Guidance on obtaining and recording witness statements

1. Introduction

At Loughborough University, workplace accidents are investigated depending on their seriousness, whether identified as part of a trend, where the accident is either known to have resulted in a claim, or it is suspected that a claim may ensue, and in line with the University accident reporting policy, procedures and statutory requirements.

The University insurers rely on the evidence gathered by such investigations, particularly where liability is denied. Any evidence provided to support a defence is therefore welcomed by them. Often the key evidence available is the written statements of witnesses. The way they are obtained and written, as well as the content, is therefore, very important.

In order to make sure the University is providing evidence of the necessary quality. The following guidance has been written, for the benefit of accident investigators, on what some would say, is "the art" of obtaining and writing witness statements. This is to ensure that statements are in a uniform format, that they are obtained correctly and fairly and contain certain fundamental and important pieces of information.

The perfect witness sees all, hears all and remembers all with absolute clarity, and records everything they know in perfect and flowing prose in their witness statement. Such people do not, unfortunately, exist. Most witnesses remember some, but not all of the incident, write jumbled and rambling witness statements, and are generally horrified at being involved with formal procedures. Given that witnesses are sometimes essential to a case, how can accident investigators help them improve their evidence and thereby increase the chances of defending against claims etc.?

2. Stumbling Block

Witness statements are the first stumbling block. Writing a good witness statement can be difficult and something which most people will be unfamiliar with. As the witness begins their long and rambling diatribe there is a terrible temptation to "assist" to ensure that the evidence comes out in the statement in clear and unequivocal terms.

If what the witness says in their statement is true, does it matter? It certainly does, because the “statement of truth” preamble to the witness statement is clear. It says that the witness believes that the facts stated in the witness statement are true and therefore, by signing it, personal liability attaches for the truth of the contents.

If there is any suggestion that the witness statement is not that of the witness and that person alone, it might be suggested that there has been collusion and witness schooling. A schooled witness does not act with a free mind, and therefore, does not provide their own evidence. Where a witness has been schooled, their evidence could be discounted. No fair-minded person would dispute that this is correct. However, what do you do where you have a witness who is clearly out of their depth and trying to write a witness statement upon which the insurers may need to rely?

Do you let them flounder and hope that those reading it can pick the bones out of it, or do you intervene and risk suggestions that the witness has been schooled?

3. Talk Through the Evidence

The first thing you can do is talk the witness through their evidence. Get them to go through what they saw, heard etc. in chronological order. You cannot impress on them what is important and what is not, because to do so is to affect their judgement. But at least they will have had an opportunity to rehearse what they will say before committing it to paper.

If they do not remember something vital, you can push very gently; "did you not say to me…", “that may be worth recording…” etc. Unfortunately, should the witness just sit and look at you unable to remember something, then, there is nothing further you can do. You cannot remind them, only they can remember.

4. Influence Statement

How much influence can you bring to the way the statement is written? The rule is that you can guide the pen but you may not push it. It is perfectly acceptable to suggest to the interviewee that he writes his statement in chronological order, because that makes sense to record the story as it unfolded. Given that you will have talked it through as suggested above, this will ensure that the defendant has a clear picture in his mind, recalls as much as possible and records it in reasonable form. When the witness has finished writing you can read over the statement and point out that he may have forgotten to mention something he has told you orally, giving him the chance to include it, provided the exchange to which reference is made, actually took place.

5. Writing the Statement

Can you write the statement for the defendant? Yes you can write down the statement at the dictation of the defendant. But you must only record what you are told. You may not add bits, and you should not sanitise the use of English to make the statement more readable. A good lawyer can usually tell whether a witness is using his own words or words are being used for him, and any suspicion that a statement has been doctored or sanitised may lead to the witness who made it, being called and cross-examined on it, should a case come to court.

However frustrating it may be, a witness statement belongs to the witness making it, and only the witness can decide what the content of their statement will be. A badly written or jumbled statement is still admissible, and may be of more value than something carefully written but from which vital material has been excluded. Most lawyers would acknowledge that there is no such thing as the perfect statement by a lay witness, and anything that looks like one should be treated with the gravest suspicion. Investigators should remember that they can speak to, but not through their witnesses.

6. Taping Statements

If the witness does not wish for any reason, to have their statement written down, the statement can be tape recorded and transcribed into written form. This must be done as soon as practicable after the recording. Contact the University Health & Safety Service for assistance.

7. Structure of the Statement

Generally, a statement starts with an explanation of who is making the statement, where

they work, where they usually work if the incident occurred elsewhere, what their job is and how long they have been employed by the organisation.

The body of the statement sets out the facts of the case as the witness knows them in a logical order. If the witness statement refers to other documents, these should be included in the case file. These documents should be marked using a unique reference and referred to in the statement by that reference.

8. Signing the Statement

All pages of a statement must be signed by the giver of the statement and a witness to the statement. Each page must also be dated.

The statement must be signed by the witness even if someone else helped them write down the statement.

It is recommended that statements are written on a standard witness statement form (Contact the UH&SS for assistance).