

The Baha Mousa Public Inquiry

Inquiry Chairman: The Right Honourable Sir William Gage

Witness Statement-taking Protocol

1. A witness in relation to the Inquiry is any person from whom the Chairman proposes to take written and/or oral evidence.
2. The Inquiry will produce a written Rule 9 Request (that is a Written Request for evidence, pursuant to Rule 9 of the Inquiry Rules 2006, hereinafter a “R9R”) in respect of any person who is believed to have evidence / further evidence relevant to the Terms of Reference to provide a written statement setting out that evidence.
3. The R9R will generally be sent to a witness’s recognised legal representative or, if none exists, to the witness directly.
4. The R9R will contain a description of matters to be covered by the statement, but may be in “generic form”, that is to say, the R9R may list a number of witnesses and outline a description of matters to be covered common to all witnesses therein named.
5. Thereafter, the Inquiry intends the following procedures to be adopted (save in exceptional circumstances or where paragraph 6 herein applies):
 - 5.1 The witness will draft an unsigned statement. In doing so, the witness may prepare the draft statement him or herself, or seek the assistance of a lawyer. But the statement must be in the witness’s own words and, while unsigned, must be approved by the witness as being complete and accurate.
 - 5.2 Not later than 21 days after the R9R has been received, the draft unsigned statement must be submitted to the Inquiry, both electronically (Word version) and in hard copy.

- 5.3 Not sooner than 7 nor usually later than 30 days following receipt of the draft statement, the Inquiry may:
- (a) indicate that it has no points for clarification or requests for further information in relation to the draft statement, and request a signed final statement; or
 - (b) (in so far as they were not included in the original R9R) produce to the witness a description of the matters or issues for clarification, or further information sought, which the witness will be requested, at the Inquiry's election, either,
 - (i) to incorporate into a finalised statement, or
 - (ii) to deal with by attending upon the Solicitor to the Inquiry or his appointed representative for the purpose of finalising a statement.
- 5.4 At such a meeting, the Inquiry's witness statement-taker will be seeking only to finalise the witness statement. The Inquiry emphasises that the Inquiry's witness statement taker will not cross-examine the witness but simply obtain the clarification and/or information sought and obtain a finalised factual witness statement, consistent with the Inquiry's inquisitorial role.
- 5.5 Amendments to the draft witness statements at such meetings will be made live on screen for the witness. At the end of the meeting, a finalised statement will be produced, having been agreed by the witness.
- 5.6 Within 7 days of receipt of the finalised statement following such a statement, the witness must return a hard copy signed statement to the Inquiry.
- 5.7 The statement to be disclosed by the Inquiry will ordinarily be the final signed statement. However, in the event that a witness refuses to return a signed statement, or delays to an unacceptable extent in returning such a signed statement, the Inquiry, having allowed representations from the

witness or his legal representative, may proceed to disclose a statement from its witness statement-taker who attended the meeting.

- 5.8 In the event that a finalised statement refers to any original document or material in the possession of the witness, such document or material must be submitted with the draft unsigned statement.
- 5.9 In the event that a finalised statement refers to any document in the possession of the Inquiry or a third party, such document must be fully identified in the manner to be designated by the Solicitor to the Inquiry.
6. Witnesses who are not legally represented may, if they prefer, attend for a meeting with the Solicitor to the Inquiry (or his representative appointed for the purpose) at which the entirety of their witness statement will be drafted. If unrepresented witnesses wish to take this course, they should notify the Solicitor to the Inquiry as soon as possible after receipt of the R9R.
7. Meetings at which witness statements are finalised will be in every respect “on the record”. The witness may attend with his/her recognised legal representative. Meetings will normally be minuted by a representative of the Inquiry but not be tape-recorded. The Inquiry will however consider any request for a meeting to be tape recorded, provided that the request is made in advance of the meeting by the witness or, where applicable, by his recognised legal representative.
8. In any case where the Inquiry Team proposes a substantial departure from the procedures outlined above, the Inquiry Team will endeavour to agree the process with the witness and/or his legal representative before issuing the R9R.
9. Where the witness or his / her recognised legal representative believes there may be good grounds for departure from this Protocol, notice of this must be communicated to the Inquiry team as soon as possible and normally no later than 7 days after receipt of the R9R with details in writing of the reasons for suggested departure and setting out the proposed alternative process.

10. Before the statement of a military witness is disclosed by the Inquiry, MoD will be given a short period in which to indicate any provisional redactions it may request in relation to the witness statement.

Gerard Elias QC

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Issued under the authority of the Chairman on 12 January 2009