

South Wales Police

Guidance on taking Section 9 witness statements

Introduction

A police officer investigating an incident is entitled to question any person from whom they believe useful information can be obtained. The fact that the person is unwilling to assist does not affect the officer's entitlement. No person can be forced to make a statement to the police, however, it is important to remember that negative statements can be as valuable as positive ones. This particularly applies when dealing with alibi evidence or sometimes when people say they did not see anything.

When a witness or a victim is either vulnerable or intimidated (Section 16 or 17), including children, you must consider the need for an appropriately trained officer to conduct the interview. If you are not able/ trained to deal with a child or vulnerable adult then seek further advice from the PPU before obtaining a written statement.

The importance of a well-written accurate witness statement cannot be over emphasised. The statement must be legible and not written in a way that is difficult to understand or read.

Statements should be obtained from witnesses at the earliest opportunity, ensuring that the most accurate information and evidence is captured within the statement. As time passes witnesses and victims often forget crucial details regarding an incident.

Our role as investigators is to seek the truth and not just those parts that support the prosecution case.

The taking of a statement over the phone is not appropriate unless it is a simple loser's statement and will still need to be sent to the witness or victim for them to agree and sign before it can be tendered as evidence.

Prior to commencing the statement

- A separate statement will be required for each witness and a statement should never be taken from one witness in the presence of another.
- Always be honest about how long a statement can take to write and never give an unrealistic timescale as this will only serve to distract the witness or victim if it takes longer than they were told it would.
- Consider the elements that make up the points to prove for the offence under investigation.

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- Identify a suitable place to talk to witnesses which limits distractions and interruptions. Put the witness at ease and fully interview them about the incident before embarking on the statement. (Remember to retain any notes taken).
- Our role in taking the statement is to assist the person in presenting it to the court. However the officer should avoid using leading questions and should record statements in the third person, i.e. 'I posted the letter' rather than 'The letter was posted'.
- We must never encourage a witness to make a statement on the pretext that they will not be called to give evidence in criminal proceedings. The 'Witness Information' form explains the exact position to the witness and officers should not deviate from the information contained within that form. A 'Witness information' form will be given to witnesses from whom we record statements.
- The contents of the witness information form should be explained to witnesses and dates when the witness is not available for court obtained.
- If a person asks to write his or her own statement this should be allowed, but should not generally be encouraged unless they are an expert witness with experience in this area.(where traumatic events have been witnessed the effects of such incidents on the witness should always be assessed regardless of their experience).
- Consider the need for an interview supporter to be present during the interview. Use common sense to decide whether the witness may benefit from the presence of an interview supporter, for example, if they are young, disabled or very distressed. If a decision is made that the person requires an interview supporter they should be asked to counter sign the statement.
- If a witness is under 18 years of age record their exact age on the statement.

Taking the statement

- Typing a statement directly on to NICHE is not recommended where the witness has detailed information that needs to be captured by the officer. In certain circumstances this is acceptable practice, for example, where there is a minor offence or in the case of a losers or property identification statement.
- The witness should be interviewed and comprehensive notes taken at this time. These notes will need to be retained by the officer as they will be unused material and may wish to be viewed by the prosecutor or defence. These notes should be scanned onto the occurrence but the originals retained by the officer in the case.

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- Keep an open mind and don't make assumptions. Check everything using open questions.
- Start by asking the witness to describe what happened in their own words, tell them detail is important and that there is no rush, paint a picture with words as you weren't there. Don't interrupt a free recall or this will act to shut down the person being interviewed and forget things they would have told you if you had just listened.
- Once satisfied the witness has told them all they know, the section 9 statement is written either by hand or typed.
- Avoid changing the language of the person making the statement as that is the language they will use in the witness box. The differences could cause the jury to doubt the veracity of the statement and undermine the witness.
- Police jargon, text talk, or slang should be avoided. 'Abusive' language should not be used unless reporting direct speech. It is important that the witness's words or phrases are used as far as possible.
- Spelling, grammar and punctuation should be checked as it will reflect badly on the officer and undermine their credibility in court proceedings.
- If further statements are taken from a witness, these should be separate documents not additions to existing statements. Such additional statements should begin '*Further to my previous statement(s)...*'. If the additional statement clarifies something said in an earlier statement, both statements should be retained and submitted.
- The witness should report what they have seen or heard personally or what has been said by the accused. If the witness has not seen or heard something themselves, they have been told about it from someone else this is called hearsay and should be avoided whenever possible. Hearsay evidence as a rule is not admissible in court, however if there is doubt about whether something is hearsay or not include it in the statement, if necessary it can be excluded later.
- Medical or technical witnesses should be asked to explain matters in simple English. Their qualifications and experience should be included at the commencement of the statement to show how they are an expert in that area. These types of statements can be regarded as expert witness statements and will be allowed to contain opinion evidence.
- Thank the witness, clarify what they have told you and tell them that you are going to put the information into an order in the statement. Make sure they know it's not only okay to correct you if you have misunderstood anything but that they can add further information if something comes to mind.

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Constructing a Section 9 statement **Structured Statements**

The following Statement structure has been identified as best practice and will provide the Criminal Justice System with the best evidence possible. It entails breaking a statement up into a number of sections, which assists the statement taker in ensuring that all points are covered, Following this process produces a document that is easier to read and to allow the reader to assimilate the key points from. It is the **only** way South Wales Police officers should be taking statements and writing their own statements. Use the appropriate heading to describe what each section is about.

Introduction

The first few lines of the statement should tell the reader what the witness is going to say in more detail in the further paragraphs.

E.g. I am a victim of a burglary at my home which occurred on Friday 1st May 2015. My property was stolen and I saw the person responsible for breaking into my home. **The ONLY time the address of the witness (including Police Officer statements) should be included in the body of the statement is when it is evidentially relevant such as burglary offences, domestic violence and interfamilial child abuse. The same will apply to telephone numbers and other features that could identify or compromise the witness.**

Actions/Circumstances (Evidential)

Describe in detail the circumstances in chronological order, explaining the physical and verbal actions of the persons present, i.e. the evidence. The statement should make sense and be accurate. In general terms the resulting statement should provide a word picture of the events as they occurred.

Pre and post event

In most cases there will be events which occur prior to and after the offence which are relevant to the investigation. These incidents may provide evidence of motive or pre-planning or relate to evidential disclosures or forensic evidence. It is usual for one of these time frames to be more relevant than the other. Whichever time frame is the most relevant to the circumstances surrounding the commission of the offence should be the next area recorded on the statement.

Offender(s)

Describe the alleged offender(s) in detail

End this section with the phrase, "That is all I can tell you about that person."

R-v-Turnbull rules regarding identification are to be covered at this stage. All the following points must be covered in detail using the ADVOKATE acronym which is as follows:

A - The **amount** of time the witness had the suspect under observation, for example 'how long would you say you saw the car for?

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D - The **distance** between them when they had the best view, for example 'how far was the car away from you when you first noticed it? How far was it away from you at its closest point'?

V - The quality of the light or other weather conditions which may have an effect on the **visibility**, for example, how easy was it to see the car, how easy was it to see inside the car or what the lighting was like.

O - Whether **observation** was impeded in any way and, if so, by what and how, for example, 'was there anything between you and the car? Was there anything between you and the driver of the car'?

K - Whether the witness had any previous **knowledge** of the suspect and, if so, how long and under what circumstances. For example, have you ever seen this car before? How do you know it was the same car? When did you see the car before?

A - **Any reason to remember**, i.e. anything they did that drew attention to them, for example, 'What makes you remember this particular car'?

T - The **time elapsed** between the incident and any subsequent identification of the suspect or reporting of the incident. For example 'how long was it between seeing the man and then giving his description to the police officer'?

E - Whether there is any **error or discrepancy** if the witness gave more than one description of the suspect and, if so, how the witness explains it. Additionally, reference should be made on the MG6 (schedule of disclosure) to any differences between the stated description and the actual description.

Whether the witness had previously been shown any photographs with a view to identification and, if so, when and by whom. This issue could be addressed elsewhere in a file.

Comments such as 'I would/ would not recognise the man again' should be included in a witness statement.

In cases of multiple suspects, each suspect should be fully described when first referred to in a statement. Thereafter they should be referred to by a 'tag' identifying feature such as the 'the man with the red cap'. Whenever possible, descriptions of multiple suspects should be recorded together in any structured statement. Be careful not to use offensive or inappropriate tag names.

Other Witnesses

Describe or name other witnesses present, e.g. other persons present were
(name or describe)

Objects

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Any objects involved are to be described in detail in this section of the statement. e.g. vehicles used, weapons, any objects being produced as exhibits, any stolen property. (Exhibits are dealt with below)

Other issues

The following issues should then be included at the end of the statement if they are relevant: movements, antecedent history, personal relationships, etc.

Victims Personal Statement

Please use appropriate documentation on NICHE.

Exhibits and continuity

- Exhibits produced in a statement MUST be allocated a unique reference number and an exhibit label should be signed at that time. The unique reference number should be recorded in the statement.
- Whenever practicable each item should be given a separate reference number.
- If an exhibit is produced or created by the witness it will be their exhibit and it will be produced as a part of their statement.
- The unique reference number will consist of the exhibitor's initials and a sequential number, i.e. the third exhibit produced by David Steven Roberts would be identified as DSR/3. The officer will write the exhibit reference in the following format

'I now produce the knife as an exhibit (Ref marked DSR/3 (Exhibit no.))'

- Exhibit numbers are only allocated by the court and are left blank until that time.
- On major enquiries where officers may have the same exhibiting initials special rules will need to be established.
- It is essential that accurate descriptions of property are included in the statement and should also be included on the exhibit label. Any marks or damage that the owner would be able to recognise again should be recorded and the reason why the owner can positively identify that property as theirs.
- Where an exhibit is stored or who it is handed to is an important aspect in the continuity of that exhibit and must be included in the statement

Body Worn Video (BWV)

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BWV may be used to capture a first account, and witnesses may be permitted to review their account prior to making and signing any written statement. Care must be taken to ensure that witnesses are not permitted access, in any way, to any aspect of the recording other than their own first account. Their statement should also refer to the fact that they have viewed the recording of their first account. This applies equally to police officers and staff, who may refer to BWV material prior to making any statement.

The evidential statement must include details of the audit trail for producing the master copy. In order to assist prosecution and defence solicitors, it is advisable that the statement producing the exhibit contains a summary paragraph outlining the evidential aspects of the incident and the recording. If there is any break in the recording, the user must include the details and the reason for this in their statement.

More than one user may refer to the BWV evidence to confirm that it shows the incident that they are referring to. Their statements could say, for example, **'I have seen the video (Exhibit no.) ref marked () and confirm that this is a recording of the incident that I attended.'**

If a recording covers the whole incident, it is not essential for the BWV user to produce a written statement detailing the entire nature of the interactions contained in the material, as this is avoidable duplication. The user's recollection, as expressed in their statement or pocket notebook entries, should be confined to parts of the incident that are not properly shown or heard on the BWV material.

When producing their statement all users involved in an incident should consider the BWV material and then add to that their recollection of any other parts of the incident that they witnessed. Each case should be considered on its merits to enable the user to give their evidence in the most effective manner.

For some minor offences, such as being drunk and disorderly, the expert opinion evidence requires a number of observations (such as smell of intoxicants, eyes glazed) to prove drunkenness, but this may not be shown adequately by the recorded BWV evidence. The user may, therefore, decide not to use the BWV material, and instead provide the evidence in a short written statement. The BWV evidence should be retained as unused material.

Some offences, such as breaches of the Public Order Act 1986, require evidence that a person was, for example, put in fear of violence. This evidence must still be included in the statements of those who were present and, if applicable, the BWV user. If appropriate, the user can add a summary of what the BWV material shows (making it clear that they are summarising that material and not providing their recollection). As the BWV recording will contain only what is in the range of the camera and sound that is picked up by the microphone, it may be appropriate to add further information and a statement from the user saying what is not visible or audible from the footage.

At the conclusion of the statement

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- When the full text of the statement has been written, the witness should be asked to read it and initial any alterations. Any alteration should remain visible and as such a single line strike through the word(s) to be deleted is sufficient.
- The witness should be read or asked to read the declaration at the top of the initial page of the statement and sign that they have done so in the appropriate place.
- Any insertions should not be written between lines or in margins. A letter should be placed at the point of the required insertion e.g. 'a' at the first insertion, 'b' at the second and so on. The text of the insertion should be added at the end of the statement, before signature, and should be marked with the letter of the insertion.
- When the contents and accuracy of the statement have been agreed, the witness should sign each page and under the last line of writing on the final page. The Criminal Justice Act certificate on the first page should then be read and if necessary explained to the witness. The witness should then be invited to read and sign it. Any blank spaces at the end of the statement should then be struck out and initialled by the officer taking. If the original text is obliterated the statement cannot be served as an original document.
- If the statement is made by a person who cannot read it, the officer taking the statement will read it over to him/her before he/she signs it and will then add at the end of the statement the following

*The witness being unable to read the above statement, I
..... (name/ rank/ no) of read it to him/ her before he/
she signed it.
Dated the day of 20...
Signed.....*

- The address used on a police officer or other professional witness statement should be their usual place of work.
- In certain cases a witness will retract their initial statement or refuse to support police action. This action should be viewed with caution and consideration given as to whether there has been intimidation. It is advisable to obtain a statement giving the reasons for retraction or refusal to support the police investigation and whether any original statement was correct. A retraction or negative statement as they are sometimes known does not necessarily mean that proceedings will be discontinued.
- All witness statements, other than those of police officers, should end with an expression of willingness or unwillingness to give evidence. Police officers are expected to be prepared to attend court and give evidence.

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- If a witness is reluctant to support a prosecution or wishes some other course of action to be taken, this should be noted in the statement. It pre-warns the officer in the case and the prosecutor regarding the attitude of the witness and this may well have a bearing on the decision to prosecute.
- **Remember signatures** are a requirement of the Act and are required on every page of the statement including the declaration on the front page. Cases have been discontinued because of missing signatures.
- There is no legal requirement for a police officer to countersign an adult witness's signature.
- **NEVER** sign a statement on behalf of a witness or colleague as this would be a criminal offence
- All statements should be retained as either used or unused material and all signed statements should be scanned onto the occurrence.
- If a witness is identified as in need of Special Measures for Court the appropriate Interview Booklet **MUST** be completed and also scanned onto NICHE.
- Remind the witness that if they remember anything else then they should contact you

Statements from witnesses who have consumed alcohol

Officers will need to make a professional judgement about whether or not a victim or witness is able to make a statement despite a level of intoxication. The fact that a victim/witness has been drinking alcohol does not necessarily mean that they are unable to clearly recall the event.

A witness who has been drinking, depending on the level of intoxication, may still be able to provide a description of an incident and in many cases may be the only witness to the offence.

Officers should record their observations at the beginning of any statement, covering the following points:

- Detail the amount of alcohol consumed and
- The effect of consuming that amount of alcohol on the witness. This should **NOT** be on a scale of 1 – 10, but detailing the actual effect on the witness, e.g. Is the witness able to clearly recall what has happened?
- The witness's understanding of the terms of the Section 9 certificate at the beginning of the statement needs to be ascertained.

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Taking statements from witnesses at this early stage may be very useful for CPS decision makers and will assist with taking forward victim-reluctant prosecutions.

Officers will need to include in their own statements their thought process and observations in relation to the victim's ability to recall events, give a coherent chronological account, and any other observations in relation to the scene, and any injuries consistent with the allegation. The officer should attempt to obtain the best information available at the time. Consideration should be given to returning to speak with the victim at a later stage to ensure that everything they recall has been recorded in the statement. Any revisit must be documented.

When an officer attends an incident which is reported as an assault but is retracted on police arrival, the officer should establish from the reporting person/victim the reasons why an assault was initially reported but subsequently retracted. This explanation should be recorded in the officers PNB which should then be signed by the alleged victim.

Police officer statements

- Police officer statements should always commence with the officer's name, rank and number, and place stationed or duties. It should then outline the tour and type of duty being undertaken at the time of the incident and identify any other officers who were present. For example 'I am Police Constable 2895 David Steven Roberts currently stationed at Bridgend Police Station. At 10am on Monday the 20th of July 2016 I was on duty in full police uniform on foot patrol at the junction of High street and West Street, Bridgend in company with PC 987 Andrew Jones'.
- Police officers should make their statements without consulting with other officers as this can be seen as collusion.
- Questions from the CPS should not be included within a section 9 statement as memos between the CPS and staff are regarded as confidential.
- There is no need to include details of technical processes such as attaching documents or photographs to Niche or non-relevant information
- Police officers can only give opinion evidence on drunkenness
- A suspect cannot produce an exhibit. Anything taken from them or made by them during interview should be exhibited by an officer with their initials as the reference number. A prepared statement or sketch plan, for example, would be an exhibit taken and produced by the interviewing officer and given a consecutive reference number.

Use of Force

Any use of force must be recorded in detail in a police officer's statement and should NEVER be simply one or two lines.

- Officers should remember that use of force incorporates many aspects of policing which can regularly be overlooked such as handcuffing, escort position and simply taking hold of another person. Even a show of force such as drawing your baton or Taser without using it should be documented and treated as a use of force.
- The National Decision Making model (NDM) is to be used in detail where any force is used. The NDM consist of five elements which together fully take officers through the thought process involved when taking action and using force. Ensure that every element of the NDM is covered thoroughly to build up a picture and to JPLANE actions taken.
- Outline the risk / threat faced, the information and intelligence and the impact factors that were present during the incident. Accurately describe the offender's behaviour as per the Offender Profile Behaviour categories.
- The officer must identify which power they were acting under when using force.
- The officer should outline what actions they were taking in line with the reasonable officer response options.
- The option that the officer takes should be fully justified and it should be proportionate to the information/threat/behaviour of the offender.
- When documenting the option taken, evidence that you have considered and discounted lower levels of force, clearly outlining the reasons why. If circumstances dictate that the officer made a 'split second decision' based on instinct/morals/values/reaction rather than a clear decision making process, the officer will still need to evidence the circumstances and fully justify their actions.
- Officers MUST evidence re-assessment as soon as they take any action i.e. what was the result of the action and was it effective. This shows the officer is reviewing the NDM by analysing the additional information from the action they have taken.

Statements from persons who do not speak English

Where a witness has difficulty in speaking or understanding English, investigators must arrange for an interpreter to assist in interviewing the witness.

The interviewer should employ the same techniques and approaches for effective communications via an interpreter when dealing with a suspect, victim or witness. It is the investigator's job to ask questions and gather evidence, not the interpreter's. The process for taking a written witness statement via an interpreter can be confusing. Investigators should establish an agreed method for taking statements with the interpreter, before starting. There are two simple but effective models for taking a statement via an interpreter.

Option 1

- The investigator puts questions to the witness to elicit the information required and the interpreter interprets the witness's responses.
- The investigator indicates to the interpreter which pieces of information should be recorded on the statement form in the language of the witness. At the end of the interview the interpreter should be asked to confirm the accuracy of what is written, and then reads the statement back to the witness in the witness's own language.
- Having built up a full statement in this way, the interpreter then produces a written translation of the statement in English.

Option 2

- The investigator puts questions to the witness to elicit the information required and the interpreter interprets the witness's responses, as in Option 1.
- Based on the interpreted responses, the investigator writes a statement in English. While writing, the investigator reads out sentence by sentence what they are writing. The interpreter simultaneously writes a translation into the language of the witness onto a statement form.
- The completed statement is then read back to the witness, who is asked to confirm the accuracy of what is written.

Investigators must remember that the responsibility for taking the statement remains entirely with the investigator (as if taking a statement from an English speaker).

The investigator must never invite the interpreter to take the statement from the witness, or to formulate questions on their behalf. The investigator must speak directly to the witness throughout the process, allowing the interpreter time to interpret what is said. Taking a statement via an interpreter requires double/triple the time normally required.