

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

Protocol concerning the provision of written witness evidence

Introduction

1. A “witness” is a person from whom the Commissioner intends to receive written and/or oral evidence. The Commissioner will decide from whom he wants to hear oral or written evidence whether or not that person has been given participant status.
2. Anyone who believes they may have evidence relevant to the Commissioner’s Terms of Reference is welcome to approach the Secretary to the Commission of Inquiry (“the COI”). The means by which this can be done are set out on the COI’s website. If the Commissioner decides that such evidence may be likely to assist his investigation then the COI Team will decide what steps, if any, need to be taken. It may not be necessary or appropriate to take evidence from every person who approaches the COI.
3. Unless otherwise directed by the Commissioner, written evidence will be in the form of an affidavit.
4. For the avoidance of doubt, members of the public, witnesses and participants should not submit affidavit evidence on any matter without prior discussion with the COI. If such evidence is submitted unsolicited, that does not mean that the Commissioner will necessarily consider it to be relevant: as with all evidence, he will determine whether, and the extent to which it is relevant.
5. The purpose of this protocol is to ensure that:
 - (a) participants, witnesses and legal representatives understand the process by which the COI will seek written evidence from a witness; and

- (b) written evidence conforms to a common standard and is set out in a form which is most useful to the Commissioner.
6. This protocol is not intended to cover every eventuality that may arise in relation to written evidence. Where it is necessary for the efficient progress of the COI, the Commissioner may direct that written evidence is provided in a form other than that provided by this protocol.

The provision of written evidence

7. Where the Commissioner wishes to obtain written evidence from a person, then the COI Team will send that person a written request. If the person has legal representation, the request will be sent or copied to the relevant legal representative. The request for an affidavit may be included in a letter dealing with other matters such as the provision of disclosure.
8. The request will set out those matters to be covered in the affidavit. There may be cases where the request is directed to more than one witness and contains a description of the matters each witness needs to be addressed. Where appropriate, the COI Team may ask a witness to make more than one affidavit to cover different topics. It may issue further or supplementary requests following receipt of an affidavit.
9. The request for an affidavit will set a date for compliance. This may vary depending on the nature and extent of the evidence requested. The Commissioner will consider applications for an extension of time to provide an affidavit. Such requests must be submitted by email to Andrew King, Senior Solicitor to the COI (andrew.king@bvi.public-inquiry.uk) as soon as possible and in any event before the expiry of the time allowed. Any queries about the content of this protocol, the form of an affidavit or the content of a request should also be similarly raised.
10. Where a witness is legally represented the affidavit should be provided:

- (a) in final signed form;
- (b) following the format set out at paragraphs 13-22 below; and
- (c) be limited to addressing the matters set out in the request. Where a witness or his or her legal representative considers that the affidavit should address other matters, then they must speak to the COI Team before the affidavit is signed and before the expiry of any date by which it was to be submitted.

11. Where a witness is not legally represented then the COI Team may:

- (a) invite the witness to a meeting for the purpose of discussing the request for an affidavit; and/or
- (b) ask the witness to provide an unsigned affidavit in draft so as to decide whether:
 - (i) it requires clarification or amplification,
 - (ii) it conforms with paragraphs 13-22 below; or
 - (iii) it can be sworn and submitted to the COI.

12. The COI may ask a legally represented witness to follow the procedure set out in paragraph 11, in which case a legal representative may attend any meeting between the COI Team and the witness.

Format and Structure of the Affidavit

13. Any affidavit submitted to the COI must be typed on single-sided ANSI A Letter size paper (8.5ins width x 11ins height) and adopt the following format:

- (a) Arial font with point size 12.
- (b) Line spacing of 1.5 with each page numbered sequentially in the bottom right-hand corner of each page.

- (c) Paragraphs numbered sequentially (i.e. 1, 2, 3, 4 etc).
 - (d) Have all numbers, including dates, expressed in figures.
 - (e) Give the reference to any document or documents mentioned in bold text defined by square brackets, in the body of the affidavit.
 - (f) At the top right hand corner of the first page (and on the backsheet) there should be clearly written:
 - (i) The initial and surname of the person making the affidavit (“the deponent”).
 - (ii) The number of the affidavit in relation to the named deponent.
 - (iii) The identifying initials and number of each exhibit referred to.
 - (iv) The date on which the affidavit was sworn.
14. The affidavit must, if practicable, be in the deponent’s own words, should be expressed in the first person and should:
- (a) commence ‘I (full name) of (address) make oath and say as follows:’
 - (b) if giving evidence in his or her professional, business or other occupational capacity, give the address at which the deponent works in (a) above, the position he or she holds and the name of the organisation on whose behalf the affidavit is being made. Personal addresses should not be given.
15. Where appropriate a brief biography should be included setting out the deponent’s experience and qualifications to make the statement.
16. The affidavit must indicate which of the statements in it are made from the deponent’s own knowledge and which matters of information or belief and, if so, the source for any matters of information and belief. That is particularly important where the maker of the affidavit has been asked to address questions on behalf of an organisation.

17. Factual events should be set out chronologically. If the affidavit is dealing with a number of different matters, then these should be clearly identified by using sub-headings. Where possible, paragraphs should be confined to one subject.
18. The affidavit must:
 - (a) be signed by the deponent;
 - (b) be sworn or affirmed by the deponent; and
 - (c) contain the full name, address and qualifications of the person before whom it is sworn or affirmed.
19. The statement authenticating the affidavit (“the jurat”) must follow immediately from the text and not be on a separate page.

Documents accompanying the Affidavit

20. Any document to be used in conjunction with an affidavit must be exhibited to it. If there is more than one such document or the document is more than 10 pages in length, then these (or it) must be included in a separate bundle which is arranged chronologically or in some other convenient order. The bundle must be indexed and paginated in the bottom right hand corner.
21. Exhibits should be referenced in the body of the affidavit using the following system “[XY*]” where XY are the initials of the deponent and ‘*’ the number of the exhibit. Exhibits should be numbered sequentially. The same sequence should be used when preparing a bundle of exhibits.
22. Copies of original documents may be exhibited but these must be clearly legible. The originals must be retained for inspection by the COI if necessary.
23. Each exhibit or bundle of exhibits must be:
 - (a) produced to and verified by the deponent;

- (b) accurately identified by an endorsement on the exhibit or on a certificate attached to it signed by the person before whom the affidavit is sworn or affirmed; and
- (c) be marked in accordance with paragraph 13(f) above and with the exhibit number as referred to in the affidavit.

Submission to the COI

- 24. The signed and authenticated affidavit, together with any accompanying exhibit or bundle of exhibits should be submitted in electronic PDF format by email to Andrew King, Senior Solicitor to the COI (andrew.king@bvi.public-inquiry.uk). The affidavit should be separate from any exhibit or bundle of exhibits. Where the affidavit and exhibits are too large to send in one email, the deponent or his or her legal representative should contact the COI in advance.
- 25. The email submitting the affidavit and any accompanying exhibit or bundle of exhibits should confirm where the signed and authenticated originals are being held and that these will be retained for inspection.
- 26. Where the affidavit or any exhibit contains information which the deponent or the organisation on whose behalf the affidavit has been made contends should be redacted, then two further copies of the document to be redacted (be it the affidavit and or an exhibit) should be provided in electronic PDF format. These further copies should be in the following forms:
 - (a) one where the redaction sought is shaded but still visible; and
 - (b) the other where the same material is marked out so that it is no longer visible.

27. At the same time, and unless otherwise directed by the Commissioner, a copy of the affidavit in its final form before it was signed and authenticated should be provided in electronic Word format.
28. At the same time, and unless otherwise agreed with the COI, the deponent or the relevant legal representative should deliver five hard copies of the affidavit together with any accompanying exhibit or bundle of exhibits to the COI at the BVI International Arbitration Centre, 3rd Floor, Ritter House, Wickham's Cay II, Road Town, Tortola.
29. Where further to paragraph 26 above, redaction of the affidavit or any accompanying exhibit or bundle of exhibits will be sought, then additional hard copies of the document which it is said should be redacted must also be provided. Five of these copies must be marked in accordance with paragraph 26(a); five must be marked in accordance with paragraph 26(b).
30. If the circumstances warrant it, the Commissioner may permit a deponent to submit a signed affidavit which has not been authenticated together with any accompanying exhibit or exhibits. Any application to be permitted to submit a signed but unauthenticated affidavit must be made with reasons and submitted by email to Andrew King, Senior Solicitor to the COI (andrew.king@bvi.public-inquiry.uk). The form and content of any affidavit and accompanying documents submitted in this way must still otherwise conform with the provisions of this protocol as set out above.
31. Deponents and their legal representatives (where applicable) should proceed on the basis that the COI will treat any affidavit submitted pursuant to the preceding paragraph as if it had in fact been authenticated.

Submission of statements rather than affidavits

32. Further to paragraph 6 above, the Commissioner may permit a witness to submit written evidence in the form of a signed statement rather than an affidavit. Any application to be permitted to submit a signed statement rather than an affidavit

must be made with reasons and submitted by email to Andrew King, Senior Solicitor to the COI (andrew.king@bvi.public-inquiry.uk).

33. Any such statement must be signed as follows:

(a) There should be a statement of truth on the last page of the statement which should follow immediately on from the text of the statement. The statement of truth should be in the following terms:

“I [insert statement maker’s name] believe that the facts set out in this statement are true. I understand that proceedings for perjury may be brought against a witness who wilfully gives false evidence concerning the subject matter of the Commission of Inquiry.”

(b) The full name of the statement maker should then appear in typescript below the statement of truth;

(c) The signature of the statement maker should appear below the typed name;

(d) The date on which the statement is signed should then appear.

(e) Subject to the Commissioner granting prior approval, the use of an electronic signature is permissible.

34. Any statement submitted to the COI must, insofar as applicable conform to the requirements for an affidavit as set out in the preceding paragraphs of this protocol. Regard should be had specifically to:

(a) Paragraphs 13 to 17 concerning the format and structure of a statement.

(b) Paragraphs 20 to 22 and paragraph 23(c) concerning documents which are exhibited to a statement.

- (c) Paragraphs 26 to 29 concerning the submission of a signed statement and any accompanying exhibits to the COI.

The Rt Hon Sir Gary Hickinbottom

Commissioner

1 June 2021

Amended 23 August 2021