

Gathering, recording and presenting information for legal proceedings

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Contents

1	Introduction	2
2	Evidence.....	3
3	Statements (see appendices)	9
4	Legal proceedings in court	12
5	Special procedures for fatal or suspicious fires.....	21
	Appendix 1 – Interviews under caution	24
	Appendix 2 – Disclosure in Brigade prosecutions.....	29
	Appendix 3 – Witness statements.....	33
	Document history	41

1 Introduction

- 1.1 The purpose of this policy is to ensure that where Brigade officers give evidence in legal proceedings that evidence is of the highest quality. It therefore provides guidance to personnel who are required to gather and record information on behalf of the Brigade which may ultimately be tested in legal proceedings. It also provides policy and practical information on what to do when giving evidence in court proceedings.
- 1.2 In the course of operational, investigative and fire safety duties any officer of the Brigade may be required to gather information to be compiled and recorded. No matter the type or size of incident, this material may be tested in court. Brigade officers could be expected to provide statements to police officers or insurance representatives for use specifically in legal proceedings or provide supporting evidence in the Brigade's own legal actions. Officers should therefore be prepared to account for their findings or results of investigations, inspections and enquiries in court. This will mean individual Brigade officers would have to justify orally their observations and findings, and perhaps defend them against hostile cross-examination.
- 1.3 At any time that personnel are required to provide statements and/or are called to attend court as a witness or observing officer, this policy should be referred to for guidance on statement format and to familiarise officers inexperienced in court proceedings. Operational staff are advised to seek further advice as required from General Counsel who can identify experienced officers to assist.
- 1.4 The Brigade has a statutory duty to enforce the Regulatory Reform (Fire Safety) Order 2005 and other fire safety regulations. This includes bringing criminal prosecutions as prosecutor that can be serious enough to attract custodial sentences. Information gathered for prosecutions must therefore be collected and recorded in accordance with the Criminal Procedure and Investigations Act 1996, the Police and Criminal Evidence Act 1984 (PACE), various statutory Codes of Practice and other rules of evidence and due process. Consequently, it is essential that Fire Safety and Petroleum Inspectors can competently manage and correctly present the appropriate evidence. There is specific guidance on gathering and recording information in regard to Regulatory Fire Safety legal actions which should be referred to alongside this policy.
- 1.5 Giving evidence in court and producing statements for use in court is not an everyday task for operational staff. Therefore, it is essential that all managers ensure they have appropriate support in place for:
 - Monitoring the quality of information entered onto the Incident Management System.
 - Providing support to staff who are required to produce witness statements to the police, for coroners' courts; and following insurance interviews.
 - Ensuring written material is compiled correctly and of the highest quality.
 - Ensuring that visual information (images and video) are correctly processed in line with Brigade policy number 301 – Capturing and managing images on behalf of the Brigade.
 - Ensuring that all fire safety complaints are reported completely and accurately.
 - Ensuring that observing officers attend coroner's court when Brigade witnesses are called.
- 1.6 In the following sections some advice is given on how to record and give evidence and make statements. Example statements and template paragraphs are shown in the appendices. Operational staff making statements for coroner's courts or for the Police may wish to make use of these guidelines, and officers wishing to record the details of disciplinary or accident investigations may find them useful.

2 Evidence

- 2.1 Evidence is information that may be presented to a court or tribunal to help it weigh up the probability of some fact asserted before it i.e. it is information tending to establish facts. This section provides an overview of what evidence the Brigade is likely to provide to a court of law.

Types of evidence

- 2.2 Evidence can take a number of possible forms:

- **Oral evidence** – are statements made by witnesses **orally** in court and presented as evidence of the truth of what is said e.g. Brigade officers may attend court to offer oral evidence of what they saw and did when tackling a fire.
- **Documentary evidence** – are documents produced for examination by the court as evidence of what is recorded in them. They normally have to be authenticated by a witness to be accepted as evidence. The Brigade's photographs of a fire scene would be a form of documentary evidence (so they need to be authenticated by a witness). Reports produced from IMS are similarly documentary evidence.
- **Real evidence** - is physical evidence like samples taken from the scene of an event such as ash or fire damaged objects. Officers should be aware that it is not acceptable for Brigade officers to remove evidence from the scene of a crime that is under investigation by the police. The value of any evidence that is removed is reduced if the correct methods of recording, sealing and storage are not used i.e. it will guard against a claim it has been tampered with.

- 2.3 A number of special kinds of evidence should be noted:

- **Circumstantial evidence** – evidence which is indirectly **suggestive** of some fact but that is not **direct** proof of it, e.g. "I saw the car travelling round the bend very fast, then I heard a crash. When I turned the bend, I saw the car had been involved in a collision." The fact that the car was seen travelling fast before the accident is circumstantial - but a conclusion that it was still travelling fast at the time of the collision can be drawn. This is why evidence of the broader circumstances around the incident in question may be presented in court as relevant evidence.
- **Hearsay evidence** – Hearsay is a statement made by a witness trying to prove something by repeating what has been said by a third party who is not a witness. While hearsay evidence is now often allowed, the evidence would be much stronger directly from the third party. This is why several officers attending an incident may each need to give their own evidence individually.
- **Expert/opinion evidence** - An expert witness may give a court their **opinion** and suggest an interpretation of evidence as well as offering a simple account of what was seen/heard. The expert must usually have relevant qualifications or experience, but their qualifications may always be challenged by another party. It is for the Court to decide whether a witness is sufficiently qualified to give opinion evidence in that field. For example, an operational firefighter might not be regarded as sufficiently qualified to give an opinion in the specialist matter of risk from fire safety regulatory non-compliance.

Statements

- 2.4 During the preparation of a case for legal proceedings potential witnesses will almost always have prepared a statement. This is a formal written account of the evidence they would give in court. This helps establish the potential strength of each side's case and to clarify what issues are disputed by the parties. In some cases, the preparation of statements will show that all parties accept what a particular witness is saying as uncontroversial e.g. a simple factual narrative given

by a firefighter of how a fire was tackled. In these cases, there may not be any need for the witness to provide oral evidence at a court hearing as well as their statement. However, any statement should be prepared in the knowledge that it may be read out in court and the witness asked in oral evidence to explain and defend its contents.

- 2.5 More information about how to construct a statement is in section 4 with template statements in the appendices to this policy. Further specific guidance for regulatory fire safety can be found in FSIGN 304 - Information gathering.

Gathering information

- 2.6 Information is gathered across the Brigade for many diverse reasons, from fire investigation reports and accident investigations to performance management and trend analysis. However, this section outlines what must be done in gathering information so that it may be used in legal proceedings. This is done through questioning of witnesses, collection of real evidence, photographs and other documentary records.

Gathering information through questioning/interviewing

- 2.7 Informal questioning of witnesses is an obvious way to gather information about an incident. However, more will be needed if the information gathered this way is to be used in legal proceedings. Simply repeating at a later court hearing what a witness has said would be "hearsay" evidence (see 2.3) so is to be avoided. If the information is needed for evidence in proceedings, it must be written up in the format of a statement from the witness and if necessary, they will have to appear in court to support it orally. (See section 4 for guidance on this.)
- 2.8 If an officer conducting informal information gathering through questioning witnesses concludes that there are reasonable grounds for suspicion of a criminal offence by the witness (e.g. arson, assault, murder) **questioning of witnesses should cease immediately and the matter passed to the Police, ensuring full inter-agency liaison takes place.** It is of paramount importance that any 'hand over' communication between agencies is specific and understood by both parties.
- 2.9 Brigade staff must not under any circumstances investigate any criminal offence they suspect other than **offences under fire safety legislation for which the Brigade is the prosecuting authority** and for which they are authorised to investigate. For example, when questioning about a regulatory fire safety matter do not stray into questioning about other offences (e.g. breaches of non-fire safety building regulations, health and safety offences or deception offences) except in so far as they may be needed for the investigation of the fire safety offences.
- 2.10 Those officers who carry out regulatory fire safety investigations will at times want to conduct a formal interview of a suspect so that answers provided can later be presented in court as evidence in relation to the interviewee. For the contents of an interview to be presented to court numerous legal formalities must be satisfied. This is to ensure that the interview was conducted in a way that was fair and that the record of it that is presented to court is accurate. Most importantly, when staff are investigating fire safety offences, and the interviewee is suspected of an offence **a caution should be issued before any further questions are asked.** A transcript of an interview under caution can be admissible in evidence as an exhibit to a witness statement of a Brigade officer present throughout the interview. Specific guidance on conducting these "interviews under caution" is contained later in this policy.

Collection of real evidence

- 2.11 Real evidence is most likely to be collected where there has been a fire. Regulatory fire safety officers have certain, fairly limited, powers to take samples (under Article 27 of the RRO, or s20 H&SWA 1974 for petroleum inspectors), and the Brigade has authorised Senior Fire Safety Officers to do this although it is rarely used in practice. FI officers also have statutory powers to take evidence. This includes specific powers to retain samples for use in evidence. It is important that where these powers are exercised, they are exercised in accordance with the relevant practical guidance from Fire Safety.
- 2.12 However, operational crews have no legal authority to remove material from an incident scene, except as might be necessary to tackle fire or emergency. The Brigade has given a commitment to the Metropolitan Police to take all reasonable steps during the extinction of a fire in which a fatality or serious injury has occurred, or where it is suspected that crime has been committed, to preserve the scene and protect potential evidence from being destroyed or removed from the scene. Samples are to be taken, or items are to be seized from the scene of a fire **only by or under the authority of an authorised Fire Investigation Officer or Senior Fire Safety Officer**, who will ensure that it is preserved and stored in accordance with appropriate sampling and seizing policies so that it can be used as evidence in legal proceedings. Brigade officers should be aware that once the fire has been extinguished, the police have authority for all activities at the scene of a crime.

Photographs

- 2.13 Where images from an incident or inspection are to be used in legal proceedings, the Brigade will need to provide an audit trail for each image as proof that the images have not been manipulated after they have been captured. Exactly how this is done will depend on the changing technology for managing images. Have regard to the latest guidance in Policy number 301 - Capturing and managing images on behalf of the Brigade. However, in almost every case the officer responsible for capturing the image/s may be required to sign a legal witness statement should the Brigade intend to use the images for legal proceedings.
- 2.14 Images captured on Brigade or authorised personal equipment must not be used, or distributed, for any other reason than official Brigade business. Images must not be deleted from any memory card until after they have been uploaded to the LFB image library. Failure to comply with this may jeopardise any subsequent legal proceedings or subject the Brigade to criminal proceedings under the Data Protection legislation. Requests for disclosure of images that have been collected or used in litigation and/or some public enquiry to a third party should be referred to the Information Access team infoaccess@london-fire.gov.uk.
- 2.15 Staff should be aware that in cases where any images taken on other devices (authorised or unauthorised) such as mobile phones, tablet PCs or PDAs that relate to a criminal case, then the device (not just the images) is liable to be seized by the police.

Other documents and reports: IMS

- 2.16 Information is routinely gathered by Brigade operational staff as part of procedures for recording and analysing incidents. The principle means for this is by recording information on the Incident Management System. The Incident Management System (IMS) records basic details about every incident attended by the Brigade. It also records the results of investigations into the causes of fires carried out by the Fire Investigation Team and details of the performance of crews and officers at incidents and training events captured via the Incident Management Process.

- 2.17 Alongside the Incident Management System (IMS) a suite of reports have been developed which are drawn from a data 'warehouse' that sits beside the IMS. IMS reports contain key data about incidents, which can be filtered on a number of different criteria such as area, borough, station, stop code, etc. It is largely structured around selecting for each recorded incident the appropriate tag from drop-down lists of options with some opportunities to add further narrative detail.
- 2.18 Great care is therefore needed by incident commanders to ensure that the correct information is entered in each field. It should be remembered that to some extent all information from IMS is a fire investigation report and can be the basis for evidence in litigation. All information recorded should therefore demonstrate the highest degree of accuracy as officers may be expected to justify their account in court. Staff should ensure that any text commentary accurately reflects notes from the incident. Therefore, the details contained in it must be of the highest order and reflect who has completed the form. The Incident Commander should agree the content where someone else has entered the data.
- 2.19 It is important that all details in IMS correlate with paper records, are accurate and can be supported and qualified by verbal testimony. Times of call, attendance and "under control" times should be accurate and identical in all documents.
- 2.20 Any witness statements subsequently given by officers to police etc. should accurately reflect the details contained within IMS, as any contradiction in the account is likely to risk serious embarrassment if this becomes apparent in any subsequent legal proceedings. The statement should record if the witness is relying on notes to refresh their memory for drafting the statement, especially if there has been some delay before the formal statement is written up.

Other documents and reports: fire investigation reports

- 2.21 Fire Investigation Officers are responsible for completing the fire investigation part of the IMS record of an incident. They will give their view of the most likely cause, defect, source of ignition, material first ignited and material responsible for development of the fire.
- 2.22 Fire investigation reports can support the Incident Commander in any criminal proceedings or litigation and are essential in the case of fatal or serious injury fires (see Policy number 399 - Fire investigation about scene preservation). They would contain "opinion" evidence, and as such the expertise of the author would have to be established to the satisfaction of the court. As with all documentary evidence the content of the report has to be authenticated by a witness. This is why the standard form of report includes a s9 statement that exhibits the report. It should also exhibit any of the author's photos and "real" evidence. Other parties to any litigation may of course dispute the FIO's conclusions and submit expert opinion evidence of their own. If so, a further report/statement in response might be needed.
- 2.23 Fire Investigation reports are also potentially very helpful for the Brigade's regulatory investigations. Close liaison between the two teams is important as the FI report might be needed as evidence.
- 2.24 In the case of fatal fires, FIOs will also liaise with the Coroner's officer and prepare a detailed report on behalf of the Brigade. A copy will be submitted to HM Coroner's and/or the police to use in Criminal Courts as required. In depth fire investigations and associated fire investigation reports may provide the basis for additional reports e.g. research projects. Where there is no ongoing regulatory or criminal investigation the FI is likely to be made available to third parties and could be used in third parties' own litigation.

Other documents and reports: Fire Brigade/Police liaison

- 2.25 Incident commanders will follow appropriate protocols, to ensure effective co-operation between services. IMS manages most of the information sharing with the police, including an email notification of fires which will be of interest to them.
- 2.26 In particular in fatal fires in non-domestic settings (especially in obvious workplaces) investigations are likely to be made jointly with police, HSE, local authorities and other regulators. It is important that protocols are agreed for the sharing of information and evidential material. Most organisations likely to be involved are signatories to the work-related deaths protocol, which acts as the default multi-agency investigation arrangement. The Brigade is committed to observing this protocol. Typically, police will have primacy initially, so will direct evidence gathering and retention of material. Contact central regulatory enforcement group or General Counsel for guidance.

Other documents and reports: contemporaneous notes/notes

- 2.27 The purpose of notes is to refresh a member of staff's memory in completing official reports or witness statements and in any subsequent court testimony or legal process. Notes that are taken contemporaneously to the incident are admissible in court proceedings about the facts of that incident. A Judge may allow the author to refer to them when giving oral evidence in court. This is hugely helpful for a witness. However, the admissibility of notes and their accuracy may still be tested by the court.
- 2.28 The Brigade attends a very diverse range of incidents so it is impossible to give a prescriptive rule as to when the time should be taken to make a set of contemporaneous notes. As a general rule contemporaneous notes should be made after any particularly serious or significant incident, or if there is an event that would be expected to lead to legal proceedings. This will include incidents where there has been a fatality, obvious criminal behaviour or a firefighter injury. Policy number 1034-ORPf – Major incidents investigation provides a pro-forma to be used to for making notes by operational crews after major incidents.
- 2.29 Contemporaneous in this context means "taken at the time or as soon as possible afterwards". This will normally mean within 24 hours. The assumption should be that notes are written in the same shift before going off duty (or at least immediately a new shift starts). If notes are not made at the time, officers may be asked to explain why and will be expected to offer a credible reason to avoid criticism and perhaps a refusal to allow the notes to be used in court. Inevitably, any delay in writing up notes weakens their usefulness.
- 2.30 Again, it is hard to be prescriptive as to what to include in notes. But the fuller the notes, the greater use they are likely to be. The omission of crucial details or the rationale for decisions can affect the perceived reliability of the witness. There is no prescribed format – if need be they can be handwritten. Notes should include the time the notes were started and finished, where the notes were made and who was present. Also include any information you will need which you would not be able to otherwise accurately remember, e.g. numbers, measurements, diagrams etc. Policy number 1034-ORPf – Major incidents investigation includes specific guidance on notes after major incidents and might be helpful as a guide to what to include in other cases.
- 2.31 Any member of staff may be required to complete some contemporaneous notes at some point. Some key roles which are likely to trigger a need for contemporaneous notes of some form are below (the list is not exhaustive):
- Incident commander;
 - Sector commander;

- Safety officer;
 - Firefighters and/or officers undertaking a key role (i.e. finding and/ or treating a victim, a casualty or deceased person);
 - Anyone undertaking actions when operational discretion has been implemented;
 - Staff that are exposed to an exceptional occurrence that may require further investigation by any agency, not wholly restricted to fireground occurrences.
- 2.30 Staff should be aware that contemporaneous notes are (potentially) disclosable to rival parties in litigation and should be a professional record of their actions, observations and where appropriate, thought processes.
- 2.31 Contemporaneous notes are intended to catch the witness' immediate recollection, state of mind and knowledge. **It is vital that notes are then preserved and are not altered**, so that they remain a contemporaneous record. Notes that are not made contemporaneously or later additions made to contemporaneous notes, should be clearly distinguishable as such e.g. date and time started and signed by the author. Do not later go back and edit, delete or "overwrite" earlier notes– even if it becomes clear there were errors in them. It is better to make a further set of notes with any corrections and "second-thoughts" and leave the earlier set intact.
- 2.32 Officers must not collaborate or produce joint notes or an "agreed single version" of notes after the event. If a witness has seen another person's notes and used them as a memory aid when making a witness statement this should be stated in the statement.
- 2.33 Ideally notes should be made in a notebook with numbered pages. If this is not possible the note should be taken in some other way, e.g. the results of the inspection recorded on a plan may be considered contemporaneous. Fire safety inspecting officers and senior fire safety officers should always carry a Fire Safety Department "pink" book or other approved note books with them for taking notes when attending premises for an inspection. **Appendix 4** to this policy includes examples of contemporaneous notes.
- 2.34 Station commander, sub/station officers may not have access to note books with numbered pages and if one is not available, any other media that is available should be used (remembering to number the pages) **and the note retained for referral when compiling statements** or appearing in court.
- 2.35 The contemporaneous notes should be held in a secure personal location that will ensure they are not lost, damaged or altered. Dependent on the type and scale of incident or event, this may mean archiving within the Brigade's document archive. Advice can be sought from the relevant station commander and/or General Counsel's Department. The notes should be retained until it is clear they will not be needed. For an incident involving a fatality that will be at least until the conclusion of the inquest. Where notes have been used to complete a witness statement, the notes should be kept safe until any proceedings relying on that witness statement have been completed. If the incident has led to a police or regulatory investigation retain the notes until that has been resolved. Other cases will need judgement. Where the notes contain personal information about an identifiable living person, take particular care that they are securely destroyed once they do not need to be retained any longer.
- 2.36 Where electronic equipment such as fire safety officers' hand-helds are used to record information electronically care should be taken to ensure that any later handwritten notes are promptly included on the electronic system. This is to ensure there can be no question that all the electronic notes are still "contemporaneous". Any paper notes supporting information that has been put on an electronic record should still be kept. Remember - notes added to an electronic record sometime after the event might not be good enough to be regarded as

"contemporaneous". Note also that photographs taken at the scene might also be considered contemporaneous notes that can be used as a memory aid for a witness statement.

2.37 The Metropolitan Police have helpful rules to ensure that their notes withstand scrutiny in court. This is good practice that should be followed. These can be summarised by the mnemonic, "**no elbows**", i.e.:

- **No Erasures**;
- **No Leaves** torn out;
- **No Blank** spaces;
- **No Overwriting**;
- **No Writing** in the margins; and
- statements are to be written in direct speech.

3 Statements (see appendices)

Introduction to statements

- 3.1 In almost any type of legal proceedings witness statements have to be prepared. This section provides guidance on what is to be included in statements and the format required for them.
- 3.2 A statement is a written summary of facts observed by the witness. There are several reasons why statements are taken down:
- To elicit all relevant information as soon as possible and while memories are fresh.
 - To obtain a written record which may be read, checked and approved by the witness.
 - To help show what might ultimately be provable in court and hence determine the appropriate action.
 - To assist in the oral questioning of the witness in court.
- 3.3 Statements should be made as soon as possible after the event and accurately correlate with any supportive notes and other reports (or explain why they differ).
- 3.4 Witness statements should be prepared in the form that will enable them to be used in court, should that be necessary. The precise requirements vary depending on the type of court case. General Counsel can provide the right template.
- 3.5 In criminal prosecutions the format to use is a "section 9 statement" – referring to s9 Criminal Justice Act 1967. Under s9CJA 1967 certain written statements can be submitted to court in criminal proceedings (such as a regulatory fire safety prosecution) without the need for a witness to attend to give oral evidence. (For regulatory fire safety matters the correct format is available as form F_SF_12.) This "criminal" form of statement might be used as a default in other types of matter to ensure the statement will be admissible if there is also a prosecution arising from the same matter e.g. the statement used in FI reports is a s9 statement although it might only be used for a coroners' court – using that form of statement means it can also be used in a regulatory or police prosecution. In civil cases and similar matters, statements require a simpler form of statement of truth. They will be served on the other parties by the party relying on them in advance the trial. The statement can then stand as the witnesses evidence subject to any further live questioning.
- 3.6 Statements often refer to another document as an "exhibit". This is a way to introduce into evidence a separate document (e.g. photographs or email correspondence), (see section 2.2 above). A witness statement should specifically refer to each exhibit to be included and give it an

identifying reference – generally the witness's initials coupled with a number for each exhibit in turn e.g. ABC/01. These exhibits must also be served on the other parties.

- 3.7 Further rules apply for a witness under 18 or a vulnerable adult, or where a witness is not able to read their own statement. In both cases advice should be obtained from General Counsel beforehand to ensure the statement is correctly done.
- 3.8 From time to time a third party such as the police or a local authority might ask for a Brigade officer to prepare a witness statement for use in proceedings. In all such cases General Counsel should be informed of the circumstances before any statement is provided.

Preparing your own statement

- 3.9 A well written statement will help a witness to give oral evidence in court. The credibility of the individual and the organisation represented may depend on the quality of the written evidence and the manner in which it is verbally presented in court. Whilst it is unlikely that a witness will be allowed to read from or review the statement when giving live evidence, they will normally be taken through and questioned about the content.
- 3.10 Information should therefore be presented concisely, clearly, accurately and in chronological order. The statement should reflect as far as possible the officers' contemporaneous notes if any. It should be in the witness's own words, but slang and overly-technical terms are inappropriate. The statement should be written in the active voice rather than the passive voice e.g. "I opened the window" rather than "the window was opened". This helps to reduce ambiguity.
- 3.11 Brigade officers will generally need to prepare a statement as a witness of fact - recording what they did, what they saw and heard etc, e.g. an account of what they did to tackle a fire. On occasions the statement will be "expert" evidence or contain elements of both (see paragraph 2.3) e.g. a regulatory fire safety inspecting officer's statement will need to contain opinion evidence of the risk flowing from any breaches of fire safety legislation as well as an account of the inspection itself; a statement prepared for an inquest by Fire Investigation (invariably in the form of a FI Report) might be mainly opinion evidence.
- 3.12 The form of statement should include:
 - **Legal heading:** Statements for civil cases typically have a header setting out the parties to the case and the court hearing it. The format for s9 statements for criminal matters are more varied, but LFB's standard form has a header for the witness to insert some personal/professional details. It is only necessary to state "over 18" for age and to give a business address of usual place of work. Also, s9 statement forms usually include in the header a recital of the statement of truth which should be signed separately. This is the case for the LFB standard template, and the template used by the Police (known as a MG11 form).
 - **Opening:** The opening paragraphs of a statement should introduce the individual, set the scene and outline the individual's place in that scene. It is this section of the statement whereby an officer can establish, if necessary, their relevant professional credentials. This should state the individual's role and position, length of service, place of duty and service and principal duties. Also include any qualifications and training where that is relevant, especially where the statement is providing expert opinion evidence.
 - **The incident – observations and conclusions:** this part of the statement should set the scene on arrival of the initial attendance including an accurate time of arrival, description of the premises/scene of accident etc. It should then set out a chronological summary of the events the witness observed. Confirmed and approximate times should be clearly distinguished i.e. "*the appliance arrived at 10.21 hours*" (this is a confirmed time – it can be

cross referenced on BOSS) or "*after approximately 5 minutes*" (the use of the word 'approximately' shows that this is not a confirmed time).

- **Statement conclusions:** A statement of facts ideally would draw to a natural end as the account unfolds with no need for any further comment or summary. Principal witness statements in Fire Safety prosecution matters should also include an assessment as to the possible consequences in fire safety terms of any contraventions as this is a key issue for a court to consider. Where the statement is offered as "expert" opinion evidence it should end with a brief summary of conclusions. In any case, be sure to avoid straying beyond your area of knowledge or expertise.
- **Signature:** At the end of the statement the witness should date and sign it. The signature does not have to be witnessed but it does no harm and helps demonstrate the signature is genuine and freely done. Each page should state "page X of Y pages". A statement should always be read thoroughly and carefully before signature. It is best to re-produce the document if it needs corrections, but very minor mistakes could be ruled through and initialled in the margin. Deleted words must still be legible and the correction put above.
- **Personal details/contact arrangements:** For a s9 statement at least, it is usual to have a separate section where the witness can set out contact details, address etc. This is personal data and (unless also put in the body of the statement) will not be included in the copy of the statement that is served on the other parties to the case.

Helping a witness prepare a statement

- 3.13 Where the Brigade requires a statement from a witness (e.g. from an employee at premises involved in a regulatory fire safety prosecution) the investigating officer should assist the witness to produce their statement in the appropriate s9 format. These statements are made voluntarily and potential witnesses should be treated with all respect and courtesy. A regulatory fire safety inspecting officer might interview a witness and then write up their answers to questions in the statement format. It might also be helpful to ask for the witness to write a letter stating in their own words what they want to say and then turn this into the right format for a statement. Care should be taken to ensure that the witness is providing their own evidence and not unduly influenced or pressured. Witnesses should be interviewed in private and be made aware of the purpose of providing the information including its possible use in proceedings. A nervous witness may want to be accompanied at an interview by a friend or relative for moral support. An employee might want their own trade union representative present. Both of these ought to be acceptable. However, evidence is unlikely to be freely given if an employer tries to insist that they, a manager or the employer's own solicitor is present at an employee's interview and this should be resisted.
- 3.14 If the witness does not communicate in English a statement should be taken with the assistance of an interpreter. The statement should be in the witness' own language and can then be translated for everyday use. If a potential witness is under 18, in some way lacking mental capacity or vulnerable or has some difficulty with communication seek legal advice on how to proceed with evidence gathering. Take particular care with obtaining evidence from a victim of an offence or someone injured in a fire that is being investigated. An account by a victim can be presented in a s9 statement as with any other witness. However, their account may be particularly sensitive, as it may also be relevant to a decision whether it is in the public interest to prosecute at all.
- 3.15 In all cases investigators must take care that their questioning of a witness may uncover circumstances where that witness has themselves become a suspect for that offence (generally this would be because it has become apparent that they are in fact the appropriate responsible person). No further attempt should be made to obtain a witness statement from them. The correct way to proceed is to undertake an interview under caution (see Appendix 1).

- 3.16 Other sides in any litigation (including prosecutions) may also wish to interview and perhaps take a statement from a witness. Witnesses supportive of the Brigade's case can be urged to refuse to speak to other parties, but there is no legal power to prevent it. It could be suggested that a Brigade officer should sit in on any interview of a witness conducted by the other side. This could help reassure that any change in the witness' account is not caused by something untoward. Nevertheless, this cannot be insisted on, and it is entirely the witness's choice who they agree to speak to.

Interviews with loss adjusters to produce a statement

- 3.17 Following attendance at a fire or flooding Brigade staff may be asked to attend an interview with a loss adjuster, who acts on behalf of an insurance company, with a view to giving a statement about the incident. The interview should be supervised by a senior officer, who should take notes and be present to support the officer who is giving the interview.
- 3.18 The supervising senior officer should check who the loss adjuster has been instructed by, to ensure that Data Protection duties are complied with and personal details of individuals are not inappropriately disclosed. Advice can be obtained from Information Access or the legal team.
- 3.19 The procedure that is usually followed is that the loss adjuster will ask a number of questions and will then draft a statement, for the officer to check and sign. Officers who are giving interviews should stick to the facts as they recall them and should not try to provide an answer if they cannot remember or do not know. It is always better to say 'I don't know/ can't remember' than try to provide an answer that is not accurate.
- 3.20 Following the interview and upon receipt of the draft statement, the statement should be carefully checked to ensure that it is an accurate record of what the officer said in the interview. If the officer is required to attend court this will form the basis of their evidence and they may be questioned on it, so it is important that it is accurate. If the officer wants to make any changes to the statement these should be sent to the loss adjuster and the statement only signed once the person giving the statement is happy with its content.

If there are any concerns about providing an interview/ statement to a loss adjuster, General Counsel should be contacted for advice.

4 Legal proceedings in court

Legal proceedings

- 4.1 This section provides an overview of the main types of legal proceedings in which Brigade officers might be witnesses. It also contains guidance on how Brigade officers should approach giving evidence in courts.
- 4.2 Some incidents may lead to several sets of proceedings e.g. a coroner's inquest, a criminal case following a police investigation, regulatory prosecutions and civil actions between the parties all arising from the same incident.

Civil cases

- 4.3 Civil cases are disputes between private individuals or bodies, normally with a claim for compensation or other payment. The majority of civil claims e.g. damage to property, road traffic accidents, debt claims and personal injury are dealt with by the **County Court**. More complex or higher value claims are dealt with at the **High Court**. Appeals are heard by the **Court of Appeal (Civil Division)**. A tiny number of cases which raise unresolved points of law of general significance might be further appealed to the **Supreme Court**. The type of civil cases in which

the Brigade is involved will normally be heard by a judge sitting without a jury i.e. the judge will decide any questions of law and also decide whether the evidence is strong enough to prove the facts of a case.

- 4.4 There are also a number of tribunals which might decide cases involving LFB officers. These are less formal settings intended to resolve civil law disputes without the cost and delay all too typical of court action. The most important one for this policy is the Employment Tribunal. The ET hears disputes relating to employment, such as unfair dismissal claims. It also has jurisdiction over disputed health and safety regulatory enforcement actions (although not over enforcement of fire safety regulations).
- 4.5 Civil cases in which Brigade officers provide evidence generally relate to attendance at an incident after which someone involved raises a claim for compensation due to damage to property and/or personal injury. Invariably insurance companies manage the case for their insured. As cost pressures in civil cases are so strong, almost all civil claims are settled by a negotiated agreement without the need for a trial. Nevertheless, statements and other evidence from Brigade officers should always be prepared in the knowledge it may be tested in court.

Criminal cases

- 4.6 Criminal cases are prosecutions usually brought by public authorities that might result in a sanction such as a fine or even custody. The Brigade investigates and prosecutes offences under the Regulatory Reform (Fire Safety) Order 2005 and various similar regulations. Other offences might be investigated and prosecuted by a local council (such as offences involving unlawful Houses in Multiple Occupation) or a regulator such as the Environment Agency or Health and Safety Executive. The most serious crimes, such as arson or a homicide in a fatal fire, are investigated by the police with legal work carried out by the Crown Prosecution Service. In these cases, the Brigade will liaise closely with the investigators and prosecutors in relation to supporting evidence.
- 4.7 The **Magistrates Court** conducts trials of the majority of minor offences as well as overseeing sensitive administrative matters such as arrest and search warrants, extradition and bail applications. Magistrates Courts consist of three lay magistrates (also called JPs) sitting without a jury. The court is advised on the law by a legally qualified Clerk of the Justices. Alternatively (and typically in LFB's prosecutions) rather than lay magistrates the court consists of a single legally qualified District Judge. Either way the court has the same powers and role. The magistrates court has limited sentencing powers, reflecting its caseload of more minor offences.
- 4.8 Serious criminal cases are tried in the **Crown Court**, which is presided over by a judge, sitting with a jury. The Judge decides points of law (including whether particular evidence can lawfully be presented to the court), but it is the jury which decides whether the evidence they have is sufficient to prove the charge. The Crown Court also hears appeals from Magistrates Courts, in which case the Judge sits with magistrates rather than a jury. Some cases are also transferred to the Crown Court from the Magistrates Court after a conviction as the magistrates' may conclude that they do not have sufficient powers to pass a strong enough sentence.
- 4.9 All criminal cases begin with a hearing at the magistrates' court, which makes the preliminary decisions about how the case will be handled, and whether it will remain with them. Prosecutions for most fire safety offences can be heard in either the Magistrates Court or the Crown Court, although it is now rare for the magistrates' court to retain these cases.

Other kinds of court hearings

- 4.10 Where a death is not due to a natural cause, or where there is a work-related death or a death in custody an **Inquest** must be held in the **Coroner's Court**. These Courts are presided over by Coroners who are experienced doctors or lawyers who investigate the identity of the deceased and when, where and how the death occurred. Coroners normally sit alone to hear inquests but may empanel a jury. Coroners' Courts are not structured in the adversarial way typical of other courts. They are an inquiry with the coroner deciding what information needs to be presented and with only limited rights of any interested parties to question witnesses. The inquest does not attempt to allocate responsibility for the death as a trial would do. Usual practice is for an Inquest to be adjourned until any police investigation and criminal trial is completed. Where the inquest evidence suggests particular action should be taken to prevent future deaths, the Coroner will issue a report about it to the relevant agency – a Prevention of Future Deaths report. This might be a government department, local authority or other public body and might include LFB or fire authorities generally.
- 4.11 Very occasionally Brigade officers might be involved in a **Public Inquiry**. These are formal reviews of an incident or event held to establish the facts and to make recommendations to government. They are established by government, but the Inquiry will operate independently from government departments. The scope of these Inquiries might be very wide or just restricted to the particular incident triggering the enquiry. Normally they are heard by a judge, or possibly a retired judge or senior civil servant or public figure, who might be assisted by a panel of expert advisers on technical or specialist issues. A Public Inquiry is likely where there is a need to establish public confidence in a review of a significant aspect of public policy – and typically follow large scale disasters or similar tragedies. They can therefore easily become political or partisan as parties lobby for favourable recommendations. There will be public evidence taking hearings, perhaps over an elongated period of months or even years. Unlike a court, these hearings might even be televised. The Brigade might be formally represented as "core participants" and be allowed to question witnesses and make presentations to the Inquiry. But the Brigade could also face public examination of its own conduct. The result of an Inquiry will be a formal report to government, which could include explicit findings of fault (unlike an Inquest). Examples include the Ladbroke Grove and Southall Rail Crash Inquiry of 2000, under Lord Cullen and the Kings Cross Fire Inquiry under Sir Desmond Fennell.
- 4.12 LFB is a public authority, and its decisions and policies are liable to **judicial review**. This is a legal action normally aimed at quashing a decision by a government body on the basis that the decision is unlawful. The decision might be unlawful for a number of reasons. It might be that it is a decision to do something beyond the powers of that organisation, or because the decision took into account the wrong things, or because the decision was taken following the wrong process or simply because the decision is so irrational no sensible public authority could properly have made it. Judicial reviews of LFB decisions can be brought by anyone likely to be impacted by it or with some other legitimate interest in the decision. This would include residents, businesses and other public authorities. The courts are keen to stress that a judicial review can only be a challenge to how the decision has been made rather than what decision is made. Judicial reviews are heard in the High Court. To resist a judicial review LFB would be likely to need witness statements from LFB officers to set out how the decision came to be made and the reasons for the decision. However the emphasis in Judicial review proceedings is on the legal arguments as there is unlikely to be much scope for factual arguments when the decision making process is carried out through formal written reports. It is extremely rare that there is a need for live evidence in a judicial review case. It is also possible for LFB to bring a judicial review of the actions of another public authority.

Types of hearing

- 4.13 Most court hearings are not substantive trials. Both criminal and civil cases will invariably have one or probably more preliminary hearings to decide background and administrative issues before the case can be tried. In criminal cases, these might include initial hearings to establish which court will hear the case and when, and what plea the defendant will make to the charges. In contested criminal cases preliminary hearings may be needed to test whether prosecution material should be further disclosed to the defence or whether certain evidence is to be allowed to be admitted in the trial. Civil cases will have similar pre-trial hearings which might cover topics such as disclosure or what expert evidence is to be included at trial.
- 4.14 Officers should liaise with General Counsel as to whether they should attend a pre-trial hearing. It is unlikely they would need to give evidence at this kind of hearing. However, where the Brigade is a party to the litigation many matters may be resolved through negotiations between the parties in and around the court, so it may be very useful to have relevant officers present.

Before attending court

- 4.15 Before attending court, witnesses should have all the relevant Brigade papers and read them through to become familiar with the material e.g. contemporaneous notes, report from IMS, copy of statement. It is prudent to check in advance the address and telephone number of the Court and the date and time required for attendance. Court buildings have "airport-style" security scanning which can take a little time to get through, so make allowances. Full undress uniform, minus cap, should be worn whenever giving evidence on behalf of the Brigade. Non-uniformed staff should wear appropriate formal clothing.

Attending court to give evidence at the trial

- 4.16 LFB might be a party to the litigation, for example if it is one of the Brigade's own regulatory fire safety prosecutions or an employment tribunal case defended by the Brigade. If so, there will be officers in General Counsel and the relevant instructing department who will manage the attendance of witnesses. The information in this section is intended for use when Brigade is **not** a party to the litigation, so will not have a legal team present, and the officer is attending court as a result of events witnessed in the course of duty. This might be a police prosecution or a civil claim for compensation following a fire or other emergency or a coroner's inquest where the Brigade does not have interested person status.
- 4.17 Courts will normally require witnesses and advocates to physically attend the court building for a hearing. However it has become more common for there to be remote hearings by video or for hybrid hearings where some but not all participants are attending remotely. The courts system has its own remote video systems for this, which are accessed on-line. A remote hearing might be agreed for preliminary hearings between legal representatives without witnesses and on administrative case management issues. Some minor civil matters might be heard in a county court far from London and it might be possible for LFB witnesses to be heard remotely. Witnesses should liaise with the court or if appropriate General Counsel's Department to discuss arrangements.
- 4.18 It is important to remember that a remote hearing is every bit as much a court hearing as an in-person hearing even if it feels less formal. In particular, it is absolutely forbidden to record hearings. The same restrictions on talking to others while giving evidence and checking notes apply. The guidance set out here on giving evidence should still be followed.
- 4.19 **Magistrates/Crown Court:** A trial is likely to take place many months or even years after the incident. In a crown court case, the parties are likely to have been working towards an agreed trial

date for some months beforehand. Magistrates court trials are likely to have less notice. Witnesses expected to be required to give evidence will normally receive an "early warning" notice stating that the trial of the particular case is imminent. Often "early warnings" simply provide details relating to the defendant's name and the Court where the case is to be heard. It is therefore advisable to contact the Crown Court "Witness Care" (telephone number found on the notification) to clarify which incident(s) the case relates to if there is any doubt. If the "early warning" period passes without a confirmed date, the witness should expect to receive a further notification sometime in the future.

4.20 When "early warned" to attend Magistrates/Crown Court:

- Inform station commander who is to liaise with the area support team to ensure that an observing officer is appointed.
- Station commander inform General Counsel indicating the period of notification and the incident to which the legal process refers (the warning normally covers a particular week).
- Ensure that all relevant written material (statements, reports, notes etc.) is neatly compiled and held in a marked envelope or card wallet and retained in the Station Commanders Office or designated secure watch drawer/cabinet.
- It is therefore often helpful to inform the Court/Police of any specific dates to avoid at the time witness statements are made or when 'early warned', e.g. annual holidays. **It should be remembered that a notification to attend Court as a witness is a serious matter and that only genuine excuses not to attend will be considered.**

4.21 Final court lists do not get published until the day before the trial. If the trial date is a Monday, then the witness should receive positive confirmation on the preceding Friday. Once a definite instruction to attend Court is given to the witness, then they should liaise with General Counsel and arrangements put in hand to order the attendance of an Observing Officer. Attempts should be made to liaise with any other Brigade witnesses who may be required to attend Court, e.g. fatal fire - firefighter finding body.

4.22 If a potential witness has not previously attended court the station commander (if appropriately experienced) should offer practical support and guidance concerning procedures and what to expect in the court room. If needed General Counsel can arrange for further advice to be given by experienced officers.

4.23 **Coroners' court:** Coroner's Officers will initially inform the Fire Investigating Team of the date, time and venue of an inquest into a death following a fire. In the interests of efficiency and to reflect the Brigade's professional standing when dealing with the Coroners' Court following a fatal fire where a member of the public dies, the Fire Investigation reporting officer will make arrangements for the collation of statements, photograph captioning and attendance at Coroners' Court of any witnesses and observers. The FIT will liaise with the Court's officers. Inquests normally take place one to six months after the incident.

4.24 **Civil courts:** The witness will usually be informed of the hearing date by the legal representative of the party that has called them as a witness. As in the criminal courts, a civil case is usually heard many months or several years after the incident.

4.25 When notified of the hearing date, officers should inform their manager and arrangements should be made for a manager to attend court with the officer.

4.26 It is advisable to read through your witness statement carefully so that you are familiar with your evidence. You can also take a copy of your statement to court with you.

- 4.27 When giving evidence, answer clearly and take your time. Don't feel pressured to answer a question in a certain way. If you do not know or do not remember do not speculate, just say that you do not know.
- 4.28 **Employment tribunals:** If you are required to attend an employment tribunal to give evidence on behalf of the Brigade, it is most likely that you will have already met with someone in General Counsel in order to provide a witness statement. Once the court has listed a hearing date, General Counsel will inform you of the dates and times that you are required to attend the Tribunal and will provide details of the location and how to get there.
- 4.29 Employment Tribunals are less formal than the criminal and civil courts. Cases are heard either by an employment law judge alone or an employment judge and two lay people, one representing employers and the other representing employees.
- 4.30 As in any litigation, you should be familiar with your witness statement before giving evidence.
- 4.31 If you have any questions about giving evidence or the Tribunal procedure, General Counsel will be pleased to give you guidance on this.

On arrival at court

- 4.32 On arrival at the court building witnesses should give the receptionist or usher the name of the defendant and produce any "court warning" notice. Court ushers are responsible for calling witnesses, taking messages and for generally helping to run the Court. The usher will indicate which courtroom in the building will be used for the hearing, if this is not already indicated on the warning notice. Generally, there will be an easily identifiable notice board with this information on a printout of the day's case lists.
- 4.33 Brigade witnesses should report to the Observing Officer (see 5.46-50) or General Counsel representative who will be co-ordinating Brigade witnesses. There might be a "Witness Care Unit" or "police room" where individual officers may be allowed to wait if there is room available. However, there is frequently no alternative but to wait in the usual seating area outside the courtroom where the trial is listed. If you are unfamiliar with the layout of the Court, it might be possible to look before the case begins i.e. first thing in the morning or at lunchtime. The usher may have a picture or plan if this is not possible.
- 4.34 Some waiting time may be spent in the Court refreshment area if one exists. **Witnesses should never leave the Courts until officially dismissed and should ensure that appropriate ushers and the Brigade's Observing Officer know where they can be found at all times.** If there is an important reason to leave early tell the usher before the case starts and arrangements may be agreed. In any case, expect to have to wait while the court deals with the day's caseload.
- 4.35 Other people in the Court may include police and probation officers, newspaper reporters and members of the public. **Witnesses must not talk to these other people about the evidence they will give in the case.** It is permitted, however, to speak with those Police officers, solicitors and other people who are dealing with the case in question. Before giving evidence, a witness may wish to see a copy of their statement once more. The usher or the legal representative will normally be able to arrange this if the witness does not have a copy.
- 4.36 Courts invariably have a very crowded schedule of cases to get through in the day's sitting. They cannot always accurately predict how long each matter will take. Sometimes a defendant may change a plea to "guilty" on the day so that witnesses may not need to be called to give evidence at all. Alternatively, key witnesses may not turn up or a dispute arises that will need the respective parties' lawyers to confer before being able to present the case in court. Therefore, it is safe to

assume there will be some waiting about outside the courtroom. Some witnesses or even whole cases may even be postponed to another day.

Giving evidence

- 4.37 When called into the Courtroom witnesses will be shown to the witness box and expected to stand unless medically unfit to do so. This is the first impression given to the Court and is very important. Witnesses take the oath to tell the truth, holding the Bible or other holy book in their right hand. If the witness prefers, they can affirm i.e. to promise to tell the truth. There is no legal difference. (Either tell the Court from the witness box or tell the usher just beforehand.) Read out the oath, slowly and accurately.
- 4.38 Evidence should be addressed to the Judge or magistrate, not to the advocate asking the questions. Use the correct form of address. In the crown court expect a Circuit Judge who should be called "Your Honour" regardless of gender. More senior judges also sit in the crown court and would be entitled to be addressed as "My Lord" / "Your Lordship" or "My Lady" / "Your Ladyship". It is generally simplest to check with the court usher or assistant what form of address to use. In Magistrates Courts address the magistrate chairing the bench as "Your Worship" or Sir/Madam.
- 4.39 The party calling the witness will go first. The legal representative will be verifying credentials i.e. as in the headings and introduction of the statement then take the witnesses through their statements. Once the prosecution has finished questioning, it is the turn of the other parties' legal representatives to put questions, if they choose. This is called "cross examination". When the cross examination has finished the original part in some civil trials the court might simply accept a witness statement as previously submitted and only take the cross-examination orally.
- 4.40 A magistrate, the clerk or the Judge may also ask questions. In a Crown Court trial, the jury can write down questions which they pass to the Judge, who then asks the questions on their behalf.
- 4.41 Witnesses should not leave the witness box until told they released. This means they are free to leave. Brigade witnesses are permitted to stay in the general Court and listen to the rest of the case in their own time. If the hearing adjourns for lunch etc. in the middle of a witness's evidence, **the witness must not speak about the case to anyone**. It is better to lunch alone.
- 4.42 Under no circumstances should a witness attempt to find information about a case via the internet or share information via electronic media sites such as Twitter or Facebook. This could amount to a contempt of court and result in very serious sanctions.
- 4.43 Sometimes witnesses may have to stay after having given evidence. This usually only happens when something new has come up while giving evidence. On occasions where a jury fails to agree a verdict, witnesses may be required to attend a new trial and give evidence again.

Use of notes in court

- 4.44 A witness may be allowed to use notes made at the time as a memory aid when giving evidence. This is why it is important to ensure notes are taken correctly at the scene (see 3.22-26 above). Notes may **not** be referred to in the witness box without the permission of the presiding Judge/magistrate, so permission should be requested before any use of them.
- 4.45 The advocates are entitled to see any notes and may challenge both the accuracy of the notes and whether they are really "contemporaneous". Notes should be read over carefully before giving evidence.
- 4.46 Although the theory is that witnesses "refresh" their memories from such contemporaneous notes, most police officer witnesses read from their notebooks when responding to questions.

Similarly, when allowed to use notes, Brigade officers should always refer to them if an answer can be found there. Moreover, it is prudent not to embroider what is in the notes unless this is strictly necessary and can be done accurately from memory. Staff are entitled to respond to cross examination questions by saying that they do not remember a particular point.

Giving evidence in a Coroners Court

- 4.47 The procedure of giving evidence in a Coroner's Court is much less formal than in other Courts of law. Questioning is generally conducted only by the coroner, in order to form a view as to the circumstances of the death, rather than by competing sides with their own advocate. On occasion however an "interested person" may be formally represented and put questions to witnesses e.g. the relatives of the deceased or counsel representing such parties.
- 4.48 "Hearsay" and opinion evidence are less restricted in Coroners Courts but are generally best avoided. If a member of Brigade staff who has prepared a statement in respect of the fatality concerned is not called upon to attend an inquest or is for bona fide reasons, prevented from doing so, another member of the Brigade present in Court may be asked to make a statement or offer an opinion on a particular matter. While that officer is to try and assist the Court, they are not to propound theories which cannot be supported by their **own** knowledge of the incident. Similarly, if another member of the Brigade is called upon to read an absentee's statement, they are not to volunteer any comment on its content but if questioned, may, within their own personal knowledge of the incident, clarify any information given.
- 4.49 On occasions a Coroner may decide it is not necessary to call Brigade witnesses to give evidence. Nevertheless, the FIT will maintain liaison with the Coroner's officers regarding the death. The FIT will ensure either an observing officer attends the inquest or at least the verdict is fed back to the Brigade with any relevant recommendations.

Hints to remember:

- The defendant may have pleaded not guilty and your evidence will help the Court to decide whether they are guilty. You may have been summoned to appear for either the prosecution or defence, but you are there to present your evidence honestly and without bias or taking sides.
- You should speak clearly and your answers should be respectful even if the accuracy of your account is being challenged.
- Take your time and speak slowly and clearly - the Judge will be writing down your evidence in longhand.
- Ask for questions to be repeated if you do not understand or cannot hear.
- When 'yes' or 'no' is not an adequate answer but questioning advocate is insistent, ask the Judge for permission to explain the matter more fully.
- Answer questions concisely and only answer the question asked but take care not to omit important facts. Remember - counsel is skilled in questioning techniques and may leave long pauses hoping you will keep talking and say something that can be challenged.
- Listen to the whole question and do not pre-empt the direction of the enquiry.
- Provide factual answers, do not stray out of your professional field, trespass beyond the bounds of your own skill and competence or try to blind the Court with science.
- Only deviate from the theme of your statement after careful consideration - counsel for the other side will have a copy and is likely to make capital out of it in cross examination if you do.
- Do not give opinions unless asked to do so and you can explain the answer.
- Say if you are unsure of the answer. Do not speculate about things you don't know first-hand.
- You can ask the Magistrate or the Judge for advice.

- During the cross examination do not show any hostility in your manner. It is the opposing counsel's job to test your evidence for flaws and if they get too hostile the Judge or other counsel should come to your aid.
- Before referring to notes ask the Magistrate or Judge if you may do so. Place them on the sill of the witness box and do not continually shuffle pages.
- You will not normally be allowed to read your statement in the witness box.

Note: Notes and reports may be examined by the Court, defence or Judge and jury which highlights the importance of ensuring that these are accurate and credible.

Observing officer

- 4.50 It is Brigade practice that where personnel give evidence in Court, a manager of at least one role superior to the witness/accused be nominated to attend the Court as an observing manager. The duties of this manager are to record the outcome of the case, and any criticisms or praise directed at the Brigade. Court attendances relating to operational incidents should be recorded on the 'Court Attendances' tab of the Incident Management System database, by the observing officer. Therefore, once a final Court warning has been issued and the witness/witnesses have contacted General Counsel, an Observing Officer will be nominated to attend on the first day of the trial.
- 4.51 The Observing Officer should whenever possible obtain the relevant file from General Counsel and take this to Court. Where the trial extends beyond a day, observing officers should ensure continuity of the file and observations through General Counsel.
- 4.52 On arrival at Court the observing officer should liaise with any officer from General Counsel who is present for the case, and who will advise on the progress of the hearing. Tasks for the Observing Officer are:
- to ensure that all Brigade witnesses have arrived, establish which Court is to be used and inform the appropriate Court official of the arrival and location of Brigade witnesses;
 - to ensure that Brigade witnesses are relaxed and familiar with general Court procedures and surroundings;
 - to instruct Brigade witnesses not to discuss details of the case in any public area or with anyone other than the co-ordinating Police Officer or their counsel;
 - to be present in court and observe the court process and Brigade evidence given;
 - to record general details of the case and note any particular praise or criticism of the Brigade given by the Court. **Note:** This does not include any criticism levelled at Brigade witnesses by the counsel for the accused. For this is part of the cut and thrust of Court proceedings and it is counsel's job to try and discredit evidence which does not benefit their client.
- 4.53 Once a case relating to an operational incident is over, the observing officer should record general details regarding attending personnel, dates attended etc. on the appropriate pages of the IMP database and inform General Counsel. Remember if the Judge or magistrates praise or criticise the quality of Brigade evidence it is important to record this so that lessons can be learnt and GRIP procedures adjusted accordingly.
- 4.54 In all cases the observing officer should ensure all questions from the media to Brigade witnesses are referred to the communications team. No statements to the media should be made at the court (except with prior approval).

5 Special procedures for fatal or suspicious fires

Fatal fires - general procedures

- 5.1 A fatal fire will inevitably lead to an inquest and potentially to further legal action. The Fire Investigation Team will therefore oversee all matters relating to fatal fires/potential fatal fires as they have extensive experience in liaison with the police and Coroners' Courts as well as the preparation and collation of witness statements and fire scene photographs. Managers are therefore reminded that a Fire Investigation Unit is on the PDA for all "Fatal fires" and must always attend such incidents.
- 5.2 It is also the responsibility of the incident commander of a fire to request the attendance of an FIU to fires where persons have been seriously burned or injured as a direct consequence of the fire (including Brigade personnel). It should not be assumed that this relates exclusively to such injuries as may be considered life threatening. Even minor burns or a relatively small amount of inhalation of smoke as this may have very serious consequences for the most vulnerable e.g. the very young, elderly or infirm. A good rule of thumb would be if a person is admitted to hospital, they should be regarded as seriously injured.
- 5.3 The incident manager is responsible for sending the appropriate fire ground messages. Similarly, on return to the station the incident manager will ensure that the appropriate information has been provided to the Control Operational Resourcing and Event (CORE) team so that they can circulate the appropriate notification. The Fire Investigation Team will normally provide the required information to the CORE team. Note that in the case of potentially fatal fires it is essential that, regarding any Brigade enquiry of the patient's progress in hospital, that operational and FIU officers liaise to maintain continuity (the FIU will normally take the lead), and the Borough Commander is kept informed.

Fatal fires - collation of statements

- 5.4 The Fire Investigation Team will ensure that in the case of fatal fires post incident liaison is maintained with the Coroners Court and with line managers and fire stations.
- 5.5 As well as the Fire Investigator's own statement/report the Coroner will probably require signed statements from the following personnel:
- Brigade member(s) who find the body/casualty.
 - Incident commander of the incident at the time of discovery.
 - The lead fire investigation officer attending the incident.
 - In exceptional cases, any senior manager who takes over command before the body is located and members of the Brigade involved in rescue attempts.
- 5.6 Statements are to be produced as soon as possible after the incident. These can be handwritten or typed but should be neat and legible. Fatal fire statements should be forwarded on all occasions and without delay, to the appropriate Fire Investigation reporting officer, marked confidential, and where appropriate indicating vetting is required.
- 5.7 All statements for suspicious or fatal fires, should be prepared on an FRSC or equivalent statement template with the s9 requirements met. See section 4 for further details of statements.

Fatal fire – the inquest

- 5.8 Once an inquest date has been set, the Fire Investigation Officer will liaise with the Area Performance Team (or if short notice the CORE team) and Observing Officers (normally a station

commander) will subsequently be nominated to attend. The IMS and IMP should be updated with appropriate detail as soon as possible after the inquest.

- 5.9 After the inquest has taken place the borough commander where the fire occurred will be informed of the cause of death and/or the cause of fire where appropriate.
- 5.10 If for any reason an Observing Officer fails to attend, the witness should liaise with a member of FI management team to ensure that the correct data is captured.

Suspicious fires - introduction

- 5.11 Managers are reminded that a Fire Investigation Unit can be requested to attend the scene of suspicious/doubtful fires. In the case of a fire where the cause would be otherwise recorded as "Unknown", the FIT must be consulted.
- 5.12 Many fires attended by the Brigade are of a suspicious origin and many of these are classified as a crime. It is obvious that the Fire Investigation Units are unable to attend all such fires. However, officers should consider requesting their assistance and support in the following instances:
 - Where accidental causes cannot be eliminated.
 - Where an officer requires supportive observations.
 - Where subsequent police enquiries are likely to be complex and lengthy.
 - Where a local trend of suspicious fires has occurred.
 - Where there is high financial fire loss.
 - Where fire ground liaison with the police might benefit from the attendance of the FIU.
- 5.13 It should be emphasised that arson is a crime and that it is the police's responsibility to prove the crime and apprehend the arsonist. The Brigade's Fire Investigation Units are not an arm of the law. Nevertheless, the purpose of this policy is to ensure that when Brigade officers are required to give evidence in Court that the evidence is of the highest quality.
- 5.14 Remember in all cases of suspicious fires where legal process may follow, the accuracy and quality of all written material e.g. notes and reports, may be tested verbally in court. Even for incidents described as minor nuisance fire, legal process may follow.
- 5.15 Therefore it is advisable that where a local trend of nuisance refuse fires or other minor or major fires emerge and prosecution is likely, officers either impress upon investigating police officers on site that all possible 'accidental causes' should be eliminated by further investigation by a Crime Scene Examiner (CSE), supported by the attendance of a Brigade Fire Investigation Officer.

Suspicious fires - general procedures

- 5.16 Operational officers may be required to provide a police witness statements following attendance at a suspicious fire. Arrangements should be made to have Brigade staff present of at least Station Commander role and one role above the member making the statement. Fire Investigation Officers are familiar with completing police witness statements and may do so without the presence of an observing officer.
- 5.17 Statements provided to the police as part of their enquiries should follow the same general approach as outlined above. They should be a statement of facts that you have personally witnessed or have knowledge of. Do not trespass beyond the bounds of your own skill and competence or stray out of your professional field. You may ultimately be required to qualify the factual content of statements and reasons for saying what you have written down. As always, remember to complete the headings, date and sign as appropriate.
- 5.18 In particular:

- Retain a copy of the signed and witnessed statement in a safe place with all other relevant material e.g. reports and notes.
 - Send a copy of the signed and witnessed statement to General Counsel with a cover note indicating what other relevant written material is available and enclosing copies whenever possible.
 - Ask the police officer to keep you informed of any subsequent legal process.
 - Inform the police officer of any annual leave dates when you would be unavailable for Court.
- 5.19 General Counsel will compile copies of all written material e.g. statements and reports and retain them on file. General Counsel will oversee the quality of all such material and at the request of the submitting officer, via the local station commander, arrange for any further support as may be required. Where an officer is to give evidence in court regard should be had to section 5 of this policy.

Appendix 1 – Interviews under caution

- 1 In any case where the Brigade is bringing a fire safety prosecution the investigators should normally undertake a formal interview with the suspected person. An interview:
 - (a) will be a chance to gather evidence or useful information that requires further investigation that otherwise might not be available i.e. it is a reasonable line of enquiry to follow;
 - (b) gives the suspected person a chance to make their own representations to the Brigade about the case. This is good enforcement practice but may also be relevant to any decision whether it is in the public interest to prosecute.
- 2 In order to protect the fairness of any later legal proceedings, the law regulates the way investigators are allowed to question suspects about a criminal offence. Rules are laid down in the Police and Criminal Evidence Act 1984, and Codes of Practice "C" and "E" issued under PACE. The Codes of Practice are written with the particular context of police questioning of suspects at a police station. However, fire authority officers investigating offences for which they are the prosecuting authority are obliged by law to "have regard" to the codes. Therefore, the rules in them apply to the Brigade unless the context makes it clear that it is not appropriate. If the requirements of this Appendix are followed the interview should be compliant with PACE. As a result, a transcript of what was said at the interview will be admissible evidence in a prosecution of the interviewee despite it being "hearsay".
- 3 PACE forbids the investigator from putting questions about a suspect's involvement in the offence without various safeguards. The most important of these is that the questioning is done "under caution" i.e. after a clear warning that a record of what they say might be presented in court as evidence. However, if these safeguards are observed the suspect's own answers to questions from the investigator may be admitted as evidence in the suspect's trial.
- 4 Brigade officers will generally undertake any formal "interview under caution" at the end of the investigation so that evidence gathered can be put to the suspect to see if they can account for it, or to test that the suspect has been correctly identified as the person liable.
- 5 The correct caution that has to be given to an interviewee is printed at the front of the Fire Safety pink notebook: 'You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you say may be given in evidence.' It should always be given in **precisely** that form.

Questioning at the premises

- 6 Special care is needed when asking questions of a Responsible Person or other potential suspect during a regulatory fire safety inspection or as part of a fire safety investigation. If there are already clear grounds for suspecting that the person being spoken to has committed an offence under fire safety regulations questions to them about their personal involvement in that offence would be caught by the requirement for them to be asked "under caution". This might be particularly relevant on a re-inspection that shows non-compliance with an Enforcement Notice or an Article 31 prohibition as this will almost inevitably then amount to a potential criminal investigation. It is not Brigade practice to question suspects under caution at the premises on matters of substance. Simple questions intended to establish identity and ownership and the bare facts about the building and circumstances etc can safely be put without a caution, as can requests for relevant documents and records. But questions on site about things the suspect has done as responsible person for the premises are best avoided. As a simple rule of thumb, only put questions that are a genuine attempt to establish relevant facts in regard to the state of the premises and their management arrangements. Do not put questions in the hope the responsible

person will admit fault. Even if they did, without the caution it is highly doubtful the admission could be presented to a court.

Principles for conducting interviews under caution

- 7 Questioning at a formal interview under caution requires great care. It is vital to be thoroughly prepared. The best results will often come from discussing the issues with General Counsel to prepare a list of subject areas to be explored before the interview. Often all that is needed is to give the interviewee the space to offer a full response to an open question. A supplementary question can be asked to get clarification of the answer, or to pin down an interviewee who is giving evasive or incomplete answers. Other times a better approach will be to put an allegation in a closed question anticipating a "yes" or "no" e.g. instead of asking a general, open question about how fire safety was managed, ask "*Are you the person responsible for managing fire safety at the premises?*"
- 8 Interviewers must never stray from questioning about offences the interviewee has been invited to answer questions about. For example, a person is to be interviewed about regulatory fire safety offences should not be challenged about liability for building regulations or health and safety offences. Not only does the Brigade have no authority to be investigating those other offences, but it might also be deemed unfair to have sprung those questions on the interviewee. That means the whole interview could be excluded from court proceedings.
- 9 At all times remember that it is wrong to bully, pressurise or intimidate. "Oppressive" questioning will cause the interview to be ruled inadmissible as evidence. Repeatedly hectoring with the same question when it is clear the interviewee is not going to answer is unlikely to produce anything helpful. But it might lead a court to conclude the interviewer was too overbearing for any reply to be admitted as evidence. The simple pressure of being placed "on the spot" to answer questions on the record that an interviewee would rather avoid is as far as it is right to go. Similarly, attempts to trick, confuse or "catch out" an interviewee by misleading them over what evidence is held are more likely to risk the interview being deemed unfair to admit as evidence than to provide anything useful to the investigation. Simply placing documents or photos in front of the interviewee to ask for an explanation can be highly effective.
- 10 If the interviewee is representing a company, they should bring to the interview some written evidence of authorisation from the company. If the interviewee is not a director or the company secretary this is essential. The investigators need to know the interviewee is in fact authorised to answer for the company and a mere manager or employee may not have that authority. Be very careful to ensure that the interviewee knows whether they have been invited to an interview to speak **on behalf of a company** or as **a suspect in their own right**. Ideally the company should be invited to suggest an alternative interviewee if the person they have nominated is also under investigation for the offence themselves personally. This will not always be practical for smaller businesses, so if necessary two separate interviews should be conducted – one as a company representative and one in a personal capacity. These can be done one after the other back-to-back so long as the basis of each interview is clear.
- 11 Occasionally an interviewee's solicitor asks for their client's interview under caution to be conducted by letter i.e. that the caution is issued in writing and the questions that are to be answered are then set out in the letter. The interviewee will provide answers in a letter in reply. This might be appropriate for a large and complex organisation where one individual may not realistically have the information to hand in an interview but will need to research business records to reply to questions fully. Generally, however, an interview under caution by letter will not be the most appropriate course of action and should be refused because:

- it is rare that a case will be sufficiently straightforward, and the questions sufficiently narrow, to be able to reduce the interview to a short form of written questionnaire;
- it is more difficult to put effective and challenging supplementary questions to the interviewee;
- there is still a risk that the answers may not be considered admissible by the court.

12 Further advice should be sought if necessary from General Counsel.

Legal rules for conducting an interview under caution

- 13 This part sets out procedures to ensure interviews are conducted in accordance with the Police & Criminal Evidence Act 1984 Code of Practice "C" (which covers questioning of detained suspects at police stations) and Code of Practice "E" (which covers recording interviews).
- 14 An interview under caution has to be accurately recorded and (ideally) a transcript then agreed by the interviewee. To facilitate this 'AIR' digital recording machines are provided by the Brigade, with a contracted professional transcription service to generate hard copy as required. They should **always** be used.
- 15 Although not a requirement of PACE, it is advisable for a second Brigade representative to be present during the whole of the interview. One officer should ask questions, another should make a handwritten record of what is said in a pink note book. This prevents the interview becoming unwieldy, and allows the more effective recording of questions and answers. Interviews should be recorded in direct speech including a verbatim record of both interviewer and interviewee.
- 16 For all scheduled interviews under caution:

Preliminaries

- (a) A formal written invitation to an Interview under Caution should be sent to the suspect (or to the appropriate representative of a company under suspicion). This should set out a number of possible dates and times for the interview, clarify which offences are being investigated and what issues the investigator wishes to discuss in the interview. Interviewees sometimes seek to postpone an interview or claim to be too ill or stressed to attend. In the first instance at least, be prepared to be flexible over dates/times. Never forget that suspects for offences investigated by the Brigade are under no obligation to attend an interview.
- (b) Occasionally a potential interviewee will want to have more information about what will be asked in an interview or make a formal request for "pre-interview disclosure". The investigator has a wide discretion as to how to reply to this. It would be wrong to disclose too much information so early (e.g. provide copies of witness statements). However, if no real indication is given of the kind of material held by investigators and what questions will be put it may lead to the request for an interview being refused. In general, an outline of the issues to be covered in the interview should be provided. For example, it will often be sensible to let them have a copy of a relevant fire safety audit form. Advice should be sought from General Counsel and CREG.
- (c) The interview should take place at appropriate Brigade premises in a room that is private and in other ways suitable e.g. temperature, lighting etc. An interview should not be conducted if the interviewee appears unwell, intoxicated or not able to provide reasoned replies. If possible be accommodating of the suspect as to room lighting, temperature, ventilation. Everyone should be seated.
- (d) If there is any doubt, check in advance that the interviewee is comfortable answering questions in English. If necessary, arrange for an interpreter. If the interviewee concludes

part way through that they do want an interpreter despite having previously refused, then the interview cannot continue without an interpreter being called in. It is plausible that an interviewee might find the interview becomes so stressful that they cannot find the words in English to give the answer they want to.

- (e) The interviewee is absolutely entitled to have a legal advisor present (or to pause the interview to telephone for legal advice). They may take legal advice in private at anytime. No attempt should be made to try to persuade an interviewee to continue with an interview if they suggest they want legal advice, even if that means abandoning the interview and reconvening on another day. However it will generally be inappropriate for other people to be present. Exceptionally it might be possible for a person to be present to provide "moral support" to the suspect (e.g. a friend, union representative etc) but seek advice from General Counsel before this is accepted.

Procedure during the interview

- (f) When the suspect is brought into the interview room the interviewer shall "*without delay but in the suspect's sight*" load the recorder with a new disc and set it to record. The recording disc must be unsealed/opened in the suspect's presence. The interviewer should tell the suspect about the recording process and point out the sign or indicator which shows that the recording equipment is activated and recording. The interviewer shall:
 - (i) say the interview is being audio recorded;
 - (ii) give their own name and role;
 - (iii) ask the interviewee and any other party present, e.g. a solicitor, to identify themselves
 - (iv) state the date, time of commencement and place of the interview;
 - (v) state the suspect will be informed about what will happen to the copies of the recording.
- (g) After stating the caution, the interviewer should then ask if the interviewee understands the caution. If there is any doubt or ambiguity in the response the interviewer can explain the caution is their own words, breaking it down sentence by sentence. There are complicated legal rules governing whether a failure to mention something in an interview can in fact be used to harm the defence. In essence, it is a possible opportunity for the court to say that an account provided later is less likely to be true if they could have – but didn't – mention it in the interview.
- (h) As well as the recording, the note taker should record in the pink note book the time, date, place, and those present during the interview and at the caution, keeping a record of any breaks and changes in who is present.
- (i) The initial questions should be to identify the interviewee and provide other details (e.g. address, date of birth and role in any company, if relevant).
- (j) If the interview is interrupted for any reason, the interviewee should be reminded that they are still under caution when the interview resumes (if the break is longer than about 5 minutes the caution should be given again in full). If the interview is paused but everyone remains in the room, there is no need to stop the recording, but it should be recorded in the notes. However, if the interviewee leaves the room the recording should be stopped and a fresh disk used for any reconvened interview and the initial formalities gone through again (including stating for the record that it is a reconvened interview).

- (k) The interviewee's solicitor (or anyone else accompanying them) should not be allowed to step in to answer questions on behalf of the interviewee. If necessary, the interview can be paused to allow for the interviewee to discuss matters fully with the solicitor. Avoid letting the interview become a "round table" discussion rather than "question and answer" of the interviewee.
- (l) The interviewee may bring documents to the interview following an Article 27 letter or on their own initiative. It would help to identify clearly for the benefit of the recording any document handed over. Make sure these are then retained with appropriate labels.
- (m) The interviewee should never be left alone in the interview room. If the interview becomes protracted the interviewee should be offered an opportunity to take a break for refreshments or use the toilet.
- (n) The interview should not continue for longer than is needed. In particular it should be brought to an end as soon as all the questions relevant to obtaining accurate and reliable information about the offence have been put. This includes allowing the interviewee an opportunity to give an explanation and asking questions to test if the explanation is accurate and reliable (e.g. to clear up ambiguities or clarify what was said). The Code of Practice does not allow "interviews under caution" to continue once the investigator:
 - (i) *either* has taken account of any other available evidence (i.e. all the evidence has been put to the interviewee for comment)
 - (ii) *or* reasonably believes there is already sufficient evidence to provide a realistic prospect of conviction (i.e. enough evidence for all possible offences is now available and there is no reason for further "fishing").
- (o) That means that investigators should not indicate that they have already decided that the interviewee has committed the offence before, or during, the interview. To do so might mean the interview is deemed to be unfair as it gone on beyond the point when the investigator had no reason to be asking further questions.
- (p) At the end of the interview ask the interviewee to read any notes that have been made and sign them if they agree that they are accurate. If the interviewee disagrees with the content of the notes, record their observations and ask for these observations to be signed instead. If the interviewee refuses to sign the notes at all, record that also. Make a record of the time the interview ended.

Procedure after the interview

- (q) The recording of the interview has to be handled carefully to ensure that there can be no suspicion of tampering. One disk is a master copy and will be sealed in the presence of the interviewee. It should only be opened under supervision of the court. Check with General Counsel the arrangements for its safe storage. The other is a working copy that will be submitted to General Counsel who will arrange for a transcript to be produced. The appropriate Transcription Request Form should be sent along with the disk.

After the interview, there may be issues left unresolved – either because the interviewee wanted more time to consider or research a response or because reflection has left the interviewer wanting further follow up questions. This can be done in post-interview correspondence. It is important that this correspondence refers to the interview under caution and restates the caution itself. It can then be admitted in evidence alongside the original interview transcript. General Counsel should be consulted to get the form of this correct.

Appendix 2 – Disclosure in Brigade prosecutions

Duties

- 1 For the Brigade, the duty of disclosure is particularly relevant to regulatory fire safety investigations. This is because the Brigade will be the prosecutor and manage the disclosure process itself. Although there have always been disclosure duties for prosecutors, with cases becoming more complex and more vigorously contested it is increasingly important that disclosure is addressed correctly. In any regulatory fire safety investigation, a proper system of organisation of material must be instituted from the very start. This is not only "good housekeeping" in itself, but it will also ensure that when those investigations go to prosecution Disclosure is as simple and risk-free as possible. It cannot be assumed that material from an audit showing less serious breaches or compliance might not eventually be material in an investigation for a prosecution – who can say what a re-inspection will show? If it is decided to consider a regulatory fire safety investigations for prosecution the helpful guidance on file management in FSIGN 304 should be considered carefully. This guidance provides "best practice" for managing the material on file.
- 2 In brief, the disclosure obligation in a criminal case is to:
 - (a) **Record** material if it is not in documentary form already.
 - (b) **Retain** material on the investigator's file.
 - (c) **Reveal ALL** material relevant to the investigation to the lawyer handling disclosure.
 - (d) **Release** to the defence what material General Counsel direct to be disclosed.
- 3 **Record** – Much of the material from an investigation will already be in documentary form e.g. witness statements and documents exhibited in them. Other material will be generated by the IO and will therefore have to be specifically recorded for the investigation. This includes emails and notes of conversations with potential witnesses, including the Responsible Person. Where regulatory breaches are seen at the premises these must be recorded in the IO's notes and then in a witness statement. In appropriate cases a photographic record can be made.
- 4 **Retain** – material from the investigation must be retained if it might have some bearing on the person being investigated, the offence being investigated or the surrounding circumstances. ***In practice this means virtually anything that comes into the IOs possession during the investigation is subject to the duty to retain.*** The safest approach is therefore simply to retain everything. The responsibility to retain material runs throughout the lifetime of the case, so material that comes into the Brigade's possession at any point right up to the trial (and beyond) will be subject to disclosure. Retained material must be locatable again. That is why the IO's file should be indexed and the material collated by subject matter in the "tabs" as suggested in Central Regulatory enforcement Group's CREG's guidance.
- 5 **Reveal** – When a matter is ready to be handed to General Counsel for court proceedings the IO should prepare a full list of **all** material retained on the case file that is **not** being used as prosecution evidence i.e. the "unused" material. Also, there may be relevant material that should be listed which is not held by the IO on the IO's own case file (e.g. "real evidence" samples taken from a fire or notes made at scene by another officer who made a follow-up visit). Therefore, at the very least an Investigating Officer should ensure that any other Brigade officers who have been to the premises during an investigation have checked whether they hold material. Any records of incidents at the premises on IMS should also be checked to ensure anything there is accounted for. Where real evidence has been sent for scientific testing the testing laboratory might hold material that ought to be included. This list should be in the format as used by the

Metropolitan Police and CPS, called MG6(c), a copy of which is annexed to this policy. The schedule should **not** include material which is "sensitive", as this is listed separately (see 13 below).

- 6 Generally, each item of material should be listed on the MG6(c) individually. However, it may be appropriate to list a block of related documents as a single item with a generic description e.g. a single entry for a back-and-forth email correspondence. The IO will sign the MG6(c) as a declaration that it contains all the material that has to be included.
- 7 In many cases it will be simplest to send both the case file and the "unused material" to the lawyer along with the schedule. **Ideally, copies of original documents which cannot be re-generated by reprinting, such as original pink books or other notes, should be retained (at least electronically as "scanned" versions).** This both guards against documents lost in transit but also ensures the investigating officer has a copy of the file available for reference. In very big cases passing on the whole file may not be practical. In these cases, the IO **must** provide enough information about each item for the lawyer to decide whether they need to inspect the item itself before making a decision on whether it is to be disclosed to the defence. The IO must ensure that the original file is properly indexed and kept safe so that the original can be provided to General Counsel if there is a query. [Check this paragraph – electronic?]
- 8 When passing on the file the IO should also highlight any items that appear to satisfy the test for "prosecution disclosure". The test is whether the material:

"...might be considered capable of undermining the case for the prosecution or assisting the case of the defence". (Criminal Procedure and Investigations Act 1996, s3(1)(a) as amended)

The Attorney General has suggested in guidance that this means

"...anything that tends to show a fact inconsistent with the elements of the case that must be proved by the prosecution". (Attorney General's Guidelines on Disclosure, 2005)

General Counsel will ultimately make the decision on this and what is disclosed. But the IO handling the investigation will have a good familiarity with the material on file and should be able to give a clear initial steer if there is material which might undermine the prosecution/assist the defence.

Examples where material might satisfy this test include (but are not limited to):

- if it indicates an explanation for the circumstances on which the prosecution is based that exonerates the accused (e.g. it might help establish a "due diligence" defence or show the accused is not in fact the responsible person), or
 - if it casts doubt on the reliability of admissions made in an interview under caution or the reliability of a prosecution witness (including the Brigade's own officers); or
 - if it casts doubt on the expert opinion of the IO as to the risk of death/serious injury from breaches of the regulations (since this opinion evidence is crucial to establishing guilt in a fire safety prosecution).
- 9 The lawyer handling the case will discuss the schedule with the IO to decide how each item should be handled. The prosecuting lawyer is entitled to see items on the schedule which have not been sent or copied to General Counsel with the file. The prosecuting lawyer will also challenge the investigators if there is any reason to think material has not been included on the MG6(c) that can be presumed to exist e.g. expect the prosecuting lawyer to demand an explanation if no original pink books are revealed. This is part of the lawyer's duty to the court to ensure that proceedings are being carried out fairly.

- 10 For each item on the MG6(c) schedule the prosecutor in General Counsel will state whether it meets the test by indicating in the appropriate column:
- (i) Enter "D" where the item passes the disclosure test so that a copy has to be disclosed to the defence.
 - (ii) Enter "I" where the defence may inspect the material but it is not practical to copy it e.g. it is a sample taken from the scene.
 - (iii) Enter "ND" where the item is clearly not disclosable as it does not pass the "prosecution disclosure" test. For example it might be material that relates to other premises or to issues that have been investigated and found satisfactory so not the subject of possible charges.
- 11 Material should be considered non-disclosable if it is material that is of no evidential value at all to any issue in front of the court. This might be the case with material retained in relation to the investigation of issues that ultimately have not led to a charge e.g. photos of separate parts of premises not involved in the prosecution. Material that only assists the prosecution (or is neutral) but which is for some reason not being included in the prosecution case is also not to be disclosed. The prosecutor is also allowed to keep some material confidential by law. For example, material can be kept confidential if there is a real risk to public safety from its release e.g. national security or intelligence information. Clearly this is highly unlikely in a regulatory fire safety prosecution and specific advice from General Counsel is needed if that is considered an issue. Other material is deemed "privileged" and the prosecution need not reveal it. The most obvious example of this is legal advice given to the investigator by GCD or the Brigade's counsel for the purpose of the investigation. Some commercially confidential documents might also be within this rule and again specific advice should be sought.
- 12 There may be a temptation to over-disclose on a "better safe than sorry" basis. This is not a sound approach. It will be seen as an attempt to "bury" relevant material by disclosing it alongside large volumes of material which the prosecution knows will not assist the defence. The material has to be studied and the disclosure test applied properly to each individual item. Casual release of material beyond what is required by the disclosure rules might be a breach of the Brigade's data protection obligations as there is no real legal basis for sharing it.
- 13 Alongside the MG6(c) the investigator should complete a companion schedule (known as a MG6(d)) that contains any "Sensitive Unused Material". This is unused material where there would be **"a real risk of serious prejudice to an important public interest"** if it were disclosed. This includes matters of national security, or perhaps more relevantly, material which might have been provided to the Brigade with a clear expectation of confidentiality or the release of which might assist in the commission of other crimes. Clearly, fire safety cases where there is a need for items to be put on a Schedule of Sensitive Unused Material will be very rare. In the vast majority of cases the investigating officer can simply return the MG6(d) schedule endorsed with a statement that there is "no sensitive unused material".
- 14 The IO should sign and date the MG6(c) and (d) and include the declaration as to whether there is material which the IO has not themselves examined. The schedules also contain a declaration that to the best of their knowledge and belief all relevant material which has been retained has been revealed to the prosecutor as required by the law.
- 15 The duty to disclose is an ongoing duty. As more material becomes available the schedules should be updated as required. In particular, where there is a not guilty plea and the defence case is clearer the retained material should be reconsidered to check the judgement about the test for "prosecution disclosure" is still correct.

- 16 **Release** - The MG6(c) is sent to the defence in accordance with a timetable set down by the court at the first hearing. It is expected that the MG6(c) will be drafted in advance of this first hearing when the case file is handed to GCD but there is very likely to be a need for it to be updated to include material gathered by investigators after the case was handed over. The defence is entitled to copies of items marked "D" on the schedule and to inspect the "I" material. IOs should ensure that General Counsel have all documents in good time so that the court's deadlines can be met. The defence may challenge a decision to declare an item non-disclosable. Ultimately the court may be asked to rule whether the material is disclosable. Actual release of disclosed material to the defence should be dealt with through General Counsel.



Appendix 3 – Witness statements

LONDON FIRE COMMISSIONER (Criminal Justice Act 1967, Section 9; Criminal Procedure Rules 2015, Part 16)

STATEMENT OF WITNESS

Statement of: John Moore

Age if under 18 (if over 18 insert "over 18"): Over 18

Profession or Occupation of Witness: Fire Fighter

Address: Anytown Fire Station
368-388 New North Road
London, IG1 2BC

This statement consisting of **2** pages, signed by me, is true to the best of my knowledge and belief, and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated 16 April 2020

Signature of Witness: ...J Moore

Signature Witnessed by:

1. I, **JOHN MOORE**, am an operational fire fighter with London Fire Brigade (LFB), based at Anytown Fire Station in green watch. I have been a firefighter with LFB since 2013.
2. At 20:00 hours on Saturday 11 April 2017, I reported for night duty at Anytown Fire Station. Just after 23:00hrs on that night we received a fire call to 100 High Road, Anytown. Anytown's pump (call sign F471) was despatched. I was riding with **Sub O SAMPLE**, **LFF STATOS**, **FFs PEREZ, SMITH** and **VINESH**.

Signature:.....J Moore

Signature Witnessed by:.....



3. On my arrival at 100 High Road I saw that it was a ground floor take-away with two storeys of residential accommodation above it. I then remembered that I had been there before a few weeks earlier when we put up some smoke alarms in the flat.
4. There was a fire in progress with flames venting from the first floor front windows, which were open. **Sub O SAMPLE** immediately instructed me and **FF PEREZ** to don breathing apparatus and enter the building with a main jet to tackle the first floor fire. Other crew laid out the hose reel to the front of the building while **Lff STATOS** tried to open the timber front door to the side of the takeaway but could not get in. The next thing I noticed the door had been broken open. I did not see how¹. I did not see anyone try the main door to the takeaway. It was in darkness and clearly not open for business.
5. I entered the building with **FF PEREZ** into a long corridor. I could see about 5m down that there was a door in the right hand side wall. It was open but there was no sign of smoke or any fire in the ground floor. At the end of the corridor was a staircase up. We went up and could see that the first floor landing was very smokelugged. I could only see about three or four metres ahead of me². I felt my way to the door to the room at the first floor front. It was open. It was a bedroom and I could see that there was a large amount of furniture including a bed and also some bags of what looked like clothes alight in the middle of the room. Although there was a lot of smoke the fire was contained to this room and we were able to extinguish it quite easily.
6. At no time³ while I was at the premises did I hear any kind of alarm sounding. When the fire was extinguished I did notice that there were three domestic smoke alarms piled up on the kitchen table. I can't say if they were the ones we put up a few weeks ago. The kitchen was the room opposite the bedroom where there had been a fire.
7. I did not see any of the occupants of the flat while I was at the incident.

Signature:.....J Moore

Signature Witnessed by:.....

¹ If you do not know part of the story then say so – do not make assumptions to fill in gaps. The statement is a record of what **you** saw, heard and thought first hand – it is not expected to be a full account of everything as you will not have first hand experience of everything.

² If you do not know part of the story then say so – do not make assumptions to fill in gaps. The statement is a record of what **you** saw, heard and thought first hand – it is not expected to be a full account of everything as you will not have first hand experience of everything.

³ Remember, sometimes you might need to say what you did **not** see as well as what you did see.



LONDON FIRE COMMISSIONER
(Criminal Justice Act 1967, Section 9; Criminal Procedure Rules 2015, Part 16)

STATEMENT OF WITNESS

Statement of: Elizabeth Jane Lane

Age if under 18 (if over 18 insert "over 18"): Over 18 ⁴

Profession or Occupation of Witness: Fire Safety Inspecting Officer

Address: Anytown and Nowhere Fire Safety Team Anytown
Fire Station⁵
368-388 New North Road
London, IG1 2BC

This statement consisting of **2** pages, signed by me, is true to the best of my knowledge and belief, and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.⁶

Dated 14 March 2019

Signature of Witness: ...EJ Lane

Signature Witnessed by:⁷

⁸

Signature:.....EJ Lane

Signature Witnessed by:.....

⁴ You do not need to give your real age! Just confirm over 18

⁵ Use an LFB business address. There is no need to give your home address

⁶ This is the "Statement of Truth" needed for a s9 statement

⁷ You only need the signature to be witnessed if the statement maker is under 18 or lacks mental capacity

⁸ The statement will be much clear to read through if "1.5" line space is selected from the paragraph options and paragraphs numbered. The standard format should be set up for this.



8. I, **PENNY LANE**, am a fire safety inspecting officer with London Fire Brigade, based at Anytown Fire Station. I have worked for the LFB for sixteen years and have been in my current role for three years. I am a Fire safety Inspecting Officer with a level 3 and 4 Certificate in Fire Safety.⁹
9. On 7th of March 2019 in the course of my duties as a fire safety inspecting officer for London Fire Brigade I carried out a fire safety audit of Speedy Chicken, 100 High Road, Anytown. This was as a result of information received¹⁰ by LFB raising concerns about fire risks at the premises. The findings of my audit were recorded on my mobile-working device. At the completion of my audit I produced a standard form record of information I had gathered in the audit. The audit form was then uploaded to the Brigades fire safety database (Farynor). I have printed this out and exhibit a copy as **PL/1**¹¹. I confirm that the content of **PL/1** reflects the outcome of my audit of 7th of March 2019.
10. While at the premises I took a number of photographs with a LFB digital camera. Later that day I took the memory card to LFB HQ and arranged for the images to be uploaded to the LFB photo library, where they were given photoset number 12345. I exhibit the photoset as **PL/2**. I kept a log of what was shown in each image and exhibit a copy of this log as **PL/3**.
11. I arrived at the premises at 15:30hrs. The premises are a brick built detached residential premises converted to a takeaway shop unit on the ground floor with a flat on two floors above. There is a glazed frontage to the front including a door set into the customer area of the take-away. A driveway to the left hand side leads to a back yard. There is a forecourt in front of the premises on which a white van had been parked at the time of the audit. At the left hand side of the premises is a doorway which had a sign reading "100A High Road". I entered through the glazed door and could see that the takeaway shop unit consisted of a customer area and a service counter with a commercial kitchen behind. I introduced myself to a man in this kitchen who identified himself as **Joe SMITH**¹². I explained that I was intending to undertake a fire safety audit of the premises and he agreed to accompany me around.¹³

⁹ The witness establishes that they have experience and qualifications to give opinion evidence about fire risk and

¹⁰ This is a well tried and tested formula – it would be inadmissible hearsay to report the details of any alleged fire risk received. This minimal statement just explains how the visit came about.

¹¹ The statement should clearly say the document is being exhibited and give it the correct style of exhibit number i.e. the witness's initials with a sequential number.

¹² Putting names and maybe addresses in capitals and or bold can help someone later skim reading. But don't go wild with capitalising and bold, as it looks over-excitable and is hard to read!

¹³ The body of the statement is a simple narrative of what the witness saw, did and thought. Only record things that are relevant to the case but do not leave details out.

Signature:.....*EJ Lane*

Signature Witnessed by:.....

I first examined the commercial kitchen. I could see that the ceiling of the kitchen was constructed of thin wooden boarding, with 0.5cm gaps between some of the boards. At one corner there was a larger gap of around 10cm by 10cm and I could see through to floorboards of the premises above. I took photo 98765 from **PL/1** to show this. I had expected that this ceiling would be constructed to ensure 60 minutes fire separation from the premises above. Standard wooden floorboards alone would not offer that protection. In the event of a fire in the commercial kitchen fire, smoke, heat and fumes would pass rapidly to the residential accommodation above. This would place relevant persons there at risk of death or serious injury as fire, smoke, heat and fumes rapidly reached people in the flat above, leading to them being overcome while sleeping and /or their means of escape being blocked.¹⁴

etc etc etcSignature:.....*EJ Lane*

Signature Witnessed by:.....

¹⁴ This is an opinion – but it is admissible in court as the witness is an expert in this area and has established her credentials earlier on.



LONDON FIRE COMMISSIONER
(Criminal Justice Act 1967, Section 9; Criminal Procedure Rules 2015, Part 16)

STATEMENT OF WITNESS

Statement of: Mark Statos

Age if under 18 (if over 18 insert "over 18"): Over 18

Profession or Occupation of Witness: Fire Fighter

Address: Anytown Fire Station
 368-388 New North Road
 London, IG1 2BC

This statement consisting of **2** pages, signed by me, is true to the best of my knowledge and belief, and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated

Signature of Witness: ...*M Statos*

Signature Witnessed by:

1. I am MARK STATOS and have served as an operational fire fighter in London Fire Bridge since 1 April 2007.
 I have been Leading Firefighter on Green Watch at Anytown Fire Station since 2016.

Signature:.....

Signature Witnessed by:.....



2. On Wednesday 16 March 2019 I was on duty from 20:00 hours. Shortly after I had come on duty Station Commander **John JONES** told the crew that he had earlier that day dealt with a prohibition notice that had been served on a fried chicken shop called Speedy Chicken at 100 High Road, Anytown. He told us that there was no smoke detection in the shop or the flat in the building above it, and it was all in a very poor state of repair. He told us that the prohibition notice meant the fried chicken shop should now be closed, but he wanted us to make a home fire safety visit to the flat above the shop and check things were OK there.
3. At around 20:30hrs myself and the crew (**FF John MOORE**, **FF Fred SMITH** and **FF Monique PEREZ**) took the pump F471 to Speedy Chicken at 100 High Road, Anytown arriving there about 5 minutes later. **FF Moore** stayed with the pump and the rest of us went over to the chicken shop. The front door was open but there were no lights on and no cooking and the shop did look closed. There was a man inside who appeared to be clearing away some boxes from the kitchen in the shop into a van parked outside. We introduced ourselves and said we wanted to see the people in the flat upstairs. The man was a bit tetchy with us and pointed to a doorway next to the shop. He did not say anything to us but just unlocked the door and gestured for us to go in.
4. The three of us went through the door. There was a corridor about 10m long with a closed door on one side and some stairs up at the end. I called out to see if any one was there. After a few moments a young man around 20 years old came down the stairs. He said his name was **Billy BLOGGS**. He took us upstairs and told me that he lived there with 4 other people. Upstairs was a flat with a kitchen, front bedroom and living room and stairs up to a further floor with three bedrooms. There were two people in the kitchen cooking something. **FF Smith** and **FF Perez** had a further look round the flat and went into the kitchen to talk to the people there. I went onto the living room with Mr **BLOGGS**. There was plenty of furniture – a sofa and two armchairs, a TV and a large dining table with some plates on it. I had no doubt that it was being occupied as a residential flat.
5. While we were there the crew fitted three smoke detectors – one at the top of the stairs, one in the living room and one in the first floor hallway. We left at about 21:30hrs and returned to Anytown Fire Station. SC JONES was not there but I sent him an email to say that we had made the visit.

Signature:.....

Signature Witnessed by:.....



Name: Sara Vinesh

Address: Anytown Fire Station
(use work address) 368-388 New North Road
London, IG1 2BC

Telephone No: 02085551200 Ext 12345 Business telephone No:

Sex: Female Date of Birth: Over 18 Place of Birth:

Maiden name: N/A Height: Identity Code:

Dates to be avoided:

Contact point, if different from above:

Address: N/A

Telephone No: N/A

Document history

Assessments

An equality, sustainability or health, safety and welfare impact assessment and/or a risk assessment was last completed on:

EIA	27/09/2013	SDIA	25/09/2013	HSWIA		RA	
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Audit trail

Listed below is a brief audit trail, detailing amendments made to this policy/procedure.

Page/para nos.	Brief description of change	Date
Throughout Page 5, para 2.14 and Page 24, para 14	All reference to Legal Services updated to General Counsel. Language change to gender-neutral terms. Reference to the Authority updated to Brigade due to the abolition of LFEPA.	24/09/2020
Appendix 3	Minor updating to remove historic references to LFEPA.	23/12/2020
Throughout	Further drafting amendments and updates to reflect current court practices.	09/07/2024
Throughout	References to RMC changed to CORE team	31/07/2025
Throughout	References to cancelled PN0920 updated.	12/08/2026

Subject list

You can find this policy under the following subjects.

Post incident action	Legal management
GRIP	Legal
Records management	Reporting

Freedom of Information Act exemptions

This policy/procedure has been securely marked due to:

Considered by: (responsible work team)	FOIA exemption	Security marking classification