



Being a witness for the Office of Rail and Road

We understand that being asked to be a witness can be a daunting prospect, so this leaflet is intended to answer any questions you might have and provide guidance on why we conduct investigations, how we gather information and evidence, and how you might be asked to help.

What does the ORR investigate?

The Office of Rail and Road (ORR) is the independent safety and economic regulator for railway and tram systems in Great Britain. We make sure that railway companies and individuals comply with their legal responsibilities to protect the health, safety and welfare of people who come into contact with the railways.

Our inspectors investigate after an incident or near miss, to find out why things have gone wrong and whether any health and safety laws have been broken.

Successful outcomes rely on positive contributions from many people including employers, employees, contractors and members of the public, who help us to establish what happened. Our investigations must be fair and thorough and we believe part

of achieving that is making sure contributors are fully informed and understand why we are asking them to be involved.

If at any time you have concerns about being a witness, ask us to explain. We need your help and will take the time to explain and address any concerns

Who will ask me to be a witness?

It will be one of our inspectors who will ask you to be a witness. Our inspectors are the individuals who are responsible for conducting inspections of railway workplaces and investigating incidents which occur on the railway.

An inspector will always identify themselves to you with their warrant and explain why they are talking to you. An example of an inspector's warrant is shown below



How might I become involved in an ORR investigation?

Anyone associated with, or affected by, the operation of a railway, tramway or other guided transport system may become part of an ORR investigation, including employees and members of the public. A witness can be any person an inspector has reasonable cause to believe may be able to give information relevant to an investigation, whether or not they actually saw the incident take place.

Generally we will ask witnesses to:

- Provide an account of an incident they witnessed; and/or
- Provide background information to an incident, such as how a job was planned or when a piece of equipment was purchased.

How will I be contacted?

If we think you have relevant information to give us, we will normally contact you by phone to discuss how you might be involved in the investigation and contribute to our understanding of the

circumstances. At this point we will make arrangements to meet you at a suitable time and place, outline what will happen and explain who may be present.

Our investigations must be thorough and can often be long and complex. Therefore you may not be contacted immediately after an incident

What will happen during my interview?

The inspector will start any interview by explaining why you are being asked to assist our investigation and what form a written statement should take.

Sometimes the statement will be a simple description of events, but we could also ask you to explain other material such as a training manual or task briefing.

You will be asked questions by the inspector and they will write down your answers in your own words. If you prefer, you could write it yourself.

Once the inspector has finished their questions, you will be asked if there is anything you wish to add and then you will be asked to read your statement

through carefully, or have it read to you. When you are satisfied it is correct, you will be asked to sign it.

I'm worried that I will say something that will incriminate me, what would happen?

Our inspectors only want to establish the facts surrounding an incident. They will not try to trip you up, however if during the course of an interview you provide information which leads the inspector to believe that you may have committed an offence or contributed to someone else committing an offence, then he/she will stop the interview. The inspector will explain why they have stopped the interview and what they intend to do next, which could be to interview you formally recorded on tape or CD. You will be advised to seek legal advice before this starts and so this will usually be done on another day.

Do I have to agree to be interviewed and provide a statement?

Normally we will approach you to provide a "voluntary statement" in much the same way that a police officer might ask you to do. We understand that you may feel uncomfortable or worried and you do not

have to agree to provide a voluntary statement. But we are under a duty to find out what happened during an incident so if you refuse, an inspector can require you to answer questions in relation to the incident.

This is known as a "compelled statement." The inspector can require you to answer questions and then sign a declaration of truth. The difference with this type of statement to a voluntary statement is that nothing you say can be used as evidence against you, your spouse or civil partner. Inspectors will make it very clear when they are using this power as failure to answer questions may be an offence in itself.

Our aim is to make the interview process as comfortable and straightforward as possible

Can I have someone else present during my interview?

We recognise that witnesses are likely to give their best evidence when they are relaxed and feel supported e.g. by a family member, trade union representative, colleague or legal adviser.

When making arrangements for an interview, and again before the interview

begins, our inspectors will ask you if you wish anyone else to be present.

If you are under the age of 16, you can only be interviewed in the presence of another responsible adult, usually a parent or guardian.

If you choose to have someone else present, they cannot answer questions on your behalf or prompt you with your answers. The inspector may ask them to leave if they appear to be influencing your responses.

Sometimes when the company under suspicion is your employer, they may ask for their own solicitor to be present during your interview. The solicitor should make it clear to you if they are there to personally represent you, however be aware that they may be also representing the interests of your employer. You do not have to agree to have company solicitor present and can still arrange for your own legal representative at any time.

What happens next?

The inspector will draw together all the information obtained during their investigation and write a report on what they have found out, why they believe the incident happened and recommend any further action that should be taken to

prevent something similar happening again. As our investigations are often long and complex this could take some considerable time after your witness interview took place. We might even contact you to provide another statement should further information come to light.

Will I have to go to Court?

Where investigations result in legal proceedings you may be required to go to Court to provide the information in your statement orally. If this happens the inspector will be in touch and guide you through the process.

You might also benefit from the assistances offered by the Witness Service. They provide free and independent support for both prosecution and defence witnesses in every criminal court in England and Wales.

Trained volunteers provide practical information about the process, as well as emotional support to help you feel more confident when giving evidence. Further information can be found on their website

www.citizensadvice.org.uk/witness

In Scotland, Victim Support Scotland offer similar services. Their website gives more information:

<https://www.victimsupportsco.org.uk/help-for-witnesses-of-crime/>

Can I recoup my expenses?

Yes, in England and Wales, reasonable expenses for going to court will be reimbursed in line with the following requirements:

- (a) claims cannot be made for the time spent preparing a witness statement;
- (b) receipts will be required for all claims;
- (c) evidence will be required for all loss of earnings claim. Such evidence might take the form of a declaration from an employer or, if self-employed, proof that work had been scheduled for the days in question and for the value of that work;
- (d) sufficient information needs to be provided to enable ORR to make a judgement as to what rate of allowance to pay (for example, the time that the witness left home or work to attend court and the time that their participation at court ended; and

(e) rates will be remunerated in line with the Ministry of Justice guidelines “Costs in Criminal Cases (General) Regulations”, part 5.

<http://www.legislation.gov.uk/ukxi/1986/1335/part/V/made>).

The inspector dealing with your case will provide you with a claim form.

You will be reimbursed for reasonable expenses and the inspector will advise you how to make a claim and provide you with the relevant form.

In Scotland, the Crown Office and Procurator Fiscal Service will send you a form to claim expenses.

It is important that you inform us if your contact details change. Remember your statement could be very important for establishing what happened during an incident.

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