

### 1 Introduction

The intention of this briefing is three fold

1. to provide staff with information as to the Employers and Employees obligations under Health and Safety Legislation.
2. to provide staff with guidance should they be asked to provide a statement or comment as part of an interview process by the Health & Safety Executive. (HSE) Any information requested by the HSE is likely to be in relation to an accident/incident at work.
3. to provide an understanding of the HSE process and the reasons behind it.

### 2 Background

NHS GGC is required by law to implement and abide by relevant health and safety legislation.

Under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) NHS GGC is obliged to keep records of accidents/incidents and report certain types of incidents to the HSE.

A RIDDOR report may lead the HSE to attend the site to carry out inspections and interviews.

#### 2.1 Statutory Background

Health and Safety at Work, Etc. Act 1974

Enforcement of the Health and Safety at Work Act 1974, and related legislation, is shared between the Health and Safety Executive (HSE) and local authorities.

The general rule is that the "enforcing authority" in the case of industrial premises is the HSE and in the case of commercial premises within its area, the local authority.

Each enforcing authority is empowered to appoint suitably qualified persons as inspectors, for the purpose of exercising enforcement powers granted by the Health and Safety at Work Act 1974.

Inspectors are appointed under section 19 of the Health and Safety at Work Act 1974, and can be requested to produce details of their identity and authority (when exercising any of their powers under the Health and Safety at Work Act 1974).

Inspectors appointed by local authorities will usually be suitably qualified Environmental Health Officers.

### 3. Powers of Inspectors (Health and Safety at Work Act 1974, Section 20)

This is a key provision in the Health and Safety at Work Act 1974, setting out the very extensive powers of inspectors.

Of particular note are the following rights:

- Inspectors have a right of entry to premises (at any reasonable time) without any need to give notice
- To carry out investigations and examinations

- To require any person to answer questions relevant to any examination/ investigation and to sign a declaration as to the truth of the answers
- To require the production of and inspection of books and documents (e.g. accident book, plant maintenance schedules and risk assessments)
- To require any person to give him general facilities and assistance
- Anyone obstructing an Inspector carrying out Section 20 powers will be guilty of a criminal offence (Section 33 of the Health and Safety at Work Act 1974,).

#### 4. Interviewing Powers in More Detail

Section 20 (2) (j) enables an Inspector to question any person who the Inspector believes has information relevant to any examination/investigation.

In particular:

- Such a person cannot refuse to answer questions put to him/her under Section 20 powers
- No answer given under a "Section 20 interview" is admissible in evidence against that person in any legal proceedings
- It is a specific offence for a person to prevent any other person from appearing before an inspector or from answering any question to which an inspector may require an answer (section 33)

#### 5. Giving a Witness Statement to the HSE

The HSE have a duty to investigate deaths which occur in a workplace or are associated with a work activity. The investigations can be activated by either the person who has responsibility for the workplace or work activity notifying the HSE via RIDDOR or specifically asked to by the Procurator Fiscal or when requested to as part of a joint investigation by the Police.

As part of an investigation the HSE Inspectors will interview a number of individuals. This part of the investigation is the gathering of facts and information in order that the Inspectors can begin to understand what has happened and why.

When the Inspectors are compiling their final report either for their own internal records and decision making purposes or for submission to the Procurator Fiscal, the Inspectors will take statements from some whom they have previously interviewed and some whom they may have not.

#### 6. What is a Witness Statement?

A witness statement is a document recording the evidence of a person which is signed by that person to confirm that the contents of the statement are true.

In general, the statement should only contain information on what the witness saw, and not what others have said to him / her. However, it is important to record anything that may open up a new line of enquiry or help in corroborating other information.

### **7. Why am I being asked to give a statement?**

The Inspector wishes to record the evidence you have personal knowledge of and should the matter become a Fatal Accident Inquiry or Criminal Case, what the evidence you would say in a court.

Your statement is deemed a Voluntary Statement from a Witness. This means you are not being interviewed as a suspected person.

The term “voluntary statement” is used by the HSE to distinguish it from another form of statement they can take under their powers (section 20 Health and Safety at Work Act 1974).

### **8. Interviews**

There are different types of interview that the HSE can use as part of its investigations. These are voluntary witness statements, section 20 statements and statements under caution.

### **9. Will I be cautioned?**

No. It is not necessary as you are providing a voluntary witness statement.

### **10. What to expect from the HSE Inspector**

The Inspector will treat you with courtesy and attempt to put you at ease.

They will explain to you that the primary aim of the statement being taken is to find out what happened and should only deal with matters within the direct knowledge of the witness.

### **11. Can I make Changes to the Statement as it is being taken?**

Yes, it is your statement. Prior to finally signing the statement you will have the opportunity to read it. If you wish to make any changes then this will be done.

Once signed then that is your final statement. The signature is a declaration of the truth as contained in the statement.

The Inspector is not going to try to trick you or trip you up. They are simply looking to record the facts of the matters they are investigating.

Do not try and second guess where you think the Inspectors' questions are going. Simply answer the questions posed in a truthful manner.

### **12. If it is a voluntary statement, can I refuse to provide a statement?**

In that scenario the Inspector would revert to their Powers under Health and Safety at Work Act 1974, and require you to give a statement. This would be a compelled statement.

### **13. Can I be accompanied during the statement taking process?**

This is entirely at the discretion of the Inspector. If the Inspector agrees to someone else being present then that individual cannot participate in any way. They must not speak, must not interrupt or coach your answers this would also include making sounds or facial gestures in response to questions being posed or the answers given.

As noted above this is not an adversarial process, nor do witnesses need protection from Inspectors questioning, so the need or comfort sought from having a third party in the room is not clear.

## **14. Will I get a copy of my Statement?**

No. The statement forms part of the Inspectors report and so a copy is not provided. If the matter being investigated does lead to a FAI or criminal case then a copy of your statement will be provided via the evidence pack from the Procurator Fiscals Office.

## **15. Additional Information**

A member of NHS GGC Health & Safety Services Team will be available to assist you with any queries you may have.