

# Civil Proceedings in England & Wales

## *Summary*

This guidance explains how to respond to summonses to attend civil proceedings and requests from parties to civil proceedings to give evidence. The guidance does not apply in Scotland.

It is not intended to deal with situations where an inspector is asked to give evidence for a defendant in a criminal trial, or to give evidence at an inquiry. In either of these two instances inspectors should seek advice from Legal Adviser's Office (LAO).

## *Introduction*

HSE's policy, as an independent regulator, is not to become involved in civil disputes unless at the direction of the court in the civil proceedings. Generally, inspectors, including specialist inspectors, should not voluntarily get involved with civil claims at all, either by making statements or agreeing to give evidence in court, unless witness summonsed.

## *Action*

### **Requests to provide factual evidence**

If a party to civil proceedings wishes any member of HSE staff to make a statement, approve a witness summary or appear in court to give evidence, you should advise them that it is HSE's policy not to become involved in this way in civil disputes unless at the direction of the court.

If you are subject to such requests from a party to civil proceedings you should clarify what evidence the party wants you to give and whether this can be achieved by providing them with exhibits already within HSE's possession, and if so, follow HSE's procedures in relation to disclosure for civil proceedings.

If the party concerned has drafted a statement or witness summary on your behalf about matters of which you have no or limited first-hand knowledge, you should refuse to sign the statement and explain that these matters are not within your knowledge to avoid being summonsed to give evidence.

### **Witness Summons**

If, despite taking the actions above, you are served with a witness summons, then you are obliged to attend court in response to it – although in general it will only be binding if it is served at least 7

days before you are expected to attend. There are exceptions to this and you should check if you receive a summons less than 7 days before attendance is required.

The summons should be on form N20 and should specify the date and time on which you are expected to attend. Not attending court in response to a witness summons can be a criminal offence, and you can also be fined / ordered to pay wasted costs. In certain circumstances, applications can be made to vary or set witness summons aside and if you consider there is good reason for doing so, you should consult LAO. If you have been summonsed to attend on a date that you cannot make e.g. because you are on holiday abroad, you should notify the court and the party concerned immediately and see whether the summons can be varied. HSE will release you to attend on the required days as you are on official duty. If you do attend court in response to a witness summons, you are entitled to be paid your travel costs and also any loss of earnings which you can demonstrate. The summons should include detail of the sum which is offered to you in respect of these costs.

Further detail on witness summons is found within Civil Procedure Rule 34 and the accompanying practice directions.

## **Requests to act as an expert witness**

**A person, whether or not an Inspector, cannot be summonsed to give evidence as an expert witness.**

Expert witnesses must be instructed by one or other of the parties to the proceedings. They are required to abide by set criteria in assisting the Court to come to a decision in providing opinion on the evidence presented.

For an HSE inspector to act as an expert witness by giving opinion on matters relating to an incident in which they have been involved, either as an investigator or an expert witness, is incompatible with their role as an employee of HSE.

If an inspector is asked to do so, or to act as an independent expert in civil proceedings, they should decline and advise the party to instruct their own independent expert should they wish to obtain expert evidence.

## ***Contacts***

Legal Adviser's Office