



STATEMENT OF APPROACH – QUESTIONING OF WITNESSES

1. This statement explains the Inquiry's approach to the questioning of witnesses at the hearings from autumn 2020 onwards. In general, and for the reasons outlined below, the Inquiry expects that the vast majority of the questioning will be undertaken by counsel to the inquiry.
2. Rule 10(1) of the Inquiry Rules 2006 provides that where a witness is giving oral evidence at an inquiry hearing, only counsel to the inquiry and the inquiry panel (i.e. the Chair) may ask questions of the witness. This reflects the essentially inquisitorial nature of a public inquiry. An inquiry is not a trial and (unlike a trial) the role of the Chair is not to decide between rival cases.
3. Rules 10(2) to (5) of the Inquiry Rules empower the Chair to permit the questioning of witnesses by others only in certain defined circumstances:
 - a) Under rule 10(2) the Chair can allow the recognised legal representative of a witness to ask the witness questions, once the witness has been questioned by counsel to the inquiry.
 - b) Under rule 10(3) where a witness (other than a core participant) has been questioned by counsel to the inquiry and their evidence directly relates to the evidence of another witness, the recognised legal representative of the witness to whom the evidence relates may apply to the Chair for permission to question the witness.
 - c) Under rule 10(4) the recognised legal representative of a core participant may apply to the Chair for permission to ask questions of a witness giving oral evidence.

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- d) An application under rule 10(3) or 10(4) must state the issues to which the proposed questioning relates; whether the questioning raises new issues; or if not, why the questioning should be permitted.
4. In general, the Chair expects that the process set out below will be followed:
- a) The recognised legal representatives of core participants should inform counsel to the inquiry of the issues or points that they consider a particular witness should be asked about, in advance of that witness being called to give evidence. Recognised legal representatives are asked to provide their suggestions by email to counsel to the inquiry no later than 7 days before the witness gives evidence. Recognised legal representatives may wish to bear in mind that:
- The clinical and other witnesses (such as civil servants, former ministers and transfusion directors) from whom the Inquiry has been hearing since late 2020 are not (unlike the members of the Inquiry's expert groups) giving evidence as expert witnesses but as witnesses of fact.
 - The fact that an assertion or expression of view from a witness (whether a witness of fact or an expert witness) is not formally challenged during the witness's oral evidence does not mean that the Chair will be obliged to accept their evidence.
- b) Counsel to the inquiry will, having regard to any suggestions received from core participants, ask such questions as they consider appropriate.
- c) Following the questioning of a witness, the witness will withdraw and there will be a short break, during which the recognised legal representatives of core participants should

raise with counsel to the inquiry (either in person or by email) any point they think has not sufficiently been covered, and counsel to the inquiry will decide whether to ask further questions. The Inquiry will endeavour to ensure that the break is of sufficient duration to enable recognised legal representatives participating remotely due to Covid-19 to raise further points by email with counsel to the inquiry.

- d) In the event that the recognised legal representatives for core participants wish to make an application for permission to question the witness, they may raise the issue in open hearing at that stage and the Chair will decide whether to permit their questioning. It will be material to his decision whether the point or points to which it relates has been raised with counsel to the inquiry during the short break, and if counsel to the inquiry has declined to raise it what her or his reasons are.
- e) The Chair is only likely to permit such questioning if he considers that the point has indeed not been raised and is worth raising, or has not been sufficiently addressed by questions.
- f) If the Chair permits questioning by the recognised legal representative of a core participant he is likely (in the interests of good inquiry management) to limit the time he will allow for it. Questioning will be limited in any event to the point or points for which permission has been granted.
- g) If the Chair allows one recognised legal representative to ask questions, it does not follow that he will allow each and every recognised legal representative to do so. Thus, for example, where two or three recognised legal representatives for core participants consider that an issue has not been sufficiently addressed, it is possible that the Chair may give permission only for one of them to ask more.

5. Where a witness is represented, then, pursuant to rule 10(2) of the Inquiry Rules, at the conclusion of questioning by counsel to the inquiry the Chair may permit the witness's recognised legal representative to ask some further questions if, for example, they feel that the witness has not given the best evidence they are able to give to assist the inquiry. This should not be regarded as an opportunity to ask leading questions of the witness or to introduce new material, and if any significant points are raised in this way, the Chair may ask counsel to the inquiry to question the witness further.

Issued by the Chair on 11 March 2019.

Updated on 9 July 2020.

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