



PUBLIC INQUIRY MUCKAMORE ABBEY HOSPITAL

MAHI PROTOCOL No. 1

PROTOCOL ON THE PRODUCTION AND RECEIPT OF DOCUMENTS

Introduction

1. This Protocol governs the production of documents to the Inquiry and the receipt of those documents by the Inquiry.
2. The core objective of the Protocol is to ensure that all documents relevant to the Inquiry's Terms of Reference are produced to the Inquiry promptly and in the correct format.
3. The Protocol will not necessarily cover every eventuality that may arise. The Inquiry may need to depart from the Protocol in the interests of fairness or in order to discharge its statutory functions.
4. The Protocol may also need to be amended in the course of the Inquiry's work, in which case the amended version will be published at the earliest opportunity on the Inquiry's website.

Statutory provisions

5. The Protocol should be read in conjunction with the Inquiries Act 2005 and the Inquiry Rules 2006.¹ Attention is drawn in particular to the following provisions.
6. Section 17 of the Act provides that the procedure and conduct of an Inquiry are to be such as the Chair may direct. In making any decision as to procedure, the Chair must act with fairness and with regard to the need to avoid any unnecessary cost.
7. Rule 9(2) of the Rules provides that the Inquiry panel must send a written request to any person that it wishes to produce any document or any other thing.

¹ The Chair intends to follow the Inquiry Rules 2006 (separate rules have not been made to govern inquiries established by Northern Ireland ministers) unless in his view exceptional circumstances require a departure.

8. Section 21 of the Act provides the Chair with power to require persons to produce documents or other things that relate to a matter in question at the Inquiry (a “Section 21 Notice”).
9. Section 35 provides that it is an offence for a person who fails without reasonable excuse to comply with a notice issued under section 21. Section 35 also provides that it is an offence for a person to do anything that is intended to have the effect of distorting or altering relevant documents or to prevent documents from being provided to the Inquiry. Further, it is an offence for a person to suppress, conceal, alter or destroy any document that he or she believes to be a relevant document in the course of an Inquiry.
10. Section 19 permits restrictions to be imposed on the onward disclosure or publication of any documents that have been produced to an Inquiry. Such restrictions may be imposed by way of a notice given by the Minister to the Chair or by way of a restriction order made by the Chair during the course of the Inquiry.

Documents and providers of documents

11. In this Protocol, “document” is to be interpreted widely. “Document” means anything in which information of any description is recorded, whether in paper or electronic form. It will include, but is not limited to: statements, records, correspondence, emails, other electronic messages including but not limited to text messages, notes in any form including those which are electronic, printed, typed or handwritten in any format. It will also include but is not limited to photographs, video and audio recordings, CCTV footage, data and metadata.
12. “Document Provider” (DP) means any person, institution or organisation asked or required to provide documents to the Inquiry or that has provided documents voluntarily to the Inquiry. For the avoidance of doubt, it includes Her Majesty’s Government and any Department of State or Minister of the Crown.
13. A document is a “relevant document” if it is likely, having regard to the Inquiry’s terms of reference, that the Inquiry panel would (if aware of its existence) wish to be provided with it.
14. DPs should, if necessary, seek the advice of the Inquiry if an issue arises concerning the relevance of a document or category of documents.

Requests for the production of documents

15. The Chair intends to rely where possible on voluntary co-operation for the production to the Inquiry of documents that the Inquiry needs to obtain in order to fulfil its terms of reference. DPs are reminded of the terms of section 35 (as set out in paragraph 9 above).

16. The Inquiry Panel will normally make a request for voluntary production of documents by means of a letter from the Solicitor to the Inquiry to the person, institution or organisation believed to have possession, custody or control of the documents.
17. The Chair expects that all parties to whom a request is directed will co-operate promptly with the Inquiry and will provide all relevant documents without the need for the Chairman to exercise the compulsory powers provided in section 21 of the Act. A substantive response addressing the matters set out in the letter of request will be expected within 14 days of the receipt of a request unless exceptional circumstances apply.
18. The Chair will exercise his powers under Section 21 to obtain relevant documents, where (for example) a request is refused, the response to a request is incomplete, there has been no response to a request by a stated deadline or a delay is requested which appears to the Chair not to be reasonable. Some DPs may be facilitated in their production of documents by receipt of a Section 21 Notice, whether in general terms or in respect of certain documents or categories of document. Such DPs should alert the Solicitor to the Inquiry promptly.
19. In addition to such requests, the Inquiry will issue a general invitation to others who are in possession of relevant documents to produce such documents to the Inquiry. Persons who hold such documents should contact the Solicitor to the Inquiry promptly so that the necessary arrangements can be made for receipt of the documents by the Inquiry.

Instructions for document providers

20. DPs, including legal representatives, are expected to produce all documents requested by the Chair and all other relevant documents in their possession, custody or control to the Inquiry promptly and in compliance with any deadline stated in the request.
21. DPs are expected to undertake comprehensive, thorough and rigorous searches in response to a request for documents. DPs should keep a detailed written record at the time of the searches that will enable them to make a disclosure statement to the Inquiry if requested (see paragraph 30 below). This applies whether the production of documents is in response to a request for voluntary production of documents, a Section 21 Notice or otherwise.
22. The Inquiry will be using an electronic document management platform. All documents provided to the Inquiry must be electronic or scanned copies of original documents or, if the original is not available, the best available copy. If the original document contains colour or has colour marking (including highlighting), the scanned copy must be in colour and show all marking on the original.

23. Documents must be intact and in unredacted form, except where legal professional privilege or other legal bar to disclosure to the Inquiry is asserted in respect of a document or part of a document (see paragraphs 33 and 35 below).
24. Electronic documents should be provided in their native format. Where possible, all files should be provided in a format that is text searchable.
25. Should any issue arise as to the conduct of the above exercise, the issue should be raised immediately by the DP with the Solicitor to the Inquiry.

Schedule and disclosure statement

26. On each occasion that documents are produced to the Inquiry, they should be accompanied by a schedule (in the format provided by the Inquiry) listing the documents that have been produced and signed by or under the authority of the DP. The Solicitor to the Inquiry will issue a receipt by email for documents produced.
27. When a DP has completed its production of documents, the DP should provide a signed declaration that it has produced all documents specified in a request or notice and all other relevant documents in its possession, custody or control to the Inquiry or indicate that it has not been able to comply and why it has not been able to comply. The signatory should be an executive officer or responsible person in the organisation who is personally accountable. A lawyer acting for the DP should not be the signatory.
28. If documents have not been produced or cannot be located, the DP should provide a list of such documents, with reasons as to why the documents have not been produced and/ or an explanation as to why documents cannot be located.
29. If legal professional privilege or other legal bar to disclosure to the Inquiry is asserted in respect of a document or part of a document, the DP should identify the document and set out in writing to the Solicitor to the Inquiry the basis on which the DP believes that a legal rule prohibiting disclosure to the Inquiry applies. Before asserting legal privilege, DPs should consider carefully whether they should waive that privilege, if they are in a position to do so, in order to assist the Inquiry in the public interest.
30. The Chair may request a signed disclosure statement if that is considered necessary. The purposes of such a statement will be (a) to provide a full account of the searches conducted by the DP, (b) to provide a clear assurance that all reasonable efforts have been made to comply with the Inquiry's request and (c) to explain why documents have not or cannot be produced (including, where possible, identification of the persons known to have had access to documents that cannot be produced).

Disclosure and use of documents by the Inquiry

31. This Protocol governs the production of documents *to* the Inquiry, not the disclosure and publication of documents *by* the Inquiry.
32. DPs should be aware that the Inquiry will proceed on the basis of transparency. This means that it expects to disclose material to Core Participants and may seek to use such material as part of its body of documentary evidence and may refer to such material in its reports or otherwise. Documents or parts of documents produced to the Inquiry may therefore end up in the public domain.
33. As noted above, section 19 of the Inquiries Act 2005 allows for restrictions to be imposed on the disclosure or publication of documents by the Inquiry. It will also be necessary for the Inquiry to apply redactions to documents for established legal reasons prior to disclosure to Core Participants or publication.
34. The Chair will issue a separate Protocol to govern (a) applications for restriction orders and (b) the redaction of documents in advance of disclosure to Core Participants or publication.
35. No issues around restriction or redaction should impede the production in the first instance, with due expedition, of documents to the Inquiry. Applications to restrict or redact must be made after the production of documents to the Inquiry.

Preservation of documents

36. The original copies of documents provided electronically must be securely retained by the DP and must not be destroyed during the life of the Inquiry, unless express permission with justification for destruction is sought and granted by the Chair. All such applications should be made to the Chair in writing, through the Solicitor to the Inquiry.

Point of contact

37. Any issue arising from or query relating to this Protocol should be addressed to the Solicitor to the Inquiry using the following email address: solicitor@mahinquiry.org.uk

Issued under the authority of the Chair of the Inquiry on 10 November 2021