

## **PUBLIC INQUIRY MUCKAMORE ABBEY HOSPITAL**

### **MAHI PROTOCOL No. 2**

#### **PROTOCOL ON CORE PARTICIPANTS**

##### **Introduction**

1. This Protocol governs how the Inquiry will consider applications for Core Participant (CP) status.
2. The Protocol must be read in conjunction with the [Chair's statement of approach to Core Participant status, joint representation](#) and funding of legal representation, issued on 10 November 2021.
3. The Protocol will not necessarily cover every eventuality that may arise. The Inquiry may need to depart from the Protocol where necessary 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 ("the Act") and the Inquiry Rules 2006 ("the Rules").<sup>1</sup> 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 5 of the Rules provides that the Chair may designate a person<sup>2</sup> as a Core Participant at any time during the course of the Inquiry, provided that the person consents to being so designated. Rule 5(2) sets out matters which the Chair

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<sup>1</sup> 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.

<sup>2</sup> References to "person" should be read as "person or organisation".

must take into account when considering whether it is appropriate to grant CP status. Those considerations are explained at paragraph 13 below.

8. Rule 6 provides that, where a CP or any other person required or permitted to give evidence to the Inquiry has appointed a lawyer to act on their behalf, the Chair must designate that lawyer as the person's recognised legal representative in respect of the Inquiry proceedings.
9. However, Rule 7 provides that in certain circumstances the Chair must direct that CPs be represented by a single recognised legal representative. This is explained further below at paragraphs 30 and 31.
10. Rule 8 provides that nothing in Rules 6 or 7 prohibits a CP from appointing a legal team to assist their recognised legal representative in the discharge of the recognised legal representative's functions.

### **General principles**

11. The Chair may consider an application for CP Status at any time during the Inquiry. Further, the Chair may invite a person to become a CP at any time during the Inquiry, if he considers that necessary and appropriate. It will be a matter for each person or organisation to consider whether they wish to accept that invitation.
12. The Chair has issued a [statement](#) on his approach to the grant of CP status in respect of specified associations known to the Inquiry who represent the interests of persons affected by events at Muckamore. Persons affected are advised to read that statement before submitting any application in accordance with this Protocol.
13. In considering whether to designate a person as a CP, the Chair will consider those matters set out in Rule 5 of the Inquiry Rules 2006, namely:
  - a. whether the person played, or may have played, a direct and significant role in relation to the matters to which the Inquiry relates;
  - b. whether the person has a significant interest in an important aspect of the matters to which the Inquiry relates; or
  - c. whether the person may be subject to explicit or significant criticism during the Inquiry proceedings or in its report (including any interim report).
14. The above is not an exhaustive list of the matters which the Chair will consider in determining whether to designate CP status. The Chair will take into account all relevant considerations, including:
  - a. the individual circumstances of an applicant;

- b. the extent to which designation as a CP would assist the Inquiry in fulfilling its Terms of Reference;
  - c. the need to act with fairness and to avoid unnecessary cost, whether to public funds or to witnesses or others;<sup>3</sup>
  - d. the matters set out in the Chair's statement of approach.
15. Those designated as CPs may participate in the Inquiry in a number of ways:
- a. receiving disclosure of evidence which the Chair considers relevant to that CP in advance of hearings;
  - b. making an opening and closing statement at certain hearings;<sup>4</sup>
  - c. suggesting lines of questioning to be pursued by Counsel to the Inquiry when questioning witnesses;<sup>5</sup>
  - d. their legal representative may apply to the Chair to ask questions of a witness.<sup>6</sup>
16. CPs also have a right to appoint a legal representative and the right to be granted access to the Inquiry report prior to its publication.<sup>7</sup>
17. A person or organisation does not have to be a CP in order to participate in the Inquiry. It is open to everyone to provide evidence to the Inquiry. If documentary material held by the Inquiry appears relevant to the evidence of a witness, that witness, where possible, will be provided with any such material in advance of their giving evidence, whether they are a CP or not. A person does not need to be a CP in order to make an application for the costs of legal representation. CP status does not automatically qualify a person to an award for the costs of their legal representation.
18. CPs have a role that involves more than giving an account of their personal experiences and offering up their own documents, they are expected to further the work of the Inquiry and assist it in fulfilling its Terms of Reference.
19. A CP need not be a CP for the entire duration of the Inquiry. The Chair may designate a CP for a limited period of time, or in relation to a limited portion of the Inquiry's Terms of Reference.

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<sup>3</sup> Which the Chair is explicitly required to do by section 17 of the Act.

<sup>4</sup> See Rule 11.

<sup>5</sup> See Rule 10.

<sup>6</sup> See Rule 10.

<sup>7</sup> See Rule 17.

## **Applications for Core Participant status**

20. Applications to be designated as a CP must be made in writing to the Solicitor to the Inquiry and must specify clearly and briefly in what respects the applicant meets the criteria set out at paragraph 13. Applications must also specify any other relevant factors which the applicant wishes the Chair to take into account, bearing in mind in particular those matters set out at paragraph 14.
21. An application should not normally exceed four pages, in Arial 12 point font.
22. If an applicant is affiliated to one of the associations identified in the Chair's statement of approach, the recognised legal representative of that association need only supply:
  - a. a schedule of the names of all persons who are members of the association who wish to be CPs; and
  - b. signed and dated confirmation from each person that they wish to be affiliated to that association for Inquiry purposes; and
  - c. signed and dated confirmation from each person confirming that they consent to being designated as a CP; and
  - d. signed and dated declaration that they wish to be represented by that legal representative.
23. Applications should specify whether the applicant is or wishes to be legally represented. If the applicant is already legally represented, the details of the lawyer instructed must be provided.
24. The Chair will give careful consideration to all applications and, if he considers that further information is required before he can make a decision, he may direct an applicant to provide such further information as he considers necessary.

## **Call for applications by 23 December 2021**

25. Applications for CP status should be submitted by email to the Solicitor to the Inquiry at [solicitor@mahinquiry.org.uk](mailto:solicitor@mahinquiry.org.uk) by 23 December 2021.
26. The Solicitor to the Inquiry will notify a person and/or their legal representative of the outcome of their application to be a CP in writing.

## **Legal representation of Core Participants**

27. A CP has the right to appoint a legal representative. The designation of a CP's legal representative is separate from the decision to designate a person as a CP.

28. If a person is designated as a CP and they wish to have the Inquiry designate a specific legal representative, they must immediately inform the Solicitor to the Inquiry of the details of the legal representative they have appointed to act on their behalf.
29. As noted above, Rule 6 provides that where a CP has appointed a qualified lawyer to act on their behalf, the Chair must designate that lawyer as the person's recognised legal representative in respect of the Inquiry proceedings.
30. However, Rule 7 provides that where two or more CPs each seek to be legally represented and the Chair considers that:
  - a. their interests in the outcome of the Inquiry are similar;
  - b. the facts that they are likely to rely on during the course of the Inquiry are similar; and
  - c. it is fair and proper for them to be jointly represented;the Chair must direct that those CPs shall be represented by a single recognised legal representative, and the Chair may designate a qualified lawyer for that purpose.
31. Any such designation must be agreed by the CPs in question. If such agreement is not forthcoming within a reasonable period, the Chair will designate an appropriate lawyer who he considers has sufficient knowledge and experience to act in that capacity.

## **Confidentiality**

32. All CPs and their legal representatives must agree to treat information they receive from the Inquiry as confidential, not to use it for any purpose other than taking part in the Inquiry and not to reveal it to any third party. CPs and their legal representatives will be required to sign an undertaking to that effect.
33. Any breach of such an undertaking could lead to the Chair deciding to withdraw a person's CP status.

## **Applications for funding of legal representation at public expense**

34. Section 40 of the Inquiries Act 2005 allows the Chair to make awards for the costs of legal representation at the Inquiry. Applications for such awards are governed by a separate [Protocol](#).

**Point of contact**

35. Any queries about this Protocol should be addressed to the Solicitor to the Inquiry at [solicitor@mahinquiry.org.uk](mailto:solicitor@mahinquiry.org.uk).

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