

MEMORANDUM OF UNDERSTANDING
between
THE MUCKAMORE ABBEY HOSPITAL INQUIRY
and
THE POLICE SERVICE OF NORTHERN IRELAND
and
THE PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND

A. Introduction

1. This Memorandum of Understanding (“MOU”) has been agreed following consultations between the Chair of the Muckamore Abbey Hospital Inquiry (“the Inquiry”), the Police Service of Northern Ireland (“PSNI”) and the Public Prosecution Service for Northern Ireland (“PPS”).
2. The Inquiry is a statutory public inquiry that was set up on 11 October 2021. The Inquiry’s terms of reference require the Inquiry to examine the issue of abuse at the hospital, to determine why the abuse happened and the range of circumstances that enabled it to happen.
3. The Inquiry is enabled to make findings on events that occurred between 2 December 1999 and 14 June 2021. It may also receive and take account of evidence outside of that period where such evidence would assist the Inquiry. The terms of reference also provide that the Inquiry will examine the effects of instalment, operation and use of CCTV at the hospital.
4. The PSNI is conducting an investigation in respect of alleged abuse at the hospital. The investigation followed the seizure of CCTV footage relating to an approximate six month period commencing in April 2017. The investigation has resulted in arrests and in decisions being taken by PPS to prosecute individuals for offences alleged to have been committed at the hospital.
5. The PSNI investigation, the resulting prosecutions and PPS consideration of files submitted by PSNI remain ongoing.
6. The PPS and PSNI will provide the Inquiry with a narrative statement of the scope and progress of the investigation and prosecutions and will provide the Inquiry with monthly updates on those matters, with the objective of ensuring that the Inquiry is fully informed of relevant developments.

7. The objective of this MOU is to state the shared understanding of how the Inquiry, the PSNI and the PPS will discharge their respective statutory responsibilities as the Inquiry, the investigation and the prosecutions proceed.
8. The MOU is designed to promote and facilitate co-operation. It is not a legally binding document. It is without prejudice to any legal rights or remedies that any party to the MOU may have and wish to enforce. The independence of the three parties and the separate legal regimes under which they operate must be respected.
9. The MOU must be read subject to the provisions of the Inquiries Act 2005 (“the Act”) and the Inquiry Rules 2006 (“the Rules”).
10. The three parties will engage in ongoing consultations to ensure that the arrangements set out in the MOU are working effectively. The three parties will also ensure that all persons involved in responsibilities that may fall within the ambit of the MOU are aware of its contents.
11. The MOU may not cater for all eventualities that will arise in respect of issues common to the Inquiry, the investigation and the prosecutions. Should an issue arise that appears to a party to the MOU to fall within the ambit of the MOU but is not catered for by its provisions, the issue will be brought to the attention of the other parties.
12. The PSNI and PPS will ensure that those with responsibility for liaising with the Inquiry are familiar with the Inquiry’s Protocols and Chair’s Statements that may bear on the issues addressed in this MOU.
13. The Chair will ensure that he and all members of the Inquiry team with responsibility for handling issues arising from the MOU are familiar with the investigative and disclosure obligations imposed upon investigators and prosecutors under Parts I and II of the Criminal Procedure and Investigations Act 1996,¹ the Code of Practice issued thereunder² and the Attorney General’s Guidelines on Disclosure.³
14. The processing of personal data by the Inquiry in accordance with the MOU shall be subject to the Inquiry’s privacy notice and the processing of special category personal data by the Inquiry in accordance with the MOU shall be subject to the Inquiry’s policy on such processing. The notice and the policy are published on the Inquiry’s website.

¹ [Criminal Procedure and Investigations Act 1996 \(legislation.gov.uk\)](http://legislation.gov.uk)

² Criminal Procedure and Investigations Act 1996 Code of Practice for Northern Ireland (July 2005)

³ [Attorney General’s guidelines on disclosure 2013 - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

15. The single point of contact for communications between the three parties to this memorandum shall be:
 - a. For the Inquiry, the Solicitor to the Inquiry.
 - b. For PSNI, Jill Duffie.
 - c. For PPS, Patricia McGrath.

B. Basic principles

16. The Chair of the Inquiry acknowledges the need to make every effort to ensure that the work of the Inquiry does not impede, impact adversely on or jeopardise in any way the PSNI investigation into abuse at the hospital and the prosecutions that result from that investigation.
17. The subject matter of the investigation and prosecutions is of direct interest to the Inquiry, but the Inquiry is not examining the response of the PSNI and the PPS that has followed from the seizure of the CCTV footage.
18. The Chair, in accordance with section 17(1) of the Act, shall make every effort to ensure that the procedure and conduct of the Inquiry respects the integrity of the investigation and prosecutions while continuing to address its terms of reference.
19. In particular, the Inquiry will be conducted with due regard to the live nature of the investigation and any ongoing or prospective prosecutions (and the investigative and disclosure duties that arise in that context under the provisions specified in paragraph 13 above), in accordance with the arrangements prescribed by this MOU.
20. The Chair shall where necessary adopt specific measures as the Inquiry proceeds to ensure protection of the integrity of the investigation and prosecutions.
21. The parties to the MOU take cognisance of the fact that public access to Inquiry proceedings and information is governed by section 18 of the Act. Restrictions on such access are governed by section 19 of the Act. Restrictions imposed by the Chair must be justified with reference to section 19(3) to (5).
22. The PSNI and PPS acknowledge that the work of the Inquiry extends beyond the subject matter and timeframe of the police investigation and that the Inquiry must proceed with reasonable expedition to conduct the work that is necessary to fulfil its terms of reference.
23. The PSNI and PPS also acknowledge that the subject matter of the investigation and prosecutions is within the Inquiry's terms of reference and is therefore required to be addressed by the Inquiry.

24. In discharging their respective responsibilities in accordance with this MOU, the Chair, the PSNI and the PPS will adopt such measures as are required to protect the Convention rights of persons affected.

C. Production of documents to the Inquiry and disclosure

25. The PSNI and PPS will comply voluntarily with document requests issued by the Inquiry panel under Rule 9 of the Rules in accordance with the Inquiry's Protocol on the Production and Receipt of Documents issued on 10 November 2021.
26. The Inquiry panel will in the first instance issue a request for production to the Inquiry of any schedule or schedules compiled by PSNI that record the observations of investigating officers of the CCTV footage that is subject to the investigation and the statements of those officers. The Inquiry panel will also issue a request for the disclosure schedules relating to the investigation.
27. The objectives of this initial request will be (a) to ensure that the Inquiry panel is informed of the nature and scope of the materials generated in the course of the investigation and (b) to enable the Inquiry panel to form a view as to further document requests that may be necessary to fulfil the Inquiry's statutory functions. The PSNI will also notify the Inquiry of additional materials generated in the course of the investigation.
28. On consideration of the CCTV schedules, the statements and the disclosure schedules, the Inquiry panel will determine what further document requests are required within a reasonable time and issue the requests accordingly.
29. Special arrangements will be made by the Inquiry for the receipt by the Inquiry of documents relating to the investigation and the prosecutions and for their secure storage. Such documents shall, in the first instance, be viewed strictly only by the Inquiry panel and the Inquiry's legal team.
30. Documents relating to the investigation and prosecutions that are provided by PSNI in accordance with this part of the MOU will not be disclosed to Core Participants without reasonable notice being given to the PPS and the PSNI.
31. The PSNI and/ or the PPS may request that specified documents should not be disclosed to Core Participants where there is a real risk of such disclosure impeding, impacting adversely on or jeopardising the criminal proceedings resulting from the investigation. Such a request will be made by way of an application under Rule 12 of the Rules, specifying the nature of the risk and the suggested justification for a restriction on disclosure being imposed in accordance with section 19.
32. In considering such an application, the Chair will have due regard to the live nature of the investigation and any ongoing or prospective prosecutions. The question of whether the real risk of disclosure impeding, impacting adversely on or jeopardising the criminal proceedings will be kept under review and any

restriction on disclosure will remain in place only so long as is reasonably necessary.

33. Any such restriction on disclosure will be the subject of a Restriction Order in appropriate terms made by the Chair under section 19 of the Act.
34. Where disclosure of material is not made, the Chair will in the meantime, in accordance with the duty to act fairly under section 17(3) of the Act and in keeping with the basic principles underpinning this MOU, take appropriate steps to advise Core Participants of the nature and content of that material in accordance with paragraph 35 below.
35. Counsel to the Inquiry will, in consultation with the representatives of PSNI and PPS, draft a summary or gist of the material in question to the extent that this is possible without undermining the basis of the Restriction Order. The summary or gist will be subject to agreement by the Chair, the PSNI and the PPS. The objective of the summary or gist will be to facilitate the participation of Core Participants in the Inquiry without compromise to the criminal proceedings.
36. Disclosure of such summary or gist will, as with disclosure of all documents by the Inquiry to Core Participants, be subject to a strict undertaking to the Inquiry of confidentiality by the recipient of the disclosure (and their recognised legal representative, if any), not to use it for any purpose other than taking part in the Inquiry and not to reveal it to any third party.

D. Viewing of CCTV by Inquiry panel

37. Having regard to the fact that the subject matter of the investigation is central to the Inquiry's terms of reference, it is acknowledged by the PSNI and the PPS that the Inquiry should have access to the CCTV footage that is subject to the investigation.
38. The Chair of the Inquiry, the PSNI and the PPS will agree suitable arrangements for the Inquiry panel to view such of the footage as is necessary to enable the Inquiry panel at the outset of its work to understand the evidence on which the prosecutions are based and to meet the Inquiry's terms of reference.
39. The Inquiry panel may make further requests as the Inquiry proceeds to view that footage or footage that it has not previously viewed and the Chair, the PSNI and the PPS shall agree suitable arrangements accordingly.
40. The viewing of CCTV footage for the purposes of the Inquiry will in the first instance be restricted to the Inquiry panel, the Solicitor to the Inquiry and Senior and Junior Counsel to the Inquiry.
41. The above restriction on viewing of CCTV will be the subject of a Restriction Order in appropriate terms made by the Chair under section 19 of the Act.

42. The Chair of the Inquiry, in consultation with the PSNI and the PPS, will keep under review the matter of whether wider viewing of the CCTV footage on behalf of Core Participants may be appropriate or necessary, while at all times making every effort to ensure that the integrity of the investigation and the prosecutions is protected.
43. Viewing of CCTV footage by any person other than those specified in the Restriction Order will be permitted only in the event that the Restriction Order is revoked or varied under section 20. The Chair will revoke or vary a Restriction Order only where satisfied the restrictions imposed are no longer justified with reference to section 19(3). Where revocation or variation is contemplated by the Chair or where it is represented to the Chair that a Restriction Order should be varied or revoked, the PSNI and PPS will be afforded reasonable notice and will be invited to make written representations if they object to revocation or variation.
44. In considering any issue relating to the viewing of CCTV footage, the Chair will have particular regard to the live nature of the investigation and any ongoing or prospective prosecutions.

E. Inquiry statements

45. The Inquiry has appointed a firm of solicitors to take statements as a result of initial contact made with persons who may have information that will assist the Inquiry. The Chair issued a statement on 24 November 2021 explaining the approach that will be adopted by those who will take the statements (the “statement team”). The statement team is fully trained to an accredited standard in dealing with vulnerable witnesses.
46. References in the MOU to a “statement” taken from a witness include material exhibited to a statement and any other material furnished to the statement team by a witness.
47. Where it comes to the attention of the Chair that a statement includes (a) material that may be relevant to the investigation or ongoing prosecution of any individual pursuant to that investigation or that may trigger the PPS duty of disclosure, or (b) material that may indicate that a criminal offence has been committed, the Chair will notify the PSNI in accordance with the following provisions of the MOU.
48. In fulfilling its responsibilities in accordance with this section of the MOU, the PSNI and the PPS will be guided by the provisions in the Attorney General’s Guidelines on Disclosure advising investigators, disclosure officers and prosecutors to take reasonable steps to identify, secure and consider material held by any third party where it appears that such material exists and that it may be relevant to an issue in the prosecutions.

49. The form of notification for the purposes of paragraph 47 above will depend on whether the witness consents to disclosure of the statement to PSNI. If the witness does so consent, the statement will be disclosed to PSNI.
50. If the witness does not consent to disclosure of the statement to PSNI, the Chair will notify PSNI (without identifying the maker of the statement if the maker of the statement does not wish to be identified) as follows:
- a. that the Inquiry is in possession of a statement that includes material that may be relevant to the investigation or ongoing prosecution of any individual pursuant to that investigation or that may trigger the PPS duty of disclosure, or (as the case may be) material that may indicate that a criminal offence has been committed;
 - b. a brief description of the material, including the timeframe to which the material relates;
 - c. that the witness does not consent to the statement being disclosed to PSNI;
 - d. that it shall be a matter for PSNI to determine whether formal steps should be taken to obtain the statement in pursuance of its investigative duties.
51. Prior to the statement taking exercise, the statement team will familiarise themselves with the content of this MOU.
52. The statement team will also be provided with the narrative statement of the scope and progress of the investigation and prosecutions (and updates), with the objective of ensuring that the statement team has an awareness of the issues at play in the investigation and prosecutions.
53. The statement team will engage with witnesses from whom the Inquiry panel has requested a statement. Prior to taking a statement, the statement team will remind each witness that a criminal investigation in respect of alleged abuse at the hospital is ongoing.
54. The witness will be asked by the statement team to confirm whether they consent to the statement they make for the purpose of the Inquiry being disclosed to PSNI (if the issue of disclosure should arise).
55. The witness will be given an explanation in appropriate terms of the circumstances in which the Chair will notify the PSNI in respect of material in a statement and the form of notification, as prescribed by the above provisions in the MOU.
56. The witness will also be advised that it is open to PSNI to apply to a Court in order to obtain material that is relevant to an investigation. This could potentially include an Inquiry statement where a witness does not consent to the statement being disclosed to PSNI. It will be explained that it would then be a matter for

the Court (and not the Inquiry) to determine whether the statement should be disclosed to PSNI.

57. The Chair acknowledges that some witnesses from whom the Inquiry panel requests a statement may also be persons from whom PSNI intends to take a statement for the purpose of the investigation. The PSNI officer in charge of the investigation will notify the Inquiry of witnesses from whom the PSNI intends to take statements for the purpose of the investigation. Where the PSNI intends to take a statement from a witness who has made contact with the Inquiry and from whom the Inquiry panel has requested a statement, the PSNI will proceed with reasonable expedition to take a statement from the witness.
58. The statement team will ask each witness with whom they engage whether the witness has already made (or has been asked to make) a statement for the purpose of the police investigation.
59. If the witness indicates that they have made a statement for the purpose of the police investigation, they will be asked if they wish to adopt the police statement for the purposes of the Inquiry. If the witness wishes to adopt their police statement for the purposes of the Inquiry, a copy of that statement will be exhibited to a short form Inquiry statement confirming the intention to adopt.
60. If the witness indicates that they have been asked to make a statement to the PSNI for the purpose of the investigation and have agreed to do so but have not yet made the statement, the statement team will not engage further with the witness until after the PSNI statement has been taken. The PSNI will proceed with reasonable expedition to take the statement and will notify the Inquiry when the statement has been taken.
61. In any case where a witness indicates to the statement team that they do not wish to adopt their police statement for the purposes of the Inquiry or that they wish to add to their police statement for the purposes of the Inquiry, the statement team shall proceed to take a statement from the witness accordingly.
62. When the statement team takes a statement, it shall record evidence concerning all matters relevant to the Inquiry's terms of reference. The statement team will be at liberty to signify to the Chair matters that may potentially trigger the above notification provisions. Notification is, however, a matter for the Chair, not the statement team.
63. Disclosure to Core Participants of statements taken by PSNI for the purpose of the investigation shall be governed by the arrangements set out at paragraphs 30 to 36 above.

F. Oral evidence at the Inquiry

64. The Inquiry's legal team, when scheduling oral evidence, will seek to avoid the risk of impeding, impacting adversely on or jeopardising the investigation or prosecutions.

65. The Inquiry panel may defer issuing a request to a witness to give oral evidence under Rule 9 of the Rules, where it adopts the view that such deferral is necessary to avoid the risk of impeding, impacting adversely on or jeopardising the investigation or prosecutions. Where it appears to the panel to be necessary to call such a witness to give oral evidence, the Inquiry will notify the other parties to the MOU and will afford a reasonable opportunity for an application for a Restriction Order in appropriate terms to be made.
66. The Chair shall also take appropriate steps in the course of oral evidence to avoid the risk of impeding, impacting adversely on or jeopardising the investigation or prosecutions.
67. Where oral evidence is given to the Inquiry and the Chair forms the view that reporting or publication of that evidence may impede, impact adversely on or jeopardise the investigation or prosecutions, the Chair shall issue a Restriction Order in appropriate terms under section 19 of the Act to restrict reporting or publication of such evidence until the views of the parties to this MOU can be canvassed.
68. Transcripts of oral hearings will be published on the Inquiry's website. Where a Restriction Order is made in respect of a transcript or part of a transcript and the Chair considers that the transcript includes (a) material that may be relevant to the investigation or ongoing prosecution of any individual pursuant to that investigation or that may trigger the PPS duty of disclosure, or (b) material that may indicate that a criminal offence has been committed, the Inquiry will notify the PSNI and the Restriction Order may where appropriate be made in such terms as to permit disclosure of the transcript to PSNI.

G. Resolution of issues

69. Where it appears to any party to the MOU that an issue⁴ arising in the course of the Inquiry's work may potentially impede, impact adversely on or jeopardise the investigation or prosecutions and that the issue is unlikely to be resolved through the normal operation of the MOU, the following procedure shall apply.
70. This procedure is subject to the powers and duties of the Chairman under sections 17, 18 and 19 of the Inquiries Act 2005.
71. The party will raise the matter in writing as soon as reasonably practicable with the other parties to the MOU: (a) identifying the issue; (b) stating the basis on which the issue may potentially impede, impact adversely on or jeopardise the investigation or prosecutions; and (c) explaining why the issue is unlikely to be resolved through the normal operation of the MOU.

⁴ This may include, but is not limited to, the following: the production of material to the Inquiry; the proposed disclosure of material by the Inquiry to Core Participants; the proposed viewing of CCTV; the disclosure of material by the Inquiry to the PSNI; a matter arising in oral evidence.

72. The Chair will, in the first instance, consider whether in his view the issue can be resolved without further deliberation in accordance with his statutory powers and duties, in such a way as to avoid impeding, impacting adversely on or jeopardising the investigation or prosecutions. The Chair will indicate his view in writing to the other parties to the MOU.
73. Where the Chair adopts the view that the issue cannot be so resolved or where the PSNI or the PPS are not satisfied with the Chair's indication, the Chair, the senior prosecutor and the officer in charge of the investigation (and relevant counsel) shall meet to discuss the issue and consider whether resolution of the issue is possible.
74. The Chair will issue a note in writing of the outcome of that discussion to PSNI and PPS within one working day (or such period as is reasonable considering all the relevant circumstances) of the meeting.
75. Where the outcome of the above procedure is that proposed action is to be taken by the Inquiry and it appears to another party to the MOU that the proposed action will impede, impact adversely on or jeopardise the investigation or prosecutions, the other party will provide an indication to the Chair in writing within one working day (or such period as is reasonable considering all the relevant circumstances) of the issue of the Chair's note that it objects to the proposed action.
76. The Inquiry will not take the proposed action until after seven days of receipt of an indication under the preceding paragraph.
77. The PSNI or the PPS will signify to the Chair within that period whether it intends to initiate a legal challenge to the Inquiry in respect of the matter at issue.
78. The parties to the MOU undertake that, where it is necessary to engage in the above procedure for resolution of issues, due regard will be given to the proper discharge of the Inquiry's functions with reasonable expedition and to the live nature of the investigation and prosecutions.

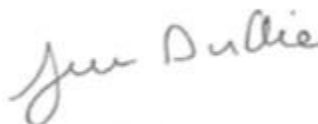
H. Conclusion

79. The Chair, the PSNI and the PPS will monitor the operation of the MOU on an ongoing basis as the Inquiry proceeds. There will be a formal review of the MOU every three months for as long as necessary in the course of the Inquiry.
80. Issues arising in respect of the operation of the MOU should be brought to the attention of the Solicitor to the Inquiry: solicitor@mahinquiry.org.uk

Signed by the Chair:

A handwritten signature in blue ink, appearing to be 'T. K. K.', with a horizontal line underneath.

Signed by Jill Duffie on behalf of the PSNI:

A handwritten signature in grey ink that reads 'Jill Duffie'.

Signed by Martin Hardy on behalf of the PPS:

A handwritten signature in black ink that reads 'Martin Hardy'.

Dated: 9 March 2022

Issued on the Inquiry's website under the authority of the Chair on 15 March 2022