

## **CHAIR'S UPDATE ON HEARINGS, RESTRICTION ORDERS AND WITNESS EXPENSES**

**ISSUED ON 20 JUNE 2022**

1. The Inquiry hearings have commenced. Following my opening remarks on 6 June, the panel heard the opening statement of Counsel to the Inquiry followed by opening statements on behalf of Core Participants. In the week commencing 13 June, the panel viewed CCTV footage in closed session in accordance with the MOU between the Inquiry, the PPS and the PSNI.
2. In the week commencing 27 June, the panel will hear from the first witnesses. The Inquiry will be sitting on Tuesday 28 June, Wednesday 29 June, Thursday 30 June, Tuesday 5 July and Wednesday 6 July. The schedule of evidence for those days is on the [website](#). The oral evidence will resume in September 2022.
3. The first phase of evidence is focused on the patient experience. I have granted anonymity to patients in Restriction Order No. 2, although that anonymity can be waived. In the statements by patients and their relatives that are disclosed to Core Participants, the names of patients are redacted and they are referred to by a cipher number (P1, P2 etc). The relatives' names are also ciphered and they are referred to as, for example, "P1's mother". The schedule also refers to ciphers rather than names. These ciphers will be used when the witnesses give evidence.
4. My opening remarks and the opening statements were streamed live to the public via an open link on the website. This approach will not be adopted to the forthcoming evidence of patients and their relatives. They will give evidence about sensitive and personal matters. It would not in my view be fair to them or conducive to the Inquiry's objectives to have their evidence broadcast outside of the hearing rooms except to Core Participants in the circumstances set out below.
5. It is important that those witnesses should feel entirely comfortable about coming to give evidence to the Inquiry and it seems to me that live streaming would create an unnecessary pressure for them. Arrangements will be made for Core Participants to view the evidence by means of a secure password protected link.

6. I also wish to provide an update on the Inquiry's Restriction Orders. There are four Orders:

[Restriction Order No. 1 \(Redaction of Personal Details\)](#)

[Restriction Order No. 2 \(Patient Anonymity\)](#)

[Restriction Order No. 3 \(CCTV\)](#)

[Restriction Order No. 4 \(Staff Identification\)](#)

7. You will see that Restriction Order No. 1 (Redaction of Personal Details) was varied on 16 June 2022. That variation can be seen in paragraph 4, which states that the Order does not apply to statements disclosed to the PSNI pursuant to a duty under paragraph 47 of the MOU. Paragraph 47 of the MOU says that the Chair will notify the PSNI if the Inquiry receives a statement that may be relevant to the ongoing investigation or prosecutions or that shows that an offence may have been committed. If the witness consents, the statement will be disclosed to the PSNI. If the witness does not consent, the Inquiry will provide a brief indication of what is in the statement and the PSNI will have to decide whether they wish to take formal steps to obtain it. It would be neither necessary nor desirable for personal details to be redacted from statements where they are disclosed to the PSNI in these circumstances. That is why the Restriction Order needed to be varied.
8. Restriction Order No. 2 (Patient Anonymity) was also varied on 16 June 2022. There are three amendments to note to the previous version of the Order:
- i. Paragraph 1 of the original order provided that the entitlement to anonymity could be "waived on request". The Order now provides that the entitlement to anonymity can be waived on request "by the patient or by a person with authority to waive anonymity on the patient's behalf". This variation was necessary to ensure that the patient's rights are fully respected, while acknowledging that not all patients will be in a position to make this decision on their own behalf.
  - ii. There is a new paragraph 3, which provides that the Inquiry can disclose the identity of patients to Core Participants and their representatives, subject to those persons having signed the Inquiry's confidentiality agreement. This variation was necessary to enable Core Participants to understand the evidence fully and to discharge the responsibilities that come with the role of CP, with the caveat that the information is provided to them under a strict duty of confidentiality.
  - iii. There is a new paragraph 4, which provides that the Inquiry may disclose the identity of a patient to which a statement disclosed under the MOU relates. This is consistent with the variation to Redaction Order No. 1.

9. Redaction Order No. 4 (Staff Identification) is new. This Order prohibits the identification of past and present staff members who are implicated in abuse on patients in evidence received by the Inquiry. Their names will be redacted in statements and replaced by ciphers. This does not apply to non ward based staff in a management or governance role, including members of the Trust Board.
10. I regard this measure as necessary in the interests of fairness and to achieve the Inquiry's objectives. It is particularly important to bear in mind that there is a live criminal investigation and prosecutions. As acknowledged in the MOU, there is a need to take steps where necessary to ensure that the Inquiry's work does not impede, impact adversely on or jeopardise the criminal proceedings.
11. Staff named in Inquiry statements may be facing charges or may face charges in the future. This Order means that they will not be publicly named in the evidence given to the Inquiry. The Inquiry also wants to hear from staff, including staff who are the subject of allegations. They will have an opportunity to comment on allegations made against them. The naming in evidence of staff against whom allegations are made would, in my view, discourage staff from co-operating with the Inquiry. The Order will, I believe, both ensure fairness and facilitate engagement by staff with the Inquiry.
12. As with the other Restriction Orders, as I have explained, this Order does not prevent the sharing of information with Core Participants or with the PSNI under the MOU.
13. Finally, I want to draw attention to the inquiry's newly published Protocol on Witness Expenses ([MAHI Protocol No. 5](#)). This is accompanied by an [expenses claim form](#).
14. As I have indicated, the next hearing day is Tuesday 28 June 2022.

Tom Kark QC

Chair

20 June 2022