

CHAIR'S STATEMENT

ISSUED ON 05 FEBRUARY 2024

INTRODUCTION

1. I would like to welcome everyone back to the Inquiry and to make a few remarks about the timetable for this year.
2. We continue today hearing evidence from members of staff at the hospital as well as those attending the hospital to provide services and looking after families.

THE SCHEDULE GOING FORWARD

3. After this week the current plan is that we will sit to hear further staff evidence in February and March 2024. We currently intend to sit in the weeks of 19 February 2024 and 04 March 2024 to hear further staff evidence. Then in the week of 11 March 2024 we will start hearing evidence relating to Module 6 which as everyone may remember was adjourned so that further preparation could be undertaken. That module is really focused on the Ennis report and the outcomes from that. We will hear evidence relating to Module 6 in that week (11 March 2024) and also from the 25 March 2024. We will not be sitting in the week of 18 March 2024 as Monday is a local bank holiday and there is a Supreme Court hearing on the Wednesday of that week to which the Inquiry is a party.
4. We will then sit in the week of 08 April 2024 when we will aim to finish hearing from members of staff.
5. The Inquiry is also preparing for the final phase of evidence, which will be comprised of a series of organisational modules, M1 to M10. These modules, which will be of varying length, will take us to the end of the evidence to the Inquiry.
6. A summary of these ten final modules has been posted on the Inquiry's website today.
7. We will begin hearing evidence in modules M1 to M10 from 15 April 2024. We will start by hearing evidence in M1, which is titled Patient Advocacy and Representation. We will then move on to hear about professional education and then regulation. We will hear from RQIA and also the PSNI. We will then cover the topic of resettlement.

8. In May we will start to hear from the senior managers about the operational management of the hospital before moving on to professional organisation and oversight. Following that we will hear evidence about the Trust Board and finally, we will hear from the Department of Health.
9. Letters requesting statements will be issuing this week for the first five modules and the remaining letters in relation to the last five modules will be sent out as soon as possible.

THE TRUST'S OBJECTION TO PARTS OF STATEMENT OF A5

10. I want to say a word or two about the fact that last week we withdrew the statement of Wednesday's witness A5, and reissued it with a number of redactions and then had to reissue it again. I want to explain why that was done.
11. On the day it was issued which was Monday 29 January 2024, I received urgent representations from the Trust that parts of the statement should not have been circulated as they were covered by legal professional privilege which the Trust did not wish to waive. It was also said that they were outside of the Inquiry's terms of reference. I did not agree with those representations and so I did not direct that any action should be taken. However, the following morning we received a further letter indicating that the Trust was considering taking legal action to prevent circulation of that material.
12. In order to preserve the Trust's legal rights, I then asked the administrative team to undertake the requested redactions and re-circulate the statement. Further representations were received from the Trust about additional paragraphs and the same exercise was undertaken. All Core Participants will have received notification that the old statement was withdrawn and a request to destroy or delete any downloaded copies.
13. In the meantime, I directed that any further legal submissions should be submitted to me by 10.00am on Wednesday 31 January 2024. Some legal submissions were received the following morning and I considered them. That afternoon I issued a determination which has now been circulated to all CPs. Given the nature of the determination, I did not feel it was necessary to hear representations by other Core Participants. The assertion of privilege is one which only the owner can make, but I realised that some CPs may have had views contrary to those apparently held by the Trust; meaning no discourtesy, I did not need to hear from them because of the determination I made.
14. I rejected the Trust's legal arguments and directed that unless they issued proceedings by 10.00am on Friday 02 February 2024 to prevent it, the statement would once again be recirculated without the requested redactions.

15. No legal proceedings were issued and shortly after the 10.00am deadline the Trust indicated through their solicitors that it would 'waive' legal privilege. I have not changed my view that legal privilege was not applicable to any of the material over which it was claimed, and core participants can find my reasons in the determination. In any event there was no continuing challenge to the circulation of the witness's statement with the redacted passages now unredacted as it had originally been and that was done shortly before 10.30am that day.

QUESTIONS FOR WITNESSES

16. I also need to mention the issue of when questions are being submitted by CPs to the counsel team for consideration that they be put to witnesses. The protocol provides that we will serve statements where we can, seven working days prior to the witness being scheduled to give evidence. CP questions must be submitted three clear working days prior to the witness. So, in relation to a witness giving evidence today, the Inquiry counsel team should have had the questions in by close of business last Tuesday. It is no good submitting them later than that and hoping for the best.
17. There are a large number of CPs and it is not fair to submit questions late in the day and expect them to be considered let alone asked. Nor does it help to submit reams of generic questions, rather than focused questions on the issues which really matter. Some CPs have submitted more pages of questioning than the witness statement itself. That does not help anyone. The counsel team will be fully entitled to give only a passing consideration where questions are submitted late or are unfocused or generic. Where the Inquiry serves a statement late then of course more leeway will have to be given.

CONCLUSION

18. I want to conclude by making clear that the focus of the Inquiry will be to finish all of the evidence by the end of June 2024. That will be a challenge, but I hope it will be achievable if we have full cooperation from all parties involved.

Tom Kark KC

MAHI Chair