

Direction 2 – Opening Statements



In terms of section 17 of the Inquiries Act 2005 (“the Act”) and rule 10 of the Inquiries (Scotland) Rules 2007 (“the Rules”), Lord Brodie (“the Chair”) of the Scottish Hospitals Inquiry (“the Inquiry”) directs that no opening statements will be made by Counsel to the Inquiry or by, or on behalf of, core participants.

Lord Brodie – Chair of the Scottish Hospitals Inquiry
16 June 2021

NOTE

Section 17(1) of the Act (headed “Evidence and procedure”) provides that, subject to any provision of the Act or the Inquiries (Scotland) Rules 2007 (“the Rules”), procedure and conduct of the Inquiry are to be such as the chairman may direct. Section 17(3) of the Act requires that in making any decision as to the procedure or conduct of an Inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or to others).

Rule 10 of the Rules provides that the “recognised legal representative of a core participant may... unless the chairman directs otherwise, make an opening statement to the inquiry panel at the commencement of the first of any inquiry hearings”.

The Chair does not consider that permitting core participants or their representatives, or Counsel to the Inquiry, to make opening statements to the Inquiry will contribute to the effectiveness or fairness of the inquiry process and, in particular, the effectiveness or fairness of the oral hearings. The Remit and Terms of Reference of the Inquiry are extensive. They address a number of different issues and a number of distinct topics. The Inquiry will require to investigate these issues before taking evidence about them over a lengthy period at a series of discrete diets of oral hearings, each of which will cover a particular topic or group of topics. Evidence relating to topics which have been investigated will be taken at the earlier hearings, at a time when other topics are still being investigated. Which topics will be the subject of which hearings have yet to be decided and details of this have not yet been announced. Because particular diets of hearings will only deal with particular topics it may be that some core participants will not attend hearings which are not concerned with their particular interests.

Subject to direction by the chairman, rule 10 provides that a core participant or the legal representative of a core participant, may make an opening statement “at the commencement of the first of any inquiry hearings”. No specific provision is made in the Rules for an opening statement at any other time. The Chair considers that no

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rational purpose would be served and neither he nor other parties would be assisted, by an opening statement dealing with the whole subject matter of the Inquiry at the beginning of a hearing dealing with a limited topic or topics and at a stage when the investigative work of the Inquiry has not been completed.

The Chair has given consideration to whether there would be benefit in directing that core participants be allowed to make opening statements at diets of hearings which, in their content, are specific to the topic or topics to be dealt with at that diet. He has concluded that the making of such statements would not contribute to the effectiveness or fairness of the inquiry process and, in particular, the effectiveness or fairness of the oral hearings. Rather, the time and work required in relation to the preparation and delivery of such opening statements would be likely to lead to disproportionate and unnecessary expense. Whatever may be the case in other jurisdictions, in Scotland it is not the practice to make opening statements prior to the leading of evidence. The object of an opening statement - giving notice of the parties' respective positions on the scope of the inquiry, the import of its investigatory work, the nature of the evidence to be led, the hypotheses to be advanced and the issues which require to be examined during the course of the hearing - would be more effectively achieved by the exchange of written notices between Counsel to the Inquiry and the legal representatives of the core participants by a date sufficiently prior to the commencement of the diet of hearings to allow Counsel to the Inquiry to explain how he proposes to conduct the hearings and the legal representatives then to consider that explanation and make any proposals in the light of it.