

# Protocol On Leave To Appear At Hearings Of The Inquiry



## 1. Introduction

1.1 The Chair of the Scottish Hospitals Inquiry has determined that core participants who wish to appear at hearings of the Inquiry in the sense described in the next section require to obtain leave from the Chair to do so. This Protocol explains the process for obtaining leave from the Chair.

1.2 This requirement applies to all hearings of the Inquiry other than procedural hearings that will be held before each substantive hearing. Procedural hearings will be formally named as such in all communications from the Inquiry. The requirement to obtain leave to appear applies separately to each substantive hearing held by the Inquiry – leave to appear at one hearing does not confer leave to appear for any subsequent hearing.

1.3 The test in relation to each hearing will be the same, namely whether the person seeking leave to appear has a direct and/or substantial interest in the subject matter being dealt with at that hearing.

1.4 The general rule will be that any core participant without leave will not be able to appear at a hearing or do any of the things described in the next section (subject to paragraph 2.2).

1.5 Please note that the leave to appear process described in this Protocol applies only to those who wish to appear at, and actively participate in, hearings of the Inquiry in the manner explained in the next section. Individuals **do not** need leave to appear to submit evidence to the Inquiry, to give a witness statement or to appear as a witness. Nor is leave to appear required simply to observe hearings of the Inquiry, either via the Inquiry's YouTube channel or in person in the space reserved for the public in the Inquiry's hearing room (although there is a process for reserving a space that should be followed if you intend to do this).

1.6 Please note also that the arrangements set out in this protocol, including (for example) the availability of spaces in the hearing room for those participating in the hearing and for members of the public, may require to be modified, perhaps at very short notice, as a result of COVID restrictions and safeguards in place from time to time.

## 2. What Does “Appear” Mean For This Purpose?

2.1 Those granted leave to appear at any hearing of the Inquiry will:

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- 2.1.1 be given copies of documents to be referred to at the hearing in advance of the hearing taking place;
- 2.1.2 be able to request Counsel to the Inquiry to ask certain questions of witnesses;
- 2.1.3 be able to ask questions of witnesses direct (with the permission of the Chair); and
- 2.1.4 be able to make opening submissions at the hearing where the Chair directs that such submissions are required.

2.2 However, the making of a closing statement at any hearing where the Chair directs the making of such statements is not contingent on the core participant, or its/ their recognised legal representative, having had leave to attend the hearing to which the closing statement relates. A recognised legal representative, or a core participant who does not have a recognised legal representative, may make a closing statement, if they so wish, notwithstanding that they have not been granted leave to attend that particular hearing.

2.3 Those granted leave to appear will be able to have two representatives present in the hearing room during the hearing in question.

### **3. How And When To Apply**

3.1 Applications should be submitted according to the timetable directed by the Chair for each hearing. This will be set out either at the procedural hearing preceding the hearing in question, or, if there is not to be a procedural hearing, in the notice of a forthcoming hearing on the Inquiry's website (which notice will be published approximately three months before a hearing takes place). Generally, a period of four weeks will be allowed for applications to be made.

3.2 Applications should be made using the form which can be found [here](#). The form should be completed in full and submitted to [legal@hospitalinquiry.scot](mailto:legal@hospitalinquiry.scot) before the deadline specified in the order or notice. Forms may be completed and submitted by a legal representative on behalf of an applicant.

3.3 The Chair will decide all applications for leave to appear. Before doing so, he may ask the applicant for further information in support of the application. If the Chair grants leave to appear, that may be subject to such conditions as he considers appropriate.

3.4 The Solicitor to the Inquiry will notify all applicants of the outcome of their application within two weeks of the closing date for applications or of the date on which such further information as has been requested by the Chair has been submitted, whichever is later.

### **4. Late Applications**

4.1 Circumstances may arise as a result of which someone who had previously taken the view that they did not have a direct and/or substantial interest in the subject matter being dealt with at that hearing changes that view – perhaps as a result of

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unexpected material being included in a list of documents, or unexpected evidence being led for example.

4.2 In such circumstances, an application for leave to appear should be made without delay. The application should be made on the form referred to at paragraph 3.2. In providing the explanation on the form as to why the applicant has a direct and/or substantial interest in the hearing, an explanation should be given as to why it was not possible to make an application in accordance with the timetable set out in section 3. The form should be sent by email to [legal@hospitalinquiry.scot](mailto:legal@hospitalinquiry.scot) with the subject line: “Urgent: Late Application for Leave To Appear”.

4.3 Following receipt of the application, it will be put in front of the Chair at the earliest possible opportunity. There may be some unavoidable delay, particularly if the late application is made after the hearings are actually under way. The Chair’s decision will be communicated to the applicant as soon as possible, and if leave is granted it will take immediate effect.

### **5. Further information**

5.1 If you have any questions about any of the above, please email the Solicitor to the Inquiry at [legal@hospitalsinquiry.scot](mailto:legal@hospitalsinquiry.scot).

### **6. Version control**

6.1 This version of the Protocol on Leave to Appear At Hearings is dated 14 June 2021 and is issued under the authority of the Chair of the Scottish Hospitals Inquiry. It is the first version of this Protocol.