

Southport Inquiry

PROTOCOL ON QUESTIONING BY THE LEGAL REPRESENTATIVES OF CORE PARTICIPANTS

Introduction

1. This protocol sets out the procedures that will usually be followed by the Inquiry regarding any questioning of witnesses by the legal representatives of Core Participants.
2. Nothing in this protocol fetters (i) the general power of the Chair to control the questioning of witnesses during the hearings or (ii) the power of the Chair to take particular measures in respect of individual witnesses to achieve that witness's best evidence, whether on the grounds of vulnerability or otherwise (see [Protocol on anonymity, other special measures for witnesses and vulnerable witnesses](#)).
3. This protocol seeks to strike an appropriate balance on the questioning of the Inquiry's witnesses having regard to the following considerations:
 - (1) Inquiry hearings are inquisitorial; they are not a trial. The Inquiry Rules 2006 make clear that questioning should largely (if not exclusively) be by Counsel to the Inquiry.
 - (2) Witnesses should not generally have to face questioning by a large number of different advocates, and especially not questioning that is duplicative of issues already traversed by Counsel to the Inquiry.
 - (3) The Inquiry has been set a demanding timetable to report, and the Inquiry's [Terms of Reference](#) require the Inquiry to make pragmatic choices as to its methods and procedure to deliver within this timeframe. The Inquiry's hearings must therefore be time-efficient.
 - (4) At the same time:
 - (a) The Inquiry will derive benefit from the recognised legal representatives of Core Participants communicating to the Inquiry:
 - Their intended lines of questioning for witnesses;
 - Documents they consider are sufficiently relevant to raise with witnesses.
 - (b) The Chair also recognises the legitimate role of (and benefit from) the recognised legal representatives of Core Participants having the opportunity to ask tightly framed, time limited and focussed questions on areas that directly impact their client(s), provided always that it does not duplicate questions asked by Counsel to the Inquiry.
 - (c) The Chair also recognises that there may be some scenarios where a line of questioning is not one that is apt to be advanced by Counsel to the Inquiry, even though it may be a legitimate line of questioning for a Core Participant to pursue.
 - (d) The Terms of Reference require the Inquiry to establish an account of the attack which includes the facts and circumstances of each individual death to reflect the purposes of section 5(1) of the Coroners and Justice Act 2009. If those matters were being heard at Inquests into the deaths of Alice, Bebe and Elsie then the Inquest Interested Persons would be entitled to put questions to witnesses subject to the overall discretion of the Coroner.
 - (e) It is generally unhelpful for the hearings of the Inquiry to be taken up by oral applications by legal representatives of the Core Participants for permission to ask questions.

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Statutory provisions

4. The starting position under Rule 10 of the Inquiry Rules 2006 is that only Counsel to the Inquiry and the Inquiry Chair will ask questions of witnesses to the Inquiry.

5. Rule 10(1) provides as follows:

“Oral evidence

10.—(1) Subject to paragraphs (2) to (5), where a witness is giving oral evidence at an inquiry hearing, only counsel to the inquiry (or, if counsel has not been appointed, the solicitor to the inquiry) and the inquiry panel may ask questions of that witness.”

6. Sub-paragraphs (2) to (5) of Rule 10, provide as follows:

“(2) Where a witness, whether a Core Participant or otherwise, has been questioned orally in the course of an inquiry hearing pursuant to paragraph (1), the chairman may direct that the recognised legal representative of that witness may ask the witness questions.

(3) Where—

(a) a witness other than a Core Participant has been questioned orally in the course of an inquiry hearing by counsel to the inquiry, or by the inquiry panel; and

(b) that witness’s evidence directly relates to the evidence of another witness,

the recognised legal representative of the witness to whom the evidence relates may apply to the chairman for permission to question the witness who has given oral evidence.

(4) The recognised legal representative of a Core Participant may apply to the chairman for permission to ask questions of a witness giving oral evidence.

(5) When making an application under paragraphs (3) or (4), the recognised legal representative must state—

(a) the issues in respect of which a witness is to be questioned; and

(b) whether the questioning will raise new issues or, if not, why the questioning should be permitted.”

The general approach to be adopted by the Southport Inquiry

7. The Chair will expect the vast majority of questioning, if not all, to be conducted by Counsel to the Inquiry.

8. Core Participants with a direct interest in the evidence of a particular witnesses should generally pursue that interest by advanced notification of their intended lines of questioning (with document references) to the Inquiry Legal Team, in accordance with the simple procedure set out below. Where considered appropriate, Counsel to the Inquiry will then seek to ensure that the topic notified is proportionately covered¹ in their own questioning.

9. In most cases, the Chair will expect it to be sufficient for areas of interest to Core Participants to be channelled in this way through the questioning of Counsel to the Inquiry.

¹ The need for proportionality means that while the questioning area will be raised by CTI, not every sub-point/topic nor every document will be the subject of questioning.

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10. The process for advanced notification will work as follows:
 - (1) By no later than 4 pm 7 calendar days before any witness is due to give oral evidence, the recognised legal representative of a Core Participant must complete the **CP questioning form** at annex 1 and send it to solicitor@southport-public-inquiry.uk. The email header must state ‘Rule 10 questions for [name of the witness]’ The form is designed to allow Core Participants to give notification of their intended lines of questioning. All documents which the Core Participant would wish to be raised with the witness should be referenced. The 7 day timeframe must be observed, and late notifications may lead to a refusal of permission to ask questions.
 - (2) 4 calendar days before the witness is due to give evidence, the Inquiry Legal Team will provide the Core Participant’s legal representative with a response to their CP questioning form. For each topic within the CP questioning form, the Inquiry Legal Team will indicate one of three responses:
 - (a) **CTI to cover (provisional permission to question)**. This will indicate that CTI intends to traverse this topic with the witness. The CP will have *provisional* permission to ask questions on the topic subject to the guidance at paragraph 12, below.
 - (b) **Permission for CP to question**. This response is expected to be less frequent. It will indicate that CTI does not intend to cover the topic, but that the Core Participant has permission to ask tightly framed, time limited and focussed questions. Unless the contrary is indicated in the response, a time limit of 10 minutes will usually apply, and the Chair will regulate the questioning accordingly. This may be extended for major witnesses or in other appropriate circumstances.
 - (c) **Permission refused**. This response will be used where the Inquiry does not consider that questioning on the topic notified is appropriate or is likely to assist the Inquiry (which may include that the topic is better addressed to other witnesses). Short reasons may be provided in appropriate cases.
11. A Core Participant who is refused permission to ask questions under paragraph 10(c) may renew their application by a submission in writing to the Chair. Any such application must be made within 48 hours of the refusal of permission and should succinctly set out the grounds upon which it is suggested the questioning will help the Chair fulfil the Inquiry’s Terms of Reference. The Chair’s response to such an application will usually be final. The Chair will not entertain an oral application by the Core Participant at the end of questioning of the witness by Counsel to the Inquiry unless the evidence that has been given orally by the witness has made a material change to the circumstances of the application.
12. When a Core Participant is given the response “**CTI to cover (provisional permission to question)**”, in most cases the questioning of Counsel to the Inquiry should suffice (see paragraph 9, above). However, the legal representative of the Core Participant may question the witness provided that:
 - (1) The questioning is genuinely going beyond that already covered by Counsel to the Inquiry, is not duplicative, and is likely to assist the Inquiry;
 - (2) Is focussed and time-limited. Unless the contrary is indicated in the response, a time limit of 10 minutes for all questions by a Core Participant will usually apply, and the Chair will regulate the questioning accordingly. This may be extended for major witnesses or in other appropriate circumstances.
 - (3) The questioning by any other Core Participant has not already covered the area. The provisional permission to ask questions will not continue if the topic has already been covered by another advocate.

The Chair will expect the legal representatives to take into account any vulnerabilities of witnesses, as well as exercise common sense and discretion, in how they exercise their provisional permission to ask questions. Advocates should be mindful of the general expectation in paragraph 9, above. An example of appropriate use of the provisional permission would be a case where there is a material dispute of fact on an issue directly

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and significantly affecting the Core Participant. The Chair will retain his general power to control questioning as set out in paragraph 2, above.

13. The procedures set out above, including the CP questioning form, must be followed by the legal representatives of the relevant witness insofar as they would seek permission to ask questions of the witness they represent. However, the questioning form need not set out matters already covered in the witness's own statement since it may be assumed that Counsel to the Inquiry will seek to draw out from the witness the main themes of the witness's own statement, with more detail in important areas.

Notification to witnesses

14. Witnesses asked to give oral evidence will have had a general indication of areas of interest to the Inquiry from the Rule 9 request for a witness statement. In addition, two days before a witness gives evidence, the Inquiry Legal Team will seek to give witnesses a written high level indication of the topics of likely questioning together with documents likely to be raised with the witness. On the day they give evidence, witnesses will normally be seen in advance of their evidence for a brief introduction with Counsel to the Inquiry or another member of the Inquiry Legal Team and this may be used for an update on any added areas of likely questioning.

Departure from this protocol

15. As is common with statutory inquiries, the pace and volume of disclosure may mean that some relevant documents are disclosed on the Inquiry's disclosure platform less than 7 days before the witness gives evidence. While the Inquiry will seek to minimise this, Core Participants should use the solicitor@southport.public-inquiry.uk email to supplement their CP questioning form where additional disclosure has been made after their CP questioning form has been submitted.
16. The procedures outlined above are not intended to cover every eventuality nor every procedural issue that will arise. The Inquiry may need to depart from this Protocol to achieve best evidence from vulnerable witnesses or in other exceptional cases in compliance with the Chair's statutory obligation to act fairly. This Protocol may be amended as necessary and, if so, a revised version will be published on the Inquiry's website.

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