

Southport Inquiry

Decision on Broadcasting

Introduction

1. This is my decision on whether the evidence that will follow the Commemorative Portraits, the Impact Statements and the evidence of the attack should be broadcast.
2. By way of background, I earlier decided, having regard to the welfare of the victims, and in particular the child victims, the risk of further traumatisation and the need to protect anonymity, that the hearings of the Impact Evidence and Commemorative Portraits, along with the evidence concerning the attack, should not be broadcast. I permitted the livestreaming of this evidence to the Core Participants, the accredited legal representatives and the accredited media (subject to confidentiality undertakings). I permitted, additionally, these hearings to be held in public.
3. As regards the evidence concerning how the risk posed by the perpetrator was assessed and response to that risk prior to the attack, I have already indicated my preliminary view that there should be livestreaming of this evidence to the Core Participants, the accredited legal representatives and the accredited media (subject to confidentiality undertakings), and that this part of the evidence should be held in public. There has been no resistance from the Core Participants or the media to that course being adopted and accordingly this approach will be followed.

The Submissions

4. I invited submissions from the Core Participants and the media as to the advantages and disadvantages of permitting broadcasting of this part of the Phase 1 hearings.
5. Jason Beer KC, on behalf of Counter Terrorism Policing North West, highlights that by section 18 of the Inquiries Act 2005, the Chair must take (subject to any restrictions imposed under section 19 of the Act) such steps as he considers reasonable to secure that members of the public (including the media) are able to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry. This duty, he submits, is consistent with the principle of open justice. He stresses, however, that neither section 18 nor the principle of open justice requires the broadcast of inquiry proceedings. He correctly reminds me that there is a strong public

interest in these matters being heard in public, such that members of the public may follow proceedings.

6. Mr Beer's submissions principally focus on what he describes as "the imperative that witnesses give their best evidence". Separately from discrete submissions which may or have been made for special measures, he suggests "it is a possibility that the broadcast of evidence to the world at large may have an adverse effect on a witnesses' ability to provide their best evidence". He highlights that it is likely that some aspects of this evidence will be sensitive and will require restriction orders. Mr Beer argues that the management of any sensitivities will be more difficult if the evidence which is not subject to a restriction order is to be broadcast.
7. Against that background, he suggests it may be preferable not to broadcast the evidence concerning how the risk by the perpetrator was assessed and responded to prior to the attack. He notes this would be consistent with the proposed approach to evidence of the attack itself. I emphasise that this was a broadbrush submission, that was not based on the particular circumstances of any of the potential witnesses.
8. Otherwise, the submissions of the Core Participants and the media supported the broadcasting of the evidence concerning how the risk by the perpetrator was assessed and responded to prior to the attack.

The Provisions

9. The three relevant statutory provisions are sections 17, 18 and 19 of the Inquiries Act 2005.
10. Section 17(3) of the Inquiries Act 2005 sets out:

"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 others)".
11. Section 18 of the Inquiries Act 2005 addresses public access to inquiry proceedings and information. In so far as is relevant:

"(1) Subject to any restrictions imposed by a notice or order under section 19, the chairman must take such steps as he considers

reasonable to secure that members of the public (including reporters) are able—

- (a) to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry;
- (b) to obtain or to view a record of evidence and documents given, produced or provided to the inquiry or inquiry panel.

(2) No recording or broadcast of proceedings at an inquiry may be made except—

- (a) at the request of the chairman, or
- (b) with the permission of the chairman and in accordance with any terms on which permission is given.

Any such request or permission must be framed so as not to enable a person to see or hear by means of a recording or broadcast anything that he is prohibited by a notice under section 19 from seeing or hearing.”

12. Restriction order under section 19 of the Inquiries Act 2005, as relevant:

“(1) Restrictions may, in accordance with this section, be imposed on—

- (a) attendance at an inquiry, or at any particular part of an inquiry;
- (b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry.

(2) Restrictions may be imposed in either or both of the following ways—

- (a) by being specified in a notice (a “restriction notice”) given by the Minister to the chairman at any time before the end of the inquiry;
- (b) by being specified in an order (a “restriction order”) made by the chairman during the course of the inquiry.

(3) A restriction notice or restriction order must specify only such restrictions—

- (a) as are required by any statutory provision, assimilated enforceable obligation or rule of law, or
- (b) as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the

public interest, having regard in particular to the matters mentioned in subsection (4).

- (4) Those matters are–
- (a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
 - (b) any risk of harm or damage that could be avoided or reduced by any such restriction;
 - (c) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;
 - (d) the extent to which not imposing any particular restriction would be likely–
 - (i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or
 - (ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).

- (5) In subsection (4)(b) “harm or damage” includes in particular–
- (a) death or injury;
 - (b) damage to national security or international relations;
 - (c) damage to the economic interests of the United Kingdom or of any part of the United Kingdom;
 - (d) damage caused by disclosure of commercially sensitive information.”

13. As with my decision on Anonymity, I have been assisted in reaching my decision by an extract from the decision of Thirwall LJ in the Letby Inquiry, when handing down a ruling on live streaming on 24 May 2024. It is helpful to quote the relevant part of the decision in full:

“The need for all witnesses to give their best evidence to the Inquiry

32. [...] it is generally accepted that a person giving evidence in public is more likely to be candid than someone who is giving evidence privately. There is little information about whether there is a difference in the quality of evidence when the witness knows it is being broadcast live across the world or, perhaps worse, to family, neighbours, work colleagues, and so on.

33. I accept Mr Skelton KC's submission (*counsel representing the families of certain children*) that the hardest part of giving evidence, particularly for those who have not previously done so, is being required to speak publicly in an unfamiliar room full of unfamiliar people with everyone looking at you. He recognised that the overlay of knowledge that the evidence is being broadcast to the whole world would bring an additional layer of stress. However, he did not think that this knowledge would "tip the balance" by which was meant, I infer, that it would tip a witness over the edge into being unable to give their best evidence. In my view the extent to which broadcasting of all the inquiry hearing to the world affects a witness probably depends on a number of factors, including the personality of the witness, what they are going to say and how they think people hearing it will respond. I would accept that the thought of being observed by family, neighbours, work colleagues or others is unlikely to settle nerves.

34. It is unsurprising that many of the staff at the hospital, when informally asked about giving oral evidence responded with anxiety and concern. Some of them gave evidence at the criminal trial so their experience has been of a very adversarial process. In their written submission the legal team for the Hospital observed that there was a "*real risk that witnesses feel inhibited by the knowledge that their evidence is being livestreamed or broadcast*". That is a reasonable observation. The submission continued, "*that they may be less inclined to speak frankly and with candour; and may be more defensive than they otherwise would. This could have a detrimental impact on the Inquiry's ability to fulfil its terms of reference*". This passage unsurprisingly attracted considerable adverse comment, as was inevitable. Mr Kennedy (*I interpolate to note, counsel representing the Countess of Chester Hospital NHS Foundation Trust*) readily acknowledged it was badly written. I make it plain that, notwithstanding their nerves, I expect all witnesses, doctors and nurses included, to tell the truth, to make every effort to assist the inquiry when giving evidence and to reflect thoughtfully on what happened. Candour and frankness should be a given. This extends to the witnesses for the corporate bodies [...].

35. Whilst I accept that knowing evidence is being broadcast live to the world may increase nervousness, I do not have a sufficient evidence

base upon which I can rely to determine whether or not it would detrimentally affect the quality of the evidence given. Nor do I know whether a witness would be affected in the same way or differently knowing evidence is being transmitted live to certain individuals and may be broadcast at some stage. For those reasons, I leave that issue out of account in coming to my decision.”

14. As Thirwall LJ indicated, there is a paucity of information about whether there is a difference in the quality of evidence when a witness knows it is being broadcast live across the world or to individuals they know, as opposed to it being heard by the more limited number of people in the courtroom or inquiry hearing room. Thirwall LJ placed some emphasis on the acceptance by Mr Skelton KC, as set out above, that the “overlay of knowledge” that the evidence is being broadcast to the whole world would bring an additional layer of stress without necessarily rendering a witness unable to give their best evidence. On all of the material available, that is a sentiment with which I agree.
15. The opportunity to broadcast proceedings has been a significant – indeed, transformative – addition to the mechanisms for securing open justice. Particularly for cases of national significance, it ensures that anyone, regardless of their location, has access to the proceedings (subject to restrictions) rather than this opportunity being largely dependent on the feasibility of attending at the court or tribunal building.
16. I accept that this comes at a price, namely that the possibility of a far wider audience than otherwise would have been the case, will probably increase the nervousness of most witnesses, particularly in high-profile cases. That said, giving evidence in a court or tribunal is an inherently intimidating process with or without broadcasting, and the anxieties of witnesses have historically been addressed by the manner in which the proceedings are conducted. It is for the judge or tribunal chair, along with the advocates, to reassure and assist the witnesses, and to ensure that the proceedings are conducted in a fair, unemotional and appropriately sensitive manner. This responsibility is more acute when there is potentially a large audience, and the issues are the subject of national debate or concern. It is particularly critical that the advocates avoid imprecise or overly complex questions, and that the judge or chair responds promptly to any hint of bullying or theatrics. Public inquiries are particularly well suited to ensuring there is an appropriate environment for witnesses with anxieties, given the majority – indeed, often the entirety – of the questioning is conducted by counsel to the inquiry, avoiding the stress that inevitably is created by having to face multiple questioners.

17. It is relevant to note that all of our dealings with the Core Participants thus far indicates, unsurprisingly, that they intend to co-operate in what ought to be a reflective inquisitorial process. This approach is self-evidently germane to my decision.
18. There may be circumstances relevant to particular witnesses that require special measures, and an order prohibiting broadcasting is one of the options that is available, depending on the circumstances of the individual. I considered this option for some of the witnesses from Alder Hey Children's NHS Foundation Trust.
19. It follows that I am against Mr Beer on his broad and cogent submission that broadcasting should not be permitted during this Inquiry because it endangers the witnesses' ability to provide their best evidence. Once the attack evidence is complete, the evidence concerning how the risk by the perpetrator was assessed and responded to prior to the attack will be broadcast, subject to any discrete issues that may arise.
20. Given the potential breadth of the topics which may be addressed, any oral Opening Statements will not be broadcast. It is important to recall, however, that the transcripts of the Opening Statements and the written Opening Statements will be publicly available on the website.
21. The Media Broadcast Protocol will be amended to include provisions as to the use of the clips of witness evidence. Of particular importance, as regards the media, broadcasts of clips of witness evidence will be limited to no more than 5 minutes per day for any individual witness. This restriction can be varied or disapplied upon application to the Chair.

Adrian Fuffard

10 September 2025