

## **Inquiry Direction No 10 – Preparation for and Conduct of Oral Hearings**

In terms of section 17(1) of the [Inquiries Act 2005 \("the Act"\)](#), which enables Lord Hardie (“the Chairman”) to decide on the procedure and conduct of the Inquiry, he has directed as follows:

1. In this Inquiry Procedure Direction (“this Direction”) references to “any person” or to “a person” include an individual, Scottish Ministers and any entity such as a company, a partnership, a local authority, a community council, a residents’ association, a trade association or professional body or other organisation representing the interests of its members whether or not it is a legal entity.
2. This Direction relates to the preparation for and conduct of oral hearings commencing on 5 September 2017.
3. This Direction is effective from the day after it is made and will remain in force until it is revoked or varied.
4. The Chairman may supplement or vary the application of this Direction where he considers that it is necessary or equitable to do so.

### **HEARINGS VENUE AND SITTING ARRANGEMENTS**

5. The hearings will be held in the Hearing Room on the first floor of Waverley Gate, 2-4 Waterloo Road, Edinburgh EH1 3EG.
6. Hearings will commence on Tuesday 5 September at 9.30 am and will generally be held each week from Tuesday to Thursday inclusive (although there may be exceptions to this).
7. Each day hearings will commence at 9.30 am and finish at 4.30 pm. There will be a 15 minute morning break and an hour for lunch from 1 pm to 2 pm.
8. In addition to members of the Inquiry team and representatives of the core participants, there will be accommodation for representatives of the media and members of the public. For health and safety reasons seating capacity is limited and seating will be allocated on a first come first served basis. Further details about media and public access will be published prior to the start of the hearings.

### **PRODUCTIONS EXCLUDING SIGNED STATEMENTS OR ANSWERS FROM WITNESSES**

9. To enable core participants to prepare for the oral hearings the Inquiry Team has already uploaded certain material to the Haymarket database (“Haymarket”) which can be accessed by core participants who have signed the necessary undertakings, including those required by [Inquiry Procedure Direction No 9 – Core Participants’ Access to material before commencement](#)

[of oral hearings](#) (“Direction No 9”). Such material does not include signed statements or answers from witnesses.

10. From time to time before and after the commencement of the oral hearings, further material may be uploaded to Haymarket in accordance with Direction No 9.
11. Where a core participant wishes to challenge the authenticity of any document in Haymarket, other than a document containing the signed statement or written answers of a witness, he must give written intimation to the Secretary to the Inquiry of the reasons for that challenge within six weeks of the document being uploaded to that database, or of the effective date of this Direction, whichever is later.
12. In the absence of any challenge to a document in accordance with paragraph 11, the Chairman will proceed on the assumption that the documents in Haymarket are what they bear to be and were created or sent on the date they bear, without the need for formal proof.

## **WITNESSES**

### *Witness lists and citation to attend the oral hearing*

13. In order to assist core participants with their preparation for attendance at the oral hearings, as soon as is reasonably practicable the Inquiry Team will prepare and publish in Haymarket a provisional list of witnesses. This will include expert witnesses who may be required to give evidence to the Inquiry by testifying at the oral hearing, whether that evidence supplements written evidence of the witness or, in exceptional circumstances at the discretion of the Chairman, is the entire evidence of a witness.
14. Expert witnesses will not be required to provide a witness statement in advance of their giving evidence but they may, at the discretion of the Inquiry Team, be asked to provide a report on matters within the scope of their expertise. If a report is prepared, copies thereof will be made available to core participants.
15. Persons who may be required to give oral evidence have been contacted by the Inquiry Team and have been requested to indicate dates when they are unavailable to give evidence by reason of prior commitments.
16. When the Inquiry has determined which witnesses on the provisional list will be required to testify in person at the oral hearings, the Inquiry Team will prepare a timetable taking into account, so far as possible, the dates and nature of the prior commitments of witnesses intimated by them to the Inquiry Team and will send a Notice to each witness signed by the Chairman under section 21(1) of the Act.
17. Before the beginning of the oral hearing, the Inquiry will publish on its website, a timetable identifying the likely witnesses during the first two weeks of the

hearings. As the oral hearings progress, the timetable will be updated and will disclose the identity of witnesses expected to appear in the course of the following two weeks. For similar reasons to those given in paragraph 19 about uncertainties in any proceedings involving witnesses giving oral evidence, any such timetable should be treated as the best current estimate of the expected attendance of any witness and will be subject to change. Where a published timetable is subject to change the Inquiry will give as much notification of such change as is practicable.

18. Each Notice specified in paragraph 16 will require the witness to attend the oral hearing on 5 September 2017 and each subsequent day of oral hearings, to ensure that witnesses are aware of their obligation to attend throughout the oral hearings as directed by the Chairman, although it is anticipated that most witnesses will complete their evidence in one session and will not need to be recalled at a later date.
19. As soon as is reasonably practicable after service of the Notice mentioned in paragraph 16, the Witness Liaison Manager will send a letter to the witness advising the witness of the current estimate of the date on which the witness is first required to attend to give evidence. In any proceedings involving witnesses giving oral evidence it is not possible to predict in advance with 100% accuracy, the length of time which any witness will take. Accordingly, it may not be possible to identify in advance the precise day on which any one witness is first required to attend. For that reason, witnesses and the Witness Liaison Manager should remain in regular contact with each other to enable the Witness Liaison Manager to advise them of any change to the estimated date upon which they are first required to attend.

#### *Attendance at oral hearing*

20. Following arrival at Waverley Gate, the witness should report to the Witness Liaison Manager at the Inquiry Office on the 1st Floor, Waverley Gate, 2-4 Waterloo Place Edinburgh EH1 3EG, who will show the witness to a witness room. At the appropriate time a member of the Inquiry Team will accompany the witness from the witness room to the witness table in the Hearing Room.
21. When the witness reaches the witness table, he or she should remain standing, if able to do so. The Chairman will ask if they wish to give the oath or affirmation and they will then repeat the oath or affirmation administered by the Chairman. The terms of the oath and affirmation are reproduced in the Appendix to this Direction. The effect of an oath and an affirmation is identical; the witness is deemed to have been “duly sworn” to answer questions truthfully.
22. Having taken the oath or affirmation, the witness should sit at the witness table and answer questions from Counsel to the Inquiry, and any other counsel or representative of a core participant permitted by the Chairman to ask questions of a witness. The oral evidence of a witness is intended to supplement or clarify his or her previous evidence contained in a signed written statement or written answers submitted to the Inquiry in reply to

specific questions. The documents in Haymarket, including any signed statements or written answers by the witness and supporting documents mentioned in such written evidence, will be available in electronic form at the hearing. In the course of questioning a witness Counsel to the Inquiry may refer the witness to these and other documents. Subject to the provisions of paragraphs 33 and 34 counsel or other representative of a core participant, who is permitted to question a witness, may also refer to documents.

23. At the end of his or her evidence, the witness will leave the witness table and need not attend the oral hearings at any future date unless the Chairman considers that it is fair to the witness, or otherwise necessary in the public interest, to recall the witness. The Chairman may, of his own accord and without the necessity of an application by Counsel to the Inquiry or any other person, exercise the power to recall a witness.
24. Where Counsel to the Inquiry or any core participant wishes to recall a witness, they should make a reasoned application to the Chairman to do so. The Chairman may determine such an application, with or without hearing submissions.
25. Where the Chairman determines of his own accord, or in response to an application in terms of paragraph 24, that it is necessary to recall a witness, the Witness Liaison Manager will contact the witness advising him or her of the Chairman's decision and arranging a date and time for the witness to appear to give supplementary evidence.

#### *Signed statements or answers from witnesses*

26. For various reasons the signed statements or answers from some witnesses may be the entirety of their evidence. However, if a core participant wishes to challenge evidence in a statement or answers from a witness whose name does not appear on any list of witnesses intimated to parties prior to the commencement of the hearings as a witness who will attend and give oral evidence at those hearings, or otherwise wishes to secure the attendance of a witness not included in such a list, the core participant, no later than four weeks before the commencement of the oral hearings on 5 September 2017, must give notice to the Chairman of a request for the attendance of that witness, including reasons for that request.

#### *Compensation for Loss of Time and Travel and Subsistence Expenses*

27. The Chairman may award reasonable amounts to a person to compensate for loss of time, or for travel and subsistence in attending the inquiry to give evidence. For further details on the criteria and application process please refer to:
  - [\*\*Inquiry Procedure Direction No 4 – Award of Compensation for Loss of Time\*\*](#) (“Direction No 4”)

- [Inquiry Procedure Direction No 5: Award of Travel and Subsistence Expenses](#) (“Direction No 5”)

## EXAMINATION OF WITNESSES

28. The oral hearing on 5 September 2017 will commence with the evidence of the first witness.
29. [Rule 9 of the Inquiries \(Scotland\) Rules 2007](#) (“the Rules”) empowers the Chairman and Counsel to the Inquiry to ask questions of a witness. The opportunity for questioning by the witness’s own legal representative and by other legal representatives will be subject to the Rules. It is recognised, however, that in the interests of efficiency and cost effectiveness some additional guidance may assist participants.
30. The questioning will primarily be carried out by Counsel to the Inquiry. In the case of any witness, where there is a particular line of questioning of importance to Core Participants, or relevant to a position they wish to present, the legal representatives of Core Participants must submit, in writing to the Chairman no later than seven days before the witness is to give evidence, a brief description of the issues proposed for questioning, including any document not referred to in the statement or written answers of the witness together with the document ID reference number for documents stored in Haymarket or the document ID reference number allocated to the document submitted in accordance with the provisions of paragraphs 32 and 33. In consultation with Counsel to the Inquiry, the Chairman will decide whether to permit such questioning either by Counsel to the Inquiry or counsel or other representative of the Core Participant and, if appropriate, on what conditions.
31. Where a question or line of questioning could not reasonably be anticipated in advance and arises as the evidence is heard, the Chairman is anxious that sufficient time is given to relevant additional matters without disrupting the proper flow of proceedings. Accordingly after Counsel to the Inquiry has concluded questioning any witness but before the witness has left the witness table, legal representatives with suggested questions or lines of questioning may make application to the Chairman for a decision whether to permit such questioning either by Counsel to the Inquiry or the legal representatives of the Core Participant and, if appropriate, on what conditions. In making such an application the applicant must explain to the Chairman the reasons for the application, including their perception of the significance of the evidence which they seek to clarify.

### *Use of documents in course of evidence*

32. Where a witness intends to refer to a document during his or her evidence, which is not referred to in their written statement, or written answers to the Inquiry, the document should be sent to the Inquiry as soon as is practicable and, in any event, no later than four weeks before the estimated date intimated to the witness when it is expected that the witness will be first

required to give oral evidence. For details on the production of documents to the Inquiry, witnesses should refer to [Inquiry Procedure Direction No 2 – Production of Documents to the Inquiry](#) (“Direction No 2”).

33. Where a core participant intends to refer to a document during the evidence of any witness, other than a document mentioned in Haymarket, the document should be sent to the Inquiry as soon as is practicable and, in any event, no later than four weeks before the commencement of the oral hearings or after the production to the core participant of the written evidence of that witness, whichever is later. For details on the production of documents to the Inquiry, witnesses should refer to Direction No 2.
34. No document tendered to the Inquiry later than the periods specified in paragraphs 32 and 33 may be put to any witness or otherwise introduced into evidence without the consent of the Chairman. Where any person tenders a document later than the periods specified in paragraphs 32 and 33 that person must explain his perception of the significance of the document for the Inquiry, the witnesses to whom the document should be put and, if applicable, the core participant whom he represents; when that person, the relevant core participant, and any of the core participant’s advisers, were first aware of the document; when the core participant, or any of his advisers, first had a copy of it; what steps, if any, were taken to recover the document; and the reasons for failing to tender the document earlier. In exercising his discretion whether to allow the document to be received as a production, the Chairman will take into account all relevant factors including, but not restricted to, its significance and the explanation given to him. Where a document is tendered in the course of the oral hearing, the Chairman may adjourn the hearing to allow Counsel to the Inquiry and legal representatives to consider the document and make submissions about its late introduction.
35. A Statement of Main Documents and Events will be published on the Inquiry’s website prior to the commencement of the oral hearings and may be supplemented from time to time thereafter. Any Supplementary Statements will be published as soon as is reasonably practicable after they are produced. As soon as is reasonably practicable after the conclusion of the evidence each day a transcript of that evidence will be published on the website.
36. At the conclusion of all the evidence there will be an adjournment to enable the legal representatives of Core Participants to prepare written closing submissions. The timetable for lodging these submissions with the Secretary to the Inquiry, the time allowed to each party to supplement them orally and the order in which they will be heard will be published at the appropriate time.

**29 June 2017**

## APPENDIX

### OATH

I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth.

### AFFIRMATION

I do solemnly, sincerely and truly declare and affirm that the evidence that I shall give will be the truth, the whole truth and nothing but the truth.