

Inquiry Procedure Direction No 8 – Avoidance of the Risk of Delays to the Inquiry

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. This Inquiry Procedure Direction (“this Direction”) relates to steps to be taken by core participants and their legal representatives to avoid the risk of delays to the Inquiry.
2. This Direction is effective from the day after its date and will remain in force until it is revoked or varied.
3. While this Direction is intended to cover most situations it may require to be supplemented or varied by the Chairman in particular circumstances.
4. All letters and certificates requested in this Direction should be sent to the Solicitor to the Inquiry, to arrive no later than 12 noon on 27 November 2015.

Background

5. A Note, dated the same date as this Direction, has been issued with this Direction concerning issues of representation and potential conflicts of interest. The Chairman has identified issues relating to the City of Edinburgh Council (“the Council”) and Bilfinger Construction UK Limited (“Bilfinger”) that ought to be addressed by each of them and their legal representatives, in addition to any other facts known to them that could delay the progress of the Inquiry.
6. Although at the Preliminary hearing, held on 6 October 2015, all other core participants advised the Chairman that they were unaware of any potential conflict of interest affecting each of them that might affect the progress of the Inquiry, the Chairman still wishes them to give careful consideration to that issue along with their legal representatives.

Requirements - Letter

7. The legal representative of each core participant should send a letter (“the Letter”) in terms of paragraph 8, 9 or 10 as appropriate, along with a certificate in terms of paragraph 11, to the Solicitor to the Inquiry, to arrive no later than 12 noon on 27 November 2015.
8. Where following the consideration required by paragraph 5 a core participant and their legal representatives are satisfied that there are no issues that might give rise to a potential conflict of interest or otherwise risk interfering with the progress of the Inquiry, the Letter should confirm that:

- the question has been given careful consideration;
 - and contain a clear statement to the effect that both the legal representative and the core participant are both unaware of any such issue.
9. Where, following the consideration required by paragraph 5, a potential conflict of interest or other issue is identified that could affect the progress of the Inquiry, the Letter should:
- identify the issue;
 - confirm that the core participant and any other affected client, past or present, of the legal representative is each aware of it;
 - and specify any steps that the core participant or any other affected party intends to take to minimise the risk of any action that might affect the progress of the Inquiry.

The Letter should also confirm that all those affected by the potential conflict agree to the continued involvement of the legal representatives of the core participant in the Inquiry.

10. For the avoidance of doubt, the legal representatives of each of the Council and Bilfinger should provide a copy of the Note mentioned in paragraph 4 to their respective clients, as well as identifying any other issues that might give rise to a potential conflict of interest or otherwise risk interfering with the progress of the Inquiry. In addition to the information specified in paragraph 8 each of them should confirm in the Letter that a copy of the Note has been provided to the respective client.

Requirements - Certificate

11. In all cases, the Letter should be accompanied by a certificate from each of the affected parties, including the core participant, confirming that the core participant, any affected party and their legal representatives have given careful consideration to the issues mentioned in paragraphs 5 and 6 and in the Note, as appropriate.
12. Where a potential conflict of interest or other issue is identified that could affect the progress of the Inquiry, the certificate should confirm that the nature of any potential conflict or other issue has been explained to all affected parties, specify what action, if any, it is intended to take to minimise the risk that could affect the progress of the Inquiry, and confirm that the core participant and any other affected party have no objection to the legal representatives continuing to act for the core participant.
13. The certificates from the Council and Bilfinger should also confirm that each of them has received a copy of the Note mentioned in paragraph 5 and has considered its terms.

Solicitor contact Details:

e-mail: evidence@edinburghtraminquiry.org

28 October 2015