

BROOK HOUSE INQUIRY

PROTOCOL FOR VULNERABLE WITNESSES

Introduction

1. The purpose of this protocol is to set out the principles which will guide the Inquiry in its treatment of vulnerable witnesses.

Core principles

2. The core principles of the Inquiry's interactions with witnesses are:
 - a. All witnesses should be able to give evidence with dignity and to the best of their ability;
 - b. The Inquiry should be in the best position to assess the quality of that evidence;
 - c. The process of being a witness does not begin once sitting in the witness box, but includes preparing for, making, editing and approving any formal statement (written or otherwise).

Definition of witness

3. For the purposes of this protocol a witness is anyone who gives evidence to the Inquiry, regardless of whether that witness is also a core participant.

Definition of vulnerability

4. A person shall be considered "vulnerable" for the purposes of this protocol if there is a significant risk that, by reason of one or more of that individual's personal characteristics:
 - a. The person will experience stress or other difficulty in being a witness or potential witness, in addition to that which might be experienced by any person; and/or
 - b. Those characteristics are likely to cause or contribute to a detrimental effect in the quality of any statement or evidence which the person gives; and/or

- c. The person will require greater than normal support to ensure participation as a witness; and/or
- d. The person will be at significant risk through giving evidence of suffering a worsening of that person's mental health or wellbeing.

Personal characteristics

- 5. These characteristics include, but are not limited to any of the following:
 - a. Age;
 - b. A significant impairment of intelligence or social functioning;
 - c. A recognised mental disorder;
 - d. Physical disability or disorder;
 - e. Substantial fear or distress related to testifying about matters relevant to the Inquiry;
 - f. Difficulties with communicating in spoken English;
 - g. Difficulties with communicating in written English;
 - h. Difficulties with reading;
 - i. Any condition which, whilst not amounting to a disorder is such as to affect significantly the ability of the individual to be a witness or potential witness.

Identifying a vulnerable witnesses or potential witness

- 6. It is essential to a fair Inquiry that anyone who is or may be vulnerable is identified as such at the earliest opportunity. The assistance and co-operation of anybody involved in advising or taking statements from such an individual is of vital importance.
- 7. It is possible for an individual's vulnerabilities and needs to develop or change over time. It is essential that any changes in an individual's vulnerabilities or needs be communicated to the Solicitor to the Inquiry as soon as they are discovered.
- 8. In any event, every statement from anyone who is or may be a witness and who is or may be vulnerable should be accompanied by the Vulnerability Questionnaire which is annexed to this Protocol.
- 9. It is for the Chair of the Inquiry to determine whether any witness should be considered vulnerable within the meaning of this protocol.

Measures to assist vulnerable witnesses: General principles

- 10. Where the Chair determines that a witness is vulnerable within the meaning of this protocol, she may also direct that additional measures be taken to assist a witness in participating effectively in that role or to improve the quality of that witness' evidence.

11. Before making any direction the Chair shall, where possible, ascertain and take into consideration the views of the witness on the appropriateness and nature of any additional measures.

Additional measures

12. The Chair has a wide discretion to make such directions as she considers necessary to implement the core principles set out above. Such direction may include, but are not limited to any one or more of the following:

- a. **The appointment of an intermediary**

The Inquiry may appoint an intermediary to assess (and report upon) the additional needs of any witness, to assist with the making of a statement and/or to assist the witness when giving evidence.

- b. **The appointment of an interpreter**

- c. **The making of a recorded interview in place of (or, exceptionally, in addition to) a written statement**

- I. Where a witness is unable to make a witness statement in the usual way or where for any other reason the Chair considers it appropriate so to do, the account of an individual may be taken by way of a recorded interview;

- II. The interview shall be conducted in a manner approved by the Chair;

- III. The interview will normally be conducted by a member of the Inquiry Counsel team, although the Chair may approve another individual outside that team to conduct the interview.

- IV. At any such interview, the witness or potential witness may be accompanied (in the interview room) by a solicitor (if one has been instructed). In the absence of a solicitor, the witness may be accompanied by a friend or relative.

- V. The recording of the interview should be audio-visual. Exceptionally, if such a method of recording is not reasonably practicable, the Chair may give permission for the recording to be solely audio.

- d. **Live link from a location outside the Inquiry room**

- e. **The support of a friend or relative (sitting with the witness who is giving oral evidence)**

Any such person shall play no part in the witness giving evidence unless directed to do so by the Chair.

- f. **Regular breaks at prescribed times**

g. Time limits for questioning a witness

h. A preliminary hearing for establishing the appropriate boundaries for questioning

Anonymity

13. Any applications for anonymity should be made separately to the Chair, in accordance with Section 19 of the Inquiries Act 2005.

General principles relating to the questioning of vulnerable witnesses

14. Whilst there is a general presumption that only Counsel to the Inquiry will question vulnerable witnesses, Rule 10 of the Inquiry Rules 2006 is still applicable. The following additional rules shall also apply, if questioning of a vulnerable witness is permitted following an application under Rule 10(3) or (4) of the Inquiry Rules:
 - a. Any questions must be straightforward and appropriate for that witness;
 - b. Unless the Chairman directs otherwise, any questions must be discussed in detail with Counsel to the Inquiry not less than 24 hours before the witness is due to give evidence and, if Counsel to the Inquiry is dissatisfied with the proposed questioning, the matter shall be referred to the Chair for determination.

Vulnerable witnesses who are unable to give evidence before the Inquiry

15. If the Chair determines that, by reason of vulnerability, a witness is unable to give evidence, in person, before the Inquiry, she may:
 - a. permit any signed statement or recorded interview made by that person to be received in evidence; and/or
 - b. if no recorded interview exists, instruct Counsel to the Inquiry to conduct such an interview (if reasonably practicable so to do).

Children and young people

16. No person under the age of 18 shall make any statement or give evidence unless specifically agreed to in advance by the Chair. The Chair may direct the manner in which any statement is to be taken and/or the manner in which evidence is to be given.
17. Should any recognised legal representative wish a statement to be taken from a person under 18, that representative should make an application to the Chair as soon as practicable, explaining the particular reason why it is necessary.
18. In deciding whether such a statement should be taken, the matters which the Chair will take into account include:

- (a) The importance of the information which can be given by the young person;
- (b) Whether that information is available from other sources (especially witnesses over 18);
- (c) The age, maturity and individual character of the young person, in particular whether that young person can participate without being caused unacceptable further trauma;
- (d) The wishes of the child or young person;
- (e) The views of the parents or carers of the young person and those of any professionals who work with the child or young person;
- (f) Any intermediary's report (if obtained).

Assistance with vulnerability issues

19. The Inquiry Team include counsel with experience in dealing with vulnerable witnesses and individuals. They may be contacted by any representative who has a concern about the potential vulnerability of an individual or who needs any assistance in interpreting this protocol.

Issued under the authority of the Chair on 7th April 2020

ANNEX

VULNERABILITY QUESTIONNAIRE

1. NAME OF INDIVIDUAL
2. SOLICITOR ACTING ON BEHALF OF THE INDIVIDUAL, if any
3. NAME OF PERSON COMPLETING THIS FORM (AND RELATIONSHIP TO VULNERABLE PERSON)
4. WHY MAY THIS WITNESS OR POTENTIAL WITNESS BE VULNERABLE?
5. WILL THEIR VULNERABILITY AFFECT THEIR ABILITY TO MAKE A STATEMENT? If so, how?
6. WILL THEIR VULNERABILITY AFFECT THEIR ABILITY TO GIVE EVIDENCE? If so, how?
7. WHAT "SPECIAL MEASURES" OR OTHER DIRECTIONS IF ANY, MAY ASSIST THIS INDIVIDUAL?
8. IS THERE ANY MATERIAL WHICH THE INQUIRY SHOULD OBTAIN TO ASSIST THEM IN DETERMINING HOW BEST TO ASSIST THIS WITNESS OR POTENTIAL WITNESS?
9. ANY FURTHER RELEVANT INFORMATION?