

Process followed by the Inquiry when publishing Provisional Position Papers



1. Introduction

1.1 This note explains the process that will generally be followed by the Scottish Hospitals Inquiry in relation to the publication of Provisional Position Papers (PPPs) for comment. The Inquiry considers it important that those with an interest in the Inquiry's investigations understand the factual basis on which the Inquiry is proceeding and have the opportunity to correct any misunderstandings or misapprehensions at as early a stage as possible. To help achieve this, the Inquiry has already, and will continue to publish PPPs.

2. Purpose of Provisional Position Papers

2.1 The purpose of releasing PPPs is to set out the Inquiry's understanding at the point of publication of the paper of the factual background in relation to the topic(s) dealt with in the paper on which, subject to the following, it may rely in terms of drawing conclusions and making recommendations.

2.2 While occasionally individual papers may offer comment or observation on the factual background set out in the paper, but this does not detract in any way from the principal purpose.

2.3 As part of its investigative process, the Inquiry considers it important that core participants, and anyone else holding relevant information, understand the factual basis on which the Inquiry is proceeding and have the opportunity to correct any misunderstandings or misapprehensions at as early a stage as possible. It is important to bear this purpose in mind when reviewing PPPs – providing a response to a PPP is an opportunity to offer corrections or modifications of factual inaccuracies or misunderstandings. Setting out a position or providing commentary on the facts may (or may not) be invited by the Inquiry subsequently.

2.4 It follows from the above that PPPs are not findings in fact by the Inquiry and are subject to review in light of any further evidence submitted.

2.5 It also follows that the Inquiry's understanding of the factual position may change, both through responses made to the PPPs and through later evidence taken in witness statements or in oral testimony at hearings or should further documentation relevant to the matters dealt with in the PPP come to light. They are a part of the investigation process, not a conclusion of it.

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3. Process

3.1 Any PPP issued by the Inquiry will be published on the Inquiry's website. Legal representatives of core participants will receive an email notification of publication and the Inquiry will endeavour to give at least a day's advance notice where that is possible.

3.2 In addition, where the Inquiry has plans to publish a series of PPPs, we will give as early an indication of that as possible, including when the Inquiry will publish individual PPPs at least in broad terms.

3.3 The period for response to any PPP will be specified both on the Inquiry's website and in the email to legal representatives of core participants. As a general rule this will be a period of three weeks from the date of publication, but that may be varied in individual cases by the notice on the Inquiry's website. This should be treated as a "hard" deadline – adherence to timetables is a key element of the Inquiry being able to maintain its programme and ultimately for Lord Brodie to deliver his report quickly. Thus, while the Inquiry will consider any application for extension based on exceptional reasons, scope for additional time is likely to be limited.

3.4 The Inquiry has considered whether all of the underlying material for a PPP should be released along with the PPP and has concluded that the present practice of not releasing that material will be maintained. It is important that review of and response to PPPs is a proportionate exercise and that due regard is had to the expense that may be incurred in such an exercise, both for the Inquiry and for core participants. For some of the PPPs already published, the number of documents released as underlying material would have been in the hundreds, amounting to thousands of pages. As should be clear from Section 2, the purpose of the exercise is not to have a document review conducted by multiple parties. While the Inquiry does not discount the possibility of releasing individual or a number of documents where that is necessary for clarification of the PPP, this will be on the basis of an application that clearly explains why the document is required having regard to the purpose of the process as set out above. If considering making such an application in any case, please note that:

3.4.1 The application must be made not later than one week before the deadline date for responses to the PPP. No late applications will be accepted; and

3.4.2 If an application is successful, the document will not be released solely to the applicant but rather it will be published on the Inquiry's website with a suitable explanation as to why it is being released.

3.5 As soon as possible after the deadline for responses has passed, copies of all responses received will be published on the Inquiry's website. Any supporting documentation submitted may also be published on the Inquiry's website, particularly where that documentation is necessary to enable the reader to understand the response itself. Accordingly, where there are reasons why any response, or supporting documentation, should not be published on the Inquiry's website, this

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must be made clear at the time of submitting the response. The Inquiry will consider those reasons when determining what should be published on its website.

3.6 Following consideration of responses received, the Inquiry may decide on further action – the PPP may be updated and republished, the Inquiry may have further questions of particular core participants, it may determine that no further action is required and so on. This will clearly vary in individual cases and cannot be predicted in advance. It will, however, be safe for core participants to proceed on the assumption that nothing further is required of them unless they hear (via their legal representatives) to the contrary directly from the Inquiry.

4. Responding to PPPs

4.1 Responses to PPPs are generally invited from core participants in the Inquiry, but also from any other individuals or organisations holding material or having knowledge of the subject matter of particular PPPs.

4.2 However, there is no expectation that every core participant will respond to every PPP. There are clearly some PPPs that will be of no interest to certain core participants – if a PPP relates only to the Queen Elizabeth University Hospital, we would not expect a response from core participants whose sole interest is in relation to the Royal Hospital for Children and Young People and the Department for Clinical Neurosciences (and vice versa). A paper that deals only with issues of governance processes and structure would not be expected to draw a response from those who had no involvement in or understanding of such processes and structures. No inferences are drawn from the fact that no response was made other than that a response was not made.

4.3 As with previous PPPs, at least some of the PPPs will contain specific questions that the Inquiry wishes addressed by those offering a response, some of which questions will be expressly directed at particular core participants. Notwithstanding the previous paragraph, as response is expected by the Inquiry from core participants where a question is directed specifically at them.

4.4 There is no particular format specified for submitting a response to PPPs. However, where a response is addressing particular paragraphs or sections of a PPP, this should be made clear in the response.

4.5 When submitting responses that offer clarifications or corrections, core participants should submit all documentation that supports the correction or clarification so that the Inquiry can consider it along with all other evidence that it holds.

5. Further information

5.1 If you have any questions about any of the above, please email the Solicitor to the Inquiry at legal@hospitalsinquiry.scot

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6. Version control

6.1 This version of the process of Provisional Position Papers is dated 27 July 2023 and was issued by the Solicitor to the Inquiry. It is the first version of this document.