

EVIDENCE & PROCEDURAL ISSUES

Disclosure & Evidence Gathering stage

1. There should be a small legal team within the inquiry that conducts an initial consideration of the nature and extent of the work that the inquiry will have to perform to discharge its terms of reference and what relevant disclosure should be obtained. This team should then carry out an initial review of those documents in order to help focus the inquiry and formulate a list of issues.
2. A list of issues should be produced based on the terms of reference with the purpose of focusing the inquiry's investigations and to ensure all relevant information, documents and evidence are obtained; to select witnesses who should be called to give evidence in the inquiry; and to aid counsel in their line of questioning.
3. A number of protocols should be issued setting out best practice on the following issues at the disclosure and evidence gathering stage:
 - a disclosure protocol e.g. Al Sweady Inquiry, to ensure transparency, increase understanding as to the procedure and to secure timely disclosure of documents.
 - a protocol for taking of witness statements to ensure the relevance of evidence and increase the quality of evidence in chief, therefore reducing the need for lengthy questioning during the oral proceedings e.g. Al Sweady Inquiry
 - a protocol on information management including redaction of documents that ensures confidentiality and preserves the anonymity of witnesses e.g. Al Sweady Inquiry

General powers to compel witnesses

4. It is important that a statutory inquiry is set up to ensure that there are powers to compel witness evidence as set out under section 21 of the Inquiries Act 2005.

Oral proceedings

5. The oral proceedings could be based on a traditional or hybrid model. The hybrid model has the advantage of shortening the length of oral proceedings and reducing the chances of witnesses having to be recalled. Essentially, counsel for the witnesses/victims would feed questions to Counsel for Inquiry and there would not therefore be the need for lengthy cross-examination, however counsel for the witness may pursue a particular line of questioning with permission from the Chairman.

A protocol for special measures for witnesses

6. A protocol should be formulated incorporating similar provisions to that contained in sections 23 to 25 of the Youth Justice and Criminal Evidence Act 1999 allowing for special measures in the case of child witnesses and sexual offence complainants. These special measures include live video-links to allow a witness to give evidence via video-link from an informal or relaxed environment (while remaining visible and audible to those present in the courtroom), the admission of video recordings of pre-trial witness interviews in place of examination-in-chief, and where witnesses give evidence in public the use of temporary screens around the witness box if they do not wish to be seen.
7. Another example is the Al Sweady Inquiry setting out a protocol for protective measures and setting out the procedure for applications for special measures.

Setting up of a Victim and Witness Unit

8. A victim and witness unit should be set up to provide victims who give evidence at the inquiry support and appropriate assistance. A presumption that witnesses have suffered harm due to the subject matter and the principle that they should not be re-traumatised by giving evidence during oral proceedings should be enshrined in any relevant protocol concerning the treatment of victim and witnesses. Alongside providing support to all witnesses giving evidence the unit should be charged with formulating short or long-term plans for protection of witnesses through communication and liaison with the police and other bodies. The unit should comprise of a multi-disciplinary expertise to ensure that appropriate referrals can be made for psychosocial support, crisis intervention etc. and to ensure that the process of giving evidence does not result in further harm, suffering or trauma.
9. When the inquiry legal team consider which witnesses will give live evidence, input should be obtained from the unit as to their assessment as to whether the witness is robust enough to give evidence in public in view of any trauma they have suffered and to make recommendations about the adoption of any protective measures that should be employed to assist witnesses that are called to give evidence in the oral proceedings.
10. A good model is the victims and witness unit at the International Criminal Court.

Anonymity of witnesses and reporting restrictions

11. The names of witnesses should not be disclosed to the press. The anonymity of witnesses should be preserved at the disclosure stage through the redaction of documents and later during the oral proceedings. This has its basis under Article 8 of the ECHR but should be enshrined as a presumption in any particular rules of procedure or protocol. This is to acknowledge the special case of victims of sexual abuse and to ensure witnesses are not deterred from coming forward and giving evidence in public.

12. The legal team for the inquiry and any staff should ensure the highest standards of confidentiality and be trained accordingly.