



Putting participants at the heart of the public inquiry process: insights from the Muckamore Abbey Hospital Inquiry on engaging with vulnerable witnesses

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ABSTRACT

This case study examines Muckamore Abbey Hospital Inquiry's approach to engaging with vulnerable witnesses and participants, including those with severe learning disabilities, developmental disabilities, and mental health needs. It offers detailed insight into the key considerations, adjustments made, and support provided by the Inquiry, and how it seeks to put the needs and interests of vulnerable participants at the heart of its process.

An inquiry chair has a very broad discretion to determine the procedure and conduct of a public inquiry. As a result, a public inquiry is uniquely placed to explore and adopt bespoke and novel approaches to challenges encountered, including addressing the needs of vulnerable participants. Lessons may be learnt to improve future inquiry practice, and comparative lessons may be learnt to inform other accountability processes, such as the criminal and civil justice systems and tribunals. However, currently, there is no central system that records and disseminates details of individual public inquiries' procedure and conduct.

This case study examines the Muckamore Abbey Hospital Inquiry's adjustments and support measures, including: its treatment of all witnesses and participants as being potentially vulnerable; its innovative approach to the use of registered intermediaries and communication support in an inquiry context; and its flexible and responsive approach to individual participants' needs. This research is designed to provide an evidence base to inform future inquiry teams in their procedural decision-making, in the United Kingdom and other jurisdictions that adopt a similar inquiry model, and to inform future research on comparative lessons for other judicial and quasi-judicial processes.

Keywords: public inquiry; Inquiries Act 2005; vulnerable witnesses; registered intermediaries; inquisitorial process; best practice; reduced inequalities; reasonable adjustments; peace, justice and strong institutions.

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INTRODUCTION AND THE IMPORTANCE OF LEARNING LESSONS¹

Muckamore Abbey Hospital (MAH) in Northern Ireland provides assessment and treatment for adult patients with a variety of severe learning difficulties, mental health issues and behavioural challenges. The Muckamore Abbey Hospital Inquiry (the Inquiry), chaired by Tom Kark KC, commenced on 11 October 2021. It was established under the Inquiries Act 2005:

to examine the issue of abuse² of patients at Muckamore Abbey Hospital (MAH) and to determine why the abuse happened and the range of circumstances that allowed it to happen. The purpose of the Inquiry is to ensure that such abuse does not occur again at MAH or any other institution in Northern Ireland which provides similar services.³

One of the Inquiry's stated priorities is to support all vulnerable witnesses to give the best account of their evidence possible, thus enabling their voice to be heard and to inform the findings and recommendations of the Inquiry.⁴

This case study offers detailed insight into the key considerations, adjustments made and support provided by the Inquiry when engaging with its vulnerable participants, particularly those with severe learning disabilities, developmental disabilities and mental health needs. This research is designed to provide an evidence base to inform future inquiry teams in their procedural decision-making in both the United Kingdom and in other jurisdictions that adopt a similar inquiry model. It is also intended to provide an evidence base for future academic research on comparative lessons that may be learnt about engaging with vulnerable witnesses within the criminal and civil justice systems and tribunals, and on the broader application of the work of registered intermediaries (RIs).

When a public inquiry is announced, it is common for statements to be made by the convening minister and inquiry chair about the importance of 'putting participants at the heart of the public inquiry process'. Unfortunately, there is no clarity or consensus about what exactly is meant by this in practice and how this might best be

1 We are extremely grateful to members of the inquiry team of the MAH Inquiry; the statement-taking team from Cleaver Fulton Rankin; Professor Penny Cooper and Oliver Wilkinson for sharing their experience, expertise and insight, to enable this case study to be produced.

2 BBC News, 'Muckamore Abbey: CCTV reveals 1,500 crimes at hospital' (*BBC News* 27 August 2019).

3 MAH Inquiry.

4 Tom Kark KC, 'Chair's statement of approach to witness statements' (MAHI 24 November 2021).

achieved.⁵ The chair of a public inquiry has a very broad discretion to determine the procedure and conduct of an inquiry in a way that best fits its scope, subject matter, terms of reference and the needs of its participants.⁶ Every inquiry is different. It is vital to learn lessons from the experience and expertise of those who are running inquiries now, and those who have run public inquiries in the past, to inform the decision-making of those setting up and running inquiries in the future to promote best practice. However, currently, there is no consistent recording and examination of the procedure and conduct adopted by public inquiries. As a result, once an inquiry has fulfilled its terms of reference and is closed down, valuable institutional knowledge of good practice is often lost, and poor practice may be repeated.⁷

Further, the chair of an inquiry also has control over an inquiry's budget that is far beyond the control granted to those overseeing other accountability mechanisms, such as courts and inquests. It is also vital to learn lessons from the experience and expertise of past and current inquiries to inform the cost management of future inquiries and to support future inquiry chairs in fulfilling their obligation to act with regard to avoiding unnecessary cost (to public funds, witnesses, or others).⁸

The very broad discretion an inquiry chair has to determine the procedure and conduct of an inquiry, and their control over the budget of the inquiry, also means a public inquiry is uniquely placed to adopt bespoke, novel and innovative approaches to challenges encountered, to address the needs of vulnerable participants. As a result, important comparative lessons may also be learnt from public inquiry procedure to inform other accountability mechanisms, such as courts and inquests, on engagement with vulnerable witnesses.

Draft Cabinet Office guidance from 2012 requires inquiry secretaries to produce a lessons-learned paper at the end of an inquiry about their experience, in order to share best practice and inform central guidance for future inquiries.⁹ However, despite 25 minister-convened public inquiries having published their final reports since then, with one

5 Emma Ireton, 'Public inquiries: irreconcilable interests and the importance of managing expectations' (2023) 45(3) *Journal of Social Welfare and Family Law* 212–233.

6 Inquiries Act 2005, s 17, for statutory inquiries.

7 House of Lords Select Committee on the Inquiries Act 2005, *The Inquiries Act 2005: Post-legislative Scrutiny* (HL 2013–2014 143) para 155.

8 Inquiries Act 2005, s 17(3).

9 Cabinet Office, 'Draft inquiries guidance: guidance for inquiry chairs, secretaries and sponsor departments' (2012) 43.

exception, these papers have not been produced.¹⁰ There is currently one publication that seeks to address this gap in knowledge by collating lessons learnt from those experienced in setting up and running public inquiries, to provide a practical guide to public inquiry practice (co-written by the lead researcher on this case study).¹¹ This case study is designed to add to that body of knowledge by examining, in detail, the MAH Inquiry's approach to engagement with vulnerable participants in the setting-up and running of the Inquiry.

The Inquiry is a relatively small public inquiry, which focuses on systemic administrative and regulatory failings in a single institution. This has allowed the researchers to explore the Inquiry's decisions and practice, and reflective feedback and communication loops, more intensively, to gain a comprehensive understanding of its approach to engaging with vulnerable participants.

This research adopts a combined 'descriptive' and 'explanatory' case study methodology, focusing on recording the detail of the processes examined, in context, and the considerations behind them.¹² It focuses specifically on Phase 1 of the Inquiry, 'the Patient Experience' phase,¹³ during which evidence was given by patients and former patients of MAH and family members and friends (the Patient Experience Witnesses). At the time the research was carried out, the Inquiry had heard oral evidence from 47 Patient Experience Witnesses. We conducted nine semi-structured elite interviews with a sample of those responsible for setting up and running the Inquiry, including one or more of: the Panel members, Counsel to the Inquiry team (CTI), the Secretariat, the solicitors statement-taking team, academic advisors, and RIs to produce composite data. We reviewed inquiry procedural documents and carried out observations at the inquiry premises.

The first part of the case study looks at the general approach to engagement with vulnerable participants adopted by the Inquiry. The second part looks at the range of adaptations and support measures put in place. The final part looks in greater detail at the Inquiry's approach to gathering evidence from vulnerable witnesses during the statement-taking process and its oral hearings.

10 House of Lords Select Committee on the Inquiries Act (n 7 above) paras 160–164. The situation, currently, remains unchanged since the report was published, though some small interim papers on interim steps have been lodged by the Independent Inquiry into Child Sexual Abuse (IICSA).

11 Isabelle Mitchell, Peter Watkins Jones, Sarah Jones and Emma Ireton, *The Practical Guide to Public Inquiries* (Bloomsbury Publishing 2020).

12 Arya Priya, 'Case study methodology of qualitative research: key attributes and navigating the conundrums in its application' (2020) 70 *Sociological Bulletin* 94–110.

13 Which was in its final stages during the period of research.

THE INQUIRY'S APPROACH TO ENGAGEMENT WITH 'VULNERABLE PARTICIPANTS'

General approach

It has become usual practice for public inquiries to put support in place for witnesses and participants. The nature of the support required depends on the subject matter of the inquiry and the particular needs of the witnesses and participants engaging with it. Vulnerable participants were at the forefront of the MAH Inquiry's considerations when considering its procedure and drafting its protocols. It used the Chair's broad discretion to determine the Inquiry's procedure and conduct to adopt novel approaches to addressing the needs of its vulnerable participants.

Where any public inquiry is convened into a matter of public concern, frequently there are witnesses and participants who are 'vulnerable' in the wider sense of the term, who find giving evidence extremely challenging. The Inquiry adopted a very broad definition of 'vulnerable', beyond that used in the civil and criminal justice systems.¹⁴ It recognised that all patients and family members are potentially vulnerable. MAH patients and former patients with learning disabilities may need extra support to communicate effectively, including support with understanding questions, articulating answers and focusing on the issues that the Inquiry has been convened to address. They are also likely to suffer from enhanced stress when engaging with the Inquiry and, in particular, when giving evidence, which may adversely impact on the evidence given.¹⁵ Many are also dealing with the psychological impact of their experiences of abuse at MAH.

Family members and friends of patients and former patients may also be suffering trauma and distress themselves because of the treatment of their loved ones. It is common for those engaging with a public inquiry to feel they have been failed by, and have lost trust in, those in authority, whom they consider to be responsible for what went wrong. The experience of speaking about their relative's experience, often for the first time, can be extremely stressful. Many family members and friends feel a passionate commitment to speak on behalf of loved ones who are unable, or less able, to speak for themselves and, for many, an inquiry has been the culmination of many years of campaigning

14 See Civil Procedure Rules, PD 1A, paras 3–5, and Youth Justice and Criminal Evidence Act 1999, and, beyond traditional legalistic definitions to incorporate broader social understandings of the concept of vulnerability, see eg Martha Fineman, 'The vulnerable subject: anchoring equality in the human condition' (2008) 20 *Yale Journal of Law and Feminism* 1–23.

15 See Jonathan Doak, Claire McGourlay and Mark Thomas, *Evidence in Context* (Routledge 2015) ch 5 for comparable discussion on vulnerable witnesses engaging with courts.

and waiting to be heard. However, many have never spoken in a public forum before and are faced with speaking in public about incredibly sensitive matters.

A key challenge for a public inquiry is to build trust with vulnerable participants and reassure them that the inquiry is there to hear their account and to make that process as easy for them as possible (whilst maintaining the inquiry's independence). Building and maintaining rapport is essential when gathering evidence and engaging with any witness. This is particularly so where witnesses have learning disabilities because they often also suffer from high social anxiety, low self-esteem, and a lack of assertiveness.¹⁶ Building rapport and trust, and placing adjustments and support in place, are priorities at the core of the Inquiry's approach to engagement with vulnerable participants.

The Chair of the Inquiry was already trained and experienced in engaging with vulnerable witnesses, and special measures had been put in place to help witnesses give their best evidence, in the context of the criminal justice system in England and Wales. He applied and adapted that approach to address the needs of the Inquiry's participants. Inquiry staff were given vulnerable witness training and trauma awareness training, support from RIs, and physical and procedural adjustments were also made. Counsellors were appointed to assist anyone affected by the work of the Inquiry (see below).

The MAH Inquiry is the first public inquiry in Northern Ireland to use RIs in its process. The Inquiry engaged with the Department of Justice to arrange for qualified RIs (professionals with specialist training)¹⁷ to assist witnesses with communication needs to give evidence in court. RIs support witnesses with physical, learning, sensory or other hidden disabilities or mental health needs. In Northern Ireland they are appointed by the Department of Justice and are part of a government-funded RI scheme in the criminal courts, and civil and family courts.¹⁸ (There is also a government-funded scheme in England and Wales, but not in Scotland or the Republic of Ireland.)¹⁹ The cost of engaging the RIs was borne by the Inquiry.

16 Rebecca Milne and Ray Bull, 'Interviewing witnesses with learning disabilities for legal purposes' (2001) 29(3) *British Journal of Learning Disabilities* 93–97.

17 They are required to pass RI accreditation training (master's level). See [Northern Ireland Registered Intermediary Scheme](#).

18 Introduced to criminal courts in 2013 and extended on an interim basis to civil and family proceedings in 2018. See *ibid*.

19 Since 2005, *ibid*. Unlike in Northern Ireland, in England and Wales RIs are not available to suspects and defendants in the criminal justice system under the legislation and this gap is filled by 'unregistered intermediaries'. See John Taggart, "I am not beholden to anyone ... I consider myself to be an officer of the court": a comparison of the intermediary role in England and Wales and Northern Ireland' (2021) 25(2) *International Journal of Evidence and Proof* 141–162.

Vulnerable witness training

The Inquiry's approach to vulnerable witnesses was reflected in, and informed by, the specialist vulnerable witness training it commissioned at the outset.²⁰ The training covered investigatory questioning of vulnerable witnesses, working with RIs, witness familiarisation, and practical adjustments and support. Two fundamental considerations underpinned the training: the concept that all witnesses are potentially vulnerable²¹ and the significance of a public inquiry being an inquisitorial process (in contrast, for example, to the criminal and civil justice systems). The training was based on the Achieving Best Evidence guidance, which is the guidance followed in Northern Ireland, and more widely, for interviewing vulnerable victims and witnesses in the criminal justice system, to enable them to give their best evidence.²² It is, in turn, based on the 'PEACE model' of interviewing, an internationally accepted best practice method of conducting investigative interviews.²³ Those attending the training were also referred to the *Equal Treatment Bench Book*, the Judicial College guide to equal treatment.²⁴

The training was delivered initially to the members of the statement-taking team.²⁵ The focus was on the importance of thorough preparation, building rapport, allowing free narrative, and on adapting the interviewing approach to reflect the individual communication needs and abilities of the witness. The training was subsequently delivered to members of the Panel, CTI team members, and other members of the inquiry team, so that they are aware of the

20 It was provided by Professor Penny Cooper, an academic and former practising barrister, who pioneered witness intermediary training in Northern Ireland, England and Wales, New South Wales, Chile and the Australian Capital Territory, and is the Cofounder and former Chair of the Advocate's Gateway, and Dr Michelle Mattison who is an RI, Chartered Psychologist and Chartered Scientist with the British Psychological Society.

21 See Penny Cooper, 'Defendant vulnerability in the criminal justice system: progress made, lessons learned, and future endeavours' (speech at the Success for the Vulnerable Accused in the Criminal Justice System Conference, Birmingham 13–14 September 2023, unpublished) and see eg Fineman (n 14 above).

22 Department of Justice, 'Achieving best evidence in criminal proceedings: Guidance on interviewing victims and witnesses, the use of special measures, and the provision of pre-trial therapy' (3 January 2012).

23 A method of investigative interviewing developed in the 1990s in the UK in a collaboration between law enforcement practitioners and psychologists.

24 The current version of which is Judicial College, *Equal Treatment Bench Book* (2024), which 'aims to increase awareness and understanding of the different circumstances of people appearing in courts and tribunals. It helps enable effective communication and suggests steps which should increase participation by all parties'.

25 A team of independent solicitors appointed by the Inquiry for this purpose.

process by which the statements have been taken and so they can adopt a consistent approach when engaging with the vulnerable participants.

The training stressed that witnesses with learning disabilities may be more easily swayed by the phrasing of a question and therefore the importance of using non-leading, open-ended questions in the interviews and oral hearings and prompts such as ‘tell me more’, rather than closed questions. This serves to promote inquisitorial evidence-gathering and also to assist those witnesses with limited narrative ability to give as full account as possible in their own words. The Chair has not permitted cross-examination of the Patient Experience Witnesses during hearings. Accordingly, the focus for the training delivered to the Panel and counsel was on a style of questioning much more similar to investigative inquisitorial interviewing than the adversarial testing of evidence in cross-examination (see below).²⁶

The training also addressed working with RIs; for many, it was the first time they had worked with an intermediary. It explained the role of the RI and how they might work collaboratively to support the Inquiry during the statement-taking and the oral hearings stage, including advising on phrasing of questions and on making practical adjustments for the witnesses (see below). The inquiry team members were directed to the toolkits on the Advocate’s Gateway, including toolkits on using communication aids²⁷ and questioning people with autism and learning disabilities.²⁸

It also highlighted practical matters for the Inquiry to consider when determining its procedures and conduct, setting up its premises, and interviewing its witnesses. The training addressed how daunting it can be for a witness who has suffered trauma to attend inquiry premises and be part of the process. It discussed the provision of counselling support and the possibility of using support animals. It addressed decisions on what rooms and accessible facilities would be made available for witnesses at the inquiry premises and how to create the best environment. It stressed the importance of giving the witnesses the opportunity to familiarise themselves with the inquiry set-up before giving evidence and of providing support throughout the process. Further, it emphasised that the needs of individual witnesses may differ significantly.²⁹

It is key to note that adjustments and support for vulnerable participants in a public inquiry may be made at three levels – ‘universal’,

26 In line with the approach of the statement takers.

27 Such as models and timelines.

28 The Advocate’s Gateway, *Toolkit on Communication Aids* (2015).

29 For example, a witness with autism may have a sensory issue around lighting or sound, so a room setting that is suitable for other witnesses may not be right for them.

‘targeted’ and individualised’ adjustments, namely: adjustments that universally benefit vulnerable witnesses; those that are targeted at a specific group in this Inquiry, for example, participants with communication needs; and those adjustments that are targeted at specific needs of an individual. (These have similarities and parallels with the three-tiered support model identified in New Zealand research in the context of responding to neurodiversity in the criminal justice system.)³⁰

Approach to engagement with vulnerable participants
• Adopting a broad definition of ‘vulnerable’ and considering the needs of vulnerable participants from the outset. • Recognising the importance of building trust and rapport with vulnerable participants. • Specialist training for inquiry staff on trauma awareness and vulnerable witnesses. • Use of registered intermediaries. • Provision of counselling support and staff wellbeing sessions.

ADAPTATIONS AND SUPPORT

Putting adaptations and support measures in place to support vulnerable witnesses to give their best evidence, and to support wider participant engagement with the Inquiry, was a key focus of the Inquiry. This section examines the adaptations and support measures put in place by the Inquiry at the three levels: universal, targeted and individualised. Building trust and rapport, and providing clear communication and support throughout, are stated priorities of the approach taken by the inquiry team, which are aimed at reducing anxiety and stress for all participants.

Reaching out to potential participants

One of the first tasks of a public inquiry is to reach out to potential participants to invite them to engage. The Inquiry used media campaigns through radio, television and social media to inform potential Patient Experience Witnesses about the Inquiry and to invite them to ‘engagement events’. However, not all patients and former patients are literate, so the Chair took part in radio interviews and the Inquiry produced radio advertisements to reach out to them. Radios are frequently on in hospitals and thought was given to the time of day

30 Betony Clasby et al, ‘Responding to neurodiversity in the courtroom: a brief evaluation of environmental accommodations to increase procedural fairness’ (2022) 23(3) Criminal Behaviour and Mental Health 197–211.

when those interviews and advertisements were most likely to be heard by patients, for example at mealtimes and during the early evening.

Engagement events were held across the region within days of the Inquiry commencing, to enable inquiry team members to meet and speak with potential witnesses openly and in person.³¹ The inquiry team judged it important to go out to the potential participants, rather than asking them to travel to the Inquiry's premises, to demonstrate the Inquiry's commitment to hearing their evidence and to build trust. At the engagement sessions, the Chair explained when the hearings would take place, what was wanted from witnesses and participants, and why it was important that they come forward. The Inquiry's senior management team all attended and introduced themselves.³² No evidence was discussed; contact details were taken so evidence could be taken later, formally. There was an open question-and-answer session and an informal session for those who did not wish to ask questions in public. Leaflets with key information were distributed, including in easy-read format.³³ Additional engagement sessions were held online for those who could not attend in person.

Venue location and travel

The chair of an inquiry is responsible for choosing a public inquiry's venue. Location was a key consideration for the inquiry. Premises were chosen in Belfast city centre to assist those using public transport, but also with sufficient car parking nearby,³⁴ including free parking for Blue Badge holders.³⁵ Taxis are arranged to the inquiry premises for those who need them; payment is made on account to avoid the need for a patient or former patient to handle money for payment. Passengers are dropped off and met at the door of the Inquiry or, if they are more comfortable being dropped off somewhere else that is familiar to them, members of inquiry staff meet them there and walk them to the inquiry premises. If a witness or participant is particularly frail, has particular mobility issues, or is worried about being seen by the media, staff will go out for them, for example, to collect lunch, so they do not need to leave the premises once they have arrived.

31 In addition to engagement sessions that were held in Belfast, there were two in County Antrim where the hospital is located, one in Coleraine to reach potential participants towards the North Coast, one in Londonderry and one in Newry.

32 The Chair chose to create a senior management team to oversee organisational decision-making for the Inquiry. This was made up of the Chair, the Secretary to the Inquiry, Solicitor to the Inquiry and CTL.

33 See MAHI, 'Easy Read'.

34 On the day a witness gives evidence, two parking spaces are made available for them on site.

35 Because of severe mobility issues: see 'Blue Badge scheme'.

Ongoing engagement with witnesses and participants

As part of providing reassurance, building trust and providing support, the Secretary to the Inquiry and members of the administration team spend significant amounts of time in regular ongoing, open and direct communication with witnesses and with core participants. An inquiry may choose to designate core participant status to a person or organisation that is considered to have a particularly close connection with the Inquiry's work.³⁶ The designation confers benefits, which include greater visibility of the Inquiry's work. It also brings with it responsibilities and the expectation that a core participant will assist and contribute to the work of the Inquiry.³⁷ Not all witnesses to a public inquiry are 'core participants' (and not all core participants are witnesses).

Core participants are updated regularly about the progress of the Inquiry and are provided with a direct telephone number for the Secretary to the Inquiry and the administration team's direct line. They are encouraged to raise any queries with them (such as when the Inquiry is next sitting and how to locate documents and other information on the website). In addition, all Patient Experience Witnesses are given direct telephone numbers and are encouraged to contact team members if they have any queries about giving their evidence or have any additional support needs. The Chair also makes regular statements about the progress of the Inquiry, which are accessible to everyone through the Inquiry's website.

Easy-read documents and input from participants

'Tell it like it is' (TILII) is a project run by the charity Association for Real Change (ARC),³⁸ which supports those with learning disabilities to have their voice heard in matters and issues that affect their lives. The Inquiry approached the charity and ARC agreed, with an existing TILII group made up of professionals and patients and former patients of MAH, and chaired by a patient of MAH, to produce easy-read versions of inquiry documents for witnesses and participants with learning disabilities. Where the Inquiry thinks a document is needed in an easy-read format, the document produced by the Inquiry is sent to ARC, which then produces an easy-read version. ARC then sends it to the TILII group for checking and approval, before it is returned to the Inquiry for distribution and publication.

36 Inquiry Rules 2006, r 5.

37 See Mitchell et al (n 11 above) 100.

38 The ARC is a national charity that supports those with learning disabilities and other needs and service providers. See [website](#) for details.

Easy-read versions of documents, including the terms of reference and the Chair's updates, are published on a tab on the Inquiry's website alongside its other documents (and are also used by the RIs when supporting the witnesses, see below). Coloured lanyards are used to assist witnesses and participants with limited or no literacy to identify the different categories of people present at the Inquiry.

Timings and flexibility

Some vulnerable witnesses and participants have specific individual needs around timings, connected to their disability or health conditions. For example, some find it harder to concentrate or to manage their condition earlier in the day; others find it harder later on in the day. This affects when the Inquiry telephones them or when they are asked to attend the inquiry premises.

The inquiry team discusses individual witnesses' needs with them when preparing the hearing schedule. The fact that full written statements are available to CTI and the Panel prior to the hearings assists the Inquiry in estimating how much time is needed to hear each witness. Time allowances for scheduled hearings are deliberately generous; that serves two purposes. Firstly, it enables sufficient time to be built in for witnesses to take regular breaks, when they are tired or distressed or have other needs such as taking time-specific medication. Secondly, it minimises the chances of overrunning and having to reschedule subsequent hearings. Schedule changes can be particularly stressful for those with learning and developmental disabilities. They are therefore avoided by the Inquiry wherever possible and, accordingly, are very rare.

Some relatives who are witnesses have ongoing caring responsibilities for patients who have been discharged from MAH. Where that prevents them from physically attending the inquiry premises, the Inquiry hears their evidence remotely, using Zoom. One issue (that was drawn to the attention of the Inquiry by witnesses through the use of pre-statement questionnaires) is that, when giving evidence remotely, these witnesses are at home with a vulnerable person, so need to have alternative care arrangements in place while they give evidence, which often has an associated expense. When a Patient Experience Witness gives evidence remotely, a member of the inquiry administration team goes out to the witness to provide technical assistance, so they can focus on giving their evidence, and to administer the oath.

Registered intermediaries

The Chair determined at the outset that the inquiry team would have access to the services of RIs. Their role is to facilitate communication between the Inquiry and vulnerable witnesses, to ensure that witnesses have the opportunity to give evidence that is as complete, accurate and coherent as possible.³⁹ They are impartial and neutral. Their role is not to provide emotional support,⁴⁰ however, their presence may provide additional reassurance for vulnerable witnesses during the process. Significantly, the use of RIs also assists and supports the Inquiry in identifying additional adjustments and measures for witnesses, to address or minimise potential stress and distress from engaging in the process, to avoid retraumatising witnesses.

The support of an RI was available for all Patient Experience Witnesses, including family members. It was recognised that the provision of RI support can be a very sensitive topic and the subject needs to be approached and explored with care and sensitivity. It does not necessarily follow that a person with a learning disability or mental health needs will have communication support needs. All patient and former patient witnesses met with an RI to assess whether such support would be suitable for them and, if so, to undertake an assessment of their specific needs.⁴¹ Some family witnesses showed signs of vulnerability, for example as a result of trauma or literacy issues, and an RI assessment and support was offered but was not always accepted.⁴² Where witnesses have used an RI before, for example when giving a police statement about MAH, and have built a relationship with them, the Inquiry will try and engage the same intermediary.

The RI is given basic information, such as how long a patient was in hospital, and what health condition or learning disability they have, or medication they take, that may affect their communication. They then carry out an independent assessment of their needs. The assessment takes place at the start of the statement-taking meeting, by exploring the witness's ability to cope with different types of question, question structures and complexity of questions or words, and how they might respond to types of questions that are likely to be asked in the hearing. It assesses their ability to listen, process information and then respond, ideally in a logical, coherent and accurate manner.

39 Penny Cooper, 'Tell Me What's Happening 3: Registered Intermediary Survey' (City University 2011).

40 Which is the role of a 'support person', see below.

41 Kark (n 4 above).

42 Though the statements were still taken by the team trained in engaging with vulnerable witnesses.

The assessment is done in the presence of the statement taker and the RI provides them with a verbal report. If it is determined that support would be suitable, the report includes advice on how to conduct the witness interview to ensure that the individual is able to understand the questions that are being asked, and recommendations on matters such as language used, the length of questions, duration of questioning, and any communication aids needed. (A full written report, including any additional recommendations for the oral hearing, is subsequently delivered to the Inquiry.) RIs then sit in during the interview. Once the draft statement is produced, they meet with the witness and the solicitor again, to ensure that it is a true reflection of what the individual wanted to say. If the RI considers it necessary to do so, they also attend the oral hearings when the witness gives their evidence to the Inquiry (see details in part three below: ‘Details of the evidence-gathering process’).

The aim is that the RI’s assessment, report and conversations with the statement takers in advance of the interview, and with counsel in advance of the hearings, means that the RI will not have to intervene much, if at all, during an interview or oral hearing. (The detail of RI support during statement-taking and in the oral hearings is also addressed in part three below).

Legal advisers

Most members of the two Muckamore-related action groups⁴³ were designated as core participants. As the groups had already appointed a legal representative for the members (which was a single firm of solicitors), the Chair designated their existing advisers⁴⁴ as their ‘recognised legal representative’ for the inquiry proceedings.⁴⁵

Not all public inquiry witnesses require legal representation. However, legal advice and assistance was provided to other patients, former patients and family members who were affected by the events at MAH but were not affiliated to one of those groups who were ‘required and justified’ for their engagement with the Inquiry.⁴⁶ This joint representation was provided by an independent firm of solicitors appointed by the Inquiry.⁴⁷ A public inquiry can be a very unfamiliar and potentially daunting process and, for many, trust with ‘those in authority’ had been broken prior to the Inquiry. The additional support

43 Action for Muckamore and the Society of Parents and Friends of Muckamore.

44 Phoenix Law.

45 In the usual way, under Inquiry Rules 2006, r 5.

46 Kark (n 4 above).

47 O’Reilly Stewart Solicitors.

from this team, where justified, is regarded as a reassuring factor for many of the witnesses.⁴⁸

Counselling and other support

The Secretary to the Inquiry worked with victims' and survivors' support groups in Northern Ireland to identify what counselling support should be made available for witnesses. It was decided that a counsellor should be on site every day when a Patient Experience Witness is giving evidence (wearing a yellow lanyard so they can be easily identified). They meet the witnesses when they arrive at the inquiry premises, help put them at their ease and inform them where they will be sitting in the hearing and that they can speak to them at any point. The length of time they spend with a witness depends on the witness's individual needs. All witnesses are also given the option to talk with the counsellor immediately after giving evidence.

Those who work with traumatised people and their accounts of traumatic events are themselves exposed to emotional and, in some cases, traumatic impact. This work is, at times, extremely challenging. It is important that staff carrying out such work are alerted to the type of things they may hear and to potential, and normal, reactions to that, and that support is made available.

The Inquiry makes counselling available to any member of the public attending hearings at the Inquiry premises as well as for inquiry staff, should they want it. Wellbeing sessions are provided for members of staff once a quarter and wellbeing books are available for staff in the inquiry office. Team building is a priority for the Inquiry. During the research interviews, interviewees stressed the importance of the strong and mutually supportive team-working environment that exists within the inquiry team and the open-door policy allowing them, at the end of a difficult day, and without revisiting the details of the subject matter, to be able to talk to colleagues, debrief and support each other.

When the research was conducted, it was too early in the Inquiry's proceedings to identify how the Inquiry will approach ongoing support for vulnerable participants after the Patient Experience Phase is concluded, particularly when resources are then deployed to support and engage with other witnesses. It was also too early to determine how the Inquiry will address the important question of how participants will access ongoing support post-inquiry, when inquiry personnel move on to new roles and funding ends.

48 Note: whether public funding is granted for legal advice is at the discretion of the chair (including for core participants, for whom there is no automatic entitlement to funding). Under s 17 of the Inquiries Act 2005, the chair must have regard to the need to avoid any unnecessary cost to public funds. Each application for legal funding was considered individually.

Summary of adaptations and support

Adaptations and support measures for vulnerable witnesses and participants

- Publicity, to encourage engagement, designed and adapted to the needs of potential participants.
- Engagement events, held locally for potential participants and online.
- Carefully selected location accessible by various modes of transport.
- Transport provided by the inquiry where needed.
- Provision of direct contact details and regular communications between inquiry staff and witnesses and core participants.
- Regular Chair's statements and updates on inquiry progress.
- Personal support from inquiry staff throughout witnesses' attendance at the inquiry premises.
- The use of registered intermediaries.
- Provision of counselling support for witnesses and participants.
- Wellbeing sessions for staff and recognition of the importance of a supportive team working environment.

Targeted and individualised adaptations and support measures

- Payment for travel made on account, to avoid the need to handle money.
- Witnesses met by inquiry staff at a place of their choice to assist in finding the premises.
- Provision of additional practical support to avoid having to leave the inquiry premises on the hearing day.
- The use of easy-read documents.
- The use of coloured lanyards to assist in identifying inquiry staff, members of the media and counsellors.
- Inquiry timetable and hearing schedules taking into account witnesses' needs around timing and flexibility.
- Remote hearings and support with caring responsibilities.

DETAIL OF THE EVIDENCE-GATHERING PROCESS

Statement taking

Instructions and case manual

Witness statements for patients and family members were taken by independent solicitors appointed by the Inquiry, rather than by legal representatives engaged by the witnesses.⁴⁹ (The Chair refused the request of some family members to provide statements to their own legal representatives on the basis that the statement-taking process must be independent of the interests of any specific party.)⁵⁰

This served a number of purposes. Firstly, it meant that the evidence-gathering was inquisitorial rather than adversarial from the outset. Public inquiries are inquisitorial; there are no ‘sides’ or ‘parties’ to a public inquiry.⁵¹ Their role is not to make a determination between opposing viewpoints and positions put forward by opposing parties, but to fulfil the Inquiry’s terms of reference by independently investigating the evidence and by following lines of inquiry where they lead. Having statements taken by independent solicitors appointed by the Inquiry ensured that the statements that were taken focused on the matters set out in the terms of reference and that all the matters of interest to the Inquiry were addressed, minimising any time and cost incurred in following up on matters not addressed.⁵²

Secondly it allowed the Inquiry greater control over the approach to statement-taking. The statements were produced in a consistent format,⁵³ and the Inquiry avoided incurring unnecessary cost associated with engaging with multiple legal representatives.⁵⁴ Thirdly, it enabled the Inquiry to ensure that all statement takers were ‘properly equipped to undertake that task and attuned to the unique sensitivities

49 Cleaver Fulton Rankin.

50 Chair’s Update and Statement in Relation to Statements from Action for Muckamore, Society of Parents and Friends of Muckamore Represented by Phoenix Law, issued on 23 November 2022. Some of those family members gave their statements to members of the Solicitor to the Inquiry team instead.

51 See further discussion on the significance of an inquisitorial rather than adversarial approach in public inquiries in Ireton (n 5 above); and House of Lords Select Committee on the Inquiries Act 2005 (n 7 above) paras 217–215; and JUSTICE, *When Things Go Wrong: The Response of the Justice System* (JUSTICE 2020) paras 3.16 and 5.1.

52 Kark (n 4 above).

53 Ibid.

54 Inquiries Act 2005, s 17(3): ‘the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others)’.

to which the issues in this Inquiry give rise'.⁵⁵ All members of the statement-taking team undertook the training provided by the Inquiry on investigative interviewing and vulnerable witness training.⁵⁶

Before work commenced, the Inquiry told the statement-taking team what questions and themes it wanted addressed⁵⁷ and agreed the statement-taking approach, taking into account the needs of vulnerable witnesses. The Chair, the Solicitor to the Inquiry, and the Secretary to the Inquiry were directly involved in those initial meetings and in subsequent regular update and review meetings. Day-to-day procedural matters and updates were dealt with in meetings between the Solicitor and Secretary to the Inquiry and the statement-taking team.

The statement-taking team produced a 'case manual' setting out the agreed approach and process and included templates for letters for use by all current and future members of the team, to ensure consistency and efficiency. (The team was, at times, scaled up and down to meet the needs of the Inquiry.) The case manual was reviewed and updated over time to reflect changes to process as the Inquiry progressed. Consistency of approach was addressed further by ongoing additional internal training and the holding of weekly statement-taking team meetings.

Arranging the interview

Patent Experience Witnesses are asked to complete a pre-statement questionnaire, which asks for information including: whether they have additional communication needs; wish to be accompanied by another person; are content to be named; have authority to name a patient; have been asked, or have already provided, a statement to the police;⁵⁸ and whether there is anything else that they need the Inquiry to know. They are also given an explanation of the statement-taking process and a non-exhaustive list of themes the statement takers would like to cover, depending on the individual witness. The witnesses' details and

55 Ibid.

56 Further, this was an important factor to ensure compliance with the Memorandum of Understanding entered into with the Police Service of Northern Ireland (PSNI) and the Public Prosecution Service (PPS) (n 58 below).

57 As the statement-taking process is inquisitorial, the statement takers are not strictly confined to only those questions and themes. Guided by the answers given by the witness, they are able to follow that evidence where it leads.

58 There is a criminal investigation running alongside the MAHI, and the Inquiry therefore must ensure that it does nothing that would interfere with that. A *Memorandum of Understanding* has been adopted in consultation with PSNI and the PPS. Witnesses who have already provided a statement to the police are given the option of adopting that statement for the purposes of the Inquiry or providing a different or supplemental statement.

pre-statement questionnaires are passed on to the statement-taking team. Witnesses are then contacted via their stated preferred method of communication – phone, email, or post.

When contacting both patient and family member witnesses, it was found to be necessary for a member of the statement-taking team to first take them back through the questions and answers in the pre-statement form to answer queries, provide further explanation of the inquiry process, address any concerns, and to seek clarification and additional information from the witness. It is a significant stage in the process. Where, for example, the preferred method of communication is by phone, the process of going through the pre-statement questionnaire may take between an hour and an hour-and-a-half. In addition to ensuring that the witness understands the statement-taking process and the Inquiry receives all the information it needs to put adjustments in place, it also allows the witness statement-taking team to start building trust and rapport.

Each Patient Experience Witness decides where they feel most comfortable having the statement-taking meeting. This is often discussed with witnesses when going through their pre-statement questionnaire, including the fact that, although it may seem more convenient to discuss their evidence at home, they may prefer to do so in the lawyers' office to avoid bringing discussion of traumatic events into their home. Conversely, some witnesses may prefer to be interviewed away from the formal environment of the lawyers' offices, in the familiar surroundings and privacy of their home, where support networks are close by. The decision is made prior to any meeting with an RI, but family members, support workers and family liaison officers may provide support in making the decision, which will include consideration of the witness's prior experience of formal processes and any additional vulnerabilities or other issues. More than half of the Patient Experience Witnesses chose to give evidence in the statement-taking solicitors' offices.

The statement-taking process

RI assessment of a witness takes place at the start of the statement-taking meeting. If the RI determines that communication support is suitable for a witness, they attend the statement-taking meeting with them. The Inquiry also offers vulnerable witnesses the opportunity to be accompanied by a 'support person', who is usually a family member, family liaison officer, or close friend.⁵⁹ Their role is to provide emotional support. The number of people who will be in the room during statement-taking is a key consideration for the RI. If a witness

59 It is important to ensure that they are someone with no potential conflict of interest.

attends the statement-taking meeting in the office, it might just be the witness and a single statement taker present. However, on a home visit, statement takers are always accompanied, for example by a social worker or a paralegal, depending on the needs of the particular witness. Some witnesses become agitated by having numerous people in the room. Others, for example, are most comfortable with their support person, support worker, police family liaison officer and RI all present.

The Patient Experience Witnesses have had a range of experiences of the criminal justice system and public health system, and many have a range of associated feelings of vulnerability, distrust and reluctance to provide information. As a result, the statement takers spend time at the beginning of the meeting reassuring the witness and ensuring that everything is explained in terms that are easily understood, to avoid misunderstanding. This includes explaining that an inquisitorial approach will be used rather than an adversarial approach (with which they might be more familiar). The statement takers wear casual, rather than business, dress to help make the process as informal and stress-free as possible. Notes of the meeting are taken by hand, rather than being recorded.

The RI's role during the interview is to ensure that the witness understands the questions they are asked, that they are able to respond coherently and accurately, are not getting confused, and have sufficient breaks to allow them to rest and refocus. They may also recommend the use of communication support aids such as: 'pause cards' for a witness to show when they need a break; 'Post-it' notes, for drawing on and arranging, to clarify the order of events; 'thumbs up thumbs down' cards; stress toys to aid concentration; and pictures or physical models to assist in referring to a particular part of the body.

The aim, by making recommendations to the statement taker and discussing and agreeing in advance how the meeting will be approached, is to minimise the need for any intervention from the RI during the meeting, thereby avoiding interrupting the statement taker and confusing the witness. (Occasional intervention may be needed, for example, if more complex question structures or language use inadvertently slip into questioning, the RI needs to check if the witness has understood what was asked, or to indicate that a witness is becoming tired or distressed and needs a break.)

The length of meetings is guided by the needs of individual witnesses. A meeting with a patient or former patient generally does not exceed an hour-and-a-half and it is common for there to be a series of shorter meetings. By comparison, many family members give their evidence in one or possibly two longer meetings. A balance has to be found between having the fewest possible meetings while ensuring that

the evidence taken is full and accurate. The statement is then drafted and sent either directly to the witness or to their legal representative. There is usually then an exchange of correspondence, via the secure document management system, in order to agree the finalised content and to arrange for signature.

Adaptations and support measures for taking statements from vulnerable witnesses

- Appointment of independent statement-takers trained in investigative interviews, vulnerable witnesses and working with RIs.
- The use of a case manual, template letters, weekly review meetings and ongoing training by the statement-taking team to maintain consistency of the approach prescribed by the inquiry.
- Pre-statement questionnaires for witnesses to identify any specific needs.
- Witnesses' choice of venue for statement-taking meeting and who will be present.
- RI assessments and communication support.
- The use of multiple short meetings, rest breaks and communication support aids.

Familiarisation support in advance of the hearing

The Inquiry produced a 'Hearing Day Explainer Video' to assist those attending the inquiry premises, including the public, media and witnesses.⁶⁰ It enables vulnerable witnesses and participants to visualise what will happen, from when they arrive at the inquiry premises to when they leave. It also allows them to see many of the people they will meet at the Inquiry. The Chair of the Inquiry and CTI introduce themselves in the video and explain their role and the role of the Inquiry. The video also shows all three Panel members and where they sit; where the core participants, lawyers and witnesses sit; and the view from the witnesses' seats.

Patient Experience Witnesses are encouraged to visit the inquiry premises prior to the day of their hearing, on a 'familiarisation visit'.⁶¹ It often takes place exactly one or two weeks before the hearing, on the same day and at the same time as the hearing, so they can practise their timings and travel arrangements. The inquiry team recommends that they come in the clothes they intend to wear on the day of the hearing to make the experience as close as possible to that of the hearing itself. RIs attend with them if they consider it necessary for the witness. (Often, they are accompanied only by their support person.)

They are met at the door of the inquiry premises, as they would be on the hearing day. The Secretary to the Inquiry takes them through the signing-in process, shows them the witness room and hearing

60 See MAHI, 'Hearing Day Explainer Video'.

61 Most took up that opportunity.

room and gives them the opportunity to sit at the witness table. They are shown where the Panel, the legal representatives, stenographer, members of the public and others will sit. Most witnesses, when asked, want members of the administration team to sit at the tables for the Panel, core participants and legal representatives and to stand to tell them who they represent, to give them an idea of how the full room will feel. If any members of the Panel are in the building during the visit, they sit in their usual seat, to give the witness the chance to meet them in advance and give them an idea of the proximity of the Panel.

The witnesses are introduced to counsel. (Where possible, it will be the member of the CTI team who will be doing their questioning on the day of their hearing). The environment of an inquisitorial public inquiry hearing is very different to that of an adversarial court hearing, which is a process with which the witness may well be more familiar and about which they may have negative preconceptions. To reassure the witness, counsel sits at their usual table and has an open conversation with them, for five or ten minutes, to give them a feel for the inquisitorial approach. The witness's evidence is not discussed, instead counsel will ask them about something they have done the weekend before or a hobby, to get them engaged and speaking and to give them experience of the style of questioning and what they will need to do when giving evidence. This can boost their confidence and also gives counsel an opportunity to gauge, in advance, how nervous the witness is about giving evidence and what further adjustments may be required on the day.

On the day of the hearing

Building trust and providing reassurance and support is a priority for the Inquiry. From their arrival at the inquiry premises to when they leave, the patients and family members have someone from the inquiry team with them, to provide support. Offering cups of tea and biscuits is seen as being a key part of the relationship-building process and helpful in putting the witnesses at their ease. Pictures are hung in the witness room, consultation rooms and corridors, including photographs from the local area, pets and wildlife, to make the rooms appear less formal and to spark conversation. The temperature of the rooms is monitored.

Witnesses, and those accompanying them, are greeted at the door of the Inquiry by one of the security team and guided to the witness room by a member of the admin team,⁶² where they are introduced to the Secretary to the Inquiry (who has already been in direct communication, as part of making the arrangements for their attendance). The Secretary to the Inquiry begins by telling the witness

62 They are all aware in advance of who the witness is and any needs and requirements they may have.

that the inquiry team's priority is to help them give their best possible evidence and they are encouraged to let the team know if they need anything from the inquiry team to help them to do so. A general outline of what will happen, where they will sit, and taking the oath or making an affirmation is explained, and any questions the witness has are answered. This is all done slowly, without any rush, to ensure the witness has a clear understanding and is as calm as possible. If they have a legal representative, they will be with them.

The inquiry counsellor also introduces themselves and explains where they will be sitting in the hearing room while the witness gives evidence and that the witness has access to them at all times should they wish to speak to them. The Secretary to the Inquiry remains with the witness throughout, including sitting with them during the hearing and until they leave. Another member of the administration team is also always nearby to respond to any needs that arise, to give regular updates on what is happening, and to relay any information, as necessary.

The member of the CTI team who will be questioning the witness meets them about half an hour before the hearing starts, to help to put them at their ease. They explain again that it will be only them asking the questions (with possibly some additional questions from the Panel). Counsel also reminds them of the inquisitorial approach and reassures the witness that they will not be faced with confrontational questioning. Counsel explains the reason for any use of ciphers. The impersonal nature of the use of ciphers contrasts with the reduced formality of the hearings and use of first names. It is explained that it is done to preserve anonymity and, whilst it might sound very impersonal to refer, for example, to their son or daughter as 'P5', CTI and the Panel will do their best to minimise any resulting discomfort.

Counsel does not discuss the witness's evidence with them but does explain which points in the witness's statement they would like to talk to the witness about during the hearing, to prepare them for the areas of questioning. The RI also spends approximately half an hour before the hearing speaking with counsel, talking through the content of the RI's written report and recommendations. Where a witness requests it, the Chair will often come and meet the witness to give further reassurance.

In the hearing room

Whilst witness familiarisation assists those who attend to give oral evidence, walking into the large inquiry hearing room on the day, with recording equipment and 30 or so lawyers and other people present, taking the oath, taking a seat before the Panel and being prepared to face questions, can be very daunting for witnesses. In an attempt to alleviate some of these challenges, large screens are made available for witnesses who are apprehensive about the number of people in the

room, so that the rows of core participants, lawyers and the public can be blocked from view and the witness can just see the Panel. These have been used relatively frequently. Further, two witnesses were apprehensive about the number of other people in the room but did not like the feeling of being enclosed by the screens, so the hearing room was cleared. All the core participants and legal representatives were put into the other hearing room, where they could follow the live stream. The only people physically in the room with the witness were their family liaison officer, the Solicitor to the Inquiry, one member of the CTI team, the three Panel members, the stenographer, IT staff⁶³ and the witness. One further witness who was apprehensive about the number of people in the room chose to give their evidence from the anonymity room (see below). In this particular instance, their voice could be heard and their face could be seen on screen.

Giving evidence at the hearing

The role of CTI in an inquiry hearing is very different to the role of counsel in adversarial court proceedings. In a court, it is the role of counsel to advise their client, who is a party to the proceedings, on legal issues and to advocate on their behalf. They present their client's case or position to the judge, and test and challenge their opponent's evidence by cross-examination, in order to 'win' the case. A public inquiry is inquisitorial and has no parties. The role of CTI is to review and analyse the evidence in advance of the hearing, question the witnesses on behalf of the inquiry to elicit their best evidence, and assist the chair with legal issues that may arise during the course of the inquiry. The focus of inquisitorial questioning is on clarifying and examining facts; ensuring comprehensive, accurate evidence-gathering and following the evidence where it may lead in order to gather the evidence the inquiry needs. During an inquiry, the role of counsel for witnesses and core participants is to assist the inquiry to fulfil its terms of reference and ensure that their clients' interests are properly represented during the course of the inquiry.⁶⁴

One of the most important advantages of the public inquiry process in terms of engaging with vulnerable witnesses is the flexibility with which counsel may examine witnesses. Counsel is not confined to examination in the form of chief and cross-examination but can adapt their style for each witness, as required. Individual witness may each have very different vulnerabilities. In addition to some witnesses having communication needs, many relatives and friends who give evidence

63 The presence of the IT technicians to one side of the witnesses did not cause any issues (their role having been explained).

64 See Mitchell et al (n 11 above) ch 6.

also find it extremely challenging to talk about the experiences of their loved ones.

A lot of the groundwork for evidence-gathering from the vulnerable witnesses is done during the statement-taking process because it can be much more flexible and can take place over an extended period of time. Witnesses can take breaks, reflect and go back and give further evidence. This provides a thorough starting point for evidence in the oral hearings.

Reading in the statement

One adaptation adopted by the Inquiry is the option to ‘read in’ a witness’s statement and to ask the witness to adopt it, so they do not have to recount everything that they have already told the statement taker. It is intended to make the process easier and less stressful for the witness. It also saves time and associated cost and assists the Inquiry in navigating its obligation to ensure that its process does not interfere with parallel criminal investigations.⁶⁵

The Inquiry adopted this approach for the Patient Experience Witnesses. The length of statements has varied hugely. Most statements are around eight to 10 pages long, but some family members have given statements of up to about 60 to 70 pages. Sometimes the whole statement is read in; other times counsel identifies and reads in only those paragraphs that are directly relevant to the issues being addressed by the Inquiry and reassures the witness that, whilst the other paragraphs are not going to be read into the hearing record, they are available to the Panel, and others, in the form of their written statement. The time taken to read in a statement gives the witnesses time to settle and familiarise themselves with the hearing room. Once a statement is formally read into the record, the witness is directed to specific paragraphs of the statement for clarifying questioning.

Some witnesses are not able to elaborate on the evidence in their statements but still want to attend to give oral evidence, to be involved in the process and have their voice heard (in a potentially much more powerful way than solely in the form of written statement). In such cases, counsel reminds them of what they said in their statement and asks them ‘Is there anything else you want to tell the Panel about that?’, for example about a particular incident, or more generally about conditions in MAH. Other witnesses choose not to give oral evidence but to simply have their statement read into the record. In those cases, the Inquiry notifies them of the date and time when their evidence

⁶⁵ For example, it was used to avoid detailed discussion in the hearing about matters that are subject to ongoing criminal proceedings. That information was not read aloud, but counsel explained to the witness that the Panel and others had that information available, through the written statement.

will be read, so that they can listen online if they wish to do so, feel involved, and know that the Panel has heard their evidence.⁶⁶

A flexible approach is taken. On occasions, witnesses who expect to give detailed evidence, and to whom it is personally very important to speak at the hearing and make their story or that of a loved one known, find on the day that the process is more difficult for them than anticipated and that they are unable to do so. In such cases, Counsel adapts their approach, reads in the statement, and asks very few questions whilst giving the witness the opportunity to add additional information if they are able to do so.

Adaptations to reduce the formality of hearings

A number of adaptations have been adopted to reduce the formality of the interaction between CTI and the Patient Experience Witnesses. Rather than using a lectern, CTI sit at a table by the witness, so they are speaking at the same level, in an attempt to help the witnesses to relax. CTI frequently uses witnesses' first names,⁶⁷ to make the exchange feel as conversational as possible (which requires care, to ensure a witness's evidence does not slip into a 'casual conversation').⁶⁸

A decision was made by the Chair that only CTI would be allowed to ask a witness question during the oral hearings in the Patient Experience Phase unless exceptional circumstances arose; no application was made to do so. That ensures that witnesses are not exposed to multiple questioners and ensures that all those questioning witnesses have received vulnerable witness training and adopt the approach to questioning that is prescribed by the Inquiry.⁶⁹ Core participants can propose questions, in writing, in advance of a hearing.⁷⁰ This is followed by a screening and refinement process by which questions are chosen. Some proposed questions are incorporated into one; not every question proposed will be asked. This gives the Inquiry greater control to ensure that all the questions asked assist it in fulfilling its terms of reference.

66 In this Inquiry, this was used as a way to ensure that all those who wanted to give evidence were able to do so. In other larger inquiries, such as the IICSA, when it is not possible to call all witnesses who wish to give evidence, this has been used to ensure the key points of all relevant witnesses' evidence is heard and read into the record.

67 Though see page 62 below in the section regarding anonymity.

68 Wigs and gowns are not used by counsel for any public inquiry.

69 MAHI, 'Transcript of Hearing of 6 June 2022' 26.

70 About nine days in advance. Note: Inquiry Rules 2006, r 10, permits core participants to apply to the chair for permission to ask questions of a witness in limited circumstances. No such application has been made in this Inquiry to date.

The length of questioning varies significantly between witnesses depending on the extent to which a witness is able to elaborate on the evidence in their statement and on the information sought by the Inquiry. Some witnesses take only an hour and others a full day. The purpose of questioning is to seek clarification, elaboration and additional information from the witness, not for them to repeat the information that is already contained in their statement.

The Chair of the Inquiry does not permit cross examination of the Patient Experience Witnesses. That does not mean that the evidence is simply allowed to go unchallenged; it is important for the Inquiry to test the evidence where necessary. CTI may question witnesses to clarify facts, probe and resolve inconsistencies, and seek additional evidence, but may not engage in questioning aimed at discrediting evidence or undermining the credibility of a witnesses, as occurs during cross-examination in adversarial proceedings. It hears the evidence, additional evidence that challenges it, and responses.

By allowing the Inquiry to depart from some of the norms of adversarial advocacy practice, the inquisitorial approach allows questioning to be done in a less confrontational way, which is particularly important in the context of vulnerable witnesses. It enables those witnesses to give evidence in a way they find more comfortable.⁷¹ The style and nature of questioning is closer to inquisitorial investigative interviewing than adversarial interrogation. The common ‘tell, don’t ask’ approach of adversarial advocacy is not used. Particular care is taken as some vulnerable witnesses can be more easily swayed by the phrasing of a question.⁷² Counsel focuses on directive rather than non-directive open questions, for example ‘How did you feel?’ rather than ‘Were you angry?’ Tag questions are avoided (ie those where a statement is followed by a question such as ‘didn’t you?’).

The role of the RI

Some witnesses are supported by an RI during the oral hearing, where recommended in the RI’s assessment. As is the case for the statement-taking meetings, good preparation in advance of the oral hearings minimises the need for any intervention by the RI during the hearing. CTI and the RI talk through the written report and recommendations prior to the hearing and discuss adjustments and modifications to counsel’s approach to the questioning. The advice and recommendations are aimed at supporting the witness to ensure that they can give their best possible evidence and also to ensure that the witness does not experience any avoidable stress or trauma as a result of participating in the inquiry process.

71 Kark (n 4 above).

72 See above.

It is often agreed in advance how the RI will attract the attention of counsel if an issue is identified, such as raising a hand. In practice, interventions are rare (and often simply the RI looking across towards counsel is sufficient for counsel to register an issue and to, for example, rephrase or reframe a question). The RI's role during the hearing includes ensuring that the pace of questioning is manageable for the witness; gauging how well the witness is able to listen, understand and respond to the questions; where necessary, requesting that words are clarified; indicating when the witness needs a break; and, on occasions, ensuring that the witness is sufficiently supported and prepared so that the witness does not do anything that might disrupt the hearing.

The RI reminds the witness that they do not need to rush and that they should notify the RI (or CTI or the Panel)⁷³ if there is anything they are not sure about. They sit at the witness table beside the witness in order to see the witness's facial expressions and to pick up on subtleties of their body language,⁷⁴ and also sit in the line of sight of the Panel and counsel.⁷⁵ They listen to the questions asked and answers given, while observing the witness throughout.

Anonymising and delay on feed

The Chair determined that all patients and former patients of MAH were to be allocated a cipher, although they can choose to waive that right.⁷⁶ Quite often, family members have been happy to use their own name or first name, and their respective dependent patient's first name. However, there are situations in which that is not appropriate and a system of ciphering is used. There is a delay on the live feed video that is shown in the second inquiry hearing room. If a witness accidentally gives their own name, or the name of another with anonymity, counsel

73 In practice, it is usually the former.

74 It is also important that they do, rather than sitting in the main body of the hearing room, to make it clear that their only role is to provide communication support for the witness and to avoid any misplaced perceptions that they are associated, for example, with one of the legal teams or the inquiry team.

75 This also serves to make the support open and transparent and make it clear to the Panel, and others present, that there is no question of the RI prompting or speaking for the witness. The independence of the RI must be clear and protected during the process.

76 That is, to have their identity protected from disclosure and/or publication during the Inquiry. See MAHI Protocol No 4 Protocol On Redaction, Anonymity and Restriction Order 7 December 2021 and Restriction Order Pursuant to Section 19 of the Inquiries Act 2005 Restriction Order No 2 (Patient Anonymity) 7 December 2021 (varied 16 June 2022). Other persons may apply for anonymity by applying for a restriction order. The PSNI and the PPS also applied for restriction orders to protect against any adverse impact on potential and ongoing criminal investigations and prosecutions in relation to evidence given.

asks to pause the feed for a few seconds, to enable it to be rectified for the purposes of the feed and the transcript, before being restarted.⁷⁷

If a witness chooses to give evidence anonymously, there is an ‘anonymity room’ which is soundproofed, has blinds and voice distortion equipment. The witness can see the inquiry room, but no one in the inquiry room can see the witness. (There is a separate entrance and exit to the inquiry building for those witnesses giving evidence anonymously.) One drawback to the use of the anonymity room that was noted during the semi-structured research interviews is that the Inquiry could not see the reaction and emotions of the witness as they gave evidence, which can be an important consideration as to how the Panel attributes weight to evidence.

Support person

Giving evidence during a hearing can be very stressful for a witness as it is an unfamiliar process and requires them to revisit what may have been extremely stressful experiences. The Inquiry offers vulnerable witnesses the opportunity to be accompanied in the hearing room by a support person, usually a family member or close friend.⁷⁸ Their role is to provide emotional support. Witnesses frequently choose to have a support person present; they sit at an adjacent table with the Secretary to the Inquiry or, at a witness’s request, at the witness table with them.

The support person is not involved in the process other than to provide reassurance and they must remain neutral. Where the support person is also a witness, each gives their evidence one at a time. In a traditional court environment if, for example, both parents of a patient are giving evidence in court, one of them will have had to sit outside while the first gives their evidence. The Inquiry does not have to adopt such strict evidential procedures, since it is not conducting adversarial testing of evidence.

After giving evidence

A witness may find they are distressed after giving evidence. Whilst for many the process of giving evidence and being heard may be cathartic, and may be part of the healing process, it does not of itself complete that healing process. Once the witness leaves the hearing room, they are given the opportunity to speak to a counsellor before they leave. Some choose to, others decide not to. If the RI has any concerns about

77 This is also the case if a witness gives information that could impact adversely on concurrent police investigations and is not in the public domain. (It also provides the chair with the opportunity to grant a restriction order over the information if it is appropriate to do so.)

78 It is important to ensure that they are someone with no potential conflict of interest.

how the witness coped during the hearing, they will tell the counsellor and the Secretary to the Inquiry.

Members of the media may wish to speak to witnesses after giving evidence. There is no live video link to the hearings for the patient experience on the Inquiry's website. It can only be used in the Inquiry's second hearing room (to control how it is used). As a result, members of the media have to come into the inquiry premises to view it. The Inquiry has sought to maintain a positive relationship with the media and has a dedicated media engagement team. There is an agreement with members of the media, who can be identified by their blue lanyards, that they will not approach Patient Experience Witnesses to speak to them. If members of the media are present, the Secretary to the Inquiry informs witnesses of the fact when they arrive at the Inquiry premises and explains that they may wish to speak to the witness after the hearing but that there is no requirement for the witness to do so. The media will only speak to a witness if the Secretary to the Inquiry

Support measures for the hearings
<i>Adaptations and support measures for oral hearings</i> • 'Hearing Day Explainer Video', to allow witnesses and participants to visualise what will happen at the inquiry. • Familiarisation visits. • Practical support from a member of the inquiry team throughout. • Counsellor support available throughout. • Pre-meeting with CTI. • Pictures hung to reduce the formality of the room. • Temperature of inquiry rooms monitored to maintain them at a comfortable level. • No wigs, gowns, or lectern and use of first names. • Anonymity room and separate entrance and exit for those giving evidence anonymously. • Inquisitorial approach to questioning. • Flexible approach to style of witness examination. • Flexible approach to reading in part, or the whole, of a witness statement. • All questioning by CTI; core participants may propose questions. • No cross-examination of Patient Experience Witnesses. • Use of RIs and support persons.
<i>Targeted and individualised measures for oral hearings</i> • Physical screens available to block the witness's view of core participants, lawyers and the public and <i>vice versa</i>. • The option of clearing the hearing room.
<i>Post-hearing</i> • Witnesses have the opportunity to speak with the counsellor. • Agreement with members of the media that they will not approach witnesses. • Thank-you letters sent after the hearing.

has spoken to the witness, the witness has asked to speak to them, and the member of the media has been advised of the fact by the Secretary to the Inquiry. There is a media room for conducting such interviews, which is away from the witness room and consultation rooms. (The media is not allowed into that section of the building).⁷⁹

After giving evidence at the hearing, the Secretary to the Inquiry sends each witness a thank-you letter. That serves two purposes. Firstly it provides an opportunity for the Inquiry to show it has heard the witness and demonstrate its recognition and appreciation of the importance of them attending to give evidence. Secondly, it explains that the Inquiry might need to hear from them again in the future, to gently make them aware that that might not be the end of their involvement.

CONCLUSION

Pledges to ‘put the needs of participants at the heart of the process’ are often made by ministers and inquiry chairs following the announcement of a public inquiry, but exactly what is meant by this is unclear. This case study demonstrates the practical adjustments and support measures the MAH Inquiry put in place to put the needs of its vulnerable witnesses and participants at the heart of its process; to support them to give their best, most accurate and complete evidence; to enable their voices to be heard; and for them to inform the findings and recommendations of the Inquiry.

The broad discretion of the Chair under section 17 of the Inquiries Act 2005, to determine the procedure and conduct of the Inquiry, and the Chair’s direct control over the Inquiry’s budget, enabled the Inquiry to adopt a bespoke and novel approach, to respond to the challenges faced by the Inquiry and its participants. Examining this approach enables lessons to be learnt, to inform future chairs and inquiry teams in their procedural decision-making and also to draw comparative lessons for other judicial and quasi-judicial processes about engaging with vulnerable witnesses and participants.

The Inquiry’s adjustments and support measures can be seen to operate at three levels: universal, targeted, and individualised adjustments and measures. The universal adjustments and measures adopt a broad definition of ‘vulnerable’, recognising that all witnesses and participants to the Inquiry are potentially vulnerable. They recognise the importance of building trust and rapport, of providing clear channels of communication and strong support mechanisms throughout, and are used to reduce the formality of the Inquiry’s hearings and to adapt its questioning style.

⁷⁹ Many witnesses do not wish to speak to members of the media.

The Inquiry's targeted adjustments and measures were put in place to address the specific needs of witnesses and participants with communication needs. Importing aspects of special measures from the justice system, particularly the integrated use of RIs, is innovative in the context of the public inquiry process. The provision of practical support, such as the use of easy-read materials, travel assistance, and being accompanied and supported by a member of the inquiry team throughout attendance at the Inquiry, helped vulnerable witnesses to give their best evidence and have their voice heard. Further, the Inquiry's flexible and responsive approach to its procedure and conduct enabled it to adopt individualised adjustments and measures to respond more specifically to the wide range of individual needs presented, such as individual adjustments to timings and limiting who may be present in the hearing room.

Because all public inquiries address serious matters of public concern, it is very common for witnesses and participants of any public inquiry to be vulnerable in the broader sense. The nature of the vulnerability, and the adjustments and support measures required for any specific inquiry, will vary according to its subject matter and the participants engaging with it. However, when determining the procedures and conduct of a public inquiry at a universal level, the starting point for all public inquiries should be considering the extent to which adjustments and support should be put in place for any vulnerable witnesses and participants, and whether additional targeted and individualised adjustments may also be necessary. All public inquiries should also consider, relatively early on, how they will approach ongoing support for vulnerable participants when the phase or module to which they have contributed comes to an end and resources are redeployed to support and engage with new categories of witnesses, as well as how vulnerable participants will access ongoing support once the inquiry comes to an end.

Costly and inefficient reinvention of the wheel each time a new public inquiry is convened must be avoided.⁸⁰ Lessons on procedural best practice must not be lost and poor practice must not, inadvertently, be repeated. There is therefore an ongoing need for greater reflection and learning on public inquiry procedure and for the recording and examination of the procedure and conduct of all public inquiries to inform future inquiries, to deliver ongoing improvement and to draw comparative lessons to inform other accountability mechanisms.

80 See the chair's obligation to act with regard to avoiding unnecessary cost: Inquiries Act 2005, s 17.