

# BRISTOL ROYAL INFIRMARY INQUIRY

## EXPERT GROUP

### **Introduction**

The BRI Inquiry Panel, as was announced by the Chairman, Professor Ian Kennedy, at the Inquiry's Preliminary Hearing in October 1998, is setting up a single Expert Group to inform and support the Inquiry. Individuals who are members of the Expert Group will be the Inquiry's experts rather than experts for any individual or organisation which has an interest in the Inquiry's work.

Only Counsel to the Inquiry will be able to call experts to give evidence to the Inquiry.

### **A single Expert Group**

The aim of this approach to the use of expert evidence in a public inquiry is to move away from the model used in trials, where expert evidence is presented in an adversarial setting. As experts to the Inquiry, those invited will be asked to give their opinion in the wider public interest, (indeed it will be published), rather than in support of the case of one side or another. As Professor Kennedy has made clear, there are no sides; there is no case. The Inquiry is there to inquire. The Chairman is also mindful of the relative scarcity of expertise in a number of areas of interest to the Inquiry. Thus, he wishes to gain the greatest benefit for the Inquiry by harnessing that expertise within one Expert Group.

### **How experts will assist the Inquiry**

Experts may be asked to assist the Inquiry in up to three ways, but involvement will be at the expert's convenience and depend on availability by providing (i) written opinions which will be the norm; (ii) by attending oral hearings to give evidence in person, and/or to be in attendance when another witness is appearing; (iii) by providing information and background to Counsel and Solicitor to the Inquiry. The extent to which any one expert actually assists in all three ways will depend on the area of expertise, the role that area of expertise may play in the Inquiry, and an individual's availability.

Although experts' principle obligation will be to serve the Inquiry direct, we should be grateful if experts could make themselves available, at their convenience, to give occasional seminars to the two groups whose costs are being met at public expense. Other organisations with a direct interest in the Inquiry may also seek advice from individuals on the Expert Group. All such requests for access to the Expert Group will need to be made through the Inquiry Secretariat.

The Inquiry recognises that membership of the Expert Group may involve a considerable commitment; to lighten the load on any one individual, a number of experts will be invited to serve in each area of expertise.

The following notes explain in more detail what is entailed by involvement in the Expert Group.

#### WRITTEN OPINION

- 1) Expert witnesses will be asked, in response to invitations from the Inquiry, to provide written opinions as follows:
  - (a) one, or possibly, a number of statements covering those aspects of the Inquiry on which he /she is qualified to comment;
  - (b) comments upon the formal written statements and/or oral evidence of other witnesses.
2. Where an expert comments in a way which the Inquiry considers critical in a relevant respect upon the formal written statement or oral evidence of a witness, those comments will be sent to that witness, and also to those other participants who, in the Inquiry's view, have a particular interest in that witness's evidence.
3. Experts appointed to the Expert Group should understand that opinions given under (a) and (b) above will be part of the Inquiry material. They will be made public by the Inquiry, and published on the Inquiry's website, at a convenient date and time.
4. Where appropriate, the membership of the Expert Group will take account of schools of thought or differences in opinion within any particular area of expertise. Although the Inquiry will not necessarily hear orally from each expert where views differ, it will seek, in taking advice and evidence, to reflect fairly any divergence of opinion and, where it is important, to explore it.

## ATTENDANCE AT ORAL HEARINGS

5. Experts will not normally be called to give oral evidence at the public hearings. They may be called, however, when there is some dispute as to the facts to which their expert opinion relates. In this case, the expert will be called as soon as possible after the witness, to whose evidence his/her expert opinion relates, has been heard.
  
6. Further, if Counsel to the Inquiry or the Inquiry Panel considers it would be helpful to the Inquiry to have an expert in attendance at the time that a witness gives oral evidence, the expert will be invited to:
  - a) attend;
  
  - b) raise, by way of comment (during the course of the evidence) any matter which is within his/her expertise and which he/she feels would be useful for the Inquiry to consider.
  
  - c) respond to specific requests made to him or her by Counsel or the Inquiry Panel during the course of the witness's evidence, with a view to enabling an informed consideration or discussion of the evidence being proffered by that witness.
  
7. Further, an expert may be asked to give evidence at a time which is convenient both to him/ her and to the Inquiry either:
  - a) to interpret evidence, or
  
  - b) where the substance of what the expert has to say may be controversial.

This may be either as a sole witness or as part of a discussion to which two or three experts who apparently hold differing views will be invited to contribute. In the latter case, each will give evidence at the same time moderated, as it were, by Counsel, thus permitting an open, panel-type discussion amongst the relevant experts, focused and facilitated by Counsel.

8. It follows that an expert, accepting an invitation to belong to the Expert Group, must agree, if necessary, to give evidence not only as a single witness, but also, if appropriate, as one of a small number of experts giving evidence at the same time.

#### **BACKGROUND INFORMATION TO COUNSEL AND SOLICITOR TO THE INQUIRY**

9. The purpose of providing such information to Counsel and Solicitor to the Inquiry is to help the Inquiry's Legal team to understand and appreciate technical issues and detail of experts' reports with a view to their serving the Inquiry more effectively.
10. Any such briefing is likely to be sought on an ad hoc basis, and will respect the convenience of the expert, both in terms of the matter of such briefing (eg telephone conversation, video link, actual meeting etc), and its timing. Every effort will be made to arrange any meeting at a place and at a time convenient to the expert.

#### **BACKGROUND SEMINARS TO GROUPS RECEIVING PUBLIC FUNDING TO ENABLE PARTICIPATION IN THE INQUIRY**

11. The Secretary of State, in agreeing funding for the Bristol Heart Children Action Group (BHCAG) and the Surgeons' Support Group, granted each group a small sum to help meet the costs of seminars from experts. The aim is to ensure that members of these Groups are better able to follow and comment on the Inquiry's proceedings. The protocol for such seminars will emphasise:
  - a) the purpose of any seminar is intended to be informative rather than partisan;
  - b) the timing of the seminar, if requested, will be such as to suit the convenience of both those requesting the seminar and the expert concerned;
  - c) arrangements for the seminar are to be made through the Inquiry Secretariat, and not directly between members of the funded group and the relevant expert;
  - d) the expert will be expected not to, (and must not) comment upon his or her view of any individual who may be asked to give evidence to the Inquiry.

## **BACKGROUND ADVICE TO OTHER ORGANISATIONS**

Experts may also be asked occasionally, via the Inquiry Secretariat, to provide advice or explanations to other organisations with a direct interest in the Inquiry. A protocol will also be established for these contacts.

## **APPOINTMENT OF EXPERTS**

Appointment of experts to the Expert Group will be by invitation only. The Inquiry has sought (and will continue to seek) advice from experts as to those others whose expertise is well recognised, with a view to ensuring that the Expert Group:

- a) as sufficient numerical strength to ensure that the demands outlined above may be met with minimum inconvenience to any one individual;
- b) covers any principal differences of view or of emphasis within any given specialty;
- c) is broadly based (both geographically and otherwise).

The Chairman will always be happy to listen to any suggestions for additions to the Group where it is considered that this will strengthen the ability of the Expert Group to be of assistance to the Inquiry, and similarly to any offers of assistance from any individual who has expertise to offer.

It is not a disqualification for any given individual to be, or to have been, involved in litigation concerning any child treated at the Bristol hospitals between 1984 and 1995, nor for that individual to have been involved in the hearings conducted by the General Medical Council (GMC) which related to the care at Bristol of patients suffering from congenital heart problems, but any expert so involved will be expected to disclose his or her involvement. No expert will be asked to volunteer any confidential information which s/he may have obtained in acting in litigation or in relation to the GMC hearing.

Similarly, any expert who shares membership of any club or society to which (so far as s/he knows), a witness or potential witness belongs, will be expected to disclose that fact.

The Expert Group will include experts in the following areas of expertise:

Paediatric Cardiology

Paediatric Cardiac Surgery

Paediatric Cardiac Anaesthesia and Intensive Care  
Paediatric Pathology  
General Paediatrics  
Nursing: General Paediatrics  
Nursing: Paediatric Intensive Care  
Medical education and training  
Medical and clinical audit  
Regulation of the medical profession  
NHS Finance in the 1980s and 1990s  
NHS Management in the 1980s and 1990s  
- including the impact of the NHS reforms  
Human Factors and Risk Management  
Statistics and Epidemiology

BRI INQUIRY SECRETARIAT

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