

CLARIFICATION OF RE-EXAMINATION OF WITNESSES
Professor Ian Kennedy, Inquiry Chairman.
18th March 1999

On Wednesday 17th March 1999, Mr Lissack QC invited me to clarify what the Inquiry expected in terms of re-examination of witnesses. I am happy to provide, below, the clarification which Mr Lissack QC sought.

At the opening of the Inquiry last autumn I said that

"The witness will be questioned by Counsel to the Inquiry whose job, as I said, is to ensure all the evidence is before the Inquiry and all the facts are investigated thoroughly. This questioning will be supplemented by questions from me and from members of the Panel. At the end of this questioning, the witness's legal representative will have an opportunity to put questions to the witness by way of re-examination. The purpose of this is to clarify any area which the legal representative feels may have been left unclear and to enable the legal representative to ensure that the witness has given a proper account of him or herself." (emphasis added)

I also emphasised that after a witness had given evidence, there would be an opportunity for a short submission to be made the following day on that witness's behalf. I made plain that, save in exceptional circumstances, submissions will be expected to be committed to writing. That remains our expectation. All that I said at the opening of the Inquiry remains good.

I hope that, in the opening statement and since we started taking oral evidence this week, I have made clear the general position, namely that anything that reasonably can be expressed in the formal written statement, or, if that is not possible, can be channelled through Counsel to the Inquiry, should be. Therefore, where a matter has arisen since a witness statement was submitted which, had it arisen beforehand, the witness would have dealt with in that statement, then the Inquiry expects that a short supplemental statement, dealing only with the new point, will be submitted as soon as possible. Where the witness is to be called to give oral evidence, the supplemental statement should, if at all possible, be submitted before the witness gives oral evidence. In the rare circumstances when this is genuinely not possible, the representatives of the witness should indicate to Counsel to the Inquiry that a fresh point has arisen, and invite Counsel to the Inquiry to lead the relevant evidence from the witness orally.

What we do not expect is that a witness will be questioned by Counsel to the Inquiry and the Panel and only then be asked to deal, for the first time, with a fresh point not previously raised in the witness's evidence. For one thing, no-one would have been in a position to consider whether the fresh point should be accepted or could be rebutted or commented upon. Those who have already commented on the witness statement are generally entitled to expect that they have seen the essentials of the intended evidence. The Inquiry recognises that there may be exceptional circumstances demanding a departure from the procedure I have set out. If such circumstances were to arise, the Panel will require to be persuaded that it would be helpful for the fresh point to be raised orally at that stage. In particular, the Inquiry will need to be persuaded that the point is not one that can be dealt with by a short written statement submitted on the following day, in accordance with the procedure I outlined at the opening of the Inquiry and to which I refer above.

It is important for the Inquiry to progress efficiently and effectively. There is a risk that it might not do so if re-examination is to be free-ranging. There is much to do. The Inquiry is determined to adopt fair but also expeditious procedures. I appreciate that the Inquiry's procedures differ from those of the courtroom; but we are not a court.

I hope that that clarifies the situation.

Ian Kennedy