

PROCEDURE TO BE FOLLOWED IN MAKING AN APPLICATION FOR CROSS EXAMINATION

1. The Inquiry has indicated that participants in the Inquiry have the right to apply to cross examine a witness who gives oral evidence.
2. This note provides a procedure which will normally be followed when such applications are made.
3. Applications should be made through legal representatives where the participant making the application is legally represented.
4. The Inquiry will expect such applications to be made orally, after the witness has been examined by Counsel to the Inquiry and after any questions have been put by the Panel and, where appropriate, by the witness's representative in re-examination.
5. The person making the application (hereafter "the Applicant") will first indicate to Counsel to the Inquiry that they wish to apply for permission from the Panel to cross examine the witness.
6. Counsel to the Inquiry will, after the witness has given evidence as set out in paragraph 4 above, indicate to the Panel that an application for permission to cross examine is to be made.
7. The Panel will ask the witness whether he or she wishes to be present while the application is made. If the witness expresses a desire to be present, the Panel will ask the Applicant whether there is any objection to this course. If not, the application will proceed (see below). If there is such an objection, Inquiry will expect to accede to the witness's wish, unless the Applicant demonstrates exceptional reasons which justify the exclusion of the witness (subject to paragraph 8 below).
8. The witness's legal representatives will, in any event, have the right to be present during the making of the application, as will the witness, notwithstanding paragraph 7 above, if he or she is not legally represented.
9. The Applicant should succinctly and clearly:
 - a. explain in outline the areas of evidence which the Applicant desires to explore in cross examination;
 - b. say why it would be helpful to the Inquiry for this to be done orally;
 - c. why it might potentially be unfair to the Applicant to leave evidence unchallenged
 - d. explain whether or not the Applicant has previously indicated to Counsel to the Inquiry that the Applicant would like questions to be put pertaining to those areas;
 - e. explain why, if the answer to (d) is no, that should have been the case;
 - f. explain why, if the answer to (d) is yes, the Applicant considers that the areas of evidence have not adequately been explored

by Counsel to the Inquiry and or the Panel in their questioning of the witness.

10. After the application has been made, the witness's representative or, where he or she has no representative, the witness him or herself will have the right to reply to the application. The reply should be made orally as soon as practicable after the application has been made.
11. Once the witness or the witness's representative, as the case may be, has replied to the application or indicates that no reply is desired, Counsel to the Inquiry will be asked to address the Panel in respect of the application. Counsel to the Inquiry will be expected to be brief.
12. The Applicant will be given the final right of reply, addressing only those points made pursuant to paragraphs 10 and or 11 above rather than rehearsing the original application. The Panel will normally withdraw from the Hearing Chamber to consider its decision as to whether or not to grant permission to cross examine.
13. The Panel will have regard to the requirements of fairness, to whether there is a need to resolve otherwise intractable disputes of fact to assist the Panel in fulfilling its terms of reference, and to all the circumstances of each application including those matters set out in paragraph 9 above.
14. Whenever practicable, the Panel's decision will be given orally after a short adjournment. Where fuller deliberation is required, the Inquiry may adjourn overnight or may, exceptionally, proceed with the next witness pending consideration of the application for permission to cross examine.
15. When permission is given, and where the timetable allows, cross examination will proceed as soon as permission has been given.
16. In any case where permission has been given, questioning in cross examination will be confined to those areas outlined in paragraph 9(a) above. The duration of the questioning may be limited by the Panel, depending on the circumstances. The witness's own representative will have an opportunity to re-examine in relation to matters raised in cross examination. The Panel may ask questions of the witness at any time.