

**High Court, Glasgow  
Lord Gill**

# **Preliminary Hearing**

*in*

## **ICL Public Inquiry**

*before*

### **The Right Honourable Lord Gill**

*on*

Monday, 25th February 2008

Appearing:

Mr Roy Martin, QC, with Mr K McBrearty, Advocate, instructed by the Solicitor to the Inquiry Ms Jillian Glass.

Miss A Anwar, instructed by Messrs Maclay Murray & Spens.

Mr P McBride, QC, instructed by Messrs HBM Sayers.

Mrs V Stacey, QC, instructed by Messrs Dundas & Wilson.

Mr T Stocker, instructed by Messrs Pinsent Masons.

Mr P Gray, QC, instructed by Messrs Simpson & Marwick.

Mr N Ellis, QC, with Mr D Sheldon, Advocate, jointly instructed by Messrs DLA Piper & Messrs Burness.

Mr C MacAulay, QC, with Mr Lloyd, Advocate & Mr Lamont, Advocate, instructed jointly by Messrs Thompsons & Messrs Levy & McRae.

Mr Jones, Advocate, instructed by Messrs Brechin Tindal & Oatts.

Mr J Carruthers, Advocate, instructed by Messrs Austin Lafferty.

**VERBATIM *reporters***

9 Coates Crescent, Edinburgh, EH3 7AL

Telephone: 0131 226 6644

MONDAY, 25TH FEBRUARY 2008

LORD GILL: Before I begin to deal with the arrangements for the Inquiry so far as those are fixed, could I begin by asking those who are in attendance to identify themselves and those whom they represent. Mr Martin?

MR MARTIN: I appear as Counsel for the Inquiry along with my learned junior Mr McBrearty, instructed by the Solicitor to the Inquiry Ms Jillian Glass.

MISS ANWAR: I appear on behalf of Marsh UK.

LORD GILL: Which firm are you with?

MISS ANWAR: Maclay Murray & Spens.

MR MCBRIDE: I am instructed to represent ICL (Tech) Ltd and ICL Plastics Ltd, instructed by HBM Sayers, Glasgow.

MRS STACEY: I appear on behalf of the Health & Safety Executive instructed by Messrs Dundas & Wilson.

MR STOCKER: Mr Stocker from Pinsent Masons, I appear on behalf of Alan Tyldesley, a former HSE Inspector.

MR GRAY: I appear on behalf of Johnston Oils Ltd, instructed by Simpson & Marwick, Solicitors.

MR ELLIS: I appear with my learned friend Mr D Sheldon for Calor Gas Ltd and we are instructed jointly by DLA Piper and Burness Solicitors.

MR MACAULAY: I appear with Mr P Lloyd and Mr G Lamont on behalf of the families of some who died in the disaster and also on behalf of 16 survivors my Lord. I am instructed jointly by Thompsons and Levy & McRae.

LORD GILL: Have you got a list of your clients Mr MacAulay?

MR MACAULAY: Yes, I have a list.

LORD GILL: May I have it please?

MR MACAULAY: Indeed.

LORD GILL: These families represent seven persons who perished in the disaster?

MR MACAULAY: That is so my Lord.

LORD GILL: And 16 survivors?

MR MACAULAY: Yes my Lord.

LORD GILL: Now how many of these survivors were on the premises and how many were not?

MR MACAULAY: Well, my understanding my Lord is that, subject to number two on the list Mrs Elizabeth Logie who was a lady in the street, the others were employed in the premises, yes, my Lord it has been drawn to my attention that the fifth on the list, Mr Friel and Miss Broadley

were also not on the premises but were in the area at the time of the disaster.

LORD GILL: So that will be 13 employees then?

MR MACAULAY: So that would make it 13.

LORD GILL: And three passers by. Thank you.

MR JONES: My name is Mr Jones, I am instructed by Brechin Tindal & Oatts. I have already tendered to his Lordship's Secretary a list of the 12 serving and former Health & Safety Inspectors whom I represent.

LORD GILL: Which of these are serving HSE Inspectors?

MR JONES: To my knowledge Mr Cruiseland the third name of the list is serving, Mr Bowie is serving, as presently advised Mr McNab is serving, Mr Adam is serving as are Annette Leppla and Michelle Gillies, yes, Mr Dodd, Mr Eric Pirie, the penultimate name on the list. I can prepare a more detailed list and have that submitted if that's of assistance to your Lordship, giving perhaps the dates on which any individuals who ceased to serve...

LORD GILL: I need that information, thank you. Anyone else?

MR CARRUTHERS: My name is Carruthers, I represent 13 of the survivors. I have provided your Lordship with a list, your Lordship's Clerk with a list of the names of those survivors. I am instructed by Austin Lafferty, Solicitors.

LORD GILL: How many of these were employed on the premises?

MR CARRUTHERS: All 13 my Lord.

LORD GILL: Thank you. Anyone else seeking to take part in this, no. Perhaps I could just indicate to everyone present, the personnel and the secretariat of the Inquiry. The Solicitor to the Inquiry who is on secondment from the Treasury Solicitors Office in London is Ms Jillian Glass. The Deputy Solicitor to the Inquiry from the Office of the Solicitor to the Scottish Executive is Miss Kathryn McCartney and the Secretary to the Inquiry who will be responsible for administration is Miss Jane Dalgleish. The Clerk to the Inquiry is Mr Eric Cumming and he will be responsible for the day to day arrangements and the running of the Inquiry and liaising with witnesses and with the families and so on. It may be that further administrative support will be added in due course.

The appointment of an Assessor to the Inquiry is a matter that is under consideration at the moment.

The Office of the Inquiry Secretariat will be in Lothian Chambers in Edinburgh and contact details for them will be provided within the next few days.

The Inquiry website will be an important means of communication but anyone who has an interest in this Inquiry who is without web access should please ensure that Mr Cumming has his contact details. The website is in the course of being set up and it should be operational as of today, but will not be quite fully functional for a little while.

I propose to hold the Inquiry in Glasgow and I understand that the Scottish Ministers have identified a possible venue and their decision on that matter will be announced in a few days time. Once the venue is established and set up then the administration of the Inquiry at the venue will be in the immediate responsibility of Mr Cumming and he should be regarded as the primary form of contact.

It may be helpful to those present if I remind everyone that this Inquiry is being held under the Inquiries Act of 2005 and it has been determined that this is a Joint Inquiry and designated as such under Section 32 and the Inquiry will be conducted in accordance with the Inquiries (Scotland) Rules of 2007.

I would emphasise that the nature of the procedure in this Inquiry is inquisitorial and not adversarial and as an aspect of that Section 17 provides that the procedure will

be such as the Chairman may direct. The 2005 Act and the 2007 Regulations of course are based on a radical new approach to the conduct of Public Inquiries. I would also emphasise that this is not a Fatal Accident Inquiry and will not be conducted as such.

It is also outwith the remit of the Inquiry to make any determination of civil liability and my understanding is that all matters of criminal liability have now been dealt with.

My appointment is dated 21st January and that has also been designated as the statutory setting up date of the Inquiry under Section 5 of the 2005 Act.

Now with those general matters perhaps we could just consider for a moment the question of core participation. Under Rule 4 of the Inquiry Rules I am prepared to entertain applications from persons who seek the status of core participant. I will receive these applications in writing. These applications should set out the grounds under Rule 4.2 on which the applicant relies; the reasons why the applicant claims to qualify for core participant status; the relationship of the applicant's interest in the Inquiry to the Terms of Reference that I have been given and a specification of the issues on which the applicant seeks to participate in the Inquiry.

I should point out to individuals who may wish to be core participants that they need not be represented by Lawyers and whether represented or not, until a determination has been made under Rule 4 after consideration of the

applications for core participant status, no question of funding can arise under Section 40.

Alternatively if any individual wishes to submit a representation to the Inquiry on a matter that may fall within the Terms of Reference I will receive and consider that representation.

The Inquiry may also request the evidence of individual persons under Rule 8 and as a result of that provision such an individual may be eligible for an award under Section 40.

The status of core participant may be granted in respect of the entire duration of the Inquiry but it may be restricted to something less than the entire duration of the Inquiry at my discretion in terms of Rule 4.3

To those relatives and the families and the survivors, if any of you wish to make representations to the Inquiry but do not wish to be represented by a Lawyer then the Inquiry Secretariat are here to help you and will give you every possible help.

I think that probably leads on to the question of funding. Section 40, sub-section 4 entitles the Ministers to make the power of the Chairman to make an award under Section 40, subject to such conditions or qualifications as the Ministers may determine and notify to the Chairman. On the 21st of February the Secretary of State and the Scottish Ministers

issued a Notice of Determination under Section 40 which sets out the qualifications and conditions that are to be applied in respect of any award that may be made. That determination will be posted to the Inquiry website I hope today, but if not today certainly tomorrow.

In addition to that for the purposes of determining the sums to be awarded under Section 40 an expenses protocol will be drawn up and will be posted on the website. The fees indicated in the Notice of Determination are the maximum that will be allowed by the decision of the Ministers. They are not necessarily the amounts that will be awarded under Section 40 when the time comes. Relevant to the question are the provisions of Section 17 which relate to the need to control unnecessary costs.

The next question which I would invite comments on is in relation to legal representation. Rule 6, sub-rule 2 provides that if there are two or more core participants, each of whom seeks to be legally represented the Chairman of the Inquiry may require them to be represented by a single recognised legal representation and if such core participants fail to agree on the single representation it will be for the Chairman to approve a single Lawyer who in the opinion of the Chairman has sufficient knowledge and experience to act in that capacity. My reading of Rule 6 suggests that that could be a Lawyer not hitherto involved in this matter.

Can I just come on now for a moment to mention the provisional arrangements. I am minded to hold the Inquiry in two stages. In stage one I would propose to deal with the circumstances leading up to the disaster and the safety and related issues that arise from that, including the regulation of the activities at Grovepark Mills.

In stage two I am minded to consider the recommendations that might be made to Ministers in the light of the lessons that are identified from the causation and the circumstances that led up to the disaster.

It may help if I indicate in general terms what my approach to the Inquiry will be. I intend to receive all relevant information in written form according to a timetable to be fixed. Rule 8 entitles me to request written statements of evidence. In relation to those who give oral evidence I shall require legal representatives who wish to examine the witnesses to apply to do so in writing in advance specifying what interest they have in doing so and what topics they wish to deal with. That application should comply with the requirements of Rule 9. Protocols for the reception of witness statements and the like and for the assessment of awards of costs will be published in due course on the website.

Now just a word or two about documents if I may. The Inquiry invites anyone who holds documents which are relevant to the Terms of Reference to supply these

documents to the Inquiry. A specific request will be made to persons who are likely to hold such documents as soon as is practicable. Those in possession of relevant documents should contact the Inquiry so that the necessary arrangements can be made to uplift them. After consideration of the information received further such requests for documents may follow.

If anyone supplying documents or information to the Inquiry considers that any document or item of information should be treated as confidential they should inform the Solicitor to the Inquiry of the reasons for this view when the document or the information is provided and I will consider each representation on its merits.

This is a Public Inquiry and we will aim to be as open and as transparent as possible. Accordingly unless otherwise agreed, documents and information supplied to the Inquiry, where relevant, are likely to become public at some stage of the Inquiry process. Such documents and information will only be used for the purposes of the Inquiry itself. The Inquiry will seek to ensure that private matters of which it is informed and which are not relevant to its work will not be published. I will make decisions about whether, when and in what form documents and information supplied to the Inquiry should be disclosed, whether to participants in the Inquiry or, more broadly taking all the relevant circumstances into account.

At the conclusion of each stage of the Inquiry I shall hear submissions from participants.

I shall receive participants' proposed findings in fact and closing submissions and in due course any proposed recommendations. I will receive all of that material in written form.

I mentioned earlier that I invite parties who wish to be core participants to apply for that status and these representations and applications should be made to me by close of business on Monday the 10th of March and these representations should deal specifically with the four matters that I identified earlier.

After that I propose to hold a further preliminary meeting at which more detailed arrangements will be discussed, including the question of the start date of the Inquiry. It is my intention to hold that further meeting on Monday the 8th of April, Tuesday, the 8th of April, after that I will set a deadline for participants and other interested persons to submit a concise statement of the issues indicating what they would wish this Inquiry to address and what aspects of the case they would wish the Inquiry to explore.

I think these are the points that I require to cover at this stage and if anyone has any comments to make or any proposals to submit at this stage I will hear them now.

Mr Martin?

MR MARTIN: I have nothing further to  
add.

LORD GILL: Miss Anwar?

MISS ANWAR: I have nothing further to  
add.

LORD GILL: Mr McBride?

MR MCBRIDE: No.

LORD GILL: Mrs Stacey?

MRS STACEY: Not at this stage my Lord  
thank you.

LORD GILL: Mr Stocker?

MR STOCKER: I have nothing at this  
stage my Lord.

LORD GILL: Mr Gray?

MR GRAY: I have nothing my Lord.

LORD GILL: Mr Ellis?

MR ELLIS: Nothing.

LORD GILL: Mr MacAulay?

MR MACAULAY: Nothing.

LORD GILL: Mr Jones?

MR JONES: I have nothing to add my  
Lord.

LORD GILL: Mr Carruthers?

MR CARRUTHERS: Nothing my Lord,  
thank you.

LORD GILL: Mr MacAulay could I, if I may raise a matter with you? I have received a letter, an application from those instructing you in which they set out proposals for the fees that they would wish to be paid both for themselves as Solicitors and for Counsel.

MR MACAULAY: My Lord plainly that's premature in that we are not there yet.

LORD GILL: So have I to disregard these proposals?

MR MACAULAY: Yes my Lord because if those whom I represent are designated to be core participants then in due course an application for funding will be made.

LORD GILL: It's difficult for me to actually calculate just what these fees would mean in global terms because for example in relation to Counsel's fees there are proposals for certain sums of money per hour for preparation, sorry, per day for preparation, per hour for preparation on the basis that they would require I think 40 days preparation, how many hours are in a day?

MR MACAULAY: Well I was shown this letter this morning and I can't really comment on it, but in any event my Lord it's plainly premature standing the way the rules operate.

LORD GILL: Do you know if it is your instructing Agent's proposal to insist on an outlay for obtaining expert evidence?

MR MACAULAY: Well, I don't my Lord, I will take instructions.

LORD GILL: Well I think it might be best then if I simply disregard this letter meantime.

You will have gathered from what has been said that there are still one or two matters of administrative detail still to be finalised and I wish to assure everyone that every possible effort is being made to finalise the arrangements in the very near future.

What I have said today may sound very bureaucratic and rather administrative to the families, but one simply has to organise the business of the Inquiry as practically as one can, but I would like the families and the survivors to know how conscious I am of the terrible tragedy we are considering in this Inquiry and to ensure them that whatever help and liaison they need in the course of the Inquiry will be given to them.

Well, I will adjourn this then to the 8th of April.

Adjourned.

