

High Court, Glasgow
Lord Gill

Preliminary Hearing

in

ICL Public Inquiry

before

The Right Honourable Lord Gill

on

Tuesday 8th April 2008

Appearing:

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

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

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

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 G Anderson, Solicitor, with Miss M J McKenna, instructed by Anderson Solicitors, LLP, representing AXA Insurance.

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

Miss C J Bone, instructed by Messrs Brechin Tindal & Oatts.

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

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TUESDAY 8TH APRIL 2008

LORD GILL: I am extremely sorry for the delay in starting this meeting. The problem arose on the M8 motorway, a not unfamiliar difficulty these days.

Are there any points that anyone wishes to raise before I deal with the matters that are on the Agenda?

Well the first question that has to be dealt with today relates to the question of core participation in the Inquiry.

I have received representations from a number of parties asking to be core participants and my decision is as follows: that I will admit to the Inquiry as core participants ICL and those related companies for whom Mr McBride acts.

HSE, Calor Gas and J Gas, and also each of those individuals who suffered injury in the disaster, and the next of kin of those who died in it.

In relation to the next of kin I think that in each case there should be one appropriate representative who I propose should be the surviving spouse, where applicable, or the eldest child, whom failing either parent, whom failing the nearest relative. But I don't want to be too legalistic about this and I'm quite prepared to take a flexible approach in individual cases. I don't foresee that there should be any difficulty with this.

In relation to Mrs Anne Ferguson's application, I admit her as a core participant who has chosen to be unrepresented.

I decline to admit as core participants AXA Insurance. They are the insurers of Mr Galloway whose employee the late Kenneth Murray was killed in the tragedy. This of course in an Inquiry that is expressly prohibited from considering issues of liability and their interest as insurers is at best indirect.

The following persons have intimated that they do not seek core participation status; namely Marsh, the other insurers who were represented at the last meeting and Mr Tyldesley. In relation to individual HSE Inspectors, their position at the moment is that they have reserved their position individually and collectively meantime and I am content to leave it on that basis.

Now arising from the question of core participant status, there are, I think, probably two main matters; the first is that the status of core participant can apply for the whole or part of the Inquiry and at this preliminary stage I'm not in a position to make any decision on that matter, but I shall keep the question under review as the issues become clearer.

The second point is in relation to those core participants who have an identity of interest. In that case multiplicity of legal representations is not permitted.

As I understand it at the moment the firms of Levy & McRae and Thompsons have in effect established a single representation for their respective clients, but there is an intimation of interest from Lafferty & Company who separately represent 13 persons. Since there can only be one single representation in relation to these persons, the obvious solution I would have thought would be for all three firms to establish a single joint representation for all of those clients of theirs who qualify as core participants. So I shall continue consideration of the matter of representation to enable that option to be explored.

One of the primary considerations underlying the new Act and the Rules is to avoid the sort of practical problems, particularly problems of duration, that could possibly arise if there were to be several legal representatives for persons who had an identity of interest, but there is also of course the important consideration of cost since core participants may be eligible for payment of legal costs from the public funds.

I will be happy to receive submissions on the point from any of those who are represented today, but on my reading of the Rules the position seems to be that where there are a number of core participants with an identity of interest only one set of legal costs can be paid out of public funds, and then of course subject to the various restrictions as

to the amount that are set out in the Rules and in the Section 40 determination of the Ministers. So a Note of Procedure in relation to that matter will be produced and made available shortly.

If the various firms whom I have mentioned reach an agreement on a joint single representation, then in terms of the Rules I require confirmation of their clients' consent to that. I can't foresee any difficulty about that, but if there is no agreement reached then I will have to consider exercising my own powers to appoint a legal representative. But I would hope that it would not come to that.

I think that's really all that I have to say at the moment about core participation status. Are there any comments or submissions that anyone wishes to make about that?

Well the next matter is in relation to the parties' Statements of Case. At the end of the day obviously I'll have to reach a view as to what the relevant issues are so far as they relate to my specific Terms of Reference, but what I do wish from Parties to the Inquiry is a concise Statement of Case that would set out what issues they would wish me to consider having regard to my Terms of Reference and the aspects of the circumstances leading up to the disaster that they would wish the Inquiry to explore. I would find that helpful, but I think that other Parties would find it helpful to know exactly what each

of the various interests represented wish to have the Inquiry consider.

I am prepared to receive Statements of Case not only from core participants but also from any person who feels that they have a relevant matter that they wish me to consider.

In relation to the core participants however I would ask that their Statements of Case should set out first of all the issues they wish the Inquiry to address having regard to the Terms of Reference; what aspects of the circumstances leading to the explosion that they would wish the Inquiry to explore; the topics in respect of who they would wish to participate in the Inquiry; what they would wish to establish in respect of each of those topics and how they consider that each of their proposed topics would be of assistance to me in fulfilling my Terms of Reference.

I will receive these Statements of Case in lieu of opening statements and these will be, or may be, published on the Website before the commencement of oral hearings.

Now once I have got that material I'll then consider the extent to which the proposed issues, aspects and topics fall with my Terms of Reference and determine which of them we will deal with in the Inquiry. I'll keep that matter under review as the Inquiry progresses and as various issues

acquire either greater or less significance as we go along. I'll also consider the topics in respect of which individual core participants will be allowed to participate during the course of the Public Hearings.

I'm determined to maintain a flexible approach to all of this but I think it is important that this Inquiry should proceed on the basis of the fullest possible disclosure of parties' positions from the outset.

It may also be helpful if I say that in relation to witness statements, I intend to receive witness statements, to receive these statements in writing as being the evidence-in-chief of the witness.

I will not require statements of any kind from individual core participants who were injured or who are next of kin. I needn't trouble the individuals with that burden, but it may be that if a factual issue arises within the Terms of Reference on which an individual survivor could give relevant evidence then I would make an appropriate request to the individual concerned to provide a written statement. Are there any questions arising from that aspect of the Rules?

Then I would ask that these Statements of Case be submitted by Friday the 16th of May and the Inquiry will start on Wednesday the 2nd of July. That will be the start of Part 1 and Part 1 of the Inquiry will deal with the factual

matters only relating to the explosion itself and the events and the circumstances leading up to it.

In Part 2 of the Inquiry we will attempt to ascertain what lessons are to be learned and what recommendations can be made to avoid any repetition of this disaster, that part will begin on Tuesday the 14th of October.

The venue for the Inquiry as already announced will be the Central Community Hall in Maryhill. I am aware that the reactions among the relatives and survivors to this choice of venue have been divided. I can only express my regret that the choice of that venue has caused upset to some of the families. I'd like to assure them that there was no intention of any kind to be insensitive to their feelings and that the choice of venue was made with the very best intentions. I regret that there are persons who have been upset by it.

Now are there any other matters that I can usefully deal with today? I think from now on it would probably be useful if all further communications between the Inquiry and the parties were to be conducted through the Website but I'm quite happy to hear any other proposals that there may be about that.

Mr Martin have you any comments to make?

MR MARTIN: I have none my Lord.

LORD GILL: Mrs Stacey?

MRS STACEY: Neither do I my Lord,
thank you.

LORD GILL: Mr McBride?

MR MCBRIDE: No.

LORD GILL: Mr Gray?

MR GRAY: No.

LORD GILL: Mr Ellis?

MR ELLIS: My Lord, just briefly, there are a number of practical issues about the running of the Inquiry that will eventually require to be addressed, maybe today is not the time for that, but if I can just flag up one or two of those and your Lordship could perhaps give some guidance as to when might be the appropriate time to explore them. One is that in relation to core participants they will have to apply to your Lordship, as I understand it, for permission to ask questions of various witnesses who give evidence to the Inquiry; in order for the core participants to formulate their position on that it would in my submission be desirable for them to be given access to the witness statements that will be the evidence-in-chief and to the various productions and at some stage certainly I think those instructing me would like to explore with the Inquiry the arrangements for such disclosure.

LORD GILL: That would be my own approach Mr Ellis. I think the practical solution here is simply

to liaise with the Solicitor to the Inquiry as and when the written material comes in.

MR ELLIS: I am obliged.

MR ANDERSON: Gilbert Anderson, Andersons Solicitors LLP, along with Miss McKenna for AXA Insurance and I have no other observations in the light of your Lordship's comments.

LORD GILL: Mr MacAulay?

MR MACAULAY: Nothing.

MS BONE: Miss Bone of Brechin, Tindal Oattes on behalf of the individual Inspectors. I have no further comment to make.

MR CARRUTHERS: I appear for Austin Lafferty on behalf of 13 of the survivors and I have nothing to add, thank you.

LORD GILL: Right, does that cover everybody; I haven't overlooked anybody have I? Well thank you very much for your attendance today, I hope that this meeting has been useful and I think the main thing is from now on that there should be the fullest possible liaison between the representatives of the core participants and the Solicitor to the Inquiry and of course once the Hearings start there will be the opportunity for day to day liaison with the relatives and other interested parties.

Adjourned.