

THE ICL INQUIRY

Inquiry Chairman: The Right Honourable Lord Gill

Procedures Document

These procedures, and accompanying protocols, are subject to, and should be read having particular regard to The Inquiries Act 2005 ("The Act"), The Inquiries (Scotland) Rules 2007 (SSI2007/560) ("The Rules"), the S40 Determination by Ministers dated 21 February 2008.

The Chairman must act with fairness in making any decision as to the procedure or conduct of an inquiry, and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others). (S17(3)).

1. Introduction

- 1.1. On 11 May 2004 there was an explosion at a plastics factory operated by ICL Plastics Limited and ICL Tech Ltd at Grovepark Mills in Maryhill, Glasgow. 9 people died and 33 were injured.
- 1.2. This is the first joint public inquiry under the Inquiries Act 2005 and it has been established by Scottish Ministers and the Secretary of State for Work and Pensions. It is subject to the Inquiries (Scotland) Rules 2007. Its setting up date is 21 January 2008.
- 1.3. The Inquiry is an Inquisitorial process and there are no "parties". The Inquiry is not to rule on, and has no power to determine, any person's civil or criminal liability (S2) nor to award damages or compensation. This remains the preserve of the proper courts. In consequence, given the special nature of the proceedings, the fact finding process will be approached in a different way. The scope for involvement of legal representatives will accordingly be limited.
- 1.4. The responsibility of any Recognised Legal Representative, those participating and/or interested in the Inquiry is to assist the Chairman in fulfilling his terms of reference.
- 1.5. It is understood that matters of criminal liability have now been dealt with.
- 1.6. Under S 17 (3) Inquiries Act 2005, in making any decision as to the procedure or conduct of an inquiry, the Chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others). Any award in respect of legal representation is subject to the provisions of S 40 of the Inquiries Act, the Notice of Determination by Ministers dated 21 February 2008, the provisions under the Rules and the Inquiry's protocols.

2. The Inquiry's Terms of Reference

are:

- To inquire into the circumstances leading up to the incident on 11 May 2004 at the premises occupied by the ICL group of companies, Grovepark Mills, Maryhill, Glasgow.
- To consider the safety and related issues arising from such an inquiry, including the regulation of the activities at Grovepark Mills.
- To make recommendations in the light of the lessons identified from the causation and circumstances leading up to the incident.
- To report as soon as practicable.

3. The Inquiry

- 3.1. The Chairman of the Inquiry, Lord Gill, who is the Lord Justice Clerk and the second most senior judge in Scotland, was appointed with effect from 21 January 2008.
- 3.2. The Chairman will keep under review whether a suitable person should be appointed to act as Assessor to assist him.
- 3.3. The Solicitor to the Inquiry is Jillian Glass, her Deputy Kathryn McCartney and the Secretary to the Inquiry is Trevor Lodge. Roy Martin Q.C. and Kenny McBrearty are counsel to the Inquiry.

4. Contact Details for the Inquiry

- 4.1. The designated correspondence address for the Inquiry is as follows:

Inquiry Secretariat
The ICL Inquiry
3rd Floor
Lothian Chambers
59-63 George IV Bridge
Edinburgh
EH1 1RN

- 4.2. Other contact details are:
Email: info@theiclinquiry.org
Telephone: 0131 240 6863
Fax: 0131 240 6811
- 4.3. An email address and a fax number notified to a witness (and/or a Recognised Legal Representative, if any) by either the Secretary or the Solicitor, shall be the designated email and fax number for the purpose of

sending or receiving documents relating to the Inquiry for that witness and/or Recognised Legal Representative.

- 4.4. Consideration will be given to providing alternative contact details while the Inquiry is in the course of public hearings in Glasgow but unless specifically notified otherwise the contact details will remain as indicated above.

5. The Inquiry Website

- 5.1. The Inquiry has established a website which will be used to publish information concerning the Inquiry including rulings, press notices and announcements, witness statements, relevant documents and transcripts of the hearings.

6. Procedures Generally

- 6.1. The procedure and conduct of an Inquiry under the Inquiries Act 2005 are to be such as the Chairman may direct, subject to the provisions of the Act and the applicable rules.
- 6.2. In order to operate most effectively and most efficiently, an Inquiry such as this needs to operate flexibly. Procedures may need to be adopted, or may need to be adapted, to enable this. The procedures outlined are not intended to cover every eventuality or every procedural issue that will arise. When procedural decisions need to be taken, they will be taken by the Inquiry Chairman with the assistance of the Inquiry legal team and of representations or submissions from others, if the Chairman considers that would be appropriate and desirable.

7. Initial information

- 7.1. Anyone who holds documents which are relevant to the terms of Reference have been, and are, invited to contact the Inquiry to arrange for delivery to the Inquiry.
- 7.2. Any person who believes that they may be able to give relevant information or evidence to the Inquiry should contact the Inquiry as soon as possible. The Solicitor to the Inquiry, or one of her colleagues, will ascertain the nature of that information and or evidence and determine what step should be next.
- 7.3. The Inquiry will consider and analyse all material received which is identified as relating to matters within the Terms of Reference.

8. Evidence

- 8.1. A witness is any person from whom the Inquiry Chairman proposes to take either written or oral evidence.
- 8.2. The Chairman wishes the evidence to be initially in written form.
- 8.3. The Inquiry will make written requests of persons who are known to have evidence relevant to the Terms of Reference to provide a written statement

setting out that evidence. Further requests may be made in due course, either for an additional written statement or for oral evidence to be given. In view of the timescales this Inquiry is working to, witnesses who are requested to provide a written statement should work on the premise that, they may be requested to attend to give oral evidence in the course of July. Witnesses, or those who believe that they may be required as witnesses are requested to inform the Secretariat of any previously committed dates in July and early August and to please otherwise liaise with the Secretariat.

8.4. Any request for a written statement will include a description of the matters or issues to be covered in the statement, and will specify a date or time by which it is to be provided.

8.5. Persons requested to provide a statement should also have regard to the Inquiry's Terms of Reference when considering what they should address in their statement. Should a statement fail to adequately address the matters with which the Inquiry is concerned, a request for a further statement to provide clarification or additional information may be made.

8.6. It is unlikely that public funding for legal assistance will be available where a person is a witness of fact and is unlikely to be the subject of criticism. Further guidance is available in the Legal Representation at Public Expense protocol.

8.7. Witness statements are to be provided in a form complying with the witness statement protocol.

8.7.1. The Solicitor to the Inquiry, or one of her colleagues, can assist with the preparation of the statement and the person concerned will have the opportunity to make such amendments or additions to the draft statement as he or she may wish prior to the statement being signed.

8.7.2 If a person prefers, they may prepare their own statement. In doing so it is open to them to seek the help of a legal or other representative (such as an official of a trade union or professional body) in so doing. In circumstances where a person is a witness of fact and someone who is unlikely to be the subject of criticism it is unlikely that public funding for legal assistance will be available. Further guidance is available in the Legal Representation at Public Expense protocol. Funding for legal representation at public expense is subject to the Act, the Determination under S40(4) by Ministers dated 21 February 2008 and the Rules.

8.8. Specific requests in writing may be made of persons who the Inquiry wishes to produce any document or other item and a date or time by which it is to be provided will be specified.

9. Disclosure of oral evidence, statements, documents by the Inquiry

9.1. The Inquiry is a public inquiry and the intention is that it will be as open and as transparent as is 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. The Inquiry will endeavour to ensure that private matters of which it is informed, and which are not relevant to its work, are not published.

- 9.2. Information and documents provided to the Inquiry will only be used by the Inquiry for the purposes of fulfilling its remit.
- 9.3. The Chairman will determine what information and/or evidence is relevant to his Terms of Reference, whether, when, 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.
- 9.4. If a person considers that that document or information they are supplying should be treated as confidential or should otherwise be withheld from the public domain, they should inform the Solicitor of their reasons for this view at the time the document or the information is provided. The Inquiry Chairman will consider each representation made on its merits.
- 9.5. Subject to any Restriction Notice or Order made under S19, in circumstances where the conditions of that section are met, the Chairman intends the evidence before the Inquiry Hearings to be published on the website. It is intended to place the hearing transcripts on the website each day. Relevant statements are intended to be placed on the website as soon as is practicable and appropriate after they have either been read into the record, or after the witness concerned has given oral evidence. Documents, other statements and information will be posted on that website when the Inquiry Chairman considers it appropriate to do so. Those decisions will need to balance the desire to be as open and transparent as possible with the other interests involved, including the need to act fairly.
- 9.6. It should be noted that for the oral evidence, written statements and documents before the Inquiry to be admissible in any legal proceedings before a Court, Tribunal or similar the rules and procedures applicable to that forum would need to be satisfied. Likewise any particular fact would be required to be proven to the standard applicable in those proceedings.

10. Witnesses

- 10.1. There are separate protocols in respect of
- 10.1.1. the structure and content of witness statements and the production of documents to the Inquiry
 - 10.1.2. witnesses giving oral evidence (to follow when arrangements at the Venue have been finalised)

11. Witnesses and legal representation

- 11.1. Where a person who is required or permitted to give evidence, produce documents or any other thing during the course of the Inquiry has appointed a qualified lawyer to act on their behalf, the Chairman will regard that person as that person's Recognised Legal Representative in respect of the proceedings at the Inquiry.

12. Witness Expenses and Legal Costs

12.1. In appropriate cases, subject to the rules and any determination under section 40, the Inquiry Chairman may award reasonable amounts to a person by way of compensation for loss of time or in respect of expenses properly incurred, or to be incurred, in attending, or otherwise in relation to, the Inquiry.

12.2. Where the Chairman considers it appropriate and is satisfied in the circumstances that it is necessary, fair, reasonable and proportionate for such an award to be made as required by the Notice of Determination made under S40(4) of the Act by Scottish Ministers and the Secretary of State for Work and Pensions dated 21 February 2008 (“the Notice”) he may award amounts in respect of legal representation subject to ensuring that the qualifications and conditions set out in the Notice, and the Rules, are satisfied.

12.3. When making a determination as to whether any award should be made the Chairman is required under the rules to take into account the financial resources of the applicant and the public interest in doing so.

12.4. A person is eligible for an award only if

- he or she is a person attending the Inquiry to give evidence or to produce any document or other thing, or
- a person who, in the opinion of the Inquiry Chairman, has such a particular interest in the outcome of the Inquiry as to justify such an award.

12.5. There are separate protocols in respect of:-

12.5.1. applications for Travel & Subsistence expenses

12.5.2. applications for compensation for loss of time

12.5.3. applications for legal representation at public expense, the conditions and qualifications on any award of legal expenses, the payment of those legal expenses and provision for resolution in the event of any dispute.

13. Core Participants

13.1. The Chairman is likely, subject to their consent, and in his discretion to designate a limited number of persons as Core Participants. These are likely to be persons who have a direct interest in the issues to be addressed under the Terms of Reference, having either played a direct part in the circumstances leading to the explosion and/or who are likely to be directly affected by any recommendations by the Inquiry. They will be persons who through their knowledge and involvement will be closest to the issues raised by the Inquiry.

13.2. In exercising his discretion the Chairman will have regard to Rule 4 (2) and the desirability of including as a Core Participant a person who: –

(a) played, or may have played, a direct and significant role in relation to the matters to which the Inquiry relates;

(b) have a significant interest in an important aspect of the matters to which the Inquiry relates; or who

(c) may be subject to significant or explicit criticism –

(i) during the proceedings at the inquiry, or

(ii) in the report (or any interim report) to be delivered under section 24 of the Act

13.2.1. Core Participants need not be represented by lawyers.

13.3. The Chairman may at his discretion designate a person as a Core Participant at any time he considers appropriate during the course of the Inquiry, subject to that persons consent.

13.4. The Chairman may make any designation subject to such terms and conditions as he may deem to be appropriate.

13.5. The Chairman may at his discretion specify in writing at any time before the end of the Inquiry that a Core Participant is to cease being a Core Participant.

14. Application to be a Core Participant

14.1. A person may apply to be a Core Participant at any stage of the Inquiry and may apply in respect of a particular topic or topics to be addressed by the Inquiry. The Chairman will require to be satisfied that any person applying to be a Core Participant qualifies under one of the above grounds as set out in Rule 4(2).

14.2. The application must be in writing and

14.2.1. set out grounds under Rule 4.2 on which the applicant relies

14.2.2. the reasons as to why the applicant claims to qualify for core participant status

14.2.3. the relationship of the applicant's interest in the Inquiry to the Terms of Reference

14.2.4. and a specification of the issues on which the applicant seeks to participate in the Inquiry

14.3. Each application will be considered and determined by the Inquiry Chairman. Admittance may be subject to such conditions as the Chairman considers may deem in his discretion to be appropriate.

14.4. The Chairman may require further details and clarification in writing from an Applicant by a specified date as to the interest claimed, issues in respect

of which they wish to participate, what it is they wish to seek to establish and how this will assist the Chairman in fulfilling his Terms of Reference.

- 14.5. The Chairman may specify in writing that a Core Participant ceases to be a Core Participant before the end of the Inquiry.

15. Core Participants and Legal Representation

15.1. Where a Core Participant, other than a Core Participant who is to be jointly represented, has appointed a qualified lawyer to act on their behalf, the Chairman will regard that person as that person's recognised legal representative in respect of the proceedings at the Inquiry.

15.2. Where there are two or more Core Participants, each of whom seeks to be legally represented, and the Inquiry Chairman considers that their interests in the outcome of the Inquiry are similar and the facts they are likely to rely on in the course of the Inquiry are similar and that it is fair and proper for them to be jointly represented, he may direct that those Core Participants be represented by a single recognised legal representative. The Chairman will invite those Core Participants to nominate a single legal representative as their recognised legal representative. Subject to his approval, that legal representative will then be those Core Participants recognised legal representative and the point of contact with the Inquiry.

15.3. If there is no nomination within a reasonable time, the Inquiry Chairman may designate an appropriate legal representative who, in his opinion, has sufficient knowledge and experience to act in that capacity.

15.4. In the event the conditions leading to the joint representation no longer apply, a Core Participant may apply stating the change of circumstances to be permitted separate representation.

16. Applications for public funding for Legal Representation by Core Participants

16.1. Where the Chairman considers it appropriate and is satisfied in the circumstances that it is necessary, fair, reasonable and proportionate for such an award to be made as required by the Notice of Determination made under S40(4) of the Act by Scottish Ministers and the Secretary of State for Work and Pensions dated 21 February 2008 ("the Notice") he may award amounts in respect of legal representation subject to ensuring that the qualifications and conditions set out in the Notice are satisfied. The Chairman is also required under the rules to take into account the financial resources of the applicant and the public interest in making an award.

16.2. There is a separate protocol giving guidance for applications by Core Participants for legal representation at public expense, the conditions and qualifications on any award of legal expenses, the payment of those legal expenses and provision for resolution in the event of any dispute.

17. Recognised Legal Representative

- 17.1. Where a person is represented by a Recognised Legal Representative, the Chairman will regard that individual as the designated Recognised Legal Representative and will require that individual to provide their personal professional contact details which will be the designated contact details through which the Inquiry will communicate for the duration of the period for which the Recognised Legal Representative is a Recognised Legal Representative. This is for efficiency, ease of process and continuity and is required by the Chairman notwithstanding the provisions of Rule 7 permitting a person to appoint other qualified lawyers to assist their Recognised Legal Representative.
- 17.2. The professional contact details required are a direct telephone number, direct facsimile number, personal professional email address and professional postal address.
- 17.3. Communications passed to any one or more of these contact details will be taken to be conclusive communication by the Inquiry. The Recognised Legal Representative must make their own arrangements for their contact details to be effective for receipts of information from the Inquiry for the duration of the Inquiry and notwithstanding any periods of absence.
- 17.4. In view of the provisions of the Determination by Ministers under S40 dated 21 February 2008, where a person is represented by a Recognised Legal Representative at public expense, the appointment of other qualified lawyers pursuant to Rule 7, will not be paid for by the public unless specifically provided for in the award made.

18. Submission of concise statements by interested persons

- 18.1. Without prejudice to the Chairman's absolute independent discretion to interpret his Terms of Reference as he deems fit and to determine what issues and aspects to consider in the course of his Inquiry, those interested in the Inquiry are invited to submit a concise statement by a date to be notified setting out
- 18.1.1. what issues they would wish this Inquiry to address having regard to its Terms of Reference
- 18.1.2. what aspects of the circumstances leading to the explosion they would wish this Inquiry to explore

19. Submission of concise statements by Core Participants, (and any of those whose applications remain under consideration for admission as Core Participants)

- 19.1. Without prejudice to his absolute independent discretion to interpret his Terms of Reference as he deems fit, and to determine what issues and aspects to consider in the course of his Inquiry, Core Participants, (and those whose applications remain under consideration for admission as Core Participants) are required to lodge by 16 May 2008 a concise statement setting out
- 19.1.1. what issues they would wish the Inquiry to address having regard to the Terms of Reference

- 19.1.2. what aspects of the circumstances leading to the explosion they would wish the Inquiry to explore
 - 19.1.3. the topics in respect of which they would wish to participate and
 - 19.1.4. what it is they would wish to seek to establish in respect of each of those topics
 - 19.1.5. how each proposed topic would assist the Chairman in fulfilling his terms of reference
- 19.2. The concise statements from Core Participants will be in place of opening statements and may be published on the web prior to the commencement of Oral hearings.
20. Core Participants without legal assistance to prepare such a statement but who would wish for such assistance may approach the Inquiry for assistance from the Inquiry legal team. Those whose legal assistance has yet to be determined under rule 6 and who are anticipating applying for legal representation at public expense may likewise approach the Inquiry team for assistance from the Inquiry legal team.

21. Chairman will then:

- 21.1. consider the extent to which each of the proposed issues, aspects and topics fall within his terms of reference.
- 21.2. rule in his discretion as to which issues, aspects and topics the Inquiry will address (such topics/issues will be kept under review by the Chairman during the course of the Inquiry in light of the information and evidence becoming available to him) and
- 21.3. as to which of the topics the individual Core Participant applicants are to be admitted to participate in respect of during the course of the public hearings

Thereafter the Chairman will consider what, if any, further assistance he may require from any of the Core Participants and at what stage of the Inquiry.

22. Participation by Core Participants

- 22.1. Subject to a suitable confidentiality undertaking and consideration as to the scope of their particular interest, consideration will be given by the Chairman as to what access Core Participants should be afforded to the Inquiry Bundle prior to the Public Hearings (it is emphasised that no final decisions on this aspect have yet been made).
- 22.2. Such access would be for the purposes only of enabling Core Participants (or their legal representatives) to read the evidence relevant to the Inquiry and consider what, if any, questions they may wish to apply to the Chairman under Rule 9 (4) for permission to ask questions directly of witnesses giving oral evidence.

23. Those interested, but who are not Core Participants, or who have not applied to be Core Participants

23.1. If any interested person wishes to assist the Inquiry at any time they may lodge a written statement as to what they wish to say to the Inquiry, subject to it being a matter falling within its Terms of Reference. The Chairman will receive and consider that statement and may invite that person at his discretion to appear at the Inquiry. .

This is an inquisitorial process and the earlier such representations are received the better they may be able to be taken into account in the Inquiry process should the Chairman consider it appropriate to do so.

24. Questions from the bereaved families and those individuals who survived and their families

24.1. Both the next of kin of those who died (identified by the Chairman on 8 April as being a surviving spouse, the eldest child, either parent, failing whom the nearest relative), and those individuals who survived, where they are without legal representation as Core Participants, are invited to approach the Deputy Solicitor to the Inquiry with any questions that they may have, or which they perhaps would wish to see asked of witnesses, throughout the process. It would be preferable for any questions proposed to be made of witnesses to be put forward in writing with the assistance of the Deputy Solicitor at the earliest opportunity, so as to better enable the Chairman to consider whether or not it will be of assistance to him, in fulfilling his Terms of Reference, for any such question to be asked. Any questions put forward to be asked of witnesses should be with the intention of eliciting facts or for further explanation.

24.2. Where a witness is either not giving oral evidence or has already completed giving oral evidence the Chairman will decide in his discretion whether the question should be put forward in writing to the witness concerned by the Inquiry.

25. Wider representations may be sought

25.1. The Inquiry Chairman may wish in due course to seek the views of persons and bodies not directly involved in the explosion at the Grovepark Mills premises on more general matters falling within the Inquiry's terms of reference.

25.2. In those circumstances, specific requests to submit representations to the Inquiry may be issued to particular persons or bodies. Those requests will identify the issues with which those representations are requested to deal.

26. Public Hearings

26.1. It is the intention to run the public hearings of the Inquiry in two phases.

26.2. The first phase will address the factual circumstances leading to the explosion to assist in the identification of the safety and related issues that arise from those circumstances

26.3. The second phase will address the regulation of the activities at Grovepark Mills in light of the safety and related issues arising from those circumstances and the lessons to be learnt from the causation and the circumstances that led up to the disaster and consideration as to the recommendations that might be made to Ministers.

27. Venue for oral hearings

27.1. In the absence of any reasonably accessible and suitable public building within Glasgow, which could be made available for use by the Inquiry, Scottish Ministers through the Scottish Courts Service, have secured the Community Central Hall, Maryhill, Glasgow being a building easily accessible to the community affected.

27.2. The Community Central Hall is being adapted for use and is undergoing a dedicated refurbishment programme to enhance security for the site, meet the requirements for the proposed use for fire, health & safety and disability discrimination, upgrade of the toilets and redecoration works to include a general upgrade of the fabric of the building. The works are to be phased to minimise disruption to existing users and scheduled to last eight weeks.

27.3. The hearings will be the Reid Hall and this together with certain other areas of the Community Central Hall will be reserved exclusively to the Inquiry.

27.4. The Community Central Hall is a registered Scottish Charity committed to working in partnership to promote social inclusion in Maryhill and throughout North West Glasgow by providing facilities, services, and opportunities for the benefit and well-being of all sections of the community. The works necessary are expected to leave a lasting benefit to the Central Community Hall and the community affected by the explosion.

28. Facilities for the bereaved families and survivors

28.1. Two rooms have been set aside for the use of the bereaved families and separately the survivors and their families to enable them to follow the proceedings with some degree of privacy, should they so wish. Proceedings in the Reid Hall will be relayed by way of fixed camera to a plasma screen within each room. The documents screened during the proceedings will be relayed to a separate screen.

28.2. The room for the bereaved families, subject to confirmation on security and fire regulations, is intended to be capable of being accessed by its own street entrance and to be made private from the rest of the Hall. It will also have its own access to the Reid Hall.

28.3. The Room for the survivors and their families is a meeting room on the same level as the Reid Hall in the main building.

29. Technology to be used

29.1. Acoustics are to be improved for the duration of the public hearings. Microphones will be as used in the Scottish Courts and will not be able to be turned off.

29.2. Subject to budgetary considerations, it is intended to use Livenote, a transcription and evidence management tool, and for the transcripts to be published daily through the website.

29.3. Documents will be screened by means of electronic presentation equipment. Monitors will be available to enable the Recognised Legal Representatives to view the documents and plasma screens around the Hall to enable the public attending to view the documents. They will be relayed to the two rooms set aside for use as detailed above.

30. Timetable up to the first phase of oral hearings

30.1. The Inquiry Bundle is in the course of preparation and will be disclosed subject to professional undertakings as to confidentiality from Core Participants who are legally represented six weeks in advance of phase one of the oral hearings. Other arrangements for access will be put in place for Core Participants who are not legally represented. The Chairman will prepare a provisional list as to the witnesses he will require to give oral evidence within two weeks thereafter. This list will be made available to the Core Participants, who will be given the opportunity to comment upon it. The Inquiry Chairman alone will determine which witnesses are to be called to give oral evidence and which witness statements will be read into the record. It is to be noted that Witness statements will be subsequently published through the Website when the Chairman considers this to be appropriate.

30.2. Applications by Core Participants as to the questions they may wish to have put forward, or be permitted to ask of witnesses, are required no later than two weeks in advance of phase one so as to enable the Chairman to consider calling any further witnesses he has not already identified as being required to give oral evidence and for any necessary arrangements to be finalised for them to attend.

31. Intention in respect of the Oral Hearings

31.1. The hearings will be designed:

31.1.1. to ensure that the public are as fully informed as possible about the uncontroversial background, and about the specific issues to be addressed at the hearings;

31.1.2. to deal with those issues in the most effective and efficient way, ensuring in the discretion of the Chairman that major issues within his Terms of Reference are publicly explored;

31.1.3. to ensure that Core Participants are given a fair opportunity, commensurate with the need for the hearings to progress efficiently and with all reasonable speed, actively to participate in the process;

31.1.4. to ensure that those who are not Core Participants but who are witnesses are afforded a fair opportunity to give their evidence.

31.2. Subject to any restriction order made under S 19 of the Inquiries Act 2005, members of the public (including reporters) will be able to attend the

Inquiry, and view a record of the evidence and documents available to the Inquiry.

32. Witness evidence at Oral hearings

32.1. The Chairman will consider in his absolute discretion which witness evidence he will require to be given orally and which witness evidence may be read into the record and published on the website. He is aware that a number of witnesses whose evidence may be required are elderly and that others have suffered trauma. In the event that a person who is requested to provide a written statement is concerned as to their fitness to attend at the Central Community Hall to give oral evidence they are invited to submit medical evidence as to their fitness to do so at the earliest opportunity for consideration by the Chairman.

32.2. In view of the timescales witnesses approached for a written statement should work on a premise that they may be requested to attend for oral hearings in July/August.

32.3. A witness will normally be sent a letter in advance of their giving evidence setting out the main topics which it is intended to address in the course of questioning. Those topics are not intended to be, and should not be treated as, a definitive or exhaustive list of the questions to be asked or the topics that might be covered. The letter is designed to assist the witness (and his or her recognised legal representative) in preparing for the Inquiry's hearings by identifying at least some of the main matters which the Inquiry wishes to explore with the witness.

32.4. If new matters relevant to the evidence of a particular witness come to light after that witness has given evidence at the Inquiry's hearings, the Inquiry may decide that it is necessary for the witness to be asked about or afforded the opportunity of responding to those new matters. Such an opportunity may be afforded by inviting the witness to provide a further statement or inviting that witness to give further oral evidence.

32.5. It may be appropriate for two or more individuals from one particular body or company or firm to give evidence together on certain issues.

32.6. Evidence given to the Inquiry orally will be taken on oath.

33. Purpose of Oral evidence

33.1. Oral evidence from a witness, in addition to the provision of a written statement, may be required for example for one or more of the following purposes:

33.1.1.1. to clarify any matters in the statement which are not sufficiently clear;

33.1.1.2. to amplify any matters in the statement in respect of which further information is required;

- 33.1.1.3. to afford the witness the opportunity of addressing matters raised by other statements or documents, or the oral evidence of other witnesses, which are relevant to his or her evidence;
- 33.1.1.4. for Inquiry Counsel to test the accuracy or reliability of any matters in the statement;
- 33.1.1.5. for Inquiry Counsel to explore disputes of fact, controversial issues or questions of opinion;
- 33.1.1.6. to afford the witness the opportunity of responding to potential criticisms to which he or she may be subject in the Inquiry's final report.

34. Questioning of witnesses giving Oral evidence

- 34.1. Under Rule 9 the Chairman and counsel to the Inquiry are permitted to ask questions of a witness giving oral evidence. An Assessor if appointed may also be permitted by the Chairman to ask questions. The opportunities for questioning by the witness's own legal representative and by other legal representatives (for example of persons who are referred to in the evidence of the witness) and/or Core Participants will be strictly limited.
- 34.2. Consideration will be given to inviting Core Participants, and any other person considered to have a sufficient interest in the evidence of the witness concerned, to submit suggested questions or lines of questioning of the witnesses to the Inquiry Chairman through the Secretariat in advance of the witnesses giving evidence. The Inquiry Chairman will decide in each case whether to permit such additional questioning and, if so, in what circumstances and subject to what limits.
- 34.3. The Chairman may direct that the Recognised Legal Representative of a witness being examined, may examine that witness.
- 34.4. Where a witness is examined by Counsel to the Inquiry or the Inquiry Chairman and the evidence of that witness relates directly to the evidence of another witness, that other witness (or their Recognised legal Representative) may apply to the Chairman to examine the witness who has given oral evidence.
- 34.5. A Core Participant or the Recognised Legal Representative of a Core Participant may apply to the Chairman for permission to examine any witness giving oral evidence.
- 34.6. The application must have regard to the terms of Reference and be in writing setting out the following in order to comply with Rule 9
 - 34.6.1.1. the matters or issues in respect of which a witness is to be examined:
 - 34.6.1.2. whether the examination will raise new matters or issues; or
 - 34.6.1.3. where no new matters or issues are likely to be raised, reasons why the examination should be permitted.

- 34.7. The Inquiry Chairman will decide in each case whether to permit such additional questioning and, if so, in what circumstances and subject to what limits.
- 34.8. Timescales for the submission of applications will be notified as part of the timetable. In respect of Phase one, please see paragraph 30.2 above.
- 34.9. Those applying for questions to be asked, or to be permitted to ask questions, are reminded, as noted previously, that the Inquiry is an Inquisitorial process and there are no “parties”. Any questions put forward to be asked of witnesses should be with the intention of eliciting facts or for further explanation, While the Inquiry is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes, it is expressly prohibited from ruling on, and has no power to determine, any person’s civil or criminal liability, nor to award damages or compensation. This remains the preserve of the proper courts, and the rules and procedures applicable to the appropriate forum would need to be satisfied within that forum, with any particular fact or finding being required to be proven to the applicable standard within those proceedings.
- 34.10. A timetable of witnesses requested to give oral evidence will be published on the website.

35. Potential criticism

- 35.1. The Chairman may send a warning letter to any person where the Chairman considers that criticism might be inferred from evidence given during the proceedings at the Inquiry. In these circumstances the letter will refer to the evidence or documents from which the Chairman considers criticism could be inferred.
- 35.2. The Chairman may send a warning letter where the person might be, or has been, criticised during the course of the proceedings at the Inquiry and/or where the person may be criticised in the report. In these circumstances the letter will
- 35.2.1. state what the criticism or proposed criticism is;
 - 35.2.2. contain a statement of any fact that the Chairman considers may substantiate the criticism or proposed criticism;
 - 35.2.3. refer to any evidence or documents which may support those facts;
 - 35.2.4. invite the person to make a written statement if the person wishes;
and
 - 35.2.5. note that the information is subject to confidentiality restrictions as provided for under Rule 13.
 - 35.2.6. The Chairman may send copies of any evidence or documents referred to with the warning letter if he considers it appropriate to do so.
- 35.3. The contents of the warning letter will be subject to any restrictions on the disclosure of the evidence, documents or information imposed or applying

under S19 or S23 of the Act or any determination as to public interest immunity.

35.4. A recipient of a warning letter may only disclose it to their Recognised Legal Representative. Obligations of confidence arise (see further below)

36. Conclusion of Phase One

36.1. Core Participants will be required to submit in writing their proposed findings as to fact as to the circumstances by a date to be specified.

36.2. Any other interested person wishes the Inquiry to make a particular finding in fact they should submit a note in writing as to that proposed finding identifying the evidence for such a finding to be made.

37. Provisional proposals in respect of Phase Two

37.1. The second phase will address the regulation of the activities at Grovepark Mills in light of the safety and related issues arising from the factual circumstances and the lessons to be learnt from the causation and the circumstances that led up to the disaster and consideration as to the recommendations that might be made to Ministers.

37.2. Provisionally relevant Core Participants will be required to submit in writing their proposed lessons in light of the safety and related issues arising from the factual circumstances by a date to be specified.

37.3. Provisionally any other interested person who wishes to propose to the Inquiry any particular lesson to be learned may be invited to submit a note in writing as to that proposed lesson identifying the reasons for such a lesson to be learnt.

37.4. Provisionally Core Participants will be required to give a written note as to any proposed recommendations by a date to be specified.

37.5. Provisionally any other interested person who wishes to propose to the Inquiry any recommendation should submit a note in writing by a date to be specified.

37.6. The Chairman will set a timescale within which such statements need to be submitted and may identify at this stage particular issues on which he would welcome assistance from particular persons.

38. Final Hearing

38.1. Provisionally there will be a further hearing to discuss the merits of various recommendations and the Chairman may hear time limited oral submissions from Core Participants.

39. Closing Statements

39.1. Once the evidence at the Inquiry's hearings has been concluded, and following the final oral hearing the Inquiry Chairman may afford the representatives of the Core Participants, and anyone else he considers appropriate, the opportunity to submit closing statements in writing.

40. Significant or Explicit Criticism in the Report

40.1. No significant or explicit criticism of a person will be included in the report unless the person concerned has been sent a warning letter and the person has been given a reasonable opportunity to respond to the warning letter.

41. Obligations as to confidence in respect of a warning letter

41.1. The contents of a warning letter are to be treated as subject to a duty of confidence

41.1.1. separately by each member of the Inquiry team to the recipient

41.1.2. by the recipient to the Chairman and

41.1.3. by the recipient's Recognised Legal Representative .

41.2. The obligations are actionable by the person to whom the obligation is owed.

41.3. The obligation of confidence may be waived in writing at any time by the Chairman or, as the case may be, the recipient. The Inquiry Chairman's obligation as to confidence ceases when the Inquiry report is signed in accordance with S24(4) of the Act. All other obligations of confidence under Rule 13 end when the Inquiry report is published under S25 of the Act.

41.4. In determining the weight to be attached to any evidence the Chairman will ignore whether or not a warning was (or was not) sent to any person.

In the interests of flexibility these procedures may be subject to amendment and/or expansion in due course.

Issued under the authority of the Chairman 2 May 2008