

**- Protocol on pen portrait evidence -**

1. The Chairman wishes to ensure that the individual deceased and their families are placed at the heart of this Inquiry. It is essential that this Inquiry (as was the case with the Inquests prior to the establishment of the Inquiry under the Inquiries Act 2005), and those involved with it, keep firmly in mind that the central reason for the Inquiry's work is to understand how the deceased died, and to assist, so far as possible, in answering the questions that the bereaved have about the loss of their loved ones.
2. Given the centrality of the deceased and their families to this Inquiry, the Chairman considers that the Inquiry (as was made clear in respect of the Inquests) should include a distinct phase of evidence allowing the bereaved, should they wish to do so, to commemorate publicly those who died, to allow the bereaved to explain who each person was as an individual beyond the tragic events at the Arena, and to share with the Inquiry and the public those matters concerning each individual deceased that they wish to. This will recognise the individuality of each of those who died and assist in ensuring that family members are able to participate fully in the Inquiry into how their loved ones died.
3. This process can be of great value to the bereaved, to the Inquiry, and to the wider public. It is a process that has been undertaken in a number of recent inquests and inquiries (including the Hillsborough Inquests, the Grenfell Tower Inquiry and the Infected Blood Inquiry), and is often used in inquests before HM Coroners. Such evidence is, of course, deeply personal and difficult. It is therefore plainly essential that it is conducted appropriately, with input from CPs, particularly the families, should they wish to do so. It is also vital that no family member feels that they must participate; it is a matter for each family member whether and, if so, how they wish to be involved in this phase of the Inquiry. The Chairman and his legal team will assist family members to do whatever they feel is best and most appropriate for them.
4. This document sets out the Inquiry's Protocol for this phase of evidence. An initial proposal document was circulated by the Inquiry to all CPs, most importantly the families, inviting any observations that CPs wished to raise. Observations have been received from the bereaved families, for which the Chairman is grateful. Those observations were uniformly supportive and have informed this Protocol, which has been finalised in accordance with the timetable set out in the Inquiry's initial proposal document. Should any CP wish to do so, STI are available to discuss any matters arising from this Protocol if that would be of assistance.
5. This phase of evidence has been described in various ways in previous inquiries and inquests. In accordance with the wishes of a number of the families, in this Protocol the 2 phrase "pen portrait evidence to be given during the commemorative hearings" is used to refer to this section of evidence.

6. Before CPs, particularly family members, read the content below, the Chairman wishes to make clear that it does not contain any personal details or reference to any individual deceased. However, the document does necessarily address the types of matters that family CPs may wish to include in their pen portraits during the commemorative hearings and the Chairman is mindful that that may well be difficult and distressing to read.

### **Timing, length and structure of the pen portrait evidence**

#### *Timing*

7. The pen portrait evidence will take place following the Chairman's and CTI's opening statements, and following the reading of the names of those who died by Counsel to the Inquiry and the observance of a minute's silence.

#### *Length of the commemorative hearings*

8. The commemorative hearings are likely to take around two weeks (with the Inquiry sitting four days a week). This time estimate will be approached with an appropriate degree of flexibility, as required, to ensure that those giving the pen portrait evidence do not feel rushed.
9. The Chairman is mindful of the distressing nature of this evidence, the need to ensure that each deceased person is afforded sufficient time and space during the commemorative hearings phase of the Inquiry, and the need to ensure that family members, if they wish to attend, are not expected to sit through long days of what is likely to be difficult evidence to give, and to hear/view. For those reasons, the Chairman intends to limit the hearings to consideration of, at most, four deceased persons per day.
10. The length of the pen portrait presentation(s) for each deceased person is a matter for the families. However, the Chairman considers that it may assist family members to have a broad guide of the time that they may consider appropriate. In the Chairman's view, for each deceased, a range from 15 minutes to one hour provides a reasonable and realistic approximation. Of course, those timings are not prescriptive and are provided solely to assist.
11. There will be breaks throughout the commemorative hearings phase of the Inquiry. This is essential given the nature of the evidence and the need for families to have time and space following their evidence, while also allowing them to attend the pen portraits given by other bereaved family members. The Chairman will have breaks between each presentation, as well as scheduled mid-morning, lunchtime and mid-afternoon breaks (if the Inquiry is sitting into the afternoon).
12. Should family members wish to have their pen portrait presentations grouped together with other bereaved family members, e.g. so that the presentation for one deceased immediately follows that of another or is on the same day, every effort will be made to accommodate such wishes. The Chairman requests that family members inform STI in accordance with the timetable set out at paragraph 22 below. STI will remain as flexible and accommodating as possible should family members wish to raise matters or make additional requests outside the timetable set out below.

### **Venue for the pen portrait evidence**

13. The bereaved families have indicated that they wish the pen portrait evidence to be heard at the same venue as the Inquiry oral evidence hearings, to ensure that the centrality and importance of the commemorative hearings is recognised. The Chairman agrees entirely that their centrality must be recognised and understands the reasons given by the families, which will of course be given significant weight in the final choice of venue.
14. In agreement with the families, a decision on the venue for the pen portraits will not be made until the families have had the opportunity to visit the hearing venue so they can consider whether, in their view, it provides a venue which will preserve the dignity of the commemorative hearings, ensure that the importance of the pen portrait evidence is fully understood, and provide a large and comfortable venue for all who wish to attend.

### **Possible topics for the pen portrait evidence**

15. The content of family members' pen portrait evidence is of course a matter for them. The Chairman recognises the highly personal, individual nature of such evidence and has no intention to offer any direction or prescription as to those matters concerning each deceased that family members may wish to include in their evidence.
16. The Chairman is also aware that approaching such evidence may be a daunting and difficult exercise. Family members may feel unsure of what they can include or find it difficult to identify the sorts of topics they would wish to address, despite a desire to provide such evidence. The Chairman therefore considers that there would be a benefit for family members in identifying, as possible topics only, the types of matters that family members may wish to consider. These topics, set out below, are based on the experience of the Inquiry legal team, including from previous inquiries and inquests where such evidence has been given. They are not intended to be prescriptive or exhaustive.
  - a. Who the deceased was: their qualities, their personality.
  - b. Family life.
  - c. Working/school life.
  - d. Hobbies or personal interests.
  - e. Achievements.
  - f. Future plans and aspirations.
  - g. Family anecdotes or particularly fond memories.
  - h. The effect of the death on the individual family member and/or the deceased's family.
17. The Chairman wishes to ensure that the pen portrait evidence does not overlap with evidence of fact concerning, for example, the lead up to the attack and the aftermath. This includes evidence seeking to criticise organisations considered responsible or evidence apportioning blame to such organisations. Where family members have relevant evidence to

give concerning those matters, that will be adduced, where appropriate, during the relevant evidential phase of the Inquiry. However, evidence of fact should not be given during the commemorative hearings. That would distract from the central purpose of this phase of the Inquiry and may risk objections being raised by non-family CPs or applications being made to ask questions of family members from non-family CPs. That must be avoided to ensure that the pen portrait evidence is able to proceed in accordance with its core purpose.

### **Format of the pen portrait evidence**

18. The way in which family members choose to present their evidence is of course a matter for them. The following non-exhaustive list is based on the experience of the Inquiry legal team, as well as previous inquiries and inquests where pen portrait evidence has been included. It is provided as guidance only as it may assist family members to consider the options available to them.
  - a. A written statement. Such statements can be read out by the author(s) themselves. This could be done by video-link should family members not wish to give evidence at the Inquiry venue. The author(s) of the statement may wish to invite another person to read the statement out, e.g. another family member, a friend, or a legal representative. The author(s) may wish to put their statement in evidence and invite Counsel to the Inquiry and their own legal representative to ask questions to bring out the contents of the statement. In terms of content, a written statement could, for example, include memories, anecdotes, a poem, etc from one family member, multiple family members, or from both family and friends.
  - b. A video. A family member may wish to pre-record the reading of a written statement and have this played during the commemorative hearings. A video could include interviews with one or more family members. It could include video material of the deceased, e.g. from family recordings, social media, etc. There is no expectation or requirement that video presentations should be “professional”. It is a matter for each family to determine how they wish to provide their evidence and recordings on mobile phones or tablets, for example, would be entirely appropriate.
  - c. An audio presentation. A family member may wish to pre-record the reading of a written statement and have this played at the Inquiry hearing. The comments at paragraph 18(b) above are repeated.
  - d. A PowerPoint presentation. Family members may wish to show a series of slides, for example showing pictures of the deceased, either alongside the reading out of a written statement, or as a standalone presentation concerning the deceased.
  - e. Presentation of a photograph of the deceased. Should families consider it appropriate, the Chairman considers that the Inquiry and those attending would be assisted by being able to view a photograph of the deceased while the pen portrait evidence concerning each deceased is given. The Chairman proposes to allow this photograph to be viewed on the hearing room screens.
19. Broadly equal time will be afforded to the family of each deceased, to ensure a fair and balanced presentation of the evidence concerning each deceased. As a broad guide the Inquiry considers that for each deceased a range from 15 minutes to one hour provides a reasonable and realistic approximation. How this is arranged, including, for example, who

authors a statement or contributes to a video presentation (whether, for example, one family member, a number of family members, or family members alongside friends of the deceased), and who reads out a statement to the Inquiry, is a matter for the families; it is important that each family can remember their loved one in the way that they feel is most appropriate.

20. For some families, multiple presentations will be appropriate and necessary to ensure that bereaved family members are each able to give their own pen portrait evidence about their family member. In these circumstances, the Chairman requests that STI is informed of the proposed number of presentations, their format, and who will be providing the statement or contributing to a video presentation. (The proposed details are set out at paragraph 22 below).
21. The Chairman is particularly conscious that children may wish to contribute to the commemorative hearings, e.g. child relatives or school friends of the deceased may wish to contribute to statements or video presentations. The nature of such evidence may inevitably be different for a younger person than an adult. This is likely to require sensitive handling to ensure that children are able to contribute effectively and appropriately without being exposed to unduly upsetting or distressing evidence. The use of special measures may be of particular relevance in the case of children giving evidence. The Chairman requests that STI is informed if it is proposed that children will contribute to the pen portrait evidence, including in what capacity, so that discussions regarding the management of such evidence can take place at an early stage. (The proposed details are set out at paragraph 22 below).

#### **Timetable**

22. The Chairman requests that family members inform STI by 4pm on 21 February 2020 of:
  - a. The format they intend to use in giving their pen portrait, e.g. written statement, video presentation.
  - b. Who will be providing the statement or contributing to a video or audio presentation, including whether any children will be contributing.
  - c. If applicable, the need for multiple pen portrait presentations for a deceased person and, briefly, the reasons for this. The Chairman is conscious that these reasons may well be personal and sensitive, and appreciates that the level of detail in the reasons provided is likely, quite properly, to reflect this. Where family members inform STI that more than one presentation is needed for a deceased person, they should inform STI of the proposed number of presentations, their format, and who will be providing the statement or contributing to a video presentation.
  - d. Whether they wish to have their pen portrait grouped together with other bereaved family members, e.g. so that the pen portrait for one deceased immediately follows that of another, or takes place on the same day.
  - e. Any applications for special measures in respect of the giving of the pen portrait evidence, including supporting evidence (if applicable).
  - f. Any dates to avoid in the period 22 June to 10 July 2020.

23. The Chairman wishes to ensure that family members have sufficient time to consider these sensitive and personal issues, while also ensuring that STI are informed with adequate notice prior to the start date of the Inquiry to ensure that the necessary arrangements can be made for the evidence to be produced and given, e.g. setting up and testing relevant technology. The Chairman considers that the 21 February 2020 date, taken with the time that has been available since the Inquiry's initial proposal document was circulated, strikes the appropriate balance.
24. If, following 21 February 2020, any family member wishes to change the way in which they will give or present their pen portrait evidence, or who will give it, they should contact STI as soon as possible. STI will of course remain as flexible and accommodating as possible and all reasonable efforts will be made to facilitate family members' wishes. This will include circumstances where family members have decided that they do not wish to participate in this phase of the Inquiry but subsequently change their mind. Should that scenario arise, all efforts will be made by STI to assist.

#### **Funding for production of the pen portrait evidence**

25. The Chairman will make funding available in the phased awards being issued to the legal representatives for families for the production and preparation of family members' pen portrait evidence. This may include not only funding for family members' RLRs but also other specialists/advisers/professionals where that is necessary, e.g. to film and produce video presentations.
26. For any expense that will be incurred in the production of pen portrait evidence over £100, evidenced applications setting out the proposed work and expenses to be claimed should be sent to STI in advance of the expense being incurred, as set out in the costs protocol. Responses will be provided as soon as reasonably practicable, with particular regard being paid to the need to progress the production of this evidence so that it can be heard at the start of the Inquiry.

#### **Process for production and review of the pen portrait evidence**

27. The Chairman requests that family members' pen portrait evidence is provided to STI by 4pm on 1 May 2020.
28. Plainly, evidence concerning the deceased is highly personal and sensitive. For this reason, the Inquiry Legal Team will not seek to suggest that the content of any pen portrait be reviewed or reconsidered save in limited circumstances. However, disclosure of the pen portrait evidence to the Inquiry Legal Team only, prior to it being finalised, is necessary for the following reasons:
  - a. To ensure that the content of the evidence does not overlap with evidence of fact concerning, for example, the lead up to the attack and the aftermath. The Chairman has identified the reasons that this must be avoided at paragraph 17 above. Disclosure to STI prior to the pen portrait evidence being finalised will ensure that evidence of fact is not included inadvertently and, if necessary, will allow a discussion between family members and the Inquiry Legal Team to avoid the issues identified at paragraph 17 arising during the oral evidence hearings. It is considered that this is the most sensitive, proportionate and effective way to address this issue.

- b. To ensure that there are no other issues arising from the pen portrait evidence that could give rise to possible interruptions or objections during the oral evidence hearings. Given the paramount importance of avoiding such occurrences during the hearings, prior disclosure to STI is the most sensitive, proportionate and effective way to address this concern.
  - c. Where family members' presentations involve the use of technology, prior disclosure to STI will allow advance checks to be done to ensure that it will work and to minimise the risks of any technological issues occurring when the pen portrait evidence is given.
  - d. Advance disclosure is necessary to allow STI to review the length of the pen portrait for timetabling purposes.
29. The Chairman wishes to assure family members that their evidence will be kept strictly confidential prior to disclosure of the finalised evidence.
30. Following review by, and, if necessary, discussion with the Inquiry Legal Team, the Chairman requests that family members submit the final versions of their pen portraits to STI by 4pm on 15 May 2020.
31. The final pen portrait evidence will then be disclosed to all CPs prior to the evidence being given before the Inquiry.

#### **Steps in the lead up to the pen portrait evidence**

##### *Timetable*

32. Following the 21 February 2020 timeframe set out above, and in advance of the evidence hearings, STI will circulate a draft timetable for the commemorative hearings. This draft timetable will set out who is due to give evidence and when (day and time). When circulating the timetable, STI will set a date for receipt of comments or proposed amendments from family members, and any other CPs. Any proposed amendments from family members will be accommodated as far as reasonably possible.
33. STI will subsequently circulate a final timetable to all CPs. This will also be reflected on the Inquiry's website.

##### *Visit to the Inquiry venue*

34. In advance of the commemorative hearings, arrangements will be made for all family members who wish to do so to attend the applicable Inquiry venue, including with their legal representatives, prior to giving evidence/attending for the pen portrait evidence. The Chairman requests that any family member wishing to take up an advance visit should contact STI as soon as possible so that arrangements can be made.

#### **Support available to family members during the pen portrait evidence**

35. This phase of the Inquiry is likely to be difficult and distressing for family members. Support, counselling and medical services will be available throughout the commemorative hearings. This will comprise:

- a. The Coroner's Court Support Service. Approximately six experienced volunteers will be available to assist family members and provide support.
- b. Cruse Bereavement. They will provide at least two members of staff at all times. Cruse Bereavement are a national charity and their staff members are qualified counsellors who can provide one-on-one counselling support to family members.
- c. The NHS Resilience Hub. Two senior clinicians will be present at all times during this phase of the Inquiry, one at the Inquiry venue and one at the conference centre. These clinicians are qualified medical professionals with experience in assisting people dealing with bereavement and a range of associated conditions, including Post Traumatic Stress Disorder. They will be able to access additional NHS resources quickly should the need arise.
- d. Arrangements are being made to have NHS nurses present at all times during commemorative hearings should any medical issues arise.

### **The role of the pen portrait evidence later in the Inquiry**

#### *Evidence hearings concerning each individual deceased person*

36. Each evidence hearing concerning the individual deceased should commence with a summary of the pen portrait evidence given by that person's family member(s) during the commemorative hearings. This will be read out by CTI.
37. In advance of the evidence hearings concerning each individual deceased, STI will propose a draft summary of the background evidence given during the commemorative hearings, circulate that summary to families, and invite comments and any suggested amendments. A final version of the summary will then be created for use during the evidence hearings concerning each individual deceased.
38. The photographs of each deceased provided for the background evidence will be shown at the start of each evidence hearing concerning each individual deceased, subject to any observations or contrary wishes from the families.

#### *The Inquiry report*

39. The pen portrait evidence concerning the deceased will be included in the Inquiry's report. This evidence is central to the Inquiry's proceedings and should form part of the Inquiry's conclusions. The pen portrait summaries provided for the start of the evidence hearings on each deceased person will be included in the Inquiry report, alongside the photographs of each deceased. In addition, the full pen portrait evidence provided by family members during the commemorative hearings will be available on the Inquiry's website.

31st January 2020  
(Revised 12th March 2020<sup>1</sup>)

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<sup>1</sup> 1 Amendments have been made to paragraphs 14, 27 and 30.