

## INFECTED BLOOD INQUIRY

### DETERMINATION OF APPLICATION MADE UNDER SECTION 21(4) OF THE INQUIRIES ACT 2005

#### The Medical Protection Society

1. The Infected Blood Inquiry has terms of reference which were made by the Minister. He made a statement to Parliament on 2 July 2018 setting them out.
2. In examining these questions amongst others the Inquiry has the power under the Inquiries Act 2005 to require information to be given to it, and to require the production of documents. The Act provides, inter alia, by section 21 as follows:

#### ***“Powers of chairman to require production of evidence etc***

*(1)The chairman of an inquiry may by notice require a person to attend at a time and place stated in the notice—*

*(a)to give evidence;*

*(b)to produce any documents in his custody or under his control that relate to a matter in question at the inquiry;*

*(c)to produce any other thing in his custody or under his control for inspection, examination or testing by or on behalf of the inquiry panel.*

*(2)The chairman may by notice require a person, within such period as appears to the inquiry panel to be reasonable—*

*(a)to provide evidence to the inquiry panel in the form of a written statement;*

*(b)to provide any documents in his custody or under his control that relate to a matter in question at the inquiry;*

*(c)to produce any other thing in his custody or under his control for inspection, examination or testing by or on behalf of the inquiry panel.*

*(3)A notice under subsection (1) or (2) must—*

*(a)explain the possible consequences of not complying with the notice;*

*(b)indicate what the recipient of the notice should do if he wishes to make a claim within subsection (4).*

*(4)A claim by a person that—*

*(a)he is unable to comply with a notice under this section, or*

*(b) it is not reasonable in all the circumstances to require him to comply with such a notice,*

*is to be determined by the chairman of the inquiry, who may revoke or vary the notice on that ground.*

*(5) In deciding whether to revoke or vary a notice on the ground mentioned in subsection (4)(b), the chairman must consider the public interest in the information in question being obtained by the inquiry, having regard to the likely importance of the information.*

*(6) For the purposes of this section a thing is under a person's control if it is in his possession or if he has a right to possession of it."*

3. If a person fails without reasonable excuse to do anything he is required to do by a notice under section 21 he commits an offence (section 35(1)), for which proceedings may be instituted (only) by the Chairman of the Inquiry.
4. Subject to those provisions (and any other specific provision) the procedure and conduct of an Inquiry are to be such as the Chair may direct. This in my view gives a Chair a right (subject only to specific contrary provision) to do such as to extend time for compliance with an Order under section 21.

### **The Current Application**

5. I have before me an application under section 21(4) made on behalf of the Medical Protection Society ("the MPS") in response to a section 21 notice served on the Society: it required the MPS to produce documents which contained any of particular search terms identified to the MPS. The notice was issued on 13 December 2018, with a date for compliance of 31 January 2019.
6. On 23 January 2019 Linklaters LLP ("Linklaters") acting on behalf of the MPS sent a letter by email to the Inquiry arguing that the MPS was unable to comply with the notice by the due date.

### **The Relevant History**

7. It is necessary for me first to set out something of the history.
8. When a statutory inquiry wishes to receive documents, rule 9(2) of the Inquiry Rules 2006 provides that "The inquiry panel must send a written request to any person that it wishes to produce any document or any other thing."
9. On 1 October 2018 the Solicitor to the Inquiry sent a request under rule 9 to the Society asking for three classes of document: (i) all files and information held by the MPS related to advice provided to doctors and dentists in regard to infected blood and blood products from 1970 to the present day, including all correspondence received and sent by both MLA's and DLA's and records of relevant phone calls (including calls on the telephone

advice line) between MPS staff and doctors and dentists as well as information on all relevant cases that may have been pursued by the GMC, GDC, NMC or have been heard by a Coroner.; (ii) all advice and guidance produced by the MPS and Dental Protection in regard to infected blood and blood products and consent in clinical practice (whether focussed specifically on infected blood and blood products or not) from 1970 onwards; and (iii) both external and internal policy related to infected blood/blood products and all information held regarding meetings at any governmental department meeting with the MPS/DPS in which infected blood/blood product was discussed.

10. In response the MPS produced a schedule containing 34 files of relevant documentation, but said it did not have the functionality to search for specific advice provided to individual doctors, nor did it have a policy on infected blood/blood products nor records of meetings with government departments where blood/blood products were discussed. The Assistant General Counsel to the MPS said he suspected there had been none. Arrangements were made to transfer the data in the files identified.
11. In the light of this progress, the Inquiry extended time for compliance with the Rule 9 notice to 28 November 2018, whilst asking questions about the functionality referred to, and whether the records held electronically could be searched using key words. It asked also for information about physical files, since it was unlikely that all the records since 1970 would be held electronically.
12. On 28 November 2018 the Assistant General Counsel wrote giving details of systems used to hold the relevant documents electronically, and to what extent they could be searched. The MPS offered to run key word searches. It had conducted further checks to see if there had been any meetings with Government related to infected blood/blood products, and confirmed there had been none.
13. On 4 December 2018 there was a further extension of time for compliance with the Rule 9 request until 12 December 2018. Discussion continued about ways of searching the particular electronic databases concerned, with the MPS offering to run a key word search against a part of the system where this could be done.
14. On 13 December 2018 the section 21 notice now under consideration was issued., requiring production of unredacted notes made during telephone advice sessions which might concern infected blood or blood products, all electronically held unredacted adviser notes made during such calls, and relevant case files concerning infected blood or blood products.
15. On 21 January 2019 Linklaters provided a detailed response to this, setting out some of the work that had been done in order to comply, identifying difficulties they had encountered running search terms, giving details of the records held and how they were stored, and indicating clearly a desire to assist the Inquiry in obtaining relevant information from within them.

### **The Reasons for the Application**

16. The application relies in part upon the fact that the Inquiry Team has agreed to have a meeting to discuss working collaboratively as to the best ways of obtaining the desired

information from the database. It had proved impossible to achieve this within the time permitted by the notice, despite the efforts made. An extension of one month (adding the words "in the first place") was requested

### **Discussion and Conclusions**

17. I have no doubt from the correspondence and contacts which the Inquiry team has had with the MPS that the MPS is actively working towards production of the relevant information from its records, and intends to honour its obligations to the Inquiry. It has already partly fulfilled those obligations, and I am satisfied that any delay in fulfilling the requirements which remain outstanding has been caused by the difficulties of working out how best to extract the relevant information from the systems in use.
18. This is not a case in which there is any reason to suspect that the MPS is seeking to delay or defeat the production of documents.
19. I regard the powers I have under section 21 of the Act, coupled with the threat of criminal sanction if information or documentation required by such a notice is not forthcoming, as important. For the Inquiry to answer its Terms of Reference in the public interest requires it to obtain documents which are of potential relevance, and consider them with the help of core participants. The principal purpose of section 21 is to help to obtain relevant documents.
20. In the light of this, coupled with the extensive co-operation thus far given by the MPS, together with there being understandable and excusable reasons for delay thus far, I have no hesitation in granting the required extension, which will be until 5pm on Monday 4 March 2019. A varied section 21 Notice will be issued to reflect this.
21. Any further request for an extension will be considered on its own merits and in the light of progress between now and 4 March 2019.

Sir Brian Langstaff

Chair Infected Blood Inquiry

29 January 2019