

IN THE BIRMINGHAM AND SOLIHULL CORONER'S COURT

HIS HONOUR RICHARD FOSTER

NOMINATED PURSUANT TO SCHEDULE 10 CJA 2009

**INQUESTS TOUCHING UPON THE DEATHS OF PATIENTS OF
MR IAN PATERSON FOR TREATMENT OF BREAST CANCER**

**FURTHER RULING UPON IAN PATERSON'S APPLICATION TO SET ASIDE
THE SCHEDULE 5 NOTICE SERVED UPON HIM**

Background

1. These Inquests were listed to commence on 7th October 2024. On Friday 27th September 2024 the Solicitors to the Inquest ("STI") received submissions on behalf of Ian Paterson that:
 - (1) I have the power to grant him funding for legal costs;
 - (2) I should exercise that power to grant him such funding;
 - (3) I should adjourn the resumption of the Inquests.
2. I heard this application on the first day of that listing. I ruled that I have no power to grant funding to any Interested Person ("IP") for legal representation, that the obligations under Article 2 ECHR rest with the state not me and that any decisions for funding rest with the Director of Legal Aid Casework. I was satisfied that there is no good reason why Mr Paterson should not engage with the Inquest process. I therefore refused the applications. My full ruling dated 7th October is available on the investigation website (<https://coronerspatersoninvestigation.org>). At that stage there was no mention of any health issues being raised by Mr Paterson.
3. The Inquests proceeded the following day, and I began to hear evidence on generic issues. Mr Paterson was due to give evidence on the generic issues on 10th October. Special arrangements were made with the prison where he is serving his sentence for him to appear remotely. At 11pm on 9th October STI received an application settled by counsel to

set aside the Schedule 5 Notice which had been served upon Mr Paterson on 4th September. I gave directions for further evidence in support of the application to be served by 4pm on 16th October, with the application being on 17th October with his legal team attending court and any medical expert giving evidence at court, if necessary, attending remotely. I was aware that a psychologist was due to see Mr Paterson in prison on Tuesday of this week, so 15th October.

4. The directions which I gave on 10th October are also available on the investigation website, and included this:

“I note that Mr Paterson states that he now has legal representation. Those instructed lawyers should be given some time to take instructions on both generic issues and individual inquests. I accept that preparation for any generic evidence is more wide ranging and likely to be more time consuming and complex for him and any lawyers advising him. If necessary any generic evidence can wait until a later stage in Module One, if still required. He and his legal team can concentrate on the individual inquests which will now be listed to start on 21 October 2024.”

The basis for the application

5. At the hearing on 10th October any details about the health issues raised on behalf of Mr Paterson’s were not referred to in open court. However, I am satisfied that now that the application has been renewed by his counsel in court that the public interest demands that IPs, particularly the bereaved families, should hear all the evidence upon which Mr Paterson relies. I have no power to restrict press reporting in these circumstances. However, paragraph 71 of the Chief Coroner’s Guidance No. 25 suggests that in appropriate circumstances I should invite the press not to report something. In my view the press should be able to report that Mr Paterson has raised health issues including anxiety as a reason to revoke the Schedule 5 Notice, but I would invite the press not to report the details of Dr Lyle’s evidence.
6. Mr Paterson’s written application dated 9th October 2024 sets out three reasons why he seeks to revoke the Schedule 5 Notice:
 - (1) The difficulties which Mr Paterson has had to access the disclosed material in these Inquests;
 - (2) The lack of legal representation until recently, and even with legal representation the difficulties in providing and taking instructions;

- (3) Mr Paterson's health, in particular anxiety and depression.
7. I will deal with each reason put forward in turn.

The difficulties in having access to disclosed material

8. There can be no doubt that the ability of Mr Paterson to access all the disclosed material has been handicapped by the fact that he is a serving prisoner. However, within the constraints of his status as a prisoner, I and my legal team have gone to enormous lengths to ensure that the disclosed material is made available to him.
9. The efforts made are set out in the chronology which has been made available to all IPs and is available on the investigation website. I will not repeat the details set out in that chronology in this ruling. The prison authorities have cooperated with the Inquest Legal Team ("ILT") to the extent that they offered Mr Paterson a move to either of two different wings within the prison where the regime would allow him uninterrupted access to all the electronic material in the same way as all other IPs. Mr Paterson declined to accept those offers. It is not my place to interfere with the prison regime but I have satisfied myself that such a move would not prejudice Mr Paterson's application to move to open conditions.
10. The present position is that facilities have been arranged with the prison for Mr Paterson to have access to two ring binders of material in hard copy, the intention being to rotate this allowance as the Inquests proceed to ensure that Mr Paterson has the material for the immediately forthcoming Inquests. This is the best that can be arranged within the prison regime in the light of Mr Paterson's refusal to move wings. I have no reason to doubt that this arrangement is working well. Indeed, the solicitor instructed by me to attend upon Mr Paterson on 3rd October 2024 reported as follows:
- "Mr Paterson came down for the appointment and was aware of the reason why I was there to see him. He confirmed he had read the lever arch files recently provided to him and this was evident as he had prepared notes ready for our meeting. He confirmed to me that he had received the list of issues that would form the basis for the witness statement and considered them. Again, having made notes on the same."*

The full version of the attendance note has been made available to all IPs. On the occasion of that attendance Mr Paterson made no mention of health issues and the reasons he gave for not providing a statement

were lack of access to the disclosed material and lack of legal representation.

11. I gave directions on 10th October that any generic evidence from Mr Paterson could wait, if still required, until towards the end of Module 1 which will be in the spring of 2025 at the earliest. I accepted that such evidence would be far more wide reaching. This allowed Mr Paterson to concentrate on the material for the first phase of the individual Inquests in Module 1. The material relevant to the first two weeks on Inquests due to commence on Monday are contained in one ring binder which was despatched to the prison on 11th October. Since then for reason of the unavailability of one of the medical experts the first Inquest listed for Monday 21st October has been stood out, and the remainder of next week will involve one other Inquest only. Mr Paterson's solicitors were informed of this on 14th October, thus enabling Mr Paterson to focus his attention on that one Inquest.

Lack of legal representation

12. Mr Paterson now has legal representation, although I am told that this will not extend to representation at court on each occasion when he would give evidence. I make it clear that CTI will treat Mr Paterson in the same fair way as they will treat all IPs regardless of whether or not he has representation at court. I have dealt with his previous lack of such representation in my ruling on 7th October 2024 when I refused application for an adjournment. That ruling appears on the investigation website.
13. The solicitors who now say that they are instructed to represent Mr Paterson at these Inquests are BCL who have been advising him for a number of months. Based in Lincoln's Inn the firm describes itself on its website as a "top-tier law firm" with "extensive experience acting in the most high-profile Inquests". Such has been their involvement in advising Mr Paterson that on 26th February this year they were able to serve 17 pages of submissions, including a detailed analysis of the medical evidence in eight of the opened Inquests. Although those solicitors have only recently been able to accept instructions to formally represent Mr Paterson at these Inquests it is clear that they do not do so from a standing start. Indeed, in recent months they have been in regular and extensive correspondence with STI, and they have received all the material served on IPs in preparation for these Inquests at the same time

as all other IPs. Even if counsel cannot appear for Mr Paterson each day he does now have full access to those specialist solicitors.

14. In the written submissions dated 9th October some of the difficulties which solicitors and counsel say they have in obtaining instructions are set out. This is an inevitable consequence of Mr Paterson's criminal convictions and thus being a serving prisoner. I have no reason to doubt that the prison authorities will be as helpful as they can be to Mr Paterson's legal team as they have been to my legal team. The fact that Mr Paterson is a serving prisoner cannot be allowed to frustrate my investigations.
15. I have given permission for Mr Paterson to participate in these Inquests remotely which was at his request. I would refer to my ruling in this regard dated 5th July 2024 which appears on the investigation website. If Mr Paterson avails himself of the opportunity to appear remotely I will ensure that arrangements are made for him to have privileged consultations with his legal team when they are at court in so far as they are reasonably necessary.

Mr Paterson's health issues

16. Shortly before the submissions made on 9th October Mr Paterson's legal team had obtained a "brief interim report" from a psychologist, Dr Lyle, whose opinion in so far as it is relevant to Mr Paterson's ability to give evidence was as follows:

- “1. He is likely to be so affected by high levels of Anxiety both in his own preparation and in his forthcoming Court appearance that he will be unable to study and marshal the relevant material, especially if voluminous, for a concentrated period of time because of intruding anxiety.*
- 2. His memory and concentration are likely to be affected in live proceedings, so that noting and remembering points which emerge, with a view to responding to them in due course, will be considerably impaired....*
- 4. He may have great difficulty in “thinking on his feet” and responding to points as they arise. ...*
- 6. His anxiety will rise even further under hostile cross-examination and he may become tongue-tied and confused....*
- 7. There is a danger he could collapse or have a serious health crisis in Court.”*

17. When I became aware of this report I directed STI to ask Mr Paterson's solicitors as to what protective measures which were within my powers could be proposed. The views of Dr Lyle as conveyed to STI were:

"Sometimes the use of frequent rest pauses is suggested, but in this case it is actually being in a Court situation which triggers the anxiety, and after the break, he would be immersed in that situation all over again.

An intermediary is not likely to help matters because there is not much that such a person could assist in explaining to him, as much of the inquest will probably focus on technical and medical matters.

I think the obvious answer to helping Mr Paterson to participate meaningfully in this series of inquests is for him to have assistance in the preparation and presentation of his case through having his own legal representation. There is otherwise a risk that he will be effectively a spectator throughout. The presence of his own legal representation would in my opinion help considerably to reduce his anxiety and allow him to participate more effectively."

18. The first that I and the ILT became aware of Mr Paterson's health issues was earlier this month. In particular Mr Paterson made no mention of them when he appeared at a Pre-Inquest Review Hearing on 14th June 2024 which was held specifically for the purpose assisting Mr Paterson with his preparation for the Inquests. Indeed, Mr Paterson informed me at that hearing that he was about to complete an Open University degree.
19. Dr Lyle had an in-person consultation with Mr Paterson at the prison where he is serving his sentence on 15th October. In the knowledge of this I directed that any report relied upon should be served by 4pm on 16th October. I have now read a copy of that report. Both reports have now been made available to all IPs.
20. In summary, Dr Lyle opines that Mr Paterson suffers from depression and high levels of anxiety, which is triggered by him having to review material relevant to the Inquests which re-awakens memories of his offending history. In the initial report following a one hour telephone interview Dr Lyle's diagnosis was that Mr Paterson is suffering from a "Trauma or Stress Related Disorder". It is this condition which gives rise to the high levels of anxiety and which will affect his memory and concentration. The anxiety would be added to by the sheer fatigue caused by the court process, with the risk of a serious health crisis.

Various tests were carried out the results from which indicate that Mr Paterson is in the “very superior range” for intelligence, with no indications of malingering. On other tests he scored well above the normal range for anxiety and depression.

21. Dr Lyle gave evidence at court remotely in accordance with his reports. He was questioned by CTI as well as counsel for some of the bereaved families and counsel for University Hospitals Birmingham NHS Foundation Trust. It became clear that he has little experience of proceedings in the Coroner’s Court, which was perhaps clear from some of the phrases used in his reports such as “hostile cross-examination” and Mr Paterson’s “ability to construct a defence”. He confirmed that he had seen no medical records nor made enquiries about the availability of medication for Mr Paterson which he was of the view would assist with any anxiety and depression. Nor was he aware of the findings of the trial Judge in Mr Paterson’s criminal trial that Mr Paterson had exaggerated his mental health symptoms in support of his failed application that he was unfit to plead. It became clear in the course of questioning that Dr Lyle relied to a considerable extent upon Mr Paterson’s self-reporting.
22. As an experienced Judge in the Crown Court I have substantial experience of some of the most vulnerable witnesses giving evidence. I have over 20 years experience as a judge trying cases including homicide and serious sexual offences. I have experience of witnesses and defendants with far greater levels of vulnerability than those which Dr Lyle states Mr Paterson has. It is common for witnesses to have high levels of stress and anxiety, but the courts are familiar with adapting the court processes and providing special measures to enable a witness to provide the best evidence. I will draw upon that experience to ensure that Mr Paterson is able to provide the best evidence possible to the court.
23. He will be giving evidence remotely so the concerns about the court environment are misfounded. Experience from Crown Court trials is that participation remotely removes the pressures of the court environment. His preparation will now be on an Inquest by Inquest basis, and I will ensure that he is provided with hard copies of the relevant material in a timely manner. Any generic evidence, if still required, can await a later stage, when I am told legal representation at court would be available to him.
24. I will make every allowance for any concentration deficits. He can be given any reasonable time within the court process and can be allowed

regular breaks. The court will only be sitting four days each week so as to allow legal teams time for preparation. The Inquest timetable already allows for regular breaks for the benefit of IPs and their legal teams.

25. Mr Paterson now has legal representation, albeit not necessarily at court on a daily basis, and his legal team can assist him. There is no cross-examination in the Coroner's Court. I will ensure that relevant questioning is conducted in an appropriate manner. In particular I will ensure that all counsel are familiar with and follow the guidance and toolkits of the Advocate's Gateway found at <https://www.theadvocatesgateway.org>. I will also take appropriate steps to protect him from inappropriate questioning by unrepresented next of kin.

The law

26. Paragraph 1(1)(a) of Schedule 5 of the Coroners and Justice Act 2009 ("the Act") provides that a coroner may by notice require a person to attend at a stated time and place and give evidence at an inquest. Similarly, paragraph 1(2) (a) empowers a coroner to require the production of a witness statement upon the giving of a suitable notice.
27. The requirements of a suitable notice are laid down in paragraph (3) of Schedule 5, where it mandates that the notice must explain the possible consequences of noncompliance and indicate what the recipient of the notice should do if they wish to claim that they are either unable to comply with the terms of the notice or they believe it is not reasonable that they be required to comply.
28. Paragraphs (4) and (5) of Schedule 5 go on to state:
- "(4) A claim by a person that –*
- (a) he or she is unable to comply with a notice under this paragraph,*
- or*
- (b) it is not reasonable in all the circumstances to require him or her to*
- comply with such a notice, is to be determined by the senior coroner, 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 subparagraph (4)(b), the senior coroner must consider the public interest in the information in question being obtained for the purposes of the inquest or investigation, having regard to the likely importance of the information".*

29. Accordingly, the powers under schedule 5 are broad and provided the notice has been properly made it mandates compliance unless and / or until revoked or varied by a coroner upon application by the person so affected.
30. In deciding whether to revoke or vary a notice, a coroner must consider the public interest in the information sought being obtained for the purposes of the inquest or investigation, having regard to the likely importance of the information.
31. By virtue of my nomination as Judge-By Coroner under Schedule 10 of the Act I have all the powers of a Senior Coroner.

Discussion

32. I remind myself that the Inquests, which I am conducting are not trials. The nature of the Inquest process, as stated by the then Lord Chief Justice Lord Lane in in *R v South London Coroner, ex p. Thompson (1982) 126 S.J. 625, DC* is this:
- “Once again it should not be forgotten that an inquest is a fact finding exercise and not a method of apportioning guilt. The procedure and rules of evidence which are suitable for one are unsuitable for the other. In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends”*
33. Whilst my duty remains to fully, fairly and fearlessly investigate all the facts, I wish to reassure Mr Paterson that I and my legal team will treat him in the same way as all other IPs. As I said in my opening remarks:
- “I make it clear from the outset that I come to each Inquest with an open mind and that it is open to me to reach a conclusion of death by natural causes without any culpable failings, if appropriate, on the evidence.”*
34. My overriding objective is to carry out the most thorough investigation possible. Nobody is on trial. It is obvious that the quality of my investigation will be enhanced by the participation of Mr Paterson. As paragraph 5 to Schedule 5 of the Act says I *“must consider the public interest in the information sought being obtained for the purposes of the inquest or investigation, having regard to the likely importance of*

the information.” Although I am satisfied that I could carry out an Article 2 compliant investigation without his participation it is clear that his evidence would be of the utmost assistance.

35. It is important to differentiate between Mr Paterson’s role as a witness and as an IP. His role as an IP is a right not a duty and it is entirely a matter for him whether he wishes to take advantage of that right in order to participate in the Inquests, although I would encourage him to do so. The Schedule 5 Notice only requires him to appear as a witness to give evidence on those days when required in the individual Inquests. That Notice has already been varied to take account of Mr Paterson’s circumstances in that I am no longer requiring him to provide generic evidence until a later stage in Module 1.
36. With the assurances which I have given regarding the conduct of these Inquests I urge him to provide evidence and participate, if only out of respect for the 62 families of his former patients. It is in the best interests of those bereaved families that his participation assists with the answering of their questions.
37. Mr Paterson’s solicitors have put forward a proposal that he should not be obliged to give evidence on the individual Inquests in Module 1 but rather he should provide evidence towards the end of Module 1 on all 62 opened Inquests, as well as it is assumed on the generic issues. It is said that the funding for his legal representation would extend to representation for him giving evidence in that way then, whereas it would not for the individual Inquests. In my judgment this would be unacceptable and detrimental to the quality of my investigations. I need to hear his evidence on a case by case basis alongside the evidence of other witnesses, including from Mr Paterson’s clinical colleagues and the medical experts. If I were to accept Mr Paterson’s proposal it would inevitably necessitate witnesses returning to provide further evidence which would lengthen the process and increase costs for no discernible benefit to my investigation.

Conclusion and ruling

38. I found Dr Lyle to be an unimpressive expert witness who had not applied the rigour which is usually expected of such an important expert witness providing evidence to the court. I do not however at this stage need to make findings in connection with his evidence. I approach this application upon the basis that Mr Paterson does suffer from the anxiety and depression which Dr Lyle opines to. Following that basis I can find no reason why, with appropriate measures and

adjustments, Mr Paterson cannot provide evidence. His evidence will be of the utmost assistance and any evidence is better than none. It is obvious that as a serving prisoner his ability to prepare and to provide instructions to his legal team has been handicapped. I can and will make every allowance for that.

39. I can find no reason why Mr Paterson should not comply with the Schedule 5 Notice served upon him. It is perfectly reasonable in all the circumstances to require him to do so, taking into account the public interest and the importance of his participation to my investigations and these Inquests. I can and will make all necessary adaptations to the court process to achieve the best evidence from Mr Paterson.

40. I refuse the application to revoke the Schedule 5 Notice, although I have varied it as previously indicated. The first Inquest when Mr Paterson is required to give evidence is that of Chloe Nikitas which commences on Tuesday 22nd October 2024. I expect him to appear remotely. No doubt his legal team will advise him upon the consequences of non-compliance.

HH RICHARD FOSTER

20th October 2024