

## DFM Meeting with Bereaved Families Notes 23 September 2021

-DFM:

- DFM sees this meeting as part of an ongoing conversation

A couple of significant points from DFM:

- leadership of inquiry conversation has focused on identification of judge that would be able to lead inquiry

- can't give conclusion about process today, that is still ongoing
- can say that they have had those discussions with the Lord Advocate, and there has been a suggestion from Lord Advocate
- From this it is evident that this will be judge-led inquiry

- There has also been discussions about Terms of ref and scope of inquiry

- DFM wants officials to engage and discuss with Bereaved Families on their views on the scope of the inquiry and the Terms of Ref

- as time goes on, we can make a reasonable amount of progress on that point, but because of inquires Act 2005 we have to discuss ToR with Chair

- DFM's influence over ToR becomes weaker as the chair of the inquiry exerts their views

- Bereaved Families can be assured that the perspective of bereaved families will be central to conduct of the inquiry

- in regards to leadership of inquiry, I was to be assured that the bereaved families will be central to their focus (by deciding chair, we can be confident that we will choose a chair who will have bereaved family at central of inquiry)

Anwar raises two issues:

1. -What is the timeline in what needs to be done now and end of the year?
  - they want to keep tight timelines
  - Want to know what aspects have been dealt with so that end of year timeline can be assured?
2. – is there a date for when a chair will be put in place?
  - and what are the dates for working through the terms of reference?

DFM can't say an X date for appointing of judge, but wants inquiry up and running by end of year:

- what this means is that they would like a Judge appointed, ToR really far advanced and possibly nailed down (but this cannot be guaranteed by DFM)

- the suggested judge has been looking for assurance that they will be independent, and we want this as well, but this is also required from Inquiries Act.

- ToR is a chicken and egg scenario

- we need to be satisfied that you have given us a comprehensive statement for your aspirations for the scope of the inquiry rather than find out down the line that this was not properly captured

- We don't want to put a false timescale on it, Bereaved Families need to take the time they need to provide input and get to a position that where they feel they have a comprehensive understanding of the issues.

Anwar:

What is the timeframe that the inquiry will be looking at? I imagine you might not be able to define this, and it might be up to chair

-Will it include time leading up to pandemic? Exercises in 2015? Advice and training, reports that came out beforehand?

DFM: That has a to be product of what goes into the Terms of Reference.

-if Bereaved Families want to have a probe into how prepared was the Scottish prepared for a pandemic, than that needs to be raised in discussions around Terms of Ref.

-you could look at reasonable preparations for a pandemic, what were the reasonable preparedness for any kind of emergency?

-hearing Bereaved Families' perspective on the timescale and what they think is necessary is important

Anwar: Bereaved Families want to know more about scale of inquiry?

-It will be like a David and Goliath battle. Many bodies (hospitals and health bodies etc) won't need co-participation status and won't need funding, but Bereaved Families need co-participant status and families need to know they won't be burdened with funding.

-ensuring families are front and centre and have co-participant status funding is essential. It would be box ticking exercise without it, families will not be able to engage. This is a key question.

DFM: Agrees, if families are going to be front and centre, frankly there is no group who has greater interest than the bereaved families. It makes absolute logical sense but cannot guarantee it

-in all that we are doing, we are ensuring that bereaved families are front and centre of inquiry. Ultimately the decision of awarding co-participant status is assigned is up to the chair

Anwar *[this part was difficult to hear]*:

FAI (fatal accident inquiries) and the Bio Case – the Scottish Gov agreed that there was no requirement for funding limit

-other examples show that well over 50% of family means tested don't get through – INCAS example? Wants us to look into it

-it is a similar case here, they want to be fed information, they want to know what is going on, they have a right to be heard.

-if there is a "your income is at this level then you do not get financial support" that will not help bereaved families

DFM believes this is different as there will not be individual family representation

Anwar agrees because otherwise the inquiry would last 10 years and they want representation for a group of families.

DFM suggest to take away for further thought: r

- representation of groups – for example at the abuse inquiry there was a represented a group of individuals that were given representative status.
- Thinks it is inconceivable for Bereaved Families to not have core participant status, although cannot guarantee that
- there should be as many examples as possible to ensure that we cannot deny Bereaved Families core participant scenario - what are the similar cases that we can use as evidence for this rationale – we as officials should investigate this?

Anwar: At the end of the day the most powerful voices we have is the bereaved families, no other experiences will compare.

DFM: we might to identify what the obstacles are and let's take that away

Anwar:

Question of a panel, has there been any thoughts put into that from Scottish Government? In other inquiries the SG has had a role and some influence with chair as to who would be on panel.

DFM: It has to be in that order: Appoint Chair, then panel discussion happens. It would be tricky to offer conditional terms to chair about panel

- it has to be sequential: "you are the chair and now we talk about what flows from that"
- Agrees that it is much more likely to be assessor rather than a panel (assessors, advisors, specialists)
- the experience in Scottish Inquiries is that they tend to be judge led and they are running the show.

Anwar: Agrees and hopes we get a robust judge

- Suspect once the chair is appointed that they will want to be ultimate decision maker with assistance from assessors

Anwar: Bereaved Families want recommendations that are implemented, with time scales given. In the past recommendations have gathered dust and there have been no sanctions

- will there be recommendations? What is the time scale for implementation? What will the sanctions be for non-compliance? This is what Bereaved Families are focused on

DFM: We are going into this to appoint a judge, a senior figure in decision making authority in Scotland,

- scope as broad and appropriate as Bereaved Families consider.
- Would be confident that government would be supportive and confident about ensuring implementation of recommendations

Anwar: Since 1990 there has been only 6 inquiries that have had post inquiry scrutiny on recommendations

- the government and whoever else needs to be held to account

DFM; Parliament can decide once inquiry is concluded to establish processes

to ensure recommendations are implemented

Jane Morrison question: The impression I get that it would happen after inquiry, can government not make a commitment at this stage that the findings of the recommendation will be put in place? What if there is change in government in the meantime?

DFM: There are things we are doing differently today from what we did in March 2020, the government has changed, it would be unusual for the government to say at the outset that they will take on recommendation because you don't know where the inquiry will go.

- parliament could be put scrutiny measures in place that could force government to do certain things
- we cannot guarantee anything because it is still unknown what those recommendations will look like
- if government was to change hands, they will want to implement the recommendations in order to show how rubbish the last government made

Anwar: 1) If the government says they will implement recommendations that will then provide an example to others (hospitals etc) and hold others to account

2) If there is a framework and chapters then issues that arise between chapters (e.g supplies of PPE) need to be addressed. Need to know that the government can take lessons on. Lessons need to be learned as inquiry goes on in order to save lives. What is the process for this?

Families do not want something 2,3,4 years down the line and only getting recommendations then. Interim reports are necessary.

DFM: this is up to the chair but (in his view) if chair takes things on sequentially, on swine flu, then preparedness, etc, this won't be helpful.

- what is most important is lockdown decisions, PPE.
- You need to take evidence in the form of case studies. For example with care homes they take an approach: this is what we think happened and this is how we are going to make it better.
- there should be tangible case studies, then hearing of evidence, come to conclusions, and make recommendations
- would rather get 10 case study reports as the inquiry goes on

Alan: Item 4 on harms list – economic harm?

- what does that encompass? If it is about who was awarded contracts and where did money go then that will take a long timeline and should be last priority (or part of a separate inquiry)

DFM: Audit Scotland will be addressing

- if other stakeholders think this is an issue (for example they were made bankrupt by a government decision) then this perhaps cannot be ignored.
- However DFM was in the business of saving lives, I would rather pick up pieces of economic hardship than that of bereaved families

Alan: Would rather focus on saving future lives rather than mitigating economic hardships.

DFM: With an independent chair they can make the rationale decisions for all of this.  
-to DFM lockdown was an obvious choice, but other decisions was one unpalatable decision against another and that is why an independent chair is needed.

-thanks Alan for raising issue

DFM suggest next steps: schedule a discussion for end of October

Anwar and lawyers agree.