

FAO Dr Steven Evans
Practitioner Performance Advice
NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

4 May 2022

Dear Sir

**Re: The Statutory Independent Public Inquiry into Urology Services in the
Southern Health and Social Care Trust**
**Provision of a Section 21 Notice requiring the production of a Witness
Statement & Documents**

I am writing to you in my capacity as Solicitor to the Independent Public Inquiry into Urology Services in the Southern Health and Social Care Trust (the Urology Services Inquiry) which has been set up under the Inquiries Act 2005 ('the Act').

I enclose a copy of the Urology Services Inquiry's Terms of Reference for your information.

You will be aware that the Inquiry is starting its investigations into the matters set out in its Terms of Reference. A key part of that process is gathering all of the relevant documentation from relevant departments, organisations and individuals.

In keeping with the approach we are taking with other departments, organisations and individuals, the Inquiry is now issuing a Statutory Notice (known as a 'Section 21 Notice') pursuant to its powers to compel the production of relevant documentation.

This Notice is issued to you as you are the link adviser for the Southern Health and Social Care Trust, within Practitioner Performance Advice (hereafter referred to as PPA), formerly The National Clinical Assessment Service (NCAS). It relates to documents within the custody or control of the PPA department and requires written responses to questions posed. The Schedule to the enclosed Section 21 Notice provides full details as to the matters which should be covered in the written evidence which is required

from you. It is hoped that this Section 21 Notice will alleviate any concerns that your department may have in relation to data protection or confidentiality.

As the text of the Section 21 Notice explains, you are required by law to comply with it.

Please bear in mind the fact that the witness statement required by the enclosed Notice is likely (in common with many other statements we will request) to be published by the Inquiry in due course. It should therefore ideally be written in a manner which is as accessible as possible in terms of public understanding.

If it would assist you, I am happy to meet with you, your officials and/or PPA's legal representative(s) to discuss what documents you have and whether they are covered by the Section 21 Notice.

You will also find attached to the Section 21 Notice a Guidance Note explaining the nature of a Section 21 Notice and the procedures that the Inquiry has adopted in relation to such a notice. In addition, as referred to above, you will also find enclosed a copy of the Inquiry's Terms of Reference to assist you in understanding the scope of the Inquiry's work and therefore the ambit of the Section 21 Notice.

Given the tight time-frame within which the Inquiry must operate, the Chair of the Inquiry would be grateful if you would comply with the requirements of the Section 21 Notice as soon as possible and, in any event, by the date set out for compliance in the Notice itself.

If there is any difficulty in complying with this time limit your organisation must make an application to the Chair for an extension of time before the expiry of the time limit, and that application must provide full reasons in explanation of any difficulty. The Inquiry will be pleased to receive your documents in tranches; you do not have to wait until you are in a position to fully comply with the Notice before you begin to send documents. Indeed it will greatly assist the progress of the Inquiry's work if you immediately begin the process of forwarding documents to the Inquiry.

If your organisation does not hold documentation in respect of some of the categories of document specified in the Section 21 Notice, please state this in your response. If it

is possible to indicate by whom such information might be held, if it is not held by your organisation, the Inquiry would find that of assistance.

Please do not hesitate to contact me to discuss any matter arising.

Yours faithfully

Personal Information redacted by the USI

Anne Donnelly
Solicitor to the Urology Services Inquiry

Tel:

Personal Information redacted
by the USI

Mobile:

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by the USI

THE INDEPENDENT PUBLIC INQUIRY INTO
UROLOGY SERVICES IN THE
SOUTHERN HEALTH AND SOCIAL CARE TRUST

Chair's Notice

[No 52 of 2022]

pursuant to Section 21(2) of the Inquiries Act 2005

WARNING

If, without reasonable excuse, you fail to comply with the requirements of this Notice you will be committing an offence under section 35 of the Inquiries Act 2005 and may be liable on conviction to a term of imprisonment and/or a fine.

Further, if you fail to comply with the requirements of this Notice, the Chair may certify the matter to the High Court of Justice in Northern Ireland under section 36 of the Inquiries Act 2005, where you may be held in contempt of court and may be imprisoned, fined or have your assets seized.

TO: FAO Dr Steven Evans
 Practitioner Performance Advice (PPA)
 NHS Resolution
 8th Floor
 10 South Colonnade
 Canary Wharf
 London
 E14 4PU

IMPORTANT INFORMATION FOR THE RECIPIENT

1. This Notice is issued by the Chair of the Independent Public Inquiry into Urology Services in the Southern Health and Social Care Trust on foot of the powers given to her by the Inquiries Act 2005.
2. The Notice requires you to do the acts set out in the body of the Notice.
3. You should read this Notice carefully and consult a solicitor as soon as possible about it.
4. You are entitled to ask the Chair to revoke or vary the Notice in accordance with the terms of section 21(4) of the Inquiries Act 2005.
5. If you disobey the requirements of the Notice it may have very serious consequences for you, including you being fined or imprisoned. For that reason you should treat this Notice with the utmost seriousness.

DOCUMENTS TO BE PRODUCED

TAKE NOTICE that the Chair of the Independent Public Inquiry into Urology Services in the Southern Health and Social Care Trust requires you, pursuant to her powers under section 21(2)(b) of the Inquiries Act 2005 ('the Act'), to produce to the Inquiry the documents set out in the Schedule to this Notice by **12.00 noon on 15th June 2022**.

APPLICATION TO VARY OR REVOKE THE NOTICE

AND FURTHER TAKE NOTICE that you are entitled to make a claim to the Chair of the Inquiry, under section 21(4) of the Act, on the grounds that you are unable to comply with the Notice, or that it is not reasonable in all the circumstances to require you to comply with the Notice.

If you wish to make such a claim you should do so in writing to the Chair of the Inquiry at: **Urology Services Inquiry, 1 Bradford Court, Belfast BT8 6RB** setting out in detail the basis of, and reasons for, your claim by **12.00 noon on 8th June 2022**.

Upon receipt of such a claim the Chair will then determine whether the Notice should be revoked or varied, including having regard to her obligations under section 21(5) of the Act, and you will be notified of her determination.

Dated this day 4th May 2022

Signed:

Personal Information redacted by the USI

Christine Smith QC
Chair of Urology Services Inquiry

SCHEDULE
[No 52 of 2022]

1. You are referred to the terms of reference of the Urology Services Inquiry ("USI"). Provide all documents within the custody or under the control of the Practitioner Performance Advice ("PPA"), formally known as NCAS, relating to paragraph (e) of those terms of reference.
2. Provide a full copy of all documents held by the PPA relating to the case of Mr. Aidan O'Brien (Consultant Urologist), NCAS Ref: 18665, including communication to and from the Southern Health and Social Care Trust ("the Trust"), internal notes of communications relating to the Trust and/or Mr. O'Brien, records of advice sought and provided, and communication to and from Mr. O'Brien.
3. Provide a narrative account using a chronological format and citing any relevant document(s) in order to fully explain the nature of the PPA's role and engagement with the Trust in connection with the performance of Mr. O'Brien, to include an outline of the information and issues which were brought to the attention of the PPA, the advice sought by the Trust and provided by the PPA, as well as any engagement between the PPA and Mr. O'Brien. You should fully describe any procedural considerations which governed these engagements. You should also outline any concerns which the PPA may have formed arising out of these engagements. The narrative account should also address in general terms the experience of the PPA when advising in the context of the MHPS framework in order to assist the Inquiry with its review of the implementation and effectiveness of this framework.
4. Please provide comments, with reference to examples, on the implementation and effectiveness of *"Maintaining High Professional Standards in the Modern HPSS: A framework for the handling of concerns about doctors and dentists in the HPSS"* published by the Department of Health, Social Services & Public Safety in November 2005 ("the MHPS Framework"). Please consider whether the MHPS Framework is fit for purpose, outline the challenges which in practice undermine the effectiveness of its implementation and consider what, if anything, would be required to strengthen the framework itself or its implementation in practice.

5. Based on the information available to the PPA at present, how would you assess the implementation and application of the MHPS Framework by the Trust with regard to Mr. Aidan O'Brien? Please consider the effectiveness of the process in identifying and addressing any concerns, any delay in the conduct of the process and the outcomes of that process.

NOTE:

By virtue of section 43(1) of the Inquiries Act 2005, "document" in this context has a very wide interpretation and includes information recorded in any form. This will include, for instance, correspondence, handwritten or typed notes, diary entries and minutes and memoranda. It will also include electronic documents such as emails, text communications and recordings. In turn, this will also include relevant email and text communications sent to or from personal email accounts or telephone numbers, as well as those sent from official or business accounts or numbers. By virtue of section 21(6) of the Inquiries Act 2005, a thing is under a person's control if it is in his possession or if he has a right to possession of it.



Urology Services Inquiry

Urology Services Inquiry | 1 Bradford Court | Belfast | BT8 6RB

T: 02890 251005 | E: info@usi.org.uk | W: www.urologyservicesinquiry.org.uk

Ms Chloe Williams
Fieldfisher
17th floor
1 Spinningfields
1 Hardman Street
Manchester
M3 3EB

19 July 2022

BY EMAIL ONLY:

Personal Information redacted by the USI

Dear Ms Williams

I refer to the responses of Dr Grainne Lynn and Dr Colin Fitzpatrick to the section 21 notice issued by the Urology Services Inquiry requiring the production of witness statements and documents.

A number of concerns have been raised about these witness statements that require correction and clarification. First, each witness statement refers to the 'Independent Inquiry into Mr Aidan O'Brien'; this is incorrect and misleading: as per the Terms of Reference, which were enclosed with the section 21 notice, the issues being investigated extend beyond Mr O'Brien's acts and relate to the Urology Services as a whole in the Southern Trust.

Secondly, each response contains dates that cannot be accurate: in the case of Dr Lynn she has signed her statement on the 23 December 2020 in response to a section 21 notice only issued on 4 May 2022. Similarly, Dr Fitzpatrick has signed his statement on 22 March 2021.

Dr Lynn has also stated, in paragraph 5 of her statement, that she 'will retire from Advice Service on 07 January 2021' and Dr Fitzpatrick, in paragraph 4 of his statement, that he is on sabbatical from 'February 2021 and am not expected to return until February 2022.'

I would be grateful if an explanation could be offered as to the discrepancies between the issuing of the section 21 notices and the dates the statements were signed and also whether Dr Lynn has now actually retired and whether Dr Fitzpatrick has returned from sabbatical.

Yours sincerely

Personal Information redacted by the USI

Fiona Marshall

Secretary to the Urology Services Inquiry

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By Email

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Our Ref: CW29/CW29/UK01-2005656-00004/105528387 v1
 Your Ref: Notice 52 of 2022

Chloe Williams

Solicitor

Personal Information redacted by the USI (Direct Dial)
 Personal Information redacted by the USI

28 July 2022

Dear Ms Marshall

Reference: Practitioner Performance Advice (formally known as NCAS) - Notice 52 of 2022**Our Client: NHS Resolution**

Thank you for your letter dated 19 July 2022.

I have enclosed our letter dated 15 June 2022 addressed to the USI Evidence inbox which may answer some of your queries (at point 3).

Our client was aware that an Inquiry would take place into either Dr Aiden O'Brien or the Southern Health & Social Care Trust (the Trust). Dr Grainne Lynn was close to retirement and Dr Colin Fitzpatrick was close to leaving the organisation. As such, in the circumstances and given that these two individual were best placed to speak to the issues, our client took the opportunity to seek their view and involvement with the case prior to their respective departures, hence the statements being signed on 23 December 2020 and 22 March 2021 respectively.

Dr Lynn has now retired from the Advice Service.

As set out in Colin Fitzpatrick's supplementary statement dated 6 July 2022 (enclosed for ease), between February 2021 and December 2021, he was on sabbatical from the Advice Service and worked as a GP in Australia. He then left the Advice Service in January 2022 and worked as an Interim Deputy Medical Director at a Health Board in Wales. Since early July 2022, he has been working as a locum GP and Consultant for various organisations including Practitioner Performance Advice. He is due to re-locate to Personal Information redacted by the USI in November 2022.

For completeness and as set out in Steve Evan's witness statement dated 12 July 2022 (enclosed for ease), he has have been involved with the Belfast Health and Social Care Trust in Northern Ireland for about 18 months which follows him providing advice to the Trust in relation to the Inquiry into hyponatraemia-related deaths and the departures of Grainne Lynn and Colin Fitzpatrick from the organisation. He then took on the

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senior adviser role for Northern Ireland. His former colleague, Steve Boyle continued to oversee the Southern Health and Social Care Trust but following Steve's retirement earlier this year, he took up the post of Lead Adviser for the whole of Northern Ireland (from April 2022).

We hope this clarifies the situation. Should you have any further queries, please do let us know.

Yours faithfully

Fieldfisher