

Compass Chambers



Public Inquiries: an update

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Compass Conference – 17 November 2023



Eight aspects:

1. Background
2. Recovery of evidence
3. Questioning witnesses
4. Effect of criminal proceedings
5. Core Participant status
6. Restriction orders
7. Final stages and the report
8. The challenges of Public Inquiries





1. Background

- The role of Parliamentary select committee
“Duke of York” (1679) Marconi (1912)
- Tribunals of Inquiry (Evidence) Act 1921
24 Inquiries in 84 years: e.g. Aberfan (1966), Dunblane (1996), Shipman (2005)
- Specific Legislation
 - Piper Alpha - Mineral Workings (Offshore installations) (Public Inquiries) Regulations 1974
 - Stephen Lawrence Inquiry - Police Act 1996
 - Billy Wright Inquiry - Initially Prisons Act (Northern Ireland) 1953. Converted to Inquiry under 2005 Act



Inquiries Act 2005

Controversial

The Minister can:

- Terminate the Chair's appointment (s.12(3))
- Terminate the Inquiry (s.14)
- Suspend an inquiry for such period as appears to him to be necessary to allow for an other investigation to conclude or the determination of criminal/civil proceedings (s.13(1)), even though they have not yet begun (s.13(2))
- Restrict attendance/disclosure of evidence (s.19)
- Take over publication/decide which parts of report should be withheld in public interest (s.25)
- Make rules dealing with evidence and return/storage of documents (s.41)

“It seems to me that the proposed new Act would make a meaningful inquiry impossible...it really creates an intolerable Alice in Wonderland situation.” (Judge Peter Corey)



Public Inquiries in Scotland

Five have reported in Scotland

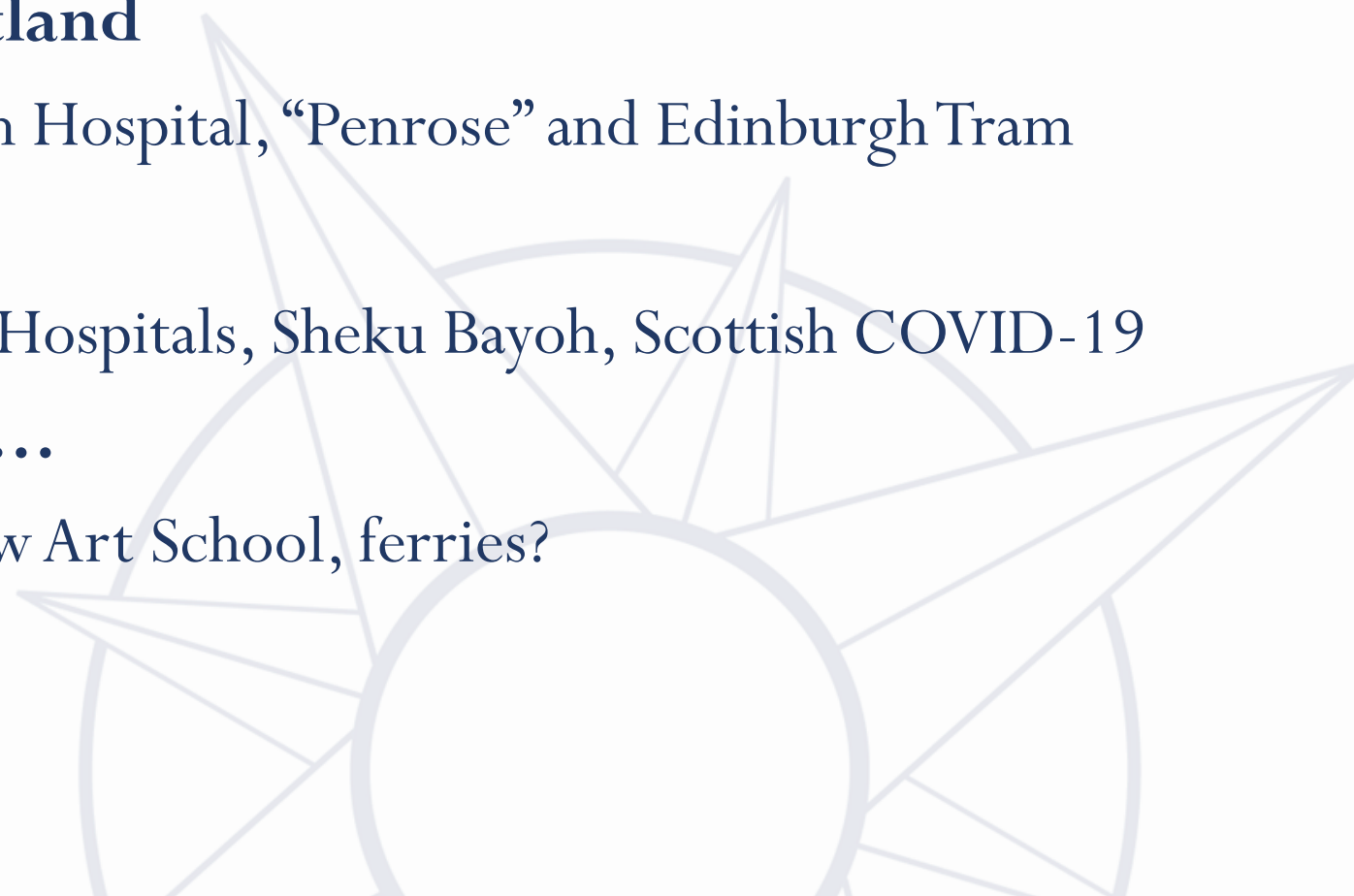
ICL, Fingerprint, Vale of Leven Hospital, “Penrose” and Edinburgh Tram

Four are ongoing

Scottish Child Abuse, Scottish Hospitals, Sheku Bayoh, Scottish COVID-19

Potential future inquiries...

Sam Eljamel, Rangers, Glasgow Art School, ferries?





Inquiry	Duration	Witnesses	Cost	Interest
Profumo	3 months	160	?	106,000 copies of report sold
Bloody Sunday	10 years (opening statement 42 days)	922	£200,000,000 (152 firms of solicitors)	6,000,000 'hits' on Publication day





2. Recovery of evidence

- Rule 8 of The Inquiries (Scotland) Rules 2007. Rule 9 of The Inquiry Rules 2006
- Section 21 of the Inquiries Act 2005
- Section 22 proviso
 - (1) A person may not, under section 21, be required to give, produce or provide any evidence or document if—
 - (a) he could not be required to do so if the proceedings of the inquiry were civil proceedings in a court in the relevant part of the United Kingdom...
- Section 28(3). For Scottish inquiries, the powers conferred by section 21 are exercisable only—
 - (a) in respect of evidence, documents or other things that are wholly or primarily concerned with a Scottish matter...
 - (4) Those powers are not exercisable so as to require any evidence, document or other thing to be given, produced or provided by or on behalf of Her Majesty's Government in the United Kingdom...
- Privilege
- Tactical considerations



3. Questioning witnesses

Section 17 - Evidence and procedure

- (1) Subject to any provision of this Act or of rules under section 41, **the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.**
- (2) In particular, the chairman may take evidence on oath, and for that purpose may administer oaths.
- (3) In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).



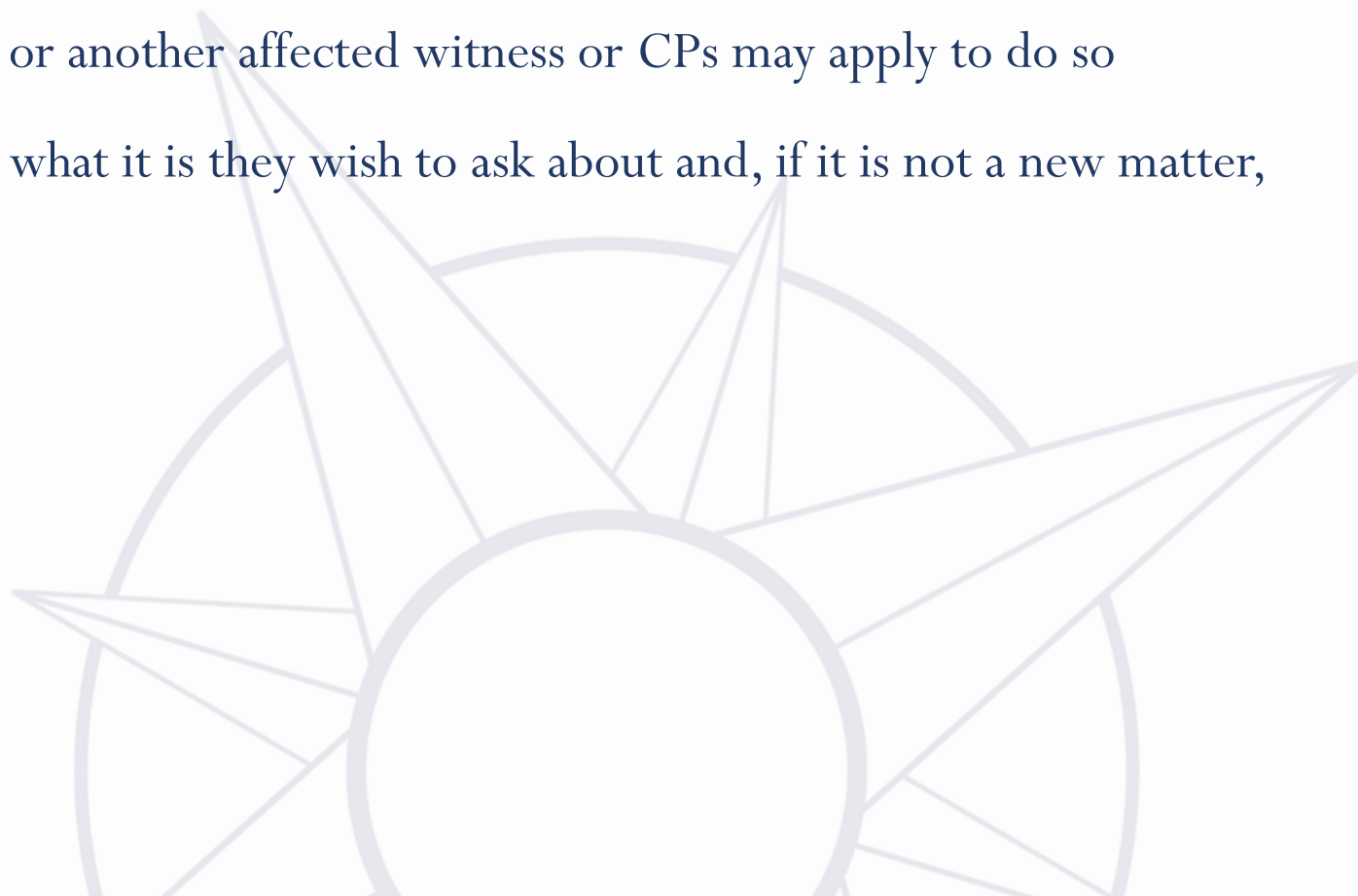
Section 9(1) Where a witness is giving oral evidence at an inquiry hearing, only the inquiry panel or counsel to the inquiry... may examine that witness.

But, the representatives of the witness, or another affected witness or CPs may apply to do so

Section 9(5) The application must state what it is they wish to ask about and, if it is not a new matter, why it should be permitted.

Difficulties:

- Timescale
- Disclosure
- Onus on Inquiry counsel
- Transparency
- Inflexibility
- Is it worth it?





4. Criminal Proceedings

(a) Offences within the 2005 Act

Section 35

(1) A person is guilty of an offence if he fails without reasonable excuse to do anything that he is required to do by a notice under section 21.

(2) A person is guilty of an offence if during the course of an inquiry he does anything that is intended to have the effect of (a) distorting or otherwise altering any evidence, document or other thing that is given, produced or provided to the inquiry panel, or (b) preventing any evidence, document or other thing from being given, produced or provided to the inquiry panel, or anything that he knows or believes is likely to have that effect.

(3) A person is guilty of an offence if during the course of an inquiry (a) he intentionally suppresses or conceals a document that is, and that he knows or believes to be, a relevant document, or (b) he intentionally alters or destroys any such document.



(b) Related criminal proceedings

“It is a sacred and inviolable principle ... that no man is bound to incriminate himself.” *Livingstone v Murrays* (1830) 9 S 161; per Lord Gillies at 162

“...there can be no doubt that the right to remain silent under police questioning and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6” *Murray v United Kingdom* (1996) 22 EHRR 29 at para 44-45; *Saunders v United Kingdom* (1997) 23 EHRR 313 at para 68

The practicalities

- By whom, and to whom, the request is made
- The significance of the attitude of the Tribunal, the witness and the prosecuting authority
- The effect of an undertaking being given, or not given



5. Core Participant status

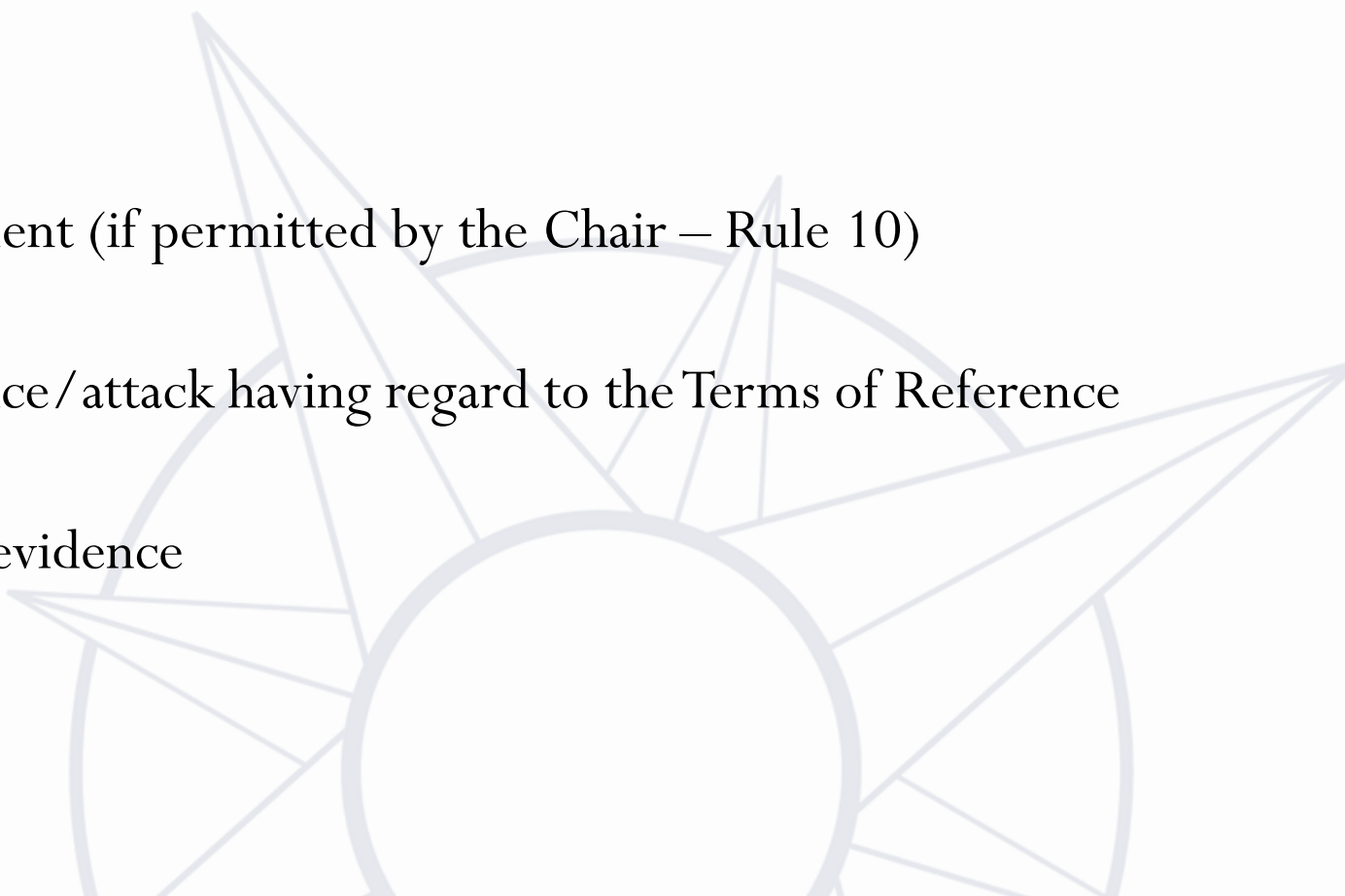
- Core participant is a legal person who will be expected to have key role during the Inquiry
- Participation requires application
- Rule 4





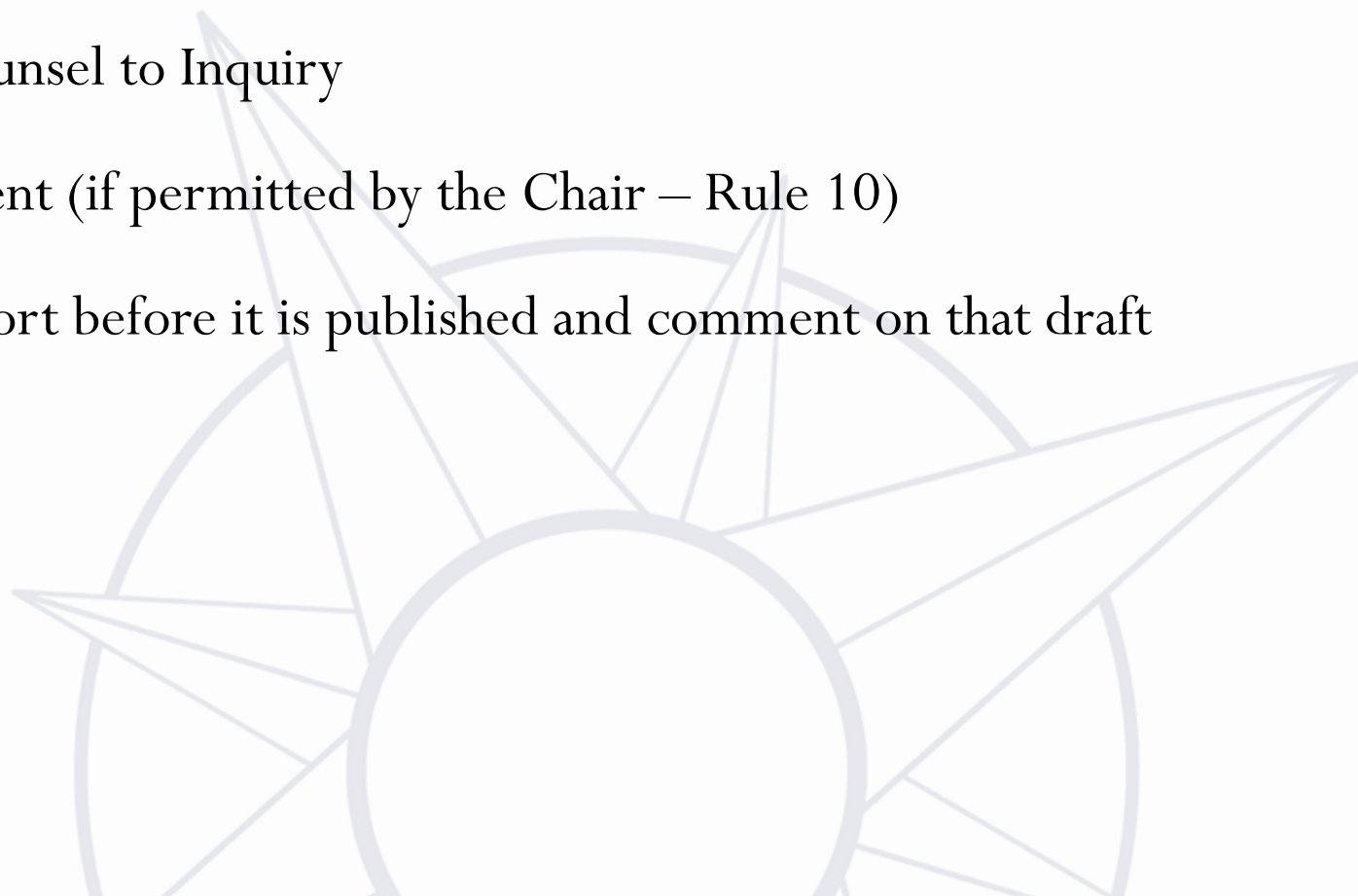
Benefits of Core Participant Status

- Entitlement to productions/disclosure of evidence
- A seat!
- Can make an Opening Statement (if permitted by the Chair – Rule 10)
- Prior notice of lines of evidence/attack having regard to the Terms of Reference
- Entitlement to transcripts of evidence





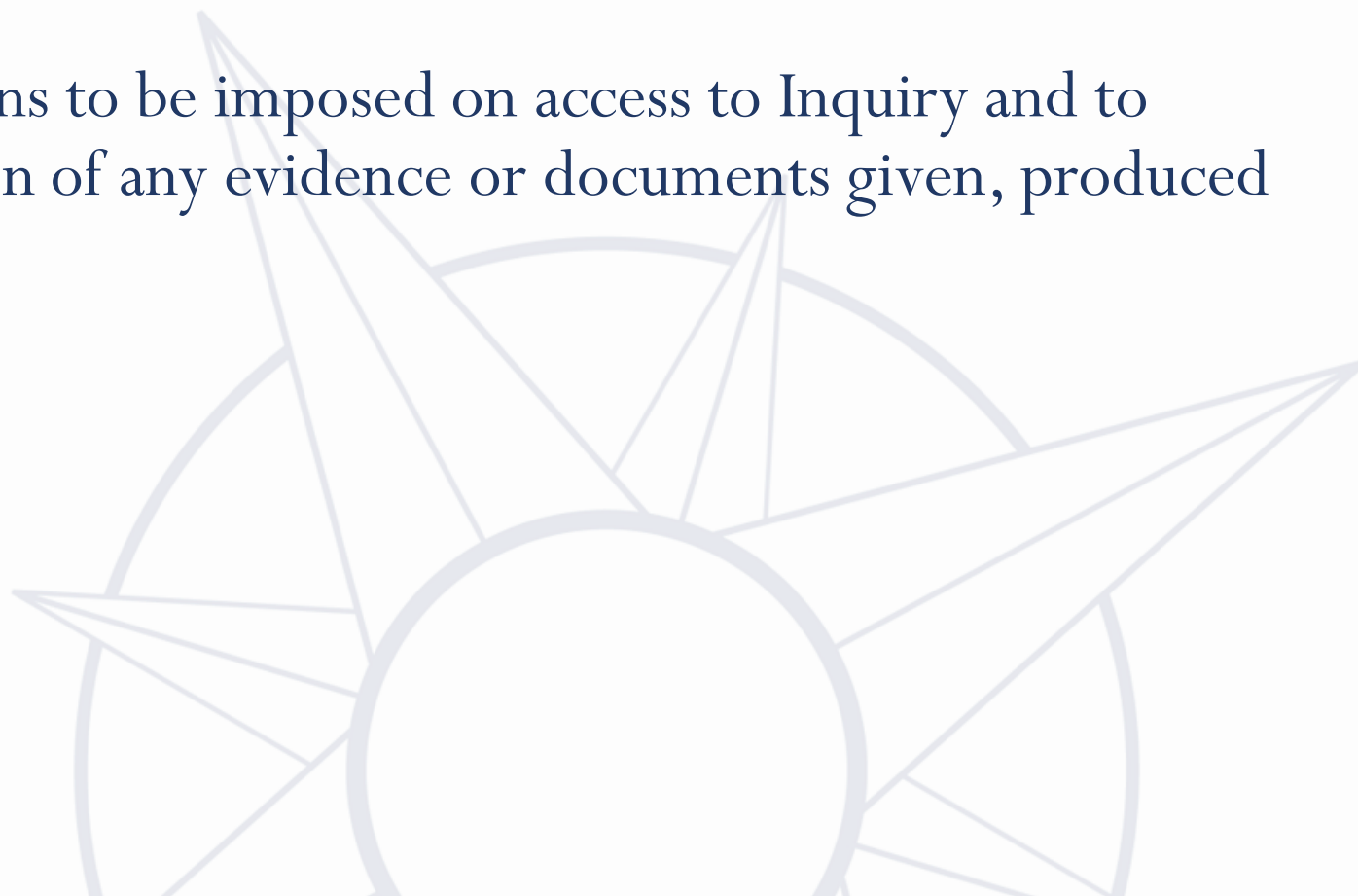
- Right to ask for permission to ask questions
- Can propose questions to Counsel to Inquiry
- Can make an Closing Statement (if permitted by the Chair – Rule 10)
- The right to see the draft report before it is published and comment on that draft





6. Restriction on access to evidence

- Sec 18(1)- proceedings at Inquiry to be accessible by public and this should be ensured by Chairman
- Sec 19(1)- permits restrictions to be imposed on access to Inquiry and to disclosure and/ or publication of any evidence or documents given, produced or provided to Inquiry





- Restriction orders/ notices
- Should specify only such restrictions as are required by any statutory provision or as Chairman “considers to be conducive to the Inquiry fulfilling its terms of reference or to be necessary in the public interest”- sec 19(3)
- Sec 19(4) considerations on whether such restrictions are conducive to that purpose or necessary in public interest





Determination of application under sec 19

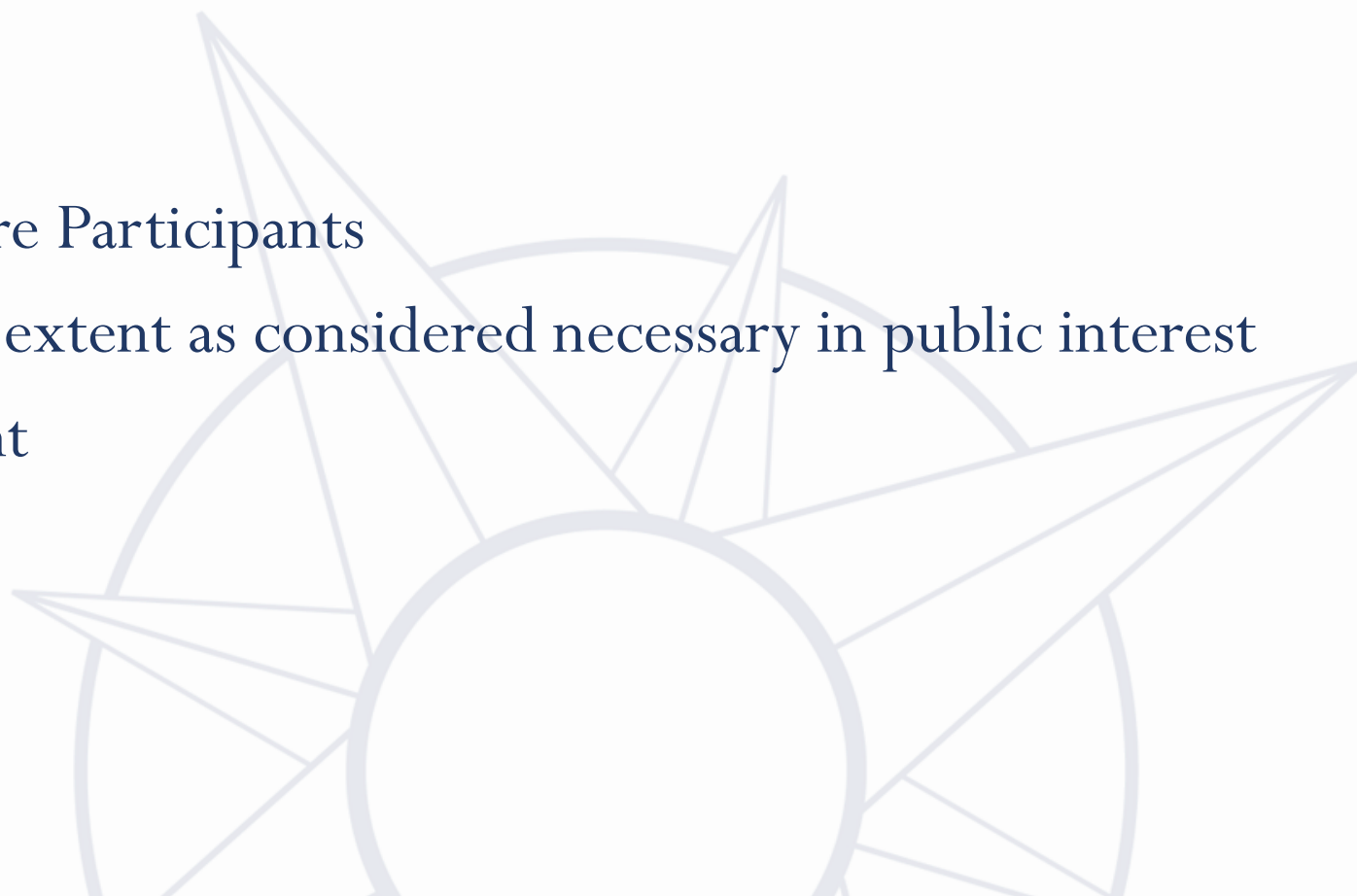
- Bilfinger Construction UK v Chairman of Edinburgh Tram Inquiry 2018 SLT 483; [2018] CSOH 46
- Application for restriction refused by Chairman
- Commercially sensitive material
- Harm or damage





7. Final stages and the Report

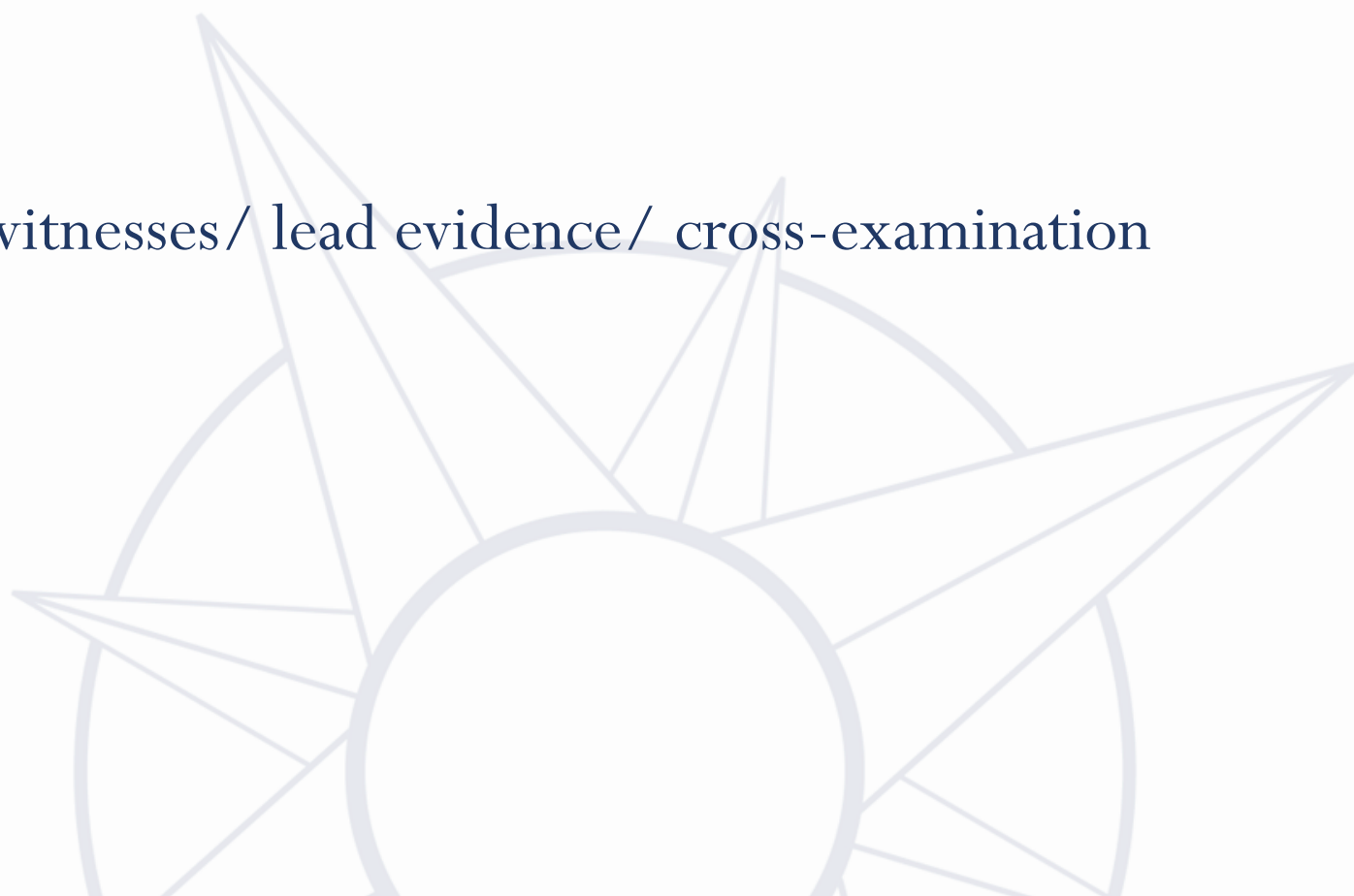
- Closing statement
- Report
- Warning letter
- Distribution of report to Core Participants
- Publication in full or to such extent as considered necessary in public interest
- Report laid before Parliament





8. The challenges

- Inquisitorial
- Parallel legal processes
- No entitlement to examine witnesses/ lead evidence/ cross-examination
- Costly and slow
- Managing challenges?



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