1	Thursday, 29 February 2024
2	(10.00 am)
3	Decision by LORD BRACADALE
4	LORD BRACADALE: Good morning. As Ms Grahame is unwell, we
5	are going to continue the evidence of Mr Mitchell until
6	Friday, 8 March and the intention is to begin the
7	evidence of Kate Frame tomorrow. I shall now give my
8	decision in the matter raised by Ms McCall yesterday.
9	Beginning with the statutory background, section 17
LO	of the Inquiries Act 2005 allows a wide discretion to
L1	the Chair in the conduct and procedure of the Inquiry.
L2	In making any decision as to the procedure or conduct of
L3	the Inquiry, the Chair must act with fairness.
L 4	The discretion provided in section 17 is subject to
L5	Rule 9 of the Inquiries Scotland Rules 2007 which makes
L 6	specific provision in relation to the examination of
L7	witnesses.
L8	The Inquiry has produced guidelines in respect of
L9	the operation of Rule 9. The guidelines stipulate that
20	the calling of witnesses, the leading of evidence and
21	the questioning of witnesses will be informed by two
22	overarching principles.
23	First, the Inquiry is inquisitorial in nature,
24	requiring an approach that differs from the conventional
25	adversarial approach employed in the Civil and Criminal

1 Courts. Second, the test for receiving evidence and allowing 2 3 lines of questioning will be whether doing so will 4 assist the Inquiry in fulfilling its terms of reference. 5 Turning to the events on 27 February 2024, at the conclusion of the examination of John McSporran by 6 7 senior counsel to the Inquiry Ms Mitchell made an oral application to be permitted to examine the witness. She 8 9 raised ten issues, some of which had subsidiary issues. After hearing submissions, I permitted her to examine 10 the witness in respect of a limited number of these 11 12 issues. 13 In the course of her examination, Ms Mitchell 14 embarked on a line of questioning in respect of which 15 I had refused permission. It was immediately clear to me that Ms Mitchell was under the misapprehension that 16 17 I had allowed this line of questioning. I recalled that the basis for the refusal in respect of this line of 18 questioning was not that the evidence was inadmissible 19 20 but that the subject matter had already been canvassed 21 by counsel to the Inquiry and I reflected that it might, 22 after all, assist the Inquiry. Taking these considerations into account, I decided not to interrupt 23 and allowed the examination to proceed. 24 Ms McCall submitted that, by allowing Ms Mitchell to 25

Τ	pursue this line of questioning, I had failed to control
2	the conduct of the proceedings. She submitted that, as
3	a result, material adduced contrary to my ruling was in
4	the public record of the Inquiry. Asserting that this
5	was a matter of principle, she moved me to make a ruling
6	that the evidence should not be available for
7	consideration in the final determination and it should
8	be redacted from the published transcript and video
9	recording.
LO	The circumstances were unusual. They occurred for
L1	the first time on the 84th day of hearings and nothing
L2	of the sort had happened before. While my decision to
L3	allow the examination to proceed was exceptional, and
L 4	no doubt may be open to criticism, it did not, in my
L5	view, give rise to unfairness. Nor indeed did Ms McCall
L 6	suggest that it did. In the absence of unfairness,
L7	I consider that the evidence should remain available for
L8	my consideration and should remain on the transcript and
L 9	the video recording.
20	Accordingly, I refuse Ms McCall's motion. The
21	Inquiry will now adjourn until 10 o'clock tomorrow
22	morning.
23	(10.09 am)
24	(The Inquiry adjourned until 10.00 am on Friday,
25	1 March 2024)

1				INDEX	
2	Decision	by LORI	BRACADALE		1
3					
4					
5					
6					
7					
8					
9					
LO					
L1					
12					
13					
L 4					
L5					
16					
L7					
18					
19					
20					
21					
22					
23					
24					
25					