



### **First Order by the Chair of the Inquiry**

- a) The Chair considers it likely, given the nature of the matters covered by the Inquiry's Terms of Reference, that the material recovered by it will include a large quantity of sensitive and personal information, the use, disclosure and publication of which by those who receive it needs to be clearly regulated.
- b) He also considers it appropriate that there be clarity about the way in which the Inquiry expects information provided or documents generated by the Inquiry should be used, disclosed or published, in the interests of working collaboratively and productively with all those with an interest in the work of the Inquiry.
- c) As such, the Chair has determined that the imposition of certain restrictions on the use, disclosure and publication of (a) evidence and documents given, produced or provided to the Inquiry or to be given, produced or provided to the Inquiry and (b) information and documents generated by or emanating from the Inquiry, should be regulated by him. In order to regulate the use of materials disclosed to individuals during the course of the Inquiry, and in exercise of his powers under sections 17 and 19 of the Inquiries Act 2005 ("the Act"), the Chair makes the following Order:

#### **Date and duration**

1. This Order is made on 7 May 2025 and remains in force indefinitely, unless the Chair orders otherwise.
2. The Chair may vary or revoke this Order by making a further order at any point during the course of the Inquiry.

## **General**

3. Any person affected by this Order may apply for it to be varied or discharged by emailing the Solicitor to the Inquiry at [legal@eljamelinquiry.scot](mailto:legal@eljamelinquiry.scot).
4. Any person who becomes aware of any breach of the provisions of this Order, or threat to do so, should notify the Solicitor to the Inquiry of the breach or threat to do so as soon as is reasonably practicable by emailing [legal@eljamelinquiry.scot](mailto:legal@eljamelinquiry.scot).
5. The contents of this Order are without prejudice to, and apply in addition to, the rules and obligations imposed by the Inquiry's General Restriction Order dated 7 May 2025.

## **Interpretation**

6. For the purposes of this Order:
  - (a) "Core Participant" means an individual who has been designated as such under rule 4 of the Inquiries (Scotland) Rules 2007 ("the Rules") and who has signed a confidentiality undertaking, or an individual office bearer of an organisation which has been so designated and who has signed a confidentiality undertaking;

- (b) “Disclosure” means passing or otherwise transferring any Protected Material to any other person, with the word “disclose” and other associated words to be construed accordingly;
- (c) “Protected Material” means any witness statements, documents and other evidence, information or material of whatsoever nature given, produced or provided to the Inquiry, or created or generated by the Inquiry, made available to any Recipient;
- (d) “Publication” means the dissemination of any Protected Material to the public at large or a section of it, with the word “publish” and other associated words to be construed accordingly;
- (e) “Recognised Legal Representative” means a qualified lawyer appointed under rules 5 or 7 or approved under rule 6 of the Rules as the case may be and who has signed a confidentiality undertaking (which term, for the avoidance of doubt, includes Counsel), and
- (f) “Recipient” means any person who or which has received, been shown or otherwise had made available to them, Protected Material or knowledge thereof, whether by the Inquiry, by a Recognised Legal Representative or otherwise and, for the avoidance of doubt, includes Core Participants, Recognised Legal Representatives (including Counsel) and the media.

### **Regulation of the use of Protected Material**

- 7. Subject to the other provisions of this Order, a Recipient shall not disclose or publish the existence, source, content or substance of any Protected Material to any person.
- 8. Recipients shall ensure that Protected Material is kept securely and shall exercise all due care and attention to ensure that Protected Material is not left unattended or left

in such a manner as it may be seen by any person who has not signed a confidentiality undertaking.

9. Otherwise than as permitted by paragraphs 13 and 14 below, a Recipient shall not make any electronic copies or print any Protected Materials.
10. A Recipient shall be permitted to make use of Protected Material only for the purposes of the Inquiry proceedings and for no other purpose whatsoever.
11. The Solicitor to the Inquiry may at any time request that any Protected Material be returned or destroyed by a Recipient. On receipt of such a request the Recipient shall return or destroy the specified Protected Material that is in their possession or control, ensuring that all electronic copies of it are permanently erased.
12. On receipt of a request of the kind specified in paragraph 11, any requested Recipient shall notify any Recipient to whom the requested Recipient has sent a copy of the specified Protected Material (as permitted by the provisions of this Order) that any copy of the specified Protected Material should be returned or destroyed, including permanent erasure of any electronic copies. The notified Recipient shall immediately comply with any such notification.

#### **Disclosure and storage of Protected Material by Core Participants and their Recognised Legal Representatives**

13. A Recognised Legal Representative of a Core Participant or Core Participant may copy Protected Material from the Inquiry's document management or storage system, or from any communication from the Inquiry which contains Protected Material, to the document management system used by the Recognised Legal Representative or Core Participant, provided that access to the Protected Material on that system is restricted to those who have signed a confidentiality undertaking. When granting access to

Protected Material stored on their document management system (in particular to any of their employees or office holders), a Recognised Legal Representative or Core Participant shall at all times have due regard to the requirement that it should not be made available more widely than is strictly required for the purpose for which the Protected Material was made available by the Inquiry.

14. A Recognised Legal Representative of a Core Participant may make available a copy of Protected Material to:

- (a) Employees of the Recognised Legal Representative or their organisation, in respect of whom a confidentiality undertaking has been signed by the Recognised Legal Representative;
- (b) Its Core Participant client or clients or, where a Core Participant client is a corporate or unincorporated body, office holders or employees of the Core Participant as agreed by the Inquiry and who have signed a confidentiality undertaking; and
- (c) Other Recognised Legal Representatives instructed by the same Core Participant client or clients, who have signed a confidentiality undertaking, having in all cases drawn their attention to the terms and possible consequences of non-compliance with this Restriction Order.

**Disclosure and storage of Protected Material by other Recipients of Protected Material and their Recognised Legal Representatives**

15. Protected Material may require to be disclosed to Recipients to whom the provisions of paragraphs 13 and 14 do not apply as they are not Core Participants, for example witnesses or those against whom criticisms are being directed.

16. The requirements and stipulations in paragraphs 13 and 14 nonetheless apply *mutatis mutandis* to any such other Recipients of Protected Material and their Recognised Legal Representatives as they do to those to whom those paragraphs apply.

## **Exceptions**

17. The terms of the provisions of this Order do not apply to the extent that:

- (a) A Recipient is obliged to disclose Protected Material by law;
- (b) A Recipient of the Protected Material requires to disclose it for the purposes of obtaining legal advice from their Recognised Legal Representative;
- (c) A Recipient of the Protected Material requires to disclose it to another individual who has signed a confidentiality undertaking for the purposes of the Inquiry;
- (d) Protected Material is or becomes generally known or available to the public at large through no act or omission of a Recipient;
- (e) Protected Material is published on the Inquiry's website or is introduced as evidence in Inquiry proceedings that have not been subject to any other restrictions regarding disclosure or publication;
- (f) Any Protected Material was acquired by a Recipient independently of the Inquiry and not as a result of any breach of confidence owed to the Inquiry, whether in terms of a confidentiality undertaking or otherwise; or
- (g) The Chair agrees in writing that a Recipient may disclose or publish any Protected Material.

## **Enforcement**

18. Where a Recipient (a) fails to comply with or acts in breach of this Order; or (b) threatens to do so, the Chair may certify the matter to the Court of Session under

Section 36 of the Act. After hearing evidence or representations on the matter, the Court of Session may make such order or otherwise as if the failure to comply with, breach or threatened breach of, this Order had occurred in proceedings before that court.

19. In addition to enforcement action that may be taken under paragraph 18 of this Order, the Chair may in relation to any Core Participant or Recognised Legal Representative who fails to comply with, breaches, or threatens to breach, this Order:

- (a) withdraw the Core Participant's status as such;
- (b) revoke any award of funding for legal representation made under section 40 of the Act;
- (c) order the return or destruction of any Protected Material which has been shared with that Core Participant or Recognised Legal Representative, and/ or
- (d) restrict or cease disclosing any Protected Material to that Core Participant or Recognised Legal Representative.

20. In addition to enforcement action that may be taken under paragraph 18 of this Order, the Chair may in relation to any other Recipient or their Recognised Legal Representative who fails to comply with, breaches, or threatens to breach this Order:

- (a) revoke any award of funding for legal representation made under section 40 of the Act;
- (b) order the return or destruction of any Protected Material which has been shared with that Recipient or Recognised Legal Representative; and/ or
- (c) restrict or stop disclosing any Protected Material to that Recipient or Recognised Legal Representative.

21. For the purposes of paragraphs 18 to 20 of this Order, a failure to comply with, a breach or a threatened breach of this Order by:

- (a) a Recipient, includes a failure to comply with, or a breach or threatened breach of, this Order by an employee of that Recipient; and/or
- (b) a Recognised Legal Representative, includes a failure to comply with, or a breach or threatened breach of, this Order by an employee of the same firm or organisation as that of the Recognised Legal Representative.

The Hon. Lord Weir

Chair of the Eljamel Inquiry

7 May 2025