



Protocol on Disclosure, Publication, Restriction and Anonymity

Purpose of the Protocol

1. The purpose of this Protocol is to:-
 - A) Set out Definitions relevant to this Protocol;
 - B) Explain the principles the Inquiry will apply to Disclosure and Publication of documents;
 - C) Provide guidance on the Inquiry's approach to Restriction;
 - D) Explain how the Redaction process will be carried out;
 - E) Provide general guidance on Restriction Orders, including the Inquiry's General Restriction Order;
 - F) Explain how someone can apply for Anonymity; and
 - G) Provide contact details for enquiries.
2. As with all of the work of the Inquiry, this Protocol and the procedures and policies set out in it should be read in the context of the Inquiry's Statement on Protocols and Principles. In particular, the Chair may deem it appropriate to change or update the contents of this Protocol in accordance with the provisions of that Statement.
3. Further, this Protocol and the procedures and policies set out in it should be read in the context of the Inquiry's:

- (a) Core Participant Protocol;
- (b) Protocol on the Production, Handling and Retention of Documents;
- (c) Protocol on Restriction Order Applications;
- (d) Protocol on Approach to Evidence and Witness Statements;
- (e) Protocol on Public hearings;
- (f) General Restriction Order; and
- (g) First Order.

A) Definitions

- 4. “Redaction” is the removal of information from a document, usually by blacking out words.
- 5. “Disclosure” is the process of making available relevant material to core participants and (in some instances) persons from whom the Inquiry proposes to take evidence. Such relevant material is disclosed subject to a strict undertaking to the Inquiry of confidentiality by the recipient of the disclosure (and their recognised legal representative, if any), not to reveal the whole or any part of that material (or any information contained within it) to others who have not signed a confidentiality undertaking.
- 6. “Publication” is the process of making information available to members of the public (a) on the Inquiry website, which is freely accessible (b) during oral hearings of the Inquiry, which are streamed on the Inquiry’s YouTube channel; and (c) as part of any interim or final report, which will be published in accordance with arrangements made under section 25 of the Inquiries Act 2005 (“the Act”).
- 7. “Restriction Order” is the name given to an order under section 19 of the Act, which restricts Disclosure or Publication of information.
- 8. “Anonymity” is the protection of a person’s identity from Disclosure and/or Publication.

9. A “document” includes information recorded in any form. This can mean in paper or electronic form. It includes but is not limited to text messages, emails, social media posts, letters, statements, manuscript notes, medical records, meeting/attendance notes, legislation, reports, guidance, codes of conduct, protocols, photographs, video and audio recordings and metadata.
10. A “relevant document” is one which, having regard to the Inquiry’s Terms of Reference, and any specific request for information received from the Inquiry, it is likely that the Inquiry would (if aware of its existence) wish to have provided to it.

B) Inquiry principles relating to Disclosure and Publication of documents

Disclosure

11. Redacted documents will be disclosed to Core Participants or their Recognised Legal Representatives to allow for their active participation in the work of the Inquiry. Information about the role of core participants in the Inquiry and how to apply to be one can be found in the Inquiry’s Core Participant Protocol.

Publication

12. The Inquiry aims to be as open and transparent as possible. The Chair must take reasonable steps to ensure that members of the public have access to a record of evidence given and documents produced at the Inquiry.¹ Information supplied to the Inquiry may be made available to core participants, witnesses, attendees at hearings and the wider public. This is essential to enable the work of the Inquiry to be carried out.
13. There is a distinction between evidence that the Chair will deem appropriate for Disclosure to core participants and others and evidence which the Chair will deem appropriate for Publication.

¹ As per section 18(1) of the Act

14. The Inquiry will publish certain relevant documents which have been considered by the Inquiry on the Inquiry website, to allow engagement with the work of the Inquiry by the wider public and to enable them to participate in the work of the Inquiry. These will include, subject to redactions being applied to them in accordance with the law, the Inquiry's Restriction Orders and the approach of the Inquiry as set out in its Protocols unless there is a compelling reason not to do so:

- (a) Witness statements and applicant statements to the Independent Clinical Review, including exhibits to those;
- (b) Documents referred to during the course of the Inquiry's public hearings or extracts thereof as ordered by the Chair;
- (c) Expert evidence commissioned by the Inquiry or the Independent Clinical Review; and
- (d) Any other documents which the Chair deems appropriate for Publication based on the Inquiry's legal obligations, its Restriction Orders and the approach of the Inquiry as set out in its Protocols and other Orders.

15. In addition, the Inquiry will publish, subject to redactions being applied to them in accordance with the law, the Inquiry's Restriction Orders and the approach of the Inquiry as set out in its Protocols and other Orders, (a) links to the public hearings as they are broadcast; (b) transcripts of those hearings; (c) further witness statements and any exhibits to those witness statements, as the Chair deems appropriate. The approach which the Inquiry will take to the Publication of such material will be set out in the Inquiry's Protocol on its Approach to Evidence and Witness Statements and Protocol on Public hearings, respectively.

C) Restriction

16. As is set out in paragraph 25 of the Inquiry's Protocol on the Production, Handling and Retention of Documents, all documents provided to the Inquiry must be in unredacted form.

17. Despite the Inquiry's general approach being one of openness and transparency, there are a number of reasons why documents or parts of documents provided to the Inquiry will require to be restricted prior to Disclosure. Amongst the purposes of Restriction is the need to protect, where it is appropriate to do so, the identities of people, for instance former patients of Mr Eljamel, and the personal information of others as per sections B and C respectively of the Inquiry's General Restriction Order.
18. Redaction of information in documents which are subsequently disclosed will also be used to exclude information not relevant to the Inquiry's Terms of Reference. The Inquiry will do so without the need for any application or request as per section E of the Inquiry's General Restriction Order.
19. Where Restriction of access to entire documents is deemed necessary or appropriate they will not be disclosed or published. Where Restriction of access to parts of documents is deemed necessary or appropriate, such Restriction will be achieved by Redaction of documents to the extent necessary.
20. Such redactions will be applied, or agreed to, by the Inquiry to or in documents which have been produced or provided by Material Providers unredacted. Reasons why Redaction will be applied to documents by or with the agreement of the Inquiry include (but are not limited to) the following:
- (a) Where information contained in a document is sensitive and/or irrelevant to the Inquiry's work, for example medical records that contain information about a patient's treatment unrelated to the Inquiry's Terms of Reference;
 - (b) Where the information in question constitutes personal data within the meaning of the UK General Data Protection Regulations ("GDPR") and the Data Protection Act 2018 ("DPA"), further disclosure of which is incompatible with that legislation; and
 - (c) The information in question is otherwise covered by a Restriction Notice or Order made under section 19(2)(a) or (b) of the 2005 Act.

21. In particular, prior to Disclosure or Publication of any document, the Inquiry will review it to ensure that the Inquiry complies with its own obligations as a controller of personal data under the Data Protection Act 2018 (“DPA”) and the UK General Data Protection Regulation (“GDPR”).

D) How the Redaction process will be carried out

Redaction to protect a person’s identity

22. When redacting to protect a person’s identity, the Inquiry will do so by removing, as necessary, the following information from all documents (including witness statements) prior to Disclosure or Publication. This is not intended to be an exhaustive list:

- a. Names;
- b. Day and month of birth;
- c. Personal telephone numbers;
- d. Personal email addresses;
- e. Personal social media identifiers;
- f. Identification numbers, such as passport numbers, CHI numbers and national security numbers;
- g. Home addresses;
- h. Signatures;
- i. Names or other means of identifying a person’s family members, such as their addresses, dates of birth etc; and
- j. Events from a person’s life which might identify them.

23. Where the Inquiry makes a request of a person from whom it intends to take evidence pursuant to Rule 8 of the Inquiries (Scotland) Rules 2007 and that person wishes their identity not to be disclosed or published, then the procedure outlined in paragraphs 43 - 47 below is to be followed.

24. The Inquiry will decide whether any other information needs to be redacted from a document on a case by case basis.

Redactions proposed by Material Providers (“MPs”)

25. Once the Inquiry has redacted material from relevant documents in accordance with the process outlined above, it will contact the MP who or which provided the documents to advise that the documentation they have provided to the Inquiry will be disclosed in redacted format and, may, in due course, be published. The Inquiry will advise the MP of its proposed redactions. The Inquiry will ask the MP to confirm whether they have any further suggested redactions prior to the Disclosure of the documentation (and ultimate Publication, if applicable).

26. Any MP who contends that a document should be further redacted or redacted otherwise than in accordance with the redactions already proposed by the Inquiry may make a proposal to the Inquiry by email to legal@eljamelinquiry.scot (“the Proposal”) within the timescale allocated for this purpose. The Proposal should include a copy of the document with the suggested redactions clearly marked in a format to be prescribed by the Inquiry and a brief explanation of the reasons for the proposed additional redactions or alterations to the Inquiry’s proposed redactions.

27. The Inquiry will consider the Proposal and inform the MP of the decision made, and the redactions agreed or rejected, by email. If the MP wishes to challenge the Inquiry’s decision, then it may apply to the Chair for a Restriction Order within a reasonable time limit set out by the Inquiry, following the process outlined in the Inquiry’s Restriction Order Application Protocol. Any such application for a Restriction Order requires to be accompanied by a detailed explanation as to why that material for which Redaction is sought cannot be disclosed or otherwise made public.

28. The Inquiry will decide what information needs to be redacted and will consider representations by MPs in coming to a view. MPs should provide sufficient information within their Proposal to allow the Inquiry to consider such representations in coming to a

view. In limited circumstances the Inquiry may seek further information or explanation from an MP to allow it to reach a view on any variation to the redactions proposed by the MP.

29. MPs should have regard to the relevant provisions of the Act referred to below and to the content of the Inquiry's Restriction Order Application Protocol when giving reasons for proposed additional or amended redactions and must take a reasonable and proportionate approach when seeking redactions, whether within a Proposal or any application for a Restriction Order.

Legal Professional Privilege ("LPP")

30. The right to assert LPP, which exists in civil proceedings, is preserved in the context of the Inquiry by section 22(1) of the Act. Under the majority of its Terms of Reference, the Inquiry is tasked with investigating matters spanning the period between 1995 and 2015. Given the passage of time, LPP and confidentiality issues may have been eroded. In addition, as the per its Terms of Reference, issues of candour and openness are key considerations for the Inquiry.

31. Against this background, before asserting LPP (whether by way of a Proposal or in an application for a Restriction Order after a decision on a Proposal has been taken in accordance with paragraph 27 above), an MP should consider carefully whether they should waive that privilege to aid transparency and assist the Inquiry in its work in the public interest.

E) Restriction Orders

32. Notwithstanding the Inquiry's general approach to Disclosure and Publication and subject to the provisions relating to Anonymity set out at paragraphs 41 et seq below, the Chair will sometimes require or deem it necessary to make orders to keep information private.

Such orders are known as “Restriction Orders” and are made in accordance with section 19(2) of the Act.

33. The Chair, in granting a Restriction Order, may impose restrictions on attendance at the Inquiry, or at any particular part of the Inquiry, or Disclosure or Publication of any evidence or documents given, produced or provided to the Inquiry.

34. A Restriction Order made by the Chair must only specify such restrictions as:

- (a) are required by law²;
- (b) will be conducive to the Inquiry fulfilling its Terms of Reference³, and
- (c) are necessary and proportionate in the public interest, having regard to the particular matters listed in section 19(4) of the Act⁴.

35. The matters listed in section 19(4) are:

- the extent to which any restriction on attendance, Disclosure or Publication might inhibit the allaying of public concern;
- any risk of harm or damage that could be avoided or reduced by any such restriction;
- any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to that inquiry; and
- the extent to which not imposing any particular restriction would be likely to cause delay or to impair the efficiency or effectiveness of that inquiry, or otherwise to result in additional cost (whether to public funds or to witnesses or others).

36. A Restriction Order may be made by the Chair if he considers it to be necessary, or on application by an interested party who wishes to prevent Disclosure or Publication of certain information.

² Section 19(3)(a) of the 2005 Act

³ Section 19(3)(b) of the 2005 Act

⁴ Sections 19(3)(b) and 19(4)(d)(i) of the 2005 Act

37. Everyone must obey a Restriction Order. That includes the media, members of the public, witnesses, core participants, legal representatives and all members of the Inquiry team.
38. Details on how to apply for a Restriction Order can be found in the Restriction Order Application Protocol.
39. Restriction Orders made by the Chair normally continue in force unless and until they are changed or cancelled. They will usually remain in force at least until the Inquiry has ended and often beyond that. You can ask the Chair to change or cancel an existing Restriction Order which affects you. The Chair can decide to change or cancel a Restriction Order without an application having been made if he considers it necessary to do so.
40. The Chair has issued a General Restriction Order dated 7 May 2025 which sets out circumstances in which information will routinely be restricted from Disclosure and/ or Publication by the Inquiry in connection with medical information, information which will be restricted to protect a person's anonymity, personal information, redactions which will be applied to documents or documents to which access will be restricted to promote the efficiency and effectiveness of the Inquiry, Redaction or Restriction of irrelevant information and Redaction or Restriction otherwise required by law.

F) Applications for Anonymity

41. While the Inquiry's overall approach remains one of openness and transparency, In accordance with Article 8 of the European Convention on Human Rights (the right to private and family life) and to ensure the effectiveness of the Inquiry by not deterring persons from giving evidence who would otherwise wish to do so, the Chair is likely to see the factors set out in paragraphs 34 and 35 above as favouring the grant of an application for Anonymity from any person who has, in the past, been treated by or under the supervision of, Mr Sam Eljamel. The Chair will also grant Anonymity to other individuals, in appropriate circumstances.

42. Any person who wishes to request Anonymity and in connection with whose identity no existing Restriction Order is in force, should do so in the normal course in the consent form issued in connection with their applicant statement to the Independent Clinical Review (“ICR”) or witness statement to the Inquiry.⁵ In cases where the Inquiry considers it appropriate to do so and where such a consent form has not been issued, the Inquiry will otherwise seek to ascertain if relevant individuals wish to request Anonymity in a similar way. In cases other than former patients of Mr Eljamel, an applicant for Anonymity will require to provide reasons for their application. In cases where Anonymity is requested in connection with an ICR applicant statement or written statement to the Inquiry, applicants will be asked to provide a copy of the relevant signed written statement(s) and any associated documents with proposed redactions, which redactions can be read through to the underlying text. In any event, within 14 days of receipt of any written request for Anonymity, the Inquiry will provide written notification of the Chair’s determination on the Anonymity application pursuant to the General Restriction Order, together with a copy (where applicable) of any signed written statement(s) and any associated documents with the information subject to that Order redacted.
43. As per paragraphs 43 et seq of the Inquiry’s Protocol on Approach to Evidence and Written Statements, in circumstances where Anonymity has been granted to a witness and they provide a written statement to the Inquiry containing criticism of another person or organisation, it may be appropriate to disclose the identity of that witness to the person or organisation criticised and their legal representative (where instructed), in order that they are afforded a fair opportunity to respond to the criticism. However, anyone to whom information is disclosed in this way must keep it confidential and it will not be disclosed to any other person who has not signed a confidentiality undertaking. The Inquiry will provide at least 14 days’ notice if it intends to disclose the identity of a witness who has been granted Anonymity so as to allow that witness an opportunity to make an application requesting that the Inquiry considers not disclosing this information.

⁵ As per the provisions of paragraphs 18 and 32 of the Inquiry’s Protocol on Approach to Evidence and Written Statements

44. Otherwise, written statements and associated documents will generally be disclosed to core participants in redacted form to remove the identity of a witness who has been granted Anonymity. Written statements by witnesses who have been granted Anonymity, along with any associated documents, will (unless there is a compelling reason not to publish them) be published in redacted form to remove the witness's identity.
45. Further, the Inquiry may refer cases to the ICR for review.⁶ In such cases, the patient to whom the referral relates will be invited to apply to and make an applicant statement to the ICR. If the patient does not wish to do so, the case may proceed to review. The review report and any associated documentation may require to be disclosed and/ or published by the Inquiry. In such cases, the patient will be sent a consent form relating to the disclosure and/ or publication of such documentation in a similar form to the consent form attached to the Inquiry's Protocol on Approach to Evidence and Written Statements. Any application for Anonymity or a Restriction Order should be made at the stage when that consent form is submitted. For the avoidance of doubt, the Inquiry may require to disclose and/ or publish the review report and any associated documentation. If the Inquiry intends to do so, it will do so subject to any successful application for Anonymity and any other applicable Restriction Order.
46. A witness who seeks to prevent Disclosure or Publication of information other than by a grant of Anonymity should submit an application for a Restriction Order in accordance with section E above and the Inquiry's Restriction Order Application Protocol.

G) Enquiries

47. All queries about any matter related to the content of this Protocol should be sent to the Solicitor to the Inquiry, as follows:

47.1.1. By email to: legal@eljamelinquiry.scot

⁶ As per paragraph 37 of the MoU

47.1.2. By post to: The Eljamel Inquiry, Area 2J North, Victoria Quay, Edinburgh EH6
6QQ.

Issued under the authority of the Chair on 10 June 2025.