



Restriction Order Application Protocol

Purpose of the Protocol

1. The purpose of this Protocol is to:-
 - A) Set out some definitions relevant to this Protocol;
 - B) Explain what a Restriction Order is;
 - C) Detail who can be considered an Interested Party who can make an application for a Restriction Order for the purposes of the Protocol;
 - D) Set out the process which the Inquiry will require to be followed in the event that an individual or organisation wishes to apply for a Restriction Order under section 19 of the Inquiries Act 2005 ("the Act"); and
 - E) 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) General Restriction Order;
 - (b) Protocol on the Approach to Evidence and Written Statements; and
 - (c) Protocol on Disclosure, Publication, Restriction and Anonymity.

4. Individuals, including but not limited to former patients of Mr Eljamel who are applying for Anonymity in accordance with the provisions of the Inquiry's Protocol on Disclosure, Publication, Restriction and Anonymity and the Inquiry's General Restriction Order need not follow the procedure set out below. They should simply submit a written request for Anonymity along with the consent form to be provided in connection with their ICR applicant statement and/ or written statement to the Inquiry or as otherwise requested by the Inquiry.¹

A) Definitions

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.

¹ As per the provisions of paragraphs 18 and 32 of the Inquiry's Protocol on Approach to Evidence and Written Statements, paragraphs 41 et seq the Inquiry's Protocol on the Disclosure, Publication, Restriction and Anonymity

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.

B) What is a Restriction Order?

10. A Restriction Order is an order made under section 19(2)(b) of the Act by the Chair of an Inquiry, which may impose restrictions on attendance at an inquiry, or at any particular part of an inquiry, or Disclosure or Publication of any evidence or documents given, produced or provided to an inquiry. This Protocol applies to applications for a Restriction Order for any of these purposes.

11. As per section 19(3) of the Act, a Restriction Order may only impose restrictions that are required by any statutory provision or rule of law, or that the Chair of an inquiry considers to be conducive to that inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters listed in section 19(4) of the Act.

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

- (a) the extent to which any restriction on attendance, Disclosure or Publication might inhibit the allaying of public concern;
- (b) any risk of harm or damage² that could be avoided or reduced by any such restriction;
- (c) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to that inquiry; or

² In terms of section 19(5) “harm or damage” includes, in particular, death or injury, damage to national security or international relations, damage to the economic interests of the United Kingdom or any part of the United Kingdom or damage caused by disclosure of commercially sensitive information

- (d) 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).

13. A Restriction Order may be made by the Chair if he considers it to be necessary, or on application by an Interested Party (see paragraph 14 below) who wishes to prevent Disclosure or Publication of certain information.

C) Who Can be Considered an Interested Party for the Purposes of the Protocol?

14. For the purposes of this Protocol an “Interested Party” is a party with an interest in the Restriction of information from Disclosure or Publication. Any individual, group of individuals, or organisation can be an “Interested Party”. For the avoidance of doubt, being a Core Participant is not a prerequisite to being an Interested Party.

D) How Can an Interested Party Apply for a Restriction Order?

15. An application for a Restriction Order (“an Application”) should be made in writing to the Solicitor to the Inquiry; it should be addressed to the Solicitor to the Inquiry, and submitted by email to legal@eljamelinquiry.scot.

16. An Application should comprise:

- (a) a section that describes the particulars of the restriction sought and provides as much detail about the Application and the grounds on which it is made as possible (“the Open Section”). The Open Section should contain only information that the Interested Party making the Application is content for the Inquiry to share with Core Participants, the media and the wider public via the Inquiry website. As such, care should be taken not to include in the Open Section any information that would risk defeating the purpose of the Application, e.g. a detailed reference to information, the Disclosure or Publication of which the Interested Party wishes to restrict;

- (b) a section that provides any additional information about the Application and the grounds on which it is made (“the Closed Section”). Information contained in the Closed Section will be treated as “potentially restricted evidence” within the meaning of rule 11(1) of the Inquiries (Scotland) Rules 2007 (“the Rules”). As such, information in the Closed Section of an Application will be treated as restricted as if the application had been granted³ and will only be disclosed to others where the Chair considers that it is necessary to do so for the determination of the application.⁴ If such disclosure is considered necessary, the person to whom disclosure is made for the purpose of the Application will owe a duty of confidence to the person who provided or produced the potentially restricted evidence.⁵ The Chair will only disclose any such material where both the person who provided or produced the potentially restricted evidence and the maker of the application have been afforded the opportunity to make representations about whether such disclosure should be permitted.⁶;
- (c) any relevant supporting evidence, which, if considered necessary by the applicant, may be appended to the Open and/ or Closed Sections of the Application; and
- (d) a statement of truth in relation to the factual content of the Application.

17. Upon receipt of an Application, the Inquiry will follow the general process set out below:

- (a) The Open Section of the Application will normally be disclosed to Core Participants and the media and other persons or organisations identified by the Chair as having a proper interest in the Application, subject to the terms of the Inquiry’s First Order. It may also be published on the Inquiry’s website, if the Chair considers wider publication of it necessary. The Chair may issue a note of his provisional views in relation to the Application (“a Provisional Decision”) when disclosing the Open Section.

³ Rule 11(3) of the Rules

⁴ Rule 11(4)(a) of the Rules

⁵ Rule 11(5) of the Rules

⁶ Rule 11(4)(b) of the Rules.

(b) The Closed Section of the Application (or any part of it) may be disclosed to Core Participants and/ or the media, and other persons or organisations identified by the Chair as having a proper interest in the Application, subject to the terms of the Inquiry's First Order and the duty of confidence which would be owed in such circumstances by any person to whom such disclosure was made for the purpose of the application in terms of Rule 11(5) of the Rules. Before such disclosure is made, the Inquiry's legal team will consult with the applicant and the person who produced or provided the potentially restricted evidence to the Inquiry as to whether they think that such disclosure should be made for that purpose and subject to the duty of confidence and the terms of the Inquiry's First Order. The Chair will then decide whether and to whom to disclose the Closed Section in the light of all the circumstances, including but not limited to:

- (i) any representations made by the person who produced or provided the potentially restricted evidence to the Inquiry under rule 11(4)(b)(i) of the Rules;
- (ii) any representations made by the party making the Application under rule 11(4)(b)(ii) of the Rules;
- (iii) the sensitivity of the material included in the Closed Section; and
- (iv) the importance of the material included in the Closed Section to the issues in the Application. Consideration will be given as part of this process to the possibility of disclosing parts of the material included in the Closed Section, where the Chair considers it appropriate to do so in light of these considerations.

(c) The Chair will normally invite Core Participants, members of the media and other persons or organisations identified by the Chair as having a proper interest in the Application, to provide the Inquiry with written submissions in response to the Application (and any Provisional Decision that was issued). Such submissions may be published on the Inquiry's website.

(d) The Chair may thereafter: (i) invite Counsel to the Inquiry to provide him with written submissions in response to the Application (and any Provisional Decision that was issued); and (ii) hear oral submissions on the Application at a hearing, attendance at which may be restricted by the Chair in accordance with section 19 of the Act.

(e) The Chair will determine the Application and give a written ruling, which will be published on the Inquiry's website. The ruling may contain an addendum in respect of the Closed Section of the Application, which will be shared with the party who made the Application, the party who provided the potentially restricted evidence and any party whom the Chair deems it appropriate to have access to that addendum but will not be disclosed to any other party.

18. Any Restriction Orders made by the Chair will be published on the Inquiry's website.

19. The Chair may vary the procedure set out above as appropriate in individual Applications.

20. If a party making an Application wishes it to be determined by a procedure other than that set out above, written representations to that effect should be included with the Application, with reasons as to the alternative procedure which is proposed and why the alternative would be appropriate in the circumstances.

E) Enquiries

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

21.1.1. By email to: legal@eljamelinquiry.scot

21.1.2. 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.