



MUCKAMORE ABBEY HOSPITAL INQUIRY

MAHI PROTOCOL No. 4

PROTOCOL ON REDACTION, ANONYMITY AND RESTRICTION ORDERS

Introduction

1. This Protocol governs the following:
 - a. redaction of information from documents before they are disclosed or published by the Inquiry;
 - b. anonymity; and
 - c. Restriction Orders.
2. This Protocol should be read in conjunction with [the Protocol governing the production of documents to the Inquiry and receipt of those documents by the Inquiry](#).
3. The Protocol will not necessarily cover every eventuality that may arise. The Inquiry may need to depart from the Protocol in the interests of fairness or in order to discharge its statutory functions.
4. The Protocol may also need to be amended in the course of the Inquiry's work, in which case the amended version will be published at the earliest opportunity on the Inquiry's website.

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 use it for any purpose other than taking part in the Inquiry and not to reveal it to any third party.
6. "Publication" is the process of making information available to members of the public: on the Inquiry website, which is freely accessible; during oral hearings of the Inquiry, which are streamed on the Inquiry's live feed; and 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.

7. “Restriction Order” is the name given to an order under section 19 of the Inquiries Act 2005, which restricts attendance at the Inquiry, disclosure or publication of information.
8. “Redaction” is the removal of information from a document prior to disclosure or publication, usually by blacking out words. The main purpose of redaction is to protect information from disclosure for established legal reasons, for example where the text contains sensitive and personal data. Redaction may also be used to exclude information which is not relevant to the Inquiry’s Terms of Reference.
9. “Anonymity” is the protection of a person’s identity from disclosure and/or publication.
10. Redaction of information and/or the grant of anonymity will be under the authority of a Restriction Order. The Chair may make Restriction Orders of his own motion during the course of the Inquiry. The Chair may also make Restriction Orders upon application.

Statutory provisions

11. The Protocol should be read in conjunction with the Inquiries Act 2005 (“the Act”) and the Inquiry Rules 2006 (“the Rules”). Attention is drawn in particular to the following provisions.
12. Section 17 of the Act provides that the procedure and conduct of an Inquiry are to be such as the Chair may direct. In making any decision as to procedure, the Chair must act with fairness and with regard to the need to avoid any unnecessary cost.
13. Section 18 of the Act requires the Chair to take such steps as he considers reasonable to ensure that members of the public are able:
 - a. to attend the Inquiry or to see and hear a simultaneous transmission of proceedings at the Inquiry;
 - b. to obtain or view a record of evidence and documents given, produced or provided to the Inquiry or Inquiry panel.
14. However, under section 19 of the Act, the Chair may impose restrictions on:
 - a. attendance at the Inquiry, or at any particular part of an Inquiry;
 - b. disclosure or publication of any evidence or documents given, produced or provided to an Inquiry.

15. Such restrictions may be imposed by the Chair making a Restriction Order.¹
16. A Restriction Order must specify only such restrictions:
 - a. as are required by law; or
 - b. as the Chair considers to be conducive to the Inquiry fulfilling its Terms of Reference or to be necessary in the public interest.
17. In considering whether a Restriction Order of this latter type should be made, the Chair will have regard in particular to the matters set out in section 19(4) of the Act, namely:
 - 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 damage that could be avoided or reduced by a restriction;²
 - c. any conditions as to confidentiality subject to which a person acquired information which that person is to give to the Inquiry; and
 - d. the extent to which not imposing the restriction would be likely to cause delay or to impair the efficiency or effectiveness of the Inquiry or otherwise to result in additional cost (whether to public funds or to witnesses or others).
18. Rule 12 provides that, where an application is made for a Restriction Order which entails the withholding of evidence from the public, any evidence subject to the application is deemed to be “potentially restricted evidence” until the application is determined or withdrawn. As such, it is restricted from disclosure unless the Chair considers disclosure to be necessary for the determination of the application itself, and he has first allowed the applicant (or any other person providing the subject evidence) the opportunity to make representations on whether such disclosure should be permitted. Any person who is shown potentially restricted evidence owes an obligation of confidence to the person who produced the evidence to the Inquiry. Any breach of that obligation is actionable in a civil court.
19. Pursuant to section 20(5) Restriction Orders made by the Chair remain in force indefinitely, unless they are stated to expire at a specific time or are varied or revoked.

¹ Restrictions may also be imposed by a “Restriction Notice” given by the Minister to the Chair at any time before the end of the Inquiry. No such notice has been issued.

² The words “harm or damage” are defined by section 19(5) of the Act as including in particular death or injury, damage to national security or international relations, damage to the economic interests of the United Kingdom or of any part of it, or damage caused by the disclosure of commercially sensitive material.

Redaction

20. As set out in the Protocol on the Production and Receipt of Documents (Protocol No. 1), documents provided to the Inquiry must be intact and in unredacted form. That Protocol also provides that no issues around restriction or redaction should impede the production of documents to the Inquiry.
21. Documents provided to the Inquiry may contain large amounts of personal information. The Inquiry will normally redact:
 - private addresses;
 - private email addresses;
 - private telephone numbers;
 - personal identifying numbers such as National Insurance numbers and Health and Social Care numbers.
22. Such redactions to Inquiry documents are carried out under the authority of [General Restriction Order No. 1 \(Redaction of Personal Details\)](#) issued on 7 December 2021.
23. The Inquiry will decide whether any other information needs to be redacted on a case-by-case basis and the Chair may issue further Restriction Orders accordingly.
24. Following production of documents to the Inquiry, document providers may apply for further redactions to be made to documents in accordance with paragraphs 31 - 32 below.

Anonymity

25. The Chair has determined that it is appropriate to grant anonymity to past and present patients of Muckamore Abbey Hospital. That determination and the basis on which it is made are set out in [General Restriction Order No. 2 \(Anonymity of Patients\)](#).
26. Individuals who fall within this category may choose to waive their right to anonymity. If they so choose, they should inform the Solicitor to the Inquiry of that choice in writing.
27. Any person who does not fall into the category referred to at paragraph 25 above and who wishes to apply for anonymity should apply for a Restriction Order in accordance with paragraphs 31 - 32 below.
28. Where a Restriction Order granting anonymity is made, the following additional information³ relating to the person will be redacted in any documents disclosed or published by the Inquiry:

³ That is, additional to the information redacted under the authority of General Restriction Order No. 1 (Redaction of Personal Details): see paragraphs 21-22 above.

- name;
 - date of birth;
 - names and specific identifying details of the person's family members.
29. In addition to redaction of the details set out in paragraph 28, the Chair will consider the redaction of other details specified in an application for anonymity.
30. A person granted anonymity will be allocated a cipher by the Inquiry. The cipher will be inserted in place of the person's name in all statements and evidence for the purposes of the Inquiry.

Application for a Restriction Order

31. An application for a Restriction Order must be made in writing to the Solicitor to the Inquiry.
32. Any such application must include:
- a. the name and contact details of the applicant;
 - b. specific details of the restriction sought (referenced by page and, where possible, paragraph number);
 - c. an explanation of why the restriction is sought, with reference to section 19(3), (4) and (5) of the Act;
 - d. a declaration of truth in relation to the factual content of the application.
33. The Chair may ask the applicant to provide such further information as he considers necessary to determine the application. The Chair may invite submissions from any person that he considers necessary in order to determine an application. Pursuant to Rule 12, evidence which is subject to an application will not be disclosed until the application is determined or withdrawn, unless the specified limited conditions set out in Rule 12 are met.
34. The applicant will be notified in writing of the Chair's determination in respect of the application. Restriction Orders will be published on the Inquiry website.

Effect of Restriction Orders

35. 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.
36. If a person fails to comply with, or acts in breach of a Restriction Order, or threatens to do so, the Chair may certify the matter to the High Court, pursuant to section 36 of the Act. Upon certification, the High Court may make such

order by way of enforcement or otherwise as it could make if the matter had arisen in proceedings before the court (this may include committal to prison or a fine).

37. A Restriction Order will continue in force indefinitely unless the Chair varies or revokes it under section 20(4) of the Act. The Chair may vary or revoke a Restriction Order at any time if he considers it necessary and appropriate.
38. If a person wishes to apply to the Inquiry for the variation or revocation of any Restriction Order they should do so by making an application in writing to the Solicitor to the Inquiry. The Chair will invite submissions from any person that he considers necessary in order to determine such an application.

Point of contact

39. Any issue arising from or query relating to this Protocol should be addressed to the Solicitor to the Inquiry: solicitor@mahinquiry.org.uk

Issued under the authority of the Chair of the Inquiry on 7 December 2021