

Scottish COVID-19 Inquiry
Restriction Order 1 – Health and Social Care

1. This Inquiry is to establish the facts of, and learn lessons from, the strategic responses to the COVID-19 pandemic in Scotland. The Inquiry has multiple terms of reference and has grouped its terms of reference into the following broad themes: health and social care; education and young people; and finance, business and welfare.

2. The Chair of the Scottish COVID-19 Inquiry may impose restrictions on the publication or disclosure of any evidence or documents produced by or provided to the Inquiry. The Chair may do so where he considers it to be conducive to the Inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard to:
 - 2.1. the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;

 - 2.2. any risk of harm or damage that could be avoided or reduced by any such restriction;

 - 2.3. any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;

 - 2.4. the extent to which not imposing any particular 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).

3. This Restriction Order covers the publication or disclosure of any evidence or documents produced by or provided to the Inquiry pertaining to Health and Social Care in the Inquiry's investigation of matters covered by Terms of Reference (g), (h) and (i) and where appropriate Terms of Reference (c), (d), (e) and (f).

4. Evidence can be obtained by the Inquiry from people and organisations in the following ways:
 - 4.1. Witness statements;

 - 4.2. Oral evidence given during hearings; and

4.3. Provision of documents

5. The Chair is mindful of the sensitive and/or personal nature of many aspects of such evidence and documents, to the interests of certain persons and organisations that may be identified by such evidence and/or documents and to the risk of harm and/or damage being occasioned to them.
6. The persons or organisation who are protected by this Restriction Order are referred to as “Protected Persons” and are as follows:

6.1. Applicants;¹

6.2. Applicants’ family members;²

6.3. Persons (and/or their family members) who were in receipt of care in a residential care setting or hospital, or in receipt of health and social care in the community alongside the Applicant;

6.4. The name of the residential care setting, hospital or other care setting;

6.5. The name of individual carers, whether paid or unpaid, and health care providers;

6.6. A person who was a key worker³ except persons referred to in paragraph 10.8 below.

¹ An Applicant is a person who applies to give evidence to the Inquiry in respect of the Inquiry’s Impact Hearings on Health and Social Care.

² A “family member” includes any person who an applicant regarded or regards as a member of their family and/or who lived or lives with the applicant in a family-type setting.

³ A “key worker” for the purposes of this Order is as defined in the guidance published by the Scottish Government first published on 31 March 2020 titled the “Coronavirus (COVID-19): school and early learning closures - guidance about key workers and vulnerable children” and found [here](#). For the ease of reference, key worker is defined as follows:

Category 1 – Health and Care workers who directly supported the COVID response, and associated staff; Health and Care workers who supported life threatening emergency work, as well as critical primary and community care provision; Energy suppliers (small numbers identified as top priority already); staff who provided childcare/learning for other category 1 staff.

Category 2 – All other Health and Care workers, and wider public sector workers who provided emergency/critical welfare services (e.g. Fire, Police, Prisons, Social Workers, etc.), as well as those who supported Critical National Infrastructure, without whom serious damage to the welfare of the people of Scotland would have been caused.

Category 3 – All workers (public, private or third sector) without whom there could have been a significant impact on Scotland (but where the response to Covid-19, or the ability to perform essential tasks to keep the country running, would not have been severely compromised).

7. Having regards to the above, the Chair has concluded that it is in the public interest and conducive to the Inquiry fulfilling its Terms of Reference to issue this restriction order in the following terms:

7.1. Evidence given to the Inquiry by way of a written statement and/or by a witness giving evidence in person before the Inquiry, to the extent that such evidence identifies Protected Persons, must not be disclosed to or by any person and/or published by any person without the express written permission of the Chair.

7.2. Documents⁴ which bear to have been created for the purposes of the Inquiry, (hereinafter referred to as "Inquiry documents"), to the extent that such documents identify Protected Persons, must not be disclosed to or by any person and/or published by any person without the express written permission of the Chair.

7.3. Documents recovered or obtained by the Inquiry in exercise of its statutory functions, which are processed by the Inquiry and which will bear an Inquiry reference (hereinafter referred to as "Inquiry copies"), to the extent that such Inquiry copies identify Protected Persons, must not be disclosed to or by any person and/or published by any person without the express written permission of the Chair.

8. For the avoidance of doubt, this Restriction Order does not restrict the publication and/or disclosure of published versions of anything falling within paragraphs 7.1 to 7.3 above which has been published by the Inquiry on its website.

9. Nor does paragraph 7.3 of this Restriction Order restrict the publication and/or disclosure of documents which are not inquiry copies or inquiry documents.

Exceptions

10. The following exceptions qualify the prohibition on disclosure or publication of the identities of Protected Persons detailed in this Restriction Order:

⁴ A "document", for the purposes of this Order and as defined by section 43(1) of the Inquiries Act 2005, includes information recorded in any form.

- 10.1. Members of the Inquiry team may disclose the identities of Protected Persons to any individual carers and health care providers named and to the legal representatives of any individual carer and health care provider so named. Disclosure to such persons or organisations and/or their legal representatives will be made strictly on a confidential basis and only for the purpose of progressing the work of the Inquiry and in the interests of fairness.
- 10.2. Members of the Inquiry team may disclose the identities of Protected Persons to any residential care setting, hospital or other care setting named and to the legal representatives of any residential care setting, hospital or other care setting so named. Disclosure to such persons or organisations and/or their legal representatives will be made strictly on a confidential basis and only for the purpose of progressing the work of the Inquiry and in the interests of fairness.
- 10.3. Members of the Inquiry team may disclose the identities of Protected Persons to any persons or organisations who they believe hold information relevant to the Inquiry's Terms of Reference in order to recover information to assist the Inquiry with its investigations, or may disclose the identities of Protected Persons to experts instructed by the Inquiry where this is necessary to enable the expert(s) to carry out work which the Inquiry has instructed them to undertake. This may be done only on a strictly confidential basis and only for the purpose of progressing the work of the Inquiry.
- 10.4. The Chair may, at his discretion, instruct members of the Inquiry team to disapply this order in relation to documentary evidence which forms part of a case study bundle to be released to parties with leave to appear, if he considers that to do so would not create a risk of harm to Protected Persons. Access to case study bundles is only afforded on a strictly confidential basis, only for the purpose of progressing the work of the Inquiry and only in the overall interests of fairness.
- 10.5. This Order does not restrict disclosures by members of the Inquiry team to Police Scotland relating to those who are the subject of allegations of criminality.

10.6. This Order does not restrict disclosures made by members of the Inquiry team to Police Scotland of the identities of any persons to enable assessment by Police Scotland of current risk of harm to any person or risk to any person's life. Nor does this Order restrict disclosures made by members of the Inquiry team to Police Scotland of information indicating that persons protected by this Order have been subjected to harassment or intimidation.

10.7. This Order does not restrict disclosures by the Inquiry of the names of residential care settings, hospitals or other care settings in any report published by the Inquiry where those residential care settings, hospitals or other care settings are subject to significant or explicit criticism by the Inquiry.

10.8. Senior civil servants and members of the Scottish Government's Cabinet are not subject to the protection of this Restriction Order. For the avoidance of doubt, the Inquiry considers a Senior Civil Servant to be a person holding, or who held at the relevant time⁵, one of the following positions: Deputy Director 1, Deputy Director 1A, Director, Director General and Permanent Secretary.

General

11. This Order is made on 5 May 2023 and remains in force indefinitely, unless the Chair orders otherwise.

12. The Chair may vary or revoke this Order by making a further order at any point during the course of the Inquiry.

13. Any person affected by this Order may apply for it to be varied or discharged on giving 3 working days' notice to the Solicitor by emailing contact@covid19inquiry.scot.

14. Any breach of this Order, or threat to do so, shall be notified to the Solicitor by emailing contact@covid19inquiry.scot immediately.

⁵ The relevant time is, for the purposes of this Restriction Order, the period between 1 January 2020 and 31 December 2022

15. This Order applies to everyone.