

Statement of approach to criticism – health and social care

1. In the interests of fairness, the Inquiry intends to disclose serious criticism to the subject of that criticism (hereinafter “the criticised”). This will afford them the opportunity to consider their position and whether they may wish to apply for a Restriction Order to prevent the statement from being disclosed by the Inquiry. The Inquiry considers that this is in line with its human rights-based approach.

Disclosure of evidence – health and social care impacts

2. The Inquiry intends to publish witness statements on its website following on from the conclusion of each hearing. This is in line with the Chair’s statutory duty to take steps that he considers reasonable to secure that members of the public can view a record of evidence and documents given, produced or provided to the inquiry.
3. Witness statements for the Inquiry’s health and social care impact hearings will be redacted in line with the Inquiry’s Health and Social Care Restriction Order. The exception to this is that the name of the witness and any residential care setting, hospital or other care setting will be unredacted.
4. Publication of the witness statement will be further subject to any Restriction Order that is granted by the Chair following on any application made by an individual/organisation in respect of specific statements or documents.

What will be disclosed and when

5. The Inquiry will approach disclosure of a serious criticism to the criticised on a case-by-case basis. It is for the Chair to assess and determine what amounts to a serious criticism. Consideration will be given to the potential impacts that may follow on the publication of the statement.
6. Where the Chair determines that it is reasonable, in the interests of fairness, to disclose the criticism to the criticised, this will be done in advance of any hearing.
7. If the criticised is a Core Participant, they will receive a full copy of the witness statement, as they are entitled to.
8. Where the criticised is not a Core Participant, the Inquiry will not disclose the entire witness statement to them. The Inquiry will provide a summary of the criticism, sufficient to enable the criticised to understand the position that has been advanced in the witness statement.

Views of the witness

9. Where a witness has criticised a core participant of the Inquiry, it should be assumed that the witness statement will be disclosed to the core participant irrespective of the seriousness of the criticism.
10. Where the criticised is not a core participant, and the Inquiry determines to disclose a summary of that criticism, the witness or their representative will be notified, thereby affording the witness the opportunity to apply for a restriction order or to withdraw their statement.

Extent of the disclosure

11. Any disclosure made to the criticised will not stray beyond the terms of any Restriction Order in place at the time. What this means is that the information provided will not stray beyond what will be published on the Inquiry's website following the hearing at which the witness gives evidence.

Version control

12. This is the first version of the Scottish COVID-19 Inquiry's Statement of approach to criticism – Health and Social Care and is dated 13 October 2023.
13. Please note that on 2 October 2023 the Inquiry issued a FAQs sheet in respect of Restriction Order 1 – Health and Social Care. This statement supersedes the FAQ response in respect of criticisms.