



## Scottish COVID-19 Inquiry

### Restriction Order 1 – Health and Social Care

#### Version 2 in force from 8 March 2024

#### Introduction

1. The aim of the Scottish COVID-19 Inquiry is to establish the facts of, and learn lessons from, the strategic responses to the COVID-19 pandemic in Scotland<sup>1</sup>. For the purposes of its initial hearings, the Inquiry 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 Inquiry may impose restrictions on the disclosure or publication of any evidence or documents given, produced or provided to the Inquiry<sup>2</sup>. Any restrictions are specified in an order (a “restriction order”) made by the Chair during the course of the Inquiry. A restriction order may be issued where the Chair 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 is to be given, or has been given, to the inquiry; and
  - 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).<sup>3</sup>

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<sup>1</sup> [Scottish COVID-19 Inquiry Terms of Reference](https://www.covid19inquiry.scot/terms-reference)  
(<https://www.covid19inquiry.scot/terms-reference>)

<sup>2</sup> Inquiries Act 2005, section 19

<sup>3</sup> 2005 Act, Section 19(4)

3. This Restriction Order covers the publication or disclosure of any evidence or documents given, produced, 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.

## **Restrictions**

6. The persons or organisation protected by this Restriction Order are referred to as "Protected Persons" and are as follows:
  - 6.1 [4]
  - 6.2 Applicants' family members;
  - 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 [5]
  - 6.5 The name of individual carers, whether paid or unpaid, and health care providers;

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<sup>4</sup> Paragraph 6.1 was revoked from 28<sup>th</sup> August 2023. Prior to this date "Applicants" were Protected Persons.

<sup>5</sup> Paragraph 6.4 was revoked from 28<sup>th</sup> August 2023. Prior to this date "The name of the residential care setting, hospital or other care setting" were Protected Persons.

- 6.6 A person who was a key worker except (a) where that person is also the Applicant and (b) persons referred to in paragraph 10.8 below.
7. The Chair hereby imposes the following restrictions that, having regard to the matters noted at paragraph 2 above, he considers are in the public interest and conducive to the Inquiry fulfilling its Terms of Reference:
- 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 Documents 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. 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. Paragraph 7.3 of this Restriction Order does not restrict the publication and/or disclosure of documents which are not Inquiry copies or Inquiry documents.

### **Exceptions and Specific Variations**

10. The following exceptions apply to this Restriction Order:

- 10.1 Members of the Inquiry team may disclose the identities of Protected Persons to any individual carers, health care providers, business or organisations named and to their legal representatives. 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. The Inquiry considers a Senior Civil Servant to be a person holding one of the following positions during the period 1 January 2020 to 31 December 2022: Deputy Director 1, Deputy Director 1A, Director, Director General and Permanent Secretary.
11. This order has been varied. Details of variations to this order will be published on the Inquiry's website.<sup>6</sup>

## **General Provisions**

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 (for example, to seek a specific exception to the order) or revoked on giving 3 working days' notice to the Solicitor by emailing [contact@scottishinquiry.scot](mailto:contact@scottishinquiry.scot).
14. Any breach of this Restriction Order, or threat to do so, should be notified to the Solicitor to the Inquiry by emailing [contact@scottishinquiry.scot](mailto:contact@scottishinquiry.scot) immediately.
15. This Order applies to everyone.

## **Interpretation**

16. Terms used in this Restriction Order are defined as follows:

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<sup>6</sup> <https://www.scottishinquiry.scot/variations-ro1>

- 16.1 “**Applicant**” means is a person who applies to give evidence to the Inquiry in respect of the Inquiry’s Impact Hearings on Health and Social Care
- 16.2 “**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.
- 16.3 “**health care provider**” for the purposes of this Restriction Order means a natural person who was providing care or treatment to an individual. A health care provider may be, but is not limited to, a nurse, doctor, carer or other physician. For the purposes of this Order, a health care provider is not a business, organisation or body corporate.
- 16.4 “**Inquiry documents**” has the meaning given in paragraph 7.2.
- 16.5 “**Inquiry copies**” has the meaning given in paragraph 7.3.
- 16.6 “**Protected Persons**” has the meaning given in paragraph 6.6.
- 16.7 This “**Restriction Order**” refers to this Order as varied to the date stated above.