

# **RESTRICTION ORDER No. 1: MATERIAL RELEASED BY THE SCOTTISH HOSPITALS INQUIRY IN ADVANCE OF PUBLICATION BY IT**



The Chair of the Scottish Hospitals Inquiry, in exercise of the powers contained in section 19 of the Inquiries Act 2005 (“the Act”) and all other powers enabling him in that behalf, makes the following Restriction Order.

## **IT IS ORDERED THAT:**

### **1. General**

- 1.1 This Order is made on 26 August 2021 and remains in force indefinitely, unless the Chair of the Inquiry orders otherwise.
- 1.2 The Chair may vary or revoke this Order by making a further order at any point during the course of the Inquiry.
- 1.3 Any person aware of any breach of this Order must notify the Solicitor to the Inquiry in writing immediately upon becoming aware of the breach.

### **2. Interpretation**

- 2.1 For the purposes of this Order:
  - 2.1.1 “Core Participant” means an individual or organisation who is designated a core participant by the Chair of the Inquiry.
  - 2.1.2 “Counsel”, in relation to a Core Participant, means any senior and junior counsel appointed to represent the interests of the Core Participant in relation to the Inquiry from time to time.
  - 2.1.3 “Inquiry” means the public inquiry established by the Scottish Ministers under the Inquiries Act 2005 to consider the planning, design, construction, commissioning and, where appropriate, maintenance of both the Queen Elizabeth University Hospital Campus (QEUH), Glasgow and the Royal Hospital for Children and Young People and Department of Clinical Neurosciences (RHCYP/DCN), Edinburgh with Lord Brodie PC QC as chair, commonly referred to as the Scottish Hospitals Inquiry. References to the “Chair” should be construed accordingly.

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- 2.1.4 “Recognised Legal Representative”, in relation to a Core Participant, means any qualified lawyer appointed to act on behalf of the Core Participant and recognised by the Chair as their recognised legal representative in accordance with Rule 5(2) of the Inquiries (Scotland) Rules 2007 from time to time.
- 2.1.5 “Protected Material” means any witness statements, documents and other evidence, information or material of whatsoever nature given, produced or provided to the Inquiry, or created or generated by the Inquiry, made available to Recognised Legal Representatives by the Inquiry (and by Recognised Legal Representatives to Core Participants, or Counsel, in accordance with the terms of this Restriction Order) from time to time.
- 2.1.6 “Recipient” means:
- (a) a Core Participant,
  - (b) a Recognised Legal Representative, or
  - (c) Counsel,
  - (d) any other person

who has received, been shown or otherwise had made available to them Protected Material, whether by the Inquiry, by a Recognised Legal Representative or otherwise.

### **3. Order**

- 3.1 Subject to the other provisions of this Restriction Order, a Recipient shall not disclose, publish or communicate the existence, source, content or substance of Protected Material to any person, nor in any way directly or indirectly permit or suffer the publication, disclosure or communication of the existence, source, content or substance of Protected Material.
- 3.2 To ensure that full effect is given to the restrictions specified in paragraph 3.1, a Recipient shall ensure that Protected Material is kept securely and shall exercise all due care and attention to ensure that Protected Material is not left unattended (including being available on an unattended computer) or left in such a manner as it may be seen by an unauthorised person.
- 3.3 A Recognised Legal Representative may copy Protected Material from the Inquiry’s document management or storage system, or from any email from the Inquiry to which is attached Protected Material, to the document management system used by the Recognised Legal Representative, provided that access to the Protected Material on that system is restricted to those actively working on matters connected to the Inquiry.
- 3.4 A Recognised Legal Representative may make available a copy of Protected Material in accordance with the provisions of paragraph 3.5 to:

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- 3.4.1 the Core Participant, or where the Core Participant is a corporate or unincorporated body, appropriate office holders or employees of the Core Participant, represented by the Recognised Legal Representative; and
- 3.4.2 Counsel,
- having in both cases first drawn their attention to the terms of this Restriction Order and the possible consequences of non-compliance with its terms.
- 3.5 When making Protected Material available in accordance with paragraph 3.4, a Recognised Legal Representative shall do so only by means of a password protected secure electronic file sharing system, the password to access file sharing system being sent by email to a verified email address to which emails have been sent and from emails have been received for the individual in question. A Core Participant (or office holders or employees of same) and Counsel may download a single copy on one occasion only of the Protected Material from the file sharing system.
- 3.6 Where Protected Material has been made available to a Recognised Legal Representative in a password protected file and they are sharing that file in accordance with paragraphs 3.4 and 3.5, the password necessary to access the file must be sent in a separate later email from that which gives access to the file sharing system, and the emails must be sent not less than one hour apart unless receipt of the email containing the password to the file sharing system is acknowledged before then.
- 3.7 Paragraph 3.3 applies to:
- 3.7.1 A Core Participant that is a corporate or unincorporated body; and
- 3.7.2 a Recipient that is not a Core Participant, Recognised Legal Representative or Counsel but is a corporate or unincorporated body,
- as if the references in that paragraph to a Recognised Legal Representative were references to that body.
- 3.8 Otherwise than as permitted by paragraphs 3.4, 3.5 and 3.7, a Recipient shall not:
- 3.8.1 make any electronic copies of Protected Material; or
- 3.8.2 print any Protected Material.
- 3.9 When
- 3.9.1 a Recognised Legal Representative makes available Protected Material in accordance with paragraph 3.4, or

- 3.9.2 a Recognised Legal Representative, or those referred to in paragraph 3.7, are granting access to Protected Material stored on their document management or storage systems to their employees or office holders,

they shall at all times have due regard to the requirement that it should not be made available more widely than is strictly required for the purpose for which the Protected Material was made available by the Inquiry. Accordingly, Protected Material should be distributed on a on a need to know basis and only to those who can reasonably be expected to assist in the fulfilment of that purpose.

- 3.10 A Recipient shall not make use of Protected Material for any purpose whatsoever other than for the purposes of Inquiry proceedings.

## **4. Exceptions**

- 4.1 The terms of this Restriction Order do not apply to the extent that:

4.1.1 Any Protected Material is or becomes generally known or available to the public at large through no act or omission of a Recipient;

4.1.2 Any Protected Material was acquired by a Recipient independently of the Inquiry and not as a result of any breach of confidence or of this Restriction Order either on the part of the Recipient or a party from whom the Recipient obtained the Protected Material, whether the acquisition was before or after disclosure by the Inquiry to the relevant Recognised Legal Representative;

4.1.3 A Recipient is obliged to disclose any Protected Material by law; or

4.1.4 The Chair agrees in writing that a Recipient may disclose any Protected Material.

- 4.2 Where a Recipient proposes to disclose, publish or communicate any Protected Material by virtue of any of the provisions of paragraph 4.1, they shall give the Solicitor to the Inquiry no less than 24 hours' advance notice of their intention to do so.

- 4.3 Nothing in this Restriction Order prevents or prohibits a Recipient from relying upon or referring to any Protected Material during any hearing of the Inquiry, or in any written or oral submissions or statements made to the Inquiry, provided that any submissions, statements or other material containing Protected Material are not sent to any third party, and are subject to any other applicable restrictions on disclosure.

## **5. General**

- 5.1 The Solicitor to the Inquiry may at any time request that any Protected Material be returned or destroyed by a Recognised Legal Representative or any other

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Recipient that has received Protected Material directly from the Inquiry. On receipt of such a request the Recognised Legal Representative or such a Recipient shall return or destroy the specified Protected Material that is in their possession or control, ensuring that all electronic copies of it are permanently erased.

- 5.2 On receipt of a request of the kind specified in paragraph 5.1, a Recognised Legal Representative shall further immediately notify any Core Participant (or office holder or employee of same) or Counsel to whom the Recognised Legal Representative has sent a copy of the specified Protected Material in accordance with paragraph 3.4 that the specified Protected Material should be returned or destroyed, including permanent erasure of any electronic copies. The Core Participant (or office holder or employee of same) and Counsel shall immediately comply with any such notification.
- 5.3 This Order has no force or effect with respect to any of the Protected Material that is at any time published on the Inquiry's website or which is introduced as evidence in Inquiry proceedings that are not subject to any other restrictions regarding disclosure.
- 5.4 Recipients shall return or destroy (including permanent erasure of any electronic copies) any Protected Material which remains subject to this Restriction Order at the end of the Inquiry in accordance with any guidance that may be published by the Inquiry.
- 5.5 In addition to any enforcement action that may be taken under section 36 of the Act, in the event of any breach of this Order, the Chair of the Inquiry may in relation to any party who breaches the Order:
  - 5.5.1 Withdraw core participant or recognised legal representative status;
  - 5.5.2 Revoke any award of funding of legal representation; and
  - 5.5.3 Stop sharing any Protected Material with that Core Participant or Recognised Legal Representative, including withdrawing or restricting the facility by which Protected Material is shared with Core Participants and Recognised Legal Representatives ahead of hearings of the Inquiry.

Lord Brodie PC QC  
Chair, Scottish Hospitals Inquiry  
26 August 2021