

SCOTTISH HOSPITALS INQUIRY
NOTE of REASONS
in
APPLICATION
on behalf of
NHS GREATER GLASGOW AND CLYDE HEALTH BOARD
for
RESTRICTION ORDER IN TERMS OF SEC 19 OF THE INQUIRIES ACT 2005

1. On 20 October 2021 the Inquiry received a written application from a core participant, NHS Greater Glasgow and Clyde Health Board (“the Board”) seeking imposition of a restriction on disclosure or publication of evidence or documents given, produced or provided to the Inquiry by two witnesses, Mrs Theresa Smith and Mr Matthew Smith. Power to impose such a restriction, by specifying it in an order, is conferred on the chairman of an inquiry by sec 19(1)(b) sec 19 (2) (b) of the Inquiries Act 2005. Restrictions imposed under sec 19 on disclosure or publication of evidence or documents continue in force indefinitely, unless the relevant notice or order is varied or revoked, as the chairman has power to do in terms of sec 20(4) of the Act.
2. Mrs and Mr Smith are spouses. They are the parents of a child who died while being treated on the Queen Elizabeth University Hospital campus (“the QEUH”). It is proposed that they should give oral evidence to the Inquiry at a hearing on 2 November 2021. They have already provided written witness statements.
3. On 21 October 2021 the Inquiry received a written application from another core participant, the Scottish Ministers, seeking imposition of a restriction to similar effect.
4. I appointed parties to be heard on their respective applications. Intimation of the applications was made to Mrs and Mr Smith, who indicated their wish to be heard in response. Accordingly, on 25 October 2021 I heard submissions from Mr Gray QC, who appeared together with Ms Toner, Advocate, on behalf of the Board; from Ms Davie QC on behalf of Scottish Ministers; and from Mr Love QC, who appeared together with Mr Thornley, Advocate, on behalf of Mrs and Mr Smith. I invited observations by

Counsel to the Inquiry. In preparation for the hearing I read the applications and the two witness statements.

5. On convening the hearing it proved to be the case that there was a common position among the three core participants. Mr Gray confirmed that the order sought by the Board was in exactly the same terms as the order sought by the Scottish Ministers. Mr Love conceded that looking to the terms of the witness statements of Mrs and Mr Smith, the applications were merited and, accordingly they were not opposed. Mr Love reminded me of the power conferred on the chairman by section 20(4) of the 2005 Act to vary or revoke a restriction order, and the possibility which this gives rise to that a party or parties might make a further application with a view to the publication of the witness statements in redacted form. Ms Davie and Mr Gray moved their respective applications. Otherwise, counsel for the respective core participants did not elaborate on what appeared in the written applications.
6. Counsel to the Inquiry stated that his position was one of neutrality. He noted the positions taken by counsel for the core participants but it was important to remember that any restriction on the right of public and media access to the proceedings of the Inquiry and the evidence and documents provided to it, as conferred by section 18 of the Act, can only be imposed where there are good reasons to do so, regard being had to the terms of sections 19 and 20 of the Act. It was not enough that serious allegations were made. However, there were two factors which were particular to the present applications and which were relevant to the question of whether the imposition of restrictions was appropriate. First, as had previously been stated by Counsel to the Inquiry, no challenge will be made to the evidence of patients and their families about their perceptions of their experience at the QEUH. This will not necessarily be the case with evidence led at or documents produced to later hearings. Second, although the point is not made explicitly in the respective applications, there is a concern that some of the evidence that Mrs and Mr Smith will give will go to matters that are outwith the terms of reference of the Inquiry. Counsel to the Inquiry acknowledged that the applications had identified a risk of harm as that expression was to be understood in sec 19(4) (b).
7. Having taken time to consider, I imposed restrictions as specified in Restriction Order 5, issued on 25 October 2021.

8. On 28 October 2021 the Inquiry received a written application on behalf of Mrs and Mr Smith for variation of Restriction Order 5. In summary, the application proposed that Restriction Order 5 be varied in order that, while there should be no live-streaming or reporting of the evidence of Mrs and Mr Smith, which would be heard at a hearing which was closed to the public, Mrs Smith should make a statement prior to the commencement of her evidence which would be live-streamed and that versions of the statements of Mrs and Mr Smith, as redacted in terms agreed on behalf of Scottish Ministers and the Board, would be published on the Inquiry website. It was stated that the application for variation was not opposed by the Board or by the Scottish Ministers (as was confirmed by email correspondence copied to the Inquiry). Appended to the application were copies of the witness statements as redacted in the terms agreed.
9. On 29 October 2021, having considered the application for variation and the email correspondence in the light of the original applications on behalf of the Scottish Ministers and the Board, but without a further hearing, I concluded that to impose restrictions in the terms proposed was both conducive to the Inquiry fulfilling its terms of reference, and necessary in the public interest. Accordingly, I made Restriction Order 6 which revoked Restriction Order 5 and re-imposed restrictions in terms such as to reflect the variation sought in the application.
10. For the avoidance of doubt, I made a single restriction order – Restriction Order 5, albeit in response to the two separate applications. In response to the application on behalf of Mrs and Mr Smith I determined that the restrictions imposed by that order should be varied. The mechanism that I adopted to do so was to make Restriction Order 6 which revoked Restriction Order 5 but re-imposed some, but not all, of the restrictions which appeared in Restriction Order 5.
11. I summarise the original applications on behalf of the Scottish Ministers and the Board and my reasons for imposing restrictions in a Note in the Application on behalf of the Scottish Ministers, to which I refer.