



STATEMENT OF APPROACH – ANONYMITY AND REDACTION

1. This statement sets out the Inquiry’s approach to redaction of information from documents before they are disclosed or published. It also explains the circumstances in which ‘restriction orders’ will be made.

Definitions

2. “Redaction” is the removal of information from a document, usually by blacking out words.
3. “Disclosure” is the process of making available relevant material to core participants and (in some instances) persons from whom the Inquiry proposes to take evidence. Such relevant material is disclosed subject to a strict undertaking to the Inquiry of confidentiality by the recipient of the disclosure (and their recognised legal representative, if any), not to reveal the whole or any part of that material (or any information contained within it) to others.
4. “Publication” is the process of making available information on the Inquiry website, which is accessible by members of the public, or as part of any interim or final report.
5. “Restriction order” is the name given to an order under section 19 of the Inquiries Act 2005, which restricts disclosure or publication of information.
6. “Anonymity” is the protection of a person’s identity from disclosure and/or publication.

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Redactions

7. Documents provided to the Inquiry can contain large amounts of personal information. The purpose of redaction is to protect, where it is appropriate to do so, the identities of people, for instance those who were infected and affected, and the personal information of others. Redaction may also be used to exclude information not relevant to the Inquiry's Terms of Reference.
8. When redacting to protect a person's identity, the Inquiry will do so by removing, as necessary, the following information from all documents (including witness statements):
 - name;
 - date of birth;
 - other dates which might identify a person;
 - address(es) and other contact details;
 - names or other means of identifying a person's family members, such as their addresses, dates of birth etc;
 - events from a person's life which might identify them.
9. The Inquiry will decide whether any other information needs to be redacted on a case by case basis.
10. Documents provided to the Inquiry should be unredacted. Where the Inquiry decides to redact irrelevant information it will do so without the need for any application or request.
11. Where the Inquiry makes a request of a person from whom it intends to take evidence pursuant to Rule 9 ("a Rule 9 request") of the Inquiry Rules 2006 ("the Rules") and that person wishes their identity not to be disclosed or published, then the procedure outlined below is to be followed.

Restriction Orders

12. The Inquiry regards it as important that its proceedings are conducted in public and in as open and transparent a manner as is possible (in any event, see section 18 of the Inquiries Act 2005 (“the Act”). The Inquiry will therefore publish on its website written statements provided to the Inquiry, the evidence that is heard and documents referred to at Inquiry hearings, and expert reports obtained by the Inquiry, unless there is a compelling reason not to. In addition, relevant material (including written statements and material which is likely to be relied on by the Inquiry in making its report) will be disclosed to core participants and (in some instances) witnesses by making it available on the Inquiry’s database and through other means as directed by the Chair at his discretion.
13. Although this is a public inquiry, the Chair will sometimes make orders when it is necessary to keep information private. Such orders are known as “Restriction Orders” and are made in accordance with section 19 of the Act.
14. Everyone must obey a restriction order. That includes the media, members of the public, witnesses, core participants, legal representatives and all members of the Inquiry team.
15. A restriction order made by the Chair must only specify such restrictions as:
 - (a) are required by law (section 19(3)(a));
 - (b) will be conducive to the Inquiry fulfilling its Terms of Reference (section 19(3)(b));
 - (c) are necessary and proportionate in the public interest, for example in order to ensure the efficiency and effectiveness of the Inquiry (sections 19(3)(b) and 19(4)(d)(i)).

When deciding whether or not to make a restriction order, the Chair will take account of any risk of harm or damage which may be avoided or reduced by issuing a restriction order (section 19(4)(b)).

16. Restriction orders made by the Chair normally continue in force unless and until they are changed or cancelled. They will usually remain in force at least until the Inquiry has ended and often beyond that. You can ask the Chair to change or cancel an existing restriction order which affects you. The Chair can decide to change or cancel a restriction order without an application having been made if he considers it necessary to do so.

16.A The Chair has issued a General Restriction Order dated 01 November 2018 in respect of medical records, anonymity and redacted documents, a copy of which is annexed to this Statement of Approach. He has done so because he considers it “conducive to the Inquiry fulfilling its terms of reference”, and because he has taken into account the very real risk that publication or disclosure of personal details will cause or add to significant distress to persons named in such documents, or may exacerbate any illness from which they suffer already. He regards this as a type of risk which falls within section 19(4)(b).

Decisions on anonymity for persons infected and affected

17. In accordance with Article 8 of the European Convention on Human Rights (the right to private and family life), and further and separately to ensure the effectiveness of the Inquiry by not deterring persons from giving evidence who would otherwise wish to do so, the Chair is likely to see the factors set out in paragraph 15 as favouring the grant of an application for anonymity from any person who is infected or affected whose evidence includes personal sensitive information of the following nature:

- (a) details of medical history and medical records, including those of a family member; and/or

(b) details of the fact and circumstances of infection from blood or blood products, including of a family member, and consequential impact on private and family life.

18. Any person who wishes to request anonymity in the circumstances set out in paragraph 17 should do so by written request when submitting their written statement (see paragraph 28 below for the procedure to follow).
19. If a written statement contains criticism of another person or organisation, it may be appropriate to disclose the identity of a witness who has been granted anonymity to the person or organisation criticised and their legal representative (where instructed), in order that they are afforded a fair opportunity to respond to the criticism. However, anyone to whom information is disclosed in this way must keep it confidential and it will not be disclosed to any other person. The Inquiry will provide at least 14 days' notice if it intends to disclose the identity of a witness who has been granted anonymity so as to allow that witness an opportunity to make an application requesting that the Inquiry considers not disclosing this information.
20. Written statements will generally be disclosed to core participants redacted to remove the identity of a witness who has been granted anonymity in the circumstances of paragraphs 17 and 18 above, and redacted to remove irrelevant information including irrelevant personal information. Written statements by witnesses who have been granted anonymity in the circumstances of paragraphs 17 and 18 above will (unless there is a compelling reason not to publish the statement) be published redacted to remove the witness's identity and to remove irrelevant information including irrelevant personal information.
21. A witness who is infected or affected who seeks to prevent disclosure or publication of information contained in their written statement (including information contained in documents exhibited to the written statement)

other than by a grant of anonymity in the circumstances of paragraph 17, should submit an application for a restriction order in accordance with section 19 of the Act when submitting a written statement in accordance with Infected Blood Inquiry Statement of Approach - Evidence 2.

Other applications for anonymity or redaction

22. Any other person who seeks anonymity or who seeks to prevent disclosure or publication of information contained in their written statement (including information contained in documents exhibited to the written statement), should submit an application for a restriction order in accordance with section 19 of the Act when submitting a written statement in accordance with Infected Blood Inquiry Statement of Approach - Evidence 2.
23. If a written statement contains criticism of another person or organisation the expectation is that the identity of the person or organisation being criticised will be disclosed to core participants, and published, unless it would be disproportionate or unfair to do so in an individual case.
24. Should a person or organisation seek to prevent disclosure or publication of information other than in the circumstances set out above, or beyond any existing restriction order made by the Chair, they may apply to the Chair for a restriction order preventing such disclosure or publication in accordance with Section 19 of the Act.

Redaction of documents

25. Where documents are provided to the Inquiry (including as exhibits to a written statement) in response to a request pursuant to Rule 9 of the Rules, they will be reviewed by the Inquiry for relevance. Where they are assessed to be relevant to the Inquiry's Terms of Reference they will be disclosed to core participants. Relevant documents may also be disclosed to witnesses and others so far as reasonably necessary. In the

case of relevant documents exhibited to written statements, they will be published in the circumstances described in paragraph 12 above.

26. Before relevant documents are disclosed or published, a person or organisation responding to the Rule 9 request pursuant to which the documents were provided may apply to the Chair for a restriction order preventing such disclosure or publication in accordance with section 19 of the Act.
27. Where documents are provided to the Inquiry in response to a Rule 9 request other than as exhibits to a witness statement, the person or organisation to whom the request was sent will be notified when relevant documents are added to the Inquiry's database and provided at that stage with an opportunity to apply for a restriction order within 14 days.

Procedure for applying for a restriction order

28. Persons infected and affected who are applying for anonymity in accordance with paragraph 17, need not follow the procedure set out at paragraphs 29 to 32 below. They should simply submit a written request for anonymity when submitting their written statement to the Inquiry. The written request should explain briefly the basis for their application and highlight the requested redactions within a copy of the signed written statement (which redactions can be read through to the underlying text). Thereafter, within 14 days of receipt of a written request, the Inquiry will provide written notification of the Chair's determination pursuant to the General Restriction Order, together with a copy of the signed written statement with the information subject to that Order redacted.
29. Other applications are to be submitted in three parts (which can be in a single document) supported by a statement of truth in relation to the factual content:
 - (a) a statement setting out the protective measures sought;

- (b) an open part;
- (c) a closed part (if desired).

30. The open part of the application will be disclosed to core participants and other persons or organisations identified by the Chair as having a proper interest in the application and if appropriate submissions may be invited. Accordingly it should contain as much information as possible without undermining the purpose of the application.
31. The closed part (if any) of the application will consist of the information upon which the applicant wishes to rely in support of the application but which cannot be disclosed or published without undermining the purpose of the application, and will amount to “potentially restricted evidence” within the meaning of Rule 12(1) of the Rules.
32. The Chair will determine each application. A draft open ruling will be provided to the applicant, who will have an opportunity to raise any objections to publication. In the absence of any such objections the open ruling will be published after 14 days. A closed ruling may be provided, which will not be published.

Issued by the Chair on 2 July 2018

Amended by the Chair on 01 November 2018

Annex

**RESTRICTION ORDER PURSUANT TO SECTION 19 OF THE
INQUIRIES ACT 2005**

General Restriction Order

The Chair has the power under section 19 of the Inquiries Act 2005 to make orders restricting disclosure or publication of documents given, produced or provided to the Inquiry. Any threat to break such an order, or any breach of it, can be certified to the High Court or Court of Session under section 36 of the Inquiries Act, which will deal with it as though the breach had occurred in proceedings before that court.

In exercise of the power, IT IS ORDERED THAT:

A. Medical Records

1. **General Provision:** No detail of the medical history or medical records of any person which has been provided to or obtained by the Inquiry may be published or disclosed by any person, unless express permission is given by the Chair of the Inquiry, or the Solicitor to the Inquiry acting on his behalf.
2. **Exceptions:** The general provision does not apply where publication or disclosure is required by law, or to:
 - a. information mentioned in a written statement provided to or obtained by the Inquiry and made by a person who is infected or affected, which relates to that person or any partner, child, parent, family member, carer, of that person or others close to that person.
 - b. the publication and/or disclosure of medical records where the person to whom those medical records principally relate consents to their publication and/or disclosure.
 - c. information which has already been published to a substantial section of the public.
 - d. disclosure to any legal representative acting for the individual who is infected or affected to whom the records principally relate.
 - e. any member of staff of the Inquiry (which expression includes counsel to or instructed by the Inquiry, and is to be broadly construed) where the disclosure or publication is to another member or members of the staff of the Inquiry, or to an expert to the Inquiry, or to any person

carrying out processing of information on behalf of the Inquiry whilst and only whilst doing so, and is for the purposes of the Inquiry.

B. Anonymity Order

3. **General Provision:** The maker of any written statement or other document disclosed or published by the Inquiry which is marked “Anonymous” is granted anonymity. The name and address of the witness and any other identifying information that is redacted in the witness’s written statement cannot be disclosed or published in any form, whether oral, written or electronic, or in any other way, unless express permission is given by the Chair of the Inquiry, or the Solicitor to the Inquiry acting on his behalf.
4. **Exception:** In accordance with paragraph 19 of Infected Blood Inquiry Statement of Approach - Anonymity and Redaction, where the written statement of the witness granted anonymity contains criticism of another person or organisation, the identity of the witness and the nature of the criticism may be disclosed to the person or organisation being criticised subject to any application to prevent disclosure made under paragraph 19. Anyone to whom information is disclosed in this way must keep it confidential and not disclose it to any other person, without the express permission of the Chair of the Inquiry, or the Solicitor to the Inquiry acting on his behalf
5. A confidential schedule of witnesses to whom this Order relates will be maintained by the Inquiry.
6. Any person who has applied and has been determined to fall within this Order may apply to the Chair of the Inquiry to amend (remove and/or vary) their anonymity at any time.

C. Redacted Documents

7. Where any document published or disclosed by the Inquiry appears on the face of it to have been redacted, no person may reveal what has been redacted to any other person by any means whatsoever unless permitted in respect of each specific redaction to do so by the Chair of the Inquiry or by the Solicitor to the Inquiry acting on his behalf.
8. **Exceptions:** The restriction imposed by paragraph 7 of this Order does not apply where publication or disclosure is required by law, or to:
 - a. the person who gave, produced or provided the document to the Inquiry.
 - b. any member of staff of the Inquiry (which expression includes counsel to or instructed by the Inquiry, and is to be broadly construed) where

the disclosure or publication is to another member or members of the staff of the Inquiry, or to an expert to the Inquiry, or to any person carrying out processing of information on behalf of the Inquiry whilst and only whilst doing so, and is for the purposes of the Inquiry.

D. Written statements containing criticism

9. **General Provision:** where a written statement provided to the Inquiry contains criticism of a named person or organisation, the witness' written statement may be disclosed to the person or organisation criticised for the purpose of obtaining their response to the criticism raised. Anyone to whom information is disclosed in this way must keep it confidential and it must not be disclosed to any other person unless express permission is given by the Chair of the Inquiry, or the Solicitor to the Inquiry acting on his behalf.
10. **Exception:** the general provision does not apply where:
- a. disclosure is required by law;
 - b. disclosure is for the purpose of obtaining legal or other professional advice in connection with the criticism and, in such circumstances, it is incumbent on the person criticised to ensure that their professional advisor(s) agree to keep the information confidential before the information is shared;
 - c. the information has already been published to a substantial section of the public.

E. General

11. This Order is made on 1 November 2018. It remains in force for the duration of the Inquiry and at all times thereafter, unless otherwise ordered.
12. The Chair of the Inquiry may vary or revoke this Order by making a further order during the course of the Inquiry.

PENAL NOTICE

You should be aware that the High Court and Court of Session have power to imprison or fine for any breach of this Order.

Dated 1 November 2018,
Updated on 1 March 2019

Sir Brian Langstaff
Chair