

RESTRICTION ORDER FOR ANONYMITY OF WITNESS HSC0209 DATED 3 May 2024 PURSUANT TO SECTION 19 OF THE INQUIRIES ACT 2005

The Chair of the Scottish COVID-19 Inquiry has the power under section 19 of the Inquiries Act 2005 (“the Act”) to make orders restricting disclosure or publication of evidence and documents given, produced or provided to the Inquiry.

This Restriction Order is made pursuant to section 19(1) of the Act and binds all members of the public and media, witnesses, recognised legal representatives, core participants and all members of the Inquiry team.

Any threat to breach such an order, or any breach of it, can be certified to the Court of Session or the High Court under section 36 of the Act, and the Court will deal with it as though the breach had occurred in proceedings before that Court.

IT IS ORDERED THAT:

1. General

1.1 This Order is made on 3 May 2024 and remains in force until otherwise ordered.

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 breach of this Order by any means whatsoever shall be notified in writing to the Solicitor to the Inquiry immediately upon identification 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 establish the facts of, and learn lessons from, the strategic response to the COVID-19 pandemic in Scotland with Lord Brailsford as Chair, commonly referred to as the Scottish COVID-19 Inquiry. References to the “Chair” should be construed accordingly.

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 “Witness Statement” means the witness statements and any documents referred to in the witness statement, provided by the Witnesses to the Inquiry.

2.1.6 “Witness” means witness HSC0209.

3. Order

3.1 This Order applies to all evidence given in the course of the Inquiry’s proceedings, including evidence which is published on the Inquiry’s website, insofar as such parts give rise to information relating to the identity of the Witness and/or the identity of the operator and/or owner of any care home referred to within the Witness’s written or oral evidence.

3.2 Reference to information which is capable of leading to the identification of the identity of a person includes, but is not limited to, the Witness’s name, the Witness’s address, the names of any relatives of the Witness, the identity of the Witness’s place of work, any still or moving image of the Witness and information that may tend to identify the Witness, the Witness’s family members, which may include deceased family members, any care home name and location of the care home.

4. Restrictions

4.1 There shall be no reporting or publication whatsoever of any information capable of leading to the identification of the Witness. Particular provisions relevant to this restriction include, but are not limited to, the following:

4.1.1 There shall be no reporting, publication, or disclosure of any information provided in the course of any oral witness evidence during the Inquiry's hearings which is capable of leading to the identification the following:

4.1.1.1 the Witness;

4.1.1.2 the operator and/or owner of any care home referred to in the written statement of the Witness, or in the course of their oral testimony;

4.1.1.3 any care home referred to in the written statement of the Witness, or in the course of their oral testimony.

4.1.2 The Inquiry will not publish any written statements provided by the Witness.

4.1.3 There shall be no publicly available video recording or livestream (whether delayed or otherwise) on YouTube (or any other medium) of any oral witness evidence which is given by the Witness.

4.1.4 The Inquiry shall not publish a transcript of the oral testimony of the Witness.

4.1.5 Materials adduced in evidence during the Inquiry's oral hearings which are capable of identifying the Witness and/or the identification of the operator and/or owner of any care home referred to in the written and/or oral evidence of the Witness, shall be redacted to remove any such identifying information before they are published on the Inquiry's website.

5. Exceptions to Order

5.1 Nothing in this Order prevents:-

5.1.1 The Inquiry making available the Witness Statement, or a transcript of the oral evidence of the Witness to Core Participants and their Recognised Legal Representatives or Counsel. Any such Witness Statement or transcript shall be redacted prior to release to Core Participants and their Recognised Legal Representatives or Counsel to remove any information which is capable of leading to the identification of the Witness and/or the identification of the operator and/or owner of any care home referred to in the written and/or oral evidence of the Witness.

5.1.2 The contents of the Witness Statement being referred to by 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.

5.1.3 A copy of the Witness Statement, the recording of the Witness's oral testimony and the transcript of the Witness's oral testimony being provided by the Inquiry to the Crown Office and Procurator Fiscal Service on receipt of a written request from it.

6. Application of General Restriction Order

6.1 For the avoidance of doubt, the terms of the Inquiry's General Restriction Order will apply to any written statement provided by the Witness, and any oral testimony of the Witness, or transcript thereof as if that material was Protected Material.

7. Penal Notice

7.1 The Court of Session and the High Court and the have the power to imprison or fine for any breach of this Order.

Dated 3 May 2024

Lord Brailsford
Chair of the Scottish COVID-19 Inquiry