

FAQ on the Inquiry’s Restriction Orders

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Q1. What is a restriction order?

A1. The Scottish COVID-19 Inquiry is a public inquiry. A public inquiry chair has powers under section 19 of the Inquiries Act 2005 to restrict the public’s access to documents or evidence that it receives. Orders made by a chair under section 19 are referred to as “restriction orders”.

Q2. Why do inquiries issue restriction orders?

A2. In any public inquiry, it is important that members of the public (including reporters) are able to attend or watch proceedings at the inquiry and that they are able to view evidence and documents given, produced or provided to the inquiry. An inquiry chair is required to take reasonable steps to ensure the public have access to both hearings and evidence. However, there are circumstances where a public inquiry is required by law, in the public interest, or to enable it to effectively meet its terms of reference, to restrict access to evidence or documents.

Q3. At what point will restriction orders be made in this Inquiry?

A3. [NOTE: See below for deadlines affecting particular witnesses.] Lord Brailsford, the Inquiry Chair, is entitled to impose restriction orders at any time during the course of the Inquiry. These can apply generally or be limited in effect to particular hearings, persons etc. 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. It is likely that restriction orders relating to these individual themes will be issued.

Q4. What restriction orders have been made?

A4. The Chair has so far¹ made two principal restriction orders:

1. **The General Restriction Order** ("the GRO"). This was made on 10 October 2023. The GRO makes restrictions in relation to the disclosure, publication or communication in respect of the existence, source, content or substance of "Protected Material". "Protected Material" is defined in the GRO.
2. **Restriction Order 1 – Health and Social Care** ("RO1"). RO1 relates to the health and social care hearings only. This was made on 13 October 2023. RO1 makes restrictions in relation to evidence or documents produced

¹ As at the date of the FAQ version.

by or provided to the Inquiry in respect of its health and social care hearings to prevent the identification of certain “Protected Persons”. The relevant Protected Persons are identified in of RO1.

The Chair has also made two restriction orders at the request of other parties. These are **Restriction Order 2** and **Restriction Order 3** and relate to the evidence of two witnesses at the health and social care hearings.

Q5. Do the restriction orders apply to everyone?

A5. Everyone in Scotland must comply with the terms of the Restriction Orders. However, affected persons may apply to have any Restriction Order varied (changed) either to remove restrictions or apply for further restrictions.

Q6. Have the restriction orders been varied?

A6. Yes. At the health and social care preliminary hearing on 28th August the chair ordered that RO1 would be varied. From that date, the names of witnesses and care homes could be disclosed unless a further application is made to reapply a restriction.

The Chair has also granted a number of requests to vary the Restriction Orders to disapply some of the restrictions of RO1 (for example from bereaved witnesses who wished to name their deceased relative) or to prevent the name of a witness or care home being disclosed to the public.

Details of variations to RO1 will be published on the Inquiry’s website.

Q7. Can I ask for a new restriction order?

A7. The Inquiry’s Protocol on applications for restriction orders sets out the steps a party requires to take to request the Chair grant a restriction order.

Q8. How do I apply to change the provisions of the existing restriction orders?

A8. Applications for variation of any existing restriction order should be made in
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writing to the Solicitor to the Inquiry giving reasons. Any application must be submitted by email to contact@covid19inquiry.scot.

Q9. Is there a deadline to apply for a restriction order or for any existing restriction order to be changed?

A9. Applications for restriction orders or variation to existing restriction orders should be made **8 working days before any affected witness is scheduled to give evidence**. The Inquiry requires 3 working days to consider an application for a restriction order or an application to vary or discharge an existing restriction order. The names of witnesses will be disclosed to the public (including the press) 5 working days before a witness is due to give evidence.

Q10. In what circumstances will the Chair grant a restriction order or an application to vary an existing restriction order?

A10. The Chair would require to be satisfied that to do so is either necessary for legal reasons, is necessary to protect the public interest or would enable the Inquiry to fulfil its terms of reference. When considering an application to vary an existing restriction order the Chair will have in mind the reasons for making the restriction order.

Q11. What factors will the Chair consider when deciding whether to grant an application for a restriction order or a variation?

A11. When considering whether to grant an application the Chair has a duty to consider whether he considers it to be conducive to the Inquiry fulfilling its terms of reference or to be necessary in the public interest, having particular regard to the following matters:

- (a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
- (b) any risk of harm or damage that could be avoided or reduced by any such restriction;

- (c) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;
- (d) the extent to which not imposing any particular restriction would be likely–
 - (i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or
 - (ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).

Q12. Is an Applicant who is also a keyworker a Protected Person in terms of RO1?

A12. No. Keyworkers are only protected person in terms of RO1 in so far as they are being referred to within evidence provided by someone other than the key worker themselves. If the Keyworker is the witness their identity will be made available to the public unless a specific application for a restriction order or variation is granted.

Q13. Can a Recognised Legal Representative delegate their powers under General Restriction Order to a non-legally qualified member of staff within their practice unit?

A13. Yes. A Recognised Legal Representative can delegate tasks to a non-legally qualified member of staff as long as the Recognised Legal Representative provides appropriate supervision and the non-legally qualified member of staff signs a confidentiality form.