

# **The Inquiry into Historical Institutional Abuse 1922 to 1995**

## **Redaction, Anonymity and Restriction Orders Protocol to be followed by the Inquiry into Historical Institutional Abuse 1922 to 1995**

### **Introduction**

1. This Redaction, Anonymity and Restriction Orders Protocol should be read with the HIA Inquiry's Procedural Protocol.
2. The powers of the HIA Inquiry are contained in the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013 ("the Act"), and in the Inquiry into Historical Institutional Abuse Rules (Northern Ireland) 2013 ("the Inquiry Rules").
3. The Act specifically requires the Chairman, in making any decision as to the procedure or conduct of the HIA Inquiry, to act with fairness and with regard to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).
4. This Redaction, Anonymity and Restriction Orders Protocol ("the Protocol"), which is subject to, and must be read in conjunction with, section 8 of the Act, and Rule 13 of the Inquiry Rules<sup>1</sup>, is intended to provide general information and guidance as to how the Inquiry will deal with matters relating to redaction and anonymity and how you may, if necessary, apply to the Inquiry for what is known under the Act as a "Restriction Order". It is not intended to cover every eventuality that may arise.

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<sup>1</sup> As of today, OFMDFM's draft Inquiry Rules is completing its consultation process.

5. The Protocol does not apply to that part of the HIA Inquiry described as the Acknowledgement Forum. Under the terms of reference the Acknowledgement Forum is a separate part of the HIA Inquiry structure. For convenience, and to distinguish the investigative role of the HIA Inquiry from the Acknowledgement Forum, the investigative part of the HIA Inquiry will be referred to throughout this Protocol simply as “the Inquiry”.

### **The Powers of the Inquiry**

6. Section 6 of the Act provides that the procedure and conduct of the Inquiry are to be such as the Chairman may direct, having regard to his duty to act with fairness and to avoid unnecessary expense.
7. Section 8 of the Act provides the Chairman with power to make a “Restriction Order” on:
  - a. attendance at the Inquiry;
  - b. disclosure or publication of any evidence or documents given, produced, or provided to the Inquiry;
  - c. disclosure or publication of the identity of any person.
8. This means that the Inquiry can take steps to:
  - a. protect the identity of witnesses appearing before it;
  - b. prevent, or limit, the publication of information given to the Inquiry in whatever form.

### **The Considerations in making a Restriction Order**

9. The Chairman’s power to make a Restriction Order is limited to imposing restrictions that:

- a. are required by any statutory provision, enforceable EU obligation or rule of law; or
- b. he considers to be conducive to the Inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the following:
  - i. the extent to which any restriction on attendance, disclosure, or publication might inhibit the allaying of public concern;
  - ii. any risk of harm or damage that could be avoided or reduced by a restriction (“harm or damage” is defined by the Inquiry as meaning death or injury, damage to national security or international relations, damage to the economic interests of the United Kingdom or of any part of it, or damage caused by the disclosure of commercial sensitive material);
  - iii. any conditions as to confidentiality subject to which a person acquired information which that person is to give to the Inquiry;
  - iv. the extent to which not imposing the restriction would be likely to cause delay or to impair the efficiency or effectiveness of the Inquiry or otherwise to result in additional cost.

10. Having considered the legal obligations which apply, and the particular circumstances and needs of the Inquiry, the Chairman has decided to make a general Restriction Order from the outset of the Inquiry’s work. The nature of this Restriction Order is discussed further below.

### **The Intention of the Inquiry in relation to the redaction of documents**

11. The Chairman intends to make a general Restriction Order requiring redaction of the following information from all material to be made use of by the Inquiry:

- a. The names of:
  - i. any applicants to the Inquiry who do not wish their identity to be disclosed;
  - ii. any other individuals identified to the Inquiry as having been abused, or as having been a witness to abuse;
  - iii. any individual accused of abuse, except for those who have criminal convictions for abuse (as determined by the Inquiry);
  - iv. any individual who the Inquiry considers may be the subject of criticism by it and whose name the Inquiry considers should be redacted;
  - v. individuals, not falling into any of the above categories, whose identity the Inquiry considers ought not to be disclosed;
- b. Personal information of individuals such as addresses, telephone numbers, dates of birth, national insurance numbers;
- c. Any other information from which the identity of an individual could be discerned such as the names of relatives;
- d. Irrelevant material in documents that contain other relevant material.

12. This will mean that the information which is subject to the Restriction Order will be blacked out in any versions of those documents which are published by the Inquiry and it will not be permissible to publish what lies behind the redactions.

13. In respect of a redaction in a document which relates to the name of an individual, a designation for that person, which will be used as the public identifier for that individual during the Inquiry's work, will be inserted beside the redaction.

## **The Intention of the Inquiry in relation to anonymity and the use of designation**

14. The Chairman also intends to make a general Restriction Order providing for the anonymity of the following persons:

- a. Any applicants to the Inquiry who do not wish their identity to be disclosed;
- b. Any other individuals identified to the Inquiry as having been abused, or as having been a witness to abuse;
- c. Any individual accused of abuse, except for those who have criminal convictions for abuse (as determined by the Inquiry);
- d. Any individual who the Inquiry considers may be the subject of criticism by it, and whose name the Inquiry considers should be redacted;
- e. Individuals, not falling into any of the above categories, whose identity the Inquiry considers ought not to be disclosed.

15. This means that it will not be permissible to publish the actual name of those persons who are covered by the Restriction Order, personal information relating to them, or other information from which they could be identified.

16. In relation to those individuals who are given anonymity on foot of a Restriction Order the Inquiry will make use of a designation for that person as the public identifier for that individual during the Inquiry's work.

### **Applications for a Restriction Order**

17. It may be that a core participant, or some other person, will wish to apply to the Chairman for a Restriction Order during the course of the Inquiry.

18. Examples of what could be covered by a Restriction Order include:

- a. the non disclosure of a document or the redaction of a particular part of a document;
- b. that evidence be given in private to the Inquiry;
- c. that a person's identity be screened from the public while they are giving their evidence;
- d. that the voice of a witness is not recognisable while they are giving their evidence;
- e. that certain people (other than authorised legal representatives) be excluded from the Inquiry while a witness is giving their evidence;
- f. that nothing relating to a witness is published in newspapers, television, on the internet or on social media.

19.If a person wishes to apply for a Restriction Order then they should do so in writing.

20.The application should include:

- a. the name, address and contact information of the applicant;
- b. what restrictions the Inquiry is being asked to make;
- c. why the Inquiry is being asked to make those restrictions;
- d. a consideration of the criteria that the Chairman has to apply when deciding whether to make a Restriction Order and why it is said that those criteria are met in respect of the application.

21.Applications should be sent to the Solicitor to the Inquiry, Patrick Butler, preferably by email to [Patrick.Butler@hiainquiry.org](mailto:Patrick.Butler@hiainquiry.org) or, if that is not possible, by post to HIA Inquiry at PO Box 2080, Belfast, BT1 9QA.

22. The Chairman of the Inquiry will then consider the application.
23. If the Chairman considers that, on foot of the application, a Restriction Order is justified in the manner requested then a Restriction Order will be made by the Chairman. The applicant will be notified of that decision.
24. If the Chairman considers that a Restriction Order is not justified, or is justified but not in the manner requested, then the Inquiry may request that the applicant make further representations to it in relation to the application. If necessary an oral hearing may be required before a final decision is made.
25. It may be, if an application relates to some evidence that has been provided to the Inquiry and which would entail the withholding of evidence from the public, that the Chairman will need to disclose that evidence to another individual in order to properly determine the application. If this is the case then the Chairman will first afford the applicant an opportunity to make representations about whether that evidence should be disclosed to the other individual before deciding to do so.
26. It should be noted that if anyone is shown evidence which is the subject of a Restriction Order application then they are immediately subject to a legal duty of confidence to the person who produced the evidence to the Inquiry which, if breached, may lead to a civil action for breach of confidence.
27. If it is determined that a Restriction Order in some form is appropriate then a Restriction Order will be made by the Chairman.
28. The applicant will be notified of the Chairman's decision in relation to the application.

### **Power to Vary or Revoke a Restriction Order**

29. The Inquiry intends that Restriction Orders made by it will continue in force indefinitely unless the Chairman varies or revokes a Restriction Order under Section 8(5) of the Act.

30. If someone wishes to apply to the Inquiry for the variation or revocation of any Restriction Order then the application should be made in writing.
31. The application should be sent to the Solicitor to the Inquiry, Patrick Butler, preferably by email to [Patrick.Butler@hiainquiry.org](mailto:Patrick.Butler@hiainquiry.org) or, if that is not possible, by post to HIA Inquiry at PO Box 2080, Belfast, BT1 9QA.
32. The Chairman will then consider the application.
33. If the Chairman deems it necessary he may invite submissions from others who would be affected by the application to vary or revoke. It may be, if the application relates to some evidence that has been provided by the applicant to the Inquiry, and which has been withheld from the public on foot of a Restriction Order, that the Chairman will need to disclose that evidence to another individual in order to properly determine the application. If this is the case then the Chairman will first afford the applicant an opportunity to make representations about whether that evidence should be disclosed to the other individual before deciding to do so.
34. It should be noted that if anyone is shown evidence which is the subject of an application to vary or revoke a Restriction Order then they are subject to a legal duty of confidence to the person who produced the evidence to the Inquiry which, if breached, may lead to a civil action for breach of confidence.
35. If it is determined that a Restriction Order is to be varied or revoked then the Chairman will do that.
36. The applicant will be notified of the Chairman's decision in relation to the application.
37. The Chairman has power at any time to revoke or vary any Restriction Order made by him.



## **Review**

38. The Inquiry intends to keep the existence of, and necessity for, any Restriction Orders made under the Act under continual review.

## **Offences**

39. Section 16 of the Act makes it a criminal offence for a person, without reasonable excuse, to contravene a Restriction Order. If a person is convicted of this offence they are liable to be sentenced to imprisonment for a period not exceeding 6 months, or to a fine, or to both. A person may also be certified to the High Court where they may be dealt with by way of Contempt of Court potentially resulting in similar consequences.