

## **Restriction Order Application Protocol**

### Purpose of the Protocol

1. The purpose of this protocol (“the Protocol”) is to explain:
  - (a) what a Restriction Order is;
  - (b) who can be considered an Interested Party for the purposes of the Protocol; and
  - (c) how an Interested Party can apply for a Restriction Order.

### What is a Restriction Order?

2. It is important that the Sheku Bayoh Inquiry (“the Inquiry”) proceedings are conducted in public and in as open and transparent a manner as is possible. The Inquiry will therefore as a general rule distribute all relevant witness statements and other relevant material to Core Participants and those referred to in the Inquiry’s public hearings or otherwise put in evidence will be published on the Inquiry’s website. (For the avoidance of doubt, all evidence to be shared will first be reviewed in accordance with the Inquiry’s protocol for disclosure and redaction of documents.)

3. A Restriction Order is an order made under section 19(2) of the Inquiries Act 2005 (“the Act”) by the chairman of an Inquiry, which may impose restrictions on attendance at an inquiry, or at any particular part of an inquiry, or disclosure or publication of any evidence or documents given, produced or provided to an inquiry.
4. Per section 19(3) of the Act, a Restriction Order may only impose restrictions that are required by any statutory provision or rule of law, or that the chairman of an inquiry considers to be conducive to that inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters listed in section 19(4) of the Act. The matters listed in said section are: the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern; any risk of harm or damage that could be avoided or reduced by any such restriction; any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to that inquiry; and the extent to which not imposing any particular restriction would be likely to cause delay or to impair the efficiency or effectiveness of that inquiry, or otherwise to result in additional cost (whether to public funds or to witnesses or others).
5. A Restriction Order may be made by the chairman of the Inquiry (“the Chair”) if he considers it to be necessary, or on application by an Interested Party who wishes to prevent disclosure or publication of certain information.

#### Who Can be Considered an Interested Party for the Purposes of the Protocol?

6. Any individual, group of individuals, or organisation can be an “Interested Party”. For the avoidance of doubt, being a Core Participant is *not* a prerequisite to being an Interested Party.

#### How Can an Interested Party Apply for a Restriction Order?

7. An application for a Restriction Order (“an Application”) should be made in writing to the Solicitor to the Inquiry; it should be addressed to the Solicitor to the Inquiry, and submitted by email to [legal@shekubayohinquiry.scot](mailto:legal@shekubayohinquiry.scot).
8. An Application should comprise:
  - (a) a section that describes the restriction sought and provides as much detail about the Application and the grounds on which it is made as is possible (“the Open Section”). The Open Section should contain only information that the Interested Party making the Application is content for the Inquiry to potentially share with Core Participants, the media and on the Inquiry website; as such, care should be taken not to include in the Open Section any information that would risk defeating the purpose of the Application, e.g. a detailed reference to information whose disclosure or publication the Interested Party wishes to restrict;
  - (b) a section that provides any additional information about the Application and the grounds on which it is made (“the Closed Section”). Information contained in the Closed Section will be treated as “potentially restricted evidence” within the meaning of rule 11(1) of the Inquiries (Scotland) Rules 2007 (“the Rules”); and

(c) any relevant supporting evidence, which, if considered necessary by the Interested Party, may be appended to the Open and Closed Sections of the Application.

9. Upon receipt of an Application, the Inquiry will follow the general process set out below:

(a) The Open Section of the Application will be disclosed to Core Participants and the media, subject to the Inquiry's Restriction Order. It may also be published on the Inquiry's website. The Chair may issue a note of his provisional views in relation to the Application ("a 'Minded To' Decision") when disclosing the Open Section.

(b) The Closed Section of the Application may be disclosed to Core Participants and the media, subject to the Inquiry's Restriction Order. Before such disclosure is made, the Inquiry's legal team will consult with the Interested Party as to whether such disclosure should be made. The Chair will then decide whether and to whom to disclose the Closed Section in the light of all the circumstances, including but not limited to:

- (i) any representations made by the Interested Party under rule 11(4)(b)(ii) of the Rules;
- (ii) the sensitivity of the material included in the Closed Section; and
- (iii) the importance of the material included in the Closed Section to the issues in the Application.

Consideration will be given as part of this process to the possibility of disclosing redacted versions of the material included in the Closed Section.

(c) The Chair will invite Core Participants and members of the media to provide the Inquiry with written submissions in response to the Application (and any 'Minded

To' Decision that was issued). Such submissions may be published on the Inquiry's website.

(d) The Chair may thereafter:

(i) invite Counsel to the Inquiry to provide him with written submissions in response to the Application (and any 'Minded To' Decision that was issued); and

(ii) hear oral submissions on the Application at a hearing, attendance at which may be restricted by the Chair in accordance with s.19 of the Act.

(e) The Chair will determine the Application and give a written ruling, which will be published on the Inquiry's website. The ruling may contain an addendum in respect of the Closed Section of the Application, which will be shared with the Interested Party but will not be disclosed to any other party.

10. The Chair may vary the procedure set out above as appropriate.

11. If an Interested Party making an Application wishes for same to be determined by a procedure other than that set out above, written representations to that effect should be included with the Application.

*Issued under the authority of the Chair on 27 September 2021.*