

RESTRICTION ORDER
MADE UNDER SECTION 19 OF THE INQUIRIES ACT 2005

Section 18 of the Inquiries Act 2005 (“the Act”) imposes an obligation on the Chair to take such steps as he considers reasonable to secure that members of the public (including reporters) are able to obtain or to view a record of evidence and documents given, produced or provided to the Inquiry. Section 19(3) of the Act provides that restrictions on the disclosure or publication of such documents can be imposed where the Chair considers it 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 matters mentioned in section 19(4) of the Act.

The Chair observes that for the Inquiry to fulfil its terms of reference, the Inquiry team needs to engage with the Core Participants (“CPs”) and their Recognised Legal Representatives (“RLRs”) in relation to its investigation into the circumstances surrounding the death of Mr Bayoh. That engagement includes sharing with the CPs and their RLRs documents produced to the Inquiry that the Chair considers material to its terms of reference.

The Chair observes that the investigation by the Inquiry team, including the ingathering and analysis of documents, is ongoing, and disclosure of material documents to the CPs and their RLRs will be a continuing process.

The Chair considers that the disclosure of documents, which may contain personal data and other sensitive or confidential data, to the public at the same time as to the CPs and their RLRs would not be conducive to the Inquiry fulfilling its terms of reference. The Chair considers that disclosure of evidence to the public should take place during the hearings and that such evidence should be considered alongside witness evidence. Further, all documents disclosed to the CPs and their RLRs will not necessarily be led in evidence or otherwise disclosed to the public.

The Chair, having considered his obligation under section 18 of the Act, and having regard to the terms of section 19(3) and the matters in section 19(4) of the Act,

HEREBY ORDERS THAT:

General

1. This Order is made on 16 September 2021 and remains in force indefinitely, unless the Chair orders otherwise.
2. The Chair may vary or revoke this Order by making a further order at any point during the course of the Inquiry.
3. Any person affected by this Order may apply for it to be varied or discharged on giving 24 hours' notice to the Solicitor by emailing legal@shekubayohinquiry.scot.
4. Any breach of this Order, or threat to do so, shall be notified to the Solicitor by emailing legal@shekubayohinquiry.scot immediately.
5. This Order applies to all members of the public, including the CPs, their RLRs and the media.

Restriction on Disclosure

6. Subject to Articles 7 to 14, no Recipient may Disclose to any person the source, content, substance or any other aspect of Restricted Material.

Exceptions

7. Article 6 does not apply in circumstances described in Articles 8 to 14.
8. The Disclosure is required by law.
9. The Disclosure is:
 - (a) by an RLR to:
 - (i) an employee of the same firm or organisation as the RLR;

- (ii) the CP, or appropriate office holders or employees thereof, who instructed the RLR;
 - (iii) Counsel instructed on behalf of the CP who instructed the RLR; or
 - (iv) an expert instructed on behalf of the CP who instructed the RLR;
- and
- (b) necessary for the purposes of the Inquiry only.

10. The Disclosure is:

- (a) by a member of an RLR's Administrative Team to:
- (i) an employee of the same firm or organisation as the RLR;
 - (ii) the CP, or appropriate office holders or employees thereof, who instructed the RLR;
 - (iii) Counsel instructed on behalf of the CP who instructed the RLR; or
 - (iv) an expert instructed on behalf of the CP who instructed the RLR;
- and
- (b) necessary for the purposes of the Inquiry only.

11. Prior to the first Disclosure of Restricted Material, in accordance with:

- (a) Article 9, the relevant RLR must have directed the Recipient to the terms of this Order;
- (b) Article 10, the relevant RLR must:
- (i) have directed the Recipient to the terms of this Order; and
 - (ii) have confirmed to the relevant member of their Administrative Team that the requirement in head (i) has been complied with.

12. The Disclosure is by a Recipient who can demonstrate that immediately prior to the Disclosure the Restricted Material had entered the public domain other than as a result of a breach of this Order by any person.

13. The Disclosure is by a Member of Staff of the Inquiry for the purposes of the Inquiry.

14. The Disclosure is by a Recipient who has obtained express, written authorisation from the Chair prior to making the Disclosure.

Protective Measures

15. To preserve the operation of the restriction in Article 6 of this Order, a Recipient shall ensure Restricted Material is kept securely.
16. Any Recipient, other than a Member of Staff of the Inquiry, holding Restricted Material must ensure it is deleted, destroyed or returned to the Inquiry at the end of the Inquiry, or such earlier date if directed by the Solicitor.

Enforcement

17. Where a Recipient:

- (a) fails to comply with, or acts in breach of, this Order; or
- (b) threatens to do so,

the Chair may certify the matter to the Court of Session or 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.

18. In addition to enforcement action that may be taken under Article 17 of this Order, the Chair may in relation to any CP or RLR who breaches, or threatens to breach, this Order:

- (a) withdraw their CP or RLR status;
- (b) revoke any award of funding for legal representation; and
- (c) restrict or stop sharing any Restricted Material with that CP or RLR.

19. For the purposes of Article 18, a breach or threatened breach by:

- (a) a CP includes a breach or threatened breach by an employee or office holder of that CP;
- (b) an RLR includes a breach or threatened breach by:
 - (i) an employee of the same firm or organisation as that RLR; and
 - (ii) Counsel instructed on behalf of the CP who instructed the RLR.

Interpretation

20. For the purposes of this Order:

“Administrative Team” means a team of no more than two people:

- (a) who are employed by the same firm or organisation as an RLR;
- (b) who are not qualified to practice law in Scotland; and
- (c) are nominated to the Inquiry by the relevant RLR;

“the Chair” means the Chairman of the Inquiry;

“Core Participant” means a person designated as such under rule 4 of the Rules;

“Disclose” means reveal, share, indicate, publish or otherwise communicate, and includes directly or indirectly permitting or suffering such revelation, sharing, indicating, publication or other communication, and “Disclosure” is to be construed accordingly;

“the end of the Inquiry” means:

- (a) the date, after the delivery of the report of the Inquiry, on which the Chair notifies the Scottish Ministers that the Inquiry has fulfilled its terms of reference; or
- (b) any earlier date specified in a notice given to the Chair by the Scottish Ministers;

“the Inquiry” means the Sheku Bayoh Public Inquiry;

“Member of Staff of the Inquiry” means:

- (a) any person assigned to, or recruited for, the Inquiry by the Scottish Government;
- (b) the Chair; and
- (c) Counsel to the Inquiry;

“Recognised Legal Representative” means a qualified lawyer:

- (a) appointed by a CP under rule 5 or 7 of the Rules; or
- (b) approved by the Chair under rule 6 of the Rules;

“Recipient” means:

- (a) a CP;
- (b) an RLR;
- (c) Counsel instructed on behalf of a CP; or
- (d) any other person

who has received, been shown or otherwise had made available to them Restricted Material or knowledge thereof, whether by the Inquiry, an RLR or otherwise;

“Restricted Material” means either of the following, the same having been made available from time to time by the Inquiry to any RLR:

(a) evidence, documents or any other thing produced or provided to the Inquiry;

(b) documents created or generated by the Inquiry;

“the Rules” means the Inquiries (Scotland) Rules 2007; and

“the Solicitor” means the Solicitor to the Inquiry.

The Right Hon Lord Bracadale
Chair, Sheku Bayoh Public Inquiry

15 September 2021