

# Scottish Child Abuse Inquiry

PO Box 24202; Edinburgh EH3 1JN

e-mail: [solicitors@childabuseinquiry.scot](mailto:solicitors@childabuseinquiry.scot)

## General Restriction Order

The Inquiry receives evidence (including documents) which may identify: (i) persons who make allegations of having been abused, (ii) persons who are the subject of allegations of abuse, and (iii) persons who may otherwise have knowledge of allegations of abuse.

The Chair has power, under section 19 of the Inquiries Act 2005, to make a restriction order to restrict disclosure or publication of any evidence or documents given, produced or provided to the Inquiry in certain circumstances.

The Chair has had regard to the sensitive and/or personal nature of many aspects of such evidence. The Chair has had regard to the interests of persons in the three categories referred to above and to the risk of harm and/or damage being occasioned to them.

The Chair has concluded that it is conducive to the Inquiry fulfilling its Terms of Reference to issue a restriction order and makes this order so as to protect their identities.

Disclosure and/or publication of evidence or documents given, produced or provided to the Inquiry which identify a person as someone who is protected by Parts One, Two or Three of this order is not permitted, except insofar as provided for in this introduction and in Parts One, Two and Three of this order.

The Chair may, however, permit disclosure and/or publication if she considers it appropriate to do so. The Chair will permit disclosure, by members of the Inquiry team, to Police Scotland of the identities of any persons who the Inquiry believes may have committed an offence under section 35 of the Inquiries Act 2005.

The Chair understands that documents previously given, produced or provided to the Inquiry may be the subject of subsequent requests made to organisations responsible for holding them, by persons other than the Inquiry, to disclose part or all of those documents. She understands that such organisations may be told that they are required to do so. For the avoidance of doubt, this order is not intended to prevent compliance with any **lawful** request or requirement for disclosure of documents, notwithstanding that the documents may previously have been given, produced or provided to the Inquiry.

The Chair's General Restriction Order dated 8 January 2020 is hereby revoked. This order replaces the previous order. This order is effective from today's date.

## Part One

1. This part of the order applies to:

- (a) An applicant, who is a person who tells the Inquiry that they were abused<sup>1</sup> in circumstances which fall within the Inquiry's Terms of Reference;
- (b) Any person who is a family member<sup>2</sup> of an applicant; and
- (c) Any other person who tells the Inquiry, whether in a written statement or otherwise, that they experienced abuse as a child which is relevant to the Inquiry because it took place in an institutional residential care setting<sup>3</sup> and/or because the person against whom the allegations are made is an alleged abuser in terms of Part Two of this order, but where that other person is not an applicant because he/she was not a child in care.

These persons are described in this order as "applicants and/or related witnesses".

- 2. Evidence or documents given, produced or provided to the Inquiry which identify applicants and/or related witnesses (including names and any other identifying details) must not be disclosed and/or published in a manner which identifies applicants and/or related witnesses as such.
- 3. Notwithstanding paragraph 2, members of the Inquiry team may disclose the identities of applicants and/or related witnesses to any persons or organisations named by them as having been involved in their abuse and to the legal representatives of any person or organisation so named. Disclosure to such persons or organisations and/or their legal representatives would be made strictly on a confidential basis and only for the purpose of protecting any legitimate interest they may have in the work of the Inquiry.
- 4. Notwithstanding paragraph 2, members of the Inquiry team may disclose the identities of applicants and/or related witnesses to any persons or organisations who they believe hold information relevant to the Inquiry's Terms of Reference in order to recover information to assist the Inquiry with its investigations, or may disclose the identities of applicants and/or related witnesses to experts instructed by the Inquiry where this is necessary to enable the expert(s) to carry out work which the Inquiry has instructed them to undertake. This may be done only on a strictly confidential basis and only for the purpose of progressing the work of the Inquiry.
- 5. Notwithstanding paragraph 2, the Chair may, at her discretion, instruct members of the Inquiry team to disapply this order in relation to documentary evidence which forms part of a case study bundle to be released to parties with leave to appear, if she considers that to do so would not create a risk of harm

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<sup>1</sup> "Abuse" means abuse as defined in the Inquiry's Terms of Reference.

<sup>2</sup> "Family member" includes any person who an applicant or a person now deceased regarded as a member of their family.

<sup>3</sup> "Institutional residential care setting" means as defined in the Inquiry's Terms of Reference.

to applicants and/or related witnesses. Access to case study bundles is only afforded on a strictly confidential basis and only for the purpose of protecting any legitimate interest which parties may have in the work of the Inquiry.

6. The restrictions in paragraph 2 do not apply to disclosures made by members of the Inquiry team to Police Scotland of the identities of any persons to enable assessment by Police Scotland of current risk of harm to any person or risk to any person's life. Nor do the restrictions in paragraph 2 apply to disclosures made by members of the Inquiry team to Police Scotland of information that has been provided to them indicating that persons protected by those restrictions have been subjected to harassment or intimidation.
7. Notwithstanding paragraph 2, the Chair may permit the identities of applicants and/or related witnesses to be disclosed and/or published where such identities and the fact that they have made allegations of abuse are already in the public domain, or otherwise if she considers it appropriate in all the circumstances to do so.

## Part Two

8. This part of the order applies to the following category of persons:

Persons who, according to evidence given directly to the Inquiry<sup>4</sup>, are accused of having abused children in circumstances within the Inquiry's Terms of Reference, but who have not been convicted of abusing children in care.

These persons are described in this order as "alleged abusers".

9. Evidence or documents given, produced or provided to the Inquiry which identify alleged abusers (including names and any other identifying details) must not be disclosed and/or published in a manner which identifies alleged abusers as such prior to the publication of any Findings or Report(s) by the Inquiry. The Chair may make a further order restricting the disclosure of such identities in any such Findings or Report(s) and may make an order restricting disclosure of them after publication.
10. Notwithstanding paragraph 9, the identities of alleged abusers may be disclosed by members of the Inquiry team to any provider of residential care and to the legal representatives of any such provider of care. This may be done only on a strictly confidential basis and only for the purpose of protecting any legitimate interest they may have in the work of the Inquiry.
11. Notwithstanding paragraph 9, members of the Inquiry team may disclose the identities of alleged abusers to any persons or organisations who they believe hold information relevant to the Inquiry's Terms of Reference in order to recover information to assist the Inquiry with its investigations, or may disclose the

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<sup>4</sup> "Evidence given directly to the Inquiry" includes evidence provided by applicants and other witnesses in statements or during hearings, and evidence provided to the Inquiry by providers of care which contains details of allegations of abuse which have been made to them.

identities of alleged abusers to experts instructed by the Inquiry where this is necessary to enable the expert(s) to carry out work which the Inquiry has instructed them to undertake. This may be done only on a strictly confidential basis and only for the purpose of progressing the work of the Inquiry.

12. Notwithstanding paragraph 9, the Chair may, at her discretion, instruct members of the Inquiry team to disapply this order in relation to documentary evidence which forms part of a case study bundle to be released to parties with leave to appear, if she considers that to do so would not create a risk of harm to alleged abusers. Access to case study bundles is only afforded on a strictly confidential basis and only for the purpose of protecting any legitimate interest which parties may have in the work of the Inquiry.
13. The restriction in paragraph 9 does not apply to disclosures by members of the Inquiry team to Police Scotland relating to those who are the subject of allegations of abuse to enable assessment by Police Scotland of current risk to children or vulnerable adults.
14. The restriction in paragraph 9 does not apply to disclosures made by members of the Inquiry team to Police Scotland of the identities of any persons to enable assessment by Police Scotland of current risk of harm to any person or risk to any person's life. Nor does the restriction in paragraph 9 apply to disclosures made by members of the Inquiry team to Police Scotland of information that has been provided to them indicating that persons protected by those restrictions have been subjected to harassment or intimidation.
15. Notwithstanding paragraph 9, the Chair may permit the identities of alleged abusers to be disclosed and/or published where allegations that they abused children in care are already in the public domain, or otherwise if she considers it appropriate in all the circumstances to do so.

### Part Three

16. This part of the order applies to the following categories of persons:
  - (a) Any person, other than an applicant, who is or was a child in care<sup>5</sup> in Scotland, or whose care was arranged in Scotland, during the period within living memory to date;
  - (b) Any person who has complained, other than to the Inquiry, of abuse as a child which is relevant to the Inquiry because it took place in an institutional residential care setting<sup>6</sup> and/or because the person against whom the allegations are made is an alleged abuser in terms of Part Two of this order;
  - (c) Family members of children in care<sup>7</sup>;
  - (d) Foster carers;

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<sup>5</sup> "Child in care" means a child in care as defined in the Inquiry's Terms of Reference.

<sup>6</sup> "Institutional care setting" means as defined in the Inquiry's Terms of Reference

<sup>7</sup> "Family member" includes any person who a child in care regards or regarded as a member of their family.

- (e) Children<sup>8</sup> living in family with foster carers who are not children in care.

These persons are described in this order as “children in care and/or related persons”.

17. Evidence or documents given, produced or provided to the Inquiry which identifies children in care and/or related persons (including names and any other identifying details) must not be disclosed and/or published in a manner which discloses that evidence relating to them has been given, produced or provided to the Inquiry.
18. Notwithstanding paragraph 17, the identities of children in care and/or related persons may be disclosed by members of the Inquiry team to any provider of residential care and/or to any persons or organisations named by them as having been involved in their abuse, and to the legal representatives of any person or organisation so named. This may be done only on a strictly confidential basis and only for the purpose of protecting any legitimate interest they may have in the work of the Inquiry.
19. Notwithstanding paragraph 17, members of the Inquiry team may disclose the identities of children in care and/or related persons to any persons or organisations who they believe hold information relevant to the Inquiry’s Terms of Reference in order to recover information to assist the Inquiry with its investigations, or may disclose the identities of children in care and/or related persons to experts instructed by the Inquiry where this is necessary to enable the expert(s) to carry out work which the Inquiry has instructed them to undertake. This may be done only on a strictly confidential basis and only for the purpose of progressing the work of the Inquiry.
20. Notwithstanding paragraph 17, the Chair may, at her discretion, instruct members of the Inquiry team to disapply this order in relation to documentary evidence which forms part of a case study bundle to be released to parties with leave to appear, if she considers that to do so would not create a risk of harm to children in care and/or related persons. Access to case study bundles is only afforded on a strictly confidential basis and only for the purpose of protecting any legitimate interest which parties may have in the work of the Inquiry.
21. The restrictions in paragraph 17 do not apply to disclosures made by members of the Inquiry team to Police Scotland of the identities of any persons to enable assessment by Police Scotland of current risk of harm to any person or risk to any person’s life. Nor do the restrictions in paragraph 17 apply to disclosures made by members of the Inquiry team to Police Scotland of information that has been provided to them indicating that persons protected by those restrictions have been subjected to harassment or intimidation.

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<sup>8</sup> “Children” means persons under the age of 18.

22. Notwithstanding paragraph 17, the Chair may permit the identities of children in care and/or related persons to be disclosed and/or published where such identities and the fact that they have made allegations of abuse are already in the public domain, or otherwise if she considers it appropriate in all the circumstances to do so.

18 June 2020