

RESTRICTION ORDER No. 6: EVIDENCE OF MATTHEW SMITH AND THERESA SMITH



The Chair of the Scottish Hospitals Inquiry, in exercise of the powers contained in sections 19 and 20 of the Inquiries Act 2005 (“the Act”) makes the following Restriction Order.

IT IS ORDERED THAT:

1. General

- 1.1 This Order is made on 29 October 2021 and remains in force indefinitely, unless the Chair of the Inquiry orders otherwise.
- 1.2 The Chair may vary or revoke this Order by making a further order at any point during the course of the Inquiry.
- 1.3 Restriction Order No. 5: Evidence of Matthew Smith and Theresa Smith is hereby revoked.
- 1.4 Restriction Order No. 1: Material Released By the Scottish Hospitals Inquiry In Advance Of Publication By It shall not apply to the Witness Statements or the Redacted Witness Statements (as those terms are defined below).
- 1.5 Any person aware of any breach of this Order must notify the Solicitor to the Inquiry in writing immediately upon becoming aware of the breach.

2. Interpretation

- 2.1 For the purposes of this Order:
 - 2.1.1 “Core Participant” means an individual or organisation who is designated a Core Participant to the Inquiry by the Chair, and where the Core Participant is a corporate or unincorporated body, references to a Core Participant includes appropriate office holders or employees of that Core Participant.
 - 2.1.2 “Counsel” means any senior and junior counsel appointed to represent the interests of the Core Participant in relation to the Inquiry from time to time.
 - 2.1.3 “Inquiry” means the public inquiry established by the Scottish Ministers under the Inquiries Act 2005 to consider the planning,

design, construction, commissioning and, where appropriate, maintenance of both the Queen Elizabeth University Hospital Campus (QEUH), Glasgow and the Royal Hospital for Children and Young People and Department of Clinical Neurosciences (RHCYP/DCN), Edinburgh with Lord Brodie PC QC as chair, commonly referred to as the Scottish Hospitals Inquiry. References to the “Chair” should be construed accordingly.

- 2.1.4 “Recognised Legal Representative” means any qualified lawyer appointed to act on behalf of a Core Participant and recognised by the Chair as their recognised legal representative in accordance with Rule 5(2) of the Inquiries (Scotland) Rules 2007 from time to time.
- 2.1.5 “Witness Statements” means the witness statements, and any documents referred to in the witness statement, provided by the Witnesses to the Inquiry and to be published by the Inquiry to Recognised Legal Representatives as Bundle 8A.
- 2.1.6 “Witnesses” means Matthew Smith and Theresa Smith, both of Greenock, who have submitted the Witness Statements to the Inquiry.
- 2.1.7 “Redacted Witness Statements” means the Witness Statements as subsequently redacted, and any documents referred to in the Witness Statements as so redacted, to be published by the Inquiry to Recognised Legal Representatives as Bundle 8B.

3. Order

- 3.1 This Order applies to any information contained in the Witness Statements or evidence given in the course of the Inquiry’s proceedings by the Witnesses.
- 3.2 There shall be no publication or reporting whatsoever of the Witness Statements, or any other evidence, including oral evidence, given to the Inquiry by the Witnesses except for (i) an opening statement which will be read by the witness Mrs Theresa Smith prior to the commencement of her oral evidence and (ii) the Redacted Witness Statements. In addition:
 - 3.2.1 The Inquiry shall not publish the Witness Statements.
 - 3.2.2 Any oral evidence of the Witnesses shall be provided in closed session of the Inquiry during which everyone is excluded from the hearing room except for the members of the Inquiry team, the Witnesses and the legal representatives of Core Participants.
 - 3.2.3 The Inquiry shall not make available a video recording or livestream (whether delayed or otherwise) of any oral evidence which is given by the Witnesses at a hearing of the Inquiry.
 - 3.2.4 The Inquiry shall not publish a transcript of the oral evidence of the Witnesses.

- 3.2.5 No reference will be made to the evidence provided by the Witnesses by any person in any subsequent hearing of the Inquiry that is being live streamed.

4. Exceptions to Order

4.1 Nothing in this Order prevents:-

- 4.1.1 the Inquiry making available the Witness Statements, a livestream of any oral witness evidence which is given by the Witnesses or a transcript of the oral evidence of the Witnesses to any Recognised Legal Representatives or Counsel. Any Recognised Legal Representative or Counsel to whom such Witness Statements, livestream or transcript is made available shall not further publish or disclose its content to any person, including, for the avoidance of doubt, any Core Participant on whose behalf they act. However:
- a) Recognised Legal Representatives and Counsel may disclose the Redacted Witness Statements to the Core Participants on whose behalf they act, provided that in doing so they do not disclose the terms of any text redacted in them; and
 - b) With the prior express permission of the Chair, or the Solicitor to the Inquiry acting on his behalf, the Witness Statements may be disclosed to any person or appropriate employees or office holders of any organisation criticised in them solely for the purpose of obtaining their response to the criticism raised. The person making disclosure by virtue of this paragraph must draw the attention of the terms of this Restriction Order (and in particular the terms of this paragraph) to the recipient's attention prior to disclosure. Anyone to whom the Witness Statements are disclosed by virtue of this paragraph must keep them confidential and not disclose them to any other person without the prior express permission of the Chair, or the Solicitor to the Inquiry acting on his behalf, to such further disclosure;
- 4.1.2 the contents of the Witness Statement or any other evidence, including oral evidence, given to the Inquiry by the Witnesses being disclosed by the Witnesses outside of Inquiry proceedings provided that in disclosing such contents, they shall not disclose that the material was contained in the Witness Statements or other evidence submitted to the Inquiry by them;
- 4.1.3 the contents of the Witness Statement being referred to by any member of staff of the Inquiry (which expression includes counsel to or instructed by the Inquiry) where the disclosure or publication is to another member or members of the staff of the Inquiry, or to an expert to the Inquiry, or to any person carrying out processing of information

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on behalf of the Inquiry, and is, in all cases, for the purposes of the Inquiry; and

- 4.1.4 the contents of the Witness Statement and any other evidence given by the Witnesses being referred to orally at any further hearing of the Inquiry held in a closed session from which members of the public are excluded.
- 4.2 Paragraphs 3.2.2 to 3.2.5 of this Order shall not apply to any opening statement by Mrs Theresa Smith prior to the commencement of her oral evidence.

5. PENAL NOTICE

5.1 In the event of any breach of this Order, the Chair may certify the matter to the appropriate court under section 36(1) of the Act for the court to make such order by way of enforcement or otherwise as it sees fit.

Lord P Brodie QC PC
Chair, Scottish Hospitals Inquiry
29 October 2021