

The Independent Jersey Care Inquiry (the “Inquiry”)

Inquiry Protocol: Protective Measures

Scope

1. This protocol establishes the procedures whereby the Inquiry has the ability to issue orders:
 - 1.1 Protecting the identity of a witness by ordering anonymity;
 - 1.2 Restricting the attendance at the Inquiry, for example by excluding a person or persons, or permitting evidence to be given privately;
 - 1.3 Restricting the disclosure or publication of any evidence or documents given, produced or provided to the Inquiry;
 - 1.4 Restricting the disclosure or publication of the identity of any person; and
 - 1.5 Putting in place special measures to protect and safeguard the well-being of witnesses.
2. This protocol also:
 - 2.1 Sets out the privileges and immunities that will apply to persons appearing before or producing documents to the Inquiry; and
 - 2.2 Sets out the Inquiry’s approach to warning individuals, institutions, organisations or bodies about criticisms that may be made of them.

Protective measures for witnesses

3. In order to protect the well-being of witnesses and in the public interest, the Inquiry has set out measures to assist witnesses who wish to give evidence, or have been summonsed to give evidence, to the Inquiry. The Inquiry will consider the following applications:
 - 3.1 The giving of evidence anonymously;
 - 3.2 The giving of evidence in private – see the Inquiry Protocol: Oral Hearings;
 - 3.3 Protective Rulings; and

- 3.4 Other special measures.
4. Interested Parties, witnesses and/or their legal representative are entitled to make an application for any of these measures. The Inquiry can also implement any of these measures of its own accord (see provisions below).

Anonymity

5. An anonymity order will act so as to protect the identity of a witness appearing before the Inquiry. Such an order will also prevent the publication of information given to the Inquiry which identifies the witness. This may include the need to take additional measures, such as screening.
6. If an anonymity order is granted, the following measures will automatically apply to that witness:
- 6.1 The witness will be identified by a letter or number reference which will be used from then on as the public identifier for that individual during the course of the Inquiry's work, for example, Witness A.
- 6.2 The following information related to that individual will be redacted from all material made use of and/or published by the Inquiry:
- 6.2.1 Name;
- 6.2.2 Personal information, such as address, telephone number, date of birth, national insurance number; and
- 6.2.3 Any other information from which the identity of the individual could reasonably be discerned, such as the names of relatives.
- 6.3 When giving oral evidence to the Inquiry:
- 6.3.1 The individual's identity will not be given and he/she will be screened from the public if he/she so requests; or
- 6.3.2 An application can be made for evidence to be given to the Inquiry in private (see the Inquiry Protocol: Oral Hearings), which will be considered by the Inquiry.
- 6.4 Once an anonymity order is made, any evidence or document which reveals, or might reveal, the identity of the witness will be prohibited from being published in newspapers, on television or radio, on the internet or social media, and any other media outlet. The strict terms of any anonymity order made by the Inquiry in relation to the publication of evidence must be respected by all members of the public and the media.

Protective Rulings

7. A Protective Ruling is a ruling given by the Inquiry that protects witnesses during the Inquiry's proceedings.
8. The Chair has made a General Protective Ruling in order to restrict the disclosure or publication of the identity of certain persons and information that is not in the public domain. The General Protective Ruling means that the following information will be redacted from all material before it is disclosed by the Inquiry to Interested Parties and/or published on the Inquiry's website:
 - 8.1 The names and identifying details of:
 - 8.1.1 individuals identified as having claimed to have been abused, or as having been a witness to any abuse alleged;
 - 8.1.2 any individuals accused of abuse, except for those who have criminal convictions for that abuse;
 - 8.1.3 individuals not falling into any of the above categories, whose identity the Inquiry considers ought not to be disclosed;
 - 8.1.4 any applicants who have successfully applied to the Inquiry to not have their identities revealed and who do not fall into any of the above categories.
 - 8.2 Other personal information. This does not extend to individuals' names (save for those individuals specified at paragraph 8.1 above), but would include telephone numbers, dates of birth and home addresses, unless there are particular circumstances that make such personal information relevant to the Inquiry's Terms of Reference.
9. In order to ensure compliance with the Inquiry's General Protective Ruling, those providing documents to the Inquiry are required to follow the procedures set out in the Inquiry Protocol: Data Protection, Freedom of Information and Redaction, relating to the redaction of information.
10. The Inquiry also has the ability to make other Protective Rulings. Examples include:
 - 10.1 For a specified period of time, restrict the attendance of a person or class of persons at the Inquiry, or part of the Inquiry. Such a protection may be imposed if it is necessary to exclude the public, or part of the public, Interested Parties (or some of the Interested Parties), Accredited Lawyers (or some Accredited Lawyers) from the oral hearings of the Inquiry;

- 10.2 A restriction on the disclosure of any evidence or documents given, produced, or provided to the Inquiry. For example, it may be necessary to limit the onward disclosure of a document that has been given, produced or provided to the Inquiry, for example by limiting the disclosure of that document to certain Interested Parties only; and
- 10.3 A restriction on the publication of any evidence or documents given, produced, or provided to the Inquiry, or parts of any document. Such a protection may be necessary to prevent the publication of documents (or parts of documents) that have, for example, been disclosed to Interested Parties and referred to in the Inquiry's hearings, but which should not be published, or which were mistakenly referred to during oral hearings. A Protective Ruling might also be necessary where the transcript of the Inquiry's hearings should not be published on a particular day, for example where evidence is given in private. Evidence directed to be given privately will not be published.

Special measures

11. A variety of special measures, including video links, may be authorised by the Inquiry for the purpose of taking the evidence of a witness.

Applications for protective measures

Timing and contents of an application

12. Any person who wishes to apply for protective measures pursuant to this protocol should do so promptly and not later than 14 days before the date when the witness is scheduled to give evidence. Applicants should however bear in mind that disclosure of information that may be the subject of an application for protective measures may have already been made available to Interested Parties, Accredited Lawyers and the public. Any delay in making an application will mean that an individual's personal information may become public.
13. The Solicitors to the Inquiry can assist applicants with the format of, and procedures for, making an application.
14. Any application must include details of the following:
 - 14.1 The nature and circumstances of the issues which are the subject of this Inquiry and which are relevant to the applicant;
 - 14.2 The nature of the evidence the applicant is likely to give;
 - 14.3 The personal and/or professional circumstances of the applicant which are said to warrant the making of an order granting protective measures;

- 14.4 If the application is for anonymity or restricting the identity of the applicant, the extent to which the identity of the applicant has – in connection with the matters under consideration by the Inquiry – already been disclosed, either to Interested Parties or to the public at large;
- 14.5 If the application is for restricting the disclosure and/or publication of documents, the extent to which the material has – in connection with the matters under consideration by the Inquiry – already been disclosed, either to Interested Parties or to the public at large;
- 14.6 Why protective measures are considered necessary for the applicant;
- 14.7 The possible effect on the applicant if required to give evidence or give disclosure of documents or have documents published without the benefit of any protective measure; and
- 14.8 The protective measure(s) considered to be appropriate for taking the applicant’s evidence, having regard to the applicant’s best interests and the public interest.

Format of the application

15. The application should be divided into the following three sections:
 - 15.1 Section 1 - A submission of the nature of the evidence that can be given by the witness;
 - 15.2 Section 2 - a submission setting out the protective measure(s) sought and the reason for doing so.

, The material submitted in section 1 and section 2 should collectively set out each and every ground relied on by the applicant.
16. The application should be supported by a statement of truth.
17. The application should be sent to the Solicitors to the Inquiry by email to info@jerseycareinquiry.org or by post to PO Box 551, St Helier, Jersey, JE4 8XN, Channel Islands.
18. The application will be considered by the Panel and the applicant will be notified of the outcome.
19. If, exceptionally, it is necessary to hold a hearing (whether closed or open) to consider an application/s the Inquiry will notify persons concerned with the Inquiry of that fact.

Ruling on an application

20. The Inquiry shall, after submissions from Interested Parties and/or their Accredited Lawyers have been received, consider the application and issue a ruling which authorises or refuses the use of protective measure(s).
21. In deciding the application, the Inquiry will balance the interests of the witness with the public interest.
22. The Inquiry may issue a closed and draft open ruling to the applicant. The applicant will be asked to confirm within 7 days that the open ruling can be published in the terms proposed by the Panel. The final decision as to the wording of the open ruling will be for the Panel to decide. After 7 days have elapsed, an open ruling will be distributed to Interested Parties and Accredited Lawyer and published.

Protective measures implemented of the Inquiry's own accord

23. The Inquiry may review the arrangements for taking a witness's evidence at any time.

Privileges and immunities of persons appearing before or producing documents to the Inquiry

24. In accordance with the States of Jersey (Powers, Privileges and Immunities) (Committees of Inquiry) (Jersey) Regulations 2007:
 - 24.1 A person asked or required to give evidence or produce documents before the Inquiry shall be entitled, in respect of such evidence and documents, to legal professional privilege and privilege against self-incrimination;
 - 24.2 An answer given by a person to a question put to that person, or an oral or written statement made by that person, or a document produced by a person in the course of his or her appearance before the Inquiry shall not be admissible in evidence against that person in any civil or criminal proceedings;
 - 24.3 Paragraph 23.2 above shall not apply to evidence given or documents produced by that person which he or she knows to be untrue.

Criticisms

25. Individuals, institutions, organisations and/or other bodies may be subject to criticism in the Inquiry's final report, or any interim reports, arising out of evidence that the Inquiry has heard. The Inquiry does not intend to give any forewarning to the subject of such criticisms prior to the publication of any report unless it would be unfair not to do so in the judgment of the Inquiry.