
NOTICE OF DETERMINATION
RESTRICTION ORDER PROTECTING THE
IDENTITIES OF FORMERLY DETAINED INDIVIDUALS

1. On 15 November 2021 a draft Restriction Order was circulated to Core Participants and the media to enable them to provide observations on its terms, if they wished to do so. They were informed that I was minded to make the Order, pursuant to section 19 of the Inquiries Act 2005.
2. The draft Restriction Order was intended to give legal effect to the measures that the Inquiry has put in place in order to ensure it protects the identities of formerly detained individuals at Brook House about whom the Inquiry is likely to hear evidence during its public hearings. The introductory paragraphs of the final Restriction Order, which I have made, explain my reasons for considering that such an order is necessary in these circumstances.

Submissions Received

3. Submissions were received from Deighton Pierce Glynn Solicitors ('DPG'), which represents two formerly detained individual Core Participants and Gatwick Detainees Welfare Group, which has also been designated as a Core Participant. Submissions were also received from the BBC, which is also designated as a Core Participant.
4. Neither DPG nor the BBC objected to an Order being made to protect the identities of formerly detained individuals. However, both submitted that I should add further exceptions to the Order enabling information that would otherwise be protected by it, to be disclosed or published in specific circumstances.

(i) DPG
5. DPG submits on behalf of their clients that I should expand the following exception to specifically include 'immigration applications', rather than simply 'legal proceedings':

"Where the person making the disclosure is a formerly detained individual who is disclosing their own identity and link to the Inquiry's proceedings known in confidence to their legal adviser, or a legal adviser making such a disclosure to another legal adviser on their instruction, in connection with other legal proceedings in which their involvement in the Inquiry is relevant."

6. They also ask for clarification that formerly detained persons can divulge information to family and friends that would be restricted, on the basis of the draft Restriction Order.
7. I am content to make amendments to the terms of the Restriction Order to give effect to both of those observations. I consider that it is appropriate that where an individual's involvement is relevant to immigration applications that they should not be barred from providing that information, in confidence, to their legal adviser. Likewise, it is also understandable that, for a number of reasons, an individual may want to confide in family and close friends that they are involved in the Inquiry and/or that the Inquiry has considered evidence about their experiences. However, it is important that when they do so, they notify whomever they inform that they, in turn, are bound by the terms of the Restriction Order to ensure that information is not then disclosed or published further in potential breach of its terms.

(ii) BBC

8. The BBC suggests that the Restriction Order should include an exception for the publication and disclosure of information that is already in the public domain. For example, the BBC notes that there is some information already in the public domain, such as within the Panorama documentary, which may otherwise be caught by the terms of the Restriction Order as drafted. They propose an exception in the following terms:

"This Restriction Order does not prohibit the disclosure or publication of any information that is already in, or is put into, the public domain otherwise than by breach of any term of this Restriction Order."

9. I am content to include an exception for information within the public domain. However, I consider that it is important that where such publicly available information is disclosed or published further, care is taken not to make any direct link to evidence heard by the Inquiry in relation to the individual, or individuals, to whom the

information relates. The Inquiry may well adduce considerably more evidence in relation to an individual's circumstances, including sensitive personal information. Even where information has been put into the public domain previously about their experiences in a form that is not anonymised, I consider it important that the Inquiry, in so far as is possible, seeks to maintain the anonymous nature of the information that it adduces.

10. The BBC also submits that under Article 10 of the European Convention on Human Rights, formerly detained individuals have a right to publicly tell their stories, if they wish to do so. They submit that the Restriction Order as drafted would mean that any individual caught within the terms (any formerly detained individual designated as a Core Participant or any formerly detained individual from or about whom the Inquiry hears or adduces evidence) would breach the terms of the Restriction Order by identifying himself to the media and the media too if they subsequently published the individual's story. They propose an exception in the following terms:

"This Restriction Order does not prohibit any formerly detained individual from disclosing or publishing, or from consenting to the disclosure or publication of, information that identifies or tends to identify that formerly detained individual as an individual to whom paragraph [9] of this Restriction Order refers.

For the avoidance of doubt:

(I) This Restriction Order shall not prohibit any disclosure or publication to which paragraph [x] above refers.

(ii) Paragraph [x] above does not apply to the disclosure or publication of information that identifies or tends to identify any formerly detained individual other than the formerly detained individual to whom that paragraph refers."

11. I do recognise that some individuals may consider that they do not wish to remain anonymous in the context of the Inquiry. I am also aware that whilst the BBC seek such an exception, none of the firms representing formerly detained individuals do so.
12. It is important that the terms of any Restriction Order that I make are as clear as possible. It is also important that the Inquiry is able to monitor compliance with the

Order, for example whether publications appear to have breached the terms of the Order so that, if necessary, I can consider whether to certify any breach to the High Court under section 36 of the Inquiries Act 2005.

13. I consider that the provision, as drafted by the BBC, would leave too much uncertainty as to whether information disclosed or published is, or is not, covered by the Restriction Order, including a potential lack of clarity as to whom any consent has been given to publish or disclose, and how, and what has been explained to them in relation to the possible impact of providing such consent. The proposed Restriction Order already includes provision for any person affected by it to apply to me to vary its terms. Therefore, I have considered carefully whether it would be appropriate to include an exception in the terms sought by the BBC, I consider that it would not be.

14. I will of course consider any application to vary the terms of the Restriction Order and, where it is from a formerly detained individual whom it is clear has understood the consequences of waiving their anonymity in the context of the Inquiry, I am likely to be sympathetic to such applications. It is likely that if such applications are received, and granted by me, that an annex will be added to the Restriction Order providing the names of any formerly detained individuals who have sought and been granted a waiver from the terms of the Order. Where that occurs the Order will be updated on the website.

Conclusion

15. I therefore make a Restriction Order pursuant to Section 19 of the Inquiries Act 2005 in the terms attached to this determination. This determination, and the Order, will be published on the Inquiry's website as soon as possible.

Kate Eves

Chair of the Brook House Public Inquiry

22 November 2021