

Note on the Chair's Decision regarding Patient Identity Restriction Orders

1. This document explains the approach that the Inquiry Chair will adopt in relation to the restriction of the identities of patients who engage with the Inquiry. It should be read in conjunction with the Inquiry's [Protocol on Restriction Orders](#) and [Protocol on Vulnerable Witnesses](#).
2. For the purposes of this document, a 'patient' means someone who is living and is currently, or has previously been, a mental health inpatient under the care of NHS Trust(s) in Essex¹.
3. The starting point for the Chair is that under Section 18 of the Inquiries Act 2005 ("the Act"), she is required to take reasonable steps to secure that members of the public can attend proceedings and view records of evidence and documents.
4. The Chair has the power under Section 19 of the Act to make orders restricting disclosure or publication of evidence or documents given, produced or provided to the Inquiry.
5. In addition to the Inquiry's intention to redact personal information and sensitive personal information in respect of patients and other witnesses where not relevant to the Inquiry's Terms of Reference, the Chair considers that there should be a presumption in favour of anonymity for patients engaging with the Inquiry.
6. Exercising her discretion under Section 19 of the Act, the Chair intends to grant anonymity to any patient who engages with the Inquiry. The Chair considers that the following factors support a presumption in favour of anonymity for all patients:
 - a. It is conducive to the Inquiry fulfilling its terms of reference and necessary in the public interest where:
 - i. Patient evidence will likely contain details of medical treatment and medical records in respect of their mental health. Such matters engage patients' rights to private and

¹ Please refer to the Chair's [Statement of Approach to Determining Core Participant Applications](#) for an explanation of what it means to be "a mental health inpatient under the care of NHS Trust(s) in Essex".

- family life under Article 8 of the European Convention on Human Rights and will contain sensitive personal information.
- ii. Patient evidence may include details of self-harm, attempted suicide or other previous trauma.
 - iii. Anonymity will likely improve the quality of patients' evidence and their willingness to cooperate with the Inquiry.
- b. Without an order for patient anonymity there is a readily foreseeable risk of harm within Section 19(4)(b) of the Act if those patients are named publicly during proceedings.
 - c. A general presumption in favour of patient anonymity will allow the Inquiry to process restriction orders more efficiently and to avoid incurring unnecessary costs (in line with the Chair's duties under s17(3) of the Act).
 - d. Anonymity for patients will not generally inhibit the allaying of the public concern that the Inquiry relates to.
 - e. In some cases, anonymity may be a statutory requirement. For example, where a patient has made a formal allegation of a sexual offence to the police or another individual/organisation with professional responsibility to take the complaint through the criminal justice system (pursuant to Section 1 of the Sexual Offences (Amendment) Act 1992).
7. In practice, the presumption in favour of anonymity will mean that patients engaging with the Inquiry, who do not elect to waive anonymity, will be assigned a cipher. A restriction order will be made to that effect and published on the Inquiry's website. The patient will then be referred to by their cipher in any evidence or document that the Inquiry publishes and at any public hearings.
8. The Chair will consider departing from the presumption in favour of a restriction order granting patient anonymity where:
- a. A patient's identity is already known within the public domain and a restriction order would not be necessary in the public interest or proportionate.
 - b. A patient or their representative agrees to waive anonymity. It should be noted that where there is a statutory requirement for anonymity

(see paragraph 6e above), it may still be possible for the patient or their representative to waive it.

- c. A patient faces serious allegations of wrongdoing.
 - d. There are other circumstances which would not make a restriction order conducive to the Inquiry fulfilling its terms of reference or in the public interest.
9. If evidence from a patient contains criticism of another person or organisation, it may be appropriate to disclose the identity of a patient who has been granted anonymity to the person or organisation criticised and their legal representative. Such questions will be considered on a case-by-case basis with regard to the approach set out at [39] of the Protocol on Restriction Orders. If the Inquiry elects to make such a disclosure, it will do so under its terms of confidence.

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