

NOTICE OF DETERMINATION
RESTRICTION ORDER APPLICATION - HMIP

1. On 12 March 2022, Her Majesty's Inspectorate of Prisons (HMIP) applied for a restriction order covering three issues in respect of evidence contained within documents disclosed by HMIP to the Inquiry.
2. The application concerns the following:
 - (a) A number of notes of interviews between HMIP inspectors and members of Brook House IRC staff during the 2019 HMIP inspection ("the staff interviews");
 - (b) A document which summarises the interview responses and where some identifying details remain; and
 - (c) A small number of documents which concern other confidential disclosures to HMIP (i.e. intelligence.).

3. In particular, the application states as follows:

"2. HMIP's submission in respect of staff interviews is that minimal redactions are required to

protect the identity of the person giving the interview, as follows:

- a) Over the name of the staff member, where it has been recorded;*
- b) Over the exact role, but this can be gisted to the department (or rank in case of DCO/DCM);*
- c) Over their gender (to avoid easy identification in departments which have a gender imbalance);*

- d) *Over any such other details of background as may make the staff member identifiable, such as – for example – exact length of service, exact wing of service;*
- e) *previous experience and so on. In most cases a gist can be applied to ensure the reader has as much information as possible, consistent with maintaining confidentiality: for example, the gist in respect of length of service can confirm whether the person started work at Brook House before or after the Relevant Period.*

3. Likewise in respect of intelligence, generally the source of a confidential disclosure should be restricted. In one case, the intelligence was provided by another organisation ..."

The Application

- 4. HMIP's application is made in two parts. An OPEN document, which summarises, so far as is possible, the issues covered by HMIP's application and which was circulated to all Core Participants. HMIP has also provided a CLOSED document, which provides details of the redactions, or gists that HMIP consider should be applied to documents covered by its application, if it is granted.
 - 5. The Inquiry's legal team carefully considered the CLOSED document to assess whether it contains any information that is capable of being included within the OPEN document. As a result of discussions between the Inquiry's Legal team and HMIP's legal representatives information was moved from the CLOSED to the OPEN document. Therefore, the OPEN document contains much, if not all, of the rationale behind the HMIP's application.
 - 6. The basis of the restriction order application is that it is necessary in the public interest for the purposes of section 19(3)(b) of the Inquiries Act 2005 ("the 2005 Act"). HMIP also submits that making the application sought would be consistent with my duty to act with fairness, as contained within section 17(3) of the Inquiries Act 2005.
 - 7. The submissions made by HMIP in support of the application can be summarised as follows:
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- (a) HMIP has statutory duties to inspect immigration removal centres (IRCs), and to report to the Home Secretary on the treatment of detained persons and conditions in removal centres;
 - (b) Following the Panorama broadcast, HMIP wished to provide staff at IRCs with further opportunities to raise any concerns with HMIP. Therefore, during HMIP's inspection of Brook House in 2019 HMIP issued a confidential staff survey and conducted confidential interviews with staff;
 - (c) Publication of confidential staff interviews would harm the public interest. It is important that HMIP can receive information in confidence. Article 20 of the Operational Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) recognises the need to be able to hold "*private interviews*" and Article 21 states that "*Confidential information collected by the national preventive mechanism shall be privileged*";
 - (d) The interviews are conducted under terms of confidentiality, which are set out in the "suggested introduction" to the notes of interview;
 - (e) Callum Tulley highlighted the need for such a confidential process in his evidence on 9 March when he stated "*I had no confidence that I could make those kinds of complaints anonymously*";
 - (f) An inspection is a cooperative process, which relies upon the willingness of staff and those detained to engage with it. It would not be in the public interest to do anything to discourage that;
 - (g) Publishing information given to HMIP in confidence would have a chilling effect, which can be avoided by imposing the restrictions sought. It may also inhibit the allaying of public concern as it could make staff less likely to speak to HMIP in future;
 - (h) HMIPs task is to uncover the truth of what is occurring in an IRC at the time of an inspection and the Inquiry should avoid taking action which would make that task harder;
 - (i) The harm to the public interests of effective inspection of places of detention outweighs the public interest in openness in this case, particularly given that the
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redactions sought are only those required to protect the identities of the interviewee/informant and the accounts relate to HMIP's 2019 inspection.

8. On 16 March 2022, the Solicitor to the Inquiry circulated to Core Participants my provisional determination, which explained that I was minded to make the Restriction Order sought by HMIP in relation to all but one of the documents covered by HMIP's application. The reasons I gave for my provisional decision are set out at paragraphs 14 to 17 below. Core Participants were asked to provide any observations, or HMIP to provide any additional observations, by 18 March 2022.
9. I decided that it was not necessary to circulate my provisional decision to the media for observations at that stage given the discrete number of documents covered by the application and that I was able to determine the application without the need to hear oral submissions. I remain of that view.
10. The only substantive observation was received from Bhatt Murphy solicitors. On behalf of their Core Participant clients, they explained that they were generally content with my provisional determination. However, they asked for clarification as to whether, where "*the interviewer, or the source of the information, was the subject of a Rule 9 request from BHI*" the name would not be redacted. In those circumstances, they considered that the restriction order "*may not be appropriate.*" I have considered their observation and my view is set out below.
11. This Determination sets out my final ruling in respect of HMIP's application.

The Legal Framework and Context

12. Section 18 of the 2005 Act creates a presumption that inquiry proceedings will be conducted openly. Section 18(1) provides that, subject to any restrictions imposed pursuant to section 19:

"the chairman must take such steps as he considers reasonable to secure that members of the public (including reporters) are able –

- (a) to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry;*
- (b) to obtain or to view a record of evidence and documents given, produced, or provided to the inquiry panel.”*

13. I have powers under section 19 of the 2005 Act to make orders restricting public access to the Inquiry's proceedings or evidence given to it. The relevant provisions of section 19 are as follows:

“19 Restrictions on public access

- (1) Restrictions may, in accordance with this section, be imposed on –*
 - (a) Attendance at an inquiry, or at any particular part of an inquiry;*
 - (b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry.*
 - (2) Restrictions may be imposed in either or both of the following ways—*
 - (a) ...*
 - (b) by being specified in an order (a “restriction order”) made by the chairman during the course of the inquiry.*
 - (3) A ... restriction order must specify only such restrictions—*
 - (a) ...*
 - (b) as the ... chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).*
 - (4) Those matters are—*
 - (a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;*
 - (b) any risk of harm or damage that could be avoided or reduced by any such restriction;*
 - (c) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;*
 - (d) the extent to which not imposing any particular restriction would be likely—*
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- i. to cause delay or to impair the efficiency or effectiveness of the inquiry, or*
- ii. otherwise to result in additional cost (whether to public funds or to witnesses or others).*

(5) In subsection (4)(b) "harm or damage" includes in particular—

- (a) death or injury;*
- (b) damage to national security or international relations;*
- (c) damage to the economic interests of the United Kingdom or of any part of the United Kingdom;*
- (d) damage caused by disclosure of commercially sensitive information.*

14. In determining this application, I must strike a balance when considering the factors listed at 19(4).
15. HMIP does not seek to prevent disclosure of the documents covered by the application in their entirety. HMIP seeks for redactions to be applied to the documents in order to protect the identity of staff members who have provided information to HMIP. HMIP has an important statutory function to inspect immigration removal centres (IRCs), and to report to the Home Secretary on the treatment of detained persons and conditions in removal centres. I accept that in order for HMIP to be able to conduct its work effectively it requires the cooperation of individuals detained within or working in connection with IRCs. I consider that such individuals may be less likely to engage with HMIP if they cannot feel assured that information provided to HMIP can be provided in confidence and that confidence maintained. In addition, the OPCAT also recognises the important nature of confidential information being provided to institutions such as HMIP.
16. HMIP's application recognises that I have previously declined an application for a restriction order made by G4S over transcripts of 'confidential' interviews conducted with staff at Brook House by Verita. I agree with HMIP that this application raises different considerations not least HMIP's statutory function and the fact that the interviews covered by this application were carried out in 2019.
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17. For the reasons set out above I grant the restriction order sought to protect:

- (a) the identities of staff members who have given interviews to HMIP;
- (b) the source of other intelligence provided to HMIP.

18. I make that order in respect of the following documents:

- (a) HMIP000029
 - (b) HMIP000030
 - (c) HMIP000031
 - (d) HMIP000032
 - (e) HMIP000033
 - (f) HMIP000034
 - (g) HMIP000035
 - (h) HMIP000036
 - (i) HMIP000037
 - (j) HMIP000038
 - (k) HMIP000039
 - (l) HMIP000040
 - (m) HMIP000041
 - (n) HMIP000043
 - (o) HMIP000046
 - (p) HMIP000047
 - (q) HMIP000048
 - (r) HMIP000049
 - (s) HMIP000050
 - (t) HMIP000051
 - (u) HMIP000052
 - (v) HMIP000061
 - (w) HMIP000129
 - (x) HMIP000154
 - (y) HMIP000176
 - (z) HMIP000179
 - (aa) HMIP000201
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19. The exception that I refer to relates to an email from the Care Quality Commission (CQC) to HMIP passing on concerns from two informants (HMIP000013). Neither of the informants is named in the documentation. The information about one of the informants is very limited and they are, in my view, not capable of identification. The email contains more information about the second informant. However, the nature of the informant and the issues they raise are of relevance to this Inquiry's terms of reference. I consider that they are in a different category to the staff members who have provided information directly to HMIP. This information has been provided to HMIP by CQC in an anonymised form. Whilst some limited redactions may be required to reduce further the possibility of identification of the underlying source, I consider that it is not necessary or in the public interest for the restriction order to cover this document.

20. I do not consider that it is necessary, or appropriate, to make the potential exception raised by Bhatt Murphy. I have set out my view as to why it is necessary to make the order that HMIP seeks. Those reasons apply as much in relation to individuals who have provided evidence to the Inquiry as any other. It would not be appropriate for me to disclose whether there is any cross over between the documents covered by my order and the individuals from whom the Inquiry has requested evidence. The Inquiry is aware of the identities of the individuals to whom these documents relate. Therefore, if there are any matters to be addressed with them then the Inquiry will do so.

Kate Eves

Chair of the Brook House Public Inquiry

22 March 2022
