SECOND "MINDED TO" NOTE

PHASE 2 RESTRICTION ORDERS

Introduction on "minded to" notes

1. Where he considers it conducive to:
    a. The Inquiry fulfilling its Terms of Reference (including reporting on time)
    b. Obtaining the views and ensuring the fair participation of the Core Participants and media,

   the Chair may issue "minded to" notes providing the **provisional** views of the Chair.

2. Where a minded to note is issued, there will be provision (in the Chair's discretion) for one or both of:
    a. Submissions in writing from Core Participants and the media;
    b. Oral submissions.

3. In responding to "minded to" notes, the Chair encourages all those involved in the Inquiry to work constructively with him and the Inquiry Legal Team to ensure:
    a. That the Terms of Reference of the Inquiry (including reporting on time) are met;
    b. That appropriate procedures are adopted which recognise the need: to act fairly towards the victims and all witnesses and Core Participants; for the Inquiry to be open and transparent; for Core Participants to be meaningfully involved and able to participate; to minimise cost and delay.

4. This "minded to" note covers Phase 2 Restriction Orders.

Background

5. The Inquiry has embarked on a rapid and extensive exercise of gathering the appropriate evidence to address the matters set out in the Inquiry's Phase 2 Terms of Reference. More than 100 rule 9 requests have now been made. Thanks to the cooperation of Material Providers, a significant proportion of the statements and disclosure have now been received by the Inquiry, with the majority received from late July onwards.

6. As rule 9 responses have been received, Material Providers have identified sensitivities to the Inquiry, as they were invited to do. As a result of further liaison with various Material Providers, it has become clear that there are a number of sensitivities which are likely to feature across a contained but significant proportion of relevant documents from some Material Providers. These relate to relevant material and are in addition to the usual categories of redaction which are already addressed in the Inquiry's Protocol on the

Redaction of Documents (see below) such as irrelevant and sensitive, personal data and anonymity orders. For the majority of these documents, the Material Providers submit that the documents should be provided to Core Participants on the basis that they are not made public. If a Restriction Order is to be granted in those terms, it will be termed a **Type 1 Restriction Order** ("**Type 1**").

7. For Type 1 material, Core Participants would be able to access a copy of the document in question on Relativity with the sensitive information identified and visible (through highlighting). There will be another copy of the document which has "Type 1" printed over an opaque redaction over the same information. Core Participants will only be able to reference the latter version of the documents during oral hearings and only those latter documents will be published on the Inquiry website. In other words, the sensitive information will be provided to Core Participants but will not be made public.

8. The Inquiry will publish a further Protocol to address this type of material which will make provision for Core Participants to either object to certain material being subject to a Type 1 Restriction Order, or to seek to ask questions about the Type 1 material in a private hearing, within a set period prior to the intended reference to that document. If an objection is raised, then the Inquiry will consider the objection and, if it agrees, liaise with the Material Provider to seek either to lift the redaction or agree on a satisfactory gist that can be made public. If agreement is not possible, then the Chair will need to determine the matter.

9. For a more limited sub-set of documents, Material Providers are seeking to withhold information from Core Participants entirely. In those circumstances, the material would either be withheld from disclosure or subject to an opaque "Type 2" redaction. If a Restriction Order is to be granted in those terms, it will be termed a **Type 2 Restriction Order** ("**Type 2**").

10. The Inquiry has liaised with those Material Providers who are seeking to raise sensitivities and required them to identify the categories of sensitivity that they rely upon to found their requests for restrictions on the release of relevant material. Those categories are set out below: in places with adaptions to reflect the approach the Chair is minded to take, subject to submissions. The categories are addressed in full below but, in short, they are:
    a. Cabinet Collective Responsibility;
    b. Government policy in development;
    c. Government decision making process;
    d. National security;
    e. Operational sensitivity;
    f. Commercial sensitivity;
    g. Unpublished statistics;

h. Personal data.

Relevant Legal Provisions

11. Section 17 of the Inquiries Act 2005 provides:

> *"(1) Subject to any provision of this Act or of rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.*
>
> ...
>
> *(3) In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others)."*

12. Section 18(1) of the Inquiries Act 2005 provides:

> *"(1) Subject to any restrictions imposed by a notice or order under 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 or inquiry panel."*

13. Section 19 of the Inquiries Act 2005 provides in relevant part:

> *"(1) Restrictions may, in accordance with this section, be imposed on—*
>
> …
>
> > *(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—*
>
> …
>
> > *(b) by being specified in an order (a "restriction order") made by the chairman during the course of the inquiry.*
>
> *(3) A restriction notice or restriction order must specify only such restrictions—*

(a) as are required by any statutory provision, assimilated enforceable obligation or rule of law, or

(b) as the Minister or 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—

(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. Finally, Rule 12 of the Inquiry Rules 2006 states that:

"12.—(1) In this rule—

(a) "potentially restricted evidence" means any evidence which is in the possession of the inquiry panel, or any member of the inquiry panel, and which is the subject of a relevant application which has not been determined or withdrawn;

(b) "relevant application" means an application which is

(i) made by any person that evidence or documents are the subject of a restriction notice made by the Minister pursuant to section 19(2)(a) of the Act;

(ii) made by any person that the chairman exercise his discretion under section 19(2)(b) of the Act; or

(iii) made by any person that evidence or documents be withheld on grounds of public interest immunity,

and which entails the withholding of evidence from the public.

(2) Subject to paragraph (3), potentially restricted evidence is subject to the same restrictions as it would be subject to if the order sought in the relevant application had been made.

(3) Where the conditions in paragraph (4) are satisfied, the chairman may disclose the potentially restricted evidence to a person who would not otherwise be permitted to see it.

(4) The conditions are that—

(a) the chairman considers that disclosure to an individual is necessary for the determination of the application; and

(b) the chairman has afforded the opportunity to—

(i) the person providing or producing the evidence to the inquiry panel; or

(ii) any other person making the relevant application,

to make representations regarding whether disclosure to that individual should be permitted.

(5) Any person who is shown potentially restricted evidence pursuant to paragraph (3) shall owe an obligation of confidence to the person who provided or produced the evidence to the inquiry.

(6) A breach of the obligation referred to in paragraph (5) is actionable at the suit of the person to whom the obligation is owed, subject to the defences applying to actions for breach of confidence."

The Inquiry's Protocols

15. The Inquiry has a Protocol on the Redaction of Documents. As set out in that Protocol, there are essentially three stages to disclosure. The first stage is the request for documents and disclosure of those documents to the Inquiry. At the second stage, the Inquiry team

considers the documents to assess those that are sufficiently relevant. The third stage involves the Inquiry giving the material provider an opportunity to request redactions or further redactions to deal with sensitivities. The Protocol explains this third stage as follows:

> *"13. Before documents are disclosed to CPs, the Inquiry will share such documents with the relevant Material Provider who will be given an opportunity to review and approve any redactions applied and identify any further redactions sought. The Inquiry's legal team cannot be responsible for identifying sensitivities which are specific to a Material Provider and expects these to be brought to the Inquiry's legal team's attention by the Material Provider at this stage.*
>
> *14. The Inquiry's legal team will consider each request for further redactions and will either:*
>
> *a. agree the request for further redaction, apply such redaction and then disclose the document(s) to CPs;*
>
> *b. reject the request for further redaction, in whole or in part. In such circumstances, the Material Provider will be given a short opportunity to apply for a Restriction Order to prevent disclosure of the information which it seeks to redact. Please refer to the Inquiry's 'Protocol on applications for Restriction Orders' further information.*
>
> *15. The required reporting time of the Inquiry is such that only a short period can and will be allowed for Material Providers to response to the stages set out above, and they must resource those working on the Inquiry accordingly.*
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> *16. The Inquiry expects Material Providers to adopt a measured approach when seeking redactions. The Inquiry will redact documents only where the case for redaction is properly made out. Material Providers should have regard to the relevant provisions of the Inquiries Act 2005 (the "2005 Act") and other relevant legislation. By section 18 of the 2005 Act the Chairman is obliged to take reasonable steps to ensure that members of the public are able to view documents provided to the Inquiry, subject to any restriction imposed under section 19 of the 2005 Act."*

16. The Inquiry's Protocol on Applications for Restriction Orders in Relation to Documents states that "*ordinarily, applications should be made within (but not before) the window of opportunity provided to Material Providers following the Inquiry legal team's rejection of the Material Provider's request for further redactions.*" It sets out a process which requires:
    a. The Material Provider to make a Restriction Order application including an OPEN and CLOSED section;
    b. Written submissions from Core Participants, representatives of the media and any other person served with the application;
    c. Thereafter, submissions from Counsel to the Inquiry and/or oral submissions at a hearing;
    d. Followed by a written ruling.

Proposed Process

<u>"Minded to" indication</u>

17. The Chair has considered the challenges to which the Phase 2 disclosure gives rise and the appropriate response, and gives the following indication of how he is currently minded to proceed.

18. The Protocol on Applications for Restriction Orders notes that, in exceptional cases, where the interests of justice and fairness require it, the Inquiry may need to depart from this Protocol. The "minded to process" is already set out above. The Inquiry is working to timeframes which are, for good reason, extremely demanding. The Terms of Reference require the Chair to report by May 2027. In order to meet that deadline, the Chair has listed a series of seminars in the first two weeks of September followed by hearings starting in the second week of October.

19. The Inquiry aims to disclose as many documents (including witness statements) as possible prior to the Seminars, in order to inform those Seminars and the debate that will surround them, including during the plenary sessions. In any event, the material must be disclosed in advance of the hearings, allowing sufficient time for Core Participants to digest the statements and disclosure, and provide any proposed questions under Rule 10 of the Inquiry Rules 2006.

20. With these timelines in mind, the Chair assesses that it is not possible to follow the usual process of individual, sequential submissions as set out in the Protocol on Applications for Restriction Orders as summarised at paragraph 16, above. Instead, this "minded to" note is issued in order to enable the Inquiry to meet its deadlines, while ensuring that Core Participants and the media have the opportunity to make submissions on the issues in question, and the Inquiry and the Chair can give those issues thorough consideration.

<u>Decision in Principle</u>

21. The Chair intends to make a decision in principle on the Restrictions Orders in advance of the third stage of disclosure. That decision will aid the Inquiry Legal Team when considering whether to agree or reject redactions proposed by Material Providers. It will minimise the need for a ruling by the Chair at that stage. An individual ruling would only be necessary where there is a disagreement between the Material Provider and the Inquiry Legal Team as to whether a Restriction Order made applies to the material in question. This process will

enable the important Inquiry disclosure to be processed expeditiously, and for the product to be disclosed to the Core Participants as soon as possible before the upcoming hearings in September and October 2026.

22. Similar approaches have previously been taken in other Inquiries. For example, in the Manchester Arena Inquiry, the Chair held, with the agreement of all Core Participants and the Media, that Restriction Orders should, in principle, be made over material that was "operationally sensitive", defined as material: "*the publication of which, whether taken alone or based on all the available disclosure (i.e. the mosaic effect), would be capable of assisting those who would wish to carry out future terror attacks.*"[1]

23. It is important to clarify that in this case, none of the Material Providers has raised what has been termed a "class claim", where a party seeks a restriction on a whole class of documents, whether or not there was anything injurious to the public interest in particular documents forming part of that class (see for example, in the context of a Public Interest Immunity application, *R v Chief Constable of the West Midlands Ex p. Wiley* [1995] 1 AC 274). Instead, Material Providers have raised, and the Inquiry seeks to determine, categories of information which, if included in a document, may merit the granting of a Restriction Order.

Type 1 Restriction Orders

24. For Type 1 Restriction Orders, Core Participants will still be able to view the material and therefore the Inquiry will provide a later opportunity for them to raise any specific objections to the protection of the material by the Type 1 Order. This will be after there has been an opportunity to review the material in question but in sufficient time before the Core Participant seeks to make reference to the material in the hearings.

25. Under the proposed process, the media will not be able to see the unredacted copies of documents containing Type 1 material. They will be able to view copies of documents containing Type 1 material but the relevant sensitivities will have an opaque "Type 1" redaction applied.

26. The Chair notes that the Media objected to this approach in the Manchester Arena Inquiry, submitting that without seeing the documents and the proposed redactions, they could not make any meaningful submissions about whether content had been properly identified as Operationally Sensitive and that this therefore was an interference with the media's rights under common law and the European Convention on Human Rights which must be justified as a matter of fairness.

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[1] Manchester Arena Inquiry Report: Volume 3, p.145

27. The Chair will carefully consider any submissions by the media in response to this Minded to note but, currently, he is not minded to allow the media access to Type 1 material. Fairness is a matter for the Chair to determine and the media does not have an absolute right to review this material. Rule 12 of the Inquiry Rules 2006 only requires the provision of material where necessary for the determination of the application. The media does not have the same rights to review material as Core Participants. If the media were to be allowed access to Type 1 material, Material Providers may seek a Type 2 Restriction Order to prevent the Media from reviewing such information. If that course of action was justified, this would in turn reduce the amount of material provided to Core Participants. Moreover, in the normal course of events, the Media would not be entitled to review all such documents, which would only be published if they were referred to in an oral hearing. In any event, the Chair observes that he is providing the media with the opportunity to make submissions on the categories of sensitivities addressed below.

Type 2 Restriction Orders

28. In relation to Type 2 Restriction Orders, Core Participants and the media will not have the opportunity to review the material and raise a later objection. However, by definition, such material is provided to the Inquiry accompanied by a submission that it is not to be viewed by Core Participants and the media. The material will be provided to the Inquiry in CLOSED and therefore would never be visible to Core Participants in any event, subject, of course, to the Inquiry's determination of whether the material should properly remain in CLOSED. Core Participants and the media will still have the opportunity to make submissions in response to the minded to note in the same way that they would have the opportunity to make OPEN submissions in response to the OPEN parts of a Restriction Order application.

Cabinet Collective Responsibility

29. Cabinet Collective Responsibility (CCR) is a constitutional convention whereby the Government is collectively accountable to Parliament for its actions, decisions and policies. The effect of the principle is that decisions of Cabinet are binding, such that members of the Government must publicly maintain support even where they disagree with the decision and the privacy of opinions expressed in cabinet and ministerial committees should be maintained.[2]

[2] Ministerial Code (29 June 2026) at §5.1.

30. It is ultimately a matter for the Prime Minister to determine whether CCR is engaged in respect of any issue arising, although advice may be sought from Cabinet Secretaries and it is the responsibility of the initiating department to ensure proposals for disclosure have been discussed with other interested departments.[3] The Ministerial Code addresses the impact of CCR on the disclosure of information:

> *"The internal process through which a decision has been made, or the level of committee by which it was taken, should not be disclosed. Neither should the individual views of ministers or advice provided by civil servants as part of that internal process be disclosed… Ministers should take special care in discussing issues which are the responsibility of other ministers, consulting ministerial colleagues as appropriate."*[4]

31. However, the requirements of the Ministerial Code, including in respect of CCR, must be read against the overarching duty on Ministers to comply with the law and to protect the integrity of public life.[5]

32. Although CCR exists as a result of convention rather than statute, it has been held to be a potential factor weighing against the public disclosure of documents. In the case of *AG v Jonathan Cape Ltd* [1976] QB 752, concerning the publication of the diaries of a former Cabinet minister, Lord Widgery CJ held that CCR is "*an established feature of the English form of government*"[6] and acknowledged that "*the expression of individual opinions by Cabinet Ministers in the course of Cabinet discussion are matters of confidence, the publication of which can be restrained by the court when this is clearly necessary in the public interest*".[7] The Chief Justice identified a three-stage test for considering whether material should be withheld: i) the existence of an obligation of confidence which would be breached by disclosure; ii) that the public interest requires restraint on publication; and iii) that there should be "*no other facts of the public interest contradictory of and more compelling than that relied upon*".[8]

33. CCR is "*not a rigid dogma*"[9] and it does not operate as a blanket restriction preventing the disclosure of Cabinet discussions or expressions of disagreement with Government decisions. There is a limit in time, "*after which the confidential character of the information and the duty of the court to restrain publication will lapse*"[10], and alternatives to non-disclosure should be considered:

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[3] Ibid. at §5.4.
[4] Ibid. at §5.3.
[5] Ministerial Code (29 June 2026) at §1.6.
[6] *AG v Jonathan Cape Ltd* [1976] QB 752 at 770B.
[7] Ibid. at 771B.
[8] Ibid. at 770H.
[9] *Cabinet Office v Information Commissioner* [2009] 1 WLUK 504 at [77].
[10] *Jonathan Cape Ltd* at 771C.

> "… *the fact that a document is confidential does not make it immune from disclosure. There are precautions, such as redaction, that can be taken to protect confidentiality whilst at the same time disclosing the document. There are degrees of confidential information. There is a balance to be struck between the public interest in maintaining confidentiality and competing public interests for instance in the administration of justice. Restrictions on disclosure should not be imposed beyond the strict requirement of public interest and the court would have to be satisfied that disclosure would inhibit free and open discussion in cabinet in future in relation to this issue.*"[11]

34. Categories of material where the Home Office, and other Government Department Material Providers, are likely to seek Restriction Orders, along with an indication of the type-level of restriction that they are likely to say applies, are:
    a. Formal documents from meetings of Cabinet and its committees e.g. Minutes, Papers, Agendas, Actions and Decisions Documents, Chair's briefs (Type 2);
    b. Documents referencing Cabinet and Cabinet committee discussions e.g. briefings for ministerial attendees, references to Cabinet or Cabinet committee actions in other documents (Type 2);
    c. Products generated as part of the Write Round process e.g. write round letters, write round responses, references to write round in other documents (Type 1 or Type 2);
    d. Any material outside of formal Cabinet or committee documentation that reveals a difference of opinion between ministers e.g. ministerial correspondence (Type 1 or Type 2).

35. In terms of the Inquiry's approach, the principle of CCR is supported by authority and is a potentially legitimate ground for a Restriction Order. Whether it is appropriate will depend on the nature of the information in question and its context. The authorities above show that, in order to be established, the Inquiry would need to be satisfied that its disclosure would "*inhibit free and open discussion in cabinet*".

36. The Chair recognises the risk that prospect of disclosure of all documentation showing areas of debate or disagreement in Cabinet (or associated Cabinet committees), particularly to the public, could have a chilling effect on such debate and disagreement. This would, in turn, risk damaging the decision-making process of central Government. This risk is more acute where the decision making relates, as it may do in this context, to matters being considered at the same time as the Inquiry. In addition, this Inquiry is not examining the mechanics of that decision making process in the same way as other Inquiries which have taken a different approach to CCR, such as the Covid Inquiry. Unlike the Covid Inquiry, this Inquiry is not an examination of the historic process of decision making in response to a national crisis.

[11] *Finucane's Application* [2013] NIQB 45 at [23].

As a result, there is not the same need to examine the mechanics of the decision-making process.

37. Nevertheless, it is important to this Inquiry, which is examining policy areas under active consideration by Government, to understand the reasons why certain policies are either being pursued or under consideration and others are not. In addition, it is important for the Inquiry to understand any dissenting views or areas of disagreement in relation to such policies so that both those views, and the prevailing views, can be tested. To give a simple example (advanced as a hypothetical at this stage), if certain parts of Government were contending for a "big front door" to deal with Violence Fixated Individuals, but others were suggesting a different mechanism, the Inquiry needs to be on notice of the different views and the reasons for those differences.

38. Of lesser importance to this Inquiry, is the exact circumstances in which such views are raised and by whom. However, there may be discrete examples where the Inquiry considers that the status of the person raising the view, in terms of seniority, experience and specialist knowledge, or the context in which it is raised, for example the audience to whom it is presented, shed important light on the weight that should be applied to that view or position. It would, for example, matter if the views of policing and central government on an issue were different. The same would be true if the Inquiry were to consider that a dissenting view in the disclosure is not frankly reflected in documentation and statements that are to be provided to Core Participants and the public. In these circumstances, the Inquiry will seek disclosure of the material to Core Participants to ensure that they have the necessary understanding of the relevant matters to be able to test the evidence. It may be, however, that it is appropriate that such information is subject to a Type 1 Restriction order and is provided to Core Participants but not made public, in order to prevent the inhibition of "*free and open discussion in cabinet*", particularly where sufficient general information about the view is disclosed in material not subject to a Restriction Order. The threshold for a Type 2 Restriction Order will necessarily be significantly higher.

39. In order to ensure that sufficient general information about a view is disclosed to Core Participants and the public, the Inquiry has worked with the Home Office to ensure that the balance of views and opinions is reflected in the statement provided by their witness (Mr Jonathan Emmett). The same process has been undertaken with other Government departments. The parts of this statement over which the Home Office does not seek Restriction Orders will be disclosed to Core Participants in the near future, with a further version to be disclosed after the Restriction Orders have been determined. This will be a substantial step towards ensuring that the relevant information referred to above is provided to Core Participants and, in time, to the public. Any applications for Type 1 or Type 2

Restriction Orders over parts of that statement, and the underlying documentation, will be carefully considered against the OPEN material in that statement.

Government policy in development

40. The Home Office has indicated that it will seek Restriction Orders over material which addresses matters of policy that are under active consideration/development, and that have previously been considered and may be subject of future development even if not being actively considered at this time. This may include policy that has been announced but not yet considered (or finally considered) by Parliament, as it is said that it is important that parliamentary debate is not influenced by material of this nature.

41. Examples of material where such Restrictions will be sought are:
    a. Policy proposals or discussions about policy options that have not been agreed or finally agreed by ministers. This is not intended to concern more general open evidence that consideration is being given to certain policy areas but would encompass specific details of matters being progressed such as discussions are underway with certain companies on specified topics;
    b. Exchanges of views or discussions between officials and/or operational partners and/or HMG advisors and/or experts invited to advise HMG about policy proposals or ideas (which usually at that stage will not be government policy and will not have been agreed by ministers);
    c. Information provided in confidence by other departments, operational partners, international governments and external bodies or persons e.g. academics or campaigners, disclosure of which would undermine information sharing;
    d. Draft documents and comments on documents;
    e. Content that may influence market or public behaviour (e.g. a proposed compensation scheme for recall of a certain item may lead to stockpiling of those items).

42. The Home Office has indicated that, in the majority of cases of this kind, it will seek a Type One Restriction Order but will seek a Type Two Restriction Order for some content.

43. There is no principle in law directly applicable in the context of public inquiries which formally restricts the disclosure of information regarding the development of policy by Government outside the boundaries of CCR. However, the Chair has already acknowledged that there is a public interest in ensuring that free and open discussion in Cabinet is not inhibited. He also acknowledges that this interest applies particularly to policies which have not yet been implemented or which are in development, in relation to which there is a need

for "*candour in communication*" and the provision of "*frank and uninhibited advice*".[12] This may be particularly the case where the policies are still under active consideration and have not been agreed as policy positions by ministers.

44. The Chair also recognises that there is a countervailing public interest in the disclosure of information regarding Government policy in order to promote accountability, enable public debate and increase scrutiny of the reasons for its implementation.

45. Consideration of this issue has occurred primarily in the context of the application of section 35(1)(a) of the Freedom of Information Act 2000, which exempts information regarding the formulation or development of government policy from disclosure. The exemption is qualified by the application of a public interest test, meaning that the information can only be withheld where the public interest in maintaining the exemption outweighs the public interest in disclosure.[13]

46. The ICO Guidance on the application of section 35 distinguishes policy-making from "*purely political, administrative, presentational or operational decisions*"[14] and the formulation of policy from its implementation. In this context, whether communications amount to policy-making, and whether they fall within the period of development or implementation, are questions of fact to be determined in light of all the circumstances.[15]

47. The position of the ICO in relation to Freedom of Information Requests is that the public interest in facilitating space for the development of policy applies to government departments (including non-ministerial departments and executive agencies) but not to non-departmental public bodies because they are not government departments with ministerial policy-making functions.[16]

48. The timing of disclosure is a factor which is directly relevant to assessment of the public interest, with the interest in withholding disclosure being strongest at the time when the policy process remains ongoing and waning after significant milestones (such as the announcement of the relevant high-level policy).[17] The onus is on those seeking to prevent disclosure to explain why a safe space is necessary at the relevant time, taking into account that:

[12] *Burmah Oil Co Ltd v Bank of England* [1980] AC 1090 at 1112E.
[13] ICO Guidance "Section 35 – Government policy" (13 January 2023).
[14] Ibid; see also ICO Decision FS50083726.
[15] Information Tribunal Appeal EA/2006/0006 at §75(v).
[16] ICO Guidance "Section 35 – Government policy" (13 January 2023).
[17] Ibid; Information Tribunal Appeal EA/2006/0040.

> *"Once the government has had a chance to properly set out its policy position and frame the debate, a safe space to present the policy is no longer needed. And on the other side of the public interest balance, there is likely to be significant public interest in allowing public scrutiny of the policy details (including risks and alternatives) while the policy is still in the public consciousness, and before it is implemented."*[18]

49. Against this background, the Inquiry will consider requests for redaction or the withholding of disclosure on the basis that policy remains in development on a case-by-case basis, by the application of a public interest test. In relation to the public interest test, the matters set out above in relation to CCR apply by analogy here (see paragraphs 35-39 above). In particular, any such application will need careful consideration against the material that is not subject to a Restriction Order application. Again, this is material for which there may be a good rationale for a Type 1 Restriction Order to ensure that Core Participants are able to understand and test the evidence fully, without unduly inhibiting free and open discussion of policy in Government. However, the threshold for a Type 2 Restriction Order will be higher, given this will inhibit the ability of Core Participants to understand fully the issues in play.

50. One area in which the Chair considers he will require strong justification relates to policies that have previously been considered and may be subject of future development even if not being actively considered at this time. This could in theory be applied to a very wide range of material and would need cogent reasons in support such as actual evidence that the policy is planned to be subject of a future development, not simply that it is possible.

Government Decision Making Process

51. In tandem with the issues of CCR and Government policy in development, the Home Office has indicated that it is likely to seek Restriction Orders in relation to material that demonstrates the Home Office decision making process. This is because it is said that the underlying disclosure reveals in significant detail how Home Office decision making is structured and developed, how matters are pitched to ministers and the working views and discussions of junior and senior officials and others. The Home Office notes that much of the work in this area is being done at pace meaning that steps such as consultation with partners may occur later in the process of policy development. Finally, the Home Office notes that ongoing policy development will take into account the evidence of the Inquiry such as emerging lines of questioning, topics of discussion and potential conclusions of the Inquiry, so that ongoing advice to Ministers can incorporate likely recommendations. The

[18] Ibid.

rationale for this is that such comment may be misconstrued as the Home Office seeking to influence the Inquiry or pre-empt its findings and that this may inhibit decision making which is done in tandem with the Inquiry.

52. The Home Office has indicated that for past documents, it is likely to seek Type 1 Restriction Orders over this material but, for documents to be generated over the coming months, they may seek Type 1 or Type 2 Restriction Orders.

53. In relation to whether the Home Office decision making process in general is sensitive, the Chair considers that this will require substantial justification. This sensitivity is not on all fours with national security cases, where, for example, it would be sensitive to reveal the criteria by which a decision was made to deem a person to be a Subject of Interest ("SOI"), because this would allow potential SOIs to adapt their behaviour and evade scrutiny (see below under the national security heading). The Chair will consider submissions but, in general terms, he does not currently consider that there is an obvious harm or damage from Core Participants, and the public, having a level of understanding of *how* the Home Office makes decisions.

54. In relation to the working views and discussions of junior and senior officials in general terms, the Chair considers that this issue has already been covered by the matters addressed under the headings of CCR and Government policy in development. There is, however, one additional matter under this heading. The Chair recognises the need for the Home Office to carry on working on policy in this area in tandem with the Inquiry. Such work, by necessity, will involve an analysis of the Inquiry's own evidence, including in advance of the Inquiry's report. In many cases, this analysis will be between civil servants, rather than lawyers, and therefore it will not attract legal professional privilege. The Chair accept that the Home Office and other Government Departments need to be able to carry out such an analysis freely without fear of such discussion then being analysed by the Inquiry or otherwise being interpreted as influencing the Inquiry's own workings. For contemporary and future documentation, the Chair considers this is likely to be a valid rationale for a Type 1 or Type 2 Restriction Order.

National security

55. National security is a frequent reason for a Restriction Order and is one of the specified examples of "harm or damage" listed under s.19(5) of the Inquiries Act 2005.

56. The Home Office has indicated the following examples of material for which they are likely to seek Restriction Orders on the grounds of national security, with an indication of whether the Home Office is likely to seek a Type 1 or Type 2 Restriction Order:

a. Information supplied by or relating to intelligence and security agencies, including any reference to intelligence or security agencies (Type 2);
b. Information that may disclose intelligence and security agencies' priorities, capabilities, tactics, data and resources (Type 2);
c. Identifying information about individuals in sensitive roles - including but not exclusively names, email addresses, phone numbers, job titles and business units. (Type 2);
d. Details of contracts operating under a National Security exemption (Type 2);
e. Information likely to be of interest to hostile state actors (Type 2);
f. Information that if disclosed may harm international relations, or risk any ongoing dialogues or bilateral agreement negotiations (Type 2);
g. Research, Information and Communications Unit ("RICU") reports which reveal insights into government national security capabilities (Type 1);
h. Open Source Intelligence (OSINT) on propaganda, online activity and hostile actors where publication of material could inadvertently amplify, legitimise or embolden actors, behaviours and risk/threat (Type 1).

57. The Chair will consider any submissions that are made but currently considers that these appear to be reasonable justifications for Restrictions Orders. The Chair observes, however, that a. in the list above (information supplied by or relating to intelligence and security agencies, including any reference to intelligence or security agencies) is very widely drafted. Indeed, the Chair notes that the statement of Jonathan Emmett does refer to limited ways in which MI5's capabilities are engaged in relation to the threat by VFIs. There may therefore be discrete areas in which matters relating to intelligence or security agencies can be referred to in OPEN but the Chair recognises that this will be the exception.

Operational sensitivity

58. By virtue of s.19(3) and s.19(4) of the Inquiries Act 2005, there may also be material which needs to be redacted in order to enable the inquiry to fulfil its functions and/or is necessary in the public interest because of the risk of harm or damage to operational matters.

59. The following are examples of the types of information which are likely to require Restriction Orders on the grounds of operational sensitivity that have been raised by the Home Office and other Material Providers:

a. Protocols and/or policies which are designed to tackle online harms but which are not in the public domain and which, if made public, could enable terrorists, VFIs and/or other bad actors to circumvent the controls or otherwise tailor their conduct to circumvent those policies;

b. Information which discloses the mechanisms, techniques and/or tools used by online platforms to monitor and detect online harms which could allow terrorists, VFIs and/or other bad actors to evade detection;
c. Information which discloses limitations in the capabilities of online platforms and/or other organisations to detect online harm which could be abused by terrorists, VFIs and/or other bad actors to evade detection;
d. Documents or content that disclose operational Prevent and policing matters as well as offender management operations in the prison and probation service (e.g. details of Prevent decision making process; or discussion of criminal techniques and tactics);
e. Documents or content that disclose information regarding Prevent casework (e.g. information which might be capable of identifying individual Prevent subjects or Intervention Providers; or reduce the effectiveness of Prevent interventions);
f. Information which discloses the capability and impact of weapons which could be utilised by terrorists, VFIs and/or other bad actors in the commission of criminal activity;
g. Details of ongoing HMG pilots.

60. In relation to the matters set out above relating to online harms (i.e. sub-paragraphs (a)-(c)), the Inquiry has sought to agree Type 1 Restriction Orders with the relevant Online Platforms.

61. The Home Office has indicated that, depending on the context, it will seek both Type 1 and Type 2 Restriction Orders in relation to sub-paragraphs (e)-(g).

62. The Chair recognises that there may be elements of the Prevent decision making process that, if made public, might aid bad actors, and therefore would be subject to a Type 1 Restriction Order. Indeed the Chair would recognise the following category: any tactics and/or capabilities, or limitations to tactics and/or capabilities, used by the UK state authorities and others in the investigation and/or disruption of suspected terrorist or other criminal activities which, if disclosed, would allow terrorists, VFIs and/or other bad actors to evade detection. However, the Inquiry was able to consider the decision making in relation to Prevent in some detail in OPEN in Phase 1 and therefore the Chair considers that any such application would need to be carefully circumscribed. Similarly the approach to HMG pilots would need to be carefully circumscribed given the Inquiry was able to consider the Dovetail pilot, within Prevent, in some detail in Phase 1.

63. The Chair also recognises that there may be harm or damage arising from the publication of specific information about individual Prevent subjects or Intervention Providers. Such specific information may be irrelevant to the Inquiry in any event.

Commercial sensitivity

64. Pursuant to s.19(3) of the Inquiries Act 2005, a restriction order must only specify such restrictions as are considered to be conducive to the Inquiry fulfilling its terms of reference or to be necessary in the public interest having regard to, amongst other factors, damage caused by disclosure of commercially sensitive information (s.19(4) and s.19(5)(d)). Commercially sensitive information may encompass information which would prejudice commercial interests, particularly if it would provide a competitive advantage to others.

65. The following are examples of the types of information which are likely to require redaction on the grounds of commercial sensitivity that have been raised by the Home Office and other Material Providers:
    a. Sensitive confidential commercial information which may adversely affect an ongoing or anticipated tender, bid and/or supplier appointment process if disclosed;
    b. Details about the commercial providers of pilot schemes and the cost of those schemes;
    c. Trade secrets including those which would disclose information relating to algorithms and/or formulas, which would cause commercial harm if disclosed;
    d. Private information relating to a private company's finances and/or technology in development;
    e. Negotiations between the Government and private companies concerning scoping and requirements, capabilities and resourcing and the ability to support pilot activity;
    f. Information concerning a company's engagement with the Government or its operational partners, for example, the level of engagement a particular company has with the Government;
    g. Information which discloses, in respect of government funded pilots, contracts, projects or workstreams: costs, pricing assumptions, supplier proposals, procurement strategies, contractual arrangements, evaluation criteria (e.g. details of the Government's evaluation of pilots conducted by commercial providers), business cases and information relating to ongoing or future market engagements;
    h. Information which discloses confidential contractual terms between two or more parties which would cause commercial harm if disclosed;
    i. Information which discloses confidential software architecture which would cause commercial harm if disclosed;
    j. Information relation to compensation and surrender schemes for weapons.

66. Subject to submissions, the Chair considers that provided the material properly and genuinely falls within these categories, these are reasonable grounds for Restriction Orders. It is anticipated that the majority of this material would fall into the category of a Type 1 Restriction Order, and much of it may well be classed as irrelevant and sensitive in any event.

Unpublished Statistics

67. The Home Office refers to the Code of Practice for Statistics and indicates that it will seek Type 1 or Type 2 Restriction orders, depending on the context, for unpublished statistics that will form part of an official statistical release, for example the annual statistics released in relation to Prevent. The harm or damage is that introducing unpublished statistics before full publication creates a risk that incomplete, incorrect or misleading information is introduced into the public domain. The Home Office indicates that it will seek Type 1 Restriction Orders over other unpublished statistics that will not form part of an Official Statistical Release.

68. The Chair appreciates that the Inquiry should not seek to publish, or rely upon, statistics which are incorrect or misleading and should avoid publication where there is a risk that this is the case. In those circumstances, there may be grounds for a Type 1 Restriction Order, although: (a) it may be that evidence can be adduced which simply explains that caution should be applied to the statistic in question; and (b) a Type 2 Restriction Order would be challenging threshold to reach in this context.

Personal data

69. The Inquiry's Protocol on the Redaction of Documents sets out its position in this respect. The Home Office has noted that redaction of staff names and contact details may be sought where the release of those details would cause harm, other than by virtue of the individual being in a sensitive role. For example, due to likelihood of a person's involvement in a certain policy area giving rise to 'doxxing', targeted harassment, intimidation, threats and harm. Where this is supported by a sufficient rationale or evidence, the Chairman is minded to accept that this is a sufficient basis for a Restriction Order.

Conclusion

70. Having regard to these considerations, the Chair is **minded to:**

(1) Following receipt of submissions from Core Participants, Material Providers who have raised a sensitivity and the media, make a Restriction Order over the categories set out above. The decision will provide guidance to the Inquiry Legal Team as to when material falls within the Restriction Order categories;

(2) Provide a Protocol dealing with the Inquiry's Approach to Type One Restriction Orders;

(3) Continue with the third stage of disclosure as per the Protocol on the Redaction of Documents. If the Inquiry and a Material Provider are not able to agree an approach to a sensitivity, then the matter will be referred to the Chair for determination; and

(4) Allow Core Participants the opportunity to object to a Type One Restriction Order within a set period prior to the intended reference to that document.

Invitation to make submissions

71. The Chair wishes to emphasise that the indications given above are only "minded to" indications and are subject to submissions that may be made.

72. Submissions are invited from Core Participants, Material Providers who seek to rely on a sensitivity and the media on the "minded to" indications given above.

73. The Chair requests that such submissions should:

    a. be provided by no later than **4 pm on Thursday 3 September 2026**;
    b. be in Word Format;
    c. be concise and should not generally exceed 15 pages in length;
    d. should only cite authorities insofar as it necessary to establish the proposition of law the authority establishes.

Southport Inquiry
27 August 2026