

UK Covid-19 Public Inquiry | Module 5

Final Notice of Determination

**Restriction Order Application in relation to
the applications by the NCA dated 9 and 17 December 2024**

Introduction

1. Module 5 of the Inquiry was opened on 24 October 2023. It is concerned with the procurement and distribution of key healthcare equipment and supplies during the pandemic. Public hearings are scheduled to begin on 3 March 2025.
2. On 20 September 2024, the Inquiry received a number of witness statements from the National Crime Agency (“NCA”). This evidence relates to the NCA’s criminal investigation into contracts entered into by PPE Medpro Ltd (“Medpro”), one of the suppliers to the UK government of personal protective equipment (“PPE”) during the pandemic. Some of the evidence contains information which the NCA considers to be sensitive. The NCA submits there is a realistic possibility that criminal charges against one or more individuals will flow from the investigation.
3. On 9 December 2024, the Inquiry received an application from the NCA for a restriction order under section 19 of the Inquiries Act 2005 (the “**9 December Application**”). The application was made by way of an OPEN application supported by a CLOSED witness statement. The basis of the 9 December Application was that there was a risk of harm, “*to the ongoing criminal investigation, its cumulative content and the need to ensure the proper administration of justice*”. The application sought to withhold from OPEN disclosure:
 - a. “*the 26 witness statements provided by the NCA to the Inquiry [from disclosure] to Core Participants (“CPs”) and preventing their use in the Inquiry in any manner whatsoever by any person;*
 - b. *any other witness statement/s made by a witness who has made a statement falling within paragraph (a) above, to the extent that the additional statement touches and concerns the same issues or persons*”;

and to make an order:

- c. “*preventing any person asking any question or otherwise adducing any evidence in the course of the oral hearings of the Inquiry which touches or concerns the PPE procurement process involving PPE Medpro and/or any person associated with or allegedly associated with that company in*

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connection with that process. Save that the fact of the criminal investigation into PPE Medpro and/or associated individuals may be referred to in so far as it may be relevant to the Terms of Reference of the Inquiry.”

I will refer to the evidence encapsulated by a.-c., above, as “**Sensitive Evidence**”. It includes not only the evidence obtained by the NCA but also that which the Inquiry has independently obtained for itself about Medpro.

4. The effect of the restriction order, if granted on the terms sought by the NCA as at 9 December 2024, would be significant. It would mean that the class of evidence received by the Inquiry relating to Medpro would be withheld from disclosure to Core Participants, the public and the press. If I considered it necessary to refer to this evidence during the substantive hearings, these hearings would have to take place in CLOSED session. The 9 December Application also sought to have Core Participants, the public and the press excluded from these hearings so they would not have the opportunity to hear the evidence and effectively participate in the hearings.
5. On 11 December 2024, the Inquiry Legal Team asked the NCA to:
 - a. provide further information in support of the OPEN application;
 - b. consider whether any of the material in the CLOSED evidence could be made OPEN;
 - c. provide a schedule particularising the categories of material over which the restriction order is sought with an explanation as to why each category met the threshold of harm under section 19 of the Act; and
 - d. provide examples of the types of redactions sought, using a representative sample of witness statements.
6. I asked the Inquiry Legal Team to speak to the NCA and ask them to consider whether, if I was minded to make a restriction order, the risk of harm would exist in the same way if there was a CLOSED hearing which would include Core Participants and an accredited member of the press. Such a hearing would exclude the public pending the conclusion of any criminal investigation and/or prosecution including any reviews and/or appeals. At that stage, the transcript and recording would be made OPEN together with any other CLOSED evidence and/or report (if applicable). The NCA expects a decision to be made in 2025.
7. On 17 and 19 December 2024, the Inquiry received further documents (the “**17 December Application**”):
 - a. an OPEN Addendum to the OPEN Application;
 - b. a version of the CLOSED witness statement which it was content could be shared in OPEN;

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- c. a key for the colour coding applied to the Sensitive Evidence to assist the Inquiry in understanding the proposed redactions to a representative sample of statements; and
 - d. five witness statements with indicative redactions over material which the NCA said was a representative sample of where the risk of harm arises in the material.
8. The 17 December Application provided further submissions on the approach that I should take when considering both the 9 and 17 December Applications. It also provided a number of categories of material in respect of which the NCA said there was a real risk of harm if disclosed in the Inquiry. It also set out a number of options for the Inquiry in relation to CLOSED hearings in response to the Inquiry's request outlined at paragraph 6 above.
9. I have considered the 9 and 17 December Applications (the "**Application**") with care, and I have also received advice in relation to them from Counsel to the Inquiry. The approach to the legal principles engaged by this application reflects the advice that I have received and that I have accepted.

The Application

10. The OPEN sections of the Application explain in general terms that the NCA considers a restriction order should be made in the public interest because any disclosure or interrogation by the Inquiry of the Sensitive Evidence in public will potentially prejudice possible criminal proceedings and/or the Inquiry. I note that the later submission relates to the NCA's view that the risk of prejudice to the Inquiry arises from it making findings of fact in the absence of other relevant evidence in the NCA's possession.
11. The CLOSED sections of the Application identify the Sensitive Evidence and explain in more detail the reasons why it is considered by the NCA to be sensitive.
12. The NCA submits that sensitivity of the material is such that a restriction order should be made to prevent harm or damage to the public interest. In broad terms, the public interest is said by the NCA to be the protection of the criminal justice process by:
 - a. protecting the integrity of evidence gathered by the criminal investigation; and
 - b. avoiding potential prejudice to any criminal proceedings which may follow.
13. The NCA submits that evidence which falls within the following categories is sensitive and there is a real risk of harm or damage if it is disclosed in the Inquiry:
 - a. *The identity of persons under investigation where that information is not already in the public domain via the NCA.*

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b. *The following categories of evidence which are key lines of enquiry in the criminal investigation and likely to form the evidential basis for any criminal prosecution:*

- i. *The formation of the company known as PPE Medpro.*
- ii. *Actions by any person which touch or concern the PPE procurement process involving PPE Medpro and/or any person associated with or allegedly associated with that company in connection with that process.*
- iii. *Communications between persons under investigation which touch or concern the PPE procurement process involving PPE Medpro and/or any person associated with or allegedly associated with that company in connection with that process, including conversations face to face or by telephone, texts, e-mail or social media.*
- iv. *Communications between persons under investigation and any other person (including government officials) which touch or concern the PPE procurement process involving PPE Medpro and/or any person associated with or allegedly associated with that company in connection with that process, including conversations face to face or by telephone, texts, e-mail or social media.*
- v. *Evidence relating to the opinion of any government official which touches or concerns the PPE procurement process involving PPE Medpro and/or any person associated with or allegedly associated with that company in connection with that process.*
- vi. *Evidence regarding the transfer of funds and ultimate beneficiaries of the monies paid to PPE Medpro pursuant to the contracts.*
- vii. *Evidence relating to the NCA's investigation including protection of underlying evidence, lines of enquiry or tactics.*

14. Following the Inquiry's request that the NCA consider whether a limited form of CLOSED hearing would reduce and/or eliminate the risk of harm, the 17 December Application indicates that the NCA agrees that, in the event that I determine that Medpro should be considered by the Inquiry, the following measures would at least reduce the risk of harm:

- a. disclosure of the Sensitive Evidence to Core Participants and relevant witnesses only;
- b. restricting the hearing to Core Participants and an accredited representative of the media; and

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- c. time limiting any restrictions to the conclusion of any criminal proceedings (including review and/or appeals) which may follow or to any decision not to commence such proceedings.

Legal Framework and Context

15. There is a presumption under Section 18 of the Inquiries Act 2005 that the inquiry proceedings will be conducted openly:

“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.”

16. Section 19 of the Inquiries Act 2005 provides as follows:

“(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) by being specified in a notice (a “restriction notice”) given by the Minister to the chairman at any time before the end of the inquiry;

(b) by being specified in an order (a “restriction order”) made by the chairman during the course of the inquiry.”

17. Section 19(3) makes it clear that a restriction order must specify only such restrictions as I consider 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 section 19(4). They are as follows:

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. Harm or damage includes death or injury and damage to national security or international relations;

c. Any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the Inquiry; or

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 of “damage” includes in particular:*

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

18. It is clear from reading section 19 as a whole, that, if I am satisfied disclosure of the material might cause harm or damage, I must consider the other provisions and factors that may militate against making a restriction order and if I decide to make a restriction order I must limit it to what is absolutely necessary.

19. In making this provisional determination, I have considered the approaches, in so far as is relevant, in other public inquiries. Sir Christopher Pitchford, Chair of the Undercover Policing Inquiry, provided a ruling (dated 3 May 2016) on the approach to restriction orders. There is much in the ruling that is of general application although I approach it with care given the different subject matter and focus of that Inquiry.

20. I note, in particular, Sir Christopher’s conclusion (summarised at paragraph A.2(1) of Part 6 of the ruling) that the concept of allaying public concern under subsection 19(4)(a) of the 2005 Act extends to, *“public concern about the subject matter, process, impartiality and fairness of the inquiry”*. There has been a significant amount of public interest in the Medpro contracts and they are plainly relevant to the scope of Module 5. That is an important factor to weigh in the balance.

21. It is incumbent on me to assess whether the grounds set out in the Application meet the test under s.19 and to perform the balancing exercise of any risk that I consider is made out against the need to allay public concern about the process by which contracts for significant sums of public money were awarded during the pandemic as per the Scope of Module 5.

22. The CLOSED section of the application sets out in general terms:

- a. The criminal offences under investigation.
- b. The subjects under investigation.
- c. The NCA’s current case theory.
- d. The NCA’s anticipation of the potential risks of disclosure, including with respect to:

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- i. contamination of evidence;
- ii. inconsistent factual findings as between the Inquiry and any criminal proceedings which may follow; and
- iii. potential applications to stay proceedings for abuse of process.

Provisional Decision

23. On 19 December 2024, I issued a Provisional Decision setting out that I was minded to grant the NCA's application for a Restriction Order but in more limited terms. I invited submissions from Core Participants, the NCA and the media on the approach the Inquiry intended to take.

Written Submissions

24. On 13 and 14 January 2025, the Inquiry received written representations on the provisional decision from: the Cabinet Office, Scottish Ministers, the Department of Health and Social Care ("DHSC"), CBFFJ (UK) and NI CBFFJ ("the Bereaved Groups"), the NCA and Guardian News & Media Limited, the BBC, Times Media Limited and News Group Newspapers Limited ("the Media Organisations"). None of the written submissions have requested an oral hearing. I have carefully considered whether it is necessary to hold one given the nature of the application. I have concluded that the application by the NCA for a Restriction Order may, in all the circumstances, be determined on the papers.

25. The Cabinet Office, Scottish Ministers and DHSC have not raised any objections in principle to the grant of a Restriction Order. The DHSC submits that the terms of the Restriction Order should, however, be widened to include financial material and correspondence relating to the procurement of PPE from Medpro on the basis that these will likely feature in any prospective civil and criminal proceedings. I note that this application relates to the criminal proceedings only and should DHSC wish to make separate representations and/or an application for a Restriction Order in relation to civil proceedings they will need to follow the procedure set out in the Inquiry's protocol.

26. The Bereaved Groups submit that the NCA application does not provide a reasoned basis on which the Inquiry may properly conclude that there is a genuine risk of harm to criminal proceedings beyond that which would ordinarily affect proceedings relating to matters which have received public attention. They maintain that the risk of harm described in the NCA application has not been set out in sufficient detail, and the specific risks posed by publication through this Inquiry of relevant evidence have not been properly specified. The Bereaved Groups and the Scottish Ministers request that, in the event a Restriction Order is granted, the Inquiry provides access to a secure live link so that any proceedings in CLOSED may be followed remotely.

27. The Media Organisations submit that the NCA's representations on prejudice to the criminal investigations are over-stated given: (i) the extent of material already in the

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public domain; (ii) the early stage of the criminal investigation; and (iii) the authorities they refer to in their submissions on section 4(2) Contempt of Court Act 1981, which apply by analogy. The Media Organisations maintain that, even if I am satisfied that prejudice would be caused, the steps proposed to address any such prejudice are not strictly necessary as there are other, less intrusive means, which would achieve the same ends. They submit that, in any event, any CLOSED hearing should be kept to a minimum and that there is no justification for limiting the number of accredited journalists in such a hearing.

28. The NCA makes a number of further representations about the Provisional Decision and, in particular, the precise terms of any Restriction Order. It submits that any Restriction Order should: (1) refer to a schedule of specific material the NCA has provided to the Inquiry covered by the order; (2) refer in the same schedule to other sensitive material obtained by the Inquiry about Medpro; and (3) expressly permit an NCA representative to attend the CLOSED hearings as a watching brief. The NCA requests the Inquiry provide the NCA with the topics to be covered at the CLOSED hearings, remove reference to the operation name from the Provisional Decision and Restriction Order and clarify that it is the CPS which bears the decision to prosecute.

Final Decision

29. This Module will make recommendations as to how procurement of key healthcare equipment and supplies in a future pandemic could be improved. It is imperative that all relevant evidence is explored and heard as part of this investigation to obtain the fullest picture possible of how the system responded during the pandemic and to enable me to make such recommendations. I therefore bear very much in mind the importance of the Inquiry considering evidence in order to fulfil the Scope of Module 5 and wider Inquiry Terms of Reference.
30. The NCA submits that the Inquiry has available to it other contracts which could be selected for investigation and which would allow the Inquiry to fulfill its Terms of Reference. This is clearly a matter which only the Inquiry is properly in a position to decide. The Inquiry has a wide discretion to determine the subject and scope of its investigation. The evidence relates in whole or in part to the nature and response of the systems and individuals responsible for procurement during the pandemic and, in particular, to the operation of the High Priority or 'VIP' Lane. I have considered Counsel to the Inquiry's advice on this issue and am satisfied it is both necessary and proportionate to investigate the contracts between the UK government and Medpro. In the context of the evidence gathered, it is both a relevant and important line of inquiry. It will assist me in assessing the institutional and systemic response in the context of procurement during the pandemic.
31. I have considered the written representations made by the Bereaved Groups that the risk of harm or damage to the possible criminal proceedings has been inadequately articulated by the NCA. I have also considered the submissions by the Media Organisations on prejudice and, in particular, the line of authorities cited on s. 4(2) the Contempt of Court Act 1981. I have had regard in my determination as to

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prejudice in relation to the material already in the public domain, the period of time which may elapse before there is a possibility of a criminal trial, the experience of the media in reporting Inquiry proceedings and the fact that any prejudice arising from the Inquiry proceedings' publicity will be subject to judicial directions to the jury.

32. Having carefully considered the application, I accept the NCA's submission that there is a risk of harm or damage to the possible criminal proceedings within the meaning of section 19 of the Act. I have had the benefit of reading the CLOSED material provided by the NCA which provides additional detail not available to those who have provided submissions due to its sensitive nature. The risk arises from placing into the public domain, including to potential jurors, written and oral evidence which may be in issue in any criminal proceedings, if charges are brought. I have had due regard in reaching my determination to the risk of prejudice, the particular weight which should be attached to NCA's evidence in support of its application and the fact that the NCA is an expert public authority in the investigation of serious crime. There is clearly sensitive material obtained by the Inquiry in its Module 5 investigation into Medpro which is not in the public domain and to publish it would, in my view, aggravate rather than ameliorate the risk of harm or damage to any possible criminal trial. I have considered the request which DHSC makes to widen the scope of any order but, given the expertise of the NCA as to the risk to its investigation, am satisfied that it is appropriately drawn and focused on the criminal investigation.
33. Further details about the risks are set out in the CLOSED witness statement which I have taken into consideration. The redactions proposed by the NCA to the representative sample of statements add further weight to these arguments. I accept the NCA's submission that there is a realistic possibility the risk will materialise if the Inquiry hears Sensitive Evidence in OPEN session at the hearings scheduled to commence on 3 March 2025. The risks set out only exist if there is a realistic possibility that criminal proceedings will be brought. At this stage no charges have been laid and the CPS is not formally instructed by the NCA. There remains, therefore, a possibility that charges will not be brought and, even if they are, for there to be a potentially significant delay between that decision and any criminal trial.
34. I am also satisfied that pending resolution of any investigation or criminal proceedings, the only way in which the Inquiry can hear evidence without putting at risk any future criminal prosecution is by granting a restriction order. I therefore consider that making such an order is conducive to the Inquiry fulfilling that part of its terms of reference which is fulfilled by Module 5. I have borne very much in mind that granting a restriction order is a significant infringement on the principle of open justice and the right of public access to the Inquiry's proceedings and information, as required by section 18. The terms of any restriction order I grant must be necessary in the public interest (s19(3)(b)) having regard, in particular, to the matters mentioned in subsection (4). I must achieve an appropriate balance of competing public interests. I am acutely conscious of the fact that any restriction on attendance, disclosure or publication may itself cause public concern and might inhibit the allaying of concern about procurement contracts. However, I am satisfied it is preferable (and the right balance of interests) for the Inquiry to continue its investigation and hear relevant evidence albeit subject to restrictions.

35. The restrictions suggested by the NCA in my view go far further than is necessary. First I reject the NCA's attempt to prohibit, as a class, any material which has been obtained by a criminal investigation from being disclosed and examined by an Inquiry. There is no such principle of general application. Second, nor is there (as appears to be suggested by the NCA) any property in the examination of a witness or their evidence. The Inquiry has, to date, already and could properly continue to gather evidence from the same witnesses as the NCA about PPE Medpro Ltd as part of its own investigation. I am of the view that it may be helpful for them to see their NCA evidence when preparing their Inquiry evidence if they would wish to do so. The wide ambit of paragraph c. of the NCA's draft restriction order seeks to limit the ability of the Inquiry to examine relevant evidence which it has obtained and is within its Terms of Reference. This is too wide an approach and is, in any event, not substantiated by any risk set out in the application.
36. Further, although the NCA refers to possible "*contamination of evidence*", the NCA accepts that it is not in a position to assess risk if I were to hear evidence which touches or concerns the PPE Mepro procurement process or persons associated with the company in the context of a CLOSED hearing. Therefore, if I conclude the right balance to be drawn is to order a closed hearing, there is no material before me to justify restricting the disclosure of material to Core Participants and witnesses (where the Inquiry considers it necessary for them to see the material in order to respond to the Inquiry's questions), nor would it be necessary to limit, control or in any other way restrict the questioning of witnesses, other than in the usual way to ensure all evidence is relevant to the Inquiry's investigation and requires examination at an oral hearing.
37. The Media Organisations suggest that the Inquiry, rather than sitting in CLOSED session, could adequately mitigate the risk of harm or damage by instead permitting the press and the public to attend the proceedings and making an order postponing their being reported. The Inquiry, it is submitted, could then not broadcast or publish those parts of the evidence deemed to be sensitive. However, in my Provisional Decision, I was minded to impose a strict limit on the time for which proceedings remain CLOSED. I consider that by time-limiting the CLOSED hearings and publications in this way, the right balance is achieved between open justice and limiting the risks identified by the NCA. I do not think that it is necessary, as suggested by the Media Organisations, for there to be a specific provision in the Restriction Order to provide for material in the public domain to be outside the scope of the order. It is plain that such material is, by definition, not sensitive.
38. If the Inquiry were to provide a live link to the CLOSED hearings this could increase the risk of harm or damage to the NCA's investigation. However, I consider this risk would be adequately mitigated by restricting access to the link to the Recognised Legal Representatives of the Core Participants, accompanied by an undertaking that they will only permit others to be present who are Core Participants and who have signed a document to the effect that they understand the reasons why a Restriction Order is in place, that breach of it is a criminal offence and what this means, i.e. that they must not record or repeat the content of the Inquiry's proceedings during the

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CLOSED hearing. A transcript of the CLOSED hearing may be provided to the Recognised Legal Representatives with the same undertaking as to the terms on which access is granted to Core Participants.

39. Although the NCA has indicated in its OPEN addendum that one accredited member of the press could be included in the CLOSED hearings, I am mindful of the sensible approach taken in the Dawn Sturgess Inquiry where up to five accredited members of the press were included in CLOSED hearings. I am asked to consider making an order which does not limit the number of accredited reporters who are permitted to attend any CLOSED hearing. However, in balancing the risk of harm or damage, even if inadvertently caused, it is in my view prudent to limit the number.
40. Accordingly, having been satisfied that there is a risk of prejudice to possible criminal proceedings of OPEN hearings and the publication of evidence, I confirm my provisional decision to grant the application but on a limited basis.
41. I consider that the risk of prejudice to possible criminal proceedings may be adequately mitigated and/or eliminated by implementing restrictions during the public hearings in the following ways:
 - a. There will be a Restriction Order in relation to Sensitive Evidence relating to PPE Medpro Ltd in the form of the Draft Restriction Order;
 - b. Any Sensitive Evidence (as defined under Annex A to the Restriction Order) will be provided to the Inquiry in CLOSED hearings;
 - c. Any CLOSED hearings will permit Core Participants to be in attendance (As set out at Annex B to the Restriction Order);
 - d. Any CLOSED hearing will permit a representative of the NCA to be present as a watching brief [TBC names] [x];
 - e. Up to five accredited reporters whose names will be confirmed to the Inquiry in advance will be permitted to attend the CLOSED hearing in person, subject to the reporting restrictions I impose;
 - f. The NCA will be provided with a copy of the Evidence Proposals of the witnesses called at the CLOSED hearings at the same time as the Core Participants;
 - g. In terms of a publicly available record of the evidence, there will be a recording of proceedings and a transcript. These will be made public at the conclusion of any criminal proceedings which may follow (including review and/or appeals);
 - h. Any CLOSED evidence will be made public at the conclusion of any criminal proceedings which may follow (including review and/or appeals);

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- i. In the event that I consider it necessary to have a CLOSED annex to the Module 5 Report, and any criminal proceedings are extant, it will be made public at the conclusion of those proceedings (including review and/or appeals).

24 January 2025
Baroness Hallett
Chair, UK Covid-19 Public Inquiry