



## **Inquiry Protocol on Warning Letters**

### **Introduction**

1. This Protocol sets out the approach that will be taken by the Inquiry to warning letters. Its purpose is to ensure that Core Participants and recipients of warning letters understand how the Inquiry will comply with its obligations under the Inquiry Rules 2006 (“the Rules”).
2. This Protocol should be read in conjunction with the relevant provisions of the Inquiries Act 2005 (“the Act”) and the Rules.
3. Under Rule 13(3) of the Rules the Chair must not include any explicit or significant criticism of a person in their report unless the Chair has sent that person a warning letter and the person has been given a reasonable opportunity to respond to that letter.
4. Rule 15 of the Rules provides that the Inquiry’s warning letters must -
  - a. state what the criticism or proposed criticism is;
  - b. contain a statement of the facts that the Chair considers substantiate the criticism or proposed criticism; and
  - c. refer to any evidence which supports those facts.
5. It is for the Chair to determine the warning letter process for this Inquiry. In doing so, the Chair will comply with her obligations under the Rules and will, in accordance with Section 17(3) of the Act, determine and conduct the process with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).
6. The requirement to send warning letters is not restricted to Core Participants or to those who have given oral or written evidence to the Inquiry.

### **Confidentiality**

7. Rule 14 of the Rules provides that the contents of a warning letter are to be treated as being subject to a duty of confidence owed by each member of the Inquiry team to the recipient, and by the recipient to the Chair. If the recipient has a recognised legal representative appointed under Rule 6 of the Rules, they are entitled to share the letter with them (Rule 13(2)) and they will then also owe a duty of confidence to the Chair (Rule 14(c)). This means that, unless the Chair has given express permission the recipient may only disclose the warning letter to their recognised legal representative.

8. The duty of confidence imposed on the recipient may be waived by the Chair. Without a written waiver from the Inquiry the recipient must not disclose the contents of the warning letter, its enclosures, or the fact that they have received a warning letter, to any other person except their recognised legal representative.
9. The Chair will waive the duty of confidence owed to her under Rule 14, without requiring an application to be made, to enable the recipient of a warning letter to disclose the contents of the warning letter to the following individuals (the “general waiver”) -
  - a. any member of the legal team appointed by the recipient’s recognised legal representative (solicitor or counsel) under Rule 8 of the Rules;
  - b. the named legal representative (solicitor or counsel) of the recipient of a warning letter where they do not have a legal representative recognised under Rule 6 of the Rules;
  - c. where the recipient is a Minister or official with an administrative Private Office, one member of that Private Office;
  - d. the recipient’s immediate line manager (if any).
10. The general waiver at paragraph 9 above is granted subject to the following conditions:
  - a. the recipient of the warning letter must notify the Inquiry of any person to whom they intend to disclose the contents of the warning letter under this waiver before the disclosure is made;
  - b. any person to whom disclosure is made under this general waiver is subject to the same duty of confidence owed to the Chair as the recipient of the warning letter; and
  - c. the recipient must make any person to whom the contents of the warning letter are disclosed aware of that duty of confidence.
11. The recipient of a warning letter, or of advance notice that one is likely to be issued, who wishes to request a waiver to share the report with anyone who does not fall within the remit of the general waiver set out at paragraph 9 above, must submit a written application to the Inquiry in accordance with the process set out at paragraph 17 below.
12. Under Rule 14(4) of the Rules, the duty of confidence imposed **on the recipient**, the recognised legal representative, and any other person in respect of whom the Chair has granted a waiver, ends when the relevant Inquiry module report is published.
13. The duty of confidence imposed **on the members of the Inquiry team** ends when the report is signed in accordance with section 24(4) of the Act (Rule 14(3)).
14. Any breach of a duty of confidence is actionable at the suit of the person to whom the duty is owed, subject to the defences applying to actions for breach of confidence (Rule 14(4)).

15. The contents of a warning letter are subject to any restriction on the disclosure of evidence, documents or information pursuant to Sections 19 (restriction orders made by the Chair) and 23 (risk of damage to the economy) of the Act or resulting from a determination of public interest immunity.

### Process

16. The Inquiry will notify likely recipients (via their recognised legal representative or named legal representative where applicable) of warning letters approximately four weeks in advance, where possible. If the legal representative is not instructed to receive the warning letter on behalf of the likely recipient, they must notify the Inquiry in writing within 7 days of receiving notification.
17. Where the Inquiry has notified a person (including via their recognised legal representative or named legal representative) that they are likely to receive a warning letter, applications for waivers of the duty of confidence may be sent to the Inquiry. Any application for waivers must be received by the date stipulated in the Inquiry's notice and set out the following:
  - a. the name of any individuals they are requesting a waiver in respect of;
  - b. details of their role and/or relationship with the recipient; and
  - c. an explanation as to why it is considered necessary that each individual has sight of the warning letter.
18. Such a request may be submitted by the legal representative on behalf of the likely recipient.
19. The Inquiry will confirm at the point the letter is issued which waivers have been granted by the Chair.
20. Where the recipient has a recognised legal representative, or a named legal representative, for the purposes of the Inquiry the warning letter will be sent directly to that named individual.
21. Where the recipient does not have a recognised legal representative, or a named legal representative, and has not previously engaged in correspondence with the Inquiry, the Inquiry will take reasonable steps to identify a contact address (email or postal) for that person so that the warning letter may be issued to them directly.
22. Upon receipt of a warning letter, any recipient (or their legal representative) may also seek waivers to the duty of confidentiality, ensuring such applications address the matters identified at paragraph 17(a)-(c) above. The Chair will endeavour to make a swift decision on any waivers sought after this time. The warning letter must not be shared more widely until the Chair has determined the waiver application.

### Responses

23. All warning letters will specify the email address to which a response should be sent and the date by which any response should be sent.

24. Requests for extensions of time must be made in writing to the Inquiry as soon as possible and no later than 48 hours before the expiry of the deadline for response stated in the warning letter. Any requests will be considered by the Inquiry on a case by case basis.
25. The Chair will consider carefully all responses received before finalising the Report. The Inquiry does not enter into correspondence regarding the Chair's consideration of responses, for example to confirm whether any amendments to or removal of proposed criticisms will result.
26. In accordance with Rule 16 of the Rules, in determining the weight to be accorded to any evidence, the Chair will disregard the fact that a warning letter was, or was not, sent to any person before the determination is made.

#### Section 40 Funding

27. Recipients of a warning letter are entitled to apply for funding for legal representation in accordance with Section 40 of the Act. Where a recipient wishes to do so, an application should be made in accordance with the [Inquiry Costs Protocol](#) and the [Notice of Determination made by the Prime Minister under Section 40\(4\) of the Act](#).
28. The Chair will not generally make awards in respect of the legal expenses of substantial bodies, or of individuals who could reasonably expect their legal expenses to be met by such bodies, unless there are special circumstances which justify a call on public funds.