

**In the matter of section 19(3) Inquiries Act 2005**  
**Application for restriction order by BEIS**  
**'Minded to' note**

**Introduction**

1. The Department for Business, Energy and Industrial Strategy (“**BEIS**”) has made an application dated 24 June 2022 for a restriction order, a draft of which has been submitted in the following terms:

“(a) The names of junior civil servants (those at Grades 6 and 7, Senior Executive Officer, Higher Executive Officer, Executive Officer and Administrative Officer or Assistant levels) shall be redacted from, anonymised or initialised in documents disclosed by the Inquiry to Core Participants and to the public and shall not be otherwise disclosed or published in any form, unless express permission is given by the Chair of the Inquiry, or the Solicitor to the Inquiry acting on his behalf.

(b) This order shall remain in force for the duration of the Inquiry and at all times thereafter, unless otherwise ordered.

(c) Any person affected by this order may apply for it to be varied or discharged on giving 24 hours’ notice to the Solicitor to the Inquiry.”

2. In line with the Protocol on Redaction, Anonymity and Restriction Orders (the “**Redaction Protocol**”), I have decided to issue this ‘minded to’ note expressing my preliminary view on the application, prior to receiving written submissions from Core Participants and the media. I have set a deadline of 4pm on 5 July 2022 for any such submissions.

**Background**

3. By way of background, the Inquiry has so far identified 408 documents which have been disclosed by BEIS and which have been determined to be relevant to the Inquiry’s Terms of Reference. These documents include Ministerial Submissions, notes and briefings to Ministers, minutes of meetings and reports of a group known as the Horizon Project Review Group, briefing notes, reports and official letters. The majority of documents which have so far been identified are more than 20 years old, relating to Phases 2 and 3 of the Inquiry. They will in due course be disclosed to Core Participants and witnesses, subject to the process of redactions. If they are referred to during the Inquiry’s hearings, they will also be published on the Inquiry’s website.

4. All of these documents have been through an initial redaction process (“**Stage 1**”) that has been undertaken by the Inquiry prior to returning the documents to the document provider for their own redaction comments (“**Stage 2**”). I understand that a process such as this is usual in statutory inquiries.
5. In accordance with the Redaction Protocol, the Inquiry has completed the following steps during Stage 1:
  - “9. On receipt of the documents, the Inquiry will review all documents before disclosure to ensure it complies with its own obligations under the UK General Data Protection Regulation and Data Protection Act 2018. The Inquiry’s approach to redaction of personal data is governed by the relevance of that data to the Inquiry and the necessity of its disclosure.
  10. The Inquiry will normally redact private addresses, private email addresses, private telephone numbers, dates of birth and signatures. Such information will be redacted without the need for any restriction order or order for anonymity (save where the particular information is relevant to the Inquiry’s Terms of Reference).
  11. The Inquiry will decide whether any other information needs to be redacted on a case-by-case basis.”
6. The documents therefore already contain redactions to personal data and redactions have been considered on a case-by-case basis (insofar as is possible based on information that is known to the Inquiry). For example, throughout these documents, there are proposed redactions to signatures and personal contact details. Document reviewers are mindful of the underlying relevance of the information to be disclosed and, where it is clear to a reviewer that an individual name is not relevant for the purpose of the Inquiry, the name is redacted.
7. There will always be cases where the Inquiry’s own reviewers are not aware of a case or context-specific reason why it is not necessary to disclose an individual’s name. It may be that an individual only held a purely secretarial role and had no substantive knowledge of the matters contained in the document. It may also be that an individual has good personal reasons for not being identified, which may outweigh the importance of their name being identified. Additionally, there may be some cases of human error, where a name should have been redacted but was missed.
8. Pausing there, I take as a starting point that the Minister has determined that the ‘public concern’ requirement of s.15(2) of the Inquiries Act 2005 is satisfied and that all documents that have been identified for disclosure have been determined to be relevant to the Terms

of Reference of the Inquiry which were set out by the Minister pursuant to addressing that public concern. The matters being investigated by this Inquiry are very serious indeed. Furthermore, in the context of this specific Inquiry, there are a wide range of questions to be answered which go to who knew what and when. One of the issues in the List of Issues asks, if Horizon was not fit for purpose, who knew? Another series of issues concerns 'Government Oversight' and addresses the adequacy of the mechanisms that were put in place. Who received what information within Government is relevant to the matters that I am determining. These are all matters which will clearly be in the balance when requests for further redactions are made.

9. As part of the redactions process, in order to take into account case or context specific reasons, there is the Stage 2 process. The Protocol provides as follows:

“12. When the Inquiry has decided which documents it intends to disclose to core participants with a view to putting them in evidence, it will inform the providers of documents (PoDs) so that those PoDs may indicate which part or parts of the document (if any) they seek to have redacted on the grounds that its disclosure is not relevant and necessary for the purposes of the Inquiry. Reasons must be given by PoDs for each proposed redaction.”

13. The Inquiry will consider all requests for redaction. PoDs will be notified before the document in question is disclosed to the core participants.

14. The Inquiry expects PoDs to adopt a measured approach when seeking redactions and will redact documents only where there is a good reason to do so.” [emphasis added].

10. I have underlined the two key sentences. It is expected, and I understand usual in statutory inquiries, for proper reasons to be given where additional redactions are sought and the good reasons explained.

11. In the present case, BEIS responded to the Stage 2 process by inserting an identical form of words in the document management system in respect of 227 documents, namely “*Personal information of junior Civil Servants*”. No attempt was made within the space provided to explain why the individual name is not relevant to the issues being investigated by the Inquiry or what case-specific reason there may be for redaction. BEIS was asked in early May (and again on 9 June) to include such case-specific reasons for redactions, but this request was rejected. It is in those circumstances that BEIS was asked to file the application for a Restriction Order which has now been provided to the Core Participants and the media.

### **'Minded to' indication**

12. I do not propose to give a full recitation and analysis of the law at this 'minded to' stage because I am only indicating a preliminary view. However, it is a view which seems to me to be in accordance with the UK GDPR and the Data Protection Act 2018. In short, I am minded to refuse the application.
13. The starting point is that I consider the names of junior officials that are contained in documents that have been determined to be relevant to the Inquiry's Terms of Reference (and which have not been redacted by the Inquiry's team of reviewers at Stage 1) to be relevant for the reasons I have set out at paragraph 8 above. This is an inquiry into very serious matters and where the issue of who knew what, when are of central importance. To use the language of the UK GDPR, it is "*necessary*" for those names to be disclosed.
14. The wide range of Core Participants in this Inquiry, which includes over 200 Subpostmasters, managers and assistants, Post Office Limited, Fujitsu Services Limited and a wide range of other organisations, individuals, regulators, unions and the police should be able to see those names in order to identify relevant witnesses, identify relevant evidence, suggest appropriate questions for witnesses, draw together themes or suggest lines of further inquiry. In the circumstances of this particular Inquiry there are many people who have been involved in the underlying issues for many years and who may be able to spot matters that are relevant to the issues to be determined and that are outside of my knowledge, the knowledge of my Assessors or the knowledge of the Inquiry Legal Team. They should be permitted to have that opportunity. I would remind BEIS that all Core Participants have signed confidentiality undertakings and it is only documents that are of sufficient importance to be referred to at a hearing that will be published to the world at large.
15. Whatever the position may or may not be in the context of a request under the Freedom of Information Act 2000 or even within a judicial review, every case of this nature will turn on its individual facts. Whilst BEIS has attempted to draw a line at junior civil servants, this is an artificial line to draw in the present circumstances. I would note, for example, that an individual who has been referred to as 'Team Leader' in the Posts Directorate of the-then Department of Trade and Industry was a junior civil servant at Higher Executive Officer level.

16. Significantly, there are also names of individuals who have been referred to as “*junior civil servants*” in the application by BEIS but who undoubtedly no longer fall within that category (assuming that they did at the time that the document was produced). One individual who BEIS seek to redact is now a High Commissioner, another individual was promoted over the course of the period covered by this Inquiry and served as a Director General in the civil service. Whilst it has been possible for the Inquiry to conduct its own research and establish this information from open source searches, it serves to demonstrate why BEIS’s proposal for the Inquiry to redact or anonymise in the first instance will not work. Such an approach would also impair the efficiency and effectiveness of the Inquiry and would undermine the important public interest in reaching conclusions and making recommendations within a reasonable timeframe.
17. I would like to reiterate that BEIS have always been able to propose case and fact-specific reasons for any redactions, including to individual junior civil servants who, for example, by reason of their personal circumstances, should be redacted.
18. In light of the fact that the Inquiry has already considered the necessity of disclosure of the names contained within documents that it is proposing for disclosure (Stage 1) and the fact that it is always willing to consider fact-specific reasons for further redaction (Stage 2) a broad Restriction Order of the type that is proposed by BEIS is unnecessary.

**Sir Wyn Williams**

**29 June 2022**