



**IN THE INDEPENDENT INQUIRY RELATING TO AFGHANISTAN**

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**OPEN RULING**

**ON THE APPROACH IN PRINCIPLE  
TO RESTRICTED CLOSED HEARINGS  
AND ‘NEITHER CONFIRM NOR DENY’**

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## **INTRODUCTION**

1. This is my decision in relation to two matters:
  - (1) As to whether this Inquiry may, in principle, restrict evidence (including evidence given at hearings) from all Core Participants, including the Ministry of Defence (“MOD”) and the Secretary of State for Defence (“SSD”), *i.e.* hold a Restricted Closed Hearing (“RCH”<sup>1</sup>); and
  - (2) If so, whether it might be proper, in the above circumstances, for the Inquiry to neither confirm nor deny (“NCND”) as to whether such evidence has been received, or whether an RCH has, or may have, taken place.
2. This ruling relates to matters of principle, only. It does not make any Restriction Order. It does not decide whether, in any particular circumstances, it would or would not be right to NCND whether such a hearing had in fact taken place. That question has to be determined on a case-by-case basis.
3. There is no CLOSED counterpart to this decision.

## **PROCEDURAL BACKGROUND**

### *First round of submissions*

4. The possibility of conducting CLOSED hearings, attendance at which was restricted, was intimated in Counsel to the Inquiry (“CTI”)’s [Note](#) of 17 June 2024 regarding Restriction Orders for Autumn 2024 Hearings (“the First CTI Note”). Within that note, at paragraph 17, CTI explained that “...*there are likely to be IIA witnesses where it will be necessary to apply for a Restriction Order for a restricted CLOSED hearing whereby disclosure of the hearing bundle and attendance at any hearing is limited to Inquiry team members and the witness’ legal representative where the witness is represented.*”
5. Following this, Core Participants served submissions and correspondence on issues that touched upon the question of whether the Inquiry might, in principle, restrict evidence (including evidence given at hearings) from *all* Core Participants, including the MODCT<sup>2</sup>, in a situation referred to for the purposes of this ruling as a RCH. At that stage, I was not minded to give a general ruling on the issue.

### *Second round of submissions*

6. On 22 May 2025, CTI served a Note (“the Second CTI Note”) to assist Core Participants and other interested parties as to the proposed approach to Restriction Orders for CLOSED hearings involving a cohort of witnesses who were unwilling to give evidence other than in a

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<sup>1</sup> This decision does not relate to other Restriction Orders that may impose restrictions (but lesser restrictions) on attendance at hearings and disclosure of evidence (e.g. the ‘Green Hearings’ restriction order).

<sup>2</sup> At the time, the Ministry of Defence was a single Core Participant with two teams representing different interests: the Corporate Team (“MODCT”) and the Witness Team (“MODWLT”)

highly restricted setting at which no military personnel, or those connected with the military, were present which were provisionally scheduled to take place later that year (and which became known as “Green Hearings”). This led to a second round of submissions from Core Participants and media interests. Consideration was given as to how to reconcile Restriction Orders which prohibited any disclosure of material, including to the MOD, with the fact that at the conclusion of the Inquiry, evidence and the responsibility for maintaining Restriction Orders would pass to the SSD as the Minister who established the Inquiry, in accordance with section 20(7) of the Inquiries Act 2005 (“the 2005 Act”).

7. The MODCT proposed that any such restricted material could (safely) be provided to a tightly and closely defined small group comprising senior civilian figures, including the SSD, the Permanent Secretary for MOD (“PUS”), a small number of supporting staff and senior legal advisors (collectively the ‘Green restricted group’). Notably the Green restricted group, would not (and does not) contain any military personnel. The Green restricted group would then hold the material, maintaining the confidence of Restriction Orders and those who were subject to them. Following consideration of submissions and evidence I issued my two OPEN and one CLOSED Rulings on ‘Green Hearings’ dated 21 June 2025. The Inquiry subsequently held a number of ‘Green Hearings’ from which the MODWLT and others were excluded, and only members of the ‘Green restricted group’ were permitted to attend. There followed further correspondence.

*Witness IIIA126 v Chair of the Independent Inquiry relating to Afghanistan*

8. The MODWLT challenged the lawfulness of my ‘Green Hearings’ Rulings in Judicial Review proceedings issued on 29 July 2025 (“the Green Hearings JR”). These proceedings are on-going and directions hearings took place in October 2025 and in January 2026. It is anticipated that a rolled up hearing of the judicial review will be listed to be heard in the Summer of 2026. Given the current timescale of the Green Hearings JR, and the need to achieve clarity in relation to the RCH as soon as possible, I am clear that this Ruling should be a final ruling in principle, rather than a minded-to ruling (see further below).

*Third round of submissions*

9. Over the Summer of 2025, MODCT inquired in correspondence whether any hearings had taken place from which they had been excluded. The Solicitor to the Inquiry (“STI”), replied that the Inquiry would ‘neither confirm nor deny’ whether any such hearings had taken place. On 15 September 2025, STI issued a letter noting that correspondence and inviting further submissions from Core Participants and interested parties on the following questions, namely whether:
  - (1) The Inquiry may, in principle, restrict evidence (including evidence given at hearings) from *all* Core Participants, including the MODCT, and
  - (2) If so, whether it might be proper, in the above circumstances, for the Inquiry to neither confirm nor deny (*i.e.* NCND) as to whether such evidence has been received or, indeed, whether such a hearing had in fact taken place at all.
  - (3) Whether the Inquiry should disclose to the MODCT the true identity of a number of IIA

witnesses.

10. Following further submissions on these questions from Core Participants, STI circulated a further detailed Note on 27 November 2025 (“the Third CTI Note”), in which CTI helpfully analysed the competing submissions and concluded:
- (1) Paragraph 16: *“Whilst it is possible at a later stage to relax a restriction order to make greater disclosure; once disclosure has been given, it is not possible to rescind it. It is therefore arguable it is both necessary and appropriate, to ensure the witnesses are afforded the requisite protection, for the Chair to take a precautionary approach.”*
  - (2) Paragraph 40: *“In conclusion, the Chair may consider that there would need to be specific factors and evidence which meant it would be necessary to impose a restriction that went beyond that (very high level of protection and restriction) provided for in a ‘Green Hearing’ Restriction Order” (i.e. for RCH).*
  - (3) Paragraph 41: *“[T]he Chair may well agree with MODCT’s submission that a mere assessment made by the Inquiry Legal Team of the necessity of a ‘restricted closed hearing’ may be insufficient’. The Chair would require a sound basis upon which to make his independent assessment of the necessity for such a hearing. Similarly, a ‘general preference for reduced attendance in court’, without any other factor would not make a restricted closed hearing necessary.”*
  - (4) Paragraph 52: *“If... the Chair concluded that as a matter of principle, it is lawful not to inform a Core Participant that a hearing from which they were restricted was to take place (or has taken place), it would logically follow that an NCND approach to confirming whether such a hearing has taken place or would take place is correct. To do otherwise would mean that the ability to hold a hearing without informing a Core Participant would not be available, as the answer would be revealed by repeatedly asking whether there had been or would be such a hearing.”*

*Fourth round of submissions*

11. Following the Third CTI Note, the Core Participants served a fourth round of written submissions.

**SUBMISSIONS**

12. I have carefully considered all four rounds of submissions and correspondence received from each Core Participant, which are summarised below.

*The Ministry of Defence*

*Ministry of Defence Corporate Team (“MODCT”)*

13. The MODCT represents the SSD, and the general interests of the Ministry of Defence, for which the SSD is ultimately responsible, including (a) the Royal Navy, (b) the Army, (c) the Royal Air Force, and (d) Cyber and Specialist Operations Command (including UK Special

Forces).

14. The MODCT served the following submissions and letters:

- (1) A letter to the Inquiry dated 7 May 2024
- (2) Written submissions dated 1 July 2024
- (3) Written submissions dated 23 December 2024 (regarding IIA125 and IIA131)
- (4) A letter to the Inquiry dated 18 June 2025
- (5) A letter to the Inquiry dated 8 August 2025
- (6) A letter to the Inquiry dated 5 September 2025
- (7) Written submissions dated 6 October 2025
- (8) Written submissions dated 19 December 2025

15. In their submissions dated 1 July 2024, the MODCT accept that:

*“[S]ubject to the requirement of fairness (section 17 of the 2005 Act) [the Chair] undoubtedly has the power to restrict attendance at any part of the Inquiry and to restrict the disclosure or publication of any evidence given at a hearing (section 19), a decision to exclude all Core Participants from a hearing would on any view be an exceptional measure”.*

16. MODCT submit that restrictions of the type proposed in the First CTI Note should be sought by the relevant witness or witnesses themselves, rather than being offered by the Inquiry Legal Team (“ILT”), adding that it is their view that it would not be lawful for the ILT to provide any *“prospective, unilateral guarantee of confidentiality to classes of witnesses that might approach the Inquiry”*. Each application must be considered on its own facts and merits, and any decision to impose such an exceptional measure should be accompanied by a reasoned ruling from the Chair explaining the rationale for the restriction.
17. MODCT submit that, as far as possible and provided it does not undermine the purpose of the restriction sought or any other sensitivities, applications for Restriction Orders and the supporting evidence should be disclosed to the Core Participants whom it is proposed to exclude from the hearing, stating that this is necessary to allow those Core Participants an opportunity to comment on the application. Where it is genuinely impossible to provide any detail at all about an application to a Core Participant who may be excluded, MODCT submit that the Inquiry must at a minimum inform that participant that an application has been made and provide them with a copy of any resulting Restriction Order.
18. Under the statutory scheme, the Chair’s final report and recommendations must be provided in full to the relevant Minister, in this case the SSD. While it has been the practice in previous public inquiries for Chairs to produce a confidential or ‘*secret annex*’ with a restricted readership and no publication, the legislation does not permit any part of the report or its recommendations to be withheld from the Minister. Accordingly, MODCT submit that all contents of the report must ultimately be disclosed to the SSD, this would include all material relevant to RCH.
19. MODCT submit that, if I were minded to make a Restriction Order preventing the SSD from accessing the evidence of a particular witness, I would need to confront the consequence that

such evidence could not lawfully be included in the final report. In making any such order, I would therefore be required to explain expressly why, notwithstanding the resulting exclusion of that evidence from the report, it is nevertheless appropriate to prevent access not only by other Core Participants but also by the SSD.

20. Following the conclusion of the Inquiry, responsibility for the oversight of all extant Restriction Orders transfers to the Minister, who has statutory power to revoke or vary them. MODCT submit that in order to perform that function, the SSD must have access to all of the evidential material protected by any ongoing Restriction Orders, including witness statements and transcripts. Whether or not the SSD ultimately decides to amend or revoke an order, they must be able to review the protected material to inform that decision. MODCT therefore conclude that I cannot, by means of a Restriction Order, lawfully prevent the SSD from accessing material required to discharge their statutory duties.
21. In contrast to the above, MODCT submit that I could, consistently with section 20(7) of the 2005 Act, make a Restriction Order excluding the SSD from access to a particular witness's evidence provided that the order expired at the end of the Inquiry. However, MODCT explain that this would give rise to a significant anomaly, as the SSD would be denied access to the evidence only for the duration of the Inquiry, notwithstanding that he would necessarily have full access to it immediately once the Inquiry concluded. It is therefore unclear what practical purpose would be served by excluding the SSD on a time-limited basis.
22. MODCT conclude that, if I were nonetheless minded to adopt this approach, I would need to set out clearly and fully in my ruling the rationale for taking it and recommend that I should give serious consideration to allowing the SSD access to the evidence of all Inquiry witnesses, even in circumstances where I consider it appropriate to make a Restriction Order excluding all other Core Participants.
23. In their submissions dated 6 October 2025, MODCT again expressly accept that in principle the Chair can make a Restriction Order under section 19 of the 2005 Act excluding all Core Participants, including the MODCT, from access to evidence (as accepted in paragraph 14 of their July 2024 submissions).
24. So far as RCH is concerned however, MODCT submitted:
  - (1) *As a matter of fairness and transparency, the Inquiry should take as its starting point the desirability of making all evidence available to all Core Participants. The default position is that all documentary evidence upon which the Inquiry intends to rely should be disclosed and Core Participants should have access to all evidential hearings.*
  - (2) *That said, section 19 of the Inquiries Act 2005 ("the 2005 Act") allocates to the Chair extensive and important powers to depart from that starting point. In practice, Restriction Orders are widely used and are essential to the proper conduct of most public inquiries.*
  - (3) *We accept (and this is the short answer to the question raised) that in principle the Chair can make a Restriction Order under section 19 of the 2005 Act excluding all Core Participants, including the MODCT, from access to evidence - be it evidence in*

*documentary form or oral evidence given at a hearing. See paragraph 14 of our July 2024 submissions.*

- (4) *But there are two further important points to make.*
- (5) *First, any restriction on a Core Participant's access to evidence should be regarded as an exceptional measure. It should only be made if it is necessary – or, to put it another way, if there is no lesser alternative. Given the exceptional nature of the measure, the Chair must be satisfied of the need to hold a 'Green'/'restricted closed' hearing on the basis of an application and evidence from the individual in question. For the avoidance of doubt, an assessment made by the Inquiry Legal team ("ILT") of the necessity of a 'restricted closed' hearing will not be sufficient. Nor would it be sufficient for a witness to express a general preference for reduced attendance in court. No doubt most witnesses in legal proceedings would prefer that their evidence was provided in a less public environment: that is not the test. See paragraph 16 of our July 2024 submissions. If at all possible, the Core Participant in question should be given advance notice of the intended restriction, and as much information about it as possible to enable meaningful submissions to be made. See paragraph 18 of our July 2024 submissions. This is what happened in relation to the 'Green' hearings and it is difficult, if not impossible, to conceive of circumstances in which Core Participants could not be provided with that opportunity.*
- (6) *Second, the SSD is in a different position in this regard to other Core Participants. His statutory functions under the 2005 Act require him to have access to all restricted material after the conclusion of the Inquiry. Whilst (as above) it is accepted that in principle the Chair has the power to exclude the SSD from access to evidence during the course of the Inquiry, in making a Restriction Order with that effect the Chair would have to confront the fact that the SSD will have access to the material in question in due course, and reach a rational conclusion that notwithstanding this fact it is necessary and appropriate to exclude the SSD from the evidence on a temporary basis. See paragraphs 19-27 of our July 2024 submissions."*

25. So far as NCND is concerned, they contend:

- (1) *For the reasons set out at paragraph 18 of our July 2024 submissions (and as summarised at paragraph 4(e) above), in advance of making a Restriction Order excluding a Core Participant from a hearing, the Inquiry ought to provide that Core Participant with as much information as possible about the Restriction Order application to enable the Core Participant to make submissions. It may obviously be the case that certain information has to be withheld. It is very difficult to see, though, that a Core Participant could not be told (at least) of the mere fact of an intended hearing from which it was to be excluded. Indeed, the process followed in respect of the 'Green' hearing(s), when the Core Participants were invited, in advance of the intended hearing(s), to make submissions in principle regarding the intended scope of the proposed Restriction Order (guided by a limited summary of the nature of the evidence which the Inquiry anticipated it would receive) demonstrate how such a process can (and should) work. It is even more difficult, indeed for practical purposes impossible, to comprehend how – after the event – the mere fact that a Core Participant has been*

*excluded from a hearing (or that documentary evidence has been withheld from the CP) is sufficiently sensitive to justify withholding from the Core Participant this important procedural information. Again, the process followed in respect of the 'Green' hearing(s) tends to support that analysis.*

- (2) *Our answer to the question is therefore that it is not proper for an Inquiry to refuse to provide a 'yes' or 'no' answer to a Core Participant's bare query as to whether an evidential hearing has taken place in its absence, or whether the Inquiry has adduced documentary evidence that it has not shared with the Core Participant."*

*Ministry of Defence Witness Legal Team ("MODWLT")*

26. The MODWLT served the following submissions and materials:
- (1) Written submissions dated 2 July 2024
  - (2) Written submissions dated 2 June 2025
  - (3) Witness IIA126's Statement of Facts and Grounds dated 7 July 2025
  - (4) Written submissions dated 28 September 2025
  - (5) Written submissions dated 19 December 2025
27. In their first set of submissions, the MODWLT oppose the proposals for RCH on the basis that it contravenes the requirement for the Chair to 'act with fairness' pursuant to section 17 of the 2005 Act. MODWLT submit that Restriction Orders represent a departure from the fundamental principle of open justice, under which court hearings are ordinarily held in public and judgments identify witnesses. Any such departure, including on grounds of national security, must therefore be justified by clear and cogent evidence. The MODWLT submit that the use of RCH is not justified in this Inquiry. In its view, such measures go beyond what is permissible and undermine the principle of open justice. MODWLT further submit that this concern is heightened by the nature of the Inquiry, which involves the investigation of serious criminal allegations. In that context, particularly exacting standards of openness and procedural fairness are required.
28. MODWLT add that CTI's suggestion in their First CTI Note that certain individuals will only provide evidence to the Inquiry if strict confidentiality is guaranteed is misguided. At paragraph 10 of their submissions, the MODWLT submits that *"the need for superseding restriction orders and restricted CLOSED hearings is not justified and in any event such hearings stray unacceptably far from the principle of open justice."* At paragraph 17, MODWLT submit that this would permit such witnesses to give evidence on the basis that neither their identities nor the substance of their evidence is disclosed to other Inquiry participants. The MODWLT submit that issuing 'superseding Restriction Orders' to reflect the personal preferences or stipulations of individual witnesses would be exceptional and unprecedented. MODWLT go further to say that this approach finds no basis in the legislative framework governing statutory inquiries and, so far as the MODWLT is aware, has not been adopted by any other inquiry team.
29. MODWLT submit that the Inquiry has publicly invited individuals to come forward on the assurance that confidentiality would be maintained, and these assurances are already safeguarded by my existing provisional Restriction Order on anonymity and the established

Restriction Order governing CLOSED hearings, which include the State Core Participants and the MODWLT. These measures ensure that identities are not disclosed to other witnesses or to the public. Where necessary, proportionate and targeted mitigations - such as restricting the attendance of specific individuals - can be employed, as has occurred in earlier hearings, without resorting to 'blanket non-disclosure' of evidence.

30. The MODWLT submit that allowing material evidence to be withheld from those directly affected by its content would risk undermining fairness. Such an approach may incentivise affected individuals to adopt a more cautious stance and to limit or decline their cooperation in accordance with their legal rights. The MODWLT submit that it would be incompatible with the Inquiry's duty of fairness to place witnesses who have approached the Inquiry directly in a more favourable position than others, adding that such an approach would effectively allow those witnesses to: (a) choose whether to give evidence; (b) control who is informed of the existence or content of that evidence; and (c) give evidence free from any meaningful challenge. MODWLT conclude that this would undermine consistency, fairness and the integrity of the Inquiry process.
31. In further submissions dated 28 September 2025, MODWLT refer to their earlier submissions and reaffirm their submission that the holding of hearings that restrict Core Participants attendance, to include MODCT is irrational and unlawful on the basis that such hearings breach the Chair's duty to conduct the Inquiry with fairness: section 17(3) of the 2005 Act. In respect of NCND, the MODWLT submit that a core precondition for any proper application of the NCND principle is that confirmation or denial of the fact in issue would give rise to a tangible risk of harm. The burden lies on the party invoking NCND to demonstrate the nature of that harm. In the present case, MODWLT submit that the Inquiry has not asserted that any harm would result from confirming or denying whether RCH have taken place. MODWLT state that, in the absence of further contextual disclosure, it is difficult to conceive how confirmation of that limited procedural fact to the MODCT and the MODWLT could damage national security or engage any wider public interest. MODWLT conclude that the Inquiry's reliance on NCND in these circumstances is to be characterised as unprecedented in the context of a statutory inquiry. Given the absence of any articulated risk or reasoned justification, and the failure to explain the harm that NCND is said to avert, MODWLT conclude that reliance on NCND in this instance is neither proper nor reasonable.
32. MODWLT's additional submissions dated 9 December 2025 refer to their stance made in previous submissions summarised above. MODWLT seek to clarify that MODWLT's concerns relate to their exclusion from hearings at which the Inquiry is receiving evidence in relation to matters of relevance to the position of the WLT witnesses.
33. The MODWLT submissions urge me to make a final ruling rather than a provisional ("minded to") decision pending the outcome of the extant judicial review. Given the implications of previous Green Hearings Restriction Order decisions, any further RCH— particularly those which exclude the MODCT—are likely to involve evidence of potentially significant relevance to WLT witnesses and to attract exceptional procedural protections. In those circumstances, MODWLT submit that fairness requires a prompt and final determination so that affected parties are able to understand their position clearly and obtain legal advice, including in relation to self-incrimination. The MODWLT further submit that, as the Inquiry approaches its third year, it is 'imperative', in the interests of fairness, transparency,

efficiency, and the public purse, that procedures governing the receipt of evidence are settled as definitively as possible for the benefit of Core Participants and the public.

34. The MODWLT's submissions dated 28 September 2025 include a quote given to the Undercover Policing Inquiry by Paddy McGuinness, Deputy National Security Adviser of the National Security Secretariat at the Cabinet Office, who explained NCND in the following way:

*“6 (...) The NCND principle is a mechanism used to protect sensitive information and applies where secrecy is necessary in the public interest; and where this mechanism avoids the risk of damage that a confirmation or denial would create.”*

35. The MODWLT submit that a “core precondition for any proper reliance on the NCND principle is that a risk of damage must flow from the confirmation or denial of the particular fact in issue. It is for the person giving the NCND response to demonstrate the harm that would eventuate.” MODWLT go on to state that it is ‘inconceivable’ that such confirmation to MODCT or MODWLT could directly or indirectly damage national security (or engage any other public interest).
36. MODWLT conclude that the Inquiry's reliance on NCND in respect of RCH is “not proper or reasonable”.

#### The Afghan Families

37. Leigh Day have served the following submissions on behalf of the Afghan Families:
- (1) Written submissions dated 1 July 2024
  - (2) Written submissions dated 6 October 2025
38. The Afghan Families submit that I may, in principle, restrict evidence from any Core Participant. This includes the MODCT and SSD where strictly necessary to obtain evidence or for the Inquiry to fulfil its Terms of Reference. In addition, the Afghan Families submit that I may impose a Restriction Order in respect of whether and when restricted hearings have taken place, but only in narrow circumstances, namely where:
- (1) the order is founded on a very careful scrutiny of the evidence that is said to justify it;
  - (2) the Chair is satisfied that the interests that the Restriction Order is said to be necessary to protect cannot be protected by other means; and
  - (3) the basis and necessity for the order is kept under rigorous ongoing review.
39. Furthermore, the Afghan Families submit that I am not required to disclose the true identities of the witnesses who have approached this Inquiry directly with evidence pertinent to its investigation to the MODCT. The Afghan Families highlight the fact that Inquiry may be faced with a ‘stark choice’ between hearing evidence under restricted conditions versus not hearing evidence at all, and submit that in this scenario, the Inquiry ‘can and should’ hear evidence under the restricted conditions. They submit that the Inquiry's Article 2 obligations

thus militate strongly in favour of any measures which are necessary in order to obtain important evidence, without which the Inquiry may not be able to establish the “*full facts*” and to expose any “*culpable and discreditable conduct*”.

40. In respect of the SSD being excluded from (or ‘restricted out’ of) hearings, the Afghan Families submit that there is no reason in principle why I cannot impose a Restriction Order to that effect. They submit that Section 19 of the 2005 Act ‘Restrictions on public access’, places no constraints on the category of persons on who the Chair may impose restrictions on. They point out that the Inquiry Terms of Reference require me as Chair to report my conclusions to the SSD, but I am not under an obligation to report on the substance of each piece of evidence received. They submit that the contrary conclusion, *i.e.* that the SSD has ‘absolute entitlement to attend all hearings and see all evidence’, risks compromising the independence of the Inquiry from the executive body that established it.
41. In respect of NCND, the Afghan Families submit that in line with its submissions that the Inquiry can in principle hold a hearing from which the MODCT is excluded, it may also be appropriate for the Inquiry to invoke a NCND policy to avoid disclosing such information, but only in specific circumstances which demand non-disclosure of those specific details.
42. The Afghan Families detail these circumstances as where:

*“15.1. First, the Chair must be satisfied on the evidence there is a compelling public interest in withholding the information (e.g. that disclosure of the specific category of information would expose a witness to a real and evidenced risk of harm).*

*15.2. Second, the Chair be satisfied that the public interest cannot be adequately protected by other means. For example, if the risks to witnesses can be met by other safety and security measures, then those measures should be invoked and the information regarding the occurrence of the hearings should be disclosed.*

*15.3. Third, the Chair must keep any decision to neither confirm nor deny the existence of a restricted hearing under rigorous and ongoing review. The Inquiry should be alive to the possibility that it may be possible to relax any restriction orders relating to whether or not restricted hearings have been held prior to the conclusion of the Inquiry, as, in many cases, the interest in withholding the information may fall away once the hearings have concluded.”*

*The Royal Military Police (“RMP”)*

43. The Royal Military Police (“RMP”) served the following submissions and materials:
  - (1) Written submissions dated 1 July 2024
  - (2) Written submissions dated 28 October 2025
  - (3) Letter to the Inquiry dated 12 December 2025
  - (4) Letter to the Inquiry dated 14 January 2026
44. The RMP submit that they have confidence in the judgements of the Chairman in respect of measures that are necessary in relation to any particular witness in order to secure their best

evidence. The RMP has therefore adopted a position of neutrality in respect of RCH. In their original submissions, the RMP made the following points:

- (1) First, the MoD's submissions about the impact of an RCH order at the conclusion of the Inquiry seem to the RMP to deserve consideration.
- (2) Second, where the Chairman is considering making an RCH order, they suggest that the issues are or may not be the same in relation to all state Core Participants. In other words, it may be that the circumstances require the exclusion of one state core participant, but not another.
- (3) Third, in the event that the Inquiry hears any evidence in a RCH hearing that reveals a matter that requires investigation by the Service Police (in circumstances in which the RMP is not present), they invite the Inquiry to establish some process by which the RMP is informed of that fact.

45. In later submissions dated 28 October 2025, the RMP repeated its support for the Inquiry and deferred to its judgment on whether, and to what extent, RCH could be held. This is broadly in line with the RMP's neutral position on comparable issues, including the 'Green' hearings. The RMP remind me of the MODCT's concerns about the implications of exclusion from RCH at the conclusion of the Inquiry and that this merits careful consideration.
46. The RMP maintain their position in relation to any RCH that exclude the MODCT, adding that it is their submission that while such hearings may be theoretically possible, the RMP considers that they are likely to present significant practical difficulties, potentially rendering them undesirable or unworkable. In particular, the RMP cautions that assurances to witnesses that their evidence would not be known within the MOD could not reliably be maintained, given the handling of evidence following the conclusion of the Inquiry.
47. In respect of NCND, the RMP submit that their position on whether the Inquiry could adopt a NCND approach to whether RCHs have been held mirrors its position on holding such hearings generally, i.e. while an NCND approach is theoretically permissible, there is nothing in the Inquiries Act 2005 or the Inquiry Rules 2006 that prohibits it, and it would be open to the Inquiry to adopt where justified on the facts. However, the RMP submits that previously the Chair has recognised that adopting an NCND approach represents a departure from ordinary procedural norms and would require evidentiary justification akin to that required for Public Interest Immunity (Chair's OPEN Ruling, 22 September 2025, para 90(5)).
48. The RMP submit that it considers it highly unlikely that such evidentiary justification could be met in relation to whether a particular type of hearing has taken place. Disclosure of the bare fact that hearings occurred—without identifying witnesses, subject matter, or evidence—would need to cause sufficient harm to justify departure from the open justice principle, s.18 of the 2005 Act, fairness requirements in s.17(3), and Core Participants' participation rights under the Inquiry Rules.
49. Even where statutory or legal obligations mandate restrictions on disclosure of evidence under s.19(3)(a), the RMP submit that they consider it difficult to see how this would extend to requiring an NCND response to the question of whether hearings excluding all Core

Participants have taken place.

*Final or minded-to Ruling; necessity for an oral hearing*

50. The Core Participants also made submissions on (a) whether I should make a ‘minded-to’ or final Ruling, and (b) whether I should hold an oral hearing. As to (a), the MODCT and, to an extent, the RMP suggested there was merit in a minded-to decision at this stage in view of the ongoing JR into ‘Green Hearings’. The MODWLT have emphasised the need for procedural clarity as a priority going forward. As to (b), neither the RMP, nor MODCT, nor the Afghan Families requested an oral hearing; but the MODWLT did on the basis that the matters raised were of ‘great significance’ to the MODWLT witnesses.

## **LEGAL FRAMEWORK**

51. The Legal Framework for Restriction Orders has been extensively considered and debated within written and oral submissions on numerous previous occasions, and at separate CLOSED hearings. The general principles are set out *in extenso* in my OPEN Ruling dated 21 August 2023, and in my OPEN Green Hearings Rulings, and it is not necessary to rehearse them all again in full here. For the avoidance of doubt, I have taken full account in this Ruling of all relevant principles and considerations set out in my earlier Rulings, including in particular the statutory provisions under the 2005 Act. However, for convenience and the sake of good order, I set out below the salient statutory provisions, principles and precepts, and key considerations.

*The Inquiries Act 2005*

52. As I emphasised in my OPEN Ruling of 21 August 2023, open justice is at the heart of our system of justice and applies equally to those conducting quasi-judicial inquiries (*c.f.* see Toulson LJ in *R (Guardian news and Media) v City of Westminster Magistrates’ Court* [2012] EWCA Civ 420 at [1]) and Lord Mance in *Kennedy v Charity Commission* [2014] UKSC 20 at [124]).
53. The principle of open justice is enshrined in the Inquiries Act 2005. It is important to be reminded of the salient provisions of the 2005 Act.
54. Section 17 of the 2005 Act requires the Chair to act with fairness and with regard to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others) when making any decision as to the procedure or conduct of an inquiry. The relevant parts of Section 17 provide:
- (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).”*
55. Section 18 of the 2005 Act which contains a presumption that an inquiry initiated under its

provisions will be held in public. Section 18 provides:

- (1) *Subject to any restrictions imposed by a[n].. 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...*
  - (b) *to obtain or to view a record of evidence and documents...*

56. However, section 19 of the 2005 Act gives the Chair the power to restrict public access to hearings and evidence where appropriate. The exercise of this power involves balancing a number of competing considerations in the public interest. Section 19 provides:

*19. Restrictions on public access etc*

- (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.*
- (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.*

57. At the end of a public inquiry, the Minister (in this case the SSD) assumes responsibility for all extant Restriction Orders previously made by the Chair. The Minister then has the power to vary or revoke a restriction order. Section 20 provides

*20 Further provisions about restriction notices and orders*

...

(3) *The Minister may vary or revoke a restriction notice by giving a further notice to the chairman at any time before the end of the inquiry.*

...

(7) *After the end of an inquiry the Minister may, by a notice published in a way that he considers suitable—*

- (a) *revoke a restriction order or restriction notice containing disclosure restrictions that are still in force, or*
- (b) *vary it so as to remove or relax any of the restrictions.*

58. In broad terms, the effect of these statutory provisions can be summarised as follows:

- (1) The Chair determines the conduct and procedure of an inquiry, and must act with fairness and avoiding unnecessary cost (section 17).
- (2) There is a presumption that a statutory inquiry will be held in public (section 18).
- (3) The Chair has power to restrict public access to hearings or evidence but only where (a) required by any statutory provision or rule of law, or (b) conducive to the Inquiry fulfilling its terms of reference, or (c) necessary in the public interest (section 19(3)(b)).
- (4) In determining whether a Restriction Order should be made, the Chair is required to consider a number of factors: (a) any risk of harm or damage (including death or injury and damage to national security or international relations); (b) conditions of confidentiality; (c) the extent to which any restriction might inhibit the allaying of public concern; (d) the extent to which the absence of a restriction would be likely to (i) cause delay or to impair the efficiency or effectiveness of the inquiry; or (ii) result in additional cost (section 19(4) and 19(5)).
- (5) The Minister may vary or revoke a restriction notice they have made at any time before the end of the inquiry, or after the end of an inquiry; but may vary or revoke any restriction order made by the chair only after the end of the inquiry (section 20).

*The Inquiry Rules 2006*

59. The Inquiry Rules 2006 provide that no inquiry may make an explicit or significant criticism

of a person in its report without sending them a warning letter, and that person must be given a reasonable opportunity to respond to the letter (Inquiry Rules 2006, Rule 13(1) and (3)).

60. A warning letter must set out the criticism, along with a statement of the facts that support the criticism and referring to the evidence that supports those facts (Inquiry Rules 2006, Rule 15(1)). Rule 15(4) further provides: “*15(4) Paragraphs (1) to (3) are subject to any restrictions on the disclosure of evidence, documents or information pursuant to sections 19 and 23 of the Act 7 [Restriction Orders], or resulting from a determination of public interest immunity.*”

*Inquisitorial nature of an inquiry*

61. As I explained in paragraph 44 of my OPEN Ruling dated 21 August 2023, and as Lord Scarman was at pains to stress in the *Red Lion Square Inquiry* in 1974, it important to be reminded of the fundamental difference between the adversarial process of court proceedings and the inquisitorial process of an inquiry such as this is fully understood. An inquiry involves no parties, no issues as in a suit between parties, no right by parties to ‘deploy’ documents, no right to call or cross-examine witnesses or otherwise appear in the inquiry, save with express permission of the inquiry chair.
62. The inquisitorial nature of public inquiries was underlined most recently by the Divisional Court (Dingemans LJ and Garnham J) in *R (Cabinet Office) v. The Chair of the UK Covid19 Inquiry* [2023] EWHC 1702 (Admin) who said at [52]: “*It is well established that regard must be had to the investigatory and inquisitorial nature of a public inquiry. An inquiry is not determining issues between parties to either civil or criminal litigation, but conducting a thorough investigation. The inquiry has to follow leads and it is not bound by the rules of evidence.*”
63. The purpose of inquiries in the context of a State’s Article 2 obligations was articulated by Lord Bingham in *R (Amin) v SSD for the Home Department* [2004] 1 AC 563 at [31]:
- “[To] ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others”.*
64. These principles are not controversial and are well understood. It is, therefore, a matter of some regret that, with increasing frequency, legal representatives approach statutory inquiries as though they were courts of law in all but name. A statutory inquiry is not a forum for the determination of civil or criminal liability, nor is it an arena for adversarial contest or proxy litigation. Yet one observes submissions framed as if advancing a cause of action, and a discernible tendency to regard the Chair as exercising a judicial power to determine rights *inter partes*. That is a category error predicated on a misunderstanding of the nature and purpose of a public inquiry. The importation of adversarial forensic attitudes appropriate to the courtroom risks distorting the Inquiry’s statutory purpose, prolonging proceedings and obscuring, rather than illuminating, the issues that are the subject of the terms of reference.

65. It is an Inquiry's very flexibility and absence of rigid procedural constraint that constitutes its inherent strength. Unfettered by the technicalities of pleading, the strictures of admissibility, and an immutable procedural code (and shorn of the adversarial imperative to 'win' rather than to understand) an Inquiry may follow the evidence wherever it leads and in the manner that will be the most effective. That freedom does not exist for its own sake: it is the deliberate means by which the truth can be established when other processes - trammelled by narrower remits and stricter rules - may have proved unequal to the task. Inquiries are about the public interest, not partisan interests.

### **ANALYSIS AND CONCLUSIONS**

66. I agree with MODWLT that it is important that the Core Participants have clarity about the current issues at hand as soon as possible. I do not think that this ruling should be held up awaiting the outcome of the 'Green Hearings JR'. I am satisfied that I can, and should, proceed to make a final 'in principle' ruling on the points before me regarding RCH and NCND. I can and will, of course, re-visit this ruling in the light of any judgment in the 'Green Hearings JR' if and when appropriate.
67. The matters to be determined are ones of principle only, without complex disputes of fact. The Core Participants are ably represented by experienced legal teams who have produced comprehensive written submissions, over a number of years, that have effectively addressed all of the issues I need to consider. I therefore conclude an oral hearing is not necessary in order for me fairly to determine these matters.
68. Whilst the issues which I am considering, at this stage, are issues of legal principle and approach, they do not arise in the abstract or in a vacuum. They need to be considered in context. There are two matters of context, in particular, which must be borne in mind in any analysis:
- (1) First, it is a prerequisite for the establishment of a statutory inquiry that matters have arisen that give cause for public concern.<sup>3</sup> The matters of concern that fall to be considered in this Inquiry include grave allegations of extra-judicial killing and cover-up of illegal conduct by members of UK Special Forces and the military establishment, for whom the Ministry of Defence (a Core Participant) are or were responsible.
  - (2) Second, the Inquiry is still part heard, and the truth or otherwise of the allegations will not be determined until its conclusion. Given the seriousness of the allegations and their sensitivity within the military community, it is understandable why a very high degree of protection is sought and required for witnesses, their anonymity and their security. Whilst it is always possible to relax a restriction order made to allow greater disclosure, the reverse is problematic. Accordingly, I agree with CTI that, in such circumstances, it may be necessary as well as sensible to take a precautionary approach.
69. The two questions are addressed below.

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<sup>3</sup> Section 1 of the Inquiries Act 2005.

**Q1: Whether the Inquiry may, in principle, restrict evidence (including evidence given at hearings) from all Core Participants, including the MODCT and the SSD?**

70. The answer to the first question is ‘yes’. This is a simple matter of statutory construction. Section 19 of the 2005 Act gives the Chair wide powers to restrict “(a) attendance at an inquiry, or at any particular part of an inquiry” and “(b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry. ...”. Section 19 imposes no limitation on the identity of, or class of, persons whose attendance may be restricted or from whom evidence may be restricted. A restriction order may restrict attendance at oral hearings if it is necessary to exclude the public, or part of the public, core participants (or some core participants) from the oral hearings, or disclosure to one Core Participant, or all core participants, or restriction on disclosure to a witness (or all witnesses)<sup>4</sup>.
71. The power to restrict is, however, expressly circumscribed by the provisions of sub-section 19(3), namely that the Chair may only make such restrictions “... (a) as are required by any statutory provision, ... 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)”. The matters mentioned in sub-section 19(4) are four-fold:

*(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).”*

*Note:* The term “harm or damage” is non-exhaustively defined in sub-section 19(5).

72. The power to restrict under section 19 must also be read in its immediate statutory context, in particular with regard to:

(1) Section 17 of the 2005 Act, which grants the Chair the power to determine “the procedure and conduct of an inquiry” but requires the Chair to act “...with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).”

(2) Section 18 of the 2005 Act, which imposes a duty on the Chair to take “...such steps as

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<sup>4</sup> Beer on Inquiries (1st edition) e.g. at para. 6.30.

*he considers reasonable to secure that members of the public (including reporters) are able - (a) to attend the inquiry... (b) to obtain or to view a record of evidence and documents... ”. But note that section 18 expressly references section 19 in its opening words: “Subject to any restrictions imposed by a[n].. order under section 19...”.*

73. As accepted by the Core Participants, the Chair has wide powers to determine the procedures and conduct of the inquiry (section 17) and to grant Restriction Orders (section 19). Restriction Orders are essential to the proper conduct of most public inquiries, of great practical value and extensively used. However, given the foundational principle of ‘open justice’ which applies to quasi-judicial inquiries (see above) and enshrined in the 2005 Act (section 18), the Chair’s power to restrict attendance or access to evidence of any members of the public is always to be exercised with care and precision, in accordance with public law principles.
74. However, it should be emphasised that, in determining whether or not to grant a Restriction Order, the Chair is not applying his broad power under section 17 of the 2005 Act to determine the procedure and conduct of the Inquiry, but is applying the very specific statutory provisions of section 19.

#### *Relevance of the SSD’s Dual Status*

75. The power to restrict Core Participants from attendance or access to evidence must also be considered in the context of the special status and rights attaching to persons designated Core Participants under Rule 5 of the Inquiry Rules 2006 who, by definition, have a particular interest in being present at inquiry proceedings and having access to inquiry evidence. In my ruling of 12 May 2023, I granted the Ministry of Defence (“MOD”)<sup>5</sup> application for Core Participant status on the basis of Rule 5(a) and (c), namely that I was satisfied that MOD “(a) ...played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates”, and “(c) ... may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report”. Some of those who have direct knowledge of, and involvement with, the subject matter of the Inquiry are now senior officers and officials at the MOD.
76. The power to restrict the SSD from attendance or access to evidence must also be considered in light of the SSD’s status as the Minister responsible for setting up the Inquiry<sup>6</sup>. As such, the SSD has a significant number of powers and duties, including the following:
- Amending the Terms of Reference (s.5(3))
  - Appointing panel members (s.7)
  - Terminating the appointment of the chairman (s.12)
  - Suspending the Inquiry (s.13)

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<sup>5</sup> The MOD does not have a legal identity of its own. It is an administrative arm of the Crown. However, by virtue of the Crown Proceedings Act 1947 s17, it may take part in civil proceedings in its own name. The Secretary of State for Defence (“SSD”) is responsible for the activities of the Ministry of Defence. His powers originate from the Royal Prerogative, Common Law, and various statutory provision, notably the Defence (Transfer of Functions) Act 1964

<sup>6</sup> By a Ministerial announcement in Parliament on 22 December 2022.

- Terminating the Inquiry (s.14)
- Imposing restrictions on attendance at an inquiry or disclosure or publications of documents (s.19)
- At any time, varying or revoking a restriction notice made by the SSD themselves; or after the end of an Inquiry, varying or revoking a restriction order made by the Chair (s.20(7))
- Withholding material from the Inquiry report if necessary in the public interest (s.25)
- Determining conditions or qualifications regarding the payment of witness expenses (s.40)

77. The SSD set up the Inquiry in the first place because of public concern as to the activities of individuals and organisations to which the Terms of Reference relate and for whom the SSD is responsible and accountable to Parliament. The SSD will have the responsibility for considering and deciding upon the implementation of any recommendations the Inquiry may make. It follows that the SSD has the highest level of interest in the Inquiry and understanding its findings, evidence and conclusions.

78. The SSD is, therefore, in a unique position by reason of being both:

- (1) a Core Participant with the MOD entitled to participate in the Inquiry by reason of the fact that the MOD played a ‘direct and significant role’ in relation to the matters which the Inquiry related and may be subject to ‘explicit or significant criticism’; and
- (2) the Minister who set up the Inquiry, having the powers and duties set out above in relation to how the Inquiry operates.

79. One can understand why these dual functions might be perceived, on occasion, as pointing in differing directions, particularly where the SSD will be served by those who may have a personal interest in the Inquiry’s outcome.

80. The MODCT submit that the SSD’s statutory functions under the 2005 Act “...require him to have access to all restricted material after the conclusion of the Inquiry”.<sup>7</sup> This may be true after the end of the Inquiry, but not necessarily before. I am currently concerned with the present position whilst the inquiry is still on-going and extant. There is nothing in the legislation to suggest that the Chair is under an obligation to disclose or report on the substance of every piece of evidence received by the Inquiry. Section 24 of the 2005 Act simply requires the chairman of an inquiry to “*deliver a report to the Minister setting out — (a) the facts determined by the inquiry panel; (b) the recommendations of the panel (where the terms of reference required it to make recommendations)*”, together with “*anything else that the panel considers to be relevant to the terms of reference*”. Further, there may be matters the sensitivity of which are time-limited. Moreover, it is by no means certain once the inquiry is completed, that the SSD will wish to, or require to, have access to all restricted material. Much may depend on the particular circumstances, and submissions would be invited before the variation of any restriction orders.

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<sup>7</sup> See paragraphs 19-27 of MODCT’s 1 July 2024 submissions and paragraph 4f of the MODCT’s 6 October 2025 submissions

81. I agree with the insightful observation by the Afghan Families<sup>8</sup>: “Concerns which the MODCT have raised about the role and responsibilities of the SSD after the Inquiry concludes in maintaining the restriction orders made during the course of the Inquiry are practical in nature ... but are not a principled basis for implying limitations on a power which do not appear on its face while the Inquiry is ongoing” (emphasis added).
82. I also agree with the Afghan Families’ further submission that: “The contrary conclusion – which would, in effect, mean that the SSD for Defence has an absolute entitlement to attend all hearings and see all evidence received by the Inquiry, regardless of any application for a restriction order and the Chair’s assessment of it – risks compromising the perceived independence of the Inquiry from the executive body which established it and which is subject to its investigation...” (emphasis added).
83. Whilst MODCT eschew the suggestion by CTI<sup>9</sup> that they were contending for “an absolute entitlement to attend all hearings and see all evidence”, this is the logical consequence of their primary submission – even if restricting the evidence from them would be “conducive to the inquiry fulfilling its terms of reference” or “necessary in the public interest”. Further, as CTI summarise, for the MOD to be treated as having an absolute entitlement to consider the detail of all evidence in all circumstances would risk compromising the perceived (if not actual) ‘independence of the Inquiry from the body that is the subject of the serious allegations that the Chair is required to investigate’.<sup>10</sup>
84. The basis upon which a Restriction Order may be made is carefully prescribed in section 19(3)(b): a Restriction Order may only specify such restrictions as are “...conducive to the inquiry fulfilling its terms of reference or ... necessary in the public interest”.
85. This requires separate consideration as to (a) what the evidence is, and (b) the necessity to restrict disclosure of that evidence from the public or a particular Core Participant. Where that Core Participant is the SSD and the Minister who set up the Inquiry (and so has additional powers and responsibilities) will almost certainly be a relevant consideration when deciding whether it is necessary to restrict disclosure from the MODCT. As CTI put it, there is no principled basis for disregarding this dual status.
86. The practical nature of the problem was illustrated, in another context, by the proposed solution offered by the MODCT to the ‘Green Hearings’ issue. As explained above, after considering submissions and evidence, I allowed a small non-military cohort, comprising the SSD and Permanent Secretary and their senior advisers to be privy to the Green Hearings. This was a practical solution to the issues and concerns which arose in relation to that specific evidence. I noted:

*“46(5). The SSD has a unique position in the statutory scheme. In order to address the statutory issues regarding (a) the delivery of the final Report and recommendations (under section 24(1) of the Act) and (b) the safe post-Report handling of Inquiry material (under section 20(7) of the Act), as stated above, it is necessary for the SSD*

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<sup>8</sup> See paragraph 11 of their 6 October 2025 submissions.

<sup>9</sup> Paragraphs 32-33 of CTI’s 27 November 2025 note.

<sup>10</sup> Paragraphs 32-33 of CTI’s 27 November 2025 note.

*and a limited number of his senior advisers to be given access to the Green Hearings material.”*

87. However, whilst the ‘dual roles’ factor might be a relevant, or indeed highly relevant, consideration when determining whether to restrict disclosure from the SSD and/or his senior advisers, in my view, it cannot be determinative in all circumstances:
- (1) One can envisage circumstances in which a hearing, particular evidence or material is acutely sensitive only within a particular time-window, and there are sound reasons for restricting the SSD’s access to the hearing, evidence or material *pro tempore* whilst the Inquiry is on-going, and potentially a rational basis for re-visiting the Restriction Order at a later date, or when the inquiry report is being finalised.
  - (2) It might be appropriate strictly to restrict the identity of IIA witnesses where, for instance: (a) the witness is highly vulnerable and/or the information highly sensitive, and it would be conducive to the Inquiry fulfilling its terms of reference were the identity of the witnesses to be withheld from the SSD (for example, due to considerations relating to the confidence held by witnesses in feeling able to come forward and give evidence) and/or (b) the particular information that is restricted (*i.e.* the actual identity of the witness) does not need to be known by the SSD in order to understand the import of the witnesses’ evidence.
  - (3) One can envisage circumstances where the choice was a stark one between receiving or not receiving the evidence. As the Afghan Families memorably put it in their submissions in relation to the Green Hearings: “*Put crudely, if the choice is between the Inquiry hearing such evidence under those conditions or not at all, the Bereaved Families would invite the Inquiry to hear the evidence under those conditions.*”<sup>11</sup> As Lord Bingham said in *(R (Amin) v SSD for the Home Department* [2004] 1 AC 563 at [31], inquiries are a means by which the State discharges its Article 2 obligations. An RCH may be a necessary measure to establish the “*full facts*”.
  - (4) One can also envisage circumstances in which the SSD would not wish to exercise his power to vary the Restriction Order after the conclusion of the Inquiry in this regard.
88. Further, whilst acting *qua* a Core Participant, the SSD is under no particular constraint, save to consider how best to advance the MOD’s interests. However, when exercising his above powers and duties *qua* the Minister who set up the Inquiry, even if not amounting to quasi-judicial functions, the SSD would nevertheless be bound to have regard to the relevant statutory factors governing such functions, and to act in a procedurally fair manner in accordance with public law principles. In particular, when exercising his power to vary a Restriction Order after the conclusion of an Inquiry under sections 20(4) and 20(7), including to enable evidence to be disclosed to him, the SSD would be bound to have regard to the requirements of section 19, together with any Article 2, 3 and 8 ECHR rights engaged. Natural justice may require affording those affected an opportunity to be heard, before making a decision.

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<sup>11</sup> Paragraph [6] of the Afghan Families submissions dated 2 June 2025.

89. Nonetheless, having regard to all of those matters, it would undoubtedly be an exceptional set of circumstances in which it would be necessary to impose an RCH. This would need to be considered on a *case-by-case* and, *witness-by-witness* basis following a careful examination of the particular evidence and factors.
90. There is no ‘inconsistency’ in the Inquiry’s approach as to how the position of different witnesses has been expressed or addressed (as suggested by the MODCT).<sup>12</sup> The Inquiry’s approach must be to consider each application on its merits, in the light of the particular evidence and considerations pertaining to that particular witness.
91. For the avoidance of doubt, I agree with MODCT’s submission that a mere assessment made by the ILT of the necessity of a ‘restricted closed’ hearing would be insufficient. I would require a powerful evidential basis upon which to make a finding of the necessity for such a hearing. Similarly, a ‘general preference for reduced attendance in court’, without any other factor would not make an RCH necessary or appropriate.

*Restriction Order for RMP dated 21 August 2023*

92. In 21 August 2023, I granted an application by the RMP for a Restriction Order which restricted all other Core Participants from (a) access to, or knowledge of, information provided to the RMP on confidential basis, (b) knowing whether a person had, or had not, provided information to the RMP, and (c) attendance at any hearings at which information provided to the RMP on confidential basis was being considered, whether in evidence or submissions. My order read:

***“B. Restriction on disclosure of information***

5. *Any information provided to the Inquiry which discloses, directly or indirectly, the identity of any person who provided information to the Royal Military Police on a confidential basis shall not be disclosed to any Core Participant in this Inquiry or to the public.*

6. *Whether any person did or did not provide information to the Royal Military Police on a confidential basis shall not be disclosed to any Core Participant in this Inquiry or to the public. ...*

***C. Restriction on attendance at hearings and on conduct of hearings***

9. *Any hearings where any of the information covered by paragraphs 5-8 above is to be considered, whether in evidence or submissions, shall not be attended by the public or by any Core Participant or their representatives save for the Royal Military Police.”*  
[emphasis added]

93. It is noteworthy that there was no legal challenge to this Order from any of the other Core Participants (including the MODCT), notwithstanding it excluded them all from attendance at these hearings and excluded them all from access to evidence that they might argue might be relevant to their interests and that it would have engaged the exact same practical issues now raised on behalf of the MODCT.

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<sup>12</sup> In paragraph 11 of the MODCT’s submissions dated 6 October 2025.

**Q2: If so, whether it might be proper, in the above circumstances, for the Inquiry to neither confirm nor deny ('NCND') as to whether such evidence has been received, or whether a hearing has taken place.**

94. This part of my ruling relates only as to whether, if an RCH Restriction Order was made, it might be proper for the Inquiry neither to confirm nor deny as to whether such evidence has been received, or whether a hearing has taken place or will take place. It does not consider any wider circumstances in which this Inquiry (or any statutory Inquiry) might apply 'NCND'.<sup>13</sup>

95. With that in mind, I turn to the second question, which has two parts or aspects:

**Part 1:** Might I decide not to notify Core Participants that a hearing from which they are excluded is going to take place or has taken place?

**Part 2:** If a Core Participant inquires, would it then be lawful neither to confirm nor deny that a hearing without any of the Core Participants present is to take place or has taken place?

96. As I have explained in previous rulings, 'NCND' is not a legal principle, but "*a departure from procedural norms relating to ... disclosure. It requires justification similar to the position in relation to public interest immunity (of which it is a form of subset)*"<sup>14</sup> (*CF v Ministry of Defence and ors [2014] EWCA Civ 559 [2014] W.L.R. 4240 at [20]*). It is a policy designed to encourage the provision of information which, but for that policy, might not otherwise be provided (see *re Secretary of State for Northern Ireland [2025] UKSC 47 [2026] 2 WILR 109 at [30]-[31]*).

97. The notion of not informing parties as to whether or not a hearing has taken place, or even whether an application had been made, is not novel in the legal arena. It is well-established and understood, for instance, in the context of Public Interest Immunity (PII). In *R v. Davis [1993] 1 WLR 613* the Court of Appeal considered whether the Crown Court could hear a PII application without even informing the Defendant that such an application was being made. The Court held it could:

*"It may be that, in a highly exceptional case, to reveal even the fact that an ex parte application is to be made, could "let the cat out of the bag" so as to stultify the application. Such a case would be rare indeed, but we accept Mr. Bevan's contention that it could occur. In that event, the prosecution should apply to the court, ex parte, without notice to the defence. Again, if the court, on hearing the application, considered that at least notice of the application should have been given to the defence or even that the normal inter partes procedure should have been adopted, it will so order. In reaching these conclusions, we recognise that open justice requires maximum disclosure and whenever possible the opportunity for the defence to make representations on the basis of fullest information."*

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<sup>13</sup> For example, should a member of the public ask whether a named person was the true identity of a ciphered individual.

<sup>14</sup> See paragraph 90(5) of my OPEN Ruling dated 22 September 2025.

98. *R. v. Davis (supra)* was discussed and endorsed by House of Lords in *R v. H* [2004] UKHL 3, in the context of PII: “*The third class, described [by the Court of Appeal in R v. Davis] as “highly exceptional”, comprises cases where the public interest would be injured even by disclosure that an ex parte application is to be made.*”<sup>15</sup>
99. Unlike the court in *Davis*, however, an inquiry cannot determine criminal (or civil) liability, and is not adversarial in nature. Set against that is the fact that, as the MODWLT observe, whilst PII serves entirely to exclude material (albeit, in the criminal context, this would be material that would be undermining of the prosecution or would assist the defence) evidence heard subject to a Restriction Order may nevertheless be relied upon by the Chair in making positive findings.
100. Nonetheless, as is clear from section 17 of the 2005 Act, public inquiries have a far wider latitude than Courts to determine their own procedure, so long as the process is fair and cost effective. (See also my observations above regarding the inquisitorial nature of an Inquiry.)
101. As the RMP rightly observe<sup>16</sup>, nothing in the Inquiries Act 2005, or the Inquiry Rules 2006, prohibits an Inquiry applying NCND in particular circumstances during an Inquiry, *i.e.* the Inquiry neither confirming nor denying to one or more Core Participants about a hearing taking place, or having taken place, from which they have been or will be excluded. I agree. Applying an NCND approach is a decision relating to the procedure and conduct of an Inquiry, and accordingly is open to a chair, so long as they act with fairness and with regard to the need to avoid any unnecessary cost (section 17 of the Act).
102. However, the RMP submit that it is ‘near impossible’ to envisage a situation where that evidentiary justification would fall in favour of an NCND response to the question of whether a particular kind of hearing has taken place. That submission is supported by the MODCT and applies, they contend, *a fortiori* in the case of the SSD given his dual functions.
103. In my view, this submission goes too far. For the reasons I give below, applying an NCND approach could well be justified if and when it is necessary to avoid undermining a Restriction Order in particular circumstances, but it will be limited in duration.
104. A witness may be granted anonymity specifically because of the risk of harm to the witness if it became known they had given evidence to the Inquiry. If the Inquiry confirmed that such a CLOSED (or RCH) hearing would take place<sup>17</sup>, or had recently taken place, to a person who was excluded from that hearing, that would risk undermining the anonymity granted to the witness as it might enable the witness to be identified.
105. A person determined to identify the witness in question might draw (correct or incorrect) conclusions from the sudden absence of a person from their workplace, or seeing a person in the environs of the place where hearings are held.
106. Whether, in fact, that risk might arise would depend on many factors, including the particular

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<sup>15</sup> Note: the PII regime is given effect to in the modern procedural scheme in Crim PR 2020 r15.3(2)(b)(iii) and (3)(c).

<sup>16</sup> See paragraph 6 of the RMP submissions dated 28 October 2025.

<sup>17</sup> A wide cohort of individuals might have an informed opinion as to the usual timescale between the issuing of a Restriction Order (or decision notice) and the listing of a hearing.

listing arrangements.

107. The risk of undermining the Restriction Order was one of the reasons I decided that it was not possible to disclose, immediately, the fact that the Green Hearings had taken place<sup>18</sup>.
108. However, as illustrated by the publication of my OPEN ruling in relation to the conclusion of the Green Hearings, the risk of undermining a Restriction Order that provides for anonymity by disclosure of the fact a hearing has taken place is likely to reduce over time. The precise length of time before any such risk is reduced to a manageable, or acceptable, level would depend on the particular circumstances.
109. In the particular context of the preservation of anonymity, I agree with the Afghan Families suggested three-stage approach to any analysis:
- (1) First, the Chair must be satisfied on the evidence there is a compelling public interest in withholding the information (*e.g.* that disclosure of the specific category of information would expose a witness to a real and evidenced risk of harm).
  - (2) Second, the Chair must be satisfied that the public interest cannot be adequately protected by other lesser means. For example, if the risks to witnesses can be met by other safety and security measures, then those measures should be invoked and the information regarding the occurrence of the hearings should be disclosed.
  - (3) Third, the Chair must keep any decision to neither confirm nor deny the existence of a restricted hearing under rigorous and ongoing review.
110. So far as (3) is concerned, that would involve the identification of a time when it was no longer necessary to maintain NCND.

#### *Fairness*

111. The MODWLT lay emphasis on the statutory duty of the Chair under section 17 to act “*with fairness*”. Indeed, their principal objection to the notion of RCH and NCND is on grounds of ‘fairness’. They submit in terms: “*In accordance with this established means of operating, the MWLT submits that fairness, mandated by s.17 of the 2005 Act, requires that appropriately cleared members of its team should attend all CLOSED hearings where evidence is to be given which has the potential materially to affect the position of its witnesses. Given the serious nature of the allegations engaging the MWLT’s witnesses and the absence of relevant undertakings, effective participation in all hearings where relevant evidence is to be given is equally important for the MWLT – if not more so – than for the MOD.*”
112. MODWLT’s submissions amount, in effect, to a blanket denial that RCH and NCND could ever be justified in any circumstances. This is untenable, for the reasons given above. It also betrays a lack of understanding of the concept of ‘fairness’. Fairness is not myopic. Fairness requires taking account of the legitimate interests of all concerned and the balancing of all

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<sup>18</sup> See OPEN gist of the Chair’s Ruling on Disclosure about the Conclusion of the ‘Green Hearings’ para 5(I)(c) dated 11 August 2025.

relevant, often competing, considerations, and the public interest.

113. As explained in my OPEN Ruling on Green Hearings, procedural fairness does not require every piece of evidence to be disclosed to every interested party or the public either before or after it was given. Thus, for example, for reasons of National Security much of the evidence has been heard by the Inquiry in CLOSED with only limited representatives of State Core Participants (and the Afghan Families have been excluded, even though the hearings plainly affect their interests).
114. I would emphasise that the fact I may receive evidence does not mean that I would rely upon it to make any finding.
115. The law on giving notice as a matter of natural justice and procedural fairness was recently summarised by the Privy Council in *Hart v. Chin* [2025] UKPC 51. Lord Clarke giving the judgment of the Judicial Committee said at [32]:

*“[32] The law on when a person should receive notice in advance of adverse comments or findings, as a matter of natural justice and procedural fairness, is well-established. It is covered in a number of authorities, but the key elements can be summarised as follows:*

*(i) The standards of fairness are neither immutable nor are they to be applied identically in every situation: Pyaneandee v Lam Shang Leen [\[2024\] UKPC 27](#) (para 68).*

*(ii) Rather, the requirements of fairness in any given case depend crucially upon the particular facts and circumstances: Permanent Secretary, Ministry of Foreign Affairs v Ramjohn [\[2011\] UKPC 20](#) (para 39), under reference to R v SSD for the Home Department, Ex p Doody [\[1994\] 1 AC 531](#), 560; and R v Chief Constable of the Thames Valley Police, Ex p Cotton [\[1990\] IRLR 344](#), CA (para 60).*

*(iii) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result, or after it is taken, with a view to procuring its modification, or both: R v SSD for the Home Department, Ex p Doody, at p 560, referred to in Pyaneandee v Lam Shang Leen (para 69).*

*(iv) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests, fairness will very often require that he is informed of the gist of the case which he has to answer (ibid).*

*(v) While cases may arise in which it can properly be held that denying the subject of a decision an adequate opportunity to put his case is not in all circumstances unfair,*

*that will rarely occur: R v Chief Constable of the Thames Valley Police, Ex p Cotton (para 60).*

*(vi) The more finality there is in the conclusions reached by an inquiry and reflected in its report and the greater the strength of their expression, the more that is required to be done by the inquiry to ensure that the process is fair: Pyaneandee v Lam Shang Leen (para 70).*

*(vii) Breach of the requirements of fairness is a serious matter even if it is devoid of practical consequences: R v Chief Constable of the Thames Valley Police, Ex p Cotton (para 65), under reference to R v Chief Constable of Thames Valley Police, Ex p Stevenson (unreported), 6 March 1987.”*

116. Whether it might be fair to rely on evidence that had been restricted from a person in order to support an adverse finding of fact would need to be carefully considered with those factors in mind.

#### Conclusions on Question 2

117. For those reasons I cannot rule out at this stage that: (a) I may deem it necessary not to inform any of the Core Participants that a hearing from which they are excluded is going to take place or has recently taken place (Part 1); and/or (b) I may also deem it necessary to neither confirm nor deny that a hearing without the Core Participants present is to take place or has recently taken place, *i.e.* NCND (Part 2).
118. Part 1 is not strictly NCND *per se*, but simply requires consideration to be given to the prior question whether it is necessary in order not to undermine a Restriction Order to decide not to notify Core Participants as to the fact of a hearing in the first place.
119. Part 2 is ‘NCND’ in form, but not classically in substance. The answer to Part 2 is logically dependent on the answer to Part 1. Thus, if having carefully considered the evidence and matters raised at Part 1, it is concluded that it is necessary not to inform a Core Participant that a hearing from which they were restricted was to take place (or has taken place), it would logically follow that an ‘NCND’ approach at Part 2 to confirming or refuting whether such a hearing has taken place or would take place would similarly be justified. To do otherwise would mean that the ability to hold a hearing without informing a Core Participant would not be available.
120. It will be appreciated, therefore, that in the Inquiry context, the invocation of NCND is not the blanket application of a free-standing policy, but simply the means by which effect is given to existing Restriction Orders to ensure they provide the protection intended. By way of example, if asked whether a particular cypher related to a particular name, the inquiry would provide an NCND answer since, to do otherwise, would undermine the original Restriction Order giving rise to the cypher.

121. The same particular factors that apply to the SSD by virtue of his dual functions, set out above, also apply in relation to NCND in this context. That means that particularly cogent justification would be required to exclude the SSD and Minister who set up the Inquiry not just from an evidential hearing, but from being told that such a hearing was even taking place or had recently taken place, given the exceptional nature and impact of the combination of the restrictions.
122. As I have set out above, even having regard to the precautionary principle, the time period over which it would be necessary to apply NCND to preserve anonymity granted by a restriction order would inevitably be time-limited, because the risks of undermining a restriction order will abate over time. For this reason, like Restriction Orders, decisions as to NCND need to be kept under review. I can foresee no situation that would necessitate an indefinite adherence to NCND.

### **DECISION**

123. In summary, therefore, I answer the two questions as a matter of principle as follows:

**Q1:** Whether the Inquiry may, in principle, restrict evidence (including evidence given at hearings) from all Core Participants, including the MODCT and the SSD?

**Answer: Yes.**

**Q2:** If so, whether it might be proper, in the above circumstances, for the Inquiry to neither confirm nor deny ('NCND') as to whether such evidence has been received, or whether a hearing has taken place.

**Answer: Yes, but not on an indefinite basis.**

124. As I explain above, either would be exceptional orders to make, and require cogent evidence and justification. Whether, in fact, it would be appropriate to make an RCH or adopt NCND in any particular instance can only be decided on a case-by-case and witness-by-witness basis, following a careful analysis of the particular evidence and all relevant circumstances.
125. I have always made clear that I will keep all Restriction Orders that I make under review. In the light of my decisions as to principle, I will review all of the Restriction Orders I have made and ask the Inquiry Legal Team to take any appropriate next steps following that review to give effect to my ruling and my review.
126. The question as to whether the Inquiry should disclose to the MODCT the true identity of a number of IIA witnesses (see para 9(3), above)) will expressly fall within that review.

**The Rt. Hon. Lord Justice Haddon-Cave**

**Chair of the Inquiry**

**17 March 2026**