

PHASE 1: DISCLOSURE PROTOCOL

Introduction

1. This Phase 1 Disclosure Protocol (“Phase 1 Protocol”) sets out the initial approach that will be taken by the Andrew Malkinson Inquiry (“Inquiry”) to the disclosure of material made to the Inquiry by Material Providers (MPs) in relation to its Terms of Reference (“ToR”). It is intended to govern the Inquiry’s approach to disclosure during Phase 1 of the Inquiry’s work (as defined below), and its scope may be extended, or it may be amended, added to or replaced, in due course.

Definitions

2. In this Phase 1 Protocol:

“**document**” means anything in which information of any description is recorded, whether in paper or in electronic form. It will include but is not limited to, contract documents, governing/constitutional documents, guides/codes of conduct, design plans, technical drawings, blueprints, reports, reviews, committee/board minutes, meeting/attendance notes, manuscript notes, memoranda, letters (including fax), leaflets, circulars, emails (internal and external), legislation, policy documents/statements, witness statements, photographs, video and audio recordings and physical evidence.

“**Material Provider**” or “**MP**” means any person, institution or organisation, which has been asked to provide documents to the Inquiry or which has provided documents voluntarily to the Inquiry. For the avoidance of doubt, it includes His Majesty’s Government and any Department of State or Minister of the Crown.

“**Potentially relevant documents**” means those which, having regard to the Inquiry’s ToR, it is likely that the Chair (if aware of their existence) would wish to be provided with.

“**Phase 1**” means the first phase of the Inquiry’s work, during which the Chair and Inquiry Team intend to conduct a provisional assessment of material disclosed to the Inquiry by MPs, with a view to (a) developing the issues to be investigated (“Issues”) in furtherance of its ToR, (b) determining the number

and scope of future Phases of its work in order to investigate the Issues and discharge the ToR, (c) determining the approach which the Inquiry will take during such future Phases of work, and (d) identifying further evidence that may be required to assist it in investigating the Issues.

Objectives

3. The purpose of this Phase 1 Protocol is to ensure that MPs understand the Inquiry's initial procedures for (a) the provision of documents by MPs to the Inquiry and the handling of such documents by the Inquiry, and (b) the delivery of documents to the Inquiry in the correct form and format, during Phase 1. Annex A sets out the standards MPs should follow in submitting evidence to the Inquiry.
4. In addition to the other objectives of Phase 1 set out herein, and as set out above, the Chair and the Inquiry Team intend, after a provisional assessment of material, to formulate a further or amended protocol (or protocols) governing disclosure as the Inquiry moves into future Phases of its work ("future Protocol"). It is anticipated that such future Protocols will deal with onward disclosure by the Inquiry, as well as applications for redactions and anonymity.
5. The Inquiry will publish any future Protocol on its webpage and will notify MPs who have provided documents when such future Protocols are published. Similarly, if this Phase 1 Protocol is amended from time to time, the amended version will be published on the Inquiry webpage.

Application

6. This Phase 1 Protocol will apply to all documents received by the Inquiry from MPs prior to the publication on the Inquiry's webpage of any future Protocols.

Provision of Documents to the Inquiry

7. The Inquiry requests anyone who holds potentially relevant documents to supply those documents to the Inquiry. Any person who is in possession of potentially relevant documents and who is not approached by the Inquiry should contact the Inquiry Secretariat so that the necessary arrangements can be made for receipt of those documents.
8. Wherever possible the Chair intends to rely on voluntary co-operation for production to the Inquiry of the documents she considers necessary to fulfil her ToR.
9. The Chair will normally make a request for voluntary production of documents by means of a letter from the Solicitor to the Inquiry to the person believed to have custody or control of them. The Chair expects that all parties to whom a

request of this kind is addressed will co-operate with the Inquiry and will provide all potentially relevant material.

10. MPs, including legal representatives, should provide documents requested by the Chair, together with any other documents they consider to be potentially relevant to the Inquiry's ToR, without delay and within the time limits specified by the Inquiry in any relevant request.
11. MPs are expected to undertake comprehensive, thorough and rigorous searches for all potentially relevant documents they control in response to any request for documents. MPs should keep a detailed written record at the time of the search that will enable them to complete a Disclosure Statement (see paragraph 17 below). For the avoidance of doubt, a document is in an MP's control if the MP has:
 - a. physical possession of it; or
 - b. a right to possession of it; or
 - c. a right to inspect or take copies of it.
12. Persons who hold potentially relevant documents are reminded about the duty to preserve documents and evidence which appear to be relevant to the Inquiry's ToR. Steps should be taken to ensure any such evidence and documentation is not destroyed, distorted or otherwise altered.

Disclosure of Documents by the Inquiry

13. All documents supplied to the Inquiry by MPs under this Phase 1 Protocol will not be subject to disclosure beyond the Chair and the Inquiry Team during Phase 1¹. Future Protocols will deal with onward disclosure and the Inquiry's approach to applications for redactions and anonymity.
14. The Inquiry operates independently from the Ministry of Justice and the Secretary of State for Justice, and they have no right of access to evidence collected by the Inquiry, including any documents collected under this Phase 1 Protocol. The Chair and Inquiry are not public authorities for the purposes of the Freedom of Information Act 2000.

¹ Save for any information, including Personal Data, provided to the Inquiry, may be transferred to third-party contractors providing services to it, such as the operation of IT systems used, or to allow the secure storage of information, as well as allowing the Inquiry to review and analyse information. The contractors will act as Processors acting on behalf, and under the control, of the Inquiry. Where this is the case, these Processors are subject to stringent contractual obligations in relation to ensuring the security and confidentiality of the information, including Personal Data, they hold on behalf of the Inquiry. This means that they cannot do anything with that Personal Data unless instructed to do so. These Processors cannot share any Personal Data with any organisation apart from the Inquiry and/or unless instructed to do so, except where required to do so by law or Court order.

15. The Inquiry processes personal data in accordance with its obligations under the Data Protection Act 2018 and UK General Data Protection Regulation 2018. Requests made under those provisions will be dealt with on a case-by-case basis by the Inquiry.
16. MPs who are responsible for public records are reminded of their duties under the Public Records Act 1958 and that they remain responsible for complying with those duties, including (so far as relevant) in respect of any documents provided to the Inquiry under this Phase 1 Protocol. Any material subject to preservation by Inquiry will be outlined in future Protocols.

Disclosure Statement

17. The Inquiry will in due course request MPs to provide a signed disclosure statement if it deems the same to be necessary. The purpose of such a statement will be, *inter alia*: to confirm an MP's search methodology, to provide clear assurance that the Inquiry's request for disclosure has been met and to explain, so far as can be ascertained, what has become of any information which cannot be produced (including, where possible, identification of the last person known to have had access to documents that are no longer held).

Issued under the authority of the Chair on 9 November 2023

Annex A

Guidance on provision of documents

Material Providers should note the following standards for submitting evidence to the Inquiry:

- a. all documents should be provided with an accompanying index listing them, along with their locations in any systems or folders;
- b. all documents should be provided electronically where possible, with their original filenames and, where scanned, they should be named appropriately;
- c. digital documents should be provided in their native format (e.g. Microsoft Word, Microsoft Excel, email files (e.g. msg, eml) with their attachments), together with any underlying metadata;
- d. documents should be submitted at document level, i.e. multiple documents should not be grouped into one large PDF. Similarly, a document should not be scanned as individual pages, but as a single PDF;
- e. hard copy documents should be digitised to multipage PDF format;
- f. scanning of paper documents should be undertaken at a standard of 300dpi;
- g. scanned (PDF) images of paper should show all information on the paper, including all corners and both sides of the paper (where information is contained on two sides) and any annotations. No data should be cut off during the scanning process. If the paper that is being scanned has any attachment (e.g. a sticky paper note) or cover sheet, it should be scanned twice, both with and without the attached note; and
- h. all documents should be provided in unredacted format, unless agreed with the Inquiry beforehand.

The Inquiry will be using Egress (cloud-sharing platform) to send and/or receive electronic material securely from various Material Providers. In advance of any material intended to be supplied to the Inquiry, yourself or your representatives should identify the individuals/organisations that will require access to your designated secured Egress folder.

Upon the Inquiry receiving these email addresses, the Inquiry will share a link of your secured folder and issue instructions on how to upload material. All material should be uploaded in .zip/compressed files and each .zip/compressed folder should not exceed 2GB.

In so far as is possible, when compressing material for upload, please do keep any original folder/file structure/categorisation you have applied to the material as part of your records management. It will be helpful to the Inquiry if any work on categorisation of the material has already been applied.

As outlined in (a) above, each disclosure should also be made with an accompanying index (.csv/excel file). The following index should include any unique identification number that a Material Provider wishes to be applied to any documents supplied upon ingestion of such material onto the Inquiry's document management system ("DMS"). The Inquiry will refer to the following unique reference as the 'Control Number'. Please ensure you provide a .csv file/excel/index file that aligns exactly with the names of the

files (including their formats), along with the Control Number, to those files which you have uploaded to Egress (please see example below).

Control Number	File Name
MSTR0000001	Letter from x to y - Dec 2013.doc
MSTR0000002	2005 - Spreadsheet Audit.xls
...	...
MSTR0006345	2015 Internal Guidance.xls

The Inquiry will also supply all ingested files on our DMS with a Unique Reference Number ("URN") for all internal Inquiry purposes (including any reference within a final and/or interim report). If no Control Number is provided by the Material Provider, the Inquiry will apply the same reference as the URN.

In line with the request at (c) above, if a Material Provider stores material on a DMS, we request that material is supplied by way of formal production at the point of export from your system. Your document management system vendor supplier will be able to assist you in the following regard.

Finally, for all hard-copy material, the Inquiry will engage with you and/or your representative in the meeting scheduled. The Inquiry will set out separate hereto an approach for providing hard-copy material to the Inquiry.