

Rule 9 Requests

A number of NHS trusts have received formal requests for evidence from the [UK Covid-19 Inquiry](#) (the Inquiry), under rule 9 of the [Inquiry Rules 2006](#) (rule 9 requests). These typically include requests for documentation, information about the trust, and a witness statement. The responses will inform the Inquiry ahead of the planned public hearings on the health and care sector (known as [module 3](#)) which will commence in autumn 2024. The chair of the Inquiry, Baroness Hallett, has not indicated how many trusts will receive requests but we expect more will be issued.

Responding to these requests will take up significant time and resources, particularly if they arrive during the winter peak. We have collaborated with our legal panel partners to provide an overview of the process, and to prepare you for what to expect.

These FAQs have been drafted by Charlotte Harpin, partner and Head of Health, Browne Jacobson, Hugh Giles, partner at Capsticks and Liz Hackett, partner at Hempsons. To find out more about how our partners support members download the brochure [here](#).

If you have any questions about rule 9 requests or the UK Covid-19 Inquiry please get in touch with Finola Kelly, senior legislation and inquiry manager finola.kelly@nhsproviders.org.

FAQs

What is a rule 9 request?

It is a request for information. It can be a request for documents and/or a witness statement. It's called a rule 9 request because it's made under the power set out in rule 9 of The Inquiry Rules 2006 ([The Inquiry Rules 2006 \(legislation.gov.uk\)](#)).

The request is intended to help the inquiry understand the chronology of the decision-making process and the narrative of how and why key decisions were made.

Failure to comply with a rule 9 request can lead to a requirement to produce the evidence in question, under the powers set out in section 21 of the Inquiries Act 2005.

Who could or is likely to receive a rule 9 request?

Rule 9 requests are directed to a named individual.

Although core participants are most likely to receive a rule 9 request, the chair can make a request to anyone who the Inquiry considers has information relevant to the matters under consideration.

What is usually requested in a rule 9 request?

Where a rule 9 request is made for documents, this will usually be for key documents that the Inquiry considers likely to assist it, and may be followed by further requests (such as for documents referred to within the initial disclosure batch).

If the request also asks for a witness statement, then the request must include a description of the matters or issues to be covered in the statement. The issues/matters listed to cover can be useful when thinking about how to structure the response but there is no need for each issue to form a separate point as on some. The witness may have nothing to say because they were not involved, while others may be able to be addressed as part of a general paragraph addressing several issues.

The request will also set out requirements that should be followed in terms of font size, line spacing etc.

Where a request is for both documents and a witness statement, documents should be exhibited (i.e. attached and referred to) in the witness statement, where they are relevant or help illustrate a point that the witness is making.

How much time is there to respond to a rule 9 request?

A timeframe for response will be specified in the request (no timeframes are set out in the rules). Occasionally the time period can be extended but this should not be assumed. If a rule 9 request is received, it needs to be actioned promptly and legal advice should be sought as appropriate to assist with responding.

Will responses to rule 9 requests be published?

Any document or information provided in response to a rule 9 request will be used as part of the inquiry's work and, if relevant, disclosed to core participants. Disclosure to core participants in this way is subject to them complying with the inquiry's confidentiality undertaking. Any wider public disclosure

depends on whether the material is used in oral evidence during a hearing (this is referred to as the material being adduced as evidence).

Certain categories of document can be withheld (such as legally privileged documents) or redacted (such as where third-party personal data is included). The inquiry has published various protocols on how it will manage documents disclosed to it and these should be followed when making decisions as to disclosure. These include the [protocol on documents](#) and a [protocol on redaction of documents](#).

Why would a trust receive a rule 9 request?

Any rule 9 request is made because the inquiry considers that the information requested will help it understand the chronology of the decision-making process and the narrative of how and why key decisions were made. Looking at the scope for each module will help inform the areas that the inquiry might want to seek input from individual trusts, as part of its evidence gathering process.

With this in mind, there are various reasons why a trust might receive a request, such as to help the inquiry understand how key decisions were locally implemented; how particular issues were dealt with in specified geographic areas; as well as areas of best practice/learning that can be drawn from the way the pandemic managed by trusts.

If a trust receives a rule 9 request does that mean the trust will be called to give evidence in the public hearings?

There is no requirement for evidence provided in writing to be followed-up by oral evidence but the fact that a rule 9 request has been made is an indication that the inquiry is minded to call oral evidence from the organisation/witness in question. Decisions as to who to call to give oral evidence at the public hearing will be taken once the inquiry has gathered sufficient documentary evidence to determine what to hear (adduce) at the hearing.

Can trusts discuss their response with the Inquiry team prior to submission?

Yes. The UK Covid-19 Inquiry's (the Inquiry) legal team encourage a two-way discussion. Should your organisation receive a rule 9 request and have any questions, you should contact the legal team. The Inquiry's legal team can discuss with you timeframes for submission of your rule 9 response, as well as providing clarification of particular questions and disclosure requests.

What are the rules on redaction, anonymity, legally privileged documents, Freedom of Information (FOI) requests and restriction orders?

The Inquiry has a [protocol on documents](#) and a [protocol on redaction of documents](#). and a [protocol on applications for restriction orders](#).

It is important to remember that an inquiry cannot compel production of documents which are outside the scope of its terms of reference (TOR), and in providing disclosure to the Inquiry, you must ensure that it complies with your organisations own data protection obligations including those imposed by the General Data Protection Regulation (GDPR).

Redaction and Anonymity

Any documents provided to the Inquiry must be given in clean, unredacted form [redactions can be suggested]. The Inquiry will arrange for secure transfer of the documents, and they will be held securely once in receipt. Any departure from this approach must be discussed with the Inquiry's legal team in advance. Any delays to provision of the documents will not be excused on the grounds that the material provider was seeking redaction of the material.

Section 35(3) of the Inquiries Act 2005 makes it an offence intentionally to suppress or conceal a document which the Inquiry is likely to wish to obtain, or to alter or destroy such a document.

Once the Inquiry have reviewed the documents and determined which are relevant, they will make redactions before disclosing any documents to core participants. Material providers will be given an opportunity to review and comment on redactions proposed by the Inquiry and seek further redaction. The Inquiry will consider each request on case-by-case basis and will either (a) apply the proposed further redactions, or (b) reject the request for further redactions. In the event that further redactions are rejected by the Inquiry, your organisation will be given time to apply for restriction order (below).

Legally Privileged Documents

Legally privileged documents are excluded from disclosure to the Inquiry by section 22 of Inquiries Act 2005.

FOI

The Inquiry is not a public authority for the purposes of the Freedom of Information Act (FOIA) 2000, and will not disclose material in response to requests made pursuant to the FOIA. Arrangements will be made for the Inquiry to assist with responses to any requests made to those individuals and

organisations who have provided disclosure to the Inquiry under the Act. Each request under FOI should be considered on case-by-case basis.

Restriction Orders

The Inquiry recognises that there may be instances where evidence (or parts of it) provided to the Inquiry ought to be excluded from disclosure to the public in order to *protect against the risk of harm and damage to the public interest* ("including" – death, injury, national security, economic interests of the UK, commercially sensitive materials). Section 19 of the Inquiries Act 2005 governs the restrictions on public access to documents and attendance at inquiry hearings.

As a general rule, the Inquiry will disclose all witness statements and documents it considers relevant, to which restrictions do not apply, to core participants prior to the Inquiry's public hearings. Such documents used in the Inquiry's public hearings or otherwise put in evidence will be published on the Inquiry's website. Should anyone have a valid reason to object to disclosure or publication of such relevant material, they may apply to the chair for a restriction order in accordance with section 19 of the Inquiries Act 2005, following the procedure set out in the protocol on applications for restriction orders.

Can a trust refuse to respond on the basis that it would cost too much or take too much staff time to deal with the request?

The chair to the Inquiry has a duty under Section 17 of the Inquiries Act 2005 to act proportionately.

There are grounds upon which you can refuse to comply with a disclosure request:

Section 21(4)(a) – You are unable to comply, for example because you do not have the information

S21(4)(b) – It is unreasonable to comply. This could include:

- It is too difficult to get the information
- It would take too much time
- It would involve spending too much money
- The evidence will not be of material assistance to the inquiry

On receipt of a rule 9 request, you consider whether the request addresses matters identified in the TORs, is fair and whether it has it been formulated with regard to the need to avoid unnecessary cost. Rather than refuse to respond and risk receiving a Section 21 notice (discussed elsewhere), you should contact the Inquiry's legal team and explain your concerns and why you consider the request to be

disproportionate. The legal team may provide clarification or guidance on the nature and extent of the disclosure being sought.

You should always seek legal advice in the event of receiving a rule 9 request which, following discussion with the Inquiry's legal team, your organisation is considering refusing to respond to.

Can the Inquiry request further information after receiving the response?

Yes. The Inquiry may make a further written requests for additional evidence, clarification or comment. Multiple requests can be sent over a period of time, and some inquiries ask for evidence about particular subjects at different times on a rolling basis.

Can trusts publish or share their response to a rule 9 request?

No. Your request is formal evidence given to the Inquiry and strict rules of evidence apply. Only the chair can make decisions regarding disclosure. If your response is not published by the Inquiry, you would require the consent of the chair following conclusion of the Inquiry to publish your response.

What powers to compel disclosure or witnesses does an inquiry have?

The vast majority of witnesses who give evidence to a public inquiry do so by consent after having provided a statement and disclosed documents following a request under rule 9 of the Inquiry Rules 2006.

However in the event that a witness refuses to co-operate, section 21 of the Inquiries Act 2005 gives the chair the power to issue a notice directing a witness to attend and give evidence. This power to compel witnesses to attend to give evidence or provide a witness statement is one of the crucial distinguishing features of a statutory inquiry as compared to a non-statutory inquiry.

Under section 21, the chair may by notice require a person to attend at a time and place stated in the notice:

- (a) To give evidence;
- (b) To produce any documents in the custody or control that relate to a matter in question at the inquiry; or

- (c) To produce any other thing in their custody or under their control for inspection, examination or testing by or on behalf of the inquiry panel.

Are there any circumstances where a party can refuse to comply with a section 21 notice?

There are two circumstances where a party can lawfully refuse to comply with a section 21 notice:

- (a) Where they are unable to do so; or
- (b) Where it is unreasonable in all the circumstances to do so.

An inquiry cannot compel the production of documents which are outside the scope of its terms of reference. This issue was the subject of the recent **ruling** by the chair of the Inquiry in relation to the production of certain material by the Cabinet Office. This ruling made the point that it is not for the material provider to refuse to disclose material requested by the inquiry on the grounds that it is, in its view, "unambiguously irrelevant" (see paragraph 21 of the ruling), this is a matter for the chair of the inquiry to determine. The government is now seeking a judicial review.

Under section 22 of the Inquiries Act 2005 which related to "privileged information", a person may not be required to produce information which is legally privileged, might incriminate them or their spouse or civil partner or is covered by parliamentary privilege. Section 22 also provides that the rules of law under which material may be withheld on the grounds of public interest immunity apply in relation to an inquiry.

If a trust refuses to comply with a section 21 notice what can the Inquiry do?

Section 35 of the Inquiries Act states that it is a criminal offence to fail to comply with a section 21 notice, to do things intended to have the effect of distorting or concealing evidence or to intentionally suppress or conceal a document.

If, following the issue of a section 21 notice, the witness fails to appear (or gives an indication that they are going to refuse to co-operate) then the chair can apply to the High Court under section 36 of the Inquiries Act for a witness summons requiring attendance at the inquiry backed up by what is known

as a bench warrant to enforce the witness summons. If, following this step, the witness continues to resist then they can be arrested. This process was undertaken in the case of *Chairman of Manchester Arena Inquiry v Taghdi* [2021] to ensure the attendance of a witness at the Manchester Arena public inquiry.

Will the UK Covid-19 Inquiry (the Inquiry) share the responses with anyone?

The Inquiry has issued a [protocol on documents](#), which states that it expects to disclose material to core participants and may (irrespective of any wider disclosure) use material as part of its body of documentary evidence to which reference may be made in its reports.

Core participants will be required to enter into confidentiality undertakings and any disclosure made to them will be subject to those undertakings until such time as it is made public by the Inquiry.

Therefore, it is anticipated that completed rule 9 statements will be shared with core participants (subject only to privacy redactions on the basis of the data protection regime and for any issues touching on issues relating to national security). The core participants will then be bound by their confidentiality undertakings until such time as the Inquiry makes the statements public by publishing them on their website.

