

IN THE MATTER OF THE INQUIRIES ACT 2005

AND IN THE MATTER OF THE INQUIRY RULES 2006

The UK Covid-19 Inquiry

**NHS England's Note re:
First Preliminary Hearing in Module 1 of the Inquiry**

A. Introduction

1. NHS England (“*NHSE*”) welcomes this Inquiry. It will allow the facts to be set out and the truth to be told and, through that process, learning and understanding to be identified for the benefit of the future. Consistently with the NHS Values, and in particular to work together for patients, NHSE looks forward to participating in the Inquiry to help it in its important work. NHSE is grateful for being designated a Core Participant in Module 1 of the Inquiry.
2. Reflecting the extent of its role in Module 1 of the Inquiry, NHSE has (limited) submissions to make about only two of the topics identified in CTT’s Note of 22nd September 2022.

B. The Commencement of the Inquiry

3. NHSE makes no submissions about the narrative account given in §§3-25 of CTT’s Note of the history of the Inquiry to date. That account does, however, offer some new information - in §23 of CTT’s Note the following is said:

“Module 3 will examine the impact of Covid, and of the governmental and societal responses to it, on healthcare systems generally across the UK. Among other issues, it will investigate the general impact of the pandemic on healthcare systems and governance, hospitals, healthcare staff, primary care (including GPs and dentists), NHS 111 services and ambulance services. It will address the use of ‘do not resuscitate’ notices, the rationing of critical care, capacity, triage systems, the shielding and care of the extremely vulnerable, NHS backlogs and waiting times, and the treatment of those suffering from long Covid. It is a UK ‘system’ module, and will look across all four nations, utilising in addition data from the initial stages of the listening exercise.”

4. The Inquiry published the Provisional Outline of Scope of M1 on 21st July 2022, and the Provisional Outline of Scope of M2 on 31st August 2022. It has not yet published its provisional outline of scope of M3¹

¹ The Chair’s Opening Statement, updated on 15th July 2022, contained a different list of the issues to be examined in M3: “Module 3 will examine the impact of Covid, and of the governmental and societal responses to it, on healthcare systems generally and on patients, hospital and other healthcare workers and staff. Among other issues, it will investigate healthcare systems and governance, hospitals, primary care (including GPs and dentists), the impact on NHS backlogs and non-Covid treatment, the effects on healthcare provision of vaccination programmes and Long-Covid diagnosis and support.”

5. Plainly, Module 3 of the Inquiry is amongst the most significant for NHSE. NHSE would accordingly ask that a reasonable opportunity is given to Core Participants in Module 3 to make representations as to the scope of the investigation to be undertaken within the Module.
6. For present purposes, NHSE notes the following:
 - a. First, the issue of “...the effects on healthcare provision of vaccination programmes...”, which was included in the Chair’s statement of 15th July 2022, has been omitted from §23 of CTT’s Note. For NHSE, the development of vaccines and the vaccination programme are among the issues of the first importance in the Inquiry. It may of course be that the omission is explained because a separate Module will be devoted to the vaccinations issue.
 - b. Second, the issue of “...NHS backlogs and waiting times...” (in §23 of CTT’s Note), or “...the impact on NHS backlogs and non-Covid treatment...” (as it is put in the Chair’s statement of 15th July 2022) will probably need to be framed by reference to some time parameters (as this is an ongoing issue).
 - c. Third, the strategy to increase critical care capacity in hospitals to ensure demand from Covid-19 could be met (described as “the rationing of critical care” in §23 of CTT’s Note) will require to be addressed in Module 3.
 - d. Fourth, as this Module will consider issues from a UK-wide perspective, it will be necessary to examine the effect that the legislative arrangements in England had on the provision of healthcare and NHSE’s relationship with Government, as compared to the position in Wales, Northern Ireland and Scotland.

C. Instruction of expert witnesses

7. The Inquiry has rightly recognised the need to receive a substantial proportion of the evidence that it receives through the provision of expert evidence: this is the only way in which the Inquiry can proceed at a reasonable pace and complete its important work within a reasonable time.
8. The difficult context in which the instruction of impartial experts by the Inquiry arises includes that (i) a substantial proportion of experts were themselves involved in the events under investigation, or have committed themselves to publicly expressed views already on matters falling within the remit of the Inquiry; (ii) on many of the issues which the Inquiry will investigate there were divided opinions within relevant disciplines and within communities of experts *at the time* of the events which are being investigated; (iii) one of the very issues which the Inquiry may in due course investigate is which amongst a number of divergent expert views a policy maker or decision maker ought to have followed; (iv) after a number of the key milestones in the pandemic passed, especially after the end of the height of the pandemic, a number of experts have emerged and have sought to coalesce and express views; and (v) the approach taken in other countries may itself also be a focus of attention in the Inquiry (and so seeking expert opinion from other jurisdictions may not be the simple expedient that is often employed in other contexts).
9. The usual safety net of the duty imposed upon an expert - to summarise the range of opinions on the matters dealt with in her or his report, and to give reasons for his or her

own report² - may be an insufficient bulwark, especially in the context of healthcare matters.

10. In these circumstances, NHSE particularly welcomes the Inquiry's recognition of the need to "...consider suggestions from core participants as to who should be appointed..." (§58 of CTT's Note). The Inquiry may additionally need to consider instructing more than one expert in each of the disciplines that it identifies in order, through that means, of obtaining a range of views that fairly represents the breadth of opinion in that discipline.

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28.9.22**

² *Cf* in the context of civil proceedings: PD 36, para 3.2(6); and in the context of criminal proceedings: CrimPR 19.4(f).