

IN THE UK COVID-19 PUBLIC INQUIRY

BEFORE BARONESS HEATHER HALLETT

IN THE MATTER OF:

THE PUBLIC INQUIRY TO EXAMINE THE COVID-19 PANDEMIC IN THE UK

Submissions on behalf of Covid 19 Bereaved Families for Justice and NI Covid 19 Bereaved Families for Justice for the Module 2 preliminary hearing on 31 October 2022

1. These submissions are provided on behalf of Covid 19 Bereaved Families for Justice (CBFFJ) and NI Covid 19 Bereaved Families for Justice (NI CBFFJ) in advance of the Inquiry's Module 2 preliminary hearing on 31 October 2022. These submissions are filed in accordance with the request from STI and CTI, dated Friday 21 October 2022, that CP submissions should be lodged by midday on Thursday 27 October 2022. For convenience, references to CBFFJ below can be read as including NI CBFFJ.
2. As the Chair is aware, the goal of CBFFJ has always been, and remains, to establish what happened to their loved ones, to participate effectively in that pursuit of the truth, and, in so doing, to ensure accountability and to prevent future deaths. CBFFJ considers that the Chair's Inquiry can and should achieve those same aims. As with the Inquiry's Module 1 preliminary hearing, CBFFJ set out below their initial submissions as to how that vital aim – to conduct a fearless and effective inquiry that establishes the truth and involves the bereaved in a meaningful way – can be achieved.
3. As requested by the Inquiry on 21 October, we confirm that the CBFFJ and NI CBFFJ representatives intend to make oral submissions at the preliminary hearing. These written submissions follow the order of the issues set out in §2 of CTI's note, dated 21 October 2022. Where CBFFJ have no written submissions to make on an issue at this stage, the issue has not been included below.

Dialogue and communication with the Inquiry Team

4. CBFFJ provided detailed written and oral submissions on this topic for the Inquiry's Module 1 preliminary hearing on 4 October 2022.¹ CBFFJ reiterate but do not repeat those submissions here. In short: CBFFJ acknowledge that the Inquiry is at an early stage and that it is seeking to move at considerable pace; precisely because of those imperatives, CBFFJ urges the Inquiry to adopt an open, collaborative and two-way approach to communication with CPs, as is common in other such processes. CBFFJ is committed to such collaborative working with the Inquiry.

¹ Written submissions dated 28 September 2022, §§4-7: <https://covid19.public-inquiry.uk/wp-content/uploads/2022/10/2022-09-28-Joint-note-from-Covid-Bereaved-Families-for-Justice-and-the-Northern-Ireland-Covid-Bereaved-Families-for-Justice.pdf>.

Scope of Module 2

5. CBFFJ agrees that the provisional scope is wide enough to cover all relevant aspects of this topic, with two caveats. Firstly, CTI note that greater particularity “*is neither practical nor advisable at this stage*”², and that scope will evolve through the Rule 9 process. If it remains the Inquiry’s stance that Rule 9 requests will not be disclosed, it will be almost impossible for CPs to assist in developing scope. Secondly, it is the intention of the Inquiry to seek targeted disclosure of material from providers in M2 (addressed below). If such an approach is adopted it is vital that providers (and CPs) understand the extent of its scope.
6. With those comments in mind, CBFFJ raises the following issues at this stage concerning Module 2 scope.
7. First, paragraph 3 of the provisional scope should expressly include:
 - a. Consideration of so-called ‘herd immunity’ by infection.
 - b. Consideration of the proportionality of NPIs against forecast deaths and other effects.
 - c. Decisions to allow major sporting and other events to go ahead in the face of dire Covid statistics.
 - d. Which vulnerable groups were actually considered, and in particular whether there was full and proper consideration of the impact on:
 - i. Black and brown communities (in particular with respect to structural discrimination);
 - ii. Other ethnic minority communities (as above);
 - iii. The elderly;
 - iv. The clinically vulnerable;
 - v. Those in detention and other congregate facilities;
 - vi. People living with physical and mental health issues and disabilities;
 - vii. People living with learning disabilities, autistic people, and people with other cognitive disabilities such as dementia;
 - viii. Key workers;
 - ix. Workers in the gig economy;
 - x. Socially and economically disadvantaged communities.
8. Second, paragraph 5 of the provisional scope should include whether the PM and Ministers took the virus sufficiently seriously in their (early) public messaging.
9. Third, paragraph 6 of the provisional scope should include a full examination of the disproportionate enforcement of the coronavirus legislation and regulations on members of certain racial and ethnic minority groups, particularly young Black and Asian men.
10. Finally, we recognise that work is at an early stage, however, we request that the Inquiry indicates that it intends to engage with CPs regarding the selection of appropriate witnesses as early as possible.

² CTI note dated 21 October 2022, §37.

Rule 9 requests

11. In submissions for the Module 1 preliminary hearing, CBFFJ invited the Chair to disclose Rule 9 requests to CPs.³ The TUC did the same. Without knowing what information has been sought by the Inquiry, it is extremely difficult for CPs to assist the Inquiry by raising other topics or avenues of investigation or by identifying particular material which may exist.
12. By her ruling following that hearing (§§19-20), the Chair declined to make such a direction and instead indicated that the Module 1 lead solicitor will provide monthly updates to CPs on the progress of Rule 9 work to include, “*in general terms*”, details of what requests have been made, whether documents have been received, when further documents are expected and when further Rule 9 requests have been made. CTI have indicated that the same approach will be adopted in Module 2.⁴
13. CBFFJ remain of the view that disclosure of Rule 9 requests would serve a number of important purposes. That is for the reasons previously advanced; in summary, it facilitates the effective participation of CPs – to assist the Inquiry – and it provides transparency to underpin confidence in the Inquiry’s process (from CPs and the wider public).
14. Those reasons have been fortified by the developments set out by CTI in their Module 2 note at §§43-45. In those paragraphs, CTI explain that because of the volume of potentially relevant material identified by some document providers (and specifically the Cabinet Office), a “*targeted approach*” is being adopted in such cases. That involves the following:
 - a. The Inquiry is *not* requiring all potentially relevant documents to be disclosed in such circumstances;
 - b. Instead, the Inquiry is requiring disclosure of “*documentation relevant to the key narrative events, the decision-making procedures of those bodies and persons relevant to the core political and administrative decision-making, and the core decisions themselves*”;
 - c. Further focused requests may be made after such material has been reviewed;
 - d. In addition, requests are being made for chronologies and corporate statements from all the organisational CPs in Module 2; and
 - e. Such “[o]rganisations have also been asked to ensure staff have the opportunity to flag particularly important materials so that the most crucial materials are identified and reviewed by the inquiry as soon as possible.”
15. CBFFJ understands the reasons for this approach, which is a significant departure from the general process adopted by this and other inquiries. The obvious concern is that it places a significant responsibility for identifying what is relevant on document providers who will, very often, be subject to investigation and potential criticism by the Inquiry.
16. In those circumstances, it is vital that CPs are able to participate effectively in the mechanisms by which the Inquiry is conducting these targeted evidence-gathering

³ Written submissions dated 28 September 2022, §§19-20.

⁴ CTI note dated 21 October 2022, §46.

exercises. Without such an approach, relevant material may be overlooked and there will be a concern that document providers who are subject to scrutiny are able to determine what should be disclosed. The position is not the same as in Module 1.

17. If such a targeted approach is to work, and confidence in the process is to be maintained, CBFFJ urge the Inquiry to:
 - a. Disclose the requests for chronologies and corporate statements from all the organisations within Module 2 (§45), and their responses, and the key issues identified by the Inquiry so far (§44).
 - b. Invite dialogue between CPs and the Inquiry team regarding the responses, in order to ensure that nothing is overlooked in the “*key narrative events, the decision-making procedures of those bodies and persons relevant to the core political and administrative decision-making, and the core decisions themselves*” (§44) that the Inquiry is using in its targeted approach.
 - c. Disclose the Rule 9 requests issued to document providers and the further focused disclosure requests made following receipt of initial disclosure from document providers (§44).
18. We note that the Chair declined to request position statements with respect to Module 1 and CTI propose the same approach is adopted for Module 2. If the above approach is adopted, with a short timeframe for the first stage (chronologies and corporate statements), we agree with CTI that the process may achieve the same purpose (§50).

Disclosure to Core Participants

19. CBFFJ note the clarification that has been provided as to the Inquiry’s approach to disclosure, in the Chair’s 17 October 2022 Module 1 ruling, in the Inquiry’s recently disclosed Protocol on the Redaction of Documents, and in CTI’s note for this Module 2 hearing. As CBFFJ understand the position, based on those documents:
 - a. The Inquiry will seek all potentially relevant material from document providers⁵ subject to the targeted approach discussed above, where a document provider holds a very significant volume of potentially relevant material. (CBFFJ have addressed the implications of that targeted approach above and have proposed a constructive solution to the concerns which arise).
 - b. The Inquiry will disclose all relevant documents to CPs and do so in tranches as far in

⁵ Chair’s ruling dated 17 October 2022, §11: “*The Inquiry’s approach has been, and will continue to be, to request document providers, through the Rule 9 process, to provide information and documents that are likely to be relevant to the issues and matters identified in a particular module.*” Protocol on the Redaction of Documents, §3: “*The Inquiry will operate a three-stage disclosure process. First, it will make requests from Material Providers for documents which are considered to be of potential relevance to its Terms of Reference.*” CTI note dated 21 October 2022, §52: “*The Inquiry’s approach is to request document providers, through the Rule 9 process, to provide information and documents that are likely to be relevant to the issues and matters identified in a particular module.*” (emphasis underlined).

advance of hearings as is possible.⁶

20. Given the importance of disclosure, it would be helpful if it can be confirmed that our understanding of the position is correct. For the avoidance of doubt, we have never sought disclosure of every document the Inquiry receives (Module 1 ruling, §12).

Instruction of expert witnesses

21. CBFFJ note the broad areas for expert evidence which are set out in CTI's note and will provide further submissions in due course, having regard to the indication that the Inquiry welcomes suggestions in respect of additional specialist areas and will consider suggestions as to the expert witnesses who should be instructed.⁷
22. Expert evidence will clearly play a central role in the Inquiry. With that in mind CBFFJ repeats the submission made in respect of Module 1 and invites the Inquiry to seek observations from CPs on the questions and issues the experts will be asked to address. Disclosure of letters of instruction at an early stage would be the appropriate course to allow CPs the opportunity to provide meaningful assistance with this important process and to ensure that this can be done within the rigorous timescales required by the Inquiry.

The listening exercise and the Inquiry's approach to evidence of circumstances of individual death and pen portrait material

23. CBFFJ provided detailed submissions on these issues for the Module 1 preliminary hearing.⁸ That reflected the considerable importance of this issue to the bereaved clients that make up CBFFJ. Following the Module 1 preliminary hearing, and prior to provision of the Chair's ruling on 17 October 2022 (which indicated that the question of pen portrait evidence would be kept under review: §40), CBFFJ submitted to the Inquiry a further submission on these issues⁹, intended to provide a constructive, practical proposal in an attempt to resolve the issues that had arisen.
24. CBFFJ have considered the Chair's ruling carefully, as well as CTI's recent note for this Module 2 preliminary hearing. We are unclear whether our further submissions of 17 October 2022 will be published, and therefore we set out the key parts in order that other CPs may see and understand them. CBFFJ's position is as follows:
25. First, it remains CBFFJ's position that the Inquiry should hear commemorative/pen portrait evidence from the bereaved first-hand. Such evidence is of considerable importance to the bereaved, it will assist the Inquiry¹⁰, the ToR do not prohibit or discourage such evidence

⁶ Chair's ruling dated 17 October 2022, §13: "*The disclosure of the relevant and redacted documentation will be in tranches.*" Protocol on the Redaction of Documents, §3: "*'Disclosure' is the process of making relevant documents available to Core Participants and (if required) to persons from whom the Inquiry proposes to take evidence.*" CTI note dated 21 October 2022, §57: "*The disclosure of the relevant and redacted documentation will be in tranches.*" (emphasis underlined).

⁷ Chair's ruling dated 17 October 2022, §21; CTI's note §§66-67

⁸ Written submissions dated 28 September 2022, §§35-44.

⁹ Dated 17 October 2022.

¹⁰ Our submission of 17 October 2022 stated as follows on these issues (§5):

"The importance of such commemorations being heard within the Inquiry itself has already been aired, but in our submission, it is a part of the process which is not only vital to the engagement of the bereaved, but also for the Inquiry itself. The hearing of commemorative evidence will provide the bereaved, many of whom were deprived of a proper opportunity to mark the death of their loved ones, with public recognition of their personal loss, whether they are among those who give oral evidence or not. It will also help to convey the extent of the loss to society as

being heard¹¹ (not least because commemorative evidence does not involve the detailed consideration of individual cases of death: para (b) of the ToR), such evidence can and should be heard in a manner that is proportionate, sufficient, voluntary and inclusive, and it is inappropriate to deal with such commemorative evidence solely through a listening exercise that is separate from the Inquiry (with the evidence not given direct to the Inquiry) and outsourced to others.

26. CBFFJ have set out in their submission of 17 October 2022 suggestions as to how commemorative/pen portrait evidence from the bereaved can be facilitated. They invite the Inquiry to consider the constructive proposals that have been made there. In particular, we repeat the contents of §6 of our 17 October submission:

- a. “Given the imperative to drive the Inquiry process forward, and the inevitability that the Inquiry will only be able to hear a proportionate number of such individual commemorations, we agree that commemorative hearings should not cause delay. If the Chair is willing to consider this approach, we ask that the extent and arrangement of the hearings should be the subject of further discussion. However, one of the following proposals may be appropriate:
 - i. A single period for hearing pen portraits prior to the commencement of M1;
 - ii. A series of shorter periods prior to each module;
 - iii. A single pen portrait at the beginning of each hearing day.

Reasonable guidelines for pen portraits should be set, following dialogue with representatives of the families, to ensure that they are kept to proportionate length.

- b. Engagement with the process should be voluntary. The method by which families are chosen to give oral pen portraits should be led by the families themselves, in dialogue with the Inquiry team. This is an approach that has worked well in other inquiry processes. Such a process would ensure that families from across our communities are involved, and with a variety of backgrounds and experiences. For other families, again on a voluntary basis, and with agreed guidelines to ensure proportionate length, their pen portraits should be posted to the dedicated website as above.
- c. There should be dialogue regarding the physical installation already announced by the Inquiry, together with any other ideas such as a visit by the Chair to the commemorative wall instituted by the CBFFJ at Westminster.
- d. There should be a space set aside at hearing venues where attendees can view or read pen portraits which are posted to the website.”

27. Second, CBFFJ consider that the Inquiry will need to consider evidence of circumstances of death, where necessary to meet the ToR. Reassurance has been provided by the Chair’s Module 1 ruling, §31, which indicates that “*bereaved family members may well have relevant evidence to give on possible systemic failings*” and “*If so, they may well be called to give evidence that includes the circumstances of their loved one’s death. These were the kind of issues raised repeatedly with me during the UK wide consultation on the draft Terms of Reference. It has always been my intention to call such evidence in the appropriate*

a whole and indicate to relevant State, corporate and other organisational CPs what is at stake in ensuring the most robust accountability and lesson-learning. The narrative account of the pandemic which the Inquiry has set out to provide will also be incomplete without commemorative evidence.”

¹¹ A matter raised by the Chair in her Module 1 ruling: §35.

module.”

28. Third, the Inquiry should hear first-hand evidence of the effect of bereavement itself. That can be accomplished by the Inquiry hearing from a proportionate number of witnesses during an appropriate module.
29. If the above approach is adopted, CBFFJ recognises that there is a role for a wider evidence-gathering process, and one which can also go beyond the bereaved, to others affected by the pandemic. If the listening exercise is used in this way, and is developed collaboratively between those affected and the Inquiry, in line with the proposals we have made in our 17 October submission¹², it is capable of developing the support of those impacted by the pandemic and provides an opportunity to devise an innovative and inclusive solution which will meet the needs and expectations of all involved.
30. With respect to any listening exercise, and the evidence of the bereaved generally – whether commemorative or concerning evidence directly related to ToR – firstly, dialogue is essential. Formulating a strategy and process should, in the first instance, involve dialogue between the Inquiry team and representatives of the bereaved, both of which have significant experience in this regard. Secondly, there are charities, and other experts with such experience. Outsourcing strategy or the process itself to entities with no apparent relevant experience is a wrong turn.

Future hearing dates

31. We note the choice of venue for both the Module 1 and 2 preliminary hearings. Although we welcome arrangements for streaming, which allows for many more to be virtually present, we request that arrangements for future hearings are subject to collaboration between the Inquiry team and CPs to ensure that all concerns are considered. In particular, the late notice of hearing dates is causing difficulties for counsel due to other court commitments and this is exacerbated by what for many, amounts to substantial travel arrangements.

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¹² §§9-11.

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