

Monday, 31 October 2022

(10.00 am)

LADY HALLETT: Good morning, everyone.

This is the first preliminary hearing into Module 2 of the Covid-19 UK Inquiry.

Module 2 -- and Mr Hugo Keith King's Counsel will expand upon this in a moment -- is looking at and making recommendations upon the UK's core political and administrative decision-making in relation to the Covid-19 pandemic between early January 2020 and February 2022, when the remaining Covid restrictions were lifted.

I have received a number of written submissions in relation to this module, and in a moment I shall invite Mr Keith, first of all, and then any core participants who wish to make oral submissions to elaborate upon the written submissions.

Can I just say this: I don't wish to take up unnecessary time, because we've got a lot to get through, but I'm extraordinarily grateful to the core participants for their written submissions. They were helpful and they were constructive, and I very much appreciate the offers of support and close co-operation expressed within them.

So thank you to everybody who took the trouble to

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a considerable way to satisfying this obligation.

May I say straightaway also that one of the core participant groups has reminded us of the need to review whether any reasonable adjustments are required to be made to the transmission of proceedings, and we'll of course review matters going forward in light of what they have said.

Also, as is routine in public inquiries, where there may from time to time be matters mentioned of a potentially sensitive nature, the broadcasting of the hearing will be conducted with a three-minute delay. This provides the opportunity for the feed to be paused if anything unexpected is aired which should not be. We do not expect any such matters to arise over the course of today.

Let me then turn to representation. Present today, whether in person or remotely, but excluding myself and the Inquiry legal counsel and solicitor team here, are counsel and solicitors representing 39 core participants. All are, therefore, legally represented and I don't propose, my Lady, to read all the names out.

Then turning to the core participants themselves, they know who they are, but I should explain that they are entities, organisations or persons with a significant legal interest in Module 2 and who,

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submit those written submissions.

I'll now call upon Mr Keith to outline the issues that we have to consider this morning.

Mr Keith.

Statement by LEAD COUNSEL TO THE INQUIRY

MR KEITH: My Lady, by way of brief introduction, I'm going to start by setting out the arrangements for today's hearing, and then introduce the core participants. Some of what I will say will repeat what I said at the preliminary hearing into Module 1. Because this is a different module with necessarily different issues to be addressed, and a significant number of new core participants, it's necessary to set out some of the matters again.

Starting with the arrangements for this hearing, the proceedings are of course being recorded and live streamed to other locations. This has certain benefits. First, it allows the hearing to be followed by a greater number of people than would be able to be accommodated within the hearing room or any overspill rooms; second, and in accordance with section 18 of the Inquiries Act 2005, my Lady, you're obliged to take such steps as you consider reasonable to ensure that members of the public are able to attend or see and hear a simultaneous transmission of the proceedings. Live streaming goes

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therefore, have enhanced rights to participate in this process.

Each of the core participants appearing before you was granted this status by you under Rule 5 of The Inquiry Rules 2006.

By way of overview, the Inquiry received 75 applications, some made jointly, for core participant status. Of these applications, 39 have been designated, some jointly, as core participants. They are as follows, and there is, my Lady, no significance in the order of names that I will read out:

The UK Statistics Authority; Scottish Covid Bereaved, formerly known as the Scottish Covid-19 Bereaved Families for Justice; Northern Ireland Covid-19 Bereaved Families for Justice; Covid-19 Bereaved Families for Justice Cymru; Covid-19 Bereaved Families for Justice Group; Care England; the Homecare Association; and the National Care Forum; Long Covid Kids; Long Covid SOS; and Long Covid Support; Save the Children UK; Just for Kids Law; and the Children's Rights Alliance for England; Solace Women's Aid; and Southall Black Sisters; disabled people's representatives organisations, comprising the Disability Rights UK, the Disability Action Northern Ireland, Inclusion Scotland and Disability Wales groups; the

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1 National Police Chiefs' Council; the Office of the Chief
 2 Medical Officer; the Secretary of State for the
 3 Home Department; the Welsh Government; the
 4 Scottish Ministers; the Executive Office of
 5 Northern Ireland; the Chancellor of the Duchy of
 6 Lancaster; the Cabinet Office; the Secretary of State
 7 for Foreign, Commonwealth and Development; His Majesty's
 8 Treasury; the Secretary of State for Health and Social
 9 Care; the Government Office for Science; the Local
 10 Government Association; and Welsh Local Government
 11 Association; NHS England; the Trades Union Congress; the
 12 British Medical Association; the Federation of Ethnic
 13 Minority Healthcare Organisations; the UK Health
 14 Security Agency; and Imperial College.

15 My Lady, you know, of course, that core participant
 16 status brings significant procedural advantages.
 17 The core participants get access to the disclosed
 18 documents, they will make submissions on the course and
 19 the mechanics of this Inquiry, they will raise specific
 20 questions and assist us in ensuring that the Inquiry
 21 discharges the formidable duties imposed upon it.

22 I need to say something about the nature of those
 23 duties, given the public interest in these proceedings,
 24 and the nature of the issues that Module 2 will be
 25 enquiring into.

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1 those who stood to suffer particular disadvantage
 2 because of the pandemic and the steps taken to deal with
 3 it were properly identified by the government, and
 4 whether the likely impact on them was sufficiently
 5 assessed.

6 We welcome, therefore, particularly, in addition to
 7 the bereaved family groups, the assistance of those core
 8 participants representing the interest of those sectors
 9 of society and groups who were likely to be particularly
 10 affected by the government decision-making:
 11 the disabled; the vulnerable; the elderly; children,
 12 particularly those at risk or in care or with particular
 13 needs; women and girls against whom violence and
 14 domestic abuse was perpetrated; those with chronic
 15 mental and physical health needs; members of ethnic
 16 minority communities; and, not least, long Covid
 17 sufferers, who ask whether the risks that eventuated in
 18 their case were properly considered. And it's for those
 19 reasons, my Lady, that you have appointed the
 20 representative organisations that you have.

21 To aid the better recollection, if it be needed, of
 22 the devastating impact of the Covid pandemic and to
 23 reinforce the utter seriousness and extent of
 24 the Inquiry's task in examining in Module 2 the
 25 decisions that the government took, it's necessary to

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1 In the very briefest of outlines, Module 2 is
 2 concerned with how, in overarching terms, central
 3 government responded to the pandemic and made the key
 4 decisions that it did, concerning matters of central
 5 importance such as the decisions to impose lockdowns,
 6 how and why did it make those core decisions, how well
 7 did the system work.

8 You have resolved, and I repeat the resolution
 9 today, that the Inquiry will enquire into these
 10 momentous decisions and events thoroughly and
 11 rigorously. It will ensure that the facts are properly
 12 revealed. It will identify plainly wrongful
 13 decision-making, and significant errors of judgement,
 14 but it will acknowledge what went well. And most
 15 importantly, it will ensure that lessons are identified
 16 so that they may be properly learnt for the future.

17 The bereaved and those who have suffered are
 18 absolutely entitled to no less.

19 In this unprecedented and vast and difficult
 20 undertaking, the Inquiry team will need the insightful
 21 and sensible assistance of all the core participants,
 22 and I wish to record also the Inquiry team's gratitude,
 23 alongside your own, my Lady, for the contributions
 24 reflected in the written submissions.

25 A key consideration in this module will be whether

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1 set out the briefest of chronologies of the early stages
 2 of the pandemic.

3 My Lady, as your opening statement recalled, in
 4 late December 2019, a cluster of cases of pneumonia of
 5 unknown etiology was detected in Wuhan City,
 6 Hubei Province, in China. A new strain of coronavirus
 7 was subsequently isolated on 7 January 2020. It was
 8 identified as severe acute respiratory syndrome
 9 coronavirus 2, SARS-CoV-2.

10 On 21 January 2020, the World Health Organisation
 11 published its Novel Coronavirus Situation Report - 1.
 12 It recorded that, as of the day before, 282 confirmed
 13 cases of 2019-nCoV had been reported from four
 14 countries, including China, Thailand, Japan and the
 15 Republic of Korea.

16 On 30 January, the second meeting of
 17 the International Health Regulations Emergency Committee
 18 of the World Health Organisation declared a public
 19 emergency of international concern.

20 The virus and its associated disease, Covid-19,
 21 spread rapidly. On 15 February 2020 France recorded
 22 the first official death in Europe from Covid-19. By
 23 late February, the number of cases of Covid-19 outside
 24 China had increased thirteenfold, and the number of
 25 affected countries had tripled.

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1 A worldwide public health emergency ensued, and on
2 11 March the WHO declared Covid to be the first
3 coronavirus pandemic.

4 As few on this planet will be unaware, Covid-19 has
5 killed millions of people worldwide and infected many
6 millions more. Globally, as of 26 October of this year,
7 there have been over 625 million confirmed cases of
8 Covid-19, including over 6.5 million deaths, all these
9 reported to the World Health Organisation.

10 Some estimates of death put the estimated number of
11 deaths attributable to Covid, that is to say not just
12 those reported, at tens of millions.

13 The pandemic has led to financial and economic
14 turmoil. It has disrupted economies and education
15 systems, and put unprecedented pressure on national
16 health systems. Jobs and businesses have been destroyed
17 and livelihoods taken away. The disease has caused
18 widespread and long-term physical and mental illness,
19 grief, and untold misery. Its impact will be felt
20 worldwide, including in the United Kingdom, for decades
21 to come.

22 As everyone here will recall, on Monday, 23 March of
23 2020, the Prime Minister announced severe restrictions
24 on the entirety of the United Kingdom in what became
25 known as the first national lockdown.

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1 home.

2 The months that followed saw death and illness on
3 an unprecedented scale. The latest government figures,
4 my Lady, calculate that in the United Kingdom there have
5 been around 180,000 deaths within 28 days of a positive
6 test. Beyond the individual tragedy of each and every
7 death, and the devastating effect on the bereaved, it is
8 clear that the pandemic placed extraordinary levels of
9 strain on the UK's health, care, financial and
10 educational systems, as well as on jobs and businesses.

11 The pandemic reached out and affected almost every
12 person in the United Kingdom one way or another. But
13 the hardship and suffering was not equally spread. For
14 many it meant confronting the risk of infection or worse
15 at the coalface: in hospitals, care homes and on
16 the frontline of the public sector.

17 For others, it meant the loss of employment or of
18 a business, or of worsening health, or an increase in
19 the daily struggle, the struggle with financial worry or
20 home care or poor living conditions.

21 So societal damage has been widespread, with unmet
22 health needs, damaged educational prospects, financial
23 insecurity, exacerbated inequalities and access to
24 opportunity significantly weakened.

25 The disease is still with us, of course. There were

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1 My Lady, I don't propose to say anything more about
2 the events leading up to that cataclysmic moment in
3 the life of the United Kingdom. For this preliminary
4 hearing it's not required and the detail of those events
5 will, of course, be a matter for you in due course.

6 But we recall that vast swathes of human and social
7 activity were ordered to be drastically curtailed and
8 much of public life was halted. People were instructed
9 to stay at home except for certain very limited
10 purposes, such as to shop for essential items, to carry
11 out one form of outdoor exercise each day, for medical
12 needs, to provide care to a vulnerable person, or to
13 travel to and from work if absolutely necessary and
14 where that work could not be done from home.

15 Almost every area of public life across all four
16 nations, including schools, the transport system,
17 the justice system and the majority of public services
18 were adversely affected. The hospitality, retail,
19 travel and tourism, arts and culture, and sport and
20 leisure sectors effectively ceased to operate. Even
21 places of worship closed.

22 While the numbers of deaths rose inexorably,
23 the NHS, the police and the emergency services and other
24 key workers continued in their places of work. Almost
25 everyone else was forced to work or to be educated from

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1 625 deaths involving Covid-19 registered patients in
2 the United Kingdom in the week ending 14 October 2022.

3 The cost in human and financial terms of bringing
4 coronavirus under control has also been immense.
5 Government borrowing and the cost of procurement and of
6 the various job retention income, loan, sick pay and
7 other support schemes has severely impacted public
8 finances and our financial health. The impact on the
9 NHS, its operations, its waiting lists and its elective
10 care has been similarly immense.

11 So, my Lady, this Inquiry has been constituted to
12 investigate, on behalf of the bereaved and those who
13 have otherwise suffered, as well as the wider public,
14 whether anything could have been done to reduce that
15 loss and suffering.

16 Only in this way can proper and effective
17 recommendations be drawn up to protect the country
18 better in the future from pandemics, whether caused by
19 a coronavirus variant or some other form of disease, and
20 also from comparable civil emergencies.

21 Given the sheer extent of the impact of the pandemic
22 and the government decision-making that was required
23 across such a very wide range of areas, it is little
24 surprise that this Inquiry will be no less complex and
25 multifaceted.

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1 My Lady, may I then turn to say something about
2 the commencement of the Inquiry, so that its legal
3 foundations and legal scope can be properly understood
4 and the work that you have already done be brought to
5 public attention.

6 On 12 May 2021, the then Prime Minister made
7 a statement in the House of Commons in which
8 he announced that there would be a public inquiry under
9 the Inquiries Act 2005. He stated that it would examine
10 the UK's preparedness and response to the Covid-19
11 pandemic and learn lessons for the future.

12 On 15 December 2021, as the sponsoring minister, he
13 appointed you, my Lady, as Chair of the
14 Covid-19 Inquiry.

15 In his written appointment letter, he confirmed that
16 he would be consulting with ministers from the devolved
17 administrations. This is important, because such
18 consultation is required, by section 27 of
19 the Inquiries Act, to enable the inclusion in the terms
20 of reference of an Inquiry for which a United Kingdom
21 minister is responsible, of anything that would require
22 the Inquiry to determine facts and make recommendations
23 wholly or primarily concerned with a Scottish matter or
24 a Welsh matter or a transferred Northern Ireland matter.

25 Draft terms of reference were drawn up making clear

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1 reference which had been made in response to some
2 comments from the devolved administrations.

3 Then the consultation process commenced, because
4 on 11 March you wrote an open letter to the public in
5 which you announced the launch of a public consultation
6 process on the Inquiry's draft terms of reference.
7 The Inquiry issued a consultation document seeking
8 the public's views on whether the Inquiry's draft terms
9 of reference covered all the areas that they thought
10 should be addressed, and on whether the Inquiry should
11 set a planned end date for its public hearings.

12 The consultation was open to everyone, and
13 the public could contribute on the Inquiry's website by
14 email or in writing.

15 You consulted widely across all four nations,
16 visiting towns and cities across England, Wales,
17 Scotland and Northern Ireland and speaking in particular
18 to a number of the bereaved. In parallel, the Inquiry
19 team met with representatives of more than
20 150 organisations in round table discussions, covering
21 themes such as healthcare, business, equality and
22 diversity and education in young people, among others.

23 In total, the Inquiry received over 20,000 responses
24 to the consultation, of which over 19,000 were received
25 through an online consultation form.

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1 that the Inquiry would consider and report on
2 the state's preparations and response to the pandemic,
3 and would therefore consider both reserved and devolved
4 matters relating to the devolved administrations in
5 Scotland, Wales and Northern Ireland.

6 On 10 January, you wrote to the Prime Minister
7 recommending certain amendments to ensure greater
8 clarity in the Inquiry's remit. You also sought
9 an express mandate to publish interim reports so as to
10 ensure that any urgent recommendations could be
11 published and considered in a timely manner.

12 In addition, given your view that the Inquiry would
13 gain greater public confidence and help the nation to
14 come to terms with the pandemic if it was open to
15 the accounts that many people would wish to give, you
16 suggested adding explicit acknowledgement of the need to
17 hear about people's experiences and to consider any
18 disparities in the impact of the pandemic.

19 On 4 February the Prime Minister responded
20 accepting, with some minor caveats, the detailed changes
21 that you had proposed.

22 On 10 March, having consulted with the ministers
23 from the devolved administrations in the way that I've
24 described, the Prime Minister wrote to you to inform you
25 of certain further changes to the draft terms of

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1 An independent research consultancy was commissioned
2 to analyse the responses and produce a comprehensive
3 independent report. This summarised the respondents'
4 views and the key themes that emerged from
5 the consultation process.

6 In light of those views, my Lady, you recommended
7 a number of significant changes to the draft terms of
8 reference, and you wrote to the Prime Minister
9 recommending those changes.

10 It's important that I emphasise: they were accepted
11 in full.

12 Accordingly, on 21 July, the Inquiry was formally
13 opened and you announced the decision to conduct
14 the Inquiry in modules. Module 1, dealing with
15 preparedness and resilience, was opened on 21 July, and
16 the preliminary hearing into that module took place
17 a few weeks ago.

18 This module was opened on 31 August, when its
19 provisional outline of scope was published.

20 As I will explain a little further in a moment,
21 Module 2 will consider and make recommendations about
22 the UK's core political and administrative
23 decision-making in relation to the pandemic between
24 early January 2020 until the Covid restrictions were
25 lifted in February 2022.

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1 This module will pay particular scrutiny to
 2 the decisions taken by the Prime Minister and
 3 the Cabinet, as advised by the civil service, senior
 4 political, scientific and medical advisers, and relevant
 5 Cabinet subcommittees. And it will do so with
 6 particular scrutiny to the period between early January
 7 and late March 2020, when the first national lockdown
 8 was imposed.

9 Because, as I've said, this Inquiry is obliged under
 10 section 27 of the Inquiries Act and its terms of
 11 reference to consider both reserved and devolved matters
 12 in respect of Scotland, Wales and Northern Ireland,
 13 having considered the picture from a UK-wide and also
 14 English perspective in Module 2, Modules 2A, 2B and 2C
 15 will address the same overarching and strategic issues
 16 from the perspective of Scotland, Wales and
 17 Northern Ireland. So the preliminary hearing in those
 18 modules will take place tomorrow and on Wednesday.

19 The public hearings in Module 1 and Module 2 will
 20 take place in London. Modules 2A, 2B and 2C will take
 21 place in Scotland, Wales and Northern Ireland
 22 respectively.

23 My Lady, many of the core participants in their
 24 written submissions have asked for detail of what will
 25 come thereafter.

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1 due course, will address, putting it very broadly,
 2 vaccines, therapeutics, antiviral treatment, the care
 3 sector, government procurement and PPE, test, tracing,
 4 government business and financial responses across the
 5 United Kingdom. And then later modules still will look
 6 at health inequalities and the impact of the pandemic on
 7 education, on business and the self-employed, on
 8 children and young persons, on courts and prisons, on
 9 the public services and key workers. It will also
 10 address -- or they will address hospitality, retail,
 11 tourism, arts, culture and sport.

12 The request from one of the core participants for
 13 yet more detail can be answered, I'm afraid, only in
 14 this way: that is as much detail as can sensibly be
 15 decided and set out at the moment.

16 I then turn to this module. The documents setting
 17 out the provisional outline of scope for Module 2 has
 18 been published and I don't propose to read it out. The
 19 focus is on the really significant decisions that formed
 20 the response to the pandemic: the non-pharmaceutical
 21 interventions, the lockdowns, working from home,
 22 the reduction of person-to-person contact, social
 23 distancing and the use of face coverings.

24 You intend to investigate how and why the major
 25 decisions were made; what factors were taken into

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1 Module 3 will consider the impact of the Covid
 2 pandemic on healthcare systems in England, Wales,
 3 Scotland and Northern Ireland. It will examine
 4 the capacity of healthcare systems to respond to
 5 a pandemic and how they evolved. It will consider
 6 the primary, secondary and tertiary healthcare sectors
 7 and services and people's experience of healthcare
 8 during the pandemic. It will examine healthcare-related
 9 inequalities, core decision-making, and leadership
 10 within the healthcare systems. And the matters that you
 11 have directed will be inquired into will include
 12 staffing levels, critical care capacity,
 13 the establishment and use of Nightingale hospitals and
 14 the use of private hospitals, the 111, 999 and ambulance
 15 services, GP surgeries, hospitals and cross-sectional
 16 co-operation, healthcare provision and treatment for
 17 patients with Covid-19, palliative care, the provision
 18 of cardiopulmonary resuscitation, including the use of
 19 Do Not Attempt Cardiopulmonary Resuscitation
 20 instructions (DNACPRs), the impact of the pandemic on
 21 healthcare staff, communication with patients,
 22 shielding, the impact of the pandemic on the clinically
 23 vulnerable, and the post-Covid condition referred to as
 24 "Long Covid".

25 Later modules, details of which will be published in

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1 account in making those key decisions; what was
 2 the scientific and medical evidence upon which those
 3 decisions were based; were they the right decisions
 4 insofar as we can tell?

5 We will consider the timeliness of those
 6 interventions, whether there were viable alternatives,
 7 whether different decisions might have produced
 8 different outcomes. We will investigate what the
 9 driving forces of those momentous decisions were. Why
 10 did the Prime Minister and senior ministers decide what
 11 they did?

12 Some of the issues, my Lady, might be posed as
 13 questions, but I emphasise that these are but a handful
 14 of the areas that you will be looking at, and different
 15 issues may also come to the fore as we move through
 16 the process.

17 But in relation to the structures and effectiveness
 18 of the central government bodies tasked with responding
 19 to the pandemic, such as COBR, the COBR committee,
 20 Cabinet committees, the ministerial implementation
 21 groups, SAGE, the Scientific Advisory Group for
 22 Emergencies and so on, some relevant questions might be
 23 these:

24 How effectively was SAGE utilised by central
 25 government? What improvements, if any, could be made to

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1 SAGE or the way in which central government uses it?
 2 Can lessons be learnt from the structures in place in
 3 other countries for the provision of scientific advice
 4 to policymakers? How effectively were these government
 5 structures resourced and staffed? Was their membership
 6 sufficiently transparent? How well did government
 7 departments assist and co-operate with the specialist
 8 committees?

9 Was the system of government medical and scientific
 10 advisers effectively utilised? How effective was
 11 the decision-making system under which
 12 the Prime Minister and other ministers acted on
 13 the advice and recommendations of the relevant bodies
 14 and advisers?

15 Did the system allow properly for timely political
 16 decision-making? Were decision-makers able to
 17 understand and interrogate scientific advice
 18 sufficiently?

19 What lessons were learnt from the way in which
 20 advice and recommendations were given and decisions made
 21 and responded to? And what was the extent of
 22 the co-ordination between the United Kingdom Government
 23 and the devolved administrations?

24 Access to and use of medical and scientific
 25 expertise, including data and data modelling, is

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1 providers, the issue of herd immunity.

2 And then, in relation to the lockdowns and other
 3 restrictions, you will enquire into the effectiveness of
 4 the mandatory lockdowns in controlling the transmission
 5 of Covid-19 and the relationship between the timeliness
 6 and the length of the lockdown and the trajectory of
 7 the disease.

8 How were economic and societal impacts, including
 9 the impacts on physical health, healthcare provision,
 10 mental health, education and societal wellbeing,
 11 assessed and weighed in the balance?

12 Perhaps, my Lady, the single most important
 13 question: is it possible to say what the likely effects
 14 of earlier or different decisions to intervene would
 15 have been; the counterfactual proposition? Bluntly,
 16 would lives have been saved if the lockdowns had been
 17 imposed earlier or differently?

18 You will be enquiring also into the identification
 19 of at risk and other vulnerable groups and the
 20 assessment of the likely impact on them of the pandemic
 21 decision-making in light of those existing inequalities.
 22 Was there a failure to adequately recognise that
 23 chronic illness and/or disability was an outcome for
 24 the pandemic?

25 Then, public health. You will be enquiring into

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1 an important matter at the heart of this module. So did
 2 key decision-makers have sufficient and proper access to
 3 reliable data and data modelling? Was there sufficient
 4 professional breadth and diversity of personnel? Were
 5 there any disciplines that were underrepresented on
 6 the committees? Was international experience
 7 sufficiently represented?

8 Did the committees have relevant and accurate data?
 9 How effectively was data described through
 10 the government? How reliable was the infectious disease
 11 data modelling? Did the data modelling cover the right
 12 eventualities? Was there an over-reliance on
 13 epidemiological modelling or mathematical modelling?
 14 Was there a over-reliance on influenza epidemiology and
 15 data modelling in the advice that was provided?

16 To what extent were factors such as the economy,
 17 non-Covid-related health concerns, education,
 18 mental health and societal issues considered when these
 19 momentous decisions were taken?

20 Were there any decisions in relation to which
 21 scientific advice was not sought but which ought to have
 22 been?

23 So we will examine the initial strategies relating
 24 to community testing, the movement from contain to
 25 delay, the broad and early guidance given to healthcare

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1 public health communications in relation to the steps
 2 taken to control the spread of the virus,
 3 the effectiveness and the reach of government messaging.
 4 Was the declared policy of "following the science"
 5 a fair reflection of the actual decision-making?

6 You will be enquiring into the maintenance of public
 7 confidence in the government strategy and
 8 decision-making, and you will be looking at the impact
 9 of alleged breaches of rules and standards on that
 10 process and on the maintenance of public confidence.

11 My Lady, I have taken those issues at a pace. Their
 12 scope is, of course, hugely ambitious, but it's
 13 necessarily provisional because it's neither practical
 14 nor advisable to identify at this stage all the issues
 15 that will be addressed at the public hearing.

16 The key, my Lady, must be to keep our focus on
 17 understanding the effectiveness of the core
 18 decision-making process; what worked, what didn't work
 19 and what are the lessons that must be learnt?

20 A number of the core participants in their written
 21 submissions have made helpful suggestions concerning
 22 scope. They've identified certain changes that they
 23 propose you should make in the direction of the Inquiry
 24 and this module, or they have specified particular areas
 25 for investigation. There are particularly helpful

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1 suggestions in the submissions from Covid-19 Bereaved
2 Families for Justice Group and the Northern Ireland
3 Covid-19 Bereaved Families for Justice submissions.

4 Some have also called for a draft list of issues.

5 My Lady, the Inquiry will reflect, of course, on all
6 those submissions. May I just make a number of points
7 as to how we propose to do so.

8 First, the Inquiry will approach all those
9 suggestions with an open, indeed eager frame of mind.
10 It serves no purpose whatsoever to expend the time,
11 energy and cost in designing and holding this Module 2
12 hearing only for issues of real importance not to be
13 explored.

14 But, second, the scope document is only a generic
15 guide. The actual scope and the issues and questions
16 that will arise for scrutiny at the public hearing can
17 only be assessed by reference to the material gathered
18 under the Rule 9 process.

19 Third, as you said in your opening statement
20 in July, with such a wide scope, the Inquiry will have
21 to be ruthless in its selection of issues and relentless
22 in its focus on matters of real importance. You cannot
23 examine every issue, even if thematically within the
24 reach of Module 2, and nor can you call every witness
25 relating to every event, every issue or every major

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1 the Inquiry, setting up the legal teams, identifying
2 hearing venues, responding to public communications and
3 setting Modules 1 and 2 on their way.

4 The Inquiry has already issued formal requests for
5 evidence under what is known as Rule 9 to the following
6 organisations for the purposes of this module, Module 2.

7 The Cabinet Office, Foreign, Commonwealth &
8 Development Office, the Department of Health and Social
9 Care, the Office of the Chief Medical Officer, the
10 Government Office for Science, SAGE, Independent SAGE,
11 the Home Office, His Majesty's Treasury, the Department
12 for Education, the Department for Transport, the
13 Department for Levelling Up, the Department for Work and
14 Pensions, the Department for Business, Energy &
15 Industrial Strategy, the UK Health Security Agency, and
16 NHS England.

17 Those Rule 9s are lengthy, complex and wide-ranging,
18 and I'm greatly indebted to the counsel team, solicitors
19 and barristers alike, for Module 2 for their industry
20 and focus in drafting those documents.

21 As a result, we will receive many tens of thousands
22 of documents for this module alone. And I need to say
23 that in the case of the major government departments,
24 it's clear from the initial responses that tens of
25 millions of documents could be potentially responsive to

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1 decision.

2 In the context of this module, Module 2, the focus
3 is on whether the government had sufficient regard to
4 the likely impact of the pandemic and its
5 decision-making, not on what the impact of its
6 decision-making turned out to be.

7 One core participant has called for a commitment
8 that the Inquiry will examine whether the government had
9 due and proper regard to the public sector equality
10 duty. In summary, those subject to that duty must:

11 "... have due regard to the need to:

12 "(a) eliminate [unlawful] discrimination,
13 harassment, [and] victimisation and ... other conduct
14 prohibited by ... [the] Act ..."

15 Also, the need to "advance equality of opportunity",
16 and to "foster good relations between [people] who share
17 a ... protected characteristic and [those] who do not".

18 Of course, you will be asking questions about
19 the extent to which the government adhered to such
20 duties, but that is an evidential issue and it serves no
21 purpose for the Inquiry now to try to set out, let alone
22 guarantee, what it will ask and what it will not.

23 May I then turn to the Rule 9 requests.

24 Since the start-up date of 21 July, a huge amount of
25 work has been done in terms of resourcing and staffing

26

1 the outline of scope if one went by the overall theme
2 identified for Module 2.

3 In respect of the Cabinet Office alone, the required
4 reviews of its own mass of documentation have been
5 estimated as being likely to take over three years.
6 The Inquiry would then itself have to review all that
7 material prior to disclosure being given to the core
8 participants.

9 Such a process if put in place would lead to
10 an unconscionable delay in the Inquiry's timetable, and
11 render impossible your stated determination to produce
12 timely recommendations.

13 So with respect to the central government providers,
14 the Inquiry has adopted a targeted approach. For this
15 module, by which, rather than requiring all the
16 documents potentially relevant to a theme or an area to
17 be provided, it has instead sought documentation
18 relevant to the key narrative events,
19 the decision-making procedures, to particular bodies and
20 persons, and the decisions relating to the key political
21 and administrative decision-making.

22 Some of the core participants, my Lady, have asked:
23 how will we know, therefore, whether you will receive
24 the relevant material? The answer is plain: we
25 ultimately decide what the key narrative events and

28

1 decisions are; by making detailed requests, then
 2 scouring the first responses for events and decisions
 3 worthy of investigation, and by harvesting all the other
 4 material that we receive to make sure those are the
 5 correct decisions, we will bear down on what matters.

6 So we assess, my Lady, that the targeted approach
 7 will lead to the disclosure of what is potentially
 8 relevant. We are not limiting what is potentially
 9 relevant or how that is to be defined. We are instead
 10 identifying at an early stage what the real issues are
 11 to which the documents may be potentially relevant, and
 12 we do so by reference to dates, to people, and events,
 13 rather than by warehousing that documentation.

14 To assist the process, may I also say that we are
 15 asking those Rule 9 recipients for chronologies, for
 16 corporate statements and the flagging of particularly
 17 important materials. Disclosure statements will be
 18 requested, so organisations explain the approach they
 19 have taken, and we can dip sample materials to check
 20 against those explanations.

21 My Lady, may I emphasise, however, that we just
 22 can't ask material providers to give us everything they
 23 hold about Covid. Common sense dictates that would be
 24 an impossible request, and an impossible task to
 25 achieve. It would take too much time and be

29

1 that was unaffiliated to government, who worked together
 2 to provide independent scientific advice to
 3 the United Kingdom Government and the public.

4 Let me say a little more about those requests.

5 As you know, the membership of the scientific
 6 advisory body SAGE and its subcommittees comprised --
 7 and comprises -- both civil servants and independent
 8 scientists. The Inquiry has sent Rule 9 requests to
 9 very nearly all of the independent scientists who sat on
 10 those committees during the pandemic, 199 individuals in
 11 total.

12 They were asked to provide amongst other things
 13 a summary of their involvement in this work, their views
 14 as to whether the committees on which they sat succeeded
 15 in their aims during the pandemic, and more generally
 16 their reflections on lessons learnt and recommendations
 17 for change that the Inquiry should consider making.

18 Similar requests have been sent to all members of
 19 the Independent SAGE committee, and we have received
 20 responses to a large proportion of those asks.

21 The Rule 9 requests continue weekly. They are being
 22 issued on an iterative basis and further requests will
 23 be made in due course.

24 Rule 9 requests will be made to civil society and
 25 special interest groups, representative bodies of local

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1 self-defeating. Too much disclosure is as bad as too
 2 little.

3 But may I, to give a brief example, give some detail
 4 of the sort of documents we've requested from, by way of
 5 example, the Cabinet Office.

6 We have sought agendas, minutes, and other documents
 7 associated with the core decision-making forums, such as
 8 Cabinet meetings, COBR meetings and ministerial
 9 implementation groups. We have asked for ministerial
 10 submissions, Number 10 daily briefing documents, records
 11 of written and oral advice to ministers, and details of
 12 internal communications, including WhatsApp group, which
 13 included the Prime Minister, Number 10, and other senior
 14 officials.

15 I should also say that the formal Rule 9 requests
 16 that the Inquiry has made amount to only one element of
 17 the ongoing process of discussion between the Inquiry
 18 and those organisations, the purpose of which has been
 19 to ensure that the requests we make are as efficient as
 20 possible in capturing material and setting the
 21 timescales.

22 My Lady, the long list that I gave of recipients of
 23 those Rule 9 requests also included members of SAGE,
 24 the Scientific Advisory Group for Emergencies, and
 25 Independent SAGE, the group of scientists, but a group

30

1 authorities, further scientists on SAGE, as well as
 2 independent scientists, certain witnesses from the
 3 People's Covid Inquiry, first ministers from the
 4 devolved administrations and other ministers attending
 5 UK Cabinet meetings, Chief Medical Officers, Deputy
 6 Chief Medical Officers, scientific advisers, senior
 7 officials in Public Health England, NHS England, senior
 8 civil servants, certain political advisers, and then the
 9 then Prime Minister and other key ministers.

10 So of course we will give consideration to
 11 the further suggestions made by the core participants,
 12 including those made by the Southall Black Sisters and
 13 Solace Women's Aid, those made by the disabled people's
 14 organisations and by the Trades Union Congress.

15 But the net that we have cast is already
 16 an exceptionally wide one.

17 Turning to disclosure of those requests, which is
 18 an issue which has been raised by a number of the core
 19 participants.

20 Disclosure to the core participants of those Rule 9
 21 requests is neither required by the rules nor generally
 22 established by past practice. We submit that their
 23 disclosure would serve little purpose, given that
 24 the core participants will get and see the vast majority
 25 of what the Rule 9 requests reveal. It is

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1 the documentary material that matters, not how it was
2 asked for.

3 Moreover, given that almost all the Rule 9 requests
4 will be superseded by and built upon further requests
5 from the Inquiry team, disclosure of preceding requests
6 serves, we assess, no purpose.

7 One core participant particularly concerned about
8 whether the government may omit to identify certain
9 areas which are of importance, including whether or not
10 it considered certain risks and the impact of its
11 decision-making on that particular sector, suggests that
12 disclosure of a schedule of an itemised list of
13 documents possessed by all the Rule 9 recipients would
14 enable that core participant to identify where an issue
15 should have been but was not considered by
16 the government. We respectfully disagree.

17 Where the government failed to consider certain
18 issues, such omissions will be apparent on the face
19 of the documents and their internal submissions, those
20 internal submissions relating to decision-making in
21 issue.

22 So disclosure of lists of potentially relevant
23 materials is not necessary to enable the core
24 participants to make the forensic point that certain
25 issues which should have been considered by

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1 In particular, the documents received from
2 the document providers cannot be provided without a sift
3 for relevance and for utility. Disclosure requires
4 active management by the Inquiry. But I can give
5 further details about the disclosure process that is
6 being adopted, so that core participants can be further
7 reassured.

8 As an Inquiry team, we propose to give regular
9 disclosure updates in which we can report on progress
10 which has been made in obtaining relevant documents, and
11 we will do so at future procedural hearing or hearings.

12 Secondly, we don't propose only to provide core
13 participants with documents relevant to themselves.
14 Everyone will receive the same documents for that
15 module.

16 Third, we'll provide all documents that the Inquiry
17 has received subject, as I've said, to a relevance
18 review, but also a de-duplication exercise and, third,
19 redactions in accordance with the redactions protocol,
20 so as to weed out irrelevant personal data, for example.

21 Fourth, there won't be a document protocol because
22 I've endeavoured to set out today the Inquiry's general
23 approach.

24 So disclosure is likely to be made in tranches.
25 Experience has shown, my Lady, that the disclosure of

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1 the government at the time were not in fact considered.

2 My Lady, in your Module 1 ruling you ruled that
3 disclosure of the Rule 9 requests would serve little
4 practical purpose, given the wide scope and the detailed
5 nature of the requests that are in fact being made, and
6 we invite you to apply the same approach to this module,
7 Module 2.

8 Turning next to disclosure to the core participants.

9 The core participants are of course entitled to
10 disclosure of relevant documents in advance of
11 the public hearing, so as to enable them to contribute
12 meaningfully to the process. Plainly, to make sure that
13 this Inquiry is in a position to disclose relevant
14 material, we have to cast our net more widely when
15 gathering it in. The Inquiry does this by asking
16 document providers for material that is likely to be
17 relevant to the issues that arise for enquiry.

18 But thereafter, it's neither necessary nor
19 proportionate for the Inquiry to disclose every document
20 that it receives or every request that it makes, or,
21 of course, every piece of correspondence. That is not
22 required, and it would hinder the Inquiry in
23 the performance of its functions. It is not the
24 function of the core participants to duplicate
25 the inquisitorial task of the Inquiry.

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1 documents as and when they're received makes for
2 practically a more difficult task.

3 Some core participants have requested that document
4 providers sign a statement explaining how they have
5 secured the preservation of documents, how they have
6 conducted their searches, and how they have satisfied
7 themselves that they have complied in full with their
8 duties.

9 I can say that each provider has been asked or will
10 be asked to provide an account setting out details of
11 how the documents were originally stored, the search
12 terms used, or other processes used to locate documents,
13 and the nature of the review carried out by the document
14 provider.

15 So where the Inquiry has queries or concerns about
16 a provider's processes for locating relevant documents,
17 it will raise them, it will pursue them. And of course,
18 as documents are reviewed and gaps identified, further
19 documents will be sought.

20 My Lady, in the course of the preliminary hearing
21 into Module 1, an issue arose in relation to the steps
22 taken to ensure the preservation of documents. And
23 I said on that occasion that the Inquiry secretary,
24 Mr Ben Connah, had written to the Director General,
25 Propriety & Ethics to the Cabinet Office to request

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1 the retention of records across government.
 2 The Director General had replied, setting out the steps
 3 that had been taken to ensure records relevant to
 4 the Inquiry were being retained. But may I assure you,
 5 and assure the core participants, that the Director
 6 General, Propriety & Ethics to the Cabinet Office has
 7 again written to government departments reiterating
 8 the requirement to ensure that all bodies within their
 9 ambit that exercise public functions, either within
 10 the department or wider via representative bodies,
 11 including local authorities, retain documents relevant
 12 to this Inquiry.

13 You also, of course, have the power to compel
 14 the production of documents, and there are provisions in
 15 the Inquiries Act which make it a criminal offence if,
 16 during the course of an Inquiry, a person does anything
 17 to alter or distort a document or intentionally
 18 destroys, suppresses or conceals one.

19 Finally on this topic, my Lady, there is the issue
 20 of whether or not there should be an obligation on
 21 document providers to submit a list of undisclosed
 22 documents, that is to say documents which aren't
 23 disclosed because they are not relevant.

24 It is, of course, a matter for you. In our
 25 submission, we do, however, ask rhetorically: to what

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1 assist the Inquiry, either individually or as part of
 2 a group of such persons, by way of the provision of
 3 written reports and opinions and, where appropriate,
 4 the giving of oral evidence at the public hearing.

5 My Lady, those experts will have the necessary
 6 expertise and experience for the particular instruction.
 7 They will be independent and objective, and subject to
 8 an overriding duty to assist the Inquiry on matters
 9 within their expertise.

10 As the core participants will no doubt appreciate,
 11 the identification of suitable experts is not at all
 12 straightforward, given the public ventilation of views
 13 by many of the experts in their particular fields, and
 14 the fact that some of the best experts were themselves
 15 involved in the events under investigation.

16 There is also, it will be no surprise to know,
 17 a significant absence of unanimity of opinion on many
 18 matters.

19 However, we've started to draw up a list of
 20 provisionally suitable experts. Written reports will be
 21 shared with the core participants, and where there are
 22 significant differences of view or emphasis among
 23 the members of a group, that will be clear on the face
 24 of the reports themselves. And of course, disputes or
 25 differences of view can be tested during the oral

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1 end? It is for the Inquiry to determine whether proper
 2 disclosure is being made, what further areas should be
 3 explored, and whether documents are required to be
 4 produced. So the production of a document setting out
 5 everything that's not been disclosed would simply
 6 require an immense amount of further work to little end.

7 In the preliminary hearing in Module 1, you ruled
 8 that the production of a document setting out everything
 9 that has not been disclosed would require a very
 10 considerable amount of work for little practical gain.
 11 In your view, you ruled, this would not be consistent
 12 with the obligation to minimise cost to the public
 13 purse, and we invite you to apply the same analysis to
 14 Module 2.

15 The electronic disclosure system that will be used
 16 to provide documents will be Relativity, and we
 17 anticipate that disclosure will commence before
 18 Christmas.

19 Turning next to expert material and the instruction
 20 of expert witnesses in Module 2.

21 A significant number of experts and persons with
 22 recognised expertise are likely to be giving evidence at
 23 the public hearing as witnesses. However, the Inquiry
 24 will also appoint qualified experts in particular fields
 25 of expertise as experts to the Inquiry, and they will

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1 hearings.

2 The Inquiry has provisionally identified a number of
 3 areas in relation to which witnesses are likely to be
 4 giving evidence on such topics, whether as witnesses of
 5 fact or as experts. And those areas are likely to
 6 include: the co-ordination of strategy and crisis
 7 management in central government; the governance and
 8 accountability of and the co-ordination between
 9 government departments; systems for measuring and
 10 the estimation of infections and deaths; registration of
 11 deaths; and the overall figures for infection and death;
 12 statistical methods in infectious disease epidemiology;
 13 mathematical modelling of the spread of the virus;
 14 transmission, infection, mutation, reinfection and death
 15 modelling systems. Also, the international comparison
 16 of modelling systems; data sharing in government and
 17 with regional and devolved administrations.

18 Finally, experts and lay witnesses with expertise
 19 will be asked to look particularly at the issue of
 20 government and public communications, and behavioural
 21 science, the impact of messaging in the maintenance of
 22 public behaviour.

23 On behalf of the Inquiry team, we welcome
 24 the identification by some of the core participants of
 25 other suitable areas, and we note the suggestions made

40

1 by the Southall Black Sisters and the Solace Women's Aid
2 group in particular. We will consider all
3 the suggestions, bearing in mind the guiding principle
4 that the appointment of experts to the Inquiry and their
5 assignment to a group are matters exclusively for you.

6 I now turn to the question of
7 the Listening Exercise, as to which, my Lady, you'll
8 have seen that again some of the core participants have
9 advanced submissions.

10 As foreshadowed in the terms of reference,
11 the Inquiry is in the process of designing its
12 Listening Exercise. That is to say, you have ordered
13 that the Inquiry set up a way in which the experiences
14 of bereaved families and others who have suffered
15 hardship or loss can be heard and recorded, and that
16 those experiences can be analysed and summarised before
17 being admitted into the formal record of the Inquiry.

18 The summaries of what is heard via
19 the Listening Exercise and that accompanying analysis --
20 and it is not just data and numbers -- will be fed into
21 the public hearings for Module 3 onwards as evidence, as
22 I have said, so that it can inform the Inquiry's
23 understanding of the impact of the pandemic and
24 the response and of the lessons to be learned. It will
25 also, of course, be disclosed to the core participants.

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1 its website which will invite people to share their
2 experiences. With thanks to the many members of
3 the public, including bereaved families, who have
4 already provided feedback, progress has been made on
5 this online option.

6 Then, later in the winter and into the spring,
7 a pilot in-person and online process will start with
8 group sessions, and over time those trials will increase
9 in scale until the Listening Exercise is running at full
10 capacity next year.

11 But, my Lady, to do this, the Inquiry needs to draw
12 on experts with a range of knowledge. We cannot
13 ourselves design and set up a system that can reach out
14 to potentially tens of thousands of persons wishing to
15 share their experiences and then manage that information
16 also. So the company Ipsos has been appointed by
17 the Inquiry to bring research and analysis expertise to
18 the Inquiry's design and piloting of this process.

19 They will set up the pilot process by which meetings
20 can take place for people to share their experiences,
21 and approaches might include one member of the public
22 meeting someone who is an expert in talking about such
23 things. It may involve group meetings, focus groups or
24 sharing by phone and virtual meetings.

25 Of course, appropriate support will be arranged with

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1 My Lady, this will allow the Inquiry to understand
2 the experiences of the pandemic from across the whole of
3 the United Kingdom, including from those most affected,
4 but also those whose voices are not always heard. It
5 will provide an opportunity for people to have their
6 voices heard by the Inquiry without the formality of
7 giving evidence or attending a public hearing, so that
8 everyone who wishes to do so feels able to contribute to
9 the Inquiry.

10 My Lady, the process which you have instructed to be
11 done will reach vastly more people than could ever be
12 accommodated by the giving of evidence in public
13 hearings.

14 So the exercise aims to hear from a broad range of
15 people, including the bereaved, but also those whose
16 health has suffered from the disease, long Covid
17 sufferers, those living with disability or
18 health problems, the clinically vulnerable, and those
19 whose family life, education, jobs, health, well-being
20 and livelihoods were significantly affected.

21 It's obviously important that the Inquiry gets
22 the design and structure right, and the Inquiry will
23 start piloting different approaches for
24 the Listening Exercise very shortly. This will include
25 the Inquiry introducing, in November 2022, a new part of

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1 the Inquiry to ensure those early trials don't have
2 a detrimental impact on those participating, but
3 the trials will take place in different locations across
4 the United Kingdom and will target different types of
5 people and groups.

6 The initial Listening will be undertaken by Ipsos on
7 behalf of the Inquiry but in combination with other
8 organisations that might be needed, such as community
9 outreach groups and experts in trauma. Inquiry
10 officials and you, my Lady, may be attending individual
11 sessions, but it is too early to tell.

12 A consortium will then gather those experiences
13 alongside members of the Inquiry team so that they can
14 be properly analysed and summarised before being placed
15 into a form that can be admitted into the record.

16 M&C Saatchi, a second company, has been appointed by
17 the Inquiry to help the Inquiry inform people how and
18 when to come forward to talk about what happened to
19 them, and they are required to design the plans required
20 to communicate with people to ensure that we can reach
21 across society to hear from as many people as possible.

22 My Lady, some concern has been raised about
23 a communications company doing the Listening. May I say
24 for the sake of clarity, they will not themselves be
25 doing the Listening.

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1 The contracts will run for between five to
2 eight months depending on how quickly the work
3 progresses and how much insight the Inquiry can generate
4 from bereaved groups and interested organisations, all
5 of whom will of course be consulted.

6 Both companies have been required to declare any
7 potential conflict of interest and their declarations
8 have been considered and approved by the Inquiry.
9 The Solicitor to the Inquiry, Mr Martin Smith, has
10 provided further information about this process in
11 a note that will be circulated this morning and may
12 indeed already have been sent out.

13 My Lady, I emphasise that the experiences which will
14 be shared will not be filed in the hearing by way of
15 direct oral evidence or as individual testimony, because
16 it must necessarily be anonymised. But legal
17 representation to participate will not therefore be
18 necessary and it's not intended that the Inquiry will
19 fund legal assistance for people to participate.

20 I further emphasise that this is quite separate from
21 the direct oral testimony that you will be receiving
22 concerning the circumstances of individual deaths where
23 such evidence is relevant to the light that it sheds
24 upon whether there were systemic failures.

25 Some of the core participants have again asked in
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1 and find the right solution, one that is suitable and
2 that captures the right feelings and emotions.

3 So, further to your direction, the Inquiry team will
4 be in call shortly with affected groups and will involve
5 them as appropriate in coming weeks in relation to
6 development of that commemoration.

7 Now, my Lady, finally before you hear from the legal
8 representatives, may I say that there will be a further
9 preliminary hearing for this module. It will be held
10 early in 2023 in London, on a specific date and at
11 a venue to be confirmed, but probably here.

12 The public hearing in Module 2 will take place in
13 London in the summer of 2023, next year, and it will
14 last around eight weeks.

15 We are proceeding, as I have said and as some core
16 participants have acknowledged, at immense pace, and
17 that is a sensible and achievable time at which to
18 conduct the Module 2 public hearing.

19 Notice will be given of everything that is required
20 to be so notified. My Lady, it may not always allow for
21 as much time as the core participants would like. We
22 will do our best, but time is against us, and there is
23 a huge amount to be done.

24 My Lady, I've sought to lay out where the Inquiry
25 stands at present in the major procedural terms, but
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1 their written submissions some questions about
2 the process: who will be doing the Listening, what
3 qualifications if any will the listeners have, what
4 training if any will the listeners have, how will the
5 experiences be recorded? This and much, much more
6 of course remains to be worked out, but naturally it
7 will all be shared with the core participants as soon as
8 the Inquiry is able to do so.

9 Turning then to commemoration.

10 Given the scale of loss and hardship, the Inquiry
11 wishes to provide opportunities for that loss and
12 hardship to be commemorated as part of the process.
13 The Inquiry team intends to create a physical
14 installation in its future hearing centre, which could
15 be a static or mobile artwork or a more organic piece
16 that grows over time, such as, for example, a book of
17 commemoration, a picture or video wall. It's also
18 looking at how the Inquiry website can be used for
19 commemoration.

20 My Lady, I know that you have asked the Inquiry team
21 to work over the coming weeks with the core participants
22 and those who have suffered so much to offer our
23 thinking on this matter and so that they may be able to
24 contribute to the process.

25 You have said that we should agree some principles
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1 we're also here of course to listen to the
2 core participants about the Inquiry and how it should
3 proceed, and we will of course, as I've said, take
4 careful account of everything that will be said to you
5 this morning.

6 You have received, as you know, a note from Counsel
7 to the Inquiry setting out the issues that may be
8 explored, and you have also received ten written
9 submissions in response, one of which is a joint note on
10 behalf of the Covid-19 Bereaved Families for
11 Justice Group and the Northern Ireland Covid-19 Bereaved
12 Families for Justice.

13 The majority of the remainder of the core
14 participants have kindly indicated that they don't wish
15 and haven't wished to file written submissions, but
16 the written submissions which have been filed have
17 of course all been circulated around the core
18 participants.

19 My Lady, we understand that of the core participants
20 there will be ten who will wish now to make oral
21 submissions to you.

22 **LADY HALLETT:** Thank you very much, Mr Keith, thank you.
23 I have been asked to take a break for the stenographer,
24 who has been doing an excellent job on the transcript.
25 So we shall break now and return at 11.30, please.
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1 (11.10 am)

2 (A short break)

3 (11.30 am)

4 LADY HALLETT: Mr Weatherby.

5 **Submissions on behalf of the Covid Bereaved Families for**
6 **Justice Group by MR WEATHERBY**

7 MR WEATHERBY: Good morning.

8 I previously introduced the Covid Bereaved Families
9 for Justice Group to you at the preliminary hearing for
10 Module 1, but with your permission I will do so again
11 briefly at this Module 2 hearing because obviously there
12 are other people present and watching.

13 The Covid Bereaved Families for Justice is the group
14 formed in early 2020 as a support and campaigning group
15 for those who lost loved ones to Covid, and the failed
16 response to it. Sadly, as you know, the group grew and
17 grew for very obvious reasons.

18 The group is UK wide. Its Facebook page has about
19 6,600 supporters currently. Of those, about 3,320 are
20 signed up as members of the group, which is
21 a significant figure, indicating, more than they want to
22 be updated, they want an actual involvement.

23 The group is incorporated for administrative
24 reasons. It has a board of directors and a campaign
25 team. Its directors are all bereaved family members.

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1 significant -- I hope significant -- submissions to you
2 both in writing and orally, and the group facilitated
3 the consultation at the earliest stages after your
4 appointment.

5 In respect of Module 2, we've made fairly detailed
6 written submissions. Some of the issues overlap with
7 the issues that I raised in Module 1. And where you've
8 ruled on them, I certainly don't intend to tax your
9 patience or repeat those, save for the fact that there
10 is some overlap and I will, with respect, return to one
11 or two of them.

12 We have read the written submissions of other core
13 participants which came through a few days ago. It's
14 notable to us on a quick read-through that many of the
15 themes in them are repeated, and therefore no doubt
16 that's something as we've recognised, you will too. And
17 the fact that points are being raised by a number of
18 different core participants will no doubt have an effect
19 on the way that you consider them.

20 In terms of the agenda, I'll start, if I may, with
21 scope and paragraph 5 of our written submissions.

22 We've noted that the Inquiry's provisional scope is
23 certainly wide enough to encompass all relevant issues
24 within this module, and therefore we don't seek to make
25 constructive criticism of the width of it. We are

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1 The members are from England, Scotland, Wales,
2 Northern Ireland and, indeed, beyond, because
3 the criteria is that they lost loved ones within the UK
4 not where they live, and so the members are widely
5 geographically located.

6 I lead the central legal team instructed by Broudie
7 Jackson Canter Solicitors. We have a full working
8 arrangement with the Northern Ireland team, the Scottish
9 and Welsh bereaved groups who have CP status or are
10 autonomous from the group.

11 A main object of the campaign from its inception was
12 to get this public inquiry. The families are committed
13 to engaging with the Inquiry to get the answers they
14 seek, to get accountability, and to ensure that all of
15 the UK and each part of it is better prepared for the
16 next time, through your recommendations.

17 The bereaved understand that they are by no means
18 the only ones with a legitimate interest in the success
19 of this process, but they are central to it, a fact that
20 I have not been slow to underline in my submissions to
21 you so far -- or, indeed, with respect, you have not
22 been slow to acknowledge.

23 The families seek effective participation in
24 the Inquiry. They do not want to be bystanders or
25 passive observers. As you know, we have made

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1 grateful to Mr Keith this morning for fleshing out some
2 of those issues.

3 We also note that it's been said that it's neither
4 practical nor advisable at this stage to give greater
5 particularity, and the scope will evolve through
6 the Rule 9 procedure. As was said earlier, but just to
7 remind those less familiar, the Rule 9 procedure being
8 the process by which the Inquiry requests material from
9 those it believes can assist the Inquiry.

10 We certainly understand the logic behind the
11 assertion that that process will lead to material and
12 answers that will allow for more consideration to be
13 made to expand the scope. But if the position on Rule 9
14 requests remains the same, that they won't be shared
15 with the core participants, then it does make it
16 difficult for us to have input into the development of
17 that scope.

18 As I say, I've had that argument and therefore I'm
19 going to move swiftly on, but with one caveat, and that
20 is that we say the position in respect of Module 2 is
21 not the same, because of the targeted approach that
22 Mr Keith referred to in writing and earlier on, that
23 being that important government departments, including
24 perhaps the most central of them, the Cabinet Office,
25 will not be required to provide all relevant documents

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1 or potentially relevant documents but ones with target.
 2 Therefore, I'll come on to the process, if I may, in
 3 a few moments, but what we say about that is that makes
 4 it even more important that we're involved in
 5 the process from an earlier stage. But, as I say, I'll
 6 come back to that, if I may, in a moment.

7 Before I do, I just want to raise a number of
 8 factual points or points that we think should be
 9 expressly included within the scope for Module 2, and we
 10 say they should be made express within the scope, so
 11 there is no doubt but that they will be covered.
 12 The enormous task that you have has been noted by
 13 Mr Keith and everybody else, and so the possibility of
 14 matters being overlooked or missed is obviously going to
 15 be there and there throughout. Therefore, the maximum
 16 amount of assistance that you can get from core
 17 participants we would urge you to do.

18 More than that, for people who are perhaps within
 19 vulnerable groups or people who have suffered
 20 discrimination, which I will come on to in a moment, it
 21 is very important indeed that they understand expressly
 22 that they're included in the scope. So for those
 23 reasons we would ask you, through your team, through
 24 either expanding the provisional scope or, perhaps
 25 better, through a list of issues, that there should be

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1 included in that. But again, as I say, for people
 2 within those communities, people with particular
 3 vulnerabilities, it's very important to them to
 4 understand as clearly as can be that their issues will
 5 be considered, and therefore we would urge you to expand
 6 on the generic reference in paragraph 3 of your
 7 provisional scope to these issues and to raise them
 8 again through a list of issues or an amended provisional
 9 scope, to include as many -- as much particularisation
 10 as possible.

11 So, for example, the effects of systemic or
 12 structural discrimination and the way that Covid had
 13 a disproportionate effect on black and brown
 14 communities, other ethnic minority communities, and
 15 whether that was properly considered by the high level
 16 government and Cabinet, particularly but not exclusively
 17 in the early stages.

18 We note and support the submissions on the self-same
 19 points made by the Federation of Ethnic Minority
 20 Healthcare Organisations and the TUC, which appeared to
 21 be supportive of them.

22 Separately, but in addition, specific concerns were
 23 they properly considered? Concerning the elderly,
 24 children, clinically vulnerable, those in detention and
 25 other congregate facilities, those living with physical

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1 a rolling or iterative process of expanding the express
 2 terms of the scope.

3 We've heard from Mr Keith this morning on the first
 4 of the points that I was going to raise, that so-called
 5 herd immunity is very much within the consideration of
 6 the Inquiry. We're not surprised to hear that, but we
 7 would invite you to make that clear within an amended
 8 provisional scope or a list of issues.

9 Likewise, we would say that it's important to make
 10 clear that the effect of mitigating measures,
 11 non-pharmaceutical interventions in particular, to
 12 the extent to which they were considered against
 13 forecasts of the numbers of people who might die, should
 14 be included expressly.

15 Likewise, the fact that there were certain very high
 16 profile sporting events which were allowed to take place
 17 during a period of dire Covid statistics. And very
 18 sadly some of the people that I represent are here
 19 because of those events. And therefore it's important
 20 to them that it's made clear and express that
 21 the Inquiry will be looking at those.

22 In terms of discrimination and vulnerability, two
 23 separate but overlapping areas, I'm grateful to Mr Keith
 24 for his clarification and setting out some of the
 25 groups, some of the sections of community that will be

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1 and mental disabilities, those living with learning
 2 disabilities, autistic people, people with other
 3 cognitive disabilities such as dementia, were they fully
 4 and properly considered? Again, we note and support
 5 the submissions on some of these points made by
 6 the disabled people's organisations, the children's
 7 rights organisations in particular.

8 And then, of course, there are key workers, those in
 9 particularly vulnerable jobs such as transport,
 10 healthcare, social care, those in the gig economy and
 11 those especially vulnerable because of economic
 12 disadvantage.

13 And importantly, and I think Mr Keith has already
 14 covered this point, we very much support the Southall
 15 Black Sisters and Solace Women's Aid regarding whether
 16 the particular impact on women and girls of Covid and
 17 the response measures were properly considered.

18 Now, of course, it may well be, particularly given
 19 the issues that were raised by Mr Keith, that
 20 the Inquiry absolutely intends to pursue those issues,
 21 but, for the reasons I've already mentioned, we
 22 respectfully invite you to particularise them and
 23 particularise them at an early stage.

24 Two further points, quick points on scope.
 25 In paragraph 5 we would urge you to add whether

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1 the Prime Minister and Cabinet took the virus
2 sufficiently seriously in their messaging. That's
3 an issue which is particularly raw for some of
4 the families, given some of the media attention
5 particularly in the early months.

6 And in paragraph 6 we've raised the issue of
7 the disproportionate or the allegedly disproportionate
8 enforcement of regulations on certain racial and ethnic
9 minority groups.

10 And we recognise that may straddle other modules but
11 it is covered to some extent in Module 2, particularly
12 with respect to the drafting of a framework of
13 regulations.

14 So that's all I seek to assert in terms of scope.

15 Moving on to Rule 9, we've set out further
16 submissions on Rule 9 from our paragraph 11. You did
17 not find favour with our submissions and those of
18 the TUC on this subject in Module 1, indicating that
19 we'd be provided with general updates on a monthly
20 basis, and Mr Keith has indicated that he is urging you
21 to adopt the same process.

22 But, as I flagged earlier, we do say that
23 the position is different because of the targeted
24 approach to the production of material to the Inquiry
25 with respect to Module 2. And we do understand the

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1 those estimates come from. They must come from the
2 Cabinet Office itself. And the time taken to consider
3 what needs to be disclosed is a function of many things,
4 including the amount of resources that are put into it.

5 So we're not sure the extent of the problem of
6 disclosure, and we would urge you to keep a very open
7 mind of people who may have reason to try to rein in
8 their own disclosure.

9 If the answer is a targeted approach, and we don't
10 indicate -- we don't submit that it isn't, it's even
11 more vital that there is maximum transparency in this
12 process from the outset as to what is and, perhaps more
13 importantly, what is not being targeted.

14 So, having commented that the provisional scope is
15 wide enough to cover all relevant matters, the lack of
16 particularity -- currently, understandably, the lack of
17 particularity doesn't assist in the bereaved or anybody
18 else understanding what is being targeted and what is
19 not.

20 Interestingly, the submissions of NHS England at
21 their paragraph 6 would appear to chime with that
22 submission from the other end of the telescope, from
23 an organisation which is a producer. Of course they'll
24 speak for themselves, if I've got that right or wrong,
25 but it is interesting and important that, in trying to

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1 reasons for the Inquiry taking that approach. The
2 example given, unsurprisingly, and helpfully indeed, is
3 that of the Cabinet Office, and we do follow that there
4 will be an extremely large volume of potentially
5 relevant material available.

6 Now, obviously, as the department of state which
7 supports the Prime Minister and the Cabinet, that
8 material is likely to be central to Module 2 and,
9 indeed, other modules, but -- we do understand the
10 points that are being raised, but we also note
11 the obvious caution, that an approach of targeted
12 disclosure does give significant latitude to those who
13 will be subject to investigation and potential criticism
14 to be the ones that actually determine, rather than
15 the Inquiry, in the first place at least, what is
16 disclosed.

17 I follow and understand and accept that the Inquiry
18 will pursue on a rolling iterative basis with Rule 9s so
19 that, inadvertently or not, disclosure of relevant
20 documents can't be overlooked or missed. We note that
21 counsel has recounted that the reviews by the
22 Cabinet Office would take over three years, we're told,
23 and that's before there's a privilege and national
24 security check. But in a way this starts to open up
25 the issues with this, because we're not clear where

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1 assist the Inquiry, core participants are approaching
2 the same issue from different approaches.

3 So, in our submission, if a targeted approach is
4 the right one, and it may well be, then it's even more
5 important that it's accompanied by a list of issues,
6 iteratively evolving over time as facts emerge, and that
7 there should be disclosure of the Rule 9s so that core
8 participants can see what is actually being sought and
9 what is not being targeted.

10 So those are our submissions on that.

11 CTI, Counsel to the Inquiry, refers to the "key
12 narrative events, the decision-making procedures [of
13 those] ... bodies and persons [relevant] to the [core]
14 political and administrative decision-making", and the
15 core decisions themselves, quote unquote.

16 It's essential that we all know, in our submission,
17 to what that actually refers, and that's the greater
18 particularity we seek. At the moment we don't. And
19 it's only through that transparency that we are
20 effectively allowed to take a part in this section of
21 the process.

22 Moving on from that, we note the fact that
23 the Inquiry is seeking corporate or organisational
24 statements "setting out a narrative of relevant events
25 and the lessons learned", including a chronology. And

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1 we note in the written submissions at paragraphs 45 and
2 50 of counsel's note that they will "serve a similar
3 purpose to position statements".

4 We agree, and we view that as a very positive step
5 indeed, adding only that we hope, in line with the tight
6 timescale set by the Inquiry, that those statements will
7 be required to be provided very swiftly and, indeed, the
8 product disclosed as soon as the redaction process is
9 undertaken. That would be a significant step in
10 facilitating the engagement of core participants. And
11 therefore, we would seek clarification about when those
12 statements are to be produced to the Inquiry and when
13 it's envisaged that they'll be disclosed to core
14 participants.

15 I was going to raise a short point on disclosure,
16 but I think Mr Keith has helpfully answered that point,
17 that it's the intention of the Inquiry to disclose all
18 material which passes the relevance test that's gathered
19 by the Inquiry.

20 Just for the avoidance of doubt, we have not argued,
21 and we don't argue, for disclosure of non-relevant
22 material. We fully understand and agree that that isn't
23 required. So I don't think I need to address you
24 further on that.

25 Experts. We welcome the assertion that the Inquiry
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1 CPs are brought to the table on this, the less positive
2 input that we can have into that. And this is
3 effectively allowing us to assist the Inquiry and
4 facilitating the effective participation of core
5 participants.

6 Almost finally, the Listening Exercise. This is
7 an issue which, as you know, has generated a number of
8 written and oral submissions already. You considered
9 matters during Module 1. In our written submissions
10 we've set out, from 23, a summary of submissions we
11 served on 17 October. Now, we did that in light of the
12 discussion at the Module 1 preliminary hearing, to try
13 to make what we considered to be constructive proposals,
14 and we've included them in the written submissions for
15 today, just so that they're set out so that everybody
16 can see the position of the families on those issues.

17 As you know, the proposals we made were regarding
18 commemorations or pen portraits, the evidence of
19 circumstance of death and evidence of bereavement, and
20 we stressed the imperative that the Inquiry hears
21 a proportionate amount at first-hand. We've noted in
22 the written submissions the reassurance that has been
23 given regarding the second of those issues,
24 the intention of the Inquiry to call evidence from the
25 bereaved on systemic matters relating to the deaths of
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1 will consider suggestions from core participants, and we
2 will make observations in due course when we have
3 a greater understanding of the wider issues in Module 2.
4 But we would urge the Inquiry to have more of a dialogue
5 with core participants about the areas, the identities
6 and the letters of instruction at an early stage.

7 The current indication is that there is a provisional
8 list of experts, and we would seek that that is shared
9 with us so that we can have input into that.

10 Certainly from our perspective, and I've no doubt
11 others', we will take a positive approach to that. We
12 have already indicated that we understand the problems
13 in this particular Inquiry of getting independent
14 experts, because just about everybody has expressed
15 a view, but we don't think that's insurmountable. We
16 respectfully agree with the indication that I think you
17 gave earlier that you will look to adopt panels of
18 experts so there can be a balance of views where there
19 is such.

20 But we would urge that these matters are a matter
21 for dialogue, and the current indication that
22 the dialogue or consultation about experts will be at
23 the stage that they are being finalised, we respectfully
24 say is the wrong approach. It's the wrong end of
25 the stick. The later it is that we and all the other
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1 their loved ones where it's relevant to the particular
2 module.

3 You've indicated already in your ruling that you're
4 not minded to hear pen portrait evidence, but that you
5 will keep commemorations under review and something has
6 been said about that today.

7 I'm not therefore going to address you further on
8 those matters, but we do indicate clearly and publicly
9 that we will positively engage with your team in
10 the dialogue that was mentioned earlier about
11 commemorations. With respect, we won't change our
12 position, but we will engage positively on that subject.

13 What I do raise further today is the parts of those
14 further submissions we put in about
15 the Listening Exercise. So beyond the submissions about
16 the importance of the Inquiry hearing first-hand from
17 the bereaved, we have recognised the utility of
18 the wider process to gather experiences and evidence,
19 not just from the bereaved, but from others affected by
20 the pandemic. And we referred to this at 29 and 30 of
21 our written submissions.

22 But if there is to be such a process, we urge again
23 that it's devised in collaboration with those affected.
24 You are well aware of the concerns that the bereaved had
25 to reading reports in the media. I'm not going to go
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1 back to that. Whether outside assistance is required
2 is plainly a matter for you. We've learned today for
3 the first time, in the course of oral submissions, of
4 the two companies that have been engaged to assist
5 the Inquiry in this endeavour.

6 Whether such outside assistance is engaged, as it
7 appears it has been, we respectfully urge that, through
8 your team, you engage with us to try to put into that
9 process. Your team has many people that have dealt with
10 the bereaved positively and have experience and
11 expertise in that. Frankly so do we. I raised on
12 the last occasion that there were charities, for example
13 Inquest -- Inquest has been doing listening exercises
14 for 40 years. It does listening days with the bereaved
15 from many tragedies. So far as we're aware, it is a key
16 body which we would invite the Inquiry to look to, to
17 engage with.

18 We're also aware of other experts, for example some
19 academics that have also, over many processes and
20 reviews and enquiries, been engaged in gathering
21 evidence from the bereaved and have a lot of learning
22 and experience about how to do that, and we would urge
23 that engagement is made with them. We will help. But
24 we would say that it's important to engage with those
25 who have the experience of the sensitivities involved,

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1 So I do understand the concerns when you aren't told
2 what's going on, but, as you've acknowledged, the team
3 are working enormously hard, but we'll do everything we
4 can. And I also understand the problem with notice of
5 hearings. I know it's a really, really tight timetable,
6 and I know some representatives weren't able to be here
7 today for other commitments. I apologise and I don't
8 apologise, in one sense. I apologise to them and to you
9 when we cause inconvenience, but the reason is, as you
10 know, that I have set a very ambitious timetable, I hope
11 for good reasons.

12 So thank you for raising those matters, I'll bear
13 them all very much in mind.

14 **MR WEATHERBY:** Thank you.

15 **LADY HALLETT:** Right. Mr Lavery.

16 I pronounced it correctly today, I hope, Mr Lavery?

17 **MR LAVERY:** Yes.

18 **Submissions on behalf of the Northern Ireland Covid-19
19 Bereaved Families for Justice by MR LAVERY**

20 **MR LAVERY:** My Lady, as your Ladyship knows, I represent
21 the Northern Ireland Covid-19 Bereaved Families for
22 Justice, and we have -- as we set out in Module 1
23 preliminary hearing, we are collaborating very closely
24 with the overall group, and Mr Weatherby and I and our
25 team have produced a joint submission, so I'm not going

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1 and we hope that that will be done.

2 Finally, just a small point, notice of hearings. We
3 are obviously aware of the difficulties the Inquiry is
4 having because of the extent of its work, but it would
5 be helpful if a little extra warning could be given
6 about hearings, both for the families and also those of
7 us who have other commitments.

8 Mr Keith has addressed the issue of future modules
9 and the difficulties with providing further information
10 about those at the moment. We would join with both
11 the TUC and, I think, NHS England in their submissions
12 about that. I'll leave it to them to expand, but we
13 would urge as soon as possible that greater
14 particularity could be given regarding those.

15 Those are my submissions.

16 **LADY HALLETT:** Thank you very much indeed, Mr Weatherby.
17 It's all extremely helpful.

18 I'm sure I don't need to assure you, but to assure
19 those whom you represent and the public, my mind is open
20 and the Inquiry team is flexible, and the Inquiry team
21 also knows that I wish to get as much information out
22 there to the core participants and to the public as soon
23 as possible, and I promise you that the team is under
24 direct instructions from me to do that as soon as we
25 can.

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1 to add to anything that Mr Weatherby set out this
2 morning. I wanted to introduce myself and the team at
3 this stage.

4 What I said in the Module 1, my Lady, was I looked
5 very briefly at unique factors relevant to
6 Northern Ireland, and I gave a list of those, and I'm
7 very sure that those will be the subject of
8 consideration in Module 2C.

9 There is some overlap, though, into this module.
10 One of those unique factors is the success or
11 otherwise -- probably otherwise, I say with no sense of
12 pride -- of devolved government in Northern Ireland.
13 And we have had over a sustained period of time either
14 no Assembly, no functioning Assembly, or, at best,
15 a form of mandatory coalition which, depended on
16 a commentator, does or does not work, and here may not
17 be suitable in the longer term.

18 So that is a feature of disfunctionality of
19 government, for whatever reasons -- we won't get into
20 those -- of Northern Ireland, but it has an impact, we
21 say, at a central government level in terms of what the
22 awareness is of that, what contingency is made for that,
23 what response there is to that and, indeed, how one
24 deals and responds to that ongoing disfunctionality.
25 We're even responding to a more acute breakdown of

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1 devolved government in Northern Ireland.

2 So these are all issues which may well be looked at
3 as part of 2C, may well be looked at as part of this
4 module. I know that Ms Gallagher, as part of the TUC
5 submission, specifically addresses the lack of
6 government in Northern Ireland for a period of
7 three years immediately preceding the pandemic, and
8 I was assured this morning by Mr Keith that that will be
9 properly looked at as part of Module 2C, and we welcome
10 that and we'll continue -- I will, with Mr Keith and
11 Ms Dobbin -- about what falls into 2 and what falls into
12 2C, and we'll collaborate hopefully closely on that
13 basis.

14 Lastly, my Lady, one other aspect that will probably
15 fall more into Module 2 is the relationship between
16 central government in London and Dublin, when one is
17 looking at the island as one epidemiological unit. What
18 exchange was there between the two governments that deal
19 with the land border and what exchange of information,
20 what collaboration was there, and of course the common
21 travel area.

22 So that's all I want to say this morning, my Lady.
23 And, as I say, we hope that the collaboration that we've
24 seen already will evolve into greater -- to make sure
25 that you, my Lady, aren't faced with any omissions or

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1 those matters which seem to be of particular importance.

2 First of all, may I thank you on behalf of CBFFJ
3 Cymru for designating it as a core participant in
4 Module 2 hearings of this public inquiry, and for the
5 Chair's recognition that it is best placed to assist
6 this public inquiry to achieve its aims by representing
7 the collective interests of a broad spectrum of those
8 bereaved by Covid-19 in Wales.

9 It is vitally important that the people of Wales can
10 have full confidence that this public inquiry will fully
11 scrutinise decision-making in Wales in respect of
12 Covid-19 and that the experiences and voices of the
13 Welsh people will be properly heard and represented.

14 We welcome the Chair's indication that this public
15 inquiry will come and hear evidence in Wales on
16 Module 2B, and it may be on other parts of the various
17 modules as well.

18 This all gives confidence to those I represent that
19 this Inquiry takes the interests of Wales seriously, and
20 intends to do a thorough examination of all those
21 matters which touch upon the interests of Wales and its
22 concerns.

23 It's particularly important, in the case of Wales,
24 since there is no separate Inquiry being undertaken in
25 Wales. Frankly we don't know why that is so. It may be

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1 gaps in the scope of the Inquiry.

2 **LADY HALLETT:** Thank you very much, Mr Lavery, that's very
3 helpful. And thank you for any contributions you made
4 to the written submissions, I'm very grateful, I shall
5 bear those issues very much in mind.

6 Thank you.

7 **MR LAVERY:** Thank you, my Lady.

8 **LADY HALLETT:** Mr Williams.

9 For those who have to come from the deepest corners,
10 we are trying to work out how to configure the hearing
11 room so you don't have to come from the darkest corners.

12 **Submissions on behalf of Covid-19 Bereaved Families for
13 Justice Cymru by MR WILLIAMS**

14 **MR WILLIAMS:** My Lady, it's avoiding me having to climb over
15 people, so I have to sit in a corner over there.

16 My Lady, I represent the Covid-19 Bereaved Families
17 for Justice Cymru. Together with the legal team that
18 I lead, it is a Welsh-based and Welsh-focused group,
19 dedicated solely to campaigning for and giving a voice
20 to those bereaved by Covid-19 in Wales.

21 We have listened carefully to the address by
22 Mr Keith, and we're grateful for the more detailed
23 information he was able to provide us. That means that
24 the submissions I make will be significantly shorter,
25 which might please some people here, but I'll deal with

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1 that at some stage in these proceedings the
2 Welsh Government, or Mr Drakeford, can explain it to
3 you. We will have to wait and see who is called to give
4 evidence.

5 CBFFJ Cymru welcomes the Chair's commitment to
6 looking at the actions of the devolved administrations.
7 However, as the Chair will be aware, there are still
8 concerns in Wales that the preliminary scope of Module 2
9 does not set out in specific detail the Welsh-specific
10 issues that ought to be investigated by this public
11 inquiry.

12 In particular, as may not be appreciated still,
13 Wales is a separate country, with a devolved government.
14 Although Wales receives funding from the UK Government,
15 responsibility for health and social care is devolved to
16 the Welsh Government. Wales has its own healthcare
17 system. This means that the key decisions made in Wales
18 in relation to the Covid-19 pandemic were largely
19 separate to and quite often different from those taken
20 in the UK Government.

21 Clearly, Wales has strong links with
22 the UK Government and the other devolved governments,
23 and it will obviously be necessary in Module 2 to
24 unravel the links between these governments, both
25 the formal and informal links, and to see the extent to

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1 which they influence the Welsh Government, whether for
2 good or bad.

3 In relation to Module 2, CBFFJ Cymru would wish to
4 highlight some of the areas of concern that this public
5 inquiry must scrutinise in respect of Wales, but it may
6 be that now is not the time or the place to go into
7 those in great detail, having heard other matters raised
8 by Mr Keith.

9 There are, however, just a few little matters
10 I would like to comment upon which need to be
11 emphasised. We need to know the extent to which there
12 was a sharing of knowledge between Wales and
13 the UK Government, in particular on scientific and
14 medical matters. We need to know the actions taken or
15 not taken by the Welsh Government, whether they were
16 influenced by and why they differed from decisions taken
17 by the UK Government.

18 We need to know whether the actions taken or not
19 taken by the Welsh Government were justifiable in
20 the light of the state of knowledge, whether expert,
21 medical or otherwise. We need to know to what extent
22 were the decisions of the Welsh Government supported or
23 not supported by expert opinion.

24 Then, this is rather an open-ended consideration,
25 this is at paragraph 8(e), we need to know the extent to

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1 **LADY HALLETT:** Very grateful, Mr Williams, thank you very
2 much. As you know, but I need to emphasise, whether or
3 not a devolved nation institutes an inquiry of its own
4 is not a matter for me and I'm not entering into that
5 debate; I just will cope with or co-operate with
6 whatever happens.

7 As far as some of the matters you've raised,
8 I suspect they are already intended to be covered but it
9 may be that, as Mr Weatherby was saying, we can make
10 matters more explicit to allay any concerns. But
11 anyway, thank you very much for your very helpful
12 submissions.

13 Right, Scotland and Ms Mitchell, I think.

14 **Submissions on behalf of Scottish Covid Bereaved by**
15 **MS MITCHELL**

16 **MS MITCHELL:** My Lady, I represent the Scottish Covid
17 Bereaved, as instructed by Aamer Anwar & Company.

18 We note that Module 2 covers a very broad range of
19 issues, and it's acknowledged that this module has
20 ambitious scope. We note that the Module will explore
21 how, in overarching terms, the central government
22 responded to the pandemic. For the Scottish Covid
23 Bereaved at this first preliminary hearing, the
24 following four issues are raised.

25 One, disclosure. As with the first preliminary

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1 which the actions of the Welsh Government were
2 influenced by political considerations. Whether they
3 were influenced or not remains to be seen. We have had
4 no information outside of this Inquiry concerning that
5 matter, although, by common consensus, in Wales at
6 least, it was greatly influenced by political matters.

7 There are further matters, one of which was raised
8 by Mr Weatherby, and that's the question of
9 superspreader events. This is part of a wider topic,
10 which is that the scope raises different issues in
11 respect of Module 2, England, Module 2A, Module 2B and
12 Module 2C. So the superspreader issue is raised in
13 respect of Scotland, Module 2A. There were similar
14 events in Wales. In particular, one close to my heart,
15 the rugby international between Wales and Scotland was
16 cancelled the day before it was due to take place
17 in 2020, but it was cancelled after very large numbers
18 of Welsh and Scottish supporters had descended on
19 Cardiff, tens of thousands, and consideration will need
20 to be made to perhaps drawing a more consistent approach
21 to the four countries so that those issues are covered.

22 My Lady, the matters I was going to make further
23 submissions on have been met by Mr Keith's submissions
24 and touched upon by Mr Weatherby. I don't intend to
25 repeat them any more.

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1 hearing for Module 1, we have no disclosure as yet. We
2 understand the process of receiving disclosure in
3 tranches will begin before Christmas 2022. We welcome
4 the process beginning as soon as possible in order that
5 we can assist the Inquiry in identifying any areas which
6 may not have been considered as yet.

7 Given the very significant number of documents
8 requested in the Rule 9 applications and their undoubted
9 voluminous nature, does the Inquiry envisage any
10 potential delays with the recovery and the time required
11 for consideration of such disclosures?

12 Senior Counsel to the Inquiry this morning makes it
13 clear that there is no requirement that Rule 9
14 applications be disclosed to core participants, and
15 of course no issue can be taken with that as a matter of
16 fact.

17 Of course, equally so, there is no requirement that
18 Rule 9 applications not be disclosed to core
19 participants. It might be imagined that Rule 9
20 responses may call for other Rule 9 requests, and Senior
21 Counsel to the Inquiry this morning has acknowledged
22 that that will be likely. The disclosure of Rule 9
23 requests to core participants would allow core
24 participants to bring their own knowledge and
25 understanding. I make no criticism of the legal team to

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1 the Inquiry but that's a knowledge and understanding
2 that may not necessarily be held by the legal team, as
3 to whether certain documents ought to be requested.

4 If the documents were disclosed, this would cut down
5 the possibility of delay in the disclosure process and
6 the necessity for lengthy additional Rule 9 requests.

7 The ingathering of relevant evidence is key to
8 an understanding of how central government responded to
9 the pandemic. A transparent system of disclosure
10 of course enhances the robustness and the legitimacy of
11 the process, and I would encourage my Lady to consider
12 in particular that last point as to whether or not,
13 particularly with these high level decision-making
14 processes, the Rule 9 requests ought to be disclosed to
15 core participants.

16 Two, modules. We appreciate Senior Counsel to
17 the Inquiry setting out, as he stated, very broadly the
18 topics of the future modules, and indeed it was
19 ourselves that requested if that could be done. We did
20 so to help the Scottish Covid Bereaved understand what
21 shape the Inquiry will take and to allow them to see
22 whether areas of particular concern to them will be
23 dealt with in later modules. And albeit the scope was
24 very broad this morning, we thank Senior Counsel to the
25 Inquiry for setting out what those are. We of course

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1 We note the terms of the letter by the Solicitor to
2 the Inquiry dated 13 September 2020, which was made
3 available online on 4 October, setting out in some
4 detail how that will work, and we are grateful for that
5 additional information.

6 We now ask for some further specification. It would
7 assist those we represent to know how the report will
8 fit into the hearing process. I know my Lady has
9 already touched upon in this at the preliminary hearing
10 for Module 1, but what we would like to know,
11 for example, is: will the Listening Exercise still be
12 running contemporaneously with the hearing of evidence?
13 We ask that question because it's anticipated that there
14 may be people who listen to the evidence as it comes out
15 and perhaps do not recognise their experiences reflected
16 in the evidence as it is led, and then decide to contact
17 the Listening Exercise to share their position.

18 It would be helpful to know whether there will be
19 a delay after hearings to allow those who may have been
20 influenced by what they heard to have their say as part
21 of the Listening Exercise.

22 Further submissions for the Scottish Covid Bereaved
23 will be made in hearing for Module 2A tomorrow.

24 That's all at the moment, my Lady.

25 **LADY HALLETT:** Thank you very much, Ms Mitchell, helpful as

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1 appreciate that more detail can't be given at the
2 moment, but we invite Senior Counsel to the Inquiry to
3 let us know as soon as possible when greater
4 specification becomes available.

5 Three, evidence. We noted in the first hearing that
6 the proposed length of the first module was hoped to be
7 a month. We note that Module 2 will be approximately
8 two months. We would seek clarification: does
9 the two-month period include the hearings on
10 the discrete sub-modules in that timeframe? We will
11 raise separate issues in relation to evidence in
12 relation to the module that relates to Scotland alone,
13 so I will say no more in relation to evidence this
14 morning.

15 Four, the Listening Exercise. As doubtless
16 the Inquiry fully appreciates and has now stated on
17 a number of occasions, finding out what people went
18 through at the time of Covid is fundamental to
19 the Inquiry's understanding of the process. As no doubt
20 the Inquiry fully appreciates, finding out what
21 happened, for example in a hospital setting, will rarely
22 be found by scrutiny of documents alone. The Scottish
23 bereaved understand that, whilst not direct evidence,
24 the Listening Exercise will be an important part of
25 finding out what happened to people during these times.

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1 ever.

2 As you know, given the particular situation with
3 Scotland and what's been happening with the
4 Scottish Inquiry, the situation is such that it's not
5 straightforward for me to give the kind of clarity that
6 I would like to give at this stage, but I can promise
7 you we are working on giving the Scottish people and the
8 Scottish bereaved as much information as we can as soon
9 as possible, because I appreciate it's far from clear at
10 the moment.

11 **MS MITCHELL:** I'm very much obliged.

12 **LADY HALLETT:** Thank you very much.

13 Oh, and I can emphasise that I think -- I can say
14 this straightaway, the Listening Exercise, the intention
15 is that it will run throughout the time of the Inquiry.

16 **MS MITCHELL:** I'm obliged for that clarification, my Lady.

17 **LADY HALLETT:** Thank you.

18 Right, Ms Twite.

19 **Submissions on behalf of Just for Kids Law, Save the
20 Children UK and the Children's Rights Alliance for England
21 by MS TWITE**

22 **MS TWITE:** My Lady, I represent Just for Kids Law, Save the
23 Children Fund and the Children's Rights Alliance for
24 England. I'm instructed by the in-house legal team at
25 Save the Children.

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1 Those children's rights organisations make a joint
2 application for core participant status and they are
3 jointly represented at this Inquiry.

4 At the outset they wish to clarify that they are
5 grateful to this Inquiry to be designated as core
6 participants and, further, for the acknowledgement that
7 you gave when designating them as such of the specific
8 impact that the Covid-19 pandemic had on children and
9 young people.

10 By way of, I hope, a brief introduction to those
11 organisations, we wanted to acknowledge that today's
12 generation will forever be the Covid generation. Sorry,
13 I meant to say today's children will forever be the
14 Covid generation. The impact on them goes far beyond
15 the closing of schools and other education settings. At
16 times, the practical effect of the lockdown rules meant
17 that children were prevented from seeing others their
18 own age, even when adults were allowed to meet friends
19 from other households. During the first lockdown, while
20 outdoor exercise was allowed for adults, there was
21 a lack of clarity about whether children could play, and
22 fences went up around playgrounds. Soft play centres
23 were among the very last places to receive guidance
24 about re-opening.

25 Many of the non-pharmaceutical interventions which

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1 between 0 and 6 years old.

2 Just for Kids Law provided legal representation and
3 advocacy support to children and young people on many
4 issues throughout the pandemic, including those arrested
5 for breaching Covid laws and kept in police stations,
6 those whose cases were delayed, those who faced
7 homelessness and those who had insufficient support from
8 their local authorities. They also campaigned for
9 children to be treated distinctly by the court system,
10 by the Department for Education, and in respect of
11 the lockdown rules.

12 Just for Kids hosts the Children's Rights Alliance
13 for England, a membership organisation with over
14 100 members from across the children's sector. The
15 Children's Rights Alliance and its members were also
16 campaigning for children's rights to be considered in
17 particular through the use of children's rights impact
18 assessments.

19 These organisations share a concern that the
20 children's voices were not heard and that children's
21 rights were not respected. That concern in particular
22 was highlighted when the initial draft of the terms of
23 reference to this Inquiry were published. Those terms
24 of reference did not initially include a reference to
25 the impact on children and young people.

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1 affected everyone, disproportionately affected children.
2 Six months in the life of a 12-year old is vastly
3 different to that of a 28-year old; children's lives
4 were turned upside down at crucial stages for their
5 development. And there were many specific impacts, such
6 as children who were awaiting trials in the criminal
7 justice system, many turned 18 and lost protections that
8 would have been afforded to them when they were
9 children.

10 Despite this and many other impacts that I don't
11 have time to go into, children were not systemically
12 identified as a vulnerable group requiring additional
13 support to cope with restrictions. And the impact on
14 children, the rights of children, were not considered
15 adequately or even at all in many key decisions.

16 The children's rights organisations I represent
17 today spent the pandemic both directly supporting and
18 working with children affected by such matters that
19 I have just addressed, as well as advocating for their
20 voices and their rights to be heard by government.

21 For example, Save the Children Fund, which is the
22 UK member of the Save the Children movement, launched
23 the emergency response programme to support families,
24 following which they published a report drawing on
25 the experience of over 7,000 families with children aged

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1 My Lady, you undertook a public consultation and, as
2 a result of that, you recommended that the terms of
3 reference were updated, one of those recommendations
4 being that the impact on children and young people be
5 included, which they were.

6 And the children's rights organisations now hope to
7 assist this Inquiry and your team in assessing the
8 issues as regards children within the pandemic.

9 I will address you briefly, if I may, on four
10 specific issues, the first of which is the scope of
11 the Inquiry.

12 We addressed our submissions on scope in
13 paragraph 14 of our written submissions, and the
14 proposed scope for this module has six individual parts.
15 Our primary submission throughout is that the rights and
16 the impact on children run through each and every one of
17 those parts. And we give some examples of how
18 children's rights are connected to those considerations
19 before this Inquiry in our written submissions, which
20 I don't repeat here.

21 I do make it clear that our submissions deal with
22 examples of how children were impacted; they're not
23 intended to be an exhaustive list of the matters that
24 relate to children that will need to be considered in
25 this module. We expect that the rights of children, and

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1 indeed other groups, many of whom's rights are
2 represented by other core participants here today,
3 should be incorporated in key decisions at every stage.

4 We did not ask in our written submissions that
5 the rights of children are explicitly stated or set out
6 in the scope, and that was partly out of a concern that
7 if children are added as an extra point to consider,
8 that may have the unintended effect of undermining
9 rather than strengthening their importance, because they
10 may become an additional consideration at the end rather
11 than an integral consideration at the heart of the
12 decision-making.

13 We note that some core participants have taken
14 a different approach, and in particular, my Lady, you
15 have received submissions on behalf of the Covid-19
16 Families for Justice and the Northern Ireland Covid-19
17 Families for Justice. At paragraph 7(d) of their
18 submissions they suggest adding to the scope by
19 questioning which vulnerable groups were considered and
20 they list those potential vulnerable groups.

21 We certainly agree that these are important
22 considerations for the Inquiry, and we note that
23 Mr Keith indicated this morning that the team will
24 reflect upon those submissions. Were you minded to
25 amend the scope in such a way as to spell out these

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1 a number of matters including education, and we simply
2 ask how those considerations will interact with future
3 modules on education, and have similar questions about
4 modules on courts and prisons and children and young
5 people which are also of concern to the organisations
6 that I represent.

7 We note further representations have been made about
8 this by the TUC in their submissions, and we endorse
9 the submission that this needs to be given some further
10 consideration.

11 Thirdly, I come to the Rule 9 requests. In our
12 written submissions we didn't take issue with
13 the proposal that a Rule 9 request would not be
14 disclosed to the core participants, which was in line
15 with your ruling following the Module 1 hearing.
16 However, having considered the matter further and taken
17 further instructions, we do support the submissions made
18 by other core participants that the Rule 9 requests
19 themselves be disclosed.

20 As I stated, we do acknowledge your ruling on
21 Module 1 but we endorse the submissions made by
22 Mr Weatherby that, given Module 2 has quite a different
23 focus, it is certainly open to the Inquiry to make
24 a different ruling, and I don't repeat the submissions
25 made quite ably by Mr Weatherby on that point already.

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1 vulnerable groups, we submit that children and young
2 people should be added to that list.

3 But whether or not the scope is amended or whether,
4 as has been proposed by others, a list of issues is
5 created, we simply ask that children and young people
6 are considered in any such list and that it is clear in
7 the scope or in the list that these are not a separate
8 consideration but at the heart of every decision, and
9 essentially we are neutral as to exactly how that is put
10 in terms of writing the scope.

11 The second point is about the scope of further
12 modules. Other core participants have stated it would
13 be useful to know the shape of future modules, and we
14 are grateful to Mr Keith for providing further
15 information about those future modules this morning.

16 In addition to doing so, he stated that further
17 detail as to the further scope cannot be given at this
18 stage, and we do appreciate the difficulties in doing
19 that.

20 However, we only ask for thought to be given as to
21 how the issues in this module will overlap with future
22 modules and how they will be dealt with in this matter.

23 For example, the lockdown included the shutting of
24 schools and Mr Keith confirmed this morning that this
25 module will consider the economic and social impacts on

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1 There are two points we wish to make. Firstly, we
2 endorse the submissions that you have already heard at
3 length, and I don't repeat, by other core participants,
4 in particular regarding transparency and the
5 practicality of such. Save for, I do want to pick up
6 the point made by the Southall Black Sisters and Solace
7 Women's Aid. In their written submissions at paragraphs
8 11 and 12, they state that the government failed to
9 consider the impact on women and girls in their
10 decision-making, and they go on to make the point that
11 omissions are hard to identify, and it makes it all
12 the more important to be able to see the Rule 9
13 requests, to ensure that nothing is missed.

14 The same point is true for children. It's very much
15 the case that a lot of decisions simply did not consider
16 the impact on children and, therefore, the children's
17 rights organisations will wish to draw attention often
18 to what is not said or not considered. Essentially, we
19 will be trying to show a negative.

20 Mr Keith has told you about the impracticability of
21 simply asking for everything, given the number of
22 documents that must be relevant in an Inquiry such as
23 this, and we are told that disclosure will be targeted
24 and we accept that may be necessary.

25 The difficulty that arises from that is that

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1 the Inquiry will need sufficient disclosure to make
2 proper inferences as to matters that weren't considered
3 as well as to matters that were.

4 Mr Keith did acknowledge this in his submissions to
5 you this morning and indicated that there will be
6 sufficient disclosure to ensure that such points can be
7 made, and we're grateful for that indication and the
8 fact that that's very much a matter that the Inquiry
9 team are alive to.

10 Our simple point is that we can assist with ensuring
11 that Rule 9 requests cover sufficient disclosure to make
12 these points that we are concerned with, and that we may
13 be in a position to assist the Inquiry team in these
14 matters, given these are matters that the children's
15 rights organisations have been working on for some time.

16 And further, that if we wait for the disclosure that
17 we are told will come, it may well cause delay because
18 it may mean that the children's rights organisations are
19 making points later in the process that could have
20 rightly been made earlier on.

21 The second point I wanted to make on the Rule 9
22 requests is this: the children's rights organisations,
23 along with other core participants, have made specific
24 submissions within their written submissions about what
25 Rule 9 requests should be made, such as who should be

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1 have no wish to do so but simply to assist the team, but
2 it is difficult to do so blind.

3 The fourth point and final point I wish to address
4 my Lady on is about the Listening Exercise. The
5 intention behind the Listening Exercise is very much
6 welcomed by the children's rights organisations. It is
7 fundamentally important that children's voices are heard
8 as part of that, especially given our concern that
9 children's voices have been very much lost within this
10 pandemic.

11 It is, I am sure, an obvious point, but there is
12 a particular urgency for hearing children's voices.
13 Everyone's memories are fading but especially younger
14 children will find it increasingly difficult to
15 contribute meaningfully as time passes. In order for
16 children to take part, it will also be necessary for
17 some children to have support, especially younger
18 children or those with additional needs. That does not
19 need to be legal representation, and in fact we endorse
20 the Inquiry's approach that this be a non-legal process.

21 At this stage this is really a request for
22 information. And I know we were reassured this morning
23 that more information is coming, and we are grateful and
24 welcome that. In particular, we want to know how
25 children will be encouraged and told about

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1 asked for -- sorry, which organisations should receive
2 Rule 9 requests, and have sought clarification as to
3 whether or not certain requests or certain lines of
4 inquiry have been pursued.

5 We will no doubt make more such inquiries. For one
6 example, we support the request for equality impact
7 assessments to be asked for, and we would also ask that
8 children's rights impact assessments, which can't simply
9 be substituted by an equality impact assessment, also be
10 asked for from government departments.

11 But we find ourselves in the position where we don't
12 know whether such requests have already been made, or
13 maybe something similar has been asked for, or something
14 else has been asked for that makes our request less
15 relevant to the questions of this Inquiry. And our
16 submission is that it is potentially more work for
17 a core participant to be second-guessing what
18 the Inquiry team are doing and checking whether
19 the Inquiry team have -- whether a certain line has been
20 pursued, than it would be simply to see what has been
21 asked for and make further suggestions based on that.

22 Mr Keith quite rightly said this morning that
23 the core participants should not attempt to duplicate
24 the inquisitorial role of the Inquiry team, and I wish
25 to assure the Inquiry team that the core participants

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1 the Listening Exercise, how they will be supported to
2 take part. Of course, that cannot be one answer for all
3 children, there will be different answers for children
4 in different age groups and those with different
5 backgrounds and characteristics. There will be children
6 who are particularly hard to reach. We are particularly
7 keen that children in custodial settings get their
8 voices heard, many of whom during the pandemic were
9 locked in cells for 22 and a half hours a day. But we
10 also ask for confirmation from your Inquiry team that
11 children will be engaged and supported to take part in
12 this process.

13 So we ask at this stage for conversations with your
14 Inquiry team to happen quickly, given the urgency for
15 engaging children that we have outlined, and emphasise
16 our willingness to engage and collaborate with your team
17 on how to plan for and support children and other young
18 people in this.

19 The organisations I represent do engage with and
20 support children and young people and assist them in
21 engaging with government decisions at many levels, and
22 so we offer our support in that matter, and indeed our
23 willingness to engage on all issues in this Inquiry or
24 aspects of the Inquiry as matters arise.

25 Those are the submissions on behalf of the

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1 children's rights organisations.
 2 **LADY HALLETT:** Thank you very much indeed, Ms Twite. You
 3 made some excellent points, as indeed everybody has
 4 to date.

5 As far as the detail on subsequent modules is
 6 concerned, at the moment my hope is that by having
 7 children's rights organisations involved in this module
 8 and then having later modules which deal more
 9 specifically with the impact on children and young
 10 people, we can ensure that we do investigate, that
 11 I investigate fully and properly every -- all the impact
 12 upon children and young people.

13 We will give you as much detail as we can as soon as
 14 we can, and I'm sorry there is not more available, but
 15 I'm afraid I have been making some pretty dreadful
 16 impositions on the Inquiry team so far and they do need
 17 to get the odd hour's sleep, so I promise you we will
 18 get to it as soon as we can, because I appreciate how
 19 much it would assist you to know -- and others,
 20 indeed -- what's going to be dealt with here and what's
 21 going to be dealt with there. But we will give you
 22 information when we can.

23 May I also say, having dealt with children's
 24 memories in another role, you make an excellent point
 25 about the fading of children's memories and

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1 not been able to be excused from deputy high court
 2 judicial training, and I'm sure that you will accept
 3 that there is no discourtesy intended to my Lady or to
 4 the parties by his absence.

5 **LADY HALLETT:** Of course.

6 **MS SIVAKUMARAN:** You will have observed from both groups'
 7 written submissions that they share common positions on
 8 procedural matters that are being considered today, and
 9 it's for that reason that I propose to address you on
 10 each group's status as core participants before making
 11 joint submissions on the remaining matters on the
 12 agenda.

13 Turning first to the long Covid groups, three groups
 14 have been granted core participant status due to their
 15 significant interest in the matters examined under
 16 Module 2. They are Long Covid SOS, Long Covid Kids and
 17 Long Covid Support, they are grateful for this
 18 opportunity to represent the collective interests of
 19 their members and the 2.3 million adults and children --
 20 that is at least 3.5% of the population -- who are
 21 victims of long Covid.

22 It would perhaps be helpful to open with a short
 23 introduction about each group. Long Covid Support was
 24 established in March 2020 as a Facebook group and has
 25 grown quickly since then. Their Facebook support group

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1 the Listening Exercise, one that I confess I hadn't
 2 thought about until you mentioned it, and I will make
 3 sure that we look into that immediately. So thank you
 4 very much indeed.

5 **MS TWITE:** Thank you.

6 **LADY HALLETT:** Right. Who is next? Disabled people's ...
 7 yes, please, Ms Sivakumaran. Please tell me how to
 8 pronounce your surname. Mr Lavery quite rightly did.

9 **MS SIVAKUMARAN:** It's Sivakumaran, my Lady.

10 **LADY HALLETT:** Sivakumaran, thank you very much.

11 Right. Now, are you speaking all together for
 12 the two organisations you're representing?

13 **MS SIVAKUMARAN:** Yes, that's the intention.

14 **LADY HALLETT:** Thank you very much.

15 **Submissions on behalf of Long Covid Groups and Disabled
 16 People's Organisations by MS SIVAKUMARAN**

17 **MS SIVAKUMARAN:** So, my Lady, I appear on behalf of the
 18 three long Covid groups, along with Anthony Metzger
 19 King's Counsel, and Sangeetha Iengar. I also appear on
 20 behalf of the disabled people's organisations, who have
 21 all been granted core participant status. I am
 22 instructed by Bhatt Murphy Solicitors for both groups.

23 As you are aware, Anthony Metzger King's Counsel has
 24 provided sincere apologies for not being present today.
 25 He has sought hard to attend at least remotely, but has

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1 now has over 56,000 members globally, with 23,000 based
 2 in the UK. It has become a go-to resource and community
 3 for people suffering from long Covid. They campaign and
 4 advocate for recognition, rehabilitation and research
 5 into treatments in the UK and facilitate international
 6 support for those with long Covid.

7 Long Covid SOS was established in June 2020 as
 8 a volunteer-run patient advocacy and campaign group.
 9 Nearly 4,000 people have signed up to their website and
 10 they're an important voice for those with long Covid.
 11 They promote recognition and understanding and advocate
 12 for the support of people with long Covid by working
 13 with relevant government departments and institutions.

14 They also campaign for more research into long Covid.

15 Long Covid Kids was established in September 2020 by
 16 a group of families whose children have become victims
 17 of long Covid. They have grown to provide support
 18 services for 10,000 families and they continue to
 19 represent those families' interests in relevant national
 20 stakeholder forums.

21 They are all representative organisations of victims
 22 of long Covid.

23 In their written submissions at paragraph 3 to 7,
 24 the long Covid groups have explained why they consider
 25 themselves as victims of Covid-19. Long Covid, as you

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1 may be aware, is the term used to describe the prolonged
2 and fluctuating symptoms following an infection of
3 Covid-19, and it has been defined by NICE as the signs
4 and symptoms which continue for more than 12 weeks and
5 are not explained by an alternative diagnosis.

6 Many previously fit and healthy individuals have
7 suffered profound changes to their lives as they
8 continue to experience the effects of the disease. They
9 have had to fight hard for its recognition as an illness
10 and disability, and they wish to underscore that they
11 are suffering from the disease itself, and this is why
12 they are asking the Inquiry to recognise their status as
13 victims of Covid-19.

14 As I mentioned earlier, 3.5% of the population are
15 believed to suffer from long Covid at the most recent
16 statistical analysis. This is a significant cohort of
17 the population and they were not mentioned by Mr Keith
18 King's Counsel's review of the events and impact of
19 Covid since December 2020. This may have been a simple
20 oversight but its mention, as long Covid groups'
21 experience of the pandemic, is one of oversight. During
22 the pandemic the individuals suffering from long Covid,
23 feeling overlooked by government decision-makers who
24 failed to recognise and respond to long Covid, meant
25 that they had to come together and they formed their

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1 well as their experiences of engaging with
2 administrative and political decision-makers during
3 the pandemic.

4 Although initially concerned about the limited
5 explicit reference to long Covid in the terms of
6 reference, the long Covid groups have welcomed my Lady's
7 comments in the final consultation summary report on
8 the terms of reference.

9 Long Covid groups have been reassured by your
10 commitment that you will read the terms of reference as
11 including the need to investigate the extent to which
12 risks associated with long Covid were considered,
13 including investigation into how decisions were made,
14 communicated and implemented.

15 They have welcomed Mr Keith King's Counsel's
16 comments this morning when he mentioned that
17 the investigation for Module 2 will consider whether the
18 likely impact of long Covid was sufficiently assessed
19 and will be investigated within this module.

20 They reaffirmed their commitment to fully assist
21 the Inquiry in its investigations as they seek answers
22 to why the risks of long Covid and the risks of chronic
23 illness and disability were not seemingly factored into
24 the government's response to the pandemic.

25 **MR KEITH:** My Lady, I do apologise for interrupting

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1 groups, whose whole purpose is to advocate on their
2 behalf. In pursuit of government recognition and
3 improved government decision-making, they made direct
4 interventions at the highest levels of government on the
5 risks of long Covid and the need for public recognition
6 and public messaging relating to long Covid.

7 As an example, all three long Covid organisations
8 were consulted as part of the Department of Health and
9 ministerial round table on Covid-19 with NICE, ONS and
10 NHSE. There were monthly meetings, twice chaired by the
11 Secretary of State of Health and Social Care, and as
12 participants to the round table, the long Covid groups
13 provided recommendations to ministers on important
14 issues, such as the need for public messaging
15 identifying the risks of chronic illness and disability
16 from SARS-CoV-2, and they voiced concern for
17 the pressure on the NHS that sickness and absence due to
18 long-term illness would inevitably cause.

19 All three organisations have become important public
20 voices for the long Covid community since the early
21 stages of the pandemic, and they have been part of
22 government taskforces as well as providing advisory
23 roles on NIHR-funded research projects. They anticipate
24 being able to assist this Inquiry by sharing their
25 perspective of the suffering of those with long Covid as

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1 Ms Sivakumaran. I wonder whether that's an appropriate
2 time to take the break, which I know the Inquiry staff
3 I think were anticipating would be around about this
4 time.

5 **LADY HALLETT:** Sorry, I thought they were expecting it to be
6 at about 1.00 -- no, Mr Smith is shaking his head.
7 Apologies.

8 On the last occasion I think I forgot Ms Gallagher
9 after lunch, so at least it will be -- with any luck
10 I won't forget you after lunch, Ms Sivakumaran!

11 Right, if it's 12.45, come back at 1.45.

12 **MR KEITH:** Please.

13 Thank you, my Lady.

14 **LADY HALLETT:** Thank you.

15 (12.46 pm)

(The short adjournment)

17 (1.45 pm)

18 **LADY HALLETT:** Right, thank you very much. Sorry to have
19 interrupted you.

20 **MS SIVAKUMARAN:** My Lady, I'll be turning next to the
21 disabled people's organisations, and these submissions
22 are made on behalf of Disability Rights UK, Disability
23 Action Northern Ireland, Inclusion Scotland and
24 Disability Wales.

25 Disability Rights UK was founded in 2012 and is

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1 a leading national disability organisation led by
2 disabled people. The majority of trustees and staff are
3 disabled people and their work is rooted in
4 an experience of disabled people and gives a voice to
5 their concerns through campaigning for central and local
6 government improvements in policies and services as
7 well, as providing information and advice.

8 Disability Action Northern Ireland originated in
9 the 1950s. It is now the largest Northern Ireland-wide
10 pan-disability organisation working with disabled
11 people, and it's an umbrella organisation for more than
12 300 organisations led by disabled people, and they
13 advocate for the rights of the deaf and disabled.

14 Inclusion Scotland is a national network of disabled
15 people, their organisations and allies. It works to
16 achieve positive changes to policy and practice so that
17 they are fully included throughout Scottish society as
18 equal citizens.

19 And Disability Wales is a Welsh national association
20 of disabled people's organisations, striving to achieve
21 rights and equality for all disabled people in Wales.
22 Its core role is to represent the views and priorities
23 of its members to government with the aim of informing
24 and influencing policy, and they have a hundred member
25 organisations across Wales, 29 of which are full member

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1 consider their needs when responding to the pandemic.
2 This included psychological distress, unequal access to
3 emergency health treatment, social isolation and
4 loneliness as well as difficulties accessing the most
5 basic of necessities, such as food, medicine, personal
6 protective equipment and social care.

7 Throughout the pandemic, all four disabled people's
8 organisations actively advocated for their interests to
9 be considered by relevant decision-makers. They have
10 a significant interest in this Inquiry's investigations
11 because of the profound impact of the pandemic on
12 disabled people.

13 My Lady, turning now to our submissions, we have one
14 preliminary observation on behalf of the long Covid
15 groups as well as the disabled people's organisations,
16 and that is in relation to reasonable adjustments.

17 We are grateful for the indication this morning that
18 the Inquiry will review its arrangements for access to
19 the proceedings. We note that we do have a joint
20 request for the Inquiry to consider reasonable
21 adjustments to the proceedings as well as
22 the publication of evidence to ensure that the Inquiry
23 is accessible to the public.

24 To this end, the long Covid groups and the disabled
25 people's organisations would encourage the Inquiry to

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1 disabled people's organisations.

2 All four organisations are run by and for disabled
3 people, they are majority led, directed, governed and
4 staffed by disabled people, and they use the term
5 "disabled people" to mean people facing disabling
6 societal barriers due to their impairments or
7 conditions, regardless of their age. This includes
8 physical impairments, mental health conditions, hearing
9 impairments, deaf people with British Sign Language as
10 their first language, visual impairments, learning
11 difficulties, and neurodiverse people.

12 They are grateful for their recognition as core
13 participants in Module 2 and are committed to assisting
14 the Inquiry by representing the interests of their
15 constituents and those with pre-existing health
16 inequalities.

17 The disabled people's organisations emphasise that
18 inequality is at the heart of their experience during
19 the pandemic. First, the pandemic had
20 a disproportionate impact on them. They were at
21 significantly greater risk of death from Covid-19.
22 Disabled people made up six in ten deaths from Covid-19,
23 which increased to seven in ten in Wales.

24 Secondly, they suffered disproportionate hardship
25 and significant harm as a result of the failure to

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1 work from a social model of disability. That is, to
2 identify the barriers to access, and remove or mitigate
3 them.

4 A number of simple proposals have been set out in
5 the disabled people's organisations' submissions at
6 paragraph 12, and they would invite the Inquiry to
7 consider adopting them. In addition, both groups are
8 willing to be consulted by the Inquiry on improving
9 access and to provide any further assistance or feedback
10 on accessibility within the Inquiry proceedings and
11 their publication of evidence.

12 Turning next to our substantive submissions, the
13 long Covid groups and disabled people's organisations
14 share common positions on the relevant matters on the
15 agenda. We rely on both our written submissions and
16 I therefore do not intend to repeat them in detail, but
17 I do wish to summarise the following points.

18 Turning first to the issue of scope of Module 2,
19 the disabled people's organisations, with the support of
20 the long Covid groups, have raised concerns about
21 the absence of reference to inequalities in five out of
22 six paragraphs of the scope of Module 2.

23 My Lady, you have committed to inequalities being at
24 the forefront of the Inquiry's investigations in your
25 opening statement in July 2022, and most recently in

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1 your grant of CP status for the disabled people's
2 organisations. If inequalities are truly to be at
3 the forefront of the Inquiry's investigations, we
4 respectfully submit that they should be threaded
5 throughout the scope and not reserved to paragraph 3
6 of 6.

7 At paragraph 17 of the disabled people's
8 organisations' written submissions, they have made
9 a number of suggestions on how inequalities could be
10 added to the scope of this module. We would invite you
11 to consider those suggestions. In our submission, it's
12 not sufficient to give voice to a commitment to address
13 inequalities, it must also be acted upon. Amending
14 the scope to explicitly include examination of
15 inequalities in all aspects of administrative and
16 political decision-making is giving effect to that
17 voiced commitment.

18 It's unnecessary to repeat our submissions on the
19 disproportionate risk of death and hardship that
20 disabled people faced during the pandemic. We explain
21 simply that our submissions in relation to scope are
22 informed by their lived experience. They are looking to
23 the Inquiry to ask the difficult questions as to whether
24 their circumstances were taken into account and when
25 those decisions were made; and if not, why not.

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1 practice to develop a list of issues in consultation
2 with core participants in an Inquiry, and we would look
3 forward to an opportunity to effectively assist this
4 Inquiry by contributing to the development of an agreed
5 list of issues for Module 2.

6 This is not a prescriptive or determinate list but
7 rather an iterative list, which can be added to and can
8 be adapted as further lines of inquiry are developed
9 through disclosure of Rule 9s and further evidence.

10 Secondly, on behalf of Inclusion Scotland, we would
11 invite the Inquiry to clearly state how they intend to
12 minimise duplication with a Scottish public inquiry, as
13 required by the terms of reference. We understand this
14 is necessary as envisaged by the terms of reference but
15 we would simply ask for transparency of that approach.

16 Turning next to the question of the Rule 9 requests,
17 we wish to make three short points. We note that all
18 organisations have been requested to provide
19 a chronology and corporate statement setting out
20 a narrative of relevant events and the lessons to be
21 learnt. We would strongly encourage the Inquiry, if it
22 has not already done so, to ask the relevant
23 organisations to ensure that the corporate statement
24 addresses the organisation's understanding of its
25 responsibilities, remit, processes, policies and

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1 We note that their concerns about the scope are
2 shared by other affected groups, including the bereaved
3 families, the children's interest groups, Solace Women's
4 Aid and Southall Black Sisters.

5 It is for those reasons that we invite you to
6 consider how scope is addressed in relation to
7 inequalities.

8 There are two further issues that we raise in
9 respect of scope. First, we would invite the Inquiry to
10 develop the issues which will be covered in the scope in
11 consultation with core participants to realise an agreed
12 list of issues. The scope of Module 2 is, as Mr Keith
13 King's Counsel has noted in his note, wide and
14 ambitious. There is a need for clarity on what issues
15 the Inquiry team will have in mind during its
16 investigations, as well as the delineation between
17 Module 2 and other modules. A list of issues will help
18 to provide structure to the investigation in the module,
19 informing decisions on relevance of evidence, lines of
20 inquiry, and identification of witnesses to be called.

21 We have set out at footnotes 7 to 11 on page 6 of
22 the long Covid submissions, and at footnote 13 on page 9
23 of the disabled people's organisations' submissions,
24 the practice of other Inquiries who have developed lists
25 of issues. In our submission, it has become good

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1 resources in place at the time. Not only will this put
2 into context any lessons that are purported to have been
3 learnt, these statements will also clarify what
4 the organisation's position is in relation to the
5 narrative of the relevant events.

6 On behalf of the disabled people's organisations,
7 the Inquiry is requested to ensure that, to the extent
8 this is not already addressed, a Rule 9 request is sent
9 to the relevant organisations and departments asking
10 whether they considered themselves responsible for
11 assessing the impact of their decisions in relation to
12 the pandemic on disabled people, and if not, who they
13 thought held that responsibility.

14 The disabled people's organisations have identified
15 two further departments which should be subject to
16 Rule 9 requests, if not already captured, at
17 paragraph 24(a), and we are grateful for the indication
18 this morning that this request will be considered.

19 Turning to the issue of disclosure, we make three
20 points, and these are advanced in the interests of
21 transparency and open co-operation. We recognise that
22 ultimately it is a matter for the Inquiry to decide on
23 the scope of disclosure. However, we would invite
24 the Inquiry to disclose the list of key narrative
25 events, decision-making procedures of bodies and persons

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1 relevant to the core political and administrative
2 decision-making, and the core decisions that were
3 referred to at paragraph 44 of Counsel to the Inquiry's
4 note and which he referred to this morning.

5 We would suggest that core participants are provided
6 with the opportunity to feed into the list to ensure
7 that there are no gaps in disclosure. Core participants
8 are acknowledged to have a role to play and can only
9 effectively participate if they are included. This
10 could be by way of disclosure of the Rule 9 requests or
11 by disclosure just of the list of events, persons and
12 decisions that have been identified by the Inquiry.

13 The purpose of this request is to assist the Inquiry
14 not to obstruct it, and we would support the Bereaved
15 Families' submissions and others that this approach to
16 disclosure is a novel approach and we would encourage
17 the Inquiry to adapt to these circumstances and consider
18 disclosing those events and persons and decisions.

19 We would also invite, in our second request on
20 disclosure, the Inquiry to disclose the statements from
21 document providers explaining their document review. It
22 would be helpful if document providers could, when
23 preparing those statements, confirm if documents had
24 been deleted before or after there were taken steps to
25 retain potentially relevant material, for example

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1 offering core participants an opportunity to feed into
2 the design of the Listening Exercise, and we hope this
3 marks the start of a collaborative approach with both
4 the long Covid groups and the disabled people's
5 organisations, who would welcome the opportunity to work
6 with the Inquiry to develop this exercise and to achieve
7 its full potential.

8 We would, however, also note that
9 the Listening Exercise cannot replace the need to hear
10 direct personal testimony within the Inquiry's
11 proceedings. You have already noted that individual
12 evidence of circumstances of death should be admitted if
13 relevant to possible systemic failings in your Module 1
14 ruling. The terms of reference at C anticipate
15 the Inquiry will listen to accounts of individual cases
16 of harm as well as death. Both the long Covid groups
17 and the disabled people's organisations submit that
18 individual evidence of harm which is relevant to
19 systemic failings should be heard within the main module
20 structure of the Inquiry, including Module 2, not least
21 because we invite you, as the Chair, to hear directly
22 from individual voices of people who have suffered
23 hardship or loss as a result of the pandemic. As
24 currently proposed, we infer that you will not be
25 personally hearing individual testimony gathered in

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1 through the use of WhatsApp, Signal or Cabinet Office
2 Instant Chat applications. In our submission, this
3 would be a helpful indication to give in their
4 statements.

5 Finally, on behalf of the disabled people's
6 organisation, the Inquiry is invited to request
7 disclosure from all relevant government organisations
8 and institutions of their relevant equality impact
9 assessments. And where not carried out, a statement
10 confirming this and the reasons.

11 Turning to the issue of expert witnesses, we welcome
12 the Inquiry's commitment to disclose the identity of
13 the witnesses and the questions they will be asked, and
14 we ask only that this is done as early as possible so
15 that we may effectively assist the Inquiry in
16 considering whether the experts address all relevant
17 issues, raise any objections we may have, and to suggest
18 alternative experts where appropriate.

19 We understand that there is already a provisional
20 list and early disclosure of that list would assist us
21 in providing our observations.

22 In respect of the Listening Exercise, long Covid
23 groups and the disabled people's organisations make two
24 core submissions. We welcome the note from
25 the Solicitor to the Inquiry that was published today

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1 the Listening Exercise. The terms of reference
2 recognising that the Inquiry will be listening to these
3 accounts will inform the Inquiry's understanding of
4 the pandemic, the response and lessons to be learnt.

5 Accordingly, we would invite you to hear directly
6 from a representative sample of these voices.
7 Anonymised abstract evidence cannot do justice to their
8 experience and in its absence there is a real risk that
9 context will be lost.

10 As an overarching point in relation to
11 the Listening Exercise, the disabled people's
12 organisations' submissions on reviewing access to
13 the proceedings is especially relevant to
14 the Listening Exercise. The Inquiry is invited to
15 develop the outreach strategy in consultation with them
16 and with the long Covid groups to identify the barriers
17 to access and seek to remove or minimise those barriers.

18 The Inquiry is reminded of the danger of certain
19 groups and their harmful experiences being airbrushed
20 out of history if reasonable adjustments are not made.

21 Our final point, which is expressed in the spirit of
22 co-operation and a desire to assist the Inquiry, is that
23 the long Covid groups and disabled people's
24 organisations are willing to provide organisational
25 statements of their experiences of engaging with

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1 the administrative and political decision-makers about
2 the need to consider their interests when making
3 decisions in response to the pandemic.

4 We noted Mr Keith King's Counsel's comments that
5 Rule 9 requests will be made to civil society and
6 special interest groups, and they simply say they have
7 been active in making -- and interest groups. The
8 long Covid groups and the disabled people's
9 organisations welcome that comment and those
10 observations, and they're offering, through the
11 provision of statements and supporting evidence, to
12 assist the Inquiry by providing the picture from
13 the other side of the window from the government
14 organisations which have provided evidence so far.

15 We anticipate that the Inquiry will have in mind
16 the need to hear from all perspectives, not only
17 non-governmental -- not only governmental perspectives,
18 and would welcome the opportunity to assist the Inquiry
19 in this respect.

20 My Lady, this is all I wish to raise, unless I can
21 assist you further.

22 **LADY HALLETT:** Thank you very much indeed. Again, some
23 points you make with considerable force.

24 As far as hearing direct evidence during the Inquiry
25 public hearings, I've made clear and I hope now allayed

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1 hearing but also, as you say, in the Listening Exercise.
2 And that has always been our intention, and that's why
3 we have sought professional expertise as to how best we
4 can do it.

5 The only other matter I wanted to raise at this
6 stage, and I'll consider all the other points you make
7 obviously very carefully, is the relationship with the
8 Scottish Inquiry. As I said to Ms Mitchell earlier, we
9 were working on a memorandum of understanding on how we
10 would avoid duplication and how we'd work together with
11 the previous Chair, but obviously things have had to
12 wait until the new Chair can get his feet under
13 the table and we can make some progress. But it's very
14 much an item on my quite lengthy to-do list.

15 Thank you very much indeed for your help.

16 **MS SIVAKUMARAN:** Thank you very much, my Lady.

17 **LADY HALLETT:** Right. Is it Ms Davies next?

18 **Submissions on behalf of Solace Women's Aid and
19 Southall Black Sisters by MS DAVIES**

20 **MS DAVIES:** My Lady, thank you.

21 I represent Southall Black Sisters and Solace
22 Women's Aid, and I'm instructed by Public Interest Law
23 Centre, and I appear with junior counsel,
24 Marina Sergides.

25 SBS and SWA, which is how we refer to them, are

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1 some concerns on the part of the bereaved that I would
2 be hearing and intend to hear from individuals about
3 the circumstances they experienced where they related to
4 possible systemic issues in the modules and in the
5 public hearings. I only mention the bereaved because,
6 of course, I was dealing with the concern that they had
7 raised. I fully intend, where relevant, to hear
8 evidence from individuals with other -- for example,
9 with individuals with disabilities, about their
10 experiences where they relate or possibly raise issues
11 of systemic failings. So I hope I can allay that
12 concern immediately. And I apologise if the language
13 used before didn't make that clear. We were dealing
14 with a specific concern. We should have made it clear
15 whether it intended to apply more broadly. So it
16 definitely does. And obviously it would also include
17 people with long Covid if they had evidence that might
18 relate to possible systemic failings.

19 As far as accessibility and reasonable adjustments
20 are concerned, I for one and I know the Inquiry team
21 would welcome the kind of advice that the groups you
22 represent can offer to the team to make sure we make
23 every reasonable adjustment that we can, because it's
24 essential that they are able to participate effectively,
25 and not only in the Inquiry hearings and in this kind of

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1 grateful to have been given CP status for Module 2.
2 They each have a significant interest in the
3 government's decision-making in relation to the handling
4 of the pandemic, since they provide frontline services
5 to women and girls experiencing domestic abuse, and they
6 saw the demands for their services increase by
7 significant and staggering amounts in March and
8 April 2020, and continuing to this day.

9 SBS have a particular remit to provide advice
10 services and support to women and girls from black and
11 ethnic minorities, to migrant women, and women whose
12 status is subject to a no recourse to public funds
13 condition.

14 We refer to our written submissions which set out
15 the particular issues that the two organisations will be
16 concerned with throughout the Inquiry.

17 Those issues include the significant increase in
18 domestic abuse during lockdown, the effect on women and
19 girls' mental health as a result of abuse, isolation and
20 the health risks, the pressure on refuge spaces and on
21 social housing, so that too many women remain trapped in
22 abusive situations, and the particular disproportionate
23 effect that lockdown and the pandemic had on black and
24 ethnic minority women, women with disabilities, migrant
25 women and women who had NRP status.

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1 As Mr Keith said in his opening statement this
2 morning, a key consideration for this Inquiry should be
3 those who stood to suffer particular disadvantage during
4 the pandemic and whether the impact on them was
5 sufficiently assessed.

6 Our principal submission is that throughout this
7 Inquiry, scrutiny of all decisions should include
8 scrutiny through an equalities lens, and often
9 the problem with considering decision-making in relation
10 to equalities is not so much what a document contains as
11 what it omits. Ms Twite was kind enough to make the
12 point for me earlier.

13 We would expect government decisions relating to
14 lockdown, to public health measures and everything else
15 concerning the pandemic to include an assessment of the
16 impact on groups with protected characteristics: women
17 and girls, black and ethnic minorities, sexual
18 orientation, disability and so forth.

19 Sometimes those assessments can be found on the face
20 of documents in minutes of meetings, but particular
21 problems arise where those documents do not contain
22 specific equality impact assessments, and there has to
23 be careful scrutiny of the extent to which authors,
24 decision-makers and so forth actually did have
25 equalities impact in mind.

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1 the Government Equalities Office and any other relevant
2 organisation, and our hope is that, having seen those
3 Rule 9 requests, if they are disclosed to us, that we
4 can provide input, as can other CPs, so as to actually
5 assist the Inquiry team in identifying whether there are
6 further relevant documents which had not been requested
7 and therefore not been disclosed, not least because
8 those documents had not been considered with a view to
9 equalities issues.

10 Those are our submissions on the disclosure of
11 the Rule 9 requests. We agree with everything that has
12 been said by the other core participants, and I don't
13 repeat those submissions now.

14 Moving on, we have made suggestions in our written
15 submissions for other recipients of Rule 9 requests, and
16 we're grateful for the confirmation this morning that
17 those suggestions will be considered.

18 On experts, we do support the request to have
19 disclosure of the identity of experts and indeed letters
20 of instructions to experts at an early stage in order
21 that there can be proper dialogue between the CPs and
22 the Inquiry team on those terms of instructions.

23 We have also suggested that expert evidence is
24 commissioned specifically to advise on the proper
25 approach to equalities assessment in public sector

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1 My Lady, Mr Keith this morning also quoted to you
2 the full words of section 149(1) of the Equality Act,
3 the public sector equality duty, and we know that you're
4 familiar with that duty.

5 With that duty in mind, we support the request from
6 the various families' campaign and indeed, I think, all
7 the other organisations that have addressed you this
8 morning and now this afternoon, for disclosure of the
9 Rule 9 requests sent to the various government
10 departments.

11 We understand the pressures on disclosure. We
12 understand that too much disclosure could be as
13 difficult as too little disclosure. But we believe that
14 simply disclosing the Rule 9 requests is a proportionate
15 step to take. We consider -- we'll be corrected if
16 we're wrong, but we consider that the administrative
17 burden of doing so on the Inquiry team is relatively
18 small. They simply have to copy those documents to us.

19 We're not asking for any new documents to be drawn
20 up. But disclosure will assist all the core
21 participants in being able to make submissions to
22 the Inquiry team as to whether additional categories of
23 documents would be relevant. And from the point of view
24 of SBS and SWA, we would want to be scrutinising for
25 equalities impact assessments, for consultation with

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1 decision-making, what should have happened and what
2 actually did happen, and whether what actually did
3 happen was both lawful and in accordance with good
4 practice. And again, we're grateful for confirmation
5 that that suggestion of that type of expertise will be
6 considered.

7 Moving on to evidence and the Listening Exercise,
8 and very grateful indeed for your confirmation just now
9 that of course direct evidence will be heard in
10 the Inquiry and at Module 2 and not just in the
11 Listening Exercise.

12 We will be suggesting at some point when it comes to
13 consideration of what evidence should be heard, and we
14 accept that today is not the time, but we will be
15 suggesting that non-state CPs be asked to give evidence
16 if they wish, and in particular, whilst we understand
17 that the Inquiry is going to be reluctant to scrutinise
18 too many individual cases, it is our organisation's view
19 that evidence of case studies taken from their direct
20 advice and support on the ground, from their advice
21 sessions, during the time of the pandemic, would assist
22 the Inquiry in identifying equalities issues, in
23 identifying the significance of the rise in domestic
24 abuse, the communications made to government by my
25 clients and other similar organisations as soon as that

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1 rise in domestic abuse was identified, and therefore
2 that that evidence would be relevant to the Inquiry's
3 ultimate decision as to what government should have done
4 about the rise in domestic abuse along with other
5 equality matters.

6 Given that participants in the Listening process
7 will not have the benefit of disclosure or consideration
8 of the evidence received at the Inquiry, then we suggest
9 that the CPs who do have that benefit should be able to
10 provide evidence of case studies and exemplars which
11 would supplement those experiences along with the
12 experiences that are going to be summarised for
13 the Inquiry in the Listening process.

14 Moving on to the Listening process itself, we heard
15 this morning details of those who are to be commissioned
16 to undertake the organisation of the Listening process.
17 We would support the point made by Mr Weatherby that
18 there is considerable expertise outside of the sector
19 that was being referred to, and there is expertise in
20 the voluntary sector and indeed in the academic
21 environment around listening to those who have been
22 bereaved.

23 The charity Inquest stands out as a notable example,
24 it's not the only one, but we would ask therefore that
25 consideration is given to voluntary sector or academic

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1 the firm Saunders Law. My leader is
2 Mr Leslie Thomas KC, who is presently out of the
3 jurisdiction, and who means no discourtesy for not being
4 here today.

5 Let me start by introducing my client group. FEHMO
6 is a multidisciplinary consortium of over
7 55,000 individual members and 43 organisations and
8 networks, advocating on behalf of black, Asian, and
9 those minoritised as ethnic workers in the healthcare
10 and social care sectors.

11 We represent a broad spectrum of workers, including
12 doctors, nurses, care workers and hospital support
13 staff, people who, as it were, worked tirelessly on
14 the front lines, who worked selflessly on a daily basis,
15 putting their lives at risk despite the known and
16 the unknown dangers of the Covid virus.

17 Many have suffered. Some paid the ultimate price of
18 caring for others with their own lives.

19 FEHMO was conceived during the Covid pandemic with
20 its initial aim being to bring to light
21 the disproportionate impact of the disease on its
22 members.

23 In the long term, the consortium seeks to provide
24 a united voice against systemic and underlying health
25 inequalities across all the nations of the UK.

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1 sector groups who have experience and can provide advice
2 on how to conduct a listening exercise and listen to
3 those who have been bereaved or suffered significant
4 harm.

5 Finally, my Lady, we do welcome the Inquiry's
6 commitment to commemoration, and we also note, outside
7 the terms of this Inquiry, that the government itself is
8 consulting on a permanent commemorative memorial to all
9 those who lost their lives in the pandemic and all those
10 millions of people bereaved, in poor health or suffering
11 other long-term consequences, and we see that as
12 an important step.

13 Thank you, my Lady.

14 **LADY HALLETT:** Thank you very much, Ms Davies, and I promise
15 that I will discuss the issues that you and the other
16 core participants have raised with the team and do what
17 I can to make sure that any concerns are allayed. Thank
18 you very much indeed.

19 **MS DAVIES:** Thank you.

20 **LADY HALLETT:** Right, and Mr Dayle?

21 **Submissions on behalf of the Federation of Ethnic Minority
22 Healthcare Organisations by MR DAYLE**

23 **MR DAYLE:** Thank you, my Lady.

24 I act on behalf of the Federation of Ethnic Minority
25 Healthcare Organisations, FEHMO, and I am instructed by

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1 The disproportionate impact of Covid on black and
2 brown people is now an indisputable fact. The
3 contemporaneous reporting told the devastating story.
4 April 23, 2020, the British Medical Journal headline
5 stated "Two thirds of healthcare workers who have died
6 were from ethnic minorities". May 25, 2020,
7 The Guardian headline similarly stated "Six in ten UK
8 health workers killed by Covid ... are BAME".
9 June 8, 2020, British Vogue asked the obvious question:
10 "Why Are So Many Health Workers from BAME Backgrounds
11 Dying of Covid-19?"

12 For this Inquiry, my Lady, these early, dire
13 headlines raise serious questions about government
14 decision-making. Why? Despite concerns and known
15 statistics on higher prevalence and severity amongst
16 ethnic minority groups, public health recommendations
17 specifically targeted towards ethnic minority groups at
18 the time were limited. Why? Why was there no proper
19 system of recording infection levels based on race and
20 ethnicity? This was so despite the obvious and rising
21 number of casualties as the disease progressed. Why?
22 When the obvious was becoming clear that black and brown
23 communities were being disproportionately impacted,
24 there was still a lack of timely action to provide
25 better protection.

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1 FEHMO submits that for this Inquiry's commitment to
2 placing possible inequalities at the forefront to be
3 properly and adequately realised, there must be due
4 consideration of how institutional and structural racism
5 affects health outcomes.

6 As the Macpherson Inquiry into the death of
7 Stephen Lawrence found at paragraph 6.3 of that report,
8 which no doubt my Lady is very familiar with:

9 "... the concept of institutional racism which we
10 apply consists of ..."

11 And it goes on to say:

12 "The collective failure of an organisation to
13 provide an appropriate and professional service to
14 people because of their colour, culture, or ethnic
15 origin."

16 And it goes on further:

17 "It persists because of the failure of
18 the organisation openly and adequately to recognise and
19 address its existence and causes by policy, example and
20 leadership."

21 Structural racism as been defined in the Du Bois
22 Review, an academic journal, as the:

23 "... macro-level systems, social forces,
24 institutions, ideologies, and processes that interact
25 with one another to generate and reinforce inequities

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1 decision-making. Was this duty ignored during
2 the pandemic, or was there a suspension of these
3 obligations within the respective decision-making
4 apparatus?

5 My Lady, we have no illusions about the enormity of
6 the disclosure exercise that is required for this
7 module. It is for that reason that, on the matter of
8 scope, we join the call inviting the Inquiry to provide
9 a list of issues at an early stage with the opportunity
10 for CPs to comment on them, and I believe those
11 arguments have been canvassed by my colleagues
12 previously.

13 We acknowledge Mr Keith's promise to reflect on this
14 issue in his earlier remarks this morning. We also seek
15 to join the call of those inviting you to direct that
16 Rule 9 requests are shared with CPs in the interest of
17 transparency.

18 Notwithstanding Mr Keith's nuanced discussion on
19 this point this morning, we believe that the opportunity
20 to comment on Rule 9 requests would assist your
21 investigation by addressing gaps that have not been
22 covered in the Inquiry's own requests.

23 On the subject of expert witnesses, we welcome
24 Mr Keith's promise in his written statement for
25 the Inquiry to "consider suggestions from [core

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1 among racial and ethnic groups."

2 For example, historical experiences of minority
3 ethnic groups and long term discrimination may lead to
4 a higher proportion working in lower paid jobs on
5 insecure contracts without sickness benefits and in
6 public-facing occupations, living in crowded housing
7 conditions, and having fewer resources for health.

8 FEHMO members have had to conduct their professional
9 duties whilst suffering with higher levels of infection,
10 mortality, bereavement, physical and mental burn-out,
11 and sadly nowadays the spectre of long Covid.

12 They seek answers on the government's apparent
13 failure to: one, provide appropriate PPE to health and
14 social care workers in a timely manner; two, keep proper
15 epidemiological data and map progression within BAME
16 communities; and three, put in place proper public
17 health measures to protect BAME health and social care
18 workers.

19 In the terms of reference, one need not remind you,
20 my Lady, that this Inquiry has committed itself to
21 consider any disparities evident in the impacts of
22 the pandemic on different categories of people.

23 FEHMO believes it bears saying at this point that
24 this Inquiry must investigate whether government had any
25 regard to the public sector equality duty throughout its

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1 participants] as to who should be appointed" as experts.

2 As we noted in our written submissions, FEHMO considers
3 it vital that the Inquiry has the benefit of expertise
4 on matters of health inequality, race and ethnicity, and
5 intends to make further representations in this regard.

6 We also endeavour to make sure or we will also
7 endeavour to make sure that generally on the matter of
8 choice of experts across all disciplines, the Inquiry
9 works along with experts who have previously in their
10 work engaged with these issues.

11 Finally on the matter of the Listening Exercise,
12 my Lady, FEHMO has considered the arguments advanced by
13 the Covid-19 Bereaved Families for Justice, and
14 the position set out by the Inquiry. Without rehearsing
15 the finer points of this debate, we want to say that we
16 are somewhat sympathetic to the arguments that have been
17 advanced by CBFFJ and Mr Weatherby this morning, and
18 indeed Ms Davies.

19 The process of obtaining stories for a report to be
20 produced by a party outside of the Inquiry, we submit,
21 seems too far removed and beyond the juridical process
22 of this Inquiry.

23 On the matter of pen portraits, we appreciate
24 Mr Keith's comments on the work being undertaken to
25 commemorate the experiences and losses of victims of

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1 Covid-19 from within the Inquiry, and we look forward to
 2 updates as this work progresses.
 3 Those, my Lady, would be our opening remarks at this
 4 time.
 5 **LADY HALLETT:** Thank you very much indeed, Mr Dayle, very
 6 helpful.
 7 Just on that last point about the
 8 Listening Exercise, my intention at present, and
 9 obviously I am keeping every issue under review, is to
 10 make sure that individual experiences are fed into
 11 the Inquiry in two way: one as direct evidence in
 12 the Inquiry hearings where they relate to possible
 13 systemic failings and are therefore plainly relevant to
 14 that particular module, but secondly, also, that the
 15 Listening Exercise is not intended to be just, you know,
 16 an add-on. The reports from the Listening Exercise of
 17 people's experiences will be fed into the Inquiry as
 18 evidence. So it's not removed from the juridical
 19 process -- sorry, I can never say that word -- as you
 20 were perhaps suggesting. It is intended to be very much
 21 part of the process.
 22 **MR DAYLE:** Very well.
 23 **LADY HALLETT:** So thank you very much for your very helpful
 24 submissions.
 25 **MR DAYLE:** Thank you.

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1 a huge number. By way of context, this is a number
 2 greater than the entire population of the Republic of
 3 Ireland, it's roughly approximate to the entire
 4 population of Scotland.
 5 In an annex to our written submissions, we have set
 6 out the 48 member unions of the TUC and you will be
 7 aware, my Lady, that this list spans a very wide range
 8 of industries profoundly affected by the Covid-19
 9 pandemic, including many frontline roles and many
 10 workers at what Mr Keith described this morning as the
 11 coalface in his submissions: those in hospitals,
 12 including hospital doctors, midwives, radiographers and
 13 others, those working in care homes, those working in
 14 shops, warehouses and factories, drivers and other staff
 15 on buses and trains. And in many ways the pandemic
 16 showed on whose shoulders society is built, the true
 17 value of labour, who carries us as a society at moments
 18 of crisis.
 19 At the outset, on behalf of the TUC, I want to make
 20 three points about workers and workplaces which we say
 21 must be borne in mind throughout the examination of
 22 the UK's core political and administrative
 23 decision-making in this module, in Module 2.
 24 First, in addition to the coalface as mentioned this
 25 morning, we must remember -- and I know you and your

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1 **LADY HALLETT:** Right, Ms Gallagher.
 2 Ms Gallagher, I'm just pausing for a second because
 3 I interrupted you last time. I have been asked to break
 4 every hour and a quarter. We started at 1.45 to 2, so
 5 I think you should be all right.
 6 **Submissions on behalf of the Trades Union Congress by**
 7 **MS GALLAGHER**
 8 **MS GALLAGHER:** Thank you.
 9 My Lady, as you know, I represent the Trades Union
 10 Congress, the TUC, along with my colleague Mr Jacobs,
 11 from whom you will be hearing later in the week,
 12 instructed by Thompsons, and the TUC is grateful to be
 13 designated as a core participant in Module 2, also in
 14 Modules 2A, 2B and 2C concerning Scotland, Wales and
 15 Northern Ireland in particular. And as of course you're
 16 aware, my Lady, we are also a core participant in
 17 Module 1 on pandemic preparedness, and so you have been
 18 introduced to the TUC at a prior hearing, at your first
 19 hearing.
 20 Given the different attendance here today along with
 21 Mr Weatherby, I also intend just to very briefly
 22 introduce my client's role and interest.
 23 The TUC brings together 5.5 million working people
 24 who make up its 48 member unions from all corners of
 25 the UK. And 5.5 million working people is, of course,

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1 team will have this in mind -- that there are other
 2 coalfaces which don't necessarily share the same profile
 3 or have the same public awareness as hospitals,
 4 care homes, buses and trains. And by way of indicative
 5 examples only, may I give you two: first, food
 6 processing. Essential so that we could all continue to
 7 eat during this period. There were several mass
 8 outbreaks associated with food processing plants,
 9 including at an early stage: March 2020, for example,
 10 many of you will recall the mass walkout of over
 11 1,000 workers in Moy Park at Seagoe, Portadown, due to
 12 safety concerns; Bakkavor factory in Kent, two died,
 13 100 tested positive following an early outbreak; and in
 14 August 2020, at Banham Poultry factory in Norfolk,
 15 responsible for a huge 7% of chicken processing in the
 16 UK, it had to be shut down after a serious mass
 17 outbreak, 75 initially testing positive, rising to 127,
 18 and devastating outcome.
 19 Second example of a coalface which isn't necessarily
 20 in the public consciousness as much as others is workers
 21 in supply chains, including delivery, logistics and
 22 communications workers.
 23 Of course, one of the consolations of lockdown for
 24 many of us was that we could order goods online and they
 25 would appear at our front doors as if by magic. But

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1 behind that magic were people: postal and delivery
2 drivers who continued to work, to be travelling around
3 at great risk; logistics staff; call centre workers;
4 HGV drivers sleeping in their cabs on laybys.

5 Now, some supply chains and the people behind them
6 began to seep into public consciousness as soon as there
7 was a direct impact. We saw the headlines when Nando's
8 ran out of chicken, when Ikea ran out of mattresses,
9 when Wetherspoons ran out of beer, and suddenly supply
10 chains were acknowledged as mattering. But a key
11 question will be: was there timely and adequate
12 recognition that the people who keep essential supplies
13 moving should matter too?

14 That's the first point we want to make as
15 an underlying point in relation to this module.

16 The second is that many of those working in
17 essential coalface roles are in low paid jobs, often
18 paid minimum wage, and some indeed paid, as you will
19 hear, below minimum wage. So many of those at the
20 coalface in shops, in care homes, in supply chains, were
21 in jobs which exposed them to particularly high risk of
22 contracting Covid but they were also paid very poorly.

23 High risk, low wage jobs. And that meant limited
24 choices. In many cases, my Lady, it meant deaths from
25 Covid, having contracted it in their workplaces. Tens

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1 hardship and suffering were not equally spread. And we
2 agree, or as the TUC General Secretary Frances O'Grady
3 put it in her speech to Congress in September 2020:
4 coronavirus is no leveler; on the contrary, it has
5 exposed huge inequality in modern Britain.

6 For the TUC, they hope that this Inquiry, my Lady,
7 will deliver, if I can put it this way, on three As:
8 answers about what went wrong, and of course, as
9 Mr Keith indicated this morning, what went right, when
10 it went right. Accountability, a form of public
11 accountability, where justified, for decision-makers who
12 made plainly wrongful decisions and significant errors
13 of judgement. Again to quote from this morning. And
14 vitally, action, recommendations to secure real change
15 with recommendations being made during the lifetime of
16 the Inquiry in interim reports where possible and with
17 ongoing monitoring by your team. We were very
18 encouraged to see that at the heart of your opening July
19 statement, my Lady.

20 Against that general backdrop, we wish to address
21 you on four points orally today, and we're grateful to
22 your team for the detailed written note and the further
23 indications this morning, as a result of which some
24 matters have fallen away.

25 The four points I'll address you on are: one,

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1 of thousands of people of working age died in
2 the pandemic, and a great many of them were workers in
3 those high risk workplaces, sectors such as health,
4 social care, transport, food processing, textiles.

5 The third key factor is that amongst the working
6 population the impact of Covid, as you have heard from
7 others this morning and indeed from Mr Keith in his
8 opening remarks, hit particular communities and groups
9 harder than others. And as we said in Module 1,
10 my Lady, workers from ethnic minorities were
11 particularly hard hit: BME men 57% more likely to be
12 working in jobs with a higher mortality rate;
13 BME women 48% more likely. And you have heard, in
14 powerful words from Mr Dayle just now, on behalf of
15 the Federation of Ethnic Minority Healthcare
16 Organisations, particular disparities in that sector.

17 Migrant workers were also particularly adversely
18 impacted. For example, I mentioned Banham Poultry
19 factory: the majority of workers there were migrant
20 workers, many from Eastern Europe. And that, of course,
21 links to the point about low wages. Many lived with
22 co-workers at houses with multiple occupancy, travelled
23 together.

24 This all goes to underpinning the point Mr Keith
25 acknowledged this morning in his opening remarks, that

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1 the focus of Module 2 and the role of core participants;
2 second, some additional specific points about Module 2
3 and scope, I'll call them the micro points; third, some
4 higher level points about Module 2 and scope, I'll call
5 those the macro points, primarily about Northern Ireland
6 and England and how they fit in; and then, fourth,
7 a specific request for a closing hearing in early 2024
8 in Module 2 when you have completed Modules 2A, 2B
9 and 2C. So we gather again, is our proposal, at the end
10 to look back on what we've learnt from each of those
11 other modules.

12 So number one, the focus of Module 2 and the role of
13 core participants. My Lady, the TUC agrees that, as you
14 indicated in your opening statement in July,
15 the Inquiry's overall terms of reference are
16 wide-ranging and demanding, and we recognise that and we
17 say it at the outset it would of course be impossible to
18 call every witness relating to every single event, issue
19 or decision, and that you must focus on the key issues.

20 We agree that this requires the Inquiry to be, as
21 Mr Keith indicated this morning, ruthless in
22 the selection of issues and relentless in its focus on
23 matters of real importance.

24 I mentioned the TUC's three As. We're also
25 committed to Mr Keith's two Rs: being ruthless and

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1 relentless, continuing the alphabet theme.
 2 But for Module 2, my Lady, given the plethora of
 3 decisions on a wide range of issues which necessarily
 4 were taken at national -- by which I mean both UK and
 5 then national within each of the nation states --
 6 regional and local level over a two-year period, we
 7 recognise you cannot examine each and every one of those
 8 decisions, and the focus needs to be upon what you
 9 described in your opening statement as "the key issues",
 10 or what Mr Keith described this morning as matters of
 11 real importance or the "key narrative events".

12 We do also recognise that scope as currently defined
 13 is a generic wide guide without necessarily delving into
 14 specific detail at this stage.

15 Now, where there is a difficulty is this: Counsel to
 16 the Inquiry this morning say that the detail will follow
 17 and what will inform it will be the evidence gathered
 18 under the Rule 9 process. What we heard this morning in
 19 effect was: the evidence gathered under the Rule 9
 20 process will in effect determine the issues.

21 But there is a circularity to this, because
 22 the Rule 9 evidence obtained will necessarily be
 23 affected by the terms of the request from your team.
 24 Indeed, for a statement under Rule 9.4, it requires in
 25 terms that any request for an written statement must

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1 Essentially we will see it when we see it, was the
 2 approach taken, when the product of the requests is
 3 returned and disclosed. He said, and I hope my note is
 4 accurate:

5 "The answer is plain: we [by which he meant
 6 the Inquiry team] ... decide what the key narrative
 7 events and decisions are ..."

8 My Lady, he says the answer is plain. We say
 9 the concern is plain. It's been shared in different
 10 forms by the vast majority of core participants who
 11 filed written submissions or made oral submissions to
 12 you today. We're not attempting to be difficult. We
 13 simply don't want to be in a position where we hit
 14 March 2023, within weeks of this eight-week hearing
 15 being due to start in summer 2023, and we say there's
 16 a problem or there's a gap.

17 And really here we think the fault line and the
 18 difference between us and your team is about what
 19 the true role of core participants is in this process.
 20 Now, we're conscious that a core participant is not
 21 defined as such in the Inquiries Act 2005 or in the 2006
 22 Rules, save the rather circular definition provided in
 23 Rule 2:

24 "[A] 'core participant' means a person designated as
 25 such under rule 5."

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1 include a description of the matters or issues to be
 2 covered in the statement. So the Rule 9 evidence which
 3 will come later, which is said to be determinative of
 4 the detail of the scope, will itself necessarily be
 5 limited, focused or targeted, if you will, by the terms
 6 of the Rule 9 requests, and that means that the outline
 7 of what are, using your phrase from July, the key issues
 8 or, using Mr Keith's phrase this morning, matters of
 9 real importance or the key narrative events, those
 10 phrases become hugely important, because what will come
 11 back to you will be coloured by what your team set out
 12 in the requests as being the key issues, the matters of
 13 real importance or the key narrative events.

14 Regrettably, because the core participants are not
 15 seeing those requests, we don't know the list of key
 16 issues, we don't know the matters of real importance, or
 17 precisely what the key narrative events are seen to be
 18 by your team, we're in difficulty. And, as we
 19 understand it from this morning, by the time we're now
 20 going to see those, the key issues, the matters of real
 21 importance, it will in effect be a done deal,
 22 a fait accompli, with very limited time left until
 23 the summer 2023 hearing.

24 Now, Mr Keith asked again this morning: to what end
 25 would there be earlier disclosure to core participants?

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1 And in the Core Participant Protocol which you have
 2 produced, it's defined by reference to its entitlements
 3 under the rules. But broadly speaking, in our
 4 submission, a core participant is understood to be
 5 an entity which plays a key role in the Inquiry, and our
 6 position, and we understand this to be shared by other
 7 core participants who have made submissions today about
 8 early disclosure, is that core participants should play
 9 that role from the outset at an early stage, and
 10 the impression that we have from what's been said today
 11 is that the Inquiry team does not envisage core
 12 participants playing a key role in the evidence
 13 gathering process at this stage; instead we're to wait
 14 until we see what comes out of the sausage machine at
 15 the other end.

16 Now, we are not intending to usurp the Inquiry
 17 team's inquisitorial role. We recognise it's their role
 18 to gather the evidence. We say the core participants,
 19 of whom you've got 39, with a very broad breadth of
 20 expertise and knowledge, here, we all by definition have
 21 played a key role in the decision-making under scrutiny
 22 in this module, or we have a significant interest in it.
 23 Our submission is it's in your interests and your team's
 24 interests to hear from us earlier rather than later.

25 Now, there's many ways to skin this particular cat,

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1 whether it's through early provision of a list of
2 issues, as advanced by Ms Sivakumaran and Mr Dayle,
3 whether it's disclosure of the Rule 9 requests in this
4 module -- we appreciate the ruling in Module 1 but we
5 agree with Mr Weatherby that this is different because
6 of the targeted approach being adopted rather than
7 relevance alone -- or another mechanism.

8 What we have said with one voice today in our
9 written and oral submissions is: engage with us earlier,
10 give us the information earlier, and that will help to
11 make your process as robust as possible and avoid
12 difficulties in 2023.

13 May we give you one specific example about
14 the Inquiry's focus of which we learned this morning and
15 about which the TUC has concerns, having discussed it
16 over lunchtime.

17 Mr Keith said, and I hope I'm quoting accurately:

18 "In the context of this module, Module 2, the focus
19 is on whether the government had sufficient regard to
20 the likely impact of the pandemic and its
21 decision-making, not on what the impact of its
22 decision-making turned out to be."

23 From the TUC's perspective, if we have understood
24 that quote correctly, we consider this to be a false
25 dichotomy, because this is not about a single snapshot

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1 a whole throughout March, April, early May 2020. Across
2 England, bus and coach drivers at an early stage were
3 identified as amongst the occupations that ONS reported
4 as having elevated mortality from Covid-19. And indeed,
5 ONS published occupational mortality from all causes and
6 deaths involving Covid-19 between March and May 2020 and
7 that indicated that the all-cause death rate for bus and
8 coach drivers was greater than that for all other
9 occupations, and almost double what would have been
10 expected from the mortality of bus and coach drivers in
11 the previous five years.

12 Now, a swift understanding of the reasons behind
13 those statistics was critical. Was the key factor
14 increased levels of exposure to the public? What about
15 additional risks for bus drivers in London, including
16 age or race? Early evidence tended to suggest that
17 amongst bus drivers those aged 65 and over, and those
18 from BAME backgrounds, and those with certain
19 pre-existing conditions were at higher risk from
20 Covid-19 mortality. And similarly Mr Dayle, in his
21 submissions just now, referred to the emerging picture
22 about the particular adverse impact upon healthcare
23 workers in black and brown communities.

24 And of course, when you're looking at central
25 government's decision-making, factors such as these and

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1 of decision-making at one time; it's about
2 decision-making over a two-year or 25-month period from
3 early January 2020 to February 2022. And in our
4 submission, the impact of that decision-making, on
5 an ongoing basis, is indeed a key part of analysing
6 the adequacy of ongoing decision-making by central
7 government.

8 I'll just give you two indicative examples to
9 illustrate the point, one is London bus drivers, one is
10 inspection of workplaces.

11 So London bus drivers. The epidemic in London began
12 at least an estimated 15 days before the rest of
13 the country. That meant that its lockdown occurred at
14 a later stage of its pandemic and, as we anticipate
15 evidence will show during this Inquiry, there's a stark
16 difference in mortality during the first wave between
17 London compared to the national average.

18 But this also gave rise to some learning
19 opportunities which could and should have been learned
20 from and rolled out in other parts of England, in
21 Scotland, Northern Ireland and Wales. And that's why we
22 give this specific example.

23 A very early pattern emerged of deaths in the London
24 bus driver population. Death rates from Covid amongst
25 bus drivers in London exceeded death rates for London as

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1 the impact of decision-making or lack of decision-making
2 at an early stage is likely, of course, to be relevant
3 to the adequacy of your ongoing decision-making.

4 The other example the TUC gives is the inspection of
5 workplaces. And my Lady, we gave you some information
6 in previous submissions about the HSE, the Health and
7 Safety Executive, and just in summary, by early
8 June 2020 the HSE had received over 6,000 additional
9 concerns from workers about social distancing and other
10 pandemic-related matters, and the impression of the
11 unions at that time was that the HSE response fell
12 woefully short. And that's supported by the HSE's own
13 reporting of its response.

14 At that early stage of over 6,000 concerns,
15 only 2,684 were even passed to HSE field teams for
16 follow-up. Of those, 1,331 were considered to require
17 no further action. And most starkly, of over
18 6,000 concerns, only 47 concerns were responded to with
19 a physical inspection, and only one prohibition notice
20 was served.

21 That's striking, we say, six months into a pandemic
22 which had terrible consequences in so many workplaces,
23 that HSE had conducted only 47 site visits and issued
24 only one prohibition notice. We, on behalf of the TUC,
25 say that that was wholly inadequate, and it was heavily

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1 criticised by the Commons select committee on work and
2 pensions.

3 Now, when you're considering the adequacy of central
4 government's decision-making to ensure safety in
5 workplaces, what in fact was happening on the ground
6 with the HSE is central. So the impact is central. And
7 this goes back to looking at your opening statement in
8 July and the reference to impact and systems, there is
9 of course an interaction between impact and systems.

10 The well known quote, my Lady, about the definition
11 of insanity is doing the same thing over and over again
12 and expecting a different result, which is sometimes
13 wrongly suggested to be from Einstein, but that quote is
14 relevant here. Because if you have, on an ongoing basis
15 over this two-year period, decision-making by central
16 government which fails to look at impact, in our view,
17 that will, in itself, indicate an inadequacy in that
18 decision-making.

19 We also suggest this is in fact reflected in
20 the scope document itself. When considering issue 3 on
21 non-pharmaceutical interventions, NPIs, it says:

22 "... the development of the approach to NPIs in
23 light of the understanding of their impact on
24 transmission ..."

25 Which suggests that ongoing decision-making rightly
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1 a later stage in another module in greater detail.

2 So the four points are: first, the education sector,
3 which we say is of significant relevance to the
4 examination of decision-making around NPIs,
5 non-pharmaceutical interventions. And that's both
6 because education was significantly affected by NPIs but
7 also because education settings could be vectors for
8 community transmission.

9 So when considering your issue 3 in the scope
10 document, this must inevitably include consideration of
11 educational settings, we say, and there is some clarity
12 needed about the extent to which you will do that in
13 Module 2 or whether it will be something that is
14 returned to in a later, as yet undefined, further
15 module.

16 Second is the use and effectiveness of NPIs in
17 workplaces across the UK. And as I have indicated in my
18 opening remarks, community transmission and significant
19 loss of life occurred in particular sectors, including
20 the transport sector, communications sector,
21 the manufacturing sector, food processing, textiles
22 industry, construction sector, the retail sector.

23 Now, all of those sectors saw significant loss of
24 life and outbreaks of the virus, and all were reliant to
25 varying degrees on NPIs such as social distancing and
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1 should have an eye on impact.

2 A second category, my Lady, is a number of
3 additional specific points about Module 2 and scope.
4 These are micro points, if I can put it that way.

5 Mindful of the time, may I indicate that we deal
6 with these in detail in paragraph 33 of our written
7 submissions, so just in headline terms, my Lady, the TUC
8 has indicated to you and your team that it has
9 a particular interest and expertise in three issues in
10 the provisional scope document. Issue 2, as it relates
11 to guidance and advice given to health and social care
12 providers. Issue 3, on NPIs. Issue 5, on public health
13 communications.

14 At paragraph 33 of our written submissions we have
15 set out four points. And to be clear, we don't suggest
16 these points require an editing to the wording of
17 the scope document, we agree with the point made by
18 Mr Keith about the scope document on many issues being
19 sufficiently broad to allow these things to come under
20 its particular umbrella without editing the wording.

21 The reason we raise them now is that we submit that
22 it's vital that they're considered, they appear to fall
23 within scope of Module 2, but there is a lack of clarity
24 as to whether or not they will be delved into in
25 Module 2 or touched on in Module 2 and delved into at
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1 the use of masks. And in examining the development of
2 the approach to NPIs, in light of the understanding of
3 their impact on transmission, it would be important to
4 understand the effectiveness of NPIs in these sectors
5 and how they were being applied in practice.

6 We also say that an understanding of these issues is
7 relevant to examining the assessment of the likely
8 impact of the contemplated NPIs on vulnerable groups in
9 light of existing inequalities. And again, we're
10 unclear about the extent to which would be delved into
11 in Module 2 or looked at later.

12 The third example is in relation to public health
13 communications, and a significant feature of the use of
14 NPIs was the lack, we submit, of clear communications
15 and guidance for workplaces. The Inquiry will need to
16 consider what guidance was given in respect of NPIs and
17 workplaces, and you have seen in our written submissions
18 that the TUC say in the experience of the TUC unions,
19 the messaging and guidance was frequently confused,
20 often contradictory, and placed workers at risk, with
21 the unions trying to fill the gap.

22 It was limited. Different industries were served to
23 different degrees by a patchwork of professional bodies
24 seeking to adapt national public health communications
25 and guidance to their particular workplace and to fill
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1 in these gaps. That's why we have given you specific
2 indicative of examples of that confusion and the
3 contradiction in our written submissions referring to
4 the communications sector, construction sector and
5 the transport sector.

6 Then the fourth point under this heading is: both in
7 submissions on the terms of reference and for Module 1,
8 my Lady, the TUC has emphasised the importance of
9 the Inquiry examining the mechanisms in place for
10 ensuring safety in workplaces and how in practice NPIs
11 were implemented and enforced. And again we say that
12 requires an examination of the role of the Health and
13 Safety Executive, other regulators such as the ORR, and
14 also local authorities. That will be critical.

15 Third point, the macro points, my Lady, about
16 the scope of Module 2 and its interaction with
17 Modules 2A to 2C. There's two separate points.
18 One relates to Northern Ireland, one relates to England.
19 I'm grateful for the indication Mr Lavery gave in his
20 oral submissions that he had had a reassurance from
21 CTI about the Northern Ireland issue being addressed.
22 We have dealt with that in some detail at paragraphs 20
23 to 24 of our written submissions, my Lady, starting at
24 page 6.

25 And in short, the issue is that we are unclear at
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1 three years. When looking at pandemic preparedness in
2 Module 1 this will be very relevant when it comes to
3 Northern Ireland. It also means that you had a brand
4 new government after three years of a hiatus in early
5 January, just as the pandemic was starting to hit. And
6 we are unclear, when looking at Module 2 and Module 2C,
7 as to how that's going to be dealt with, or indeed how
8 it will be dealt with in Module 1.

9 We are quite happy to discuss that further with your
10 team, if helpful. Bottom line is, as we've said in our
11 submissions, this is an elephant in the room. It
12 doesn't appear in any of the scope documents currently.
13 It's of sufficient significance and importance that it
14 must be reflected and we must be clear on when it's
15 going to be dealt with. If it's going to be dealt with,
16 for example, in early 2024 in Module 2C, we can see that
17 that's pragmatic and sensible, given that an eight-week
18 hearing in summer 2023 is bearing down upon us
19 relatively quickly. But if that's the case, Module 2C
20 will have to look at centralised UK decision-making in
21 respect of Northern Ireland as well as looking at
22 decision-making in Northern Ireland itself, because of
23 the particular role of the Secretary of State for
24 Northern Ireland in Westminster.

25 The other issue is England, and we have dealt with
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1 this stage how the particular position of
2 Northern Ireland's pandemic preparedness in the period
3 leading up to January 2020, and Northern Ireland's
4 unique position in early 2020 will be addressed, and how
5 it will fit between Module 1, Module 2 and Module 2C.
6 As we indicated in our written submissions, and
7 Mr Lavery echoed this earlier, Northern Ireland had no
8 functioning executive for a three-year period from 2017
9 until 9 January 2020. You will recall that in
10 January 2017 the then deputy first minister
11 Martin McGuinness resigned, the Northern Ireland
12 Executive collapsed, and in essence you had a three-year
13 period where Northern Ireland was governed by civil
14 servants in a caretaker capacity. And it also meant
15 that the UK Government in Westminster had particular
16 additional obligations as there was no functioning
17 Executive.

18 Now, that played out in certain ways in particular
19 other areas. So, for example, you will recall the fact
20 that there was a particular legal challenge against
21 the Secretary of State for Northern Ireland within
22 Westminster for failing to take action in relation to
23 abortion and ECHR rights of women and girls in
24 Northern Ireland. But it's relevant here because you
25 have a situation where there was a hiatus period for
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1 that in our written submissions at paragraphs 25 to 27.
2 Now, Module 2 in the provisional outline of scope
3 document is described in a way which is plainly UK-wide,
4 and it seems clear to us that Module 2 is focused upon
5 UK-wide decision-making, with Modules 2A, B and C
6 intended to address, in turn, Scotland, Wales,
7 Northern Ireland. And we are unclear from the current
8 wording how England-specific issues are to be addressed.
9 And perhaps an unusual submission for an Irish counsel
10 to make, but there is a worry that England will be
11 overlooked in this context.

12 **LADY HALLETT:** Very unusual.

13 **MS GALLAGHER:** Precisely. Unusual for someone with my name
14 and my number of consonants and vowels to be making this
15 submission. But we are concerned that 2 looks at
16 UK-wide. And we're conscious that there is a reference,
17 of course, to communications with both devolved
18 administrations and regional and local authorities in
19 issue 1, as currently phrased. So we're conscious that
20 there will be some looking at how UK-wide
21 decision-making was then communicated to others, but
22 what we don't have is an equivalent of what you get in
23 2A, 2B and 2C about England specifically. And our
24 proposal for that is: we recognise we are not going to
25 have a whole new England-specific module, and that's why
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1 pragmatically what we have suggested is that you do
2 alter the wording, so there is a new 1A, which is
3 England-specific, and we recognise that in
4 the eight-week hearing we are going to have to look at
5 England particularly.

6 And you will recall that in Module 1 we raised
7 specific concerns about the north of England and
8 London-centric decision-making, and that is an issue
9 which we say does have to be addressed in Module 2.

10 Final point, my Lady, is about closing submissions
11 in 2024, and in our written submissions, my Lady, at
12 paragraph 9 onwards we dealt with the Inquiry's modular
13 approach. And this arose, if you recall, in the
14 Module 1 hearing, when a number of other core
15 participants were saying: well, why can't we see the
16 provisional scope documents in advance? And the
17 position adopted in the ruling and at the hearing was:
18 you've no entitlement to see them unless and until
19 you're a core participant.

20 So we recognise that there is a value to a modular
21 approach in an Inquiry such as this. And indeed, many
22 core participants who achieve core participant status in
23 one particular module might struggle if they needed to
24 be a core participant across the Inquiry as a whole. So
25 it has great value.

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1 at how interim recommendations have been impacted, and
2 affected, core participants should be entitled in some
3 form to make submissions to you on overarching
4 underpinning points, rather than sticking to their lane
5 and only dealing with the particular issues in
6 the particular module that they're in.

7 Now, in relation to Module 2, there's a very
8 specific proposal. Module 2 is constructed in a way
9 which allows you to look first, in this eight weeks in
10 summer 2023, at UK-wide decision-making. Then, as we
11 understand the timetable, in autumn 2023 there will be
12 hearings about Scotland and Wales. And then in
13 early 2024, there will be a specific hearing about
14 Northern Ireland. It stands to reason, my Lady, that
15 during those hearings specific to Scotland, Wales and
16 Northern Ireland, it may illuminate certain issues, it
17 may highlight other gaps in decision-making at a UK-wide
18 level which we simply didn't deal with in summer 2023
19 because we didn't know about it.

20 So our proposal is that the core participants in
21 the summer of 2023 Module 2 hearing should be entitled,
22 in the usual way, to make closing submissions at the end
23 of that eight-week hearing, but we also ask that you
24 take the unusual step of listing a short hearing, we
25 suggest two days, in early 2024, when you've finished

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1 It also has great value, we recognise, in allowing
2 your team pragmatically to be broken down and to have
3 different people working at the same time on different
4 strands. So bearing in mind the importance of
5 timeliness and speedy recommendations outlined in your
6 July opening statement, we can entirely see the value.

7 There are some disadvantages to it, however, and
8 that's why we have made the pragmatic suggestions that
9 we have at paragraph 9 onwards. One of the real risks,
10 of course, is a risk of a silo mentality. And one of
11 the other real risks is that core participants won't be
12 able to ultimately have a real impact on your final
13 report. And an example of that, my Lady, which we give
14 in our written submissions, is that there were no
15 overarching final submissions in the Independent Inquiry
16 into Child Sexual Abuse. And as a result, when the
17 final report comes out, it's impacted by, of course,
18 submissions which are made in individual modules by
19 individual core participants, but the only people who
20 have actually impacted upon the ultimate decision-maker,
21 in this case you, my Lady, are your own team.

22 We submit that that's not the right approach. And
23 that's why we support, as in Grenfell, overarching
24 submissions being made at the very end of the process,
25 so that looking back, standing back, including looking

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1 Module 2, Module 2A, 2B and 2C, so that we can come back
2 here again and we can make submissions on underlying
3 issues arising from Module 2.

4 Now, it may well also be, of course, that you may
5 need to have further evidence in relation to Module 2
6 arising from what's emerged in Modules 2A, 2B and 2C.
7 We simply don't know that yet. What we do know is that
8 there will be further submissions to be made that we
9 simply will not be able to make in July 2023 because we
10 won't know the issues. And we suggest that it would be
11 sensible to list a short hearing as a strand-tying
12 hearing so that you can look at Module 2 as a whole with
13 the benefit of the evidence that's emerged in
14 Modules 2A, 2B and 2C.

15 And, in our submission, that's an obvious approach
16 which will help when we go back to the TUC's three As.
17 So when you're trying to get answers to what happened,
18 and when you're looking for accountability and actions,
19 you are likely to get more informed and detailed
20 submissions in early 2024 with the benefit of those
21 other modules having already taken place than you will
22 ever get in summer 2023. So it's a proposal for
23 an additional hearing but, we suggest, a modest one and
24 a pragmatic one which ultimately will make your process
25 more robust.

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1 Unless I can assist further, I think I have done it
2 within time for the stenographers.
3 **LADY HALLETT:** Thank you very much, Ms Gallagher. Your
4 submissions were as constructive as ever, thank you very
5 much, and I will consider very carefully. A lot of what
6 you said obviously we all agree with. The modular
7 system has its downsides but, when you have an Inquiry
8 of this complexity, it seemed to me, on advice, that it
9 was the best way to deal with it, but as soon as I can
10 get more detail out, as I've said to people, about what
11 these modules will do and what later modules will do,
12 I promise you core participants will be the first to
13 know as soon as I've made my decisions.

14 Thank you very much, and I have taken on board all
15 the submissions that you made. Thank you.

16 **MS GALLAGHER:** Thank you.

17 **LADY HALLETT:** Right, the stenographer's had a really rough
18 time. I think we've only got a couple of minutes of
19 Mr Hill, and how long for Mr Keith? I'm going to give
20 the stenographer the choice. I think Ms Gallagher
21 speaks even more quickly than I do.

22 We'll take a break. Right. 15 minutes, then
23 everyone can sort themselves out. So I shall return
24 at 3.20.

25 **(3.05 pm)**

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1 your Ladyship's decisions. There are two reasons for
2 this.

3 The first and most important is that we believe that
4 we can help. The Government Office for Science has
5 extensive knowledge of relevant areas of suitably
6 qualified experts and of a wider academic landscape.

7 The second reason is that it will help further build
8 confidence in the work of the Inquiry among all who
9 participate in it.

10 Counsel to the Inquiry has said that the
11 identification of experts has not been straightforward,
12 for reasons that we can well understand, and he has also
13 said that core participants will be provided with
14 further information about expert evidence in due course.
15 Our submission is that the sooner that is done,
16 the greater the benefit will be for the Inquiry, both in
17 terms of the practical help to be given and in terms of
18 public confidence. And that is so, we say, particularly
19 because of the demanding timetable that your Ladyship
20 has placed on the Inquiry.

21 Unless I can assist further, those are the
22 submissions I have.

23 **LADY HALLETT:** No, thank you very much, Mr Hill, and
24 thank you for the offer of assistance, and I will
25 consider very carefully -- as you say, a number of core

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1 **(A short break)**

2 **(3.20 pm)**

3 **Submissions on behalf of the Government Office for Science**
4 **by MR HILL**

5 **LADY HALLETT:** Mr Hill, I gather you'd like to say a few
6 words.

7 **MR HILL:** Thank you, my Lady. I represent the Government
8 Office for Science, which is headed by the Government's
9 Chief Scientific Adviser. Among other things, the
10 Government Office for Science provided secretariat
11 support for SAGE. Very short submissions for
12 your Ladyship, and we're grateful for the opportunity to
13 make them.

14 They are prompted by Mr Weatherby's observation that
15 it is helpful to identify where there is agreement
16 between core participants at either end of a telescope,
17 to borrow his metaphor. From the Government Office for
18 Science's perspective, one such area is the early
19 involvement of core participants in discussions on
20 expert evidence.

21 We recognise that it is unequivocally for
22 your Ladyship to decide which areas are suitable for
23 expert evidence and who is instructed to cover those
24 areas. But we would welcome an early opportunity to
25 contribute to the discussion that informs

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1 participants have made a similar point, and so I will
2 give it very careful consideration. Thank you.

3 **MR HILL:** I'm grateful to you, my Lady.

4 **LADY HALLETT:** Mr Keith.

5 **Response statement by LEAD COUNSEL TO THE INQUIRY**

6 **MR KEITH:** My Lady, there is much to reflect upon. We, but
7 much more importantly you, will reflect on the points
8 that have been made in the course of the proceedings
9 today, but may I nevertheless seek to answer just some
10 of the points which can be answered, we believe,
11 straightaway.

12 Whilst Ms Gallagher's exhortations continue to ring
13 in our ears, can I start with some of the points that
14 she made, perhaps what may be described as the systemic
15 points going to the broad nature and width of this
16 Inquiry.

17 In relation to her submissions concerning Module 2C,
18 and of course the crucial issue concerning the absence
19 of a Northern Ireland Executive from early 2017 to
20 11 January 2020, notwithstanding the point made that
21 there is a distinct absence of any reference to that
22 important matter in the provisional outline of scoping
23 documents, it is in fact a matter which is expressly
24 identified in paragraph 3 of the provisional outline of
25 scope for Module 2C. And that's something upon which

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1 you will be hearing further submissions, no doubt, from
2 Ms Dobbin on Wednesday.

3 In relation to the notion of an English-specific
4 module, the very short answer is that the provisional
5 outline of scope for Module 2 identifies that the
6 central government structures and bodies concerned with
7 the UK response to the pandemic will form a key part of
8 Module 2. The reference to the United Kingdom in that
9 context necessarily includes England because, as we all
10 know, England forms no separate entity in a federal
11 model in the United Kingdom and, insofar as it is within
12 the United Kingdom, it naturally forms part of any
13 consideration of United Kingdom issues.

14 The reason, of course, why there is nevertheless
15 a separate Module 2A, 2B and 2C is because, alongside
16 the UK decision-making, there was also relevant
17 decision-making in relation to Scotland, Wales and
18 Northern Ireland.

19 The last point that I would like to address in
20 relation to Ms Gallagher's submissions concerned the
21 pleasure of having the advocates come to a further
22 module hearing in 2024. The Inquiry team couldn't
23 possibly begin to make submissions in relation to the
24 desirability or benefit of that course being adopted at
25 this very early stage indeed.

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1 the Inquiry's obligation to obtain potentially relevant
2 documents for subsequent disclosure; it is designed to
3 make the process work more smoothly, more sensibly, and
4 to ensure that the right documents are obtained.

5 As I said earlier, too much disclosure is as
6 unhelpful as too little disclosure, and you may
7 conclude, my Lady, that ultimately this debate comes
8 down not to an analysis of whether or not there is some
9 forensic unfairness in the process that you have
10 adopted, but is actually one of engagement.

11 Because you may well conclude that the core
12 participants feel that unless there is some means by
13 which we can tell them what it is that we're asking for
14 over and above the disclosure of the provisional outline
15 of scope, that they may feel that they have been denied
16 a sufficient and proper opportunity to engage in that
17 process.

18 But I can assure them -- and as you in fact stated
19 in your ruling in Module 1 -- they will be provided with
20 a monthly update of where we've got to in terms of the
21 Rule 9 process and disclosure, and that will obviously
22 reflect quite a lot more about the way in which we have
23 been asking for documents and what we have been given.
24 And, of course, as the documents are provided, they will
25 necessarily be able to see what issues those documents

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1 Returning then to the beginning of the submissions
2 this morning and the points made by the advocates for
3 the core participants earlier in this process.

4 In relation to Mr Weatherby's submissions concerning
5 the disclosure process and the Rule 9 process, it was
6 suggested that the Cabinet Office would not be required
7 to provide all relevant documents. That is how
8 Mr Weatherby put the iniquity, as he saw it, of the
9 process we have adopted. So I must correct I'm sure
10 what is an inadvertent but nevertheless misapprehension.

11 What we have sought to do is, rather than tie the
12 disclosure obligation to the very broad, high level,
13 necessarily opaque outline of scope, which is a document
14 which was prepared to enable the core participants
15 prospectively to decide whether or not they wished to
16 apply to become core participants, we are seeking to tie
17 the disclosure obligation to a more targeted, more
18 focused understanding of what it is you are seeking to
19 investigate in the course of Module 2.

20 So we are expressly asking that the government
21 document providers provide material relevant to the key
22 decisions, the people, the events, the matters that are
23 really important.

24 So targeting the disclosure process in that way and
25 the Rule 9 process in that way is not a derogation from

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1 go to, so they will immediately be able to assess which
2 of the issues in the provisional outline of scope
3 document those documents concern.

4 We would also wish to make the point that you may
5 consider in due course that the time will come when
6 there will have to be disclosure of a more granular or
7 detailed list of issues because, as we get nearer to the
8 point in the process where we start to make decisions
9 about the likely witnesses, and what precisely the
10 public hearing will look at, the CPs will need to have
11 at that stage a better understanding of frankly what
12 questions will be the areas which will be posed of the
13 witnesses. So they will be bound to get at that stage
14 a more detailed understanding, as I say, of the list of
15 issues.

16 **LADY HALLETT:** So the question the core participants,
17 I think, are raising is this, isn't it: will there be
18 sufficient detail in the monthly updates pending what
19 you say will be a more detailed list of issues to come
20 later?

21 **MR KEITH:** We believe so, my Lady. But, in any event, as
22 a matter of principle -- and I'll come back to this in
23 a moment in the course of addressing one of the other
24 submissions -- the iniquity of providing the Rule 9
25 requests is this: it was suggested that of course the

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1 core participants would be grateful by sight of the
 2 Rule 9 requests, but there was no mention of what will
 3 surely follow, which is that each of the core
 4 participants would then seek to invite the Inquiry to
 5 recalibrate, reformulate, reiterate perhaps, the Rule 9s
 6 which have already been sent out. And when one
 7 considers of course the number of recipients who have
 8 received a Rule 9 request, that will require a hugely
 9 significant administrative process, because the Inquiry
 10 team will receive a myriad number of requests in writing
 11 for the Rule 9 process to be recalibrated; and, when we
 12 are dealing with the receipt of tens of thousands of
 13 documents along with all the other matters which will
 14 need to be addressed, that is an impossible burden.

15 **LADY HALLETT:** So you say the burden is coming not in
 16 posting or emailing the Rule 9 requests themselves, it's
 17 in responding to what the core participants say?

18 **MR KEITH:** Because they will surely --

19 **LADY HALLETT:** Analysing and responding to.

20 **MR KEITH:** Absolutely, and it's perfectly understandable.

21 There will be no benefit to be gained in seeing what the
 22 Rule 9 requests consisted of unless they return to the
 23 fray by engaging in the minutiae of those requests and
 24 then seeking to persuade us to make further or different
 25 requests.

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1 King's Counsel, he suggested that there may be concerns
 2 in relation to the differences in the wording between
 3 the scope documents for Module 2 and Modules 2A, 2B and
 4 2C.

5 In my respectful submission, nothing turns on
 6 a difference or any differences in language between
 7 those outline of scope documents. The modules are
 8 different, my Lady. They are different because they
 9 deal with and they address different decision-making
 10 processes. They are nevertheless fundamentally aligned,
 11 although I acknowledge that there may be differences in
 12 detail or in emphasis. But my learned friend should
 13 refrain, we would respectfully suggest, from believing
 14 that there is anything more significant in the
 15 differences in wording than that.

16 The evidence, which is what will really matter, will
 17 of course overlap between the sub-modules in Module 2,
 18 but that doesn't necessarily mean that the evidence will
 19 be identical, and nor could it.

20 In relation to the submissions made by Ms Mitchell
 21 King's Counsel, obviously it would be foolhardy of the
 22 Inquiry team to rule out any possibility of delay, but
 23 of course delay is not inevitable, even if it is not to
 24 be welcomed at all.

25 We make this point in relation to whether or not the

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1 The further submission was made on behalf of the
 2 Covid-19 Bereaved Families for Justice Group by
 3 Mr Weatherby to the effect that the group would be
 4 significantly denied a proper involvement in the
 5 Inquiry's process unless it was provided with further
 6 detail of the Rule 9s or of undisclosed documents.

7 But, as I've sought to suggest, firstly they will
 8 receive those monthly updates; secondly, in due course
 9 there will be a far better understanding of the issues,
 10 necessarily; and, thirdly, when one stands back from
 11 this process, at the heart of it will be the disclosure
 12 of the actual material itself, the stuff of the forensic
 13 heart of this Inquiry. And it is when they receive all
 14 those documents, which will necessarily go far wider
 15 than any attempt to describe in writing what the broad
 16 issues consist of, they will see immediately what
 17 evidential points can be made, what the forensic links
 18 are, and where the Inquiry is headed.

19 So it is, in my respectful submission, simply not
 20 correct to suggest that the core participants are being
 21 denied in any material way a proper involvement in the
 22 process or a proper opportunity to become engaged in the
 23 disclosure process. It is a hare that cannot be allowed
 24 to run.

25 In relation to the submissions made by Mr Williams

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1 Rule 9 process and the disclosure process, significant
 2 procedures as they are, may lead to delay. The more
 3 focused we can make the Rule 9 process, the more
 4 streamlined we can make the disclosure process, the more
 5 we can reduce the risk of delay.

6 She posed a question as to whether or not the
 7 timetable for Module 2 encompassed Modules 2A, 2B and
 8 2C. Without letting too many cats out of the bag,
 9 because obviously Modules 2A, 2B and 2C will be
 10 addressed by you tomorrow and on Wednesday, they are
 11 entirely separate chronologically.

12 She also asked whether or not evidence would be led
 13 in writing. Yes, a great deal of evidence will have to
 14 be led in writing, but it won't all necessarily be read
 15 out.

16 Turning then to some of the submissions made on
 17 behalf of Save the Children UK, Just for Kids Law and
 18 the Children's Rights Alliance for England by Ms Twite.

19 She raised the important issue which I'm going to
 20 call, with a terrible modern euphemism, the
 21 cross-cutting issue of how matters in relation to,
 22 for example, education and the impact of the pandemic on
 23 children and young persons would be divided between the
 24 early module, Module 2, and the later module which, as
 25 I've said, will deal with education, children and young

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1 persons.

2 The answer is this: Module 2, as I've said already,
3 will be looking at the extent to which decision-makers
4 had regard to the particular interests of children and
5 young persons, and in a very broad sense the likely
6 consequences on the educational structure in the
7 United Kingdom.

8 That's because the focus of Module 2 is on the
9 etymology of the decision-making itself. But the
10 issues, for example, the detailed consideration of the
11 impact on schools and on children and young persons, are
12 not falling, and they're not intended to fall, within
13 Module 2. We simply cannot look at the specific impact
14 in relation to every sectoral group in the context of
15 examining whether the government failed adequately
16 itself to look at those issues.

17 If the government failed to look at a particular
18 impact or a particular area or the likely consequences
19 on a particular societal group, then that omission and
20 failure will be absolutely apparent.

21 In relation to some of the points made by
22 Ms Sivakumaran on behalf of the disabled people's
23 representative organisations and the long Covid
24 sufferers, Long Covid Kids, Long Covid SOS and
25 Long Covid Support, she invited you to consider making

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1 iniquity of omission, if you like, on how the Inquiry
2 would be able to identify whether or not there had been
3 a failure by government to consider the important issues
4 that it was obliged to consider, and on whether or not
5 the Rule 9 and disclosure process would enable that
6 feature of government decision-making not to be
7 discovered.

8 My Lady, as I've said already, one of the central
9 parts of Module 2, and one of the central issues, is
10 your determination to assess how the government weighed
11 disabilities and equalities in the balance in its
12 decision-making.

13 As I've said, when the material comes back from the
14 various government departments, it will be apparent
15 immediately whether or not there was any or any
16 sufficient consideration of those issues on the
17 contemporaneous documentation, on the face of the
18 contemporaneous documentation.

19 So if any particular government decision-maker
20 failed to have adequate regard to the particular issue,
21 then, as I've said, that omission will be apparent, and
22 it will have a forensic significance all of its own.

23 She advanced also further submissions in relation to
24 the Rule 9 disclosure process, and she suggested that it
25 would be a fairly straightforward process simply for the

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1 express reference to inequalities as part of each
2 paragraph of the outline of scope document.

3 My Lady, we would invite you to decline to accept
4 that invitation, however well advanced, and that's
5 because you have made it absolutely plain in your
6 opening statement, as it is reflected in the terms of
7 reference, and I've repeated this morning, that the
8 issue of the extent to which disabilities and
9 inequalities were considered by the government is at the
10 heart of Module 2, and you have tied that issue directly
11 to the issue of the government's decision-making.

12 Properly analysed, each paragraph in the outline of
13 scope document is just one facet of government
14 decision-making. Each paragraph is a reflection of the
15 various government functions that were in play. So it
16 necessarily follows that inequalities will be
17 considered, along with disabilities and all the other
18 ways in which the government decision-making had the
19 impacts that we believe it had, as part of Module 2.
20 All the themes will be examined in part through that
21 prism.

22 Turning next to the submissions by Ms Davies
23 King's Counsel on behalf of Solace Women's Aid and
24 Southall Black Sisters.

25 One of her central submissions focused on the

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1 Rule 9 requests to be disclosed to the core
2 participants.

3 As I ventured to suggest, no core participant would
4 ever be satisfied with mere sight of the requests; they
5 would inevitably wish to prefer them to be redrawn or
6 recalibrated and, given the number of core participants
7 and requests, that would impose an impossible burden on
8 the Inquiry.

9 Mr Dayle, on behalf of the Federation of Ethnic
10 Minority Healthcare Organisations, advanced a particular
11 submission concerning the degree to which you would
12 examine the extent of institutional racism, and also the
13 general subject and the important issue of the way in
14 which government goes about recording the number of
15 fatalities in the black and Asian minority ethnic
16 communities, and also through the prism of the BAME
17 workforce.

18 My Lady, those are extremely wide and complex
19 issues, and I think all I can say at this stage is they
20 cannot possibly be answered solely through the prism of
21 Module 2. Module 2 cannot bear the weight of that
22 sort of scrutiny because it is not a module designed to
23 look at, in a broad sense, whether or not all the
24 various aspects of the government are indeed
25 institutionally racist.

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1 What Module 2 will do instead is it makes it
 2 a forensic and evidential issue, and of course in the
 3 prism of Module 2 you will be asking suitable
 4 witnesses -- and no doubt based upon the material which
 5 is disclosed -- whether or not, in relation to specific
 6 decisions, those decisions were infected by that sort of
 7 iniquitous behaviour.

8 So the answer to my learned friend's submissions is
 9 not: yes, Module 2 or any module can look thematically
 10 at that concept, but yes, of course the right people
 11 will be the asked the right question as an evidential
 12 issue in relation to that theme.

13 He advanced further submissions dealing with
 14 specifically the way in which the Inquiry intended to
 15 look at impact on various sectors of workers and
 16 healthcare, the care sector, the educational sector, and
 17 the public sector generally.

18 You have determined that later modules will look at
 19 the impact on various sectoral groups, and this is where
 20 the examination of the impact will be predominant, but
 21 it's not an issue -- for the reasons I've attempted to
 22 espouse -- in relation to Module 2.

23 So, my Lady, that is all that we would say by way of
 24 response to the many thoughtful and enlightening
 25 submissions that you have heard.

1 **LADY HALLETT:** Thank you very much indeed, Mr Keith.

2 Thank everybody for attending, all of you who have
 3 made submissions. When I designated what seemed to me
 4 to be rather a large number of core participants, I did
 5 so on the basis, I hoped, they would all provide great
 6 assistance to the Inquiry, and that's how it is proving
 7 to be. So thank you all very much for your submissions.

8 I have already indicated that I have an open mind
 9 and the Inquiry remains flexible, and that I do
 10 undertake to ensure that all your submissions are taken
 11 into very careful consideration before I reach any
 12 decisions. So, thank you, everybody.

13 For those who are interested in the Modules 2A and
 14 2B: as you have already heard, 2A and 2B, Scotland and
 15 Wales, tomorrow, and then 2C, Northern Ireland, on
 16 Wednesday.

17 Thank you very much indeed.

18 **(3.48 pm)**

19 **(The hearing adjourned until 10 am**
 20 **on Tuesday, 1 November 2022)**

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