

Tuesday, 4 October 2022

(10.00 am)

Opening remarks by LADY HALLETT

LADY HALLETT: Good morning. The UK Covid-19 Public Inquiry was established to examine, consider and report on the UK's preparations for and the response to the Covid-19 pandemic. This is our first public hearing.

There is one word that sums up the pandemic for so many and that is the word LOSS. Although there were positive aspects of the pandemic, for example, the way in which communities banded together to help each other and the vulnerable, millions of people suffered loss, including the loss of friends and family members, the loss of good health, both mental and physical, economic loss, the loss of educational opportunities and the loss of social interaction.

Those who were bereaved lost the most. They lost loved ones and the ability to mourn properly. It is therefore right that we begin this first hearing with a minute's silence for those who died. So would those of you who are able to do so, please stand for a minute's silence.

The Inquiry will analyse our state of readiness for the pandemic and the response to it, as I've said,

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But my terms of reference cover a huge breadth of issues, and I shall not be able to produce reports and recommendations in a timely manner, if I grant every application for core participant status, if we cover every issue that people want covered, if we call for every document, examine every witness or cover every issue in as much detail as some may wish.

There is a balance to be struck between making timely recommendations and the extent to which we explore every issue, a balance recognised by many of the bereaved to whom I spoke during the public consultation on the Inquiry's terms of reference.

I assure them and the rest of the public that I will do everything in my power to ensure we achieve a sensible and fair balance and that the Inquiry is as thorough as possible. I will consider submissions on the various issues and that balance should be drawn before I reach any conclusion. No decision will be taken lightly.

One of my earliest decisions was to break the issues into several modules and to assign members of the legal team and the secretariat to each module. Each module involves a gathering of evidence, (a process that has already begun) followed by the public hearings. We cannot hold hearings into each

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and to determine whether that level of loss about which we have just been reflecting was inevitable or whether things could have been done better. My principal aim is to produce reports and recommendations before another disaster strikes the four nations of the United Kingdom and if it is possible to reduce the number of deaths, the suffering, and the hardship.

To that end, I've set an ambitious timetable and the Inquiry team are working extraordinarily hard to meet it. I will need the full co-operation of the Core Participants, witnesses, holders of documents and information and experts. I have a duty to the public to conduct a thorough, fair and independent inquiry for the whole of the United Kingdom and I intend to do so. I am acutely conscious that different parts of the United Kingdom, different communities and different groups of people suffered in different ways, and the Inquiry team and I will ensure that we listen to them and learn from them. Throughout the Inquiry, we shall have the impacted on them at the forefront of our minds.

I am also determined that this Inquiry will not drag on for decades, producing reports when it is too late for them to do any good.

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module at the same time and they will therefore be heard in sequence.

But I wish to emphasise that the order of the modules does not indicate that I consider the issues in later modules to be of any lesser importance, and the teams assigned to them will be working on them whilst the other modules are heard. Furthermore, the order and broad scope of the later modules are not yet set in stone.

For the avoidance of doubt and to allay concerns expressed in the media over the weekend, I should point out that the standard of care given to those suffering from Covid, including the triage system and the use of DNR notices, is very much an issue that I intend to explore and about which I shall receive evidence in a later module.

I have also had to decide on the designation of Core Participants for this, the first module. For those who have not been designated a Core Participant for Module 1, I hope they understand that my decision does not mean I have concluded their concerns are not legitimate or that they will not be addressed. If they are reasonable, my independent legal team will investigate them robustly and pursue them either in Module 1 or in what we consider to be a more

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1 appropriate module or modules. They may wish to apply
2 for CP status in that later module or modules.

3 Even if they do not apply again or have not yet
4 applied for CP status, they can still contribute to
5 the Inquiry. There will be many ways in which
6 individuals and organisations can do this, for
7 example, by providing information or evidence to the
8 Inquiry or suggesting lines of enquiry to the legal
9 teams.

10 Alongside the preparation and hearings of the
11 modules, I intend to conduct a listening exercise.
12 Again there has been some reporting over the weekend
13 about the design of and intent behind the proposed
14 Listening Exercise. So let me explain a little more.

15 Our intention in conducting the Listening
16 Exercise is to ensure that everyone across the UK who
17 wishes to contribute to the Inquiry can do so in
18 a less formal setting. People will not have to wait
19 for the module in which they have an interest to be
20 heard, and they will not have to give evidence at the
21 public hearings, but their contributions will inform
22 the Inquiry. It will provide valuable evidence to the
23 Inquiry about the impact of the pandemic. I wish to
24 emphasise that the fact that someone contributes to
25 the Listening Exercise will not prevent them from

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1 constructive submissions and within a tight
2 time-frame. I am very grateful to them. Some of the
3 issues raised may be more relevant to later modules.
4 I simply ask everyone to keep their oral submissions
5 today as succinct as possible and to focus on the
6 issues that I have to consider today.

7 Mr Hugo Keith, King's Counsel, Counsel to the
8 Inquiry will now set those issues out. Mr Keith.

9 **Opening statement by MR KEITH**

10 **MR KEITH:** My Lady, by way of brief introduction what I'm
11 going to do is commence by setting that arrangements
12 for today's hearing and then introduce the Core
13 Participants. I will then turn to say a little about
14 the background to and commencement of this Inquiry
15 before introducing this module, Module 1, and
16 addressing some of the legal issues that arise and
17 which, my Lady, you have prefaced.

18 The practical arrangements starting necessarily
19 with the arrangements for today, these proceedings are
20 of course being recorded and live streamed to other
21 locations. May I say this has certain benefits. It
22 allows the hearing to be followed by a greater number
23 of people than would be able to be accommodated within
24 this hearing room or any overspill room. Also in
25 accordance with section 18 of the Inquiries Act 2005,

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1 giving evidence at the public hearings of the Inquiry
2 if they have relevant evidence to give. I have taken
3 no decisions as yet on the witnesses to be called, so
4 no-one has been barred from giving evidence.

5 We shall also find an appropriate way or ways to
6 commemorate those whom we have lost. In planning and
7 designing the Listening Exercise, and commemoration,
8 we shall ensure that those most affected, in
9 particular the bereaved, are properly consulted.
10 I promised the bereaved during the consultation
11 process on the terms of reference that those who have
12 suffered will be at the heart of the Inquiry and
13 I intend to keep that promise. As I'm sure they will
14 understand, that does not mean that I can or should
15 consult them and the other Core Participants at every
16 single stage of our preparation. If I did that, the
17 Inquiry would go on forever.

18 But today I do invite further submissions on the
19 Listening Exercise and other issues and, thereafter,
20 we shall of course be listening to the most affected
21 as we design the Listening Exercise and the
22 commemoration or commemorations.

23 This is a preliminary hearing for Module 1
24 preparedness and resilience. Several of the Core
25 Participants have provided extremely helpful and

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1 my Lady, you are obliged to take such steps as you
2 consider reasonable to ensure that members of the
3 public are able to attend or see and hear
4 a simultaneous transmission of the proceedings. Live
5 streaming goes a long way to satisfying that
6 obligation.

7 Also, I need to say that as is routine in public
8 inquiries where there may from time to time be matters
9 mentioned of a potentially sensitive nature, the
10 broadcasting of the hearing will be conducted with
11 a 3-minute delay, and this provides the opportunity
12 for the feed to be paused if anything unexpected is
13 aired which should not be but, my Lady, we don't
14 expect any such matters to arise in the course of
15 today.

16 Representation. Let me turn to that. Present
17 today, whether in person or remotely, and excluding
18 myself and the Inquiry legal counsel and solicitor
19 team who are here, are counsel and solicitor teams
20 representing 28 Core Participants in Module 1. All
21 the Core Participants are therefore legally
22 represented. I don't propose to read out the names of
23 the legal representatives. My Lady knows well that
24 they are set out at tab 4 of your bundle. Of those
25 legal representatives, I believe that 22 are present

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1 before you today and six are attending remotely.
 2 Then most important, the Core Participants. The
 3 Core Participants know who they are, but I should
 4 explain for the others that they are entities,
 5 organisations or persons with a significant legal
 6 interest in Module 1 and who therefore have enhanced
 7 rights to participate in this process. Each of them,
 8 those appearing before you today, remotely or in
 9 person, were granted this status by you for the
 10 purposes of this module under Rule 5 of the Inquiry
 11 Rules. The list of the Core Participants is also in
 12 your bundle but I intend to read them out so that we
 13 all know who they are. There is no significance in
 14 the order of the names that I will read.

15 Covid-19 Bereaved Families for Justice; Scottish
 16 Covid-19 Families for Justice; Covid-19 Bereaved
 17 Families for Justice Cymru; Northern Ireland Covid-19
 18 Bereaved Families for Justice; the Chancellor of the
 19 Duchy of Lancaster (the Cabinet Office); His Majesty's
 20 Treasury; the Secretary of State for Health and Social
 21 Care; the Secretary of State for the Home Department;
 22 the Secretary of State for Business, Energy and
 23 Industrial Strategy; the Secretary of State for the
 24 Environment, Food and Rural Affairs; the Office of the
 25 Chief Medical Officer; the United Kingdom Health

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1 notice; that plainly wrongful decision-making and
 2 significant errors of judgement are identified; and
 3 that lessons may be properly learnt. The bereaved and
 4 those who have suffered are absolutely entitled to no
 5 less.

6 The extent of the collaborative approach
 7 required between the Inquiry and the Core Participants
 8 and, in particular, the bereaved groups is an issue
 9 that has been raised before you in the written
 10 submissions, and it is important that I address it
 11 now. In deference to the importance of the role that
 12 the Bereaved Families for Justice organisations play
 13 and your stated wish that the Inquiry foster an
 14 atmosphere of inclusion, there has been extensive
 15 communication already between you, your team and those
 16 groups.

17 Even before the Terms of Reference were
 18 finalised, the Inquiry team was working closely with
 19 all the Bereaved Families for Justice organisations
 20 and I know, my Lady, that you are grateful for their
 21 assistance in the terms of reference consultation
 22 exercise that took place in March when you met
 23 bereaved families across the United Kingdom.

24 The views they shared, including on issues like
 25 DNAPRs, do not attempt cardiopulmonary resuscitation

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1 Security Agency; NHS England; the Government Office
 2 for Science, the Association of Directors of Public
 3 Health; Imperial College of Science and Technology;
 4 represented legally together, the Local Government
 5 Association and the Welsh Local Government
 6 Association; the National Police Chiefs' Council;
 7 Scottish Ministers; Public Health Scotland; NHS
 8 National Services Scotland; the Welsh Government;
 9 Public Health Wales; the Executive Office for Northern
 10 Ireland; the Northern Ireland Department of Health,
 11 the Trades Union Congress (the TUC), and the British
 12 Medical Association (the BMA).

13 My Lady, Core Participant status brings of
 14 course significant procedural advantages. Core
 15 Participants get access to the disclosed documents.
 16 They will get to make submissions on the course and
 17 mechanics of your Inquiry. They will get to raise
 18 specific questions and assist you in ensuring that the
 19 Inquiry can discharge the formidable duties imposed
 20 upon it.

21 May I say something straight away about those
 22 duties so that there is no doubt. That duty as you
 23 have explained it is to get to the truth, to ensure
 24 that the full facts are revealed, that culpable and
 25 discreditable conduct is exposed and brought to public

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1 decisions and end of life care, informed your
 2 recommendations for changes to be made to the scope of
 3 this Inquiry, all of which proposals the then Prime
 4 Minister accepted.

5 We have also had a number of meetings. There
 6 has been some small disappointment expressed from one
 7 quarter that the Inquiry team did not add to the
 8 agenda items proposed by some of the groups for those
 9 meetings, but may I say that the agendas were only
 10 provided shortly before the meetings. But, in any
 11 event, we were and remain completely happy to be
 12 guided by them as to what they wished to raise with
 13 us.

14 There have also been multiple calls and
 15 a significant amount of correspondence. Indeed, the
 16 solicitor to your inquiry, Mr Martin Smith, has
 17 engaged with the Bereaved Families for Justice groups
 18 more than with any other Core Participant, and
 19 I should also observe that they have benefited from
 20 your 28 March 2022 decision to grant legal costs in
 21 connection with the consultation process. They have
 22 also received a section 40 determination to cover
 23 costs from 28 July immediately after Module 1 had been
 24 opened.

25 So may I also make clear that the Inquiry team

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1 is genuinely grateful for all the contributions from
2 them and from the other core participants both before
3 this hearing and in the written submissions.

4 Frankly, in this unprecedented and vast and
5 difficult undertaking the Inquiry team needs the
6 insightful and sensible assistance of all the Core
7 Participants. A list, my Lady, of the Core
8 Participants that you have designated will of course
9 be published on the website in due course.

10 Turning to the written arguments which have been
11 produced for this morning, my Lady, as you know, you
12 have had notes from myself and Ms Blackwell, assisted
13 by the very able junior counsel team that help us, as
14 well as from Mr Smith, sent out in advance of the
15 preliminary hearing.

16 The Inquiry has received eight written
17 submissions in response, one of which is a joint note
18 submitted on behalf of Covid-19 Bereaved Families for
19 Justice and Northern Ireland Covid-19 Bereaved
20 Families for Justice. The majority of the remainder
21 of Core Participants have kindly indicated that they
22 don't wish to make oral submissions and have not filed
23 written submissions.

24 The written submissions have, obviously, all
25 been circulated around the Core Participants. So, my

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1 an unknown aetiology was detected in Wuhan City, Hubei
2 Province in China. A new strain of coronavirus was
3 subsequently isolated on 7 January. It was identified
4 as Severe Acute Respiratory Syndrome-Coronavirus 2
5 SARS-Cov-2.

6 On 21 January the World Health Organisation
7 published its Novel Coronavirus 2019-nCoV Situation
8 Report 1. It recorded that, as of 20 January, 282
9 confirmed cases of 2019-nCoV had been reported from
10 four countries including China, Thailand, Japan and
11 the Republic of Korea. On 30 January, the second
12 meeting of the International Health Regulations
13 Emergency Committee of the World Health Organisation
14 declared a public health emergency of international
15 concern but it didn't recommend any travel or trade
16 restrictions.

17 The virus and its associated disease Covid-19
18 spread rapidly. On 15 February, France recorded the
19 first official death in Europe from Covid-19. By late
20 February, the number of cases of Covid-19 outside
21 China had increased 13-fold and the number of affected
22 countries had tripled. A worldwide public health
23 emergency ensued and, on 11 March, the World Health
24 Organisation declared Covid-19 to be the first
25 coronavirus pandemic.

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1 Lady, what I propose to do is to say something about
2 the background to the Inquiry, its commencement and
3 procedures so as to illuminate and highlight the
4 issues which arise for ventilation today.

5 I don't propose to answer all the points made in
6 the written submissions. I will reserve my position
7 in respect of some or all of them until they have been
8 developed by the Core Participants in their oral
9 submissions.

10 My Lady, the Inquiry understands that eight of
11 the Core Participants before you want to make oral
12 submissions. So, after my opening remarks, you will
13 of course be hearing from them following a speaking
14 order that you have had drawn up.

15 To aid the better recollection, if it be needed
16 at all, of the devastating impact of the Covid-19
17 pandemic and to reinforce the utter seriousness and
18 extent of this inquiry's task, it's necessary to set
19 out the briefest of chronologies of the early stages
20 of the pandemic. For many, including some here today,
21 they will never be forgotten, but it is remarkable how
22 with the passage of time we have allowed some of those
23 terrible details to be forgotten.

24 My Lady, as your opening statement recalled, in
25 late December 2019 a cluster of cases of pneumonia of

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1 As few on this planet will be unaware, Covid-19
2 has killed millions of people worldwide and infected
3 many millions more. As of 20 September of this year
4 over 609 million confirmed cases of Covid-19,
5 including around 6.5 million deaths, have been
6 reported to the World Health Organisation. Some
7 estimates of death put the figure for estimated deaths
8 from Covid-19 at 17.5 million.

9 The pandemic has led to financial and economic
10 turmoil. It has disrupted economies and education
11 systems and put unprecedented pressure of national
12 health systems. Jobs and businesses have been
13 destroyed and livelihoods taken away. Communities,
14 especially the poor and vulnerable, have been
15 devastated and existing inequalities have been widened
16 and exacerbated.

17 The disease has caused widespread and long-term
18 physical and mental illness, grief and untold misery.
19 Its impact will be felt worldwide, including in the
20 United Kingdom, for decades to come.

21 As everyone here will recall, on Monday
22 23 March 2020 the then Prime Minister announced severe
23 restrictions on the entirety of the United Kingdom in
24 what became known as the first national lockdown. My
25 Lady, I don't propose to say more about the events

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1 leading up to that cataclysmic moment in the life of
 2 this nation because for this preliminary hearing it's
 3 not required, and their detail will in any event be
 4 a matter for you of course to determine. But vast
 5 swathes of human and social activity were ordered to
 6 be curtailed and much of public life halted. Almost
 7 every area of public life across all four nations,
 8 including schools, the transport system, the justice
 9 system, prisons, the majority of public services, were
 10 all adversely affected. Hospitality, retail, travel
 11 and tourism, arts and culture and the sport and
 12 leisure sectors effectively ceased to operate; even
 13 places of worship closed.

14 Whilst the number of deaths rose, the NHS, the
 15 police and emergency services and other key workers
 16 continued in their places of work. Almost everyone
 17 else was forced to work or be educated from home.

18 The months and years that followed saw death and
 19 illness on an unprecedented scale. Recent figures
 20 calculate that in England there have been 165,806
 21 deaths within 28 days of a positive test or 171,764
 22 deaths where Covid-19 was recorded on the death
 23 certificate. The Office of National Statistics
 24 provides weekly figures for deaths that are so
 25 registered. In Scotland the figures are no less

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1 retention, income, loan, sick pay and other support
 2 schemes has severely impacted public finances and our
 3 financial health.

4 Concern has been expressed from many quarters
 5 that poor health and existing inequalities have left
 6 parts of the United Kingdom more vulnerable to the
 7 disease and that the restrictions imposed on the
 8 country have led to unmet health needs, damaged
 9 educational prospects and financial insecurity.
 10 Societal damage has been widespread, with existing
 11 inequalities exacerbated and access to opportunity
 12 significantly weakened. The impact on the NHS, its
 13 operations, its waiting lists and elective care has
 14 been similarly immense.

15 My Lady, this Inquiry has been constituted to
 16 investigate on behalf of the bereaved and those who
 17 have otherwise suffered, as well as the wider public
 18 whether anything could have been done more to prevent
 19 their loss or reduce their suffering. More
 20 specifically, in this module, they are entitled to
 21 know whether the United Kingdom and its systems for
 22 preparedness and response could have been better.
 23 Only in this way, as you have said, can proper and
 24 effective recommendations be drawn up to protect the
 25 country better from pandemics, whether caused by

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1 terrible: 12,389 and 15,555 by those two measures as
 2 of 4 September; in Wales, 7,844 and 10,675; and in
 3 Northern Ireland 3,445 and 4,832.

4 By an alternative measure of excess deaths or
 5 excess mortality, that is to say the number of deaths
 6 from all causes above and beyond what would be
 7 expected under normal conditions, i.e. had the
 8 pandemic not occurred (so capturing not only confirmed
 9 deaths but also Covid-19 deaths that were not
 10 correctly diagnosed or reported as well as deaths from
 11 other causes attributable to the pandemic) the figures
 12 are likely to know higher still.

13 Beyond the individual tragedy of each and every
 14 death, it is clear the pandemic placed extraordinary
 15 levels of strain on the UK's health, care, financial
 16 and educational systems, as well as on jobs and
 17 businesses. It affected the health and well-being of
 18 vast numbers of people, particularly vulnerable
 19 groups, including people with disabilities, the
 20 clinically vulnerable, the mentally ill, ethnic
 21 minority groups, older people, children, and those
 22 living in deprived areas. The cost in human and
 23 financial terms of bringing coronavirus under control
 24 has, my Lady, been immense. Government borrowing and
 25 the cost of procurement and of the various job

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1 future coronavirus variants or some other forms of
 2 disease and also from comparable civil emergencies.
 3 Given the sheer extent of the impact of the pandemic
 4 and the Government decision-making that was required
 5 across such a very wide range of areas, it is little
 6 surprise that this Inquiry will be no less complex and
 7 multifaceted.

8 May I therefore turn to say something about the
 9 commencement of the Inquiry so that its legal
 10 foundations and scope can be properly understood and
 11 the work that has already been done brought to public
 12 attention.

13 On 12 May, the then Prime Minister made
 14 a statement in the House of Commons in which he
 15 announced there would be a public inquiry under the
 16 Inquiries Act 2005. On 15 December as the sponsoring
 17 minister he appointed you, my Lady, as Chair. In the
 18 written appointment letter, the Prime Minister
 19 confirmed that he would be consulting with ministers
 20 from the devolved administrations. Such consultation
 21 is required by section 27 of the Inquiries Act 2005 to
 22 enable the inclusion in the terms of reference of an
 23 inquiry for which a United Kingdom minister, including
 24 the Prime Minister, is responsible of anything that
 25 would require the Inquiry to determine facts and make

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1 recommendations wholly or primarily concerned with
2 a Scottish matter or a Welsh matter or a transferred
3 Northern Ireland matter.

4 Draft terms of reference were drawn up making
5 clear that the Inquiry would consider and report on
6 the State's preparations and response to the pandemic
7 and would consider reserved and devolved matters in
8 those nations in respect of which there had been
9 a need for such consultation.

10 On 10 January, you wrote to the Prime Minister
11 recommending certain amendments to ensure greater
12 clarity and to enable you to conduct the Inquiry at an
13 appropriate pace. You also sought an express mandate
14 permitting the publication of interim reports.

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

23 On 4 February the Prime Minister responded
24 accepting, with some minor irrelevant changes or minor
25 caveats and a small number of textual refinements, the

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1 In total you received over 20,000 responses to
2 the consultation. An independent consultancy team was
3 commissioned to analyse the response. They produced
4 a comprehensive report summarising those views and the
5 key themes that emerged. So, in light of that process
6 and the many thousands of views expressed, you
7 recommended a number of further changes to the draft
8 terms of reference. You wrote asking that those
9 changes be made. They were all accepted in full.

10 So on 21 July the Inquiry was formally opened,
11 and you announced the decision to conduct the Inquiry
12 in modules. This module concerns of course resilience
13 and preparedness prior to the pandemic, but I need to
14 say just a little bit more about the overall width of
15 the Inquiry to show that this module forms only one
16 part of it.

17 Module 2. The provisional outline of its scope
18 was published on 31 August. It will look essentially
19 at the core political and administrative governance
20 and decision-making in the United Kingdom concerning
21 the high-level response to the pandemic from
22 January 2020 onwards. It will pay particular scrutiny
23 to the decisions taken by the Prime Minister and the
24 Cabinet as advised by the Civil Service, senior
25 political scientific and medical advisers as well as

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1 detailed changes that you had proposed.

2 On 10 March, having consulted with the ministers
3 from the devolved administrations in the way that I've
4 described, he wrote to you to inform you of certain
5 further changes which had been made in response to
6 their comments. The same day, the draft terms of
7 reference were published.

8 You then wrote an open letter to the public in
9 which you announced the launch of a public
10 consultation process on the draft terms of reference.
11 The consultation document sought the public's views on
12 whether the Inquiry's draft terms of reference covered
13 all the areas that they thought should be addressed
14 and on whether the Inquiry should set a planned end
15 date. The consultation was open to everyone, and the
16 public could contribute on the Inquiry's website by
17 email or by writing.

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

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1 relevant Cabinet subcommittees.

2 It will examine Government structures and bodies
3 concerned with the response, the initial understanding
4 and response to the nature and spread of Covid, the
5 Government's initial strategies, the decision-making
6 relating to the non-pharmaceutical interventions, the
7 national lockdowns, the restrictions, the circuit
8 breakers, the working from home, the orders to reduce
9 person-to-person contact, social distancing, and so
10 on.

11 But also their timeliness and reasonableness,
12 including there likely affects had decisions to
13 intervene been taken earlier or differently.

14 Importantly, the degree to which Government
15 looked at and considered the risk on vulnerable groups
16 and others. Access to and use in decision-making of
17 medical and scientific expertise, data collection and
18 modelling, public health communications in relation to
19 steps taken to control the spread of the virus -- this
20 is transparency of Government messaging, the use of
21 behavioural management and the maintenance of public
22 confidence. All those as I say are for Module 2.

23 This Inquiry is obliged under section 27 of the
24 Inquiries Act as well as its terms of reference, as
25 I've said, to consider both reserved and devolved

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1 matters in respect of Scotland, Wales and Northern
 2 Ireland. So having considered the picture in Module 2
 3 from a UK-wide and also English perspective, Modules
 4 2A, 2B and 2C will address the same overarching and
 5 strategic issues from the perspectives of Scotland,
 6 Wales and Northern Ireland. But obviously, on account
 7 of the fact that an Inquiry has been established in
 8 Scotland to look at matters devolved to the Scottish
 9 Government, your intention in relation to Scottish
 10 matters has been to seek to minimise any duplication
 11 that might arise, and so a memorandum of understanding
 12 is already under discussion to guide both Inquiries in
 13 their communications with document providers,
 14 potential witnesses and other sources of information
 15 material to ensure the minimum degree of overlap.

16 Module 3. It will examine the impact of Covid
 17 and the governmental responses on the healthcare
 18 systems generally across the United Kingdom. It will
 19 investigate the general impact of the pandemic on the
 20 healthcare systems, governance, hospitals, primary
 21 care, NHS 111 services and ambulance services. It
 22 will address issues such as the use of Do Not
 23 Resuscitate orders -- rationing of critical care,
 24 capacity, triage systems, the shielding and care of
 25 extremely vulnerable, NHS backlogs and waiting times

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1 and at regional and national levels and look at their
 2 history, development, co-operation and performance.

3 In terms of enquiring into pandemic planning,
 4 this will include examination of the forecasting
 5 processes, the extent to which past knowledge of
 6 actual events and simulated exercises were learnt
 7 from. The degree of readiness preparation and the
 8 general resources that were available.

9 International comparisons will be drawn, and the
 10 funding capacity and maintenance of emergency planning
 11 and public health structures examined. This will
 12 include any impact arising from the United Kingdom's
 13 departure from the European Union.

14 Evidence will be given in relation to the
 15 planning for future pandemics, including the
 16 forecasting of new Covid-19 variants, the other
 17 viruses of concern, and diseases resulting from viral
 18 transmission from animals.

19 But that scope, my Lady, although it introduces
 20 a wide range of areas, cannot at this stage be readily
 21 determined in detail. It's neither practical nor
 22 advisable to identify now all the granular issues that
 23 will be addressed at the Module 1 hearing, let alone
 24 the questions that will arise forensically.

25 Concern has been expressed by one Core

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1 and the treatment of those suffering from long Covid.

2 Later modules, details of which will be
 3 published in the coming months, will address very
 4 broadly system and impact issues across the
 5 United Kingdom, vaccines, therapeutics, the care
 6 sector, Government procurement and PPE, testing,
 7 trace, Government financial responses. The impact
 8 modules will look at health inequalities and the
 9 impact of Covid on the education and business sectors,
 10 children and young persons, on public services and on
 11 other public sectors. Hence, my Lady, the
 12 unprecedented and ambitious nature of this Inquiry.

13 Module 1's scope. The document setting out the
 14 provisional outline of scope for this module has been
 15 published on the Inquiry website and I don't propose
 16 to read it out. The outline of scope document was
 17 expressly designed to be provisional so that Core
 18 Participants could see that they were being invited to
 19 comment on its further development as, indeed, they
 20 have.

21 In essence, the module is concerned with high
 22 level pandemic resilience, preparedness and planning
 23 across all four nations.

24 It will examine whether the correct structures,
 25 bodies, procedures and policies were in place at UK

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1 Participant that the scope of Module 1 has been
 2 limited in some way by the wording of the decision
 3 letter in the case of that Core Participant to grant
 4 it Core Participant status. May I say therefore that
 5 the reasoning in that letter did not and could not
 6 purport to reflect the entirety of the Module 1 scope.

7 My Lady, the issues will obviously be further
 8 developed once the responses to the majority of the
 9 Rule 9 requests for evidence have been received and
 10 analysed. But a number of very helpful suggestions
 11 have been made by the Core Participants concerning
 12 scope by way of identifying changes in the direction
 13 or specifying particular areas for investigation in
 14 Module 1 and I know, my Lady, that you and the team
 15 would wish to reflect on them all but may I just make
 16 a number of points as to how we propose to do so.

17 We will approach those suggestions from the Core
 18 Participants with an open, indeed eager, frame of
 19 mind. It serves absolutely no purpose whatsoever for
 20 us to expend the time, energy and cost in designing
 21 and holding a Module 1 public hearing only for issues
 22 of real importance not to be explored.

23 Secondly, this is only the first module. It is
 24 designed to investigate the general state of the
 25 United Kingdom's resilience and preparedness or lack

28

1 thereof. It cannot be used as a vehicle to front-load
2 others issues better suited for scrutiny later in the
3 Inquiry.

4 Third, that scope document is meant only to be
5 a generic guide. As I've said, the actual scope and
6 the issues in question that will arise for scrutiny
7 will be far better assessed by reference to the
8 forensic trawl that is this process of gathering up
9 documents, statements and information from Core
10 Participants, from evidence providers, holders of
11 documents and many, many more entities.

12 That process is designed to sweep up
13 a significant body of documents and statements from
14 which the issues can then be identified and developed.

15 Lastly, my Lady, as you said in your opening
16 statement in July and again today, with such a wide
17 scope, the Inquiry needs to be ruthless in its
18 selection of issues and relentless in its focus on
19 matters of real importance. It is simply not possible
20 to examine every issue, even if thematically within
21 the reach of Module 1, or to call every witness
22 relating to every event, issue or major decision.

23 What is instead required is a carefully judged
24 assessment of what really matters.

25 I've mentioned the Rule 9 requests. May I say

29

1 preparedness between June 2009 when the World Health
2 Organisation announced the scientific criteria had
3 been met for an influenza pandemic, what became known
4 as the swine flu pandemic, and 21 January 2020, the
5 date upon which the World Health Organisation
6 published its Novel Coronavirus Situation Report
7 number 1.

8 The areas of enquiry range widely. They have
9 been made, or the enquiries by way of Rule 9 have been
10 made, in relation to development and functions of
11 relevant organisations; resources and levels of
12 funding; the monitoring, and communication of new and
13 emerging infectious diseases; the duties and
14 responsibilities under the Civil Contingencies Act
15 2004; policies and operational strategy, including
16 those set out in various pandemic preparedness
17 strategy documents and reports.

18 We have sought explanation and analysis of the
19 Government's forecasting of influenza and
20 high-consequence infectious; diseases of institutional
21 learning and the simulation and real exercises from
22 Exercise Winter Willow in 2007 through to Exercise
23 Pica in 2018.

24 We have sought information relating to public
25 health services and resources, the stockpiling of

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1 a little more about them. Since the start-up date of
2 21 July, a huge amount of work has been done in terms
3 of resourcing and staffing the Inquiry, setting up the
4 legal teams, identifying hearing venues, responding to
5 public communications, and setting this module on its
6 way. The Inquiry has also identified and published
7 the scope documents, the outline of scope documents,
8 as I have said, in relation to modules 2, 2A through
9 to 2C. It's also prepared the groundwork for the
10 later modules which will follow in quick succession,
11 and there is also then the Listening Exercise.

12 But, importantly, the Inquiry has already issued
13 formal requests for evidence pursuant to Rule 9 of the
14 Inquiry rules to the following organisations which
15 appear to us to have played a central or significant
16 role in relation to the United Kingdom's resilience,
17 plans and preparedness, the Cabinet Office, the
18 Department for Levelling Up, housing and Communities
19 and the Department of Health and Social Care.

20 My Lady, those Rule 9s are lengthy, complex and
21 wide-ranging. They request information and documents
22 (including policy documents, agendas, meeting notes
23 and minutes) and the identities of key figures and
24 decision-makers (including ministers, civil servants
25 and advisers) relating to relevant decision-making on

30

1 essential resources, co-operation between Government
2 and devolved administrations, regional local
3 government, and expert advisory groups and public
4 sector bodies.

5 We've sought the disclosure of key actions,
6 activities, initiative, policies and publications. In
7 the next few weeks Rule 9 requests will also be sent
8 to the United Kingdom Health Security Agency, his
9 Majesty's Treasury, the Welsh Government, the
10 Government of Northern Ireland and the Scottish
11 Government. The Trades Union Congress has helpfully
12 suggested adding the Health and Safety Executive, and
13 we will reflect on that.

14 The Rule 9 requests are being issued on an
15 iterative basis as part of which further requests will
16 then be made of the recipients focusing on particular
17 issues or topics. We will issue further Rule 9
18 requests on a rolling basis to other organisations.

19 Some have asked in their written submissions
20 whether we will disclose the Rule 9 requests
21 themselves, the requests made of all those various
22 entities. In my submission, my Lady, that is,
23 however, neither required by the rules nor established
24 by past practice. It is, we suggest, furthermore, not
25 practicable. Given that all or almost all the Rule 9

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1 requests will be superseded and built upon by further
2 iterative requests from the Inquiry team itself,
3 disclosure of each Rule 9 request serves we suggest no
4 purpose.

5 Some Core Participants have raised the issue of
6 position statements by state bodies and organisations.
7 So, my Lady, the proposition before you in some of the
8 written submissions is that position statements, if
9 ordered, would assist you by enabling you to target
10 further disclosure, hone the expert evidence and
11 tailor the hearings to those areas that are actually
12 in dispute or are unclear.

13 We suggest, with respect, however that the
14 foundational principle that this argument is based
15 upon may not be correct in the circumstances of this
16 Inquiry. You will of course be reflecting on all the
17 submissions. But may I introduce a note of caution.
18 Position statements are in effect a form of pleading,
19 but they are not a required feature of Inquiry
20 proceedings which are of course not adversarial.

21 In any event, we rather doubt whether such
22 statements would help to narrow issues and, therefore,
23 save time and cost. Written clarification of
24 a document provider's position whether in a position
25 statement or otherwise, can really only be done at

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1 a person, or even a particular decision or policy or
2 course of behaviour (such as the Infected Blood
3 Inquiry or the Post Office Horizon Inquiry).

4 You will be scrutinising Government
5 decision-making made by a very significant number of
6 bodies and individuals over many years, even in this
7 module a complex and multi-layered task and,
8 therefore, it simply doesn't readily lend itself to
9 the preparation of position statements.

10 But may I say that you know, my Lady, that you
11 will and you have already started seeking corporate
12 witness statements as well as making those more
13 directed requests of which I have spoken, and those
14 statements will naturally reflect the particular
15 entity's position but they will have a far better
16 foundation.

17 I then turn to disclosure. There is no express
18 requirement for disclosure contained in the Act or the
19 Rules. The reason why of course inquiries give
20 disclosure is because the obligation arises from your
21 overarching obligation to act fairly under
22 section 17(3) of the Act, and Core Participants must
23 have disclosure of relevant documents in advance of
24 the public hearing to enable them to contribute
25 meaningfully to the process.

35

1 a point when that entity is sufficiently sighted on
2 the issues, the disclosure that enables their proper
3 examination, and their own position. So to start the
4 Inquiry process with a position statement is to jump
5 the gun.

6 Asking entities to commit to a committed
7 position at an early stage is therefore liable to lead
8 to delay in the commencement of the process because,
9 in this complex forensic picture, it's likely to take
10 months for them to be able to assemble sufficient
11 documentation for them to identify their position,
12 then form it and then commit to an inalienable
13 position on paper.

14 My Lady, this Inquiry is in truth an inquiry
15 into myriad decisions and complex decision-making.
16 It's not an inquiry into an easily identifiable event
17 or action as to which document providers and
18 decision-makers might be expected to have a pellucid
19 position. It's not an inquiry limited by a single
20 event, a short passage of time, a place, or a limited
21 course of Government or State conduct, a crash, air
22 crash, an explosion, a shooting or a single terrorist
23 attack. Nor is it limited by place (as with the
24 Sizewell Inquiry or the Inquiry into the Bristol
25 Royal Infirmary Hospital), or by connection to

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1 Plainly, to make sure that the Inquiry is in
2 a position to disclose relevant material, we will be
3 casting our net more widely when gathering it in. The
4 Inquiry does this by asking document providers for
5 material that is likely to be relevant to the issues
6 that will arise in the course of the module.
7 Therefore, it is neither necessary nor proportionate
8 for the Inquiry to disclose every document that it
9 receives or every request that it makes or every piece
10 of correspondence. That is not required, and it would
11 hinder the Inquiry in the performance of its
12 functions.

13 In particular, the documents received from
14 document providers can't be provided without that sift
15 for relevancy and for utility. It would be
16 a derogation of the Inquiry's functions simply to pass
17 everything on to the Core Participants.

18 But may I say that, as an Inquiry team, we will
19 of course be giving regular disclosure updates on
20 which we can report on the progress which is being
21 made. We don't propose only to provide Core
22 Participants with documents relevant to them; all Core
23 Participants will receive the same documents for the
24 particular module.

25 Third, we'll provide all relevant documents that

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1 the Inquiry's received subject to a de-duplication
2 exercise and appropriate redactions in accordance with
3 the redactions protocol.

4 But lastly, we don't propose to provide
5 a document protocol. I have set out our general
6 approach, and the provision of protocols for
7 protocol's sake assist no-one.

8 My Lady, it's likely that we'll be making
9 disclosure in tranches as opposed to documents being
10 made available as soon as they are provided to us.

11 Lastly, some Core Participants have requested
12 that document providers sign a statement explaining
13 how they've secured the preservation of documents, how
14 they've conducted their own searches, and how they
15 have satisfied Limited themselves that they've
16 complied in full with their duties. I can say that
17 each provider has been asked or will be asked to
18 provide an account setting out details of how the
19 documents were originally stored, the search terms
20 used or other processes used to locate documents, and
21 the nature of any review carried out by them.

22 Where we have queries or concerns about those
23 procedures, we will raise them and we will pursue them
24 and of course, as documents are disclosed and gaps
25 identified, we will seek further documents.

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1 explored, and whether there are more documents
2 required to be produced. The production of a document
3 setting out everything that has not been disclosed
4 would simply require an immense amount of further work
5 to little end.

6 No final decision has been taken as to which
7 electronic disclosure system will be operated by the
8 Inquiry to provide those documents to Core
9 Participants. We anticipate, my Lady, that disclosure
10 will commence before Christmas.

11 Experts: again, a topic that has fallen within
12 the scope of the written submissions which have been
13 provided today.

14 The Inquiry will obviously review and provide
15 a vast amount of national and international research
16 material relating to pandemic preparedness and make
17 that material available.

18 A significant number of qualified experts and
19 persons with recognised expertise are also likely to
20 be giving evidence at the public hearing as witnesses
21 of fact. However, the Inquiry will also appoint
22 qualified experts in particular fields of expertise as
23 experts to the Inquiry. They will assist the Inquiry,
24 either individually or as part of a group of such
25 persons, by way of written reports and opinions and,

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1 I should also observe that the Inquiry's already
2 taken steps to ensure the preservation of documents.
3 On 20 January, the Secretary to the Inquiry, Mr Ben
4 Connah, wrote to the Director General Propriety and
5 Ethics of the Cabinet Office to request the retention
6 of records across the entirety of the Government. On
7 8 February, the Director General replied setting out
8 the steps that had been taken to ensure records
9 relevant to the Inquiry were being retained across the
10 whole of Government.

11 There are also provisions in section 35 of the
12 Inquiries Act which make it an offence if any person
13 does anything to alter or distort a relevant document
14 or prevent any relevant document being produced to the
15 Inquiry or intentionally destroys, suppresses or
16 conceals a relevant document.

17 Lastly on this topic, some Core Participants
18 seek an obligation or they seek from you the provision
19 of a list of undisclosed documents (that is to say,
20 documents which we, the Inquiry, will not be providing
21 to the Core Participants). It is of course a matter
22 for you, and you will reflect on that submission, but
23 we ask rhetorically: to what end? It is for the
24 Inquiry to determine whether proper disclosure is
25 being made, whether further areas are required to be

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1 where appropriate, the giving of oral evidence at the
2 subsequent public hearing.

3 They will naturally have the appropriate
4 expertise and experience for the particular
5 instruction, and they will be selected on the grounds
6 of their independence and objectivity.

7 The identification, however, of suitable experts
8 is not at all straightforward, given the public
9 ventilation by many of them of the areas of expertise
10 in which they practice, the fact that many of them
11 were themselves involved in the events under
12 investigation, and the fact that there is a distinct
13 lack of unanimity on many matters. But we have
14 already compiled a list of provisionally suitable
15 experts for Module 1. Their reports when prepared
16 will naturally be shared with the Core Participants,
17 and they will be published on the Inquiry's website.

18 Where there are significant differences of view
19 or emphasis among members of a group, they will be
20 made clear on the face of the reports and of course
21 can be tested during the public hearing.

22 My Lady, we set out in the note from counsel to
23 the Inquiry a number of specialist topics on which the
24 assistance of expert witnesses will be sought for
25 Module 1. I don't propose to read them out but they

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1 cover such areas as the identification, history and
 2 funding of those structures and bodies at Government
 3 devolved administration local authority level
 4 concerned with risk management, the changes to those
 5 structures and bodies, their funding, their
 6 resourcing, the identification of international bodies
 7 concerned with risk management, and the comparative
 8 examination of their performance with our own.

9 The identification, history and funding of UK
 10 public health bodies, their development over time,
 11 their readiness and preparation, and also forecasting
 12 of epidemic trends and the transmission of diseases.

13 May I express my gratitude to those Core
 14 Participants who have already expressed interest in
 15 that topic, and have offered other suitable areas for
 16 exploration. We're particularly grateful to the
 17 Department of Health in Northern Ireland that the
 18 early assistance in the identification of potential
 19 experts.

20 But, my Lady, the guiding principle must remain
 21 that it is for the Inquiry to investigate the
 22 appointment of experts, and the final decision of
 23 course on who they will be is absolutely a matter for
 24 you.

25 The letters of instruction setting out the

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1 ever be accommodated by the giving of witness evidence
 2 in a public hearing.

3 So the Listening Exercise will hear or receive
 4 accounts from a broad range of people including the
 5 bereaved and those whose health has suffered from the
 6 disease, those living with the disability or health
 7 problems, the clinically vulnerable and those whose
 8 family life, education, jobs and well-being and
 9 livelihoods have been significantly affected. Those
 10 summaries and the accompanying analysis, not just data
 11 and numbers, will be fed into the public hearings as
 12 written evidence and inform the Inquiry's
 13 understanding.

14 My Lady, this is scarcely marginalisation of
 15 those who have suffered. The details of the current
 16 plans have been set out in a note from Mr Martin
 17 Smith, and that will be shortly available on the
 18 website. But I need to emphasise that that mass of
 19 information needs to be properly assimilated and
 20 understood if it is to prove the worth that we expect
 21 it to be. It is designed, this process, to take the
 22 accounts from tens or possibly hundreds of thousands
 23 of people and, bearing in mind the importance to the
 24 Inquiry's architecture of that process, and to ensure
 25 it's robust and easy for anyone who wishes to

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1 parameters of their work and the questions for their
 2 consideration will be prepared, and the questions that
 3 they will be asked to address will be made available
 4 to Core Participants in advance of the reports being
 5 finalised so that Core Participants will be provided
 6 with an opportunity to provide observations on them.

7 My Lady, may I then turn to the Listening
 8 Exercise, a vital part of your Inquiry. As
 9 foreshadowed in the terms of reference that you
 10 recommended and which were accepted, the Inquiry is
 11 designing and setting up a process by which the
 12 experiences of bereaved families and others who have
 13 suffered hardship or loss as a result of the pandemic
 14 will be submitted and listened to or read, and then
 15 analysed and summarised before being provided to the
 16 Inquiry teams and the Core Participants for use in the
 17 public hearings.

18 This will allow the Inquiry to understand the
 19 experiences of the pandemic from across the whole of
 20 the United Kingdom, including those most affected, and
 21 those whose voices are not always heard. It will
 22 provide an opportunity for people to tell us about
 23 their experiences without the formality of giving
 24 evidence or attending a public hearing. The process,
 25 my Lady, I will reach vastly more people than could

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1 participate, in the Listening Exercise will take some
 2 time to design and test. But the procurement of
 3 specialist assistance is under way.

4 As part of that work, your Inquiry, my Lady, I
 5 will start trialling different approaches for the
 6 Listening Exercise shortly. That will include later
 7 this year an online platform which will invite people
 8 to share their experiences and then, later in the
 9 winter and in the spring, targeted face-to-face
 10 sessions with some selected groups from society. Over
 11 time, the trials will develop and increase in scale
 12 until the exercise is running at full capacity.

13 So that process is an integral part of the
 14 Inquiry's process. That evidence will necessarily be
 15 anonymised -- how could it not be? There will be no
 16 need for legal representation for the participation
 17 and it's not intended the Inquiry will fund legal
 18 assistance. But the material which comes from that
 19 exercise will go to the heart of the Inquiry's
 20 procedures.

21 Some of the Core Participants have asked
 22 perfectly properly some questions about the process.
 23 Who will be doing the listening? What qualifications,
 24 if any, will the listeners have? What training will
 25 they have? How will the experiences be recorded?

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1 This is naturally all to be worked out but, my Lady,
2 may I say for the benefit of those listening that
3 a great deal of time, energy and resource is already
4 being devoted to ensuring proper correct answers to
5 those questions are made.

6 May I then turn to commemoration. Given the
7 scale of the loss and hardship, the Inquiry wishes to
8 provide opportunities for this to be commemorated as
9 part of the Inquiry's process. So the Inquiry team
10 intends to create a physical installation in its
11 future hearing centre which could be a static or
12 mobile artwork or a more organic piece that grows over
13 time, a book of commemoration or a video wall. It's
14 also looking at how the Inquiry website can be used
15 for proper commemoration.

16 My Lady, your team is already working on this to
17 find the right solution, and it has already reached
18 out to the representatives of those most affected to
19 develop a commemoration that is suitable and captures
20 the right feelings and emotions.

21 Then the sensitive and difficult issue of the
22 evidence of individual deaths and pen portrait
23 evidence. Paragraph B of the terms of reference by
24 which the Inquiry is bound provides that the Inquiry
25 will not consider in detail individual cases of harm

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1 only because it's relevant to the systemic flaws that
2 we believe may have existed. So evidence relating to
3 the NHS 111 system or the triage system or mortuary
4 arrangements or end-of-life care are all wider issues
5 to which such evidence may well be relevant.

6 The Inquiry has also received submissions from
7 Bereaved Families for Justice groups asking for
8 extensive pen portrait evidence to be heard. That is
9 to say, statements or other materials such as videos
10 relating to the lives of the persons who have died.
11 My Lady, we recognise the value that this can bring in
12 an inquest or an inquiry performing the role of an
13 inquest, and we acknowledge the heart-felt submissions
14 that have been made as part of that request. But this
15 too is impracticable. It is also not required by the
16 European Convention on Human Rights because of course
17 effective participation is a procedural guarantee
18 which doesn't prescribe the introduction of any
19 particular forensic material by specific route.

20 But far more importantly, as it happens, the
21 Listening Exercise that you have ordered to be
22 undertaken will be a far more extensively developed
23 process by which individuals may have their accounts
24 heard and considered.

25 But lastly in any event, may I say that you have

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1 or death. That is because, my Lady, the core function
2 of this Inquiry is not to enquire into the direct
3 circumstances of the tragic deaths that occurred, but
4 is instead to examine the pandemic that led to those
5 deaths and the response to the pandemic, in order to
6 ensure that in future death and suffering and harm
7 cannot occur on such a scale again. So it is
8 necessarily an inquiry into high-level decision-making
9 and systemic issues and failures.

10 Moreover, given the breadth of the Inquiry's
11 remit and the need to make timely recommendations
12 about the pandemic, the receipt of oral evidence at
13 public hearings about individual's losses or the
14 circumstances of individual deaths is impracticable.
15 It would also require the most invidious of decisions
16 amongst the hundreds of thousands of deaths who should
17 be called upon to give evidence.

18 But, as you have said and I emphasise again,
19 that is not to say there will not be evidence from
20 individuals surrounding the circumstances of the
21 deaths of loved ones as part of the later modules in
22 relation to the circumstances leading up to death, the
23 use of Do Not Resuscitate orders you have mentioned,
24 but also there are any number of issues which may be
25 illuminated by the giving of individual evidence but

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1 also asked that consideration be given to alternative
2 ways in which individual tragedies can be publicly but
3 briefly recognised in the module hearings there. I
4 will be more on that anon.

5 So, my Lady, before you hear from the legal
6 representatives of the Core Participants who wish to
7 make oral submissions, may I conclude by saying that
8 there will be a further preliminary hearing for
9 Module 1 early in 2023 in London, on a specific date
10 and venue to be confirmed, and it may be that a third
11 preliminary hearing will be required, but it is simply
12 too early to say.

13 The public hearing in this module will take
14 place in London in May 2023. It will provisionally
15 last four weeks but, as with every aspect of this
16 hearing process, it will be kept under review. Notice
17 will be given of everything that is required to be so
18 notified. It may not always allow as much time as the
19 Core Participants would like. I'm sorry for that. We
20 will do our best but time is against us. There is a
21 huge amount to be done.

22 The final point, my Lady, concerns more
23 prosaically the section 40 determinations on the
24 subject of those applications. Some have already been
25 received but more can be expected from the Core

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1 Participants who are not amongst the Bereaved Family
2 groups who have not yet made them, may we invite you
3 to ask that those applications be filed but perhaps
4 within 14 days.

5 My Lady, that concludes my opening remarks.

6 **LADY HALLETT:** Thank you very much, Mr Keith. I have been
7 asked to take a break for the benefit of the
8 stenographers or transcribers, so I shall return at
9 11.30. Thank you very much.

10 (11.14 am)

11 (A short break)

12 (11.30 am)

13 **LADY HALLETT:** Mr Weatherby.

14 **Opening statement by MR WEATHERBY**

15 **MR WEATHERBY:** Good morning.

16 I represent the Covid Bereaved Families for
17 Justice group which came into being soon after the
18 pandemic struck our shores, and was set up as
19 a campaigning group by those who had lost loved ones
20 to Covid and what they perceived as the lack of
21 preparedness and response to it.

22 It started as a Facebook group and it currently
23 has more than 6,500 supporters, some 3,225 of whom
24 have signed up as members of the group, which simply
25 means that they have a greater involvement as part of

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1 inquiry. He did so at a time that the families,
2 through the Covid Bereaved Families for Justice had
3 indicated that they were to pursue judicial review
4 proceedings if he did not.

5 This is already public knowledge, but I make it
6 clear now to demonstrate just how much the families
7 want this process to succeed and their intention to
8 participate effectively within it.

9 From the announcement in May of last year, there
10 was then a further delay of eight months in appointing
11 you as Chair, and more delay in providing draft terms
12 of reference and then in formally setting up the
13 Inquiry in June of this year.

14 The resistance in acceding to an inquiry in the
15 first place and the subsequent delays have caused
16 substantial frustration to the families and their wish
17 to expedite the Inquiry in order to try to prevent
18 future deaths, in particular by the timely
19 recommendations that may follow from the modules that
20 you have announced.

21 However, within the period from when you were
22 appointed, the families recognise that you instituted
23 the consultation on the terms of reference, indeed,
24 the very same day the draft was provided to you by the
25 Prime Minister. Your counsel has already noted that

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1 it.

2 The membership is spread across England,
3 Scotland, Wales and Northern Ireland, and the group is
4 very much a UK-wide one. It's administratively
5 organised as a limited company with directors who are
6 all bereaved family members. Broudie Jackson Canter
7 are instructed for the Covid Bereaved Families for
8 Justice group, and Elkan Abrahamson is the recognised
9 legal representative for the Inquiry, and I lead the
10 central counsel team.

11 Family members of those who died in the devolved
12 nations and jurisdictions have organised into
13 branches. We have a fully collaborative arrangement
14 with the Northern Ireland families and the Northern
15 Ireland legal team, but there's a difference of view
16 with some of the families in Scotland and Wales which
17 the group and the families are currently trying to
18 resolve. It appears that there may be the emergence
19 of some autonomous groups as well.

20 The Covid Bereaved Families for Justice group
21 campaigned for this Inquiry and for devolved inquiries
22 right from its inception. For a long time the
23 Government resisted but eventually, as Mr Keith has
24 already said, in May of last year the former Prime
25 Minister announced that there would be a statutory

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1 the consultation involved face-to-face meetings with
2 the bereaved in, I think, 11 locations. But what is
3 perhaps also worth noting is that those meetings were
4 facilitated by the Covid Bereaved Families for Justice
5 group and, indeed, I think all of the families that
6 you met were part of the group at that time.

7 It's clear from the recommendations made to the
8 Prime Minister that you took account of many of the
9 views expressed to you from the bereaved directly and,
10 indeed, from submissions made on behalf of the group
11 in writing at that time which followed those
12 consultations.

13 Again, I mention all of this as it demonstrates
14 that the Inquiry well understood from the outset the
15 importance of the bereaved and their effective
16 participation in the process. They are of course by
17 no means the only persons or groups with a keen
18 interest in this process and I readily acknowledge
19 that. However, they are front and central to it.

20 Again, the consultation indicates the clear
21 commitment of the group and the families to
22 collaborate in ensuring the Inquiry reaches its goals.

23 The importance of hearing directly first-hand
24 from the bereaved is a theme, of course, I will return
25 to in due course.

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1 However, as you know from our written
2 submissions and prefaced by Mr Keith helpfully this
3 morning, we have raised concerns about the engagement
4 of the Inquiry with the Covid Bereaved Families for
5 Justice team since the consultation. We've attempted
6 to engage in writing in submissions on 1 April
7 regarding process and, in particular, regarding the
8 evidence of the bereaved themselves on 30 June, and
9 through requests for information about the intentions
10 of the Inquiry regarding, for example, a central
11 matter of importance at the moment to the families the
12 Listening Exercise.

13 Likewise, the provisional scope of Module 1 was
14 handed down without any real discussion about what it
15 might include. Now, of course we recognise we can and
16 we will make submissions about both issues today, but
17 our collective experience as set out in the written
18 submissions is that much more can be achieved by
19 dialogue, a two-way street between the teams prior to
20 positions hardening, documents being published, and
21 decisions being set out by the Inquiry in writing.

22 There has been reference by Mr Keith this
23 morning to the fact that has been extensive contact
24 between the teams; there most certainly has. I do not
25 wish to be misunderstood here, and I do not suggest

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1 Participants and indeed others. That, we perceive, is
2 the role of independent counsel and independent
3 solicitors instructed for the Inquiry.

4 The better dialogue we seek should be undertaken
5 across the board. I will undertake from our side to
6 do everything possible to make that work. The
7 families have no plan B, and most certainly neither do
8 I, and I hope this particular submission is received
9 in the spirit within which it is made.

10 One further point before turning to the agenda
11 items. We note that the PM has still to nominate the
12 panel members who were promised to assist you in the
13 Inquiry. We made submissions about that issue many
14 months ago, and how it's an opportunity to enhance the
15 decision-making process by expanding the range of life
16 experience and the diversity of those right at the
17 centre of it. We obviously recognise this is a matter
18 for the Prime Minister, but it's a matter directly
19 affecting the Inquiry and its progress. So we would
20 hope that you would join with us in asking the PM to
21 resolve that matter that was promised some ten months
22 ago.

23 The agenda. I'm only going to address the
24 matters which we want to make submissions on, so if
25 I miss something it's because we don't have anything

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1 that we have a poor relationship with your team; we
2 don't. We want to make it work.

3 As far as my recollection is concerned, we've
4 had four meetings with your team. Mr Keith has
5 indicated there's a willingness to discuss what we
6 raise. With respect, that is an identification of the
7 point I make. We seek a two-way street. We seek the
8 Inquiry to come to us as well as us coming to the
9 Inquiry to discuss important matters which either
10 directly engage the bereaved or which the bereaved
11 have a central position in trying to assist the
12 Inquiry, for example, the scope of the modules and
13 what should be included.

14 That does, with the greatest of respect,
15 identify the problem that this idea of dialogue has to
16 come from both sides and to some degree that is what's
17 missing at the moment.

18 I've explained the position of the group in some
19 detail this morning, mindful that the wider world and
20 media are watching, to emphasise that we do not want
21 to be some kind of official opposition within this
22 Inquiry; quite the opposite. Neither do we seek
23 special treatment; we don't. We have made it
24 persistently clear that any dialogue that is had with
25 us we expect will be had with all of the other Core

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1 to say at this point.

2 In respect of Module 1, we respectfully commend
3 the fact that preparedness this starting point for the
4 Inquiry. That was very much our position too from the
5 outset and it's very much the logical place to start
6 and, indeed, more than that, it may be one of the key
7 areas where the Inquiry can make a real difference and
8 relatively quickly through recommendations.

9 We do understand that the scope that was
10 published was provisional and a first iteration, but
11 we set out in paragraph 8 and following in our written
12 submissions three particular concerns which we do so
13 to assist the Inquiry, the first of which is the
14 treatment of devolved issues within Module 1; the
15 second is the disproportionate effect of the pandemic
16 on black and brown communities, other ethnic minority
17 communities, and other sections of our communities who
18 are otherwise more vulnerable because of personal
19 characteristics; and, thirdly, the social care and
20 care home sector and places of detention.

21 It may be on this subject that none of our
22 submissions on these issues are too controversial but,
23 before I make them, this is again rolling back an
24 example of perhaps the way that dialogue could enhance
25 the process and, as we move forward, if the Inquiry

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1 team could discuss with Core Participants the scope of
2 particular modules, perhaps with lists of issues
3 provisional list of issues, draft lists of issues,
4 then the scope documents announced by the Inquiry
5 would be fuller and all of us would be actually
6 engaged in that process. Then the scope for further
7 submissions would be limited to matters which are
8 controversial or not agreed or, perhaps, arise at
9 a later point.

10 Dealing with the three issues briefly, with
11 respect to devolved issues, we don't understand why
12 a different approach is being taken in Module 1 as
13 cared with Module 2. It appears to us that only
14 through dealing with devolved matters in a dedicated
15 manner can the Inquiry ensure it covers each devolved
16 nation or jurisdiction fully, and recognise that each
17 is unique, which we perceive as the approach taken in
18 Module 2. Only through undertaking the analysis in
19 that way can the Inquiry be sure of then determining
20 how the devolved structure's provisions decisions on
21 preparedness fitted together with the overall UK
22 structures, provisions, decisions or, indeed, that it
23 did not.

24 I know my learned friend from the Northern
25 Ireland team, and no doubt the others with respect to

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1 respectful submission, investigate why they apparently
2 did not or did not do to a sufficient degree.
3 Pandemics are occasionally said to be indiscriminate
4 but that is of course not right. Age, gender, race,
5 disability, co-morbidities are all obvious potential
6 factors, so too are discrimination disadvantage,
7 poverty and the need for people to remain in post as
8 key workers or the existence of the gig economy. All
9 of these are relevant and ought to have been
10 considered in terms of preparedness.

11 Those who were responsible for preparedness
12 should have taken clear account of discrimination and
13 the differences across communities, the fact that
14 public health and inequality and social deprivation
15 are linked, and the fact that many different sections
16 of the communities required different provision to
17 protect them and, as with the terms of reference, we
18 submit that this should be made clearer within the
19 scope of Module 1.

20 Further, I'll come back to these very briefly
21 later, but at the moment we suggest, propose, submit
22 that issues of disproportionate effect and
23 discrimination and their relation to preparedness is
24 likely to be an area where you will be assisted by
25 expert evidence, and that's a matter that we intend to

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1 Scotland and Wales, will also make submissions on this
2 point, but we simply flag at this point that we raise
3 an issue about understanding how the devolved issues
4 in relation to preparedness will work and the current
5 thinking on Module 1, and request some clarification
6 about that.

7 As you will recall, the general issues of
8 discrimination and the disparity of effect of the
9 pandemic on certain black and brown communities and
10 other minority ethnic communities was raised
11 persistently during the terms of reference
12 consultation phase by families, and so too the
13 position of other vulnerable sections of the
14 community, the elderly, those with mental health
15 issues, people living with autism or developmental
16 disorders, those with clinical vulnerability, those
17 with physical disabilities and those in detention.

18 Following those concerns, you made
19 recommendations as to the prominence within the terms
20 of reference with which those issues should be
21 treated, yet they are not apparent within the
22 provisional scope for Module 1 and, with respect, we
23 think they ought to be.

24 Proper preparedness should have fully included
25 these considerations, and the Inquiry should, in our

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1 address you more fully on in due course.

2 The third point I can put very quickly. The
3 provisional scope makes reference to public health
4 services and to economic planning but not to social
5 care or care homes or, indeed, places of detention
6 and, again, we hope that can be made explicit also.
7 But again I make the general point that it would be
8 helpful if we could have a dialogue about scope before
9 it's set out in public.

10 Rule 9 and position statements -- and I'll deal
11 with these submissions together, if I may. At
12 paragraph 13 of the written submissions, we made
13 reference to the efforts which the Inquiry has taken
14 to date to gather evidence as set out in the counsel's
15 note for this hearing but very fully by Mr Keith and
16 very helpfully by Mr Keith earlier today.

17 We made three points about this. Firstly, all
18 material providers should be asked to provide all
19 potentially relevant material so that the Inquiry can
20 determine -- the Inquiry -- what is actually relevant
21 to its investigations in line with its terms of
22 reference, and the providers should be reminded of
23 their duty of candour. This may seem a trite and
24 obvious point but, in order for public confidence to
25 be maintained, it must be made clear that providers,

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1 in particular public authorities, must take a wide
2 approach and not tailor disclosure to their own ends
3 or sit on their hands and only provide material which
4 has been expressly requested.

5 I note the efforts to address this in the
6 detailed Rule 9s we're told have been made but, in our
7 submission, history shows that this is something which
8 needs to be made express clear and in terms.

9 Secondly, if Core Participants are to
10 effectively participate in evidence-gathering,
11 particularly in an inquiry as wide-ranging as this and
12 one where we respectfully commend your approach in
13 driving it forward quickly, we submit that Rule 9
14 requests should be disclosed in order that we can see
15 not just a summary, a helpful summary, but not just
16 a summary, where we can see what has been requested,
17 and it will allow us to suggest other avenues or other
18 material that we may just have spotted which your team
19 may not, however diligent and effective they are.

20 We don't actually think this is a radical
21 submission; it's transparent. It allows all of us to
22 collaborate with the Inquiry in progressing its work
23 expeditiously, and it builds confidence between us.
24 The disclosure would be subject to the undertakings so
25 we can't see a difficulty in taking this approach. We

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1 authorities, in particular, particularly in an inquiry
2 of this nature, needs to wait until there is
3 significant disclosure.

4 A position statement is not asking Core
5 Participants to do, with respect, your job; it's
6 asking them to state what they did. It's effectively
7 putting a narrative burden, an evidential burden
8 perhaps in more legal terms, on to them rather than
9 you and your team. So, in terms of slowing the
10 process down, absolutely the opposite, because it
11 would put an onus on the Core Participant to identify
12 everything about their own conduct, their own
13 narrative, rather than simply others having to search
14 within their domain for it.

15 In terms of being adversarial, we respectfully
16 ask: how is asking a Core Participant to assist the
17 Inquiry by saying what did or did not happen
18 adversarial? Again we say it's part of a proper
19 institutional inquisitorial approach.

20 The statements that we seek, the position
21 statements we seek, would include the
22 responsibilities, the legal and regulatory framework
23 within which the organisation works, what did and
24 didn't happen so far as relevant to the terms of
25 reference in the particular module, and what failures

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1 have flagged this up with your team in advance which
2 I think may be why Mr Keith, again helpfully,
3 addressed it. But we don't think -- well, first of
4 all, we do think that in the past there have been
5 occasions where Rule 9s have been disclosed. We can't
6 think of any legal reason or any practical reason why
7 they shouldn't be disclosed and, therefore, we ask you
8 to consider that submission and positively do it.

9 The third point we have raised is in respect of
10 what have become known as position statements. Now,
11 position statements can be cast as Rule 9s or
12 otherwise, and we don't in fact think it matters, but
13 we submit that the Inquiry should request from State
14 and organisational Core Participants and other
15 providers, corporate or institutional statements
16 signed off at the highest level setting that
17 organisation's narrative of events so far as it was
18 involved or so far as it observed the conduct of the
19 others.

20 Now, I pause at this point to address a matter
21 that was addressed this morning about slowing the
22 process down or being adversarial. That is not what
23 we are submitting here. We absolutely think the
24 opposite is the case with position statements. We do
25 not think that position statements with public

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1 and what good practice it can identify to assist the
2 process.

3 It should identify relevant material and the
4 issues on the terms of reference to which it applies.
5 In an inquiry as huge as this one, this approach would
6 be key, in our submission, to cutting to the centre of
7 the issues, and it avoids the Inquiry having to
8 identify the haystacks, never mind the needles that
9 might be lying within them. This has been an approach
10 taken by inquiry Chairs recently as we've set out in
11 writing from paragraph 21 onwards. The general
12 approach was extensively looked by the working group
13 in the Law Reform Group Justice, report of which
14 expressly endorsed the approach of using position
15 statements and, importantly for my submission
16 certainly, is that three of your fellow senior judges
17 who have very considerable experience in this area was
18 central to that justice process and that justice
19 report: Sir Robert Owen who chaired the Litvinenko
20 Inquiry; Sir John Goldring, the coroner in
21 Hillsborough; and Sir Peter Thornton, who was
22 a previous chief coroner.

23 Given the number of issues, the number of
24 potential material providers putting there is initial
25 burden on them to identify roles, issues, narrative,

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1 what may have gone wrong, is, in our submission, not
 2 only the right approach, but it's a common-sense
 3 starting approach and it should expedite the Inquiry's
 4 work. It's an approach which has been deployed. It
 5 was deployed with great effect in the Manchester Arena
 6 Inquiry and to some effect in the Grenfell Tower
 7 Inquiry.

8 From the gathering of evidence, can I now
 9 briefly turn to the disclosure of the material to Core
 10 Participants. Paragraph 49 of the Counsel to the
 11 Inquiry's note there is reference to:

12 "Focused and proportionate disclosure to Core
 13 Participants to allow them to effectively participate
 14 in the hearings."

15 Some discussion about that was had earlier.
 16 I say candidly I don't know what that means. I don't
 17 know what test is set out there at all. What is it?
 18 Who would apply it? Practically, we assume, we hope,
 19 the material will come into the Inquiry, undergo
 20 a potential relevance test and no doubt a screening
 21 for material which should properly be taken out
 22 (personal details and such-like) and then disclosed on
 23 an ongoing basis in tranches. Rhetorically, how is
 24 the solicitor or counsel within the Inquiry team
 25 undertaking this task day-to-day, or more likely

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1 will consider suggestions as to experts on the
 2 questions they are asked to address will be made
 3 available prior to finalisation of reports but, again,
 4 rolling back to dialogue, it will be helpful if we
 5 could have more of a two-way street as the Inquiry
 6 progresses on this point. Effective participation
 7 again means Core Participants, all of us,
 8 collaborating with the Inquiry in searching for
 9 evidence and answers. It appears to us and w,e,
 10 perceive it is the approach of the Inquiry that there
 11 will be the need for significant areas of expert
 12 evidence, and we agree with that.

13 We also agree with submissions made by other
 14 Core Participants that in an inquiry like this it will
 15 be impossible -- not just difficult but impossible --
 16 to find experts who have not already expressed views.
 17 I think those are the submissions of Mr Beer, in
 18 particular, for NHS England. There is the need for
 19 a balancing of groups of experts, which I think he's
 20 putting forward and with which we most certainly
 21 agree, and I will endeavour to assist in the
 22 identification of relevant experts.

23 The Listening Exercise. Of course this is the
 24 area of most current concern to family members, as you
 25 know. In earlier submissions and those for today,

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1 a small army of solicitors and counsel, given the
 2 volume here, how are they, how are the individuals
 3 there to do this without a clearly set-out test?

4 Given that there will be electronic disclosure,
 5 there's no greater burden in adopting the approach
 6 taken in other inquiries and inquests and that of
 7 disclosing all potentially relevant material, subject
 8 to narrow exceptions.

9 I won't repeat them, but we set out five reasons
 10 why this is the appropriate approach from paragraphs
 11 29 of our written submissions. But what they amount
 12 to in summary is proper transparency, consistency of
 13 approach across the material, and facilitating the
 14 effective participation of Core Participants.

15 If Core Participants are only given a part of
 16 the evidence, how is it that they can properly engage
 17 within the Inquiry?

18 Now, we do obviously understand that there will
 19 be a substantial amount of material generated. We do
 20 understand that the Inquiry must apply a proper
 21 relevance test here. However, the approach currently
 22 indicated appears to reduce the disclosure process to
 23 an arbitrary one, without any consistency or proper
 24 standard or test.

25 Experts. We note that the indication that you

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1 we've identified that there are three key areas of
 2 evidence which the bereaved can and should provide to
 3 the Inquiry, commemorative evidence regarding their
 4 lost loved ones, evidence of circumstance of death,
 5 and evidence regarding the effect of loss on the
 6 bereaved themselves. There are, of course, other
 7 categories to which particular family members can
 8 contribute, but these seem to be the main three
 9 strands and we made written submissions in April and
 10 June regarding those.

11 We haven't had a substantive response or again
 12 any real discussion or dialogue about the submissions.
 13 The Listening Project or now the Listening Exercise
 14 appears to be passed as a parallel process. The
 15 bereaved learned from the Guardian about a tender
 16 process. How accurate that was I'll leave others to
 17 say. But nevertheless the families were concerned to
 18 learn from the media about a tender process which
 19 apparently was directed at companies from
 20 a Government-approved list which may have played
 21 a role; some of them have played a role in Government
 22 messaging regarding the pandemic itself. Whether or
 23 not that's an entirely accurate picture put across, it
 24 has caused real concern with the families.

25 If it is that the Inquiry is seeking a strategy,

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1 a plan, as to how to take the evidence of the bereaved
2 and of course others, then within its own team it has
3 quite a cohort of very experienced lawyers who have
4 engaged in these processes before. So do we, and we
5 absolutely want to collaborate with your team in
6 coming up with a process that actually works and has
7 the confidence and buy-in of the bereaved and allows
8 the Inquiry to take this very important evidence in
9 the best way possible.

10 But, if the Listening Exercise is to be
11 a process outside of the Inquiry to which the bereaved
12 and anybody else affected provides information about
13 their experiences or, indeed, anything that they wish
14 to contribute, that is a matter of some concern. The
15 assertions at an early stage of this, before the
16 process has even properly formed, so there will be no
17 resourcing for the bereaved to receive help,
18 assistance or advice from their representatives, is
19 equally troubling given the experience from a wide
20 range of inquiries and inquests about the necessity
21 for it.

22 So far as I'm aware, there's been no contact
23 with Inquest, the charity, who for 40 years has been
24 the central charity involved in dealing with the
25 bereaved and their needs within such processes. May

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1 at that process how the product of it was considered
2 or whether it influenced the Inquiry itself. We're
3 not aware of any post Truth Project analysis of how or
4 whether it worked.

5 We're not aware of any other case where this
6 approach has been taken. There's reference in the
7 Solicitor to the Inquiry note of 13 September that
8 a research analyst company is proposed to be
9 instructed to do this work. We're not aware of this
10 as a discipline or, indeed, of expertise or experience
11 which would allow an outsourced company to deal with
12 this.

13 Our submissions, on the other hand, refer to
14 other inquests and other inquiries into mass
15 fatalities. We're not suggesting they are the same.
16 The way in which the evidence of the bereaved has been
17 considered in the past and to the current guidance of
18 the Chief Coroner on pen portraits. We also made it
19 quite clear and repeatedly so that we did understand
20 that every process is different.

21 We understood that this Inquiry will not look at
22 the circumstances of each death individually. How
23 could it? We make clear that we took notice that the
24 extent of loss of life to the pandemic means that
25 a proportionate approach has to be taken here, and we

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1 I just in passing declare an interest, because I'm
2 actually a trustee of Inquest. But it would be
3 essential, in my submission, to involve organisations
4 such as Inquest, with their wealth of expertise in
5 this area, to play a role in the formulation of any
6 such process.

7 We have asked but we've not been informed as to
8 who would take the information from family members or
9 others and what their training or expertise would be.
10 The information supplied, we're told, will be analysed
11 and a report will be provided, then considered by the
12 Inquiry. Again we've asked but not been told who it
13 is that would analyse such material or how or what
14 training or expertise they would have, or, indeed, how
15 the Inquiry would consider the report, or to what end
16 or, indeed, how the Inquiry would quality control the
17 taking or the analysis of such material.

18 The only guidance that we've had is that we
19 might like to look at the process of the Truth Project
20 in IICSA, the Independent Inquiry into Child Sexual
21 Abuse. We note that Inquiry was primarily about
22 institutional child abuse, not huge loss of life, so
23 quite different. Anecdotally, we note that many who
24 were involved, certainly professionally, were critical
25 of that process, and it's not clear to us, looking in

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1 set out preliminary proposals as to how that might be
2 done with all that in mind.

3 Those submissions are being characterised as
4 heart-felt and that they call for "extensive hearing
5 of pen portraits". The reality is that the
6 submissions are based on what has worked in the past,
7 but they are crafted to provide starting proposals,
8 proportionate proposals which would properly engage
9 and value the bereaved, but without having any
10 disproportionate effect on progress or on cost for the
11 Inquiry.

12 Now, of course, if those submissions are to be
13 given further consideration, we would absolutely wish
14 to do so, and we would engage fully with that, and we
15 are happy to discuss as far as anybody wishes us to
16 what we mean by the proportionate approach, because we
17 are committed to the approach that you've taken into
18 driving the Inquiry forward.

19 Mr Keith referred to (b) in the terms of
20 reference to "listen to and consider carefully the
21 experiences of bereaved families and others who has
22 suffered hardship or loss as a result of the
23 pandemic." The Listening Exercise proposal, as cast
24 up to now, in our respectful submission, does not do
25 this. It outsources examination of the experiences

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1 and the evidence of the bereaved and of their loss,
2 and it places them in a parallel *ad hoc* process
3 outside of the statutory inquiry framework and it
4 does, with respect, marginalise the bereaved and their
5 voices.

6 I'm not going to repeat the points we've made
7 earlier about how it should be done.

8 But, firstly, the Inquiry should facilitate the
9 gathering of commemorative evidence, in our
10 submission, from those who wish to do so. It should
11 explore with us their representatives, how this can be
12 done in a proportionate and fair way, and that the
13 Inquiry process should include a proportionate amount
14 of this evidence within it, not an extensive and
15 disproportionate section which diverts the Inquiry.

16 A clear recognition that the Inquiry wants to
17 hear and recognise at first-hand the loss and the
18 experience of the bereaved. Hearing commemorative
19 evidence at first-hand has no substitute. It cannot
20 be provided through a parallel process. It can and
21 should be done in a dignified yet proportionate
22 fashion.

23 Moving on, in respect of the investigation of
24 individual deaths, we've been assisted this morning by
25 some further clarification, which we certainly hadn't

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1 this stage our surprise that it's thought that the
2 whole of preparedness across the United Kingdom and
3 within the devolved nations and jurisdictions can be
4 dealt with properly within four weeks. Again, the
5 first we heard of that was in CTI's note. We're not
6 aware of how that estimate has been reached. All we
7 ask at this stage is that the Inquiry revisits it and
8 revisits it in time as more is known about the
9 progress of Module 1.

10 Finally this: I reiterate the bereaved families
11 recognise the work that has been undertaken to date.
12 They campaigned hard for a full independent statutory
13 inquiry and are fully invested in its success, and
14 what they really seek is an indication that they will
15 actually be placed front and central to the process,
16 as you have promised, including through effective
17 participation in the process, and that you will take
18 due account of the submissions we made this morning.

19 **LADY HALLETT:** Thank you, Mr Weatherby. I'm very grateful
20 to the Bereaved Family organisations for their help in
21 organising the consultation on the terms of reference
22 and for introducing me to so many members of bereaved
23 families. It was extraordinarily helpful and, as we
24 have heard today, fed into my recommendations on the
25 terms of reference.

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1 picked up before. We were going to ask you for
2 a clear signal that a proportionate amount of witness
3 evidence of those who can give direct evidence of
4 circumstances of death would be called for key issues
5 such as the 111 service and DNR. We are reassured by
6 what has been said this morning that that is in fact
7 your intention and that you will be hearing first-hand
8 witness evidence of what actually happened to assist
9 you in determining the terms of reference on those
10 points.

11 Thirdly and briefly, we think that a similar
12 approach, a proportionate amount of evidence should be
13 taken to give the experiences of the loss on the
14 bereaved themselves.

15 Finally, moving on and briefly to future
16 hearings, I've already emphasised the families'
17 frustrations at the time to get to this point and the
18 imperative that this wide-ranging Inquiry is kept
19 within a proper timescale, a point we have repeatedly
20 made and which we perceive is entirely in tune with
21 your own approach. It should aim to take the shortest
22 possible time but be as long as is necessary.

23 We respectfully agree that the Inquiry has set
24 a realistic and proper start date for the hearings of
25 Module 1, spring next year. However, we do flag at

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1 I welcome also your offer of a collaborative
2 approach, and I hope that always remains the case
3 because we simply can't get through this Inquiry,
4 given the complexities, without that kind of
5 collaboration.

6 I will obviously reflect on all the submissions
7 that you've made this morning, but I just want to say
8 a couple of things to put the record straight, because
9 I know how distressed people already traumatised by
10 grief can be if they see something perhaps
11 misunderstood in reports.

12 There is absolutely no question that the
13 bereaved will be marginalised, and I really don't ever
14 want to hear that expression again because, as I hope,
15 those families to whom I spoke understand, and I hope
16 your members will understand, I am determined that
17 those who have suffered will be at the heart of this
18 Inquiry. So any plans that we are developing as far
19 as the Listening Exercise and commemoration are
20 concerned will ensure that they are not marginalised.

21 As you know the intention of the Listening
22 Exercise is, far from marginalising the bereaved, it
23 is to extend the number of people who suffered and the
24 number of bereaved who have suffered to many, many
25 thousands more than we could do in the ordinary

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1 classic way of a formal hearing.
 2 But the reason you haven't had any answers to
 3 your questions is that the plans are in an early stage
 4 of development. You know, Mr Weatherby, how hard
 5 everyone's been working to try and get this Inquiry
 6 underway and, as soon as we have sensible suggestions,
 7 we will of course make sure that your lay clients are
 8 properly consulted, and of course all the others, the
 9 other Core Participants and people who have suffered
 10 in other ways.

11 So I hope that you and those whom you represent
 12 are reassured by those comments that the bereaved will
 13 remain that heart of this Inquiry, as all the others
 14 who have suffered will do so too. So thank you for
 15 your submissions.

16 Right, who's next? Mr Lavery.

17 **MR LAVERY:** My Lady, thank you. Just, for the record, the
 18 name is Lavery.

19 **LADY HALLETT:** I'm so sorry, thank you. Please, if I make
 20 that mistake again, please correct me.

21 **Opening statement by MR LAVERY**

22 **MR LAVERY:** I Won't hesitate to.

23 Thank you for giving us the opportunity to
 24 address you here in person, and it is great to see so
 25 many people here in person.

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1 Belfast and were struck with your humanity, my Lady,
 2 and it is our wish that that humanity continues
 3 throughout this process. It sounds from what has been
 4 said today that it will because, although as Mr Keith
 5 pointed out we're dealing here with high-level
 6 decision-making, a group of lawyers examining it,
 7 scrutinising it, this is of course about human beings
 8 and humanity, and that won't be lost on you, my Lady.

9 When one is looking at this from a Northern
 10 Irish perspective, there are decisions that were made
 11 at a UK-wide level that impact on Northern Ireland,
 12 and we will collaborate with the other nations on
 13 those issues, but there are also decisions that were
 14 made in Northern Ireland.

15 Northern Ireland's a unique place, not just
 16 geographically, as I've explained and as set out in
 17 our submissions as well, there are some features that
 18 are unique to Northern Ireland. So we want to impress
 19 upon you the importance of dealing with these issues
 20 in Module 1 as well, and they seem to have been looked
 21 at in a more separate and different way in Module 2
 22 and simply, I suppose, we want to impress upon the
 23 Inquiry the importance of this for our families.

24 There is no Northern Ireland Inquiry, and so
 25 this is their opportunity to shape the outcome of this

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1 I represent the Northern Ireland Covid-19
 2 Bereaved Families for Justice, and I'm Ronan Lavery.
 3 I'm here with Mr Conan Fegan who is another barrister,
 4 and Mr McGowan, and Enda McGarrity and Conal McGarrity
 5 are here as well, and we represent our families in
 6 Northern Ireland and they will be heartened to hear
 7 what you just said, my Lady, in terms of them being at
 8 the heart of participation in this Inquiry.

9 We are here to represent them in London.
 10 Northern Ireland is a place geographically removed
 11 from here and we're here to represent them as this
 12 Inquiry proceeds.

13 We have prepared a joint submission to the
 14 Inquiry, and I hope that you will see that as a way
 15 that we want to collaborate responsibly with the other
 16 families from the other jurisdictions, and I endorse
 17 entirely what Mr Weatherby was saying and I'm not
 18 going to repeat that in that manner.

19 As I say, we're heartened to hear some of what
 20 Mr Keith said today and what you are saying as well,
 21 and that the door will be open and, just as we're
 22 collaborating together, we want to collaborate as well
 23 with the Inquiry going forward.

24 The families I represent were very impressed
 25 with the Listening Exercise which did happen in

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1 Inquiry in a collaborative way. Some of the unique
 2 features or Northern Ireland are -- this may come as
 3 a surprise to many people -- we don't actually have an
 4 NHS. We have a universal healthcare system which is
 5 branded in different ways. We have an amalgamated
 6 health and social care system, again different from
 7 the England and Wales model. We have a unique
 8 constitutional arrangement in terms of decision-making
 9 at a devolved level. There is mandatory coalition and
 10 hurdles that have to be surmounted before any kind of
 11 decision is made. For instance, if they are
 12 significant or controversial, then they have to be
 13 referred to the executive. So that is a unique
 14 feature.

15 Of course -- and I'm back to geography -- north
 16 and south, the island as one epidemiological unit is
 17 something that is of course unique and there was,
 18 I understand, a memorandum of understanding between
 19 the jurisdictions north and south, and the impact of
 20 that the effectiveness of it is something that we
 21 would invite the Inquiry to look at.

22 I'm not going to say an awful lot more, my Lady.
 23 Mr Weatherby has dealt with the issues and as I say
 24 that's our collaborative effort.

25 On the issue of disclosure, we are keen to hit

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1 the ground running and, if there we're looking at
2 a hearing in May, we want to look at materials as
3 quickly as possible and make sure that we're prepared
4 for that and that we can deal with this as
5 expeditiously as possible and that there won't be
6 delays in the scheduling.

7 So just lastly then our families' concern is
8 that we have a real role in this Inquiry, that the
9 unique Northern Irish situation is dealt with and that
10 it is not somehow dealt with as a footnote to the
11 Inquiry, and that's the phrase that they have used.
12 So we hope, and it's our aim as their legal team to
13 make sure that that doesn't happen.

14 **LADY HALLETT:** Thank you very much, Mr Lavery. Thank you
15 for your comments about my trip to Belfast. I think
16 as you will recall -- I mean, I fail to believe
17 anybody could be not moved by what we heard from the
18 families on that occasion and, indeed, throughout the
19 UK. So thank you very much for your comments and for
20 your offer of collaborative working. I really do
21 appreciate it from all of you.

22 As far as many of the unique aspects of Northern
23 Ireland are concerned, if I didn't know about some of
24 them before, I certainly do now, and I can promise the
25 people of Northern Ireland that, for as long as I am

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1 Senior Counsel to the Inquiry has set out very
2 broadly the matters to be explored in Module 1.
3 Having spoken to him and the solicitor to the Inquiry,
4 we appreciate that, given the amount of information
5 that's been processed by the Inquiry at present, no
6 greater specification is possible.

7 Given this situation, combined with a lack of
8 disclosure to us at present, it's difficult to know
9 whether all the issues we wish covered will, in fact,
10 be in there. In order to assist the Inquiry, we look
11 forward to disclosure commencing and, where
12 appropriate and possible, a list of issues and/or
13 questions at the earliest opportunity in order that we
14 can assist by flagging up anything that we see as
15 omissions or suggest any additional issues to be dealt
16 with.

17 We appreciate Senior Counsel to the Inquiry's
18 comments this morning that he will approach such
19 suggestions from the Core Participants with an open,
20 indeed eager, frame of mind. We're keen to start
21 working on disclosure, and we hope that, before the
22 further preliminary hearing in early 2023, we'll be in
23 a position to help the Inquiry in this regard.

24 I now turn to address four specific issues.

25 (1) The Listening Exercise. As no doubt

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1 the only Inquiry into Northern Ireland, we will ensure
2 that all the aspects that your lay clients' wish to be
3 considered and, indeed, the public in Northern Ireland
4 wish to be considered, if they are of course what we
5 in the end determine are relevant, then they will be.
6 So thank you very much for your comments.

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

8 **LADY HALLETT:** Ms Mitchell.

9 **Opening statement by MS MITCHELL**

10 **MS MITCHELL:** My Lady, over the last two years the
11 Scottish Covid-19 Bereaved Families for Justice group
12 have campaigned for a robust, independent and
13 transparent public inquiry into the handling of the
14 pandemic.

15 The Scottish families welcome the approach of my
16 Lady and the Inquiry in assuring them that their
17 voices will be heard at the UK inquiry and will be
18 heartened this morning to hear the comments that they
19 will be at the heart of this Inquiry.

20 Today is the start of the process, and the
21 grieving families in Scotland hope that this public
22 Inquiry will be both an effective and credible
23 mechanism to ensure what happened to them will not
24 happen again. We hope to assist the Inquiry to ensure
25 this happens.

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1 appreciated by the Inquiry, the ability for
2 individuals to explain how Covid affected them and
3 their loved ones personally is something which is
4 hugely important to the people that we represent in
5 Scotland. My Lady, we welcome the comments in your
6 opening remarks. With regard to the Listening
7 Exercise for those that we represent, it is a crucial
8 part of the Inquiry process and, again, indeed they
9 will be heartened to find out my Lady's comments on
10 that this morning.

11 Once the information collected in the exercise
12 is analysed and presented in a report, it will bring
13 considerable value to this Inquiry. We have had
14 constructive meetings with the Inquiry legal team in
15 respect of the Listening Exercise. We do understand
16 that at present there are still a number of matters to
17 be considered and have made some representations
18 already on our views. We look forward to continued
19 discussion in that regard.

20 We are keen to ensure that there are as many
21 ways as possible to facilitate listening by speaking
22 to someone, providing written response, using
23 technology, or really by whatever means the Inquiry
24 can think of that would be appropriate, and also we
25 are keen to ensure that the people carrying out the

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1 process are suitable for that role.

2 (2) Watching proceedings.

3 It is important to those that we represent to
4 have the opportunity to watch the proceedings, and we
5 note that, thanks to the benefits of technology,
6 proceedings will be placed online with a short time
7 delay. This doesn't, however, assist those who don't
8 have computers, don't have access to Wi-fi, are not
9 tech savvy or simply don't have the ability to watch
10 online. We would ask that the Inquiry gives
11 consideration to finding places, if you like listening
12 rooms, which could be made available in Scotland so
13 that, with the use of technology, the work of the
14 Inquiry in the hearings could be viewed by people
15 wishing to attend those places. We would ask that
16 consideration be given to this being put in place for
17 the next hearing.

18 Number(3) The Scottish Inquiry.

19 The Inquiry has already stated its aim to work
20 alongside the Scottish Inquiry to assure that there is
21 as little duplication of work as possible. We're glad
22 this morning to hear the memorandum of understanding
23 has been drawn up, and we hope that that will minimise
24 any problems that will arise.

25 There will however no doubt be issues on which

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1 My Lady, these are the submissions on behalf of
2 the Scottish Covid-19 Bereaved Families for Justice
3 group.

4 **LADY HALLETT:** Thank you very much indeed, Ms Mitchell.

5 Your constructive support is absolutely very welcome
6 and very much appreciated. So thank you very much.
7 The idea of listening rooms is an excellent suggestion
8 and we'll certainly look into whether it's going to be
9 possible. I know a number of people who fall into the
10 category that you have considered who would welcome
11 that kind of opportunity for a listening room. So
12 thank you for that idea, and I can undertake that we
13 will give you as much notice as possible whenever we
14 can.

15 I'm sorry that people didn't have that much
16 notice of today's hearing and the list of issues, but
17 we will give you as much notice as we can as Mr Keith
18 has indicated. So thank you very much indeed.

19 **MS MITCHELL:** I'm obliged. That's helpful, my Lady.

20 **LADY HALLETT:** Ms Heaven, isn't it?

21 **MS HEAVEN:** Thank you, my Lady. I represent the Covid-19
22 Bereaved Families for Justice Cymru, a group dedicated
23 solely to campaigning for robust, independent and
24 transparent scrutiny into the preparation for and
25 response to the pandemic in Wales.

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1 there are queries as to whether or not the matter is
2 properly an issue for the UK Inquiry or Scottish
3 Inquiry. We would ask that we can assist the Inquiry
4 in providing our views, if and when those matters
5 arise.

6 On a practical note, we would also ask that the
7 Inquiries work together insofar as is possible not to
8 sit at the same time, as those we represent have
9 a direct interest in both inquiries.

10 (4) Memorialisation.

11 We agree and support the idea of a memorial as
12 mentioned by Senior Counsel to the Inquiry. Under
13 consideration, as we understand it, at present is
14 a commemorative memorial in the future hearing centre.
15 We understand that the hearing centre will be in
16 London, at least for the first module. Particularly
17 in the present financial climate, travelling to London
18 to view a memorial would simply neither be practical
19 nor viable for many people in Scotland. We welcome
20 the comments this morning by senior counsel that
21 consideration is being given to the memorial being
22 mobile, and we would ask that any memorial which is
23 decided upon is capable of being moved so that, when
24 the Inquiry visits Scotland and elsewhere, people have
25 an opportunity to see it.

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1 The group has worked tirelessly to give a voice
2 to those bereaved by Covid-19 in Wales, and they are
3 heartened to hear today that the Welsh voices will be
4 at the heart of this Inquiry.

5 The Covid-19 Bereaved Families for Justice Cymru
6 wish to thank the Chair for designating them as a Core
7 Participant in the Module 1 hearings of this public
8 Inquiry, and for the chair's recognition that they are
9 best placed to assist this public Inquiry to achieve
10 its aims by representing the collective interests of
11 a broad spectrum of those bereaved by Covid-19 in
12 Wales in relation to Module 1.

13 The Covid-19 Bereaved Families for Justice Cymru
14 also welcome the Chair's very clear commitment to
15 looking at the actions of the devolved
16 administrations. However, as the Chair will be aware,
17 there are still concerns in Wales, and indeed in all
18 of the other devolved administrations, that the
19 preliminary scope of Module 1 does not set out in any
20 detail the issues specific to Wales that ought to be
21 investigated by this public Inquiry.

22 It is vitally important that the people of Wales
23 can have full confidence that this public Inquiry will
24 scrutinise decision-making in Wales in respect to the
25 pandemic. The group does welcome the chair's

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1 indication that this public Inquiry will come and hear
2 evidence in Wales for certain modules.

3 Wales is a separate country and, although Wales
4 receives funding from the United Kingdom Government,
5 responsibility for health and social care is devolved
6 to the Welsh Government. Wales has its own healthcare
7 system and NHS Wales is comprised of local health
8 boards and NHS Trusts. There is a Public Health Wales
9 and relevant offices and agencies such as the Office
10 of the Chief Medical Officer and Care Inspectorate are
11 specific to Wales.

12 Key decisions made in Wales in relation to the
13 Covid-19 pandemic were largely separate to and quite
14 often distinct from those taken by the UK Government.
15 However, Wales does have strong connections with the
16 UK Government and the other devolved governments, and
17 so it will be necessary in Module 1 to unravel the
18 links between these governments and the extent to
19 which they influenced the Welsh Government, whether
20 for good or for bad.

21 In relation to preparedness, whilst the UK
22 influenza pandemic preparedness strategy 2011
23 concerned a UK-wide strategic approach to planning for
24 and responding to the demands of an influenza
25 pandemic, the Cabinet Office Guidance of November 2017

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1 a pandemic.

2 The preparedness in NHS Wales in the Welsh
3 hospital estate and in Welsh care homes in respect of
4 infection control measures including segregation,
5 resourcing PPE, stockpiling and distribution, and
6 whether there was adequate or, indeed, any planning in
7 relation to post death procedures to protect dignity
8 and to support the Welsh bereaved in the event of
9 a pandemic.

10 So the Covid-19 Bereaved Families for Justice
11 Cymru will be making further submissions to the public
12 Inquiry on all the procedural matters raised by
13 Counsel To the Inquiry today and after disclosure has
14 been received. However, the Cymru group is also of
15 the view that position statements are going to be
16 essential in understanding in an efficient way what
17 happened in Wales in relation to preparedness.

18 The Covid-19 Bereaved Families for Justice Cymru
19 are committed to working with the Inquiry team to
20 assist in developing the Listening Exercise in Wales,
21 and stand ready to work collaboratively with the Chair
22 in developing the scope of Module 1 in relation to
23 Wales.

24 Thank you.

25 **LADY HALLETT:** Thank you very much indeed. I do

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1 on pandemic flu planning made absolutely clear that
2 devolved administrations are responsible for the major
3 areas of pandemic influenza planning and response in
4 their respective countries.

5 It also made clear that it was the Wales
6 resilience forum chaired by the First Minister for
7 Wales that provides the mechanism for a national
8 multi-agency overview of pandemic preparedness in
9 Wales. There can therefore be no doubt that
10 responsibility for pandemic planning in Wales was
11 largely, if not entirely, in the hands of the Welsh
12 Government.

13 In relation to Module 1, the Covid-19 Bereaved
14 Families for Justice Cymru just wish to highlight
15 a few particular areas of concern that they have that
16 this public Inquiry must scrutinise in relation to
17 Wales in Module 1.

18 These include whether the level of funding
19 provided to Wales by the UK Government had an impact
20 on the planning, and preparedness in Wales for the
21 pandemic, and the political relations between Wales
22 and the UK Government.

23 Co-ordination between the UK Government and all
24 the devolved governments and the variation in
25 standards in the approach to preparedness for

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1 understand the concerns expressed about the approach
2 to devolved nations and whether the provisional scope
3 has set it out appropriately. So I will very much
4 look into that and I'm very grateful for your helpful
5 submissions. Thank you.

6 Mr Bermingham?

7 **Opening statement by MR BIRMINGHAM**

8 **MR BIRMINGHAM:** Good afternoon, ma'am. I represent the
9 Association of Directors of Public Health, the ADPH.

10 My client is grateful for the Inquiry's
11 recognition that the role of Directors of Public
12 Health have taken in preparing for and responding to
13 the pandemic.

14 Our thoughts are of course with those who have
15 lost their lives and the bereaved. ADPH is committed
16 to this Inquiry and to helping it deliver
17 recommendations to ensure that pandemic response will
18 be better in future. ADPH has filed brief written
19 submissions, and there are a few matters arising from
20 these and from the other submissions that I would like
21 to address now.

22 First is the question of how we investigate
23 pandemic preparedness. We are unclear if the Inquiry
24 intends to take the high-level approach described by
25 counsel to the Inquiry and look at the paper state of

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1 preparedness as at, say, January 2020, or whether in
2 investigating preparedness the Inquiry intends to look
3 at what was revealed about preparedness by events in
4 the early stages of the pandemic when gaps in the
5 planning became apparent.

6 The example given in our submissions is of
7 Government departments who did not have up-to-date
8 contact details for Directors of Public Health. That
9 seems to us to be a gap in the planning, but it is
10 only when you descend into the early events of the
11 Inquiry that that gap becomes apparent.

12 Clearly our submissions are that the Inquiry
13 should look into those early weeks of the pandemic
14 but, to be clear, we are not suggesting that in
15 Module 1 in preparedness we go deep into the pandemic
16 and into late events looking at the question of
17 preparedness. What we're interested in is systemic
18 failures that are revealed by the early events.

19 Next up is the local government perspective. As
20 the Inquiry will be aware, there has been a trend
21 toward the unification of health and social care in
22 recent years in recent legislation. As a result,
23 local authorities were at the forefront of pandemic
24 response and in pandemic preparation. Their plans,
25 their preparation, are important for understanding how

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1 of position statements. The association is against
2 filing of witness statements and supports what was
3 said by Mr Keith earlier. Position statements would
4 effectively have us pleading in the Inquiry, and
5 a position statement filed before we've had an
6 opportunity to really descend into the documents would
7 be no more than a statement of an organisation's early
8 impression of its pandemic response, rather than
9 a detailed and thought-out narrative. As such, we
10 don't think that position statements will help.

11 That said, ADPH recognises that it is important
12 that this Inquiry understands the role of Directors of
13 Public Health, particularly as it differs across the
14 four countries, and so it suggests filing witness
15 evidence at an early stage to explain that to the
16 Inquiry and to provide the Inquiry with its documents;
17 and then, after that, for the Inquiry to move to the
18 question of Rule 9 requests of the association.

19 Turning to disclosure, ADPH has great sympathy
20 for what the survivors say about wanting to see all of
21 the paperwork that encourages transparency. It
22 creates an impression of openness and so we don't
23 oppose that submission in principle. However, in the
24 interests of balance, we do have to comment that this
25 Inquiry is going to acquire a vast amount of

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1 well prepared our society was. In light of that, it's
2 slightly surprising to see that we only have two
3 organisations here dealing with local government, in
4 the form of my client and the LGA.

5 It's my client's submission that more detail on
6 the local government position is needed and, in that
7 respect, two organisations that would be able to
8 assist the Inquiry significantly are the Association
9 of Directors of Adult Social Services, and the
10 Association of Directors of Children's Services.
11 Local authorities are at the forefront of service
12 delivery in respect of both children and vulnerable
13 adults, and those organisations will be able to assist
14 on how those aspects of pandemic response were planned
15 for.

16 In addition, my client suggests that we could
17 look at undertaking some preparedness case studies
18 around individual local authorities, or the Inquiry
19 could make Rule 9 requests of individual local
20 authorities on the question of preparedness.

21 The local authorities that we choose would need
22 to be selected to be contrasting local authorities,
23 contrasting parts of the country, contrasting areas of
24 affluence and so forth.

25 The next issue to comment upon is the question

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1 paperwork; it will be millions of pages. We're
2 talking about amounts of paperwork so vast that
3 electronic document management systems, search terms,
4 use of AI to index and audit it, will be required to
5 control it. As such, the Inquiry has to strike
6 a balance and, therefore, the position that we take is
7 one of neutrality on that, but we need to be assured
8 that the Inquiry is giving the relevant stuff and,
9 therefore, there is a place perhaps for identifying
10 the material that has been left out.

11 On the subject of disclosure of documents
12 generally, it's clear that Central Government
13 departments have been asked to preserve documents.
14 I think Mr Keith mentioned January 2021 in respect of
15 that. The question is whether local authorities
16 should also be asked to preserve documents because
17 they will be sitting on vast amounts of material which
18 would also be of relevance to the Inquiry.

19 The final point for ADPH is one of perception.
20 It's about openness. It's vital that this Inquiry
21 carries the survivor community, carries full public
22 confidence, and that's about a perception of openness.
23 In this information age, the more open the Inquiry
24 appears to be, the better it will be received by the
25 public.

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1 On that basis, when the core participation
2 determinations were made, it was a little surprising
3 to learn that we had become a Core Participant but
4 that we couldn't communicate that fact and that fact
5 that not going to go up on the Inquiry website until
6 after today. I know that nothing sinister is intended
7 by that. I know that that's just about information
8 management, but it is one of those things that just
9 created a slight perception that maybe the Inquiry
10 wasn't being as open as it could be and, dealing with
11 any mis-perceptions around openness, ADPH submits it
12 is extremely important. Unless there's anything else
13 I can help you with, ma'am.

14 **LADY HALLETT:** Thank you very much indeed. One of the
15 first things I said to the Inquiry team was that I
16 believe in openness. I mean, the last point hadn't
17 occurred to me until you made it. So thank you very
18 much, and the other points too, important points, and
19 we'll reflect upon them. Thank you.

20 **MR BIRMINGHAM:** Thank you.

21 **LADY HALLETT:** Ms Gallagher?

22 **Opening statement by MS GALLAGHER**

23 **MS GALLAGHER:** My Lady, as you know, I act for the Trades
24 Union Congress (the TUC) along with Mr Jacobs, and
25 instructed by Thompsons Solicitors. May we start by

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1 swathes of human and social activity which were
2 curtailed, halted or impacted by the Covid-19 pandemic
3 and the official response to it and, if you look at
4 the list that he gave and you look at the 48 member
5 unions, you see a very substantial overlap because the
6 remit is breathtakingly broad.

7 It includes, by way of example only, midwives,
8 workers in food industries, headteachers, teachers,
9 lecturers, those working in adult education,
10 probation, prison and family court staff, workers in
11 social care, manufacturing, nurseries, coalmining, the
12 voluntary sector, aviation and a great many more.

13 It also includes groups such as freelance
14 artists, journalists, bus drivers, call centre
15 workers, civil servants, a huge range, and to use
16 Mr Keith's phrase, it's vast swathes of human and
17 social activity reflected in the TUC's work.

18 Critically, my Lady, thousands of people of
19 working age died in the pandemic, many of whom were
20 key workers in high-risk workplaces, in sectors such
21 as health, social care, transport, food processing and
22 textiles, and a great many of whom were TUC members.

23 Workers from ethnic minorities were particularly
24 hard hit, as you will hear through this Inquiry, with,
25 on the statistics we have available, BME men

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1 saying how grateful we are to be a Core Participant in
2 this vitally important module and, as the TUC has made
3 clear in its engagement prior to the official
4 commencement of this Inquiry and since your opening
5 statement in July, we seek to bring forward the
6 experience and expertise of the TUC members and the
7 TUC member unions, for the benefit of this important
8 Inquiry.

9 We intend to do that to the extent we can
10 through the life of the Inquiry and, of course, also
11 we wish to protect the interests of our members and
12 member unions. I'm conscious you have detail in the
13 written materials before you about the TUC, but I just
14 want to start by saying something brief for those who
15 are watching us in the room and online about that.

16 The TUC brings together 5.5 million working
17 people who make up its 48 member unions, from all
18 parts of the UK, from all four countries. Each of
19 those 48 member unions is listed as an annex to the
20 submissions we have given you and, as that list makes
21 clear, my Lady, they span a very wide range of
22 industries profoundly affected by the Covid-19
23 pandemic, including many front-line roles.

24 Mr Keith King's Counsel to the Inquiry
25 referenced in his opening remarks today the vast

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1 57 per cent more likely to be working in jobs with
2 a high mortality rate, BME women 48 per cent more
3 likely to be working in jobs with a higher mortality
4 rate and, indeed, that echoes Mr Weatherby's
5 submissions a little earlier on behalf of the bereaved
6 families in his group.

7 Many thousands of TUC members died as a result
8 of the Covid-19 pandemic, tens of thousands continue
9 to suffer the effects of long Covid and
10 pandemic-related workplace injury, and many more are
11 bereaved, many have suffered hardship of loss in
12 a myriad of ways.

13 I did want to quote what the TUC General
14 Secretary Francis O'Grady said in April of this year
15 in a joint statement released with the Covid Bereaved
16 Families for Justice on Workers' Memorial Day. That
17 of course was before the Inquiry's Terms of Reference
18 were finalised. She said:

19 "We'll forever be in the debt of the workers who
20 kept the country going during the pandemic: nurses,
21 carers, bus drivers, factory workers and so many more.
22 Far too many were exposed to the virus at work and
23 lost their lives as a consequence. Now the
24 governments owe it to them and to their families to
25 make sure the public Inquiry investigates what should

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1 have been done to keep everyone safe at work."
 2 Since that time of course the Terms of Reference
 3 have been finalised and the baton has been passed from
 4 the Government to you and your team, my Lady, and
 5 echoing those words from the general secretary in
 6 April, we say now the Inquiry owes it to them and
 7 their families to ensure that the Inquiry investigates
 8 what should have been done to keep everyone safe at
 9 work and what should be done in future, and we're very
 10 grateful for the clear and robust recognition in your
 11 opening statement of July and again in your words
 12 today of the vital importance of learning as swiftly
 13 as possible if anything could or should have been done
 14 to prevent or reduce that suffering and those
 15 failures.

16 We were struck, my Lady, by the fact that, at
 17 the outset of today's hearing, you indicated that
 18 there's one word that sums up the pandemic for so many
 19 and that word is: loss.

20 For the TUC, TUC members and member unions, we
 21 wholeheartedly agree. For many of our members we
 22 would use two words -- avoidable loss. Losses which
 23 may have been avoided had the UK been prepared and
 24 ready in early 2020, and losses which may be avoidable
 25 in future if lessons are learned and learned swiftly

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1 much in mind those driving factors that you identified
 2 today and you identified in July 2022. It's precisely
 3 because of your clear commitment, which we welcome, to
 4 timeliness, to avoiding unnecessary delay, but also to
 5 ensuring that you have the right evidence before you
 6 before embarking on public hearings that we
 7 respectfully request on three topics that you adopt
 8 the approach proposed by the TUC and the Bereaved
 9 Families, and respectfully we request that you do take
 10 a slightly different approach to that proposed by your
 11 counsel this morning.

12 Those three topics are: disclosure of Rule 9
 13 requests; disclosure of letters of instruction to
 14 experts; and disclosure more generally and the test or
 15 approach to apply. I'll take those in turn.

16 So starting firstly, my Lady, with Rule 9
 17 requests, we agree with Mr Weatherby, King's Counsel,
 18 that Rule 9 requests should be disclosed to Core
 19 Participants. Now, in the submissions made by
 20 Mr Keith, King's Counsel, this morning he said you are
 21 neither required by the rules nor is it established by
 22 past practice. He also used the phrase that it would
 23 "serve no purpose", and he made reference to practical
 24 difficulties given the iterative process.

25 May I summarise our submissions under two

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1 and the right lessons are learned.

2 That's why we've made clear in our written
 3 submissions that we agree entirely that Module 1 is
 4 a vital and urgent topic which cannot wait. You raise
 5 a pressing question in the scope for Module 1: was the
 6 UK prepared for a pandemic or, indeed, for another
 7 form of civil emergency? This is a vitally important
 8 issue. It must be considered as soon as possible, and
 9 that's precisely why we agree with your commitment to
 10 timeliness, and we agree with and endorse, in your
 11 opening remarks today, the reference to the importance
 12 of timeliness and striking a balance between
 13 timeliness and the extent to which you are able to
 14 explore each and every single issue within the very
 15 broad scope of the Terms of Reference.

16 But equally, my Lady, we agree entirely with the
 17 point you made in your written opening statement in
 18 July 2022 at page 8, where you said:

19 "Given the breadth of my investigations, this
 20 will not be completed as quickly as some might like.
 21 I make no apology for that. I'm determined to ensure
 22 that the Inquiry has access to the evidence it needs
 23 and has the time to analyse that evidence properly
 24 before witnesses appear in front of me."

25 In the submissions we make today, we bear very

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1 headings, one principle, and one practicality. In
 2 relation to principle, my Lady, the TUC welcomed in
 3 our April 2022 consultation response the principles
 4 you set out in your open letter announcing that
 5 consultation process. There was a clear and very
 6 welcome commitment to transparency and to
 7 inclusiveness. We recognise of course that Mr Keith
 8 is correct that Rule 9 requests are not mandated to be
 9 automatically disclosed by the rules but, in
 10 exercising your discretion, we say the transparency
 11 which you have been committed to from the outset is
 12 a key factor to bear in mind. The rules are
 13 essentially neutral. There's no mandatory requirement
 14 to disclose. There's also no barrier to disclose. As
 15 a matter of principle we say you should disclose.

16 Other inquiries have taken that step, and chairs
 17 when exercising their discretion have delayed Rule 9
 18 requests. By way of example, familiar to many of your
 19 team, Rule 9 requests were disclosed in a number of
 20 the independent Inquiry into Child Sex Abuse modules.
 21 So we ask you to exercise your discretion to disclose
 22 as a matter of principle and, indeed, we say that that
 23 would be in keeping with another phrase used by
 24 Mr Keith this morning when he referred to having "an
 25 open, indeed eager, frame of mind." So for

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1 transparency reasons in principle we ask that they be
2 disclosed.

3 Secondly, practicality. Our submission is that
4 it would be efficient and time saving to disclose the
5 Rule 9 requests and to do so early. We noted
6 Mr Keith's words this morning referring to the Rule 9
7 requests already made being described as lengthy,
8 complex and wide-ranging. We assume, as they are
9 lengthy complex and wide-ranging, it is likely to take
10 some time for the resulting witness statements to come
11 back to you and to your team. The advantage of CPs
12 having early sight of those Rule 9 requests is we can
13 feed in, we can identify if there are gaps, we can
14 suggest additional queries or clarifications on the
15 ambitious timetable you have set out. We have under
16 seven months to the start of May. We can see that
17 preparation of these witness statements may make some
18 months. We do not want to be in a position where we
19 hit spring 2023 and we start to receive statements
20 which make clear that there was a blind spot or a gap.

21 We want to avoid that. The reference to the
22 iterative process that was made earlier seems to us
23 not to be a point against us, it's a point in favour
24 of disclosure. It's precisely why the Rule 9 request
25 can be disclosed and we can go back. We make that

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1 that our suggestion that a Rule 9 request be made to
2 the Health & Safety Executive is now under
3 consideration.

4 You will have seen your submissions on that
5 point at paragraph 25 in particular. Taken shortly,
6 this is an issue of vital importance to the TUC. It's
7 intimately linked to sub-topic 2 in your provisional
8 scope document, Risk Management. The TUC for over
9 a decade since 2010 has been raising grave concerns
10 that systematic underfunding of vital services,
11 including safety regulators, places the UK at risk
12 and, as you have seen, the TUC's view is that the UK's
13 pandemic preparedness was gravely undermined by
14 a number of historical changes to risk management
15 structures and bodies and, in addition, by substantial
16 cuts to their budgets.

17 You have seen your submission that funding cuts
18 to the HSE and local authority enforcement since 2010
19 seriously hindered the regulator's ability to
20 effectively prevent workplace hazards, deter employers
21 from breaching regulations and the law and, put
22 simply, the TUC, as set out our submissions, say the
23 effects of cuts to funding resulted in fewer
24 inspectors, few inspections, much less enforcement
25 action prior to the pandemic, gravely therefore

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1 submission without doubting in any way the diligence
2 and expertise of your solicitor team and your counsel
3 team. But necessarily there will be information
4 unavailable to them which is available to Core
5 Participants, given their background and their
6 expertise.

7 The TUC, for example, the British Medical
8 Association, the Local Government Association, may
9 have information unknown to your legal team. If I can
10 adopt a phrase from Donald Rumsfeld there will be
11 unknown unknowns. They simply won't know what gaps
12 there are in their knowledge, and what we want to
13 avoid is a situation where we get close to the May
14 hearing, we receive statements, we can see there are
15 gaps in them, and we then have a last-minute scramble,
16 which seems to us to cut against your commitment to
17 timeliness and to trying to ensure that the timetable
18 is adhered to.

19 A good example of a collaborative approach with
20 the disclosure of Rule 9 requests came in Mr Keith's
21 welcome words this morning referring to the
22 Health & Safety Executive. That's not about
23 disclosure of the Rule 9 request itself, but it is an
24 example of where the TUC has raised a concern, and
25 we're very grateful for the indication this morning

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1 weakened the resilience and preparedness of risk
2 management structures.

3 That's an example where we were able to give
4 a reference to the HSE which didn't appear in your
5 early list and it's now under consideration. But
6 a similar principle would apply with disclosure of
7 Rule 9 requests where there simply may be unknown gaps
8 which we and other Core Participants may be able to
9 fill.

10 The second topic is disclosure of letters of
11 instruction to experts. We were grateful to hear and
12 we welcome the fact that today counsel to the Inquiry
13 confirmed that those instructions will indeed be
14 provided to Core Participants before the reports are
15 finalised, so we welcome that.

16 We simply raise a timing point. The earlier
17 those letters or instructions can be provided to Core
18 Participants, the earlier Core Participants can
19 identify any gaps or any additional issues and return
20 to you, again seeking to avoid a last minute scramble
21 assuming that the reports will take some time to
22 prepare.

23 In some other inquiries we have seen a situation
24 where you get the report and the letter of instruction
25 disclosed at the same time or often three or four

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1 weeks before the hearing, and that doesn't assist
2 anyone. It seems to us, if they are going to be
3 disclosed, the earlier they can be disclosed the
4 better, particularly in circumstances where the TUC,
5 the Bereaved Families and many other groups are
6 collectives who have large numbers of people who they
7 represent, their representative voices. So the more
8 time we can have the better.

9 We entirely hear and understand the point
10 Mr Keith made at the end of his submissions earlier in
11 relation to notice, where he said, "We'll give you as
12 much as possible", but time is against us and there's
13 a huge amount to be done.

14 But the letters of instruction to experts is
15 a good example of where earlier disclosure will avoid
16 problems for everyone. It's accepted in principle
17 they are going to be disclosed. The sooner we can see
18 them the better.

19 The third point is about disclosure more
20 generally. Now we dealt with this in our written
21 submissions at paragraphs 29 to 30, and the TUC is
22 also in agreement with the written submissions made by
23 the Covid-19 Bereaved Families for Justice and the
24 Northern Ireland Covid-19 Bereaved Families for
25 Justice and, indeed, with Mr Weatherby's oral

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1 if you are against us on a relevancy test, and that
2 this idea of a schedule of undisclosed, equivalent of
3 schedule of unused. The question put to us this
4 morning by Mr Keith was: to what end? It's for the
5 Inquiry to determine whether further areas are
6 required to be investigated. He said it was an
7 immense amount of the further work to little end. But
8 again we say: give the Core Participants some credit.
9 The Core Participants may well spot in a schedule of
10 undisclosed or a schedule of unused a key point
11 unknown to your Inquiry team. Again, we don't say
12 that to raise any concern about the diligence or
13 excellence of your legal team. We say that because
14 the Core Participants, by virtue of having become Core
15 Participants, are adding value to your process, have
16 particular expertise, have got a significant interest
17 or have played a significant role in the issues. They
18 know matters which simply may be unknown to your team,
19 and we say there is a good end and, again, there's of
20 course also a good end in principle when we go back to
21 the very first point that I made a little earlier
22 about transparency and openness and collaboration.

23 Against that backdrop, we do ask that you
24 consider adopting a more open and transparent approach
25 to disclosure, ideally the approach proposed by

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1 submissions today.

2 The concern which we share with Mr Weatherby is
3 that the reference at paragraph 50 of counsel to the
4 Inquiry's note to proportionate and focused disclosure
5 is unclear to us, and it appears to be a recipe for
6 potential arbitrariness in decision-making,
7 particularly when you have a very large team.

8 We understand Mr Keith's point, given the scope
9 of the issues you are dealing with here, adopting his
10 phrase "it's neither necessary nor proportionate for
11 the Inquiry to disclose every document that it
12 receives" and, just to ensure there's no straw men
13 here, we're not proposing that; we agree. Our primary
14 position, in keeping with Mr Weatherby, is that the
15 test should be relevance; relevant documents should be
16 disclosed to Core Participants. We accept there needs
17 to be a sift for relevancy, but that's not the test
18 that's suggested at paragraph 50 of Counsel to the
19 Inquiry's note.

20 We agree that irrelevant documents or duplicated
21 documents don't need to be disclosed. But our
22 position is "relevancy" should be the watch word.
23 That should be the test.

24 There is of course an alternative potential
25 compromise which we raised in our written submissions,

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1 Mr Weatherby, but there is a compromise alternative
2 which we say is better than what is proposed at
3 paragraph 50 about which we have concerns.

4 We do need to have a safety net so that Core
5 Participants can review, see if there may have been
6 a matter overlooked and make submissions to you, and
7 then of course it will be a matter for you ultimately
8 as to whether or not that material should be
9 disclosed. We cannot make those submissions if these
10 decisions are made entirely behind closed doors.

11 We've indicated in our written submissions that
12 those forms of schedules have worked well in other
13 inquiries and large scale inquests; for example, they
14 were used in the Hillsborough Inquest to good end.

15 There's a number of small additional issues
16 I wish to pick up. I won't repeat all the points in
17 our written submissions and we're grateful for the
18 indication from you, my Lady, and from Mr Keith this
19 morning that a number of matters raised in our written
20 submissions have now been resolved or have fallen
21 away. We're grateful for that.

22 Before I move to three short points we want to
23 address at the end, the TUC also wishes to support the
24 submissions made in relation to the devolved nations
25 by Mr Weatherby, King's Counsel, Mr Lavery, King's

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1 Counsel, Ms Mitchell, King's Counsel, and Ms Heaven
 2 this morning but there's three short matters we want
 3 to highlight now drawing on our written submissions.
 4 One is specifically about Module 1, my Lady, and two
 5 are more general.

6 **MR KEITH:** I don't wish to interrupt but I am just
 7 wondering whether my Lady wished to --

8 **MS GALLAGHER:** I see the time.

9 **LADY HALLETT:** I was wondering about whether or not we
 10 need to break.

11 **MR KEITH:** That might be advisable and then we can look
 12 forward to hearing the remainder of Ms Gallagher's
 13 submissions after.

14 **LADY HALLETT:** I'm sorry we've interrupted --

15 **MS GALLAGHER:** I'm very happy to do that. I'm so sorry.
 16 I didn't see the time.

17 **LADY HALLETT:** It also saves you having to rush through it
 18 because we obviously are meant to be taking a break
 19 for the stenographer transcribers anyway. We haven't
 20 really decided how long to have for a break. Does
 21 anybody have any thoughts as to -- I'm happy to come
 22 back whenever anybody wants me to but I want people to
 23 have enough time to --

24 **MR KEITH:** Could my Lady indicate 2.00? That's just short
 25 of an hour and that's the customary amount of time,

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1 to just some final comments on behalf of the TUC.
 2 When we referred to the schedule of undisclosed, I'm
 3 just asked to make two short supplementary points on
 4 that.

5 The first is of course that all Core
 6 Participants have signed the confidentiality
 7 undertakings and are entirely committed to your
 8 process and to the confidentiality of your process,
 9 and the second is that the TUC's submission is that
 10 this should not be a vast amount of extra work, as
 11 internally a sift for relevancy will of course have
 12 been undertaken, those engaged in document review
 13 necessarily won't be operating in a vacuum and will be
 14 giving some form of summary internally to your team
 15 about the decision they have made or what the document
 16 is.

17 Now, we say that not under-estimating the
 18 significant and onerous task being undertaken by
 19 Counsel to the Inquiry and Solicitor to the Inquiry.
 20 We recognise that any additional task does add to that
 21 burden. But, in our submission, the balance currently
 22 as described in paragraph 50, a proportionate and
 23 focused test applied by the Inquiry's legal team
 24 without more and without oversight, is striking the
 25 balance wrongly and this would be an appropriate

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1 isn't it?

2 **LADY HALLETT:** Very well. So thank you, Ms Gallagher, if
 3 you then finish your submissions this afternoon and
 4 also I think we've got two others, Ms Henke and
 5 Ms Spearing, who want to speak and then I'll hear
 6 whether Mr Keith has any submissions by way of reply.
 7 So thank you very much indeed and we'll see you
 8 this afternoon. 2.00, please.

9 **(1.06 pm)**
 10 **(Luncheon Adjournment)**
 11 **(2.00 pm)**

12 **LADY HALLETT:** Next I think we have Ms Henke, Ruth Henke.
 13 Oh, Ms Gallagher, I'm so sorry. How could I do that
 14 to you. I do apologise.

15 **MS GALLAGHER:** Thank you, my Lady. If I could start by
 16 just apologising to the stenographer for overrunning
 17 my time a little early, it does mean this morning
 18 I have made myself deeply unpopular by going into
 19 lunchtime over the sound of growling stomachs, which I
 20 didn't hear; I've quoted Donald Rumsfeld, the US
 21 Secretary of Defence former; and, for once, I was the
 22 Irish person in the room who was not complaining about
 23 the pronunciation of my name. So quite a few firsts.

24 There's two short supplementary points arising
 25 from the disclosure submissions I made, before I turn

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1 alternative.

2 I mentioned just before lunch that we had three
 3 short final matters. I'm afraid given lunchtime it's
 4 now five, but they are brief. So the first is in
 5 respect of Module 1, and the public hearings. We
 6 share the concern raised by Mr Weatherby earlier about
 7 the four-week time estimate. You will have seen this
 8 in our written submissions at paragraph 34. Our view
 9 is that four weeks for this module seems exceptionally
 10 tight, particularly given those six detailed
 11 sub-topics in the provisional scope outline. So, with
 12 each of those topics and with opening and closing
 13 statements, you would be left within the region of
 14 three days per topic, and we think that, recognising
 15 you don't need to cover absolutely everything in the
 16 public hearing, but that tends, we would say, towards
 17 the superficial and is too short.

18 We also bear in mind the important nuanced
 19 submissions that have been made before you by a number
 20 of Core Participants today about the differential
 21 position of the devolved nations. Just by way of
 22 example, in respect of Northern Ireland, you've had
 23 powerful submissions made today about the differential
 24 position in relation to health and social care, the
 25 amalgamated health and social care system, there not

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1 being an NHS as such answered so on, and it's very
2 difficult to see how in one of those sub-topics, where
3 Northern Ireland is so very different, you could
4 possibly in three days examine that issue.

5 So our submission is that four weeks is
6 extremely tight, and we agree entirely with the
7 importance of getting on with it and having this
8 module listed quickly, but our submission is that four
9 weeks is too short.

10 We welcomed the indication this morning that
11 that's under review. We don't press you on any
12 particular time-frame, nor could we sensibly
13 pre-disclosure and in circumstances where we've heard
14 additional submissions today which give us pause for
15 thought. But we suggest that it would be appropriate
16 to have an early recognition that, whatever the
17 correct length of time is, four weeks is too short,
18 and we suggest it will be much easier to block time in
19 diaries and then shorten it than to try to do the
20 other, and to try to shoehorn in an additional four,
21 eight or whatever number of weeks it is at a time when
22 diaries have become busy.

23 So we suggest that that should be dealt with
24 quickly and the nettle should be grasped.

25 The second point that we wanted to make concerns

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1 at least part of public hearings, even when there
2 isn't a specific issue about devolved Government. So
3 by way of example, in an impact module it may be
4 appropriate to proceed on the basis that London is not
5 the assumption, and that in fact an impact module
6 could sensibly take place in whole or in part in
7 another part of the UK.

8 We raised a particular concern in our written
9 submissions about England itself. The TUC may -- and
10 we put it no higher than this at this stage, but given
11 that the issue was raised in the outline submissions
12 and this is your first hearing, we thought it sensible
13 to put down a marker -- the TUC may later wish to
14 request that you consider sitting for at least part of
15 the public hearings in a later module in another
16 English city other than London.

17 We can't make the submission firmly at this
18 stage; it will of course depend when we see the later
19 Modules. We raise it because there are certain
20 sectors which were significantly adversely affected by
21 the pandemic in which workers faced increased risk of
22 loss of life and other hardships which are centred in
23 the north of England, and there are also particular
24 issues arising, which we'll come to much later in this
25 Inquiry, about the failure speedily to respond to

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1 a matter raised by Mr Bermingham this morning.
2 Mr Bermingham this morning raised a concern for the
3 ADHP about not being able to notify people about Core
4 Participant status, and the TUC supports
5 Mr Bermingham's submissions on that important point
6 and needing to keep Core Participant status secret for
7 a long period of time, save for those who's signed the
8 confidentiality undertaking. That's a practically
9 important point for representative bodies like the
10 TUC, like the ADHP which have stakeholders and members
11 that they need to update. So we echo and support his
12 submissions.

13 Third point is about location of the hearings.
14 We've dealt with that in our written submissions at
15 paragraph 11 to 14. I won't raise all the points but,
16 just in headline, the TUC welcomes the decision to
17 avoid the Inquiry being exclusively England-centric
18 given its UK-wide remit.

19 We note the intention is for public hearings in
20 Modules 2A, 2B and 2C to take place in Scotland, Wales
21 and Northern Ireland respectively, and we welcome that
22 commitment.

23 We just at this stage note that it may be for
24 certain later Modules that the TUC may wish to invite
25 you, my Lady, to consider sitting outside London for

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1 developments in London, which could have saved lives
2 in northern England, in Northern Ireland and elsewhere
3 in the UK.

4 Against that context, in circumstances where you
5 recognise rightly the symbolic importance of this
6 being a UK-wide Inquiry, we think it must not be
7 London-centric. The norm should not be London, and we
8 may wish to address you on that at a later stage.

9 Fourth point, is about identification of future
10 modules. We're conscious from paragraph 24 of
11 Mr Keith and counsel to the Inquiry's note that there
12 is will later be some systems modules and some impact
13 modules. We don't yet know the precise shape, and of
14 course we recognise that, even when you tell us more
15 about the shape, it may necessarily change. This is
16 an iterative process; as evidence comes in you may
17 need to add modules so on.

18 We do think in contrast to some other inquiries
19 which have proceeded in a modular way where the
20 initial list of modules was given earlier, we think
21 the fact that the initial list of Modules is not
22 public is likely to cause some problems. We just give
23 two examples.

24 First, you may have Core Participants or
25 putative Core Participants applying for Modules which

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1 are not the most relevant to them and, if they had the
 2 full list, they may be able to make a different
 3 decision. We're conscious that a number of those who
 4 applied were told, "Well, you may want to wait and
 5 apply for a later module." But, if they knew what the
 6 later Modules were that were coming, they may be less
 7 likely to make an application early which you think is
 8 better placed at a later stage. We're mindful of the
 9 fact you had 130 applications and that of course adds
 10 to the onerous task that your legal team is
 11 undertaking. Secondly, it would assist with us being
 12 able as Core Participants to make focused and targeted
 13 scope submissions. By way of one very small example,
 14 an indication was given in Mr Weatherby's submissions
 15 on behalf of the Bereaved Families about places of
 16 detention. It may well be that you think places of
 17 detention is going to be considered in a later module,
 18 Module 1 is not the place for it. At the moment we
 19 simply don't know. So it means we're having to make
 20 submissions a little in the dark because we don't know
 21 the later intended shape, and we think it would assist
 22 all of us if we could have the intended shape public
 23 earlier, and we hope that that would also take some
 24 pressure from your team. So we raise that in
 25 a constructive way, we hope.

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1 We raise this simply because we are concerned
 2 that decision-making which tends to lean towards
 3 Government will mean essentially that you have
 4 a skewed process, and that's not something which you
 5 want, it's not something which we want, and we raise
 6 it here against the backdrop of us having originally
 7 been refused, a decision which we're very grateful to
 8 have had overturned.

9 We're now here, and we wish to play
 10 a collaborative and constructive role in the Inquiry.
 11 But we also wish to ensure that other nonofficial
 12 voices going forward are given appropriate weight and
 13 Core Participant status where appropriate.

14 Against that backdrop, we understood from the
 15 initial decision that it may perhaps have been thought
 16 that the TUC was an Impact module-type Core
 17 Participant. I hope it's now clear that we're also
 18 a Systems module-type Core Participant, and there will
 19 be other non-governmental, non-public body
 20 organisations which have valuable evidence to give you
 21 in relation to systems, but who will also be able to
 22 play a valuable role as a Core Participant, including
 23 the right to make submissions to shape the provisional
 24 scope outline itself, having access to the disclosure,
 25 being able to test the evidence of institutional

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1 The fifth point that we want to raise and the
 2 final one concerns the issue of balance, and we do
 3 echo some submissions made by Mr Bermingham for the
 4 Association of Directors of Public Health this morning
 5 on this point. We dealt with this in writing at
 6 paragraphs 15 to 19 of our written submissions and
 7 I take it shortly. You will be aware that the TUC and
 8 the British Medical Association were originally
 9 refused Core Participant status in this module and the
 10 original list of 26 Core Participants was very heavily
 11 weighted towards officialdom, towards august public
 12 bodies. Of 26 Core Participants originally granted
 13 that status there were the four Bereaved Family
 14 groups, there was Imperial College, and others were
 15 all public bodies in some shape or form. That's over
 16 80 per cent. We recognise of course, and we do not
 17 question in any way, those that have been granted Core
 18 Participant status here. We're very grateful for the
 19 recreation given to the TUC and indeed also to the
 20 BMA. At this stage we simply raise a concern that
 21 going forward we're in the foothills of this Inquiry
 22 now that early stages. Non-officialdom,
 23 non-governmental bodies, non-public bodies, have
 24 a real and valuable role to play, and I hope we as the
 25 TUC can show you that in Module 1 and going forward.

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1 witnesses and indeed suggesting lines of enquiry.

2 Against that backdrop, my Lady, they are our
 3 submissions.

4 **LADY HALLETT:** Thank you very much indeed. All extremely
 5 constructive, and I am very grateful to you both for
 6 your written and oral submissions. A number of the
 7 issues you have raised have caused me particular
 8 concern, so I can assure you that I am very receptive
 9 to some of them. I don't know whether I can reflect
 10 all your submissions in my decisions, but I will
 11 consider them very carefully.

12 **MS GALLAGHER:** Very grateful. Thank you.

13 **LADY HALLETT:** Having called on Ms Henke prematurely, is
 14 she around?

15 **Opening statement by MS HENKE**

16 **MS HENKE:** My Lady, *prynhawn Da*, ruth Henke on behalf of
 17 the Welsh Government.

18 The Welsh Government would like to take this
 19 opportunity to confirm once more its whole-hearted
 20 commitment to giving you and your team the fullest
 21 possible co-operation in investigating its response to
 22 the unprecedented challenges faced by everyone in
 23 Wales, every public authority, and every business in
 24 Wales as a result of the pandemic.

25 My Lady, the First Minister on behalf of the

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1 entire Welsh Government shares your commitment to
2 putting the bereaved, those who have suffered hardship
3 and those who were affected by the decisions of the
4 Governments of the UK at the heart of this Inquiry.
5 The Welsh Government will make good that commitment by
6 fully co-operating with this investigation.

7 Our overriding aim is to assist you in your task
8 of ensuring that those, in particular, who lost their
9 loved ones have all their questions asked and receive
10 the complete and candid answers we acknowledge they
11 rightly deserve.

12 The Welsh Government is committed to learning
13 not only the lessons of this continuing pandemic but
14 also to ensure that future Welsh governments are in
15 the best position to respond to future public health
16 challenges.

17 My Lady, *diolch*, thank you.

18 **LADY HALLETT:** Thank you very much indeed. Ms Spearing?

19 **Opening statement by MS SPEARING**

20 **MS SPEARING:** My Lady, good afternoon. I represent the UK
21 Health Security Agency. Firstly, there are no written
22 submissions from those whom I represent and no
23 discourtesy is intended by that. I certainly only
24 have in fact three short points and one response to
25 a submission that my clients would wish to raise.

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1 agencies, may be working in current organisations with
2 status, who may have been linked to Core Participants
3 where such boundaries may in fact hinder access, or
4 perhaps legal advice where those firm position
5 statements are sought which then may prevent the
6 expeditious exploration of facts and information to be
7 importantly provided to your team.

8 So those are all of our submissions and
9 everything that I wish to say. Thank you very much.

10 **LADY HALLETT:** Thank you very much indeed. Mr Keith, do
11 you have any observations by way of response?

12 **Response statement by MR KEITH**

13 **MR KEITH:** My Lady, thank you. There is obviously a great
14 deal to reflect upon and, my Lady, for you to
15 determine in due course. But may I express my
16 gratitude for the very helpful and informative
17 submissions which have been made. The manner and the
18 style in which they have been advanced and the matters
19 that they have covered are a testament to the
20 collaborative approach for which I and others have
21 been advocating.

22 My Lady, some of the points can't be responded
23 to today and nor would you expect them to be, not
24 least because some of them are technical, some of them
25 are specific and will require considerable thought and

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1 The first is that, like many us who appear
2 before you today, the UK Health Security Agency are
3 absolutely committed to assisting you with this very
4 challenging process. The second is that we will do
5 all we can in order to facilitate and respond, and we
6 have been thus far working well with all of those
7 parties who have been communicating with the agency.

8 The third is in fact important, that we do
9 support the submissions that counsel to the Inquiry
10 Mr Keith has already represented, and I don't repeat
11 those. We support and endorse the careful
12 consideration that he has given in dialogue with many
13 of the Core Participants about the challenges that
14 this Inquiry will present.

15 Finally, it's a response to a submission, and
16 that is in relation to the importance which you have
17 already raised of good dialogue, of collaborative and
18 cohesive conversations in order to be able to respond
19 whether that be to the Rule 9 disclosure requests, to
20 the practicalities of challenges that this very novel
21 Inquiry will present to many of the participants, the
22 position statements which have been raised by many.

23 My Lady, we ask that you bear in mind the
24 challenges that many of the Core Participants will
25 have where multiple individuals may have moved between

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1 reflection and, therefore, it's best that I simply
2 don't venture into some particular territories.

3 In relation to panellists, my Lady, in relation
4 to that issue, I would strongly suggest that that is
5 a matter for the Prime Minister as the sponsoring
6 minister. It is for her to decide whether to appoint
7 other panel members to sit with you and, therefore,
8 although my learned friend has invited you to
9 contribute to the decision to lend support to the
10 appointment of other panel members, may I invite you
11 to resist that invitation, however attractively
12 advanced it is. It is simply not a matter for debate.

13 Some submissions have been made about the
14 provisional outline of scope, and the complaint was
15 reiterated that there had been no advance opportunity
16 in advance of the promulgation of that document for
17 Core Participants to make their submissions and to
18 make their positions plain. My Lady, the outline
19 scope document preceded the appointment of Core
20 Participants and, therefore, there was procedurally no
21 means by which fairly persons who may have an interest
22 in due course could have contributed to that process.

23 But in any event, the Inquiry had to start
24 somewhere and fairness and transparency requires
25 a proper opportunity for comment, which of course has

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1 been demonstrated today and exemplified in the written
2 submissions and, therefore, there has been no
3 unfairness done by virtue of an absence of an anterior
4 opportunity to comment.

5 In relation to some of the points made in
6 relation to scope for Module 1, a submission was
7 advanced to the effect that the outline of scope
8 document failed to make sufficiently plain that
9 Module 1 covered all four nations and of course dealt
10 with and would deal, will deal with reserved and
11 devolved matters.

12 True it is that there is only one express
13 reference on the face of the outline of scope document
14 to the United Kingdom scope of that module, and of
15 course to the need to examine devolved and reserved
16 matters. But it is absolutely apparent from the
17 detail of the Rule 9 requests which have gone out or
18 will go out to Scotland, Wales and Northern Ireland
19 that the scope of Module 1 indubitably includes all
20 areas arising across the United Kingdom that are
21 relevant to preparedness and resilience, and it simply
22 cannot sensibly be suggested otherwise.

23 Module 1, it was suggested furthermore, might
24 not be looking at issues of discrimination and
25 disproportionate impact. My Lady, the degree to which

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1 documents to Core Participants.

2 My Lady, there is no legal requirement, as
3 I have said. There has in certain instances been
4 a practice of disclosure of each of those documents,
5 but there is by no means an overwhelming case for them
6 and nor has an overwhelming case been established by
7 practice. It will be, my Lady, a matter in your
8 absolute discretion to decide what best promotes
9 fairness and efficiency.

10 In relation to disclosure of the instructions to
11 experts, I have already said that the Inquiry will
12 disclose those instructions and they will be disclosed
13 at a sensible stage which permits the Core
14 Participants to be able to comment on the width of the
15 expert reports, framed by those instructions, at
16 a time which allows enough opportunity thereafter for
17 the reports to be varied before they reach their final
18 emanation. That is good, sensible practice, I would
19 suggest.

20 Disclosure. There has been some comment made in
21 relation to the approach adopted by counsel to the
22 Inquiry in paragraph 49 of the written submissions to
23 disclosure. My Lady, may I say straight away that
24 paragraph 49 expresses itself as an aim; it is not the
25 standard. It may be thought that it is dancing on the

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1 Government structures as part of their preparedness
2 considered discrimination and the possibility of
3 disproportionate impact on a variety of sectors and
4 groups is an evidential issue which will be
5 considered.

6 What cannot be considered, however, of course,
7 is how in a more granular way each part of the
8 Government preparedness structure should have provided
9 for the needs of each of those sectors to which it
10 necessarily had regard. So, putting it another way,
11 we will and must look at the general degree of
12 preparedness or lack thereof and the extent to which
13 the Government did have the variety of groups and
14 persons and people to whom I have referred in mind,
15 but it won't form part of the Inquiry's job to try to
16 replicate that process and to try to draw up detailed
17 plans in place of what the Government did. That is
18 not the focus of Module 1.

19 Planning within the social care sector. Again
20 scrutiny of how the Government prepared necessarily
21 includes an examination of the degree to which they
22 had that sector and others in mind.

23 Then there are the three procedural pillars:
24 disclosure of the Rule 9 requests, position
25 statements, and the disclosure of lists of undisclosed

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1 head of a pin to try to distinguish between what is
2 proportionate and focused and relevant, but I have
3 said this morning, and I repeat, of course the Core
4 Participants will receive material that is relevant
5 and, in our Inquiry and the throwing out of a net wide
6 enough to receive relevant material, we will look for
7 material that is potentially relevant.

8 I don't propose to say anything about the
9 Listening Exercise, but turning finally to the
10 question of the retention of documents, the point was
11 made forcibly on behalf of ADHP that the
12 retention-of-documents warning that Mr Connah sent out
13 in January may not have been wide enough to go beyond
14 the demand that is placed upon Central Government.

15 Can I say that the letter invited and made
16 perfectly plain to Central Government that the warning
17 was to be promulgated to all bodies exercising public
18 functions and, therefore, that necessarily includes
19 local government.

20 Finally, my Lady, I should say, in the context
21 of the issue of the overwhelming and plain obligation
22 to retain documents, that I believe that Mr Smith will
23 be when preparing the redaction protocol for the
24 benefit of document providers that he will emphasise,
25 re-emphasise of course the message on the overarching

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1 obligation to retain and preserve material.
 2 There was a final submission in relation to the
 3 need for remote location made by leading counsel on
 4 behalf of the Scottish Covid-19 Bereaved Families for
 5 Justice and we will give urgent consideration to
 6 setting up the Inquiry by way of remote location to
 7 allow persons to view and follow these proceedings
 8 online.
 9 My Lady, that is all that I propose to say in
 10 relation to the submissions which have been advanced
 11 on behalf of the Core Participants, unless there's
 12 anything else that you would wish me to address.
 13 **LADY HALLETT:** Thank you very much, Mr Keith.
 14 I thank all the Core Participants, those who
 15 made oral submissions and those who have made both
 16 oral and written submissions. They've all been
 17 extremely constructive and helpful and, I repeat, I am
 18 very grateful to them and for the offers of support
 19 because, to be frank, we're going to need it. We have
 20 a huge task ahead and we will need the support of
 21 everybody, particularly the Core Participants, and
 22 with that support I hope we can achieve the aims that
 23 I set out earlier.
 24 So thank you all very much indeed and thank you
 25 to those who have come who didn't have a speaking

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1 role. We do appreciate your interest in everything
 2 that's going on. So thank you all.
 3 **(2.28 pm)**
 4 **(The preliminary hearing concluded)**

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