IN THE MATTER OF THE UK COVID-19 PUBLIC INQUIRY

BEFORE BARONESS HALLETT

MODULE 2 PRELIMINARY HEARING

SUBMISSIONS FROM THE FEDERATION OF ETHNIC MINORITY HEALTHCARE ORGANISATIONS ("FEMHO")

Introduction

1. The Federation of Ethnic Minority Healthcare Organisations ("FEMHO") is grateful to the Chair for granting its application for Core Participant ("CP") status in Module 2 and looks forward to assisting the Inquiry in its investigation.

2. FEMHO is a multi-disciplinary consortium comprising of over 55,000 individual members belonging to over 40 organisations and networks. It was conceived as a federation to bring together existing organisations with shared interests and goals and form a united voice to advocate on behalf of Black, Asian and Minority Ethnic workers at all levels within the health and social care sectors. We represent a broad spectrum of workers including but not limited to doctors, nurses, midwives, dentists, psychiatrists, pharmacists, biomedical scientists, physiotherapists, radiographers, speech and language therapists, healthcare assistants, paramedics, social workers, medical secretaries, public health practitioners, managers, IT staff, chaplains, cleaners, porters, catering and other support staff.

3. FEMHO's initial focus has been on ensuring that the starkly disproportionate impacts of the Covid-19 pandemic faced by our members are brought to light and addressed. Our long-term aims seek to reduce and ameliorate the systemic and underlying inequalities faced by our members and communities.

4. The Covid-19 pandemic is first and foremost a public health emergency. It has laid bare the structural health inequalities, left unchecked by successive UK governments, that have beset

the delivery of health and social care to ethnic minority communities across the four nations of the UK.

5. FEMHO's members have been on the frontline and behind the scenes throughout the pandemic and have worked tirelessly under brutal pressures and conditions to research, test, treat, care and vaccinate and keep the United Kingdom's public health services going. Despite our best efforts we have sadly also lost countless patients, colleagues, friends, family and loved ones along the way. Members have put their own lives, and those of their families at risk to save others and many have contracted the virus at work, with some now suffering with long covid. We have suffered, and continue to suffer, devastating personal costs, bereavements and physical and mental burnout as a result of the conditions we have been required to work in.

6. An early and striking feature of the Covid-19 pandemic was that health sector workers from Black, Asian and Minority Ethnic communities were becoming infected and dying at alarmingly disproportionate rates. For example, the British Medical Association reported that in the early stages of the pandemic: "*95% of doctors who died were BAME"* and *"64% of nurses who died were BAME*".[1] In addition to the devastating and direct health outcomes FEMHO members have faced, we and our communities have also experienced the workforce culture of the public health and coronavirus response structures and wider disparate socio-economic impacts throughout the pandemic.

7. The scale of these disproportionate impacts is indisputable and well documented in contemporaneous reporting. By way of illustrative example:
   a. On 10 April 2020 a Guardian headline read: "*UK government urged to investigate coronavirus deaths of BAME doctors - Exclusive: Doctors' organisation concerned at 'disproportionate severity of infection'*"[2];
   b. On 22 April 2020 a Sky News headline read: "*BAME people make up 72% of all NHS and carer deaths with Covid-19*" and reported that the Seacole Group of Black, Asian and Minority Ethnic Chairs and Non-Executive Directors within the NHS had written to the Secretary of State for Health highlighting their concerns, including that "*the*

[1] https://www.bma.org.uk/advice-and-support/covid-19/your-health/covid-19-the-risk-to-bame-doctors
[2] https://www.theguardian.com/society/2020/apr/10/uk-coronavirus-deaths-bame-doctors-bma

pandemic is clearly highlighting the cracks in health inequalities", and offering their advisory services[3];

c. On 23 April 2020 a British Medical Journal headline read: "*Two-thirds of healthcare workers who have died were from ethnic minorities*"[4];

d. On 24 April 2020 a British Medical Association headlined read: "*BAME doctors hit worse by lack of PPE*"[5];

e. On 25 May 2020 a Guardian headline read: "*Six in 10 UK health workers killed by Covid-19 are BAME - Guardian analysis shows 61% from ethnic minority background as total reaches 200*"[6];

f. The NHS People Plan for 2020/2021 published in July 2020 noted that: "*The NHS is the largest employer of BAME people in the country and BAME colleagues have lost their lives in greater numbers than any other group*"[7];

g. NHS England officially recognised Black, Asian and Minority Ethnic staff as being at high risk of complications and severe illness from Covid-19 and asked for risk assessments to be undertaken in July 2020[8];

h. A report published by the Runnymede Trust in August 2020 found that Black, Asian and Minority Ethnic frontline workers were being given substandard or inadequate PPE for their roles and risk of exposure[9];

i. The challenges faced by Black, Asian and Minority Ethnic social care professionals were highlighted in a report published on 18 September 2020 by the Department of Health and Social Care[10];

j. The unequal impact on Black, Asian and Minority Ethnic nursing staff was highlighted by Dame Donna Kinnair in an article published by the Royal College of Nursing on 30 October 2020: "*You should be safe when you go to work. When the emerging evidence*

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[3] https://news.sky.com/story/coronavirus-bame-people-make-up-72-off-all-nhs-and-carer-deaths-with-covid-19-11977263
[4] https://www.bmj.com/content/369/bmj.m1621
[5] https://www.bma.org.uk/news-and-opinion/bame-doctors-hit-worse-by-lack-of-ppe
[6] https://www.theguardian.com/world/2020/may/25/six-in-10-uk-health-workers-killed-by-covid-19-are-bame
[7] NHS People Plan for 2020/2021, published July 2020, p.24.
[8] https://www.nhsemployers.org/articles/risk-assessments-staff
[9] Over-Exposed and Under-Protected: The Devastating Impact of COVID-19 on Black and Minority Ethnic Communities in Great Britain, Runnymede Trust, August 2020.
[10] Social Care Sector Covid-19 Support Taskforce: report on the first phase of Covid-19 pandemic – BAME communities advisory group report and recommendations, 18 September 2020

and the lived experience of our members is there and is saying that BAME staff are at increased risk, nursing staff should not need to fight for change to happen"[11];

k. The Lawrence Review; An Avoidable Crisis in 2020 made 20 key recommendations including a national strategy to tackle health inequalities[12];

l. A report by the Equality and Human Rights Commission published in June 2022 found that ethnic minority workers were more likely to work in hazardous situations without adequate PPE compared with their white counterparts[13]; and

m. A Guardian article dated 28 August 2022 entitled 'Facing the uncomfortable possibility that healthcare is discriminatory' noted that: "*As the first Covid wave hit, it quickly became clear that people from black and ethnic minority backgrounds were dying in disproportionate numbers. The immediacy and visibility of these deaths was shocking and revealed a disparity so clear-cut that some wondered if the explanation could be genetic. But those who have spent a lifetime studying health inequalities were less surprised. People from black, Asian and minority ethnic (BAME) backgrounds do worse across a wide range of health outcomes*"[14].

8. FEMHO respectfully submits that, for this Inquiry's commitment to placing "*possible inequalities*" at the "*forefront*" of its investigation to be properly and adequately realised, it is vital that the serious questions these disparities raise in relation to how institutional and structural racism and inequality played a part in government decision making and action are examined within the scope of Module 2 of the UK Covid-19 Public Inquiry. Answers must be sought as to why and how government decision-making failed to adequately protect against the disproportionate deaths, poor health outcomes and wider socio-economic consequences suffered by ethnic minority healthcare workers and their wider communities.

9. The Public Sector Equality Duty, in particular to eliminate discrimination and advance equality of opportunity between differing protected characteristics, was not complied with. It is very likely that had this been done many lives would have been saved and outcomes improved

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[11] https://www.rcn.org.uk/news-and-events/blogs/the-unequal-impact-of-covid-19-on-nursing-staff-301020

[12] An Avoidable Crisis: The disproportionate impact of Covid-10 on Black, Asian and minority ethnic communities, Doreen Lawrence, October 2020.

[13] Experiences from health and social care: the treatment of lower-paid ethnic minority workers, EHRC, 9 June 2022.

[14] https://www.theguardian.com/society/2022/aug/28/facing-the-uncomfortable-possibility-that-healthcare-is-discriminatory

exponentially. Such matters have to be fully considered, with strategy in place, in advance of the particular emergency in order to ameliorate such disadvantage and disparate outcomes.

10. The MacPherson report published in February 1999 following the inquiry into the death of Stephen Lawrence applied the following conceptualisation of institutional racism, which we invite the Inquiry to reflect on:

"*For the purposes of our Inquiry the concept of institutional racism which we apply consists of:*

The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.

It persists because of the failure of the organisation openly and adequately to recognise and address its existence and causes by policy, example and leadership. Without recognition and action to eliminate such racism it can prevail as part of the ethos or culture of the organisation. It is a corrosive disease."[15]

11. The submissions below on matters for the preliminary hearing are necessarily brief and in outline form given the paucity of time we have had to consider the note from Lead Counsel to the Inquiry and take instructions on its contents from our extensive membership base. We anticipate that further instructions may be received before the hearing on 31st October 2022, in which case we will supplement these submissions orally where required.

Scope of Module 2

12. FEMHO has already set out submissions to the Inquiry in respect of the key areas and questions we consider must be addressed within the scope of Module 2. We do not intend to repeat those submissions in detail here but in short our concerns focus around the areas of decision-making by which our members have been directly and significantly affected; in particular those concerning non-pharmaceutical interventions, public communications and messaging, the provision and allocation of PPE, the adequacy of risk assessments, the

[15] The Stephen Lawrence Inquiry Report, Sir William MacPherson, February 1999 at para 6.34.

collation and use of epidemiological data, science and consultation on matters of ethnicity in mapping and responding to the disease and decisions made in respect of the public health measures and policies put in place.

13. The Inquiry's terms of reference commits to "*consider any disparities evident in the impact of the pandemic on different categories of people*…". However, in line with the Chair's commitment to keep possible inequalities at the forefront throughout the investigations, FEMHO implores the Inquiry to go further than merely examining the impacts and to investigate the root causes of the underlying inequalities. Without this, no investigation of political decision-making can be full and effective and nor will meaningful change be achievable.

14. FEMHO would welcome further discussion with the Inquiry as to how this is achieved through the scope of Module 2, the detail of which is to be confirmed in due course. FEMHO invites the Inquiry to commit now, however, that as a minimum it will examine within the scope of Module 2 whether government had due and proper regard to the Public Sector Equality Duty enshrined under the Equality Act 2010 throughout its decision making.

Rule 9 requests and disclosure

15. FEMHO notes the Inquiry's planned approach to disclosure and welcomes the decision to require corporate statements and chronologies from the organisations subject to Rule 9 requests. We would be grateful if the Inquiry would also remind material providers of their duty of candour.

16. We do not underestimate the complexity and challenges faced by the Inquiry in balancing the need for a full and thorough disclosure exercise with the potential scale of potentially relevant documents and the time delay this could cause. We are troubled, however, by the risks we can foresee in the planned "targeted approach" leaving open a real possibility that relevant materials may be overlooked or considered to fall outside the scope of the request, and the level of autonomy this approach gives material providers. We would welcome some clarity and further detail on the oversight the Inquiry will have over its proposed approach.

Experts

17. FEMHO welcomes the Inquiry's commitment to providing CPs with an opportunity to make observations on the identity of the expert witnesses they appoint, and the questions and issues they will be asked to address in their reports, and that it will consider suggestions from CPs as to who should be appointed. FEMHO considers it vital that the Inquiry has the benefit of an expert who can speak to matters of racial health inequality and intends to make further representations and suggestions in this regard.

Conclusion

18. FEMHO reiterates our gratitude to the Inquiry for granting it CP status in Module 2 and we look forward to making further submissions and assisting the Inquiry with the investigation. We will continue to consider and take instructions from our members in advance of the preliminary hearing next week and will supplement these submissions orally where appropriate.

27 October 2022

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