



Note for the Preliminary Hearing in Module 2B of the UK Covid-19 Inquiry

Introduction

1. The purpose of this Note is threefold. First, it sets out, in overarching terms, the background to the UK Covid-19 Inquiry. Second, it introduces the agenda for the Preliminary Hearing in Module 2B at 1.45 pm on Tuesday 1 November 2022. Third, it sets out, primarily for the benefit of Core Participants, information concerning the nature of the Inquiry's work so far, to enable them to file written submissions, if they wish, in advance of the Preliminary Hearing and to prepare for that hearing. Any brief written submissions should be received by 12pm Thursday 27 October.
2. The Preliminary Hearing in Module 2B will address the following issues:
 - a. The commencement of the Inquiry
 - b. Designation of Core Participants
 - c. Outline of scope for Module 2B
 - d. Rule 9 Requests
 - e. Disclosure to Core Participants
 - f. Instruction of Expert Witnesses
 - g. The Listening Exercise
 - h. Commemoration

- i. Approach to evidence of circumstances of individual death and ‘pen portrait’ material
- j. Future Hearings Dates

The Commencement of the Inquiry

3. On 12 May 2021 the then Prime Minister made a statement in the House of Commons in which he announced that there would be a public inquiry under the Inquiries Act 2005. He stated that it would examine the UK’s preparedness and response to the Covid-19 pandemic and learn lessons for the future.
4. On 15 December 2021, the Prime Minister, as the sponsoring Minister, appointed the Rt Hon Baroness Heather Hallett DBE as Chair of the Covid-19 Inquiry.
5. In the written appointment letter the Prime Minister confirmed that he would be consulting with Ministers from the devolved administrations. Such consultation is required by section 27 of the Inquiries Act 2005 to enable the inclusion in the terms of reference of an inquiry, for which a United Kingdom Minister (including the Prime Minister) is responsible, of anything that would require the inquiry to determine facts wholly or primarily concerned with a Scottish matter or a Welsh matter or a transferred Northern Ireland matter.
6. Draft terms of reference were drawn up making clear that the Inquiry would consider and report on the UK state’s preparations and response to the pandemic, and would consider reserved and devolved matters relating to all four nations.
7. On 10 January 2022, Baroness Hallett wrote to the Prime Minister recommending certain amendments to ensure greater clarity in the Inquiry’s remit and enable it to be conducted at an appropriate pace. She also sought an express mandate to publish interim reports so as to ensure that any urgent recommendations could be published and considered in a timely manner.
8. In addition, given her view that the Inquiry would gain greater public confidence and help the UK to come to terms with the pandemic if it was open to the accounts that many people - including those who have been bereaved - would wish to give, she suggested adding explicit acknowledgement of the need to hear about people’s experiences and to consider any disparities in the impact of the pandemic.

9. On 4 February 2022, the Prime Minister responded, accepting, with three caveats and a small number of clarificatory textual refinements, the detailed changes that had been proposed.
10. On 10 March 2022, having consulted with Ministers from the devolved administrations, the Prime Minister wrote to Baroness Hallett to inform her of certain further changes to the draft terms of reference which had been made in response to comments from the devolved administrations.
11. The same day the Inquiry's draft terms of reference were published. On 11 March 2022 the Chair wrote an open letter to the public in which she announced the launch of a public consultation process on the Inquiry's draft terms of reference so that public concerns could be reflected in the final terms of reference and inform the scope of the Inquiry's investigations.
12. The Inquiry issued a consultation document seeking the public's views on whether the Inquiry's draft terms of reference covered all the areas that they thought should be addressed, and on whether the Inquiry should set a planned end-date for its public hearings. The consultation was open to everyone, and the public could contribute on the Inquiry's website, by email or by writing.
13. Baroness Hallett consulted widely across all four nations, visiting towns and cities across England, Wales, Scotland and Northern Ireland and speaking, in particular, to a number of the bereaved. In parallel, the Inquiry team met with representatives of more than 150 organisations in 'roundtable' discussions, covering themes such as equality and diversity, healthcare, business, and education and young people, among others.
14. In total the Inquiry received over 20,000 responses to the consultation, of which 19,903 were received through an online consultation form. An independent research consultancy was commissioned to analyse the responses and produce a comprehensive independent report, summarising respondents' views and the key themes that emerged from the consultation process: - <https://covid19.public-inquiry.uk/document/analysis-of-consultation-responses-from-alma-economics/>.
15. In light of the views expressed, the Inquiry recommended a number of significant changes to the draft terms of reference. Baroness Hallett wrote to the Prime Minister on 12 May 2022 recommending her changes to the terms of reference.

16. In his response on 28 June 2022, the Prime Minister accepted her proposed changes in full. The 'set up date' was confirmed to be 28 June.
17. On 21 July 2022 the Inquiry was formally opened. Baroness Hallett announced the decision to conduct the Inquiry in modules, which would be announced and opened in sequence. Those wishing to take a formal role in the Inquiry were invited to apply to become Core Participants, within the meaning of Rule 5 of the Inquiries Rules 2006, for each module, rather than throughout the Inquiry as a whole.
18. Module 1 was opened on 21 July 2022, and a document outlining its provisional scope was published on the same day. The Inquiry also published a Core Participant Protocol, a Protocol for the Transfer and Handling of Documents, and a Costs Protocol on 21 July 2022, 28 July and 21 March 2022, respectively.
19. The Module 2 provisional outline of scope was published on 31 August 2022. It will consider and make recommendations about the UK's core political and administrative decision-making in relation to the Covid-19 pandemic between early January 2020 until Covid-19 restrictions were lifted in February 2022. It will pay particular scrutiny to the decisions taken by the Prime Minister and the Cabinet, as advised by the Civil Service, senior political, scientific and medical advisers, and relevant Cabinet sub-committees, between early January and late March 2020, when the first national lockdown was imposed.
20. This Inquiry is obliged under section 27 of the Inquiries Act 2005 and its Terms of Reference to consider both reserved and devolved matters in respect of Scotland, Wales and Northern Ireland. Therefore, having considered the picture from a UK-wide (and also English) perspective in Module 2, Modules 2A, 2B and 2C will address the same overarching and strategic issues from the perspective of Scotland, Wales and Northern Ireland.
21. The provisional outline of scope for each of Modules 2A, 2B and 2C was published on 31 August 2022, when each module was formally opened. The Preliminary Hearing in Module 2 will take place on Monday 31 October. The Preliminary Hearings in Modules 2A, 2B and 2C will take place on Tuesday 1 November and Wednesday 2 November 2022.
22. However, on account of the fact that an Inquiry has been established in Scotland to look at matters devolved to the Scottish government, this Inquiry's intention, in relation

to Scottish matters, is to seek to minimise duplication of investigation, evidence gathering, and reporting with the Scottish Inquiry.

23. The public hearings in Module 1 and Module 2 will take place in London. Modules 2A, 2B and 2C will take place in Scotland, Wales and Northern Ireland, respectively.
24. Module 3 will examine the impact of Covid, and of the governmental and societal responses to it, on healthcare systems generally across the UK. It is a UK 'system' module, and will look across all four nations, utilising, in addition, data from the initial stages of the listening exercise.
25. This will include consideration of the healthcare consequences of how the government and the public responded to the pandemic. It will examine the capacity of healthcare systems to respond to a pandemic and how this evolved during the Covid-19 pandemic. Among other issues, it will investigate the general impact of the pandemic on healthcare systems and governance, hospitals, healthcare staff, primary care (including GPs and dentists), NHS 111 services and ambulance services. It will address the use of 'do not resuscitate' notices, the rationing of critical care, capacity, triage systems, the shielding and care of the extremely vulnerable, NHS backlogs and waiting times, and the treatment of those suffering from long Covid.
26. Later modules, details of which will be published in the coming months, will address, very broadly, 'system' and 'impact' issues across the UK. The system modules will include vaccines, therapeutics and antiviral treatment; the care sector; government procurement and PPE; testing; tracing; government business and financial responses across the UK. The impact modules will look at health inequalities and the impact of Covid-19 on the education and business sectors; on children and young persons; and on public services and on other public sectors. Neither the provisional scope nor the order of the modules has been determined.
27. In later modules the Inquiry will return to Scotland, Wales and Northern Ireland to address matters arising within those nations (other than as considered in the earlier modules) and remaining devolved issues.

Designation of Core Participants

28. The applications for Core Participant status in Module 2B have been considered by the Chair in accordance with Rule 5 of the Inquiry Rules 2006, which provides:

“5.—(1) The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.

(2) In deciding whether to designate a person as a core participant, the chairman must in particular consider whether—

(a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;

(b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or

(c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.

(3) A person ceases to be a core participant on—

(a) the date specified by the chairman in writing; or

(b) the end of the inquiry.”

29. In making determinations, the Chair considered whether, in each case, the application fulfilled the criteria set out in Rule 5(2) in relation to the issues set out in the Provisional Outline of Scope for Module 2B.
30. She exercised her wide discretion, bearing in mind a number of features. First, the obligation to run the Inquiry as thoroughly and as efficiently as possible, bearing in mind the Inquiry’s wide-ranging Terms of Reference and the need for the Inquiry process to be rigorous and fair. Given the vast numbers of people who were involved with, or adversely affected by, the Covid-19 pandemic, very many people could claim to have an interest in the Inquiry. That, however, is not the test, and the Chair was obliged to assess very carefully whether, in reality, applicants could assist the Inquiry in Module 2B. Second, it is not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry. Third, the Inquiry will also be listening to and considering carefully the experiences of those who have suffered hardship or loss as a result of the pandemic, through the listening exercise.

31. By way of overview, the Inquiry received 15 applications (some made jointly) for core participant status in Module 2B. Of these 15 applications, 8 applicants have been designated (some jointly) as Core Participants in Module 2B; they are:
- a. Children's Commissioner for Wales
 - b. Covid-19 Bereaved Families for Justice Cymru
 - c. National Police Chiefs' Council
 - d. Public Health Wales
 - e. Relatives & Residents Association and John's Campaign (joint application)
 - f. Trades Union Congress in particular the Wales Trades Union Congress
 - g. Welsh Government
 - h. Welsh Local Government Association
32. Any applications for re-consideration for core participant status will be considered in writing and will be determined in advance of the Preliminary Hearing, thereby allowing those who are successful to participate in it.
33. For the avoidance of doubt, the determinations which have been made by the Chair in relation to Module 2B in no way prejudice the ability of any applicant to apply in another, later, module which may in any event be more suited to the application.
34. It is also, of course, not necessary for an individual or organisation to be a core participant in order to provide information or evidence to the Inquiry. All applicants may have relevant information to give in relation to matters being examined in the Inquiry and the Inquiry will be approaching, in due course, a range of individuals, organisations and bodies to seek information, to gain their perspective on the issues raised in the modules and, where appropriate, to ask for witness statements and documents.

Scope of Module 2B

35. Module 2B is primarily concerned with the Welsh Government's core political and administrative decision-making in relation to the Covid-19 pandemic between early

January 2020 and May 2022, when the then remaining Covid-19 restrictions were lifted in Wales

36. The document setting out the provisional outline of scope for Module 2B states:

“This module will look at, and make recommendations about, the Welsh Government’s core political and administrative decision-making in relation to the Covid-19 pandemic between early January 2020 and May 2022, when the then remaining Covid-19 restrictions were lifted in Wales. It will examine the decision-making of key groups and individuals within the government in Wales including the First Minister and other Welsh Ministers, in particular between early January and late March 2020 when the first national lockdown was imposed. More detailed consideration of a number of key areas and the impact of the pandemic on those areas in Wales will be undertaken later in the Inquiry.

Module 2B will examine:

1. The structures of the Welsh Government and the key bodies within it involved in Wales’ response to the pandemic and their relationships and communications with the UK Government, other devolved administrations and local authorities within Wales.
2. The Welsh Government’s initial understanding of, and response to, the nature and spread of Covid-19 in Wales in the period between January and March 2020 in light of information and advice received from the UK Government and other relevant international and national bodies, advice from scientific, medical and other advisers and the response of other countries.
3. Decision-making by the Welsh Government relating to the imposition or non-imposition of non-pharmaceutical interventions (NPIs) including lockdowns, local restrictions, working from home, reduction of person to person contact, social distancing, the use of face coverings and border controls in Wales; the degree of and rationale behind differences in approach between the Welsh

Government and other governments in the UK; the timeliness and reasonableness of such NPIs, including the likely effects had decisions to intervene been taken earlier or differently; the development of the approach to NPIs in light of the Welsh Government's understanding of their impact on transmission, infection and death; the identification of at risk and other vulnerable groups in Wales and the assessment of the likely impact of the contemplated NPIs on such groups in light of existing inequalities; and the impact, if any, of the funding of the Welsh pandemic response on such decision-making, including funding received from the UK Government.

4. Access to and use in decision-making of medical and scientific expertise, data collection and modelling relating to the spread of the virus in Wales; the measuring and understanding of transmission, infection, mutation, re-infection and death rates in Wales; and the relationship between and operation of relevant systems for the collection, modelling and dissemination of data.
 5. Public health communications in Wales in relation to the steps being taken to control the spread of the virus; transparency of messaging; the use of behavioural management and the maintenance of public confidence in the Welsh Government, including the impact of any alleged breaches of rules and standards by Ministers, officials and advisers.
 6. The public health and coronavirus legislation and regulations that were proposed and enacted: their proportionality and enforcement across Wales.”
37. This scope, whilst ambitious, is necessarily provisional. Although it introduces a wide range of topics, it is neither practical nor advisable to identify at this stage all the issues that will be addressed at the Module 2B public hearing, let alone the questions. Much will depend on the evidence and materials obtained under the Rule 9 process,

which has been designed of course to obtain documentation from which the issues can be further distilled.

38. The Inquiry believes that the provisional scope provides a proper framework in which to include all the issues and matters that the Inquiry is likely to inquire into, and a sufficient indication for persons and organisations who have relevant information and evidence, as well as core participants, to be able to commence their preparations. The issues will, however, be further developed once the responses to the majority of the Rule 9 requests for evidence have been received.
39. Nevertheless, if there are broad matters or areas of inquiry relating to core political and administrative decision making that the core participants would additionally wish the Inquiry to consider as part of the provisional scope, these will be considered.

Rule 9 Requests

40. The Inquiry has issued formal requests for evidence, pursuant to Rule 9 of the Inquiry Rules 2006, to a significant number of organisations and persons already, including the following:
 - a. Welsh Government
 - b. Chief Medical Officer for Wales
 - c. Office of the Secretary of State for Wales
 - d. Technical Advisory Group
 - e. Technical Advisory Cell
 - f. Welsh Local Government Association
 - g. Wales Trades Union Congress
 - h. Public Health Wales
41. The Rule 9 requests are being issued on an iterative basis, as part of which further requests will be made of recipients, focusing on particular issues or topics. Further Rule 9 Requests will be issued, on a rolling basis, to organisations and witnesses as issues come into greater focus.

42. The initial Rule 9 Requests have been lengthy, complex and wide-ranging. They request information and documents and the identities of key figures and decision-makers (including Ministers, senior officials and advisers) relating to relevant responsive decision-making within the Welsh Government between 21 January 2020, which is the date on which the WHO published its '*Novel Coronavirus (2019-nCoV) Situation Report - 1*', and 30 May 2022, which is the date when the then remaining Covid-19 restrictions were lifted in Wales. Requests have also been made for chronologies and corporate statements of all the organisations / people listed above
43. A principal aim of the Inquiry is to understand the way that individuals and organisations which were instrumental in the response to Covid-19, operated and made decisions. This goes to a fundamental aim of the Inquiry, which is to identify what might be improved in the event of a future pandemic. As such, the areas of inquiry made in relation to core political and administrative decision-making seek a detailed understanding of the role, function and responsibilities of key decision-makers and advisers. They also seek disclosure of key actions, activities, initiatives, policies, operational strategies and publications by the Welsh Government in response to the Covid-19 pandemic.
44. In line with a determination made in Module 1, Core Participants will not be provided with copies of the Rule 9 requests made by the Inquiry. Disclosure to the core participants of the Rule 9 requests themselves (as opposed to the relevant documents and material generated by them) is neither required by the Rules nor generally established by past practice. Furthermore, it would serve little practical purpose given the wide scope and detailed nature of the Rule 9 requests that are being made.
45. However, to ensure the core participants are kept properly informed, the Inquiry will ensure that the Module 2B lead solicitor provides monthly updates to core participants on the progress of Rule 9 work. Such updates would, in general terms, include details of what requests have been made, whether documents have been received, when further documents are expected and when further Rule 9 requests have been made.
46. Baroness Hallett declined, for the purposes of Module 1, to order that position statements be made by state and organisational Core Participants and material providers.

47. In Module 2B the Inquiry will similarly examine a wide range of policies and decisions over a number of years by a significant number of departments, bodies and entities. This subject matter does not lend itself readily to the preparation of position statements until a core participant or document provider is sufficiently confident of their knowledge of all the relevant issues and documents. That will take time given the large number of matters to be addressed and the voluminous documentation. The making of an order for position statements would therefore be likely to lead to delay.
48. In any event, the Inquiry is requesting key Rule 9 recipients to provide a corporate statement setting out a narrative of relevant events and of the lessons learned. These will serve a similar purpose to position statements. Counsel to the Inquiry does not, therefore, propose that position statements be ordered for the purposes of Module 2B.

Disclosure to Core Participants

49. The obvious purpose of disclosure is to enable the Core Participants to participate effectively in the public hearings. This Inquiry will be as open as possible with the Core Participants and with the public in relation to the disclosure of documents.
50. The Inquiry's approach is to request document providers, through the Rule 9 process, to provide information and documents that are likely to be relevant to the issues and matters identified in a particular module. Recipients of Rule 9 requests are being made aware of this obligation and of the strict duties the law places upon them in relation to the preservation and retention of documentation.
51. The information and documents received will be assessed for relevance and then redacted in line with a Redactions Protocol that has been prepared and published (<https://covid19.public-inquiry.uk/document/inquiry-protocol-on-the-redaction-of-documents/>), so as to remove sensitive material, such as personal data.
52. It is neither necessary nor proportionate for the Inquiry to disclose every document that it receives, or every request that it makes, or every piece of correspondence. That is not required and would hinder the Inquiry in the performance of its functions. It would also be a derogation of the Inquiry's functions were it to pass to the Core Participants all the material that it receives.

53. Each document provider is being asked to provide an account setting out details of the nature of the review carried out, how the documents were originally stored and the search terms used or other processes used to locate documents.
54. Where the Inquiry has any queries or concerns about a provider's processes for locating relevant documents, it will raise and pursue them and, of course, as documents are reviewed and gaps identified, further documents will be sought.
55. The disclosure of the relevant and redacted documentation will be in tranches. All Core Participants in the same module will receive all the disclosable documents for that module.
56. In light of the above approach, Baroness Hallett has determined, and made a determination to this effect in Module 1, that she does not consider it appropriate for the Inquiry to publish either a Disclosure Protocol or a schedule setting out an itemised list of documents and other material that is not intended to be disclosed to the core participants.
57. The electronic disclosure system which will be used to provide documents to core participants will be Relativity. Details of how to access the system and use it will be provided to core participants shortly before disclosure commences. Only those who have provided a signed undertaking to the Chair will be permitted access to the material that the Inquiry discloses to core participants.
58. The Inquiry is working to begin the process of disclosing materials to core participants as soon as possible. The process of disclosure to core participants will begin in early 2023.

Expert material and the instruction of expert witnesses

59. A number of qualified experts and persons with recognised expertise are likely to be giving evidence at the public hearing as witnesses of fact.
60. However, the Inquiry will also appoint qualified experts in particular fields of expertise as experts to the Inquiry. They will assist the Inquiry, either individually or as part of a group of such persons, by way of the provision of written reports and opinions (including the answering of specific questions asked of them by, or through, the Inquiry) and, where appropriate, the giving of oral evidence at the public hearing.

61. Such reports and evidence will inform and support the Inquiry's work during the public hearings, as well as Baroness Hallett's recommendations, by ensuring that its factual conclusions are soundly based and supported by the weight of the best expert opinion.
62. Such experts will have the appropriate expertise and experience for the particular instruction. They will be independent and objective and subject to an overriding duty to assist the Inquiry on matters within their expertise (whether or not they may also be considered as witnesses of fact in relation to matters falling within the scope of the Inquiry).
63. The identity of the expert witnesses and the questions and issues that they will be asked to address will be disclosed to the Core Participants before the expert reports are finalised. These will include Wales specific issues, where appropriate. Core Participants will therefore be provided with an opportunity to provide observations. Where there are significant differences of view or emphasis among the members of a group, these will be made clear on the face of the reports and, of course, these can be tested during oral hearings.
64. The appointment of experts to the Inquiry, and whether they are assigned to a group of experts considering particular issues, are matters exclusively for the Inquiry, although it will consider suggestions from Core Participants as to who should be appointed.
65. The Inquiry has provisionally identified a number of specialist areas in relation to which both lay and expert witnesses are likely to be giving evidence in Module 2 and potentially also Modules 2A, 2B and 2C (a significant number of experts have already been conditionally approached). Additional suggestions from Core Participants are welcome.
66. These areas are likely to include:
 - a. Public policy and governance: structures for decision-making, coordination of strategy and crisis management in central government, and their effectiveness; governance and accountability of, and coordination between, government departments; reliance upon scientific and other evidence in policy and decision-making; coordination with Devolution Administrations.

- b. Systems for measuring and estimation of infections and deaths, and registration of deaths; overall figures for infection and death.
- c. Statistical methods in infectious disease epidemiology; mathematical modelling of the spread of virus, transmission, infection, mutation, re-infection and death; international comparison of modelling systems; data sharing in government, and with regional and devolved administrations; counter-factual modelling;
- d. Government and public communications, and behavioural science: the impact of messaging and the maintenance of public behaviour; the impact of behavioural, social and environmental factors on infectious disease transmission; compliance.

Listening Exercise

- 67. The Inquiry is in the process of designing and setting up a process by which the experiences of those affected by the pandemic and the UK's response to it will be gathered, analysed and summarised. Details of the listening exercise are set out in the Note from the Solicitor to the Inquiry (STI), a copy of which is on the Inquiry website (<https://covid19.public-inquiry.uk/document/note-from-the-solicitor-to-the-inquiry-regarding-the-listening-exercise-and-commemoration-dated-13-september-2022/>)
- 68. The Inquiry is designing the listening exercise to obtain broad and representative information from anyone who wishes to contribute, i.e. both from the bereaved and anyone else who was impacted by the pandemic. It is being designed bearing in mind the potential for hundreds of thousands, if not millions, of people to contribute if they wish.
- 69. These experiences will be anonymised and reviewed by research specialists, and will be collated into summary reports. The resulting reports, rather than individual accounts, will be aligned with and fed into the Inquiry's later modules, particularly those dealing with the direct and indirect consequences of the pandemic on the health and care systems, the vulnerable, the elderly, children and the disabled, the public sector, businesses and other sectors of the economy. They will be disclosed to Core Participants. The summary reports will then be formally adduced in evidence so they form part of the Inquiry's record.

Commemoration

70. Given the scale of the tragedy brought about by the pandemic, and the grief and loss suffered by the bereaved, the Inquiry wishes to provide opportunities for those who were lost to be commemorated as part of the Inquiry's process.
71. Baroness Hallett believes it appropriate to recognise the human suffering arising from the pandemic, including the loss of loved ones, by ensuring that it is reflected throughout the Inquiry's work. The Inquiry is exploring ways in which this can be done, including by way of a commemorative memorial in the future hearing centre, through the inquiry's public hearings, and through the Inquiry website. Further details are given in the [Note](#) from STI.
72. In the course of the Preliminary Hearing in Module 1, the Inquiry received submissions to the effect that the Inquiry should allow evidence of the circumstances of individual deaths and pen portrait material to be heard at the public hearing.
73. Although she will keep the issue under review, Baroness Hallett has ruled that evidence of the circumstances of individual deaths and pen portrait material will not, as a general rule, be admitted either in Module 1 or in later modules: see the published Ruling of 17 October 2022. Evidence of individual deaths may well be relevant, however, where it relates to possible systemic failings.

Future Hearings

74. A further Preliminary Hearing for Module 2B will be held early in 2023 in London on a specific date and at a venue to be confirmed.
75. The public hearing in Module 2B will take place in Wales in Autumn 2023.

Counsel to the Inquiry for Module 2B

21 October 2022

Tom Poole KC

Kate Wilson

Louise Cowen

Laura Paisley