

IN THE UK COVID-19 PUBLIC INQUIRY BEFORE BARONESS HEATHER HALLETT
IN THE MATTER OF: THE PUBLIC INQUIRY TO EXAMINE THE COVID-19 PANDEMIC IN THE
UK

SUBMISSIONS ON BEHALF OF NI COVID 19 BEREAVED FAMILIES FOR JUSTICE
FOR THE MODULE 2C PRELIMINARY HEARING ON 2 NOVEMBER 2022

INTRODUCTION

1. These are the submissions of the NI Covid 19 Bereaved Families for Justice (NI CBFFJ) in respect of the Inquiry's Module 2C Preliminary Hearing on 2 November 2022.
2. These submissions should be read with the detailed submissions made by NI CBFFJ for Module 2 dated 27 October 2022. To avoid duplication, it is not proposed to repeat those submissions herein and therefore reference will be made to those submissions where appropriate.
3. These submissions will follow the sequence of issues as set out in the Note for the Preliminary Hearing in Module 2C of the UK Covid-19 Inquiry dated 21 October 2022.

THE COMMENCEMENT OF THE INQUIRY

4. NI CBBJ are glad to read at para 23 that the Module 2C ('2C') hearings will take place in Northern Ireland ('NI') and that the Inquiry will return to NI to address matters arising within NI and remaining devolved issues (para 27).

DESIGNATION OF CORE PARTICIPANTS

5. NI CBBJ are pleased to read that The Commissioner for Older People for Northern Ireland and the TUC have been granted CP status. Those participants will bring a wide and important insights into how the core political and administrative decision-making in Northern Ireland affected some of the most vulnerable people and frontline workers in NI.

SCOPE OF MODULE 2C

6. It is agreed that it would not be practical to identify all of the issues that will need to be addressed in 2C. However, it is respectfully submitted that the following broad matters relating to core

political and administrative decision making are required to be considered and should be included in the Outline of Scope of 2C:

(a) Island of Ireland

7. There is passing reference to 'border controls in Northern Ireland' and 'the extent to which decisions were informed by the response of the government of the Republic of Ireland' at paragraph 3 of the Provisional Outline Scope. However, there are two crucial and distinct issues that are centrally important to the pandemic decisions taken in NI that do not fit within the current proposed scope and which are necessary to be examined. Both relate to the unique position of NI's proximity and relationship with the Republic of Ireland ('ROI'): *(i) the island of Ireland as an epidemiological unit; and (ii) the Memorandum of Understanding between NI and ROI health ministers.*

(i) The island of Ireland as a single epidemiological unit

The island of Ireland is a single epidemiological unit ('SEU') for the purposes of public health. This is why for the last 24 years there has been a single all-island institute for public health for ROI and NI, the Institute for Public Health in Ireland ('IPHI').¹ IPHI was set up under the Good Friday Agreement and is directly accountable to both Chief Medical Officers with offices in Belfast and Dublin. There is a compelling case that in the decision making in NI did not reflect this legal and practical reality. Independent SAGE in its report of 12 May 2020 made the case for a SEU response to the pandemic on the island of Ireland:²

Manage the risk of exporting and importing cases from countries with high risks of transmission

The government has decided that everyone coming to the UK, except those travelling from the Republic of Ireland or transport workers such as lorry drivers, should be required to self-isolate for a period of 14 days. We welcome this measure although it is not clear why there is a delay in implementing it. However, we note that there is a serious loophole in it. It will be perfectly possible for someone to fly from somewhere where the level of infection is extremely high, such as New York, to Dublin and then change planes to travel to London. For this, and for other reasons related to the extent of movement across the Irish border, it makes much more sense

¹ <https://publichealth.ie/>

² 'COVID-19: what are the options for the UK? Recommendations for government based on an open and transparent examination of the scientific evidence', available at <
<https://www.independentsage.org/wp-content/uploads/2020/05/The-Independent-SAGE-Report.pdf>
> All web pages referred to herein last accessed on 27 October 2022.

either to treat the two main islands of Britain and Ireland as separate entities for human health purposes, as is already the case for animal health, or for the UK and Republic of Ireland to agree a common approach.

In an article entitled 'Dr Gabriel Scally: Three outstanding issues require all-Ireland response' dated 18 May 2020,³ Dr Gabriel Scally, Honorary Professor of Public Health at the University of Bristol and President of the Epidemiology and Public Health section of the Royal Society of Medicine, wrote of 3 issues that required an all-island response:

There are three outstanding issues that require an urgent all-Ireland response. One is the investigation of the relatively high incidence of cases of coronavirus in the border counties of the South, and the second is the difficult issue of port and airport restrictions. The third, is the nonsensical difference between the recommendation, under some circumstances, of 14 days isolation in the South and seven days in the North.

Later in February 2021 in an article entitled 'Gabriel Scally: "Get it down. Keep it down. Keep it out."',⁴ Dr Scally was derisive of the political decision making in NI and the failure to treat the island of Ireland as a SEU:

The two missing components of any successful zero Covid strategy in Ireland are firstly, mandatory hotel quarantining for travellers arriving on the island and secondly, effective north-south cooperation.

"You cannot have this situation, which we know doesn't work, of voluntary self-isolation combined with a lack of cooperation north and south... Government ministers in Dublin insist that it is impossible to cooperate with the North because of the DUP and we can't have an all-island strategy. In reality, it's a failure of the body politic, both north and south.

"Meanwhile, we have now far exceeded the number of deaths from 'the Troubles'. Don't tell me it's impossible for the administrations north and south to cooperate on this; that is stupid," the prominent epidemiologist remarks.

³ *The Irish News* available at

<<https://www.irishnews.com/news/northernirelandnews/2020/05/18/news/platform-dr-gabriel-scally-1942164/>>

⁴ *Eolas* available at <<https://www.eolasmagazine.ie/gabriel-scally-get-it-down-keep-it-down-keep-it-out/#:~:text=Having%20consistently%20advised%20that%20the%20island%20of%20Ireland,and%20the%20North%E2%80%99s%20Chief%20Medical%20Officer%20Michael%20McBride.>>>

The difficulties that the public health response to the pandemic faced because of the politics on the island of Ireland is dealt with in detail in a study entitled 'Obstacles to Public Health that even Pandemics cannot Overcome: The Politics of Covid-19 on the Island of Ireland'.⁵

It concluded that:

Public health narratives that frame the island of Ireland as a SEU for Covid-19 are seen to push NI one step closer to a united Ireland, and coming on foot of the Brexit trade deal between the UK and the EU, unionist concerns are at an all-time high. Ultimately, Brexit has further 'politicised and toxified the British-Irish political landscape'⁶ so much so that public health responses are automatically viewed as constitutional threats.

The historical and constitutional politics of the island of Ireland is the obstacle to an all-island response to Covid-19 and this has almost certainly been compounded by Brexit. Defying the odds, however, this study has demonstrated substantial public health policy alignment brought about through ongoing dialogue and cooperation between the health administrations in each jurisdiction. While this is cause for optimism, the outbreak of Covid-19 on the island of Ireland is a reminder that there are political obstacles to public health that even pandemics cannot overcome.⁷

The political decisions that were made against and because of binary constitutional backgrounds has arguably been deleterious to public health in NI resulting in unnecessary deaths. It is a serious failure of political decision making during the pandemic which needs to be avoided in the future. Accordingly, the Inquiry simply must examine in 2C the issue of the island of Ireland as a SEU.

(ii) the Memorandum of Understanding between NI and ROI health ministers

A Memorandum of Understanding entitled 'Covid-19 Response— Public Health Cooperation on an all-Ireland basis' was made between Department of Health, Ireland and its Agencies and the Department of Health, Northern Ireland and its Agencies on 7 April 2020 ('MoU').⁸ The MoU commits the NI executive and the ROI government to 'coordination and cooperation' in the response to Covid-19, with the active involvement of health administrations to protect, as

⁵ Nolan et al, *Irish Studies in International Affairs*, Volume 32, Number 2, 2021, pp. 225-246 (Royal Irish Academy)

⁶ Deirdre Heenan, 'Cross-border cooperation health in Ireland', *Irish Studies in International Affairs: ARINS* 32 (2) (2021), 117–36, 120

⁷ Ibid, 245-6

⁸ Available at < <https://www.health-ni.gov.uk/sites/default/files/publications/health/MOU-NI-Rol-Covid-19.pdf> >

paramount, 'the lives and welfare of everyone on the island...and no effort will be spared in that regard'.⁹ It did not create legally binding obligations the governments and agencies.

However, as Scally puts it scathingly:

North-south cooperation

Having consistently advised that the island of Ireland be treated as a one epidemiological unit, Scally initially welcomed the memorandum of understanding (MOU) on public health cooperation on an all-Ireland basis co-signed by Chief Medical Officer Tony Holohan and the North's Chief Medical Officer Michael McBride.

Now, however, he is scathing of what he regards as "a meaningless document". "The language remains great and the sentiment is excellent, but I don't think anyone could point to anything that it has influenced for the better... There is no use in having this wonderful tool if no one is prepared to pick it up and use it," he asserts.¹⁰

The failure to put the MoU to proper use were choices or failures of political and administrative decision-makers arguably resulting in the loss of life and is therefore required to be examined under 2C.

(b) Care homes

Care homes are not referred to at all in the outline scope nor in the CTI's note. We understand the Commissioner for Older People in Northern Ireland has called for a public inquiry into how care homes were treated during the pandemic¹¹ and we will defer to his greater expertise in this area. However, because 30% of all deaths in NI from the pandemic occurred in care homes,¹² it is respectfully submitted that this is a serious omission from the scope of 2C and needs to be included expressly.

RULE 9 REQUESTS

8. The submissions made on Rule 9 requests by NI CBFFJ in the joint submissions on the scope of M2 dated 27 October 2022 at paragraphs 5 and 11-18 are adopted *mutatis mutandis* for the purposes of 2C and the reader is invited to consider those paragraphs presently.

⁹ Ibid, 1.3

¹⁰ N 4 above

¹¹ <https://www.copni.org/news/2021/november/commissioner-for-older-people-calls-for-public-inquiry-into-northern-ireland-s-handling-of-care-home-residents-throughout-the-covid-19-pandemic>

¹² Ibid

DISCLOSURE TO CORE PARTICIPANTS

9. Again, NI CBFFJ cannot add meaningfully to the submissions made in the joint submissions on the scope of M2 dated 27 October 2022 at paragraphs 19-20. Those paragraphs are adopted *mutatis mutandis* for the purposes of 2C and the reader is invited to consider those paragraphs presently.

EXPERT MATERIAL AND THE INSTRUCTION OF EXPERT WITNESSES

10. NI CBFFJ have made submissions in the joint submissions on M2 at paragraphs 21-22 and adopts same *mutatis mutandis* for the purposes of 2C and the reader is invited to consider those paragraphs presently.
11. Additionally, NI CBFFJ submit that due to Northern Ireland's *sui generis* constitutional, legal and health and social care structures, some of which are cross-border with ROI, a bespoke response is required by the Inquiry to 2C. This is particularly so because the NHS does not operate in NI and the health and social care is a combined service.
12. It is respectfully submitted that the Inquiry might sit with or be assisted by an enduring expert panel for the purposes of 2C. This template has been used in at least the following public inquiries in Northern Ireland:
 - (a) Statutory Independent Public Inquiry into Urology Services in The Southern Health and Social Care Trust;¹³
 - (b) Independent Neurology Inquiry.¹⁴
13. It would be anticipated that such a panel should comprise experts in public health and social care in Northern Ireland. It would be of assistance to have at least one expert with some knowledge of the ROI health system and the state response of ROI to the Covid 19 pandemic. Should the Chair wish to explore this further, NI CBFFJ would be willing to research and suggest some experts it believes could cover these important areas that will be of assistance to the Inquiry in 2C.

¹³ <https://www.urologyservicesinquiry.org.uk/>

¹⁴ <https://www.neurologyinquiry.org.uk/>

LISTENING EXERCISE, COMMEMORATION AND FUTURE HEARING DATES

14. In respect of these 3 issues, NI CBFFJ adopt its submissions in the joint submissions in respect of M2 at paragraphs 23-31.

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27 October 2022

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