

THE UK COVID-19 INQUIRY

TRADES UNION CONGRESS: SUBMISSIONS IN ADVANCE OF THE PRELIMINARY HEARING IN MODULE 2C

Introduction and Overview

1. These submissions are made by the Trades Union Congress (“TUC”) in advance of the first preliminary hearing in module 2C, which will take place on 2nd November 2022.
2. The TUC seeks to assist the Inquiry with its experience and expertise. The TUC brings together 5.5 million working people who make up its 48 member unions, from all parts of the UK. Each of the 48 member unions is listed as an annex to these submissions and, as the list makes clear, they span a wide range of industries profoundly affected by the Covid-19 pandemic, including many front-line roles.
3. The TUC is also working in partnership with the Northern Ireland Committee of the Irish Congress of Trade Unions (“ICTU”) representing affiliated membership in Northern Ireland. ICTU is the single umbrella organisation for trade unions on the island of Ireland. Congress is the largest civil society organisation on the island.
4. The organisation is required, through its mission statement, to strive to achieve economic development, social cohesion and justice by upholding the values of solidarity, fairness and equality.
5. The Northern Ireland Committee (“NIC”) of the ICTU is the representative body for 34 trade unions with over 200,000 members across Northern Ireland. In membership terms, it is the largest civil society organisation in Northern Ireland.
6. Across the UK, tens of thousands of people of working age died in the pandemic, many of whom were key workers in high-risk workplaces in sectors such as health, social care, transport, food processing and textiles, a great many of whom were TUC

members and, in Northern Ireland, members of the NIC-affiliated unions. Workers from ethnic minorities were particularly hard hit, with BME men 57% more likely to be working in jobs with a higher mortality rate, and BME women 48% more likely. As the TUC General Secretary, Frances O’Grady, put it in a joint statement released with the Covid Bereaved Families for Justice on Workers’ Memorial Day earlier this year, before the Inquiry’s Terms of Reference (“ToR”) were finalised,

“We’ll forever be in the debt of the workers who kept the country going during the pandemic - nurses, carers, bus drivers, factory workers and so many more.

Far too many were exposed to the virus at work - and lost their lives as a consequence. Now the government owes it to them, and to their families, to make sure the public inquiry investigates what should have been done to keep everyone safe at work.”¹

7. As the TUC submitted in respect of module 1, the baton has now passed to the Inquiry, and the Inquiry owes it to those who were exposed to the virus at work, and lost their lives as a consequence, and to all those who suffered hardship in other ways – including loss of livelihoods, long-term work-related injury, loss of colleagues to the virus – to investigate what should have been done to keep everyone safe at work. Module 2C is a critical part of this, focusing upon the core political and administrative decision-making in Northern Ireland in relation to the Covid-19 pandemic between early January 2020 until Covid-19 restrictions were lifted in March 2022.
8. We address below the following topics:
 - (a) Overall timetable;
 - (b) Particular challenges in respect of Northern Ireland in the lead-up to January 2020;
 - (c) Scope of Module 2C;
 - (d) Rule 9 Requests for Module 2C.
9. Please note that, given the very tight turnaround time between receipt of the CTI Notes (21st October) and the deadline for filing written submissions (27th October), it has not

¹ ‘On Workers’ Memorial Day, Unions and Bereaved Families Demand Covid Inquiry Seeks the Truth About Worker Deaths,’ 28th April 2022, <https://www.tuc.org.uk/news/workers-memorial-day-unions-and-bereaved-families-demand-covid-inquiry-seeks-truth-about>.

been possible to consult and gather full views from the TUC's Working Group, the NIC of ICTU or affiliated unions on the issues arising, and so these submissions should be seen as provisional and we will provide any updates or clarifications if required orally at next week's module 2C hearing.

10. As the Chair is of course aware, the TUC is also a core participant ("CP") in module 1, and has already made written and oral submissions regarding a number of matters for the 4th October 2022 preliminary hearing, some of which have since been the subject of a written ruling of 17th October 2022.
11. The TUC is also intending to make written and oral submissions regarding module 2 and UK-wide issues which also bear on module 2C, and they are not repeated here.

(a) Overall Timetable

12. It is noted that the intention is to hold the module 2 hearing in "*summer 2023*," modules 2A and 2B in "*Autumn 2023*" and module 2C in "*early 2024*" (paragraph 78 of the module 2C Note from Counsel to the Inquiry, "*CTI*"). The TUC considers the proposal to have the public hearings in relation to module 2C in early 2024 to be realistic and feasible, particularly given the indication that disclosure to core participants will commence a year earlier, in early 2023 (paragraph 61 of CTI's Note).
13. However, as we explain further below at point (b), the TUC submits that substantial thought and care needs to be given to the question of how Northern Ireland will be addressed and the interaction between modules 1, 2 and 2C in particular. We do consider there to be adequate time to address this, although pragmatically given the timetable it may be that these matters would be best addressed in early 2024, when module 2C is being explored, as it may be difficult to be ready to address them in summer 2023, and in any event many Northern Irish specific core participants appear on the list of core participants for module 2C only, and not module 2. We are likely to address this matter further orally when more is known about the intended approach.
14. Given the complexity of these issues, it will also be necessary to give careful thought to the length of the public hearings in respect of Northern Ireland, in due course. We

anticipate that this may be an issue to be addressed at a future preliminary hearing, when disclosure has commenced and the Inquiry team has begun to receive Rule 9 statements, so more will be known.

15. We also submit that the Inquiry should list a short hearing in module 2 to take place after module 2C concludes. Whilst it is important to have distinct modules for the UK (and, in the TUC's submission, England), Wales, Scotland and Northern Ireland, it will also be useful to have some opportunity to take a broader view of the evidence gathered in and heard in each of the modules, and to take a coherent view of the findings and lessons learned across these modules. Closing submissions made in summer 2023 regarding module 2 will be made without the benefit of understanding the full position in respect of Scotland, Wales and Northern Ireland.
16. We suggest that a sensible way to address this is for the Inquiry to set aside a short (perhaps two day) hearing in 2024 for the purpose of hearing submissions in module 2, reflecting on the four modules as a whole (2, 2A, 2B and 2C). Whilst those core participants who are within modules 2A/ 2B/ 2C only would not need to address these overarching points, core participants in module 2 should have this opportunity; and it is likely to assist the Chair and the Inquiry team in their work.

(b) Particular challenges in respect of Northern Ireland in the lead-up to January 2020

17. The TUC submits that urgent consideration must be given to how the particular position of Northern Ireland's pandemic preparedness in the period leading up to January 2020, and Northern Ireland's unique position in early 2020, will be addressed. Whilst there are, of course, also issues arising concerning the interrelationship between modules 2 and 2A (Scotland) and 2B (Wales) respectively, there are particularly acute and thorny issues arising in relation to Northern Ireland which are not currently reflected in either the provisional scope documents for modules 1, 2 or 2C; or in CTI's Note in relation to module 2C.

18. Whilst we recognise that the scope outline document for module 2C is drafted in broad terms, we are concerned that the current wording simply replicates that used for modules 2A and 2B and does not reflect the very different position of Northern Ireland in early 2020. This concern is compounded by the fact that there is no reflection of one particular issue concerning Northern Ireland in the module 1 and/ or 2 scope outlines, namely the fact that Northern Ireland had no functioning Executive for a three-year period, until 9th January 2020. In January 2017, the then Deputy First Minister Martin McGuinness resigned, and the Northern Irish Executive consequently collapsed. From January 2017 to January 2020 Northern Ireland was governed, in essence, by civil servants in a caretaker capacity, and the UK Government in Westminster had particular additional obligations as there was no functioning Executive.
19. In early January 2020 the parties signed the 'New Decade, New Approach' agreement and an Executive was subsequently established. The result of this chain of events is that, first, for a three year period in the lead-up to January 2020, there was no functioning Executive at all in Northern Ireland; and second, Northern Ireland was in the process of returning to having a functioning government at the same time that the pandemic hit.
20. During the hiatus period (January 2017 – January 2020), in other contexts, this led to judicial review challenges of the Secretary of State for Northern Ireland and the alleged failure to act to fill the lacuna resulting from the absence of a functioning Executive (e.g. provision of abortion services in Northern Ireland, to ensure that the UK as a whole complied with its obligations under the European Convention on Human Rights). Similar complex issues arise here, in relation to the respective roles of central UK Government and the Northern Irish Executive.
21. At present, this issue appears to us to be the elephant in the room, and of sufficient significance and importance that it should be reflected in at least one of the scope documents – whether module 1, 2 and/ or 2C. Pragmatically, we can see that it may be easiest to address this in January 2024 rather than attempt to deal with it in detail

in what is likely to be a relatively short hearing in summer 2023, and with what is now a tight timeframe.

(c) Scope of Module 2C

22. First, we repeat our request that the Inquiry provide further information as to the scope of future modules at the earliest possible stage, to facilitate core participants in understanding the likely broad dividing lines between modules, identifying any gaps, and being able to make meaningful submissions regarding scope. It is particularly difficult to make submissions regarding scope in a vacuum, when at present we only know the provisional scope outlines for modules 1, 2, 2A, 2B and 2C, and the broad approach likely to be adopted in module 3. We are conscious that the Inquiry has also indicated that there will be a number of further modules addressing ‘system’ and ‘impact’ issues across the UK, and some indications may be drawn from the Opening Statement in July 2022.
23. On the information currently known to us, it is apparent that there could be very significant overlap between the issues to be considered in module 2C and some of those subsequent modules. For example, consideration in module 2C of the reasonableness and timeliness of non-pharmaceutical interventions (“NPIs”), and public health communications, may have very significant relevance to, and be informed by, the evidence in subsequent modules on topics such as *“the care sector”*, *“the education and business sectors”*, *“children and young persons”* and *“public services and on other public sectors.”* At this stage we do not have a clear understanding of how the Inquiry intends to address these overlaps; and we are thus hampered in being able to make meaningful submissions as to whether or not we agree with the Inquiry’s proposed approach.
24. Some important considerations arise. For example, it may be that module 2C does need to hear some evidence on those topics earmarked for subsequent modules as they are highly relevant to the issues being considered in module 2C. Alternatively, it may be that areas of investigation that *could* fall within module 2C, are to be investigated in the later modules.

25. Those are matters on which core participants should have opportunity to address the Inquiry at an early stage. However, it is very difficult to do so in a meaningful way, without any indication as to subsequent modules beyond the broadest of headings.
26. It is recognised that the Inquiry is working at an immense pace, and its own thinking as to the division of topics between modules will be developing and will continue to do so. It will inevitably be an iterative process. However, it is far better for the Inquiry to reveal its current plans for subsequent modules so as to put core participants in an informed position. Core participants should, for the benefit of the Inquiry, be more than passive recipients of updates given by the Inquiry team.
27. Second, the TUC has indicated that its overall focus, common to modules 2, 2A, 2B and 2C, will be on issue 2 (as it relates to guidance and advice to health and social care providers), issue 3 (NPIs) and issue 5 (public health communications).
28. Third, there are a number of specific issues arising concerning the scope of module 2C. The TUC submits:
- (a) As indicated above, the TUC is concerned that the provisional scope outline does not make any reference to the newly formed Executive in January 2020. It is recognised that it is not essential that this topic be spelled out in terms in the module 2C scope outline, but we do submit that it must be spelled out somewhere – whether in relation to module 1, 2 and / or 2C – and there must be a clear understanding as soon as possible as to when the Inquiry will be considering the twin issues of the absence of an Executive in January 2017 – January 2020 (we suggest module 1 is most logical, but the timings may be challenging and so this may need to fall within module 2C), and the newly formed Executive in January 2020 and any particular challenges which that brought, with a global pandemic (we suggest module 2C is the most logical, but it may also need to be touched upon in respect of module 2 as it also raises issues about the UK Government’s approach).
- (b) Further, the TUC is concerned that the current ‘identikit’ provisional scope outline does not reflect the very particular position of Northern Ireland. Issue 1 refers to

“the structures and bodies concerned with the response to the pandemic in Northern Ireland and their relationships and communications with the UK Government, other devolved administrations and local authorities within Northern Ireland,” echoing the language used in relation to Scotland (module 2A) and Wales (module 2B). Why is there no reference to the Republic of Ireland, given the particular relationship between the UK Government, Irish Government and Northern Ireland under the Good Friday Agreement, and given the large number of cross-border workers and cross-border services? This should be amended, we submit.²

- (c) The education sector is of significant relevance to the examination of decision making around NPIs. That is both because education was significantly affected by NPIs, but also because education settings could be vectors for community transmission. The relationship between school attendance, for example, and community transmission, is an important one. Thus, when the Inquiry examines *“the development of the approach to NPIs in light of the understanding of their impact on transmission, infection and death”* must inevitably include consideration of educational settings. Some clarity is needed as to how this issue will be examined across module 2C, and as yet undefined further modules.
- (d) The use and effectiveness (or otherwise) of NPIs played out in significant part in workplaces across the UK. Community transmission and significant loss of life occurred in sectors such as the transport sector, the communications sector, the manufacturing sector (in particular, it appears, the food processing and textiles industry), the construction sector and the retail sector. In Northern Ireland there were particularly significant difficulties in relation to food production sites. For example, in March 2020 there was a mass walkout of up to 1,000 workers at Moy Park at Seagoe, Portadown over concerns of a failure to provide basic health and safety protections to the workforce. Unite’s attempts to secure commitments to ensure a minimum two metre social distancing between workers and other

² Issue 2’s reference to *“other relevant international bodies”* does not address this concern, as it relates to a different point, regarding the Northern Ireland government’s initial understanding of, and response to, the nature and spread of Covid-19 in Northern Ireland between January and March 2020.

measures to enable infection control in the face of the threat of the virus were dismissed by management. There was a similar walk out at ABP Meats in Lurgan. On 30th March 2020 Unite called upon the Secretary of State for Environment, Food and Rural Affairs to make the two-metre social distancing guideline mandatory for food industry workers on production lines. The Northern Ireland Food and Drink Industry did respond with new industry guidance, but as Unite indicated on 31st March 2020, *“While some employers are now working with us, there are many who aren’t doing anything meaningful. Indeed, some are issuing public statements saying that they have measures in place to ensure social distancing within their factories but we have evidence that this is simply not the case. Guidance around social distancing, slowing down and simplifying production has not been implemented in many workplaces”* and the HSE are *“refusing to act despite being provided photographic evidence of breaches.”* Unite regional officer, Sean McKeever, explained that *“Food and retail workers are now front line workers in the battle against the Covid-19 virus but are at risk of being sacrificed by our politicians. The Northern Ireland Executive’s shameful failure to bring forward any meaningful enforcement mechanisms whatsoever cannot be allowed to continue. The [HSE] is chronically under resourced and under-staffed to deal with the scale of this challenge – they are no longer conducting inspections of workplaces – leaving workers to fend for themselves.”* By May 2020 a worker at Moy Park, Dongannon had died following contracting the virus. There were outbreaks at both Dungannon and Portadown, and a growing number of clusters of infections at meatpacking sites. Unite advocated for the Stormont Executive to require testing for workers in the poultry and meat packing sector. The high-risk nature of the sector had been widely recognised, but there was nonetheless a failure to roll-out a comprehensive programme of testing for those working in the sector. Moy Park itself refused to provide Covid-19 testing to its workforce. In examining *“the development of the approach to NPIs in light of the understanding of their impact on transmission”*, it will be important to understand the effectiveness of NPIs in these sectors and how NPIs were being applied in practice.

- (e) In relation to public health communications, one significant feature of the use of NPIs was the lack of clear communications and guidance for workplaces. The

Inquiry will need to consider what guidance was given in respect of NPIs in workplaces, including the role played by the Northern Ireland Executive, and how public health guidance was cascaded to and implemented in workplaces across Northern Ireland. The Northern Ireland Executive did form a Strategic Engagement Forum which brought together trade unions, as well as employers and statutory bodies and published documents including workplace safety guidance. However, as it appears to the ICTU, the forum was largely ignored by the Executive after its initial work. However, the ICTU made repeated requests to meet bilaterally with both the First and Deputy First Ministers of the Northern Ireland Executive. The joint office of the First and Deputy First Minister failed to meet with the ICTU, which the ICTU regards as regrettable and a significant failure of leadership. That lack of engagement is itself an important issue for the Inquiry. It stands in contrast to the more proactive engagement with the unions, by the Welsh government in particular.

- (f) Both in submissions on the terms of reference, and for module 1, the TUC has emphasised the importance of the Inquiry examining the mechanisms in place for ensuring safety in workplaces and how, in practice, NPIs were implemented and enforced. That requires an examination of the role of the Health and Safety Executive (“HSE”), other regulators such as the ORR, and also local authorities. Presently, the TUC is unclear as to in which module these issues are going to be examined.

(d) Rule 9 requests

29. The TUC is grateful for the update as to the recipients thus far of Rule 9 requests for the purposes of module 2C.
30. The Inquiry is invited to direct a Rule 9 request to the NIC of ICTU who will be able to give relevant and important evidence on the use and effectiveness of NPIs in workplaces in Northern Ireland, and related public health communications. During

the pandemic, the trade unions sought to represent workers who were working on the COVID front line. ICTU can provide a specific perspective on both the initial decision-making and guidance documentation, but also the subsequent level of public confidence in connection with workplace safety measures.

31. The Inquiry is also invited to direct a Rule 9 request to the Northern Ireland Food and Drink Industry (“NIFDA”). As above NIFDA played a role in providing guidance in relation to the use of NPIs in food processing plants Northern Ireland. On 27th March 2020 it issued the ‘Good Manufacturing Practice Covid-19’³, which was described as taking *“the advice from Public Health England and practical experience from local food manufacturers to identify practical ways in which mitigations may be employed in order to keep our employees safe whilst continuing to ‘Feed the Nation.’* Guidance was given on matters such as social distancing, hygiene and sanitation, and responses to a suspect case of Covid.
32. Depending upon the approach taken to the fundamental issues we have outlined above regarding Northern Ireland, it may be necessary to consider seeking to obtain evidence from the Irish Government or other entities within Ireland. We are content to address this in detail later, but it is important to note it now as the existing documentation does not reflect the unique position of Northern Ireland and its inter-relationship with Ireland in a myriad of ways.
33. Finally, the TUC notes that there are certain entities which have CP status in one of the devolved modules, but their equivalents do not. For example, the Children’s Commissioner for Wales is a CP in module 2B, but her equivalents in England and Wales and Northern Ireland are not CPs; and in module 2C, the Commissioner for Older People for Northern Ireland is a CP, whereas the Older People’s Commissioner for Wales is not a CP in module 2B. Whilst, of course, whether or not to apply for CP status is a matter for individuals and organisations, and there is no difficulty with this, it does seem sensible to consider at an early stage whether to make Rule 9 requests of

³ <https://nifda.co.uk/wp-content/uploads/2020/03/NIFDA-Good-Manufacturing-Practice-Covid-19.pdf>



equivalent entities in other jurisdictions in order to maximise the opportunity for comparing and contrasting differing approaches across the UK, and indeed considering how such office holders interacted with each other during the pandemic.

34. We hope these submissions are of assistance.

CAOILFHIONN GALLAGHER KC

SAM JACOBS

Doughty Street Chambers

27th October 2022

THE UK COVID-19 INQUIRY: MODULE 2

ANNEX

THE TUC UNIONS

- Accord – Lloyds Banking Group, TSB and other financial services
- Advance - Santander and Santander businesses in the UK
- Aegis - Finance sector staff at Aegon UK, Atos UK, Skipton Building Society, Yorkshire Building Society
- AEP – Educational psychologists and assistant educational psychologists in public and private sector
- AFA-CWA – Mobile civil aviation workers (flight attendants/cabin crew)
- Artists’ Union England – Freelance visual artists, applied arts, sound and performance
- ASLEF – Railways – drivers, operational supervisors and staff
- BALPA – Airline pilots; commercial helicopter pilots; and technical rear crew
- BDA – Dieticians in the public and private sector
- BFAWU – Workers in food industries
- BOSTU – Orthoptists
- Community – General union covering a range of sectors including steel and other metals, third sector and logistics
- CSP – Chartered physiotherapists, physiotherapy students and support workers



- CWU – BT, O2, Post Office, Royal Mail Group and other telecoms companies
- EIS – Teachers, lecturers, associated educational personnel in Scotland
- Equity – Professional performers and creative practitioners
- FBU – Fire and rescue services
- FDA – Senior staff in civil service, public bodies and NHS
- GMB – General union covering a range of sectors, including social care, manufacturing, energy and public services
- HCSA – The hospital doctors’ union
- MU – Musicians including live and recording artists, composers, teachers and writers
- NAHT – Head teachers, deputies, assistant head teachers and school leaders across sectors
- NAPO – Probation and family court staff
- NARS – Racing staff employed by licensed racehorse trainers
- NASUWT – Teachers and head teachers in all sectors from early years to FE across the UK
- Nautilus International – Merchant navy and all related areas
- NEU – Teachers, headteachers, lecturers and support staff in all education sectors
- NGSU – All staff at the Nationwide Building Society
- NHBSCA – All staff at the National House Building Council
- NSEAD - Art, craft and design educators across all phases and sectors
- NUJ – Journalists, copywriters, designers, presenters, producers and website content providers



- NUM – Coal mining and associated undertakings
- PCS – Government departments and agencies, public bodies, private sector IT and other services
- PFA – Professional football
- POA – Staff in penal or secure establishments or special hospitals
- Prospect – General union covering a range of sectors, including creative industries, defence, scientific and professional staff and energy
- RCM – Practising midwives and maternity support workers in the UK
- RCP - NHS, independent practice and private chiropodists and podiatrists
- RMT – Railways, underground, metro, bus, road transport, taxi, maritime and offshore
- SoR – Radiographers and related staff in NHS
- TSSA – Administrative, clerical, professional and technical employees of railways, buses, London Underground, travel trade
- UCAC – Teachers, headteachers, education advisors and lecturers across all sectors in Wales
- UCU – Academic and related staff in HE, FE, land-based, adult and prison education.
- UNISON – General union covering a range of sectors, including local government, health and social care, utilities, energy, education and voluntary sector
- UNITE – General union covering a range of sectors, including manufacturing, aerospace, aviation, transport, voluntary and public services
- URTU – Drivers, ancillary and warehousing workers in the logistics and food sectors
- USDAW – Call centres, catering, distribution, food processing and manufacturing, retail and warehouses



- WGGB - Writers working in TV, radio, film, books, theatre, comedy, video games and multimedia