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 Covid 19 Bereaved Families for Justice and NI Covid 19 Bereaved Families for Justice for the Module 1 preliminary hearing on 14 February 2023

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1. These submissions are provided on behalf of CBFFJ and NI CBFFJ in advance of the second Module 1 preliminary hearing on 14 February 2023. CBFFJ was established to campaign for this Public Inquiry: the families are committed to making it work. Submissions for a change of approach from the Inquiry are intended to assist the Inquiry's important work. We trust that these submissions will be taken in that spirit.

2. We note CTI's description of the 14 February preliminary hearing as *"an opportunity to draw ... information together and ensure that it is up to date, as well as allowing a public update on the Inquiry's work so far."* The core purpose of any Inquiry's preliminary hearings is actually for the Inquiry to receive submissions from CPs, reflect on its approach in light of those submissions and, where appropriate, make changes.

3. As requested by the Inquiry, we confirm that the CBFFJ and NI CBFFJ representatives intend to make oral submissions at the preliminary hearing. Save for the paragraph immediately below, these written submissions follow the order of the issues set out in §2 of CTI's Note, dated 30 January 2023.

4. While our submissions below are advanced on a joint basis, we make the following overarching observations on behalf of NI CBFFJ:

    a. Our families see no provision within the scheduled hearings in May 2023 (or within Module 2C) to address preparedness at a devolved level. In particular, no NI-specific expert witnesses have been identified, nor has any devolved disclosure been provided. Preparedness in NI cannot be directly aligned with UK preparedness: emergency preparedness is largely a devolved issue and there are many distinct features and conditions applicable solely in NI.

    b. Although civil contingency guidance and policy documents are in existence, there is no statutory duty-imposing, specific devolved legislation governing the area. Most emergency preparedness powers are concentrated in NI government departments, all of which have been without Ministers for years at a time. The result is that those departments could not make significant, controversial or cross-cutting decisions[1] on civil contingency planning in the years running up to (and during) the pandemic.

[1] *Buick's Application* [2018] NICA 26

c. The international land border with Ireland, a EU member state, with which emergency responses are shared on a local, regional, strategic and statutory basis, is yet another uniquely prevailing condition of NI that must be examined properly if preparedness in NI is to be understood and lessons learned.

d. The position of local authorities in NI is again distinct from those in Britain: in NI, policy guidance and statutory powers exist for district councils as distinct from statutory duties.

e. Preparedness in NI is a major and unique issue that requires to be given full attention by the Inquiry in its own right. If preparedness in NI is not to be dealt with in Module 1, then we respectfully seek an assurance that it will be fully addressed in Module 2C.

Update on Rule 9 requests

5. CTI observe that *"other than a small number of discrete suggestions from Core Participants for organisations that should receive a Rule 9 request, it has not been suggested that there are significant gaps in the range or identity of organisations and entities to which the inquiry has directed Rule 9 requests"* (§4). That is for two reasons. Firstly, the Inquiry appears to have cast the net widely; Rule 9 requests have been made to 114 departments/bodies/organisations/individuals as at 30 January 2023: CTI Note, §3. CBFFJ and NI CBFFJ endorse that approach. Secondly, and of concern, it is not easy to identify significant gaps in who has been issued with Rule 9 requests because the Inquiry has not disclosed the Rule 9 requests themselves and has provided only limited disclosure to date. That makes identifying gaps virtually impossible.

6. Subject to those significant limitations in identifying gaps, CBFFJ and NI CBFFJ note that no Rule 9 request has been made of any international body, e.g. WHO and CEPI. Two of the experts – Professor Jimmy Whitworth and Dr Charlotte Hammer – appear to have been instructed to comment on international processes to a limited extent (see Annex C, which refers to *"a high-level review of international processes"* and *"a broad comparison with the UK government and its devolved administrations"*). We invite the Inquiry to issue Rule 9 requests to both the WHO and CEPI to assist its understanding of UK preparedness.

7. CBFFJ and NI CBFFJ note that Rule 9 requests have been provided to a small number of individuals so far (see Annex A to CTI's Note under the heading "Individual Scientists"). Annex A also states that *"the Inquiry will be issuing R9s to certain key politicians, civil servants and administrators from the UK Government and the governments of the devolved nations. It is likely that the majority of these requests will be issued before the preliminary hearing."* We note with concern that these requests, which on any view are likely to be of significant importance to the issues under consideration in Module 1, remain under contemplation less than three months from the start date of the Module 1 hearings. CBFFJ and NI CBFFJ look forward to a comprehensive update on these individuals prior to the preliminary hearing on 14 February 2023 given the central importance of such requests to the efficacy of Module 1 and the viability of the current hearing dates.

Disclosure to Core Participants

8. CBFFJ and NI CBFFJ recognise the practical issues facing the Inquiry in providing disclosure to CPs (CTI Note, §§9-13). Nonetheless, we remain concerned by the slow pace

of disclosure to date, and the limited amount of material that has been provided (to date, we have received three tranches of disclosure and only three witness statements of consequence). The Inquiry has set a timetable for the commencement of the Module 1 hearings; disclosure to CPs must take place well before that commencement to ensure that CPs can effectively participate at all stages of this Inquiry, to allow for adequate time to prepare and to ensure that the hearings are both effective and allow for the meaningful participation of our client group. The current pace and extent of disclosure is not on course to ensure that those key requirements of effectiveness and participation are met. Voluminous disclosure on the eve of, or during the Module 1 hearings, is not a solution. We would therefore be grateful for an update on the date by which the Inquiry intends to have completed Module 1 disclosure.

9. CBFFJ and NI CBFFJ are also concerned by the Inquiry's broad provisional redaction of names, described in CTI's Note (§§14-15). While we agree that disclosure to CPs should be made swiftly, the Inquiry's approach reverses the responsibility on the Inquiry to adopt the most minimal redactions possible. That responsibility is rightly placed on the Inquiry because the Inquiry has access to the totality of the unredacted material and has the resources to review it and keep redactions to a minimum. The current proposal is likely to impede CP understanding and use of the material that is disclosed. Further, it is no solution for CPs to be tasked with informing the Inquiry if there are *"good grounds for believing that any document has had relevant content redacted"* (CTI Note, §15). That is the Inquiry's responsibility and CPs will face significant difficulties in identifying inappropriate redactions precisely because they do not have the access and resources that the Inquiry has.

10. The Inquiry's disclosure is being made via Relativity, a platform with significantly less functionality than others. What functionality it has is not currently being provided to us. As a result, our ability to review the material that is being disclosed, and prepare for the Module 1 hearings, is being hampered. This is a matter we have raised with the Inquiry team. We would be grateful if it would be re-visited.

<u>Parliamentary privilege</u>

11. CTI's Note sets out a series of propositions that will prevent or hinder the ability of the Inquiry and CPs to question statements made in Parliament and drawn from Parliamentary material (§§23-27). The implications of that approach in this Inquiry (across multiple of its Modules) are far-reaching and detrimental: such an approach risks compromising the efficacy of the Inquiry; hampering its ability to fulfil its ToR; and undermining the confidence of the bereaved, CPs and the wider public that the Inquiry will deliver truth and accountability. The stakes are therefore very high; this is an issue of the utmost importance.

12. In light of the above, the propositions advanced by CTI require careful consideration, submissions and legal argument. By way of example only, the classic statement of what Parliamentary privilege comprises is that of Cockburn CJ in *Ex p Wason* (1869) LR 4 QB 573, at 576 (endorsed by the Court of Appeal in *Warsama v FCO* [2020] QB 1076, §23):

> *It is clear that statements made by members of either House of Parliament in their places in the House, though they might be untrue to their knowledge, <u>could not be made the foundation of civil or criminal proceedings</u>, however injurious they might be to the interest of a third party.* (emphasis added)

13. The House of Lords in *Pepper v Hart* [1993] AC 593 observed that *"impeachment is limited to cases where a Member of Parliament is sought to be made liable, either in criminal or civil proceeding, for what he has said in Parliament, e.g., by criminal prosecution, by action for libel or by seeking to prove malice on the basis of such words"* and the 'questioning' limb of Article 9 *"cannot have effect so as to stifle the freedom of all to comment on what is said in Parliament"* (at 638). Their Lordships concluded that:

> *the plain meaning of article 9, viewed against the historical background in which it was enacted, was to ensure that Members of Parliament were not subjected to any penalty, civil or criminal for what they said and were able, contrary to the previous assertions of the Stuart monarchy, to discuss what they, as opposed to the monarch, chose to have discussed.* (emphasis added)

14. More recently, the Supreme Court in *R v Chaytor* [2011] 1 AC 684 has indicated that *"the principal matter to which article 9 is directed is freedom of speech and debate in the Houses of Parliament and in parliamentary committees"* and *"[i]ts effect where it applies is to prevent those injured by civil wrongdoing from obtaining redress and to prevent the prosecution of members for conduct which is criminal"* (§§47 and 61, per Lord Phillips PSC). Significantly, in *Warsama* the Court of Appeal (Lord Burnett of Maldon CJ, Coulson, Rose LJJ) indicated that the privilege protects against the risk of *"litigation"* (§64).

15. CTI's Note does not address how Parliamentary privilege, as defined by the courts[2], is said to have the far-reaching implications for which CTI contend given the following matters which appear to suggest otherwise:

    a. The express warning from the Supreme Court and the House of Lords that claims to the privilege should be treated with caution; see *Chaytor*, §101, per Lord Rodger of Earlsferry JSC, approved in *Warsama*, §59:

        > *An invocation of Parliamentary privilege is apt to dazzle lawyers and judges outside Parliament. In Wellesley v Duke of Beaufort (1831) 2 Russ & M 639, 660, Lord Brougham LC warned courts of justice against acceding to claims of privilege 'the instant they hear that once magical word pronounced' ...*

    b. The courts' ability and willingness to *"adapt"*, *"redraw the boundaries"* of the privilege where required and appropriate, and identify exceptions to the privilege so that statements in Parliament can be referred to in litigation (*Warsama*, §24[3]; *Project for the Registration of Children as British Citizens*, §90; *R (Heathrow Hub) v*

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[2] The definition of the privilege is a matter for the Courts rather than Parliament: see *R (Project for the Registration of Children as British Citizens) v SSHD* [2021] 1 WLR 3049, §89, and *Warsama*, §24, citing *R v Chaytor* [2011] 1 AC 684, §§14-15.

[3] *"24. It was common ground before us that it is for the court and not for Parliament to decide the scope of Parliamentary privilege. That proposition was confirmed by Lord Phillips of Worth Matravers PSC in R v Chaytor [2011] 1 AC 684, paras 14 and 15. However, the Supreme Court stated that in determining any such issue, a court should pay careful regard to the views of those who are in a position to speak with authority on the matter and that would include the Speaker of the House of Commons. The case law establishes not only that the courts are able to identify the current boundaries of Parliamentary privilege but that they are able to adapt the scope of privilege where appropriate as occurred when the House of Lords held in Pepper v Hart [1993] AC 593 that clear statements made in Parliament concerning the purpose of legislation in course of enactment may be used by the courts as a guide to the interpretation of ambiguous statutory provisions. The courts have also redrawn the boundaries of privilege to allow examination in judicial review proceedings of the reasons given by a minister in Parliament for a particular decision under challenge."*

Secretary of State for Transport [2020] 4 CMLR 17, §158).

c. The recent emphasis in the Supreme Court that *"[t]here are good reasons of policy for giving article 9 a narrow ambit that restricts it to the important purpose for which it was enacted – freedom for Parliament to conduct its legislative and deliberative business without interference from the Crown or the Crown's judges."* (*Chaytor*, §61). That narrow approach is important precisely because the privilege is absolute and incapable of waiver (*Chaytor*, §61), as CTI observe in their Note (§23).

d. This Inquiry is prohibited from ruling on or determining any person's civil or criminal liability (s.2(1) of the 2005 Act). Its process therefore falls outside the definition of the privilege in *Wason*, *Pepper v Hart*, *Chaytor* and *Warsama* because it does not involve civil or criminal proceedings and is not litigation. Put another way (applying the language of the House of Lords in *Pepper v Hart*): Article 9 exists to ensure that MPs are not subject to any penalty, civil or criminal, for what they say in Parliament. Considering Parliamentary statements and material in this Inquiry cannot result in MPs being subject to any penalty. Therefore the privilege does not have the effect for which CTI contend.

e. It is far from clear that questioning statements made in Parliament and in Parliamentary material in this Inquiry would have any adverse impact on *"the principal matter to which article 9 is directed"*, namely *"freedom of speech and debate in the Houses of Parliament and in parliamentary committees"*. Given that after questioning in this Inquiry, the Chair is prohibited from determining civil or criminal liability (those being the focus of the protections afforded by the privilege: see *Wason*, *Pepper v Hart*, *Chaytor* and *Warsama* above), it is not at all clear how such questioning would adversely impact on free speech and debate within Parliament, nor hinder the effectiveness of Parliament (see the analysis applied by the Court of Appeal in *Warsama*, §§47 and 63).

f. We are not aware of any decided case which supports the broad reach and impact of the privilege in a 2005 Act statutory inquiry for which CTI contend. No such case is cited in CTI's Note.

g. The requirement, pursuant to s.3 HRA 1998, to interpret the privilege so far as possible, in a manner which conforms to the ECHR (*Warsama*, §26[4]), including the procedural duties under Articles 2 and 3 (read with Article 14) which require the Inquiry to be effective.

h. CTI's proposed approach to parliamentary privilege would represent a significant departure from practice in previous inquiries, including, notably, the Chilcot Inquiry which expressly examined speeches given to Parliament by the then Prime Minister.

16. Given the matters above, the reach and effect of the privilege is very much a live issue in this Inquiry. It therefore requires careful consideration and determination. That is not possible on the current timetable for written submissions and given the breadth of other issues to be addressed orally at the 14 February preliminary hearing. CBFFJ and NI CBFFJ therefore invite the Chair to set a timetable for skeleton arguments and legal argument on this vital issue. CTI and any CP that wishes to make submissions on the

[4] *"The Bill of Rights 1688, like any other enactment, must be interpreted, so far as possible, in a manner which conforms to the ECHR (section 3 of the HRA)"*.

effect and ambit of the privilege in this Inquiry should be asked to provide their arguments, to be answered by CPs who disagree, sequentially.

Instruction of expert witnesses

17. We note the areas on which expert evidence has so far been sought (CTI Note, §§31-33 and Annexes B-E). In respect of race and inequality, we note the Inquiry's commitment to investigating inequality as set out in the ToR. The Inquiry is to:

> consider any disparities evident in the impact of the pandemic on different categories of people, including, but not limited to, those relating to protected characteristics under the Equality Act 2010 and equality categories under the Northern Ireland Act 1998.

18. Accordingly, we welcome the Inquiry's instruction of Professors Sir Michael Marmot and Claire Bambra who have been instructed to provide reports for Module 1 on the existence of health inequalities prior to the pandemic in public health structures in the UK and planning for a pandemic. We note, however that neither Professors have expertise in structural discrimination and structural racism and so their investigation and reports on health inequalities will be devoid of such analysis. We consider such omission to fall short of the Inquiry's stated objective (above) and invite the Inquiry to include the investigation of structural racism and discrimination in Module 1.

19. It is well documented that racism operates at multiple levels ranging from the individual to structural. Structural racism is defined as *"the macrolevel systems, social forces, institutions, ideologies and processes that interact with one another to generate and reinforce inequities among racial and ethnic groups"*.[5]

20. The link between structural racism and racial and ethnic inequalities has been long recognised and continues to confront us in our daily lives. As Charmichael and Hamilton wrote in their seminal work in 1967: *"it is institutional racism that keeps black people locked in dilapidated slum tenaments, subject to daily prey of exploitative landlord, merchants, loan sharks and discriminatory real estate agents"*[6]. Charmichael could well have been referring to the UK in the 21st century. Recent research showed that one in three black people who have experienced homelessness have also faced racial discrimination from a landlord.[7]

21. The Inquest into the death of Awaab Ishak, who died of black mould in a rented flat where he lived with his parents, led to an admission by the Housing Secretary that the family had been victims of prejudice and warned of significant problems with people from black and minority ethnic groups not being treated as they should be, with respect.[8] Awaab's death was avoidable and sadly illustrates the interconnection between race, housing and health inequity.

[5] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4306458/pdf/nihms645189.pdf
[6] Kwame Ture and Charles Hamilton, Black Power: The Politics of Liberation in America page 20
[7] https://www.theguardian.com/society/2022/nov/21/racial-inequality-hard-wired-housing-system-england-study
[8] https://www.theguardian.com/society/2022/nov/21/racial-inequality-hard-wired-housing-system-england-study

22. As well as housing, the UK's immigration policies[9], access to health[10] and criminal justice system[11] are all blighted by complaints of structural racism. These are all inequalities which were well documented and known prior to the pandemic. That begs the question, were they acted upon? If not, why not? To what extent was the planning and preparation for the pandemic affected by structural racism and discrimination? How do we address this? Given the well documented disproportionate impact of the pandemic on black and brown people across the UK[12] these are questions that can only be appropriately and adequately addressed by an expert in structural racism.

23. At present we are not in a position to make detailed submissions on the scope of the remaining areas of expert evidence. We will address any issues of scope that do arise as soon as possible.

24. To this end, we repeat our request that expert Letters of Instruction (LoIs) are disclosed to CPs now, as a matter of urgency. The Chair has previously ruled that LoIs will be provided to CPs before the expert reports are finalised.[13] Currently it appears that at least three of the four expert reports to be obtained by the Inquiry will be provided to CPs after the Inquiry has circulated its provisional witness list in the week of 6 March 2023.[14] Given that CPs will be given only a short period in which to provide observations on the provisional list (CTI Note, §44), and may only have a short period in which to request that specific issues be clarified or expanded upon by the experts (CTI Note, §32), it is important that the LoIs are disclosed now. That will enable CPs to consider not only whether all the right issues have been addressed to the instructed experts but also whether there is a need for further expert assistance. Having the LoIs now will also allow CPs to prepare for the provision of comments to the Inquiry, and do so in a way that is most effective and constructive to the Inquiry. We can see no reason for withholding the LoIs at this stage; they have all been finalised by the Inquiry and the Chair has previously stated that they will be disclosed to CPs.

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[9] https://www.theguardian.com/commentisfree/2022/may/30/britain-immigration-system-racist-laws
The truth is out: Britain's immigration system is racist, and always has been. Now let's fix it.

[10] https://blogs.bmj.com/bmj/2020/03/05/women-from-ethnic-minorities-face-endemic-structural-racism-when-seeking-and-accessing-healthcare/ "Black women are five times more likely to die during childbirth, and Asian women are twice as likely to die during childbirth compared with white women in the UK. These are the findings of the "*Mothers and Babies: Reducing Risk through Audits and Confidential Enquiries across the UK"* reports (MBRRACE) in 2018 and 2019

[11] https://news.un.org/en/story/2023/01/1132912
Racism in the United Kingdom is "structural, institutional and systemic", independent UN human rights experts said on Friday, warning that people of African descent in the country continue to encounter discrimination and erosion of their fundamental rights.
"We have **serious concerns about impunity and the failure to address racial disparities in the criminal justice system**, deaths in police custody, 'joint enterprise' convictions, and the dehumanising nature", of the so-called 'stop and search' policing strategy, the UN Working Group of Experts on People of African Descent said in a statement at the end of an official visit to the UK.

[12] https://blogs.bmj.com/bmjgh/2020/08/25/the-disproportionate-impact-of-covid-19-on-bame-communities-in-the-uk-an-urgent-research-priority/
https://www.theguardian.com/world/2020/apr/07/bame-groups-hit-harder-covid-19-than-white-people-uk
https://arc-w.nihr.ac.uk/Wordpress/wp-content/uploads/2020/05/COVID-19-Partner-report-BAME-communities-BCC001.pdf

[13] Ruling following Module 1 preliminary hearing on 4 October 2022, 17 October 2022, §22.

[14] The reports from Professor Jimmy Whitworth and Dr Charlotte Hammer, Prof Sir Michael Marmot and Professor Claire Bambra, and Bruce Mann and Professor David Alexander are all due to be provided in draft, to the Inquiry, in early March 2023.

Evidence proposal procedure and Rule 10

25. CBFFJ and NI CBFFJ recognise the need for the Module 1 hearings to be conducted efficiently (CTI Note, §35). However, we have real concerns that the Inquiry has set an unrealistic and unachievable timetable for Module 1 and is now relying on that as a basis to prevent the bereaved and other CPs questioning witnesses. Given that the hearing dates were set prior to the receipt of any witness statements or list of witnesses, the timetable can only be arbitrary. This is an issue that has been raised on behalf of CBFFJ from the outset. Preparedness issues constituted approximately half of the draft ToR we submitted to the Inquiry consultation. It is submitted that the 14 hearing days currently timetabled to deal with the whole of the Module 1 issues is completely inadequate.

26. With respect to the Rule 10 issue raised by CTI, we make four submissions. First, CTI's reasoning is circular: *"Module 1 has a very significant amount of ground to cover during its hearing, and a relatively limited amount of time within which to do so"*, therefore *"it is important that the hearing is conducted as ... swiftly as possible"* (CTI Note, §35). The Inquiry has prescribed the very limited time that is available; there is limited time for that reason, and the Inquiry is empowered to permit more time to this important exercise.

27. Second, CTI state that there is a presumption *"envisaged by Rule 10(1) ... namely that only Counsel to the Inquiry may conduct the questioning of the witnesses"* (CTI Note, §36). There is no such presumption; Rule 10(1) is expressly subject to Rule 10(4), which includes a broad discretion permitting the Chair to allow CPs' RLRs to ask questions of witnesses. If there is any presumption, it is that all relevant questions are to be asked.

28. Third, CTI's Note appears to indicate that CPs will not be permitted to ask questions under Rule 10(4).[15] That risks pre-determining and fettering a statutory discretion and thus applying an unlawful approach.

29. Fourth, CTI's Note does not consider the multiple advantages – to the Inquiry and to CPs – of allowing CPs to ask questions. Such questioning has repeatedly been shown, in other inquiries, to have forensic benefits; CPs can ask questions that CTI have not identified, drawing from the CP's perspective that CTI do not have. Facilitating CP questioning ensures the effective participation of the bereaved and others. That is central to their confidence in the Inquiry, catharsis and some form of resolution. That in turn engenders wider public confidence in the Inquiry. Permitting CP questioning will also ensure a greater diversity of questioners. That is both important and beneficial in this Inquiry. There appears to have been no consideration of these benefits and how they will be considered within the Rule 10(4) discretion.

Witnesses and hearing timetable

Witnesses

30. The Inquiry is proposing to provide a provisional witness list in the week commencing 6 March 2023, that list is subject to change following observations from CPs, and CPs are then expected to provide responses to the first round of evidence proposals by 10 April 2023 (CTI Note, §39-40). This is all against a context of very limited, piecemeal disclosure.

[15] At §36, CTI suggest that the evidence proposal process, and applications under Rule 10(4), *"will ensure that Core Participants have a meaningful opportunity to engage in the process by which areas for the questioning of witnesses are identified."* (emphasis added). But Rule 10(4) is a process by which CPs can apply to ask questions, not merely engage in identifying areas of questioning which CTI will pursue.

31. While our families are eager for the Inquiry to maintain momentum and make progress, we are concerned that this timetable is unrealistic, will compromise the rigour of the Inquiry, and will hamper the participation of the bereaved. As we have previously, we urge the Inquiry to reflect and think again.

32. In advance of the provisional witness list, we note that we have liaised with the TUC and believe that it is imperative that a TUC witness is called to address structural issues in preparedness, including the relevance and impact of austerity.

33. Furthermore, we note that the Inquiry has indicated that it intends to call family members to give evidence in Modules where relevant to particular issues. We note that there has been no indication of how family witnesses are to be identified for Module 1. It should not be assumed that family members cannot assist the Inquiry on issues of State preparedness; on the contrary, the direct experience of many in our client group is likely to be of central relevance. We urge that this is addressed urgently by the Inquiry. We remain anxious to assist.

Hearing timetable

34. The Inquiry is intending to commence the Module 1 hearings on 2 May 2023, in less than three months' time. Given the extent of matters outstanding – including the vast majority of Module 1 disclosure, expert reports, identification of witnesses, the role of commemorations within Module 1 – there should be further preliminary hearings prior to 2 May. We invite the Chair to direct further in-person hearings in the week of 20 March 2023 and in the second half of April 2023.

35. The Inquiry is intending to complete the Module 1 hearings in a matter of 14 hearing days. While the Inquiry must of course take a proportionate approach, and set a timescale, we remain concerned that the timetable for Module 1 is too short and will compromise the rigour and thoroughness of this vital Module. Preparedness is not only hugely important to establishing what happened and what went wrong, but to making findings and recommendations that will ensure, so far as possible, that future pandemics are prevented or their harm mitigated. We urge the Inquiry to reflect on the shortness of the current timetable so that speed is not prioritised over the Inquiry's ToR and the opportunity for future prevention.

Module 1 direction

36. We have raised previously that there is an absence of clarity about where Module 1 is heading. Regrettably, that remains the case. We understand that the Inquiry is seeking to move at pace, but the Inquiry has provided CPs with no list of issues (just a general provisional scope document), very limited disclosure, only three witness statements, no Rule 9 requests, no expert reports, no expert LoIs, and no witness list. With less than three months until the Module 1 hearings commence, it remains all but impossible to understand the structure, content and clear scope of Module 1. We would invite the Inquiry to reflect on this observation which is intended to focus minds on solutions.

<u>Opening and Closing Statements</u>

37. CTI are intending to make an opening statement at the commencement of the public hearing (CTI Note, §47). We request sight of CTI's written opening statement well in advance of the hearings so we can optimise the assistance we can provide.

The Listening Exercise - Every Story Matters

38. We note the contents of the update note at Annex F. Regrettably, the substantial numbers of bereaved families that we represent remain thoroughly confused about what the Inquiry envisages and how it is intended to work for them. Rather than ad hoc update notes and annex documents – describing feedback exercises, Inquiry suppliers and delivery contracts – we invite the Inquiry to provide a definitive, transparent document setting out the process, in detail, including who is involved, how it will operate, and when. The families also need transparency on conflicts of interest in respect of those appointed/being considered for the delivery of the Listening Exercise (including the criteria the Inquiry is applying to such conflicts, if any), and how such conflicts are being considered. Consideration of conflicts of interest should also include perception of such conflicts, given the trauma involved in bereaved family members assisting this process. Without transparency on process and conflicts, real or perceived, our families will not understand the Inquiry's proposal nor will they be able to make an informed choice on whether they intend to participate.

Commemoration

39. Our families remain ready and willing to assist with appropriate arrangements for commemorations. That has been the case since the establishment of the Inquiry and we have sought to provide constructive submissions on this issue on a number of previous occasions. The update note states that the Inquiry is *"developing video content to be played at the start of the first Module 1 public hearing in May"* and that the Inquiry *"has already requested assistance from the Bereaved Families for Justice groups."* (Annex F, §§4.5 and 4.7). CBBFJ participated in a workshop on commemoration in November 2022 but apart from this we have not been asked for assistance and are confused by the suggestion that we have been. As we have said before, we are willing to assist. We request a written explanation of what assistance the Inquiry is seeking so that the families can consider it properly.

8 February 2023

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