



RULING FOLLOWING THE SECOND MODULE 1 PRELIMINARY HEARING

ON 14 FEBRUARY 2023

Background

1. On 14 February 2023 I held the second Preliminary Hearing in relation to Module 1.
2. Eight of the twenty-eight designated Core Participants filed written submissions (one was a joint note) and oral submissions were made on behalf of five of the Core Participants. In this ruling I set out my decisions on those issues that require determination.

Timetable

3. A great deal of work has been done since the last Preliminary Hearing on 4 October, and much progress has been made. A very significant number of Rule 9 requests have been made (160 in total as at the date of the second Preliminary Hearing) and, in relation to Module 1 alone, the Inquiry has already received many thousands of documents. I am very grateful to the Inquiry team for their industry and to the Rule 9 recipients, including many of the groups of bereaved families and others who suffered hardship, for the manner in which they have responded.
4. An important part of the Inquiry is the disclosure process by which the documents that are received are individually assessed for relevance, then redacted so as to remove irrelevant and sensitive information and irrelevant personal data relating to government officials who did not play any meaningful role in the decision-making process. The documents are then sent back to the documents provider for its comments. Only once this disclosure process is complete can a document be provided to the Core Participants.
5. As Mr Keith KC submitted, and as I observed in the course of the hearing, the Core Participants play a vital role in this Inquiry and its forensic process. One of the major ways in which they participate is by scrutinising the disclosed relevant documentation for themselves and suggesting lines of inquiry and topics for the questioning of witnesses who give evidence at the public hearings. In this way, amongst others, the Core Participants participate meaningfully in the Inquiry.
6. I set a challenging timetable for Module 1 and its public hearing. However it is now clear that the rate at which documents are progressing through the disclosure

process will not allow the current timetable to be met. I do not need, for current purposes, to address the reasons why the disclosure process is not running at a faster rate but can assure the Core Participants and the public that everything is being done, that can be done, to speed up the process. However, the delay means that I have real concerns about the ability of all parties properly to prepare for hearings starting in May 2023.

7. I have therefore concluded that the Module 1 public hearing will not commence in the first week of May 2023, as was originally envisaged, but will start on **Tuesday 13 June 2023**.
8. The inevitable result of putting back the start date for Module 1 to June is that the public hearing in Module 2 cannot now be heard in June and July. This will allow for a longer hearing period for Module 1 and more time to prepare for Module 2. Given the importance of these two Modules to the Inquiry's aims, I am satisfied this is the appropriate way forward. Accordingly, the public hearing in Module 1 will provisionally take place between **13 June and 21 July**.
9. I also direct that there be a further Preliminary Hearing in Module 1 in late April 2023, provisionally on **25 April**.

Scope

10. I am grateful for the helpful further submissions relating to the scope of Module 1 and the various suggestions concerning the particular issues that the Core Participants invite the Inquiry to consider. The Inquiry team already intends many of those issues to be addressed in Module 1 and they are reflected in the Rule 9 requests that have been sent out. As for the remainder, these will all be further considered by me and the Inquiry team.
11. There is much merit in the submission that the Inquiry team provide the Core Participants with a List of Issues and I direct that this be provided by 8 March 2023.

Rule 9 Requests

12. In their written and oral submissions, some of the Core Participants reiterated their earlier requests for the Rule 9 requests made by the Inquiry to be disclosed to them.
13. In my ruling of 17 October 2023, I ruled, for the reasons I set out, that the Rule 9 requests would not be disclosed. However, I did direct that, to ensure the Core Participants are kept properly informed, the Inquiry provides monthly updates to Core Participants on the progress of Rule 9 work.
14. Such updates have, in general terms, included details of what requests have been made, whether documents have been received, when further documents are

expected and when further Rule 9 requests will be made. These have therefore provided considerable information concerning the formulation and issue of the Rule 9 requests. In addition, the Core Participants have of course started to receive the actual disclosed documents that are the product of the Rule 9 requests. In these circumstances, although I understand the request, I see no reason to revisit my earlier ruling.

Parliamentary Privilege

15. Out of an abundance of caution, Counsel to the Inquiry raised the issue of Parliamentary Privilege in his Note for the hearing so that the Core Participants could understand the general approach that the Inquiry is taking in relation to it. He set out how the Inquiry team is approaching the obtaining of documents and witness statements so that Parliamentary Privilege, if it applies, is not infringed.
16. Having said that, an important point of principle does in theory arise, namely whether Parliamentary privilege, as provided for by Art IX of the Bill of Rights 1689, attaches to Statutory Inquiries under the Inquiries Act 2005, in which witnesses are examined under oath. I am grateful for the various introductory submissions that have been advanced. Mr Keith KC maintains that Parliamentary privilege does apply to this Inquiry and that the Inquiry cannot introduce statements made in or to the Houses of Parliament or evidence given to select committees, or allow witnesses to introduce such material, either on their own account or to gainsay or support other evidence given before me. Two of the Core Participants disagree.
17. However, this is unlikely to present a problem because, as Mr Keith submits, and as the CTI note sets out in detail, the Inquiry team has sought simply to replicate such statements or materials by way of formulating its own Rule 9 requests in full knowledge of what it knows the witnesses to have already said or provided to Parliament. It has also sought, afresh, such relevant documents as have already been provided to Select Committees and to the NAO.
18. As for the opinions and reports from the Select Committees themselves, which are ordinarily covered by Parliamentary privilege, these are unlikely to have much utility given that it is for this Inquiry to examine the evidence and to reach its own conclusions.
19. I do not therefore propose to rule on whether, in principle, Parliamentary privilege applies to this Inquiry, although I will of course keep this issue under review as the process of collating and assembling the evidence continues.

Rule 10

20. The CTI Note addresses the mechanics of the process by which the Core Participants will be able to provide their observations on the witness evidence proposals drawn up by the Inquiry team in advance of the public hearing.
21. Ms Mitchell KC for Scottish Covid Bereaved and Mr Williams KC for Covid 19 Bereaved Families for Justice (Cymru) invited the Inquiry team to consider instituting an additional process outwith the provisions of Rule 10. They propose that the Core Participants may be permitted to meet Counsel to the Inquiry, following the submission of their observations, so as to be better able to explain the rationale underpinning those observations.
22. In effect, they suggest an informal route by which they can seek to persuade the Inquiry team that there are areas or issues that are of such centrality that they must be raised in the course of the witnesses' evidence.
23. This is a sensible proposal and I will ask the Inquiry team to give thought as to the mechanics of how this will work.
24. To avoid any misunderstanding, I must also make clear that the Core Participants will of course have the right, under Rule 10(4), to seek permission from me to question witnesses themselves.

The Listening Exercise

25. Finally, I should mention the concern expressed by Mr Weatherby KC that some of the bereaved family members whom he represents feel that they have not received sufficient information on the details of the listening exercise ("Every Story Matters"). It has always been my intention to provide as much information as possible at every stage of the development of the exercise and I note that not all bereaved family groups have expressed a similar concern. Nonetheless, I have directed the Inquiry team to consider if there are any ways in which we could improve our communication with them.

The Right Honourable Baroness Hallett

Chair of the Covid-19 UK Inquiry

17 February 2023