

# UK COVID-19 INQUIRY

## SUBMISSIONS FOR THE PRELIMINARY HEARING IN MODULE 3 OF THE UK COVID-19 INQUIRY ON 28 FEBRUARY 2023

ON BEHALF OF  
NHS NATIONAL SERVICES SCOTLAND (“NHS NSS”)

### Introduction

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1. NHS NSS makes the following submissions in relation to duplication with the Scottish Covid-19 Inquiry.

### Duplication with the Scottish Covid-19 Inquiry

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2. NHS NSS previously made written submissions in advance of the first and second Preliminary Hearings in Module 1 and in advance of the Preliminary Hearing in Module 2A in relation to the need to minimise duplication with the Scottish Covid-19 Inquiry. NHS NSS continues to be concerned about this issue.
3. The UK Covid-19 Inquiry’s terms of reference state, *inter alia*:

“In carrying out its work, the Inquiry will consider reserved and devolved matters across the United Kingdom, as necessary, but will seek to minimise duplication of investigation, evidence gathering and reporting with any other public inquiry established by the devolved governments. To achieve this, the Inquiry will set out publicly how it intends to minimise duplication, and will liaise with any such inquiry before it investigates any matter which is also within that inquiry’s scope.”  
(emphasis added)

4. Since the first Preliminary Hearing in Module 1 which took place on 4 October 2022, NHS NSS has been aware that a draft Memorandum of Understanding is being negotiated between the respective Inquiry teams. At the second Preliminary Hearing in Module 1 on

14 February 2023, the Chair advised that she is to meet with the Chair of the Scottish Covid-19 Inquiry during the week commencing 20 February 2023 and that it is hoped that the Memorandum of Understanding will be published shortly. At that Preliminary Hearing, Counsel to the Inquiry (“CTI”) confirmed that both Inquiries are committed to minimising duplication between the Inquiries in investigation, evidence gathering and reporting. He referred to the draft Memorandum of Understanding which will set out a framework for how the Inquiries will work together. He gave examples of matters of investigation and evidence gathering which would be dealt with by this framework but he did not mention the matter of reporting which is, of course, an important aspect of potential duplication.

5. NHS NSS also understands that recently arrangements were made for an early meeting to take place between the teams of the UK Covid-19 Inquiry and the Scottish Covid-19 Inquiry in order to agree on a plan as to how the two Inquiries will seek to implement the requirement to minimise duplication. NHS NSS understands that the plan may include a proposal to have a joint contact to discuss information planning between the respective Inquires (thus far, each Inquiry has access to a shared platform which allows one Inquiry to see what requests are being made by the other).
6. These developments are welcomed by NHS NSS as the matter of duplication remains of most concern to NHS NSS in the Inquiry as a whole. It remains the case, however, that nothing has been published yet. In the Note prepared by CTI in advance of the Preliminary Hearing for Module 3 on 28 February 2023, there is a reference at paragraph 19 to the obligation under section 27 of the Inquiries Act 2005 to consider both reserved and devolved matters. At that paragraph, CTI also states the following:

“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 which has been established to look at matters devolved to the Scottish government.”

Otherwise, no information is provided in CTI’s Note as to how the Inquiry intends to fulfil its obligations under its terms of reference in relation to the Scottish Covid-19 Inquiry.

7. Whilst early publication of the Memorandum of Understanding would be welcomed, NHS NSS also repeats the point it has previously made, namely that it is not clear that the publishing of a Memorandum of Understanding between the Inquiries alone will fulfil the obligation to minimise duplication under the terms of reference.
8. NHS NSS also repeats the point previously made that it has already been obliged to respond to a Module 1 Rule 9 Request without any clear indication of what practical steps are being put in place to minimise duplication, both between the two Inquiries and also within the different Modules of the UK Covid-19 Inquiry.

### **Concluding comments**

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9. Although it is reassuring to be informed that further discussions are to take place in relation to the issue of duplication, NHS NSS is still left in an uncertain position which is of some concern, given the progress being made with different Modules.
10. NHS NSS fully intends to assist both Inquiries as much as possible to allow the Inquiries to consider the best evidence available. The NHS in Scotland (as with the other parts of the UK) is still dealing with severe winter pressures. The individuals within NHS NSS who require to be consulted in order to finalise responses to the Inquiries are often the key members of staff working to address the whole-system pressures. The same staff are often already assisting with responses to other requests from both Inquiries. Insofar as possible, NHS NSS invites the Chair to bear these matters in mind when considering how best to address the issue of duplication.
11. NHS NSS appreciates that the issue of duplication is not a straightforward matter. However, the terms of reference seem unambiguous in their requirements.

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16 February 2023