

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 2 preliminary hearing on 1 March 2023**

1. These submissions are provided on behalf of CBFFJ and NI CBFFJ in advance of the second Module 2 preliminary hearing on 1 March 2023. CBFFJ was established to campaign for this Public Inquiry: the families are committed to making it work. As with previous written and oral submissions, our requests for a change of approach from the Inquiry are intended to assist the Inquiry's important work and the delivery of truth, justice, and accountability, which our families seek.
2. 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 §§3-11 these written submissions follow the order of the issues set out in §2 of CTI's (Re-issued) Note, dated 17 February 2023. So as to avoid unnecessary repetition, we expressly refer to and rely on matters raised in our previous written and oral submissions in Module 2, as well as those in Modules 1 and 3.

Introductory observations on Module 2 scope

3. The Covid-19 pandemic revealed that public institutions and some households in the UK were in a vulnerable and weak financial position to mitigate the immediate and devastating consequences of the pandemic. Public institutions did not have the necessary resources to support their communities and low income groups were disproportionately affected by the economic contraction of 2020 to 2021.
4. By the start of the pandemic, both UK society and the UK economy had been subject to 10 years of austerity which were characterised by disinvestment, decentralisation, de-collectivisation, and disintegration of the public realm¹. Module 2 will investigate, and make recommendations upon, the UK's core political and administrative decision-making in relation to the Covid-19 pandemic between early January 2020 until February 2022. Given

¹ Austerity in the United Kingdom and its legacy: Lessons from the Covid-19 pandemic, Tania Arrieta The Economic and Labour Relations Review Volume 33, Issue 2 June 2022 pages 238 - 255 Accessed from <https://journals.sagepub.com/doi/epub/10.1177/10353046221083051>

the depleted climate that a decade of austerity had created, we invite the Inquiry to examine the role and impact of austerity on political and governmental decision-making, and the outcomes of such decision-making, particularly on vulnerable and at-risk groups.

5. Module 2 scope also includes examination of:

“.... government’s initial strategies relating to community testing, the movement from contain to “delay” and guidance and advice to health and social care providers...decision-making relating to the imposition of UK-wide and, later, England-wide NPIs ...the timeliness and reasonableness of such NPIs....the identification of at risk and other vulnerable groups and the assessment of the likely impact of the contemplated NPIs on such groups in light of existing equalities.”

6. Structural discrimination and racism are a central, and crucial, example of such inequalities. It is well known that the outcomes and mortality rate for black and brown people during the pandemic were disproportionately higher than other racial groups.² We repeat our submissions made in Module 1. The link between structural racism and racial and ethnic inequalities has been long recognised and continues to confront us in our daily lives; housing, UK’s immigration policies, health access and the criminal justice system.³ We therefore invite the Inquiry to include structural racism and discrimination in its examination of Module 2 issues, including through the calling of witnesses from the bereaved and other groups whose experiences of Covid-19 were exacerbated by structural discrimination and racism, as well as by obtaining relevant expert evidence on structural discrimination and racism, see further below on expert evidence at §§24-25.

7. In addition, while our submissions below are advanced on a joint basis between CBFFJ and NI CBFFJ, we make the following overarching observations on behalf of NI CBFFJ.

8. NI CBFFJ welcome that the following experts have been asked to report on the following issues touching on central government’s relationship with the devolved governments:

- a. Prof Henderson on political structures for devolution within the UK and mechanisms for inter-governmental decision-making between the UK Government and the devolved administrations during the Covid-19 pandemic.

²<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/updatingethnicontrastsindeathsinvolvingthecoronaviruscovid19englandandwales/24january2020to31march2021>

During the first wave of the coronavirus (COVID-19) pandemic (24 January 2020 to 11 September 2020), people from all ethnic minority groups (except for women in the Chinese or "White Other" ethnic groups) had higher rates of death involving the coronavirus compared with the White British population.

The rate of death involving COVID-19 was highest for the Black African group (3.7 times greater than for the White British group for males, and 2.6 greater for females), followed by the Bangladeshi (3.0 for males, 1.9 for females), Black Caribbean (2.7 for males, 1.8 for females) and Pakistani (2.2 for males, 2.0 for females) ethnic groups.

In the second wave of the pandemic (from 12 September 2020 onwards), the differences in COVID-19 mortality compared with the White British population increased for people of Bangladeshi and Pakistani ethnic backgrounds; the Bangladeshi group had the highest rates, 5.0 and 4.1 times greater than for White British males and females respectively.

³ 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, dated 8 February 2023, §§19-22.

- b. Prof Hale on analysing the effectiveness of the decision-making of the UK and each devolved administration to the Covid-19 pandemic in comparison to other countries.
 - c. Mr Freeguard on the access to and use of data by the UK Government and devolved administrations during the Covid-19 pandemics.
9. NI CBFFJ hope to be given the opportunity to make further comments on the scope of the experts' report once draft witness statements and/or reports are ready.
10. As the Inquiry is aware, the island of Ireland is a single epidemiological entity with a cross-border public body, the Institute of Public Health, being responsible for the public health on the entire island. There is also of course free movement of people across the island and there are many cross-border and intergovernmental bodies and political institutions set up under Strands 2 and 3 of the Good Friday Agreement (for example, the North South Ministerial Council, North/South Inter-Parliamentary Association, North/South Consultative Forum, the British-Irish Intergovernmental Conference, the British-Irish Council and the British-Irish Interparliamentary Body).
11. For these reasons, the Inquiry will have to consider and assess the UK central government's interaction and co-operation with the Government of Ireland and the cross-border and intergovernmental bodies and institutions. However, these important political structures set up under the Good Friday Agreement that could have had a bearing on the response to the pandemic in Northern Ireland do not appear in the proposed scope of CTI note. It is our submission that they absolutely require to be examined so that the Inquiry can understand the complex system of intergovernmental, co-sovereignty structures that pertain in Northern Ireland. It is respectfully submitted that an expert on political institutions in Northern Ireland be appointed to assist the Inquiry in this respect.

Start date for the oral hearings

12. CBFFJ and NI CBFFJ welcome the commencement date for the Module 2 hearings. However, we are concerned that the Inquiry intends to allocate just over a month (31 days) of actual hearing days to the evidence in Module 2.
13. This Module, which will examine the UK's core political and administrative decision in relation to the Covid-19 pandemic between January 2020 and February 2022 is of great importance to our families. Module 2 goes to the heart of the UK government's decision-making during the first and second waves of the pandemic, during which a significant number of the CBFFJ and NI CBFFJ families' loved ones died. The same will of course be true of the wider public; tens and tens of thousands of lives were lost during these waves of the pandemic. Module 2 is therefore of the greatest importance to the wider public.
14. Whilst, as we have stated in previous submissions, the Inquiry must of course take a proportionate approach, and set a timescale, given the number of witnesses from whom the

Inquiry has already requested witness statements⁴, and the number of organisations⁵ from which Rule 9 requests have been made, we are concerned that the proposed timetable for Module 2 is too short and will compromise its rigour, thoroughness and effectiveness. We therefore urge the Inquiry to reflect on the length of the current timetable so that speed is not prioritised over the Inquiry's ToR, the requisite rigour of its investigation and our families' meaningful and effective participation.

Update on Rule 9 requests

15. We note the Inquiry's update on the Rule 9 requests that have been issued, and welcome in particular the decision to issue Rule 9 requests to organisations and bodies representing at-risk and vulnerable groups. We remain concerned, however, that in the absence of disclosure of the Rule 9 requests themselves we are unable to assist the Inquiry with relevant lines of investigation to be pursued.
16. For example, STI has indicated in *Annex A - Update on Module 2 Rule 9 Requests for Evidence* that the No.10 witnesses, including the former Advisor to the Prime Minister, Dominic Cummings, have been asked to "disclose to the Inquiry the following categories of material: *key emails* and other correspondence in relation to the issues addressed in their witness statements;...". We are concerned that this approach allows the test of relevance in identifying material that should be disclosed to the Inquiry to be determined by the witness, not the Inquiry. That is a matter of very serious concern; vital material may be missed. Whilst we appreciate that this may not ultimately be case in the light of the content of the Rule 9 requests themselves, in the absence of their disclosure, we simply do not know.
17. We therefore renew our request for disclosure of the Rule 9 requests and rely on the reasoning set out in our previous written and oral submissions.⁶
18. We welcome the issue of Rule 9 requests to organisations and bodies representing at-risk or vulnerable groups and make the following requests and observations:
 - a. Of the over 75 Rule 9 requests issued to cover matters across Modules 2 and 2A-C, how many of those requests have been issued to organisations and bodies for matters to be covered in Module 2?
 - b. Have witness statements been requested in Rule 9 requests? If so, we request that CPs be updated with a list of witnesses from whom witness statements have been requested. This will assist our ability to identify additional witnesses who can meaningfully assist the Inquiry's work and also allow us to make informed and constructive representations on witnesses to be called during the oral hearings, including in response to CTI's

⁴ 9 from regional mayors, 10 from government ministers, 18 from the cabinet office/No10, 9 from SAGE and we note that a request for witness statement from the current prime minister is imminent.

⁵ Rule 9 requests have been issued to 12 organisations and bodies representing 12 at risk and vulnerable groups.

⁶ For example, in Module 1, see our written submissions for the preliminary hearing on 14 February 2023, §5, and the preliminary hearing on 4 October 2022, §§19-20. In Module 2, see our written submissions for the preliminary hearing on 31 October 2022, §§11-17.

proposed witness list.

- c. We would be grateful for a list of organisations and bodies to which Rule 9 requests have been issued. This will assist our identification of additional organisations and individuals who are best placed to assist the Inquiry's work.
- d. Do the Rule 9 requests address the issue of structural discrimination and racism and their role in the UK government's response to the Covid-19 pandemic? Structural discrimination and racism are a great significance to our families, and we have also raised it in our submissions on expert evidence §23-25 below.
- e. We note that groups/organisations representing people in custodial settings/places of detention have not been included in the bulleted list. Given the known impact of NPIs on inmates and staff in prisons and places of detention, particularly during the first lockdown between March and July 2020, we ask that they be included.

Disclosure to Core Participants

- 19. CBFFJ and NI CBFFJ are mindful of the significant work being undertaken by the Inquiry team and welcome the indicated timelines for disclosure set out in CTI's note. However, the Inquiry's approach to redaction (CTI's Note, §§ 14-16) remains of concern and we rely on the written and oral submissions we made for the recent Module 1 preliminary hearing in this regard.⁷
- 20. Whilst we make no comment on the Inquiry's commitment to transparency, we are concerned that the "broad approach to redaction of names and contact details and in particular where they appear in lengthy lists of email recipients or those cc'd into email chains" will impede our scrutiny of the material, hinder our ability to identify legitimate lines of inquiry, and adversely affect our families' effective participation in the Inquiry. We are mindful that documents disclosed to CPs are provided on a secure electronic platform and are covered by confidentiality undertakings. The documents are therefore not in the public domain, not widely disclosed, and subject to multiple protections against onward disclosure. For those reasons, concerns over privacy breaches are minimal and cannot outweigh the need for the Inquiry to progress its work and ensure the effective involvement of CPs.
- 21. We renew our concerns raised in relation to the Inquiry's use of the current disclosure platform, which continues adversely to impact our preparation. We invite the Inquiry to revisit our concerns, raised both with the Inquiry's team and in our written and oral submissions for the recent Module 1 preliminary hearing.

⁷ See our written submissions for that hearing, §9, and the oral submissions of Mr Weatherby KC on the topic at the hearing.

Instruction of expert witnesses

22. CBFFJ and NI CBFFJ welcome the instruction of Professor Ailsa Henderson, Professor Thomas Hale, Professor Alex Thomas and Gavin Freeguard to provide expert reports to the Inquiry. We look forward to the disclosure of the draft report and an opportunity to assist the Inquiry with observations on behalf of our families.
23. We remain concerned that the Inquiry has not instructed any experts in structural inequality and structural racism to assist its work in Module 2 and does not appear to intend to do so. For the reasons set out in §6 above we repeat our written submissions made in Modules 1⁸ 3⁹ and endorse those of FEMHO on this issue¹⁰.
24. We note that CTI's reasons for inviting the Chair not to instruct an expert on structural inequality and racism in Module 1¹¹ include: "...the inquiry is already looking intensely at the way protected characteristics were or were not probably safeguarded in the particular context of each module. Protected characteristics include, of course, race so the foundational basis of any finding of structural racism is already part of the inquiry's remit and therefore, on its face, does not require further evidence or expert evidence to be pursued and obtained specifically on the conclusion, that there was structural racism..."¹².
25. This, however, appears to be a circular reasoning which minimises the significance of the link between race and inequality and does not provide a sound reason for refusing to instruct an expert on structural inequality and racism for Module 1 and other Modules. We are unclear as to why the inclusion of race as a part of the Inquiry's remit of investigation makes it unnecessary to receive expert evidence on structural inequality and racism particularly in relation to the disproportionate deaths from black and brown ethnicities. We are concerned that without such expert evidence the Inquiry may not be in a position to make necessary critical findings and recommendations in relation to race.
26. We repeat our request from our written submissions to the 2nd preliminary hearing in Module 1¹³ 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.
27. However, disclosing the LoIs before the CPs receive the draft expert reports at the end of March 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

⁸ See our written submissions for the 14 February 2023 Module 1 preliminary hearing, §§18-24.

⁹ See our written submissions for the 28 February Module 3 preliminary hearing, §§24 - 25

¹⁰ Written Submissions FEMHO for the 31 October Module 2 preliminary hearing §17

¹¹ Transcript 14.2.2023 Module 1 preliminary hearing 23-25:21- 25

¹² Transcript 14.2.2023 Module 1 preliminary hearing 23-24:21- 6

¹³ See our written submissions for the 14th of February 2023 Module 1 preliminary hearing §§24.

the Chair has previously stated that they will be disclosed to CPs.

Witnesses and hearing timetable

28. We recognise that the Chair's decisions in relation to the start date and time estimate for Module 1 has had a direct consequence on the start date and timetable for Module 2. For the reasons we set out in our submissions to Module 1, we acknowledge that this change in the timetable was inevitable.
29. In relation to scope, we welcome the Chair's ruling of 14th February 2023 regarding the Module 2 timetable and CTI's indicated provision of a list of key issues to be examined during the Module 2 hearings. We also welcome CTI's indicated date time frame of April 2023 for the provision of a list of key issues to be examined in Module 2. We also invite the Chair to make a similar direction for all subsequent modules to enable us to effectively assist the Inquiry's work.
30. We endorse CTI's request for the timetabling of the third Module 2 preliminary hearing in September 2023 ahead of the commencement of Module 2 hearings and welcome CTI's approach to the identification of witnesses (CTI's Note §§24-25).

Parliamentary privilege

31. We have made initial submissions on the application of Parliamentary privilege in our written submissions for the recent Module 1 preliminary hearing.¹⁴ We do not repeat those submissions here. We note the Chair's indication in her ruling of 14 February 2023 that she would not rule on whether, in principle, Parliamentary privilege applies to the Inquiry but would keep the matter under review. We invite the Chair to direct detailed written submissions from CPs at the earliest opportunity should the issue of its application to this Inquiry become a live question. We believe that it will inevitably be a live issue in Module 2 given the matters it is examining. As we set out in our oral submissions to the preliminary hearing in Module 1¹⁵, this should be approached in an organised way and timetabled for argument.

Evidence proposal procedure and Rule 10

32. CBFFJ and NI CBFFJ recognise the need for the Module 2 hearings to be conducted efficiently (CTI Note, §42). However, given that the hearing dates were timetabled prior to the receipt of any witness statements or the preparation of a list of witnesses, the timetable can only be arbitrary. This is an issue that has been raised on behalf of CBFFJ and NI CBFFJ from the outset and which we have raised more recently in our Module 1 submissions.¹⁶
33. We note CTI's recognition of the important role that CPs have to play and the confirmation

¹⁴ Written submissions, §§11-16.

¹⁵ Oral submissions of Mr. Weatherby KC 14th February 2023, Transcript Page 48 Lines 4-14

¹⁶ Written submissions, §25.

that they will have a meaningful opportunity to engage in the Rule 10 process (CTI Note §43). We also note the confirmation from CTI during the recent Module 1 preliminary hearing that the Inquiry recognises the ability of CPs to apply to question witnesses. As set out in previous submissions, the only meaningful way to provide for the effective participation of CPs is to engage in an open and meaningful exercise of the discretion to permit them to question witnesses. That is particularly important in Module 2 where the advantages of CPs asking questions is most obvious, given the breadth and depth of interests that CPs represent, the issues being examined, and the witnesses who are likely to be called.

34. 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 CPs' perspectives 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.

Opening and closing statements

35. CTI are intending to make an opening statement at the commencement of the public hearing (CTI Note §52). 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

36. We note the contents of the update note at Annex B. The matters raised in our Module 1 written submissions reflect the continued experience and sentiments of our families in relation to the Listening Exercise and so we welcome the Chair's direction in her Ruling of 14 February 2023 that consideration will be given to ways in which the Inquiry's communication with our families about the Listening Exercise can be improved.
37. Nonetheless, CBFFJ and NI CBFFJ have considerable unease about the Inquiry's continued instruction of M&C Saatchi and 23 Red to progress the Listening Exercise "Every Story Matters" project, in light of their reported receipt of government contracts during the pandemic.
38. In line with our submissions for Module 1, 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

We welcome the Inquiry's continued work around commemorations. Our families remain committed to assisting with appropriate arrangements. We welcome the Inquiry team's approach to our families to discuss the establishment of meaningful and commemorative programme.

24 February 2023

Pete Weatherby KC

Allison Munroe KC

Anna Morris

Thalia Maragh

Oliver Lewis

Kate Stone

Jesse Nicholls

Mira Hammad

Ciara Bartlam

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