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## **Note for the Preliminary Hearing in Module 3 of the UK Covid-19 Inquiry**

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### Introduction

1. The purpose of this Note is threefold. First, it introduces the agenda for the Preliminary Hearing in Module 3 on Tuesday 28 February 2023. Second, it sets out, in overarching terms, the background to the UK Covid-19 Inquiry. Third, it sets out, primarily for the benefit of Core Participants, information concerning the nature of the Inquiry's work so far, to enable them to file written submissions if they wish, in advance of the Preliminary Hearing and to prepare for that hearing. Any brief written submissions should be received by 12pm on Tuesday 21 February.
2. The agenda for the Preliminary Hearing in Module 3 is as follows:
  - i) Introductory remarks from the Chair.
  - ii) Update from Counsel to the Inquiry, including:
    - a. Designation of Core Participants
    - b. Provisional Outline of Scope for Module 3
    - c. Evidence gathering
    - d. Disclosure to Core Participants
    - e. The listening exercise - Every Story Matters
    - f. Future hearings dates
    - g. Submissions from Core Participants

### The Commencement of the Inquiry

3. On 12 May 2021 the then Prime Minister made a statement in the House of Commons in which he announced that there would be a public inquiry under the Inquiries Act 2005. He stated that it would examine the UK's preparedness and response to the Covid-19 pandemic and learn lessons for the future.
4. On 15 December 2021, the Prime Minister, as the sponsoring Minister, appointed the Rt Hon Baroness Heather Hallett DBE as Chair of the Covid-19 Inquiry.



5. In the written appointment letter the Prime Minister confirmed that he would be consulting with Ministers from the devolved administrations. Such consultation is required by section 27 of the Inquiries Act 2005 to enable the inclusion in the terms of reference of an inquiry, for which a United Kingdom Minister (including the Prime Minister) is responsible, of anything that would require the Inquiry to determine facts wholly or primarily concerned with a Scottish matter or a Welsh matter or a transferred Northern Ireland matter.
6. Draft terms of reference were drawn up making clear that the Inquiry would consider and report on the UK state's preparations and response to the pandemic, and would consider reserved and devolved matters relating to all four nations.
7. On 10 January 2022, Baroness Hallett wrote to the Prime Minister recommending certain amendments to ensure greater clarity in the Inquiry's remit and enable it to be conducted at an appropriate pace. She also sought an express mandate to publish interim reports so as to ensure that any urgent recommendations could be published and considered in a timely manner.
8. In addition, given her view that the Inquiry would gain greater public confidence and help the UK to come to terms with the pandemic if it was open to the accounts that many people - including those who have been bereaved - would wish to give, she suggested adding explicit acknowledgement of the need to hear about people's experiences and to consider any disparities in the impact of the pandemic.
9. On 4 February 2022, the Prime Minister responded, accepting, with three caveats and a small number of clarificatory textual refinements, the detailed changes that had been proposed.
10. On 10 March 2022, having consulted with Ministers from the devolved administrations, the Prime Minister wrote to Baroness Hallett to inform her of certain further changes to the draft terms of reference which had been made in response to comments from the devolved administrations.
11. The same day the Inquiry's draft terms of reference were published. On 11 March 2022 the Chair wrote an open letter to the public in which she announced the launch of a public consultation process on the Inquiry's draft terms of reference so that public concerns could be reflected in the final terms of reference and inform the scope of the Inquiry's investigations.
12. The Inquiry issued a consultation document seeking the public's views on whether the Inquiry's draft terms of reference covered all the areas that they thought should be



addressed, and on whether the Inquiry should set a planned end-date for its public hearings. The consultation was open to everyone, and the public could contribute on the Inquiry's website, by email or by writing.

13. Baroness Hallett consulted widely across all four nations, visiting towns and cities across England, Wales, Scotland and Northern Ireland and speaking, in particular, to a number of the bereaved. In parallel, the Inquiry team met with representatives of more than 150 organisations in 'roundtable' discussions, covering themes such as equality and diversity, healthcare, business, and education and young people, among others.
14. In total the Inquiry received over 20,000 responses to the consultation, of which 19,903 were received through an online consultation form. An independent research consultancy was commissioned to analyse the responses and produce a comprehensive independent report, summarising respondents' views and the key themes that emerged from the consultation process: <https://covid19.public-inquiry.uk/document/analysis-of-consultation-responses-from-a-m-a-economics/>.
15. In light of the views expressed, the Inquiry recommended a number of significant changes to the draft terms of reference. Baroness Hallett wrote to the Prime Minister on 12 May 2022 recommending her changes to the terms of reference.
16. In his response on 28 June 2022, the Prime Minister accepted her proposed changes in full. The 'set up date' was confirmed to be 28 June.
17. On 21 July 2022 the Inquiry was formally opened. Baroness Hallett announced the decision to conduct the Inquiry in modules, which would be announced and opened in sequence. Those wishing to take a formal role in the Inquiry were invited to apply to become Core Participants, within the meaning of Rule 5 of the Inquiries Rules 2006, for each module, rather than throughout the Inquiry as a whole.
18. Module 1 was opened on 21 July 2022, and a document outlining its provisional scope was published the same day. The Modules 2, 2A, 2B & 2C provisional outlines of scope were published on 31 August 2022. The Inquiry also published a Core Participant Protocol, a Protocol for the Transfer and Handling of Documents, and a Costs Protocol on 21 July 2022, 28 July and 21 March 2022, respectively.
19. This Inquiry is obliged under section 27 of the Inquiries Act 2005 and its Terms of Reference to consider both reserved and devolved matters in respect of Scotland, Wales and Northern Ireland. Module 3 will consider the entirety of the United Kingdom so that there is a wider understanding of the impact of the pandemic across the



United Kingdom, with differing healthcare structures across the four nations. This will help the Inquiry make meaningful and practical recommendations. 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.

20. Module 3 will examine the impact of Covid, and of the governmental and societal responses to it, on healthcare systems generally across the UK. It will look across all four nations and draw on information provided to the listening exercise. Details relating to the scope of Module 3 are set out below.
21. Later modules, details of which will be published in the coming months, will address, very broadly, 'system' and 'impact' issues across the UK. The system modules will include vaccines, therapeutics and antiviral treatment; the care sector; government procurement and PPE; testing and tracing; government business and financial responses across the UK. The impact modules will look at health inequalities and the impact of Covid-19 on the education and business sectors; on children and young persons; and on public services and on other public sectors. In due course the Inquiry will provide further detail about the order and provisional scope of those modules.

#### Designation of Core Participants

22. The applications for Core Participant status in Module 3 have been considered by the Chair in accordance with Rule 5 of the Inquiry Rules 2006, which provides:

*"5.—(1) The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.*

*(2) In deciding whether to designate a person as a core participant, the chairman must in particular consider whether—*

*(a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;*

*(b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or*

*(c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.*

*(3) A person ceases to be a core participant on—*

*(a) the date specified by the chairman in writing; or*

*(b) the end of the inquiry."*



23. In making determinations, the Chair considered whether, in each case, the application fulfilled the criteria set out in Rule 5(2) in relation to the issues set out in the Provisional Outline of Scope for Module 3.
24. The Chair exercised her wide discretion and took into account a number of features. First, the obligation to run the Inquiry as thoroughly and as efficiently as possible in light of the Inquiry's wide-ranging Terms of Reference and the need for the Inquiry process to be rigorous and fair. Given the vast numbers of people who were involved with, or adversely affected by, the Covid-19 pandemic, very many people may have an interest in the Inquiry. That, however, is not the test, and the Chair was obliged to assess very carefully whether, in reality, applicants could assist the Inquiry in Module 3. Second, it is not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry. Third, the Inquiry will also be listening to and considering carefully the experiences of those who have suffered hardship or loss as a result of the pandemic, through the Inquiry's 'listening exercise' which is called Every Story Matters.
25. Module 3 has granted a number of applications for Core Participant status (some involving joint applicants). The list of Core Participants will be shared two days before the Preliminary Hearing.
26. Renewed applications for Core Participant status were considered in writing and determined in advance of the Preliminary Hearing, thereby allowing those who were successful in their renewed application to participate in the Preliminary Hearing.
27. For the avoidance of doubt, the determinations which have been made by the Chair in relation to Module 3 in no way prejudice the ability of any applicant to apply in another, later, module which may in any event be more suited to the application.
28. It is also, of course, not necessary for an individual or organisation to be a Core Participant in order to provide information or evidence to the Inquiry. All applicants may have relevant information to give in relation to matters being examined in the Inquiry and the Inquiry will be approaching, in due course, a range of individuals, organisations and bodies to seek information, to gain their perspective on the issues raised in the modules and, where appropriate, to ask for witness statements and documents.

### Outline of scope of Module 3



29. Module 3 is primarily concerned with the impact of the Covid-19 pandemic on healthcare systems in England, Wales, Scotland and Northern Ireland.

30. The document setting out the provisional outline of scope for Module 3 states:

*“This module will consider the impact of the Covid-19 pandemic on healthcare systems in England, Wales, Scotland and Northern Ireland. This will include consideration of the healthcare consequences of how the governments and the public responded to the pandemic. It will examine the capacity of healthcare systems to respond to a pandemic and how this evolved during the Covid-19 pandemic. It will consider the primary, secondary and tertiary healthcare sectors and services and people’s experience of healthcare during the pandemic, including through illustrative accounts. It will also examine healthcare-related inequalities (such as in relation to death rates, PPE and oximeters), with further detailed consideration in a separate designated module.*

*In particular, this module will examine:*

- 1. The impact of Covid-19 on people’s experience of healthcare.*
- 2. Core decision-making and leadership within healthcare systems during the pandemic.*
- 3. Staffing levels and critical care capacity, the establishment and use of Nightingale hospitals and the use of private hospitals.*
- 4. 111, 999 and ambulance services, GP surgeries and hospitals and cross-sectional co-operation between services.*
- 5. Healthcare provision and treatment for patients with Covid-19, healthcare systems’ response to clinical trials and research during the pandemic. The allocation of staff and resources. The impact on those requiring care for reasons other than Covid-19. Quality of treatment for Covid-19 and nonCovid-19 patients, delays in treatment, waiting lists and people not seeking or receiving treatment. Palliative care. The discharge of patients from hospital.*
- 6. Decision-making about the nature of healthcare to be provided for patients with Covid-19, its escalation and the provision of cardiopulmonary resuscitation, including the use of do not attempt cardiopulmonary resuscitation instructions (DNACPRs).*



*7. The impact of the pandemic on doctors, nurses and other healthcare staff, including on those in training and specific groups of healthcare workers (for example by reference to ethnic background). Availability of healthcare staff. The NHS surcharge for non-UK healthcare staff and the decision to remove the surcharge.*

*8. Preventing the spread of Covid-19 within healthcare settings, including infection control, the adequacy of PPE and rules about visiting those in hospital.*

*9. Communication with patients with Covid-19 and their loved ones about patients' condition and treatment, including discussions about DNACPRs.*

*10. Deaths caused by the Covid-19 pandemic, in terms of the numbers, classification and recording of deaths, including the impact on specific groups of healthcare workers, for example by reference to ethnic background and geographical location.*

*11. Shielding and the impact on the clinically vulnerable (including those referred to as "clinically extremely vulnerable").*

*12. Characterisation and identification of Post-Covid Condition (including the condition referred to as long Covid) and its diagnosis and treatment."*

31. This scope, while ambitious, is necessarily provisional. Although it introduces a wide range of topics, it is neither practical nor advisable to identify at this stage all the issues that will be addressed at the Module 3 public hearing, let alone the questions. Much will depend on the evidence and material obtained under the Rule 9 process, which has been designed to obtain documentation from which the issues can be further distilled.

32. The Inquiry considers that the provisional scope provides a proper framework of the issues and matters that the Inquiry is likely to inquire into, and a sufficient indication for persons and organisations who have relevant information and evidence, as well as Core Participants, to be able to commence their preparations. The issues will, however, be further developed once the responses to the majority of the Rule 9 requests for evidence have been received.

33. Areas in particular that Module 3 will consider within that scope include:



- a. The impact of Government decision-making on healthcare systems across the United Kingdom;
  - b. How the treatments available to those suffering from Covid-19 developed and changed over the course of the pandemic;
  - c. The quality of care provided to Covid 19 patients and non-Covid 19 patients;
  - d. In relation to discharging patients from hospital, a distinction is drawn between Module 3 and the care sector module. The care sector module is the appropriate forum to deal with availability of care and/or processes about setting up care packages. Module 3 will consider the impact on hospitals of an inability to discharge patients who have been deemed fit for discharge;
  - e. The availability and suitability of appropriate PPE. A later module will consider government procurement and PPE but Module 3 will consider the impact within healthcare systems of the PPE that was available at the time;
  - f. The effect of national guidance on infection control within healthcare settings;
  - g. The redeployment of healthcare staff from one area to another;
  - h. The use of technology to conduct appointments and meetings;
  - i. Cancellation of surgery and the creation of surgical hubs in which the risk of Covid-19 infection was minimised.
34. It is not part of the Inquiry's Terms of Reference to consider the state of healthcare systems in the United Kingdom prior to the pandemic, save where necessary to understand how the pandemic impacted on healthcare systems.
35. Nevertheless, if there are broad matters or areas of inquiry that the Core Participants would additionally wish the Inquiry to consider as part of the provisional scope, these will be considered.

#### Rule 9 Requests for information

36. The process of issuing Rule 9 letters is ongoing and an update on Rule 9 requests will be provided at the preliminary hearing.
37. Across the Inquiry, Rule 9 requests for documentation and witness statements are being issued on an iterative basis and additional requests will be made of some recipients, focusing on particular issues or topics in due course. Further Rule 9 requests will be issued, on a rolling basis, to organisations and witnesses as issues come into greater focus during the course of this investigation.
38. Some initial Rule 9 requests in other modules have been lengthy and complex and many of the Module 3 Rule 9 requests are likely to be similarly wide ranging. Documents and information provided to the Inquiry will be analysed and may then be





the subject of further focused requests. Organisations have also been asked to ensure that their staff have the opportunity to flag particularly important materials so that the most crucial materials are identified and reviewed by the inquiry as soon as possible.

39. In line with a determination made in Module 1, Core Participants will not be provided with copies of the Rule 9 requests made by the Inquiry in relation to Module 3. Disclosure to the Core Participants of the Rule 9 requests themselves (as opposed to the relevant documents and material generated by them) is neither required by the Rules nor generally established by past practice. Furthermore, it would serve little practical purpose given the wide scope and detailed nature of the Rule 9 requests that are being made.
40. However, to ensure the Core Participants are kept properly informed, the Inquiry will ensure that the Module 3 lead solicitor provides monthly updates to Core Participants on the progress of Rule 9 work. Such updates include a summary of who has received Rule 9 requests, the topics those requests cover, what categories of documents have been requested, when the request was made and by when a response is expected.
41. In addition to Rule 9 requests made by the Inquiry, Module 3 has sent initial questionnaires to over 550 organisations across England, Northern Ireland, Scotland and Wales. These organisations include NHS Trusts and Boards, other NHS providers, health-related charities, regulators and third sector organisations. The purpose of those questionnaires is to assist the Inquiry to gather information from a wide range of sources in advance of sending targeted Rule 9 requests. The benefit is twofold. Firstly, the Inquiry is able to identify themes and issues arising and cover those themes and issues in Rule 9 requests. Secondly, the Inquiry is able to focus on those who should receive Rule 9 requests.
42. The Chair declined, for the purposes of Module 1, to order that position statements be made by state and organisational Core Participants and material providers. Following the Preliminary Hearings in Module 2 and Modules 2A-C, the Chair directed that if the monthly updates and the provision of disclosure do not provide the information that the Inquiry considers Core Participants need effectively to participate in the Inquiry's work then the issue will be revisited.

#### Disclosure to Core Participants

43. The purpose of disclosure is to enable the Core Participants to participate effectively in the public hearings. This Inquiry will be as open as possible with the Core Participants and with the public in relation to the disclosure of documents.



44. Disclosure also provides Core Participants with information and documents that are likely to be relevant to the issues and matters identified in a particular module.
45. The information and documents received through the Rule 9 process will be assessed for relevance and then redacted in line with a Redactions Protocol that has been prepared and published (<https://covid19.public-inquiry.uk/document/inquiry-protocol-on-the-redaction-of-documents/>), so as to remove sensitive material, such as personal data.
46. It is neither necessary nor proportionate for the Inquiry to disclose every document that it receives, or every request that it makes, or every piece of correspondence. That is not required and would hinder the Inquiry in the performance of its functions. It would also be a derogation of the Inquiry's functions were it to pass to the Core Participants all the material that it receives.
47. Each document provider is being asked to provide an account setting out details of the nature of the review carried out, how the documents were originally stored and the search terms used or other processes used to locate documents.
48. Where the Inquiry has any queries or concerns about a provider's processes for locating relevant documents, it will raise and pursue them and, of course, as documents are reviewed and gaps identified, further documents will be sought.
49. Disclosure of relevant, redacted documentation will take place in tranches. All Core Participants in the same Module will receive all the disclosable documents for that Module.
50. In light of the above approach, the Chair has determined, and made a determination to this effect in Module 1, that she does not consider it appropriate for the Inquiry to publish either a Disclosure Protocol or a schedule setting out an itemised list of documents and other material that is not intended to be disclosed to the Core Participants.
51. The electronic disclosure system which will be used to provide documents to Core Participants will be Relativity. Details of how to access the system and use it will be provided to Core Participants shortly before disclosure commences. Only those who have provided a signed undertaking to the Chair will be permitted access to the material that the Inquiry discloses to Core Participants.



52. The Inquiry is working to begin the process of disclosing materials to Core Participants as soon as possible. The process of disclosure to Core Participants is anticipated to begin during the summer of 2023.

#### Expert material and the instruction of expert witnesses

53. A number of qualified experts and persons with recognised expertise are likely to provide evidence that is specific to Module 3 and may be called to give evidence at the public hearing. However, the Inquiry will also appoint qualified experts in particular fields of expertise as experts to the Inquiry. They will assist the Inquiry, either individually or as part of a group of such persons, by way of the provision of written reports and opinions (including the answering of specific questions asked of them by, or through, the Inquiry) and, where appropriate, give oral evidence at the public hearing.

54. Such reports and evidence will inform and support the Inquiry's work in preparation for and during the public hearings, as well as the Chair's recommendations, by ensuring that its factual conclusions are soundly based and supported by the weight of the best expert opinion.

55. Such experts will have the appropriate expertise and experience for the particular instruction. They will be independent and objective and subject to an overriding duty to assist the Inquiry on matters within their expertise (whether or not they may also be considered as witnesses of fact in relation to matters falling within the scope of the Inquiry).

56. The identity of the expert witnesses and the questions and issues that they will be asked to address will be disclosed to the Core Participants before the expert reports are finalised. Core participants will therefore be provided with an opportunity to provide observations. Where there are significant differences of view or emphasis among the members of a group, these will be made clear on the face of the reports and, of course, these can be tested during oral hearings.

57. The appointment of experts to the Inquiry, and whether they are assigned to a group of experts considering particular issues, are matters exclusively for the Inquiry, although it will consider suggestions from Core Participants as to who should be appointed.

58. The Inquiry has provisionally identified a number of specialist areas in relation to which both lay and expert witnesses are likely to be giving evidence in Module 3. Additional suggestions from Core Participants are welcome.



### Listening exercise - Every Story Matters

59. The listening exercise, Every Story Matters, has been established to gather, analyse and summarise the experiences of those affected by the pandemic and the UK's response to it. Details of the listening exercise are set out in the Notes from the Solicitor to the Inquiry (STI), copies of which have been shared with Core Participants.
60. The listening exercise aims to obtain broad and representative information from anyone who wishes to contribute, i.e. both from the bereaved and anyone else who was impacted by the pandemic. It is being designed so that anyone and everyone in the UK can contribute if they wish to do so. Specifically in relation to Module 3, the Inquiry is particularly interested to hear from: people who needed primary, secondary and tertiary healthcare during the pandemic, including those admitted to hospital; relatives and friends of patients in hospital; the bereaved; and people working in healthcare settings during the pandemic.
61. These experiences will be anonymised and reviewed by research specialists, and will be collated into summary reports. The resulting reports, rather than individual accounts, will be aligned with and fed into Module 3 and the Inquiry's later modules. They will be disclosed to Core Participants. The summary reports will then be formally adduced in evidence so they form part of the Inquiry's record.

### Commemoration

62. Given the scale of the tragedy brought about by the pandemic, and the grief and loss suffered by the bereaved, the Inquiry wishes to provide opportunities for those who were lost to be commemorated as part of the Inquiry's process.
63. The Chair believes it appropriate to recognise the human suffering arising from the pandemic, including the loss of loved ones, by ensuring that it is reflected throughout the Inquiry's work. The Inquiry is exploring ways in which this can be done, including by way of a commemorative memorial in the future hearing centre, through the inquiry's public hearings, and through the Inquiry website.

### Approach to evidence of circumstances of individual death and 'pen portrait' material

64. In the course of the Preliminary Hearing in Module 1, the Inquiry received submissions to the effect that the Inquiry should allow evidence of the circumstances of individual deaths and pen portrait material to be heard at the public hearing.



65. Although the Chair will keep the issue under review, the Chair has ruled that evidence of the circumstances of individual deaths and pen portrait material will not, as a general rule, be admitted.

66. Some evidence regarding individual deaths may well be relevant, however, where it relates to possible systemic failings. For example, bereaved family members, those shielding, post-Covid conditions such as long Covid sufferers and healthcare workers may well have relevant evidence to give on issues that affected them. Such evidence would naturally be provided in a limited way in the course of Module 3 so as to introduce systemic issues, in keeping with the Inquiry's express intention to keep those affected by the pandemic at the heart of the Inquiry.

#### Future Hearings

67. A further Preliminary Hearing for Module 3 will be held later in 2023 in London on a specific date and at a venue to be confirmed.

68. The Inquiry is exploring options for possible listening rooms to be used across the UK to relay hearings. More information on listening rooms will be provided in due course.

69. The public hearing in Module 3 will take place in London in 2024.

#### **14 February 2023**

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