

THE UK COVID-19 INQUIRY

MODULE 3

SUBMISSIONS ON BEHALF OF TRADES UNION CONGRESS

FOR PRELIMINARY HEARING, 28th FEBRUARY 2023

INTRODUCTION

1. The Trades Union Congress (the “TUC”) welcomes its designation as a core participant in module 3 of the Inquiry. The TUC has also been designated a core participant in modules 1, 2, 2A, 2B and 2C.
2. Module 3 is to examine issues of very significant importance and will likely be a fecund area for important lessons to be learned. Certainly, one important focus will be the impact of the pandemic upon the availability of adequate healthcare; the impact upon patients. It will also, and must, examine the impact upon those who worked in the healthcare sector during the pandemic. Healthcare workers - including doctors, pharmacists, nurses, paramedics, medical support staff and transport workers - were on the frontline of efforts to treat patients during the pandemic. Many of them lost their lives in the line of duty: over 900 NHS staff died whilst working during the pandemic, with a disproportionate and devastating toll upon healthcare workers from a Black and Minority Ethnic background, including many migrant workers on whom the NHS depends.
3. Many more healthcare workers contracted Covid-19 and experienced severe infection, with those working in healthcare roles more than 7 times more likely to have severe infection than those working in non-essential roles who contracted the virus. Some suffer debilitating and long-term effects of ‘Long Covid,’ having contracted Covid in the workplace. Many more have worked in extremely stressful

and traumatic conditions, experiencing the loss of their own loved ones, family members and colleagues. Often those workers would have been exposed to risk of infection with inadequate provision of PPE or other workplace mitigations.

4. It is crucial that, when the next pandemic arrives, the healthcare sector is better equipped to transform the number of deaths downwards, and minimise the many challenges and traumas of providing healthcare through a pandemic.
5. These submissions begin by summarising the interest of the TUC and its member unions in this module. They then address, in summary, the issues of (a) scope, (b) Rule 9 requests and disclosure, (c) expert evidence, (d) evidence of individual cases and (e) timetabling issues.
6. The TUC notes that, in respect of a number of topics, Counsel to the Inquiry (“CTI”) intends to provide an update either shortly before next week’s hearing (for example, the identities of the Core Participants, due to be shared two days prior to the hearing¹) or at the hearing itself (for example, an update on Rule 9 requests²). The TUC will consider these updates when received and address any issues arising orally at the preliminary hearing.

THE TUC AND ITS MEMBER UNIONS

7. The TUC brings together the 5.5 million working people who make up its 48 member unions. Those unions are identified in an annex to this submission.
8. The following eleven member unions have a particular interest in module 3:
 - (a) **UNISON**: a general union whose representation includes a broad range of medical, clinical, admin, clerical and support staff.
 - (b) **UNITE**: a general union whose representation includes a broad range of medical, clinical, admin, clerical and support staff.

¹ CTI’s Note of 14th February 2023, para. 25.

² CTI’s Note of 14th February 2023, para. 36.

- (c) **GMB**: a general union representing over 35,000 members across the NHS and ambulance services in across the UK, and a broad range of medical, clinical, admin, clerical and support staff.
 - (d) **Royal College of Midwives (“RCM”)**: representing over 50,000 midwives, student midwives and maternity support workers.
 - (e) **Chartered Society of Physiotherapists (“CSP”)**: representing over 63,000 physiotherapists, support workers and physio students.
 - (f) **Society of Radiographers (“SoR”)**: representing radiographers and related staff in the NHS.
 - (g) **British Dietetics Association (“BDA”)**: representing almost 10,000 dieticians and support workers in the public and private sector.
 - (h) **Royal College of Podiatry (“RCP”)**: representing over 50,000 NHS, independent practice and private chiropodist and podiatrists.
 - (i) **British Orthoptic Society Trade Union (“BOSTU”)**: representing Orthoptists
 - (j) **Hospital Consultants and Specialists Association (“HCSA”)**: the UK’s only professional association and trade union focused solely on hospital doctors, representing over 3,000 members.
 - (k) **POA**: representing staff in secure settings.
9. A number of unions are members of the NHS Staff Council and the UNISON Head of Health is the Staff Side Chair of the NHS Staff Council. The Staff Council also has subgroups (with affiliated union representation) of importance to module 3, including the Equality Diversity and Inclusion Group, and the Health Safety and Wellbeing Group. At the start of the pandemic a Covid-19 Terms & Conditions Group, again with affiliated union representation, was established to provide a forum for discussion about many of the urgent issues that arose in response to the pandemic. It had twice weekly meetings from the start of the pandemic and over a period of several months. The Staff Council, with affiliated union input, issued guidance on Covid-19 advice, overtime pay, annual leave and shielding, flexible working contracts, and quarantine.

10. Affiliated unions were also members of the social partnership forum (which brings together NHS employers, NHS trade unions, Health Education England, NHS England, and the Department of Health and Social Care to contribute to the development and implementation of policy that impacts on the health workforce).
11. The National Ambulance Strategic Partnership Forum (“NASPF”) is comprised of GMB, UNISON, UNITE, RCN and national NHS ambulance employers. Meetings of the NASPF were held weekly at the start of the pandemic, and monthly meetings continue to date. The purpose of the meetings was to agree guidance for all ambulance services (in England) to adopt including PPE and mask wearing, testing, ventilation in cabs, social distancing, vaccinations, patient transport, working safely guidance, annual leave, shielding and quarantine.
12. Several of the unions represent members across the devolved nations. As this is a UK-wide module, it will be important to ensure that evidence is gathered and, ultimately, the substantive hearings in 2024 are structured to take account of this.
13. Members of the affiliated unions led the creation of the Nightingales, managed schemes to bring back registered clinicians into the workforce, oversaw the organisation of the vaccination programme, managed discharge from hospitals (including to create capacity for anticipated acute covid cases), developed programmes to support the well-being of staff (for example, mental health services, based on research into major public health disasters), oversaw the procurement of PPE and other equipment nationally, regionally and locally, provided support to senior leaders, made decisions about what non covid services to provide, made decisions concerning the use and distribution of PPE to staff and organisations, oversaw and implemented the massive expansion of digital communication inside the NHS and with patients, oversaw and implemented communications plans with staff, patients and the public.

PROVISIONAL OUTLINE OF SCOPE

14. The provisional outline of the scope for Module 3 was published by the Inquiry on 8th November 2022.³ The content is replicated at paragraph 30 of CTI’s Note of 14th February 2023. We recognise and appreciate the point made by CTI at paragraph 31 of that Note, i.e. that the scope *“while ambitious, is necessarily provisional.”* As evidence is gathered and considered, and further submissions made by the Inquiry team and Core Participants (“CPs”), we anticipate that the issues which will form the focus of the substantive hearing in this module will be distilled, following a process akin to the funnel described by the Court of Appeal in *R (Lewis) v. Coroner for Mid and North Division of the County of Shropshire* [2010] WLR 1836, at paragraph 26: *“wide at its opening, but narrowing as the evidence passes down through it...”*
15. We recognise that the provisional scope outline is intended to be a high-level framework, and specific issues will crystallise and be developed at a later stage. We note that it is framed in a way which takes into account the different healthcare systems in England, Wales, Scotland and Northern Ireland, given the reference to this in the opening sentence; and that it includes reference to the impact upon patients, their loved ones, and visitors to healthcare settings, and also healthcare staff. We agree with CTI that, overall, the scope outline provides a *“proper framework”* (paragraph 32); it is broadly framed and allows leeway to the Chair at a later stage to focus upon particular matters or narrow the live issues. Recognising this, we do not propose detailed, specific edits to the provisional outline.
16. Rather, we make three points at this stage regarding the provisional scope outline.
17. First, we propose one modest but important amendment to the provisional scope outline. We propose that, at paragraph 10, the reference to *“deaths caused by the Covid-19 pandemic, in terms of the numbers, classification and recording of deaths”* be amended to instead read, *“deaths caused by the Covid-19 pandemic, in terms of the numbers, classification, recording and investigation of deaths.”*

³

<https://covid19-public-inquiry.uk/wp-content/uploads/2022/11/Module-3-Provisional-Outline-of-Scope-in-English.pdf>.

18. Paragraph 10 as it stands refers to important issues concerning the understanding of patterns of deaths and risk factors, including the important issue of whether there was underreporting of deaths likely to have related to contracting the virus in the workplace. It is important – particularly at this early stage – that the high-level outline of scope includes the significant issue of regulatory and investigative responses to reported deaths. This is of vital importance: were lessons swiftly learned from healthcare-related deaths, of patients in healthcare settings and healthcare workers, and timely adjustments made to protect others? These are issues which merit exploring and the small proposed tweak to the wording allows for this. (We may have further submissions to make on this point when we have an update regarding the current approach to Rule 9 requests, which we expect to receive at the hearing itself next week.)

19. Second, we note that there is one specific item expressly referred to in the Inquiry’s Terms of Reference (“**ToR**”) which is not in turn expressly reflected in the provisional scope outline, namely “*antenatal and postnatal care*” (see paragraph (b) of the ToR). This is a matter of particular importance to the RCM, one of the TUC affiliated unions, which worked closely with the Royal College of Obstetricians and Gynaecologists (“**RCOG**”) during the pandemic to address the huge number of changes to how antenatal and postnatal care were provided. We recognise that paragraph 1 of the provisional scope document is drafted in broad and non-exclusionary terms (“*the impact of Covid-19 on people’s experience of healthcare*”) and so could be said to encompass this, along with other matters such as palliative care and particular types of treatment. However we raise it given that this is an issue expressly referred to in the ToR but on which the scope outline is silent; and we note, in contrast, that other paragraphs include specific items (e.g. see paragraph 9 and DNACPRs). This could be addressed, to provide reassurance, through a modest edit to paragraph 1, to make express and non-exhaustive reference to this issue, by adding “*including antenatal and postnatal care*” at the end of the sentence.

20. Third, and further, we note – although we do not expect this to be controversial – that an important part of the distillation and development of issues process described by CTI at paragraphs 31 and 32 of their Note must, of course, involve meaningful CP participation, and not only the Inquiry team’s consideration of responses Rule 9 requests behind closed doors. This is a key part of the reason why we propose a further preliminary hearing in module 3 to take place in Autumn 2023, in approximately six months’ time, when CPs will be in a position to make more informed submissions regarding these matters but there will still be ample time remaining before the proposed final hearing dates in 2024. CPs must be in a position to influence the ‘direction of travel’ of this module, and the timetable set going forward should provide for that. Unlike in other modules which have a very pressing timetable with impending hearings later this year, there is with Module 3 some more time, which is welcome and, the TUC submits, can be used effectively in a way which enables CPs to assist the Chair as much as possible.
21. In addition to the provisional scope outline, the high-level framework, the TUC notes that CTI has, at this early stage, also given CPs an indication of particular matters which they anticipate are likely to be a focus during this module. At paragraph 33 of their submissions, CTI sets out nine “*areas in particular that Module 3 will consider within scope.*” Paragraph 34 also sets out an issue which CTI anticipates will not be considered in this module.
22. As the Chair will recall, in other modules we have urged the Inquiry and its legal teams to be open, at an early stage, in sharing its thinking with CPs, notwithstanding that its thinking will inevitably develop with the evidence. In that context, we welcome the Inquiry doing so here. It is helpful to see the emerging detail as to which issues CTI anticipates are likely to attract particular focus. We are grateful for this approach and commend it.
23. In broad terms, we are in agreement with much of the proposed focus (subject to the caveat that this is an early stage, and there is much we do not yet know). We would raise the following points for consideration.

24. First, the TUC is concerned by what is said at paragraph 34 by CTI, namely, that *“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.”* That may be correct, but the *“save where necessary”* is an important caveat, and we say that it is one that the Inquiry must consider carefully. We are concerned that this phrasing suggests a presumption that the state of healthcare systems in the UK prior to the pandemic will not be relevant, unless the Inquiry is persuaded otherwise; and indeed suggests that such an approach is mandated by the ToR and cannot be considered by the Inquiry at all, not only in respect of Module 3 only. We do not agree. The ToR include reference to, under heading (b), *“the response of the health and care sector across the UK, including: preparedness, initial capacity and the ability to increase capacity, and resilience.”* Preparedness, initial capacity and resilience require consideration of the state of healthcare systems in the UK prior to the pandemic.
25. This appears to be recognised by the provisional outline of scope document, which includes issues such as *“staffing levels and critical care capacity”* and *“availability of health care staff”*, which will require direct evidence as to the state of healthcare systems. The TUC has, in its module 1 statement, given some evidence as to the structural and funding deficiencies in the healthcare sector that impacted severely upon the resilience of healthcare services. The perspective of our unions is that these sorts of issues are absolutely central to understanding how the pandemic impacted on healthcare systems, and will be equally central in respect of recommendations that will achieve meaningful and lasting change.
26. We submit, in particular, that the evidence sought by way of Rule 9s must include the seeking of evidence as to how fragmentation of healthcare services, budgetary pressures, and deficiencies in staffing, were relevant to understanding how the pandemic impacted on healthcare systems.
27. Second, we would also observe that the areas of particular focus identified at paragraph 33 of CTI’s note are ‘light’ on issues concerning the impact, including

disparate impacts, on healthcare workers. The bulk of the focus appears to be upon patients and not healthcare workers. We recognise that may not reflect the actual intent of the Inquiry, particularly given that the provisional scope document does reflect the need to consider both the experiences of patients (and their visitors and loved ones), and also healthcare workers. The TUC certainly considers that item 7 of the provisional outline of scope (which focuses on the impact of the pandemic upon healthcare staff) is critical, and must be a significant focus.

RULE 9 REQUESTS FOR INFORMATION AND DISCLOSURE

28. The position is noted that, in line with a determination made in Module 1, core participants will not be provided with copies of the Rule 9 requests (CTI's Note at paragraph 39). As to that, we make the following observations:

- (a) For the record in this module, we repeat our view that there would be no real disadvantage in the Inquiry disclosing Rule 9s to core participants, but plenty of advantages, including facilitating core participant engagement at an early stage. It is true, of course, that core participants can raise further enquiries upon receipt of a statement and a further Rule 9 request can be made at that point, but that does not appear to us to be the efficient way of proceeding.
- (b) The particularly acute need for disclosure of Rule 9s in Module 1 was that the witness statements themselves were only going to materialise in very close proximity to the hearing. Early disclosure of Rule 9s was, therefore, the only way to allow core participant engagement in respect of evidence gathering. That concern has come to pass with the adjournment of Module 1. We recognise, of course, that this concern does apply with less force in Module 3, particularly if first witness statements are disclosed to core participants at a sufficiently early stage, thus enabling core participants to engage with the inquiry in respect of evidence gathering. If the Inquiry is to maintain its stance as to Rule 9s, it must aim to provide core participants with a substantial portion of the statements themselves in advance of the next preliminary hearing.

29. We are likely to wish to make submissions regarding particular Rule 9 requests, including to unions. However, we will wait to address this point when we have an update regarding the approach adopted to date. If the Inquiry requires further information as to the evidence that those unions can usefully cover, that can be provided.

30. We note that CTI has indicated that initial questionnaires have been sent to over 550 organisations across England, Northern Ireland, Scotland and Wales (paragraph 41). That has been received by some of the TUC member unions. We ask that this initial questionnaire(s) be disclosed to CPs. We do not yet know the identity of all CPs in this module, but we anticipate that there may be asymmetric knowledge, in that some CPs may have had sight of the questionnaire but not others. Disclosure would also be in keeping with the Chair's commitment to transparency, as a matter of principle. CTI states at paragraph 43 that the Inquiry "*will be as open as possible.*" Disclosure of the initial questionnaires should be made on this basis. It would also be helpful to see a list of the organisations to whom the questionnaire(s) has been sent.

EXPERT MATERIAL AND THE INSTRUCTION OF EXPERT WITNESSES

31. The TUC does not disagree with the general proposed approach to the use of expert witnesses, although much, of course, depends upon the detail of who is instructed and upon what issues.

32. At paragraph 58 of CTI's submission, it is said that "*the Inquiry has provisionally identified a number of specialist areas which both lay and expert witnesses are likely to be giving evidence in Module 3. Additional suggestions from Core Participants are welcome.*" The question we have is, additional to what? Please can the Inquiry provide some detail, even if it is at an early stage of its thinking, as to the areas upon which expert evidence will be sought, and the identities of those experts. CPs are otherwise prevented from being able to contribute in any way.

33. We do submit that core participants should have opportunity to comment upon instructions to experts. CTI says that core participants will have opportunity to comment upon the questions and issues experts will be asked to address “*before the expert reports are finalised*” (paragraph 56). We take that to mean that core participants will have opportunity to comment after draft reports have been produced, but before they are finalised. If that is correct, we would disagree with the approach. It would be far better to allow observations before draft reports are produced. It would be wrong to allow observations only after the inquiry itself has seen a draft report but the core participants have not: that would be to allow core participant engagement only at a later stage and with core participants at a significant disadvantage. It also fails to recognise the valuable role CPs can play in this inquisitorial process. CPs have particular expertise and experience, as the Chair has seen already in other modules. It is neither right nor sensible for the Inquiry team to proceed without transparency until a very late stage, and to only permit CP engagement at a that point.

APPROACH TO EVIDENCE OF INDIVIDUAL CIRCUMSTANCES

34. The TUC welcomes the indication that evidence of individual healthcare workers “*may well have relevant evidence to give on issues that affected them.*” One relevant factor for the Chair will be to properly grasp the practical and traumatic realities faced by many healthcare workers, including in relation to issues of discrimination. It is crucial that the ‘systemic’ evidence is illuminated by some individual accounts. The TUC stands ready to work collaboratively with the Inquiry in identifying appropriate persons.

TIMETABLING ISSUES

35. The TUC makes four requests regarding timetabling going forward. We emphasise that these requests are made without any criticism whatsoever of the Inquiry team; the TUC recognise how hard they are working and the scale of the task before them. These proposals are made with a view to improving processes in future so that CPs are in a position to participate meaningfully and effectively.

36. First, the TUC requests that a further preliminary hearing be listed in Autumn 2023. This takes account of CTI's indication that disclosure is likely to start being made to CPs during the summer, and it allows six months from this initial hearing to have passed, but still ensures that CPs can address the Chair on issues regarding the shape of this module when there is adequate opportunity for this to have an impact, in good time before the final public hearings are likely to take place in 2024.
37. Second, the TUC requests that the Inquiry takes all reasonable endeavours to allow a minimum of 14 days between circulation of CTI's Notes for future preliminary hearings, and the filing deadline for submissions by CPs. A 7-day turnaround time is particularly challenging for representative bodies and allows very little time for CTI's Note to be considered, instructions to be obtained, and drafts to be circulated for approval. The problem was particularly acute on this occasion, for Module 3, as there was a period of under 7 days between circulation of the Note and the deadline for filing (from the afternoon of 14th February to midday on 21st February), and all but one and a half days of that period fell over half-term, when many CPs and CP legal representatives have longstanding and unavoidable childcare and caring commitments.
38. Third, the TUC requests that efforts are made to avoid listing hearings during school holidays and on religious festivals. It is recognised, of course, that this may sometimes be unavoidable, but we ask that these matters be taken into account. Otherwise those with protected characteristics under the Equality Act 2010 and who fall within the equality categories under the Northern Ireland Act 1998 will face particular difficulties in contributing to this process on an equal footing with others.
39. Fourth, the TUC recognises that it is not always possible to provide key information in advance of hearings. However, across the various modules it is now becoming relatively common for crucial information to be provided either at the preliminary hearings themselves, or very shortly beforehand. (For example, these submissions are drafted without knowledge of who the other CPs are for this module; any individuals or bodies to whom Rule 9 requests have been made; and



the identities or topics for any of the proposed expert reports.) In general this approach causes particular difficulties for representative bodies, as instructions cannot be given and issues cannot be discussed in advance. Whilst recognising that some information will only be provided at hearings, for a range of reasons, again, we request that efforts are made to maximise the information provided to CPs in advance, so that CPs can be in a position to engage meaningfully at preliminary hearings, and thus to assist the Chair as much as possible.

40. We hope that these written submissions are of assistance.

CAOILFHIONN GALLAGHER KC

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Doughty Street Chambers

23rd February 2023



THE UK COVID-19 INQUIRY

ANNEX: THE TUC UNIONS

Accord - Lloyds Banking Group, TSB and other financial services

Advance - Santander and Santander businesses in the UK

Aegis - Finance sector staff at Aegon UK, Atos UK, Skipton Building Society, Yorkshire Building Society

AEP - Educational psychologists and assistant educational psychologists in public and private sector

AFA-CWA - Mobile civil aviation workers (flight attendants/cabin crew)

Artists' Union England - Freelance visual artists, applied arts, sound and performance

ASLEF - Railways - drivers, operational supervisors and staff

BALPA - Airline pilots; commercial helicopter pilots and technical rear crew

BDA - Dieticians in the public and private sector

BFAWU - Workers in food industries

BOSTU - Orthoptists

Community - General union covering a range of sectors including steel and other metals, third sector and logistics

CSP - Chartered physiotherapists, physiotherapy students and support workers

CWU - BT, O2, Post Office, Royal Mail Group and other telecoms companies

EIS - Teachers, lecturers, associated educational personnel in Scotland

Equity - Professional performers and creative practitioners

FBU - Fire and rescue services

FDA - Senior staff in civil service, public bodies and NHS

GMB - General union covering a range of sectors, including social care, manufacturing, energy and public services

HCSA - the hospital doctors union



- MU - Musicians including live and recording artists, composers, teachers and writers
- NAHT - Head teachers, deputies, assistant head teachers and school leaders across sectors
- NAPO - Probation and family court staff
- NARS - Racing staff employed by licensed racehorse trainers
- NASUWT - Teachers and head teachers in all sectors from early years to FE across the UK
- Nautilus International - Merchant navy and all related areas
- NEU - Teachers, headteachers, lecturers and support staff in all education sectors
- NGSU - All staff at the Nationwide Building Society
- NHBSCA - All staff at the National House Building Council
- NSEAD - Art, craft and design educators across all phases and sectors
- NUJ - Journalists, copywriters, designers, presenters, producers and website content providers
- NUM - Coal mining and associated undertakings
- PCS - Government departments and agencies, public bodies, private sector IT and other services
- PFA - Professional football
- POA - Staff in penal or secure establishments or special hospitals
- Prospect - General union covering a range of sectors, including creative industries, defence, scientific and professional staff and energy
- RCM - Practising midwives and maternity support workers in the UK
- RCP - NHS, independent practice and private chiropodists and podiatrists
- RMT - Railways, underground, metro, bus, road transport, taxi, maritime and offshore
- SoR - Radiographers and related staff in NHS
- TSSA - Administrative, clerical, professional and technical employees of railways, buses, London Underground, travel trade
- UCAC - Teachers, headteachers, education advisors and lecturers across all sectors in Wales
- UCU - Academic and related staff in HE, FE, land-based, adult and prison education.
- UNISON - General union covering a range of sectors, including local government, health and social care, utilities, energy, education and voluntary sector
- UNITE - General union covering a range of sectors, including manufacturing, aerospace, aviation, transport, voluntary and public services
- URTU - Drivers, ancillary and warehousing workers in the logistics and food sectors



USDAW – Call centres, catering, distribution, food processing and manufacturing, retail and warehouses

WGGB – Writers working in TV, radio, film, books, theatre, comedy, video games and multimedia