



RULING FOLLOWING THE FIRST MODULE 3 PRELIMINARY HEARING ON 28 FEBRUARY 2023

Background

1. On 28 February 2023 I held a Preliminary Hearing in relation to Module 3 in this Inquiry.
2. Prior to the hearing, 18 of the 36 designated Core Participants filed written submissions (one was a joint note) and oral submissions were made during the hearing on behalf of 19 of the Core Participants. I am very grateful to all those who addressed me, whether in writing or orally, for the obvious care they took in making their submissions. I have considered those matters raised with equal care. I direct that the written submissions be published on the Inquiry's website.
3. In this ruling I set out my decisions on those issues that I consider require determination.

Scope

4. I am grateful for the helpful submissions relating to the general scope of Module 3 and for the various suggestions on the specific reach of the Provisional Outline of Scope document. These will all be further considered by me and the Inquiry team. However, the majority of the evidential areas that have been raised are already reflected in the Rule 9 requests that are being sent out. I do not therefore think it is necessary to amend the Provisional Outline of Scope at this stage.
5. There are however some particular matters that I wish to address:
 - a. The Covid Bereaved Families for Justice Cymru asked me to consider splitting Module 3 into Modules 3, 3A, 3B and 3C so that there are separate hearings examining the healthcare systems in England, Scotland, Wales and Northern Ireland respectively. It was submitted that this would: reflect the constitutional position given that health is a devolved matter, take into account the differing healthcare systems and reflect the fact that during the pandemic different decisions were taken at different times across the UK. Given the broad range of matters falling within the Provisional Outline of Scope, I do not think that dividing the module is necessary. The decision to split Module 2 was necessary because examining core governmental decision-making requires the Inquiry to inquire into administrative procedures and decisions made

particularly in Westminster, Edinburgh, Cardiff and Belfast and to adduce documentary and oral evidence bearing on those matters. In my view, those considerations do not apply in respect of Module 3 which is not just considering core decision making within healthcare systems but, as the Provisional Outline of Scope makes clear, is looking at systemic matters across a wide range of topics. A single hearing is not only more efficient but is better placed to take account of any structural differences in the respective healthcare systems without the need for individual hearings. It also allows comparisons between all four nations to be more easily evidenced and drawn.

- b. On behalf of the Trades Union Congress (TUC), and supported by the Royal College of Nursing (RCN) and the British Medical Association (BMA), it was submitted that Module 3 should examine matters relating to recruitment, retention, pay, working conditions and underfunding of healthcare workers that pre-existed the pandemic. I can confirm that Module 3 will seek to ascertain the state of the healthcare systems as at March 2020, for example by considering the numbers of hospital beds, staffing capacity, availability of respiratory equipment and PPE.
- c. The Provisional Outline of Scope for Module 3 includes an examination of the impact of the pandemic on those requiring care for reasons other than Covid 19. While it will not be possible to look at the impact on every non-Covid condition, Module 3 will consider the impact on antenatal and postnatal care and will also look at some aspects of the provision of mental healthcare and at end of life care.
- d. A number of Core Participants asked me to publish a list of all Modules to be conducted during the course of this inquiry. While the Inquiry is not yet ready to publish further details of all future modules currently being considered, I have instructed the Inquiry's Legal Team to keep this under review and publish regular updates about the future modules as soon as they are able to do so. I have also invited them to share as much information as possible in the monthly updates to Core Participants. The 'list of issues' document which the Inquiry has undertaken to provide in due course will enable the Core Participants to better understand the shape and scope of Module 3.
- e. The Inquiry's Terms of Reference make clear that I must "examine, consider and report on preparations and the response to the pandemic in England, Wales, Scotland and Northern Ireland, up to and including the Inquiry's formal setting-up date, 28 June 2022." I must therefore focus on evidence relating to this period. However, I will, of course, seek evidence from a later period if I

consider it helps me to fulfil the Terms of Reference, particularly where I may need to do so in order to make meaningful recommendations.

Structural discrimination and racism within Module 3

6. A number of Core Participants submitted that Module 3 should look at structural discrimination and racism with many submitting that the Inquiry should instruct an expert or experts to examine this within the context of Module 3. It is submitted that without such an expert it will be difficult for me to determine why such inequalities exist and make recommendations to address this.
7. The extent to which the Inquiry is examining structural racism and discrimination is a matter that has been raised with me in the preliminary hearings held in Modules 1 and 2 and is a matter which affects the Inquiry as a whole. As I have previously stated and wish to reiterate, this Inquiry will consider any disparities evident in the impact of the pandemic on different categories of people, including, but not limited to, those relating to protected characteristics under the Equality Act 2010 and equality categories under the Northern Ireland Act 1998. These are the precise words contained within the Inquiry's Terms of Reference and I do not resile from them. In that regard, Module 1 (resilience and preparedness) has already instructed Professor Clare Bambra and Professor Sir Michael Marmot to prepare a report on Health Inequalities and disclosure of that report is expected shortly. I have also recently been persuaded that Module 2 (core UK decision making; political governance) should instruct an expert to address issues of structural discrimination (see [Module 2 ruling](#)). The experts' reports can be disclosed to core participants and used in evidence in Module 3, if I consider it necessary and appropriate.
8. In relation to Module 3, as Counsel to the Inquiry explained, the issue of inequalities is very much already embedded in the preparatory work being undertaken by the Inquiry Legal Team and, in particular, is a feature of the Rule 9 requests already made and those that will be made. Given the instruction of these experts; the fact that Module 3 is examining inequalities throughout its work; and has asked, and will continue to ask, recipients of Rule 9 requests about this topic, it seems premature for me to make any final decision on whether to instruct an additional expert on this topic within Module 3. I will however keep this matter under careful review and shall revisit this issue as the Module 3 evidence gathering process progresses.

Listening Exercise

9. In joint submissions made on behalf of the Covid 19 Bereaved Families For Justice and Northern Ireland Covid-19 Bereaved Families for Justice it was submitted that there should be a public explanation of why the Inquiry contends that there is no conflict of interest in the decision to appoint M&C Saatchi, who then subcontracted with '23red'

in the pilot stage of the Inquiry's Listening Exercise, 'Every Story Matters'. This point was also raised in the Module 2 preliminary hearing held on 1 March 2023.

10. During the course of the Module 2 preliminary hearing, Mr Keith KC, lead Counsel to the Inquiry, outlined why there is no perceived or real conflict of interest. He explained that M&C Saatchi had been engaged for its specialist communication expertise in order to help the Inquiry ascertain, for the purposes of the pilot stage of the process, the best way to engage people, particularly those who are under-represented or not always heard, to share their experiences. It had engaged 23red, to assist it with part of this work. As Mr Keith KC made clear, neither company is involved with the listening part of Every Story Matters, with the receipt of the experiences, with the members of the public who contact the Inquiry, or with the analysis of the information collated. During the procurement process, the Inquiry required bidders to declare potential issues of conflict and awarded contracts having satisfied itself on the basis of the information provided either that none exist or where they do, these can be managed appropriately. The fact that a company acted for the government in some capacity during the pandemic does not, by itself, amount to a conflict of interest, whether real or apparent. It depends on the role the company played then and the nature of the contract in question. Every bid is considered on its own merits.

Publication of Rule 9 requests and letters of instruction for experts

11. I have been asked to reconsider my decisions made in earlier Modules, not to disclose to Core Participants Rule 9 requests and letters of instruction to experts.
12. As previously stated in my Ruling following the Module 1 preliminary hearing on 4 October 2022, 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. However, Core Participants will be kept properly informed about the progress of Rule 9 requests via the monthly update notes provided by the Module 3 lead solicitor. This update will, in general terms, include details of what requests have been made, whether documents have been received, when further documents are expected and when further Rule 9 requests have been made.
13. In relation to the identity of any experts instructed to assist the Inquiry, I repeat my ruling made in Module 1 that the decision as to the selection of experts to be instructed by the Inquiry is one that is entirely for me. However, in line with my ruling, the identity of the expert witnesses and the 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.

Rule 10 process

14. Submissions were made in respect of the Rule 10 process to be adopted within Module 3. Given the public hearing in Module 3 will not take place until 2024, I consider it is premature to consider those matters at this stage but will revisit this matter at a future preliminary hearing.

Future hearings

15. A further preliminary hearing for Module 3 will be held later in 2023 with details to be confirmed. It is anticipated that the hearing in Module 3 will commence on a date to be confirmed in 2024. I am grateful for the submissions made by those representing the Clinically Vulnerable Families and the Long Covid group of Core Participants for their observations on how best to ensure that future hearing venues have appropriate Covid-19 infection control measures in place and have passed those matters on to the appropriate members of Inquiry staff.

Applications for funding under section 40 of the Inquiries Act 2005

16. In relation to applications for legal expense funding in accordance with section 40 of the Inquiries Act 2005, I direct that any Module 3 Core Participant wishing to make such an application must do so by **4pm on Friday 24 March 2023**. Any Core Participant who already benefits from such an award in another Module is not required to make a further application. However, if they wish to seek funding for Module 3 they must submit to the Inquiry a costs proposal for Module 3 by the same deadline.
17. Core Participants are referred to the Prime Minister's [section 40\(4\) Determination](#) and the [Inquiry Costs Protocol](#) for further information. Any new section 40 applications should comply with the requirements set out therein.

The Right Honourable Baroness Hallett

Chair of the Covid-19 UK Inquiry

9 March 2023