

THE UK COVID-19 INQUIRY

TRADES UNION CONGRESS

AND

SCOTTISH TRADES UNION CONGRESS

SUBMISSIONS FOR THE SECOND PRELIMINARY HEARING IN MODULE 2A

Introduction

1. These submissions are made on behalf of the Trades Union Congress (“TUC”) and the Scottish Trades Union Congress (“STUC”) in advance of the second preliminary hearing in module 2A. Module 2A is primarily concerned with the Scottish Government’s core political and administrative decision-making in relation to the Covid-19 pandemic between early January 2020 and April 2022.
2. The TUC and the STUC are now both separately recognised as core participants, but will continue to share representation and intend to work in partnership on module 2A.
3. The TUC and the STUC are separate organisations, albeit with similar functions and many shared objectives:
 - The TUC supports its 48 members unions (listed in Annex 1) which bring together approximately 5.5 million working people. Many of its member unions have members across England and the devolved nations, and including in Scotland.
 - The STUC supports its 39 affiliated Trade Unions and 20 Trades Union Councils (listed in Annex 2), representing 540,000 workers in Scotland.

4. The TUC and the STUC also work in partnership with the Welsh TUC (“WTUC”) (which is part of the TUC), and the Irish Congress of Trade Unions (“ICTU”) (which, like the STUC, is an independent organisation). The relationship of collaboration between the four organisations is formalised through a body known as the Council of the Isles, which brings together representatives from each trade union centre on an annual basis.
5. In respect of module 2A, a rule 9 request has been made of the STUC, and a draft response has been provided. As described by Roz Foyer, the STUC General Secretary, the STUC *“speak[s] for trade union members in and out of work, in the community and in the workplace, in all occupational sectors and across Scotland. Our representative structures ensure that we can speak with authority for the interests of women workers, black workers, young workers, lesbian, gay, bisexual, and transgender workers and other groups of trade unionists that otherwise suffer discrimination in the workplace and in society.”*¹
6. In these submissions we address:
 - (a) timetabling for the final hearing;
 - (b) rule 9 requests;
 - (c) expert witnesses;
 - (d) proposed evidence procedure and rule 10;
 - (e) opening and closing statements; and
 - (f) the listening exercise.
7. We also acknowledge and welcome the Memorandum of Understanding reached with the Scottish Inquiry and hope that it facilitates minimising overlap in the work of the two inquiries, whilst ensuring that the necessary issues are fully investigated.

Timetabling for the final hearing

¹ ‘About the STUC,’ <https://stuc.org.uk/about-the-stuc>.

7. The Inquiry has timetabled 14 days of oral hearings for module 2A. With time permitted for opening and closing statements by Core Participants (“CPs”), and assuming Counsel to the Inquiry (“CTI”) will make an opening statement, that will allow at most 12 days for oral evidence. No firm submission is made on the time estimate at this stage, given that the Inquiry has not progressed to the stage of proposed witness lists. However, the time estimate does appear to be extraordinarily short. This may, as we understand it, be the only part of the Inquiry hearings focused exclusively on Scotland, and which take place in Scotland. It is also very significantly shorter than the eight weeks set aside for module 2 hearings (2nd October to 7th December 2023, with two breaks of a week). At the very least, the Inquiry is invited to ensure that the practical arrangements being put in place for the hearing in Scotland allow the flexibility to extend the time estimate.
8. We are concerned that a third preliminary hearing in late October/early November 2023 will be too close to the final hearing to allow for the most meaningful core participant engagement. A period of two months, particularly with the Christmas break, is a limited period within which to identify any areas which require further evidence gathering, redaction, disclosure and so on. We would invite consideration of listing a hearing sooner; we suggest September 2023.

Rule 9 requests

9. It is noted that the module 2A team has issued 100 formal requests for evidence (CTI note, [13]). It is further stated that Module 2A anticipates sending “*a number of Rule 9 individual witness statement requests in due course.*” We have only very partial sight as to which organisations comprise the 100 formal requests, and the content of those requests.
10. Subject to those caveats, at this stage the following observations are made in respect of the rule 9 requests:

Requests of Ministers

11. At present, and in contrast to the approach in module 2, Rule 9 requests have been directed to the relevant Directorates of Scottish Government, but not Ministers. We

are uncertain as to whether reference to the forthcoming “*individual witness statement requests*” is a reference to an intention to do so. For our part, we think that such Rule 9 requests are necessary, and should include, at least:

Cabinet Secretaries and Ministers

- Nicola Sturgeon, First Minister
- Fiona Hyslop, Cabinet Secretary for Economy, Fair Work and Culture
- Kate Forbes, Cabinet Secretary for Finance
- Michael Mathieson, Cabinet Secretary for Transport, Infrastructure and Connectivity
- Jeanne Freeman, Cabinet Secretary for Health and Sport
- Richard Lochhead, Minister for Further Education, Higher Education and Science
- Jamie Hepburn, Minister for Business, Fair Work and Skills

Scottish Government officials

- Jason Leitch, Scottish Government National Clinical Director
- Gregor Smith, Chief Medical Officer

Organisations and bodies relevant to at-risk or vulnerable groups

12. The majority of Rule 9 requests addressed to organisations and bodies relevant to at-risk and vulnerable groups have been made generically across modules 2, 2A, 2B and 2C. The Annex to CTI’s note states that Responses have been received from, but not limited to, the following which are relevant to module 2A: Inclusion Scotland, Scottish Covid Bereaved, Scottish Women’s Aid, Enable Scotland and Children in Scotland.
13. We recognise and endorse the value of disclosure of statements from organisations and bodies relevant to at-risk or vulnerable groups across the four parts of module 2, as many of the issues will overlap across the devolved nations. We are also concerned, however, that the spread of evidence specific to Scotland may not be sufficient, and the result may be evidence that is very England-centric. Whether that concern is well-founded is difficult to decipher without knowing the detail of the

Rule 9 requests (which the Inquiry declines to disclose). If the Inquiry has not done so already, we would invite consideration of sending Rule 9 requests to:

- Coalition for Racial Equality and Rights (which works to eliminate racial discrimination and harassment and to promote racial justice across Scotland)
- LGBT Youth Scotland
- Youthlink Scotland
- Alzheimer Scotland
- Care Home Relatives Scotland
- Scottish Women's Budget Group

14. The Inquiry might also explore what evidence could be given by the following experts, who would be able to give evidence specific to the position in Scotland:

- a) Dr Angela O'Hagan is a senior lecturer in the Department of Social Sciences in the Glasgow School for Business and Society and a member of the Scottish Women's Budget Group. She is the independent chair of the Scottish Government Equality Budgets Advisory Group. She has regularly contributed to evidence sessions in the Scottish Parliament, and is well placed to give evidence as to the impact of the pandemic upon women in Scotland.
- b) Professor Andrew Watterson is a member of the Faculty of Health Sciences at the University of Stirling. He has commented widely on public health interventions during the pandemic. His commentary has included an examination of how several trade unions, health professional bodies and non-governmental organisations sought to fill gaps in regulatory and ministerial inaction by offering solutions to identified Covid-19 threats for health care workers, social care workers, production workers, and services workers in 'essential' occupations²

² See, for example, his paper *Covid-19 in the UK and Occupational Health and Safety: Predictable not Inevitable Failures by Government, and Trade Union and Nongovernmental Organization Responses*, *New Solutions*, Volume 30, Issue 2, 25th May 2020 available at <https://journals.sagepub.com/doi/10.1177/1048291120929763> and *Covid-19 in the UK and occupational health and safety – predictable but not inevitable failures: what can we do now? Technical Report*, University of Stirling, Number 29, 7 April 2020, available at <https://bit.ly/Covid-2y0pWGk>

c) Professor Gerry McCartney is a Professor of Wellbeing Economy at the University of Glasgow and works extensively on public health, inequalities and covid response. In 2010 he took up post as Head of the Scottish Public Health Observatory (ScotPHO) at NHS Health Scotland and then Public Health Scotland. In September 2021 he took up his post at the University of Glasgow. By way of example, his paper *Widening of inequalities in COVID-19 years of life lost from 2020:2021: a Scottish Burden of Disease Study*³ concluded that despite a highly impactful vaccination programme in preventing mortality, Covid-19 continues to represent a substantial area of fatal population health loss for which inequalities have widened. Tackling systemic inequalities with effective interventions is required to mitigate further unjust health loss in the Scottish population from Covid-19 and other causes of ill-health and mortality. Professor McCartney will be able to assist in providing a sound evidence base for examining the relationship between structural inequalities and responses to the pandemic.

HSE

15. The TUC has invited a Rule 9 request to be directed in Module 2 to the Health and Safety Executive (“HSE”). We understand that the Module 2 team now intends to direct a Rule 9 request in respect of the HSE. That is welcome and important. The HSE, as the GB-wide regulator for health and safety at work, had a role to play in providing guidance to employers, and also in the monitoring and enforcement workplace safety, including non-pharmaceutical interventions (“NPIs”). As the HSE itself said in its May 2020 information for the Scottish Government on the Covid-19 response: “HSE regulates Covid-19 risks using [the Health and Safety at Work Act] which provides a robust framework requiring the control of risks to workers from any source, including the virus. We are using well-established models for enforcement decision-making to ensure our actions on Covid-19 are proportionate and practical.”⁴ The Note provided guidance on various matters, such as what the HSE considered to be good workplace

³ Wyper, G. M. A., Fletcher, E., Grant, I., Harding, O., de Haro Moro, M. T., [McCartney, G.](#) and Stockton, D. L. (2022) [Widening of inequalities in COVID-19 years of life lost from 2020 to 2021: a Scottish Burden of Disease Study](#). *Journal of Epidemiology and Community Health*, 76(8), pp. 746-749. (doi: [10.1136/jech-2022-219090](#))

⁴

<https://cecascotland.co.uk/wp-content/uploads/2020/05/HSE-Briefing-for-Scottish-Government.pdf>

practice on social distancing. The HSE described that *“The key challenge is to build confidence by aligning consistency of messaging about tackling the risks from the virus in the workplace with wider advice and perceptions created by the general public health message. For example, those perceptions generated some expectation of PPE being a common control mechanism in the workplace. HSE is succeeding in helping workers to understand that risk controls short of PPE can be entirely adequate except in some specific workplaces and circumstances.”* Those are matters, which may or may not be correct, which certainly ought to be the subject of evidence when the Inquiry considers decision making regarding NPIs.

16. It is important, however, that a bespoke rule 9 request is made by the module 2A team, because the position in Scotland gives rise to distinct issues which warrants distinct consideration:

- (a) The HSE experience in Scotland may well have had differences to that in England.
- (b) The framework for the HSE is different in Scotland, as public health responsibility is devolved to Scotland, albeit the HSE has workplace health and safety jurisdiction. The Scottish Government emergency public health legislation gave powers to the police and local authorities to enforce social distancing in all premises,⁵ and the HSE and local authorities agreed local enforcement arrangements for the emergency legislation complimentary to health and safety law.⁶
- (c) In Scotland, the HSE chairs the Partnership on Health and Safety Scotland (PHASS) - a specific tripartite forum for the Scottish health and safety community, supporting the collaboration between employers, employees and government on workplace health and safety in Scotland. That will be relevant evidence in respect of the information available to and decision making of the Scottish government.

⁵ The Health Protection (Coronavirus Restriction) (Scotland) Regulations 2020

⁶ As explained in the HSE’s May 2020 Note:

<https://cecascotland.co.uk/wp-content/uploads/2020/05/HSE-Briefing-for-Scottish-Government.pdf>

The range and identity of organisations and entities

17. Finally, at paragraph 17 of CTI's note it is stated, in common with update notes in other modules, that *"it has not been suggested by Core Participants that there are significant gaps in the range or identity of organisations and entities to which the Inquiry directed Rule 9 requests."* Insofar as CTI is seeking to claim a tacit approval from core participants, it must also be born in mind that we only have the identities of a small proportion of the 100 requests that have been made. We also only have a bare summary of the Rule 9 requests in respect of few governmental bodies.
18. Despite requests from a number of core participants, the Inquiry has declined to share Rule 9 requests, the disclosure of which would allow core participants a clear picture as to what evidence has been requested, and from whom. That decision is respected and we will not seek again to persuade the Inquiry to change course. However, having decided not to share the Rule 9s, the Inquiry teams should not seek to claim any silence on the evidence gathering process as an approval of it; we (and we suspect other core participants) feel fairly in the dark.

Expert witnesses

19. The position in respect of expert witnesses is noted, and endorsed.
20. As in its draft Rule 9 response, the STUC considers that the pandemic laid bare a number of structural inequalities in Scottish society. We welcome the Chair's ruling made in module 2 as to the developing approach in respect of expert evidence on structural racism, and other structural discrimination. We presume the evidence will be relevant to module 2A, also. It may be helpful if the issue is addressed by CTI for module 2A, at the preliminary hearing.
21. We also refer to the submissions above in respect of potential expert witnesses who could give evidence relevance to module 2, and module 2A in particular.

Proposed evidence procedure and rule 10

22. The proposal that only CTI asks questions is noted. As we have observed in other modules, the approach appears to be increasingly adopted by Inquiries. It is submitted that, in fact, allocating a limited amount of time to questioning by core participants does not unduly affect the length of hearings, and has very significant benefit in terms of facilitating core participant involvement in and contribution to hearings. It facilitates questioning with the benefit of the particular perspective and expertise of the core participant. Although core participants will be at liberty to apply, Chairs to an Inquiry are inevitably inclined to resist ad hoc applications for fear of time being increasingly taken by 'satellite' issues of whether a core participant should be able to ask questions. It can, ultimately, be more efficient simply to allocate a modest amount of time for questions by core participants. At this stage no particular submission is made, in part as it is not even yet known who the witnesses are or what issues are going to be explored. The TUC and the STUC reserve their position.

Opening and Closing Statements

23. It is noted that core participants will be permitted to make opening and closing statements. It is also noted that CTI will make an opening statement, and "*strict time limits*" are to be invited in respect of statements by core participants. The STUC and TUC request that a confidential draft of CTI's opening is provided to core participants in advance. That will greatly assist in ensuring that opening statements, made in limited time, avoid being repetitive of matters already covered by CTI, and provide a meaningful opportunity for core participants to address any matters raised by CTI.

The Listening Exercise

21. We strongly endorse the importance of the listening exercise. It will be important that the listening exercise captures the experiences of those at work, and both the TUC and STUC stand ready to assist.

CAOILFHIONN GALLAGHER KC

SAM JACOBS

Doughty Street Chambers

14th March 2023

THE UK COVID-19 INQUIRY: MODULE 2A

ANNEX 1

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
- NHBCA – 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

THE UK COVID-19 INQUIRY: MODULE 2A

ANNEX 2

STUC AFFILIATED UNIONS AND TRADE COUNCILS

Affiliated Unions

ACCORD : Areas covered: All staff within HBOS plc, including the retail network, Intelligent Finance, HBOS Card Services, Halifax Direct, Clerical Medical, Halifax Estate Agents, HBOS Life and Pensions.

Aegis : Areas covered: Staff within the finance sector, including Aegon UK, Atos, Computershare Loan Services, Yorkshire Building Society, Skipton Building Society.

Associated Society of Locomotive Engineers and Firemen (ASLEF) : Areas covered: railways (drivers, operational supervisors and staff)

Association of Educational Psychologists Areas covered: Educational Psychologists in the United Kingdom

Bakers, Food and Allied Workers Union(BFAWU) Areas covered: throughout the food sector from production to retail.

British Air Line Pilots Association (BALPA) Areas covered: pilots, winchmen and flight engineers

British Dietetic Association (BDA) : Areas covered: the science of dietetics in the private and public sector

British & Irish Orthoptic Society (BOS) : Areas covered: orthoptists

Chartered Society of Physiotherapy [CSP] : Areas covered: physiotherapy and health service

Communication Workers Union [CWU] : Areas covered: posts and telecommunications in Post Office, British Telecom, Cable and Wireless, Cable TV, National Girobank and related industries

COMMUNITY : Community was formed in 2004 following the merger of the Iron and Steel Trades Confederation (ISTC) and the National Union of Knitwear, Footwear & Apparel Trades (KFAT)

Educational Institute of Scotland [EIS] : Areas covered: teachers, lecturers, associated educational personnel (Scotland)

EQUITY : Areas covered: performance workers in theatre, film television, radio and variety

FDA : Areas covered: civil service, public bodies and NHS

Fire Brigades Union [FBU] : Areas covered: local authority fire brigades

GMB : Areas covered: civil air transport, security, AA, aerospace, defence, clothing, textiles, food production and distribution, retail, hotel, catering, chemicals and process, construction, building supplies, furniture and timber, local government, NHS, care, education, engineering, offshore, shipbuilding, energy, utilities

Hospital Consultants and Specialists Association : Areas covered: hospital consultants, associate specialists, specialist registrars (within 2 years of CCT) and staff grades.

Musicians' Union [MU] : Areas covered: performers engaged in the music profession including music writers and instrumental music teachers

National Association of Racing Staff [NAORS] : Racecourse staff

National Association of Schoolmasters Union of Women Teachers [NASUWT] : Areas covered: education

National Union of Journalists [NUJ] : Areas covered: journalism (Glasgow Branch and Dundee Branch)

[National Union of Mineworkers](#) : Areas covered: Mining

[National Union of Rail, Maritime and Transport Workers \[RMT\]](#) : Areas covered: railways and shipping, underground, road transport

[Nautilus International](#) : Areas covered: Maritime professionals at sea and ashore.

[Prison Officers Association \[Scotland\]](#) : Areas covered: persons employed in any penal or secure establishment or special hospital as a prison officer, a nursing grade, a non-industrial stores grade and special hospitals staff

[Prospect](#) : Areas covered: engineering, scientific, managerial, telecommunications, information technology and related industries, film and stage production

[Public and Commercial Services Union \[PCS\]](#) : Areas covered: government departments and agencies, public bodies, private sector information technology and other service companies

[The Royal College of Midwives](#) Area covered: midwifery

[Scottish Secondary Teachers' Association](#) Area covered: education

[Scottish Artists Union](#) Area covered: artists

[Scottish Society of Playwrights](#) : The Scottish Society of Playwrights represent the interests of playwrights in Scotland and Scottish playwrights abroad

[College of Podiatrists](#)

[Society of Radiographers \[SoR\]](#) : Areas covered: National Health Service

[Transport Salaried Staffs' Association \[TSSA\]](#) : Areas covered: administrative, clerical, supervisory, managerial, professional and technical employees of railways, London Underground, buses, road haulage, port authorities and waterways in Great Britain and Ireland. Also employees in the travel trade, hotel and catering industries

Union of Shop, Distributive and Allied Workers [USDAW] : Areas covered: retail, distributive, food processing and manufacturing, laundries, catering, chemical processing, pharmaceutical, football pools, home shopping, warehouses, insurance agents, clerical, milkround and dairy process, call centres

UNISON Scotland : Areas covered: local government, health care, the water, gas and electricity industries, further and higher education, schools, transport, voluntary sector, housing associations, police support staff

Unite the Union : Areas covered: manufacturing, engineering, energy, construction, IT, defence aerospace, motor industry, civil aviation, chemicals and pharmaceuticals, steel and metals, shipbuilding, scientists, technologists, professional and managerial staff, electronics and telecommunications, tobacco, food and drink, textiles, ceramics, paper, professional staff in universities, commercial sales, the voluntary sector, financial services, and the National Health Service

United Road Transport Union (URTU) Areas covered: HGV, LGV, lorry, truck drivers and warehouse staff

University & Colleges Union [Scotland] : Areas covered: academic and related staff in higher education

Scottish Trades Union Councils

Aberdeen

Clydebank

Cumbernauld and Kilsyth District

Dumfries and District

Dundee

Edinburgh

Falkirk

Fife

Glasgow

Greenock and District

Inverness and District

Irvine and North Ayrshire
Kilmarnock and Loudoun
Midlothian
Moray
North Lanarkshire
Paisley and District
South Lanarkshire and East Kilbride
Thurso and Wick
West Lothian