

THE UK COVID-19 INQUIRY

TUC and NIC-ICTU

SUBMISSIONS FOR THE SECOND PRELIMINARY HEARING IN MODULE 2C

Introduction

1. These submissions are made on behalf of the Trades Union Congress (“TUC”) and the Northern Ireland Committee of the Irish Congress of Trade Unions (“NIC-ICTU”) in advance of the second preliminary hearing in module 2C. Module 2C is primarily concerned with the Northern Ireland 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 supports its 48 members unions 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 Northern Ireland. The NIC-ICTU represents affiliated membership in Northern Ireland. It is the representative body for 34 trade unions with over 200,000 members across Northern Ireland. In membership terms, it is the largest civil society organisation in Northern Ireland.
3. In these submissions we address:
 - (a) timetabling for the final hearing;
 - (b) rule 9 requests;
 - (d) proposed evidence procedure and rule 10;
 - (e) opening and closing statements; and
 - (f) the listening exercise.

Timetabling for the final hearing

4. The Inquiry has timetabled 15 days of oral hearings for module 2C. 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 13 days for oral evidence.
5. 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, or list of issues. 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 Northern Ireland, and which take place in Northern Ireland. 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 any practical arrangements being put in place for the hearing in Northern Ireland allow the flexibility to extend the time estimate.

Rule 9 requests

6. It is noted that the module 2C team has issued 83 formal requests for evidence (CTI note, [13]). We make the following observations:

The Department of Health

7. We note the indication that a rule 9 request has been made to the Department of Health. If it does not already, that should include seeking evidence from the five Health Trusts: Belfast Health and Social Care Trust; Northern Health and Social Care Trust; South Eastern Health and Social Care Trust; Southern Health and Social Care Trust; and Western Health and Social Care Trust.

The Department of Education

8. Similarly, we note the rule 9 request in respect of the Department of Education. Evidence should also be sought (if it is not already being sought) from the Education Authority, which is responsible for delivering education services across Northern Ireland.

HSENI

9. 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 of workplace safety, including non-pharmaceutical interventions (“NPIs”).
10. On module 2C, a rule 9 request should be made of the Health and Safety Executive for Northern Ireland (“HSENI”). It is an executive non-departmental body sponsored by the Department for the Economy. It is the lead body responsible for the promotion of health and safety at work standards in Northern Ireland. The workplace response to the pandemic is critical to the response to the pandemic as a whole, and the role played by HSENI, including in relation to any advice given to the government of Northern Ireland, will be important to explore.
11. Health and Safety is a devolved matter in Northern Ireland and therefore the role of the HSENI is critical in terms of workplace issues, in particular.

RQIA

12. We would also invite that a rule 9 request is made of the Regulation and Quality Improvement Agency (RQIA) which is the independent health and social care regulator in Northern Ireland. RQIA registers and inspects a wide range of health and social care services, including nursing and residential care homes. The RQIA will have relevant evidence to give as to the Northern Ireland government decision making, and its consequences, in respect of the health and social care sector.

Organisations and bodies relevant to at-risk or vulnerable groups

13. Annex A to CTI's note described that a number of rule 9 requests have been made to organisations and bodies representing at-risk and vulnerable groups. As we understand it, 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. 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 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). It will be important that the evidence reflects the particular experience of at-risk and vulnerable groups in Northern Ireland.

Proposed evidence procedure and rule 10

14. 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 NIC-ICTU reserve their position.

Opening and Closing Statements

15. 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 TUC and NIC-ICTU 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 NIC-ICTU stand ready to assist.

SAM JACOBS

Doughty Street Chambers

22nd March 2023