

IN THE UK COVID-19 PUBLIC INQUIRY

BEFORE BARONESS HEATHER HALLETT

IN THE MATTER OF:

THE PUBLIC INQUIRY TO EXAMINE THE COVID-19 PANDEMIC IN THE UK

**Submissions on behalf of NI Covid 19 Bereaved Families for Justice
for the Module 2c preliminary hearing on 29 March 2023**

1. These submissions are provided on behalf of NI CBFFJ in advance of the Module 2c preliminary hearing on 29 March 2023.
2. NICBFFJ was established to campaign for this Public Inquiry: the families are committed to making it work. As with previous written and oral submissions, our requests or proposals for a change of approach from the Inquiry are motivated by a desire to assist the Inquiry's important work in the delivery of truth, justice and accountability and the identification of lessons to be learned.
3. As requested by the Inquiry, we confirm that the CBFFJ and NI CBFFJ representatives intend to make oral submissions at the preliminary hearing. Save for §§4-24 these written submissions follow the order of the issues set out in §2 of CTI's Note, dated 16 March 2023. So as to avoid unnecessary repetition, we expressly refer to and rely on matters raised in our previous written and oral submissions in Module 2C, as well as those in Modules 1, 2 and 3 where applicable.

Introductory observations on Module 2C scope

Importance of Module 2C for NICBFFJ and the wider public

4. Module 2C will, in summary:
"look at, and make recommendations about, the decision-making by the government in Northern Ireland in relation to the Covid-19 pandemic between early January 2020 until Covid-19 restrictions were lifted in Northern Ireland in March 2022..."
5. We consider it important to emphasise at the outset the particular importance of Module 2C for NICBFFJ and for the wider public in this jurisdiction. Despite the efforts of NICBFFJ, a devolved inquiry has not yet been established to examine issues in relation to the Covid-

19 pandemic in NI. Furthermore, the long-term absence of the Executive and Assembly has meant that the scrutiny that may normally have been undertaken of the executive by the legislature, including in committee hearings, has simply not been possible for an extended period. The necessary consequence is that there has been limited opportunity for failings to be identified and scrutinised and for change to be effected in response.

6. Save for this Inquiry, those that we represent are left with no other effective mechanism to address what are very real and personal concerns surrounding the deaths of their loved ones, but also matters of importance for our society as a whole. It is therefore of the utmost importance that the Inquiry is, and is seen to be, comprehensive and effective. NICBFFJ also consider that this approach would ensure that this Module is of particular importance for the wider public in this jurisdiction.
7. With that background in mind we will make some observations on the provisional scope of this Module at the outset.

North-South Coordination

8. In our submissions in relation to the Module 2 preliminary hearing, we again identified that the unique context of this jurisdiction, forming part of a single epidemiological unit on the island of Ireland, would require consideration of cross border issues within that Module.
9. The Provisional Scope for Module 2C includes *“the extent to which decisions were informed by the response of the government of the Republic of Ireland”*. That is welcome. However we also consider that these issues have perhaps even greater importance in the context of this Module, and that this should perhaps receive greater attention within the scope of the Module itself. This context is not relevant merely because the response of the Irish government may have informed the approach in this jurisdiction, but because a lack of a coordinate response between both executives left open a significant prospect that aspects of the response would be ineffective. By way of example, in relation to response to foreign travel, the fact that neither the NI Executive nor the Irish Government controlled all ports and airports on the island, combined with the ease of travel between the two jurisdictions, ensured that a coordinated approach was necessary in order to ensure that important measures taken in response to the pandemic would be effective.
10. This also means that in order to fully consider the issues in Module 2C it is necessary to consider the extent to which there was coordination between the NI Executive and the Irish Government, including the extent to which the approach of the NI Executive sought to inform or influence the approach of the Irish Government. It is respectfully submitted that if the NI Executive did not itself take proactive steps to coordinate with and therefore

influence the approach of the Irish Government, but was itself simply a passive actor to be influenced by their decisions, that in itself would appear to be a failing.

11. That submission gains support from the existence of numerous cross-border institutions which reinforce the conclusion that a coordinated approach was required. These institutions include, for example, the Institute of Public Health, the North South Ministerial Council, North/South Inter-Parliamentary Association, North/South Consultative Forum, the British-Irish Intergovernmental Conference, the British-Irish Council and the British-Irish Interparliamentary Body. The absence of a coordinated approach despite the reality of an open land border and the recognised importance of these cross border institutions to the effective governance of the island of Ireland may well be suggestive of failings.
12. If these issues are not considered to already be within the scope of this Module we would suggest that the provisional scope of Module 2C should be amended to explicitly reflect this.
13. We suggested in our submissions in relation to Module 2 that an expert on political institutions in Northern Ireland be appointed to assist the Inquiry. We respectfully repeat that submission, and suggest that such an expert would necessarily inform both Module 2 and Module 2C.

Austerity

14. For the reasons identified in our submissions for the Preliminary Hearing in Module 2, we invite the Inquiry to examine the role and impact of austerity on political and governmental decision-making at the devolved level, and the outcomes of such decision-making, particularly on vulnerable and at-risk groups. We consider that the force of those submissions as applied to Module 2 applies equally to the devolved context in Module 2C, particularly for NI, given the particularly challenging situation for public services in this jurisdiction at the outset of the pandemic.

Communication

15. We note that the provisional 2C scope includes:
“Public health communications in Northern Ireland in relation to the steps being taken to control the spread of the virus; transparency of messaging;”
16. One issue of significant importance for our clients relates to failings of communication and/or the implementation of government policy during the pandemic. By way of example, evidence suggests there were failures on the part of Care Homes to implement Guidance issued by the Department of Health to permit visiting at various times throughout the pandemic. Such Guidance was of significant importance to families to enable them to

support and care for their loved ones, many of whom were vulnerable and had limited alternative means of communication, during the pandemic. However, there is clear evidence that it was inconsistently implemented and communication strategies were unclear, meaning that residents and their loved ones were left isolated, distressed and confused. The proportionality of restrictions on residents and the lack of or absence of monitoring of the public health communications in Northern Ireland would appear to come within the scope of this module. We consider this raises issues of relevance for Public Health communications, as well as issues of relevance to Paragraph 3 of the provisional scope document, which includes:

“Decision-making by the government in Northern Ireland relating to the imposition or non-imposition of non-pharmaceutical interventions (NPIs).”

17. It may be that as an issue, this also falls to be addressed in a future Module on the care sector. However, given its importance to our client group, we raise it at this stage to ensure that it is not overlooked in this Module and in future Modules. It would be of reassurance to have confirmation of the extent to which this issue will fall to be considered by the Inquiry in Module 2C.

Discrete Issues of Importance to NICBFFJ

18. In Northern Ireland, perhaps more so than in any of the other UK jurisdictions, the importance of religious rituals and social and cultural traditions relating to death cannot be understated. Wakes and funerals, many of which are large community affairs, are integral to the process of grieving and the celebration of life. It is important that, in the context of Northern Ireland, this is recognised by the Inquiry. However, it remains unclear when or how the Inquiry intends to fully examine the restrictions imposed on these important religious, social and cultural rituals relating to deaths in Northern Ireland. This issue has repeatedly been identified by an overwhelming number of NICBFFJ group members as a matter of the utmost importance to them. The impact on the ability to gather and grieve as a community and the indignity with which it is felt that many of the deceased were treated caused and continues to cause deep distress. The manner in which this issue has been raised by NICBFFJ members, and the frequency with which it is raised, suggests that this is a systemic issue with wider importance for resilience. That suggests that it is appropriate to be considered by this Inquiry.
19. It appears that issues in relation to restrictions on wakes and funerals will be considered in Module 2C, as we note that the provisional scope includes:
“The public health and coronavirus legislation and regulations that were proposed and enacted: their proportionality and enforcement in Northern Ireland.”
20. The proportionality of restrictions on wakes and funerals would therefore be within the

scope of this Module as presently defined.

21. Restrictions on funerals are also likely to be considered in the context of paragraph 5 of the Provisional Scope for Module 2C, which includes as an issue:
“the maintenance of public confidence in the government in Northern Ireland, including the impact of any alleged breaches of rules and standards by Ministers, officials and advisers.”
22. This is relevant because there was a very high-profile example of a funeral, attended by a number of senior local politicians, which appeared to very publicly breach the restrictions on funeral attendance or public gatherings.
23. We would therefore respectfully suggest that this issue must be explicitly and fully considered within the context of Module 2C and would seek confirmation of this to ensure clarity at this stage.
24. Having addressed these preliminary issues it is appropriate to now address the issues identified by the CTI Note for the Second Preliminary Hearing of Module 2C.

Start date for the oral hearings

25. NI CBFFJ welcome the identification of a proposed commencement date for the Module 2C hearings on 29 April 2024. For the reasons identified in our previous submissions we agree that it was inevitable that the date of hearing for Module 1 was required to move, and that this would have an effect on the dates of other modules, including 2C.
26. We would however make clear that we have significant concerns that the length of time identified for the hearings in Module 2C is insufficient. The CTI Note identified that this module “will run for three weeks”. Taking into account the May Bank Holiday, this will mean there are only 14 days of hearing to consider the evidence in Module 2c. We respectfully submit that this will be insufficient to properly examine the issues to be considered in this Module.
27. We consider that this conclusion finds support from the factors identified above generally in relation to the scope of the Module. Those factors serve to support a conclusion that the issues raised in this Module will be complex, and therefore that it will require a greater length of time for oral hearings than is presently envisaged.
28. Given the matters which this Module will look at, identified above, there appear to be three key factors that increase complexity and therefore sets Module 2C apart from Module 2, 2A and 2B (and therefore the time required to properly consider the issues within scope). These are:
 - (i) The fact that the jurisdiction forms part of a separate epidemiological unit of the

- island of Ireland, ensuring that consideration is required of the interaction with the Irish government, the operation of cross border bodies or institutions;
- (ii) The system of health and social care which operates in a different way to all other jurisdictions in these islands;
 - (iii) The political dysfunction in this jurisdiction which has resulted in instability in Government, and which can also lead to deadlock even when Ministers are in place due to the political system employed.

29. For the avoidance of doubt, the absence of a functioning Assembly at key times should not absolve individuals of responsibility for their actions, or provide an excuse for failings. However it plainly complicates the task of the Inquiry in examining decision making of the devolved government in relation to the Covid pandemic during periods when there were no Ministers in place. This will require the Inquiry to examine who was in charge during those periods without Ministers, and to what extent they had authority to act.

30. We note, for example, that the Provisional Scope includes as a matter to consider:

“the impact of the absence of Ministers and the Executive in Northern Ireland from early 2017 to 11 January 2020”.

31. We also note that this Module will consider decisions made up until March 2022, and further note that the Executive collapsed again in February 2022, ensuring that the time period to be considered in this Module begins and ends with no Executive in place. This may be an issue which would be appropriate to identify explicitly in the provisional scope document.

Importance of Module 2C

32. As we have stated in relation to Module 2 and in similar previous submissions, we appreciate that the Inquiry must take a proportionate approach and set a timescale. However, we are concerned that the proposed timetable for Module 2c is too short and will compromise its rigour, thoroughness and effectiveness. As with Module 2, we urge the Inquiry to reflect on the length of the current timetable so that speed is not prioritised over the Inquiry’s ToR, the requisite rigour of its investigation and our clients’ meaningful and effective participation.

Update on Rule 9 requests

33. We note the Inquiry’s update on the Rule 9 requests that have been issued, and reiterate, as highlighted in Module 2 submissions, that:

- (a) We welcome in particular the decision to issue Rule 9 requests to organisations and

bodies representing at-risk and vulnerable groups; and

- (b) We remain concerned that in the absence of disclosure of the Rule 9 requests themselves we are unable to assist the Inquiry with relevant lines of investigation to be pursued.
34. We note the reassurance offered in §8 – 12 of the CTI submission but would respectfully observe that an “iterative” process to which we cannot meaningfully and contemporaneously contribute and in relation to which we must await the outcome is of limited reassurance in real terms. In the absence of clarity and full transparency of Rule 9 the requests as well as the opportunity to consider and contribute to such requests, NICBFFJ are unable to effectively participate in the process by which evidence is gathered, considered and followed up with additional requests. Indeed the process identified by CTI as offering reassurance serves to illustrate that, save for identifying other potential recipients of Rule 9 requests, NICBFFJ are excluded from meaningful participation at this stage. That is not to fail to recognise the enormity of the task of the Inquiry team nor the importance of carefully managing the evidence gathering process in an efficient and timely manner. However, at a minimum, we renew our request for disclosure of the Rule 9 requests and follow up requests so that we can know precisely what is being sought, from whom and in what terms.
35. An additional factor that is apparent from the information provided about the Rule 9 requests issued to date is that, to the extent they are targeted at state institutions or entities, they are, understandably, addressed to those with ultimate or very senior responsibility within those institutions. They will likely therefore result in corporate statements setting out the corporate position of those entities. Such evidence clearly requires to be sought. However there is a clear and identifiable risk that such evidence will be at worst incomplete and self-justifying and at best limited to the views and experiences of those at the top. Indeed, there may be a reluctance to disclose failings or matters of controversy by senior officials within those institutions.
36. We consider it important that the Inquiry does not hear only or mainly the “*corporate line*”, but that it also maximises the opportunity to hear from dissenting voices or from those who can provide evidence of personal or controversial experiences, from within those entities. At present, there is not clear opportunity for such evidence to be invited or collated and, plainly, the Inquiry cannot rely on ‘whistleblowers’ to come forward.
37. We consider it very important that the possibility of the Inquiry receiving and considering such evidence is maximised, as many of the issues raised by the members of NICBFFJ are controversial. This will have been apparent to the Inquiry from the contents of the Group’s Rule 9 response in relation to Module 1. By way of example, that identified that many group members considered there had been failings in properly protecting the most vulnerable in care and hospital settings, with many members describing a sense of fatalism in relation to the most vulnerable to the extent that they felt their relatives had been

abandoned from the outset. It may be thought unlikely that relevant entities would accept much less disclose that there was such an approach.

38. To obtain best evidence on controversial issues, we would respectfully suggest that proactive steps are taken by the Inquiry to ensure that informed accounts which differ from what could be considered to be *“the corporate line”* are also considered. Whilst it is important for the Inquiry to obtain information from the very top of each entity with relevant evidence to provide, it is also important to ensure the possibility that information can flow upwards from those further down the *“chain of command”*, and may inform the Inquiry where this is relevant. We would suggest the following possible methods which we consider could assist the inquiry to obtain such information at this stage:

- (i) A general and well publicised invitation to those within relevant organisations or entities with relevant information or evidence to come forward and provide it to the Inquiry;
- (ii) Issuing Rule 9 requests to individuals who hold less senior roles within these organisations but who may have relevant information to give;
- (iii) The Inquiry to specifically include questions within their Rule 9 requests about dissenting opinions within the organisation, and to ask for those who openly expressed such opinions to be identified for the purpose of considering whether it is appropriate to also send those individuals a Rule 9 request. (As we have not seen the content of the Rule 9 requests, we appreciate that the Inquiry may already have adopted such an approach).

39. We seek this approach not just to encourage ‘whistle-blowers’ to reveal any material or information which may have been inappropriately concealed from the public, but more generally to identify how decisions were taken, whether all options were appropriately considered and whether there remain lessons to be learned. We consider that the inquiry would require to consider such evidence to ensure that it can make a fully informed assessment of the evidence.

40. Moreover, there are some significant bodies or entities who do not appear to have been included in the Rule 9 requests which have been identified to us. We are presently compiling a list of proposed additional entities who NICBFFJ consider should be sent Rule 9 requests, with brief reasons for each, which we will provide to the Inquiry. We will briefly address some of these herein for completeness.

41. We note, for example, that the RQIA, which has an important role for both health and social care in this jurisdiction, has not been included in the list of entities that have been sent a Rule 9 request. We also note that the Institute for Public Health Ireland, identified in our submissions prior to the first Module 2C preliminary hearing, do not appear to have been

sent a Rule 9 request. We respectfully suggest that both organisations would inevitably have relevant evidence to provide and should be sent a Rule 9 request.

42. We note that a number of Ministers, including the NI Health Minister, are not named as having been sent a Rule 9 request thus far. We accept that the CTI Note states that *“Module 2C is in the process of developing its detailed Rule 9 requests to Ministers in Northern Ireland in light of the materials received and the work which it has done thus far.”* We therefore assume that the Health Minister would be one of those Ministers whose detailed Rule 9 request is under development. If that assumption is incorrect, we would respectfully suggest that such a request should be sent. Similarly, in this Module, as with Module 2, neither of the NI Secretaries of State in post during the relevant time appear to have been approached, nor relevant counterparts in the Irish Government.
43. We have already noted that Module 2C will also require to consider the response of the Irish government to the pandemic, not least because *“the extent to which decisions were informed by the response of the government of the Republic of Ireland”* is explicitly identified as an issue within the scope of this Module. That must mean that information should be obtained by the Inquiry about that response. We would therefore respectfully suggest that Rule 9 requests should be sent to those cross border entities and institutions identified above as well as the Irish Government and the British Irish Council. We note in relation to the latter that the Inquiry has already confirmed that Michael Gove is to be asked about the role that the British Irish Council played in facilitating inter-governmental relations. What he has to say remains to be seen. It would be sensible and proportionate to also seek relevant information from the British Irish Council directly.
44. We welcome the issue of Rule 9 requests to organisations and bodies representing at-risk or vulnerable groups and make the following requests and observations:
 - a. We note that the Ruling following the preliminary hearing for Module 1 identified that eighty-five requests have been sent out in connection with issues and matters that arise in Module 2 and also in Modules 2A, 2B or 2C. We would ask for confirmation of how many of these requests related to 2C.
 - b. As with Module 2, we would ask whether witness statements have been requested in Rule 9 requests and , if so, we request that CPs be updated with a list of witnesses from whom witness statements have been requested. As noted in relation to Module 2, this will assist our ability to identify additional witnesses who can meaningfully assist the Inquiry’s work and also allow us to make informed and constructive representations on witnesses to be called during the oral hearings, including in response to CTI’s proposed witness list.
 - c. We note that groups/organisations representing people in custodial settings/places of

detention have not been included in the bulleted list. Given the known impact of NPIs on inmates and staff in prisons and places of detention, particularly during the first lockdown between March and July 2020, we ask that they be included.

Disclosure to Core Participants

45. NI CBFFJ are mindful of the significant work being undertaken by the Inquiry team and, notwithstanding the slippage to date, welcome the indicated timelines for disclosure set out in CTI's note.
46. However, the Inquiry's approach to redaction (CTI's Note, §§ 14-16) remains of concern and we rely on the written and oral submissions we made for the recent Module 1 and Module 2 preliminary hearings in this regard.¹ For the reasons we set out in that submission, we consider that concerns over privacy breaches are minimal and cannot outweigh the need for the Inquiry to progress its work and ensure the effective involvement of CPs.
47. We renew our concerns raised in relation to the Inquiry's use of the current disclosure platform, which continues adversely to impact our preparation. We invite the Inquiry to revisit our concerns, raised both with the Inquiry's team and in our written and oral submissions for the recent Modules 1 and 2 preliminary hearings. Regrettably, our attempts, together with CBFFJ, to improve the functionality of the current platform with the assistance of tags and search terms, has not met with success.

Instruction of expert witnesses

48. NI CBFFJ note the instruction of Professor Ailsa Henderson, Professor Thomas Hale, Professor Alex Thomas and Gavin Freeguard to provide expert reports to the Inquiry. We look forward to the disclosure of their draft reports and an opportunity to assist the Inquiry with observations on behalf of our clients.
49. We note CTI's indication at §24 that it *may be* that further expert evidence specific to Northern Ireland will be required. In our submission it is inevitable that such expert evidence *will be* required and we are ready to assist the Inquiry in the identification of an appropriate expert. We have previously contended that the Inquiry would be assisted by expert on devolved government in NI, given the complexities of the political and health and social care system and the relationships between Belfast and the UK Government and Irish Government. Such an individual would be of particular importance to the Inquiry in identifying lessons for future pandemics in this jurisdiction and on this island. We urge that such experts be instructed.

¹ See our written submissions for that hearing, §9, and the oral submissions of Mr Weatherby KC on the topic at the hearing.

50. We repeat our request from our written submissions to the 2nd preliminary hearing in Module 1² that expert Letters of Instruction (LoIs) are disclosed to CPs now. The Chair has previously ruled that LoIs will be provided to CPs before the expert reports are finalised. That being the case, there would not seem to be any good reason for the delay in providing those reports to CPs at this stage.
51. Disclosing the LoIs before the CPs receive the draft expert reports will enable CPs to consider not only whether all the right issues have been addressed to the instructed experts but also whether there is a need for further expert assistance. Having the LoIs now will also allow CPs to prepare for the provision of comments to the Inquiry, and do so in a way that is most effective and constructive to the Inquiry. We can see no reason for withholding the LoIs at this stage; they have all been finalised by the Inquiry and the Chair has previously stated that they will be disclosed to CPs.

Witnesses and hearing timetable

52. We recognise that the Chair's decisions in relation to the start date and time estimate for Module 1 has had a direct consequence on the start date and timetable for Module 2. For the reasons we set out in our submissions to Module 1, we acknowledge that this change in the timetable was inevitable. We also refer to our submissions above which identify our concerns that the three-week timeframe identified for hearings in this module is too short.
53. In relation to scope, we note the CTI's indication that a list of key issues to be examined during the Module 2C hearings will be provided in due course, and would respectfully invite the Chair to direct that this be provided by a specified suitable date.
54. We would also suggest that a further date be fixed for a third Module 2C preliminary hearing.

Parliamentary privilege

55. We repeat and rely on our submissions made for the Module 2 preliminary hearing in relation to the issue of Parliamentary privilege. We note, and do not demur from the approach to this issue as identified in earlier PHs on other Modules.

Evidence proposal procedure and Rule 10

56. We repeat and rely on our submissions made for the Module 2 preliminary hearing in relation to the issue of evidence and Rule 10. When it comes to Module 2C this issue is of

² See our written submissions for the 14th February 2023 Module 1 preliminary hearing §§24

acute importance to NICBFFJ, and while discussions and submission will follow in due course in relation to specific witnesses and particular issues, is our contention that the Inquiry should adopt an approach that welcomes the questioning of witnesses by the direct representatives of Core Participants.

Opening and closing statements

57. We note that CTI are intending to make an opening statement at the commencement of the public hearing (CTI Note §56). We repeat the request made that we be permitted sight of CTI's written opening statement well in advance of the hearings so we can optimise the assistance we can provide. We can indicate that we would be grateful for the opportunity to make an Opening and Closing Statement on behalf of NICBFFJ.

The Listening Exercise - Every Story Matters and Commemoration

58. We repeat and rely on our submissions made for the Module 2 preliminary hearing in relation to the issue of Every Story Matters and commemoration.

22nd March 2023

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