

THE UK COVID-19 INQUIRY

TRADES UNION CONGRESS

SUBMISSIONS FOR THE SECOND PRELIMINARY HEARING IN MODULE 2B

Introduction

1. These submissions are made on behalf of the Trades Union Congress (“TUC”) in advance of the second preliminary hearing in module 2B. Module 2B is primarily concerned with the Welsh 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 Wales.
3. Part of the TUC is the Wales TUC (“WTUC”) representing affiliated membership in Wales. The WTUC represents around 400,000 workers in Wales through its affiliated unions. The WTUC exists to improve the economic and social conditions of workers in Wales, regardless of whether or not they are currently in employment. The WTUC is the voice of Wales at work. The WTUC has already provided evidence in this module by way of a draft response to a Rule 9 request.
4. 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

5. The Inquiry has timetabled 14 days of oral hearings for module 2B. 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.
6. 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 Wales, and which take place in Wales. 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 Wales allow the flexibility to extend the time estimate.
7. CTI proposes a further preliminary hearing in “late 2023 or early 2024.” We consider that early 2024 would be far too late to allow adequate core participant participation and input in respect of a hearing commencing on 26th February 2024.

Rule 9 requests

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

Organisations and bodies relevant to at-risk or vulnerable groups

9. 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 Wales.

10. We note that the Inquiry has instructed Professor Ailsa Henderson from the University of Edinburgh to report on the political structures for devolution within the UK. It may be beneficial for the Inquiry to consider also obtaining evidence specifically on Welsh devolution, we suggest from Professor Emyr Lewis, Head of Department at the Aberystwyth Law School. Professor Lewis was recently appointed as a member of the panel of experts advising the Independent Commission on the Constitutional Future of Wales and has given evidence to UK and Welsh Parliamentary Committees on devolution.

HSE

11. 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.
12. It is important, however, that a bespoke rule 9 request is made by the module 2B team, because the position in Wales gives rise to distinct issues, which warrants distinct consideration. The framework for the HSE is different in Wales, as public health responsibility is devolved to Wales, albeit the HSE has workplace health and safety jurisdiction. The Welsh Government emergency public health legislation gave powers to the police and local authorities to enforce social distancing in all premises, and the HSE and local authorities were responsible for local enforcement

arrangements for the emergency legislation complimentary to health and safety law. The WTUC highlighted a lack of co-ordination in ensuring workplace safety during the pandemic. Partly in response to those concerns, the Welsh Government set up a health and safety forum for Wales which brought together the HSE, local authorities, employers and the Welsh Government in an attempt to improve regulation in Wales. It is important that we better understand HSE's decision making and actions in Wales during this period, and its interactions with the Welsh Government.

The range and identity of organisations and entities

13. At paragraph 13 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 that have been made. We also only have a bare summary of the Rule 9 requests in respect of few governmental bodies.
14. 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.

Proposed evidence procedure and rule 10

15. 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 reserve its position.

Opening and Closing Statements

16. 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 requests 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 WTUC stand ready to assist.

SAM JACOBS

Doughty Street Chambers

23rd March 2023