

Wednesday, 29 March 2023

(10.00 am)

BARONESS HALLETT: *Bore da.* Good morning, this is the second preliminary hearing for Module 2B. The aim of preliminary hearings is for me to check in public on the progress a module is making and to ensure that that progress is good. It is also a chance for Core Participants to air, in public, any concerns that they may have.

Core Participants play a vital role in the public Inquiry and I have been very impressed to date by the quality of the submissions made to me by many of the Core Participants and the commitment that they have shown.

With their help, I hope we can conduct a thorough investigation and meet the ambitious timetable that I have set. In that way, I can reach conclusions about the preparedness for the pandemic and the response to it and make any recommendations as we go along.

I am determined that the public of the United Kingdom should not have to wait until the end of the Inquiry for all the answers to their legitimate questions and concerns and that any recommendations that may reduce suffering in a future pandemic are published as soon as practically possible.

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represented.

Written submissions for this morning's hearing have been received from five Core Participants, namely, Covid-19 Bereaved Families for Justice Cymru; John's Campaign and Relatives & Residents Association; the Trades Union Congress and the Wales Trades Union congress; Disability Wales and Disability Rights UK; and the Welsh Government.

We are extremely grateful to them all for having provided us with their observations and insights and also for the brevity with which they have done so.

After my submissions, your Ladyship will be hearing submissions from the following Core Participants in the following order: Covid-19 Bereaved Families for Justice Cymru, represented by Bethan Harris; John's Campaign and Relatives & Residents Association, represented by Adam Straw KC; the Trades Union Congress and Wales Trades Union Congress represented by Samuel Jacobs; Disability Wales and Disability Rights UK represented by Danny Friedman KC; and the Welsh Government represented by Ruth Henke KC.

Before turning to my substantive submissions, may start by briefly explaining the arrangements for this morning's hearing. These proceedings are being recorded and live streamed to other locations. A transcript of

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I have received written submissions from several of the Core Participants to this module for today's hearing. I'm very grateful to them and I have read them very carefully. I will bear all the submissions very much in mind. It means that those who are making oral submissions need focus only on the matters they wish to highlight this morning.

Mr Tom Poole KC, lead counsel to the Inquiry for this module will now explain in detail the issues for me to consider today.

Mr Poole?

Submissions by MR POOLE

MR POOLE: *Bore da.* Good morning my Lady. Can you hear and see me?

BARONESS HALLETT: I can, thank you.

MR POOLE: This is the second preliminary hearing in Module 2B, the first one having been held on 1 November some four months ago. By way of reminder for those who are watching and listening, Module 2B is looking at core political and administrative decision making relating to the management of the pandemic in Wales. Primarily, the key strategic decisions taken by the Welsh Government.

I don't propose to reintroduce the Core Participants or their legal representatives, there are nine Core Participants in Module 2B and all are legally

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what is being said at the hearing will be made publicly available on the Inquiry's website in due course.

As is always the case in hearings like this, matters may be mentioned of a potentially sensitive nature. To cater for this, the broadcasting of the hearing via the YouTube feed will be conducted with a three-minute delay. That feed can therefore be paused if anything unexpected is aired which should not be. We do not expect such matters to arise over the course of this morning but I mention this feature so that those who are following proceedings understand the reasons for any short delay, if, for any reason, that did need to happen.

I propose to first say something about the Inquiry's evidence gathering. Since the last preliminary hearing, a great deal of work has been done and at very considerable pace indeed. As of yesterday, the Module 2B team had issued 84 formal requests for evidence pursuant to Rule 9 of the Inquiry Rules to entities, persons and organisations in Module 2B alone.

A further 73 requests have been made jointly with other Inquiry modules and 39 Rule 9 questionnaires have been issued to members of the Welsh Technical Advisory Group and its related subgroups.

As explained at the last preliminary hearing, the

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1 Rule 9 requests are formal requests for documents and,
 2 in many cases, witness statements. Most are long and
 3 complex, particularly in the case of the key decision
 4 makers. To give a sense of the breadth and width of the
 5 Inquiry's reach, the Rule 9 requests include the
 6 following organisations: the Welsh Government; the Chief
 7 Medical Officer for Wales; the Office of the Secretary
 8 of State for Wales; the Technical Advisory Group and
 9 Cell; the Welsh Local Government Association; the Wales
 10 Trades Union Congress; Public Health Wales; the
 11 Children's Commissioner for Wales; the Health Treasury;
 12 the Health and Social Services Group; the National
 13 Police Chiefs' Council; the Office of the Domestic Abuse
 14 Commissioner for England and Wales; the Office of the
 15 Victims Commissioner for England and Wales; the
 16 Intensive Care and National Audit and Research Centre;
 17 the Ministry of Justice; the Crown Prosecution Service;
 18 HM Courts and Tribunal Services; UK Statistics Authority
 19 and Office for National Statistics; Equality and Human
 20 Rights Commission in Wales; the Office of the Older
 21 People's Commissioner, Wales; the British Medical
 22 Association; Liberty; Justice, the Education and Public
 23 Services Group; the Welsh Government Transport Group;
 24 the Chief Executive of NHS Wales; Care Inspectorate
 25 Wales; and 12 Welsh Government directorates.

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1 disabled people; workers' groups; health professionals;
 2 the bereaved; LGBTQI; the traveller, gypsy and Roma
 3 community.

4 In answer to a concern that has been expressed in
 5 submissions made on behalf of the TUC, the 2B Module
 6 Team is confident that the evidence elicited from the
 7 Rule 9 requests that have been issued will reflect the
 8 particular experience of at risk and vulnerable people
 9 in Wales.

10 In our CTI note issued to Core Participants in
 11 advance of this preliminary hearing, we asked Core
 12 Participants to propose the identities of individuals
 13 and organisations to which further Rule 9 requests might
 14 be issued. Some Core Participants have very helpfully
 15 done so, including Covid-19 Bereaved Families for
 16 Justice Cymru, John's Campaign and Relatives & Residents
 17 Association and the TUC. All of these suggestions are
 18 receiving active further consideration. At this stage,
 19 I make three comments on the suggestions which have been
 20 made.

21 First, some Core Participants have provided details
 22 of experts in various fields. The suggestions that have
 23 been made are all very helpful and will be considered.
 24 The details of the suggested experts' roles, relevant
 25 publications and explanations as to what the Core

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1 Rule 9 requests have also been issued to a number of
 2 individuals, such as senior civil servants within the
 3 Welsh Government, special advisers to the Welsh
 4 Government, individuals from Public Health Wales and
 5 members of the First Minister's Black, Asian and
 6 Minority and Ethnic Advisory Group. Further requests of
 7 witness statements from Welsh Government ministers,
 8 including the First Minister, are due to be issued
 9 within the next few months.

10 Those witnesses involved in core decision making
 11 within the Welsh Government are asked to disclose to the
 12 Inquiry key emails and correspondence relevant to the
 13 issues addressed in their witness statements, as well as
 14 any informal or private communications about the Welsh
 15 Government's strategic response to the pandemic.

16 It shall also be noted that Module 2B, in
 17 conjunction with Modules 2, 2A and 2C, has issued over
 18 73 Rule 9 requests to organisations and bodies
 19 representing at-risk and vulnerable groups within Wales,
 20 as well as organisations representing those with
 21 protected characteristics. To date, entities and
 22 organisations representing the following groups have
 23 been written to: women; black and minorities; children
 24 and young people; those affected by health inequalities;
 25 those suffering from mental health issues; older people;

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1 Participants think they might add to Module 2B are all
 2 particularly helpful.

3 Second, suggestions have been provided as to Welsh
 4 ministers, civil servants and special advisers who might
 5 be contacted for individual Rule 9 responses.

6 An analysis has already been done by the module team of
 7 key decision makers within and advisers to the Welsh
 8 Government, which have been cross-referenced with these
 9 proposals.

10 Third, as regards organisations which may be able to
 11 provide information about the impact of key political
 12 decisions on vulnerable, at-risk and minority groups,
 13 various helpful suggestions have been made.

14 For some, whose area of interest is already being
 15 covered by other similar organisations, it may be that
 16 the possibility of contacting them will be reviewed once
 17 those other organisations have responded and an analysis
 18 can be undertaken of whether any additional material is
 19 required. This appears to us to be the best way to
 20 balance thoroughness and the need to avoid unnecessary
 21 expense, as your Ladyship requires us to do.

22 The point appears to be well made, in our view, by
 23 the TUC and Wales TUC, where they say that some of the
 24 national organisations who have been contacted may or
 25 may not be able to provide adequate information about

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1 Wales or information specific enough about certain
2 at-risk groups for our purposes. We accept that these
3 possibilities may prove to be right and we maintain
4 an open mind to contacting other groups if the responses
5 which we receive prove inadequate for our purposes on
6 these or other grounds.

7 I would like to be clear, however, that work has
8 already started on finding out more about the suggested
9 organisations, to the extent they were not familiar to
10 us already.

11 Before leaving the topic of Rule 9 requests, I would
12 like to repeat the assurances that were given by counsel
13 to the Inquiry at the second preliminary hearing for
14 Module 2, that the Inquiry is committed to fearlessly
15 inquire into the impact on the pandemic on at-risk,
16 vulnerable, marginalised and ethnic minority people and
17 groups. Specifically in Module 2B, we will be
18 considering whether the effects of the pandemic and the
19 measures taken in respect of these groups were
20 considered when making core political decisions.

21 It is for this reason that a number of Rule 9
22 requests have been made specifically to elicit relevant
23 evidence bearing on this issue.

24 In this regard and generally I hope that the number
25 of Rule 9 requests and the wide range of organisations,
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1 required to undertake is provisional and subject to
2 change, as a result of the Inquiry's own scrutiny of the
3 evidence and any matters raised by the Core Participants
4 following disclosure to them of the redacted document.

5 The problem encountered by the Inquiry is that,
6 given the profusion of policy documents and Government
7 emails, there are literally thousands of manual
8 redactions required. In addition, in many cases, it was
9 not possible for reviewers to be sure that the
10 particular name was irrelevant. As such, the process of
11 review and disclosure slowed down considerably.

12 As you would expect, the Inquiry team has taken
13 a number of steps which has already sped up the process,
14 whilst ensuring that only irrelevant information is
15 redacted. I mention three such steps:

16 First, increasing the number of reviewers available
17 each day to review documents. Rest assured that very
18 considerable resources are being directed at this
19 process. We hope that, by the time the process is
20 running smoothly, the number of documents reviewed
21 weekly, of which the Core Participants will receive
22 a portion, namely the relevant material, will run into
23 the thousands.

24 Second, block redacting the headers to emails in the
25 first instance, leaving only the first email in the

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1 entities and individuals who have received such requests
2 to date provides reassurance that the Inquiry is casting
3 its investigative net sufficiently widely.

4 We will continue to provide Core Participants with
5 monthly updates about our evidence-gathering process,
6 including summaries of the Rule 9 requests which have
7 been sent. These updates will also identify future
8 Rule 9 requests that are in the pipeline.

9 I next propose to address disclosure. As explained
10 in the CTI note, each and every document is individually
11 reviewed, sifted for relevancy, redacted where necessary
12 and then sent back to the document provider for comment.

13 It is fair to say that this process has proved
14 burdensome and problematic. However, in light of the
15 fact that the start of Module 2, and hence modules 2A, B
16 and C, have been moved back in light of the delayed
17 start of Module 1, the problem is now less acute.

18 As set out in the CTI note, the Inquiry team has
19 undertaken to redact from disclosed materials the names
20 of junior officials where it can be demonstrated that
21 the disclosure of that individual's name is not
22 considered necessary and, by virtue of their junior
23 position, they have a reasonable expectation of privacy.

24 I should, of course, make clear that each redaction
25 which the Inquiry, as opposed to the document maker, is
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1 chain with redactions to specific names where that is
2 required.

3 Third, working towards a more nuanced automatic
4 redaction by the document handling system of email
5 addresses.

6 Nevertheless, I accept that, on account of some
7 delays in getting back documents from document
8 providers, as well as the review process, documents have
9 not gone out quite as speedily as we would have wished.
10 We remain determined to disclose documents as soon as we
11 can. To do so, however, we will need the ongoing
12 support from Rule 9 recipients in meeting deadlines and
13 resolving issues promptly when they arise.

14 As acknowledged by the Welsh Government in their
15 written submissions, there have been some delays in the
16 disclosure of ministerial advices to the Inquiry team.
17 These are now being provided in tranches and reviewed as
18 a matter of priority and the Welsh Government has agreed
19 to provide all outstanding ministerial advices by the
20 end of May. We welcome the Welsh Government's statement
21 in their written submissions that they intend to engage
22 fully and work collaboratively with the Inquiry to
23 ensure disclosure and statements are provided in
24 a timely and efficient manner.

25 As of yesterday, Module 2B will have disclosed 473

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1 documents from the Welsh Government, Public Health Wales
2 and the Office of the Secretary of State for Wales. We
3 anticipate disclosing approximately 500 further
4 documents during the coming weeks.

5 Turning next to the issue of parliamentary
6 privilege, which is not an issue that need detain your
7 Ladyship. The issue was raised in CTI notes in modules
8 1 and 2 and addressed in our CTI note for this module
9 out of an abundance of caution so Core Participants can
10 understand the general approach that the Inquiry is
11 likely to take. However, as your Ladyship ruled in your
12 17 February ruling in Module 1, there are no issues of
13 principle that require determination, given the
14 practical approach adopted by the Inquiry.

15 Before leaving the subject, I would like to thank
16 John's Campaign and Relatives & Residents Association,
17 as well as Disability Wales and Disability Rights UK for
18 their helpful submissions on the exceptions to the rule
19 against the use of parliamentary materials in legal
20 proceedings. I'm also glad to see that they agree with
21 us that there are no issues at this stage that require
22 determination.

23 I turn next to experts. Draft expert reports, which
24 cover material relevant to Module 2B, have been received
25 from Professor Ailsa Henderson and Professor Thomas

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1 Module 2B, Core Participants will be invited to raise
2 points of clarification or new matters that are agreed
3 by the Inquiry to be relevant with each expert. Given
4 the number of Core Participants across modules 2, 2A, 2B
5 and 2C, it may be necessary for there to be some
6 limitations imposed as to the scope or the number of
7 matters able to be raised by each Core Participant. The
8 Inquiry team will provide further information about the
9 intended process for this involvement by Core
10 Participants in due course.

11 In the Module 2B preliminary hearing, your Ladyship
12 heard submissions about the need for an expert to deal
13 with the issue of structural racism and discrimination.
14 In your 9 March ruling, your Ladyship indicated that it
15 would be appropriate for an expert or experts to provide
16 an opinion on the issue of pre-pandemic structural
17 racism, with the caveat that it is not within the remit
18 of the Inquiry to conduct an Inquiry into institutional
19 racism.

20 Your Ladyship also directed that the Inquiry team
21 should look at the same issues relating to other forms
22 of pre-existing discrimination. Our proposal to you,
23 my Lady, is that you adopt the same approach to the
24 issue of pre-existing structural racism and other forms
25 of discrimination in Wales. We wish to emphasise, as

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1 Hale. Professor Henderson's report deals with political
2 structures for devolution within the UK and mechanisms
3 for inter-governmental decision making between the UK
4 Government and the Devolved Administrations during the
5 pandemic. Professor Hale's report deals with
6 international data relating to the pandemic. Both draft
7 reports are receiving consideration from the Inquiry
8 legal teams.

9 A further draft report with relevance to Module 2B,
10 instructed by Module 2, has been received concerning
11 decision making structures at the UK Government in
12 an emergency. The instruction of a similar report
13 relating specifically to the Welsh Government is being
14 considered.

15 A report has also been instructed but not yet
16 received on the access to and the use of data by the UK
17 Government and the Devolved Administrations during the
18 pandemic. This report from Gavin Freeguard the former
19 programme director and head of data and transparency at
20 the institute for Government is due to be received in
21 draft form shortly. On receipt, we will analyse its
22 content to the extent to which it covers Welsh issues
23 and, if necessary, look to instruct a Wales-specific
24 report on this important subject.

25 Following disclosure of the draft report relevant to

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1 I indicated earlier, that this is an issue to which we
2 are very alive in this module.

3 Turning then to planning and timetabling for the
4 remainder of the module. At the last preliminary
5 hearing, Core Participants were understandably keen that
6 we should set out our plan as to when the public
7 hearings in Module 2B would take place. As already
8 mentioned, necessary changes to the timetabling of
9 Module 1 has resulted in the Inquiry's overall timetable
10 being altered from our initial projections and you have
11 had already made rulings regarding the timetables of
12 modules 1 and 2, which can be have viewed on the Inquiry
13 website.

14 The need for clear planning is appreciated.
15 Therefore, subject to submissions which you may hear
16 from Core Participant representatives, we propose that
17 the Module 2B substantive public hearings should
18 commence on Monday, 26 February next year.

19 It remains our plan that those Module 2B hearings
20 will last for three weeks. More precise plans as to
21 which witnesses will give evidence on which days will be
22 announced in due course when further consideration and
23 analysis of the evidence being gathered permits.

24 We note what is submitted on behalf of the Core
25 Participants, in relation to whether three weeks is long

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1 enough. Given that the bulk of the documents have not
2 yet been received and given your Ladyship's stated
3 desire to have hearings that are relevant and not
4 undermined by the passage of time, we are loath to
5 suggest an extension in length, given the impact that
6 would have on the rest of the Inquiry. I am sure your
7 Ladyship will reflect on what has been said and keep
8 this issue under review.

9 We also note what is said on behalf of John's
10 Campaign and Relatives & Residents Association regarding
11 the adverse affects of delay. As your Ladyship has made
12 clear, you are determined that the Inquiry will not drag
13 on. The Inquiry is making fast progress with six
14 investigations already open and substantive public
15 hearings taking witness evidence starting in June. The
16 Inquiry is acutely aware of the need to make timely
17 recommendations, which is why your Ladyship has promised
18 to publish regular reports.

19 To this end, it is important that progress continues
20 at pace with the Module 2 teams, assisted of course by
21 the Core Participants, doing everything they can to
22 ensure that the relevant dates for the Module 2 public
23 hearings are met.

24 As we intimated at the last preliminary hearing, to
25 facilitate access for and engagement by the public in

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1 Core Participants and ultimately to assist in the
2 fulfilment of the terms of reference.

3 Before outlining our current thinking in that
4 regard, it is worth pointing out that we consider it
5 inevitable that there may be slight variations in the
6 way in which we propose each Module 2 and its submodules
7 be conducted, both with regard to the issues within each
8 investigation, which may differ in each of the four
9 nations of the UK, and the way in which the procedure
10 might best serve each of those issues being addressed.

11 There may be a number of legitimate reasons for this
12 such as the timing of the hearings, practicality, the
13 different issues which fall to be addressed in each part
14 of the UK, both generally and at the hearings, the
15 number and variety of material providers and decision
16 makers, the volume of material and the number and
17 interests of the Core Participants, which are different
18 in each of the four submodules.

19 Though such differences may occur, consistency in
20 the treatment of each of the four nations of the UK is,
21 in our submission, achieved by the broad consistency of
22 the outline scopes in each and the commitment in each to
23 important underlying principles, such as the need to
24 permit participation in the process by those who have
25 been accorded core participation status, which is

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1 Wales, the substantive public hearings in Module 2B will
2 take place in Wales. Moreover, the Inquiry will be
3 supporting the inclusion of the Welsh language in
4 hearings as much as possible by, for example,
5 simultaneous translation facilities.

6 As regards hearing venues in Wales, the Inquiry is
7 currently looking into this but I can assure you,
8 my Lady, and, in particular, those who represent
9 vulnerable or infirm groups that those discussions will
10 give careful consideration for the need for minimum
11 inconvenience for and any particular needs of those who
12 may wish to attend those hearings. Taking on board
13 submissions made by Core Participants, in particular
14 Disability Wales and Disability Rights UK, the Inquiry
15 is in the process of developing an overall approach to
16 reasonable adjustments in a systematic manner.

17 For those who cannot or do not wish to attend in
18 person, the intention is that those hearings, like
19 these, will be live streamed online and the transcripts
20 made publicly available via the Inquiry's website. The
21 Inquiry will also be able to upload recordings of
22 hearings to the Inquiry's website and YouTube channel.
23 Before that time, the work of the Inquiry in preparation
24 for those hearings will continue. There are a number of
25 planned events in order to maximise the involvement of

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1 reflected by each module providing means by which Core
2 Participants may participate beyond what is laid out in
3 the Inquiry Rules.

4 It is intended in the first instance that we will
5 distribute a list of issues which we intend to address
6 in Module 2B. In the first instance, we propose that
7 this will be issued to the Core Participants who will
8 then be invited to provide comments and suggested
9 alterations and additions to the list of issues. The
10 list will be a refined version of what issues we think
11 arise for determination by the Inquiry in Wales, under
12 each of the provisional outline of scope for Module 2B
13 paragraphs. The list of issues will draw on the
14 extremely helpful suggestions that have been made by
15 many of the Core Participants.

16 In addition to suggestions in correspondence, John's
17 Campaign and Relatives & Residents Association, as well
18 as Disability Wales and Disability Rights UK, have made
19 helpful suggestions in written submissions ahead of this
20 hearing. These, as well as other suggestions made by
21 the Core Participants, are being actively considered.
22 I do not propose now to deal with those detailed issues
23 raised but welcome the further engagement of Core
24 Participants on this topic.

25 In your ruling of 9 March, issued after the second

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1 preliminary hearing in Module 2, you directed that
2 Module 2 should produce a list of issues by 28 April.
3 We propose that you should direct this to happen in
4 Module 2B by 12 May.

5 I turn next to the Rule 10 process. As far as
6 questions for witnesses are concerned, Core Participant
7 representatives are aware of the provisions of Rule 10
8 and the procedures laid out there for the questioning of
9 witnesses, which will be primarily conducted by counsel
10 to the Inquiry and the opportunity which is set out
11 there for applications to be made for questions to be
12 asked by Core Participant representatives, in particular
13 under Rule 10.4.

14 In addition to the procedures laid out in the rules,
15 and to the proposed list of witnesses for Module 2B
16 public hearings, which we will share with Core
17 Participants in due course, it is intended that Core
18 Participants will be provided with an opportunity to
19 suggest areas and lines of questioning, which will be
20 covered with each witness.

21 In your ruling issued after the Module 2 preliminary
22 hearing, your Ladyship described an informal route by
23 which Core Participants could seek to persuade the
24 Inquiry team that there are issues that are of such
25 centrality that they must be raised in the course of the

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1 In our opinion, this will be too late to allow for
2 meaningful engagement by Core Participants and input in
3 respect of a substantive public hearing starting in late
4 February next year.

5 Turning next to Every Story Matters, which is the
6 name that will be given the Inquiry's listening exercise
7 through which individuals will be able to communicate to
8 us their experiences of the pandemic. It is part of the
9 work of the Inquiry that it will gather and assimilate
10 the accounts of people across the UK about the impact of
11 the pandemic on their lives. Such is the breadth of
12 human experience of the pandemic that this is really the
13 only way in which the Inquiry can ensure that record is
14 made of the accounts of those who wish to participate.

15 In response to submissions made in Module 1, further
16 information was made available in the Inquiry's marked
17 newsletter about the details planned for the exercise.
18 This newsletter can be accessed on the Inquiry's
19 website.

20 By way of overview the Inquiry has committed to
21 providing different ways for people to share their story
22 including a web form, with a save and come back feature,
23 a phone line, a paper form and in-person community
24 listening events, designed to reach seldom heard or
25 underrepresented groups attended by, where possible,

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1 witnesses' evidence. In Module 2B, we also intend to
2 adopt a similarly informal approach, details of which
3 will be provided to Core Participants when we get nearer
4 the time of those substantive public hearings.

5 When providing those details, we will also seek to
6 address the questions raised by Core Participants in
7 their written submissions, such as those raised on
8 behalf of John's Campaign and Relatives & Residents
9 Association regarding the distribution of evidence
10 proposals; Disability Wales and Disability Rights UK
11 regarding, amongst other things, the timescales for
12 receiving and commenting on evidence proposals; and the
13 TUC and Wales TUC on the questioning by Core
14 Participants of witnesses.

15 As well as the various procedures we currently have
16 in mind, all of which are designed to maximise progress
17 and also Core Participant involvement in the Inquiry's
18 work, we propose a third preliminary hearing for Module
19 2B should be held in November this year. At that
20 hearing, a full update can be given on progress and
21 plans for the public hearings, which would then follow
22 in about two to three months' time later. We note the
23 suggestion made by the Welsh Government that the third
24 preliminary hearing should take place after the
25 conclusion of the substantive hearings for Module 2A.

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1 your Ladyship and other Inquiry staff members. These
2 listening events shall be launched later this year and
3 I should add there will be an ability to participate in
4 different languages, including Welsh.

5 The Inquiry has committed to adopting
6 a trauma-informed approach to the listening exercise and
7 will provide emotional support. Experiences will be
8 gathered and analysed by experts in research and
9 analysis, not by media communications firms. Reports
10 will be produced for each relevant module investigation
11 and will be submitted as evidence to be disclosed to
12 Core Participants and published as part of the hearings
13 for each module of the Inquiry.

14 The way we plan to gather people's stories will help
15 the Inquiry obtain as broad an evidence base about the
16 impact of the pandemic as possible, to assist it in
17 reaching robust findings and recommendations which take
18 account of both cause and effect. The Inquiry team is
19 grateful to all those who have recently participated in
20 the webinar on Every Story Matters on 15 March and for
21 all of the feedback which has been received in response
22 to that exercise. The Inquiry is particularly grateful
23 for the feedback received from John's Campaign and
24 Relatives & Residents Association in their written
25 submissions. The detail of this feedback and other such

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1 feedback will be taken on board for future webinars and
2 communications about Every Story Matters, in particular
3 regarding the participation of individuals with
4 nonverbal communication needs.

5 The Inquiry team acknowledge the importance of Every
6 Story Matters hearing from a diverse range of people who
7 have been impacted and further details will be provided
8 in due course.

9 I turn finally to commemoration. In order to fulfil
10 its commitments to commemoration, the Inquiry has
11 consulted widely on this issue. The result is that you,
12 my Lady, have decided a tapestry should be created as
13 a physical installation. Each panel will be created by
14 a different artist, working with a particular community
15 or communities to develop it. The intention is for the
16 first panel to be unveiled at the UK's hearing centre in
17 time for the first substantive hearings for Module 1 in
18 June this year. This panels will be transportable to
19 wherever we hold hearings in the UK so that people in
20 Wales will be able to see them if they attend a hearing
21 in person.

22 It is also planned that impact videos providing
23 relevant insight into the harm and suffering caused by
24 the pandemic will be shown at the start of each
25 substantive hearing session. This will include the

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1 submissions.

2 **BARONESS HALLETT:** *Diolch*, Mr Poole. I'm very grateful to
3 you, thank you.

4 I think it is now time to call on Ms Bethan Harris.

5 **Submissions by MS HARRIS**

6 **MS HARRIS:** Good morning. *Bore da*.

7 **BARONESS HALLETT:** *Bore da*.

8 **MS HARRIS:** I appear to make submissions on behalf of
9 Covid-19 Bereaved Families for Justice Cymru and I will
10 confirm straightaway that I won't be going over the time
11 that has been allocated to me and if my Lady is content
12 I propose to speak in Welsh initially and then to
13 translate the Welsh language part of my submissions into
14 English and then to continue in English. Thank you.

15 *Fel y gwyr y cadeirydd, grwp ydy Covid Bereaved*
16 *Families for Justice Cymru gyda ffocws yn gyfangwbl ar*
17 *ymgyrchu dros, a rhoi llais i rai sydd mewn profedigaeth*
18 *oherwydd Covid-19 yng Nghymru.*

19 *Byddaf yn delio a'r testunnau canlynnol – Rhestr o*
20 *faterion, Ceisiadau Rheol 9, tystiolaeth arbenigol, ac*
21 *yn fyr -- y broses o ddatgelu a trefniadau ar gyfer*
22 *gwrandawiaadau a delio a tystiolaeth. Bydd hyn yn*
23 *rhannol drwy gyfrwng y Gymraeg at wedyn yn Saesneg.*

24 *Rhestr o faterion*

25 1. *Diolch I'r CTI y bore ma am y wybodaeth mai'r*

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1 Module 2B substantive hearings in Wales. I would like
2 to make special mention to the Welsh Covid Bereaved who
3 have worked with the Inquiry team to pilot the first
4 tapestry panel and shared their stories on camera last
5 week, which will form part of our impact films to be
6 played in June.

7 I hope what I have said brings those with
8 an interest in Module 2B up to speed with the
9 developments in our investigation and progress and sets
10 out a roadmap as to how we intend to progress matters
11 going forward, up to the point of our substantive public
12 hearings in Wales next year. As already indicated,
13 a further preliminary hearing for Module 2B is likely to
14 be held in November this year, though I would reiterate
15 that there will continue to be formal and informal
16 opportunities for Core Participants to contribute to the
17 work of the Inquiry.

18 May I again, on behalf of the Module 2B team, offer
19 our thanks for the helpful contributions made by the
20 Core Participants to this hearing and the continued
21 contribution of Core Participants and other material
22 providers to the work of the modules which proceeds at
23 pace but thoroughly.

24 Unless, at this stage, my Lady there are any further
25 matters with which I can assist you, those are my

26

1 *bwriad you darparu rhestr o faterion erbyn dyddiad*
2 *penodol.*

3 2. *Mae hi wedi bod o gymorth mawr i gael y rhestr*
4 *dros dro o faterion are gyfer modiwl 1 -- mae hon yn*
5 *ddogfen gynhwysfawr a defnyddiol.*

6 3. *Mae yna fantais mewn cynhyrchu rhestr or*
7 *faterion dros dro cyn gynteg ag sy'n bosib.*

8 *Unwaith bod gan y cyfranogwyr craidd y rhestr*
9 *materion bydd yn bosib paratoi yn fwy effeithiol.*

10 *Rheswm arall pan mae'n bwysig i gael y rhestr o*
11 *faterion yw bod modiwlau'n cydberthyn au gilydd, a dim*
12 *ond pan gawn weld rhestri materion i'r modiwlau sydd a*
13 *testunnau sydd berthnasol a'u gilydd y gallem eu rhoi*
14 *ochr wrth ochr a sicrhau bod materion sydd yn ymwneud a*
15 *Chymru ddim wedi syrthio i fwllch rhwng modiwlau*
16 *gwahannol.*

17 *I droi at beth dylsid cynnwys yn y rhestr o faterion*
18 *ar gyfer Modiwl 2B.*

19 4. *Yn ein cyflwyniadau ysgrifenedig rydym wedi nodi*
20 *rhai o'r materion my CBFJ Cymru o'r farn sy'n bwysig i'w*
21 *cynnwys ym Modiwl 2B, sef yn arbennig:*

22 (i) *Sut ac i ba raddau wnaeth Llywodreath Cymru a*
23 *llywodreath y Deyrnas Unedig ryngwethio a chyfarthrebu a*
24 *rhannu gwybodaeth hefo eu gilydd -- yn arbennig*
25 *gwybodaeth wyddonol ac arbenigol*

28

1 (ii) *Beth wneath Llywodreath Cymru yn wahannol --*
 2 *camau a gymerwyd neu a na gymerwyd -- a oedd yn wahannol*
 3 *i'r rheiny a gymerodd llywodraeth y deyrnas unedig.*
 4 *Rydym wedi gweld yr awgrymiad synhwyrol a wnaed yng*
 5 *nghyflwyniadau ysgrifenedig y Mudiadau am Bobl Anabl --*
 6 *sef i arbenigwr i greu nodyn dros dro yn crynhoi*
 7 *gwahaniaethau allweddol rhwng rheolau a penderfyniadau*
 8 *a wnaethpwyd gan y naill lywodreath, ac mae'r grwp dwy*
 9 *i'n ei gynrychioli yn cytuno byddai maintais mewn cael*
 10 *dogfen o'r math, a fyddai'n darparu man cychwyn i'r*
 11 *tystiolaeth a dadansoddiad i'r rhan yma o fodiwl 2B.*

12 As my Lady is aware, Covid-19 Bereaved Families for
 13 Justice Cymru are a Wales-focused group dedicated solely
 14 to campaigning for and giving voice to those bereaved
 15 due to Covid-19 in Wales.

16 I propose to address you on the scope, the Rule 9
 17 requests, expert witnesses and then briefly on
 18 disclosure and arrangements for evidence and hearings.

19 First with regards to scope, we have heard the
 20 helpful submissions from counsel to the Inquiry this
 21 morning and the aim that a list of issues will be made
 22 available by 12 May. We welcome bringing forward the
 23 provision of the list of issues and the provisional list
 24 of issues for comments that would be as soon as possible
 25 and we note that the provisional list of issues that is

29

1 summarising the key differences in regulations and
 2 decisions and those whom I represent endorse having such
 3 a document which, as regards this aspect of Module 2B,
 4 would be a good starting point for the evidence and
 5 analysis.

6 Turning now to Rule 9 requests. The main submission
 7 on behalf of the bereaved families is as to the
 8 importance of including vulnerable and at-risk groups to
 9 whom Rule 9 requests are made and to include, within
 10 those groups, groups representing older people in Wales.

11 Covid-19 Bereaved Families for Justice Cymru very
 12 much welcome that a corporate statement has been
 13 requested from the Older People's Commissioner for Wales
 14 and think this would be an important document but the
 15 group wishes to make the point that it is, of course,
 16 important that there are different perspectives as well
 17 that are sought from a wider group of organisations
 18 working on the ground.

19 As regards Rule 9 requests, we, of course, have seen
 20 the monthly updates from the CTI and they provide very
 21 helpful information about the groups upon whom Rule 9
 22 requests have been served and we have heard also the
 23 very reassuring submissions that have been made this
 24 morning as to the further service of Rule 9 requests and
 25 the attention that is given to vulnerable and at-risk

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1 being made available in relation to Module 1 is a very
 2 comprehensive and helpful document.

3 We note also that, by having such a document, it
 4 enables progress to be made much more quickly in
 5 preparation for the main hearing and, inevitably,
 6 modules are inter-related and it is only when we have
 7 the list of issues for closely related modules, so that
 8 we can look at them together and compare them, that we
 9 can be sure that issues concerning Wales have not fallen
 10 between the gaps. This is the subject upon which we
 11 have also made submissions in relation to Module 3.

12 As to what the issues should include to be on that
 13 list, in the written submission, on behalf of the Covid
 14 Bereaved Families, we have highlighted some of the
 15 matters that the group consider are important to include
 16 in this Module 2B and these are, in particular, how and
 17 to what extent the Government of Wales and the UK
 18 Government interacted and communicated and shared
 19 information with each other, in particular scientific
 20 and expert knowledge and what the Welsh Government did
 21 differently, steps taken or not taken, that differ from
 22 those of the UK Government.

23 We have seen the helpful suggestion in the written
 24 submissions on behalf of the disabled people's
 25 organisations that there should be a provisional note

30

1 groups.

2 Our concern is that, as has been mentioned, that
 3 groups that speak on a nationwide basis may not be able
 4 to pay sufficient focus to Wales and we know that the
 5 CTI has heard that point and taken it on board.

6 We are also concerned as to whether there are
 7 sufficient groups upon whom Rule 9 requests have been
 8 served within Wales, that are Wales-specific groups,
 9 that are focused on older people. We ask that
 10 consideration is given, as I know it will be, having
 11 heard the reassurance from the Inquiry this morning --
 12 that consideration will be given to the list that we
 13 have suggested which includes at least one group
 14 relating to older people in Wales.

15 I wish to make some further points about the
 16 position of older people in Wales, in order to highlight
 17 the importance of bringing forward evidence about this
 18 group of the population in Wales. The numbers of older
 19 people, as a proportion of the population, are
 20 relatively high in Wales, the group over-65 being over
 21 one fifth of the population and those over 90 being
 22 higher relatively than other parts in the UK, being
 23 1 per cent of the population.

24 The pandemic had, and the Covid-19 Bereaved Families
 25 for Justice Cymru believes continues to have,

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1 a disproportionate impact on older people, in particular
 2 those living in the relatively deprived areas in Wales.
 3 A particular concern of the Covid Bereaved Families
 4 group is the extent of the hospital acquired Covid-19 in
 5 Wales and recent data shows that a high percentage of
 6 Covid-19 infection in Wales continues to be
 7 hospital-acquired infection. Covid-19 Bereaved Families
 8 for Justice Cymru are of a view that it is likely that
 9 older people feature heavily in that percentage of
 10 Covid-19 infections that are acquired in hospitals.

11 For all these reasons, the bereaved families are
 12 concerned that the Inquiry should have a complete
 13 picture of the impact of the pandemic on older people in
 14 Wales.

15 I would like to touch on that matter again when
 16 I deal with expert evidence and, turning now to expert
 17 evidence, there are two matters upon which I would like
 18 to address the Inquiry. We call on the Inquiry to
 19 instruct an expert to report specifically on the
 20 devolved decision making structures in Wales and how
 21 they interrelate, including in an emergency situation,
 22 and we have heard what the CTI submissions have said
 23 this morning and that they are considering such a report
 24 to be brought forward, and we are very reassured by that
 25 consideration and we endorse it.

33

1 that was made this morning in submissions to the Inquiry
 2 for there to be a Wales-specific reporting on these
 3 issues, in relation to structural racism and other forms
 4 of discrimination.

5 I would like to address the Inquiry specifically
 6 with regards to the importance of bringing forward
 7 expert evidence with regards to the impact of the
 8 pandemic on older people in Wales. This is necessary in
 9 my submission in order to understand the characteristics
 10 of this at-risk cohort and it is also necessary in order
 11 to have a clear evidential foundation as to the impact
 12 of the pandemic on this group.

13 Again, it will save time at the hearing where time
 14 will inevitably be tight. It will contribute towards
 15 ensuring that matters concerning Wales are properly
 16 scrutinised, do not get lost and not properly looked at
 17 in the great amount of material that there is to be
 18 considered in this UK-wide Inquiry and so that the best
 19 time can be made out of the time that there is for the
 20 focus on Wales.

21 Again, we would like the opportunity as a group to
 22 communicate with the Inquiry with regards to suggestions
 23 for a suitable expert to deal specifically with the
 24 older people dimension.

25 Turning briefly to disclosure. We have heard that

35

1 The Welsh perspective and the impact of devolution
 2 on the competency and resilience of the Welsh Government
 3 does need to be properly explored, in our submission,
 4 and properly understood in this Inquiry. This report
 5 would provide an essential evidential foundation from
 6 which the issues of concern to the Inquiry can be
 7 explored and developed in relation to Wales. This is
 8 particularly so, given that there will inevitably be
 9 limited time for the oral hearing. Put simply, it saves
 10 time to have such a report.

11 There is a need, we submit, for detailed expert
 12 evidence such as this focusing specifically on the Welsh
 13 perspective, as regards devolved institutions. We have
 14 drawn attention in our written submissions as to how,
 15 when matters are dealt with at a national level, there
 16 does tend to be an emphasis on UK-wide institutions and
 17 English institutions, rather than those of the devolved
 18 nations.

19 I would like to mention the expert evidence that is
 20 to be brought forward in relation to structural
 21 discrimination and Covid-19 Bereaved Families for
 22 Justice Cymru welcomes your Ladyship's rulings on
 23 reporting on structural racism and for the exploration
 24 of expert evidence on discrimination on other grounds
 25 and on intersectional issues and endorses the invitation

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1 the Inquiry team is, of course, doing its best to deal
 2 with disclosure as quickly as possible and we encourage
 3 them, of course, to continue to do so and we are very
 4 grateful for those efforts.

5 With regards to the hearing timetable, we have heard
 6 this morning that it is proposed that the length of the
 7 hearing will be three weeks. That, of course, is
 8 a positive development. Nevertheless, there is concern
 9 amongst those in the group whom I represent about there
 10 being sufficient time for the scrutiny that is required
 11 as a result of this hearing in Module 2B.

12 There is a deep concern on the part of the group
 13 that it's proposed to cover the impact and handling of
 14 the pandemic within what was two weeks but even now
 15 three weeks. The group is concerned that this may not
 16 allow for adequate scrutiny nevertheless, even with the
 17 extra time. There is no other Inquiry for Wales, the
 18 First Minister having, of course, refused
 19 a Wales-specific Inquiry akin to the Scottish Public
 20 Inquiry in reliance on this Inquiry. The concern is
 21 that the devolved Welsh Government will escape full
 22 scrutiny and we invite consideration of a further
 23 extension of the time allocated to this module.

24 We once again would like to endorse and reiterate
 25 the suggestion which has been made by the TUC that

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1 a short hearing be listed after all the Module 2
2 submodule hearings are completed in order to take
3 account of the lessons learned across all the modules.

4 Finally, with regards to hearings, we hear that it
5 is the intention that the Inquiry will provide
6 translation facilities into Welsh and, of course, we
7 welcome this.

8 With regards to the evidence proposal and Rule 10,
9 we welcome the process of providing for an informal
10 approach in order to be able to speak to the Inquiry
11 team in relation to the evidence proposals and proposed
12 questions and we note the confirmation that this
13 informal process does not, in any way, impede the rights
14 under Rule 10.4 to apply to the Chair for permission to
15 ask questions or CPs to be able to ask such questions of
16 witnesses in their own right and we submit that this is
17 an important right which serves to increase public
18 confidence in the Inquiry.

19 Finally, Covid-19 Bereaved Families for Justice
20 Cymru welcomes the work on commemoration and Every Story
21 Matters and wishes to reiterate its commitment to
22 assisting with the development of this project.

23 Thank you. Those are my submissions.

24 **BARONESS HALLETT:** *Diolch*, Ms Harris. Very grateful to you,
25 both for your helpful submissions and for the extremely

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1 to my clients. There is a pressing need to make
2 recommendations which concern the care sector in
3 particular and that's because restrictions and very
4 onerous restrictions continue to be in place in the care
5 sector. It is very important for the carers, the people
6 who are being cared for, and so on, that those
7 restrictions are reviewed and changed if necessary.

8 The next topic is the list of issues. We welcome
9 counsel to the Inquiry's proposals about this, including
10 the date, which is a prompt date of 12 May, that the
11 list of issues will be produced. It is important that
12 those are finalised as soon as they can be because those
13 should be used to inform further requests under Rule 9,
14 requests for disclosure and potentially decisions about
15 expert evidence.

16 The third topic is a rather longer one, it is the
17 question about additional witnesses and whether
18 additional witnesses, over and above the very long list
19 that have been already Rule 9-ed by the Inquiry, should
20 be called. In our written submissions in paragraph 7 we
21 touch upon this issue but note there that we are taking
22 instructions in light of the recent disclosure about
23 whether additional witnesses ought to be Rule 9-ed.

24 We have now taken instructions about that and have
25 some more detail we can put forward about our

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1 helpful co-operation members of Bereaved Families for
2 Justice Cymru have been giving to the listening exercise
3 and commemoration project. I hope that those who
4 participated in the filming, which is obviously so
5 important for us, didn't find it too distressing but you
6 have been giving us great co-operation and we are
7 really, really grateful. Thank you.

8 **MS HARRIS:** Thank you.

9 **BARONESS HALLETT:** Mr Straw, I think, next.

10 **MR STRAW:** Good morning. Can you hear me, my Lady?

11 **BARONESS HALLETT:** I can Mr Straw, thank you.

12 **Submissions by MR STRAW**

13 **MR STRAW:** Thank you. *Bore da*. I represent, as you are
14 aware, my Lady, John's Campaign and the Relatives &
15 Residents Association, who broadly represent the
16 interests of those in care, their loved ones and their
17 carers.

18 If I may, I propose to address seven topics and to
19 do so roughly in the order that they appear in our
20 written submissions. The first is the question of
21 timing of the hearing.

22 The Inquiry, of course, faces a gargantuan task and
23 has already made extremely impressive progress in its
24 various modules but I would like to highlight, if I may,
25 one of the reasons why delay in this area is a concern

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1 suggestions. We will write a letter with this detail in
2 it to make sure that it is all entirely clear and in
3 writing but I hope it assists just to go over our
4 suggestions at this point.

5 Our main concern is the issue of the extent to which
6 the care sector featured or should have featured in core
7 decision making.

8 Now, I am sure that won't be controversial, not
9 least because in the letter granting our clients CP
10 status, my Lady, you said that our clients were well
11 placed to assist the Inquiry in Module 2B as to whether
12 those interests -- those whose interest we represent,
13 including those requiring care and those providing such
14 care were considered as part of the process of core
15 political and administrative decision making in response
16 to Covid-19.

17 I hope it helps to briefly summarise a few of the
18 reasons why it is important that the interests of those
19 in the care sector were considered in respect of core
20 decision making. The care sector was really at the
21 sharp end of the pandemic response. That's, in part,
22 because those in the care sector were among the most
23 vulnerable in society but it is in part because the need
24 for care meant that the restrictions which were then
25 imposed in many cases denied people the treatment, the

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1 care, the support and the company that they so dearly
2 needed.

3 There is another reason why the care sector should
4 have had an important part in core decision making which
5 is that it had a knock-on effect for a number of other
6 areas of government, for example decisions as to whether
7 people could be discharged from hospital, often depended
8 on the availability of care outside hospital.

9 The current proposals by counsel to the Inquiry as
10 to which witnesses will be called, relevant to the issue
11 of care core decision making in Wales, appear largely to
12 be in annex A to the update note in December 2022, under
13 the heading of "Older People".

14 Now, three of those -- Age UK, Care England and the
15 National Care Forum -- appear to us to be England-based
16 and to not include Wales. So it appears to us that they
17 have relationships with Welsh equivalents but don't
18 necessarily cover that.

19 The fourth proposal in the CTI's older people
20 category was the Homecare Association. We understand
21 that is a UK-wide body. It is an important body but it
22 is relatively limited so it covers homecare providers.

23 With that context in mind, we have a number of
24 further suggestions for additional witnesses, which
25 cover care and Wales specifically. So the first of them

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1 that area.

2 The second expert suggestion relates to the issue in
3 paragraph 8.4 of our submissions. This is the extent to
4 which individual autonomy, individual rights and
5 capacity were taken into account in making core
6 decisions and we have suggested Dr Lucy Series gives
7 evidence about that. She has expertise in law, policy
8 and medicine, so may be well placed to assist the
9 Inquiry on that point.

10 So that's additional Rule 9s. The fourth issue
11 which I would like to turn to, if I may, is further
12 questions to existing witnesses or further requests for
13 disclosure. Now, we are in difficulty at the moment to
14 identify specific further questions or specific further
15 disclosure and that's because we haven't yet received
16 the Rule 9 statements themselves or the majority of the
17 disclosure that comes with them. So, at this stage, all
18 we have done is put forward some suggestions for general
19 questions and we have asked the Inquiry legal team to
20 consider them and consider ensuring that sufficient
21 witnesses have been asked about them and sufficient
22 questions have been asked.

23 But just to give a couple of examples of those
24 general topics we have put forward: they are set out in
25 paragraph 8 of our written submissions, together with

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1 is Age Cymru, which is, as we understand it, the
2 equivalent to Age UK in Wales, so it covers those needed
3 care. Secondly, Care Forum Cymru, that, as we
4 understand it, is the equivalent to the National Care
5 Forum but the Welsh version, and that is representing
6 providers. Thirdly, the Carers Trust Cymru or
7 alternatively Carers Wales, and that's a body which
8 represents unpaid carers.

9 The fourth suggestion we have is Professor Adam
10 Gordon, he is a suggestion for an expert witness in this
11 area. He is the professor of care of older people in
12 the University of Nottingham. He was the author of the
13 British Geriatrics Society Guidance on Covid-19 in Care
14 Homes and we will provide a CV so that the Inquiry team
15 can consider him and make decisions about that.

16 Sticking with expert evidence, in paragraph 12 of
17 our written submissions we made suggestions for two
18 other experts, I hope it helps if I briefly mention
19 those. The first of them is an expert about the issue
20 in paragraph 8.3 of our written submissions. That is
21 the issue of the extent to which core decisions were
22 evidence based, for example whether evidence was
23 obtained about the adverse impact of non-pharmaceutical
24 interventions and how that fed into core decisions. We
25 have suggested Professor Carl Heneghan as an expert in

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1 our 15 February letter.

2 One example is Public Health Wales, so the extent to
3 which advice by Public Health Wales was taken into
4 account in core decision making. We give an example
5 about that which is a particular document where Public
6 Health Wales in July 2021 recommended that care homes no
7 longer should be closed, in other words the closure of
8 care homes was no longer proportionate. We give that as
9 an example of an issue which we suggest should be
10 explored, the extent to which that Public Health Wales
11 advice was followed in core decision making.

12 Another example is in paragraph 8.2 of our written
13 submissions, which concerns the balance between what's
14 been called direct harm and indirect harm in core
15 decision making. Direct harm is defined, as
16 I understand it, in the disclosure as being the harm
17 that comes from Covid, whereas indirect harm is the harm
18 that comes from the response to it, so the measures that
19 had been put in place to protect people from Covid.

20 The issue is to what extent in core decision making
21 was that balance taken into account. So were there
22 structures in place or systems to help people make that
23 balance, were there decisions made centrally or policies
24 put in place regarding how that balance should be struck
25 and how it should be analysed. Again, we give

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1 an example in our submissions about the care context
2 and, again, really the sharp end of decisions of balance
3 made in this field and suggest that statements are taken
4 and questions are asked about particularly that issue,
5 about how the balance was struck.

6 Moving forwards, we would be grateful for
7 an opportunity to put forward more specific suggestions
8 to the Inquiry legal team about what further questions
9 should be asked and what further disclosure should be
10 obtained. We would be much better placed to be able to
11 do so once we have seen the disclosure and the witness
12 statements, of course. If we do so now it is likely to
13 lead to duplication but we propose that once we receive
14 the first bulk of witness statements and disclosure,
15 then Core Participants at that point have an opportunity
16 to make suggestions to the Inquiry legal team as to what
17 further specific questions should be asked and then it
18 is factored into the timetable the Inquiry legal team's
19 consideration of that matter, any further requests that
20 they decide are appropriate and then time for the Rule 9
21 responders to produce further witness statements and
22 produce further disclosure.

23 It may be difficult to do it at this stage but we
24 suggest consideration is given to timetabling those
25 various steps, so the production of the first round of

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1 2021, and those minutes of the Impact Group, and we
2 would also like to ensure that specific questions were
3 asked of the relevant witnesses about this issue.

4 Another example -- and I hope this helps to
5 illustrate the approach that we are proposing -- is the
6 public sector equality duty. Again, we would want to
7 ensure that questions have been asked of relevant
8 witnesses about whether that duty was complied with and
9 records of any consideration of that duty in terms of
10 core decision-making.

11 There are also likely to be further follow up
12 questions that we will propose in respect of the witness
13 statements and the disclosure that's ultimately
14 received. To pick a couple of examples, the disclosure
15 so far contains, in certain respects, some pretty broad
16 brush assertions. So, for example, responses along the
17 lines of "We engaged with stakeholders". Now, if the
18 witness statements themselves are similarly broad brush,
19 then we would invite the Inquiry to send further
20 specific questions to those Government bodies and others
21 who respond in that way, for example, "Exactly how did
22 you engage, with whom and what did you say?"

23 Similarly, so far the disclosure contains little
24 about the impact on individuals and how that fed into
25 core decision making. So far, it largely concerns

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1 disclosure to us, our responses to it, specific
2 questions raised by us, CTI's consideration and then
3 responses by the Rule 9 individuals.

4 I hope it helps, at this stage, just to give
5 a couple of examples of the type of specific questions
6 which we may ask in order to illustrate the sort of
7 process that we are proposing. One broad issue that we
8 have raised is the extent to which, in core decision
9 making, existing legal and regulatory duties were taken
10 into account.

11 One quite specific topic in that context concerns
12 the Welsh Government dementia strategy. This was
13 a strategy brought in before the Covid response and the
14 question is to what extent was that taken into account
15 in core decision making. We would seek to ensure that
16 the Inquiry has asked the part of the Welsh Government
17 that was particularly responsible for the dementia
18 strategy -- and, as we understand it, that is the
19 Dementia Oversight of Implementation and Impact Group
20 that monitors the implementation of the strategy -- we
21 would seek to ensure that the Inquiry has made Rule 9
22 requests for a response from that group, that the
23 Inquiry has asked for relevant documents, so there is
24 a dementia action plan. There was a policy concerning
25 Covid and dementia that was brought in in September

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1 financial or structural issues. Now, we appreciate, of
2 course, that we have had very little of the disclosure
3 that's pending so far but, again, that is an area where,
4 if the witness statements themselves are similarly broad
5 brush, then we will invite the Inquiry to make specific
6 requests along those lines.

7 So that is the topic of further witness questions.

8 The fifth issue that I hope to cover is the Rule 10
9 proposals. Thank you for providing us at this early
10 stage with those proposals, it is very useful. In
11 paragraph 13 of our written submissions we raise
12 a number of questions for clarification as to how that
13 might work. Two examples are as follows:

14 Firstly, the process that's being proposed largely
15 concerns preparation in advance but often the most
16 important questions will arise during the witness's own
17 evidence or during evidence given shortly before that
18 witness.

19 We invite the Inquiry to ensure that some process is
20 brought in to ensure that the Core Participants can
21 effectively participate in those sort of later stage
22 questions. So they can propose questions that arise
23 from the witness's own evidence or evidence that's given
24 shortly before it.

25 Now, it may be and in our experience we find it

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1 often is the most effective and efficient way of doing
2 that, simply to give Core Participants an opportunity to
3 ask their own questions, provided, of course, they are
4 limited to exactly what's come on the day but, at the
5 very least, we invite the Inquiry to consider that
6 matter.

7 Another example of the issues of clarification is
8 about expert topics. So, it may be that some of the
9 topics that are going to be put to witnesses, the Core
10 Participants, particularly Core Participants, have
11 a special expertise in that topic. For example, it may
12 be about disability and you may think that the
13 disability groups are best placed to ask those
14 questions. We would ask the Inquiry team to consider at
15 least whether in certain respects Core Participants
16 might be asked to put questions in the first instance,
17 if they have a special expertise.

18 The sixth topic is another short one. It is
19 parliamentary privilege. We agree with the approach
20 proposed by counsel to the Inquiry and agree also that
21 no ruling is necessary from you at this stage, my Lady.
22 But in our submissions we drew attention to a few of the
23 exceptions that arose to the ordinary rule against
24 parliamentary privilege. The main reason for doing so
25 at this stage is really to encourage the people who are

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1 As we understand it, the process is that there will
2 be the listening exercise first, a report produced
3 summarising it and then that will be disclosed to Core
4 Participants. That would indicate that the listening
5 exercise itself, so far as it relates to this module,
6 needs to conclude within the future three or four
7 months, in order that it can be properly taken into
8 account.

9 So we suggest that there is a pressing need for
10 those clarifications to be made.

11 That's all I hope to address unless there's anything
12 else you would like me to address, my Lady, those are my
13 submissions.

14 **BARONESS HALLETT:** No, I'm very grateful, Mr Straw. Thank
15 you very much. You reminded me of my words when
16 I granted the two organisations you represent Core
17 Participant status that they would be well placed to
18 assist and that's exactly what they have been doing.
19 I'm very grateful to you for your submissions and their
20 very constructive response.

21 As far as the listening exercise is concerned, may
22 I assure everyone there is very much a point to
23 participating in it. I wish to hear from people and
24 I wish to bear very much in mind and take into account
25 when reaching any conclusions and making recommendations

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1 going to be responding to the Inquiry's requests for
2 information about this area to be open and thorough
3 about it and, as we explained there, there are a number
4 of exceptions, if it comes to it, to the parliamentary
5 privilege rule which may be relevant to this Inquiry.

6 The last area concerns the listening exercise. In
7 Module 3, we made submissions about the listening
8 exercise, which I don't propose to repeat here, other
9 than just to briefly summarise. So our submissions
10 firstly sought clarification on how the listening
11 exercise will inform the evidence sessions and the main
12 reason for that is to encourage people to engage in the
13 listening exercise. People are much less likely, as far
14 as we understand it, to engage if they think there is no
15 point doing so.

16 So we sought clarification as to how it may inform
17 the evidence. We also sought clarification in respect
18 of reasonable adjustments, so what adjustments are made
19 to ensure that people who have difficulty communicating
20 and understanding can be involved in it? The reason for
21 raising those points in this module is that, if
22 anything, there is a more pressing need for those
23 changes to be made in respect of this module and that's
24 because of the timetabling and the hearing here being
25 sooner than that in Module 3.

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1 the experience of people across the United Kingdom of
2 the pandemic. So please reassure those you represent
3 that we are doing everything possible to allay any
4 concerns that Core Participants may have and to
5 encourage them to participate in what would be a very,
6 very purposeful exercise.

7 So thank you very much for your submissions.
8 I think now will be time to take a break. We shall come
9 back after the break to Mr Jacobs, Mr Friedman and
10 Ms Henke. Thank you.

11 (11.13 am)

(A short break)

13 (11.30 am)

14 **BARONESS HALLETT:** Apologies for the fact that I forgot to
15 say how long the break would be today.

16 Right, I think now it is time to call on Mr Jacobs
17 for the Wales Trades Union Congress.

Submissions by MR JACOBS

19 **MR JACOBS:** Good morning, my Lady, *bore da*.

20 I represent the Trades Union Congress, the TUC, and
21 also the Wales Trades Union Congress. The TUC in this
22 Inquiry seeks to bring forward the voice and experiences
23 of the 5.5 million individuals who make up its 48 member
24 unions. That includes members who live and work in
25 Wales.

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1 The Wales TUC is part of the TUC, it represents in
2 the region of 400,000 workers in Wales through its
3 affiliated unions. Those member unions span an array of
4 sectors, all of which were affected by the pandemic.
5 The members of the affiliated unions include a very
6 significant number of key workers, who provided vital
7 services, who kept people in Wales cared for, fed, able
8 to access basic goods and services they needed to live
9 and tended to them when they were sick.

10 For the purposes of this module, the Wales TUC has
11 provided a detailed response to a Rule 9 request from
12 the module to the team. My Lady, for the purposes of
13 these oral submissions I am going to emphasise a few
14 points of the written submissions. Of course, I stand
15 by the remainder.

16 The first issue I'm going to turn to is the
17 timetabling for the final hearing.

18 As I understand matters, it remains the case that 14
19 hearing days are timetabled to consider the core
20 political and administration decision making in Wales
21 throughout the pandemic. With some time allocated for
22 submissions, it is perhaps just 12 or 13 days of oral
23 evidence. It is presently the only hearing stated to be
24 taking place in Wales and focused exclusively on the
25 pandemic in Wales. Without a list of issues or the

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1 will have a significant number of witness statements
2 before us, perhaps a deluge of documents and it may be
3 very helpful to know in advance of that preliminary
4 hearing, rather than after, whether there is scope for
5 extending the timetabled hearings.

6 In relation to the next preliminary hearing,
7 Mr Poole has indicated this morning a proposal that it
8 be held in November of this year. We say that seems to
9 be eminently sensible. We agree that any later would be
10 too late, with the substantive hearing starting at the
11 end of the following February.

12 My Lady, I turn to Rule 9 requests. In relation to
13 evidence sought from bodies relevant to at-risk and
14 vulnerable groups, you will have seen the concern raised
15 in writing from the TUC and the Wales TUC as to Rule 9
16 requests made across the four parts of Module 2 and the
17 importance of seeking Welsh-specific evidence.

18 All I would say about that now is that counsel to
19 the Inquiry, from remarks made this morning, has clearly
20 heard the points and we are very grateful for that. For
21 the present, I say no more, other than if there is
22 a need in due course to make further Rule 9 requests of
23 Welsh bodies, we will of course assist where we can.

24 The Inquiry has already sought expert evidence on
25 the arrangements for devolution from Professor

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1 opportunity to review any witness statements, it is, of
2 course, difficult to meaningfully submit as to how long
3 precisely the hearing needs to be. But we can say,
4 however, that to us 14 days seems extraordinarily short.

5 As we see it, there are really two difficulties.
6 The first is a problem of appearance, of it appearing
7 that the Wales hearing is the poorer relative of more
8 robust consideration given in relation to Westminster
9 decision making in Module 2. There is also, secondly,
10 the problem of being able to meaningfully test an array
11 of complex issues in a mere 12 or 13 days of evidence.

12 An Inquiry of this scale, which does have
13 a compelling need to progress speedily, must inevitably
14 proceed with taking a significant proportion of evidence
15 in writing, rather than orally. That is understood.
16 Even so, the current estimate appears to us to be
17 problematically short.

18 As you will have seen in our written submission, for
19 the present what we ask is that whatever practical
20 arrangements the Inquiry is making for the hearings in
21 Wales, it retains scope for extending it. It may be
22 however, my Lady, that you decide, instead, to grasp the
23 nettle now and extend the timetable. Perhaps
24 realistically, that will be inevitable.

25 When it comes to the next preliminary hearing, we

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1 Henderson, as we have heard. In our written submission,
2 paragraph 10, we suggested that there would be value in
3 obtaining a report specifically on Welsh devolution from
4 an expert who is specifically immersed in the
5 Welsh-specific issues and we note with interest that
6 an identical suggestion has been made by the Covid-19
7 Bereaved Families, Cymru. For our part, we suggested
8 Professor Emyr Lewis, from Aberystwyth Law School who
9 was recently appointed on a panel of experts advising
10 the Independent Commission on the Constitutional Future
11 of Wales and has given evidence to UK and Welsh
12 parliamentary committees on devolution.

13 The Covid-19 Bereaved Families Cymru have made
14 a different suggestion as to the identity of the expert
15 and we note that with interest and, from our
16 perspective, it is the principle of seeking such
17 evidence about which we have a particular strong view,
18 rather than who that person may be.

19 I turn then to the importance of seeking, in this
20 module, Rule 9 evidence from the Health and Safety
21 Executive. We have previously invited Rule 9 evidence
22 from the Health and Safety Executive, the HSE, in
23 Module 2 and indeed in other modules and we understand
24 that the Module 2 team is now doing so. That is welcome
25 and important. The HSE is the GB-wide regulator for

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1 health and safety at work. It had a role to play in
2 providing guidance to employers and also in the
3 monitoring and enforcement of workplace safety,
4 including non-pharmaceutical interventions.

5 It is important, however, in our submission, that
6 a bespoke Rule 9 request is made of the HSE by the
7 Module 2B team because the position in Wales does give
8 rise to distinct issues, which warrants distinct and
9 separate consideration.

10 The framework for the HSE is different in Wales as
11 public health responsibility is devolved, albeit the HSE
12 has workplace health and safety jurisdiction. The Welsh
13 Government emergency Public Health Legislation gave
14 powers to the police and local authorities to enforce
15 social distancing in all premises and the HSE and local
16 authorities were responsible for local enforcement
17 arrangements for the emergency legislation,
18 complimentary to health and safety law.

19 The Wales TUC highlighted, during the course of the
20 pandemic, a lack of coordination in ensuring workplace
21 safety. Partly in response to those concerns, the Welsh
22 Government set up a health and safety forum for Wales
23 which brought together the HSE, local authorities,
24 employers and the Welsh Government in their attempt to
25 improve regulation in Wales.

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1 a short strand tying hearing, eager to hear evidence
2 where issues have cropped up and/or for submissions and
3 Ms Gallagher addressed you on those in Module 2A and I'm
4 not going to repeat in full what she said there. What
5 we invite is that the Inquiry should keep in its plans
6 a provision for such a hearing to be facilitated.

7 Finally, my Lady, and briefly, the listening
8 exercise. The short point is that we strongly endorse
9 the importance of the listening exercise and we wish to
10 put that on record. It will be important that the
11 listening exercise captures the experiences of those at
12 work during the pandemic and both the TUC and the Wales
13 TUC stands ready to assist in that regard.

14 My Lady, unless I can assist further.

15 **BARONESS HALLETT:** No, thank you very much indeed,
16 Mr Jacobs, and thank you also for the support that you
17 offered the listening exercise and I know that we shall
18 be calling upon offers of assistance of that kind. So
19 thank you very much indeed.

20 Mr Friedman KC?

21 **Submissions by MR FRIEDMAN**

22 **MR FRIEDMAN:** My Lady, we act for Disability Wales and
23 Disability Rights UK and this is their first appearance
24 in Module 2B and can we thank Mr Poole KC and his team
25 for the way they have updated us and welcomed us into

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1 It is important, we say, that we better understand
2 the HSE's decision-making actions in Wales during this
3 period and, of course, its interactions with the Welsh
4 Government as is the key focus of this module.

5 We say a specific Rule 9 is important, not only to
6 capture those specific issues but there may also be
7 a need for evidence from the HSE at the final
8 substantive hearing and it may well be that the HSE
9 witness best placed to give evidence in relation to
10 Wales, initially via a Rule 9 response but also in oral
11 evidence, may not be the same witness best placed to
12 give evidence in relation to England and interactions
13 with Westminster.

14 My Lady, that's what we had to say about Rule 9s.
15 On the seeking of expert evidence regarding structural
16 discrimination, we have heard an invitation from counsel
17 to the Inquiry this morning for you to adopt the same
18 approach you have adopted in Module 2 in this module.
19 All I say, on behalf of the TUC and the Wales TUC, is
20 that we endorse that wholeheartedly.

21 My Lady, one issue that we have raised previously
22 and I do raise again is what we have described as
23 "strand tying" submissions. As it appears to us, once
24 the Inquiry has heard the evidence in Module 2 but also
25 in modules 2A, 2B and 2C, there may well be a need for

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1 this part of what is a unique four nation Inquiry
2 process.

3 As we did with Scotland last week, can I briefly
4 summarise some Welsh reference points that provide
5 an initial route into understanding how the risk to
6 disabled people was governed during Covid.

7 My Lady, you and your team must adopt many lenses to
8 scrutinise the events this Inquiry is tasked with
9 exploring. We speak for a particular but essential lens
10 because of the triple jeopardy that disabled people
11 faced during the pandemic, which was: first, far more
12 fatal Covid outcomes; second, being cut off from other
13 acute healthcare and treatment to fatal and damaging
14 effect; and, third, the disproportionate impact of
15 lockdowns and related measures.

16 In Wales, the statistics on that triple jeopardy are
17 stark. 68 per cent of deaths from Covid-19 between
18 March and July 2020 were among disabled people. Their
19 exposure was foretold by Government studies in the two
20 years before the emergency. 39 per cent of disabled
21 people in Wales were in poverty compared with 22 per
22 cent of non-disabled people and the poverty rate amongst
23 disabled people in Wales was the highest in all of the
24 UK. There was lower mental wellbeing among disabled
25 adults, disabled people faced significant barriers in

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1 accessing healthcare, including access to health checks,
2 suitably trained staff and rehabilitation services.

3 Although not its authors, the Welsh Government
4 recognised that austerity law and policy, reserved to
5 the UK Parliament, had "blighted the lives of disabled
6 people in Wales and had a devastating impact on
7 thousands of individuals, carers and families".

8 In terms of using human rights approaches to
9 comprehend what occurred in the relationship between the
10 state and disabled people during Covid we ask you to
11 note that the approach to disability and related rights
12 in Wales is different to the law and policy of the UK
13 Government in four ways:

14 First, the Welsh Government produced a framework for
15 action on independent living in 2013 and updated it in
16 2019, which sets out how it plans to fulfil its
17 obligations under the United Nations Convention on the
18 Rights of Persons with Disabilities, the UNCRPD. You
19 know something similar has been done in Scotland.

20 However, Wales is the only part of the UK where
21 codes of practice issued under the Social Services and
22 Well-Being (Wales) Act 2014 require local authorities to
23 have due regard to the UNCRPD when exercising their
24 functions in relation to disabled people and their
25 carers. Secondly, the obligations under the Convention

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1 equality, including other protected characteristics, as
2 defined by the Equality Act ..."

3 It goes on to add:

4 "... and perhaps most importantly issues relating to
5 income and poverty."

6 Fourthly, the mitigation of inequalities has been
7 fashioned into legal duty prior to the pandemic. The
8 future generations' wellbeing Act of 2015 placed on
9 a statutory footing a set of wellbeing goals that
10 includes developing a more equal Wales, defined in
11 section 4 of the Act as a society that enables for
12 people to fulfil their potential no matter what their
13 background or circumstances, including their
14 socioeconomic background and circumstances.

15 Since March 2021, Wales has brought into force
16 section 1 of the Equality Act 2010 that mandates public
17 authority attention to the desirability of an exercise
18 in relevant functions in a way that reduces inequalities
19 of outcome resulting from socioeconomic disadvantage.

20 Drawing these four features together, my Lady, we
21 provisionally suggest to the Inquiry that there are
22 lessons from and for Wales. There is a body of law and
23 policy concerning human rights, equality and wellbeing
24 in Wales that distinguishes it from the other four
25 nations, including that it not only recognises the value

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1 that disabled people must be included in law and policy
2 making to collaborate in their co-design and
3 co-production was accepted by the Government of Wales
4 prior to the pandemic.

5 It also finds statutory expression in the Well-Being
6 of Future Generations (Wales) Act 2015, that requires
7 public bodies to adopt an integrated, inclusive and
8 collaborative approach to service delivery. The Welsh
9 Government sees this as an obligation to focus on giving
10 people and communities a voice in how their services are
11 provided.

12 Thirdly, the Welsh Government, like the Scottish
13 Government, but not yet the UK Government or Northern
14 Irish Government, has formally supported the social
15 model approach since 2002 and reaffirmed its commitment
16 to it in December 2022. In the words of the Disability
17 Rights Task Force it seeks:

18 "... solutions to challenge the structural, physical
19 and attitudinal barriers that disabled people face.
20 Structural discrimination is therefore taken as a given
21 and its recognition an essential condition for change.
22 Likewise, intersectional understanding is accepted as
23 a necessary discipline by the Welsh Government declaring
24 in terms that it is very important that disability
25 action policy is closely linked to other aspects of

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1 of disabled people's lives but it is mindful of some
2 aspect of asset redistribution to enable those lives to
3 better.

4 We will urge the Inquiry to ask what difference this
5 made and how it might make more of a difference if
6 scaled up into a UK-wide integrated focus on securing
7 the resilience of disabled people in future emergencies.

8 For its part, Disability Wales recognises the
9 efforts of its government but equally draws attention to
10 the gap between rhetoric of national policies and what
11 happens on the ground. The deficiencies of engagement,
12 planning, data collection and austerity economics,
13 especially at the local level all played their part in
14 Welsh disabled people's triple Covid jeopardy.

15 We commend to the Inquiry what is said in the Welsh
16 Government Commission report, *Locked out: liberating
17 disabled people's lives and rights in Wales beyond
18 Covid-19*. Despite the official recognition of the
19 social model, the report identified a resurgence of
20 medical and vulnerability models that informed the
21 response to Covid. When non-disabled people's
22 experience of normal life came under threat by
23 a pandemic, government and administrative decision
24 making rapidly became thoughtless about the implications
25 of Covid response measures on disabled people's lives.

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1 As the *Locked out* report puts it, this kind of
2 thoughtlessness helps to illustrate a much more
3 pervasive problem, the way taken-for-granted, ableist
4 assumptions dominating decision making that can have
5 life limiting consequences for disabled people.

6 My Lady, we have addressed you in Module 2 and 2A
7 hearings on how expertise and experts might be viewed
8 from the point of view of disabled people's
9 organisations. For Wales, we therefore add the
10 following five points:

11 First, on present disclosure it appears that there
12 was no expertise regarding disability present at the
13 Welsh Technical Advisory Group which advised its
14 Government in parallel with SAGE. You have heard that
15 the response to the Rule 9 requests from members are
16 awaited. However, unlike in the other four nations and
17 more generally for the UK Government, the Deputy
18 Minister in Wales convened a Disability Equality Forum
19 which met five times in the four months following the
20 lockdown and which Disability Wales participated in.
21 The disabled people's organisations were also enrolled
22 into a Covid-19 Moral and Ethical Advisory Group.

23 Second, we contend that part of the gap in real-time
24 expertise can now be filled with disabled people's
25 organisations. As the updated framework for independent

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1 to be wary of how its application can fall victim to
2 ableist and other discriminatory assumptions. That is
3 especially so when it is applied without appreciating
4 the resources, arrangements and web of social and
5 economic relationships that provide resilience to some
6 but not other parts of society. Your experts and other
7 lines of Inquiry will be helped by seeking to illuminate
8 the distinction between resilience as a concept and
9 reality.

10 As my Lady knows, we have dealt with various process
11 matters in our written submissions and in previous
12 hearings, such that I do not repeat them here. Because
13 time is short and the endeavours of the Inquiry are
14 justifiably ambitious, it has been important to
15 highlight some key ideas and documents early. We share
16 them with you and your counsel because, parallel to
17 establishing the mechanics of the Inquiry's process,
18 must be some understanding of subject matter,
19 particularly so in our clients' case, namely, the
20 disabling barriers and attitudes that were detrimentally
21 unaccounted for by the non-disabled part of state and
22 society in real time.

23 In that respect, the Inquiry process-related
24 decisions we contend for are those which are made and if
25 necessarily altered along the way with the situation of

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1 living in Wales puts it, "Engaging with people is the
2 only way of knowing that services are providing what
3 people need and want and can generate better ideas and
4 more innovative approaches". Disability Wales has taken
5 a key role in that process in its country and it should
6 be enabled to do the same in this Inquiry.

7 Third, we support what other CPs have said,
8 Ms Harris and Mr Jacobs this morning, as to whether the
9 forthcoming reports on devolution will need to be
10 supplemented by devolved power experts for Wales as
11 a discrete nation. We welcome Mr Poole's indication
12 this morning that this will be kept under consideration
13 and that may need to be considered for other submodules.

14 Fourth, we also endorse what has been said by
15 Ms Harris on behalf of Bereaved Families for Justice as
16 to the need for in-depth focus on older people.

17 Fifth, following the Module 2 ruling on expert
18 evidence and structural discrimination and as my Lady
19 moves towards assembling a small group of experts and
20 thinking about how inequalities impacted on the pandemic
21 response, it may help to bear in mind that in civil
22 contingency theory of the UK Government, there is a key
23 principle of resilience. We apprehend that it will
24 feature considerably in Government disclosure.

25 We are not against the principle, we just urge you

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1 disabled people in mind.

2 My Lady, those are our submissions.

3 **BARONESS HALLETT:** Thank you very much indeed, Mr Friedman.

4 As ever, you make some very important points and, as
5 I think you know, I will very much bear them in mind and
6 keep everything under review. So thank you indeed for
7 your constructive suggestions.

8 Lastly, we turn to Ruth Henke KC for the Welsh
9 Government.

10 **Submissions by MS HENKE**

11 **MS HENKE:** *Bore da.*

12 **BARONESS HALLETT:** *Bore da.*

13 **MS HENKE:** *Boneddige*s, my Lady, these are the oral
14 submissions on behalf of the Welsh Government.

15 The pandemic, as you know, touched the lives of
16 everyone in Wales, our families, our colleagues and our
17 friends, our communities and the many families who lost
18 loved ones. On behalf of the Welsh Government, we would
19 like to take this opportunity to express again our
20 sympathy to those affected and to all who sadly lost
21 loved ones.

22 During the pandemic, the Welsh Government took
23 difficult decisions which undoubtedly disrupted and
24 changed people's lives and livelihoods. Our communities
25 and local services suffered and we are still learning of

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1 the impacts not only on the health of the people of
2 Wales but also upon our young people, our communities
3 and our businesses.

4 The decisions were made by the Welsh Government to
5 protect Welsh citizens. At the time, the Welsh
6 Government was dealing with a virus about which we knew
7 very little but where we needed to act quickly. Three
8 years on, we have greater knowledge and experience. We
9 accept there is a real need to learn from the past, to
10 ensure a better future for the society we serve. The
11 Welsh Government is fully committed to this Inquiry.

12 To date the Welsh Government has filed with the
13 Inquiry ten draft Rule 9 statements. Having read the
14 written submissions filed by the other Core
15 Participants, we thought it might be helpful if we set
16 out briefly that the drafts filed to date include
17 a draft of a statement volunteered by the First
18 Minister, as well as draft statements from the Director
19 of Legal Services, a draft statement from the Permanent
20 Secretary, from the Chief Medical Officer, a combined
21 draft statement from TAG and TAC, a draft statement in
22 relation to HSSG, a draft statement on behalf of the
23 Welsh Treasury, a draft statement from the Director of
24 Property and Ethics, a draft statement in relation to
25 the NSW request and a draft statement from Dr Gill

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1 The Welsh Government accepts that initially problems
2 with technology hindered the process by which
3 ministerial advices were disclosed to the Inquiry.

4 Those problems, as well as initial operational
5 difficulties, have been overcome. The Welsh Government
6 apologises to the Inquiry for the delay that was caused
7 and, through me, wishes to ensure the Inquiry that it is
8 doing all it can to make up for lost time.

9 As at today's date, 514 ministerial advices have
10 been disclosed to the Inquiry. In addition, over 4,000
11 documents are with the Inquiry. A pipeline of
12 disclosure into the Inquiry has been established and
13 I can tell the Inquiry on behalf of the Welsh Government
14 that approximately 800 other ministerial advice
15 documents will be disclosed by the end of the week and
16 a further 400 before the end of term.

17 In Wales, the relationship between the state and the
18 citizen is one of co-production. It is accepted that
19 a high trust and effective public service works best
20 when the person using a service is seen as an asset, not
21 as a problem to be solved.

22 The Welsh Government acknowledges and embraces
23 a reciprocal relationship between the contributions of
24 the public service and the service users. We accept
25 expertise never lies solely on the side of the provider.

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1 Richardson, who was, during the period under scrutiny by
2 this Inquiry, seconded to the Welsh Government.

3 The Welsh Government is currently working on
4 a further 20 Rule 9 requests and a further tranche of
5 Rule 9 draft statements will be served in accordance
6 with the pipeline which we have been able to agree with
7 the Inquiry and for which we are thankful.

8 Responding to counsel to the Inquiry's opening
9 submissions on the impact on others, the Welsh
10 Government would invite the Inquiry to consider seeking
11 further Rule 9 statements from Wales-based
12 organisations. We have listened carefully to the
13 submissions on this topic already made by the other Core
14 Participants. We support those suggestions and would
15 add to those that they have suggested faith groups in
16 Wales and those in Wales who advocate for those at risk
17 from violence and domestic abuse.

18 Further, the Welsh Government wish to highlight to
19 the Inquiry the statutory role in Wales of the National
20 Adviser for Violence Against Women, Domestic Abuse and
21 Sexual Violence for Wales. The Welsh Government
22 supports the Welsh TUC submission in relation to the
23 Health and Safety Executive and consider that a Rule 9
24 request directed to them would assist the Inquiry's
25 process.

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1 The Welsh Government, in its decision making, draws upon
2 the expertise of lived experience and did so in its
3 decision making, which this Inquiry will scrutinise.

4 The Welsh Government has considered the written
5 submissions of the other Core Participants who
6 emphasised the need for the Inquiry to have evidence
7 from service users with lived experience as well as
8 service providers.

9 The Welsh Government sees the importance and value
10 of that evidence. We invite the Inquiry to further
11 particularise how the voice of service users will be
12 captured by explicitly stating which are to be
13 system-based models and which impact modules and how the
14 interface between the two will be achieved.

15 My Lady, in the early history of the pandemic, it
16 became clear that the majority of measures affecting
17 people in Wales would be made through the exercise of
18 public health powers and the responsibility for making
19 decisions fell squarely and directly on the Welsh
20 Government. Understanding the Welsh devolution
21 settlement, how it operates in practice and its impact
22 on the citizens in Wales is thus an integral part of
23 understanding and scrutinising the decisions made in
24 Wales in response to the pandemic.

25 The Welsh Government looks forward to reading the

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1 report of Professor Henderson and welcomes at this stage
2 confirmation that the report is intended to fully and
3 properly reflect the Welsh devolution settlement and how
4 it impacted on the citizens of Wales.

5 In its written submissions, the Welsh Government has
6 quoted from the note of the counsel to the Inquiry that
7 Module 2B has a significant amount of ground to cover
8 during its public hearing and a relatively limited
9 amount of time within which to do so. The Welsh
10 Government emphasises that sufficient time must be
11 allowed to enable the Inquiry to do justice to its
12 important work and asks the Inquiry to ensure that if
13 extra days are needed they are made available.

14 The Welsh Government has considered the written
15 submissions on behalf of the Welsh TUC and the Bereaved
16 Families for Justice Cymru which advocate for a further
17 hearing at the conclusions of Module 2, 2A, 2B and 2C
18 and we consider it is well made. The Welsh Government
19 therefore supports that submission. It is important
20 that every opportunity is taken to learn lessons.

21 Turning to the listening exercise, Every Story
22 Matters, and commemoration. The Welsh Government
23 accepts that both are very important. It is important
24 that everyone has the time and space to reflect and
25 remember. The listening exercise and commemorative

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1 particular, the letter from John's Campaign and
2 Relatives & Residents Association, setting out their
3 further thoughts on potential Rule 9 recipients.

4 The second point concerns what has been said about
5 the length of our substantive public hearing. As
6 outlined earlier, we are loath to request more time
7 because of the knock-on effect that that will have to
8 the rest of the Inquiry. The best way, in our view, to
9 try and deal with the situation is early Core
10 Participant engagement, as I outlined earlier in my
11 submissions, about the various ways we intend to ensure
12 this is done and that this is done effectively.

13 The third point concerns the Rule 9 process. We
14 have heard what has been said, that some of the national
15 organisations who have been contacted may or may not be
16 able to provide adequate information about Wales or
17 information specific enough for certain at-risk groups
18 for our purposes. As I explained in my earlier
19 submissions, the Rule 9 process is an iterative process,
20 as we receive Rule 9 responses, these will be analysed
21 and, at that stage, a decision taken as to whether
22 further and/or additional evidence is required and if so
23 whether that should be from more Welsh-specific
24 organisations.

25 The fourth point concerns what was described by

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1 content, be it online, at the hearings themselves and in
2 a physical form, must be accessible to all. It must be
3 in a form accessible to those that need an easy reading
4 version, those with visual hearing impairments and those
5 who communicate in their own way and those who
6 communicate in their own language.

7 My Lady, finally, *diolch am wrando heddiw*. Thank
8 you for listening to me today.

9 Unless you have any questions for me, my Lady, those
10 conclude the submissions.

11 **BARONESS HALLETT:** Thank you very much indeed, Ms Henke and,
12 as I said earlier to everyone else, I will bear those
13 submissions very much in mind when I make any decisions
14 about the future progress of the Inquiry.

15 Mr Poole do you have any further submissions in
16 response?

17 Reply submissions by MR POOLE

18 **MR POOLE:** My Lady, you will be pleased to know I have very
19 little to add and seek only to make four short points.

20 The first is to reiterate the thanks I extended
21 earlier to all of those who have participated so
22 actively in and around this preliminary hearing. The
23 submissions that we have heard this morning, from our
24 point of view, have all been incredibly helpful and
25 constructive and we look forward to receiving, in

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1 Mr Jacobs on behalf of the TUC as "strand tying", namely
2 considering comparing and contrasting the key decision
3 making in the four nations of the UK.

4 As to this, I would simply like to acknowledge that
5 this is a matter of considerable importance. This
6 Inquiry is uniquely placed to be able to derive
7 information, reach conclusions and make recommendations
8 based on the different approaches taken by the four
9 nations of the UK. Precisely how we go about this is
10 the subject of active consideration by the Inquiry teams
11 for modules 2, 2A, 2B and 2C and, in the usual way, we
12 will report progress in this regard through our monthly
13 updates.

14 My Lady, those are the only points I wish to raise
15 by way of reply submissions and that concludes
16 everything that the advocates this morning wish to put
17 forward.

18 **BARONESS HALLETT:** Thank you very much, Mr Poole.

19 As I said earlier, I'm very grateful to everyone for
20 their help and for their offers of continued help in the
21 future. We are going to need that help if we are, as
22 I said earlier, to meet the ambitious timetable but
23 having seen such a constructive approach adopted by all
24 the Core Participants in their written and their oral
25 submissions, I remain optimistic that we can conduct

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1 both a thorough and a timely investigation of the issues
 2 that are of significance for the people of Wales. So
 3 thank you everybody for attending, making submissions or
 4 indeed just watching online.

5 Thank you.

6 (12.05 pm)

7 (The preliminary hearing for Module 2B concluded)

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<p>1</p> <p>1 November [1] 2/17</p> <p>1 per cent [1] 32/23</p> <p>10 [5] 21/5 21/7 37/8 48/8 56/2</p> <p>10.00 [1] 1/2</p> <p>10.4 [2] 21/13 37/14</p> <p>11.13 [1] 52/11</p> <p>11.30 [1] 52/13</p> <p>12 [5] 5/25 39/10 42/16 53/22 54/11</p> <p>12 May [2] 21/4 29/22</p> <p>12.05 pm [1] 77/6</p> <p>13 [3] 48/11 53/22 54/11</p> <p>14 [2] 53/18 54/4</p> <p>15 February [1] 44/1</p> <p>15 March [1] 24/20</p> <p>17 February [1] 13/12</p> <p>19 [22] 3/4 3/14 7/15 27/9 27/18 29/12 29/15 31/11 32/24 33/4 33/6 33/7 33/10 34/21 37/19 40/16 42/13 56/6 56/13 60/17 64/18 65/22</p>	<p>3</p> <p>39 [2] 4/22 60/20</p> <p>4</p> <p>4,000 [1] 71/10</p> <p>400 [1] 71/16</p> <p>400,000 [1] 53/2</p> <p>473 [1] 12/25</p> <p>48 [1] 52/23</p> <p>5</p> <p>5.5 million [1] 52/23</p> <p>500 [1] 13/3</p> <p>514 [1] 71/9</p> <p>6</p> <p>65 [1] 32/20</p> <p>68 [1] 60/17</p> <p>7</p> <p>73 [2] 4/21 6/18</p> <p>8</p> <p>8.2 [1] 44/12</p> <p>8.3 [1] 42/20</p> <p>8.4 [1] 43/3</p> <p>800 [1] 71/14</p> <p>84 [1] 4/18</p>	<p>above [1] 39/18</p> <p>abundance [1] 13/9</p> <p>abuse [3] 5/13 70/17 70/20</p> <p>ac [4] 27/20 28/22 28/25 29/8</p> <p>accept [4] 9/2 12/6 69/9 71/24</p> <p>accepted [3] 62/3 62/22 71/18</p> <p>accepts [2] 71/1 73/23</p> <p>access [4] 14/16 17/25 53/8 61/1</p> <p>accessed [1] 23/18</p> <p>accessible [2] 74/2 74/3</p> <p>accessing [1] 61/1</p> <p>accordance [1] 70/5</p> <p>accorded [1] 19/25</p> <p>account [10] 12/6 24/18 37/3 43/5 44/4 44/21 46/10 46/14 51/8 51/24</p> <p>accounts [2] 23/10 23/14</p> <p>achieved [2] 19/21 72/14</p> <p>acknowledge [2] 25/5 76/4</p> <p>acknowledged [1] 12/14</p> <p>acknowledges [1] 71/22</p> <p>acquired [3] 33/4 33/7 33/10</p> <p>across [5] 15/4 23/10 37/3 52/1 55/16</p> <p>act [8] 59/22 61/22 62/6 63/2 63/8 63/11 63/16 69/7</p> <p>action [3] 46/24</p>	<p>61/15 62/25</p> <p>actions [1] 58/2</p> <p>active [2] 7/18 76/10</p> <p>actively [2] 20/21 74/22</p> <p>acute [2] 10/17 60/13</p> <p>acutely [1] 17/16</p> <p>Adam [2] 3/16 42/9</p> <p>add [6] 8/1 24/3 63/3 65/9 70/15 74/19</p> <p>addition [4] 11/8 20/16 21/14 71/10</p> <p>additional [7] 8/18 39/17 39/18 39/23 41/24 43/10 75/22</p> <p>additions [1] 20/9</p> <p>address [9] 10/9 20/5 22/6 29/16 33/18 35/5 38/18 51/11 51/12</p> <p>addressed [6] 6/13 13/8 19/10 19/13 59/3 65/6</p> <p>addresses [1] 12/5</p> <p>adequate [3] 8/25 36/16 75/16</p> <p>adjustments [3] 18/16 50/18 50/18</p> <p>administration [1] 53/20</p> <p>Administrations [2] 14/4 14/17</p> <p>administrative [3] 2/20 40/15 64/23</p> <p>adopt [5] 15/23 22/2 58/17 60/7 62/7</p> <p>adopted [3] 13/14 58/18 76/23</p> <p>adopting [1] 24/5</p> <p>adults [1] 60/25</p> <p>advance [3] 7/11 48/15 55/3</p> <p>adverse [2] 17/11 42/23</p> <p>advice [3] 44/3 44/11 71/14</p> <p>advices [4] 12/16 12/19 71/3 71/9</p> <p>advised [1] 65/13</p> <p>Adviser [1] 70/20</p> <p>advisers [3] 6/3 8/4 8/7</p> <p>advising [1] 56/9</p> <p>Advisory [5] 4/23 5/8 6/6 65/13 65/22</p> <p>advocate [2] 70/16 73/16</p> <p>advocates [1] 76/16</p> <p>affected [3] 6/24 53/4 68/20</p> <p>affecting [1] 72/16</p> <p>affects [1] 17/11</p> <p>affiliated [2] 53/3 53/5</p> <p>after [7] 3/12 20/25</p>	<p>21/21 22/24 37/1 52/9 55/4</p> <p>ag [1] 28/7</p> <p>again [11] 26/18 33/15 35/13 35/21 36/24 44/25 45/2 47/6 48/3 58/22 68/19</p> <p>against [4] 13/19 49/23 66/25 70/20</p> <p>Age [3] 41/14 42/1 42/2</p> <p>ago [1] 2/18</p> <p>agree [5] 13/20 49/19 49/20 55/9 70/6</p> <p>agreed [2] 12/18 15/2</p> <p>ahead [1] 20/19</p> <p>Ailsa [1] 13/25</p> <p>aim [2] 1/4 29/21</p> <p>air [1] 1/8</p> <p>aired [1] 4/8</p> <p>akin [1] 36/19</p> <p>albeit [1] 57/11</p> <p>alive [1] 16/2</p> <p>all [29] 1/22 2/4 2/25 3/9 7/17 7/23 8/1 12/19 22/16 24/19 24/21 33/11 37/1 37/3 40/2 43/17 51/11 53/4 55/18 57/15 58/19 60/23 64/13 68/20 71/8 74/2 74/21 74/24 76/23</p> <p>alloy [1] 52/3</p> <p>allocated [3] 27/11 36/23 53/21</p> <p>allow [2] 23/1 36/16</p> <p>allowed [1] 73/11</p> <p>allweddol [1] 29/7</p> <p>alone [1] 4/20</p> <p>along [4] 1/19 47/16 48/6 67/25</p> <p>already [13] 8/6 8/14 9/8 9/10 11/13 16/7 16/11 17/14 26/12 38/23 39/19 55/24 70/13</p> <p>also [34] 1/7 3/11 6/1 6/16 10/7 13/20 14/15 15/20 17/9 18/21 22/1 22/5 22/17 25/22 30/3 30/11 31/22 32/6 35/10 47/2 47/11 49/20 50/17 52/21 54/9 57/2 58/6 58/10 58/24 59/16 62/5 65/21 66/14 69/2</p> <p>alterations [1] 20/9</p> <p>altered [2] 16/10 67/25</p> <p>alternatively [1] 42/7</p> <p>Although [1] 61/3</p> <p>always [1] 4/3</p> <p>am [10] 1/2 1/20 17/6 27/25 29/5 40/8 52/11</p>
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