## Wednesday, 29 March 2023

## (1.45 pm)

BARONESS HALLETT: Good afternoon everyone, all of whom are attending remotely, I am here in a central London venue with counsel to this module, Ms Clair Dobbin KC in another room and with the solicitor to the Inquiry, Mr Martin Smith present in this room with me.

The aim of the preliminary hearings is for me to check in public on the progress that a module is making and to ensure that good progress is being made and this Module 2C is focused on decision making in Northern Ireland in response to the pandemic.

So, I will be analysing the kind of progress that's been made and listen to any concerns that the Core Participants may have and wish to air in public about such progress.

Core Participants play a vital role in the Public Inquiry and, as I said this morning, in the hearing into Module 2B, focusing on decision making in Wales, 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 and I hope they will continue to show.

With the help of Core Participants, I hope we can conduct a thorough investigation of the issues that 1
them. I have read them very carefully. I will bear them all very much in mind and it also means that because they have been helpful enough to provide them in advance, they can keep their oral submissions to those matters upon which they wish to focus and therefore highlight.

So, having said that, could I now call please on Ms Dobbin, lead counsel to the Inquiry for this module to explain in detail the issues for me to consider this afternoon.

Ms Dobbin?
Submissions by MS DOBBIN
MS DOBBIN: Well, my Lady on behalf of the counsel team I want once again to welcome those colleagues from Northern Ireland, and those from England and Wales too, who appear on behalf of the Core Participants in Module 2 C and who join us for this online hearing.

Of course, that welcome very much extends to the Core Participants too. We are really grateful for their interest and their participation. I thought I would start, if I may, by introducing those who are represented and may I begin, please, with the Northern Ireland Covid-19 Bereaved Families for Justice, who are represented by Ms Campbell KC; Disability Action Northern Ireland represented by Mr Friedman KC; the
affect the people most in Northern Ireland and meet an ambitious timetable that I have set.

It is in that way that I can reach conclusions about the preparedness for a pandemic and the response to it and make any recommendations as we go along. I am determined that the public of the United Kingdom and, for the purposes of today's hearing in particular, the public of Northern Ireland should not have to wait until the end of the Inquiry and the hearing of all the modules for the answers to their legitimate questions and concerns and I wish to publish recommendations that may reduce suffering in any future pandemic as soon as practically possible.

I would also wish to emphasise that I am determined that modules such as this, focusing on the Devolved Administrations will not be in any way a side show. They are a vital part of the hearings, as far as I am concerned, and I will ensure that throughout the Inquiry, in these modules and indeed in other modules where we will be looking at matters that affect the Devolved Administrations and the devolved nations, that we properly investigate all relevant matters.

I have, as far as this afternoon's hearing is concerned, received written submissions from some of the Core Participants to the module. I am very grateful to 2

Trades Union Congress and the Northern Ireland Committee of the Irish Congress of Trade Unions, represented by Mr Jacobs, and you will hear submissions from all three.

Also appearing before you are the Commissioner for Older People for Northern Ireland, represented by Ms Anyadike-Danes KC; the National Police Chiefs' Council, represented by Mr Phillips KC; Dame Arlene Foster and Mr Givan represented by Ms Ellison; Michelle O'Neill represented by Mr Bassett; the Northern Ireland Department of Finance represented by Mr Hanna KC; and the Executive Office of Northern Ireland represented by Mr Sharp.

The Northern Ireland Department of Health also appear before you as well.

There are many advantages to a remote hearing but I'm sorry not to see my learned friends in person. It is worth repeating that the Module 2 C hearings will, of course, take place in Northern Ireland and we will have plenty of time together then but I wanted to press the point with my learned friends that, regardless of where they are situated, the counsel team for Module 2C are always available to speak and to be of assistance to them.

My Lady, with your leave, on behalf of the Module 2 team, I wanted to provide a brief update to Core

Participants on our work and to address shortly some discrete issues that I thought I might be able to assist on before you hear from Core Participants.

I'm conscious that a number of these points have already been made in the other modules and so I will try to be as brief as I possibly can be.

So, first of all, equality issues. We last came together at the Module 2C hearing on 2 November 2022 and on that occasion it was clear that there was a good deal of common ground between the concerns of the Core Participants and issues which were of import to them and to those of the Inquiry.

That hearing was important because it always makes a difference to hear issues being articulated. Many of the submissions that were made, the points that were emphasised, have either been directly incorporated into our work, for example in the form of questions that have been asked of witnesses, or have been bookmarked as relevant to a later part of the Inquiry's work.

It is really important that I repeat at the outset that through you, my Lady, and under your direction, the counsel team for Module 2C regards it as fundamental to its task that it understands how the pandemic impacted on those in Northern Ireland who stood to be disproportionately affected or, in ordinary language, 5
making those key decisions in Northern Ireland. It goes without saying that those who might or did in fact experience particular disadvantage throughout the pandemic may differ across different parts of the UK. I wanted to make absolutely clear that we are sensitive to that in relation to Northern Ireland. Those issues have to be looked at through the lens of inequality or disadvantage in Northern Ireland and, on that, we are ad idem with the written submissions of the TUC and the Northern Ireland Committee.

So the issue of inequality is firmly embedded in the work of Module 2C. Given that, I'm not sure that it is necessary for us to frame the approach that we are taking in Module 2C in any more formal terms.

The principal work of a public inquiry is to gather evidence, to be objective and fair, to hold the line when it comes to competing interests and rights in the Inquiry and ultimately to enable its Chair to come to conclusions or to make recommendations which are founded upon evidence which, judged overall, is sufficiently detailed and reliable.

But as part and parcel of that, it can examine the extent to which consideration was given to equality duties or to broader questions about the welfare of different groups in society and an Inquiry can achieve
who stood to lose more, whether that be by the virus itself or the measures that were taken to counteract it.

That is the lens through which we have approached our work to date and will continue to do so.

Plainly, much of the work in Module 2C is focused on understanding fundamental issues, much of a constitutional nature. To what extent was the core decision making set by decisions that had already been made by Central Government? To what extent did the Northern Irish Executive have the latitude to do things differently or were politicians constrained by the limits of their law making powers or pragmatic issues like access to scientific advice or Central Government funding?

Overarchingly did the power sharing model of government work for the people of Northern Ireland in this time of crisis? Did a power sharing model have benefits, as compared to the usual model of governance, whereby scrutiny is provided by a political opposition or were there shortcomings? What challenges did power sharing pose for the politicians themselves?

Now, these are all core issues. But as you have made clear, my Lady, of equal importance is the question of how the interests of those who stood to suffer disadvantage by the pandemic were taken into account in 6
all of those things and keep at its core the human experience of those most affected by events.

Ultimately, of course the key decisions made were made by people doubtless operating under great pressure and, in Northern Ireland alone power sharing having just been resumed after three years, and that's an important issue in Module 2C as well. But we are entitled to examine, on behalf of the people of Northern Ireland, the decision making and importantly the machinery which is intended to support it but fairly, and in particular in Northern Ireland, having a mind to the political sensitivities at stake but not being daunted by those political sensitivities either.

We said it at the first hearing but this is a public inquiry for all and it is vitally important that every part of the community feels as though they have a stake in it and, when it comes to it, witnesses must endeavour to go beyond the politics of the personal and to ensure that the focus of this Inquiry is on our shared humanity.

In analysing the proceedings of the Northern Ireland Assembly committees, it is conspicuous that important figures noted at the time that there would, in due course, be a public inquiry that would afford the opportunity to analyse the decisions made or the basis
upon which they were made. Some figures pointed at the time to the limited capacity during the pandemic to analyse decisions made or to consolidate their understanding.

In addition to that, the bereaved families make a singularly important point: because there are no power sharing arrangements at the moment, they are deprived of the scrutiny that there would otherwise be in Northern Ireland through the normal operation, for example, of Assembly committees after the event.

In short, my Lady, the moment for self-examination and objective scrutiny has come and I repeat on your behalf how important it is that those who are asked to provide evidence do so without gloss, without defensiveness and having firmly in mind the importance of using the experience gained to inform what could be done better in the future and we are grateful to those witnesses who have been explicit about this.

As we refer to at the last hearing, our early work has thus been to understand the mechanisms by which there was assessment of the impact that decisions would make -- or would have, sorry, on particular groups in Northern Ireland. The Equality Act 2010 does not extend to Northern Ireland. Protection against discrimination is found in different bits of legislation.

Disability Action Northern Ireland, been designated under the United Nations Convention on the Rights of Disabled Persons as the independent mechanism tasked with promoting, protecting and monitoring the implementation of that Convention in Northern Ireland.

I wondered, if I may, to say a word about Disability Action Northern Ireland. Since the last hearing, they have become a Core Participant. That is a welcome development to us. The point that almost 1 in 5 people in Northern Ireland have a disability alone speaks to how important their participation in Module 2C is and we look forward to working with them.

On behalf of the Inquiry, I wish to make clear that we are sensitive to disabled people not being a homogeneous group. I also understand that many disabled adults or older people don't want to be described in terms of being vulnerable. We do use that term in Module 2C but I hope that it is clear that it is intended in the well understood sense of that word, in this context to denote the clinically vulnerable or those like children who need special care. But the main point is surely this, the representation of disabled people and their families as a means of ensuring that the Inquiry can understand the full range of their experience during the pandemic and in their own words.

The analogue to the public sector equality duty is found in section 75 of the Northern Ireland Act 1998 but, despite the different architecture, the concepts which apply, principally of the need to have due regard to promote equality in respect of persons with certain characteristics, are familiar across the nations.

In the context of a public inquiry, of course the issue might run wider than that. In addition to legal duties, what account was taken or how broader consideration was given to welfare or the wellbeing of certain groups or consideration about existing inequalities and how they formed part of the key decision making process may also fall to be examined.

Again, to that end, an early part of our work was to seek evidence from the statutory commissioners and we are grateful for the engagement of the Commissioner for Older People, who is one of our Core Participants in this regard, about their role during the pandemic in relation to the Government decision making process.

We also sought evidence from the Northern Ireland Commissioner for Children and Younger People, the Equality Commission, Northern Ireland and the Northern Ireland Human Rights Commission too.

The Equality Commission, with the Northern Ireland Human Rights Commission, has, as is pointed out by 10

We are grateful to Disability Action Northern Ireland for setting out to the Inquiry the formal structures which exist so to ensure that account is given to the rights and needs of disabled people. As we understand the point they make, the importance of these mechanisms is that they exist so as to produce better outcomes for disabled people. They are not mechanistic.

It goes without saying that part of the work of Module 2C will be to investigate the extent to which the interests of disabled people were taken into account in the key decision making. The Disability Action Northern Ireland submissions reiterate that these are not novel concepts, they are part of domestic law and reflect a consensus in international law too.

We're aware that the Department of Communities has the lead responsibility for disability policy in
Northern Ireland. We have been provided with a draft statement from that Department, which we are in the process of reviewing but, as an immediate step, we will consider any further questions that need to be asked of that Department in light of some of the issues that have been raised in the Disability Action submissions.

My Lady, after the hearing in Module 2 you issued an important ruling that, first of all, the Inquiry should obtain expert evidence from a suitably qualified
expert or experts on the nature and degree of pre-pandemic structural racism. The purpose of such evidence is to assist you to understand the issue and to provide a clearer evidential foundation upon which the specific issues in Module 2 can be explored and developed.

You directed that such expert be commissioned and ruled that you would keep under review the extent to which such evidence would be needed in other modules.

Second, as to whether expert evidence should also be obtained regarding pre-existing structural discrimination on other grounds and also on intersectional grounds, you ruled that, at the first instance at least, the Inquiry team should, in addition to the expert evidence in relation to structural racism, explore the possibility of obtaining a single report covering these other issues, if necessary drafted by a small team of experts who cover different specialisms.

My Lady, it is our respectful submission that you adopt the same approach here and consider whether the issue of pre-existing structural racism or other forms of structural discrimination in relation to Northern Ireland can be encompassed in that same report. I will come back to other experts, if I may.

In their written submissions, the bereaved families 13

2001 and 2016 in Northern Ireland, the Bengoa report in 2016 was regarded as important in terms of it advocating a programme for a reform of healthcare. Disability Action Northern Ireland have also pointed to the New Decade, New Approach agreement of January 2020, which was of course immediately impacted also by the onset of the pandemic.

Now, it may well be that the fact that the Bengoa report recommendations were not implemented was a factor in the decision making in response to the pandemic and, again, I repeat it is not an issue about readiness, rather it is about the situation as it confronted ministers when they took up the reins of power in 2020. So, my Lady, I think the short point is that it is not within the scope of Module 2C to examine the effect of budgetary cuts or to focus on events before ministers came into office but rather to pick up the baton in January 2020 and to consider how that lack of an Executive up until then impacted on the Government response to the pandemic.

Turning then to the timetable. Before going on to set out shortly some of the work that has been done thus far, I was going to deal with the timetable as it stands. As our Core Participants know, the fact that Module 1 will start slightly later than originally
have raised the question of whether the Inquiry will consider the impact of austerity measures in relation to the pandemic. By "austerity", we mean that to understand the cutbacks to funding of public services after 2010 and prior to the outbreak of the pandemic. My Lady, the issue of budgetary cutbacks and the impact upon readiness to respond to the pandemic is part of Module 1.

As you are aware, one of Module 2C's provisional terms of scope is the impact of the absence of ministers and the Executive in Northern Ireland from early 2017 until 11 January 2020. This is a distinct issue from that raised in Module 1, which is resilience and preparedness. Rather the focus in Module 2C is how the lack of a functioning Executive in the three years prior to January 2020 impacted upon the decision making of those who came into power and who were almost immediately plunged into coping with the pandemic and the decisions they made.

So the focus is not so much the three years preceding the pandemic but rather the reality which confronted ministers when they took office and the impact that had on their decision making.

By way of example, we understand there to have been seven major reviews of health and social care between
planned has a knock-on effect, so that Module 2 will start on 29 April 2024 and I know that that sounds distant but, as we all know, that will come around soon enough.

It does mean that we have a little bit more time than the other nations in Module 2 to prepare for our hearings. But it also means that some of the Core Participants in Module 2 are under pressure to provide evidence that may form part of the hearings in both Modules 1 and 2 and Module 2C. We know, for example, that the Northern Ireland Department of Health is dealing with a large number of Rule 9 requests and that so too has evidence been sought from the former Health Minister, Mr Robin Swann, the former First Minister and the former Deputy First Minister too. So they have already been asked to provide evidence to other parts of the Inquiry.

Now, the bereaved families have asked whether they intend to ask Mr Swann for a statement and may I assure them that we do and plainly he will be an important witness. However, it is important that we try, in as much as we can at the moment, not to overload organisations or individuals in circumstances where we can afford, at the present, to stagger our approach.

The other point that we sought to make in our note 16
that we filed prior to the hearing is that our timing affords a little bit more latitude to take into account evidence or information that's been received before we ask organisations to finalise the drafts of their initial witness statements or before we send Rule 9s to certain witnesses.

We think, for our part at least, that it is an advantage to Northern Ireland that the Module 2 hearing precedes us and that some of the foundations will have been laid before we take up the reins in Northern Ireland.

The approach remains the one we described at the outset. It is an iterative one. Our initial Rule 9 requests are broad but we will undoubtedly be issuing further Rule 9 requests as our understanding develops. These may well be aimed at individuals where more detailed evidence is needed on particular issues or where the evidence calls for a more specific response.

So just turning very briefly to timetable. We are working to that hearing, which will commence in April 2024. There will be a further preliminary hearing. The issue has been raised as to whether three weeks is enough for a hearing. The Inquiry is of the view that, having thought about the ground to be covered and considering that Module 1 and 2 will have preceded 17

As we have explained, Module 2 C is in the process of developing its detailed Rule 9 requests to the First Ministers and to the Deputy First Minister, who will then move on to the Minister for Health, to other ministers and then to other key figures, and I repeat the point that we have made in our note, that we really welcome and encourage the identification of other potential witnesses and that we will consider any other suggestions put forward.

My Lady, I say all of this because we have noted the concern expressed on behalf of the bereaved families that a number of the Rule 9 requests to date seek to elicit what are described as corporate-type witness statements. In plain language, these are the sort of request for statements often sent to government bodies that require them to explain how the machinery works, how it did work during the pandemic, to identify who key personnel are, how they discharged their functions during the pandemic and those sorts of things, in terms of core political decision making.

I think it is right to say and to make clear that this is important evidence. It isn't mere window dressing because, as l've said, it is not just understanding how organisations work and who the key individuals are, it goes to the point that, under our
us and will lay some of that groundwork, that it is enough time but, in circumstances where we don't yet have a witness list and haven't sketched out our timetable, it will be premature to say that three weeks is not enough.

So turning then to Rule 9 requests and evidence. The Module 2C legal team has now issued 83 formal requests for evidence pursuant to Rule 9 of the rules. Some of these are joint with other Inquiry modules, particularly Module 2 and, as we anticipated, the first round of them was sent to the Executive Office, the Northern Ireland Government Departments, the Northern Ireland Office, Executive Agencies and the Chief Medical Officer.

We have disclosed the first tranche of documents to Core Participants comprising material received from the Executive Office and this includes things like briefing papers, situational reports and the minutes from executive meetings and we expect to provide further materials to Core Participants from other providers in the coming weeks.

The Inquiry has received approximately 3,000 documents in Module 2C alone from material providers and it is anticipated that a significant volume of these will be disclosed to the Core Participants. 18
system of government, those making the critical decisions are elected politicians. They are not specialists in a given field recruited to meet the needs of government at a given time, as for example is sometimes in the case of the United States of America. So it is very important to understand and scrutinise how the machinery of government supports the key decision making.

That said, we understand entirely the point made, that there is a risk that corporate evidence in particular is susceptible to glossing over problematic issues or presenting the picture that everyone within an organisation is of one mind or of one view. But I wanted to say this:

First of all, we are alive to that. Responses to Rule 9 are not an invitation for the provision of blandishment. Rule 9 requests are not a carte blanche for organisations to simply say what went well. Organisations are being asked questions intended to elicit whether, for example, there were competing views on central issues and how the decision making process that supported government accommodated a range of opinion.

Second, regardless of what we ask and how statements are provided, we seek the underlying material so as to
be able to scrutinise what the reality was at the time.
Third, those who provide foundational witness statements may well be asked to provide oral evidence.
So a witness who has sought through a witness statement to provide evidence which does not reflect reality or which glosses over the difficulties or offers little more than "Our organisation worked well" type sentiments will be examined about that and could be asked questions, if it is the case, why their statement did not reflect reality or did not make clear that there were difficulties.

Fourth, there is already material which has been generated by organisations which have embarked on lessons learned exercises or by other forms of commission against which decision making can be tested.

Fifth, the Inquiry will also be calling expert evidence as well and, again, that may constitute another route by which the decision making processes can be tested as well.

Of course, Module 2C is also open to hearing from any individuals within organisations or Departments who consider that they have important evidence to give or who are concerned that the full picture is not being presented.

The bereaved families have set out in their written

Ireland, Module 2C did send a Rule 9 request to the Department of Agriculture, Environment and Rural Affairs but these were questions relating to the vulnerability of persons who comprise that workforce. Granular issues about the enforcement of the Covid legislation and guidance in the workplace are not within the scope of Module 2C.

A further discrete issue, my Lady, which has been raised by the bereaved families is that of the restrictions around funerals and other gatherings in the event of a death. I wanted to say again, on behalf of the Module 2C legal team, that we understand that, for people who lost family members and friends, not having the support of others, not having familiar rituals and traditions which give solace and not being able to pay tribute to a loved one before people who knew them, all of those things must have been extremely painful to bear and made people feel very alone and absent kinship.

We are also conscious in Module 2C that particular significance is attached to the role of religious ceremonies and death and that these endure in Northern Ireland and there are cultural considerations which are specific to Northern Ireland in terms of how a death is marked too.

Consequently it is our intention to consider the
submissions and asked whether we intend to approach other named individuals and organisations, which they have specified, and I won't here, my Lady, go into the detail of who they are but I can say that all of the individuals to whom they have referred are individuals whom we have planned to send Rule 9s.

The position of the RQIA is slightly different. It is responsible for inspecting health and social care services in Northern Ireland and it is likely that that body will have relevant evidence to give across a number of different parts of the Inquiry. But we will certainly consider the issues it might be able to assist with in relation to the key political decision making.

Separate to that, Ms Martina Ferguson, who jointly leads the bereaved families, has also provided a suggested list of witnesses as well and that too has been considered and taken into account by us.

The TUC in the Northern Ireland Committee have also submitted that a Rule 9 request should be sent to the Health and Safety Executive for Northern Ireland, as the lead body responsible for the promotion of health and safety at work in Northern Ireland.

Following on from the last hearing and pursuant to the submissions which they made and bearing in mind the importance of the agro-food business in Northern 22
restrictions related to funerals in Northern Ireland as part of the examination of non-pharmaceutical interventions, so, in other words, that Module 2 C will examine whether and to what extent account was taken of how these restrictions would impact deleteriously upon bereaved people and the Inquiry will return later to examining in more detail the nature of that impact.

My Lady, the next issue, the Republic of Ireland.
One of the terms of scope in Module 2C is the extent to which political decisions were informed by the response of the Government of the Republic of Ireland to the pandemic.

Also, in your directions of January 2023, again having heard from Core Participants, you directed the Inquiry team to explore the relationships between the Devolved Governments and the UK Government and between the Government in Northern Ireland and the Republic of Ireland and the island of Ireland, as a single epidemiological unit.

Plainly, the decisions made by the Republic of Ireland are not within the scope of this Inquiry. Rather the issue is how the response of the Government in Northern Ireland to the pandemic was informed by the position taken by the Republic of Ireland when it came to key decision making.

Moreover, pursuant to your direction, our Rule 9 requests have asked recipients about co-operation with the Republic of Ireland more broadly. We have sought to understand the extent of co-operation, whether existing mechanisms for co-operation were used, if they weren't, why not, whether there were barriers, and we will continue to pursue that as a line of investigation, of course subject to your direction.

The bereaved families have asked specifically whether we intend to send Rule 9 requests to individuals or organisations in the Republic of Ireland, in order to have evidence about what the response of the Republic of Ireland to the pandemic was. The short answer to this is no, but I wanted to set out the reasons why we say that.

First, much of the information about the response of the Republic of Ireland to the pandemic is already in the public arena. By way of example only, the memorandum of understanding, which was made by the Republic of Ireland and the Northern Irish Departments of Health and their respective agencies -- and this was entitled Covid-19 Response -- Public Health Cooperation on an All-Ireland Basis, that is a public document and it provided that:
"The Covid-19 pandemic does not respect borders, 25

In other words, there are different ways of testing and examining this sort of evidence and these issues through the different witnesses who we intend to call.

Still on this subject of Rule 9s, the bereaved families have also repeated their request that they be provided with the Rule 9 requests sent to witnesses. As you are aware, my Lady, each month the Inquiry does send out an update to Core Participants about the Rule 9 requests which have been made and provides quite a lot of detail about what has been asked.

Certainly in Module 2C, as Core Participants are provided with statements and further evidence that will take place in due course, there may well be issues that they consider ought to be included in further Rule 9 requests or further evidence that they consider we ought to ask for. Again, I emphasise that, of course, it is open to them to contact us about them and that we would welcome that sort of engagement as well.

Next issue is that of a list of issues. Like our counterparts in Module 2A and B, we intend to provide a provisional detailed list of issues to Core Participants, which will provide greater clarity as to the matters which will be examined in Module 2C and, my Lady, we invite you to make a direction as to the date by which that ought to be served and respectfully
therefore there is a compelling case for strong co-operation, including information sharing and, where appropriate, a common approach to action in both jurisdictions."

In other words, it set out an aspiration and it is this sort of publicly available material which provides us with a yardstick against which the substantive co-operation which actually occurred can be considered.

Second, the disclosure that we have from the Northern Ireland Departments and the Northern Ireland Office too, documents the respective positions taken on issues as between the Republic of Ireland and Northern Ireland or the United Kingdom. In other words, we have a good understanding of those relationships from the material provided from the Northern Ireland perspective.

Third, aside from witnesses like the Minister for Health, Mr Swann, who will obviously be asked questions about co-operation and the mechanisms for co-operation, other types of witnesses -- and I have in mind witnesses like the Chief Medical Officer, will also be asked about co-operation, not from a political perspective but rather from a clinical perspective too and, again, will be asked questions about the use of mechanisms, whether the use of those mechanisms were sufficient, any barriers which existed, and so forth. 26
suggest that this could be by 31 May 2023, so following on from each of the dates that have been set in the other modules.

Turning then to Relativity. My Lady, as you know, that is the platform which the Inquiry uses to disclose evidence to Core Participants. Documents are disclosed once they are assessed as relevant to Module 2C. They are stored so that they are searchable by providers or key terms or by words. They can be converted into text documents and internally searched too.

I know that in Module 2C some Core Participants expressed a degree of concern or some frustration about the functionality of that system and I just wanted to pick it up here because the bereaved families have repeated those concerns in their written submissions.

But, again, and I know this was set out in Module 2 as well, Epiq is providing training sessions and there is a link to access videos of that training as well and I know that the Inquiry is also exploring options to provide Core Participants with additional functionality in terms of coding, and that there will be an update about this shortly.

A more substantive issue perhaps is that of expert evidence. Module 2 but in conjunction with Modules 2A, $B$ and $C$ has instructed a number of experts. Of these 28

Professor Ailsa Henderson from the University of Edinburgh has been instructed to report on the political structures for devolution within the United Kingdom and the mechanisms for inter-governmental decision making between the UK Government and the Devolved Administrations during the Covid-19 pandemic, in other words to explain the different bases upon which each of the Devolved Governments' rules in relation to Central Government and the relevance of that to the Covid pandemic.

Her report does provide expert evidence from a political science perspective as to the basis upon which Northern Ireland is governed. Professor Thomas Hale, from the Blavatnik School of Government at the University of Oxford, has also been instructed to report on international data related to the Covid-19 pandemic, including analysing the effectiveness of the decision making of the UK Government and each Devolved Administration in response to the pandemic, in comparison to other countries. We anticipate that there will be points of comparison relevant here, for example with the Republic of Ireland.

Alex Thomas, from the Institute for Government, has been instructed today report on decision making structures of the UK Government in an emergency. So in 29
quickly, then obviously there may be questions of law about what powers the Government had and there may be questions and issues around the practical limitations to which I have already alluded. I think it is just a question of delineation. There is likely to be evidence of fact on those issues. It is really just in terms of flagging that my learned friends may wish to consider and have a think about what more expert evidence might lend to that sort of evidence.

As has already been indicated, after disclosure of those draft expert reports, those that have been commissioned, Core Participants will be invited to raise points of clarification or new matters that are agreed by the Inquiry to be relevant with each expert and I think that will also afford the Core Participants an opportunity to indicate issues which might require dedicated Northern Ireland expertise.

I am going to turn briefly then, if I may, to the hearings in Module 2C. They are some time off so I'm not going to spend much time today on this issue. I know that no one will thank me for that. It was really to flag a few main points.

My Lady, Rule 10 of the Inquiry makes provides of how witnesses will be questioned in an Inquiry and here that will be an issue of consequence, given the enormous
particular looking at the Cabinet Office and Cabinet Committees, and so forth.

Separate to that, Gavin Freeguard, who is the former Programme Director and Head of Data and Transparency at the Institute of Government, has been instructed to report on the access to and use of data by the UK Government and the Devolved Administrations during the pandemic.

My Lady, we have already flagged -- attractive though it is to have experts who are in a position to comment across the UK, and obviously the strength of that is that it provides obvious points of comparison, we nonetheless recognise that Module 2C may well require some expertise which is Northern Ireland specific.

For my part, we will be in a better position to judge that when we have received all of the draft reports and responses to further questions that we have asked, particularly of Professor Ailsa Henderson.

In terms of evidence about devolution, it also appears to us that we might need to stand back and consider what more we need or what expert evidence might look like, above and beyond the background to devolution.

For example, if the question is: could the Government in Northern Ireland have done more and more 30
amount of ground to be covered and that there must be a balance given the pressures on this Inquiry to produce reports and recommendations which are timely. So that means that the hearings will necessarily have to be conducted with focus and efficiency and, obviously, a very good deal of work will be done in advance.

We don't expect that witnesses will be called just to repeat what's already in their statements. They will be focusing on the issues of significance and where you, my Lady, may need to resolve points of dispute also.

Pursuant to Rule 10, only counsel to the Inquiry may ask questions of the witness and requires no permission for you to do so but, under Rule 10.4, the recognised legal representative of a Core Participant can apply for permission to ask questions as well.

But aside that, putting to one side those rules, Core Participants in Module 2C will have an important part to play in informing the questions asked of witnesses. In terms of how we intend to ensure that, each witness who is called to give evidence at the hearing will be provided with a hard copy bundle of documents for their use at the hearing. This will include things like their statement and any documents to which they may be referred. An evidence proposal will be prepared for every such witness and this will be
circulated to Core Participants in advance and that will also include a list of topics that each witness will be examined about, references to the relevant parts of the witness statements and exhibits and a draft index of the documents that will form the witness bundle, including those documents about which the witness may be asked questions.

So Core Participants will be asked to review the evidence proposals and to provide comments and to make any submissions as to additional issues which they may want to have raised with a particular witness or any new document that they consider should be included. I can say that that will be considered carefully and that a final proposal will be circulated before the witness gives evidence.

In addition to that, my Lady, the Inquiry will also adopt the additional process whereby Core Participants can meet with or write to, whichever they prefer, the Module 2C team following the submission of their observations and that's so that they can explain the rationale underpinning their observations. So there will be a more informal process of dialogue about what oral evidence will cover and will allow Core Participants to ensure that we have understood the points that they seek to make.
account at their own pace but have the ability to come back to it if they want to. The Inquiry has also received input that there needs to be other ways for participants to provide their accounts. So that will include things like a phone line and a paper form too.

There will also be in person sessions with a specific focus on hearing from people who might not otherwise come forward or who would welcome being with other people who suffered bereavement or who had similar experiences to them.

The Inquiry wants to hold community listening events across the United Kingdom too, which will be attended by Inquiry staff and I know, my Lady, that, subject to your Inquiry commitments, that you would like to be able to attend some of those as well, and there will also be an ability to participate in different languages.

The Inquiry's approach to developing Every Story Matters is premised on an understanding of the trauma that people have been through. It is informed by this and, where possible, emotional support will be available.

The accounts given will be analysed and reports will be produced for each relevant module investigation and they will then be submitted as evidence disclosed to the Core Participants and also published as part of the

In terms of the opening and closing statements, the Module 2C team will prepare a detailed opening and that may, for example, draw on the evidence from the Module 2 hearings so, effectively, to set the scene from opening Module 2C and to introduce the themes and the evidence which will be explored during the hearings and some of the key materials to which we will refer as well. It is not likely that there will be a closing statement.

The Core Participants who wish to make opening and closing statements will be welcome to do so. I don't think we need to get into the detail of this now but doubtless we will come back to issues about time limits and that kind of thing on a later date.

My Lady, I wanted to finish then, if I may, on the listening exercise, which has been named within the Inquiry as Every Story Matters. It is part of the work of this Inquiry that it will gather and assimilate the accounts of people across the United Kingdom about the impact of the pandemic on their lives. As has already been observed, such is the breadth of human experience of the pandemic, that this is really the only way in which the Inquiry can ensure that record is made of the accounts of those who wish to participate.

There will be a new online form with a save and come back feature. So that means people can record their 34
evidence in those hearings. So, in this way the experience of those affected by the pandemic will be integrated into the Inquiry's core work.

The Inquiry is also about to launch a number of tenders to procure specialist services to support Every Story Matters too. These are separate contracts which will follow on from the existing interim ones which come to an end shortly and these new contracts will cover research to gather, analyse and report on people's experiences, communications to create content that raises awareness of Every Story Matters so that people can take part if they wish and community events, expert provision, to help the Inquiry gather experiences face to face, from people within the community.

I said this at the last hearing but, obviously, we very much hope that people from across Northern Ireland will participate and we encourage them to do so. It is really important that their voices are heard as part of this Inquiry.

My Lady, you have been clear from the very outset that you wanted to find a fitting means within this Inquiry of commemorating those who died. To that end, the Inquiry consulted as widely as possible as to what might be appropriate, again given the scale of the loss. To that end, my Lady, you decided that a tapestry should 36
be created and it would be a physical installation, each panel created by a different artist working with a particular community or communities to develop it.

Tapestries have been used as a means throughout history of capturing the common experience of significant events or of remembering them. Perhaps uniquely, a tapestry is a form of art which is able to both involve and reflect different communities, which is traditional but nonetheless is also one which can be modern, and that seems so important given the diversity of experience and loss which it will capture and, of course, more than anything it is a piece of art which will also endure.

The intention is for the first panels to be shown at the UK Inquiry's hearing centre in time for the first substantive hearings in Module 1 in June.

The panels will be transportable to wherever the Inquiry holds hearings in the UK so people in Northern Ireland will be able to see them if they attend in person.

It is also planned that films which convey and explain about harm and suffering caused by the pandemic will also be shown at the commencement of each hearing too and this will include Module 2C substantive hearings also. I think further details about that are set out in
are there.
MS CAMPBELL: My Lady, I am and I can.
BARONESS HALLETT: Thank you.

## Submissions by MS CAMPBELL

MS CAMPBELL: My Lady, on behalf of the Northern Ireland
Covid-19 Bereaved Families, may I once again welcome the Inquiry, if only virtually in this hearing, to Northern Ireland.

This Inquiry and this module in particular is of the utmost importance to all of the bereaved families here in the north. The families, as you know, have long campaigned for an Inquiry and a Northern Ireland Inquiry, it is fair to say, in particular. But as has been recognised by Ms Dobbin this afternoon, the ongoing political stalemate, if I can call it that, in the North means that a Northern Irish specific Inquiry is no closer to reality nor is, in fact, the ongoing scrutiny that might have been expected in the aftermath of the pandemic.

So, in reality, your Inquiry represents the only opportunity for bereaved families in the North to get and to gain and to bring some understanding of their individual and collective experience during the Covid-19 pandemic here in Northern Ireland. Accordingly, it is very much welcomed and it is very much appreciated by

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the solicitor to the Inquiry's note from January.
My Lady, those are the opening submissions on behalf of the counsel team. I think that all I otherwise need to do is ask your permission that the Core Participant submissions be published on the Inquiry website.

On behalf of the Inquiry team I wanted to thank Core Participants for the care with which they have considered the issues and the constructive way in which they have sought to engage with us and with the Inquiry too. I can't say or express clearly enough how helpful that is. Is there anything that I can assist you with at this point?
BARONESS HALLETT: Thank you very much indeed, Ms Dobbin.
No, there's nothing else at this stage and I'm grateful to you.

May I just, before I call on Ms Campbell KC, apologise to those who may have had problems with the streaming on the Inquiry website. I gather there was a problem but I'm told that it has now been resolved but for those who are members of the public or others who are trying to follow via the website, don't worry I'm reassured or assured that the Core Participants' attendance or participation in this hearing hasn't been affected.

Perhaps you can confirm that, Ms Campbell? If you 38
the Northern Irish families.
It is hoped that your Inquiry, and in particular through the focus of Northern Ireland in this module, will provide much needed scrutiny of decisions and indecision, of action and inaction, of communication and miscommunications or, in some cases, a wholesale lack of communication and, importantly, of opportunities and missed opportunities that afflicted those who we lost and those who are now bereaved.

These are all issues that continue, as my Lady knows well, to cause heart break to the bereaved across our society. My Lady, expectations really of this Module and this Inquiry are therefore very high. Module 2C in particular, from a Northern Irish perspective, has an enormous task and a very important function. I can say, on behalf of the Northern Ireland Covid-19 Bereaved Families for Justice, that we are very much here to assist the Inquiry in achieving its aim.

My Lady knows that a very significant amount of work has already been undertaken by the bereaved families and indeed by their representatives, in order to assist you in identifying our shared and collective experiences through key themes and through recurring issues that have been shared across the bereaved families. Therefore, in identifying lessons that really require to 40
be learned, as a result of their experience and their bereavement, it is regrettable but it is perhaps unsurprising that there are many shared experiences and, therefore, we feel many lessons to be learned.

You will know of several of them, my Lady, having already read the detailed statement that was provided on behalf of the bereaved families, submitted by way of a Rule 9 response to Module 1. I can assure my Lady that there is indeed more to come.

If I may, given the focus is on Northern Ireland today, I will draw your attention to some of the issues now so that our families can be aware that they are, if I can put it colloquially, on your radar or list and that, if not today, then in the near future the Inquiry can give us the necessary assurance as to how and when they will be addressed.

It may be in due course we are told some of the issues are not to be addressed in Module 2C or will be addressed in Module 1 or perhaps more appropriately in Module 3 , which is healthcare and Module 4 which is social care.

However, given our previously aired concerns, that there must be sufficient and meaningful focus on Northern Ireland within the wider modules and of course your assurance to the families that that will happen, if 41
disclosure that we receive -- but long before the pandemic hit, it was recognised politically and by health institutions that the island of Ireland is geographically a single epidemiological unit, with a cross-border public body, the Institute of Public Health being responsible for public health on the island of Ireland.

That, of course, is surely borne at the very least from commonsense. There is free movement of people across the island. People live in one jurisdiction and work in the other. Families live on either side of the border. People shop, socialise or access services in one jurisdiction or the other jurisdiction or both jurisdictions.

Neither Westminster nor the Northern Ireland Executive nor the Republic of Ireland Government controls all ports or points of entry into this jurisdiction and, as a result, there are many cross border and inter-governmental bodies and political institutions, most set up, in fact, under the Good Friday Agreement, to recognise and facilitate our unique situation.

For example the North/South ministerial council; the North/South Inter-Parliamentary Association; British-Irish Council and the British-Irish

I may I will address them shortly today.
I had entitled them "discrete issues" but that might inadvertently diminish their importance.

There are four. The first is the issue of North/South co-operation. This is perhaps increasing in prominence, in our submission, because of its relative -- I should stress the word 'relative' -absence in the scope of this module and, indeed, in the council to the Inquiry's written submissions. We have of course listened carefully to the oral submissions this afternoon.

It is right that we should observe that the provisional scope of Module 2C does include the extent to which decisions made during the pandemic were informed by the response of the Government of the Republic of Ireland. That reference is undoubtedly an acknowledgement of the unique political and geographical situation Northern Ireland is in. On any view, our unique position called for a different approach to governance during the pandemic than in any of the other administrations. However, we respectfully contend that that reference in the provisional scope does not go far enough.

My Lady, long before the onset of the pandemic -and this is, no doubt, going to be recognised in the 42

Inter-Parliamentary Body. Whilst the scope of this Module recognises that there was a need to be informed about decisions of the Irish Government, we contend that this Inquiry will have to do much more to consider and to assess both the UK Central Government's interaction and co-operation with the Government of Ireland and those cross-border and inter-governmental bodies, as well as the interaction between the Stormont Executive and their counterparts in the Republic of Ireland.

These are important political structures for us here and their existence and actions may have a bearing on a response to the pandemic but they don't appear in the provisional of scope, they didn't appear in the CTI note for this hearing nor, in fact, do many of those bodies appear in the annex relating to Rule 9 requests for evidence and submissions.

It is our submission that they really do require to be examined. Of course, we hear and we understand the point made by Ms Dobbin that, really, on an examination of the disclosure from one entity, one can get a very strong impression, perhaps even an accurate and full impression of the impact of another but that might not always be the case.

So it is of such importance that we would, in fact, invite the provisional scope of Module 2 C to be amended 44
to reflect that cross-border communication and governance will be considered so that, to extent that it is possible and indeed necessary, lessons need to be identified and learned. We are, of course, ready and willing to assist in that process and to communicate with your team in order to identify the appropriate cross-border institutions and governance that ought to be approached.

It may also be that a means and an effective means, in order to fully elucidate the importance of these cross-border institutions is to identify an appropriate expert in the -- both the political institutions and framework of Northern Ireland vis-à-vis Westminster and vis-à-vis Dublin and also within that to address the unique health and social care framework, and that might well, we suggest, be a relatively streamlined way in which to properly reflect the unique situation in which we operate in the North.

My Lady, I will touch briefly on the issue of austerity as point 2 and my learned friend has again addressed this, this afternoon, and we are grateful for her submissions. Whilst of course this is not an Inquiry into the pre-existing state of health services or public services, be it healthcare or social work, nor could it be, we contend that, so far as 45
addressed it briefly at paragraph 16 of our written submissions. In that paragraph, we set out concerns about communication during the pandemic and give the example of communications in relation to care home guidance.

My Lady, you will know, of course, that equivalent concerns exist on behalf of those who were hospitalised and, in particular, around the nature and extent of medication that was dispensed and around the decisions made in relation to resuscitation.

So too do those concerns exist on behalf of the very many people on Northern Ireland who were cared for within their own home environment by what we colloquially know as "home help".

The experiences of our families is that the messages from Stormont, trickling through each of the social care trusts were mixed, confused and inconsistently applied. While that may be an issue more appropriate for Module 3 or Module 4, we invite your team to liaise with us to identify when and how the evidence touching on this aspect of communication will be addressed and so that the experiences and concerns of the bereaved will be heard and the question that our families have as to when this will be addressed will be answered.

My Lady, point 4 was that of social, cultural and

Northern Ireland is concerned, the Inquiry must acknowledge, again either by way of expert evidence or otherwise, the really perilous state of public services in Northern Ireland before the onset of the pandemic.

Many of our families are in no doubt that their loved ones were ultimately victims of a health and social care system in a state of near collapse and the fact that it has been in a state of near collapse is widely recognised both in literature and also in expert evidence given to other court cases in Northern Ireland.

So it is our submission that the impact of that austerity that we have addressed in our written submissions, combined with the long periods of the absence of a functioning Executive left the prevailing healthcare system and social care system in a dire state before the pandemic and decisions made -- and this is important in terms of bringing it within of course this scope -- that those pre-existing pressures were real and that decisions made in the context of those have got to be examined.

Therefore, in order to properly consider the impact of the pandemic in health and social care in Northern Ireland we must first understand the prior state of the healthcare system.

My Lady, point 3 is communication and we have 46
religious customs. I can say at the outset that Ms Dobbin's indication today, that within the scope of Module 2C consideration on the restriction over wakes and funerals will be very welcome news to the bereaved families. You will, my Lady, on your tour of the UK encounter a great many cultural differences on behalf of different groups and different regions and that's, of course, one of the joys of this nation. But in Northern Ireland the social culture and religious importance of holding wakes and community funerals really cannot be overstated.

Community grieving is integral to our society and, as a result of that, the restrictions on gatherings and mournings collectively, as well as the hands-off or rather hazardous way that deceased loved ones were treated on their deaths caused immense pain and distress at the time and continues to cause heartache to those who lost loved ones. It is just one of the ways in which the pandemic impacted differently in this jurisdiction but a very important one.

So thank you to you, my Lady, and to Ms Dobbin for indicating that that will be given consideration in Module 2C. As I say, that reassurance will be very welcome news to the families.

My Lady, turning, if I may, to the agenda. We 48
recognise the start date had to be put back slightly and so we will start this module some 13 months hence. We acknowledge both the reason and the need for some delay. However, we do really question whether the proposed 14 days or three weeks, minus a Bank Holiday is sufficient.

In our respectful submission, it is not, if I may so, premature to allocate a greater degree of time at this stage. Given the unique issues that have to be addressed, it is appropriate and, we would submit, ought to be recognised that 14 days is very likely to be inadequate, in order to address all the issues that need to be addressed and that greater time needs to be allocated in order to allow for proper scrutiny.

One has to think of not only the unique geographical situation, the political dysfunction and instability before -- some might say during and since -- the input from Westminster and Dublin, the unique health and social care framework, all of those call for a greater amount of time to be allocated. In fact, at a conservative estimate, we would respectfully submit that a timetable, in fact, twice as long would easily be filled with important evidence to be scrutinised.
BARONESS HALLETT: I'm sorry to interrupt you, as you know I like to give the stenographer a break because he or she has to lot to put up with. I don't mean that in any 49
underestimate for a moment the enormity of the task, nor do we underestimate the diligence that is being applied to it by your team.

True to her word, Ms Dobbin has reached out to us to explain the work that is ongoing and the timetable that surrounds it and we are grateful for that indication and also the reassurance.

However, my Lady, we are in a position to assist with that process and it is our respectful submission that we ought to be given a greater opportunity in that regard. It will have been apparent both from our written submissions to this module but also from submissions made in other modules that, if given an opportunity, if given sight, for example, of a list of recipients of Rule 9 requests, we are in a position to identify absentees, we are in a position to identify other relevant individuals and agencies who ought to have been approached and it is fair to acknowledge that, once we have done so, there has been action on behalf of your teams across the various modules.

Just by way of example, we raised in our written submissions an approach to the RQIA and we are grateful to Ms Dobbin this afternoon for an update on that. But there is also the Institute for Public Health in Ireland, we have identified Northern Irish Ministers for
pejorative sense as far as your submissions are concerned. Any idea -- I don't want to rush you, I'm happy to take the break now, if that's convenient, or if you would rather complete your submissions but it depends on how long they are going to be.
MS CAMPBELL: I would have thought perhaps another 10 minutes.
BARONESS HALLETT: In which case, if you don't mind, we will take the break now.
MS CAMPBELL: Yes, of course.
BARONESS HALLETT: Very well, 15 minutes please, so that means I will be back at 3.15 pm .
( 3.00 pm )

## (A short break)

( 3.15 pm )
BARONESS HALLETT: Ms Campbell, sorry about interrupting you and about the confusion over timing, I have got to sort out my watch.
MS CAMPBELL: Not at all, my Lady.
I was moving on to the topic of Rule 9s and Rule 9 requests. May I start with an acknowledgement from the outset, and it is an important one. There is a huge task being undertaken by your team to seek and to obtain all necessary disclosure and information from all necessary and relevant individuals, and so we don't 50

Health, UK ministers, the Secretaries of State and Republic of Ireland equivalents just being some of those.

We also have identified, and these are submissions echoed, in fact, on behalf of Disability Action and, of course, the TUC, the various regional health and social care trusts and the directors and management in those trusts.

My Lady will be aware that Ms Ferguson, whom we represent, has provided a very lengthy and detailed list of names of individuals who may be approached. We are also in a position not only to identify absentees but to identify sources and additional sources of material that must be gathered. Whilst we, of course, acknowledge that it is an iterative process being undertaken by your team, an iterative process in which we only have that limited, if you like, outsider participation, is not as reassuring as might have been intended.

My Lady, the families and individual members of our group have an enormous repository of experience and information and of knowledge and we urge the Inquiry to adopt therefore a greater degree of openness in relation to the gathering of information under Rule 9 requests and to permit us a greater degree of participation in this process.

That can be achieved by sharing the detail of the Rule 9 requests, which is a submission that we have made previously, by sharing the full list of recipients and by receiving submissions from us, not just in relation to a list of names or organisations or agencies, but in relation to the substance of what must be asked and from whom. We have, in addition, in our written submissions, raised the additional concern of what might be termed a top heavy approach to approaching individuals, ministers and agencies. So, therefore, seeking the accounts of senior ministers or a line adopted from the council to the Inquiry submissions, a corporate statement. Of course, that is necessary, we don't suggest for a moment that it is in any way window dressing but we are keen to ensure that, if there are dissenting voices, those voices are heard and given an opportunity to be heard.

My Lady will be in no doubt that there is value in the accounts and opinions of others further down the chain, below the top echelons and how does this Inquiry ensure that those accounts are obtained is a question that we ask. At paragraph 38 of our written submissions you will have seen that we propose various means by which the Inquiry might ensure that dissenting voices are heard, including a well publicised invitation to 53
concern would be that a blanket redaction, for example, of names on an email chain, even of junior officials, might belie patterns of communication that on proper scrutiny become important.

That is not just because of the presence of names included on the list but also because of notable absences of names, in terms of communication that ought to have taken place.

So, therefore, we again urge the Inquiry against the use of blanket redactions, notwithstanding its attractiveness in order to facilitate disclosure for expediency purposes, and we are willing to work with your team to find the best way through that.

We have raised in our written submission the platform for disclosure and I can simply say that increased familiarity is not generating increased fondness for the platform or for its functionality.

We welcome the indication today that work is ongoing to provide us with coding or with tags, as we call them, to enable or to increase its functionality. That, in fact, hasn't been our experience so far and certainly I was under the impression that we had reached the end of the road in those discussions but, in fact, if we are wrong about that and if it is going to be possible to assist us with search terms, then we welcome that as
news today.
My Lady, the issue of expert witnesses I have touched on previously. It is worthy, I think, of note that of the two expert reports disclosed so far in module 1, one does not even mention Northern Ireland in terms at all and the other, that was more recently disclosed on health inequalities, on an initial read doesn't assist at all with the framework of our political or healthcare system and, in fact -- and I don't wish to criticise, it is only on an initial read -- but appears to address Northern Ireland only in relatively light terms.

Therefore, we maintain our position that this Inquiry would be assisted by an expert to give evidence firstly on devolved government in Northern Ireland and the complexities of the political health and social care system and their relationships between Belfast, Westminster and Dublin.

My Lady, we, of course, can understand why the approach might be to wait and see. We have a number of experts still to report but, in our submission, it would be appropriate to seek to identify those experts, potential experts, at this stage and we are willing to work with your team in order to assist with that process because, in our submission, an expert, or perhaps two
experts if required, would be of particular importance
to this Inquiry in identifying lessons learned for future pandemics in this jurisdiction and on this island and, in fact, to a significant degree would likely streamline the evidence that is to be heard.

My Lady, as to the witness hearing schedule, we have nothing to add. We welcome the news that there will be a further preliminary hearing.

As to the issue of parliamentary privilege, we have made earlier submissions on that in earlier modules and it seems to us that it is a bridge to be crossed as and when we come to it.

I will address briefly the issue of Rule 10 and, as you have heard undoubtedly in previous preliminary hearings, the opportunity for counsel on behalf of Core Participants to question key witnesses on central issues would not be to detract from focus but hopefully to assist in focus on issues that are of significant importance to the Core Participants.

We will, of course, work very closely with your teams in working through witness bundles when they are provided, in identifying issues, in identifying questions, both formally in written submissions and informally in discussions, and we have no doubt that the assurances given today that the Core Participants' 57
of those they have lost, no matter how difficult it is for them to do so.

So, as and when the opportunity arises, it will be taken up by many of those whom we represent and I make clear that we are, of course, ready to welcome you back as part of that process. It was observed by Ms Dobbin that you, in fact, have participated and will continue to do so.

The fact that many of our members have had the opportunity to share their experiences with you has already been the source of deep gratitude and is often discussed by them as something that is important and so, should the opportunity arise, then, as I say, we would welcome it again. Meanwhile, we will continue to work your team in order to facilitate that level of communication with the listening exercise.

Thank you.
BARONESS HALLETT: Thank you very much, Ms Campbell.
Particularly thank you for the very positive approach in relation to the listening exercise. I said before and I think you have heard me say it, that my visit to Belfast I found one of the most moving occasions and I shall certainly return, not only just for this module but on other occasions, if I possibly can. So thank you very much indeed.
voices will be heard as part of that process are given in very good faith. But we invite you, my Lady, to leave open the opportunity at this stage, the possibility and, in fact, the probability that there should be questions on behalf of the bereaved families of key and important witnesses to them.

We acknowledge that the timetable is tight but, once again, the fact that one has set what we would respectfully submit is too short a timetable ought not to be used as a reason to indicate that there is insufficient time for counsel on behalf of Core Participants to ask questions on behalf of those they represent. But that is a matter that we will continue to work with your teams in relation to.

My Lady, finally, the listening exercise. Northern Ireland Covid-19 Bereaved Families for Justice and their legal representatives are ready and willing to assist in this process to the greatest extent that we can. It is understood as an exercise to be an enhancement of the opportunity for individual participation in the Inquiry, rather than an alternative to it, of course. I can assure my Lady and I know, you having met some of the bereaved families, that we have much to say in this jurisdiction and individuals are ready and willing and keen to share their own experiences and the experiences 58

MS CAMPBELL: Thank you.
bARONESS HALLETT: Mr Friedman.

## Submissions by MR FRIEDMAN

MR FRIEDMAN: Good afternoon, my Lady. I hope you can see me.
BARONESS HALLETT: I can, thank you very much, Mr Friedman.
MR FRIEDMAN: We act, I think as you know, for Disability
Action Northern Ireland and they are also making their first appearance in the module.

We are grateful to Ms Dobbin KC and her team for the way they have updated on matters this afternoon and, in particular, the way she has engaged with our clients provisional highlighting of their issues.

We emphasised to you this morning disabled people's triple jeopardy during Covid, their far more fatal Covid outcomes, their cutoff from other acute healthcare and the disproportionate impact of lockdowns and related measures upon them.

The triple jeopardy profoundly affected the 1 in 5 people of Northern Ireland, and according to the latest census, moving to 1 in 4 , who are disabled but includes that during 2020 they were 48 per cent more likely to die of Covid and 40 per cent more likely to die of non-Covid causes than non-disabled peers. In addition, there are those unique features of Northern Ireland,
including the suspension of devolved power from January 2017 to January 2020 and the resumption of devolved power in the first crisis period of the pandemic response in 2020, only to collapse again in February 2022, of course all pretty much within the timeline of your Inquiry.

The effect on disabled people of having no Executive for long periods has been the issues that can take years to gain traction with a functioning government were without anyone to properly engage with. As Disability Action has written:
"Policy decisions relating to disabled people's lives were left in the hands of local civil servants, who, in the absence of ministerial authorisation, often felt powerless to act. Meanwhile, politicians in Westminster grappling with Brexit and a myriad of other 'bigger' issues seemed entirely removed from addressing the challenges disabled people and their families in Northern Ireland were facing.
"During the pandemic, disabled people's situation continued to be complicated by such 'bigger' issues, including the political differences within the power sharing arrangements. A direct consequence of the collapse of the Executive in 2022 is that an ongoing commitment to produce a disability strategy as part of 61
people but also other minorities.
First, Northern Ireland has a discreet architecture and culture of human rights that is tied to its existence and wellbeing as a post-conflict society. It runs through the special focus on human rights in Northern Ireland contained in the Good Friday Agreement in 1998, which affirms commitment to "the right to equally opportunity to all social and economic activity regardless of class, creed, disability, gender or ethnicity", and commits to the creation of statutory duties and oversight mechanisms. Those mechanisms are realised in part 7 of the Northern Ireland Act 1998. They are expressly protected by the so-called No Diminution of Rights principle, contained in Article 2 of the 2019 Northern Ireland Protocol that has not been changed by the recent Windsor framework.

The Northern Ireland Office Outcome Delivery Plan for 2021/2022 consequently includes in outcome 6 of its equality objectives to:
"... ensure compliance with UK public sector equality duty and section 75 requirements of the Northern Ireland Act contribute to reserve human rights work including treaty body requirements, sponsor the new Northern Ireland Human Rights Commission and ensure implementation of the No Diminution of Rights principle
the programme for government that was agreed to in January 2020 has not been realised. That is despite a commissioned expert panel report advising the Department of Communities on how to do so being completed now some two and a half years ago."

In all the circumstances, Geraldine McGahey, as the Chief Commissioner of the Equality Commission for Northern Ireland warned in October 2021, that political disagreements and a fixation on what she called the "orange and green issues", has resulted in a two-decade long failure to enhance legal protections for minority groups and she consequently describes equality protection in Northern Ireland as comparatively in the dark ages.

For the purpose of Module 2C, the Inquiry will need to consider whether the post-conflict preoccupation of maintaining the political equality between the power sharing parties, especially in the context of Brexit adversely affected the protection of minority groups, during the course of Covid decision making, including, for the reasons introduced today, disabled people.

In urging my Lady to incorporate human rights analysis into your investigative toolkit, it is right to identify what makes the Northern Ireland approach distinct. We mention four matters relevant to disabled 62
in the Northern Ireland protocol."
Second, notwithstanding this commitment to human rights work, including treaty body requirements, the Northern Ireland Government, unlike Scotland and Wales has no clear plans to implement the UN Convention on the Rights of Persons with Disabilities. It is one of the casualties of the absence of devolved government that the plan to get a plan stalled. Of particular significance to Module 2C will be the criticism by the UN Committee on Rights of person with Disabilities in 2017 of the ill-preparedness to protect disabled people in the event of an emergency, which combined with austerity measures which had the effect of stripping people of the assets required to be resilient in the face of emergency have had their consequence.

While none of the four nations fare well on this, Northern Ireland lacked the devolved government when engagement with the UN Committee's criticisms could have led to meaningful planning.

Thirdly, equal opportunities and discrimination as transferred matters under the Northern Ireland Act, which is not the case with Wales and Scotland, are a discrete issue. As such, with few exceptions, the Equality Act 2010, as you have heard, does not form part of the law of Northern Ireland, rather the Disability

Discrimination Act of 1995 remains in force.
Fourthly, Northern Ireland therefore does not have
the equivalent of section 1 of the Equality Act 2010 to bring into force even if it wanted to. Public authorities in Northern Ireland have to comply with section 75 of the Northern Ireland Act which requires them to have due regard to the need to promote equality of opportunity between various groups, including those with and without disabilities.

There is an ongoing debate in Northern Ireland, seemingly blocked by repeated suspension of devolved government, as to whether those provisions should be replaced by a structure more akin to the Equality Act 2010, as applies to the rest of the UK. There is also some suggestion, no doubt to be examined with witnesses, that intersectional thinking is relatively underdeveloped in Northern Ireland.

Overall, my Lady, if the stalling of the political process has stalled engagement with structural discrimination against disabled people generally, then, as Disability Action Northern Ireland discovered in its survey of 404 people, including 1,300 written submissions, the situation after March 2020 served to "reveal the fragility of independence of disabled people and raised questions about the strength of disability 65
services for vulnerable people which had a detrimental impact upon their physical and mental health.

Third, and by way of observation on the presently instructed experts, we support what other CPs have said in this hearing and the hearing for Wales this morning as to whether the forthcoming reports will need to be supplemented by devolved power experts for those discrete nations, and we have heard Ms Dobbin explain she wants to reflect on that and invites our reflection along with her.

For Northern Ireland, there are undoubted idiosyncrasies relevant to comprehending its policy formation, including, as you have just heard, its cross-border dimensions. They includes the administrative and healthcare connections with the Republic of Ireland and how the big issue, post-conflict politics, effectively crowds out other social issues.

Other variable local nuances concern data collection and its gaps and disaster preparation and resilience for a pandemic, especially for disabled people, in a jurisdiction which has been particularly braced for other types of emergency and disaster through its troubled years and peaceful ones, but was not prepared for an emergency of this nature.

Fourthly, on structural discrimination, in my Lady's
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rights in the face of such a crisis". As the organisation put it in September 2020 in their report on the Impact of Covid-19 on the People of Northern Ireland, what became very clear, they say, was the feeling of many disabled people that their voices were being lost in the noise or were simply ignored in the confusion and panic that was unfolding.

We have addressed in the Module 2 and the earlier submodule hearings various matters about how expertise and experts might be viewed from the point of view of disabled people's organisations. For Northern Ireland, may we add the following:

First, Disability Action found minimal consultation with disabled people's organisations in Northern Ireland in Covid decision making and its conclusions are confirmed by the independent panel of experts that described consultation as too often tokenistic.

Second, in so much as disabled people's organisations can and should assist the Inquiry as experts, then Disability Action are such an organisation. The reports they were commissioned to write or have otherwise cited make them well placed to explain what they have described as the tension in the approach of protecting vulnerable people during the Covid-19 crisis, whilst at the same time removing 66
ruling on a group of experts, can I mention the word "vulnerable". Ms Dobbin rightly notes that it will have to be used from time to time when referring to things like shielding and the "clinically vulnerable" but we appreciate that she is also aware of the complexities of the term. Like the rest of the UK, Covid decision making and its framework relied heavily on the division between the labelled "vulnerable", there to be distinguished for various reasons from everyone else. That policy framework, casting the non-vulnerable as sacrificing for the vulnerable did not work to save disabled people from Covid's triple jeopardy. It has also served to avoid sufficient thought about underlying social inequalities deflecting attention away from the administrative arrangements and systems that distribute disadvantage across people and groups.

We therefore submit that in its instruction of experts and questioning of witnesses, the Inquiry will want to understand how disabled people as a category and in parallel with others, were rendered vulnerable when denied the resources and assets to absorb the Covid emergency with resilience in the manner that I mentioned this morning.

My Lady, finally and on the procedural issues that concern all of your modules 2 and 2A to 2C, we do not 68
repeat what we have said in writing and orally previously. Thank you for allowing us in these public preliminary hearings to introduce perspectives and sources that our client has reason to know will assist you and your team to prepare the next stages of this Inquiry with disabled people's situation in mind.

It is also important for disabled members of the public to hear these matters introduced into a public forum which they are often not and, for allowing that, our thanks are also due.

My Lady, those are our submissions.
BARONESS HALLETT: Mr Friedman, thank you very much and those whom you represent. As I said this morning you, raise some extremely important and serious points and they are ones that we will bearing very much in mind and we shall welcome the assistance that your lay clients can provide. So thank you again.

Mr Jacobs for the TUC and the Northern Ireland TUC.

## Submissions by MR JACOBS

MR JACOBS: Good afternoon, my Lady.
BARONESS HALLETT: Sorry, Mr Jacobs, I think I got the name wrong.
MR JACOBS: Not at all, my Lady.
I represent the Trades Union Congress and the Northern Ireland Committee of the Irish Congress of 69
a submission made by Ms Campbell on behalf of the Covid Bereaved just a few moments ago and a submission made by myself and others this morning in Module 2B. The Inquiry has timetabled 14 days for oral hearings in this module. With time permitted for opening and closing statements, and assuming counsel to the Inquiry make such statements also, that will allow 12 or perhaps 13 days of oral evidence.

It is presently the only hearing stated to be taking place in Northern Ireland and focused exclusively on the pandemic in Northern Ireland.

Of course, we do not yet have witness statements, let alone a clear idea on witnesses, but we can say that, to us, 14 days seems extraordinarily short and, although you would have heard me made these points this morning, my Lady, I do feel that it is important that I repeat them in this Module.

As we see it there are two difficulties. The first is a problem of it appearing that the Northern Ireland hearing is the poorer relative with more robust consideration given in relation to Westminster decision making in module 2.

My Lady, I, of course, listened carefully to some of your opening remarks this afternoon and your assurances that the devolved nation modules, if I can call them

Trade Unions. The TUC supports its 48 member unions which brings together approximately 5.5 million working people. Many of its member unions have members across England and the devolved nations, including in Northern Ireland.

The Northern Ireland Committee of the Irish Congress of Trade Unions represents affiliated membership in Northern Ireland and, for ease, my Lady, I will refer to it as the Northern Ireland Committee. It is the representative body for 34 trade unions with over 200,000 members across Northern Ireland and, in membership terms, it is the largest civil society organisation in Northern Ireland.

May I make one preliminary observation, my Lady, which is that Ms Dobbin spoke at the outset of her submissions, if I may so, in a sensitive and also compelling way as to how the Inquiry should approach the political sensitivities in Northern Ireland and the focus of the Inquiry and perhaps this Module in particular being on our shared humanity, and I would like to say that that is something with which we agree.

For the purposes of today, I intend to address just a few matters arising out of our written submissions and, of course, stand by the rest.

The first matter is timetabling. I will echo 70
that, will not be a side show, they will be a vital part of the hearings and devolved nations issues will also be considered in other modules. Let me make clear, we do not doubt those assurances for a moment.

But, we still say that the bare fact of such an apparently short hearing remains problematic. Significant issues will necessarily be left off the table, at least in relation to oral hearings and, with the current time estimate, it appears to us that it will be impossible for it to be otherwise.

The second related problem, my Lady, is the problem of being able to meaningfully test an array of complex issues in such a short timeframe. We recognise of course that an Inquiry of this scale must proceed in significant part with reference to written evidence but, even so, the current time estimate appears to us to be problematic. That is all the more so, given the points which we consider to be compelling, made by the Northern Ireland Covid-19 Bereaved Families for Justice as to the particular importance of this Module to Northern Ireland and also to its complexities.

At the very least, we ask that whatever practical arrangements the Inquiry is making for the hearings in Northern Ireland, it retains scope for extending the timetable. But as I observed this morning, you may,
my Lady, wish to grasp the nettle now and extend the timetable, recognising that it is perhaps inevitable and, when it comes to the next preliminary hearing, it would be helpful if counsel to the Inquiry and others know that further time is available.

My Lady, I turn to Rule 9 requests. In our written submissions, we made observations in relation to four organisations but, for the purposes of my oral submissions, I'm going to focus on the Health and Safety Executive of Northern Ireland.

The TUC has invited a Rule 9 request to be directed in module 2 to the Health and Safety Executive and we understand that that is now in train. It appears to us that that is important because the HSE is a Great Britain-wide regulator for health and safety at work and it has a role to play in providing guidance to employers and also in the monitoring and enforcement of workplace safety, including non-pharmaceutical interventions.

In Module 2C, we say that a Rule 9 request should be made of the health safety executive for Northern Ireland. It is an executive non-departmental body sponsored by the Department for the Economy. It is the lead body responsible for the promotion of health and safety at work standards in Northern Ireland.

I understand from the observations made by Ms Dobbin 73
monitoring and enforcing non-pharmaceutical interventions did it get it? Was there adequate governmental co-operation?

To us, these all appear to be crucial questions of significant importance to Module 2C, to the political and administrative decision making of the Government.

We do not accept that the Health and Safety Executive of Northern Ireland or evidence from that organisation can be described as simply being granular issues around enforcement.

Workplace safety was crucial in the pandemic and should have been crucial to government and governmental and administrative decision making.

It was in the workplace that many would have caught the virus that resulted in a loss of life. It was also in the workplace that many of the unequal and disparate impacts were felt by frontline workers.

Deciding not to hear from or even, in fact, not to seek evidence from the lead regulator for workplace safety in Northern Ireland would, in our view, be a matter of concern.

Quite separately, if granular issues around the workplace enforcement of non-pharmaceutical interventions are not going to be considered in Module 2 or $2 \mathrm{~A}, 2 \mathrm{~B}$ and 2 C , we ask that urgent consideration is
this morning that no Rule 9 request is to be sent to the Health and Safety Executive of Northern Ireland and the reason for that is said to be that granular issues around enforcement of guidance in the workplace are not within the scope of Module 2C. My Lady, we firmly disagree.

The Health and Safety Executive of Northern Ireland, as I said, is the lead body responsible for the promotion of health and safety at work standards in Northern Ireland that, it appears to us, gives rise to important questions that do fall squarely within Module 2C. What did it know about the effectiveness of non-pharmaceutical interventions in the workplace and the guidance being published or not published by the Northern Ireland Government?

What did it know about the impact in the workplace of the virus but also of the non-pharmaceutical interventions upon protected and vulnerable groups?

Crucially, were concerns about those matters known to the Health and Safety Executive of Northern Ireland communicated to the Northern Ireland Government? Equally crucially, if they were communicated what governmental response was there?

Where the Health and Safety Executive of Northern Ireland needed Government assistance in relation to 74
given as to where those issues will be considered and that is something we have urged before.

Numerous sectors saw difficulties in workplace safety. In Northern Ireland, in particular, there were concerning outbreaks at food processing sites as early. As March 2020 Unite Northern Ireland regional officer Sean McKeever described:
"Food and retail workers are now frontline workers in the battle against the Covid-19 virus but are at risk of being sacrificed by our politicians. The Northern Ireland Executive's shameful failure to bring forward any meaningful enforcement mechanisms whatsoever cannot be allowed to continue. The HSE is chronically under-resourced and understaffed to deal with the scale of this challenge. They no longer conducting inspections of workplaces, leaving workers to fend for themselves."

My Lady, I say that is striking. Frontline workers, often low paid and in a workforce with a number of protected and vulnerable groups disproportionately overrepresented, working with their lives at risk and without any inspections of the places in which they work, without change that will happen again.

In the pandemic, non-pharmaceutical interventions in the workplaces were crucial and in a future pandemic
they will be crucial again but non-pharmaceutical interventions in principle, without any effective means of monitoring or enforcement, is a fundamentally flawed system and we say it must be grappled with in this Inquiry. It is a key area for lessons to be learned.

So to summarise, my Lady, we say that evidence from the Health and Safety Executive for Northern Ireland absolutely is relevant to Module 2C, certainly in relation to its communications with Government. Quite separately, we are concerned by the idea that issues of workplace enforcement do not fall within this or other Module 2 modules and ask where it does fall.

My Lady, next and very briefly, the issue of strand tying hearings. Again, I raise this for the record, having raised it earlier but it is certainly our view that it will be important to have some opportunity to consider after Modules 2A, 2B and 2C the lessons that are to be learned across the four nations. Counsel to the Inquiry this morning in Module 2B spoke of it being, in that respect, a unique opportunity and that is something with which we absolutely agree.

Just finally, my Lady, the listening exercise. We wish to put on record that we strongly endorse the importance of the listening exercise. It will be important that the listening exercise captures the 77
of scope are set out in quite -- it is put in a pithy way but I hope that the detailed list of issues that we will provide in due course will set out more clearly what, in fact, falls within that term of scope and might be helpful in that regard.

I also just wanted to pick up on one point made by my learned friend, Ms Campbell as well about the Rule 9s. I think she suggested that it wasn't clear to the bereaved families to whom those Rule 9s were being sent.

I just wanted to make clear again that where Rule 9s are sent to individuals that will be indicated in our monthly updates because we have been focusing on sending out the departmental ones, that's why they are not individual specific. I just wanted to make the point again because maybe I didn't explain this very clearly, but obviously those departmental Rule 9 requests and the responses that we get will inform the more detailed Rule 9s that we do send out to the sorts of individuals who work within those departments in due course and, of course, the families will know to whom those have been sent and I just wanted to reiterate again, as regards the witnesses, and Ms Ferguson, for example, had suggested as might be potentially relevant.

We have taken that on board and again some of those
experiences of those at work and both the TUC and the Northern Ireland Committee stand ready to assist.

My Lady, those are my oral submissions for the purposes of today.
BARONESS HALLETT: I'm very grateful Mr Jacobs. You have made the concerns of those organisations you represent very clear and I shall obviously pursue them all but, in particular, I understand, having heard you this afternoon, the concerns about the Health and Safety Executive at work. So I will explore those matters with counsel to the Inquiry.

Thank you very much for all your submissions.
Ms Dobbin, do you have any submissions by way of response?

## Reply submissions by MS DOBBIN

MS DOBBIN: My Lady, I mean no discourtesy to my learned friends by not responding in detail to the helpful submissions of that been made. Clearly, there are points that require further consideration by you.

There are perhaps just one or two things that might help if I just pick up on though and, in particular, Ms Campbell's submissions about the terms of scope and the short reference that's made therein to the Republic of Ireland.

I just wanted to make clear that obviously the terms 78
individuals will be sent Rule 9s as well. So I just wanted to make it clear that obviously there's room for dialogue and communication on those issues.

Just in terms of then the experts and this is the final point on devolved issues. When I was suggesting what has been described as a wait and see approach what I really had in mind was that my learned friends may want to consider the things that the experts have been able to touch on and then to think about the things that we might need that sort of dedicated Northern Ireland evidence on. I'm told that experts on devolved issues are actively -- there is a process to identify them, so the Inquiry is certainly getting on with that, regardless of the position that's taken.

I didn't want my learned friends to just think that was something that wasn't being advanced. That's very much under active consideration. I hope that that's helpful.

Unless I can help you any further with anything.
BARONESS HALLETT: No, thank you very much, Ms Dobbin.
Everyone has been extremely helpful again and I would like to express my gratitude for many of the suggestions made and I will take them up with counsel to the Inquiry and I have absolutely no doubt that the Core Participants' assistance is improving the work that we 80
do. We are developing as we go along. We try to remain flexible and therefore the submissions, as I have heard today, both this morning and this afternoon, will help us in that development.

So thank you everyone who participated. Thank you everyone who watched online. That concludes today's hearings. Thank you.
(4.00 pm) 8
(The preliminary hearing for Module 2C concluded)

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