
Counsel to the Inquiry's Note for the Third Preliminary Hearing in Module 1 of the UK Covid-19 Inquiry on 25 April 2023

Introduction

1. The purposes of this note are to provide the agenda and introduce the issues for the third preliminary hearing on **Tuesday 25 April 2023**. Those who have been granted core participant status have been provided with regular updates over the past few months. However, this preliminary hearing is an opportunity to draw this information together and ensure that it is up to date, as well as allowing a public update on the Inquiry's work so far. Should any core participant wish to file brief written submissions on any of the issues set out below, they must be received by the Inquiry by **4pm on Wednesday 19 April 2023**.
2. The third preliminary hearing in Module 1 will address the following issues:
 - a. Update on Rule 9 requests;
 - b. Disclosure to core participants;
 - c. Expert witnesses;
 - d. Evidence proposal procedure and pre Rule 10 process;
 - e. Summary of approach to witnesses and hearing timetable; and
 - f. Opening and Closing Statements.

Update on Rule 9 requests

3. The Module 1 Solicitor team circulated a note to core participants on Monday 27 March which provided a full update on the status of the Rule 9 requests issued by the Module 1 team. This note does not purport to update all of that detail in full but further substantial progress has been made in relation to the receipt of Rule 9 responses over the past week:
 - a. The Inquiry has received 26 finalised statements (up 6 from STI's note);
 - b. 121 draft statements (up 26 from STI's note);
 - c. Has disclosed 19 statements (up 8 from STI's note); and,
 - d. It is awaiting receipt of 52 responses (from 17 organisations and 35 individuals).
4. The Module 1 Solicitor team has written to 79 of the 121 respondents who have provided draft statements, asking them to finalise and sign them. Whilst a number of

statement providers have received specific and very detailed follow up requests, as set out below, most are being asked to take a number of steps, including the following:

- a. To review the topics that the Inquiry has asked to be addressed within the statement to ensure that each is covered where the witness has the knowledge to do so;
 - b. To consider each paragraph of the statement to ensure that evidence (including documentary exhibits where necessary) is provided for any assertions made and that any obvious or likely follow-up questions that a third party reader may pose are addressed proactively before the statement is finalised.
 - c. To review the Inquiry's now final List of Issues for Module 1 to ensure that any evidence that the witness is able to provide is included within the draft statement.
5. The Inquiry has also notified witnesses that it is likely that some, perhaps a substantial number, of witnesses on the provisional witness list will receive a further formal Rule 9 request, covering matters within the List of Issues which have not already been addressed in a previous Rule 9, which they will be asked to respond to within a short time frame.
6. As was explained in STI's note, it has been necessary to ask many material providers, particularly those central government departments that have provided witness statements to specifically address matters that were raised in the Inquiry's Rule 9 requests or to expand upon matters addressed in statements. A considerable number of the statements contained insufficient detail and posed more questions than they answered. The Inquiry considers that it should have been clear to those organisations that the statements simply would not provide the Chair with the detail that she will require in order to consider their responsibility for and involvement in the matters set out in the Inquiry's Provisional Outline of Scope and its Rule 9 requests.
7. The work required to consider draft statements and send further Rule 9s not only impacts significantly upon the Inquiry's workload but delays disclosure of that evidence to core participants. Whilst the Inquiry is progressing disclosure of some of those original statements, it has requested further statements from a number of organisations including:
 - a. Cabinet Office;
 - b. DLUHC;
 - c. DHSC; and
 - d. UKHSA

8. There is sufficient time before the beginning of the Inquiry's hearing on 13 June to rectify these matters but only if those who have provided statements consider carefully any further requests they have received and also consider the Inquiry's List of Issues when providing any further statements. Such statements must be provided within the deadlines set by the Inquiry.
9. A further summary update on the receipt of witness statements will be provided by the Module 1 Solicitor team on 21 April so that core participants have up to date figures in advance of the preliminary hearing.

Disclosure to Core Participants

10. The STI update also provided detail about the Inquiry's progress with disclosure. Inevitably the issues identified with Rule 9 responses impacts upon the Inquiry's ability to receive and progress disclosure.
11. The Inquiry has disclosed 3,202 documents to core participants. The Inquiry anticipates disclosing c.200 documents in the next tranche of disclosure today.
12. There are c. 3,172 documents at the latter stages of the Inquiry's disclosure process, either ready to send to, or with material providers.
13. The last STI update explained that the Inquiry then had 11,499 potentially relevant documents to review for relevance at first level (the vast majority of which were from DLUHC). That figure is now 8,800.
14. The Inquiry has engaged with DLUHC in relation to the late disclosure of this material and, as a result of those discussions and the Inquiry's initial review of the material provided, it appears that a considerable proportion of the material is not, in fact responsive to the Rule 9 request that the Inquiry made of DLUHC. The material disclosed is, in many instances, far too granular in nature. The Inquiry has made clear to DLUHC that providing the Inquiry with irrelevant material that does not match its requirements and, coming at such a late stage in the Modules' timescales, creates significant difficulties with the Inquiry's preparations for the hearing. DLUHC has assisted by identifying approximately 3,000 documents within the batch of material that more closely aligns with the Inquiry's request.
15. The Inquiry has also encountered issues concerning the disclosure from the Office of the Chief Medical Officer. Module 1 had been seeking an update from OCMO as to its progress with general disclosure (as opposed to the provision of witness statements and exhibits). On 10 March OCMO sent an email to Module 1, which did not provide a clear explanation of its position and the progress that it had made. On 17 March the Inquiry asked OCMO to clarify its position, and OCMO did so on 28 March. OCMO explained that it had been approaching its disclosure to the Inquiry not by module but

simply by providing a large amount of material that the Inquiry could then disclose as it wished. We do not accept that this is an appropriate course to take.

16. It has been clear from the outset that the Inquiry is adopting a modular approach to its work. Core participants are designated by module and accordingly disclosure is made and hearings are held by module. Of course, and where appropriate, the Inquiry may wish to disclose some material provided in relation to one module in another. However, it has always been clear that Rule 9 requests are made in relation to a specific module. The Inquiry has asked OCMO to identify, as a matter of urgency, the documents out of those it has provided that are of specific relevance to Module 1.
17. Notwithstanding the above, we consider that disclosure will be progressed so as to allow for sufficient time to enable the public hearings to start on 13 June 2023. The Inquiry is starting to see the impact of the introduction of the process of automated redaction, and the rate at which documents are being reviewed for relevance is increasing. There are then a number of ways in which the Inquiry will be assisting core participants to navigate and prioritise the disclosure received:
 - a. The field trees that have been initiated on Relativity will assist core participants to identify and review statements together with their exhibits. This will increasingly be the case as the Inquiry receives more finalised and signed witness statements over the course of the next week. The Inquiry is asking providers of witness statements to confirm when submitting the signed statement that they are content for the statement to be disclosed subject only to redaction of the signature. That should make it possible to disclose the statements swiftly;
 - b. The Inquiry will be prioritising the disclosure of documents relating to the witnesses on the provisional witness list and other significant witnesses;
 - c. The evidence proposals that will be circulated from mid-May will contain an index of documents that relate to each witness and which the witness will be expected to have familiarised themselves with before they attend. Documents in those lists will be prioritised for disclosure and the lists themselves should assist core participants.
18. The Inquiry has made a very large number of Rule 9 requests, many of them extensive and complex. It has also sought and received a very considerable amount of documentation in the relatively short period of time between the opening of Module 1 and the present. That so much has been achieved is a testament to the commitment and diligence of the Inquiry team. However it is not possible or realistic for the Inquiry to give a date by which disclosure will be complete for Module 1. Given the breadth of matters being considered, and the number of Rule 9 requests issued by Module 1, it is inevitable that while the bulk of disclosure will have been provided to core participants well in advance of the hearing, some will continue to be made up to the date of the public hearing.

19. A further summary update on disclosure will be provided by the Module 1 Solicitor team in its update on 21 April 2023.

Instruction of expert witnesses

(i) Professor David Heymann

20. We are grateful for the observations received from core participants on Professor Heymann's draft report. The vast majority of observations have been provided to Professor Heymann to consider. The Inquiry anticipates receiving his final report in the week commencing 24th April 2023

(ii) Prof Sir Michael Marmot and Professor Clare Bamba

21. Core participants' observations were due by 12pm on Thursday 6 April 2023. The Inquiry has identified a number of matters that it has asked Sir Michael and Professor Bamba to consider in the meantime.

(iii) Professor Jimmy Whitworth and Dr Charlotte Hammer

22. Their draft report will be circulated to core participants in the week commencing 10th April 2023 and observations on it will be due two weeks after its receipt.

(iv) Bruce Mann and Professor David Alexander

23. The report is due by 7th April 2023 and will be disclosed to core participants in the week commencing 10th April 2023. Observations from core participants will be due two weeks after its receipt.

(v) Dr Claas Kirchelle

24. The Inquiry has also instructed Dr Claas Kirchelle, Assistant Professor at University College Dublin and historian in microbes, laboratory infrastructure, antibiotics and vaccines. He is providing an expert report on the history of and changes to public health bodies in the UK and the devolved administrations including their accountability, key EPRR structures and pandemic preparedness functions. Due to the late stage at which the Inquiry is instructing Dr Kirchelle, and the consequent time constraints in providing his report to core participants, the Inquiry is content, on this occasion, to disclose the letter of instruction which accompanies this note. This is an exceptional course and should not be taken as any sort of precedent for future modules.

Evidence proposal, pre-Rule 10 and Rule 10 procedures

25. Much of the information below was set out in our note circulated prior to the last preliminary hearing. However, further information is provided in this note about the post evidence proposal/pre Rule 10 process. We thought it would assist core

participants to have all of this information in one place.

26. Rule 10 of the Inquiry Rules 2006 states:

10.— (1) Subject to paragraphs (2) to (5), where a witness is giving oral evidence at an inquiry hearing, only counsel to the inquiry (or, if counsel has not been appointed, the solicitor to the inquiry) and the inquiry panel may ask questions of that witness.

(2) Where a witness, whether a core participant or otherwise, has been questioned orally in the course of an inquiry hearing pursuant to paragraph (1), the chairman may direct that the recognised legal representative of that witness may ask the witness questions.

(3) Where—

(a) a witness other than a core participant has been questioned orally in the course of an inquiry hearing by counsel to the inquiry, or by the inquiry panel; and

(b) that witness's evidence directly relates to the evidence of another witness, the recognised legal representative of the witness to whom the evidence relates may apply to the chairman for permission to question the witness who has given oral evidence.

(4) The recognised legal representative of a core participant may apply to the chairman for permission to ask questions of a witness giving oral evidence.

(5) When making an application under paragraphs (3) or (4), the recognised legal representative must state—

(a) the issues in respect of which a witness is to be questioned; and

(b) whether the questioning will raise new issues or, if not, why the questioning should be permitted.

(i) Evidence proposals

27. Each witness called to give oral evidence at the hearing before the Inquiry will have a paper bundle of documents prepared for them for use at the hearing. This will include the witness' Inquiry witness statement(s) and any documents to which the witness may be referred. The hard copy will be available for their use at the hearing centre on the day. It is anticipated that organisations or legal representatives supporting witnesses will provide hard copies of any documents to the witness in advance, if the witness requires that.

28. An evidence proposal will be prepared for every witness, which will be circulated to core participants in advance of the witness giving evidence. This will include a list of

the topics that the witness will be examined about, references to relevant parts of the witness statements and exhibits, and a draft index of those documents that will form the witness bundle, including those documents about which the witness may be asked questions.

29. Core participants will be asked to review the evidence proposals and to provide any comments, as well as submissions as to any additional issues which they wish to be raised with a particular witness or any new documents they consider should be included. The Inquiry will consider these carefully and a finalised proposal will be circulated before the witness gives evidence.
30. The timetable for the circulation of evidence proposals in advance of the start of the hearing on Tuesday 13 June 2023 is as follows:
 - a. w/c 15 May - Circulation of evidence proposals for witnesses in Week 1 to core participants. Core participants will have 7 days to consider the evidence proposal in respect of each witness;
 - b. w/c 22 May - The Inquiry legal team to review core participants' observations on the Week 1 evidence proposals;
 - c. w/c 29 May - The Inquiry legal team to provide finalised evidence proposals for Week 1 witnesses.

The same would apply for Week 2 witnesses but a week later, and so on.

(ii) Pre Rule 10 process

31. If, following the evidence proposal process, a core participant wishes to submit a list of essential questions that they do not believe Counsel to the Inquiry will be considering based upon the final evidence proposal that has been circulated for the witness they may do so as follows. As with observations on the evidence proposal, the Inquiry would ask that core participants consider carefully whether it is necessary to do so and the number of questions they raise. We recognise that it will be important for core participants to have an opportunity of raising such matters, but they take a significant amount of time and resources to consider and, where appropriate, advise the Chair upon.
32. CPs may provide lists of proposed questions using a template spreadsheet that will be circulated to core participants slightly nearer the hearing. The spreadsheet will require the core participant to set out in respect of each question:
 - a. The general issue or issues to which the proposed questions relate;
 - b. The specific questions to be asked;
 - c. Whether the questions are likely to introduce new and significant evidence or, if not, why the questioning should be permitted; and

- d. any documents relied upon in support of the question, including Relativity page references and paragraph references.

33. Lists must be submitted at least 5 working days before the witness is timetabled to give evidence.

(iii) Rule 10

34. Core participants will of course retain the right to apply to ask questions pursuant to Rule 10 after the witness has given evidence. However, the Inquiry expects that the processes put in place above will mean that any such oral applications will be made sparingly and only in very limited circumstances.

Summary of approach to witnesses and hearing timetable

35. A provisional witness list is circulated with this note. If any core participant wishes to provide any observations on that witness list then they must be submitted by **4pm on 27 April 2023**.

36. Observations on such matters are best dealt with on paper and therefore the Inquiry does not invite and will not consider submissions on individual witnesses during the preliminary hearing.

37. The Inquiry team and, where appropriate, the Chair will consider any written observations received. A further witness list and provisional timetable will then be provided. Core participants are invited to bear in mind that the Chair has a wide discretion as to whether any particular witness is called to give oral evidence, whether in preference to another witness or not. Moreover, the overarching requirement to ensure that, in the public interest, the public hearing in Module 1 is conducted with efficiency and at a reasonable pace has meant that there is necessarily a limited amount of time in which to call oral evidence. There is therefore a very real limit as to how many additional (as opposed to alternative) witnesses it is possible to call.

38. The Inquiry will be writing to witnesses on the provisional list of witnesses from next week to indicate that they may be asked to attend to give evidence and when this is likely to be. That is of course subject to the Chair's consideration of any observations she may receive.

Opening and Closing Statements

39. Those core participants who wish to make opening and closing statements will of course be permitted to do so. However, CTI will be inviting the Chair to impose strict time limits in which to do so. This is likely to be determined in part by the number of participants.

40. Please would each core participant confirm by **4pm on Tuesday 16 May 2023** whether they currently intend to make an opening statement.
41. The Inquiry will ask core participants whether they intend to make an oral closing statement nearer the time. Written closing statements may be submitted following the conclusion of the public hearings and by no later than **12pm on 2 August 2023**.

Hugo Keith KC
Kate Blackwell KC
Jamie Sharma
Bo-Eun Jung
Zeenat Islam
Joshua Cainer

6 April 2023