

IN THE UK COVID-19 PUBLIC INQUIRY

**BEFORE BARONESS HEATHER HALLETT
IN THE MATTER OF:**

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

**Submissions on behalf of Covid 19 Bereaved Families for Justice (UK)
and NI Covid 19 Bereaved Families for Justice
for the Module 1 preliminary hearing on 25 April 2023**

1. These submissions are provided on behalf of CBFFJ UK and NI CBFFJ in advance of the third Module 1 preliminary hearing on 25 April 2023. Submissions will also be made orally by leading counsel for CBFFJ UK and NI CBFFJ respectively.

Latest iteration of Module 1 ‘List of Issues’

2. We welcome the inclusion of structural racism among the Inquiry’s List of Issues and the expanded emphasis on the devolved nations. With regard to the latest iteration of the List of Issues, we make the following observations:
 - a. The Inquiry is in the process of instructing experts in relation to structural discrimination for Module 2. In considering the effects of structural and institutional discrimination on the high-level response to the pandemic, the experts will inevitably have to consider those effects with regard to preparedness and planning. The instruction of those experts should therefore include Module 1 issues, and their evidence should also be included within Module 1. Such an approach is logical, practical and will ensure effective investigation and no evidential gaps. That is all to the benefit of the Inquiry’s work.
 - b. Many of the points raised in our 23 March 2023 submission relating to the List of Issues have not led to amendments, no explanation has been provided as to why not, and we have received no indication as to whether matters that we have raised have been rejected. It may be that the Inquiry team considers that the List of Issues adequately covers those matters, however, as we have stressed previously, the simple solution to such issues is dialogue from the Inquiry as to whether this is the case.
 - c. A matter of particular concern is the ambit of public health preparedness to be considered for the purposes of Module 1. Does this extend to hospitals and care homes? Is health and social care preparedness and planning to be included in Module 1? For the avoidance of doubt, we submit that it should be, reinforced by the fact that it is not included within the provisional scope of Module 3¹. We would welcome clarification.

Rule 9 Requests

¹ See the November 2022 Module 3 Provisional Scope document, which says nothing about preparedness.

Disclosure of Rule 9 requests

3. We note the Rule 9 update at §3 in CTI's note. It remains the case that the Inquiry has not provided CPs the Rule 9 requests. That poses significant problems for our clients in the particular circumstances of this Inquiry.
4. The absence of the Rule 9 requests themselves makes it impossible properly to assess the disclosure that is being made by the Inquiry, whether the proposed timetable for Module 1 remains realistic and what needs to be done now, by the Inquiry, as a matter of urgency.
5. In the seven weeks between the second preliminary hearing on 14 February 2023 and 6 April 2023, CPs received 2,708 documents, including 19 witness statements. In addition, two draft expert reports were received.
6. As at 19 April 2023, CPs have only received statements from four of the 58 non-expert witnesses on the Inquiry's provisional list of witnesses for Module 1 and the identities of some witnesses remain 'TBC'. We also note that the list of witnesses to give evidence may expand, given that the list of individual scientists (from whom we have received no witness statements) is only to be confirmed once further statements have been received, and given that the witness list is subject to amendment in light of proposals made by CPs.
7. Some of the witness statements that have been received were received weeks after they were signed; for example, James Harra's statement was received on 17 March 2023 but is dated 23 February 2023, and others included within that tranche of disclosure are dated 13 February 2023 and 17 February 2023.
8. Without the Rule 9 requests we cannot conduct an informed assessment of the Inquiry's progress against the Module 1 hearing listing and proposed timetable. We also cannot provide constructive suggestions on how problems can be addressed. These are matters of real significance to our clients which we should be entitled to address on an informed basis.
9. Second, CPs have received a number of exhibits to statements without a corresponding draft or final statement that could assist to make sense of the disclosed exhibits. For example:
 - a. Exhibits were received from Michael Adamson of the British Red Cross on 20 February 2023 with no statement.
 - b. Exhibits were disclosed from Dr Quentin Sandifer OBE of Public Health Wales on 10 March 2023 but with no statement.
 - c. Exhibits were received from Dame Jenny Harries Chief Executive of UKHSA and Aiden Dawson of the Northern Ireland HSC Public Health Agency on 17 March 2023 but with no statements.
10. The absence of the statements or Rule 9 requests makes it time-consuming and sometimes difficult to understand the identity of the witness to whom the exhibits relate. This is made more difficult by the duplication of initials (for example, CW and JH). This exercise has only recently been made easier by the provisional list of witnesses (received 6 April 2023).

As above, there is a simple solution to this issue: disclosure of the Rule 9 requests by the Inquiry.

11. Third, we note that the Inquiry has received 67 final and 91 draft statements and that a substantial number of witnesses on the provisional witness list may receive a further Rule 9 request (CTI §4). Given the shortness of time between now and the start of the Module 1 hearings, we are concerned that we and our families will not have sufficient time to properly consider the evidence and participate in proposing topics and lines of questioning, and finalising Rule 10 applications.
12. We are also concerned that CTI's note provides no detail on when these final statements can be expected, save that the witnesses "*will be asked to respond within a short time frame*" (§5). Given that a number of statements have been disclosed to CPs weeks after they were signed, we are concerned that a significant number of further statements will only be received very shortly before the hearings, providing the bereaved with little or no time to process the contents and respond.
13. For the reasons set out above, it remains the case that disclosure of the Rule 9 requests would significantly assist the Inquiry and CPs, by front-loading CP input and preparation, informing CPs as to the exercises that the Inquiry is undertaking, and allowing CPs to make informed, constructive submissions in response. In these changed circumstances, CBFFJ UK and NI CBFFJ therefore invite the Inquiry to disclose the Rule 9 requests and to do so immediately.

Non-cooperation of material providers

14. It appears from the comments at §§4-8 of CTI's note that there has been a need to repeatedly revert to those who have been sent Rule 9 requests which has frustrated the Inquiry's work. CBFFJ UK and NI CBFFJ have serious concerns about the impact of inadequate responses from material providers, especially central government departments, on the efficacy of the Inquiry's process and the ability of the bereaved families to effectively participate.
15. Given the resources available to central government departments, and their responsibility to approach these proceedings with candour, this state of affairs is completely unacceptable. The Inquiry should not be in a position where it is having to request further statements from principal organisations such as the Cabinet Office, DLUHC, DHSC, and UKHSA at this late stage.
16. In particular, we note with significant concern CTI's comment that "*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.*" (§6) That wording appears carefully and generously phrased by CTI, but it amounts to direct non-compliance with the Inquiry's requests by those bodies who bear the greatest responsibility for ensuring that the Inquiry is effective.
17. We therefore invite the Inquiry to require position statements from those responsible as a matter of urgency; they provide a ready-made solution for the situation that the Inquiry now faces. We set out cogent reasons for seeking position statements in our previous

submissions.² One of their core purposes is to avoid precisely the non-compliance that is now taking place; as we said in our October 2022 submissions: *“position statements... ensure a comprehensive account, provided openly and at an early stage, and avoid the issue that can otherwise arise, in which organisations remain silent on matters until they are asked, creating delay and an appearance of evasion which assists neither the Inquiry, CPs nor the wider public.”*

18. The aims of seeking position statements were described as *“laudable”* by the Chair in her ruling dated 17 October 2022 (§6) but such statements were not ordered at that stage because *“The Inquiry has already requested the Rule 9 recipients to provide a corporate statement setting out a narrative of relevant events and of the lessons learned. These will serve a similar purpose to position statements.”*³ That aspiration has, regrettably, been frustrated by a number of material providers, including central government departments.
19. The solution is to now require position statements, and for the Inquiry to set out, in direct terms, its expectation of cooperation and candour, backed up by clear and transparent directions. This use of position statements provides a more direct way of imposing responsibility to cooperate on the Chief Executive or other senior officer of the CP organisation. CBFFJ and NI CBFFJ will be happy to assist CTI in progressing this issue, if requested, based on their collective experience of the benefits of position statements in previous inquiry processes.

Disclosure to Core Participants

Ongoing delay and the risk of late and incomplete disclosure

20. CTI state that approximately 3,172 documents are *“at the latter stages of the Inquiry’s disclosure process, either ready to send to, or with material providers”* (§12) and a further 8,800 documents remain outstanding for first level relevance review (§13). As above, there is no detail on when CPs can expect to receive that disclosure.
21. There is accordingly an appreciable risk that disclosure will be made late to CPs, en masse and incomplete. That will inhibit the ability of the bereaved families to effectively participate and assist the Inquiry.
22. Although we appreciate the scale of the task being undertaken by the Inquiry, it is not appropriate for bereaved families, or indeed other CPs, to be receiving significant amounts of disclosure close to the start of, or during the Module 1 hearings. Aside from oral evidence by bereaved family members, the effective participation of CBFFJ and NI CBFFJ in the hearings centres on the ability of their legal representatives to identify gaps in evidence, make focused requests, provide meaningful opening statements and participate properly in the questioning and Rule 10 process. All of that must involve advance disclosure; if it does not, it does not constitute effective participation. It is not clear how the Inquiry anticipates that the bereaved families and other CPs will be able to effectively participate, and assist the Inquiry, without such advance disclosure.
23. Further, and on similar lines, we are concerned by CTI’s suggestion that some of the DLUHC disclosure may be *“far too granular in nature”* (§14). We would welcome

² CBFFJ submissions for preliminary hearing on 4 October 2022, §§21-26.

³ Chair’s ruling dated 17 October 2022, §8.

clarification on the type of document that would fall within that description, and the criteria being applied by the Inquiry to determine what should be disclosed to the Inquiry and what is deemed to “*too granular*”. In our experience, inquiries invariably benefit from receiving relevant granular material; for example, relevant granular email correspondence often holds the key to understanding how macro decision-making worked in practice, what was missed, and whether the frameworks and policies in place were fit for purpose. It is when inquiries seek to conduct a superficial, overview exercise, avoiding relevant granular material, that they fail in their task. That is a risk that must be avoided here.

24. Finally on this topic, whilst we welcome the disclosure automation and review measures outlined at §17 of CTI’s note, we fear that they are insufficient to remedy the delay given that over half the documents currently held by the Inquiry still remain at first level relevance review stage.

Cooperation of DHLUC and OCMO

25. It appears from §§14-16 in CTI’s note that DHLUC and OCMO have not complied with the requirements set by the Inquiry. If we have understood that correctly, the Inquiry should require an explanation prior to the preliminary hearing and agreement as to how the defects will be rectified urgently without delaying the Inquiry. There should be no prejudice to the Inquiry or the effective participation of the bereaved as a result of DHLUC and OCMO’s non-compliance. The explanations provided by DHLUC and OCMO should be published to ensure that the minds of all CPs are focussed on assisting the Inquiry as it progresses, across all modules. There is precedent for this type of approach.

Devolved disclosure

26. We repeat our written submissions dated 8 February 2023 made in advance of the Module 1 preliminary hearing on 14 February 2023, augmented by oral submissions. In short, the disclosure from devolved government seems to be very limited compared to that received from central government. We would welcome guidance from the Inquiry on whether we can expect further disclosure from devolved government departments and from which departments. We also request that the Inquiry inform us if there has been any difficulty obtaining disclosure from specific devolved departments.

Instruction of expert witnesses

Dr Claas Kirchelle

27. CBFFJ and NI CBFFJ welcome the appointment of Dr Kirchelle whom we expect will provide valuable insight into the role of the all-Ireland Institute of Public Health and how it interacts with the Public Health Agency (Northern Ireland) and the UK central government. We are pleased that the Inquiry seems to have taken on board some of our observations about Prof Heymann’s evidence, particularly the need for evidence on public health structures across the devolved nations and a more objective perspective on Public Health England.
28. We also welcome the disclosure of Dr Kirchelle’s letter of instruction. This allowed CBFFJ and NI CBFFJ time to review and make submissions prior to the report’s initial draft. Overall, this should save considerable time and assist the Inquiry. We repeat our submission that this approach should be adopted throughout the Inquiry. If implemented at scale over the course of the time that the Inquiry will operate, it will save significant resources, assist the Inquiry, and result in a more effective and reflective process.

29. Having had the opportunity to review the letter of instruction to Dr Kirchelle, we are of the view that it covers sufficiently the relevant issues relating to devolved public health bodies and those bodies' preparedness.

Northern Ireland pandemic preparedness

30. No expert witness with a specialism in pandemic preparedness in Northern Ireland has been identified by the Inquiry. Such an expert must be able to speak to the international dimension of Northern Ireland's preparedness, including the all-Island emergency response, the impact that the collapse of Stormont had on preparedness and the fact that Northern Ireland's local authorities' powers were policy-based rather than imposing statutory duties. For the reasons given previously⁴, and supplemented by our submissions made in respect of each of the expert witnesses that the Inquiry has appointed, it is essential that an expert witness with appropriate Northern Ireland expertise is appointed so that the complex and unique picture of Northern Ireland's preparedness can be examined in full. We make the respectful proposal that Prof Deirdre Heenan, professor of social policy at Ulster University, is such an expert and ask that the Inquiry consider appointing her. To this end, please find attached enclosed a copy of her CV for consideration.

Evidence proposal, pre-Rule 10 process, and Rule 10 procedures

Evidence proposals

31. The provision of evidence proposals referring to topics and documents with sufficient particularity to facilitate follow-on responses from CPs is sensible. So is the process for review and reply from CTI. That approach involves collaborative working by teams with different perspectives and has been used in other recent inquiries in which STI have been involved, notably the Manchester Arena Inquiry, which provides a model of good practice.
32. The key to such a process working effectively is prompt advance disclosure of all relevant material, and dialogue. The reasons for that are obvious: CPs can only provide informed and constructive responses to evidence proposals if they have been provided with the relevant material in advance and can liaise with the Inquiry in the lead up to the hearings.
33. At the time of writing, CPs have received less than one third of the anticipated disclosure and there is no witness timetable. Yet according to CTI's note (§30), CPs are expected to respond to the evidence proposals for the Module 1 week 1 hearings by 22 May 2023. It is difficult to see how that timetable will facilitate effective participation for the bereaved unless the outstanding disclosure issues are resolved rapidly.

Pre-Rule 10 process and Rule 10 procedures

34. CTI's note proposes a pre-Rule 10 process involving an additional time-consuming, template-based and Inquiry-managed arrangement (§§31-33). This imposition, which is not found in the Rules, is unnecessary, will impose additional and undue burden on both the Inquiry and CPs at a time of intense preparation, and duplicates work for all involved.
35. As to Rule 10, we repeat §§26-29 of our submissions for the preliminary hearing on 14 February 2023, which addressed Rule 10. In summary:

⁴ See our written submissions dated 8 February 2023 made in advance of the Module 1 Preliminary Hearing on 14 February 2023, augmented by oral submissions.

- a. Rule 10 should not be applied restrictively. There are compelling reasons for a broader approach. Such questioning has repeatedly been shown in other inquiries to have forensic benefits; CPs can ask questions that CTI have not identified, drawing from the CP's perspective that CTI do not have. Facilitating CP questioning ensures the effective participation of the bereaved and others. That is central to their confidence in the Inquiry, catharsis and some form of resolution. That in turn engenders wider public confidence in the Inquiry. Permitting CP questioning will also ensure a greater diversity of questioners. That is both important and beneficial in this Inquiry. None of this is recognised or addressed in CTI's note.
 - b. The presumption in Rule 10 is simply that questioning is sufficient and that all relevant questions must be asked and answered. To the extent that CTI suggest that a pre-Rule 10 process should impose an 'exceptionality' test to Rule 10 applications (see §34), that approach is not supported by Rule 10 and will compromise both the effective participation of the bereaved and the forensic efficacy of the Inquiry's oral evidence hearings.
 - c. A number of recent inquiries have adopted a reasonable and proportionate approach to Rule 10, allowing CPs to ask focused questions within appropriate time limits. There are many reasons for doing so, not least because a requirement to provide specific questions in advance in writing – CTI's "pre-Rule 10 process" – ignores the reality of oral questioning. The nature and purpose of oral advocacy involves a combination of knowing one's own clients, asking questions as they want them asked, and being prepared to ask necessary follow up questions as answers are provided. This process cannot and should not be funnelled into CTI simply reading out written questions from others. That approach does not work.
36. For those reasons, we invite the Chair to adopt the simpler, better approach taken to Rule 10 by the Manchester Arena Inquiry, which was overseen by her own STI and which worked to good effect.⁵
37. There, relevant topics beyond those proposed by CTI in the evidence proposal were identified and agreed, and could then be explored within set time limits. In practical terms, this involved, for each topic and each witness, an evidence proposal being sent out 14 days before the oral evidence for the topic/witness. The evidence proposal set out (a) a summary of the central evidence to be heard, (b) the issues which might be explored, and (c) the principal documents that witnesses might be asked to consider. CPs were then asked to provide Rule 10 requests seven days before each witness was scheduled to give evidence and a further notification was sent to CPs three days before the evidence if the Chair did not permit a topic or document to be raised with the witness. The Chair adopted "*a working presumption in favour of permitting matters to be put by CPs, subject to the normal rules of evidence and the Chairman's duty under s.17 of the 2005 Act to act fairly and to avoid unnecessary cost.*"
38. CBFFJ UK and NI CBFFJ will be happy to engage in dialogue with CTI in formulating such a process and making it work.

⁵ https://manchesterarenainquiry.org.uk/2019/wp-content/uploads/2020/04/Note-on-Advance-Notification-of-Topics-86432272_1.pdf.

Summary of approach to witnesses and hearing timetable

Provisional list of witnesses

39. As outlined above, CBFFJ UK and NI CBFFJ have received only four statements of the 58 non-expert witnesses that feature on the Inquiry's provisional list of witnesses. We will provide written submissions by the deadline set – 27 April 2023 – although they are likely to be restricted by the limited disclosure to date.
40. Insofar as §37 of CTI's note suggests that the Inquiry's ability to hear evidence may be limited by the timetable, it is submitted that relevance and sufficiency should be the paramount considerations. Relying on the timetable to restrict the evidence that is heard is simply circular. From the outset we have supported the Inquiry's intention to undertake and complete its work within a reasonable timescale. However, if the Inquiry does not call sufficient relevant evidence to complete its task it cannot fulfil its Terms of Reference. It is essential to public confidence that the Inquiry is seen to consider sufficient relevant evidence and the timetable should be flexible enough to reflect that approach.
41. In relation to the evidence of the bereaved families, CBFFJ UK and NI CBFFJ has submitted a list of proposed witnesses whom we believe have evidence which is relevant to Module 1. We would welcome dialogue about this issue with the Inquiry.

Opening and closing statements

42. In accordance with §40 of CTI's note, we confirm that both CBFFJ UK and NI CBFFJ intend to make opening statements. We invite the Inquiry to strongly encourage and request that all state and organisational CPs do the same so that the Inquiry, other CPs, and the public understand the positions taken on the issues.

Listening Exercise/Every Story Matters

43. As the Inquiry is aware, the bereaved families are keenly interested in this topic, and it provokes more anxiety and questions than any other. However, the process has yet to be explained in a clear and accessible way. The information which is currently available must be gathered from different sources, including the Inquiry website, the recent webinar, individual email responses to family members, and update notes from the Inquiry Legal Team.
44. We therefore repeat our previous submission requesting the Inquiry to provide a definitive and transparent document setting out the process, including who will be involved, how it is intended to operate and the timescales involved.⁶ We submit that this should include the measures to be implemented to ensure accessibility, how a trauma-informed approach is to be ensured, and the approach to be taken to real and perceived conflicts of interest. While the process will no doubt evolve, the key information should be provided at this stage.
45. As to the substance of the exercise, we now understand that the Inquiry Legal Team will be involved in directing the process by setting out key lines of enquiry which will be

⁶ See for example CBFFJ and NI CBFFJ submissions for Module 1 preliminary hearing on 14 February 2023, §38.

pursued through “*targeted qualitative research*”.⁷ In light of this, and of the confirmation that the Every Story Matters research reports will form part of the evidence in each relevant Module, it is clear that the listening exercise cannot be and is not being separated from the Inquiry’s legal process. We seek disclosure of the criteria for targeting, the key lines of enquiry, by whom and how the analysis of gathered material will be done, who will author the reports, and to what end and how the Inquiry seeks to use the reports.

46. We therefore submit that the families, their representatives, and other CPs should be included within the process and given the opportunity to assist the Inquiry with regard to all relevant aspects of the exercise, including the methodology to be used and the lines of enquiry to be pursued.

19 April 2023

Pete Weatherby KC
Allison Munroe KC
Anna Morris KC
Thalia Maragh
Oliver Lewis
Kate Stone
Jesse Nicholls
Mira Hammad
Ciara Bartlam
Counsel for CBFFJ

Ronan Lavery KC
Brenda Campbell KC
Marie-Claire McDermott
Conan Fegan
Malachy McGowan
Counsel for NI CBFFJ

Elkan Abrahamson
Nicola Brook
Broudie Jackson Canter Solicitors
Solicitors for CBFFJ

Conal McGarrity
Enda McGarrity
PA Duffy Solicitors
Solicitors for NI CBFFJ

⁷ This process is outlined in the answers to questions following the ESM webinar on 15 March 2023: see transcript at p18 <https://covid19.public-inquiry.uk/wp-content/uploads/2023/04/2023-03-15-Every-Story-Matters-Webinar-Transcript.pdf>. It has also been confirmed in correspondence with our members.