

BEFORE BARONESS HEATHER HALLETT IN THE MATTER OF: THE PUBLIC INQUIRY  
TO EXAMINE THE COVID-19 PANDEMIC IN THE UK

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Submissions on behalf of John's Campaign (Ymgyrch John) ('**JC**') and Relatives and Residents Association ('**R&RA**') for the preliminary hearing on 1 November 2022 –  
Module 2B

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**Introduction**

1. On 21 May 2021, the then Prime Minister announced that there would be a statutory Public Inquiry to examine decision-making during the Covid-19 pandemic. We had by then been calling for a Public Inquiry for a number of months. We welcome the establishment of this Inquiry and look forward to our engagement with it as a Core Participant in Module 2B. We hope government and all other bodies involved are as committed as we are to assisting you, as Chair of the Inquiry, and your staff, to undertake this Herculean task.

**The Relatives & Residents Association (R&RA)**

2. R&RA is the national charity for older people needing care and the relatives and friends who help them cope. R&RA was established in 1992 in recognition that many older people in need of care are unable to advocate for themselves and rely on the support of relatives and friends.
3. R&RA provides information, advice and support to empower older people and their families/friends, and uses their distinct perspective to raise awareness and to influence policy and practice. Throughout the pandemic, R&RA's Helpline has been supporting older people and their families at the sharp end of the pandemic, giving R&RA a unique insight into the experiences of families dealing with coronavirus and the measures taken to manage it.

**John's Campaign (Ymgyrch John) (JC)**

4. JC was established in 2014 to advocate and campaign for the right of people with dementia to be supported by their family carers. Before the pandemic it had received more than 1500 voluntary pledges from health and social care providers across all 4 UK countries to offer unequivocal welcome and partnership to the family carers of people with dementia. The driving principle of JC is that people should not be separated from those they love and need at the very time they would most benefit from their support and care. JC is the only organisation which has the maintenance of key

nurturing relationships during time spent in a care or health setting as its sole *raison d'être*. These relationships have a direct impact both on quality of care and the upholding of individual human rights, especially for those living with disability.

5. JC's campaign began in 2014 via a national newspaper which is read throughout UK. There was immediate support in Parliament for the rights of people with dementia not to be separated from their family carers when in hospital. An Early Day Motion backing this, gained signatures from MPs of all parties and all areas of the UK – including Wales. The first voluntary pledge from a Welsh hospital ward guaranteeing this right of unrestricted welcome came in 2015, and the first Welsh Health Board to sign up in its entirety was Betsi Cadwaladr University Health Board, in early 2016.
6. At the John's Campaign Conference in November 2016, the Director of the Carers Trust Wales made it clear that effective use of social media as well as national newspapers and TV had ensured that the campaign was well known in Wales. The Dementia Action Plan for Wales 2018-2022 pledges the Government to 'Introduce the Principles of John's Campaign across all Health Boards and Trusts'.<sup>1</sup>
7. Despite its unique remit and pre-pandemic public status, JC's many attempts to communicate with the Department of Health and Social Care ('**DHSC**') and work co-operatively to minimize the damage to vulnerable individuals during the pandemic were consistently ignored, until we successfully crowdfunded to challenge the DHSC's guidance on care homes via judicial reviews.

### **Our involvement in the Covid Inquiry**

8. In our role as joint Core Participants ('**CP**') in Module 2B, R&RA and JC are supported by Rights for Residents, the British Institute of Human Rights and the Patients Association. Overall, our reach extends to over 100,000 individuals along with a number of organisations and care providers.
9. As a legal team we have extensive knowledge of and involvement in major inquests and public inquiries including Mid-Staffordshire, the Under Cover Policing Inquiry ('**UCPI**'), and the Infected Blood Inquiry. The team includes Emma Jones, Tessa Gregory, Beatrice Morgan and Carolin Ott of Leigh Day; Adam Straw KC of Doughty Street Chambers and Jessica Jones of Matrix Chambers.

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<sup>1</sup> <https://gov.wales/dementia-action-plan-2018-2022>

10. Our experience of working on other inquiries has underscored the need for the legal teams for the Inquiry and CPs to work together to ensure the smooth, swift and effective running of the Inquiry. We look forward to contributing to the Inquiry's work, ensuring that it is able to report as speedily as possible with recommendations which ensure that the losses suffered throughout the pandemic do not happen again.
11. The remainder of our submissions address the issues set out in CTI's note dated 21 October 2022.

**a. Commencement of the Inquiry**

12. We welcome the wide Terms of Reference for the Inquiry, reflecting the breadth of issues relevant to the Inquiry's work. We are sure that behind the scenes the Inquiry team has produced a list of issues to be considered, and that such a document is likely to be extensive. We have seen in previous Inquiries how useful such a document is, operating as a "living" document which evolves in light of the evidence that emerges and in response to input from CPs, and which helps ensure that all areas within the Inquiry's Terms of Reference are thoroughly considered. We would urge the Inquiry to publish the list of issues as soon as possible, to assure affected individuals of the Inquiry's careful and comprehensive approach to its Terms of Reference, and to permit input on the issues to begin.
13. As a CP, we will be rigorous in assisting the Chair to ensure the Terms of Reference, across the whole list of issues, are fulfilled. We have very clear instructions to ensure that the Inquiry's wide scope is maintained, and that no attempt is made to cut down or deviate from the Terms of Reference for administrative convenience or to spare anyone's embarrassment. Whilst we would not want the Inquiry to turn into a "witch hunt", evidence may well show reckless or inappropriate behaviour by decision-makers. We invite the Inquiry to follow the evidence chain wherever it leads and hope the Inquiry will not hold back from investigating what really went on, what decisions were made, what risks were ignored and what errors were committed even though this may result in reaching some difficult or unpalatable conclusions.
14. Public officials working for public bodies - whether in the government or elsewhere in public service - must be held publicly accountable for what they did or did not do, for the decisions they did or did not make. We appreciate that, at this time, there is no statutory duty of candour on the civil service or decision-makers. We appreciate this issue has been raised and is being considered in other inquiries, such as Hillsborough and the Infected Blood Inquiry. We nevertheless urge the Chair to approach her

investigation as if such a duty existed. We realise that any judgement must be based upon the information available to a decision-maker at the time, but legitimate questions must be asked about what the decision-maker knew, what enquiries he or she made to establish the truth about the risks and benefits of a particular course of action, and what he or she ought to have known before making key decisions.

15. We are pleased to note that the Inquiry intends to hold hearings in Wales, Northern Ireland and Scotland. Given that the pandemic impacted all of us it is vital that the Inquiry is not seen to be London-centric. We hope the Inquiry will sit in other cities not just when considering issues relating to devolved nations but also when considering UK-wide issues.

**b. Designation of Core Participants (CP)**

16. We are grateful for the decision to designate us as a joint CP, and have read with interest the submissions from CPs involved with Module 1. We support the submissions from the Trade Union Congress ('TUC'). We too were concerned that the weight of CP designation seems to be firmly in favour of government and public bodies. We appreciate that the "weight" issue is not as stark in Module 2B as in Module 1 but it still exists. As set out in CTI's note, the Chair wrote to the then-Prime Minister to set out that the *"Inquiry would gain greater public confidence and help the UK to come to terms with the pandemic if it was open to the accounts that many people - including those who have been bereaved - would wish to give"*, and *"she suggested adding explicit acknowledgement of the need to hear about people's experiences and to consider any disparities in the impact of the pandemic"*. Those suggestions have been reflected in the Inquiry's Terms of Reference, which state explicitly that it will *"listen to and consider carefully the experiences of bereaved families and others who have suffered hardship or loss as a result of the pandemic"*.

17. Maintaining public confidence in the Inquiry, as the Chair has indicated is her aspiration, requires an equal balance between governmental and non-governmental CPs. What must be avoided at all costs is for the Inquiry to end with the public thinking they have been side lined or ignored; with any impression given that the Inquiry has favoured the voices and input of government and public bodies. We need only look at the public outcry following the Penrose Inquiry into infected blood in Scotland to appreciate the impact of what is perceived to be a skewed inquiry.

18. Indeed, the need for a fair balance of CPs is not just a public confidence issue. Without the input of non-government or non-public body CPs we do not believe the Inquiry will

be as thorough or as effective as it should be. Only non-governmental CPs will hold key information arising out of their experiences during the pandemic, including the challenges faced and the lobbying and campaigning undertaken. Without such knowledge, how can the Inquiry team be sure that all relevant questions are asked? Without the involvement of non-governmental CPs how can the Inquiry be sure that information provided to it now matches up with information being provided to organisations at the time? We firmly support the position of the TUC that the *importance of CP status being granted to non-governmental entities and other non-official voices is vital*. We are grateful that we have been granted CP status in this module, but cannot overstate our concern that the Inquiry does not continue to designate the overwhelming majority of CP status to government and official bodies going forward.

**c. Scope of Module 2B**

19. We support the position of Covid-19 Bereaved Families for Justice ('CBFFJ') set out in their written submissions for the module 1 preliminary hearings regarding involving CPs in the scope of a module before the final scope is determined. We have seen this approach to be effective in inquiries such as UCPI.
20. Of particular importance in this regard is our firm view that the Inquiry should consider within Module 2B whether the needs of people who require support from family or friends, due to vulnerabilities such as dementia, were properly taken into account in policy making around the Covid-19 response, including by reference to their human rights. We invite the Inquiry to investigate this issue, including whether there are any other groups of individuals with special needs that should have been considered and protected.
21. Of relevance to this issue is the fact that many more care homes in Wales than in England are state-run as part of health boards rather than privately owned. This means that the Welsh Government planning for those who need support from family and friends, including the dementia action plan, could have been expected to apply to care homes. We invite the Inquiry to ensure this area is properly and effectively covered within Module 2B.
22. We would urge the Inquiry to question whether the policy of closure of care homes and hospitals adequately considered the implications for safeguarding. There have been sufficient distressing abuse scandals in the often small and isolated units within the

Welsh health and care system to mean this should have been at the forefront of policy makers' minds.

23. Module 2 focusses on core political and administrative decision-making. It is our view that the political and administrative decision making may have failed, at least:
- a. To consider the impact of separation and other NPIs (such as mask wearing) on people with specific disabilities, such as dementia;
  - b. To consider individual human rights and overriding legislation such as the Equality Act 2010 and also to enable people with specific responsibilities such as power of attorney or guardianship to continue to exercise those responsibilities;
  - c. To give sufficient consideration to the additional difficulties caused by closing borders and adopting different time scales for restrictions in different areas – and how these difficulties are reconciled with 'following scientific evidence';
  - d. To have thought about the safeguarding implications of closed institutions.

We invite the Chair to ensure these areas are properly explored as part of this Module.

**d. Rule 9 Requests**

24. We note the inquiry's position in relation to Rule 9 requests. We have only one observation to make in this regard, which arises out of the legal team's work in other Inquiries. At times the written statements provided in relation to Rule 9 requests are difficult for CPs to follow or engage with because it is only possible to understand the statement if the reader knows what the questions in the Rule 9 letter were. This has resulted in requests being made for disclosure of Rule 9 requests to provide the context of the statement, some of which have been successful.
25. However, where the written statement itself sets out the questions to which it responds, or contains a precis of the request being made, it is much easier for CPs to understand the evidence and provide meaningful suggested lines of questioning or further questions to Counsel to the Inquiry. It is often important to know what question was asked to be able to properly evaluate the answer given and consider whether an additional question, put in a different way, is required.
26. We invite the Chair to consider asking those providing written statements following a Rule 9 request to include the question within the witness statement, to prevent the need for disclosure applications for Rule 9 requests, and to allow for effective and meaningful engagement with the evidence.

27. We note the Inquiry has already provided some organisations and individuals with Rule 9 requests. We would encourage the Inquiry to include the Welsh Care Inspectorate within any future requests.
28. Regarding position statements, we support the position set out by CBFFJ in their written submissions for the Module 1 preliminary hearings. We believe these will be vitally important given the breadth of the CPs designated and in order for the Inquiry to make best use of this knowledge and experience. It is not clear how else the Inquiry will take proper account of a CP, the experience of its members and the impact of decision-making on them.
29. The Chair states that: *'This subject matter does not lend itself readily to the preparation of position statements until a core participant or document provider is sufficiently confident of their knowledge of all the relevant issues and documents. That will take time given the large number of matters to be addressed and the voluminous documentation. The making of an order for position statements would therefore be likely to lead to delay.'* However, position statements made at this early stage could be prepared with the caveat that not all of the evidence has been heard and the statement is only for the purpose of explaining the experience of the CP or for decision makers, the steps they took at the relevant time. The witness statements would not to be used "against" CPs later but could provide a background or reference document to build on going forward.

**e. Disclosure to Core Participants**

30. We do not underestimate how much disclosure will need to be considered by the Inquiry team and the time this will take. We echo submissions from CPs in Module 1, particularly the submission on behalf of the TUC suggesting that a list of documents not being disclosed be provided to CPs. We have read the Chair's ruling dated 17 October 2022 in which she considers this submission, but states that to provide such a list would be costly and time-consuming. We suggest that a solution may be for those supplying documents to the Inquiry to do so under the cover of a detailed index. The Inquiry Team could then decide which documents are to be disclosed and to also provide a copy of these indices to CPs, clearly marked so that it is clear which documents are available on Relativity and which are not. We invite the Chair to consider whether such an arrangement would be workable.

## **f. Instruction of Expert Witnesses**

31. We welcome the fact that *'the identity of the expert witnesses and the questions and issues that they will be asked to address will be disclosed to the Core Participants before the expert reports are finalised'*. We invite the Chair to consider whether, to ensure the process is as quick as possible, disclosure of the letter of instruction could be made to CPs whilst the same is in draft. This would mean that CPs could provide comments or suggested lines of questioning to CTI to consider before the final letter of instruction is sent.
32. If CPs are provided with the letter of instruction after it has been sent/published, this could well lead to delay (as we have seen in other Inquiries) and possibly an increase in costs: if CPs persuade the Chair that the original instructions should be amended, or that further questions should be added to the instructions, that is likely to mean the expert will have to spend more time producing a report, than if there had been a single agreed letter of instruction. We respectfully submit that encouraging comments/reflections from CPs at the draft stage would lend itself to a more effective process. In addition, it would mean that the comments/reflections of CPs are provided to CTI at the time the Inquiry team is considering the letter of instruction rather than weeks (or months) afterwards by which time, given the amount of work the Inquiry team has to do, it would not be unreasonable to think that those involved will have turned their attention to something else.
33. We note the expert and lay areas that the Inquiry has identified. In relation to systems for measuring and estimation of infections and deaths and registration of deaths we would suggest that evidence from the Office for National Statistics and the Chief Coroner would be helpful. We would encourage the Inquiry to include experts in the fields of dementia and elderly care. In addition, we believe it is essential to hear from social workers and groups with overall knowledge of the workings of the relationship between central government, local authorities and local health authorities. Furthermore, whilst we appreciate health inequalities will be considered in a later module, we believe experts in this area working with those undertaking a statistical analysis would be of benefit at this early stage.

## **g. Listening Exercise**

34. We welcome the commitment of the Chair to ensuring those affected by the pandemic are at the heart of the Inquiry. We have read the oral submission of CPs in Module 1 and the Chair's ruling following the opening. We note the Chair's present view is that



*'the best and most appropriate way for most of the bereaved to speak to the Inquiry about their loved one is through the Listening Exercise'.*

35. The CTI's note states:

*These experiences will be anonymised and reviewed by research specialists, and will be collated into summary reports. The resulting reports, rather than individual accounts, will be aligned with and fed into the Inquiry's later modules, particularly those dealing with the direct and indirect consequences of the pandemic on the health and care systems, the vulnerable, the elderly, children and the disabled, the public sector, businesses and other sectors of the economy. They will be disclosed to Core Participants. The summary reports will then be formally adduced in evidence so they form part of the Inquiry's record.*

36. Whilst this process will ensure that those who want to can "feed into" the Inquiry, it will mean that this Inquiry will not hear any direct evidence from those affected. We do appreciate that it is not the job of the Inquiry to examine the circumstances of individuals, but we believe it would be a missed opportunity if the Inquiry reached a conclusion without hearing any direct evidence. Having worked on Inquiries in which thousands of individuals have been infected/affected, we appreciate the enormity of managing direct evidence from those affected. However, we underscore its importance and suggest that, with some careful thought, it may be achieved.

37. One possibility we would suggest is that the design of the Listening Exercise includes a way for the Inquiry to extract themes. We have seen from the Infected Blood inquiry the benefit of having panels of infected/affected individuals who can speak to themes.

38. If this Inquiry, through the Listening Exercise and through taking submissions from CPs, can identify themes/issues/possible systemic issues on which direct evidence would assist, the Inquiry would (with the assistance of CPs such as ourselves whose reach is over 100,000 individuals) be able to identify those who are able and willing to be part of panels from whom the Inquiry could hear. We would be happy to work with the Inquiry team to develop this idea further or provide any information that might assist.

## **h. Commemoration**

39. We agree that this is something that must be done. As we have only recently been designated a CP we have not had the time to consider this in detail. We will do so going forward. The legal team has seen the way in which this has been achieved in the Infected Blood Inquiry. At all hearing centres individuals are provided with the

opportunity to write a note, seal it in an ampule and add it to a physical memorial which now holds hundreds of these containers.

#### **i. Future hearings**

40. Going forward we would be grateful to be provided with as much advance notice as possible of upcoming dates. As the Chair will note, neither counsel representing us were able to attend the opening due to previous commitments. With more notice, we are hopeful that such a situation will not occur again.

41. We will consider all of the issues addressed above in more detail before next week's hearing, and we will supplement these initial written submissions orally where possible and appropriate.

#### **Final points**

##### **Costs**

42. We note the cost protocol of March 2022. However, it is not clear to us whether the Chair intends to produce any specific guidance as to applications for costs in respect of this module (for example, as to when any such application should be made). We would be very grateful if more detail could be provided, in particular as to when any application should be made.

##### **Warning letters**

43. We commend the steps that have been taken to proceed with the Inquiry as expeditiously as possible. While the issues with which the Inquiry is seized require careful and extensive investigation, and so we do not urge a rush to the end, we invite the Inquiry to focus now on the steps that will be taken following the completion of the evidence review stage, in order to ensure that the Inquiry's progress is efficient and effective. We are particularly concerned that this Inquiry should learn lessons from other Public Inquiries where there have been very extensive delays - sometimes running to years - between the conclusion of the evidence and the publication of a final report. Some delay is inevitable and proper. However, other recent Public Inquiries have been dogged by endless disputes - often litigated in the courts - where individuals seek to prevent the Inquiry reaching conclusions with which they do not agree or publishing criticisms which they do not accept. The trigger for this post-evidence series of confidential disputes has been the practice of sending warning letters - known as "Salmon Letters" or "Maxwell Letters" - to individuals whose conduct is proposed to be criticised in the final Inquiry Report. However, that process is confidential and is thus

inherently unfair to all other participants who are excluded from the debate about the extent to which any individual or organisation is criticised.

44. Given the need to produce this report as quickly as possible, the fact that the Chair obtained agreement to provide interim reports where appropriate, and in light of the unfortunate experience of other Public Inquiries, we invite the Chair to consider sending warning letters as soon as she considers there may be explicit or significant criticism of a person; rather than waiting until the end of the evidence to do so. We invite the Chair to reflect on whether this is an area where she considers it appropriate to set out the ground rules at the outset of the Inquiry.