

THE UK COVID-19 INQUIRY

MODULE 1 SUBMISSIONS ON BEHALF OF TRADES UNION CONGRESS FOR PRELIMINARY HEARING, 14th FEBRUARY 2023

INTRODUCTION

1. This Inquiry has set itself running at a rapid and demanding pace. There is, of course, an interest in moving speedily, but the speed, and the ability of the Inquiry to prepare in advance of the hearings, has significant implications for the effectiveness of the Inquiry, and the ability of core participants to participate meaningfully. Whilst these are issues of concern to the TUC in respect of the Inquiry as a whole, our concerns are heightened in Module 1, given the imminence of the hearing and the stage preparation has currently reached.
2. A further challenge is dealing with a topic of the breadth and importance of pandemic preparedness in a mere four weeks of oral hearings.
3. Materially:
 - (a) As of the date of the preliminary hearing, the substantive hearings will be ten working weeks away.
 - (b) Of the 114 rule 9 requests addressed to various government departments, adversely impacted groups, and other organisations, only three statements have been disclosed¹.
 - (c) The vast majority of disclosure remains outstanding.
 - (d) There is no provisional witness list.
 - (e) There is no list of issues to be explored.
 - (f) There is no further preliminary hearing listed.

¹ Namely Catherine Frances (DLUHC), Chris Wormald (DHSC) and Cathie Williams (LGA).

4. In the circumstances, we and all other core participants are extremely limited in the submissions we can make at this stage. We cannot meaningfully contribute to the direction of travel for Module 1 given the absence of disclosure and the limited information available to us.
5. There is, as the Inquiry is no doubt acutely aware, a great deal of work to do in a very short space of time.
6. The TUC has two, constructive requests. The first is that a further preliminary hearing is listed, at a later date, at a point that the Inquiry's preparation has progressed to the point that core participants can meaningfully engage with the process. We address this below at paragraphs 7 - 10. The second is that the Inquiry urgently provides detail as to its current plans for future modules (see paragraphs 11 - 15 below). This is important in order to be able to help the Inquiry identify what issues must be addressed within the module 1 hearings, and what issues should more sensibly be held over for subsequent modules. Dealing with all pandemic preparedness issues in four weeks of hearings commencing in ten weeks' time will be impossible.

FURTHER PRELIMINARY HEARING

7. The reality of the position for core participants, and, to a point, the Inquiry, is stark: we do not have the witness statements, we do not have the majority of documents to be disclosed, we do not know which witnesses will be called, and we do not know what issues will be explored in oral evidence. The position is encapsulated at paragraph 42 of C2I's note which says *"Much of the documentation is still to be received, and so it is not possible at this stage to provide further detail of the scope of the module or the areas about which witness will be questioned."*
8. Thus, on issues of the gathering of documentary evidence, witnesses, and issues to be investigated it is impossible to make submissions. Presently, all we (and other core participants) can really do is point out that these are significant outstanding issues, but that will not be any news to the Inquiry. Without a further preliminary hearing, all of

these crucial matters will be decided without any input from core participants. That cannot be an acceptable way of proceeding.

9. It is crucial, it is submitted, for the Inquiry to hold at least one further preliminary hearing at which these issues can be the subjected of public consideration and submissions.
10. If a provisional list of witnesses is to be provided in the week commencing 6th March 2023 (C2I note, [44]), then it would seem sensible to have a preliminary hearing in the weeks commencing 20th or 27th March 2023, before the Easter break. It could be listed on the same day as the preliminary hearing in module 2A (21st March 2023).

A ROADMAP FOR THE INQUIRY

11. Requests have previously been made for the Inquiry to provide detail as to the intended future modules. That information is important for a number of reasons, and is crucial in order to enable core participants to make meaningful submissions as to whether an issue needs to be explored in a particular module.
12. Our understanding from the Chair's indication at earlier preliminary hearings was that detail of future modules would be forthcoming, and the only reason not to have done so was one of pressure on the resources of the Inquiry. However, no further confirmed detail has been forthcoming save the indication in the Inquiry newsletter of 20th January 2023 that certain topics will be included in future modules². Whilst that further information is an improvement, the overall envisaged shape of the Inquiry remains unclear.
13. With module 1 fast approaching, core participants having some further information as to likely future modules and the central issues to be examined in those modules is crucial. The issue of pandemic preparedness is an obviously important one; it may well

² The newsletter stated that, "*future modules will consider issues including vaccines, therapeutics and antiviral treatments; the care sector; government procurement and PPE; testing; tracing; government business and financial responses; health inequalities; education, children and young persons; public services, and frontline key workers.*"

result in some of the most significant lessons to be learned. Preparedness is not just a question for central government, it is multi-layered and includes responsibilities of local authorities and a number of other bodies. Preparedness will give rise to differing issues in different sectors and public services. It will be impossible to deal with all necessary pandemic preparedness issues in a single, four week hearing, and all the more so in circumstances that the vast majority of statements and documents will only be revealed at the 11th hour.

14. A crucial area for consideration, therefore, is what issues should be considered as part of the hearings for module 1, and which would be better left for subsequent modules. For example, should preparedness in connection with social care sector be considered in module 1, or in a subsequent module on social care? Should preparedness in connection with PPE be considered in this module, or a subsequent module concerned with public procurement and PPE? Should the preparedness of the HSE be considered in this module, or a subsequent module concerning workplace safety in a particular sector(s)? The examples are innumerable.
15. These are no doubt the sorts of issues that the Inquiry is itself considering. But, so long as the Inquiry continues to resist revealing its thinking as to future modules, core participants are excluded from that consideration. The core participants will lose the opportunity to assist the Inquiry and, worse, will be compelled to make submissions seeking to ensure issues of importance are addressed in module 1, potentially in ignorance of the Inquiry already planning to address the issue in a subsequent module. This reduces and diminishes the role of core participants, and it is not efficient, either for core participants or for the Inquiry. Such efficiency is particularly important for CPs who do not have large independent resources and are not in receipt of public funding.

INSTRUCTION OF EXPERT WITNESSES

16. CTI addresses this issue at paragraphs 31-33 of their Note. We are concerned regarding the timeframes and, again, the absence of a timely and meaningful opportunity for core participants to consider the issues and make submissions to the Chair.

17. In respect of Professor David Heymann, we do not yet have sight of his draft report. Only the Inquiry team has had sight of his first draft, and the further draft is anticipated to be received by the Inquiry “*by early February 2023*” with it then to be circulated to core participants at some point thereafter, adopting a process yet to be disclosed to us. We cannot make submissions regarding the appropriateness of that process, or any proposed changes, as we do not yet know what is proposed by STI and CTI.

18. For the other experts, the position is worse again. The Inquiry only anticipates receiving the draft reports of Professor Jimmy Whitworth and Dr Charlotte Hammer, Professor Sir Michael Marmot and Professor Claire Bambra, and Bruce Mann and Professor David Alexander by “*early March 2023.*” Were the same approach to be adopted which STI and CTI have adopted for Professor David Heymann, the Inquiry team would then privately raise queries with the three teams of experts on their initial drafts, prior to further drafts being prepared which only at that point would be shared with core participants. This would, we anticipate, mean first sight of these draft reports by core participants very close to when the hearings are due to start, in April 2023 (or perhaps, at best, late March 2023). We submit that this timetable is too tight. We ask, first, that the Chair consider requesting the experts provide their draft reports faster than early March 2023. However, second, in any event we ask that the Chair direct that the first drafts of their reports be disclosed promptly to core participants, rather than following the process adopted for Professor David Heymann’s first draft.

OPENING AND CLOSING STATEMENTS

19. It is noted that core participants will be permitted to make opening and closing statements.

20. It is also noted that CTI will make an opening statement, and “*strict time limits*” are to be invited in respect of statements by core participants. The TUC requests that a confidential draft of CTI’s opening is provided to core participants in advance. That will greatly assist in ensuring that opening statements, made in limited time, avoid being repetitive of matters already covered by CTI, and provide a meaningful opportunity for core participants to address any matters raised by CTI.

EVIDENCE PROPOSAL PROCEDURE AND RULE 10

21. The proposal that only CTI asks questions is noted. The approach appears to be increasingly adopted by Inquiries. It is submitted that, in fact, allocating a limited amount of time to questioning by core participants does not unduly affect the length of hearings, and has very significant benefit in terms of facilitating core participant involvement in and contribution to hearings. Although core participants will be at liberty to apply, Chairs to an Inquiry are inevitably inclined to resist ad hoc applications for fear of time being increasingly taken by ‘satellite’ issues of whether a core participant should be able to ask questions. It can, ultimately, be more efficient simply to allocate a modest amount of time for questions by core participants. At this stage no particular submission is made, in part as it is not even yet known who the witnesses are or what issues are going to be explored. The TUC reserves its position.
22. As to timings, CTI proposes that evidence proposals will be circulated in the week commencing 3rd April and core participants will have 7 days to consider the evidence and make observations, with those observations to be considered the week after. Friday 7th and Monday 10th April 2023 are bank holidays, and this week coincides with Easter holidays for those with childcare commitments. We submit that, first, it would be preferable for a deadline such as this to be fixed so as to avoid a holiday period; but second, and in any event, core participants should have at least five working days to consider the evidence proposals.

OTHER MATTERS

23. We are considering further the issues raised in respect of parliamentary privilege. We make no written submissions at this stage but reserve our position.

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8th February 2023