

THE UK COVID-19 INQUIRY

MODULE 1

SUBMISSIONS ON BEHALF OF TRADES UNION CONGRESS FOR PRELIMINARY HEARING, 25th APRIL 2023

INTRODUCTION

1. These submissions are made on behalf of the Trades Union Congress (“the TUC”) in advance of the third preliminary hearing in Module 1 of the Inquiry, which will take place on 25th April 2023. We are grateful to Counsel to the Inquiry (“CTI”) for their Note of 6th April 2023 outlining the agenda and issues for this hearing (“CTI’s Note”).
2. The TUC brings together 5.5 million working people who make up its 48 member unions, from all parts of the UK, and who span a wide range of sectors profoundly affected by the Covid-19 pandemic. The TUC seeks in this Inquiry to give voice to the experience during the pandemic of those in work, to the uneven impact of the pandemic in the workplace on protected and vulnerable groups, and to the need to learn lessons so as to ensure that those required in a pandemic to continue attending their places of work are appropriately protected.
3. At the outset, we note that the hearing on Tuesday 25th April will be taking place within days of International Workers’ Memorial Day, Friday 28th April, a day marked globally by the trade union movement to remember all workers who have lost their lives to workplace illness or injury, and to recommit to taking action to keep workers safe.¹ It is a day to remember the dead and fight for the living. The TUC has raised, in another module, the importance of this day for both the TUC and many bereaved by Covid, and

¹ See further <https://www.tuc.org.uk/wmd>.

has requested that the Inquiry take steps to mark this important day.² Given the imminence of International Workers' Memorial Day, we now repeat and reiterate this request.

4. Remembering the dead and fighting for the living is a principle which underpins the importance to the TUC of Module 1. As we have made clear from the outset in our written and oral submissions in this module, the resilience and preparedness of the United Kingdom for a coronavirus pandemic is a vital and urgent topic, and we welcome the Chair's commitment to a timely examination of these issues. We made clear at the first preliminary hearing, on 4th October 2022, that the TUC welcomes the Chair's desire to proceed with Module 1 as quickly as possible, but also her commitment to *"ensure that the Inquiry has access to the evidence it needs and has the time to analyse that evidence properly before witnesses appear in front of [her]."*³ We have from the outset been concerned that a balance must be struck between proceeding swiftly and ensuring that adequate time is allowed to ensure that Core Participants are in a position to meaningfully participate and prepare. This, indeed, is why the TUC (and others) advocated for a third preliminary hearing, to take place at a stage when the Inquiry's preparation had progressed to the point that core participants can meaningfully engage with the process.

5. In broad terms, the TUC welcomes the ambitious approach of the Inquiry. The timescales, though tight, serve a purpose and reflect the commitment to this topic being examined swiftly and relevant lessons being learned as soon as possible. It has also been welcome to see, at least as compared with the time currently allocated for hearings in Module 1, a broad and extensive provisional witness list. Some of the evidence that has already been disclosed, appears meaningful and significant. We hope it is indicative of a robust and fearless approach of this Inquiry to its objectives.

² See transcript of the second preliminary hearing in Module 2, 1st March 2023, submissions by the TUC at pp. 157 – 158: <https://covid19.public-inquiry.uk/wp-content/uploads/2023/03/2023-03-01-Module-2-Preliminary-Hearing-Transcript.pdf>.

³ See transcript of first preliminary hearing in Module 2, submissions by the TUC at pp. 102-103 (citing the Chair's Opening Statement of July 2022): <https://covid19.public-inquiry.uk/wp-content/uploads/2022/10/COV-4-October-2022.pdf>.

6. It is also evident, however, that the progress being made in disclosure of witness statements and documents is not keeping pace with that necessary for the oral hearings. Further, it is of particular concern that the difficulties in making progress have been contributed to by a poor response from several central government departments. This preliminary hearing was listed further to the TUC and other Core Participants seeking it, given that progress of disclosure had been very limited by the time of the second preliminary hearing on 14th February 2023, severely hampering Core Participants' ability to make any meaningful submissions regarding the shape of the public hearings, the witnesses to be called, and so on. It had been hoped that a third preliminary hearing, a number of weeks later, would allow for the Inquiry's preparation to have advanced sufficiently to enable such meaningful engagement to then happen. It is a matter of regret that, even by late April 2023, it remains the case that progress has been slower than hoped; that Core Participants thus remain limited in the extent to which they can make informed submissions on outstanding matters at this hearing; and that this situation appears to have been contributed to, in significant part, by central government.

7. In these written submissions, we address the following four matters:
 - (a) Progress in the Inquiry and the co-operation of central government departments;
 - (b) The list of issues;
 - (c) The instruction of Dr Kirchhelle;
 - (d) The timetable for submissions on the witness list.

8. Regretfully, neither of the TUC's instructed counsel are able to attend the preliminary hearing. No discourtesy is attended. Fiona Murphy KC is instructed to attend.

PROGRESS IN THE INQUIRY AND THE CO-OPERATION OF GOVERNMENT DEPARTMENTS

9. Notwithstanding the delayed start to the Module 1 hearings, there remains a very significant amount of work to do. As at the time of CTI's Note for this preliminary hearing, :
 - (a) Only 19 statements had been disclosed to core participants. A further 199 statements were either with the Inquiry in final or draft form, or first drafts were still awaited.

- (b) Approximately 3,400 documents had been disclosed to Core Participants, but a further 3,100 were working their way through the disclosure process. The number of documents awaiting review is not clear, but appears to number at least a further 3,000 documents.
10. So, the Core Participants have, broadly, a tenth of the statements, and a third of the documents, albeit it also appears that a number of Rule 9 requests for further statements are still to be made, and significant disclosure still to be received.
11. That state of progress is stark in circumstances that:
- (a) Submissions on the witness list are required by 27th April, at which point the vast majority of statements will still to be received.
 - (b) It is said that evidence proposals from the Inquiry will be circulated in a mere four weeks' time (15th May).
 - (c) The substantive hearings commence in eight weeks' time.
12. It is critical that the Inquiry makes imminent and rapid progress with disclosure of witness statements and evidence. There is a real danger of the quality of the Inquiry's examination of the Module 1 issues being severely compromised.
13. The TUC is particularly concerned to hear that the Inquiry's progress has been hampered by central government departments providing scant and unenlightening responses to Rule 9 requests. The success of the Inquiry will depend in part upon the extent to which government departments are prepared to take an open and co-operative approach with the Inquiry, as is demanded by the importance of the issues raised, including the many who lost their lives during the course of the pandemic. It is extremely concerning, therefore, to hear from Counsel to the Inquiry that a "*considerable number of statements*" from central government departments "*contained insufficient detail and posed more questions than they answered*" (CTI Note, [6]). It is clear from CTI's Note that the impact upon the Inquiry's processes has been significant.

14. These shortcomings by central government also have a direct impact upon the ability of Core Participants to meaningfully contribute to the process. As we indicated in the introduction to these submissions, the intention behind the TUC and other Core Participants pressing for this third preliminary hearing to take place was to allow for such meaningful engagement at a time when there was still adequate time remaining before the hearing start-date to impact upon the Inquiry's decision-making. It had been hoped that disclosure of witness statements and evidence would be complete by the time of that third hearing. That is unfortunately far from being the case at this late stage. The disclosure of witness statements, in particular, is only just beginning and is substantially incomplete. The need for rapid progress in evidence gathering and disclosure is obvious. The Inquiry has already pointed to the inevitability that disclosure will continue up to the date of the substantive hearings (CTI's Note, [18]). The opportunity for Core Participants to engage with the evidence remains limited.

15. It is notable that, at the time of the second preliminary hearing, on 14th February, it was anticipated that this hearing could take place by the end of March.⁴ However, despite this hearing taking place almost a month later than the potential date of 28th March 2023 which had been mooted, unfortunately progress has been significantly slower than had been hoped in February – a result which appears to be in significant part due to central government failures.

16. Those failures and the slower progress than hoped must not be permitted to prevent Core Participants – particularly the non-State Core Participants – from contributing to decision-making in the lead-up to the hearings in this module. Notwithstanding the pressures upon the Inquiry, the Inquiry must remain open to constructive requests made by Core Participants as we proceed towards the substantive hearings. Matters which cannot be addressed orally at this hearing due to these delays will now need to be addressed in writing, and the Inquiry must facilitate this and consider such requests and submissions carefully, and adjust its approach if appropriate. They may be eleventh hour requests, but that is only because central government departments have left us in the position of learning key matters at the eleventh hour, without adequate time to

⁴ Counsel to the Inquiry suggested the possibility of 28th March 2023: see transcript p. 32, line 23 – p. 33, line 2.

consider, analyse and respond. Non-State Core Participants should not be penalised for State failures to provide fulsome, detailed and candid responses to the Inquiry's Rule 9 requests at an earlier stage, when due.

THE LIST OF ISSUES

17. The Inquiry circulated a draft list of issues and provided opportunity for core participants to comment. A final list has been provided, with limited amendment. No reasons or comment have been offered on submissions made by core participants that were not accepted. The TUC raises two matters as to the list of issues: (a) the absence of social care, and (b) clarity as to which risk managements bodies are being examined and, in particular, whether it includes the HSE.

Social care

18. Topic 4 and the issues identified thereunder refers to "*public health services.*" These issues also need to consider the planning in relation to the interface between public health services and social care, and the inevitable reliance of public health services upon the social care sector during a pandemic. As explained at paragraph 62 of Ms Bell's statement on behalf of the TUC, Exercise Cygnus in 2016 described local responders as having, "*raised concern about the expectation that the social care system would be able to provide the level of support needed if the NHS implemented its proposed reverse triage plans, which would entail the movement of patients from hospital into social care facilities.*" That was, of course, a prescient concern, and the interface between health and social care was a matter of controversy during the pandemic.
19. It is also one which suffers from significant structural problems. For example, The National Audit Office produced a June 2020 report on *Readying the NHS and adult social care in England for Covid-19*.⁵ It described that:

...the NHS has had to reorganise its services at great speed. This has been a major and far-reaching undertaking. The adult social care sector has had to respond very quickly too, both to cope with residents coming in from NHS hospitals and to manage the pandemic within care homes. These undertakings, difficult in any circumstances, have

⁵ Available at: <https://www.nao.org.uk/wp-content/uploads/2020/06/Readying-the-NHS-and-adult-social-care-in-England-for-COVID-19.pdf>

undoubtedly been made harder because of historic and unaddressed differences and divisions between the two sectors.

And:

... the onset of an emergency does not mean that long-standing problems suddenly vanish or can instantly be solved. The relationship between adult social care and the NHS has been problematic for decades. We have reported on successive efforts to integrate the two sectors: there have been 12 government white papers, green papers and consultations, and five independent reviews on integration over the past 20 years. Going into the pandemic, meaningful integration was still to occur, however, and the lack of it has made responding to the crisis more difficult in a number of ways. [emphasis added]

20. As we understand it, these crucial issues are not being examined as part of Module 1. The interface between health and social care, and the structural problems within social care that make the interface so problematic, are a key feature of pandemic planning and response, and must be firmly identified in the issues for Module 1.
21. The planning for and resilience of the social care sector more generally is also a key issue for pandemic preparedness. Whilst it was the health sector responsible for acute care, both the health sector and social care sector were key, front-line services during the pandemic. These issues were also picked up in the NAO report:

... since 2010-11 both the NHS and local government have been under financial pressure. Additional funding for health and social care has at times been used to address immediate needs rather than to increase the long-term sustainability of services. The past five years for local government, in particular, are characterised by one-off, short-term funding fixes, with the sector's financial condition worsening. Public bodies in the health and social care sectors now face two challenges: to maintain readiness to respond to COVID-19 and to put other essential services onto a sustainable footing, including working through backlogs that have developed since March. A realistic, costed and prioritised plan will give them the best chance of succeeding.

At the start of the outbreak, therefore, there was no systematic national process to collect a wide range of daily data from care providers. We have commented previously on gaps in adult social care data, particularly on self-funding recipients of care.

22. The social care sector must be prepared for a pandemic, and it is unclear why it would not fall squarely within Module 1. The pandemic must have taught us that a pandemic

requires a whole system response, and that whole system includes the social care sector as a vital part.

23. We note (and welcome) that the Inquiry has instructed Dr Claas Kirchhelle to provide an expert report on the history of and changes to public health bodies in the UK and the devolved administrations including their accountability, key Emergency Preparedness, Resilience and Response (“EPRR”) structures, and pandemic preparedness functions. His instructions include matters such as the history of the public health bodies in the UK and devolved nations, the background to their creation or divergence, and so on. There is also a need for like matters in the social care sector to be examined, with care.
24. As expressed by Ms Bell in her statement on behalf of the TUC, the social care workforce was *“let down and [felt] absolutely abandoned by the government”* (first statement, para 64), with so much of the early focus being on the NHS, whilst social care continued without even the basics of workplace guidance and basic PPE. This Inquiry should not mirror the UK government’s own lack of focus on the social care sector during the pandemic.
25. These matters were raised in the TUC’s submissions on the list of issues, but no response has been provided. We urge a re-think.

‘Risk management bodies’ and the HSE

26. The list of issues identifies the issues as including the *“History of the structures and specialist bodies concerned with risk management and civil emergency planning”* (2(a)), *“Pandemic preparedness bodies and structures”* (2(c)) and *“funding of risk management and civil emergency structures”* (2(e)).
27. Whilst in and of themselves, these issues are eminently sensible, they are far too broad to bring any clarity to what is being investigated. Who are the *“specialist bodies concerned with risk management and civil emergency planning”*? To what does *“risk management and civil emergency structures”* refer to?
28. It is important that the Inquiry actually states, in terms, the role of which bodies it is examining. The Inquiry must know. It would be a matter of regret were it to transpire only at or close to the hearing that a key body is not, in fact, being examined. A more

detailed identification of the bodies being examined will also help focus on whether the specialist bodies in each of the devolved nations are properly being considered.

29. Certainly from the perspective of the TUC, the specialist bodies concerned with risk management and pandemic preparedness should include:

- (a) Public Health England (and its precursor the Health Protection Agency) and its counterparts in each of the devolved nations.
- (b) The Health and Safety Executive (“HSE”) in respect of its role in risk management in England, Wales and Scotland, and the Health and Safety Executive of Northern Ireland (“HSENI”).
- (c) Local authorities, in particular in their role in respect of health and safety enforcement.
- (d) The National Institute of Biological Standards and Control (“NISBC”).
- (e) Local Resilience Forums.
- (f) Fire and rescue services, in particular, the Chief Fire and Rescue Advisor, Chief Fire Officers Association, and the National Fire Chiefs Council.

30. The TUC’s concern is heightened, in particular, by the Inquiry’s approach in relation to the HSE and HSENI. The TUC has repeatedly raised the importance of the Inquiry examining the role of the HSE. We raised it, for example, in our written submissions for the first preliminary hearing (28th September 2022, para 24):

Risk management, and failures in the risk management process, should be a key aspect of module 1, in our submission. The TUC has for over a decade been raising grave concerns that systematic underfunding of vital services, including safety regulators, places the UK at risk. The TUC’s view is that the UK’s pandemic preparedness was gravely undermined by a number of historical changes to risk management structures and bodies, and in addition by substantial cuts to their budgets. Funding cuts to the Health and Safety Executive (“HSE”) and local authority enforcement since 2010 seriously hindered the regulators’ ability to effectively prevent workplace hazards and deter employers from breaching regulations and the law. As explained in the renewal submissions, the TUC has produced detailed research reports on this topic in 2010, 2011, 2016, 2017, 2018 and, more recently, in 2021 (in a report which identified how HSE underfunding since 2010 had hindered the agency’s RIDDOR reporting system for Covid infections and fatalities).⁵ Put simply, the effects of cuts to funding resulted in fewer inspectors, fewer inspections and much less enforcement action prior to the pandemic, and gravely weakened the resilience and preparedness of risk management structures. This must be examined during module 1, and the TUC is concerned that

today's decision makes no reference to it and suggests this is not a topic to be explored by the Inquiry.

31. We have raised it many times since. Notwithstanding, the Inquiry is yet to actually state, in terms, that it will be examining the role of the HSE. We remain in the dark about the Inquiry's stance on this vital issue.

32. The TUC's concern had been assuaged somewhat by a Rule 9 request having been made of the HSE in Module 1, but increased on review of the provisional witness list. Further, the Module 2C team indicated at the last preliminary hearing that no Rule 9 request would be made of the HSENI as that module was not concerned with the "*mechanics of enforcement*". We made oral submissions as to why that was wrong, and we understand the position is being reviewed by the Chair. Ultimately, the TUC remains uncertain as to whether the HSE (and the HSENI) is accepted to be firmly within the compass of its investigations.

THE INSTRUCTIONS TO DR KIRCHHELLE

33. The TUC welcomes the Inquiry seeking an expert report on relevant aspects of public health structures. It is an important area of enquiry. The information provided in CTI's Note in respect of Dr Kirchhelle's expertise is that he is described as an "*historian in microbes, laboratory infrastructure, antibiotics and vaccines.*" We would be grateful for some further information as to Dr Kirchhelle's relevant expertise. Should it become necessary, the TUC is aware of a number of individuals very well placed to give independent, expert evidence as to public health structures.

THE TIMETABLE FOR SUBMISSIONS ON THE WITNESS LIST

34. The Inquiry has invited submission on the witness list to be made in writing on 27th April 2023. However, as above, as at the time of CTI's Note, 19 of over 200 witness statements had been disclosed. The TUC can and will make some limited submissions by 27th April 2023. Realistically, however, the opportunity for meaningful submissions in the absence of witness statements is extremely limited. The Inquiry must be open to further submissions following the actual disclosure of witness statements.



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19TH April 2023