

## THE UK COVID-19 INQUIRY

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### TRADES UNION CONGRESS: SUBMISSIONS IN ADVANCE OF THE PRELIMINARY HEARING IN MODULE 2

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#### Introduction

1. These submissions are made by the Trades Union Congress (“TUC”) in advance of the first preliminary hearing in Module 2, concerning the UK’s core political and administrative decision-making, which will take place on 31<sup>st</sup> October 2022.
2. The TUC seeks to assist the Inquiry with its experience and expertise. The TUC brings together 5.5 million working people who make up its 48 member unions, from all parts of the UK. Each of the 48 member unions is listed as an annex to these submissions and, as the list makes clear, they span a wide range of industries profoundly affected by the Covid-19 pandemic, including many frontline roles.
3. Tens of thousands of people of working age died in the pandemic, many of whom were key workers in high-risk workplaces in sectors such as health, social care, transport, food processing and textiles, a great many of whom were TUC members. Workers from ethnic minorities were particularly hard hit, with BME men 57% more likely to be working in jobs with a higher mortality rate, and BME women 48% more likely. As the TUC General Secretary, Frances O’Grady, put it in her speech to Congress in September 2020, *“Coronavirus is no leveller. On the contrary. It has exposed huge inequality in modern Britain.”*<sup>1</sup>
4. The TUC is grateful to have been designated a core participant (“CP”) in module 2, and indeed also in modules 2A (Scotland), 2B (Wales) and 2C (Northern Ireland). The Note provided by Counsel to the Inquiry (“CTI”) dated 21<sup>st</sup> October 2022 is helpful in

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<sup>1</sup> 14<sup>th</sup> September 2020, <https://www.tuc.org.uk/speeches/tuc-general-secretary-speech-congress-2020>.

understanding the current position and approach by the Inquiry, along with the CTI Notes prepared for modules 2A – 2C.

5. From reviewing the currently available information, in the provisional scope outlines for modules 2 and 2A-2C, the CTI Notes, and the available information in respect of the Inquiry more generally, the TUC considers that there are important issues to address in the upcoming hearings on 31<sup>st</sup> October – 2<sup>nd</sup> November 2022 regarding the inter-relationship between these four modules, and much of the content of these submissions is directed to that question. The Chair will also be aware that we have raised particular concerns in respect of the position of Northern Ireland in our submissions concerning module 2C, and we summarise these points below, where relevant, as we are mindful that the CPs in module 2 and 2C differ and our module 2C submissions will not necessarily be seen by all of those who are CPs in module 2.
6. As the TUC is also a core participant in module 1 of the Inquiry, some of the generic content of CTI's Note, concerning the commencement of the inquiry, is familiar to us, and we have already made submissions in relation to some of the matters arising which had a relevance beyond module 1 in the TUC's written and oral submissions for the first preliminary hearing for module 1 on 4<sup>th</sup> October 2022. Some of those issues were subsequently addressed in the Chair's ruling of 17<sup>th</sup> October 2022. Those submissions are not repeated here.
7. In these submissions, we make a number of general submissions, and some submissions specific to Module 2, and regarding the inter-relationship between Modules 2, 2A, 2B and 2C. Please note that, given the very tight turnaround time between receipt of the CTI Notes (21<sup>st</sup> October) and the deadline for filing written submissions (27<sup>th</sup> October), it has not been possible to consult and gather full views from the TUC's Working Group or affiliated unions on the issues arising, and so these submissions should be seen as provisional and we will provide any updates or clarifications if required orally at next week's hearings. We address:
  - (a) The Inquiry's Modular Approach;
  - (b) The Proposed Overall Timetable for Module 2;

- (c) Northern Ireland and the Relationship between Modules 1, 2 and 2C;
- (d) England and the Scope of Module 2;
- (e) Other Scope Issues concerning Module 2;
- (f) Rule 9 Requests for Module 2.

8. We address these six points in turn below.

**(a) The Inquiry's Modular Approach**

9. The TUC is conscious that, as the Chair indicated in her Opening Statement<sup>2</sup>, the Inquiry's ToR are "*wide-ranging and demanding*" and so "*it would be impossible to call every witness relating to every event, issue or major decision, so the Inquiry has to focus on the key issues.*"<sup>3</sup> The TUC also appreciates that the Chair has a wide discretion in relation to how she runs the Inquiry, within the bounds set by the statutory framework, public law principles and the ToR themselves.
10. This is the backdrop against which the Chair has decided to proceed on a modular basis, in order to run the Inquiry as thoroughly and efficiently as possible, whilst being "*rigorous and fair*", and in order to ensure that findings are reached and recommendations are made in a timely manner. The TUC recognises and respects the decision to proceed in this way, and can see there are many benefits to it, not least it enabling work to be undertaken in parallel by different legal teams; and ensuring regular reports can be produced, with recommendations, and it has the vitally important benefit of allowing for the implementation of those recommendations to be monitored by the Inquiry during its lifetime.
11. However, the TUC is also conscious that there are some disadvantages to proceeding in a modular way, particularly for CPs who may have a significant interest in or who played a significant role in relation to a large number of modules. We make a number of suggestions to mitigate those difficulties. They are relatively simple and

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<sup>2</sup> UK Covid-19 Inquiry Opening Statement, July 2022 (15<sup>th</sup> July 2022), p. 6.

<sup>3</sup> Opening Statement, p. 4.

straightforward but will increase the prospects of the Inquiry's findings and, importantly, its recommendations being as robust and thorough as possible.

12. First, the Inquiry is urged, at the earliest possible stage, to provide further information as to the scope of further modules. This will assist with CPs and the broader public understanding the overall approach which is being adopted, and it will allow for the early identification of any potential gaps or issues which should be brought to the Chair's attention. It will also have a range of practical benefits for the Chair and her team.
13. Second, we suggest that the Inquiry should ensure that CPs who have played a part in multiple modules are in a position to make overarching closing submissions at the conclusion of the full Inquiry. We suggest that both written and oral overall closing statements should be permitted. This was not a step taken in the Independent Inquiry into Child Sexual Abuse ("IICSA"), but overarching submissions were heard by the Grenfell Inquiry. It is an important step, otherwise the risk is that Chair's final report will be based upon evidence obtained across each of the individual investigations, and other processes (such as the Listening Exercise), but the only overarching contributions will be made behind closed doors, from her own Solicitors to the Inquiry ("STI") and CTI team. Given the entitlements of CPs under the legal framework, and the fact that there are a number of entities and groups who are likely to span multiple modules - for example, the TUC; the UK Covid-19 Bereaved Families for Justice Group; the Secretary of State for Health and Social Care - this 'sweep up' role at the end of the full process will ensure that CPs can in fact make submissions which may have a bearing on the final report.
14. Third, at specific points during the Inquiry process it may be sensible to consider adjusting the timetabling to allow for strand-tying type submissions to be made, enabling submissions to be made on lesson learning across more than one module. This could be where, for example, the Chair wishes to invite written submissions on a particular topic on which she is minded to make a recommendation from CPs in a range of different modules; or it could be where there is good reason to permit a

second round of closing submissions to be made, in the way we propose for Module 2, below. These steps would mitigate the risk of a ‘silo’ mentality, with issues arising in specific modules not necessarily being picked up in other modules; mitigate the risk of CPs being excluded from decision-making on issues which may be of vital importance to them; and, most importantly, mitigate the risk of the Chair and Inquiry team proceeding without the benefit of expertise of relevant CPs.

**(b) Overall Timetable for Module 2**

*Time Estimates*

15. It is noted that the intention is to hold the module 2 hearing in “summer 2023,” modules 2A and 2B in “Autumn 2023” and module 2C in “early 2024.” The TUC notes that, particularly with module 1 due to have a public hearing in May 2023, the intention may be for the Module 2 hearing in “Summer 2023” to be relatively short, in the region of 3-4 weeks. The TUC has already made submissions regarding its concerns in respect of the provisional 4-week timetable for module 1, and the Chair is aware of our concerns in that regard. It does seem to us that both Module 2 and 2C (in relation to Northern Ireland) have particular complexities and we ask that this be borne in mind when timetabling is being fixed, to avoid having too little time to examine the issues.
16. In considering the time estimates, it will also be important to address the questions of (a) whether centralised decision-making regarding Northern Ireland (i.e. decision-making by the Secretary of State for Northern Ireland, in Westminster) during the period when there was no functioning Executive in Northern Ireland will be addressed within module 1, module 2 and/ or module 2C (see further below, at paragraphs 19 – 23); and (b) how the issue of England-specific decision-making is to be addressed within module 2, as distinct from UK-wide decision-making.
17. We recognise that it is too early to take a definitive view regarding the length of these hearings, but at this stage we simply put down a marker regarding these issues and the importance of allowing adequate time. We also note, given the very large number of CPs in module 2, that adequate time will need to be built in to ensure that CPs can exercise their entitlements to make opening and closing statements, and to ensure that

they can play a meaningful role in relation to questioning witnesses (whether directly or through the Rule 10 process).

*Module 2 Closing Hearing Following Completion of Modules 2A-2C*

18. We also submit that the Inquiry should list a short hearing in module 2 to take place after module 2C concludes. Whilst it is important to have distinct modules for the UK (and, in the TUC's submission, England), Wales, Scotland and Northern Ireland, it will also be useful to have some opportunity to take a broader view of the evidence gathered in and heard in each of the modules, and to take a coherent view of the findings and lessons learned across these modules. Closing submissions made in summer 2023 regarding module 2 will be made without the benefit of understanding the full position in respect of Scotland, Wales and Northern Ireland. Whilst closing submissions in summer 2023 will be valuable, we suggest that there should be a second short hearing listed, to follow the conclusion of module 2C in early 2024.
19. We propose that the Inquiry set aside a short (perhaps two day) hearing in 2024 for the purpose of hearing submissions in module 2, reflecting on the four modules as a whole (2, 2A, 2B and 2C). Whilst those core participants who are within modules 2A/ 2B/ 2C only would not need to address these overarching points, core participants in module 2 should have this opportunity; and it is likely to assist the Chair and the Inquiry team in their work.

**(c) Northern Ireland and the Relationship between Modules 1, 2 and 2C**

20. The TUC submits that urgent consideration must be given to how the particular position of Northern Ireland's pandemic preparedness in the period leading up to January 2020, and Northern Ireland's unique position in early 2020, will be addressed. Whilst there are, of course, also issues arising concerning the interrelationship between modules 2 and 2A (Scotland) and 2B (Wales) respectively, there are particularly acute and thorny issues arising in relation to Northern Ireland which are not currently reflected in either the provisional scope documents for modules 1, 2 or 2C; or in CTI's Note in relation to module 2C.

21. Whilst we recognise that the scope outline document for module 2C is drafted in broad terms, we are concerned that the current wording simply replicates that used for modules 2A and 2B and does not reflect the very different position of Northern Ireland in early 2020. This concern is compounded by the fact that there is no reflection of one particular issue concerning Northern Ireland in the module 1 and/ or 2 scope outlines, namely the fact that Northern Ireland had no functioning Executive for a three-year period, until 9<sup>th</sup> January 2020. In January 2017, the then Deputy First Minister Martin McGuinness resigned, and the Northern Irish Executive consequently collapsed. From January 2017 to January 2020 Northern Ireland was governed, in essence, by civil servants in a caretaker capacity, and the UK Government in Westminster had particular additional obligations as there was no functioning Executive.
22. In early January 2020 the parties signed the 'New Decade, New Approach' agreement and an Executive was subsequently established. The result of this chain of events is that, first, for a three year period in the lead-up to January 2020, there was no functioning Executive at all in Northern Ireland; and second, Northern Ireland was in the process of returning to having a functioning government at the same time that the pandemic hit.
23. During the hiatus period (January 2017 – January 2020), in other contexts, this led to judicial review challenges of the Secretary of State for Northern Ireland and the alleged failure to act to fill the lacuna resulting from the absence of a functioning Executive (e.g. provision of abortion services in Northern Ireland, to ensure that the UK as a whole complied with its obligations under the European Convention on Human Rights). Similar complex issues arise here, in relation to the respective roles of central UK Government and the Northern Irish Executive.
24. At present, this issue appears to us to be the elephant in the room, and of sufficient significance and importance that it should be reflected in at least one of the scope documents – whether module 1, 2 and/ or 2C. Pragmatically, we can see that it may be easiest to address this in January 2024 rather than attempt to deal with it in detail

in what is likely to be a relatively short hearing in summer 2023, and with what is now a tight timeframe.

**(d) England and the Scope of Module 2**

25. Module 2 is described in the provisional outline of scope document as follows:

*“This module will look at, and make recommendations upon, the UK’s core political and administrative decision-making in relation to the Covid-19 pandemic between early January 2020 until February 2020, when the remaining Covid restrictions were lifted. It will pay particular scrutiny to the decisions taken by the Prime Minister and the Cabinet, as advised by the Civil Service, senior political, scientific and medical advisors, and relevant Cabinet sub-committees, between early January and late March 2020, when the first national lockdown was imposed.”*

26. It is clear that module 2 is focused upon UK-wide decision-making, with modules 2A-2C intended to address, in turn, each of Scotland, Wales and Northern Ireland. The current wording does not make clear how England-specific issues are to be addressed. There is no equivalent focus upon England-specific decision-making. We recognise that issue 1 refers to the relationship between “central government structures and bodies concerned with the UK response to the pandemic” and their “communications” with both devolved administrations and “regional and local authorities,” but this is not the same point. In contrast to the devolved administrations, there is currently no indication that England-specific decision-making will be considered within this module, as opposed to UK-wide interactions with local decision-makers.

27. Pragmatically, we recognise that a timetable has been set and it is now very unlikely that there will be a new, England-specific module. However, it will be important that module 2 includes within it both a focus upon UK-wide decision-making and England-specific decision-making. We suggest that a new issue 1A be included to address this, following the UK-wide issue 1 as currently drafted.



(e) Other Issues concerning Scope of Module 2

28. As we indicated above, we ask that the Inquiry provide further information as to the scope of further modules. At present, the Inquiry has given broad indications of the scope of modules 1, 2, 2A-C, and 3. The Inquiry has also indicated that there will be a number of further modules addressing ‘system’ and ‘impact’ issues across the UK. It is apparent that there could be very significant overlap between the issues to be considered in module 2 and those subsequent modules. For example, consideration in module 2 of the reasonableness and timeliness of non-pharmaceutical interventions (“NPIs”), and public health communications, may have very significant relevance to, and be informed by, the evidence in subsequent modules on topics such as *“the care sector”, “the education and business sectors”, “children and young persons”* and *“public services and on other public sectors.”*
29. Some important considerations arise. For example, it may be that module 2 does need to hear some evidence on those topics earmarked for subsequent modules as they are highly relevant to the issues being considered in module 2. Alternatively, it may be that areas of investigation that *could* fall within module 2, are to be investigated in the later modules.
30. Those are matters on which core participants should have opportunity to address the Inquiry at an early stage. However, it is very difficult to do so in a meaningful way, without any indication as to subsequent modules beyond the broadest of headings.
31. It is recognised that the Inquiry is working at an immense pace, and its own thinking as to the division of topics between modules will be developing and will continue to do so. It will inevitably be an iterative process. However, it is far better for the Inquiry to reveal its current plans for subsequent modules so as to put core participants in an informed position. Core participants should, for the benefit of the Inquiry, be more than passive recipients of updates given by the Inquiry team.
32. Second, the TUC indicates that its own focus for the purposes of module 2 will be issue 2 (as it relates to guidance and advice to health and social care providers), issue 3 (UK wide, and England-wide NPIs) and issue 5 (public health communications).

33. The TUC makes the following additional submissions as to the scope of this module:

- (a) The education sector is of significant relevance to the examination of decision making around NPIs. That is both because education was significantly affected by NPIs, but also because education settings could be vectors for community transmission. The relationship between school attendance, for example, and community transmission, is an important one. Thus, when the Inquiry examines *“the development of the approach to NPIs in light of the understanding of their impact on transmission, infection and death”* must inevitably include consideration of educational settings. Some clarity is needed as to how this issue will be examined across module 2, and as yet undefined further modules.
  
- (b) The use and effectiveness (or otherwise) of NPIs played out in significant part in workplaces across the UK. Community transmission and significant loss of life occurred in sectors such as the transport sector, the communications sector, the manufacturing sector (in particular, it appears, the food processing and textiles industry), the construction sector and the retail sector. All of those sectors saw significant loss of life and outbreaks of the virus. All were reliant to varying degrees on NPIs such as social distancing and the use of masks. In examining *“the development of the approach to NPIs in light of the understanding of their impact on transmission”*, it will be important to understand the effectiveness of NPIs in these sectors and how NPIs were being applied in practice. Further, it was in these sectors that much of the uneven impact of the pandemic was revealed, with certain front-line and high-risk industries having low-wage and insecure work, disproportionality high numbers of BAME workers and, in some sectors, workers particularly weighted to one or the other gender. Some understanding of these issues is therefore relevant to examining *“the assessment of the likely impact of the contemplated NPIs”* on vulnerable groups *“in light of existing inequalities.”* Again, some clarity is needed as to how these issues will be examined across module 2, and as yet undefined further modules.
  
- (c) In relation to public health communications, one significant feature of the use of NPIs was the lack of clear communications and guidance for workplaces. The

Inquiry will need to consider what guidance was given in respect of NPIs in workplaces. In reality, the guidance was limited and different industries were served to different degrees by a patchwork of professional bodies seeking to adapt national public health communications and guidance to the particular workplace. In the communications sector, for example, there was significant confusion around the safety measures that led to high levels of transmission in indoor spaces – which many postal workers, cleaners and security guards had to occupy during work. In the construction sector, guidance was issued by the Construction Leadership Council (CLC). Early guidance suggested that workers could work within two metres of each other, but *“work side by side, or facing away from each other, rather than face to face”* (patently risking transmission of the virus). By around July 2020 the CLC’s site operating procedures (SOPs) not only envisaged working without social distancing, but advised that when social distancing was not possible *“workplaces should not encourage the precautionary use of extra PPE to protect against Coronavirus”*. In the transport sector, industry wide guidance as to the implementation of NPIs was given by the Rail Industry Coronavirus Forum (RICF), as did the Office of Rail and Road (ORR). These are but examples and the Inquiry should consider how public health messaging was cascaded to a range of workplaces. In the experience of the TUC unions, the messaging and guidance was frequently confused and placed workers at risk, with the unions trying to fill the gap.

(d) Both in submissions on the terms of reference, and for module 1, the TUC has emphasised the importance of the Inquiry examining the mechanisms in place for ensuring safety in workplaces and how, in practice, NPIs were implemented and enforced. That requires an examination of the role of the Health and Safety Executive (HSE), other regulators such as the ORR, and also local authorities. Presently, the TUC is unclear as to in which module these issues are going to be examined.

**(e) Rule 9 requests for Module 2**

34. The TUC is grateful for the update as to the recipients thus far of Rule 9 requests for the purposes of module 2.



35. Rule 9 requests should also be made of those professional bodies that played a significant role in cascading and adapting national public health communications into workplaces. That should include the organisations described above such as the CLC, the RICF, the HSE and the ORR. The issue of to whom Rule 9s are addressed is being given urgent consideration and the TUC envisages writing to the Inquiry as a matter of urgency with a list, with explanatory detail, of those professional and regulatory bodies to whom a Rule 9 request should be addressed.
36. Rule 9 requests should also be made of a number of the TUC member unions. Again, urgent consideration is being given as to which unions can offer the most useful evidence to the Inquiry, and the TUC envisages writing to the Inquiry as a matter of urgency with further detail including the mechanism by which we propose member unions might most effectively and efficiently be approached.
37. We hope these submissions are of assistance.

**CAOILFHIONN GALLAGHER KC**

**SAM JACOBS**

Doughty Street Chambers

27<sup>th</sup> October 2022



## THE UK COVID-19 INQUIRY: MODULE 2

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### ANNEX

#### THE TUC UNIONS

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- Accord – Lloyds Banking Group, TSB and other financial services
- Advance - Santander and Santander businesses in the UK
- Aegis - Finance sector staff at Aegon UK, Atos UK, Skipton Building Society, Yorkshire Building Society
- AEP – Educational psychologists and assistant educational psychologists in public and private sector
- AFA-CWA – Mobile civil aviation workers (flight attendants/cabin crew)
- Artists’ Union England – Freelance visual artists, applied arts, sound and performance
- ASLEF – Railways – drivers, operational supervisors and staff
- BALPA – Airline pilots; commercial helicopter pilots; and technical rear crew
- BDA – Dieticians in the public and private sector
- BFAWU – Workers in food industries
- BOSTU – Orthoptists
- Community – General union covering a range of sectors including steel and other metals, third sector and logistics
- CSP – Chartered physiotherapists, physiotherapy students and support workers
- CWU – BT, O2, Post Office, Royal Mail Group and other telecoms companies
- EIS – Teachers, lecturers, associated educational personnel in Scotland



- Equity – Professional performers and creative practitioners
- FBU – Fire and rescue services
- FDA – Senior staff in civil service, public bodies and NHS
- GMB – General union covering a range of sectors, including social care, manufacturing, energy and public services
- HCSA – The hospital doctors’ union
- MU – Musicians including live and recording artists, composers, teachers and writers
- NAHT – Head teachers, deputies, assistant head teachers and school leaders across sectors
- NAPO – Probation and family court staff
- NARS – Racing staff employed by licensed racehorse trainers
- NASUWT – Teachers and head teachers in all sectors from early years to FE across the UK
- Nautilus International – Merchant navy and all related areas
- NEU – Teachers, headteachers, lecturers and support staff in all education sectors
- NGSU – All staff at the Nationwide Building Society
- NHBCA – All staff at the National House Building Council
- NSEAD - Art, craft and design educators across all phases and sectors
- NUJ – Journalists, copywriters, designers, presenters, producers and website content providers
- NUM – Coal mining and associated undertakings
- PCS – Government departments and agencies, public bodies, private sector IT and other services



- PFA – Professional football
- POA – Staff in penal or secure establishments or special hospitals
- Prospect – General union covering a range of sectors, including creative industries, defence, scientific and professional staff and energy
- RCM – Practising midwives and maternity support workers in the UK
- RCP - NHS, independent practice and private chiropodists and podiatrists
- RMT – Railways, underground, metro, bus, road transport, taxi, maritime and offshore
- SoR – Radiographers and related staff in NHS
- TSSA – Administrative, clerical, professional and technical employees of railways, buses, London Underground, travel trade
- UCAC – Teachers, headteachers, education advisors and lecturers across all sectors in Wales
- UCU – Academic and related staff in HE, FE, land-based, adult and prison education.
- UNISON – General union covering a range of sectors, including local government, health and social care, utilities, energy, education and voluntary sector
- UNITE – General union covering a range of sectors, including manufacturing, aerospace, aviation, transport, voluntary and public services
- URTU – Drivers, ancillary and warehousing workers in the logistics and food sectors
- USDAW – Call centres, catering, distribution, food processing and manufacturing, retail and warehouses
- WGGB – Writers working in TV, radio, film, books, theatre, comedy, video games and multimedia