

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 2 preliminary hearing on 6 June 2023**

1. These submissions are provided on behalf of CBFFJ UK and NI CBFFJ in advance of the third Module 2 preliminary hearing on 6th March 2023. CBFFJ was established to campaign for this Public Inquiry and accordingly the families are committed to making it work. As with previous written and oral submissions, our requests for a change of approach from the Inquiry and more collaborative engagement with the families and their legal representatives are intended to assist the Inquiry's important work.
2. As requested by the Inquiry, we confirm that the CBFFJ UK and NI CBFFJ representatives intend to make oral submissions at the preliminary hearing. Save for §40 these written submissions follow the order of the issues set out in CTI's Note, dated 17 May 2023. So as to avoid repetition, we refer to and rely on matters raised in our previous written and oral submissions in Module 2, as well as those in Modules 1 and 3.

Panel Members

3. CBFFJ UK and NI CBFFJ are disappointed with the Prime Minister's decision¹ that he will not appoint a panel to sit with the Chair. We note that the decision is on grounds of expedience[§5-6 CTI note] without reference to the [previous decision](#)² to appoint two panel members which was to be done at the outset of the Inquiry in late 2021 or early 2022³. We consider the failure to refer to the previous decision and in particular the intention to appoint two panel members is particularly unfortunate. Whereas CTI is correct (§7 CTI Note) that

¹ <https://questions-statements.parliament.uk/written-statements/detail/2023-04-27/hcws745>

² The Prime Minister has said he wishes to appoint two additional panel members to assist me in hearing the evidence and making findings and recommendations. However, I do not want to hold up the work until they are appointed, so I have instructed the Inquiry Team to move forward with preparing the modules

³ <https://www.gov.uk/government/news/prime-minister-announces-covid-19-inquiry-chair> ("The Inquiry, set to begin its work in spring 2022, will be established under the Inquiries Act 2005, with full powers, including the power to compel the production of documents and to summon witnesses to give evidence on oath. Additional panel members will be appointed in the new year to make sure the Inquiry has access to the full range of expertise needed to complete its important work")

this was a decision of the PM and not the Inquiry, it is of note that the PM's statement referred to the decision having been taken following consultation with the Chair. Given the submissions that we have previously made with respect to a panel – that appointing panel members with diverse life experience would assist and enhance the Inquiry – we request that any view expressed by the Chair to the PM should be published. We do not suggest that there was anything wrong with the PM seeking the view of the Chair, or assistance being given, but we submit that the distinct roles of establishing Minister and independent Chair, call for transparency in such consultation. This is particularly important given that the PM has reversed the original decision.

Update on Rule 9 requests

4. We welcome the Inquiry's update on Rule 9 requests and note the cross section of government, non state and NGO groups to which requests have been sent.
5. On behalf of NI CBFFJ, we have previously submitted that R9 requests should be sent to a number of additional agencies and departments. These have included but were not limited to the British Irish Council; the North South Ministerial Council; the North/South Inter-Parliamentary Association; the North/South Consultative Forum; the British–Irish Interparliamentary Body; the Institute of Public Health Ireland; the Northern Ireland Statistics and Research Agency; the Secretaries of State for Northern Ireland, ministerial counterparts in the Republic of Ireland and the NI Health and Safety Executive.
6. We note that Prof. Henderson makes plain at §16 of her expert report the importance of three strands of governance in Northern Ireland, as established by the Belfast Agreement. They are the internal arrangements of Northern Ireland, relations between NI and the Republic of Ireland (strand 2 north/south relations) and relations between UK government and Irish government (strand 3 British Irish Council and British-Irish intergovernmental conference). We observe that those three strands appear to us to be insufficiently reflected in the ambit (and, we presume, content) of the R9 requests to date.
7. While we understand that additional R9 requests have been issued based on the earlier submissions of NI CBFFJ, it remains unclear to us which individuals, departments and organisations have been approached to assist the Inquiry with regards to Northern Ireland – both in this module and in M2C. We therefore request transparency as to whom R9 requests have been issued and the nature of those requests.
8. Given the impact of Covid19 and the pandemic on people with dementia we ask for clarification as to whether Rule 9 requests have been sent to organisations including Dementia UK and the Alzheimer's society.
9. CBFFJ is deeply concerned that the work of the Inquiry, in particular its evidence-gathering process is being hampered by the non cooperation of Government departments, in particular the Cabinet Office. The non cooperation of any material provider is problematic, however

the failure of Government departments to demonstrate full compliance with requests from the Inquiry risks undermining the integrity of the Inquiry and erodes public confidence and that of the families, in its work.

10. From the outset of the pandemic, well before the Public Inquiry was announced in 2021, Government departments will have known that they would be called upon to provide evidence to various inquiries and reviews. It is therefore wholly unacceptable that the responses of Government departments to R9 requests for witness statements and documents have been insufficient and in some cases incomplete. This was raised as a serious issue prior to the last preliminary hearing for M1, and it has assumed a much greater significance with the necessity for the Inquiry to issue a Section 21 Notice to the Cabinet Office with respect to M2. CBFFJ is unaware of another example of a Public Inquiry having to make such an order against a sponsoring Department of State.

Cabinet Office – Redaction of irrelevant material

11. CBFFJ and NI CBFFJ welcome the Chair's [Ruling](#) of 22nd May 2023, following the written legal submissions made on 15 May 2023 by the Cabinet Office.
12. The families are however, concerned that Core Participants (CPs) were only informed of the issue of the Section 21 Notice in the Inquiry's May 2023 update, and were unaware of the legal argument to revoke it until the CTI Note of 17 May 2023. The Cabinet Office legal argument was itself not disclosed until the ruling had been made on 22 May 2023.
13. It is clear that the difficulties with the Cabinet Office have persisted for some time: the section 21 notice to the Cabinet Office on 28th April followed "*a lengthy period of discussions and correspondence with the Cabinet Office regarding the application of redactions to its content prior to disclosure to the Inquiry*" [CTI note §15]. CBFFJ UK and NI CBFFJ, in common with other CPs, have called for disclosure of the R9 requests from the outset. Where non-compliance with those requests results in the issue of a formal Notice and a subsequent detailed legal submission by the Cabinet Office, the lack of transparency means that CPs are excluded from making submissions and assisting the Inquiry in this regard.
14. Having made several submissions concerning disclosure of R9 requests, we had not intended repeating them at this juncture. However, given the contentious position now reached with the Government, we ask that this issue is revisited and full disclosure made. Additionally, we request that CPs are kept fully-informed and updated of non-compliance with the Inquiry's disclosure requests and redaction protocol, by the Cabinet Office or other Departments.
15. Given the clear relevance of the initially redacted material to the Inquiry's investigation, an example being "*discussions between the Prime Minister and his advisers about the enforcement of Covid regulations by the Metropolitan Police during the public demonstrations following the murder of Sarah Everard*", we also request disclosure of the

discussions and correspondence between the Inquiry and the Cabinet Office to ensure full transparency and address and allay any concerns the families may have as to the Cabinet Office's motive for the redactions and non-compliance with the Inquiry's disclosure requests and redaction protocols.

16. Turning to the specific issue of the argument raised by the Cabinet Office, we note that the statutory scheme of the Inquiries Act 2005 creates a discretion for the Executive as to whether to establish a statutory Inquiry and in setting its ambit or terms of reference, which will only be challengeable in the clearest of circumstances. However, it is equally clear that such an Inquiry, once established, is to be fully independent, and not subject to the control of the establishing Minister, their Department, or anyone else.
17. The Chair's ruling rightly rejected the Cabinet Office submissions. At the time of writing, it remains to be seen whether the Cabinet Office will seek to challenge the ruling or comply. However, although the immediate issue will resolve, the families remain extremely concerned at what amounts to a bold attempt to interfere with the Inquiry's independence and control what it can see.
18. The families are particularly concerned that the documents which are the subject of the Section 21 Notice had been produced to the Inquiry in redacted form. This indicates that the documents had been subject to analysis by the Cabinet Office in sufficient detail to facilitate the redaction process. It appears that some of those documents are the subject of the Cabinet Office referrals to two police forces, not made at the time of the redactions but only after the issue of the Section 21 Notice requiring their production to the Inquiry, and the attempt on 15 May 2023 to maintain their non-disclosure. We emphasise that we have not had sight of these documents, however, the fact that the Cabinet Office have apparently referred some of them to the police indicates that the Cabinet Office itself considers that they may evidence criminal offences. Further, the fact that they did so only after the Section 21 Notice raises serious questions about the redaction process and for what it may have been used.
19. CBFFJ UK and NI CBFFJ consider that the conduct of the Cabinet Office and its response to the Inquiry's R9 requests for unredacted material, potentially relevant WhatsApp messages [§21], google spaces [22] and material relevant to Whitehall's engagement with the Devolved Administrations, requested as long ago as 19 January 2023, demonstrate a lack of candour and undermines the sincerity of its submissions to the Inquiry at the Module 1 PH:
"...the Cabinet Office remains committed to providing full assistance to the Inquiry, and continues to work hard to respond to the requests made of it by the Inquiry Legal Team".
In our view, there could hardly be more compelling evidence for the need for a statutory duty of candour and associated legal tools to enforce it, as called for by a significant number of Chairs of previous inquiries and reviews, and a wide number of bereaved family groups. In the absence of such legal reform, we urge the Inquiry to adopt a fully transparent approach to R9 requests, its dealing with challenges to its process, and to indicate that it will be vigilant and highly critical of any attempts to obfuscate or omit important facts or assertions,

even where contrary to interest, in corporate and other statements and disclosure.

20. As we have made clear, we welcome the use of Section 21 and the Chair's recent ruling. However, these measures can only deal with 'known unknowns'. Evidence of a lack of candour raises the spectre of problems regarding 'unknown unknowns': the application of an inappropriate approach to material which is not known to the Inquiry cannot be rectified in this way. The use of devices such as position statements, requiring proactive identification of issues and material which may be contrary to interest, and requiring senior officials to sign off on full disclosure is a potent way in which to ensure candour, within current provisions.

Cabinet Collective Responsibility

21. We note that the Cabinet Office has indicated its intention to apply for Restriction Orders under s.19 of the Inquiries Act in respect of material which it intends to assert should not be disclosed to CPs or put into the public domain on the basis of 'Cabinet Collective Responsibility', and that CTI intends to provide an update at the Preliminary Hearing [§30-32 CTI note]. We note that the fact of this proposed application is to be treated as confidential until the Preliminary Hearing [§33]: we welcome the intention to provide a public explanation at the hearing, there is no proper basis for it to be confidential beyond that point.
22. If the application is to be pursued, we submit that the Chair should set a timetable for the Cabinet Office to provide a written argument, with sequential responses from CPs and CTI.
23. In our view, this is a matter upon which oral submissions may become necessary, before a ruling can be made.

Materials relevant to Whitehall's engagement with the Devolved Administrations

24. Linked to our concerns about the failings of the Cabinet Office to engage with the Inquiry in a manner consistent with its duty of candour, NI CBFFJ fails to comprehend how it can be that the Cabinet Office has not disclosed material relevant to Whitehall's engagement with the Devolved Administrations. We note that some of the statements disclosed in M1 from Ministers in the Devolved Administrations raise concerns as to how it was perceived that the Devolved Administrations were treated by Whitehall as the pandemic took hold (and on that note, in order to ensure proper scrutiny we observe that those statements should undoubtedly fall for disclosure in M2). It is plain that agendas, briefings and minutes of meetings are of central relevance to issues that must be considered by the Inquiry. They must be disclosed as a matter of urgency or, if they are not available for disclosure, a clear explanation must be forthcoming as to why not.
25. Moreover, we would ask that, in addition to requests for disclosure held by Whitehall of notes or minutes of such meetings, corresponding requests should be issued (if they have

not already been issued) to Belfast, Cardiff and Edinburgh. Any agendas, emails, briefings or notes, whether formally minuted or informally taken should be disclosed by the Devolved Administrations.

Overdue Corporate Statements

26. It is extremely disappointing that the Inquiry is yet to receive corporate statements from a number of other government departments including the DHSC and UKHSA despite extensions that have been granted by the Inquiry. The fact that statements are overdue, and that many statements received have been inadequate, requiring further requests and follow up from the Inquiry team, wholly undermines the confidence of the bereaved families in the Inquiry process. The combination of refusals to provide information, delays in the production of statements and proffering incomplete answers to the Inquiry's requests gives rise to an impression, if not a belief, that Government departments are preoccupied with protecting the positions of individuals and departments rather than learning lessons that might have prevented deaths in the last pandemic and would be capable of preventing future deaths.

List of Issues and provisional list of witnesses

List of Issues

27. We are grateful for the Inquiry's engagement with CPs in the preparation of the list of issues and have provided detailed submissions for the inquiry's consideration.
- (a) Structural Racism and Inequality – we welcome the Inquiry's commitment to investigating the role of structural racism and inequality during Module 2. As the Inquiry no doubt appreciates the structural nature of racial inequality in the UK society and its impact on the disproportionate numbers of black and brown people who died during the pandemic warrants distinct analysis. We therefore invite the Inquiry to expressly include the investigation of the impact of Structural Racism on the outcomes for Black and Brown and other racialised groups during the pandemic in the list of issues, as in Module 1.
 - (b) Austerity – We note that Austerity has not been included in the list of issues. We refer to and rely on our submissions made during the Module 2 Preliminary Hearing on 1 March 2023 and invite the Inquiry to include in the list of issues being examined in Module 2: the role and impact of austerity on political and governmental decision making and the outcome, particularly on marginalised, vulnerable and at-risk groups.
 - (c) The approach to the deceased and bereaved people - As the Inquiry team are aware, CBFFJ UK and NI CBFFJ have great concern about the treatment of bereaved families and their loved ones, particularly in connection with burial arrangements and the interference with funeral rituals. We seek confirmation that core political and administrative decision-making about these matters will receive appropriate scrutiny in Module 2.

Provisional list of witnesses

28. CBFFJ UK and NI CBFFJ maintain that it is essential that the bereaved families are called as witnesses during Module 2 to enable the Chair and the legal team to fully understand and contextualise the consequences of the government decisions taken during the pandemic. The families will assist the inquiry's work in this regard as they have sought to do in M1.

Disclosure to Core Participants

29. We note the challenges faced by the Inquiry with the slow progress of responses to R9 requests from the Cabinet Office and other Government departments which have directly impacted on the progress of disclosure to CPs. To date we have received 9 witness statements. Given the identified challenges faced by the Inquiry we are concerned that the anticipated date of end of July 2023 for disclosure of the "majority of signed statements" to CPs may be unrealistic.
30. We are also mindful of the impact of delayed disclosure on the Inquiry's start date and ask that CPs be kept informed in a timely manner of the progress with disclosure.

Expert Witnesses

31. CBFFJ UK and NI CBFFJ welcome the Inquiry's commitment to receiving expert evidence on the "nature and degree of pre-pandemic structural racism" and "pre-existing inequalities on other grounds and intersectional issues". We also welcome the Inquiry's engagement with CPs on the identification of appropriate experts to assist with this work. We look forward to the Inquiry's update on the experts identified to report on these issues ahead of the 3rd Preliminary Hearing as indicated in §49 of CTI's note.
32. We also welcome the Module 2 draft experts reports received to date. Many of the experts refer to publications throughout their reports, which of course, having been referred to, form a part of the report. Whilst some of the publications are open source material, many are not and are therefore inaccessible to us and our clients. In order to enable the families to effectively participate and engage with the expert evidence we ask that where experts have referred to publications, the Inquiry is provided with the articles, and in turn they are disclosed to CPs.
33. Moreover, and related to the issue of disclosure above, while on behalf of CBFFJ UK and NI CBFFJ we have sought to submit comprehensive responses to the draft expert reports, we have done so in the absence of a significant volume of disclosure and witness statements that would inevitably inform our response. We anticipate that it may become necessary to invite further comment from the expert witnesses when disclosure is further advanced.

Every Story Matters

34. We note the contents of Annex B of the Inquiry's May update and in particular that the contracts with Ipsos, M&C Saatchi and their associated consortiums including 23red, are coming to an end. We also note that the Inquiry will be seeking new partners to engage in the next phase of this aspect of its work. Regrettably, the tender documents have not been disclosed to CPs, despite requests. We request that an update is provided, and that the concerns of the families as to the nature of organisations commissioned or contracted to take part have been taken into account.
35. CBFFJ UK and NI CBFFJ notes that the project appears to be focused on the collation of themed reports through the analysis of people's experiences which will in turn be submitted to the Inquiry as evidence. In this regard it is the reports rather than the accounts given which will be considered evidence. Despite the helpful update provided by the Inquiry, we remain unaware of the expertise, experience or training of those who will gather, and those who will analyse the material. We remain unaware of how the reports will be produced, who will author them, how it will be possible for the Chair or anyone else to assess them, and for what purpose they will feed into the Inquiry.
36. Further, we remain unclear as to how the integrity of the online material gathering will be ensured (for example, to prevent multiple entries or a campaign to provide accounts to lead to a particular outcome), and how paper and community listening events are to be conducted. We have not been informed, or involved in the process by which the ILT will target certain groups or themes or how this will work, together with the random-access methodology described. In our submission, however the ESM project is designed, it remains vital that the bereaved have voices within the Inquiry process itself.

Commemoration

37. CBFFJ UK and NI CBFFJ notes the Inquiry's efforts to commemorate the impact of the pandemic through the commemorative tapestry. It remains a point of real disappointment to the families that the Inquiry has not seen fit to devise a way of memorialising those who have died, either through a proportionate amount of material heard within the hearings, or by way of online methods, or both.

Impact films

38. We also note that the Inquiry will be receiving human impact films which will be played at the start of each module. The focus of the films will be on the impact of the pandemic on individuals. We have yet to see the videos but understand they will extend to about 15 minutes at the commencement of each module. In our submission this will provide an inadequate basis upon which the Inquiry can seek to understand the impact of the pandemic on the bereaved and others.
39. With respect to ESM, the tapestry, and the impact videos, some families have engaged with

the Inquiry. Some have withdrawn when they have seen what is envisaged, and many more have indicated that they do not want to engage because these perceive that these processes have marginalised them from the Inquiry itself.

Venue

40. The families are disappointed that having campaigned long and hard for a Public Inquiry, the physical attendance of the families of CBFFJ UK and NI CBFFJ at the hearings will be restricted to less than a handful of persons, given that there are only 41 seats for members of the public in the hearing room. Whilst we appreciate the significant challenges in identifying and securing premises for a medium to long term process such as the Inquiry and that efforts have been made to utilise technology to enable live streaming of the hearings, the families are being deprived of attending the hearing room to see and hear the live evidence of witnesses, particularly those whose decisions impacted on the outcomes of their loved ones. In the circumstances the families are left feeling outside of the process.

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