COVID-19 PUBLIC INQUIRY

M2

SUBMISSIONS ON BEHALF OF DISABLED PEOPLE'S ORGANISATIONS: DISABILITY RIGHTS UK, DISABILITY ACTION NORTHERN IRELAND, INCLUSION SCOTLAND AND DISABILITY WALES
Preliminary Hearing – 6 June 2023

The following addresses [**I**] Inquiry [**II**] Expertise [**III**] Issues [**IV**] Disclosure [**V**] Witnesses and [**VI**] Society.

I: INQUIRY

1.1. CHALLENGES: The Inquiry's Terms of Reference ('TOR') and Module 2 draft List of Issues ('LOI') reflect the complexity of its purpose and subject matter, and its aim to cover considerable ground in a short period of time with disclosure and preparation likely to be ongoing, possibly even after oral hearings begin,[1] although it is appreciated that the Inquiry is looking to avoid that outcome.

1.2. POSSIBILITIES: The Chair has already had good cause to explain publicly why this investigation has no other parallel in UK Inquiry history, or by global comparison.[2] Some of those reasons include the breadth of its TOR and proposed issues, its concern to investigate inequalities, its determination to give freestanding recognition to all four nations, its powers of compulsion of witnesses and materials, and its involvement of core participants ('CPs') from across political and civil society, including those representing marginalised and discriminated against groups.

1.3. PROCEDURES: The DPO understand the Inquiry to have a range of tools and procedures available to it to meet its challenges and realise its possibilities, which will be considered at this procedural hearing. We deal with some of those in turn below, but the essential point is that no other investigation currently known to be occurring anywhere in the world will be able to gather the range of materials and accounts that this Inquiry can. The key aim now is to best facilitate that happening.

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[1] M1 PH 25.04.23 {T/6/20-25} and {T/9/4-14}
[2] E.g., M2 PH 01.03.23 {T/3/1-9} Ruling on Section 21(4) Application 22.05.23 §18 and Ruling on Experts on Structural Discrimination 09.3.23 §21

II: EXPERTISE

2.1. PANELLISTS: The Prime Minister, who alone has the power to determine the issue,[3] albeit in consultation with the Chair, has decided not to appoint additional panellist(s) to sit with the Chair as part of the formal fact finding function of the Inquiry. He has expressed his reasons as according with the public interest that the Inquiry be thorough, rigorous and comprehensive, but also that it delivers its report without excessive delay (CTI Note §§5-9). The Chair can of course advise and recommend to the Prime Minister that she would in fact be assisted by additional panellists. If she elects not to do that for the start date of Module 2, consideration should still be given to advising the Prime Minister whether panellists would assist in Modules to come.

2.2. ASSESSORS: The Chair has the power to appoint assessors to assist her with discrete expertise.[4] For the purposes of Module 2, the DPO favour the commissioning of expert reporting on discrete subjects, rather than the use of Assessors. That is because the expert opinions are a more transparent form of assistance, better suited to controversies that attach to this Inquiry, with other parties able to comment on, oppose and/or supplement the expert's views. The Chair should not rule out that Assessors might usefully be appointed to advise on the structure and issues of future Modules and/or approaches to recommendations in discrete areas.

2.3. EXPERTS: The DPO agree with the choice of areas in which the Chair has commissioned expert reporting to date, acknowledge the value of the Inquiry affording CPs the opportunity to comment on the draft reports before they are finalised,[5] and are pleased to have been informed that Module 1 expert reports will be disclosed as soon as they are finalised. They add the following:

2.3.1. Relevant instructed experts and/or CTI should produce provisional summaries in core areas with a view to saving time and providing reference points to which questions can be addressed. This could include: (a) Key Decision Chronology, (b) Devolved and Regional variations in statutory NPIs and (c) High level summaries, without in-

[3] IA 2005, s. 4: detailing that the Minister appoints panellists (s. 4(1)), but consults with the Chair (s. 4(3))
[4] IA 2005. s.11
[5] Thus far, this has been done for Professor Hale and Professor Henderson

depth detail,[6] of different NPI approaches in a sample selection of countries: e.g. US, Germany, Sweden, South Korea, New Zealand. The documents could be introduced as drafts and finalised in the light of initial feedback from CPs and then as a result of the evidence in the hearings.

2.3.2. Separate consideration should be given to either commissioning or using pre-existing data summaries that compare what was *predicted/modelled* at various junctures in terms of transmission, hospitalisation, and mortality and what *actually occurred*, with additional breakdown in terms of age, sex, race and ethnicity, and disability. One assumes a standard question for witnesses would be "*What did you assume correctly and what turned out differently to your assumptions?*". As above, it will save time and facilitate effective questioning if there is some objective table of disaggregated statistics in order to evaluate those answers.

2.4. EXPERTISE: The Inquiry can also draw on the expertise and knowledge of its CPs, those who will feed into Every Story Matters, and broader opinion publicly expressed about the Covid 19 pandemic in its duration and aftermath. Inquiries, by their nature, are not closed systems and without losing their independence, should gather the wisdom that society produces, especially in this instance where the subject matter of investigation has affected everyone. For instance, the 66 responses to rule 9 requests from impact organisations (CTI Note §§34(a) and 36), combine a formidable range of insight and experience, including the reports and other sources they refer to in their footnotes, which will supplement evidence of other experts, civil servants, politicians and scientists.

2.5. OPENING AND CLOSING STATEMENTS: Given the Inquiry's time constraints, it will be particularly important to accentuate the participation of CPs when they can support the Inquiry's direction of travel and overall analysis. The Opening and Closing Written Statements will be useful resources for the Inquiry and the wider public. As the pressure of timetables mean that hearings will start while disclosure continues, the Inquiry should consider whether the Closing Submissions for Module 2 should be at the end of Modules 2A-C and/or whether there should be an opportunity for overarching/update submissions

[6] Communication with the Inquiry has indicated that the work cannot require unreasonable detail, and we agree. The balance struck in the Inquiry's aims contained in the TOR is to "*have reasonable regard to relevant international comparisons*". Hence the suggestion that the document should be a brief summary/table.

combining Module 1, 2 and other Modules at some other date. These types of approach worked particularly well in the Grenfell Tower Inquiry to avoid the adverse consequences of delayed disclosure and to help draw strands together at various junctures.

III: ISSUES

3.1. DISABLED PEOPLE: Our clients are anxious to ensure that the Inquiry List of Issues (LOIs) adequately addresses the extent to which d/Deaf and Disabled people (hereafter referred to as 'Disabled people') and those with pre-existing health inequalities were considered as part of the process of core political and administrative decision making, and if so, how. Consequently they are concerned to ensure that the Inquiry examines, considers and reports on, amongst other things:

(1) HMG's degree of accounting for pre-existing inequalities relating to Disabled people when planning for and responding to the pandemic.

(2) How and why Disabled people were comparatively excluded from initial contemplation of 'vulnerability' in terms of being both *at risk clinically* from Covid 19 and from other conditions due to the contraction of health and social care, and *at risk socially, physically and psychologically* as a result of NPIs.

(3) The approach of HMG to its legal duties under Equality and Human Rights law and related policy commitments.[7]

(4) The limited extent to which Disabled people and their representative organisations run by and for Disabled people were consulted with during the pandemic response.

(5) Lessons learned from (1) to (4) above and necessary changes to prevent recurrence.

3.2. UTILITY: The DPO support the Inquiry's use of LOIs, including the process of taking feedback on provisional lists and otherwise keeping an open mind on how the LOIs may develop depending on the emerging evidence. While the LOIs remain provisional they are a valuable guide to CTI, CPs, document providers and witnesses as to what will be important going forward. In their feedback to date on the provisional LOIs, the DPO have raised certain matters which they have asked the Inquiry to either insert into the LOI, or confirm

[7] The Inquiry is aware of the emphasis our clients have placed on the duties of the UK Central Government, and its devolved Governments, under the UN Convention on the Rights on Persons with Disabilities ('UNCRPD'). It is submitted that these duties should be considered as tools to understand what happened to Disabled people during the pandemic, as well as because HMG is under a legal obligation to comply with the substantive rights contained within the Convention.

impliedly fall within their current text, such that the concerns outlined in paragraph 3.1 above can be addressed. We emphasise two particular matters here in order that they be taken into consideration by the Inquiry, and others, in the next stages of preparation.

3.3. VULNERABILITY: First, based upon the status of inequality as an overriding issue for the Inquiry, including how decision making impacted on Disabled people to the extent that they were "*at risk, or vulnerable or marginalised*"[8] the DPO have suggested that the characterisation of who is "*vulnerable*" and/or "*at risk*", and how that affected administrative and political decision-making over time, requires greater consideration in the LOI.[9] The DPO reasons for this, as set out in the LOI feedback, include that the provisional texts take the category "*vulnerable and at risk groups*" as something of a given whereas the evidence suggests it was constructed over time, moving only incrementally from a clinical/shielding focus to a broader social focus. How and why the 'vulnerable' are recognised, defined and distributed to is a key part of an examination of structural discrimination. Although this issue is relevant to all those who were at risk due to pre-existing inequalities, for Disabled people it is also relevant because the social model focuses on how disability is socially constructed, including in this context how vulnerability is recognised and defined, and the extent to which that process is (paradoxically) marginalising.

3.4. RESILIENCE: Second, the consequence of the failure to plan is worthy as an issue in its own right. All modules after Module 1 will serve to deepen the Inquiry's appreciation of what resilient planning requires and how and why it was missing prior to the pandemic. For that reason, some form of cross-cutting issue is required as an ongoing post-script to Module 1. While the matter could be implied into the current draft text of the Lessons Learned Issue (LOI at §7, it is worthy of discrete consideration and could also serve to ameliorate the fact that the Module 1 hearings will likely have to start (and possibly even finish) while additional disclosure of Module 1 material to the Inquiry and/or CPs is still being made. Although this issue is especially relevant to all those who were at risk due to pre-existing inequalities, for Disabled people it is also relevant to HMG's human rights compliance,

[8] Ruling on Experts on Structural Discrimination 09.3.23 §21

[9] The suggested textual amendment to draft Issue §4(a)(v) is: "To what extent did the UK Government ***(a) recognise and define "vulnerable and at risk groups", (b) evolve its recognition and definition of those groups over time, (c) take account of pre-existing inequalities in doing so and (d)*** assess the likely impact of contemplated NPIs ***upon people and communities falling within those groups*** ~~vulnerable and at risk groups~~?"

because of the substantive right to emergency planning provided for under Art. 11 of UNCRPD, which the UK was criticised by the UN Committee on CRPD for non-compliance with prior to the pandemic.[10]

IV: DISCLOSURE

4.1. CHALLENGES: The CTI Note for this hearing has identified two significant challenges by the Cabinet Office ('CO') to the Inquiry's ability to effectively discharge its TOR by viewing material itself to ascertain potential relevance and enabling the CPs and the public to view such material in due course. They are:

4.1.1. THE 'PRODUCTION' CHALLENGE: The CO has objected to the mandatory notice issued under s. 21 of the Inquiries Act 2005 to produce unredacted WhatsApp messages and Boris Johnson MP's full diary entries and notebooks for the Inquiry to then judge, in accordance with its Redaction Protocol, what (if any) parts should be restricted from disclosure to CPs and then for the purposes of general publication (CTI Note §§14-20).

4.1.2. THE 'DISCLOSURE CHALLENGE': Although CTI are not yet (at time of writing) in a position to update CPs on the "*basis for an ambit of this claim*", they have been notified that Cabinet Minutes that have been and will be produced to the Inquiry are to be the subject of an application for restriction orders under section 19 of the Inquiries Act because it is said that disclosure and publication would be likely to damage the public interest underpinning the principle of Cabinet Collective Responsibility. More information is promised at the forthcoming hearing (CTI Note §§30-33).

4.2. SUMMARY RESPONSE:

4.2.1. As to the PRODUCTION' CHALLENGE, the DPO endorse the ruling of the Chair of 22 May 2023 that the specified documents must be produced to the Inquiry in an unredacted form and then made subject to the Inquiry Redaction Protocol (see §§4.3-4.6 BELOW). They regard it as improper that the CO has delayed from 3 February to 26 May 2023 to tell the Inquiry that they do not have complete copies of the Mr Johnson's WhatsApp messages and notebook materials, especially so since the

[10] Concluding observations CPRPD/C/GBR/CO/1 (3 October 2017) §§28-29

materials were referred to in Annex A(i) §2 and Annex A(ii) §1 of a Section 21 Notice that was issued as long ago as 28 April 2023.

4.2.2. As to the prediction of a likely pending DISCLOSURE CHALLENGE, the DPO will oppose such a claim. The damage that non-disclosure of the nature of debates in Cabinet would do to the Inquiry's ability to allay public concerns about political decision making during the Covid 19 pandemic response *very far outweighs* the interest of retaining confidentiality of those aspects of the documents where alternative views were, or were not, expressed. That is especially so now that the acute emergency of the pandemic has passed, Cabinet is no longer engaged in those live issues, and the far greater interest lies in the accountability and lesson learning that has caused the Government to commission the Inquiry and its TOR (see §§4.7-4.9 BELOW).

PRODUCTION

4.3. As to PRINCIPLES:

4.3.1. The Chair may use her powers under Rule 9 to ask for particular "*documents*" which she considers to be potentially relevant to a matter in question in the Inquiry.

4.3.2. Where the whole "*document*" is requested, it is not for the Rule 9 recipient to redact parts of the document for relevance prior to production. They must avail themselves of the regime under Section 19 of the Inquiries Act and the Redactions Protocol to make a case for redaction to the Inquiry once production is made.

4.3.3. As the Chair's ruling underscores at §21, analogies with criminal and civil proceedings in this context are inapposite, because when the parties dispute relevance, the judge will inspect the document.

4.3.4. Both privacy rights of individuals and obligations under GDPR UK are properly protected by the process under section 19 and the Redaction Protocol.

4.3.5. By contrast, permitting a document provider to determine relevance in relation to a specified category of documents, which the Chair has asked to inspect in full, risks

damaging public confidence and causes unfairness and costly delay. By Section 17(3) Inquires Act the Chair is duty bound to avoid such an outcome.[11]

4.3.6. While the Chair's decision is technically open to judicial review, her decision in this context carries particular weight. That is because "*where tribunals that have been given the statutory task to perform and exercise their functions with a high degree of expertise so as to provide coherent and balanced judgment on the evidence and arguments heard by them, that does make those tribunals better placed to make a judgment than* [a Judicial Review court] *on the need for particular information to be brought before it*": *Re Paisley Junior* [2009] NIQB 40 §37 endorsed in *Moore-Bick v Mills* [2020] EWHC 618 (Admin) §5.

4.4. As to APPLICATION:

4.4.1. The Inquiry as investigator and judge, based on a much broader knowledge of the evidence than the individual provider, has determined that WhatsApp messages and Mr Johnson's diaries and notebooks are relevant *as documents*, subject to the application of the Redaction Protocol.

4.4.2. There is nothing irrational and/or ultra vires about the Chair and her legal team inspecting complete unredacted versions of documents so that – subject to further submissions under the Protocol – she and not the parties can be the judge of what should be ultimately redacted.

4.4.3. If the CO are correct then a Chair of a Public Inquiry has less power than a judge in ordinary legal proceedings, who can always inspect full documents in circumstances of disputed relevance, even though the Inquiry (unlike a Judge) is responsible for investigating as well as fact finding.

4.4.4. As correctly acknowledged in the Chair's ruling of 22 May 2023 at §7, the subject documents of the s. 21 Notice (WhatsApp messages between key decision makers, and the former PM's diaries and his notebooks) are clearly materials that the Chair owes a duty to the public to inspect carefully for potential relevance.

[11] IA 2005 s. 17 ("*In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others*")

4.4.5. The Chair's ruling (at §22(d)) refers to a stark example arising from WhatsApp messages relating to the Sarah Everard protests. It would damage the reputation of the Inquiry process were she not to continue to insist upon her power of independent inspection of such messages.

4.4.6. The manifest importance of full unredacted production and independent inspection is underscored by the latest public disclosure that based on its reading of the former PM's diary the CO has reported Mr Johnson to two police forces due to alleged further breaches of the Covid regulations.

4.4.7. The DPO are bound to criticise the CO for improper delay on this issue. It now appears that production requests were served by the Inquiry on 3 February 2023, which produced correspondence from the CO on 30 March and 18 April. The Chair issued an enforcement notice on 28 April, which was the subject of a s.21 (4) application by the CO on 15 May, resulting in the Chair's ruling on 22 May. However, at no time until close of business on 26 May (before a Bank Holiday weekend and once the issue was in the public domain) has the CO informed the Inquiry that it does not have the material as it relates to Mr Johnson. Instead, it appears to have used the s. 21(4) application procedure to do something it was not designed to do (i.e. to challenge the legality/vires of the Notice) to avoid doing something that it could have been used for (admitting that materials central to the conduct of emergency government during the main period of the Pandemic response were not within their possession, and to explain why).

4.5. CONCLUSION: If the CO is minded to judicially review the decision of the Chair, the DPO would like (a) to be notified, (b) this aspect of their submission to be drawn to the attention of the Administrative Court, and (c) delay to be addressed in the application. Delay will be relevant to any judicial review because the CO became aware of the decision to require production of unredacted material more than 14 days ago.[12] The further delay for submissions made by the CO pursuant to s. 21(4), including after the date for compliance with Annex A(i) had passed, is unjustifiable either because that it is not the function of the s. 21(4) procedure (which is about the practicability of compliance not the legality of the order) or, because in this instance, the use of the procedure amounted to an abuse of process,

[12] *Cf.* Inquiries Act 2005, s. 38(1)

because the CO should have made it clear long ago that they did not have key parts of the Annex documents.

DISCLOSURE

4.6. PRINCIPLES: Disclosure of Cabinet and Committee Minutes to the CPs and for wider publication is governed by the following principles. The DPO raise these now for general consideration and as a public plea to Government. Further delay on this matter has the consequence of delay to everyone and unduly hampers the Inquiry's progress:

4.6.1. Collective Cabinet Responsibility is a creature of convention not law, and is primarily concerned to govern relations between Ministers and to constitute decisions of Cabinet as constitutionally binding on all members of Government (Cabinet Manual (2011) §§4.1-4.4, Ministerial Code (2011) §§2.1, 2.3, Halsbury's Laws of England Vol. 20 (2014) Ch. 4 §212).

4.6.2. While there is a public interest in protecting the confidentiality of Cabinet papers and discussions, because it could inhibit freedom of debate and the integrity of final decisions presented to Parliament as the collective decision of the Government, that public interest is not absolute, rather "*it must be for the court in every case to be satisfied…after balancing all the factors which tell for or against publication, to decide whether suppression is necessary*" (*AG v Jonathan Cape* [1976] QB 761, 765B-E).

4.6.3. For an analogous position under Freedom of Information Act 2000, s. 35(1)(b), see *Scotland Office v Information Commissioner* EA/2007/0070 §86: "*The maintenance of the convention of collective Cabinet responsibility is a public interest like any other, in the sense that the weight to be accorded to it must depend on the particular circumstances of the case*".

4.6.4. In determining the issue timing is likely to be of paramount importance, such that "*it may be that in the short run (for example, over a period of weeks or months) the public interest is… compelling to maintain joint Cabinet responsibility and the protection of advice given by civil servants*", but it should not be accepted *"without close investigation that such matters must, as a matter of course, retain protection after a period of years*": *AG v Jonathan Cape* 768G-H. Likewise, "*Where the Ministerial communication is in relation to an issue that was "live" when the request was made,*

the public interest in preserving a "safe space" for Ministers to have a full and open debate, and the public interest in the Government being able to come together successfully to determine what may, in reality, have been a contentious policy issue, may weigh the balance in favour of maintaining the exemption. However, that does not detract from the need to assess each case on its own circumstances: *Scotland Office v Information Commissioner* §88.

4.6.5. Section 19 Inquiries Act only allows the Chair to impose restriction orders on disclosure or publication subject, in this instance, to what she "*considers to be…necessary in the public interest*" (s. (19(3)(b)), with regard to be had under section 19(4), to (a) "*the extent to which any restriction on… disclosure or publication might inhibit the allaying of public concern*"; (b) "*any risk of harm or damage that could be avoided or reduced by any such restriction*"; (c) "*any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry*"; and (d) "*the extent to which not imposing any particular restriction would be likely…to impair the efficiency or effectiveness of the inquiry*".

4.6.6. As to the adjudication upon public interest claims, the common law test that ordinarily applies to PII applications is set out in *Binyam Mohammed* [2009] 1 WLR 2653 §34(ii) ("*will disclosure bring about a real risk of serious harm to an important public interest*"); and *R v H and C* [2004] 2 AC 134 §36(3) ("*Is there a real risk of serious prejudice to an important public interest (and, if so, what) if full disclosure of the material is ordered?*").

4.6.7. In judging what harm is really at risk it is important to acknowledge that in the era, at least, since *Jonathan Cape v Attorney General*, but certainly since the introduction of the Freedom of Information Act 2000, all Ministers know that the confidentiality of Cabinet Minutes, and other documents which disclose differences of opinion amongst Ministers, including the stance taken by individual Ministers during policy debates, are not subject to an absolute prohibition on disclosure. Any analysis of the chilling effect on the constitutional value of freedom of debate within Cabinet has to be understood as taking place in that less secret environment.

4.7. POTENTIAL APPLICATION: With the caveat that the CPs have seen no application, nor know the precise basis upon which any claims will be put, it is not in the public interest that they

should be accepted in the context of this Inquiry, which explicitly contains within its TOR (created by the Prime Minister) an express aim at §1(a)(ii) to "*consider how decisions were made, recorded and implemented*", has a provisional Outline of its Scope that "*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 advisers, and relevant Cabinet sub-committees…*", and has just ruled in disposing of the s. 21(4) application that there is "*a need…to investigate allegations that have been aired publicly regarding disagreements between members of the government*" (§19). To this can be added:

4.7.1. In this instance there are clearly other features of the public interest that are far more compelling than the confidentiality of the expression of individual opinions in Cabinet that the CO proposes to rely on: see the approach of Lord Widgery LCJ in *AG v Jonathan Cape* 770H. They include: (a) The detail of Ministerial debate in Cabinet meetings should be disclosed and published for the public to know the truth about what occurred during the Covid 19 pandemic response and/or for individual Ministers to be accountable for their acts or omissions. (b) There is an enhanced need for this Inquiry to scrutinise Cabinet decision making given that the law making powers provided by Part II of the Public Health (Control of Diseases) Act 1984 granted so much power to the Executive over and above the scrutiny of Parliament, or indeed the courts. (c) In the aftermath of those emergency powers being used it is crucial for this Inquiry to establish how effectively Cabinet Responsibility actually operated, or whether it acted as a rubber stamp for decisions made elsewhere in Government. Indeed, it would undermine the principle of Cabinet Responsibility if the opportunity was missed to publicly examine how it worked in this exceptional period of Executive conduct. [13]

4.7.2. The decision of the Government to commission this Inquiry, and the timing of that commission in May 2022, occurred when issues were no longer 'live' and the 'safe space' for opposition under the protection of Cabinet Responsibility was no longer required.[14]

[13] For the same reason, the Chilcott Inquiry obtained and published crucial Cabinet Minutes that detailed what was said, or not said, by the likes of Sir Tony Blair, Gordon Brown, Jack Straw, Geoff Hoon and Lord Goldsmith KC.
[14] PM's Statement 12.5.22 https://www.gov.uk/government/speeches/pm-house-of-commons-statement-on-covid-12-may-2021 ("*Amid such tragedy, the State has an obligation to examine its actions as rigorously and*

4.7.3. In any event, unlike in any other legal proceedings, or any comparable judicial decision on a public interest question of this nature, the *wisdom* of government policy, especially the decisions of the Prime Minister and the Cabinet, are directly under scrutiny in this Inquiry. The Cabinet Minutes and other documents which it appears the CO seek to withhold from full public scrutiny lie at the heart of the intended scope for Module 2.

4.8. CONCLUSION: Whilst the DPO have been able to make submissions of a general nature at this stage, they join other CPs in wishing to address the Chair in opposition to any applications for restrictions orders that the CO make on this issue (or may indeed have made by the time this document is served). They apply to make those submissions with the benefit of disclosure of the grounds for the application *unless* the Chair determines that she is able to refuse the applications without further assistance. If that occurs, the DPO seek disclosure and publication of the applications and the ruling as has occurred in relation to the notice served under section 21.

V: WITNESSES

5.1. GENERAL: As a result of reading the disclosed material to date, we have sent the Inquiry a list of suggested witnesses to issue Rule 9 requests to and are grateful for the indication that the list is under consideration. It would be helpful if the Inquiry could provide a full list of those to whom it has issued Rule 9 requests. At present various lists are provided amongst CTI update notes, but a centralised list would assist with organising disclosure and also prevent CPs from making Rule 9 request suggestions which are in fact already being progressed by the Inquiry. As a general observation, the speed with which the Inquiry needs to work, including its strict timetable for oral hearings, should not prohibit it from continuing to obtain statements, and if necessary further statements from witnesses, after which further submissions can be called for if necessary. This flexible hybrid of oral and written investigation, as well as continuing review, gives the Inquiry the potential to evolve its understanding of subjects, and loop back on matters where the needs of the investigation justify it. As to particular witnesses and areas of coverage, the DPO mention two.

candidly as possible and to learn every lesson for the future, which is why I have always said that when the time is right there should be a full and independent inquiry")

5.2. DISABLED PEOPLE: Having reviewed the hitherto disclosed Minutes of the General Public Sector Ministerial Implementation Group (GPSMIG) meetings it is striking that there was no one apparently in attendance - certainly in a Ministerial capacity - whose brief included the consideration of Disabled people. Justin Tomlinson MP – Minister for Disabled People whose statement is yet to be disclosed – was not in the early Cabinet Sub-Committee meetings.[15]We still await the corporate statement of the Cabinet Office Disability Hub to explain who was responsible in the key decision making for people with protected characteristics and otherwise at risk for shielding and/or non-shielding reasons (CTI Note §37(e)). However, a person who nominally held some of that responsibility for Disabled people in need of care was Helen Whately MP (Minister of State for Care and Mental Health), who attended GPSMIG Meetings from the outset and provided a link back into DHSC.[16] That is why the DPO have asked that she provide a Rule 9 statement, even though they apprehend she may be required to provide a statement for a later Module. The DPO have also identified designated SROs in the Cabinet Office, DHSC, MHCLG and DCMS who were responsible for the Battleplan of "*protecting the most vulnerable*".[17]

5.3. FOOD INSECURITY: The DPO observe that the CTI Note at §37 does not mention DEFRA being required to provide a corporate statement. The DPO do not want food insecurity, especially for those primarily impacted by NPIs, to be lost from detailed evidential examination. In particular, DEFRA, with Victoria Prentis MP (then Parliamentary Under-Secretary of State for Farming, Fisheries and Food) leading on the issue, was involved in decisions around access to food, including identifying those likely to suffer food insecurity, whether shielding or otherwise, that was of significant relevance to Disabled people. The DPO have identified Civil Servants in DEFRA and the Cabinet Office who were designated SROs on the issue.[18]

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[15] The Minister was not a permanent GPSMIG member under its TOR {INQ000087167} and neither was he a permanent member under the TOR of the equivalent Health Care Committee {INQ000055917}. On current disclosure, his first and only known attendance at the GPSMIG meetings was on 21.05.20 {INQ000083626/5} to speak to a paper drafted by the CO Disability Unit Paper titled Covid 19 – The Impact of C19 on Disabled People {INQ000083584}

[16] {INQ000056023/9} Identifying that as her roll at the first GPSMIG meeting on 17.03.20

[17] {INQ000106902/5} Presentation - Updating the Health & Social Care Battle Plan, DHSC 04/05/2020. Responsible SROs include Simon Case prior to his elevation to Permanent Secretary and then Cabinet Secretary. His current corporate statement for Module 2 on behalf of the Cabinet Office does deal with the detail of the decision making he was involved in relation to vulnerable persons.

[18] {INQ000083585/11} Paper - Covid-19: access to food for non-shielded vulnerable people (NSV) presented at a meeting of the GPSMIG on 21.05.20

VI: LISTENING

6.1. VALUE: The DPO recognise that Every Story Matters ('ESM') has the potential to be of great benefit to the Inquiry's outcome and of lasting benefit to society. It would be of considerable value for Disabled people to be able to tell their stories and for the DPO to be involved in supporting that.

6.2. INCLUSION: As the DPOs have explained during the ESM consultation process, it is paramount that Disabled people are able to participate in the story telling on an equal basis. They note from the additional document sent by the Inquiry on 27 April relating to ESM 'How it will Work' that, throughout the summer, the Inquiry *"will offer information about how to share [experiences] in British Sign Language, video, Easy Read, braille and other language*s". The DPO understand this to be a commitment for two-way communication in these formats, i.e. that the Inquiry will use these methods of communication **and** members of the public can make submissions using these formats as well. They would be grateful for confirmation that this is the case.

6.3. ADJUSTMENTS: From the DPO perspective, enabling people to provide submissions through video recordings is necessary to ensure equal access to ESM for the d/Deaf community who use BSL and for the wider Disabled community who will otherwise be unable to tell their stories in writing, in person or via the phone-line. Moreover, specific outreach work, sending 'listeners' to meet with people who have complex disabilities in environments in which they are comfortable, is necessary to (for example), ensure that people with learning disabilities, cognitive issues or who cannot otherwise use digital methods or a phone line can participate. Given the enormous potential of the project, coupled with the considerable efforts that are being afforded to its construction, the DPO actively invite contact for them to be of any assistance in supporting its realisation.

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31 MAY 2023