



Save the Children



Children's
Rights Alliance
for England

Standing up for kids

JUST FOR KIDS



IN THE MATTER OF THE UK COVID-19 INQUIRY

BEFORE BARONESS HEATHER HALLETT

SUBMISSIONS FOR THE THIRD MODULE 2 PRELIMINARY HEARING ON 6th JUNE 2023 ON BEHALF OF JUST FOR KIDS LAW, SAVE THE CHILDREN FUND & THE CHILDREN'S RIGHTS ALLIANCE FOR ENGLAND

Introduction

1. The Children's Rights' Organisations ("CROs"), namely Just for Kids Law, Save the Children Fund ("SCUK") and the Children's Rights Alliance for England, make joint submissions to the Inquiry in response to Counsel to the Inquiry's Note of 17th May 2023 ("CTI's Note") and in advance of the third Module 2 preliminary hearing on 6th June 2023.

Disclosure and Timetable

2. At the outset of this Inquiry, the Chair set a challenging and ambitious timetable. We understand why she did so. This Inquiry is of immense public importance. It is vital that it progresses efficiently. We are grateful for the Inquiry's detailed May 2023

...

Update about the status of the Rule 9 requests and disclosure. We note that the bulk of the disclosure is yet to reach the Core Participants (“CPs”).

3. The CROs hope that the Inquiry will be able to keep to its proposed timetable. March 2024 will be the fourth anniversary of the first lockdown, and as such it would represent a strong commitment by the Inquiry if the Module 2 interim report were published by then, or as soon as practicable thereafter, so that lessons are promptly learned which inform future policy development and responses to future crises.
4. Consequently, it is of great concern to the CROs that there continue to be difficulties with the Inquiry obtaining the disclosure it requires, particularly the refusal of the Cabinet Office to comply with the Inquiry’s Redaction Protocol which requires all material to be provided to the Inquiry in clean form, without redaction. We share the concerns expressed in CTI’s Note that these difficulties should not disrupt the Inquiry’s processes and timetable. Whilst speed and efficiency are important, so too are transparency and processes that ensure that relevant documents reach the Inquiry team and the CPs. We trust that the Chair will be robust in ensuring that, despite the difficulties, all the material is disclosed to the Inquiry in unredacted form, and further to the CPs. We welcome the Chair’s ruling of 22nd May 2023, dismissing the Cabinet Office’s application under section 21(4) of the Inquiries Act (“IA”) 2005 to revoke the entirety of the Chair’s Notice to the Cabinet Office which was issued on 28th April 2023 under section 21(2)(b) of the IA 2005. We trust that if the Cabinet Office fails to comply with the Notice or otherwise seeks to obstruct the proper inquisitorial function of the Inquiry, the Chair will take all appropriate legal steps, given the breadth of the Inquiry’s Terms of Reference, to ensure compliance and enforce her Notice.

List of Issues

5. The CROs welcome the circulation of the proposed List of Issues which has been helpful to understand the direction of Module 2. We have already responded to the List in a letter to the Inquiry, and we understand that a ruling from the Chair is anticipated. In the circumstances, we do not propose to repeat in full the same points we have already made. However, there are several matters that we do wish to reiterate.

...

6. Firstly, whilst we note that the proposed List of Issues is intended to be indicative as opposed to exhaustive, it would be useful to have a definitive list of Non-Pharmaceutical Interventions (“NPIs”) being considered during Module 2 and a definitive list of the regulations that the Inquiry considers fall under the scope of Module 2 so that there is clarity and so that the preparatory work of the CPs can focus on the same issues that the Inquiry will be considering.
7. Secondly, given neither children nor school closures are specifically mentioned in the proposed List of Issues, it is unclear to the CROs whether the Inquiry will be investigating school closures during Module 2. The decision to close schools was a key NPI and should, the CROs submit, be considered during the Inquiry’s Module 2 investigation into core UK decision-making and political governance. Furthermore, it is clear from the disclosure so far, and from what we know about how the Covid pandemic developed, that the decision to close schools was not taken in isolation. It was part of a package of measures that was deployed by the government to slow the spread of the virus. It is submitted that it is not possible for the Inquiry properly to consider the NPIs without one of the key NPIs being part of that consideration.
8. From the point of view of children and others who were directly impacted, school closures certainly did not happen in isolation. It is impossible to evaluate the questions at paragraph 4 of the proposed List of Issues that the Inquiry seeks to answer by looking at the NPIs in isolation. For example, one of the proposed questions is whether the “right” NPIs were considered, and other questions probe the balancing of societal impacts with dangers to health. Societal impacts were created by a combination of NPIs. For example, those children who were forbidden from seeing their peers whilst the rules against gatherings were in place were impacted more severely if they were not allowed to go to school at the same time.
9. Whilst the CROs welcome the fact that the Inquiry will be investigating school closures in greater detail during a later Module dealing specifically with education and children, it is apparent from the most recent Inquiry Update published on 30th May 2023 that this later Module will not be opening until 2024 and is unlikely to hold any evidential hearings until 2025. To delay any consideration of school closures until 2025 would be

...

inordinate. We trust that school closures will be one of the NPIs considered during Module 2.

10. Thirdly, the CROs have attempted, in their response to the proposed List of Issues, not to request separate consideration of children under every single issue or sub-issue. We recognise that this would lead to an unwieldy and unmanageable List of Issues. However, we do submit that the impact on children of some NPIs was different to that on adults, that children have different needs, and that the same rules and regulations often impact children in different ways. There are occasions, therefore, where a separate issue or sub-issue to consider the impact on children is necessary to ensure that their rights and interests are properly considered by the Inquiry. We have set out where that is necessary in our response to the proposed List of Issues. A good example is the youth justice system and the proportionality of criminalising children who broke lockdown rules. How children were criminalised will need to be looked at distinctly, given the different aims of the youth justice system, compared to those of the adult justice system, and the distinct considerations that are relevant to the criminalisation of children.

Rule 9 Requests

11. We proposed that the Inquiry send Rule 9 requests to several individuals and organisations. We are pleased that some of our suggestions have led to further requests being sent. However, as we understand it, the Inquiry has not sent Rule 9 requests to Sir Gavin Williamson, Secretary of State for Education (July 2019 to September 2021) or Sir Kevan Collins, Education Recovery Commissioner (February to June 2021).
12. It will be difficult, if not impossible, to assess how the balancing act between the societal impacts of school closures on children and the dangers to health was considered at government level without hearing evidence from the Secretary of State for Education and the Education Recovery Commissioner.
13. Furthermore, we understand that a Rule 9 request has not been sent to Priti Patel, Secretary of State for the Home Department (July 2019 to September 2022). The enforcement of Coronavirus legislation and its proportionality in terms of civil liberties is one of the proposed List of Issues (see paragraph 6b). It will be necessary to have

...

input from the Home Secretary, if not from others at the Home Office as well, for this important issue to be properly investigated.

14. Therefore, the CROs urge the Chair to reconsider her apparent decision not to send Rule 9 requests to the three said individuals.
15. Additionally, we ask the Inquiry team to disclose a comprehensive list of those who have or will be sent Rule 9 requests for Module 2 so that the CPs can give thought to making submissions on potential further requests. If the Inquiry team is not going to issue Rule 9 requests to the three said individuals, or other individuals requested by other CPs, we ask the Inquiry Team to give reasons for their decisions.

Childhood Development Expert

16. At the first Module 2 preliminary hearing, the CROs submitted that an expert should be instructed on childhood development to assist the Inquiry during its investigation of the balance to be struck between the societal harms of NPIs and the health advantages they were designed to achieve. Societal harms are different for adults and children. The impact on children was not and should not be seen as purely lost academic attainment. Losing part of one's childhood is a different experience to, for example, missing a 40th birthday party. Childhood is a phase of development and growth, and the impact of the lack of socialisation or playing with one's peers will have different long-term, mental health consequences for children at different ages.
17. On the nature of childhood development including the importance of play and socialisation, an expert could assist the Inquiry both to determine what matters the government should have considered when deciding on NPIs and to make useful recommendations for future pandemics.

The Listening Exercise

18. The Listening Exercise is of particular importance to the CROs. From the outset, we welcomed the prospect that members of the public who wished to feed into this Inquiry would have an opportunity to do so, and that children's voices would be heard as part

...

of that process. Understanding first-hand the impact of the pandemic on children, as well as giving a voice to those who wish to be heard, is an important and empowering endeavour. Article 12 of the United Nations Convention on the Rights of the Child provides that every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This important principle recognises children as actors in their own lives. For all these reasons, the CROs wish to support the Inquiry in the Listening Exercise and ensure that children are properly considered.

19. However, we are concerned and disappointed that after months of consideration, **Every Story Matters** is about to be launched, and we still have no answers as to how children will be included or allowed to participate. We have repeatedly been promised that children will be listened to and prioritised, but we have seen no evidence of that so far. The CROs have been invited to meetings which we have attended. Despite offering our assistance, we are, to the best of our knowledge, no further forward. We have written to the Inquiry team to express our concerns and ask for updates, only to be told on 20th April 2023 that there was no further update regarding children, and that another meeting would be held *“as soon as we have an update on how children’s experiences of the pandemic will be understood by the Inquiry.”*

20. The Inquiry’s Update on 27th April 2023 states that:

“We will find a different way to ensure we can understand the experiences of children and young people during the pandemic and share this via the Inquiry’s newsletter when we have more information.”

21. Despite there being a mechanism for any adult to participate who chooses to do so, there is no such mechanism for children. If any child hears about the Listening Exercise and wishes to participate, where do they go and to whom do they speak? **Every Story Matters** is about to be launched, and the 14 million children in the UK will see the advertising and the branding. However, if they want to share their stories, they will be told that they cannot. The Inquiry’s website states that:

“You must be aged 18 or over to use this form. The Inquiry is aware of the importance of understanding the experience of young people during the pandemic. The Inquiry is currently designing an effective way of engaging with children and young people and will provide updates on our website and social media.”

22. There is no information for children as to what they should do, when they should check back on the website or any reassurance that their stories will, one day, be heard. In the circumstances, they will think that their stories do not matter.
23. The CROs welcome the indication from the Inquiry that the Listening Exercise, once it does include children, will be trauma-informed, and accept that there are several considerations to grapple with in terms of how to listen to children. Despite the importance of hearing from children, that should not be done at all costs. There is a risk of re-traumatisation, especially when speaking to those who have suffered the most. However, if done properly, the Listening Exercise should not only cause no re-traumatisation but should also be a positive and empowering experience for those involved. There will need to be careful preparation for the sessions with children, and follow-up support after the sessions.
24. We will be writing separately to the Inquiry team with participation principles that we consider may be helpful, and recommendations of experts in the field of participation with children who we suggest are approached to assist with the design of such an exercise. We further wish to emphasise that before engagement with children happens, there needs to be clarity on how their contributions will be used and acted upon. For example, what is the purpose, process and outcome of the exercise and the reports that will follow? A feedback loop for the children involved is essential. After the Inquiry’s report on the Listening Exercise is published, it would be good practice to produce a child-friendly version of the report and share it with those involved, explaining that this is the outcome of their involvement in the Listening Exercise.
25. Alongside the right of children to participate, there should be targeted engagement with children from a range of backgrounds, demographic groups and settings to ensure their voices are heard. This should include children in care homes, custodial settings,

...

disabled children in residential homes and children from a range of socio-economic and ethnic backgrounds.

26. We urge the Chair to prioritise hearing from children themselves and ensure that they are not left voiceless during the Listening Exercise.

**RAJIV MENON KC
JENNIFER TWITE**

**Garden Court Chambers
57-60 Lincoln's Inn Fields
London WC2A 3LJ**

31st May 2023