



## **Counsel to the Inquiry's Note for the Third Preliminary Hearing in Module 2 of the UK Covid-19 Inquiry on 6 June 2023**

### **Introduction**

1. The first and second preliminary hearings in Module 2 took place on 31 October 2022 and 1 March 2023 respectively. The purposes of this note are to provide the agenda for, and introduce the matters to be addressed at, the third Module 2 preliminary hearing on **Tuesday 6 June 2023** at Dorland House, 121-141 Westbourne Terrace, Paddington W2.
2. There remain 39 Core Participants in Module 2, and all, bar 3, are legally represented. Those who have been granted Core Participant status have been provided with updates, dated 4 April 2023 and 9 May 2023, since the last preliminary hearing. However, this further preliminary hearing is an opportunity to draw this information together and ensure that it is up to date, as well as allowing a public update on the Inquiry's work so far.
3. This note, and the third preliminary hearing in Module 2 will address the following issues:
  - a. Panellists
  - b. Update on Rule 9 requests
  - c. Disclosure to Core Participants
  - d. List of Issues and provisional list of witnesses
  - e. Expert witnesses
  - f. Every Story Matters, Commemoration and Impact films
4. Should any Core Participant wish to file brief written submissions on any of the issues set out above, they must be received by the Inquiry by **12 pm on Wednesday 31 May**.

### **Panellists**

5. On 27 April 2023, the Prime Minister Rt Hon Rishi Sunak MP made a written statement to Parliament in which he announced that he had decided that the Inquiry would be

most efficient and swift if the Chair, Baroness Hallett, were to sit without a panel.

6. In the announcement he stated that, in weighing up the relevant issues, he had been conscious of the recent criticism over the length of time that the public inquiry might take to reach its conclusions. He stated that it was in the public interest that the Inquiry be thorough, rigorous and comprehensive, but also that it delivers its report without excessive delay.
7. This decision was one for the Prime Minister alone to take. The issue of whether the Inquiry has panellists is not one for the Chair, who is of course wholly independent of the government.

### **Update on Rule 9 requests**

8. The Module 2 Solicitor team circulated a note to Core Participants on Tuesday 9 May. This provided an update on the status of the requests made under Rule 9 of the Inquiry Rules 2006 by the Module 2 team.
9. The Inquiry's Module 2 legal team has now issued more than 400 R9 requests for evidence (including those issued jointly by Modules 2, 2A, 2B and/or 2C, and including over 200 questionnaires). Requests have been made to a wide range of government departments, senior civil servants and Ministers, government advisers, scientists, NGOs, organisations and bodies representing at-risk or vulnerable groups, participants of SAGE and related sub-groups, members of Independent SAGE, medical and other relevant professional organisations.
10. The Inquiry is grateful to those who have engaged fully with the requests issued and provided statements which are frank and thorough. However, a considerable number of the draft statements submitted have either contained insufficient detail or did not address all the matters raised in the Inquiry's Rule 9 request. Accordingly, it has been necessary, as it was in Module 1, to ask many witnesses to expand upon the matters contained in the draft statements.
11. The work required to consider draft statements and send requests for further detail to be added not only impacts upon the Inquiry's workload but delays disclosure of that evidence to Core Participants. The Inquiry considers, however, that this early scrutiny is necessary and is confident that the vast majority of the final, signed statements and their exhibits will be disclosed to Core Participants by the end of July 2023.
12. As noted before, the number of Rule 9 requests, and the wide range of organisations, entities and individuals who have received such requests, although highlighting the scale of the Inquiry's task, provides reassurance that the Inquiry has cast its investigative net widely. In addition, the Inquiry has accepted in certain instances additional

suggestions from the Core Participants as to who should receive a Rule 9 request.

13. A significant proportion of the Rule 9 requests for documents and witness statements have been made to Government departments. In the case of many of the departments, requests have been made requiring considerable work with demanding timescales. It is right to record that all Government departments and their legal teams have worked hard to respond to these requests, and the Inquiry is grateful for their cooperation. That said, the Inquiry has concerns about aspects of the disclosure exercise being conducted by a (limited) number of the Government departments. Given the relatively short period of time remaining before the start of the substantive hearings, these difficulties have the potential to disrupt the Inquiry's process unless they are swiftly resolved and it is appropriate that Core Participants are sighted on them.

### **Redaction of irrelevant material**

14. As set out in the Module 2 Update Note of 9 May, on 28 April 2023, Baroness Hallett sent the Cabinet Office a Notice under section 21 of the Inquiries Act 2005 requiring the provision of a range of documents, consisting of WhatsApp messages, diaries and notebooks, that she considered to be potentially relevant, and which she required to receive in unredacted form.
15. This step was taken following a lengthy period of discussions and correspondence with the Cabinet Office regarding the application of redactions to content prior to disclosure to the Inquiry. The Inquiry's Redaction Protocol makes clear that all materials must be provided in clean form, without redaction. The Cabinet Office contends however that it is permitted under the statutory scheme to redact what it judges to be "*unambiguously irrelevant*" material from documents before they are provided to the Inquiry.
16. The Notice required the unredacted materials to be provided in two tranches; the first by 4pm on 15 May 2023 and the second by 4pm on 29 May 2023 (on account of the need for the second tranche of materials to be additionally reviewed for national security reasons).
17. The position maintained by the Cabinet Office is not limited to a particular category of materials. The Cabinet Office has made redactions on the basis of relevance, or otherwise indicated that it proposes to do so, across a wide range of materials, including WhatsApp communications, diary entries and contemporaneous entries from within notebooks which the Inquiry legal team and Chair consider to be potentially relevant. All date from within the period of Government decision-making that is the subject of scrutiny by the Inquiry.
18. On 15 May 2023, the Cabinet Office made an application pursuant to s21(4) of the Inquiries Act 2005, inviting the Chair to revoke the entirety of the Notice. The Chair is

considering that application, which will be the subject of determination by her in due course.

19. The Inquiry recognises that the Cabinet Office is permitted to follow the formal process of raising with the Chair its objections to the s.21 Notice, and it is proper for that course to be followed to conclusion. However, it is important that this issue is swiftly resolved and does not disrupt the Inquiry's processes.
20. The Inquiry must also of course ensure that the Core Participants are properly sighted on this issue. Once the Chair has ruled on the Cabinet Office's application, the Core Participants will be provided with the Notice, the application and the Chair's Ruling. Further information will also be provided at the preliminary hearing.

#### **Potentially relevant messages from WhatsApp**

21. The Inquiry has made requests for potentially relevant communications sent via informal systems such as WhatsApp from almost 30 Cabinet Office witnesses. The vast majority of these requests were made in December 2022 and January 2023. Whilst it is understood that a number of those witnesses do not currently hold such materials (for which explanations are being sought), there is a lack of certainty about what potentially relevant content *is* held and will be provided to the Inquiry.
22. The Cabinet Office has so far provided the Inquiry with WhatsApp materials from two named individuals, both with redactions applied to some of the content. The DHSC, by contrast, has provided much fuller disclosure, including Mr Matt Hancock MP's WhatsApp messages without any redactions for relevance applied. The Cabinet Office is asked to ensure that by the date of the preliminary hearing all overdue disclosure of potentially relevant WhatsApp materials (both resulting from 'group' messages and one-to-one threads with other key individuals known to the Cabinet Office) has been made, or that it otherwise provides a full update in its written submissions of what remains outstanding and when disclosure will be made.

#### **Potentially relevant messages from Google Spaces**

23. The Cabinet Office drew to the attention of the Inquiry in January 2023 the existence of 'Google Spaces' as a forum for key individuals to have communicated during the response to the Pandemic. The Inquiry has requested the disclosure of communications from potentially relevant groups but unfortunately no materials have been provided to date, nor any satisfactory information about the volume of the materials held. The Inquiry has been advised that any potentially relevant materials extracted from Google Spaces will be manually reviewed "for relevance" by the Cabinet Office before being provided to the Inquiry. The Inquiry invites written submissions from the Cabinet Office on the progress made with this disclosure request, including the volume of material identified

for disclosure to the Inquiry.

### **Materials relevant to Whitehall's engagement with the Devolved Administrations**

24. On 19 January 2023, the Inquiry Legal Team asked to be provided with agendas, briefings and minutes relevant to what were understood to be regular calls held with the First Ministers of Scotland and Wales and the First and deputy First Ministers of Northern Ireland. It was made clear that engagement with the Devolved Administrations is central to the scope of Module 2 and that records of key communications between the four nations must be provided. Repeated requests have been made for an update on the delivery of this material and deadlines for disclosure have passed without being met.
25. The Cabinet Office is asked to ensure that, by the date of the preliminary hearing, all overdue disclosure (from it, and from DLUHC, which it has been liaising with) is made, or that it otherwise responds in written submissions as to the reasons for the delay, the date for provision of this material and the likely volume.

### **Overdue corporate statements**

26. The Inquiry has agreed extensions for witness statements where considered necessary and appropriate, across all categories of Rule 9 requests issued. However, we wish to raise within this note particular concern about the delay in receiving corporate witness statements from DHSC and UKHSA.
27. The initial Rule 9 request to DHSC was issued on 20 September 2022. Whilst we have received and disclosed the first corporate statement from DHSC, and remain grateful for the assistance it is providing in respect of general disclosure, there are two further statements outstanding covering the period from August 2020 to February 2022 as well as a number of supplementary statements covering topics including legislation, equalities and data. Deadlines for disclosure have been extended, but these statements are now overdue.
28. A Rule 9 request to UKHSA was issued on 14 October 2022. Deadlines for the draft statement have passed and, despite further extensions, the statement remains outstanding. The Inquiry has recently agreed a further extension to 2 June 2023.
29. Both DHSC and UKHSA are Core Participants and are asked to provide draft statements by the date of the preliminary hearing, or to provide a response by way of submissions to explain the reasons for the delay and to make clear when the statements will be provided and the likely volume of any supporting exhibits.

### **Cabinet Collective Responsibility**

30. The Cabinet Office has very recently informed the Inquiry that it will seek to withhold from disclosure to CPs (although not from the Inquiry) a certain amount of material, disclosure of which is said by it to be likely to damage the public interest underpinning the principle of Cabinet Collective Responsibility.
31. The Cabinet Office has provided a selection of Cabinet and committee minutes that are understood to be potentially representative of a larger number of documents in relation to which the Government may wish to make representations for protection from onward disclosure or publication. It is not possible at this stage to say how many there are likely to be.
32. Accordingly, the Cabinet Office is likely to be applying for appropriate restriction orders under section 19 of the Inquiries Act 2005. More information will be provided at the preliminary hearing about the basis for, and ambit of, this claim.
33. Core Participants are reminded that the above information is to be kept confidential, and subject to the terms of the undertaking unless and until CTI refers to it openly in the course of the open preliminary hearing.

### **Disclosure to Core Participants**

34. In summary, the Inquiry has received:
  - a. 66 questionnaire responses from impact organisations;
  - b. 162 questionnaire responses from participants of SAGE and its related sub-groups and 14 responses from members of Independent SAGE;
  - c. 48 draft R9 statements; and
  - d. 14 finalised R9 statements (whether signed or unsigned).
35. The Inquiry has disclosed to Module 2 Core Participants:
  - a. 4 R9 statements and 273 questionnaire responses and supporting documents; and
  - b. 13,440 documents in total.
36. Within the materials disclosed to date are: all substantive questionnaire responses received from SAGE and Independent SAGE participants; almost all the questionnaire responses received from the at-risk or vulnerable groups contacted (with supporting documents/footnoted materials to follow), over 7,500 Department for Health and Social Care (“DHSC”) documents including WhatsApp communications and materials from the Office of the Chief Medical Officer, NHS England, Home Office, FCDO and Department

for Education. Narratives have been prepared by the Cabinet Office which set out a chronology of the meeting fora (including COBR, Cabinet and the Ministerial Implementation Groups) held during the response to the Pandemic. Those narratives have been disclosed alongside a large number of supporting materials, including minutes of meetings.

37. The Inquiry has disclosed four corporate statements; those on behalf of the Department for Education, Cabinet Office, NHS England and DHSC. The Inquiry will continue to make disclosure to Core Participants on a regular basis and in addition to general disclosure across a number of providers, hopes to disclose the following key statements by, or shortly after the preliminary hearing:
- a. Corporate witness statement and exhibits from the Department for Transport;
  - b. Corporate witness statement and exhibits from the Foreign, Commonwealth and Development Office;
  - c. Corporate witness statement and exhibits from the Crown Prosecution Service;
  - d. Corporate witness statements and exhibits from HM Treasury;
  - e. Corporate witness statement and exhibits from the Equality Hub (Cabinet Office);
  - f. Witness statements from Cabinet Office witnesses, likely to include James Bowler, David Halpern, Martin Reynolds, James Slack, Imran Shafi and Henry Cook; and
  - g. Witness statements on behalf of a number of the regional Mayors.
38. Almost all of the deadlines set for draft statements in the Inquiry's Rule 9 requests fall within the next month. As far as it is possible to do so, further information about the outstanding statements will be provided at the preliminary hearing. However, save for exceptional circumstances, the Inquiry expects to have received all draft witness statements in sufficient time to enable disclosure of the vast majority of signed statements to Core Participants by the end of July 2023.
39. Whilst over 13,000 documents have been disclosed across 19 tranches of material, the Inquiry has a significant volume of materials still to review, assess for relevance and work through before it can be released to Core Participants. The largest of these providers are DHSC, the Office for the Chief and Deputy Chief Medical Officers and GO-Science and it is possible that the Inquiry will disclose a further 20,000 documents from them alone. Large volumes of material are also being reviewed from the British Medical Association, UK Health Security Agency, Crown Prosecution Service and

Government departments including the Department for Business, Energy and Industrial Strategy (“BEIS”) and Foreign, Commonwealth and Development Office (“FCDO”).

40. Save for the materials which it knows to be outstanding, and anything which results from further requests for disclosure issued, the Inquiry expects that it has now received the vast majority of the disclosure relevant to Module 2. The legal team is working swiftly to review this material and we wish to put on record our thanks to those Material Providers who are assisting with this important process, and doing so at pace. There remains much to be done, and materials will continue to be made available to Core Participants as quickly as possible.

#### **List of Issues and provisional list of witnesses**

41. A list of the proposed issues was circulated to the Core Participants on 27 April 2023. Core Participants were asked to provide their comments on that list within two weeks. Comments from all those Core Participants who wished to contribute were received by 11 May 2023 and we are grateful for them. All are under consideration by the Inquiry team and the Chair will decide in due course the extent to which the provisional list requires amendment.
42. To assist with the timetabling, the Inquiry team proposes to write in due course to all potential witnesses to give them sufficient advance notice of the dates of the public hearing and to ask them to provide any dates to avoid. In many cases, this notification will be provided to the witness through their legal representative.
43. These possible witnesses are, by necessity, provisional only, given that we are awaiting further statements. Not all of those individuals who are given notice will be called, and some additional names may be written to later, particularly once observations on the provisional witness list have been received from Core Participants and considered.
44. The Inquiry team thereafter proposes to send out, likely in June, a provisional list of those witnesses who *may* be called to give oral evidence at the public hearing commencing on Tuesday 3 October 2023. Core Participants will be invited to make observations.

#### **Instruction of expert witnesses**

45. As set out in the previous Update Notes, Module 2 has issued instructions to the following experts:
  - a. Professor Ailsa Henderson from the University of Edinburgh has been instructed to report on the political structures for devolution within the UK and mechanisms for inter-governmental decision-making between the UK Government and the devolved administrations during the Covid-19 pandemic.
  - b. Professor Thomas Hale from the Blavatnik School of Government, University of Oxford, has been instructed to report on international data relating to the



Covid-19 pandemic, in particular in analysing the effectiveness of the decision-making of the UK and each devolved administration to the Covid-19 pandemic in comparison to other countries.

- c. Alex Thomas from the Institute for Government has been instructed to report on the decision-making structures of the UK Government in an emergency, in particular the Cabinet Office, Cabinet Committees and the Office of the Prime Minister.
  - d. Gavin Freeguard, former Programme Director and Head of Data and Transparency at the Institute for Government, has been instructed to report on the access to and use of data by the UK Government and devolved administrations during the Covid-19 pandemic.
46. The draft report from Professor Hale was circulated to the Core Participants, who provided a voluminous number of issues, comments and observations. Those which, in the opinion of the Inquiry team and the Chair, raise matters which require a response from Professor Hale have been forwarded to him with a request that he consider them. Although he has been given sight of all the many remarks from the Core Participants, he has not been asked to consider those which took the form of evidential or forensic points more properly to be raised when he gives evidence. He is currently in the process of considering the relevant comments and his final report is due by the end of June 2023.
47. A draft report from Professor Henderson was circulated to the Core Participants on 15 May 2023. Their responses are due by 4pm on Tuesday 30 May.
48. The draft reports from Alex Thomas and Gavin Freeguard are expected to be shared with Core Participants for their observations within the coming weeks.
49. In her [Ruling](#) of 9 March 2023, the Chair directed that the Inquiry should obtain evidence from an expert, or experts, on "the nature and degree of pre-pandemic structural racism" (paragraph 32). The Ruling also makes clear that expert evidence should be obtained regarding pre-existing inequalities on other grounds and intersectional issues. The Inquiry team has identified a number of experts, and instructions to them are being drawn up. Core Participants will be informed of the identity of those experts as soon as possible, but in any event in advance of the 3rd preliminary hearing.

### **The Listening Exercise ("Every Story Matters"), Commemoration and Impact films**

50. On 27 April, the Inquiry published a detailed document setting out in a single place the progress that had been made with the Listening Exercise "Every Story Matters", together with an open letter from Ben Connah, Secretary to the Inquiry.
51. To assist with the production of commemorative tapestry panels, sessions have taken place with BF4J Cymru, Scottish Covid Bereaved, NI BF4J, BF4J UK, Care Campaign for

the Vulnerable, and Long Covid organisations (Long Covid SOS, Long Covid Support, Long Covid Kids and Long Covid Nurses and Midwives). Several panels will be ready by the commencement of the Module 1 public hearing. Construction of the website to accompany the commemorative tapestry is also under way.

52. Core Participants will recall that the Chair directed that impact films be played at the commencement of each module. Filming sessions have been held with members of BF4J Cymru, Scottish Covid Bereaved, and Bereaved Families for Justice UK and NI as well as some other Core Participants. All interviewees were offered access to trained counsellors through the Inquiry's emotional support partner Hestia.
53. Because of the need to ensure content is reflective of the diversity of UK society, it is unlikely that all interviewees will feature in the first impact film, which is due to be screened on 13 June. Those that do not will feature in the impact films being shown at later modules.
54. The Inquiry is exploring a means by which the films can be shared securely with all Core Participants in advance of the hearing, so they can arrange viewings with their members, if they think it necessary.

**Counsel to the Inquiry**

**17 May 2023**

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