

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 4 preliminary hearing on 13 September 2023**

1. These submissions are provided on behalf of Covid 19 Bereaved Families for Justice UK (CBFFJ UK) and NI Covid 19 Bereaved Families for Justice (NI CBFFJ) in advance of the Inquiry's Module 4 preliminary hearing on 13 September 2023.
2. As the Chair is aware, the goal of CBFFJ UK and NI CBFFJ has always been, and remains, to establish the truth about how their loved ones died, to participate effectively in that pursuit of the truth, and, in so doing, to ensure accountability and to prevent future deaths. CBFFJ UK and NI CBFFJ consider that the Chair's Inquiry can and should achieve those same aims. As with the Inquiry's preliminary hearings in Modules 1, 2 and 3, CBFFJ UK and NI CBFFJ set out below their initial submissions as to how that vital aim – to conduct a fearless and effective inquiry that establishes the truth and involves the bereaved in a meaningful way – can be achieved.
3. As requested by the Inquiry team, we have confirmed that the CBFFJ UK and NI CBFFJ representatives intend to make oral submissions at the preliminary hearing.

Dialogue and communication with the Inquiry Team

4. CBFFJ UK and NI CBFFJ have provided detailed written and oral submissions on this topic in Modules 1, 2 and 3. We do not repeat those submissions in full, but we continue to urge the Inquiry to adopt an open, collaborative and two-way approach to communication with CPs, as is common in other such processes. CBFFJ UK and NI CBFFJ are committed to engaging collaboratively with the Inquiry to ensure the effective participation of the Core Participant groups and in order to best assist the Inquiry to achieve its aims.
5. In this regard we note the confirmation from CTI that the hearings in Module 4 will take place in summer 2024 and before the public hearings in Module 3. This is a matter of grave concern for the bereaved families, who had expected that the impact on healthcare systems would be examined after core political and administrative decision-making. We invite the Inquiry to engage with Core Participants in respect of the sequencing of future modules and in particular to consider whether Module 4 should properly be prioritised ahead of M3 and also to consider bringing forward the public hearings on Module 6. The urgent need to examine the impact of the pandemic on the health and care sectors and to identify lessons for the future was highlighted by the evidence heard on this topic in Module 1 and, we anticipate, will be reinforced in the evidence heard in Module 2. The families are justifiably concerned at the urgent need for reform in the health and care sectors. On the current timetable for M6 a full five years will have passed between the discharge of untested hospital patients into care homes in 2020 and the Inquiry's scrutiny of the care sector. The current timetable raises the worrying prospect of another two winters passing, with the ongoing risks of pandemics afflicting the clinically vulnerable, before the Inquiry is in a position to identify lessons learned and changes that are urgently needed.

Scope of Module 4

6. CBFFJ UK and NI CBFFJ agree with the Inquiry's broad approach to scope and with the indication that scope will be kept under review as relevant evidence is gathered. We look forward to the opportunity to work collaboratively with the Inquiry to assist with this process.
7. We note that paragraph 1 of the draft outline of scope identifies that the Module will

examine “*What lessons can we learn from innovative practices that were successfully introduced during the pandemic for future pandemic preparedness.*” We respectfully suggest that when considering lessons that can be learned for future pandemics, the Inquiry should not be limited to those practices that it considers were innovative or were successfully introduced. Whilst acknowledging that the UK was to the fore in approving and rolling out vaccines, the Inquiry should also consider whether there was any room for expediting the process still further, or whether any “innovative practices” were not successfully introduced or permitted excessive risk or delay despite ultimately being successful.

8. In addition to the areas identified by CTI, CBFFJ UK and NI CBFFJ submit that Module 4 should expressly consider the significance of international collaboration in the development and rollout of vaccines and therapeutics and the UK’s role in addressing global vaccine inequity. International cooperation on this issue is a moral imperative. It is also well-known that failure to achieve equitable access to vaccines globally carries with it an increased risk to the UK in the shape of future variants. International comparisons are also necessary in order to ensure that robust lessons are learned for the future.
9. We welcome the express inclusion of unequal vaccine uptake within the Provisional Outline of Scope, and submit at the outset that full examination of this topic will require expert evidence on structural and institutional racism and other forms of discrimination. This evidence will no doubt build on the expert reports which the Inquiry has obtained for Module 2 but further evidence will be necessary to address issues specific to Module 4, including vaccine rollout.
10. Given that the scope of this module is UK wide, we reiterate previously voiced concerns that the Inquiry should guard carefully against an England-centric examination of the issues within scope. Plainly, given the provisional scope of Modules 2A, 2B and 2C and the limited time that has been allocated to these modules (circa. 12 days in M2C) there will be limited or no capacity to examine the issue of vaccinations and use of therapeutics from the perspective of the Devolved Administrations within the devolved modules. Accordingly, the Inquiry is asked to allow for the meaningful consideration of the development and roll-out of the vaccination programme and use of therapeutics in Scotland, Wales and Northern Ireland, including hearing from witnesses with relevant evidence to give from a Scottish,

Welsh and Northern Irish perspective. Although it may be implicit, we would welcome the draft outline of scope confirming explicitly that it will examine differences across these jurisdictions, and identify any impact those differences may have had in practice, including conducting comparisons between jurisdictions as well as with appropriate international examples.

11. We would also suggest that this module is not merely limited to considering the effectiveness and impact of the vaccines and therapeutics in the pandemic, but also the extent to which the impact these had informed the use of non-pharmaceutical interventions in practice, including when comparing different jurisdictions in the UK. This is a matter of particular concern for a number of NI families, as they understand that there was a difference between the number of doses of a vaccine which were required to be considered “*fully vaccinated*” by the Department of Health in NI as compared to England and Wales. This had corresponding consequences for the rules on contact with family members in care homes in and around December 2021 for those who would have been considered “fully vaccinated” in England and Wales but who were not deemed “fully vaccinated” in Northern Ireland. For a number of members of NI CBFFJ this would have been their last Christmas with their loved one, so the issue takes on particular significance. We appreciate that issues of this nature may be addressed in separate Modules, and could, for example, be considered in the Module on Care Homes. We nevertheless consider it appropriate to raise at this stage to ensure it does not slip through any gaps between Modules.

Evidence gathering and disclosure to Core Participants

12. CBFFJ UK and NI CBFFJ welcome the indication that the Rule 9 process has begun and that there will be a further update at the preliminary hearing. However, as we have submitted in previous modules, without knowing what information has been sought by the Inquiry, it is very difficult for CPs to assist the Inquiry by raising other topics or avenues of investigation, or identifying particular material which may exist. In light of this CBFFJ UK and NI CBFFJ have invited the Inquiry to disclose Rule 9 requests and to direct that position statements should be made by state and organisational Core Participants and material providers.
13. We recognise that the Chair has ruled against these directions in previous modules but

remain of the view that these steps would assist the Inquiry in focusing its investigation at an early stage and in identifying areas for further examination with regard to lessons learned and preparedness for the next pandemic. In view of the difficulties with gathering evidence in M1 and M2 and the apparent late production of material to the Inquiry by various providers, and the consequent very late disclosure of relevant material to CPs, we invite the Inquiry to reconsider the use of Position Statements in M4 (and other modules). Position statements are an effective way of placing the onus of signalling what is relevant - and what may not be - onto providers, expediting the process. Evidence gathering through the Rule 9 process alone tends to lead to delay and defensive statements, necessitating much more work from the Inquiry itself in identifying issues and materials which may not be apparent to anyone other than those who were directly involved - the provider. A position statement requires the provider to proactively assist the Inquiry, the R9 process generally calls for them to address particular questions and issues, rather than identify where the Inquiry should be looking.¹

The Listening Exercise – Every Story Matters

14. CBFFJ UK and NI CBFFJ have previously provided detailed submissions on the Listening Exercise, reflecting the considerable importance of this issue to the bereaved families that make up our client groups.
15. We note the update at paragraphs 53-60 of CTI's note for the preliminary hearing and the invitation for submissions on the KLOEs for targeted research.
16. At this stage and in order to inform a substantive response CBFFJ UK and NI CBFFJ seek further clarification of the updated position in respect of Every Story Matters and in particular how targeted research is to be undertaken. Although we understood that ESM was outside of the legal process of the Inquiry (as evidenced by the funding position), we note that the Inquiry Legal Team are engaged in developing Key Lines of Enquiry and we would seek further information about that development process, together with information as to the identity and expertise of the Inquiry's research experts and how it is anticipated

¹ See *'When Things Go Wrong: The response of the justice system' A Report by JUSTICE*, p2 <https://justice.org.uk/wp-content/uploads/flipbook/34/book.html>

that they will go about their task. In particular, we seek the identity of the organisation undertaking the ESM evidence-gathering, the expertise and experience required of the researchers, the same regarding those analysing the evidence gathered, and those producing the reports. We also seek to understand the way in which the process is to be assured (distinct from the ethics panel), tested, and how the reports will be considered.

The Inquiry's approach to evidence of circumstances of individual death and pen portrait material

17. It remains the position of CBFFJ UK and NI CBFFJ that the Inquiry should hear commemorative/pen portrait evidence from a range of bereaved family members in each Module. Such evidence is of considerable importance to the bereaved, it will assist the Inquiry², the ToR do not prohibit or discourage such evidence being heard³ (not least because commemorative evidence does not involve the detailed consideration of individual cases of death: para (b) of the ToR), such evidence can and should be heard in a manner that is proportionate, sufficient, voluntary and inclusive, and it is inappropriate to deal with such commemorative evidence solely through a listening exercise that is separate from the Inquiry (with the evidence not given direct to the Inquiry) and outsourced to others.
18. We welcome the recognition at paragraph 66 of the CTI note that evidence regarding individual deaths and circumstances may well be relevant where it relates to possible systemic failings. That is the approach we have urged the Inquiry to take in M1 and M2. CBFFJ UK and NI CBFFJ submit that a range of such evidence should be heard and we will work to assist the Inquiry in identifying a proportionate number of witnesses who are able to reflect the diverse experiences of our client groups.

² Our submission of 17 October 2022 stated as follows on these issues (§5):

"The importance of such commemorations being heard within the Inquiry itself has already been aired, but in our submission, it is a part of the process which is not only vital to the engagement of the bereaved, but also for the Inquiry itself. The hearing of commemorative evidence will provide the bereaved, many of whom were deprived of a proper opportunity to mark the death of their loved ones, with public recognition of their personal loss, whether they are among those who give oral evidence or not. It will also help to convey the extent of the loss to society as a whole and indicate to relevant State, corporate and other organisational CPs what is at stake in ensuring the most robust accountability and lesson-learning. The narrative account of the pandemic which the Inquiry has set out to provide will also be incomplete without commemorative evidence."

³ A matter raised by the Chair in her Module 1 ruling: §35.

5 September 2023

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