



RULING FOLLOWING THE FIRST MODULE 4 PRELIMINARY HEARING ON 13 SEPTEMBER 2023

Background

1. On 13 September 2023 I held a Preliminary Hearing in relation to Module 4 of this Inquiry.
2. Prior to the hearing, 13 of the 32 designated Core Participants filed written submissions (one was a joint note) and oral submissions were made during the hearing on behalf of 10 of the Core Participants. I am very grateful to all those who addressed me, whether in writing or orally, for the obvious care they took in making their submissions. I have considered the matters raised with equal care. I direct that the written submissions be published on the Inquiry's website.
3. In this ruling I set out my decisions on those issues that I consider require determination.

Scope

4. Dealing first with the issue of scope, I am grateful for the helpful submissions relating to the general scope of Module 4 and for the various suggestions on the Provisional Outline of Scope. These will all be subject to further consideration by me and the Inquiry team. However, I can say that the majority of the evidential areas that have been raised are already reflected in the Rule 9 requests that have been and are being sent out and other aspects of the work in which the Module 4 Inquiry team is engaged.
5. There are however some particular matters that I wish to address:
 - a. Covid 19 Bereaved Families for Justice UK (CBFFJ UK) and NI Covid 19 Bereaved Families for Justice (NI CBFFJ) requested that the Provisional Outline of Scope for Module 4 be amended to state expressly that Module 4 will examine differences across England, Wales, Scotland and Northern Ireland and identify any impact those differences may have had in practice. I recognise the importance of exploring the differences between the four nations and it is my intention to do so in Module 4. In their written submissions CBFFJ UK and NI CBFFJ note that it is implicit that Module 4 will be examining such differences. I

agree and therefore do not consider that an amendment to the Provisional Outline of Scope is necessary.

- b. A number of Core Participants provided submissions on the scope of Module 4 which related to the use of therapeutics. As Counsel to the Inquiry observed during the Module 4 preliminary hearing, there is a close interplay between Modules 3 and 4 when it comes to therapeutics. Module 3 will be examining the impact of the pandemic on healthcare systems, including healthcare provision and treatment for patients with Covid-19. Issues relating to the use of therapeutics in practice are therefore going to be examined as part of Module 3. Module 4, on the other hand, will focus on the preceding phases: the steps taken to enable the use of therapeutics, including the development and trials of new therapeutics and repurposed medications, as well as decision-making on eligibility at a national level. I have decided that the Provisional Outline of Scope for Module 4 should be amended to make this division clearer. Paragraph 2 of the Provisional Outline of Scope will be amended so that it reads, “The development, trials and steps taken to enable the use of new therapeutics and repurposed medications during the pandemic.”
- c. CBFFJ UK and NI CBFFJ suggested that Module 4 should expressly consider the UK’s role in addressing global vaccine inequity. I am mindful that this is potentially a vast topic which it would not be practicable to examine in detail as part of Module 4. I am also mindful of the Inquiry’s Terms of Reference, which state that the Inquiry’s aims are, among other things, to “Examine the COVID-19 response and the impact of the pandemic in England, Wales, Scotland and Northern Ireland” (as opposed to any other countries). The Terms of Reference also refer to having regard to international comparisons. However, this reference to the international picture is qualified: such regard must be “reasonable” and to “relevant” comparisons only. I will keep this matter under review, but am minded at this stage to ensure that the focus of Module 4’s investigation is on the four nations of the UK.
- d. A number of Core Participants have asked that I examine the issue of Vaccine as a Condition of Deployment (VCOD) within Module 4. I agree that this important topic needs to be explored, chiefly in two respects: 1) whether VCOD was, or would have been, effective at limiting transmission and what was known by policy makers about such effectiveness and when; and 2) the impact the policy may have had in exacerbating vaccine hesitancy among particular groups. The Provisional Outline of Scope for Module 4 will be amended to reflect this with the following addition at the end of paragraph 3: “Vaccine as a Condition of Deployment, in particular its effectiveness in limiting transmission and impact on vaccine hesitancy.”
- e. In its submissions, Clinically Vulnerable Families (CVF) expressed a concern that there would be an insufficient focus on therapeutics as part of the Inquiry’s

work and pointed to the absence of a reference to therapeutics in the Key Lines Of Enquiry (KLOE) for Every Story Matters. I am committed to ensuring that the important topic of therapeutics is rigorously and comprehensively examined by the Inquiry and this will be reflected in all aspects of the Inquiry's investigation.

Listening exercise - Every Story Matters

6. I received a number of useful submissions, both orally and in writing, concerning the KLOE which will guide the Inquiry's work in gathering and analysing experiences shared with Every Story Matters, in particular through targeted qualitative research. The submissions will all be considered by me and the Inquiry team. More information about any changes to the KLOE in light of these submissions will be provided in Solicitor to the Inquiry's Update Note.

Structural discrimination and racism within Module 4

7. A number of Core Participants submitted that Module 4 should look at structural discrimination and racism, with CBFFJ UK, NI CBFFJ and the Federation of Ethnic Minority Healthcare Organisations (FEMHO) submitting that the Inquiry should instruct an expert or experts to examine this within the context of Module 4.
8. The extent to which the Inquiry is examining structural racism and discrimination is a matter that has been raised with me in the preliminary hearings held in Modules 1, 2 and 3 and is a matter which affects the Inquiry as a whole. As I have previously stated and wish to reiterate, this Inquiry will consider any disparities evident in the impact of the pandemic on different categories of people, including, but not limited to, those relating to protected characteristics under the Equality Act 2010 and equality categories under the Northern Ireland Act 1998. These are the precise words contained within the Inquiry's Terms of Reference and I do not resile from them. In that regard, Module 1 (resilience and preparedness) instructed Professor Clare Bambra and Professor Sir Michael Marmot to prepare a report on Health Inequalities. I also decided that Module 2 (core UK decision making and political governance) should instruct an expert to address issues of structural discrimination (see Module 2 ruling). The experts' reports can be disclosed to Core Participants and used in evidence in Module 4, if I consider it necessary and appropriate.
9. In relation to Module 4, the issue of inequalities is already embedded in the preparatory work being undertaken by the Inquiry Legal Team and, in particular, is a feature of the Rule 9 requests already made and those that will be made. Given the instruction of these experts; the fact that Module 4 is examining inequalities throughout its work; and has asked, and will continue to ask, recipients of Rule 9 requests about this topic, it seems premature for me to make any final decision on whether to instruct an additional expert on this topic within Module 4. I will however

keep this matter under careful review and shall revisit this issue as the Module 4 evidence gathering process progresses.

Publication of Rule 9 requests and position statements

10. I have been asked to reconsider my decisions made in earlier Modules, not to disclose to Core Participants Rule 9 requests and not to require state and organisational Core Participants and material providers to submit position statements.
11. As previously stated in my Ruling following the Module 1 preliminary hearing on 4 October 2022, disclosure to the Core Participants of the Rule 9 requests themselves (as opposed to the relevant documents and material generated by them) is neither required by the Rules nor generally established by past practice. However, Core Participants will be kept properly informed about the progress of Rule 9 requests via the monthly update notes provided by the Module 4 lead solicitor. This update will, in general terms, include details of what requests have been made, whether documents have been received, when further documents are expected and when further Rule 9 requests have been made.
12. In relation to position statements: as previously stated in my ruling following the Module 1 preliminary hearing on 4 October 2022, I am not persuaded that requiring such statements would promote the fairness and efficiency of this Inquiry. The Inquiry has requested Rule 9 recipients to provide a corporate statement setting out a narrative of relevant events and of the lessons learned and these serve a similar purpose to position statements. Module 4 has, and will continue to, adopt the same approach in its Rule 9 requests and I therefore consider position statements to be unnecessary.

Publication of correspondence

13. CBFFJ UK made oral submissions requesting that I publish all correspondence with Core Participants. The Inquiry team takes considerable steps to ensure that the Inquiry process is as open as possible. Openness is achieved by, among other things, holding preliminary hearings in public and publishing, on the Inquiry's website, the transcripts of such hearings, the written submissions received by Core Participants and my rulings and directions on key areas. Careful consideration is given to what information about the Inquiry's work can be made public. The regular Update Notes from the Solicitor to the Inquiry's team to Core Participants make it clear which information is for wider publication and which is not. In that context, I do not consider it necessary to adopt a blanket policy of publishing all correspondence with Core Participants; however, the Inquiry will continue to ensure that there is as much openness as possible about its processes and decision-making.

'Pen portrait' evidence of the bereaved and 'impact' evidence

14. A number of Core Participants submitted that the Inquiry should hear evidence from those impacted by the pandemic, including bereaved family members and other individuals who could provide evidence relevant to the issues in Module 4. I also received written submissions by CBFFJ UK and NI CBFFJ stating that it remained their position that the Inquiry should hear pen portrait evidence in each Module.
15. I have already ruled that I am not persuaded that pen portrait evidence should be admitted in Modules as a general rule and I make the same decision in respect of Module 4 for the same reasons.
16. As I have also already ruled, evidence of the impact of the pandemic or the government's response to it may be admitted where relevant to possible systemic failure. This may include evidence from bereaved family members regarding the circumstances of individual deaths and may include evidence from other impacted individuals. I will keep under review whether such evidence is appropriate in Module 4 and, if it is, the form in which it is best to receive it.

The Right Honourable Baroness Hallett

Chair of the Covid-19 UK Inquiry

21 September 2023