



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

MODULE 2A
THIRD PRELIMINARY HEARING

SUBMISSIONS FOR THE SCOTTISH COVID BEREAVED

We are grateful to Counsel to the Inquiry (CTI) for the detailed note setting out the matters which are to be addressed at the Third Preliminary Hearing. Module 2A, which will look at and make recommendations on the Scottish Government's core political and administrative decision-making in response to the Covid-19 pandemic between early January 2020 and April 2022, is of the utmost importance to the Scottish Covid Bereaved. The Scottish Covid Bereaved are pleased that the substantive oral hearings will take place in Scotland and look forward to the commencement of the substantive hearings at the Edinburgh International Conference Centre.

RULE 9 REQUESTS/GATHERING OF DOCUMENTARY EVIDENCE FROM THE
SCOTTISH GOVERNMENT

1. We note that Module 2A has issued more than 140 Rule 9 requests for evidence, as well as 103 detailed Rule 9 requests to individuals. We are disappointed that the Inquiry has received witness statements that do not address all the matters raised in the Rule 9 request and that there have been delays in meeting the Rule 9 requests for documents and witness statement. As CTI has set out in their note, these difficulties have the potential to disrupt the Inquiry's process unless they are swiftly resolved. Many of the

parties involved in the delays have of course significant resources and have had more than due notice that these issues would require addressed We are now less than three months away from the start of Module 2A. It is of the utmost importance that the Inquiry's request are dealt with timeously to allow the Inquiry to ingather the material and disclose it to the Core Participants well in advance of the hearings in January.

2. In the event that the matters requested by the Inquiry are not properly dealt with by the material providers and the witnesses, we welcome CTI's proposal to explore the reasons why there are unanswered matters at the hearings. We have of course been here before and the Inquiry had to resolve to issue a warning of potential sanctions in the event that various documents retained by former ministers and Cabinet Office were not released.
3. We are aware from the materials disclosed, and evidence thus far led, in Module 2 of the critical importance of contemporaneous notes and messages from civil servants, special advisors and politicians in establishing how core political and administrative decisions were made and the reasons why those decisions were made. The release of WhatsApp, social media and diaries has been critical in building a picture of the state of preparation or rather lack of for the pandemic, the impact of decisions, and the attitudes and conflicts that existed in liaison with the Devolved Administrations. We are astonished by the terms of the table provided by the Scottish Government on its position, and that of all relevant Scottish Government witnesses, as regards their use of WhatsApp and other electronic messaging services, and the use and retention, or otherwise of notebooks and diaries.
4. The Scottish Covid Bereaved find it difficult to accept that the most senior politicians in Scotland, making crucial decisions affecting the lives of everyone in the country, were able to attend numerous meetings, have sight of scientific and medical papers, and take decisions without apparently taking any notes to assist them in their decision making process. It is difficult to understand how any politician can provide an accurate account, several years removed, of being in rooms, who was present, the relationships involved, and how decisions were arrived at, without having any contemporaneous notes to assist them. We would as if the Inquiry would inquire of the civil servants who supported the Ministers whether they have records of any WhatsApp's or WhatsApp

groups, or any electronic recording of communications with ministers. We would also ask if the Inquiry can ascertain if there was any official or unofficial policy of deleting WhatsApp. We would be grateful if the Inquiry could confirm whether it has attempted to get all relevant notes including diaries, prepared by Ms Sturgeon and all the relevant ministers who were working during the pandemic.

5. We note that on the 4th of June 2023 on BBC Scotland's Sunday Politics programme, former health minister Jeane Freeman was asked about the frontpage Sunday Mail headline that raised the fact that Aamer Anwar & Co., had asked for all WhatsApp messages and other materials to be released. Ms Freeman stated:- "I'm sorry to say it but the Sunday Mail story is a non-story. Nobody's asked for these WhatsApp's yet for the Scottish Inquiry, so therefore nobody's refused. So the idea of demanding that you get something that nobody's yet asked for and nobody's yet refused to give is not a story as far as I'm concerned."

From the above exchange we concluded that WhatsApp messages remained in existence (at least for Ms Freeman). At the preliminary hearing in London on the 1st March we stated that anything less than full disclosure would be considered as an attack on the integrity of both the UK and the Scottish Public Inquiries by the Scottish Covid Bereaved. We said that no individual, no matter how powerful, can be allowed to interfere with the pursuit of truth, justice, and accountability in this inquiry. Those who lost their lives to COVID-19 deserve nothing less.

6. We note that the ICO office has already warned Government officials that deleting messages that could relate to investigations into alleged rule-breaking parties at 10 Downing Street and other departments would be a criminal offence. The Scottish Covid Bereaved believe it is an important principle of government transparency and accountability that official records are kept of key actions and decisions, relevant information that exists in the private correspondence channels of public authorities should be available and included in responses to information requests received. The Freedom of Information Act 2000 (FOIA) requires a Code of Practice providing a framework for public authorities to manage information and records and to comply with their obligations under FOIA and other relevant legislation, such as the Public Records

Act 1958. The Code makes clear that public bodies should keep information if it needs it for reference or where there may be a Public Inquiry.

7. We are extremely disappointed by the apparent failure by politicians and civil servants to retain messages and the seemingly widespread use of the 'auto delete' function. From CTI's note, it appears that the majority of the relevant messages have not been retained by individuals. Module 2A will cover decision making between January 2020 and April 2022. On 24 August 2021, the Scottish Government announced plans for the Scottish Covid Inquiry. It ought to have been obvious to the politicians and civil servants from that date, if not earlier, that their contemporaneous messages may be of relevance to a Public Inquiry. It is requested that the Inquiry seek to establish with these witnesses what, if any, steps they took after this date to stop the use of the 'auto delete' function on their messaging services and what, if any, steps they took to ensure that where there was a change of mobile telephone all relevant messages were retained. While there is only a short time remaining before the commencement of the substantive hearings, we would be grateful if the Inquiry take all possible steps to retrieve these crucial messages.

LEGAL PROFESSIONAL PRIVILEGE- WAIVER REQUEST

8. We note the terms of CTI's note and that the Inquiry wrote to the Scottish Government explaining that the Inquiry was constrained from fully carrying out its function as a result of not having access to material which had been redacted from documents by reason of LPP or pursuant to the Law Officers' Convention.

As CTI has set out in their note, and to the Scottish Government, that in order for the Inquiry to understand, to the fullest extent possible, all of the considerations which were taken into account by Ministers and officials, it needs to see all advice provided to them of any description, including any legal advice they were given. Were the legal advice to be redacted, the Inquiry can only see part of the story and may miss important material that might help explain the decisions taken.

9. We understand that no formal answer has been given by the Scottish Government to this request. The Scottish Covid Bereaved support the Inquiry's attempt to obtain the

fullest material possible to allow it to carry out its functions. We are aware from other Modules that the Inquiry can and will redact sensitive and irrelevant material before disclosing it to Core Participants. It is vital that the Inquiry obtain this material from the Scottish Government. No Government or politician, whether based in Westminster or Holyrood, should seek to hide behind LPP to stop the public finding out what happened in the corridors of power during the pandemic.

10. Regardless of the Scottish Government's position, it is imperative that they intimate that position to the Inquiry as soon as possible. We submit any further delay is simply inexcusable. The substantive hearings are less than three months away. The Inquiry may wish to consider what, if any, steps including legal sanctions it will take should the Scottish Government refuse to release the documents. In order to avoid any unnecessary delay, the Scottish Government ought to communicate its decision as soon as possible.

LIST OF ISSUES AND PROVISIONAL LIST OF WITNESSES

11. We are grateful to CTI for providing a revised list of issues for the Module and we note its terms. We note that a provisional list of witnesses is expected to be provided to Core Participants in November. We look forward to receiving that provisional list as soon as possible and we will seek to assist the Inquiry with comments thereon.

EXPERT WITNESSES

12. The Scottish Covid Bereaved are, of course, aware that a number of expert witnesses were instructed by the Inquiry in relation to Module 2A. No issue is taken with the expertise of these witnesses. We note, however, that a number of these reports are based on data from, and experiences from, England. We would be grateful if the Inquiry could confirm that should these witnesses give evidence at Module 2A, they will specifically focus on the situation as it exists in Scotland.

SCOTTISH COVID INQUIRY

13. We note the cooperation that exists between the two Inquiries and the efforts to avoid duplication of work. CTI notes that the Inquiries will endeavour to avoid hearing

clashes but that it may not be possible to avoid all clashes. The Scottish Covid Bereaved appreciate that they, and those representing other bereaved families throughout the UK, have been placed at the front and centre of this Inquiry.

Scottish Covid Bereaved and their representatives require to hear the evidence at both Inquiries and, where it is necessary for hearings to take place at the same times, members of Scottish Covid Bereaved and their representatives will require to attempt to play catch up using recordings of hearings. That cannot be said to be an approach which places families front and centre. We would be grateful if every possible effort is made to avoid any hearing clashes.

CONCLUSION

14. The evidence led thus far at the UK Inquiry raises serious questions as to the UK and Scottish Government's preparedness for a pandemic; the extent to which the machinery of the UK Government during the critical early stages of the pandemic allowed for the involvement of the Scottish Government; whether the available data reflected the four nations of the UK or just England; whether attendance at crucial meetings by Scottish Government ministers, civil servants, and scientists was simply a charade; and whether COBR meetings were actually a 'Potempkin village', where the devolved administrations were operating under the false belief that they were playing a key role in the process, but real key decisions were actually being taken elsewhere. This makes it even more important to understand what decisions were being taken in Scotland, by who, and on the basis of what science and data. It is imperative that, as the Inquiry turns its gaze northwards, the Scottish Government, its ministers and its civil servants provide all possible assistance to the Inquiry. Only with such assistance will the Inquiry be able to provide the answers that the Scottish Covid Bereaved, and the people of Scotland, need and deserve.

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