

**UK Covid-19 Inquiry Before Baroness Heather Hallett**

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**Submission on behalf of The Scottish Government**

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**Module 2A Third Preliminary Hearing: 26 October 2023**

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The Scottish Ministers are grateful for the opportunity to make this submission. There are four points that we would like to mention. Several, if not all, are well known to the Inquiry, yet may not be widely appreciated by those who are not involved in the day-to-day preparation for the Inquiry.

**Update on Rule 9 requests – statements and exhibits**

1. Since December 2022, the Scottish Government has been working very hard to assist the Inquiry by providing a very large volume of evidence to the Inquiry team, including corporate and individual statements and extensive documentation. The Scottish Government appreciates the Inquiry's acknowledgement of the considerable work undertaken within demanding timescales. For context, the Scottish Government has, to date, provided 25 detailed corporate statements and has been involved in the request for 89 individual statements in support of Module 2A. In addition, the Scottish Government has provided thousands of documents to the Inquiry as general disclosure and exhibits to statements.
2. The Scottish Government would observe, as has been fairly recognised by Counsel to the Inquiry ("CTI"), that this has been a significant endeavour. In many instances the Rule 9 requests comprise well over 500 questions, extending over 70 pages or more. The topics are various and wide ranging. The statements require to take the form of a 'free-flowing' narrative, whilst at the same time taking care to ensure that every part of every question that is posed has been answered. It is of course fully accepted that this exercise is important, in the interests of providing the Inquiry with the information it seeks. Nevertheless, it is challenging for witnesses, not only in terms of the number of detailed questions posed but also in terms of the timescales, having regard, in particular, to where witnesses are working full time and the timings of Scottish holidays and Parliamentary recesses.

3. Occasionally a Rule 9 request seeks information about matters which are not within the knowledge or remit of the witness, which prevents them from answering every question in the Rule 9. If there are any issues on which the Inquiry requires further detail or clarification, the Scottish Government is, as always, ready and prepared to assist.

### **WhatsApp Communications (“WhatsApps”)**

4. The Scottish Government respectfully disagrees that its position on WhatsApp and equivalent messaging applications is incomplete. The Scottish Government’s approach to records management, minuting and use of messaging applications is set out in detail in the Module 2A Corporate Statements provided by DG Corporate, dated 19 June 2023; and a further draft statement dated 11 October 2023. Relevant information from any such exchanges would be recorded (for example, in meeting notes or in email exchanges) and then saved in the Scottish Government’s electronic records and document management system (eRDM). This necessarily requires an exercise of individual judgement as to what should be retained as part of the document management system. These principles applied before and during the pandemic and continue to apply.
5. The Scottish Government’s objective is to assist the inquiry. Accordingly, it is happy to provide all WhatsApp and equivalent material in its possession, that is relevant to the Inquiry’s Terms of Reference. Mindful of its duties under the Data Protection Act 2018, the Scottish Government has requested that the Inquiry serve a notice under s21 of the Inquiries Act 2005, which will allow the Scottish Government to release any WhatsApps, and equivalent messaging applications, to the Inquiry. Further, as mentioned at paragraph 16 of CTI’s Note, a Table has been provided to the Inquiry (in time for the Preliminary Hearing on 26 October). The Table sets out, in respect of each witness, the Scottish Government’s understanding of whether they used and retained notebooks or diaries and their use of messaging applications, and whether they have messages that can be provided to the Inquiry.

### **Notebooks and Diaries**

6. As referred to in CTI’s Note, at para 19, the Scottish Government provided the Inquiry with an e-copy notebook from a potential witness on 9 October 2023; and subsequently access to twelve hard copy notebooks from two further individuals. The Scottish Government has

written to the Inquiry outlining details of further notebooks which are available for inspection.

**Legal Professional Privilege (“LPP”) waiver request**

7. A number of confidential discussions have taken place between the Inquiry team and the Scottish Government. The Scottish Government acknowledges that a request to waive LPP and material covered by the Law Officers’ convention has been made. It also acknowledges the points made by CTI regarding the ability of the Inquiry to fulfil its function. The request is under consideration.
  
8. It must be stressed that the Scottish Government is working very hard to assist the Inquiry in the fulfilment of its functions. As the Inquiry will know, for several months the Scottish Government has had regular meetings with the Inquiry team regarding the provision of all relevant material. These meetings have been very productive and, as outlined above, have assisted in the production of thousands of documents, and many witness statements. The Scottish Government and the Inquiry team will continue to meet in the period between now and the Module 2A hearings. If there are specific areas in which the Inquiry feels constrained by a lack of information, then the Scottish Government remains ready and willing to help.

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