



Counsel to the Inquiry's Note for the Third Preliminary Hearing in Module 2B of the UK Covid-19 Inquiry on Thursday 16 November 2023

Introduction

1. The first and second preliminary hearings in Module 2B took place on 1 November 2022 and 29 March 2023 respectively. The purpose of this note is to provide the background to, agenda for, and introduce matters to be addressed at, the third Module 2B preliminary hearing on Thursday 16 November 2023. This will be a hybrid hearing with Core Participants either appearing virtually or in person at Dorland House, 121-141 Westbourne Terrace, Paddington W2 6BU. Counsel to the Inquiry will address the Chair in person at Dorland House.
2. There are nine Core Participants in Module 2B, and all are legally represented. These Core Participants have been provided with regular updates on the progress of the Module since the last preliminary hearing. The third preliminary hearing is an opportunity to provide a public update on the Inquiry's work so far.
3. This note, and the third preliminary hearing, will address the following:
 - a. Update on Rule 9 requests - statements and exhibits
 - b. The gathering of documentary evidence from the Welsh Government
 - c. Documentary discovery and disclosure to Core Participants
 - d. List of Issues, plans for the hearings in February - March 2024 and provisional list of witnesses
 - e. Expert witnesses
 - f. Every Story Matters, Commemoration and Impact Film
4. Should any Core Participant wish to file brief written submissions on any of the issues set out above, these must be received by the Inquiry by **4pm on Tuesday 7 November 2023**.

Update on Rule 9 requests - statements and exhibits

5. The Module 2B Solicitor team circulated an update note to Core Participants on 9 October 2023. This provided an update on the status of the requests made under Rule 9 of the Inquiry Rules 2006 by the Module 2B team.

Overview of requests

6. At this time, Module 2B has issued more than 260 Rule 9 requests for evidence, including: those issued jointly by Modules 2, 2A, 2B and/or 2C, impact questionnaires, and questionnaires sent to the Welsh Government's Technical Advisory Group and

Cell (“TAG/TAC”) participants. Requests have been sent to numerous Welsh Government directorates, the Office of the Secretary of State for Wales, other public bodies in Wales including Local Health Boards, bodies representing at-risk or vulnerable groups and other relevant organisations which played a role in or have a relevant perspective to share on the core decisions taken by the Welsh Government in its response to the Covid-19 pandemic in Wales.

7. Additionally, Module 2B has sent detailed Rule 9 requests to a large number of individuals within these bodies. These requests have been issued to key Welsh Government decision-makers and advisors at the time of the Covid-19 pandemic, including Mark Drakeford MS, Vaughan Gething MS, Sir Frank Atherton, Dr Rob Orford, Andrew Goodall, Jeremy Miles MS and others.
8. In particular, and in connection with the Rule 9 requests issued to individuals, the Module 2B team have made clear to those in receipt of the requests that the Inquiry expects the matters raised in the request to be answered fully. The Inquiry is grateful to those bodies and individuals who have engaged fully with the requests issued and provided statements and supporting documentation in accordance with the requests.

Disclosure of Statements

9. Efforts are being made to ensure that signed statements and their exhibits will be disclosed in time ahead of the oral hearings in February/March 2024. Module 2B has already commenced the process of having the Rule 9 responses from organisations and individuals signed in order that they can be disclosed to Core Participants without further delay. Where the Rule 9 responses do not (contrary to the clear instruction given to all Rule 9 recipients) address all of the matters raised in the Rule 9 request, Module 2B has been sending questions of clarification or follow up questions to the organisations and individuals concerned. It is hoped that these will be processed, signed and disclosed without delay. In other cases, it may be necessary to explore the reasons why there are unanswered matters at the public hearing next year.

Welsh Government Update

Rule 9 Requests

10. A significant proportion of the Rule 9 requests for documents and witness statements have been made to Welsh Government and its directorates and individuals who played key roles in the Welsh Government’s response to the pandemic. In most cases, the requests that have been made have required considerable work to be completed within demanding timescales.
11. Since August 2023, the Inquiry has had weekly calls with the coordinating team within the Welsh Government to discuss updates on witness statements and disclosure progress. The Inquiry recognises that the Welsh Government directorates, the individuals and their legal teams have worked hard to respond to the Inquiry’s requests. The Inquiry is grateful for their cooperation and recognises that there has been a significant volume of requests directed at the Welsh Government and individuals within it with challenging deadlines. That said, this Module is an investigation into the Welsh Government’s core political and administration decision making in relation to the pandemic. It is, therefore, not unexpected that the Welsh Government would be the main recipient of Rule 9 requests. Notwithstanding the Welsh Government’s cooperation, there have been some delays in the provision of some statements and extensions have been sought, in particular for the provision of

exhibits to statements and general disclosure. The delay in the provision of responses to the Rule 9 requests has the potential to disrupt the Inquiry's process unless they are swiftly resolved. The Inquiry has, therefore, been working with the Welsh Government to confirm when all Rule 9 requests will be responded to and it is expected that all finalised statements, exhibits and disclosure will be provided by the end of November 2023.

Disclosure

12. The majority of the documentary material which has been recovered so far by Module 2B has come from the Welsh Government (or its various directorates) and individuals who worked within it as part of the Covid-19 response. These documents have been provided in response to the corporate and individual Rule 9 requests which have been issued by, or are relevant to, Module 2B and are additional to exhibits provided to statements. The following highlights a number of important aspects of this disclosure process.

WhatsApp and other informal messaging platforms

13. The Inquiry is aware that any informal communications between key decision-makers and/or their advisers discussing information, advice and the management of the pandemic in Wales sent during the relevant period can provide important information about, and context to, the decisions and issues in Module 2B's investigation.
14. Module 2B welcomed the submissions made by Welsh Government Counsel at the Module 2 preliminary hearing in June (*"My Lady, in relation to issues of disclosure of WhatsApp messages, diaries and the like, the Welsh Government intends to fulfil all such requests made of it by this Inquiry without any prior redaction by us. We understand the duty of candour and we intend to be transparent."*).
15. Module 2B has issued a number of requests to individuals within the Welsh Government for disclosure of WhatsApps/texts. These requests seek information about the use of WhatsApps/texts in connection with Welsh Government's response to the pandemic, policies surrounding their use, and details of group messaging and individual chats.
16. Following discussions with the Welsh Government, the Module 2B Team received its first set of Whatsapp messages in early October 2023. The Module 2B team has asked for the provision of the remaining Whatsapps to be provided to the Inquiry as a priority so that they can be reviewed and any relevant documents disclosed to Core Participants on a rolling basis.
17. It has become clear that a number of individual witnesses within the Welsh Government have not retained WhatsApps/texts from the relevant period and are therefore unable to provide them to the Inquiry. Given the potential significance of any such material, the Welsh Government is being asked to provide a full update on the position.

Notebooks

18. The Welsh Government has provided the Module 2B team with access to over 100 contemporaneous notebooks from individuals within the Welsh Government, including Ministers. The Module 2B team have been undertaking physical reviews of the

notebooks to determine relevance and the Welsh Government has confirmed that no further notebooks are available for review and the initial review is now complete.

19. The Welsh Government has been asked to prioritise scanning and disclosure to the Inquiry of such documents so that a full review can be undertaken. Any relevant documents will be disclosed to Core Participants on a rolling basis when available and having been reviewed by the Inquiry.

Data loss - Digital Health and Care Wales

20. On 2 August 2023, Module 2B received notification from Digital Health and Care Wales of a potential data loss issue in relation to the Microsoft 365 email service, which could impact all Health Boards, Trusts, Special Health Authorities and Primary Care organisations in NHS Wales. The Inquiry takes such matters incredibly seriously and has made further enquiries with Material Providers that may have been affected by the data loss. The Module 2B team understands that from all the Rule 9 requests it has made, only one individual has been impacted by the data loss issue and explains the position in their witness statement.

Disclosure to the Inquiry and to Core Participants

21. In summary, Module 2B has received 24,595 documents in total including:
 - a. 58 questionnaire responses from impact organisations;
 - b. 32 questionnaire responses from members of TAG/TAC;
 - c. 132 Rule 9 statements (corporate and individual).
22. The Inquiry has disclosed 7,781 documents in total to Module 2B Core Participants including:
 - a. 36 Rule 9 statements and supporting documents (which include Module 2 statements relevant to Module 2B);
 - b. 48 questionnaire responses from impact organisations including those jointly instructed with Modules 2, 2A or 2C; and
 - c. 32 questionnaire responses from members of TAG/TAC.
23. Module 2B will continue to make disclosure to Core Participants on a regular basis. In addition to general disclosure across a number of providers, Module 2B hopes to shortly disclose key statements and exhibits from various Welsh Ministers.
24. Many of the outstanding deadlines set for the draft statements in the Inquiry's Rule 9 requests fall in October and November 2023. 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 and provided that witnesses comply with the deadlines set, Module 2B expects to have received all draft witness statements in sufficient time to enable disclosure of the vast majority of signed statements by the end of December 2023.

25. The Welsh Government has been providing documents to the Inquiry on a rolling basis, and continues to provide general disclosure in response to Rule 9 requests made throughout 2022 and 2023. As a result, whilst 7,781 documents have been disclosed across 36 tranches of material, Module 2B still has a significant volume of documents left to review, assess for relevance and work through before they can be disclosed to Core Participants. The Module 2B legal team is continuing to engage with the Welsh Government to ascertain when all outstanding disclosure will be provided, and has requested that this is provided by the end of November 2023 to allow time for this to be reviewed by the Inquiry and disclosed to Core Participants in early 2024.
26. The Module 2B legal team is working swiftly to review materials which have been disclosed to it 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.

Module 2 Cross-Modular disclosure

27. The Inquiry is aware that some evidence received by Module 2 and some oral evidence provided at the Module 2 public hearings is likely to be relevant to Module 2B.
28. The Inquiry intends to disclose any material considered relevant to Module 2B to Core Participants, and indeed has already started to do so. This will include witness statements, exhibits and aspects of general disclosure that has been received by Module 2. However, the Inquiry will be limiting the disclosure of material to those documents that are strictly relevant i.e. where a witness statement discusses issues relevant to Module 2B, it will be disclosed to Core Participants. It follows that not all of the exhibits to such witness statements will be disclosed in Module 2B; they will only be disclosed if those exhibits are also considered relevant to Module 2B.

List of Issues, plans for the hearings in February - March 2024, and provisional list of witnesses

List of Issues

29. A list of the proposed issues was circulated to Core Participants on 12 May 2023. Core Participants were asked to provide their comments on that list. We are grateful for the comments provided. Following consideration by the Module 2B legal team, a revised List of Issues is provided to Core Participants accompanying this note.

Hearing preparation

30. As previously announced, the M2B hearing is scheduled to be held at The Mercure Cardiff North Hotel, commencing on 27 February 2024 and concluding on 14 March 2024.

31. Ahead of the hearings, Module 2B intends to share with Core Participants key documents which it has prepared relating to key uncontroversial background to the matters being covered in Module 2B. This will include a chronology of key decisions and events. In addition, Core Participants will be invited to suggest potential lines of questioning for witnesses in connection with evidence proposals which will be sent to them in advance of the hearings.
32. Further information and updates in this regard will be set out by Counsel to the Inquiry at the preliminary hearing, and will continue to be provided in the Core Participant monthly update notes issued in due course.

Expert witnesses

33. As set out in the previous monthly update notes, Module 2B (in conjunction with Modules 2, 2A and 2C) has issued instructions to the following experts who have agreed to provide evidence to the Inquiry on matters relating to Wales which will be covered by Module 2B as well:
- a. Professor Thomas Hale from the Blavatnik School of Government, University of Oxford, has reported 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. This [report](#) has been disclosed to Core Participants in final form and was presented at Module 2's public hearing on 11 October 2023.
 - b. Professor Ailsa Henderson from the University of Edinburgh has reported 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. This [report](#) has been disclosed to Core Participants in final form and was presented at Module 2's public hearing on 9 October 2023.
34. An expert report relating to political decision making in the management of the pandemic in Wales has also been commissioned by Module 2B from Professor Daniel Wincott, Professor of Law and Society in the School of Law and Politics at Cardiff University. The report is currently in draft form and will be circulated to Core Participants for their comments in due course, following a similar process to the finalisation of other expert reports which have been commissioned by the Inquiry.
35. Expert reports of indirect relevance to the matters for consideration in Module 2B were also commissioned from Alex Thomas and Gavin Freegard. 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. 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 during the Covid-19 pandemic. Reports from these two experts have been disclosed to Core Participants in final form. Gavin Freeguard's [report](#) was presented at the Module 2 public hearing on 10 October 2023 and Alex Thomas presented his [report](#) on 13 October 2023.

36. 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, at paragraphs 36-37, that expert evidence should be obtained regarding pre-existing structural discrimination on other grounds. The following experts have been instructed, including in relation to the matters within the Module 2B scope relating to Wales. Evidence from these experts has been adduced and led in Module 2:

- a. Professor James Nazroo, Professor of Sociology at the University of Manchester and Deputy Director of the ESRC Centre of Dynamics of Ethnicity, and Professor Laia Becares, Professor of Social Science and Health at King's College London, are contributing expertise on pre-pandemic inequalities by race and ageing, including expertise on the role of structural racism. This report has been disclosed to Core Participants in final form and was presented at the Module 2 public hearing on 5 October 2023.
- b. Professor James Nazroo is also contributing expertise on later life. This report has been disclosed to Core Participants in final form. Both of Professor Nazroo's reports were presented at Module 2's public hearing on 5 October 2023.
- c. Professor Thomas Shakespeare, Professor of Disability Research at the London School of Hygiene and Tropical Medicine, and Professor Nicholas Watson, Associate Professor at the School of Health and Wellbeing at the University of Glasgow, are contributing expertise on pre-pandemic inequalities associated with disabilities. This report has been disclosed to Core Participants in final form and was presented at the Module 2 public hearing on 9 October 2023.
- d. Professor Laia Becares is providing expertise on pre-pandemic inequalities for members of the LGBTQ+ community. This report has been disclosed to Core Participants in final form and was presented at the Module 2 public hearing on 9 October 2023.
- e. Dr Clare Wenham, Associate Professor of Global Health Policy at the London School of Economics and Political Science, is providing expertise on pre-pandemic gender inequalities. This report has been disclosed to

Core Participants in final form and was presented at the Module 2 public hearing on 6 October 2023.

- f. Professor David Taylor-Robinson, Professor of Public Health and Policy at the University of Liverpool, is providing expertise on pre-pandemic childhood inequalities. This report has been disclosed to Core Participants in final form and was presented at the Module 2 public hearing on 6 October 2023.

- 37. A further expert report has been disclosed to Core Participants prepared by Professor Chris Brightling (Professor of Respiratory Medicine at the University of Leicester and Chair of the NIHR Respiratory Translational Research Collaboration) and Dr Rachael Evans in relation to Long Covid. This report has been disclosed to Core Participants in final form and was presented at the Module 2 public hearing on 13 October 2023.

The Listening Exercise (“Every Story Matters”), Commemoration and Impact Films

- 38. On 28 July 2023, the Inquiry provided a further update on the ways in which an individual can share their experiences with the Inquiry.
- 39. Every Story Matters (“ESM”) was formally launched on 13 June 2023. The experiences and stories shared are helping the Inquiry to build a comprehensive picture of how the pandemic affected people’s lives across the UK. An updated webform was made available in late May, and to date, thousands of responses have been submitted. The public information campaign to make people aware of ESM has been running on radio, billboards, in the press and digital advertising. The Inquiry has been working with charities and other organisations to promote ESM to seldom heard voices. Campaign activity aimed at raising awareness of ESM will take place in Wales from 22 February 2024 and will run until the end of the Module 2B hearings. A new contract has been awarded to M&C Saatchi to support the advertising of ESM, and a new research contract has been awarded to Ipsos to help the Inquiry deliver the next phase of ESM.
- 40. An impact film will be shown on the first day of public hearings for Module 2B to set the tone for subsequent proceedings, grounding them in the lived experience of individuals living in Wales who suffered, and continue to suffer, hardship and loss as a result of the pandemic. The video will be played publicly at the substantive hearings of the Module in February 2024. It will include accounts from both Welsh and English speakers.

30 October 2023

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