

**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**

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**SUBMISSIONS ON BEHALF OF NI COVID 19 BEREAVED FAMILIES FOR  
JUSTICE FOR THE MODULE 2C PRELIMINARY HEARING ON 12  
DECEMBER 2023**

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**INTRODUCTION**

1. These are the submissions of the NI Covid 19 Bereaved Families for Justice (NI CBFFJ) for the 3<sup>rd</sup> Preliminary Hearing in Module 2C on 12 December 2023.
2. They should be read together with our submissions for previous Preliminary Hearings for Modules 2 and 2C. To avoid duplication, it is not proposed to repeat those general submissions herein but where relevant issues arise below, those general observations are relied upon.
3. For ease of reference, we will adopt the sequence of issues set out in the Counsel to the Inquiry's Note dated 21 November 2023. We will also cross-refer to the October update note served on 7 November 2023.
4. By way of preamble, we note the indication from the Inquiry that M2C is 'co-equal' to M2, M2A and M2B and that, in so far as possible and appropriate, M2C will pick up issues relating to communication with the NI Executive and NI Civil Service where M2 left off. At the time of drafting these submissions, the M2 evidence remains underway. However, such evidence as has already heard lays bare the inadequacies in consideration of and communication with the DAs. The M2 evidence will conclude on 11 December 2023, the day before the M2C PH, and oral closing submissions on the evidence are due to be heard on 13 & 14 December 2023. Thereafter, our written M2 closing submissions are to be served by 15 January 2024. To a significant extent, those closing submissions are likely, in our submission, to form a foundation stone for issues that should be built on in M2C. We will continue to work, where possible with the Inquiry team, to identify the evidence from M2 that should be carried forward for closer examination and scrutiny in M2C.

**RESPONSE TO CTI NOTE**

## **Update On Rule 9 Requests - Statements and Exhibits**

5. We note and welcome the Inquiry's update on those Rule 9 requests that have been issued and those that have been disclosed. We do not doubt the industry of the Inquiry Legal Team firstly in identifying appropriate recipients of Rule 9 requests and thereafter in issuing detailed Rule 9 requests. We are grateful that several of our previous observations in relation to both recipients and content have been accepted by the ILT. We welcome the update on Robin Swann and Sue Gray in particular and look forward to receipt of those statements.
6. We further welcome confirmation of the Rule 9 request made to Sir Brandon Lewis, former Secretary of State for Northern Ireland. By way of correspondence on 1 November 2023, we invited the ILT to consider the detail of the Brandon Lewis Rule 9 request and the potential for his evidence to fill gaps in the disclosure so far observed across M2 and M2C around the Management of the border on the island of Ireland including:
  - a. Consideration of issues that affected our border communities;
  - b. Travel across the border;
  - c. International travel restrictions;
  - d. Ministerial liaison between UK central government and the Government of Ireland;
  - e. Consideration of having a co-ordinated two-island approach to the pandemic;
  - f. Consideration of the use of mechanisms such as a British Irish Intergovernmental Conference or the British Irish Council to enable effective communication and / or joint decision making.
7. As with many of the issues the Inquiry will consider in the context of Northern Ireland, those topics are undoubtedly political and, to some extent, politically sensitive. However, for the reasons set out in our correspondence, including the 'Fortress Ireland' approach to animal health and welfare, they fall for meaningful consideration in M2C. It is hoped that Sir Brandon, and other witnesses, will be in a position to assist.
8. In relation to Annex A - Update on Module 2C Rule 9 Requests for Evidence in the October update note, we acknowledge that progress is being made in the disclosure of statements and relevant material and we commend the Inquiry for its endeavours. Again, we don't underestimate the task and we acknowledge that the Inquiry will do everything it can to make additional disclosure available as soon as possible. However CBFFJ NI remain concerned that departments are not disclosing material in a timely manner and, as a result, there will be an onslaught of disclosure at the twelfth hour, precluding any or adequate meaningful consideration. Being the last module in this phase of the Inquiry, there is no reason for that to be the case. Individuals and departments have been on notice of what is required of them for

a considerable time and we urge them to provide all outstanding material as a matter of urgency.

9. We note the following specific concerns with the responses received from individuals and NI government departments:
  - a. Inexplicably, over one year on from the anniversary of the initial deadline of 28 November 2022 for the disclosure of "*general disclosure of documents relating to operational documents, the making of key decisions, lists of key meetings*", the Department of Health has still not provided all of that 'general disclosure'. A new deadline of 'Christmas 2023' has been set. It is unfathomable that the DOH is responding in this manner to the Inquiry's general requests and it undermines any faith that the bereaved families have that the DOH is approaching its disclosure obligations with candour and / or commitment;
  - b. A significant number of witness statements from key ministers remain outstanding, with the Inquiry expecting 'draft witness statements' by 'December 2023'. These include Michelle O'Neill, Paul Givan, Conor Murphy, Diane Dodds, Edwin Poots, Naomi Long and others. Plainly, it is expected that their evidence will be of central importance to the Inquiry, as will the documents upon which they rely. We are concerned (from previous experience) that the combination of 'draft' statements and an unspecified date in December 2023 gives rise to the real risk that statements will be delayed and final statements will not be disclosed to CPs until well into 2024. We urge the Inquiry to do all it can to ensure that there is no further slippage in the provision of the fullest possible evidence from these key politicians – and by extension that they are disclosed to CPs early in 2024;
  - c. It is of grave concern to learn that there is a continuing problem of statements being provided that fall short of addressing the issues raised in the Rule 9 requests. Again, such behaviour undermines confidence in the response as a whole and it should be exposed. The bereaved families ought to know who is, or which department is, behaving in the manner outlined. To allow it to continue shrouded in anonymity, is to encourage it. Moreover, the first (inadequate) account provided may prove an important yardstick against which to assess the credibility of the final signed account. Accordingly, while we acknowledge the Inquiry's observation that '*it is appropriate that Core Participants are aware of these difficulties*' we contend that that does not go far enough. We should be aware of who is causing them.
10. The CTI note acknowledges the delays that the provision of the statements and materials may have on the progression of the Inquiry's progress. There is a real risk that these delays may impact the Inquiry's otherwise commendable pace. We therefore urge the Inquiry to consider its

significant powers of compulsion at this point so as to avoid a snowballing effect impacting timetabling and overall progress.

## **The gathering of documentary evidence from TEO and other Northern Ireland Government Departments**

### *Disclosure of WhatsApps and potential data loss*

11. The extent of the data loss appears to be extraordinary, particularly when assessed against the background of the Inquiry's clear direction that all material should be maintained. We have written to the Inquiry previously on 26<sup>th</sup> September 2023 expressing the deep concerns of the NICBFFJ and we reiterate the same. Whilst it is reassuring to note that the Inquiry is treating this as the grave issue it is and we welcome the proactive accountability that the Inquiry seeks through its regular contact with the relevant officials, that arguably does not go far enough. It is completely unacceptable that the TEO has delayed by over a month the provision of the investigation report into the data losses, particularly against a background in which the requests for WhatsApp's was made well over a year ago. We would therefore encourage the Inquiry to set 30 November 2023 as a strict deadline for the provision of the report with a warning that, if it is not met, that enforcement and/or sanctions may follow.
12. However, without prejudging the content of that report, it may well be insufficient, or at least insufficiently independent, to assuage the concerns of the NI CBFFJ and indeed the wider public as to how and why there was such widespread deletion of material contained on handsets of key individuals at key stages of the pandemic. We trust that the Inquiry will actively consider whether an independent examination of the various devices will be required in order to identify what went so badly wrong.
13. We welcome the indication that the Inquiry will require TEO to provide a certification that it has completed disclosure and to explain the process of disclosure so far (paras 18-19 of the Nov Update Note). We observe that it may well be appropriate to extend that invitation to the DOH and to other departments.

### *Notebooks and diaries*

14. We note that the Inquiry has requested personal notebooks and diaries of Ministers, special advisors and senior civil servants. We hope that, if the Inquiry encounters any resistance to the provision of personal notebooks and diaries on the basis of privacy, the same approach would be taken by the Inquiry as it has done in relation to Sir Patrick Vallance's personal diaries. We

request that we are notified of any such issues of privacy being asserted so that they can be addressed in early course.

## **Disclosure**

15. We note the progress in relation to disclosure, particularly that the Inquiry considers that it has now received the considerable bulk of the disclosure deemed relevant to it. It is submitted respectfully that the Inquiry ought not be reticent in reminding recalcitrant Material Providers of the Inquiry's considerable powers of enforcement.

16. In particular, it is frustrating that the DoH is over 1 year late with its disclosure at this point. Again, we would encourage the Inquiry to do everything possible to ensure that it receives the disclosure by Christmas 2023 as promised by DoH, including reminding the DoH of the Inquiry's powers of enforcement.

## *Module 2 Cross-modular disclosure*

17. The process of cross-modular disclosure in a structured way is welcome and, as set out at para 4 above, we are ready to assist ILT and the Inquiry in that regard.

18. For the same reasons that M2 and M2C crossover, it is likely that relevant disclosure and statements that the Inquiry receives in Modules 2A and 2B also raise important issues in 2C. We are not Core Participants in 2A or 2B and are therefore blind to such materials. Therefore, we would request that disclosure and statements from Modules 2A and 2B relevant to 2C would be disclosed to us in the context of 2C.

## **List of Issues, plans for the hearings in January 2024, and provisional list of witnesses**

### *List of Issues*

19. We acknowledge receipt of the final LOI and note the observation in the CTI note that that it is sufficiently broad that the majority of issues raised by Core Participants are properly addressed within those broad categories. We would welcome continued engagement with CTI / STI as to how that is to be achieved, particularly when it comes to issues as varied as, by way of example: the pre-existing state of the Health and Social Care System (as was heard in overview in M1) and the consequential impact on the HSC's ability to respond in crisis; and the management of funerals in Northern Ireland including the balancing of restrictions against important religious and cultural rights.

## **Expert witnesses**

20. The instruction of Professor Karl O'Connor and Professor Ann-Marie Gray to prepare a joint report on the overarching, constitutional arrangements for NI and explain the working of power sharing structures, as well as the other issue identified, is a welcome development. This is an area of expertise that NICBFFJ have called for repeatedly from the very outset of the Inquiry as a necessary input. We look forward to the opportunity to receive and make submissions on the first draft of their report.

### **The Listening Exercise (Every Story Matters), Commemoration and Impact Films**

21. We have made a number of critical submissions on the mechanism and awarding of contracts for Every Story Matters ('ESM'), which we repeat but do not rehearse. It is regrettable that M&C Saatchi have been awarded a new contract to support the advertising of ESM considering the firms long links to the Conservative Party and government campaigns during the pandemic. We also recall that on 27 April 2023, the Inquiry stated that: 'We will shortly be seeking new partners to help us deliver the next phase of Every Story Matters. These will replace the Inquiry's current contracts.'<sup>1</sup> Respectfully, we consider M&C Saatchi's appointment as entirely inconsistent with the Inquiry's position. We hope that, when it considers the awarding of the new contracts to help the Inquiry deliver further community events as indicated at para 58 of the CTI note, the Inquiry will act consistently with its position as stated in April 2023 and relied upon by NICBFFJ.
22. In regard to the impact film for M2C, the Inquiry can be assured that members of the NICBFFJ are very willing to work with the Inquiry with a view to repeating the successful impact films for M1 and M2 in which their members were involved centrally.

### **Meetings with Core Participants**

23. Our counsel have already had seen the benefit of informal counsel meetings and will continue to facilitate and welcome such productive meetings which can avoid misunderstandings and helps the efficient use of precious Inquiry hearing time.

### **OTHER ISSUES**

24. **As outlined in our correspondence of 7 November 2023**, three members of our client group have expressed a firm interest in giving evidence in Module 2C. Each client has their own individual experience and in the circumstances we would ask the Inquiry to give serious consideration to calling more than one witness from our group for the reasons set out below:

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<sup>1</sup> <https://covid19.public-inquiry.uk/wp-content/uploads/2023/05/2023-04-27-ESM-Summary-Document.pdf>

- a.** Each individual experience is unique and relates to a specific overarching theme or issue within the scope of Module 2C;
- b.** Their evidence relates to the complex and unique structures and issues pertaining to Northern Ireland;
- c.** The Inquiry will be sitting in Northern Ireland and a greater level of client participation in our view will enhance the overall process and assist the Chair in making her final findings and recommendations.

**25. Formal Module 2C Rule 9 Request**

We received a Provisional Witness Notification on 25<sup>th</sup> October 2023. We look forward to receiving a formal Rule 9 Request.

**28 November 2023**

**Peter Wilcock KC**

**Brenda Campbell KC**

**Marieclaire McDermott**

**Conan Fegan**

**Malachy McGowan**

**Blaine Nugent**

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