

**SUBMISSIONS ON BEHALF OF DISABLED PEOPLE’S ORGANISATIONS:
DISABILITY ACTION (Northern Ireland)
Preliminary Hearing – 12 December 2023**

Further to the Note for the Hearing prepared by Counsel to the Inquiry dated 21 November 2023 (hereafter ‘CTI Note’) the following addresses [I] Disabled People’s Organisations [II] Scope [III] Rule 9 Requests and Witnesses and [IV] Reasonable Adjustments.

I: DISABLED PEOPLE’S ORGANISATIONS¹

- 1.1. CORE PARTICIPANTS: Disability Action Northern Ireland is an organisation run by and for Disabled people (‘DPO’). They are to be distinguished from charities that represent Disabled people, however well, rather than enabling them to represent themselves.²
- 1.2. SOCIAL MODEL: The DPO’s approach is informed by the ‘Social Model’, that essential injustices of being disabled are the product of socially constructed barriers and attitudes. Of considerable significance to the DPO in this Inquiry is the way in which ‘vulnerability’ and ‘resilience’ operated as core policy discourses without sufficiently acknowledging their socially and economically determined dimensions.
- 1.3. UNIQUE ASPECTS OF NI DEVOLUTION: As set out in previous submissions³ there are unique features existing in Northern Ireland which inevitably affected the political and decision making processes during the Covid-19 pandemic in comparison to the rest of the United Kingdom. These included the suspension of devolved power from January 2017 to January 2020, its resumption in the first period of 2020 and subsequent collapse in February 2022. It is important that these unique features, and their consequences for disadvantaged groups, are kept in mind throughout, as the quality of decision making on such matters can be even less during suspended states of direct government. In Northern Ireland the situation is also aggravated by what Geraldine McGahey (Chief Commissioner of the Equality Commission for Northern Ireland) characterised in October 2021 as the pre-eminence given to managing

¹ For an overview of the DPO approach to the issues arising in the Inquiry see [DPO M2 Opening Submission 26.09.23 §§1.1-1.11 pp 1-7](#) and [DPO M2C PH Submissions 22.03.2023 pp 1-4 §§1.1-1.7](#)

² [General comment No. 7 \(2018\) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, CRPD/C/GC/7 §§11, 13, 15, 27 and 78 {INQ000279951/3}](#)

³ [DPO M2C PH Submission 22.03.2023 p.1 §1.2](#)

political disagreements and a fixation on “*orange and green issues*” that in her view had resulted in a two-decade long failure to enhance legal protections for minority groups, with equality protection in the region comparatively in the “*dark ages*”.⁴

1.4. ‘AFTERTHOUGHT’ SYNDROME: Compounding the consequences for Disabled people and other minority groups of Northern Ireland’s unionist-nationalist political competition is “afterthought syndrome”. The primary issue with the fusion of science and government that constructed the Covid response – especially as regards political and administrative decision making – is that the evidence from Module 2 makes clear that none of it contained Disability specialists, service providers, subject-matter experts or end users.⁵ The issue is particularly pronounced with Disabled people, not only because of their under representation and lack of empowerment, but also the risk of unconscious ableism in decision making. The treatment of Disabled people as an “afterthought” was a syndrome identified by a House of Lords Select Committee reviewing the impact of the Equality Act 2010 prior to the pandemic.⁶ Its consequences became all too apparent during the pandemic, where between 1 March 2020 and 30 September 2020 in Northern Ireland, Disabled people were 40% more likely to die of non-Covid causes and 48% more likely to die of Covid than nondisabled peers.⁷ It is likely to characterise the evidence of all Modules, including Module 2C. A significant question that the DPO have for Module 2C is whether Northern Ireland was able to develop structures for civil society engagement, including with Disabled people, and whether these structures were effective during the pandemic. It is the DPO’s submission that they were not, and that Disabled people’s experience was that their voices and concerns were “*lost in the noise*” during the pandemic.⁸

1.5. HUMAN RIGHTS AS METHOD AS WELL AS OBLIGATIONS: As set out throughout the DPO submissions to date, the United Nations Convention on the Rights of the Persons with Disabilities (‘UNCRPD’)⁹ is commended to the Inquiry not simply as including obligations that are binding on the UK under international law and of relevance to the scope of ECHR

⁴[Northern Ireland ‘in dark ages’ in terms of equality laws – The Irish Times 20 October 2021; Northern Ireland Affairs Committee Oral evidence: The experience of minority ethnic and migrant people in Northern Ireland, HC 159, Wednesday 20 October 2021 p.10](#)

⁵ [DPO M2 Opening Submission 26.09.23](#) pp 17-18 §§3.5 [no expertise] and 3.7 [no engagement]

⁶ [House of Lords - The Equality Act 2010: the impact on disabled people - Select Committee Vallance on the Equality Act 2010 and Disability \(parliament.uk\)](#) Report of Session 2015-16 (March 2016) HL Ch. 1 §16

⁷ [Northern Ireland Statistical Research Agency \(NISRA\) Covid-19 Deaths in Wave One: Analysis of Equality Group, Health and Socio-demographic Characteristics \(July 2021\) pp 3 and 13-17](#)

⁸ [DPO M2C Submissions 22.03.2023 p. 2 §1.4](#) The Impact of Covid-19 on Disabled People in Northern Ireland (September 2020) p.4

⁹ [DPO M2 Opening Submission 26.09.23 pp 7-13 §§2.1 and 2.12](#)

rights, but also as providing a set of tools for understanding the lack of protection that Disabled people endured during the pandemic and how to positively avoid such exposure in the future.¹⁰ The pertinent question for Module 2C will be to ascertain whether the practice, ethos and policies of human rights compliance in Northern Ireland, which has a unique human rights and equalities context as a result of (a) the Good Friday Agreement and Northern Ireland Protocol that constitutionally enshrines human rights compliance into the architecture of peace and (b) the absence of the majority of the Equality Act 2010, and which has also been criticised for a persistent absence of concrete measures to incorporate the UNCRPD and has not adopted the social model (unlike in Scotland and Wales), is different, better, or the same.¹¹

1.6. CO-PRODUCTION AND CO-DESIGN: Domestic administrative law does not contain a fundamental right to effective engagement and participation in policy formation for those who will be impacted by its consequences and there is no nationwide statutory right to this.¹² However, the UNCRPD requires States parties under Art. 4(3) to “*closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations*”.¹³ An approach to government that embeds its potentially Disabled people in the co-production and co-design of policy that affects them is a core recommendation of the World Health Organisation¹⁴, a key part of the Sendai Framework on Disaster Risk Reduction,¹⁵ and a practice belatedly adopted as policy in the UK Government’s National Disability Strategy (July 2021).¹⁶ The evidence before Module 2 is that this did not happen in practice with the UK Government,¹⁷ and the recognition that engagement is a mandated human right is essentially non-existent.¹⁸ In Northern Ireland, the most formal endorsement is in the framework document ‘New Decade, New Approach’ that reflected the settlement to return to Devolved Government in January 2020, in which the parties committed to abiding by “*principles and practice of citizen and community engagement and co-design*”.¹⁹ In the surveys conducted by Disability Action during

¹⁰ For further detail, see [DPO M2B PH Submissions 23.03.23 p.2 §§2.1-2.8](#)

¹¹ For initial summary of the issue in Northern Ireland, see [DPO M2C PH Submission 22.03.23 pp 4-9 §§2.1-2.8](#)

¹² See, recently, *SSDWP v Eveleigh* [2023] EWCA Civ 810

¹³ General Comment (No. 7), Fn. 2 above, §§3-5, 11, 13, 15, 18-20, 27, 42

¹⁴ [WHO World Disability Report](#) (2011 Rec. 4 p.265)

¹⁵ [The Sendai Framework for Disaster Risk Reduction 2015-2030](#) §§7, 19(d), 32, 35 and 36(a)(iii)

¹⁶ {[INQ000089722/19](#)}

¹⁷ See fn. 3 above and Kamran Mallick, CEO of Disability Rights UK {[INQ000280035/8-9 §§24-25 and pp 13-17 §§42-50 and pp 26 §§86-89](#)}

¹⁸ As to the description of how engagement might work better, see Mallick {[M2/T5/64/15-65/16](#)} and for acknowledgement of the same, see Sedwill {[M2/T20/151/16-154/13](#)}

¹⁹ [DPO M2C PH Submission 22.03.23 p.6 §§2.3; New Decade, New Approach \(Jan. 2020\) NIO §§4.5-4.6](#)

lockdown measures, it was clear that the Disabled community felt there was a failure to meaningfully involve them in policy making.

II: SCOPE

- 2.1. GENERAL: The DPO welcome the Revised List of Issues ('LOI') for Module 2C and in particular 4b(vi) (learning points from the impact of lockdown on disadvantaged groups) and §5(i) (the extent to which the Government in Northern Ireland recognised and defined vulnerable and at risk groups) read with §5(iv)-(vii) (assessment of NPI impact, mitigation and consultation with groups identified as clinically vulnerable or otherwise disadvantaged by the measures). Thereafter their focus will be especially on §6(x) (data), and 7(v) (accessible communications). The DPO advance the matters set out at §§1.5-6 above as principles and methodology that the Inquiry should adopt as part of its preparation. They assist in ensuring that Disabled people's issues become intrinsic and mainstream to all aspects of the module. Mainstreaming a Disability perspective is a proper approach in its own right, but it also ensures that the process of enquiry does not repeat the oversights that occurred during the Covid-19 pandemic.
- 2.2. ENGAGEMENT: The emerging evidence from Module 1 and 2 is that both the ethos and structures to enable engagement with at-risk and marginalised parts of society and their representative groups is crucial. In a 'whole-society' emergency, Central Government simply cannot plan or act alone. It must create resilient collaborations. This is not a new concept in so far as the civil contingency framework envisages pre-planning involving the 'voluntary sector'.²⁰ The general consensus is that the pre-pandemic situation was ineffective.²¹ In fact the unsettling revelation of UK Ministers responsible for equality issues is that they seem to have assumed more was being done for Disabled people than was actually the case.²² Simultaneously, SAGE not only lacked expertise from Disabled people and relevant specialists, but was reliant on the Disability Unit to ask it questions, when none were forthcoming.²³ Without pre-planning, it is difficult to plan during an emergency from

²⁰ Cf. First responders under the CCA are only required to 'have regard' to the Voluntary and Community Sector: see Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 ('CCR 2005') Reg 23

²¹ DPO M2 Opening Submission 26.09.23 p.14 §3.2; MacNamara {[INQ000273841/16-20 §§30-35](#)} {[M2/T16/22/17-27/9](#)}; Whately {[INQ000273897/11 §§44-46](#) and p. 92 §394}; Whitty {[M2/T23/122/4-17](#)}; see Davies {[M1/T6/161/22-162/5](#)} {[M1/T6/164/23-165/18](#)} and {[M1/T6/167/11-13](#)}. For Northern Ireland specifically see Foster {[INQ000205274/4 §12](#)} Foster {[M1/T8/31/7-32/16](#)} {[M1/T8/32/13-33/13](#)}; O'Neill {[M1/T9/18/21-19/18](#)}

²² Tomlinson {[M2/T20/208/20-209/5](#)} and his repeated emphasis on benefit payments and nothing else {[M2/T20/209/18-211/17](#)} and Badenoch on the notion that the impact of Covid on Disabled people was so obvious it did not need to be referenced in her study on disparities for risk of duplication {[M2/T25/213/16-215/17](#)}

²³ Vallance {[M2/T22/185/25-187/7](#)} {[M2/T22/188/20-189/8](#)} and {[M2/T22/190/15-191/8](#)}

a standing start. The evidence in Module 2 also suggests that it was particularly difficult to do that in our current political and administrative structures and culture. The effect of not planning and thereafter not effectively engaging was generally devastating for Disabled people. The question for Module 2C is whether the situation was structurally and culturally better in Northern Ireland.

- 2.3. MACHINERY OF GOVERNMENT: Similarly, there is evidence in Module 2 that the internal ministerial structures of the UK Government did not produce effective oversight and leadership of a range of well foreshadowed health equality issues, and especially so with regard to Disabled people. That situation arose partly through there being no lead Secretary of State, and the UK disability ministerial portfolio residing in the Department of Work and Pensions.²⁴ The relevant Cabinet Secretariat is a vehicle of policy not operations.²⁵ The DPO wish for equivalent structures and roles to be examined in Module 2C in order to assist the Chair in any consideration of whether better structures can be put in place in the future.

III: RULE 9 REQUESTS AND WITNESSES

- 3.1. GENERAL: Further to the 06 November M2C update note ('Update Note'), the DPO is aware that further Rule 9 requests are to be issued based on material received to date (Update Note p.3 §7), and these will include requests to senior civil servants. The DPO would request that those senior civil servants include the Permanent Secretaries to the departments listed with the update note (Update Note pp.10-11). The DPOs have no further observations to make regarding Rule 9 requests or individual witnesses at this stage but will make observations following disclosure of the provisional list of witnesses in January 2024 (CTI Note p.11 §45). The DPOs request that, per CTI PH Note p.8 §33, every effort is made to disclose statements to core participants as soon as possible after they are received by the Inquiry, in order to avoid key statements being disclosed very shortly before the beginning of the substantive hearing.
- 3.2. DPO WITNESS: A Rule 9 request has been made to Disability Action Northern Ireland, a statement is currently being prepared and will be provided to the Inquiry as soon as possible. As with the other Devolved Administration Modules, the DPO would like consideration to

²⁴ Tomlinson {[M2/T20/168/12-169/2](#)}; {[M2/T20/223/22-224/3](#)} and Badenoch {[M2/T25/212/12-213/15](#)} (citing discussions only with Liz Truss whose portfolio did not include Disabled people)

²⁵ [DPO M2 Opening Submission 26.09.23 p.16 §§3.4](#)

be given to calling one of their representatives to give evidence of the impact of government decision making in Northern Ireland's response to the pandemic.

IV: REASONABLE ADJUSTMENTS

- 4.1. EVERY STORY MATTERS: The DPO recognise that Every Story Matters ('ESM') and acknowledge that developments are being made, especially with regard to enabling BSL users to provide their accounts.
- 4.2. BRITISH SIGN LANGUAGE: The DPO have previously requested that the YouTube videos of the hearings should include BSL.²⁶ The Inquiry has now determined that provision of such a service will not be made for the M2 hearings, but has indicated that when d/Deaf people attend the Inquiry, then suitable arrangements will be made for BSL interpreters provided and funded by those attending. The failure to provide BSL services during the Covid press conferences is now regretted by a range of witnesses, including the previous Prime Minister.²⁷ For reasons explained in *R (Rowley) v Minister for the Cabinet Office* [2021] EWHC 2108 (Admin) §§5 and 15, there is a sizeable section of the D/deaf²⁸ population who do not necessarily read subtitles or transcripts and/or identify with them as a mode of communication. The present position is that a vast part of the d/Deaf community are therefore not able to enjoy their basic means of following the hearings. This remains a disquieting gap in the coverage of all public inquiries, including this one, where so much emphasis is otherwise put on ensuring public access. If the Inquiry will not provide BSL for the YouTube videos of the whole of the M2C Hearings, we would request that the Inquiry fund a BSL interpreter to attend with Core Participants who require them at the hearing, and to provide BSL during live transmission for at least the opening and closing submissions, which would allow the D/deaf population to access the key submission of CTI and Core Participants on an equal footing.

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28 NOVEMBER 2023

²⁶ [DPO M2C PH Submission 22.03.23 p.15 §5.5](#) and [M2 PH 01.03.23 {T/116/17-22}](#)

²⁷ Johnson {[INQ000255836/199/§686](#)}

²⁸ See Scottish BSL National Plan 2017-2023. The capital D 'Deaf' is used as a cultural label and refers to people who are profoundly deaf, whose first or only language is sign language and are part of a cultural and linguistic minority known as the Deaf community.