

Tuesday, 6 February 2024

(10.30 am)

LADY HALLETT: Good morning.

This is the first preliminary hearing into Module 5, procurement, and in a moment, Mr Richard Wald, King's Counsel, will outline the issues the module will be exploring and any issues that I have to consider today. Mr Wald.

Statement by LEAD COUNSEL TO THE INQUIRY FOR MODULE 5

MR WALD: Thank you, my Lady.

I am Richard Wald KC, and I am the lead counsel with responsibility for the preparation and delivery of matters falling within the ambit of Module 5. I appear at this preliminary hearing along with my learned friends Mr Stoate, Ms Shehadeh, Ms Akram and Ms Ward, who are, with me, the counsel team for Module 5, the focus of which will be procurement and distribution of key healthcare-related equipment and supplies.

In accordance with the agenda for this preliminary hearing, I will address you, my Lady, so far as this module is concerned, on the following areas: first, the designation of core participants, or CPs; second, the provisional outline of scope for Module 5; third, evidence gathering; fourth, disclosure to CPs; fifth, the listening exercise for Every Story Matters; and

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Aswini Weeraratne, counsel for Covid-19 for Bereaved Families for Justice Cymru; Jonathan Holl-Allen KC, counsel for NHS Wales Shared Services Partnership; Philip Dayle, counsel for the Federation of Ethnic Minority Healthcare Organisations, or FEMHO; Sarah Hannaford KC, counsel for Cabinet Office and the DHSC; Thelma Stober, solicitor for Local Government Association and Welsh Local Government Association; and Andrew Kinnier KC, counsel for the Welsh Government.

The lead representatives for the CPs attending remotely are, again in no particular order, as follows: Julie Ellison, counsel for the Right Honourable Baroness Arlene Foster of Aghadrumsee and Paul Givan; Una Doherty KC, counsel for NHS National Services Scotland; Sarah Simcock, counsel for Secretary of State for Business and Trade; Karen Quinlivan KC, counsel for Conor Murphy and Michelle O'Neill; Kevin McCaffery, counsel for Scottish Covid Bereaved; Richard Pugh KC, counsel for Scottish Territorial and Special Health Boards; Julie MacKinlay, counsel for Scottish Ministers; and Georgina Whitfield, representing NHS England.

A full list of CPs in Module 5 and their recognised legal representatives has been published on the inquiry website.

As is routine in public inquiries, where there may

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finally, future hearing dates.

There will be, then, an opportunity for those who have been designated as CPs for this Module to make submissions if they wish to do so.

These proceedings are, of course, being recorded and live streamed to other locations. In making these arrangements, your Ladyship is fulfilling the obligation under section 18 of the Inquiries Act of 2005 to take such steps as you consider reasonable to ensure that members of the public are able to attend, or see and hear a simultaneous transmission of the proceedings.

Live streaming this hearing also allows the hearing to be followed by a greater number of people than would be able to be accommodated within the hearing room or any overspill rooms. In addition to the Inquiry's counsel and solicitor teams, there are 12 CPs present at the hearing room today, with a further eight CPs in remote attendance. Three CPs are unable to attend today.

The lead representatives for the CPs present in the room are, in no particular order, as follows:

Jesse Nicholls, counsel for Covid-19 Bereaved Families for Justice; Peter Wilcock KC, counsel for Northern Ireland Covid-19 Bereaved Families for Justice; Peter Munro, UK Anti-Corruption Coalition and partners;

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from time to time be matters mentioned of a potentially sensitive nature, the broadcasting of the hearing will be conducted with a three-minute delay. This provides the opportunity for the feed to be paused if anything unexpected is aired which should not be. We do not expect this to arise over the course of today, but I mention it so that those who are following proceedings from further afield can understand the reasons for any such short delay.

I move, my Lady, now to the designation of CPs.

My Lady, pursuant to Rule 5 of the Inquiry Rules, the following applicants, again in no particular order, were designated as CPs: Covid-19 Bereaved Families for Justice UK, Scottish Covid Bereaved, Covid-19 Bereaved Families for Justice Cymru, Northern Ireland Covid-19 Bereaved Families for Justice, Welsh Government, Scottish Government Ministers, His Majesty's Treasury, Department of Health and Social Care, the Secretary of State for Foreign, Commonwealth and Development Affairs, Department for Business and Trade, the Chancellor of the Duchy of Lancaster, Cabinet Office, Northern Ireland Department of Health, Local Government Association and Welsh Local Government Association, the Right Honourable Baroness Arlene Foster of Aghadrumsee and Paul Givan, Conor Murphy, Michelle O'Neill, UK Health Security

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1 Agency, NHS England, NHS National Services Scotland,
2 Scottish territorial and special services boards, NHS
3 Wales Shared Services Partnership, UK Anti-Corruption
4 Coalition, and FEMHO (the Federation of Ethnic Minority
5 Healthcare Organisations).

6 Finally, my Lady, for those who were either not
7 granted CP status, or for those who did not apply to be
8 designated as a CP, I wish to reiterate that not being
9 a CP in Module 5 in no way precludes any person, entity
10 or group from first applying for CP status in a later
11 Module, second, bringing any matter to the attention of
12 the Inquiry, third, providing evidence and information,
13 fourth, where appropriate and relevant, giving evidence
14 at a hearing, and five, in the case of an individual
15 affected by the pandemic, taking part in the Inquiry's
16 listening exercise.

17 Moving on now to the scope of Module 5, my Lady, the
18 emergence of Covid-19 in December 2019 presented this
19 country with an unprecedented procurement challenge.
20 Some figures illustrate the scale of this challenge.
21 Early indications are that the Department of Health and
22 Social Care spent in the region of £15 billion on PPE
23 procurement through the lifetime of the pandemic, during
24 which over 30 billion items of PPE were purchased and
25 over 25 billion items of PPE distributed to people

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1 too.

2 A key focus of this module will be the way in which
3 this challenge was met. Questions arise about how
4 government procurement in the pandemic operated,
5 including the effectiveness of spending controls, the
6 prevalence of fraud and the steps taken to prevent it,
7 any conflicts of interest or maladministration, and
8 whether procurement processes were able to strike an
9 appropriate balance between speed and safety on the one
10 hand, and value for public money on the other, whilst
11 ensuring that the process was fair and transparent.

12 The Inquiry must maintain a tight focus on the key
13 issues. The Inquiry team's investigation in relation to
14 Module 5 is already under way, with real progress having
15 been made. We have started the process of gathering
16 evidence and identifying areas for expert evidence,
17 topics to which I will return in a few moments.

18 The provisional outline of scope for Module 5 states
19 that:

20 "This module will consider and make recommendations
21 regarding the procurement and distribution to end-users
22 across the four nations of the United Kingdom of key
23 healthcare related equipment and supplies, including
24 PPE, ventilators and oxygen.

25 "This module will investigate the robustness and

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1 dealing with it.

2 DHSC and the Cabinet Office spent more than half
3 a billion pounds in the early part of the pandemic to
4 reach a target of procuring 30,000 ventilators by
5 August 2020. By late May 2021, over 690 million lateral
6 flow tests had been dispatched within England as part of
7 the NHS Test and Trace programme. As my Lady will know,
8 the National Audit Office, Audit Wales and Northern
9 Ireland Audit Office and Audit Scotland have carried out
10 a significant amount of work in this area.

11 In carrying out our investigations we are, of
12 course, bound by the restrictions imposed by
13 Parliamentary privilege, but as part of our
14 investigation we will be acquiring similar relevant
15 facts and figures of our own.

16 There were also significant issues which arose, the
17 scale of which the Inquiry is engaged investigating.
18 Early indications suggest that a number of PPE contracts
19 awarded were later disputed. The Inquiry is also
20 investigating concerns that some contracts awarded may
21 have been fraudulent, that prices were inflated, or that
22 PPE was defective or unusable.

23 The procurement challenges were not limited to
24 government departments: NHS Trusts, hospitals, local
25 authorities, and care providers all faced difficulties

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1 effectiveness of procurement processes, the adequacy of
2 items obtained (including their specification, quality
3 and volume) and the effectiveness of their distribution
4 to the end-user. It will examine any challenges
5 experienced and seek to extract lessons to be learned.

6 "It will also consider the UK-wide procurement of
7 lateral flow tests and free PCR tests.

8 "Areas to be covered in this module will include:

9 "1. The existence and effectiveness of processes,
10 procedures and/or contractual provisions in place for
11 the procurement and distribution of key healthcare
12 equipment and supplies to the end-user prior to and
13 during the pandemic, the suitability and resilience of
14 the supply chains and what, if any, changes were made to
15 procurement processes during the pandemic, and have been
16 made subsequently. This will include examination of:

17 "a. The overall value of the contracts awarded;

18 "b. Preparedness, including pre-existing
19 stockpiles, inventory management and suitability;

20 "c. Spending controls;

21 "d. Steps taken to eliminate fraud and the
22 prevalence of fraud;

23 "e. Conflicts of interest;

24 "f. Contractual performance by suppliers and
25 manufacturers;

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1 "g. Compliance with public law procurement
2 principles and regulations;
3 "h. Openness and fairness, including the
4 [so-called] 'high priority lane';
5 "i. Decisions as to what to buy at what cost and
6 disposal strategies;
7 "j. The existence of any maladministration."
8 "2. Procurement of key healthcare equipment and
9 supplies to the end-user in the period leading up to and
10 during the pandemic. This will include the existence
11 and effectiveness of procedures, processes and
12 communication between the relevant bodies of the four
13 nations in relation to procurement and the use made of
14 mutual aid arrangements during the pandemic."
15 And then, finally:
16 "3. The operation and effectiveness of any
17 regulatory regimes and/or oversight (either by the
18 procuring authority or end user) in relation to key
19 medical equipment or supplies during the pandemic
20 including:
21 "a. Guidance issued by the relevant advisers,
22 regulators and/or government;
23 "b. The need for, and the efficacy of standards
24 required by the (MHRA) [... Medicines and Healthcare
25 products Regulatory Agency] and the BSI [... British
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1 Ireland Covid-19 Bereaved Families for Justice ask the
2 Inquiry to investigate a number of issues relating to
3 emergency planning in the context of procurement,
4 stockpiling, stockpile management, international
5 collaboration in procurement and emergency procurement
6 processes across the four nations.
7 The Inquiry will be investigating these matters in
8 relation not only to PPE, healthcare and oxygen, as
9 suggested by these CPs in their submissions, but to
10 include also lateral flow tests and PCRs.
11 Those submissions also raise a number of questions
12 regarding decisions made during the pandemic, how
13 quality control and counter-fraud checking was carried
14 out, and the approach to conflicts of interest.
15 These are important aspects of the work that
16 Module 5 is carrying out, and will be addressed.
17 Finally, the submissions also ask whether Module 5
18 will be considering the regulatory regime which governed
19 procurement during the pandemic. As set out in the
20 provisional outline of scope, Module 5 will be examining
21 the operation and effectiveness of any regulatory
22 regimes and/or oversight in relation to key healthcare
23 equipment and supplies during the pandemic.
24 CBFJ Cymru in their submissions reiterate the
25 importance of investigating how procurement of PPE and
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1 Standards Institution];
2 "c. The impact of any changes to the volume,
3 technical specifications and/or quality of the products
4 that were procured;
5 "d. The validation process, including benchmarks
6 and revalidation;
7 "e. Safety concerns (the existence of such
8 concerns, and how they were addressed by those
9 responsible for procurement)."
10 My Lady, this scope is necessarily provisional.
11 Although it introduces a wide range of topics, it is
12 neither practical nor advisable to identify at this
13 stage all the issues that will be addressed at to the
14 Module 5 public hearing.
15 A number of the CPs have made suggestions for
16 matters that should be included in the provisional
17 outline of scope. It is not practicable for me to
18 address all of those today. All require, and are
19 receiving, careful consideration. It may be that some
20 suggestions accord with our own understanding of the
21 scope or planned refinements of the scope. There are,
22 however, some specific matters relating to the scope
23 that I would like to address today.
24 Firstly, in their joint submissions at paragraph 5,
25 Covid-19 Bereaved Families for Justice UK and Northern
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1 key equipment and supplies was carried out in Wales, as
2 distinct from the UK Government, and urges the Inquiry
3 to consider issues such as conflicts of interest and
4 consideration given to domestic manufacture of PPE.
5 This module will examine the approach to procurement
6 across the devolved nations, through the lens on the
7 matters outlined in the provisional scope, as well as in
8 respect of central UK Government decisions.
9 Third, the UK Anti-Corruption Coalition and
10 partners, or UKACC, in their submissions suggest
11 additions to the provisional scope, including
12 investigation into the impact of procurement decisions
13 on the day-to-day experience of frontline healthcare
14 workers, scrutiny of the differences between
15 business-as-usual procurement and the procurement of PPE
16 that occurred during the pandemic, including of how
17 technical assurance and quality control was carried out.
18 They ask the module to investigate the effectiveness of
19 the government's due diligence processes and how they
20 operated.
21 These issues are rightly raised, and will be
22 investigated in the course of Module 5. The impact of
23 procurement decisions on the day-to-day experience of
24 frontline healthcare workers will be explored by
25 Module 3 as well as by the Every Story Matters project.
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1 Fourth, UKACC further raise a number of specific
2 questions about the operation of the High Priority Lane,
3 and suggest that it was an approach unique to the UK.
4 The Inquiry can confirm that it will be scrutinising the
5 reasons for and operation of the High Priority Lane
6 within this Module.

7 UKACC asks that the procurement of goods, works and
8 services for the Nightingale hospitals be included
9 within the scope of Module 5. The establishment,
10 funding, locations, staffing and operation of
11 Nightingale hospitals are addressed in Module 3,
12 healthcare systems.

13 A number of CPs including FEMHO and UKACC raise
14 questions relating to a perceived lack of transparency
15 in the procurement process, such as failures to comply
16 with publication requirements for contract award
17 notices. This important issue will also feature amongst
18 those addressed in the work of Module 5.

19 FEMHO and UKACC also query whether this module
20 should include the procurement of services. Your
21 Ladyship may consider that such procurement lies beyond
22 the scope of Module 5 and the Inquiry's terms of
23 reference, given that it does not relate to key
24 equipment and supplies, and that a better approach would
25 be for any such procurement to be addressed on

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1 of the United Kingdom, and will continue to do so.

2 At paragraph 6 of their submissions, the Scottish
3 Health Boards seek clarification that the Inquiry plans
4 to intimate a detailed list of the issues to be
5 addressed at the Module 5 public hearing as soon as
6 practicable once its investigation has developed. I can
7 confirm that further details will be provided in
8 a solicitor to the Inquiry's update notes and at further
9 preliminary hearings.

10 Moving now to evidence requests and a Rule 9 update.
11 The Inquiry has already either issued or is about to
12 issue formal requests for evidence pursuant to Rule 9 of
13 the Inquiry Rules of 2006, to a number of individuals
14 and organisations which appear to it to have played
15 a central or significant role in matters relevant to
16 Module 5.

17 These include: first, UK Government departments such
18 as the Department of Health and Social Care,
19 His Majesty's Treasury, the Department of Business and
20 Trade, and the Cabinet Office; second, key
21 decision-makers in the devolved governments in Wales,
22 Scotland and Northern Ireland, and in local government;
23 and third, executive agencies and non-departmental
24 public bodies, including NHS England, NHS National
25 Services Scotland, the Scottish territorial and special

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1 a module-by-module basis as appropriate.

2 In their submissions, FEMHO submit that Module 5
3 should consider structural inequalities in procurement,
4 including the extent to which the Public Sector Equality
5 Duty was met in the government's procurement decisions
6 during the pandemic, and the differential aspects and
7 impacts of government procurement processes, procedures
8 and decision-making on minority ethnic healthcare
9 workers and communities.

10 They also raise issues about the adequacy of PPE,
11 publicly procured for certain minority groups, and the
12 availability and access to lateral flow tests and PCR
13 tests for healthcare workers. These issues will be
14 given careful consideration as the Inquiry continues its
15 investigation into procurement, and distribution of key
16 healthcare equipment and supplies.

17 The Scottish Covid Bereaved, at paragraph 6 of their
18 submissions, suggest that issues which the Inquiry may
19 wish to consider include the interaction between the
20 procurement responsibilities of the Scottish Government
21 and UK Government, and the extent of communication and
22 cooperation between the relevant teams in the
23 UK Government and Scottish regions.

24 The Inquiry team agrees, and has already started the
25 process of seeking evidence from all four jurisdictions

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1 services boards, NHS Wales Shared Services Partnership,
2 the UK Health Security Agency and Supply Chain
3 Coordination Limited (or SCCL).

4 The Inquiry is also in the process of considering
5 and, in due course, drafting further Rule 9 requests in
6 other key groups -- I beg your pardon -- to other key
7 groups and individuals who appear relevant to the work
8 of Module 5. These include, firstly, groups and
9 organisations representing specific areas of interest
10 within the scope of Module 5, including Covid bereaved
11 groups, trade unions, and representative bodies for
12 health and care professionals, and those representing
13 minority or marginalised communities and individuals.

14 Secondly, executive agencies and non-departmental
15 public bodies, including the Medicines and Healthcare
16 products Regulatory Agency, and UK Health Security
17 Agency, and criminal justice and enforcement agencies.

18 Third, central figures in the Ventilator Challenge,
19 and government procurement more widely.

20 And fourth, relevant ministers and senior government
21 officials involved in key decision-making regarding the
22 procurement and distribution of key equipment and
23 supplies during the pandemic.

24 As my Lady is aware, the Inquiry and Scottish
25 Covid-19 Inquiry are keen to avoid duplication between

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1 them and so the Module 5 team is checking not only the
2 requests made by other inquiry modules but also those
3 made by the Scottish Inquiry. That process means,
4 inevitably, that it takes a little more time to issue
5 Rule 9 Requests to Scottish bodies, but it is hoped that
6 in the long run this approach will assist in minimising
7 unnecessary repetition.

8 In that regard I should add that on 23 February 2022
9 the Inquiry published a memorandum of understanding
10 setting out how this Inquiry and the Scottish Covid-19
11 Inquiry intend to work effectively together. I am also
12 aware that your Ladyship has met with the chair of the
13 Scottish Inquiry, Lord Brailsford, to discuss the
14 constructive ways in which the two inquiries can
15 collaborate and cooperate.

16 Moving now to experts, Module 5 is in the process of
17 identifying the broad areas where expert evidence is
18 likely to be of assistance to this inquiry. An example
19 of such expert evidence is likely to be an overview of
20 the legal and regulatory framework governing public
21 procurement, and how it operated during the pandemic.

22 Other areas may be identified and explored as the
23 Inquiry's work continues.

24 A number of CPs in their submissions have made
25 suggestions about areas of potential expert evidence for

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1 will of course also provide these at the next
2 preliminary hearing.

3 The Inquiry is working to begin the process of
4 disclosing materials to CPs as soon as possible, which
5 is a matter a number of CPs raise in their submissions:
6 the issue of timely disclosure to ensure effective
7 preparation.

8 The process of disclosure to CPs is anticipated to
9 begin in late spring of 2024, this year. Each document
10 provider is being asked to provide, amongst other
11 matters, details of the key individuals who were
12 involved in issues relevant to the Module 5, provisional
13 outline of scope, the key meetings and a summary
14 categories of other material held and/or already
15 provided to the Inquiry relating to the Module 5
16 provisional outline of scope. This information will
17 allow the Inquiry to understand the nature of relevant
18 material held by the document provider and make targeted
19 requests for further material if necessary.

20 Where, as a result of the information provided, the
21 Inquiry has any concerns about a provider's processes
22 for providing relevant documents, it will raise and
23 pursue them, and of course, as documents are reviewed
24 and gaps identified, further documents may be sought.

25 And of course, my Lady, you also have the power to

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1 Module 5, and these will be given careful consideration.
2 The identities of instructed experts will be contained
3 in a solicitor to the Inquiry's update notes, once
4 experts are instructed, these notes will also provide
5 further details of the topics which the experts will
6 address in their reports, thereby enabling CPs to
7 comment on those matters should they wish to do so.

8 I now move on to the topic of disclosure. In common
9 with the approach taken in previous modules, Module 5
10 will adopt the following approach to disclosure. All
11 CPs will receive all documents disclosed in Module 5,
12 not just those documents relevant to them. Disclosure
13 will be subject to three things: first, a relevance
14 review so that only relevant documents are disclosed;
15 second, a de-duplication exercise; third, redactions in
16 accordance with the Inquiry's redactions protocol. A
17 significant teams of solicitors, barristers, and
18 paralegals is already in place to review for relevance
19 the material that is received.

20 Disclosure is likely to be in tranches made on
21 a rolling basis. Disclosure will be made via the
22 electronic data management and disclosure system,
23 Relativity. Disclosure updates will be provided by the
24 Module 5 solicitors team informing CPs of the progress
25 which has been made in obtaining relevant documents. We

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1 compel the production of documents under section 21 of
2 the Inquiries Act. And there are provisions in
3 section 35 of the Inquiries Act, which make it an
4 offence, during the course of an inquiry, for a person
5 to do anything to alter or distort a relevant document
6 or prevent any relevant document being produced to the
7 Inquiry, or to intentionally destroy, suppress, or
8 conceal a relevant document.

9 My Lady, I now move on to the listening exercise,
10 Every Story Matters. Every Story Matters is the name
11 given to the Inquiry's listening exercise. My Lady, the
12 Inquiry's terms of reference make clear that although
13 the Inquiry will not investigate individual cases of
14 harm or death in detail, listening to the accounts and
15 experiences of the bereaved families and others who
16 suffered hardship or loss will inform the Inquiry's
17 understanding of the impact of the pandemic and the
18 response and of the lessons to be learned.

19 Every Story Matters is, therefore, the process by
20 which the public can contribute to the Inquiry so that
21 it will be able not just to hear the voices of the
22 people of the UK and to reflect upon their experiences,
23 but also to incorporate the emerging themes into its
24 work.

25 Everyone's contribution through Every Story Matters

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1 will be analysed and turned into themed reports which
 2 will be submitted into each relevant investigation.
 3 These reports will be anonymised, disclosed to the
 4 Inquiry's CPs and used in evidence. The reports will
 5 identify trends and themes and include illustrative case
 6 studies which may demonstrate systemic failures.

7 Every Story Matters aims to obtain insights and
 8 information from anyone who wishes to contribute, that
 9 is from anyone who was impacted by the pandemic and
 10 wishes to share their experience. It has been designed
 11 so that anyone and everyone in the UK who is aged 18 or
 12 older can contribute if they wish to do so.

13 There are different ways for people to share their
 14 experience of the pandemic with the Inquiry. This can
 15 be done via our web form, a variety of alternative
 16 formats including Easy Read and paper forms or through
 17 community listening events around the country.

18 These experiences will be analysed and reviewed by
 19 the Inquiry's research specialists based on the key
 20 lines of inquiry, or KLOEs for Every Story Matters,
 21 produced by the Inquiry team.

22 The KLOEs are an important tool for setting out the
 23 way in which the Inquiry will gather and analyse
 24 experiences shared with Every Story Matters, in
 25 particular through the targeted research.

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1 settings and local authorities.

2 - The impact of procurement decisions on
 3 His Majesty's Government, healthcare settings, community
 4 care settings and local authorities on frontline staff.
 5 This will include the availability and adequacy of PPE
 6 made available, and the impact of changes to technical
 7 standards and the availability of lateral flow tests.

8 - The impact of government procurement decisions on
 9 hospitals regarding access to ventilators, oxygen and
 10 other related medical equipment.

11 - The challenges facing business and suppliers of
 12 PPE. This will include their experiences of supplying
 13 PPE, the procurement processes set up by His Majesty's
 14 Government, and any views on how this process was
 15 managed from their perspective as well as the impact
 16 that this had on them.

17 Potential audience groups proposed for sampling in
 18 qualitative interviews include: first, procurement
 19 officers within healthcare and community care settings,
 20 local authorities, and healthcare businesses working
 21 adjacent to the NHS such as private ambulance services;
 22 second, frontline staff working within healthcare and
 23 community care settings, local authorities, and
 24 healthcare businesses working adjacent to the NHS; and
 25 third, businesses who either offered to supply PPE or

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1 The Inquiry's research specialists are exploring the
 2 opportunity to conduct targeted, qualitative research in
 3 relation to particular topics and particular groups of
 4 people based on the KLOEs. An example of Module 5
 5 targeted research is listening to people with experience
 6 of being involved in procurement on the ground, in order
 7 to gain an insight into their perspective on the
 8 efficacy and suitability of procurement and distribution
 9 processes.

10 The experiences shared with Every Story Matters will
 11 be analysed and turned into themed reports. The
 12 resulting reports will synthesise and amalgamate
 13 individual accounts which will be aligned with and fed
 14 into Module 5 and the Inquiry's later modules. They
 15 will be disclosed to CPs. The reports will be formally
 16 adduced in evidence so that they can form part of the
 17 Inquiry's written record.

18 In the coming weeks, the Inquiry team will work with
 19 its research specialists to identify potential research
 20 questions and priority audience in relation to the
 21 following proposed KLOEs:

22 - The challenges and impacts on staff and the
 23 settings functions (for example a hospital running its
 24 services) of obtaining sufficient lateral flow tests and
 25 PPE in: private healthcare settings, community care

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1 who were awarded contracts for the supply of PPE.

2 It is unlikely that the targeted research will be
 3 able to cover all of the areas I have listed, and CPs
 4 were invited to file written submissions making
 5 suggestions in relation to the KLOEs for targeted,
 6 qualitative research, in particular, on:

7 Whether there were any specific areas which I have
 8 listed that CPs consider to be of particular importance
 9 for targeted research.

10 Whether there were any further topics that CPs
 11 consider important for targeted research, and why,
 12 including whether or not this evidence could otherwise
 13 be obtained through the Rule 9 process or by another
 14 method.

15 And third, any views on the proposed target
 16 populations for the targeted research, either in
 17 relation to the above three topics or further proposed
 18 topics.

19 The Inquiry is grateful for the submissions it has
 20 received from CPs in relation to these matters. They
 21 will be reviewed in detail by the Inquiry team, and will
 22 help inform the work on the KLOEs. It's right to note
 23 that the ESM listening exercise, including its targeted
 24 research which focuses on specific groups, is but one
 25 part of the Inquiry's broader consideration of the

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1 experiences of groups and individuals impacted by the
2 matters falling within the scope of the provisional
3 outlines of Module 5.

4 The experiences of many more groups and individuals
5 from a larger range of different communities and
6 backgrounds will be collected by means of the accounts
7 offered to the Inquiry through its Rule 9 investigatory
8 powers. We will provide more information about the
9 process of gathering and analysing information obtained
10 through Every Story Matters shortly.

11 My Lady, on commemoration.

12 My Lady, you have made clear your wish to recognise
13 the very real and human suffering arising from the
14 pandemic by ensuring that it is properly taken into
15 account and reflected in the Inquiry's work. As you
16 know, the Inquiry is producing a series of impact films,
17 the first of which was screened at the first Module 1
18 public hearing in June, and has used images and artwork
19 to try to represent elements of the loss and suffering
20 caused by the pandemic to the people of the UK.

21 Such was the scale of the tragedy, the grief and
22 loss suffered by the bereaved, and the lasting effect of
23 the pandemic on the lives of so many millions of people,
24 that no amount of commemorative activity could
25 adequately represent the depth of suffering experienced

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1 this one.

2 They also ask you to require state and
3 organisational CPs and material providers to serve
4 position statements.

5 In light of the pressure on both the resources and
6 time of CPs, and material providers involved in
7 consecutive live modules of this Inquiry, your Ladyship
8 may consider that the previous rationale for not
9 requiring such position statements, namely that such CPs
10 are already being asked to provide corporate statements,
11 which serve a sufficiently similar purpose, still holds
12 good.

13 They further raise the possibility of matters which
14 are currently the subject of criminal investigations
15 being included in the Inquiry's work on Module 5. They
16 ask for details as to how the Inquiry intends to
17 approach such material and its disclosure, and express
18 the desire for ongoing liaison in relation to such
19 material.

20 The module's work is at an early stage in this
21 regard but the Inquiry will engage with the appropriate
22 authorities in order to understand what investigations
23 or prosecutions are under way or have been completed in
24 relation to contracts awarded for items covered by the
25 provisional outline of scope for Module 5. Updates will

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1 by so many. However, the Inquiry remains committed to
2 the voices of those most impacted by the pandemic and to
3 continuing to deliver commemorative activity that
4 recognises the scale of this tragedy, and the effect it
5 had, and continues to have, on people's lives.

6 There will be a new impact film played at the start
7 of Module 5. These films are a powerful means of
8 reminding ourselves of the impact of a pandemic, and
9 although they do not strictly constitute evidence, they
10 help to ground proceedings in the lived experience of
11 those who have suffered hardship and loss.

12 My Lady, directions and other matters next. I turn
13 to address you on some specific points raised in the
14 written submissions provided by CPs. In their joint
15 submissions, Covid-19 Bereaved Families for Justice UK
16 and Northern Ireland Covid-19 Bereaved Families for
17 Justice express a desire to be included in the process
18 of selection of witnesses and experts. They revisit the
19 issue of Rule 9 requests first made in submissions in
20 module one and repeated submissions in Module 2, namely
21 by asking that the requests themselves be shared with
22 core participants.

23 My Lady, you have already decided this matter in
24 previous modules and no reason has been advanced as to
25 why a different approach should be taken in respect of

26

1 be provided to CPs in due course.

2 Furthermore, they raise the prospect of potential
3 undertakings from the Attorney General in respect of
4 potential witnesses or CPs. They make clear that should
5 such an undertaking be sought, the CBFFJ UK and Northern
6 Ireland CBFFJ would oppose this. The Inquiry takes note
7 of this.

8 My Lady, I know that once you have had an
9 opportunity to consider the written submissions and
10 those that are being made orally today, you will publish
11 any appropriate directions in due course.

12 Moving penultimately now to next dates for Module 5.
13 We will notify core participants when the next
14 preliminary hearing is due to take place, and it will be
15 published on the Inquiry's website. As you know,
16 my Lady, the current plans are that Module 5 is expected
17 to take place in 2025. Further timetabling details will
18 be provided by way of an update to corporates in due
19 course. These will also be announced on the Inquiry's
20 website, the hearing will be held at Dorland House in
21 Paddington.

22 And now finally, my Lady, submissions from core
23 participants. That concludes all of the matters on
24 which I wish to address you on behalf of the Inquiry. A
25 number of core participants wish to address you in the

28

1 course of this hearing, and so can I now invite you,
2 my Lady, to hear first from Jesse Nicholls, counsel for
3 Covid-19 Bereaved Families for Justice.

4 **LADY HALLETT:** Thank you very much indeed, Mr Wald.
5 Just before I call on Mr Nicholls -- I'm sorry
6 I should have spotted it earlier -- I think there are
7 number of references in your opening
8 comments/observations, Mr Wald about Her Majesty's
9 Government decision processes, to make it clear, when
10 you said Her Majesty's Government, you do intend to
11 include, and we should have made it more precise --
12 I take the blame -- we include the governments of the
13 devolved nations, because they also took decisions and
14 had processes.

15 **MR WALD:** That's quite correct.

16 **LADY HALLETT:** It's a point made by Bereaved Cymru, so
17 I think it's important we make that clear now.

18 **MR WALD:** Thank you very much indeed.

19 **LADY HALLETT:** Thank you very much.
20 Mr Nicholls.

21 **Submissions on behalf of Covid-19 Bereaved Families for
22 Justice by MR NICHOLLS**

23 **MR NICHOLLS:** My Lady, good morning, I represent the
24 Covid-19 Bereaved Families for Justice group. Can
25 I first thank you for allowing us to develop our
29

1 Those aims, as I say, are acute in Module 5. As you and
2 your team, my Lady, will know, there has been extensive
3 reporting concerning procurement failures and a lack of
4 preparedness. There have been suggestions of conflicts
5 of interest, and allegations going as far as fraud and
6 corruption.

7 The clients that I represent, my Lady, look to the
8 Inquiry to expose such failings, if they occurred, to
9 ensure accountability, and, crucially, to identify
10 learning or future prevention.

11 Having made those brief comments on Module 5, can
12 I then turn to some of the specific points foreshadowed
13 in our written submissions, and, as previously, where
14 I don't address something that is included in the
15 written document, of course we rely on what is set out
16 in writing.

17 First, scope, at paragraphs 2 to 6 of our written
18 submissions -- I can take this very briefly -- we
19 welcome the broad provisional scope outlined by the
20 Inquiry, including the list of questions helpfully set
21 out at paragraph 16 of CTI's note.

22 We also note the helpful update from Mr Wald this
23 morning in response to paragraph 5 of our written
24 submissions in particular, in which he confirmed that
25 the issues we have identified there will form part of
31

1 submissions orally this morning. We've set out our
2 submissions in writing, as I hope you've seen, and of
3 course I won't go through them line by line.

4 Those submissions are intended in the same
5 constructive spirit that we have sought to adopt
6 throughout the Inquiry. They also seek to ensure, as
7 far as possible, the effective involvement of the
8 bereaved clients that we represent in Module 5.

9 My Lady, I am conscious that my time is tight and
10 I have a 15-minute guillotine and I know how stringent
11 guillotines can be. Can I therefore indicate briefly
12 how I intend to use the remaining minutes that I have.

13 First, some very brief introductory comments on
14 Module 5 from the perspective of our client.

15 And second, I'll move on to address orally but
16 briefly a small number of the points we've addressed in
17 writing, and of course taking into account the helpful
18 update that Mr Wald has just given.

19 First, then, Module 5. As you have heard
20 Mr Weatherby and others say on previous occasions,
21 my Lady, the broad aim of our clients is to establish
22 what happened to their loved amongst, to participate
23 effectively in that pursuit of the truth, to ensure
24 accountability and to prevent future deaths so that
25 others do not have to go through the same tragedy.
30

1 the Inquiry's examination.

2 Second topic, disclosure from the Inquiry. We
3 address this at paragraph 9-11 of our written
4 submissions, my Lady, and of course I note the update
5 this morning from Mr Wald that the disclosure from the
6 Inquiry is now anticipated to begin in late spring of
7 2024. The CTI note previously indicated that it was due
8 to commence in autumn 2024. And of course, earlier
9 disclosure from the Inquiry to our clients is something
10 that we wholeheartedly welcome.

11 Nonetheless, can I make some brief points about
12 a request for earlier disclosure from the Inquiry than
13 has taken place before in previous modules, and can
14 I start those submissions by making two things clear:
15 first, we fully appreciate that the Inquiry is dealing
16 with many demands and moving at a fast pace. Second, we
17 also consider from our prior experience in other modules
18 that the disclosure being made appears to be that which
19 should be made. We are not suggesting that things are
20 not being disclosed.

21 However, for our clients, the timing of disclosure
22 in prior modules has been an issue of real concern, and
23 the crux of that concern, my Lady, is this: that we say
24 we need disclosure from the Inquiry earlier than has
25 been happening to date to enable effective participation
32

1 in the proceedings. The point I'm sure will be a very
2 familiar one to you, my Lady, I wouldn't labour it: if
3 disclosure is received only very shortly before relevant
4 evidence hearings and relevant witnesses, that hinders
5 the ability of our clients to understand the
6 proceedings, to propose lines of questioning, and to
7 assist the Inquiry.

8 Now, of course, we do not say that all disclosure
9 has come at too late a stage, but having gone through,
10 in a painstaking and extremely boring exercise that
11 Ms Brook, who sits to my right, has done with her team,
12 we've identified that there has been an issue of
13 bottlenecks where large amounts of material is
14 disclosed, sometimes as much as 40-50% of the entire
15 disclosure in a module, in the last month and during the
16 hearing itself of a module. And what we are seeking is
17 for that being repeated in Module 5.

18 Of course, if disclosure in fact is going to start
19 in early spring 2024, that is welcome, and should help,
20 but we hope that by raising these matters now, early in
21 Module 5, the issues that have arisen previously can be
22 remedied. And as we have said before, my Lady, we would
23 of course be very open to dialogue with your team in
24 seeking to achieve that, and we have sought, at
25 paragraph 11 of the written submissions, to identify

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1 consider that done properly, and in a focused manner,
2 they will save both resources and time. You have the
3 point.

4 Second, we say the subject matter of Module 5,
5 including allegations of improper conduct and corporate
6 bodies putting profit before public safety, is
7 particularly well suited to position statements. Can
8 I refer briefly, by reference to another Inquiry, to the
9 submissions that were made by lead CTI at the end of the
10 Grenfell Tower Inquiry in November 2022, when he
11 described "a merry-go-round of buck-passing" from
12 corporate and state core participants seeking to protect
13 their own interests, that had created "a spider's web of
14 blame".

15 That, of course, was a different case. But,
16 my Lady, we say that position statements in Module 5
17 would assist this Inquiry to avoid the risk of the same
18 form of merry-go-round and evasion which we have no
19 doubt your Inquiry seeks to avoid, and which our clients
20 seek to avoid as well.

21 Third, and finally on this point, my Lady, since
22 your Module 5 ruling, which CTI have noted in their
23 written note, there have been a number of meaningful and
24 material instances of non-compliance with the Inquiry's
25 Rule 9 requests.

35

1 some possible steps for your consideration, my Lady.

2 I won't repeat them, they're in the written
3 submissions. They are matters for your consideration
4 and that of your team, because, of course, you are the
5 ones best placed to know if those go to the issues that
6 have caused some of what I have described as the
7 bottlenecks problem in previous modules.

8 Third topic, my Lady, position statements. You have
9 heard from Mr Wald and will have seen from our
10 submissions at paragraph 12 that we invite you to direct
11 position statements in Module 5. You will also recall,
12 my Lady, that we have made those submissions before and
13 they have not been accepted.

14 If I may channel the spirit of Mr Weatherby for
15 a moment, my Lady, we say that the position in Module 5
16 is now different, that Module 5 is particularly well
17 suited for position statements for the reasons we've
18 summarised in the written submissions but which I can
19 distill to three principal points: first, the general
20 merits of position statements apply to Module 5 as they
21 did previously. Of course that point only goes so far,
22 it's been rejected before.

23 But, to the extent that Mr Wald says you may
24 consider that they will have a negative impact on
25 Inquiry resources and time, as we have said before, we

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1 Position statements can help to avoid such issues
2 and that is particularly relevant because Mr Wald
3 suggested that one reason you may think position
4 statements remain inappropriate is because of the Rule 9
5 process. But of course, if the Rule 9 process is not
6 complied with, we say that supports, now, the use of
7 position statements.

8 That's all I say on that, having managed to get
9 through that submission without interruption., my Lady.

10 Fourth point, experts. Submissions are at 13 to 14
11 of the written submissions. The core point is this,
12 my Lady: our clients wish to be involved in the
13 Inquiry's instruction of experts. The Inquiry allowed
14 that approach in selecting the structural racism
15 experts. Of course, the choice of who to instruct and
16 what to ask is ultimately a matter for the Inquiry. But
17 our clients seek collaboration on that issue for their
18 own benefit and to assist the Inquiry.

19 The note from CTI, not altered in the oral update --
20 for your note, my Lady, it's paragraph 34 -- indicates
21 that in Module 5 the Inquiry will withhold from core
22 participants the identities of the experts and the
23 questions they will be asked until they have completed
24 their draft reports. We do not see that that is
25 a necessary or sensible approach, and we invite

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1 a reconsideration of it.

2 Fifth topic, the Inquiry's liaison with relevant
3 criminal investigations. We note the update from
4 Mr Wald. There is little we can say other than this:
5 our clients' position is that the Inquiry should be
6 speaking with criminal investigators to assist the
7 Inquiry's work, for example, in identifying relevant
8 themes, topics, materials and witnesses. And the update
9 we seek, as summarised at 15-18 of our written
10 submission, is, so far as possible without risking
11 prejudice to such investigations, an update on what
12 liaison has taken place, including with whom, the terms
13 of such contact, and how the Inquiry in practical terms
14 proposes to manage and benefit from the overlap between
15 its own scope and the work of such investigations.

16 Sixth topic, undertakings. And here I'm of course
17 referring to the possibility of seeking undertakings
18 from the Attorney General. And, my Lady, you're nodding
19 your head, you know this issue very well, you've seen
20 that we've sought, I hope relatively neutrally, to set
21 out the context at 19-23 of our written submissions.
22 You will understand the issue well, my Lady.

23 For those listening and with perhaps less experience
24 of what is a rather technical legal issue, can I seek to
25 summarise the issue in this way for those who are

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1 considered that seeking an undertaking or undertakings
2 may seriously undermine victim and public confidence in
3 the Inquiry itself by seeking an undertaking that would
4 be granted to those responsible for serious failings,
5 including where such failings have or may have
6 contributed to thousands of deaths.

7 We say, my Lady, that this is an important issue.
8 It can impact confidence in the Inquiry and, if not
9 grappled with at an early stage, it can inadvertently
10 frustrate and delay the Inquiry's work, which no one
11 wants.

12 We understand from constructive discussions with
13 your team, my Lady, that this is an issue under active
14 consideration and our submission at this stage is
15 a simple one: we invite an update as soon as possible on
16 the Inquiry's position so it can be aired and resolved.
17 But in the hope it assists the Inquiry's thinking,
18 my Lady, and yours, can I make three short points as to
19 our likely position? And I just want to clarify one
20 matter that Mr Wald made in his update. He said that we
21 would oppose. What we in fact say is we are likely to
22 oppose, because of course this is being addressed at
23 a relative degree of abstraction at this stage. But the
24 three points are this: first, we're likely to argue
25 against an undertaking, essentially for the reasons set

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1 listening. The issue is whether you, my Lady, consider
2 now or at some later stage that an undertaking should be
3 sought from the Attorney General so that witnesses
4 and/or organisations, that is to say legal persons who
5 would otherwise or may otherwise seek to assert the
6 privilege against self-incrimination and thus not give
7 relevant evidence, can instead give such evidence.

8 Set against that rationale for seeking such an
9 undertaking are a range of factors that may weigh
10 against such an undertaking. And I should say we have
11 taken these from, among other sources, the rulings of
12 prior inquiries that have dealt with the issue, as well
13 as from a pro forma template indicating the very factors
14 that the Attorney General him or herself considers when
15 such requests have previously been made. They include,
16 first, that a witness may not assert the privilege at
17 all, or may only do so in response to specific issues,
18 rendering an undertaking unnecessary.

19 Second, it may be considered that the Inquiry can
20 reach conclusions and discharge its terms of reference
21 even if the privilege is asserted by one or more
22 witnesses or organisations. For example, by reliance on
23 the totality of the evidence that others have given and
24 that's been obtained.

25 And third, and perhaps most importantly, it may be

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1 out in the written submissions. First, we consider that
2 doing so at this stage would be premature. The proper
3 course is witnesses and organisations should first be
4 asked the relevant questions through the Rule 9 process
5 and their responses assessed before any consideration is
6 given to the issue.

7 Second, in exercising your important judicial
8 function in this Inquiry, my Lady, we say that you
9 should be slow, indeed very slow, to seek an undertaking
10 that affords protection to those responsible for the
11 kinds of failures that I've identified.

12 Third, the confidence point. You have the point,
13 I say no more.

14 Fourth, an undertaking may well be unnecessary.
15 There is an experience from some inquiries indicating
16 that the undertaking issue, if grappled with too early,
17 can lead to an overstating of the impact of the
18 privilege. There can be a benefit to playing out the
19 process so that you, my Lady, can assess what people say
20 and on what basis, and assess the privilege stage by
21 stage as the law requires rather than jumping straight
22 to the issue.

23 Penultimate headline point from us, we say that the
24 possibility that the privilege will be asserted should
25 not inform decisions on who are relevant witnesses to

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1 seek information and disclosure from. The issues are
2 distinct and should be kept separate. Witnesses and
3 organisations should be selected on relevance, based on
4 proper questions the Inquiry wishes to ask. What
5 witnesses say in response comes later.

6 Finally, my Lady, and this is my final point and
7 I'll sit down, having exhausted a little more, I think,
8 than my 15 minutes, my Lady, you may consider it
9 appropriate to direct that any applications asking you
10 to approach the Attorney General should be made promptly
11 with a fixed cut-off time set, to avoid the issues
12 I alerted to earlier: that is that the issue is raised
13 too late, and can cause delay and compromise the
14 viability of the Inquiry's evidence hearings.

15 On the listening exercise and commemoration you have
16 our written submissions. My Lady, in light of the time,
17 I won't say any more on those. Thank you for the time
18 and, unless I can assist you further, those are our
19 submissions.

20 **LADY HALLETT:** You have been very helpful, Mr Nicholls,
21 thank you. And there is no need to channel your inner
22 Mr Weatherby, the inner Mr Nicholls does a very good
23 job. Thank you very much.

24 **MR NICHOLLS:** I'm very grateful.

25 **LADY HALLETT:** Mr Wilcock?

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1 On 11 December 2023 you informed P Duffy & Co that
2 you considered the Northern Ireland Covid Bereaved
3 Families for Justice campaign is well placed to assist
4 this Inquiry to achieve its aims in Module 5, by
5 representing the collective interest of a broad spectrum
6 of those bereaved in Northern Ireland as a result of the
7 Covid-19 pandemic in relation to matters relevant to
8 Module 5, as set out today by Mr Wald, King's Counsel,
9 and including: the procurement and distribution of key
10 healthcare-related equipment and supplies, including
11 PPE, ventilators and oxygen to end users across Northern
12 Ireland; consideration of the robustness and
13 effectiveness of the procurement processes; the adequacy
14 of the items obtained and the effectiveness of their
15 distribution to the end user; and the UK and Northern
16 Ireland-wide procurement of lateral flow tests and PCR
17 tests.

18 As you have acknowledged, my Lady, many of the group
19 I represent have experienced firsthand many of the
20 issues which the Inquiry will investigate in Module 5,
21 including not only the distribution of such key
22 healthcare-related equipment and supplies, but also the
23 adequacy of the items obtained, the effectiveness of
24 their distribution within Northern Ireland, and the
25 challenges experienced, especially in relation to

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1 **Submissions on behalf of Northern Ireland Covid-19 Bereaved
2 Families for Justice by MR WILCOCK KC**

3 **MR WILCOCK:** I'm not entirely sure the length of my
4 submissions justifies me having a lectern but I will
5 take it since I was offered it anyway.

6 My Lady, I appear in this module on behalf of the
7 Northern Ireland Covid-19 Bereaved Families for Justice
8 campaign, instructed by PA Duffy & Co, and I make these
9 short oral submissions in the knowledge that our written
10 submissions, dated 29th January, are publicly available,
11 that your Ladyship will be aware that, unless we say
12 otherwise, we adopt and support those submissions and
13 those made today orally by Mr Nicholls on behalf of the
14 UK Covid Bereaved Families for Justice. And that
15 particularly applies to submissions you've just heard in
16 relation to the role of the people -- the group
17 I represent within the Inquiry, the timing of
18 disclosure, the use of position statements, and the
19 process for the instruction of expert witnesses.

20 Your Ladyship, Mr Nicholls understandably didn't go
21 into detail on the issues of commemoration of individual
22 deaths and pen portrait. I am not going to use up all
23 my time so I can say that we would ask you to look in
24 detail at the submissions we make in relation to that,
25 at paragraphs 26 of -- 25 and 26 of our written note.

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1 procurement of lateral flow tests and PCR tests in
2 particular, you won't be surprised to hear, in relation
3 to the facilities in which their loved ones were being
4 treated.

5 My Lady, I'm grateful for your counsel's indication
6 as to the scope of the Inquiry, and the indication that
7 that means there will be an examination of the approach
8 to procurement across all the devolved nations
9 separately. And equally grateful for your clarification
10 that, in terms of the way questions are phrased, one
11 must be careful, and I adopt the submissions you've
12 heard on behalf of the Cymru team in relation to that
13 and thank you for that clarification.

14 But my Lady, an illustration of why it may be
15 important from the Northern Ireland perspective to look
16 at procurement through the Northern Irish lens may be
17 evident in the fact that in April 2023 the Northern
18 Ireland Audit Office published a document entitled
19 "*Public Procurement in Northern Ireland*", which observed
20 (i) that according to Department of Finance estimates,
21 around 25% of the total resources available to the
22 Northern Ireland Executive are used for procurement.
23 Now, plainly I'm talking in general sense rather than in
24 Covid sense, but it gives an indication of the
25 importance of the general issue of procurement to the

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1 Northern Ireland political process, and, coincidentally,
 2 to the Covid pandemic.
 3 In 2020 the New Decade, New Approach, which you will
 4 hear much more about when you come to Belfast, made
 5 transforming how public procurement operates a key
 6 priority of the Executive, and was followed by number of
 7 different initiatives intended to modernise how
 8 procurement functions in the north of Ireland.
 9 In that context, your Ladyship is already well aware
 10 of the parlous state of the health system in Northern
 11 Ireland, and it is with some relief that, for the first
 12 time since this Inquiry began, we do not have to tell
 13 you that we do not have a functioning Executive, and we
 14 all hope that recent events will mark the time when
 15 steps can be taken to rectify the crisis within the
 16 Northern Ireland health and social care system.
 17 As far as this module is concerned, and in the light
 18 of the resumption of power sharing in Belfast, we note
 19 that, although a number of individual members of the
 20 Executive between 2020 and 2022 -- and Mr Wald did his
 21 best to pronounce their names correctly when he read
 22 them out -- have been granted CP status. To our
 23 knowledge, no such application has been made, or
 24 certainly granted, in relation to the Northern Ireland
 25 Executive Office, which is different to the approach
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1 the future, I'm really sorry.
 2 **MS WEERERATNE:** Good morning, that was precisely my first
 3 intention, was to say my name, and not as a matter of
 4 ego but just to say it's Aswini Weereratne. Every
 5 syllable to be pronounced.
 6 **LADY HALLETT:** Thank you.
 7 **Submissions on behalf of Covid-19 Bereaved Families for**
 8 **Justice Cymru by MS WEERERATNE KC**
 9 **MS WEERERATNE:** My Lady, good morning.
 10 My Lady will be familiar with the group I represent
 11 and I'm privileged to represent this morning, the Covid
 12 Bereaved Families for Justice For Cymru has been granted
 13 Core Participant status in number of other modules,
 14 including 1 and 2, and of course 2B, which is dedicated
 15 to scrutinising the decision-making of the Welsh
 16 Government. This is, however, as you've noted, my first
 17 appearance at this Inquiry in its behalf and I'm
 18 honoured to be here.
 19 My aim is to be brief in making these submissions.
 20 But for the purposes of this different module and for
 21 the benefit of those who have not been able to follow
 22 earlier hearings, I hope it's permissible to repeat one
 23 or two matters that have already been stated in other
 24 modules and in our written submissions. My submissions
 25 today will address three broad areas: firstly, a few
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1 taken by that office in relation to other modules.
 2 My Lady, it's a matter for not us who applies and
 3 who is granted, but we make that passing observation.
 4 In any event, we look forward to working with your
 5 Ladyship, your legal team, and all other core
 6 participants in your investigations in this module in
 7 order, as we put it in our written submissions, to make
 8 this Inquiry work.
 9 My Lady, I don't think there's anything more that
 10 I can say unless there's anything in particular you
 11 would wish me to deal with?
 12 **LADY HALLETT:** No, I'm very grateful, Mr Wilcock, and, as
 13 I know I speak for everyone here, we share your hopes
 14 that the Executive can at last get back to making sure
 15 Northern Ireland is governed.
 16 **MR WILCOCK:** Thank you very much.
 17 **LADY HALLETT:** Thank you very much.
 18 It's a break now, I think, and I shall return at
 19 11.55.
 20 **(11.38 am)**
 21 **(A short break)**
 22 **(11.56 am)**
 23 **LADY HALLETT:** Right.
 24 Ms Weereratne KC, I'm so sorry, have -- can you
 25 pronounce your name for me just so I can get it right in
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1 introductory words about the group, some questions on
 2 scope and in areas for -- key areas for substantive
 3 investigation that are currently of concern for this
 4 group, in itemised and in summary form; and finally, to
 5 highlight some points on preparatory steps.
 6 Firstly, then, the Cymru group extends its thanks to
 7 the Chair for granting it CP status in this module, from
 8 which important lessons for the future can be learned.
 9 The group was established to ensure proper scrutiny of
 10 government decision-making relevant to Wales, this
 11 includes in Westminster, the devolved administration in
 12 Wales, and local and regional government bodies in
 13 Wales.
 14 In granting the group CP status, the Inquiry has
 15 recognised its central role in engagement with the Welsh
 16 Government, and the strong links it has forged with
 17 other interested groups based in Wales who are not
 18 themselves CPs, but giving them a voice in this Inquiry.
 19 It's also acknowledged -- it also acknowledges the
 20 severity of the impact of the pandemic on the people
 21 throughout Wales and the numbers of lives lost. It
 22 bears restating that it is crucial that the people of
 23 Wales can have full confidence that this public inquiry
 24 will fully scrutinise decision making in Wales in
 25 relation to the pandemic, and that the experiences and
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1 voices of the Welsh people will be properly heard and
2 represented before it. Of course there is currently no
3 separate inquiry in Wales, which adds to the importance
4 of this Inquiry to the Welsh people.

5 The main decisions made in Wales concerning the
6 pandemic were largely separate to, and also different
7 from, those taken by the UK Government. The devolved
8 nations had their own processes and responsibilities in
9 relation to procurement of PPE, RPE, healthcare
10 equipment and other medical supplies. This highlights
11 why it is so important that the Inquiry examines the
12 decision-making in response to the pandemic of the Welsh
13 Government and its government bodies in addition to the
14 decisions in Westminster and by other devolved nations
15 that might also have had an impact in Wales.

16 To date the approach taken by this Inquiry and other
17 modules has provided a measure of reassurance that it
18 intends to take Welsh interests seriously. Members of
19 this group have wide-ranging experience of the impact of
20 government decisions on procurement throughout Wales,
21 and stand ready to assist this Inquiry and share its
22 experiences with the public.

23 Turning then to Module 5 matters more specifically.
24 Of course, this module is just getting under way and,
25 prior to the disclosure and Rule 9 exercises, its shape

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1 welcome very much if this could be borne in mind for
2 future submissions and notes, simply because it always
3 causes a sharp intake of breath by my clients, and is
4 a small anxiety that could easily be avoided.

5 I'm grateful.

6 **LADY HALLETT:** Completely understand.

7 **MS WEERERATNE:** Thank you.

8 So we do acknowledge that the Inquiry's provisional
9 scope outlines explicitly reference to the governments
10 of the UK and devolved nations and we are grateful that
11 the Inquiry continues to respect the need to examine key
12 questions within each of the four nations.

13 So, from that, I would like to add to our written
14 submission in this way: we say that it's necessary to
15 acknowledge that beyond end users of protective
16 equipment lay patients and care home residents, so that
17 the Inquiry, we say, must not overlook the likely impact
18 on numbers of deaths from mismanagement of procurement
19 and distribution. The question we say that arises or
20 that we'd like to flag at this point, at this early
21 stage, is: does the Inquiry propose to establish or
22 consider how procurement and availability of protective
23 equipment impacted on the numbers of deaths and the
24 avoidability of deaths in this module?

25 In making that submission, we also note that

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1 and scope remains rightly provisional. We do not
2 therefore address scope today in any detail.

3 We note the overarching framework for this
4 investigation set out by CTI in paragraph 16 of his
5 note. Clearly, questions around the lack of basic
6 resources, such as PPE for health and social care staff,
7 and the lack of due process, and potentially of fraud
8 are likely to feature prominently in this module. And,
9 aligned with our submission highlighting the importance
10 of understanding and investigating the role of each of
11 the four nations, I'm going to say out of an abundance
12 of caution, we ask the Inquiry team for explicit
13 reassurance that all of the questions identified at (a)
14 to (t) of paragraph 16 of the note will be addressed to
15 each of the four nations, and this will include, for
16 example, oversight mechanisms, that's 16(h), and issues
17 of fraud and conflicts of interest, that's 16(i).

18 And I note in saying that the intervention made
19 a few moments ago by my Lady on the issue of the use of
20 the acronym HMG and the intention that it should include
21 all devolved nations, obviously grateful to hear that,
22 and will assume, hopefully correctly, that this applies
23 to all other -- what I'm going to call are omissions,
24 from my clients' points of view, in that note. And if
25 I might add this for good measure: if -- we would

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1 proposed research work, or KLOEs, which have already
2 been referred to by CTI, and are referred to in the note
3 at paragraph 38, to which I will briefly return shortly,
4 but that -- so far, that does not identify the impact on
5 numbers or deaths as an area for research.

6 Turning then to points that the Cymru group would
7 like to raise as preliminary issues of scope. And from
8 information currently available to it, we have
9 identified some key initial concerns around procurement
10 questions for Welsh Government decisions, or decisions
11 with a Welsh angle, which we say are likely to have had
12 a direct impact on the number of deaths in Wales, and
13 which we hope will be helpful to the Inquiry team at
14 this stage. And these include, firstly, the
15 effectiveness and quality of items that were procured,
16 including from abroad. Did they meet safety standards
17 or even guard against airborne viruses at all? Whether
18 there were sufficient FFP3 masks procured rather than
19 a focus on gowns, visors and fluid-repellent masks which
20 gave the appearance of a government striving to procure
21 PPE when in fact what was needed was protection from
22 airborne viruses.

23 This then raises the question about the failure to
24 procure the correct RPE and PPE, the failure to have
25 stores of adequate RPE/PPE so that exorbitant prices

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1 were subsequently paid during the pandemic for
2 equipment, the lack of transparency and questions over
3 whether value for money was achieved, and that different
4 approaches were taken within Wales resulting in
5 a postcode lottery for the availability of protective
6 equipment.

7 Turning then, finally, to more specifically points
8 on the preparatory steps for this module. The Cymru
9 group accepts that KLOEs are an important tool for
10 gathering and analysing experiences shared with Every
11 Story Matters through targeted research. In our
12 submission, priority audiences from each of the four
13 nations should be invite to consider the impact of
14 procurement decisions by their own nations, as
15 identified in the research questions set out in
16 paragraph 38 of CTI's note.

17 I'd like to turn next, then, to highlight the point
18 that we have made in our written submissions on the
19 proposed Rule 9 updates, particularly in light of the
20 renewed call by other CPs for position statements from
21 government and other bodies. What we've done is to draw
22 attention to the need to have proper detail of the
23 issues raised in Rule 9 requests of state and other
24 organisations, in order to assist us in participating
25 and preparing fully for this module, including by making

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1 Inquiry to hear their testimonies in this module.

2 With that, my Lady, unless there's anything further
3 I can help the Inquiry with this morning, we look
4 forward to continuing to work in collaboration with the
5 Inquiry team and other CPs in this -- to make this
6 a meaningful and fruitful exercise.

7 **LADY HALLETT:** Thank you very much indeed for your help.
8 Very grateful.

9 Right, Mr McCaffery, I think you're attending
10 remotely.

11 **Submissions on behalf of Scottish Covid Bereaved by**
12 **MR McCAFFERY**

13 **MR McCAFFERY:** Thank you, my Lady.

14 My Lady, I am instructed by Amer Anwar & Company on
15 behalf of Scottish Covid Bereaved this morning.
16 Scottish Covid Bereaved are once again grateful to the
17 Inquiry for being included as a designated core
18 participant in Module 5. We're also grateful to counsel
19 to the Inquiry for providing a detailed note setting out
20 the matters which are to be addressed at this first
21 preliminary hearing in Module 5.

22 Module 5 is, of course, of significant importance to
23 the members of Scottish Covid Bereaved, who had
24 firsthand experience of the widespread lack of
25 availability of personal protective equipment, or PPE,

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1 suggestions for lines of inquiry. Our submission
2 reflects our experience in other modules where the full
3 extent of Rule 9 requests has become known too late in
4 the day so that we've been unable to raise any challenge
5 or speak to the Inquiry team about other key witnesses
6 or issues to be explored with witnesses in good time.
7 Our overarching concern is that this inevitably impedes
8 effective investigation, fairness and full anticipation
9 by CPs.

10 We are, of course, grateful to the Inquiry for its
11 collaborative approach, and it goes without saying that
12 everyone's resources are stretched in an inquiry of this
13 complexity, and we do note with approval submissions by
14 other CPs for the Inquiry to take all steps to promote
15 fairness and full participation.

16 We will make further submissions on this and on
17 disclosure -- on the disclosure process in due course as
18 necessary.

19 We also wish to reserve our position at this stage
20 on expert evidence.

21 And finally, we would also wish to highlight that
22 members of this group can speak to systemic failings in
23 procurement in Wales, and the shortages of resources in
24 hospital and care home settings where their families and
25 loved ones lost their lives, and so we do invite the

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1 during the course of at least the early stages of the
2 pandemic, and, in many cases, can corroborate many of
3 the stories of not only a lack of availability, but also
4 other healthcare-related equipment and supplies,
5 including ventilators and oxygen.

6 Scottish Covid Bereaved members are keen to find
7 answers to all of the issues raised, and particularly
8 with regard to procurement, availability and use of
9 lateral flow tests and free PCR tests.

10 The members of Scottish Covid Bereaved have
11 significant experience and perspectives to share with
12 the Inquiry as end users of all of such equipment and
13 supplies and as firsthand witnesses to its use within
14 hospitals and care home environments.

15 Scottish Covid Bereaved as a group has a wide and
16 varied membership, which includes doctors, paramedics
17 and carers in both care home and community settings, as
18 well as those who cared for loved ones in domestic
19 settings.

20 Members of Scottish Covid Bereaved whose loved ones
21 died in care homes and hospitals will, along with the
22 bereaved from the other nations, be able to provide the
23 Inquiry with a wealth of information on what was
24 happening on the ground, as it were, and within those
25 environments.

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1 The issues surrounding testing are also of great
 2 importance to Scottish Covid Bereaved members. The
 3 impact of the lack of testing of patients being
 4 discharged from hospitals and transferred to care homes
 5 is a matter which, as your Ladyship is aware, was raised
 6 in Module 2A in the last few weeks, and how this failure
 7 to test fuelled the spread of the virus to vulnerable
 8 residents in care homes and led to the deaths of many of
 9 the group's members' relatives. Had testing been
 10 identified and utilised earlier in the pandemic, this
 11 would have allowed staff to have identified Covid
 12 positive residents and to take steps to minimise the
 13 spread of virus within care homes. This is an issue of
 14 great significance for Scottish Covid Bereaved members
 15 who lost loved ones in those situations.

16 Further, had testing been widespread in those early
 17 stages of the pandemic, members of Scottish Covid
 18 Bereaved would have been more likely to have been able
 19 to visit their loved ones in the last hours rather than
 20 leaving them alone, isolated, and often confused as to
 21 their situation.

22 We note that the scope of Module 5 does indeed
 23 appear ambitious, and Scottish Covid Bereaved members
 24 will endeavour to assist the Inquiry in meeting its
 25 objectives throughout in its disclosure, expert

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1 dangers which we now know surrounded that decision.

2 Although I do note from Mr Wald's submissions this
 3 morning that the establishment, funding, location,
 4 staffing and operation of the Nightingale hospitals are
 5 to be addressed in Module 3, healthcare systems, and it
 6 is hoped and anticipated that the NHS Louisa Jordan
 7 Hospital will also be included in that module.

8 Scottish Covid Bereaved also very much share the
 9 significant concerns referred to in the submissions from
 10 the UK Anti-Corruption Coalition in relation to the
 11 questions surrounding the use of the "VIP lane" and the
 12 seemingly close relationships between those succeeding
 13 in gaining contracts for the supply of PPE and those
 14 politicians recommending the award of those contracts.

15 Turning to disclosure, my Lady, Scottish Covid
 16 Bereaved note all that is contained in counsel to the
 17 Inquiry's note in that regard. Members of the group
 18 look forward to the commencement of the disclosure
 19 procedure, and are obviously limited in terms of the
 20 submissions that they can make until such times as the
 21 results of that process are known and distributed to
 22 core participants.

23 It was obvious from the difficulties, highlighted in
 24 Module 2A in the last few weeks, that the Inquiry faced
 25 in obtaining certain evidence from the Scottish

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1 reporting, and the eventual hearings.

2 The scope of the module is, of course, necessarily
 3 provisional at this stage, and much will depend on the
 4 evidence and material obtained during the Rule 9
 5 procedure. Counsel to the Inquiry has helpfully set out
 6 at paragraph 16 of his note some of the questions that
 7 the Inquiry is likely to consider in Module 5.

8 Other questions which the Inquiry may wish to
 9 consider from the Scottish perspective, and which are,
 10 of course, important to Scottish Covid Bereaved, have
 11 been identified at this stage, and include: what was the
 12 interaction between the procurement responsibilities of
 13 the Scottish Government and the United Kingdom
 14 Government? Were the relevant teams in the
 15 UK Government and devolved administrations properly and
 16 effectively operating and communicating with each other
 17 or were they in competition with each one another in
 18 a desperate scramble for supplies? What assistance were
 19 medical and caring staff given to secure adequate
 20 personal protective equipment? And the role of the
 21 NHS Louisa Jordan temporary hospital facility and
 22 whether this could have been set up and utilised at an
 23 earlier stage in the pandemic, and where patients
 24 discharged from mainstream hospitals may have been
 25 accommodated rather than to care homes, with all of the

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1 Government in that module that the recovery of evidence
 2 is often far from straightforward, and while we are sure
 3 that the Inquiry will continue to make every effort to
 4 obtain all relevant evidence, it is to be hoped that
 5 every effort will be made to ensure a level of
 6 compliance in response to Rule 9 Requests from all core
 7 decision-makers across the four nations, which meets the
 8 high expectations of all of the core participants.

9 It is further hoped and anticipated by Scottish
 10 Covid Bereaved members that disclosure in Module 5 will
 11 include details in relation to the apparent PPE hotline
 12 established by the Scottish Government, and referred to
 13 in the evidence of the then Scottish Health Minister
 14 Jeane Freeman in Module 1. While it perhaps did not
 15 appear to some to be the most efficient use of time to
 16 senior government ministers, to be answering telephone
 17 calls about the availability or otherwise of personal
 18 protective equipment, Scottish Covid Bereaved look
 19 forward to this matter being explored in greater detail
 20 in Module 5.

21 One particular area of concern, and one which has
 22 also been raised by other core participants, is the
 23 timing of disclosure and its likely availability to core
 24 participants. As core participants are now accustomed
 25 to, there is inevitably a vast amount of material to be

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1 considered in any module, and it is anticipated that
2 that amount will potentially be even greater, given the
3 intended scope of Module 5.

4 Accordingly, there is some apprehension that the
5 timing of the disclosure of documents will leave core
6 participants and their legal representatives with
7 insufficient time to properly consider all of the
8 materials. It is therefore to be hoped that all
9 disclosures will be made available as quickly as
10 possible to allow sufficient time for adequate
11 preparation to be made for the substantive hearings in
12 early 2025.

13 We're again grateful to Mr Wald for indicating this
14 morning that disclosure is now anticipated to begin in
15 late spring of this year.

16 In relation to expert reports, my Lady, Scottish
17 Covid Bereaved note that, as with previous modules, the
18 Inquiry intends to instruct a number of expert reports
19 across various disciplines to assist it by providing
20 written reports, and giving oral evidence at a public
21 hearing.

22 We'll have further submissions to make once the
23 identity of the experts and the questions and issues
24 they will be asked to address are disclosed to core
25 participants.

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1 deal to offer to assist the Inquiry in achieving its
2 aims, and we anticipate that many members of Scottish
3 Covid Bereaved will wish to participate in the Every
4 Story Matters exercise.

5 Further, we note submissions in relation to
6 potential undertakings regarding criminal investigations
7 and/or proceedings in respect of evidence provided to
8 the Inquiry, and likely opposition to such and any
9 assertions of the privilege against self-incrimination.

10 We would reserve our position on that matter until
11 such times as further information becomes available.

12 Those are the submissions on behalf of Scottish
13 Covid Bereaved this morning, my Lady, and unless I can
14 be of any further assistance?

15 **LADY HALLETT:** No, thank you very much, Mr McCaffery. May
16 I repeat my apology that there are references to HMG.
17 We should have made it clear in what was said that we
18 include the devolved nations and, as I say, I'm
19 extremely sorry that wasn't made clear. I am going to
20 do everything in my power to make sure that everyone
21 knows throughout the Inquiry that when we're talking
22 about investigating fully, we mean each of the devolved
23 nations and the United Kingdom Government. So thank you
24 very much for your assistance.

25 **MR McCAFFERY:** I'm grateful, my Lady.

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1 At this stage, we would simply submit that it is
2 hoped that all such experts will have sufficient and the
3 requisite expertise in relation to those matters
4 concerning Scotland and the Scottish Government.

5 Finally, turning to Every Story Matters, my Lady,
6 Scottish Covid Bereaved note that the Inquiry's research
7 specialists are exploring opportunities to conduct
8 targeted qualitative research in relation to particular
9 topics based on the lines of inquiry. We note that the
10 key lines of inquiry are identified by counsel to the
11 Inquiry in his note, and that those relate to the
12 procurement processes and decisions made by the
13 United Kingdom Government.

14 Again, to echo previous core participants'
15 submissions this morning, Scottish Covid Bereaved hope
16 that the research to be carried out by the Inquiry does
17 not exclude the impact of procurement processes and
18 decisions made by the Scottish Government, and the other
19 devolved administrations.

20 It may be that the Inquiry further wishes to carry
21 out research in relation to the impact of those
22 decisions on patients, residents in care homes, and
23 their loved ones. It is in these areas that we believe
24 that the members of Scottish Covid Bereaved and those of
25 the other bereaved families groups will have a great

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1 **LADY HALLETT:** Right, Mr Dayle.

2 **Submissions on behalf of Federation of Ethnic Minority
3 Healthcare Organisations by MR DAYLE**

4 **MR DAYLE:** My Lady, I act for the Federation of Ethnic
5 Minority Healthcare Organisations, FEMHO, and I am part
6 of a counsel team led by Mr Leslie Thomas KC and
7 instructed by the firm Saunders Law.

8 As you already know, my Lady, FEMHO's membership
9 straddles the intersection of two disproportionately
10 affected groups in your Inquiry, ethnic minorities and
11 health and social care workers.

12 As minority ethnic health and social care workers,
13 which FEMHO, is, FEMHO's members were more likely to
14 find themselves in hazardous work investigations without
15 adequate PPE compared to their white colleagues. And to
16 make matters worse, as we've been saying through other
17 modules, they were the least empowered to speak up about
18 it in a work situation.

19 FEMHO's central contention in this module,
20 therefore, is that structural inequalities impacted upon
21 procurement decisions and the availability of
22 healthcare-related equipment and supplies during the
23 pandemic. This resulted in substantial problems
24 concerning the availability of suitable PPE and
25 equipment, including ventilators and oxygen.

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1 FEMHO also contends that issues of structural
2 inequalities shaped the availability of, and access to,
3 lateral flow tests and PCR tests.

4 I note the encouraging words from Mr Wald KC this
5 morning, which confirms that issues of structural
6 inequalities in procurement will be given careful
7 consideration as the Inquiry continues its
8 investigation.

9 Needless to say, FEMHO welcomes these comments, but
10 it bears restating how important it is that the
11 Inquiry's investigation considers how the processes,
12 procedures and decision-making might have been inimical
13 to the interests of health and social care workers and
14 their communities. This, of course, includes the extent
15 to which there may or may not have been reference to the
16 Public Sector Equality Duty in the heady days of the
17 pandemic, when usual business practices were suspended.

18 My Lady, you will note in our written submissions,
19 FEMHO sought confirmation that the Inquiry's
20 investigation of procurement will not be limited to
21 material assets such as PPE and healthcare equipment,
22 but will extend to how contracts for communications and
23 community engagement related to them were procured.

24 And I note comments made by Mr Wald KC earlier this
25 morning that such procurement lies beyond the scope of

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1 Many of these themes will be borne out in
2 discussions around fit testing and the provision of
3 suitable and effective PPE for individual healthcare
4 workers, for example, which is a matter of particular
5 concern to FEMHO in this module.

6 The Inquiry will learn that much of the PPE procured
7 in the UK was designed and manufactured based on the
8 average facial measurements of a white male. There was
9 thus a lack of adequate consideration for variation of
10 facial features among different ethnicities. In
11 addition, what was described as "standard" PPE was often
12 incompatible with facial hair and religious and/or
13 cultural dress such as hijabs or turbans. And
14 alternatives, such as powered air-purifying respirators
15 or PAPR, also referred to as hoods, were not always
16 procured or made available.

17 FEMHO will be keen, my Lady, for you to examine
18 whether healthcare equipment was fit for purpose and
19 demonstrated cultural competency in procurement
20 decisions. Concerns have been raised that a range of
21 healthcare devices may be designed and are operating
22 with a racial bias. This includes underlying predictive
23 assessment protocols and algorithms, which have in
24 recent years grown significantly in use when supporting
25 clinical decision-making.

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1 Module 5.

2 Our observations at this time would be that
3 communication and community engagement that is directly
4 related to procurement of PPE and healthcare equipment
5 should logically be considered within the scope of this
6 module. If this is not to be the case, we would
7 respectfully seek the Inquiry's confirmation of when
8 these matters will be looked into and when the wider
9 issues of procurement of services contracts for
10 communication and community engagement will be examined.

11 My Lady, the through line that runs through FEMHO's
12 approach in this module, and perhaps others, is that
13 issues of equality in the context -- in this instance,
14 Module 5 -- in the context of procurement, are
15 cross-cutting, and may not be ghettoised into discrete
16 segments. As such, FEMHO members want the Inquiry to
17 consider the following overarching themes across the
18 entire module: diversity and inclusion in
19 decision-making, cultural competence in procurement
20 decision-making processes, equitable distribution of
21 resources, community engagement in procurement, language
22 access and communication strategies, support for
23 minority-owned businesses, regular diversity audits,
24 transparency in decision-making, and collaboration for
25 inclusive protocols.

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1 Nowhere were these issues more evident than in the
2 now notorious issues related to the accuracy of the
3 pulse oximeter, and the work of the NHS Race and Health
4 Observatory unearthed the fact that readings from black
5 and minority ethnic people could be seriously misleading
6 and needed further assessment. Oximeters have been
7 developed based on studies measuring oxygen levels in
8 Caucasian and light-skinned individuals, and research
9 has revealed inaccurate and ambiguous readings for those
10 with darker pigmentation and skin tones.

11 My Lady, in matters of procedure, we wish to support
12 the position of the UK Covid Bereaved Families for
13 Justice regarding parallel criminal investigations and
14 possible undertakings from the Attorney General, and
15 this is set out in paragraphs 19-23 of the written
16 submissions, and has been ably canvassed by Mr Nicholls
17 on their behalf, with all its nuances, earlier this
18 morning.

19 On the matter of experts, my Lady, FEMHO invites you
20 to engage experts to consider how disengagement with the
21 issue of race and inequality across the public sector,
22 and lack of diversity and inclusion in senior leadership
23 have negatively affected procurement decision-making.
24 And in this connection, a follow-up report by the
25 experts instructed for Module 2 on these issues, and I'm

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1 referring to Professors James Nazroo and Laia Bécarea,
2 is suggested.

3 FEMHO also commends the work conducted by the NHS
4 Race and Health Observatory in the context of potential
5 racial bias and cultural competency in healthcare
6 equipment. The Inquiry is invited to draw on the expert
7 studies and expertise that has been generated from this
8 organisation.

9 It bears reiterating, my Lady, that on the issue of
10 position statements, we say that it is an opportune time
11 for your Inquiry to revisit whether state actor CPs
12 should provide position statements to this Inquiry. You
13 have kept this position under review since October 2022,
14 and we say that given the disparate approaches to
15 procurement across a range of state bodies, it would be
16 helpful to your Inquiry for these bodies to set out
17 their respective positions by way of position
18 statements. And this would no doubt save time expended
19 to research to ascertain this, and ensure more
20 efficiency and focus on matters that are more central to
21 the Inquiry's investigations.

22 My Lady, we commend these matters to you for your
23 careful consideration, and unless there are questions
24 arising, my Lady, that will be all our submissions at
25 this time.

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1 Our coalition is a non-partisan group of
2 anti-corruption organisations who aim to reduce
3 corruption in the UK and reduce its role in facilitating
4 it abroad. We consist of 17 partner members, including
5 international NGOs and academics with shared aims
6 offering bespoke expertise wherever corruption exists in
7 the UK and beyond. Our policy areas include illicit
8 financial flows, money laundering, defence and security,
9 environmental issues, human rights, the courts, the
10 press, matters of public governance and political
11 integrity, and public health.

12 For over a decade, our group has been the leading
13 civil society voice in the anti-corruption space,
14 consulting with government authorities and
15 parliamentarians to improve relevant UK policy, raising
16 awareness of the social, economic, and national security
17 threats posed by corruption.

18 For the purposes of this Inquiry, the part of the
19 Coalition that will be engaging as core participants is
20 our Procurement Working Group. This working group was
21 created in early 2020, when issues with the UK's
22 pandemic response, particularly relating to emergency
23 procurement of PPE equipment, first came to light.

24 The organisations in this working group that have
25 core participant status are as follows: Transparency

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1 **LADY HALLETT:** Thank you very much for your help, Mr Dayle.

2 Mr Munro, I think you come last.

3 **Submissions on behalf of the UK Anti-Corruption Coalition by**
4 **MR MUNRO**

5 **MR MUNRO:** Thank you, Chair.

6 My name is Peter Munro, and I am speaking on behalf
7 of the UK Anti-Corruption Coalition. I'd like to first
8 open with a note of appreciation. The Coalition would
9 like to thank you and your team for granting us core
10 participant status for this key module in the Covid
11 Inquiry on the UK Government procurement response.

12 We hope we can add some important, constructive
13 insights into proceedings today and throughout the
14 course of the year.

15 We look forward to adding our voice, sharing our
16 evidence and expertise to support the Inquiry's
17 investigation into the UK and devolved governments'
18 management of government procurement, helping the
19 country learn important lessons.

20 You'll be aware that we have submitted a written
21 submission ahead of today's hearing, but today I'd like
22 to summarise some of those points on behalf of the
23 group. But first, by way of introduction as a first
24 time core participant, I'd like to note a few points
25 about the UK Anti-Corruption Coalition itself.

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1 International UK; Open Contracting Partnership; and
2 Chris Smith, procurement expert; Spotlight on
3 Corruption; and the Centre for Health and Public
4 Interest.

5 Each of these organisations undertake detailed and
6 evidence-based research on public procurement. They
7 also offer specific technical expertise on procurement
8 systems, governance arrangements, digital tools and data
9 standards.

10 For a number of years, our organisations have
11 contributed to various national and international
12 consultations and reviews into procurement best
13 practice. We've undertaken investigations into the UK's
14 emergency procurement of PPE, and patient capacity from
15 private sector hospitals during the pandemic.

16 At this point, it's certainly worth highlighting
17 that it is internationally accepted that with government
18 procurement and public contracts, there is considerable
19 risk of corruption. Procurement rules exist to keep
20 politicians, political influence and conflict of
21 interest out of public contracts. Quite simply, if
22 these rules are not followed, this does not only have
23 ripple effects on the direct response to emergencies,
24 but also can diminish the public's trust in its
25 government.

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1 Since our inception as a group, we have analysed and
2 critiqued the UK's pandemic procurement response, and
3 our work is always focused on securing stronger
4 safeguards against corruption in procurement, and we
5 were pleased to contribute to the necessary reforms
6 within the UK's new Procurement Act 2023.

7 **LADY HALLETT:** I'm sorry to interrupt, Mr Munro, but
8 I suspect -- could you just slow down?

9 **MR MUNRO:** Sure.

10 **LADY HALLETT:** I speak very quickly too, so I understand.
11 It's just that I'm going to have a stenographer
12 complaining. I appreciate you're trying to get things
13 done in time.

14 **MR MUNRO:** No problems; I can certainly slow down.

15 **LADY HALLETT:** Thank you.

16 **MR MUNRO:** Now, turning to scope of Module 5.

17 We think the key questions put forward by the
18 Inquiry team form a very solid basis for the module, but
19 I will highlight seven key areas that are of particular
20 interest for us, and that we hope the Inquiry gets to
21 the bottom of.

22 The latter few points relate to the counsel's
23 remarks this morning of what is and is not in scope, and
24 covered in different modules, but I would still like to
25 put them on record.

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1 Secondly, the lack of basic commercial acumen. We
2 believe the Inquiry should investigate what appears to
3 be systemic lack of commercial acumen and adherence to
4 key guiding principles of public procurement.

5 Usually, in the public procurement process, very
6 clear technical specifications provided by the
7 contracting authority would lead the procurement process
8 for PPE. However, this does not appear to be the case
9 for the UK's emergency response, which relied on
10 supplier specifications and offers that formed the basis
11 of contracts.

12 Instead of saying "This is what we need", the
13 government asked "What do you have?" and "We'll take
14 it."

15 This would seem partly to account for the
16 extraordinary high rate of failure and waste in UK
17 contracts.

18 Third, the High Priority Lane, or "VIP lane". This
19 particular response emerged as a core feature of the UK
20 procurement policy. Our members work in countries all
21 over the world and know that this VIP approach was quite
22 unique to the UK.

23 As I said earlier, one of the key purposes of
24 procurement rules is to keep undue political influence
25 away from government commercial decision-making. Close

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1 Firstly, the frontline impact of PPE failures.
2 Whilst our focus is the process and decision-making by
3 the government, we are pleased to see the Inquiry's
4 emphasis on recognising the impact that procurement
5 decisions had on the frontline provision of equipment.
6 It is vital for the Inquiry to fully consider the
7 profound impact the government-level decisions had on
8 the ground-level emergency response and on frontline
9 responders.

10 Ahead of coming to the Inquiry today, I spoke to my
11 own mum about her experiences as a health visitor and
12 those of her district nurse colleagues. She said that
13 the PPE was so thin, thinner than bin bags, that by the
14 time you opened the roll, it was already falling apart.
15 Especially in the winter months, when health visitors
16 and district nurses were outside visiting their
17 communities, the equipment that was procured by the
18 government wouldn't last in the elements. She could
19 tell that her one-hour visits in patients' homes were
20 almost over not by looking at her watch, but by looking
21 at the wear of her PPE equipment.

22 As she said to me, "It felt like we were wearing the
23 equipment for appearance sake and to reassure our
24 patients, rather than as something that would actually
25 protect us."

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1 connections to politicians normally are a cause for more
2 scrutiny of contracts, not less. There is no evidence
3 that politicians anywhere were particularly well placed
4 to decide who had good stocks of PPE and who does not.
5 There were plenty of routine and sensible approaches for
6 securing PPE at speed in other jurisdictions.

7 Most countries managed to do this whilst maintaining
8 due process. And in Sweden, Slovakia, Estonia, Latvia,
9 the number of contracts awarded using open competition
10 actually went up.

11 We believe it is very important that the Inquiry
12 discovers exactly how and why the High Priority Lane was
13 created and what other, more effective, emergency
14 response options were considered and rejected.

15 We also hope the Inquiry will consider how the High
16 Priority Lane delayed the publication of critical
17 information about contracts, and they have deterred
18 efforts to hold some suppliers accountable.

19 Fourth, failure to disclose basic information on
20 emergency PPE contracts. In other countries, like
21 Ukraine, information on emergency contracts was
22 published within 24 hours. In the UK, the normal 30 and
23 90-day periods for required publication of contract
24 information completely collapsed. Contract award
25 notices for PPE worth £4.7 billion were not published

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1 until 14 months after contracts were awarded.
 2 Even today, we remain concerned about the lack of
 3 public disclosure for many contracts worth billions of
 4 pounds that were awarded without competition. A large
 5 value of PPE contracts remains unpublished, and
 6 contracts that have been published are incomplete,
 7 lacking detail on the items procured, or are heavily
 8 redacted.

9 There is a risk that the government could rely, as
 10 it often does, on commercial confidentiality to avoid
 11 full disclosure of important contract documents to the
 12 Inquiry. We fear that the Inquiry may not have access
 13 to much of this documentation and will be unable to
 14 fully investigate what happened to them, and what
 15 lessons can be learned.

16 Fifth, the use of digital procurement tools. We
 17 believe the module scope should include digital tools
 18 that were available for the procurement of items, and
 19 the role of procurement data in managing the whole
 20 process across all levels of government.

21 Other jurisdictions quickly built dashboards to
 22 track PPE availability and contracts. Lithuania's
 23 Public Procurement Office was able to identify an
 24 increasing number of untested suppliers, overpriced
 25 protective equipment, and risky high-value direct

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1 regarding services at private hospitals and the
 2 Nightingale hospitals, and their respective equivalents
 3 in the devolved governments.

4 Many contracts were awarded in the test and trace
 5 area with no competitive tenders. Public Accounts
 6 Committee reported that ministers and government
 7 officials played "fast and loose" when awarding over
 8 £700 million in Covid-19 contracts to a healthcare firm.
 9 The committee also noted that it was impossible to know
 10 if the contracts had been awarded properly.

11 Chair, I would like to thank you again for granting
 12 the UK Anti-Corruption Coalition core participation
 13 status. We do encourage and fully support the direction
 14 of the module so far, and look forward to working with
 15 you and your team in the coming months.

16 Unless I can be of any further assistance, or you
 17 need me to repeat anything or slow down more, then that
 18 concludes my remarks.

19 **LADY HALLETT:** Thank you very much for your help, Mr Munro,
 20 and you raise some very interesting points. Thank you.

21 Right, I think that now completes all the
 22 submissions, and unless anybody has anything else they
 23 wish to add, that completes this preliminary hearing.

24 I think the next hearing of the Inquiry is in
 25 Cardiff, I think, at the end of February. And I look

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1 awards. We would like to know what tools and approaches
 2 the UK could have taken.

3 Six, the impact and implementation of Boardman and
 4 other reviews. Following concerns about the
 5 transparency of the UK's emergency procurement response,
 6 multiple official reviews were conducted. The Cabinet
 7 Office asked Sir Nigel Boardman to conduct a review into
 8 the award of contracts for Covid communication services
 9 made by the Cabinet Office, and to identify areas for
 10 improvement.

11 Similarly, there were key reviews conducted by the
 12 National Audit Office and Public Accounts Committee.
 13 We'd like to see the Inquiry investigate what impact
 14 these reviews and their recommendations had on
 15 Government Department behaviour and the procurement of
 16 equipment.

17 Number 7, quality assurance. We believe the Inquiry
 18 should investigate the considerable waste to physically
 19 dispose of PPE that was not fit for purpose, and look at
 20 what could have been done to identify quality problems
 21 before PPE was distributed.

22 We had some following points here, but counsel made
 23 points about the scope of procurement services this
 24 morning. We do think there are massive and costly
 25 failures and similar flaws that ought to be looked at

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1 forward to seeing those who are following these
 2 proceedings there or remotely, even though I won't see
 3 them.

4 Thank you all very much.

5 **(12.42 pm)**

6 **(The hearing adjourned until a future date in February 2024)**

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