Counsel to the Inquiry's Note for the first Preliminary Hearing in Module 5 of the UK Covid-19 Inquiry on Tuesday 6 February 2024

Introduction

1. The purpose of this Note is threefold. First, it introduces the agenda for the Preliminary Hearing in Module 5 on 6 February 2024. Second, it sets out, in overarching terms, the background to the UK Covid-19 Inquiry. Third, it sets out, primarily for the benefit of Core Participants, information concerning the nature of the Module's work so far, to enable them to file written submissions if they wish, in advance of the Preliminary Hearing and to prepare for that hearing. Any brief written submissions should be received by 4 pm on 29 January 2024.

2. The agenda for the Preliminary Hearing in Module 5 is as follows:

    i) Introductory remarks from the Chair.

    ii) Update from Counsel to the Inquiry, including:

    a. Designation of Core Participants
    b. Provisional Outline of Scope for Module 5
    c. Evidence gathering
    d. Disclosure to Core Participants
    e. The Listening Exercise - Every Story Matters
    f. Future hearings dates

    iii) Submissions from Core Participants

The Commencement of the Inquiry

3. On 12 May 2021 the then Prime Minister, the Right Honourable Boris Johnson MP, made a statement in the House of Commons in which he announced that there would be a public inquiry under the Inquiries Act 2005. He stated that it would examine the UK's preparedness and response to the Covid-19 pandemic and learn lessons for the future.

4. Module 5, this module, concerns Government procurement during the pandemic. The public hearings in Module 5 are expected to take place in early 2025. More details about the scope of Module 5 are set out below.

5. This Inquiry is obliged under section 27 of the Inquiries Act 2005 and its Terms of Reference to consider both reserved and devolved matters in respect of Scotland, Wales and Northern Ireland. However, because an Inquiry has been established in Scotland to look at matters devolved to the Scottish government, this Inquiry's intention, in relation to Scottish matters, is to seek to minimise duplication with that Inquiry's handling of investigation, evidence gathering, and reporting.

Designation of Core Participants

6. The applications for Core Participant status in Module 5 have been considered by the Chair in accordance with Rule 5 of the Inquiry Rules 2006, which provides that:

"5.—(1) The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.

(2) In deciding whether to designate a person as a core participant, the chairman must in particular consider whether—

(a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;
(b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or
(c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.

(3) A person ceases to be a core participant on—

(a) the date specified by the chairman in writing; or
(b) the end of the inquiry."

7. In making determinations, the Chair considered whether, in each case, the application fulfilled the criteria set out in Rule 5(2) in relation to the issues set out in the Provisional Outline of Scope for Module 5.

8. The Chair exercised her wide discretion and took into account a number of factors. First, the obligation to run the Inquiry as thoroughly and as efficiently as possible in light of the Inquiry's wide-ranging Terms of Reference and the need for the Inquiry process to be rigorous and fair. Given the vast numbers of people who were involved with, or adversely affected by, the Covid-19 pandemic, very many people may have an interest in the Inquiry. That, however, is not the relevant test, and the Chair was obliged to assess very carefully whether, in reality, applicants could assist the Inquiry

in Module 5 as a Core Participant. Second, it is not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry. Third, the Inquiry will also be listening to and considering carefully the experiences of those who have suffered hardship or loss as a result of the pandemic, through the Inquiry's 'listening exercise': Every Story Matters

9. By way of overview, the Inquiry received 36 applications for Core Participant status in Module 5 from individuals, organisations, and groups of individuals and organisations. Of these 36 applications, 23 applicants have been designated as Core Participants in Module 5. They are, in no particular order:

    a. Covid-19 Bereaved Families for Justice UK
    b. Scottish Covid Bereaved
    c. Covid-19 Bereaved Families For Justice Cymru Group
    d. Northern Ireland Covid-19 Bereaved Families for Justice
    e. Welsh Government
    f. Scottish Government Ministers
    g. HM Treasury
    h. Department for Health and Social Care
    i. The Secretary of State for Foreign, Commonwealth and Development Affairs
    j. Department for Business and Trade
    k. The Chancellor of the Duchy of Lancaster (Cabinet Office)
    l. Northern Ireland Department of Health
    m. Local Government Association and Welsh Local Government Association
    n. Rt Hon. Baroness Arlene Foster of Aghadrumsee DBE and Paul Givan MLA
    o. Conor Murphy MLA
    p. Michelle O'Neill MLA
    q. UK Health Security Agency
    r. NHS England
    s. NHS National Services Scotland
    t. Scottish Territorial and Special Services Boards
    u. NHS Wales Shared Services Partnership
    v. UK Anti-Corruption Coalition
    w. Federation of Ethnic Minority Healthcare Organisations (FEMHO)

10. Five applicants renewed their applications for Core Participant status following notification by the Chair that she was provisionally minded to decline their application. Renewed applications for Core Participant status were considered in writing and determined in advance of the Preliminary Hearing, thereby allowing those who were successful in their renewed application to participate in the Preliminary Hearing.

11. For the avoidance of doubt, the determinations which have been made by the Chair in relation to Module 5 in no way prejudice the ability of any applicant to apply in another, later, module which may in any event be more suited to the application.

12. It is also, of course, unnecessary for an individual or organisation to be a Core Participant in order to provide information or evidence to the Inquiry. All applicants may have relevant information to give in relation to matters being examined in the

Inquiry and the Inquiry will be approaching, in due course, a range of individuals, organisations and bodies to seek information, to gain their perspective on the issues raised in the modules and, where appropriate, to ask for witness statements and documents.

Outline of scope of Module 5

13. Module 5 is concerned with government procurement in the Covid-19 pandemic. The Provisional Outline of Scope for Module 5 states:

> *"This module will consider and make recommendations regarding the procurement and distribution to end-users across the four nations of the United Kingdom of key healthcare related equipment and supplies, including Personal Protective Equipment (PPE), ventilators and oxygen.*
>
> *This module will investigate the robustness and effectiveness of procurement processes, the adequacy of the items obtained (including their specification, quality and volume) and the effectiveness of their distribution to the end-user. It will examine any challenges experienced and seek to extract lessons to be learned.*
>
> *It will also consider the UK-wide procurement of lateral flow tests and free polymerase chain reaction (PCR) tests.*
>
> *Areas to be covered in this module will include:*
>
> 1. *The existence and effectiveness of processes, procedures and/or contractual provisions in place for the procurement and distribution of key healthcare equipment and supplies to the end-user prior to and during the pandemic, the suitability and resilience of the supply chains and what, if any, changes were made to procurement processes during the pandemic and have been made subsequently. This will include examination of:*
>   a. *The overall value of the contracts awarded;*
>   b. *Preparedness, including pre-existing stockpiles, inventory management and suitability;*
>   c. *Spending controls;*
>   d. *Steps taken to eliminate fraud and the prevalence of fraud;*
>   e. *Conflicts of interest;*
>   f. *Contractual performance by suppliers and manufacturers;*
>   g. *Compliance with public law procurement principles and regulations;*
>   h. *Openness and fairness, including the 'high priority lane';*
>   i. *Decisions as to what to buy at what cost and disposal strategies;*
>   j. *The existence of any maladministration.*

2. *Procurement of key healthcare equipment and supplies to the end-user in the period leading up to and during the pandemic. This will include the existence and effectiveness of procedures, processes and communication between the relevant bodies of the four nations in relation to procurement and the use made of mutual aid arrangements during the pandemic.*

3. *The operation and effectiveness of any regulatory regimes and/or oversight (either by the procuring authority or end user) in relation to key medical equipment or supplies during the pandemic including:*
    a. *Guidance issued by the relevant advisers, regulators and/or government;*
    b. *The need for, and the efficacy of standards required by the Medicines and Healthcare products Regulatory Agency (MHRA) and the British Standards Institution (BSI);*
    c. *The impact of any changes to the volume, technical specifications and/or quality of the products that were procured;*
    d. *The validation process including benchmarks and revalidation;*
    e. *Safety concerns (the existence of such concerns and how they were addressed by those responsible for procurement).”*

14. This scope, while ambitious, is necessarily provisional. Although it introduces a wide range of topics, it is neither practical nor advisable to identify at this stage all the issues that will be addressed at the Module 5 public hearing. Much will depend on the evidence and material obtained under the Rule 9 process, which has been designed to obtain documentation from which the issues can be further distilled.

15. The Inquiry considers that the provisional outline of scope provides an overarching framework for the issues and matters that the Inquiry is likely to investigate to enable Core Participants, and individuals and organisations likely to have relevant evidence, to commence their preparations. As set out above, the issues will be further developed in light of in particular the responses to Rule 9 requests.

16. Some of the questions that the Inquiry in Module 5 is likely to be considering include the following:

    a) Were the Governments of the United Kingdom and the devolved nations, the NHS, local authorities and the care sector adequately prepared for the logistical challenge of procurement of key healthcare equipment and supplies during the pandemic, and what are the lessons for future pandemic preparedness?

    b) What were the processes, procedures and plans in place for the procurement and distribution of key healthcare equipment and supplies before the pandemic? How were these used or adapted as the pandemic progressed?

c) How did the Governments of the United Kingdom and the devolved nations, the NHS, local authorities and the care sector procure key healthcare equipment and supplies that were needed during the pandemic?

d) Were there difficulties in ordering and obtaining stock of items such as Personal Protective Equipment, ventilators (and associated supplies such as oxygen), Lateral Flow Tests and other medical consumable supplies for use in the pandemic? If so, how were these dealt with?

e) Were there difficulties in the delivery and distribution of these items, or any disruption of supply chains of them? If so, how were these dealt with?

f) What was the impact of price rises and fluctuations, and international competition on the supply and distribution of key healthcare equipment and supplies in the UK?

g) Was the quality of the goods supplied adequate and fit for purpose? What steps were taken by those responsible for procurement to ensure that goods obtained were fit for purpose and that suppliers and manufacturers delivered what was expected?

h) What oversight mechanisms did the government put in place in relation to procurement activities, including spending controls, monitoring of conflicts of interest and ensuring value for money.

i) What steps were taken to eliminate fraud and the prevalence of fraud, any conflicts of interest or any maladministration? What steps were taken in the event that fraud or other criminal behaviour was suspected?

j) What approach was taken to the management of contracts for key equipment and supplies, including PPE. What approach was taken to breaches?

k) Did government procurement during the pandemic comply with public law procurement principles and regulations? How, and to what extent, were steps taken to ensure openness and fairness?

l) How effective were any regulatory regimes and processes put in place to ensure compliance with these in relation to key medical equipment or supplies procured during the pandemic?

m) What was the impact of and response to changes made to national guidance for the use of key medical equipment or supplies?

n) What steps were taken to ensure fair and adequate distribution of key medical equipment or supplies across the NHS, local authorities and the care sector? Were they available when and where they were needed?

o) What difficulties in relation to distribution of key healthcare equipment and supplies were experienced? How were these resolved?

p) How widespread was the use of emergency provisions within procurement rules?

q) How effective was communication between the four nations during the pandemic about the procurement of key healthcare equipment and supplies during the pandemic?

r) How did the High Priority Lane and the Parallel Supply Chain set up by the Department of Health and Social Care operate during the pandemic?

s) How could any difficulties in procurement be avoided in the face of a future pandemic?

t) What are the lessons for government procurement in terms of future pandemic preparedness?

Rule 9 Requests for information

17. The process of issuing Rule 9 letters seeking documents and statements relevant to this module has begun. An update on Rule 9 requests will be provided at the preliminary hearing.

18. Documents and information provided to the Inquiry will be analysed and may then be the subject of further focused requests. Organisations have been asked to ensure that their staff have the opportunity to identify particularly important materials so that the most crucial materials are identified and reviewed by the Inquiry as soon as possible.

19. For the reasons set out in the determination of 17 October 2022 made in Module 1, Core Participants will not be provided with copies of the Rule 9 requests made by the Inquiry in relation to Module 5.

20. However, to ensure the Core Participants are kept properly informed, the Inquiry will ensure that the Module 5 lead solicitor provides monthly updates to Core Participants on the progress of Rule 9 work. Such updates include a summary of who has received Rule 9 requests, the topics those requests cover, what categories of documents have been requested, when the request was made and by when a response is expected.

21. On 17 October 2022, the Chair made a ruling in Module 1 on a number of general matters including including position statements, disclosure and experts

(https://covid19.public-inquiry.uk/wp-content/uploads/2023/05/2022-10-17-Ruling-following-M1-Preliminary-Hearing.pdf). The Chair declined, for the purposes of Module 1, to order that position statements be made by state and organisational Core Participants and material providers. Following the Preliminary Hearings in Module 2 and Modules 2A-C, the Chair directed that if the monthly updates and the provision of disclosure do not provide Core Participants with necessary information then the issue will be revisited.

Disclosure to Core Participants

22. The purpose of disclosure is to enable the Core Participants to participate effectively in the public hearings. This Inquiry will be as open as possible with the Core Participants and with the public in relation to the disclosure of documents.

23. The information and documents received through the Rule 9 process will be assessed for relevance and then redacted in line with the Inquiry Protocol on the Redaction of Documents that has been prepared and published (https://covid19.public-inquiry.uk/documents/inquiry-protocol-on-the-redaction-of-documents/), so as to remove sensitive material, such as personal data.

24. It is neither necessary nor proportionate for the Inquiry to disclose every document that it receives, or every request that it makes, or every piece of correspondence it conducts.

25. Each document provider is being asked to provide (amongst other matters) details of the key individuals who were involved in issues relevant to the Module 5 Provisional Outline of Scope, the key meetings and events and a summary of the categories of other material held and/or already provided to the Inquiry relating to the Module 5 Provisional Outline of Scope.

26. This information will allow the Inquiry to understand the nature of relevant material held by the document provider and make targeted requests for further material if necessary. Where, as a result of the information provided, the Inquiry has any concerns about a provider's processes for providing relevant documents, it will raise and pursue them and, of course, as documents are reviewed and gaps identified, further documents will be sought.

27. Disclosure of relevant, redacted documentation will take place in tranches. All Core Participants in the same Module will receive all the disclosable documents for that Module.

28. In light of the above approach, the Chair has determined, and made a determination to this effect in Module 1, that she does not consider it appropriate for the Inquiry to publish a schedule setting out an itemised list of documents and other material that is not intended to be disclosed to the Core Participants.

29. The electronic disclosure system which will be used to provide documents to Core Participants will be Relativity. Details of how to access and use the system will be provided to Core Participants shortly before disclosure commences. Only those who have provided a signed undertaking to the Chair will be permitted access to the material that the Inquiry discloses to Core Participants.

30. The Inquiry is working to begin the process of disclosing materials to Core Participants as soon as possible. The process of disclosure to Core Participants is anticipated to begin in late Autumn 2024.

Expert material and the instruction of expert witnesses

31. A number of experts across different disciplines are likely to be appointed as experts to the Inquiry. They will assist the Inquiry, either individually or collaboratively, by way of the provision of written reports (including the answering of specific questions asked of them by, or through, the Inquiry) and, where appropriate, by giving oral evidence at the public hearing.

32. Such evidence will inform and support the Inquiry's work in preparation for and during the public hearings, as well as assist the Chair in making any recommendations.

33. The experts will be suitably independent and subject to an overriding duty to assist the Inquiry on matters within their expertise.

34. The identity of the expert witnesses and the questions and issues that they will be asked to address will be disclosed to the Core Participants before the expert reports are finalised. Core Participants will therefore be provided with an opportunity to provide observations. Where there are significant differences of view or emphasis among the members of a group, these will be made clear on the face of the reports and, of course, these can be addressed during oral hearings.

Listening exercise - Every Story Matters

35. The listening exercise, Every Story Matters, has been established to enable people in the UK to tell people how the pandemic has affected their lives. Every Story Matters aims to obtain insights and information from anyone who wishes to contribute, i.e. from anyone who was impacted by the pandemic and wishes to share their experience. It has been designed so that anyone and everyone aged 18 or older in the UK can contribute if they wish to do so. There are different ways for people to share their experience of the pandemic with the Inquiry: via our webform and a variety of alternative formats including easy read and paper forms; community listening events around the country; and via targeted research. People's contributions to Every Story Matters will be analysed and turned into themed reports, which will be submitted into each relevant investigation. These will be anonymised, disclosed to the Inquiry's Core

Participants and used in evidence. The reports will identify trends and themes and include illustrative case studies which may demonstrate systemic failures. Details of Every Story Matters are set out in the Notes from the Solicitor to the Inquiry (STI), copies of which have been shared with Core Participants.

36. The Inquiry's research specialists are exploring the opportunities to conduct targeted qualitative research in relation to particular topics and particular groups of people based on the KLOEs. Module 5 targeted research may include, among other things, the experience of those involved in procurement 'on the ground', to gain an insight into their perspective on the efficiency and suitability of procurement and distribution processes.

37. These experiences will be analysed and reviewed by the Inquiry's research specialists based on Key Lines of Enquiry (KLOEs) for Every Story Matters produced by the Inquiry team. The KLOEs are an important tool for setting out the way in which the Inquiry will gather and analyse experiences shared with Every Story Matters through the targeted research.

38. In the coming weeks, the Inquiry legal team will work with its research specialists to identify research questions and priority audiences in relation to the following proposed KLOEs:
    a. The challenges and impacts on staff and the setting's functions (e.g. a hospital running its services) of obtaining sufficient lateral flow tests and PPE in: private healthcare settings, community care setting and Local Authorities;

    b. The impact of procurement decisions by HMG, healthcare settings, community care settings and LAs on frontline staff. This will include the availability and adequacy of PPE available, and the impact of changes to technical standards and availability of lateral flow tests;

    c. The impact of government procurement decisions on hospitals regarding access to ventilators, oxygen or any other related medical equipment;

    d. The challenges facing businesses and suppliers of PPE. This will include their experiences of supplying PPE, the procurement processes set up by HMG, and any views on how this process was managed from their perspective as well as the impact that this had on them.

39. It is unlikely that the targeted research will be able to cover all the areas listed above and Core Participants are therefore invited to file written submissions **by 4pm on Monday 29 January 2024** making suggestions in relation to the KLOEs for targeted qualitative research, in particular, on:

a. Whether there are any specific areas listed in paragraph 57 above that Core Participants consider to be of particular importance for targeted research;

b. Whether there are any further topics that Core Participants consider important for targeted research and why (including whether or not this evidence could otherwise be obtained through the Rule 9 process or by another method); and

c. Any views on the proposed target populations for the targeted research, either in relation to the above three topics or further proposed topics.

Commemoration

40. Given the scale of the tragedy brought about by the pandemic, and the grief and loss suffered by the bereaved, the Inquiry wishes to provide opportunities for those who were lost to be commemorated as part of the Inquiry's process.

41. The Chair wishes to recognise the human suffering arising from the pandemic, including the loss of loved ones, by ensuring that it is reflected throughout the Inquiry's work. The Inquiry has used an Impact Film at the start of the Module 1, Module 2 and Module 2A hearings and used images and artwork to try to represent the loss and suffering caused by the pandemic. More commemorative work will be announced in due course.

42. There will be an Impact Film broadly connected with the issues set out in the Module 5 Provisional Outline of Scope aired at the public hearings next year and the Inquiry will be in touch with Core Participants to discuss filming opportunities.

Approach to evidence of circumstances of individual death and 'pen portrait' material

43. In the course of the Preliminary Hearing in Module 1, the Inquiry received submissions to the effect that the Inquiry should allow evidence of the circumstances of individual deaths and pen portrait material to be heard at the public hearing.

44. Although the Chair will keep the issue under review, she has ruled that evidence of the circumstances of individual deaths and pen portrait material will not, as a general rule, be admitted.

45. Some evidence regarding individual deaths and circumstances may well be relevant, however, where it relates to possible systemic failings. For example, bereaved family members, clinically vulnerable individuals and those who have experience of the effects of procurement and distribution of key medical supplies may well have relevant evidence to give on issues that affected them. Such evidence would naturally be provided in the course of Module 5 so as to introduce systemic issues, in keeping with the Inquiry's express intention to keep those affected by the pandemic at the heart of the Inquiry.

Future Hearings

46. A further Preliminary Hearing for Module 5 will be held at Dorland House in Paddington in mid-2024. The specific date will be confirmed in due course.

47. The public hearing in Module 5 is expected to take place in early 2025. The hearing will be held at Dorland House in Paddington.

19 January 2024

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