

**IN THE UK COVID-19 PUBLIC INQUIRY**

**BEFORE BARONESS HEATHER HALLETT**

**IN THE MATTER OF:**

**THE PUBLIC INQUIRY TO EXAMINE THE COVID-19 PANDEMIC IN THE UK**

---

**Submissions on behalf of Covid-19 Bereaved Families for Justice UK  
and NI Covid-19 Bereaved Families for Justice  
for the Module 5 preliminary hearing on 6 February 2024**

---

1. These submissions are provided on behalf of CBFFJ UK and NI CBFFJ in advance of the first Module 5 preliminary hearing on 6 February 2024. CBFFJ was established to campaign for this Public Inquiry. The goal of CBFFJ has always been, and remains, to establish what happened to their loved ones, to participate effectively in that pursuit of the truth, and, in so doing, to ensure accountability and to prevent future deaths. The families are therefore committed to making the Inquiry work. These submissions are provided in that spirit. They follow the order of issues adopted in CTI's Note. Where CBFFJ have no written submissions to make on an issue at this stage, the issue has not been included below.

**Provisional outline of scope for Module 5**

2. CBFFJ welcome the broad provisional scope outlined by the Inquiry, including the list of questions at §16 of the CTI's Note. Those questions are all matters that CBFFJ consider will require careful investigation in Module 5.
3. CBFFJ understand from the Inquiry's materials to date that the Inquiry's intention is to deal with procurement issues in the following way:
  - a. The procurement of extra bed capacity in the health and social care sectors will be addressed in Modules 3 and 6, respectively;
  - b. The obtaining and manufacture of vaccines, and whether stockpiles and plans of therapeutics were sufficient, will be covered in Module 4;
  - c. Module 5 will deal with PPE, healthcare equipment and oxygen; and
  - d. Testing equipment and laboratory capacities will be addressed in a future Module of the Inquiry.
4. These submissions proceed on the basis summarised above, i.e. that Module 5 is limited to the procurement of PPE, healthcare equipment and oxygen. CBFFJ request clarification from the Inquiry if that is not the case.
5. CBFFJ note CTI's observations at §§14-15; it therefore maybe that the Inquiry considers that the following issues already fall within the scope of Module 5. To the extent that they

do not, CBFFJ invite the Inquiry to examine the following issues within Module 5:

*Procurement preparedness (each of the following to relate to the UK Government and each Devolved Administration)*

- a. Inventories, suitability, and the management of existing stockpiles of equipment, prior to the pandemic.
- b. The existence and sufficiency of emergency procurement plans as part of pandemic preparedness.
- c. Data preparedness, including what plans (if any) there were for the gathering, analysis and presentation of data required in a pandemic emergency.
- d. The existence and sufficiency of guidance to, *inter alia*, local authorities, the health and social care sectors, and other frontline services, for emergency procurement and related processes.
- e. Whether there was or should have been involvement by regulators in planning for emergency procurement.
- f. Whether there was or should have been international collaboration, through the WHO or otherwise, in emergency pandemic procurement planning.
- g. Whether standard/‘business as usual’ government procurement processes and regulations were appropriate for a pandemic, whether an ‘oven-ready’ emergency process existed, and if not, why not.
- h. Whether procurement planning took account of structural/institutional discrimination. If not, what should have been considered in this context.
- i. To what extent and how was emergency procurement in the three Devolved Administrations distinct from that of the UK Government, and to what extent was there any or any sufficient collaboration between central Government and the Devolved Administrations in this respect.

*The procurement response during the pandemic (each of the following to relate to the UK Government and each of the Devolved Administrations)*

- a. A factual narrative of what occurred in respect of procurement, including what steps were taken and when, the speed with which Government procurement for equipment and supplies was put in train, the cause of any delays, and how such delays can be prevented in future.
- b. Whether essential items were exported in January 2020, without proper regard to emergency procurement and imminent UK needs.
- c. Whether inadequacies in/failures of procurement adversely affected decision- and policy-making, including:

- i. Whether insufficient manufacture or sourcing of testing capacity led to decisions to discharge from hospitals without testing, in March 2020; and
  - ii. Whether the lack of emergency manufacture or sourcing of respirators led to the downgrading of HCID in mid-March 2020, and the use of inferior protection by frontline workers (including doctors and nurses).
- d. What emergency procurement processes were put in place and when, how did they differ from BAU, were they fit for purpose, and did they ensure value for money.
- e. In respect of quality control (CTI Note §16(g)), what safeguards were in place, were they fit for purpose, who set the standards for the quality of emergency procurement, who determined what deviation from standards was acceptable and on what basis.
- f. In respect of fraud (CTI Note §16(i)), what safeguards were in place, who set them, and were they fit for purpose.
- g. Whether the legal and regulatory framework for identifying, investigating and sanctioning improper procurement conduct (including, but not limited to, fraud and conflicts of interest) is adequate, including to provide sufficient deterrence to prevent recurrence.
- h. In respect of CTI Note §16(r), and related issues: what was the reason for and scale of procurement through VIP lanes, was this appropriate, and were there sufficient checks on conflicts of interest, profiteering, and unfit products in using VIP and related procurement processes.
- i. What evidence is there of conflicts of interest, fraud, and profiteering, what is the scale of such issues, when were they discovered, and what was done.
- j. The role played by Government Ministers and other politicians in facilitating, organising and otherwise arranging for access to Government procurement processes and contracts.
- k. Whether Government Ministers and other politicians profited directly or indirectly, or took non-pecuniary advantage, from such facilitation, organising and arranging of access.
- l. What systems and procedures were in place to identify gaps, deficiencies and other shortcomings in Government procurement of equipment and supplies, the adequacy of such systems and procedures, and how they can be improved. This should include consideration of data capture and analysis, including what was assessed as required at Government level to determine and review emergency needs, supply, management and distribution of essential items, and when.
- m. What occurred regarding re-dating stockpiles, why, and was this appropriate.
- n. The role of out-sourcing in pandemic procurement, including the role, function and cost/value for money of employing external consultants (including management consultants and professional services and accountancy firms) in pandemic

procurement.

- o. How did emergency pandemic procurement processes deal with non-State services, such as private health and social care providers, private laboratory services, and other private frontline resources.
  - p. The impact of procurement failings on healthcare provision, including in the care sector. The Inquiry is invited to call evidence to elicit the experiences of the bereaved in the Module 5 evidence.
  - q. The role of structural/institutional discrimination, including what was done to mitigate discrimination and its impacts in procurement actions, e.g. in respect of the shape, size and design of PPE, the targeting of PPE where most needed, etc.
  - r. To what extent and how was emergency procurement in the three Devolved Administrations distinct from that of the UK Government, and to what extent was there any or any sufficient collaboration between central Government and the Devolved Administrations in this respect.
  - s. Was there international collaboration regarding procurement, through the WHO or otherwise and did international competition for scarce resources cause and/or exacerbate supply problems.
6. Finally, we recognise that work is at an early stage, however, we request that the Inquiry indicates that it intends to engage with CPs regarding the selection of appropriate witnesses as early as possible.

#### Rule 9 requests

7. CBFFJ note §§17-20 of CTI's Note. CBFFJ set out a proposed approach to Rule 9 requests in their submissions dated 28 September 2022 for Module 1 (see §§13-21), supplemented by later submissions in Module 2.<sup>1</sup> Those submissions are relied on but not repeated here; our concerns remain.

#### Disclosure to Core Participants

8. CBFFJ note §§22-30 of CTI's Note. CBFFJ set out a proposed approach to disclosure to CPs in their submissions dated 28 September 2022 for Module 1 (see §§28-33), supplemented by later submissions in Module 2.<sup>2</sup> That approach included an emphasis on a potential relevance threshold and the disclosure of all potentially relevant material to CPs, to ensure effective participation and public confidence. Those submissions are relied on but not repeated here.
9. CBFFJ note that in previous Inquiry Modules, there have been significant issues with the lateness of disclosure to CPs. During Modules 1 and 2, substantial disclosure was made very late, preventing proper consideration and hampering effective participation. Further, in both Modules 1 and 2, disclosure continued well after evidence hearings and closing submissions

---

<sup>1</sup> CBFFJ submissions dated 27 October 2022 for Module 2, §§13-17.

<sup>2</sup> CBFFJ submissions dated 27 October 2022 for Module 2, §19.

had already been completed. Correspondence since the end of Module 2 suggests that this lateness was not the result of late provision of material to the Inquiry, but rather by delays in processing and disclosing material to CPs.

10. Such issues are not conducive to effective investigation, fairness or effective participation. We are concerned that these difficulties will be repeated, in Module 5 and in other Modules. This concern is particularly the case in Module 5 as disclosure is anticipated to “*begin in late autumn 2024*” (CTI §30) with hearings commencing in early 2025 (CTI §47). That means that disclosure will only *start* a short time before Module 5 hearings. The potential for a repetition is clear.
11. The Inquiry is therefore respectfully invited to take all possible steps to prevent this issue being repeated in Module 5, including:
  - a. Putting in place greater resources and/or more effective processes to ensure that material provided to the Inquiry is processed and disclosed to CPs more speedily.
  - b. If the problem is in fact the late production of material by CPs and material providers, the Inquiry should set more efficient deadlines and prevent document providers, mainly Government departments and public authorities, from setting timeframes that are missed and/or providing inadequate or incomplete disclosure in response to the Inquiry’s requests. This was an issue that arose in Module 1, nearly a year ago.<sup>3</sup>
  - c. The Inquiry should direct that position statements are provided. We address this below.

#### Position statements

12. CBFFJ note §21 of CTI’s Note and the Chair’s ruling in Module 1. However, in light of the matters above, CBFFJ invite the Chair to direct that State and organisational CPs and material providers serve position statements in Module 5. That is for the reasons set out at §§21-26 of CBFFJ’s submissions dated 28 September 2022 for Module 1, and because:
  - a. Module 5 will examine a number of focused issues and questions; that is apparent from CTI’s Note. Position statements are of particular assistance in those circumstances: they will allow the Inquiry and CPs to identify, in advance, relevant positions on the Inquiry’s enunciated scope. The position is different to the one in Module 1, when the Chair issued her first ruling on position statements. There it was stated that “Module 1 [of] the Inquiry will examine a wide range of policies and decisions over a number of years”: ruling §7. That is not the case with Module 5. And in Module 1, scope was framed in more general, broad terms at the time of the Chair’s ruling. Again, that is not the case with Module 5.
  - b. Module 5 will cover a more limited time period than Module 1. In the Chair’s Module 1 ruling on position statements, she indicated that the broad timeframe of Module 1 militated against position statements: ruling §7. The timeframe of Module 5 is more limited, spanning the period during and immediately prior to the pandemic, unlike Module 1, which spanned a period of years.

---

<sup>3</sup> See CTI Note for 25 April 2023 preliminary hearing and CBFFJ submissions dated 19 April 2023 §§14-19.

- c. Module 5 concerns focused allegations of improper conduct against companies and individuals, including preferential treatment and conflicts of interest. Such allegations are well-suited to the use of position statements, which will allow the Inquiry to seek direct responses from those subject to such allegations.
- d. In the Module 1 ruling, the Chair expressed concern that position statements would be likely to lead to delay given the breadth of Module 1: ruling §7. If that concern was correct, it is noted that the same breadth does not apply to Module 5; there is therefore not the same perceived risk of delay. There is also at least a year until Module 5 is due to be heard. Delay is therefore not a reason not to seek position statements in Module 5. With appropriate deadlines, position statements will expedite and enhance the production and disclosure processes.
- e. The experience of non/inadequate compliance with Rule 9 requests since the Chair made her Module 1 ruling provides further support for position statements in Module 5. That is because position statements, at this stage, will focus minds, provide a formal, structured basis for comprehensive responses from CPs and material providers, and ensure that responsibility for adequate responses is clear. That will minimise the risk of non/inadequate compliance with Rule 9 requests and further the Inquiry's work. CBFFJ rely on but do not repeat their submissions on this topic made during Module 1.<sup>4</sup>

#### Instruction of expert witnesses

- 13. CBFFJ note §34 of CTI's Note. It gives rise to the same concerns over a lack of collaboration, openness and transparency that CBFFJ have expressed in previous Modules.<sup>5</sup> The Inquiry is proposing to withhold from CPs the identities of the experts (who have already been selected and instructed), as well as the questions they have been asked (which have already been put), until the experts have completed their draft reports. That is unnecessary, undermines the participation of the bereaved, and prevents us from assisting the Inquiry in its work.
- 14. As we have submitted previously, CPs should be invited to make observations on areas of expert instruction, the identification of experts, and the terms of their instruction; this should be done before experts are selected and their draft reports prepared; and expert letters of instruction should be disclosed to CPs at the earliest opportunity.

#### Liaison with criminal investigations

- 15. The scope of Module 5 necessarily includes matters which are, have been or may in future be subject to criminal investigation. For example, there has been widespread public coverage of the criminal investigation by the NCA into Baroness Mone and PPE Medpro.
- 16. It is not uncommon for public inquiries to examine matters that are or maybe subject to criminal investigation, e.g. see, recently, the Grenfell Tower Inquiry and the Manchester Arena, and the ongoing Post Office Horizon IT Inquiry and the Thirlwall Inquiry

---

<sup>4</sup> CBFFJ submissions dated 19 April 2023 for Module 1, §§14-19.

<sup>5</sup> CBFFJ submissions dated 28 September 2022 for Module 1, §34; CBFFJ submissions dated 27 October 2022 for Module 2, §22; CBFFJ submissions dated 24 February 2023 for Module 2, §§26-27; CBFFJ submissions dated 12 September 2023 for Module 3, §15.

(examining matters surrounding the crimes committed by Lucy Letby).

17. CBFFJ anticipate that the Inquiry has liaised with relevant police forces/Chief Constables, the NCA and other relevant investigative bodies in respect of the criminal investigation of procurement-related offences occurring during the pandemic. CBFFJ request confirmation (so far as possible without risking prejudice to such investigations), that that is the case, the bodies with whom the Inquiry is liaising, when such investigations are expected to conclude (if applicable), the terms of such liaison between the Inquiry and relevant investigative bodies (e.g. whether through an informal arrangement, a formalised memorandum of understanding, or some other arrangement), and how the Inquiry proposes to manage disclosure with such investigations.
18. Pending further submissions following the above confirmation from the Inquiry, CBFFJ's position is that liaison with such investigations should take place to assist the Inquiry's work (including in respect of disclosure and identification of witnesses), and the terms of s.2 of the 2005 Act mean that the scope of Module 5 should not be curtailed by the existence of parallel criminal investigations.

#### Undertaking from the Attorney General

19. Where public inquiries are conducted in parallel with criminal investigations, or where such investigations are contemplated or possible, an issue may arise as to whether an undertaking is sought from the Attorney General (AG) by the Chair, either of his/her own volition, or following a request by a CP/potential witness. The normal course where an undertaking is sought is for it to provide that a person's own evidence may not be used in evidence against them in criminal proceedings, or for the purpose of deciding to initiate criminal proceedings against them.
20. The reason for such an undertaking is said to be to prevent reliance on the privilege against self-incrimination, given effect through s.22(1)(a) of the 2005 Act (which imports s. 14 of the Civil Evidence Act 1968 into inquiry proceedings), and thus receive evidence that would otherwise not be provided in order to discharge the inquiry's terms of reference.
21. The factors weighing against seeking an undertaking may include: that it may prevent the relevant person having to assert the privilege, question by question, with cogent justification for the assertion, as the law requires; it would in turn prevent the Chair from assessing an assertion of the privilege, whether or not it is made out, and the steps that may follow (including enforcement under s.36 of the 2005 Act); it may undermine victim and public confidence in the Inquiry by granting an undertaking to those responsible for serious failings, including where failings may have contributed to numerous deaths; and an undertaking may not be strictly necessary, e.g. because the witness can answer many questions without it and/or because the Inquiry can nonetheless reach conclusions, and discharge its terms of reference, without an undertaking.
22. Such undertakings have been requested and refused in a number of recent inquiries<sup>6</sup>, and

---

<sup>6</sup> For example: Manchester Arena Inquiry ruling of Sir John Saunders dated 10 June 2021 ([https://files.manchesterarenainquiry.org.uk/live/uploads/2021/06/11111247/Ruling-on-AG-Undertaking-Issue-10.6.21-96780639\\_1.pdf](https://files.manchesterarenainquiry.org.uk/live/uploads/2021/06/11111247/Ruling-on-AG-Undertaking-Issue-10.6.21-96780639_1.pdf)); Post Office Horizon IT Inquiry rulings of Sir Wyn Williams dated 16 November 2022 and 23 October 2023 (<https://www.postofficehorizoninquiry.org.uk/sites/default/files/2022-11/Decision%20on%20Gareth%20Jenkins%27%20application%20re%20Attorney%20General%27s%20Undertaking%20from%20the%20Attorney%20General.pdf>).

have been requested and granted in others.<sup>7</sup>

23. We anticipate that the Inquiry may be considering this issue given the subject-matter of Module 5. Subject to clarification from the Inquiry, CBFFJ are very likely to oppose requests for an undertaking, principally for the reasons at §21 above.
24. CBFFJ respectfully invite the Inquiry to provide an update on this issue prior to the preliminary hearing, indicating the Inquiry's position and the reasons for it. CBFFJ invite the Chair to direct that any applications requesting that she approach the AG for an undertaking are made promptly, with a cut-off time for such applications, so that the issue is ventilated and resolved now and not raised at later stage, with prejudicial effects on the viability of the Inquiry's hearings.

#### The listening exercise

25. CBFFJ have provided detailed submissions to the Inquiry on the listening exercise. Those submissions are relied on but not repeated; our concerns remain.

#### Commemoration, individual deaths, and pen portrait material

26. CBFFJ have previously provided detailed submissions to the Inquiry on these issues. Those submissions are relied on but not repeated.
27. We note §45 of CTI's Note, indicating that some evidence regarding individual deaths and their circumstances may be relevant where it relates to possible systemic failings, including from bereaved family members. We intend to assist the Inquiry in this regard by providing a schedule of bereaved family witnesses with relevant evidence of systemic issues, such as family members of doctors, health and social care workers, and other keyworkers (such as transport staff) who were required to work without appropriate PPE.

29 January 2024

Pete Weatherby KC  
Jesse Nicholls  
Counsel for CBFFJ UK

Brenda Campbell KC  
Peter Wilcock KC  
Blaine Nugent BL  
Counsel for NI CBFFJ

Elkan Abrahamson  
Nicola Brook

---

[aking.pdf](https://www.postofficehorizoninquiry.org.uk/matter-undertaking-attorney-general-gareth-jenkins-ruling-2); <https://www.postofficehorizoninquiry.org.uk/matter-undertaking-attorney-general-gareth-jenkins-ruling-2>); Anthony Grainger Inquiry (<https://www.bbc.co.uk/news/uk-england-manchester-38077251>).

<sup>7</sup> For example: Brook House Inquiry (<https://cloud-platform-e218f50a4812967ba1215eaccede923f.s3.amazonaws.com/uploads/sites/29/2021/01/2021-01-11-AG-to-Chair-BHI.pdf>); Grenfell Tower Inquiry (<https://assets.grenfelltowerinquiry.org.uk/inline-files/Letter%20from%20the%20Attorney%20General%20to%20the%20Chairman%20May%202020.pdf>).



Broudie Jackson Canter Solicitors  
Solicitors for CBFFJ UK

Conal McGarrity  
Enda McGarrity  
PA Duffy Solicitors  
Solicitors for NI CBFFJ