

# THE UK COVID-19 INQUIRY

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## TRADES UNION CONGRESS: WRITTEN SUBMISSIONS FOR PRELIMINARY HEARING IN MODULE 6, 19 MARCH 2024

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### INTRODUCTION

1. These are the submissions of the Trades Union Congress ('the TUC') for the preliminary hearing on 19 March 2024 in Module 6 of the UK Covid-19 Inquiry ('the Inquiry').
2. The TUC brings together over 5 million working people who make up its 48 unions. TUC affiliated unions with a particular interest in Module 6 include UNISON, GMB, and Unite, each of which are general unions whose representation includes a substantial number of members across the social care sector.
3. These submissions address:
  - a. The **provisional outline of scope** detailed at paragraphs 17 to 22 of Counsel to the Inquiry's 'Note for the Preliminary Hearing in Module 6' dated 1 March 2024 ('the Note').
  - b. The proposed arrangements for **expert material and the instruction of expert witnesses** set out at paragraphs 33 to 37 of the Note.
  - c. The proposed arrangements for the **listening exercise (Every Story Matters)** set out at paragraphs 38 to 43 of the Note.
4. At the outset, however, we observe that Module 6 is a unique and important opportunity. The social care sector forms a hugely important function in our society, providing care and support, as it does, for those acutely dependent on it. Many of us will, at one stage or another, depend on the social care sector to provide us, or a family member, with the care and support necessary to continue to live a full and independent life. The NHS also depends on a functioning social care sector and faces a tremendously increased burden if the sector is not functioning effectively, for example through being unable to discharge people otherwise fit to leave hospital care because of a lack of social care to meet their support needs. The social care sector is also often undervalued and ignored: the 'Cinderella

Service' to the NHS. All of these features were acute and came to the fore during the pandemic.

5. Module 6 provides an opportunity to cast some light on how the sector functions. It must do more than make observations as to how awful the pandemic was, for both staff and residents. It must grapple with the long-standing structural problems within the sector, of which there are many, which frustrated the pandemic response. This Inquiry must, of course, be tightly focused on those issues arising in relation to the pandemic, but a social care sector which is able to function effectively in a pandemic will be able to function effectively when it is not faced with the extraordinary challenges of the pandemic.

### **PROVISIONAL OUTLINE OF SCOPE**

6. The TUC welcomes the provisional outline of scope, which appears in general terms to be appropriately broad.
7. We do note the observation made by Counsel to the Inquiry that it *'is not part of the Inquiry's Terms of Reference to consider the state of the adult social care systems in the United Kingdom prior to the pandemic, save where necessary to understand how the pandemic impacted on adult social care'*. That is no doubt correct, but it begs the question: to what extent *is it* necessary, in order to understand how the pandemic impacted on adult social care, to consider the state of adult social care systems prior to the pandemic? The inescapable reality, however messy and difficult it may be, is that the impact of the pandemic is a function of the state of the adult social care system going into the pandemic. The extraordinary challenges of the pandemic met with the challenges of a chronically underfunded and fragmented social care sector delivered by over many thousands of independent providers, with little central strategic direction, oversight and data, served by an understaffed, underpaid and stretched workforce in insecure work and limited sick pay.
8. Just as in a pandemic the impact is inevitably a function of the capability of the system, change cannot be achieved in a vacuum, free from those systemic issues. Accordingly, the recommendations must also grapple with them. If they do not do so, they will not be meaningful recommendations, with consequence.
9. Accordingly, the Inquiry must receive and examine evidence as to the systemic challenges, including but not limited to:
  - a. The state and impact of fragmentation and privatisation in the sector;
  - b. The lack of any centralised leadership;
  - c. The lack of a centralised workforce strategy;

- d. Profound issues with recruitment and retention of staff in the sector, leading to high vacancy rates in the workforce;
- e. The lack of integration between the NHS and care services;
- f. The lack of any meaningful reform in the care sector over the two decades immediately preceding the pandemic;
- g. The terms and conditions of deployment of workers in the sector, including: remuneration, notably underpayment of minimum wage; working hours; insecure work including zero hours contracts; the requirements placed upon agency workers specifically, including the requirement to work across more than one care setting; and the provision of sick pay including statutory sick pay;
- h. The lack of centralised data collection in relation to the sector;
- i. The difficulties faced by local authorities in meeting their responsibilities in respect of the care sector with increasingly limited resources and a population with increasingly long term and complex care needs and
- j. The historic undervaluing of social care as compared to health care and the impact this has upon its disproportionately BAME, female and migrant workforce.

Those matters will build upon the foundations set by the evidence gathered (and, in due course findings made) in Module 1 of this Inquiry.

10. On a different matter, the TUC welcomes that the experiences of those working in the sector falls within the provisional scope. Such lines of enquiry are relevant to the terms of reference, which include: to *'listen to and consider carefully the experiences of [those] who have suffered hardship or loss as a result of the pandemic'* and to *'consider any disparities evident in the impact of the pandemic on different categories of people, including, but not limited to, those relating to protected characteristics [...] and equality categories'*.<sup>1</sup> Care workers were truly on the front line of the pandemic; their acute suffering is evident from the accounts set out in the Second Witness Statement of Kate Bell in Module 2. Furthermore, as the TUC has repeatedly set out in other modules of this Inquiry, the care sector workforce is majority female and more likely to be BAME, older and/or disabled than the rest of the general population and other parts of the labour market.<sup>2</sup>

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<sup>1</sup> See:

<https://covid19.public-inquiry.uk/wp-content/uploads/2023/05/Covid-19-Inquiry-Terms-of-Reference-Final-2.pdf> at p.1.

<sup>2</sup> See: INQ000103561/5 (GMB Written Evidence to HSC Committee Inquiry - Social Care Funding and Workforce).

11. The TUC is grateful for the opportunity to *identify 'broad matters or areas of inquiry that the Core Participants would additionally wish the Inquiry to consider as part of the provisional scope'*. The TUC raises the following matters as additions to the provisional outline of scope (or, alternatively, as matters which can feature in the list of issues):
- a. Within point 2, the 'structure and resourcing of the care sector'.
  - b. Within point 2, the 'deployment terms and conditions of staff within the sector' in addition to 'staffing levels'.
  - c. Within point 2, 'centralised oversight of the social care system' and 'centralised data collection in relation to the sector'.
  - d. Within point 2, the 'physical infrastructure of the social care system'.
  - e. Within point 3 or under its own paragraph, the provision for sick pay within the social care sector, including the Adult Social Care Infection Control Fund and its efficacy. Although it is recognised that a future module will examine 'business and financial responses', the TUC considers that an analysis of the response to the pandemic within the social care sector, including the infection prevention and control measures implemented, would not be complete without consideration of the support which existed to enable care sector workers to self-isolate.
  - f. Within point 4, 'the movement of staff between care homes and measures introduced to prevent or limit this'.
  - g. Within point 4, 'government guidance issued to the sector in respect of the management of the pandemic'.
  - h. Within point 4, 'the training of staff in respect of infection prevention and control'.
  - i. Within point 7, 'the disproportionate representation of BAME and migrant workers'.
  - j. Under a separate point, 'the mandatory vaccination requirements placed upon care sector workers'. The TUC notes that this is not mentioned within the provisional outline of scope for Module 4, and Module 6 appears to be the best forum for consideration of this issue.<sup>3</sup> The TUC considers that it is essential for it to be fully explored so lessons can be learned, given the high likelihood of another pandemic occurring which involves administering vaccinations to the population and where

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<https://covid19.public-inquiry.uk/wp-content/uploads/2023/10/20150123/Module-4-Provisional-Outline-of-Scope-REVISED-Sept23.pdf>.

those delivering and in receipt of care face additional risk in respect of transmission and severe disease.

## EXPERTS

12. The Inquiry's proposed areas on which expert evidence is to be obtained are noted and are supported. We raise whether the Inquiry might consider the including the following minor amendments to the proposed area for expert evidence set out at paragraph 33(a) of the Note (labelled 'Structure and capacity of the Adult Social Care Sector across the UK'):
  - a. Inclusion of expert evidence on the 'terms and conditions of deployment of staff in the social care sector'.
  - b. Inclusion of expert evidence on 'the demographics of the workforce in the sector, including the representation of BAME people, migrant workers, disabled workers, women, and older people within the workforce'.
  - c. Inclusion of expert evidence on 'the localised commissioning of social care', 'the centralised oversight and strategy for the sector', and on 'the centralised collection of data on the sector'.
13. We further raise whether the Inquiry might consider obtaining expert evidence to explore the issue of the mandatory vaccination requirements placed upon care sector workers during the pandemic. The TUC and its affiliated unions lobbied government to take a proportionate, measured approach to encouraging the very small number of staff who were unvaccinated at the time of the operational guidance coming into effect; and made recommendations as to how this could be achieved without making vaccination a condition of deployment in the social care sector.<sup>4</sup> The decision to introduce this requirement is deserving of careful scrutiny, as to its efficacy and whether any less intrusive means could have achieved the desired results. The TUC considers that expert evidence would aid the Inquiry in analysing this decision and the possible other avenues which could be explored in a future pandemic, should similar challenges arise.

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<sup>4</sup> See, for example:

<https://www.unison.org.uk/health-news/2022/01/mandatory-covid-vaccination-of-health-and-care-workers-england/>;

<https://eastern.unison.org.uk/events/mandatory-vaccinations-in-care-homes-what-does-it-mean-for-our-members-in-care-homes/>;

<https://www.unison.org.uk/content/uploads/2022/02/2022-02-16-Revoking-vaccination-as-a-condition-of-deployment-across-all-health-and-social-care-consultation-UNISON-response.pdf>;

<https://www.gmb.org.uk/assets/media/documents/evidence/DHSCmandatoryNHSvaccinations22102021.pdf>;

<https://www.gmb.org.uk/news/care-worker-mandatory-vaccinations>; and

[https://www.unitetheunion.org/media/3597/jn9318-a4-covid-19-vaccination-position-statement\\_jan21\\_v4final.pdf](https://www.unitetheunion.org/media/3597/jn9318-a4-covid-19-vaccination-position-statement_jan21_v4final.pdf).

14. Finally, we raise whether the Inquiry might consider obtaining an expert in statistical analysis of the available data in respect of deaths of social care staff. The Inquiry is examining *'deaths related to the infection of Covid-19 including deaths of residents and staff'* (paragraph 18, sub-paragraph 7 of the Note). The TUC has itself encountered difficulties in obtaining reliable data in relation to deaths in the social care sector during the pandemic, not least because many of the available sources of statistics group together deaths in the health and social care sectors. The Inquiry will need a detailed understanding of what is revealed in the available data as to recorded deaths, including the extent to which they reveal disparities in impact, and as to the limitations in the available data. We are uncertain as to the Inquiry's intention in terms of seeking such evidence, but it may well be an area that would benefit from expert statistical analysis.

### **EVERY STORY MATTERS**

15. The TUC was grateful for the opportunity to comment on the key lines of enquiry ('KLOEs') set out at paragraph 41 of the Note in separate written submissions conveyed by email on 7 March 2024 and has no further comments to make regarding Every Story Matters at this stage, save to note that we are encouraged to see the broad scope of the KLOEs and the explicit inclusion of the experiences of those working in the care home and domiciliary care sectors.
16. A key issue will be how the experiences of those working in the sector feature in the evidence in Module 6, including the oral evidence. Though we have suggested (above) that the Inquiry must do more than make observation as to how awful the pandemic was for staff and residents, it also important that the Inquiry lays the proper foundation for its findings and recommendations in those experiences of staff providing care, and those dependent on such care. The traumatic experiences of care staff in the pandemic do not appear to have featured prominently in the public eye during the pandemic, and to the extent that they did see any prominence, have perhaps since fallen from public consciousness. They must be at the fore in Module 6, and the TUC is willing to assist the Inquiry in identifying appropriate witnesses, from a range of social care staff.

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11 March 2024