
Note for the Preliminary Hearing in Module 6 of the UK Covid-19 Inquiry

Introduction

1. This note introduces Module 6 and the agenda for the Preliminary Hearing in Module 6 on Tuesday 19 March 2024. It sets out, primarily for the benefit of Core Participants, information concerning the nature of the Inquiry's work on Module 6 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 4pm on **Monday 11 March 2024**.
2. The agenda for the Preliminary Hearing in Module 6 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 6
 - c. Evidence gathering including expert evidence
 - d. Disclosure to Core Participants
 - e. Every Story Matters
 - f. Future hearings dates
 - iii) Submissions from Core Participants

The Commencement of the Inquiry and Module 6

3. On 12 May 2021 the then Prime Minister 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. Following the appointment of the Rt Hon Baroness Heather Hallett DBE as Chair of the Covid-19 Inquiry on 15 December 2021, and consultation with Ministers from the devolved administrations (as is required by section 27 of the Inquiries Act 2005 for this Inquiry), draft terms of reference were drawn up. The draft terms were consulted upon and amendments suggested, including by Baroness Hallett. In particular, Baroness Hallett sought an express mandate to publish interim reports so as to ensure that any urgent recommendations could be published and considered in a timely manner. In addition, given her view that the Inquiry would gain greater public confidence and help the UK to come to terms with the pandemic if it was open to the accounts that many people - including those who have been bereaved - would wish to give, she suggested adding explicit acknowledgement of the need to hear about people's experiences and to consider any disparities in the impact of the pandemic.
5. On 21 July 2022 the Inquiry was formally opened following a consultation across all four nations on the draft Terms of reference. Baroness Hallett announced the decision to conduct the Inquiry in modules, which would be announced and opened in sequence. Those wishing to take a formal role in the Inquiry were invited to apply to become Core Participants, within the meaning of Rule 5 of the Inquiries Rules 2006, for each module, rather than throughout the Inquiry as a whole.
6. The Inquiry has already held public hearings in respect of Module 1 (resilience and preparedness) and Module 2 and 2A (core decision making and political governance by the UK and Scottish Governments respectively). The public hearing into core decision making in Wales, Module 2B, commenced on 27 February 2024 and so is ongoing as at the date of this note. Module 2C in respect of Northern Ireland will commence in Belfast on 30 April 2024.
7. In addition, the Inquiry has opened Module 3 (impact of the pandemic on healthcare systems in the four nations of the UK), Module 4 (vaccines and therapeutics), Module 5 (procurement) and, on 12 December 2023, this Module.
8. 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. Module 6 will consider the entirety of the United Kingdom so that there is a wider understanding of the impact of the pandemic across the United Kingdom, with differing care structures across the four nations. This will help the Inquiry make meaningful and practical recommendations. This Inquiry's intention, in

relation to Scottish matters, is to seek to minimise duplication of investigation, evidence gathering, and reporting with the Scottish Inquiry which has been established to look at matters devolved to the Scottish government.

9. Module 6 will examine the impact of the pandemic on the publicly and privately funded adult social care sector in England, Scotland, Wales and Northern Ireland. Details relating to the scope of Module 6 are set out below.
10. Details of later modules will be published in the coming months, and, in due course, the Inquiry will provide further detail about the order and provisional scope of those modules.

Designation of Core Participants

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

“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.”

12. 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 6.

13. The Chair exercised her wide discretion and took into account a number of features. 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 test, and the Chair was obliged to assess very carefully whether, in reality, applicants could assist the Inquiry in Module 6. Second, it is not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry. 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. 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' which is called Every Story Matters.
14. Module 6 has granted a number of applications for Core Participant status (some involving joint applicants):
- a. Covid-19 Bereaved Families for Justice
 - b. Covid-19 Bereaved Families for Justice Cymru
 - c. Northern Ireland Covid-19 Bereaved Families for Justice
 - d. Scottish Covid Bereaved
 - e. John's Campaign, Care Rights UK and the Patients Association
 - f. Disability Rights UK, Disability Action Northern Ireland, Disability Wales and Inclusion Scotland ("Disabled People's Organisations")
 - g. Frontline Migrant Health Workers Group
 - h. British Association of Social Workers
 - i. National Association of Care and Support Workers
 - j. Royal College of Nursing
 - k. Trades Union Congress
 - l. Care England, National Care Forum, and the Homecare Association
 - m. Scottish Care
 - n. Association of Directors in Adult Social Services, the Local Government Association and the Welsh Local Government Association
 - o. Care Quality Commission
 - p. Regulation and Quality Improvement Authority
 - q. Care Inspectorate

- r. Department for Health and Social Care
- s. Department for Health Northern Ireland
- t. Scottish Territorial and Special Health Boards
- u. Convention of Scottish Local Authorities
- v. Scottish Ministers
- w. Welsh Government
- x. Public Health Wales
- y. UK Health and Security Agency
- z. Public Health Scotland

15. 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.

16. For the avoidance of doubt, the determinations which have been made by the Chair in relation to Module 6 in no way prejudice the ability of any applicant to apply in another, later, module which may in any event be more suited to their application.

Outline of scope of Module 6

17. Module 6 will examine the impact of the pandemic on the publicly and privately funded adult social care sector in England, Scotland, Wales and Northern Ireland.

18. The document setting out the provisional outline of scope for Module 6 states:

“ This module will examine the impact of the Covid-19 pandemic on the publicly and privately funded adult social care sector (the “Care Sector”) in England, Wales, Scotland and Northern Ireland. It will consider the consequences of government decision making on those living and working within the Care Sector. This includes adult care and residential homes including care provided in the home (but not care provided within day care centres or in supported housing) and the decisions to free up capacity in hospitals by discharging patients into adult care and residential homes. It will address the steps taken in adult care and residential homes to prevent the spread of Covid-19 and examine the capacity of the adult care sector to respond to the pandemic. The module will also consider the impact of the pandemic on residents and their loved ones and the impact on staff working within the Care Sector.

In particular, this module will examine:

- 1. The impact of the pandemic on people's experience of the Care Sector. This will focus on residents and their loved ones and those working within the Care Sector and will include consideration of the unequal impacts on them.*
- 2. The structure of the Care Sector and the key bodies involved in the UK and Devolved Administrations at the start of and during the pandemic. This will include staffing levels and bed capacity immediately prior to the pandemic.*
- 3. The key decisions made by the UK Government and the Devolved Administrations in respect of the Care Sector, including the decisions relating to the discharge of people from hospitals into adult care and residential homes in the early stages of the pandemic.*
- 4. The management of the pandemic in adult care and residential homes. This will include the measures preventing the spread of Covid-19, such as infection prevention and control measures, testing for Covid-19, the availability and adequacy of personal protective equipment (PPE), restrictions on access by/to healthcare professionals and visits from loved ones.*
- 5. The use of Do Not Attempt Cardiopulmonary Resuscitation (DNACPRs) and communication with residents and their loved ones about the resident's condition and treatment including discussions and decisions about DNACPRs.*
- 6. The changes to the regulatory inspection regimes within the Care Sector.*
- 7. Deaths related to the infection of Covid-19 including deaths of residents and staff.*
- 8. Infection prevention and control measures for those providing care in the home, including by unpaid carers."*
19. This scope 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 6 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. In due course, Module 6 will circulate a 'List of Issues' to help identify the key issues arising from the evidence.
20. At the outset though, given the public concern about the discharge decisions and the

fact that this policy primarily affected adult patients, the Inquiry does not intend to examine children in care in this module (aspects of the impact of the pandemic on children and young persons will, in any event, be considered in a later module). In addition, although there are a number of different settings in which adult social care is provided, it will not be possible or proportionate to examine all the settings - the Inquiry considers that by focussing on adult care and residential homes and care provided in the home, the Inquiry will have a sufficiently broad evidence base upon which to make meaningful recommendations. In the event that the evidence suggests that other adult social care settings need to be considered, the Inquiry will keep these decisions under review.

21. The Inquiry considers that the provisional scope provides a proper framework of the issues and matters that the Inquiry is likely to inquire into, and a sufficient indication for persons and organisations who have relevant information and evidence, as well as Core Participants, to be able to commence their preparations. The issues will, however, be further developed once the responses to the majority of the Rule 9 requests for evidence have been received.
22. 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. Nevertheless, if there are broad matters or areas of inquiry that the Core Participants would additionally wish the Inquiry to consider as part of the provisional scope, these will be considered.

Rule 9 Requests for information

23. Module 6 has started the process of identifying and issuing Rule 9 requests for evidence from relevant organisations and individuals. For example, in November 2023, Module 6 asked the Local Government Association to conduct an online survey of all its members. All 337 members in England and Wales responded. The topics covered by the survey included:
 - a. Changes to council structures and decision making and the reasons for those changes;
 - b. The activities taken before and during the pandemic to support care providers;
 - c. Preparedness and capacity in the year leading up to the pandemic and the reasons why capacity and/or resilience were considered by responders not to be good during the pandemic;
 - d. Communication with those who use adult social care and the general public;

- e. DNACPR guidance;
- f. Staffing and workforce issues in the care sector;
- g. Accessing information about local care providers such as available beds, vaccination rates of staff and residents and Covid-19 test results;
- h. Accessing PPE, hand sanitiser and Covid-19 tests
- i. Visiting restrictions
- j. IPC measures
- k. Impact of the discharge policy
- l. Impact of the pandemic on unpaid carers.
- m. Guidance and funding
- n. Regulatory regime

24. CTI will provide further information about the survey responses and an update on the Module's initial approach to Rule 9 requests at the preliminary hearing.

25. Across the Inquiry, Rule 9 requests for documentation and witness statements are being issued on an iterative basis and additional requests will be made of some recipients, focusing on particular issues or topics in due course. Further Rule 9 requests will be issued, on a rolling basis, to organisations and witnesses as issues come into greater focus during the course of this investigation.

26. In line with a determination 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 6. Disclosure to the Core Participants of the Rule 9 requests themselves (as opposed to the relevant documents and material generated by them) is neither required by the Rules nor generally established by past practice. Furthermore, it would serve little practical purpose given the wide scope and detailed nature of the Rule 9 requests that are being made.

27. However, to ensure the Core Participants are kept properly informed, the Inquiry will ensure that the Module 6 lead solicitor provides monthly updates to Core Participants on the progress of Rule 9 work. Such updates will 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.

Disclosure to Core Participants

28. 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. Disclosure will be specific to Module 6 such that the information and documents received through the Rule 9 process will be reviewed and, if considered relevant for disclosure, redacted in line with a Redactions Protocol that has been prepared and published (<https://covid19.public-inquiry.uk/document/inquiry-protocol-on-the-redaction-of-documents/>), so as to remove sensitive material, such as personal data.

29. Where the Inquiry has any queries or concerns about a provider's processes for locating relevant documents, it will raise and pursue them and, of course, as documents are reviewed and gaps identified, further documents will be sought.
30. 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.
31. The electronic disclosure system which will be used to provide documents to Core Participants will be Relativity. Details of how to access the system and use it 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.
32. The Inquiry has already identified material potentially relevant to Module 6 that has been provided to other modules. This material will be reviewed for disclosure. Module 6 hopes to start making disclosure in summer 2024.

Expert material and the instruction of expert witnesses

33. The Inquiry has provisionally identified a number of areas where expert evidence is likely to assist in examining some of the matters set out in Module 6's provisional outline of scope. These include:
 - a. **Structure and capacity of the Adult Social Care Sector across the UK.** It is envisaged that this will include an outline of how the Care Sector is structured and funded and any key differences across the UK; the numbers and types of care homes and providers; and the workforce capacity at the start of and during the pandemic.
 - b. **Infection prevention and control ('IPC').** This is likely to include the development of the scientific understanding of Covid-19, including routes of

transmission, in relation to care settings at the start of and through the pandemic; IPC guidance relevant to the care sector; and issues relating to personal protective equipment ('PPE').

- c. **Impact of the pandemic on those with specific conditions which commonly underpin the need for social care.** The Inquiry is considering which specific condition(s) should be covered by expert evidence and would welcome submissions from the Core Participants in this regard. For obvious reasons, the Inquiry will not be able to look at all relevant conditions. Options include the impact on those with learning difficulties; mental health difficulties; dementia; physical disabilities and/or those with multiple or complex needs.

- 34. The expert(s) will be asked to prepare a written report and may be asked to give evidence at the public hearing. Such reports and evidence will inform and support the Inquiry's work in preparation for and during the public hearings, as well as the Chair's recommendations, by ensuring that its factual conclusions are soundly based and supported by the weight of the best expert opinion.
- 35. The experts will have the appropriate expertise and experience for the particular instruction. They will be independent and objective and subject to an overriding duty to assist the Inquiry on matters within their expertise (whether or not they may also be considered as witnesses of fact in relation to matters falling within the scope of the Inquiry).
- 36. 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 tested during oral hearings.
- 37. The appointment of experts to the Inquiry are matters exclusively for the Inquiry, although it will consider suggestions from Core Participants as to who should be appointed along with any additional areas where the Core Participants consider the Inquiry would be assisted by expert evidence.

Listening exercise - Every Story Matters

38. The listening exercise, Every Story Matters, has been established to gather, analyse and summarise the experiences of those affected by the pandemic and the UK's response to it. Every Story Matters themed reports will be submitted into each relevant investigation. These reports will be anonymised, disclosed to the Inquiry's CPs and used in evidence, so that they can form part of the Inquiry's written record. The reports will identify trends and themes and include illustrative case studies which may demonstrate systemic failures.
39. Every Story Matters aims to obtain information from anyone who wishes to contribute, i.e. both from the bereaved and anyone else who was impacted by the pandemic. It has been designed so that anyone and everyone in the UK can contribute if they wish to do so. Specifically in relation to Module 6, the Inquiry is particularly interested to hear from people who have interacted with the care sector, including: residents living within the adult social care sector and those who are cared for at home and their loved ones; those managing public and privately funded care homes and people working in care settings during the pandemic including those who provide care at home.
40. In addition, Every Story Matters will commission targeted research about the impact of lockdowns and visiting restrictions including on the physical and mental health of those who receive and provide care; end of life care, DNACPR decisions and bereavement; information provided to and about patients being discharged from hospital; access to emergency and routine healthcare for residents in care homes; and IPC measures.
41. In the coming weeks, the Inquiry legal team will work with its research specialists to identify research questions and audiences in relation to the following proposed Key Lines of Enquiry (KLOEs):

Care homes

1. *Experiences of care home residents and their loved ones during the pandemic*
2. *Experiences of those working in the care home sector across various different job roles*
3. *The use of Do Not Attempt Cardiopulmonary Resuscitation (DNACPRs) decisions and communication with care home residents and their loved ones about these decisions, the resident's condition and care plan.*
4. *Discharge of people from hospitals into care homes in the early stages of the pandemic*
5. *Infection prevention and control measures in care homes, including:*

- a. *Access to PPE and Covid-19 tests, and the adequacy of PPE for workers in the care home sector*
 - b. *The broader management of covid-19 in care homes.*
6. *Bereavement experienced by people who lost loved ones living in care homes*

Care in the home

1. *Experiences of those who receive care in the home either from unpaid or paid carers*
 2. *Experiences of those providing care in the home whether paid or unpaid,*
 3. *Infection prevention and control measures in the context of home care, including:*
 - a. *Access to PPE for those providing care in the home*
 - b. *Broader management of covid-19 in the cared for individual's home,*
 4. *Bereavement experienced by people who lost loved ones who received social care in the home during the pandemic.*
42. Potential audience groups that it is proposed are included in the sampling for qualitative interviews include those categorised by:
- Residents of adult care/nursing homes and their loved ones.
 - Staff working in adult care/nursing homes
 - Those providing care in the home (ie domestic home) whether providing paid or unpaid care.
43. Core Participants are invited to file written submissions **by 4pm Thursday 7 March** making suggestions in relation to the KLOEs for targeted qualitative research, in particular, on:
- a. Whether there are any specific areas listed in the paragraphs 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

44. 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.
45. 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. In addition to the commemorative memorial at the Inquiry's hearing centre, Dorland House, Module 6 will have an Impact Film aired at the public hearings.

Future Hearings

46. A further Preliminary Hearing for Module 6 will be held in due course at Dorland House.
47. The public hearing in Module 6 will take place in London in 2025.

1 March 2024

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