

IN THE MATTER OF THE INQUIRIES ACT 2005
AND IN THE MATTER OF THE INQUIRY RULES 2006

The UK Covid-19 Inquiry

NHS England's Note re:
Second Preliminary Hearing in Module 3 of the Inquiry

Introduction

1. NHS England welcomes the opportunity to participate in Module 3 of the Inquiry. Given its subject matter, NHS England expects to be an active Core Participant in Module 3 and to play a significant role. Its preparation to do so is well underway. NHS England has submitted witness evidence, in the form of Corporate Witness Statements, and disclosure to the Inquiry, and stands ready to assist the Inquiry with its investigation.
2. NHS England also participated in Module 1 and Module 2 of the Inquiry, provided opening and closing submissions and attended hearings. It is also now in the process of preparing for future modules in which it is a Core Participant, in particular Module 4 and Module 5.
3. NHS England welcomes and applauds the Inquiry's emphasis of taking a trauma based approach to hearing and collecting evidence from those impacted through Every Story Matters, and its wider commitments to reasonable adjustments for appearing and non-appearing witnesses. The welfare and wellbeing of NHS England's staff and colleagues is of utmost importance to it. Preparation for the multi modular Inquiry has placed many individuals and teams under considerable stress, and we ask that all witnesses continue to be treated with sensitivity and care.
4. It is largely with that in mind that NHS England wishes to raise a small number of issues as the Inquiry and Core Participants prepare for hearings in Module 3. These are:

- (1) Timings and pressures;
- (2) Relationship between Module 3 and Other Inquiry Modules.
- (3) The complexity of health services in England and the Devolved Administrations

(1) Timing and Pressures

5. NHS England has responded to and co-operated fully with requests from the UK Covid-19 Public Inquiry and has directed significant resources into supporting the Inquiry's investigations, including setting aside substantial amounts of time of its senior leadership team during winter, and whilst responding to industrial action. NHS England is grateful that the module team have been mindful of the amount of information NHS England has had to review and the time permitted to do so. However, notwithstanding its best efforts and the module team's accommodations, it has been challenging to meet multiple concurrent Inquiry deadlines across several modules, and this appears to reflect the experience of other Core Participants; we note that some have been subject to s.21 Inquiries Act 2005 notices.
6. NHS England is preparing for the hearings, which will inevitably involve more work, often on short timescales and with significant time commitment from senior leadership, those individuals who are called to give evidence, and the teams of people who support them. This work will intensify with closer proximity to hearings and will be conducted alongside evidence submissions made for other Modules, as well as responding to and reporting on any findings and recommendations set out by the Inquiry. Due to the scheduling of the Module 4 and 5 hearings in early 2025, preparation for those hearings will now have to occur during Module 3 hearings, as well as over the Christmas period for those that are appearing witnesses.
7. NHS England dedicates significant resources to its participation in this Inquiry but is mindful that it does so with public money. This Inquiry, and others alongside it, places a substantial strain on a significant number of individuals and teams as they endeavour to respond to evidence and statement requests in a timely and transparent manner. Whilst recognising the Chair's desire for all hearings to be

concluded by the end of 2026, NHS England requests that the Inquiry does all it can to mitigate and plan for the burden placed on material providers through the existence of concurrent modules, such as through sharing existing relevant material across modules, opening future modules as soon as possible, and issuing R9 requests early. We remain uncertain about the potential burden future Modules will potentially place on the organisation.

8. NHS England wishes to express its particular concern about the pressure on its and the wider NHS family's resources and witnesses throughout the Autumn and Winter. While it will make every effort to work with the Inquiry and respond co-operatively, the scale of the task cannot be underestimated. The operational workload and pressures during Autumn and Winter are always substantially heavier than at other times of the year as the NHS deals with winter pressures such as seasonal respiratory illnesses which impact on waiting lists. There is also the possibility of a General Election that will increase burdens on organisations and senior officials.
9. Against that background, NHS England seeks assistance from the Inquiry as preparation for Module 3 hearings progresses and during the hearings themselves, and would welcome an open dialogue with the Inquiry about how best to achieve this.
10. In addition to the UK Covid-19 Inquiry, NHS England is also participating in other public inquiries, some of which are likely to require preparation and attendance at hearings concurrently with or shortly after the Module 3 hearings; for example, the Thirlwall Inquiry. NHS England asks for proper consideration to be given to the schedule for hearings so that its witnesses are not timetabled so that they are required for both the UK Covid-19 Inquiry and other inquiries in quick succession, and that fair warning is given to witnesses before the summer of whether they are required to give oral evidence across all Modules currently scheduled.
- 11.** NHS England specifically requests that there is active coordination across the overlapping public inquiries. Some support by way of the Cabinet Office as sponsoring department may be necessary to achieve the necessary co-ordination for witnesses so affected.

(2) Overlap with Other Inquiry Modules

12. NHS England understands that it is not possible to clearly delineate the boundaries between each of the Inquiry's modules.¹ However, Module 3 is broad in scope and there are a number of areas in Modules 4, 5 and 6 where there is likely to be particular overlap between the issues considered in Module 3 and other Modules: for example the use of therapeutics in Module 4, the availability of PPE, its procurement and distribution in Module 5, and health care provision in the community and discharges from hospital into the care homes in Module 6. At present, it is not clear how the Inquiry intends to deal with these overlapping issues in Module 3 (if at all) and where the dividing lines are. NHS England therefore seeks clarity on this topic.
13. The issue is particularly acute for NHS England in Module 6 where it is not a Core Participant. At the recent Module 6 preliminary hearing, a number of cross-cutting issues were raised by multiple participants, including Counsel to the Inquiry, such as the provision of emergency care in community settings, suggestions of preferential distribution of PPE into the NHS, discharge of patients from hospital settings, and DNACPR policy – all of which are issues to be considered in Module 3.
14. It is not currently clear how it is intended that NHS England will be expected to address those issues and assist the Inquiry with its investigations. NHS England has provided evidence and information to the Inquiry on cross-cutting topics through witness statements for Modules 1, 2, 3 & 4 and briefing material on Module 5. It is not known whether these statements will be disclosed in Module 6 or whether NHS England witnesses will be expected to speak to these issues. NHS England requests that if it is determined that evidence it has provided for those Modules is usefully disclosed to participants for which it is not a core participant, that it is given the opportunity to review the wider evidence available to Core Participants to ensure the evidence it is providing to the Inquiry is as full and helpful as possible.

¹ See NHS England's First Preliminary Hearing Submissions at 28-42.

15. It is reasonable to expect that the Modules Lists of Issues will provide some clarity on these dividing lines, but these points are made now to ensure that thought is given to advance of preparation of the lists, noting that NHS England is unable to comment on Module 6 lists, nor on the Inquiry's approach to witnesses for that Module.

(3) The complexity of the NHS in England and the Devolved Administrations

16. Finally, Module 3 will navigate the complex roles and responsibilities of different organisations at different times. NHS England has set out an overview of its structure and its role in the health system as a whole in its submissions for the first Module 3 Preliminary Hearing on 21 February 2023, as well as in statements submitted to the Inquiry in Modules 1, 2 and 3.

17. We briefly note again that complexity of the healthcare landscape in England and that it continues to evolve. In particular, the Health and Care Act 2022 has resulted in several national health bodies having merging or ceasing to exist since the pandemic, as well as the organisations responsible for health care commissioning, CCGs, being abolished with their functions now transferred to new bodies known as Integrated Care Boards which work more closely with Local Government.

18. As the Inquiry is very aware, the health systems in the Devolved Administrations differ substantially from that in England.

19. Given that the landscape is complicated and difficult to understand for the public, core participants, and the Inquiry, NHS England suggests that sufficient time is taken at the start of the hearings to hear from experts who will aid understanding of the structure of how health and care services are provided in England, and in particular the way in which NHS services link to and interact with areas such as Social Care and public health. This will help ensure witnesses called to give evidence are asked to comment on issues within their spheres of influence.

20. The recent CTI note for the Preliminary Hearing sets out the list of experts and the topics that they will cover. NHS England welcomes the opportunity to comment on draft reports as has been the case in other modules. We suggest that in addition to their written reports, the instructed experts could be given time to set out in the early part of the hearings the structure of the NHS services which they have been asked to address in evidence, and thus the way in which the healthcare services in question are commissioned and delivered.