Module 3: Counsel to the Inquiry's Note for the Third Preliminary Hearing on 10 April 2024

Introduction

1. The purposes of this note are to provide the agenda and introduce the issues for the third preliminary hearing in Module 3 to be held on 10 April 2024. Those who have been granted core participant status on Module 3 have been provided with regular progress updates over the past few months. However, this preliminary hearing is an opportunity to draw this information together and ensure that it is up to date, as well as allowing a public update on the Inquiry's work so far. **Should any Core Participant wish to file brief written submissions on any of the issues set out below, they must be received by the Inquiry by 4pm on 27 March 2024**.

2. The third preliminary hearing in Module 3 will address the following issues:

    a. Update on Rule 9 requests

    b. Disclosure to Core Participants

    c. Expert witnesses

    d. Every Story Matters

    e. Public hearings

Update on Rule 9 requests

3. Since the last preliminary hearing in September 2023, Rule 9 requests have been sent to 46 additional individuals and organisations. The Module 3 Solicitor team update notes provide details of the recipients and an overview of the topics about which they have been asked but, in summary, Rule 9 requests have been sent to recipients including:

    a. The Public Services Ombudsman for Wales, Northern Ireland and Scotland, The Chief Nursing Officers for each nation, along with a number of charities and other interest groups;

    b. 22 'Spotlight' hospitals.

    c. Individual Rule 9 requests to Matt Hancock and Robin Swann have been issued. The Rule 9 requests to Jeane Freeman, Humza Yousuf, Eluned Morgan, Vaughan Gething and Sajid Javid will be sent in the week commencing 18 March 2024. Topics covered in these Rule 9 requests include:

        - Personal background, ministerial role and working relationships;
        - Initial response to the pandemic and planning assumptions/modelling;

- Capacity within the healthcare system, cancellation of care, including screening programmes, and reopening services, staffing and redeployment of staff, use of Nightingale Hospital and the independent sector.
- Infection prevention and control, visiting, shielding and PPE;
- Medical Equipment;
- Testing of healthcare workers;
- DNACPR orders;
- Primary Care, ambulances and the use of technology;
- Delaying access to care;
- Long Covid;
- Lessons learned.

d. A personal Rule 9 request to Dame Jenny Harries will be issued in the next week;

4. As at the date of this note, Module 3 has sent over 180 Rule 9 requests for witness statements and associated documents.

5. As the Module 3 update notes set out, the Inquiry has provided recipients of Rule 9 requests with a deadline by which the draft statement should be submitted. Some recipients have asked the Inquiry for an extension of time by which to file their response and, in appropriate cases, reasonable extensions have been granted.

6. However since the last preliminary hearing, the Chair has considered it necessary to issue s.21 Inquiries Act 2005 notices to a number of government departments/agencies to ensure that all matters raised in the Rule 9 requests are properly addressed and that the evidence is provided in time to allow the Inquiry Legal Team time to progress its work. By way of background, the departments/agencies received their Rule 9 requests in the spring of 2023 (March-May 2023) and applications for extensions for deadlines were often granted. However, the Inquiry was increasingly concerned to hear that some delays in receiving evidence were said to have been as a result of the work required on other Modules (whether preparing statements and/or preparing for public hearings), even in circumstances where many months had elapsed between the Rule 9 request being issued by Module 3 and the draft statement (or parts thereof) being received.

7. In deciding to issue s.21 notices, the Chair was cognisant not only of the demands placed on those departments by other Inquiry Modules and other public inquiries but also of the everyday pressures of the respective departments' normal work over the winter and took this into account when setting and, where necessary, varying s.21 deadlines.

8. Section 21 notices have been issued to:

a. UK Health and Security Agency ('UKHSA') - the deadlines set for providing draft and signed statements in response to section 21 notices have been met. The corporate statements of Dame Jenny Harries and Professor Susan Hopkins on behalf of UKHSA and the accompanying exhibits will be disclosed by 9 April 2024.

b. Department of Health and Social Care ('DHSC') - Given the breadth of topics to be covered by DHSC in the Inquiry's Rule 9 request dated 16 March 2023, it was agreed that DHSC's statement could be divided into five sections. Section 21 notices have been issued (and in some instances varied following a request from DHSC) for the following:

    i. Parts A (corporate structure and roles) and B (Covid-19 response and measures including IPC and shielding) were provided by the deadline and were disclosed on 12 March 2024.

    ii. Part D (impacts of the pandemic/the NHS response including on non-Covid care) was provided in draft by the deadline and a final, signed statement is due by 22 March 2024.

    iii. Part C (including capacity, resilience, funding, private hospitals, Nightingales) was also provided in draft by the specified deadline. However, there were aspects of the statement that either did not answer, or answer fully, all matters set out in the Rule 9 request. Since that time, the Inquiry Legal Team has engaged in productive discussions with DHSC in order to address these concerns, as a result of which the section 21 notice was varied and a revised Part C is due by 22 March 2024.

    iv. Part E (lessons learned) is due by 12 April 2024.

c. Welsh Government and Social Services Group - A s.21 notice was issued on 12 February 2024 which required the following to be provided:

    i. the final signed statement of the Welsh CMO, Sir Frank Atherton. This statement was provided by the deadline and is in the process of being reviewed. A further Rule 9 request will be made in respect of one topic that was not fully addressed in the signed statement.

    ii. The draft corporate statement of Andrew Goodall and any outstanding exhibits. These documents were received by the deadline of 12 March 2024. The 'lessons learned' part of this statement is due by 16 April 2024.

    iii. The draft statement from the Welsh Chief Nursing Officers. This statement was received by the deadline and is in the process of being reviewed and feedback provided.

iv. The NHS Welsh data statement is due by 28 March 2024.

d. Department of Health Northern Ireland - a section 21 notice was issued on 7 February 2024 and varied on 23 February 2024.

i. Given the breadth of topics to be covered by the Department, it was agreed that the statement could be divided into sections A-K and then compiled into one or two statements, rather than being disclosed in separate parts. Sections A (department structure and roles/responsibilities) and J (shielding) were not subject to a s. 21 Notice.

1. The deadline for draft Sections B & C (Infection Prevention and Control, Personal Protective Equipment), Section E (Admissions and discharge); Section F (Staffing); and Section G (Medical Equipment and Oximeters) was met. These sections have been reviewed and feedback will be provided shortly;
2. Section H (Nightingales and Independent Sector) and Section I (Healthcare provision and treatment) were received in draft by the deadline of 6 March and are now being reviewed.
3. Section K (Technology and Lessons Learned) was received by the deadline and we understand the exhibits will follow on 13 March 2024.

ii. The deadline for provision of the Chief Nursing Officer's draft statement is 4pm on 13 March 2024. The exhibits have been received in advance.

iii. The final signed statement of the Chief Medical Officer, Professor Sir Michael McBride is due by 3 April 2024.

'Spotlight' hospitals

9. In December 2023, Module 3 sent Rule 9 requests for 22 hospitals across the length and breadth of the UK. The purpose of these requests was to obtain evidence about the impact of national decision-making and leadership upon those operating within healthcare systems, including how hospitals responded 'on the ground' to the Covid-19 pandemic. The requests focus on how the hospital responded to the challenges faced, seeking practical examples of the steps taken to respond where possible. It is important to note that this is not the only way by which Module 3 will examine the impact of the pandemic on those working and being treated in hospitals.

10. The number and location of the Spotlight hospitals were chosen so as to gain evidence from across the four nations taking into account the respective populations within each nation, covering both rural and urban areas. Accordingly, two Spotlights were selected from each of Northern Ireland, Scotland and Wales with the remaining 16 Spotlights being selected from England. The number of Spotlights is inevitably

limited given the Inquiry's need to balance its finite resources with its obligations under the Terms of Reference.

11. When selecting the Spotlight hospitals, the Inquiry considered the questionnaire responses provided by some Trusts, Health Boards and Health & Social Care Trusts, identifying from those responses, hospitals which may be able to provide practical information and evidence to the Inquiry. The Inquiry also selected some hospitals where the Trust or Board did not provide a response to the Inquiry's questionnaire. The Rule 9 requests were sent to the Medical or Clinical Director, Chief Medical Officer or equivalent at each of the 22 hospitals across the UK. We have specifically requested that the statement is provided by an appropriate individual or individuals who are able to provide evidence about events during the relevant period, rather than a corporate statement from the senior management team at the Trust or Board responsible for that hospital.

12. The purpose of the Spotlights is not to identify hospitals most severely affected by the pandemic, nor is it to conduct an examination nation by nation, region by region or hospital by hospital. It is not a comparative exercise comparing one hospital's response against another, nor could it be. As was made clear in the update note covering December 2023 (sent on 10 January 2024), and in accordance with the Inquiry's Terms of Reference, it is not the Inquiry's intention to examine the circumstances surrounding the treatment of individual patients or the outcomes of their treatment. The intention of requesting information from the Spotlight hospitals is to assist the Inquiry in identifying key themes and particular issues that arose with respect to the healthcare system's response to the pandemic. As such, the evidence will come to form part of the Inquiry's broader investigation into the operational and healthcare pressures or challenges faced by the healthcare system during the relevant period.

13. Topics covered in the Spotlight Rule 9 request include:

    a. Staff shortages just prior to and during the pandemic;

    b. The practical effect of efforts to increase:

        i. staff capacity eg through Covid-19 testing, temporary re-registration of staff etc;

        ii. Bed and intensive care capacity;

        iii. Access to Ventilators; CPAP, renal dialysis machines, oxygen, and medication;

    c. The impact of redeployment of staff, whether to a different specialism within the hospital, to other hospitals or to Nightingale hospitals or the equivalent temporary field hospitals in the devolved nations;

d. Vaccination as a condition of deployment;

e. Any difficulties in disseminating and implementing IPC guidance;

f. The hospital's response to nosocomial outbreaks;

g. Issues relating to obtaining PPE (both in terms of quantity and quality);

h. Visiting restrictions and how, for example, the hospital practically facilitated contact between patients and their loved ones, in particular regarding end of life contact;

i. Impact of the pandemic on non-Covid conditions and decisions relating to escalation of care; and

j. Impact of the pandemic on the health and wellbeing of those working in the healthcare system, including Long Covid.

14. The Rule 9 requests sent to each hospital covered the same topic areas and questions. In addition, the Inquiry asked some hospitals about specific issues that were raised in either the questionnaire responses or were revealed in open source research on the hospital in question, where these issues may indicate systemic problems in the response to Covid-19.

Impact evidence

15. Module 3 has embarked on the process of obtaining impact evidence that highlights systemic issues. In this regard, the Inquiry has contacted a number of Core Participant groups in Module 3 from across the United Kingdom to request short summaries from a specified number of individual members of those groups. These summaries will then be used to help the Inquiry identify a small number of witnesses who will be formally asked to provide statements and some of whom will be asked to give oral evidence at the public hearing. This will be in addition to other evidence about the impact of the pandemic on individuals, as set out in some statements and as will be included in the Every Story Matters report.

16. In total the Inquiry has requested 100 summary accounts to be provided from the four bereaved families groups; Clinically Vulnerable Families; Long Covid groups; Baby, Parent and Birthing Organisations; John's Campaign, Care Rights & the Patients Association; and the Disability Charities Consortium. Accounts were also requested from the following healthcare workers' organisations: Federation of Ethnic Minority Healthcare Organisations; Frontline Migrant Healthcare Workers Group; Royal College of Nursing; British Medical Association; National Pharmacy Association; Royal Pharmaceutical Society and the Trades Union Congress.

17. A further update on the status of all the Rule 9 requests including the Spotlights and impact evidence will be provided by CTI at the preliminary hearing on 10 April 2024.

Disclosure to Core Participants

18. As at the date of this note:

    a. 45 statements have been disclosed in 9 tranches of disclosure;

    b. More than 70 draft statements have been received and are either being reviewed and feedback prepared or the Inquiry has given feedback and requested those statements be finalised.

19. The Inquiry expects to make further significant tranches of disclosure between this note and the preliminary hearing.

20. Contained within the recent and upcoming tranches of disclosure in March and April are a number of corporate witness statements from organisations and departments such as NHSE, DHSC, OCMO, UKHSA, HSE, Public Health Scotland, and NHS National Services Scotland. These statements are lengthy and detailed and cover a wide range of topics relevant to Module 3's scope. In addition, there will be statements from some of Module 3's Core Participant groups which highlight specific areas of concern relevant to their members. It is inevitable that reading and assimilating all this material will take some time. The Inquiry Legal Team therefore considers that in order to have a more meaningful and detailed second draft of the List of Issues ('LofI'), the second draft should be circulated once the disclosed material has been analysed.

21. Module 3 has reviewed the transcripts of evidence from Modules 1 and 2 and relevant transcripts and statements will be disclosed in a separate discrete tranche of disclosure. Work on reviewing the transcripts of evidence from Modules 2A and 2B has commenced. Module 2C (due to commence on 30 April 2024) will be reviewed in due course.

Expert witnesses

22. The Inquiry has identified a number of areas for expert evidence.

<u>Long Covid</u>

23. Core Participants' comments on the draft report of Professor Chris Brightling and Dr Rachael Evans' draft report have been reviewed and both experts are now in the process of finalising their report taking into account the feedback provided by the Inquiry. We anticipate disclosing the report by the end of April 2024. The report they prepared for Module 2 has already been disclosed to Module 3 Core Participants.

<u>Intensive Care</u>

24. We anticipate that the draft report by Dr Ganesh Suntharalingam and Professor Charlotte Summers will be ready to send to Core Participants before the end of March.

<u>Non-Covid Conditions</u>

25. Ischaemic heart disease - The Inquiry has instructed Professor Christopher Gale and Dr Ramesh Nadarajah to prepare an expert report into the impact of the pandemic on ischaemic heart disease. Professor Gale is a Professor of Cardiovascular medicine at the University of Leeds and works alongside his colleague, Dr Nadarajah, a cardiology speciality registrar. We anticipate that the draft report will be ready to be sent to Core Participants in April.

26. Colorectal cancer - Professor Aneel Bhangu and Dr Dmitri Nepogodiev have been instructed in respect of the impact of the pandemic on colorectal cancer. Professor Bhangu is Professor of Global Surgery at the University of Birmingham and his clinical practice specialises in management of colorectal cancer. His colleague, Dr Nepogodiev, is an Academic Clinical Lecturer in Public Health and Surgical Epidemiology. Their draft report is likely to be sent to Core Participants for their comments in May.

27. Hip replacement - Two experts have been identified and the Inquiry is in the process of issuing the letter of instruction. A further update on this expert report will be provided at the public hearing.

28. All three expert reports will examine from a healthcare systems perspective the impact of the Covid-19 pandemic on the diagnosis, care and treatment of the respective non-Covid conditions, including how diagnostic and treatment pathways were maintained during the pandemic and the impact of delays to diagnosis and/or care and treatment on patient outcomes.

29. In relation to child and adolescent mental health services, the Inquiry has identified two experts to prepare a report on the impact of the Covid-19 pandemic on the diagnosis, care and treatment of children and young people in need of inpatient mental health care. The Inquiry is in the process of issuing the letter of instruction and will provide a further update at the public hearing.

<u>Primary care and emergency pre-hospital care</u>

30. Professor Helen Snooks (Professor of Health Services Research at Swansea University) and Professor Adrian Edwards (Professor of General Practice at Cardiff University) have been instructed to provide a draft report by the end of April. They will be examining a number of aspects of healthcare outside of hospitals, including:
    a. Primary care - this includes changes to the way primary care was accessed as a result of the pandemic including the effects of the transition to remote primary care during the pandemic, such as the use of telephone triage, video calls, oximeters and other remote monitoring.
    b. Emergency pre-hospital care - including changes to 999 and 111 calls, impact on ambulance services, including response time by category, handover time, outcome, and whether related to likely Covid-19 or non-Covid conditions.
    c. Escalation from community care to hospital care.

d. The shielding programme including how the shielding criteria evolved over time; a summary of relevant published academic research on some of the positive and negative impacts of the shielding programme; and an evaluation of any known qualitative or quantitative differences between England, Wales, Northern Ireland and Scotland in the outcomes of the shielding programme, if available.

Infection prevention and control ('IPC')

31. Progress in relation to the expert report on IPC is not as we anticipated or would have wished. In short, of the five experts identified in September 2023 only two are now available to continue with this work (Clive Beggs and Hajo Grundmann).

32. The Inquiry is making enquiries to identify suitable replacements and will provide a further update on this at the preliminary hearing.

33. Although the Inquiry had initially envisaged producing an overarching IPC report to which all IPC experts contributed, Clive Beggs' draft report will shortly be ready. This report focuses on the role of ventilation and air cleaning systems in hospitals and on the role of face masks, respirators and visors in mitigating the transmission of Covid-19. Rather than delay the provision of feedback on this report, the Inquiry intends to ask Core Participants to comment on Professor Beggs' draft report so that this aspect of IPC expert evidence can be progressed.

Every Story Matters

34. The Module 3 Every Story Matters report is due to be provided to the Inquiry in the middle of April 2024 following which it will be reviewed by the Inquiry Legal Team and any feedback provided. Thereafter the report will be finalised and we anticipate that it will be shared with Core Participants by the end of June 2024.

Public Hearings

35. The Module 3 public hearings will commence on 9 September 2024 and take place in two phases each lasting 5 weeks. The Inquiry is not planning to hold hearings in the weeks commencing 14 and 21 October 2024. The second phase will begin on 28 October 2024.

36. The Inquiry does not currently anticipate holding a further preliminary hearing for Module 3 before the start of the public hearings in September 2024. However, the Inquiry will keep this under review and will inform all Core Participants if it considers a further preliminary hearing to be necessary.

37. In preparation for the public hearings, the Inquiry intends to circulate a provisional list of witnesses along with the second draft of the List of Issues later in the Spring and will invite Core Participants' submissions on this in due course.

38. The monthly update notes will provide detail about the process for evidence proposals to be sent to Core Participants and the Rule 10 procedure to be adopted by Module 3.

13 March 2024

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