

**IN THE MATTER OF THE UK COVID-19 PUBLIC INQUIRY
BEFORE BARONESS HALLETT**

**MODULE 3 THIRD PRELIMINARY HEARING ON 10 APRIL 2024
WRITTEN SUBMISSIONS FROM THE FEDERATION OF ETHNIC MINORITY
HEALTHCARE ORGANISATIONS (“FEMHO”)**

These written submissions are provided on behalf of FEMHO in advance of the third Module 3 preliminary hearing on 10 April 2024. They address the following items identified by Counsel to the Inquiry (‘CTI’) in the Note for Preliminary Hearing dated 13 March 2024: (1) Rule 9 requests; (2) Disclosure; (3) Expert and impact witnesses; and (4) Listing.

[A.] INTRODUCTION

1.1 Module 3 seeks to examine the impact of the pandemic on healthcare systems and staff, including healthcare provision and treatment for patients with Covid-19. As a consortium of Black, Asian and Minority Ethnic health and social care workers (‘HCWs’), FEMHO provides the Inquiry with a unique but pivotal voice, given the unequal impact of the pandemic on Black, Asian and Ethnic Minority HCWs. Our members shed light this disproportionate impact and can speak directly to each of the areas to be considered in the provisional list of issues in this module. They will do so by bringing the benefit of their professional expertise and personal lived experience of the impact of the pandemic at all levels within the health care systems across the UK and also from the perspective of the communities where the disparity in the devastating and direct health outcomes are by now well-known and firmly established.¹ FEMHO look forward to actively participating in this important module.

1.2 Furthermore, FEMHO recognises the urgent need to address systemic inequalities and institutional barriers within the healthcare system that have contributed to the disparate impact of the pandemic on Black, Asian and Minority Ethnic communities. They are committed to

¹ The Inquiry has already highlighted and contextualised the invidious link between health inequality and the healthcare system. Professor Clare Bambra, in addressing the question posed in the course of her evidence in Module 1 of what the impact of racism and inequality is, said as follows: “*People from minority ethnic groups are much more likely to be living in deprivation, so everything that Professor Marmot outlined in terms of the health impacts of poverty, housing and so on applies kind of even more so, it's amplified for people from minority ethnic groups. So, for example, 50% of Bangladeshi and Pakistani households are in the 20% most deprived neighbourhoods, compared to 17% of the white population.*” [16 June 2023, p.18 lines 14-22]

advocating for policy reforms which touch upon the issues highlighted in Module 3 and initiatives aimed at promoting equity, diversity, and inclusion in healthcare settings. By actively participating in this module, FEMHO seeks not only to provide insights into past shortcomings but will assist the Inquiry by contributing constructively to the development of solutions that will safeguard the health and well-being of all individuals, regardless of ethnicity or background going forward.

[B.] RULE 9 REQUESTS

- 2.1 FEMHO acknowledges and welcomes the progress made by Module 3 in issuing further Rule 9 requests to relevant institutions, organisations and individuals. However, we are disappointed that Rule 9 requests to a number of key health ministers across the devolved nations are only being issued now at this relatively late stage with limited time remaining for the formulation, disclosure, and analysis of responses ahead of the hearings beginning in September.
- 2.2 We further express serious concern over the delay in receiving statements from several state bodies who were recipients of previous Rule 9 requests – with those requests having been made a significant time ago. Despite extended deadlines, these entities have failed to provide their statements in a timely manner. While FEMHO does not speculate on the reasons for this non-compliance, the urgency of the situation cannot be overstated. The delay in obtaining this evidence directly impacts on the preparation and examination of the issues in Module 3, and it poses a risk of derailing the Inquiry’s overall timetable. We fully support the approach of the Chair in issuing notices pursuant to s.21 Inquiries Act 2005 to address this matter.
- 2.3 FEMHO commends the issuance of Rule 9 requests in respect of 22 individual hospitals (‘Spotlight Hospitals’) across the four nations in the UK to gather evidence about what was happening ‘on the ground’ in respect of hospital, Trust, and Board level. We consider that the Inquiry would benefit from carrying out a similar exercise gathering information from a range of primary care services.
- 2.4 As outlined in CTT’s December update to CPs, the purpose of this exercise is to “*gather evidence in relation to hospitals across the UK about the practical impact of the pandemic on healthcare systems*”. As such, it is imperative that the Spotlight Hospitals take an open and transparent approach in their responses. The duty of candour is fundamental to any public inquiry in the search to uncover

the truth and learn valuable lessons. Therefore, defensive corporate statements from senior management teams at the Trusts or Boards responsible for any particular hospital would undermine the integrity of this investigative process. We hope that the responses will reflect the experiences of HCWs across all the different levels and areas within the individual hospitals and be candid in acknowledging any issues and/or negative experiences that were encountered.

2.5 We are grateful for the summary of topics that were covered in the Spotlight Hospital Rule 9 requests. However, we note with concern the absence of specific references to evidence regarding the impact of disparate treatment on vulnerable groups within hospital settings, particularly Black, Asian and Minority Ethnic HCWs. A comprehensive investigation into the impacts of Covid-19 on the healthcare system must include thorough consideration of inequality, especially the starkly disparate impact on Black, Asian and Minority Ethnic HCWs. Rule 9 requests to the Spotlight Hospitals ought to include topics addressing the inequalities including, but not limited to: whether Black, Asian and Minority Ethnic HCWs were disproportionately represented for rostering in high-risk clinical roles; whether appropriate and effective risk assessments were carried out in the deployment of Black, Asian and Minority Ethnic HCWs and whether any reasonable adjustments were implemented; the extent of any diversity within the leadership; consultation and inclusion in leadership positions; as well as any disproportionality in decisions regarding redeployment of staff into “red zones” or other high-risk areas and whether concerns regarding PPE access and fit were raised and appropriately addressed.

2.6 Whilst we acknowledge the Chair has now repeatedly declined requests from FEMHO and other non-state CPs for disclosure of Rule 9 correspondence and position statements, in light of the continuing issues outlined above, we once again request that the Chair considers revisiting these decisions. Disclosure of the Rule 9 requests would enable CPs to make timely submissions on any important issues in good time ahead of the hearings. Position statements, meanwhile, would greatly assist in providing clarity to the Inquiry team and CPs alike allowing for more effective preparation whilst we await full disclosure from key individuals and organisations.

2.7 FEMHO has recently received requests for short summaries of impact evidence from a number of representative members that highlights systemic issues relevant to the scope of the module. In this regard, FEMHO looks forward to fully engaging with the request and will endeavour to assist the Inquiry and ensure that it has the benefit of a range of experiences and perspectives

of those most affected by the pandemic. We are grateful and are encouraged by the Inquiry seemingly agreeing with our earlier submissions within Module 3 to listen to the voices of Black, Asian and Minority Ethnic HCWs, their representative bodies, and other organisations that represent the interests of vulnerable groups in the healthcare system.

2.8 FEMHO urges the Inquiry to prioritise calling a proportionate number of witnesses who are from diverse backgrounds, disciplines, and locations across the UK, and who can speak to a range of systemic issues relevant to Module 3. FEMHO has many such witnesses who can provide this evidence. While the Every Story Matters project is commendable in its own right, it is not sufficient for this purpose. It is evident that HCWs need to be heard within the Inquiry room and be part of the evidence presented before it. Their voices and lived experiences are essential to the integrity and effectiveness of this module and sufficient time should be afforded to their evidence.

[C.] DISCLOSURE TO CORE PARTICIPANTS

- 3.1 FEMHO welcomes the confirmation in CTT's Note of further significant tranches of disclosure taking place before the preliminary hearing. While we recognise the immense pressure the Inquiry Team is undoubtedly facing, we, along with other Core Participants, strongly urge the Inquiry to prioritise early disclosure of material for Module 3. Such early disclosure is imperative to facilitate and enable proper preparation and exploration of the technical and scientific issues expected to arise. Additionally, it will aid and assist in the effective preparation and formulation of questions to witnesses. We note that there have been serious problems with disclosure relating to both Module 1 and Module 2, underscoring the critical importance of improving the disclosure process moving forward.
- 3.2 With this in mind, whilst we welcome the rationale behind the Inquiry's intention to disclose witness statements and all exhibits simultaneously, we request that disclosure is made piecemeal in situations where waiting to disclose it all together would create a delay to allow CPs to "frontload" their preparation. Should a similar situation arise to Module 2, whereby the vast majority of disclosure was released soon before the EP processes and hearings began, CPs will simply not be in a position to effectively digest and analyse the evidence in time to meaningfully contribute to the hearings.

- 3.3 We further note that given the tight, near-back-to-back scheduling of future modules, this issue will be compounded and worsened going forwards should disclosure on all modules not be frontloaded in this way. Whilst the Inquiry has separate teams working on the different modules, many CP teams are necessarily participating in and preparing for multiple modules at any one time with considerably less resource. Again, we reiterate our appreciation of the constraints of the Inquiry team particularly where material providers have not complied with their requested deadlines, but simply ask that onward disclosure is made to CPs at the very earliest opportunity after it has been provided to the Inquiry team by material providers.

[D.] EXPERT AND IMPACT WITNESSES

- 4.1 FEMHO makes two submissions in response to CTT's Note addressing expert witnesses in Module 3, with respect to (1) structural racism, and (2) adult mental health services.
- 4.2 Firstly, this Inquiry's commitment to placing "*possible inequalities*" at the "*forefront*" of its investigation must involve fearless and thorough exploration of whether institutional and structural racism and inequality had an impact on vulnerable groups in the healthcare system across the UK within the scope of Module 3. It is imperative that Module 3 extensively examines whether, and if so how, structural inequalities and cultural competencies influenced the capacity of healthcare systems and workers to address and respond to the disparate impact and disproportionate death rates experienced among Black, Asian and Minority Ethnic HCWs and communities. This must be considered together with the extent to which due regard was given to the Public Sector Equality Duty to eliminate discrimination and concomitant equality impact assessments undertaken.
- 4.3 Racial inequality and discrimination experts, Professors James Nazroo and Laia Bécáres, have provided a joint report to address the terms of reference under Module 2. Whilst FEMHO would welcome disclosure of their report into Module 3, it is inadequate to address the issue on its own. Clearly, this is a crucial topic within Module 3 and the report in its current form responds to letters of instruction in relation to Module 2, thus failing to sufficiently engage with the issues pertinent to the current module.

- 4.4 Our position is that the experience of FEMHO members as workers and users of the healthcare system, reflects wider issues of health inequality. Black, Asian and Minority Ethnic HCWs and their patients from within those same communities suffered disproportionately adverse health outcomes and death rates. The Inquiry, with the assistance of evidence from FEMHO members, will need to address how structural and systemic, economic, political and social factors coalesced to produce these adverse, racialised outcomes within the healthcare system, during the pandemic. Professors Nazroo and Bécaries should be issued with new letters of instruction addressing the issues under investigation within Module 3. They should also be requested to provide an addendum report, and be made available for questions during the evidential hearings for Module 3.
- 4.5 Additionally, whilst acknowledging that 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, the evidence of those working on the UK-REACH project, a study focused on experiences of minority ethnic HCWS during the pandemic is of considerable significance regarding the issue of structural racism and inequalities within the healthcare system and for HCWs. It would greatly benefit the Inquiry if live witness evidence (for example from the Chief Investigator Professor Manish Pareek) is obtained as well as copies of the study reports.
- 4.6 Secondly, FEMHO invites the Inquiry to revisit its consideration of adult mental health services as regards scope and expert evidence. The impact on the mental health of the population is a matter within the Inquiry's Terms of Reference, and it is our submission that Module 3 must consider this issue. It is well documented in public literature that the pandemic saw a dramatic increase in the numbers of referrals to mental health services during Covid, so much so that the services were unable to cope with them. There has been an increase in depression, anxiety, sleep disorders, addictions/abuse of alcohol and drugs, eating disorders and domestic abuse.
- 4.7 Individuals with mental health issues died disproportionately during the pandemic. Emerging evidence indicates that Black, Asian and Minority Ethnic individuals were disproportionately affected within that cohort. Data provided by NHS England Digital and

evidenced in a CQC report² show that rates of detention for people identified as ‘Black or Black British’ were over four times those of people identified as ‘White’; Black or Black British people have longer periods of detention and more repeated admissions and are more likely to be made subject to police holding powers under the Mental Health Act; and, finally, known rates of Community Treatment Order use for the ‘Black or Black British’ group were over 10 times the rate for the White group. There is little to no exploration of this important issue within adult services currently within Module 3, representing a clear evidential gap due to its impact on the healthcare system, and its obvious impact on patients in accessing appropriate care.

[E.] LISTING OF HEARINGS

- 5.1 FEMHO maintains a genuine concern as to the limited duration afforded to the evidential hearings for Module 3, given the breadth of the scope and issues to be investigated. Whilst we are of course keen that the Inquiry progress as expeditiously as possible, for it to be a meaningful and effective, we respectfully invite the Inquiry to allocate more days for Module 3 hearings within the Inquiry timetabling.

[F.] Conclusion

- 6.1 FEMHO invites the Chair to give favourable consideration to all the matters raised above.

27 March 2024

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² [CQC report: Monitoring the Mental Health Act 2020/21.](#)