



## **RULING FOLLOWING THE FIRST MODULE 6 PRELIMINARY HEARING ON 19 MARCH 2024**

### **Background**

1. On 19 March 2024 I held the first Preliminary Hearing in Module 6.
2. Prior to the hearing, 14 of the 27 designated Core Participants filed written submissions (one was a joint submission) and during the hearing I heard 12 oral submissions. I am very grateful to all those who addressed me, whether in writing or orally, for the obvious care they took in making their submissions. I direct that the written submissions be published on the Inquiry's website.
3. In this ruling I set out my general approach to those submissions and record my decisions on those issues that I consider require determination now.

### **Scope generally**

4. I will consider the helpful submissions on Module 6's Provisional Outline of Scope further with the Inquiry team. However, the majority of the evidential areas they raise are already reflected in Rule 9 requests the team is sending out and in other aspects of the work in which they are engaged.

### **Splitting the Module**

5. The Covid Bereaved Families for Justice Cymru asked me to consider splitting Module 6 into Modules 6, 6A, 6B and 6C (as I had split Module 2 into 2A 2B and 2C) so that there would be separate hearings examining the care systems in England, Scotland, Wales and Northern Ireland respectively. It was submitted that this would: reflect the constitutional position given that care is a devolved matter, take into account the differing structure and nature of the care sector in each country and reflect the fact that there were different policies, procedures and practices in Wales during the pandemic.
6. Given the broad range of matters falling within the Provisional Outline of Scope, I do not think that it is necessary to divide the module. I decided to split Module 2 because examining core governmental decision-making required the Inquiry to inquire into administrative procedures and decisions made particularly in Westminster, Edinburgh, Cardiff and Belfast and to adduce documentary and oral evidence bearing on those

matters. Those considerations do not apply in respect of Module 6 which, as the Provisional Outline of Scope makes clear, is looking at systemic matters across a wide range of topics. A single hearing is also more efficient, and I bear in mind my obligation to minimise the cost of the Inquiry to the public purse in section 17(3) of the Inquiries Act 2005. Consequently, I consider that neither an amendment to the Provisional Outline of Scope nor the manner in which I intend to conduct Module 6 is necessary.

### **Care settings**

7. The Provisional Outline of Scope provides that Module 6 will examine “*adult care and residential homes including care provided in the home (but not care provided within day care centres or in supported housing).*” A number of Core Participants submitted that additional care settings should also be examined. Whilst I consider the primary focus of this module should remain on those receiving and providing care in care and residential homes and care provided in the home, having carefully considered these submissions, I consider Module 6 should also examine the impact of the pandemic on additional groups of people in receipt of social care, such as those with learning disabilities. In doing so, this may involve considering evidence relating to people living in supported housing. To that limited extent, Module 6 will examine those other care settings but the focus will be on the impact on those receiving care and will not extend to the impact on providers of those other settings or issues such as access to PPE.
8. I also consider it is appropriate to amend references to “*residents*” in the Provisional Outline of Scope so that it reads “*recipients of care.*”

### **Pre-existing systemic concerns**

9. Several Core Participants, including the Trades Union Congress (TUC), the Royal College of Nursing (RCN), the Disabled People’s Organisations, Frontline Migrant Health Workers Group and the National Association of Care and Support Workers, submitted that Module 6 should examine pre-existing, systemic concerns about the care sector including matters relating to recruitment, retention, pay, working conditions and underfunding of workers. They also submitted that Module 6 should examine matters relating to the preparedness of the adult social care sector which they said would require me to consider any deficiencies or structural issues that predated the pandemic.
10. I note that some of the evidence obtained and heard in previous Modules has already touched on these matters and has provided me with important context and background to the issues affecting the adult social care sector. In addition, as paragraph 2 of the Provisional Outline of Scope makes clear, Module 6 will seek to ascertain the structure of the publicly and privately funded adult social care sector as at March 2020 along with some aspects of the sector’s capacity immediately prior to the pandemic. In doing so I consider I will be fulfilling the Inquiry’s Terms of Reference. I do not therefore consider it necessary to amend paragraph 2 of the Provisional Outline of Scope or broaden the remit of Module 6, focussing as I must on

the impact of the pandemic and not on wider, more historic concerns about the care sector as a whole.

### **Visiting restrictions**

11. A number of Core Participants addressed me on the impact of visiting restrictions. I have therefore considered whether the Provisional Outline of Scope should be amended explicitly to refer to this topic more expressly. However, I note that Paragraph 4 of the Provisional Outline of Scope includes reference to “*restrictions on access by/to healthcare professionals and visits from loved ones*” and I do not consider that any amendment to the Provisional Outline of Scope is necessary.

### **Structural discrimination**

12. A number of Core Participants submitted that Module 6 should look at structural discrimination within the adult social care sector with many submitting that the Inquiry should instruct an expert or experts to examine this issue. It was submitted that without such an expert, it will be difficult for me to examine why inequalities exist and make recommendations to address this.
13. The extent to which the Inquiry is examining structural discrimination is a matter that has been raised with me in the preliminary hearings held in other Modules and which affects the Inquiry as a whole. As I have previously stated, and wish to repeat, the Inquiry will 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 under the Equality Act 2010 and equality categories under the Northern Ireland Act 1998. This is the phrase contained within the Inquiry’s Terms of Reference. Various experts on inequalities have been instructed in previous Modules and the reports that they produced can be disclosed to Core Participants and used in evidence in Module 6, if I consider it necessary and appropriate. In addition, experts instructed in Module 6 can be asked to consider any inequalities within their area of expertise.
14. In relation to Module 6, as Counsel to the Inquiry explained, the issue of inequalities is very much already embedded in the preparatory work being undertaken by the Inquiry Legal Team and, in particular, is already a feature of the Module’s Rule 9 requests. Given the instruction of these experts; the fact that Module 6 is examining inequalities throughout its work and has asked, and will continue to ask, recipients of Rule 9 requests about this topic, it seems premature for me to make any final decision on whether to instruct an additional expert on these topics within Module 6. I will however keep this matter under review and shall revisit this issue as the Module 6 evidence gathering process progresses.

### **Listening Exercise - Every Story Matters**

15. I received a number of useful written and oral submissions concerning the ‘Key Lines Of Enquiry’ (‘KLOE’) which will guide the Inquiry’s work in gathering and analysing experiences shared with Every Story Matters, in particular through targeted qualitative research. I will consider these submissions carefully and any changes to the KLOE that

result will be notified to Core Participants through the Solicitor to the Inquiry's Update Note.

**Publication of Rule 9 requests, position statements and letters of instruction for experts**

16. I have considered the submissions that I revisit my Ruling following the Module 1 preliminary hearing (on 4 October 2022) not to disclose to Core Participants Rule 9 requests, not to require position statements and not to disclose letters of instruction to experts but I see no reason to vary my Ruling.
17. I wish to reiterate however, that the monthly update notes provided by the Module 6 lead solicitor will keep the Core Participants properly informed about the progress of Rule 9 requests. This update will include, in general terms, details of what requests have been made, when further documents are expected and when further Rule 9 requests have been made. The monthly update note will also provide the identity of the expert witnesses and the broad issues that they will be asked to address and, in common with the approach in other Modules, Core Participants will be provided with a copy of the draft expert report and given an opportunity to provide their observations.

**Future hearings**

18. A further preliminary hearing for Module 6 will be held in due course with details to be confirmed. The Inquiry expects to hold the hearing in Module 6 on a date to be confirmed in the summer of 2025.

**The Right Honourable Baroness Hallett**

**Chair of the Covid-19 UK Inquiry**

**12 April 2024**