

Witness Name: Louis Burns
Statement No.: LB/CI/Mod2/1
Exhibits: 6
Dated: 10 August 2023

UK Covid-19 Public Inquiry (Module 2C)

**WRITTEN STATEMENT OF LOUIS BURNS ON BEHALF OF HEALTH
AND SAFETY EXECUTIVE NORTHERN IRELAND**

I provide this statement in response to a request under Rule 9(1) and (2) of the Inquiry Rules 2006 dated 3 March 2022 dated 8 August 2023.

I, Louis Burns, will say as follows: -

1. I am one of four deputy chief executives (DCE) in The Health and Safety Executive for Northern Ireland (HSENI). I joined HSENI in 2000 as a trainee inspector, became an inspector in 2002, a principal inspector in 2005 and Deputy Chief Executive (DCE) in 2016. I am responsible for Services Division. When the pandemic started in March 2020 I was Head of Services Division until 1 June 2020 when I was temporarily moved to a role of overseeing HSENI's EU Exit preparations. I was replaced as Head of Services Division by my colleague, Kevin Neeson. I returned to being Head of Services Division on 1 November 2021.

2. HSENI is a non-Departmental Public Body of the Department for the Economy (DfE) with Crown status. HSENI has an independent board made up of non-executives. Given our statutory role as a regulator, our relationship with government in Northern Ireland is characterised by the term 'independence'. HSENI does not get involved in the development of government policy in Northern Ireland.
3. HSENI's work focuses on helping ensure that everyone stays safe and well 'at work' [as defined in Health and Safety at Work (Northern Ireland) Order 1978].
4. The vires of HSENI is set in legislation and extends to a range of sectors including manufacturing; schools and universities; chemical plants; hospitals and nursing homes; construction; disciplined services; transport; district councils; gas supply and distribution; government departments; agriculture; fairgrounds; market compliance in respect of chemicals and products used at work; mines and quarries. HSENI does not have an enforcement vires in respect of premises such as residential homes, retail, entertainment & leisure, offices activities etc. Enforcement for these premises falls to local authorities.
5. During the pandemic, HSENI had a staff complement of approximately 100 staff of which around 10 were principal inspectors, 30 were inspectors. In addition we had four other front line staff (compliance officers). For various reasons only circa 25 of these inspectorate staff could be deployed to fieldwork.

6. The staffing complement set out above is broadly in keeping with the numbers we had in the five years before the pandemic. In some years the numbers would have been a little lower. This was because we traditionally only recruited to fill vacancies.
7. The number of premises which are physically inspected is limited by the number of available inspectors and other work pressures. In order to increase our reach to dutyholders we use a mixture of inspections, website, events, media etc. Prior to the pandemic, we prioritised our limited resources more in the high-risk industries and activities known to be associated with serious injuries and fatalities. These would include agriculture, construction, extractive industries and manufacturing, work at height, workplace transport, machinery safety etc. In addition we deployed staff to cover all work sectors and meet our statutory duties. Our work would have been a mix of proactive (inspections, education etc.) and reactive (complaints, investigations etc.).
8. When the pandemic started HSENI was inundated with an unprecedented increase in complaints and requests for advice on managing covid-19 in workplaces (see Table One below).

Table One:

Total interactions recorded by HSENI during the pandemic.

Table One - Covid Related Interactions			
Year	2020	2021	2022
Inspections	2069 (926)	1758 (508)	170 (164)
Advisory Contact	961 (25)	162 (5)	27 (4)
Complaints	3153 (295)	585 (99)	14 (6)

Number in brackets indicates site visits.

9. To put this in context, in the years before the pandemic, we would expect to receive approximately 800 to 850 complaints. In 2020 we received 3,153. The volume of complaints and requests for advice resulted in us prioritising our resources to meet this demand. Our entire staff complement moved immediately to home-based working. In the period 25/03 to 05/05 2020 HSENI suspended site visit inspections for all but serious and fatal incidents to reduce the risk of staff contracting and spreading Covid. Our inspectorate staff were tasked with responding, mostly by telephone and email to the increased number of complaints and requests for information. Given the number of requests, the novel nature of the subject and that the available guidance was public health guidance, meeting this demand engaged all our available inspectorate staff. Due to this and the risk to HSENI staff, alternative methods for dealing with them were developed. These included remote inspection methods where confirmation of any required actions was obtained by video, photographic or documentary validation and where possible corroboration by the complainant or Trade Union Officials. Staff would have used these methods to a lesser extent before the pandemic. The move to using these methods on a much greater scale was due to the volume of complaints and requests for information received and also to protect our own staff as much as possible from the risks of Covid-19 by maximising opportunities to adopt a home-working model.
10. Information of complaints and requests for advice
- Part of HSENI's role is to ensure compliance with relevant health and safety at work legislation to protect workers' health. The need for this came into sharp focus as a result of the Covid pandemic,

albeit the increased risk could have been the result of non-work interactions rather than the work activity itself. HSENI did not have the public health competence to develop Covid-19 guidance or best practice, so the organisation's work in the period was to provide / signpost advice and assist organisations to operate in compliance with the available public health guidance, particularly in working environments. The basic guidance both in and out of the workplace was predicated around "Hands, Face, Space". This work was underpinned by the duty under law, for "every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees".

11. The key legislation used by HSENI is (and was) the Health and Safety at Work Order (NI) 1978, The Management of Health and Safety at Work Regulations (NI) 2000 and the Workplace (Health, Safety and Welfare) Regulations (Northern Ireland) 1993. It should however be noted that these regulations were drafted to protect workers and members of the public from risks to their health and safety created as a result of a work activity. They were not designed to address a pandemic where the hazard is at large within the community. It was reasonable to assume that workers should be afforded the same level of protection in the workplace as they would have in wider society in terms of a pandemic. The application of public health guidelines to workplaces (under health and safety legislation) is based on the legal test "so far as is reasonably practicable".
12. The approach taken by HSENI was to ask businesses to utilise the approach set out in regulation 3 of the Management of Health and

Safety at Work Regulations (NI) 2000 to conduct risk assessments to identify risks associated with work practices against the Covid-19 guidance (hands / face / space). In this approach, organisations were being asked to identify situations where staff were not adhering to the 2-metre rule, hygiene rules and mask wearing rules. They were then asked to introduce, so far as reasonably practicable, measures to bring their operations into compliance with the Covid-19 rules.

13. HSENI worked closely with duty holders to help them meet the relevant public health requirements in order to protect workers. Formal enforcement was only considered as a last resort. Employers, trade unions, trade representatives, politicians, government policy makers and regulators all wanted to achieve solutions that kept workers safe in order to not bring about a feeling of fear among workers.
14. During interactions with duty holders, where covid controls were found not to meet public health requirements, HSENI staff sought compliance in the form of either verbal or written instructions. Unfortunately the HSENI Case management System does not facilitate the quantification of the number of such interactions. However, follow up was typically from the complainant or a trade union rep who would confirm if measures had been implemented or not. Where a business failed to implement the changes as required HSENI staff issued formal enforcement notices (Improvement Notices) on 3 occasions. All such notices were complied with.

15. From 05/05/2020 HSENI developed a covid inspection protocol which allowed site visit inspection for serious issues and cases where Covid outbreaks were identified in premises where HSENI was the enforcing authority. This was subsequently modified as the pandemic developed and more information became available regarding Covid control measures (see Annex 1 – LB/1INQ000236250).
16. HSENI did not specifically identify particular workplaces where controlling Covid-19 had to be a priority but it quickly became apparent that the food manufacturing companies (mainly meat processors) who were maintaining full operations were problematic in respect of Covid-19. The problems were being reported in local media and the trade unions were highlighting these also. There were specific difficulties associated with the work environment such as workers in close proximity to each other. HSENI prioritised its fieldwork in this sector because of the problems and also because it was necessary to keep these businesses operational. Our inspectors worked closely with many meat processors to help them introduce measures which were compliant with public health covid-19 advice. In most cases the employers engaged positively with the guidance and made considerable efforts to achieve compliance. Even where compliance was achieved, some of the factories did experience outbreaks of covid-19 which may have been down to societal factors outside of the workplace.
17. Reported Clusters and Outbreaks - HSENI provided support to PHA Contact Tracing unit for 621 identified cluster or outbreaks in premises within the remit of HSENI. In each case the company was

contacted and information obtained to assess the situation. Where necessary, site visits were carried out to assess the Covid-19 risk management measures which were implemented. When required, HSENI sat on PHA led Incident Management Teams.

18. HSENI worked alongside the PHA and DAERA to look at measures that could be introduced, in light of public health guidance, where workers were potentially made vulnerable to COVID-19 because of the nature of their work. Examples of this included the food processing and packaging industry, where staff typically work side by side and on both sides of conveyor lines. Solutions included perspex screens between workers, extending lines to allow for greater distancing, reduction of the number of staff on a shift, cohorting of teams to prevent any infection spreading beyond a specific group and enhanced ventilation etc.
19. HSENI had no role in enforcing Covid-related legislation as we were not an enforcing body within the Regulations (The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020). HSENI inspectors were not designated as a 'relevant person' (see regulation 12(b)(ii) of the above regulations). Whilst it would have been possible to designate our inspectors under this, HSENI did not have the available staff numbers to divert to this work. As outlined above, we required all our available staff to meet the demand for advice and complaints which were coming to us. I must point out that meeting the demands of our own work put incredible mental and physical stress and strain on our staff who worked with a new subject area, worked very long hours and were publicly criticised in the media at the time.

20. HSENI continued to enforce health and safety legislation and where possible apply it to Covid-19 in keeping with the UKG / PHA advice. Our vires is restricted by The Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999. These regulations and associated guidance give rise to the list of workplaces enforced by HSENI as set out in paragraph four above. Health and safety in all other workplaces are enforced by the relevant local authorities in NI. This would include offices, shops, restaurants and places of entertainment etc.
21. HSENI's chief executive was a member of the NI Engagement Forum (the Forum) which was one of a number of announcements made by the then the First Minister and Deputy First Minister on 28 March 2020. I exhibit The NI Engagement Forum (the Forum) on Covid-19 - Terms of Reference (see Annex 1 – LB/2INQ000236254).
22. The Forum sought to protect the safety of workers by bringing together a multi-stakeholder group to advise and support the NI Executive in relation to the Covid-19 virus as it applies to the NI Economy/Labour Market. The Forum was to provide a conduit for the Executive to consult on new approaches in response to emerging pressures.
23. It is my understanding that the Forum did contribute to the work of the NI Government specifically in relation to the protection of workers. I understand that Ministers Kearney and Lyons acted as the conduit between the Forum and the NI Executive. Whilst the Forum did not identify individuals or groups of workers who may

have been at any particular disadvantage because of the decisions taken in response to the pandemic, with other members, HSENI's representative sought to identify potential issues and areas of concern and contributed on how particular issues might be addressed quickly.

24. The Forum did draw up a list of priority business sectors (see Annex 1 – LB/3 INQ000236255). I understand this list was developed through discussion in the forum. The purpose of the list is captured in the press statement of the then DfE Minister who said, *“the list is there to protect everyone in the workplace, to ensure our essential supply chains remain solid and to help Northern Ireland be ready to rebuild its economy when this crisis has passed”* (Minister publishes Engagement Forum guidance and priority sector list | Department for the Economy (economy-ni.gov.uk)). I am not aware of this list being amended after it was published.

25. The Forum developed and published a guidance document which I exhibited at Annex 1 – LB/4 INQ000236252. Its purpose was to provide advice to assist companies to comply with public health guidelines in the workplace. The main tenet of the guidance was to promote 5 steps to working safely which were: carry out a covid-19 risk assessment; develop cleaning, handwashing and hygiene procedures; help people to work from home; maintain 2m social distancing, where possible; where people cannot be 2m apart, manage transmission risk. It was aimed to also have a general practical application in all workplaces. HSENI does not hold any minutes of meetings of this group.

26. The classification of vulnerable people was set by the UK Government. The Forum and indeed HSENI accepted this definition and was not responsible for identifying vulnerable groups, but the organisation did look at how public health guidance, for people already identified as being vulnerable could be applied in the workplace to protect them. This resulted in guidance for example on pregnant workers as employers have an existing duty to carry out risk assessment for pregnant workers. HSENI used its website to signpost advice from UK Government and the HSE in GB.
27. For the purposes of this section the NI Assembly is considered the 'government of Northern Ireland' [GoNI]. I have been asked to comment on the frequency of meetings between HSENI and the Government of Northern Ireland (GoNI). HSENI did not have direct contact with the GoNI. It is my understanding that The Executive Office and the Department of Health were in the lead in the response to the pandemic.
28. In the very early days (March / April 2020) there were some phone calls etc. with The Executive Office (TEO) where HSENI's position in respect of the regulations, resources and enforcement was clarified. HSENI did not provide policy advice to GoNI but rather took the regulations and public health guidance and provided pragmatic assistance to industry as far as possible and within its resource and competence limitations.
29. I confirm that whilst representatives from HSENI would have attended meetings organised by others, these were operational meetings and not about the development of the GoNI Covid-19

response policy. For example, HSENI representatives would have attended meetings with DAERA where there were particular operational issues in food processing plants or with the PHA where clusters were associated with certain workplaces (see paragraphs 16 to 18).

30. The only other group HSENI had a representative on was a cross-departmental group led by Peter May, then permanent secretary of the Department of Justice NI (DoJ). This group considered issues such as adherence to messaging in relation to enforcement and ways to allow businesses to operate (e.g. ventilation). The focus of this multi-agency group was mostly aimed at the public and leisure and retail venues. The purpose of this groups was to monitor how the public generally were adhering to restrictions and seek to target messaging specifically in areas where it was needed. Most of the focus was around the hospitality sector and where limits were placed on the number of people allowed to attend events and gatherings. Part of the role was to utilise information from survey data on public commitment to the restrictions as the pandemic progressed. Some frustration crept in when initiatives such as “Eat out to Help out”. This group met weekly and the frequency was reduced as restrictions decreased and the subsequent need to reinforce messaging. A key driver in this group were the Innovation Lab team in the Department of Finance. HSENI does not hold any minutes of meetings of this group.
31. HSENI did not receive guidance from the Executive or any Northern Ireland Department as to how Covid-related legislation, guidance and / or Health and Safety legislation should be enforced

during the Pandemic. In the case of the former as already stated, HSENI did not have any competence in this field. In the case of the latter we were concentrating our efforts on the provision of advice and site visits to food production premises where we used public health guidance created by the UKG, GB and NI Departments and Agencies to produce guidance for businesses in NI. The Guidance was promulgated via HSENI's website, online events, and directly with businesses and employees via email etc.

32. HSENI played no role in advising the GoNI about vulnerable workers i.e. those workers vulnerable because of their characteristics or made vulnerable to Covid- 19 by the nature of their work.
33. Advice was sought from the PHA at the very start of the pandemic (March/April 2020), as to the application of public health guidelines to the workplace, but industry specific advice was extremely limited at that stage.
34. HSENI was invited to appear before the Department for the Economy (DfE) Committee on 6 May 2020. HSENI's Chief Executive and two Deputy Chief Executives (DCEs) explained HSENI's role in relation to Covid-19 enforcement. HSENI's senior management team appeared before the DfE Committee on 3 February 2021. HSENI's Chief Executive outlined how HSENI had discharged its functions during the period from March 2020 to February 2021. In addition he provided general information about HSENI's work. I am advised Hansard does not produce reports of all Assembly Committee business, only the items for which a report has been specifically requested by the relevant Committee office.

No such request was received in respect of 6 May 2020 and 3 February 2021. It is possible to watch video recordings of the proceedings at: *6 May 2020* and *3 February 2021*.

35. Through our sponsor department (DfE) the main issues HSENI wanted to promulgate in respect of Covid-19 and the wider pandemic were: our role; our legal vires; our competence; and our limited resources.
36. HSENI did not produce any significant public statements, it only produced guidance derived from existing public health guidelines. HSENI issued the following two press releases in the period:
- a. Annex 1 – LB/5 INQ000236249- *HSENI Safety Alert - COVID - 19: Advice and guidance for places of work, Respiratory Protective Equipment (RPE) - (11.6.2020)*
 - b. Annex 1 – LB/6 INQ000236256- UK Guidance on the Repurposing of Non-Compliant Personal Protective Equipment (PPE) and Medical Devices.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed

Personal Data

LOUIS BURNS

Dated 10 August 2023.

Annex A

**INDEX OF EXHIBITS TO ACCOMPANY WRITTEN STATEMENT OF
LOUIS BURNS ON BEHALF OF HEALTH AND SAFETY EXECUTIVE
NORTHERN IRELAND**

Exhibit reference	Title	Location Content Manager
LB/1 INQ000236250	HSENI - Final COVID 19 Site Visit Procedures Document	HS2/23/14755
LB/2 INQ000236254	The NI Engagement Forum on Covid-19 - Terms of Reference	HS2/23/14726
LB/3 INQ000236255	The NI Engagement Forum - List of priority business sectors	HS2/23/12889
LB/4 INQ000236252	COVID- 19: Working Through This Together - Issued 28 May 2020	HS2/23/12874
LB/5 INQ000236249	COVID -19: Advice and guidance for places of work, Respiratory Protective Equipment (RPE) - (11.6.2020)	HS2/23/14735

LB/6 INQ000236256	UK Guidance on the Repurposing of Non-Compliant Personal Protective Equipment (PPE) and Medical Devices	HS2/23/14736
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