



Counsel to the Inquiry's Note for the first Preliminary Hearing in Module 7 of the UK Covid-19 Inquiry on Thursday 27 June 2024

Introduction

1. The purpose of this Note is threefold. First, it introduces the agenda for the Preliminary Hearing in Module 7 on 27 June 2024. Second, it sets out, in overarching terms, the background to the UK Covid-19 Inquiry. Third, it sets out, primarily for the benefit of Core Participants, information concerning the nature of the Inquiry's work so far, to enable them to file written submissions if they wish, in advance of the Preliminary Hearing and to prepare for that hearing. Any brief written submissions should be received by **4 pm on 13 June 2024**.
2. The agenda for the Preliminary Hearing in Module 7 is as follows:
 - i) Introductory remarks from the Chair.
 - ii) Update from Counsel to the Inquiry, including:
 - a. Designation of Core Participants
 - b. Provisional Outline of Scope for Module 7
 - c. Evidence gathering
 - d. Disclosure to Core Participants
 - e. Every Story Matters
 - f. Future hearings dates
 - iii) Submissions from Core Participants

The Commencement of the Inquiry

3. On 12 May 2021 the then Prime Minister made a statement in the House of Commons in which he announced that there would be a public inquiry under the Inquiries Act 2005. He stated that it would examine the UK's preparedness and response to the Covid-19 pandemic and learn lessons for the future.

4. Following the appointment of the Rt Hon Baroness Heather Hallett DBE as Chair of the Covid-19 Inquiry on 15 December 2021, and consultation with Ministers from the devolved administrations (as is required by section 27 of the Inquiries Act 2005 for this Inquiry), draft Terms of Reference were drawn up. The draft Terms were consulted upon and amendments suggested, including by Baroness Hallett. In particular, Baroness Hallett sought an express mandate to publish interim reports so as to ensure that any urgent recommendations could be published and considered in a timely manner. In addition, given her view that the Inquiry would gain greater public confidence and help the UK to come to terms with the pandemic if it was open to the accounts that many people - including those who have been bereaved - would wish to give, she suggested adding explicit acknowledgement of the need to hear about people's experiences and to consider any disparities in the impact of the pandemic.
5. On 21 July 2022 the Inquiry was formally opened following a consultation across all four nations on the draft Terms of Reference. Baroness Hallett announced the decision to conduct the Inquiry in modules, which would be announced and opened in sequence. Those wishing to take a formal role in the Inquiry were invited to apply to become Core Participants, within the meaning of Rule 5 of the Inquiry Rules 2006, for each module, rather than throughout the Inquiry as a whole.
6. The Inquiry has already held public hearings in respect of Module 1 (resilience and preparedness) and Module 2 (core political and administrative decision-making in relation to the pandemic) 2A, 2B and 2C (core decision making and political governance from the perspectives of Scotland, Wales and Northern Ireland respectively).
7. In addition, the Inquiry has opened Module 3 (which concerns the impact of the pandemic on healthcare systems). The public hearings in Module 3 are expected to begin in Autumn 2024. The Inquiry has also opened Module 4 (vaccines and therapeutics), Module 5 (procurement), Module 6 (care sector) and Module 8 which opened on 21 May 2024 (investigating the impact of the pandemic on children across society including those with special educational needs and/or disabilities).
8. This Inquiry is obliged under section 27 of the Inquiries Act 2005 and its Terms of Reference to consider both reserved and devolved matters in respect of Scotland, Wales and Northern Ireland. However, because an Inquiry has been established in Scotland to look at matters devolved to the Scottish government, this Inquiry's intention, in relation to Scottish matters, is to seek to minimise duplication with that Inquiry's handling of investigation, evidence gathering, and reporting.
9. Module 7, this Module, concerns the approach to testing, tracing and isolation adopted during the pandemic. The public hearings in Module 7 are expected to take place over three weeks in the spring of 2025. More details about the scope of Module 7 are set out below.

10. Later modules will address, very broadly, ‘system’ and ‘impact’ issues across the UK. In due course the Inquiry will provide further detail about the order and provisional scope of those modules.

Designation of Core Participants

11. The applications for Core Participant status in Module 7 have been considered by the Chair in accordance with Rule 5 of the Inquiry Rules 2006, which provides that:

“5.—(1) The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.

(2) In deciding whether to designate a person as a core participant, the chairman must in particular consider whether—

(a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;

(b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or

(c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.

(3) A person ceases to be a core participant on—

(a) the date specified by the chairman in writing; or

(b) the end of the inquiry.”

12. In making determinations, the Chair considered whether, in each case, the application fulfilled the criteria set out in Rule 5(2) in relation to the issues set out in the Provisional Outline of Scope for Module 7.

13. The Chair exercised her wide discretion and took into account a number of factors. First, the obligation to run the Inquiry as thoroughly and as efficiently as possible in light of the Inquiry’s wide-ranging Terms of Reference and the need for the Inquiry process to be rigorous and fair. Given the vast numbers of people who were involved with, or adversely affected by, the Covid-19 pandemic, very many people may have an interest in the Inquiry. That, however, is not the relevant test, and the Chair was obliged to assess very carefully whether, in reality, applicants could assist the Inquiry in Module 7 as a Core Participant. Second, it is not necessary for an individual or organisation to be a Core Participant in order to provide evidence to the Inquiry. Third, the Inquiry will also be listening to and considering carefully the experiences of those who have suffered hardship or loss as a result of the pandemic, through the Inquiry’s ‘listening exercise’: Every Story Matters.

14. By way of overview, the Inquiry received 31 applications for Core Participant status in Module 7 from individuals, organisations, and groups of individuals and organisations. Of these 31 applications, 23 applicants have been designated as Core Participants in Module 7. They are:

- a. The Right Honourable Baroness Arlene Foster of Aghadrumsee DBE and Paul Givan MLA
- b. Chancellor of the Duchy of Lancaster
- c. Covid-19 Bereaved Families for Justice UK
- d. Covid-19 Bereaved Families for Justice Cymru
- e. Department for Education
- f. Department for Transport
- g. Department of Health and Social Care
- h. Federation of Ethnic Minority Healthcare Organisations (FEMHO)
- i. HM Treasury
- j. Local Government Association and Welsh Local Government Association
- k. NHS England
- l. NHS National Services Scotland and Public Health Scotland
- m. NI Covid-19 Bereaved Families for Justice
- n. Northern Ireland Department of Health
- o. Public Health Agency NI
- p. Public Health Wales
- q. Scottish Covid Bereaved
- r. Scottish Health Boards
- s. Scottish Ministers
- t. Secretary of State for the Home Department
- u. Trades Union Congress
- v. UK Health Security Agency
- w. Welsh Government

15. For the avoidance of doubt, the determinations which have been made by the Chair in relation to Module 7 in no way prejudice the ability of any applicant to apply in another, later, module which may in any event be more suited to the application.

16. It is also, of course, unnecessary for an individual or organisation to be a Core Participant in order to provide information or evidence to the Inquiry. All applicants may have relevant information to give in relation to matters being examined in the Inquiry and the Inquiry will be approaching, in due course, a range of individuals, organisations and bodies to seek information, to gain their perspective on the issues raised in the modules and, where appropriate, to ask for witness statements and documents. There are also avenues available to applicants, including through Every Story Matters, which is addressed further in this Note.

Outline of Scope of Module 7

17. Module 7 is concerned with the approach to testing, tracing and isolation adopted during the pandemic. The Provisional Outline of Scope for Module 7 states:

“This Module will look at, and make recommendations on, the approach to testing, tracing and isolation¹ adopted during the pandemic in England, Wales, Scotland and Northern Ireland from January 2020 until February 2022.

The Module will consider the policies and strategies developed and deployed to support the test, trace and isolate system by the UK Government and the Devolved Administrations. It will consider the decisions made by key bodies, other options or technologies that were available and factors that may have influenced public compliance

Module 7 will examine:

1. The test, trace and isolate policies and strategies developed and deployed, taking into account modelling, capacity of the systems throughout the pandemic and the rationale, appropriateness and data available for the decisions of the UK and devolved administrations and wider border policy considerations.

2. The availability, use and effectiveness of different test, trace and isolate technologies, policies and strategies including lateral flow and PCR tests, testing for variants, digital contact tracing and other testing techniques.

3. The structure of the test, trace and isolate system and the key bodies involved in decision making in the UK and Devolved Administrations. It will include the efficacy and impact of the models adopted, the use of the private sector and other institutions and the cost.

4. Enforcement of testing, tracing and isolation procedures and factors influencing compliance, such as the adequacy of and trust in messaging, financial and practical support to those required to isolate and the availability and use of data in decision making.

5. The preservation of infrastructure, capacity and research to improve and develop, test, trace and isolate schemes for future pandemics.”

18. Whilst the Provisional Scope and this Note refers to “testing, tracing and isolation” (“TTI”), Module 7 will include consideration of Test and Protect (Scotland), Test and Trace (England), Test, Trace, Protect (Wales) and Test, Trace and Protect (Northern Ireland). Where TTI is used in correspondence with Core Participants, it is intended to acknowledge the different models adopted across all four nations, which will be investigated.

¹ This includes Test and Protect (Scotland), Test and Trace (England), Test, Trace, Protect (Wales) and Test, Trace and Protect (Northern Ireland)

19. The Inquiry considers that the provisional Outline of Scope provides an overarching framework for the issues and matters that the Inquiry is likely to investigate to enable Core Participants, and individuals and organisations likely to have relevant evidence, to commence their preparations. Module 7's scope remains provisional. As the investigation continues and further evidence and material is obtained through the Inquiry processes, including Rule 9 requests, the core issues to be addressed at the hearing will be identified.
20. Whilst the scope remains provisionals, to assist Core Participants understand, we have identified below some of the questions that the Inquiry in Module 7 is likely to be considering. This includes:
- a. What policies and strategies for test, trace and isolate (TTI) were developed and deployed between January 2020 and February 2022 in England, Wales, Scotland and Northern Ireland, and how did they vary across the four nations?
 - b. Were the policies and strategies deployed effective at meeting their stated objective(s)?
 - c. Did the development of the overarching strategies and policies take account of the Public Sector Equality Duty and how effective were any steps taken to mitigate unequal impacts on the general population across the UK and, in particular, vulnerable groups?
 - d. How effectively were the adopted policies and strategies communicated to the general public?
 - e. How did available data and scientific or expert advice, including modelling, inform the development of the policies and strategies?
 - f. How effectively was technology used in the rollout of the TTI system?
 - g. How effective were the tools in place for enforcing and monitoring isolation?
 - h. Were appropriate steps taken to support people to comply with TTI?
 - i. What recommendations can be made for future pandemics?

Rule 9 Requests for information

21. The process of issuing Rule 9 letters seeking documents and statements relevant to this Module has begun. An update on Rule 9 requests will be provided at the preliminary hearing.
22. Documents and information provided to the Inquiry will be analysed and may then be the subject of further focused requests. Organisations have been asked to ensure that their staff have the opportunity to flag particularly important materials so that the most crucial materials are identified and reviewed by the Inquiry as soon as possible.

23. For the reasons set out in the determination of 17 October 2022 made in Module 1, Core Participants will not be provided with copies of the Rule 9 requests made by the Inquiry in relation to Module 7. For the reasons also given in that same determination, the Chair also declines to consider position statements as necessary for the purposes of Module 7.
24. However, to ensure the Core Participants are kept properly informed, the Inquiry will ensure that the Module 7 lead solicitor provides monthly updates to Core Participants on the progress of Rule 9 work. Such updates include a summary of who has received Rule 9 requests, the topics those requests cover, what categories of documents have been requested, when the request was made and by when a response is expected.

Disclosure to Core Participants

25. The purpose of disclosure is to enable the Core Participants to participate effectively in the public hearings. This Inquiry will be as open as possible with the Core Participants and with the public in relation to the disclosure of documents.
26. The information and documents received through the Rule 9 process will be assessed for relevance and then redacted in line with the Inquiry Protocol on the Redaction of Documents that has been prepared and published (<https://covid19.public-inquiry.uk/documents/inquiry-protocol-on-the-redaction-of-documents/>), so as to remove sensitive material, such as personal data.
27. It is neither necessary nor proportionate for the Inquiry to disclose every document that it receives, or every request that it makes, or every piece of correspondence it conducts.
28. Each document provider is being asked to provide (amongst other matters) details of the key individuals who were involved in issues relevant to the Module 7 Provisional Outline of Scope, the key meetings and events and a summary of the categories of other material held and/or already provided to the Inquiry relating to the Module 7 Provisional Outline of Scope. In addition, the Inquiry has identified a volume of documents disclosed in previous modules that have relevance to Module 7 issues. These will be reconsidered by the Module 7 team and disclosed to Core Participants.
29. This information will allow the Inquiry to understand the nature of relevant material held by the document provider and make targeted requests for further material if necessary. Where, as a result of the information provided, the Inquiry has any concerns about a provider's processes for providing relevant documents, it will raise and pursue them and, of course, as documents are reviewed and gaps identified, further documents will be sought.

30. Disclosure of relevant, redacted documentation will take place in tranches. All Core Participants in the same Module will receive all the disclosable documents for that Module.
31. In light of the above approach, the Chair has determined, and made a determination to this effect in Module 1, that she does not consider it appropriate for the Inquiry to publish a schedule setting out an itemised list of documents and other material that is not intended to be disclosed to the Core Participants.
32. The electronic disclosure system which will be used to provide documents to Core Participants will be Relativity. Details of how to access and use the system will be provided to Core Participants shortly before disclosure commences. Only those who have provided a signed undertaking to the Chair will be permitted access to the material that the Inquiry discloses to Core Participants.
33. The Inquiry is working to begin the process of disclosing materials to Core Participants as soon as possible. The process of disclosure to Core Participants is anticipated to begin in autumn of 2024.

Expert material and the instruction of expert witnesses

34. In Module 7, the Inquiry will likely appoint experts to assist it, either individually or collaboratively, by way of the provision of written reports (including the answering of specific questions asked of them by, or through, the Inquiry) and, where appropriate, by giving oral evidence at the public hearing. Such evidence will inform and support the Inquiry's work in preparation for and during the public hearings, as well as assist the Chair in making any recommendations.
35. The experts will be suitably independent and subject to an overriding duty to assist the Inquiry on matters within their expertise.
36. The Chair also maintains her position regarding experts as per her ruling in relation to Module 1. The identity of the expert witnesses will be disclosed to the Core Participants before the expert reports are finalised. Core Participants will be provided with an opportunity to provide observations through commenting on a developed draft of any reports written to the Inquiry. If an expert is to be called to give oral evidence, Core Participants will also be able to provide questions to be considered by the experts during the hearing through the Rule 10 process as has been the case in previous modules.
37. Core Participants will be kept updated on expert instructions and, if needed, a further update will be provided at the Preliminary hearing.

Every Story Matters

38. Every Story Matters, has been established to enable people in the UK to explain how the pandemic affected, and continues to affect their lives. The Inquiry recognises that not every experience will be the same and the impact on individuals will be multifactorial. The Inquiry wishes to hear from as many of those impacted as possible. The contributions through Every Story Matters will be gathered, analysed and turned into themed reports, which will be submitted into each relevant investigation. These will be anonymised, disclosed to the Inquiry's Core Participants and used in evidence. The reports will identify trends and themes and include illustrative case studies. Details of Every Story Matters are set out in the Notes from the Solicitor to the Inquiry (STI), copies of which have been shared with Core Participants.
39. Every Story Matters aims to obtain insights and information from anyone who wishes to contribute, i.e. from anyone who was impacted by the pandemic in the UK and wishes to share their experience. It has been designed so that anyone and everyone aged 18 or older can contribute if they wish to do so. For Module 7, the Inquiry is seeking to capture a broad range of experiences and is particularly interested to hear from those who are more likely to have had difficulties engaging with the test, trace and isolate system including those across the devolved nations² for a variety of reasons. This could include, but is not limited to, those with literacy and learning difficulties, the visually impaired, and those with challenges accessing testing sites and health services.
40. For Module 7 targeted research is being undertaken to hear the experiences of: families of people who were clinically vulnerable during the pandemic, ethnic minority healthcare workers, people living with Long Covid and people with disabilities among other target groups listed below.
41. The Inquiry's research partner will conduct targeted qualitative research in relation to particular topics and particular groups of people based on the KLOEs. It is proposed in Module 7 that this research will focus on, among other things, listening to people from different communities and backgrounds where there were particular difficulties and the impact caused to them by the test, trace and isolate system in relation to the following proposed KLOEs:
- I. The practicalities of accessing and using PCR and LFT tests;
 - A. What factors facilitated or impeded people's access to PCR and LFT tests;
 - B. What were the challenges in accessing tests;
 - C. What was the impact, if any, on not being able to access tests when needed;

² Test and Protect (Scotland), Test and Trace (England), Test, Trace, Protect (Wales) and Test, Trace and Protect (Northern Ireland)

- D. What was the impact of both the implementation, and the ending, of universal/mass home testing.

II. Compliance with testing

- A. What factors affected people's willingness to comply with testing requirements;
- B. Were there circumstances in which people felt it was more or less important to comply with testing requirements;
- C. Which Government measures encouraged testing uptake across different communities;
- D. Which measures were ineffective or counterproductive in that they increased/exacerbated hesitancy or otherwise discouraged uptake.

III. Practicalities of "tracing"

- A. Understand people's experiences of the tracing system, including: online; on apps; over the telephone and in person;
- B. What factors facilitated or impeded engagement with the tracing system;
- C. Understand whether concerns about privacy, about sharing personal data or sharing other people's contact details affected compliance;
- D. Understand any unintended consequences of people's engagement with tracing apps.

IV. Isolating

- A. Understand the experiences of those who were able to comply with the full duration of their isolation periods and/or those for whom isolation was not particularly difficult;
- B. Understand the experience of those who were unable to comply with the full duration of their isolation periods and/or those for whom faced particular 'barriers to isolating';
- C. How did the need to isolate affect or exacerbate mental health conditions and preexisting loneliness and isolation for people;
- D. Understand the impact of the provision or non-provision of financial or practical support on people's ability to isolate;
- E. Understand to what extent a fixed penalty notice impacted behaviour;
- F. Understand whether messaging around support available was clear and accessible.

VI. Suggestions for future improvement of:

- A. The overall clarity of the test, trace and isolate system;
- B. The accessibility of tests and their ease of use;
- C. The accessibility of the tracing system and enhancing willingness to comply with contact tracing;
- D. Public messaging; and
- E. Means of enforcement.

42. Potential audience groups that it is proposed are included in the sampling for qualitative interviews include those categorised by:
- a. Those with disabilities;
 - b. Those with physical and mental health conditions;
 - c. Those who are digitally excluded;
 - d. Those who were clinically vulnerable, shielding or immunosuppressed at the time of the pandemic and their families;
 - e. Those living with Long Covid;
 - f. Healthcare workers including those from ethnic minorities;
 - g. General population (ensuring a mix of ages, geographies, financial and household circumstances and ethnicity across the four nations);
 - h. Those who were supporting any of the above groups to test, participate in the tracing system or isolate, including but not limited to, community groups and charities.
43. It is unlikely that the targeted research will be able to cover all the areas listed above and Core Participants are therefore invited to file written submissions **by 4pm on 13 June 2024** making suggestions in relation to the KLOEs for targeted qualitative research, in particular, on:
- i. Whether there are any specific areas listed in paragraph 41 above that Core Participants consider to be of particular importance for targeted research;
 - ii. Whether there are any further topics that Core Participants consider important for targeted research and why (including whether or not this evidence could otherwise be obtained through the Rule 9 process or by another method); and
 - iii. Any views on the proposed target populations for the targeted research, either in relation to the above three topics or further proposed topics.

Commemoration

44. Given the scale of the tragedy brought about by the pandemic, and the grief and loss suffered by the bereaved, the Inquiry wishes to provide opportunities for those who were lost to be commemorated as part of the Inquiry's process.
45. The Chair wishes to recognise the human suffering arising from the pandemic, including the loss of loved ones, by ensuring that it is reflected throughout the Inquiry's work. The Inquiry has produced Impact Films at the start of Module hearings.
46. There will be an Impact Film aired at the public hearings next year

47. In the course of the Preliminary Hearing in Module 1, the Inquiry received submissions to the effect that the Inquiry should allow evidence of the circumstances of individual deaths and pen portrait material to be heard and ruled that evidence of the circumstances of individual deaths and pen portrait material will not, as a general rule, be admitted.

Future Hearings

48. A further Preliminary Hearing for Module 7 is likely to be held at Dorland House in Paddington in early 2025. The specific date will be confirmed in due course.
49. The public hearing in Module 7 is expected to take place over three weeks in the spring of 2025. The hearing will be held at Dorland House in Paddington.

31 May 2024

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