

THE UK COVID-19 INQUIRY

TRADES UNION CONGRESS SUBMISSIONS FOR THE FIRST PRELIMINARY HEARING IN MODULE 8

Introduction

1. These are the submissions of the Trades Union Congress (**'the TUC'**) in advance of the first preliminary hearing in Module 8 of the UK Covid-19 Inquiry.
2. The TUC brings together over 5 million working people who make up its 48 affiliated unions. In this Inquiry, the TUC is working in partnership with TUC Cymru (formerly the Wales TUC), the Scottish TUC, and the Northern Ireland Committee of the Irish Congress of Trade Unions.
3. Those affiliated unions with a particular interest in Module 8 are:
 - (a) AEP: a trade union and professional association representing registered educational psychologists practising in the UK.
 - (b) EIS: Scotland's largest education union, representing over 80% of Scotland's teaching professionals, across all sectors, from early years to Higher education.
 - (c) GMB: a general union representing over 100,000 workers in schools, academies and further education organisations.
 - (d) NAHT: a trade union and professional association representing over 38,000 senior leaders in education in England, Wales and Northern Ireland.
 - (e) Napo: representing those working in the criminal and civil justice system, including in prisons and secure facilities.
 - (f) NASUWT: representing teachers and headteachers in all sectors, from early years to FE.
 - (g) NEU: representing the majority of teachers and education professionals in the UK, with around 500,000 members.

- (h) POA: with members working in the criminal and civil justice, including in prisons and secure facilities.
- (i) UCAC: representing teachers, head-teachers, lecturers and tutors in Wales.
- (j) UCU: representing over 120,000 workers across all roles in universities, colleges, prisons, adult education and training organisations throughout the UK.
- (k) UNISON: a general union whose representation includes over 250,000 support staff in schools (for example: teaching assistants, pupil welfare, IT, school meals, and estates).
- (l) UNITE: a general union representing school support staff, including teaching assistants, catering staff and lunch time supervisors across all school designations.

4. These submissions address:

- (a) Scope;
- (b) Evidence;
- (c) Expert evidence;
- (d) The second preliminary hearing;
- (e) The substantive hearings.

(A) Scope

- 5. The Inquiry describes the identified scope of the module as “*ambitious*” and “*encompass[ing] the broad range of impact on all children...*” (CTI Note, §23) and providing a “*flexible framework*” (CTI Note, §25). It is certainly broad and flexible, but that does make it difficult for core participants to discern the Inquiry’s likely lines of enquiry.
- 6. The TUC submits that the areas examined within this module should include:
 - (a) A detailed examination of central government decision-making in respect of education; and
 - (b) In addition to the impact of that decision-making on children, the role of and impact upon education staff.

Central-government decision-making in respect of education

7. The provisional scope provides that that the areas covered will include *“the extent to which children and young people were considered by the UK government and Devolved Administrations in respect of the application of non-pharmaceutical interventions (NPIs) and the impact of those decisions”, and the “impact of the pandemic on the education of, and the early years provision for, children and young people...”*. It is possible that, in addressing those matters, the Inquiry envisages a detailed examination of central government decision-making in respect of education, but it is by no means clear that this is so.
8. Education was arguably an area of the pandemic response in which the decision-making of central government was most strewn with error. Not least:
 - (a) Decisions as to restrictions on school attendance were left to the last minute and were chaotic. As revealed in Module 2, there was a pattern of refusing to countenance planning for restrictions on school attendance until conceding, at the 11th hour, that the restrictions were impossible to avoid. This was a theme which ran through from primary level education to higher education.¹ As early as September 2020, Sir Patrick Vallance was observing, privately: *“complete chaos over schools and what they should do. No one had any answers. The comms are shambolic”*.² It was particularly shambolic in December 2020 when it was obvious to many in central government that school attendance would be restricted after the Christmas break, but the Department of Education was, at the same time, threatening local authorities and multi-academy trusts with punitive and/or legal action over decisions to start the Christmas break early. In the event, primary school children returned to school for a single day on 4th January 2021, to then be told that attendance would be restricted from the following day.
 - (b) Some NPIs implemented within schools, such as year-wide ‘bubbles’ and discretionary (rather than mandatory) guidance on face masks, were fraught with

¹ For example, in September 2020, SAGE warned that: *“there was a significant risk that Higher Education could amplify national and local transmission rates”*; it was *“highly likely that there would be significant outbreaks associated with HE, and asymptomatic transmission might make these harder to detect”*; and university accommodation was a high risk setting for transmission. These warnings were not heeded – universities reopened – and adequate safeguards were not in place for students and staff.

² INQ000273901/183.

uncertainty and questionable effectiveness. Other NPIs that scientists urged would be effective, such as: mandatory face covering policies; improvements to ventilation; and staggered school attendance, were implemented either belatedly or not at all. The UK became an international outlier in terms of the lack of ‘multi layered’ NPIs to protect children and young people, and the education workforce.³ Schools were, on virtually no notice, told that they were to be turned into mass testing sites. As the TUC observed in its Module 2 submissions, *“These matters will no doubt be considered in detail in a subsequent module on education. For the purposes of [Module 2], it is evident that the poor outcomes were symptoms of significant flaws in the decision-making processes within central government”*.⁴

- (c) The approach to school exams was equally flawed. In 2020 and 2021, exams were cancelled and replaced with teacher-assessed grades. In 2020, a centralised algorithm was used to ‘moderate’ the marks which disproportionately marked down students from poorer backgrounds. Government was forced to U-turn and students were able to receive whichever was the higher of their allocated grades (teacher or algorithm assessed). There were real difficulties when exams returned in 2022, with a great deal of uncertainty as to whether exams would go ahead in person and, later, insufficient numbers of invigilators due to fears regarding Covid-19, causing further disruption.
- (d) Decisions regarding supporting vulnerable children were similarly problematic. The Government only u-turned on a decision not to continue to provide free school meals to children in England during the Christmas holidays in 2020/21 after a series of interventions, including a campaign by footballer Marcus Rashford. Similarly, in 2020, the Government launched a scheme to provide laptops and internet access to children without the means of engaging with online learning at home. However, the scheme was narrowly defined, with eligibility only being afforded to care-leavers, children with social workers and students in year 10. The Department for Education’s evidence to Module 2 of the Inquiry revealed that the Treasury had blocked funding for a wider roll out of laptops earlier in the

³ See: <https://www.bmj.com/content/378/bmj-2022-071234#:~:>.

⁴ TUC written closing for Module 2, p.28, §85: <https://covid19.public-inquiry.uk/wp-content/uploads/2024/01/30165011/INQ000399530.pdf>.

pandemic.⁵ The Government faced judicial review challenges over the eligibility criteria and the pace of the provision of laptops and, ultimately, many children faced significant proportions of the pandemic without equitable access to remote learning.

(e) Decisions around higher education lacked rational application of the available evidence. For example, in September 2020, SAGE warned that: *“there was a significant risk that Higher Education could amplify national and local transmission rates”*; it was *“highly likely that there would be significant outbreaks associated with HE, and asymptomatic transmission might make these harder to detect”*; and university accommodation was a high risk setting for transmission.⁶ However, there was a feeling that these warnings were ignored at a time when confirmed daily cases were rising steadily, and that little was done to tackle the risks identified by SAGE, such as improving ventilation.⁷ It is not clear that any work was undertaken to risk assess the potential impact on the physical and mental wellbeing of students ahead of the return. The outbreaks which resulted contributed to the second wave of the virus.

9. Module 2 has gathered, and heard, evidence on some of these matters. The evidence gathered from SAGE included significant detail relating to schools, particularly relating to restrictions on attendance and community transmission. Many of the decision-making records considered in Module 2 – both formal (e.g. minutes of Covid-O and Covid-S meetings, and Cabinet meetings) and informal (e.g. WhatsApp) – reveal the discussion and thinking relating to education. The Department of Education provided a lengthy witness statement. The questioning of witnesses such as Boris Johnson, Sir Christopher Witty, and Sir Patrick Vallance touched on decision-making in respect of schools. The Module 2 Report will inevitably touch on decision-making in respect of schools.

10. It is also clear, however, that Module 2 provides no more than a foundation for consideration of these issues, with detailed consideration left for a future module –

⁵ INQ000146054/141, para. 23.3.2.

⁶ INQ000146054/71, paras. 7.1.4, 7.1.4.1 and 7.1.4.4.

⁷ <https://www.bbc.co.uk/news/uk-54040421>.

Module 8. Accordingly, in Module 2 the Inquiry did not hear from the then Secretary of State for Education, Sir Gavin Williamson, nor any official within the Department of Education. Examination of key witnesses in relation to education was in passing. Areas of questioning on which the TUC sought permission were frequently marked off as for a future module in which there was to be detailed consideration of these issues.

11. Accordingly, whilst the impact on children and young people may quite properly be the appropriate and primary lens through which to focus Module 8, the module must include a testing examination of the efficacy of central government decision-making in respect of education, which impacted directly upon children and young people; such analysis is yet to have taken place.
12. Such examination is necessary not only to understanding the Covid-19 pandemic as it impacted children and young people and their education, but also to addressing some of the key questions in responding more effectively to the next pandemic:
 - (a) How can NPIs within schools be improved in order to maximise unrestricted school attendance? The safer that school attendance can be during a pandemic, the lesser the need for restrictions on attendance. It is an area in which real improvements can be made. It has a crucial indirect impact on children in decreasing the need for restrictions on attendance.
 - (b) How should restrictions on school attendance be managed? The general principle that restrictions on school attendance should be avoided where possible in order to protect and advance the interests of children will be broadly uncontroversial. Equally, an overly simplistic urging from an Inquiry to limit restrictions on school attendance will at best serve no purpose, and at worst be damaging. During the Covid-19 pandemic there was a strong link between school attendance and community transmission. Covid-19 did have a direct risk towards children, including of death⁸ and Long Covid, and the next pandemic could be a virus that has yet a higher fatality rate for children (and/or adults). For example, fatalities arising during the current mpox outbreak in Africa, which WHO recently declared

⁸ See: <https://www.bmj.com/content/378/bmj-2022-071234#:~:>.

a public health emergency of international concern,⁹ are overwhelmingly amongst children.¹⁰ This is similar to previous outbreaks of viruses, such as hib, measles, whooping cough and rotavirus. Restrictions on school attendance should be avoided where possible, but they were necessary in confronting Covid-19, and may well be unavoidable in a future pandemic. This Module, and its recommendations, will need to carefully reflect that reality.

- (c) When school restrictions do prove to be necessary, how can remote learning be improved? Given that restrictions on school attendance may be unavoidable, recommendations should include a focus on improving the effectiveness, for all pupils, of remote learning.

The role of and impact upon education staff

13. In granting core participant status to the TUC in this Module, the Chair expressed the view that the TUC could assist the Inquiry by “*putting forward the perspective of a large group of educators who were involved in the frontline delivery of education during the pandemic*” and, on that basis, had an interest sufficient to warrant core participant status. However, the Chair also stated:

I have considered the activities undertaken by the Applicant during the pandemic as set out in its application. I do not consider that these amount to the Applicant having played a direct and significant role in relation to the matters to which Module 8 relates. Nor do I consider that the Applicant’s concern about the health of its members, whilst understandable, gives it a significant interest in an important aspect of the matters to which Module 8 relates: this Module is concerned with the impact of the pandemic on children and young people rather than on those working with them.

14. That gives rise to concern. First, though it may be entirely appropriate to have the impact on children and young people as a primary focus, to exclude the impact on staff in education is unwarranted given the demands they faced. Other modules, such as those in relation to health care (Module 3), and social care (Module 6), have set out to consider not just the impact upon those who benefit from a service, but also upon those who provide it. It is unclear why education staff should be singled out for a different

⁹ See: <https://www.who.int/news/item/14-08-2024-who-director-general-declares-mpox-outbreak-a-public-health-emergency-of-international-concern>.

¹⁰ See: <https://www.unicef.org/press-releases/children-significant-risk-surgings-mpox-outbreak-democratic-republic-congo-unicef#:~:text=>.

approach. The demands on education staff during the pandemic were significant. Although reference is frequently made to ‘school closures’, they were never closed. Even in the first wave, schools remained open to the most vulnerable, and staff continued to attend to facilitate the attendance of the most vulnerable, and children of key workers. At other times when much of society were operating to family bubbles and strict social distancing, education staff were operating with large classes of children in poorly ventilated classrooms and without masks. Staff also faced the huge changes to working practices as they sought to implement NPIs within schools (such as year group bubbles), and during times of restricted attendance having to entirely change working practices and teach remotely.

15. Second, it adopts the false premise that the interests of pupils attending education, and the interests of staff providing that education, can be separated. In truth, they are interdependent. At a basic level, educators enter their profession in order to advance the interests of the children they serve. Educators are integral to education and the wellbeing of children; they are not a workforce whose interests need to be put to one side so that the interests of children can come to the fore. Ultimately, an effective response in education is a response which supports both children and staff and the interests of each need to be considered. By way of example:

- (a) NPIs within schools need to account for the safety of those at places of education as a whole, and, therefore, the impact on both children and staff. It is noted, for example, that Every Story Matters is looking at the impact on children of a number of NPIs, including masks. However, impact on staff also needs to be considered. Consider a teacher or teaching assistant with elderly or clinically vulnerable relatives working in close proximity to students, with no masks and in a poorly ventilated classroom. The interests of those students will quite properly be an important and primary consideration, but the interests of the teacher and assistant cannot be excluded.
- (b) Decisions as to restricting school attendance must, in addition to taking account of the impact on children, also consider the impact on staff. Such decisions cannot exclude the additional risks faced by staff members and those with whom they live. Similarly, if education staff are required to remain in schools to supervise and

educate the children of key workers, consideration must be given to how this work is allocated, considering any vulnerabilities of staff or persons in their households. Again, the impact on children might have a particular importance, but the interests of staff are intertwined with those of children and young people and cannot be excluded.

- (c) The effectiveness of remote learning, important to the welfare of children if attendance has to be restricted, will depend in part on the experience of and support provided to education staff. Further, if education staff are going to be required to teach remote lessons, provision for, caring for and educating the children of education staff must be considered.
- (d) Underlying the effectiveness of education during and in the aftermath of a pandemic is the resilience of schools, including both the quality and capacity of its buildings and resources, and also the resilience of the profession. The resilience of the profession in terms of having sufficient numbers of adequately trained, experienced staff working in an environment in which they can thrive is central to having the capacity to meet the exceptional needs of children in a pandemic in creative and demanding ways. Research demonstrates that pressure on education staff to ‘get back to school’ (despite the fact that schools never truly closed) and a perception that their contribution was not valued equally with that of other key workers negatively impacted upon the wellbeing of the workforce.¹¹ This may, in turn, be contributing to the pre-existing retention crisis, which is of course pertinent in respect of the impact upon children and young people. NEU’s State of Education surveys in 2021, 2022 and 2023 revealed a trend of worsening mental health issues in pupils after the pandemic – placing additional demand on already stretched teaching support resources and causing children to lose out on the individual support they require. These issues do not affect children in isolation – there are evident knock-on effects for staff in terms of workload and work-related stress which are likely to contribute to workforce shortages. Furthermore, during the pandemic support staff played a vital role in keeping schools open, including by

¹¹ See: <https://www.cam.ac.uk/research/news/get-back-to-school-headlines-eroded-teacher-wellbeing-during-the-pandemic>.

covering lessons, which accelerated the pre-existing erosion of the demarcation between support staff and teaching roles. That erosion continues; UNISON research suggests that support staff are consistently being asked to cover, and in many cases, teach whole classes due to teacher shortages and absence.¹² This is problematic for the staff being asked to consistently work beyond their training and experience, for remuneration which does not reflect the level of responsibility, but also for pupils, who are receiving inconsistent cover teaching from staff not trained or properly supported to deliver the lessons.

16. Ultimately, a series of findings and recommendations (properly) centred on the interests of children but at the exclusion of the interests of and impact on staff will be fundamentally flawed: such findings and recommendations would be divorced from the reality that improving the experiences of education staff is a crucial part of improving the experiences of children in education.

(B) Evidence

17. A significant amount of material disclosed in previous modules, particularly Module 2, should be cross disclosed, at an early stage, into Module 8.

(C) Expert evidence

18. The TUC welcomes the Inquiry's intention to call expert evidence across a range of topics and, in particular, evidence as to: the effectiveness of the education provided during the pandemic; the impact upon the mental and physical health of children; the impact upon child development; and the experience of children with special educational needs and disabilities.

19. In addition, the TUC considers that this module would be assisted by expert evidence as to:

- (a) The relationship between school attendance and community transmission of the virus and the impact of restrictions on school attendance;
- (b) The effectiveness of NPIs within school (masks, ventilation, bubbles, etc);

¹² See: <https://www.unison.org.uk/news/press-release/2024/04/struggling-schools-forced-to-rely-on-teaching-assistants-as-cheap-cover-for-teachers/>.

- (c) International comparative analysis to consider how other countries handled key NPIs affecting children, such as testing programmes, school bubbles, remote working and school restrictions; and
- (d) The Government's approach to the additional risk faced by Black, Asian and Minority Ethnic children and young people; specifically, the response to the finding in the PHE report '*Understanding the impact of Covid-19 on BAME groups*' which identified the additional risk posed to BAME communities, of children (who may be attending school and/or other activities in close contact with peers) spreading Covid-19 to older relatives, who were at higher risk of severe disease.¹³ Whether and to what extent the Government took steps to support Black, Asian and Minority Ethnic children to attend school safely without the anxiety of spreading Covid-19 within intergenerational households should be explored.

20. In order to analyse and weigh the merit of particular NPIs, balancing their positive and negative impacts upon children as against their wider value of such NPIs within the context of the pandemic, the Inquiry would benefit from clear and independent expert evidence on the topics identified above.

21. We commend to the Inquiry the expertise of the authors of a relevant and specialist peer-reviewed article published in the British Medical Journal: '*Covid-19 in the UK: policy on children and schools*'.¹⁴

(D) The Second Preliminary Hearing

22. It has been indicated that a further preliminary hearing will be held on 10 June 2025 (CTI Note, §54) and that the substantive hearings will take place in Autumn 2025 (CTI Note, §14). We urge the inquiry to hold the next preliminary hearing at an earlier stage than June 2025. For the reasons set out above, much remains to be determined in terms of the issues to be examined and the evidence to be gathered. By June 2025, potentially no more than three months prior to the commencement of the substantive hearings,

¹³ See:

https://assets.publishing.service.gov.uk/media/5ee761fce90e070435f5a9dd/COVID_stakeholder_engagement_synthesis_beyond_the_data.pdf, at pp. 6 and 21.

¹⁴ See: <https://www.bmj.com/content/378/bmj-2022-071234>.

the opportunity for core participants to have any significant influence on the direction of the module will be narrow.

(E) The Substantive Hearings

23. The Inquiry must have an idea as to the likely length of hearings, even if provisional, and the Inquiry is invited to share it. The scope, complexity and importance of the issues within Module 8 would all appear to point towards the hearing needing to be of some length, akin to hearings in Modules 2 or 3.

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