****

**Counsel to the Inquiry’s Note for the Second Preliminary Hearing in Module 5 of the UK Covid-19 Inquiry on 11 December 2024**

**Introduction**

1. The purpose of this Note is to introduce the issues and agenda for the second preliminary hearing in Module 5 of the Covid-19 Inquiry, on Wednesday 11 December 2024. The first preliminary hearing in Module 5 took place on Tuesday 6 February 2024.
2. Those who have been granted Core Participant status on Module 5 have been provided with regular progress updates. This second preliminary hearing is an opportunity to draw this information together and ensure that it is up-to-date, as well as allowing a public update on the Inquiry’s work so far. Should any Core Participant wish to file brief written submissions on any of the issues set out below, they must be received by the Inquiry by **4pm on 27 November 2024**.
3. The second preliminary hearing in Module 5 will address the following issues:

* 1. Update on Rule 9 Requests;

* 1. Disclosure to Core Participants;

* 1. Approach to the Investigation and Hearing;

* 1. List of Issues;

* 1. Expert Witnesses;

* 1. Every Story Matters;

* 1. Timetable;

* 1. Opening and Closing Statements; and

* 1. Public Hearing Dates.

**Update on Rule 9 Requests**

1. The Inquiry has now issued a total of 273 formal requests for evidence, pursuant to Rule 9 of the Inquiry Rules 2006.
2. The monthly Module 5 Solicitor team update notes provided details to Core Participants of the recipients of the Rule 9 requests and an overview of the topics raised with them. In summary, Rule 9 requests have been sent to:
	1. the major UK Government and Devolved Administration departments and directorates (including significant individuals therein);
	2. the major NHS and other bodies involved in procurement, including public health bodies and a number of individual NHS Trusts and Health Boards in England, Scotland, Wales and Northern Ireland;
	3. a range of health unions (including the British Medical Association and Royal College of Nursing), associations (including the NHS Confederation), research bodies and civil society organisations, such as the UK Anti-Corruption Coalition;
	4. a range of care sector bodies (including the National Care Association and Care Provider Alliance) in England, Scotland, Wales and Northern Ireland;
	5. the regulatory agencies with an important role in procurement during the pandemic (including the Medicines and Healthcare products Regulatory Agency, UK Health Security Agency, Competition and Markets Authority, British Standards Institution and British Safety Industry Federation);
	6. the major investigatory, enforcement and prosecution authorities for the UK and Devolved Administrations, including the National Crime Agency, Serious Fraud Office, the Crown Prosecution Service, Crown Office and Procurator Fiscal Service, and the Public Prosecution Service for Northern Ireland;
	7. a number of Local Authorities;
	8. groups and individuals concerned with equalities in the UK, including the Runnymede Trust and Voluntary Organisations Disability Group;
	9. industry bodies (including the Confederation of British Industry, Federation of Small Businesses and the UK Bioindustry Association);
	10. individual companies, primarily those involved in the Ventilator Challenge; and
	11. a range of private sector consultancies which advised the government on procurement, distribution and supply chain resilience during the pandemic.
3. This module is focused on the structures, processes and core decision-making in procurement during the pandemic. It will examine systemic issues in order to learn important lessons for the future. To conduct an effective investigation, the Inquiry team does not consider that it is generally necessary to seek evidence from individual companies about specific offers of equipment and/or contracts entered into. It continues to keep this under review but at this stage does not anticipate its focus will be on hearing from specific companies or individuals connected to them about particular contracts as these will be of limited probative value.
4. The Inquiry is grateful to recipients of Rule 9 requests for the efforts they have made to comply with the Inquiry’s requests in a timely manner. There have, however, been delays, in some cases significant ones, in the module receiving disclosure of some categories of material and witness evidence. This has had an impact on the approach which the module will be able to take to the investigation (see Approach to the Investigation and Hearing, below). In many cases, extensions to proposed deadlines have been agreed to allow government departments, organisations and individuals to focus on providing responses to requests made in earlier Inquiry modules, or where disclosure requests have been more complex and/or extensive.
5. Module 5 has now received 140 draft statements, which are either being reviewed with a view to providing feedback (and in some cases seeking further evidence), or have been finalised but are awaiting final confirmation and/or signatures. A number of further new or follow-up Rule 9 requests to organisations and witnesses are being considered as evidence is reviewed and issues continue to come into greater focus.
6. It remains the Inquiry’s approach that Core Participants will not be provided with copies of Rule 9 requests. They will, however, continue to be kept properly informed through the monthly Module 5 Solicitor team update notes and they will, of course, receive copies of the evidence and disclosure generated by the requests.
7. The Inquiry will, of course, continue to consider and send out further Rule 9 requests, including to individuals, during the course of the following weeks, as evidence is received and examined and lines of inquiry continue to be investigated. Core Participants will continue to be updated through the monthly Module 5 Solicitor team update notes.

**Disclosure to Core Participants**

1. A large number of documents in this module contain information which may fall within a category of material under s19(5) of the Inquiries Act 2005. As a result, there are a number of significant processes and checks which documents must progress through prior to disclosure to Core Participants. It has taken time for the module team to work with the Material Providers, interested third parties and investigating/prosecuting authorities to establish a robust approach to the review, redaction and disclosure of relevant material. These are now operating effectively but the number of checks each document must, of necessity, pass through means that it takes significantly longer for a document identified as relevant in this module to be disclosed to Core Participants than would otherwise be the case. The module team is working hard to ensure that this process operates as quickly and efficiently as possible.
2. As at the date of this Note, the Module 5 team has disclosed a significant volume of relevant material. The latest tranche was delivered on 15 November 2024. This includes evidence and disclosure from the following key Material Providers:
	1. Department of Health, Northern Ireland;
	2. Department of Health and Social Care (“DHSC”);
	3. Welsh Government;
	4. Scottish Government;
	5. Department of Finance, Northern Ireland;
	6. Cabinet Office;
	7. The Executive Office, Northern Ireland; and
	8. Department for Business and Trade (“DBT”).
3. Additionally, the module has commenced disclosure of witness statements with the following released to Core Participants:
4. Paul Webster on behalf of Supply Chain Co-ordination Limited;
5. Stephen McGowan on behalf of Crown Office and Procurator Fiscal Service;
6. Professor Sir Gregor Smith, Chief Medical Officer for Scotland;
7. Professor Sir Christopher Whitty, Chief Medical Officer;
8. Lesley Fraser, Scottish Government's Director General for Corporate;
9. Jon Rouse on behalf of Stoke-on-Trent City Council;
10. Fiona McQueen, Chief Nursing Officer for Scotland;
11. Corporate witness statement provided by Gareth Rhys Williams on behalf of the Cabinet Office;
12. Paul Johnston and Nicolas Phin on behalf of Public Health Scotland;
13. Andrew Slade on behalf of the Welsh Government;
14. Sir Frank Atherton, the Chief Medical Officer for Wales;
15. Jean White, Gareth Howells and Sumeshni Tranka, the current and former Chief Nursing Officers for Wales;
16. Richard Elsy on behalf of the VentilatorChallengeUK Consortium;
17. Angela Ridgwell on behalf of Lancashire County Council; and
18. Caroline Lamb, Chief Executive of NHS Scotland and Director-General Health and Social Care.
19. Publicly available material relevant to the scope of the module has also been disclosed.
20. The Inquiry expects to make further significant tranches of disclosure in the coming weeks. This will include final signed witness statements and exhibits received by the Inquiry. As a result of the checks outlined above, it may not always be possible to disclose all of the exhibits at the same time that the witness statements are disclosed. However, the module team carefully tracks the progress of exhibits through the disclosure process and will continue to update Core Participants on the contents of disclosure tranches and any outstanding exhibits.

**Approach to the Investigation and Hearing**

1. The Inquiry team intends to adopt a thematic approach to its interrogation of the evidence and the hearing. As set out in recent Module 5 Solicitors team update notes, the module was previously considering whether case studies (following a number of contracts from offer through to conclusion, including any issues with performance and recovery) would be an appropriate method of examining systemic issues in procurement during the pandemic. It was the Inquiry team’s initial intention that this would have included obtaining witness and documentary evidence about every stage of the process for a sample set of contracts.
2. The Inquiry team sent out a number of Rule 9 requests to government departments seeking high-level evidence of the contracts awarded, including on price, volume, risk, conflicts of interest and issues with performance. It also sought detailed information about particular contracts, identified as part of the evidential review process. This was in anticipation that the Inquiry would receive disclosure of materials in sufficient time to enable it to identify appropriate examples on which to request further, more detailed statements from organisations and individuals and to follow a contract through from offer to conclusion.
3. It has taken some departments a significant amount of time to provide this information to the Inquiry. The Inquiry understands that this has been for a number of reasons. In part it has been due to the way in which documents and records are stored, the manner in which they can be searched and challenges in the reconstruction of events to ensure that evidence is complete and accurate. There has also been staff movement and departures which has meant that organisations have not always had key individuals available to provide responses to the Inquiry’s questions. DHSC and the UK Health Security Agency (“UKHSA”) have experienced particular difficulties in this regard.
4. As a result of ongoing criminal investigations and civil litigation, it has taken longer for the Inquiry to agree processes with government departments for disclosure of material and for that process to start. Where there have been particular sensitivities, it has been necessary for the Inquiry to issue s.21 Notices in order to receive disclosure of material.
5. A number of departments have also experienced significant pressure as a result of the necessary demands of other modules and the Inquiry has regularly discussed prioritisation between modules with them. This has meant that it has not always been possible for Module 5 to receive evidence by its preferred date.
6. As a result of these delays, it has not been possible for the Inquiry to request all relevant evidence from offer through to conclusion for individual contracts identified as particularly relevant to the Scope of the module be provided. The Inquiry will not therefore be in a position to examine the contracts at every stage as originally anticipated. The Inquiry considers that there is still benefit in using examples but instead will focus on and examine critical points in the chronology of particular contracts to highlight particular systemic issues. This will assist the Inquiry in understanding the existence and persistence of only the most important issues with procurement during the pandemic. Illustrative examples from contracts will be taken from England, Scotland, Wales and Northern Ireland.
7. From the review of the evidence received to date, the Inquiry team has identified a number of themes through which it considers the Module 5 Outline of Scope and wider Inquiry Terms of Reference will be met. These are:
	1. Structures, Systems and Processes;
	2. Data Analysis;
	3. Skills, Expertise and Experience;
	4. Emergency Trade and Industrial Strategy;
	5. Regulation and Inspection; and
	6. Governance, Transparency and Accountability.
8. Further detail about these themes includes likely exploration of:
	1. The approach in the UK and devolved administrations to pandemic stockpiles, including their adequacy, accessibility and appropriateness for the range of physical characteristics of the health and social care workforce, in so far as this has not been addressed in previous modules.
	2. The key structures, systems and processes for procurement and how they worked in practice. This will include an examination of: modelling; gathering and analysing inventory data; due diligence; contract terms, advance payments and risk; the role of intermediaries; and how value for money was assessed and spending controls applied. In this thematic review, the Inquiry will focus on important aspects of contracts awarded as part of the China Buy, New Buy and UK Make strategies.
	3. The establishment and operation of the ‘VIP’ or ‘High Priority’ lane. The Inquiry will consider issues including: its purpose and performance, vulnerability to influence by high profile individuals; the level of pressure exerted by referrers and suppliers on officials; and an analysis of key features of the contracts awarded, including their overall value for money.
	4. The effectiveness of the logistics and distribution systems in England, Scotland, Wales and Northern Ireland. This will include an examination of the role of the Ministry of Defence and private companies in the distribution of key healthcare related equipment and supplies, including to the care sector.
	5. The skills, expertise and experience in government for the emergency procurement and distribution of key healthcare equipment and supplies. The Inquiry will consider the analysis, advice, leadership and support provided by special appointees and consultants from the private sector during the pandemic.
	6. The reliance of the UK and devolved administrations on global supply chains and domestic manufacturing to support the procurement of key healthcare equipment and supplies. This theme will include consideration of supply chain resilience and risk during the pandemic and the ‘Calls to Arms’.
	7. The institutions and systems for the effective regulation and inspection of key healthcare equipment and supplies procured during the pandemic. The Inquiry will examine their effectiveness and whether they provided a coherent, efficient and systematic scheme to protect the safety of end-users.
	8. The roles of governance, transparency and accountability in the award and publication of contract information during an acute emergency. As part of the examination of this theme, the Inquiry will consider at a high level the use of criminal investigations and civil enforcement action against individuals and companies.
	9. The anticipation of and strategy for excess purchasing, waste and disposal.
9. The Inquiry team intends to examine key aspects of a number of contracts as illustrative examples of the above themes. This is likely to include:
	1. value for money;
	2. the effect, if any, of a contract being in the High Priority Lane;
	3. the impact, if any, of contact from referrers about contracts during the award process;
	4. the approach to due diligence and risk; and
	5. intermediaries between government and manufacturers.
10. Work continues on the review of relevant materials and requests for further evidence relating to these contracts are likely to be made in the coming weeks. The Inquiry will liaise closely with the relevant organisations to provide clear instructions as to its priorities to ensure that it has all relevant material to meet effectively the Module 5 Outline of Scope and the Inquiry’s Terms of Reference.

**List of Issues**

1. A Draft List of Issues is provided with this Note. This is an indicative guide to the topics proposed for exploration within the Module 5 investigation. Any Core Participant Submissions on this list must be provided by **27 November 2024.**

**Expert Witnesses**

1. Module 5 has instructed two expert witnesses:
	1. **Albert Sanchez-Graells**, Professor of Economic Law and Co-Director of the Centre for Global Law and Innovation at the University of Bristol Law School, whose report will focus on **public procurement**. It is expected that this report will be provided to Core Participants in final form by 6 December 2024, with any Core Participant comments on it to be received by **20 December 2024.**
	2. **John Manners-Bell**, CEO of Transport Intelligence and Honorary Visiting Professor, London Guildhall Faculty of Business and Law at London Metropolitan University, whose report will focus on **supply chains**. It is expected that this report will be provided to Core Participants in final form by **29 November 2024,** with any Core Participant comments on it to be received by **13 December 2024.**

**Every Story Matters**

1. The summary of the pilot for Every Story Matters (“ESM”) was disclosed to Core Participants today. As has been communicated to Core Participants, it was not considered by the Inquiry that a full ESM report would provide the best account for this module. The Inquiry will instead be exploring the key themes in the evidential hearings.

**Timetable**

1. The Module 5 team will circulate the Final List of Issues, a Provisional List of Witnesses and timetable and further details about the Rule 10 process following the second preliminary hearing.

**Opening and Closing Statements**

1. Counsel to the Inquiry (“CTI”) will make an Opening Statement at the commencement of the public hearing. It is unlikely that CTI will deliver a closing statement.
2. Those Core Participants who wish to make Opening and Closing Statements will, of course, be permitted to do so. However, CTI will be inviting the Chair to impose strict time limits. This is likely to be determined, in part, by the number of participants. Written statements must be submitted to the Inquiry within a time frame which will be set out in due course.

**Public Hearing Dates**

1. The Inquiry does not anticipate holding a further preliminary hearing for Module 5 before the start of the public hearings in March 2025.
2. As the Core Participants were informed in the monthly Module 5 Solicitor team monthly update notes, and as published on the Inquiry website, the public hearing of Module 5 will take place at Dorland House between 3 and 27 March 2025.

**15 November 2024**

**Richard Wald KC**

**Jamie Sharma**

**Tom Stoate**

**Victoria Shehadeh**

**Hannah Gardiner**