

**IN THE UK COVID-19 PUBLIC INQUIRY
BEFORE BARONESS HEATHER HALLETT
IN THE MATTER OF:
THE PUBLIC INQUIRY TO EXAMINE THE COVID-19 PANDEMIC IN THE UK**

**Submissions on behalf of Covid-19 Bereaved Families for Justice UK and NI Covid-19
Bereaved Families for Justice:**

for the Module 5 preliminary hearing on 11th December 2024

1. These submissions are provided on behalf of CBFFJ UK and NI CBFFJ in advance of the second Module 5 preliminary hearing on 11th December 2024.
2. Both CBFFJ UK and NI CBFFJ were established to campaign for this Public Inquiry. The goal has always been, and remains, to establish what happened to their loved ones, to participate effectively in that pursuit of the truth, and, in so doing, to ensure accountability and to prevent future deaths. The families are therefore committed to making the Inquiry work. These submissions are provided in that spirit and address the following:
 - a. The efficacy of stockpiled equipment;
 - b. Approach to the investigation of contracts;
 - c. Liaison with criminal investigations;
 - d. Expert witnesses;
 - e. Family member witnesses; and
 - f. Timetable and witness list.
3. We jointly made submissions in relation to a number of general issues at the last Module 5 ('M5') preliminary hearing, including on matters such as the Inquiry's approach to

disclosure and position statements.¹ Those submissions are relied on but not repeated here; our concerns remain.

The efficacy of stockpiled equipment

4. PPE is an essential aspect of effective infection prevention and control ('IPC') because it is "*the last line of individual defence*".² From the evidence this Inquiry has already heard in previous modules, it is confidently anticipated and well documented that PPE stockpiles were insufficient to respond to the Covid pandemic.³ As an example, in April 2020 a UK-wide RCN membership survey found that of the health care workers asked, 47% felt "*obliged to provide care*" without adequate PPE protection.⁴ Clearly where there is no 'last line of defence' lives are put at risk.
5. In the crucial planning phase, which includes the construction of stockpiles of PPE, there is an expectation that to afford sufficient and rapid protection against a range of pandemic threats, stockpiles must be capable of being scaled up in an emergency with rapid and effective distribution.⁵ This Inquiry will look to what structures, systems and processes were in place to ensure that procurement was sufficiently "*agile or flexible*".⁶
6. Whilst CBFFJ UK and NI CBFFJ welcome the focus on the resilience of the stockpile arrangements, there is potential for a blind spot in relation to efficacy of the PPE equipment contained within those stockpiles. For example, in Northern Ireland, by the end of April 2020, 12.5 million items (63% of available stocks) had already been drawn down, including all available face visors. Of note some 190,000 pieces of eye protection were withdrawn in June 2020, having been deemed to offer inadequate protection.⁷ It is therefore essential that this Inquiry considers, in depth, the utility of the equipment stored, whether it was 'in date' and sufficiently protective.
7. In a similar vein, the Inquiry may want to broaden this question and consider the availability of staff to fit, test and operate some of the machinery stockpiled and further consider the

¹ [CBFFJ submissions dated 29th January 2024 for first M5 Preliminary Hearing](#)

² [INQ000022737/2]

³ BBC, "[Covid-19: 'Clear evidence' of PPE shortages across NI during pandemic](#)", 1st March 2022

⁴ [INQ000281185] §3.6

⁵ [INQ000184637/7] §4.7

⁶ [INQ000184901/70-71] §239

⁷ [INQ000281185] §3.26

public contracts awarded to private sector employment agencies to assist with recruitment. The people of Northern Ireland were assured by the Department of Health that such “*Contracts and finances would be very carefully managed to ensure costs are tightly controlled and value for money is achieved.*” At this remove there is no opportunity to test the accuracy of that statement.

Approach to the investigation of contracts

8. At the heart of this Module are serious concerns about the nature of decisions taken by government during the pandemic in relation to the procurement of medical equipment, supplies and services, such as Personal Protective Equipment (‘PPE’). The Inquiry has already heard evidence of the extreme difficulties faced by medical staff in accessing appropriate PPE⁸ and basic medical equipment,⁹ and, as has been publicised in news reports, some resorted to the use of bin bags where staff were unable to access suitable supplies of protective wear.¹⁰ The lack of access to appropriate PPE quite clearly contributed to the transmission of Covid, and in turn, to deaths, in a range of health and care settings and this is of course an issue presently under investigation in Module 3, and relevant to the Inquiry’s future investigations in Module 6.

9. Against that background, the families that we represent have serious and significant concerns in relation to the way in which contracts were awarded by government under emergency procurement processes such as the “High Priority” or “VIP Lane”. Information that is already in the public domain raises suspicion that conflicts of interests, commercial interests and maladministration impacted on the contracts awarded and quality of what was supplied. These concerns must be central to the Inquiry’s M5 investigations. Indeed, Counsel to the Inquiry, Richard Wald KC, set out at the first M5 Preliminary Hearing, the Inquiry has undertaken to investigate concerns “*that some contracts awarded may have been fraudulent, that prices were inflated, or that PPE was defective or unusable*”.¹¹

⁸ M3 Transcript of Hearing Day 13, p.38, 40; M3 Day 14, p. 117

⁹ M3 Transcript of Hearing Day 13 p.3

¹⁰ BBC News, ‘Coronavirus: The NHS workers wearing bin bags as protection’, 5th April 2020

¹¹ [Module 5 first Preliminary Hearing](#), p.6

10. As we have set out in submissions made to the Inquiry, in order to address these issues, which are matters of clear interest to both the bereaved families that we represent and the public more widely, the Inquiry must investigate specific procurement decisions taken by government and the specific contracts awarded, including those under the “VIP” Lane as well as under non-competitive procurement processes deployed in Northern Ireland, Scotland and Wales. This is particularly important where information already available in the public domain suggests that individual companies did not meet their contractual obligations, conflicts of interest were present, public law principles and regulations were not complied with, maladministration was present, contracts were not awarded openly or fairly and/or there are questions of possible fraud or corruption. As Vaughan Gething, the former First Minister for Wales, observed in his evidence to the Inquiry for Module 3 on the 20th November 2024: “*with PPE there were frankly an awful lot of shysters who were trying to make money out of inadequate equipment. The whole world wanted more and some people saw that as an unscrupulous business opportunity, including inadequate equipment.*” We jointly urge the full force of the Inquiry’s investigatory powers to test the legitimacy of these practices.
11. We have jointly made a number of submissions to the Inquiry in which suggestions have been made as to specific companies to which requests for evidence should be made under Rule 9 of the Inquiries Rules 2006 (‘Rule 9’), including PPE Medpro, SG Recruitment Ltd and Radox Laboratories. To date, as far as we are aware, none of those companies have so far been issued with a Rule 9 request.
12. We further noted in previous submissions that governments and health bodies in Northern Ireland, Scotland and Wales employed distinct procurement processes and spent vast amounts of tax-payers money in a very short space of time on contracts for healthcare equipment and supplies from new sources without the usual competitive processes. For example, according to an Audit Scotland report, NHS National Services Scotland spent £98 million between March 2020 and June 2021 on 29 PPE contracts which were awarded to new suppliers with no competition.¹² The NI, Business Services Organisation Procurement and Logistics Service, the sole provider of procurement and logistics services for the HSC

¹² [INQ000108737/18]

organisations, entered into direct award, that is untendered PPE contracts worth approximately £370 million between January 2020 and April 2021.¹³ The NHS Wales Shared Services Partnership bought PPE from 67 suppliers, of which 51 were new suppliers, between March 2020 and February 2021. CBFFJ UK and NI CBFFJ invited the Inquiry to consider and share a list of suppliers relevant to contracts agreed by the devolved administrations to which it intends to issue Rule 9 requests. No such indication has yet been provided.

13. The Inquiry has previously indicated that it was considering whether case studies would be an appropriate method by which to examine systemic issues in procurement during the pandemic. CTI indicates that this would involve “*following a number of contracts from offer through to conclusion, including any issue with performance and recovery*”.¹⁴ It was the Inquiry’s intention that “*this would have included witness and documentary evidence about every stage of the process for a sample set of contracts*”.¹⁵ We endorse this approach and, in order to understand best how to support and contribute to this aspect of the Inquiry’s investigations, we have previously requested further information in relation to the Inquiry’s planned methodology, including how the Inquiry intends to select contracts to be investigated and the evidence it intends to obtain.

14. However, CTI’s note for the second Preliminary Hearing now indicates that such an approach will no longer be taken. We understand that the reasons for this can be summarised as follows:

- a. There have been delays on the part of government departments in providing information to the Inquiry for reasons that include the way in which documents and records are stored and staff movement/departures;
- b. Delays in the agreement with government departments of processes for the disclosure of materials, and, in some cases, the need for notices under section 21 of the Inquiries Act 2005 (‘Section 21 Notices’) to be issued in order to receive disclosure of materials; and

¹³ [INQ000281185/16]

¹⁴ CTI Note for the Second Preliminary Hearing in Module 5 on 11th December 2024, §16

¹⁵ Ibid.

- c. A failure on the part of government departments to provide evidence in line with deadlines set by the Inquiry.
15. As a result of these delays, it is indicated that the Inquiry has not been able to request all relevant evidence from offer through to conclusion for individual contracts identified as particularly relevant to the scope of the module. The Inquiry will therefore not be in a position to examine the contracts at every stage as they originally committed to. We are incredulous at the Inquiry’s approach and have particular concerns that the Inquiry’s M5 investigations have been frustrated and limited by delays on the part of central government departments and, in particular, the Department for Health and Social Care.
16. We maintain that these issues are of central relevance to the Inquiry’s Module 5 investigations, and the Inquiry’s ability to fulfil its Terms of Reference more generally. For example, the Inquiry’s Terms of Reference require it to examine (emphasis added):
- a. The public health response to COVID-19 across the whole of the UK, including “*testing and contract tracing*”, “*impact on health and care sector workers and other key workers*” and “*the safeguarding of public funds and management of financial risk*”;¹⁶ and
 - b. The response of the health and care sector across the UK, including infection prevention and control in a range of health and care settings and “*the procurement and distribution of key equipment and supplies, including PPE and ventilators*”.¹⁷
17. The Inquiry’s Provisional Outline of Scope for Module 5 confirms that the Module will cover (emphasis added):
- “1. The existence and effectiveness of processes, procedures and/or contractual provisions in place for the procurement and distribution of key healthcare equipment and supplies to the end-user ... during the pandemic ... This will include examination of:*
- (a) The overall value of the contracts awarded; ...*

¹⁶ COVID-19 Inquiry Terms of Reference, p.1-2, §1(a), available at: <https://covid19.public-inquiry.uk/wp-content/uploads/2023/05/Covid-19-Inquiry-Terms-of-Reference-Final-2.pdf>

¹⁷ Ibid, p.2-3, §1(b)

- (d) *Steps taken to eliminate fraud and the prevalence of fraud;*
- (e) *Conflicts of interest;*
- (f) *Contractual performance by suppliers and manufacturers;*
- (g) *Compliance with public law procurement principles and regulations;*
- (h) *Openness and fairness, including the ‘high priority lane’;*
- (j) *Decisions as to what to buy at what cost and disposal strategies;*
- (j) *The existence of any maladministration.*”

“2. Procurement of key healthcare equipment and supplies to the end-user in the period leading up to and during the pandemic. This will include the existence and effectiveness of procedures, processes and communication between the relevant bodies of the four nations in relation to procurement and the use made of mutual aid arrangements during the pandemic.”¹⁸

18. It is absolutely essential to the Inquiry’s investigations (and to its Terms of Reference) that it considers the operation of emergency procurement processes and procedures in practice. In order to do so, it will need to obtain evidence in relation to those contracts that were awarded, particularly high-value contracts on which the health and social care sector depended for essential medical supplies.
19. CBFFJ UK and NI CBFFJ now urge the Inquiry to revert to its original proposal for the investigation of contract case studies, and to consult meaningfully with Core Participants in relation to the approach to be taken and the selection of appropriate contracts (including contracts agreed through referrals from the ‘VIP Lane’).

¹⁸ Module 5 Provisional Outline of Scope, p.1, §§1-2, available at: https://covid19.public-inquiry.uk/wp-content/uploads/2023/10/24092125/2023-09-28-M5-FINAL-Provisional-Outline-of-Scope-as-approved-by-Chair-28_09_2023.pdf

Liaison with criminal investigations

20. The scope of M5 necessarily includes matters which are, have been or may in future be subject to criminal investigation. For example, there has been widespread public coverage of the criminal investigation by the NCA into Baroness Mone and PPE Medpro.
21. In submissions for the first M5 Preliminary Hearing, CBFFJ UK previously invited the Inquiry to set out its plans for liaison with relevant police forces/Chief Constables, the NCA and other relevant investigative bodies in respect of the criminal investigation of procurement-related offences occurring during the pandemic, and how the Inquiry proposes to manage disclosure with such investigations. It is apparent from updates that have been provided to Core Participants, that some such liaison has taken place, although information as to the terms of such liaison between the Inquiry and relevant investigatory bodies (for example, whether through an informal arrangement, a formalised memorandum of understanding or some other arrangement) and the approach taken to disclosure has not yet been provided.
22. CBFFJ's position is that the terms of s.2 of the 2005 Act mean that the scope of Module 5 should not be curtailed by the existence of parallel criminal investigations. Indeed, as set out in previous submissions, it is not uncommon for public inquiries to examine matters that are or maybe subject to criminal investigation, e.g. see, recently, the Grenfell Tower Inquiry and the Manchester Arena, and the ongoing Post Office Horizon IT Inquiry and the Thirlwall Inquiry (examining matters surrounding the crimes committed by Lucy Letby). The presence of concurrent investigations should not inhibit the Inquiry's investigations or prevent it from fulfilling its Terms of Reference.
23. In previous submissions for the first Preliminary Hearing, CBFFJ UK and NI CBFFJ raised that, where public inquiries are conducted in parallel with criminal investigations, or where such investigations are contemplated or possible, an issue may arise as to whether an undertaking is sought from the Attorney General (AG) by the Chair, either of his/her own volition, or following a request by a CP/potential witness.
24. We previously invited the Inquiry to provide an update on this issue, indicating the Inquiry's position and the reasons for it, in order that the issue could be aired in a public hearing and

resolved promptly not raised at later stage, with prejudicial effects on the viability of the Inquiry's hearings. No information has been provided to Core Participants as to whether such an undertaking has been sought or considered. On this basis, it is assumed that the Inquiry does not intend to seek such an Undertaking and confirmation should be provided to this effect.

25. For the avoidance of doubt, our position remains as articulated at the last Preliminary Hearing, namely that we would oppose any such request for an undertaking, for the reasons set out in previous submissions.

Expert witnesses

26. In light of documented issues with the quality of healthcare equipment supplied to frontline medical staff, we welcome CTI's indication at §23(g) of the Note that one of the themes identified for investigation in M5 is:

“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.”

27. In light of the importance of this issue, we invite the Inquiry to revisit the decision not to call expert evidence on the area of standards and regulatory framework for key healthcare equipment and supplies.¹⁹ It is submitted that Rule 9 requests of relevant regulators do not provide an independent or impartial basis upon to which to investigate this issue given their close role in matters under inquiry. The Inquiry is invited to consider the instruction of an appropriate expert to comment on this important area.

Family member witnesses

28. CBFFJ UK and NI CBFFJ members have relevant evidence to give in relation to the consequences and impact of difficulties in accessing appropriate medical equipment and

¹⁹ Module 5: Update to Core Participants dated 12th September 2024, §7.3

supplies. As such, we invite Rule 9 requests from the inquiry for an organisational and individual witness statements from family members particularly in light of the Inquiry's decision not to provide a full Every Story Matters report in this Module.

Timetable and witness list

29. CTI's Note indicates that the M5 team will circulate the Final List of Issues, a Provisional List of Witnesses and timetable following the second Preliminary Hearing. It is also indicated that the Inquiry does not intend to hold a further Preliminary Hearing prior to the commencement of public hearings in March 2025. We request that the Inquiry indicates that it intends to engage with CPs in relation to plans for the hearings and in particular regarding the selection of appropriate witnesses as early as possible.

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