

## THE UK COVID-19 INQUIRY

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### TRADES UNION CONGRESS SUBMISSIONS FOR THE PRELIMINARY HEARING IN MODULE 6 ON 5 FEBRUARY 2025

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#### Introduction

1. The Trades Union Congress ('TUC') makes submissions as to:
  - (a) Rule 9 requests;
  - (b) expert witnesses;
  - (c) the provisional list of issues; and,
  - (d) impact evidence at the hearings.

#### Rule 9 requests

2. The TUC asks that a Rule 9 request is made of the Health and Safety Executive ('HSE').
3. Issue 6 of the provisional list of issues is:
  6. *Changes to the regulatory inspection regime, including:*
    - a. *rationale behind the decision to cease, suspend or reduce in-person / physical inspections;*
    - b. *measures taken by the regulators to:*
      - i. *support the ASC;*
      - ii. *ensure the safety and care of recipients of care;*
    - c. *oversight of the ASC sector in the absence of physical inspections*
4. To that end, a Rule 9 request has been made of the Care Quality Commission ('CQC'). However, whilst the CQC is the regulator of the safety of those who receive care in adult social care, the regulator of worker safety (at least in respect of care homes providing nursing/medical care<sup>1</sup>) is

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<sup>1</sup> As explained by Richard Brunt of the HSE in module 3 (INQ000182615, para 7): "Responsibility for enforcing [Health and Safety at Work Act] is divided between the HSE and other regulators — principally, and most importantly for the purposes of the Inquiry, by the Health and Safety (Enforcing Authority) Regulations 1998 ("the Regulations"). Under the Regulations, Local Authorities are the enforcing authority for certain premises, dependent upon the main activity carried out there. This includes, for example, office activities, accommodation provision such as hotels, the sale of goods (shops), church worship and religious activities, and beauty treatments. Conversely, HSE is the enforcing authority for HSWA purposes over schools, prisons, courts, factories, farms, most construction sites, and hospitals (for example). In some cases, the Regulations lead to additional complexity — for example, HSE is the enforcing authority for a

the HSE. The HSE is an essential part of “*the regulatory inspection regime*” to which issue 6 refers. It plays a relevant and, indeed, important role in issues such as to the extent to which there are in-person inspections. Its remit as regulator for worker safety includes infection prevention and control (which necessarily impacts upon both those who provide and receive social care). The HSE’s guidance book on ‘Health and Safety in care homes’ includes a chapter on ‘hazardous substances, infections and disease, which includes guidance on infection prevention and control.<sup>2</sup> The twin and complementary roles mirror the roles of the CQC and HSE in health care. In module 3, the HSE gave written and oral evidence. The same approach should be taken in module 6.

5. The HSE generally took a ‘light touch’ in respect of the care sector, and that should be considered. At the request of UNISON, the Department of Health and Social Care agreed to work with the HSE to consider whether poor employment practices may have contributed to worker deaths (as explained in the TUC’s draft statement). As with health care, there were significant inadequacies with the reporting of care worker deaths to the HSE (as a requirement under RIDDOR). The HSE did carry out an investigation into the fatality of a staff member who had tested positive for Covid-19 at St Christopher’s Care Home in Northampton in January 2021. HSE’s letter to the care home in May 2021 identified several contraventions of health and safety law by virtue of failing to reduce the risk to employees of contracting coronavirus at work, citing inadequate arrangements in place for social distancing and cleaning in the workplace (again, see, further, the TUC’s draft statement).

### **Expert witnesses**

6. As the Inquiry has already heard, one of the significant challenges for pandemic response in the social care sector was its fragmented and uncoordinated structure. For good reason, the provisional list of issues identifies “*Structure ... of the ASC sector in each of the four nations immediately prior to the start of the pandemic and any subsequent key changes made during the Relevant Period.*”

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*care home where the main activity is nursing / medical care, but Local Authorities are the enforcing authority for care homes where the care being provided is residential as opposed to medical. HSE has developed guidance to assist in understanding the Regulations and which types of business fall under our enforcing authority which is available on our website (RGB/2 — INQ000101584).”*

<sup>2</sup> Available at <https://www.hse.gov.uk/pubns/priced/hsg220.pdf>

7. In advance of the preliminary hearing on 19 March 2024, CTI's Note indicated that the Inquiry had "*provisionally identified a number of areas where expert evidence is likely to assist*" (paragraph 33) and those included (paragraph 33(a)):

***Structure and capacity of the Adult Social Care Sector across the UK.*** *It is envisaged that this will include an outline of how the Care Sector is structured and funded and any key differences across the UK; the numbers and types of care homes and providers; and the workforce capacity at the start of and during the pandemic.*

8. Such a report is a critical area for expert evidence, and some observations were made on behalf of the TUC as to its necessary scope.<sup>3</sup>
9. It is of concern that there is no mention in CTI's Note for this hearing, or in the Module 6 update notes, as to expert evidence on structure and capacity of the Adult Social Care Sector. An urgent update is sought. If, in the event, the Inquiry has decided not to obtain expert evidence focused on structure and capacity of the Adult Social Care sector, that would be a matter of significant concern.

### **Provisional list of issues**

10. The provisional list of issues includes "*the understanding of the transmission risk presented by staff and the steps taken to address the same*" (issue 4(a)(iv)). The TUC invites confirmation that this will include consideration of:
- (a) Movement of staff between care homes as a factor in transmission. The issue was given some consideration in module 2 (and addressed in the TUC's module 2 written closing submissions at paragraphs 76 to 84: INQ000399530\_0026-0027).
  - (b) Financial support for self-isolation in the social care sector, including the effectiveness of the Infection Control Fund (noting that there may be some overlap with module 7). There is significant cause for concern that the Infection Control Fund transferred large amounts of public money to the care sector without achieving its central objective of paying care workers during periods of self-isolation. For example, many care home employers refused to take the money offered through the fund for fear that it would set a precedent and expectation of sick pay above the statutory minimum. A UNISON survey of social care members in July 2020 found that half of care workers were still to receive less than

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<sup>3</sup> See paragraph 12 of the TUC's written submission of 11 March 2024

£100 per week if they needed to shield or self-isolate. These issues are explained further in the TUC's draft statement.

### **Impact evidence at the hearings**

11. In module 3 the Inquiry heard directly from a number of 'frontline' workers. This occupied a proportionate amount of time but, in the TUC's view, was vital and important evidence. It was necessary both to acknowledge the sacrifice who worked in health care, and illuminated the practical problems in the provision of services during the pandemic. It illuminated and brought balance to the evidence. On several issues, the impression left by frontline workers and those in central government/management positions were in stark contrast (such as on questions of capacity and availability of PPE). Paragraph 15 of CTI's Note for this hearing would appear to suggest that this module will move away from that approach, and be limited to organisations describing impact. That is important but not sufficient. The sacrifice and importance of the frontline experience of those working in social care, is no less vital than those in health care.

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24<sup>th</sup> January 2025