

Wednesday, 5 February 2025

(10.29 am)

MS CAREY: My Lady, good morning. I hope you can see and hear me all right.

Opening Introductory remarks by THE CHAIR

LADY HALLETT: I can, thank you, Ms Carey.

Good morning, everyone, this is the second preliminary hearing for Module 6, the impact of the Covid-19 pandemic on the adult social care sector. In a moment, Ms Carey King's Counsel, Counsel to the Inquiry, will outline the submissions and the issues that I have to hear today.

I shall then hear submissions from eight Core Participants. I am conducting the hearing remotely. One of the Core Participant's advocates, Mr Pete Weatherby King's Counsel will also be attending remotely but all other participants and the Inquiry team are all present at the hearing centre at Dorland House.

Ms Carey.

Statement by LEAD COUNSEL TO THE INQUIRY FOR MODULE 6

MS CAREY: Thank you, my Lady. May I welcome all Core Participants who are present today, whether online or in person. I know many of them are known to you from your work in other modules, so forgive me for not introducing each one of them individually. Can I start, though,

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But, my Lady, there is no room for complacency, in my submission, and there remain a small number of recipients of Rule 9 requests where the Inquiry is becoming concerned at the slow progress of draft statements and, in particular, late requests for extensions to deadlines, especially where the deadline has already been extended.

The Inquiry appreciates that across all its modules the Inquiry has made a number of requests of the main government departments and certain key individuals. Given the centrality of some departments and ministers in the pandemic, that was perhaps inevitable, and the Inquiry understand that work needs to be prioritised and the modules that come before Module 6 will inevitably come first.

However, we cannot and do not ignore the importance of this evidence to this module, and the Inquiry has been working hard with the relevant legal teams to devise a workable and realistic plan for production of the statements and any accompanying documents.

So may I, through you, my Lady, at this stage, urge all material providers to redouble their efforts, whether that be providing draft or indeed final statements, to ensure that disclosure is made in good time.

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with a thank you to all Core Participants who provided written submissions in advance of today's hearing. And with your permission, my Lady, can we publish those after the hearing today. It may be that I address some of the matters raised in those submissions as we go through today's agenda.

So, turning to the agenda, the first item is Rule 9 requests and an update. Since the last preliminary hearing, which was in fact back in March of last year, Module 6 has, in my submission, made good progress in preparing for the public hearing this summer, not least in obtaining evidence pursuant to Rule 9.

As at today's date, Module 6 has issued 104 Rule 9 requests, from the relevant organisations and individuals, and that includes the major government departments and ministers, local government organisations, the regulators, the public health agencies, trade unions, and a wide range of interest groups, organisations and charities, representing those who both provide and, indeed, receive adult social care.

To date, 26 statements and one questionnaire response have already been disclosed, and there are a further 50 statements that have been received in draft and are in the process of being finalised and progressed for disclosure.

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I know that one of the Core Participants this morning asked you to impose a deadline by which the bulk of disclosure is made, but given the ongoing progress, and the fact that there is much hard work ongoing across this module and other modules, we would ask that you do not make such an order.

Indeed, if it assists those listening this morning, there are a number of draft and final statements that are due to be received by the end of February. And that includes from the Public Health Agency in Northern Ireland, DHSC, the Ministry of Housing, Communities and Local Government, and statements from the LGA and COSLA in Scotland.

And I know that the Inquiry legal team will of course be prioritising those for review so that disclosure is made as promptly as possible, and we thank all the material providers in advance for meeting those deadlines.

Given the number of Rule 9 requests already made, the Inquiry legal team considers that the majority of Rule 9 requests have now been sent. A number of Core Participants today have made helpful suggestions: in excess of 35 individuals or organisations have been suggested to whom Module 6 might send a Rule 9.

Some of the proposed recipients are, in fact,

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1 already preparing statements for the Inquiry, for
 2 example we understand that the Chief Social Worker in
 3 Northern Ireland is preparing the statement on behalf of
 4 the Department of Health in Northern Ireland. There has
 5 been a request that Jonathan Marron and Michelle Dyson
 6 provide statements on behalf of DHSC, and in fact they
 7 are already providing the draft statements. And there
 8 is one particular request that we -- Rule 9, the Health
 9 and Safety Executive, and indeed that Rule 9 has in fact
 10 now been drafted.

11 The additional requests are under active
 12 consideration, but it is likely that if further Rule 9s
 13 are to be sent, the number will be significantly fewer
 14 than 35.

15 May I give just one example: the Inquiry is asked to
 16 send Rule 9 requests to the relevant ombudsman in each
 17 country. In our submission, examining complaints of the
 18 ombudsman and/or how those complaints were handled is
 19 not a matter that is within the scope of Module 6. It
 20 runs the risk, in our submission, that individual cases
 21 and complaints may become the focus of any evidence that
 22 is provided, which would be contrary to the Inquiry's
 23 terms of reference, which expressly state that
 24 individual cases will not be considered in detail.

25 Further, in our submission, the concerns about the
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1 individual care home, but it's designed to obtain
 2 evidence from those on the ground, from which any common
 3 issues or themes might emerge.

4 The care homes have been selected by the Inquiry
 5 legal team and include care homes of varying sizes, who
 6 provide a range of services, which are located in
 7 a mixture of urban and rural settings, some which are
 8 state run, others run by the private sector. And they
 9 cover areas of the UK where there was both high and,
 10 indeed, low prevalence of Covid-19. In our submission,
 11 approaching this exercise in this way will provide you
 12 with a broad range of evidence from the care homes
 13 themselves and the impact of the pandemic on them.

14 Item 2 on the agenda deals with disclosure to Core
 15 Participants, and forgive me if this sounds like
 16 a shopping list of what we have done, or not yet done,
 17 but, to date, Module 6 has made eight tranches of
 18 disclosure, comprising 4,747 documents, including the
 19 witness statements and exhibits I referred to a moment
 20 ago. And to give those listening just a few examples of
 21 the disclosure made to date, it includes statements from
 22 organisations such as Dementia UK, members of the
 23 Disabled People's Organisations, the Welsh Government
 24 Care Forum Wales, the Older People's Commissioner for
 25 Wales. There is the results of the local government
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1 adult social care sector's response are already apparent
 2 in the evidence that has been disclosed to date, such
 3 that it is in fact not necessary to send Rule 9 requests
 4 to the ombudsman.

5 Can I turn to a discrete work stream and the
 6 approach that Module 6 is taking to gathering evidence
 7 from individual care and nursing homes.

8 By way of background to date, the Inquiry legal team
 9 has sent a number of Rule 9 requests to organisations
 10 that run or represent residential care and nursing
 11 homes, but, in addition, the Inquiry wishes to gather
 12 evidence from individuals who managed the care homes
 13 during the pandemic. And in order to do so, the Inquiry
 14 intends to issue a small number of Rule 9 requests,
 15 numbering no more than approximately 22 in total, to
 16 a selection of care homes from across the UK.

17 Now, my Lady, may I make it clear, this evidence is
 18 not intended to be representative of the issues faced by
 19 each and every care home, nor could it be. Nor is it
 20 a comparative exercise, and I must stress that. The
 21 sheer number of care homes across the UK and the breadth
 22 of care provided means that, in seeking to draw
 23 comparisons, it would be an impossible, if not a futile,
 24 task, and I should make it clear that the aim of this
 25 exercise is not to either praise or criticise any
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1 survey of its member local authorities in England and
 2 Wales, and the findings, for example, on capacity and/or
 3 resilience in the adult social care sector. There are
 4 references in those survey findings to the highly
 5 negative impact that the pandemic had on unpaid carers.

6 The results of the Scottish survey are expected in
 7 the very near future.

8 I know that the Northern Irish Covid Bereaved
 9 Families for Justice make reference in their submissions
 10 to the absence of a similar survey in Northern Ireland,
 11 and they are correct.

12 As my Lady is aware, the structure of health and
 13 social care is very different in Northern Ireland and,
 14 given the integrated system of health and social care,
 15 local councils have no role in the provision or
 16 commissioning of adult social care, and so could not
 17 assist in such a survey.

18 It's partially for that reason that Rule 9 requests
 19 were sent to the health and social care trusts in
 20 Northern Ireland, who are in fact the bodies responsible
 21 for providing adult social care services in their areas
 22 of operation.

23 Given the amount of disclosure that is anticipated
 24 to be forthcoming, certainly in the imminent future,
 25 there will be further tranches of disclosure in the
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1 coming weeks and months.

2 That disclosure brings me on to the third item on
3 the agenda, and expert evidence. Before Christmas, the
4 Inquiry disclosed draft expert reports in relation to
5 three particular areas: the impact of the pandemic on
6 end-of-life care, impact of the pandemic on those in
7 adult social care with dementia, and the impact upon
8 individuals with learning disabilities.

9 The Core Participants have provided their comments
10 on those reports and the Inquiry anticipates disclosing
11 the final version of the reports in the spring of this
12 year. But it may assist your Ladyship to have a brief
13 introduction to some of that expert evidence and the
14 matters contained in those draft reports.

15 The dementia expert includes reference in his report
16 to the fact that in 2019 there are approximately 885,000
17 people in the UK with the dementia, and that that was
18 expected to have reached 1 million by last year.

19 In terms of mortality, in the pandemic people with
20 dementia were disproportionately negatively affected.
21 To give just one example, over a quarter of those who
22 died of Covid in England and Wales between March and
23 June of 2020 had dementia. It was about 13,840 deaths
24 just in that few months period alone.

25 Professor Sube Banerjee's report examines the impact
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1 the report, is defined as people with life-threatening
2 illness and those at end of life, commonly considered to
3 be within the last year of their lives, and often to
4 those in the last months and weeks of their lives.

5 Importantly, the report notes that end-of-life care
6 is not just about pain relief and other pharmacological
7 treatments but is often about a more holistic approach,
8 aimed at achieving the best quality of life for those
9 patients and their families.

10 As Professor Katherine Sleeman and Professor Stephen
11 Barclay explain, palliative and end-of-life care
12 services are often interconnected across health and
13 social care and throughout all care settings, and so
14 their report not only examines palliative and end of
15 life care in care homes and that provided by domiciliary
16 social care providers in one's own home, but it does
17 include some information about the services outside the
18 scope of Module 6. So, for example, it does include
19 reference to care provided by general practitioners,
20 community nurses, palliative care specialists, and it
21 includes references to settings that are outside the
22 cope of Module 6, including care in hospices and the
23 community.

24 The inclusion of that information, although outside
25 of the scope, has been provided for important context,
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1 of the pandemic on the care and treatment of people with
2 dementia and their family carers, whether they were
3 receiving in their own home or whether they were
4 resident in a care home, and his report looks at the
5 impact of mental health outcomes and mortality rates,
6 and the impact of things like lockdown and visiting
7 restrictions on people with dementia and, indeed, the
8 impact of infection prevention and control measures on
9 people with dementia.

10 The second expert report is that prepared by
11 Professor Chris Hatton and Professor Richard Hastings,
12 and it examines the impact of the pandemic on
13 individuals with learning disabilities. That draft
14 report notes that people with learning disabilities were
15 more at risk of being infected, more like likely to be
16 hospitalised, and were at higher risk of dying from
17 Covid-19.

18 In addition, the pandemic negatively impacted family
19 carers, particularly those caring for adults with
20 profound and multiple learning disabilities and where
21 the impact of the withdrawal of support services was
22 most keenly felt.

23 The third expert report looks at palliative and
24 end-of-life care, the impact of the pandemic on those in
25 receipt of palliative care, which for the purposes of
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1 in our submission. But it should not be taken to mean
2 that the scope of Module 6 has been amended.

3 My Lady, I know that a number of Core Participants
4 are likely to ask you this morning to consider
5 instructing experts covering additional areas of
6 evidence, that includes a request that Module 6 obtain
7 expert evidence on the structure and capacity of the
8 care sector in each country. Now, you may recall that
9 at the first preliminary hearing that was an area of
10 expert evidence that the Inquiry itself was considering
11 but, in fact, it was not possible to identify a suitable
12 expert who could cover the matters the Inquiry was
13 interested in from a UK-wide perspective. Moreover, as
14 in fact the evidence gathering process has progressed,
15 evidence about the respective structures and capacity or
16 lack thereof is, in fact, contained in a number of
17 corporate witness statements and it's also contained in
18 evidence from organisations such as the King's Fund,
19 whose statement has been disclosed, and in statements
20 provided by the Nuffield Trust and Social Care Institute
21 for Excellence, or SCIE as they're often known, whose
22 draft statements are in the process of being finalised.

23 Across the combination of all of that evidence, it
24 is our submission that it is no longer necessary for you
25 to seek expert evidence on that topic.
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1 Other requests this morning are for you to seek
 2 expert evidence on the impact on people with physical
 3 impairments, people with sensory impairments and people
 4 with multiple or complex needs. Now, your Ladyship has
 5 already considered which conditions should be the
 6 subject of expert evidence and, doubtless, you could
 7 have picked many more or in fact differently but, in our
 8 submission, there comes a point where it's unrealistic
 9 and disproportionate to seek additional expert reports,
 10 and so this may be one of those difficult decisions
 11 where you decline this request. That same reasoning may
 12 apply to the requests made by the DPO Core Participant
 13 group that you consider the impact of the pandemic on
 14 people with cerebral palsy and autism.

15 There is a request that you consider instructing
 16 an expert in mental health to speak to the elevated risk
 17 of death among people with severe mental illness and, in
 18 particular, elevated risk of death for Black Caribbean
 19 and Black African people. In our submission, whilst no
 20 doubt important, you may consider that request lacks
 21 a sufficient focus on the scope of Module 6.

22 I know that you are also going to be asked this
 23 morning to consider an expert to consider the impact of
 24 racism, ageism and sexism as it relates to Module 6 and,
 25 in particular, an expert to speak to the

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1 list of issues itself will be kept under review and
 2 an updated list will be circulated to Core Participants
 3 in due course.

4 The John's Campaign Core Participant group submit
 5 that Module 6 should examine the role played by insurers
 6 in adult social care sector, which may have led care
 7 homes to take what they describe as a "risk-averse
 8 approach". For example, in relation to visits, it is
 9 said that, even where leeway was provided by government
 10 guidance, some care homes took a more restrictive
 11 approach to visiting as a result of the insurer's
 12 stance.

13 Now, some of the statements obtained by Module 6
 14 indeed refer to the insurer's position and so, to that
 15 extent, Module 6 is aware of this issue but, in our
 16 submission, it is beyond the scope of this module to
 17 seek additional evidence on this topic nor would it be
 18 proportionate to do so.

19 In relation to the list of issues, may I just say
 20 something about the extent to which pre-pandemic
 21 decisions and structure and capacity are being covered
 22 by Module 6. As you know, the Module 6 scope sets out
 23 that this is an examination into the structure of the
 24 care sector, the key bodies involved in the UK and
 25 devolved administrations at the start of and during the

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1 disproportionate impact of the pandemic on female
 2 carers, both unpaid and paid.

3 I know that you will recall from Module 2 that you
 4 received evidence from experts in relation to aging and
 5 ethnicity from Professor Nazroo, and indeed gender from
 6 Dr Clare Wenham and, in our submission, that evidence,
 7 coupled with the evidence gathered across Module 6,
 8 including the expert evidence that's being obtained, it
 9 is not necessary for you to seek additional expert
 10 evidence in this area.

11 May I turn, please, to item 4 on the agenda, which
 12 is the provisional list of issues.

13 In common with other modules, the Module 6 legal
 14 team has provided Core Participants with a list of
 15 issues, the list is provisional, it is not intended to
 16 be exhaustive, prescriptive, or indeed final.
 17 Inevitably, someone issues may come into greater or
 18 lesser focus as the module progresses, some may drop
 19 away, other issues may emerge. So it follows that not
 20 all of the areas will be addressed to the same degree or
 21 explored in the same way at the Inquiry's public
 22 hearing.

23 We are grateful for the suggested additions and
 24 amendments made by some of the Core Participants and
 25 will consider those as disclosure progresses and the

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1 pandemic. This includes, and I quote, "staffing levels
 2 and bed capacity immediately prior to the pandemic".

3 It is submitted on behalf of the Frontline Migrant
 4 Health Care Workers Group that Module 6 should look at
 5 the extent to which pre-existing issues, such as
 6 underfunding, understaffing, unavailability of sick pay,
 7 overrepresentation of insecure migrant workers should
 8 feature in Module 6 and, my Lady, you have already heard
 9 evidence about some of those matters and, indeed,
 10 a number of the statements provided to Module 6 include
 11 further reference to those concerns. Doubtless, you
 12 will take that background into account but there is, in
 13 our submission, a limit to the extent to which you need
 14 to further examine these matters.

15 As you have said before on a number of occasions,
 16 including on your ruling in this module, following the
 17 first preliminary hearing, it is not within your terms
 18 of reference to seek to address these long-standing and
 19 deep-rooted issues and, in our submission, the focus of
 20 this module's work must firmly remain on the impact of
 21 the pandemic itself.

22 My Lady, a brief update in relation to the listening
 23 exercise Every Story Matters. Work on Every Story
 24 Matters continues. There are thousands of care
 25 experiences being analysed for the Module 6 record and

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1 it is anticipated that that will be disclosed to Core
 2 Participants in the spring of this year.

3 Finally, my Lady, a few words from me on the public
 4 hearing, and a word at the start about Module 6 approach
 5 to calling impact evidence.

6 As with the Inquiry's other modules, Module 6 will
 7 commence with an impact video. In addition to the ESM
 8 record, the expert reports and the surveys conducted on
 9 behalf of the Inquiry, many of the Rule 9 requests have
 10 asked the recipients for evidence of the impact of the
 11 pandemic on those in receipt and indeed providing adult
 12 social care. Some of that evidence will be called at
 13 the public hearings along with some impact evidence from
 14 each of the four Covid-19 bereaved groups.

15 In addition, the Inquiry will hear some impact
 16 evidence from people who provided adult social care, and
 17 the Inquiry wishes to explore calling a witness who was
 18 in receipt of social care. I am hopeful that with the
 19 assistance of the Inquiry's policy and research team, we
 20 are now actively pursuing the option of trying to
 21 identify a witness who was in receipt of social care,
 22 and, in particular, to call evidence from a witness who
 23 can attest firsthand to the impact of the pandemic on
 24 people with disabilities.

25 The hearing itself will commence on Monday, 30 June,
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1 to circulate a provisional list of witnesses and will
 2 invite Core Participants' submissions on those lists.

3 There will be, as I said a moment ago, a final draft
 4 of the list of issues and the monthly update notes
 5 provided by the Solicitor to the Inquiry will provide
 6 detail about the process for making written and oral
 7 submissions, the process for evidence proposals, and the
 8 Rule 10 procedure to be adopted by Module 6.

9 So my Lady, that concludes all the matters
 10 that I wish to raise. Can I invite you now to hear
 11 submissions from Mr Weatherby King's Counsel on behalf
 12 of Covid-19 Bereaved Families for Justice.

13 **LADY HALLETT:** Thank you very much indeed, Ms Carey.
 14 Mr Weatherby.

15 **Submissions on behalf of Covid-19 Bereaved Families for
 16 Justice by MR WEATHERBY KC**

17 **MR WEATHERBY:** Thank you very much.

18 As set out in the Covid Bereaved Families for
 19 Justice UK Rule 9 statement of Jean Adamson, Module 6 is
 20 an extremely important module for the bereaved families.
 21 Many of our families lost loved ones who were either
 22 receiving residential or domiciliary care or were
 23 working in the care sector itself. They tell
 24 heartbreaking stories of the problems of receiving
 25 adequate care during the pandemic and not having been
 19

1 conclude on 31 July of 2025. I know that those
 2 representing the Covid Bereaved Families for Justice and
 3 indeed Northern Irish Covid Bereaved Families for
 4 Justice submit that you should extend the hearing time
 5 by an additional five weeks to allow what they submit
 6 should be sufficient time for all the issues to be
 7 examined and to allay any fears that the care sector
 8 might be treated with lesser priority than the NHS.

9 In our submission, even if it were possible to
 10 extend the hearing time, which it is not given the
 11 programme of work you have in 2025, it is not necessary
 12 to do so, as we submit that in the current hearing time
 13 there is sufficient time for you to consider all the
 14 matters within scope, not least because of the knowledge
 15 you have gained and the evidence you've heard from the
 16 other modules, which will enable you to bring a real
 17 focus, in our submission, to the key decisions affecting
 18 the social care sector.

19 My Lady, the Inquiry does not currently anticipate
 20 holding a further preliminary hearing for Module 6
 21 before the start of public hearings. However, I know
 22 you will keep that under review and will inform all Core
 23 Participants if you consider a further preliminary
 24 hearing necessary.

25 Preparation for those hearings continues. We intend
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1 able to visit loved ones.

2 Many of our bereaved families work in social care
 3 and many more are family carers. They come from all
 4 four nations and jurisdictions of the UK.

5 I will turn to each point on the agenda. Where we
 6 made repeat submissions on issues common to other
 7 modules, or where we know other advocates will address
 8 similar points we can adopt, I will do so, and I will
 9 move on swiftly.

10 So Rule 9 statements and evidence gathering. We are
 11 grateful for the updates and we note the number of
 12 Rule 9 requests for statements that have been sent out.
 13 As Ms Carey King's Counsel referred to earlier, in our
 14 written submissions we made submissions, which we hope
 15 were helpful, to a limited number of further witnesses
 16 whom we considered should be requested to provide
 17 statements. Obviously I'm not going to go through those
 18 now, but we have been and remain keen to liaise with
 19 your team about them and we are grateful that it's been
 20 indicated that those submissions have been and are being
 21 considered.

22 I emphasise we are not, of course, at this stage
 23 asking for those witnesses to be called, just that they
 24 appear to be able to provide evidence that isn't covered
 25 elsewhere.

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1 I'll just give one example, because I'm aware that
 2 not everybody listening will have read the written
 3 submissions, but we have, for example, suggested
 4 Professor Christina Pagel, from Independent SAGE.
 5 Amongst other matters, we know that she can provide
 6 evidence of how the care sectors of a number of other
 7 European countries fared, which might assist the
 8 analysis of our own system, but more specifically it
 9 might help inform recommendations from this module.
 10 So we are reassured by what's been said by Ms Carey
 11 this morning generally, and we look forward to liaising
 12 further about this issue.

13 We raise a particular concern that the devolved
 14 administrations are covered properly. Again, by way of
 15 example, the Age UK witness, Caroline Abrahams, notes
 16 that her organisation covers England and matters
 17 reserved to the UK centrally, but she indicates that
 18 colleagues from Wales, Scotland and Northern Ireland are
 19 better able to deal with their jurisdictions, and so we
 20 propose that the Inquiry should at least get Rule 9
 21 statements from the age organisation in each of the
 22 three devolved administrations.

23 No doubt those requests can be tailored to limit
 24 duplication with Caroline Abrahams's, and obtaining the
 25 statements doesn't necessarily mean that they will need
 21

1 and service user organisations and family members too.
 2 The Inquiry will only get one perspective if it
 3 doesn't do that, which may be worse than not doing it at
 4 all, because it could be inadvertently misleading. And
 5 obtaining only the providers' view might illicit
 6 a partisan and institutionally defensive position,
 7 rather than one which truly does give an "on the ground"
 8 experience.

9 We fully understand the limitations of this sort of
 10 evidence, as noted by Ms Carey. Care home and care
 11 sector providers are even more disparate in nature than
 12 hospitals, and Ms Carey has referred to some of the
 13 characteristics of that: size and purpose, residential,
 14 nursing and care homes, domiciliary providers. And we
 15 would add that there are different purposes to those
 16 that support older people with semi-independent living,
 17 those caring with people with dementia or those with
 18 learning disabilities, and then, in addition to that,
 19 the respite and recuperation care.

20 And, of course, there are four jurisdictions, and
 21 private and public sectors. So truly a wide range of
 22 different providers and different sectors and locations.

23 From the evidence from our own families, we're
 24 acutely aware that some of the care facilities and
 25 providers performed to the highest possible standard,
 23

1 to be called, of course.

2 I note that, on the subject of Rule 9s, Ms Campbell
 3 King's Counsel is going to make submissions specific to
 4 Northern Ireland, and also, importantly, regarding
 5 migrant workers. So I'm going to leave that, with
 6 respect, to her. And knowing what she's going to say,
 7 we adopt those submissions in advance and underline the
 8 importance of them.

9 Can I turn to the evidence that's been described as
 10 "on the ground"? And again, I note the helpful comments
 11 of Ms Carey this morning regarding evidence from
 12 individual care homes, and that's dealt with in
 13 paragraph 5 of the CT1 note. And the reference is made
 14 to the sending of Rule 9s to a random selection of care
 15 homes, and I quote, "designed to obtain evidence from
 16 those 'on the ground'", in a way that we took to be
 17 similar to the spotlight approach in terms of hospitals.

18 We absolutely agree it's a good idea to obtain such
 19 example evidence from residential care and nursing
 20 homes. We would ask that it's extended to domiciliary
 21 care providers also.

22 Now, we've had the experience of Module 3 and the
 23 approach taken there, we would urge the Inquiry not to
 24 rely solely on the care home owners or operators, as
 25 appears to be the intention, but to engage with staff
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1 and we set that out in paragraph 13 of our written
 2 submissions. But we are also acutely aware that others
 3 didn't.

4 And if the selection of care homes is at random,
 5 then that may lead, inadvertently, to a picture which
 6 isn't as clear as it might be. And therefore, we
 7 respectfully ask that there's a liaison between your
 8 team and the CPs as to exactly which providers are
 9 picked, so that there can be a representative sample.

10 Now, Ms Carey has added to what's been said in
 11 writing in what she said this morning, and it appears,
 12 and we are reassured, that there has been thinking along
 13 these lines already. We'd be keen to assist with that.

14 As we've said, being truly representative is
 15 impossible within the capacity of the Inquiry, but
 16 designing into the exercise a spread of different
 17 experience is essential, and we respectfully assert that
 18 we have relevant import into how to achieve that.

19 So, in our view, the Inquiry should liaise with CPs
 20 to ensure the diversity of the example of spotlighted
 21 facilities to achieve a spread, even though not
 22 a representative sample, of care homes for the reasons
 23 that Ms Carey has correctly already referred to.

24 Time is short for this to be done, but there's no
 25 reason why this type of approach can't be taken if acted
 24

1 on expeditiously. We would respectfully say that a list
2 should be finalised, narrative or position statements
3 should be obtained from each, followed by very targeted
4 Rule 9 requests to each stakeholder, and those
5 stakeholders should include providers, staff and users.

6 Disclosure. We've highlighted our concerns
7 regarding disclosure, and we've listened carefully this
8 morning to Ms Carey. We fully understand the Inquiry is
9 moving at pace. We understand that disclosure will
10 continue throughout, even up to and beyond the start of
11 hearings. However, it is hugely important to everyone
12 that production of material is made to the Inquiry in
13 proper time for it to be worked and acted upon, but
14 also, in time for disclosure to Core Participants. The
15 later material is produced to the Inquiry, the greater
16 the chance of things being missed. The later it's
17 disclosed to Core Participants, the less effective their
18 participation can be.

19 I know that is stating the obvious, but it does bear
20 repeating.

21 We note that, in this Inquiry, there have been times
22 when material has been produced late and, again,
23 Ms Carey has adverted to that this morning, and we
24 understand that providers are under pressure from
25 multiple module requests. We're not unsympathetic, but

25

1 Inquiry can work back and use its considerable powers to
2 require timely production of evidence, and only by doing
3 so can we ensure that our families can effectively
4 participate.

5 Just finally on disclosure, one specific point, and
6 that's the local government surveys and the lack of such
7 evidence from Northern Ireland. We note what Ms Carey
8 has said and, once again, we know that Ms Campbell is
9 going to address this, and we adopt what she is going to
10 say in that regard.

11 Also, with respect to the local government surveys,
12 we repeat what we said about the example evidence: that
13 it's essential that the Inquiry seeks out evidence of
14 staff and service users, as well as the perspective of
15 provider and local authority.

16 Experts. We note the disclosure of the three expert
17 reports, which has been very helpful. We provided our
18 written observations on those, which we trust will be of
19 assistance to the Inquiry.

20 In our written submissions we've raised issues of
21 discrimination as they apply to Module 6 issues. They
22 are as important, as issues in Module 6, as in any other
23 module -- the issues of structural and institutional
24 racism, affect the care of individuals and also staff.

25 The disproportionate impact applies in Module 6 as in

27

1 processes take as long as they're allowed to take. For
2 an Inquiry as important as this one, resources must be
3 made available, particularly within government
4 departments and state agencies. Furthermore, the longer
5 evidence gathering takes, the more expensive the
6 exercise, because delay reduces efficiency.

7 The consequences of late production to the Inquiry
8 is late disclosure from the Inquiry to those who have
9 a right not just to take part but to effective
10 participation. With a large amount of disclosure made
11 close to hearing dates, that makes things much more
12 difficult. The problem is not confined to this module
13 or, indeed, to this Inquiry, as we've set out in our
14 written submissions with the example of the CQC at
15 paragraph 15.

16 Referring to this, Ms Carey has helpfully indicated
17 that the Inquiry is aware of these issues but we do note
18 that, as of today, we've received only 26 witness
19 statements, for example, which obviously are a key part
20 of disclosure. So, as in other modules, we do repeat
21 the submission that we've made before: that the Inquiry
22 should set a date, not a deadline, but a date, and we've
23 suggested two months prior to the start of the hearings,
24 by which it intends to complete the substantial bulk of
25 disclosure to Core Participants. By doing so, the

26

1 other modules.

2 We note the earlier evidence and the fact that this
3 module, of course, can rely on the early evidence
4 relating to structural and institutional discrimination
5 but, given the specific issues of Module 6, at least the
6 Inquiry, in our submission, should seek addendum reports
7 which speak to those specific issues in respect of the
8 issues under Module 6.

9 Ms Campbell is going to address you on the need to
10 commission an expert on the disproportionate impact of
11 the pandemic on female carers, both paid and unpaid, and
12 again, we adopt what she will say about that.

13 Respectfully, we say that this is a significant lacuna
14 in the evidence regarding this issue. We have also
15 raised, as Ms Carey has noted, the discrete issue of the
16 impact of the pandemic on those with mental ill health,
17 and we pick up the comments that were initially made by
18 CTI prior to the first preliminary hearing in their
19 written note for that, and we have, in fact, put forward
20 a suggested expert who can deal with the effects of
21 mental ill health, and also the intersection evidence of
22 mental health with black Caribbean and black African
23 people, which is a particular concern.

24 Finally, just can I piggyback onto the issues of
25 experts the issues of language. Our families have

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1 raised with us specific concerns, which we've addressed
 2 at paragraph 25 of our written submissions, a number of
 3 families have raised an issue with the use of the term
 4 "carer burden", which has appeared in some of the
 5 disclosed material. For obvious reasons, perhaps and
 6 particularly with those bereaved, there's a strong
 7 feeling that the care of their loved ones should not be
 8 seen as a burden. "The impact of caring" would be
 9 a more appropriate phrase and, similarly, whilst on the
 10 same language, we'd urge the Inquiry to encourage
 11 witnesses to avoid terms such as "suffering from
 12 dementia", and to use more neutral terms, simply "people
 13 with dementia" would be more appropriate. Language is
 14 obviously important.

15 The list of issues we've dealt with at paragraph 26
 16 of our submissions. It's a simple point, I hope. The
 17 outline of scope on the list of issues includes the
 18 structure of the care worker, as Ms Carey has said,
 19 including staffing and capacity, at the outset of the
 20 pandemic and, we say, by implication, planning. But the
 21 list of issues refers to the relevant period being the
 22 1 March onwards. That would appear to downplay or
 23 indicate that there won't be evidence relating to what
 24 occurred in January or February 2020.

25 As we said in writing, the position at 1 January is
 29

1 Social Care in the DHSC for the four years prior to the
 2 pandemic, and there was no adequate pandemic planning
 3 for the care sector or for specific issues, such as PPE
 4 and IPC.

5 That's why it's so important to us that the Inquiry
 6 looks at evidence right from the outset. Shockingly,
 7 finally on this topic, it appears that the adult social
 8 care sector is in little better shape to respond to the
 9 next pandemic five years on and it's, of course, vital
 10 that the Inquiry meets those key points for the purposes
 11 of recommendations.

12 Every Story Matters, I'm not going to repeat the
 13 same submissions we've made a number of times, save that
 14 I want to note two things: first of all, that the
 15 Inquiry has now had four modules in which it has heard
 16 the accounts of bereaved family members and it can be in
 17 no doubt as to how powerful that evidence is, adduced in
 18 such a way; and, secondly, the issues of care in
 19 Module 6 are particularly relevant for so many of our
 20 families. So to those ends, we submit that the Inquiry
 21 should call a greater number of bereaved family members
 22 who have different accounts to tell of their experiences
 23 of care during the pandemic. As we've done in other
 24 modules, we'll submit a schedule which we hope will be
 25 of assistance to the Inquiry.

31

1 hugely important but, whatever you decide the state of
 2 the social care sector at that point, both January and
 3 February were crucial months for the genesis of the
 4 emergency response, both by the UK and the devolved
 5 administrations, by local authorities, by care
 6 providers. We've set out what the key issues were
 7 during that initial period in our written submissions:
 8 the urgent optimisation of capacity, planning for
 9 widespread testing, PPE procurement and distribution,
 10 isolation facilities, IPC guidance, addressing the
 11 movement of staff, clinicians, and the approach to
 12 visitors and visitation. All of this applies to
 13 residential facilities of all forms but also to
 14 domiciliary care.

15 Neglect of the care sector is a well-known feature
 16 and we've cited in the written submissions, from the
 17 disclosure itself that we've received so far, no less
 18 than eight organisations and institutions who have
 19 spoken to this issue. So the months January and
 20 February were key to how the previous neglect of the
 21 care sector became exposed and what was done about it.

22 We pointed out in the Rule 9 statement that the
 23 Health Secretary, Matt Hancock, didn't even know how
 24 many care homes there were in England, even by
 25 March 2020. There was no Director General of Adult
 30

1 Finally, in respect of hearings, again, we have made
 2 similar submissions in other modules, so I'll be brief.
 3 From the outset, we've urged the Inquiry to expedite its
 4 processes and complete its task as soon as reasonably
 5 possible. We respectfully commend it for moving swiftly
 6 from one module to the next. However, there must be
 7 a balance. Module 6 is currently listed for four weeks,
 8 during which we anticipate there will be 17 days for the
 9 hearing of evidence. That compares to 37 days of
 10 evidence in Module 3, health care and we submit,
 11 although they're very different modules, they are
 12 broadly comparable.

13 I don't repeat what we've said in writing but we
 14 have raised the fact that there are four systems across
 15 four nations and jurisdictions. There are numerous
 16 bodies involved across the UK, the devolved
 17 administrations, at local authority level. Secondly,
 18 there is a proliferation of guidance. Thirdly, there is
 19 the importance of treating the care sector as
 20 importantly as the health care systems.

21 So, in summary, we submit that the Inquiry should
 22 consider extending the time for the hearing of evidence.
 23 We fully understand the response that Ms Carey has given
 24 this morning, we do understand the need for any such
 25 extension to be proportionate but we would respectfully
 32

1 ask you to think again about whether this a module that
 2 can be properly dealt with in 17 days of evidence.
 3 My Lady, those are our submissions, unless there is
 4 anything I can assist you with further.
 5 **LADY HALLETT:** No. Thank you very much for your help,
 6 Mr Weatherby.
 7 Ms Campbell?
 8 **Submissions on behalf of Northern Ireland Covid-19 Bereaved**
 9 **Families for Justice by MS CAMPBELL KC**
 10 **MS CAMPBELL:** Thank you, my Lady. I hope you can see and
 11 hear me.
 12 Can you hear me?
 13 **LADY HALLETT:** Distantly.
 14 **MS CAMPBELL:** Shall I move the microphone. Does that help?
 15 Shall I get started and see how we go?
 16 **LADY HALLETT:** Yes. Thank you.
 17 **MS CAMPBELL:** Thank you.
 18 My Lady, good morning. Can I start by adopting the
 19 submissions that Mr Weatherby has just made on behalf of
 20 the UK Covid Bereaved Families for Justice. As ever, we
 21 are grateful to him for the issues that he has advanced
 22 on our behalf and jointly.
 23 My Lady, on behalf of the Northern Ireland Covid
 24 Bereaved, you really don't need to hear from me about
 25 the importance of this module to the Northern Irish

33

1 care, domiciliary care, residential or nursing care, or
 2 care at home from family and friends, really matters in
 3 Northern Ireland. So determined are we that our loved
 4 ones receive the highest possible standard of care, that
 5 as a society, you know that we are prepared to shoulder
 6 80% of the responsibility for it directly upon unpaid
 7 shoulders.
 8 My Lady, we didn't need a pandemic to know that the
 9 Northern Ireland care sector was failing those that
 10 needed it. Instead, when the pandemic did arrive, you
 11 have heard, and will continue to hear, that people
 12 instinctively knew that reliance on the adult care
 13 sector, far from safeguarding their loved ones,
 14 increased their risk and vulnerability. That was true
 15 at every stage of the pandemic, from early 2020, when
 16 Brenda Doherty's mother, Ruth, passed away in a care
 17 home in March; for the brothers, James and
 18 Robbie Gallagher, residents of the same care home who
 19 contracted Covid in summer 2020; for William Creen who
 20 was housebound and reliant on domiciliary care and yet
 21 caught Covid in February 2021; for Raymond McAleese, who
 22 lived with Down syndrome and died from Covid that he
 23 contracted in the residential home in which he lived in
 24 December 2021.
 25 There are too many more families who did everything

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1 Covid bereaved because you have heard it directly from
 2 so many in our group on more than one occasion.
 3 You know, because you have heard it, that providing
 4 a high standard of care, be it social care, residential
 5 care, nursing care, domiciliary care or care from family
 6 and friends --
 7 **LADY HALLETT:** I can't hear you at all at the moment.
 8 **MS CAMPBELL:** Well, we've got the microphone working here.
 9 Can you hear me? No.
 10 **MS CAREY:** I don't know if your Ladyship is going to hear me
 11 speaking. You can hear me.
 12 **LADY HALLETT:** I can hear you.
 13 **MS CAREY:** Would it be sensible for Ms Campbell perhaps to
 14 stand where I am, if we can't remedy the problem? Would
 15 you just give us one moment to rearrange ourselves?
 16 Thank you very much.
 17 **MS CAMPBELL:** Can you hear me now?
 18 **LADY HALLETT:** I can, thank you.
 19 **MS CAMPBELL:** My Lady, I'll start again by saying that you
 20 don't need to hear from me about the importance of
 21 Module 6 to the Northern Irish Covid bereaved because
 22 you have so often spoken to members of our group who
 23 have reinforced that to you, and you also know from
 24 speaking to members of our group that providing the
 25 highest possible standard of care, whether it be social

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1 they could to navigate the broken and fragmented adult
 2 social care system, only to finding them and their loved
 3 ones powerless and trapped in a system that was
 4 overwhelmed.
 5 My Lady, it's important that I acknowledge that the
 6 responsibility to protect the vulnerable so-called
 7 service users weighed heavily on many care home staff
 8 and domiciliary staff and others, and we support the
 9 submissions that you will hear this morning and will
 10 read in writing from all of those Core Participants who
 11 urge you to hear a range of voices from frontline staff,
 12 including from frontline staff in Northern Ireland. If
 13 you look, you will find examples of clear heroism and
 14 real compassion from the staff who cared for those
 15 reliant on social care and who supported their families
 16 beyond the call of duty.
 17 But you will also find too many examples of
 18 isolation, neglect, disempowerment, overreliance on
 19 medication, misapplication of DNACPRs and a failure to
 20 consider the catastrophic consequences of hastily made
 21 decisions about hospital discharge.
 22 You've heard the beginnings of that evidence from
 23 Marion Reynolds in Module 2C, from Eddie Lynch, the
 24 Commissioner for Older People of Northern Ireland, also
 25 in Module 2C, but we urge you to hear it very much from

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1 a Northern Irish perspective in this module also, which
2 really brings me to my first substantive submission.
3 We acknowledge that the Inquiry has sought evidence
4 from a range of individuals and agencies in the north
5 and we respectfully suggest that those requests do not
6 yet go far enough. It is welcome news this morning to
7 hear from Ms Carey that the Chief Social Worker, from
8 whom the Inquiry heard Professor McArdle explain in
9 Module 3, worked closely on issues around guidance and
10 safeguarding, and it's welcome to know that a statement
11 will be received.

12 We echo Mr Weatherby's submissions that you've just
13 heard in relation to approaching Age NI directly, rather
14 than reliant on the UK, if you like, umbrella
15 organisation. We note and support the submission from
16 the Disabled People's Organisations to obtain evidence
17 from the Centre for Independent Living in Northern
18 Ireland, who will doubtless be in a position to assist
19 from their unique perspective. But, my Lady, it will be
20 important that the Northern Ireland Rule 9 statements
21 properly reflect that the very significant proportion,
22 particularly of registered care homes in
23 Northern Ireland, are privately managed.

24 Now, we don't have the Rule 9 statements that have
25 been issued. We anticipate that, to some extent, the

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1 You have heard, and I know you found it
2 disconcerting, my Lady, that there is a real lack of
3 data collection in Northern Ireland, particularly when
4 it comes to the position of black, Asian and Minority
5 Ethnic community members and our migrant community. And
6 there is, therefore, a difficulty in analysing --
7 firstly, in identifying, and, secondly, analysing --
8 their experiences during the pandemic.

9 We know that our care sector relies heavily on care
10 workers from our migrant communities, but the lack of
11 available or easily accessible data does not preclude
12 this Inquiry from really trying, and trying hard, to
13 capture their voices and experiences, and we urge you to
14 do so to seek out that evidence.

15 There are organisations who can assist, the Migrant
16 Centre Northern Ireland, for example, is one, and we can
17 assist in identifying others, but not hearing adequate
18 voices from migrant workers and, in particular, migrant
19 workers from Northern Ireland, at any point in this
20 Inquiry would leave us all the poorer, and in Module 6,
21 perhaps more than any other module, their experience
22 matters, and again, we are ready to assist.

23 My Lady, my third request is relating to expert
24 evidence, and I won't repeat the statistics quoted at
25 paragraph 6 of our joint submission, some of which are

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1 fact that such a large proportion, 90% of privately
2 managed, will be addressed within them. But, in real
3 terms, the privatisation of the adult social care sector
4 means that, for the most part, our loved ones in
5 reinsurance care are also in profit-making businesses.

6 There are some very large providers in Northern
7 Ireland who run multiple care homes and we invite the
8 Inquiry to consider the consequences, both positive and
9 negative, of that in the context of a pandemic.

10 Some of those privately-operated care homes, in the
11 experience of our client group, appeared to develop and
12 follow their own guidance or frameworks, despite all of
13 the engagement and government assistance they received.

14 We will, of course, consider with care the
15 disclosure still to come, including that from the
16 respective trusts, which is a welcome alternative to the
17 results, for example, of the local government surveys in
18 England but, if the Inquiry hasn't already, it should
19 consider approaching some of the smaller and larger
20 private providers in the sector in Northern Ireland and
21 we, of course, are in a position to assist.

22 My Lady, my second, albeit related request, is to
23 focus on the position of black, Asian and minority
24 ethnic migrant workers, particularly in Northern
25 Ireland.

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1 truly shocking.

2 You heard evidence in Module 4, which has just
3 finished, that there were an estimated 220,000 unpaid
4 carers in Northern Ireland. To put it another way, one
5 in eight people in the north has unpaid and unregistered
6 caring responsibilities, saving the Department of Health
7 a colossal 80% of its entire annual budget.

8 And my Lady, I anticipate that you know, and I know,
9 and the Northern Ireland Covid Bereaved know, that the
10 very significant majority of those 220,000 carers are
11 women. Wives, mothers, daughters, sisters, nieces.

12 We have listened carefully, of course, to Ms Carey's
13 submissions to you this morning, but we nonetheless urge
14 you to obtain expert evidence on the disproportionate
15 impact of the pandemic on women carers of all
16 descriptions.

17 This is not, we submit, to use Ms Carey's words,
18 a disproportionate or unrealistic request, given that we
19 have, of course until July.

20 You may consider that you already have an expert,
21 and inviting her to further contribute her expertise to
22 this module is an important and indeed proportionate
23 request.

24 The first paragraph of your draft outline of scope
25 for Module 6 reflects your undertaking to consider

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1 firstly the impact of the pandemic on people's
2 experiences of the care sector, focusing on recipients
3 of care and their loved ones and those working within
4 the care sector, and, I quote, it will include
5 "consideration of unequal impact" upon them.

6 This is a very clear area of unequal impact. And in
7 furtherance, therefore, of your aim in your outline of
8 scope, we urge you to really build upon the green shoots
9 of evidence that have emerged in other modules, that the
10 disproportionate responsibility borne by women in the
11 care sector, both paid and unpaid, exacerbates gender
12 inequality and amounts to discrimination against women.

13 And that discrimination, we know, impacts in real
14 time: those who work in undervalued and low-paid jobs,
15 those who give up employed work or reduce their hours to
16 plug a gap in care that their loved ones needs but
17 otherwise cannot access. It has long-term consequences
18 on women's education, career and employment
19 opportunities, pension contributions, and their health,
20 and it is not unique to the experiences of women in
21 Northern Ireland.

22 Although the value of unpaid work has grown
23 exponentially in Northern Ireland over the last decade,
24 there has been a sharp upward trend also in England and
25 in Wales and, we anticipate, Scotland too. And

41

1 consideration to the concerns that are raised at this
2 stage., because they arise not out of a desire to add to
3 the work of your Inquiry, which we know is massive, but
4 to enhance the evidence of this module by ensuring that,
5 so far as possible, you receive a wide and adequately
6 representative picture, and therefore, the
7 recommendations that you will ultimately make are well
8 founded.

9 And finally my Lady, on the subject of
10 representative evidence, we of course endorse the
11 concerns about the length of Module 6 as we also
12 recognise the pressures that are upon this Inquiry. We
13 would, of course, like more time to consider the
14 importance of the issues before you in this module, but,
15 anticipating that that may not be possible, on behalf of
16 the Northern Ireland Covid Bereaved, may we push for
17 a proportionate amount of time to be given firstly to
18 the experiences of the bereaved, of patient groups, of
19 other service users, and to that extent we endorse the
20 submission in John's Campaign to hear evidence from the
21 rights of residents and those at the coalface.

22 And, secondly, we urge a proportionate amount of
23 time to be given to the evidence considering the
24 response of the health care and social care sector in
25 Northern Ireland, so that meaningful, focused and

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1 therefore, we invite you to consider the consequences of
2 that in any future pandemic, and to seek expert evidence
3 insistence.

4 My Lady, moving on to spotlight evidence.
5 Mr Weatherby has, of course, already addressed this, but
6 can we add just briefly from a Northern Irish
7 perspective that it has been a remarkable feature of the
8 evidence that you have heard from the bereaved and other
9 groups across each module of this Inquiry, whether it be
10 from the witness box or from the powerful impact videos,
11 that all too often they could see where the mistakes
12 were being made at the time they were being made.
13 Individually and collectively, they voiced their
14 concerns, they wrote letters, they spoke to the powers
15 that be to tell them that they weren't seeing or
16 appreciating the full picture and therefore changes
17 needed to be implemented.

18 And yet, too often, their real experiences were
19 given inadequate consideration.

20 We note, on the topic of spotlight homes, or
21 evidence being chosen at random, that the concerns of
22 the Northern Irish Bereaved about this approach are
23 independently shared by the UK Covid Bereaved, by John's
24 Campaign, we anticipate by the Disabled People's
25 Organisations, and others, and we ask you to give proper

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1 Northern Irish-specific recommendations can be made for
2 a more positive future. Thank you.

3 **LADY HALLETT:** Thank you very much indeed, Ms Campbell, I'm
4 extremely grateful.

5 Ms Mitchell, would you like to take us up to the
6 break? I hope your microphone is going to work.

7 **DR MITCHELL:** Can my Lady hear me?

8 **LADY HALLETT:** I can.

9 **Submissions on behalf of Scottish Covid Bereaved by**
10 **DR MITCHELL KC**

11 **DR MITCHELL:** Fantastic. The Scottish Covid bereaved are
12 grateful to Counsel to the Inquiry for her note and
13 submissions this morning and also for engaging in
14 discussions about matters which are of particular
15 importance for the group.

16 This module, of course, is of particular importance
17 to those who lost loved ones that died in care homes and
18 in hospitals. As was set out in the first preliminary
19 hearing, the bereaved are anxious to know why certain
20 decisions were taken by the UK and Scottish Governments,
21 whether they had in mind their human rights and whether
22 those decisions impacted on, or indeed led, to the
23 deaths of their loved ones.

24 Amongst other issues, many are waiting on the answer
25 to a question that has been asked since March 2020: why

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1 were those suffering from Covid transferred into care
2 homes without being tested?

3 In this PH, we address the following four issues:

4 1. Rule 9 requests. The bereaved welcome the
5 Inquiry's intention to issue Rule 9 requests to care
6 homes and note the caveats attached to this evidence as
7 outlined this morning. While the requests are to be
8 sent to care homes located in both urban and rural
9 settings across the UK, the Scottish Covid Bereaved hope
10 that the Inquiry team will be able to recognise
11 Scotland's distinct geographical features with many
12 living in island communities. These communities and the
13 care homes in them will doubtless have experienced
14 issues which did not arise in mainland care homes.

15 It's hoped that the Inquiry legal team will be able
16 to identify a care home in an island community, and that
17 can be issued with a Rule 9 request.

18 2. Disclosure to Core Participants. We echo what
19 has been said earlier, of course. We note that the
20 Inquiry is doing what it can to get disclosure as soon
21 as possible, and we are keen to receive that.

22 In particular, the Scottish Covid Bereaved note that
23 the summary findings of the survey of local government,
24 LGA, and the bereaved, are keen to see the results of
25 the COSLA survey, due, as we understand it, in spring.

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1 experience loved ones not receiving the care that they
2 deserve, with GPs refusing to attend care homes and
3 residents not being admitted to hospital.

4 It is hoped that these and other matters will be
5 explored during the hearing. It is hoped that the
6 Inquiry will also consider the impact of visiting
7 restrictions on the residents themselves, particularly
8 those suffering from dementia, and we look forward to
9 reading the expert report in that regard.

10 4. Public hearing. The Scottish Covid Bereaved
11 thank the Inquiry for its request as to input as to how
12 witnesses can provide evidence of the impact of the
13 pandemic for those in receipt of adult social care. We
14 consider the best way for the Inquiry to hear impact
15 evidence is to adapt the approach adopted in relation to
16 Module 3, where members of the Scottish Covid Bereaved
17 gave evidence to the issues faced by the group as
18 a generality, with later evidence from a particular
19 member with significant aspects to their loved one's
20 experience that allows the Inquiry to hear specific
21 impacts.

22 It's said that society is defined by the way it
23 treats its most vulnerable and there is considerable
24 evidence available that the most vulnerable, who should
25 have been given the greatest levels of care, did not

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1 It would be surprising if the results of the COSLA
2 survey differed greatly from that already obtained by
3 the LGA. It's the experience of the Scottish Covid
4 Bereaved that social care was poorly prioritised with
5 insufficient numbers of staff to provide proper care.

6 Visits by health care professionals were restricted
7 and, as outlined above, residents were discharged from
8 hospitals to care homes without having been tested. The
9 bereaved anticipate seeing their own experience
10 reflected in the COSLA survey and look forward to
11 additional disclosure soon.

12 3. List of issues. The Scottish Covid Bereaved are
13 in a unique position in that we have an ongoing Inquiry
14 in Scotland. It would be helpful to know what, if any,
15 tens are being taken in relation to what evidence is to
16 be called in this hearing, and the Scottish hearing to
17 come, bearing in mind the memorandum of agreement that
18 is in place. It is the hope of the Scottish Covid
19 Bereaved simply to try to avoid duplication of questions
20 being asked or requests for witnesses to be called.

21 The bereaved welcome the Inquiry's focus on
22 decisions relating to the discharge of people from
23 hospital into adult care and issues relating to visiting
24 restrictions and guidance. In addition to
25 aforementioned issues, the bereaved include those who

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1 receive that care when they needed it the most.
2 Accordingly, the Inquiry may wish to consider allowing
3 a greater number of impact witnesses from the bereaved
4 groups to allow the Chair to have the opportunity to
5 hear directly about the plight of those most vulnerable?

6 The Scottish Covid Bereaved have always been
7 measured in requesting impact evidence, but submit that
8 having two witnesses to speak to their own personal
9 experience, one of whom can perhaps provide the general
10 Core Participant witness statement and can have
11 additional specific questions put to them at the same
12 time as giving their own personal account.

13 The Scottish Covid Bereaved are aware of the effect
14 of calling a number of additional witnesses and the
15 impact this may have on the Inquiry's timetable,
16 especially when this is multiplied over all the bereaved
17 groups but we submit that allowing an extra few hours
18 for this purpose may be of significant value.

19 It is noted that the media pick up on and highlight
20 individual stories in a way that they do not for more
21 general issues, unless of course the politicians are
22 involved. Greater public awareness of the issues faced
23 by those most vulnerable in society may ultimately
24 result in greater public support for the recommendations
25 which the Chair will ultimately make. The Scottish

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1 Covid Bereaved have noted the chair's comments that she
2 can make recommendations but it is for the politicians
3 to implement them.

4 It is submitted that the broader the public support,
5 the greater the public pressure and the more likely
6 implementation of those recommendations. Those may be
7 assisted by hearing more directly from those who either
8 lost the most vulnerable or were the most vulnerable.

9 These are the submissions of the Scottish Covid
10 Bereaved.

11 **LADY HALLETT:** Thank you very much indeed, Ms Mitchell.
12 Extremely grateful to you.

13 Very well, we shall take the break now and I shall
14 return at 11.55 am.

15 **(11.40 am)**

(A short break)

17 **(11.55 am)**

18 **MS CAREY:** My Lady, I hope we're turning next to Mr Stanton.

19 **LADY HALLETT:** We are.

20 Yes, please, Mr Stanton.

21 **MR STANTON:** My Lady, I hope you can hear me?

22 **LADY HALLETT:** I can. Thank you.

23 **Submissions on behalf of the Covid-19 Bereaved Families for**
24 **Justice Cymru by MR STANTON**

25 **MR STANTON:** Thank you.

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1 cross-cutting issues, my Lady, you heard in Module 2B
2 from the former First Minister of Wales, Mark Drakeford,
3 that there is no or was no single register within Wales
4 of all care homes.

5 You also have heard in previous modules, and you
6 will hear in Module 5, that the responsibility for
7 provision of PPE to care homes fell to the Welsh
8 Government from 19 March 2020.

9 My Lady, added to this, the group has proposed
10 a witness, a former health care owner, former nurse and
11 health care owner, who, if the request for a witness
12 statement is pursued, will be able to provide evidence
13 that no PPE whatsoever was provided to her care home
14 until late April 2020, early May 2020, and that in
15 a briefing in March 2020 care homes were advised to seek
16 their PPE from pharmacies.

17 You will of course have heard, my Lady, in Module 3
18 that pharmacies were one of the last health care
19 settings to receive any PPE, so that route was
20 completely blocked to them.

21 So, pulling all these strands together from the
22 various different modules that you have heard and will
23 hear in the future, the group would like to know, and
24 invite the Inquiry to explore, the state of provision of
25 PPE in relation to care homes within Wales, and also to

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1 My Lady, on behalf of the Covid-19 Bereaved Families
2 for Justice Cymru, there are four points that I'd like
3 to make.

4 The first is a point that's already been made by
5 Mr Weatherby and Ms Campbell, that this module is one of
6 the most important for the group, and, for many of the
7 group members, it is the most significant of all modules
8 at your Inquiry.

9 It will also be one of the most difficult for the
10 members to participate in, having regard to the
11 devastating impacts of the circumstances under
12 investigation.

13 My Lady, we know that you are acutely aware of this,
14 but it is a fact that cannot be understated, in our
15 submission.

16 The next point, my Lady, relates to the
17 cross-cutting nature of Module 6. By the time you hear
18 evidence in this module, you will have heard evidence in
19 nine previous modules, all of which will have included
20 evidence that is relevant to care homes, including
21 issues of testing, asymptomatic and aerosol
22 transmission, PPE, key government decisions such as
23 whether to discharge patients from hospital without
24 testing.

25 If I could give a Wales-specific example of these

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1 ask the Welsh Government to explain, particularly given
2 they didn't know of the existence of every care home in
3 Wales, how they were able to meet their
4 responsibilities.

5 So that's just one example. There are many more,
6 and there will be many different examples, including
7 examples relating to testing.

8 My Lady, the Welsh group would invite you in these
9 circumstances to consider asking Core Participants,
10 particularly Core Participants who have participated in
11 many previous modules, to assist the Inquiry by
12 highlighting issues such as this, so that the Inquiry
13 can ensure that they are fully explored, that the
14 evidence needed will be available in Module 6, and so
15 that these issues can be addressed within witness
16 statements in the preparatory stages of the Inquiry's
17 work.

18 My Lady, we appreciate that the Inquiry will be well
19 aware that cross-cutting issues such as these exist, but
20 we suggest that the particular interests of each Core
21 Participant group can add value to this exercise. We
22 appreciate there's a need not to over-engineer any work
23 such as this, but on behalf of the Welsh group, my Lady,
24 we would not anticipate -- if you were able to allow
25 this opportunity, we would not anticipate raising more

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1 than ten such issues. So we think it's a proportionate
2 and manageable option.

3 One connected issue to this, my Lady, relates to the
4 period of time specified in the list of issues that the
5 Inquiry will be focusing on, which suggests that that
6 period will commence on 1 March 2020.

7 My Lady, for the reasons mentioned, we'd ask that
8 the Inquiry gives consideration to relaxing that date,
9 so that, for example, issues of preparedness and
10 resilience, as were considered in Module 1, can also be
11 considered in Module 6.

12 My Lady, moving to the next topic, that is the
13 group's priorities and key witnesses. My Lady, the
14 group's priorities are set out in the group's witness
15 statement and within the written submissions provided
16 for this hearing. I don't seek to repeat those issues
17 now. I would like, however, to mention an issue in
18 relation to witnesses.

19 My Lady, in Wales, to an extraordinary degree, key
20 decisions for consideration by the Inquiry on issues
21 such as testing strategies in care homes, again, the
22 decision not to test patients being discharged from
23 hospital, provision of PPE, and the extent to which
24 treatment was withheld or not provided in care homes,
25 were taken by a very small number of key

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1 adopted effectively here in Module 6.

2 One concern we would have, however, would be in any
3 selection process. For example, if biographies were
4 provided by families, there would be a risk, if they
5 were not selected for witness statements, for it to be
6 seen as somehow their story was not considered
7 sufficiently important or significant, and therefore, to
8 avoid that real risk and possibility, we would suggest
9 that the Inquiry considers inviting witness statements
10 from between ten to fifteen families within each of the
11 bereaved groups and other similar groups. These would
12 be statements that, we suggest, could be proportionate,
13 and the length would be manageable, either with
14 reference to page numbers or, indeed, the amount of time
15 to be spent on them. But we think it will be an
16 important signal of the importance of their experiences
17 to proceed in that way.

18 My Lady, one final point I'd like to make very
19 quickly is a point addressed earlier by Mr Weatherby in
20 relation to Age UK.

21 Age UK is primarily focused on England and we would
22 ask in those circumstances that the Inquiry gives
23 consideration to requesting a witness statement from
24 Age Cymru.

25 My Lady, those are all the submissions I would like

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1 decision makers, including the former First Minister,
2 Mark Drakeford, the former Minister for Health and
3 Social Services, Vaughan Gething, and the CMO for Wales,
4 Sir Frank Atherton. And we would be grateful if the
5 Inquiry would give careful consideration to calling all
6 three witnesses in the Module 6 hearings.

7 My Lady, the final topic I'd like to deal with is
8 impact evidence. As already mentioned, the issues under
9 consideration in Module 6 are particularly distressing
10 for bereaved families, with some care homes having lost
11 over half of their residents, and there are a very wide
12 range of impacts that were experienced by the families
13 of residents.

14 The group suggests in these circumstances that there
15 is need for more than a single group statement that
16 collects and reflects a range of experiences, and we
17 have been grateful for the Inquiry's invitation to speak
18 to these issues.

19 We consider that the process that was followed in
20 Module 3 was a good one, whereby health care
21 organisations were invited to provide biographies for
22 between five and ten members, from which witness
23 statements were selected for a smaller number, and then
24 a still further smaller number were asked to provide
25 evidence, and that type of process we think could be

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1 to make, unless I can assist further.

2 **LADY HALLETT:** No, thank you very much indeed, Mr Stanton.

3 Right, now I think it's Ms Irving for Disabled
4 People's Organisations.

5 **MS IRVING:** My Lady, can you hear me clearly?

6 **LADY HALLETT:** I can. Thank you.

7 **Submissions on behalf of Disabled People's Organisations**
8 **by MS IRVING**

9 **MS IRVING:** I'm grateful.

10 My Lady, we act for four Disabled People's
11 Organisations from across the UK. They are: Disability
12 Rights UK, Inclusion Scotland, Disability Wales and
13 Disability Action Northern Ireland.

14 The DPO reiterate the importance of this module to
15 them and the people they work with. Within the care
16 sector, disabled people suffered significant and
17 disproportionate fatalities and other harms during the
18 pandemic. For many disabled people, the impact on their
19 lives is ongoing.

20 The DPO have four points. First, as to settings.
21 From my Lady's previous ruling, DPO understand that the
22 primary focus of this module will be on adult care and
23 residential homes and care provided in the home. They
24 nevertheless welcome the recognition of the need to
25 consider the impact of the pandemic on additional groups

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1 of people in receipt of social care, including those
2 with learning disabilities.

3 In doing so, you have recognised that recipients of
4 care can live in a range of supported forms of housing.

5 The Inquiry's careful widening of the lens in this
6 way is important. It ensures that variations in where
7 and how disabled people live are appreciated and
8 factored into overall learning. This could include in
9 supported housing, mental health units, and various
10 forms of transitional accommodation.

11 We note that there is no broadly applicable
12 statutory definition of supported housing, but the
13 Ministry of Housing, Communities and Local Government
14 define it as "accommodation provided alongside support,
15 supervision, or care, to help people live as
16 independently as possible in the community".

17 Even for those who live at home, their ability to do
18 so can often depend on access to respite and day centres
19 and other social care in the community. Each of these
20 settings and services is indispensable to certain groups
21 of disabled people to lead dignified and independent
22 lives.

23 As settings and services, they were also profoundly
24 impacted during the pandemic. For those reasons, in
25 accordance with my Lady's ruling and the terms of

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1 legal representation, go to court, and prove that any
2 reduction in services met the very high threshold of
3 inhuman and degrading treatment.

4 We know from the Supreme Court decision of
5 McDonald v Royal Borough of Kensington and Chelsea just
6 how high that threshold is. It was not met where
7 services were cut which required a disabled person to
8 sleep with incontinence pads when she would not have
9 needed them if she had a care worker to assist her.

10 Accordingly, from the outset, of the pandemic, the
11 rights of disabled people to have their needs met were
12 actively reduced by statute. As well as the significant
13 practical consequences of this, the symbolic impact of
14 this decision, what it said about the value placed on
15 disabled people's lives, cannot be overstated.

16 However, it is the consequences of this legislation,
17 including the transparency and monitoring of decisions
18 made under it, that DPO submit requires consideration.

19 The statutory changes were introduced with minimal
20 debate and process. For those local authorities that
21 registered easements, and there were only eight of them,
22 and just in England, there were no follow-up systems to
23 disclose how or whether they were used, and no external
24 monitoring of their effect.

25 That easements were not formally relied upon

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1 reference for this Inquiry, DPO do not seek a full audit
2 of these matters, but it is important that they are
3 included in the investigation.

4 To that end, and bearing in mind what Counsel to the
5 Inquiry has said this morning, the DPO in their written
6 submissions have made suggestions of other cohorts that
7 the Inquiry might consider. The purpose of these
8 suggestions is to assist in building a picture of the
9 Social Care Sector, and those other cohorts of people
10 with cerebral palsy and autistic people.

11 Our second point falls within paragraph 1 of the
12 Inquiry's preliminary list of issues for this module,
13 and it concerns the reduced adult social care support
14 during the pandemic.

15 In three of the four UK nations, one of the first
16 decisions taken was to permit statutory easements to
17 social care duties. This enabled local authorities to
18 cease formal social care assessments and reviews, and
19 reduce provision without breaking the law.

20 Where easements were triggered by a local authority,
21 the safeguards accompanying them were limited and
22 ineffectual. For example, in England, although
23 authorities were still required to meet a person's human
24 rights at a minimum, in practice this meant the care
25 user, in order to obtain relief, would have to access

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1 elsewhere in the UK did not mean all was well. Social
2 care users in areas that did not trigger easements also
3 experienced significant reductions in their care and
4 support, even to levels below what was previously
5 considered the minimum acceptable. In many instances,
6 this left people with their most basic needs unmet.

7 A University of Manchester-led study has since found
8 that there was confusion across local authorities as to
9 what social care changes should be made without
10 triggering easements. The DPO therefore invite the
11 Inquiry to scrutinise both the central government
12 decision to introduce social care easements in three of
13 the four nations, and the reductions and changes to
14 social care provision made, both in areas where
15 easements were triggered and those where they were not.

16 Given the removal and downgrading of the central
17 services that undoubtedly occurred during the pandemic,
18 some of which never returned, it is important to
19 discover whether reductions were sufficiently
20 proportionate, transparent, or consulted upon, including
21 with DPO, and externally monitored.

22 Thirdly, the DPO welcome the Inquiry's intention to
23 consider the use of do not attempt cardiopulmonary
24 resuscitation orders in Module 6.

25 Adult social care users were at the sharp end of the

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1 misuse of DNACPRs during the pandemic. According to the
2 Care Quality Commission, from March to December 2020,
3 there was a marked increase in the number of people with
4 DNACPRs in the adult social care settings and nursing
5 homes, despite there being no guidance suggesting that
6 their use should increase.

7 Module 6 affords an important opportunity to address
8 unanswered questions as to the misuse of DNACPRs, and
9 understand what work has been done and what remains to
10 be done to prevent misuse in any future pandemic.

11 In particular, DPO invite the Inquiry in its Rule 9
12 request to the Department of Health and Social Care to
13 seek an explanation of why the Ministerial Oversight
14 Group, established in response to the CQC's
15 recommendations, met only four times, with the last
16 meeting convened in May 2022.

17 Finally, the DPO invite the Inquiry to confront the
18 pandemic mortality rates for people receiving care in
19 their homes. By May 2021, at least 28,000 people in
20 receipt of domiciliary care had died in their homes
21 across England and Scotland. In the earlier stages of
22 the pandemic, from March to June 2020, that was a 225%
23 increase in mortality amongst those receiving care in
24 their homes. That was a greater increase in mortality,
25 in proportionate terms, than that amongst care home

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1 domiciliary care in its Rule 9 requests. In particular,
2 the CQC must address the available data, the limits of
3 that data and the reasons for this, and what, if
4 anything, is understood by why so many recipients of
5 domiciliary care died.

6 Finally, we again acknowledge the evident commitment
7 that your Ladyship and your team, including Ms Carey QC,
8 have shown today to that is module.

9 Thank you, my Lady.

10 **LADY HALLETT:** Thank you very much indeed, Ms Irving. Very
11 grateful.

12 I think next is Ms Jones for John's Campaign.

13 **Submissions on behalf of John's Campaign, Care Rights UK and
14 the Patients Association by MS JONES**

15 **MS JONES:** Yes, my Lady -- can you hear me?

16 **LADY HALLETT:** I can, thank you.

17 **MS JONES:** Thank you, my Lady, on behalf of John's Campaign,
18 Care Rights UK and the Patients Association, I plan to
19 address three broad themes today, amplifying issues
20 we've identified in our written submissions and which we
21 hope will inform the Inquiry's conduct of Module 6 going
22 forward.

23 Our first theme is the need for a close focus in
24 this module on the dignity and quality of life of people
25 who rely on care. Decision makers during the pandemic

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1 residents. The reasons for this are not yet well
2 understood. There has rightly been major public concern
3 about deaths in residential care settings. Factors
4 contributing to deaths of those receiving care at home
5 should also be carefully focused upon in this module.

6 Of the various factors, my Lady has already
7 indicated at previous hearing that the movement of care
8 workers between different settings will fall within
9 scope and, in that regard, we have in mind the
10 inadequate financial support provided to peripatetic
11 workers to self-isolate.

12 Last month, in the context of Module 4, the Inquiry
13 heard evidence about the extent to which care in the
14 domiciliary context was arguably even more misunderstood
15 and overlooked than the fragmented and confused
16 situation in care homes. Further, one particularly
17 complicating factor for care at home is that, by the
18 governing regulations, there is no obligation to report
19 a death to the CQC unless a person dies while
20 a regulated activity is being provided or is as a result
21 of that activity. This means that the available data
22 omits many deaths, including deaths of people receiving
23 care from unpaid carers.

24 The DPO therefore invite the Inquiry to explore the
25 important issue of deaths amongst those receiving

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1 often seem to overlook the fact that people living in
2 residential care settings remain loved and valued
3 members of families and friendship groups, and that they
4 are not all one type of person. Their needs,
5 characteristics and vulnerability to Covid-19 were
6 individual and varied.

7 As my Lady well knows, human rights legislation
8 already requires individual assessments of need, for
9 example in this context, whether the harm of isolation
10 and confinement outweighed the risk of Covid-19 for any
11 particular person.

12 But in the experience of our Core Participant group,
13 these obligations were consistently ignored and
14 difficult to enforce, with John's Campaign having to
15 bring judicial review challenges as late as mid-2021, to
16 get the government to recognise these duties in the
17 guidance it published for residential care settings.

18 My Lady, for the Inquiry to avoid repeating this
19 mistake, it needs to hear the voices of those who draw
20 on care and we welcome the Inquiry's indication that it
21 is exploring how to achieve this. Our group stands
22 ready to give oral evidence themselves in Module 6 and
23 can identify to the Inquiry a number of other potential
24 witnesses, including, as we have done, the grassroots
25 organisation, Rights for Residents, as well as family

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1 carers and people who rely on care, who will be able to
2 testify to the direct impact of the restrictions imposed
3 on them and the avoidable harm that was caused.

4 My Lady, we will follow up with the Inquiry after
5 this hearing about these potential witnesses and our
6 Core Participant group continue to encourage their
7 supporters to share experiences with Every Story
8 Matters, so that a broad range of personal experiences
9 are heard by the Inquiry.

10 The day-to-day experiences of people who rely on
11 care, their family members and care staff will cast
12 an important light on the extent to which respect for
13 individual dignity and concern for quality of life
14 informed the approach taken to the adult social care
15 sector. There will no doubt be substantial evidence in
16 this module on the high number of deaths among people in
17 care homes and who rely on social care in other
18 settings. This is, of course, important evidence from
19 which we hope lessons can be learned, but we take this
20 opportunity, my Lady, to remind the Inquiry that it is
21 not only that people died but also how they died that
22 matters, and their quality of life before they died.

23 To understand this involves understanding a broad
24 range of issues, including the impact of restrictions,
25 isolation and confinement, the loneliness and confusion

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1 about them were made with the same care, caution and
2 respect as decisions that were made about individual
3 homes and the general population.

4 In this regard, my Lady, we repeat our request that
5 the Inquiry obtains evidence in this module from Boris
6 Johnson, who, as Prime Minister, was ultimately
7 responsible for government decisions affecting the adult
8 social care sector. His reported comments about the
9 care sector and about older and disabled people,
10 including, for example, blaming the high number of
11 deaths in care homes on the care providers and
12 describing the virus as "nature's way of dealing with
13 old people", caused grave concern about the level of
14 care and respect that underpinned government decision
15 making for the adult social care sector.

16 Mr Johnson should, we say, be asked to provide
17 evidence, including oral evidence, at the Module 6
18 hearings to explain how his decisions affecting the care
19 sector were made and the extent to which the impact of
20 measures of people who rely on care was ever taken into
21 account.

22 My Lady, these are important matters within the
23 scope of Module 6, Mr Johnson is uniquely well placed to
24 address them and they were not covered by his previous
25 evidence to the Inquiry.

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1 that were suffered by many people who rely on social
2 care, the difficulties that people faced in accessing
3 high quality health care, palliative care and
4 end-of-life care when they needed it, and whether their
5 loved ones were able to present with them in their final
6 days.

7 The quality of life of people drawing on care was
8 also impacted by whether appropriate measures were in
9 place to ensure oversight and safeguarding in care
10 settings, and this was particularly important when loved
11 ones were excluded and inspections suspended so that the
12 eyes and ears which ensure safe care were reduced, and,
13 my Lady, whether there were adequate systems in place to
14 deals with complaints and concerns about poor care when
15 they were received.

16 The evidence that the Inquiry obtained in this
17 module needs to be broad enough to address all of these
18 points.

19 Through all of this, and to maintain the close focus
20 on dignity that we say is so crucial to the conduct of
21 Module 6, we urge the Inquiry to remember that decisions
22 about care homes and other social care settings were not
23 just decisions about institutions: they were decisions
24 about the people for whom these settings are their home.
25 We invite you, my Lady, to consider whether decisions

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1 Moving on to my second theme, which is the diversity
2 of the adult social care sector and the need for the
3 evidence obtained in Module 6 to reflect this.

4 My Lady, we welcome the ways in which the Inquiry
5 has already recognised this diversity and variety, for
6 example in expansion of the provisional scope to include
7 domiciliary care and to take account of the experiences
8 of unpaid carers, but we say that there is more to be
9 done.

10 On unpaid carers, my Lady knows that the
11 contribution made by unpaid carers to the adult social
12 care system is enormous, and it's been touched on by
13 other Core Participants this morning.

14 Even more than normal during the pandemic, unpaid
15 carers stepped up to fill the gaps that arose and to
16 ensure that their loved ones continued to receive the
17 care that they needed. But in order to understand their
18 contribution, their experiences and the impact on them,
19 much more data is necessary.

20 There is, for example, no comprehensive register of
21 unpaid or family carers, many of whom do not even
22 describe themselves as carers, even though they do much
23 more than would normally be the case, for example, for
24 a spouse, parent, child or sibling. And as
25 a consequence, many of them perform their role with

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1 little or no targeted support.

2 Given the evidence that we know there is of the
3 impact that increased caring responsibilities can have
4 on family carers' health and wellbeing, and the extent
5 to which this was exacerbated during the pandemic, this
6 is something that we say needs to be remedied, and we
7 seek the Inquiry's engagement with this issue.

8 On the diversity of care settings, we strongly urge
9 the Inquiry, as the DPOs have also just done, to include
10 consideration of supported and assisted living
11 facilities and mental health units, which together
12 comprise an important subsection of the adult social
13 care sector, in which thousands of adults with, for
14 example, autism, learning disabilities, and dementia
15 live. These settings were subject to their own
16 restrictions and government guidance during the
17 pandemic, and they warrant their own evidence and
18 conclusions.

19 The issues they raise are different from, but
20 connected to, the issues observed in residential care
21 homes, and if they are not considered in the course of
22 Module 6, they will be overlooked by this Inquiry
23 entirely.

24 My Lady, the importance of recognising the variety
25 and diversity of care settings, particularly in the

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1 sector to give the Inquiry a proper understanding of
2 experiences on the ground.

3 On the point that was raised by Ms Carey about the
4 relevance of insurers to Module 6, we maintain that
5 questions about the impact that insurance terms had on
6 the decisions that care providers made, and how it
7 affected their ability to provide high-quality and
8 person-centred care, is at the very least something that
9 ought to be explored with witnesses, including the
10 spotlight setting witnesses.

11 My Lady, the third and final theme I want to address
12 today is the visiting restrictions.

13 While the terminology of visiting restrictions is
14 frequently used, I want to be clear that this entails
15 the much broader and crucial question of access to care
16 settings, including access for those who provided
17 essential care.

18 It will not surprise you, my Lady, having heard our
19 submissions in Module 3, that this is an issue of
20 primary importance to this Core Participant group.

21 Restrictions on visits into and out of residential
22 care settings persisted far longer and were
23 significantly more onerous than the restrictions on the
24 general population. There were, for example, blanket
25 14-day isolation rules imposed when people first entered

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1 spotlight setting exercise, is a point also raised by
2 the Covid Bereaved groups, and in particular by
3 Mr Weatherby King's Counsel this morning.

4 We endorse the points that they have made today,
5 including on the length of the hearing for Module 6, and
6 on the importance of understanding the position of the
7 care sector in January and February 2020, not just from
8 March onwards, and, in particular, in relation to the
9 spotlight settings, on the need for the spotlight
10 evidence to include the experiences of those who rely on
11 care at the spotlight settings, rather than just the
12 management perspective.

13 We are grateful for Ms Carey's clarification this
14 morning that the 22 or so individual care homes which
15 will be asked to provide spotlight evidence will
16 comprise care homes with different characteristics,
17 including size, public or private ownership, and
18 geography, and will not therefore be entirely at random.

19 We set out at paragraph 14 of our written
20 submissions the characteristics that we say are
21 important for the spotlight evidence to reflect, and we
22 hope the Inquiry will take account of what we have set
23 out there, because evidence from the spotlight settings
24 will only be valuable if the chosen settings represent
25 enough of a cross-section of the adult social care

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1 or re-entered care homes, which effectively prevented
2 trips out of care homes even long after the general
3 population were not subject to lockdown restrictions.
4 And these had a particularly harmful effect on access to
5 health care, because they required two weeks' isolation
6 for anyone who attended a straightforward doctor or
7 dentist appointment outside their home.

8 The cessation of face-to-face contact and visits
9 into care homes also had a stark impact on access to
10 health care, as specialist health care workers no longer
11 attended many settings and essential caregivers were not
12 able to continue their role.

13 And of course, it affecting wellbeing more
14 generally, as visits and activities crucial to the good
15 care of people with, for example, dementia and learning
16 disabilities, were withdrawn.

17 Worryingly, my Lady, these remain ongoing issues as
18 the precedent set by the pandemic restrictions has, in
19 the experience of these Core Participants, resulted in
20 a much greater readiness on the part of care settings to
21 suspend access in response to any infection in the
22 setting.

23 The Inquiry's analysis of the impact and harm of
24 this approach during the pandemic will, we hope, play
25 a significant role in ensuring that now and in the

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1 future when these decisions are taken, the people that
2 the system exists to support are properly considered and
3 respected, according to the legal duties owed to them,
4 and with a consistent recognition of their value and
5 importance.

6 My Lady, unless there's anything on which I can
7 assist further, those are our submissions.

8 **LADY HALLETT:** Very grateful. Thank you very much indeed,
9 Ms Jones.

10 I think next is Ms Weston.

11 **Submissions on behalf of Frontline Migrant Health Workers**
12 **Group: United Voices of the Word, Independent Workers of**
13 **Great Britain and Kanlungan Filipino Consortium**
14 **by MS WESTON KC**

15 **MS WESTON:** My Lady.

16 I appear, with Mr Clarke of counsel, and Mr Latimer
17 of the Public Interest Law Centre, representing the
18 Frontline Migrant Health Workers Group.

19 This is a group made up of two trade unions and
20 a charity, which together represent the interests of
21 care workers across the sector, including nurses,
22 non-clinical staff, and both domiciliary and residential
23 care workers, a high proportion of which are migrant
24 workers.

25 For convenience, I'll refer to the Frontline Migrant
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1 sector.

2 So, beginning with the provisional list of issues,
3 our suggestions are set out at paragraphs 7 to 11 of our
4 written submissions for reference. Firstly, as regards
5 the relevant period for the Inquiry's analysis, we agree
6 with the Bereaved Families for Justice Groups who argue
7 in their submissions that the Inquiry's focus in
8 Module 6 should begin by establishing a clear
9 understanding of what the starting position was. That
10 is, the condition of the Adult Care Sector as at
11 1 January 2020, as the Bereaved Families for Justice put
12 it in their submissions: in order to understand why the
13 care sector was impacted as it was and why it had to
14 respond as it did.

15 In other words, the Inquiry will be familiar with
16 the term "set up to fail", as issued in the social care
17 context. So we say that a proportionate focus on
18 understanding those pre-existing features of the Adult
19 Care Sector, which bear on the success or failure of the
20 pandemic measures themselves that the Inquiry will go on
21 to examine, is essential.

22 Part of that focus of conditions immediately prior
23 to the pandemic, we say, should include a proper
24 understanding of the workforce in the sector and the
25 impact of jobs in security, immigration sanctions and

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1 Health Workers Group as the Frontline Group.

2 Our submissions focus on the experience of care
3 workers and how working conditions of that sector
4 affected both systemic preparedness but also the
5 effectiveness of measures taken aimed at combatting the
6 pandemic generally and protecting vulnerable adult
7 service users in particular.

8 Having listened carefully to the helpful indications
9 of the Inquiry team this morning, and read and heard the
10 submissions of the other Core Participants, we endorse
11 but do not repeat the submissions of the other Core
12 Participants and highlight two particular aspects of our
13 written submissions.

14 Building on themes developed in the opening hearing
15 of Module 6, in particular the fragmented nature of the
16 Adult Care Sector, the Frontline Group stresses the
17 importance of ensuring that the Inquiry captures the key
18 features of a range of settings in which care is
19 delivered, including, importantly, the impact of work
20 practices endemic in harder to reach parts of the sector
21 on the safety of an intensely vulnerable population of
22 adults in need of care because they were unable to care
23 for themselves. I know that the court has heard from
24 the Core Participants in detail, and all those
25 submissions we endorse about the vulnerability of that

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1 the lack of employment protections which we outlined in
2 more detail in our Rule 9 statement, and refer also to
3 at paragraph 7 to 11 of the written submissions for this
4 hearing.

5 We say that a sufficient focus on the starting
6 position will inform the Inquiry's understanding of the
7 impact the pre-pandemic position had on later events.
8 This is because the Frontline Group submits that the
9 sector was already vulnerable, owing to, for example,
10 fragmentation, profiteering incentives and lack of
11 effective oversight. So there is a clear connection to
12 be made between the lack of employment safeguards in the
13 sector, and the spread of the virus because significant
14 part of the workforce had no right to sick pay or sick
15 leave and were subject to a range of pressures to
16 continue working while they were sick, and to travel
17 from home to home to provide care.

18 Secondly, the Frontline Group also agrees with the
19 submissions made by John's Campaign, the Patients
20 Association and Care Rights UK, that the list of issues
21 needs to have a closer focus on care at home, and we've
22 heard a great deal of submissions about the importance
23 of examining the harder-to-reach aspects of domiciliary
24 care. We take on board the indications given by
25 Ms Carey for the Inquiry team today but we do make

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1 further written submissions, and we suggest that if
2 these approaches are adopted and there is sufficient
3 focus on how the structure of the sector, including the
4 care provided in people's homes, affected decision
5 making, then the Inquiry's conclusions on the outcomes
6 and the resilience will be better informed.

7 The Frontline Group's submission that the evidence
8 before the Inquiry should capture the position in
9 domiciliary care also aligns with the DPO, who stressed
10 in writing and also in their submissions the Inquiry
11 heard this morning, that it's important to obtain and
12 consider the available statistics on the number of
13 people within the adult care sector who died, to also
14 scrutinise carefully the reasons why large numbers of
15 recipients of domiciliary care died during the pandemic.

16 I'm quoting from their submissions.

17 I'd like to turn, then, if I may, to the second
18 issue I wish to highlight on the behalf of the Frontline
19 Group, which is evidence gathering.

20 The group notes the submission of the Bereaved
21 Families for Justice Group's drawing attention to the
22 lack of data concerning the extent to which care homes
23 and also domiciliary care is dependent on migrant
24 workers.

25 The Frontline Group observes that there seems to be

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1 reach but significant parts of the sector, such as
2 independent domiciliary care arrangements, whether
3 privately funded care or publicly funded through direct
4 payments or personal health budgets. The Frontline
5 Group stands ready to provide practical assistance to
6 the Inquiry in obtaining this essential primary
7 evidence.

8 Regarding the Inquiry's proposed approach to
9 spotlight evidence from a selection of care homes, the
10 Frontline Group agrees with the other Core Participants
11 that Module 3 showed clearly the shortcomings of such an
12 approach, which tend to privilege the institutional or
13 managerial employer perspective. The group agrees with
14 the other Core Participants that, for Module 6, where
15 the Inquiry is examining the resilience of the adult
16 care sector to the pandemic, in the face of some
17 horrifying death statistics which were shared at the
18 first hearing of this module, it's essential that the
19 Inquiry hears from frontline care workers who are able
20 to give firsthand evidence of the extent to which, for
21 example, immigration-related sanctions, lack of
22 employment protections, restricted their ability to
23 provide care safely and, importantly, to follow
24 government guidance.

25 The group notes that there are two practical

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1 a degree of consensus between the Core Participants that
2 the Rule 9 requests do not so far appear to encompass
3 evidence from the experiences of the migrant workers
4 themselves.

5 It's right that the Inquiry heard concerning
6 evidence in Module 3 about the lack of data relating to
7 the sector's reliance on migrant workers, and the
8 consequential difficulties in reflecting their
9 experience during the pandemic.

10 We agree with the Bereaved Families for Justice
11 groups that the Inquiry can and should ensure, so far as
12 it can, that the experiences of frontline migrant
13 workers themselves are captured.

14 The Frontline Group's Rule 9 witness statement makes
15 reference to its collective knowledge of the impact of
16 insecurity and vulnerability to exploitation on the
17 extent to which workers in the sector were free to adopt
18 safe practices during the pandemic.

19 The Frontline Group submits that it should be
20 possible, proportionately, to ensure that the frontline
21 experience of migrant care workers is captured both by
22 approaching advocacy groups already working to support
23 migrant domestic workers, and by hearing from individual
24 workers representative of the migrant care worker
25 experience, particularly in those otherwise hard to

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1 proposals from Core Participants as to how the Inquiry
2 might modify its proposed approach to evidence gathering
3 to meet this objective.

4 We agree with the Covid Bereaved Families groups'
5 proposal that evidence should be gathered not only from
6 providers who operate care homes but from those who
7 provide domiciliary care services, and this aligns with
8 the points we make at paragraphs 14 to 17 of our
9 submissions and the oral submissions I've just made.

10 We note the helpful indication from Ms Carey today
11 that efforts are being made to obtain primary evidence
12 of recipients of care. As to the suggestion by
13 John's Campaign, we agree that further thoughts should
14 be given by the Inquiry to identifying a range of
15 criteria to ensure that different types of care
16 provision are captured, in order to develop an
17 understanding of whether particular criteria placed the
18 service users more or less at risk.

19 For the reasons that we set out in our written
20 submission and in our Rule 9 statement, the Frontline
21 Group suggests that there is evidence that the
22 precarious position -- particularly in the less visible
23 parts of the sector -- of the migrant carers, which make
24 up a large proportion of the workforce, had a negative
25 impact on both preparedness and resilience of the adult

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1 care sector.

2 The Inquiry will need, in our submission, to ensure
3 that it is able to scrutinise this feature of the sector
4 in reaching conclusions about the features of the sector
5 which make it more or less likely to be resilient in the
6 future.

7 Those are our submissions, my Lady, unless I can
8 assist further.

9 **LADY HALLETT:** No, thank you very much indeed, Ms Weston.

10 And, I think, bringing up the rear is Mr Jacobs.

11 **Submissions on behalf of Trades Union Congress by MR JACOBS**

12 **MR JACOBS:** Good afternoon, my Lady, these are the
13 submissions of the Trades Union Congress.

14 We have in writing raised four issues. The first
15 related to evidence of the Health and Safety Executive
16 and that has been addressed this morning, for which we
17 are grateful.

18 The second was expert evidence on the structure of
19 the Social Care Sector. It is a crucial area for this
20 module, both in understanding what happened in the
21 sector and why, and for the learning of meaningful
22 lessons. In Module 2, some of the key decision makers
23 were keen to explain just how limited the levers were to
24 assist the sector, given how fragmented it is.

25 We note that, contrary to previous indications, no
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1 the same. The TUC invites confirmation that this will
2 include consideration of, firstly, movement of staff
3 between care homes as a factor in transmission. How to
4 address that issue may be important in terms of learning
5 practical lessons for the next pandemic.

6 Second, other modules have and will consider
7 financial support for self-isolation but it must be
8 touched on in this module. This module concerns
9 a cohort of workers who often are on low pay, often
10 limited job security -- you've heard some of those
11 features addressed by the Frontline Migrant Workers
12 Group just a few moments ago -- and it is also a cohort
13 that work in contact with perhaps the most vulnerable
14 parts of the population.

15 Moreover, there are particular issues for this
16 module, given the Infection Control Fund. The Fund was
17 made available by the UK Government to address this
18 issue of needing to self-isolate, but there is real
19 concern as to whether it actually served its purpose.

20 These matters should be considered in this module,
21 we say, of course supplementing rather than duplicating
22 the work of earlier modules.

23 Fourth, and finally, impact evidence at the public
24 hearings. Clearly, my Lady, it is an issue which is of
25 concern for a number of Core Participants who have
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1 expert evidence will be obtained in this module on this
2 topic. It is said primarily, as we understand it, that
3 it will be covered in other evidence. The TUC has
4 reservations about that. Rule 9 requests as to the
5 perspective and experience of a single organisation is
6 unlikely to be as broad as that put to an expert, and
7 one value of an expert is to bring together a breadth of
8 views, academic studies, and so on, in a way that
9 stretches beyond the corporate statement and perspective
10 of a single organisation.

11 Having said that, we don't know the breadth of the
12 Rule 9s that have been put to these organisations, nor
13 who is the maker of the statements, nor the contents.
14 The King's Fund statements has been disclosed but not
15 that of the Nuffield Trust or the Social Care Institute
16 for Excellence. So we do not yet know whether we will
17 share the Inquiry's perspective that these statements
18 adequately cover the issue; we may do. What we say is
19 that we ask that the statements are disclosed as soon as
20 possible and we reserve the right to make submissions on
21 the points in writing and once we have been able to
22 consider them.

23 Third, my Lady, the provisional list of issues. It
24 currently includes the understanding of the transmission
25 risk presented by staff and the steps taken to address
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1 addressed you on it this morning. In Module 3 on
2 healthcare, the Inquiry heard directly from a number of
3 frontline workers. It occupied a proportionate amount
4 of time but, in the TUC's view, was vital and important
5 evidence.

6 It was necessary both to acknowledge the sacrifice
7 of those who worked in healthcare but also to illuminate
8 the practical problems in the provision of services
9 during the pandemic. There was real value, the TUC
10 says, in hearing directly from someone who had
11 experienced working in a poorly ventilated ambulance
12 waiting for hours with Covid-19 positive patients, in
13 an intensive care unit with terrible fatality rates, on
14 a maternity ward trying to manage under-disruptive
15 restrictions, and so on. Of course, similarly
16 challenging issues arose in social care.

17 On several issues in Module 3, the impression left
18 by frontline workers and those in central government or
19 management positions were in stark contrast, for
20 example, on questions of capacity and the availability
21 of PPE.

22 On occasion, my Lady, we recall you putting the
23 experiences of frontline workers to those witnesses in
24 leadership roles. And that, my Lady, is effective
25 inquiry in action.
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1 Before the break, Ms Mitchell made submissions as to
 2 the power and impact, both inside and outside of the
 3 Inquiry, of direct impact evidence of powerful human
 4 stories, and we endorse what she said wholeheartedly.
 5 It appears that this module has moved away from the
 6 Module 3 approach, and been limited to organisations
 7 describing impact. That, in the TUC's submission, is
 8 wrong, and unless driven by a desire to keep hearings
 9 short -- which we say is not a good reason -- it is
 10 difficult, respectfully, to understand why this module
 11 is having a more restrictive approach.
 12 Mr Stanton and others have urged a similar approach
 13 to Module 3 in respect of hearing directly from
 14 frontline workers, and, of course, those who were
 15 reliant on the care provided, and we invite the same
 16 approach.
 17 Ultimately, my Lady, the sacrifice and importance of
 18 the frontline experience of those working in social care
 19 is no less vital than those who worked in health care,
 20 and their evidence is likely to be no less illuminating.
 21 My Lady, those are our submissions. Thank you.
 22 **LADY HALLETT:** Thank you very much indeed, Mr Jacobs.
 23 Ms Carey, did you want to say anything by way of
 24 reply?
 25 **MS CAREY:** Nothing from me. Thank you very much, my Lady.

1 **LADY HALLETT:** Very well, then, I'd like to thank everyone
 2 for their submissions, Counsel to the Inquiry,
 3 obviously, and all the Core Participants. They were
 4 extremely helpful and constructive and made some
 5 important points. I will consider them all carefully
 6 with the Inquiry team, and then decide whether or not
 7 I need to make a determination. But thank you all very
 8 much indeed. That concludes the hearing.
 9 **MS CAREY:** Thank you, my Lady.
 10 **(12.46 pm)**
 11 **(The hearing concluded)**

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