MODULE 6
SUBMISSIONS ON BEHALF OF
THE FRONTLINE MIGRANT HEALTH WORKERS GROUP
FOR PRELIMINARY HEARING, 19 MARCH 2024

INTRODUCTION

1. The Inquiry has listed a second Preliminary Hearing to take place at 10:30am on Wednesday 5 February 2025 at Dorland House. These submissions are provided so that the Frontline Migrant Health Workers Group ("**the Group**") can outline its position in respect of the following matters:
    a. Attendance and oral submissions at the Preliminary Hearing.
    b. The Provisional List of Issues ("**the LOI**") for Module 6.
    c. Rule 9 evidence gathering.

ATTENDANCE AND ORAL SUBMISSIONS

2. As confirmed by email on 20 January 2025, members of the Group's legal team intend to attend the hearing in-person, namely Amanda Weston KC (lead counsel), Finnian Clarke (second junior counsel) and Joseph Latimer (solicitor). At present, we do not propose that anyone else joins us remotely, though we will update the Inquiry if that position changes.

3. Should it be considered necessary, counsel are content to attend the familiarisation session at 9.30am on 5 February 2025, as indicated at §3.3 of the Operational Note circulated in advance of the hearing.

4. The Group requests leave to make oral submissions for a maximum 10 minutes. The submissions will be made by Amanda Weston KC, who can be contacted at amandaw@gclaw.co.uk. Those submissions will address the points made below in respect of (i) the LOI and (ii) Rule 9 evidence gathering.

THE PROVISIONAL LIST OF ISSUES

5. The Group has considered the LOI and welcomes in particular the inclusion of references to care provided *in the home* at §§1b and 8 thereof. As the Group has sought to argue in its Submissions at the first Preliminary Hearing in Module 6, and in its Rule 9 Witness Statement, domestic workers providing domiciliary care made up a crucial but largely unseen proportion of the Adult Social Care ("**ASC**") sector whose contribution ought to be recognised and understood. Further, reliance on domestic care workers is a significant but informal/unregulated aspect of the 'fragmentation' of the sector, the adverse impact of which on resilience to the pandemic is described in this Group's Rule 9 statement.

6. It is understood that the LOI is not intended to be exhaustive, prescriptive or final (as set out at §11 of the Inquiry's "*Note for the Second Preliminary Hearing in Module 6 of the UK Covid-19 Inquiry*" dated 13 January 2025 ("**the Inquiry's Note**"). In the spirit of that ongoing calibration of the list, the Group would make the following two suggestions.

7. First, the Group suggests that a key point missing from §§2-3 of the LOI (and indeed from point §2 of the Provisional Outline of Scope for Module 6) is a reflection of how the pre-pandemic structure of the ASC sector *affected* the ability of the sector to cope with the demands placed upon it by Covid-19. At §3, focus is rightly placed on the impact certain key decisions had on management of the pandemic, but there is no reflection of the impact *pre*-pandemic decisions or structures might have had too.

8. As Mr Matt Hancock explained in oral evidence on 1 December 2023, "*problems*" such as the provision of PPE in the care sector "*started with the structural make-up of social care, which is a decision that can trace its origins back to the foundation of the NHS in 1948*." [See lines 1-4, page 32, transcript of oral evidence, 1 December 2023.] In tandem with Mr Hancock, we suggest this is an essential aspect of the Inquiry's consideration of the sector's resilience: the identification of extant features inherent in the sector which predispose it to resist or undermine otherwise potentially effective measures.

9. In the Group's submission, this is a vital point that warrants express mention in the LOI, in order to ensure that appropriate time and energy is directed towards this issue by all Core Participants and by the Inquiry itself. As has emerged in great detail in the hearings in Module 3, pre-pandemic structure – such as the prevalence of outsourced services to

the NHS – had huge implications for management of the pandemic once it arrived. For the ASC sector, the following factors (set out in more detail in the Group's rule 9 statement) are likely to have played important roles throughout the pandemic both in the understanding of the potential effectiveness of measures aimed at reducing the risks to a highly vulnerable population and those factors which might impede them such as:

a. Understaffing (and its root causes, including low-pay, work insecurity/casualisation and poor working conditions).
b. Underfunding, and in particular the £7.7 billion in cuts made to care budgets in the decade before the pandemic [see survey from the Association of Directors of Adults Social Services, MHW/16 INQ000509516, page 7].
c. Widespread unavailability of sick pay, such that care workers were faced with a choice between poverty or attending work while sick or at risk of contracting or spreading Covid-19.
d. The fragmented nature of adult social care provision, including in particular the preponderance of private domiciliary care arrangements and independent care homes [see INQ000551244, Institute for Public Policy Research, "*Who Cares? The Financialisation of Adult Social Care*" September 2019, pages 1, 5-8].
e. The overrepresentation of insecure migrant workers within the sector, such that workers with the No Recourse to Public Funds condition applied to their visas would find themselves suddenly destitute in the event of sickness and others on the Overseas Domestic Worker and Health and Care Worker visas being unable to change employer, even when such employers were abusive or negligent, owing to limited and complex sponsorship requirements.
f. Fragmented and ineffective regulatory and oversight/compliance arrangements across the sector including work practices, staff ratios, health and safety [see, for instance, INQ000551241, the recent review into the operational effectiveness of the CQC]. In these conditions, it is no wonder that the Gangmasters and Labour Abuse Authority recently stated that "*Exploitation is on the rise in the care sector*" [INQ000551242]. The prevalence of such vulnerability raises stark questions about the resilience of the sector in the face of whole-system civil emergencies.

10. The foregoing, it is suggested, are all features capable and indeed likely to have presented particular problems for the sector in managing the pandemic and protecting a

highly vulnerable population, in addition to posing unacceptable risks to the sector's essential workforce. Accordingly, it is suggested that the wording of §2 LOI is amended as follows:

"*Structure, oversight and staffing and bed] capacity of the ASC sector in each of the four nations immediately prior to the start of the pandemic, any subsequent key changes made during the Relevant Period*, **and the impact of such factors on resilience and preparedness for/management of the pandemic**".

We further suggest removing the reference to 'bed' capacity and simply use the term 'capacity' of the ASC sector, which is more appropriate for a social care context – rather than the 'bed capacity' term which is commonly used in the in-patient or hospital context.

11. Second, in light of the above points, it is suggested that consideration of pre-pandemic structures is logically prior to the measures taken and impacts felt during the pandemic. That is, it is suggested that §2 of the LOI (in the amended form suggested above) should be set out as the first point, with impacts discussed subsequently. This would reflect the important point made above that pre-pandemic decisions both affected and constrained the choices that could be made during the pandemic and their potential effectiveness.

RULE 9 EVIDENCE GATHERING

12. The Group acknowledges the point made at §5 of the Inquiry's Note that Rule 9 requests have been sent to "*organisations that run or represent residential care and nursing homes*", as well as individual care homes *"to obtain evidence from those 'on the ground' from which any common themes or issues might emerge."*

13. Firstly, we wish to suggest that given the findings of recent reviews into the ineffectiveness of regulatory oversight in the sector [see again INQ000551241, the recent review into the operational effectiveness of the CQC], the Inquiry should seek evidence of workers' and service users' experience "*on the ground*" in care homes which have subsequently faced regulatory action from the CQC and Home Office (the latter having the ability to withdraw sponsorship licenses for employers hiring migrant workers such as our clients). Recent research has found that *"60% of all upheld complaints by the Local Government and Social Care Ombudsman … identified between 2022 to April 2024, where safe care was a factor, and where the care home could be identified, were*

not inspected by the CQC following these rulings."[1] Evidence from those sites where regulatory action has been taken may therefore be reasonably used to draw wider inferences about the experiences of workers and service users across the country.

14. Secondly, the Group considers that to obtain a representative sample of evidence of those working "*on the ground*" from across the United Kingdom, it is submitted that the Inquiry ought to include evidence from organisations that operated domiciliary care arrangements, such as care agencies and outreach providers, and also those that sought to provide services and advice to often isolated domestic workers, such as Kalayaan, Focus on Labour Exploitation and the Work Rights Centre.

15. As submitted above and raised in more detail in the Group's Rule 9 statement, a significant proportion of care during the pandemic was provided in the home. How the pandemic felt "*on the ground*" therefore cannot be understood without hearing from those organisations and individuals that provided domiciliary care, including those with responsibility for managing and implementing domiciliary care plans safely and the challenges the pandemic posed. Prior to the pandemic, almost half of local authority spending on care was provided within the home, [INQ000506973 National Audit Office report into the social care sector, p21]. The figures for self-funders and the extent of provision of adult care through privately contracted domestic services is therefore even greater.

16. As explained by the Nuffield Trust:

"*policies to limit movement of staff introduced in September 2020 did not adequately take account of the nature of domiciliary care, high levels of staff vacancies and the fact that, as a largely low-paid sector, many staff often work more than one job*" [Exhibit MHW/12 INQ000506975, research into resilience of the social care system, page 6].

17. It is submitted that the perspective that will be offered by those kinds of providers will be a unique one. In particular:
    a. Domiciliary carers frequently worked in very close proximity with residents, and were often "*live-in*" such that their livelihoods depended on one or two people and

[1] Violations Tracker UK, https://goodjobsfirst.org/over-half-of-safe-care-failings-picked-up-by-the-ombudsman-not-leading-to-cqc-follow-up/#:~:text=In%2080%20cases%20(60%25),up%20on%20serious%20care%20breaches.

their wellbeing. This inevitably caused very particular forms of stress when faced with the possibility of either the carer or the "*employer*"[2] becoming infected.

b. Domiciliary carers also frequently travelled between private residences (often on public transport), as they often worked for more than one service user or "*employer*", reflecting the way that care plans are arranged and funded eg 2 hours 3x per week. A domiciliary care worker may see 20 service users in a week.

c. Such carers did not typically have access to sick pay, or traditional management structures whereby they could raise concerns about safety.

18. Separately, the Group notes that comments on the drafts of the expert reports provided to Core Participants are due on 31 January 2025. Our comments will be provided on those in due course.

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Public Interest Law Centre

24 January 2025

[2] The Group notes that many such workers used the term "*employer*" to describe those who engaged the services of carers, even where that relationship is an informal one that may not meet the statutory definition in s.230 Employment Rights Act 1996. That term is used in the present document.