

Thursday, 6 February 2025

(10.30 am)

**MS CARTWRIGHT:** Good morning, my Lady, can you see and hear me?

**Opening Introductory remarks by THE CHAIR**

**LADY HALLETT:** I can, thank you, Ms Cartwright. Thank you very much.

Good morning, everyone, this is the second preliminary hearing for Module 7, in shorthand "Test and Trace". I am conducting the Inquiry remotely, everyone else, including the Inquiry team, are present in the hearing room at Dorland House, and I shall now ask Ms Sophie Cartwright King's Counsel to outline the issues I have to consider this morning.

Ms Cartwright.

**Statement by LEAD COUNSEL TO THE INQUIRY FOR MODULE 7**

**MS CARTWRIGHT:** Thank you.

My Lady, I am Sophie Cartwright King's Counsel, the senior counsel for Module 7, the focus of which, as you've just identified, concerns, in summary, the approach to testing, tracing and isolation during the pandemic in England, Wales, Scotland and Northern Ireland, and to make recommendations.

I appear along with other members of the counsel team for Module 7: my learned friends, Ms Malhotra,

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list of witnesses, and proposals for Rule 10 process; and, finally, future hearing dates.

There will then be an opportunity for those who have been designated as Core Participants for this module to make submissions if they wish to do so.

In addition to the Inquiry's counsel and solicitor team, there are a number of Core Participants present in the hearing room today, with further in remote attendance. Seven Core Participants are unable to attend today.

Present in the hearing room and represented in no particular order are the following Core Participants: Covid-19 Bereaved Families for Justice UK, represented by Ms Munroe King's Counsel; Northern Ireland Covid-19 Bereaved Families for Justice, represented by Mr Nugent, Covid-19 Bereaved Families for Justice Cymru, represented by Mr Stanton; Scottish Covid Bereaved represented by Ms Mitchell King's Counsel; the Federation of Ethnic Minority Healthcare Organisations, represented by Mr Dayle; the Trades Union Congress represented by Mr Jacobs; NHS England, represented by Ms Crabtree; His Majesty's Treasury, represented by Mr Smith; and the Department of Transport, represented by Mr Mertens.

Present over the link are NHS National Services

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Ms Nice, Mrs Islam, Ms Nagesh and Ms Omotosho.

Lead solicitor for Module 7 is Ms Morris OBE, who is supported by a wider team of solicitors, paralegals and members of the secretariat.

This the second preliminary hearing in Module 7.

The first preliminary hearing took place on 27 June 2024. May I welcome all Core Participants and their legal representatives who are present at today's hearing, whether in person or online. Can I also thank the Core Participants who provided written submissions in advance of today's hearing.

These written submissions will be published following this hearing.

Some of the matters raised within the submissions I will address as we go through today's agenda but can I assure each of the Core Participants that their submissions have been considered with care by the Inquiry legal team.

In accordance with the agenda for this preliminary hearing, I will address you, so far as this module is concerned, on the following areas: first, an update on Rule 9 requests; second, disclosure to Core Participants; third, expert witnesses; fourth, Every Story Matters; fifthly, the timetable concerning the provision of Provisional List of Issues document,

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Scotland and Public Health Scotland, represented by Mr McConnell King's Counsel; Scottish Health Boards represented by Ms MacQueen; Scottish Ministers, represented by Ms Drysdale King's Counsel; the Department for Education represented by Ms Ward King's Counsel; Baroness Arlene Foster of Aghadrumsee DBE and Paul Givan MLA, represented by Mr McBurney; the Local Government Association and the Welsh Local Government Association, represented by Ms Stober; the Welsh Government, represented by Ms James; and Northern Ireland Public Health Agency, represented by Mr Donnelly.

A full list of Core Participants in Module 7 and their recognised legal representatives is published on the Inquiry website.

My Lady, as detailed within the Counsel to the Inquiry's note circulated before today's hearing, Module 7 received a late application for Core Participant status on behalf of Ms Michelle O'Neill MLA, the First Minister of the Northern Ireland Executive. My Lady, you granted that application on 31 January of this year.

Turning, then, to practical arrangements for today's hearing. The proceedings are being recorded and live streamed to other locations. This allows the

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1 hearing to be followed by a greater number of people  
2 than would be able to be accommodated within this  
3 hearing room.

4 My Lady, it also goes a considerable way to  
5 satisfying the obligation set out in section 18 of the  
6 Inquiries Act to take such steps as you consider  
7 reasonable to ensure that members of the public are able  
8 to attend or see and hear a simultaneous transmission of  
9 proceedings.

10 Also, as is routine in public inquiries, the  
11 broadcasting of this hearing will be conducted with  
12 a three-minute delay. This provides the opportunity for  
13 the feed to be paused if anything unexpected is aired,  
14 which should not be. We do not expect this to arise  
15 over the course of today but I mention it so that those  
16 who are following proceedings from further afield can  
17 understand the reason for any short delay.

18 Turning then to the first item on the agenda, the  
19 update in respect of Rule 9 requests.

20 As of this hearing, Module 7 has issued 233 (sic)  
21 Rule 9 requests sent to individuals and organisations  
22 for witness statements and associated documents. The  
23 Module 7 solicitor team's monthly update notes have  
24 provided details of the recipients, and an overview of  
25 the topics about which they have been asked. We are

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1 extensions that have been sought. A clear timetable has  
2 been agreed for Module 7 to receive these completed  
3 corporate draft statements as soon as possible and as  
4 detailed.

5 The draft Module 7 corporate statement from the  
6 Department of Health and Social Care will be received on  
7 28 February 2025. Sections of this draft statement and  
8 exhibits have already been provided on a rolling basis  
9 for the Inquiry legal team review.

10 Turning, then, to the Department of Health and  
11 Social Care's individual statement requests. In respect  
12 of other outstanding individual statements, where DHSC  
13 are assisting relevant witnesses, the timetable for  
14 provision of these outstanding draft statements has  
15 required further clarity and a commitment to meet  
16 a clear deadline. This was the subject of a further  
17 helpful discussion, as recently as 31 January 2025, with  
18 the Department of Health and Social Care and the Inquiry  
19 legal team, for which I am grateful.

20 I can now confirm that in respect of Matt Hancock's  
21 Module 7 Rule 9 request, this was issued on  
22 31 October 2024. The latest update is that this will be  
23 provided by end of February with an aspiration for  
24 provision of the same by 14 February 2025. Module 7 are  
25 clear that this draft statement is required as

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1 grateful to recipients of Rule 9 requests for the  
2 efforts they have made to comply with the Inquiry  
3 requests in a timely manner.

4 In some cases, extensions to deadlines have been  
5 agreed to allow departments, organisations, and  
6 individuals to focus on providing responses to requests  
7 made in earlier Inquiry modules. However, there are  
8 a number of draft statements still awaited in respect of  
9 Rule 9 requests issued. This has been the subject of  
10 liaison and scrutiny by the Inquiry legal team.  
11 Clarification has been required as to firm dates when  
12 those outstanding draft statements will be provided.

13 There is no room for complacency.

14 The Inquiry legal team are confident in almost all  
15 cases that these will have been received by the end of  
16 February and a final small number by the beginning of  
17 March.

18 Significantly, Module 7 is yet to receive drafts of  
19 witness statements following Rule 9 requests issued for  
20 what are anticipated to be important corporate witness  
21 statements from the Department of Health and Social Care  
22 and the UK Health Security Agency. This in particular  
23 has been the subject of regular correspondence and  
24 discussion by the Inquiry, with both DHSC and UKHSA, to  
25 progress these Rule 9 requests and to consider the

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1 a priority and by no later than 21 February 2025.

2 Sajid Javid's Module 7 Rule 9 request was issued on  
3 17 October 2024. The latest update is that this is  
4 being completed in line with the deadlines for  
5 completion of Mr Hancock's draft statement and,  
6 similarly, Module 7 are clear that this draft statement  
7 is required as a priority and by no later than  
8 21 February 2025.

9 Lord Bethell's Module 7 Rule 9 request was issued on  
10 31 October 2024. The latest update is that this will be  
11 submitted by probably late February. This draft  
12 statement is required as a priority, due to the  
13 importance of Lord Bethell's role and liaison with the  
14 private companies in respect of contracts of  
15 significance to Test, Trace and Isolate. This statement  
16 is required to be received by no later than  
17 28 February 2025.

18 Matthew Gould's Rule 9 request was issued on  
19 15 November 2024. The latest update is that the draft  
20 is on track for mid-February.

21 In January 2025 additional Rule 9 requests were  
22 issued to the National Institute for Health and Care  
23 Research and to Lord Kamall. The Department of Health  
24 and Social Care have responded in that no confirmation  
25 can be given as to when the NIHR statement will be

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1 provided in draft, but Lord Kamall's statement will  
2 likely be provided before the end of February, and  
3 Module 7 has communicated that we require as a priority  
4 the date when the NIHR draft will be received.

5 Turning then to UKHSA. In respect of the UKHSA  
6 draft corporate statement being prepared by  
7 Dame Jenny Harries, we are grateful for confirmation  
8 that this will be received by 21 February 2025. We are  
9 aware that this has been the product of much hard work  
10 and will be in a format that could be disclosed, save  
11 for any clarifications that are sought or raised by the  
12 Inquiry legal team. It has also been confirmed that  
13 this corporate statement will incorporate and address  
14 the Rule 9 request made in relation to the Joint  
15 Biosecurity Centre.

16 Additionally, the statement of Baroness Dido Harding  
17 is anticipated and will be provided by the end of the  
18 month. It is expected that Baroness Harding's statement  
19 and Dame Jenny's witness statements will be disclosed to  
20 Core Participants by the beginning of March.

21 Then turning to an update in respect of the  
22 statement of Mr Johnson. Module 7 is yet to receive  
23 a draft witness statement from Mr Boris Johnson. This  
24 has been the subject of discussion and it has been  
25 confirmed that this draft statement will be received by

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1 operations for the hearing.

2 Covid Bereaved Families for Justice UK and Northern  
3 Ireland in their submissions wish a date two months  
4 prior to the hearings to be set for the bulk of  
5 disclosure to have been made. They request this to  
6 concentrate the minds of document and statement  
7 providers who still have to comply and to set a clear  
8 target date for the Inquiry team, whilst allowing Core  
9 Participants time to effectively participate. Further  
10 careful review is being undertaken by the Inquiry legal  
11 team as to the various issues raised in each of the  
12 submissions received for this hearing, many of which  
13 have been and will be addressed by the Rule 9 statements  
14 that will be disclosed.

15 It is appreciated that as disclosure of the Rule 9  
16 statements is only just beginning and in light of the  
17 approach of the Inquiry not to provide Core Participants  
18 with copies of the Rule 9 requests made, inevitably,  
19 a number of the clarification requests within the  
20 submissions will be addressed by disclosure of the  
21 statements. However, there are a small number of issues  
22 and requests made in the submissions that will be  
23 addressed now.

24 Covid-19 Bereaved Families for Justice Cymru in  
25 their submissions make a request in relation to witness

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1 no later than 14 March 2025.

2 My Lady, as of today, 98 draft witness statements  
3 have been received and are either being reviewed with  
4 a view to the giving of feedback or for confirmation as  
5 to finalisation by signature. As the draft statements  
6 are reviewed, decisions are being taken as to whether  
7 any follow-up Rule 9 requests to organisations and  
8 witnesses are necessary or required. These will be  
9 issued only if truly necessary to Module 7 scope and  
10 will be progressed as a matter of urgency.

11 The Inquiry legal team will continue to actively  
12 chase receipt of the outstanding draft statements.  
13 A detailed update will be provided in the February  
14 monthly note at the end of the month. This will address  
15 in detail the further progress made following today, so  
16 that there is clarity by the end of the month as to what  
17 statements are outstanding and will fall to be disclosed  
18 in March. Core Participants will continue to be kept  
19 properly informed through the Module 7 solicitor updates  
20 in March and April.

21 Module 7 appreciate and understand the requests made  
22 in the submissions on behalf of each of the Covid  
23 bereaved groups, that they wish to receive disclosure of  
24 these statements and completion of the disclosure  
25 process as soon as possible to assist with their

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1 proposals beyond those issued to date by Module 7. This  
2 has been considered and a focused Rule 9 request has  
3 been issued to the former Older People's Commissioner  
4 for Wales, Heléna Herklots and also has been issued to  
5 the Older People's Commissioner for Northern Ireland.

6 A request is also made in the submission of Covid  
7 Bereaved Families for Justice Cymru for evidence from  
8 the seven local health boards in Wales. Module 7 had,  
9 before receiving the submissions, progressed the  
10 drafting of a local health questionnaire to be sent to  
11 health bodies in England, Scotland, Northern Ireland and  
12 Wales. The seven health boards will be issued these  
13 questionnaire and the responses disclosed to Core  
14 Participants.

15 Module 7 does not, however, intent to issue a Rule 9  
16 request to the Chief Medical Examiner for England and  
17 Wales, as requested by the Covid-19 Bereaved Families  
18 for Justice Cymru. The formulation of this suggestion  
19 refers to 9,000 deaths in Wales from 2020 to 2021 that  
20 occurred in health and social care settings and were  
21 examined by the Chief Medical Examiner. Reception of  
22 evidence is sought to seek the views of the Chief  
23 Medical Examiner relative to this cohort of deaths,  
24 which would necessarily need each individual death to be  
25 reviewed.

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1 The request is seeking to identify if these  
2 individual deaths were as a result of Covid-19  
3 nosocomial infection and, further still, whether failure  
4 to test was a contributory factor.

5 The scope of Module 7 has been clearly formulated  
6 and published. Module 7 scope is to be read in  
7 conjunction with the Inquiry's overarching terms of  
8 reference and, specifically, the aims set out at  
9 paragraph B state as follows:

10 "Although the Inquiry will not consider in detail  
11 individual cases of harm or death, listening to those  
12 accounts will inform its understanding of the impact of  
13 the pandemic and the response, and of the lessons  
14 learnt."

15 Previous modules have adhered to those parameters,  
16 and it is right that the evidence to be adduced within  
17 this module is similarly directed. As will be  
18 appreciated, Module 7 will receive general evidence on  
19 the issue of testing in hospital settings prior to  
20 discharge from hospital.

21 Scottish Covid Bereaved families for justice raise  
22 issues surrounding the differing experiences of  
23 permanent and agency staff who worked in care homes and  
24 discussions relating to do not attempt cardiopulmonary  
25 resuscitation notices. Although sector testing is

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1 Rule 9 requests, and will be addressed within a number  
2 of the statements to be disclosed, which the Inquiry  
3 legal team has seen in draft. Module 7 will address the  
4 decisions and the timing of relevant decisions  
5 concerning test, trace and isolate.

6 FEMHO and Covid Bereaved Families for Justice UK and  
7 Northern Ireland, in their submissions, raise concern as  
8 to issues of discrimination and the disproportionate  
9 impact on people from ethnic minority backgrounds and  
10 disabled people.

11 Each Rule 9 issued in Module 7 has made clear the  
12 commitment to investigating the unequal impact of the  
13 pandemic on different categories of people across the  
14 United Kingdom, with particular consideration of groups  
15 with protected characteristics, geographical  
16 differences, social economic background, occupation and  
17 immigration status.

18 Each Rule 9 issued in Module 7 has also asked for  
19 inclusion within the statement of any relevant evidence  
20 that can be given as to, firstly, did decision makers  
21 consider the impact of policy decisions on each of these  
22 groups. And, secondly, were the decisions taken as  
23 a result adequate in mitigating the impact of the  
24 pandemic on these groups.

25 Module 7 has also issued number of Rule 9 requests

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1 addressed in the Scottish-focused Rule 9 requests  
2 issued, Module 7 is keeping a careful focus on  
3 Module 7's provisional outline of scope. We are  
4 confident that the statements to be disclosed will touch  
5 upon the experience of workers, where relevant, to the  
6 system of test, trace and isolate.

7 Similarly, Covid Families for Justice Cymru raise  
8 a number of issues relating to testing within care  
9 homes, discharge to care homes without testing, and  
10 asymptomatic testing.

11 Careful liaison continues to take place with  
12 Module 6 whose scope includes steps taken in adult care  
13 and residential homes to prevent the spread of Covid-19.  
14 Whilst these issues of relevance to TTI have been raised  
15 across the Rule 9 requests issued, necessarily, and as  
16 is obvious, Module 7 must keep a careful focus on its  
17 scope.

18 Covid Bereaved Families for Justice UK and Northern  
19 Ireland, in its joint submissions, seek clarification as  
20 to whether decision making to stop testing and tracing  
21 in Northern Ireland, on 12 March 2020, in co-ordination  
22 with the UK Government but in the absence of substantive  
23 evaluation of whether there was merit in continuing with  
24 Test and Trace in Northern Ireland, has been addressed.  
25 I can confirm that this issue has been addressed in our

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1 to impact and equality organisations, as has been made  
2 clear in the monthly update notes.

3 FEMHO have also specifically raised the question of  
4 unequal treatment in the enforcement of TTI in the  
5 context of racism and institutional racism.

6 Module 7 has asked those responsible for enforcement  
7 at various levels about issues of diversity, equality,  
8 impact on those with protected characteristics, and, in  
9 particular, the experience of those from ethnic minority  
10 communities.

11 Covid Bereaved Families for Justice UK and  
12 Northern Ireland seeks clarity as to whether Module 7  
13 will include a comparative international analysis  
14 between UK systems and that of other countries.

15 Module 7 is exploring the UK's response and system  
16 of test, trace and isolate.

17 The Inquiry terms of reference make clear that, in  
18 meeting its aims, the Inquiry will have reasonable  
19 regard to relevant international comparisons.

20 As part of the work of Module 7, we have considered  
21 international approaches but a detailed comparative  
22 analysis would not be reasonable or required by the  
23 terms of reference.

24 That being said, Core Participants will receive  
25 a number of statements and disclosure of documents that

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1 address international comparisons relevant to TTI.  
 2 By way of example, an incredibly helpful and  
 3 detailed Rule 9 statement on this issue will be  
 4 disclosed from Professor Martin McKee, professor of  
 5 European public health at the London School of Hygiene.

6 Professor McKee is also Research Director at the  
 7 European Observatory on Health Systems and Policies,  
 8 a member of Independent SAGE, a member of the EU Expert  
 9 Panel on effective ways of investing in health. He is  
 10 Research Director of the European Observatory,  
 11 responsible for the Covid-19 Health System Response  
 12 Monitor, collating information on national responses to  
 13 Covid-19, run in partnership with the World Health  
 14 Organisation and the European Commission. He is  
 15 a health adviser to the WHO and also Regional Director  
 16 for Europe, a member of the Pan-European Commission on  
 17 Health and Sustainable Development in light of the  
 18 pandemic, and was also a past president of the BMA from  
 19 2022 to 2023.

20 Module 7 will hear live evidence from  
 21 Professor McKee at the hearing in May, and we are  
 22 grateful to Professor McKee for confirming his  
 23 attendance already.

24 Secondly, moving to disclosure to Core Participants.  
 25 As I've already detailed, a significant number of draft

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1 and receipt of the draft expert reports. On  
 2 17 January 2025, the draft expert reports for Module 7  
 3 were disclosed to Core Participants. Core Participants  
 4 had an opportunity to provide comments by  
 5 29 January 2025, and the experts will now be asked to  
 6 consider relevant comments with a view to provision of  
 7 final reports to the Inquiry and onward disclosure  
 8 in March.

9 The first disclosed draft expert report provides an  
 10 analysis of adherence to behaviours associated with the  
 11 test, trace and isolate system by lead author  
 12 Professor Arden, with author contributions from  
 13 Professor Swanson for Scotland, Dr Phillips for Wales,  
 14 and Dr Shorter for Northern Ireland, thus ensuring  
 15 a perspective from each of the four nations.

16 Professor Arden is Professor of Health Psychology  
 17 and Head of the Centre for Behavioural Science and  
 18 Applied Psychology at Sheffield Hallam University.  
 19 Professor Swanson is a Professor of Health Psychology  
 20 based at the University of Sterling. Dr Phillips is  
 21 a Reader in Health Psychology, and Deputy Associate Dean  
 22 for Research in the Cardiff School of Sport and Health  
 23 Sciences. And Dr Shorter is a Reader in Clinical  
 24 Psychology in the School of Psychology at Queen's  
 25 University Belfast.

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1 statements have been received and are being reviewed.  
 2 Good progress is being made in respect of to the review  
 3 of the draft stents and disclosure of these will follow.  
 4 The majority of the statements can be expected to be  
 5 disclosed over the next eight weeks.

6 The Module 7 team have been prioritising the issuing  
 7 of the remaining primary Rule 9s and, now that work is  
 8 drawing to a close, the team's next priority will be on  
 9 issuing feedback letters and disclosing final signed  
 10 statements. Updates as to the likely order of feedback  
 11 and disclosure of witness statements will be provided in  
 12 the regularly monthly solicitor updates and in the  
 13 regular meetings between material providers and the  
 14 Module 7 team.

15 The Module 7 team has disclosed a significant volume  
 16 of material identified as relevant to the scope of  
 17 Module 7. Eight tranches of disclosure have been  
 18 disclosed to date with the last disclosure tranche  
 19 having been made on 23 January of 2025. The ninth  
 20 tranche of disclosure is scheduled to take place on  
 21 10 February 2025. Disclosure will thereafter continue  
 22 on a rolling basis.

23 Turning, then, to the third item on the agenda:  
 24 expert witnesses and evidence. Significant progress has  
 25 been made in respect of the instructions of the experts

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1 The second disclosed draft expert report provides an  
 2 analysis of the effectiveness of Covid-19 financial  
 3 support and the impact on adherence with the test,  
 4 trace, isolate system from Richard Machin, Associate  
 5 Professor in Social Policy in the Social Work, Care and  
 6 Community Department at Nottingham Trent University.

7 Professor Machin specialises in research on the UK  
 8 social security system, poverty, financial wellbeing,  
 9 and the impact of inequalities.

10 Module 7 thanks Core Participants for consideration  
 11 of the issue detailed within counsel's note circulated  
 12 prior to submissions relative to the involvement of  
 13 Mr Pickford in supporting Professor Machin. No Core  
 14 Participant has raised an objection, and the Inquiry  
 15 maintains, and we are grateful for the confirmation,  
 16 that the matter identified creates no issue with  
 17 Mr Pickford's contributions to the Machin report or his  
 18 continued assistance to Professor Machin.

19 My Lady, as has been detailed within the update  
 20 notes, throughout July, August and September 2024, the  
 21 Inquiry team met with a number of potential experts  
 22 relating to testing technologies and strategies.  
 23 Despite the extensive scoping of possible experts and  
 24 numerous interviews, the Inquiry has not identified  
 25 an appropriate independent witness with appropriate

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1 expertise to provide a report on this topic.  
 2 The Inquiry has, however, identified number of SAGE  
 3 and independent scientists, think tanks and research  
 4 institutes, who were involved in providing advice to  
 5 relevant advisory bodies in relation to testing  
 6 technologies and strategies during the Covid pandemic.  
 7 Rule 9 requests have been issued and the Inquiry has  
 8 already received a large number of draft witness  
 9 statements in response, which will be disclosed to Core  
 10 Participants, and on rolling basis as more are received.  
 11 Module 7 is particularly grateful for the responses  
 12 to these requests for witness statements from these  
 13 organisations, scientists and academics. Their work,  
 14 research and advice has real importance relative to  
 15 Test, Trace and Isolate during the pandemic.  
 16 A large number of individuals have kindly, once  
 17 again, given time to share their important and valuable  
 18 evidence to inform the work of Module 7. We anticipate  
 19 that a number of these distinguished experts, academics  
 20 and scientists will be called to give live evidence  
 21 in May.  
 22 Turning next to Every Story Matters. Module 7 is  
 23 currently working on the Module 7 Every Story Matters  
 24 record with our research partners IPSOS. The Module 7  
 25 legal team is in the process of reviewing the Module 7

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1 Dorland House between 12 and 30 May 2025. There will be  
 2 an impact film broadly connected with the issues  
 3 addressed in Module 7, which will be played at the  
 4 commencement of the Module 7 public health hearings.  
 5 My Lady, that concludes all of the matters on which  
 6 I wish to address you on behalf of Counsel to the  
 7 Inquiry. And can I just in fact thank my learned  
 8 junior. In fact, I indicated that we'd issued  
 9 233 Rule 9 requests. I apologise, it should have  
 10 been 223. Thank you.  
 11 So my Lady, that clarification having been made,  
 12 a number of Core Participants wish to address you orally  
 13 during the course of this hearing, and so can I invite  
 14 you to hear from those now.  
 15 Can I first turn to Ms Munroe King's Counsel to make  
 16 the oral submissions she wishes to make in respect of  
 17 the Covid-19 Bereaved Families for Justice UK.  
 18 Thank you, my Lady.  
 19 **LADY HALLETT:** Thank you very much indeed, Ms Cartwright.  
 20 Ms Munroe.  
 21 **Submissions on behalf of Covid-19 Bereaved Families**  
 22 **for Justice UK by MS MUNROE KC**  
 23 **MS MUNROE:** Thank you. Good morning, my Lady.  
 24 Today, along with Ms Maragh, counsel, and  
 25 Ms Fletcher from BJC solicitors, we represent the Covid

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1 Every Story Matters record, and we confirm that we  
 2 anticipate sharing the final record with Core  
 3 Participants in March 2025, eight weeks before the  
 4 Module 7 hearings.  
 5 Fifth, timetable.  
 6 In preparation for the public hearings which will  
 7 commence on 12 May 2025, the Inquiry intends to  
 8 circulate, around 12 weeks in advance of the hearing and  
 9 in late February, a provisional list of witnesses, along  
 10 with a provisional list of issues. Core Participants  
 11 will of course be invite to respond.  
 12 Covid Bereaved Families for Justice UK and Northern  
 13 Ireland urge a review of the hearing timetable for  
 14 Module 7. Module 7 are focused and committed to,  
 15 alongside the wide-ranging disclosure of Module 7's  
 16 investigatory material to Core Participants, undertaking  
 17 a focused examination at the hearing of the key and  
 18 central issues to Module 7 scope. This will be  
 19 undertaken with a focus on the evidence to inform  
 20 appropriate and meaningful recommendations.  
 21 Finally, in respect of timetable, proposals for the  
 22 Rule 10 process will be circulated by 7 April 2025.  
 23 My Lady, in respect of item 6 on the agenda, future  
 24 hearings, as has been made clear on the Inquiry website,  
 25 the public hearing in Module 7 will take place at

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1 Bereaved Families for Justice UK. However, my Lady, you  
 2 will shortly be hearing from Mr Nugent on panel, of the  
 3 Northern Ireland group. Together, we commend the joint  
 4 written submissions on behalf of both groups for this  
 5 Module 7 preliminary hearing, which sets out, we hope,  
 6 clearly and succinctly the major concerns in respect of  
 7 Module 7 on behalf of our families.  
 8 My Lady, can I take this opportunity, at this point,  
 9 to say that the discussions and correspondence in the  
 10 run-up to today's preliminary hearing, and indeed this  
 11 morning, that we've had with Ms Cartwright King's  
 12 Counsel and her team have been extremely constructive  
 13 and we very much welcome the approach that she takes and  
 14 has taken, and the time that she took this morning to  
 15 speak individually to each CP and go through our  
 16 relative respective submissions. I suspect, as a result  
 17 of that, there will be less repetition and more areas of  
 18 agreement and I hope, consequently, slightly shorter  
 19 submissions from many of us, but I do thank her.  
 20 My Lady, before addressing on the substantive  
 21 submissions, I thought it might be useful and helpful to  
 22 highlight a couple of publications and quotes which, in  
 23 our submission, are illustrative of how important this  
 24 module is in its international context and dynamics. It  
 25 is important that in examining, test, track, isolate and

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1 support, one doesn't isolate the analysis. There is  
2 much to learn from how other nations approached these  
3 universal problems.

4 Five years ago at the very height of the pandemic,  
5 of the World Health Organisation called on all countries  
6 to ramp up their testing programmes as the best way to  
7 slow the advance of the coronavirus pandemic and also  
8 urge companies to boost production of vital equipment to  
9 overcome acute shortages.

10 "We have a simple message to all countries: test,  
11 test, test", said the World Health Organisation Director  
12 General, Tedros Ghebreyesus at a news conference in  
13 Geneva, calling the pandemic, "the defining global  
14 health crisis of our time".

15 In the same year, defend, in an article in  
16 Eurohealth, entitled "Successful find-test-trace-  
17 isolate-support systems: how to win at snakes and  
18 ladders", the authors, Ms Rajan, Mr Cylus and Mr McKee  
19 noted:

20 "In order to ease lockdown restrictions and prevent  
21 a second wave of infections, countries must be able to  
22 find, test, trace, isolate and support new coronavirus  
23 cases."

24 The simplicity of the test, trace, isolate mantra  
25 dramatically understates the multitude of time-dependent

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1 some of the most important tools that were developed to  
2 combat the pandemic. With a module such as this, our  
3 families believe it is vital that there is a thorough  
4 investigation of how successful or otherwise these  
5 measures were.

6 Where things veiled it is necessary not only to  
7 dissect and investigate, in order to understand why they  
8 failed, but as importantly, to consider ways in which  
9 things can be improved, changed and ameliorated. This  
10 is obviously crucial going forward so that we will be  
11 better placed to have the correct tools to combat any  
12 future pandemic.

13 In the time available, my Lady, we don't propose to  
14 deal with all the matters in our written submissions but  
15 simply to touch upon some of the matters raised this  
16 morning very helpfully by CTI and look at three specific  
17 points: experts, discrimination, and support.

18 Much, as I said, has been answered by CTI from our  
19 discussions and in the opening this morning, which was  
20 particularly helpful. Such, as I said, an open and  
21 collaborative approach is very much welcomed, both by  
22 the lawyers and the families, and we hope we can  
23 continue this going into Module 7 itself in May.

24 In terms of experts, we note what is said. We had,  
25 in previous submissions, and indeed in our written

27

1 processes that must occur seamlessly for the strategy to  
2 work effectively, and I note from that quote one of the  
3 authors, Mr McKee, is indeed the individual that  
4 Ms Cartwright King's Counsel has been breaking of.

5 Thirdly in a publication from 2022, entitled  
6 "Development Cooperation TIPs: Tools, Insights,  
7 Practice", Germany in particular was highlighted because  
8 they took a stepped approach to the challenges faced by  
9 the virus. Before making the case to the federal  
10 Parliament for additional funding, the jury matter of  
11 law government first mobilised its existing capacity.  
12 It did so by tracking needs thematically instead of by  
13 region or country, which was something rather unique to  
14 Germany.

15 It is clear, my Lady, from those few short  
16 quotations, the utility of understanding the issue on  
17 a global basis.

18 My Lady will be aware that we represent a wide and  
19 diverse group of individuals who bring to this Inquiry  
20 not only their shared experiences of the pandemic but  
21 also their unique individual knowledge and understanding  
22 of all aspects of the pandemic, from preparedness,  
23 impact, through to implementation of measures to  
24 mitigate and combat it. Module 7 is of particular  
25 relevance to many of our families because it represents

26

1 documents for today's hearing, specifically addressed  
2 the issue of comparative experts and experts in relation  
3 to discrimination and I hear what is said on behalf of  
4 CTI.

5 We've said it before and I'll say it again, my Lady:  
6 the quality and calibre of the experts instructed in the  
7 Inquiry thus far has been extremely impressive and they  
8 have added real value to the process. Something I've  
9 particularly noted, my Lady, is that the expert evidence  
10 often complements and expands and underpins the lived  
11 experience of the families and the more anecdotal  
12 evidence from key players, such as doctors, nurses,  
13 healthcare workers on the frontline, and those who are  
14 the interface between the chronically ill and vulnerable  
15 members of the public, and others, such as BAME and  
16 those who are faced with health inequalities, those who  
17 are working the hostile environment, such as migrant  
18 workers, and as we've very recently in the last module  
19 heard, those in communities such as those who are  
20 disabled, the Gypsy, Roma and Traveller communities, who  
21 are largely absent or completely written out of the  
22 narrative altogether.

23 So when one has the expert evidence that we have had  
24 so far, it has been extremely cogent because it as  
25 I said, underpins some of that very visceral and at

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1 times difficult to listen to evidence and adds weight to  
2 already impressive accounts.

3 What is said in relation to the comparative  
4 analysis, we are heartened by that, because Mr McKee, as  
5 I said, is somebody we quoted, independently, in fact,  
6 of hearing about the role he is going to play in this  
7 module, and is somebody that we were obviously aware of  
8 previously. Whilst it may not be an expert report  
9 *per se*, it's akin to an expert report and, ultimately,  
10 my Lady, it's -- rather than the title -- is an expert  
11 report -- is a witness -- it's the quality of the  
12 evidence that one will hear and the information that  
13 that evidence will hopefully bring to bear upon and  
14 assist with the findings that you have to make.  
15 Certainly from what's been said about Professor McKee,  
16 he would fall into that category of somebody who really  
17 will be adding value to the proceedings. So we're very  
18 heartened by that.

19 In relation to testing technologies and strategies,  
20 again, I don't doubt for a second that the enquiries  
21 have been extensive. I know that at the moment  
22 an expert hasn't been found. Obviously, if somebody is  
23 found in the time between now and May, we will welcome  
24 that but, in the alternative, again, we're heartened by  
25 what is said in terms of who can perhaps give evidence  
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1 because that is how one actually dismantles the problem.  
2 If you can identify the structures, why they are in  
3 place, then that's the starting point for dismantling  
4 those structures. So I would simply ask that that is  
5 borne in mind when looking at those Rule 9 questions,  
6 and looking at the types of evidence that we would hope  
7 to receive from those to individuals.

8 No doubt, in part, the reason why so many of the  
9 witnesses and that theme of structural racism and  
10 discrimination has sort of been a thread in the Inquiry,  
11 has been not simply because those who we represent, the  
12 families and Northern Ireland, have made it part and  
13 parcel at the forefront of their submissions, but  
14 organisations, such as FEMHO, who have been very  
15 helpfully Core Participants in a number of modules and  
16 very much have that at heart.

17 Can I just say, my Lady, Mr Dayle in due course will  
18 be addressing you, but we have read those and adopt his  
19 submissions, and in particular the points made at  
20 paragraphs 9 and 10 of his written document. But I'll  
21 not steal his thunder. He will deal with those in due  
22 course.

23 My Lady, then going on to the question of support.  
24 We deal with that in paragraph 3 of our written  
25 submission. Our central point is a simple one: a system  
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1 to the Inquiry in relation to that.

2 That, perhaps, brings me neatly to the question of  
3 discrimination and experts. I can perhaps deal with  
4 those together.

5 We had urged previously the Inquiry to consider  
6 together whether an expert commissioned to report on  
7 aspects of discrimination and inequality in this module  
8 was necessary and could be found. Again, my Lady,  
9 I hear what is said on behalf of CTI, and the Rule 9  
10 question -- again, we're grateful because we've never  
11 had an opportunity to hear those questions before --  
12 that addresses specific points of investigations of  
13 unequal impact upon individuals and organisations, and  
14 inequality organisations being particularly targeted, is  
15 very important and is welcomed.

16 What we would say, however, is it also needs to be  
17 borne in mind that the impact of structural  
18 discrimination and racism needs to be addressed. It's  
19 not simply a question of investigation but looking at  
20 the structures. That is something that has come out  
21 from the other modules we've heard to date, even where  
22 there hasn't been specific experts. The evidence from  
23 the witnesses very much talk about the structures, talk  
24 about and look at and try to analyse, as best they can,  
25 issues about structural discrimination and racism,  
30

1 of test and trace, isolate and support has long been  
2 established as a core pillar of a public health role in  
3 responding to infections, and one cannot, sort of,  
4 compartmentalise and isolate, as it were, those four  
5 individual points. Support is an integral part of the  
6 whole picture and it needs to be seen it as a vital  
7 component and not marginalised, ignored or understated.

8 Again, my Lady, we are heartened by what is said in  
9 terms of the experts that have been instructed thus far,  
10 and the points that will be raised, no doubt, in further  
11 questioning from them and indeed other witnesses that we  
12 don't yet have available to us because of disclosure.

13 I should have said at the outset, of course,  
14 everything that I do say, my Lady, is predicated on the  
15 fact that a lot more disclosure is to come, and  
16 I suspect more of our questions, that perhaps remain  
17 unanswered, will be answered with later disclosure.

18 We note -- having read the submissions prior to  
19 today, we note what is said, in particular on behalf of  
20 the Welsh group, about testing in care homes and  
21 hospitals. In their submissions, understandably, it is  
22 specific to the issue in Wales, but I know that that is  
23 obviously concern to our families that we have in Wales,  
24 but also to our families in England as well, because it  
25 is not -- from what we can see, my Lady, it certainly  
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1 wasn't a necessarily blanket rule that in English and  
2 Scottish hospitals and care homes that testing was  
3 routinely done or that indeed it was done in  
4 a sufficiently rigorous fashion. So that is obviously  
5 an area that we would again endorse and adopt those  
6 submissions, because it's an area that the Inquiry in  
7 Module 7 will want to consider carefully.

8 My Lady, finally, on disclosure, again, thank you,  
9 Ms Cartwright King's Counsel for what is said. I know  
10 it is unfortunate that the modules are sort of coming  
11 fast and furious and we're all working under pressures  
12 of time, some CPs with very small legal teams, but  
13 obviously timely disclosure is of great importance  
14 because it allows everyone to read -- and perhaps it  
15 focuses the mind in terms of questions that, actually,  
16 who should be asked -- we should be directing written  
17 questions to, rather than, sort of, a more scatter --  
18 I'm not saying that we do this -- a scattergun approach,  
19 but sometimes when one has more time it focuses the  
20 mind.

21 In conclusion, my Lady, obviously it is important  
22 that this module identifies any shortcomings -- that are  
23 clearly identified and properly understood, and  
24 rectified with due expedition. As we are constantly  
25 reminded through the course of the Inquiry, it is not

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1 that.

2 My Lady, on 30 January 2020, the World Health  
3 Organisation issued advice stating as follows:

4 "... it is still possible to interrupt virus spread,  
5 provided that countries put in place strong measures to  
6 detect [the] disease early, isolate and treat cases,  
7 trace contacts, and promote social distancing ...  
8 commensurate with the risk."

9 From a Northern Ireland perspective, we were in  
10 a relatively privileged position to have the time to  
11 follow that advice, and to put in place those requisite  
12 strong measures. We were, at the time, behind the curve  
13 of England, and we could benefit from its experience.

14 As you know, my Lady, we're a very different  
15 society, a smaller population, with fewer people living  
16 in densely populated areas or using public transport  
17 systems, for example. It would be almost a full month  
18 before our very first case would arrive, at the very end  
19 of February 2020, and over the few days that followed,  
20 the numbers would increase relatively slowly in Northern  
21 Ireland.

22 Test, trace and isolate had the capacity to succeed  
23 there.

24 Why, then, we would ask you to explore, my Lady, was  
25 it not possible for us to, as the WHO put it, interrupt

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1 a case of when there will be another -- if there will be  
2 another pandemic, but rather when there will be another  
3 pandemic and what we will do. We cannot afford to  
4 repeat the mistakes of the past. It literally is  
5 a matter of life and death. And there can be no higher  
6 level of urgency and motivation to make it right.

7 My Lady, those are our submissions.

8 **LADY HALLETT:** Thank you very much indeed, Ms Munroe, and  
9 thank you for your comments about -- I'm delighted to  
10 hear about the construction and positive relationship  
11 between you and the Inquiry team. Thank you.

12 Ms Campbell, I hope we're not going to pick on you  
13 again today?

14 **MS CARTWRIGHT:** It is, in fact, Mr Nugent, my Lady, that  
15 will be --

16 **LADY HALLETT:** Oh, is it Mr Nugent, is it? Are we going to  
17 pick on you, Mr Nugent?

18 **Submissions on behalf of Northern Ireland Covid-19 Bereaved  
19 Families for Justice by MR NUGENT**

20 **MR NUGENT:** If we can get the microphone working, we might.  
21 You can hear me okay, my Lady? Thank you.

22 My Lady, at the outset, may I echo the sentiments of  
23 Ms Munroe in respect of the constructive approach of  
24 Counsel to the Inquiry for Module 7. Similarly, for us,  
25 it has been most helpful and we're very grateful for

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1 the virus spread by detecting the disease, tracing its  
2 course and isolating it?

3 Why, just 12 days after the virus had been detected  
4 in Northern Ireland, was our system of test, trace and  
5 isolate apparently stopped, at a time when we still had  
6 significant capacity?

7 If it is correct that test and trace was stopped in  
8 Northern Ireland, and in the other devolved  
9 administrations also, because England had moved to the  
10 delay phase of the Covid response plan, what  
11 consideration was given to the wisdom of that decision,  
12 and by whom? And significantly, my Lady, what were the  
13 consequences of it?

14 Richard Pengelly, the then Permanent Secretary to  
15 the Department of Health gave evidence about this during  
16 Module 2C. He said and I quote, my Lady:

17 "... this was a UK-wide decision that was being  
18 taken, and all the devolved administrations were part of  
19 that decision."

20 His evidence was clear: there was no meaningful  
21 scrutiny of this decision in Northern Ireland as to  
22 whether there was any merit in continuing to test and  
23 trace, as this was simply swept up in the broader  
24 decision.

25 Northern Ireland Covid Bereaved Families for Justice

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1 are gravely concerned by that apparent reality, my Lady,  
2 and, we respectfully suggest, so should be the Inquiry.  
3 Our client group trust that these issues and the  
4 consequences of them will be addressed by this module of  
5 the Inquiry.

6 And in terms of consequences, my Lady, we draw your  
7 attention to three issues raised in the Rule 9 statement  
8 of Hazel Gray on behalf of the Northern Ireland Bereaved  
9 Families for Justice.

10 Firstly, in the absence of a robust system to test,  
11 trace and isolate the virus, the isolation of vulnerable  
12 groups and individuals became the norm. Failure to  
13 effectively use measures such as testing to lessen  
14 restrictions, for example, on visiting loved ones in  
15 care or in hospital is therefore a significant concern  
16 on the part of our families.

17 Secondly, and simultaneously, inadequate measures to  
18 protect those benefiting from care, including testing  
19 within care homes and health care facilities, not least  
20 at the point of transfer from one to the other, leaves  
21 the lasting impression that loved ones were positively  
22 given the virus behind otherwise locked doors.

23 Thirdly, the absence of routine testing of  
24 healthcare workers reinforces that impression.

25 My Lady, you will recall the evidence of

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1 the test, trace and isolate are not unique to the care  
2 system, as you will know. We know that Module 7 has, as  
3 at December 2024, sent Rule 9s to a variety of impact  
4 organisations, seeking to capture experiences across  
5 a range of society, including children, women,  
6 disability groups, migrant representatives and others.

7 My Lady, a similar point was made yesterday in the  
8 Module 6 preliminary hearing, you might recall.  
9 Umbrella groups such as Age UK cannot be assumed to  
10 reflect the experiences in Northern Ireland, nor can,  
11 for example, migrant groups or children's organisations  
12 who are based in London.

13 Again, my Lady, we are ready to assist and invite  
14 the Inquiry to gather representative voices from  
15 Northern Ireland.

16 My Lady, aside from those Northern Ireland-based  
17 concerns, may I respectfully adopt the submissions of  
18 Ms Munroe KC, in particular on the following core  
19 issues: firstly, the disclosure process. And I'm very  
20 conscious of the fulsome update from Ms Cartwright KC  
21 today in this regard and we thank her for that.

22 The second is the instruction of experts.

23 The third is international comparative analysis.

24 And the fourth is timetabling.

25 I'll conclude with this point, my Lady, and I'm

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1 Dr Catherine McDonnell in Module 3 of this Inquiry. She  
2 was the medical director of the Western Health and  
3 Social Care Trust. She told you that Altnagelvin  
4 Hospital departed from regional guidance on testing,  
5 and, in practice, undertook testing of more staff than  
6 would have occurred under the guidance which was  
7 formally in place.

8 As a result of that, my Lady, they identified Covid  
9 positives amongst staff who were otherwise  
10 non-symptomatic. And as a result, they protected both  
11 staff and patients.

12 That an apparent success story relied on the  
13 departure from the guidance should be a matter of real  
14 concern, as should the inadequate measures to ensure  
15 that those who had to work, in particular with the  
16 health care and care systems, were isolating when they  
17 were supposed to. Or were there financial disincentives  
18 against isolation for some staff?

19 We know, my Lady, that we are not alone in voicing  
20 these concerns. Many are represented in the written  
21 submissions of the Cymru group, and we know they are  
22 shared by the UK Covid Bereaved group also.

23 We recognise the overlap of the issues raised in  
24 Module 6 as raised by Ms Cartwright this morning, but  
25 having said that, my Lady, the impact of the failings in

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1 conscious that Ms Munroe KC has already touched upon the  
2 topic of international comparative analysis, and of  
3 course I also take account of the submissions of Counsel  
4 to the Inquiry this morning, and collectively I think we  
5 look forward to receiving the statement of  
6 Professor McKee on this issue, the Inquiry is  
7 nevertheless reminded, my Lady, that international  
8 comparative analysis, as far as test, trace and isolate  
9 is concerned, has particular resonance in Northern  
10 Ireland, where the phrase "the virus doesn't stop at  
11 borders" has real meaning.

12 You've heard on countless occasions, my Lady, that  
13 Ireland is a single epidemiological unit, and yet there  
14 is precious little evidence of how test, trace and  
15 isolate policies were developed with that scientific and  
16 health care-based reality in mind.

17 Could and should we have done better? How do  
18 countries like Germany fare with an open land border  
19 with eight other countries, for example? How did small  
20 island nations like New Zealand compare? What can we  
21 learn about future pandemic responses if we broaden our  
22 horizon, if only for a day's worth of evidence? Perhaps  
23 those are issues that Professor McKee can address in his  
24 evidence.

25 My Lady, we understand the pressures of time and

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1 resources. But we contend that it would be a worthy  
2 diversion in the context of this particular module.  
3 Thank you very much, my Lady.

4 **LADY HALLETT:** Thank you very much. I'm very grateful,  
5 Mr Nugent.

6 Right, I think it's now Mr Stanton.

7 **MR STANTON:** Thank you, my Lady. I hope you can hear me.

8 **LADY HALLETT:** Yes, I can.

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

11 **MR STANTON:** Thank you, my Lady.

12 My Lady, I make these submissions on behalf of the  
13 Covid-19 Bereaved Families for Justice Cymru group. As  
14 you'll be aware, the issue of nosocomial infections and  
15 deaths in hospitals and care home settings in Wales is  
16 a major concern of the group, and the testing failures  
17 of the Welsh Government were a significant contributory  
18 factor to these tragic circumstances.

19 From the written submissions provided on behalf of  
20 the group, I propose to highlight four key areas of  
21 failure with which you will already be familiar, but in  
22 respect of which we hope you and the Inquiry team will  
23 find it helpful to hear the Welsh-specific perspective.

24 The first is the suspension of contact tracing  
25 between March and June 2020. A key concern of the

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1 correspondence from early March 2020, disclosed by the  
2 Inquiry at INQ000183761, which we suggest is a line of  
3 inquiry to be pursued. Further, the introduction of  
4 testing on discharge in Wales was inexplicably delayed,  
5 and came some two weeks after testing on discharge was  
6 introduced in England on 16 April 2020.

7 The third area is testing within care homes. The  
8 failure of the Welsh Government to provide routine  
9 testing in care homes is a matter of very great concern  
10 for the group and encapsulates everything that was wrong  
11 about the approach of the Welsh Government to the  
12 pandemic, including a failure to take a precautionary  
13 approach to the risks of asymptomatic and aerosol  
14 transmission, inaccurate claims that testing had no  
15 value, numerous changes of policy, a lack of  
16 transparency and delays in implementation, including in  
17 comparison with other UK countries.

18 Statements made by the former First Minister, Mark  
19 Drakeford, on this issue include on 29 April 2020,  
20 stating that:

21 "The reason we don't offer tests to everybody in  
22 care homes, symptomatic and asymptomatic, is because the  
23 clinical evidence tells us that there is no value in  
24 doing so."

25 And on 6 May 2020, that he had not:

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1 group's members is that contact tracing in Wales was  
2 halted in March 2020 and did not restart until June  
3 2020, almost two months after the peak of the first  
4 wave. In this regard, the group wishes to understand  
5 why contact tracing was suspended, whether the  
6 justification provided for suspension, namely that the  
7 UK was moving from the contain to the delay phase, was  
8 an accurate and complete explanation, or whether the  
9 real reason for suspension was in fact a lack of  
10 capacity; why there was such a lengthy delay in  
11 reintroducing a tracing programme, given its importance;  
12 and what was being done by the Welsh Government in the  
13 early stages of the pandemic to speed up testing and  
14 tracing infrastructure.

15 The second area is the failure to test hospital  
16 patients upon discharge to care homes. Over 1,000  
17 patients were discharged from hospital into care homes  
18 in Wales prior to the introduction of testing on  
19 discharge on 29 April 2020. This practice seeded  
20 infections into vulnerable communities and was  
21 exacerbated by the lack of PPE, testing and effective  
22 treatment and equipment available in care homes.

23 My Lady, the lack of awareness of the risks that  
24 this policy posed, including the lack of awareness of  
25 asymptomatic transmission, can be seen within the email

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1 "... seen any clinical evidence that led me to  
2 believe that testing of non-symptomatic residents and  
3 staff in care homes, where there is no coronavirus in  
4 circulation, had a clinical value."

5 Both these statements were made after the  
6 commencement of routine testing in care homes in England  
7 from 28 April 2020.

8 My Lady, over this period, a member of the group who  
9 owned and ran a care home in Wales campaigned  
10 extensively for routine testing because of the risks of  
11 asymptomatic transmission and also because elderly and  
12 vulnerable care home residents were falling ill and  
13 dying within 48 hours of becoming symptomatic, without  
14 Public Health Wales being able to provide testing in  
15 this short period between symptoms and death.

16 On 16 May 2020, the Welsh Government announced  
17 routine testing in care homes and, on the same day,  
18 testing was carried out at the care home of the group  
19 member mentioned and, as feared, the testing resulted in  
20 several positive tests of asymptomatic staff and  
21 residents.

22 On 19 May 2020, the group member asked her MP for  
23 these results to be passed to the First Minister and the  
24 Health Minister and stated:

25 "This virus is an invisible killer and the only way

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1 it is going to be eradicated in care homes is to have  
2 the staff tested weekly, especially as their children  
3 return to school, so we all know who is shedding  
4 Covid-19 and they can stay away until safe to return."

5 My Lady, the group wish to know why the Welsh  
6 Government was so blind to these risks and precisely  
7 what clinical evidence they relied upon to justify their  
8 position prior to 16 May 2020 that there was no value in  
9 routine testing.

10 The fourth key issue is that of the consistent  
11 delays by the Welsh Government in implementing essential  
12 safety measures behind other UK nations. As already  
13 mentioned, these include testing on discharge from  
14 hospital some two weeks after England, and routine  
15 testing in care homes 18 days after England. These were  
16 critical periods in the pandemic and, while delays of  
17 two weeks might not seem significant, the absence of  
18 testing allowed infection to spread unchecked and will  
19 sadly have contributed to increased infections and  
20 death, as described by the group's member when referring  
21 to the virus as "an invisible killer".

22 My Lady, in respect of proposed witnesses, as  
23 mentioned yesterday at the Module 6 preliminary hearing,  
24 the key decisions in Wales were taken by the former  
25 First Minister, Mark Drakeford, former Health Minister,

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1 published a report of its work in 2024, which includes  
2 references to testing deficiencies in Wales. Again,  
3 Ms Cartwright, very helpfully, prior to the hearing, has  
4 indicated that those lines of inquiry are being pursued  
5 by the Inquiry and, again, we are very grateful for that  
6 indication pause.

7 Third and last, my Lady, we had suggested that  
8 enquiries were made of the Medical Examiner for England  
9 and Wales. Ms Cartwright has explained in full the  
10 reasons that the Inquiry is not pursuing that line of  
11 inquiry. We entirely understand and accept that's  
12 a matter for the Inquiry. The only point we would add  
13 to that, and with apologies for perhaps not making this  
14 plain in our submissions, is the reason for suggesting  
15 an inquiry would be to identify any underlying analysis  
16 of the 9,000 deaths in Wales. We entirely accept that  
17 it is not for this Inquiry to pursue the individual  
18 circumstances of deaths but it is possible, we suggest,  
19 that the Medical Examiner has undertaken some analysis  
20 of that large group, which may be worth pursuing.

21 My Lady, those are the submissions on behalf of the  
22 group. Can I join in with my colleagues in indicating  
23 that we're very grateful for the helpful and  
24 collaborative approach taken by the Inquiry team in this  
25 module. Thank you.

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1 Vaughan Gething, the CMO for Wales, Sir Frank Atherton,  
2 and additionally, in respect of this module, by the CSO  
3 for Wales, Dr Rob Orford, all of whom made public  
4 statements that routine testing was not effective, and  
5 we ask that they be considered for oral evidence at the  
6 Inquiry's hearings.

7 My Lady, we made other proposals for witness  
8 statements in our written submissions, and Ms Cartwright  
9 helpfully indicated earlier, prior to the hearing's  
10 commencement, that those would be pursued in respect of  
11 the former Older People's Commissioner for Wales, Heléna  
12 Herklots, and the seven local health boards in Wales,  
13 and we're very grateful for that indication.

14 My Lady, I'd like to conclude by raising a small  
15 number of further lines of inquiry. First, a rapid  
16 review on testing in Wales reported to the Welsh  
17 Government in mid-April 2020, and resulted in a change  
18 in testing policy on 18 April 2020. The group has made  
19 efforts to identify this rapid review report but has  
20 been unable to obtain a copy and, in these  
21 circumstances, we ask the Inquiry to consider doing so.

22 Second, the group campaigned extensively for  
23 an investigation of nosocomial infections in Wales from  
24 Covid-19 and, in April 2022, the National Nosocomial  
25 Covid-19 Programme was established. The programme

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1 **LADY HALLETT:** Thank you very much indeed for your help,  
2 Mr Stanton.

3 Ms Mitchell?

4 **Submissions on behalf of Scottish Covid Bereaved**  
5 **by DR MITCHELL KC**

6 **DR MITCHELL:** My Lady, touching on that last point again,  
7 we're grateful to Counsel to the Inquiry for speaking to  
8 us this morning and also for providing the detailed  
9 notes setting out the matters to be addressed at the  
10 second preliminary hearing, and for her submissions this  
11 morning.

12 The Scottish Covid Bereaved have a great many  
13 concerns as to how the Test and Protect policies and  
14 strategies were developed and deployed in Scotland.  
15 A Rule 9 statement has been provided to the Inquiry  
16 setting out these concerns. Now isn't the time to  
17 repeat all of them but, put short, the bereaved consider  
18 that the testing capacity in Scotland and indeed the  
19 wider UK was wholly inadequate at the start of the  
20 pandemic.

21 Testing, tracing and isolation was the key to  
22 protecting the most vulnerable in our society. We  
23 flagged yesterday the concern of the lack of testing the  
24 most vulnerable in our society from hospital to care  
25 homes, and the failure of testing elderly and care home

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1 residents. Test, tracing and isolating, was the key to  
 2 unlocking the door to allow relatives to visit  
 3 vulnerable loved ones in care homes and hospital  
 4 settings and, in many cases, allowing them to be with  
 5 loved ones in their final moments. For many, they  
 6 remained locked out, and their loved ones died alone.

7 When the next pandemic comes, having a test, trace  
 8 and isolation system in place, that will be adequately  
 9 resourced and efficient so that it can be quickly put  
 10 into operation, will be vital to our pandemic response.  
 11 The bereaved were therefore pleased that the Chair has  
 12 confirmed in Module 7 that it will consider specific  
 13 financial support in place as part of the TTI systems  
 14 adopted as one of the factors in influencing compliance.  
 15 Many of the bereaved are concerned that a lack of  
 16 funding meant that people were required to go to work,  
 17 whether symptomatic or not, and this is may have  
 18 directly affected their loved ones.

19 I do not repeat today our plea, as ever, in respect  
 20 of disclosure. We know the Inquiry is working as fast  
 21 as it can and as hard as it can in getting that, and we  
 22 look forward to receiving that when we do. The Scottish  
 23 Covid Bereaved look forward to receiving the provisional  
 24 list of witnesses and note the dates given this morning  
 25 by Ms Cartwright KC. The bereaved have already provided

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1 These are the submissions on behalf of the Scottish  
 2 Covid Bereaved.

3 **LADY HALLETT:** Thank you very much indeed, Ms Mitchell. As  
 4 ever, very grateful.

5 Mr Dayle, I think you complete the speakers this  
 6 morning.

7 **Submissions on behalf of the Federation of Ethnic Minority  
 8 Healthcare Organisations by MR DAYLE**

9 **MR DAYLE:** Yes, indeed, my Lady. Good morning.

10 I represent the Federation of Ethnic Minority  
 11 Healthcare Organisations (FEMHO) in a counsel team led  
 12 by Mr Leslie Thomas KC and instructed by Saunders Law.  
 13 You are invited, as ever, my Lady, to consider these  
 14 very brief submissions alongside the written ones that  
 15 we've also made.

16 It bears stating that perhaps more than any other  
 17 module in your Inquiry, my Lady, Module 7, the  
 18 investigation of test, trace and isolate, or TTI, will  
 19 necessarily put the issue of trust front and centre, in  
 20 particular, trust between members of the Black, Asian  
 21 and Minority Ethnic, or BAME, communities, and the  
 22 state. The matter of trust and its implications for our  
 23 members in conducting their work during the pandemic  
 24 has, as you know, been a recurring theme in earlier  
 25 modules. We have previously encouraged you to pursue

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1 the Inquiry with submissions and key lines of inquiry  
 2 highlighting, in addition to matters identified by the  
 3 inquiry, issues surrounding the differing experience of  
 4 permanent and agency staff who worked in care homes.

5 This morning, again, we are grateful to Counsel to  
 6 the Inquiry who spoke to us, assuring us that there will  
 7 be evidence in respect of people who worked during the  
 8 pandemic through the prism of test, tracing and  
 9 isolating, and we're grateful to her for that  
 10 confirmation.

11 As the Scottish Covid Bereaved have previously  
 12 highlighted, there is of course a memorandum of  
 13 understanding between this Inquiry and the Scottish  
 14 Covid-19 Inquiry. Both Inquiries are required to work  
 15 together to minimise duplication of their investigation,  
 16 evidence gathering and reporting. We note that the  
 17 memorandum of understanding is understandably drafted at  
 18 a relatively high level. The bereaved are having some  
 19 difficulty in understanding where lines are to be drawn,  
 20 and which issues are to be dealt with by this Inquiry  
 21 and which are to be considered by the Scottish Inquiry.

22 They would welcome any guidance, if possible, in  
 23 relation to this matter in respect of this module, and  
 24 the reason for this, my Lady, is simply to minimise  
 25 Rule 9 question duplication.

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1 lines of inquiry that show the link between trust and  
 2 access to healthcare and, continuing in this vein, we  
 3 say too that this module should further explore the  
 4 notion of BAME community as hard to reach for the  
 5 purpose of TTI.

6 My Lady, FEMHO is confident that your investigations  
 7 in this module will uncover the racialised approaches  
 8 that you've heard of before, that were taken regarding  
 9 enforcement of TTI measures.

10 In mirroring -- what we say mirroring the wider  
 11 concerns about racist policing, for example, FEMHO says  
 12 that the disproportionate use of enforcement measures  
 13 against BAME communities served to reinforce scepticism  
 14 about the public good of these measures, and cast them  
 15 as much of the regular fare, worthy of the same old  
 16 scepticisms from black and brown people.

17 My Lady, your investigation has so far established  
 18 that, in most personal decisions about how to engage  
 19 with even the most well-meaning infection prevention and  
 20 control measures, it is not sufficient for the  
 21 government to simply run a message that the benefits of  
 22 a particular measure will far outweigh the risks. The  
 23 evidence we have heard thus far is that government  
 24 messaging is seldom ever trusted implicitly. Members of  
 25 the BAME community are more likely to question the

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1 *bona fides* of government measures given deeply rooted  
2 historical factors.

3 There are just far too many, we say, recent  
4 controversial examples of racialised government  
5 surveillance and law enforcement. Around the time that  
6 TTI measures were being rolled out, for example, there  
7 was much scrutiny of law enforcement arising out of the  
8 murder of George Floyd in the USA. The Black Lives  
9 Matter campaigns that followed, and which swept across  
10 the UK, drew attention to transparency in issues of  
11 state surveillance and criminal justice enforcement and,  
12 like a split screen in epic reel, there were examples of  
13 flagrant breaking of TTI- related rules by the very  
14 political leaders who made them. It's not difficult to  
15 see the challenges of obtaining buy-in to TTI measures  
16 from members of the BAME community.

17 So in our written submissions we identified the two  
18 areas in which we indicated that our attention in  
19 Module 7 would be focused: one, the role of BAME  
20 healthcare workers, such as our members, in supporting  
21 TTI measures by providing access to their communities,  
22 and a trusted voice for circumventing some of the  
23 scepticism; and, two, the way in which some would say  
24 somehow people of colour were more likely to end up with  
25 a fixed penalty notices in respect of Covid regulations

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1 the next pandemic.

2 We commend the submissions that we made at the last  
3 hearing, at the first preliminary hearing, and indeed,  
4 in our written submissions, and we also acknowledge the  
5 support that was kindly offered by Ms Munroe KC on  
6 behalf of the UK Covid Bereaved Families in this regard.

7 So, unless there are any questions arising from  
8 these observations, my Lady, those will be our  
9 submissions at this time.

10 **LADY HALLETT:** Thank you very much indeed, Mr Dayle.

11 Ms Cartwright, I don't suppose you have anything to  
12 say by way of reply?

13 **MS CARTWRIGHT:** Not by way of reply, my Lady, but can I just  
14 confirm that I've had notification that when I did the  
15 introductions this morning, I can confirm that  
16 Mr Bassett, junior counsel, is present on the link  
17 representing the interests of Ms Michelle O'Neill.

18 Secondly, my Lady, just to thank the stenographer,  
19 Louise Pepper, for allowing us to sit a little longer  
20 than usual to enable to complete this hearing in one  
21 sitting.

22 Those matters being said, those are the only things  
23 I intend to address you in respect of today, my Lady,  
24 and to thank you also for your time.

25 **LADY HALLETT:** Thank you, Ms Cartwright.

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1 related to TTI.

2 In pursuing lines of inquiry during the hearings, we  
3 will seek to be forward looking around how matters of  
4 trust may be addressed for the purpose of effective TTI  
5 programmes in the future. FEMHO is of the view that  
6 there is room for more thoughtful programmatic ways of  
7 deploying BAME healthcare workers in efforts to reach  
8 their wider community.

9 My Lady, it is because we do anticipate that these  
10 important considerations will unfold from your  
11 investigations in Module 7, why we are of the view that  
12 the experts on race and ethnicity that previously  
13 attended at this Inquiry should be recalled. And here  
14 I pause to acknowledge the assurances given by  
15 Ms Cartwright KC that her team appreciates our argument  
16 for expert involvement on this issue, and that the  
17 Inquiry will endeavour to secure if not a bespoke  
18 expert, as before, then someone who can speak  
19 authoritatively to, or answer questions in relation to,  
20 these very important issues.

21 The expert, such as they are identified, can assist  
22 you, my Lady, in contextualising how issues of trust had  
23 what we say is a direct bearing on the effectiveness of  
24 TTI measures, and assist you in your considerations of  
25 how these matters might be constructively addressed in

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1 Well, I will obviously bear very much in mind all  
2 the submissions made orally today and indeed all the  
3 written submissions that have been provided.

4 I am delighted to hear some of the comments about  
5 the very constructive and positive approach adopted by  
6 the Core Participants and the Inquiry team and the  
7 relationship they have been developing, and I look  
8 forward to working with everybody in such a constructive  
9 and positive manner. Thank you all very much indeed.

10 That concludes the hearing this morning.

11 **MS CARTWRIGHT:** Thank you, my Lady. Good morning.

12 (11.52 am)

13 (The hearing concluded)

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			<b>Wales [25]</b> 1/22 12/4 12/8 12/12 12/17 12/19 19/13 32/22 32/23 41/15 42/1 42/18 43/4 44/9 44/14 45/24 46/1 46/3 46/11 46/12 46/16 46/23 47/2 47/9 47/16 <b>want [1]</b> 33/7 <b>Ward [1]</b> 4/5 <b>was [48]</b> 7/16 7/21 8/2 8/9 8/18 13/4 14/23 17/18 26/7 26/13 27/19 30/8 33/2 33/3 35/24 36/4 36/7 36/11 36/17 36/17 36/20 36/20 36/22 36/23 38/2 38/6 39/7 42/1 42/5 42/7 42/7 42/9 42/10 42/12 42/20 43/4 43/5 43/10 44/18 45/6 45/8 46/4 46/25 48/19 48/21 49/1 53/7 55/5 <b>was clear [1]</b> 36/20 <b>wasn't [1]</b> 33/1 <b>wave [2]</b> 25/21 42/4 <b>way [7]</b> 5/4 17/2 25/6 44/25 53/23 55/12 55/13 <b>ways [3]</b> 17/9 27/8 54/6 <b>we [104]</b> <b>we'd [1]</b> 23/8 <b>we're [11]</b> 29/17 29/24 30/10 33/11 34/12 34/25 35/14 46/13 47/23 48/7 50/9 <b>we've [6]</b> 24/11 28/5 28/18 30/10 30/21 51/15 <b>website [2]</b> 4/15 22/24	

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