

# UK Covid-19 Inquiry: preliminary hearings on module 2

Over the course of 31 October to 2 November, the **UK Covid-19 Inquiry** (the Inquiry) held preliminary hearings to look at the scope and procedures for the forthcoming public hearing for module 2 (focused on the UK's core political and administrative decision-making in relation to the Covid-19 pandemic).

We set out below the key issues discussed. A full transcript of the hearing can be found [here](#). If you have any comments or questions about this briefing, please contact Finola Kelly, senior legislation and inquiry manager ([finola.kelly@nhsproviders.org](mailto:finola.kelly@nhsproviders.org)).

## Overview

Module 2 will examine the UK's core political and administrative decision-making in relation to the Covid-19 pandemic. The period under scrutiny will be from early January 2020 to February 2022 (when restrictions were lifted). Particular attention will be paid to decisions made in early January to late March 2020 when the first lockdown began.

Preliminary hearings are to agree on procedural matters and help the Inquiry prepare for the public hearings where oral evidence is heard. The hearing for module 2 on Monday 31 October focused on the UK. This was followed by a hearing for module 2A (looking at decision-making in Scotland) and module 2B (decision-making in Wales) on Tuesday 1 November. The hearing for module 2C (Northern Ireland) took place on Wednesday 2 November.

The Inquiry has granted 38 bodies core participant (CP) status<sup>1</sup> for module 2. There has been a significant increase in the number of civil society organisations granted this status for this module, alongside government departments and representative bodies and trade unions. The chair, Baroness Hallett, heard submissions from CPs suggesting changes to her outline plans. The chair published her

---

<sup>1</sup> A core participant is an individual, institution or organisation that has a specific interest in the work of the Inquiry, and has a formal role defined by legislation. CPs have special rights in the Inquiry process. These include receiving disclosure of documentation, being represented and making legal submissions, suggesting questions and receiving advance notice of the Inquiry's report. You do not need to be a CP to provide evidence to the Inquiry.

rulings following the module 1 preliminary hearing on 4 October 2022 (see Annex 1 of this briefing) and as many of the same issues were raised by CPs in the module 2 hearings, it is likely she will make similar rulings again.

To avoid delay and to ensure the production of timely recommendations, the Inquiry has decided to adopt a targeted approach to evidence gathering for this module. This approach was not welcomed by CPs representing civil society and led to increased demand for greater transparency and disclosure.

## Future hearing dates

- There will be at least one further preliminary hearing for module 1, which will examine government planning and preparedness, early in the new year. The module 1 public hearing has been provisionally scheduled for four weeks in May 2023. Our briefing on the first preliminary hearing can be found [here](#).
- The public hearing for UK-wide issues in module 2 will take place in London in the summer of 2023, and it will last around eight weeks.
- No dates have been announced for preliminary hearings for module 3. This module will examine the capacity of healthcare systems to respond to a pandemic and how this evolved during the Covid-19 pandemic.
- Later modules will address 'system' and 'impact' issues across the UK:
  - The system modules will include vaccines, therapeutics and antiviral treatment; the care sector; government procurement and PPE; testing; tracing; government business and financial responses across the UK.
  - The impact modules will look at health inequalities and the impact of Covid-19 on the education and business sectors; on children and young persons; and on public services and on other public sectors. Neither the provisional scope nor the order of the modules has been determined.

## Designation of core participants (CPs)

- Out of 75 applicants, 38 bodies and organisations (some jointly) have been given CP status for module 2 (see Annex 2 of this briefing). CPs used their oral submissions to flag concerns. The chair will publish her ruling at a later date.
- CPs for this module include NHS England (NHSE) and the Department for Health and Social Care (DHSC). Four of the CPs represent families, reflecting the chair's commitment to putting the bereaved and those harmed at the forefront of the Inquiry. Civil society organisations

representing the interests of ethnic minorities, disabled people (including those with long Covid), and children and women and girls at risk of violence, have also been granted CP status.

## Rule 9 requests

- [Rule 9 of the Inquiry Rules 2006](#) entitles the Inquiry to send a written request for evidence to any person.
- To avoid delay and to ensure the production of timely recommendations, the Inquiry has decided to adopt a targeted approach to evidence gathering with respect to central government providers. To assist the process, they are asking recipients to provide chronologies, corporate statements, and flag particularly important materials. Disclosure statements should set out the process undertaken when gathering evidence.
- The Inquiry provided an example of what was included in a request to the Cabinet Office, including details of internal communications such as WhatsApp groups which includes the Prime Minister, Number 10 and other senior officials.
- A number of CPs called on the Inquiry to publish requests made under rule 9. Requests for information under rule 9 have been made to those listed in annex 3. Several CPs welcomed the inclusion of corporate statements and asked that they be published promptly.
- A number of CPs called on the Inquiry to ask the government for evidence on how they paid due regard to the public sector equality duty and assessed the impact on groups with protected characteristics when making decisions.

## Concerns raised by CPs on the provisional outline scope

- NHSE asked for clarity as to the level of detail required as to NHSE's internal operational activities and its leadership of the wider NHS. It also asked the Inquiry to ensure that practical time pressures can be managed effectively and fairly.
- Other issues raised by CPs regarding the provisional outline scope for module 2 included:
  - That it would be useful to know the scope of future modules and how issues in this module will overlap with future modules, particularly module 3 which will examine the health and care sector
  - A request to amend the provisional scope to include issues expressly or alternatively for the Inquiry to publish a 'list of issues' that would be a rolling or iterative process
  - Asking the chair to include children and young people as an integral consideration at the heart of the decision-making

- The risk that a modular approach may create a silo mentality and therefore the request that CPs should be allowed to make overarching submissions.

## Disclosure to CPs

- Some CPs raised concerns about the targeted approach to the collection of evidence and said that the Inquiry should move to full disclosure of rule 9 requests, including asking for details of documents not disclosed, which would help CPs identify relevant omissions.
- Some CPs want the Inquiry to disclose the identity of experts and letters of instructions to experts.

## Instruction of expert witnesses

- A number of CPs asked that expert evidence is commissioned specifically to advise on the proper approach to equalities assessment in public sector decision-making and whether what actually did happen was lawful and in accordance with good practice.

## Listening exercise

- The Inquiry is designing and setting up a process by which the experiences of those affected by the pandemic and the UK's response to it will be gathered, analysed and summarised.
- From November 2022 people will be invited to share their experiences via the Inquiry website. Later in winter and next spring a pilot 'in person' and online process will start with group sessions and will move to full capacity late next year. The summaries will be fed into the Inquiry from module 3 onwards. The listening exercise will run throughout the time of the inquiry. Further details are set out in the [note](#) from the Solicitor to the Inquiry (STI).
- Alongside the listening exercise, the chair made it clear that she intends to hear evidence in the modules and in the public hearings from individuals about the circumstances they experienced where they related to possible systemic issues.
- Some CPs want academic and voluntary organisations with relevant expertise and experience to be included in delivering the listening exercise.

## Annex 1: Summary of chair's ruling following the module 1 preliminary hearing on 4 October 2022

- *Position statements*: the chair is not persuaded that the ordering of position statements from state and organisational CPs and material providers is necessary. The Inquiry has already

requested rule 9 recipients provide a corporate statement setting out a narrative of relevant events and of the lessons learned. These will serve a similar purpose to position statements. The chair can at any time require written clarification of the position of an individual or organisation but requesting them now would be premature and may cause delay.

- *Full disclosure*: it is neither necessary nor proportionate for the Inquiry to disclose every document that it receives, every request that it makes, or every piece of correspondence. That would hinder the Inquiry in the performance of its functions. The chair does not consider it necessary also to publish a Disclosure Protocol.
- *Providing an itemised list of documents and other material that is not intended to be disclosed to the CPs*: it is for the Inquiry to determine what material must be disclosed. This would also involve a considerable amount of work and this would not be consistent with the chair's obligation to minimise cost to the public purse.
- *Rule 9 requests*: disclosure to the CPs of the rule 9 requests themselves is neither required by the rules nor generally established by past practice. Furthermore, it would serve little practical purpose given the wide scope and detailed nature of the rule 9 requests that are being made. However, the chair will ensure that the module 1 lead solicitor provides monthly updates to CPs on the progress of rule 9 work.
- *Expert witnesses*: the Inquiry will consider suggestions as to whom should be appointed. However, the decision as to the selection of experts to be instructed by the Inquiry is one that is entirely for the chair. The identity of the expert witnesses and the questions and issues that they will be asked to address will be disclosed to the CPs before the expert reports are finalised. CPs will therefore be provided with an opportunity to provide observations.
- *Circumstances of death and pen portrait evidence*: paragraph (b) of the Terms of Reference provides that the Inquiry will not consider, in detail, individual cases of harm or death. Arguably, this sub paragraph alone would prevent the chair hearing pen portrait evidence unless it falls into the category of evidence relevant to a possible systemic failing. The listening exercise is a fundamental part of the Inquiry's work and will allow individuals' experiences to be gathered, analysed and entered into evidence. The chair will keep this decision under review.

## Annex 2: Core Participants in module 2

- British Medical Association
- Care England
- Covid-19 Bereaved Families For Justice
- Covid-19 Bereaved Families for Justice Cymru
- Children's Rights Alliance
- Department of Health and Social Care
- Disability Action Northern Ireland
- Disability Rights UK
- Disability Wales

- Federation of Ethnic Minority Healthcare Organisations
- Government Office for Science
- HM Treasury
- Homecare Association
- Imperial College of Science, Technology and Medicine
- Inclusion Scotland
- Just for Kids Law
- Local Government Association & Welsh Local Government Association (represented legally together)
- Long Covid Kids
- Long Covid Support
- Long Covid SOS
- National Care Forum
- National Police Chiefs' Council
- NHS England
- Northern Ireland Covid-19 Bereaved Families for Justice
- Office of the Chief Medical Officer
- Save the Children UK
- Scottish Covid Bereaved
- Secretary of State for the Home Department
- Secretary of State for the Foreign, Commonwealth and Development Office
- Solace Women's Aid
- Southall Black Sisters
- The Chancellor of the Duchy of Lancaster (Cabinet Office)
- The Executive Office of Northern Ireland
- Trades Union Congress
- UK Health Security Agency Scottish Ministers
- UK Statistics Authority
- Welsh Government

## Annex 3: Rule 9 requests

- Cabinet Office
- Department for Health and Social Care
- Department for Business Energy and Industrial Strategy
- Department for Education
- Department of the Home Office
- Department for Levelling Up
- Department for Transport
- Department for Work and Pensions
- Foreign Commonwealth and Development Office
- Government Office of science
- HM Treasury
- Independent SAGE
- NHS England
- Office of the Chief medical officer
- SAGE
- UK Health Security Agency