UK Covid-19 Inquiry: preliminary hearing on module 2, 1 March 2023

The UK Covid-19 Inquiry (the Inquiry) held a second preliminary hearing to look at the scope and procedures for the forthcoming public hearings 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).

Opening remarks

The Chair, Baroness Hallett, responded to the publication of ministerial WhatsApp messages and commentary about the Inquiry in the media this week. She was emphatic that the Inquiry’s recommendations and reports will be published promptly and reasserted her commitment to publishing interim reports. She also set out that:

- She believes international comparisons are unhelpful because of the difference in scope and the unique involvement of core participants (CPs) in the UK.
- She is determined to examine equality issues, including disproportionate mortality in certain groups. She has made no decision as to whether appoint an expert on structural or institutional racism and media reports about that are incorrect. She also said it was wrong to accuse the Inquiry of failing to examine the issue of racism. It is something she very much intends to do.

CPs pointed to the urgent need to clarify the extent to which Matt Hancock, and other UK government ministers, have complied with their disclosure obligations.

Progress

- Over 150 formal requests for evidence under rule 9 of the Inquiry Rules have been issued. Each of these witnesses has been asked to disclose relevant emails and correspondence, and any informal or private communications, about the UK government’s response to the Covid-19 pandemic to which they were party. These documents include and are not limited to informal
group communications such as text messages and WhatsApp group messages, private messages, email communications and contemporaneous diary or other notes.

- The Inquiry is seeking to establish when the government first became aware of the disproportionate impact of the pandemic on black and minority ethnic groups. To that end they have issued rule 9 requests to the Minister for Women and Equalities and the Cabinet Office Equality Hub which includes the Race Disparity Unit. The Equality and Human Rights Commission has also been issued a rule 9 request because the Inquiry believes it is well placed to assist them in looking at the impact on at-risk and vulnerable groups.
- The Inquiry has requested witness statements with the majority of rule 9 requests.
- The Inquiry will look at whether UK laboratory field modelling and case studies at the onset of Covid included references to race and/or ethnicity and if not, why not.
- Counsel to the Inquiry (Counsel) urged caution on the appointment of an expert on institutional racism, pointing out that a finding of institutional racism must depend on what inferences it is proper for the Chair to draw from the primary facts.
- They will also examine the issue of disability data collection and to that end have issued a rule 9 request to the Minister for Disabled People.
- The provisional date for commencement of the public hearings is 2 October. It was moved because of delays in processing documents received for module 1. The Inquiry will also share a list of witnesses in advance of the hearings.
- Expert reports from module 1 will be in the public domain when the hearings for module 2 begin. The Inquiry is also likely to formally introduce parts of that expert material on the basis that it will be of assistance and relevant; for example, the reports from Professors Sir Michael Marmot and Clare Bambra.
- The Inquiry has received and continues to receive huge numbers of documents and has put in place initiatives to speed up processing so that documents can be disclosed to CPs in good time. However, the bulk of documents has not yet been received.
- Counsel advised the Chair to consider whether eight weeks will be sufficient time for the public hearings in the autumn.
- There will be an additional preliminary hearing in July and they will share a list of issues with CPs in April/May. There may be a further preliminary hearing in September.
- The Inquiry is responding to feedback on the listening exercise and continues to make improvements to the process, including measures to make it more accessible to disabled people. The Inquiry is adopting a trauma-informed approach and staff will receive specialist training.
- The Inquiry has asked core decision makers about the decision to use public health legislation to govern the UK government’s response to Covid-19 rather than the Civil Contingencies Act.
Counsel received permission to publish CPs submissions.

**CP submissions: recurring themes**

CPs revisited many of the requests made at previous preliminary hearings for other modules and covered in our briefings. These include:

- Requests for earlier preliminary hearings at a time when CPs can still influence the direction of travel.
- Consultation on, and disclosure of, unredacted rule 9 requests.
- Permission for CPs to put questions to witnesses giving oral evidence.
- Disclosure of instructions to expert witnesses and opportunities for CPs to input into identifying expert witnesses.
- Early identification of experts and clarity on the questions and issues they have been instructed to address.
- Disclosure of all the module expert reports to CPs in module 2 in full and at an early stage.
- Repeated calls to appoint expert witnesses on health inequalities for all modules, and particularly on institutional and structural race and disability discrimination. The Local Government Association has said that expert evidence will also be required in relation to the delivery of social care during the pandemic.
- Opportunities for the bereaved to give evidence directly to the Inquiry.
- Concerns about the adequacy of the listening exercise and the absence of opportunities for children to participate.
- Continued unease about possible conflict of interests with regards to the companies delivering the listening exercise who worked with the government during the pandemic.

**Extending the scope**

This module will look at core political and administrative decision-making from early January 2020 until February 2022, when the remaining Covid restrictions were lifted. The Chair has no legal power to consider anything outside of these dates according to Counsel. Lawyers for the CPs disagree.

A request was made to the Chair for proper funding to be made available to all non-state CPs, or otherwise risk losing the voice of key bodies. One CP has already received 30,000 documents. There were also calls for the Inquiry to consider calling CPs as witnesses from the civil society groups, especially those involved in trying to influence administrative and political decision making in real time.
Others called on the Inquiry to secure expert advice on how the public sector equality duty should have been approached when it came to assessing the potential impact of Government decisions regarding the pandemic and lockdown on women and girls.

A number of recommendations were made by CPs to extend the scope of this module to include:

- Examination of the role and impact of austerity on political and governmental decision making and the outcomes of such decision making particularly on vulnerable and at-risk groups.
- Recognise the reality of structural racism that exists and existed prior to January 2020, and its impact on both the healthcare workforce and the general population.
- Requests for rule 9 requests to be issued to people involved in this week's leaks to the media.
- Persons in custodial settings and places of detention should be included within the scope of this module, including children held in custody.
- Analysis of how decision making considered the impact on children, including how that decision making dealt with children with protected characteristics.
- Consideration of inequalities caused by socio-economic disadvantage.
- Exploration of learning from the experiences of patient advocacy groups in a pandemic in relation to long Covid.
- Exploration of the relationship between central and local government in relation to the use of data.