



RULING FOLLOWING THE SECOND MODULE 2 PRELIMINARY HEARING ON 1 MARCH 2023

Background

1. On Wednesday 1 March 2023 I held the second Preliminary Hearing in relation to Module 2 of the Inquiry. The hearing was held virtually.
2. Prior to the hearing a lengthy written Note from Counsel to the Inquiry was circulated to all Core Participants. Twenty of the thirty-nine Core Participants filed written submissions (a significant number did so jointly).
3. At the hearing, which lasted a day, I heard oral submissions from Mr Hugo Keith KC, Counsel to the Inquiry and from twelve of the Core Participants. The Note from Counsel to the Inquiry, the written submissions from the Core Participants and a transcript of the hearing are available on the Inquiry website.

Progress

4. A great deal of work has been done since the last Preliminary Hearing on 31 October, and much progress has been made. A very significant number of requests under Rule 9 of the Inquiry Rules 2006 have been made.
5. Eighty-one formal requests for evidence have been sent out to entities, persons and organisations in connection with issues and matters arising exclusively in Module 2. Eight-five more have been sent out in connection with issues and matters that arise not just in Module 2 but also in Modules 2A, 2B or 2C. There are too many to list in this Ruling, but details can be found attached to the Note from Counsel to the Inquiry.
6. Rule 9 requests have gone to the UK Ministers, including the former Prime Minister Boris Johnson MP and to the government departments, bodies and entities and devolved administrations involved in the matters which Module 2 is investigating. We have also issued Rule 9 requests for witness statements from the First Minister of Scotland Nicola Sturgeon, the former First Minister of Northern Ireland Paul Givan, the former First Minister of Northern Ireland Baroness Foster, the former deputy First

Minister of Northern Ireland Michelle O'Neill, and the First Minister of Wales Mark Drakeford.

5. Rule 9 requests have also been issued to senior officials in No 10 Downing Street and the Cabinet Office, to eleven regional Mayors, including The Mayor of London, Sadiq Khan and The Mayor of Greater Manchester, Andy Burnham, and to officials and administrators in the devolved administration. Rule 9 requests have been sent to a significant number of the scientists and advisers who participated in the Scientific Advisory Group for Emergencies (SAGE) and specialist sub-committees or who otherwise gave advice to the UK government. Rule 9 requests will also shortly be sent to Professor Sir Chris Whitty, Professor Dame Jenny Harries, Professor Sir Jonathan Van-Tam, and Professor Sir Patrick Vallance.
6. The Inquiry has also sent Rule 9 requests to over eighty organisations and bodies representing ethnic minority groups or the interests of at risk or vulnerable sectors of society, including women, children and young persons, older people, disabled persons, those affected by health inequalities, the bereaved, LGBTQIA groups and the Traveller, Gypsy and Roma communities. All have had their views sought on the extent to which they believe the UK government took their interests and needs into account when making the core decisions that are the subject of Module 2.
7. Relevant persons have been asked to disclose to the Inquiry their emails and other correspondence relevant to the issues addressed in their witness statements, their informal or private communications about the response to Covid-19, including but not limited to informal groups (such as text messages and WhatsApp groups), private messages or email communications and any contemporaneous diary or notes that they made.
8. Module 2 has also sent questionnaires seeking information to two hundred members of SAGE and to seventeen members of Independent SAGE, the independent group of scientists providing advice concerning the Covid-19 crisis.
9. The Inquiry has already received many thousands of documents and will receive many thousands more over the coming months (not all of which, of course, will necessarily be relevant and disclosable). I am very grateful to the Inquiry team for their industry and also to the Rule 9 recipients, including many of the groups of bereaved families and others who suffered hardship, for the manner in which they have responded.
10. It is obvious that the huge volume of material that will be received must be carefully analysed and considered by the Inquiry team before the process can be commenced at the public hearing of examining witnesses in relation to the issues raised in the Inquiry's wide Terms of Reference.

Scope

11. I am grateful for the helpful further submissions relating to the scope of Module 2 and the various suggestions concerning the particular issues that the Core Participants invite the Inquiry to consider.
12. Many of the matters that were raised were addressed by Mr Keith in his oral submissions, and some of them are already reflected in the Rule 9 requests that have been sent out. However, they will all be further considered by me and the Inquiry team over the coming weeks.
13. There is much merit in the submission that the Inquiry team provide the Core Participants with a List of Issues and I direct that this be provided by 28 April 2023.

Expert evidence on structural racism

14. A number of the Core Participants raised in their written submissions the issue of whether the Inquiry should obtain, for use in Module 2, evidence from experts or experts on the issue of structural racism and discrimination. Some of those submissions referred back to submissions on this issue that were made in the Module 1 Preliminary Hearing on 14 February 2023 and the Module 3 Preliminary Hearing on 28 February 2023 and, as the arguments developed, it became clear that the issue is one that affects the Inquiry as a whole. In this regard, I note that a number of other organisations have also called in the public domain for such expert evidence to be obtained and adduced in every module.
15. Ms Morris made oral submissions on behalf of Covid-19 Bereaved Families for Justice. She referred to the Module 2 Provisional Outline of Scope and the reference there, as one of the matters to be considered, to “*the identification of at risk and other vulnerable groups and the assessment of the likely impact of the contemplated NPIs on such groups **in light of existing inequalities***” (emphasis added). She questioned how the Inquiry could understand the inequalities that pre-existed the pandemic without understanding the underlying social conditions, including structural racism, which had generated those inequalities. Expert evidence was, she said, the means by which the Inquiry can and should gain that understanding.
16. Ms Morris’s submissions on this issue were adopted and, in some cases, expanded upon by advocates representing some of the other Core Participants. Ms Twite made submissions on behalf of the Children’s Rights Organisations: Save the Children Fund, Just for Kids Law and the Children’s Rights Alliance for England. Whilst supporting the argument that expert evidence should cover the issue of structural racism, Ms Twite emphasised that the pre-existing inequalities to which the Inquiry must be alive relate not just to racism, but to discrimination on the basis of all characteristics protected under the Equality Act 2010 and also, she suggested, socio-economic disadvantage. She further submitted that the Inquiry’s analysis must be intersectional.

17. Ms Davies KC, who represented Southall Black Sisters, argued that the Inquiry required expert advice *“on how the public sector equality duty should have been approached when it came to assessing the potential impact of the Government’s decisions regarding the pandemic and lockdown on women and girls.”* She made it clear that, whilst she supported the submission made by others that there should be expert evidence addressing the issue of structural racism, her request was for a separate report from *“an expert whose specialism is the equalities impact on women and girls that should be considered in public decision making”*. She added that she would expect the expert to adopt an intersectional approach *“so that she or he understands that women and girls have multifaceted characteristics and can have more than one protected characteristic.”*
18. Ms Davies noted in this regard that her clients represented in particular the interests of black and ethnic minority women and migrant women and she therefore sought an expert *“specialising in the protected characteristic of sex, and its intersection with race, class and immigration or nationality, to understand those intersectional nuances.”*
19. Ms Gallagher KC, for the TUC, also supported the argument that there was a need for an expert in structural racism to be instructed. Mr Dayle, for The Federation of Ethnic Minority Healthcare Organisations, argued that the Inquiry was obliged to explore how institutional and structural racism and health inequality played a part in government decision-making and the contemporaneous responses to the pandemic and, in particular, why ethnic minority healthcare workers and their wider communities had suffered disproportionate rates of death and poor health outcomes.
20. In considering these matters, it is first necessary to identify what is meant by structural racism. The written submissions on behalf of Covid-19 Bereaved Families for Justice and NI Covid-19 Bereaved Families for Justice, prepared for the Preliminary Hearing in Module 1, reproduce a 2008 definition of structural racism as follows: “Structural racism is defined as the macro level systems, social forces, institutions, ideologies, and processes that interact with one another to generate and reinforce inequities among racial and ethnic groups”. In other words, structural racism may be understood to mean the processes and societal attitudes which give rise to and perpetuate racial and ethnic inequalities. Such inequalities may include, for example, (and of particular significance in the context of this Inquiry), the disproportionate rates of death and unequal health outcomes amongst ethnic minority groups arising from the pandemic and the government’s response to it.
21. I make it absolutely clear that the vital issue of the impact of the pandemic and the response to it on ‘at risk’ or vulnerable or marginalised people, and on ethnic minority groups, has been at the heart of this Inquiry since its inception.

22. This issue has a central place in the Terms of Reference as a result of my recommendation to that effect following the consultation exercise at the very start of the Inquiry's work. The Terms of Reference oblige the Inquiry to consider any disparities evident in the impact of the pandemic on different categories of people, including, but not limited to, those relating to protected characteristics under the Equality Act 2010 and equality categories under the Northern Ireland Act 1998. The characteristics that are protected by the Equality Act 2010 are age, disability, gender reassignment, marriage or civil partnership (in employment only), pregnancy and maternity, race, religion or belief, sex and sexual orientation.
23. I also repeat here what I said at the start of the Module 2 preliminary hearing:
- "I should like to reaffirm my commitment to ensure equalities are at the forefront of the Inquiry's work, and that means they are at the forefront of every module. There is no question of any group being sidelined or that I am not listening to them. I am. The only question is how we ensure we investigate inequalities properly and we investigate properly the disproportionate number of deaths in particular groups and communities"*
24. This is further evidenced by the designation of Core Participant status to those organisations I considered, amongst other matters, to be representative of at risk, vulnerable and marginalised or minoritised groups which included those with protected characteristics and/or those with pre-existing inequalities.
25. In the context of Module 1, the Inquiry is already inquiring, by way of direct Rule 9 requests to UK government and devolved administration planners, whether, and to what extent, pre-existing inequalities in the population were taken into proper account in planning for a pandemic. We have asked to what extent inequalities were considered as part of the UK's and devolved administrations' risk assessment processes, what structures were responsible for reducing inequalities and what role such structures had in pandemic planning. The Inquiry has directed the taking of expert evidence from Professor Marmot, author of the seminal report *Fair Society, Healthy Lives* and from Professor Bambra, Professor of Public Health, who has extensively analysed Covid-19 and health inequalities and who led the Independent SAGE report on Covid-19 and health inequalities.
26. The scoping documents for Module 2 states in the plainest terms that the Inquiry will include identification of at risk and other vulnerable groups and the assessment of the likely impact of the UK government's contemplated non-pharmaceutical interventions on such groups in light of existing inequalities. In other words, the Inquiry is already investigating in Module 2 the extent to which the government and the key decision-makers, when making the core strategic decisions, properly had in mind and took into account the considerations and interests of ethnic minority groups and those who were at risk or vulnerable or marginalised.

27. Accordingly, this issue is reflected in many of the Rule 9 requests that have been made, including those issued to government departments, to the Cabinet Office Equality Hub (which includes the Race Disparity Unit) and to government Ministers. In our Rule 9 request to the Equality and Human Rights Commission, we have sought information concerning the impact of Covid-19 on at risk and vulnerable groups and groups with a protected characteristic (race being a protected characteristic) and asked it specifically to provide us with details about its inquiry into the impact of Covid-19 on ethnic minorities.
28. The inquiry has also sent a very significant number of impact questionnaires to bodies and organisations representing ethnic minority groups, seeking information about the extent to which they engaged with the UK government on the impact of Covid-19 on these communities and their views on the extent to which the government considered such communities when making decisions about the response to Covid-19. Module 2, together with the relevant devolved modules 2A, 2B and 2C, has sent Rule 9 impact questionnaires to a number of organisations representing or supporting ethnic minority communities including Race Equality Foundation, the Runnymede Trust, Race Equality First, Race Council Cymru, BAWSO, Southall Black Sisters and the Federation of Ethnic Minority Healthcare Organisations, as well as to groups representing the bereaved.
29. At the heart of Module 3, as its scoping document makes clear, are the issues of the impact of the pandemic on doctors, nurses and other healthcare staff, by reference to ethnic background and the extent to which death rates varied by reference to ethnic background and geographical location. Later modules will continue to consider the issue of the impact of the pandemic on pre-existing inequalities.
30. The Inquiry will be addressing, across relevant modules, whether the pandemic exacerbated racial disadvantage, disproportionately affected ethnic minority groups and whether the government and devolved administrations' actual decision-making led to the perpetuation of racial and cultural disadvantage. These are precisely the questions advocated for inclusion in the Inquiry's work by the Federation of Ethnic Minority Healthcare Organisations, at paragraphs 8 and 9 of their written submissions of 24 February 2023.
31. It follows that the Inquiry's investigations, and the evidence that it intends to adduce, will necessarily highlight and expose the nature and degree of pre-pandemic structural racism that existed. Such an issue is bound to be raised as part of the Inquiry's own examination of the extent to which the pandemic and the governmental response exacerbated and perpetuated the existing position.
32. Nonetheless, having considered very carefully all the submissions made on this issue, I have concluded that the Inquiry should obtain expert evidence from a suitably qualified expert, or experts, on the nature and degree of pre-pandemic structural

racism. Such an expert or experts will assist me to understand the issue and will provide a clearer evidential foundation upon which the specific issues in Module 2 can be explored and developed. I therefore direct that such expert evidence be commissioned. I will consider in due course, and keep under review, the extent to which such evidence will be needed in other Modules.

33. I must emphasise, however, that it forms no part of the Inquiry's functions to reach a conclusion on the degree to which such structural racism, as the expert or experts may conclude exists, has been institutionalised either on the part of particular state structures or on the part of those government departments, entities and personnel whose decisions are under scrutiny in Module 2.
34. It would in any event be impossible, as Mr Keith KC submitted, for this Inquiry to reach any view on such matters, given the relatively narrow number of government bodies and officials whose decisions are under scrutiny in Module 2. Module 2 is examining the nature and quality of the Covid-19 related decisions themselves, including of course any disproportionate impact in terms of ethnic or societal inequality. Module 2 is not an inquiry into government structures as a whole or directly into the persons who staff it.
35. For that reason, it will not be necessary for the expert or experts who are instructed to review all the documents that have been disclosed to the Inquiry relating to the government's response to the pandemic, as opposed to reviewing the impact of the various ways in which the government responded. Rather, and this reflects what I understood to be the core argument that was made in support of obtaining this expert evidence, the expert(s) will focus on the extent to which structural racism and discrimination underpinned the inequalities that undoubtedly existed prior to the pandemic and which therefore, at least arguably, should have been taken into account by government decision makers in formulating their response to the pandemic, as well as the way in which the pandemic and responses exacerbated the pre-existing position.
36. I now turn to the further argument that expert evidence should also be obtained regarding pre-existing structural discrimination on other grounds and also on intersectional issues.
37. I agree that those further specific issues need to be addressed in expert evidence. It seems to me that, in the first instance at least, the Inquiry legal team should, in addition to the expert evidence to be obtained in relation to structural racism, explore the possibility of obtaining a single report covering these other issues, if necessary drafted by a (small) team of experts covering different specialisms.

Further Directions/Preliminary Hearing

38. Finally, I need to address directions for the future conduct of the Module. I can deal with this issue shortly.
39. There was a consensus amongst all who addressed me at the hearing that it would be sensible to hold a further Preliminary Hearing before the summer. There was some debate about the precise timing of such a hearing. An earlier date will allow more time for consequential steps to be taken before the commencement of the substantive hearings; a later date will allow for more work to be done and, therefore, for a fuller picture to emerge.
40. Clearly, a balance has to be drawn between these competing considerations. Having reflected on this matter, I do not feel I am yet in the best position to make that judgement. I make it clear now that there will be a further Preliminary Hearing before the summer but the date remains to be determined. I will decide on the most appropriate date for that hearing and Core Participants will of course be notified as soon as possible.
41. Some Core Participants also raised the issue of whether the length of the Module 2 public hearing, currently scheduled for 8 weeks, will be sufficient for the Inquiry to be able to address the many important matters that arise in this Module. I will keep this issue under review.

The Right Honourable Baroness Hallett
Chair of the Covid-19 UK Inquiry
9 March 2023