

Scottish COVID-19 Inquiry

Planning Meeting Minutes – Health and Social Care

10 May 2023

Chair to the Inquiry Lord Brailsford

Senior Counsel to the Inquiry Stuart Gale KC

Solicitor to the Inquiry Joanna Bain

Co-Secretary Scott Bell

Organisations represented at the meeting:

Scottish COVID-19 Inquiry

Care Home Relatives Scotland and CHRS Lost Loved Ones

Church of Scotland (including its Social Care Council "CrossReach")

City of Edinburgh Council

College of Paramedics

COSLA

East Dunbartonshire Council

Glasgow City Council

Glasgow Disability Alliance

Group comprising bereaved relatives, current/former care home staff,

Community Response Team (Skye)

Healthcare Improvement Scotland

Independent Care Homes Scotland

Kirsty Solman (lay representative of families who have children with additional support needs) Law Society of Scotland

Long Covid Kids Scotland

NHS National Services Scotland

NHS Territorial Health Boards and Special Health Boards

PAMIS

Public Health Scotland

Refugees for Justice

Royal College of Nursing

Rradar (Scotland) Limited (representing a group of three private sector care home operators) Scotland Excel

Scottish Care

Scottish Covid Bereaved

Scottish Hazards

Scottish Healthcare Workers Coalition

Scottish Ministers

Scottish Trades Union Congress

The ALLIANCE

The Care Inspectorate

UK Covid-19 Inquiry

Summary Note

Agenda item 1: Housekeeping

Mr Bell (Co-Secretary) explained the meeting was being recorded purely for the purposes of capturing a minute, after which the recording would be deleted. He also explained the process for asking any questions during the virtual meeting.

Agenda item 2: Welcome

Lord Brailsford welcomed everyone to the meeting.

He explained the purpose of the meeting was to share information; to explain where the Inquiry is and what it plans to do. Lord Brailsford said that for the remainder of this year, and into the next, the Inquiry would be addressing issues of health and social care impact. He added that Mr Gale would go into much more detail.

Lord Brailsford acknowledged that many attendees had engaged actively with Inquiry colleagues over the past several months about a large variety of matters pertaining to the Inquiry, and their involvement was appreciated. He expressed gratitude for their cooperation and participation, adding it would become even more important in the coming months. Lord Brailsford said, as hard as he is going

to try, Mr Gale would not be able to give all the information attendees might want and that there would be detailed matters which would remain unanswered. However, he added Inquiry colleagues would continue to be on hand to discuss such matters and assist attendees in future, particularly with hearing evidence.

Agenda item 3: Overview of Inquiry's structure and approach

Mr Stuart Gale KC said the Inquiry's [Terms of Reference](#) had been grouped into three initial broad themes:

1. health and social care, led by Mr Gale;
2. education and young people; and
3. finance, business, and welfare.

The second and third themes will be led by his Co-Lead Counsel, Ms Laura-Anne van der Westhuizen KC.

Mr Gale said the Inquiry is bound by its Terms of Reference, specifically TOR 2(b), to examine decisions to lock down and their impacts. He added that the impact hearings would allow the Inquiry to gain an understanding of the practical consequences of those decisions on the ground, particularly where the impacts of decisions earlier in the pandemic might have affected later decisions taken in the strategic response as the pandemic progressed.

Mr Gale advised that a few questions had been posed about the structure of the Inquiry and whether more could be offered in the way of detail as to the proposed order of the Inquiry's hearings.

Mr Gale said:

- the initial focus is on impacts, starting with health and social care;
- he could not be certain how long these hearings will last. More detail of

specific timelines could not be given at this stage but ample notice would be given in advance;

- impact hearings will follow for education, and business and welfare, in due course;
- core participants and other interested parties will be kept informed of the Inquiry's intended progress and their views will be sought in assisting the Inquiry in this work; and
- windows for applications for core participant status specific to those other themes will reopen as the hearing timetable becomes clearer.

Mr Gale addressed questions seeking to understand the purpose of these impact hearings:

- the Inquiry is charged with creating a factual record of the key strategic responses to the pandemic in Scotland;
- strategic decisions/responses taken in relation to the pandemic and its developing circumstances had consequences affecting all parts of the population; and
- it is important that impacts are recorded.

Mr Gale addressed questions arising as to why the Inquiry will be taking the impact evidence at the outset of its oral hearings:

- recollections, even of events which were traumatic, do, inevitably and with the best will in the world, dim with time, and we wish to obtain the best evidence we can;
- we will apply our approach both geographically and demographically; and
- it is important to note that oral evidence in the context of impact hearings will be relatively limited – its purpose is to provide a representative sample.

Mr Gale addressed questions arising whether these hearings will focus on the implementation of decision-making:

- the primary aim of the first set of hearings is to take a
- representative sample of the way in which people were impacted by the pandemic, this will be supplemented by the experiences shared as part of Let's Be Heard;
- Let's Be Heard is the principal route for people to interact with the inquiry and provide it with a record of their experiences;
- the Inquiry team is tasked with demonstrating "how a human rights-based approach... has contributed to the Inquiry's findings in fact and recommendations";
- the Inquiry team has resolved to apply a human rights-based philosophy to all its conduct and decision-making; and
- the Inquiry will, over the summer, publish a policy on its human rights-based approach to make clear to people interacting with it what this means in practice.

Agenda item 4: Restriction order - health and social care

The recently published Restriction Order can be found on the Inquiry [website](#). This Restriction Order is specific to the health and social care portfolio, and it covers the publication or disclosure of any evidence or documents produced by, or provided to, the Inquiry pertaining to health and social care in the Inquiry's investigation of matters covered by Terms of Reference (g), (h) and (i) and, where appropriate, Terms of Reference (c), (d), (e) and (f). It will be for applicants and/or their relatives to decide if they wish to give evidence anonymously. All applicants will be offered that opportunity.

Mr Gale addressed several questions relating to how the Inquiry proposes to deal

with confidential/medical evidence provided to the Inquiry in relation to impacts. For example, where a witness is critical of either health and social care institutions, organisations or individuals providing health and social care:

- information critical of individuals or institutions will not be placed in the public domain without the Chair's permission;
- the Inquiry will alert relevant parties in advance of any hearing where it is aware of criticism occurring;
- in terms of their right to respond, the Inquiry will be undertaking a significant evidence-gathering exercise shortly to support the hearings that will deal with implementation and operational decisions taken to ensure compliance with the relevant legislation and restriction regulations; and
- the Inquiry will ensure it does not inadvertently create any difficulties for the ongoing investigations by Crown Office and Procurator Fiscal Service (COPFS).

Agenda item 5: Expert witness on the epidemiology of COVID-19

5(a) – Presentation planned for July 2023

The witness in question is Dr Ashley Croft. He is a Consultant Public Health Physician and a Medical Epidemiologist, who is based in London. Dr Croft's curriculum vitae will be produced with his report.

Dr Croft's evidence will be the first public event held by the Inquiry and will take the form of a presentation by Dr Croft of his findings. It will take place in Dundee during the week commencing 24 July 2023. Arrangements are being made for it to be open for core participants to attend and it will be live streamed. For the avoidance of doubt, this will be a presentation – it will not provide an opportunity to put to Dr Croft what may be differing views of the accepted science.

Mr Gale addressed questions arising regarding if, or when, core participants will

have sight of the instruction to Dr Croft, and his written report:

- both will be published in advance of his evidence along with material he references in his report.

For the avoidance of doubt, in response to a specific question, the Scottish COVID-19 Inquiry has not at this stage had sight of any UK Covid-19 Inquiry-commissioned report.

5(b) - Purpose of expert evidence and presentation in July 2023

The Inquiry has commissioned Dr Croft to prepare a report on the accepted scientific and medical understanding of coronavirus and COVID-19, as that understanding existed in late 2019 and developed during the pandemic, up until the end of 2022. It is intended that his report will be a narrative and will take the form of a presentation. He will not provide a critique of the science/medicine that informed decision-making by the Scottish Government or other institutions, nor will it be a critique of the implementation of decisions taken in Scotland.

5(c) - Future expert evidence

Several parties have asked whether the Inquiry intends to review its expert evidence or would consider instructing further expert evidence. If it becomes apparent that it would be advisable to do so, we will, at a subsequent date, consider other scientific and medical evidence including the scientific and medical basis which informed the decisionmaking and implementation of pandemic policies in Scotland. The Inquiry would consider taking input from core participants as appropriate in connection with any such further instruction. That evidence will be considered in the context of Dr Croft's evidence and any differences will be examined. Dr Croft will thereafter be asked to return to consider any issues which have been raised.

Agenda item 6: Health and social care impact hearings

6(a) – Preliminary hearing planned for August 2023 and its purpose

This will constitute, in effect, the opening of the Inquiry and the first of its substantive hearings and will be a significant event in providing more detailed information of its proposed hearings. This session will cover, among other things, house rules, processes and procedures, and will set out more detailed timetabling and an update on readiness in the context of impact hearings.

6(b) – Intention to begin impact hearings in Autumn 2023

It is the Inquiry's intention to commence these hearings towards the end of October and to sit uninterrupted until early December 2023. The UK Covid-19 Inquiry will be sitting in Scotland in January of next year, so the Scottish COVID-19 Inquiry will not be sitting then. This reflects the process of liaison between the two Inquiries to avoid, as best we can, occurrences when both Inquiries may be sitting and considering material which is germane to both. The Scottish COVID-19 Inquiry plans to resume its hearings in February 2024 and to continue for several weeks with, perhaps, a one-week break in the middle of that period.

Mr Gale said he could confirm that these hearings will be in Edinburgh and more details will be shared in due course.

Mr Gale addressed several questions regarding the order and sequencing of hearings:

- the Inquiry can provide limited information at this stage;
- the Inquiry is not yet able to provide a detailed timetable in terms of the range and number of individuals giving oral evidence in the context of impact hearings, nor of the order in which the different impacted demographics will be heard; and
- a list of witnesses, which is common in all inquiries, will be published in the Scottish COVID-19 Inquiry

month preceding the first set of hearings.

Mr Gale explained what he recognised as being covered by impacts using the care home setting as an example:

People who were residents in care homes were obviously impacted if they contracted COVID-19. Evidence of their experience can come from the resident and from their relatives and friends who witnessed the effects of the virus and the impact of lockdown. There will be the tragic circumstances in which the virus caused, or contributed to, the resident's death; in which case the evidence will principally come from the resident's bereaved relatives/friends. The Inquiry will also be considering the impact on residents and their relatives/friends caused by the implementation of restrictions on access to residents. This will include the effects these restrictions had upon the mental and psychological wellbeing of both residents and their relatives/friends. The Inquiry will also be looking at the impact on those working in the health and social care setting, and this consideration will cover the effects on those workers in circumstances where they contracted the virus and the psychological effects on working in those circumstances and the effects on them of witnessing the distress of others.

6(c) – Order in which the Inquiry intends to call witnesses

Every effort will be made to take the evidence in a way which respects and accommodates the witness' circumstances and, obviously, evidence may be taken remotely.

In identifying the various settings in which the Inquiry envisages impacts will have occurred, we are mindful of hearing evidence from people in a wide variety of settings:

- care/nursing homes for the elderly;
- adult, young people and children's residential care settings;
- health and social care in the community;

- hospital settings;
- children in care outside of residential facilities, including foster and kinship care;
- people in custody;
- those in accommodation for refugees and asylum-seekers;
- those who were homeless;
- those receiving treatment for drug and alcohol dependence; and
- those who were in receipt of palliative care, end-of-life care, or those subject to 'do not resuscitate' notices.

The Inquiry is also mindful of those who were employed in these settings.

As with other impacted groups, we would anticipate working closely with relevant organisations which might be able to steer us towards the most appropriate way to access staff members who may wish to contribute.

Let's Be Heard will be the primary avenue for sharing their experiences.

Given the scale of this exercise, it is extremely difficult to predict how long these groups of witnesses will take. We anticipate these hearings could extend to at least spring 2024.

In any discussion of the scope of this exercise, it is necessary for us as a Counsel team to manage expectations. We will take a great deal of care in selecting those witnesses whose testimony may lend itself more readily to oral evidence or a formal witness statement, but this will necessarily be a small fraction of the potential demographics.

6.d. Scope of hearings

The potential scope of these hearings is significant. We aim to obtain evidence pertaining to as broad a range of impacts in respect of health and social care as we can.

6.e. Deadlines for gathering statements

The Inquiry needs to be rigorous in adhering to timetables and deadlines – and we wanted to take this opportunity to make clear that we will be gathering evidence over the summer until the end of August 2023, with a view to providing core participants with sight of the relevant information in the month preceding the first set of hearings, commencing in October 2023.

Agenda item 7: Interaction with the Inquiry listening project, Let's Be Heard

Mr Gale advised several questions were received from organisations attending today, focusing on the interaction between Let's Be Heard and the Inquiry's investigative work, and the interaction between Let's Be Heard and the UK Covid-19 Inquiry's equivalent outreach project, Every Story Matters:

- Let's Be Heard is an integral and vital part of the Inquiry. It is the primary way in which the Inquiry hopes to hear from individuals seeking to provide an account of their experiences during the COVID period, and the lessons they believe ought to be learned.
- Let's Be Heard is the main avenue through which the Inquiry will ingather material pertaining to personal accounts of individual experiences. The project is designed to be as accessible and open as possible and to invite as many people to come forward as would want to participate.

Mr Gale addressed a question about whether those who have not been directly

contacted by the Inquiry, and in particular health care workers, can still contribute to the Inquiry's work:

- The first port of call for any individual account ought to be Let's Be Heard. There can be no guarantee that formal witness evidence will be sought from any particular impacted individual, even if that is what they wish.
- Regarding the interaction with Every Story Matters, people are welcome to share their experiences with both inquiries. They should check each Inquiry's Terms of Reference. The Scottish COVID-19 Inquiry is working closely with Every Story Matters to ensure that engaging with either process is as seamless as possible. Our central questions are quite similar so that people can share their responses with the other Inquiry, should they wish to do so.

Item 8: Crown Office and Procurator Fiscal Service (COPFS)

Mr Gale acknowledged the Inquiry had received several questions seeking clarification as to how it's work fits in with ongoing investigations being conducted by other agencies, in particular the Crown Office unit investigating COVID-19 deaths:

- We are conscious of the work being done by COPFS and the importance of doing our best to avoid the possibility that the work we are undertaking prejudices its investigations, or any subsequent proceedings.
- In terms of the interaction between the two sets of inquiries, while there are two very distinct remits at play, there will undoubtedly be an element of overlap in terms of the facts the Scottish COVID-19 Inquiry is seeking to establish and the facts underpinning investigations being conducted by COPFS. The Scottish COVID-19 Inquiry will make findings of fact and make recommendations as to any lessons that might be learned from the handling of the pandemic in Scotland but will not, and cannot, make any findings of liability, criminal or otherwise.

- The Inquiry is in regular contact with COPFS to ensure the timing and scope of its work is factored into our timetabling and planning. However, we are also mindful of the fact we have an obligation to progress our Inquiry.

Ms. Joanna Bain – Solicitor to the Inquiry

Agenda item 9: Matters arising

Q: In relation to undertaking a discrete inquiry into a particular incident

A: In respect of the Inquiry examining the Park Hotel incident as a discrete matter, the Inquiry is not able to do that – and it would not be appropriate for us to do so.

The Inquiry has been tasked with investigating the strategic elements of the handling of the pandemic within the Terms of Reference set by Scottish Ministers. As such, it cannot commit to undertaking in-depth inquiries into a specific incident. To do so would create a precedent within the Inquiry that would not be sustainable given the breadth of the Terms of Reference. The Inquiry also notes the findings of the Independent Commission into Asylum Provision in Scotland by Baroness Helena Kennedy KC.

Q: In relation to whether pre-pandemic planning would be addressed in hearings

A: Pre-pandemic planning is expressly included within the Inquiry's Term of Reference 2(a). As we have described, the Inquiry intends to look first at the impacts of the pandemic, then the implementation of measures, and thereafter government decision-making and planning. Though issues relating to pre-pandemic planning may be relevant to hearings at each stage, we have taken the view that pre-pandemic planning as a specific topic is best addressed after the consequential impacts and decisions founded on such planning have been established. We think that this way, by the time we come to consider this in detail,

the lessons to be learned relative to pre-pandemic planning will be more readily apparent (than trying to look at this topic without an appreciation of the ultimate effects).

Q: In relation to whether long COVID will be considered by the Inquiry

A: Long COVID will form part of the Inquiry's investigations, but it is important to note the limitations on that. The Inquiry is bound to operate within its Terms of Reference, which relate to the strategic response to the pandemic in Scotland from 1 January 2020 to 31 December 2022.

Long COVID will, we expect, be relevant to various Terms of Reference and the Inquiry will issue a short statement setting out our views on the scope of our remit in this respect to provide greater clarity.

Q: In relation to timelines for evidence gathering

A: We may have covered this sufficiently in Mr Gale's address, but for the avoidance of doubt, the Inquiry will contact any organisation it is planning to formally seek information from, either through a Rule 8 or a Section 21 notice, in advance of issuing that notice, to discuss proposed requests that are upcoming. This is intended to open a dialogue with relevant organisations to manage expectations and ensure requests are pitched appropriately to draw out the information the Inquiry needs.

We expect to be approaching, over the summer, organisations which may be able to provide information on impacted staff and, in that event, advance warning will be given.

Q: In relation to coordination with the UK Inquiry, in particular coordinating requests for information

A: We meet regularly with the UK Covid-19 Inquiry team to discuss upcoming programmes of work and are working very closely with them to avoid duplication, where we can. While there is undoubtedly overlap in our Terms of Reference, we are taking all steps presently available to us to try to avoid placing additional and unnecessary burden on interested parties who we know are already under immense resource pressure.

We are jointly organising a meeting of shared core participants in June in Edinburgh and will discuss in more detail then. After this, we will be able to share more widely with other common material providers.

Q: In relation to the extent we can communicate with our members about the Inquiry's work

A: We hope to begin issuing a monthly update to core participants, and we would be content for any such periodic update to be circulated to members of your organisation as you see fit.

In terms of participation more broadly in the elevated rights afforded to core participants, we would expect, given the potential sensitivity, that representatives from your organisation would be identified who you would want to have access to Inquiry documents, such as to ensure confidentiality is maintained in respect of restricted material and in advance of any publication.

Q: In relation to investigating the framework for emergency legislation within the thematic structure

A: If by this you mean whether the Inquiry will examine the legislative structures in place (or not) to allow decisions that were made to be implemented as they were, then yes – inevitably any consideration of the decisions that were made will

require consideration of the way in which these were taken, and the legislative options available at the time. The use of emergency legislation will necessarily form part of that analysis.

In terms of how it will play into the thematic structure, following on from our impact hearings, we will move to look at 'implementation' across the three broad themes identified and in respect of other subjects falling within the Terms of Reference, which do not readily fit within those three broad themes. Finally, we will consider decision making and pandemic planning. Given the broad effect of these decisions and plans, in our preparation for that stage in the Inquiry's hearings, we will take a view on whether these are best considered in the round or with reference to individual themes.

Lord Brailsford, Chair to the Inquiry, opened for further questions relating to matters arising.

Adrian Ward, Law Society of Scotland:

Item (I) of the Terms of Reference – if one business gives some support to another business, would that be within the Terms of Reference or not?

"This question should be submitted in writing to the Inquiry to respond to."

Jon Kiddie, Counsel for Refugees for Justice:

Clarify please if you do not mind; the deadline of next Wednesday 17 May and what that is for?

"That deadline was for any views that people on this call might have if there were particular groups or demographics within the health and social care impacts group.

"It is not prescriptive in the sense of an unknown emerging sometime after 17 May."

Judith Peacock, Edinburgh City Council:

One of the things that occurred to me about the 17 May deadline was whether what you were anticipating were members of staff impacted by the COVID situation coming forward to give evidence, or do you think that is an organisational rather than an impact position?

“Refer to previous points regarding Let’s Be Heard.”

Michael Clancy, Law Society of Scotland:

Wondering if minutes of this meeting, or if a transcription of this discussion will be sent to the participants so we can have it on file and answer questions to those who hold our mandates?

Mr Bell: “Yes. Circulating next week.”

Tressa Burke, Glasgow Disability Alliance:

I just wondered about the perspective of people who might not yet be considered, and I am wondering about people who were not covered to get a booster because of the type of condition they had and were not eligible for treatment. Some of those people are still very much imprisoned in their own homes. They feel unsafe because they feel the public health guidance during COVID was not supportive of them. Some of those people are known to us, they are not coming to our events they are still at home online and are terrified to go out and there is a perspective there that we should be looking at.

Lord Brailsford: “The inquiry would welcome this input. Please get in touch, contact the core participant mailbox.”

In concluding the meeting, Lord Brailsford thanked everyone for attending and participating.