

## **Covid Inquiry Questions & Answers**

**Q. Why is it important that the Covid Inquiry is a statutory inquiry?**

A. This is vital because a statutory inquiry is governed by the Inquiries Act 2005 and has the power to compel witnesses (including the Prime Minister) to attend and answer under oath. It also can compel production of documents and the requirement to involve the bereaved.

**Q. How does this affect the bereaved, those like me?**

A. The Inquiries Act 2005 gives you the right to effective participation in the Inquiry process, including the right to full disclosure and the right to be legally represented. This means that you will be on a level playing field with government departments, Ministers, other public authorities and corporate interests.

**Q. When will the Inquiry start?**

A. There is no set timescale other than the Prime Minister committing that a statutory inquiry be set up in the spring 2022. We will continue to push for expedition so that a start date can be set as soon as possible so that all of the necessary preparatory work can be started.

**Q. What preparatory work is involved?**

A. The Inquiry is a massive undertaking and you must be involved at every stage, including key issues like the scope of the inquiry, the make-up of the panel, the timetable and timescale, the evidence to be called, interim reports on urgent matters and geographical coverage.

**Q. Why is it important that I individually instruct legal representation?**

A. It is possible that the Inquiry will not formally recognise the 'Covid-19 Bereaved Families for Justice' as a Core Participant. This is why it is important that the bereaved come together as individuals in a legal sense to ensure strength in numbers and are a prominent voice in the process.

**Q. Do I have to instruct Broudie Jackson Canter?**

A. No, you have the right to instruct whomever you want but our experience of major inquests and inquiries shows that it's best to have a single point of representation for the bereaved if possible, minimising severe distraction and maximising the group's participation.

**Q. Will I have to pay anything?**

A. No, we are acting pro Bono (without charge) at the moment and will continue to do so until the Inquiry is formally set up, at which point there should be a scheme through which the government will pay for the legal representatives for bereaved families.

**Q. What should I do next?**

A. Once you have instructed legal representation, if you are a member of Covid-19 Bereaved Families for Justice please continue to recommend other bereaved families join the group to maximise the impact of the bereaved by acting with one voice. If you are not a member, we recommend you consider joining by visiting the following website to find out more - <https://www.covidfamiliesforjustice.org/>.

**Q. What will Broudie Jackson Canter do next?**

A. Given the Covid-19 Bereaved Families for Justice group has over 4,000 family member supporters, we have made an early approach to the government to arguing that the group should be consulted on the Inquiry process. We will be representing the interests of all our clients whether group members or not.

**Q. How can we start this now when we are still in the thick of things (i.e. rise in cases and more potential deaths to come)?**

A. Because even if we start the Inquiry process tomorrow a lot has to be done before the hearings start. A chair has to be appointed, panel members possibly, decisions on core participants, disclosure of evidence (which itself can easily take a year or so)

**Q. Should I reach out and start getting notes from the hospital?**

A. It is always worth trying to get the notes. It is often a long -winded process so if you think the notes might be relevant start the process now.

## **Client Webinar Q&As**

**Q. What will be done about those who died from hospital acquired Covid? Will a separate group be set up to deal with this as per care homes?**

A. Until we know how the Inquiry looks, we don't precisely know how it will run. It might be that there are separate modules, with part of the Inquiry dealing with care homes, and part of the Inquiry dealing with hospital acquired Covid, however we do not yet know if this will be the case as it is too early to say. We will be looking at each of these issues both separately and together as they begin to join up with the families that are involved in those.

**Q. Recently 111 North West service have admitted to failings. The head of 111 has now said they will stand up in court and admit failings. Could the families use this & take this further?**

A. Yes, is the short answer. We have specifically included the 111 service and indeed the 999 service in the draft Terms of Reference that we have put forward to the government so the answer is very much so.

**Q. Could this Inquiry take years and years?**

A. The depressing side of this answer is that the Hillsborough Inquiry took almost 30 years, other Inquiries (like the Infected Blood Inquiry) possibly longer in many cases. What we're demanding from the government is not only timetable, but time scale too. We've proposed that there needs to be a discussion about how quickly the Inquiry can be done. Of course we want no stone unturned but with the right resources there's no reason why this Inquiry needs to take 5-10 years like other Inquiries. The longer it takes, the less justice you will get and the less impact there is in any recommendations that are made. Until the government start talking to use properly we are not in a position to provide a time scale.

**Q. What can we as individuals do to support the work of the legal team?**

A. On the legal front, try to write down your recollections as soon as you feel comfortable doing it, the sooner you do it, the more accurate it is likely to be. At the same time, I realise how upsetting it can be, so you have to decide when the best time is for you to do that. On the non-legal front, it's a matter of what the Covid-19 Bereaved Families for Justice group can do, and you can play a part in that group. I believe the next stage in their campaign is to each write a letter to their MP. Although we are supporting and liaising with them, we the lawyers are not coordinating the campaign of the group so any assistance you can provide on that front has to be through them.

**Q. What exactly is the Parliamentary Inquiry that Dominic Cummings and Matt Hancock have been participating in, and will it have any effect on the Statutory Inquiry?**

A. The recent Inquiry at which Cummings spoke was the Health and Social Care Committee and Science and Technology committee joint Inquiry. Cummings said a lot but produced very little evidence. Given what he said we will be asking the Inquiry to obtain his evidence (which he has said he will supply) and then assessing whether he is a credible witness.

**Q. Has there been any analysis of Covid acquired infections and subsequent deaths in hospitals?**

A. If your question refers to whether the CQC is looking at figures for hospital acquired Covid the answer is not as far as we are aware but hospital trusts keep their own figures and in May 2021 the Guardian compiled figures saying up to 8,700 patients died after catching Covid-19 while in hospital being treated for another problem.

**Q. Will individual family members be given an opportunity to give evidence at the Inquiry?**

A. I would hope so. It would be a defiance of all proper principles that should be applied about putting families and the bereaved at the heart of the process if that were not to happen. It is ultimately up to the Chair to determine how that process would be done, but that would be after a lot of work and submissions made on behalf of the bereaved by us as a legal team to make sure that that happens in the best way for the families.

**Q. Could the outcome of the inquiry lead to criminal prosecution?**

A. An Inquiry cannot determine either criminal or civil liability, so the answer on that level is no. The real answer is much more complicated. The Inquiry brings out all of the evidence and conclusions are reached, and that then informs the other processes. The police and the prosecuting authorities will be watching the Inquiry very closely. The outcome of the Inquiry often has as a matter of law to be considered by the prosecuting authorities. In the Hillsborough Inquiry, the jury concluded that the deceased had been unlawfully killed, and following from that there were criminal prosecutions. There were also follow on civil proceedings where people managed to gain compensation, but they are separate processes.

**Q. If all of the preparatory work for the Inquiry was to start now, or in September, at a normal pace would the Inquiry be ready to start hearing evidence by May or is it already too late for that?**

A. It is probably too late. However, it depends how the Inquiry decides to deal with things. They might for instance isolate an individual issue as taking priority and put all of their resources into the preparatory work for that issue and then hear evidence on that issue. The problem is the issues tend to overlap.

**Q. Can we find out how many people died of Care Home acquired Covid?**

A. The CQC data covers deaths of residents involving Covid-19 under the care of the proprietor as notified to CQC no matter where the deaths occurred or where the virus was contracted. Therefore, a death of someone who acquired Covid in a care home and later died in hospital should be included in the statistics.

**Q. Will the Statutory Inquiry hear our evidence on how we have found the complaints process of NHS Foundation Trust?**

A. The Inquiry will be looking at general issues and will only examine specific cases insofar as they are necessary to shed light on general issues. It is unlikely that the Inquiry will spend much, if any, time examining the complaints processes of individual hospitals, but if there is evidence of a systemic failure of the complaints system that might be examined.

**Q. Will the decision on blanket DNR orders and not qualifying for treatment be scrutinised?**

A. The Inquiry will be asked to look into the use of DNR, invoking the end of life process and withdrawal of treatment. There seem to have been systemic issues and concerns in this area.

**Q. Can the devolved nations have their own statutory inquiry?**

A. We regrettably have bereaved families instructing us from all 4 nations of the United Kingdom. We have encouraged the formation of subgroups in Wales, Scotland and Northern Ireland for the purpose of looking at devolved matters. The Scottish group has already decided (and we have advised and support) that there should be a UK-wide Inquiry, but also a complementary Scottish Inquiry, which will deal with devolved matters. The UK-wide matters that affect Scotland will be dealt with in the main UK-wide Inquest, and then the devolved matters will be dealt with in the Scottish Inquiry. The Welsh group has also decided to push for a Welsh Inquiry. We're also inviting other human rights Solicitors to assist us in those areas, and 3 firms, one in Scotland, one in Wales and one in Northern Ireland are being instructed as well as Broudie Jackson Canter to assist with the devolved matters. What we're advising and what the families are instructing us is to support a UK-wide Inquiry but also complementary Inquiries in Scotland, Wales and Northern Ireland.

**Q. When will the Inquiry report findings? Will there be interim reports?**

A. Absolutely, there have been historically inquiries that have had interim reports. Volume 1 of the Manchester Inquiry reports has just been released and a further 2 reports are set to be released as the Inquiry develops.

**Q. If the chair is appointed by the Secretary of State are they neutral?**

A. This cannot be guaranteed but a High Court judge is as near as you can get to neutral.

**Q. If criminal acts are discovered by the inquiry, can separate proceedings take place as a consequence?**

A. Yes. The Inquiry brings out all of the evidence and conclusions are reached, and that then informs the other processes. The police and the prosecuting authorities will be watching the Inquiry very closely. The outcome of the Inquiry often has as a matter of law to be considered by the prosecuting authorities. In the Hillsborough Inquiry, the jury concluded that the deceased had been unlawfully killed, and following from that there were criminal prosecutions. There were also follow on civil proceedings where people managed to gain compensation, but they are separate processes.

**Q. Why is no law firm willing to take on a Covid-19 case at the moment?**

A. If the reference is to Medical Negligence cases, law firms cannot get legal aid for these and of course will take on private payers but if a client can't afford to pay the

only option is to apply for legal expenses insurance and the insurers are not taking on such cases. Although, I have heard that some of them are running one or two test cases.

**Q. What can be done about those records which have been withheld or missing?**

A. Nothing can be done if entries have simply not been made. If a complaint is made about treatment the investigation should take this into account.

**Q. Do I need to get hold of my deceased loved one's medical records?**

A. You only need to access medical records if you are concerned that the hospital may have done something wrong. However they may help you learn what happened to your loved one.

**Q. Will bereaved families be called to give evidence in the inquiry?**

A. In theory, the chair has the power to force someone to give evidence. However, as far as the bereaved are concerned, it is unlikely that anyone will have to give evidence. The chair will likely decide how they will look at particular issues and the evidence of the bereaved families will first of all be considered in the light of whether it can contribute to those issues.

**Q. How long do we have to bring a complaint to the hospital and if not happy then take it to the Ombudsman?**

A. Normally a complaint needs to be made to the NHS within 12 months but the NHS can grant an extension for good reason.

**Q. Is there any action we can take to force the Prime Minister's hand in opening a statutory inquiry immediately?**

A. Any publicity can help; if you are a member of the [Covid Group](#) please liaise with them as they will be able to advise further around their strategy for publicity.

[Join the group](#)

**Q. If the inquiry makes recommendations are they obligatory or could they be ignored?**

A. They're not obligatory unfortunately, and this is a real problem with statutory inquiries. There have been many cases in past inquiries where recommendations have been made and ignored. It is tricky because, of course, recommendations may not always be correct so it is important that there is the freedom to reject a recommendation. However, chairs are recognising increasingly the problem with coming up with well-reasoned recommendations that are then ignored. Both coroners in inquests and chairs of public inquiries are developing devices to deal with this problem, like interim reports.

**Q. Is there a clear definition of hospital acquired Covid?**

A. Possibly not - when you say it was clearly acquired in Hospital the question is whether the hospital agrees. NHS England defines probable healthcare-associated Covid-19 inpatient infection as patients diagnosed more than 7 days after admission.

**Q. Any pitfalls to avoid when talking to the media (so as not to jeopardise any future legal action)?**

A. I wouldn't worry about jeopardising any future legal action, I think it's more a question about whether what you say is in accordance with the strategy that the Covid Bereaved Families want to pursue, which is at the moment a strategy of trying to bring the Inquiry forward. Having said that, you have the right to say exactly what you want and to a certain extent to tell us what you want us to say on your behalf.

**Q. Are human rights experts involved in this process?**

A. All the legal team specialise in Human Rights law and have done for many years.

**Q. Will the Inquiry look in to the government guidance and how people interpreted it?**

A. We would expect it to look at the guidance and to a limited extent at how it was interpreted.

**Q. Will the Terms of Reference include the frailty score used in hospitals during the pandemic?**

A. The Terms of Reference will be set by the Secretary of State/Prime Minister when they set the Inquiry up. The frailty scores are likely to emerge as part of the evidence to be examined within the overall context of hospital care.

**Q. Would audio recording with hospitals be used as evidence?**

A. Audio recordings can be admissible as evidence if relevant.

**Q. Will there be any missing evidence now that Matt Hancock has had to step down?**

A. There shouldn't be, but government ministers have been using a phone app which deletes messages so there may well be. Only once an Inquiry is formally set up is there a prohibition on destruction of evidence.

**Q. Do I need to make a personal complaint to the hospital where my loved one caught it? Or do I leave that up to the solicitors?**

A. We are not dealing with individual cases or complaints on behalf of clients - the Inquiry will be looking at general issues rather than specific cases although it will need to look at some (not all) specific cases in order to establish generalities.

**Q. Is the CQC investigating into hospitals to see if they covered up positive Covid tests when they were discharged into care homes?**

A. Not to our knowledge but they could be conducting investigations without making this public.

**Q. Covid-19 is not on the death certificate, will I still be able to participate in the inquiry?**

A. The Chair of the Inquiry ultimately decides who will and who won't be allowed to be a core participant. If you aren't allowed to be a core participant, you won't be allowed direct access to the disclosed paperwork but as the proceedings are all or almost all going to be public we can still update you.

**Q. Why do we need the death certificate?**

A. To ensure that Covid-19 is listed and to see what other factors are listed and where Covid 19 appears on the list of causes.