

UK PUBLIC INQUIRY

BEFORE BARONESS HEATHER HALLETT

IN THE MATTER OF:

THE PUBLIC INQUIRY TO EXAMINE THE COVID-19 PANDEMIC IN THE UK

Submissions on Terms of Reference on behalf of Covid-19 Bereaved Families for Justice NI

1. We write to you in our capacity as the legal representatives for the group Covid Bereaved Families for Justice Northern Ireland. Firstly, we would like to thank you for taking the time to meet some of the families in person and listening to their experiences.
2. We have been compiling an account of each member of the wider group's experience as well as their comments on the draft terms of reference. As you will appreciate, the issues are wide ranging and quite specific to each member's personal circumstances. We have therefore compiled a list of the most common issues which are considered as pertinent to this consultation process.
3. These submissions focus primarily on the four areas in respect of which the Inquiry have sought the views of the public. We have identified issues which relate solely to bereaved families from Northern Ireland. These submissions should be read in conjunction with submissions made by Broudie Jackson Canter solicitors on behalf of the wider Covid-19 Bereaved Families for Justice group, with which we fully concur.

Do the Inquiry's draft Terms of Reference cover all the areas that you think should be addressed by the Inquiry?

4. A common concern among bereaved families from Northern Ireland is that the current terms of reference do not provide for an evaluation of various key areas which are unique to the handling of Covid-19 in Northern Ireland. While the families appreciate assurances that devolved matters will be reviewed as rigorously as non-devolved matters, there is still a fear that the current terms are not comprehensive enough to achieve this objective. We have set out what are considered to be the most significant omissions below:

The 'All-Island' approach between Northern Ireland and the Republic of Ireland

5. In April 2020 a Memorandum of Understanding was agreed between the respective Ministers for Health in Northern Ireland and the Republic of Ireland. The Memorandum set out the basis for a collaborative approach to responding to the pandemic in both jurisdictions.
6. This was deemed to have been an appropriate measure at the time given that the island is considered to be one epidemiological unit. By way of example, one group member pointed to the irrationality of someone living in a border town in Northern Ireland, such as Newry, and working across the border in the Republic of Ireland but who had to follow different rules in respect of testing, travel, and isolation. There are

an estimated 30,000 people who travel across the border each day to work in the other jurisdiction.

7. On a number of occasions during the pandemic, there was significant divergence between the measures taken between the jurisdictions. There were also cultural differences with a higher incidence of face mask wearing and vaccine uptake in Ireland than Northern Ireland. Further, the vaccine was rolled out much faster in Northern Ireland.
8. This is a unique issue given that Northern Ireland is the only devolved nation which is bordered by a nation which is not a member of the UK. It is submitted that an evaluation of the 'all island' approach and the extent to which this was effective is necessary when considering the response of Northern Ireland to the pandemic.

The unique political circumstances in Northern Ireland

9. A common issue which was raised by various group members is the need to evaluate the impact that the unique political landscape in Northern Ireland had on the effectiveness of its response to the pandemic.
10. One example which has been used is the political dispute which followed the Minister for Health Robin Swann's request to have the British army deployed in Northern Ireland to assist with emergency services, such as manning testing centres in April 2020. The nationalist and unionist divide on the issue led to delays in the rollout of these measures.
11. Further, due to the mandatory political coalition of the Northern Ireland Executive which requires the parties to agree on issues of cross-cutting, significant or controversial decisions (see *In Re Safe Electricity A&T Limited* [2021] NIQB 93 for the legal complexities surrounding this), there were delays in decision making. This was because the parties could not agree which measures should be adopted, with the DUP usually reluctant to impose restrictive measures. Another delay arose when the Minister for Health was desirous of obtaining Executive approval to lift the restrictions. However, he could not do so because the DUP had left the executive in protest over the Northern Ireland Protocol, meaning that the Executive could not take the cross-cutting, significant or controversial step of lifting the restrictions. After some time, the Minister proceeded to remove the restrictions without formal Executive approval. Although no challenge ensued, this decision is legally dubious in light of the *Safe Electricity* judgment. Should, however, the Minister wish to reimpose restrictions in the absence of an Executive, he is very likely to be successfully judicially reviewed.
12. It is impossible to effectively evaluate the effectiveness of the decision-making process in Northern Ireland without considering the impact that the political circumstances and operation of devolution had on same.

The Regulation of Health and Social Care

13. The regulation of health and social care services, and in particular care homes, is an issue which our clients believe should be central to a Covid-19 Inquiry. In Northern Ireland the regulator is the Regulation and Quality and Improvement Authority (RQIA). Many bereaved families who have lost loved ones in care homes have significant concerns around the role of RQIA during the pandemic.

14. RQIA suspended onsite inspections from 20th March to 30th April 2020. Over the course of this period RQIA did not inspect any health and social care facility which had residents or patients. The Department of Health later rescinded this Order following the resignation of the RQIA Board.
15. During this period there was a plethora of outbreaks of Covid-19 in care homes. For example, there was a mass outbreak of Covid-19 in Glenabbey Manor nursing home in County Antrim in April 2020 and 14 residents sadly passed away. Whistle blowers have since reported that a staff party took place in the home on 25th March 2020 when the facility was supposed to be in lockdown. The deaths of loved ones was therefore compounded by the lack of oversight from the regulator in this period. It is not possible to extricate the role of regulators from an assessment of the overall preparedness and response of care homes to the pandemic.
16. It is submitted that the regulation of care homes and other such facilities should be included in the terms of reference. We note that the draft terms of reference do mention legislative and regulatory control. We consider that this should be included within the reference to "legislative and regulatory control." However, to the extent that it is not, for the reasons identified above we consider that inclusion of an evaluation of regulators would be inherently necessary in assessing the preparation and response of health and care sectors in this jurisdiction.

The composition of Health Care Trusts in Northern Ireland

17. The National Health Service does not operate in Northern Ireland. Rather, Northern Ireland has an extremely fragmented and complex health care structure administered through five Trusts. Each of the five Trusts are distinct from one another and have separate Chief Executives. Above the Trusts sits the Health and Social Care Board. This Board is to close on 31 March 2022. In his 2014 review of health and social care, England's former chief medical officer Sir Liam Donaldson highlighted a system burdened with bureaucracy. He memorably observed that the people he interviewed had no consistent answer as to who was in charge or ran the health system. Conversely, Dayan and Heenan (2019) 'Change or collapse: lessons from the drive to reform health and social care in Northern Ireland', Nuffield Trust London found a strikingly different picture. They found that in a rigidly hierarchical system, power was centralised in the Department of Health with Health and Social Care Trusts having relatively little autonomy or access to the levers of power.
18. Moreover, the provision of health and social care in Northern Ireland is combined and discharged through each Trust, a unique position within the United Kingdom.
19. Another issue that should be considered by the Inquiry is the effect that the pandemic has had on the provision of medical treatment. In this regard, Northern Ireland is an outlier within the United Kingdom with Northern Ireland being by far the worst performer when it came to waiting lists. In 2019 the number of people on a waiting list of over a year for a consultant-led outpatient appointment in NI was 105,486 (population 1.9 m) compared to 1,089 in England, (population 56m) (Heenan and Dayan, 2019). There are people waiting up to five years for routine orthopedic treatment, four years for ear, nose and throat procedures and up to seven years for a urology appointment (BBC News, NI report 10 June 2021). The pandemic has exacerbated Northern Ireland's already vulnerable health service and has delayed thousands of important, urgent and life-changing surgeries with a 'hidden waiting list' of people who have not yet come forward or who have not yet been referred for hospital treatment (Royal College of Surgeons England, 'Our Action Plan For NI. NI Action plan for Surgical Recovery, 10 steps not ten years')

<https://www.rcseng.ac.uk/about-the-rcs/government-relations-and-consultation/position-statements-and-reports/action-plan-for-northern-ireland/>).

20. Our clients are also concerned that the lack of uniformity in the provision of healthcare services across each Trust led to significant disparities in the effectiveness of their preparedness and response to the pandemic. By way of example, in the period from 27th February 2020 until the 12th June 2020 the Western Health and Social Care Trust discharged 249 patients from hospitals to care homes without a Covid-19 test. In the same period, the Northern Health and Social Care Trust discharged 959 patients.
21. Bereaved families who have lost loved ones in hospital and care home settings are deeply concerned at the decision-making process within healthcare Trusts and, in particular, the policy of discharging Covid-19 positive and/or untested patients from hospitals to care homes.

Children

22. There is no mention of the word 'children' in the draft terms of reference. This is deeply concerning particularly when children are the demographic who will suffer the most severe and long-lasting effects of the pandemic (save for mortality rates). In this regard, the Inquiry ought to consider the impact that the pandemic and the measures taken has had on children's:
 - (a) education;
 - (b) social development;
 - (c) mental health; and,
 - (d) physical health, including obesity.

Which issues or topics do you think the Inquiry should look at first?

23. Bereaved families from Northern Ireland have resoundingly indicated that preparedness should be the first topic that is reviewed at the Inquiry. It is considered that preparedness is the logical starting point for a Covid-19 Inquiry, particularly in circumstances where the Chairperson has indicated a desire to produce interim reports.
24. An interim report on this topic would enable bereaved families to gain an increased understanding of the steps that were taken prior to and in the early stages of the pandemic.

Do you think the Inquiry should set a planned end-date for its public hearings, so as to help ensure timely findings and recommendations?

25. Bereaved families from Northern Ireland are unanimously in favour of an end date for public hearings being set. Many bereaved families have been seeking answers in respect of their loved one's deaths for up to two years. Implementation of a well-defined timeframe and deadlines for public hearings are imperative in order to minimise the emotional strain on bereaved families as will naturally arise during the Inquiry.
26. Notwithstanding the above, the bereaved families recognise the practical difficulties which can be expected to arise in an Inquiry of this magnitude and will cooperate

with the Inquiry to the necessary extent in the interests of bringing about timely findings and recommendations.

How should the Inquiry be designed and run to ensure that bereaved people or those who have suffered harm or hardship as a result of the pandemic have their voices heard?

27. It is imperative that bereaved family members are granted core participant status at the Inquiry. It is difficult to conceive of a group of people who have suffered to a higher degree than those who have lost loved ones to Covid-19 during the pandemic. Bereaved families therefore have a significant interest in this Inquiry and many of the areas in the current terms of reference are relevant to them.
28. Bereaved families should be granted automatic core participant status and should be entitled to participate throughout the Inquiry to the extent necessary to protect their interests including but not limited to:
 - (a) Receiving and reviewing disclosure of relevant evidence in advance of hearings;
 - (b) Making opening and closing statements at the hearings;
 - (c) Suggesting lines of questioning to be pursued by counsel to the Inquiry;
 - (d) Questioning witnesses.
29. We would suggest that the most practical measure would be to grant core participant status to groups of bereaved families who would have the option of being represented by solicitors designated according to the geographical location of the bereaved family member.
30. It is envisaged that this would be the most reasonable and proportionate approach both in terms of ensuring the effective participation of bereaved families from across the UK and minimizing the cost to the public purse.
31. Bereaved families from Northern Ireland welcome Lady Hallett's commitment to holding physical hearings in devolved nations. This is an important measure in order to ensure that bereaved families from Northern Ireland can engage effectively with the Inquiry to the extent necessary to protect their interests. In addition, we would suggest that a facility for remote attendance at the hearings should be introduced to assist those who are unable to attend the hearings in person.
32. We would be grateful if you would give consideration to these matters and if you require us to provide further details on any of the above points you are welcome to contact us directly.

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