

An Leas-phrìomh Mhinistear agus Ath-shlànachadh  
Cobhid  
Deputy First Minister and Cabinet Secretary for Covid  
Recovery  
John Swinney MSP



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The Hon Lord Brailsford  
Scottish Covid-19 Inquiry  
by email to:  
[redacted]

28 October 2022

Dear Lord Brailsford,

## **APPOINTMENT AS CHAIR TO THE SCOTTISH COVID-19 INQUIRY**

I am writing to confirm the terms of your appointment as Chair of the Scottish Covid-19 Inquiry (“the Inquiry”). The Inquiry will be held under the Inquiries Act 2005 (“the Act”) and will be an Inquiry for which the Scottish Ministers are responsible, as referred to in section 28 of the Act.

This letter and associated schedule, serves as the written instrument of your appointment as Chair to the Inquiry pursuant to section 4(1) of the Act and also confirms that the formal setting up date for the purposes of section 5(1)(a) of the Act was 28 February 2022. The Schedule to this letter sets out matters which have been discussed and agreed with you.

This letter confirms your appointment as Chair. Your appointment commences on 28 October 2022. Your appointment will end when the Inquiry comes to an end, or on such an earlier date as may be determined in accordance with section 12 of the Act. You will wish to note the terms of section 12. I can reaffirm that I will not be appointing any additional members to the Inquiry Panel at this stage.

The Act sets out various statutory powers and duties which Scottish Ministers have in relation to the Inquiry. The Chair too has statutory powers and duties under the Act.

You undertake that, whilst you are Chair, you will continue to uphold the obligations, qualities and standards of judicial appointments.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

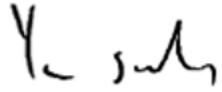
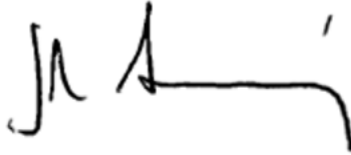
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I should be grateful if you would confirm in writing your willingness to accept this appointment by signing and dating the attached terms of appointment. A copy of the terms is attached for your retention.

I am grateful for the commitment you have shown in agreeing to this appointment.

A handwritten signature in black ink, appearing to be 'K. Smith'.A handwritten signature in black ink, appearing to be 'John Swinney'.

**JOHN SWINNEY**

## **Schedule of the Terms of Appointment of the Hon Lord Brailsford as Chair of the Scottish Covid-19 Inquiry**

### **1. Status**

1.1 You are appointed as Chairman (“Chair”) of the Scottish Covid-19 Inquiry (“the Inquiry”), an Inquiry to be held in accordance with and subject to the provisions of the Inquiries Act 2005 (“the Act”). In this Schedule, except where stated, “you” and related expressions refer to the holder of that role.

### **2. Interpretation**

2.1 Where relevant, statutory terms, conditions and other requirements of appointment also apply to you.

2.2 The terms and conditions contained in this Schedule (“the terms”) are to be read in a way that is consistent with any relevant enactment. If such a reading is not possible, the terms do not apply to the extent that they are inconsistent with any such enactment.

### **3. Functions**

3.1 Your main function as Chair of the Inquiry is to fulfil the Inquiry’s terms of reference (attached at Annex A), acting in accordance with the duties on you as Chair under the Act.

### **4. Duration of Appointment**

4.1 You remain Chair of the Inquiry under the terms of section 12(1) of the Act, or until such earlier date as may be determined, in consequence of your resignation under section 12(2) of the Act or the termination of your appointment under section 12(3) of the Act.

4.2 You may resign from your appointment by giving written notice to the Scottish Ministers of a period of no less than 3 months.

### **5. Time Commitment and Remuneration**

5.1 Your time commitment will vary over the course of the Inquiry, however you are expected to devote such time to the Inquiry and to your appointment as you consider necessary for the effective performance of your functions and to ensure that the Inquiry reports within a reasonable timescale.

5.2 In relation to the performance of your functions as Chair of the Inquiry, you will retain your current terms of appointment as a Senator of the Outer House, including in relation to rate of remuneration (and payment thereof) and pension, as this appointment is considered to comprise a temporary assignment within the functions of your appointment as a Senator.

5.3 Nothing in this appointment shall be construed as or have the effect of giving rise to a relationship of employer and employee as between the Scottish Ministers and you.

5.4 You are not entitled to any gratuity when your appointment to the inquiry ends. Your other legal rights remain unaffected.

## **6. Expenses**

6.1 You are entitled to be reimbursed for any reasonable expenses that appear to the Scottish Ministers to be necessary for the proper discharge of your functions as Chair. Reimbursement will be in line with prevailing Scottish Government Travel and Subsistence rates, which may be amended from time to time.

## **7. Removal from Office**

7.1 Your appointment as Chair may be terminated in accordance with section 12 of the Act, if the grounds in section 12(3) apply.

## **8. Liability**

8.1 Section 37 of the Inquiries Act 2005 states that no action lies against the Chair of an Inquiry in respect of any act done or omission made in the execution of the Chair's duty as such or any act done or omission made in good faith in the purported execution of the Chair's duty as such. The Scottish Ministers will meet all and any reasonable expenses incurred by you in the process of invoking immunity under section 37.

8.2 If any legal proceedings are brought against you by a third party in consequence of the execution of your duty as Chair of the Inquiry or any act done or omission made in good faith in the purported execution of your duty as such, Scottish Ministers will meet all and any reasonable expenses in relation to defending those proceedings in the event that it is determined that section 37 does not apply, and indemnify you in relation to any award made in those proceedings.

8.3 The Scottish Ministers as indemnifying party will, with prior discussion with you, and having regard to your views and keeping you informed of any significant developments, be entitled to take control of, and conduct, the litigation in your name.

## **9. Confidentiality**

9.1 In the course of performing your functions or in consequence of your appointment, you will use reasonable endeavours to exercise due care in the use of information to which you have access, adhere to applicable data protection and GDPR legislation; and protect information that you receive in confidence from unauthorised disclosure.

9.2 When your appointment ends (for whatever reason) you will continue to owe a duty of confidentiality to Scottish Ministers on the basis of their appointment of you as Chair in relation to any confidential information to which you had access during your appointment and you will continue to be subject to any other duty of confidence arising as a matter of fact or law in the course of your appointment.

9.3 If the Scottish Ministers are satisfied that you disclosed information, without authority (statutory or otherwise), that you received in the course of performing your functions or in consequence of your appointment, or used it for personal gain or advancement, this may constitute grounds for termination of your appointment as Chair in terms of section 12(3)(d) of the Act.

## 10. Impartiality

10.1 Under section 9(3) of the Act, you must notify the Scottish Ministers if during the course of the Inquiry, you become aware that you have a direct interest in the matters to which the Inquiry relates, or a close association with an interested party.

10.2 Under section 9(4) of the Act, you must not, during the course of the Inquiry, undertake any activity that could reasonably be regarded as affecting your suitability to serve as Chair.

Signed:

Deputy First Minister and Cabinet  
Secretary for Covid Recovery

Date:

A Member of the Scottish Government

Signed:



The Hon Lord Brailsford  
Chair of the Scottish Covid-19  
Inquiry

Date:

14 December 2022

## SCOTTISH COVID-19 INQUIRY: TERMS OF REFERENCE

### Aim

1. The aim of this inquiry is to establish the facts of, and learn lessons from, the strategic response to the COVID-19 pandemic in Scotland.

### Scope

2. To investigate the strategic elements of the handling of the pandemic relating to:
  - a) pandemic planning and exercises carried out by the Scottish Government;
  - b) the decisions to lockdown and to apply other restrictions and the impact of those restrictions;
  - c) the delivery of a system of testing, outbreak management and self-isolation;
  - d) the design and delivery of a vaccination strategy;
  - e) the supply, distribution and use of Personal Protective Equipment;
  - f) the requirement for shielding and associated assistance programmes, provided or supported by public agencies;
  - g) in care and nursing homes: the transfer of residents to or from homes, treatment and care of residents, restrictions on visiting, infection prevention and control, and inspections;
  - h) the provision of healthcare services and social care support, including the management and support of staff and the recognition, involvement and support of unpaid carers;
  - i) the delivery of end of life care and the use of DNACPR (do not attempt cardiopulmonary resuscitation decisions);
  - j) welfare assistance programmes, for example those relating to benefits or the provision of food, provided or supported by public agencies;
  - k) the delivery of education and certification; and
  - l) financial support and guidance given to businesses and the self-employed, including in relation to identification of keyworkers, by public agencies.

## Reporting

3. To create a factual record of the key strategic elements of the handling of the pandemic.
4. To identify lessons and implications for the future, and provide recommendations.
5. To demonstrate how a human rights based approach by the inquiry has contributed to the inquiry's findings in facts and recommendations.
6. To provide reports to the Scottish Ministers as soon as practicable.

## Interpretation

7. When interpreting and applying these terms of reference:
  - a) in relation to points 2(b) to 2(l), investigations will cover the period between 1 January 2020 and 31 December 2022;
  - b) the inquiry will, as the chair deems appropriate and necessary, consider the impacts of the strategic elements of handling of the pandemic on the exercise of Convention rights (as defined in Section 1 of the Human Rights Act 1998);
  - c) the inquiry will, as the chair deems appropriate and necessary, consider any disparities in the strategic elements of handling of the pandemic, including unequal impacts on people.
  - d) the inquiry can consider only "Scottish matters" as defined in section 28(5) of the Inquiries Act 2005;
  - e) the inquiry respects the independent role of the Lord Advocate in relation to the prosecution of crime and the investigation of deaths in Scotland; and
  - f) the inquiry must make reasonable efforts to minimise duplication of investigation, evidence gathering and reporting with any other public inquiry established under the Inquiries Act 2005.

28 October 2022