

# OPUS2

Scottish Covid-19 Inquiry

Day 1PH1

August 28, 2023

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Monday, 28 August 2023

1  
2 (10.00 am)  
3 (Proceedings delayed)

4 (10.05 am)  
5 Health and Social Care Preliminary Hearing

6 THE CHAIR: Good morning. I am Lord Brailsford, Chair to  
7 the Inquiry, and I'd like to thank you all for attending  
8 our first public hearing. I am honoured to have been  
9 entrusted with such an important undertaking on behalf  
10 of the people of Scotland.

11 Let's adjust this mike a little bit.

12 Today I'm here to share with you the approach  
13 I intend to take to the task I've been set, which is to  
14 establish the facts of and to learn lessons from the  
15 strategic response to the COVID-19 pandemic in Scotland  
16 between 1 January 2020 and 31 December 2022, the period  
17 covered by this Inquiry.

18 Before we begin, however, I would like to address  
19 bereaved families, care home relatives and all of those  
20 of you here today and watching online who were impacted  
21 by the pandemic and who are looking to this Inquiry for  
22 answers. We all hold at the forefront of our minds the  
23 very difficult and distressing experiences so many have  
24 had. In particular we remember those who have lost  
25 their lives and those who were separated from their

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1 families, key workers who did all they could to  
2 alleviate suffering and the many people who are still  
3 affected by COVID-19 and the pandemic.

4 I wish to express my sincere condolences and those  
5 of the Inquiry team to those of you who lost relatives  
6 and friends to COVID-19.

7 I would now like to invite you to watch a short film  
8 as we reflect on the impact of the pandemic on the  
9 people of Scotland. This film is intended as formal and  
10 lasting recognition of the suffering caused by the  
11 COVID-19 pandemic. You may find some of the images and  
12 words in this film distressing and you may prefer not to  
13 watch. I will pause for a few moments for anyone to  
14 leave the hearing room or suspend the live-stream if you  
15 are watching online. I should tell you that the film  
16 lasts a little over 11 minutes. So we'll pause for  
17 a moment or two. It doesn't appear as if anyone wants  
18 to leave so could the film please start.

19 (Video played)

20 Now, I'm sure the film has brought back many  
21 memories for all of us in this room and those watching  
22 online. I can tell you it will be published on our  
23 website and can be viewed throughout the lifetime of the  
24 Inquiry.

25 The purpose of this preliminary hearing today is to

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1 provide you with an update on the work undertaken by the  
2 Inquiry to date and to set out our plans for hearings  
3 this autumn and the relevant processes and protocols.  
4 What we will discuss today relates only to our health  
5 and social care hearings. Further information about our  
6 approach to future sets of hearings will be set out at  
7 a later date.

8 This preliminary hearing and the Inquiry itself is  
9 not a court. We are not here to determine criminal or  
10 civil responsibility; we are here to examine what  
11 happened in Scotland in a non-adversarial manner,  
12 working with core participants and gathering and  
13 analysing the experiences of people across the country.  
14 While you do not need to be a core participant to engage  
15 with the Inquiry, these organisations have some  
16 additional rights. We have 37 core participants to this  
17 Inquiry, many of whom are with us in the room today.  
18 They play a central role, working with the Inquiry to  
19 fulfil its terms of reference and ensure our terms are  
20 met.

21 When I was appointed Chair of this Inquiry by the  
22 then Deputy First Minister in October 2022, I was under  
23 no illusion as to the importance and magnitude of the  
24 Inquiry's work. The COVID-19 pandemic presented the  
25 most severe health crisis in living memory. It affected

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1 everyone. More than 17,700 people have died in Scotland  
2 with COVID-19 listed as one of the causes on their death  
3 certificate, many without being able to say goodbye to  
4 their loved ones, and thousands of people are still  
5 living with the consequences, including those with long  
6 COVID and others whose mental health has suffered  
7 because of the pandemic. Care home residents and many  
8 of those required to shield because of underlying health  
9 conditions had long periods with no contact with their  
10 families and friends. Some people were unable to  
11 receive the medical treatment they urgently required.  
12 Young people's education was disrupted and educational  
13 opportunities were missed. Businesses faced financial  
14 hardship, some of them failed and jobs were lost.  
15 Health and social care workers faced huge pressures as  
16 they sought to save the lives of critically ill patients  
17 and keep us all safe. They, along with teachers, police  
18 officers and thousands of other emergency and  
19 key workers, risked their lives in the course of duty.  
20 Politicians, local government leaders, NHS boards and  
21 others found themselves in an unprecedented situation  
22 and were required to respond to a virus that was  
23 spreading rapidly and mutating. They had to make  
24 decisions at pace that impacted upon the entire  
25 population. They shouldered this responsibility for

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1 many months.  
 2 I will conduct a robust investigation without fear  
 3 or favour that will arrive at the facts, identify any  
 4 lessons that need be learned and make recommendations to  
 5 Scottish ministers so we are better prepared in the  
 6 event of any future pandemic. I will not take sides and  
 7 I will act with fairness towards all parties involved in  
 8 the Inquiry process.

9 I'd now like to invite Mr Stuart Gale KC to make  
 10 some opening remarks.

11 MR GALE: Thank you, my Lord.

12 Good morning, everybody. Can I also thank everyone  
 13 present here in Murrayfield and also watching us online  
 14 for joining us today in what is the first preliminary  
 15 hearing of this Inquiry and indeed a very important  
 16 milestone in the Inquiry. As some of you may know, I am  
 17 Stuart Gale King's Counsel and, together with my  
 18 colleague, Laura—Anne van der Westhuizen King's Counsel,  
 19 we are the co—lead counsel to this Inquiry.

20 Our responsibilities, so far as the investigative  
 21 work of the Inquiry and indeed the presentation of the  
 22 evidence, are divided between us and our respective  
 23 teams. You will be aware perhaps from the Inquiry's  
 24 website that we have structured our investigative work  
 25 into four portfolios. My team and I are responsible for

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1 Portfolio 1, which is the public sector response, and  
 2 Portfolio 3, which is of specific significance today.  
 3 That is the provision of health and social care  
 4 services. Ms van der Westhuizen and her team are  
 5 responsible for Portfolio 2, which is the financial and  
 6 welfare support to businesses and individuals, and  
 7 Portfolio 4, which is education, certification and  
 8 impact on children and young people.

9 My counsel team comprises advocates Alan Caskie, who  
 10 is here with us today, and Faryma Bahrami.  
 11 Ms van der Westhuizen's team comprises advocates  
 12 David Turner and Mary Ellen Stewart. In addition our  
 13 counsel teams have further counsel input from advocates  
 14 Chris Stephens, Dennis Edwards, Graham Dunlop and  
 15 Sarah Trainer. Each counsel team works with a dedicated  
 16 team of solicitors and paralegals and support staff.  
 17 Various specific investigative streams have been and  
 18 will continue to be allocated to various members of the  
 19 counsel and solicitors' teams.

20 In these introductory remarks from me I would like  
 21 to reflect, if I may, on some of the matters touched on  
 22 by Lord Brailsford in his opening remarks. At the very  
 23 outset Lord Brailsford mentioned the honour that his  
 24 appointment represents and the appreciation of the  
 25 nature and extent of the undertaking which lies before

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1 him. None of us associated with this Inquiry is under  
 2 any misapprehension as to the scale of the task before  
 3 us. It is immense and to a certain extent it is  
 4 daunting. Speaking personally and on behalf of the  
 5 whole counsel team, we are all honoured by the fact that  
 6 Lord Brailsford has placed his trust in our abilities to  
 7 perform the roles of Counsel to the Inquiry. Our role  
 8 in the Inquiry is to be independent and to perform our  
 9 duties to the best of our professional abilities, and we  
 10 do that, as Lord Brailsford has said in the general  
 11 context of the Inquiry, without fear or favour. All of  
 12 us intend to carry out our duties in that way.

13 Both Lord Brailsford and I have had the honour of  
 14 meeting members of both the Scottish Covid Bereaved and  
 15 Care Home Relatives Scotland. In those meetings we  
 16 heard distressing accounts of the loss of loved ones,  
 17 the circumstances experienced both before and after that  
 18 loss and the impact of being separated from loved ones,  
 19 particularly in circumstances where that loved one had  
 20 a compromised understanding of the reasons for that  
 21 separation or isolation. To all those relatives and  
 22 indeed to those individuals, whether in care homes or in  
 23 other settings, the counsel team through me conveys  
 24 their deepest condolences and sympathies.

25 Most of us have experienced personal loss, whether

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1 it be of a loved one, a family member, a dear friend.  
 2 The circumstances attending such loss are inevitably  
 3 difficult to deal with. To try to have to cope with the  
 4 circumstances of loss in the overall context of the  
 5 restrictions imposed by outside authorities, all in the  
 6 context of a pandemic, are completely unparalleled.

7 In addition to those who tragically died during the  
 8 pandemic and those who had to deal with the impact of  
 9 the pandemic and its restrictions in visiting loved ones  
 10 in care homes and other settings, we, as a counsel team,  
 11 are mindful also of the impact that the pandemic had on  
 12 workers in the healthcare sector in particular and those  
 13 impacts are relevant to our investigations. Indeed, if  
 14 I may be permitted to make a personal observation,  
 15 having watched now for I think the third or fourth time  
 16 the film that we've just seen, there was a quotation  
 17 from a nurse in that film, and she said this:

18 "Feeling we were failing everyone bore down hard on  
 19 us as nurses. Our best was rarely good enough."

20 That was then followed by a photograph of a trainee  
 21 advanced critical care practitioner in full PPE with  
 22 bloodshot eyes. That was a particularly moving reminder  
 23 of the impact that caring for people during the pandemic  
 24 had on those in the caring professions.

25 Lord Brailsford has said that the role of this

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1 Inquiry is to establish the facts of and learn lessons  
2 from the strategic decisions taken in response to  
3 COVID-19. Establishing the facts and the critical  
4 examination of those facts will lead to recommendations,  
5 the intention of which will be to provide an informed  
6 basis for an approach to dealing with another pandemic,  
7 should one occur.

8 As a counsel team, we are committed to the  
9 establishment of those facts and to a critical  
10 examination so that lessons can be learned. We will not  
11 hold back in examining and stating anything we consider  
12 to have been mistakes in the strategic decision-making  
13 process. Some chairs of previous inquiries have been  
14 sceptical of the success that inquiries have achieved in  
15 providing the basis for different approaches to similar  
16 circumstances. If I can give one example,  
17 Dame Janet Smith, who chaired the Shipman Inquiry, said  
18 this:

19 "If the success of public inquiries is judged in  
20 terms of changes in regulations and legislation, then we  
21 cannot often claim to have achieved that."

22 Now, we are aware of that critical approach and we  
23 are determined that this Inquiry will be a success in  
24 providing recommendations to decision-makers so that  
25 they are better prepared in the event of a future

1 pandemic.

2 In saying all this, we are mindful as an inquiry  
3 that COVID-19 remains in Scotland as well as in the UK  
4 more widely an issue. The National Records of Scotland  
5 for the week to 13 August of this year disclose that  
6 17 deaths were recorded during that time in which  
7 COVID-19 was mentioned and that there have been also  
8 recent media reports of new variants emerging and new  
9 mutations. More recently Professor Jason Leitch, the  
10 National Clinical Director, stated in an interview last  
11 week that 200 people were admitted to hospital with the  
12 virus in the previous week. Also, over the weekend, we  
13 have been aware of further press reports regarding the  
14 closure of certain hospital wards due to the presence of  
15 COVID and again also of further mutations.

16 It seems reasonable to assume that COVID-19 is not  
17 behind us and we therefore take extremely seriously our  
18 obligation to identify the lessons to be learned from  
19 the pandemic that we have just been through.

20 Can I now pass back to Lord Brailsford to provide an  
21 update on the progress of the Inquiry so far?

22 THE CHAIR: Thank you very much indeed, Mr Gale.

23 Now, in this section we will provide updates in  
24 a number of areas, including staffing and premises,  
25 planning and structure of the Inquiry, the approach the

1 Inquiry will take in terms of human rights, being  
2 person-centred and trauma-informed, connections with the  
3 UK Inquiry and with the Crown Office and Procurator  
4 Fiscal Service and gathering evidence. I should say  
5 that between myself and Mr Gale we will share the  
6 informing you about these various heads, under these  
7 various heads.

8 So I will start with staffing. Over the last few  
9 months the Inquiry has undertaken a number of  
10 recruitment exercises to further expand the team to  
11 conduct the investigation. That process is advanced,  
12 with new team members now in post or joining soon.  
13 In July I welcomed Mr Ian Duddy to the Inquiry as  
14 Chief Executive and you heard very briefly from Mr Duddy  
15 earlier this morning. As chief executive, Mr Duddy is  
16 the Inquiry's most senior official and will be  
17 responsible and accountable for the administration and  
18 management of the Inquiry. He brings to the Inquiry  
19 more than 20 years' experience in leadership, advocacy  
20 and human rights, having served as a senior diplomat,  
21 a UK ambassador and former Chair of the Scottish Human  
22 Rights Commission. I am confident that Mr Duddy's  
23 extensive leadership experience will ensure the Inquiry  
24 continues to proceed apace. He will also be  
25 instrumental in assisting me in upholding my commitment

1 to conducting a robust, independent investigation and  
2 adopting a human-rights-based approach in arriving at  
3 its findings and recommendations.

4 As some of those present today will be aware, the  
5 secondment of Ms Joanna Bain, the Inquiry's interim  
6 solicitor, will end on Thursday, 31 August, three days'  
7 time. I would like to thank Ms Bain for her significant  
8 contribution to the Inquiry to date and wish her well  
9 with all her future endeavours.

10 I am happy to announce her successor as  
11 interim solicitor is Mr Gordon McNicoll, who is sitting  
12 on my left, although he's probably quite hidden from  
13 you, I fear. Mr McNicoll is an experienced solicitor  
14 who brings with him experience of working on other  
15 independent public inquiries. Mr McNicoll has already  
16 taken up post and is with us here today, as I've already  
17 said. Recruitment for the permanent appointment to this  
18 post is ongoing. I will ensure core participants are  
19 informed once this recruitment exercise has concluded.

20 If I now turn to premises. We have been working in  
21 our offices at Waverley Gate at the end of  
22 Princes Street for most of this year. The space the  
23 Inquiry team is using currently will become our hearing  
24 suite and we will move to another office space within  
25 the same building. The refurbishment works to make the

1 hearing space suitable and accessible will be completed  
2 in summer 2024. We are therefore planning to use other  
3 buildings for our hearings scheduled before then. We  
4 will use the Land Court space at George House in central  
5 Edinburgh for our first impact hearings in October and  
6 Mr Gale will say more about this shortly.

7 We recognise that those giving evidence may wish to  
8 have family members or friends close by and that we may  
9 not be able to accommodate everyone in the hearing room  
10 at George House. We are putting the needs of families  
11 and the bereaved very much at the forefront of our  
12 consideration of suitable spaces to hold hearings.

13 Therefore we are hiring additional space close to George  
14 House where the proceedings will be live-streamed and  
15 families and friends can watch and have access to  
16 refreshments. We will have a hearings and witness  
17 support team in place for those hearings and will ensure  
18 that appropriate emotional support is available to those  
19 who need it, both in the hearing space and in the  
20 additional room where the live-stream will be shown.

21 A named support officer will be available for those  
22 giving evidence prior to their attendance on the day.  
23 The support officer will ensure those giving evidence  
24 know what to expect when they attend, have the  
25 opportunity to visit the hearing space beforehand and

1 receive support on the day. The support officer can  
2 also provide signposting to organisations that may be  
3 able to help to provide bespoke or ongoing support if  
4 that is required. This forms part of our person-centred  
5 and trauma-informed approach, and I will say a little  
6 more about that later today.

7 I would now like to pass back to Mr Gale to tell you  
8 something about the planning and designing of the  
9 structure of the Inquiry.

10 MR GALE: Thank you again, my Lord.

11 I would like now to share with you information about  
12 the structure and approach that we propose to take with  
13 our investigations and hearings. Again this is in the  
14 context of the health and social care hearings that are  
15 upcoming. The Inquiry is adopting a thematic approach.  
16 The themes are health and social care; education and  
17 young people; and finance, business and welfare. For  
18 each of these themes the Inquiry will look at the impact  
19 of the pandemic first, then the implementation of  
20 measures and, finally, key decision-making.

21 Our approach seeks to bring the experiences of  
22 people in Scotland to the forefront of the Inquiry's  
23 investigations and the presentation of evidence,  
24 ensuring that the human impact of the pandemic is  
25 captured first. This is a deliberate choice on our part

1 and I consider it right at this stage that I should  
2 explain a little more detail about the reasoning behind  
3 that choice.

4 Last year the counsel team gave advice to his  
5 Lordship as to how we saw the order of consideration in  
6 this Inquiry. In giving that advice, our view was that  
7 impacts were likely to have been contingent upon the  
8 decisions that were implemented. In essence, decisions  
9 have consequences. The fact and existence of decisions  
10 and their implementation gave rise to the impacts. It  
11 was our view that it would not be possible to consider  
12 decision-making without first considering the impacts.  
13 As further consideration was given to that approach, we  
14 became more satisfied that consideration of impacts  
15 should precede consideration of implementation and  
16 decision-making. In simple terms, we considered that,  
17 in order to properly consider the quality and nature of  
18 the decisions made and the way in which they were  
19 implemented, the Inquiry first needs to consider the  
20 impact of those decisions in the real world.

21 The counsel team made this recommendation to  
22 Lord Brailsford and, after discussion with him, he  
23 accepted the recommendation. Thereafter the approach  
24 was further refined. In particular, it was decided that  
25 the examination of impacts should begin with the impacts

1 in the health and social care setting and that we should  
2 conduct detailed examination of those impacts. I should  
3 emphasise that the counsel team was not persuaded by the  
4 suggestion that impacts did not require detailed  
5 consideration on the basis that those impacts were  
6 obvious.

7 I can perhaps give an example of the subtlety of  
8 certain impacts that would not, in my view, be regarded  
9 as obvious. Recently I have seen one witness statement  
10 where the individual who gave it had certain  
11 vulnerabilities and they indicated that some of the  
12 advice created in their mind a level of fear which had  
13 an adverse impact on their confidence and affected their  
14 coping mechanisms that they had come to rely on in  
15 dealing with their vulnerabilities.

16 There were a number of reasons we made a positive  
17 decision to commence our impact hearings with those in  
18 the health and social care setting. As Lord Brailsford  
19 will explain, the Inquiry has adopted a trauma-informed  
20 and human-rights-based approach to our investigations  
21 and our hearings. With that in mind, we considered it  
22 appropriate that in our evidential public hearings we  
23 begin without delay consideration of those people who  
24 wish to engage with the Inquiry and who have suffered  
25 loss and/or trauma of separation from loved ones. We

1 are also minded that much of the evidence from such  
 2 witnesses will depend on personal recollections without  
 3 the aid of extensive contemporaneous written records  
 4 and, with that in mind, we feel that we should bring  
 5 this evidence to the fore.  
 6 A further consideration that we have in mind is  
 7 that, while our principal role is information-gathering,  
 8 we appreciate that for many involved in public  
 9 inquiries, providing a public statement, whether that is  
 10 simply the statement or one which is then expanded upon  
 11 at an oral hearing, is a cathartic experience and we are  
 12 anxious to provide that opportunity.  
 13 It is right now that I give an indication of our  
 14 programme of impact hearings in the health and social  
 15 care setting.  
 16 The Chair has to strike a balance between the need  
 17 to report as quickly as practicable so that lessons can  
 18 be learned and ensuring that the Inquiry conducts  
 19 a robust, open and independent investigation which gets  
 20 to the truth and makes recommendations grounded in  
 21 evidence and informed by the experiences of the people  
 22 of Scotland. In addition he has a statutory duty to act  
 23 fairly and with regard to the need to avoid unnecessary  
 24 cost.  
 25 By necessity this means the Inquiry will not be able

1 to hear from everybody who wishes to give a formal  
 2 witness statement or provide formal oral evidence at  
 3 a hearing. To do so would lead to unacceptable delay in  
 4 terms of reporting on findings and making  
 5 recommendations. However, we will invite a number of  
 6 organisations and individuals to appear as witnesses at  
 7 our impact hearings. Those organisations and  
 8 individuals will also provide signed witness statements  
 9 which will be published on the Inquiry website and will  
 10 form the basis for counsels' questioning of witnesses.  
 11 The impact hearings will begin on Tuesday,  
 12 24 October of this year. Weekly sittings will be from  
 13 Tuesday to Friday of each week. The hearing will start  
 14 at 10.00 am, continue through to about 11.30 for  
 15 a mid-morning break and resume thereafter until  
 16 1 o'clock. We will then resume after lunch at 2 o'clock  
 17 and continue until 4 o'clock or thereby, with a short  
 18 mid-afternoon break. There will be flexibility in these  
 19 timings and particularly about the finishing time if it  
 20 is necessary to complete the evidence of a witness.  
 21 It is my intention that we begin with what we are  
 22 terming "representative" statements on impacts. These  
 23 will be from representatives of organisations speaking  
 24 to the sorts of impacts that people associated with  
 25 their organisations experienced. The organisations will

1 include those which were established during or just  
 2 after the pandemic as well as from organisations which  
 3 were established before the pandemic and continued to  
 4 operate during it. In this regard the Inquiry has been  
 5 in contact with a number of charitable organisations as  
 6 well as other organisations established to assist with  
 7 those having particular needs. The decision to take  
 8 such evidence was instigated after certain members of  
 9 the counsel team, including myself, held meetings with  
 10 a number of organisations and they provided anecdotal  
 11 information in respect of groups that they had supported  
 12 during the pandemic. We anticipate that those  
 13 representative hearings will probably take two weeks.  
 14 From the third week of hearings I expect to commence  
 15 hearing from members of Care Home Relatives Scotland and  
 16 Scottish Covid Bereaved and we are grateful as a counsel  
 17 team and as an inquiry generally to Mr McGuire, Mr Anwar  
 18 and their teams for facilitating engagement with members  
 19 of the client groups that they represent. Further, we  
 20 are grateful to members of those groups who have already  
 21 provided witness statements and to those who are making  
 22 time to engage with the Inquiry team to allow further  
 23 statements to be taken.  
 24 As has been made clear, not all members of those  
 25 groups will be called to give oral evidence and the

1 decision as to who gives oral evidence will be one for  
 2 me and my team, but I can assure you that we will try to  
 3 ensure that a broad range of impacts arising from this  
 4 tragic situation are presented in oral evidence and  
 5 I would wish to emphasise that all statements given by  
 6 members of those groups — and this applies to all  
 7 groups and all others who provide statements — will be  
 8 considered and account will be taken of them.  
 9 It had originally been my intention in these initial  
 10 hearings to only take evidence from those who suffered  
 11 bereavement in the care home setting. On further  
 12 reflection it seemed to me that to do so would be an  
 13 unnecessary division and, mindful of the distress giving  
 14 evidence of bereavement will inevitably cause, I have  
 15 concluded that witnesses from these groups will give  
 16 evidence of deaths of loved ones experienced in all  
 17 settings.  
 18 I do not intend to place a limit on the length of  
 19 time that witnesses from either group or indeed any  
 20 other witnesses will take and, as with the scheduling of  
 21 all witnesses to the Inquiry, there is no case of  
 22 preference or prioritisation being given. The Inquiry  
 23 intends to complete this first tranche of impact  
 24 hearings at the conclusion of the week ending Friday,  
 25 8 December. We want to finish before the festive period

1 as we appreciate that, for many people who have been  
 2 impacted by the pandemic, this will have been and will  
 3 continue to be a very difficult period.  
 4 Therefore we will continue our engagement with the  
 5 Care Home Relatives Scotland and the Scottish Covid  
 6 Bereaved and their legal representatives, beginning as  
 7 it has already and will continue, with a view to  
 8 completing the witness—statement—taking process, and  
 9 I should say that last week we were very grateful to  
 10 have been provided by Mr Anwar and his team a total of  
 11 66 statements from members of the Scottish Covid  
 12 Bereaved group and we are in the process of examining  
 13 those statements, reviewing them, analysing them and, if  
 14 necessary, seeking further clarification in certain  
 15 areas.  
 16 For those individuals who are asked to provide oral  
 17 evidence at the impact hearing, the Inquiry team will  
 18 explore their availability in order to inform scheduling  
 19 of the witness timetable. This is all with the ambition  
 20 of having called all relevant witnesses in this area by  
 21 8 December, subject obviously to availability.  
 22 The Inquiry obviously has an idea of the number of  
 23 witnesses who are likely to give evidence — we have  
 24 a very clear idea of that — in these groups and also in  
 25 the representative organisations that I've referred to.

21

1 It seems to us that, given the anticipated numbers of  
 2 witnesses, it is quite possible that the witnesses from  
 3 these groups will occupy the entire period to  
 4 8 December. Thereafter we will continue with our  
 5 investigations, and I should say that our investigations  
 6 do not stop during the presentation of evidence. Our  
 7 investigations are ongoing, as they have been now for  
 8 many, many months. We will continue with our  
 9 investigations but we will not hold further public  
 10 hearings until February 2024 so that we do not overlap  
 11 with the UK Inquiry's Module 2A hearings, which are on  
 12 Scottish matters and which will be held in Scotland.  
 13 From February we expect to run until Easter,  
 14 continuing with public hearings on health and social  
 15 care impacts. The reason we are not being specific at  
 16 this stage about the exact number of weeks or the  
 17 witnesses at this point is that we are mindful that many  
 18 of the witnesses we call will have suffered bereavement  
 19 or loss and we wish again to make a trauma—informed  
 20 approach to all these hearings, not rushing witnesses to  
 21 get through to a fixed timetable.  
 22 Our intention for the remainder of 2024 is to hold  
 23 hearings on the impacts on education and young people  
 24 and, after that, on the impacts, both human and  
 25 economic, on finance, business and welfare. These

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1 obviously, as I've said earlier, fall within the  
 2 portfolios that are headed by my colleague,  
 3 Laura—Anne van der Westhuizen. We will then return to  
 4 health and social care and hold hearings on  
 5 implementation, hearing from those who took decisions to  
 6 put into practice the legislation and guidance in the  
 7 health and social care sector over the period that we  
 8 are investigating.  
 9 Can I ask Lord Brailsford now to expand on the  
 10 approach of trauma—informed and human rights?  
 11 THE CHAIR: Thank you again, Mr Gale.  
 12 Now, the trauma—informed approach we are taking with  
 13 respect to health and social care impact hearings will  
 14 be embedded in all the Inquiry's work. While our  
 15 purpose and terms of reference are set by  
 16 Scottish ministers, it is for me, as Chair of the  
 17 Inquiry, to set out how we will engage with others, how  
 18 we will organise ourselves and how we will deliver these  
 19 outcomes. I want to ensure that every person and  
 20 organisation engaging with the Inquiry feels they have  
 21 been treated fairly and feels that they have been heard.  
 22 I know that many of the people the Inquiry will be  
 23 engaging with have suffered loss of different kinds.  
 24 Everyone working in the Inquiry has had training in  
 25 trauma awareness. Those colleagues working in direct

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1 contact with individuals who have been bereaved or  
 2 suffered other losses have had specific, more in—depth  
 3 training so they are equipped with the skills they need  
 4 to conduct their tasks. While it is not the role of  
 5 a public inquiry to provide counselling, we will provide  
 6 emotional support at hearings through our own team and,  
 7 where appropriate, through partner agencies.  
 8 When reporting at the end of the Inquiry, I am  
 9 required "to demonstrate how a human rights—based  
 10 approach by the Inquiry has contributed to the Inquiry's  
 11 findings in facts and recommendations". This means  
 12 taking a human—rights—based approach from the beginning.  
 13 I want to set out here how I intend to do that.  
 14 A human—rights—based approach goes beyond a series  
 15 of specific actions. I view it as the philosophy of the  
 16 Inquiry and embedded in our approach to how we conduct  
 17 our work in accordance with the terms of reference. We  
 18 will apply this philosophy when scrutinising the extent  
 19 to which decision—makers and those implementing measures  
 20 set out in legislation and guidance had regard to human  
 21 rights considerations. When investigating the 12 areas  
 22 in our terms of reference, we will consider ways in  
 23 which the strategic handling of the pandemic may have  
 24 had an adverse effect on the exercise of human rights.  
 25 As measures varied over time, we will consider

24

1 developments of legislation , guidance and policies  
 2 individually and cumulatively and the extent to which  
 3 regard was given to human rights and equalities duties.  
 4 It is important to remember that my role is not to  
 5 determine if rights have been breached in individual  
 6 cases or circumstances. However, when the Inquiry makes  
 7 findings about lessons learned, where I determine it is  
 8 relevant, I will consider and comment on any adverse  
 9 effects on the exercise of human rights or equality  
 10 issues .  
 11 On the issue of equalities and any disparities or  
 12 unequal impacts, I am bound in the terms of reference to  
 13 consider these as I deem appropriate and necessary.  
 14 A statement of how we will embed a human—rights—based  
 15 approach in our work will be published on our website in  
 16 advance of our October hearings.  
 17 I would like now to turn to our relationship with  
 18 the UK Inquiry. I recognise that people living in  
 19 Scotland may be affected by and indeed interested in the  
 20 investigations of both the Scottish COVID—19 Inquiry and  
 21 the UK Covid—19 Inquiry. The response to the COVID—19  
 22 pandemic involved both Scottish and UK authorities.  
 23 This Inquiry will only investigate areas within the  
 24 devolved competence of the Scottish Parliament.  
 25 However, as Chair, I recognise the importance of it

1 being clear to people which Inquiry is responsible for  
 2 looking at particular issues and both inquiries have an  
 3 obligation in our terms of reference to take steps to  
 4 minimise any duplication of evidence gathering,  
 5 investigation and reporting.  
 6 I have had several discussions with Baroness  
 7 Heather Hallett, Chair of the UK Covid—19 Inquiry, about  
 8 how our two inquiries might work together to share  
 9 information and maximise value for money to the public  
 10 purse. In February of this year, we signed a memorandum  
 11 of understanding which formalises our agreement. This  
 12 commits us to providing clear information to the public  
 13 about how each inquiry will conduct its investigation in  
 14 Scotland to enhance public understanding of its work,  
 15 including both public engagement exercises, Let’s Be  
 16 Heard and Every Story Matters.  
 17 Officials and solicitors meet regularly and share  
 18 information and planning where possible on areas which  
 19 are within both our terms of reference. While we do not  
 20 share evidence directly with each other, we endeavour to  
 21 minimise the burden on material providers by sharing our  
 22 requests for information so that, where such requests  
 23 meet each other’s needs, these are identical and require  
 24 one search rather than two. Earlier in the summer we  
 25 held a meeting for organisations which are core

1 participants in both inquiries . This was found useful  
 2 by all parties and is something we would be pleased to  
 3 arrange again at suitable points in time.  
 4 Where possible we will organise our timetabling of  
 5 hearings to ensure we do not hold public hearings at the  
 6 same time as each other. However, we are mindful of our  
 7 own responsibilities in conducting our separate  
 8 independent inquiries. I need to consider the interests  
 9 of those who are not part of the UK Inquiry and who  
 10 deserve to see this Inquiry’s progress in a reasonable  
 11 timescale. It will not be possible or desirable  
 12 therefore to avoid having public hearings which overlap  
 13 at times.  
 14 After the festive period, when the UK is holding its  
 15 Module 2A hearing, which is specifically about Scottish  
 16 matters, we will pause our own hearings. However,  
 17 neither inquiry can guarantee there will not be  
 18 overlapping hearing schedules at other times, when the  
 19 focus of the UK Inquiry hearings is not  
 20 Scotland—specific. Our particular meetings with our  
 21 UK Inquiry counterparts will assist us in planning this  
 22 and both inquiries will be flexible in responding to  
 23 situations where the same witness or witnesses may be  
 24 scheduled for a particular set of hearings.  
 25 I now ask Mr Gale to again represent to you in

1 relation to the relationship with the Crown Office.  
 2 MR GALE: Thank you, my Lord.  
 3 In the same way in which we and the UK Inquiry  
 4 respect each other’s independence, we and the  
 5 Crown Office and Procurator Fiscal Service respect the  
 6 distinct and independent roles each has. The Inquiry is  
 7 aware of the investigations being carried out by  
 8 Crown Office into deaths which occurred in care and  
 9 nursing homes and other settings during the pandemic and  
 10 the importance of avoiding, wherever we can, the  
 11 possibility that work carried out by the Inquiry  
 12 prejudices those investigations or any subsequent  
 13 proceedings. The Inquiry and the Crown Office have  
 14 already established an ongoing dialogue relating to  
 15 these matters and will continue a channel of  
 16 communication concerning their respective work and the  
 17 Inquiry will discuss with all legal representatives of  
 18 core participants and others in the event that we  
 19 consider that it may be appropriate or necessary to  
 20 defer participation in the Inquiry to a later date.  
 21 THE CHAIR: Thank you again, Mr Gale.  
 22 Now, an update on evidence gathering. Using my  
 23 powers under the Inquiries Act 2005, I have required  
 24 public bodies, including the Scottish Government, to  
 25 produce documents relevant to the Inquiry’s



1 investigations . We estimate that during the course of  
2 this Inquiry we will review and analyse millions of such  
3 documents, with the aim of producing a factual record of  
4 the key strategic elements of the handling of the  
5 pandemic.

6 Rule 8 and Section 21 notices are the two avenues at  
7 the Inquiry's disposal to pursue to recover documents  
8 and evidence from individuals and organisations.

9 A Section 21 notice gives the Chair of the Inquiry the  
10 power to compel an individual or organisation to hand  
11 over documents and evidence to the Inquiry. In  
12 contrast, a Rule 8 request is for the voluntary  
13 provision of records and evidence. The Inquiry has  
14 published a full list of the recipients of Rule 8 and  
15 Section 21 recipients on our website.

16 When embarking on its evidence-gathering process,  
17 the Inquiry was mindful that information relevant to its  
18 investigations may include communications shared via  
19 WhatsApp and other private messaging applications. To  
20 ensure that such material is not lost or destroyed,  
21 in August 2022 the Inquiry issued "Do not destroy"  
22 letters to organisations and individuals which may hold  
23 information relevant to the Inquiry's investigations .  
24 Those letters, which made specific reference to WhatsApp  
25 and text messages, emails and other communications,

1 require such information to be preserved and retained so  
2 it is available to the Inquiry as and when required.

3 The Inquiry is examining all the material that has  
4 been provided to it by Scottish Government and other  
5 parties . As this process continues, I will decide  
6 whether any further calls for evidence are required .  
7 Where documents and requests for information are  
8 required by these hearings, we will endeavour to engage  
9 as early as possible with document-holders to understand  
10 demands on organisations and co-ordinate requests for  
11 evidence where practicable.

12 While I do not have power to make any findings of  
13 criminal or civil liability , I will continue to use my  
14 powers as Chair to the Inquiry to obtain evidence and to  
15 compel the production of documents and the appearance of  
16 witnesses. I will not tolerate any attempt to obstruct  
17 or hinder the work of this Inquiry .

18 Can I now ask Mr Gale to tell you something about  
19 Let's Be Heard?

20 MR GALE: Thank you again.

21 Earlier it was mentioned today that you do not have  
22 to be a core participant to engage with the Inquiry.

23 For most people in Scotland, the principal channel for  
24 sharing your experiences with us is through our  
25 listening project , Let's Be Heard. It aims to give

1 a voice to as many people in Scotland as possible.  
2 Let's Be Heard allows people to tell us about their  
3 experiences in the pandemic, how these affected them and  
4 any lessons that they believe should be learned or could  
5 be learned from those experiences. We are gathering and  
6 analysing the thousands of experiences the people of  
7 Scotland have kindly shared with us through  
8 Let's Be Heard.

9 Provision of information to Let's Be Heard is  
10 a formal submission to the Inquiry , therefore project  
11 staff are working closely with the Inquiry's legal teams  
12 in engaging with both organisations and individuals.  
13 In addition to facilitating the identification of  
14 potential witnesses, the experiences gathered through  
15 Let's Be Heard will help guide the Inquiry's  
16 investigations and inform its reports and  
17 recommendations.

18 I can perhaps just reiterate that the quotations  
19 that you saw on the film that was played this morning  
20 were, in the main, obtained from representations and  
21 communications received by Let's Be Heard.

22 The process that we are undertaking will include  
23 identifying any disproportionate or unequal impacts on  
24 particular groups or communities. The legal team review  
25 the evidence received by Let's Be Heard and may follow

1 up with individuals to ask if they would provide  
2 a further statement to the Inquiry.

3 In addition to our online platform and paper forms,  
4 Let's Be Heard has created a bespoke Engagement Guide to  
5 encourage organisations to engage with their members in  
6 a way that best suits them. Let's Be Heard asks to  
7 attend events where invited and offers financial support  
8 to help meet accessibility needs. Let's Be Heard is  
9 also designed with accessibility in mind, but we  
10 understand that some may face further barriers in  
11 participation . We encourage people to contact  
12 Let's Be Heard if they have any queries or require any  
13 additional materials, any translations, languages or  
14 formats, so that they can find a way for people to  
15 engage with Let's Be Heard.

16 A dedicated team of researchers and analysts has  
17 been recruited to the Inquiry to analyse these responses  
18 and Let's Be Heard will publish a series of reports  
19 based on key findings of the experiences shared by the  
20 public in Scotland. The reports will provide insights  
21 into the issues, impacts and recurring or emerging  
22 themes.

23 So far Let's Be Heard has received 2,800 responses  
24 from individuals and groups and will continue its  
25 national engagement approach until the end of this year.

1 I'm grateful to the team for providing detailed  
 2 information with regards to the geographic spread of the  
 3 responses into Let's Be Heard. It is pleasing that  
 4 Let's Be Heard has received individual responses from  
 5 people in every local authority area in Scotland. Based  
 6 on a preliminary analysis of submissions, it is perhaps,  
 7 however, unsurprising that almost a quarter of all  
 8 responses have come from the City of Glasgow and the  
 9 City of Edinburgh areas. Certain areas that we have  
 10 heard less from include, for example, West Lothian,  
 11 North Lanarkshire and Fife, and I would welcome as many  
 12 people as possible from those areas and indeed across  
 13 Scotland broadly to engage with Let's Be Heard.  
 14 Frankly, we all have an experience that can be conveyed  
 15 to us.

16 Both Let's Be Heard and the counsel team are eager  
 17 to ensure that we hear from ethnic minority groups in  
 18 Scotland and I would use this platform to ask that  
 19 members of such groups engage with the Inquiry, either  
 20 directly or through Let's Be Heard, in order that we are  
 21 informed of the impact of the pandemic on members of  
 22 such groups and their suggestions of any lessons to be  
 23 learned so that they can be incorporated into our  
 24 investigations and final recommendations.

25 Let's Be Heard will undertake a more targeted

1 approach this winter and beyond, which will include more  
 2 specific engagement and research, such as focus groups  
 3 and workshops, as requested by the Inquiry's  
 4 investigative teams, in order that we can fulfil any  
 5 information gaps and provide a more detailed information  
 6 base.

7 Aligned to this, I wonder if I could refer briefly  
 8 to academic research that the Inquiry has instructed and  
 9 undertaken. So we have been able to call on independent  
 10 academic research of the highest quality.

11 When the Inquiry was established in December 2021,  
 12 it commissioned introductory scoping research from  
 13 academics considered to be leading authorities in their  
 14 respective fields to provide context for the Inquiry's  
 15 investigative portfolios. This research has been  
 16 crucial in helping direct our investigations and covers  
 17 many, but not all, of the areas within the Inquiry's  
 18 terms of reference and from a multitude of perspectives.

19 In keeping with the transparent way in which we are  
 20 working, these scoping research reports were published  
 21 on our website in June 2022 and included research from  
 22 academic institutions including the Universities of  
 23 Dundee, Edinburgh, Edinburgh Napier, Glasgow, Highlands  
 24 and Islands and Birmingham.

25 These reports covered the period up to April 2022.

1 We issued a second call for academic research in January  
 2 of this year to extend the scope of research to cover  
 3 the entire period of the Inquiry, that is up until  
 4 31 December 2022. As well as additional areas  
 5 identified as important, we are preparing to publish  
 6 these additional reports on our website in the coming  
 7 weeks and months.

8 I have found the high-quality research which has  
 9 been produced to date to be extremely instructive as we  
 10 conduct our investigations and prepare for our public  
 11 hearings and I'm very grateful to all the academics  
 12 involved for their continued invaluable input into our  
 13 work.

14 This research is one of many sources of evidence of  
 15 the Inquiry which we will consider before we report, and  
 16 it follows, therefore, that the content of the research  
 17 we have received and will receive in future should not  
 18 in any way be seen to pre-empt the eventual conclusions  
 19 and recommendations that we will make.

20 Could I also say some words about the science and  
 21 epidemiology? As COVID-19 spread across the world, we  
 22 all found ourselves in uncharted territory. Decisions  
 23 regarding Scotland's response to the emerging pandemic  
 24 were taken against the backdrop of evolving science  
 25 regarding the nature and transmission of COVID-19 and

1 the race to develop and then roll out effective  
 2 vaccines.

3 In July of this year Dr Ashley Croft provided  
 4 a report and a presentation on the epidemiology of  
 5 COVID-19. We will be hearing from other epidemiologists  
 6 and public health experts as we continue our  
 7 investigations. In addition, we will be analysing  
 8 academic research and materials published by a wide  
 9 range of sources, including those commissioned by the  
 10 UK Inquiry, where relevant to our terms of reference.

11 None of the findings of these expert reports and  
 12 academic research papers is binding on the Inquiry,  
 13 which will reach its own conclusions on all matters  
 14 within the terms of reference. We will also be  
 15 examining the science which informed the alternative  
 16 strategic approaches taken by countries around the world  
 17 to managing the pandemic. We will explore what factors  
 18 influenced the contrasting approaches taken by countries  
 19 such as New Zealand and Sweden and how these compare to  
 20 the decisions taken in Scotland.

21 Now back to Lord Brailsford on the matter of  
 22 reporting.

23 THE CHAIR: Although I think we will have a pause. Thank  
 24 you very much, Mr Gale.

25 That has been a relatively large amount of

1 information and I appreciate you've all been very  
 2 patient over the course of almost an hour and a half and  
 3 I also don't forget, of course, that much of this for  
 4 many of you has been quite emotional. So we'll have  
 5 a break now of about 15 minutes or thereby, which should  
 6 have us back -- my computer has conveniently switched  
 7 itself off, as these things do at the moment, so I'm not  
 8 sure of the exact time. I think it's about 11.20 -- so  
 9 around about 25 to or 20 to 12. Thank you very much.  
 10 We'll pause for a moment.

11 (11.21 am)

12 (A short break)

13 (11.48 am)

14 THE CHAIR: Welcome back.

15 Now, I think I said just before the break that  
 16 I would turn now to reporting. It's not possible for me  
 17 to say at this stage how long the Inquiry will take to  
 18 reach its final conclusions, but we will, of course,  
 19 report as quickly as we can whilst ensuring we conduct  
 20 a robust, thorough, independent investigation which  
 21 establishes the facts and identifies any lessons that  
 22 need to be learned so that Scotland is better prepared  
 23 for the future.

24 As the work of the Inquiry progresses, it is my  
 25 intention to publish interim reports as and when

1 I consider it to be appropriate to make sure interested  
 2 parties are kept informed. Again, I can't say how many  
 3 we will have. It will very much depend on when it seems  
 4 appropriate to do that.

5 I turn now to specific protocols which are probably  
 6 of primary interest to those that will be -- solicitors  
 7 who will be responsible for looking after the affairs of  
 8 their clients in a practical sense. So I'm going to  
 9 deal with protocols and orders, firstly restriction  
 10 orders.

11 A number of questions have been put to the Inquiry  
 12 in advance of today's proceedings relative to anonymity,  
 13 disclosure and use of identifying information. As  
 14 Chair, I have been clear that I consider it important  
 15 that this Inquiry carries out its work in as open and  
 16 transparent a manner as is possible and that its  
 17 proceedings are conducted in public. However,  
 18 I appreciate that there will be circumstances where it  
 19 would not be appropriate to do so and that it will be  
 20 necessary and in the public interest to keep some of the  
 21 evidence provided to the Inquiry private.

22 One of the powers available to me as Chair is the  
 23 power to make an order known as a "restriction order",  
 24 which restricts the disclosure or publication of  
 25 specific information. These orders remain in force

1 unless and until I decide they should be changed or  
 2 cancelled and usually remain in force at least until the  
 3 Inquiry has ended but often beyond that.

4 I made one of these restriction orders on 5 May this  
 5 year, known as "Restriction Order 1 -- Health and Social  
 6 Care". The effect of that order is to impose  
 7 restrictions on the publication or disclosure of  
 8 evidence or documents produced by or provided to the  
 9 Inquiry pertaining to health and social care in the  
 10 Inquiry's investigation of matters covered by Terms of  
 11 Reference (g), (h) and (i) and, where appropriate, Terms  
 12 of Reference (c), (d), (e) and (f). It is important to  
 13 note that this order applies equally to the Inquiry  
 14 itself as it does to core participants.

15 The Inquiry is very grateful to individuals who are  
 16 coming forward to provide witness evidence and is  
 17 acutely conscious of the need to ensure sensitive  
 18 information is given appropriate protection. In terms  
 19 of how Restriction Order 1 works in practice, it first  
 20 creates a category of protected persons who will benefit  
 21 from the protections set out in the order. Those are:  
 22 persons who apply to give evidence to the Inquiry in  
 23 respect of the Inquiry's impact hearings on health and  
 24 social care; that person's family members; persons  
 25 and/or their family members who were in receipt of care

1 in a residential care setting or hospital or in receipt  
 2 of health and social care in the community alongside the  
 3 witness; the name of the residential care setting,  
 4 hospital or other care setting; the name of individual  
 5 carers, whether paid or unpaid, and healthcare  
 6 providers; a person who was a key worker, although this  
 7 is subject to certain exceptions.

8 Restriction Order 1 prohibits the disclosure or  
 9 publication of information that can enable a protected  
 10 person to be identified unless I give my express written  
 11 permission to the contrary. What this means in practice  
 12 is that careful consideration will be given before  
 13 documentation is disclosed by the Inquiry in unredacted  
 14 form to ensure that the information falling within the  
 15 terms of the restriction order is kept private.

16 There are exceptions to the restriction order; for  
 17 example, where we receive evidence which includes  
 18 allegations of criminality, the Inquiry may disclose the  
 19 identities of a protected person to Police Scotland.  
 20 Therefore, I would encourage all core participants to  
 21 ensure their legal representatives have reviewed  
 22 Restriction Order 1. It can be found on the Inquiry's  
 23 website.

24 I also want to remind core participants of the terms  
 25 of section 36 of the Inquiries Act 2005. This provides

1 that where a person fails to comply with or breaches  
 2 a restriction order made by the Inquiry, I may refer the  
 3 matter to the Court of Session. Any breach of the  
 4 restriction order will not be treated lightly and  
 5 I request in the strongest terms that all legal  
 6 representatives and core participants ensure they are  
 7 familiar with its terms.

8 I would like to say something now about anonymity.  
 9 I am aware that there may be circumstances where  
 10 individuals may wish to provide evidence to the Inquiry  
 11 but may be concerned about any personal or professional  
 12 implications of them doing so. Therefore I wanted to  
 13 address today the matter of whether an individual can  
 14 provide a statement to the Inquiry anonymously.

15 I consider that anonymity for those providing  
 16 evidence to the Inquiry will only be granted if the  
 17 reasons why it is required have been properly justified .  
 18 This would be done on a case-by-case basis and would  
 19 involve the individual or their legal representative  
 20 setting out in writing why it is needed and who should  
 21 be covered by it, and that will enable me to make  
 22 a decision on that matter.

23 Criticism . Some core participants have raised  
 24 questions with me about whether they will have the  
 25 opportunity to respond to any criticisms made about them

1 by witnesses to the Inquiry. I would like to highlight  
 2 section 10, subsections (a), (b) and (c) of  
 3 Restriction Order 1, which enables the Inquiry to  
 4 disclose the identity of protected persons to individual  
 5 carers or healthcare providers or residential care  
 6 settings or hospitals or other care settings and their  
 7 representatives in the interests of fairness . In  
 8 practice , what this means is that, where significant or  
 9 explicit criticism of individuals or organisations is  
 10 made, the Inquiry can disclose this to them in the  
 11 interests of fairness .

12 As with our approach to granting requests for  
 13 anonymity, the Inquiry will take decisions about whether  
 14 to disclose such information on a case-by-case basis.  
 15 In the event that an unexpected criticism is made during  
 16 the course of a hearing, the live-stream will be on  
 17 a delay, which will give the Inquiry time to prevent  
 18 that information from being released into the public  
 19 domain. The terms of the restriction order will apply  
 20 to all those in attendance at the hearing. While  
 21 organisations are entitled to respond to criticisms made  
 22 of them, the Inquiry cannot guarantee the opportunity to  
 23 respond before a witness gives evidence nor will the  
 24 Inquiry give a right of reply .

25 Organisations will have opportunity during the

1 course of the implementation hearings to provide  
 2 statements in which they can comment on the evidence  
 3 presented to date. The Inquiry is an inquisitorial  
 4 process, not an adversarial one, therefore, depending on  
 5 the severity of the criticism and the implications this  
 6 might have for an organisation, I may decide that  
 7 details of the criticism will not be disclosed to the  
 8 wider core participant group.

9 I have also been asked to clarify whether the  
 10 Inquiry will investigate and rule on every criticism and  
 11 complaint. It is not the role of the Inquiry and  
 12 therefore we will not do so.

13 Now, leave to appear. Whilst this does not apply to  
 14 preliminary hearings such as the one we are having  
 15 today, there will be a general rule at all substantive  
 16 hearings that any core participant who wishes to appear  
 17 at this Inquiry's hearings will be required to be  
 18 granted leave to appear. I think I may have said "leave  
 19 to appeal" by mistake at the outset of this .  
 20 I apologise for that. It's leave to appear.

21 Those granted leave to appear at any hearing in the  
 22 Inquiry will be given copies of documents to be referred  
 23 to at the hearing prior to those being made available to  
 24 the public in advance of the hearing taking place, be  
 25 able to request Counsel to the Inquiry to ask certain

1 questions of witnesses, be able to ask questions of  
 2 witnesses direct with the permission of the Chair and be  
 3 able to make opening submissions at the hearing where  
 4 the Chair directs that such submissions are required.

5 Making a closing statement at any hearing where the  
 6 Chair directs the making of such statements is not  
 7 contingent on the core participant or its or their  
 8 recognised legal representative having had leave to  
 9 attend the hearing to which the closing statement  
 10 relates . Those granted leave to appear will be notified  
 11 of the number of representatives they can have present  
 12 in the hearing room during the hearing in question.

13 I would remind core participants that the  
 14 requirement to obtain leave to appear applies separately  
 15 to each substantive hearing date held by the Inquiry , so  
 16 leave to appear at one hearing does not confer leave to  
 17 appear for any subsequent hearing. I encourage core  
 18 participants and their legal representatives to  
 19 familiarise themselves with the terms of the Inquiry's  
 20 leave to appear protocol, which can be found on our  
 21 website.

22 Opening statements. In relation to the October 2023  
 23 impact hearing, I can confirm that opening statements  
 24 will be sought from core participants who have been  
 25 granted leave to appear. I will issue a direction on

1 opening statements in due course which will set out my  
 2 position on this matter.

3 Expenses. I recognise that the question of the  
 4 payment of expenses has been raised in advance of this  
 5 hearing. As Chair, I have a legal duty to minimise  
 6 expense to the public purse. The Inquiry's current  
 7 policy of not paying travel expenses to people  
 8 voluntarily attending a hearing in person is consistent  
 9 with those of other public inquiries. The Inquiry does,  
 10 however, pay legal expenses for core participants and  
 11 others, where eligible, to ensure they have appropriate  
 12 legal representation throughout the course of the  
 13 Inquiry's work. We will shortly publish our policy with  
 14 regards to the payment of expenses for witnesses who  
 15 will be asked to attend future hearings.

16 People who are unable to attend the Inquiry's  
 17 preliminary hearing and future hearings are invited to  
 18 watch them via dedicated live-streams on the Inquiry's  
 19 YouTube channel, which will also be recorded and  
 20 available to watch any time on demand.

21 The questioning of witnesses. In advance of our  
 22 first substantive hearings, I wanted to take some time  
 23 to set out this Inquiry's position regarding the  
 24 questioning of witnesses. Rule 9 of the Inquiries  
 25 (Scotland) Rules 2007 enables core participants to apply

1 to examine a witness. Witnesses may be asked to give  
 2 evidence in the form of a written or oral statement and  
 3 may also be asked to appear at an inquiry. I will issue  
 4 a procedural direction in the coming weeks which will  
 5 set out further details on the process for core  
 6 participants making an application to pose questions.  
 7 My intention is for Inquiry counsel to ask any questions  
 8 that have been posed by core participants, subject to  
 9 them being granted permission by Inquiry counsel, rather  
 10 than have witnesses examined by the representatives of  
 11 core participants. I would expect that application  
 12 process to be preceded by an informal approach to  
 13 Counsel to the Inquiry to explore whether they are  
 14 prepared to put a question or line during examination.

15 Confidentiality undertakings. I wish to highlight  
 16 that confidentiality undertakings were sent to core  
 17 participants on 24 August 2023. I remind all core  
 18 participants and their representatives that  
 19 documentation will only be disclosed to individuals who  
 20 have signed such an undertaking.

21 Evidence and witnesses. For our October hearings,  
 22 core participants who have status in respect of sections  
 23 (g), (h) and (i) of the Inquiry's terms of reference and  
 24 leave to appear will receive bundles containing witness  
 25 statements and documentary productions in respect of

1 this tranche of hearings prior to these being available  
 2 to the public and in advance of the commencement of  
 3 the October 2023 impact hearing. The Inquiry team is  
 4 working towards an initial tranche of disclosure in  
 5 respect of bundles at the end of September 2023.  
 6 Documents will be shared with core participants using  
 7 our document management system, Relativity.

8 The Inquiry is in the course of gathering evidence  
 9 from a variety of sources in preparation for the first  
 10 set of hearings. As I highlighted earlier in the  
 11 session, in the context of the impact hearing  
 12 specifically, written statements are being sought from  
 13 members of core participant groups and relevant external  
 14 organisations, in addition to which we are conducting  
 15 detailed analysis of the submissions made to  
 16 Let's Be Heard.

17 Core participants will not be entitled to comment on  
 18 draft witness statements of others. The only  
 19 circumstances where someone may comment on a draft  
 20 witness statement is the witness to whom the draft  
 21 pertains. Inquiry counsel will then take a view on who  
 22 ought to be called to appear in person to give oral  
 23 testimony. As a general statement, witnesses who are  
 24 called to give oral evidence will, at the start of their  
 25 evidence, be invited by Counsel to the Inquiry to

1 confirm that they will adopt the written statement as  
 2 their evidence.

3 The Inquiry team will identify and call witnesses to  
 4 give evidence. We will, of course, communicate to core  
 5 participants when their own members are expected to be  
 6 called but it is not our intention to publish a witness  
 7 list for impact hearings. However, we will provide on  
 8 a weekly basis a list of those with leave to appear in  
 9 that period. Because of the nature of impact hearings,  
 10 there may require to be changes to the intended witness  
 11 schedule. Witnesses may be asked to give evidence in  
 12 the form of a written or oral statement and may also be  
 13 asked to appear at an Inquiry hearing. Counsel to the  
 14 Inquiry will identify and call witnesses to give  
 15 evidence.

16 Witnesses who speak to key and distinct impacts will  
 17 be invited to give oral evidence. Evidence will be led  
 18 by a cross-section of witnesses who are able to speak to  
 19 key and divergent impacts experienced by individuals.

20 Can I turn to access to medical records? Specific  
 21 questions have been asked in advance of this hearing  
 22 about whether the Inquiry plans to routinely consider  
 23 the medical records of individuals who have been asked  
 24 to give evidence. Given the Inquiry's remit, it is not  
 25 our function to ascertain causation of anyone being in

1 hospital, therefore it is unlikely. They will only be  
 2 requested as and when required. Where the Inquiry does  
 3 require access to a patient’s medical records, it will  
 4 issue a notice under Section 21 of the Inquiries Act  
 5 2005 requiring their production. The Inquiry may  
 6 involve medically qualified persons in considering  
 7 patient records if it considers it necessary.

8 I will make decisions on what records may be  
 9 relevant and I will consider this on a case-by-case  
 10 basis, bearing in mind what is necessary, proportionate,  
 11 reasonable and relevant to fulfil the Inquiry’s terms of  
 12 reference. Not everything that is collected will be  
 13 disclosed to core participants or placed into the public  
 14 domain. This will also be considered on a case-by-case  
 15 basis.

16 As you know, core participants were asked to  
 17 pre-submit questions in advance of this preliminary  
 18 hearing so I’d like to take some time to speak to the  
 19 points raised. I believe most of these questions will  
 20 have been covered in the course of today’s proceedings  
 21 already. However, there were a number of specific  
 22 questions raised that I will now address.

23 Evidence. I have received a number of questions  
 24 regarding what types of evidence the Inquiry will  
 25 consider during the course of our health and social care

1 hearings. We will not publish evidence proposals for  
 2 the impact hearings. I may consider doing so for the  
 3 implementation hearings and decision-making hearings.  
 4 Proceedings for these hearings will be shared nearer the  
 5 time.

6 One question specifically mentioned evidence  
 7 relating to population triage and DNACPR (do not attempt  
 8 cardio-pulmonary resuscitation decisions),  
 9 decision-making in hospital and social care settings.  
 10 This is an area where we have already collected evidence  
 11 and will consider further during the course of our  
 12 investigations.

13 Front-line workers. I have been asked to confirm if  
 14 workers and workplaces will be considered in the impact  
 15 hearings. The Inquiry will of course hear evidence from  
 16 front-line workers. This will likely take place in the  
 17 next tranche of hearings early next year. Staff will be  
 18 approached directly rather than through their employers.  
 19 The Inquiry is in its evidence-gathering stage and is  
 20 focusing on the impacts felt in relation to health and  
 21 social care. The terms of reference in focus at present  
 22 are: (g), in care and nursing homes, the transfer of  
 23 residents to or from homes, treatment and care of  
 24 residents, restrictions on visiting, infection  
 25 prevention and control, and inspections; (h), the

1 provision of healthcare services and social care  
 2 support, including the management and support of staff  
 3 and the recognition, involvement and support of unpaid  
 4 carers; (i), the delivery of end-of-life care and the  
 5 use of DNACPR, again do not attempt cardio-pulmonary  
 6 resuscitation decisions.

7 There will of course be staff who do not fall  
 8 naturally within the themes. We are actively  
 9 considering this and do not wish for anyone to fall  
 10 between the cracks. We will provide further information  
 11 in the course of our investigations.

12 Long COVID. I’ve been asked how the Inquiry will  
 13 address the issue of long COVID. As many of you will be  
 14 aware, following a legal opinion from the advocate and  
 15 junior counsel to this Inquiry, Mr David Turner,  
 16 I determined that certain matters relating to long COVID  
 17 fall within the Inquiry’s remit. This was because the  
 18 existence and effects of long COVID are relevant to the  
 19 handling of the pandemic in Scotland and those affected  
 20 by long COVID will be relevant to the scope of the  
 21 Inquiry. Mr Turner’s full opinion can be found on the  
 22 Inquiry’s website for those with an interest.

23 The Inquiry is in its evidence-gathering stage and  
 24 is focusing on the impacts felt in relation to health  
 25 and social care. The terms of reference in focus are --

1 I have already stated these, so I won’t repeat them  
 2 again. They are (g), (h) and (i), which I read out just  
 3 a moment or two ago.

4 Evidence will be sought in respect of long COVID,  
 5 particularly in respect of ToR (h).

6 One question specifically mentioned evidence  
 7 relating to population triage, and again I think I’ve  
 8 covered this, so I don’t need to repeat that this is an  
 9 area which we’ve collected evidence in and will consider  
 10 further during the course of investigation.

11 Some core participants have also asked for  
 12 opportunities for their members to provide evidence to  
 13 me as Chair which would not be made public. I would  
 14 invite all these core participants with an interest to  
 15 make a formal request to Counsel to the Inquiry and, if  
 16 a request is approved, this will be arranged by the  
 17 Inquiry policy and external relations team.

18 Disproportionate impacts. One question asked what  
 19 the Scottish COVID-19 Inquiry is going to do to  
 20 specifically address the issue of race in the first  
 21 hearings. On the issue of equalities and any  
 22 disparities or unequal impacts, I am bound in the terms  
 23 of reference to consider these as I deem appropriate and  
 24 necessary. In preparing for the hearings, we have been  
 25 gathering evidence from organisations representing those

1 with protected characteristics and other disadvantaged  
2 groups where it is relevant to each of the 12 areas  
3 included in the terms of reference, including  
4 consideration of any disproportionate and intersectional  
5 impact.

6 Dr Croft's report. I have received a number of  
7 questions concerning the status of the report and  
8 evidence provided by Dr Ashley Croft to the Inquiry  
9 regarding the epidemiology of COVID-19. To set the  
10 report in context, prior to commencing hearings we  
11 considered it appropriate to explore the scientific  
12 position at the relevant time. We instructed Dr Croft  
13 to provide an account of this.

14 Dr Croft is a public health physician and  
15 epidemiologist who has undertaken and published research  
16 on a wide range of public health issues, including  
17 issues relating to COVID-19. Dr Croft's report was  
18 commissioned to form the basis for future discussion in  
19 the Inquiry and to provide some scientific context for  
20 the work that will follow. His report will sit  
21 alongside other existing academic research the Inquiry  
22 has received and will receive in future, covering  
23 specific areas in more detail.

24 The contents of Dr Croft's report, as with any  
25 expert commissioned by the Inquiry, should not be seen

1 to pre-empt the eventual conclusions and recommendations  
2 I will eventually make. The views expressed in  
3 Dr Croft's report are his own professionally informed  
4 opinions and were provided by the Inquiry to inform core  
5 participants, interested parties and members of the  
6 public and to form the basis for future discussion in  
7 the Inquiry.

8 As is the case with all commissioned advice and  
9 research, I will consider all relevant material. I will  
10 assess it and give it the weight I consider to be  
11 appropriate, taking into account all the relevant  
12 circumstances.

13 I have also been asked to provide further details on  
14 the timeframe for core participants to have the  
15 opportunity to respond to Dr Croft's report and his  
16 presentation in Dundee last month.

17 Core participants will of course have an opportunity  
18 to apply to the Inquiry for questions they may wish to  
19 be put to Dr Croft with regard to his presentation.  
20 This will necessarily take place at a date later in the  
21 lifetime of the Inquiry to enable core participants to  
22 consider the conclusions presented in Dr Croft's report  
23 in the context of the additional evidence presented in  
24 the course of the Inquiry's work. Careful consideration  
25 is being given to scheduling and core participants will

1 be given appropriate notice ahead of any session to  
2 enable them to prepare questions which will be submitted  
3 to Inquiry counsel for consideration.

4 I also think it is important to address some of the  
5 questions asked regarding why this Inquiry has taken  
6 a different approach to the UK Inquiry with regards to  
7 the use of an expert presentation. As with all  
8 statutory inquiries, it is for the Chair to determine  
9 the structure of investigation and hearings. In line  
10 with our memorandum of understanding, we have opted not  
11 to duplicate costs in commissioning a very similar  
12 exercise to that undertaken by the UK Inquiry.

13 Where the UK Inquiry has commissioned expert  
14 reports, such as that produced by Professor Heymann,  
15 these are available to us. As is the case with all  
16 commissioned advice and research both by the UK Inquiry  
17 and this Inquiry, I will consider all the relevant  
18 material and give it the weight I deem appropriate,  
19 considering all the circumstances.

20 Evidence from expert witnesses. Questions have also  
21 been raised about whether I plan to instruct any  
22 additional expert witnesses during the course of  
23 proceedings. As I have previously discussed, the  
24 Inquiry is an inquisitorial process and, in the course  
25 of progressing work to fulfil its terms of reference,

1 I will decide whether and which experts I wish to  
2 instruct. Where an expert is brought to a hearing,  
3 I wish to reassure core participants that they will have  
4 an opportunity to apply to ask questions to the expert.  
5 Any documentary evidence relied upon at the hearing will  
6 also be disclosed to core participants with leave to  
7 appear prior to the hearing.

8 The Inquiry has already conducted some round-table  
9 meetings with experts and key organisations to help  
10 gather the evidence we hope to capture. The Portfolio 4  
11 team, led by Ms Van der Westhuizen KC, commenced  
12 round-tables with Colleges Scotland on 24 August and  
13 will continue through the week of 28 August. Similar  
14 round-tables have been set up with Universities  
15 Scotland. Where the Inquiry considers round-tables to  
16 be most effective, it will consider using them.

17 I understand some core participants have also asked  
18 whether the Inquiry may be willing to fund the  
19 instruction of experts by core participants to assist  
20 with their preparation for hearings. There will be no  
21 blanket permission or denial of such a request at this  
22 stage. If a core participant strongly felt that it  
23 would not be possible for them to prepare fully without  
24 the input, in an advisory rather than investigatory  
25 capacity, to help them understand technical evidence

1 advanced, the Inquiry will consider that request with  
 2 regard to its overarching duties and, in particular,  
 3 with regard to proportionality and fairness. Any  
 4 request for funding for such expert input will need to  
 5 be considered in context.  
 6 In principle, if a strong case were to be made and  
 7 I consider it appropriate to do so, the Inquiry could  
 8 grant such a request. It may be, for example, that  
 9 multiple core participants are asked to jointly instruct  
 10 an expert to ensure proportionality or some other  
 11 limitation or expectation may be placed on parties  
 12 seeking to secure such funding. This, however,  
 13 I stress, will need to be considered in context and on  
 14 a case-to-case basis.  
 15 While we would not envisage that such expert input  
 16 would be required, for example in the context of the  
 17 impact hearings, it may be that this is a justifiable  
 18 request with regard to particular aspects of the  
 19 Inquiry's work in due course, and I will turn my mind to  
 20 such requests as and when they are made.  
 21 Funding — bear with me. I think I said already  
 22 this computer closes down from time to time so I need to  
 23 refresh it.  
 24 Funding. In terms of what legal fees can be claimed  
 25 for preparatory work for public hearings, the initial

1 interim award and accompanying documents set out a range  
 2 of activities for which funding can be made available  
 3 and we are currently working to confirm the final scheme  
 4 for the award of legal expenses. We hope to have that  
 5 ready and published to all legal representatives by  
 6 early October. Until the work to put in place  
 7 structures for the final award has been concluded, fees  
 8 submitted will be assessed with reference to the interim  
 9 award scheme.  
 10 In terms of whether work charged to the UK Inquiry  
 11 for work done with regard to their terms of reference,  
 12 we cannot provide assurances that that work will  
 13 necessarily be funded with regard to this Inquiry.  
 14 Specifically, we cannot take the view it would  
 15 necessarily be fair to double-fund for work already  
 16 done. Any claim for legal expenses will need to be tied  
 17 to the ongoing work of the Scottish Inquiry at a given  
 18 time and will be considered on its merits by the  
 19 Inquiry. We will, however, consider how best to reflect  
 20 these issues in the ongoing work on what will be the  
 21 final funding award.  
 22 Operation of the hearings. A number of the  
 23 questions we have received related to the practical  
 24 operation of our hearings in relation to the publication  
 25 of transcripts and the option for remote participation.

1 The proceedings will be live-streamed and, as such, can  
 2 be viewed by as many people as want to access them. In  
 3 terms of individual requests for participation in  
 4 hearings without attending in person, we are considering  
 5 the needs of individuals on a case-by-case basis, with  
 6 a view to facilitating remote access where appropriate  
 7 to do so. We are presently considering requests from  
 8 people who wish to participate in hearings but cannot do  
 9 so by attending in person. The Inquiry will produce  
 10 a transcript of each hearing which will be made  
 11 available on the website as soon as practicable.  
 12 Now, that concludes, rather more expeditiously than  
 13 we had necessarily thought, the introductory remarks and  
 14 the answers to some of the questions which have been  
 15 posed by myself and by Mr Gale. We're slightly ahead of  
 16 schedule. I'm told that lunch isn't available for  
 17 another seven minutes — I checked — and I apologise  
 18 for such expedition.  
 19 I think, however, the sensible thing to do is,  
 20 bearing in mind that luncheon is not available until  
 21 12.30, we'll give you an hour from 12.30 and, instead of  
 22 starting again with any questions that may remain at  
 23 2 o'clock, we'll start at 1.30. There's always the  
 24 prospect we might finish earlier than the anticipated  
 25 time, which I'm sure no one would object to. So thank

1 you very much for listening this morning. I appreciate  
 2 it's been a lengthy session.  
 3 I'm sorry, I apologise. I've been reminded I should  
 4 have told you that anyone who wishes to ask a question  
 5 at the afternoon session, could they please do so at the  
 6 reception — is that correct? — at the reception,  
 7 please. Thank you very much indeed.  
 8 (12.25 pm)  
 9 (The short adjournment)  
 10 (1.39 pm)  
 11 THE CHAIR: Good afternoon, ladies and gentlemen. Over the  
 12 luncheon adjournment I have been provided with  
 13 information that two persons have additional questions.  
 14 What I'm going to do is ask them in turn to come up and  
 15 give me their question from the lectern here so they can  
 16 address you.  
 17 So the questions and the persons that want to ask  
 18 questions are Mr Aamer Anwar, who is the solicitor for  
 19 Scottish Covid Bereaved, and Ms Amber Galbraith, who is  
 20 the lead counsel, I assume, for Care Home Relatives  
 21 Scotland. So Mr Anwar first, if you would, please.  
 22 MR ANWAR: I'm obliged, your Lordship. If this fails, it's  
 23 because the wifi connection is awful and for the next  
 24 set of hearings it will be checked out before we go into  
 25 the hearing process.



1 As your Lordship said, I am the lead solicitor for  
 2 the Scottish Covid Bereaved and I have a handful of  
 3 questions for your Lordship and your senior counsel.  
 4 The public quite rightly are looking for answers and no  
 5 more so than the loved ones of the nearly 16,450 people  
 6 in Scotland who died from the pandemic.  
 7 The Inquiry has claimed repeatedly and has so again  
 8 today that it is human—rights based, so the question,  
 9 having spoken to my clients earlier on and prior to  
 10 this, is — the question that the Scottish Covid  
 11 Bereaved and many others — core participants I've  
 12 spoken to are asking is: why can they not be given  
 13 precise dates of hearings? It starts on Tuesday,  
 14 24 October, which happens to be the same date that the  
 15 preliminary hearing into Module 2A is taking place in  
 16 London for the UK Inquiry, and that impacts on Scotland,  
 17 and when after that will this hearing actually sit? We  
 18 have been provided by the UK Inquiry dates of hearings  
 19 of up to six months in advance into 2024, yet the  
 20 Scottish Inquiry is still unable to provide precise  
 21 details of when from 24 October onwards the Inquiry will  
 22 actually sit.  
 23 We understand that you have a memorandum of  
 24 understanding with the UK Inquiry and the  
 25 Scottish Covid Bereaved welcome that. We know that

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1 Module 2 impacts on Scotland and we have dates of  
 2 30 October to 1 November, 1 November to 9 November,  
 3 20 November to 30 November and 1 December to 7 December  
 4 when Module 2 is sitting in London. So one wonders how  
 5 exactly is it not clashing. I appreciate and we have  
 6 said to our clients that there will be an overlap in  
 7 dates in hearings, but clarity and preciseness is  
 8 important, not just to the bereaved, but also to their  
 9 representatives, who have to organise their diaries and  
 10 be able to make sure that counsel, solicitors, are  
 11 available to fully represent and adequately represent  
 12 their clients.  
 13 Both our clients and their representatives have the  
 14 right to know in advance. The bereaved have said it is  
 15 deeply traumatising for them to even be here today.  
 16 They have this hanging over them, and to not even know  
 17 when they have family commitments, when they have work  
 18 commitments — many of the families we represent are  
 19 suffering from financial crisis but also from the crisis  
 20 that they lost their loved ones, and the idea that they  
 21 should drop everything a few days in advance or a week  
 22 in advance or two weeks in advance is simply  
 23 unacceptable and, I repeat, it traumatises those who  
 24 want to speak and who want a right — that have a right  
 25 to clarity and they want to be front and centre.

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1 There are also 37 core participants and so far we  
 2 have heard very little about the other core  
 3 participants. I am conscious of the fact that there is  
 4 myself and somebody else asking questions today, but we  
 5 have only so far heard about the care homes and the  
 6 Scottish Covid Bereaved. I know that many of my clients  
 7 also happen to be front—line workers, they happen to be  
 8 members of trade unions, they are people involved in the  
 9 care homes, and many of the core participants want to  
 10 know when will they be involved, when will they be  
 11 spoken to. All of those issues interact with each  
 12 other, and that is essential that this Inquiry, that is  
 13 human—rights based — and these families and the  
 14 bereaved and front—line workers and trade unions and the  
 15 refugees and the minorities, the minority ethnic  
 16 communities, are front and centre of this Inquiry, then  
 17 that should most definitely be addressed and not left up  
 18 in the air because again that retraumatises. Again,  
 19 there is a concern.  
 20 There is a concern from what has been said today  
 21 that it would appear that no politicians, no ministers  
 22 and no senior civil servants will give evidence until  
 23 2025. We have already heard from a former  
 24 Prime Minister, we've heard from the former Chancellor  
 25 of the Exchequer, we have heard from the former First

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1 Minister in the London Inquiry and we know whether  
 2 individuals are being called back for October, November  
 3 and December.  
 4 Another matter that arises, as I understand, is that  
 5 no core participants out of the 37 core participants  
 6 have received any disclosure of worth for evidence. For  
 7 comparison, we received disclosure from the UK Inquiry  
 8 almost six months in advance of the hearing so we could  
 9 be ready. We were disclosed a total of 35,370  
 10 documents, totalling around 385,436 pages. However,  
 11 when it comes to the Scottish Inquiry, we have to date  
 12 received only one report, of which the main part of the  
 13 report is 127 pages, from an expert that our clients do  
 14 not accept as an expert.  
 15 We understand that you and senior counsel will  
 16 decide who gives evidence. Where is the clarity on the  
 17 participation of core participants in that process? How  
 18 is that human—rights based? Will we have any  
 19 involvement or is it simply the case that it will be  
 20 your Lordship and senior counsel that will decide who  
 21 gives evidence in the impact hearing?  
 22 I am one of those who, I remember at the start of  
 23 the UK Inquiry, explained to our clients and accepted  
 24 the fact that it would be impossible for all bereaved to  
 25 come to an inquiry to give evidence, but what happened

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1 in the UK Inquiry was that the statements were taken,  
2 they were provided to the Inquiry and out of that it was  
3 selected core individuals who would come forward and  
4 give evidence. I am concerned when it is said there is  
5 no time limit on giving evidence that we have -- I don't  
6 like to call it "tradition", but in this country where  
7 inquiries trundle on for years.

8 Your interim solicitor of course was involved in the  
9 Trams Inquiry, which is still yet to report and has  
10 spent £13 million. This Inquiry, we sought an FOI in  
11 terms of clarification of the costs. £8 million have  
12 been spent on this Inquiry. We have not received any  
13 answers of breakdown in costs, but there is a real  
14 concern that this will break the record of the Iraq  
15 Chilcot Inquiry, which the Trams Inquiry had in terms of  
16 that.

17 The families do not want haste at the expense of it  
18 being robust and independent and transparent but they do  
19 have a right to know exactly what is happening with  
20 regard to cost, expenditure, even in terms of the  
21 general day-to-day of an inquiry hearing, how people are  
22 treated, whether it is trauma-based, whether counsellors  
23 are available, et cetera.

24 The final question, my Lord, is: why is there such  
25 secrecy around experts? How can we prepare if we do not

1 know in advance? Dr Croft, as far as we're concerned --  
2 and that's the only so-called expert we can go by -- but  
3 as far as the Scottish Covid Bereaved were concerned,  
4 his evidence was disastrous and we do not want to repeat  
5 that.

6 However, we are entitled, if it's  
7 a human-rights-based Inquiry and it is operating -- it  
8 has a gold-plated standard which to look at, to know who  
9 the experts are in advance in order that we may instruct  
10 and seek permission and seek leave to instruct our own  
11 experts to advise on that, not to be told four weeks in  
12 advance. This is far too important and we need to have  
13 that clarified.

14 I'm obliged.

15 THE CHAIR: Thank you. I'll just wait until you're back in  
16 your seat.

17 Well, as you fairly said at the beginning, there are  
18 a number of questions embedded in that speech and  
19 I think in fairness quite a lot of the points that you  
20 have raised have been covered in what I've already said  
21 today. However, I will highlight certain matters. I'm  
22 also going to call on Mr Gale to address certain of  
23 those issues because he's the person that is directly  
24 concerned.

25 The first one concerned timings, and you indicated

1 that you had, I think you said, notice of specific dates  
2 of hearings from the UK Inquiry six months in advance,  
3 but unless my arithmetic is very wrong, Mr Gale gave you  
4 this morning a clear indication of what his intention  
5 was in relation to adducing evidence in a period which  
6 is I think a little in excess of six months.

7 It is in what Mr Gale said earlier this morning, but  
8 I think in fairness and to be absolutely clear, I'm  
9 going to ask Mr Gale again to explain his plan for the  
10 hearings between now and Easter, which I think is at the  
11 beginning of April next year.

12 Mr Gale.

13 MR GALE: Thank you, my Lord.

14 Yes, as I said earlier, the plan is to commence  
15 impact hearings on 24 October and I indicated that they  
16 would be each day, a four-day week and run through to  
17 8 December. Initially we are going to hear from  
18 representative witnesses -- and a quite deliberate  
19 decision has been taken on that -- and thereafter we  
20 will hear from Care Home Relatives and the Covid  
21 Bereaved group, and the intention is that there will be  
22 witnesses through that period up until 8 December.

23 If there are more witnesses than we can accommodate  
24 in that period, we will have further hearings in  
25 relation to those witnesses. We are not prescriptive in

1 cutting off witnesses as at 8 December, and I hope  
2 I made that clear.

3 Thereafter, into the new year, we have a period when  
4 we will not be sitting due to the presence here of the  
5 UK Inquiry and thereafter we will resume our hearings in  
6 February and run through to Easter. During that time we  
7 will hear from other impacted witnesses and groups, and  
8 that will include -- as I think was made clear at an  
9 earlier hearing and also at an earlier meeting that  
10 I had with some of the parties -- that will include, for  
11 example, those who were employed within the care and  
12 health sectors. We will also hear from witnesses and  
13 their impacts who were in the refugee community. We  
14 will also hear from witnesses who were in prison. We  
15 have dedicated teams looking at each of these areas, and  
16 they are just some. We will also be looking  
17 specifically at hospitals and we will be looking at care  
18 in the community. So we have the intention of obtaining  
19 as much information on impacts in as many settings as we  
20 can conceivably accommodate. So that is our plan.

21 As I say, we have a number of dedicated teams. When  
22 I say "dedicated teams", I use that word in two senses.  
23 They are very dedicated to what they're doing and they  
24 are specific in relation to what they are doing. They  
25 are looking -- for example, there is a dedicated team

1 looking to those who were impacted by the use of "do not  
 2 resuscitate" notices. We already have a number of  
 3 witnesses who are within that category, we have  
 4 statements from them, we have material from them, we  
 5 have liaised with hospice groups, we have liaised with  
 6 groups providing palliative and end-of-life care. So  
 7 I would like to reassure Mr Anwar that all of these  
 8 matters are in hand, are well in hand and prepared. We  
 9 are utilising the statement that his firm gave us last  
 10 week in relation to the witnesses within his client  
 11 group and we will be in touch with him and, through him,  
 12 his clients to advise as to when his clients will be  
 13 giving evidence.

14 THE CHAIR: Thank you, Mr Gale.

15 Now, there's a number of other points ancillary to  
 16 that that arose in the questions from Mr Anwar. The  
 17 first one is in relation to hearings on the same dates  
 18 as the UK Inquiry has intimated it is having hearings.  
 19 As I said earlier this morning, there is a memorandum of  
 20 understanding between the two inquiries and that  
 21 memorandum of understanding encompasses trying, where  
 22 possible, to avoid having hearings on the same dates or  
 23 certainly hearings concerning the same subjects on the  
 24 same dates.

25 In relation to that, it is not an absolute

1 undertaking not to have hearings on the same dates  
 2 although we will use our best endeavours to avoid having  
 3 hearings on the same dates. My understanding is that  
 4 the hearings of the UK Inquiry in the months of October,  
 5 November and December do not directly relate to Scottish  
 6 matters, and that was a factor we took into account.

7 Now, I immediately acknowledge that there may be  
 8 dates when representatives who are participants in both  
 9 inquiries might feel a need to be at the UK Inquiry even  
 10 if it's not dealing specifically with Scottish matters.  
 11 If there are such dates, then we would be willing, on  
 12 representations being made to us by the participant  
 13 involved, to consider whether we can do anything about  
 14 that. But as a matter of generality, my understanding  
 15 is the UK Inquiry is not dealing with Scottish matters.  
 16 Obviously, we are accommodating the UK Inquiry by not  
 17 sitting when it is dealing with Scottish matters in  
 18 January of next year. That's the first point.

19 The second point is in relation to the question or  
 20 the issue of why our focus in this case. One of the  
 21 reasons we're having hearings when we're having hearings  
 22 in October is because we are taking a people-centred  
 23 approach. We are putting individuals, people, in all  
 24 their capacities, workers, bereaved and so forth and so  
 25 on, at the heart of our Inquiry. As Mr Gale said when

1 he was addressing you this morning, there were good,  
 2 cogent reasons for trying to prioritise this evidence.  
 3 Memories get stale is the obvious one. We were anxious  
 4 to hear individuals at the first opportunity. That is  
 5 why we put impact hearings first. If we delayed impact  
 6 hearings, these people, these individuals, would not be  
 7 heard until well into next year. We took, and I may say  
 8 still take, the view that that is undesirable if we want  
 9 to be person-focused and adopt a human rights approach.  
 10 So that is another reason why we are proceeding  
 11 in October.

12 You make the point absolutely correctly that  
 13 politicians and others have already given evidence in  
 14 the UK Inquiry. Again this comes back to the priorities  
 15 and the focus that we have chosen to adopt in this  
 16 Inquiry. We will hear from politicians during the  
 17 implementation and decision-making hearings, when these  
 18 come later, but we thought that frankly it was more  
 19 important to hear from the individuals as soon as  
 20 possible rather than hearing from persons who were  
 21 taking decisions, important though that obviously is.

22 Let me see, what else did you raise? Disclosure,  
 23 yes. I again acknowledge that there are times when  
 24 disclosure should be made well in advance of any  
 25 hearings. You have been provided, you told me, with

1 many thousands -- I can't remember the exact figure.  
 2 Forgive me -- but many thousands of documents, at  
 3 considerable periods of time, months in advance of  
 4 hearings of the UK Inquiry. Well, I've already said  
 5 that the UK Inquiry has been run in a different way from  
 6 us and was hearing evidence of those involved in  
 7 decision-making and implementation at an earlier stage,  
 8 at the beginning of their Inquiry, and since those  
 9 persons are those that would require documents or would  
 10 be involved in relation to documents that were produced,  
 11 I can well see the need for you having lots of notice of  
 12 that. When we come to implementation hearings, I can  
 13 assure you that we will give adequate time and you will  
 14 get, I've no doubt, fairly voluminous volumes of  
 15 production of documents well in advance.

16 The hearings that we're going to have between now  
 17 and Easter of next year are of a different category.  
 18 They are, obviously, primarily of individuals as  
 19 witnesses and therefore the documents which we will  
 20 disclose to you will be in the majority witness  
 21 statements from those persons. It's Mr Gale's ambition,  
 22 which again he's stated this morning and which I can  
 23 assure you is being adhered to, that he will try and  
 24 give you a month's notice of those things and, in the  
 25 exercise of our professional judgment, for documents of

1 the sort that we're going to use in the implementation  
 2 hearings, that is sufficient . You will get a greater  
 3 degree of notice when we come to implementation at  
 4 a later stage.  
 5 I think -- is there anything I've forgotten? No.  
 6 I think that is my answer to your questions. If there  
 7 is anything that I've missed, please feel free to  
 8 communicate this and we will supplement anything I've  
 9 said.  
 10 ATTENDANT AT HEARING: (inaudible).  
 11 THE CHAIR: Yes. Can I just -- I didn't quite hear you.  
 12 There was some coughing at the side. Clarification of  
 13 the costs?  
 14 ATTENDANT AT HEARING: (inaudible).  
 15 THE CHAIR: Well, I think that's actually again relatively  
 16 straightforward . We have to set up a public inquiry.  
 17 A public inquiry is of necessity an expensive process.  
 18 We had to engage staff. I may say the staff continued  
 19 to grow and to some extent continues to grow and we have  
 20 to pay for staff . We had to acquire premises, which  
 21 I may say was a very time-consuming and difficult job  
 22 and has not been without its difficulties . We had to  
 23 engage academics to perform research who require to be  
 24 paid. We had to set up Let's Be Heard, which is a very  
 25 wide-ranging process which continues to operate. It's

1 been operating since the -- well, it's been set up since  
 2 the inception of the Inquiry and is operating and will  
 3 continue to operate for many months yet. All those  
 4 things cost a great deal of money and that is why we  
 5 have expended to date something in the region of  
 6 £8 million.  
 7 I do not, I may say, consider the £8 million to be  
 8 at all excessive, having regard to the scale of the  
 9 organisation and operation that we've set up.  
 10 Yes. Thank you, Mr Anwar.  
 11 Ms Galbraith.  
 12 MS GALBRAITH: Chair, thank you for the opportunity to ask  
 13 questions on behalf of Care Home Relatives Scotland and  
 14 PAMIS. There are five key questions I would like to ask  
 15 which each relate to different issues . The Chair may  
 16 prefer if I pause after each question to allow for an  
 17 answer on each specific point.  
 18 The first question relates to the practical  
 19 operation of restriction orders and anonymity. It's  
 20 considered this remains a little unclear and in that  
 21 respect the Inquiry is asked whether consideration could  
 22 be given to providing a protocol or written policy  
 23 regarding the practicalities .  
 24 Four particular issues arise that I would like to  
 25 highlight in that regard. The first is where a person

1 falls within the definition of those protected in terms  
 2 of a restriction order. Will this prevent information  
 3 that could lead to their identification being passed to  
 4 other core participants as opposed to being disseminated  
 5 to the wider public or would there have to be an  
 6 application for anonymity? The second point is: when  
 7 can an individual apply for anonymity? Thirdly, if  
 8 anonymity is refused, can an individual withdraw their  
 9 evidence? And lastly, if the Inquiry consider  
 10 a statement contains criticism, will the identity of the  
 11 critic be given to the organisation or individual being  
 12 criticised and will the critic be told about that and  
 13 given the opportunity to withdraw that criticism?  
 14 THE CHAIR: Right. I think probably the answer is that we  
 15 can provide you with some written protocol in relation  
 16 to that. So far as the four specific sub-heads are  
 17 concerned, I don't think I would be confident in  
 18 answering the first question off the top of my head and  
 19 I think I'd prefer to have that answered in writing.  
 20 I think I may apply that to the other three heads as  
 21 well, although I'm prepared to answer those. When can  
 22 an application apply for anonymity? I think "any time"  
 23 is the answer to that, but we'll confirm that in  
 24 writing. Can it be withdrawn? "Yes", I think is the  
 25 answer to that. And will -- if there is a complaint,

1 will the identity of the complainer be revealed?  
 2 I think the answer to that is probably "No". But could  
 3 you please treat these as provisional answers and we  
 4 will respond in writing?  
 5 MS GALBRAITH: Thank you, Chair.  
 6 The second question is in relation to the timeline.  
 7 The indication is that in October there will firstly be  
 8 evidence from representatives of organisations. Can it  
 9 be clarified whether this is only for a care home or  
 10 social care organisations or is the term being used in  
 11 a wider context, such that it might cover those  
 12 I represent?  
 13 THE CHAIR: Right. I think I'll ask Mr Gale to answer that.  
 14 MR GALE: Yes. The position in relation to representative  
 15 organisations, as I said, will be wider than simply  
 16 Care Home and I think I indicated there would be various  
 17 charitable organisations that we are approaching. So  
 18 I won't give a particular example but we have been in  
 19 touch with numerous charitable organisations who advised  
 20 groups with specific needs in the care sector and the  
 21 health sector to give an indication of the sorts of  
 22 impacts that they were experiencing or their members  
 23 were experiencing, so it will be wider than care homes.  
 24 MS GALBRAITH: Thank you.  
 25 The third question is: what opportunities will there

1 be to use creative or multi-media means to hear evidence  
 2 of those with profound and multiple learning disability ?  
 3 THE CHAIR: Again, I think I can be quite straightforward.  
 4 We will cater to the best of our abilities to enable  
 5 persons in the categories you indicate to give their  
 6 evidence — we've given quite a lot of thought to that  
 7 and I'm confident that we'll be able to satisfy the  
 8 demand.  
 9 Could I ask you and to any other core participants  
 10 to whom this affects to give us as much notice in  
 11 advance of witnesses in those categories so that we can  
 12 make sure that we take the appropriate and adequate  
 13 means to facilitate the giving of their evidence.  
 14 MS GALBRAITH: The fourth question relates to what was said  
 15 earlier about the use of medical records. Can it be  
 16 clarified what approach will be taken to records from  
 17 care homes or perhaps social work records if the same  
 18 would apply?  
 19 THE CHAIR: Yes, I don't think we anticipate requiring to  
 20 recover medical records in relation to persons in care  
 21 homes, but again I'll ask Mr Gale to say a bit more  
 22 about that. So far as social work records are  
 23 concerned, again, I'm not sure if the requirement is  
 24 going to arise on many occasions, but let's see what  
 25 Mr Gale thinks.

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1 MR GALE: Where circumstances disclosed in a witness  
 2 statement require us in our view to obtain some more  
 3 clarification about circumstances of a particular  
 4 witness or about whom a witness is speaking, then we may  
 5 wish to obtain more specific records. An obvious  
 6 situation that we may be faced with is a date on which  
 7 a particular resident contracted COVID and we may need  
 8 to obtain records relating to that so that we can set in  
 9 context what restrictions were being placed on the  
 10 visiting of that relative, and so those are  
 11 circumstances where we would consider doing it.  
 12 I must emphasise, however, that we are not and will  
 13 not be in the business of obtaining widespread records  
 14 in relation to individual care home residents. Those  
 15 are beyond — what is strictly necessary would be all  
 16 that we would be requiring and we would not be wanting,  
 17 for example, to know why somebody was put into a care  
 18 home three years ago. We would only want to know  
 19 whether there was information relating to the care of  
 20 that resident and the interaction of the resident's  
 21 relatives with the care home at the material time of the  
 22 pandemic.  
 23 THE CHAIR: I think I'd simply add to that, Ms Galbraith,  
 24 that Mr Gale made clear, when speaking earlier this  
 25 morning, that we are not concerned, obviously, within

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1 the terms of the remit of causation, of any person being  
 2 in a care home or hospital and therefore our approach in  
 3 the event that we require to recover records will be the  
 4 most restrictive possible.  
 5 MS GALBRAITH: Thank you. The last point is: can  
 6 a reassurance be given that the first tranche of  
 7 evidence will not only consider the issue of deaths due  
 8 to COVID in health and care settings but will deal with  
 9 wider issues of the impact of restrictions on  
 10 individuals and their families, even where there was no  
 11 death, and will also consider the impact on care home  
 12 residents of all ages, not simply the elderly?  
 13 THE CHAIR: Yes, I think we're both absolutely clear the  
 14 answer to that is in the affirmative.  
 15 MS GALBRAITH: Thank you.  
 16 THE CHAIR: Thank you.  
 17 Very good. Well, I think that answers the  
 18 supplementary questions that have been proposed, so that  
 19 formally brings an end to the day's hearing. I would  
 20 like to say, however, again — repeat my thanks to all  
 21 of those that have attended today. We appreciate  
 22 particularly to the relatives of victims of this that  
 23 this has been a trying and stressful day and we're all  
 24 the more appreciative for your appearance today. Thank  
 25 you, and thank everyone else for their participation and

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1 help and we look forward to their support going forward.  
 2 Thank you all very much.  
 3 (2.11 pm)  
 4 (The preliminary hearing concluded)  
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