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Rt Hon Boris Johnson MP
Prime Minister
10 Downing Street
London SW1A 2AA

Sent by email

16 July 2021

Dear Prime Minister,

JUSTICE Working Party: When Things Go Wrong. Recommendations for the establishment of a Statutory Public Inquiry into COVID-19

I write with regard to your announcement before Parliament on 12 May 2021, that the Government had taken the decision to establish an independent public inquiry on a statutory basis into the response to the COVID-19 pandemic, to commence in the Spring of 2022. As chair of the JUSTICE Working Party that produced the report *When Things Go Wrong: The response of the justice system*¹ published in August 2020, I welcome your Government's acknowledgement that "the State has an obligation to examine its actions as rigorously and candidly as possible", and its commitment to an investigatory process that will "place the State's actions under the microscope "and "learn lessons at every stage".

Never before has a public inquiry been tasked with an inquiry into a matter concerning such a number of deaths and survivors, and, as a result of the measures that have been taken to control the spread of the virus, affecting every part of society. The importance and urgency of learning the lessons that can be drawn has never been so pressing. If it is to gain the confidence of the public, the Inquiry must be established and run in a manner that reflects the needs of the bereaved and of all affected by the virus, whether directly or indirectly. It must arrive at a full and transparent account of what happened, and what may have gone wrong.

The erosion of public trust as to the manner in which the State responds to mass deaths, particularly where the State itself might be at fault, is marked and well documented. The evidence that we gathered in the course of our work showed very clearly the degree to which in the past the survivors of disasters and those bereaved have been let down by the system. Inquiries have taken far too long, are notoriously time-consuming and cost vast amounts of public funds, often to little effect. Furthermore, the lack of any formal process for oversight of the implementation of recommendations, tends to undermine the objective of ensuring that the necessary lessons are learnt. Sadly, and instead of receiving the answers to which they are entitled, the bereaved and survivors are frequently left feeling confused, betrayed, re-traumatised and alienated. The supposedly inquisitorial processes tend to pitch the bereaved and survivors into an unequal battle against the organs of the State or corporate core participants with vastly greater financial resources and knowledge of legal processes. The lack

¹ JUSTICE [When Things Go Wrong: The response of the justice system](#) (2020).

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President of Council **Baroness Kennedy of The Shaws QC Director Andrea Coomber**

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of any input into setting terms of reference, the lack of any structure in the process of the appointment of an inquiry chair, the lack of diversity in inquiry teams and panels, the inability of the bereaved and survivor core participants to ask questions of witnesses through their own lawyers, and the unsuitability of venues, are repeatedly cited as threats to the legitimacy of the process and its ability to establish the truth.

In August 2019, and in the wake of the Grenfell Fire Disaster, JUSTICE established a Working Party to consider the weaknesses in the current arrangements, and the relationship between inquests and public inquiries. Its membership was diverse and highly experienced in all aspects of the management of both inquiries and inquests, in representation before them and in the experience of the bereaved and survivors, as can be seen from the attached list of members of the Working Party and its sub-groups. We consulted widely; and a list of our principal consultees is also attached. The report made a series of recommendations, 54 in number, directed at remedying shortcomings in the response of the justice system to catastrophic events or other serious incidents where a “systemic pattern of failure” is evident, a number of which are relevant to the proposed inquiry into COVID-19. We sought to arrive at practical and cost effective recommendations directed at ensuring that inquiries into fatal events are more efficient, more humane and more likely to precipitate lasting change, and in consequence likely to serve to remedy the erosion of public trust in the State’s response to deaths giving rise to public concern. Our report is available on the JUSTICE website and in attachment to this letter, and I invite your attention in particular to our recommendations 1 – 9 (the establishment and role of a Central Inquiries Unit within the Cabinet Office and its support by an Independent Advisory Board), and 34 – 35 (consultation as to the appointment of chairs and panellists, and the setting of terms of reference).

I particularly welcome your acknowledgment of the State’s obligation to examine its actions both “rigorously and candidly”. Institutional defensiveness can impede the effectiveness of an inquiry, with a detrimental effect on participation and public confidence. It is clear that public authorities and private sector organisations have consistently approached inquiries as if they were litigation, failing to disclose the full extent of their relevant knowledge unless directed to do so. In addition to the distress that such a stance may cause, it can prolong the process at considerable cost to the public purse and to public confidence. We recommend (recommendation 39) the introduction of a statutory duty of candour; and as you will be aware the Public Authority (Accountability) Bill, which enjoyed all-party support, was scheduled for its second reading in May 2017, but fell at the General Election. But in any event, and in the context of the COVID-19 Inquiry, your acknowledgement of the State’s obligation to examine its actions with candour could be reinforced by the express adoption by Government of Bishop James Jones’s “Charter for Families Bereaved through Public Tragedy”, the product of his 2017 report into the Hillsborough disaster, *‘The patronising disposition of unaccountable power’: A report to ensure the pain and suffering of the Hillsborough families is not repeated*, a report commissioned by Government. Such an approach will unquestionably serve to reduce the length of the Inquiry and hence its cost.

If the COVID-19 Inquiry is to begin in the Spring of 2022, there are a number of issues that need urgently to be resolved. First and foremost, and as you identified in the announcement, there is the proposed consultation with the Devolved Administrations which will affect both the scope of and detailed arrangements for the Inquiry, and which, if not yet concluded, should immediately be put in hand so as to avoid unnecessary delay. Secondly, and for the reasons set out in our report, we recommend consultation as to the appointment of a chair to the Inquiry, as to whether they should sit with a panel (see sections 3 and 4 of the Inquiries Act 2005), and, if so, as to the panel’s composition, and as to the Inquiry’s terms of reference. It is our considered view that such consultation is imperative if the Inquiry is to enjoy the confidence of the public. Following such consultation, the appointment should be made as a matter of urgency so that the necessary administration can be put in place; and the Inquiry can embark upon the considerable amount of preparatory work necessary to identify the issues that must be investigated and establish the most efficient and effective structure within

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which they can be addressed. That all needs to be done urgently if the expectation expressed in your statement to Parliament that the right moment for the Inquiry to begin work is Spring 2022 is to be achieved.

We would welcome the opportunity to discuss the many issues to which the establishment of the Inquiry gives rise with those in Government charged with implementation of your Government's decision.

Yours sincerely,



Sir Robert Michael Owen

Copying:

Rt Hon Robert Buckland QC MP
Lord Chancellor and Secretary of State for
Justice

Rt Hon Michael Gove MP
Chancellor of the Duchy of Lancaster

Rt Hon Nicola Sturgeon MSP
First Minister of Scotland

Mr Paul Givan MLA
First Minister of Northern Ireland

Rt Hon Mark Drakeford MS
First Minister of Wales

Mrs Michelle O'Neill MLA
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When Things Go Wrong: The response of the justice system

Members of the Working Party and sub-groups

Sir Robert Owen (Chair)

Michaela Bolton, Inquiry Lawyer, Infected Blood Inquiry

Paul Bowen QC

Deborah Coles, Executive Director, INQUEST

Sir John Goldring

Nicholas Griffin QC

Professor Carol Harlow QC, Professor Emeritus, London School of Economics

Charlotte Haworth Hird, Partner, Bindmans LLP

Matthew Hill, Barrister

D. Supt. Carwyn Hughes, Crime and Operations, West Sussex Police

Lee Hughes CBE

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Gill Kernick, Master Consultant, JMJ Associates

Thalia Maragh, Barrister

Lubka Mieresova, former Executive Assistant, Independent Inquiry into Child Sexual Abuse

Una Morris, Barrister

Andrew O'Connor QC

Dr Sara Ryan, University of Oxford

Professor Phil Scraton, Professor Emeritus, Queen's University Belfast

Marcus Shephard, Senior Researcher, The Institute for Government

Martin Smith, Partner, Fieldfisher

Robbie Stern, Senior Legal Fellow, JUSTICE (Rapporteur)

Ken Sutton, Secretary, East Kent Maternity Services Independent Investigation

Professor Leslie Thomas QC

Sir Peter Thornton QC, former Chief Coroner

Sonya L. Van de Graaff, Partner, Morrison & Foerster LLP

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When Things Go Wrong: The response of the justice system

Principal consultees to the Working Party

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FRSE

Jason Beer QC

Tom Bell

Syd Bolton, Co-convener, The Last Rights
Project

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Mitchell

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David Collins

Dr Edward Kirton-Darling, Lecturer in law,
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Michael Davison, Partner and Deputy CEO,
Hogan Lovells

Sir Robert Francis QC

Deputy Assistant Commissioner Dean
Haydon, Senior National Coordinator for UK
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Professor Jacqueline Hodgson, Deputy Pro
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Catriona Jarvis, Co-convener, The Last
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Peter Watkin Jones, Partner, Eversheds

Deputy Chief Constable Nev Kemp,
National Police Chiefs' Council lead for
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Tom Luce CB

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