



UK Covid-19 Inquiry
Terms of Reference Consultation Response
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For further information contact

Stephanie Needleman, Legal Director sneedleman@justice.org.uk

JUSTICE, 59 Carter Lane, London EC4V 5AQ tel: 020 7762 6439
email: admin@justice.org.uk website: www.justice.org.uk

Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. The In 2019 JUSTICE established a working party, chaired by Sir Robert Owen with a diverse and highly experienced membership, to consider the weaknesses in the current arrangements for inquests and public inquiries. The working party gave particular attention to the experiences of bereaved people, who, instead of finding answers through the inquest and inquiry process, are often left feeling confused, betrayed, and re-traumatised. This response is informed by the working party's report *When Things Go Wrong: The response of the justice system*.¹

Question 2: Please explain why you think the draft Terms of Reference do not cover all the areas that the Inquiry should address.

3. JUSTICE considers that the Terms of Reference should be amended to include an examination of the impact of the pandemic on Black Asian and minority ethnic (BAME) communities. The disproportionate negative impact that the pandemic has had on BAME communities has been widely documented, and it is our view that the Inquiry would benefit from considering the extent to which public health-decision making contributed to this. The Terms of Reference should also include an express commitment to examining the disparate treatment of BAME individuals in relation to the enforcement of COVID-19 regulations. Again, reports of this have been widespread – for instance, it was found that during the UK's first COVID-19 lockdown BAME people were more likely to be fined than their White counterparts.² According to

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

² R. Currenti and J. Flatley, [Policing the Pandemic: detailed analysis on police enforcement of the Public Health Regulations and an assessment on disproportionality across ethnic groups](#), (National Police Chiefs' Council, July 2020), p. 3.

a 2021 poll by 2 in 3 BAME Britons feel the government managed the pandemic badly.³ It is therefore vital that the experiences of minorities communities in the UK are given proper attention. Making this intention explicit in the terms of reference will help to regain the trust BAME communities and generate greater confidence in the aims of the Inquiry amongst some of those most affected by the pandemic.

Question 5: How should the Inquiry be designed and run to ensure that bereaved people or those who have suffered serious harm or hardship as a result of the pandemic have their voices heard?

4. If the Inquiry is to gain the confidence of the public, its design must reflect the needs of the bereaved and all those who have suffered harm or hardship because of the pandemic. Considering the scale of the pandemic and the high number of people affected, it's crucial that the inquiry give voice to as broad a range of people as possible, beyond those identified as core participants. JUSTICE considers that there are three groups the Government must consider in designing the enquiry:
 - a) Bereaved people and those who have suffered harm or hardship designated as core participants.
 - b) Non-core-participant bereaved people and people who have suffered harm or hardship who wish to engage with the inquiry by providing witness evidence.
 - c) Bereaved people and people who have suffered harm or hardship who wish to share their experience informally.
5. The Inquiry should therefore include three avenues to participation. First, participation as a core participant. Second, individuals who are not core participants should be able to participate by providing witness evidence or documents to the Inquiry. This will contribute to the evidential basis of the Inquiry's findings. Individuals should apply to be core participants or non-core participant witnesses through an open, accessible, and transparent application process. Finally, the Inquiry should also incorporate a non-evidential forum to facilitate the therapeutic giving of testimony by bereaved people and survivors, who do not wish to be formally involved. This forum should also be open to all those who have been affected by the pandemic, rather than just those who are bereaved or have suffered serious harm or hardship. Individuals should be able to

³ T. Abraham, '[Who do BAME Britons trust when it comes to COVID-19?](#)' (YouGov, 2021).

make submissions to the forum online, other the phone, or by post. Further details of these avenues are outlined below.

6. Given the disproportionate impact of the pandemic on BAME communities⁴ and the lack of trust in the government's response to the pandemic reported in these communities,⁵ particular attention should be paid to ensuring BAME individuals feel listened to by the Inquiry. A lack of diversity amongst inquiry professionals has previously been identified as a substantial threat to the participation of underrepresented communities.⁶ JUSTICE, therefore, recommends appointing a diverse panel to sit alongside the inquiry chair. Having a panel that reflects the diversity of those affected will enhance the perception of fairness, promote confidence amongst minority communities, and encourage greater participation.
7. JUSTICE has also previously highlighted institutional defensiveness as a barrier to participation and public confidence. Whilst we welcome the Government's previous acknowledgement of the State's obligation to examine its actions both "rigorously and candidly," we believe that the Inquiry would benefit from requiring public bodies, including care homes (which are public authorities for the purposes of the s.6 of the Human Rights Act), to expressly adopt Bishop James Jones's "Charter for Families Bereaved through Public Tragedy."⁷
8. In order to ensure that the voices of those who have suffered harm as a result of the pandemic are heard, the Inquiry team must establish effective communication with the public as early as possible. This should involve developing a systematic plan for publicising when the Inquiry will start, its terms of reference, and how people can engage with it. Careful consideration should be given to the method and style of communication to ensure that it can be fully understood by all those who wish to be involved. In particular, the Inquiry team should ensure that any communication is accessible to those with disabilities, as well as individuals facing digital exclusion.

⁴ Public Health England, [Beyond the data: Understanding the impact of COVID-19 on BAME groups](#) (2020)

⁵ T. Abraham, '[Who do BAME Britons trust when it comes to COVID-19?](#)' (YouGov, 2021).

⁶ JUSTICE, '[When Things Go Wrong: The response of the justice system](#)' (August 2020), para 59 – Leslie Thomas QC submissions to the Grenfell Tower Inquiry

⁷ <https://www.cps.gov.uk/sites/default/files/documents/publications/Charter-for-Families-Bereaved-through-Public-Tragedy.pdf>

9. We are pleased to see that efforts have already been made to make Inquiry communications accessible. We note that the Inquiry has made the Draft Terms of Reference and consultation overview available in 8 languages other than English. Whilst the Inquiry has provided “easy read” versions of the Terms of Reference and consultation questions, these appear to be large print versions, rather than easy read versions for those with learning disabilities, or those with conditions affecting how they process information. We recommend that, in the future, the Inquiry refers to the guidance on easy-read text provided by the Foundation for People with Learning Disabilities when producing alternative versions.
10. Going forward, ensuring accessible communication will, at a minimum, involve making important information about the Inquiry available in an easy-read format and in translation. It will also be helpful to provide local community hubs, such as doctors’ surgeries, with pamphlets and posters containing key information about the Inquiry to be disseminated amongst residents. In order to reach as many people as possible, the Inquiry might also consider running a national advertising campaign that makes people aware of key dates and provides information on how to get involved in the inquiry.
11. Similarly, applications to become a core participant, or to give evidence as a non-core-participant witness, must be accessible and must be available in both digital and paper format. The criteria for becoming a core participant, or non-core participant witness must be transparent and clearly stated in the application pack. Individuals wishing to apply should be able to contact a specially established freephone helpline for assistance with their application. The inquiry should also put systems in place to allow for the early identification of vulnerabilities of core participants and non-core-participant witnesses so that appropriate adjustments can be made to enable them to effectively participate. This might involve including a section in the application forms inviting applicants to outline any reasonable adjustments they need.
12. Further to this, the Inquiry should, as far as possible, pre-empt potential participant needs. For non-core participant witnesses, there should be an option to give evidence other than in writing. Participants should be able to provide video witness statements or to give evidence through an Inquiry intermediary – either over the phone or in person. Intermediaries should be positioned throughout the U.K. so that witnesses from as many areas as possible, can access them if necessary. Inquiry hearings should be held at rotating venues across the UK, to allow a range of people from across the country to give evidence at hearings when appropriate. Inquiry venues

should have systems in place before the start of hearings to allow participants to give evidence remotely, where giving evidence in person is not possible. Where bereaved and survivor core participants give evidence in person, the Inquiry team must as a minimum ensure that these participants are positioned at the heart of the hearing with adequate views of the panel and witnesses; sufficient separation from any other core participants/interested persons implicated in the events; and access to private, quiet space. Inquiry teams should also ensure that there are clear signs around the venue and prominently displayed maps at the entrances. Signs should also be used within the hearing rooms themselves to indicate to family members as well as members of the public where they should sit and who other people in the room are. Ahead of all hearings, bereaved people and survivors should be given familiarisation tours of the venue.

13. Holding Inquiry hearings in rotating venues throughout the UK will also signal to all those affected by the pandemic that their views and experiences are being taken into consideration, irrespective of which part of the country they are from. In the spirit of enhancing public inclusion, members of the public should be able to register to attend in-person hearings. Deadlines for registration and the registration process should be clearly advertised on the Inquiry website and in community hubs, and registration should be available online, over the phone or by post. Spaces should be randomly allocated, rather than on a first come first served basis, so as not to disadvantage those registering by post. Given the vast number of people affected by the pandemic, most of those affected will not be able to attend an in-person hearing. It is therefore crucial that hearings are made available through live-stream and/or video recording. This will enable more members of the public to hear the testimony of those who have suffered serious hardship and harm because of the pandemic – elevating the voices of these individuals and promoting inclusion and transparency.
14. To further enhance inclusion and recognise the broad range of voices affected by the pandemic, it is vital that access to information about the inquiry should not be limited to core participants.⁸ Except where there is a compelling reason not to do so, written statements provided to the Inquiry, and the evidence heard and documents referred to at Inquiry hearings should be made publicly available, through the Inquiry website. Updates on the Inquiry's progress should also be made publicly available, including

⁸ Core participants have a right to receive disclosure of documentation etc under Inquiry Rules 2006

the number of documents already disclosed and the time estimates for the completion of any processing phase. We acknowledge that a Covid-19 Inquiry website has been set-up and has already published a number of key documents. We are also pleased to see that the website includes information on the Inquiry team, as well as a short video introducing the Chair, Baroness Hallett. Giving the public access to information about the Inquiry and those in charge of it will greatly enhance public confidence, including amongst those who have been bereaved or suffered serious harm or hardship, making them more likely to engage with the Inquiry. We hope that this transparency continues as the Inquiry progresses.

15. Given the potentially sensitive nature of some of the documents likely to be provided as evidence, the Inquiry team must establish a bespoke document management system that allows for secure storage of evidence, as well as an effective redaction process. The Inquiry must also publish clear guidance outlining the circumstances in which documentation will not be made publicly available, alongside a statement of how they intend to keep participants private information, including medical information, secure. Striking an appropriate balance between transparency and ensuring the privacy of bereaved people and those who have suffered harm or hardship is crucial, as these individuals will be less willing to lend their voice to the Inquiry if they lack confidence in the way their information will be processed.
16. Participation in the Inquiry is likely to be very traumatic for bereaved people or those who have suffered serious harm or hardship because of the pandemic. It is therefore vital that the Inquiry is designed so as to be as supportive as possible to those involved. Lack of adequate support may act as a barrier to participation, particularly where continuous or repeated participation is required. Moreover, a lack of adequate support for those who are bereaved or have suffered serious harm or hardship, may be perceived as reflecting a lack of understanding by the Inquiry of the substantial negative impact the pandemic has had on them – making them feel alienated from the process and undermining their confidence in the Inquiry as a whole.
17. Whilst we acknowledge that the Inquiry website has a “support” section which lists some independent support services available to those affected by the pandemic, we consider that more could be done to make those who are bereaved or have suffered significant harm or hardship aware of the support available to them. We are concerned that the list of services on the Inquiry website contains some significant omissions. For instance, whilst domestic abuse survivors have been widely reported as one of the

groups most severely impacted by the pandemic, the support section does not include details of any services tailored to supporting individuals who have experienced or are experiencing domestic abuse. The Inquiry team should develop and publish a more comprehensive list of support services before the Inquiry begins.

18. Furthermore, those who contribute to the Inquiry, either as core participants, non-core-participant witnesses, or informally through a non-evidential forum, should be referred to specialist sources of support at every stage of their participation. For instance, a list of relevant support services should be made available at the end of core-participant or witness application forms. Equally, participants should be actively signposted to sources of support after participating in the Inquiry. This could be done through an email or letter sent out to bereaved people and survivor core participants and non-core participant witnesses. Individuals who chose to participate in the inquiry informally by sharing their experiences through the non-evidential forum, should also be sign posted to sources of support after making a submission.
19. Staff working on the Inquiry, including intermediaries and those working at the hearings themselves, should also be provided with a list of services that they can signpost participants to. They should be encouraged to remind participants that there are independent sources of support available to them and should be given training in identifying how and when to signpost sensitively. Any training delivered to Inquiry staff should emphasis the importance of empathizing with bereaved people and survivors.
20. Finally, the Inquiry must introduce, and make the public aware of, a formal process of oversight for the implementation of any recommendations it makes. A lack of formal implementation and oversight following the end of an inquiry significantly limits the likelihood of future prevention. However, for many bereaved people and survivors, the hope that others will not have to endure similar experiences is a key factor motivating their participation. The meaningful implementation of recommendations following the inquiry process is therefore of central importance to those affected by catastrophic events. Given this, establishing a formal mechanism for implementing the Inquiry's recommendations is fundamental to ensuring bereaved people and those who have suffered hardship or harm as a result of the pandemic feel heard by the Inquiry.

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