JMW Solicitors LLP
Registered Office:
1 Byrom Place
Spinningfields
Manchester M3 3HG

DX. 14372 Manchester 1
T: 0345 402 0001
W: jmw.co.uk

Our Ref: [redacted]

Your Ref:

15 December 2023

Rt Hon Baroness Hallett DBE
UK Covid-19 Public Inquiry

By Email only: [redacted]

Dear Lady Hallett

We are instructed on behalf of UsForThem. UsForThem was formed in May 2020 to advocate for children's interests during the pandemic. Its network of supporters has since grown into tens of thousands of parents, grandparents, carers and other citizens concerned about the impact of the response to the pandemic more generally. UsForThem is a non-profit non-affiliated group.

In addition to extensive critical analysis and commentary (including legal analysis) produced by UsForThem during the pandemic and since, members of the leadership team at UsForThem have written two books of significant relevance to the Inquiry's Terms of Reference.[1] UsForThem's analysis and commentary has on many occasions been quoted or referenced in debates in Parliament, as well as being widely reported in the media. Indeed, you may recall that it was following an intervention by UsForThem in July 2022 specifically calling for the Inquiry to modify its original Terms of Reference to address the plight of children that the Terms were amended in that way – an intervention reported on at the time.[2]

UsForThem emphatically supports the Inquiry's stated objective to learn lessons that will inform future pandemic responses in the UK. But it also now bears serious concerns that the Inquiry's current approach is not only failing adequately to identify those lessons, but risks entirely undermining the validity of its future findings by perpetuating the impression that it holds a predetermined view of both the nature of the pandemic and of the desirability and effectiveness of the UK's particular response.

The appearance of predetermination and questions about fairness

On behalf of UsForThem, we are therefore recording here a number of those serious concerns, specifically about the appearance of predetermination and about the fairness of the Inquiry's proceedings more generally. Appended to this letter is a spreadsheet setting out extensive examples which evidence the underlying issues. We urgently invite you as Chair to

[1] *The Children's Inquiry* (L. Cole and M. Kingsley, Pinter & Martin, 2022) which examined the impact of pandemic response policies on the physical and mental wellbeing of children, and *The Accountability Deficit* (M. Kingsley, A. Skinner and B. Kingsley, UK Book Publishing, 2023) which has forensically documented serious failures of governance, government and ethics in relation to decision-making concerning the UK's non-pharmaceutical measures and the coordinated State-level curation of public health information in relation to those measures.

[2] https://www.telegraph.co.uk/news/2022/07/21/covid-inquiry-sidelining-children-mps-campaigners-fear/

take the necessary action to correct the course of the Inquiry to avoid a future challenge to the accuracy, completeness and legal validity of its findings.

This is not, at this stage, a formal letter before claim under the Judicial Review Pre-Action Protocol, but it has been drafted with input from leading counsel James Maurici KC and junior counsel Siân McGibbon having in mind the possibility of a formal such letter becoming necessary in due course. We reserve UsForThem's rights in that regard.

The Inquiry's stated aims

An overriding aim and purpose of the Inquiry according to its Terms of Reference is to identify lessons to be learned *"to inform preparations for future pandemics across the UK".* Among the other detailed aims of the Inquiry are to examine:

- *"how decisions were made, communicated, recorded, and implemented"* (para 1.a.ii);
- *"the availability and use of data, research and expert evidence"* (para 1.a.iv);
- *"legislative and regulatory control and enforcement"* (para 1.a.v);
- *"the impact on the mental health and wellbeing of the population, including but not limited to those who were harmed significantly by the pandemic"* (para 1.a.x);
- *"the impact on children and young people, including health, wellbeing and social care"* (para 1.a.xiii); and
- *"the safeguarding of public funds and management of financial risk."* (para 1.a.xxii).

In meeting those aims the Inquiry is expected among other things to consider carefully not only the impact of the pandemic itself but also – and equally – of *"the response"* (introductory para (b)); it is also expected *"to have reasonable regard to relevant international comparisons"* (introductory para (d)).

The Inquiry's contemplation of the physical and mental tolls of the *response* to Covid

There are many in the UK who believe that multiple lockdowns were variously not necessary, or not proportionate or not adequately justified by the evidence. There remains widespread concern, including significant concern among respected members of the scientific community, that the harms caused by mandatory mass lockdowns were more severe than the harm that would have been done by the virus had a more consensual policy been adopted (as was the case in Sweden), or had more focussed and shorter lockdowns for the most vulnerable been used (as is reported to have been broadly the international consensus of epidemiological views prior to 2020).

On Monday 11 December, Prime Minister Sunak in his oral evidence mentioned the relevance of a quality-adjusted life years (QALY) analysis to any assessment of the justification for the first national lockdown, remarking that such an analysis carried out by two leading UK academic institutions *"suggested that the lockdown in its severity and duration is likely to have generated costs that are greater than the likely benefit"*. Counsel to the Inquiry interjected to

say that *"I wasn't aware of that but I'm sorry … I don't want to get into quality life assurance models"*.[3]

We suggest this was a highly prejudicial interjection both because it gave rise to the impression that the Inquiry wishes to avoid any discussion of the possibility that locking down was not justified, and because it revealed an apparent absence of understanding of the significance of QALY and a disregard for what should have been a material piece of evidence from the current Prime Minister. The number of Quality Adjusted Life Years saved by the Government's £400 billion of public spending on the pandemic response arguably is one of the most important questions that the Inquiry should be seeking to answer, and we note that many eminent public health experts have in recent days opined to this effect.[4]

Well-documented negative impacts on children and young people

There is now unfortunately widespread evidence of the scale of the harms inflicted on children and young people by lengthy mass lockdowns. Some of the well-documented effects that school closures have had on children in this country include: the highest annual rise in children living with obesity on record, a severe impact on children who are victims/survivors of domestic abuse, an amplification of differences in educational attainment between children who come from well-off families versus children from less-well-off families, a marked decline in participation by children in sporting and extra-curricular activities, a significant increase in symptoms of depression and post-traumatic stress disorder among children, mental-ill-health, and self-harm and suicide among children and young people.

The Inquiry cannot satisfactorily contemplate lessons to be learned from the pandemic, and specifically to the impact of *the response* to the pandemic on children and young people (which by any measure is now confirmed as having been far greater than the impact of the virus itself), unless it objectively and fairly considers the harms of lockdowns and other measures alongside the actual or perceived benefits for society as a whole including on a QALY basis. At the very least it must apply an openly critical mind to the efficacy of *mandating* mass lockdowns and other NPIs (including school closures) in the future. The Inquiry leaves itself open to criticism and potential review by failing to do so in this second module.

The Inquiry's examination of decision-making processes

Extensive questioning of witnesses to date has been devoted to examining the fractious or chaotic relationships between Ministers and their advisers and officials, and in particular to building an impression that poor working practices, and individual instances of political indecision or incompetence in the face of uniquely reliable scientific expertise, caused delays in implementing unquestionably necessary interventions, including lockdowns in particular. Yet topics of potentially critical significance to our collective understanding of how decisions were made – and therefore how better decisions might in future be made – have been entirely omitted.

For example, it has become apparent from evidence already given to the Inquiry that there were many instances when dissenting views were expressed among the experts that formed SAGE, but which may not have been communicated to Ministers appropriately, or at all. There is therefore an issue, not so far apparently being examined by the Inquiry, as to how the views of SAGE were communicated to Ministers and whether there was a systemic failure to give

[3] https://covid19.public-inquiry.uk/wp-content/uploads/2023/12/11230950/C-19-Inquiry-11-December-2023-Module-2-Day-33.pdf, page 101.
[4] https://www.telegraph.co.uk/news/2023/12/13/karol-sikora-covid-inquiry-qaly-lockdown-wrong/

adequate prominence to dissenting views among even the core scientific advisers to the Government.

By way of another example, the circumstances and manner in which Ministers considered it appropriate to brief and seek the support of Parliament for nationwide interventions which profoundly impacted human and civil rights in this country and which implicated massive public spending commitments, appears not as yet to have been considered by the Inquiry. The Inquiry presumably will not therefore be able to take into account the extent to which a more rigorous governance process of testing and scrutiny of decision-making, including by better involving Parliament, could have contributed to better, more timely, more ethical or more democratically robust policy choices.

Such scrutiny of the Government's choice of the legislative basis for its pandemic interventions as has taken place so far (most notably in the brief questioning of Michael Gove during his oral evidence session) has been limited to Counsel to the Inquiry encouraging witnesses to affirm that the Government had no realistic option but to exercise powers under the Public Health (Control of Disease) Act 1984. This is despite the existence of a Court of Appeal decision (***R. (Dolan) v Secretary of State for Health and Social Care*** [2021] 1 W.L.R. 2326*)*, and numerous published legal articles and commentaries from highly-respected jurists which dispute that supposition, though none appears to have been noted by Counsel to the Inquiry.

Nor has the ethical dimension of decision-making been addressed. As members of UsForThem have recently detailed in *The Accountability Deficit*, drawing on official public source documents available online, the Government's own Moral and Ethical Advisory Group (MEAG) – which had been convened specifically to provide moral and ethical advice on high-stakes pandemic decisions – appears not only to have been asked explicitly <u>not</u> to put its recommendations in writing (notably after its advice became incompatible with the Government's policy ambitions), but in 2021 it was then stood down prematurely with the effect that moral and ethical guardrails were, it seems deliberately, removed from the decision-making process.

Yet the Inquiry has so far not sought to explore the role of ethical factors in decision-making, let alone contemplated the significance of a senior official requesting that records of ethical recommendations <u>not</u> be created. This is despite the Inquiry plainly having recognised the negative implications of poor governance practices, and Counsel to the Inquiry: (i) having specifically lamented that numerous witnesses have described *"a circumvention of Cabinet governance, a certain level of dysfunction",* and (ii) in response to a comment attributed to Rishi Sunak by *The Spectator* that he had tried not to leave a paper trail, having asked pointedly *"Why, if you were debating these hugely important topics with the Prime Minister, was it important not to leave a paper trail?"*[5] and *"... what is the Inquiry to make of the suggestion here, to which you do appear to lend your support, that there was a form of communication between the Prime Minister that was not recorded and was obviously of significance?".*[6]

We suggest that any assessment of "*how decisions were made, communicated, recorded and implemented"* during the pandemic could not on any reasonable basis omit an analysis of

[5] https://covid19.public-inquiry.uk/wp-content/uploads/2023/12/11230950/C-19-Inquiry-11-December-2023-Module-2-Day-33.pdf
[6] https://covid19.public-inquiry.uk/wp-content/uploads/2023/12/11230950/C-19-Inquiry-11-December-2023-Module-2-Day-33.pdf

these highly consequential factors, and the Inquiry leaves itself open to criticism and potential review by failing to consider these objectively important elements.

The Inquiry's approach to experts and their evidence

Though the Inquiry is expressly required to consider *"the availability and use of data, research and expert evidence"*, as by now has been widely observed and commentated in mainstream print media, by elevating and leaving unchallenged the opinions and disputed advice of Government-appointed scientific experts, while appearing to disparage the credentials and opinions of experts who have not supported the 'official science', the Inquiry through the comments of its Counsel and – on occasion – its Chair, is perpetuating an impression that it has a preconceived view of what is 'the right' scientific opinion and is closed to considering dissenting views, when it should be inquisitorial and open-minded about the competing scientific perspectives at pivotal moments in the pandemic response.

To that end it is notable that eminent but dissenting voices have not only largely been excluded from the oral evidence sessions but have also been denied a right to reply in response to serious and potentially defamatory criticisms made of them in the Inquiry. For example, Professor Sunetra Gupta of Oxford University, as an original author of the Great Barrington Declaration, has been extensively critiqued and expressly or impliedly disparaged during the evidence of others (including by Counsel to the Inquiry, most recently during his questioning of Rishi Sunak on 11 December). Her opinions and expert advice have on a number of occasions been misrepresented to the Inquiry, including even by Counsel to the Inquiry, for example as having advocated a "let it rip"[7] approach,[8] yet she has been given no opportunity to reply nor any opportunity officially to correct the misrepresentations of her expert views. We suggest this raises a legal issue for the Inquiry which we explain further below.

It is also notable, for example, that Professor Mark Woolhouse, in his evidence to the Inquiry, described lockdown as *"a failure of public health policy"*, yet Counsel to the Inquiry has not put this expert opinion to others in subsequent evidence sessions.

UsForThem is equally concerned that Counsel to the Inquiry has not asked key witnesses, and key scientific witnesses in particular, to disclose during oral public evidence sessions the existence of their actual and potential conflicts of interest arising from personal financial interests and professional appointments in both public and private sector organisations.

Consideration of the negative effects of censorship on decision-making

The Inquiry has yet to indicate that any consideration has been or will be given to the effect on decision-making of the by now well-documented[9] suppressive activities of both the Government (through its CDU and RRU agencies in the DCMS and Cabinet Office respectively) and private sector partners (including in particular media and social media organisations) including in relation to academic and clinical commentaries, opinions and advice which were perceived as casting doubt on the Government's policy decisions.

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[7] https://covid19.public-inquiry.uk/wp-content/uploads/2023/12/07183942/2023-12-07-Module-2-Day-32-Transcript.pdf

[8] It is notable that for other witnesses, Counsel have acknowledged the importance of the right of reply, see for instance the oral evidence session of Boris Johnson where Counsel notes "*it's right and proper and fair that you're asked to give your…response to some of the material which has been produced to this Inquiry.*"; https://covid19.public-inquiry.uk/wp-content/uploads/2023/12/06220325/Transcript-of-Module-2-Public-Hearing-on-06-December-2023.pdf, page 38.

[9] https://www.telegraph.co.uk/news/2023/09/01/secretive-covid-disinformation-unit-security-services/

UsForThem has a particular interest in this topic as a confirmed target of State-led suppressive activity in relation to its campaigning for children.

Quite aside from the implications for free speech and democracy in the UK, for the Inquiry to discharge its duty to assess whether appropriate account was taken of available data and expert evidence prior to decision-making, it must surely be essential to consider the existence of evidence which was not visible to, or had been inappropriately withheld from or excluded by, decision-makers and their advisers.

We suggest that any assessment of *"the availability and use of data, research and expert evidence"* during the pandemic could not on any reasonable basis omit a full, balanced and fair discussion of this pervasive factor, including for example the well-documented[10] suppression and smear campaign targeted at the authors of the Great Barrington Declaration and other contrary opinions of eminent UK academics (including Professor Gupta) and expert clinical practitioners (such as Professor Karol Sikora). It must equally be necessary to evaluate critically, with an open mind, the risk of bias in the evidence of the pro-intervention 'consensus group' of current and former Government officials. The Inquiry leaves itself open to criticism and potential review by failing to consider these important aspects.

The Inquiry's examination of the financial costs of lockdowns and other NPIs

Allied to any objective and fair consideration of the *harms* of lockdowns and other measures deployed by the Government in response to the pandemic must be an objective and fair consideration of the short, medium and long-term financial costs of those measures, absent which there can be no meaningful view reached as to whether those measures were justified or should ever be repeated.

The Government spent – indeed borrowed, for repayment by future generations – approximately £400,000,000,000 to fund its policy decisions. If the Inquiry intends to fulfil its commitment to look at core political and administrative governance, as well as decision-making, surely it must seek to test the justification for the Government seeking, and being granted, the largest public spending blank cheque ever written for a Chancellor by the UK Parliament when the Contingencies Fund Act 2020 was rushed through Parliament in a single day in March 2020?

It appears inconceivable that decision-making around lockdowns and other NPIs could have been unaffected by the Government's knowledge that it had so readily been granted a vast reserve of public funds for which Ministers would not be required to seek Parliament's further approval to spend. Whether that led to better or worse decision-making, and whether it should ever be repeated, is a matter which it appears the Inquiry has not sought to address.

We suggest that any assessment of *"the safeguarding of public funds and management of financial risk"* and of *"legislative and regulatory control"* during the pandemic could not omit an analysis of this highly consequential moment in March 2020, and the Inquiry leaves itself open to criticism and potential review by appearing not to have considered its relevance, and more generally in appearing to have been inexplicably unwilling to challenge and weigh the broader financial costs to support an assessment of whether lockdowns and other NPIs were in fact justified.

Future interrogation of these issues will not remedy earlier flawed assumptions

We acknowledge that later modules may examine some of these issues. It will though be impossible to escape the reality that if the current key module relating to high level decision-

[10] https://www.prweek.com/article/1724028/scientists-accuse-government-media-smear-campaign

making is allowed to proceed on the basis of unexamined and thus potentially flawed assumptions such as that lockdowns and school closures were necessary or optimal choices, or that the costs and harms caused by those measures were justified, the Inquiry's findings will have been vitiated. Moreover, the examination of those issues in later modules is, as a result of those apparent assumptions, at serious risk of being perceived as prejudged – the growing concern on precisely this topic evident across national print media will presumably not have escaped the attention of the Inquiry.

Relevant legal principles

We have provisionally signposted above a number of areas in which we believe the Inquiry may leave itself open to a potential future judicial review. We outline here the legal basis on which any such review might be grounded.

In ***Cabinet Office v Chair of the UK COVID-19 Inquiry*** [2023] EWHC 1702 (Admin) the Court said at [52] that:

"Public inquiries are convened to address matters of public concern. The matters of public concern are identified by the Terms of Reference and the powers of the inquiry can only be carried out within the Terms of Reference, see ***R(EA) v The Chairman of the Manchester Arena Inquiry*** *[2020] EWHC 2053 (Admin); [2020] HRLR 23 at paragraph 46. It is well established that regard must be had to the investigatory and inquisitorial nature of a public inquiry. An inquiry is not determining issues between parties to either civil or criminal litigation, but conducting a thorough investigation. The inquiry has to follow leads and it is not bound by the rules of evidence".*

An inquiry is a decision-making exercise to which the principles of public law apply. In public law a decision-maker's decision can be vitiated by predetermination or the appearance of predetermination. The appearance of predetermination involves an assessment of whether a fair-minded and informed observer would think that the evidence gives rise to a real possibility or risk that the decision-maker had pre-determined a matter, in the sense of closing her mind to the merits of the issue to be decided: **see *R (Electronic Collar Manufacturers Asso) v SSEFRA*** [2019] EWHC 2813 (Admin) at [140]. The principles are closely related to, but not the same as, those governing the appearance of bias.

See also ***R (Miller) v Health Service Commissioner for England*** [2018] PTSR 801 at [62]:

"The question is whether a fair-minded and impartial observer would conclude that the ombudsman had predetermined the outcome …. Jackson LJ (with whom the rest of the court agreed) ***in Lanes Group plc v Galliford Try Infrastructure Ltd*** *(trading as Galliford Try Rail) [2011] EWCA Civ 1617; [2012] Bus LR 1184 held at para 45 that: "predetermination arises when a judge or other decision-maker reaches a final conclusion before he or she is in possession of all the relevant evidence and arguments." Jackson LJ cited the speech of Lord Hope of Craighead in* ***Porter v Magill*** *[2001] UKHL 67; [2002] 2 AC 357 to identify the test: the question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."*

These principles all derive from the fundamental rule that justice must not only be done but be seen to be done.

Crucially these principles apply not only to the conduct of the Chair but also that of the broader Inquiry team and especially including Counsel to the Inquiry. It is well-established that the appearance of bias among advisers is capable of vitiating the views of a decision-maker: see e.g. ***R (Compton) v Wiltshire PCT*** [2009] EWHC 1824 (Admin) at [91] **and *R (Hussain) v***

Shadwell MBC [2018] PTSR 142 at [165]. This case-law must apply *a fortior*i to Counsel to the Inquiry given their particular role.

More generally, the law of fairness is relevant here. The Inquiry is required to act fairly, albeit that as set out in the ***Cabinet Office*** case fairness must be assessed in the light of its function as a *'thorough investigation'* rather than *'determining issues between parties to civil or criminal litigation'*. The public law principle of fairness encompasses a requirement that any decision-maker act with even-handedness. Decision-makers should therefore act and be seen to act fairly and even-handedly. This is not only a matter of legal principle but is also essential to maintain public confidence in the Inquiry without which it can serve no useful purpose.

In relation to the issues set out above as to the Inquiry being critical of those experts who were not supportive of lockdown policies we refer to ***Mahon v Air New Zealand*** [1984] A.C. 808 and ***re Pergamon Press*** [1971] Ch 388. It is contended that natural justice requires an inquiry to ensure that any person that might be affected adversely by a finding should know of the risk of such a finding being made and be given an opportunity to adduce additional material that might have deterred the making of that finding.

UsForThem's specific concerns about predetermination and fairness

UsForThem has serious concerns about the appearance of predetermination and/or unfairness in the Inquiry's proceedings to date.

<u>The inevitability and desirability of lockdowns</u>

The Inquiry appears to be failing to consider whether there was any alternative to the lockdowns that were imposed in this country. On numerous occasions Counsel to the Inquiry has made explicit statements to this effect; for example in the recent questioning of Michael Gove, Counsel to the Inquiry stated: *"There was no real argument as to whether, for good and obvious public health reasons, these measures had to be contemplated. They were matters of life and death. So there wasn't really a thesis and an antithesis position here, Mr Gove. All the public health advice on a public health crisis were pointing in one direction";*[11] *and then later* in questioning of Boris Johnson: *"on the premise that the lockdown was necessary on 23 March, was it nevertheless imposed too late*?"[12]

However, the question of whether lockdowns were necessary, proportionate and justified can only be meaningfully considered in the context of possible available alternative strategies and – crucially – only once one has attempted to evaluate the harms caused by such action.

The concerns we are raising are focussed on the fact that the conduct of the Inquiry gives rise to the appearance that it has already been predetermined that lockdowns, and other NPIs generally, were necessary, proportionate and justified notwithstanding the very extensive and far-reaching documented harms they have caused, and continue to cause, including (but by no means limited to) children and young people. The Inquiry seems instead to be almost exclusively focussed on whether lockdowns should have been implemented harder, sooner or for longer.

On more than one occasion both the Inquiry Chair and Counsel to the Inquiry appear also to have misunderstood the nature of the scientifically significant "precautionary principle". We refer in this regard to the exchange between Counsel to the Inquiry and Chris Whitty, in which

[11] https://covid19.public-inquiry.uk/wp-content/uploads/2023/11/28214340/C-19-Inquiry-28-November-23-Module-2-Day-27.pdf
[12] https://covid19.public-inquiry.uk/wp-content/uploads/2023/12/06220325/Transcript-of-Module-2-Public-Hearing-on-06-December-2023.pdf

the latter attempts to correct Counsel on this point.[13] A proper understanding of this principle is essential for the Inquiry to be able to satisfy its Terms of Reference.

A flawed understanding which assumes that if an intervention *might* work it is better to implement it than not, would permit the damaging conclusion that a serious intervention could be justified on the basis of a speculative hope of benefit. In fact, an accurate application of the precautionary principle is that an action or intervention is justified only once it is clear that the benefits exceed the harms and that potential harms have been adequately explored.

In order to satisfy its Terms of Reference it is essential the Inquiry does not take lockdowns as a given – as a starting point – but engages inquisitively with the merits of that policy decision, including by examining international comparators, and Sweden in particular.

Measuring the success of interventions

The Inquiry has repeatedly focussed on deaths from COVID-19 as the sole measure of the success or otherwise of the Government's approach to lockdowns. This was apparent from the very outset in Counsel to the Inquiry's opening speech: *"However, if the protection of life is the pre-eminent duty which every government owes to the people, the numbers of those who died is the marker against which the government's response must be judged. This is the stark metric which matters most"*.[14]

This preconception of the basis for measuring the success of the response has been repeated a number of times, including during recent questioning of Boris Johnson.[15]

A focus on deaths from COVID-19 by definition grossly underweights the harms of lockdowns and other NPIs, including the known severe impacts on children and young people who were substantially less likely to become ill or to die as a direct result of the virus but far more likely to face increased risk. In particular, as public health experts have pointed out in recent days, a key metric in public health economics is the notion of a quality-adjusted life year.

Selection of witnesses and evidence supportive of consensus views

It is a matter of public record that Inquiry's approach to the selection of core participants and the calling of witnesses to give evidence in person has given rise to an impression among members of the public and a significant element of UK print media that the Inquiry has consistently selected and favoured those who supported lockdown policies. The treatment of Professor Carl Heneghan has received national media attention. More substantively, throughout the Inquiry's hearings there has been an apparent lack of curiosity or desire to follow up by Counsel to the Inquiry when expert witnesses proffer views that challenge the necessity or wisdom of lockdowns.

A few examples of many include the testimony of Claire Lombardelli who had noted "*[s]o there was lots of evidence early on, certainly before restrictions were brought in, that people were beginning to adapt their behaviour anyway*",[16] and that of Professor Mark Woolhouse who, as

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[13] See also the Chair's comments in relation to testimony from Professor Sir Peter Horby where the Chair asks: *"I'm sorry, I'm not following, Sir Peter. If there's a possible benefit, what's the downside?"*; https://covid19.public-inquiry.uk/wp-content/uploads/2023/10/18193417/C-19-Inquiry-18-October-23-Module-2-Day-12.pdf

[14] https://covid19.public-inquiry.uk/wp-content/uploads/2023/10/06170713/C-19-Inquiry-3-October-2023-Module-2-Day-1-2nd-Revision.pdf

[15] https://covid19.public-inquiry.uk/wp-content/uploads/2023/12/06220325/Transcript-of-Module-2-Public-Hearing-on-06-December-2023.pdf

[16] https://covid19.public-inquiry.uk/wp-content/uploads/2023/11/06192714/2023-11-06-Module-2-Day-18-Transcript.pdf

we have earlier noted, opined in his evidence that "*lockdown is a failure of public health policy*",[17] and that "*there's good evidence now that that lockdown was not strictly necessary*".[18]

One might have expected these important counterviews contradicting the notion that lockdown was a public health inevitability to be put to other witnesses, but it is notable that they have not been mentioned again.

Prejudicially prioritising harms and losses arising directly from the virus

The videos projected to the Inquiry (but not displayed on the public livestream) before each hearing have been observed to be extremely emotive and to focus on care home deaths, long Covid sufferers and those bereaved by Covid. These images almost certainly seed – and certainly give the impression of seeding – a prejudged mindset as to the priority of harms and losses suffered during the pandemic period.

In particular, it appears to have contributed to, or at the very least to be illustrative of, a broader focus in the Inquiry to date on the immediate and short term issues emerging from the spread of the virus to the detriment of a critical examination of the harms of the policy interventions and the longer term effects of those policies.

UsForThem wishes to record its view that this practice is highly prejudicial to the perceived objectivity of the Inquiry – and certainly not appropriate for any inquiry process intending to weigh and fairly assess the relative merits and harms of key policy decisions.

Summary of concerns

In summary, UsForThem holds serious concerns that the approach of the Inquiry to date gives rise to the appearance of predetermination in relation to a number of critical issues, and at times to an apparent absence of fairness in its witness selection and questioning. UsForThem believes the Inquiry's approach is damaging public confidence in the proceedings and by extension in any recommendations which might ultimately be made.

Proposed Corrections

The changes needed to correct the appearance of predetermination and unfairness are obviously a matter for you as Chair, but some practical suggestions are offered:

- Amend the Terms of Reference such that harms other than deaths from COVID-19, including QALY lost as a result of lockdowns, are properly weighed in the metric or metrics adopted for judging the UK's response to COVID-19;

- Amend the Terms of Reference such that there can be an independent and thorough review of all data with respect to NPIs, including a rigorous examination of underlying

[17] https://covid19.public-inquiry.uk/wp-content/uploads/2023/10/16195035/2023-10-16-Module-2-Day-10-Transcript.pdf
[18] https://covid19.public-inquiry.uk/wp-content/uploads/2023/10/16195035/2023-10-16-Module-2-Day-10-Transcript.pdf

assumptions. This is especially important where those assumptions have proved to be unreliable;

- Amend the Terms of Reference to commit to explore the extent, role and impact of the agencies of Government engaged in the suppression of commentaries and opinions perceived as casting doubt on the Government's pandemic policy decisions;

- Provide assurance that going forward witnesses will be treated even-handedly and not favoured based on their support for lockdown policies, and invite at least one of the authors of the Great Barrington Declaration – most probably Professor Gupta – to give oral evidence to the Inquiry; and

- Amend the Terms of Reference to commit to explore the ethical aspects of decision-making, including in relation to the Government's public communication campaigns.

If the course of the Inquiry is not corrected then we reserve the rights of UsForThem in due course to challenge any final outcome of the Inquiry on the basis of any or all of the issues raised in this letter.

Yours sincerely

JMW Solicitors LLP