



Submission to the UK Covid-19 Inquiry consultation on the draft Terms of Reference

April 2022

Introduction

Just Fair¹ is a UK charity that is working to realise a fairer and more just society by monitoring and advocating for economic, social, and cultural rights (ESCR) in the UK. We aim to ensure that the UK Government's law, policy, and practice comply with international and domestic human rights obligations pertaining to ESCR.

We welcome this opportunity to respond to the consultation on the draft Terms of Reference for the UK Covid-19 Public Inquiry.

We are responding to this consultation because the impact of the pandemic contributed to serious violations of human rights, including to health (mental and physical), work, education, and an adequate standard of living.

We recommend that the Inquiry takes a human rights-based approach to its work to:

- understand the extent of this impact on the population, including those disproportionately affected
- ensure we learn lessons from the pandemic, and
- increase the resilience of society to future threats and emergencies.

As a starting point, we encourage the Inquiry to read the submission made by the Scottish Human Rights Commission consultation response on the draft Terms of Reference of the Scottish Government's Covid-19 Inquiry.²

¹ <https://justfair.org.uk/>

² Scottish Human Rights Commission, '[Consultation Response: Terms of Reference for COVID-19 Inquiry](#)' September 2021

Summary

In this document we highlight various limitations of the current process, and we call for a full public inquiry, rather than the limited vehicle that is currently being proposed.

In addition, we believe the Terms of Reference must clearly lay out the following:

1. The importance of participation, and the ways in which the Inquiry will ensure all groups, including those disproportionately impacted, have their voices heard.
2. The ways in which the Inquiry will authentically engage traditionally 'easy to ignore' communities.
3. A requirement for the Inquiry to make recommendations.
4. Name who is accountable regarding the Inquiry's work, what they are accountable for and what needs to be done for effective remedy and non-repetition.
5. Confirm what the Inquiry can achieve and what other processes may be necessary to ensure access to justice and an effective remedy.
6. That the Inquiry will assess decision-making by the UK and other public authorities in relation to its legal obligation to consider inequality and advancement of equality under the Equality Act 2010.
7. That the Inquiry will examine and understand the disproportionate impact of the pandemic on those with protected characteristics, and particularly how this intersects with socio-economic status.
8. That the Inquiry will take an approach that actively seeks to extinguish discrimination at all stages.
9. That the Inquiry will adopt processes and safeguards that may be necessary to ensure it discharges its duty of care and strives to cause no further harm than disproportionately impacted people have already experienced.
10. That the Inquiry will work in line with and comply with the Human Rights Act 1998.
11. That the Inquiry will work in line with and comply with the international framework of rights which the UK has signed and ratified, including the International Covenant on Economic, Social and Cultural Rights, and the rights protected within these.

Main submission

In this submission, we have used the PANEL principles³ as a framework for highlighting the areas where we commend the current draft Terms of Reference, and the areas where we believe improvements should be made.

This is not meant to be a detailed analysis of these principles, but rather illustrative of the benefits of taking a human rights-based approach to the work of the Inquiry.

Please note that each of the principles are overlapping and complimentary. Like human rights themselves, they are best viewed holistically, as part of a mutually dependent ecosystem.

Question 1: Do the Inquiry's draft Terms of Reference cover all the areas that you think should be covered by the Inquiry? If no, what areas should also be included?

Accountability

We are concerned about the ability of the current Draft Terms of Reference to achieve accountability. With regards to recommendations, it states that the Inquiry will, *"produce its reports (including interim reports) and any recommendations in a timely manner."*

As laid out in Section 24 of the Inquiries Act 2005,

*"(1) The chairman of an inquiry must deliver a report to the Minister setting out—
(b) the recommendations of the panel (where the terms of reference required it to make recommendations)."*

We feel that the current wording of the Draft Terms of Reference does not clearly require the Inquiry to make recommendations, but rather suggests they are optional. This must be altered to ensure that everyone, including people who have experienced rights violations as a result of the pandemic have access to an effective remedy through accountability.

Indeed, the Terms of Reference must also cite that **to achieve accountability the Inquiry will name who is accountable regarding the Inquiry's work, what they are accountable for and what needs to be done for effective remedy and non-repetition.**

In addition to requiring the Inquiry to make recommendations, the Terms of Reference should also provide clarity by **confirming what the Inquiry can achieve and what other processes may be necessary to ensure access to justice and an effective remedy.** For example, the Inquiries Act 2005 at section 2 makes it clear that, *"An inquiry panel is not to rule on, and has no power to determine, any person's civil or criminal liability."*

In noting these limitations of the current process, we call for a full public inquiry rather than the limited vehicle that is currently being proposed.

³ The PANEL principles are one way of breaking down what a human rights based approach means in practice. PANEL stands for **Participation, Accountability, Non-Discrimination and Equality, Empowerment and Legality.**

Non-discrimination

Meeting legal obligations

At the most basic level, the Inquiry **must assess decision-making by the UK and other public authorities in relation to its legal obligation to consider inequality and advancement of equality under the Equality Act 2010**. This is set out by the Equalities and Human Rights Commission in response to the Scottish Government's aims for its Covid-19 Inquiry.⁴

This commitment should be clearly laid out in the Terms of Reference (something the current draft omits).

Protected Characteristics

In relation to the following draft commitment:

“consider any disparities evident in the impact of the pandemic and the state’s response, including those relating to protected characteristics under the Equality Act 2010 and equality categories under the Northern Ireland Act 1998.”

We recommend that the Terms of Reference must lay out **that the Inquiry will examine and understand the disproportionate impact of the pandemic on those with protected characteristics, and particularly how this intersects with socio-economic status**.

This recommendation is made in the face of evidence of from the ONS on the overwhelming disparities experienced by people in terms of socio-economic status. **ONS data from 2020 showed that rates of avoidable deaths due to Covid-19 in the most deprived areas were 4.3 and 5.7 times higher than in the least deprived areas for males and females, respectively.**⁵

Combatting discrimination at all stages

In terms of non-discrimination, we would encourage the Inquiry to consider how the Terms of Reference will make it clear that **the Inquiry will take an approach that actively seeks to extinguish discrimination at all stages**. This approach would help to ensure a conscious journey whereby the positive obligation to achieve equality is realised and the legitimacy of the work strengthened.

Legality

As a public body the Inquiry will be required to be compliant with the Human Rights Act 1998 (HRA), particularly with relation to [Article 2 investigations](#). **We believe it is important for the Terms of Reference to make explicit reference to this duty to work in line with and comply with the HRA in order to help people understand the protections and safeguards that will be in place to ensure an effective investigation**. As an example, the Scottish Covid-19 Inquiry draft [Terms of Reference](#) stated,

“6 b) the inquiry will, as the chair deems appropriate and necessary, consider the impacts of the strategic elements of handling of the pandemic on the exercise of Convention rights (as defined in Section 1 of the Human Rights Act 1998)”

⁴ EHRC, '[Public inquiry into the handling of COVID-19 in Scotland – call for views on draft aims](#)', September 2021

⁵ ONS, '[Socioeconomic inequalities in avoidable mortality in England: 2020](#)', March 2022

We think it is important for the UK Terms of Reference to make a similar provision. We also believe that the Inquiry should closely consider the value of using the European Convention of Human Rights as a framework for assessing competing rights – something that was a near-constant feature of the pandemic – for example balancing the right to life with the right to freedom of assembly or expression in terms of lockdowns.

However, the UK's legal obligations go beyond the HRA, the Equality Act and the Northern Ireland Act 1998 in relation to rights and equalities standards. The UK Government has signed, ratified and thus agreed to be bound by the provisions of a number of international treaties, including the International Covenant on Economic, Social and Cultural Rights ([ICESCR](#)).

Ratification of this treaty places a legal obligation on the United Kingdom government to protect, respect and fulfil rights including the following without discrimination:

- Work (including just and favourable conditions (Articles 6 and 7)
- Social security (Article 9)
- Adequate standard of living – including food and housing (Article 11)
- Highest attainable standard of physical and mental health (Article 12)
- Education (Articles 13 and 14)
- Culture (Article 15)

It is clear from this basic list of rights that the impact of the pandemic violated many of them. **We recommend that the Inquiry clarify that it will work in line with and comply with the international framework of rights which the UK has signed and ratified, including the International Covenant on Economic, Social and Cultural Rights, and the rights protected within these.**

Question 2: Which issues or topics do you think the Inquiry should look at first?

There are any number of metrics the Inquiry could use to decide upon what issues to begin looking at including the severity of impact, the number of people impacted, the length of time the impact was felt etc. We are confident that the Inquiry will be presented with lots of important and relevant issues to review.

What we would encourage is that the Inquiry should consider fully the implications of any issues for the whole ecosystem of human rights, and particularly economic, social and cultural rights.

For example, if we were to examine violations of the right to health⁶ during the pandemic, a human rights-based approach would necessitate examining the right in the round and what other rights are implicated in any violation. ICESCR [General Comment No. 14 \(2000\)](#) explains that the realisation of the right to health involves realising other rights as well,

⁶ The right to health is recognised in a number of treaties which the UK has signed up to and agreed to be bound by at the United Nations level including the [Universal Declaration of Human Rights](#), the [International Convention on the Elimination of All Forms of Racial Discrimination](#), the [Convention on the Elimination of All Forms of Discrimination against Women](#), the [Convention on the Rights of the Child](#) and the [Convention on the Rights of Persons with Disabilities](#). In addition, the right is also recognised in the [European Social Charter](#) (an instrument of the [Council of Europe](#) and so unaffected by the UK's withdrawal from the EU).

“The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.”

What’s clear from this is that human rights, including health, are interdependent and interrelated. Importantly, the list above is open-ended and the proper realisation of the right to health could necessitate the realisation of a number of other rights.

Decisions made by government or other public authorities in relation to other rights, such as social security, just and favourable conditions of work and adequate standard of living, can have a direct impact on the realisation of the right to health.

Question 3: Do you think the Inquiry should set a planned end-date for its public hearings, so as to help ensure timely findings and recommendations? [Yes/No]

The Inquiry should be concluded in a timely manner and the recommendations made should be communicated clearly, widely and in a variety of formats to ensure accessibility. This will help to ensure that the process can meet the requirements for accountability, legality and non-discrimination.

However, this must be balanced with the need to ensure genuine participation and empowerment. We would advise against imposing arbitrary timelines without careful consideration of what might be necessary to facilitate the nature and scope of the evidence the Inquiry will be receiving.

What is important here is considering the impact and implications of timelines and communicating clearly and transparently with the public about what decisions are being taken and the reasoning behind the decisions.

Question 4: How should the Inquiry be designed and run to ensure that bereaved people or those who have suffered harm or hardship as a result of the pandemic have their voices heard?

Participation

The draft Terms of Reference lays out that the Inquiry will, *“consider any disparities evident in the impact of the pandemic and the state’s response, including those relating to protected characteristics under the Equality Act 2010 and equality categories under the Northern Ireland Act 1998.”* We commend this commitment, and believe it is important as the evidence clearly illustrates that the pandemic has been experienced very differently by different groups.⁷

⁷ See for example Blundell R., Costa Dias M., Joyce R., and Xu X., [‘COVID-19 and Inequalities’](#), IFS, 41(2), 2020

However, the current draft Terms of Reference does not lay out any detail about how these disparities will be considered, and indeed whether members of these groups with direct experience of rights violations will be enabled to participate.

The Inquiry must clearly lay out in the Terms of Reference the importance of participation and the ways in which the Inquiry will ensure all groups, including those disproportionately impacted, have their voices heard. This is key to ensuring the Inquiry is examining the correct issues, that its work has legitimacy, and its final recommendations are meaningful.

A key part of this work must be to **think carefully about ways in which the Inquiry will authentically engage traditionally ‘easy to ignore’ communities and clearly lay these out in the Terms of Reference.**

A simple ‘online call out’ and limiting feedback to responses which directly answer set questions, as per the consultation on the Terms of Reference, will increase barriers to participation, and curtail the voices you will hear and what they will tell you.

This issue is not unique to the current consultation but rather is typical of current UK and devolved Government consultations. As noted by the [British Institute of Human Rights \(BIHR\)](#),

*“At BIHR, we have concerns about the human rights implications of government approaches to policy consultations. Many groups we work with, and people with lived experience, **have a lot to offer policy consultations, from the impact on individuals to the realities of staff implementing proposals.** But engaging with government consultations **takes valuable time and resources** from all involved, and we are increasingly concerned about **flawed processes which exclude or lead to “consultation fatigue”.** Governments have duties to uphold human rights; **developing a human rights approach to policy consultation could offer civil society a proactive solution, helping to balance the power dynamics.**”⁸*

Empowerment

We commend the current draft of the Terms of Reference for highlighting a range of disproportionately impacted groups, including the clinically vulnerable, refugees, people experiencing homelessness, bereaved families and care home residents.

However, we would highlight the evidence gathered by the British Institute of Human Rights highlighted above which illustrates the issues some groups have in accessing typical government consultations. In addition, Just Fair has had the privilege of working with groups and individuals who have direct experience of rights violations. When we work with groups with lived experience, we try to always ensure that our work helps them feel ‘empowered’ and does not lead to further traumatisation or any other form of harm.

We would encourage the Inquiry to think very carefully about the **processes they will use to ensure that they authentically hear people’s voices, and what processes and safeguards may be necessary to ensure the Inquiry discharges its duty of care and strives to cause no further harm than disproportionately impacted people have already experienced.**

⁸ BIHR, [“Government Policy Consultations: From a Human Rights Analysis to a Human Rights Approach”](#) August 2021

These processes and safeguards should be clearly and accessibly laid out in the Terms of Reference and communicated widely to build the confidence of those who have been disproportionately impacted before they engage.

The Inquiry is a major undertaking, and it is examining a defining experience for all of us. It must be carried out to the highest standard possible. **We strongly believe that taking a human rights-based approach gives the Inquiry the opportunity to honour the scale of the tragedy** by understanding what happened and the human impact, travelling alongside those worst impacted and committing to do better in the future. We believe those who were worst impacted are owed this.

Further information

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