Broudie Jackson Canter

The Rt. Hon Mr Matt Hancock, MP
Secretary of State for Health and Social Care
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU

Date: 22 July 2020
Ask For: Leanne Devine
Our Ref: LD/C227785.001
Direct Dial: 0151 227 1429
Your Ref: PMDE - 1235680

By email and recorded delivery

Dear Minister

Re: Proposed Claim for Judicial Review
COVID-19 Bereaved Families for Justice UK

A. The Claimants

1. We are instructed by:

   a. Ben Spencer
   b. Charlie Williams
   c. Deborah Doyle
   d. Fiona Kirton
   e. Gail Birch
   f. Gemma Birkett
   g. Hannah Bland
   h. Hannah Brady
   i. Helen Hudson
   j. Joanna Goodman
   k. Julie Skelton
   l. Katherine Edmunds
   m. Kathryn de Prudhoe
   n. Kenneth Sazuze
   o. Lashanthie Chandrapala
   p. Leigh Morgan Jones
   q. Lobby Akinnola
   r. Matt Fowler
   s. Mina Uppal
   t. Patrick Wallis
   u. Paul Hewett
   v. Paula Williams
   w. Sofie Zermansky
   x. Sophie Nevison

y. Tracy Wallis

2. The proposed Claimants are part of the Covid-19 Bereaved Families for Justice , a group of over 1,400 bereaved who lost loved ones during the pandemic ('The Group'). The Group was set up by bereaved family members who are concerned that the government was unprepared and has serially failed to take reasonable steps to minimise the effects of the pandemic, leading to massive, unnecessary loss of life.

3. The Defendants are the Prime Minister and the Secretary of State for Health, as the two ministers primarily responsible for managing the crisis.

B. The Claim

4. On 11 June 2020, the Claimants requested that the Defendants (a) meet with the bereaved family members, (b) immediately institute a statutory Public Inquiry, (c) direct that it begin work urgently with an interim phase, to reach recommendations which would minimise future loss of life from the virus. The power to institute a Public Inquiry arises under the Inquiries Act 2005. In the instant cases, the Defendants are under a duty to exercise that power to set up an Inquiry as requested, in order to comply with the UK's obligations under Articles 2 and 3 of the European Convention on Human Rights.

5. The Defendants replied by letter dated 16 July 2020. The letter indicated that the Prime Minister and Secretary of State declined to meet with the family members, and that the government would not establish any form of Inquiry at the current time, commenting: "As the Government has made clear, at some point in the future there will be an opportunity for it to look back, to reflect and to learn lessons".

6. The letter comments that: "Where appropriate, individual deaths may be investigated by the Health and Safety Executive, Coroners, or Medical Examiners". None of these processes are able to deal with the range of issues set out below, and the Chief Coroner has issued 'Guidance Note 37'[1] which indicates that inquests will be held only for a very small number of Covid-19 related deaths, and will not be able to look at the wider issues of preparedness and response to the virus. These processes are manifestly inadequate, as are references to vague opportunities "at some point in the future", and the Claimants are thereby left without current remedy for the investigation of their loved ones' deaths.

7. The Claimants therefore ask the Defendants to reconsider their position in the light of this letter. If the requested action is not indicated within 14 days of the date of this letter, the Claimants will issue judicial review proceedings without further notice.

C. Summary

8. The Group instructed us to send a letter to the Prime Minister and the Secretary of State dated 11 June 2020. In the letter, the Group called for a statutory Public Inquiry to be set up to inquire into the preparedness and response to the pandemic and why the UK has had the highest number of Covid-19 deaths of any European country and the second

[1] https://www.judiciary.uk/wp-content/uploads/2020/07/Chief-Coroners-Guidance-No-37-AMENDED-01.07.20.pdf

highest per capita rate of deaths after Belgium. Crucially, the letter also called for an immediate interim phase for such an Inquiry, with the purpose of urgently reaching recommendations to minimise further unnecessary loss of life over the coming months. The letter also asked for the Prime Minister and Secretary of State to meet with the bereaved.

9. The Group has also instituted an online public petition calling on the Defendants to establish a Public Inquiry, to start straight away. It currently has more than 163,500 signatures.

10. A Public Inquiry would necessarily be led by a senior judge, probably sitting with a panel of experts. Its purpose would be to determine a definitive, official, evidence-based narrative of what did and did not happen, independent of political influence. The Inquiry would determine who was accountable for failures, past and present, and make recommendations to ensure that future similar deaths and serious illnesses are minimised.

11. The statutory provisions under the Inquiries Act 2005 are versatile and allow for the commencement of an immediate interim phase to make recommendations on an urgent basis. There are precedents for this to happen. The interim phase of the Taylor Inquiry into the Hillsborough stadium disaster reported within three and a half months[2].

12. Public Inquiries are appropriate where there is widespread public concern regarding an event or issue, which should be looked into by a dispassionate, forensic process. Inquiries are tailored to the particular circumstances with bespoke 'terms of reference'. Issues in this case should include, but not be limited to:

    a. Was the UK properly prepared for a pandemic[3], given that it was an entirely foreseeable event?[4]
    b. In January 2020, when the government became aware of the impending pandemic, what information was or should have been available to the government about its likely progression to and within the UK?
    c. What contingency plans and policies were in place, nationally and locally? Did those plans and policies reflect learning from pandemic modelling and exercises? Did they meet the UK's international commitments?[5] Were they disability- and age-inclusive?

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2 https://web.archive.org/web/20130619160223/http://www.southyorks.police.uk/sites/default/files/Taylor%20Interim%20Report.pdf : the disaster occurred on 15 April 1989. The Home Secretary established an Inquiry and appointed Taylor LJ on 17 April 1989. Taylor LJ sitting with two expert assessors started hearing evidence on 15 May 1989 and the interim report was delivered on 1 August 1989, with recommendations to make stadiums safer before the start of the next football season.

3 In this regard, did it meet its obligations under the Sendai Framework for Disaster Risk Reduction 2015-2030: https://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf ? This Framework aimed to reduce disaster risk and losses of life and livelihoods and applied "to the risk of small-scale and large-scale, frequent and infrequent, sudden and slow-onset disasters caused by natural or man-made hazards, as well as related environmental, technological and biological hazards and risks" [para. 15].

4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/419549/20150331_2015-NRR-WA_Final.pdf

5 For example, under Article 11 of the UN Convention on the Rights of Persons with Disabilities.

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d. Did preparedness include the resourcing of sufficient medical facilities, including hospitals and intensive care beds, and the ability to rapidly increase such emergency facilities as required?
e. Similarly were there sufficient numbers of doctors, nurses and support staff, to deal with the emergency?
f. Was there sufficient available medical equipment (including ventilators) and medicines?
g. Were stocks of protective personal equipment ("PPE"), in particular that required for hospitals, care facilities and home-care, adequate and were sufficient distribution and emergency supply lines available?
h. Did shortages of PPE cause or contribute to the spread of the virus in the community, hospitals and care facilities?
i. Were healthcare, social care, and other key workers sufficiently protected against infection by provision of PPE, and clear and evidenced safety policies and training?
j. Was testing and tracing capacity adequate, particularly in comparison with other high-income countries?
k. What advice was given to people by the 111 service from the start of the virus outbreak, and was it appropriate and sufficient? On what evidence was that advice based? Why were people seriously ill advised to stay at home?
l. Were people with symptoms inappropriately left in care homes or the community because of inadequate medical provision or advice, and was medical intervention affected by fears of lack of capacity?
m. Lockdown occurred on 23 March 2020. Was this the appropriate time, given the knowledge of infection transmission and spread in other countries that were 'ahead' of the UK?
n. Were any or sufficient measures taken to monitor or quarantine travellers across UK borders?
o. When was it known that the virus had a disproportionate effect on BAME communities, what explains the effect, were any or sufficient steps taken to minimise the effect?
p. As the pandemic progressed, were changes in policy/guidance evidence-based, consistent with WHO and other international guidance, appropriate, clear, communicated effectively and made at the right time?
q. Were policies for admission to and discharge from hospitals (including into care homes) effective in containing the virus and safeguarding life? Were they consistent with international guidance such as the CPR guidance issued on 20 March 2020 and the WHO guidance issued on 21 March 2020?[6]
r. To what extent did the virus spread within hospitals? Should that have been prevented, and if so, how?
s. Were infectious patients inappropriately discharged from hospitals, including to care facilities?
t. What steps were taken to prevent the infection spreading to, within and from care facilities?
u. Were there sufficient and appropriate policies and contingency plans in place with respect to places of detention, including mental health facilities, prisons, youth detention, and immigration detention centres? Were persons in detention, and those without capacity, or with autism, or learning disabilities, sufficiently safeguarded?

[6] See chronology, below.

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v. To what extent did those people and bodies that took decisions in relation to the above themes take into account their statutory duties *inter alia*, the Human Rights Act 1998 and the Equality Act 2010 (particularly in relation to discrimination on the basis of age, disability and race)?

13. The institution of a Public Inquiry would have a number of important, immediate effects, including:

    a. The expeditious production of all relevant records, policies, documents, minutes and other relevant material retained by institutions, organisations and officials.
    b. Witnesses would be required to appear and give evidence on oath as to decisions and actions taken, and their appropriateness.
    c. The effective participation of the bereaved in investigations relevant to the deaths of their loved ones.
    d. The ability to commence an immediate phase (or phases) to deal with urgent issues which may prevent further unnecessary deaths.

14. For most families bereaved as a result of the pandemic and the response to it, a Public Inquiry is likely to be the only way they can obtain answers to what happened to their loved ones, and whether the death could have been prevented. In the circumstances, a Public Inquiry is also likely to be the only way in which the state can meet its obligations under Article 2, the right to life. The Article 2 duty to investigate arises whenever there is an arguable case that there has been a breach of the positive or negative duties to protect life. A similar duty arises with respect to Article 3 in cases of serious illness which did not lead to death.

15. For the above reasons, the Claimants assert that the Defendants have a duty to institute a Public Inquiry, because in each case there is such an arguable case. The obligation to commence the Public Inquiry with an immediate interim phase arises from the continuing nature of the threat to life and arguable breaches of Articles 2 and 3.

16. The Group is aware of a wide range of other groups and initiatives calling for similar Inquiries. These include:

    a. A cross-party parliamentary group calling for an urgent independent Inquiry[7].
    b. The BMJ and the heads of Royal Societies representing Doctors, nurses and public health officials calling for an Inquiry[8].
    c. The Doctors' Association UK, Hourglass and the Good Law Project have instituted proceedings challenging the government's failure to establish an Inquiry into the failure to provide PPE[9]
    d. The Ubele Initiative has called for a Public Inquiry into the disproportionate effect of Covid-19 on BAME communities[10].

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[7] https://www.theguardian.com/world/2020/jul/12/cross-party-mps-to-lead-independent-uk-coronavirus-inquiry

[8] https://www.bmj.com/content/369/bmj.m2052?ijkey=46b29bcda7988b20328527514480c14959d16367&keytype2=tf_ipsecsha
https://www.bmj.com/content/369/bmj.m2514
https://www.theguardian.com/world/2020/jun/05/covid-inquiry-vital-before-second-wave

[9] https://www.dauk.org/news/tag/Good+Law+Project

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e. The Law Centres Network, supported by other civil society groups have called for a public inquiry into Cocvid-19 deaths[11].
f. A petition by March for Change calling for an Inquiry has gathered 117k signatures[12]
g. A 38 degrees petition calling for an Inquiry into BAME Covid-19 deaths has 33K signatures[13].

D. The Facts

Context

17. The below table sets out a chronology of key events and reports relevant to the state of knowledge of policy makers:

27 March 2015	The National Risk Register (2015) identifies pandemic influenza as presenting the most significant civil emergency risk with a likelihood of half the UK population being infected and a projected 20,000 to 750,000 deaths by its end[14].
18-20 October 2016	Exercise Cygnus takes place, a Department of Health led, multi-agency, three-day simulation of an influenza outbreak which was intended to evaluate the preparedness of the UK for a pandemic (in that case the influenza strain H2N2).
July 2017	The Exercise Cygnus report is released to a limited range of Ministers and officials, but not made public then or since save for the version leaked to The Guardian[15] and Telegraph[16]. It made 26 recommendations including addressing a shortage of PPE, a shortage of ICU beds, gaps in the NHS 'surge' capacity. , It recommended strengthening the capacity of care homes and the numbers of staff available to work in them and warned of the challenge facing care homes asked to accept patients being discharged from hospitals. The conclusion of the report was that,"The UK's preparedness and response, in terms of its plans, policies and capability, is currently not sufficient to cope with the extreme demands of a severe pandemic that will have a nation-wide impact across all sectors"

[10] https://www.ubele.org/covid19-supporting-bame-communities
[11] https://www.pilc.org.uk/news/
[12] https://www.marchforchange.uk/coronavirus_inquiry
[13] https://you.38degrees.org.uk/petitions/bame-communities-and-the-disproportionate-incidence-of-covid-19
[14] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/419549/20150331_2015-NRR-WA_Final.pdf
[15] https://www.theguardian.com/world/2020/may/07/revealed-the-secret-report-that-gave-ministers-warning-of-care-home-coronavirus-crisis
[16] https://www.telegraph.co.uk/news/2020/03/28/exercise-cygnus-uncovered-pandemic-warnings-buried-government/

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	(page 6)
3 October 2017	The UN Committee on the Rights of Persons with Disabilities issues its concluding observations on the UK, noting "the absence of comprehensive policies related to disaster risk reduction that include persons with disabilities in the planning, implementation and monitoring processes of disaster risk reduction", and recommending that the UK government "adopt a comprehensive disaster risk reduction plan and strategies that provide for accessibility and inclusion of persons with disabilities in all situations of risk, in line with the Sendai Framework […]".
5 January 2020	WHO publishes a 'Disease outbreak news' on the virus: "Pneumonia of Unknown Cause - China", containing the information that on 31 December 2019 China had reported to the WHO 44 cases of pneumonia with unknown aetiology in Wuhan, of which 11 patients were seriously ill.[17]
12 January 2020	WHO publishes an update, "Novel Coronavirus - China", reporting one death and the likelihood that the outbreak began in a seafood market in Wuhan, and that China has shared the genetic sequence with other countries. The WHO said its recommendations on public health measures for novel coronaviruses applied.[18]
22 January 2020	The UK government's first Scientific Advisory Group for Emergencies ("SAGE") "precautionary meeting" is held.[19] Minutes state evidence of person-to-person transmission, that the UK is "days away from a specific test, which is scalable across the UK in weeks".
22-24 January 2020	Professor Neil Ferguson and others from Imperial College London report to government[20] that: "Self-sustaining human-to-human transmission of the novel coronavirus (2019-nCov) is the only plausible explanation of the scale of the outbreak in Wuhan. We estimate that, on average, each case infected 2.6 (uncertainty range: 1.5-3.5) other people up to 18th January 2020". The report states, "this epidemic represents a clear and ongoing global health threat" and that for control to be effective there must be a 60 per cent cut in transmission rate.
24th January 2020	Following a COBR(A) meeting, the Secretary of State for Health and Social Affairs, Matt Hancock said,: "The risk to the public remains low

[17] https://www.who.int/csr/don/05-january-2020-pneumonia-of-unkown-cause-china/en/
[18] https://www.who.int/csr/don/12-january-2020-novel-coronavirus-china/en/
[19] https://www.gov.uk/government/publications/precautionary-sage-minutes-coronavirus-covid-19-response-22-january-2020

[20] https://www.imperial.ac.uk/mrc-global-infectious-disease-analysis/covid-19/report-2-update-case-estimates-covid-19/
https://www.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-transmissibility-25-01-2020.pdf

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	and the chief medical officer will be making a full statement later today".[21]
28th January 2020	At the second SAGE Meeting,[22] the Reproductive number ("R") is estimated at between 2 and 3, with a doubling rate" estimated at 3 to 4 days. The pandemic influenza infection control guidance was recommended as a base case and adapted.
30 January 2020	WHO declares COVID-19 a "Public Health Emergency of International Concern" ("PHEIC").[23] The UK's four Chief Medical Officers advise that the threat level be raised from low to moderate on the basis that "[i]t is likely there will be individual cases".[24]
31 January 2020	The first confirmed diagnoses of COVID-19 in the UK with 2 cases in York.[25]Prof Chris Whitty says in response that the NHS was extremely well prepared for managing infections.[26]
3 February 2020	The third SAGE meeting notes that: "It is a reasonable hypothesis that the epidemic is still growing exponentially-doubling every 4-5 days". A month of additional preparation time for the NHS would be meaningful.[27]
10 February 2020	The UK's Scientific Pandemic Influenza Modelling Committee (SPI-M) reports[28] that "outbreaks outside China cannot be contained by isolation and contract tracing. If a high proportion of asymptomatic cases are infectious, then containment is unlikely via these policies. It noted that there is "a realistic probability that there is already sustained transmission in the UK, or that it will be become [sic] established in the coming weeks." It also said that "[t]he relative risk of cases in countries outside China has been shown to be correlated with air passenger levels"
25 February 2020	Public Health England issues "Guidance for social or community care and residential settings on Covid-19'.[29]

[21] https://www.reuters.com/article/us-china-th-britain-hancock/coronavirus-risk-to-british-public-remains-low-health-minister-idUSKBN1ZN1R9

[22] https://www.gov.uk/government/publications/sage-minutes-coronavirus-covid-19-response-28-january-2020

[23] https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19

[24] https://www.gov.uk/government/news/statement-from-the-four-uk-chief-medical-officers-on-novel-coronavirus

[25] https://www.thetimes.co.uk/article/hunt-for-contacts-of-coronavirus-stricken-pair-in-york-dh363qf8k

[26] https://www.bbc.co.uk/news/health-51325192

[27] https://www.gov.uk/government/publications/sage-minutes-coronavirus-covid-19-response-3-february-2020.

[28] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882713/17-spi-m-o-consensus-statement-10022020.pdf

[29] https://www.gov.uk/government/publications/guidance-for-social-or-community-care-and-residential-settings-on-covid-19/guidance-for-social-or-community-care-and-residential-settings-on-covid-19

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	It says "there is currently no transmission of COVID-19 in the community. It is therefore very unlikely that anyone receiving care in a care home or the community will become infected." It states that, "[d]uring normal day-to-day activities facemasks do not provide protection from respiratory viruses, such as COVID-19 and do not need to be worn by staff in any of these settings". It states, "Currently there is no evidence of transmission of COVID-19 in the United Kingdom. There is no need to do anything differently in any care setting at present."
28 February 2020	First death in the UK from COVID-19.[30]
3 March 2020	Professor Chris Whitty, Chief Medical Officer of England, states at the media launch of the Government's Coronavirus Action Plan that specific advice for care homes would be issued in the future but "one of the things we are keen to avoid [...] is doing things too early".[31]
5 March 2020	Chief Medical Officer announced the first Covid19 death in the UK who was being treated in Royal Berkshire Hospital. Patient is believed to have contracted Covid19 in the UK.[32]
6 March 2020	Michelle Bachelet, UN High Commissioner for Human Rights, publishes "Coronavirus: Human rights need to be front and centre in response",[33] urging governments to, "taking great care to protect the most vulnerable and neglected people in society, both medically and economically."
11 March 2020	The WHO declares COVID-19 a pandemic.[34] Its Director-General, Dr Tedros Adhanom Ghebreyesus, says he is "[d]eeply concerned, both by the alarming levels of spread and severity and by the alarming levels of inaction" and that "social distancing and quarantine measures need to be implemented in a timely and thorough manner".[35] That night a match between Liverpool FC and Atletico Madrid went ahead at Anfield stadium.[36] Some 3,000 fans travelled from Spain to Liverpool. Atletico Madrid could not have played at their stadium at that time due to restrictions imposed in Spain.
12 March 2020	The Prime Minister in a public televised press conference says, "this is now not just an attempt to contain the diseased but to minimise its

[30] https://news.sky.com/story/coronavirus-first-uk-death-was-a-week-earlier-than-thought-nhs-data-reveals-11967999.
[31] https://uk.reuters.com/article/uk-health-coronavirus-britain-carehomes/exclusive-review-contradicts-boris-johnson-on-claims-he-ordered-early-lockdown-at-uk-care-homes-idUKKBN22R1NA
[32] https://www.gov.uk/government/news/cmo-for-england-announces-first-death-of-patient-with-covid-19
[33] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25668&LangID=E.
[34] https://www.univadis.co.uk/viewarticle/who-deeply-concerned-by-levels-of-spread-severity-and-inaction-as-it-declares-covid-19-a-pandemic-714934
[35] https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/3/who-announces-covid-19-outbreak-a-pandemic
[36] https://www.bbc.co.uk/sport/football/51800660.

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	spread […] from tomorrow if you have coronavirus symptoms you should stay at home for at least 7 days […] we advise those over 70 against going on cruises and we advise against international school trips […]we are considering banning major public events… we are not, repeat not, closing schools now". The Government moves from the 'contain' phase to the 'delay' phase. People with potential symptoms urged to stay at home, not call 111 and use the internet for information if they can.[37] Moving away from the 'contain' phase meant abandoning the test and trace policy[38].
13 March 2020	Public Health England issues, "Guidance on Residential Home Provision". It advises staff to use PPE if in close personal contact with residents who have COVID-19 symptoms, but "[i]If neither the care worker nor the individual receiving care and support is symptomatic, then no personal protective equipment is required above and beyond normal good hygiene practices."
13 March 2020	Sir Patrick Vallance tells the BBC that the advice the Government is following is not looking to "suppress" the disease entirely but to help create a "herd immunity in the UK" while protecting the most vulnerable from it.[39]
14 March 2020	A group of about 500 UK scientists sign an open letter calling for immediate stronger social distancing measures.[40] The letter criticises the 'herd immunity' plan and called for restrictions that were already in place in other countries.
16 March 2020	In a press briefing, the WHO Director-General, Dr Tedros Adhanom Ghebreyesus says, "We have a simple message for all countries: test, test, test. Test every suspected case. If they test positive, isolate them and find out who they have been in close contact with up to 2 days before they developed symptoms, and test those people too. [NOTE: WHO recommends testing contacts of confirmed cases only if they show symptoms of COVID-19]"[41]
16 March 2020	Imperial College publishes a report from a team headed by Professor Neil Ferguson. It forecasts 510,000 deaths from Covid-19 in the UK in the absence of any mitigation or suppression[42]. Additional deaths from the strain on the health system were predicted but not

[37] https://www.gov.uk/government/news/covid-19-government-announces-moving-out-of-contain-phase-and-into-delay
[38] https://www.bmj.com/content/369/bmj.m1845
[39] https://inews.co.uk/news/coronavirus-sir-patrick-vallance-covid-19-herd-immunity-408022
[40] http://maths.qmul.ac.uk/~vnicosia/UK_scientists_statement_on_coronavirus_measures.pdf
[41] https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---16-march-2020
[42] https://www.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-NPI-modelling-16-03-2020.pdf

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	calculated. The report concluded that : "Overall, our results suggest that population-wide social distancing applied to the population as a whole would have the largest impact; and in combination with other interventions — notably home isolation of cases and school and university closure — has the potential to suppress transmission below the threshold of R=1 required to rapidly reduce case incidence. A minimum policy for effective suppression is therefore population-wide social distancing combined with home isolation of cases and school and university closure.
16 March 2020	A group of 600 UK behavioural scientists sign an open letter questioning the evidence for government assertions that imposing strict social distancing measures too soon would lead to "behavioural fatigue"[43].
16 March 2020	Dunja Mijatović, Council of Europe Commissioner for Human Rights, publishes a statement: "We must respect human rights and stand united against the coronavirus pandemic",[44] in which she says, "[a]ccess to health care for all population groups based on sound medical evidence is clearly the priority. Positive measures are required to meet the specific needs of the groups at particularly high risk, such as older persons [...]" and urges "member states to do more to mitigate the enormous pressure health professionals are under in responding to the expectations placed on them."
16 March 2020	The Prime Minister urges further voluntary measures:[45] "Now is the time for everyone to stop non-essential contact with others and to stop all unnecessary travel. We need people to start working from home where they possibly can. And you should avoid pubs, clubs, theatres and other such social venues,"
16 March 2020	The CQC suspends its routine visits to hospitals and care homes.[46]
17 March 2020	Sir Patrick Valance tells the Health Select Committee that keeping Covid-19 deaths below 20,000 would be a "good outcome"[47]
17 March 2020	Catalina Devandas, UN Special Rapporteur on the Rights of Persons with Disabilities, publishes a statement, "COVID-19: Who is protecting the people with disabilities?",[48] saying "[p]eople with disabilities feel they have been left behind", noting that "the situation of people with disabilities in institutions, psychiatric facilities and prisons is particularly grave, given the high risk of contamination and the lack of external oversight, aggravated by the use of emergency powers for

[43] https://sites.google.com/view/covidopenletter/home

[44] https://www.coe.int/en/web/commissioner/-/we-must-respect-human-rights-and-stand-united-against-the-coronavirus-pandemic.

[45] https://www.theguardian.com/world/2020/mar/16/pm-tells-britons-to-avoid-non-essential-contact-with-others

[46] https://www.cqc.org.uk/news/stories/routine-inspections-suspended-response-coronavirus-outbreak.

[47] https://www.youtube.com/watch?v=jGOuvXHsboE

[48] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25725&LangID=E.

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	health reasons."
17 March 2020	NHS England instructed Trusts to urgently discharge all medically fit patients as soon as it was clinically safe to do so: "this could potentially free up to 15,000 acute beds"[49]. There was no mention of testing patients on discharge.
19 March 2020	UNICEF publishes, "COVID-19 response: Considerations for Children and Adults with Disabilities",[50] advising that people with disabilities "living in institutions, residential schools and other places have access to appropriate prevention and response measures".
19 March 2020	New UK government guidance indicates that COVID-19 is no longer considered a "high consequence infectious disease (HCID).[51] This enabled a lower standard of PPE to be used within the NHS. The DHSC issues "COVID-19: Ethical framework for adult social care".[52]
20 March 2020	The European Committee on the Prevention of Torture ("CPT") publishes its "Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic",[53] setting out high level standards on managing visiting restrictions, ensuring the continuation of independent inspectorates and putting in place measures for at-risk detainees. It specifies that, "WHO guidelines on fighting the pandemic as well as national health and clinical guidelines consistent with international standards must be respected and implemented fully in all places of deprivation of liberty."
21 March 2020	The WHO publishes, "Infection Prevention and Control guidance for Long-Term Care Facilities in the context of COVID-19".[54] It advises PPE including eye protection for staff providing routine care of residents with confirmed or suspected COVID-19, the placing of a medical mask on such residents, PPE for cleaning staff, and a minimum temperature of laundry at 60 degrees celsius. It advises treating residents who have been discharged from hospital as if they had been diagnosed with COVID-19.
20 March 2020	The Government closes schools and some public venues.[55]

[49] https://www.england.nhs.uk/coronavirus/wp-content/uploads/sites/52/2020/03/urgent-next-steps-on-nhs-response-to-covid-19-letter-simon-stevens.pdf

[50] https://www.unicef.org/disabilities/files/COVID-19_response_considerations_for_people_with_disabilities_190320.pdf.

[51] https://www.gov.uk/guidance/high-consequence-infectious-diseases-hcid

[52] https://www.gov.uk/government/publications/covid-19-ethical-framework-for-adult-social-care

[53] https://www.coe.int/en/web/cpt/-/covid-19-council-of-europe-anti-torture-committee-issues-statement-of-principles-relating-to-the-treatment-of-persons-deprived-of-their-liberty-.

[54] https://apps.who.int/iris/bitstream/handle/10665/331508/WHO-2019-nCoV-IPC_long_term_care-2020.1-eng.pdf.

[55] https://www.bbc.co.uk/news/uk-51952314.

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23 March 2020	The full lockdown comes into effect.[56]
25 March 2020	Michelle Bachelet, UN High Commissioner for Human Rights, publishes a statement "Urgent action needed to prevent COVID-19 rampaging through places of detention".[57] It states, "Covid-19 has begun to strike prisons, jails and immigration detention centres, as well as residential care homes and psychiatric hospitals, and risks rampaging through such institutions' extremely vulnerable populations" and that "authorities should act now to prevent further loss of life among detainees and staff."
25 March 2020	Coronavirus Act passed granting the Government emergency powers to respond to Covd19 pandemic
26 March 2020	The WHO publishes its guidance "Disability considerations during the COVID-19 outbreak".[58] The document advises: "Reduce the number of people in psychiatric hospitals, wherever possible, by implementing schemes of early discharge, together with provision of adequate support for living in the community"
27 March 2020	The UN Inter-Agency Standing Committee publishes, "Interim Guidance on COVID-19: Focus on Persons Deprived of Their Liberty".[59] It advises that, "states should ensure that persons in detention have access to the same standard of health care as is available in the community" and that for "suspected or confirmed cases of COVID-19 all persons deprived of their liberty should be able to access healthcare, including urgent, specialised health care, without undue delay."
27 March 2020	Rosa Kornfeld-Matte, the UN Independent Expert on the Enjoyment of all Human Rights by Older Persons, publishes a statement calling for better protection of older persons, expressing "particular concerns about older persons with underlying health conditions and those who are already socially excluded, living in poverty, having limited access to health services, or living in confined spaces such as prisons and residential care homes".[60]
2 April 2020	The first guidance for care homes in England was issued jointly by

[56] https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020.
[57] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E.
[58] https://www.who.int/publications/i/item/disability-considerations-during-the-covid-19-outbreak.
[59] https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf.
[60] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25748&LangID=E.

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	DHSC, PHE, CQC and NHS England: ", "Coronavirus (COVID-19): admission and care of people in care homes".[61] It states that,"[n]egative tests are not required prior to transfers/admissions into the care home."
8 April 2020	NHS England and Improvement publishes, "Workforce guidance for mental health, learning disabilities and autism, and specialised commissioning services during the coronavirus pandemic",[62] the first guidance for such service providers. It states, "People with mental health needs, a learning disability or autism should receive the same degree of protection and support with managing COVID-19 as other members of the population. This may mean providing additional support including by making reasonable adjustments."
9 April 2020	DHSC publishes "Coronavirus (COVID-19): looking after people who lack mental capacity".[63] It sets out that where life-saving treatment is provided then the person will not be deprived of liberty. It does not advise on how COVID-19 changes the best interests calculation for those in hospitals or care homes.
1 April 2020	The Chair of the UN Committee on the Rights of Persons with Disabilities and the Special Envoy of the UN Secretary-General on Disability and Accessibility publish a joint statement, "Persons with Disabilities and COVID-19",[64] which calls on states to, "accelerate measures of deinstitutionalization of persons with disabilities from all types of institutions".
2 April 2020	Dunja Mijatović, Council of Europe Commissioner for Human Rights, publishes, "Persons with disabilities must not be left behind in the response to the COVID-19 pandemic".[65] Referring to residential settings, she says that "while residents in such institutions often face neglect and inadequate health care at the best of times, this pandemic has unfortunately brought to the forefront the additional serious health risks persons with disabilities are exposed to in such settings". She advised governments that, "[i]n the short term, it must be the utmost priority for states to reduce these risks, including by stopping new admissions, by moving people with disabilities out of these institutions as much as possible, and by taking all necessary precautions to protect their residents. When it comes to stopping new admissions, I have concerns regarding emergency measures which on the contrary relax rules for placements in closed settings, such as the ones enacted in the UK."

[61] https://www.gov.uk/government/publications/coronavirus-covid-19-admission-and-care-of-people-in-care-homes

[62] https://www.england.nhs.uk/coronavirus/wp-content/uploads/sites/52/2020/03/C0074-MHLDA-Covid-19-Guidance-Workforce-final-v1-1.pdf.

[63] https://www.gov.uk/government/publications/coronavirus-covid-19-looking-after-people-who-lack-mental-capacity.

[64] https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDStatements.aspx.

[65] https://www.coe.int/en/web/commissioner/-/persons-with-disabilities-must-not-be-left-behind-in-the-response-to-the-covid-19-pandemic.

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9 April 2020	Marija Pejčinović Burić, the Secretary General of the Council of Europe, publishes "Coronavirus: guidance to governments on respecting human rights, democracy and the rule of law".[66] She says that responsibility under Articles 2 (right to life) and 3 (freedom from torture, inhuman or degrading treatment or punishment) may be invoked in respect of people with disabilities: "Their exposure to the disease and the extreme level of suffering may be found incompatible with the state's positive obligations to protect life and prevent ill-treatment. This positive obligation is further confirmed by Article 11 of the European Social Charter (revised) according to which states parties must demonstrate their ability to cope with infectious diseases, by means of arrangements for reporting and notifying diseases and by taking all the necessary emergency measures in case of epidemics. States' increased attention to vulnerable groups would be consistent with the peoples' right to equitable access to health care (Article 3 of the Convention on Human Rights and Biomedicine, "the Oviedo Convention")."
16 April 2020	DHSC issues guidance on social care[67]: "Covid-19: our action plan for adult social care:, which indicates a policy change: "We can now confirm we will move to institute a policy of testing all residents prior to admission to care homes. This will begin with all those being discharged from hospital and the NHS will have a responsibility for testing these specific patients, in advance of timely discharge."
29 April 2020	The Office of the UN High Commissioner for Human Rights publishes "Covid-19 and the rights of persons with disabilities: guidance".[68] It advises states to "[d]ischarge and release persons with disabilities from institutions and promptly ensure provision of support in the community through family and/or informal networks, and fund support services by public or private service providers."
17 April 2020	PHE publishes "How to work safely in care homes".[69] It sets out PPE requirements, including for care home staff that eye masks are not mandatory, but must be risk assessed on sessional use.
1 May 2020	CQC publishes its "Emergency Support Framework" explaining how it is working while suspending regular visits to hospitals and care homes: said to be a further source of intelligence to be used to monitor risk, identify where providers may need extra support to respond to

66 https://www.coe.int/en/web/portal/-/coronavirus-guidance-to-governments-on-respecting-human-rights-democracy-and-the-rule-of-law.

67 https://www.gov.uk/government/publications/coronavirus-covid-19-adult-social-care-action-plan/covid-19-our-action-plan-for-adult-social-care.

68 https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf?fbclid=IwAR2k4WVrFxgLiKXDUAnfRb509X_NDFux_wYm1L0oXBW1tyNfKwBWOHYtYk4.

69 https://www.gov.uk/government/publications/covid-19-how-to-work-safely-in-care-homes.

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	emerging issues, and ensure they are delivering safe care which protects people's human rights.[70]
4 May 2020	Mr Justice Hayden, Vice-President of the Court of Protection, sends a letter to all Directors of Adult Social Services, reminding them that the Mental Capacity Act 2005 remains in force and that the deprivation of any individual will always require appropriate authorisation. He also acknowledges that those on the front line and in case homes have come under immense pressure during the pandemic[71]
6 May 2020	The UN Secretary-General publishes "Policy Brief on Persons with Disabilities and COVID-19".[72] including a recommendation for the reduction of "the number of people within institutions. It is important to take immediate action to discharge and release persons with disabilities from institutions, whenever possible. Deinstitutionalization strategies need to be accelerated and reinforced with clear timelines and concrete benchmarks."
19 May 2020	NHS England publishes "Legal guidance for mental health, learning disability and autism, and specialised commissioning services supporting people of all ages during the coronavirus pandemic 19"[73]
20 May 2020	Dunja Mijatović, Council of Europe Commissioner for Human Rights, publishes "Lessons to be drawn from the ravages of the COVID-19 pandemic in long-term care facilities".[74] She observes that there are, "many legitimate doubts as to whether all those who lost their lives in a long-term care facility had access to adequate healthcare, which includes both life-saving curative treatments and end-of-life care to reduce their suffering"
28 May 2020	The WHO European Office publishes, "Guidance on preventing and managing the COVID-19 pandemic across long-term care services in Europe".[75]
10 June 2020	Professor Neil Ferguson of Imperial College asserts that if the lockdown had been imposed a week earlier (in March), the number of deaths would have been halved[76].

[70] https://www.cqc.org.uk/news/stories/cqc-launches-emergency-support-framework.
[71] https://courtofprotectionhandbook.files.wordpress.com/2020/05/letter-vp-to-adass-4-may-2020.pdf.
[72] https://www.who.int/who-documents-detail/policy-brief-of-the-un-secretary-general-a-disability-inclusive-response-to-covid-19.
[73] https://www.england.nhs.uk/coronavirus/wp-content/uploads/sites/52/2020/03/C0454-mhlda-spec-comm-legal-guidance-v2-19-may.pdf.
[74] https://www.coe.int/en/web/commissioner/-/lessons-to-be-drawn-from-the-ravages-of-the-covid-19-pandemic-in-long-term-care-facilities.
[75] http://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/5/new-whoeurope-guidance-shows-more-can-be-done-to-protect-people-in-need-of-long-term-care-during-the-covid-19-pandemic.
[76] https://www.imperial.ac.uk/news/198155/neil-ferguson-talks-modelling-lockdown-scientific/

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16 June 2020	PHE publishes review of impact of Covid19 on the BAME population [Covid19: understanding the impact on BAME communities] with a finding that Black ethnic groups had the highest age standardised diagnosis rates of COVID-19 per 100,000 population and the death rates from Covid19 was higher in Black and Asian ethnic groups[77]
23 June 2020	The lockdown begins to be eased.[78]
16 July 2020	Sir Patrick Valance, Chief Medical Adviser to the government, gave evidence to the House of Commons Science and Technology Committee, saying that SAGE had advised a full lockdown should be imposed about a week before it was. He also said the country's coronavirus outcome has "not been good"[79].

The Claimants

18. The stories of the Claimants are set out below:

19. **Ben Spencer's** father Brian Spencer died of Covid-19 on 24 April 2020, aged 70. Brian was a black cab driver in London who continued to work following government guidance that regular, thorough hand washing would prevent infection. Brain was a husband of 47 years and the main carer for his ill wife who has MS. Brian was his daughters' main support and assisted her with the care of her autistic son. He began to show symptoms on 21 March 2020 and over the following days advice was sought on several occasions from 111 as Brian's condition worsened. Paramedics were finally sent on 30 March 2020 and he was admitted. Brian died on 24 April 2020. The family are particularly concerned about:
    a. the failure to go into lockdown earlier
    b. the lack of information as to infection and the false impression given that mere hand washing would be sufficient to safeguard life
    c. the failure to take measures and provide robust guidance to safeguard the lives of key workers
    d. the lack of provision of PPE.

20. **Charlie Williams** is the son of Vernute Williams who died of COVID-19 on 20th April 2020 in Coundon Manor Care home where he had been living. The family received a call on Thursday 16th April to say his health had deteriorated with chest, urinary tract infection, high temperature and also suspected COVID-19. The family asked for a COVID-19 test and if they could see Vernute. The care home informed that testing was not available and that it was not possible to visit as they had transformed the first floor into an

77 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892376/COVID_stakeholder_engagement_synthesis_beyond_the_data.pdf

78 https://www.gov.uk/government/news/pm-announces-easing-of-lockdown-restrictions-23-june-2020.

79 https://news.sky.com/story/coronavirus-sage-urged-govt-to-lockdown-a-week-earlier-uks-chief-scientific-adviser-says-12029956

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isolation unit and were receiving hospital patients to the care home to isolate for 14 days. Charlie Williams is particularly concerned about:

a. The policy that patients could be discharged from NHS beds into care homes without testing
b. The failure to take measures to prevent the virus spreading into, and within the care home
c. The lack of availability of testing in care homes
d. The failure by care home to prevent the virus spreading into and within the care home
e. The lack of provision of PPE for care home staff
f. The failure to recognise and mitigate the disproportionate effect of the virus on persons from BAME communities, and the lack of information published about this issue

21. **Deborah Doyle**'s mother Sylvia Griffiths died in a care home of suspected Covid-19 on 16 April 2020. On 12 April, care home staff telephoned Deborah Doyle informing her that her mother was unwell, a doctor having assessed her by telephone. Two days later, she was informed that her mother was showing signs of recovery and that she was in the dining room mixing with other residents. On 16 April she was informed that her mother had died. Deborah Doyle is particularly concerned about:
    a. failure of government to take measures to prevent the virus spreading into, and within the care home
    b. lack of availability of testing in care homes
    c. failure of government guidance to advise staggering meals or the provision of meals in bedrooms, consistent with WHO guidance
    d. failure by the care home to prevent the virus spreading into and within the care home
    e. failure of the care home to follow government guidance to isolate symptomatic residents

22. **Fiona Kirton**'s father Bernard Kirton had Alzheimer's disease and was admitted to hospital following a fall. The hospital staff treating him did not have adequate PPE. After treatment the family were advised he should go to a care home. A place was found in a care home with a CQC rating of "good". The place was offered on condition that he had a Covid-19 test. However, the hospital refused to carry out the test stating that PHE guidance would not allow it as he had no symptoms. It took more than two weeks to arrange his transfer to an alternative care home. On 28 March 2020 Mr Kirton was transferred to a new care home where he was isolated for 7 days before being integrated into the home. Within four hours of arriving at the new care home his temperature went up. The home also reported that Mr Kirton had a chesty cough when he arrived. On 31 March 2020 had another fall. He was readmitted to hospital that day where he was tested. Mr Kirton tested positive for Covid-19 that day, but sadly died on 7 April 2020. He was aged 84. Fiona Kirton is particularly concerned about
    a. the lack of adequate PPE in hospitals
    b. the lack of testing for asymptomatic inpatients, and patients discharged to care homes
    c. the failure to prevent Covid-19 spreading through the hospital and care homes

23. **Gail Birch**'s mother Edith Jones died on 13 April 2020 of Covid-19 aged 97 years. She had Alzheimer's disease and COPD. She was admitted to hospital on 17 March 2020,

discharged and readmitted on 20 March 2020. Staff did not wear PPE. She was transferred to a different hospital on 24 March and tested positive on 6 April. The consultant told Ms Birch the virus had "ripped through the ward". The family were told that Mrs Jones had contracted the virus some 5-11 days earlier, when she was in hospital. Gail Birch is particularly concerned about:

a. the fact that NHS staff did not wear PPE, and the apparent unavailability of PPE
b. the lack of testing until 20 days after admission.
c. the transmission of the virus within hospitals

24. **Gemma Birkett** is the daughter of Reggie Birkett who died of Covid-19 on 7 April 2020 aged 56 years. Mr Birkett followed the government guidance carefully but started to feel weak and tired in the two weeks before he died. On the day he died, he said he was experiencing what he thought was a heart attack and asked his wife to drive him to hospital. He died en route. At the time of his death, the advice was stay at home and call NHS 111 only if symptoms of temperature or cough were worsening. Gemma Birkett is particularly concerned about:
    a. the delay in lockdown
    b. failure of NHS "111" service to advise those without worsening temperature or cough to seek medical assistance

25. **Hannah Bland**'s father, Philip Carlin aged 71, died on 23 March 2020 of Covid-19. On 12 March Philip developed the persistent cough and temperature symptoms that the Government recognised as to self isolate. On 14 March 2020 he emailed the '111' service and was advised to isolate and he was informed that testing was unavailable. Hannah Bland is particularly concerned about:
    a. the failure to lockdown swiftly enough, despite the evidence of rapidly increasing infections, and recent international experience,
    b. whether lockdown was delayed by pursuance of a 'herd immunity' policy,
    c. the failure to have a testing system in place,
    d. insufficient advice and information provided by the 111 service or at all.

26. **Hannah Brady**'s father, Shaun, died on 16 May 2020, of Covid-19. Shaun was a key worker at a food factory in Wigan, aged 55. He had no underlying health conditions and had not had a day off sick in 21 years. Hannah Brady is particularly concerned about:
    a. the failure to quarantine or take any measures to monitor persons crossing UK borders, until 22 May 2020,
    b. the lack of a fit-for-purpose track and testing regime,
    c. the failure to lockdown swiftly enough
    d. the lack of protection for key workers.

27. **Helen Hudson** is the wife of Steve Hudson who died of Covid-19 on 21 May 2020, aged 52, having been treated for vasculitis for the previous nine months and had treatment of chemotherapy and Ritixamub on 26 March 2020. In the evening of the following day, he became unwell with a temperature, took paracetamol and rested but over the following week he got worse. He and his wife had been self-isolating for most of the year given his diagnosis and immune-suppressing treatment. On 7 April 2020 he began struggling to breathe and developed a cough. He was taken to hospital on 8 April 2020 but died on 21 May 2020. Helen Hudson is particularly concerned about:
    a. the failure to quarantine or monitor those crossing UK borders when it was known that there was a significant risk of the virus spreading to the UK

Continuation. . . . . .

b. the failure to lockdown soon enough to inhibit the progress of the virus
c. the failure to provide adequate protective measures and information for people with a weakened immune system

28. **Joanna Goodman**'s father Stuart Goodman died aged 72 on 2 April 2020 from Covid-19. Having had tests previously, he went to hospital on 18 March 2020 and received a diagnosis of Non-Hodgkin's Lymphoma which was aggressive but treatable. He was not offered a telephone or video appointment despite the fact that no medical procedures or testing were to take place. At the hospital the waiting room was crowded, there was no social distancing and no staff were seen to be wearing PPE. On 24 March 2020 (the day after lockdown) he started chemotherapy treatment. Later that week he began to feel unwell, on the 28 March 2020 he developed a fever and on 29 March 2020 he lost lucidity and was admitted to hospital. On 30 March 2020 he was tested positive for Covid-19 and he died on 2 April 2020. He received a shielding letter 9 days later. Jo Goodman is particularly concerned about:
    a. the failure to quarantine or even monitor travellers across UK borders
    b. the failure to provide an appropriate test and trace system
    c. the failure to lockdown until 23 March 2020, when the necessity was obvious much earlier, from international evidence
    d. the failure to protect vulnerable patients by providing telephone or video appointments and ensuring adequate PPE and enforced social distancing in hospital settings prior to the 23 March 2020
    e. the failure to provide specific advice for those who would later be advised to shield
    f. the failure to test for Covid-19 prior to starting chemotherapy treatment given how it suppresses immune response

29. **Julie Skelton** is the daughter of Alan Davis who died of suspected Covid-19 on 17 April 2020, aged 80 years, in a care home. Julie Skelton is particularly concerned about:
    a. the government's policy that patients could be discharged from NHS beds into care homes without a negative test
    b. the failure of the care home to take adequate measures to prevent the virus from entering, and spreading within the care home
    c. the lack of availability of testing for care home residents and staff
    d. the lack of PPE for care home staff

30. **Katherine Edmunds** is the sister of Matthew Anthony Charles Pears who died on 17 May 2020 having tested positive for Covid-19. Matt was receiving chemotherapy treatment for non Hodgkin's Lymphoma in March, no PPE was used in the hospital and it is likely that he contracted the virus there. Katherine Edmunds is particularly concerned that:
    a. Lockdown was imposed too late
    b. Health workers were not provided with PPE to treat cancer patients as late as March 2020

31. **Kathryn de Prudhoe** is the daughter of William Anthony Clay who died of multi organ failure having contracted Covid-19 on 14 April 2020 aged 60 years. Mr Clay had been in an unaffected French village and flew into the UK on 13 March 2020. There is now evidence that the government should have locked down the country at the beginning of March and not allowed Mr Clay to return to the UK. Had he been forced to stay in the french village, he would still be alive. Mrs de Prudhoe is particularly concerned about:

Continuation. . . . . .

a. the government's failure to lockdown as soon as was necessary,
b. the failure to monitor persons crossing UK borders.

32. **Kenneth Sazuze**'s wife, Elsie, aged 44 years, died on 8 April 2020 of Covid-19 complicated by asthma. Elsie was a care home worker who probably contracted the virus during the week of 16 March 2020, prior to the lockdown. Ken Sazuze is particularly concerned about:
    a. the failure to lockdown swiftly enough, despite the evidence of rapidly increasing infections, and recent international experience,
    b. the lack of PPE in care homes to prevent infection generally,
    c. the discharge from hospitals to care homes of Covid-19 patients or those who were untested,
    d. the lack of policy or guidelines to prevent the spread of the virus into and within care homes,
    e. the failure to institute measures to protect key workers,
    f. the disproportionate effect of the virus on persons from BAME communities and the lack of information about this.

33. **Lashanthie Chandrapala**'s father Greesman Archarige Ranjith Kithsiri Chandrapala was working as a bus driver in London until 24 April 2020. Until 19 April 2020, passengers were able to access buses using the front doorway and no measures had been put in place to protect drivers from the risk of infection. On the evening of 24 April 2020, Mr Chandrapala began to feel unwell and the following day received a self-isolation note from NHS 111 and stayed off work. He was admitted to hospital on 30 April 2020 and sadly died on 3 May 2020, aged 64 years. His daughter Lashanthie Chandrapala is particularly concerned about:
    a. the failure to lockdown early enough
    b. the failure of government to issue guidance to transport companies to protect bus drivers from contracting the virus
    c. the failure of London Transport to protect him against contracting Covid-19 at work, including the failure to provide PPE
    d. the unavailability of testing in the community
    e. the failure to recognise and address the disproportionate effect of the disease on members of the BAME community, and to provide information about increased risk

34. **Leigh Morgan Jones'** father, Ivor Arthur Fredrick Morgan, died of Covid-19 on 3rd April 2020, aged 75. Ivor travelled to Spain in early March and his flight back to the UK was four days after Spain went into lockdown. Ivor's wife called 111 on several occasions after Ivor began to display symptoms. The advice was to wait for 'Day 8' and ring back. She rang back on day 8 as he was worse. His blood pressure was checked over the phone and they said he was ok and should be left at home. That afternoon he collapsed on the stairs and fell backwards hitting his head. Ivor's wife called the ambulance which took 2.5 hours to arrive. A nurse who arrived separately to the paramedics, to stitch the head wound, made it clear to the paramedics that Ivor had to go to the hospital. He was put on a ventilator and sadly passed away 30 hours later. Leigh Morgan Jones is particularly concerned about:
    a. the failure to monitor persons crossing UK borders
    b. the failure to lockdown sooner
    c. the inadequacy of 111 and government advice

Continuation. . . . . .

35. **Lobby Akinnola**'s father, Olufemi Akinnola died on 26th April 2020, of suspected covid-19 aged 60. Olufemi was a Keyworker, he worked at Mencap supporting vulnerable people with learning difficulties without PPE. Olufemi contacted 111 numerous times and was advised to self-isolate and take paracetamol. Lobby Akinnola is particularly concerned about:
    a. The failure to lockdown swiftly enough
    b. The failure to provide key workers with adequate PPE
    c. The inadequacy of the 111 service especially for members of BAME communities, and inappropriate questions asked to detect symptoms such as are your lips blue.
    d. The failure to recognise and mitigate the disproportionate effect of the virus on BAME communities

36. **Matt Fowler**'s father Ian Fowler died aged 56 years of organ failure as a result of Covid-19 on 13 April 2020. He started showing symptoms on 19 March 2020 and was admitted to hospital on 23 March 2020. Matt Fowler is particularly concerned about:
    a. the delay in lockdown and other preventive measures, considering the head-start the UK had compared with countries like Italy and Spain
    b. the indication on 14 March 2020 that lockdown was to happen, but the failure to ensure this happened for another nine days

37. **Mina Uppal**'s father Gopalbhai Premabhai Patel aged 81 years had been shielding during lockdown, and at the beginning of April was admitted to Sandwell hospital for a blood transfusion and other treatment. Despite having tested negative for Covid-19 in hospital, he was kept on the Covid-19 ward. A week after being discharged, he presented with symptoms of Covid-19 and within ten days he could not walk without help and struggled breathing. He was admitted to hospital when he presented symptoms of a heart attack, tested and was positive. He died two days later. Ms Uppal is particularly concerned about:
    a. admission to Covid-19 ward of negative patients;
    b. failure to make provision for PPE to prevent the infection spreading within the hospital
    c. the failure to recognise and mitigate the disproportionate effect of the virus on BAME communities.

38. **Patrick Wallis'** father, Kevin aged 81, died on 20 April 2020, of suspected Covid-19, pneumonia and dementia. Kevin was detained under the Mental Health Act on account of his dementia, and not allowed to leave the care home where he resided. Patrick Wallis is particularly concerned about:
    a. the discharge from hospitals to care homes of Covid-19 patients or those who were untested,
    b. the lack of policy or guidelines to prevent the spread of the virus into and within care homes,
    c. the apparent lack of PPE or use of PPE in the care home,
    d. the failure to test care home residents and staff,
    e. the failure to protect highly vulnerable residents with dementia or other disabilities,
    f. the lack of information provided to families.

Continuation. . . . . .

39. **Paul Hewett** is the son of Patricia Hewett who had dementia and died, aged 84 years, in a secure mental health unit on 4 April from Covid-19. Staff at the mental health unit had no or insufficient PPE. At the time of her death her husband was trying to get her discharged to a care home, but was prevented by the local authority. Paul Hewett is particularly concerned about:
    a. the lack of adequate guidance for mental health hospitals for PPE
    b. the lack of provision and failure of staff at the mental health unit to wear PPE
    c. the failure of any or adequate steps taken by the mental health Trust to stop the spread of infection into, and within, the mental health unit
    d. the failure to take adequate measures to safeguard the most vulnerable

40. **Paula Williams** is the daughter of Patricia Williams who died of COVID-19 on 29th May 2020, aged 64, with no underlying health conditions. Patricia was a NHS community care worker working within an End of Life (Palliative) care team. During lockdown, Patricia only left home to go to work or to go shopping when she would wear a mask and gloves, sanitise her trolley, take full precaution, and even wash her groceries when she returned home. Patricia became ill on the 17th April, but did not display the common symptoms for the first three days. She was admitted to intensive care on the evening of 20th April, where she was put onto CPAP ventilation that evening. Subsequently, Patricia was put into an induced coma and died after 39 days. Paula Williams is particularly concerned with:
    a. The failure to institute measures to protect key workers,
    b. The lack of adequate PPE available in hospitals and to health workers more generally,
    c. The failure to prevent COVID-19 spreading through hospitals and care homes.

41. **Sofie Zermansky** is the daughter of John Harris, who died on 27 March 2020 of Covid-19. He lived in a care home, and staff reported that Mr Harris had developed a temperature, but that they had no PPE and no way of testing him. He was admitted to hospital where he was tested positive. It is understood that a further nine or ten residents of the care home died of Covid-19. Sophie Zermansky is particularly concerned about:
    a. the failure of the government to provide any or adequate guidance to care homes to prevent the virus from entering and spreading within the care home;
    b. the government's policy of discharging people from the NHS into care homes without testing them for Covid-19

42. **Sophie Nevison**'s grandfather Derek Welburn, aged 82 years, self-isolated from 14 March 2020 when he lost his sense of smell and was vomiting frequently. On 22 March 2020 he collapsed and went to A&E from where he was discharged, but readmitted on 25 March 2020 where the next day he tested positive for Covid-19. He was told the hospital did not have enough equipment to treat him and they could only "make him comfortable". On 27 March 2020 equipment became available and he was given CPAP, but died on 30 March 2020. Sophie Nevison is particularly concerned about;
    a. the lack of PPE in hospital
    b. the lack of prompt testing
    c. the failure to prevent Covid-19 spreading through the hospital

d. the failure to ensure adequate provision of equipment such as CPAP and ventilators

43. **Tracy Wallis** is the daughter of Linda Williams, who died of Covid-19 on 12 April 2020 aged 71 years. Mrs Williams had isolated as soon as lockdown was announced, but unbeknownst to her at the time, she had already contracted the infection. She telephoned 111 several times, and was advised to stay at home and take paracetamol. When the family called 999 they were told to call 111 and advised that they would receive a call-back within 6 hours, a call that never came. By the time Mrs WIlliams went to hospital she had difficulty breathing and could not walk. She was taken to ITU and put on a ventilator, where, a week later, life support was removed as it was decided clinically she could not recover. Tracy Wallis is particularly concerned about:
    c. the delay in the UK going into lockdown, given what was known about the spread of the virus in other countries
    d. the failure of government to provide access to adequate healthcare advice and services for those who were at home
    e. the failure to make available NHS Nightingale hospitals to those who required oxygen therapy

E. The Law

The duty to establish a public inquiry

44. There is an overwhelming public interest in understanding the causes of the deaths of over 50,000 deaths in the UK from COVID-19 and preventing further preventable deaths. Allied to that overwhelming public interest, there is an overwhelming public concern that these deaths and the spread of COVID-19 in the UK has been caused or contributed to by multiple failings across various public authorities, including Government and the health service.

45. These overwhelming public interests and concerns include, but are not limited to the matters set out in paragraph 12 above.

46. In light of the above, it is imperative that an inquiry is established in order to provide answers to those who have lost loved ones, to learn lessons, and to ensure that further preventable deaths are prevented.

47. On 15 July, the Prime Minister informed the House of Commons during Prime Minister's Question Time that, *"certainly we will have an independent inquiry into what happened".*[80]

48. The obligation to establish a public inquiry is reflected in the duty under Articles 2 and 3 to conduct an official, effective and public investigation into COVID-19 deaths and the role of the State in those deaths, which will include the effective participation of victims.

49. Articles 2 and 3 mandate the establishment of such an inquiry here. That is because it is arguable that the State is in breach of its substantive obligations to protect the lives of its citizens, and prevent them from suffering serious illness, in the way that it has

[80] https://www.youtube.com/watch?v=17ptHZaQMLk

prepared for and responded to the COVID-19 outbreak. An effective investigation is required, to use the words of Lords Bingham in *R (Middleton) v HM Coroner for West Somerset* [2004] 2 AC 182, into *"any death occurring in circumstances in which it appears that one or other of the … substantive obligations has been, or may have been, violated and it appears that agents of the state are, or may be, in some way implicated"* (§3). That is the case here, for the reasons set out below.

50. First, it is arguable that the State has breached the systems duty in its preparation for and response to the COVID-19 outbreak. That is because:

    a. Articles 2 (and 3) impose a general protective obligation on the State to safeguard life, including by putting in place systems, precautions and procedures which will, to the greatest extent reasonably practicable, protect life (*R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653, §30; *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182, §2; *Öneryildiz v Turkey* (2005) 41 EHRR 20, §§73, 89; *Savage v South Essex Partnership NHS Foundation Trust*[2009] 1 AC 681, §§30-31; *R (Smith) v Oxfordshire Deputy Coroner* [2011] 1 AC 1, §§87, 106; *Smith v Ministry of Defence* [2014] AC 52, §68).

    b. The systems duty includes the obligation to:

        i. Employ and train competent staff and adopt appropriate systems that will protect the right to life (*Savage v South Essex Partnership NHS Foundation Trust* [2009] 1 AC 681, §§30, 45, 50, 97; *Mitchell v Glasgow City Council*[2009] 1 AC 874, §66).

        ii. Provide adequate protective equipment (*R (Smith) v Oxfordshire Deputy Coroner* [2011] 1 AC 1, §105; *Smith v Ministry of Defence* [2014] AC 52, §§63, 68; *Savage v South Essex Partnership NHS Foundation Trust* [2009] 1 AC 681, §§30, 50; *Brincat v Malta* (App. No. 60908/11), §101).

        iii. Put in place adequate planning, training and deployment tailored to the risk in question (*Smith v Ministry of Defence*[2014] AC 52, §§63, 68; *R (Lewis) v HM Coroner for the Mid and North Division of the County of Shropshire*[2010] 1 WLR 1836, §16).

        iv. Have in place systems which will detect and remedy individual failings and errors, including errors at different organisational levels, before harm is done (*Öneryildiz v Turkey* (2005) 41 EHRR 20, §§89-95; *Kolyadenko v Russia*(2013) 56 EHRR 2, §§158-159; *Mosendz v Ukraine* (App. No. 52013/08), §91).

        v. Ensure the effective functioning of the relevant regulatory framework. Article 2 requires not only that regulations are in place, but that the regulatory framework functions effectively through supervision and enforcement (*Cevrioğlu v Turkey* (App. No. 69546/12), §66).

        vi. Provide the public with information to enable them to make informed decisions where the right to life is at stake (*Öneryildiz v Turkey* (2005) 41 EHRR 20,§108; *Budayeva v Russia* (2014) 59 EHRR 2, §§152, 154; *Vilnes v Norway*(App. No. 52806/09)).

c. The systems duty applies to foreseeable risk to life and serious injury generally, and also in the healthcare context. For example, as well as the matters summarised above:

i. The State is under an obligation to adopt appropriate general measures for protecting the lives of patients in hospitals, including ensuring that high professional standards are maintained and that suitable systems of work are put in place (*Savage v South Essex Partnership NHS Foundation Trust* [2009] 1 AC 681, §4).

ii. The State is required to make regulations compelling hospitals to adopt measures for the protection of patients' lives (*Sarishvilli-Bolkvadze v Georgia* (App. No. 58240/08), §67). Acts and omissions of the authorities in the context of public health policies may in certain circumstances engage the State's responsibility under Article 2 (*Lopes de Sousa Fernandes v Portugal* (2018) 66 EHRR 28, § 167).

iii. Article 2 will be breached where *"where a systemic or structural dysfunction in hospital services results in a patient being deprived of access to life-saving treatment and the authorities knew or ought to have known about the risk and failed to undertake the necessary measures to prevent the risk from materialising, thus putting the patients' lives, including the life of the particular patient concerned, in danger"* (*Lopes de Sousa Fernandes v Portugal* (2018) 66 EHRR 28, §192; see also *Sarishvilli-Bolkvadze v Georgia* (App. No. 58240/08), §§67-69).

iv. The systems duty to provide adequate healthcare is not confined to hospitals and extends to a duty to provide suitable facilities, adequate staff and appropriate operational systems of operation (*R (Humberstone) v Legal Services Commission* [2011] 1 WLR 1460, §69-70).

d. The requirements of the systems duty will be particularly exacting where vulnerable individuals are involved (e.g. *DMD v Romania* (App. No. 23022/13), §41; *M and M v Croatia* (App. No. 10161/13), §136).

e. In light of the above, it is clear that the inadequacy of the Government's response to COVID-19 gives rise to an arguable breach of the systems duty under Articles 2 and 3.

51. Second, it is arguable that the State has breached the operational duty in its response to the COVID-19 outbreak. That is because:

a. Article 2 imposes a positive obligation on the State to take appropriate steps to safeguard the lives of those within its jurisdiction. This includes an operational duty to take preventative measures to protect life (*Osman v UK* (2000) 29 EHRR 245).

b. This duty arises where there is a real and immediate risk to life. A "real" risk to life is one that is *"a substantial or significant risk and not a remote or fanciful one"* (*Rabone v Pennine Care NHS Foundation Trust* (2012) 2 AC 72, §38). A risk

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of 5%-20% is "real" (*Rabone v Pennine Care NHS Foundation Trust* [2010] EWCA Civ 698, §73). The risk posed by COVID-19 plainly satisfies the real and immediate risk threshold.

c. The operational duty is owed in circumstances where danger arises for which the State is in some way responsible (*Öneryildiz v Turkey* (2005) 41 EHRR 20, §101).

d. The operational obligation applies in circumstances which engage healthcare professionals and the category of persons to whom the operational duty is owed is not closed (*Rabone v Pennine Care NHS Foundation Trust* (2012) 2 AC 72, §25).

e. The operational obligation may require the State to afford general protection to society at large (*Sarjantson v Chief Constable of Humberside* [2014] QB 411, §§18-22; *Mastrommateo v Italy* (App. No. 37703/97), §74; *R v Marines A, B, C, D & E* [2014] 1 WLR 3326, §§76, 78; *R v Blackman* [2017] EWCA Crim 326, §21; *Griffiths v Chief Constable of Suffolk* [2018] EWHC 2538 (QB), §502; *Tagayeva v Russia* (App. No. 26562/07), §§482, 486).

f. Where the operational duty arises there will be an arguable breach of Article 2 where the State fails to take measures within the scope of its powers which, judged reasonably, might have been expected to avoid or minimise that risk (*Osman v UK* (2000) 29 EHRR 245, §116; *Tagayeva v Russia* (App. No. 26562/07), §§482, 492).

g. An equivalent operational duty is owed under Article 3 to prevent inhuman and degrading treatment where there is a real and immediate risk that such treatment will occur (*Rabone v Pennine Care NHS Foundation Trust* (2012) 2 AC 72, §23).

h. COVID-19 has presented a real and immediate risk to both the lives and the bodily and mental integrity of UK citizens. The risk of death and serious harm from COVID-19 was known to the UK government who owed the bereaved and other victims an operational duty to take steps to protect the lives of their loved ones and to prevent serious harm from occurring. This risk continues and has resulted in between 45,000 and 65,000 deaths across the UK: far higher than comparable high income European countries.

i. In light of the principles summarised above, it is clear that the inadequacy of the Government's response to COVID-19 gives rise to an arguable breach of the operational duty under Articles 2 and 3; that it, it is arguable that the Government did not take sufficient steps.

52. Third, it is arguable that the State has allowed a number of systemic and operational deficiencies to exist in its response to the COVID-19 outbreak. Such deficiencies have arguably caused or contributed to numerous similar, analogous deaths. Prompt remedial action has not been taken to correct these deficiencies. That gives rise to an arguable breach of Article 2 (see *Ireland v UK* (1979) 2 EHRR 25, §159; *France v Turkey* (1984) 6 EHRR 241, §19; *Aslakhanova v Russia* (App. No. 2944/06), §217; *R (Mousa) v Secretary of State for Defence* [2013] EWHC 1412 (Admin), §192).

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53. The proposed Defendants are therefore under an obligation to establish an official, effective and public investigation into COVID-19 deaths which will examine the role of the State in those deaths and which will include the effective participation of victims. That is because:

    a. The procedural obligation places a duty on the State to investigate deaths for which it may bear responsibility. The investigation must be effective, prompt, public, independent of those responsible for the death, and it must involve the family or representatives of the deceased (*Jordan v UK* (2001) 37 EHRR 52, §§105-106).

    b. Where it is arguable – meaning more than fanciful, a low threshold (*R (AP) v HM Coroner for Worcestershire* [2011] EWHC 1453, §60) – that the substantive obligations under Article 2 have been, or may have been, violated, and it appears that agents of the State and/or systemic defects in a State system are, or may be, in some way implicated, the procedural obligation arises and there is a duty to conduct an effective, official investigation (*R (Middleton) v HM Coroner for West Somerset* [2004] 2 AC 182, §3). Put another way: does the death disclose *"possible state responsibility"*? (*R (Hambleton) v Coroner for the Birmingham Inquests (1974)* [2018] EWCA Civ 2081, §47). That is clearly the case here, for the reasons set out above. An Article 2 and 3-compliant inquiry must therefore be established.

54. The common law similarly requires a meaningful public investigation in these circumstances (*R (Silvera) v HM Senior Coroner for Oxfordshire* [2017] EWHC 2499 (Admin), §39; *R (Vote Leave Ltd) v. Electoral Commission* [2019] 4 WLR 157, §24; *Kennedy v Information Commissioner* [2015] AC 455, §§47, 125-129, 133; *R (CPRE Kent) v. Dover District Council*[2018] 1 WLR 108, §§50-57).

55. The public inquiry mandated by Articles 2 and 3, and the common law, must be established under the Inquiries Act 2005. That is for a number of reasons.

56. First, an inquiry under the 2005 Act confers numerous substantive benefits compared with other forms of investigation. It indicates the seriousness with which the Government is treating the issue. That in turn can assist in allaying victim and wider public concern and in promoting public confidence, both of which are imperative in the present circumstances. An inquiry under the 2005 Act will ensure the very independence that the Prime Minister referred to in stating that *"certainly we will have an independent inquiry into what happened."* Section 9 of the 2005 Act requires such independence. An inquiry under the 2005 Act will have the necessary powers of compulsion at its disposal, including section 17(2) which provides for witness evidence to be taken on oath, and section 21, which provides for the Inquiry to compel the disclosure of documents. Such an inquiry can act speedily and the chair has the power to adapt his/her procedure as needed to meet the aims and expedience that is required. A statutory inquiry will also ensure the effective participation of the victims by designating them as Core Participations under Rule 5 of the Inquiry Rules 2006. That would confer on them the procedural rights provided by the 2005 Act and the 2006 Rules. In short, an inquiry under the 2005 Act would ensure compliance with the procedural duty under Articles 2 and 3.

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57. Second, other investigations, falling short of a public inquiry, will not be sufficient to meet the procedural duty. Taken individually or cumulatively, they will not involve sufficient independence, public scrutiny, effectiveness or victim involvement. They will not be equipped with the essential overview perspective to identify urgent lessons and make immediate recommendations. They may be unable to examine the policy and resourcing issues that the inquiry into COVID-19 deaths must address; inquests, for example, are unlikely to be able to do so (see Chief Coroner's Guidance No.37, §16, above cit). Even where investigations can consider such issues, they will do so in isolation, without the advantage of considering the Government's response in totality. This will materially hamper their ability to make informed and prioritised recommendations. A number of cases under Article 2 indicate that a range of non-compliant investigations, taken together, will not be sufficient to satisfy the procedural duty (e.g. *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653, §§34-38; *R (Silvera) v HM Senior Coroner for Oxfordshire* [2017] EWHC 2499 (Admin), §39).

58. Third, the matters that require investigation here are well suited to examination through a public inquiry. The Prime Minister has indicated as much in confirming that *"certainly we will have an independent inquiry into what happened."* Self-evidently, the Prime Minister would not have committed to an independent inquiry were it not capable of examining what happened and learning the necessary lessons. Further, the ability of an inquiry to investigate important issues of policy and resourcing has been recognised on multiple occasions in the Article 2 case law (e.g. *R (Smith) v Oxfordshire Deputy Coroner* [2011] 1 AC 1; *R (Lewis) v HM Coroner for the Mid and North Division of the County of Shropshire* [2010] 1 WLR 1836; *R (Scholes) v SSHD* [2006] EWCA Civ 1343).

59. For those reasons, there is a duty to establish an inquiry pursuant to the Inquiries Act 2005 into COVID-19 deaths and a public inquiry is the only mechanism by which the State can properly discharge its duties under Articles 2 and 3, and the common law.

The duty to establish an inquiry now

60. The Government asserts that 'now is not the time' for an Inquiry of any form[81]. Yet people are dying daily, lives continue to be at stake, and there is a very real possibility of a second and/or further peaks in the months to come, requiring an effective national response to save lives. In those circumstances, now is very much the time to examine whether current and future steps to deal with the crisis are appropriate and to learn lessons, now, so as to prevent future deaths.

61. Under s.1 and s.5 of the 2005 Act the Proposed Defendants have the power to order that an inquiry under the 2005 Act should commence at any time. They can therefore establish an inquiry immediately. Subject to the requirements in s.5 of the Act, an inquiry initiated by the Proposed Defendants could commence its vital work within days of being established.

62. The Proposed Defendants have a broad power to identify those matters that the Inquiry must consider. This is done through the Inquiry's Terms of Reference, which are a matter for the Proposed Defendants to determine (s.5(1)(b)(i)).

[81] see Prime Minister's response to question from Sir Ed Davey MP during Prime Minister's Question Time, 15 July 2020

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63. The Terms of Reference may identify the matters to which the inquiry relates, any particular matters as to which the inquiry panel is to determine the facts, whether the inquiry panel is to make recommendations, and any other matters relating to the scope of the inquiry that the Minister may specify (s.(6)). The Proposed Defendants can therefore mandate that the Inquiry must consider whether current and future steps to deal with the crisis are appropriate, and make recommendations accordingly in order to improve the response to future peaks and prevent future deaths.

64. The Chair of an inquiry under the 2005 Act may deliver an interim report to the relevant Minister setting out the facts determined by the inquiry panel, the recommendations of the panel, and anything else that the panel considers to be relevant to the terms of reference (s.24(1) and (3)). The ability to conduct an interim phase of an inquiry, and deliver an interim report, is consistent with the Chair's broad discretion to direct the procedure and conduct of an inquiry under the Act (s.17(1)). This allows the Chair to direct that the inquiry hold an urgent, interim phase if that is considered necessary and desirable. That is the case here in order to learn lessons now and prevent future deaths.

65. A number of previous public inquiries, under the 2005 Act and prior to its enactment, have conducted interim phases in order to consider pressing matters of public safety and ensure urgent remedial measures were adopted. These have included the Taylor Inquiry, conducted by Lord Taylor, into the Hillsborough Stadium Disaster (above cit), and the Grenfell Tower Inquiry.

66. In the grave ongoing situation facing the country, the power to establish an inquiry immediately is in fact a duty, requiring the Proposed Defendants to establish an inquiry now so that an urgent, interim phase can be conducted as soon as possible. That is for a number of reasons.

67. First, people are continuing to die from COVID-19 on a daily basis as a result of the Government's inadequate preparedness and response to the crisis. For the reasons set out above, those deaths are occurring as a result of the State's breach of its substantive obligations to protect the lives of its citizens. There therefore remains a continuing and ongoing breach of Article 2 by the State. For obvious reasons, that requires immediate remedial action.

68. Second, the scale of the loss of life that has occurred, and which may recur should a second and/or further peaks eventuate without an effective national response, cannot be overstated. The need to prevent future deaths carries the greatest possible weight and requires that an inquiry must be established now.

69. That is consistent with the requirement within Article 2 to prevent recurrence. The purpose of an Article 2 investigation is to:

> …ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others. (*R (Amin) v SSHD* [2004] 1 AC 653 §31, emphasis added).

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70. Similarly, the purpose of an Article 2 investigation is, *"within the bounds of what is practicable, [to] promote measures to prevent or minimise the risk of future violations"* of the right to life (*R (Middleton) v HM Coroner for West Somerset* [2004] 2 AC 182, §5).

71. It is imperative that such measures are identified and promoted now given the imminent risk of future deaths. Domestic and international experts have repeatedly stressed the urgency of identifying relevant lessons and implementing changes.

72. For example, the Academy of Medical Sciences has recently reported that intense preparations are required to prevent potentially tens of thousands of further deaths during the coming Winter. The current period, according to the Academy, represents a critical window to identify and implement necessary measures to minimise the risk to life.[82] The Government-commissioned AMS report would provide an expert starting point for the interim phase, honing the issues and thereby the evidence and witnesses that would be required, to expedite the learning required. It provides expert opinion of the risks ahead, and some recommendations on what needs to be done, but it is light on how[83].

73. Similarly, the Council of Europe's Commissioner for Human Rights has emphasised that, *"As the pandemic continues, it is extremely urgent for all member states to draw the necessary lessons from the experience in Europe so far, and quickly turn them into policies and actions to ensure that these mistakes are not repeated."*[84]

74. Without an immediate inquiry now, further preventable deaths will occur and the purposes of Article 2 will be frustrated: dangerous practices and procedures will not be rectified in time to prevent further, substantial deaths, and those bereaved families who have already lost their family members will be denied the knowledge that lessons learned from the deaths of their loved ones may save the lives of others.

75. Third, inherent in the Article 2 procedural duty is a requirement that the State's investigation should take place promptly and be pursued with exemplary diligence (*Amin*, §25; *R (JL) v SSHD* [2009] 1 AC 588, §74, citing *Trubnikov v Russia*(Application No 49790/99) 5 July 2005, §88). This requirement will of course vary from case to case. Here, the need to learn lessons *now* in order to prevent future deaths, compels an immediate inquiry that will examine whether current and future steps to deal with the crisis are appropriate and learn lessons. That is essential, both to prevent future deaths and to maintain public confidence by demonstrating that the State, faced with a situation of the utmost gravity, is responding accordingly and doing all it can to ensure future prevention.

76. Fourth, there will clearly be a need to hold a public inquiry into the State's preparedness for and response to the current public health crisis. The Prime Minister has

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[82] Preparing for a challenging winter 2020/21, 14 July 2020 https://acmedsci.ac.uk/file-download/51353957

[83] https://blogs.bmj.com/bmj/2020/07/17/covid-19-the-academy-of-medical-sciences-has-produced-a-useful-report-but-its-no-substitute-for-a-rapid-review-of-uk-preparedness/

[84] Lessons to be drawn from the ravages of the COVID-19 pandemic in long-term care facilities, 20 May 2020 https://www.coe.int/en/web/commissioner/-/lessons-to-be-drawn-from-the-ravages-of-the-covid-19-pandemic-in-long-term-care-facilities

confirmed that that is the case: *"we will seek to learn the lessons of this pandemic in the future and certainly we will have an independent inquiry into what happened."*[85] It could not sensibly be suggested otherwise.

77. In those circumstances, the House of Lords in *JL* has indicated that (§74):

> …the sooner [the investigation] starts work the better. This is just common sense, but the European Court emphasised the point in *Edwards v United Kingdom* (2002) 35 EHRR 487, 515, para 86:
>
> > "The Court reiterates that it is crucial in cases of deaths in contentious situations for the investigation to be prompt. The passage of time will inevitably erode the amount and quality of the evidence available and the appearance of a lack of diligence [will] cast doubt on the good faith of the investigative efforts, as well as drag out the ordeal for the members of the family."

78. Those factors are engaged here. The appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts. That is particularly the case because the Government has the power to establish an immediate inquiry (but is refusing to do so) and it is the Government's response to the current crisis that requires immediate and exacting scrutiny. In those circumstances, the refusal to establish an inquiry now in order to prevent future deaths poses a serious risk to both the confidence of the bereaved families and wider public confidence.

79. The impact on the bereaved families of a refusal to establish an inquiry now will be substantial. Such a refusal will create a particular ordeal for them because they are motivated in large part by a desire to ensure that other families are not subjected to the same anguish they have suffered and continue to suffer. That desire will be frustrated if the Government maintains its refusal to establish an inquiry immediately because other people will die preventable deaths.

80. Fifth, one of the important purposes of an investigation into a death for which the State is arguably responsible is to contribute to the victims' sense of catharsis and resolution, and to aid in the restoration of their human dignity (*R (Keyu) v Secretary of State for Foreign and Commonwealth Affairs* [2012] EWHC 2445 23 (Admin), §157; *R (Mousa) v SSD* [2013] EWHC 2941 (Admin), §22; *R (Khan) v Secretary of State for Health* [2004] 1 WLR 971, §43; *MA BB v SSHD* [2019] EWHC 1523 (Admin), §75).

81. An immediate inquiry is required to give effect to this requirement for catharsis, restoration and dignity. Currently, the Proposed Defendants' failure to establish an inquiry leaves the bereaved families in limbo, without answers, fearing that other families will lose their relatives as a result of the Government's failings, and unable to achieve any sort of closure. That is contrary to their human dignity. Where, as here, that applies to a huge number of bereaved families, an urgent inquiry is required.

82. Sixth, the common law has long recognised that investigations into deaths must be sufficiently full, fair and fearless to meet the public interest that the facts of the case require, and must *"seek out and record as many of the facts concerning the death as*

[85] Prime Minister's response to question from Ed Davey MP during Prime Minister's Question Time, 15 July 2020

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[the] public interest requires". The centrality of the public interest is pre-eminent where a case gives rise to acute public concern (*R (Hurst) v HM Coroner for Northern District London* [2007] 2 AC 189, paras 21-22, approving the comments of Lord Lane CJ in *R v South London Coroner, ex parte Thompson* (1982) 126 SJ 625).

83. Clearly that is the case here. The public concern about the State's role in deaths from COVID-19 could not be more acute. Nor could the public concern to ensure that immediate steps are taken to prevent future deaths. The public interest therefore requires an immediate investigation that will find the necessary facts to make urgent recommendations and aid the prevention of further deaths. That requires an inquiry, now.

84. Seventh, to the extent that it is suggested that a range of other investigations will or may be sufficient to meet the Article 2 procedural duty, such that the bereaved families should "wait and see", that approach does not justify a refusal to establish an inquiry now.

85. Such a "wait and see" approach was recently rejected in an Article 3 case involving alleged breaches in respect of two individual victims (*MA BB v SSHD*, §§76, 79, 82). Here, Article 2 is engaged, the circumstances are therefore of greater gravity, there are a vast number of victims, and there will be more as the risk of recurrence is real and present. There will clearly be a need to hold a public inquiry into the State's preparedness for and response to the current public health crisis, not least to learn lessons and prevent future deaths. There is therefore all the more reason not to adopt a wait and see approach here.

86. Eighth, it is important that this claim is being brought promptly, now, to avoid any suggestion that the claim has been unduly delayed (*R (Dolan) v Secretary of State for Health and Social Care* [2020] EWHC 1786 (Admin), §30; *R (Sustainable Development Capital LLP) v Secretary of State for Business, Energy and Industrial Strategy* [2017] EWHC 771 (Admin)).

87. Further, there are compelling reasons why a challenge seeking an HRA-compliant investigation should be brought promptly, as is the case here. Not doing so may result in a meritorious and successful challenge resulting in no substantive relief (e.g. *R (AM) v SSHD* [2009] EWCA Civ 219 see §§67-69). It is vital that that does not occur here given what is at stake.

F Conclusion

88. As at 14 July 2020, just under 45,000 UK deaths had occurred of persons who had tested positive for Covid-19[86]. Given the excess death 5-year average, and the fact that there have undoubtedly been many such deaths of persons who were not tested, the true figure is likely to be about 65,000[87]. As stated above, these are the highest figures in Europe, and only Belgium has a higher per capita Covid-19 mortality rate.

89. There is no obvious reason for this marked disparity, other than lack of preparedness and differences of response. The Claimants have a legal right to an independent,

[86] https://coronavirus.data.gov.uk 40,379 in England
[87] https://medicalxpress.com/news/2020-06-excess-deaths-uk-figures.html

official investigation to determine exactly what happened, who was accountable for any failures which contributed to the deaths, and for recommendations to prevent similar future unnecessary deaths.

90. The default process to determine these matters is an inquest, although other processes may discharge the duty to investigate in some circumstances. As explained above, in the vast majority of Covid-19 cases, inquests and other investigative processes are either unavailable or inapt. A statutory Public Inquiry is therefore the only appropriate process and should be established without further delay. Once the process is established, documentary and witness evidence will be gathered and the possibility of material being lost or forgotten will be reduced.

91. Given that some of the historical issues continue, and the virus is still amongst us and expected to return in waves or spikes, which could be as lethal or more so than the first wave, there are two imperatives of an investigatory process:

    a. That current efforts to contain the virus must not be deflected by determination of historical facts and accountability now, but equally,
    b. Urgent interim measures must be taken to immediately learn such lessons as may prevent further unnecessary deaths[88].

92. The statutory regime is versatile and expressly provides for interim phases with reports and recommendations to be reached in short timeframes, where delay may cost lives. Although determination of some of the historic issues and accountability may have to wait, the prevention of further deaths will not. The duty to hold a Public Inquiry in the current circumstances, therefore extends to the holding of an urgent interim phase.

G. Interested Parties

93. The Interested Parties in these proposed Judicial Review proceedings are:
    a. Chief Coroner
    b. Health and Safety Executive
    c. INQUEST

94. We have sent a copy of this letter to the proposed Interested Parties.

95. Please advise us if there are other Interested Parties who you consider should be notified of this claim.

H. Details of the Action the Defendant is Expected to Take

96. As set out at paragraph 7 above, the Claimants ask the Defendants to reconsider their position and take the following action:

    a. establish a statutory Public Inquiry;
    b. direct that the Inquiry begin work urgently with an interim phase, to reach recommendations which would minimise future loss of life from the virus.

[88] Imperatives supported by all the bodies referred to in para 16 above.

Continuation. . . . . .

97. If the requested action is not indicated within 14 days of the date of this letter, the Claimants will issue judicial review proceedings without further notice.

G. Alternative Dispute Resolution

98. The families have asked the Defendants to meet with the bereaved family members in order to discuss their request. The invitation was declined by the Defendants.

H. Ancillary matters

99. It is hoped that the Defendants will now establish a statutory Public Inquiry with an immediate phase with the single aim to prevent further unnecessary deaths. In the event that the Defendants do not do so and the Claimants take judicial review proceedings, we seek an undertaking that the Government will not seek costs against them. The Claimants have all suffered grievous loss and seek no personal gain from such process.

I. Address for Reply and Service of Court Documents

100. All correspondence should be addressed to ourselves.

J. Your Responsibilities

101. We request that you confirm receipt and further confirm you will revert to us substantively by close of business on 6 August 2020.

102. Alternatively, our clients have instructed us to issue a Claim for Judicial Review without further notice.

Yours sincerely

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c.c. The Rt. Hon Boris Johnson, MP, Prime Minister
Government Legal Department