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Date: 17 March 2021
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Final Letter before claim

To :

The Prime Minister, and Secretary of State for Health and Social Care

Further 'Letter Before Claim' regarding potential judicial review of the failure by the Prime Minister and Secretary of State to establish a Public Inquiry into the preparedness for and response to the Covid-19 pandemic

1. The claimants

1.1 The following persons have all lost loved ones as a result of the Covid 19 pandemic and the lack of preparedness for and response to it.

- a. Mr Jamie Mawson, son of Mr Richard Mawson deceased
- b. Mr Kenneth Sazuze, husband of Mrs Elsie Sazuze deceased
- c. Ms Leigh Morgan-Jones, daughter of Mr Ivor Arthur Fredrick Morgan deceased
- d. Mr Peter McMahon, husband of Mrs Deborah McMahon deceased
- e. Mr Charlie Williams, son of Mr Vernute Williams deceased
- f. Ms Julie Ann Tranham, daughter of Mr Ryan Whittaker deceased
- g. Ms Joy Dosoo, daughter of Mr Richard Nateh Dosoo deceased
- h. Mr Michael Ian Stewart Handley, son of Mr Ian Handley deceased
- i. Ms Katherine Swift, daughter of Mrs Angela Williams deceased and step-daughter of Mr Eric Williams deceased
- j. Mr Matt Fowler, son of Mr Ian Fowler deceased
- k. Ms Kathryn de Prudhoe, daughter of Mr William Anthony Clay deceased
- l. Ms Fiona Kirton, daughter of Mr Bernard Kirton deceased
- m. Mr Lobby Akinnola, son of Mr Olufemi Akinnola deceased
- n. Ms Hannah Brady, daughter of Mr Shaun Brady deceased

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- o. Mrs Lyn Paddon, wife of Mr Trevor John Paddon deceased
- p. Mr Paul Hewett, son of Mrs Patricia Hewett deceased
- q. Ms Sofie Zermansky, daughter of Mr John Harris deceased
- r. Ms Gail Birch, daughter of Mrs Edith Jones deceased
- s. Dr Saleyha Ahsan, daughter of Mr Ahsan-Ul-Haq Chaudry deceased
- t. Ms Paula Williams, daughter of Ms Patricia Williams deceased
- u. Mr Alexander Barrett, son of Mr Kenneth Thomas Barrett deceased
- v. Ms Francine Page, daughter of Mr Gilbert Page deceased and sister of Ms Gwendolyn Sylvia Reilly deceased
- w. Ms Julie Skelton, daughter of Mr Alan Davis deceased
- x. Ms Jo Goodman, daughter of Mr Stuart Goodman deceased
- y. Ms Deborah Doyle, daughter of Ms Sylvia Griffiths deceased

2. Status of this ‘letter before claim’

2.1 This letter should be read together with the original LBC sent on 22 July 2020, and it has regard to the reply dated 6 August 2020 and subsequent events.

3. The details of the claimants’ legal advisers

3.1 Elkan Abrahamson, Broudie Jackson Canter Solicitors, 3rd Floor, Walker House, Exchange Flags, Liverpool, L2 3YL.

4. The details of the matter being challenged

4.1 The Claimants challenge the refusal or failure of the Defendants to institute a statutory public inquiry, pursuant to Section 1 of the Inquiries Act 2005, into the government’s preparedness for and response to the COVID-19 pandemic. It is difficult to think of any matter that has arisen since the enactment of the 2005 Act which is so appropriate for investigation at such an inquiry.

4.2 The Defendants are required by Articles 2 and 3 of the European Convention on Human Rights to institute such an inquiry and their refusal to do so is unlawful pursuant to section 6 of the Human Rights Act 1998.

5. The details of any Interested Parties

5.1 To be confirmed.

6. The issue

6.1 On 14 March 2021, Government figures indicate that 125,516 people have died in the UK within 28 days of a positive COVID-19 test. A total of 143,259 persons have died and have COVID-19 as a cause on the death certificate. Many more have suffered serious illness, “long covid”, isolation and adverse mental health consequences, as well as dire economic effects.

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6.2 Are this death toll, and other effects, the unavoidable consequences of a naturally occurring disease, or have the effects been exacerbated by a failure of preparedness, a lack of framework and systems to limit the number of infections and their consequences, and a failure to take a range of appropriate measures soon enough?

6.3 Why have the consequences for an island nation, amongst the wealthiest in the world, with a highly functioning health service, been so strikingly worse than in other countries?

6.4 Given that pandemic influenza and newly emergent diseases have been high on the official list of predicted threats to the UK documented on the National Risk Register since its inception, there are multiple questions regarding the lack of preparedness and contingency plans for a threat that was historically inevitable.

6.5 The Claimants have each lost loved ones. They seek answers to what happened when, what was known when, what level of preparedness the UK had, whether contingency plans were sufficient, whether appropriate measures were taken soon enough, and whether particular sections of society who were more vulnerable to contracting COVID-19 and experiencing a worse outcome - older people, care home residents, hospital patients, disabled people, BAME communities, and frontline workers - were accorded appropriate protection from the virus.

6.6 Moreover, they seek to ensure that everything possible is done to limit further loss of life from this coronavirus, and that appropriate measures are put in place to combat future pandemics.

6.7 The Claimants rely upon and do not repeat, other than in summary or where further facts or issues have come to light, the matters referred to in the original LBC.

6.8 The Claimants note that the proposed claims did not proceed following the original LBC for two reasons, one substantive and one procedural.

6.9 Firstly, on 15 July 2020, the Prime Minister promised Parliament an “independent inquiry” at the appropriate time. Although the Claimants had wanted a public inquiry to start urgently, not least to facilitate interim recommendations to address shortcomings in the response to the first wave of the pandemic, they took on board assertions in the reply to the LBC that nothing should be done to deflect those on the frontline, as well as ministers and civil servants taking decisions, from combating the spread of the virus and its effects. Although those on the frontline have continued to do all that they can, it is a matter of regret that the Government failed to learn lessons, evidenced by the huge loss of life since the first wave alleviated.

Given the roll out of vaccines and falling case numbers, the balance between the urgency of the situation and the urgency of learning lessons to combat the continuing risks posed by COVID-19 (including vaccine-resistant variants) and future pandemics, has now decisively changed.

6.10 Secondly, the Prime Minister and Secretary of State declined to waive any costs risk to the bereaved Claimants, or even to enter discussions about limiting such risk. Issuing claims at that point would therefore have exposed the Claimants, in the midst of bereavement, to open-ended costs. The Claimants are part of the ‘Covid-19 Bereaved Families for Justice’ network (C19BFJ) which has fundraised and campaigned for a public inquiry. The C19BFJ is a network of about 2,800 bereaved family members, but without legal standing for such a claim. It has

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gathered well over 200,000 signatures on a petition calling on the government to institute a public inquiry, and it has pledged a sum of money to facilitate these Claimants taking a claim. If such a claim becomes necessary, the Claimants will seek an assurance that the Defendants will not try to defeat a claim of this importance and public interest by seeking adverse costs against them. If such assurance is not forthcoming, the Claimants will seek a ‘costs capping order’ pursuant to Section 88, Criminal Courts and Justice Act 2015.

6.11 The following matters evidence the imperative for a public inquiry to be instituted without further delay:

6.11.1 The effects of this pandemic are likely to continue for a long time, and perhaps indefinitely. Lessons must be learned swiftly to minimise further deaths and serious illness, not only from this virus but future pandemics.

6.11.2 The bereaved are entitled to an official investigation into the deaths of their loved ones, in which they can effectively participate, to determine a factual narrative as to what happened, to allay rumours and falsehoods, to determine the policy decisions that were effective and those that were ineffective, and to seek to prevent future similar deaths.

6.11.3 Given that it is more than a year since the emergence of the virus, and a year since some of the Claimants lost loved ones, delay in instituting an inquiry will lead to loss of vital evidence by destruction and deletion of records and fading of memories.

6.12 The original LBC argued that the PM and SoS were responsible for the lack of pandemic preparedness and planning in this country, and for failing to take sufficient mitigating measures swiftly enough to prevent such catastrophic loss of life.

6.13 Both domestic law, the European Convention on Human Rights and international agreements such as the Sendai Framework for Disaster Risk Reduction require the UK to identify risks to life and health and to take measures to prevent those risks from occurring, or to mitigate their effects when they do. An investigative obligation arises where it is arguable that such reasonable measures were not taken and persons died or suffered serious illness and effects as a result, or might have done. The hurdle to trigger the investigative obligation is low, and it will be for the Chair or Panel of the Public Inquiry to determine whether in fact there were failures in planning, preparedness and measures taken, or whether everything reasonably practicable was done.

6.14 The suggestion in the reply to the original LBC that there is no obligation to investigate because the virus is a naturally occurring disease is without merit. The relevant jurisprudence is quite clear: the investigative obligation arises out of arguable failures by the state to take all reasonable measures to prevent or mitigate foreseeable risks to life and limb. It is not limited to risks arising from the conscious, intentional or negligent acts of individuals, corporations or institutions including government.

6.15 Furthermore, parliament provided for the institution of Public Inquiries to investigate matters of public concern. It is difficult to imagine a matter of public concern of greater magnitude than the current pandemic: the biggest public health crisis for more than 100 years, seriously affecting the daily lives of the whole population, causing massive loss of life and serious illness, and having dire effects on the economy.

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6.16 At the centre of those public concerns, shared by and illustrated by the losses of the bereaved Claimants, is the fact that the UK has had one of the highest per capita death rates of any country in the world.

6.17 The exact ‘terms of reference’ for the public inquiry should be a matter for consultation and development, but the Claimants assert that they should include whether contingencies and response to the pandemic were appropriate and sufficient with respect to the following list:

- 6.17.1 Pandemic Planning and Preparedness
- 6.17.2 Information and Messaging to the Public
- 6.17.3 Lockdown and Social Distancing Measures
- 6.17.4 Border Controls and Quarantine
- 6.17.5 Test and Trace
- 6.17.6 Support for those Isolating and Shielding
- 6.17.7 PPE
- 6.17.8 Care Homes and other Congregate Facilities
- 6.17.9 Hospitals
- 6.17.10 NHS 111 and Ambulance Systems
- 6.17.11 The Impact on Black, Asian and Minority Ethnic Communities
- 6.17.12 The Impact on Disabled People
- 6.17.13 The Impact on Frontline, Key Workers, and Others Required to Work

6.18 Key questions will include:

- 6.18.1 Given the known serious risks from pandemics, was there a sufficient framework of laws, regulation, policy, planning and contingencies to prevent or mitigate those risks?
- 6.18.2 Were deficits in preparedness known by government and public authorities prior to the outbreak of the virus, including through exercises such as Cygnus in October 2016?
- 6.18.3 Were policy measures including lockdown instituted swiftly enough? The risk from Coronavirus came to the attention of the UK Government by early January 2020. By February, the virus was having a serious impact within Europe, in particular in Italy. The eventual UK lockdown brought in on 23 March 2020 had a significant role in reducing the effects of the disease. However, a lockdown implemented even a week earlier would have halved the deaths from the first wave. Were subsequent measures and lockdowns sufficient and appropriate, or would other decisions have reduced the loss of life and serious illness, and damage to the economy?
- 6.18.4 Similarly, were other measures introduced swiftly enough? Social distancing and prohibiting mass assembly events such as football matches and Cheltenham races being key amongst them.
- 6.18.5 Was the messaging of restrictions and precautions consistent and effective in changing behaviour or did the regular changes in messaging confuse and lead to non-compliance?
- 6.18.6 Should the government have limited non-essential cross-border travel, and instituted testing of all who came into the UK?
- 6.18.7 Given the success of ‘test and trace’ systems in some other countries, why was the UK delayed in establishing such a system? Was the procurement optimal and transparent? How was the effectiveness of the scheme monitored, and what were the results? Should ‘test and trace’ contingency plans, training and infrastructure have been part of preparedness?

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6.18.8 Did contingency plans enable sufficient numbers of tests to be developed, manufactured and rolled-out quickly, and should there have been sufficient arrangements to rapidly expand laboratory provision to enable the testing?

6.18.9 Why was there a shortage of PPE in hospitals, care homes and many essential sectors? Did guidance as to the use of PPE meet international standards? How did the UK's PPE roll-out fare compared with other countries? Did the UK have a large enough stockpile of PPE, and contingency plans to produce and source sufficient quantities that would be needed in an epidemic or pandemic? Why was PPE guidance downgraded in early March 2020?

6.18.10 Should there have been contingency plans to focus measures on care homes, and minimise the chance of the virus to enter and spread within congregate care facilities? In particular should there have been limitations placed upon staff moving between different homes, visits, and discharges from hospitals without clear isolation and testing measures being in place? Were care home residents denied treatment for COVID-19?

6.18.11 Should more have been done to prevent cross-infection within hospitals, including by more rigorous testing, and provision of PPE? What contingency plans were in place to minimise cross-infection from the outset?

6.18.12 Was there adequate contingency to supply medical equipment and medicines, including ventilators, antiviral drugs, and oxygen?

6.18.13 Did the massive demands upon hospitals lead to a reduction in the levels of treatment and care for COVID-19 patients and others?

6.18.14 Were 'Do Not Attempt Resuscitation' orders used inappropriately?

6.18.15 What was the role of NHS 111? What was the advice given by its operators, and what was the effect of the advice? Was NHS 111 able to cope with the demand?

6.18.16 Did ambulance services cope with demand? What were the contingencies to increase supply of ambulance services?

6.18.17 Should decisions have been made to protect BAME communities when the evidence emerged about the disproportionate impact of the virus on these communities? What other measures should have been instituted to meet the structural nature of health inequalities, for example, to mitigate overcrowding, increased risks from multi-generational living (in particular where persons should be shielding), greater representation in frontline roles, and prevalence of high risk underlying conditions? Has systemic racism played a part in disproportionate BAME deaths?

6.18.18 Should the impact of the virus on disabled people, including those with mental health issues, ASD, and learning difficulties, have been given earlier and greater recognition, and should appropriate measures have been implemented to combat it?

6.18.19 Were appropriate measures put in place in relation to key and essential workers given the evidence about their vulnerability to infection?

6.18.20 Was disaggregated data collated and published rapidly enough for decisions to be made to save life and limit infection?

7. The details of the action that the defendant is expected to take

7.1 The pandemic has preoccupied the nation's life for more than the past year. The Prime Minister said in July 2020 that there must be an "independent inquiry". There is now a roll-out of vaccinations, and together with the extended lockdowns in the four nations mean that the reproduction rate is coming down. There is a need for, and now the space and time, for the Defendants to immediately establish a Public Inquiry, and set out an speedy timetable to determine its ambit, terms of reference, and process.

7.2 The establishment of the Inquiry must be done in consultation with bereaved families and other relevant stakeholders. Given the ongoing threat from this pandemic and the potential for

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others to come, the Inquiry should be asked to make such interim recommendations as it can as it goes along, and as soon as possible.

7.3 Given that many of the issues arising are devolved matters, the Claimants are seeking a Public Inquiry established in England. However, the Inquiries Act provisions are sufficiently flexible to allow for similar processes to be set up in Scotland, Wales and Northern Ireland and for the processes to take a joined-up approach to common questions and areas of evidence. The Claimants will work to that end, with other bereaved families from those jurisdictions.

7.4 We note that the usual means by which unnatural or controversial deaths are investigated in England is via the coronial process (similarly in Wales and Northern Ireland, and by Fatal Accident Inquiries in Scotland). For reasons spelled out by the last Chief Coroner (Guidance Note 37) inquests are generally inappropriate to investigate deaths occurring in a pandemic where many of the issues may be generic and may touch on governmental decision-making.

7.5 In cases where Article 2 of the European Convention on Human Rights is applicable, public inquiries have been instituted to comply with the obligations required by Article 2 where either an inquest cannot discharge those obligations or where the public inquiry process is more appropriate.

7.6 The reply to the original LBC is correct to state that there have already been a number of investigations and committees reporting on aspects of the pandemic, and that the European Court of Human Rights is not prescriptive regarding the form of process necessary to comply with Article 2. No doubt many of the investigations and inquiries instituted to date have been useful for their purpose, but none were designed to provide the bereaved with the answers and recommendations to which they are entitled, none has involved their effective participation beyond the providing of evidence, and none could be said to have discharged the Article 2 obligation on the state. It is well-established that a variety of investigative processes can feed into the work of an inquest or public inquiry, and no doubt that will be so here.

7.7 The fact that the European Court of Human Rights has not been prescriptive regarding process merely reflects the different legal systems of the 47 states of the Council of Europe. In the current circumstances, where inquests are generally inappropriate, only a statutory public inquiry can provide a process which can compel witnesses to appear, compel institutions and individuals to produce all potentially relevant material, hear evidence on oath, and ensure the effective participation of the bereaved.

8. ADR proposals

8.1 No formal ADR process is apt for this matter. From the outset, by letter dated 11 June 2020, and repeated in the original LBC and a series of other letters, the bereaved families asked the Prime Minister and Secretary of State to meet with them to hear their concerns. On Sky News on 26 August 2020, the Prime Minister indicated he would meet with the bereaved, however, on 2 September 2020, at Prime Minister's Questions, the Prime Minister incorrectly asserted that he could not meet the families because of extant litigation. The request for the Prime Minister and Secretary of State to meet with the bereaved was designed precisely to obviate the need for any claims to be issued.

8.2 The bereaved have no interest in taking claims unless absolutely necessary. In each case the bereaved Claimant wants to know exactly what happened, what factors played a part in the deaths, whether those factors made the deaths preventable, and how large-scale death may be

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prevented in the future. The request for the Prime Minister and Secretary of State to meet with the bereaved Claimants and the 'COVID-19 Bereaved Families for Justice' group is repeated here.

8.3 In addition, if there is an intention to honour the commitment made by the Prime Minister in July 2020 to hold an "independent inquiry", we request that the Defendants' officials and lawyers meet with the Claimants' representatives to consider how the inquiry process can be taken forward, without delay, and without the need for the Claimants to issue an application in the Administrative Court.

9. The details of any information sought

9.1 In addition to a decision to institute a public inquiry, the Claimants seek:

9.1.1 Information regarding measures taken to ensure all relevant records and minutes which may be required by a public inquiry have been retained, and

9.1.2 An assurance that the Defendants will not seek costs, given the extraordinary nature of the context of this proposed claim, the fact that the Claimants are bereaved, and the fact that the Claimants stand to make no financial gain from it. If that request is refused, we ask for an estimate of the Defendants' costs if the proposed claims are issued and defended. This information is required to inform a Cost Capping Order application.

10. The details of any documents that are considered relevant and necessary

10.1 The Defendants should consider the original LBC and documents referenced therein.

11. The address for reply and service of court documents

11.1 Please address all replies to Elkan Abrahamson, Broudie Jackson Canter Solicitors, 3rd Floor, Walker House, Exchange Flags, Liverpool, L2 3YL

12. Proposed reply date

12.1 The Defendants have been 'on notice' of the potential claims since the original LBC. A substantive reply is therefore sought within 14 days of the date of this letter. After that date, the Claimants will issue claims for judicial review as soon as they are in a position to do so, unless a satisfactory outcome has been achieved.

Yours sincerely



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