

Consultation on the UK COVID-19 Inquiry draft Terms of Reference: Submission from the Parliamentary and Health Service Ombudsman

31 March 2022

About the Parliamentary and Health Service Ombudsman

The Parliamentary and Health Service Ombudsman (PHSO) provides an independent and impartial dispute resolution service for complaints that have not been resolved by the NHS in England and UK Government Departments.

We look into complaints where someone believes there has been injustice or hardship because an organisation has not acted properly or has given a poor service and not put things right. We share findings from our casework to help Parliament scrutinise public services and to help drive improvements in public services and complaint handling.

1. Do the Inquiry's draft Terms of Reference cover all the areas that you think should be covered by the Inquiry?

- 1.1 The COVID-19 pandemic has had an unprecedented impact on the lives of people in this country. It is imperative that Government is truly open to learning the lessons from *all* aspects of its handling of the pandemic and adopts a robust and forensic approach. The draft Terms of Reference do not achieve this. PHSO's view is that the language lacks clarity and is both insufficiently broad in scope and insufficiently specific with regard to the areas included.
- 1.2 The Inquiry should consider the cumulative impact on individuals, and the extent to which this was considered during the progress of the pandemic (as new evidence became available). The Inquiry should consider:
 - i. Any failings in service provision before the pandemic, including (but not limited to) those resulting in unequal outcomes across protected characteristics and socio-economic groups
 - ii. The extent to which these failings in service provision were exacerbated by measures implemented during the pandemic
 - iii. The extent to which the demand for services was exacerbated by measures introduced during the pandemic (e.g. increased demand for mental health support or women's refuges as a result of lockdowns).
 - iv. The extent to which individuals experienced cumulative harm resulting from multiple aspects of the handling of the pandemic
 - v. The extent to which this could have been foreseen, investigated and addressed by the Government at an earlier stage of the pandemic.
- 1.3 The draft Terms of Reference suggest the Inquiry will consider the pandemic response 'up to and including the inquiry's formal setting-up date'. This cut-off does not recognise that the pandemic response is ongoing. The Inquiry should be allowed to consider activity taking place while it is underway.
- 1.4 The pandemic affected the resourcing and management of *all* public bodies, not just the NHS. The impact on services includes the shift to home-based working and its effects upon service provision, and the diversion of resources to deal with emerging issues. While those impacts may be secondary to the public health response, they significantly impacted people's lives. This must be considered, alongside the effectiveness of remote service provision.

Part 1: Central, devolved and local public health decision-making and its consequences

1.5 It is not sufficiently clear what is meant by ‘public health decision-making.’

1.6 Considerations in this section should include:

- i. **Preparedness and resilience:** The Inquiry should look at whether, and how, learning from previous pandemics and emergencies was used in the COVID-19 response. Resilience is not only about the ability of services to adapt in a crisis, but about their fitness and capacity beforehand. Resilience must be considered in the round, given the pandemic exacerbated existing issues including inequalities, administrative delays and wait times for care.
- ii. **How decisions were made, communicated and implemented:** How decisions were made must include whether, and how, stakeholders were engaged in the process. The Inquiry should also consider how service changes were conveyed, such as the closure of consular services or delays to court proceedings.
- iii. **Lockdowns:** Lockdowns should be considered in terms of the differential impact on people/groups, and with particular reference to older people living on their own, young people and parents of young children. The Inquiry should consider broader issues of accountability that arise from this: for instance, prisoners and care home residents were deprived, not only of visitors, but of the scrutiny afforded by routine inspections.
- iv. **COVID-19 testing:** Issues related to the upscaling of testing capacity in the early phase of the pandemic must be examined in detail. The Inquiry should look at whether preparations had been made, prior to March 2020, to upscale testing capacity, at pace, in the event of a pandemic. Capacity had a significant impact on NHS and social care in spring 2020, especially in relation to the safe discharge of patients from hospitals to care homes.
- v. **Travel and borders:** The Foreign, Commonwealth and Development Office’s support for UK citizens overseas must be examined, in particular due to issues with repatriation in the early phase of the pandemic.
- vi. **Education:** Consideration should also be given to changes to examinations and assessments, the cessation of inspections and changes to higher education.
- vii. **Safeguarding:** The effect of the pandemic on safeguarding measures should be considered, including for vulnerable children and victims of domestic abuse.

The health and social care response

1.7 The section of the draft Terms of Reference that refers to the ‘management of the pandemic in hospital’ should look beyond COVID care. It must examine the impact of pandemic-related pressures on *all* areas of hospital provision, including maternity services and outpatient care.

1.8 This section of the Terms of Reference should include:

- i. **Primary and community care:** These services are a gateway to the NHS, especially for the vulnerable and shielding. There is often interaction between these services and care provided by hospitals. It is essential that the response of GP, dentist, pharmacy, optician and other community services be considered, both in terms of availability of service and the efficacy of remote provision.
- ii. **Ambulance services:** It is remiss not to examine the response of ambulance services, given known issues with response times and handovers at A&E.

- iii. **Shielding:** The Inquiry should consider how shielding lists were generated and whether local networks were engaged in the process.
- iv. **Mental health:** It is critical that mental health care be added to the Terms of Reference. The Inquiry should examine capacity before the pandemic, the pandemic's impact on provision, the impact of the pandemic on people's mental health and the impact of measures introduced during the pandemic.
- v. **Communication:** There is a need to think more broadly about communication here, including a) communication between clinicians and carers/families/next of kin; b) what was available to patients/residents to allow them to communicate with carers/families/next of kin and c) the communication of the vaccination programme, particularly to ethnic minority communities.
- vi. **Visiting:** The Inquiry should also consider visitor guidelines and visitor access for inpatients and those in residential care.
- vii. **Waiting times:** The diversion of resources to treat COVID-19 impacted the prompt diagnosis and treatment of other health conditions. The Inquiry should consider how waiting lists are prioritised and wait times communicated.

The economic response - debt management

- 1.9 The economic impact of the pandemic should consider debt management, including rent/mortgage suspensions and evictions/repossessions. Consideration should be given to how suspensions worked, their removal and their impact on all parties.
- 1.10 While 'benefits and sick pay' are included in the draft Terms of Reference, the wider work of the Department for Work and Pensions should be examined, including complaint handling, Jobcentre closures and changes to sanctions.

Part 2: Identifying lessons to inform preparations for future pandemics

- 1.11 Future pandemics should not be considered at the expense of other threats. Lessons generated by the Inquiry must inform preparedness for *all* future crises.
- 1.12 The Government has previously undertaken lessons learned exercises in response to other pandemics¹. PHSO would expect the recommendations from previous exercises to be examined and an assessment made as to whether they were met.
- 1.13 The Inquiry should consider broadening the scope beyond bereaved families, those who have experienced hardship or loss, health and care workers and other key workers. Evidence should also be invited from carers, students, parents of school-age children and volunteers, among others, and include representatives of groups that experienced unequal impact.

Accountability

- 1.14 An Inquiry is a long, costly and complex undertaking. Previously, the Government has argued that public inquiries have not been needed because other institutions, including Ombudsman services, exist to provide scrutiny². The Inquiry should examine the effectiveness of the legislative framework and mandate of each of those bodies in holding public services to account and consider whether there is

¹ This includes the independent review into the UK's response to the 2009 influenza pandemic (published in July 2010), which made twenty-eight recommendations for the management of future pandemics.

² Institute for Government (April 2021), '[The coronavirus inquiry: The case for an investigation of government actions during the Covid-19 pandemic](#)', p.5.

scope for increasing their powers, in particular with regard to proactive investigations of critical issues and events affecting public service delivery.

- 1.15 Complaints provide valuable feedback that, when embraced, can drive change. During the pandemic, many services redeployed complaint handling staff to help manage frontline pressures. In exploring questions of accountability, the Inquiry should examine the impact of the pandemic on complaint handling functions, in order to understand:
 - i. The experiences of complainants during the pandemic
 - ii. The resourcing of complaint handling functions during the pandemic
 - iii. The ability of complaint handling functions to make prompt improvements
 - iv. Whether, and how, learning was shared across services.
2. **Which issues or topics do you think the Inquiry should look at first?**
 - 2.1 PHSO has chosen not to comment on this question.
3. **Do you think the Inquiry should set a planned end-date for its public hearings, so as to help ensure timely findings and recommendations?**
 - 3.1 While timeliness is important in ensuring prompt improvement, it would be unhelpful to set arbitrary deadlines that could constrain the process. The Inquiry may wish to consider publishing findings and recommendations in phases, rather than as a single overarching report. That way, learning can be acted on promptly. Improvement to public services, including health, cannot be delayed.
4. **How should the Inquiry be designed and run to ensure that bereaved people or those who have suffered harm or hardship as a result of the pandemic have their voices heard?**
 - 4.1 In order to broaden and diversify the range of people consulted, the Inquiry should remove or mitigate barriers to participation, which include:
 - i. Awareness of the Inquiry
 - ii. Understanding of Inquiry processes
 - iii. Varying ability, and confidence, of witnesses to engage in the Inquiry
 - iv. Mistrust in public institutions
 - v. Witnesses experiencing grief and trauma.
 - 4.2 The Inquiry should consider, consult on, and clarify the forms of support available to witnesses, including:
 - i. Closed evidence sessions to protect those speaking out on difficult issues, or under difficult circumstances
 - ii. Proactive, tailored outreach with diverse groups and individuals
 - iii. Use of technology: While online engagement is a barrier for some, it can be an enabler for others. For example, people with atypical neurological conditions or physical disabilities may find it easier to give evidence via video link.

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