

IN THE UK COVID-19 PUBLIC INQUIRY

BEFORE BARONESS HEATHER HALLETT

IN THE MATTER OF:

THE PUBLIC INQUIRY TO EXAMINE THE COVID-19 PANDEMIC IN THE UK

Application for Core Participant status on behalf of the Covid 19 Bereaved Families For Justice Group and individual bereaved family members in their own right.

Application to be appointed Recognised Legal Representative on behalf of the above named UK Group and Individuals

Summary

1. Covid 19 Bereaved Families For Justice (CBFFJ) began as a campaign group of family members bereaved by Covid 19 who met through a Facebook page in about April 2020. The group subsequently formalised into a limited company. The Group has always been and remains UK-wide. The Facebook group currently has about 6,500 members. Of those who have provided their details (3179) 55 are from NI, 222 from Scotland, 163 from Wales and 2739 from England.
2. Broudie Jackson Canter (hereafter BJC) solicitors and a group of counsel have acted for the group since its inception, and also for a large number of individuals bereaved by Covid in their own right, most of whom are also supporters of the group. The number of families of deceased individuals represented by BJC and counsel currently stands at approximately 1,453 (the number of individual bereaved who we are assisting is of course much higher) and this number is anticipated to rise significantly as the Inquiry process evolves. We will supply a register of applicants in due course if requested. We confirm that all these applicants wish to and consent to be designated as Core Participants and this represents 1453 deceased.
3. There are in addition about 157 families who have approached us but not yet returned authority for us to ask for CP status on their behalf. We will add these families to the register as appropriate in due course.
4. This is an application for Core Participant (CP) status for both the CBFFJ group and the individuals on the register, pursuant to Rule 5(1) of the Inquiry Rules 2006. The group and bereaved individuals plainly have a significant interest in numerous important aspects of the matters to which the Inquiry relates: Rule 5(2)(b).
5. We have previously requested that those clients who are signed up to both BJC and a firm in a devolved nation or jurisdiction should be able to apply for status via both firms and a lawyer from each firm be appointed as RLR. It has been indicated to us by Solicitor to the Inquiry that this not possible and only one RLR can be appointed per

CP.

6. If the Chair does not accept that RLR can be granted to two firms for one client, then Elkan Abrahamson of BJC should be designated as the RLR for the CBFFJ (UK) group and each individual who has instructed BJC: Rule 6, with the following caveat. BJC and counsel have endeavoured to reach a working arrangement with legal teams from the devolved nations and jurisdictions to ensure that all bereaved families are fully represented on UK and devolved issues before the UK Inquiry, and devolved inquiries. We have pursued an approach whereby no families will be marginalised and public resources will be protected by collaborative working. That approach would mean that devolved teams would deal with all devolved matters and issues before the UK Inquiry, and they would be fully involved in all UK-wide issues by integration into the UK team or by agreement as to how their team will work together with the central team (which model being their choice following discussion). We have reached agreement in principle with the NI solicitors (PA Duffy) and their counsel, and on that basis, we are content that families who have instructed both PA Duffy and BJC should have the former as their RLR. The position regarding families whose loved ones died in Wales or Scotland is yet to be resolved. CBFFJ (UK) represents families from all parts of the UK, including the devolved nations and jurisdictions, and similarly BJC is instructed by families from each nation/jurisdiction. Recently, a number of bereaved family members have indicated that they wish to be represented only by legal teams from Wales and Scotland for all matters. We are unclear as to how many family members this involves, and we await a response from the legal teams involved as to how they envisage joint working can work.
7. We have considered the Chair's Core Participant Protocol July 2022 for which our thanks. We note the reference to granting CP status by module and that there will be 'few if any' who would acquire CP status for the whole Inquiry. We submit that both the group and the individuals should be granted CP status for the whole Inquiry; not only is it clear that they will satisfy the criteria for every module, it is also the case that requiring the bereaved to apply for every module separately will increase the stress on the bereaved. However, if the Chair is not minded to do this, we ask her to treat this as an application for CP status for the first module.

CBFFJ

8. A short summary of CBFFJ's establishment and work is set out below. The focus has been on brevity given the nature of this application.

Company details

9. CBFFJ is a private Company limited by guarantee, incorporated 1st December 2020. The Company Number is 13055461. The Company Directors are Matt Fowler, Charlie Williams, Deborah Doyle, Hannah Bland, Stephen Hamer, Helen Brewer, Naomi Fulop, Arshiyah Kaiser and Matt Iszakovits-Manning. All of the Directors are bereaved family members.
10. The Company's objectives include:

"To secure access to and the benefit and protection of public law and the sound

administration of the law for those in need of the same by reason of Covid 19.”

CBFFJ and bereaved family member instructions

11. BJC is instructed by CBFFJ to act on its behalf and to seek Core Participant status in this Inquiry. We are also instructed by a number of individual bereaved family members, most of whom are supporters of CBFFJ. Other individuals will wish to be joined to the list as the inquiry progresses.

CBFFJ establishment and work during the pandemic

12. CBFFJ began life as a Facebook page set up by Jo Goodman and Matt Fowler to offer support to bereaved. The current Company Directors are listed above at para. 9 above. It quickly became apparent that members wanted an early independent Public Inquiry into the government handling of the pandemic and that this should be established under the Inquiries Act 2005.
13. CBFFJ took the view that it was for an Inquiry to consider the level of UK preparedness for such a pandemic and to determine the propriety and efficacy of decisions taken. The group's view was that the sooner an Inquiry got under way, the more lives could be saved, in particular because a Public Inquiry can make interim recommendations as it progresses. For this reason, the vast majority of their work was directed towards securing an Inquiry as soon as possible. However, they also campaigned on other covid related issues in order to identify lessons and potential improvements and assist in the prevention of future deaths.
14. Through the summer of 2020, the CBFFJ lobbied the Prime Minister and Government, and campaigned for a Public Inquiry to begin as soon as possible. In June 2020, they wrote to the Prime Minister (PM) and the Secretary of State for Health and Social Care (SSHSC) requesting an immediate Public Inquiry and provided a sizeable public petition calling for the same. In July 2020 the group wrote a careful, detailed pre-action letter to the PM seeking an immediate Public Inquiry. At that time, the PM rejected these requests.
15. In October 2020, the CBFFJ sent a briefing to members of the House of Lords regarding the financial challenges facing those bereaved by Covid 19 and calling for the NHS and Social Care Life Assurances Scheme to be re-assessed and extended to the families of all Key Workers who had died of Covid. The briefing also suggested that policy makers should ensure that families who received a lump sum did not have Universal Credit payments stopped as a result, and that more should be done to address the rising costs of funerals.¹
16. On 3 December 2020, the CBFFJ sent a further, detailed letter to the PM repeating calls for an Inquiry, but also for the effectiveness of the Test and Trace Programme to be assessed, and an immediate review into the evaluation of infection control measures and how risk measurements were communicated to the public, to identify why Black and Ethnic Minority communities were disproportionately affected by Covid 19, to address these factors, and to evaluate the effectiveness of NHS 111 services to identify risk and

¹ <https://committees.parliament.uk/writtenevidence/14401/pdf/>

patients' needs. This letter was signed by 23 partner organisations.²

17. On 3 February 2021, a briefing was sent to MPs ahead of the House of Commons Adjournment debate on establishing a bereavement standard to support families. The briefing called for a national system of inclusive bereavement support, involving helplines, professionally facilitated peer support groups and therapy groups, befriending services, and counselling and trauma informed psychotherapy for those most in need. This was signed by 61 organisations and academics.³
18. In February 2021, Charlie Williams, one of the group's directors, addressed the All Party Parliamentary Group (APPG) on Adult Social Care with regards to issues the group had identified around care homes.⁴ The Care Homes sub-group of CBFFJ has also been engaging with the Care Quality Commission, resulting in improvement in the transparency of information around Covid 19 within care homes.
19. On 19 November 2021, CBFFJ made a submission to the APPG on Hospice and End of Life Care Review into the Lasting Impact of Covid 19 on Death, Dying and Bereavement.⁵ The submission was informed by research carried out in collaboration with Rare Consulting.
20. On 22 November 2021, Liverpool University's report, 'The Lived Experience of People Bereaved by Covid 19', created in collaboration with many members of CBFFJ, was handed to the Care Minister, Gillian Keegan MP, and sent to all MPs.⁶ A dossier of personal bereavement testimonies provided by members of the group was also provided to Gillian Keegan MP to illustrate the need for national provision of bereavement support.
21. The group held meetings with MPs and Peers around the challenges bereaved families experienced accessing the Life Assurance scheme and provided a written briefing.
22. In the Summer of 2020 and the Spring of 2021, the CBFFJ set out the key issues that the bereaved families considered should be included in a Public Inquiry. Following the announcement by the PM in May 2021 that a Public Inquiry would be established, CBFFJ held a further consultation process with its supporters and produced the first draft of its proposed Terms of Reference which were sent to the PM and Secretary of State for Health and Social Care. The CBFFJ carried out further work in the Autumn of 2021 on the main issues which the Inquiry should address. This led to the publication of a document in December 2021, 'Learn Lessons, Save Lives', which was endorsed by a number of NGOs and Unions.⁷
23. In January 2022, a further amended draft Terms of Reference document was published and sent to the PM and SSHSC.
24. The CBFFJ was responsible for establishing and maintaining the National Covid

² [Letter to Prime Minister dated 03.12.20](#)

³ [Briefing to House of Commons re Support dated 03.02.21](#)

⁴ [Charlie Williams writes of the work of the Covid-19 Bereaved Families for Justice.](#)

⁵ [Submission to the APPG on Hospice and End of Life Care Review](#)

⁶ [The Lived Experience of People Bereaved by Covid-19](#)

⁷ [Learn Lessons Save Lives](#)

Memorial Wall, a wall facing the Houses of Parliament painted with hearts representing each of the more than 200,000 people who have lost their lives to Covid.⁸

25. From its inception, the group has held meetings with numerous MPs and members of the House of Lords. The PM met to discuss the Inquiry and other issues face to face with members of the group at Downing Street in September 2021. The group has also met with the leader of the opposition, Sir Keir Starmer MP, and the leader of the Liberal Democrats, Sir Ed Davey MP. In November 2021, the group met with Gillian Keegan MP, Minister of State for Care, to discuss bereavement support.
26. The CBFFJ includes families from across the UK, and has groups in Scotland, Wales and Northern Ireland. The group has always been united in wanting a UK Public Inquiry to investigate decisions and issues which are related to the whole of the UK, and complementary Inquiries in the devolved nations and jurisdictions to deal with decisions and issues particular to those administrations.
27. Family members in Scotland have successfully lobbied for a devolved inquiry, and families in Wales and NI continue to lobby for devolved inquiries in their jurisdictions with the full support of the UK group.
28. Since the original application was made, the Inquiry has conducted a Consultation on the draft terms of reference with a number of parties including bereaved families. CBFFJ was instrumental in assisting the Inquiry Legal Team and Secretariat in the arranging for a cross section of the bereaved to be present at each of the 11 meetings across the UK to ensure the Chair heard from a broad spectrum of those who lost loved ones in a variety of circumstances. We understand this strategic organisation has assisted the Chair in appreciating themes and issues that were not previously so clearly on the radar. This has fed into the drafting of the recommended Terms of Reference which have now been approved by the Prime Minister.
29. As solicitors acting on behalf of the Group and the Individuals, we have liaised with the Solicitor to the Inquiry team and provided Submissions on both the process of the Inquiry and the Terms of Reference. We have helped to coordinate responses from the legal teams to assist with the organisation of a meeting with STI. We all attended this meeting at the offices of Field Fisher on 30 May where we articulated the concerns of our clients, offered assistance in the form of meaningful dialogue on issues still to be resolved by the Chair and demonstrated our eagerness and that our clients be fully engaged on all matters.
30. We have consulted with our families to formulate a proposal on their evidence to the Inquiry including memorials to their loved ones (pen portraits) the circumstances of death, and the effect of bereavement on them. The objective of that proposal was to assist the Chair and ILT in determining the best way for the bereaved families to not only participate, but to do so in such a way that is meaningful for both the bereaved in terms of providing them with a voice, and for the Inquiry in terms of contributing to its understanding of the evidence that should be heard in due course. We have also attempted to engage with the Inquiry regarding the listening exercise.

⁸ [Walk the National Covid Memorial Wall](#)

Reasons that CP status should be granted

31. As the Chair will be well aware, pursuant to Rule 5(2)(b) of the 2006 Rules, in deciding whether to designate an applicant as a CP, the Chair must in particular consider whether the applicant has a significant interest in an important aspect of the matters to which the Inquiry relates.
32. As Rule 5 makes clear, Rule 5(2) is not exhaustive⁹, and the Chair is required to consider other relevant factors, as a matter of public law and in accordance with the s.17 duty to act with fairness. Significant interest is therefore one relevant factor alongside a number of others to be considered when determining CP status.
33. In determining this application for CP status, the Chair is invited to pay particular regard to the following factors, all of which favour granting status to the present applicants:
 - a. Significant interest. Put shortly, the interest of the CBFFJ group, and the individual bereaved family members listed in Appendix A, is not merely significant, it is overwhelming. Their desire is to understand how and why their loved ones came to die and to prevent others suffering the same loss and grief. At its core, the Inquiry will examine the same issues. The present applicants therefore have a significant interest that dovetails directly with the work of the Inquiry. As Sir Christopher Pitchford indicated when Chairman of the Undercover Policing Inquiry, “[t]he purpose of designation [as a CP] is to provide those most intimately concerned with the work of the Inquiry with the means to participate effectively”.¹⁰ It is respectfully submitted that the bereaved are those most intimately concerned with the work of this Inquiry.
 - b. Active involvement. CP status is generally reserved for those with a key role to play in the Inquiry and who expect to take an active part in the Inquiry’s proceedings. This was stressed in the Penrose Inquiry, where the Chairman emphasised that CPs are designated “*in the expectation that [they] will take an active part in the proceedings of the inquiry, either throughout its proceedings or for a material part of them.*”¹¹ CBFFJ and the Individuals (who can be identified as required) wish to take an active part in the Inquiry; that is consistent with their significant interest in the Inquiry’s work and the work they have done over the last two years since the group’s establishment.
 - c. Management of the Inquiry. Self-evidently, the Chair and her team face a significant exercise in managing the Inquiry so that it identifies and delivers on the appropriate Terms of Reference effectively and efficiently. CBFFJ and the identified individual applicants both understand and wish to assist the Inquiry in that important exercise. It is respectfully submitted that granting CP status to the present applicants will further those aims: it will ensure that an appropriate, established and informed cohort of the bereaved are actively involved in the Inquiry’s work, supported by experienced solicitors and counsel. That will ensure effective and efficient assistance to the Inquiry, proper bereaved

⁹ For example, see the ruling of Leveson LJ as Chairman of the [Leveson Inquiry: Core-Participants-final 14.09.11 at \[8\]](#)

¹⁰ [Undercover Policing Inquiry, Core Participants Ruling \(21 October 2015, as revised\), at \[2\]](#)

¹¹ [Penrose Inquiry, Key Documents and Guidance](#), Note on Designation of Core Participants dated 30.09.10 pg 2

participation, and cost-effectiveness, all of which are consistent with the s.1 aim of addressing public concern, the requirements of fairness under s.17, and the establishment of overarching public confidence in the Inquiry's process.

- d. Assistance to the Inquiry in identifying and discharging its Terms of Reference. Previous inquiries have repeatedly identified the relevance of this factor to CP determinations. For example, in the Infected Blood Inquiry the Chairman has indicated that when assessing CP applications, he will consider *“the extent to which the individual can show that their involvement would add further to achieving the aims of the Inquiry”*.¹² In light of the background summarised above, the CBFFJ and the individual family members are uniquely qualified to raise and identify relevant issues for the Inquiry and so contribute to the effective investigation of the facts in question. Family members can of course speak to their own unique experiences and those of their loved ones, but many of them also have their own expertise, and as a group they can also draw on their broad and deep campaigning work over the last two years to assist the Inquiry in its work.
- e. The need to ensure that a range of interests is represented. A number of previous inquiries have emphasised the importance of this factor, particularly where there is the potential for a vast number of CPs to be designated. For example, in the Leveson Inquiry the Chairman had regard to whether those designated as CPs would be *“representative of aspects of public concern”*.¹³ Similarly, the Chairman of the Penrose Inquiry identified as relevant *“the need to ensure that those who are designated adequately illustrate the range of interests that are addressed by the inquiry's terms of reference”*.¹⁴ The present applicants will ensure that the Inquiry includes representation of a broad spectrum of those bereaved by Covid, a matter that is plainly essential in order for the Inquiry properly to address public concern. This can be achieved through the designation of organisations (such as CBFFJ), as is commonplace in inquiries under the 2005 Act.¹⁵
- f. Prior interest in the establishment of the Inquiry. In the Infected Blood Inquiry, Sir Brian Langstaff included as a relevant factor whether *“individuals have openly and for some time campaigned for an inquiry, or where they have formed associations with others to discuss the issues and promote certain outcomes, they have demonstrated by those actions an interest in the workings of the Inquiry as well as how important the conclusions of the Inquiry are for them. In general, those individuals should be granted core participant status if they wish it.”*¹⁶ The present applicants have long campaigned for the establishment of this Inquiry and their work demonstrates precisely the interest and importance to them that Sir Brian drew attention to. That strongly favours their application for CP status.

¹² [Infected Blood Inquiry, Chair's Statement of Intent on Core Participant Status, at \[25\]](#) see also [Penrose Inquiry, Note on Designation of Core Participants \(30 September 2010\), pp.3 and 6](#) and the Manchester Arena Inquiry, [Ruling on survivor application, dated 21.04.20 at \[35\]-\[36\]](#)

¹³ [Leveson Inquiry, Further ruling on Core Participants \(Module 2\) \(17 February 2012\), at \[1\]](#)

¹⁴ [Penrose Inquiry, Note on Designation of Core Participants \(30 September 2010\), pp.3 and 6](#)

¹⁵ [Penrose Inquiry, Guidance Note - Core Participants \(undated\)](#)

¹⁶ [Infected Blood Inquiry, Chair's Statement of Intent on Core Participant Status, at \[13\]-\[15\]](#)

- g. The Article 2 right to effective participation. The bereaved families have the right to participate effectively in the Inquiry under domestic law and Article 2 ECHR. Speedy designation of CBFFJ and the individual families will enable their full participation in the Inquiry from the outset.
34. It follows from the above that granting CP status to CBFFJ and its supporters, and the represented individuals, would, inter alia:
- a. Be consistent with the applicants' significant interest in the Inquiry;
 - b. Assist the Inquiry, including by facilitating a common source of experience and expertise;
 - c. Allow for the efficient, timely and cost-effective management of the Inquiry;
 - d. Ensure that an established, broad and informed range of bereaved interests are represented;
 - e. Ensure that the rights of the bereaved to effective participation are met; and
 - f. Ensure public confidence in the Inquiry, as all of the matters at (a)-(e) are fundamental to building and maintaining public confidence in the Inquiry's crucial work.

CP representation

35. While we appreciate that representation is a separate issue which follows a decision on CP status, we observe at this stage that allowing the participation of the CBFFJ Group, and a large group of individuals with similar interests, will allow for a single, or collaborative, expert and experienced legal team to represent them, which will itself assist with the management of the Inquiry and the efficient use of resources.
36. Rule 7 provides for a limitation on proliferation of representation, for example to where there is an actual legal conflict of interest, and we invite the Inquiry to keep this in mind when considering issues of representation.

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