

John Swinney MSP,
Deputy First Minister and Cabinet Secretary for Covid Recovery
Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

cc: The Hon. Lady Poole

17 May 2022

Dear Deputy First Minister,

Scottish COVID-19 Inquiry

We write in connection with the Scottish COVID-19 Inquiry (the Inquiry), which is currently in the establishment phase, ahead of a public launch which we understand is scheduled for early summer.

We provided a [detailed response](#) to the Scottish Government's consultation on the Inquiry's Terms of Reference and subsequently attended constructive meetings with Scottish Government officials to discuss the importance of embedding Human Rights into the design, processes and outcomes of the Inquiry.

We note that the [published ToR](#) did not reflect all of our recommendations. We understand that the present establishment phase allows for reflection upon and adjustment of the published ToR, including to take into account the scope of the UK Inquiry. We are therefore writing to request that our recommendations be revisited to ensure that

Bridgeside House, 99 McDonald Road, Edinburgh, EH7 4NS
0131 297 5750

hello@scottishhumanrights.com
www.scottishhumanrights.com

the ToR are as strong and as clear as possible in terms of embedding human rights into the Inquiry.

We note that [draft Terms of Reference](#) for the UK Inquiry were published in early March 2022, and were subject to a four-week consultation and the Chair, Baroness Hallett, recently published recommended amendments to the draft ToR, so as to better reflect the views and concerns of those who responded to the consultation. There are a number of respects in which the approach recently outlined by Baroness Hallett aligns more closely with our recommendations for the Scottish Inquiry.

For example, one of our key recommendations was that the ToR stipulate that the Inquiry take a human rights based approach (HRBA) to ensure that human rights are respected, protected and fulfilled in the design, processes and outcomes. Applying a HRBA means that every aspect of the process must support fundamental principles of Participation, Accountability, Non-Discrimination, Empowerment and Legality (known as PANEL principles) (see section 2 of our submission). We are pleased to note that Baroness Hallett has decided to adopt the ‘PANEL’ principles in carrying out the UK Inquiry’s work.¹

We also recommended that the Scottish ToR should require examination of the full range of human rights and equality impacts, particularly on those most impacted by pandemic response measures (see section 8 of our submission), a view which was widely shared among civil society organisations. We are therefore also pleased to note Baroness Hallett’s recommendation that the UK ToR be reframed “to put possible

¹ [FINAL Consultation Summary Report \(public-inquiry.uk\)](#) at page 18

inequalities at its forefront so that investigation into any unequal impacts of the pandemic runs through the whole Inquiry.”²

The Scottish ToR defines the scope of the Inquiry in terms of “the strategic elements of the handling of the pandemic,” but it is not clear which of the many relevant duty-bearers will be scrutinised. We previously recommended that the Inquiry’s scope should cover the full range of responsible actors across all public bodies and those performing public functions [Recommendation 7]. We note that the UK Inquiry will look at the responses of UK Government, Devolved Administrations, local government, and many other parts of the state.

In terms of the design of the inquiry, we note that the announcement of Baroness Hallett’s appointment included reference to the future appointment of “additional panel members ... to make sure the Inquiry has access to the full range of expertise needed to complete its important work.”³ We refer to section 6 of our consultation response, which outlined the benefits of appointing a panel with diverse experience, ideally reflective of those most impacted by the pandemic and/or expertise in the human rights based approach. We note that there was broad consensus among Scottish stakeholders that this kind of support for the Chair would be beneficial (see the [Analysis of Stakeholder Views at Section 1.9](#)).

In terms of the areas that will be covered by the Inquiry, we note that the ToR for the Inquiry do not appear to cover criminal justice. We trust that this was an oversight in the initial draft and that this will be remedied in the final version of the ToR. Further reflection will also no doubt be undertaken in terms of the delineation between the two inquiries, to

² [FINAL Letter - Chair to PM letter - ToRs consultation recommendations \(public-inquiry.uk\)](#)

³ [Prime Minister announces COVID-19 Inquiry Chair - GOV.UK \(www.gov.uk\)](#)

ensure that all relevant areas are covered between the two. For example, we note that – being a reserved matter - ‘immigration and asylum’ properly features in the UK ToR. However, it is unclear whether this will consider impact on refugees and asylum seekers in Scotland in respect of devolved matters such as accommodation, health and education. We trust that the precise delineation of the two inquiries will be made clear in the updated ToR.

In conclusion, we ask that in reviewing the ToR with Lady Poole, the Scottish Government revisit the Commission’s full recommendations, and reflect on the points set out above.

We would welcome an opportunity to discuss this further at your convenience.

Yours sincerely,

Dr. Anna Black
Commissioner