

Preparing for the COVID-19 public inquiry

The Prime Minister has announced that the Government will launch an independent Public Inquiry into the Government and public sector response to the COVID-19 pandemic.

Public Inquiries take place when there is public concern about an event. The enquiry can ask for a broad range of documents and records, and on occasion witness testimony from senior managerial and clinical staff. The organisation wants to be transparent and provide full support to any requests for information.

As an organisation, we have not yet been informed of the level of involvement and work that will be required to meet our obligations.

This document therefore outlines what we know about the inquiry so far, and what we need to do to ensure we retain all of pandemic related documents and communications.

A further update will be provided in February 2022, once the full terms of reference are approved at a national level.

Julie Williams
Covid-19 Inquiry Lead
Assistant Director of Corporate Governance, Performance & Risk.

26 January 2022

Preparing for the COVID-19 public inquiry

The Prime Minister has announced that the Government will launch an independent Public Inquiry into the Government and public sector response to the COVID-19 pandemic.

Public Inquiries take place when there is public concern about an event. The enquiry can ask for a broad range of documents and records, and on occasion witness testimony from senior managerial and clinical staff. The organisation wants to be transparent and provide full support to any requests for information.

As an organisation, we have not yet been informed of the level of involvement and work that will be required to meet our obligations.

This paper therefore outlines what we know about the inquiry so far, an initial judgement on resources and early planning.

1. Introduction & Overview

- **Statutory public inquiries**
 - Held under The Inquiries Act 2005 (“the Act”); The Inquiry Rules 2006 (“the Rules”)
 - Held where it appears to a Minister that events “have caused or are capable of causing public concern” (Section 1 of the Act) e.g. large scale loss of life, serious health and safety issues
 - No determination of civil or criminal liability (s.2(1))
 - Legal powers to compel witness evidence
 - Legal procedures and framework for various aspects of the process e.g. appointment of chair
- **Appointment of the Chair confirmed 15 December 2021**
 - An inquiry can be undertaken by a chairman alone or by a chair and one or more other members (section 3 of the Act)
 - *Baroness Heather Hallett*, who previously led the independent inquest into the 7/7 terror bombings in London, will oversee the review of the UK’s response to coronavirus, which is due to begin in the spring of 2022.
 - Subject to provisions of the Act, the chair will determine procedure and conduct of the inquiry. A key decision in the inquiry process
 - Inquiry chair must have the necessary expertise to undertake the inquiry and be impartial (sections 8 & 9). (Most are judges)
- **Terms of Reference**
 - Must be set out before the setting up date of the inquiry (s5(1))
 - The draft is expected to be issued early 2022
 - Chair/ proposed chair must be consulted on the ToRs (s5(4))
 - Defined as: a) the matter to which the inquiry relates; any particular matters as to which the inquiry panel is to determine the facts; c) whether the inquiry panel is to make recommendations; d) any other matters relating to the scope of the inquiry that the Minister may specify (section 5(6))

- Inquiry cannot act outside its terms of reference
- **Core Participants**
 - Determined by the chair and governed by Rule 5 of the Rules
 - Generally, organisations/ people who played a direct role in the subject of the inquiry, may be criticised or have a significant interest
 - Usually attends for all of the proceedings (or substantial parts) either personally or by recognised legal representatives
 - Various rights in respect of disclosure, questioning of witnesses, the making of submissions, review of draft report
- **Evidence**
 - Chair can by notice require a person/ organisation to give evidence/ provide disclosure (s.21; Rule 9)
 - Evidence be taken by interview or in a public hearing
 - Intentionally suppressing or concealing a relevant document is an offence (s.35) that can result in imprisonment and/ or fine.

2. Stop Notice

The Trust is required to communicate to all staff their legal duty in relations to record keeping to support the Trust's preparation for the inquiry, please see attached letter sent to staff.

Dear Colleague

Covid-19 Inquiry Stop Notice

The Trust is required to communicate to all staff their legal duty in relations to record keeping to support the Trust's preparation for the above inquiry.

The Prime Minister has announced that the Government will launch an independent Public Inquiry into the Government and public sector response to the COVID-19 pandemic.

Public Inquiries take place when there is public concern about an event. They can ask for a broad range of documents and records, and on occasion witness testimony from senior managerial and clinical staff. The organisation wants to provide our fullest support and transparency to any requests for information. So, we are therefore asking all colleagues to save full records, whether they are working directly on COVID-19, recovery, or as part of our business-as-usual activities.

Our Internal SWYT Inquiry support team

The Trust Lead for the Inquiry is Julie Williams, Assistant Director.

We will be supporting staff and teams across our organisation as part of the management of this Public Inquiry process including information, advice and guidance in terms of the storage and preservation of data, records and documents, and what is needed to be considered and actioned if SWYT and our services are called upon to give evidence and records.

What does this mean for me?

The Inquiry will need to have records from the start of COVID to present date, so to demonstrate how we responded to the pandemic, how we maintained as normal activities as we could and what compensatory actions we undertook. We have initially stated information from 01 January 2020 will be collated and catalogued, although this date may change. If in doubt, err on the side of caution and preserve anything that may relate to the potential public Inquiry. All teams should suspend any routine document destruction that are in place until they receive a further update, or have confirmed with our Internal Inquiry Team that the information is no longer required.

Why is document preservation important?

We will work with any public inquiry openly and transparently. We want to learn lessons where we can, and we want to show the amazing work that has been done by all our staff. In due course, once the terms of reference for the Inquiry have been confirmed, NHS England and NHS Improvement may ask us to disclose all or some of our relevant documents that fall within the terms as set out by the Inquiry. Any significant loss of documentation will cause delay, impede supportive preparation of any witnesses, increase costs and could harm the reputation of the NHS.

What if I have already deleted some records?

If you have any worries or questions, just email our Internal Inquiry lead at pandemic.inquiry@swyt.nhs.uk Don't worry we are here to support you and we will do everything we can to support staff through the enquiry both before and while it is happening.

We completely understand that the organisation was working in new ways, in new teams and at pace. It is inevitable that some records will be missed, improperly logged, or simply not created in the first place. That is expected and we can help advise on what to do. It remains important that we continue to save relevant records to the best of our ability.

What sort of documents and records should I retain?

A 'document' is anything which records information. This includes records of decisions, the process by which decisions were reached, and the evidence and data used to support them.

It doesn't matter what format the information is held on, or the type of device or system. It could be saved on computers, or on portable devices such as memory sticks or mobile phones.

The different types of records is very broad, but can include:

- Reports, PowerPoint presentations, records, briefings, minutes, notes and correspondence by email or otherwise, Teams 'chats', action logs
- Models and Sitreps and related data histories
- Material relevant to key policy decisions or submissions
- Materials relevant to policy or legislative development
- Training materials
- Materials relating to contracts, procurements, other commercial arrangements, data management, recruitments, secondments and appointments (paid or not) or requests and arrangements for support from other public sector agencies
- Any other documents relating to the organisations' response or communications with patients, the system, industry or other stakeholders

- Messages on personal or work phones including social media applications such as WhatsApp, Facebook and Twitter
- Personal Diaries/calendars

What if I've used my personal phone or email account?

It is not our policy to use WhatsApp or other instant messaging services for recording records or critical information. However, we do understand that people may have used instant messaging services in order to facilitate flexible working at pace – both on a work and/or personal device(s).

If that was the case, please ensure that all work records, information and data is migrated from your personal assets to an identified folder.

If a personal mobile device has been utilised for communications information relevant to the pandemic response, it is possible that device may be subject to an order for disclosure in the Inquiry and so should be preserved in accordance with this notice. If you'd like to speak to someone in the team about this, just get in touch.

Why do we have to do all this?

We need to describe how and why key decisions were taken. Access to relevant documents will be essential to enable those who are required to give evidence to articulate what happened during a period when many issues were being addressed at great pace.

In due course it will be necessary to search for and identify all relevant records, so it is essential that all records are appropriately saved and will be available for access including after any staff holding these have left the organisation.

If there are people due to leave from your team, please make sure you know how to keep in touch with them and ensure all their records are saved and filed before they leave (including handwritten notes).

When will the inquiry start?

The inquiry is expected to start early 2022, but there will be preparatory work to do before then and as guidance and information comes in we will keep you updated. We will be as transparent and open as we can so please do all you can to keep records safe. We will provide as much support as people need during the inquiry and will communicate with individuals and teams as required.

Contact Us

If you have any questions or concerns, please email:

pandemic.inquiry@swyt.nhs.uk

Yours Sincerely

Julie Williams
Covid-19 Inquiry Lead/Assistant Director Corporate Governance

3. Summary and next steps

As stated in the introduction, we do not yet know the extent of our involvement with the inquiry, however it is important that we plan for full involvement.

Further information will be provided when we have received the Terms of Reference.

26 January 2022