

To: 1. PS(P)
2. SoS

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FUTURE HANDLING OF THE REPORT INTO EXERCISE CYGNUS

Issue	We have received a number of public, parliamentary and legal requests for release of the report of Exercise Cygnus, a pandemic influenza preparedness exercise carried out in 2016. To date, we have declined to release this report based on a balanced assessment of the public interest. This submission provides advice on options and asks for your agreement on the handling of these requests going forward.
Timing	<u>Urgent (two working days)</u>
Recommendation	You are asked to: <ul style="list-style-type: none">• agree that on balance the public interest is best served by us seeking collective agreement to release the full report, including annexes• agree the proposed handling plan, including publishing an update on how the learning from Cygnus was taken forwards after the exercise.

Background

1. In recent weeks, DHSC has received a number of requests for release of the report into our 2016 exercise of pandemic flu plans, through the Freedom of Information Act, Parliamentary questions in both Houses, and a current threat of litigation in relation to disclosure of this report. To date, all requests have been declined by the Department, the Cabinet Office (CO), the Home Office (HO) and PHE. This submission seeks your agreement to release the lessons learnt report.

Exercise Cygnus

2. 'Exercise Cygnus' took place over three days in October 2016. Participants included Ministers and officials from: the Department of Health and Social Care (DHSC); twelve other Government departments;

work to strengthen the UK's preparedness. We have delivered the biggest and most important work in each of the workstreams, including:

- a) the development of a draft four nations Bill (which formed the initial basis of the Coronavirus Act);
 - b) surge planning for the acute sector, out of hospital care and adult social care;
 - c) planning for recruitment and deployment of retired staff and volunteers;
 - d) strengthened excess death planning;
 - e) stress-testing the resilience of key sectors;
 - f) establishing a group of experts / advisors to advise Government on moral, ethical and faith considerations in advance of, and during, a pandemic;
 - g) working with MHCLG on local engagement around pandemic influenza planning, including advice on best practice through the development of a Resilience Standard, and;
 - h) further developing our communications strategy and messaging.
8. Some projects had to be re-scheduled in 2018 and 2019 due to competing priorities in civil contingencies. For example we have not updated the public-facing 2011 pandemic flu strategy, or produced a check-list for business, but have made progress on the work that sits behind them.

Discussion

9. In declining FOIA requests to date for the Exercise Cygnus report, officials sought to balance a desire for transparency against the public interest risks (as set out below). Counsel assesses that there is a medium-high (50 to 70 per cent) likelihood that the decision not to disclose the report, including annexes, under the FOIA would be overturned by the Information Commissioners Office (ICO) First-Tier Tribunal (FTT). It would take some time (probably a matter of months) to get to that point.
10. We advise that there are four main risks, and mitigations.
- **Policy formulation risk.** Following exercises, Ministers and officials need space to objectively explore lessons identified with complete candour, then develop policies and/or response plans to address these points. For Exercise Cygnus, some work has been concluded but other work is still ongoing. Public discussion prior to Ministerial agreement of these products might impact on the formulation of policy.

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- *Mitigation.* The apparent leak of the report to the media might impact this consideration, as it could be considered to reduce the private space for consideration.
- **Ongoing COVID-19 response risk.** Cygnus tested extreme responses to a significant influenza pandemic, and a number of these measures are identified in the report. In the current context of a COVID-19 pandemic, releasing information on extreme response measures could hamper current and future covid-19 response activities, spread confusion, and increase concern in the general population.
 - *Mitigation.* This risk could be mitigated (though not eliminated) through a clear comms strategy below, highlighting that while there is an obvious similarity, there are key differences between scenarios, response plans, capability requirements and guidance for pandemic influenza and Covid-19. These reflect differences between the viruses and treatment options available.
- **Emergency exercise programme effectiveness risk.** Publication could lead to increased pressure to publish findings from of other past and future emergency preparedness exercises carried out by all organisations at a national, regional and local level. There could be national security implications of releasing this material in some cases, for example testing the response to (malicious) threat risks, and there is an overriding public interest in the ability of government to conduct effective emergency exercises to identify capability gaps, improve procedures and ensure that there is a safe space for challenging future exercises.
 - *Mitigation.* This is a balanced argument. For some other exercises the government has published summary reports, although these have been short, high-level documents. Disclosure requests under the FOI should be considered on a case by case basis and do not set a legal precedent. We would make clear in any disclosure that we are doing so on a specific basis and that we maintain our right under FOIA to withhold future reports in similar or comparable cases. Not releasing some or all of the annexes would protect some of the integrity and confidentiality of the exercise experience.
- **Communications and public confidence.** While this would not be a consideration for FOI purposes, it is if you are considering going beyond your legal duties. Advice on communications is below.
 - *Mitigation.* You should note that while work is ongoing, there are no major gaps in our implementation of the lessons from Cygnus. The Sun criticised Cygnus itself because it did not explore contact

being transparent. Most of this social media interaction is hostile and critical of the government. On Tuesday 28 April, The Sun ran a two page spread based on a leaked copy of the Cygnus report detailing the findings. This was a negative piece but has not resulted in much follow up and a cross-government line was included as a rebuttal.

15. On 7 May, the Guardian newspaper published the full report on its website with personal information redacted. This was alongside an article highlighting there was no evidence recommendations from the report around social care preparedness had been acted on. DHSC briefing and a spokesperson line was included in the coverage.

Handling considerations

16. CDL gave evidence to the Public Administration and Constitutional Affairs Committee on 29 April and was asked about this report- the transcript is at Annex A. We understand from his officials that he is happy for the report to be published, if we can do so without compromising the effectiveness of such exercises in the future. If we do decide not to publish, he would like Parliamentarians to be able to access a copy securely.
17. There are three possible options for the handling of the Exercise Cygnus report:
 - a) **Maintain our position and continue to withhold the report.** We expect the leak coverage to lead to increased criticism about transparency, and give further fuel to coverage of the legal challenge. We have public lines in place to rebut against requests for the release of Cygnus and criticism that the Government is not being transparent on our preparedness activity, in light of COVID-19 and pandemic influenza preparedness work. However, even with the leak, the news agenda is likely to still be dominated with PPE, lock down and testing issues. As such we would not consider maintaining our position to put us at too much risk of inflating further coverage. **This is not recommended.**
 - b) **Produce and release a short summary of the report.** A published summary could be seen by critics as unhelpful because it would provide no further information than what is already in the public domain but it could act as a way to establish the government's position. It would also be accompanied by a list of measures taken as a result of the report to prepare for a pandemic. However, it may not serve to address issues raised by the leak coverage or legal challenges and