

Tuesday, 11 July 2023

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(10.00 am)

MR KEITH: Good morning, my Lady.

LADY HALLETT: Mr Keith.

MR KEITH: The first witness today is Baroness Foster, the former First Minister of Northern Ireland. Could she be sworn, please.

BARONESS ARLENE FOSTER (sworn)

Questions from LEAD COUNSEL TO THE INQUIRY

MR KEITH: Could you give the Inquiry your full name, please.

A. Yes, my name is Arlene Foster, otherwise Baroness Foster of Aghadrumsee.

Q. Lady Foster, thank you very much for the assistance you have already given to this Inquiry by way of the provision of a witness statement, INQ000205274, dated 18 April 2023. At page 13, I believe you will see your statement of truth and a signature.

A. That's correct.

Q. Lady Foster, could I ask you to remember to keep your voice up so that we may clearly hear you, but also, and it's proven to be quite hard, try to go as slowly as you can so that the demands on our stenographer do not become impossible.

You were, between 9 June 2008 and 11 May 2015,

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1 constituted under the Northern Ireland Act 1998 along
2 with the Good Friday Agreement, and they comprise
3 primarily the Northern Ireland Assembly and the body
4 which is known as the Executive Committee of the
5 Northern Ireland Assembly, or the Northern Ireland
6 Executive for short. Is that correct?

A. Yes, that is correct.

Q. Voting in the Northern Ireland Assembly needn't detain us, but there are special thresholds which apply to the voting structures in the Assembly, and in the Northern Ireland Executive, which is the committee of ministers that is the ultimate decision-making body in the Northern Ireland government, do the First Minister and the deputy First Minister occupy a particularly important or unique position?

A. They do. The First and deputy First Minister operate in what is known as a joint office, the now Executive Office, it used to be the Office of the First Minister and deputy First Minister. Neither, my Lady, of those ministers can act unilaterally, they have to act jointly, and therefore it is a unique situation that we have in Northern Ireland.

Q. Is that obligation to act jointly something which has come about by way of constitutional practice or is it mandated by the Northern Ireland Act 1998 Act itself?

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1 Minister for Enterprise, Trade and Investment in
2 Northern Ireland; is that right?
3 **A.** That's correct.
4 **Q.** Were you then Minister for Finance and Personnel between
5 May 2015 and 12 January 2016?
6 **A.** Yes.
7 **Q.** In December 2015 had you by then become the leader of
8 the Democratic Unionist Party, the DUP, in
9 Northern Ireland?
10 **A.** Yes.
11 **Q.** A position which you held until your resignation in June
12 of 2021?
13 **A.** That's correct.
14 **Q.** Most importantly for our purposes, were you
15 First Minister of Northern Ireland between
16 11 January 2016 and 10 January 2017, and then again,
17 during, of course, the pandemic itself, between
18 11 January 2020 to 14 June 2021?
19 **A.** Yes, that's correct.
20 **Q.** I would like to start, if I may, with asking you some
21 questions about the constitutional and governance
22 position in Northern Ireland and its unique
23 arrangements.
24 Under the Good Friday Agreement of 1998, the
25 devolved institutions in Northern Ireland are

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1 **A.** It's mandated by legislation.
2 **Q.** Do the functions of the Executive Office need to be
3 taken by joint agreement as well, or is this
4 a requirement that attaches only to the two persons
5 holding the ministerial positions of First Minister and
6 deputy First Minister?
7 **A.** So the officials of the Executive Office are the
8 officials of the First Minister and the deputy First
9 Minister, so they will act under the direction of both
10 of those ministers. They cannot act unilaterally on the
11 will of either the First Minister or the deputy First
12 Minister, so documents will have to be signed off, and
13 all of the officials are very much aware of that
14 practice.
15 **Q.** Since 1998, has the Executive continued to exist
16 throughout that period, or have there been times when
17 the Executive and the ministerial positions within
18 the Executive have not been able to function?
19 **A.** They haven't functioned for, I think, it's 40% of the
20 time. So I think the longest period of an absence
21 without ministers was between 2002 to 2007, obviously
22 the period between 2017 and 2020, and again today
23 Northern Ireland is without ministerial oversight.
24 **Q.** In general terms, what happens when there has been
25 a suspension or collapse in the power-sharing agreement

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1 and the Executive is unable to form? How is rule over
 2 Northern Ireland or in Northern Ireland maintained?
 3 **A.** My Lady, as you're aware, we are in a devolved
 4 administration, and therefore the Westminster government
 5 still has sovereignty over the Northern Ireland region.
 6 However, Northern Ireland Office ministers do not
 7 intervene in a direct rule manner, they rarely take
 8 decisions that affect Northern Ireland, but there have
 9 been some occasions where they have intervened. The
 10 budget, for example, they intervene on that to make sure
 11 that there is money available to run Northern Ireland,
 12 and, perhaps controversially, they have intervened in
 13 other areas as well, such as in the area of women's
 14 reproductive rights and, indeed, in the area of Irish
 15 language, culture. That, again, was something that was
 16 legislated for in Westminster.
 17 **Q.** May we take it, then, that at the time that you first
 18 held the tenure of being First Minister for
 19 Northern Ireland from 11 January 2016, that
 20 the Executive had been reconstituted before you took
 21 office? So, I think in November 2015, was a fresh
 22 agreement reached, the Fresh Start Agreement, which
 23 allowed the Executive to re-form, which led to you then
 24 becoming First Minister in January of the following
 25 year?

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1 **Q.** He resigned at the time of what became known as an issue
 2 concerning the Renewable Heat Incentive scheme. After
 3 that time in January 2017, do we take it from what you
 4 said earlier that the Executive did not then re-form
 5 until 11 January 2020, when your second tenure
 6 commenced?
 7 **A.** Yes, that is correct, because if either the
 8 First Minister or the deputy First Minister resigns,
 9 then the other office holder is also out of office.
 10 Without a First Minister and deputy First Minister, the
 11 Executive Office -- or the Executive meetings do not
 12 take place.
 13 **Q.** In the Executive there are obviously a number of other
 14 ministries, so it's not just the Executive Office, we
 15 believe there are eight other ministries and each
 16 minister heads up their own Northern Ireland department.
 17 One of those is obviously the Department of Health.
 18 **A.** Correct.
 19 **Q.** To what extent, Lady Foster, when you were
 20 First Minister between 2016 and 2017, were you engaged
 21 in the affairs of departments other than the Executive
 22 Office?
 23 **A.** Well, because we're in a unique situation, my Lady, of
 24 mandatory coalition, where we have five political
 25 parties in the government, the -- although we are the

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1 **A.** The Executive had still been in place at that time,
 2 I think. The last time before that that we didn't have
 3 an Executive was 2007. There had been different
 4 political talks, processes, to deal with issues that
 5 arose, and one of those was indeed in 2015, after
 6 an incident in August of that year.
 7 That Fresh Start Agreement was put in place and then
 8 the then First Minister decided that he would retire
 9 from public office and the appointment took place of
 10 myself in January of 2016 -- alongside the appointment
 11 of the deputy First Minister, because every time
 12 a deputy First Minister or a First Minister resigns,
 13 there has to be an appointment of the two offices again,
 14 you can't just slot another First Minister or deputy
 15 First Minister into position, they both have to be
 16 reappointed.
 17 **Q.** Did you take over, in effect, from Peter Robinson, and
 18 was the deputy First Minister who was appointed
 19 alongside you when you became First Minister in January
 20 of 2016 the late Martin McGuinness?
 21 **A.** That's correct.
 22 **Q.** The Executive of which you were First Minister lasted
 23 until 16 January 2017, when Mr McGuinness resigned; is
 24 that correct?
 25 **A.** Yes, that is correct.

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1 First Minister and deputy First Minister, the so-called
 2 head of the Northern Ireland Executive, we certainly do
 3 not intervene in other departments and other ministries,
 4 because they may be held by someone from a different
 5 political party. And unlike the Westminster system,
 6 where there is Cabinet responsibility and you will not
 7 see ministers going out and criticising other ministers
 8 in relation to decisions that have been taken,
 9 unfortunately that doesn't exist in Northern Ireland.
 10 There is no Cabinet responsibility. And so the five --
 11 sometimes you will see ministers from one particular
 12 party criticising a decision of another minister in
 13 a different political party.
 14 So there is a difference, if you like, to the system
 15 in Northern Ireland.
 16 **Q.** Therefore, in terms of oversight, as the First Minister,
 17 unless and until a minister in a particular department
 18 brings a matter to the attention of the
 19 Executive Office --
 20 **A.** Yes.
 21 **Q.** -- and thereby the Executive and thereby the
 22 First Minister and deputy First Minister, you may not
 23 necessarily know what issues are engaging the time of
 24 that particular department?
 25 **A.** I think that is absolutely the case, and it's only

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1 matters of significance or matters that are
2 cross-cutting across government that would be brought to
3 the table of the Executive Committee, or indeed if
4 a minister felt that he wanted to alert his colleagues
5 to what was going on on a particular issue, we would not
6 have an Executive paper on that matter.

7 **Q.** Therefore, does the decision to bring a cross cutting
8 issue, for example, to the attention of the
9 Executive Office and the First Minister and deputy First
10 Minister depend very much on the individual position of
11 the minister in the department as opposed to,
12 for example, the civil servants who assist the Executive
13 Office or who assist the ministerial departments?

14 **A.** So I think the Civil Service in a particular department
15 will advise their minister as to whether a matter should
16 come to the Executive table for discussion. That
17 certainly was the case when I was in the Department of
18 Enterprise, Trade and Investment. I would have received
19 advice that this is something in terms of a decision
20 that needs to get Executive authority as opposed to just
21 the authority of myself. And I'm sure that was the case
22 in other departments as well.

23 **Q.** Is one of the functions that the Executive Office itself
24 is responsible for contingency planning arrangements in
25 Northern Ireland generally?

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1 Arrangements, NICCMA?

2 **A.** Yes, I was aware in my first day brief -- the first day
3 brief that has been shared with me through evidence is
4 I think my first day brief from 2020, but something
5 similar would have been shared with me back in 2016 as
6 well.

7 **Q.** We may have had sight of the later briefing in your
8 second tenure in January 2020. We've not, I think, seen
9 a briefing document from 11 January 2016. Can you
10 recall to what extent you were made aware of the civil
11 contingencies arrangements in Northern Ireland? Was it
12 a particularly specific briefing, do you recall, or were
13 you just made aware of what arrangements exist in terms
14 of policy and guidance for Northern Ireland?

15 **A.** So in the first day brief to the First Minister,
16 my Lady, we're made aware of the different areas under
17 the Executive Office, and part of that would have been
18 a general briefing in relation to civil contingencies
19 policy which sits under the Executive Office.

20 **Q.** What would you have been told about the existence of the
21 major or the greatest risks facing Northern Ireland, in
22 particular what was then known as the very high risk of
23 pandemic influenza? I say "very high" because in
24 London, for the United Kingdom, it was described as
25 a Tier 1 risk, but it had a different description in

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1 **A.** Yes, the contingency planning and policy branch sits
2 within the Executive Office.

3 **Q.** Is that to be distinguished from civil contingencies
4 relating to, for example, health emergencies, where
5 responsibility would be vested and is vested in the
6 Department of Health?

7 **A.** So the Civil Contingencies Group, the actual operational
8 group, my Lady, is headed up by the head of the
9 Civil Service, he normally chairs those meetings.
10 Depending on the type of incident or emergency that
11 we're speaking about, there will be a lead department
12 allocated to deal with the incident or with the ongoing
13 emergency. When I was in the Executive in those early
14 days, 2010/2011, there would have been a number of
15 flooding incidents in Northern Ireland and the lead
16 department on those occasions would have been the
17 Department of Agriculture, Environment and Rural Affairs
18 or, indeed, the Department for Infrastructure, depending
19 on whether there was something that needed to happen
20 with those departments.

21 But in the incidence of the pandemic, it would have
22 been the Department of Health.

23 **Q.** Did you therefore become familiar with the overarching
24 arrangements for crisis management in Northern Ireland,
25 namely the Northern Ireland Central Crisis Management

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1 Northern Ireland.

2 **A.** I would have been aware -- and I'm doing this from
3 memory, my Lady -- I would have been aware that the
4 biggest risk would have been flu pandemic from a health
5 point of view, and of course we were always kept up to
6 date with security risks as well, which of course were
7 of a different nature.

8 **Q.** Of course.

9 Would you have been jointly briefed with your deputy
10 First Minister, Martin McGuinness, or were you
11 separately briefed when you took office in January 2016?

12 **A.** He would have had exactly the same first day brief as
13 I would have received.

14 **Q.** All right.

15 You would also, we presume, have been made aware
16 then of the Civil Contingencies Group, Northern Ireland
17 which is the overarching body within the
18 Northern Ireland government for dealing with civil
19 contingencies, and it's often chaired by a senior
20 official but it may also be chaired by, together, the
21 First Minister and the deputy First Minister. Do you
22 recall convening or having to convene that group during
23 your first tenure?

24 **A.** No, I did not convene that group with the deputy First
25 Minister during my first tenure.

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1 Q. May we look, please, at INQ000086924.
 2 This is the protocol for the Northern Ireland
 3 Central Crisis Management Arrangements, so the CCG(NI)
 4 protocol. If we could have page 3, paragraph 3:
 5 "The First Minister and deputy First Minister or TEO
 6 [that's the Executive Office] may activate NICCMA [those
 7 are the Northern Ireland Central Crisis Management
 8 Arrangements to which you have just referred] following
 9 a request to do so from the Executive; the Lead
 10 Government Department; a senior representative from the
 11 [Northern Ireland Office] Briefing Room ... a senior
 12 member of the [Police Service of Northern Ireland]
 13 involved in the Police led multi-agency GOLD group; the
 14 local level co-ordinator; or in the absence of any such
 15 requests, whenever [the Executive Office] judges it
 16 appropriate to do so."
 17 Again, it's obviously some time ago now, but do you
 18 recall during your first tenure the NICCMA arrangements
 19 being activated by the Executive Office as opposed to
 20 yourself or Mr McGuinness?
 21 A. From memory I don't think that the emergency structure
 22 was activated during that year.
 23 Q. All right.
 24 Page 8, paragraph 10, there is a reference to
 25 level 2 and level 3 emergencies.

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1 emergencies would effectively be operated by, be managed
 2 by the First and deputy First Ministers?
 3 A. Yes, I think there was that expectation. From memory
 4 again, my Lady, I think that is what has happened during
 5 those flooding incidents that I've referred to.
 6 However, I think even during those incidents the head of
 7 the Civil Service continued to chair the CCG, but the
 8 First and deputy First Minister of the time would have
 9 been very much involved with the group.
 10 Q. The reason I ask is -- we will look in a moment at the
 11 impacts across the board of the collapse in the
 12 power-sharing agreement -- but in the context
 13 particularly of the CCG Northern Ireland and the NICCMA
 14 arrangements, it must presumably have been a matter of
 15 real concern to you that, at the moment that you are
 16 unable to continue to discharge your ministerial
 17 functions because the agreement, the power-sharing
 18 agreement, has collapsed, you would necessarily be
 19 unable to take up the role, the important role, of
 20 leading the civil contingencies response in
 21 Northern Ireland; there could be no ministerial
 22 leadership of this group once the agreement had
 23 collapsed.
 24 A. I think that is an accurate description. However,
 25 I will say that, on an operational basis, the head of

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1 As may appear obvious, Lady Foster, level 2 and 3
 2 emergencies are the more serious emergencies within the
 3 categories of 1, 2 and 3, and they require direction,
 4 co-ordination and effective decision-making at
 5 government level.
 6 May we presume that you would have been briefed that
 7 in the event of a level 2 or level 3 emergency, you
 8 would be expected, as the First Minister, to call for
 9 these arrangements to be triggered, to be activated, in
 10 order to be able to apply the requisite degree of
 11 governance?
 12 A. I certainly would have expected to have been informed by
 13 the head of the Civil Service, who was the chair of the
 14 CCG(NI). I don't recall any time during 2017 or,
 15 indeed, even during the pandemic, when the
 16 First Minister and deputy First Minister chaired the CCG
 17 group.
 18 Q. Does it stand to reason -- or maybe I can put it
 19 a different way: was there an expectation that, as
 20 First Minister, and as deputy First Minister,
 21 Mr McGuinness, you would be expected to take charge of
 22 a level 2 or level 3 emergency by virtue of the
 23 seniority of your post and, of course, the democratic
 24 accountability that you bring to bear as First Minister?
 25 Was there an expectation that level 2 and level 3

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1 the Civil Service was the chair of the group. I'm not
 2 diminishing the role of ministers at all. I think
 3 ministers had a very important role, particularly in
 4 emergencies, particularly around democratic
 5 accountability, as you've indicated. However, from
 6 an operational point of view, I think the group would
 7 have continued to operate, albeit without the
 8 ministerial leadership that you've referred to.
 9 Q. To what extent were you made familiar, Lady Foster, with
 10 the associated civil contingency documents and policy
 11 guidance? We have been shown a number of documents,
 12 for example, the *Northern Ireland Civil Contingencies*
 13 *Framework* from September 2011, a key document, a *Guide*
 14 *to Risk Assessment in Northern Ireland* dated from
 15 January 2010, *A Guide to Plan Preparation* from
 16 March 2002, and *A Guide to Emergency Planning*
 17 *Arrangements in Northern Ireland*, described again as key
 18 in the evidence, running to 200 pages but not updated
 19 since its refresh, to use a terrible word, in September
 20 of 2011.
 21 Were you aware of the existence of those underlying
 22 documents which underpinned the approach to civil
 23 contingencies in Northern Ireland?
 24 A. I think, my Lady, I would have been aware that there was
 25 a structure underlying the operation of the CCG and the

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1 Hub, as it became known, which was the operational
 2 structure that integrated all of the other departments
 3 into the centre. However, I don't think I was aware of
 4 the specific nature of all of the documents, no.

5 **Q.** During the interregnum, ministerially, in 2019, it
 6 became apparent that these documents were significantly
 7 out of date and a review determined that they be
 8 updated. Do you recall between 2016 and 2017 any
 9 analogous body or group of civil servants recommending
 10 that this paperwork be updated?

11 **A.** I don't believe I received any submission in that
 12 regard.

13 **Q.** May we take it from your earlier answer that the
 14 Northern Ireland central operations room, the Hub, was
 15 in existence during your first tenure, 2016/2017?

16 **A.** It wasn't activated during 2017, as far as I'm aware.
 17 It was certainly activated when I was holding other
 18 ministerial office before then --

19 **Q.** But it -- I'm sorry, but it existed --

20 **A.** Yes, it absolutely existed, yes.

21 **Q.** All right.
 22 The Inquiry heard yesterday from
 23 Professor Sir Michael McBride, the current Chief Medical
 24 Officer in Northern Ireland, who sits at the apex of the
 25 CMO Group, within a particular directorate in the

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1 preparedness groups and strategic co-ordination groups.
 2 To what extent were you aware of the quite broad and
 3 diffuse nature of this structure when you were
 4 First Minister, or of the fact that there were these
 5 structural divides between the various entities in the
 6 Northern Irish government?

7 **A.** I would have been aware, my Lady, of the different
 8 structures and responsibilities between the Public
 9 Health Agency and the department. However, I would not
 10 have been aware of the very many different groupings
 11 that there were to advise the minister in relation to
 12 all of the different threats that may come towards
 13 Northern Ireland.

14 I found it difficult actually sometimes to follow
 15 all the acronyms that were in the papers that were
 16 furnished to me, so I wasn't aware of all of those, no.

17 **Q.** All right.
 18 Turning to look at the importance of ministerial
 19 leadership and the consequences of the collapse in the
 20 power-sharing agreement between 2017 and 2020.
 21 The presence of ministers and the actions of
 22 ministers is of fundamental importance to the proper
 23 maintenance of government in Northern Ireland, is it
 24 not?

25 **A.** It is.

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1 Department of Health. It's apparent that the CMO in
 2 Northern Ireland discharges a very wide range of
 3 functions. Do you recall advice being given to the
 4 Executive Office by Professor Sir Michael McBride when
 5 you were First Minister?

6 **A.** I certainly remember his excellent work during the
 7 pandemic, but I do not believe that he was present at
 8 the Executive in the year of 2017. That must mean that
 9 there was no particular health issue that he came to
 10 the Executive on.

11 **Q.** The evidence may indicate that structurally in
 12 Northern Ireland there is a distinct divide between the
 13 functions of the Executive Office, which deal with civil
 14 contingencies in a general sense, and the role of the
 15 Department of Health, which deals with health
 16 emergencies, both in a policy sense and operationally,
 17 and also that there's a divide between the Department of
 18 Health, which deals with policy and operation, and the
 19 Public Health Agency, which is concerned generally with
 20 operational matters only.

21 There is also quite a diffuse structure and a split
 22 between planning bodies, such as the elements of the
 23 Executive Office, the Department of Health and so on,
 24 and pandemic preparedness groups, and what are known as
 25 EPGs and SPGs, the response groups, the emergency

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1 **Q.** Ministers give direction to the Northern Ireland
 2 Civil Service, they can set priorities, they drive the
 3 system onwards, they may make specific decisions about
 4 resourcing. When matters are concern are brought to
 5 their attention, they have the political authority to be
 6 to bring change about. Is that all broadly accurate?

7 **A.** I think that is broadly accurate, but bearing in mind
 8 that the Office of First Minister and deputy First
 9 Minister, then the Executive Office, is slightly
 10 different, insofar as agreement had to be sought between
 11 the two First Ministers, if you like.

12 **Q.** Indeed, but that is an internal issue, I suppose --

13 **A.** Yes.

14 **Q.** -- because, from the outside world, you would be seen as
 15 a seamless part of the Northern Irish government.
 16 The ministers also liaise, do they not, with the
 17 rest of the United Kingdom, and they liaise with the
 18 Republic of Ireland?

19 **A.** Yes.

20 **Q.** In terms of civil contingencies, are those important
 21 parts of the system?

22 **A.** Very important parts of the system, as was shown by the
 23 response to the pandemic, my Lady. I think -- and
 24 I know we're not going into this remit during this
 25 phase, but I think if you look back at all of the

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1 documents in relation to preparedness, you will see how
2 much integrated Northern Ireland is into the
3 United Kingdom system, for the provision of expertise,
4 for the provision of resource, for the provision of
5 training in terms of preparedness, so I think that is
6 very important.

7 In terms of our links with the Republic of Ireland,
8 we do have very strong co-operation that goes on on
9 a day -- a daily basis as well. There was a planning
10 document from 2014, a cross-border management group was
11 set up to deal with, if you can call it the border
12 corridor area between Northern Ireland and the
13 Republic of Ireland, and I'm sure that's the sort of
14 thing that happens across the world when there are two
15 jurisdictions sitting beside each other in terms of how
16 you deal with an emergency situation.

17 **Q.** Is that the Cross-border Emergency Management Group?

18 **A.** Yes.

19 **Q.** All right.

20 Then thirdly, in relation to the fundamental
21 importance of ministers, they bring leadership to bear,
22 do they not, not just in terms of democratic
23 accountability, but they bring a visible face to
24 leadership? So for the people of Northern Ireland, in
25 a crisis it's obviously of great concern that there are

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1 time, and I think, my Lady, when you look at the fact
2 that the Northern Ireland Office took a policy decision
3 not to intervene at that time but instead leave
4 Northern Ireland without any ministerial cover is
5 something that I feel I need to comment on as well.
6 Because, of course, we are a devolved administration,
7 the Westminster government is sovereign at all times,
8 and if there is a deficiency in the Northern Ireland
9 administration, then those people in Westminster with
10 responsibility for Northern Ireland have
11 a responsibility. That's true whether it's in relation
12 to female reproductive rights or indeed resilience and
13 emergency planning, and I would think that that was
14 a gap that should have been dealt with at that time.

15 **Q.** In addition, had the Stormont House Agreement of 2014
16 committed the Executive to a spending programme which
17 had involved reductions in public sector costs and pay
18 bill costs and the like, and I think a reduction in the
19 overall size of the Northern Ireland Civil Service?

20 **A.** Yes, that is correct. That was known as the voluntary
21 exit scheme, which allowed civil servants to apply for
22 redundancy, an enhanced redundancy package was available
23 at that time, and that meant that the number of civil
24 servants in Northern Ireland -- and of course we have
25 a small Civil Service to begin with -- was actually

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1 leaders in place who are accountable and who may be seen
2 to be leading the charge on the part of its citizens?

3 **A.** I certainly hope that that was the case during the
4 pandemic, but yes, I take your point in relation to
5 visible leadership.

6 **Q.** The reason I ask, Lady Foster, is you're aware that,
7 from the evidence given to this Inquiry, there were
8 a number of ways in which deleterious consequences
9 flowed from the absence of ministerial leadership during
10 the interregnum in your tenureship; would you agree?

11 **A.** Yes, I agree that ministers could and should have been
12 in place during that period.

13 **Q.** The evidence from Sir David Sterling, who was formerly
14 the Secretary to the Northern Ireland Executive, as
15 you'll no doubt recall, because I think he became head
16 of the Northern Ireland Civil Service just at the end of
17 your first tenureship, but he was in any event head of
18 the Executive Office, he says in his witness statement
19 that the three-year period left public services in
20 a state of decay and stagnation, as well as making
21 extraordinary demands of the Civil Service, who had to
22 devote a very considerable bandwidth to governing
23 Northern Ireland in the absence of ministers; would you
24 agree with that?

25 **A.** Indeed, there were no ministers in place during that

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1 further reduced.

2 **Q.** Was the impact or one of the impacts of the collapse in
3 the power-sharing agreement that it was impossible after
4 2017 for that process to be reversed because civil
5 servants, in the absence of ministers, had no powers to
6 change or recalibrate those spending priorities?

7 **A.** That is correct, they would not have been able to
8 increase recruitment as they did not have the resource
9 to do so.

10 My Lady, if I may, I do think this points to
11 a difficulty, a more -- a wider difficulty with the
12 Northern Ireland Civil Service, because we are
13 a separate Civil Service to the Home Civil Service. If
14 we had have been part of the Home Civil Service, then
15 that could have been dealt with, and we could have had
16 that interchange not only of resource and numbers but
17 also skills, and I've no doubt we will come on to talk
18 about preparedness in the context of a lack of resource.
19 I think one of the ways that we should have been able to
20 deal with this, and I have felt this for some time, is
21 that the Northern Ireland Civil Service should be
22 integrated into the Home Civil Service.

23 **Q.** So in essence, Lady Foster, the public sector spending
24 patterns that were put in place as a result of the
25 Stormont House Agreement of 2014 remained immutable

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1 after 2017?

2 **A.** And indeed the wider UK spending at that time, which

3 of course had been reduced in the context of dealing

4 with the worldwide recession --

5 **Q.** So is that --

6 **A.** -- 2009.

7 **Q.** That's a reference to the general so-called austerity --

8 **A.** It is.

9 **Q.** -- programme?

10 Just dealing -- just maintaining our focus on

11 Northern Ireland, those spending cuts and the impact on

12 the Northern Ireland Civil Service were the direct

13 result, of course, of a pre-interregnum programme put

14 into place in 2014 that civil servants were unable to

15 alter. Why couldn't, under direct rule, Westminster

16 step in between 2017 and 2020 and recalibrate that

17 spending programme?

18 **A.** That's actually the point I'm making, my Lady, that they

19 should have stepped in. If there was a difficulty with

20 resourcing in Northern Ireland, particularly around the

21 important issue of resilience and planning for

22 emergencies, then there was a duty on the Westminster

23 government to note that and indeed to take the

24 appropriate action.

25 **Q.** In addition, Mr Swann in evidence and in his witness

25

1 the Executive. And all of the parties in the Executive,

2 the five parties, agreed that it was not just a nice

3 thing to do, it was an absolute necessity to reform the

4 health service in Northern Ireland.

5 As a result of the Executive collapsing, in January

6 of 2017, the leadership required to take those reforms

7 forward was not present for three years, and then

8 because of the pandemic again those reforms have not

9 been able to be taken forward, and now we're in

10 a situation where we have a report from 2016 which

11 hasn't actually been implemented.

12 **Q.** Had Professor Rafael Bengoa recommended widespread

13 systemic change? I mean, in his review paper of

14 October 2016, was he making a general suggestion that

15 there should be an increase in resources and the rooting

16 out of inefficiency, or was he recommending wholesale

17 transformation across the health and social care system?

18 **A.** He was recommending system change. He was recommending

19 that we had a -- more of a focus on primary care, that

20 we move to elective centres for surgery, that we looked

21 at Northern Ireland in the whole as opposed to our own

22 little parts of Northern Ireland. I know this may sound

23 strange, but those of us who live in Northern Ireland

24 think it's an incredibly large place, but I think for

25 those who look into Northern Ireland it's not that

27

1 statement, a fellow former politician in

2 Northern Ireland, speaks of how the lack of an Executive

3 between 2017 and 2020 had an adverse effect on the

4 preparedness of the health and social care system

5 generally, because key decisions were not taken on

6 resources and staffing levels. There was a gap between

7 demand and health and social care capacity that civil

8 servants were unable to fill, so the health and social

9 care system became significantly more degraded during

10 that period as well.

11 Would you agree?

12 **A.** I think, my Lady, we have to put that into the context

13 of a recognition by the Executive before the collapse

14 that there was a need to reform the health system widely

15 in Northern Ireland. When I began my life as a minister

16 I think the budget for health and social care was just

17 over 40%. By this stage the budget was 52% of the block

18 grant. So the health and social care budget was

19 continuing to grow, but there continued to be

20 difficulties within the system.

21 So that recognition led to the commissioning of

22 a report and work carried forward for us by an eminent

23 person in the field, Rafael Bengoa. He reported to the

24 health minister in 2016, I think around October, might

25 have been September of 2016. That was brought to

26

1 large, and I think he was recognising that there was

2 a need for systems change, and, as I say, that was

3 accepted by all of the parties at that particular time.

4 **Q.** In essence, as we've heard from Dr McBride, there was

5 a mandate --

6 **A.** Yes.

7 **Q.** -- I apologise, Professor Sir Michael McBride -- there

8 was a mandate to introduce the changes recommended by

9 Professor Rafael Bengoa, but in the short period between

10 October 2016 and the collapse of the Executive in

11 January 2017 it was impossible to bring about any

12 practical change?

13 **A.** Yes, there may have been preparatory work taken forward,

14 but certainly by the time the Executive collapsed there

15 was no meaningful change having taken place.

16 **Q.** Turning to a different angle of the collapse, with no

17 ministers in place, presumably it wasn't possible for

18 the important North South Ministerial Council to meet.

19 What is that council? You have referred to the

20 cross-border management arrangements, but this is

21 something different, is it not?

22 **A.** It is entirely different. So the Belfast Agreement has

23 three strands within it. We have the internal workings

24 of Northern Ireland, and we've talked about the Assembly

25 and the Northern Ireland Executive; that's strand one.

28

1 Strand two is north-south relationships, and that's
2 facilitated through the North South Ministerial Council,
3 which meets in plenary, usually about twice a year, but
4 there are other sectoral meetings that take place
5 throughout the year, so the health sectoral, the
6 agricultural sector, those will take place throughout
7 the year, with the appropriate minister attending from
8 Northern Ireland and from the Republic. Then strand
9 three of the agreement is the east-west relationships,
10 the British-Irish Council relationships.

11 Once an Executive breaks down, there is no minister
12 from Northern Ireland to attend the North South
13 Ministerial Council, therefore the ministerial meetings
14 no longer take place. However, the officials, as
15 I understand it, my Lady, continued to meet within the
16 policy that was already set by their ministers during
17 that time.

18 **Q.** I think there's only a relatively few number of plenary
19 meetings, maybe two a year, but --

20 **A.** Yes.

21 **Q.** -- Dr McMahon, the permanent secretary in the Executive
22 Office, calculated that:

23 "In terms of the North South Ministerial Council,
24 a rough calculation on my part would have been that
25 there were about 46 lost ... Ministerial Council
29

1 a nationalist minister, to make sure that, in the
2 balance that is Northern Ireland, that things are kept
3 in equilibrium. So there would have been two ministers
4 from the Northern Ireland Executive and one minister
5 from the Republic of Ireland.

6 **Q.** All right.

7 Turning now to look at the civil contingencies
8 structure more specifically, in the context of the
9 impact of the collapse, the evidence before my Lady
10 shows that, in a number of letters from members of the
11 Civil Contingencies Policy Branch, in particular its
12 head, in a letter dated 22 January 2020, significant
13 work on sector resilience, that's to say making
14 preparations for the ability of the health and social
15 care structures in Northern Ireland to meet the demands
16 of a prospective pandemic, effectively were unable to be
17 completed because of the resourcing problems to which
18 you've made reference, the demands of the necessary
19 preparations for a no-deal EU exit. And the risk
20 registers, both at the civil contingencies policy board
21 level and in the Department of Health departmental level
22 and in the civil contingencies policy board work
23 programme documents, were flashing red for concerns
24 being expressed about the civil contingencies system
25 running behind on producing assessments, sector
31

1 meetings ..."

2 In total, because of course there is a number of
3 meetings between individual ministers, not just plenary
4 meetings.

5 So a very significant number of meetings simply did
6 not take place?

7 **A.** Yes, so sectoral committee meetings would have been
8 lost, to use Dr McMahon's words.

9 **Q.** Yes. We of course presume that those meetings are
10 envisaged under the Good Friday Agreement for good
11 reason, for good purpose, they have enormous utility,
12 and they bring about significant practical benefit, so
13 their absence was obviously a matter of very real
14 concern and regret, no doubt?

15 **A.** The actual North South Ministerial Council meetings can
16 be quite formalised, my Lady. A lot of the work that
17 goes on between the two administrations takes place on
18 either side of the meetings, as often happens to be the
19 case. The meetings themselves are of a formalised
20 nature because of the arrangements that have been set up
21 for those meetings. So not only does the minister of
22 that particular department attend, he is usually
23 accompanied by a minister. So if it's a unionist
24 minister, if I take the Department of Health,
25 Minister Swann, he would have been accompanied by
30

1 resilience, the problems from staffing shortages, the
2 non-attendance at Cross-border Emergency Management
3 Group meetings and so on.

4 Were you made aware of the parlous state into which
5 that part of the system had descended when you took
6 office again on 11 January 2020?

7 **A.** No, I was given the general briefing, which I think I've
8 already indicated. I was aware that, in terms of civil
9 contingencies, that there had been
10 an Operation Yellowhammer to deal with a no-deal Brexit
11 and that there had been a number of exercises carried
12 out and training, and the TEO, the Executive Office, had
13 taken on a leadership role in respect of that.

14 But to answer your question, and those number of
15 issues that you've raised, I was not made aware when
16 I came into office in January 2020 of that.

17 **Q.** Although it's a matter for further debate in the context
18 of Module 2C, plainly you had to deal with the system as
19 you found it to be --

20 **A.** Sure.

21 **Q.** -- on 11 January in the face of this terrible pandemic,
22 so it must have been apparent to you that things were
23 not as well as they perhaps ought or should have been?

24 **A.** Well, I have to say, my Lady, that when the pandemic hit
25 Northern Ireland, whatever about planning, the
32

1 determination of the Civil Service, and indeed the
 2 National Health Service in Northern Ireland, was quite
 3 amazing, they stood up in a way that I was very proud
 4 of, and whilst Mr Keith may say that it was in a parlous
 5 state, I think the response was, given that we hadn't
 6 ministers for three years, quite an incredible response
 7 to what was coming towards us.

8 **Q.** On account largely of the remarkable efforts of the
 9 individual members --

10 **A.** Absolutely.

11 **Q.** -- of the population of Northern Ireland?

12 **A.** Correct.

13 **Q.** Because the reality by January 2020 was that the
 14 Civil Service, to use the words of Sir David Sterling,
 15 had become stagnant, it had been denuded of leadership,
 16 direction and ministerial control, there was a general
 17 shortage of resources, the civil contingencies structure
 18 was described by an officer in its main constituent
 19 body, the policy branch, as being not fit for purpose,
 20 and the country generally was devoid or at least
 21 suffered from a lack of proper resilience, so that it
 22 was less able and less prepared to be able to meet the
 23 demands of a pandemic; would you agree with those
 24 general propositions?

25 **A.** I'm not sure I agree with all of those general

33

1 acted, because if there is a gap in resilience, my Lady,
 2 in part of the United Kingdom, surely that should
 3 concern the Government of the United Kingdom, in terms
 4 of where there are gaps, whether that's in Wales,
 5 Scotland or indeed in Northern Ireland.

6 **Q.** Therefore you would agree, would you not, with this
 7 proposition: that all the politicians in
 8 Northern Ireland, and perhaps also in Westminster, must
 9 bear their share of the responsibility for leaving the
 10 people in Northern Ireland in that state?

11 **A.** Well, as the record knows, my Lady, I very much wanted
 12 to be in government during those years of 2017, 2018,
 13 2019, to deal with the issues that Sir David Sterling
 14 has referred to, and indeed has been referred to by
 15 Denis McMahon. Unfortunately, because we have
 16 a mandatory coalition, I cannot go in alone, and
 17 therefore we were in a situation where we did not have
 18 ministerial cover.

19 And I don't want to enter into the realms of
 20 politics, my Lady.

21 **Q.** Indeed not.

22 It seems self-evident, Lady Foster, that the demands
 23 and the benefits but the exigencies of the Good Friday
 24 Agreement and the constitutional structure in
 25 Northern Ireland are what they are. Nothing can be done

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1 propositions. When I now look back, my Lady, at the
 2 planning that there was and which at the time I was
 3 unaware of in terms of the Department of Health to deal
 4 with some of the issues that came towards them, I'm not
 5 sure any planning would have had us fit for purpose to
 6 deal with the Covid pandemic, in terms of the scale and
 7 nature of it, particularly when the number one risk on
 8 the risk register across the United Kingdom was for
 9 a flu pandemic and what came towards us was not a flu
 10 pandemic but a very transmittible disease in the
 11 community. Therefore, the need to scale up and have the
 12 capability to deal with that was something that we had
 13 to dig very deep into very quickly.

14 **Q.** That, of course, is a perfectly proper observation to
 15 make in relation to the operational response and the way
 16 in which the people of Northern Ireland responded to the
 17 crisis. But you agree, and you've agreed in the course
 18 of evidence, that there was, objectively, a reduced
 19 resilience in Northern Ireland as a result of the
 20 matters that we've discussed.

21 **A.** I think there was a reduced resilience, and as I've
 22 said, I believe that the Westminster politicians who
 23 were in charge of Northern Ireland ostensibly from
 24 a sovereignty point of view at that time should have
 25 been made aware of that difficulty and should have

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1 about the fact that if there is a collapse in the
 2 power-sharing agreement there is no ministerial
 3 leadership or control or guidance.

4 **A.** I believe it's what is called realpolitik, and indeed if
 5 there is difficulty in Northern Ireland then we are left
 6 without ministerial cover, and I really do believe,
 7 my Lady, that the United Kingdom Government needs to
 8 look at that, and when there is an absence of
 9 power-sharing, which of course has been voted on by the
 10 people of Northern Ireland, and that's their system of
 11 government that they desire, then there is
 12 a responsibility on Westminster to step in.

13 **Q.** So that never again may it be said that politicians have
 14 derogated from their duties to the citizens of
 15 Northern Ireland in terms of making sure that the
 16 country is ready for whatever emergencies it may
 17 confront in the future?

18 **A.** The preparedness of the UK is something that this
 19 Inquiry is determined to look at, and indeed the
 20 response thereafter, and I think in terms of the
 21 preparedness the Westminster government should have been
 22 aware that there was a gap in Northern Ireland.

23 **Q.** To what extent were you updated, as the leader of the
 24 DUP, during the interregnum, the period of time in which
 25 you were not First Minister? Were the political parties

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1 in Northern Ireland kept informed of the position in
 2 terms of public sector resources, spending, the state of
 3 the Civil Service, the structural state of play, or was
 4 it very -- was it ... well, were you made privy to very
 5 little information about the state of play?
 6 **A.** So as is the case now, from time to time parties will be
 7 invited in by the head of the Civil Service for
 8 briefings in relation to the state of play, usually to
 9 deal with the most pressing issue of the time. Health
 10 resourcing was one of those issues and of course
 11 Operation Yellowhammer was another issue that we would
 12 have been briefed on as well.
 13 **Q.** So the political parties in Northern Ireland --
 14 **A.** Yes.
 15 **Q.** -- were made aware of the general state of affairs --
 16 **A.** Yes.
 17 **Q.** -- where the position had been reached in terms of
 18 resourcing and the impact of Operation Yellowhammer and
 19 so on?
 20 **A.** In a very general way, yes.
 21 **Q.** Were you aware, therefore, that there were problems or
 22 at least aware that there had been unwelcome and
 23 deleterious consequences or impacts upon the civil
 24 contingencies structure in Northern Ireland?
 25 **A.** I don't believe that that is something that was briefed

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1 the United Kingdom generally was suitable for
 2 a particular part of the United Kingdom which happens to
 3 share, epidemiologically and geographically, an island
 4 with another country? Was that ever issue ever up for
 5 debate?
 6 **A.** I don't think the issue was ever up for debate because
 7 we're part of the United Kingdom, therefore we work
 8 through the systems of the United Kingdom, Wales,
 9 Scotland, Northern Ireland, England. But we do
 10 of course, through other systems, recognise our nearest
 11 neighbour. We work very closely in terms of operational
 12 matters, we work through the North South Ministerial
 13 Council, and indeed, very shortly after the pandemic
 14 came to our shores, we took action to have those
 15 connections with our ministerial colleagues in the
 16 Republic of Ireland.

17 So sometimes I think there is a lot of emphasis on
 18 structure, but actually it's the operational issues that
 19 matter to people on the ground, and I think we had
 20 a close working relationship with our colleagues.

21 Sometimes problems arise, we have a different legal
 22 system, we have a different structure, and that arose
 23 during the response phase, and I'm sure we'll come back
 24 to that during those hearings.

25 **Q.** Your first period in post as First Minister ended on

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1 to the parties during those three years.

2 **Q.** All right.

3 Could we now turn to the question of the issue
 4 concerning the broad alignment between
 5 Northern Ireland's approach to pandemic planning and --
 6 together with that of the United Kingdom.

7 When you were First Minister in 2016 to 2017, how
 8 aware were you of the general alignment between
 9 Northern Ireland and the United Kingdom in terms of the
 10 strategy that would be adopted to any future pandemic?

11 **A.** Well, Northern Ireland is part of the United Kingdom, so
 12 we're very much involved in the strategic view of what
 13 should happen in an emergency of whatever type. So,
 14 yes, I would have been very much aware of that, and the
 15 existence of COBR should the need arise.

16 **Q.** What about the 2011 strategy which underpinned the
 17 approach in Westminster and was the analogue of the 2013
 18 document in Northern Ireland? Were you aware of the,
 19 what is now quite apparent, limitations of that strategy
 20 and of that pandemic influenza document?

21 **A.** I don't think that that was briefed to me during my time
 22 in 2016. I probably became more aware of that document
 23 in the early days of the pandemic.

24 **Q.** Does it follow that you wouldn't have, therefore,
 25 engaged in any debate about whether or not a plan for

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1 10 January 2017. Shortly beforehand there had been
 2 an exercise for the United Kingdom called
 3 Exercise Cygnus. It took place over a number of days in
 4 October, and it had in fact its genesis in an earlier
 5 exercise which took place in Wales in 2014.

6 There hadn't, I think, been a report on
 7 Exercise Cygnus in Northern Ireland by the time you left
 8 office in January 2017, but were you briefed orally on
 9 the outcome of that exercise, or were you made aware of
 10 the ways in which the pandemic planning or the health
 11 emergency systems in Northern Ireland required certain
 12 actions and lessons to be implemented?

13 **A.** Well, as I said, my Lady, in evidence, those would have
 14 been matters for the Department of Health and, given our
 15 very specific circumstances in Northern Ireland, I was
 16 not made aware of the outcome of Operation Cygnus, but
 17 I understand that the Department of Health were very
 18 much leading in that exercise.

19 **Q.** Coming forward to 2020, and deliberately not asking you
 20 questions about the reality of the operational responses
 21 that you were forced to make after the pandemic struck,
 22 but focusing on the structures that were in place as you
 23 found them to be, were you aware that there was no
 24 automatic Northern Ireland representation on SAGE?

25 **A.** I was not made -- I was not aware of that immediately,

40

1 but I became aware of that.

2 **Q.** Did you ensure, after no doubt an appropriate passage of
3 time, that a Northern Ireland representative was to be
4 on SAGE and had to be on SAGE?

5 **A.** It was a matter of concern. The Chief Medical Officer
6 and Chief Scientific Adviser, however, assured us that
7 they were very much in close contact with their
8 colleagues in Whitehall, and, as I understand it,
9 I think from March the Chief Scientific Adviser did
10 attend most of the meetings in SAGE and then augmented
11 that with other mechanisms, which we will discuss during
12 the response phase no doubt.

13 **Q.** Did you have many dealings yourself when you were
14 First Minister with Professor Young, one of the two
15 departmental CSAs? There was a CSA in the Department of
16 Health, Professor Young, and one in the Department of
17 Agriculture, Environment and Rural Affairs, as you would
18 have known from your previous ministerial position.

19 **A.** Yes.

20 **Q.** Was there an overarching governmental CSA, or were they
21 the only two CSAs within the Northern Irish government?

22 **A.** They were the only two, my Lady, and I think that gap
23 has now been identified in terms of having an overall
24 Chief Scientific Adviser and is being actioned, as
25 I understand it, now.

41

1 that.

2 **Q.** But the point is that it wasn't until the pandemic
3 struck --

4 **A.** Sure.

5 **Q.** -- that it became apparent that there was this lacuna in
6 the provision of scientific data and information and
7 there was a need for a body to collate the information
8 from London alongside the rest of the United Kingdom,
9 but also from Northern Ireland, in order to put it into
10 a form that was of the greatest practical utility to you
11 in Belfast?

12 **A.** I think it's one of the very important lessons from the
13 pandemic that, as well as having the expertise and the
14 ability to ask questions of some of the world's top
15 academics in London, that to have that
16 Northern Ireland-specific part is something that was of
17 benefit. So hopefully in any new plans we will have
18 that available to us -- or, indeed, not available to me
19 but to the new ministers that are in position.

20 **Q.** May we presume that there were regular meetings and
21 communications between yourself as First Minister and
22 ministers in London?

23 **A.** Yes.

24 **Q.** You're aware, of course, of the United Kingdom review of
25 intergovernmental relations. I think a policy document

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1 **Q.** Sir Michael, in the course of his evidence, observed
2 that in April 2020 he'd had to establish a strategic
3 intelligence group chaired by the CSA, Professor Young,
4 and including members from a number of renowned academic
5 institutions in Northern Ireland, as well as some
6 others, because he believed that the scientific
7 information that was available to Northern Ireland
8 failed to pay due regard or sufficient regard to the
9 specific circumstances of Northern Ireland. It
10 needed -- you needed -- to have more Northern Ireland
11 specific information.

12 **A.** I think what he indicated, and I had the opportunity to
13 watch his evidence yesterday, my Lady, was that it was
14 augmenting what was coming from Whitehall, and I think
15 that that is absolutely the right thing to do in terms
16 of making sure that we had the best available data,
17 information and scientific advice given to us. So the
18 setting up of that strategic intelligence group is
19 something that I absolutely think was the right thing to
20 do, and it allowed us to have the ability to pinpoint in
21 this terrible disease the transmissibility in particular
22 areas of Northern Ireland, and to do, indeed,
23 Northern Ireland modelling as well. So that is
24 something that I think is going to now be taken forward
25 by the Public Health Agency and I very much welcome

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1 for that review was published or at least made available
2 during your second time in office, in 2020 to 2021. It
3 states -- or at least the UK review of intergovernmental
4 relations states that ministers and civil servants
5 across the United Kingdom are in touch on a daily basis
6 across all areas of interest.

7 Was that the reality? Is that an accurate
8 description of what you found to be the case?

9 **A.** Yes, because I had a particular background to engagement
10 with ministers in the government. I had been involved
11 in a confidence in supply arrangement with the
12 government from 2017 to 2019, and that allowed me to get
13 to know a number of ministers on a personal basis, which
14 I think was very helpful during the pandemic, if I may
15 say so.

16 But that intergovernmental relationships piece was
17 really tested after the vote to leave the
18 European Union, because Scotland, Wales and ourselves
19 had particular issues that we needed to discuss with the
20 Westminster government, and that's the genesis, if you
21 like, of that policy framework and policy document.

22 **Q.** Putting aside the ease and efficiency with which you
23 conducted your communications with Westminster and with
24 UK ministers, governmentally --

25 **A.** Yes.

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1 Q. -- would you say that the relationship ministerially
2 between Northern Ireland and Westminster worked well?
3 I ask because, as you know very well, your former
4 colleague Michelle O'Neill describes meetings with the
5 Chancellor of the Duchy of Lancaster and with the
6 Prime Minister, the then Prime Minister, as being
7 a last minute decision-making platform, which would
8 perhaps tend to suggest that it was not the sort of
9 bilateral communication device that we would all wish to
10 aim for.

11 A. Indeed. And I certainly don't want to enter into the
12 realm of politics, but it is worth noting that the
13 complexion of the government in London was completely
14 different from Wales, Scotland and Northern Ireland, and
15 therefore that in and of itself had its challenges, as
16 we moved through sharing information, and I think that
17 that is reflected in the deputy First Minister's
18 response.

19 Q. To the extent that you required to be linked in to COBR
20 and to partake in its affairs, did you find that,
21 practically, an efficient process?

22 A. I wouldn't say it's an efficient process, because by its
23 very nature there are many people in the room, all
24 trying to share information and speak, but I think it's
25 a very necessary part of the procedure, and something

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1 But I also note that Sir Michael talked about the
2 need to have that connection between not just north and
3 south but actually the UK and Ireland, because we
4 shouldn't forget that these are two sovereign
5 governments, and therefore there is a need for them to
6 work together. And at the risk of moving into the
7 response phase, you could see that on international
8 travel, you could see the fact that we do share a common
9 travel area between the UK and Ireland, and people move
10 freely through the UK and Ireland, and that is probably
11 why Sir Michael was referring to that five, if you like,
12 nation approach as opposed to just north-south.

13 Q. Exercise Cygnus was obviously a UK exercise.

14 A. Yes.

15 Q. So, to the extent that you've expressed concern that
16 there isn't enough UK testing, there obviously is
17 a process in place for cross-United Kingdom exercises.

18 But Sir Michael had in mind a formalised process of
19 testing cross-border, so not systems concerned, and they
20 do already exist, to deal with problems associated with
21 obesity, food poverty, there's a British-Irish Council
22 workstream, as you know, on drugs and alcohol, suicide
23 prevention, and that accident & emergency system which
24 operates cross-border but only in relation to the land
25 over either side of the border or the counties on either

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1 that initially the Health Minister was invited to in
2 Northern Ireland, and then the First and deputy First
3 Minister became involved in COBR at a slightly later
4 stage.

5 Q. Turning, finally, to some of the lessons which you
6 identify in your witness statement and some of the
7 issues which have arisen out of the evidence concerning
8 Northern Ireland in particular, Sir Michael McBride has
9 said that he thought that there would be a significant
10 benefit in conducting testing of emergency response
11 plans and joint exercises on a north-south basis, which
12 would be a development, of course, on the existing
13 arrangements. Would you agree with that proposition?

14 A. Well, I think there's already operational procedures and
15 plans that take place on a north-south basis, if I think
16 of some of the responses along the border corridor.
17 For example, you will see health service workers,
18 ambulances, moving across the border to help in
19 particular incidents, which is absolutely right and
20 should be the case. We have particular structures in
21 place to deal with paediatric cardiac services, which
22 I actually was involved with at the time. So I think
23 there are some instances already taking place in terms
24 of north-south operability and the need to work
25 together.

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1 side of the border. Testing in the field of emergency
2 response, civil contingency, EPRR, would be something
3 novel and different?

4 A. That's why I say I think it will be better with the two
5 sovereign governments becoming involved, and we've
6 already talked about resilience --

7 Q. All right, so your position is it has merit, it has
8 a benefit, but it must be a matter for the politicians
9 at Northern Ireland and Westminster level and the
10 Republic of Ireland to debate between themselves?

11 A. Yes, because inevitably if you are to have a plan
12 north-south, there will be elements that will be
13 reserved to Westminster, and that is why there is a need
14 for Westminster politicians to be involved as well.

15 Q. Much evidence has been given about -- and you referred
16 to it in your own witness statement, to embedded
17 structural inefficiencies in Northern Ireland, in
18 particular in the context of the healthcare system,
19 which you say you believe can only be tackled by
20 fundamental reform.

21 Is such fundamental reform a necessary part of
22 reforming the system of civil contingencies? So putting
23 it another way, can you have a properly operated system
24 of civil contingencies without having a properly working
25 system of healthcare and resilience?

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1 **A.** I believe the reforms envisaged by Bengoa are necessary,
2 and therefore if they're necessary for the system, that
3 must mean that they're necessary for resilience overall,
4 in terms of Northern Ireland response. Particularly in
5 a health emergency, obviously less so in other sorts of
6 emergencies. Mind you, it's very difficult to envisage
7 an emergency which doesn't involve the health service,
8 if I'm frank.

9 **Q.** Another point you make in your witness statement is that
10 it's vital next time to have better planning and advance
11 consideration of the potential impacts, not just of --

12 **A.** Yes.

13 **Q.** -- the emergency, the exigency, the pandemic, if that is
14 what it is, but also of the governmental responses, so
15 lockdowns or mandatory quarantines or countermeasures
16 and so on.

17 It is obvious, isn't it, from what you've said, that
18 there was no consideration at all given to any of those
19 features or the countermeasures or the potential
20 consequences of the government's response to Covid in
21 advance of Covid striking?

22 **A.** I think certainly when Covid struck there was a great
23 fear and a great panic that ensued, not just in
24 Northern Ireland but right across the United Kingdom,
25 and indeed other jurisdictions as well, and there --

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1 **MR KEITH:** My Lady.
2 (11.15 am)

(A short break)

4 (11.30 am)

5 **LADY HALLETT:** Just before -- Mr Lavery, are you asking the
6 questions? Just before you do, can I ask one question
7 myself, and then of course -- you have finished,
8 Mr Keith?

9 **MR KEITH:** I have, my Lady, I was just standing up out of
10 courtesy since you were asking the witness a question.

11 **LADY HALLETT:** I see.

12 Then, Mr Lavery, if you would ask the questions that
13 I've given you permission to ask.

Questions from THE CHAIR

15 **LADY HALLETT:** Lady Foster, can I ask, you mentioned several
16 times that, in the absence of ministerial oversight,
17 because the power-sharing agreement's collapsed, if
18 there are gaps, for example in resilience, then the
19 Westminster government should step in.
20 Whose duty would it be to inform the Westminster
21 government that they had discovered gaps in resilience
22 or preparedness?

23 **A.** Well, firstly, the Civil Service in Northern Ireland
24 does have a relationship with the Northern Ireland
25 Office, of course, and they have ongoing conversations,

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1 felt there was a need to lock down in a particular way.
2 I do not think that enough consideration was given to
3 the impact, the non-health impact, if I can put it like
4 that -- and indeed there were many health impacts as
5 well that were not foreseen.

6 My Lady, if I may, I mean, the devastating impact
7 that Covid had on so many families in Northern Ireland
8 I think is -- stays with me, because it was
9 a devastating impact. Many people lost loved ones in
10 devastating circumstances, which have been set out by
11 the bereaved families' statement, and I want to take
12 this opportunity to give them my condolences and my
13 sympathies, and indeed to note that there are many
14 people still suffering today with long Covid, and indeed
15 some people in hospital today with Covid.

16 Therefore, I really do hope that this Inquiry is
17 able to bring an element of closure, but more
18 importantly to learn the very important lessons for the
19 future, because I think that is the critical point of
20 this Inquiry.

21 **MR KEITH:** My Lady, those are all the questions that I have.

22 **LADY HALLETT:** I think we'd better break here.

23 We take a break for the benefit of everybody, in
24 particular our wonderful stenographer. So I shall
25 return at 11.30.

50

1 so the civil servants in Northern Ireland could alert
2 the NIO. Of course, and I know this is a subject of
3 under consideration, if there was to be a wider
4 resilience audit of the UK that identified gaps in
5 whatever part of the United Kingdom, then that could be
6 brought to the attention of central government, whether
7 that was on an annual, biannual basis. So I think
8 that's maybe something to consider as well.

9 **LADY HALLETT:** Thank you very much.

10 Mr Lavery.

Questions from MR LAVERY KC

12 **MR LAVERY:** Thank you, my Lady.

13 Lady Foster, my name is Lavery and I represent the
14 Northern Ireland Covid-19 Bereaved Families for Justice,
15 and her Ladyship has permitted me to ask you questions
16 about a couple of themes.

17 The first thing I want to ask you about is the
18 scientific advice that you were getting, and you said in
19 your statement that the decisions you made during the
20 pandemic, including those in relation to lockdowns and
21 other non-pharmaceutical interventions -- this is at
22 paragraphs 32 and 38 -- were based on a very high level
23 of scientific advice which were, in turn, very well
24 connected into SAGE and central government systems.
25 That's at paragraph 22.

52

1 Now, with the obvious assistance that you obtained
2 from scientific advisers during the pandemic, and the
3 fact that, as First Minister, you were responsible for
4 civil contingencies, do you regret not seeking the
5 advice of the Chief Scientific Adviser, Professor Young,
6 in any of the five years of his appointment prior to the
7 pandemic?

8 **A.** Well, of course prior to the pandemic the number one
9 risk was the flu pandemic, and it was of a different
10 nature, the pandemic that arrived with us in 2020. The
11 route to the Chief Scientific Adviser was through the
12 Department of Health, because he reports in to the
13 Department of Health through their system, and I think
14 it is a gap in the governance that we don't have
15 a governmental Chief Scientific Adviser, in other words
16 one that sits in the Executive Office.

17 I think that that is -- that has been identified,
18 my Lady, and is something that is now being dealt with
19 and is certainly one of the learnings from this terrible
20 time.

21 **Q.** So you do regret not receiving advice or seeking advice
22 from him?

23 **A.** Well, as I say, I wasn't in office during those years of
24 2017 to 2020, so it wouldn't have been appropriate for
25 me to seek advice at that time.

53

1 evidence earlier asked you about Northern Ireland's
2 membership of SAGE, and you said that that's something
3 that you weren't aware of prior to the onset of the
4 pandemic; is that right?

5 **A.** That's correct, yes.

6 **Q.** So that did come as a surprise to you, no doubt?

7 **A.** It did. I suppose that that's something that, again,
8 operates in our system of government, which you will be
9 familiar with, Mr Lavery, that operates through the
10 Department of Health, so I wasn't aware that we weren't
11 sitting members, but then when I listened to
12 Sir Chris Whitty giving his evidence, he was very clear
13 that the only permanent position in SAGE is actually the
14 Chief Scientific Adviser to the UK Government, and then
15 they bring in whoever they need to bring in.

16 I absolutely think we should be there of right in
17 SAGE when SAGE is stood up, and in terms of horizon
18 planning that's something that should happen across
19 the UK on an ongoing basis, and again leads me back to
20 the point I made to my Lady about resilience planning
21 and the need to audit what's going on across the UK in
22 terms of preparedness for whatever may come our way.

23 **Q.** In fact in your evidence earlier you suggested we should
24 be more integrated into the UK system in terms of
25 scientific expertise and resources.

55

1 In 2017, the year I was First Minister, before the
2 pandemic, I wasn't aware that there was any issue of
3 which I needed to seek advice at that time.

4 **Q.** One of the issues that has arisen during the course of
5 the Inquiry is the topic of horizon planning.

6 **A.** Yes.

7 **Q.** Is that something that you're aware of, in scientific
8 terms, that scientific advisers should be conscious of
9 the advice that they should proactively be giving?

10 **A.** Yes, I became aware of this phrase and the meaning
11 behind it obviously in preparation for the hearing
12 today, and it certainly seems to me, particularly in
13 identifying risks, however likely or unlikely they are,
14 the impact -- and I go back to the evidence of
15 Sir Oliver Letwin -- I think the impact should be
16 flagged up that if it does happen that this is the
17 impact that it's going to have on society, and I think
18 certainly if there had have been horizon planning for
19 this type of pandemic, it would have been very helpful
20 to know what then we needed to put in place to deal with
21 that type of pandemic.

22 **Q.** Now, at paragraph 22 of your statement, you say that
23 your impression was that the Northern Ireland scientific
24 advisers had the same rights and access to central
25 government scientific systems, and Mr Keith in your

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1 Does this then come as a surprise to you or were you
2 aware that the Chief Scientific Adviser,
3 Professor Young, was denied membership of the Chief
4 Scientific Adviser UK network?

5 **A.** Yes, well, that isn't something that I would have been
6 made aware of, because, as I say, his sponsor department
7 is the Department of Health.

8 **Q.** Did you know about that before I asked you, for
9 instance?

10 **A.** No, I didn't. No.

11 **Q.** From what you said earlier, do you think that would have
12 been a good thing for him to be involved in that?

13 **A.** Yes, absolutely.

14 **Q.** Or essential?

15 **A.** I think it's essential that we have as much opportunity
16 to be involved in seeking information, seeking
17 expertise, as we possibly can, and therefore I think --
18 and I know, Mr Lavery, probably there is a need to keep
19 some of these organisations small and agile, to make
20 sure that they work properly, because if there's too
21 many people in the room it becomes a difficulty.
22 However, I think from a Northern Ireland point of view,
23 and I'm sure it's the same for Scotland and Wales, it's
24 important that we are plugged in to the expertise that
25 is there.

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1 **Q.** If you had been made aware of this, no doubt you would
 2 have talked to people and tried to make him a part of
 3 that?
 4 **A.** I certainly would have spoken with the Minister of
 5 Health to have a discussion about his concerns around
 6 the provision of scientific advice. As we've already
 7 indicated, we don't have a governmental chief scientific
 8 adviser. I think that is something that we need to deal
 9 with, and when that person is in post I would hope that
 10 that person would have access to all of the relevant
 11 meetings that he needs to attend.
 12 **Q.** Just lastly on this topic, did you know that the Senior
 13 Medical Officer for Northern Ireland only had observer
 14 status, with no speaking rights at the Joint Committee
 15 on Vaccination and Immunisation, and that
 16 Northern Ireland only had observer status at the
 17 Advisory Committee on Dangerous Pathogens meetings, the
 18 ACDP?
 19 **A.** I think I became aware of that on reading the evidence
 20 before I came to this hearing.
 21 **Q.** Then I want to ask you about your role as minister
 22 responsible for civil contingencies.
 23 At paragraph 27 of your statement, you said that
 24 Northern Ireland needs more "access to sufficient
 25 suitably qualified draftspeople", and at paragraph 8 you

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1 preparedness and civil contingency legislation
 2 protections as those in the rest of the UK?
 3 **A.** So there's quite a lot in that, Mr Lavery.
 4 **Q.** Yes.
 5 **A.** But just to say that when Operation Cygnus reported,
 6 unfortunately the Executive had collapsed by that stage
 7 and, as you've indicated, the work began on pandemic flu
 8 preparedness in terms of legislation, but that was then
 9 stopped in order to deal with Operation Yellowhammer.
 10 When I came back into office, I wasn't made aware of the
 11 fact that we hadn't progressed the Pandemic Flu Bill,
 12 but I think by that stage it had actually begun again,
 13 and indeed that work had been paused right across the UK
 14 and not just in terms of Northern Ireland.
 15 In terms of the statutory duties, as I understand
 16 it, there are only two organisations that are at
 17 a category 1, the Police Service of Northern Ireland and
 18 the maritime authority, but that the other authorities
 19 in category 2 do operate alongside those two bodies, and
 20 it is a moot question as to whether, if there were
 21 statutory duties attached to those people they would
 22 have done -- or they would have engaged in different
 23 planning in preparation for an emergency. I'm not
 24 qualified to say whether they would or they wouldn't.
 25 Perhaps someone from those organisations could indicate

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1 said that during the period of collapse 2017 to 2020
 2 that there was no Assembly present to -- no Assembly
 3 there to pass legislation.

4 You'll also be aware that large parts of the Civil
 5 Contingencies Act in 2004 do not apply to
 6 Northern Ireland, and those parts of the Act contain
 7 important statutory obligations on public authorities.

8 The reason that happened was that in 2005 there was
 9 an expectation on the part of the Secretary of State
 10 that equivalent devolved legislation would be introduced
 11 to Northern Ireland to ensure a similar level of
 12 protection as experienced elsewhere. In fact, Cygnus
 13 recommended that Northern Ireland should consider
 14 developing legislation on pandemic response.

15 Now, you may or may not be aware that Peter May,
 16 then, the former permanent secretary for the Department
 17 of Health, in his statement, paragraph 101, says that
 18 civil servants at the request of the Chief Medical
 19 Officer decided to divert resources away from the
 20 development of the Northern Ireland public health Bill
 21 to other areas, stalling the progress of that
 22 legislation.

23 Now, as minister responsible for civil contingencies
 24 during the relevant period, do you believe that
 25 Northern Ireland does deserve the same level of pandemic

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1 whether that was the case.

2 **Q.** Well, Dr McMahon suggested that there were perhaps
 3 three, maybe four areas in which legislation imposing
 4 mandatory duties was necessary: one was that the duties
 5 would be clearly set out; secondly, that those duties
 6 would be properly resourced; and, thirdly, that during
 7 periods which are recurrent and do last for a long
 8 period of time where there is no Assembly, that public
 9 authorities would know exactly what they had to do.

10 **A.** Yes, I think there's much merit in what Mr McMahon has
 11 said around that. And as I don't have the
 12 recommendations from Operation Cygnus in front of me,
 13 I can't really comment any further at this point.

14 **Q.** Did you ever discuss the legislative changes and how
 15 these disadvantages should be addressed?

16 **A.** No, they were never brought to my attention.

17 **Q.** Were you aware that the Northern Ireland public health
 18 Bill had been stalled?

19 **A.** Well, I wasn't in office until January of 2020, so
 20 I wasn't aware, when I came in -- back into office in
 21 2020, that it had been stalled, but I think by that
 22 stage it had begun the planning again, because
 23 Operation Yellowhammer obviously was behind us at that
 24 stage, having ended in December of 2019.

25 **Q.** Do you agree that it was an inappropriate position for

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1 the Chief Medical Officer and civil servants to have to
2 make the decision to stall that legislation in the
3 absence of ministerial oversight?

4 **A.** Well, I think I've given evidence to my Lady about the
5 fact that when there isn't devolved ministers in office,
6 that really United Kingdom Government ministers should
7 take responsibility for something as important as
8 resilience and emergency preparedness.

9 **Q.** But just going back to your earlier response, you
10 weren't aware of this legislation or this lacuna, it
11 wasn't brought to your attention?

12 **A.** No, it wasn't, no.

13 **Q.** Do you think it should have been?

14 **A.** Yes.

15 **MR LAVERY:** Thank you, my Lady.

16 **LADY HALLETT:** Thank you, Mr Lavery.

17 **MR LAVERY:** Thank you, Lady Foster.

18 **THE WITNESS:** Thank you.

19 **MR KEITH:** My Lady, that concludes the evidence of
20 Baroness Foster.

21 **LADY HALLETT:** Thank you very much indeed for your help,
22 Lady Foster, and as you have envisaged in your evidence
23 we shall meet again for the response phase. Thank you.

24 **THE WITNESS:** Thank you, my Lady.

(The witness withdrew)

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1 expenditure in the Department of Finance.

2 **Q.** Thank you.

3 My Lady, I'm conscious that you have already heard
4 a significant amount of evidence about health matters in
5 Northern Ireland, but I will begin, if I may, by
6 establishing with Mr Pengelly an overview of the
7 Department of Health in Northern Ireland.

8 Mr Pengelly, in 2016, there was departmental
9 restructuring which led to the Department of Health,
10 Social Services and Public Safety becoming the
11 Department of Health; is that right?

12 **A.** That's right, yes.

13 **Q.** The Department of Health, as my Lady has heard, is one
14 of nine Northern Irish governmental departments.

15 The department's statutory responsibilities under
16 the Health and Social Care (Reform) Act (Northern
17 Ireland) 2009 are to promote an integrated system of
18 health and social care, designed to secure
19 an improvement in the physical and mental health of the
20 people of Northern Ireland, the prevention and diagnosis
21 and treatment of illness, and the social well -- and
22 well-being of people in Northern Ireland; is that right?

23 **A.** That's right, yes.

24 **Q.** Thank you.

25 Does the top management group and departmental board

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1 **MS BLACKWELL:** My Lady, the next witness is
2 Richard Pengelly.

MR RICHARD PENGELLY (sworn)

Questions from COUNSEL TO THE INQUIRY

5 **MS BLACKWELL:** Is your name Richard Pengelly?

6 **A.** It is, yes.

7 **Q.** Mr Pengelly, thank you for the assistance that you have
8 given so far to the Inquiry. You have provided
9 a witness statement which is at INQ000195848, and if we
10 go to page 18 of the document -- thank you -- we can see
11 that you signed it on 23 May of this year. Can you
12 confirm that it's true to the best of your knowledge and
13 belief?

14 **A.** I can indeed.

15 **Q.** Thank you very much. We can take that down.

16 You currently hold the position of
17 permanent secretary at the Department of Justice in
18 Northern Ireland, but you previously held the position
19 of permanent secretary at the Department of Health
20 between July of 2014 and April of 2022.

21 Prior to that, you had been permanent secretary of
22 the Department for Regional Development, but it's right
23 to say that prior to 2014 you had no experience of
24 working in the area of health and social care?

25 **A.** That's right, I was largely working in public

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1 have the responsibility for the overall corporate
2 governance of the department?

3 **A.** It does indeed. The overall responsibility sits largely
4 with myself as permanent secretary and accounting
5 officer, and I'm supported in that by the top management
6 group, who would typically meet weekly, and the
7 departmental board, who would meet less frequently.

8 **Q.** Thank you.

9 Does the department discharge its responsibilities
10 by direct departmental action and also through its arm's
11 length bodies?

12 **A.** Yes, essentially the department focused on the policy
13 agenda and the operational delivery of services, was
14 through 17 arm's length bodies of the department.

15 **Q.** So as permanent secretary, what is the variety of roles
16 that you held in the Department of Health?

17 **A.** The permanent secretary role in the Department of Health
18 is unique in the Northern Ireland context because
19 there's a dual job title: it's permanent secretary of
20 the department and chief executive of the health
21 service. It's a slightly strange title because there is
22 no legal entity of the health service in
23 Northern Ireland; there are, as I mentioned, 17 arm's
24 length bodies. The operational responsibilities sit
25 with those individual bodies. So my discharge of the

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1 permanent secretary responsibilities was through the
2 department and the top management group. I saw very
3 much the chief executive role as one of trying to
4 consolidate system behaviour as opposed to having the
5 operational responsibility for the provision of care,
6 for example.

7 **Q.** My Lady heard yesterday from
8 Professor Sir Michael McBride, who explained the role of
9 Chief Medical Officer and, indeed, the Chief Medical
10 Officers group, because the Chief Medical Officer holds
11 overall policy responsibility for emergency planning,
12 preparedness and response, does he not?

13 **A.** He does, yes.

14 **Q.** In terms of multiple levels of delegation and how that
15 fits within emergency planning and preparedness, does
16 the level of delegation go from the Department of Health
17 to the Chief Medical Officer, and from the Chief Medical
18 Officer then to the Deputy Chief Medical Officer, and
19 also the director of Population Health directorate?

20 **A.** It does, although I'm just wary of emphasising the
21 delegation nature too much, because sometimes that can
22 be erroneously interpreted as an abdication of
23 responsibilities.

24 Sir Michael took a very, very close involvement in
25 emergency planning but the day-to-day work would have

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1 peers, the leader of the various groups across the
2 department -- I would have had stock takes with them,
3 normally every three to four weeks, and it would have
4 been an hour spent together just talking through issues.
5 From time to time we'd have touched on emergency
6 planning, and Michael might have mentioned, you know,
7 there's an issue about -- we have lost a member of
8 staff, we need to bring someone in, but the sense I got
9 was this was a very well managed and well organised area
10 of the department, with no concerns coming to me on
11 a formal basis.

12 **Q.** My Lady has heard evidence about other relevant
13 structures in terms of emergency planning within the
14 Department of Health, the Northern Ireland Pandemic Flu
15 Oversight Group, a Task and Finish Group, Health
16 Emergency Planning Forum, Critical Threats Preparedness
17 Steering Group, Joint Emergency Planning Board, and
18 Joint Emergency Planning Team.

19 I'm going to ask you a question that's been put to
20 other witnesses: do you think that there was too complex
21 an arrangement so far as emergency planning was
22 concerned, and also I'd like you to consider: was there
23 any risk of duplication and overlap between those
24 various bodies?

25 **A.** I think the short answer has to be it is a complex

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1 been delegated down to the emergency planning branch,
2 who -- that would have been the sole focus of their
3 responsibilities, and obviously Sir Michael would have
4 had a broader range.

5 **Q.** So what systems were in place to ensure efficient
6 collaboration and engagement of those that needed to
7 focus on emergency planning?

8 **A.** The main approach was one of the provision of assurance
9 statements, so rather than, for example, either
10 Sir Michael or the Deputy Chief Medical Officer
11 completely -- the phrase we use is "marking the
12 homework" of their direct reports, it would have been
13 set a broad range of objectives and then seek assurance
14 at various touchpoints in the year that those objectives
15 were being delivered or were on track for delivery, with
16 any issues or concerns being escalated upwards, in the
17 first instance to the Deputy Chief Medical Officer, if
18 necessary to Sir Michael, and then to myself if they
19 were of a significant nature.

20 **Q.** During your time as permanent secretary of the
21 Department of Health, did you have any concerns about
22 the efficacy of that system?

23 **A.** No concerns -- and, sorry, just to complete. There
24 would be the upward escalation of concerns. The main
25 way that my own involvement -- and Michael and his

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1 landscape, and with complexity there is always the risk
2 of duplication or overlap.

3 The point I would make in favour of the structures
4 is that, in my experience, and for many years as
5 a senior civil servant, one of the issues that causes us
6 greatest concern is organisations retreating into their
7 silos, and the silo mentality. We strive for
8 cross-departmental and cross-organisational working.
9 The delivery of effective emergency preparation work
10 cuts across the responsibilities of a number of
11 organisations. In Health alone we have a department and
12 17 arm's length bodies --

13 **Q.** Could I ask you to slow down your evidence a little for
14 the stenographer.

15 **A.** The work also cuts across other sectors, so at times to
16 bring those diverse range of organisations together
17 effectively and to get them to work collaboratively
18 towards a unified purpose requires the establishment of
19 groups.

20 It does look complex, and it's something we should
21 always be alive to and seek to minimise that complexity,
22 but I think it's a necessary approach where
23 responsibilities cut across organisational structures.

24 **Q.** The Department of Health is the lead government
25 department in respect of pandemic preparedness, is it

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1 not?
 2 **A.** It is.
 3 **Q.** The department is therefore required to maintain a state
 4 of readiness and build resilience to allow it to
 5 effectively lead the response to such health emergencies
 6 where they occur, and part of the way in which the
 7 government department sought to carry out its
 8 responsibilities in that regard was in terms of the
 9 development of response plans. So I want to turn now to
 10 look at the arrangements that were in place over the
 11 course of time.

12 I don't want us to look at this document, but can
 13 you confirm, please, Mr Pengelly, that *A Guide to*
 14 *Emergency Planning Arrangements in Northern Ireland*,
 15 which was published by the Executive Office, a guide
 16 which runs to over 200 pages, required the Department of
 17 Health to maintain and review and update its own
 18 emergency response plan?

19 **A.** That's correct, yes.

20 **Q.** The emergency planning branch in the department's
 21 Population Health directorate, until January of this
 22 year, was responsible for maintaining, reviewing and
 23 updating this plan; is that right?

24 **A.** That's right, yes.

25 **Q.** Versions of the plan were published by the department

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1 department.

2 So let's take a look at it, please, it's at
 3 INQ000184662. This is the 2019 version of the plan, as
 4 we can see from the red text at the bottom, and it's
 5 version 4.

6 It we go to pages 4 and 5, please, and have a look
 7 at the contents. Now, we can see there is
 8 an introduction. There are then set out, in part 2,
 9 areas of responsibility in terms of emergency response.
 10 Part 3 covers activation procedures. Part 4, the detail
 11 of an emergency response. Part 5, a long-term response.
 12 If we can go over the page, please, part 6, training,
 13 Part 7, validation and review. Then a series of
 14 annexes, including the health Gold command templates and
 15 action cards.

16 Could we go to page 6, please, where I think we can
 17 see that the plan has been signed by both yourself and
 18 also Dr McBride, as he then was.

19 If we turn to page 11 -- thank you -- we can see at
 20 paragraph 1.9 the "Principles for activation", that:

21 "The Department will deploy and operate an effective
 22 and resilient response and recovery for any emergency
 23 with which it is designated the [lead government
 24 department] arising from an emergency in the following
 25 scenarios ..."

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1 between 2009 and 2013, but the plan that was in place at
 2 the time that Covid hit was the 2019 version; is that
 3 right?

4 **A.** That's right.

5 **Q.** How often was the plan reviewed?

6 **A.** The plan would have been reviewed after any exercise
 7 which tested it or whether the plan had actually been
 8 commissioned in response to an issue, so there was
 9 an ongoing programme of review throughout that period.

10 **Q.** Was it reviewed between 2013 and 2019?

11 **A.** It was, I think it was reviewed certainly as
 12 a consequence of Exercise Cygnus, the departmental plan
 13 was reviewed.

14 **Q.** Was the departmental emergency response plan tested in
 15 Exercise Cygnus?

16 **A.** It wasn't specifically tested because of the nature of
 17 Cygnus, but colleagues in the emergency planning team
 18 who would have been involved in that say it would --
 19 it's an ongoing programme of constant evaluation and
 20 review of that plan.

21 **Q.** The plan is said to be modular in structure and
 22 therefore flexible, scalable and capable of escalation
 23 and de-escalation, and it claims to set out how the
 24 department would carry out the responsibilities and
 25 functions associated with its role as lead government

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1 If we look to the third bullet there, it covers:

2 "- human infectious diseases (including pandemic
 3 influenza, avian influenza and smallpox ...) ..."

4 Thank you.

5 Could we turn to page 13, please, to look at what is
 6 said in terms of scalability. Could you explain to us,
 7 please, what the "Activation Protocol Summary" table
 8 shows us.

9 **A.** That's showing moving from a local area, which is
 10 essentially an issue which would be contained to one
 11 health trust, one small geographical area, and then once
 12 we're into levels 1, 2 and 3 there's an escalating scale
 13 of impact.

14 Bronze essentially means a response by one
 15 individual health and social care trust. Silver are the
 16 arrangements where what was the Health and Social Care
 17 Board, the Public Health Agency, would come together to
 18 lead a regional response at a significant level. Then
 19 if it comes to level 2 or level 3 it would escalate it
 20 up to a Northern Ireland-wide issue and up to the
 21 catastrophic level.

22 **Q.** Thank you.

23 Could we have a look, please, at annex G at page 63,
 24 which I think will show us the "Health Gold Command
 25 Support to Infectious Disease Outbreaks". It says this:

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1 "In response to any infectious disease outbreak,
2 [the Department of Health] can provide strategic health
3 and social care advice and direction in addition to HSC
4 Silver arrangements (as detailed in their Joint Response
5 Emergency Plan and other Critical Care and Acute
6 Escalation Plans)."

7 Then there are a series of four bullet points which
8 set out specific roles, responsibilities and actions
9 that the department may take, which include:

10 "- Establishing a Department Reporting Rhythm ...

11 "- Early identification and communication of the
12 lead Policy Branch and contact details;

13 "- For isolated cases in [Northern Ireland],
14 notification to other
15 [United Kingdom]/[Republic of Ireland] health
16 departments ..."

17 Then, finally:

18 "- Identification of a Press ... point of contact."

19 There is reference at the bottom of this annex to:

20 "The Northern Ireland Infectious Disease Outbreak
21 Plan [of] 2018 developed by the Public Health Agency in
22 liaison with the [Department of Health] ..."

23 And saying that it's:

24 "... based on the most up-to-date guidance available
25 on leading and managing an incident or outbreak ..."

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1 pathway and be treated under one plan and then migrate
2 to the escalation, so I think most infectious disease
3 outbreaks would have been contained within the PHA
4 outbreak plan and that would have covered the response
5 by PHA colleagues.

6 **Q.** Would it be more efficient to simply have one plan
7 rather than the need to move from one to the other?

8 **A.** But if the second plan we're talking about is dealing
9 with a catastrophic level, the infectious disease
10 outbreak plan is dealing specifically with those
11 infectious disease issues, and very much led by our
12 clinical and medical colleagues in PHA, as opposed to
13 the more administrative response of the ERP.

14 **Q.** The ERP was underpinned by the United Kingdom risk
15 assessment process, wasn't it?

16 **A.** It was.

17 **Q.** My Lady has heard about the National Security Risk
18 Assessment and the National Risk Register. You may have
19 been following the evidence that the Inquiry has heard
20 so far about the limitations and drawbacks of the system
21 and the 2011 strategy, the United Kingdom pandemic
22 strategy.

23 So without going into the detail of those drawbacks
24 again, do you accept that if there were drawbacks to the
25 system of risk assessment and the United Kingdom 2011

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1 Just pausing there, does this mean, Mr Pengelly,
2 that, in addition to the document that we're looking at,
3 in the situation of an outbreak of pandemic influenza,
4 or indeed any similar disease, then this document needs
5 to be considered in conjunction with the Public Health
6 Agency outbreak plan?

7 **A.** Yes, the Public Health Agency would have had primacy in
8 terms of the infectious disease work, so this was their
9 plan. My understanding is that that work was predicated
10 on an infectious disease outbreak which didn't reach
11 pandemic level. It was more an outbreak, as opposed to
12 a pandemic, that they would have led on.

13 **Q.** So how serious would the outbreak have to be to move
14 from the Public Health Agency infectious disease
15 outbreak plan to the plan that we're looking at now?

16 **A.** Well, it would be along that escalation pathway where --

17 **Q.** That we've just looked at?

18 **A.** Yeah, where it reached a sort of critical or
19 catastrophic level, and that's always assessed, in terms
20 of impact, at Northern Ireland level.

21 **Q.** Was that transition from one plan to another well
22 understood within your department?

23 **A.** I'm ... I'm not sure that it had ever been thought about
24 in those terms as a transition from one to another,
25 because Covid essentially didn't come down the outbreak

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1 strategy, then those drawbacks would have fed in to this
2 ERP document?

3 **A.** If I follow your question correctly, if we accept the
4 premise that there were drawbacks in a UK-wide 2011
5 strategy, our 2013 HSC strategy was very much
6 piggybacking that strategy --

7 **Q.** Yes.

8 **A.** -- so it would have been a natural flow through.

9 **Q.** Let's take a look at the 2013 strategy, please.

10 It's at INQ000183431. Thank you. That's the first
11 page. Can we go to the contents page, please, which is
12 at page 2.

13 You can see there there's an executive summary, then
14 health and social care preparedness and response.
15 Part 3 is the pandemic phase. At part 4, pandemic
16 countermeasures. Part 5, summary of actions required by
17 the HSC organisations for a pandemic. Then acronyms and
18 glossary at the end.

19 You may be aware that Professor Sir Michael McBride
20 was asked about his view of this guidance document
21 yesterday, and he told my Lady that, in his view, it was
22 not an effective basis for responding to the Covid
23 pandemic because there was a need for a more generic
24 plan that could be scaled up, but at the same time be
25 specific enough to be tailored to a particular pathogen.

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- 1 Do you agree with his view on this document?
- 2 **A.** Yes, absolutely.
- 3 **Q.** The purpose of the guidance was to provide guidance for
4 the healthcare system should a pandemic hit, and as
5 we've established it's closely aligned to the 2011
6 United Kingdom strategy. You may also be aware that
7 Professor Sir Michael McBride was asked about the
8 similarity between the Northern Ireland document and
9 that of Wales, and that in some regards it is word
10 perfect one with the other. We know that, so far as the
11 Wales version is concerned, the version of the document
12 was first published, I think, in March of 2010. Are you
13 able to shed any light on whether or not the
14 Northern Ireland document copied certain parts of the
15 Welsh document or vice versa?
- 16 **A.** I can't -- the development of the document pre-dated my
17 arrival in the department -- other than, I think, the
18 point Sir Michael made yesterday, it would be very
19 common for us to share documents back and forward with
20 colleagues across the devolved administrations and
21 colleagues in England.
- 22 **Q.** The Northern Ireland document was not updated between
23 2013 and 2020, was it?
- 24 **A.** No, it wasn't.
- 25 **Q.** Do you think it should have been?

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- 1 they?
- 2 **A.** They don't, but, again to emphasise, the purpose of the
3 document was to address what was assessed by the
4 scientific and clinical assessment of the most likely
5 risk. We didn't set out to prepare a document that
6 would be of use in every possible scenario that we might
7 face. So it was aimed at the number one threat.
- 8 **Q.** Yes, but not just every scenario that you might face,
9 there was no level of scalability or adaptability, was
10 there?
- 11 **A.** Not in the terms you apply. I mean, there was reference
12 that the -- some of that repeats(?) of the plan could be
13 used for a non-influenza pandemic. But, to be fair,
14 I don't think it went into much more granular detail
15 than that.
- 16 **Q.** No, and do you see the sense in the plans going forward
17 containing details of different transmission situations
18 and also plans to deal with the manner in which the
19 population may need to be controlled in the event of
20 a outbreak?
- 21 **A.** I think in the light of experience that would be
22 a hugely sensible approach.
- 23 **Q.** I'd like to move now to look at the department risk
24 register, which again my Lady heard some evidence about
25 yesterday.

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- 1 **A.** It -- there was a desire to do so, and I think it was
2 one of the lessons emerging from Exercise Cygnus, but
3 the 2013 document hung off the back of the 2011 UK
4 document, so the approach was we were awaiting an update
5 of the UK document to do the refresh of the
6 Northern Ireland-specific document.
- 7 **Q.** As was the case with other parts of the United Kingdom,
8 none of the Department of Health for Northern Ireland
9 plans set out how planning might need to be adapted for
10 a pandemic in terms of a pandemic that had significantly
11 higher rates of transmission, or a longer or shorter
12 incubation period, whether or not it was an asymptomatic
13 or symptomatic spread, or indeed had much focus on the
14 prevention of transmission of the spread of a pandemic,
15 did it?
- 16 **A.** It didn't, no, and I think that's a point that's been
17 touched on. The reason, as I understand it, this
18 document was reflecting what at the time was assessed as
19 the most likely threat that was faced, which was
20 an influenza pandemic, which wouldn't have those
21 characteristics that you have mentioned.
- 22 **Q.** Indeed, none of the plans deal in any sufficient way,
23 I'm going to suggest, with mass diagnostic testing or
24 infrastructure of mass contact tracing or mandatory
25 quarantine or the possibility of mass self-isolation, do

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- 1 It's at INQ000185379. Thank you.
- 2 We can see that this is the risk register for
3 2018/2019, which is indeed the one that was in place at
4 the time --
- 5 **A.** Yes.
- 6 **Q.** -- of the outbreak, wasn't it?
- 7 If we can look at page 6, please, and go to row DR6,
8 we can see that:
- 9 "The health and social care sector [this is the risk
10 that's being identified] may be unable to respond to the
11 health and social care consequences of any emergency
12 (including those for which the [Department of Health] is
13 the Lead Government Department) due to inadequate
14 planning and preparedness which could impact on the
15 health and well-being of the population."
- 16 Tell us, Mr Pengelly, what oversight you would have
17 had to the creation of the departmental risk register,
18 and indeed, specifically, the risk which is identified
19 here as risk 6?
- 20 **A.** There's a rolling programme of work that would be
21 undertaken throughout the year. It starts with the
22 articulation of the department's broad strategic
23 objectives and -- that would be set out in our annual
24 business plan. Once we have established the strategic
25 objectives, the risk register is then designed to

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1 identify what are the risks that may prevent us from
2 achieving the objectives, as we've articulated them.

3 So the first stage in the cycle would be to identify
4 the risks, as has been done here.

5 **Q.** Yes.

6 **A.** The next stage then is to assess and, I'm sure we'll
7 come on to it, the likelihood and impact: the likelihood
8 of that risk crystallising and, if it were to
9 crystallise, the impact it would have.

10 Then we develop mitigating measures. So that, in
11 a sense, is the planning cycle. It's: identify the
12 risks against the strategic objectives, assess the
13 impact of the risk and what steps can we take to
14 mitigate the risk. Then the rest of the reporting cycle
15 is: are we delivering the mitigating actions that are
16 necessary? And that would happen then.

17 There would be -- it would come on a quarterly
18 basis. We mentioned earlier the department's top
19 management group. It would come on a quarterly basis to
20 that. It would also go on the departmental board agenda
21 and the department's audit and risk committee would
22 specifically look at the risk register and provide some
23 assurance.

24 **Q.** Let's look at pages 24 and 25, please, for more details
25 on risk DR6. My Lady was taken through this yesterday

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1 this document would have been made available to myself
2 and colleagues in the top management team throughout the
3 year to monitor progress against the column 8 actions.

4 **Q.** Right. Are you able to explain to the Inquiry why that
5 fuller version has not been provided so far?

6 **A.** I don't honestly know. I think this was provided as
7 part of the corporate statement from the department,
8 which -- you know, given that now I've left the
9 department, I'm not sure about the methodology that
10 supported that.

11 **LADY HALLETT:** Forgive my interrupting, I thought you told
12 me or Mr Keith told me that, parts of this document,
13 that column had been completed.

14 **MS BLACKWELL:** Certainly so far as the column 8 is
15 concerned. If we can go over on to page 25 --

16 **A.** I think this version for some of the other risks that
17 have been identified, it has been completed. It's
18 an omission just for this specific risk.

19 **MS BLACKWELL:** Yes. Yes. Not for any of the risks that are
20 set out and the action that's planned in column 8 here
21 for this risk, my Lady, but in relation to some of the
22 other risks -- this is department risk 6 -- for some of
23 the other risks the ninth column is completed, but not
24 for this one.

25 **LADY HALLETT:** That's what I understood.

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1 during the evidence of Professor Sir Michael McBride,
2 and we can see that under the second column, the
3 risk(sic) and social care sector risk is set out again
4 in full.

5 In the eighth column we can see the action that was
6 planned with target dates and owners, and my Lady has
7 been taken through that.

8 But I want to ask you the same question that was
9 asked of Robin Swann and also Professor Sir
10 Michael McBride: why column 9 is empty, were there any
11 actions completed, and if so what was the completion
12 date?

13 **A.** Yeah. The -- my -- forgive me, maybe this is
14 speculation on my part. When I was describing the
15 process, I was separating, there's the planning stage
16 and then there's the reporting stage. My sense is that
17 the version before us now is the document at an early
18 stage in the year, at the completion of the planning
19 process, when the risks had been identified and what the
20 planned mitigating measures are. I certainly have
21 a copy of this document that has column 9 completed and
22 I think colleagues are providing that.

23 **Q.** That hasn't so far been provided to the Inquiry.

24 **A.** No, but I think steps are in place to do so, my Lady.

25 That will be -- so there is a version -- a version of

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1 **MS BLACKWELL:** Yes.

2 **LADY HALLETT:** The reason for my question is: how could this
3 be a document at an early stage of planning if other
4 risks have got column 9 --

5 **MS BLACKWELL:** Completed?

6 **A.** Forgive me, my Lady, as I said at the start, it was --
7 there was a touch of speculation on my part. The bottom
8 line is there should be a version with you that has
9 column 9 completed. That does exist. And it's
10 an oversight on the part of the department that that
11 isn't in your possession.

12 **MS BLACKWELL:** Right, we will await its arrival with great
13 interest, thank you.

14 Elsewhere in this document there is what I'm going
15 to describe as a crucial warning that the health and
16 social care sector may be unable to respond because of
17 difficulties anticipated in terms of resources.

18 Now, Professor Sir Michael McBride yesterday told
19 my Lady that, in his view, the resources for the
20 Department of Health around about this time and in the
21 run-up to the pandemic were not enough to meet the
22 demands of the department and that the issue persisted.

23 Is that something with which you agree, first of
24 all, in terms of the level of funding that the
25 department was receiving?

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1 A. Yes, but could I, forgive me, firstly, just -- in terms
 2 of terminology, and forgive me if I'm dancing on a pin
 3 here -- the risk here isn't an ominous warning.
 4 Q. No.
 5 A. It is the identification of a risk that may or may not
 6 crystallise, in the specific context of resources.
 7 Q. Yes.
 8 A. The common view certainly that I held, my top management
 9 team held, and, you know, across the health and social
 10 care sector, was that the resource position was a huge
 11 and material challenge to us, and we didn't have
 12 sufficient resources to help us meet our strategic
 13 objectives.
 14 Q. Are you able to expand upon that and explain to my Lady
 15 in what way was the department receiving a shortfall of
 16 funding and what was suffering as a result of that?
 17 A. In high level terms, and I can't recall the exact
 18 figure, but the figure that Sir Michael used yesterday
 19 certainly resonates with me from my memory, that on
 20 an annual basis typically inflation, in terms of
 21 delivering health and social care, runs at about 6%
 22 per annum. Now, that would have been the figure before
 23 we've gone into the current period of high inflation.
 24 Q. Yes.
 25 A. So the period in particular we're looking at here,

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1 a reasonable state. We didn't have the very long waits
 2 that we currently see. The reason for that was that the
 3 resource position of the Executive had allowed
 4 additional money to be made available to the health
 5 service each year for what's called the waiting list
 6 initiative, where there is a special initiative to try
 7 and increase activity.
 8 As we moved past 2014 and the financial environment
 9 tightened, that additional funding for waiting list
 10 initiative disappeared. That meant -- so the real
 11 manifestation of the financial crisis was that waiting
 12 lists started to escalate, and they escalated year on
 13 year up to the period we now face where it's commonly
 14 reported Northern Ireland has the longest waiting lists
 15 across the United Kingdom.
 16 Q. Was there a concern within the department, though, that
 17 resources were not being deployed effectively?
 18 A. Yes, the view within the department would be the reason
 19 we needed additional money to run a waiting list
 20 initiative was because the health and social care system
 21 wasn't structured enough, wasn't structured in the right
 22 way that we could meet the demands upon it.

23 The language we used was there was a mismatch
 24 between demand and capacity, and any transformation
 25 strategy, and I'm sure we'll come on to talk about that,

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1 2018/2019. So to run the same health service in year 2
 2 as you did in year 1 you need a 6% increase. Typically
 3 throughout the period our budget was increasing by
 4 something in the region of 2% to 3%. So that meant year
 5 on year there was 3 percentage points of a squeeze in
 6 terms of the availability of resources.
 7 Q. I would like to ask a follow-up question about resources
 8 as well, please, and could we go back to page 14 in this
 9 document -- thank you -- and have a look at column 2,
 10 which sets out the detail of risk number 1:
 11 "That available financial resources are insufficient
 12 and are not deployed effectively to ensure that
 13 essential services are maintained and the strategic
 14 objectives for the HSC and Public Safety are
 15 progressed ..."
 16 Again, you have explained that that is the
 17 identification of a risk rather than a warning, but were
 18 there concerns, certainly whilst you were in position as
 19 permanent secretary of the department, about the way in
 20 which resources were managed and the direction in which
 21 resources were focused within the department?
 22 A. Yes, it wasn't so much a concern about the way resources
 23 were managed, it was just the total quantum of resources
 24 that were available. If I go back, when I arrived in
 25 the department in 2014 the waiting list position was in

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1 is fundamentally aimed to try to align capacity and
 2 demand. But for as long as the system faces more demand
 3 than it has the capacity to meet, waiting lists will be
 4 the obvious manifestation of that.
 5 Q. Well, I want to come on and deal with the Bengoa report,
 6 because, as my Lady heard yesterday, in November of 2015
 7 the then Minister for Health, Simon Hamilton, announced
 8 that, in response to the recommendation in *The Right*
 9 *Time, The Right Place* report by Sir Liam Donaldson, he
 10 would appoint an expert clinically-led panel to have
 11 an informed debate and prepare a report on the best
 12 configuration of health and social care services in
 13 Northern Ireland.
 14 Is that right?
 15 A. That's right, yes.
 16 Q. That was a review, as my Lady has heard, led by
 17 Professor Rafael Bengoa, who reported in October,
 18 I think, of 2016?

19 A. That's right, round about.
 20 Q. Now, the resultant report covered a myriad of areas:
 21 inequalities, an ageing population, recommendations for
 22 an overhaul, really, of primary care and hospital
 23 services, a look at workforce. And recommendation 1 was
 24 that the triple aim of improving patient experience, the
 25 health of the population, and creating a system with

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1 better value, should be very forefront of the health and
2 social care system; is that right?
3 **A.** That's right.
4 **Q.** My Lady has heard this morning from Baroness Foster that
5 the absence of ministerial oversight and input into the
6 recommendations of the Bengoa report meant that
7 unfortunately, at the collapse of the power-sharing
8 agreement in January of 2017, the recommendations had
9 not been implemented and, as far as she was aware, had
10 not been implemented at the time that Covid hit.

11 Do you agree with that assessment?

12 **A.** I think I would take a slightly different journey to
13 reach -- I think the broad conclusion there is that the
14 necessary transformative work hadn't taken place in
15 terms of the Northern Ireland health and social care
16 system. I would absolutely agree with that. But if
17 I can explain --
18 **Q.** Yes, please.
19 **A.** -- the journey was a little different.
20 **Q.** I should also say, to put the full picture, that when
21 questioned about this before my Lady yesterday,
22 Professor Sir Michael McBride described that what had
23 happened was a mandate had been agreed and building
24 blocks had been set up, but that no further work had
25 been done thereafter. So I tell you that just to put it

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1 implemented. It was an input to the then health
2 minister.
3 Now, by the time Rafa reported the health minister
4 had changed and Michelle O'Neill was in post. But what
5 we did towards -- in the autumn of 2016 was we
6 effectively took the outstanding recommendations from
7 Transforming Your Care, the live recommendations from
8 the Liam Donaldson piece of work and the Bengoa
9 recommendations, and we developed the Delivering
10 Together transformation strategy, which became the
11 health minister's blueprint for transformation.

12 That was presented to the Executive and agreed in
13 October 2016.

14 **Q.** So just to interrupt you, if I may, that piece of work
15 and the presentation of that to the ministers therefore
16 must have taken place a very short time after
17 Sir Rafael Bengoa produced his report?
18 **A.** Yes. It was a very short time after the formal receipt
19 of his report, but we had been working very closely with
20 Professor Bengoa in the run-up to the formal delivery of
21 the report and he had shared with us in detail the
22 direction of travel that he was making in terms of
23 recommendations. So we had a good line of sight on
24 that.

25 **Q.** I'm sorry I interrupted your flow.

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1 in its full context.

2 **A.** Okay. The ... I think the point has been made
3 previously that one thing we're not short of in the
4 Northern Ireland health and social care system is
5 reviews about how we improve. The traditional issue has
6 been the implementation and delivery of those reviews.

7 **Q.** Yes.

8 **A.** At the point I arrived in the department the live piece
9 of work at that time was a document called Transforming
10 Your Care, which had been a previous attempt at
11 transformation. I think, from memory, there was
12 something in the region of 70 plus recommendations,
13 about half of which had been implemented at that stage.
14 The Liam Donaldson work was commissioned by the then
15 health minister in response to a specific set of
16 circumstances that we don't need to labour. But it
17 meant then we had two live documents, each of which were
18 trying to chart a pathway towards transformation.

19 The then minister, Simon Hamilton, thought it would
20 be useful to commission a clinically-led piece of work
21 that Rafael Bengoa had chaired, and there was input
22 from, you know, a consultant surgeon on our system,
23 a general practitioner, a former chief executive of one
24 of the trusts. But the Bengoa report was never designed
25 to be the transformation strategy that would be

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1 **A.** The key point in terms of where I have a slightly
2 different perspective on the journey, the Delivering
3 Together transformation strategy was a ten-year
4 transformation journey. It included, at the point of
5 agreement, 18 actions that would be undertaken in the
6 early stage of that ten-year journey.

7 **Q.** When did the ten-year journey begin?

8 **A.** 2016, so it was --

9 **Q.** I see.

10 **A.** -- Delivering Together 2026 was the full title of it.

11 **Q.** Yes?

12 **A.** Those 18 actions -- the department, if I roll forward to
13 May 2019, so well into the period where there was no
14 Executive in place, a progress report was published,
15 all 18 of those actions that were in the original
16 document were marked as completed and achieved. So
17 a huge amount of preparatory work had taken place in the
18 period with no ministers. The important point is -- but
19 in a ten-year transformation journey, the first couple
20 of years are putting the building blocks in place and
21 not the big strategic decisions which would follow.

22 So those actions were delivered, but they alone were
23 not delivering the strategic transformation of the
24 service. So I think I end up in the same place but
25 albeit a slightly different journey to it.

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1 **Q.** Professor Sir Michael McBride said this yesterday:
 2 "... we put together the building blocks, we did
 3 some very good work in terms of what we would need to
 4 do, but there were clearly elements of this that
 5 required ministerial decision, and those areas that
 6 required a ministerial decision ... were not
 7 possible [and so] it was not possible for us to
 8 progress."
 9 Speaking, as he was asked to do, about the time
 10 period between January of 2017 and 2020 and the lack of
 11 any ministerial oversight.

12 **A.** Yes.

13 **Q.** So what could have been done in that time period, had
 14 there been ministerial oversight, that couldn't be done?

15 **A.** Just to be clear, I'm not contradicting or disagreeing
 16 with what -- the evidence Sir Michael gave yesterday.
 17 I think the point I'm getting at, and forgive me if it's
 18 rather precious of me, but at a point in time when I was
 19 the chief executive of health and social care in
 20 Northern Ireland, I think it's really important to
 21 acknowledge that, despite the absence of ministers,
 22 a huge amount of energy and work went in by colleagues
 23 across the system to achieve transformation. And I say
 24 that to rebut the notion that nothing happened in the
 25 absence of ministers. Lots of things happened, but the

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1 **Q.** Yes. Recommendation 2 in Professor Bengoa's report is
 2 that the health and social care department should
 3 formally invest, empower and build capacity in networks
 4 of existing health and social care providers.

5 I mean, that was something, looking at it starkly,
 6 and the words that I've just read out, that would have
 7 required the input of ministers to take it forwards,
 8 wouldn't it?

9 **A.** There's a continuum there. Building the network -- and
 10 at one level it's a network of clinicians across the
 11 health and social care sector in Northern Ireland. The
 12 end point of building a network is the network has to
 13 give effect to change. One of the issues, and it's
 14 shorthand in terms of the public debate, is that there
 15 are too many hospitals in Northern Ireland. I think
 16 that's shorthand for: we have too many places where we
 17 have small units delivering care. And if there was
 18 a strategic approach to that, that would be the end
 19 point of the development of those clinical networks.
 20 That end point absolutely would require ministerial
 21 endorsement and without it we couldn't progress. But
 22 the level of engagement leading up to that could happen.
 23 So it's not that nothing could happen, but you can't
 24 reach the end point without ministers and that could
 25 never happen.

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1 next stage of that would have been when we had done the
 2 preparatory work, and we'd delivered -- and some of
 3 those 18 actions were reviewing the configuration of
 4 particular services -- when we had done the preparatory
 5 work to undertake the review and develop what
 6 a refreshed and reformed service might look like, that
 7 required ministerial agreement to make those changes.

8 So I'm trying just to differentiate, preparatory
 9 work was happening, but the strategic change still
 10 required ministers and that couldn't happen. But it
 11 wasn't that we weren't moving.

12 **Q.** It needed ministerial input, for instance, to arrange
 13 and to ensure that there was significant additional
 14 investment or legislative changes or structural changes
 15 within the department, didn't it?

16 **A.** Yes, and -- or a combination of all those.

17 **Q.** Yes.

18 **A.** A lot of the actions were things like developing a new
 19 workforce strategy, because having an effective and --
 20 a workforce of the right size is critical to the
 21 delivery of care, but when you have the workforce
 22 strategy and you know how to get the workforce in place,
 23 it requires ministerial input to get the resources in
 24 place to be able to afford that workforce with the right
 25 skillset.

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1 **Q.** No, I'm not suggesting for a moment that nothing did
 2 happen. But what I'm asking you, I go back to my
 3 previous question, is: was there, in relation to any of
 4 the 18 recommendations that you've identified, a period
 5 of time during January of 2017 and January of 2020 when
 6 the preparatory work had been completed or was ready for
 7 ministerial input but the lack of ministerial oversight,
 8 given the collapse of the power-sharing agreement, meant
 9 that that couldn't happen?

10 **A.** Yes, we reached some issues, and one of the issues that
 11 I can remember specifically is the reconfiguration of
 12 stroke services, for example. We reached the point that
 13 we had to hold that until ministers returned because we
 14 couldn't -- and there was the opportunity for a quantum
 15 increase in the effectiveness of the provision of stroke
 16 care with some restructuring, but a very contested issue
 17 that required ministerial input.

18 **Q.** All right, thank you.

19 Just before we break, I want to develop your
 20 evidence on this issue of a lack of ministerial
 21 oversight during the Executive's suspension, because
 22 what you tell us in your witness statement, Mr Pengelly,
 23 is that your general views on the systems, processes and
 24 structures for pandemic preparedness in Northern Ireland
 25 were that they were robust and appropriate and that you

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1 couldn't identify any respect in which they could be
2 improved.

3 Do you still stand by that?

4 **A.** Yes. The point I was making there, in terms of the
5 system structures, that it's predicated, as we're
6 a constitutional part of the UK, on a UK model, that
7 flows through all regions. We're heavily linked into
8 that. We have a mechanistic and structural approach to
9 it which we follow. So, in terms of that, the logistics
10 and the mechanics of that, absolutely.

11 **Q.** And that you are not aware of any issues that would have
12 gone to either ministers or an Executive had they been
13 in place between 2017 and 2020, and that in that context
14 it couldn't be asserted that the political hiatus had
15 any direct impact on planning and preparedness. Do you
16 still stand by that?

17 **A.** But just to be clear, if my language wasn't completely
18 clear, that's in the context of emergency planning, it's
19 not the broader transformation piece that we've touched
20 on. In that three-year period there were no issues
21 about the work that we were doing in the department as
22 regards the development of our emergency response plan
23 or emergency preparation that, had a minister been in
24 place, they would've landed on the minister's desk.

25 **MS BLACKWELL:** My Lady, that's slightly earlier than normal
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1 or to find an alternative way to deal with it. So it
2 would be through that dialogue.

3 **LADY HALLETT:** Were you aware of anybody in the department
4 or the Chief Medical Officer or anyone engaging with the
5 Northern Ireland Office about any possible gaps in
6 resilience or preparedness?

7 **A.** I wasn't, but I would assume that, to the extent that
8 such a conversation was needed, it would be between
9 colleagues in the Executive Office and the
10 Northern Ireland Office rather than the Department of
11 Health. I think it would more be the civil
12 contingencies planning work that sits with TEO rather
13 than the departmental activity.

14 **LADY HALLETT:** Right.

15 Thank you very much, I shall return at 1.45.

16 (12.42 pm)

(The short adjournment)

18 (1.45 pm)

19 **LADY HALLETT:** Ms Blackwell.

20 **MS BLACKWELL:** Thank you, my Lady.

21 Mr Pengelly, I'm going to ask you to keep your voice
22 up a little bit, you're very softly spoken and a request
23 has come in for you to perhaps move a little closer, as
24 you have done, to the microphone. Thank you very much.

25 The Inquiry has heard that Robin Swann took up his
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1 but I'm about to move on to a different topic.

2 **LADY HALLETT:** Certainly.

3 Can I just ask one question before we break,
4 Mr Pengelly. I don't know if you heard
5 Baroness Foster's evidence about when you have
6 a collapse in the power-sharing agreement and experts in
7 the field discover that there's a gap in resilience or
8 preparedness, that that should be relayed to Westminster
9 or Westminster should know about it and therefore
10 intervene.

11 What would happen, in your experience, if, as
12 permanent secretary at the Department of Health, as you
13 then were, that you discovered such a gap, how would you
14 go about making sure the Westminster government knew
15 about it?

16 **A.** My Lady, if we're talking about a gap that we felt was
17 outwith our powers, because it would require a minister,
18 and if it was such a critical nature, we would routinely
19 be engaged with colleagues in the Northern Ireland
20 Office. And even if in the current climate, where there
21 are issues of a critical nature that we feel, as
22 permanent secretaries, we don't have the power to take
23 decisions on them, we would engage with the NIO with
24 a view to either asking the Secretary of State to take
25 the appropriate legislative power to make that decision
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1 role as Minister for the Department of Health on
2 11 January 2020, and he told my Lady last week that
3 pandemic readiness was referenced in his first day
4 briefing, which I would like to bring up on screen,
5 please. INQ000188802.

6 This is the first page, and in fact I think the
7 document only runs to two paragraphs.

8 "Under the NI Civil Contingencies Framework ... the
9 Department has been identified as the Lead Government
10 Department for responding to the health and social care
11 consequences of emergencies arising from ..."

12 Then we see the third bullet:

13 "- Human infectious diseases, eg Pandemic
14 Influenza ..."

15 3.2:

16 "This requires the Department to not only develop
17 and maintain appropriate emergency plans and response
18 arrangements to manage its own response to an emergency,
19 and that of its associated agencies and NDPBs, but also
20 to co-ordinate the inter agency aspect of civil
21 protection for those emergencies for which it has been
22 designated lead. In such circumstances the Minister
23 would be required to lead, direct and co-ordinate the
24 response for [Northern Ireland], reporting as necessary
25 to the Executive under the Northern Ireland Central
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1 Crisis Management Arrangements ..."

2 Let's just go down to check if there's any more. We

3 can see that there is another paragraph on this page:

4 "EU Exit":

5 "9.1. The primary focus for [the Department of

6 Health] has been to ensure the Health and Social Care

7 Sector in Northern Ireland was prepared for EU Exit so

8 that patient care was paramount. Preparedness was

9 progressed across three workstreams ..."

10 Including emergency planning.

11 And:

12 "9.2. The Department worked closely with the

13 Executive Office, the Department of Health and Social

14 Care in England ... and the other Devolved

15 Administrations as part of these preparations."

16 So if we can zoom out, please, two sections of the

17 first day briefing, emergency planning and EU exit,

18 Mr Swann confirmed to my Lady, last week, that this

19 briefing was not accompanied by any other documentation

20 or guidance to expand what we see on this one sheet.

21 Can you explain to us, please, Mr Pengelly, how this

22 briefing was created? Did you have a hand in it?

23 **A.** The briefing would have originated really on a bottom-up

24 basis and we touched earlier on the structure of the

25 department and the number of groups led by the likes of

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1 and Mr Swann has confirmed that this was all that he

2 received, certainly in terms of emergency planning.

3 And where on the document does it direct Mr Swann to

4 engage in additional reading in order to bring himself

5 up to speed with what the emergency planning issues are?

6 **A.** Well, this is one sheet which is an extract from the

7 first day brief. The first day brief was not one piece

8 of paper.

9 **Q.** But the first day brief didn't contain anything else in

10 terms of emergency planning, did it?

11 **A.** No, but it contained a lot of detail on other areas, and

12 it was just a sighting document, and -- and I don't have

13 access to it now, but I imagine the cover sheet that

14 went with the first day brief would have made reference

15 to it being supplemented and followed up with

16 discussions and dialogue across the department, which

17 would be the routine practice.

18 **Q.** Not only did Mr Swann tell the Inquiry that this

19 document was all that he received by way of emergency

20 planning information, but also that during his time in

21 office he was not made aware of the department risk

22 register. So that appears to be something that isn't

23 contained within the first day briefing and, according

24 to Mr Swann, wasn't brought to his attention at all

25 during his time in office. Do you find that surprising?

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1 Sir Michael and his peers across the department.

2 It would have been prepared, that would have been

3 the building blocks for it at group level, where they

4 would have had transparency on the live issues that

5 warranted just being aired with the minister on his or

6 her arrival into the department. So it would have been

7 prepared.

8 Given the pace that it was prepared, I cannot recall

9 whether it came to me to approve before it went to the

10 minister or it came to me in parallel with going to the

11 minister because, you know, things happened quite

12 quickly in terms of restoration back in January 2020.

13 **Q.** If it had come across your desk would you have noted

14 that it's quite sparse in the detail?

15 **A.** I would have noted that, but I wouldn't have been

16 critical of that, because the purpose of the first day

17 brief is just to sight the minister, it's not a document

18 in which we convey a request for any decisions, and the

19 first day brief is really a pack that will be given to

20 the minister on appointment, basically as their homework

21 to read before they arrive in the department, at which

22 point a series of meetings with individual to go into

23 a bit more detail on some of the areas will be

24 discussed.

25 **Q.** Well, this isn't a pack, is it, it's a sheet of paper,

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1 **A.** Not necessarily, because -- I mean, if we think back to

2 January 2020, when Minister Swann took up post, at that

3 stage the immediate crisis that an incoming health

4 minister was dealing with was the industrial action, and

5 all energy had to be focused on that. So there is

6 an issue just about pure bandwidth and how much

7 information you can bombard an incoming minister with.

8 So it's always a balance between trying to get

9 something that's proportionate but sufficiently

10 detailed.

11 In terms of the risk register, that's an issue that

12 is dealt with at a corporate level by myself, and it was

13 my responsibility as an accounting officer. I didn't

14 feel the need to escalate that to the minister. Again,

15 that's an issue just about trying to manage, you know,

16 a very, very demanding workload and the volume of paper

17 that routinely goes to the minister.

18 **LADY HALLETT:** Could I just intervene here? I'm afraid

19 I didn't understand your answer about who would have

20 prepared the briefing, Mr Pengelly, and I've looked at

21 the transcript and I'm afraid I still don't follow.

22 You were the permanent secretary of the department

23 and you had an incoming minister. Wouldn't you have had

24 overall charge of making sure the briefing was adequate?

25 **A.** Yes, I would have had overall responsibility, but --

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1 I can't recall, my Lady, the exact timeline, but in the
2 run-up to the restoration, within each department we
3 would commission first day brief from what we called
4 each "business area", but the nature of the first day
5 brief is to sight the minister on the nuances and
6 particulars of that business area, so that's where the
7 knowledge base resides. That is pulled together and
8 then it would come to the permanent secretary for
9 overall approval.

10 I'm just -- you know, I want to avoid erroneously
11 misleading you in this. I can't recall specifically
12 whether this iteration of the document came to me to
13 formally approve before it went to the minister or,
14 given that it was a document for information rather than
15 decision-making, given the pressing time constraints, it
16 might have been compiled and sent to me in parallel with
17 going to the minister, on the basis that I read it at
18 the same time as him and if there were any issues in it
19 I noted I could raise directly with the minister, in
20 terms of clarification.

21 **LADY HALLETT:** But if you read that as a new minister, you
22 would think, forgive the expression, everything was
23 hunky-dory. It wouldn't have alerted the minister to
24 any potential problems, would it, or risks?

25 **A.** In terms of just focusing on emergency planning? But
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1 this is, I presume, section 8. I mean, the numbering
2 seems to have gone a bit awry on this document, because
3 EU exit is section 9, whereas this is section 3 --

4 **Q.** Yes. This is the document that we've received from your
5 department, your old department, the Department of
6 Health, and we have been led to understand that there
7 was nothing else in the briefing on emergency planning
8 apart from these two paragraphs.

9 **A.** My point is that I don't think that's unreasonable,
10 because the purpose of a first day brief is to sight the
11 minister. The reason I'm making the specific reference
12 to the numbering is, if I assume that this is section 9,
13 if the emergency planning section had been unpacked with
14 all that granular detail in the way you suggest, that
15 would have had to happen -- I mean, a similar approach
16 would -- could be taken under that approach for every
17 other section, and a short, high-level document that is
18 meant just to sight an incoming minister would become
19 an unmanageable, unwieldy and virtually unreadable
20 document in which any important issues could be lost.

21 **Q.** Accepted, but this does not telegraph Mr Swann to other
22 documentation, to other pieces of guidance or pandemic
23 planning, in order for him to inform himself as to the
24 position that was in place at the time that he came into
25 the role of Minister for Health?

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1 this section of the document was just citing the fact
2 about the departmental responsibilities. The emerging
3 issue at that stage about the evolving position in
4 Covid, I think at this stage, in January, it was so
5 fast-moving that it was captured through dialogue with
6 the minister, because anything that was written down and
7 sent would have been out of date by the time it had
8 arrived with the minister.

9 **LADY HALLETT:** Sorry for interrupting.

10 **MS BLACKWELL:** Not at all, my Lady.

11 As my Lady has observed, it doesn't indicate that
12 there are any difficulties perceived in the area of
13 emergency planning. There's nothing on this document
14 about the National Risk Register or the National
15 Security Risk Assessment. There's nothing about the
16 PFRB workstreams which had been set up but then paused
17 for 12 months because of Operation Yellowhammer.
18 There's nothing about any previous learning or
19 identification of recommendations such as that that came
20 out of Exercise Cygnus. And there's nothing at all
21 about the existence of a departmental risk register.

22 Is your evidence, Mr Pengelly, that those matters
23 would have been brought to Mr Swann's attention in
24 subsequent conversations?

25 **A.** To the extent that they needed to be, but if we take --
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1 **A.** I accept this document doesn't do that, no.

2 **Q.** Is it your evidence, Mr Pengelly, that you personally
3 briefed Mr Swann on the matters which we've agreed were
4 not in this document?

5 **A.** No, I didn't personally brief him. The point is that
6 an incoming minister would have access and would read
7 the first day brief, which is the very high level
8 overview. That would be followed up with the detailed
9 engagement with the group heads and they would make
10 a judgement call about the extent to which they needed
11 to go into the detail of the sorts of issues that you
12 have referred to.

13 So that -- there would have been a supplementary
14 briefing, because, as came out yesterday, this is
15 an area that was in Sir Michael's directorate.
16 Sir Michael then would have had a more detailed briefing
17 with him, and I don't know that -- you know, sitting
18 here, to what extent he would have unpacked these
19 issues.

20 **Q.** Does the lack of detail in the briefing and what I'm
21 going to describe as a subsequent failure from the
22 permanent secretary to verbally brief the incoming
23 minister on these matters indicate that there was
24 an expectation that the department could be run without
25 the involvement of ministers?

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1 **A.** No, not at all. It was an issue about prioritisation
 2 and focus, because there was a huge work programme for
 3 an -- an incoming minister to a department that accounts
 4 for over 50% of the public expenditure in
 5 Northern Ireland that had been without a minister for
 6 three years, so it was a question about prioritisation
 7 and ensuring the ministerial focus on the key areas,
 8 and, as I've mentioned, in the context of health at that
 9 time the number one issue which consumed a huge amount
 10 of time for the incoming minister was trying to settle
 11 the industrial dispute, which was really crippling at
 12 that stage to the health service.

13 **Q.** All right.

14 I want to ask you about exercises, please, and
 15 whilst appreciating that an exercise that my Lady heard
 16 about yesterday, Goliath, took place in 2003, so well
 17 before your involvement as permanent secretary in the
 18 department, nevertheless it was a Department of Health
 19 and Health Protection Agency exercise to explore the
 20 Northern Ireland response to SARS in order to identify
 21 the potential for improvements and amendments.

22 Professor Sir Michael McBride told my Lady yesterday
 23 that although he had not, by that time, been appointed
 24 as the Chief Medical Officer, in actual fact he was
 25 involved in the exercise in another capacity.

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1 a contract -- contact tracing capability in the Public
 2 Health Agency at the time of the Covid pandemic. The
 3 issue was the scale that was subsequently needed. So
 4 I don't understand the -- you know, the link between the
 5 point that was made, so clearly something was done about
 6 developing contact tracing.

7 Separately, surge plans, now there's a separate
 8 issue, which was touched on yesterday and we may come
 9 to, about some of the surge planning work that had been
 10 parked because of EU exit preparations, but surge
 11 planning -- surge planning work had been taken forward.

12 So without seeing the detail I couldn't conclude the
 13 extent to which corporate memory had sufficiently and
 14 adequately addressed Exercise Goliath.

15 **Q.** But it's a simple issue: this exercise had taken place
 16 prior to you coming into the role of
 17 permanent secretary, you knew nothing about it, so
 18 whether or not certain workstreams had been taken
 19 forwards or not, does the fact that this exercise and
 20 its recommendations had not been identified to you in
 21 your role as permanent secretary indicate that perhaps
 22 there is a disconnect, that something should be in place
 23 by way of a procedure to ensure that these lessons
 24 learned and recommendations are captured and passed on
 25 to people who need to know about --

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1 The lessons identified from Exercise Goliath
 2 included the following: that operational contact tracing
 3 mechanisms with the potential for scaling up needed to
 4 be developed, that hospital surge arrangements needed to
 5 be developed, that PPE had not been distributed
 6 according to plan, and that there had been little
 7 discussion heard during the course of the exercise on
 8 primary prevention to avoid further spread of the
 9 disease.

10 These problems were identified 17 years prior to
 11 Covid-19 hitting, and were perhaps prescient of the
 12 matters which will come to the Inquiry's attention in
 13 Module 2.

14 But does the fact that -- I think, if asked, you
 15 will say that this exercise wasn't brought to your
 16 attention at all, was it?

17 **A.** No, that's right.

18 **Q.** No. Does the fact that you didn't know about any of
 19 these matters during the time that you held the role of
 20 permanent secretary in the department reflect the fact
 21 that there is a problem with corporate memory?

22 **A.** I can fully understand the premise of the question.
 23 I'd be reluctant to jump to that conclusion, because two
 24 of the issues in particular that you mentioned -- the
 25 development of contact tracing capability, there was

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1 **A.** And I'm not trying in any way to be unhelpful, but if
 2 I offer the scenario that -- I think it was 2003 this
 3 exercise took place.

4 **Q.** Yes.

5 **A.** If the assessment was that those particular issues about
 6 developing surge capacity and looking at contact
 7 tracing, for example, by 2010 they had been addressed,
 8 I don't think that a new permanent secretary four years
 9 after that would necessarily be briefed on that. If
 10 something had arisen, been considered and the assessment
 11 was that it had been adequately dealt with, because this
 12 was 11 years before I took up post, and if, you know,
 13 everything-- taking it to a ludicrous extreme, if
 14 everything that had happened in that 11-year period was
 15 the subject of briefing an incoming permanent secretary,
 16 the here and now issues might risk being squeezed out.

17 **Q.** So is your answer that it was too far in the past for
 18 you to expect to be knowledgeable about it?

19 **A.** No, no, sorry. Forgive me if I've ... my answer would
 20 be: if there had been important and critical
 21 recommendations in 2003 that hadn't adequately and
 22 sufficiently been acted upon by 2014, that is an issue
 23 that could and should have been put on my desk. What
 24 I'm saying is that recommendations in 2003, if the
 25 assessment is in the intervening period they had been

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1 adequately dealt with, there would be no need to put
 2 them on my desk in 2014. And I don't, sitting --
 3 I don't know the answer as to how well or not they were
 4 addressed.

5 **Q.** Well, were you briefed about the report that was
 6 published into the swine flu pandemic which happened in
 7 November of 2010, which was four years before you coming
 8 into post?

9 **A.** I cannot recall if I received a specific briefing on it.
 10 I was aware, possibly aware, because in 2009, although
 11 not in the health service, I was working in public
 12 expenditure and was working closely in terms of the
 13 financial package that was being made available to the
 14 Department of Health to respond to the H1N1 issue. So
 15 I -- coming into health, I had an awareness, but I would
 16 need to go back and look at the record in terms of the
 17 exact nature of any briefing that was given to me.

18 **Q.** Given your evidence on this subject, if there were
 19 outstanding actions that needed to be taken forwards
 20 from that report and from the Northern Ireland-specific
 21 recommendations that were contained within the report,
 22 and that you hadn't had those brought to your attention,
 23 would that be concerning?

24 **A.** Sorry, not to throw another caveat. It's the extent,
 25 the significance. If recommendations had been made and

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1 Exercise Cygnus lessons learned report.
 2 Thank you, it's at INQ000188775.
 3 This is a specific Department of Health document and
 4 I want to look specifically, please, at page 2. We can
 5 see there that the contents of the report include
 6 an introduction, regional health command centre
 7 strategic cell analysis and recommendations, emergency
 8 operations centre analysis and recommendations,
 9 evaluator analysis and recommendations, Exercise Cygnus
 10 planning team comments, and feedback on exercise
 11 organisation and outcomes.

12 Can we go to page 3, please. Thank you.
 13 Now, we can see that the objectives at 1.2, the UK
 14 objectives were initially agreed with the four UK
 15 countries as follows:

16 "To exercise organisational pandemic influenza plans
 17 at local and national levels in the [UK].
 18 "To exercise co-ordination of messaging to the
 19 public.
 20 "To exercise strategic decision-making processes
 21 around managing the wider consequences and
 22 cross-government issues at both local and national
 23 levels ...
 24 "To exercise the provision of scientific advice,
 25 including SAGE ..."

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1 not adequately implemented, if work was ongoing, it
 2 mightn't have reached the stage of escalation to the
 3 permanent secretary at that stage. It certainly should
 4 have been a live issue in the department, with
 5 monitoring and reporting about the progress of it. But
 6 if we follow the position, it was said earlier that
 7 there's a hierarchy and the escalation -- there needs to
 8 be a filter mechanism -- whether they'd have reached
 9 that threshold at that stage in terms of the work,
 10 ultimately yes, but just at the point of arrival I'm not
 11 sure.

12 **Q.** Certainly you were in post at the time that
 13 Exercise Cygnus took place, weren't you?

14 **A.** Yes.

15 **Q.** 2016, and the Department of Health participated in the
 16 exercise that took place in October of that year, and
 17 the Inquiry has heard evidence that as of June 2020
 18 there were 14 of the 22 recommendations that came out of
 19 Exercise Cygnus which had not been fully implemented.
 20 Is that a figure that you recognise?

21 **A.** The figure I recognised for Exercise Cygnus is ten
 22 recommendations, of which six were implemented.

23 **Q.** For Northern Ireland specifically?

24 **A.** Yes.

25 **Q.** Well, can we look at the Department of Health

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1 Then the following additional objectives were added
 2 by England in 2016 but these were not being tested by
 3 the devolved administrations, and if we can go over the
 4 page, please:

5 "To explore the social care policy implications
 6 during a pandemic.
 7 "To explore the use of the 3rd sector to support the
 8 response.
 9 "To exercise the co-ordination of resources to cope
 10 with excess deaths in the community.
 11 "To identify issues raised around the impact of flu
 12 in the prison population."

13 Are you able to explain to the Inquiry, Mr Pengelly,
 14 why the issues at numbers 5, 6 and 7 on this document
 15 were not taken forwards by the devolved administrations?

16 **A.** I -- in terms of item 5, I suspect that because the
 17 structure for social care is so radically different
 18 between Northern Ireland and England -- this was
 19 predominantly an English-led exercise -- I cannot recall
 20 and I certainly haven't read anything in preparing for
 21 today that gives me the specific detail of why items 6
 22 and 7 weren't taken forward.

23 The excess deaths I know was an issue more for the
 24 Department of Justice than the Department of Health,
 25 which may be a partial explanation. But, sorry, I can't

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1 add any more than that.

2 **Q.** All right.

3 Can we replace this document, please, with
4 INQ000006210, which is an undated document, but it
5 appears to be the record of a roundtable discussion with
6 devolved administrations coming out of Exercise Cygnus.

7 If we look at the background to the exercise itself,
8 those details are familiar. The third bullet point
9 underneath the heading "Background" is:

10 "The DAs [devolved administrations] participated
11 throughout the exercise, and were comprehensively
12 involved in the planning."

13 There is then a paragraph dealing with the exercise
14 itself. If we can move down the document, please, we
15 can see DA feedback, and the penultimate bullet point
16 under this paragraph reads that:

17 "Although the [devolved administrations] were
18 complimentary of the planning on clinical management,
19 some felt it was at the cost of social care."

20 Can you explain, Mr Pengelly, what was meant by
21 those concerns?

22 **A.** I can't, and I don't know whether "DAs" is used there
23 just as a generic term or, given that the previous point
24 about -- the items that you read on social care --
25 whether that is all the DAs or some that could be

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1 Michelle O'Neill's departure from the department.

2 **Q.** Do you remember ever discussing Exercise Cygnus with
3 Ms O'Neill?

4 **A.** I don't recall discussing it in detail with her,
5 I suspect it was mentioned in terms of some broader
6 issues. But, again, this was a specific responsibility
7 within the Chief Medical Officer's group where the
8 granularity, and the colleagues who had actually
9 participated in the exercise, so any briefing would have
10 more come from that source.

11 **Q.** If you didn't become involved yourself in the briefing,
12 would you accept this, Mr Pengelly: that, given the
13 matters that were discussed and the lessons that were
14 identified to be learned from Exercise Cygnus, it would
15 have been important to have brought Ms O'Neill into
16 a certain level of knowledge about the exercise itself
17 and the report?

18 **A.** Oh yes. Yes, absolutely.

19 **Q.** All right, thank you. We can take that down now.

20 I'd like to seek your views on evidence that was
21 provided to my Lady from Professor Sir Michael McBride
22 in terms of the island of Ireland being a single
23 epidemiological unit, and the fact that he said there
24 would be significant benefit in conducting testing of
25 emergency response plans and exercises on a north-south

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1 specific to Scotland, Wales. But, sorry, I'm not
2 familiar with the detail behind that point.

3 **Q.** Do you remember ever reading this document?

4 **A.** I can't specifically remember, sitting -- this document.
5 But, you know, re-reading in preparation for today,
6 there was clearly a familiarity about it. But you will
7 appreciate the volume of documents that land on the
8 desk, particularly going back seven years.

9 **Q.** At the time of this exercise and at the time that this
10 document was prepared -- because although, as I said,
11 it's undated, it must have come in a relatively short
12 period of time after the exercise itself -- there was
13 a health minister in role in Northern Ireland, wasn't
14 there? Michelle O'Neill was in place from May 2016 to
15 March 2017.

16 **A.** That's right.

17 **Q.** And as principal adviser to the minister of health, do
18 you accept that it would have been your role, your duty
19 to bring to her attention the lessons learned and
20 recommendations from Exercise Cygnus?

21 **A.** Well, it would have been a responsibility that
22 I carried, but it doesn't necessarily mean that
23 I discharge each of those responsibilities personally.
24 And with the other point that, if this is undated, I'm
25 not sure whether this was available pre or post

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1 basis involving respective Northern Ireland and
2 Republic of Ireland health departments.

3 Do you agree with that?

4 **A.** I would absolutely agree with it, although I would have
5 some concerns about the practical out-working of that,
6 because at the moment if we plan and prepare on
7 a separate jurisdictional basis, that there's a suite of
8 UK preparations and a suite of Irish preparations, if
9 they were fundamentally different in nature, I just
10 wonder about coming together to test them in practical
11 terms, how that would happen and how beneficial. But
12 the principal point about greater collaboration and
13 working together I think the point was well made by
14 Michael.

15 **Q.** Thank you.

16 Then finally I'd like to take you to two draft
17 reports. The first is a draft report from the
18 Department of Health emergency planning branch which we
19 have at INQ000188797, and it's titled "A review of
20 health gold command response to SARS-CoV-2 or Covid-19".

21 We can see that this is a document that's dated
22 11 November of 2021, so outwith our period, but what
23 I would like you to consider, please, is what we had at
24 page 6 of this report, and to take this into
25 consideration in terms of planning and preparation for

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1 a pandemic.

2 Thank you. If we look at the top of the page, we
3 can see in relation to what didn't go so well. There is
4 a reference to the release of PIPP stock:

5 "There was a sense of panic across the HSC and
6 independent sector in relation to PPE and an expectation
7 that [the Department of Health] would release its entire
8 emergency stockpile ... to BSO without appropriate
9 justification, including items already in good stock
10 across trusts."

11 If we go down to recommendation 2:

12 "Recommendation ... that roles and responsibilities
13 for managing PPE during a pandemic, including when and
14 how the emergency stockpile is used, need to be
15 established and embedded in emergency plans."

16 Does that recommendation and what lies before it and
17 behind it suggest that the emergency plans in relation
18 to the establishment and embedding of PPE were not
19 sufficient?

20 **A.** This isn't an issue, because it comes after the end of
21 the module. I accept its relevance, but just to say
22 that I haven't gone back and, in preparation for today,
23 refreshed myself fully on this. My sense of -- that
24 this recommendation is much more about clarifying the
25 position to stop the sense of panic that was referred

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1 silver response, which also has a similar -- I'm going
2 to suggest -- recommendation in that at page 2 it says:

3 "It is strongly recommended that a review is
4 undertaken on how the emergency stockpile is controlled
5 and managed regionally."

6 Did you, in your role as permanent secretary, ever
7 consider whether or not there was sufficient planning
8 and clarity in terms of the level of PPE, where it was
9 kept, and whether or not it was easily available in the
10 event of a pandemic?

11 **A.** If I could separate the issue. There's issues about PPE
12 during the pandemic, which I suspect we'll want to
13 leave --

14 **Q.** Yes.

15 **A.** -- and come back to in future modules. In terms of the
16 preparedness work --

17 **Q.** Yes.

18 **A.** -- there was no issues that I was ever drawn into about
19 any lack of clarity about roles and responsibilities and
20 where oversight and management of that stock lay. That
21 was a clear responsibility of the CMO group and, as far
22 as I was aware, there was clarity throughout the
23 department and the business service organisation about
24 where that responsibility lay and what the approach to
25 applying for and securing any release of that stock,

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1 to, as opposed to there not being a mechanistic and
2 sensible approach to actually management of the PIPP
3 stock.

4 **Q.** Well, that might be what created the necessity for
5 a recommendation to be made, but the recommendation,
6 with respect, is clear, that roles and responsibilities
7 need to be established and embedded in emergency plans.
8 My question is: does that suggest that they hadn't been
9 sufficiently established and embedded in emergency
10 plans?

11 **A.** I -- forgive me, but I would need to go back and refresh
12 the document. My clear sense is that roles and
13 responsibilities for managing that stock were very
14 clear, so I don't know whether this recommendation is
15 saying -- is trying to suggest there was a lack of
16 clarity about those roles and responsibilities, which
17 I would push back against, or whether it's simply saying
18 that those roles and responsibilities, although clear,
19 need to be better articulated in emergency plans. I'm
20 just not sure of what -- the exact point that's being
21 made there.

22 **Q.** All right.

23 Well, this was the review of the gold command
24 response, and perhaps we don't need to put up the
25 document, but there was also a debrief in terms of the

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1 what those mechanisms were.

2 **Q.** So if those were concerns held by members of your
3 department, that was certainly never brought to your
4 attention?

5 **A.** Not at the planning and --

6 **Q.** Prior to --

7 **A.** -- stage, no.

8 **MS BLACKWELL:** -- the onset of Covid. Thank you.

9 My Lady, that concludes my questioning and, as
10 I understand it, there are no questions suggested by any
11 of the other core participants, and so that concludes
12 Mr Pengelly's evidence.

13 **LADY HALLETT:** Thank you very much indeed, Ms Blackwell.

14 Thank you, Mr Pengelly. See you in the next phase.

15 **THE WITNESS:** Thank you.

16 **(The witness withdrew)**

17 **MS BLACKWELL:** My Lady, that concludes the evidence for
18 today, although I should say although we're having an
19 early day, we have a lot of evidence to get through
20 tomorrow, so we will be working hard behind the scenes.

21 **LADY HALLETT:** Well, even the best laid plans can sometimes
22 have a gap, so I'm sure that a lot of people will be
23 grateful for a slightly early day.

24 10 o'clock tomorrow morning.

25 **MS BLACKWELL:** Thank you very much.

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1 LADY HALLETT: Thank you very much.
 2 (2.22 pm)
 3 (The hearing adjourned until 10am
 4 on Wednesday, 12 July 2023)
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