

Witness Name: Richard Gregory

Brunt

Statement No: 1

Exhibits: RGB/1 – RGB/65

Dated: 28 April 2023

## **UK COVID-19 INQUIRY**

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### **WITNESS STATEMENT OF RICHARD GREGORY BRUNT**

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I, Richard Gregory Brunt, will say as follows: -

#### **Introduction**

1. I am Richard Gregory Brunt and my position at The Health and Safety Executive (HSE) is Director of Engagement and Policy Division. I am authorised to make this statement on behalf of HSE. This statement is provided to the UK Covid 19 Inquiry to explain the role and function of HSE in relation to responding to a pandemic and the actions taken by HSE in relation to preparing businesses for a pandemic during the period 11 June 2009 to 21 January 2020.

#### **Background and Function of HSE**

2. HSE is a UK government agency sponsored by the Department of Work and Pensions ("DWP"). It is Britain's national regulator for workplace health and safety and operates across England, Scotland and Wales.
3. HSE was established by The Health and Safety at Work etc Act 1974 (HSWA). HSE enforces workplace health and safety in certain workplaces, mainly through HSWA (and relevant Regulations).

4. HSE's general duty is set out in section 11 (1) of HSWA, namely to *"do such things and make such arrangements as it considers appropriate for the general purposes of this Part,"* and HSE is provided with a variety of powers, including enforcement powers, to assist it in achieving that duty.
5. Section 11(1) of HSWA provides for a significant degree of flexibility and discretion for HSE in terms of how HSWA is applied, and for that reason, HSE's longstanding position is that there is no need to suspend health and safety at work legislation during an emergency (RGB/1 – INQ000101531).
6. HSWA is non-prescriptive in nature in that it places duties on employers, employees and the self-employed ("Dutyholders") to reduce risks to health and safety arising out of work activity, but it is not specific about the precise actions which must be taken by any Dutyholder to fulfil those objectives. Appropriate action by a Dutyholder will depend on an assessment of the risks in a particular workplace, and also what is proportionate
7. Responsibility for enforcing HSWA is divided between the HSE and other regulators – principally, and most importantly for the purposes of the Inquiry, by the Health and Safety (Enforcing Authority) Regulations 1998 ("the Regulations"). Under the Regulations, Local Authorities are the enforcing authority for certain premises, dependent upon the main activity carried out there. This includes, for example, office activities, accommodation provision such as hotels, the sale of goods (shops), church worship and religious activities, and beauty treatments. Conversely, HSE is the enforcing authority for HSWA purposes over schools, prisons, courts, factories, farms, most construction sites, and hospitals (for example). In some cases, the Regulations lead to additional complexity – for example, HSE is the enforcing authority for a care home where the main activity is nursing / medical care, but Local Authorities are the enforcing authority for care homes where the care being provided is residential as opposed to medical. HSE has developed guidance to assist in understanding the Regulations and which types of business fall under our enforcing authority which is available on our website (RGB/2 – INQ000101584).

8. In addition, it is important to understand that HSE works collaboratively with other Regulators, agencies and government departments to ensure the most appropriate organisation takes responsibility when a health and safety issue arises and there are potential overlaps in regulatory responsibility. In order to facilitate this, we have entered into a number of agency agreements and Memoranda of Understanding with other regulators (for example, the Care Quality Commission (RGB/3 – INQ000101585). These agreements are also all published on our website.
9. The fact that the HSE is the enforcing authority for health and safety in a particular workplace does not mean that we are responsible for predicting risks which may arise during a pandemic or providing workplaces with guidance on how they are to be controlled during a pandemic. Neither is HSE responsible for ensuring businesses have in place appropriate contingency plans. However if a pandemic leads to greater risk of exposure to persons engaged in specific work activities, HSE will provide advice and guidance to relevant Dutyholders. HSE will also provide advice and assistance to partner agencies where requested, for example, HSE assisted the Department of Health and Health Protection Agency to prepare guidance on infection control in the healthcare sector “Pandemic (H1N1) 2009 Influenza” published in 2009 (RGB/61<sup>1</sup>- INQ000176074). In 2015 a NERVTAG Face Mask and Respirator Sub-Group was formed to provide the Department of Health and Public Health England with scientific and clinical advice on the use of face masks and respirators in the health and social care sector in the event of an influenza pandemic (RGB/4 – INQ000101589). HSE was a member of this sub-group. The sub-group subsequently made formal recommendations to the Department of Health (RGB/5 – INQ000101587). Also in 2019, HSE provided advice to a project run by BEIS (the Department for Business, Energy and Industrial Strategy) to assess whether the chemicals sector had sufficient contingency plans in place (RGB/6 – INQ000101546 and INQ000101547).
10. HSE is a Category 2 Responder under paragraph 29 of Part 3, Schedule 1 of the Civil Contingencies Act 2004 (“the CCA”) (RGB/7 – INQ000101548). This is in contrast to Category 1 Responders, who have specific duties under the CCA to

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<sup>1</sup> At the time of writing, HSE has not been able to identify any further records in relation to this.

assess the risks of an emergency situation occurring and plan for it. Category 2 Responders such as HSE will generally not lead in an emergency and will be less likely to be involved at the centre of planning work. Rather, our role is as a 'co-operating body', with a lesser set of duties than Category 1 Responders (RGB/8 – INQ000101582). Those duties are principally co-operating and sharing relevant information with other Category 1 and 2 responders to inform multi-agency planning frameworks.

11. HSE works with the Cabinet Office in relation to National Risk Assessment planning and is identified as the "risk owning" department where the identified risks arise in relation to work activity in sectors / business regulated by HSE rather than pandemics. Our role in mitigating these risks is the regulation of those business under HSWA. In the context of pathogens, in the 2019 assessment, HSE was the risk owning department is in relation to the accidental release of a biological pathogen from a containment laboratory (RGB/47 – INQ000176073).
12. HSE works with Government departments and other agencies to support the implementation and delivery of the UK Biological Security Strategy, published in 2018. The Strategy recognises HSE's purpose to promote standards of safety that are proportionate to the risks from high consequence micro-organisms, and reassure the public that appropriate controls are in place. It also recognises HSE's role in keeping pace with change and anticipating, and tackling, new safety challenges to enable science and technology to develop. (RGB/48 - INQ000176116).

### **HSE's Role in Pandemic Planning and Guidance**

13. HSE had and continues to have a limited role in pandemic planning. HSE would not expect, or be expected to take the lead in such matters. HSE has regulatory responsibility for health and safety (including occupational diseases) arising from work activity. In contrast, pandemics are, by their nature, public health emergencies, because they involve the incidental spread of diseases that are in general circulation and are not limited to workplaces.

14. The Department of Health and Public Health England / Health Protection Scotland / Public Health Wales take the lead in any response, with HSE providing input where necessary. This is reflected in Cabinet Office guidance on the national risk assessment process (RGB/9 – INQ000101521, RGB/32 – INQ000101522 & RGB/33 – INQ000101523) and DWP contingency planning guidance and supporting documentation (RGB/10 – INQ000101559, RGB/37 – INQ000101564, RGB38 – INQ000101563, RGB/39 – INQ000101562, RGB/40 – INQ000101565, and RGB/41 – INQ000101561). This position is also set out in HSE guidance (RGB/11 – INQ000101588) and is reflected in the way in which HSE plans for a pandemic.
15. HSE provides guidance on a range of topics to Dutyholders to assist them in complying with their duties under HSWA, but the duties remain theirs. HSE do not carry out risk assessments for businesses. Although HSE is a training provider and we can offer training on how to carry out risk assessment, we do not routinely provide training for businesses as part of our front line regulatory activities. Our Concerns and Advice team (“CAT”) can be contacted for advice, and they were available during the COVID-19 pandemic to Dutyholders who needed advice.
16. HSE has published guidance on our website, which has been in place for many years but is regularly reviewed, relating to pandemic planning for businesses. Primarily, however, we signpost to Department of Health Guidance as the lead department (RGB/12 – INQ000101583).
17. HSE’s published guidance is entitled “Pandemic Flu - Workplace Guidance” (“HSE’s Pandemic Flu Guidance”)(RGB/13 – INQ000101590<sup>2</sup>). The HSE’s Pandemic Flu Guidance recognises HSE’s limited role, stating *“The Government has dedicated a lot of time to influenza pandemic planning in case there should be a influenza pandemic. This is first and foremost a public health matter, and so the UK’s Health Departments have taken the planning lead in close consultation with other Government departments and agencies including the Health and Safety Executive.”*

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<sup>2</sup> The exhibit is an extract from National Archives showing the version that was published on HSE website until 19 May 2020.

18. The HSE Pandemic Flu Guidance provides general, but important, guidance to businesses on topics including:

- a) General advice for employers/employees concerned about exposure to pandemic flu at work – which advises employers to carry out a risk assessment and put preventative measures and/or controls in place as appropriate where workers are in close contact with someone who has the disease or contaminated objects. It goes on to consider measures such as working from home, suspension of work, use of air conditioning, the risks from depleted workforces and importance of reviewing risk assessments if workers are doing unfamiliar tasks, and compliance with Working Time Regulations.
- b) General advice for employees – which is to stay at home if you are unwell, and practice good personal hygiene in the workplace

19. The HSE Pandemic Flu Guidance goes on to specify a number of different professions (laboratory workers, health care workers, cleaning staff) and gives guidance and provides a signpost to Department of Health Guidance where appropriate. The HSE Pandemic Flu also contains guidance on when masks may be needed, and the type of masks which should be selected.

20. It is HSE's view that the HSE Pandemic Flu Guidance constitutes an appropriate and proportionate approach to assisting businesses to plan for a pandemic, bearing in mind our limited role in pandemic planning, the non-prescriptive nature of HSWA, but also the unfeasibility of providing detailed or prescriptive guidance in advance of a pandemic when the nature of the controls which will be needed cannot be foreseen because they are dependent on the nature of the disease, and where the controls may be vastly different depending on the nature of the workplace. As set out above, pursuant to the Regulations, HSE is the enforcing authority in respect of health and safety for a huge variety of workplaces which give rise to a number of different issues; the controls which are appropriate within a school setting (for example) will be very different to those which are appropriate in a hospital, factory or a prison.

21. In addition to guidance, HSE may undertake and publish research which is relevant to certain Dutyholders when considering how they comply with their duties under HSWA. The findings of such research are not prescriptive in nature. They provide a Dutyholder with information to assist them when undertaking their risk assessment and when determining appropriate measures to eliminate or control identified risks. In relation to preparing for a pandemic, HSL<sup>3</sup> (commissioned by HSE) published research in relation to the protection afforded by surgical masks against influenza bioaerosols. This research was first published in 2008<sup>4</sup> and remains on the HSE website (RGB/14 – INQ000101591). Similarly, in 2019, the HSE published an evaluation of existing PPE worn by NHS Staff for assessment of a patient with a suspected high consequence infectious disease (“HCID”) (RGB/49 – INQ000176118) following the Ebola outbreak between 2014 and 2016.
22. HSE has published procedures on how we respond to an emergency event (RGB/15 – INQ000101586), and a long-standing central Emergency Planning Unit (EPU), and single National Incident Contact Centre. The EPU works with others across HSE to ensure that arrangements are in place to support the delivery of HSE's response to major incidents and civil contingency events. This includes:
- a) Maintaining the Duty Officer system to provide a 24/7, 365 days a year, out of hours triage and response facility.
  - b) Providing HSE staff with procedures, guidance, training and exercising in major incident and emergency response;
  - c) Ensuring HSE contributes to central government civil contingency planning effectively and proportionately, in accordance with its duties under HSWA and as a Category 2 Responder under the CCA;
  - d) Acting as a central coordination point in HSE for other government departments for civil contingency related issues;
  - e) Coordinating the HSE response to a civil contingency event for which government emergency arrangements procedures have been activated.

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<sup>3</sup> HSL is now HSE's Science Division

<sup>4</sup> It is recognised that this research was first published outside the time period specified in the Rule 9 request but has been included to assist the Inquiry due to its relevance to the request.

23. In terms of internal preparedness, HSE's Business Continuity Plans consider the impacts of staff absences and availability of offices (for any reason rather than specifically linked to a pandemic) on its ability to deliver critical functions. There are a number of plans, relevant to different HSE divisions. Business Continuity Plans are reviewed and updated by each Division (example at RGB/16 – INQ000101579 which was updated in 2019). HSL had also developed a Pandemic Plan (RGB/17 – INQ000101518) in 2009.

### **HSE's Involvement in Cross Government Pandemic Planning and Preparedness Exercises**

24. HSE participated in the cross government national pandemic exercise known as Exercise Cygnus as part of DWP's Departmental Operations Centre. Exercise Cygnus was held in October 2016. In preparation for the event, HSE updated its Pandemic Influenza Guidance and internal Business Continuity Plans.
25. In October 2016, HSE produced a document in preparation for the exercise which was based on the top line brief which had been developed in response to the 2009 Swine Flu Pandemic (RGB/18 – INQ000101543). This comprehensive document sets out HSE's approach during that pandemic and includes consideration of the impact on various sectors, for example, the prison sector (drawing attention to the HMPS guidance for managing such a situation), educational sector, and nuclear sector. It reiterates that the Department of Health is the lead in a pandemic, and that HSE's primary advice is that employers should first assess the risks for a particular workplace to identify the most appropriate controls.
26. HSE designed five injects (information passed to participants which simulate the different types of information received during a real-life response) for the exercise though ultimately they were not all used (RGB/19 – INQ000101525 – INQ0001529). The injects were designed to reflect key issues; complaints from employees about lack of hand gel/hygiene provision, supply shortage of FFP3 masks and face fitting, allegation from a family of an employee having failed to protect their family member who had died. There were also some media injects based around prisons and poultry farms.



27. HSE provided advice on a number of matters during Operation Cygnus, including:

- a) advice to employers about staff safety by taking precautions consistent with advice offered by the Department of Health, practising good personal hygiene in accordance with Public Health England Guidance, staying at home if symptomatic. It also advised on the use of masks in occupations where close contact with symptomatic people was likely and other high risk situations (RGB/20 – INQ000101533).
- b) a similar piece of advice which was specific to prison staff, but which also highlighted that Her Majesty's Prison Service follow Public Health England / Department of Health Guidance to reduce the risk of infection, and that that advice was originally developed in conjunction with HSE and was consistent with health and safety at work legislative requirements (RGB/21 – INQ000101538).
- c) advice to DWP in responding to an inject around a trade union request to close customer facing offices following worker deaths. HSE's guidance was that employees could not refuse to work, but employees should stay at home if unwell as per Department of Health guidance, alternative working practices (working from home, reduction in face to face meetings) should be employed on a case by case basis in the event of an illness outbreak, and that employees who do attend work should practice good hygiene measures (RGB/22 – INQ000101535 and RGB/44 – INQ000101534).
- d) advice in relation to a proposed inject from the Department of Health around vaccination strategy in which we drew attention to the fact that in the event of an influenza pandemic, the major group of workers (other than laboratory workers), most likely to come into contact with the virus are the wide spectrum of health care workers caring for patients with the disease (RGB/23 – INQ000101541 and RGB/34 – INQ000101539).

28. Following Exercise Cygnus HSE completed its own lessons learned process. The findings were that HSE's internal systems had worked well, but a few external areas for improvement were identified which centred around communications, where HSE had had to take the lead in place of DWP. It was identified that our

role in relation to healthcare workers wasn't fully exercised because the injects selected had tested our relationship with other sectors such as prisons. It was also identified that an opportunity may have been missed to consider business continuity issues more broadly than health impacts. (RGB/24 – INQ000101542).

29. Also following Exercise Cygnus, the Cabinet Office established a Pandemic Flu Readiness Board ("PFRB") in late 2017 to deliver on the actions identified (RGB/35 – INQ000101545). HSE was not initially invited onto the group, but HSE made contact in November 2017 (RGB/25 – INQ000101544) and were then added to the group. HSE contributed to working groups led by other organisations on body storage and transport in an excess deaths scenario which was run by the Civil Contingencies Secretariat of Cabinet Office (RGB/36 – INQ000101556). We provided briefings highlighting the need for risk assessment, and potential risks which may need to be considered, including the methods of transmission, the need for PPE and the potential unavailability of body bags (RGB/26 – INQ000101555 and RGB/27 – INQ000101557). HSE had (and continues to have) existing guidance on managing infections risks when handling the deceased (RGB/28 – INQ000101553).

30. One action which came out of the PFRB was for the Department of Health and Social Care to review pandemic influenza preparedness and response documentation from across government. This was done and a table of available documentation was circulated in October 2018 (RGB/29 – INQ000101566 and RGB/45 – INQ000101567). That included guidance owned by various other organisations, such as BEIS, NHS, the Department for Transport, Public Health England and for particular sectors including health, retail, hospitality and transport as well as some guidance owned by HSE. HSE responded following its circulation to clarify which pieces of guidance were owned by HSE and to offer assistance should any of the other organisations' guidance documents relating to worker health and safety be revised (RGB/30 – INQ000101568 and INQ000101569).

31. In May 2020, DHSC circulated a draft paper setting out an analysis of the work that had been undertaken since the publication of the Exercise Cygnus report in

July 2017, including the work being conducted by PFRB (RGB/50 – INQ000176119 and RGB/63 - INQ000176120).

32. In November 2018, HSE were asked by the Department of Health and Social Care to assist with their work refreshing the Department of Health's 2011 UK Pandemic Influenza Preparedness Strategy (RGB/31 – INQ000101572 and RGB/42 – INQ000101573). The request made of HSE was extremely limited – to review 2 paragraphs within the strategy which set out the duty on employers to assess the health and safety implications of reduced staffing levels, and to continue to manage risks at work sensibly and proportionately (RGB/46 – INQ000101571). HSE did not identify any changes which were needed.

33. PFRB has now been replaced by the Pandemic Diseases Capabilities Board. HSE is a member of that board.

34. In July 2016, HSE was also involved in UK Biological Security Strategy workshop which considered how Government learnt lessons from biological incidents (RGB/51 - INQ000176092).

### **HSE's Involvement in Pandemic Planning and Preparedness in the Devolved Nations**

35. In addition to Exercise Cygnus, a separate pandemic planning exercise was conducted in Scotland in 2015 which was known as Exercise Silver Swan (RGB/52 – INQ000176078). HSE was not involved in the initial stages of this exercise but following correspondence with the Scottish Resilience Development Service on the role of HSE in a pandemic event, it was agreed that HSE should attend the Exercise Silver Swan final event held in November 2015 (RGB/53 – INQ000176063). Following our attendance at the November event, we received a copy of correspondence dated 6 November 2017 from the Deputy Chief Medical Officer and Deputy Director of the Resilience Division summarising actions arising from the exercise, key learnings from Cygnus and Silver Swan and new pandemic workstreams being undertaken in collaboration with other UK nations (RGB/54 – INQ000176065). There were no specific actions for HSE arising from the exercise or the identified workstreams.

36. In relation to pandemic planning and preparedness in Wales, HSE attended meetings of the Wales Resilience Forum which considered matters relating to pandemic planning and Exercise Cygnus (RGB 55/ - INQ000176103, RGB/56 – INQ000176115 and RGB/62 – INQ000176087).

### **Previous Pandemics and HCIDs**

37. As the enforcing authority for health and safety in certain workplaces, HSE has provided advice and guidance to both Government departments and Dutyholders in preparation for, and in response to previous pandemics and HCIDs. The response to both the swine flu pandemic and Ebola virus was led by Department of Health. HSE worked closely with Government departments and other agencies to provide information and advice on workplace safety. HSE attended COBR meetings during both emergencies when required to do so (RGB/43 – INQ000101532).
38. Following the swine flu pandemic, HSL was invited to participate in Exercise Panorama which explored how Interlab Forum Partners worked together in an emergency (RGB/57<sup>5</sup> - INQ000176075). Following Ebola, NHS England established the HCID Programme and Programme Board. HSE was a member of the Programme Board (RGB/58 – INQ000176095). HSE also participated in lessons learnt reviews undertaken by the Cabinet Office (RGB/64 - INQ000176080 and RGB/65 – INQ000176082) and Public Health England and NHS England (RGB/59 – INQ000176079) and (RGB/60 – INQ000176117).

### **General Reflections on HSE's Role in Covid 19 Pandemic**

39. Whilst the HSE played a limited role in the pandemic planning and preparedness exercises and previous pandemics, HSE considers that its involvement put the organisation in a good position to respond to the COVID-19 pandemic, particularly given that significant factors such as the actual level of virulence, routes of transmission and impact on workers were not known until the virus struck.

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<sup>5</sup> At the time of writing HSE has not been able to identify any further records in relation to this.

40. HSE was not an enforcing authority for any of the Coronavirus Restriction Regulations which were brought into force during the pandemic, and that was an appropriate decision. In contrast with Local Authorities, who have a greater collective footprint, HSE's size meant we had limited resource to enforce those Regulations which required enforcing officers who were visible and "on the ground," and it would not be realistic to resource HSE for such an eventuality in future. Nor would it be possible to scale up our workforce rapidly and at short notice given the training which would be needed for new staff undertaking inspections.

41. Any emergency will put pressure on an organisation such as HSE, which has limited resource and capacity. Inevitably, the pandemic meant that HSE had to divert resource away from planned business activity. However HSE considers that it showed itself to be flexible and able to adapt to provide an appropriate level of engagement across the wide variety of workplaces that HSE regulates and the differing impact that any pandemic may have on their workplace activities.

### **Statement of Truth**

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

**Personal Data**

**Signed:** \_\_\_\_\_

Richard Gregory Brunt

**Dated:** \_\_\_\_\_ 28 April 2023