

## **CLEARANCE CHECKLIST**

*Inclusion of this checklist is mandatory. Please complete the whole list and private office will remove before putting submission in the box. A submission without it will be sent back.*

**Note:** Contact names provided must have seen and approved the submission.

### **Finance:**

Does this involve any spending or affect existing budgets?

- ☐ If yes, named official:  
[Click here to enter text.](#)  
☒ No



### **Communications:**

Could this generate media coverage, or a response from the health sector?

- ☒ If yes, named official:  
Syeda Hasnain, Chief  
Communications Officer  
☐ No

### **Analysis and data fact-checking:**

Does this include complex data, statistics or analysis?

- ☐ If yes, named official:  
[Click here to enter text.](#)  
☒ No

### **Devolved Administrations:**

Will this affect Scotland, Wales or Northern Ireland?

- ☐ If yes, named official:  
[Click here to enter text.](#)  
☒ No

### **Fraud:**

Have you considered fraud risks?

- ☐ If yes, named official:  
[Click here to enter text.](#)  
☒ No

### **Commercial:**

Does this include commercial or contractual implications?

- ☐ If yes, named official:  
[Click here to enter text.](#)  
☒ No

### **Strategy Unit:**

Does this relate to cross-cutting or longer-term implications for wider DH strategy?

- ☐ If yes, named official:  
[Click here to enter text.](#)  
☒ No

### **Implementation Unit:**

Does this relate to one of the Secretary of State priorities?

- ☐ If yes, named official:  
[Click here to enter text.](#)  
☐ No

### **Legislation:**

Does this include options that may require secondary legislation?

- ☐ If yes, do you have a prioritisation reference number? (*contact Parly or SOPL if unsure*):  
[Click here to enter text.](#)  
☒ No

### **Duties, Tests and Appraisals:**

*The following tests apply and have been considered.*

- ☐ Secretary of State Statutory Duties, including on health inequalities  
☐ Public Sector Equality Duty  
☐ Family test  
☒ Other(s) (please specify)  
SofS Duties under the Civil Contingencies Act 2004

To: 1. PS(P)  
2. SoS

From: Kevin Dodds  
Clearance: Clara Swinson  
Date: 14 May 2020  
Copy: NR

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## FUTURE HANDLING OF THE REPORT INTO EXERCISE CYGNUS

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

### Background

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

### Exercise Cygnus

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

the Devolved Administrations (DAs); NHS England; Public Health England (PHE); NHS Wales; eight Local Resilience Forums; and six prisons.

3. The exercise scenario was close to the Reasonable Worst-Case Scenario (RWCS) for pandemic flu and specifically designed to highlight vulnerabilities and areas for improvement. It focussed on the later stages of an influenza pandemic, and tested the country's response to the increased demand for healthcare and our ability to maintain essential services.
4. The lessons learnt report was commissioned by DHSC and produced independently by PHE. Overall it concluded that "the UK's command and control and emergency response structures provide a sound basis for the response to pandemic influenza. However, the UK's preparedness and response, in terms of its plans, policies and capability, is not currently sufficient to cope with the extreme demands of a severe pandemic that will have a nation-wide impact across all sectors." The exercise identified 22 lessons learned in four areas of key learning:
  - a) Concepts of operations, i.e. how Government works with responders;
  - b) Legislative easements that might be employed during a pandemic;
  - c) Public reactions; and
  - d) Capability and capacity to surge services to meet demand.
5. The documents (attached) comprise:
  - The 14 page main report, which sets out overall message and the 4 key learnings;
  - There are four annexes to the main report. Annex A has detail and commentary on each of the 22 lessons. Annex B has lessons from a preparatory 1-day exercise Cygnet. Annex C covers planning for the exercise and Annex D has participant feedback.
6. The main report plus annexes was shared with all exercise participants. The main report only was also re-titled 'Summary Version' and shared with local delivery partners through the 'Resilience Direct' portal.

#### Subsequent work

7. Following Exercise Cygnus, the then-Prime Minister chaired a meeting of the National Security Council (Threats, Hazards, Resilience and Contingencies), which commissioned a cross-government programme of



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

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

## **Discussion**

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

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

tracing (which was not part of our response to the peak of a pan flu) or PPE volumes.

11. You may wish to note that the Chief Medical Officer has indicated that while he sees the decision to release the Exercise Cygnus report as a policy he will, if asked, say that he is open to/in favour of it being published.
12. Overall, we believe that the release of this material could impact on preparedness for civil emergencies, including pandemics, and that this works against the public interest. Nonetheless, we believe that a careful handling strategy can minimise (though not eliminate) that impact. Given the general desire for transparency in the FOIA, and the Government's specific intention to be open and transparent in the handling of its response to the current COVID pandemic, on balance we advise for release of the main report, including annexes. We would take advice on whether specific quotes or attributions should be redacted. **In doing so, we will bear in mind any areas that have already been put in the public domain. As this is an 'on balance' judgement it would of course be open to ministers with their view of public interest to take a different approach.**

**Communications – cleared by** Name Redacted **Chief Communications Officer**

13. There has been widespread and often critical coverage of the government not publishing the Exercise Cygnus report, with national print and broadcast media including the Guardian, Telegraph, Times, BBC and Sky piecing together publicly available statements and minutes discussing the report. The main angle of this reporting is that the exercise showed significant gaps in the UK's ability to respond to a influenza pandemic and in the context of COVID-19, questions have been asked about whether these warnings have been heeded and if action has been taken to address the alleged shortcomings. This has led to persistent calls for the full report to be published so that it can be judged whether the current pandemic could have been dealt with better and if issues with PPE, testing and the death rate should have been avoided.
14. On Monday 27 April the Guardian reported that a group of doctors have launched legal action to try and force DHSC to publish the report. It is notable that this story, along with past reporting on Cygnus, receives a lot of impressions (28,000 as of 08:00 on 27 April) and shares on social media. The top comments on social media place this report in a perceived wider pattern of the Government 'hiding' information and not



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

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

### **Handling considerations**

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

instead increase pressure to release the full version. **This is not recommended.**

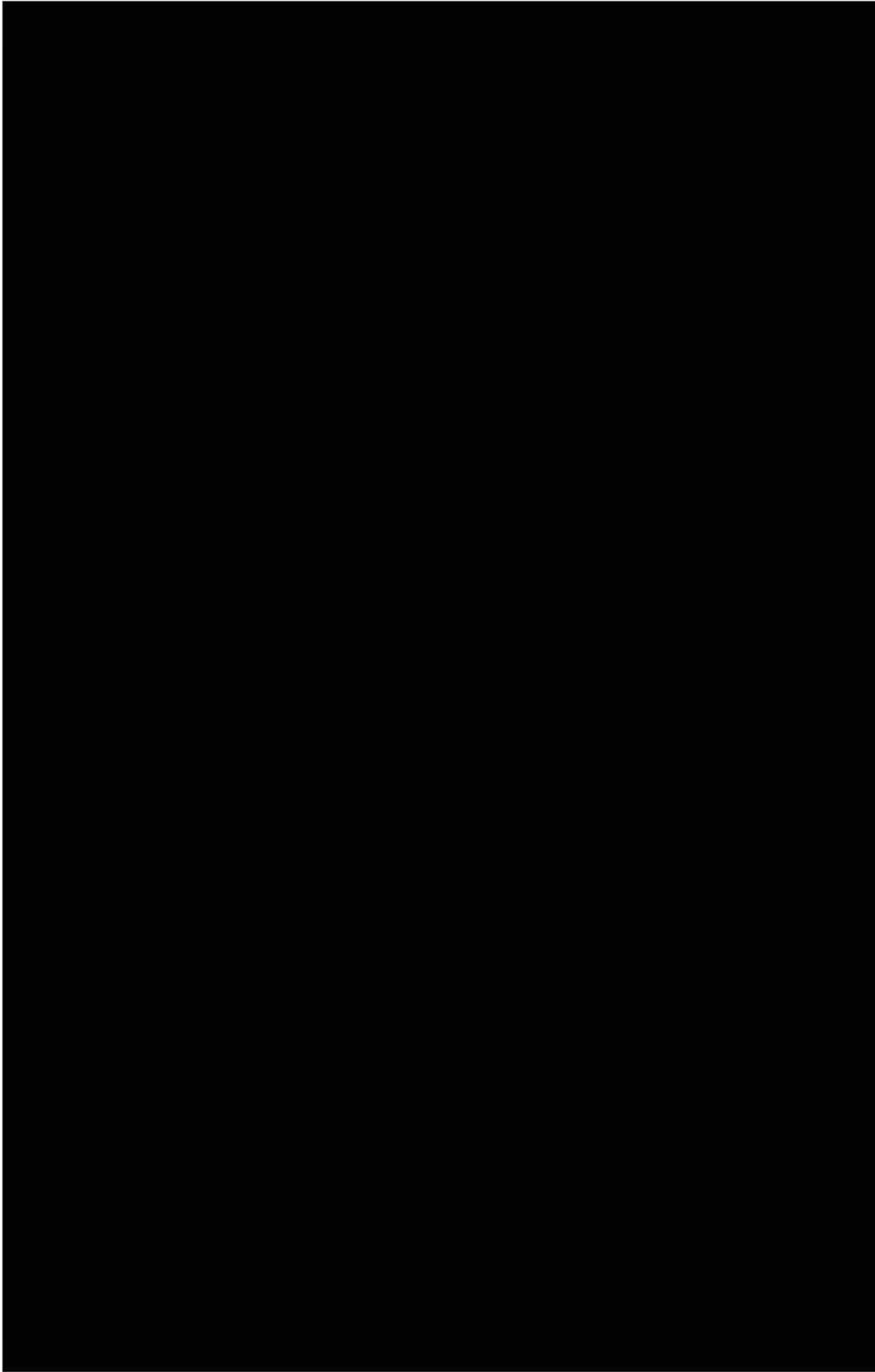
- c) **Full release** - commit to releasing the main report, with annexes. This might reduce (but not eliminate) criticism that the Government is not being transparent but it should be noted that it will be seen as a victory for campaigners 'forcing' the Government into action; and it is unlikely Government will receive positive coverage just for doing so. It is likely that publication would lead to at least a day of negative and critical national coverage following the initial coverage from the leak, as the whole document is picked apart for evidence of Government failings. However, as the full release is the recommended option, communications would recommend publishing the report alongside a gov.uk release detailing: the actions taken since the report to improve our pandemic preparedness; how this has helped our response to COVID-19; and a reminder that COVID-19 is a different type of disease, requiring its own distinct strategy. We would prepare a reactive line emphasising the main points of the release and the government's commitment to transparency, and have an extensive Q&A prepared for further media queries. We would also coordinate across government to ensure all relevant departmental press offices are aware of this decision. **This is our recommendation.**

18. If you choose to publish in full or in summary, we will prepare a communications handling plan. This will include a WMS, draft oral statement, Q&A and press briefing. We would also inform named participants, the DAs, and previous ministers, of the decision in advance of release. We have confirmed that CCS are content with this approach.
19. **If you do agree with our recommendation that we publish the report, you will first need to secure collective agreement to publication – a draft is attached at Annex B.**
20. We have been making preparations to pave the way for publication, including:
- a. redacting the report (ie. the names of junior officials) and seeking CO input to any further redactions on (for example) national security grounds
  - b. checking with CCS what other documents we could publish alongside this, as a way of contextualising it and explaining positively how robust our civil contingencies planning actually is
  - c. developing a narrative setting out what lessons were learned from the exercise, and how and when they were implemented. **We are**



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confident that this will convey a strong and positive message about our state of preparedness for any epidemic.





### **Parliamentary handling**

27. Current responses to parliamentary business, including parliamentary questions, committee briefings, and correspondence with Members of Parliament, are being drafted in line with the decision to use Section 35 of FOIA in response to requests for this information.

### **Recommendation**

28. We recommend you:
- **note** the sensitivities associated with publication of the Exercise Cygnus report;
  - **agree on balance the public interest is best served by us seeking collective agreement to release the main report, including its annexes, subject to our making the handling arrangements set out above.**

**Kevin Dodds**

**Deputy Director, UK Health Security**

Copies to

Private Office Submissions Copy List

Paul Kissack, Director General

David Lamberti, Director Covid-19 RWCS Team

Covid\_SID

Wendy Fielder, Director of Communications

Name Redacted Director of Comms, PE

Name Redacted Head of ERD, PHE

Andrew Vereker, Deputy Director Covid-19 RWCS Team

Clair Baynton, Deputy Director for EPRR

Name Redacted Team Leader UKHS

Cheryl Cavanagh, Team Leader Covid-19 RWCS

Name Redacted Head of Media and Campaigns

Mel Nebhrajani, Legal Director, GLD

Matt Smith, Deputy Director, GLD

Name Redacted GLD

Name Redacted GLD

Sarah Harriss, Senior Private Secretary to the Permanent Secretary

Name Redacted Head of Office and Senior Private Secretary to CMO

Name Redacted Head of Ministerial Correspondence and Public Enquiries

Name Redacted Chief Communications Officer

Name Redacted Chief Communications Officer

Name Redacted Senior Media Relations Officer

Name Redacted Health Security

Name Redacted UKHS Team

Name Redacted UKHS Team

Covid-19Spoc



## Annex A

**Chair:** You preempt my further question regarding Exercise Cygnus, an exercise that is shrouded in mystery it seems—only several references to it in local authority minutes and a board paper from NHS England. I presume you have read the report issued following that exercise?

**Michael Gove:** Yes.

**Chair:** Can you confirm it therefore exists?

**Michael Gove:** Yes.

**Q236 Chair:** Would it be possible to put that in the public domain?

**Michael Gove:** I do not think I can make that decision; I will talk to my colleagues. One of the things, again, I would say is that the purpose of Exercise Cygnus was to model a scenario for a flu pandemic. It was conducted in 2016 with a different Prime Minister. That Prime Minister then authorised, as I mentioned, the National Security Council to look at the work that was required. It was because of that that we were able to introduce the coronavirus legislation, because of that that we had a pandemic stockpile and because of that that some other steps were taken by DHSC.

**Q237 Chair:** If not a full version, might you be able to provide a redacted version?

**Michael Gove:** Let me consider that, yes. I would obviously want to share as much as possible with the Committee. It may well be the case that members of the Committee could come into the Cabinet Office to read it or that we could share a redacted version. I will reflect with my colleagues on what is the right approach. One of the things again that you will know as a Committee is that, while Ministers have wide discretion, I have to take account of precedents and I would have to ask the Propriety and Ethics Team here in the Cabinet Office, because sometimes I am anxious to share things but the point is made to me that this is advice that has been offered in confidence by civil servants and that we have to respect their duty of candour and the safe space in which advice is offered. I will talk to the Propriety and Ethics Team, take its advice and write back with what I can and cannot share. My general disposition is to share as much as possible.

**Annex B**

Rt Hon Boris Johnson MP  
Prime Minister

**PUBLISHING THE REPORT INTO EXERCISE CYGNUS**

As you are aware, there is much interest in seeing the report of Exercise Cygnus. We have received requests from Parliamentarians, the media, members of the public (as FoI requests and as part of litigation proceedings). A copy of the original report appears to have been published already by the Guardian newspaper.

For the reasons set out below, I believe that there is a balanced case for release in the public interest, and am therefore seeking agreement of DAU and NSC colleagues to do so.

‘Exercise Cygnus’ took place over three days in October 2016. Participants included Ministers and officials from: the Department of Health and Social Care (DHSC); twelve other Government departments; the Devolved Administrations (DAs); NHS England; Public Health England (PHE); NHS Wales; eight Local Resilience Forums; and six prisons.

The exercise scenario was close to the Reasonable Worst-Case Scenario (RWCS) for pandemic flu and specifically designed to highlight vulnerabilities and areas for improvement. It focussed on the later stages of an influenza pandemic, and tested the country’s response to the increased demand for healthcare and our ability to maintain essential services.

The lessons learnt report was commissioned by my Department and produced independently by Public Health England. Overall it concluded that “the UK’s command and control and emergency response structures provide a sound basis for the response to pandemic influenza. However, the UK’s preparedness and response, in terms of its plans, policies and capability, is not currently sufficient to cope with the extreme demands of a severe pandemic that will have a nation-wide impact across all sectors.” The exercise identified 22 lessons learned in four areas of key learning:

- a) Concepts of operations, i.e. how Government works with responders;
- b) Legislative easements that might be employed during a pandemic;
- c) Public reactions; and
- d) Capability and capacity to surge services to meet demand.

The main report (and its annexes) was shared with all exercise participants at the time.

Following Exercise Cygnus, the then-Prime Minister chaired a meeting of the National Security Council (Threats, Hazards, Resilience and Contingencies), which commissioned a cross-government programme of work to strengthen the UK's preparedness. We should note that while work is ongoing, and some work had to be balanced against competing civil contingencies priorities, there are no major gaps in our implementation of the lessons from Cygnus.

Departments have delivered the biggest and most important work in each of the workstreams, including:

- the development of a draft four nations Bill (which formed the initial basis of the Coronavirus Act);
- surge planning for the acute sector, out of hospital care and adult social care;
- planning for recruitment and deployment of retired staff and volunteers;
- strengthened excess death planning;
- stress-testing the resilience of key sectors;
- establishing a group of experts / advisors to advise Government on moral, ethical and faith considerations in advance of, and during, a pandemic;
- local engagement around pandemic influenza planning, including advice on best practice through the development of a Resilience Standard, and;
- further developing our communications strategy and messaging.

In declining FOIA requests to date for the Exercise Cygnus report, we sought to balance a desire for transparency against the public interest risks around the preservation of a safe space for policy development:

- following exercises, Ministers and officials need space to objectively explore lessons identified with complete candour, then develop policies and/or response plans to address these points. For Exercise Cygnus, some work has been concluded but other work is still ongoing. Public discussion prior to Ministerial agreement of these products might impact on the formulation of policy
- Cygnus tested extreme responses to a significant influenza pandemic, and a number of these measures are identified in the report. In the current context of a COVID-19 pandemic, releasing information on extreme response measures could hamper current and future covid-19 response activities, spread confusion, and increase concern in the general population
- publication could lead to increased pressure to publish findings from of other past and future emergency preparedness exercises carried out by



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all organisations at a national, regional and local level. There could be national security implications of releasing this material in some cases, for example testing the response to (malicious) threat risks, and there is an overriding public interest in the ability of government to conduct effective emergency exercises to identify capability gaps, improve procedures and ensure that there is a safe space for challenging future exercises.

I consider that the release of this material could impact on preparedness for civil emergencies, including pandemics, and that this works against the public interest. Nonetheless, I consider that a careful handling strategy can minimise (though not eliminate) that impact. Given our collective desire to be open and transparent in the handling of the response to the current COVID pandemic, on balance I advise for release of the main report, including annexes. Officials are taking advice on whether specific quotes or attributions should be redacted.

As a great many outstanding requests and cases (including a Lords oral PQ on 9 June) will be resolved by a decision on this issue, I should be most grateful if colleagues could reply by 22 May.

In terms of handling, we will liaise with officials from departments named in the report to develop an agreed narrative about the role of their departments and agencies, as well as to discuss how to inform relevant former Ministers. We will also publish explanatory material (alongside the report itself) to reinforce the point that the lessons of this exercise have been addressed.

I am copying this letter to DAU and NSC colleagues, and to the Cabinet Secretary.

Matt Hancock