Monday, 9 October 2023

(10.30 am)

LADY HALLETT: Mr Keith.

MR KEITH: Good morning, my Lady.

We propose to start today's evidence, my Lady, with the evidence of Professors Tom Shakespeare and Nick Watson, please.

PROFESSOR THOMAS SHAKESPEARE (affirmed)

PROFESSOR NICHOLAS WATSON (affirmed)

Questions from LEAD COUNSEL TO THE INQUIRY

MR KEITH: Professor Shakespeare, could you commence, please, by giving your full name.

PROFESSOR SHAKESPEARE: So, I'm Professor Thomas William Shakespeare and I am professor of disability research at the London School of Hygiene and Tropical Medicine .

MR KEITH: Thank you. And, Professor Watson, you too.

PROFESSOR WATSON: I'm Nicholas Watson and I'm professor of disability research at the University of Glasgow.

MR KEITH: You have been both been good enough to produce a joint report to this Inquiry on structural inequalities and disability. And there we have it, INQ000280067.

At the bottom of the page, of that first page, professors, if I can address you collectively, have you provided confirmation of the accuracy and the substance

of your joint report?

PROFESSOR WATSON: We have, yeah.

MR KEITH: And the declaration is dated 21 September 2023.

Can I turn, please, to your professional qualifications.

Professor Shakespeare, you've told us that you are professor of disability research at the London School of Hygiene and Tropical Medicine. Have you written extensively on the issues of disability, development and bioethics for many years now.

PROFESSOR SHAKESPEARE: I have. I got my PhD in 1995, and since then I've written mainly about Britain and disabled people's experience.

MR KEITH: Thank you.

Professor Watson, you are, as you have told us, Chair of Disability Studies and Director of the Centre for Disability Research. In Glasgow, the University of Glasgow, have you also written for many years extensively on a range of disability issues?

PROFESSOR WATSON: Yes.

MR KEITH: Do those issues, for both of you, cover obviously the issue of disability but, in your case, disability in childhood, social care, social support for disabled people, disabled young people and public service reform and poverty?

PROFESSOR SHAKESPEARE: Yes.

PROFESSOR WATSON: Yes, they have.

MR KEITH: Right.

Gentlemen, whilst you give evidence, please if you could remember to keep your voice up and speak as slowly as you humanly can in order to aid our stenographer. If I ask a question the meaning of which is not clear, please don't hesitate to ask me to put the question again.

We have, in the interests of transparency, discussed the way in which you are proposing to give your evidence. One of you, you've had a think beforehand, will go first in answering the particular topic that I raise, and if the other then wishes to add an answer or add some explanatory further comment in relation to that topic, then of course you'll do so.

The report commences on page 3 with this statement, which I might observe would, I hope, be taken to be a statement of the obvious:

"The potential for disabled people to be at higher risk of harm from Covid-19 was well understood before the pandemic took full effect."

You refer in the report thereafter to two particular pieces of learning, one from the US Centers for Disease Control, but in your joint opinion, was it obvious that,

in the face of a viral pandemic, both the pandemic and the response of the government, the response of any government, would be likely to have a disproportionate impact upon disabled people?

PROFESSOR SHAKESPEARE: Yes, it was. We feel from the evidence that disabled people not only have a primary vulnerability, not all but some, a primary vulnerability to a SARS-like infection, but they also have a narrow margin of health, and are more likely to be in a situation of deprivation.

MR KEITH: Do you in fact identify in your report five separate areas in which there was potential -- and the potential, as you've said, must have been well understood -- for greater vulnerability and impact?

PROFESSOR SHAKESPEARE: Yes. Yes, we do.

MR KEITH: Let us see whether we can identify each of them, drawing the threads together from your report.

So firstly, in terms of vulnerability, do disabled people suffer from a greater vulnerability in terms of their overall health?

PROFESSOR SHAKESPEARE: Not all, but some certainly, and particularly people with intellectual disability or who are older would be more vulnerable to an infection of this kind.

MR KEITH: Secondly, is there a greater vulnerability in

terms of clinical vulnerability, that is to say a propensity to become infected, to be vulnerable to the virus itself?

PROFESSOR SHAKESPEARE: For some people, not for all. Particularly for people living in congregate living situations, who are more likely to be older or disabled, they would, by virtue of their proximity to each other. But also people who have suppressed immune systems as a side effect of their primary condition would be more likely to become infected and therefore become ill.

LADY HALLETT: I'm sorry, Professor, I missed the word, and I think the stenographer did too: living in something situations?

PROFESSOR SHAKESPEARE: Sorry, congregate living situations.

LADY HALLETT: Congregate.

PROFESSOR SHAKESPEARE: So, many -- certainly older people but also people with intellectual disability, mental health conditions may live together. It might be not necessarily an institution, which would be the past experience, but more congregate than most of us would live in.

MR KEITH: Professor Shakespeare, whilst you give evidence, could I ask you to go a little more slowly. These are important, and well, scientific issues in part, and it's very important that we understand what you have to say.

The third area that you identify in your report is that of the greater risk of infection on account of the socio-economic conditions of some disabled people, so that is to say the greater risk of infection from their housing or from general deprivation.

Professor Watson, do you want to agree with that proposition?

PROFESSOR WATSON: Yes, I think so. I think for some disabled people, they -- I mean, Tom's talked a lot about how disabled people can be vulnerable to SARS-like viruses, but disabled people can be made vulnerable to SARS-like viruses as well, and I think that what we have seen here is that, through structural inequalities, we've placed disabled people in a position where they're more at risk, both of acquiring a SARS-like virus but also of not responding as well to a SARS-like virus, should that happen.

MR KEITH: Then fourthly, is there the issue of resources? So some disabled people may have a greater lack of access to the necessary health and care resources which would plainly be needed or required in order to be able to combat consequences of the virus?

PROFESSOR WATSON: There's evidence of significant inequalities in access to healthcare for disabled people. I mean, there's a substantial body of evidence

to show that disabled people face discrimination when trying to access healthcare.

PROFESSOR SHAKESPEARE: But -- can I add to that? -- in addition, some disabled people, not all, have higher needs for healthcare, whether that's a physical healthcare or psychiatric healthcare, and therefore if their primary physician is, as it were, diverted, they would be at some risk.

MR KEITH: And although, Professor Watson, you used the word "discrimination", in this context, we're examining, are we not, objectively, a lack of access to health and care resources?

PROFESSOR WATSON: Yes.

MR KEITH: Is your point that some disabled people, for whatever reason, may encounter a greater lack of access to the resources that are required in order to be able to combat the virus?

PROFESSOR WATSON: Yes.

MR KEITH: All right.

Then lastly, do you identify this last, fifth, area, which concerns the general impact, which you say is disproportionate, of the pandemic control measures which the government brought into effect in order to combat the virus?

PROFESSOR SHAKESPEARE: I mean, I would say, from

the evidence that we've seen, there would be the way in which, for many people, their social world is constructed by the state and voluntary organisations. I'm talking about particularly people with intellectual disability. And therefore, when all that has to be withdrawn, what can they do? They will stay at home and watch television. And then other people, who -- the nature of the pandemic control measures, there were a certain number of people who were, as it were, given priority in shopping, but then we excluded from a lot of other people, and -- things like social distancing, if you're visually impaired, it's impossible for a guide dog to understand what is necessary. So all of those aspects would be more difficult.

PROFESSOR WATSON: Sorry, I think also, moving things digitally online works for a lot of people, but obviously there was a lot of -- we point to the digital exclusion that disabled people are more likely to experience. So one of the responses to the Covid pandemic was to move things online. Well, if you're digitally excluded, then that greatly increases the disadvantage experienced by those who are digitally excluded.

MR KEITH: So you've both given some examples of the ways in which the government decision-making and

the restrictions that it applied on the population as a whole would have had a disproportionate impact on disabled people. But the nub of it, in relation to this fifth category, is this, isn't it: that the government decision-making and the measures it imposed had a direct impact on the day-to-day lives of disabled people, who, because they are disabled, would therefore tend to be disproportionately affected by that impact?

PROFESSOR WATSON: Yes.

PROFESSOR SHAKESPEARE: Yes, that's true. And I would add to that, that disabled people were an afterthought in many of the provisions. They were not centrally thought about, and therefore they were excluded from measures that were taken to protect the general population.

MR KEITH: By that, Professor, do you mean that when one examines the non-pharmaceutical interventions, the social restrictions, the lockdown orders, the stay at home orders, the social distancing and so on and so forth, the measures that were put into place, on their face they don't appear to pay any regard to this particular part of society?

PROFESSOR SHAKESPEARE: Exactly, yeah.

MR KEITH: All right.

So that we are clear, however, as to the extent to which you were asked to look at this area by

the Inquiry, we didn't ask you, in fact, to look at the actual nature specifically of the government response and see to what extent the needs of disabled people were expressly considered?

PROFESSOR SHAKESPEARE: We cannot comment on that, we haven't studied it.

MR KEITH: Thank you very much. Well, that's very clear.

Can we now turn, please, to some of the figures that you've produced, very helpfully, at paragraph 3 of your report.

The Department for Work and Pensions produced a survey, the Family Resources Survey. Did it estimate that in 2021, 22% of the United Kingdom's population reported a disability?

PROFESSOR SHAKESPEARE: Yes, it did.

MR KEITH: And what was meant in that survey by "reported a disability"? The Inquiry has seen, and we'll come to this tomorrow, some ONS data, both by way of statistical material and also what's called an opinions and lifestyle survey, that those who are disabled have the ability to be able to report whether they are disabled a little or disabled a lot.

What sort of reporting structure was the foundation for this survey?

PROFESSOR SHAKESPEARE: Well, that would have been a survey

of people claiming benefits and people not claiming benefits, and therefore it would -- I think it would take the definition of disability in the single Equality Act, which is that physical or mental impairment, a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. That is what is meant.

MR KEITH: Thank you.

The survey postdated the pandemic, at least insofar as it drew upon figures from 2020 to 2021. Is it possible to say, from the survey, or from your own researches, to what extent levels of disability have fluctuated in the course of the pandemic or as a result of the pandemic?

PROFESSOR SHAKESPEARE: That would be supposition on our part, we don't have that data.

MR KEITH: All right.

PROFESSOR WATSON: I don't think that these data would be sensitive enough to pick that up, but I think the -- there is a possibility that we could look at that.

MR KEITH: For those of state pension age, 46% reported a disability, and the figure for those of working age was 21%, the figure for children was 9%, and 24% of females reported a disability compared to 20% of males.

Did those figures for or based upon the criteria of

age or sex or occupation vary by jurisdiction?

PROFESSOR SHAKESPEARE: I think that, generally speaking, people in Scotland and Wales tend to have a higher rate of disability than people in England, because disability is related to deprivation, there's a strong poverty gradient, and therefore you can see that Wales has got the highest figure.

In this statistics Scotland has got the lowest, but, you know, there are others which would put it higher.

PROFESSOR WATSON: I think that there's a huge variation. No one knows -- when this report came out, lots of people had been speculating as to why Wales has such a high figure. But no one really knows, because it could be age, it could be -- it will be a mixture of age, poverty and other -- industrial -- legacies of industrial injuries and things.

MR KEITH: Although we didn't ask you in the report to address this issue, are you able to say how these figures compare to other comparable Western European countries?

PROFESSOR SHAKESPEARE: The trouble is, I'm sorry to disappoint you, but people used a different definition of disability. I mean, Britain has got the highest levels of disability in Europe, but that may be an artefact of the way that we count disability.

I mean, Norway and Germany, Norway 10.7, Germany, 9.4, those are not what we would count as disability. We are more like France, at 17.8, Switzerland, at 20.9. I think Sweden is about the same. So those would be comparable to us, but we would caution extreme care, because we're not clear on what basis they have defined people as disabled. Disability is a bit like a piece of string, it depends where you cross the line.

MR KEITH: Thank you. Well, that's extremely clear and not altogether surprising.

Your report then deals in general terms with three areas: vulnerability, the areas in which disabled people suffer the greatest degree of vulnerability; the area, secondly, in which they suffer from discriminatory practices; and thirdly, the issue of access to resources, and in particular to health and care resources on the part of the state.

So picking up, firstly, that issue of vulnerability. Is it well established that in general terms -- and I emphasise in general terms -- disabled people have a much narrower margin of health and face significant health inequalities? What is meant by a narrower margin of health?

PROFESSOR SHAKESPEARE: People I think are more likely to have secondary conditions, that is conditions consequent

on their primary health condition. They're more likely to be poor and, therefore, they might have comorbidities which are unrelated to their primary condition, and of course things like age or gender would also have a role.

PROFESSOR WATSON: I think they're also more likely to respond less well to a health challenge, because there's an increased vulnerability, so if they get flu, they're more likely to face mortality or morbidity resulting from flu.

MR KEITH: Because they are more vulnerable?

PROFESSOR WATSON: Because they're more vulnerable, they've got that narrower band of health, would be the way ...

MR KEITH: Now, you've referred to comorbidities, Professor Shakespeare. Are comorbidities serious health conditions from which a person may suffer alongside the disability or some other aspect of their day-to-day life or their societal position? So, in the case of a disabled person, they may suffer from hypertension or heart disease or respiratory disease alongside the disability?

PROFESSOR SHAKESPEARE: Exactly. And if I can take the example of people with intellectual disability, often people are overweight or obese, and of course there's lots of consequent health risks on that as well

as any primary health risk they might have because of their intellectual disability.

MR KEITH: As a general proposition, it's obvious from this report and the other reports that the Inquiry has looked at that there is a great need for care and a degree of nuance when examining these issues.

A disabled person may have a greater chance of suffering from a comorbidity not because they are disabled but because there are aspects to their day-to-day life or their condition, of which the disability is a part, which exposes them to a greater risk of that comorbidity; is that the position?

PROFESSOR SHAKESPEARE: Exactly. So taking the example of people with intellectual disabilities that I provided before, often they're supported by other people and often they might eat ready meals, those might contribute to their obesity. They're not eating a balanced diet, in other words, because that takes time to prepare.

PROFESSOR WATSON: I think work from colleagues in the Scottish Learning Disabilities Observatory estimate that at age 20 a person with a learning disability has the same number of comorbidities as a person without a learning disability at age 50, and a lot of this is down to poor access to healthcare and also to inequalities experienced throughout the life course, as

they go through. So I think it's -- and the fact that they live in poverty. There's this -- disability and -- impairment and poverty is a circular relationship. So we know that poverty causes disability, but we also know that disability can create poverty. So it becomes like a positive feedback loop, and it can exacerbate the problems of poverty, and then poverty exacerbates the problems of disability. So it's that circular relationship, if you like, that you get through there.

MR KEITH: With that in mind, do you then go on to identify certain vulnerabilities or aspects of disability which has made those persons who are disabled in this way more vulnerable to the Covid-19 disease? The first vulnerability you identify is age. Does disability entail a strong age gradient? Or, putting it another way, a significantly large proportion of elderly people have a disability?

PROFESSOR SHAKESPEARE: Absolutely, yeah, far more so than in younger people. So something like up to 50%, really, on average, for people, 47.1% are females. That's of older people who are limited a lot.

MR KEITH: It may be an obvious feature: do you conclude, therefore, that approximately half of people significantly affected by disability are over 60?

PROFESSOR SHAKESPEARE: That is statistically correct, yeah.

MR KEITH: And, again, they are disabled or they suffer from a disability or they have a disability not because they are elderly but because they have a disability associated with age, there's a convergence of condition, if you like?

PROFESSOR SHAKESPEARE: Exactly. And many older people are perfectly fit and well and no disabilities at all.

MR KEITH: What about the connection or the link or the convergence between disability and intellectual disability and health? You refer in the next paragraph to people with intellectual disabilities having as many health conditions at age 20 as the rest of the population aged 50 and over.

Is that a significant aspect of disability?

PROFESSOR SHAKESPEARE: We would say so. And so, for example, the relative risk of respiratory-related deaths is 2.5 times higher for people with mild intellectual disability and 5.8 times higher for people with profound and multiple intellectual disability.

So the more severe the condition, the more they're likely to have poor outcomes and to contract respiratory infections.

MR KEITH: So if you have an intellectual disability of the type that you've described, you are more likely to catch and to suffer from a respiratory disease or

condition --

PROFESSOR SHAKESPEARE: Yes.

LADY HALLETT:

MR KEITH: -- and, indeed, to die from it?

PROFESSOR SHAKESPEARE: Yeah, indeed. And during the 2017/2018 flu epidemic in the Netherlands, people with intellectual disability were three times higher deaths than in the general Dutch population. And often it's younger people as well. It's very unlikely for a young person without intellectual disability to become seriously ill. It's not unlikely for a person with intellectual disability.

MR KEITH: Whilst reminding you, please, to keep your evidence as slow as you can, are there other groups of disabled people who are at increased risk of respiratory infection?

PROFESSOR WATSON: I think many. You know, there's lots of different groups that we could look at. People with MS, with multiple sclerosis, for example, you could talk about being known to be at increased risk of viral infections. People with spinal cord injury are more likely to be at risk of respiratory infections. Same with rheumatoid arthritis and many other conditions, like people with chronic obstructive airways disease or coronary heart disease, diabetes.

So a lot of what we might call chronic illnesses but also have -- will also be included under disabled, as disabled people. So all of these put people at increased risk of respiratory infections.

MR KEITH: May I ask, professors, is that feature, is that increased vulnerability, well known? Is that something that's known not just within your particular speciality, the field in which you are experts, but known more widely?

PROFESSOR SHAKESPEARE: I would say it is known more widely. It's known through public health, it's known, obviously, through disability research, and it'd be known through social policy. It would be very evident.

PROFESSOR WATSON: I mean, I think the fact that respiratory infections are the major cause of death of people with a learning disability, it would make it -- that obviously would be very well known or should be well known by anybody who works in this area.

MR KEITH: The next category you identify is that of self-isolation. Do you make the point that, on top of the intrinsic vulnerability to Covid, a disabled person's needs for care and support may mean that it's much more difficult to self-isolate and, thereby, to reduce the risk of catching the virus in the first place?

PROFESSOR SHAKESPEARE: Absolutely. I mean, we've talked about disabled people who live in congregate living situations. Now, you can shut the door, but you need somebody to dress, undress, feed, transport you, and often it's the same person who performs those services for somebody else. So it might be at a care home, it might be in your private home, but very few people work only for one person, and therefore to isolate might be to shut yourself off from sources of care and support.

MR KEITH: Thank you, that's very clear.

You then turn, in paragraphs 13 and 14, to the issue of unequal access, the topic that I introduced at the beginning of your evidence, lack of access or inequality of access to healthcare.

It is self-evident there may be some disabilities which require a greater degree of access to health and care support. In very general terms, and we're not, of course, looking in detail at the detail of health and care resource in the United Kingdom in this module, but in very general terms, are there inequities or variations in the degree of access?

PROFESSOR WATSON: Yes, I mean, there is a significant body of evidence that points to the disadvantage disabled people face when trying to access healthcare, and then, when they access healthcare, about their health needs

being poorly understood, that are specific to their impairment.

MR KEITH: You then turn to the issue of discrimination, and you make the general proposition, you express the general opinion that despite over 20 years of antidiscrimination legislation, disabled people in the United Kingdom continue to face disadvantage compared to their non-disabled peers.

I should make plain what is I hope obvious, which is that this is not an inquiry into discrimination nor into the needs of disabled people or any other part of the population, but that level of discrimination is plainly relevant to the degree to which the government could or should have responded to the pandemic by measuring its responses in light of that degree of discrimination.

Has this issue of how a government might, in an emergency situation, respond to dealing with the needs of disabled people been raised at the UN level in the past few years?

PROFESSOR WATSON: Yes. In the 2017 or 16 --

PROFESSOR SHAKESPEARE: 16.

PROFESSOR WATSON: -- 16 response, the committee, in paragraph 28 in its report on -- that we refer to in paragraph 16 -- the inquiry concerning the

United Kingdom of Great Britain and Northern Ireland, it said that:

"The Committee is concerned about the impact on persons with disabilities in situations of emergencies, including floods and fire, and the absence of comprehensive policies related to disaster risk reduction that include [people] with disabilities in the planning, implementation and monitoring process of disaster risk reduction."

So I think it was highlighted to the government prior to the pandemic.

MR KEITH: Let's unpick that a little, then. So is this the position, that the United Kingdom is a signatory to and has ratified the UN Convention on the Rights of Persons with Disabilities?

PROFESSOR WATSON: And the optional protocol as well.

MR KEITH: I was going to come to that.

It ratified that convention. The convention is itself dated 3 October 2017 -- I do apologise, it's dated 2009.

Alongside the ratification of the convention, the United Kingdom agreed to an optional protocol by way of a side agreement. Following that process, did the UN Committee consider the position of disabilities in the United Kingdom and consider a report from

the United Kingdom on the Committee's views on the level of disabilities here?

PROFESSOR WATSON: There was concern about the impact of changes in welfare spending, and this was expressed in 2000 -- this culminated in the Inquiry published in 2016 that you refer to.

MR KEITH: In its concluding observations, dated 3 October 2017, did the UN Committee consider, amongst a myriad of other issues, and I should say there were some areas in which it commended the United Kingdom for the positive aspects of its response, as well as addressing and identifying principal areas of concern, but one of the areas, in paragraph 28 in fact, that the committee expressed concern about was whether, bluntly, the government was sufficiently considering the likely impact on persons with disabilities of emergencies?

PROFESSOR WATSON: Yes.

MR KEITH: All right. And that is a document and of course is a concern which is relayed directly to the government?

PROFESSOR WATSON: Yes.

PROFESSOR SHAKESPEARE: Yes, it is.

MR KEITH: Was another specific area of concern, in the same concluding observations dated October 2017, a concern about the availability of high-quality, timely and

reliable data disaggregated, that is to say addressing disability?

PROFESSOR SHAKESPEARE: Yes, it was.

MR KEITH: And, Professor, what, in general terms, was the nature of the concern that was there expressed?

PROFESSOR SHAKESPEARE: I think that there's not enough knowledge about the situation in which disabled people live, and where there are more general surveys or evidence around emergencies or pandemics or whatever, that isn't sufficiently disaggregated, so you can see whether disabled people are doing better or worse. And I think the fact that we've referred and can refer to so much data about intellectual disabilities is because of the Learning Disability Register, which all people with learning disabilities can be part of, and that does not exist for other forms of disability, and therefore it's harder to get data.

MR KEITH: All right.

You then turn to a number of other areas, areas in relation to which you say disabled people face discrimination. Could we perhaps briefly review some of the figures.

In relation to employment, in 2018, which appears to be the last time for which these figures were available, were 51% of disabled people employed compared to 81% of

non-disabled people?
PROFESSOR WATSON: Yes.
MR KEITH: And there are variations also in relation to levels of pay and whether or not the occupation is part or full-time?
PROFESSOR WATSON: Yes.
MR KEITH: Deprivation. Were and are disabled people as a group in a weakened situation relative to non-disabled people in the United Kingdom on account of the degree of deprivation that they encounter?
PROFESSOR WATSON: Yes.
MR KEITH: Do you provide figures in relation to the poverty rate for disabled adults and disabled adults in working age families?
PROFESSOR WATSON: Yes.
PROFESSOR SHAKESPEARE: Yes, we do.
MR KEITH: All right.
I'm not going to ask you questions about the links between poverty, morbidity and mortality, because that is not at the core of the Inquiry's work. But may I ask you this, professors: again, was this information, that's to say the levels of deprivation and the links between poverty, deprivation, housing and, in the context of disabled people, morbidity and mortality, well known to government?

PROFESSOR SHAKESPEARE: Yes, it was, and it was published by Joseph Rowntree Foundation and by the Equality and Human Rights Commission in 2018, so that would have been publicly very available.
MR KEITH: And are disabled people therefore more likely to live in inadequate housing, to have lower levels of security, be at greater risk of sexual and domestic violence and to be at greater risk of social exclusion?
PROFESSOR WATSON: Yes. And I think another -- not only are disabled people more likely to live in poverty but actually it is more expensive to live with a disability. There is an added cost to disability. So not only are people, disabled people -- not only do they have less income, it costs them more.
I think SCOPE do an annual extra cost of disability per month figure, and the poorer you are, the greater the additional cost as well. And these are all available, all of these will be well known.
MR KEITH: Turning to education, are there varying degrees of access to proper educational facilities, and in particular a lack of access to special educational needs and disabilities resources?
PROFESSOR WATSON: Yes.
PROFESSOR SHAKESPEARE: Yes, and the situation has worsened in the last ten years.

MR KEITH: Is that the same across the United Kingdom, so does it vary by jurisdiction?
PROFESSOR SHAKESPEARE: Well, it will do, but it's broadly the same across the United Kingdom, in Northern Ireland, in Scotland, in Wales.
PROFESSOR WATSON: I think Wales have recently introduced a new system, but most -- I think it's fair to say that there are inadequacies in the provision of special educational needs for children across the country.
MR KEITH: Paragraph 25, digital exclusion. This is relevant of course to the impact of stay at home orders and to social distancing measures.
Do disabled adults make up a large proportion of those adults across the United Kingdom who do not use the internet and therefore who may be said to be digitally excluded?
PROFESSOR WATSON: Yes.
MR KEITH: Again, those are quite significant figures. Is that broadly known and understood as well?
PROFESSOR WATSON: Yes, I mean, it's well -- it was -- it's easily available, the information, so yes.
MR KEITH: All right.
Security, I needn't trouble you with, because I don't think there's a sensible argument that measures imposed in the face of a viral pandemic need to be

particularly nuanced to deal with the possibility of being a victim of crime and security.
What about social isolation and loneliness? Are many disabled people subject to high levels of social exclusion and segregation?
PROFESSOR WATSON: Yes.
PROFESSOR SHAKESPEARE: Yes, they are.
Sorry to interrupt you and to correct you, but due to the pandemic people may spend longer at home, and if there are domestic violence issues in the home, they'll be more subject to them, and therefore it is relevant to the condition brought round through lockdown orders.
MR KEITH: Yes, I should say, Professor, that paragraphs 27 and 28 appear to deal, on their face, with what I might call "external" crime, hence security.
PROFESSOR SHAKESPEARE: Yeah, yeah, yeah.
MR KEITH: You've raised there the issue of domestic violence, which is different to the question that I asked you.
PROFESSOR SHAKESPEARE: I beg your pardon.
MR KEITH: But let's have a look at that.
What can you say about, in general terms, the levels of domestic violence on disabled persons?
PROFESSOR WATSON: I think it's fair to say that home is not always a safe place for disabled people. There is a lot

of hate crime and so-called "mate crime", where the person who's providing the care for disabled people can become the perpetrator of the hate crime towards them.

So I think there's a need to -- this is well recognised, that disabled people are often subject to such crimes, and that locking people down in that area is one that I think where there was significant risk and should have been --

PROFESSOR SHAKESPEARE: I think disabled women were twice as likely to experience sexual assault in a given year than non-disabled women. That's very stark.

MR KEITH: So that we are clear about the position, the point that you make, jointly, is that stay at home orders would, of course, have a tendency to increase the vulnerability of disabled people, insofar as they may be subject to domestic violence?

PROFESSOR WATSON: Yes.

PROFESSOR SHAKESPEARE: A small minority, it certainly would.

MR KEITH: Yes.

Can we then turn, please, to the issue of access to health and social care. Without engaging in polemic debate about the merits or demerits of austerity, is it clear that there have been reductions, objectively, in the overall levels of funding for disabled persons over

recent years?

PROFESSOR WATSON: Yes.

PROFESSOR SHAKESPEARE: I would say that fewer people are getting support from the state. So it's the numbers. For any individual, it might not have gone down, but the numbers of people being supported have certainly gone down.

MR KEITH: Were those reductions in the levels of funding, were they prevalent across society? So are they reflections of reductions in levels of funding in central government or at local authority level or in terms of access to the third sector? Was it a particular area or was it generally across the board?

PROFESSOR WATSON: Generally across the board, I think. But I think there's a general cut in the funding of social care, particularly so in England, and a reduction in the spending -- and of course social care is delivered either by the local authority or by non-statutory agents such as the health authorities, or through the third sector or private sector. So cutbacks would have been -- so cuts in funding was apparent to all -- across all of those sectors.

MR KEITH: As there were reductions in levels of funding, presumably the third sector, that's to say voluntary and community sector organisations, would step in to greater

or lesser extent to assist.

In the run-up to the pandemic, were there any changes in the capacity of the third sector or its ability to be able to provide services and resources where the state could not?

PROFESSOR WATSON: Well, the evidence is that there have been significant cuts to the third sector by sort of 2017 and that the cuts are greatest to those third sector agencies that are working in the areas of highest social deprivation. So actually it was -- you know, the inverse care law, where more support was needed there was more likely to be cuts to the services that provide care in those areas.

I think that these have reduced the capacity of local authority -- of services to provide social care and support to people in those areas. And I think one of the things that's really important here is -- I know we're not talking about the pandemic, but actually the third sector played a really significant role in the response to the pandemic, and actually we'd already set up, so we were disadvantaging -- these third sector organisations that were working in areas of high social deprivation were the ones that were finding it hardest prior to the pandemic to keep going.

LADY HALLETT: And you mean by the third sector, just so

everybody watching knows? By third sector you mean?

PROFESSOR WATSON: Third sector I mean voluntary sector organisations, not provided by statutory funding.

MR KEITH: I think I described it to you as voluntary and community sector organisations.

PROFESSOR WATSON: Yeah, yeah.

MR KEITH: So non-state bodies --

PROFESSOR WATSON: Non-state bodies, yeah.

MR KEITH: -- that operate and work in this area and provide help.

PROFESSOR WATSON: Yeah.

PROFESSOR SHAKESPEARE: And because there were cuts that operated through local authorities -- they are commissioning care, either in care homes or domiciliary care -- they can't pay as much, so the wages of staff has decreased and therefore there are fewer staff, and therefore more, as it were, unmet need at the frontline. And that's prior to the pandemic, that's by 2018.

MR KEITH: So what you're saying in essence is that the viral pandemic and the impact, of course, of the government's necessary steps to combat it had a huge impact on the third sector, and it was the third sector which was already under very real stress and strain even before the pandemic?

PROFESSOR SHAKESPEARE: Absolutely. And, as

Professor Watson has just said, would go on to play a really important part during the pandemic.

MR KEITH: Yes, and I know my Lady will be looking at that particularly in the course of the healthcare and care sector modules later.

Finally, although the passage and the part of your report is entitled "Conclusions and Missed Opportunities", in fact you provide quite a bit of information about the access and the availability of data concerning disabled persons, and therefore I want to ask you, in general terms, about the provision of data, and mindful of what the UN Committee said in its concluding observations in relation to the need for data relating to disabled persons.

As at the pandemic, as at the onset of the pandemic in 2020, was there widely available data expressly addressing the position of disabled persons?

PROFESSOR WATSON: No. Not that we know of. Not ...

MR KEITH: Are you aware of whether or not the statistical authorities in the United Kingdom had produced either datasets dealing expressly with disabled persons or data extracted from opinion and lifestyle surveys, for example?

PROFESSOR SHAKESPEARE: I think you're going to look at the Office of National Statistics tomorrow or in future

days, and I think that only recently have they turned their attention to this issue. In the distant past there were big surveys, more recently they have done much better, but in the era which we're concerned with, there was nothing.

MR KEITH: You refer, and it's plain from paragraph 40, that there was, Professor Watson, a research study carried out by the ONS concerning mortality. So, in England, people with disabilities made up 59% of deaths from Covid. That was based, wasn't it, upon a 2021 census, so by definition that must have been after the pandemic started?

PROFESSOR WATSON: Yes.

MR KEITH: All right. You are, I think, aware, and we'll hear more about it tomorrow, of an ONS opinions and lifestyles survey which reported in April 2020 on the impact of coronavirus on disabled people, but again that was after the pandemic had commenced?

PROFESSOR WATSON: Yes.

PROFESSOR SHAKESPEARE: Exactly.

MR KEITH: All right.

So is your general conclusion, at paragraph 41, that these broad areas of vulnerability and lack of access to resources all well known, well debated, and therefore known to government?

PROFESSOR SHAKESPEARE: Yes, these were in the public domain.

MR KEITH: Thank you very much.

Those are all the questions I have for you, Professor Watson, Professor Shakespeare. I don't believe there are --

LADY HALLETT: I think I've got Ms Morris to ask a couple of questions.

Questions from MS MORRIS KC

MS MORRIS: Thank you, my Lady.

Good morning, Professor Shakespeare. Good morning, Professor Watson. I ask questions on behalf of the Covid Bereaved Families for Justice. I have just a few questions for you, please, to expand on the single topic digital exclusion.

Mr Keith has taken you through paragraphs 25 and 26 of your joint report. Just to draw on a few of those facts and figures, please, for a moment. You have highlighted there that disabled adults make up a large proportion of those who don't use the internet.

PROFESSOR SHAKESPEARE: Yeah.

MS MORRIS: And you provided data from 2017 which estimated that the number of people not using the internet was around 22%. You say of that, about 56% were people with disabilities?

PROFESSOR WATSON: Correct.

MS MORRIS: You have broken that down by age. I'm just interested in that for a moment, please.

You report that in 2017 that 60% of non-internet users aged 16 to 24 were disabled people, and this proportion was in fact the same for those over the age of 75. So what does that tell us in terms of the age range of those who are disabled people and non-internet users?

PROFESSOR WATSON: I think it's to say that disabled people -- I mean, like you said, on the report, disproportionately disabled people make up the largest numbers of people who were not internet users. I mean, we couldn't find the statistics that were disaggregated by poverty to see if this is -- there might well be an impact, because we know that more disabled people live in poverty, this might be to do with poverty as well, but there also will be significant numbers and there are significant numbers of disabled people still who don't use the internet. There will be some that don't use the internet for reasons that are impairment-related, but there are also some who just won't have had, who didn't have prior to the pandemic -- I think, the pandemic, a lot of third sector organisations stepped in to help a lot of disabled

people through those early years -- I know, you know, organisations that I'm involved with were sending out tablets and instructions to disabled people at the start of the pandemic --

MS MORRIS: You're ahead of me, Professor Watson, thank you, that's very useful.

Are there particular disabilities that impact on online use? You have mentioned intellectual disabilities. Is that the only example?

PROFESSOR WATSON: I think -- yes, and the sight impairment might also be one. I mean, that's one of the ones that's listed in the thing, so just -- where the internet is not accessible to disabled -- well, it's not made accessible.

MS MORRIS: Moving then to sort of the public health context, and you've touched on this already, Professor Watson, in particular, about the movement of things online during the pandemic.

What challenges are faced with individuals with, for example, intellectual disabilities and their families and their carers in receiving public health information?

PROFESSOR SHAKESPEARE: We obviously did research with disabled people during the pandemic, and I think people with intellectual disabilities found the messages very

complicated, and they didn't -- they were changing and they didn't always understand them, and even when they listened to broadcasts they didn't understand them.

MS MORRIS: Mr Keith touched on, a moment ago, some of the important topics that might include -- like stay at home orders, testing, self-isolation, rules around contact with others, to give but a few examples. Are those areas where digital exclusion could have a disproportionate impact on disabled people?

PROFESSOR WATSON: I mean, I think so, I mean, in terms of explanation, that a lot of these -- this was made available through the television, but for people to try and get access. And I know that, you know, a lot of learning disability organisations were putting the information online. But if people didn't have access to that information, then it ...

And a lot of the Easy Read -- where organisations relied on Easy Read, getting Easy Read out to people would have required online access and if people didn't have the online access it would have been pretty pointless putting it out there.

MS MORRIS: Can you expand on what Easy Read is, please.

PROFESSOR WATSON: Sorry, it's a method of writing that's designed to be accessible to people with a learning disability, so it uses a lot of pictures and simpler --

PROFESSOR SHAKESPEARE: Simpler phrasing.

PROFESSOR WATSON: Simpler phrasing.

MS MORRIS: I think we have an example of that, in fact, available to see at INQ000273831.

This is an Easy Read document provided by Mencap, so one of those third sector organisations you mentioned a moment ago. If we could please move through, see an example.

Is that what you're describing, pictorial representations, clear English --

PROFESSOR SHAKESPEARE: Fewer words, yeah.

MS MORRIS: Simple fonts.

PROFESSOR SHAKESPEARE: Yeah.

MS MORRIS: Easier to follow instructions.

PROFESSOR SHAKESPEARE: Yeah.

MS MORRIS: Okay.

Just to expand on what you said a moment ago, Professor Watson, about what was providing this information, and who would be able to get this into the hands and in front of people who needed it, this is an example of something that's available on a website, would it need to be printed out for somebody who didn't have access to the internet?

PROFESSOR WATSON: Yes, and it would have to be delivered to them.

MS MORRIS: Okay. Then who would ordinarily do that?

PROFESSOR WATSON: Well, I'm not sure, I don't know. I mean, GPs or other means of ...

MS MORRIS: Does it follow, sorry, that if someone requires this easy to read information, they are dependent on somebody else providing it to them from an internet source?

PROFESSOR SHAKESPEARE: Very much so.

PROFESSOR WATSON: Yeah.

MS MORRIS: Thank you very much indeed.

Thank you, those are my questions.

Thank you, my Lady.

LADY HALLETT: Thank you, Ms Morris.

MR KEITH: Thank you, my Lady. There are no more questions, I believe, for the two professors, so thank you very much.

LADY HALLETT: Thank you very much indeed, professors.

In my time I have seen a lot of expert reports and heard a lot of experts give evidence. If I may say so, yours was particularly helpful, focused and analytical, and really good. Thank you.

PROFESSOR WATSON: Thank you very much.

PROFESSOR SHAKESPEARE: Thank you.

(The witnesses withdrew)

LADY HALLETT: Perhaps I'll --

MR KEITH: Would my Lady rise for a few moments?
LADY HALLETT: I think I have been asked to take the morning break now.
MR KEITH: So be it.
LADY HALLETT: So I think I shall return at 11.40.
(11.27 am)
(A short break)
(11.40 am)
LADY HALLETT: Mr Keith.
MR KEITH: My Lady, the next witness is the chief executive officer of Disability Rights UK, Kamran Mallick.
MR KAMRAN MALLICK (affirmed)
Questions from LEAD COUNSEL TO THE INQUIRY
MR KEITH: Could you please commence by giving the Inquiry your full name?
A. My name is Kamran Mallick.
Q. Mr Mallick, thank you very much for attending and also for providing a witness statement, INQ000280035, which I believe you signed on 21 September 2023.
Mr Mallick, whilst I ask you questions, could you please remember to keep your voice up and go as slow as you humanly can, in order to aid our stenographer.
Are you the chief executive officer of Disability Rights UK?
A. Yes, I am.

Q. Was Disability Rights UK founded in 2012, and is it a leading national disabled people's organisation?
A. Yes, it is.
Q. It has, no doubt, a number of functions, and carries out an enormous number of worthwhile tasks. Could you please, in outline, tell her Ladyship what in essence Disability Rights UK does, starting from the degree and the extent to which it engages with disabled persons and represents their voice?
A. Of course.
So the first thing I would just want to start with, my Lady, is that we refer to ourselves as a disabled people's organisation. We meet the United Nations definition of a disabled people's organisation, in that it's led by and in control and governed by disabled people. That differentiates us from the disability charities that exist in the country, so disabled people -- organisation like ours are run by and for disabled people.
We are a membership organisation. That means that we have individual disabled people as members of the organisation, and other local and regional disabled people's organisations up and down the country who are also members of us.
Our job is to listen to what's going on, what life

is like for disabled people around the country, to learn, and to then advocate to bring about equality, justice and equity for disabled people in our country.
We also play a role in making sure that disabled people themselves have access to quality information about their rights and equality.
Q. Are you in fact, as a DPO, a disabled people's organisation, therefore majority led, directed, governed and staffed by disabled people?
A. Yes, we are.
Q. In terms of the work that you do to listen to disabled people and disabled people's organisations, you obviously receive letters, you receive emails and calls, but do you also have in place and do you operate an independent living helpline, a student helpline, and also a group which you manage called "Our Voices" group, which is a meeting of a variety of people, CEOs and staff from other DPOs across England?
A. Yes, we do.
Q. All that is of course aimed, is it not, at the state, at the government, in order to be able to communicate the views and concerns of your members and the other groups to government in order to pursue the aims that you believe are required to be raised with them?
A. It is. So we use all of those methods to understand

what life is like for the vast numbers of disabled people around the country. We are not impairment-specific, so we look at all impairments, as well as people with long-term health conditions. And it is our role, kind of our job is to understand what life is like and where there are inequalities and what should be done about them, and then to take that position and advocate, lobby, influence people in positions of influence and power such as government.
Q. So, in short, you listen to the concerns of disabled people, you give them a voice, you take information from them and then you campaign with government and other bodies for work to be done and for improvements to be made?
A. Yes, that's correct.
Q. I think you have a substantial regional social media, with a very large number of followers from X, formerly known as Twitter, and during the pandemic you had over a million visitors to your website?
A. That's correct.
Q. All right.
During the pandemic, so that is to say between January 2020 and spring 2022, did you, by a variety of methods, seek to raise with the government issues faced by disabled people?

A. We did. So we would do a number of things. We wrote countless letters where we were raising issues with given government officials in different government departments. We would write to the Cabinet Office, to the Prime Minister directly, raising concerns about a wide range of issues, as they were occurring, pretty much in real time almost.

We would also, where the opportunity arose, if there was a meeting that was put on by government we would attend and make sure that the views of disabled people and our concerns were highlighted in those.

And of course we were then publishing both on our website and through our Disability Rights UK's electronic newsletter, that was going out weekly at the time making sure that all of our positions were made public, about what we were doing and what we were asking for and what our concerns were.

Q. That was your direct engagement. Would you also and did you also encourage members of your organisation and persons who had been in touch with you to contact their own local MPs if they had concerns and worries, and invite them to raise those matters with those MPs?

A. So -- absolutely. So we kept an ongoing record on our website of all the government decisions as they were being announced, on our website. We would promote them

through our electronic newsletter. And then the Our Voices group that you mentioned, it was meeting every week on a Tuesday morning for two hours, and the purpose of that was to share that information across and make sure that local people could lobby, influence local decisions, if that was relevant. So we were doing that throughout the two years.

Q. Now I want to ask you some more detailed questions about the meetings that you had with government and the correspondence into which you entered with them.

As a matter of coincidence, did you have arranged and therefore did you attend a short meeting on 29 January 2020 with the Minister for Disabled People, Health and Work, Justin Tomlinson MP?

A. Yes, so we were asked to attend a short meeting with the minister at that point.

Q. Was Covid on the agenda at that meeting? Was it discussed?

A. No, from -- my recollection is that it wasn't discussed, no.

Q. All right.

Now, when the pandemic began, and of course the terrible consequences of the outbreak started to become apparent in March, were you extremely concerned on behalf of disabled people generally as to what

the impact would be of the government's response and, of course, what the future would hold?

A. We were extremely worried and we wrote a letter dated in March, March 16th, outlining a list of our concerns, but actually even before then, just by listening to what was happening around the world and how -- what the impact was in other countries -- and also it's our job to know disabled people in our lives and how we are potentially affected by potential disasters that may be coming along our way -- so we -- we were aware of what some of the risks would be, how our community lives their lives, the different ways that people have structured their lives to manage the inequality that they experience every day.

So we, just through the sheer kind of engagement, but also the fact that we were disabled people ourselves, so we were living through and had the same concerns and worries that many of our members and constituents would have around the country, so we became aware and consciously concerned about it quite early on.

Q. Because, of course, the government's response and the decisions that the government took were of such great width and there were so many of them, there was a great capacity, wasn't there, to affect disabled people in a number of very different ways?

A. There was. So when --

Q. I'm going to ask you in a moment about each of those areas.

A. Okay, yes.

Q. So you needn't enumerate them all --

A. Sure.

Q. -- by way of a response. But in blunt terms, you were having to address a large number of issues and cover a very wide turf in terms of the areas of concern that you were raising with the government?

A. Yes, we were.

Q. Let's have a look at that letter that you mentioned, Monday, 16 March. It's INQ000238504.

(Pause)

There we are. A letter from Disability Rights UK dated 16 March 2020 addressed to Justin Tomlinson MP, minister of state, Minister for Disabled People, Health and Work, and Helen Whately MP, Minister for Care.

Just looking at that first page, please, Mr Mallick, you plainly identified to the ministers, the two ministers, the expression of concern. On this page specifically in relation to the guidance on coronavirus, because you say it:

"... does not go far enough to safeguard the lives of disabled people, people with long-term health

conditions and older people."

When you refer to "current guidance", did you mean the guidance published by the government addressed towards disabled and other people in relation to how they could be expected to respond to the pandemic and respond and deal with the government's steps?

A. So we were referring to guidance issued by government in relation to disabled people in particularly select areas that they had released.

Q. Geographical areas?

A. No, so in terms of -- so, for example, advice for care homes. So that kind of guidance that was being released at that time.

Q. There was guidance to the country as a whole, but specifically England, issued around that time to the care sector. Is that the guidance that you had in mind?

A. Yep.

Q. Ah, I see.

Over the page, you identify more specifically the concerns that you had. Firstly:

"Care homes are already stretched thin by a pre-Brexit exodus of qualified, skilled workers."

They lack proper and meaningful advice.

And you say:

"The advice issued ... does not take full account of

the ease of transmission of this virus within confined communities, relying too much on modelling for influenza."

What did you mean by that reference to the fact that you believed the guidance relied too much on modelling for influenza?

A. So it was looking at how, I guess, their response to influenza and the modelling that they had around that, so how people should protect themselves, and -- but we were in a situation where we had a virus that had arrived, there was no vaccinations for it, people in care homes, by the nature of why they're there, are -- often have underlying health conditions, would have long-term health conditions, and so were at greater risk. And of course if you are in a care home, you are in an environment with other people who are equally potentially at risk, and have underlying health conditions. And so the advice being given wasn't adequate to protect those individuals.

Q. The Inquiry has heard evidence that pre-pandemic the government's strategy was based upon a historical approach to influenza pandemics, and there was a presumption that the influenza pandemic or, as in this case, the coronavirus pandemic would break upon the United Kingdom's shores and it would progress through,

spread through the population. There was no debate about lockdowns or stay at home orders or anything of that sort, or society-wide restrictions.

Was your reference here to the government having placed too much reliance upon that strategy, and upon modelling, a reference to the need, as you saw it, for the government to keep the virus under complete control, to stop it spreading, to reduce, to use the terminology, the level of incidence?

A. Yes. So the influenza modelling would be around kind of that idea of herd immunity, that if you let it spread there is natural protection that develops within people. We felt that that was not the right thing to be doing within this particular virus.

Q. Was it your position that the best protection was not to have measures for hand washing or for trying to control marginally the spread of the virus, but to apply complete control to reduce the overall levels of infection?

A. Yes, yeah.

Q. All right.

Is that because realistically, but particularly in the care sector, it is impossible to hermetically seal away any segment or part of the population?

A. Absolutely. And the way both care homes are structured

but also the care sector is much wider than just care homes, people receiving care at home, in their own homes, where you've got carers moving from home to home, visiting different clients through the day. So there's that increased risk of the infection being travel -- going from place to place just because of that nature.

There was -- because of the crisis the care systems was under, you had lots of temporary staff who were being brought in as well.

And so because of those, the way the care structures are designed, it produced greater risk.

Q. So in essence, Mr Mallick, were you calling for, because of your concerns in particular about the care sector, a suppression approach rather than a mitigation approach?

A. Yes. Yeah.

Q. If I may say so, very prescient.

On that page, you refer, however, also to certain particular areas of concern: funding for isolation areas, advice to protect people giving and receiving care, emergency support, the training of new care workers, the stopping of attendances for benefits, which you deprecate, but you welcomed the move to suspend face-to-face personal benefit assessments, and the general need to get money to people quickly and to

reduce financial anxiety.

So all more specific concerns that your group had.

Did the government reply addressing each of those specific concerns or not?

A. No, the government reply was incredibly disappointing. They only referred to -- the response really only talked about the benefits changes that they were making. They addressed none of the other concerns in their response to us.

Q. Could we have, please, INQ000238515. The government was of course at this time -- the letter is dated 9 April -- in the full face of the storm that was the pandemic, and may therefore be given some leeway in relation to its ability to be able to respond to correspondence.

However, was the only issue that it actually sought to address at all in this letter the issue of the new guidance about claiming benefits and the introduction of the Employment and Support Allowance Regulations 2020?

A. It was, yes.

Q. Did it respond at all in relation to any of the other areas that I've asked you about, or in particular the massively important strategic issue of whether or not seeking to mitigate the impact of the virus, as opposed to controlling the virus, would have on the very vulnerable care home sector?

A. No, so they didn't address any of those points specifically. They make general comments about how the government will do whatever it takes to support people.

LADY HALLETT: Is the Minister for Disabled People, Health and Work based in the Department for Work and Pensions?

A. Yes, they are, my Lady.

LADY HALLETT: Ah, right.

MR KEITH: In your statement, Mr Mallick, you raise, in fact, this issue, because you make the point at paragraph 90 -- perhaps we could have that paragraph up on the screen from the witness statement, which is INQ000280035, page 27 -- you make this very point, the same point that my Lady has made, which is that:

"... the Disability Minister sits within the Department for Work and Pensions and has [therefore] a low profile in Government."

You also make the point that:

"There have been five different Disability Ministers since [you] joined [Disability Rights UK] in July 2017 ..."

From your viewpoint, does it appear that, politically, the lack of a high profile for the disability minister has had an impact on the degree to which the government has, as you see it, been able to

respond and address the particular needs of disabled people?

A. Without doubt. The fact that the minister sits within the DWP and therefore the remit of the minister is purely within the remit of what the DWP is about.

And from our perspective, as a disabled people's organisation, the DWP is fundamentally about getting people off benefits, reducing the benefit bill, and getting people into work. That's the main focus that that department has had for many years, and that's the focus of the minister.

When we meet with the minister and raise issues to do with housing or transport or health, the response will often be, "That's not within my remit, therefore I can't answer that question".

The other issue within government is if you localise the response to disability and disabled people in one department, it then means that the rest of government has no oversight, has no onus to respond to how -- what they should be doing in order to affect disabled people's lives.

Q. You refer to a unit in the Cabinet Office called the Disability Unit. The Cabinet Office is, of course, that part of central government which seeks to co-ordinate government matters, broker issues between

particular government departments, and plays a centralising role.

Was there at one stage an expectation or a hope that the Disability Unit would increase the profile of disability-related issues in government?

A. So we looked upon it as a potentially positive move, that by situating the Disability Unit within the Cabinet Office, centralising it, would have the ability to access other departments, ministers, and other people that we needed to speak to, and that actually we hoped that if a request came from the Disability Unit in the Cabinet Office, departments would feel compelled to respond. But our experience was not that way.

Q. Before we look briefly at each of the areas that you raised with government, I omitted in fact to take you to an important part of your statement which concerns the figures that you provide for the numbers of disabled persons in the United Kingdom.

Could we have, please, page 3, paragraph 6. Do you provide figures, in fact provided by the Department for Work and Pensions, based upon a family resource survey -- my Lady, that's the same survey to which Professors Shakespeare and Watson referred a few moments ago -- for the financial year 2020-21, which showed

that:

"... there are ... 14 million disabled people in the [United Kingdom]; we make up 22% of the population".

So was that a survey, Mr Mallick, based upon self-reported information from disabled persons? Could you just help us with the terminology or the phraseology upon which the survey was based? Did it ask people whether or not they were disabled a lot or disabled a little or not disabled? Was it that sort of survey?

A. So I can't remember -- exactly recall how the questions are asked in the survey. But often these are defined by disabled people themselves, whether they recognise themselves as disabled people. Often there is a delineation of kind of -- you know, classed as a physical disability, sensory, cognitive, and people would be able to tick those boxes, as it were.

Q. Right.

A. But, yeah, that's generally how these surveys are done.

Q. Thank you.

Returning to the chronology, you wrote to central government on 23 March raising concerns on the part of Disability Rights UK and a number of other charities, in fact, relating to the impacts of the Coronavirus Act on disabled persons' rights relating to education, social care and mental health protections.

Was there any resolution of those concerns? You raised concerns about the Coronavirus Act, but the Act -- or rather the Bill had already been published and was just about to proceed through Parliament; were there any changes in the Bill as far as you could see?

A. Not that we saw as a direct result of what we'd -- the concerns we'd raised.

Q. You provided feedback as part of the National Voices group in late March on the framework for the Moral and Ethical Advisory Group, MEAG. Was that because MEAG was primarily concerned with providing guidance for intensely difficult ethical issues, matters of triage and the like, which would be bound to have a huge impact upon disabled persons?

A. We were, and we were specifically concerned that what resulted was a frailty index, and that frailty was being conflated with disability, and that the risk was that you would be seen to be frail just because you had a health condition or that you were a disabled person.

But also our concerns were, in those kind of situations, if someone arrives in hospital and potentially is unconscious or is not able to advocate for themselves, how that index may tilt the kind of decision of medical people about who is and isn't frail.

So we were extremely worried that disabled people

would be judged to be frail purely based on their health condition.

Q. My Lady, of course that, as you know, because you've so ordered, is an issue that will be looked at in Module 3, the issue of triage and the frailty index.

You also wrote on a number of other subjects, just to highlight what those subjects were, you wrote in relation to the arrangements for the delivery of essential groceries and supplies to disabled and vulnerable people; you wrote in relation to the impact of the regulations upon disabled people's incomes; you wrote in relation to your concerns that treatment decisions were not being applied and made in a way that would be discriminatory of the position of disabled persons; you wrote in relation to shielding, access to food. Was that throughout this whole period of March through to the summer of 2020?

A. Yes, it was.

Q. In your statement, you deal with another issue, which is that of data. Did you write to government and also to local government about the degree to which government was assembling sufficient and adequate data on disabled people for the purposes of being able to better inform its decision-making?

A. Yes, we did.

Q. Is it the position -- we've heard a bit of evidence about this from Professor Watson and Professor Shakespeare -- that there was a general dearth of information relating to data, a general absence of data relating to disabled people generally?

A. Yeah, so there's no -- during that period there was no systematic and formalised way of collecting this data and aggregating it across.

Q. You wrote also in relation to the reductions or adjustments or easements that were being put into place by local authorities in relation to their provision of support and services, and also you discussed with the ministers the reasonable adjustments that were being made in relation to people working from home?

A. Yes, we did.

Q. Now I just want to ask you also, please, about certain fora, or forums that were set up by the government.

In July 2020, did you have two meetings with Justin Tomlinson MP as part of a lead-up to a new organisation or forum that the government intended to set up called DPO Forum, Disabled People's Organisations Forum?

A. Yes, we did.

Q. Did you have those two preliminary meetings?

A. We did, yeah.

Q. In the event, did the government say that it intended to have a number of DPO Forum meetings?
A. So the government said that these would be regular meetings where the minister would be present. Ongoing, yeah.
Q. There was a first DPO Forum meeting on 22 July, and a second one on 27 August 2020. Did the minister, Mr Tomlinson, attend the second meeting?
A. Erm ...
Q. If you'll take it from me, because I'm reading from paragraph 48 of your statement, Mr Mallick.
A. Yep.
Q. Were meetings scheduled for 17 September 2020, 13 October 2020, 12 November 2020, and then again in December 2020, January 2021 and February 2021?
A. Yes, they were, yeah.
Q. Did they all take place?
A. No, they did not. Many -- certainly at the latter end of it many got cancelled, and the forum effectively ended in 2021 with the final three meetings all being cancelled.
Q. So the only two that took place were those two I've mentioned in July 2020 and August 2020?
A. Yes.
Q. Was there any meeting again between the DPOs and the

government before May 2022?
A. Sorry, would you repeat the question.
Q. Yes. Did you have any meetings again between the DPOs, the disabled people's organisations, and government, between then, that's to say February 2021, and May 2022?
A. No, so they were -- the DPO Forum meetings were discontinued, and so therefore there was no further DPO meetings with the government. The ones that they had set up.
Q. In your statement you suggest that, and this is paragraph 50, the next meeting you recall between DPOs and the government did not take place until May 2022. As a result, there was no line of communication between the DPO Forum and central government for around 18 months; is that correct?
A. That's correct, yes, yes.
Q. Nevertheless, you continued to write open letters and letters directly to a number of government departments, and you've set those out in the following few pages of your statement.

Did you make an offer to Mr Tomlinson to meet with the Disability Unit in the Cabinet Office every two months?
A. Yes, we did.
Q. Did the government take you up on that offer?

A. No, so they didn't take us up on that offer, no, from memory.
Q. There was, I think, a suggestion from the government that a meeting that had been due to take place on 18 February, this is 18 February 2021, would instead be replaced by a series of smaller group conversations, individual meetings, with DPO Forum members.
A. That's right.
Q. So there was no replacement of the wider --
A. No, there wasn't.
Q. -- significant DPO Forum structure?

Did you continue to write a variety of letters, through, in fact, to the summer of 2022?
A. So we continued to raise issues as they were coming to our attention. Any government announcements, any guidance that was being released by government ongoing we would be scrutinising that and making representations.
Q. Was long Covid an issue which you drew particularly to the government's attention?
A. Yes, we did, yeah.
Q. Did you publish in fact a number of articles relating to long Covid --
A. We did.
Q. -- in the course of the pandemic? And did those

articles note the huge rise in disabled people during the pandemic suffering in particular or including from long Covid?
A. Yes, we did. So we started to realise that long Covid itself could, under the Equality Act, be defined as a disability.
Q. Finally, did you draw to the government's attention a number of reports prepared either under your auspices or the auspices of non-governmental organisations or the UN and the WHO, for example the WHO guidance on disability considerations during the pandemic, the UN Secretary General's policy brief on a disability-inclusive response, and a number of reports from civil society?
A. We did, and we particularly, you know, raised issues around the -- all of these reports had something in common, which was about engagement, and engagement both with disabled people and disabled people's organisations. It's a central aspect of -- when we talk about engagement. And some other methods behind that are things like co-production and co-design, the idea being that you don't bring people in at the end, once you've already designed something, you actually bring people in right at the outset. So you bring in people who are going to be affected by these decisions or

changes, so the thinking can be co-produced, co-designed.

And it's about kind of ongoing conversations, so these are not consultations or meetings, these are ongoing processes, structured processes, where civil society is funded to engage with government. And what -- one thing we've always said to government is, when they bring in consultants, they will be required to pay for that, but when we bring disabled people in, we're expected to do it for free. And that's not acceptable, because what people are bringing is their lived experience. That, if brought into design and thinking, can fundamentally change the way we address issues like the pandemic but general inequalities in society.

Q. It is obvious, Mr Mallick, that the pandemic and the government's response had massive impacts upon the day-to-day lives of disabled people. You've set out in your statement some of the broad areas where that impact was most obvious. Are they these: disabled people were obviously likely to be more clinically vulnerable, they were more vulnerable generally on account of socio-economic conditions, the pandemic and the government's response led to an abrupt transformation on their day-to-day lives, and there

were, lastly, before I come to the issue of mortality, very real problems in terms of their continued access to health and care support as a result of the pandemic and the government's response?

A. Yes, we did, and we defined vulnerability as a situation someone finds themselves in, and that vulnerability is not inherent in being a disabled person or having a health condition, but actually the decisions that were being made and the situation that was being created was what was creating that increased vulnerability.

Q. Then, of course, worst of all, and terribly, it became apparent, and the figures immediately establish this, that there was a much higher rate of mortality for those who were disabled?

A. That's correct, yes.

Q. There were reports from the ONS but also from Public Health England, in particular a report dated November 2020, which showed conclusively that the rate -- or the death rate, the risk of death, was a multiple of times higher for disabled persons than for the remainder of the population?

A. That's correct, yes.

MR KEITH: Thank you very much.

Mr Mallick, thank you very much.

Questions from THE CHAIR

LADY HALLETT: Mr Mallick, could I go back to the point you made about the disability minister being in the Department of Work and Pensions. I can see how that could be difficult for you, particularly difficult, if that minister said, "And I don't deal with health and I don't deal with education", and I think you were suggesting that responsibility for disability ought to be with every government department.

In another context, I have been urged to consider a minister responsible for resilience, so the idea being that if you put one specific person who has nothing else to do but think about that. I mean, I'm just wondering how you would suggest that the interests of disabled people and the concerns will be best taken into account. Is it one minister who understands that they deal with all the issues?

A. So -- thank you. So I would say that, yes, having a disability minister is good and important, but it's the remit of that minister that's vital.

LADY HALLETT: Yes.

A. The remit should be cross-government and not isolated to one area of government, which is currently Department of Work and Pensions. It should be given a higher profile. I would be arguing that it should be part of the Cabinet, so that it's central to all thinking and

all conversation, that the experiences of disabled people are being fed in. But it also relies on the government having structures in place to engage with a wider audience of disabled people, funded structures, that are ongoing, so that the minister is engaging with a group of people on an ongoing basis, they're not just trying to do something when a crisis hits, but actually just as a matter of course, and centralising it.

LADY HALLETT: So the Disability Unit is in Cabinet Office?

A. Yes.

LADY HALLETT: And are you suggesting the minister ought to be within Cabinet Office?

A. Yes. We think the minister should be centralised, and should be part of the government's Cabinet, so it raises the profile. It's currently, how we see it, a junior position, and in my time since 2017 at DR UK we have had a number of ministers come in and go, and therefore you get no continuity, and ministers will come in and have a flagship thing that they want to do to mark their time as minister, and then we kind of roll on to the next one.

LADY HALLETT: Does the problem then come, if you're trying to run Cabinet Office, and you have other interest groups, for example a Minister for Children, a Minister for Women, a Minister for Equalities -- I mean, there is

a limit, obviously, to how many ministers you can have within Cabinet Office.

A. There is. I think disability is different because, unlike some of the other ministers that you've just mentioned, disability is across the board. Anyone will -- could have a disability. I mean, I often say anyone in this room at some point will experience what it is to be a disabled person. It could be through injury, health or just ageing process. And therefore it's really important that the experiences and the barriers and challenges that disabled people experience are across government, because how we build our cities and communities and structures and institutions should be affected by that thinking, and the idea of inclusive design, inclusive thinking. Because when you bring that into your thinking across government, it benefits everybody, not just disabled people. You create a society that's truly inclusive for everybody.

LADY HALLETT: Thank you.

Summary of questionnaire responses

MR KEITH: My Lady, as you know, you've directed that questionnaires be sent out to a range of individuals and organisations concerned with the affairs of disabled persons.

To summarise the material we received back,

the Inquiry took evidence from seven disabled people's organisations about how government decision-making affected the disabled people they represent. There were four broad themes identified in the responses and in the evidence.

Firstly, the barriers and inequalities in communication and accessibility. Many of the respondents noted the difficulties faced by disabled people and the fact that they were exacerbated by the lack of consistency in the use of accessible communications for disabled people during the pandemic. Others noted the delay in recognising and responding to those barriers, and some believe that they saw that failure to deal with the barriers, ineffective communication, as being part of a broader pattern of failing to meet the requirements of the Equality Act.

A second theme was the need to improve understanding among decision-makers. Most of the organisations stated their belief that the government had neglected their needs. Mencap in particular explained that the blanket restrictions on visiting hospital settings and accompanying disabled people in ambulances did not provide for necessary reasonable adjustments. Many of them pointed to this issue of the absence of proper methods of data collection.

A third theme was the use of do not resuscitate, do not attempt cardiopulmonary resuscitation notices, DNACPRs, which my Lady will be looking at, of course, in Module 3.

The fourth theme was a general statement of general belief that the government had failed to engage properly and sufficiently with DPOs during the pandemic, notwithstanding the obligations of the Equality Act which provides, as my Lady knows, for the public sector equality duty. A number of organisations felt that, particularly during the early stages of the pandemic, the government had failed to consider the importance of consulting the disabled people and organisations representing disabled people, and they call generally for a proper, more structured approach to engagement.

My Lady, that concludes this part of the evidence in relation to that particular theme, the theme of disabled persons' rights.

LADY HALLETT: Thank you very much indeed, Mr Mallick, and thank you for all that your organisation and others with similar interests did during the pandemic, and I've no doubt for many years to come. Thank you very much indeed.

THE WITNESS: Thank you, my Lady.

(The witness withdrew)

LADY HALLETT: I have been asked to break for five minutes.

MR KEITH: Thank you.

(12.28 pm)

(A short break)

(12.33 pm)

LADY HALLETT: Ms Cecil.

MS CECIL: Yes, my Lady, may I call Professor Laia Bécares.

PROFESSOR LAIA BÉCARES (affirmed)

Questions from COUNSEL TO THE INQUIRY

MS CECIL: Professor Bécares, if you could just state your full name, please.

A. Laia Bécares.

Q. Thank you. Thank you for coming today to assist the Inquiry. Can I ask that you keep your voice up, and that we take our answers slowly, because as you can tell we have a stenographer making a note in court. Thank you.

If there is a question from me that you do not understand or you need me to repeat, please just say so.

Just to deal briefly, if I may, with your professional background and expertise, you are a professor of social science and health at King's College London; is that correct?

A. That is correct.

Q. And you have a particular expertise in the role of

structural and societal determinants leading to health inequalities?
A. That's right.
Q. Within that area of specialism you focus specifically on LGBTQ+ populations and ethnic minorities?
A. Yep.
Q. In fact you co-authored the report on ethnicity from which we heard from Professor Nazroo last week; is that right?
A. That's right, yes.
Q. Thank you.

Today we're focusing on a separate report that you've written for the purposes of the Inquiry, and that is on pre-existing inequalities experienced by LGBTQ+ groups. You can see that it's been brought up on the screen for you.

For those following, the reference for that is INQ000280059.

We see here, don't we, a declaration by you in relevance to your provision of an expert report, simply confirming that it's your own work, the facts stated in the report are within your own knowledge, you understand your professional duties and the fact that you are an independent expert providing independent evidence to the Inquiry, and then you go on to explain that you've

made clear where those facts and matters referred to in the report are within your own knowledge and those that are not; and that's correct, isn't it?
A. That's correct.
Q. Thank you.

Now, if I can just take us to the very beginning, really, of your report, we've referred, as you've heard me, to LGBTQ+. Can you just assist the Inquiry with those definitions for each of those initials?
A. Yes. So LGBTQ+, it's a broad umbrella term that refers to people who self-identify as lesbian, gay, bisexual, trans, queer, or questioning, and the plus refers to people who do not identify with any of the labels I've just said but who do not identify as heterosexual or cisgender either.
Q. It's often otherwise referred to as "and more"?
A. Yes.
Q. Just dealing with that population, is it fair to say at the outset it's not a homogenous group?
A. That's right, it's very heterogeneous.
Q. Thank you. Now, you say in headline form that inequalities for those groups is both stark and long-standing, with worse health, healthcare and social outcomes, and I'm going to go through and break that down a little bit more with you.

But before we do so, can I just establish with you the scope and limitations of your report. Okay?

The first is in relation to data and the datasets that you rely on, and you explain that a significant proportion of the underlying evidence that you rely on is from government bodies and arm's length bodies. What bodies are those?
A. So in 2017 the Government Equalities Office conducted a very large, the largest, study on LGBTQ+ health and social circumstances, so I referred to this in my report. Public Health England has also commissioned reports to ascertain the level of health amongst LGBTQ+ people. The Scottish Government has conducted reports, and also voluntary sector and academics have conducted reports.
Q. Thank you. I think you also refer to the Scottish Government reports as well?
A. Yes.
Q. Generally your views within the report are expressed on a UK-wide basis?
A. Yes, that's right. So, many of the data I have used have sampled LGBTQ people across England, Scotland, Wales and Northern Ireland, so yes, all the -- and where not, I have used data or studies for particular devolved nations.

Q. Thank you.

You explain within each category that you identify whether that data relates to a particular nation or not?
A. Yes.
Q. Thank you.

I just want to deal with, if I may, one difficulty that you have encountered in terms of writing your report and expressing your views, and that's on, actually, an absence of data in terms of population level studies; is that right?
A. Yeah, so we do not have a population level study that's representative of the whole of the LGBTQ+ population in the UK, but what we do have are very large social and health surveys that are generalisable to the population, the general population of the UK, and many of these studies collect data on sexual orientation, very few on gender identity. So we can analyse these large representative studies that have collected data on sexual orientation to understand and to assert whether there are health inequalities for LGBTQ+ people. So we have these surveys, but we do not have a survey specifically for LGBTQ+ people.
Q. It's correct to say that the situation with regard to data is even more limited with regard to both Northern Ireland and Wales; is that right?

A. That's right, in particular Northern Ireland.
Q. Thank you.
Within your report, you refer to convenience sampling in relation to a number of the studies that you rely upon. Can you just assist the Inquiry firstly with what a convenience study is?
A. Yes. So a convenience sample is a sample that's a non-probability sample. This means that not everybody in the population has an equal chance of participating. Instead, a convenience sample selects participants into a study based upon a particular characteristic, so either they live in a particular region or a city, they have attended a particular clinic or a social setting, or they might have been selected into the study via social media. So they are samples that are convenient to the researcher. And these studies provide very crucial and critical information on the lives of the participants but are not generalisable to a total population.
Q. That's essentially the limitation of that material within the report?
A. That's right, yeah.
Q. Thank you.
Then just again dealing with the scope of your report, you have been asked to opine on the situation

pre-pandemic with respect to inequalities that --
A. That's right.
Q. -- individuals in this group may have faced.
If I can just turn, firstly, to health inequalities prior to January of 2020, in your report you don't set out all of the available evidence in relation to health inequalities but what you've chosen to do, as you say, is focus in on those which have or you consider to have a strong potential to lead to adverse outcomes, whether that's by way of Covid-19 infection and outcomes or as a consequence of the non-pharmaceutical interventions that were put into place, the NPIs.
Turning first then to those in relation to health and physical health, you refer in here to obesity and being overweight, which, as we will hear in due course, is a risk factor for Covid. How does that impact within the LGBTQ population?
A. Yes, so there's evidence that bisexual women and lesbian women are more likely to be overweight than heterosexual women, so there are higher rates of obesity and overweight.
Q. Thank you. The next category, paragraph 12, is in relation to respiratory conditions, and you've looked specifically at asthma there, and we see similar issues for lesbian and bisexual women; is that right?

A. That's right, yes.
Q. Thank you.
Then turning to cardiovascular disease, this is a little bit more complex, because what you refer to within your report is an elevated risk of cardiovascular disease risk factors, so not the actual disease itself but those risk factors that underline the likelihood of getting cardiovascular disease; is that right?
A. That's right.
Q. Thank you. And in relation to that you identify specific risks for lesbian women and gay men, and heightened risks again for those within the trans population. Is that right?
A. That's right.
Q. We see that for trans women there's an increase of thromboembolic events, ie blood clots?
A. Yes, following hormone therapy.
Q. Yes, thank you.
You then turn to look at cancer within your report, and can you just assist us with cancer within the LGBTQ population as opposed to the heterosexual population?
A. So, yes, lesbian, bisexual, gay women and gay men and bisexual men are more likely to have certain types of cancer than heterosexual people. So for lesbian and bisexual women, they are more likely to have breast

cancer, for example, stomach and endometrial cancer, so different types of cancer. And gay men and bisexual men are more likely to have penile cancer and anal cancer, and it's important also to say that they are less likely to engage in screening behaviour with regards to cancer.
Q. Thank you.
A. It's not just the incidence but the behaviour.
Q. So it's not simply the incidence but it's also the engagement with health services --
A. That's right.
Q. -- in relation to cancer and diagnosis and therefore timing of diagnoses?
A. That's right.
Q. Thank you.
HIV you identify as a potential risk factor owing to studies that connected that as a risk in relation to Covid-19 infection rates.
A. Yeah.
Q. I think I can take this relatively swiftly with you, but there is a clear higher incidence of HIV within homosexual men and bisexual men; is that correct?
A. Yeah, so heterosexual men who have sex with men have higher rates of HIV than men who have sex only with women. Also gay men and trans women have higher rates of HIV. But within the LGBTQ+ community, minoritised

ethnic gay men and trans women have higher rates of HIV than white LGBTQ+ people.

Q. Thank you.

We've heard a little bit about self-reporting and self-reporting of health and health outcomes, and you cover that off within your report. I'm going to summarise it, if I may, that, in terms of general health, typically the LGBTQ population, people, report worse health outcomes and worse health situations, is that right, than --

A. That's right, they have (inaudible) health.

Q. -- the heterosexual population?

And the same is true, as you note at paragraph 17, of limiting long-term illnesses.

A. That's right.

Q. Can I just pick up briefly on disability. Obviously we've been hearing from experts in disability and individuals representing disabled people this morning. But in relation to those with a disability, in the broader context, in terms of the LGBTQ population, disability is lower than the general population; is that right?

A. So if you are referring to point 18, this survey does not compare LGBTQ+ people to heterosexual or cisgender people, so what this point refers to is that trans

people within the LGBTQ+ umbrella are more likely to have a disability than cisgender LGBQ people.

Q. Certainly I was going to move to the specific position of trans people in due course, and that's certainly correct that it's a higher proportion, but is it right that in terms of the rate of disability in the general population, the LGBTQ population in the national LGBTQ survey, was approximately 17% compared to 22% that could be seen across the population. Can you assist us with that or not?

A. So I don't see this in point 18, and the LGBT survey did not compare to a heterosexual population, so we could compare with other surveys, comparing the prevalence, but -- yeah, but this is not what --

Q. Not at all, but we see a particular issue in relation to trans respondents.

A. That's right.

Q. And it's probably fair to say in relation to trans people that we see that frequently in terms of exacerbated inequalities within the various areas; is that right?

A. That's right, yes.

Q. Now if I may turn to mental health, it's paragraph 19 of your report onwards, in general terms, in headline terms, what was the position prior to January of 2020

with regard to what was known about the LGBTQ population and mental health?

A. Yes. So, based on robust representative studies of the general population, we know prior to the pandemic that LGBTQ+ people have worse mental health, so they have higher rates of depression, anxiety, suicidal attempts and self-harm compared to heterosexual and cisgender people. And so this happens across the life course, but it's particularly stark perhaps for LGBTQ+ youth, who have, compared to heterosexual youth, really stark, alarming levels of poor mental health.

Q. Indeed. And just picking up, if I may, on the adolescent and young people aspect for a moment, at paragraph 21 you identify that in relation to suicide that there is a specific increase in risk for adolescents, and heightened yet again in relation to transgender young people; is that right?

A. That's right, yes.

Q. Turning to more general issues of loneliness, isolation and social support, is that a specific issue that's raised in relation to LGBTQ people?

A. Yes, so LGBTQ+ are more likely than heterosexual and cisgender people to experience social isolation. This is particularly stark with regards to youth and older people, so people aged 50 and older.

Q. So we see it at two ends, effectively, young people and then people from 50 plus?

A. That's right.

Q. Why is that, do you know?

A. Well, it's a complex causal mechanism behind social isolation, but young LGBTQ+ people experience really high rates of bullying and exclusion within their network, so within school, for example, and I provide some of the evidence in the report. Then older people also -- they may experience higher rates of digital exclusion that we've seen. They have experienced a life course of exclusion and discrimination, so I think this community of exposure leads to increased social isolation in later life.

But I think it's important also to think about the different types of social support and social networks that LGBTQ+ people have. These are less likely to be kin-based, so less likely to be related to family, so they are more likely to be based on friends and past partners, perhaps, but also these social networks are more likely to be geographically dispersed as compared to social networks of heterosexual and cisgender people.

Q. So the implication there being that they may need to travel to access those?

A. That's right, yep.

Q. Related to that is caring responsibilities, if I may just pick up on that aspect for one moment, and what you do explain in relation to LGBTQ+ individuals is that often that begins earlier in life for them, taking on a caring role, a caring responsibility for relatives or friends; is that right?
A. That's right, yes. Yeah.
Q. Picking up on an issue that has obviously touched many people in many different ways in the pandemic, you write in your report about grief, and in particular the additional complexities or challenges that are potentially faced by those within the LGBTQ community. Can you just expand on that a little, please?
A. Yes, so I think grief is really -- has strong implications for mental health, but for LGBTQ+ people this is compounded by the fact that the grief that they experience may have to be hidden from others because it comes from a relationship that perhaps was not recognised, is not valued or accepted, and so it's a grief that they cannot share with others, they have to keep to themselves, they cannot seek support, even if it's formal or informal support, and so this compounds the impact of grief on mental health. So it's an additional complexity.
Q. Thank you.

Now, leading on from health, I just wanted to touch upon, if I may, access to healthcare. It's from paragraphs 56 to 62 onwards, but seems to me to be convenient to deal with it, if I may, with you now.

Can I just summarise that, because it's a mixed picture, isn't it, within the LGBTQ+ community, and that is that they are -- individuals are less likely to visit a GP?
A. Yes.
Q. But more likely to access emergency services, often more likely to use NHS online and telephone services, comes from some Scottish studies, and more likely to have accessed or tried to access public healthcare overall; is that right?
A. Yes, I think because LGBTQ+ people experience exclusion from health and social care, they are less likely to seek primary care, so they're less likely to access their GP. Then their health complications worsen and so then they have to seek emergency care. So that's why they are different in the seeking behaviour.
Q. Thank you, that's helpful.

Now if I may turn, then, leave healthcare to one side for a moment, just turn very briefly to pre-existing social and economic inequalities, I'm just going to touch on four of those if I may. There is

a wealth of material within your report. But the first one is: to what extent are LGBTQ people likely to face material disadvantage, in brief terms?
A. Yeah, so LGBTQ+ people are less likely to experience material disadvantage. For example, I provide an example of area deprivation, so they are more likely than heterosexual or cisgender people to live in the most deprived quintiles of England and Wales.
Q. Thank you. The second area is exposure to violence and harm in the home, so domestic abuse or hidden harms essentially. We've heard a little bit about that, but are there increased risks to LGBTQ+ populations in their homes?
A. Yes. So studies show a really high rate of exposure to domestic violence, whether this is physical or emotional or sexual or threat of violence, because of one's sexual or gender identity.
Q. Thank you. And I think you give statistics within your report of 44% of lesbian or bisexual women and 41% of gay or bisexual men of having experienced domestic violence or abuse for more than a year?
A. Yes.
Q. Thank you.

Another area that we will touch upon within Module 2 is that in relation to residential care, and very

briefly, if I may summarise that for you, you explain a little bit like in terms of seeking assistance and help with regard to public health services, that individuals within that population are more likely to delay entering residential care, with the consequence that when they do enter residential care they're likely to have more complex needs at the point of entry, and that's at paragraph 52. Is that right?
A. Yes, that's right. So they are more likely to delay care because of experienced discrimination in the past and anticipated discrimination, because they have to hide a crucial part of their identity, who they are in terms of sexual orientation and gender identity.

Also it's important to note here that lesbian and bisexual women and gay men and bisexual men are less likely to have children and grandchildren compared to hetero and cisgender people, and that has implications for arranging care and making decisions around care.

So it's a complex picture of why they delay care.
Q. Thank you, that's really helpful. If I can then just turn to the final topic under this heading and that's homelessness and housing and what particular challenges are faced within the LGBTQ+ population in relation to housing and homelessness.
A. Yeah, so as we discussed before, the violence within the

home often leads to people and particularly young LGBTQ people leaving the family home, which leads to increased rates of homelessness. And within housing and housing provision, oftentimes housing providers do not take into account the needs and challenges of LGBTQ+ people, so that means that they may put clients or, yeah, people seeking housing, social housing, in circumstances that they may feel threatened and be dangerous for them in terms of violence.

Q. Thank you. And we see specific statistics that you set out at paragraph 64 of your report, where 24% of homeless young people, those aged 16 to 25, are LGBTQ, and so overrepresented within the cohort.

I want to turn now to the final area within your report, and that's the one of structural discrimination, and in relation to that you use the terms "heterosexism" and "cisgenderism". Can you just explain briefly what each of those are.

A. Yes. So heterosexism is a system that structures societal policies, institutions, practices, norms and values under the assumption that everyone is heterosexual, and heterosexism denies and stigmatises sexual orientations or communities or relationships that are not heterosexual.

And cisgenderism is a system that denies and

denigrates gender identities which are not congruent with gender assigned at birth.

Q. Where and in what areas is structural discrimination in your view most acutely felt by those within the LGBTQ+ population?

A. Well, I think because it's a system that impacts on policies and institutions, it's very hard to say there is one area that's more acutely felt because it -- yeah, it's porous, it goes everywhere. And I think the important concept to think about here is that it accumulates across employment, education, housing, healthcare, social care, and then individual interactions as well.

So every single aspect that matters to one's life is heterosexist or cisgenderist.

Q. Thank you. I just want to focus in on one area, if I may, and that is in relation to the lack of data, which you attribute to heterosexism and cisgenderism? Is that right?

A. That's right.

Q. Why do you say that?

A. Well, there is a persistent underinvestment in the infrastructure and research for LGBTQ+ populations, and data are crucial because unless we document inequities we cannot intervene on them and we cannot monitor how we

are progressing around that.

I put a statistic here around UKRI funding in relation to Covid and how, of all the funding provided for understanding how Covid was impacting on different populations, only 0.13% was given to LGBTQ+ research. So I think this is very disproportionate and it leads to us not knowing how the pandemic was impacting LGBTQ+ populations.

Q. Thank you.

Circling effectively back down to almost where we began, with data and investment, you've explained the consequence of that data gap. We've seen the introduction of the 2021 census, is that right, which for the first time includes questions in this respect?

A. That's right.

Q. To what extent does that assist in closing that gap?

A. Well, it's a very positive step to include sexual orientation and gender identity in the census. It doesn't fully close the gap because it collects data on sexual orientation, but we really need to understand what are the mechanisms driving this LGBTQ+ inequities that are so stark and persistent, and so it's a great step but it's not sufficient.

Q. What improvement, in your opinion, is required to data collection and research infrastructure for LGBTQ+

populations generally?

A. Well, we first need a greater amount of funding to be able to conduct the research and we need a study that collects sufficiently large samples of LGBTQ+ people to make it generalisable.

But it's not just about the numbers, it's about the questions asked as well, so these surveys need to have the questions that enable us to understand why are we seeing these stark inequities and where can we intervene.

Q. Thank you.

Then my final questions for you are, firstly, you set out a number of missed opportunities within your report and we have those in front of us, and those no doubt will be considered in due course so I'm not proposing to go through those in detail. Many follow on from what you have said at earlier points either today or, indeed, within your report, and some have been touched on or emphasised by others in other aspects of the evidence.

But may I just simply ask this: should the LGBTQ+ population have been identified as a vulnerable group?

A. Yes, I think so, because of the pre-existing stark physical inequalities, worse levels of mental health, but also with regards to social vulnerability,

for example violence within the home, differences in social networks, increased levels of social isolation, which had strong possibilities of increasing vulnerability and inequalities for LGBTQ+ people.

MS CECIL: Thank you.

My Lady, I have no further questions for Professor Bécares. There are no Rule 10 requests. Does your Ladyship have any questions?

LADY HALLETT: No, I have no questions. Thank you very much indeed for your help.

THE WITNESS: Thank you.

(The witness withdrew)

LADY HALLETT: 2.05, please -- unless there is anything else?

(Pause)

MS CECIL: No, my Lady.

LADY HALLETT: Anything coming from Ms Davies?

MS CECIL: No, my Lady, thank you.

LADY HALLETT: Thank you. 2.05.

(1.05 pm)

(The short adjournment)

(2.05 pm)

Summary of questionnaire responses

MS CECIL: My Lady, I'm grateful. If I may continue now to review the questionnaire responses that were received

firstly in relation to LGBTQ+ representative organisations, of which sadly there were none, despite efforts made by your team. Then, secondly, move to those in relation to sex and gender, do you recall, which we heard evidence of on Friday.

As I say, unfortunately and regrettably, despite efforts to obtain a response, no response was forthcoming in relation to LGBT groups. As such, the Inquiry legal team, with the assistance of your policy and research team, have distilled relevant and available open source material to assist the Inquiry and to provide some context for you.

You have just heard about pre-existing inequalities faced by the group, however very little academic research has been published about the pandemic's impact on the health and wellbeing of people from the LGBTQ+ communities and especially those living within the United Kingdom.

The research that has been conducted notes, building, indeed, on Professor Bécares' evidence today, that data is limited and that the quality of available evidence is also limited. The National Centre for Social Research in November of 2021 conducted a review of available evidence and data with regard to the experiences of UK LGBTQ+ communities during the Covid-19

pandemic.

The report again acknowledges that there are significant evidence gaps on the experiences. In particular there is a need to explore the experiences of LGBTQ+ people from black and minority ethnic groups and communities, as well as those facing with disabilities.

Surveys were predominantly conducted by LGBTQ+ voluntary and community sector organisations via their own networks and service users, ie those non-representative convenience samples that you've heard about, and other research largely comes in the form of small-scale qualitative studies.

But in summary, as perhaps could be anticipated, the pandemic had a negative impact on the mental health of those within the LGBTQ+ population, and many of the risk factors identified today by Professor Bécares were reflected: increased levels of anxiety, depression, isolation and loneliness.

There was a loss of safe, supportive and identity-affirming peer groups, communities and spaces according to the reports. The mental health of younger people within the cohort was particularly negatively affected, and that in part was attributed to those younger people feeling the most unable to connect with those outside of their households during the pandemic.

The mental health of trans people was also specifically noted as deteriorating.

In terms of access to health services, the research notes a reduced level of access, including lack of HIV checks, lack of access to STI tests, worries around renewing prescriptions and, importantly, including PrEP prescriptions and medication. That is the medication that reduces the likelihood of contracting HIV. Then ancillary to that, the monitoring of those medications and side effects.

A new harm arose, it is reported, during the pandemic, that is of online harassment and discrimination, essentially reflecting and, the reports say, as a consequence of the move to online meetings.

Finally, picking up on a point that was articulated earlier by Professor Bécares, in relation to home pressures, working from home, similarly, individuals articulated increased pressures to come out to their families while home working, or their colleagues, during the pandemic, which in turn had a negative impact on those relationships and their mental health.

Secondly, as I said at the outset, I propose to turn now to the impact in relation to gender and sex. My Lady, the Inquiry received responses from 13 voluntary sector and civil society organisations in

relation to issues facing women. Areas ranged from gender equality to maternity rights and domestic abuse. Flowing through each one was one primary theme, that the government did not adequately consider how decisions would specifically affect women. Further, that the measures taken in response were piecemeal and fragmented, with the result that not only pre-existing inequalities were exacerbated but new inequalities were created, with disproportionate impacts upon women.

In respect to that, the Women's Budget Group outlined that without robust analysis or consideration of women in the policy making phase of the pandemic, the government was not able to anticipate how inequalities were likely to be exacerbated by the pandemic and ensure that it influenced the policy response, including in relation to employment, welfare, childcare, pregnancy and maternity.

Similar comments were received by the Northern Ireland Women's Budget Group, emphasising there were little to no targeted measures from either government to mitigate specific issues impacting women.

Southall Black Sisters added to that point, noting that ethnic minority women and refugee women are vulnerable to compounding disadvantages. And of course my Lady you have already heard reference to the triple

threat that they say they faced.

One critical example of government decision-making not considering the impact on women is said to be violence against women and girls. Southall Black Sisters, Refuge, Solace Women's Aid and Women's Aid across Scotland, England and Northern Ireland all noted that the pandemic exacerbated existing issues for service users and, as we've heard them termed, survivors of domestic abuse struggling to access both public services, welfare provisions and indeed, in some respects, it's been reported, the justice system.

Picking up from the evidence that you heard on Friday, my Lady, Refuge also noted that government communications around lockdown did not make it clear until April of 2020 that survivors or victims of domestic abuse were able to leave their homes. Organisations noted that these issues were foreseeable. Southall Black Sisters pointed and emphasised the fact that countries such as China, who had locked down earlier, reported rises in rates of domestic abuse and that this in turn had been reported within the domestic UK media.

They say, yet the government seemingly ignored international experience as well as domestic expertise when decision-making.

All organisations consistently reported the government failing to provide funding to the sector in terms of emergency funding until 2 May of 2020 and that it was slow to reach the frontline.

Various issues were raised in relation to the staff working in such refuges in relation to a lack of clarity as to whether they were eligible for testing and PPE, vaccination priority of course a matter for subsequent modules, and a lack of specific guidance in relation to managing social distancing and infection control measures in such places.

Various lessons have been suggested, one of which is that the domestic abuse commissioner should play a key role in policy development and decision-making and that violence against women and girls sector experts should be consulted. A secondary aspect relates to communications, and of course, my Lady, you have heard a lot about that already.

The secondary impact that was emphasised by respondents was that on pregnant women. Firstly in relation to pregnant women within the workplace, Maternity Action flagging that, flagging both with regard to return to work maternity leave but also in relation to the Covid-19 financial support schemes, again matters that will no doubt be explored in

subsequent modules.

Finally, in relation to matters that were identified that may be relevant to Module 3 and healthcare systems, birth rights highlighted the fact that restrictions on maternity services were not lifted at the same time as wider restrictions, with partners not being allowed to attend, even as the Eat Out to Help Out scheme encouraged people to attend restaurants.

Then impacts upon mental health and wellbeing of new mothers, alongside limited community healthcare provision, was highlighted.

My Lady, that concludes the summaries of questionnaires for today. At this stage, may I formally ask permission for the Inquiry to publish the witness statements for each of the witnesses from whom you heard last week and indeed today, and the ancillary expert reports?

LADY HALLETT: I so order. Thank you.

MS CECIL: Thank you very much.

LADY HALLETT: Thank you, Ms Cecil.

Mr O'Connor.

MR O'CONNOR: My Lady, may we now please call Professor Henderson.

PROFESSOR AILSA HENDERSON (affirmed)

Questions from MR O'CONNOR

MR O'CONNOR: Could you give us your full name, please?
A. Ailsa Henderson.
Q. Thank you. You are currently a professor of political science at the University of Edinburgh; is that right?
A. Yes. That is correct.
Q. We also see from the report, which I'll mention in a moment, that you have more than 20 years' experience across universities in Canada and the UK, conducting research on multilevel and multinational states, with a particular focus on the relationship between sub-state political institutions and sub-state attitudes and behaviour?
A. That is correct.
Q. You have prepared at the Inquiry's request a report that we have in front of us and which is entitled "Devolution and the UK's response to Covid-19", have you not?
A. Yes, I have.
Q. It's been helpfully brought up on the screen, so I won't give the INQ number, but we can see, Professor Henderson, at the bottom of that first page, in italics, there is what's described as an author statement, where you refer to this report, to your duty as an expert to provide independent evidence, and to the fact that the material within this report is true to the best of your belief; is that right?

A. That is true.
Q. Thank you.
Lastly, we note it was signed by you on 25 September this year.
A. That is correct.
Q. Thank you.
Professor Henderson, as you know, from the work that you have done preparing this report, one of the areas of inquiry for this module relates to the question of how the UK central government worked with the devolved administrations' regional local authorities of the UK. You're aware of that?
A. Yes, I am, yes.
Q. And you know that that area of inquiry covers matters such as the liaison between the Westminster government and the devolved nations, communication between them, consultation and so on?
A. Yes.
Q. The purpose of your evidence, Professor Henderson, is to establish the factual background, if you like, or context relating to devolution, the structures, the interplay between the various actors, and also to raise issues and matters that the Inquiry might consider further as we hear evidence from the various different decision-makers over the course of this module and also,

as you know, the Modules 2A, B and C that are to take place in the New Year.
A. That is correct.
Q. I just want to be clear about the mechanics and the way in which your report was drafted. You were initially instructed some time ago, months, if not more, ago, on the basis that you would prepare a report on the basis of your own understanding of matters during Covid and materials you could find in the public domain?
A. Yes. Absolutely right.
Q. But it's right to say that much more recently, as in fact the Inquiry has obtained its own evidence, you have been asked to look at some but not all of the evidence that the Inquiry has obtained relating to these devolution issues?
A. That is correct.
Q. During the course of your evidence today we will touch on both your report and also some of those further documents, some of which you hadn't seen until your report was in a very late stage of drafting?
A. Exactly right, yeah.
Q. We will, Professor Henderson, adduce your report into evidence in its entirety. It's lengthy, there's an awful lot in it, and we won't be able to touch on everything today, but what we will try to do is cover

what perhaps are the core issues, the central themes.
So I want to start, if I may, as your report does, with a few points about the state of the UK before the pandemic in terms of the relations between the different nations within the UK, the structures and so on, and then once we've done that we'll turn to look at the pandemic and how the different governments, administrations dealt with each other.
So turning to paragraph 1 of your report, the first sentence, you describe the UK as being a multilevel state and then, later in that paragraph, you contrast in principle a federal, the idea of a federal state with a unitary state, and then a few lines down you describe the UK as being a unitary state with asymmetrical devolution.
We mustn't let this become a seminar in political theory, Professor Henderson, but just in a few sentences could you explain what you mean by those various terms?
A. Yes. So in terms of a multilevel state, the United Kingdom is a state in which policy decisions and law is made at multiple levels.
It's not a federation, because the constituent units of that state don't exist as part of a constitution, the legislatures are created by statute. And it's asymmetrical in a number of different ways. It's

asymmetrical in past in part because there is only devolution to Scotland, Wales and Northern Ireland, so they're different from England. It's asymmetrical because the arrangements for Scotland, Wales and Northern Ireland are different from each other. And then it's also asymmetrical because whatever arrangements there are at a lower level within England with are also different across England as a whole.

Q. There is also another aspect of asymmetry which you refer to during your report, which is simply the size of England, which is larger by various measures than Wales, Scotland or Northern Ireland.

A. Yes. Each of the four territories are of different sizes territorially and also in terms of population.

Q. You explain in your report, Professor Henderson, in a little length the origins of the various devolution settlements for different devolved nations, and we will leave much of it for the written report. I don't want to spend too much time on it now.

A. Yeah.

Q. But in summary, as you explain in your report, the years 1998 to 1999 were of great significance in respect of the current devolved arrangements in the UK?

A. Yeah, arguably, 1997 to 1999, I would say, yes, because we had referendums on devolution in each of Scotland,

Wales and Northern Ireland. We arrived at the referendums through slightly different routes, but yes, the three referendums, in those two years, 1997 to 1998, led to the establishment of devolved legislatures, with varying levels of legislative competence.

Q. As you have already mentioned, the settlements that were reached in each of the three nations were different from each other. You refer to the fact that Wales initially had a conferred powers model. That is, the statute which created devolution in a sense identified the matters that the Welsh Assembly could legislate on rather than those which it could not. That's one point of difference, isn't it?

A. Yes.

Q. Of course, there is a great deal of complexity around the arrangements in Northern Ireland, which are very different from the situation in either Wales or Scotland?

A. Yes.

Q. Thirdly, again as you have mentioned, the final position that was reached reflects a difference between the competence of the devolved governments in the three nations, and that's a point I'm going to come back to.

A. Yes.

Q. If we can look, please, at paragraph 12 of your report

at page 7, you record, as it were, the position that had been reached some time later. We were talking about 1997 to 1999. By 2020 various changes had taken place, had they not, in the sense that Wales had moved from a conferred powers model to a reserved powers model?

A. Yes. So that's one change. Another change in Wales is that there were additional levels of competence. Another change is that the Assembly was no longer a body corporate but there was a separate role for the Executive, and the legislature.

So there were differences at the time reflecting the different origins of the route to devolution. There were differences in the early days because the plans put to the electorates in referendums were very different. And there were differences reflecting the fact that there have been changes to the devolution settlements over time. And the result of that has been to take some of the asymmetry that existed, particularly between Scotland and Wales, and make them more comparable than they were.

Q. Right. Thank you. The point, the rather narrower point you make in paragraph 12, is that by 2020 all three of the devolved nations were operating on a conferred powers basis?

A. Reserved powers basis.

Q. I'm sorry, no longer conferred, but reserved.

A. Yes.

Q. Yes. Thank you, we can take that down.

I just want to take a step to one side, Professor Henderson, quite briefly, because although most of your report deals with the devolution to the three devolved nations we have been mentioning, you do mention English devolution briefly, and if we can -- we can see, actually, there, we don't, perhaps, need to expand, but in paragraph 11 you refer to the fact there is no England-specific legislature, with policy on what is otherwise devolved decided either by Westminster or, in some instances, by local bodies.

A. Mm-hm.

Q. Then, if we look at page 15 of your report at paragraphs 32 to 33, you do describe briefly the limited steps that had been taken within England towards what you describe as executive devolution. What do you mean by the term "executive devolution"?

A. Well, it's not legislatures enacting law over a set of policy arrangements. So if we look, for example, at the arrangements for London, it's the mayor who has overall responsibility for strategy and vision, and the Assembly holds the mayor to account, it can approve or reject the budget, but they are powers that are

exercised by the mayor himself.
Q. So that's the model in London. It's also broadly the model in the other mayoral areas that you refer to towards the end of paragraph 33 --
A. Yes.
Q. -- of your report, and you mention at the beginning of paragraph 33 the fact that there was, at one stage, a proposal for a rather broader type of devolution for the northeast of England but that, as we may remember, was rejected in the vote that took place?
A. Yes, exactly.
Q. Thank you.
I want to, by way of introduction, just go to one more point, and this involves going back to pages 7 to 8 of your report, and it's paragraphs 13 to 14.
In these paragraphs, Professor Henderson, you discuss a rather more general idea related to devolution, which is that of policy variation. You describe it as being an automatic consequence of devolution, that is the ability to engage in policy variation. Then at paragraph 14 you make a number of points about policy variation, both that it has its benefits and that others see it as a disbenefit.
Could you just expand on those points for us a little bit?

A. Yes, absolutely. So one thing to mention would be that the very existence of devolution was seen as an opportunity to have policy variation. It was argued for on the basis that different electorates had different policy preferences, different policy needs, different socio-economic contexts that would encourage, that would lead to different legislatures creating different policy. So policy variation was the purpose of devolution when it was campaigned for. It is the automatic byproduct of its existence.
And it comes with benefits, and one of the benefits is that, in normal circumstances, it's easier to understand how that might work, but policy variation makes a policy lab of the state, it means that we can evaluate the different policies that have been introduced in different parts of the state and evaluate whether they have been effective or not.
Notwithstanding the fact that it is an automatic byproduct and it comes with benefits, one thing we also know about policy variation is that support for it varies within the state and there is a considerable degree of support for policy uniformity across the state, particularly so in England, and one of the reasons for that is that it is perceived to create the possibility of, for example, postcode lotteries,

where certain people get certain benefits and certain rights and others do not, and that is seen as an argument that might undermine a sense of social solidarity across the state.
Q. Thank you. As we shall see, this tension between policy variation, particularly in the devolved nations and, on the other hand, the argument in favour of uniformity, became very much a theme, did it not --
A. It did.
Q. -- of the debates during the pandemic?
A. Absolutely, yes.
Q. Let me turn to another contextual topic, which is that simply of the mechanisms and structures that give effect to devolution. In your report, paragraph 23, page 10, you categorise these mechanisms and structures into three areas: the first being legislation, which as we've already touched on is the source of the devolved competence; second, the financial arrangements between the various nations; and, thirdly, arrangements made for intergovernmental discussion and problem solving. I want to take them in that order, if I may.
So first of all, the question of legislative competence.
Paragraph 26 on page 10 of the report, please.
Now, we've already touched on the fact, Professor,

that the various routes that the devolved nations took towards at least the current state of devolution was a complex one, the powers that were conferred back in 1997, 1998, 1999, have changed, there is an asymmetry as you have described between the three nations. And is it those matters that have led you, if we go over the page in fact, to provide what you described as an alternative explanation for this process, which is that it's been piecemeal, reactive and ad hoc?
A. Yes. I mean, I would -- one explanation is that there's not been one devolution process but there's been three devolution processes and the devolved settlements reflect the local context, the political context and political culture. But one way to look at it is that we also have ended up with an asymmetrical highly changing devolution settlement because changes have been introduced as a result of demands made at different points in time, and sometimes they have been responded to and sometimes they have not, and so sometimes they have lacked a unifying logic of why certain things should be devolved and certain things should not.
Q. Thank you.
You've already referred to the fact that the position as it has been reached, at least as it was in 2020, is that the competences across the three

nations are not the same, and we will see that when we look at some tables in a moment, and it's also the case, perhaps it's obvious from what you've already said, that they are not fixed.

A. Yes.

Q. Precisely because the Westminster government initially conferred the powers on the devolved nations, it is possible, and indeed it has happened, for further powers to be conferred?

A. Yes.

Q. The other factor that you refer to, which probably stems from the same point, is that, in principle at least, Westminster retains the power to legislate, as it were, against the run of devolution. So it is in principle entitled to legislate for the devolved nations?

A. Yes, I mean, that's a reflection of the principle of Parliamentary sovereignty. Westminster tends to restrict itself to legislating in reserved areas, but it need not.

Q. You describe in your report the Sewel Convention, which is, if you like, the rulebook that relates to that particular issue. In summary, Westminster will not normally legislate in matters that have been devolved?

A. Yes.

Q. You've given me a cautious "yes", Professor, so do

expand.

LADY HALLETT: With a smile as well.

MR O'CONNOR: If you thought my summary was a little bit C minus, do expand.

A. No, not at all. No, you're absolutely right that if it wishes to legislate in areas of devolved competence, then the devolved legislatures have the opportunity to pass legislative consent motions acknowledging and approving the legislation on the part of the UK Parliament. And the use of LCMs -- they were always fairly high in Scotland, but the use of LCMs in Wales and in Northern Ireland, in particular, has increased over the years in terms of devolution, but so too has the -- we have also seen an increase in the number of rejected LCMs and we also know, from the courts, that rejecting an LCM is no barrier to the UK Parliament legislating in a devolved area.

So it can legislate in any area it wants, which reflects the principle of Parliamentary sovereignty, but also the fact that a failure to approve an LCM is also not a barrier to the UK Parliament legislating in an area, which also reflects its Parliamentary sovereignty.

Q. So the legislative consent motion, the LCM, is a mechanism whereby the devolved Parliament can --

A. Yes.

Q. -- consent to Westminster legislating over its powers?

A. Yes.

Q. But, as you say, there have been examples of Westminster legislating notwithstanding that an LCM was not given, and Brexit provides a useful example of that?

A. Yes, across all three.

Q. I want to turn to, more precisely, the boundaries of competence of the devolved nations, and to do that could we look at page 12, first of all, of your report, table 3.

This table, Professor, identifies policy areas that, where the devolved administrations, the devolved governments, have powers; is that right?

A. Yes.

Q. One can see immediately, as we've already said, that they are not common, between them there are areas where one government has a power and the others don't, for example?

A. Yes.

Q. We don't need to go all the way down the list, but perhaps the most important for our purposes this afternoon is the first, we see that health, health and social services, is a devolved matter in all three of the devolved nations?

A. Yes.

Q. Thank you.

We may need to come back to that table, but for the moment can we go on to the next page, please. This is, as it were, the other side of the story. These are the powers that have been reserved to Westminster in relation to each of the three devolved nations.

Again, the position is not uniform, and we see, for example, the first three, constitution, foreign affairs, defence. None that perhaps fit as precisely into our experience of the pandemic as health, but certainly, as it were, one can see in each of those the question of borders.

A. Yes.

Q. Which is something we'll come back to.

A. Yes.

Q. And obviously if we can go back to the main table, we also see a series of entries relating to financial matters --

A. Yes.

Q. -- which is certainly something that we will need to look at in a bit more detail with relation to the pandemic.

Thank you.

I want to, in fact, stick with financial

arrangements and ask you a little more about that. For that purpose, can we go, please, to paragraph 24 of your report on page 10. We've seen from that table, Professor, that in broad terms, matters of national finance are reserved, but that then poses the question: how are the devolved nations to be funded? And at least one of the answers to that is to be found in what's known as the Barnett formula, which you refer to in this paragraph of your report.

Can you explain to us in a few sentences what it is, how it works?

A. Yes. So it's the largest of the block grants that are made available from UK Government to the devolved administrations, and the Barnett formula is calculated on the basis of English spending, changes in English spending, and so the same changes in English spending are then applied to the changed spending available to the devolved administrations, because they -- and it was designed to stop an annual haggling over how much money was available for a devolved administration to create policy or to manage services that it controls.

Because the devolved administrations started from a different spending base, the changes -- say there's a minor, a 10% reduction in spending in England and a 10% reduction in the devolved administrations, if

the devolved administrations started from a higher place, you could still end up in a situation where you had higher per capita spending in the devolved territories than for England as a whole.

Q. If, for example, the Westminster government decided suddenly to spend a very large amount of money, extra money, on schools in England --

A. Yes.

Q. -- the Barnett arrangements would lead to pro rata extra funding being provided for schools to the three devolved nations?

A. Yes. And that's an important point, it's spending made by the UK Government in relation to policy areas that are otherwise devolved in Scotland, Wales and Northern Ireland. So schools is a good example, because education is devolved in Scotland, Wales and Northern Ireland.

Q. This Barnett formula, and these arrangements for funding, as we will see when we turn to look at events during the pandemic, create an extra complexity to the whole question of what powers are devolved, do they not, because it's all very well to say to a devolved nation "You have power to operate in this particular field", but if the nation doesn't have the funding to do what it wants in that field, then that is at the very least

a constraint or a factor to be taken into account?

A. Absolutely. I think it's also of significance if we're trying to identify what is England-only legislation, when we -- we were speaking for a while about English votes for English laws. If English policy, England-only legislation, has knock-on financial consequences to devolved administrations, then you can understand why MPs representing seats in devolved territories might take an interest in that legislation that would otherwise seem to have absolutely nothing to do with them.

Q. Yes. Thank you.

The third of those structures that I referred to a moment ago is the question of intergovernmental arrangements that exist within the UK for communication between the devolved nations and Westminster and dispute resolution.

Starting off with the Westminster government, we know, of course, that the devolved nations all have their own secretary of state. That is part of the structure, as we will see. Boris Johnson, when he was Prime Minister, created a post of Minister for the Union, which he then occupied. That was in 2019. What was the significance of that?

Perhaps we'd better ask him that.

A. Yes, I think it's a question best asked of him.

Q. All right. We'll come to this, but we know that during the pandemic, in fact, in September 2021, another ministerial post of Minister for Intergovernmental Relations was created, and that was a post occupied by Michael Gove, was it not?

A. Yes.

Q. As we will see, he had in fact already been playing a liaison role between Westminster and the devolved nations in his previous capacity as Chancellor of the Duchy of Lancaster?

A. Yes.

Q. In terms of the, as I said, mechanisms for intergovernmental relations, you refer in your report to an important document, the memorandum of understanding. Perhaps we can look at paragraph 46 of your report, which I think is probably on page 19. You refer to this memorandum of understanding as having existed, I think, back from the days of the 1997, 1998, 1999, the very first --

A. Yep.

Q. -- devolution settlements, no doubt amended in between times. Tell us a little bit about it. What force did it have, who drafted it and so on?

A. I mean, it's more than anything it's a statement of

intent. It's a description of how ideal arrangements are supposed to work. It describes the spirit with which different actors are to approach the concept of intergovernmental relations, and then it identifies different fora in which different actors can come together.

But it argues that it's important to have good communication, early communication, sharing of information but also sharing of data, if it's easily accessible and easy to process and easy to share, and it is identifying how these multilevel bodies are supposed to interact with one another.

Q. You say, I'm looking about five or six lines down, as you say:

"[The memorandum] calls for good communication, early notice of developments, consideration of the views of others, and sharing of scientific, technical and policy information ..."

And so on.

A. Mm-hm.

Q. Going over the page, the last sentence of the same paragraph, you refer to the fact that there's no specific mention within the MoU of managing emergencies or crises and so on?

A. Exactly. I mean, because it was a statement of intent,

it was never intended to be something that offered an easy rulebook for what you would do in all situations. It was more describing the spirit with which actors should approach their interaction.

Q. Now, you mentioned a moment ago that it's not a sort of entirely aspirational document, it does have within it various fora.

A. Yes.

Q. One that we will be coming back to this afternoon is the Joint Ministerial Committee, which you address at paragraph 48 of your report.

It's what you describe as part of the "institutional architecture by which the governments will come into contact with each other".

Before you refer to the JMC, as we might find ourselves calling it, you make this point, which is that the MoU itself argues that much of that liaison between the nations will in fact just take the form of routine daily or weekly contact between different touching points within the various administrations.

So it would be wrong to see the JMC as being, as it were, the intended only point of contact between the governments?

A. Yes, it was absolutely anticipated that most of the activity would be between officials and executives

discussing the boundaries of devolved and reserved policy, and often bilateral exchanges rather than full-on multilateral exchanges involving someone from each of the four parts of the UK.

Q. The JMC, you say, we can see in the paragraph that's been highlighted, was intended to meet as a plenary body once a year or at least once a year, and you also say in the paragraph below that it was a consultative rather than an executive body.

A. Yes, it was for facilitating communication rather than taking decisions, and while it met, while it existed in plenary, there were also other formats discussing very specific --

Q. Yes.

A. -- very specific policy areas.

Q. So the JMC that perhaps we are talking about at the moment is the top of the pyramid --

A. Yes.

Q. -- which is intended to be chaired by the Prime Minister and attended by the First Ministers, but, as you say, there were bodies below that operating at ministerial level?

A. Yes. I mean, one thing I would also mention is that it was intended as a forum for dispute management where parties could come together and try to resolve disputes.

So in the first instance you might have kind of bilateral conversations between actors to try to resolve disputes. Then it would go to the Secretary of State for the relevant territory. Then it would come to the JMC. And if that then didn't work it would eventually end up in the court.

So it's also important not just as a forum for chat, but served a specific purpose in terms of trying to see off disputes and resolve disputes.

Q. Thank you.

One of the hallmarks of the JMC and that structure which you've described is that it had a sense of independence. You refer in paragraph 50 to it having its own secretariat, and the term that is used occasionally, I think, in your report, but you also refer to others using it, is "ownership". It was, as it were, independent, not only of the Westminster government but all of the devolved governments as well?

A. Yes.

Q. Just lastly then on the JMC, in terms of actually how it was doing in the period prior to the pandemic, going right back, during I think between 2002 and 2008 you refer to the JMC itself not meeting at all, and that perhaps being attributable to the fact that there were Labour governments in all of the different centres, and

so perhaps they didn't need to resolve any disputes.
But more recently, it had met, had it not, in the years running up to the pandemic?
A. Well, I mean, I could be mistaken, but I'm fairly certain that the last one before the pandemic was in 2018, when Theresa May was Prime Minister.
Q. Yes. Well, just looking at -- if we look at paragraph 52 of your report, going over the page, you refer to the JMC being sort of revived by the SNP after it came to power in Edinburgh in 2007 and then meeting 11 times, so a little bit less than annually, but roughly annually, before March 2020. I won't take you to it, but later in your report you say the last meeting was actually in 2019 --
A. There we go.
Q. -- before the pandemic started.
Briefly, that's the JMC, but there were other inter-national bodies that were part of these structures. You refer to two: one was the North South Ministerial Council, and another was the British-Irish Council. Tell us just a little bit about those.
A. These come to us through the Belfast Agreement, so they're specific to the devolution settlement in Northern Ireland. They reflect strands 2 and 3 of the arrangements, where strand 1 was the internal

arrangements for Northern Ireland. And they were forums for communication. So it was to reflect the fact that Northern Ireland is embedded within an island but also is part of the UK, and so the North South Ministerial Council manages relations across the island of Ireland, and the British-Irish Council was a way of providing a forum in which a larger group of actors could meet, so it includes members from across both islands.
Q. Thank you.
If we can go on, finally, in this section to paragraph 56. We have sketched, then, this network of institutions which existed before the pandemic commenced, and in paragraph 56 you offer us some of the value judgments given by academics over the years, that were critical of these arrangements, and one that's particularly striking is the view that was offered was that they were not sufficiently strong to withstand a crisis?
A. Yes. This is a kind of non-representative sample of -- no, that makes it sound like it's not representative of what academics in general think. This is a grab bag of some of the articles that have been written about intergovernmental relations in the UK, but they are almost uniform in their condemnation of the fact that there are insufficiently robust intergovernmental

relations in the UK.
And partly that is attributed to three things. One, it's to the asymmetry that I mentioned at the start. So because of the asymmetrical arrangements and also because of the way that devolution in Northern Ireland arrived in particular, it wasn't possible to devise a kind of one-size-fits-all intergovernmental relations arrangement.
The second, as you mentioned earlier, is that Labour dominance in the UK Government but also in administrations in Scotland and in Wales in the early years of devolution meant that a lot of the interactions took place within a single political party, and so Paul Cairney, who writes on this, has said that that lent the entire area a kind of air of informality that has continued to this day.
But the other reason why we see kind of underdeveloped intergovernmental relations is partly the spirit with which the UK Government in particular has approached them and has sort of let them languish.
Q. That is a theme that we will pick up in, when we see, as I'm now going to turn to, the events of the pandemic and how these -- the relations between the various governments developed and the extent to which the institutions we've just been referring to were in fact

operated or not.
So of course, as we all know, the pandemic developed in the early months of 2020, and I'm going to address the question of the liaison between the Westminster government and the devolved governments, try and do it in sort of two sections. The first is just to look at the first three months or so, up to around about the first lockdown in March/April of that year, and then we'll look at the latter period, when I think, in summary, relations declined.
Perhaps we can start by going to paragraph 67 of your report, which is on, I think, page 25.
In broad terms, Professor, the theme of this paragraph is that the first months of the pandemic reflected more or less a four-government approach where there was co-operation or certainly a degree of co-operation between the four governments leading up to the lockdown and into the first lockdown; is that fair?
A. Yes, absolutely, yeah.
Q. So if we go through various heads or various factors within that, we know that during the period from January through to March there were a series of COBR meetings, initially chaired by Matt Hancock and, subsequently, by Boris Johnson. There was, was there not, attendance by the devolved governments at those meetings?

A. Yes, in the early days, when they were held, yes.
Q. So there's a debate perhaps about exactly who from which devolved nation attended. And there is a similar -- if you like, a mirror image of the debate about whether Boris Johnson should have chaired the early meetings rather than Matt Hancock, there has been some debate about which minister from which devolved governments should have attended COBR. I don't want to spend time on that now, but, as a general point, they were invited and they did come to those COBR meetings, or they probably dialled in, but they attended?
A. They did. I mean, I think one of the debates is whether the right person came. The other is obviously how much they were listened to when they were there.
Q. Yes.
A. Which I, yeah --
Q. That is a theme we may pick up.

We know that one of the products of those early COBR meetings was the *Coronavirus: action plan*, which was published in early March, on 3 March 2020, and I would like, please, to have a look at that. It's been helpfully brought up on the screen.

The first point to note, perhaps from the very first page, Professor, is that not only does the title explain it's "A guide to what you can expect across the UK", but

we see immediately beneath that box illustrative --
A. Yes.
Q. -- crests showing that it is the work not just of the Westminster Department of Health and Social Care, but the three devolved governments as well?
A. Yes.
Q. I think if we go on to page 10 of this document, I think these were some paragraphs -- 3.6 to 3.8 were passages within this document that you have drawn attention to in your report, or certainly I think at least paragraph 3.8. We just cast our eyes down there, I'm not going to read them all out, but there is a reference to the fact that the UK Government and the devolved administrations have been planning, there is a reference to the well known contain, delay, mitigate plan, and then at 3.8 there is an explanation that:

"The different phases, types and scale of actions depends upon how the course of the outbreak unfolds over time. We monitor local, national and international data continuously to model what might happen next ...".

I think you saw some particular significance in those words?
A. Yes, because I think taken together the three paragraphs suggest that change is anticipated, change in the conditions of the virus are anticipated, and then also

change in the reaction is therefore anticipated, and it's a tying of the actions taken by different actors to the local context.

So it implies that change is anticipated, that there will be variation -- that there will be change over time but also variation in the response in light of local context, as made clear by the data that was being collected and analysed.
Q. Thank you.

I think one more reference in this document, if we go over to page 17 and paragraph 4.40, we see there, do we not, a reference back to COBR, it's part of the plan that COBR is going to meet as often as needed, and later in the paragraph:

"The respective crisis management mechanisms across the Devolved Administrations have also been stood up and will operate in very similar terms to that of COBR within their own nations, and all four co-ordination centres are linked up on UK-wide planning and delivery of the response to Covid-19."

So would it be fair to say that that suggests that the plan at that stage is very much COBR-centred, COBR will be the place where the four governments come together, of course with other committees, and pursue a combined response to Covid? That seems to be

the message that's being given?
A. Absolutely, I think it's the importance of COBR but also the fact that it's a four nation response, and so that reference to being linked up together implies that it would be all four working together, co-ordinating across them.
Q. So that was -- we know that COBR was meeting and we see from this document that the plan seemed to involve COBR going forward. We also know that at around this time there was a plan to institute so-called MIGs, ministerial implementation groups, sitting just below COBR, that would do some of the more detailed work.

I want to take you to a couple of documents relating to those, please. First of all, can we please go to INQ000182338, which is a paper or a note addressed to the Prime Minister from Mark Sedwill, who was then the Cabinet Secretary, dated 13 March 2020.

So a week or so after the publication of the action plan that we were just looking at.

He tells the Prime Minister:

"We need to step up a gear ..."

But he also talks about a sense in which it's not just a crisis, they need to plan for the longer term, they need to plan looking ahead for six months or whatever it is.

If we can go over the page, we see what is being suggested. First of all, at paragraph 4, a new structure of working. At paragraph 4 we see a small meeting to be held with the Prime Minister at 9 o'clock in the morning. I'm not sure I know why, but I think it became the 9.15 meeting.

Then on paragraph 5, we see the suggestion of what became the MIGs:

"To support this we will need a series of subgroups so you can task your ministers to solve specific problems."

We can see that they're being intended to deal with various different policy areas. Is that right?

A. Yes.

Q. Then of more interest for present purposes, if we can over the page, sorry, over my page, it looks like it's starting at the bottom of this page, paragraph 7, he says this:

"You will also need to decide how you want to involve the Devolved Administrations. Instead of inviting them to your daily 9am meetings, I propose continuing to include them in COBR as public service delivery is where their main challenges will be. I would also recommend a regular meeting with First Ministers, either chaired by you or CDL, to update

them on the response."

Do you see that?

A. Yes.

Q. What we can see then, if we go on to another document, please, and this is INQ000182343, we can see this is a list of attendees at one of the MIGs, which is dated very shortly after this. This was the Public Sector Ministerial Implementation Group, and we can see about halfway down the page that the First Ministers of the devolved governments were on the attendee list, "As required" attendee list, of this particular MIG; is that right?

A. Yes. I read this less as a list of attendees for a particular meeting and more a statement of who the core and as required members should be moving forward, but I think the thing to mention is that they were included but included not as core members but as --

Q. Yes.

A. -- as and when.

Q. Certainly. I think that's right, by the way, I think this wasn't -- it's not, as it were, a list of invitees for any particular meeting. This is the proposal as to who should be generally involved in these various meetings.

This was, as we see at the top, the Public Sector

MIG, but the same -- in fact the First Ministers had the same role, that is, as required invitees, for the healthcare and the economic business MIGs as well.

Then finally on this section, another letter just from a couple of weeks later. This, I think, is in fact a draft letter.

So this is INQ000218318, please. Yes, we've got it.

So here, this is again a letter from Mark Sedwill, although I think, as I said, it's a draft, early April, so a week or so later again.

Now the MIGs have been set up, and that we see them listed there in those bullet points. We see immediately below the bullet points the assertion that the MIGs all have the status of Cabinet committees.

Then if we go over the page, please, the penultimate paragraph, Cabinet Secretary is stating:

"These programmes must deliver for all our citizens in England, Scotland, Wales and Northern Ireland ... [there should be] a coherent Government response ... wherever they are in the UK. Departments should consider how the implementation of policy will work across the four nations where aspects of the response are reserved, and engage closely with the Devolved Administrations where they are devolved."

So looking at these documents together, as it were,

they were drafted over the course of just a few weeks in March and very early April of 2020. There seems still to be, as there was in the action plan, an intention that Covid is something to be faced on a four nation basis?

A. Yes, absolutely, I think they take their spirit from what was in the action plan, and so it looks to me like someone trying to take the principles of the action plan and put them into suggestions for how people should meet -- or how often they should meet, who should be there in the room.

MR O'CONNOR: Yes. Thank you.

My Lady, I'm just looking at the time. I've come to the end of one moment, but if that's a convenient moment just for a short break.

LADY HALLETT: If that's a convenient moment for you, of course, Mr O'Connor.

We take a break every so often, Professor Henderson. We always say for the sake of the stenographer, but I suspect for the sake of everybody. 15 minutes. I shall be back at 20 past.

(3.06 pm)

(A short break)

(3.20 pm)

LADY HALLETT: Mr O'Connor.

MR O'CONNOR: Professor Henderson, we had discussed the *Coronavirus: action plan* and the attendance of the devolved government representatives at MIGs and the terms of their attendance. I want to turn and ask you some questions about the Coronavirus Act, which in fact gained Royal Assent on 25 March, so very much at the same time as those other matters that we were discussing.

Now, you address the Act at paragraph 74 and following of your report, we have it on the screen.

Professor, we don't need to, and we won't, get into the fine detail of the Act, which of course addressed all sorts of issues relating to the emergency measures that were taken and lockdown and so on.

But that part of it which dealt with the devolved nations, in particular Scotland and Northern Ireland, granted them, those two administrations, powers -- to take powers, as it were, in order for them to implement emergency measures in particular relating to lockdown and closing schools and so on.

Is that right?

A. Yes.

Q. I mentioned particularly Northern Ireland and Scotland. Was that because, again without getting too far into the detail, another aspect of the asymmetry that you

mentioned earlier was that Wales had in fact had greater sort of emergency civil contingency type powers than the other two devolved nations?

A. Yes, those had been transferred under the 2006 Act.

Q. As you describe in your report, at the UK/English end of things, the measures to implement lockdown were to be implemented under the Public Health (Control of Disease) Act 1984?

A. Yes.

Q. Going over the page, please, to look at paragraph 76, what you say here, in the first sentence of that paragraph, is that:

"One purpose of the Act was to facilitate a co-ordinated and consensual approach across the UK, but also to facilitate deviation where necessary."

Is that right?

A. Absolutely, yes.

Q. What do you mean by that, in this context?

A. I think there's two things. One, in terms of the co-ordination and consent, or consensual approach, there's references in the Act, for example section 87, where it makes reference to the fact that a UK minister shouldn't make a provision and shouldn't bring it into force without the consent of devolved administrations. And I think that's important because it's stronger

language than we normally see, for example in the Sewel Convention. So that's one thing. And then the other is that it assumes that -- by giving these powers it assumes that different actors in the devolved administrations might wish to use them, so by giving them the authority to use them it assumes that variation will flow from that.

Q. Yes. So, on that analysis, the Act is really of a piece with the approach we were discussing relating to the action plan?

A. Exactly.

Q. It anticipated a four nations approach which would allow for variation between the nations?

A. Which allowed for a consensual approach and one where there was good communication and the principle of consent, but fundamentally one that was varied.

Q. Yes. Now, the reason that that is of some interest is that latterly there has been some debate as to whether that particular sort of legislation approach was the right one to have chosen?

A. Yes.

Q. And Boris Johnson -- not him alone, but Boris Johnson in his witness statement for this Inquiry -- has suggested that another approach might, on reflection, have been preferable.

Can we, for these purposes, go to Mr Johnson's statement, please, which is INQ000255836, and start at paragraph 126, which I think is page 30.

Yes, thank you. So we can see this is Mr Johnson's reflection on these matters. He says:

"Looking back, we should have thought much harder about the legal basis for the measures proposed. There is a respectable argument that we should have used civil contingencies legislation rather than public health legislation. By allowing for at least the appearance of a divergence in approach between the various parts of the UK, we were risking considerable public confusion and frustration -- when clarity of message was crucial."

Then if we may, one other paragraph in the same statement, paragraph 153, which I think is on page 37.

(Pause)

Thank you. If we see, starting four lines down he says this:

"It would perhaps have been better, in retrospect, if we had formed policy under the Civil Contingencies Act 2004 so as to bind the UK together. We should then have met regularly, UK Government and DAs, to decide the policy [singular] together and to stick to it."

So Mr Johnson, Professor, is describing an alternative legislative approach which, as he

describes, he in retrospect thinks might have been better.

Now, there are two points I want to address there. The first is, just to, as it were, complete the factual story. We know that at the time COBR was advised that in fact it wasn't open to the government to use the Civil Contingencies Act. And let us look briefly, if we may, at the minutes of the COBR meeting dated 20 March. If we can go to page 5, please, and if we could zoom in on the bottom bullet point on that page, please, we can see recorded that the Civil Contingencies Act could not be used as this, that is the pandemic, is not an unforeseen event and the Public Health Act was recommended instead.

Again, Professor, I'm not going to ask you to opine on that legal question, but the point, the advice that COBR appear to have received is essentially the Civil Contingencies Act is for something like an earthquake or a terrorist attack, which happens in the moment, whereas this is, albeit a crisis, something that, by the very nature of the COBR meeting, could be seen coming, they were having meetings about it, and therefore the Civil Contingencies Act wasn't available. That appears to have been the advice that was given.

A. Yes.

Q. And there are some other documents to a similar effect.

LADY HALLETT: Is this legal advice?

MR O'CONNOR: My Lady, I'm afraid I'm not sure. There are other documents, and at least one of them was referred to in the opening submissions, but I'm afraid I can't remember exactly the source of the advice within government.

LADY HALLETT: I can see it might be lawyers might have different views.

MR O'CONNOR: I hope I've made that clear, my Lady. It does happen sometimes that lawyers have different views about things.

LADY HALLETT: As if, Mr O'Connor.

MR O'CONNOR: But, as I say, I certainly wasn't inviting Professor Henderson to resolve that debate, simply to see what advice was given at the time, for completeness.

Because perhaps the more important point to draw from this, Professor, is that what we see in Mr Johnson's statement is a very different sort of approach to the question of how the UK and its constituent parts should have approached the crisis.

A. Yes, absolutely. I mean, it's not just that differentiation and diversity was allowed to happen, it was facilitated. It was foregranted in the action plan. The means to achieve it were put into

the Coronavirus Act. And that is within a general context in which devolution also leads to policy variation.

So devolution leads to differentiation, the action plan said it was coming, the Coronavirus Act facilitated it, and then the Prime Minister also equated kind of divergence and differentiation and a lack of clarity of message.

But one does not necessarily follow from the other. You can be very clear about differences that exist across the state. If you choose not to be clear, that's your choice, in a way.

Q. Thank you.

We know from the witness statements, at the very least, that the witness statements that have been supplied to this Inquiry by the various First Ministers, Deputy First Minister in Northern Ireland, that their approach was very much that they wished -- in the main, that they wished to take their own course, unlike the suggestion from Mr Johnson. Is that fair?

A. Yes, and I think that has its roots in the fact that, you know, when -- you often see in the documents a phrase that "the science says this", and "The science says this, therefore we are going to do this, and I can't understand why you, the devolved

administrations, are doing something different". But I think there's a number of points to be made there. One, the data was not uniformly accessible and data from different parts of the state could have led to different conclusions about what might have been the best thing to do.

One could also imagine a situation in which different administrations would look at the same data and the same modelling and come to different conclusions about the appropriate plan of action. And I think it's also slightly disingenuous at times for people to claim "the science said X" when in fact we know there were arguments within the scientific community, including the scientific community of advisers advising the UK Government, there were differences of opinion there. So the science didn't say one thing. And what we arrive at is a situation in which the UK Government has interpreted the data to which it had access, often England-only data, and had identified a course of action, and then expressed frustration that the others did not fall in line with that course of action, when in fact the devolved administrations say, "Well, this is the point of devolution, of course we're going to make our own evaluations".

Q. Indeed.

Let me move on, but in doing so back to a topic that we've already touched on, which is the whole question of funding.

In paragraph 81 of your report, Professor, so it's -- we've got it up on screen already -- you deal with -- you can see the title there -- "Changes to funding January 2020" onwards, so if we look at that and then go over the page, this is a paragraph or two in which you describe the effect of the Barnett mechanism.

We don't need to go through all this detail, but, Professor, in summary, the Barnett mechanism or the consequence of the Barnett mechanism was that where the Chancellor of the Exchequer and Westminster set up these extremely expensive schemes, we know about the furlough scheme, and the various -- the job retention scheme, that's the furlough, the Bounce Back loans and Business Interruption schemes and so on, they had possibly a complicated but a read-through into the Barnett mechanism and then extra funding for the devolved nations; is that right?

A. Yes, when it was England-only spending, that then had Barnett consequentials for the devolved administrations, so -- look, I think later in the paragraph it says by one estimate that meant the arrival of £7 billion to the devolved administrations by November 2020.

Q. Yes, I was going to take you to that. It's towards the end of that paragraph, isn't it? It's an OECD report, but in November 2020, so that's spending in the first seven or eight months --

A. First part, yes.

Q. -- of the pandemic, £7 billion, and you can see that you've broken it down there between the three nations. So very large amounts of money, extra money, that was going to the devolved nations through the Barnett mechanism.

Then sticking with the chronological --

LADY HALLETT: Sorry, just before you do.

MR O'CONNOR: Yes.

LADY HALLETT: Sorry to ask, I meant to ask earlier, with the Barnett formula mechanism, if an England-only measure is -- something like the furlough scheme, so support for workers, is that ringfenced when Scotland gets extra money or do they just get extra money which they can allocate to whatever they want to?

A. Yeah, Barnett is not ringfenced, so if it's spending on health in England, it doesn't have to be spent on health outside of England.

LADY HALLETT: Thank you.

MR O'CONNOR: As I said, Professor, sticking with the chronological theme, we're sort of still in about

March/April, and I just want to take you to a series of further references about First Minister engagement in core decision-making.

First of all, can I ask you to look at a letter dated 4 April. It's INQ000217032, I see it's already up on the screen.

I know you're familiar with this letter, Professor. This is a letter, is it not, in fact, from all four -- I was going to say all four First Ministers, but the three First Ministers plus the Deputy First Minister of Northern Ireland --

A. Yes.

Q. -- to Boris Johnson on 4 April, so in the middle of the first lockdown, and we see from the second paragraph they refer to the fact that the lockdown measures were to be reviewed after three weeks, and the letter essentially contains a request for a considered process whereby they can take part in that review; is that a fair summary?

A. Yes. They're identifying what they perceive to be weaknesses with existing opportunities to express their views and to influence UK decision-making.

Q. So they say: we had these sort of crisis COBRs which were called at the last minute in the run-up to the first lockdown. But now they describe a predictable

milestone, that is the three-weekly review, and can we have an orderly process.

And, going over the page, they also say a "transparent and collaborative approach to sharing and producing analysis, options", and so on, in advance of a COBR. And they describe their proposals as being the minimum commensurate with an approach founded on partnership across the four nations.

On a similar theme, if I could take you to a second letter, this time written just by Mark Drakeford, the First Minister of Wales, to Michael Gove.

I see it's already up on the screen, thank you.

This is a couple of weeks later on 20 April. Perhaps if we could go to the middle of the page, he requests what he describes as establishing a "regular rhythm" to meetings between the devolved nations and the Westminster government, where initially officials meet in the early part of the week, then there is a meeting with Michael Gove in the middle of the week, and then finally a COBR at the end of the week.

So, again, it's an attempt to put a sort of orderly process in place to capture that four nation decision-making, is it not?

A. Yes. I think there are two things that are important here. The last line of the second paragraph, so "assist

appreciation of difference where that is necessary", so it's kind of an expectation that difference will be there, but in the previous line, this argument that there should be a "common approach" is also a call for consensus and communication.

So it's not a letter from someone who is pursuing deviation or difference for the sake of it.

Q. Yes. Yes. And the final, the third of these documents from around this time is INQ000091348, and this is a different type of document, this is an email within Whitehall. It is, at any rate the part of it that we will look at, is a read-out from a meeting between Michael Gove and other members of the Westminster -- the UK Government, in particular the Secretaries of State for Wales, Scotland and Northern Ireland, and they are discussing, in fact, I think, that very letter that we have just looked at from Mr Drakeford.

Again, I'm not going to read it through, but the summary point is they're against it. And in particular -- I think, in fact, if we can go to the next page -- I know there are certain parts of this document that you find significant, Professor, and we'll go back to them.

I'm sorry, I just need ...

Yes, so if we can go to about halfway down this

page, we see CDL, it's not the bottom CDL bullet point but about four or five bullet points up?

A. Yeah.

Q. Can we see "CDL - conclusion", yes?

A. Yeah.

Q. So it's the earlier of the two conclusions from the CDL. He says:

"... he'd heard SoS TOs' [that's the territorial officer, so it's the Scotland, Wales, Northern Ireland Secretary of State] caution that regular meetings won't mean DAs agree on the approach to Covid ..."

And then this:

"... regular meetings could be a 'potential federalist Trojan horse'."

And he talks about being "attracted to individual meetings".

It's certainly a different view from that expressed by the joint letter from the First Ministers and then the letter from Mr Drakeford?

A. Yes, this is the most remarkable document I have read in a number of years. I mean, the phrase "potential federalist Trojan horse" jumps out, but so too, on the first page, a few references to the fact that the devolved administrations were "exposed" to UK Government decision-making, as if being in the room and listening

to what the UK Government was going to do was enough and satisfied commitments in terms of intergovernmental relations.

I mean, it's also clear that the Secretary of State for Scotland thought that weekly contact was too frequent and certainly didn't want it to roll on after Covid, and wanted bilateral meetings rather than multilateral ones.

So if we take it in the round, I think there's a number of things going on, but for me what it looks like is that there were positions on intergovernmental relations and how the devolved administrations should be integrated within a UK-wide response that were not driven necessarily by what would be best able to respond to an epidemiological event.

It's clear that there was a desire to structure intergovernmental relations for ad hominem reasons, so there's a clear effort to control or handle one of the First Ministers in particular, there is a fear of federalism, there is a fear of leaks, there is a perceived kind of venality or self-serving nature to the motives of the devolved administrations, and never a reflection that this might also be true for all actors, and no real expression in this document that it might improve decision-making if more voices from more

parts of the UK were included in the decision-making.

So that's one thing to say.

The other thing is that it looks to me like Michael Gove felt caught in the middle by this, and so we see this tension developing between the principles as laid out in the action plan and the principles in the Coronavirus Act and the reaction of Mark Sedwill and the reaction of Michael Gove on the one hand, and then the views of the Prime Minister, the views of the Secretaries of State for Scotland, Wales and Northern Ireland, the views of Number 10 as well in later documents, and there is a tension at the centre in terms of how the devolved administrations should be accommodated.

Q. Thank you, Professor.

I'm going to move on. Those, let's remind ourselves, were in April 2020. We will look at some later documents, and they will bring us back to similar themes. But, as I said, I was going to address this by reference, first of all, to the first three months or so, which we've finished now, and then to look generally, more generally, at the later period, and it's paragraph 102 of your report which starts to talk about this later period.

You make the point that in general terms

the variation that we've discussed expanded, and from the time of the sort of lifting the first lockdown, then on into the later part of 2020, the different devolved nations increasingly took their own course, whether it was the date of lifting the lockdown, the Welsh early circuit breaker in October, there are other examples, but the close sort of consensus on approach which we saw in March broke down and that was the context during the rest of the year, was it not?

A. Yeah, I wouldn't say broke down, it just changed.

Q. It was no longer the case --

A. Yes.

Q. -- and different -- more different policies were pursued?

A. Yes, absolutely.

Q. Taking a step to one side, one of the mechanisms that we haven't talked about so far is SAGE.

A. Yes.

Q. Now, SAGE is an organisation -- probably there are many of us in this room that know more about them than we thought we ever would, and we're going to be hearing evidence from a number of people who sat on SAGE in the coming weeks. But you have referred to it in a number of respects in your report, and of course it was meeting throughout this period and in fact throughout

A. Yes.

LADY HALLETT: I think I've already heard that the purpose of SAGE was to provide scientific advice, and therefore the people who attended were selected for their expertise, rather than their representative nature. So in other words, is your criticism, if it is a criticism, which I think it is, is that fair if they're being selected for their expertise, not their representative nature?

A. But they're talking about data, and, so SAGE focused overwhelmingly on England data, and if you don't have anyone in possession of Scottish data or Welsh data in the room, then your evidence base is partial.

MR O'CONNOR: Professor, that links in to the next point I was going to take you to, and that's paragraph 139 of your report, where you do make a series of points about, a criticism really of SAGE focusing too much, I think, in your view, on English data, even though they would sometimes describe it as UK data.

A. Yes.

Q. Is that the point you're trying to get across in that paragraph?

A. Yes, absolutely right. I mean, there's a unit of analysis problem. And it's not restricted to Covid, it is everywhere. People talk about the UK when they don't

the pandemic.

There are a couple of points you make about SAGE. First of all, relating to attendance by members of the devolved governments. You refer at paragraph 98 of your report to the membership lists which you've looked at indicating what you describe as patchy engagement with the devolved administrations, and you also refer to the fact that at least one of them had what he described as part-time observer status. So can you expand on those points a little?

A. Sure. So one thing to mention is that the representatives from the devolved administrations weren't included from the very beginning, so there was an early attendee on -- in one instance, but then when we get to later in the period then we start to see more regular attendance from representatives of the devolved administrations. So they weren't included at the start and only included afterwards. And we have a shifting group of people who are invited to this, and because they weren't full members of SAGE, they -- you know, in some of the Inquiry testimony we see that they felt that they didn't have the same ability to feed information into SAGE.

LADY HALLETT: Doesn't it depend on what the purpose of SAGE was?

mean the UK, they mean England -- or they mean Britain, they don't mean the UK, because Northern Ireland is almost always just sort of hived off at the start. So when people talk about having access to UK data, then they often don't actually, they have England-only data.

So England, it's a way of -- there's an elision between England and the UK, but it also means that there's a kind of inability to look at England as England as well, that it's seen as, you know, good enough to have data from England and for the rest, and just assume that what applies in England applies in the rest of the UK. But there are demographic and socio-economic elements about England that are not replicated elsewhere in the UK. So there is a unit of analysis problem.

Q. The elision point is one we will come back to --

A. Yes.

Q. -- in other contexts, but sticking with SAGE, it's not just a data point, the point you make about -- in paragraph 140, so the next paragraph, you describe it as being a terms of reference. So, for example, one of the examples you give is that SAGE thought about schools, whether schools should go back early, not go back, but seemed to have addressed their mind solely to the question of English term dates and left out of the

equation the fact that Scottish term dates are very different?

A. The Scottish schools were already back when they were talking about whether they should be concerned about potential mixing in English schools. So it's just an English frame of reference tied to an English calendar and English data.

And it's also the case that when they turned their minds to certain things, it was often because there had been a change in the rules that applied to England, but a comparable change did not apply in Scotland or Wales or Northern Ireland, so issues moved their way on to the agenda to an English rhythm.

Q. Well, these are matters we can take up with the SAGE scientists when we see them, in fact later this week and on into next week.

Professor, turning our attention to a different organisation, although associated with it, you are rather less critical of the Joint Biosecurity Centre, which was established in May 2020. The "Joint" is an indication of its four nation basis, and I think your view, and it's paragraph 99 I think we have, is that it was successful in its ambition of being a four nations organisation?

A. Four nations by default, absolutely.

And when we talk about intergovernmental relations, we often distinguish between vertical and horizontal relations, so vertical would be the centre and the other parts, and horizontal would be across the different units of a state. So the JBC is an example, a rare example of pure horizontal intergovernmental relations: it brings in representatives from Scotland, Wales and Northern Ireland. And the representative is there as the relevant health minister for England. Because often in intergovernmental relations in the UK they are neither vertical nor horizontal, or in a way they're both vertical and horizontal by virtue of the fact that the UK Government wears two hats, so it renders everything a vertical form of intergovernmental relations and everything a horizontal -- or a horizontal one, and that muddiness of roles can cause problems. This is a pure instance of horizontal IGR and also one where it was seen as a four nations by default, but also it's a continuation of this understanding that different approaches are anticipated and normal.

Q. Thank you.

I want to come back now, Professor, in this slightly later chronological period to the question of the engagement between the four nations at senior ministerial levels.

If we can, please, go to paragraph 126 of your report, where you summarise the position later in 2020. You refer to the fact that really COBR ceased to meet after about mid-May for several months, until well into the autumn. You record the fact that in late September, early October, Mark Drakeford said he hadn't spoken to the PM in months. There were more letters of the type we've seen, I'm not going to take you to them, requesting a more secure rhythm of meetings and for COBR to meet again. And in fact it did during the autumn.

You also make the point, in fairness, that that frustration cut both ways --

A. Yeah.

Q. -- and that when, in the example you give, a member of the Westminster government asked to attend Welsh Government meetings he was given a fairly short answer?

A. Yeah, received little response, yes.

Q. Against that backdrop, I want to ask you about one or two other documents.

First of all, can we look, please, at INQ000137215, which is a submission to the Prime Minister towards the end of May 2020.

If we can go over to the next page, please, we see, I won't take you to it, but this is in fact not from

Mark Sedwill but from Helen MacNamara and Simon Case, so two very senior members of the Cabinet Office team, Simon Case not having taken over as Cabinet Secretary quite by this time, but it's a minute to the Prime Minister, and it is a similar document to the one we were looking at from Mark Sedwill earlier in the sense that it is proposing a new scheme, a new set of arrangements for handling the crisis, and the intention is to replace the MIGs with what we now know as Covid-S and Covid-O, that structure, and we see in the bold passage at the top, just as with the Mark Sedwill document, also raised is the question of how to "manage" the DAs and the suggestion is that there would be a Joint Ministerial Committee mechanism.

So if we can just pass through the document, we see without zooming in at paragraph 3 they are suggesting having a ministerial group shaping strategy. That's what became Covid-S. Then at paragraph 4, here, a Covid Operations Committee that became what we know as Covid-O. Then the DA, the devolved administrations, are addressed at paragraph 6. It says:

"Thus far the DAs have been involved in decision-making through the MIGs and in COBR. There needs to be a mechanism to discuss and agree on a four-nation approach."

There is a suggestion that a Joint Ministerial Committee should be convened when needed.

"Covid(sic) would stop meeting on Covid unless we re-enter a crisis situation and need to engage with the mayors."

Question to Mr Johnson:

"Do you agree to use the JMC to manage conversations with the DAs, only use COBR if we re-enter a crisis situation?"

We know from his witness statement Mr Johnson did agree with that proposal, but in fact the JMC did not meet during Covid, did it?

A. No, it did not.

Q. What we see from the materials and we see from witness statements and so on is that starting very much at the time of this document, and then carrying on through 2020, the engagement between Westminster and the devolved nations primarily took the form of telephone calls with Michael Gove, the Chancellor of the Duchy of Lancaster, and the First Ministers; is that right?

A. Yes.

Q. It's fair to say that Boris Johnson in his witness statement says, "Well, that's what I meant. When I agreed to JMCs, I agreed to liaise with the devolved nations, and those phone calls with Michael Gove were

sort of more or less what I had in mind".

It doesn't seem to have been seen that way, at least by the First Ministers, as we've seen from your report, that they were later in the year pressing for more COBR meetings, they weren't satisfied with the engagement that they were receiving; is that fair?

A. Yes. I don't think it's the case that -- I mean, you'll have to ask them, but I don't read from that dissatisfaction with the conversations with Michael Gove, I just think there was a perspective that they weren't sufficient.

Q. In fact I think that's very fair, because many of the statements say, in terms of receiving information and having routine, frequent communication, they served their purpose?

A. Yes.

Q. It's just not the level of engagement that they wish for.

Can we look, please, following in this vein, at paragraph 129 of your report.

LADY HALLETT: Were the calls conference calls or were they calls one-to-one?

A. I don't know.

MR O'CONNOR: I think the evidence will show that they were group calls, but there was also, you'll recall, in that

earlier email, a suggestion of individual calls as well. I think you'll find that it was a mix, my Lady.

LADY HALLETT: Thank you.

MR O'CONNOR: But the routine engagement was conference calls.

Paragraph 129, Professor. It's here that you first of all refer to the fact that, contrary to that suggestion, the document we just looked at, the JMC in fact was never --

A. Yeah.

Q. -- convened during the pandemic. We see it recorded there Mr Drakeford addressing the Senedd and indicating that at no point did anyone reach for the JMC structure. He says that that's not fit for purpose. But you make the observation towards the end of that paragraph, you say:

"In a way, these were cultural rather than institutional obstacles. Or, put another way, it was the spirit in which actors approached intergovernmental work that mattered."

What do you mean by that?

A. So I think one example of that would be the document that you raised earlier where there was a conversation between Michael Gove and the Secretaries of State for the territories. I mean, you can see there a very

particular vision and understanding of intergovernmental relations that is not the one that you see sometimes from members of the devolved administrations.

There is a lot of talk about the importance of having secretariats housed in particular ways and staffed in particular ways, but I think two things are relevant: one, what is the body and what is its purpose? And two, is its presence or is the frequency of its meetings down to the whim of individual leaders?

So I think there's a concern that the JMC structure was not just not fit for purpose in a crisis situation like this. You can well imagine that routine intergovernmental relations are really not helpful in a crisis, but I think, you know, there were noted weaknesses of the JMC. It wasn't seen as a decision-making body. And so therefore, in a crisis, you do kind of want a decision-making body where you can all contribute to joint decisions, if the principle of joint decisions and consensus is something that you say is important from the start.

So it's about the organisation itself and then it's about whether it's ever called into action. And we know that the other weakness of the --

LADY HALLETT: Can you slow down, please.

A. Oh, sorry, I'm just getting excited about JMCs.

So one thing is the weakness of the organisation itself, and the other is that it was just in abeyance for most of the time. And so how -- you kind of wonder, when people complain, well, they were never called, and it's said, "Well, you didn't like them anyway, so how annoyed can you be?" That they were never called.

The UK is not the only state that had a kind of intergovernmental machinery that wasn't really pressed into service. And as we know, the whole point of it was to facilitate communication in plenary, it wasn't meant to be convened very often. So you can understand why it wasn't pressed into service.

MR O'CONNOR: So when you talk in that paragraph about cultural rather than institutional problems, and what lies at the heart of this is the spirit in which people approached their engagement, would another way of making that point be to say that the problem here is much larger than just whether the JMC was convened and told to meet?

A. Yes, absolutely.

Q. There's much more going on, isn't there?

A. Yes, but the fact you have an organisation you don't convene is a symptom of that same lack of a kind of spirit.

Q. Let me ask you about another passage from

Boris Johnson's witness statement.

So can we go, please, back to his statement, which is INQ000255836, and it's paragraph 188. This is a statement or a part of his statement which, as you may know, Professor, the First Ministers have all been asked to comment on. He says this:

"It is optically wrong, in the first place, for the UK Prime Minister to hold regular meetings with other DA First Ministers, as though the UK were a kind of mini EU of four nations and we were meeting as a 'council' in a federal structure. That is not, in my view, how devolution is meant to work."

This of course takes us right back to your evidence at the beginning of this afternoon about the difference between a multilevel state, or rather a unitary state and a federal state.

What's your view about this statement?

A. Well, we often evaluate mechanisms and organisations for implementing intergovernmental relations. We evaluate them on a number of criteria, and one of them is parity of esteem. So the task then becomes, in each instance, is there parity of esteem? So the JBC, parity of esteem across the health ministers, so that's a good thing.

This is an instance of the Prime Minister saying, "But parity of esteem is not a goal. In fact I find it

distasteful because it implies that there is parity of esteem. I don't believe there is".

Q. This, after all, is exactly what Mr Drakeford and the other First Ministers had been asking for in those letters we looked at earlier: regular meetings between Mr Johnson and the other First Ministers so that they could meet, to use Mr Johnson's words, as a council to decide on a joint -- not necessarily uniform, but joint approach to Covid; and Mr Johnson appears to take the view that that is not only not the right answer but there's something constitutionally wrong about that answer?

A. I don't even know if the wish was joint -- you'll have to ask them, but I don't know if the wish was joint decision-making so much as an opportunity to inform UK Government decision-making, and I think that's an important distinction. But certainly this, the spirit of this paragraph and the spirit of the statement from, you know, the record of the meetings with Secretaries of State for Scotland, Wales and Northern Ireland help one to understand why we have the intergovernmental relations architecture that we do.

Q. And it's -- again I won't go to them, we can ask them themselves when they give evidence in the later modules -- but it's certainly the case that, by and

large, the First Ministers profoundly disagree with this statement?

A. Yes.

Q. I want to --

A. As would most in a multilevel state, to be honest, I mean ...

Q. I want to go back, if we can, to your report and go to page 43, please, because there you refer to Mr Gove's, Michael Gove's angle on this issue, if I can put it that way.

At the top of the page you refer to one devolved minister as having said, "The choice not to talk with us as equals was plain and obvious." Then you refer to Mr Drakeford saying something similar.

But then you can see in the indented passage you refer to Michael Gove's account where he said they were, as it were, faced with a problem, "What are we supposed to do? Are we supposed to invite them to our Cabinet committee meetings, where decisions need to be taken urgently, or do we make an agreement and then, as it were, tell them what it is and they'll complain that something's being imposed on them?"

And I think your analysis is that that might be a -- or at least a self-created problem on the part of the British Government, or the Westminster government?

A. I think in this instance Michael Gove is treating -- is portraying as external constraints that are of the UK Government's making. The reason it's difficult to decide, "Well, should we have them in a Cabinet subcommittee or not?", well, you decided to have the decisions made in the Cabinet subcommittee. You didn't need to, they could've been in COBR. Admittedly that's for a crisis at the start, so you can understand why it's not COBR all the way through, but you had the MIGs, you could have kept with those. The reason you have this problem about the Cabinet subcommittees is because you created the Cabinet subcommittees and wanted decisions to be made there.

And likewise if there's a lack of clarity about status and role, that's because since 1999 we have perhaps devoted less attention to clarifying what that status might be and how we generate organisations or mechanisms for good intergovernmental working.

Q. Sticking with the theme of whether the devolved ministers should or shouldn't be present at Cabinet meetings or Cabinet committee meetings, and COBR for that matter, the evidence also raises perhaps a rather more basic practical point about trust, and whether these individuals that we're concerned with were actually capable of working together as sort of trusted

partners or not.

Let me take you to one or two documents.

First of all, I'd like to take you to a sort of letter that the Inquiry received from Dominic Cummings, which contains screenshots, amongst other things, of WhatsApps between him and Boris Johnson.

So can we go, please, to INQ000048313, page 22. This takes us back to the early days, back to -- so if we can look at the bottom half of that, please. So this is a WhatsApp from Dominic Cummings to Boris Johnson on 12 March, so back before the first lockdown. He says:

"You need to chair daily meetings in the Cabinet room -- not COBR -- on this [I mean, I think we can assume that means Covid] from tomorrow. I'm going to tell the system this.

"Not with the DAs on the [fucking] phone all the time either so people can't tell you the truth."

We can ask him when he comes to give evidence, but the inference there is that the devolved ministers are not trusted partners, that Boris Johnson can't receive sort of full, truthful advice when they're at the meeting because they can't be trusted, perhaps, to keep it confidential.

A. Yeah, it's not clear whether -- and this is something that could be put to Mr Cummings is that: is the issue

that, by their mere presence, people were constraining what they were saying and therefore, you know, a propensity to be more free-talking might have led to better decisions, or is it a fear of leaks? I don't know what's implied by that.

But on the former, it's worth asking whether there was such a more free-talking COBR possible and, if so, whether that more free-talking COBR would have made different decisions than the ones that were made. I think that's unknowable, but perhaps he has evidence.

Q. Well, it's certainly something we can pursue, but it is possible to take this matter just a little bit further on the statements we have. I'm going to take you briefly to two further references.

First of all, if we can look at Arlene Foster's witness statement, please, it's INQ000274192, page 1. This is a recent account she has given. If we can zoom in on the first paragraph, or the (a), starting about five lines down, where it says:

"Nicola Sturgeon would brief ..."

That's fine. Can you say five lines down it says:

"Nicola Sturgeon would brief the media ahead of an upcoming announcement by the Prime Minister. I imagine this led to UK Government being perhaps less open about its decision-making than it otherwise might

have been, in a bid to stay in control of messaging."

So for what it's worth, that might help us to understand what Dominic Cummings was referring to --

A. Yep. Yes.

Q. -- in his WhatsApp.

Then let's also see what Nicola Sturgeon had to say about this, and that is in her recent witness statement, INQ000273749, page 11, please. It's the last paragraph of her witness statement, she says:

"On the issue of briefing the media, I considered that to be a core part of the job I had to do. Given the situation we faced, and the extraordinary sacrifices people were being asked to make, my judgment was that building trust in Government was essential to achieving the compliance that was necessary. A key part of that ... was ensuring quick, clear, and open communication that explained what we were asking people to do, and why. That is why I undertook daily media briefings."

So she --

LADY HALLETT: Mr O'Connor, I think we're stretching a bit beyond this witness's expertise.

MR O'CONNOR: Yes, my Lady.

A. Except that we do have data on trust, and we do know that the Scottish electorate and the Welsh electorate

trusted their own devolved governments more than they trusted the UK Government in terms of its handling on Covid, and given that so many of the decisions were actually not wildly different but were variations, and we also asked questions about the roll-out of the vaccine, which was also very similar across ... the explanation for that is largely to do with the different scores that people gave in terms of communications.

So the electorates in Scotland and Wales did have higher levels of trust in the devolved administrations, and we can attribute that almost exclusively to the different way that those governments communicated their decisions to their electorates.

However, the other side of it, I can well imagine that routinely briefing news ahead of the Prime Minister was deeply annoying to the Prime Minister, and it's not just that, I think also that in building trust in the Scottish Government there is a possibility that by briefing early, it also undermined trust in the UK Government, and on that we don't -- we don't know.

But we do have decent trust data, for Scotland and Wales in particular.

Q. Yes, and those are matters which you go into in a little bit more detail in your report, are they not, Professor? Thank you.

Just now there are, I think, really perhaps three short points I want to finish with. The first two of those are two obstacles to policy variation that you address in your report. The first of those takes us back to the Barnett situation and economic levers, as you describe them in your report.

So can we go, please, to paragraph 134 of your report, page 44. The high level point you make here, Professor, is that -- and this was a point I referred to when we were looking at those tables -- it's one thing saying to a devolved government that it has power to act in a certain area, but often undertaking that action will cost money. And it may be that the example of Covid is a very good one in that respect, because to initiate a lockdown, to use a general term, couldn't be done practically without a great deal of funding for -- to make up for, you know, the furlough scheme, Bounce Back loans and so on.

And that was a problem, or an issue at any rate, that devolved nations faced during the pandemic, wasn't it?

A. Yes. Yes, absolutely, because the funding for the furlough scheme came from the UK Government, and the UK Government -- you can think of it like -- in the report I use the metaphor of a money tap being turned off and

on. The tap was turned on when England was in lockdown, and so if England wasn't in lockdown, the tap had not been turned on, and it made it very difficult therefore to impose a lockdown in Scotland, Wales or Northern Ireland if you didn't have the fiscal levers to support individuals and businesses that could not earn income. And so there was frustration that perhaps a clear policy path had been identified but the devolved administrations couldn't act on it because they didn't have the financial resources to do so. And in fact some have said that actually that -- the fact that that fuelled policy convergence was a benefit of the arrangements.

Q. Those who thought, like Boris Johnson, that policy convergence is a good thing expressed that view?

A. Yes.

Q. Of course not everyone did think that was a good thing.

A. Yes.

Q. And if we can look, please, at a letter, another of the letters from Mr Drakeford, this one is INQ000228013. We'll note this one is much later than the other documents we have been looking at, so this is December 2021, so during the Omicron wave.

He really makes the point that we have been discussing. If we look at the paragraph starting

"However, in the circumstances we now face ..." he's talked about the approach so far to the public health crisis, then he says this:

" ... the Welsh Government is inhibited from considering a full range of mitigation measures because we are unable to access Treasury funding to support public health options. Put plainly, Wales and the other devolved nations can only access Treasury funds when the UK government decides the time is right for such measures in England."

That's, in a nutshell, what you have been describing, isn't it?

A. Yes.

Q. We can see that in the rest of the letter he is asking for funds to be made available so that the Welsh Government can impose their own measures, even if those measures aren't imposed throughout the UK.

A. Yes.

Q. That was one of the points.

Another point just to touch on briefly -- in fact it's in the next paragraph of your report, so 135 -- is the question of borders. Again, it's something I mentioned right back when we were looking at those tables.

There was an issue, was there not, with whether

borders were properly something that were to be dealt with by Westminster government, as it were, as an international matter which was therefore reserved, or whether border -- access through borders was something that was a health matter that was therefore devolved?

A. Yes, and I think that's why, when the devolved administrations took action that related to the external border, it was variations in terms of health rules about quarantining or testing upon arrival and things like that, rather than -- certainly members of the devolved administrations at different times have complained that they were not -- because they were not able to control the arrival of people from outside the UK into their territories, it meant that the virus continually was re-seeding. And that's obviously something that was relevant in Scotland and Wales, but it's a particular issue in terms of Northern Ireland, given the open border with Ireland, and there was not just frustration about -- it wasn't so much frustration about jurisdictional competence, but the arrangements with the Republic and whether they could get the information they felt they needed, for example from arrivals who were coming to Ireland and then travelling on to Northern Ireland, they felt not being able to access that information caused them problems.

Q. Yes.

Then finally, Professor, a point which you address in a little detail in your report, but I'm just going to ask you a few questions about it now. It takes us back to the point you were making earlier about the elision between the UK and England. We talked about it earlier in the narrow context of SAGE, but I think you hinted at that stage that it's a broader question, and you certainly describe it in your report as being a broader issue and you refer, for example, to Ofcom talking to broadcasters --

A. Yes.

Q. -- about whether they had got their message straight about whether particular measures were focusing on the UK or in England, but you go on to say that the government, or the UK Government itself, made similar mistakes and was guilty of referring to the UK when it really meant England.

A. Yeah. So I coded all the daily press conferences, the printed pre-prepared material that's available online, you can analyse it to see whether the UK Government clarifies when something about the UK is clarified as being about the UK, or when something that applies only to England --

Q. Sorry, just I think you need to slow down --

A. I'm getting excited again.

Q. -- a little bit more again.

A. When something that applies only to England is clarified as such, and in the first two months this almost never happened. Whoever was the spokesperson of the day typically did a better job in clarifying when a UK-wide issue was indeed UK-wide, but that's often because the UK-wide issue was information about data and so they were clarifying that it was UK-wide data.

Almost never in the first two months did they clarify when an England-only issue applied only to England, and in fact I can find, in all of the daily press conferences, only one instance in late May of 2020 when I think it was Matt Hancock clarified, "These are rules that apply only to England, and this is what the rule is in Scotland, and this is what the rule is in Wales, and this is what it is in Northern Ireland".

Sometimes, in a handful of situations, the spokesperson would say, "These rules apply only to England, the devolveds have their own rules". Right? But persistently you get this failure to clarify that changes to rules about the re-opening of car showrooms or the re-opening of offices or bike voucher schemes -- the report lists about 20 different types of policies that it talks about -- never once clarifies that those

were changes or policies that applied only to England.

And that's important because a lot of what they were talking about had an impact on behaviour. They wanted citizens to change their behaviour, but when the rule applied only in England, it was only English residents whose behaviour would need to change, and that wasn't clarified at any point, and it led to confusion on the part of electorates in Scotland, Wales and Northern Ireland, and it meant that the media picked up those statements and ran with them, and also didn't clarify what applied to England alone and what applied to Scotland, Wales and Northern Ireland; and so bad was the lack of clarity that Ofcom got involved and Ofcom issued three different kind of statements about media reporting on Covid, and the first two are urging for more clarity about medical matters, but the third one talks about the representation of diversity across the UK and urges broadcasters and print journalists to be clear when a rule or a change applies only to a particular part of the UK.

There was a chronic lack of clarity from the UK Government about when it was speaking on -- with its England, government of England hat on, and when it was acting or speaking with its UK Government hat on.

Q. If I may, in conclusion, just to round off this point,

Professor, just to provide one illustration of this problem, if we can look at one last document, please. It's INQ000216525. This is a -- it's similar to other documents we've seen, because it's a read-out, an email describing one of these calls, Michael Gove's calls with the devolved ministers.

It's an email that's written not at Westminster this time, it's in Cardiff, in Mark Drakeford's office, I think, but we can see this is -- so this is in July 2020 that Michael Gove has told them about "the next chapter in our plan to rebuild document", and we see that -- and I'm looking in the third paragraph down where it says "MG" -- that they say, well, they'd actually received it 15 minutes before the meeting.

Then if we could zoom back into the main part of the document, please, that the FM, that's Mr Drakeford, first of all he says he's only had time for a quick scan of the document, then he says it mixes up UK and England in a number of places, and he explains where, and then he once again:

"Plea for the clarity that when the PM speaks he makes clear when the actions he's announcing are England-only measures."

Then a couple of paragraphs down he picks up on another strand of all this, which is to say, "Well,

actually our message is not the same", and at that point Boris Johnson was encouraging people to go back to work, and we see Mark Drakeford saying, "We're keen to maintain home working because of its benefits in reducing risk of transmission", and there were other examples, were there not, where the devolved governments declined to adopt Westminster government messaging?

A. Yes.

MR O'CONNOR: Professor, thank you very much indeed. Those are all my questions. There are just going to be five minutes or so, I think, of questions from one of the other barristers.

LADY HALLETT: Ms Shepherd.

Questions from MS SHEPHERD

MS SHEPHERD: Thank you, my Lady.

Professor Henderson, I act on behalf of Covid-19 Bereaved Families for Justice Cymru. I've got two questions to ask you, and they are on disparate topics, but the first one relates to border control.

If we could have up on the screen, please, INQ000083851, on the front page we can see there that these are the minutes of a COBR meeting held on 12 October 2020.

If we could turn, please, to page 7, at paragraph 11 of page 7 the First Minister of Wales, who we know is

Mark Drakeford, raises a number of points. The fifth line down, it is said that he was disappointed that the travel restrictions from parts of England to Wales remained subject only to guidance as opposed to enforceable restrictions. It goes on to say that the ability for cross-border travel between areas of England with high infection levels and Wales left people situated within medium and low areas of infection in Wales susceptible to increased risk.

As you discussed earlier, we know from your report that all four nations issued their own regulations to restrict international travel. My question is this: were internal border restrictions between England and Wales a matter for the Welsh Government, the UK Government or both?

A. Yeah, it's an interesting question, and one probably -- that particular phrasing of it is probably best put to a constitutional lawyer. But one thing we do know is that the -- if we look on the website of the Senedd, they have a list of all the regulations and restrictions that they approved during the pandemic, and they have a handy little table that locates the parent Act from which they think they have the authority to make that regulation or that restriction. And in the case of the restrictions that were made just a few days later,

I think this was 12 October and then on 16 October there were restrictions made for people travelling from areas where there was higher rates of illness to areas inside Wales, not just in terms of England, it's clear that they felt they had the authority to do this because of the Public Health (Control of Disease) Act 1984, and particularly they were drawing on section 2A of the Act and section 45, and I think it's -- three different sections, three different parts of section 45, and then the last fourth one is section 45R, which says that they don't have to lay that before the Senedd, they can just issue the regulation.

So there was one in October, there was another one in December. So certainly they felt they had the authority, as a result of the powers that they had by virtue of the Public Health (Control of Disease) Act 1984 to make that change.

It's noteworthy that no other devolved administration made that change, but I think schedules 18 and 19 of the Coronavirus Act give similar powers to Northern Ireland ministers and Scottish ministers.

The only thing I would say is that we know this was not -- this was a controversial regulation. Erecting internal borders within the union was highly

controversial, and for the most part one's view of the union and one's understanding of the union kind of helps us to understand how someone might react to it.

So those in the devolved administrations, certainly those who want constitutional change or greater powers for the devolved administrations were generally more satisfied with it, but on the more unionist side of things there was deep discontent with the establishment of internal borders.

Q. Thank you.

Then my next question is: at paragraph 93 of your report -- I'm not suggesting we bring it up on the screen -- you discuss how the Joint Biosecurity Centre was integrated with Public Health England into the UK Health Security Agency.

What was the impact of the JBC being subsumed into UKHSA on intergovernmental working?

A. Well, the most obvious change is that its minutes were no longer available for me -- for anyone to read, me included. So there is some lack of clarity. But if I had to summarise the effect of that change, it would be that the JBC, which had worked on the principle of parity of esteem and horizontal -- good horizontal intergovernmental working then became subsumed into an organisation, although it had "UK" in its name, was

fundamentally concerned more with England than with the UK as a whole.

MS SHEPHERD: Thank you.

Thank you, my Lady.

LADY HALLETT: Thank you very much, Ms Shepherd.

Thank you very much, Professor Henderson. I hope you don't get teased by family and friends for getting excited about JMCs, but you've been extremely helpful, thank you. And I think you've travelled down from Scotland to be with us today?

THE WITNESS: I did, I did.

LADY HALLETT: Well, thank you for making the journey.

THE WITNESS: Thank you very much.

(The witness withdrew)

LADY HALLETT: 10 o'clock tomorrow?

MR O'CONNOR: My Lady, yes.

LADY HALLETT: Thank you very much.

(4.30 pm)

(The hearing adjourned until 10 am on Tuesday, 10 October 2023)

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