

Monday, 9 October 2023

1
2 (10.30 am)
3 **LADY HALLETT:** Mr Keith.
4 **MR KEITH:** Good morning, my Lady.
5 We propose to start today's evidence, my Lady, with
6 the evidence of Professors Tom Shakespeare and
7 Nick Watson, please.
8 **PROFESSOR THOMAS SHAKESPEARE (affirmed)**
9 **PROFESSOR NICHOLAS WATSON (affirmed)**
10 **Questions from LEAD COUNSEL TO THE INQUIRY**
11 **MR KEITH:** Professor Shakespeare, could you commence,
12 please, by giving your full name.
13 **PROFESSOR SHAKESPEARE:** So, I'm Professor Thomas William
14 Shakespeare and I am professor of disability research at
15 the London School of Hygiene and Tropical Medicine .
16 **MR KEITH:** Thank you. And, Professor Watson, you too.
17 **PROFESSOR WATSON:** I'm Nicholas Watson and I'm professor of
18 disability research at the University of Glasgow.
19 **MR KEITH:** You have been both been good enough to produce
20 a joint report to this Inquiry on structural
21 inequalities and disability. And there we have it,
22 INQ000280067.
23 At the bottom of the page, of that first page,
24 professors, if I can address you collectively, have you
25 provided confirmation of the accuracy and the substance

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1 **PROFESSOR SHAKESPEARE:** Yes.
2 **PROFESSOR WATSON:** Yes, they have.
3 **MR KEITH:** Right.
4 Gentlemen, whilst you give evidence, please if you
5 could remember to keep your voice up and speak as slowly
6 as you humanly can in order to aid our stenographer. If
7 I ask a question the meaning of which is not clear,
8 please don't hesitate to ask me to put the question
9 again.
10 We have, in the interests of transparency, discussed
11 the way in which you are proposing to give your
12 evidence. One of you, you've had a think beforehand,
13 will go first in answering the particular topic that
14 I raise, and if the other then wishes to add an answer
15 or add some explanatory further comment in relation to
16 that topic, then of course you'll do so.
17 The report commences on page 3 with this statement,
18 which I might observe would, I hope, be taken to be
19 a statement of the obvious:
20 "The potential for disabled people to be at higher
21 risk of harm from Covid-19 was well understood before
22 the pandemic took full effect."
23 You refer in the report thereafter to two particular
24 pieces of learning, one from the US Centers for Disease
25 Control, but in your joint opinion, was it obvious that,

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1 of your joint report?
2 **PROFESSOR WATSON:** We have, yeah.
3 **MR KEITH:** And the declaration is dated 21 September 2023.
4 Can I turn, please, to your professional
5 qualifications.
6 Professor Shakespeare, you've told us that you are
7 professor of disability research at the London School of
8 Hygiene and Tropical Medicine. Have you written
9 extensively on the issues of disability, development and
10 bioethics for many years now.
11 **PROFESSOR SHAKESPEARE:** I have. I got my PhD in 1995, and
12 since then I've written mainly about Britain and
13 disabled people's experience.
14 **MR KEITH:** Thank you.
15 Professor Watson, you are, as you have told us,
16 Chair of Disability Studies and Director of the Centre
17 for Disability Research. In Glasgow, the University of
18 Glasgow, have you also written for many years
19 extensively on a range of disability issues?
20 **PROFESSOR WATSON:** Yes.
21 **MR KEITH:** Do those issues, for both of you, cover obviously
22 the issue of disability but, in your case, disability in
23 childhood, social care, social support for disabled
24 people, disabled young people and public service reform
25 and poverty?

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1 in the face of a viral pandemic, both the pandemic and
2 the response of the government, the response of any
3 government, would be likely to have a disproportionate
4 impact upon disabled people?
5 **PROFESSOR SHAKESPEARE:** Yes, it was. We feel from the
6 evidence that disabled people not only have a primary
7 vulnerability, not all but some, a primary vulnerability
8 to a SARS-like infection, but they also have a narrow
9 margin of health, and are more likely to be in
10 a situation of deprivation.
11 **MR KEITH:** Do you in fact identify in your report five
12 separate areas in which there was potential -- and the
13 potential, as you've said, must have been well
14 understood -- for greater vulnerability and impact?
15 **PROFESSOR SHAKESPEARE:** Yes. Yes, we do.
16 **MR KEITH:** Let us see whether we can identify each of them,
17 drawing the threads together from your report.
18 So firstly, in terms of vulnerability, do disabled
19 people suffer from a greater vulnerability in terms of
20 their overall health?
21 **PROFESSOR SHAKESPEARE:** Not all, but some certainly, and
22 particularly people with intellectual disability or who
23 are older would be more vulnerable to an infection of
24 this kind.
25 **MR KEITH:** Secondly, is there a greater vulnerability in

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1 terms of clinical vulnerability, that is to say
 2 a propensity to become infected, to be vulnerable to the
 3 virus itself?
 4 **PROFESSOR SHAKESPEARE:** For some people, not for all.
 5 Particularly for people living in congregate living
 6 situations, who are more likely to be older or disabled,
 7 they would, by virtue of their proximity to each other.
 8 But also people who have suppressed immune systems as a
 9 side effect of their primary condition would be more
 10 likely to become infected and therefore become ill.
 11 **LADY HALLETT:** I'm sorry, Professor, I missed the word, and
 12 I think the stenographer did too: living in something
 13 situations?
 14 **PROFESSOR SHAKESPEARE:** Sorry, congregate living situations.
 15 **LADY HALLETT:** Congregate.
 16 **PROFESSOR SHAKESPEARE:** So, many -- certainly older people
 17 but also people with intellectual disability, mental
 18 health conditions may live together. It might be not
 19 necessarily an institution, which would be the past
 20 experience, but more congregate than most of us would
 21 live in.
 22 **MR KEITH:** Professor Shakespeare, whilst you give evidence,
 23 could I ask you to go a little more slowly. These are
 24 important, and well, scientific issues in part, and it's
 25 very important that we understand what you have to say.

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1 to show that disabled people face discrimination when
 2 trying to access healthcare.
 3 **PROFESSOR SHAKESPEARE:** But -- can I add to that? -- in
 4 addition, some disabled people, not all, have higher
 5 needs for healthcare, whether that's a physical
 6 healthcare or psychiatric healthcare, and therefore if
 7 their primary physician is, as it were, diverted, they
 8 would be at some risk.
 9 **MR KEITH:** And although, Professor Watson, you used the word
 10 "discrimination", in this context, we're examining, are
 11 we not, objectively, a lack of access to health and care
 12 resources?
 13 **PROFESSOR WATSON:** Yes.
 14 **MR KEITH:** Is your point that some disabled people, for
 15 whatever reason, may encounter a greater lack of access
 16 to the resources that are required in order to be able
 17 to combat the virus?
 18 **PROFESSOR WATSON:** Yes.
 19 **MR KEITH:** All right.
 20 Then lastly, do you identify this last, fifth, area,
 21 which concerns the general impact, which you say is
 22 disproportionate, of the pandemic control measures which
 23 the government brought into effect in order to combat
 24 the virus?
 25 **PROFESSOR SHAKESPEARE:** I mean, I would say, from

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1 The third area that you identify in your report is
 2 that of the greater risk of infection on account of the
 3 socio-economic conditions of some disabled people, so
 4 that is to say the greater risk of infection from their
 5 housing or from general deprivation.
 6 Professor Watson, do you want to agree with that
 7 proposition?
 8 **PROFESSOR WATSON:** Yes, I think so. I think for some
 9 disabled people, they -- I mean, Tom's talked a lot
 10 about how disabled people can be vulnerable to SARS-like
 11 viruses, but disabled people can be made vulnerable to
 12 SARS-like viruses as well, and I think that what we have
 13 seen here is that, through structural inequalities,
 14 we've placed disabled people in a position where they're
 15 more at risk, both of acquiring a SARS-like virus but
 16 also of not responding as well to a SARS-like virus,
 17 should that happen.
 18 **MR KEITH:** Then fourthly, is there the issue of resources?
 19 So some disabled people may have a greater lack of
 20 access to the necessary health and care resources which
 21 would plainly be needed or required in order to be able
 22 to combat consequences of the virus?
 23 **PROFESSOR WATSON:** There's evidence of significant
 24 inequalities in access to healthcare for disabled
 25 people. I mean, there's a substantial body of evidence

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1 the evidence that we've seen, there would be the way in
 2 which, for many people, their social world is
 3 constructed by the state and voluntary organisations.
 4 I'm talking about particularly people with intellectual
 5 disability. And therefore, when all that has to be
 6 withdrawn, what can they do? They will stay at home and
 7 watch television. And then other people, who -- the
 8 nature of the pandemic control measures, there were
 9 a certain number of people who were, as it were, given
 10 priority in shopping, but then we excluded from a lot of
 11 other people, and -- things like social distancing, if
 12 you're visually impaired, it's impossible for a guide
 13 dog to understand what is necessary. So all of those
 14 aspects would be more difficult.
 15 **PROFESSOR WATSON:** Sorry, I think also, moving things
 16 digitally online works for a lot of people, but
 17 obviously there was a lot of -- we point to the digital
 18 exclusion that disabled people are more likely to
 19 experience. So one of the responses to the Covid
 20 pandemic was to move things online. Well, if you're
 21 digitally excluded, then that greatly increases
 22 the disadvantage experienced by those who are digitally
 23 excluded.
 24 **MR KEITH:** So you've both given some examples of the ways in
 25 which the government decision-making and

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1 the restrictions that it applied on the population as
 2 a whole would have had a disproportionate impact on
 3 disabled people. But the nub of it, in relation to this
 4 fifth category, is this, isn't it: that the government
 5 decision-making and the measures it imposed had a direct
 6 impact on the day-to-day lives of disabled people, who,
 7 because they are disabled, would therefore tend to be
 8 disproportionately affected by that impact?
 9 **PROFESSOR WATSON:** Yes.
 10 **PROFESSOR SHAKESPEARE:** Yes, that's true. And I would add
 11 to that, that disabled people were an afterthought in
 12 many of the provisions. They were not centrally thought
 13 about, and therefore they were excluded from measures
 14 that were taken to protect the general population.
 15 **MR KEITH:** By that, Professor, do you mean that when one
 16 examines the non-pharmaceutical interventions,
 17 the social restrictions, the lockdown orders, the stay
 18 at home orders, the social distancing and so on and so
 19 forth, the measures that were put into place, on their
 20 face they don't appear to pay any regard to this
 21 particular part of society?
 22 **PROFESSOR SHAKESPEARE:** Exactly, yeah.
 23 **MR KEITH:** All right.
 24 So that we are clear, however, as to the extent to
 25 which you were asked to look at this area by

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1 of people claiming benefits and people not claiming
 2 benefits, and therefore it would -- I think it would
 3 take the definition of disability in the single
 4 Equality Act, which is that physical or mental
 5 impairment, a substantial and long-term adverse effect
 6 on their ability to carry out normal day-to-day
 7 activities. That is what is meant.
 8 **MR KEITH:** Thank you.
 9 The survey postdated the pandemic, at least insofar
 10 as it drew upon figures from 2020 to 2021. Is it
 11 possible to say, from the survey, or from your own
 12 researches, to what extent levels of disability have
 13 fluctuated in the course of the pandemic or as a result
 14 of the pandemic?
 15 **PROFESSOR SHAKESPEARE:** That would be supposition on our
 16 part, we don't have that data.
 17 **MR KEITH:** All right.
 18 **PROFESSOR WATSON:** I don't think that these data would be
 19 sensitive enough to pick that up, but I think the --
 20 there is a possibility that we could look at that.
 21 **MR KEITH:** For those of state pension age, 46% reported
 22 a disability, and the figure for those of working age
 23 was 21%, the figure for children was 9%, and 24% of
 24 females reported a disability compared to 20% of males.
 25 Did those figures for or based upon the criteria of

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1 the Inquiry, we didn't ask you, in fact, to look at
 2 the actual nature specifically of the government
 3 response and see to what extent the needs of disabled
 4 people were expressly considered?
 5 **PROFESSOR SHAKESPEARE:** We cannot comment on that, we
 6 haven't studied it.
 7 **MR KEITH:** Thank you very much. Well, that's very clear.
 8 Can we now turn, please, to some of the figures that
 9 you've produced, very helpfully, at paragraph 3 of your
 10 report.
 11 The Department for Work and Pensions produced
 12 a survey, the Family Resources Survey. Did it estimate
 13 that in 2021, 22% of the United Kingdom's population
 14 reported a disability?
 15 **PROFESSOR SHAKESPEARE:** Yes, it did.
 16 **MR KEITH:** And what was meant in that survey by "reported
 17 a disability"? The Inquiry has seen, and we'll come to
 18 this tomorrow, some ONS data, both by way of statistical
 19 material and also what's called an opinions and
 20 lifestyle survey, that those who are disabled have
 21 the ability to be able to report whether they are
 22 disabled a little or disabled a lot.
 23 What sort of reporting structure was the foundation
 24 for this survey?
 25 **PROFESSOR SHAKESPEARE:** Well, that would have been a survey

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1 age or sex or occupation vary by jurisdiction?
 2 **PROFESSOR SHAKESPEARE:** I think that, generally speaking,
 3 people in Scotland and Wales tend to have a higher rate
 4 of disability than people in England, because disability
 5 is related to deprivation, there's a strong poverty
 6 gradient, and therefore you can see that Wales has got
 7 the highest figure.
 8 In this statistics Scotland has got the lowest, but,
 9 you know, there are others which would put it higher.
 10 **PROFESSOR WATSON:** I think that there's a huge variation.
 11 No one knows -- when this report came out, lots of
 12 people had been speculating as to why Wales has such
 13 a high figure. But no one really knows, because it
 14 could be age, it could be -- it will be a mixture of
 15 age, poverty and other -- industrial -- legacies of
 16 industrial injuries and things.
 17 **MR KEITH:** Although we didn't ask you in the report to
 18 address this issue, are you able to say how these
 19 figures compare to other comparable Western European
 20 countries?
 21 **PROFESSOR SHAKESPEARE:** The trouble is, I'm sorry to
 22 disappoint you, but people used a different definition
 23 of disability. I mean, Britain has got the highest
 24 levels of disability in Europe, but that may be
 25 an artefact of the way that we count disability.

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

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

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

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

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

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

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

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

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

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

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

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

11 **MR KEITH:** Because they are more vulnerable?

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

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

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

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

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

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

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

25 **PROFESSOR SHAKESPEARE:** That is statistically correct, yeah.

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

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

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

14 Is that a significant aspect of disability?

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

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

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

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

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

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

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

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

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1 condition --

2 **PROFESSOR SHAKESPEARE:** Yes.

3 **LADY HALLETT:**

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

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

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

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

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

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

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

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

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

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1 being poorly understood, that are specific to their
2 impairment.
3 **MR KEITH:** You then turn to the issue of discrimination, and
4 you make the general proposition, you express the
5 general opinion that despite over 20 years of
6 antidiscrimination legislation, disabled people in the
7 United Kingdom continue to face disadvantage compared to
8 their non-disabled peers.

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

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

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

22 **PROFESSOR SHAKESPEARE:** 16.

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

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

3 **PROFESSOR WATSON:** There was concern about the impact of
4 changes in welfare spending, and this was expressed in
5 2000 -- this culminated in the Inquiry published in 2016
6 that you refer to.

7 **MR KEITH:** In its concluding observations, dated
8 3 October 2017, did the UN Committee consider, amongst
9 a myriad of other issues, and I should say there were
10 some areas in which it commended the United Kingdom for
11 the positive aspects of its response, as well as
12 addressing and identifying principal areas of concern,
13 but one of the areas, in paragraph 28 in fact, that the
14 committee expressed concern about was whether, bluntly,
15 the government was sufficiently considering the likely
16 impact on persons with disabilities of emergencies?

17 **PROFESSOR WATSON:** Yes.

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

21 **PROFESSOR WATSON:** Yes.

22 **PROFESSOR SHAKESPEARE:** Yes, it is.

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

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

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

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

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

16 **PROFESSOR WATSON:** And the optional protocol as well.

17 **MR KEITH:** I was going to come to that.

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

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

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1 reliable data disaggregated, that is to say addressing
2 disability?

3 **PROFESSOR SHAKESPEARE:** Yes, it was.

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

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

18 **MR KEITH:** All right.

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

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

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1 non-disabled people?
 2 **PROFESSOR WATSON:** Yes.
 3 **MR KEITH:** And there are variations also in relation to
 4 levels of pay and whether or not the occupation is part
 5 or full-time?
 6 **PROFESSOR WATSON:** Yes.
 7 **MR KEITH:** Deprivation. Were and are disabled people as
 8 a group in a weakened situation relative to non-disabled
 9 people in the United Kingdom on account of the degree of
 10 deprivation that they encounter?
 11 **PROFESSOR WATSON:** Yes.
 12 **MR KEITH:** Do you provide figures in relation to the poverty
 13 rate for disabled adults and disabled adults in working
 14 age families?
 15 **PROFESSOR WATSON:** Yes.
 16 **PROFESSOR SHAKESPEARE:** Yes, we do.
 17 **MR KEITH:** All right.
 18 I'm not going to ask you questions about the links
 19 between poverty, morbidity and mortality, because that
 20 is not at the core of the Inquiry's work. But may I ask
 21 you this, professors: again, was this information,
 22 that's to say the levels of deprivation and the links
 23 between poverty, deprivation, housing and, in the
 24 context of disabled people, morbidity and mortality,
 25 well known to government?

25

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

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

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

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1 of hate crime and so-called "mate crime", where the
 2 person who's providing the care for disabled people can
 3 become the perpetrator of the hate crime towards them.
 4 So I think there's a need to -- this is well
 5 recognised, that disabled people are often subject to
 6 such crimes, and that locking people down in that area
 7 is one that I think where there was significant risk and
 8 should have been --
 9 **PROFESSOR SHAKESPEARE:** I think disabled women were twice as
 10 likely to experience sexual assault in a given year than
 11 non-disabled women. That's very stark.
 12 **MR KEITH:** So that we are clear about the position,
 13 the point that you make, jointly, is that stay at home
 14 orders would, of course, have a tendency to increase
 15 the vulnerability of disabled people, insofar as they
 16 may be subject to domestic violence?
 17 **PROFESSOR WATSON:** Yes.
 18 **PROFESSOR SHAKESPEARE:** A small minority, it certainly
 19 would.
 20 **MR KEITH:** Yes.
 21 Can we then turn, please, to the issue of access to
 22 health and social care. Without engaging in polemic
 23 debate about the merits or demerits of austerity, is it
 24 clear that there have been reductions, objectively, in
 25 the overall levels of funding for disabled persons over
 29

1 or lesser extent to assist.
 2 In the run-up to the pandemic, were there any
 3 changes in the capacity of the third sector or its
 4 ability to be able to provide services and resources
 5 where the state could not?
 6 **PROFESSOR WATSON:** Well, the evidence is that there have
 7 been significant cuts to the third sector by sort of
 8 2017 and that the cuts are greatest to those third
 9 sector agencies that are working in the areas of highest
 10 social deprivation. So actually it was -- you know, the
 11 inverse care law, where more support was needed there
 12 was more likely to be cuts to the services that provide
 13 care in those areas.
 14 I think that these have reduced the capacity of
 15 local authority -- of services to provide social care
 16 and support to people in those areas. And I think one
 17 of the things that's really important here is -- I know
 18 we're not talking about the pandemic, but actually
 19 the third sector played a really significant role in
 20 the response to the pandemic, and actually we'd already
 21 set up, so we were disadvantaging -- these third sector
 22 organisations that were working in areas of high social
 23 deprivation were the ones that were finding it hardest
 24 prior to the pandemic to keep going.
 25 **LADY HALLETT:** And you mean by the third sector, just so
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1 recent years?
 2 **PROFESSOR WATSON:** Yes.
 3 **PROFESSOR SHAKESPEARE:** I would say that fewer people are
 4 getting support from the state. So it's the numbers.
 5 For any individual, it might not have gone down, but the
 6 numbers of people being supported have certainly gone
 7 down.
 8 **MR KEITH:** Were those reductions in the levels of funding,
 9 were they prevalent across society? So are they
 10 reflections of reductions in levels of funding in
 11 central government or at local authority level or in
 12 terms of access to the third sector? Was it
 13 a particular area or was it generally across the board?
 14 **PROFESSOR WATSON:** Generally across the board, I think. But
 15 I think there's a general cut in the funding of
 16 social care, particularly so in England, and a reduction
 17 in the spending -- and of course social care is
 18 delivered either by the local authority or by
 19 non-statutory agents such as the health authorities, or
 20 through the third sector or private sector. So cutbacks
 21 would have been -- so cuts in funding was apparent to
 22 all -- across all of those sectors.
 23 **MR KEITH:** As there were reductions in levels of funding,
 24 presumably the third sector, that's to say voluntary and
 25 community sector organisations, would step in to greater
 30
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1 everybody watching knows? By third sector you mean?
 2 **PROFESSOR WATSON:** Third sector I mean voluntary sector
 3 organisations, not provided by statutory funding.
 4 **MR KEITH:** I think I described it to you as voluntary and
 5 community sector organisations.
 6 **PROFESSOR WATSON:** Yeah, yeah.
 7 **MR KEITH:** So non-state bodies --
 8 **PROFESSOR WATSON:** Non-state bodies, yeah.
 9 **MR KEITH:** -- that operate and work in this area and provide
 10 help.
 11 **PROFESSOR WATSON:** Yeah.
 12 **PROFESSOR SHAKESPEARE:** And because there were cuts that
 13 operated through local authorities -- they are
 14 commissioning care, either in care homes or domiciliary
 15 care -- they can't pay as much, so the wages of staff
 16 has decreased and therefore there are fewer staff, and
 17 therefore more, as it were, unmet need at the frontline.
 18 And that's prior to the pandemic, that's by 2018.
 19 **MR KEITH:** So what you're saying in essence is that
 20 the viral pandemic and the impact, of course, of
 21 the government's necessary steps to combat it had a huge
 22 impact on the third sector, and it was the third sector
 23 which was already under very real stress and strain even
 24 before the pandemic?
 25 **PROFESSOR SHAKESPEARE:** Absolutely. And, as
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1 Professor Watson has just said, would go on to play
2 a really important part during the pandemic.
3 **MR KEITH:** Yes, and I know my Lady will be looking at that
4 particularly in the course of the healthcare and
5 care sector modules later.

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

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

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

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

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

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

3 **MR KEITH:** Thank you very much.

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

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

9 Questions from MS MORRIS KC

10 **MS MORRIS:** Thank you, my Lady.

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

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

21 **PROFESSOR SHAKESPEARE:** Yeah.

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

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

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

13 **PROFESSOR WATSON:** Yes.

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

19 **PROFESSOR WATSON:** Yes.

20 **PROFESSOR SHAKESPEARE:** Exactly.

21 **MR KEITH:** All right.

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

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1 **PROFESSOR WATSON:** Correct.

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

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

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

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

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

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

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

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

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

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

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1 **PROFESSOR SHAKESPEARE:** Simpler phrasing.

2 **PROFESSOR WATSON:** Simpler phrasing.

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

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

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

11 **PROFESSOR SHAKESPEARE:** Fewer words, yeah.

12 **MS MORRIS:** Simple fonts.

13 **PROFESSOR SHAKESPEARE:** Yeah.

14 **MS MORRIS:** Easier to follow instructions.

15 **PROFESSOR SHAKESPEARE:** Yeah.

16 **MS MORRIS:** Okay.

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

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

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

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

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

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

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

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

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

2 **PROFESSOR WATSON:** Well, I'm not sure, I don't know.

3 I mean, GPs or other means of ...

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

8 **PROFESSOR SHAKESPEARE:** Very much so.

9 **PROFESSOR WATSON:** Yeah.

10 **MS MORRIS:** Thank you very much indeed.

11 Thank you, those are my questions.

12 Thank you, my Lady.

13 **LADY HALLETT:** Thank you, Ms Morris.

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

17 **LADY HALLETT:** Thank you very much indeed, professors.

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

22 **PROFESSOR WATSON:** Thank you very much.

23 **PROFESSOR SHAKESPEARE:** Thank you.

24 **(The witnesses withdrew)**

25 **LADY HALLETT:** Perhaps I'll --

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1 **MR KEITH:** Would my Lady rise for a few moments?
 2 **LADY HALLETT:** I think I have been asked to take the morning
 3 break now.
 4 **MR KEITH:** So be it.
 5 **LADY HALLETT:** So I think I shall return at 11.40.

6 (11.27 am)

7 (A short break)

8 (11.40 am)

9 **LADY HALLETT:** Mr Keith.

10 **MR KEITH:** My Lady, the next witness is the chief executive
 11 officer of Disability Rights UK, Kamran Mallick.

12 **MR KAMRAN MALLICK (affirmed)**

13 **Questions from LEAD COUNSEL TO THE INQUIRY**

14 **MR KEITH:** Could you please commence by giving the Inquiry
 15 your full name?

16 **A.** My name is Kamran Mallick.

17 **Q.** Mr Mallick, thank you very much for attending and also
 18 for providing a witness statement, INQ000280035, which
 19 I believe you signed on 21 September 2023.

20 Mr Mallick, whilst I ask you questions, could you
 21 please remember to keep your voice up and go as slow as
 22 you humanly can, in order to aid our stenographer.

23 Are you the chief executive officer of Disability
 24 Rights UK?

25 **A.** Yes, I am.

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1 is like for disabled people around the country, to
 2 learn, and to then advocate to bring about equality,
 3 justice and equity for disabled people in our country.

4 We also play a role in making sure that disabled
 5 people themselves have access to quality information
 6 about their rights and equality.

7 **Q.** Are you in fact, as a DPO, a disabled people's
 8 organisation, therefore majority led, directed, governed
 9 and staffed by disabled people?

10 **A.** Yes, we are.

11 **Q.** In terms of the work that you do to listen to disabled
 12 people and disabled people's organisations, you
 13 obviously receive letters, you receive emails and calls,
 14 but do you also have in place and do you operate
 15 an independent living helpline, a student helpline, and
 16 also a group which you manage called "Our Voices" group,
 17 which is a meeting of a variety of people, CEOs and
 18 staff from other DPOs across England?

19 **A.** Yes, we do.

20 **Q.** All that is of course aimed, is it not, at the state, at
 21 the government, in order to be able to communicate
 22 the views and concerns of your members and the other
 23 groups to government in order to pursue the aims that
 24 you believe are required to be raised with them?

25 **A.** It is. So we use all of those methods to understand

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1 **Q.** Was Disability Rights UK founded in 2012, and is it
 2 a leading national disabled people's organisation?

3 **A.** Yes, it is.

4 **Q.** It has, no doubt, a number of functions, and carries out
 5 an enormous number of worthwhile tasks. Could you
 6 please, in outline, tell her Ladyship what in essence
 7 Disability Rights UK does, starting from the degree and
 8 the extent to which it engages with disabled persons and
 9 represents their voice?

10 **A.** Of course.

11 So the first thing I would just want to start with,
 12 my Lady, is that we refer to ourselves as a disabled
 13 people's organisation. We meet the United Nations
 14 definition of a disabled people's organisation, in that
 15 it's led by and in control and governed by disabled
 16 people. That differentiates us from the disability
 17 charities that exist in the country, so disabled
 18 people -- organisation like ours are run by and for
 19 disabled people.

20 We are a membership organisation. That means that
 21 we have individual disabled people as members of
 22 the organisation, and other local and regional disabled
 23 people's organisations up and down the country who are
 24 also members of us.

25 Our job is to listen to what's going on, what life

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1 what life is like for the vast numbers of disabled
 2 people around the country. We are not
 3 impairment-specific, so we look at all impairments, as
 4 well as people with long-term health conditions. And it
 5 is our role, kind of our job is to understand what life
 6 is like and where there are inequalities and what should
 7 be done about them, and then to take that position and
 8 advocate, lobby, influence people in positions of
 9 influence and power such as government.

10 **Q.** So, in short, you listen to the concerns of disabled
 11 people, you give them a voice, you take information from
 12 them and then you campaign with government and other
 13 bodies for work to be done and for improvements to be
 14 made?

15 **A.** Yes, that's correct.

16 **Q.** I think you have a substantial regional social media,
 17 with a very large number of followers from X, formerly
 18 known as Twitter, and during the pandemic you had over
 19 a million visitors to your website?

20 **A.** That's correct.

21 **Q.** All right.

22 During the pandemic, so that is to say between
 23 January 2020 and spring 2022, did you, by a variety of
 24 methods, seek to raise with the government issues faced
 25 by disabled people?

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

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

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

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

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

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

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

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

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

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

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

11 As a matter of coincidence, did you have arranged
 12 and therefore did you attend a short meeting on
 13 29 January 2020 with the Minister for Disabled People,
 14 Health and Work, Justin Tomlinson MP?

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

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

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

21 Q. All right.

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

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1 A. There was. So when --

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

4 A. Okay, yes.

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

6 A. Sure.

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

11 A. Yes, we were.

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

(Pause)

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

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

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

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1 conditions and older people."

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

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

10 **Q.** Geographical areas?

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

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

17 **A.** Yep.

18 **Q.** Ah, I see.

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

21 "Care homes are already stretched thin by
22 a pre-Brexit exodus of qualified, skilled workers."
23 They lack proper and meaningful advice.

24 And you say:

25 "The advice issued ... does not take full account of
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1 spread through the population. There was no debate
2 about lockdowns or stay at home orders or anything of
3 that sort, or society-wide restrictions.

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

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

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

20 **A.** Yes, yeah.

21 **Q.** All right.

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

25 **A.** Absolutely. And the way both care homes are structured
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1 the ease of transmission of this virus within confined
2 communities, relying too much on modelling for
3 influenza."

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

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

20 **Q.** The Inquiry has heard evidence that pre-pandemic the
21 government's strategy was based upon a historical
22 approach to influenza pandemics, and there was
23 a presumption that the influenza pandemic or, as in this
24 case, the coronavirus pandemic would break upon the
25 United Kingdom's shores and it would progress through,
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1 but also the care sector is much wider than just
2 care homes, people receiving care at home, in their own
3 homes, where you've got carers moving from home to home,
4 visiting different clients through the day. So there's
5 that increased risk of the infection being travel --
6 going from place to place just because of that nature.

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

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

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

16 **A.** Yes. Yeah.

17 **Q.** If I may say so, very prescient.

18 On that page, you refer, however, also to certain
19 particular areas of concern: funding for isolation
20 areas, advice to protect people giving and receiving
21 care, emergency support, the training of new care
22 workers, the stopping of attendances for benefits, which
23 you deprecate, but you welcomed the move to suspend
24 face-to-face personal benefit assessments, and
25 the general need to get money to people quickly and to
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1 reduce financial anxiety.
 2 So all more specific concerns that your group had.
 3 Did the government reply addressing each of those
 4 specific concerns or not?
 5 **A.** No, the government reply was incredibly disappointing.
 6 They only referred to -- the response really only talked
 7 about the benefits changes that they were making. They
 8 addressed none of the other concerns in their response
 9 to us.
 10 **Q.** Could we have, please, INQ000238515. The government was
 11 of course at this time -- the letter is dated 9 April --
 12 in the full face of the storm that was the pandemic, and
 13 may therefore be given some leeway in relation to its
 14 ability to be able to respond to correspondence.
 15 However, was the only issue that it actually sought
 16 to address at all in this letter the issue of the new
 17 guidance about claiming benefits and the introduction of
 18 the Employment and Support Allowance Regulations 2020?
 19 **A.** It was, yes.
 20 **Q.** Did it respond at all in relation to any of the other
 21 areas that I've asked you about, or in particular the
 22 massively important strategic issue of whether or not
 23 seeking to mitigate the impact of the virus, as opposed
 24 to controlling the virus, would have on the very
 25 vulnerable care home sector?

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1 respond and address the particular needs of disabled
 2 people?
 3 **A.** Without doubt. The fact that the minister sits within
 4 the DWP and therefore the remit of the minister is
 5 purely within the remit of what the DWP is about.
 6 And from our perspective, as a disabled people's
 7 organisation, the DWP is fundamentally about getting
 8 people off benefits, reducing the benefit bill, and
 9 getting people into work. That's the main focus that
 10 that department has had for many years, and that's the
 11 focus of the minister.
 12 When we meet with the minister and raise issues to
 13 do with housing or transport or health, the response
 14 will often be, "That's not within my remit, therefore
 15 I can't answer that question".
 16 The other issue within government is if you localise
 17 the response to disability and disabled people in one
 18 department, it then means that the rest of government
 19 has no oversight, has no onus to respond to how -- what
 20 they should be doing in order to affect disabled
 21 people's lives.
 22 **Q.** You refer to a unit in the Cabinet Office called
 23 the Disability Unit. The Cabinet Office is, of course,
 24 that part of central government which seeks to
 25 co-ordinate government matters, broker issues between

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1 **A.** No, so they didn't address any of those points
 2 specifically. They make general comments about how
 3 the government will do whatever it takes to support
 4 people.
 5 **LADY HALLETT:** Is the Minister for Disabled People, Health
 6 and Work based in the Department for Work and Pensions?
 7 **A.** Yes, they are, my Lady.
 8 **LADY HALLETT:** Ah, right.
 9 **MR KEITH:** In your statement, Mr Mallick, you raise, in
 10 fact, this issue, because you make the point at
 11 paragraph 90 -- perhaps we could have that paragraph up
 12 on the screen from the witness statement, which is
 13 INQ000280035, page 27 -- you make this very point, the
 14 same point that my Lady has made, which is that:
 15 "... the Disability Minister sits within the
 16 Department for Work and Pensions and has [therefore]
 17 a low profile in Government."
 18 You also make the point that:
 19 "There have been five different Disability Ministers
 20 since [you] joined [Disability Rights UK] in
 21 July 2017 ..."
 22 From your viewpoint, does it appear that,
 23 politically, the lack of a high profile for
 24 the disability minister has had an impact on the degree
 25 to which the government has, as you see it, been able to

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1 particular government departments, and plays
 2 a centralising role.
 3 Was there at one stage an expectation or a hope that
 4 the Disability Unit would increase the profile of
 5 disability-related issues in government?
 6 **A.** So we looked upon it as a potentially positive move,
 7 that by situating the Disability Unit within
 8 the Cabinet Office, centralising it, would have
 9 the ability to access other departments, ministers, and
 10 other people that we needed to speak to, and that
 11 actually we hoped that if a request came from
 12 the Disability Unit in the Cabinet Office, departments
 13 would feel compelled to respond. But our experience was
 14 not that way.
 15 **Q.** Before we look briefly at each of the areas that you
 16 raised with government, I omitted in fact to take you to
 17 an important part of your statement which concerns
 18 the figures that you provide for the numbers of disabled
 19 persons in the United Kingdom.
 20 Could we have, please, page 3, paragraph 6. Do you
 21 provide figures, in fact provided by the Department for
 22 Work and Pensions, based upon a family resource
 23 survey -- my Lady, that's the same survey to which
 24 Professors Shakespeare and Watson referred a few moments
 25 ago -- for the financial year 2020-21, which showed

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1 that:

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

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

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

17 **Q.** Right.

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

19 **Q.** Thank you.

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

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

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

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

18 **A.** Yes, it was.

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

25 **A.** Yes, we did.

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

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

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

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

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

25 So we were extremely worried that disabled people

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

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

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

15 **A.** Yes, we did.

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

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

23 **A.** Yes, we did.

24 **Q.** Did you have those two preliminary meetings?

25 **A.** We did, yeah.

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- 1 **Q.** In the event, did the government say that it intended to
2 have a number of DPO Forum meetings?
3 **A.** So the government said that these would be regular
4 meetings where the minister would be present. Ongoing,
5 yeah.
6 **Q.** There was a first DPO Forum meeting on 22 July, and
7 a second one on 27 August 2020. Did the minister,
8 Mr Tomlinson, attend the second meeting?
9 **A.** Erm ...
10 **Q.** If you'll take it from me, because I'm reading from
11 paragraph 48 of your statement, Mr Mallick.
12 **A.** Yep.
13 **Q.** Were meetings scheduled for 17 September 2020,
14 13 October 2020, 12 November 2020, and then again in
15 December 2020, January 2021 and February 2021?
16 **A.** Yes, they were, yeah.
17 **Q.** Did they all take place?
18 **A.** No, they did not. Many -- certainly at the latter end
19 of it many got cancelled, and the forum effectively
20 ended in 2021 with the final three meetings all being
21 cancelled.
22 **Q.** So the only two that took place were those two I've
23 mentioned in July 2020 and August 2020?
24 **A.** Yes.
25 **Q.** Was there any meeting again between the DPOs and the

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- 1 **A.** No, so they didn't take us up on that offer, no, from
2 memory.
3 **Q.** There was, I think, a suggestion from the government
4 that a meeting that had been due to take place on
5 18 February, this is 18 February 2021, would instead be
6 replaced by a series of smaller group conversations,
7 individual meetings, with DPO Forum members.
8 **A.** That's right.
9 **Q.** So there was no replacement of the wider --
10 **A.** No, there wasn't.
11 **Q.** -- significant DPO Forum structure?
12 Did you continue to write a variety of letters,
13 through, in fact, to the summer of 2022?
14 **A.** So we continued to raise issues as they were coming to
15 our attention. Any government announcements, any
16 guidance that was being released by government ongoing
17 we would be scrutinising that and making
18 representations.
19 **Q.** Was long Covid an issue which you drew particularly to
20 the government's attention?
21 **A.** Yes, we did, yeah.
22 **Q.** Did you publish in fact a number of articles relating to
23 long Covid --
24 **A.** We did.
25 **Q.** -- in the course of the pandemic? And did those

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- 1 government before May 2022?
2 **A.** Sorry, would you repeat the question.
3 **Q.** Yes. Did you have any meetings again between the DPOs,
4 the disabled people's organisations, and government,
5 between then, that's to say February 2021, and May 2022?
6 **A.** No, so they were -- the DPO Forum meetings were
7 discontinued, and so therefore there was no further DPO
8 meetings with the government. The ones that they had
9 set up.
10 **Q.** In your statement you suggest that, and this is
11 paragraph 50, the next meeting you recall between DPOs
12 and the government did not take place until May 2022.
13 As a result, there was no line of communication between
14 the DPO Forum and central government for around
15 18 months; is that correct?
16 **A.** That's correct, yes, yes.
17 **Q.** Nevertheless, you continued to write open letters and
18 letters directly to a number of government departments,
19 and you've set those out in the following few pages of
20 your statement.
21 Did you make an offer to Mr Tomlinson to meet with
22 the Disability Unit in the Cabinet Office every
23 two months?
24 **A.** Yes, we did.
25 **Q.** Did the government take you up on that offer?

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

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1 changes, so the thinking can be co-produced,
 2 co-designed.
 3 And it's about kind of ongoing conversations, so
 4 these are not consultations or meetings, these are
 5 ongoing processes, structured processes, where civil
 6 society is funded to engage with government. And
 7 what -- one thing we've always said to government is,
 8 when they bring in consultants, they will be required to
 9 pay for that, but when we bring disabled people in,
 10 we're expected to do it for free. And that's not
 11 acceptable, because what people are bringing is their
 12 lived experience. That, if brought into design and
 13 thinking, can fundamentally change the way we address
 14 issues like the pandemic but general inequalities in
 15 society.
 16 **Q.** It is obvious, Mr Mallick, that the pandemic and
 17 the government's response had massive impacts upon
 18 the day-to-day lives of disabled people. You've set out
 19 in your statement some of the broad areas where that
 20 impact was most obvious. Are they these: disabled
 21 people were obviously likely to be more clinically
 22 vulnerable, they were more vulnerable generally on
 23 account of socio-economic conditions, the pandemic and
 24 the government's response led to an abrupt
 25 transformation on their day-to-day lives, and there

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1 **LADY HALLETT:** Mr Mallick, could I go back to the point you
 2 made about the disability minister being in the
 3 Department of Work and Pensions. I can see how that
 4 could be difficult for you, particularly difficult, if
 5 that minister said, "And I don't deal with health and
 6 I don't deal with education", and I think you were
 7 suggesting that responsibility for disability ought to
 8 be with every government department.
 9 In another context, I have been urged to consider
 10 a minister responsible for resilience, so the idea being
 11 that if you put one specific person who has nothing else
 12 to do but think about that. I mean, I'm just wondering
 13 how you would suggest that the interests of disabled
 14 people and the concerns will be best taken into account.
 15 Is it one minister who understands that they deal with
 16 all the issues?
 17 **A.** So -- thank you. So I would say that, yes, having
 18 a disability minister is good and important, but it's
 19 the remit of that minister that's vital.
 20 **LADY HALLETT:** Yes.
 21 **A.** The remit should be cross-government and not isolated to
 22 one area of government, which is currently Department of
 23 Work and Pensions. It should be given a higher profile.
 24 I would be arguing that it should be part of
 25 the Cabinet, so that it's central to all thinking and

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1 were, lastly, before I come to the issue of mortality,
 2 very real problems in terms of their continued access to
 3 health and care support as a result of the pandemic and
 4 the government's response?
 5 **A.** Yes, we did, and we defined vulnerability as a situation
 6 someone finds themselves in, and that vulnerability is
 7 not inherent in being a disabled person or having
 8 a health condition, but actually the decisions that were
 9 being made and the situation that was being created was
 10 what was creating that increased vulnerability.
 11 **Q.** Then, of course, worst of all, and terribly, it became
 12 apparent, and the figures immediately establish this,
 13 that there was a much higher rate of mortality for those
 14 who were disabled?
 15 **A.** That's correct, yes.
 16 **Q.** There were reports from the ONS but also from Public
 17 Health England, in particular a report dated
 18 November 2020, which showed conclusively that the
 19 rate -- or the death rate, the risk of death, was
 20 a multiple of times higher for disabled persons than for
 21 the remainder of the population?
 22 **A.** That's correct, yes.
 23 **MR KEITH:** Thank you very much.
 24 Mr Mallick, thank you very much.

Questions from THE CHAIR

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1 all conversation, that the experiences of disabled
 2 people are being fed in. But it also relies on
 3 the government having structures in place to engage with
 4 a wider audience of disabled people, funded structures,
 5 that are ongoing, so that the minister is engaging with
 6 a group of people on an ongoing basis, they're not just
 7 trying to do something when a crisis hits, but actually
 8 just as a matter of course, and centralising it.
 9 **LADY HALLETT:** So the Disability Unit is in Cabinet Office?
 10 **A.** Yes.
 11 **LADY HALLETT:** And are you suggesting the minister ought to
 12 be within Cabinet Office?
 13 **A.** Yes. We think the minister should be centralised, and
 14 should be part of the government's Cabinet, so it raises
 15 the profile. It's currently, how we see it, a junior
 16 position, and in my time since 2017 at DR UK we have had
 17 a number of ministers come in and go, and therefore you
 18 get no continuity, and ministers will come in and have
 19 a flagship thing that they want to do to mark their time
 20 as minister, and then we kind of roll on to the next
 21 one.
 22 **LADY HALLETT:** Does the problem then come, if you're trying
 23 to run Cabinet Office, and you have other interest
 24 groups, for example a Minister for Children, a Minister
 25 for Women, a Minister for Equalities -- I mean, there is

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1 a limit, obviously, to how many ministers you can have
2 within Cabinet Office.
3 **A.** There is. I think disability is different because,
4 unlike some of the other ministers that you've just
5 mentioned, disability is across the board. Anyone
6 will -- could have a disability. I mean, I often say
7 anyone in this room at some point will experience what
8 it is to be a disabled person. It could be through
9 injury, health or just ageing process. And therefore
10 it's really important that the experiences and the
11 barriers and challenges that disabled people experience
12 are across government, because how we build our cities
13 and communities and structures and institutions should
14 be affected by that thinking, and the idea of inclusive
15 design, inclusive thinking. Because when you bring that
16 into your thinking across government, it benefits
17 everybody, not just disabled people. You create
18 a society that's truly inclusive for everybody.

19 **LADY HALLETT:** Thank you.

20 **Summary of questionnaire responses**

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

25 To summarise the material we received back,
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1 A third theme was the use of do not resuscitate, do
2 not attempt cardiopulmonary resuscitation notices,
3 DNACPRs, which my Lady will be looking at, of course, in
4 Module 3.

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

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

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

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

25 **(The witness withdrew)**

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

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

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

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

2 **MR KEITH:** Thank you.

3 **(12.28 pm)**

4 **(A short break)**

5 **(12.33 pm)**

6 **LADY HALLETT:** Ms Cecil.

7 **MS CECIL:** Yes, my Lady, may I call Professor Laia Bécaries.

8 **PROFESSOR LAIA BÉCARES (affirmed)**

9 **Questions from COUNSEL TO THE INQUIRY**

10 **MS CECIL:** Professor Bécaries, if you could just state your
11 full name, please.

12 **A.** Laia Bécaries.

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

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

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

24 **A.** That is correct.

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

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

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

17 For those following, the reference for that is
18 INQ000280059.

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

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- 1 But before we do so, can I just establish with you
2 the scope and limitations of your report. Okay?
3 The first is in relation to data and the datasets
4 that you rely on, and you explain that a significant
5 proportion of the underlying evidence that you rely on
6 is from government bodies and arm's length bodies. What
7 bodies are those?
8 **A.** So in 2017 the Government Equalities Office conducted
9 a very large, the largest, study on LGBTQ+ health and
10 social circumstances, so I referred to this in my
11 report. Public Health England has also commissioned
12 reports to ascertain the level of health amongst LGBTQ+
13 people. The Scottish Government has conducted reports,
14 and also voluntary sector and academics have conducted
15 reports.
16 **Q.** Thank you. I think you also refer to
17 the Scottish Government reports as well?
18 **A.** Yes.
19 **Q.** Generally your views within the report are expressed on
20 a UK-wide basis?
21 **A.** Yes, that's right. So, many of the data I have used
22 have sampled LGBTQ people across England, Scotland,
23 Wales and Northern Ireland, so yes, all the -- and where
24 not, I have used data or studies for particular devolved
25 nations.

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- 1 made clear where those facts and matters referred to in
2 the report are within your own knowledge and those that
3 are not; and that's correct, isn't it?
4 **A.** That's correct.
5 **Q.** Thank you.
6 Now, if I can just take us to the very beginning,
7 really, of your report, we've referred, as you've heard
8 me, to LGBTQ+. Can you just assist the Inquiry with
9 those definitions for each of those initials?
10 **A.** Yes. So LGBTQ+, it's a broad umbrella term that refers
11 to people who self-identify as lesbian, gay, bisexual,
12 trans, queer, or questioning, and the plus refers to
13 people who do not identify with any of the labels I've
14 just said but who do not identify as heterosexual or
15 cisgender either.
16 **Q.** It's often otherwise referred to as "and more"?
17 **A.** Yes.
18 **Q.** Just dealing with that population, is it fair to say at
19 the outset it's not a homogenous group?
20 **A.** That's right, it's very heterogeneous.
21 **Q.** Thank you. Now, you say in headline form that
22 inequalities for those groups is both stark and
23 long-standing, with worse health, healthcare and social
24 outcomes, and I'm going to go through and break that
25 down a little bit more with you.

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- 1 **Q.** Thank you.
2 You explain within each category that you identify
3 whether that data relates to a particular nation or not?
4 **A.** Yes.
5 **Q.** Thank you.
6 I just want to deal with, if I may, one difficulty
7 that you have encountered in terms of writing your
8 report and expressing your views, and that's on,
9 actually, an absence of data in terms of population
10 level studies; is that right?
11 **A.** Yeah, so we do not have a population level study that's
12 representative of the whole of the LGBTQ+ population in
13 the UK, but what we do have are very large social and
14 health surveys that are generalisable to the population,
15 the general population of the UK, and many of these
16 studies collect data on sexual orientation, very few on
17 gender identity. So we can analyse these large
18 representative studies that have collected data on
19 sexual orientation to understand and to assert whether
20 there are health inequalities for LGBTQ+ people. So we
21 have these surveys, but we do not have a survey
22 specifically for LGBTQ+ people.
23 **Q.** It's correct to say that the situation with regard to
24 data is even more limited with regard to both
25 Northern Ireland and Wales; is that right?

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

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

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

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

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

3 **Q.** Thank you.

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

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

12 **Q.** -- the heterosexual population?

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

15 **A.** That's right.

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

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

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

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

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

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

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

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

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

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

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

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

17 **A.** That's right.

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

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

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

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

3 **A.** That's right.

4 **Q.** Why is that, do you know?

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

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

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

25 **A.** That's right, yep.

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

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- 1 a wealth of material within your report. But the first
2 one is: to what extent are LGBTQ people likely to face
3 material disadvantage, in brief terms?
- 4 **A.** Yeah, so LGBTQ+ people are less likely to experience
5 material disadvantage. For example, I provide
6 an example of area deprivation, so they are more likely
7 than heterosexual or cisgender people to live in the
8 most deprived quintiles of England and Wales.
- 9 **Q.** Thank you. The second area is exposure to violence and
10 harm in the home, so domestic abuse or hidden harms
11 essentially. We've heard a little bit about that, but
12 are there increased risks to LGBTQ+ populations in their
13 homes?
- 14 **A.** Yes. So studies show a really high rate of exposure to
15 domestic violence, whether this is physical or emotional
16 or sexual or threat of violence, because of one's sexual
17 or gender identity.
- 18 **Q.** Thank you. And I think you give statistics within your
19 report of 44% of lesbian or bisexual women and 41% of
20 gay or bisexual men of having experienced domestic
21 violence or abuse for more than a year?
- 22 **A.** Yes.
- 23 **Q.** Thank you.
- 24 Another area that we will touch upon within Module 2
25 is that in relation to residential care, and very

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- 1 Now, leading on from health, I just wanted to touch
2 upon, if I may, access to healthcare. It's from
3 paragraphs 56 to 62 onwards, but seems to me to be
4 convenient to deal with it, if I may, with you now.
- 5 Can I just summarise that, because it's a mixed
6 picture, isn't it, within the LGBTQ+ community, and that
7 is that they are -- individuals are less likely to visit
8 a GP?
- 9 **A.** Yes.
- 10 **Q.** But more likely to access emergency services, often more
11 likely to use NHS online and telephone services, comes
12 from some Scottish studies, and more likely to have
13 accessed or tried to access public healthcare overall;
14 is that right?
- 15 **A.** Yes, I think because LGBTQ+ people experience exclusion
16 from health and social care, they are less likely to
17 seek primary care, so they're less likely to access
18 their GP. Then their health complications worsen and so
19 then they have to seek emergency care. So that's why
20 they are different in the seeking behaviour.
- 21 **Q.** Thank you, that's helpful.
- 22 Now if I may turn, then, leave healthcare to one
23 side for a moment, just turn very briefly to
24 pre-existing social and economic inequalities, I'm just
25 going to touch on four of those if I may. There is

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- 1 briefly, if I may summarise that for you, you explain
2 a little bit like in terms of seeking assistance and
3 help with regard to public health services, that
4 individuals within that population are more likely to
5 delay entering residential care, with the consequence
6 that when they do enter residential care they're likely
7 to have more complex needs at the point of entry, and
8 that's at paragraph 52. Is that right?
- 9 **A.** Yes, that's right. So they are more likely to delay
10 care because of experienced discrimination in the past
11 and anticipated discrimination, because they have to
12 hide a crucial part of their identity, who they are in
13 terms of sexual orientation and gender identity.
- 14 Also it's important to note here that lesbian and
15 bisexual women and gay men and bisexual men are less
16 likely to have children and grandchildren compared to
17 hetero and cisgender people, and that has implications
18 for arranging care and making decisions around care.
- 19 So it's a complex picture of why they delay care.
- 20 **Q.** Thank you, that's really helpful. If I can then just
21 turn to the final topic under this heading and that's
22 homelessness and housing and what particular challenges
23 are faced within the LGBTQ+ population in relation to
24 housing and homelessness.
- 25 **A.** Yeah, so as we discussed before, the violence within the

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

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

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

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

25 And cisgenderism is a system that denies and
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1 are progressing around that.

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

9 **Q.** Thank you.

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

15 **A.** That's right.

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

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

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

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

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

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

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

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

20 **A.** That's right.

21 **Q.** Why do you say that?

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

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1 populations generally?

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

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

11 **Q.** Thank you.

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

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

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

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1 for example violence within the home, differences in
 2 social networks, increased levels of social isolation,
 3 which had strong possibilities of increasing
 4 vulnerability and inequalities for LGBTQ+ people.
 5 **MS CECIL:** Thank you.
 6 My Lady, I have no further questions for
 7 Professor Bécares. There are no Rule 10 requests. Does
 8 your Ladyship have any questions?
 9 **LADY HALLETT:** No, I have no questions. Thank you very much
 10 indeed for your help.
 11 **THE WITNESS:** Thank you.
 12 **(The witness withdrew)**
 13 **LADY HALLETT:** 2.05, please -- unless there is anything
 14 else?
 15 **(Pause)**
 16 **MS CECIL:** No, my Lady.
 17 **LADY HALLETT:** Anything coming from Ms Davies?
 18 **MS CECIL:** No, my Lady, thank you.
 19 **LADY HALLETT:** Thank you. 2.05.
 20 **(1.05 pm)**
 21 **(The short adjournment)**
 22 **(2.05 pm)**
 23 **Summary of questionnaire responses**
 24 **MS CECIL:** My Lady, I'm grateful. If I may continue now to
 25 review the questionnaire responses that were received
 93

1 pandemic.
 2 The report again acknowledges that there are
 3 significant evidence gaps on the experiences. In
 4 particular there is a need to explore the experiences of
 5 LGBTQ+ people from black and minority ethnic groups and
 6 communities, as well as those facing with disabilities.
 7 Surveys were predominantly conducted by LGBTQ+
 8 voluntary and community sector organisations via their
 9 own networks and service users, ie those
 10 non-representative convenience samples that you've heard
 11 about, and other research largely comes in the form of
 12 small-scale qualitative studies.
 13 But in summary, as perhaps could be anticipated,
 14 the pandemic had a negative impact on the mental health
 15 of those within the LGBTQ+ population, and many of the
 16 risk factors identified today by Professor Bécares were
 17 reflected: increased levels of anxiety, depression,
 18 isolation and loneliness.
 19 There was a loss of safe, supportive and
 20 identity-affirming peer groups, communities and spaces
 21 according to the reports. The mental health of younger
 22 people within the cohort was particularly negatively
 23 affected, and that in part was attributed to those
 24 younger people feeling the most unable to connect with
 25 those outside of their households during the pandemic.
 95

1 firstly in relation to LGBTQ+ representative
 2 organisations, of which sadly there were none, despite
 3 efforts made by your team. Then, secondly, move to
 4 those in relation to sex and gender, do you recall,
 5 which we heard evidence of on Friday.
 6 As I say, unfortunately and regrettably, despite
 7 efforts to obtain a response, no response was
 8 forthcoming in relation to LGBT groups. As such,
 9 the Inquiry legal team, with the assistance of your
 10 policy and research team, have distilled relevant and
 11 available open source material to assist the Inquiry and
 12 to provide some context for you.
 13 You have just heard about pre-existing inequalities
 14 faced by the group, however very little academic
 15 research has been published about the pandemic's impact
 16 on the health and wellbeing of people from the LGBTQ+
 17 communities and especially those living within
 18 the United Kingdom.
 19 The research that has been conducted notes,
 20 building, indeed, on Professor Bécares' evidence today,
 21 that data is limited and that the quality of available
 22 evidence is also limited. The National Centre for
 23 Social Research in November of 2021 conducted a review
 24 of available evidence and data with regard to the
 25 experiences of UK LGBTQ+ communities during the Covid-19
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1 The mental health of trans people was also specifically
 2 noted as deteriorating.
 3 In terms of access to health services, the research
 4 notes a reduced level of access, including lack of HIV
 5 checks, lack of access to STI tests, worries around
 6 renewing prescriptions and, importantly, including PrEP
 7 prescriptions and medication. That is the medication
 8 that reduces the likelihood of contracting HIV. Then
 9 ancillary to that, the monitoring of those medications
 10 and side effects.
 11 A new harm arose, it is reported, during
 12 the pandemic, that is of online harassment and
 13 discrimination, essentially reflecting and, the reports
 14 say, as a consequence of the move to online meetings.
 15 Finally, picking up on a point that was articulated
 16 earlier by Professor Bécares, in relation to home
 17 pressures, working from home, similarly, individuals
 18 articulated increased pressures to come out to their
 19 families while home working, or their colleagues, during
 20 the pandemic, which in turn had a negative impact on
 21 those relationships and their mental health.
 22 Secondly, as I said at the outset, I propose to turn
 23 now to the impact in relation to gender and sex.
 24 My Lady, the Inquiry received responses from
 25 13 voluntary sector and civil society organisations in
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1 relation to issues facing women. Areas ranged from
2 gender equality to maternity rights and domestic abuse.
3 Flowing through each one was one primary theme, that the
4 government did not adequately consider how decisions
5 would specifically affect women. Further, that the
6 measures taken in response were piecemeal and
7 fragmented, with the result that not only pre-existing
8 inequalities were exacerbated but new inequalities were
9 created, with disproportionate impacts upon women.

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

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

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

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

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

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

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

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1 threat that they say they faced.

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

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

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

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1 subsequent modules.

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

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

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

18 **LADY HALLETT:** I so order. Thank you.

19 **MS CECIL:** Thank you very much.

20 **LADY HALLETT:** Thank you, Ms Cecil.

21 Mr O'Connor.

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

24 **PROFESSOR AILSA HENDERSON (affirmed)**

25 **Questions from MR O'CONNOR**

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1 **MR O'CONNOR:** Could you give us your full name, please?

2 **A.** Ailsa Henderson.

3 **Q.** Thank you. You are currently a professor of political
4 science at the University of Edinburgh; is that right?

5 **A.** Yes. That is correct.

6 **Q.** We also see from the report, which I'll mention in
7 a moment, that you have more than 20 years' experience
8 across universities in Canada and the UK, conducting
9 research on multilevel and multinational states, with
10 a particular focus on the relationship between sub-state
11 political institutions and sub-state attitudes and
12 behaviour?

13 **A.** That is correct.

14 **Q.** You have prepared at the Inquiry's request a report that
15 we have in front of us and which is entitled "Devolution
16 and the UK's response to Covid-19", have you not?

17 **A.** Yes, I have.

18 **Q.** It's been helpfully brought up on the screen, so I won't
19 give the INQ number, but we can see,
20 Professor Henderson, at the bottom of that first page,
21 in italics, there is what's described as an author
22 statement, where you refer to this report, to your duty
23 as an expert to provide independent evidence, and to the
24 fact that the material within this report is true to
25 the best of your belief; is that right?

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1 as you know, the Modules 2A, B and C that are to take
2 place in the New Year.

3 **A.** That is correct.

4 **Q.** I just want to be clear about the mechanics and the way
5 in which your report was drafted. You were initially
6 instructed some time ago, months, if not more, ago, on
7 the basis that you would prepare a report on the basis
8 of your own understanding of matters during Covid and
9 materials you could find in the public domain?

10 **A.** Yes. Absolutely right.

11 **Q.** But it's right to say that much more recently, as in
12 fact the Inquiry has obtained its own evidence, you have
13 been asked to look at some but not all of the evidence
14 that the Inquiry has obtained relating to these
15 devolution issues?

16 **A.** That is correct.

17 **Q.** During the course of your evidence today we will touch
18 on both your report and also some of those further
19 documents, some of which you hadn't seen until your
20 report was in a very late stage of drafting?

21 **A.** Exactly right, yeah.

22 **Q.** We will, Professor Henderson, adduce your report into
23 evidence in its entirety. It's lengthy, there's
24 an awful lot in it, and we won't be able to touch on
25 everything today, but what we will try to do is cover

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1 **A.** That is true.

2 **Q.** Thank you.

3 Lastly, we note it was signed by you on 25 September
4 this year.

5 **A.** That is correct.

6 **Q.** Thank you.

7 Professor Henderson, as you know, from the work that
8 you have done preparing this report, one of the areas of
9 inquiry for this module relates to the question of how
10 the UK central government worked with the devolved
11 administrations' regional local authorities of the UK.
12 You're aware of that?

13 **A.** Yes, I am, yes.

14 **Q.** And you know that that area of inquiry covers matters
15 such as the liaison between the Westminster government
16 and the devolved nations, communication between them,
17 consultation and so on?

18 **A.** Yes.

19 **Q.** The purpose of your evidence, Professor Henderson, is to
20 establish the factual background, if you like, or
21 context relating to devolution, the structures, the
22 interplay between the various actors, and also to raise
23 issues and matters that the Inquiry might consider
24 further as we hear evidence from the various different
25 decision-makers over the course of this module and also,

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1 what perhaps are the core issues, the central themes.

2 So I want to start, if I may, as your report does,
3 with a few points about the state of the UK before the
4 pandemic in terms of the relations between the different
5 nations within the UK, the structures and so on, and
6 then once we've done that we'll turn to look at the
7 pandemic and how the different governments,
8 administrations dealt with each other.

9 So turning to paragraph 1 of your report, the first
10 sentence, you describe the UK as being a multilevel
11 state and then, later in that paragraph, you contrast in
12 principle a federal, the idea of a federal state with
13 a unitary state, and then a few lines down you describe
14 the UK as being a unitary state with asymmetrical
15 devolution.

16 We mustn't let this become a seminar in political
17 theory, Professor Henderson, but just in a few sentences
18 could you explain what you mean by those various terms?

19 **A.** Yes. So in terms of a multilevel state,
20 the United Kingdom is a state in which policy decisions
21 and law is made at multiple levels.

22 It's not a federation, because the constituent units
23 of that state don't exist as part of a constitution, the
24 legislatures are created by statute. And it's
25 asymmetrical in a number of different ways. It's

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

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

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

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

20 **A.** Yeah.

21 **Q.** But in summary, as you explain in your report, the years
 22 1998 to 1999 were of great significance in respect of
 23 the current devolved arrangements in the UK?

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

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1 at page 7, you record, as it were, the position that had
 2 been reached some time later. We were talking about
 3 1997 to 1999. By 2020 various changes had taken place,
 4 had they not, in the sense that Wales had moved from
 5 a conferred powers model to a reserved powers model?

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

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

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

25 **A.** Reserved powers basis.

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

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

14 **A.** Yes.

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

19 **A.** Yes.

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

24 **A.** Yes.

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

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

2 **A.** Yes.

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

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

14 **A.** Mm-hm.

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

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

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1 exercised by the mayor himself.

2 **Q.** So that's the model in London. It's also broadly the
3 model in the other mayoral areas that you refer to
4 towards the end of paragraph 33 --

5 **A.** Yes.

6 **Q.** -- of your report, and you mention at the beginning of
7 paragraph 33 the fact that there was, at one stage,
8 a proposal for a rather broader type of devolution for
9 the northeast of England but that, as we may remember,
10 was rejected in the vote that took place?

11 **A.** Yes, exactly.

12 **Q.** Thank you.

13 I want to, by way of introduction, just go to one
14 more point, and this involves going back to pages 7 to 8
15 of your report, and it's paragraphs 13 to 14.

16 In these paragraphs, Professor Henderson, you
17 discuss a rather more general idea related to
18 devolution, which is that of policy variation. You
19 describe it as being an automatic consequence of
20 devolution, that is the ability to engage in policy
21 variation. Then at paragraph 14 you make a number of
22 points about policy variation, both that it has its
23 benefits and that others see it as a disbenefit.

24 Could you just expand on those points for us
25 a little bit?

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1 where certain people get certain benefits and certain
2 rights and others do not, and that is seen as
3 an argument that might undermine a sense of social
4 solidarity across the state.

5 **Q.** Thank you. As we shall see, this tension between policy
6 variation, particularly in the devolved nations and, on
7 the other hand, the argument in favour of uniformity,
8 became very much a theme, did it not --

9 **A.** It did.

10 **Q.** -- of the debates during the pandemic?

11 **A.** Absolutely, yes.

12 **Q.** Let me turn to another contextual topic, which is that
13 simply of the mechanisms and structures that give effect
14 to devolution. In your report, paragraph 23, page 10,
15 you categorise these mechanisms and structures into
16 three areas: the first being legislation, which as we've
17 already touched on is the source of the devolved
18 competence; second, the financial arrangements between
19 the various nations; and, thirdly, arrangements made for
20 intergovernmental discussion and problem solving.

21 I want to take them in that order, if I may.

22 So first of all, the question of legislative
23 competence.

24 Paragraph 26 on page 10 of the report, please.

25 Now, we've already touched on the fact, Professor,

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1 **A.** Yes, absolutely. So one thing to mention would be that
2 the very existence of devolution was seen as
3 an opportunity to have policy variation. It was argued
4 for on the basis that different electorates had
5 different policy preferences, different policy needs,
6 different socio-economic contexts that would encourage,
7 that would lead to different legislatures creating
8 different policy. So policy variation was the purpose
9 of devolution when it was campaigned for. It is the
10 automatic byproduct of its existence.

11 And it comes with benefits, and one of the benefits
12 is that, in normal circumstances, it's easier to
13 understand how that might work, but policy variation
14 makes a policy lab of the state, it means that we can
15 evaluate the different policies that have been
16 introduced in different parts of the state and evaluate
17 whether they have been effective or not.

18 Notwithstanding the fact that it is an automatic
19 byproduct and it comes with benefits, one thing we also
20 know about policy variation is that support for it
21 varies within the state and there is a considerable
22 degree of support for policy uniformity across
23 the state, particularly so in England, and one of
24 the reasons for that is that it is perceived to create
25 the possibility of, for example, postcode lotteries,

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1 that the various routes that the devolved nations took
2 towards at least the current state of devolution was
3 a complex one, the powers that were conferred back in
4 1997, 1998, 1999, have changed, there is an asymmetry as
5 you have described between the three nations. And is it
6 those matters that have led you, if we go over the
7 page in fact, to provide what you described as
8 an alternative explanation for this process, which is
9 that it's been piecemeal, reactive and ad hoc?

10 **A.** Yes. I mean, I would -- one explanation is that there's
11 not been one devolution process but there's been three
12 devolution processes and the devolved settlements
13 reflect the local context, the political context and
14 political culture. But one way to look at it is that we
15 also have ended up with an asymmetrical highly changing
16 devolution settlement because changes have been
17 introduced as a result of demands made at different
18 points in time, and sometimes they have been responded
19 to and sometimes they have not, and so sometimes they
20 have lacked a unifying logic of why certain things
21 should be devolved and certain things should not.

22 **Q.** Thank you.

23 You've already referred to the fact that
24 the position as it has been reached, at least as it was
25 in 2020, is that the competences across the three

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

5 **A.** Yes.

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

10 **A.** Yes.

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

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

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

24 **A.** Yes.

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

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1 **A.** Yes.

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

3 **A.** Yes.

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

7 **A.** Yes, across all three.

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

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

15 **A.** Yes.

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

20 **A.** Yes.

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

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1 expand.

2 **LADY HALLETT:** With a smile as well.

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

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

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

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

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1 **A.** Yes.

2 **Q.** Thank you.

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

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

14 **A.** Yes.

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

16 **A.** Yes.

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

20 **A.** Yes.

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

24 Thank you.

25 I want to, in fact, stick with financial

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

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

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

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

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1 a constraint or a factor to be taken into account?

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

12 **Q.** Yes. Thank you.

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

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

25 Perhaps we'd better ask him that.

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

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

8 **A.** Yes.

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

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

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

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

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

7 **A.** Yes.

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

12 **A.** Yes.

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

21 **A.** Yep.

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

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

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

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

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

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

19 And so on.

20 **A.** Mm-hm.

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

25 **A.** Exactly. I mean, because it was a statement of intent,
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1 discussing the boundaries of devolved and reserved
2 policy, and often bilateral exchanges rather than
3 full-on multilateral exchanges involving someone from
4 each of the four parts of the UK.

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

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

14 **Q.** Yes.

15 **A.** -- very specific policy areas.

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

18 **A.** Yes.

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

23 **A.** Yes. I mean, one thing I would also mention is that it
24 was intended as a forum for dispute management where
25 parties could come together and try to resolve disputes.
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1 it was never intended to be something that offered
2 an easy rulebook for what you would do in all
3 situations. It was more describing the spirit with
4 which actors should approach their interaction.

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

8 **A.** Yes.

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

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

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

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

24 **A.** Yes, it was absolutely anticipated that most of
25 the activity would be between officials and executives
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1 So in the first instance you might have kind of
2 bilateral conversations between actors to try to resolve
3 disputes. Then it would go to the Secretary of State
4 for the relevant territory. Then it would come to the
5 JMC. And if that then didn't work it would eventually
6 end up in the court.

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

10 **Q.** Thank you.

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

19 **A.** Yes.

20 **Q.** Just lastly then on the JMC, in terms of actually how it
21 was doing in the period prior to the pandemic, going
22 right back, during I think between 2002 and 2008 you
23 refer to the JMC itself not meeting at all, and that
24 perhaps being attributable to the fact that there were
25 Labour governments in all of the different centres, and
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1 so perhaps they didn't need to resolve any disputes.

2 But more recently, it had met, had it not, in
3 the years running up to the pandemic?

4 **A.** Well, I mean, I could be mistaken, but I'm fairly
5 certain that the last one before the pandemic was in
6 2018, when Theresa May was Prime Minister.

7 **Q.** Yes. Well, just looking at -- if we look at
8 paragraph 52 of your report, going over the page, you
9 refer to the JMC being sort of revived by the SNP after
10 it came to power in Edinburgh in 2007 and then meeting
11 11 times, so a little bit less than annually, but
12 roughly annually, before March 2020. I won't take you
13 to it, but later in your report you say the last meeting
14 was actually in 2019 --

15 **A.** There we go.

16 **Q.** -- before the pandemic started.

17 Briefly, that's the JMC, but there were other
18 inter-national bodies that were part of these
19 structures. You refer to two: one was the North South
20 Ministerial Council, and another was the British-Irish
21 Council. Tell us just a little bit about those.

22 **A.** These come to us through the Belfast Agreement, so
23 they're specific to the devolution settlement in
24 Northern Ireland. They reflect strands 2 and 3 of the
25 arrangements, where strand 1 was the internal

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1 relations in the UK.

2 And partly that is attributed to three things. One,
3 it's to the asymmetry that I mentioned at the start. So
4 because of the asymmetrical arrangements and also
5 because of the way that devolution in Northern Ireland
6 arrived in particular, it wasn't possible to devise
7 a kind of one-size-fits-all intergovernmental relations
8 arrangement.

9 The second, as you mentioned earlier, is that Labour
10 dominance in the UK Government but also in
11 administrations in Scotland and in Wales in the early
12 years of devolution meant that a lot of the interactions
13 took place within a single political party, and so
14 Paul Cairney, who writes on this, has said that that
15 lent the entire area a kind of air of informality that
16 has continued to this day.

17 But the other reason why we see kind of
18 underdeveloped intergovernmental relations is partly the
19 spirit with which the UK Government in particular has
20 approached them and has sort of let them languish.

21 **Q.** That is a theme that we will pick up in, when we see, as
22 I'm now going to turn to, the events of the pandemic and
23 how these -- the relations between the various
24 governments developed and the extent to which the
25 institutions we've just been referring to were in fact

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1 arrangements for Northern Ireland. And they were forums
2 for communication. So it was to reflect the fact that
3 Northern Ireland is embedded within an island but also
4 is part of the UK, and so the North South Ministerial
5 Council manages relations across the island of Ireland,
6 and the British-Irish Council was a way of providing
7 a forum in which a larger group of actors could meet, so
8 it includes members from across both islands.

9 **Q.** Thank you.

10 If we can go on, finally, in this section to
11 paragraph 56. We have sketched, then, this network of
12 institutions which existed before the pandemic
13 commenced, and in paragraph 56 you offer us some of
14 the value judgments given by academics over the years,
15 that were critical of these arrangements, and one that's
16 particularly striking is the view that was offered was
17 that they were not sufficiently strong to withstand
18 a crisis?

19 **A.** Yes. This is a kind of non-representative sample of --
20 no, that makes it sound like it's not representative of
21 what academics in general think. This is a grab bag of
22 some of the articles that have been written about
23 intergovernmental relations in the UK, but they are
24 almost uniform in their condemnation of the fact
25 that there are insufficiently robust intergovernmental

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1 operated or not.

2 So of course, as we all know, the pandemic developed
3 in the early months of 2020, and I'm going to address
4 the question of the liaison between the Westminster
5 government and the devolved governments, try and do it
6 in sort of two sections. The first is just to look at
7 the first three months or so, up to around about the
8 first lockdown in March/April of that year, and then
9 we'll look at the latter period, when I think, in
10 summary, relations declined.

11 Perhaps we can start by going to paragraph 67 of
12 your report, which is on, I think, page 25.

13 In broad terms, Professor, the theme of this
14 paragraph is that the first months of the pandemic
15 reflected more or less a four-government approach where
16 there was co-operation or certainly a degree of
17 co-operation between the four governments leading up to
18 the lockdown and into the first lockdown; is that fair?

19 **A.** Yes, absolutely, yeah.

20 **Q.** So if we go through various heads or various factors
21 within that, we know that during the period from January
22 through to March there were a series of COBR meetings,
23 initially chaired by Matt Hancock and, subsequently, by
24 Boris Johnson. There was, was there not, attendance by
25 the devolved governments at those meetings?

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1 A. Yes, in the early days, when they were held, yes.
 2 Q. So there's a debate perhaps about exactly who from which
 3 devolved nation attended. And there is a similar -- if
 4 you like, a mirror image of the debate about whether
 5 Boris Johnson should have chaired the early meetings
 6 rather than Matt Hancock, there has been some debate
 7 about which minister from which devolved governments
 8 should have attended COBR. I don't want to spend time
 9 on that now, but, as a general point, they were invited
 10 and they did come to those COBR meetings, or they
 11 probably dialled in, but they attended?

12 A. They did. I mean, I think one of the debates is whether
 13 the right person came. The other is obviously how much
 14 they were listened to when they were there.

15 Q. Yes.

16 A. Which I, yeah --

17 Q. That is a theme we may pick up.

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

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

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

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

9 Q. Thank you.

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

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

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

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1 we see immediately beneath that box illustrative --

2 A. Yes.

3 Q. -- crests showing that it is the work not just of the
 4 Westminster Department of Health and Social Care, but
 5 the three devolved governments as well?

6 A. Yes.

7 Q. I think if we go on to page 10 of this document, I think
 8 these were some paragraphs -- 3.6 to 3.8 were passages
 9 within this document that you have drawn attention to in
 10 your report, or certainly I think at least
 11 paragraph 3.8. We just cast our eyes down there, I'm
 12 not going to read them all out, but there is a reference
 13 to the fact that the UK Government and the devolved
 14 administrations have been planning, there is a reference
 15 to the well known contain, delay, mitigate plan, and
 16 then at 3.8 there is an explanation that:

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

21 I think you saw some particular significance in
 22 those words?

23 A. Yes, because I think taken together the three paragraphs
 24 suggest that change is anticipated, change in the
 25 conditions of the virus are anticipated, and then also

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1 the message that's being given?

2 A. Absolutely, I think it's the importance of COBR but also
 3 the fact that it's a four nation response, and so that
 4 reference to being linked up together implies that it
 5 would be all four working together, co-ordinating across
 6 them.

7 Q. So that was -- we know that COBR was meeting and we see
 8 from this document that the plan seemed to involve COBR
 9 going forward. We also know that at around this time
 10 there was a plan to institute so-called MIGs,
 11 ministerial implementation groups, sitting just below
 12 COBR, that would do some of the more detailed work.

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

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

20 He tells the Prime Minister:

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

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

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

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

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

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

14 **A.** Yes.

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

19 "You will also need to decide how you want to
20 involve the Devolved Administrations. Instead of
21 inviting them to your daily 9am meetings, I propose
22 continuing to include them in COBR as public service
23 delivery is where their main challenges will be.
24 I would also recommend a regular meeting with
25 First Ministers, either chaired by you or CDL, to update
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1 MIG, but the same -- in fact the First Ministers had the
2 same role, that is, as required invitees, for the
3 healthcare and the economic business MIGs as well.

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

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

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

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

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

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

25 So looking at these documents together, as it were,
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1 them on the response."

2 Do you see that?

3 **A.** Yes.

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

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

18 **Q.** Yes.

19 **A.** -- as and when.

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

25 This was, as we see at the top, the Public Sector
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1 they were drafted over the course of just a few weeks in
2 March and very early April of 2020. There seems still
3 to be, as there was in the action plan, an intention
4 that Covid is something to be faced on a four nation
5 basis?

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

12 **MR O'CONNOR:** Yes. Thank you.

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

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

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

22 **(3.06 pm)**

23 **(A short break)**

24 **(3.20 pm)**

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

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

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

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

21 Is that right?

22 **A.** Yes.

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

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

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

11 **A.** Exactly.

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

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

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

21 **A.** Yes.

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

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

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

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

9 **A.** Yes.

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

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

16 Is that right?

17 **A.** Absolutely, yes.

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

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

25 And I think that's important because it's stronger

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

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

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

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

16 **(Pause)**

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

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

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

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1 describes, he in retrospect thinks might have been
2 better.

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

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

25 **A.** Yes.

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

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

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

13 **Q.** Thank you.

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

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

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

2 **LADY HALLETT:** Is this legal advice?

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

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

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

13 **LADY HALLETT:** As if, Mr O'Connor.

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

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

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

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

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

25 **Q.** Indeed.

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

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

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

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

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

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

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

12 **A.** Yes.

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

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

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

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

5 **A.** First part, yes.

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

11 Then sticking with the chronological --

12 **LADY HALLETT:** Sorry, just before you do.

13 **MR O'CONNOR:** Yes.

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

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

23 **LADY HALLETT:** Thank you.

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

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

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

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

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

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

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

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

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

6 So it's not a letter from someone who is pursuing
 7 deviation or difference for the sake of it.
 8 **Q.** Yes. Yes. And the final, the third of these documents
 9 from around this time is INQ000091348, and this is
 10 a different type of document, this is an email within
 11 Whitehall. It is, at any rate the part of it that we
 12 will look at, is a read-out from a meeting between
 13 Michael Gove and other members of the Westminster -- the
 14 UK Government, in particular the Secretaries of State
 15 for Wales, Scotland and Northern Ireland, and they are
 16 discussing, in fact, I think, that very letter that we
 17 have just looked at from Mr Drakeford.

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

24 I'm sorry, I just need ...

25 Yes, so if we can go to about halfway down this
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1 to what the UK Government was going to do was enough and
 2 satisfied commitments in terms of intergovernmental
 3 relations.

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

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

16 It's clear that there was a desire to structure
 17 intergovernmental relations for ad hominem reasons, so
 18 there's a clear effort to control or handle one of
 19 the First Ministers in particular, there is a fear of
 20 federalism, there is a fear of leaks, there is
 21 a perceived kind of venality or self-serving nature to
 22 the motives of the devolved administrations, and never
 23 a reflection that this might also be true for all
 24 actors, and no real expression in this document that it
 25 might improve decision-making if more voices from more
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1 page, we see CDL, it's not the bottom CDL bullet point
 2 but about four or five bullet points up?

3 **A.** Yeah.

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

5 **A.** Yeah.

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

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

12 And then this:

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

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

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

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

2 So that's one thing to say.

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

15 **Q.** Thank you, Professor.

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

25 You make the point that in general terms
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1 the variation that we've discussed expanded, and from
 2 the time of the sort of lifting the first lockdown, then
 3 on into the later part of 2020, the different devolved
 4 nations increasingly took their own course, whether it
 5 was the date of lifting the lockdown, the Welsh early
 6 circuit breaker in October, there are other examples,
 7 but the close sort of consensus on approach which we saw
 8 in March broke down and that was the context during
 9 the rest of the year, was it not?
 10 **A.** Yeah, I wouldn't say broke down, it just changed.
 11 **Q.** It was no longer the case --
 12 **A.** Yes.
 13 **Q.** -- and different -- more different policies were
 14 pursued?
 15 **A.** Yes, absolutely.
 16 **Q.** Taking a step to one side, one of the mechanisms that we
 17 haven't talked about so far is SAGE.
 18 **A.** Yes.
 19 **Q.** Now, SAGE is an organisation -- probably there are many
 20 of us in this room that know more about them than we
 21 thought we ever would, and we're going to be hearing
 22 evidence from a number of people who sat on SAGE in the
 23 coming weeks. But you have referred to it in a number
 24 of respects in your report, and of course it was meeting
 25 throughout this period and in fact throughout

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1 **A.** Yes.
 2 **LADY HALLETT:** I think I've already heard that the purpose
 3 of SAGE was to provide scientific advice, and therefore
 4 the people who attended were selected for their
 5 expertise, rather than their representative nature. So
 6 in other words, is your criticism, if it is a criticism,
 7 which I think it is, is that fair if they're being
 8 selected for their expertise, not their representative
 9 nature?
 10 **A.** But they're talking about data, and, so SAGE focused
 11 overwhelmingly on England data, and if you don't have
 12 anyone in possession of Scottish data or Welsh data in
 13 the room, then your evidence base is partial.
 14 **MR O'CONNOR:** Professor, that links in to the next point
 15 I was going to take you to, and that's paragraph 139 of
 16 your report, where you do make a series of points about,
 17 a criticism really of SAGE focusing too much, I think,
 18 in your view, on English data, even though they would
 19 sometimes describe it as UK data.
 20 **A.** Yes.
 21 **Q.** Is that the point you're trying to get across in that
 22 paragraph?
 23 **A.** Yes, absolutely right. I mean, there's a unit of
 24 analysis problem. And it's not restricted to Covid, it
 25 is everywhere. People talk about the UK when they don't

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1 the pandemic.

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

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

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

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

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

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

17 **A.** Yes.

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

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1 equation the fact that Scottish term dates are very
2 different?
3 **A.** The Scottish schools were already back when they were
4 talking about whether they should be concerned about
5 potential mixing in English schools. So it's just
6 an English frame of reference tied to an English
7 calendar and English data.

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

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

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

25 **A.** Four nations by default, absolutely.

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

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

13 **A.** Yeah.

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

18 **A.** Yeah, received little response, yes.

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

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

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

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

21 **Q.** Thank you.

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

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

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

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

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1 There is a suggestion that a Joint Ministerial
2 Committee should be convened when needed.
3 "Covid(sic) would stop meeting on Covid unless we
4 re-enter a crisis situation and need to engage with the
5 mayors."

6 Question to Mr Johnson:

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

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

13 **A.** No, it did not.

14 **Q.** What we see from the materials and we see from witness
15 statements and so on is that starting very much at the
16 time of this document, and then carrying on through
17 2020, the engagement between Westminster and the
18 devolved nations primarily took the form of telephone
19 calls with Michael Gove, the Chancellor of the Duchy of
20 Lancaster, and the First Ministers; is that right?

21 **A.** Yes.

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

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

3 **LADY HALLETT:** Thank you.

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

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

10 **A.** Yeah.

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

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

21 What do you mean by that?

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

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

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

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

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

16 **A.** Yes.

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

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

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

23 **A.** I don't know.

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

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

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

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

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

24 **LADY HALLETT:** Can you slow down, please.

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

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

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

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

20 **A.** Yes, absolutely.

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

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

25 **Q.** Let me ask you about another passage from
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1 distasteful because it implies that there is parity of
2 esteem. I don't believe there is".

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

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

23 **Q.** And it's -- again I won't go to them, we can ask them
24 themselves when they give evidence in the later
25 modules -- but it's certainly the case that, by and
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1 Boris Johnson's witness statement.

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

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

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

17 What's your view about this statement?

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

24 This is an instance of the Prime Minister saying,
25 "But parity of esteem is not a goal. In fact I find it
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1 large, the First Ministers profoundly disagree with this
2 statement?

3 **A.** Yes.

4 **Q.** I want to --

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

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

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

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

23 And I think your analysis is that that might be a --
24 or at least a self-created problem on the part of the
25 British Government, or the Westminster government?
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1 **A.** I think in this instance Michael Gove is treating -- is
2 portraying as external constraints that are of the UK
3 Government's making. The reason it's difficult to
4 decide, "Well, should we have them in a Cabinet
5 subcommittee or not?", well, you decided to have the
6 decisions made in the Cabinet subcommittee. You didn't
7 need to, they could've been in COBR. Admittedly that's
8 for a crisis at the start, so you can understand why
9 it's not COBR all the way through, but you had the MIGs,
10 you could have kept with those. The reason you have
11 this problem about the Cabinet subcommittees is because
12 you created the Cabinet subcommittees and wanted
13 decisions to be made there.

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

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

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

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

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

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

20 "Nicola Sturgeon would brief ..."

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

22 "Nicola Sturgeon would brief the media ahead of
23 an upcoming announcement by the Prime Minister.

24 I imagine this led to UK Government being perhaps less
25 open about its decision-making than it otherwise might

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1 partners or not.

2 Let me take you to one or two documents.

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

7 So can we go, please, to INQ000048313, page 22.

8 This takes us back to the early days, back to -- so if
9 we can look at the bottom half of that, please. So this
10 is a WhatsApp from Dominic Cummings to Boris Johnson on
11 12 March, so back before the first lockdown. He says:

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

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

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

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

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

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

4 **A.** Yep. Yes.

5 **Q.** -- in his WhatsApp.

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

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

20 So she --

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

23 **MR O'CONNOR:** Yes, my Lady.

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

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

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

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

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

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

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

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

16 **A.** Yes.

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

18 **A.** Yes.

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

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

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

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

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

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

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

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

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

13 **A.** Yes.

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

18 **A.** Yes.

19 **Q.** That was one of the points.

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

25 There was an issue, was there not, with whether

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1 borders were properly something that were to be dealt
 2 with by Westminster government, as it were, as
 3 an international matter which was therefore reserved, or
 4 whether border -- access through borders was something
 5 that was a health matter that was therefore devolved?
 6 **A.** Yes, and I think that's why, when the devolved
 7 administrations took action that related to the external
 8 border, it was variations in terms of health rules about
 9 quarantining or testing upon arrival and things like
 10 that, rather than -- certainly members of the devolved
 11 administrations at different times have complained that
 12 they were not -- because they were not able to control
 13 the arrival of people from outside the UK into their
 14 territories, it meant that the virus continually was
 15 re-seeding. And that's obviously something that was
 16 relevant in Scotland and Wales, but it's a particular
 17 issue in terms of Northern Ireland, given the open
 18 border with Ireland, and there was not just frustration
 19 about -- it wasn't so much frustration about
 20 jurisdictional competence, but the arrangements with the
 21 Republic and whether they could get the information they
 22 felt they needed, for example from arrivals who were
 23 coming to Ireland and then travelling on to
 24 Northern Ireland, they felt not being able to access
 25 that information caused them problems.

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1 **A.** I'm getting excited again.
 2 **Q.** -- a little bit more again.
 3 **A.** When something that applies only to England is clarified
 4 as such, and in the first two months this almost never
 5 happened. Whoever was the spokesperson of the day
 6 typically did a better job in clarifying when a UK-wide
 7 issue was indeed UK-wide, but that's often because the
 8 UK-wide issue was information about data and so they
 9 were clarifying that it was UK-wide data.
 10 Almost never in the first two months did they
 11 clarify when an England-only issue applied only to
 12 England, and in fact I can find, in all of the daily
 13 press conferences, only one instance in late May of 2020
 14 when I think it was Matt Hancock clarified, "These are
 15 rules that apply only to England, and this is what the
 16 rule is in Scotland, and this is what the rule is in
 17 Wales, and this is what it is in Northern Ireland".
 18 Sometimes, in a handful of situations, the
 19 spokesperson would say, "These rules apply only to
 20 England, the devolveds have their own rules". Right?
 21 But persistently you get this failure to clarify that
 22 changes to rules about the re-opening of car showrooms
 23 or the re-opening of offices or bike voucher schemes --
 24 the report lists about 20 different types of policies
 25 that it talks about -- never once clarifies that those

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1 **Q.** Yes.
 2 Then finally, Professor, a point which you address
 3 in a little detail in your report, but I'm just going to
 4 ask you a few questions about it now. It takes us back
 5 to the point you were making earlier about the elision
 6 between the UK and England. We talked about it earlier
 7 in the narrow context of SAGE, but I think you hinted at
 8 that stage that it's a broader question, and you
 9 certainly describe it in your report as being a broader
 10 issue and you refer, for example, to Ofcom talking to
 11 broadcasters --
 12 **A.** Yes.
 13 **Q.** -- about whether they had got their message straight
 14 about whether particular measures were focusing on the
 15 UK or in England, but you go on to say that the
 16 government, or the UK Government itself, made similar
 17 mistakes and was guilty of referring to the UK when it
 18 really meant England.
 19 **A.** Yeah. So I coded all the daily press conferences, the
 20 printed pre-prepared material that's available online,
 21 you can analyse it to see whether the UK Government
 22 clarifies when something about the UK is clarified as
 23 being about the UK, or when something that applies only
 24 to England --
 25 **Q.** Sorry, just I think you need to slow down --

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1 were changes or policies that applied only to England.
 2 And that's important because a lot of what they were
 3 talking about had an impact on behaviour. They wanted
 4 citizens to change their behaviour, but when the rule
 5 applied only in England, it was only English residents
 6 whose behaviour would need to change, and that wasn't
 7 clarified at any point, and it led to confusion on the
 8 part of electorates in Scotland, Wales and
 9 Northern Ireland, and it meant that the media picked up
 10 those statements and ran with them, and also didn't
 11 clarify what applied to England alone and what applied
 12 to Scotland, Wales and Northern Ireland; and so bad was
 13 the lack of clarity that Ofcom got involved and Ofcom
 14 issued three different kind of statements about media
 15 reporting on Covid, and the first two are urging for
 16 more clarity about medical matters, but the third one
 17 talks about the representation of diversity across the
 18 UK and urges broadcasters and print journalists to be
 19 clear when a rule or a change applies only to
 20 a particular part of the UK.
 21 There was a chronic lack of clarity from the UK
 22 Government about when it was speaking on -- with its
 23 England, government of England hat on, and when it was
 24 acting or speaking with its UK Government hat on.
 25 **Q.** If I may, in conclusion, just to round off this point,

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

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

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

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

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

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

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

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

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

8 **A.** Yes.

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

13 **LADY HALLETT:** Ms Shepherd.

14 Questions from MS SHEPHERD

15 **MS SHEPHERD:** Thank you, my Lady.

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

20 If we could have up on the screen, please,
21 INQ000083851, on the front page we can see there that
22 these are the minutes of a COBR meeting held on
23 12 October 2020.

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

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

13 So there was one in October, there was another one
14 in December. So certainly they felt they had the
15 authority, as a result of the powers that they had by
16 virtue of the Public Health (Control of Disease) Act
17 1984 to make that change.

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

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

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

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

10 **Q.** Thank you.

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

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

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

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

3 **MS SHEPHERD:** Thank you.

4 Thank you, my Lady.

5 **LADY HALLETT:** Thank you very much, Ms Shepherd.

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

11 **THE WITNESS:** I did, I did.

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

13 **THE WITNESS:** Thank you very much.

14 **(The witness withdrew)**

15 **LADY HALLETT:** 10 o'clock tomorrow?

16 **MR O'CONNOR:** My Lady, yes.

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

18 **(4.30 pm)**

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

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