

Tuesday, 12 December 2023

(10.00 am)

LADY HALLETT: Good morning.

This is the third preliminary hearing for module 2B, key decision-making in Wales, and Mr Tom Poole King's Counsel will now explain to me what issues are outstanding before the hearings in early-ish 2024.

Statement by LEAD COUNSEL TO THE INQUIRY FOR MODULE 2B

MR POOLE: My Lady, as you've said, this is the third preliminary hearing in Module 2B, which relates to the core political and administrative decision-making of the Welsh government in its management of the Covid-19 pandemic.

I don't propose to reintroduce the core participants or their legal representatives. There remain nine core participants in Module 2B, and all are legally represented. We've received four sets of written submissions for today's hearing, and I believe that you'll be hearing from three separate legal representatives later this morning.

We are, of course, extremely grateful to all of the core participants for having provided us with their observations and insights, and also for the brevity with which they have done so. Whilst I do not propose to address all of the points which they have raised, I hope

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the four nations of the United Kingdom.

As was predicted, our investigations have inevitably shown that the broad issues identified in the scopes differ somewhat as between the four nations. The timeline in Module 2B thus differs from that in Modules 2, 2A and 2C. The issues to be examined are inevitably different, due to the different structures involved in decision-making in Wales, the different trajectory of the pandemic in Wales, devolution considerations, and Wales' different advisory arrangements and legislative and enforcement mechanisms.

The objective throughout has been to achieve consistency across Module 2, 2A, 2B and 2C to the extent that the facts will bear, but also to acknowledge that these differences must be respected.

A question has been posed by one of the core participants as to whether the list of issues will be kept under review. I want to assure all core participants that the list of issues is not closed. Our understanding of the scope increases on a daily basis, and so the possibility that further important issues will be identified remains open. However, for practical purposes, the list needs to be given some element of finality, and with that caveat our list is now, in our view, in such a form.

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during the course of my submissions this morning to address those which appear to us to be of the greatest significance.

My Lady, may I start with the list of issues for consideration in Module 2B.

In August last year, the Inquiry published its provisional outline of scope for Module 2B, alongside similar scopes for the associated Modules 2, 2A and 2C. Since then, your legal team has been conducting an investigation within the remit of those published documents. You directed at the last preliminary hearing that the Inquiry circulate a more detailed list of issues to core participants. That list was sent on 12 May and we received insightful and constructive comments from all of the core participants, for which we are very grateful.

Following consideration by your Ladyship and the Module 2B team, a revised list of issues was provided to core participants alongside the CTI note on 30 October.

The list of issues attempts to frame with clarity the matters which will ultimately be addressed in your report into the matters covered by Module 2B. As was intimated at the last preliminary hearing, the Inquiry has sought to co-ordinate the scopes of each part of Module 2 so as to ensure fairness and consistency among

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Lastly on the list of issues, one core participant has advanced submissions concerning the extent to which Module 2B will cover the care sector. Of course there will be exploration through the high level political decision-makers of the broad reasons why care-related decisions were taken as they were, but the detailed examination of the merits of that process and the operational impact of such decisions is outside the scope of this module, and your Ladyship this morning has opened a separate investigation into the care sector across the UK.

My Lady, may I then turn to the issue of Rule 9 requests which have been issued by the Inquiry.

Can I start by saying that a huge amount of work has been done since we last met and at very considerable pace. The Inquiry has worked extremely hard to ensure that it and the core participants can be ready for the public hearings scheduled in February and March next year under this most demanding of timetables. Tens of thousands of documents and exhibits have been received from material providers so far, although not all of them, of course, are relevant and disclosable.

My Lady, may I commend the legal team in Module 2B for their diligence and hard work in scoping, drafting and issuing so many Rule 9s and in dealing with the

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1 array of documentation that has been received.
 2 As of this morning the Module 2B team have issued
 3 more than 274 formal requests for evidence under Rule 9,
 4 some in conjunction with Modules 2, 2A and 2C, but the
 5 vast majority in Module 2B alone.

6 To give a sense of the breadth and width of your
 7 Inquiry's reach, Rule 9 requests have been sent to
 8 numerous Welsh Government directorates, the Office of
 9 the Secretary of State for Wales, and other public
 10 bodies in Wales, including local health boards, which
 11 played a role in or have a relevant perspective to share
 12 on the core decisions taken by the Welsh Government in
 13 its response to the pandemic in Wales.

14 We've also sent detailed Rule 9 requests to a large
 15 number of Welsh ministers and key advisers during the
 16 pandemic, including the First Minister, Mark Drakeford,
 17 the former Minister for Health and Social Services,
 18 Vaughan Gething, the Chief Medical Officer for Wales,
 19 Sir Frank Atherton, and the Welsh Chief Scientific
 20 Adviser for Health, Dr Rob Orford.

21 A further 82 Rule 9 requests have been made jointly
 22 with other Inquiry modules, and 40 Rule 9 questionnaires
 23 have been issued to members of the Welsh Technical
 24 Advisory Group and its related subgroups.

25 The joint requests that have been made include

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1 have suggested two further Rule 9 recipients, both of
 2 whom the Inquiry has now issued Rule 9 requests to.

3 We are also considering the helpful suggestions
 4 received from Covid-19 Bereaved Families for Justice
 5 Cymru, and will take those forward if we consider it
 6 necessary.

7 It goes without saying that we are very grateful to
 8 all those who have engaged with the requests and who
 9 have provided statements.

10 Before leaving Rule 9 requests, there are two
 11 aspects of the Rule 9 process that have unfortunately
 12 caused some problems. First, a number of draft
 13 statements have either contained insufficient detail or
 14 did not address all of the matters raised in the Rule 9
 15 request, so the Inquiry has asked a number of witnesses
 16 to expand upon the matters raised in their draft
 17 statements. The work required to consider those draft
 18 statements and to send requests back for further detail
 19 has an obvious impact upon the workload of the Inquiry
 20 and upon the process of disclosure. However, we do not
 21 consider that overall the timetable will be
 22 significantly impacted, and we are confident that the
 23 final signed statements and exhibits will be disclosed
 24 for them to be reviewed by core participants in good
 25 time, ahead of the public hearings next year.

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1 a very significant number of impact questionnaires that
 2 have been sent to bodies and organisations representing
 3 individuals who might be considered to have a greater
 4 risk or vulnerability. My Lady, that includes groups
 5 including the bereaved, women, children and young
 6 people, ethnic groups, those suffering from health
 7 inequalities, including Long Covid and mental health
 8 issues, members of the LGBTQI+ community, workers'
 9 groups and health professionals.

10 The issue of inequalities, since this has been
 11 raised by the core participants, has been included in
 12 practically every Rule 9 request issued by Module 2B,
 13 including those in core decision-making in Wales and
 14 their advisers.

15 My Lady, the number of Rule 9 requests, and the wide
 16 range of organisations, entities and people who have
 17 received such requests, although highlighting the scale
 18 of your task, provides ample reassurance that we have
 19 cast our investigative net sufficiently widely.

20 In addition, we have accepted additional suggestions
 21 from core participants as to who should receive Rule 9
 22 requests and we've carefully considered each of these
 23 and acted upon those suggestions when appropriate. In
 24 fact, in their submissions for this morning's
 25 preliminary hearing, the disabled people's organisations

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1 Second, in respect of a number of entities and
 2 individuals, there has been a failure to respond
 3 sufficiently quickly to the Rule 9 requests,
 4 necessitating repeated extensions to deadlines. We are
 5 on top of the issue and it is expected that all
 6 finalised statements, exhibits and disclosure will be
 7 provided by the end of this month.

8 I wish to emphasise, however, the absolute need to
 9 comply with these final deadlines, given the diminishing
 10 time before the substantive hearings. Further requests
 11 for extensions are unlikely to be granted.

12 My Lady, may I next turn to the Welsh Government.

13 Unsurprisingly, given the scope of this module,
 14 a significant proportion of Rule 9 requests have been
 15 made to the Welsh Government, its directorates and
 16 individuals who played key roles in its response to the
 17 pandemic. In most cases the requests that have been
 18 made have required considerable work to be completed
 19 within demanding timescales, and I would like to
 20 acknowledge that the Welsh Government and their legal
 21 team have worked very hard to respond to the requests,
 22 and we are very grateful to them for that co-operation.

23 There have been some delays and extensions have been
 24 sought, some with good reason. The Inquiry recognises
 25 that there has been a significant volume of materials

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1 sought from the Welsh Government. This, however, has to
 2 be balanced against the fact this is an Inquiry into
 3 Welsh Government core decision-making during the
 4 pandemic. Those core participants that have expressed
 5 concerns with the disclosure from the Welsh Government
 6 can rest assured that we have been working with their
 7 team and all outstanding disclosure was largely provided
 8 by the end of November, subject to additional Rule 9s
 9 which have recently been sent.

10 My Lady, I would like to draw attention to two
 11 specific matters. The first concerns informal
 12 messaging, namely WhatsApps and texts; the second,
 13 notebooks.

14 You will be aware, my Lady, that the issue and
 15 content of informal communications, in particular
 16 WhatsApp and text messages, has become a prominent part
 17 of the Inquiry's investigations into core
 18 decision-making by the UK Government in Module 2. Those
 19 conducting this module's investigations have thus been
 20 aware for some time of the need to investigate the use
 21 of such informal messages by those involved in the
 22 Welsh Government response to the pandemic. We are very
 23 aware that messages sent by informal methods of
 24 communication between key decision-makers and their
 25 advisers, discussing information, advice and the

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1 senior scientific and medical advisers. For the
 2 avoidance of doubt, we sought not only messages in which
 3 decisions were communicated, but also messages in which
 4 matters relating to government decision-making were
 5 raised, in order that a full assessment of the basis
 6 upon which such decisions were arrived at could be
 7 undertaken.

8 Some of the witness statements that we have received
 9 from key decision-makers within the Welsh Government
 10 suggest that informal communications such as WhatsApp
 11 messages were used to discuss matters around the
 12 progress of the pandemic in Wales. Following
 13 discussions with the Welsh Government, the Module 2B
 14 team received its first set of WhatsApp messages in
 15 early October this year, and as of today the Inquiry has
 16 received 21 transcripts of WhatsApp group chats and 163
 17 transcripts of individual WhatsApp or text message
 18 conversations during the pandemic, provided by a number
 19 of different individuals within the Welsh Government,
 20 including the First Minister.

21 These transcripts have been reviewed and a large
 22 proportion of them are currently at the material
 23 provider review stage with the Welsh Government,
 24 following which they will be made available to
 25 core participants.

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1 management of the pandemic in Wales, can provide
 2 important information about and context to decisions and
 3 issues which are to be addressed in this module. We
 4 therefore welcome the submissions made by counsel to the
 5 Welsh Government at the Module 2 preliminary hearing in
 6 June this year when it was said that the
 7 Welsh Government intends to fulfil all such requests
 8 made of it by this Inquiry for WhatsApp messages,
 9 diaries and the like without any prior redaction.

10 As a result of the significance of informal
 11 messaging in the way that the government business was
 12 conducted in Westminster, in our first Rule 9 to the
 13 Welsh Government in October last year we asked the
 14 Welsh Government to explain whether there were WhatsApp
 15 groups, group chats, that key decision-makers used to
 16 communicate about decisions or to make decisions. The
 17 Welsh Government was also put on notice that the Inquiry
 18 may request disclosure of emails, WhatsApps and texts
 19 through the course of its investigation. Similar
 20 requests and notifications were also made to other
 21 significant Welsh public bodies, including Public Health
 22 Wales and local health boards.

23 As I have already set out, extensive individual
 24 Rule 9 requests were also compiled for individuals who
 25 worked within the Welsh Government operation, including

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1 The Module 2B team has also issued a further Rule 9
 2 request to the Welsh Government for a corporate
 3 statement on the use of informal messages, as well as
 4 individuals within the Welsh Government, asking for the
 5 provision of further information and an explanation
 6 where WhatsApps and texts exchanged during the pandemic
 7 do not appear to have been provided to the Inquiry or
 8 retained. A response to that request was received on
 9 Friday last week and is being reviewed.

10 The Inquiry is also receiving responses from
 11 individuals on a rolling basis, which will be made
 12 available for core participants once they have been
 13 through the material provider review process.

14 Finally on the issue of informal messaging, I would
 15 like to add that the Inquiry intends to keep an open
 16 mind as to the significance of the responses and not
 17 rush to the conclusion that these messages provide the
 18 key to understanding the processes of Welsh Government
 19 decision-making during the pandemic. We will not rush
 20 to conclusions, but reach them on the basis of the
 21 evidence that the Inquiry uncovers.

22 As regards notebooks, the Welsh Government has
 23 provided us with access to over 100 contemporaneous
 24 notebooks from individuals within the Welsh Government,
 25 including ministers. The Module 2B team have been

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1 undertaking physical reviews of those notebooks to
2 determine relevance and the Welsh Government has
3 confirmed that no further notebooks are available for
4 review. A full review of the notebooks is presently
5 under way by the Inquiry and a tranche has already been
6 disclosed to core participants. Further tranches will
7 continue to be provided on a rolling basis when
8 available.

9 If I can move next to an issue regarding data loss,
10 which has been raised by one of the core participants.

11 On 2 August this year, we received notification from
12 Digital Health and Care Wales of a potential data loss
13 issue in relation to the Microsoft 365 email service
14 which could impact all health boards, trusts, special
15 health authorities and primary care organisations in
16 NHS Wales. My Lady, you will not be surprised to hear
17 that we took this issue seriously and made immediate
18 enquiries with material providers that might have been
19 affected.

20 We understand that from all of the Rule 9 requests
21 made in this module, only one individual has been
22 impacted by the data loss issue and the position is
23 explained in their witness statement.

24 Turning then, my Lady, to the issue of the general
25 state of disclosure of documents to core participants.

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1 disclosed across 42 tranches of material, Module 2B
2 still has a significant volume of documents left to
3 review, assess for relevance, and work through before
4 they can be disclosed to core participants.

5 The Module 2B legal team is working swiftly to
6 review materials which have been disclosed to it, and
7 I'm very grateful to the material providers who are
8 assisting with this important process and doing so at
9 pace. There remains much to be done, and materials will
10 continue to be made available to core participants as
11 quickly as possible.

12 I propose to say something next about cross-modular
13 disclosure.

14 The Inquiry is aware that some evidence received by
15 Module 2 and some oral evidence provided at the Module 2
16 public hearings is likely to be relevant to Module 2B.
17 In order to ensure that core participants have access to
18 Module 2 material that is relevant to Module 2B,
19 the Inquiry is conducting a cross-modular review to
20 identify such relevant material. As a number of our
21 core participants have been core participants, and hence
22 involved in the work of the prior modules of the
23 Inquiry, they will have had access to this material
24 already, and indeed may be well placed to assist with
25 drawing our attention to documents which they think

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1 As of this morning, Module 2B has received
2 30,838 documents in total, including 58 questionnaire
3 responses from impact organisations, 32 questionnaire
4 responses from members of TAG and TAC, and 148 Rule 9
5 statements. To date we have disclosed 12,396 documents
6 in total to core participants, including 67 Rule 9
7 statements and supporting documents which include some
8 Module 2 statements relevant to our module,
9 48 questionnaire responses from impact organisations
10 including those jointly instructed with Modules 2, 2A
11 and 2C, and 32 questionnaire responses from members of
12 TAG and TAC.

13 We will continue to make disclosure to
14 core participants on a regular basis and hope to shortly
15 disclose witness statements and exhibits from various
16 Welsh ministers. The Inquiry expects to have received
17 all draft witness statements in sufficient time to
18 enable disclosure of the vast majority of signed
19 statements by the end of this month.

20 The Welsh Government has been providing documents to
21 the Inquiry on a rolling basis, and subject to a few
22 Rule 9s which have been issued recently, has confirmed
23 that it has provided all general disclosure in response
24 to Rule 9 requests made of it over the last 12 months.
25 As a result, whilst some 12,396 documents have been

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1 autumn to form part of Module 2B evidence proposals in
2 due course.

3 The Inquiry intends to disclose any material
4 considered relevant to Module 2B to core participants,
5 and indeed has already started to do so. This will
6 include witness statements, exhibits and aspects of
7 general disclosure that has been received by Module 2.
8 We will, however, be limiting the disclosure of material
9 to those documents that are strictly relevant, ie where
10 a witness statement discusses issues relevant to
11 Module 2B it will be disclosed to core participants. It
12 follows that not all of the exhibits, however, to such
13 witness statements will be disclosed in Module 2B. They
14 will only be disclosed if those exhibits are considered
15 relevant to this module.

16 My Lady, the next issue on the agenda concerns
17 preparations for the public hearings in February and
18 March next year.

19 My Lady, may I start by addressing you briefly on
20 the issue of timing, because I want to say something
21 about the very considerable progress that the Inquiry
22 has already made, and about the timing of the public
23 hearings next year.

24 We have proceeded at a remarkable pace. No Inquiry
25 with so wide a scope has ever proceeded with such speed.

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1 Having said that, the Inquiry process is simply not
 2 designed to assemble every single document and person
 3 relevant to the preparation for, response to, or the
 4 impact of the Covid pandemic. That would be
 5 an impossible task, and no sensible Inquiry could ever
 6 contemplate it. What we've done is to seek the
 7 witnesses and documents that you have considered are
 8 most relevant to the issues that you've decided you want
 9 to explore. This is especially so in Module 2B, and the
 10 associated Modules 2, 2A and 2C, because they are
 11 concerned with high-level political and administrative
 12 decision-making. We are not enquiring into every aspect
 13 of every decision on Covid made by the Welsh Government.
 14 It is an inquiry into only such parts of the
 15 decision-making process that appear to you to really
 16 matter.

17 But even then, my Lady, I need to put the
 18 core participants on notice that it is impossible to
 19 call every witness who can give evidence of every issue
 20 covered in every paragraph of the list of issues. We
 21 have neither the time nor the resources, and I daresay
 22 the core participants and the general public would not
 23 wish it to be so.

24 So choices will have to be made as to which
 25 witnesses will be called at the public hearings, but,

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1 In addition, core participants will be invited to
 2 engage in the hearing preparation process which has been
 3 adopted by the Inquiry in Module 2. This will involve
 4 evidence proposals being produced and core participants
 5 being permitted to propose important documents and
 6 suggest potential lines of questioning for witnesses in
 7 connection with those evidence proposals, which will be
 8 sent to them in advance of the hearings.

9 The intention in our module is to try to follow
 10 a regimented process, whereby a draft evidence proposal
 11 for a witness is circulated to core participants
 12 a certain period before a witness is due to give
 13 evidence, with clear indicators as to the date by which
 14 a response is expected.

15 The same will apply to applications to contribute to
 16 questions to be asked by Counsel to the Inquiry or
 17 applications to ask questions, the opportunity for both
 18 being invited simultaneously.

19 Thus the timescales for each witness in which
 20 a particular core participant might be interested will
 21 be clearly prescribed from the start, hopefully
 22 increasing certainty and providing a reasonable
 23 opportunity to contribute to the hearing preparation
 24 process.

25 Precise details and timings of what we intend in

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1 my Lady, there can be no doubt by the time of those
 2 hearings sufficient material will have been secured and
 3 disclosed to core participants to enable you to be
 4 satisfied you can conduct an absolutely full and fair
 5 Inquiry.

6 As to hearing preparation, as previously announced,
 7 the hearings in Module 2B are scheduled to be held at
 8 the Mercure Cardiff North Hotel, starting on 27 February
 9 next year and concluding on 14 March. As regards the
 10 venue, work is under way to address the issues of access
 11 raised by some of the core participants, such as a daily
 12 shuttle service from the centre of Cardiff to the venue.

13 As to the hearings themselves, ahead of the hearings
 14 Module 2B intends to share key documents which it has
 15 prepared with core participants. It is likely that this
 16 will include a chronology of key decisions and events,
 17 details of the structures involved in Welsh Government
 18 decision-making, and the identity of key individuals
 19 involved in such decision-making.

20 The intention of these will be that they will cover
 21 some of the uncontroversial background allowing the
 22 hearings themselves to focus on the key controversies
 23 and issues. It is also intended that key aspects of the
 24 agreed uncontroversial background will be set out in my
 25 opening statement at the start of the public hearings.

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1 this regard will continue to be provided to
 2 core participants either as necessary or in monthly
 3 update notes issued in due course.

4 I turn next to expert witnesses.

5 As set out in the previously monthly update notes,
 6 Module 2B, in conjunction with Modules 2, 2A and 2C, has
 7 issued instructions to the following experts who have
 8 agreed to provide evidence to the Inquiry on matters
 9 relating to Wales which will be covered by this module:

10 Professor Thomas Hale, from the Blavatnik School of
 11 Government University of Oxford, has reported on
 12 international data relating to the Covid-19 pandemic, in
 13 particular in analysing the effectiveness of the
 14 decision-making of the UK and each of the devolved
 15 administrations to the pandemic in comparison to other
 16 countries. This report has been disclosed to
 17 core participants in final form and was presented at
 18 Module 2's public hearing on 11 October.

19 Professor Ailsa Henderson, from the University of
 20 Edinburgh, has reported on the political structures for
 21 devolution within the UK and mechanisms for
 22 intergovernmental decision-making between the
 23 UK Government and the devolved administrations during
 24 the Covid-19 pandemic. This report has been disclosed
 25 to core participants in final form and was presented at

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1 Module 2's public hearing on 9 October.
 2 An expert report relating to political
 3 decision-making in the management of the pandemic in
 4 Wales has also been commissioned by Module 2B from
 5 Professor Daniel Wincott, professor of law and society
 6 in the School of Law and Politics at Cardiff University.
 7 This report is currently in draft form and has been
 8 circulated to core participants for their comments
 9 following a similar process to the finalisation of other
 10 expert reports which have been commissioned by
 11 the Inquiry.
 12 The Inquiry appreciates that we have set a tight
 13 deadline for core participants to provide their comments
 14 on Professor Wincott's draft report. We are grateful
 15 for their understanding and continued engagement.
 16 Expert reports of indirect relevance to the matters
 17 for consideration in Module 2B were also commissioned
 18 from Alex Thomas and Gavin Freeguard.
 19 Alex Thomas, from the Institute for Government, has
 20 been instructed to report on the decision-making
 21 structures of the UK Government in an emergency, in
 22 particular the Cabinet Office, Cabinet committees and
 23 the office of the Prime Minister. And Gavin Freeguard,
 24 former programme director and head of data and
 25 transparency at the Institute for Government, has been

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1 scope relating to Wales. Evidence from these experts
 2 has been adduced and led in Module 2:
 3 Professor James Nazroo, professor of sociology at
 4 the University of Manchester and deputy director of the
 5 ESRC Centre on the Dynamics and Ethnicity, and
 6 Professor Laia Bécares, professor of social science and
 7 health at King's College London, have produced a report
 8 on pre-pandemic inequalities by race and ageing,
 9 including expertise on the role of structural racism.
 10 This report has been disclosed to core participants in
 11 final form and was presented at the Module 2 public
 12 hearings on 5 October.
 13 Professor James Nazroo is also contributing
 14 expertise on later life, this report having been
 15 disclosed to core participants in final form. Both of
 16 Professor Nazroo's reports were presented at Module 2's
 17 public hearing on 5 October.
 18 Professor Thomas Shakespeare, professor of
 19 disability research at the London School of Hygiene and
 20 Tropical Medicine, and Professor Nicholas Watson,
 21 associate professor of the School of Health and
 22 Wellbeing at the University of Glasgow, are contributing
 23 expertise on pre-pandemic inequalities associated with
 24 disabilities. This report has been disclosed to
 25 core participants in final form and was presented at the

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1 instructed to report on the access to and the use of
 2 data by the UK Government during the Covid-19 pandemic.
 3 Reports from these two experts have been disclosed
 4 to core participants in final form: Gavin Freeguard's
 5 report presented at the Module 2 public hearing on
 6 10 October, and Alex Thomas' report on 13 October.
 7 One core participant has queried whether the issue
 8 of data sharing covered by Gavin Freeguard in respect of
 9 the UK Government will be covered by another expert in
 10 respect of Wales. As previously explained in our
 11 monthly update notes, the Inquiry has unfortunately been
 12 unable to identify an independent expert who can address
 13 data governance issues in Wales. We have there are
 14 issued Rule 9 requests to individuals involved with data
 15 governance within Wales so as to gather relevant
 16 evidence in this regard. This approach has also been
 17 adopted in Modules 2A and 2C.
 18 In your Ladyship's ruling of 9 March, your Ladyship
 19 directed that the Inquiry should obtain evidence from
 20 an expert or experts on the nature and degree of
 21 pre-pandemic structural racism. This ruling also makes
 22 clear that expert evidence should be obtained regarding
 23 pre-existing structural discrimination on other grounds.
 24 The following experts have been instructed,
 25 including in relation to matters within the Module 2B

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1 Module 2 public hearing on 9 October.
 2 Professor Laia Bécares is also providing expertise
 3 on pre-pandemic inequalities for members of the LGBTQI+
 4 community. This report's been disclosed in final form
 5 to core participants and was presented at the Module 2
 6 public hearing on 9 October.
 7 Dr Clare Wenham, associate professor of global
 8 health policy at the London School of Economics and
 9 Political Science, is providing expertise on
 10 pre-pandemic gender inequalities. This report has been
 11 disclosed to core participants in final form and was
 12 presented at the Module 2 public hearing on 6 October.
 13 Professor David Taylor-Robinson, professor of public
 14 health and policy at the University of Liverpool, is
 15 providing expertise on pre-pandemic childhood
 16 inequalities. This report has been disclosed to
 17 core participants in final form and was presented at the
 18 Module 2 public hearing on 6 October.
 19 A further expert report has been disclosed to
 20 core participants prepared by Professor Chris
 21 Brightling, professor of respiratory medicine at the
 22 University of Leicester and chair of the NIHR
 23 Respiratory Translational Research Collaboration, and
 24 Dr Rachael Evans in relation to Long Covid. This was
 25 presented at the Module 2 public hearing on 13 October.

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1 The current provisional intention of Module 2B is
2 that it will not lead further evidence from the experts
3 who have spoken about matters of general relevance
4 across the UK, such as Professor Brightling and
5 Dr Evans, or whose reports have specifically covered
6 Module 2B in their remit, including Professor Henderson
7 and Professor Hale and the inequalities experts, whose
8 written and oral evidence already covers Welsh
9 considerations.

10 The evidence which they have provided to the Inquiry
11 remains available for consideration at the Module 2B
12 hearings, and/or in the final report on Module 2B
13 matters. Issues arising from their evidence about
14 governmental (including intergovernmental) structures,
15 NPIs and structural inequality and, by extension,
16 inequality in political decision-making and outcomes,
17 have been and will be canvassed at the Module 2B
18 hearings with other witnesses. It is also likely that
19 I will cover key aspects of this evidence in my opening
20 statement at the hearings in February.

21 Finally on the issue of experts, one of the
22 core participants has asked that experts' letters of
23 instructions be disclosed. My Lady, in my submission,
24 providing the letters of instruction now is neither
25 necessary nor sufficient. Firstly, it is not necessary

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1 22 February next year and will run until the end of the
2 Module 2B hearings. A community listening event held by
3 members of the Inquiry team took place in Wrexham in
4 mid-November with another in Ruthin, enabling the people
5 of North Wales to meet the team and find out in person
6 how they can share their story.

7 An impact film will be shown on the first day of the
8 public hearings for module 2B to set the tone for
9 subsequent proceedings, grounding them in the lived
10 experience of individuals living in Wales who suffered
11 and continue to suffer hardship and loss as a result of
12 the pandemic.

13 The video will be played publicly at the substantive
14 hearings of this module in February next year.

15 My Lady, I hope what I've said brings those with
16 an interest in Module 2B up to speed with the progress
17 which has been made since the last preliminary hearing,
18 and sets out a roadmap as to how we intend to progress
19 matters going forward, up to the point of our public
20 hearings in Wales next year.

21 May I again on behalf of the 2B team offer our
22 thanks for the helpful contributions made by the
23 core participants to this hearing and the continued
24 contribution of core participants and other material
25 providers to the work of this module. It is very much

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1 to have such disclosure now because the
2 core participants will have time to receive and consider
3 the expert reports themselves. Secondly, the provision
4 is not sufficient because the letters of instruction
5 provide only the framework for an expert report and can
6 say nothing of course about the expert's opinion. The
7 core participants need the reports themselves in order
8 to be able to understand what is being opined upon, and
9 that is what we are providing.

10 My Lady, the final issue on the agenda this morning
11 concerns Every Story Matters and impact films.

12 Every Story Matters was formally launched on 13 June
13 this year. The experiences and stories shared are
14 helping the Inquiry to build a comprehensive picture of
15 how the pandemic affected people's lives across the UK,
16 including in Wales. An updated web form was made
17 available in late May and to date thousands of responses
18 have been submitted. The public information campaign to
19 make people aware of Every Story Matters has been
20 running on radio, billboards, in the press and digital
21 advertising. The Inquiry has been working with
22 charities and other organisations to promote Every Story
23 Matters to seldom heard voices.

24 Campaign activity aimed at raising awareness of
25 Every Story Matters will take place in Wales from

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1 appreciated. It is also necessary.

2 May I finally pay tribute to the legal team with
3 whom I am working. The Welsh public can rest assured
4 that they can do all they can to deliver these
5 hearings to the very best of their ability and with the
6 fullest and deepest investigation into the management of
7 the pandemic in Wales that we can achieve.

8 My Lady, that concludes my opening submissions in
9 relation to the important matters raised in written
10 submissions and in relation to the practicalities of
11 this module.

12 May I lastly just seek permission to publish the
13 core participants' submissions and the CTI note.

14 And I understand you are going to hear first from
15 Ms Heaven, on behalf of the Covid-19 Bereaved Families
16 for Justice Cymru.

17 **LADY HALLETT:** Thank you very much, Mr Poole, and I give
18 permission for the publication of the submissions and
19 the note.

20 Ms Heaven.

21 **Submissions on behalf of Covid-19 Bereaved Families for
22 Justice Cymru by MS HEAVEN**

23 **MS HEAVEN:** Good morning, my Lady, thank you.

24 As you know, I represent the Covid-19 Bereaved
25 Families for Justice Cymru, and it will come as no

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1 surprise to the Inquiry that the majority of my
2 submissions this morning will relate to the linked
3 issues of delayed disclosure and what appears to be the
4 deletion or loss by the Welsh Government of highly
5 relevant communications between members of the
6 Welsh Government and its advisers, including but not
7 necessarily limited to WhatsApp message. Time
8 permitting, I'll briefly touch upon a number of other
9 issues. But can I start by saying that these
10 submissions do not in any way call into question the
11 efforts the Inquiry has made and is continuing to make
12 on behalf of the Welsh bereaved.

13 Now, the first issue, as I've indicated, relates to
14 delayed disclosure by the Welsh Government in relation
15 to this Inquiry in Module 2B, and as my Lady knows this
16 hearing was scheduled to take place on 16 November.
17 CTI's written update for this hearing was prepared now
18 some six weeks ago, on 30 October 2023, and it's
19 important to note that at that stage, so in other words
20 at the end of October, core participants were being told
21 that the Welsh Government had delayed in the provision
22 of certain responses to your Rule 9 requests, and that
23 your CTI's level of concern was such that
24 core participants were being told that this delayed
25 disclosure has the potential to disrupt the Inquiry's

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1 Module 2C, and core participants still do not have
2 anywhere near full disclosure from the Welsh Government.

3 My Lady, of course those whom I represent fully
4 understand that your Inquiry has very important
5 processes that must be adhered to before you can
6 disclose any material. So, to be clear,
7 core participants still do not have Module 2B witness
8 statements from many significant witnesses, to name
9 a few: First Minister for Wales, Mark Drakeford,
10 Vaughan Gething, and Eluned Morgan. So the bereaved
11 non-state core participants are facing a situation in
12 Module 2B not dissimilar to that faced in Module 1 where
13 the Welsh Government also delayed in providing certain
14 key disclosure right up until the last minute, which
15 delayed onwards disclosure to core participants by
16 the Inquiry.

17 Now, the Welsh bereaved are understandably asking:
18 how could this have happened? Because as you know,
19 my Lady, in the early days of this Inquiry, the Cymru
20 group, the UK Government, the Senedd and this Inquiry
21 received repeated assurances from the First Minister for
22 Wales, Mark Drakeford, and the Welsh Government that
23 they were committed to fully engaging with this Inquiry,
24 and these assurances were repeated after Module 1. And
25 I do just want to repeat again what Mr Drakeford said to

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1 process notice they are quickly resolved.

2 Now, we learn today from your Counsel to the
3 Inquiry, Mr Poole KC, that certain draft statements
4 contained insufficient detail or did not address all the
5 matters raised in the Rule 9 requests, and that there
6 were failures to respond sufficiently quickly,
7 necessitating repeated requests for extension of
8 deadlines.

9 Covid-19 Bereaved Families for Justice Cymru are
10 extremely disappointed to learn today that some of the
11 delays and extensions relate to the Welsh Government.

12 Now, it is important to note that the
13 Welsh Government in their written response to your
14 Counsel to the Inquiry's note of 30 October was
15 unfortunately not in any way apologetic for these
16 delays, but apparently -- certainly at least from the
17 perspective of the Welsh bereaved -- it seemed to be
18 rather defensive, pointing out what had been disclosed
19 rather than being clear on what had not been disclosed.

20 Certainly, in that response, there appeared to be in
21 acknowledgement by the Welsh Government of the impact of
22 delayed disclosure on the ability of core participants
23 to effectively participate in this Inquiry. We are now
24 some six weeks ahead of that CTI note of the end of
25 October, and some 11 weeks before the commencement of

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1 the Right Honourable Boris Johnson MP when he was
2 Prime Minister, when he announced the Inquiry. So
3 Mr Drakeford said the following:

4 "... I would invite you to agree that all public
5 bodies engaging with the Inquiry are expected to
6 consider themselves under a duty of candour. That duty
7 should drive their culture of engagement with
8 the Inquiry and should lead to prompt and comprehensive
9 disclosure of all relevant material to the Inquiry.
10 A duty of candour should also guide the way the public
11 body witnesses should approach the Inquiry."

12 So the Covid-19 Bereaved Families for Justice Cymru
13 ask the Welsh Government to explain: where is this
14 prompt disclosure that they promised way back in
15 November 2021?

16 With that in mind, can I now turn to the issue of
17 non-disclosure and deletion or loss of other forms of
18 informal communication, including but not necessarily
19 limited to WhatsApp messages.

20 Now, as we know, with a few notable exceptions,
21 significant volumes of WhatsApp messages were retained
22 and disclosed to this Inquiry by the UK Government in
23 Module 2. These contemporaneous notes and messages
24 between civil servants, special advisers, scientists and
25 politicians have played a key role in illuminating how

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1 and why political and administrative decisions were made
2 by the UK Government.

3 It was therefore very surprising, and indeed
4 concerning, to learn from your Counsel to the Inquiry's
5 update note of 30 October that only very limited
6 WhatsApp messages and text messages had been disclosed
7 to the Inquiry by the Welsh Government as at that date,
8 and that several individual witnesses within the
9 Welsh Government had apparently deleted or simply lost
10 WhatsApp messages from the relevant period.

11 My Lady, can I start by making a request for a bit
12 more clarity from the Inquiry as to what exactly the
13 Inquiry have requested the Welsh Government and their
14 advisers and whether the request for disclosure extends
15 to all forms of informal communications to include not
16 just WhatsApp but other platforms such as Signal,
17 Telegram, Discord, MS Teams chat, iMessage, Facebook
18 Messenger. This appears to have been the case in
19 respect of requests to the Scottish Government, which
20 were outlined by your Counsel to the Inquiry in the
21 recent Module 2A preliminary hearing, and we're assuming
22 that the same rigorous approach has been adopted in
23 relation to Wales.

24 I now turn to the Welsh Government's written
25 response to this Inquiry on the WhatsApp non-disclosure

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1 any other bodies exercising public functions. Namely
2 that they ensure that a full and clear record of their
3 part in events exists, is accessible, and that they
4 apply a precautionary principle by retaining all
5 material that could be relevant -- including emails,
6 text or WhatsApp messages and other communications."

7 The response you received from the Director General
8 in February 2022 indicated that he'd written to all
9 permanent secretaries in June 2021 about preservation of
10 material and that they were written to again, including
11 the devolved administrations, in February 2022, with
12 assurances being given to you that "well-established
13 records management processes are in place across
14 government".

15 The public were told in an Inquiry update note for
16 Module 2B that -- in October 2022 -- a corporate
17 statement had been requested from the Welsh Government,
18 and we note today that your CTI, Mr Poole KC, has
19 confirmed that it was in this request that went to the
20 Welsh Government that the request was made for informal
21 messaging. So that's October 2022.

22 So in short, the Welsh Government have been on
23 notice for over two years, and probably longer, that
24 they needed to retain, seize and disclose all informal
25 messaging to the Inquiry. The Welsh Government have

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1 issue, this is the written response of 16 November.

2 Now, the Welsh Government in their defence state that
3 searching for WhatsApp text material is, in their words,
4 time consuming, demanding of resources and technically
5 problematic, and the word "complex" is also used.

6 My Lady, the Covid-19 Bereaved Families for
7 Justice Cymru were staggered by this response. The
8 Welsh Government have had more than sufficient time to
9 find, preserve and disclose these informal
10 communications in a timely fashion. The Inquiry needs
11 no reminding of the timelines, but the key dates are
12 placed on record for the avoidance of any doubt.
13 Counsel to the Inquiry's October update noted that the
14 Welsh Government committed to providing WhatsApps and
15 related material in June 2023. However, in fairness to
16 the Inquiry, the expectation that this material would be
17 disclosable arose much earlier, and as you well know,
18 my Lady, on 20 January 2022 you wrote a letter to the
19 Director General of Propriety and Ethics at the
20 Cabinet Office on record retention, and you clearly
21 stated that:

22 "I would ask that each department and Devolved
23 Administration takes steps to ensure that the same
24 approach to record retention is communicated throughout
25 all relevant bodies, including arm's-length bodies and

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1 been in receipt of a formal request for disclosure of
2 this material for 14 months. It therefore is extremely
3 surprising and disappointing that the Inquiry has only
4 very recently, a matter of weeks ago, received this
5 disclosure.

6 There is an obvious point to make here, and
7 I appreciate it's been made a number of times on behalf
8 of my client, but it's an important one, but it was
9 Mr Drakeford himself, when refusing to hold a Welsh
10 public inquiry, who insisted that the Welsh Government
11 be scrutinised alongside the UK Government. Now the UK
12 Government has disclosed significant volumes of WhatsApp
13 communications, and so the Covid-19 Bereaved Families
14 for Justice Cymru query: if the Welsh Government want
15 parity of scrutiny, why have they not made similar
16 disclosure in a timely manner?

17 To be clear, as at today's date, the
18 core participants in Module 2B have not received
19 a single WhatsApp from the Welsh Government.

20 I now turn to the deletion or the loss of relevant
21 material by members of the Welsh Government, in relation
22 to informal messaging.

23 Now, the First Minister for Wales, Mark Drakeford,
24 said at First Minister's questions on 7 November 2023 on
25 this issue that:

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1 "... as soon as we knew that the Inquiry wanted
2 something, there's no deletion beyond that point.
3 However, during the COVID period itself, many colleagues
4 working for the Welsh Government will have had devices
5 with deletion instructions already on them, and those
6 things may have remained on their phones, because at the
7 point nobody, I think -- absolutely nobody -- was
8 focused on whether those messages might be required at
9 some future distant point."

10 The Covid-19 Bereaved Families for Justice Cymru are
11 appalled that the Welsh Government has indefensibly
12 allowed a situation in which relevant communications
13 were either lost or deleted. They question whether it
14 can be the case that nobody focused on the preservation
15 of messages during the pandemic. Well, before the
16 pandemic, it would have been obvious, indeed
17 a requirement, that informal messaging touching upon
18 matters of government ought to be preserved and there
19 had to be a policy on the retention of government
20 records in the Welsh Government. The Freedom of
21 Information Act 2000 Code of Practice makes it clear
22 that public bodies should make destruction decisions in
23 accordance with an up-to-date policy using a method or
24 process that is applied consistently and has been
25 approved by the authority.

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1 that she sent texts and WhatsApp communications for
2 government business on her private phone, but that
3 "these messages were regularly deleted at this time",
4 but in any event she thinks that they wouldn't assist
5 the Inquiry.

6 We also note from the very recently disclosed
7 statement of the senior special adviser Jane Runeckles,
8 at paragraphs 79 to 80, that iMessage was set to delete
9 every 30 days and that that 7-day disappearing messages
10 was used for WhatsApp messages for the majority of the
11 groups from when that function became available. In
12 this statement, Ms Runeckles tells us that she is in
13 possession of WhatsApp messages but that these will be
14 made available to the Inquiry. We query why were these
15 messages simply not appended to the statement when it
16 was disclosed?

17 If the Welsh Government have actively as a cohort
18 consciously switched to using the disappearing messages
19 function when it became available, which we know is
20 November 2020, this would suggest that, certainly at
21 this stage, the Welsh Government knowingly adopted
22 a policy or a system designed to delete government
23 communications when it would have been obvious to them
24 that such material ought to be preserved.

25 My Lady, you no doubt will be an expert on the

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1 Public bodies must retain information if they are to
2 need it where there may be a public inquiry and policies
3 must be flexible enough to foresee this.

4 The Covid-19 Bereaved Families for Justice hope and
5 anticipate that the Inquiry will be scrutinising how,
6 why and when messages came to be deleted or lost by the
7 Welsh Government and its advisers, and the policies
8 under which individuals claim they were operating,
9 including the justification for the deletion, as we know
10 is the case with the Scottish Government.

11 We ask the Inquiry to obtain and disclose all
12 correspondence within the Welsh Government, including
13 from Mr Drakeford, touching upon the non-destruction of
14 material on phones, and we also ask the Inquiry to
15 ascertain whether instructions were in fact given within
16 the Welsh Government at any stage prior to or during the
17 pandemic on the preservation of documents and whether
18 there was any official or unofficial policy in the
19 Welsh Government of deleting WhatsApps, or other
20 messages, at any stage, including the use of the
21 auto-delete function.

22 We note the evidence of Clare Jenkins,
23 a Welsh Government special adviser during the pandemic,
24 who makes what may be considered to be a surprising
25 comment at paragraph 22 of her witness statement, namely

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1 working of the platforms of WhatsApp and the like, but
2 just to be clear, that 7-day disappearing function
3 didn't become available, as I said, until November 2020,
4 and even then this function on WhatsApp would not delete
5 all chat messages for every participant in the group,
6 but only the individual using that function. And in the
7 absence of deleting messages function, at the time of
8 the pandemic there was only a one-hour window in which
9 messages could be deleted, and again such deletion would
10 not remove the message from all participants unless
11 everyone in the chat pressed "Delete for everyone" for
12 every message in the chat.

13 The Covid-19 Bereaved Families for Justice would
14 then just like to ask for a further update from
15 the Inquiry setting out the Welsh Government explanation
16 as to what happened to this material.

17 Can we also ask for an update in relation to the
18 status of material such as informal messaging from
19 Public Health Wales as well.

20 I now turn to a different aspect of apparent poor
21 practice in relation to data preservation in Wales, and
22 that's the retention of emails that we've just heard
23 about from Mr Poole KC.

24 Now, we note the reassurance that has been given by
25 him today, but the group remain particularly concerned

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1 that deletions might still impact on the ability of
2 the Inquiry and CPs to put relevant matters to
3 witnesses, so we do ask for a bit more information on
4 this topic so that the bereaved families can be
5 satisfied that this issue is no longer of relevance to
6 the Inquiry and will no longer impact on the Inquiry.

7 So I now turn to some other matters.

8 As my Lady knows, one of the issues of concern to
9 the Covid-19 Bereaved Families for Justice Cymru is that
10 Module 2B and later modules scrutinise the impact of
11 decision-making on the older population of Wales, by
12 reference to Welsh data, and seek to understand the
13 extent to which Welsh policy and legislation in place at
14 the time of the pandemic in Wales in fact made any
15 meaningful difference to decision-making in relation to
16 disadvantaged and vulnerable groups, including the older
17 population of Wales.

18 To that end, the group support and endorse the
19 submissions on this topic that have been made by other
20 core participants for this preliminary hearing, in
21 particular they draw your attention to and endorse the
22 written submissions made on behalf of the disability
23 people's organisations in Wales at paragraph 1.6, namely
24 that the Inquiry is asked to focus on the gap between
25 the rhetoric of national policies and what happened on

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1 and age, and we just draw your attention to that
2 specific point.

3 In relation to the venue for Module 2B, as you will
4 know, the group have already indicated their concern
5 with the location of the hearing venue, which is the
6 Mercure in Cardiff North. They consider it to be
7 unsuitable because it's not centrally located and not
8 easily accessible on public transport links. There is
9 one bus, but it doesn't stop directly outside the venue.
10 I mean, it's understood and accepted that the Inquiry is
11 clearly now committed to this venue, but we simply ask
12 that the Inquiry thinks about solutions to facilitate
13 access, and it may be that that is a shuttle service
14 located close to Cardiff station. The group, as you'll
15 understand, are keen to ensure that as many of its
16 members as possible can attend the final hearing in this
17 module, particularly as it's the only one relating to
18 Wales, and they stand ready to give any assistance that
19 they can to facilitate access to the hearings.

20 Finally, then, can I take this opportunity to once
21 again remind the Welsh Government, as we did in our
22 opening statement for Module 1, that the Covid-19
23 Bereaved Families for Justice Cymru are a group of
24 bereaved families, they have lost loved ones to
25 Covid-19, often in terrible circumstances. Many of the

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1 the ground in Wales. The experience of the membership
2 of the group is that there was a chasm between what
3 government policy aspired to achieve and the reality,
4 particularly for vulnerable and disabled groups.

5 I turn to the use of experts.

6 The group welcomes the instruction of
7 Professor Daniel Wincott by the Inquiry and notes that
8 a first draft of his report has very recently been
9 received and they will respond in the usual way. They
10 also note the Inquiry's reliance on certain Module 2
11 expert reports in respect of Wales for Module 2B. As
12 you know, the group's already indicated their concerns
13 that a number of these reports do not adequately cover
14 Wales, either because there's just simply a lack of data
15 known to those experts in respect of Wales, or a lack of
16 Welsh-specific expertise.

17 The gaps from Module 2 have been highlighted in our
18 written submissions, I think many times, previously, and
19 where possible we ask the Inquiry to seek to fill these
20 gaps, although we note the update today in relation to
21 the data issue.

22 For example, as noted by John's Campaign and Care
23 Rights UK, the report by Professors Shakespeare and
24 Watson on structural inequalities relating to disability
25 does not consider the intersection between disability

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1 group are traumatised by their experiences. However,
2 despite this, the group are working tirelessly to assist
3 the Inquiry to bring scrutiny to the decisions of the
4 Welsh Government on behalf of all those bereaved in
5 Wales. My Lady, this is not an easy task for bereaved
6 individuals who are simply members of the public.
7 Delaying disclosure right up until the last minute
8 fundamentally undermines and frustrates their ability to
9 scrutinise all the disclosure and, in turn, effectively
10 participate in this Inquiry. But the Covid-19 Bereaved
11 Families for Justice Cymru are of course grateful for
12 the opportunity to provide these submissions and remain
13 committed to assisting you and the Inquiry team in their
14 work.

15 Thank you very much.

16 **LADY HALLETT:** Thank you very much, Ms Heaven, and may
17 I repeat my thanks to you, and those you represent, for
18 the help that you have given to the Inquiry so far.
19 I very much take into account the issues that you've
20 raised, including the one about venue, but I think you
21 know the Inquiry ended up with not many options, if not
22 only one option, but we'll do everything we can to
23 ensure that those you represent can participate fully in
24 the hearings.

25 Right. Mr Straw.

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1 **Submissions on behalf of John's Campaign and Care Rights UK**
 2 **by MR STRAW KC**

3 **MR STRAW:** Good morning, my Lady. As you know, I represent
 4 John's Campaign and Care Rights UK.

5 We've set out quite a lot of detail in our written
 6 submissions and this morning I'd just like to emphasise
 7 a few key points on three topics: firstly, the list of
 8 issues; secondly, Rule 9 requests; and thirdly, a few
 9 procedural points.

10 So, list of issues, we welcome the changes that have
 11 been made to the Inquiry's list of issues in the most
 12 recent version, and also the indication from Mr Poole
 13 that the list will be kept under review. In our written
 14 submissions, and this morning, I'd like to identify
 15 a few more specific subissues which aren't explicit on
 16 that list, for the purpose of encouraging the Inquiry
 17 team to bear these in mind and consider them when it's
 18 continuing to prepare for the hearing, so when making
 19 decisions about disclosure, further Rule 9s, if there
 20 are to be any, which witnesses to be called and so on.

21 I'd like to focus on eight subissues for this
 22 morning. The first of them is the indirect harm of
 23 NPIs, non-pharmaceutical interventions, and by indirect
 24 harm I mean the adverse impact other than Covid itself
 25 of those NPIs.

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1 recognition or consideration being given to those who
 2 fall into that category.

3 There's a particularly important disability, which
 4 is dementia. I gave reasons why that's a particularly
 5 important disability in this context in the Module 3
 6 hearing, and I won't repeat those, other than to say
 7 that dementia is the leading cause of death in the UK,
 8 and therefore we submit something that should be
 9 an important matter to be borne in mind.

10 Disability Wales have submitted two points that we
 11 would respectfully endorse. Firstly, in paragraph 1.3
 12 of their written submissions they submit that disabled
 13 people were no more than an afterthought in core
 14 decision-making, and they were given insufficient weight
 15 by central government and central administrators, and we
 16 endorse that.

17 They also invite the Inquiry to obtain an expert
 18 report from Professor Debbie Foster, who was the
 19 co-ordinator of the "*Locked out*" report on this
 20 particular topic. Again, we support that. It does
 21 appear from Mr Poole KC's submissions that that will be
 22 obtained, and if so we are content with that.

23 The fourth sub-issue is the care sector, so the
 24 consideration given to the care sector within core
 25 decision-making, and we're content to hear from Mr Poole

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1 Now, this is a very important issue for our client
 2 group, which is broadly those in the care sector,
 3 because the adverse impact on our client group of NPIs
 4 was at least as bad as the impact of Covid itself, and
 5 that's in terms of both death, illness and serious other
 6 injury.

7 There are a variety of emerging themes from the
 8 disclosure which we would invite the Inquiry team to
 9 bear in mind, related to this, for example, failure to
 10 evaluate or take into account the adverse impact by core
 11 decision-makers, failure to obtain sufficient input from
 12 appropriate experts by core decision-makers, including
 13 expertise about vulnerable groups, for example those in
 14 the care sector. Similarly, failure to obtain
 15 sufficient data and Welsh-specific data regarding the
 16 adverse impact on vulnerable groups.

17 The second issue is failure, by core
 18 decision-makers, to understand and properly consider the
 19 needs and rights of older people.

20 The third issue is similar, it's failure to
 21 understand the needs and rights of disabled people.

22 Now, there's a particular concern for our group,
 23 which is the disabled people with mental or learning
 24 disabilities or cognitive impairment, and there's a real
 25 vacuum in the disclosure that we've seen so far of any

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1 that this module will look at broad reasons why
 2 care-related decisions were taken by core
 3 decision-makers. It's important that that issue is
 4 considered by the Inquiry, as it was important that the
 5 care sector was taken into account by core
 6 decision-makers. These decisions in central government
 7 led to many deaths, they led to serious harm, both Covid
 8 and non-Covid, for those in the care sector, and so it
 9 should have been an issue that was front and centre of
 10 decisions being taken centrally.

11 There are particular issues which affect this module
 12 concerning the care sector that we would invite
 13 the Inquiry to bear in mind.

14 So, firstly, little engagement with those in the
 15 care sector, little engagement with stakeholders.

16 Recommendations from the care sector weren't acted
 17 upon, there was little regard by those in central
 18 positions on the impact of core decisions on the
 19 care sector.

20 And finally, again, a vacuum really in the
 21 disclosure that we've received so far of any
 22 consideration by core decision-makers of care outside
 23 hospital or care home. And this is an often forgotten
 24 part of the health and care sector. It's a very large
 25 proportion of those being cared for are actually those

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1 who are outside hospital or care homes.
 2 The fifth sub-issue is guidance or policy. In
 3 a number of cases guidance or policy was produced by
 4 different parts of government, different departments,
 5 about the same topic. So there may have been guidance
 6 or policy for one particular sector produced by Public
 7 Health Wales and different sections of the government
 8 which conflicted, so it told people to do different
 9 things.

10 We would invite the Inquiry to look into whether
 11 there was a process in place to try to avoid that
 12 sort of conflict, a process for co-ordinating guidance
 13 and policy.

14 Similarly, we would endorse what Ms Heaven submitted
 15 earlier today, that there was a gap between government
 16 policy announcements or government rhetoric and what
 17 happened on the ground in Wales, and we invite
 18 the Inquiry to look into that.

19 The sixth issue is the disclosure indicates that
 20 duties arising from equality and human rights
 21 legislation were overlooked or breached in core
 22 decision-making. So, for example, due regard duties or
 23 reasonable adjustment duties appear often to have been
 24 ignored. Now, of course, government had a great deal on
 25 its plate during the pandemic, but if anything those

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1 importance of what happened in the care sector to core
 2 decisions, so the very high number of deaths that were
 3 caused, the very high number of serious injuries,
 4 serious illness that was caused by core decisions in the
 5 care sector.

6 We would submit on the basis of the evidence that's
 7 been disclosed so far that those in core decision
 8 positions did not have sufficient understanding of the
 9 care sector. For example, a basic point, the difficulty
 10 in isolating those entirely dependent on others for care
 11 and survival. And it would be helpful, we submit, for
 12 an expert to include a section in the report on the
 13 peculiar characteristics of the care sector and those in
 14 care, and how that should have impacted on core
 15 decisions.

16 We've put forward in correspondence an individual
 17 called Mark Llewelyn, who is the director and professor
 18 of health and care policy at the Welsh Institute for
 19 Health and Social Care, and we invite the Inquiry to
 20 consider him.

21 On outstanding Rule 9 requests, we invite
 22 the Inquiry to consider, if it's not already done so,
 23 obtaining a statement from Learning Disability Wales.
 24 Learning Disability Wales were part of a report that was
 25 produced in February 2022 in combination with

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1 duties were more important during a pandemic than
 2 otherwise. Similarly, regulatory bodies such as the
 3 Equality and Human Rights Commission were often
 4 overlooked.

5 The seventh issue, the disclosure so far indicates
 6 that there was, at a relatively early stage, high levels
 7 of hospital-acquired infections, and that those weren't
 8 recognised or properly acted upon in core
 9 decision-making, and the obvious example is discharge
 10 into care homes, but there are other core decisions as
 11 well where that wasn't properly recognised.

12 The final, eighth, issue is lack of record-keeping.
 13 Ms Heaven has already made detailed submissions on that
 14 which I need not repeat, but we endorse those
 15 submissions.

16 My Lady, the second topic I'd like to turn to now is
 17 experts and Rule 9 requests.

18 We do invite the Inquiry to call expert evidence
 19 regarding the care sector for the purpose of this
 20 module. Now, that need not be a specific separate
 21 report, but assuming the Inquiry will be obtaining
 22 a report for Module 6, the care sector module, then if
 23 that can be prepared in time, we would invite
 24 the Inquiry to include in that a section on core
 25 decision-making. And that's really to reflect the

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1 Warwick University about the impact in Wales
 2 specifically of the pandemic on those with learnings
 3 disabilities, for example autism. And we invite the
 4 Inquiry to consider obtaining a report from Learning
 5 Disability Wales. It's likely to be of significance to
 6 issue 3B, that's the impact on vulnerable groups of core
 7 decisions.

8 It's unclear from what we've seen so far whether
 9 full evidence has been sought by the Inquiry on the
 10 adverse impact of NPIs on vulnerable groups in Wales.
 11 For example, the impact of those on carers or visitors,
 12 the impact of the restrictions on carers and visitors on
 13 others. Expertise and data, so has sufficient witness
 14 evidence been obtained as to what data was available of
 15 the impact of NPIs on vulnerable groups?

16 And, if that hasn't already been done, then we
 17 invite the Inquiry to do that. One body that may be
 18 able to help is Social Care Wales, who would be in
 19 a good position to give evidence about that.

20 The last point about Rule 9s is that written
 21 submissions of Covid-19 Bereaved Families for Justice in
 22 paragraph 3 invite the Inquiry to obtain evidence in
 23 relation to older people in Wales, particularly those
 24 receiving care outside a state setting, and we would
 25 endorse that request.

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1 My Lady, the third topic I'd like to turn to now is
 2 a few procedural matters, preparation for the final
 3 hearing. CTI has mentioned the provisional list of
 4 witnesses. We would be grateful if we could have
 5 an opportunity to make submissions about the provisional
 6 list of witnesses when it's produced. The timing is,
 7 of course, difficult. We're well aware of the
 8 difficulties and the pressures that the Inquiry is
 9 under. It's important that the time in which we make
 10 submissions is after sufficient information has been
 11 disclosed so that they can be effective submissions, but
 12 giving us enough time prior to the Inquiry so that they
 13 can be made at a time when witnesses can actually be
 14 called.

15 A similar issue, Mr Poole has mentioned that key
 16 documents, for example about uncontroversial
 17 backgrounds, will be produced by the Inquiry, and draft
 18 evidence proposals for witnesses will be produced.
 19 Again, we'd be grateful for an opportunity to comment on
 20 all of those, and again in sufficient time for us to be
 21 able to do so effectively. I'm sure your Ladyship is
 22 well aware of this, our client groups have full-time
 23 jobs, some of them have protected characteristics
 24 themselves, so the more time that can be given to us the
 25 better.

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1 address.
 2 **LADY HALLETT:** No, thank you very much indeed, Mr Straw, you
 3 make some obviously very important points and I'll bear
 4 them all very much in mind. Thank you.

5 I think we'll take a break now. Where is
 6 Mr Howells? Oh, he's there. Right. I was assured that
 7 I'd have a clear line of sight, Mr Howells. Maybe if
 8 I take the break and we can make sure that I do have
 9 a clear line of sight.

10 I'll return at 11.25. Thank you.

11 **(11.08 am)**

(A short break)

13 **(11.25 am)**

14 **LADY HALLETT:** Now I can see you, Mr Howells.

15 **Submissions on behalf of the Welsh Government by MR HOWELLS**

16 **MR HOWELLS:** My Lady, bore da.

17 The Welsh Government is grateful to Counsel to the
 18 Inquiry, Mr Poole King's Counsel, for acknowledging the
 19 significant efforts that the Welsh Government has made
 20 to comply with all requests made of it by the Inquiry.
 21 In addition to Module 2B, the Welsh Government is
 22 a core participant in five other modules. Few other
 23 governmental core participants have a similarly intense
 24 involvement in the Inquiry. That brings a very heavy
 25 workload, but the First Minister and the whole

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1 Mr Poole has indicated that instructions given to
 2 experts won't be disclosed. We would ask you to
 3 consider that issue, not necessarily to disclose those
 4 in advance, but to disclose those at the same time as
 5 disclosing the reports themselves. And the basic reason
 6 for that is that, in some instances, it's been difficult
 7 to understand the contents of the reports without the
 8 letters of instruction, so without that context of the
 9 questions that were asked, it's difficult to understand
 10 the answers that were given. We, in our submissions at
 11 paragraph 31, outline a few particular examples of that
 12 happening.

13 The final point I'd like to raise is context for
 14 certain disclosure. We deal with this in our written
 15 submissions at paragraph 32 onwards. It's sometimes
 16 been difficult to understand the significance of some of
 17 the disclosure that we've received, and would be
 18 grateful for the Inquiry to consider giving more context
 19 about the particular points we've raised. One example
 20 is WhatsApp messages. So in some instances it's unclear
 21 who was in the WhatsApp group, what its function was,
 22 and that makes it difficult or impossible to understand
 23 the significance and the impact of those messages.

24 My Lady, that's all I hope to cover for today,
 25 unless there's anything else you would like me to

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1 Welsh Government consider it to be vital that its
 2 decision-making in the pandemic, which affected everyone
 3 in Wales and every aspect of life in Wales, is examined,
 4 tested and judicially considered.

5 Given the scale of the response to the pandemic,
 6 fair and impartial scrutiny of the Welsh Government's
 7 actions is necessary. It is for that reason that the
 8 First Minister, uniquely, volunteered to give evidence
 9 and to be examined in Module 2, so that you heard
 10 evidence from at least one other head of government
 11 about the operation and effectiveness of
 12 intergovernmental decision-making during the pandemic.

13 This is, we hope, a telling and practical example of
 14 the Welsh Government's willingness to submit itself to
 15 scrutiny.

16 It may help those following today's hearing to know
 17 the extent of the Welsh Government's contribution to
 18 Module 2B's work so far. It has provided over
 19 75 statements in either final or draft form with a small
 20 balance to be provided imminently and certainly well
 21 before the start of the hearings next February. It has
 22 disclosed more than 24,000 documents to date,
 23 a significant volume of material, which includes
 24 documents that are relevant to the matters that
 25 your Ladyship will consider in Module 2B.

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1 The Welsh Government will continue to meet its duty
2 of disclosure and provide any further material that is
3 sought, including all specific disclosure.

4 The materials which have already been provided to
5 the Inquiry and future disclosure will include, but is
6 not confined to, advice to ministers throughout the
7 pandemic from January 2020 onwards and the supporting
8 material which was provided with that advice, the
9 scientific and other evidence which ministers considered
10 when making decisions, relevant minutes, relevant email
11 and other correspondence, and other material which
12 explains and illustrates decision-making in Wales during
13 the material time.

14 When the Welsh Government's disclosure is provided
15 to core participants, it is of course subject to
16 the Inquiry's procedures. Finally, in February and
17 March next year, you will hear evidence from the
18 Welsh Government including officials and ministers.
19 Those witnesses will be examined by Counsel to the
20 Inquiry on the basis of the materials that ministers
21 relied upon in making decisions and officials in giving
22 advice.

23 The Inquiry will receive the fullest co-operation
24 from all those witnesses. WhatsApp and other similar
25 forms of communication have featured prominently in

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1 continue to do so.

2 Following discussions between the Welsh Government
3 and the Inquiry about the substance and focus of
4 the Inquiry's requests, on 25 October this year
5 the Inquiry asked some specific questions about WhatsApp
6 communications which usefully distilled matters. The
7 Welsh Government has provided a comprehensive response
8 to that request by the deadline of 8 December.

9 My Lady, finally, may I thank again Counsel to the
10 Inquiry, Mr Poole King's Counsel, and his team for their
11 positive, practical and constructive approach throughout
12 their work in Module 2B. Although we may not always
13 agree, the Module 2B team has been consistently
14 courteous, appropriately demanding and always rigorous
15 in carrying out their investigation, a balance which is
16 not always easy to find or to maintain and to do so
17 fairly.

18 My Lady, unless there are any other matters, those
19 are my submissions.

20 **LADY HALLETT:** Thank you very much indeed, Mr Howells, very
21 grateful.

22 Mr Poole, anything to conclude?

23 **Reply statement by LEAD COUNSEL TO THE INQUIRY FOR MODULE 2B**

24 **MR POOLE:** My Lady, may I briefly attempt just to deal with
25 four issues which, in our submission, require to be

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1 recent hearings and in media coverage. In relation to
2 Wales at least, you may conclude in your report that the
3 high-profile coverage of WhatsApp messages was
4 disproportionate to its true forensic value in examining
5 or illustrating the Welsh Government's decision-making.
6 That, however, will be a matter for your Ladyship to
7 decide in light of the whole body of evidence that will
8 be adduced in Module 2B, of which WhatsApp
9 communications are a minor and peripheral part.

10 At the end of September this year, the Inquiry and
11 the Welsh Government agreed the approach to be adopted
12 in relation to the appropriate management of WhatsApp
13 and similar communications. Between 3 October this year
14 and today, the Welsh Government has disclosed batches of
15 WhatsApp, text message transcripts and screenshots to
16 the Inquiry and will continue to do so. It should be
17 borne in mind that the process of searching for these
18 materials is time consuming, intensely demanding of
19 limited resources, and, on occasion, technically
20 problematic.

21 The Welsh Government has kept the Inquiry regularly
22 informed about progress of the complex process of
23 gathering WhatsApp and other communications from many
24 individuals, some of whom have left office or no longer
25 work for the Welsh Government. It will, of course,

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1 responded to and can be usefully dealt with
2 straightaway.

3 The first, delayed disclosure. As I said earlier
4 this morning, we have received everything that we
5 anticipate receiving and we will provide material to
6 core participants as soon as possible, which inevitably
7 is probably going to tip into the New Year.

8 As regards the three statements specifically
9 mentioned by Ms Heaven on behalf of Covid-19 Bereaved
10 Families for Justice Cymru, namely the statements from
11 the First Minister, Mr Drakeford, Mr Gething and
12 Eluned Morgan, they will be disclosed before Christmas,
13 failing which very early in the New Year, and they are
14 all at the final review stage.

15 The second issue, informal communications. Again,
16 in response to submissions made on behalf of Covid-19
17 Bereaved Families for Justice Cymru, I can confirm that
18 the Rule 9 questions that were in the Rule 9 sent out by
19 Module 2B team included questions on informal WhatsApps
20 and other messaging platforms, texts and iMessages.

21 As regards the issue of retention and deletion, we
22 are reviewing, as I said earlier, the recent response
23 received from the Welsh Government regarding the use of
24 WhatsApps and other informal methods of communication,
25 and the CPs can rest assured that we will pursue the

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1 issue until we are satisfied that the issue is fully
 2 investigated, and we will provide an update on this
 3 issue to core participants in due course. And
 4 of course --
 5 **LADY HALLETT:** Sorry to interrupt you, I think Ms Heaven
 6 also mentioned Public Health Wales in relation to
 7 deleted messages.
 8 **MR POOLE:** My Lady, yes, I include --
 9 **LADY HALLETT:** You do?
 10 **MR POOLE:** -- Public Health Wales within that, and we will
 11 provide an update to core participants in respect of all
 12 of those in due course. We will also, of course,
 13 provide the materials when we can.
 14 The third issue I wanted to mention was list of
 15 issues and Rule 9 recipients. In response to
 16 submissions made by Mr Straw KC on behalf of
 17 John's Campaign and Care Rights UK, the Inquiry is very
 18 alive to the issues that Mr Straw has identified. We
 19 will reflect on the specific issues when putting
 20 together the evidence proposals before circulating to
 21 core participants for their input. We will also
 22 consider the individuals and bodies that he's identified
 23 and reflect on whether further Rule 9s should be issued,
 24 and I can confirm that the Inquiry has already sent
 25 a Rule 9 request to Professor Debbie Foster.

1 I'm going to start the Module 2C preliminary hearing.
 2 Anyway, for those who need to know, we'll make sure
 3 a message is there.
 4 Thank you.
 5 **(11.35 am)**
 6 **(The hearing concluded)**

1 Then, finally, on the provisional list of witnesses
 2 and evidence proposals, I can confirm that the
 3 core participants will be given the opportunity to
 4 provide their comments on the provisional list of
 5 witnesses in advance of that list being finalised. We
 6 hope to be able to share that list with
 7 core participants this week, and we welcome their
 8 observations in due course, and we will also write very
 9 early in the New Year to core participants explaining
 10 the timetable for evidence proposals and
 11 core participant contributions.
 12 My Lady, they're all my submissions.

13 **LADY HALLETT:** Very grateful, Mr Poole, and indeed I'm
 14 extremely grateful to everyone who's made submissions
 15 today and indeed anybody who's made submissions in
 16 writing in the past, it all bodes extremely well for
 17 an effective investigation in February and March. The
 18 focus and the constructive nature of the submissions are
 19 very welcome. So thank you all very much indeed.
 20 I'm afraid my Welsh isn't good enough to say I look
 21 forward to seeing you in February and March, but maybe
 22 you can give me some lessons, Ms Heaven or Mr Howells.
 23 Actually I think I have somebody in the Inquiry who can
 24 give me lessons.
 25 Thank you all, and I will rise now until 1.45, when
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