

THE UK COVID-19 INQUIRY

TRADES UNION CONGRESS AND SCOTTISH TRADES UNION CONGRESS: JOINT OPENING SUBMISSION IN MODULE 2A

INTRODUCTION

1. This is the opening statement of the Trades Union Congress ('the TUC') and the Scottish Trades Union Congress ('the STUC') in Module 2A of the UK Covid-19 Inquiry. The TUC and STUC are separate organisations, but with shared aims and values. Both are recognised as 'core participants' to this module. The 54 unions affiliated to the TUC represent over 5 million working people, across a range of sectors, and across the four corners of the UK. The STUC is a national lobbying, campaigning, and co-ordinating body for trade unions in Scotland and represents over 545,000 trade union members. Both the TUC and the STUC aim to provide a voice for working people, and to shine a light on the consequences of decision-making upon the experiences of those at work. In Modules 1 and 2, the Inquiry heard evidence from Kate Bell, Assistant General Secretary of the TUC. In this module, the Inquiry is to hear evidence from Roz Foyer, General Secretary of the STUC.
2. The pandemic response in Scotland shared very many of the experiences and challenges of the pandemic response of the UK Government ('UKG'). Inevitably, insofar as Modules 2, 2A, 2B and 2C are concerned with examining the decision-making processes of central government, the differing approaches of the UKG and Devolved Administrations ('DAs') provide illuminating counterpoints. Module 2 has heard evidence of shocking dysfunction in the UKG response, with decision-makers repeatedly oscillating between the pursuit of varying objectives, all against a background of bitter squabbling resembling something of a playground politics. The decision-making in respect of Scotland is yet to be explored in the oral hearings, but the indications thus far are of a more professional, mature, and open form of decision-making within Scottish Government ('SG'), which resulted in better decisions. So far as the TUC and STUC are particularly concerned, the SG certainly engaged in more open and meaningful consultation with unions, and the Scottish approach generally reflected a better understanding of pandemic response in the workplace.

3. This written opening submission addresses: (a) social partnership and pandemic response in the workplace, (b) cultural contrast between Westminster and Holyrood, and (c) devolution and collaboration in decision-making.
4. This submission does not address the lasting impacts of austerity upon the ability of public services to respond to a crisis, as has been considered, particularly, in Module 1 of this Inquiry. It is right to acknowledge, however, that the Scottish experience equally reinforces the grave lessons to be learned about the impact of austerity policies on resilience of key public services including local authorities, social care, and health services to deal with a pandemic.

SOCIAL PARTNERSHIP AND PANDEMIC RESPONSE IN THE WORKPLACE

5. An important feature of the pandemic response of the SG was a pre-existing culture of professionalism, engagement, and collaboration, which, in the Covid-19 pandemic translated into a willingness to look outside of government for advice and expertise. As Ms Foyer describes in her witness statement:

'The STUC has a successful history of engagement and working with devolved government in Scotland. For a number of years we have held formal biannual meetings with Scotland's First Minister. These meetings include a number of General Council members representing our largest affiliated trade unions. The First Minister is also usually invited to speak at the annual STUC Congress. We have frequent engagement with the Deputy First Minister, Cabinet Secretaries, Ministers, and senior officials across all government directorates as required. Prior to the pandemic the STUC raised concerns and offered input to the Scottish Government on a range of issues as deemed appropriate by our affiliates. Alongside formal meetings with Cabinet Secretaries and Ministers, the STUC had open channels of communications with civil servants, key officials, and special advisors where issues could be raised or feedback given on policy decisions and their implementation'.¹

6. Scotland, due to the history of social partnership between the trade union movement and government, had the benefit of existing processes and mechanisms which could be mobilised during a crisis. These established engagement forums with SG included bi-annual meetings with the First Minister, regular meetings with Cabinet Secretaries, Ministers and senior officials, along with ad hoc issue-specific roundtables as required.
7. On 25 March 2020, the SG and STUC issued a joint statement titled 'Fair Work During the Covid-19 Crisis' which highlighted the importance of forging a partnership between government, the public sector, unions, businesses, third sector organisations and workers and managers to respond to the specific demands of the Covid-19 pandemic.²
8. From an early point in the pandemic, regular meetings were also set up between the STUC and Fiona Hyslop (then Cabinet Secretary for Economy, Fair Work and Culture),

¹ INQ000103538/8-9, para. 22

² INQ000107242.

which became the Covid Group meeting and took place on a weekly and then monthly basis throughout the pandemic (until end-March 2022). In March 2020, Ms Hyslop contacted the STUC directly to request its support in pandemic response and seeking input into its response.³ A regular format and schedule was devised to ensure the meetings were as effective as possible and all participants could appropriately prepare for the meeting.⁴

9. This approach to consultation is reflected in evidence already before this Inquiry. For example, Lesley Fraser (Director General Corporate) explains: *'Business Organisations, Unions, and Regulatory bodies were represented on various fora to address particular topics or concerns in specific sectors e.g. the Safer Workplaces Working Group; the Construction Leadership Forum; and the Hospitality Industry Group. The purpose of such groups was to provide a forum to discuss emerging issues; to share experience and best practice; and to develop and maintain support and guidance. Feedback from businesses and representative organisations was used to support 'four harms' decision-making within the Scottish Government'*.⁵
10. In relation to social care specifically, Nicola Sturgeon (former First Minister ('FM')) describes that SG *'had access to, and drew on, views, information, and advice from a range of representative groups, including those with a perspective on patients' issues. [...] there was ongoing and regular discussion and consultation with a range of external organisations throughout the pandemic, including trade unions'*.⁶ Jeane Freeman (then Cabinet Secretary for Health and Sport) similarly describes *'very strong liaison between me, COSLA, Scottish Care and the relevant trade unions for social care, including in home social care and adult social care that sought to resolve issues relating to PPE and support of adult social care staff'*.⁷
11. The consultation was important, not least as the STUC was uniquely placed to gather information, identify concerns, and offer advice further to its representative structure coverings all parts of the voluntary and public sector in Scotland. Its representative structure enables direct reporting and feedback from key workers who were delivering emergency and essential services.⁸
12. Although, as outlined in Ms Foyer's statement, the SG made decisions which the STUC and relevant unions did not agree with, the general view was that the expertise and input of the STUC was considered in a meaningful way. It is noted that Professor Philip

³ INQ000107220.

⁴ See, further, Roz Foyer's statement: INQ000103538/13.

⁵ INQ000215474, p.16, para. 59.

⁶ INQ000339033/44, para. 117.

⁷ INQ000273984/41-42, para. 181.

⁸ See Roz Foyer's statement at INQ000103538/2, para. 9.

Banfield of the British Medical Association describes a similarly constructive experience of engagement.⁹ A number of areas of disagreement are summarised at paragraph 10 of Ms Foyer's statement.¹⁰

13. That is, of course, in stark contrast to the approach as it was in Westminster, typified by a needlessly oppositional approach to consultation with key stakeholders such as unions. The evidence has been described in the TUC's Module 2 submissions, but it is encapsulated by Sir Patrick Vallance's (then UK Chief Scientific Adviser) note of Boris Johnson (then UK Prime Minister ('PM')) describing in a meeting with senior Ministers that he *'can't have the bollocks of consulting with employees and trade unions'*.¹¹
14. The TUC and STUC consider that this is part of a wider cultural issue in UKG. As Ms Foyer describes in her statement, at *'a UK level'* there was a *'notable lack of engagement with trade unions [...] about how to deal with the pandemic'*, which *'contributed to a very regrettable disparity between policy at UK and at devolved government level'*.¹² Similarly, Professor Banfield describes *'different pre-existing relationships and established ways of working in each nation, with the devolved nation governments often working more collaboratively with stakeholders such as the BMA'*.¹³
15. More generally, those within SG demonstrate in their evidence a greater openness to incorporating the views of others in future, supported by an understanding that this will strengthen the response. For example, Humza Yousaf raises the possibility of Cabinet hearing directly from those impacted by a pandemic and the response to it.¹⁴
16. This greater openness had a positive impact in a range of areas of decision-making, as is set out at 18 to 33 below and at paragraph 90 of Ms Foyer's witness statement in this module. The TUC and STUC consider that this positive approach to social partnership will be reflected in many of the key decisions made by the SG, which will be examined in this module.
17. That is not to say, of course, that there were not shortcomings. As Ms Foyer observes, there were many examples of the STUC being given little to no time to respond adequately to complex documents or to ensure that representatives with the right level of expertise about a key sector were present for meaningful dialogue. The STUC often found itself inadequately resourced for the engagement that was being sought by SG. There are lessons to be learned about the need for SG when engaging so intensely with stakeholders, to ensure that work is put into ensuring that the organisations being

⁹ INQ000228384/18, paras. 70-71.

¹⁰ INQ000103538/3.

¹¹ INQ000273901/478.

¹² INQ000103538, p.32, para. 95.

¹³ INQ000228384/14, para. 52(c).

¹⁴ INQ000273956/107, para. 470.

engaged with are, if required, given assistance with their capacity and infrastructure to engage meaningfully and at pace.¹⁵ There were also many occasions where the STUC raised serious concerns and had heated and robust exchanges with SG ministers about decisions made that in the STUC's view lacked appropriate consultation.

Financial support for workers

18. The evidence considered in Module 2 revealed the UKG being urged, from all sides, to increase the support for self-isolation, particularly financial support. That included not just calls from unions, but from the UK Chief Medical Officer and Chief Scientific Advisor, from SPI-B, from the behavioural scientists, from the Department of Health and Social Care, from regional mayors, and others. The evidence is analysed in the TUC's submissions for Module 2.
19. Similarly, the STUC wrote to the SG on a number of occasions urging greater action on this issue, including on 12 March 2020 via a letter to Kate Forbes.¹⁶ The SG in turn asked the UKG to provide the necessary financial support. In her statement for Module 2, Ms Sturgeon described SG analysis showing that the labour market impact of requiring self-isolation was unequal, with those not able to work from home being more likely to face a loss of income, and the equality implication of some higher risk sectors having higher concentrations of employment of women and minority ethnic groups.¹⁷ In summer 2020 Scottish Ministers wrote to UK Ministers asking that the terms of its Statutory Sick Pay scheme be amended to ensure people who complied with self-isolation did not lose out financially. In the event, the UKG implemented the bespoke self-isolation payment scheme, and it was necessary for the SG to put in place an equivalent scheme.
20. The difference in approach between governments is likely explainable in part due to the SG not sharing the same ideological resistance to sick pay that appears to have been held by the UKG, and particularly the UK chancellor.¹⁸ It is also likely to have been contributed to by the SG's greater openness to the views of stakeholders such as unions. In a similar vein, Professor Stephen Reicher, who similarly advocated improved financial support for self-isolation, described the comparatively more engaged approach of the SG with SG Covid-19 Advisory Group, as compared with the UKG and SPI-B.¹⁹ As Professor Reicher describes: *'poorer people and those from ethnic minorities were between three and six times more likely to break Covid regulations, not because they*

¹⁵ See the witness statement of Roz Foyer: INQ000103538/31.

¹⁶ INQ000107231.

¹⁷ Nicola Sturgeon's statement in Module 2: INQ000235213/31-32, paras. 102-104.

¹⁸ See the TUC's Module 2 written closing statement, paras. 38-42.

¹⁹ INQ000370347/3.

*were less motivated to comply (there were no differences on this score) but because of the practical difficulties of staying home and putting food on the table’.*²⁰

21. The difference in approach also reflected the SG’s greater willingness to turn to incentives rather than enforcement (in contrast to the UKG, as Professor Vallance describes in his diaries, always reaching for the stick rather than the carrot). That is something described by Professor Reicher: *‘The [SG] by and large avoided a reliance on punishment to secure adherence, both in terms of its messaging [...] and in terms of policies’.*²¹
22. The STUC also worked to highlight the situation for those in the creative industries who were not supported by the UKG’s furlough or Self-Employed Income Support Scheme, both by meetings with government, briefings on gaps in financial support, and via the publication of a report, ‘The Impact of Coronavirus on Hospitality and Creative Workers’. The SG responded positively, launching two funds, the Screen Hardship Fund and the Hardship Fund for Creative Freelancers and committed over £28 million to these funds.²² The STUC also brought to the SG’s attention the difficulties faced by taxi drivers, many of whom were not supported by the UKG’s financial support mechanisms. The Taxi and Private Hire Vehicle Driver and Operator Support Fund was subsequently introduced, with £62 million committed to plug the gap.

Sectoral guidance and enforcement

23. The TUC’s submission in Module 2 emphasised the significant evidence as to occupational exposure being a key risk factor both in transmission of the virus, and its deadly effects. Further, the risk of occupational exposure did not fall equally. In particular, occupations less likely to be able to work from home had higher mortality rates, as did those which involve a higher degree of physical proximity to others. Amongst Scottish men, higher Covid-19 mortality rates were amongst kitchen and catering assistants, waiters and hospital porters, taxi and cab drivers, and large goods vehicle drivers.²³ Amongst Scottish women, higher Covid-19 mortality rates were recorded in cleaners, bottlers, canners, process, plant and machine operatives, postal workers and couriers, and shelf-fillers in stores.²⁴ That unequal impact intersected with disproportionately higher representation in those sectors of certain groups, including a number of ethnic minority groups and migrant workers.²⁵ On 22 May 2020, the STUC

²⁰ INQ000370214.

²¹ INQ000370347/73, para 148.

²² INQ000107219. For further information, see INQ000103538/18, paras. 53-55.

²³ Scottish Centre for Administrative Data Research, ‘Occupation and COVID-19 deaths: Scotland in a comparative perspective’ [INSERT INQ].

²⁴ [INSERT INQ].

²⁵ INQ000280057/20, para. 63.

Black Workers Committee sent an open letter to the FM urging action to combat the unequal impacts of the pandemic and highlighting that *'Black and Minority Ethnic Workers are employed at a higher rate within the key workers category identified by Government and yet are more likely to be paid less than their white counterparts. They are over-represented in roles and jobs which put them at even greater risk to being exposed to illness and disease'*.²⁶ These issues were highlighted in further detail in a report by UNISON Scotland, titled *'Underlying Inequalities & Infection Risk: Black Workers & Covid-19'*.²⁷

24. Scotland benefitted from marginally more effective workplace guidance but was similarly hamstrung by the limitations in enforcement of workplace health and safety. In Module 2, the TUC has described that workplace guidance was too often late, lacking in understanding of the practical realities of workplaces, and too discretionary and generic to properly protect workers, particularly those in low-paid and insecure work who are less empowered to raise issues of workplace safety with their employers. In a letter to Alok Sharma on 8 May 2020, the STUC explained their concern that UK workplace guidance *'effectively leaves it at the employer's discretion whether they uphold social distancing and prioritise safety and public health'*.²⁸ There were instances in which workplace guidance in Scotland was stronger, with stricter requirements on physical distancing, as described by Alister Jack, and mandatory rules around the wearing of face coverings in settings not mandated in England, including in classrooms.²⁹
25. However, some of the deficiencies were shared, and there is some welcome acknowledgment of that from Humza Yousaf: *'We did our best to explain the rationale of decision making but the feedback from some groups, in particular the hospitality industry, was that the rules were changing too often, with decisions made before guidance was available. On reflection, there may have been instances where we could have worked with industry on guidance before making a final decision on restrictions. I believe this could have been improved'*.³⁰
26. As for enforcement, on numerous occasions during the life thus far of this Inquiry, the TUC has pointed to the importance of systemic underfunding of the Health and Safety Executive and the implications of that for pandemic response. It is a view shared by the STUC. Ms Foyer describes a *'lack of adequate resourcing for implementation and monitoring of safety guidance and other covid related emergency measures'* which meant that *'these were not adequately enforced across employers, due to years of*

²⁶ INQ000107240/1-2.

²⁷ INQ000215615.

²⁸ INQ000215540/2.

²⁹ INQ000355538.

³⁰ INQ000273956/7, para. 35

underfunding of areas including the Health and Safety Executive and Environmental Health Officers employed by local authorities. It became evident that there was a huge skills gap in these areas when it was most needed'.³¹ The TUC and STUC commend to the Inquiry the views on the issue expressed by Professor Reicher who, importantly (and correctly), describes it as an issue which *'needs to be addressed if we are to fare better in future pandemics'*:

'As concerns regulation of public spaces to ensure they observed Covid-19 safety regulations (and complied with Health and Safety law, this was one of the greatest failures of the pandemic response right across the UK). In the entire first year of the pandemic there was not a single prosecution for health and safety violations relation to Covid - the first that did occur was in late 2021. Indeed, during the first 'lockdown' the HSE suspended site inspections entirely, reverting to telephone conversations. In part, these failures reflect a sharp decrease in funding for the HSE and in numbers of Inspectors at a national and local level. Thus, the number of full time equivalent local authority health and safety officers in the UK fell from 1,020 in 2010 to 543 in 2017 (and fell further by 2020). This is an issue which needs to be addressed if we are to fare better in future pandemics'.³²

Face masks and the precautionary approach

27. Several of the TUC and STUC affiliated unions called for a precautionary approach in respect of the use of face masks in workplaces, including in schools. The precautionary approach, including in the particular context of face masks, is explained in the Module 2A evidence by public health expert, Devi Sridhar:

'The precautionary principle is that if the costs of a policy are minimal and the potential benefits are large, you enact it before you have all the evidence to back it up This ensures that effective policies are put in place at an early stage. For example, at the outset we did not have clear evidence on whether the wearing of masks would make a difference. Many countries however thought the benefit could be very large compared to the low costs involved, so moved quickly to make the wearing of masks mandatory in public spaces. I would recommend the use of the precautionary principle, but I do not know how this consideration affected decision making'.³³

28. This precautionary approach appears to have been more willingly adopted by the SG, as urged by unions, with the UKG lagging behind. In Scotland, guidance recommending face coverings in places such as shops and on public transport was introduced in April 2020, and became compulsory on public transport on 22 June 2020, and in shops on 10 July 2020.³⁴ A number of unions called for the use of face coverings in schools, and in schools in Scotland they were required in communal areas from 31 August 2020³⁵ and in classrooms (for those in tiers three and four) from 2 November 2020. Unions recommended that some of these decisions should have been taken earlier, or measures

³¹ INQ000103538/32, para. 97.

³² INQ000370347/47, para. 96.

³³ INQ000339838/12-13, paras. 82-83.

³⁴ INQ000357465; INQ000357778; INQ000357414.

³⁵ INQ000357790.

left in place for longer, but the decision-making generally reflected an appropriate, precautionary approach informed by consultation with unions, other stakeholders, and public health experts.

29. The UKG lagged behind, it appears in part simply chasing the decision-making in Scotland. On 25 August 2020, Mr Johnson privately bemoaned to his advisors that he was trying to understand the UK's *'totally f*cked up'* policy on masks in schools.³⁶ The following day, Simon Case (then Downing Street Permanent Secretary) shared his explanation with Dominic Cummings (then Chief Adviser to Mr Johnson) that permissive guidance on masks in schools had been recommended *'weeks ago'* but *'Because at that stage it was Unions pressing for masks'*, the Secretary of State for Education ('SSE') was in *'no-surrender mode and didn't want to give an inch to the unions so said we should hold firm'*.³⁷ Mr Johnson was said to have given the SSE his *'full support in this approach'*, consistent with him generally backing *'bullshit 'no surrender' ideas'* which he then *'totally regrets [...] later'*.³⁸ It was antithetical to precautionary, mature and open decision-making, and in contrast to the decision-making in Scotland.
30. The different approaches to face masks are an example of divergence in approach being unhelpful. As Ms Foyer set out in her statement, *'The differing advice caused confusion in the public messaging on mandatory face coverings and often resulted in tensions and abuse for workers who were tasked with requesting the public, or customers, to follow the guidance'*.³⁹

Care sector

31. Workers in essential services including social care were called upon to work on the frontline, often putting themselves and their immediate families at risk. SG's decision to transfer patients from hospital to care homes allowed Covid-19 to spread amongst residents in care, resulting in tragic consequences for some residents and social care workers.
32. The STUC raised concerns from the initial stages of the pandemic regarding the urgent need for PPE for social care workers and financial support in the absence of sick pay for social care workers. The SG established the Social Care Staff Support Fund in June 2020 which was designed to mitigate the financial hardship for those working in social care who were required to self-isolate. Following representation from trade unions this fund was extended until 31 March 2023.

³⁶ INQ000283369/41.

³⁷ INQ000048313/53.

³⁸ INQ000048313/53.

³⁹ INQ000103538/6, para. 11.

33. There was meaningful liaison between unions and the SG on the care sector, although some of the fundamental problems facing the care sector workforce and which came to the fore during the pandemic require fundamental reform. As Professor Reicher describes:

*'There is evidence that poor staffing conditions contributed to the death toll. Those homes which failed to provide sick pay, or which used bank and agency workers saw higher rates of infection amongst residents. Neither of these findings are particularly surprising. If staff work when infected because they cannot afford not to, or if they move from home to home with the potential to spread Covid not only within but also between homes, there is bound to be a problem. This cannot be addressed without addressing the general employment conditions in the sector. A 2022 Health Foundation report shows over a quarter of the UK's residential care staff to be living in, or on the brink of, poverty. While Scotland has introduced a minimum wage for care workers of £12 from April 2024, there remains a long way to go. And we will not be able to look after care home residents in future crises unless we also look after care home staff.'*⁴⁰

CULTURAL CONTRAST BETWEEN WESTMINSTER AND HOLYROOD

34. The different approach of the SG to consultation with stakeholders such as unions is an example of a divergent (and more effective) approach to decision making. There appears also, to have been others.

35. First, the SG appears to have been quicker to work within clear and agreed frameworks for decision-making. Most notably, the SG implemented the four harms framework, which was introduced in April 2020 and applied throughout the period of pandemic restrictions in Scotland.⁴¹ The Framework was published, as were updates to the Framework, enabling the public to understand how and why decisions were being taken and promoted a culture of transparency in respect of decision-making. The Framework was considered within the 'Four Harms Group' which fed into Cabinet meetings. The SG appears to have been more willing to look outwards in its decision-making. Examples include the influence on the SG of the writings of Thomas Pueyo which argued for a severe set of initial NPIs ('the hammer') and variable NPIs thereafter according to the state of the pandemic ('the dance').⁴² They also include the greater influence of WHO advice, upon which the SG's route map was based.⁴³ From early on, the SG appears to have been better at setting objectives and frameworks, applying these to decision-making, communicating these both internally and externally, and achieving buy-in, leading to a clearer, more cohesive approach.

⁴⁰ INQ000370347/64, para. 131 [references omitted].

⁴¹ See witness statement of Ken Thomson, INQ000215495/19, paras. 73-74.

⁴² See witness statement of Ken Thomson, INQ000339033/90, para. 250.

⁴³ See witness statement of Nicola Sturgeon, INQ000339033/112, para. 308.

36. Second, some of the evidence suggests that the meetings of the Scottish Cabinet appear to have been, in substance, decision-making meetings, where various members of Cabinet contributed to decision-making, albeit the FM exercised final sign-off.⁴⁴ Scottish Ministers deny significant decision-making in informal side-meetings⁴⁵ They were also attended by, and therefore benefitted directly from, the advice of the Scottish CMO. It contrasts with the 'Potemkin' UKG cabinet meetings described by Mr Cummings, and the COBR meetings which *'became even more scripted, formulaic, and pointless than the normal Cabinet. They were 'handling' meetings rather than the place where issues were really hashed out'*.⁴⁶ The use of formal decision-making forums also contrasts with ever-diminishing circle of decision-makers in No.10, often meeting informally, and the apparent belief that the intellect of a very small few will out.⁴⁷ It contrasts with what Helen McNamara described as a *'macho and heroic'* culture within UKG, which *'meant debate and discussion was limited [...] and everything was contaminated by ego [...] when the country needed thoughtful and reflective decision-making'*.⁴⁸
37. Third, there appears to have been a commitment to understanding the detail of ministerial briefings. Professor Reicher describes being *'very impressed by First Minister, Cabinet Secretary and others we worked with. In the deep dives it was clear that they [...] were on top of their brief, took the issues seriously, understood the issues and cut to the core of the matter with their questions. [...] what I experienced in Scotland was very clearly at odds with what I saw and what I have heard about the UK Government, the Prime Minister and their mastery of the brief'*.⁴⁹
38. Fourth, there appears to have been an important, basic professionalism. Ms Sturgeon describes that *'the working environment within the Scottish Government [...] during the pandemic in particular was always professional, serious, and formal – for example, titles such as First Minister, Deputy First Minister, Cabinet Secretary would be used in meetings'*.⁵⁰ That contrasts to the UKG in which the PM was commonly referred to as *'the trolley'*, Ministers were urged to *'back the Gavster'* (i.e. Sir Gavin Williamson), the PM's Chief Adviser was perfectly content to message the PM referring to a senior civil servant as a *'c*nt'*, Ministers laughed about unrealistic *'Hancockian timetables'*, and so on.⁵¹ We recognise the controversy over the retention of WhatsApp and text messages by SG Ministers and other senior officials and this limits the SG's claim to be fully

⁴⁴ See, for example, Kate Forbes' witness statement: INQ000273982/6, para. 17.

⁴⁵ See, for example, the witness statement of Jeane Freeman at INQ00274004/8, para. 25.

⁴⁶ INQ000273872/19, para. 82.

⁴⁷ INQ000137221/7.

⁴⁸ Transcript: Module 2, Day 16, p.17, lines 4-10.

⁴⁹ INQ000370214/27, para. 57.

⁵⁰ INQ000339033/9, para. 20.

⁵¹ Transcript: Module 2, Day 15, p.114, lines 11-17; INQ000280061/68; INQ000283369/38; INQ000280061/144.

transparent. However, on the basis of those messages which have been made available to the Inquiry, the difference in tone and culture appears also to have been reflected in private communications. The messages of the FM with her chief adviser could not be more different in tone, style, and content to that of the PM with his.⁵²

39. Fifth, there was a different approach to rule-breaking by public officials and, particularly, responses to it. When Dr Catherine Calderwood visited her second home in April 2020, she immediately resigned from her role as Chief Medical Officer, which Ms Sturgeon explained '*ensured that confidence in the Scottish Government public health advice was not undermined*'.⁵³ Similarly, when Margaret Ferrier admitted she had visited venues in her constituency and spoken in the House of Commons whilst waiting for a Covid-19 test result, Ms Sturgeon called upon her to resign. And, when Ms Sturgeon momentarily removed her face mask at a wake, she publicly apologised, and notes in her witness statement that she '*was very concerned that this would undermine confidence given my leadership role in devising and communicating the advice*'.⁵⁴ It may be that the response to a breach is more important in terms of public confidence than the breach itself. In relation to the alleged breach by Mr Cummings when he visited Barnard Castle, Professor Reicher suggests: '*the key moment was not Cumming's own actions, but the response of the Prime Minister in his May 24th, 2020, press conference. Here, Boris Johnson defended Cumming's actions, stating that he had acted 'responsibly, legally and with integrity', that 'he had no alternative' and that he had 'followed the instincts of every father and every parent*'.⁵⁵
40. As the closing submission of the TUC and its sister organisations emphasised in Module 2, the government in Westminster and in No.10 suffered from a lack of professionalism, leadership, and effective structures for collective decision-making. That is not to say that the SG was perfect in its performance throughout the pandemic, far from it, and at times the SG did not act upon critical recommendations made by the STUC and by trade unions – but the SG does appear to have been isolated from many of the systemic cultural issues revealed by Module 2 in relation to UKG.
41. This stark difference in culture and working practices may be reflected in contemporaneous polling around the public's confidence in UKG as compared to SG. As Ken Thomson (Director-General for Constitution and External Affairs and manager of the Covid Co-ordination Directorate), and many other witnesses in Module 2A, have highlighted: '*Contemporary polling data indicated that the Scottish Government retained*

⁵² INQ000335126/17.

⁵³ INQ000339033/105, para. 287.

⁵⁴ INQ000339033/191, para. 589(iii).

⁵⁵ INQ000370347/70, para. 143.

more public trust in its approach to managing the pandemic than the UK Government.⁵⁶ Ms Fraser explained in her witness statement that *'the proportion of adults (age 18 and above) across Scotland who said that they completely or mostly trusted the Scottish Government to provide information on coronavirus stood at 72% at the end of July 2020 (fieldwork 28-30 July 2020) compared to 28% for the UK Government'*.⁵⁷ More broadly, Linda Bauld (Chief Social Policy Adviser to the SG and adviser to the COVID-19 Committee of the Scottish Parliament) included in her witness statement a graph which demonstrates that public confidence was higher in the Welsh Government and SG than the UKG throughout the period from March 2020 to March 2022.⁵⁸

DEVOLUTION AND COLLABORATIVE DECISION-MAKING

42. The STUC considers that the pandemic response in Scotland, though benefitting from a generally more effective decision-making process, was hamstrung by limits in the arrangements for devolution, including in relation to workplace health and safety, and employment laws. It is recognised that this Inquiry is unlikely to review the arrangements for devolution, save to the extent that is necessary for the purposes of understanding the relevant decision-making. It is necessary, however, to address the narrative suggested by some (Mr Johnson and others) that the approach in the DAs (a) frustrated the pandemic response by adopting differences in approach, and (b) that those differences in approach cynically served political rather than public health objectives. In the evidence for this module, Alistair Jack suggests, for example, that divergence pursued the SG's *'constitutional aim of achieving independence'*, and Michael Gove refers to the SG simply wanting to demonstrate its *'otherness'*.⁵⁹ As to that narrative, the TUC and STUC make the following observations:

43. First, on analysis, the differences in approach appear to have served public health rather than political objectives and, indeed, are judged well in hindsight. It is difficult to see what criticism could be levelled at the SG for diverging from the UK on 15 March 2020 in banning gatherings of over 500 people, or for taking a more precautionary approach to the use of face masks (when the PM was privately complaining of the UK's *'totally f*ucked up'* mask policy).⁶⁰ Rather than divergence demonstrating political opportunism, it reflected better decision-making processes including more effective and meaningful consultation with others, and an appropriately precautionary approach to pandemic response. It would be surprising if, in a future pandemic, either nation adopts an

⁵⁶ INQ000215495/43, para. 168.

⁵⁷ INQ00032058812, para. 40.

⁵⁸ INQ000346395/37, para. 116.

⁵⁹ INQ000360600/27, paras. 118-119; INQ000371583/18, para. 56.

⁶⁰ See Nicola Sturgeon's rationale at INQ000339033/102, paras. 277-279; and at INQ000339033/108, para. 295.

approach which is reticent to recommend face masks, or to ban mass gatherings only weeks prior to a national lockdown.

44. Second, where greater unity could have been achieved, it likely reflected limitations in co-operation. The DAs were not routinely included in the Covid-O or Covid-S meetings and the perception amongst Scottish Ministers was of being unable to meet with UK counterparts as often as they would have wished.⁶¹ Many in the SG felt that the SG and UKG did not work together to discuss and consider potential decisions in order to reach mutually beneficial outcomes, and that the UKG made decisions unilaterally. Ms Sturgeon explains: *'it too often felt as if the UK government had already reached decisions that it simply wanted COBR to formalize, rather than there being any real sense that discussions would be meaningful and shape the outcome'*.⁶² The perception was that the UKG did not understand a 'four nations approach' to be a collaborative, co-operative decision-making process between three individual governments, but to be the three devolved nations blindly applying decisions made by the UKG to the devolved nations.⁶³
45. Such cultural problems with communication and collaboration between the SG and UKG was instilled at a high level in the UKG by the PM. Mr Johnson did not engage in meetings with the leaders of the DAs for fear of it appearing to be a 'mini-EU' and he described such meetings during oral evidence as *'constitutionally a bit weird'*.⁶⁴ The TUC and STUC consider that this approach bears similarities to the dismissive, at times oppositional, approach which Mr Johnson instilled in respect of engagement with unions and other representative bodies – it reflects a failure to appreciate that transparent, open communication and effective collaboration and consultation lead to improved decision-making, including, indeed especially, in the crisis context. The UKG's work with the SG can be contrasted with the relationships which existed between the DAs.
46. The failure to communicate and collaborate effectively led to real and lasting negative impacts upon business and workers. An example arises in relation to the furlough scheme, which was funded and controlled by the UKG. The evidence suggests that, at times, the SG wished to maintain restrictions but were unable to do so because of uncertainty as to the continuation of funding for furlough.⁶⁵ A WhatsApp exchange between Ms Sturgeon and her chief advisor, Liz Lloyd, reveals a picture of the FM learning about crucial furlough developments from public announcements, and late

⁶¹ See, for example, Jeanne Freeman in her statement at INQ000273984/77, para. 326; see, for example, Kate Forbes at INQ000273982/13, para. 32.

⁶² INQ000339033/19, para. 46(b). A similar sentiment is expressed by Humza Yousaf at INQ000273956/14, para. 66, and INQ000273956/92, para. 398.

⁶³ INQ000339033/16-17, para. 43.

⁶⁴ Transcript: Module 2, Day 31, p.156, lines 5-8.

⁶⁵ See witness statement of Ken Thomson at INQ000339033/42, para. 161 and Kate Forbes at INQ000273982/22, para. 55.

communications (over which SG had no influence or control) leading to avoidable job losses:

[31/10/2020, 20:12:27] Nicola Sturgeon: They really are a shower. [Person A] has a catering company laid off all their workers yesterday and put company into liquidation because of furlough reduction. He says today's announcement might have changed that, but too late

[31/10/2020, 20:14:07] Liz Lloyd: Yep one of my pals lost her job yesterday and another was making half her colleagues redundant. Not a clue'.⁶⁶

47. This exchange speaks volumes about the quality of communication between the two governments on critical NPIs, but it also highlights the devastating impact that the poor collaboration had upon workers in Scotland.

48. It is also evident that the divergence in approach between the administrations worked both ways: the UKG, equally, diverged from the wishes of the SG. It points to the force of an observation by Mr Thomson, who dismisses any *'implicit understanding that the UK Government's approach for England was the 'orthodox' approach from which other parts of the UK 'diverged'. It was simply another approach, resulting from the application of judgement to the facts and circumstances in England'*.⁶⁷

49. There are, of course, additional considerations in evaluating divergence in approaches between the UKG and the DAs. The SG is, ultimately, accountable to its Parliament and electorate.⁶⁸ Further, the clarity of national boundaries may also provide more effective opportunity for localised responses (the value of which was pursued by the UKG in implementing a regional tier system in Autumn 2020).

CONCLUSION

50. To some witnesses in Module 2, the deeply unattractive side of the internal dysfunction within UKG was *'just Westminster'*. Correct or otherwise, it cannot be said to be *'just politics'*, as the evidence in Module 2A demonstrates, perhaps unsurprisingly, that a more mature, professional and open form of central government is achievable. It is submitted that the evidence in Module 2A demonstrates the value of a form of government that is open to and meaningfully engages with the views of stakeholders, including trade unions. It is an approach of consultation and engagement which should be embraced and strengthened in a future pandemic.

⁶⁶ INQ000335126/17.

⁶⁷ INQ000339033/41, para. 159.

⁶⁸ See witness statement of Nicola Sturgeon at INQ000339033/171, para. 527.

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