A. That's right.
Q. And that is under Inquiry reference INQ000274154. You are familiar with the content of this report?
A. Yes.
Q. It is your report?
A. Yes.
Q. And your position is that this represents your opinion in connection with matters upon which you were asked to provide it?
A. Yes.
Q. Broadly speaking, that ended up covering your topics 1 and 2?
A. Yes.
Q. You were then also asked to look at the challenges that were posed by the Covid-19 pandemic; is that right?
A. That's right.
Q. And you were asked to look at a number of areas relating to processes that go into Scottish Government decision-making during the pandemic, broadly?
A. Yes.
Q. And those included the role that devolution had played?
A. Yes.
Q. It included looking at key individuals and bodies that made decisions?
A. Yes.
Q. It included looking at key both administrative and medical advisory bodies, in broad terms?
A. Yes.
Q. It included looking at the challenges posed by the scale of the pandemic in Scotland?
A. Yes.
Q. It included looking at decision-making structures?
A. Yes.
Q. And ultimately all of those many topics you brought together in your topics 3 and 4?
1. A. Yes.
2. Q. You were also asked to look at the Scottish Government's systems for communications, in particular its public communications strategy?
3. A. Yes.
4. Q. And that became your topic 5, I think?
5. A. Yes.
6. Q. You were asked to look at parliamentary processes by which primary and secondary legislation were enacted during the pandemic in Scotland?
7. A. Yes.
8. Q. And those matters were brought together under your topic ??
9. A. Yes.
10. Q. You were also asked to look at, drawing all of these things together, whether you were to provide an opinion in their specialist areas had identified as potential order to inform yourself as to what other commentators speaking, how public life and public services are funded in Scotland?
11. A. Yes.
12. Q. And you, as I understand it, looked at these reports in connection with these areas and on the basis of these materials, that there were in existence a broad range of other materials; is that correct?
13. A. Yes.
14. Q. And you discovered, I think, when preparing your report, those key documents?
15. A. Yes.
16. Q. In your expert report at page 4, if we could just have a look at that, you list 25 such witness statements from the Scottish Government and these two key individuals, and you took these reports into account in the preparation of your report?
17. A. I did.
18. Q. I understand from your report that you also had regard to places where people have provided commentaries on those key documents?
19. A. Yes.
20. Q. Which you also drew on to try to understand the Scottish Government's strategy during the pandemic?
21. A. Yes.
22. Q. And you also received copies of the individual witness statements of key decision-makers, former First Minister Nicola Sturgeon, and former Deputy First Minister John Swinney; is that correct?
23. A. Yes.
24. Q. You were asked specifically to look at how funding worked for Scotland during the pandemic?
25. A. Yes.
26. Q. And subsequently you received additional directorate statements which were by way of addenda to the original statements.
27. A. Yes.
28. Q. You also received some additional directorate statements on subjects that hadn't been covered in the first bundle.
29. A. Yes.
30. Q. That's correct.
31. A. That's correct.
32. Q. And those materials included materials relating to key strategies within the Scottish Government's decision-making process; is that right?
33. A. Yes.
34. Q. And that included things like the four harms framework from April 2020?
35. A. Yes.
36. Q. It also included other things like the statement of the route map from May 2020?
37. A. Yes.
Q. I was very academic about it.

Q. Yes.

A. I do.

Q. And you have not had access to its internal documents relating to decision-making processes, have you?

A. No.

Q. And when you had analysed these reports and other sources, you developed a knowledge about issues which may exist and then addressed, within your own specialist expertise, yourself to the question as to whether political decision-making or structures may have played a part in these perceived issues with the pandemic?

A. Yes.

Q. Right, and you make frequent reference to these and, in academic fashion, you reference all of these as you go through?

A. Yes.

Q. Setting out a number of proposed issues and questions for that Inquiry to examine?

A. Yes.

Q. Some of those reports relate to questions that are relevant to this module.

A. Yes.

Q. In particular, reports relating to preparedness and Scottish decision-making?

A. Indeed.

Q. And you have taken into account for the purpose of this report as well?

A. Yes.

Q. You define in your report in the context of the pandemic various policy problems which might be defined as the issue with which government is presented, to which it requires to come up with a broad strategy as to how to deal; is that right?

A. Yes. I would say an issue is only a problem when a government pays attention to it and makes sense of it. So there's quite a technical definition of problem requiring to come up with a broad strategy as to how to deal; is that right?

Q. As I say, I don't think we'll touch on every area that's costs order in your extremely extensive report, Professor, but we would like to focus on the ones that appear to us to be of most significance to the types of decisions that the Chair will ultimately have to face and make in this module.

A. They are.

Q. Are there any other important sources of information which you have used which are not listed in the report?

A. Only indirectly. Some of the sources I use as a proxy for a wide range of other sources. So, I mean, for example you will see quite some self-citation, and that is an efficient way to refer to a whole other body of other sources that I didn't get into in detail.

Q. I see, so you're referring to publications that you have authored yourself?

A. Yes.

Q. But within them are included a lot of other sources that you looked at for that purpose --

If I could then move on to some of the substance --
Q. And once one has developed a strategy, one has to work out a way as to how one implements that strategy --
A. Yes.
Q. -- to deal with what you have defined as the policy problems.
A. Yes.
Q. In order to implement the policy, the government requires to take decisions about matters on a more granular level?
A. Yes.
Q. It is normally thought to be good governance policy, is it not, Professor, that the policy, the strategy, will guide how those decisions are taken?
A. Yes.
Q. The systems in place aim, broadly, to try to maximise the quality of the decisions when faced with problems in order to meet the aim of the policy?
A. Yes.
Q. Would that be fair?
A. Yes.
Q. So in order to assess whether there is good governance, would it be fair to say that you need to assess broadly, quality of the decision-making?
A. Yes.
Q. And your expertise helps us in that process?
A. Good.
Q. Well, that's a question.
A. Yes, it should do.
Q. You say a number of things in your report. Very helpfully, you set out a very long section dealing with what you've defined as topics 1 and 2, the background, and we've already had Module 1 which -- as you know, because you draw on some of the evidence that was heard in that module, which has looked in detail at UK-level preparedness, but has also looked at Scottish-level preparedness. So I don't want to dwell too much other than as necessary to inform the key elements, topic 3 and onwards in your report, on that.
A. Yes.
Q. However, we will come to that in due course as necessary.
A. Yes.
Q. You tell us something in your report about -- at paragraph 1, if we could go to that. A number of bullet points which I think summarise aspects, I think, of your assessment of Scottish Government decision-making culture, I think it would be fair to say?
A. Yes.
Q. And you say in paragraph 1 that: "Devolution promised 'new Scottish politics' but delivered a Westminster-style system."
A. So, I won't dwell on this too much, but if I take you back to the 1990s, the push for Scottish devolution took place during a time of low faith in political institutions, so the language was very much that Scottish politics would be a very strong improvement on old Westminster politics, you know, which was too adversarial, too centralised, too "winner takes all" and suchlike. So the Scottish Government built on this idea that the Scottish Parliament would be more important, the culture of politics would be more consensual, and the Scottish Government would operate in that context.
A. Perhaps not at a granular level, but broadly?
Q. And you've tried to do so in order to assist the Inquiry with reaching its conclusions about whether any of these things played a role in affecting the outcome and perhaps, three things: first of all, do you need to assess the quality of the policy which aims to provide better lives for the people of Scotland?
A. Yes.
Q. You need to assess the quality of the more granular decisions which seek to put that policy into practice?
A. Yes.
Q. And you need to analyse and address the quality of the systems which lead to the making of the decisions?
A. Yes.
Q. You've looked at the quality of the policies?
A. Yes.
Q. You've looked at the quality of the systems?
A. I have.
Q. And you've looked at the quality of the decisions?
A. Yes.
Q. Perhaps not at a granular level, but broadly?
A. Yes.
Q. And you've tried to do so in order to assist the Inquiry with reaching its conclusions about whether any of these things played a role in affecting the outcome and perhaps, three things: first of all, do you need to assess the quality of the policy which aims to provide better lives for the people of Scotland?
A. Yes.
Q. You need to assess the quality of the more granular decisions which seek to put that policy into practice?
A. Yes.
Q. And you need to analyse and address the quality of the systems which lead to the making of the decisions?
A. Yes.
Q. I think, broadly speaking, if I've summarised it correctly, that's what you've sought to do in your report, analyse all of these areas?
A. Yes.
Q. You've looked at the quality of the policies?
A. Yes.
Q. You've looked at the quality of the systems?
A. I have.
Q. And you've looked at the quality of the decisions?
A. Yes.
Q. Perhaps not at a granular level, but broadly?
A. Yes.
Q. And you've tried to do so in order to assist the Inquiry with reaching its conclusions about whether any of these things played a role in affecting the outcome and perhaps, three things: first of all, do you need to assess the quality of the policy which aims to provide better lives for the people of Scotland?
A. Yes.
Q. You need to assess the quality of the more granular decisions which seek to put that policy into practice?
A. Yes.
Q. And you need to analyse and address the quality of the systems which lead to the making of the decisions?
A. Yes.
Q. I think, broadly speaking, if I've summarised it correctly, that's what you've sought to do in your report, analyse all of these areas?
A. Yes.
Q. You've looked at the quality of the policies?
A. Yes.
Q. You've looked at the quality of the systems?
A. I have.
Q. And you've looked at the quality of the decisions?
A. Yes.
Q. Perhaps not at a granular level, but broadly?
A. Yes.
Q. And you've tried to do so in order to assist the Inquiry with reaching its conclusions about whether any of these things played a role in affecting the outcome and perhaps, three things: first of all, do you need to assess the quality of the policy which aims to provide better lives for the people of Scotland?
A. Yes.
Q. You need to assess the quality of the more granular decisions which seek to put that policy into practice?
A. Yes.
Q. And you need to analyse and address the quality of the systems which lead to the making of the decisions?
A. Yes.
forms of policy delivery, you know, like traditional local government. It was more likely to put faith in public bodies such as local government, and more likely to put faith in the traditional public sector professionals to deliver policy.

Q. Thank you, Professor. So just to set it in a broad context, the position before 1999, when devolution came into operation as a result of the Scotland Act 1998, was that there had been a certain amount of, I think, what used to be called administrative devolution --

A. Yes.

Q. -- in Scotland, and that a number of the areas that were subsequently devolved to the new Scottish Parliament after the 1998 Act had been administratively devolved within the Westminster government to the Secretary of State for Scotland; is that right?

A. Yeah, essentially the Scottish Government from 1999 inherited the responsibilities of the Scottish Office before then.

Q. Yes, but the way that things had been dealt with up to that point led to, as you've already described, a certain degree of dissatisfaction with that arrangement --

A. Yes.

Q. -- for some of the particular reasons that you've identified feasible solutions."

So the reference to the policy problems we discussed a moment ago.

A. Yes.

Q. You say at (b) that one of the other aspects of this was that there was "more faith in public bodies and public sector professions to deliver policy", which you explain as meaning that: "Ministers would place high trust in traditional ways to make and deliver policy -- such as through collaboration with local government -- and rely less on the top-down and remote performance management measures associated with the UK Government?"

A. Yes.

Q. So there are a number of aspects here that were part of this style which included greater commitment to collaboration; yes?

A. Yes.

Q. With stakeholders in the first instance?

A. Yes.

Q. But also by professionals and organisations that delivered government at an even further devolved level?

A. Yes.

Q. And that there was a commitment not only to consultation with those types of groups and individuals and organisations, but to their genuine involvement in policymaking?

A. Yes.

Q. And as we've said, policymaking would then underpin decision-making if it's delivered correctly?

A. Yes.

Q. Is it correct to say that this policy style has continued in different guises, at least at an aspirational level, to be the aim of the Scottish Government since that time?

A. Yes. They changed the terminology a little bit. So "Scottish policy style" I think would be a phrase used by academics. You know, successive permanent secretaries to the Scottish Government have described a "Scottish model" or a "Scottish approach".

Q. If we could go to paragraph 22, please, and we see in this paragraph that you've set out, I think, a number of principles, and the Scottish policy style, I think, over time, has crystallised itself in these principles, being the way in which the Scottish Government would report, to go about its business.

A. Yes. This is slightly tricky to explain, this one. So the Parliament committee was examining effective Scottish Government decision-making -- in fact, you know, not long ago, so it's, you know, good timing.
And they provided a list of things that they associated with effective Scottish Government decision-making from their perspective and that of the government, and turned that into seven common principles that you would associate with being effective.

Q. So these would be the sorts of things that the committee thought would be laudable principles and aims in trying to achieve good governance?

A. Yes.

Q. And of course every government is trying to achieve good governance, or at least that's what the people expect them to do?

A. Yes.

Q. If I could just run through these, these include responsible and accountable government, and you mention there -- it's mentioned there that: "There should be a direct link between the choices of elected governments and the citizens they serve."

A. Yes.

Q. You mention the fact that it's important to have anticipatory or preventative policymaking?

A. Yes.

Q. Might that include the need to try to predict when things will happen that will require decisions to be taken in the interests of the people?

A. Yes, and also to deal with things that are -- that can't be dealt with immediately, such as, you know, long-term plans and outcomes. So that would come up with things like health inequalities.

Q. Yes. Indeed. We'll probably return to health inequalities at some point, Professor. But this, just to understand the role of policy in this, what's being suggested by that principle is that it's important to have policies in place as a broad structure within which particular decisions might need to be taken in any given circumstance?

A. Yes, yes, rather than dealing with crises when they happen.

Q. Thank you.

A. The third is power sharing and co-operation (sic), and we've seen -- as well as (a), responsible and accountable government, we've seen power sharing and co-operation (sic) appear in the Scottish policy style definition you've already given, so those are repeated here; is that right?

A. Yes, but they use this -- again, a technical term -- "co-production", which is quite a vague term, but it's supposed to give this idea that the government is not simply consulting with other people, it is producing something with them, and so that can either be producing policy-relevant knowledge or producing policy.

Q. That was, yes, that was relevant to the point we discussed earlier, which was that it's not simply a matter of speaking to stakeholders but actually involving them in the creation of policy?

A. Yes.

Q. And the next is policy coherence and policymaking integration. Could you just explain to us briefly what that is.

A. So this is -- I would describe this as a -- just a very broad aspiration that if you produce -- a mix of policy should be coherent in that governments produce lots of different instruments, they tax and spend, they regulate, they provide information, they add resources; they should all come together to produce something that makes sense. And a problem of government in general is that they produce lots of different policies that don't match up, so policy coherence would be dealing with that problem.

Q. Right, thank you.

A. The others include evidence-informed policymaking, fostering equity, fairness -- it says "or" justice but I assume it's "and" justice?"?

A. Well, these terms tend to be used interchangeably or differently. So, yes, all of those, but often people use them as an alternative to each other when they describe them.

Q. Thank you, and the final one is delivering services well, so the operational side of the delivery of the policy?

A. Yes.

Q. The broad proposition that you put forward, I think, at the top of paragraph 1, if we go back to that, please, the very first bullet point, was that "Devolution promised 'new Scottish politics' but delivered a Westminster-style system". That's a conclusion which I think you have come to or a proposition you are making. Is it correct to say that your summary here or your analysis here leads us to think that although at the start of devolution and since there is an aspiration that all of these various important principles should form part of the way that decisions are made, that many of the problems associated with the previous system, the Westminster system, have started to manifest themselves?

A. Yes. Indeed. We'll probably return to health inequalities at some point, please, the very first bullet point, was that "Devolution promised 'new Scottish politics' but delivered a Westminster-style system". That's a conclusion which I think you have come to or a proposition you are making. Is it correct to say that your summary here or your analysis here leads us to think that although at the start of devolution and since there is an aspiration that all of these various important principles should form part of the way that decisions are made, that many of the problems associated with the previous system, the Westminster system, have started to manifest themselves in Scottish decision-making?

A. Yes. Could I expand on that a little bit.

Q. Of course, yes.

A. So I think there are two aspects to that. So one is culture and one is structure. So if you look at what the -- well, what we'd call the architects of
devolution, what they actually produced, it was many of
the same organisations and relationships that
Westminster had. So, for example, there was not like
a US-style division of powers between the executive and
the legislature. You had the same expectation that
the executive would be in a parliament, would likely
have very strong influence over the parliamentary
arithmetic, would be expected to govern, and the main
form of accountability would be ministers to their
citizens through national elections. So the same
sort of sense of high stakes politics that would produce
competition between parties rather than, you know,
a much more proportional system where they were expected
to co-operate more routinely.

Q. What were the sorts of things that had been contemplated
as might -- as possibly forming a more powerful part of
the Scottish system that might have gravitated against
that outcome, structurally speaking?
A. Yeah. Well, the -- one of the principles of the
Scottish Parliament was to be this idea of power sharing
between Parliament and government, but I think that was
never really fully defined, and essentially it was the
same relationship that you associate with Westminster:
the government produces most legislation, the parliament
scrutinises. So it's a very traditional Westminster
approach, and I think that was always the plan.

Q. Okay. You go on in your report to tell us, at
paragraph 31 -- if you could go there, please -- about
something called the National Performance Framework.

Could we just go to paragraph 31, please. If we could
just have the page up on its own.

You're telling us here broadly at this passage about
what you call the NPF, which is the National Performance
Framework. Could you just tell us broadly what that is
and how that fits into the way in which decisions are
made in the Scottish Government?
A. Yes, so that really began in 2007, but it was supposed
to be the manifestation of all these things we talked
about, about, you know, more consultative, more coherent
government. So the National Performance Framework had
a single core purpose, and I couldn't tell you the exact
wording but it was -- it was, you know, sustainable
economic growth, and then it had a series of other
ancillary purposes associated with that, you know, to do
with health, education and suchlike, and the idea was
that instead of individual ministers or departments
being responsible for each part, all of the government
and the public sector would be responsible for turning
this vision into reality.

Q. Right. Does the National Performance Framework continue
to play that role, has it continued since that time to
play that role, is it updated and adapted?
A. I think it does. I mean, it's not something that many
people know about outside of government, but my
impression is that if you're in the Scottish Government,
you're very aware of it and you're very aware of the
need to pay reference to it.

Q. I think it is referred to in some of the high-level
strategic documents that you've looked at,
Professor Cairney, is that right, including things like
the four harms type documents which informed the
approach to the pandemic?
A. Yes.

Q. So it seems that it did continue to play a role, as in
guiding policy and then into decision-making, within the
Scottish Government?
A. Yes.

Q. You say at paragraph 31 that:
"... the NPF does not feature strongly in civil
contingencies or pandemic preparation. It represents
Scottish Government agendas and aspirations, not
a specific decision-making tool."
A. Yes.

Q. Could you explain what you mean by that?
A. My impression is that civil servants are expected to
know about the NPF, they're expected to use the language
of the NPF when they produced other strategy documents,
in a general sense, you know, it's -- you know, key
reference points that they all use, but it is not
something that is detailed enough to inform detailed
decision-making. It doesn't -- it's not a blueprint
that tells you what to do. It's a set of principles
that you would use to inform your work.

Q. So your impression of government decision-making is that
the NPF has a laudable set of principles contained
within it --
A. Yes.

Q. -- but that when it comes to the application of those
principles to actual on the ground real decisions,
because it lacks a mechanism to transport, to transfer
those principles into results --
A. Yes.

Q. -- that is, perhaps, a problem with the system?
A. Well, I would say it's a problem with any system in that
a lot of the aspirations they have are in practice
contradictory, so even the phrase that they used to use,
"sustainable economic development", there's
a contradiction there in terms of the things they have
to pursue. For some that would mean prioritise economic
development, often at the expense of the environment.
For some people, the word "sustainable" would suggest that we need to change the way we pursue economic growth. But the NPF itself does not resolve those matters. It presents the phraseology to use. Another aspect I think of what you say at paragraph 31 is that the NPF is not something which features strongly in civil contingencies or pandemic preparation; is that the impression you've gained from the materials you've looked at?

Q. One might say that if the NPF is part of an attempt -- a laudable attempt, I think we've said -- to try to define principles that will assist with good decision-making ultimately --

A. Yeah.

Q. -- that in situations of emergency, one might wish to have a means by which those principles can be operationalised quickly and effectively --

A. Yes.

Q. -- is that right?

A. Yes.

Q. Just by way of reminder, this was a framework which was published originally in April 2020; is that right?

A. Yes.

Q. And it set out a framework which required explicit comparison and balancing between four different areas where harm was perceived to be caused by the pandemic?

A. Yes.

Q. And that those harms were: the direct harm of Covid-19 itself, other health harm caused by the pandemic, societal harm, and economic harm; is that right?

A. Yes.

Q. There are repeated references to the four harms framework in the witness statements of the Scottish Government; is that not right?

A. Yes.

Q. The ones that we provided you with from the Scottish Government, was the Scottish four harms framework in the witness statements of the Scottish Government; is that not right?

A. Yes.

Q. So it essentially says there are four main harms that we need to take into account, and there will always be trade-offs between trying to reduce one harm in relation to the other. So the classic was a lockdown would reduce Covid-19 harm, but it would also have a knock-on effect for the other three. There would be less access to the NHS, there would be more social isolation, there would be a problem of, you know, economic activity. So it was essentially a way to describe the four key harms that they wanted to pay attention to at any one time.

Q. Does this mean that it's perhaps, again, a laudable statement of intent or approach, but it doesn't set out any means by which ultimate decisions should be made in a scientific or evidence-based way?

A. That's right. I think it's just a very general way of focusing the mind on, you know, four key objectives.

Q. And it would mean that, I think you say here, it would require still a significant degree of judgement, perhaps subjective judgement, to be applied when it comes to actually making decisions?

A. I would say profoundly so. You know, I think there's no framework like this that could tell a minister when to lock down or not, who to favour -- you know, to favour economic growth or Covid-19 reduction in harm. It does not -- I don't think it was ever really designed to guide decision-making in that way, apart from just to, you know, give people the things that they -- you know, remind them of the trade-offs, remind them of the principles that they signed up to.

Q. So I think, if I heard you correctly, your position was that it helped define the problem but didn't help with the solution?
subject to the problems associated with Westminster,

joined-up -- relating to the NPF -- and much less

each other.

referred to from a structural perspective in your report, very helpfully, and about

which is an enormous amount of very complex information, which I think I have to try to present in

due course, is the directorate structure of the Scottish Government.

Is this a structure which has come in, broadly speaking, since the governments have become

SNP-dominated or either exclusively SNP-led administrations since 2007?

permanent secretary at the time described this meeting of minds between the Scottish Government and the SNP government, they had the same idea about what to do, and the idea was you would have fewer ministers and you would have a departmental system that became a directorate system, that was designed to be much more joined-up -- relating to the NPF -- and much less subject to the problems associated with Westminster,

that period, I think?

that -- that focuses the mind on that trade-off. But that doesn't mean that other governments are not engaged with the same trade-offs and decisions.

Okay, thank you.

We've talked about a number of things which might be

described as setting the scene or aspirational; would that be right, characteristic of the various things we've looked at so far?

A. Yes.

Q. And you've also drawn us to your -- the first bullet point conclusion in paragraph 1 that there has been a characteristic of Scottish Government decision-making over years that it aspires to be different from the Westminster system but often fails in that aspiration; is that correct?

A. Yes.

Q. Is it your evidence that the decision-making structures within the Scottish Government, as far as you could glean -- relating to the pandemic -- in the paperwork with which you were provided, which emanated predominantly from the Scottish Government, shared some of the features that were criticised, I suppose, in the UK Government decision-making structures, such as it being centralised and top-down?

A. Yes. I hesitated there. I would say there's -- given the system they have, there's an almost in-built tendency towards top-down policymaking. It's a Scottish version, and it may be less top-down, more consensual, but the thing that I always had in mind is the comparison with the UK is often unhelpful, because to
A. Yes, yes.

Q. And you go into more detail about this in the report, and that there had been, I think -- please correct me if I'm wrong about this -- an impetus or a desire on the part of the new SNP administration to try to achieve this directorate structure, broadly for the reasons that you've outlined, that it was thought that it would work better than the rigid departmental structure which had been and is characteristic perhaps of the UK Government and had been characteristic of the Scottish Government up till that point?

A. Yes, and I think it needed that meeting of minds between ministers and civil servants because it was a substantial reform, you know, essentially abolishing what they called departments, introducing a far larger number of directorates. It required support from both sides.

Q. So there was -- I suppose, the policy, if you like, was to try to introduce a new system, but there needed to be buy-in from those who would be part of that system, and that was the position at 2007?

A. Yes.

Q. The directorate system had these goals, and in particular you referred to the fact that it seeks to minimise rigidity and departments working in silos; is that correct?

A. Yes.

Q. And one sees sometimes a phrase which we rather use in the Inquiry as well, I'm afraid, a degree of trying to minimise cross-cutting problems that would arise in different areas and try to work together to solve them; is that right?

A. Yes, and I would say almost every problem is cross-cutting in some way. So this is an approach that makes sense.

Q. In your evidence at paragraph 89.2 -- if we could go to that -- this is in the section where you are still talking about some of the Module 1 evidence and the background structures which existed to try to deal with emergency situations in the Scottish system, you referred in particular to some evidence on this subject that was given by Gillian Russell.

Could you explain the role that she played and why it was that you thought that the description that she gave of the system was of interest as far as whether this directorate system functioned well or not?

A. Yeah, so this is a little bit simplistic, but, as I understand it, all serving Scottish Government civil servants make reference to this kind of language, about being joined-up and about having a good directorate system. So you would expect this kind of testimony where there was very much an emphasis on doing things in a Scottish way, a Scottish Government way, with reference to a wider culture and set of expectations, and you'd normally expect there to be a story that this works well.

Q. And as far as you are concerned, did you see in the materials with which you were provided evidence of this aspirational approach to the directorate structure achieving the aims which it set out to achieve?

A. Yeah, I would say that on paper, or if you were to listen to someone describing what they do, it would look like it made sense. It's very difficult to relate to what actually happens.

Q. Okay, and that would apply -- obviously the paperwork I'm referring to is paperwork related to the way that decisions were made in the pandemic?

A. Yes.

Q. So is your position, is your evidence that this is an example, again, I think, of a structure which seeks to try to have a positive aim, but of which there is little evidence that it actually has a positive effect?

A. Yes. I mean, I'm keen to stress -- you know this phrase "evidence of absence is not absence of evidence", or -- either/or. So what I'm struck by is, when I read Scottish Government documents or accounts, they very much emphasise their aspirations, their structures, their strategies, and they do not really emphasise the more fine grain decisions or their impacts. It's very much a kind of genal story about how this is supposed to work.

Q. Just to be clear, in case there is any doubt about it, the documents that I'm referring to upon which you have undertaken this analysis, these are the corporate statements and a couple of individual statements which have emanated from the Inquiry's investigation into how decisions were taken?

A. Yes.

Q. So it would be fair to say that if there were examples which you have suggested are absent of the way in which this directorate structure did achieve the aim which it set out to achieve, one might expect them to appear within that very large corporate body of evidence?

A. Yeah. I wouldn't expect the Scottish Government to be sitting on, you know, a secret stash of documents exhibiting their success.

Q. You refer in your report also to a number of organisational changes which took place during the course of the pandemic.

If we go to paragraph 141 -- yes, in paragraph 142,
under the heading "The reorganisation of Directorates to co-ordinate a Scottish Government response to Covid-19", we’ve touched on some of this in the opening statement and we’ll address some of the detail with some other witnesses in due course, but you set out there that, broadly speaking, there was a reorganisation based on the materials that you were given where, within the directorate structure, a number of new directorate bodies were created to deal with the pandemic at various different times and in various different places?

A. Yes.

Q. Just to be clear, and in the hope that I understand this, there are, I think, what are called "directorates general", which are overarching bodies that within them contain a number of sub-directorates that are called "directorates"?

A. Yeah. It is a confusing language, and I think that the Scottish Government uses the language of "families of directorates". So I think a family -- I mean, a well-working family, I think, that was what they're trying to project, and that this is a collection of directorates which interact with each other. They are separate organisationally, but they interact with each other in -- as part of a wider directorate general, led by a director general.

We see there at 142.1, for example, the "Directorate General for Constitution and External Affairs", that would be one of the family definitions, and within that there would be a number of members in the family that would be directorates underneath that?

A. Yes.

Q. And I think you point in particular to the fact that within that directorate general, which I think it fair to say was certainly one of, if not the lead directorate general in relation to the pandemic, there were a number of new bodies and directorates and structures created while the pandemic was actually happening?

A. Yes. I should say that I would express uncertainty. It’s very difficult to know the extent of the reorganisation. My sense is the documents that I read that we referred to provide a lot of detail on various name changes to directorates, and they list the director in each case. It’s very difficult to know if the name change represents or symbolises a functional change or if they’re simply re-branding what they do with different names.

Q. We can explore that factual matter, and no doubt we will have to with other witnesses in due course, Professor Cairney, but within that particular directorate general and also another one, which was the Health and Social Care Directorate General, there appeared to be a number of new bodies, new advisory structures created; is that broadly your understanding?

A. Yes, and I think in some other cases the role is much clearer because the directorate is new and the topic is new, so I think, for example, a directorate for, you know -- well, I should remember them all, but say a directorate for testing and tracing or something like that, it's clearly been established to do something new.

Q. Yes.

A. Where some of them have been re-branded to repurpose what they do.

Q. Yes.

Can we look at paragraph 141, please. Again, your position was, I think, there, around about halfway through, you say: "However, the Scottish Government provides limited evidence that this system of decision-making was more effective during its response to Covid-19 (partly because the Inquiry did not ask it to do so explicitly)."

As far as that is concerned, where does that second comment emanate from, the one in brackets?

A. Yeah, I’m smiling a bit here. So I -- I produced four drafts of my report, the final draft was the fourth
Q. As far as the second part is concerned, based on what you have seen, and putting aside for the moment the question of whether they had been asked that or not, your assessment was, I think:
"... most of its relevant written evidence (to which I have had access) describes organisational changes rather than their effectiveness."
A. Yes.
Q. So your impression was that, although there was a lot about how things had been moved around and re-branded, there wasn't an awful lot of discussion about how that had helped the people of Scotland ultimately?
A. Indeed.
Q. Broadly speaking, based on your experience of the way in which governments are structured, policies formulated and implemented to try to maximise the effectiveness of decisions, would you -- and bearing in mind, of course, that you have conducted a very extensive analysis of the pre-pandemic situation in Scotland in that regard -- you would generally think it is a good idea to reinvent systems so much in the heat of the fire, rather than before the fire starts?
A. That's a good question. I certainly think -- it's

... most of its relevant written evidence (to which I have had access) describes organisational changes rather than their effectiveness."

Q. My question is that, although there was a lot that. You go on at various stages in your report to discuss, for example, in the context of advisory structures --
A. Yeah.
Q. -- but also decision-making structures -- this is in the context of the devolution and intergovernmental section of your report -- you refer to the fact that there were systems for achieving medical advice from experts via, for example, SAGE --
A. Yes.
Q. -- and its various subgroups?
A. Yes.
Q. And there were existing decision-making bodies such as COBR, for example?
A. Yes.
Q. And that you question, I think -- you pose the question, at least, as to whether more effort could have been made to try to use those existing structures developed for the purpose of an emergency?
A. Yes.
Q. And you question, therefore, by extension, as
I understand it, whether the development of these new structures -- and its various subgroups?

To be honest, I'm not sure. It's difficult to tell from the evidence available. I can say in general terms some of these things make sense. So it makes sense to have a family of directorates that try to co-ordinate policy across government. I think maybe it makes sense to give them names that relate to the tasks, and maybe that's the advantage of the directorate system.

It's difficult -- the thing that I would be less sure about would be, for example, the -- I mean, a lot of directorate functionality comes down to the people who lead them and their experience and suchlike. I don't have enough detail on their experience in, you know, relevant things or if they were put into new roles or this was an extension of their old role. So it's difficult to tell. I think it would be difficult for anyone on the outside to tell how these things work, and presumably very difficult for the Scottish Government to explain how they work to, you know, a typical citizen.
Q. I wonder if I could give a comparison about which you've already heard some evidence. Although it's not the area you have been asked to look at, you'll be aware of the fact that there was a body called Public Health Scotland...
Q. It was the case that the Scottish Government, as I think you note in your report, was keen to try to develop a new and better system for dealing with Scotland’s considerable health inequalities.

A. Yes.

Q. And part of that plan was the development of a body to co-ordinate the public health response, which was Public Health Scotland.

A. Yes.

Q. And it became operational in April of 2020.

A. Yes.

Q. And although that had been pre-planned, that was a difficult -- we’ve heard some evidence that that was a difficult time, obviously --

A. Yeah.

Q. -- for that to happen.

A. It’s been accepted on their behalf that when one creates new structures like that, it’s inevitable that there will be a degree of practical and cultural and organisational change and reorganisation that will be necessary.

Q. Thank you very much.

A. I think those -- they’re comparable, but different.

Q. Could we go to paragraph 125, please. This is, I think, where you’re expressing your opinion in relation to topic 1, which is technically the preparedness topic, although I think you, quite helpfully, use these opinion sections to try to tell us a bit about how this feeds into our core function here, which is to look at the actual decision-making.

A. I think in this paragraph you say that:

[The] focus on ... being better prepared over time to make effective decisions, based on a commitment to continuous policy learning and ... being increasingly better prepared for an unfolding pandemic, is a strong feature of Scottish Government oral testimony for Module 1 and written testimony for Module 2A, as follows. First, a general focus on the Scottish Government being a learning organisation is a key feature of the Scottish Government’s ‘Scottish approach’ narrative on decision-making ... Second, multiple witness statements describe continuous learning to respond to an emerging problem more effectively:

Q. Of course. I’d very much like you to.

A. Yes. Could I expand on that?
A. So I would say that if you were to distill down all of the evidence from the Scottish Government, you could turn it into a very simple convincing story, which is: we are a well co-ordinated learning organisation, we may not have been prepared for this new pandemic in spring 2020 but we are an effective organisation to the extent that we can learn and respond to subsequent pandemics much more effectively.

I think that is the Scottish position, the Scottish Government position.

I also think there is witness statements from the former First Minister and Deputy First Minister that encapsulate that assertion of learning. So the First Minister says "I told the Scottish Cabinet in December 2020 that essentially we have learned that you cannot wait to become a crisis, you have to act quickly. We learned that from the first lockdown". The Deputy First Minister says "We've learned that in key cases sometimes only a major lockdown will do, you know, these other measures are not going to work and we need to do it".

So they both talk about learning from the previous experience in the sense that it would inform their future decisions, and, you know, that is a good learning organisation.

But what I can't then do is reconcile that with the fact that they appear to have made exactly the same mistakes twice. The first one was understandable because the virus was novel. Lockdown in March was something that was profoundly different from what anyone had been used to. They clearly were not sure what would happen, how much people would adhere to the guidelines and suchlike. But they state time and time again in the documents, "We learned a lot from what happened during that lockdown and we have learned a lot about what this virus is", and yet they appear to have produced the same delays in response for the second lockdown as the first.

So in my mind that does not exhibit pandemic preparedness in relation to continuously learning.

So I've been reflect -- this is slightly speculative, but what I would like clarity on is the extent to which there is a rhetoric of learning during the inquiries. And I think that's one of the sort of unresolved issues parts of the Scottish Government. It is not a coherent narrative of how they learn effectively during a crisis.

Q. You, I think, have confined your comments there to what happened during 2020, but the Inquiry has heard evidence from statisticians, the government statistician and the PHS statistician, about there being significantly high levels of cases, higher than other places in the United Kingdom, later in the pandemic, but still in the period we're interested in, in particular from around August 2021. We have heard that those high rates obviously went up and down but they continued and there continued to be a high mortality rate resulting from what were known as the Delta and Omicron variants from that point into 2022. We have heard evidence that there were significant issues with hospitals becoming overwhelmed in 2021, which required the military to be drafted in to assist. We've heard evidence of this situation being described as a perfect storm.

A. Mm.

Q. We've heard evidence from particular impacted organisations that their voice continued not to be heard during the pandemic, and, that members of their communities continued to suffer, including oral testimony to that effect yesterday.

Are these features of the evidence -- and of course we keep our mind open to what the evidence may be -- are these features of the evidence consistent with your --

what I understand to be your general proposition that the evidence doesn't seem to suggest, that you've seen, that lessons were learned during the pandemic such as to combat further waves and further devastation?

A. Yes, I think that the Scottish Government documents talk much more about learning than they demonstrate learning feeding into action.

I should say I made this point more strongly in the third draft of my report. I did get a response from the Scottish Government which was essentially a list of the ways in which they were learning, and I put that list in my fourth report. But my sense is that essentially that's what it is, it's a list of activity in different parts of the Scottish Government. It is not a coherent narrative of how they learn effectively during a crisis.

And I think that's one of the sort of unresolved issues here about the extent to which there's a rhetoric of learning that does not match reality.

I suppose the other thing I should note is, in my mind the Scottish Government, much like the UK Government, have described inquiries as the place to learn. In fact, when the now Deputy First Minister gave evidence to the committee -- or was it -- the inquiry that was involved in effective government decision-making, I believe she said that "We will learn lessons during the inquiries". And that struck me as quite odd, given that the focus so much in these documents is about continuous learning.
Q. And in paragraph 14, you refer to: "From 2015, the Scottish Government used its revision of the NPF ten year plan to: ..." Amongst other things, at bullet point 2: "identify priorities in relation to addressing poverty and reducing inequalities (then First Minister Nicola Sturgeon made strong commitments to reduce education and health inequalities)."

A. Yes.

Q. Could we look at paragraph 113, please. Again, this is in the section where you were looking at some of the evidence that was available in relation to the Scottish Government from Module 1, and in that paragraph, as part of your analysis of the context of the pandemic, you say that: "... health outcomes do not reflect the successful application of [these] new policies." Citing, amongst other materials, the Bambra and Marmot report commissioned by this Inquiry. Is that right?

A. Yes.

Q. Could we look at paragraph 115, please. Do you say in this paragraph that in the field of health inequalities you state this is an example of where there were aspirations not put into practice?

A. Yes.
approach to something like that, it would be very
difficult to make sense of without more detail.
Q. Your report as regards the period before the pandemic,
drawing, as I say, amongst other things, on the Bambra
and Marmot report but other sources, suggests that
although this approach to inequalities, in particular
health inequalities, had been an aspirational part of
Scottish Government decision-making for some time,
updated and reinforced in 2015, as we saw --
A. Yeah.
Q. -- that health inequalities and inequalities in general
remained a significant problem with Scottish society at
the time the pandemic started; is that correct?
A. Yes.
Q. And this Inquiry has heard significant evidence relating
to this module that those inequalities and health
inequalities were exacerbated by the way the pandemic
was managed. Would it surprise you to hear that it has
heard that evidence?
A. No. I think that the experience of Covid-19 policy
symbolises a lot of the problems with inequalities that
we saw before 2020.
Q. Thank you.
I’d now like to move to a different area which you
have also very helpfully covered in some detail in your
report. The area is devolution and the interplay
between the UK Government and the Scottish Government.
We have heard in the Inquiry a substantial body of
evidence, generally speaking, about the devolution
settlements across the UK, not least in the expert
opinion from Professor Ailsa Henderson, which I know
that you have been able to look at.
A. Yes.
Q. So it may be the ground that we cover here can be
a bit more focused, because we have some general
context, but I would like to ask you some questions
about that.
I think you say in your report that because of the
devolution settlement which attributes certain policy
areas to the Scottish Government but reserves certain
other policy areas to the UK Government, that both the
UK Government and the Scottish Government share overall
responsibility for policy decisions that impact
Scotland?
A. Yes.
Q. You say in your report at paragraph 56 -- we’ll go to
that -- that in this context the -- I think you use the
word "blurry" to describe the boundary between UK and
Scottish Government responsibilities. I think at this
stage you’re referring to the period before the
pandemic. There was blurriness about the lines of
responsibility. Broadly speaking, is that right?
A. I would say there’s always a blurry boundary in this
kind of system.
Q. Yes. And would it be fair to say that when a disaster
comes along like the pandemic, which affects all areas
of society and life, and therefore all policy areas,
that this blurriness starts to become a bit of
a problem?
A. Yes.
Q. Because in response to a pandemic, one needs clarity,
not blurriness?
A. Yes.
Q. Clarity as to whose responsibility each element of
society it is?
A. Yes.
Q. The Inquiry has heard evidence that there were systems
in place, I think as far back as the Scotland Act but
certainly from more recent years, including a memorandum
of understanding and supplementary agreements last
updated in 2013, that were designed, amongst other
things, to encourage activity within, amongst other
bodies, a Joint Ministerial Committee, to try to deal
with this very issue of what you’ve described as the
blurriness.
these blurry lines may also make it easier for
decision-makers in the Scottish Government to attribute
blame for bad policy outcomes to the UK Government and
vice versa, thereby potentially creating
an accountability deficit in Scotland?
A. Yes.
Q. Could you explain a little bit more about what you mean
by that concept?
A. Well ... this would take us back to the topic that we
began with about, you know, new Scottish politics or old
Westminster. I think a characteristic of a Westminster
system is high stakes accountability for problems. It
is -- parties contest elections based on who should take
the credit, who should take the blame for decisions, and
that is reflected in relationships between UK and
devolved governments, particularly when they're of
different party. So I would say that the way that the
parties narrate the relationships relates profoundly
strongly to the way that they campaign. So I would say
that, on both sides, the UK Government leadership and
the SNP government, to criticise each other in key cases
is a key part of the way in which they present
themselves to the electorate.
Q. To turn, then, to the outcomes of this as far as the
pandemic was concerned, you explain very helpfully in
your report -- which hopefully I can summarise, but
please correct me if I'm going wrong -- that there would
in these circumstances have been two ways in which, from
a legal and constitutional perspective, the pandemic
could have been managed.
I think you highlight, about which evidence has been
heard in Module 2 as well, that the pandemic could have
been governed by the Civil Contingencies Act route or it
could have been governed the way it was, via what
I think you describe as the public health route.
A. Yes.
Q. And that these two routes have different legal and
constitutional outcomes in terms of responsibility for
the management of the pandemic; is that right?
A. I think so.
Q. Yes, and I think that the evidence we've heard in
Module 2 already, and please tell me if you disagree
with this, is that had the Civil Contingencies Act route
been used, that would have resulted in a greater degree
despite responsibility being vested in the UK Government for
matters pertaining to Scotland than actually happened;
is that correct?
A. That is what I -- I'm relying on more expert people than
I --
65
Q. Yes.
66

heard in detail in Module 1 to do with resilience partnerships and that sort of thing. Given that -- is it your understanding that the systems which existed pre-pandemic as far as Scotland's preparedness was concerned were based on a civil contingencies type outcome in terms of the way a pandemic or any other emergency might be managed?

Q. Yes. But the systems that we were talking about were systems that would be employed in a civil contingencies type scenario, the scenario that wasn't actually followed through; is that right?

A. Yes. I mean, my impression -- to be honest, I found the documents very confusing, but my impression was they were anticipating either -- "emergency" is defined very generally, so they very rarely refer to a pandemic, or they're anticipating -- my impression is that they're anticipating emergencies a bit like natural disasters, where there's this very quick responses by emergency services to an incident. I don't think that many of the documents talk about, you know, the scale of this kind of pandemic.

of being challenged, but that it made a decision not to legislate in the Scottish Parliament in favour of a four nations approach built on legislation in Westminster.

Q. So your understanding from the Scottish Government materials is that the Scottish Government had the power to impose a lockdown before it was imposed?

A. If it legislated to do so.

Q. Yes.

A. Yes.

Q. Indeed. But that it chose not to in favour of the four nations approach, which culminated in a co-ordinated commencement to the lockdown in March 2020?

A. Yes.

Q. Is it fair to say -- one might say, I think, that -- or is it fair to say that in this area there may be a significant degree of confusion as to where the power lies in this regard?

A. Yes.

Q. And that perhaps is why you have struggled, as others have, to work out what the position is?

A. Yes.

Q. But your understanding of the evidence is that the Scottish Government's position is that it felt it could not legislate for a lockdown in the period before 23 March?

A. Yes.

Q. And we know, of course, that the Scottish Government did not legislate and have a lockdown before that period, but it did issue a number of recommended courses of action in early March to curb social interaction and the like?

A. Yes.

Q. Given that there is a lack of clarity in this area, it would appear, and it is your evidence that that is the case, is this the sort of thing that would have benefitted from clarification of the blurry lines, perhaps in a Joint Ministerial Committee, so that if an emergency like this struck, everyone would know what their powers were?

A. Yes.

Q. Does it appear to be the case that the lack of clarity contributed to issues around a delay in the lockdown at that time based on your assessment of the materials?

A. That's tricky for me to answer. What I can say for sure is that the feedback from the Scottish Government is that they thought this was the quickest way to do it. So I think from their perspective this reduced delay. I think the counterfactual is: what if Scottish Government ministers had much earlier on recognised this?

Legislative powers and the Scottish Parliament

You talk there, I think, in written testimony in particular, that from a legal perspective, and with the caveat that you're not a lawyer and you're relying on this material, the Scottish Government's position, or at least certain individuals who were prominent in the Scottish Government at the time, suggest that the Scottish Government could have acted so as to impose lockdown, for example, before the Coronavirus Act 2020?

A. Yes, and this is one of -- an example where I think I got far more clarity from the Scottish Government in comparison to other issues, because in the draft of my report I had said -- I had said that I'm honestly not sure if the Scottish Parliament could have legislated in this field, and I'm not sure what the legal position was before that.

Q. Mm.

A. And I got very clear -- which I quoted here -- very clear feedback from the Scottish Government that the Scottish Government could have initiated the legislation in the Scottish Parliament, because this was clearly a public health responsibility, so there were no issues
as a problem, thought that the UK Government was not
doing enough about it, and therefore legislated much
more quickly? From the documents they have given, they
do not give the impression that they were operating on
a much more accelerated timetable than
the UK Government, and therefore, they were quite close
together, it made sense for them to do this quickly.
I think that sometimes things that aren't left said
is, although the UK Government does not challenge
Scottish Government legislation much, the UK Government
and citizens can challenge Scottish Parliament
legislation if deemed out of competence.
So I think it would be reasonable for the Scottish
Government to say that during a crisis, when there's not
100% clarity on who's responsible, it makes sense for
Westminster to legislate because then it won't receive
that challenge over competence in a way that the
Scottish Government could.
Q. But as I think you accepted earlier, one might, in
a counterfactual situation, had there been greater
clarification over these matters between the governments
to deal with the pandemic --
A. Yes.
Q. -- that we might have been operating in a counterfactual
situation where there wasn't that lack of clarity?
A. Okay.
Q. -- about the financial issue that meant that they had
the responsibility but not the financial means to act,
which it seems played some part in the decision-making.
A. I --
Q. We'll get on to the more difficult stuff in a moment,
I assure you.
A. Okay.
So I think the Scottish Government position is that
an act such as lockdown would be profoundly expensive,
and that has been borne out, and it did not have the
means to borrow the money to finance that activity. It
had a budget, but that budget was already allocated, and
we're talking about a scale that it wouldn't be able to
fund, for example -- I think the biggest example is the
employment furlough, it didn't feel able financially to
fund its own furlough.
Q. So to be fair, I think it's important to point out that
the evidence that you've seen is pointing out that that
was an important factor in the decision-making as
well --
A. Yes.
Q. -- it wasn't simply a matter of "We can just go off and
have a lockdown because we can", there were other
considerations, including these financial
considerations, to take into account?
A. Yes, because I think the key question, when they're
considering solutions, is: is this solution feasible?
So at the time they were wrestling with two
feasibility issues. One was the political one: will
people accept a lockdown? The other was the technical
feasibility: can we do it and can we afford it? And
I think, yeah, that informed all decision-making at that
time.
Q. Thank you.
Before we move on to look at this area of funding in
a bit more detail, I just wanted to clarify with you,
which is an important although I think sometimes maybe
misunderstood element, of the way that the devolution
settlement played out in the pandemic. It is important
to understand, is it not, that the UK Government
continued to have a direct role in controlling Scottish
matters during the course of the pandemic?
A. Yes.
Q. Not all Scottish matters, but certain Scottish matters
that were reserved to their competence?
A. Yes.
Q. So, for example, as we will see in a moment, the funding
arrangements were still generally controlled by the
Treasury?
1. A. Yes.
2. Q. I say generally because there are some tax raising powers of the Scottish Government that we’ll touch on.
3. A. Yes.
4. Q. Other areas, for example, that we’ve seen, we’ve heard something about already, defence is a reserved matter?
5. A. Yes.
6. Q. So that during the course of the pandemic, when the military required to be brought in to assist with hospitals, that was a matter over which the Secretary of State for Scotland took control?
7. (Pause)
8. A. Yes.
9. Q. If you don’t know that particular --
10. A. I --
11. Q. In general terms --
12. A. In general terms --
13. Q. -- defence matters would be for the UK Government --
15. Q. -- and if you take it from me on the hypothesis that there required to be defence intervention, you would expect that to be a matter for the UK Government.
16. A. Yes.
17. Q. So although operational control of the pandemic lay with the Scottish Government, the UK Government had exclusive control in certain areas and therefore an important part to play in Scotland’s pandemic response?
18. A. Yes.
19. Q. Thank you.
20. So then to turn to the question of funding, we go to paragraph 255, please.
21. This is what we described earlier as topic 7. You were asked a specific question about this, and you say, I think, at paragraph 258 -- if we could just go over the page -- I think as you’ve already said in passing that the general rule as far as funding in Scotland is concerned is that the Treasury heavily influences the size of the Scottish Government’s budget but it does not control how the Scottish Government spends its budget?
22. A. Yes.
23. Q. Is that correct? Again, if I could try and put this to you, and if you disagree please tell me. My understanding of the very helpful evidence you’ve given in this regard is that funding is normally allocated to Scotland by the UK Treasury as part of a block grant; is that correct?
24. A. Yes.
25. Q. And that when the grant is being fixed by the UK Treasury, there will be some level of negotiation with the Scottish Government about how big that should be?
26. A. Yes.
27. Q. Yes.
28. A. They didn’t want to have these annual disputes about how much the budget should be, and this was the formula to --
29. Q. Yes, indeed, indeed. So that’s why, although one might do it a different way, many people may, there is a fixed formula which tries to simplify the process?
30. A. Yes.
31. Q. And that presumably gives a certain degree of predictability about what the funding might be for future planning purposes and many other factors?
32. A. Yes.
33. Q. At paragraph 261, this is in the section where you are talking about the Scottish Government’s pandemic response, you note that the Scottish Government’s budget available to deal with the pandemic was largely influenced by spending on comparable services in England. Is that because where large amounts of effectively emergency funding were allocated for England by the UK Treasury, generally speaking, the amount for Scotland was calculated by the application of the Barnett formula?
34. A. Yes, particularly if -- the expectation would be a lot of the funding would be on the National Health Service, so that would be treated as a devolved matter, highly
comparable, so it would be relatively straightforward to apply.

Q. Yes. In circumstances where the Barnett formula is applied as the tool -- you described it as being to a block grant -- it may well be the case that the Scottish Government may apply a greater proportion to one area and a smaller proportion to another; is that right?

A. Yes.

Q. And that the Scottish Government has the power to decide, once it's got its grant, what it uses it for?

A. Yes.

Q. And over a block grant, which applies to all services, although the Scottish Government may disagree, the amounts that are required may balance out because there might be greater spending in one area as a result of Scottish Government policy but there may be a lesser requirement to spend in another area; is that right?

A. Well, certainly they have to balance their budget.

Q. Yes.

A. So any additional spending in one area has to be met by a reduction somewhere else.

Q. Yes, but the theory at least is that they require to do that and therefore if the Scottish Government decides to spend more on health, for example, it would have to find some proportionate deficit elsewhere?

A. Yes.

Q. Is it correct to say, as I think we’ve confirmed already, that the way in which funding for the Covid-19 pandemic generally worked would be that money would be allocated by the UK Treasury as an emergency budget, and that the Barnett formula would be applied in order to reach the amount that Scotland would get?

A. Yeah, so I think eventually, instead of working it out after the spending had taken place, they estimated what the spending would be.

Q. In advance?

A. Yes.

Q. Is it your view that such an approach to working out the Scottish share for specific matters in an emergency situation, which although generally certainly adopted if not necessarily entirely agreed with, is the approach to overall block grant is an appropriate way of allocating funding to Scotland for its specific needs in a specific emergency?

A. No. I would say that what became known as the “Barnett formula” -- that’s me being academic -- was a political solution, was not a coherent financial solution.

Q. Again, given your evidence that this was not an appropriate thing to deal with this sort of situation, is this the sort of matter which could have formed part of discussions in a Joint Ministerial Committee to work out how such eventualities may be dealt with in an emergency?

A. Yes. I would say given the level of crisis and, you know, the sort of unprecedented nature of the crisis, the kind of negotiations between civil servants in the UK and Scottish Government would require a level of co-operation between ministers to give them the cover to talk those things through.

Q. I think you have drawn upon perhaps other sources but certainly John Swinney’s evidence to Module 1 where he said that -- not just at ministerial level but more broadly his evidence was that relations between the two governments at the time the pandemic struck were particularly poor?

A. Yes, I think -- and it might be important to stress, you know, poorer than what?

So I would say from 1999 to 2007 you had Labour leading both governments, and all of these issues you talk about would be dealt with quite informally. If there were crises at ministerial level it would be dealt with informally between parties. From 2007 that was not possible, and the devolved administrations pushed for more formal arrangements. But I think these meetings are largely in the control of the UK Government. The devolved governments can’t successfully demand that they happen, so they’re sort of subordinate partners there.

So their relationship was already bad. The -- over the years there have been -- so it’s been both sides. So the SNP has been highly dissatisfied with the UK Government. The UK Government has portrayed the SNP government as not to be trusted. So this was a key feature before, that their position was: it was very difficult to share information with the Scottish Government, because we do not trust their ministers to keep it quiet.

So there was a lack of trust between ministers. It was exacerbated, I think, by key personalities, and exacerbated by the -- you know, the -- you know, Brexit, which was, you know, famously, you know, rejected by most people in Scotland.

Q. Yes.

A. So I would say that up to, roughly, the point of Brexit, it’s hard to imagine a worse relationship between the UK Government and devolved government.

Q. Thank you very much for that context. We’ll obviously explore these matters with appropriate witnesses in due course, my Lady.

A. Just a few final things on funding. One of the
A. Scottish Government ministers do not trust UK Government fact I’m sure this will come up in their testimony -- accordingly. I think the problem here is that -- in Government would have been assured and would have acted this funding in a flexible manner” the Scottish then if the Prime Minister had said “We will provide to together, they knew each other and trusted each other, 2020 when the two governments were working really well important here, because if you had a situation before I think so. I think the context you describe is 20 time, perhaps, from England. You, in your report, talk about this issue. It was, I think, a part of the narrative from the Scottish Government during the course of the pandemic that this was a problem, and you, I think, in your report, comment on this where you talk about the extent to which financial levers may influence policy decisions in Scotland. A. Yes. Q. Is that your understanding of the Scottish Government's position, broadly, from the papers that you’ve looked at? A. Yes, that they needed the UK Government to allocate additional funds, that the Scottish Government did not have the means to provide those funds themselves, because, you know, almost all of this additional funding came from borrowing and the Scottish Government does not have those powers. It needed the certainty of how much it would receive so that it could allocate that funding quickly. And I think its position is it not only relied on the UK Government to give it this funding, but it also did not get a clear enough steer about what that funding would be. Q. That's its position. There is evidence which came from the Inquiry has before it that this was a matter of some concern to the Scottish Government in around November 2020. You'll remember at that time that contemplation was being given to the possibility of what were called “firebreak” lockdowns to break chains of transmission, and there were concerns expressed not only on the part of the Scottish Government but indeed other politicians in Scotland that to do so would perhaps run the risk of a measure being taken that could not be supported financially.

Is it your understanding that a clarification was made at that stage to the effect that -- by the then Prime Minister -- that the furlough scheme would be available for future lockdowns in Scotland? A. I think from a document I took that the former Prime Minister had given a verbal assurance that that would be true.

Q. There was something of a political issue. The document that you’re talking about is -- there are two news articles. Just for the record I’ll leave their numbers: INQ00360049; and the one relating to the Prime Ministerial response is INQ00360145. Because would it not seem, from a political perspective, odd if the position were that, in terms of the Coronavirus Act, the political power had been accorded to the Scottish Government to do just that, create a lockdown if they felt it appropriate in the interests of Scotland, for the government, the UK Government, then to say "Well, if you feel you need to do that at a different time from us, we won't fund it”? Would that not be a politically unusual situation to be in? A. I think so. I think the context you describe is important here, because if you had a situation before 2020 when the two governments were working really well together, they knew each other and trusted each other, then if the Prime Minister had said "We will provide this funding in a flexible manner” the Scottish Government would have been assured and would have acted accordingly. I think the problem here is that -- in fact I'm sure this will come up in their testimony -- Scottish Government ministers do not trust UK Government ministers, and would not take a verbal assurance as something that they could plan on. And I think it's that lack of trust, you know, communication, co-operation, that would undermine the delivery of that kind of flexibility. Q. Before I move on from that, just to point out, of course, the other devolved nations did have firebreak lockdowns around that time and, as I understand it, the Welsh firebreak lockdown had started before those exchanges on 1 November. A. Mm. Q. And it may be subject to subsequent evidence, but obviously those devolved nations have similar financial arrangements -- A. Yes. Q. -- and therefore it would seem that some sort of plan had been laid out for the Welsh firebreak lockdown, which no doubt we will address in due course. A. Yes. And I should say there’s a long history of that kind of allocation. I think, again, the -- not everyone would use this term, but the -- academically you would say that is called “formula bypass”. So the UK Government would ostensibly use the Barnett formula to make these decisions, but would always reserve the right to make any ad hoc financial decision it wanted to
in relation to devolved governments. So there is a long
time history of essentially saying "Here's your budget" but
then on an ad hoc basis giving different allocations.

Q. Okay, thank you.
A. One matter I just wanted to raise with you at
paragraph 289, please.

Q. This is in your conclusions section relating to
topic 7. You earlier on have done an analysis of some
reports and materials available from, amongst others,
Audit Scotland, relating to the question of how the
money was spent --
A. Yes.
Q. -- and was the conclusion that came from that analysis
that it's difficult to know exactly what the money was
actually spent on?
A. Yes. I think that Audit Scotland's quite clear on that,
that it's -- they're very dissatisfied with the lack of
clarity and how the money was spent.
Q. When we talk about "the money", the money that was
allocated in support of the pandemic response?
A. Yes. And I think the added complication is that
Audit Scotland can only audit resource allocation by the
Scottish Government and the Scottish public sector, and,
wherever you say, this response was characterised by spending
from the UK to the Scottish Government or the UK
89
could possibly contribute collectively to joint
decision-making. I don't think that's what it exists
for. And if ministers want to perform that kind of
work, they do that in far smaller Cabinet committees, or
subcommittees.

So I think -- for as long as I've studied UK
politics, Cabinet has not been seen as a decision-making
body, it's rather been seen as a decision-ratifying
body.

Q. Right.
A. Whereas the -- at least the Scottish Government's
description of its Cabinet is that because it's smaller,
because they have cross-cutting responsibilities,
because directorates can respond to different ministers,
and because the Deputy First Minister has this
overarching role, it can perform that function that,
you know, would be -- you know, that most people would
think Cabinets perform.

Q. But consistently with some other themes from your
evidence, you say in paragraph 45 that this potential is
not necessarily or always realised.
A. Yeah. It's difficult. I would say the story that "We
make all decisions through the Scottish Cabinet" I think
is the official story. It was -- if I was doing
academic work, it would be my starting point for
criticise analysis to look at what actually happened.
I would just assume that there was always this gap
between the official picture and how things are really
done.

Q. When you mentioned earlier the concept of a -- the
UK Cabinet you were describing as potentially
a decision-ratifying body, what exactly do you mean by
it? Does that mean the decisions are taken elsewhere
and simply put before the Cabinet to rubber stamp them;
is that roughly what you're saying?
A. I mean, "rubber stamping" has a real --
Q. Yes, please use your own words to describe it.
A. I would say that given the amount of time and
deliberation and knowledge that it would take to make
a meaningful collective decision, and the time given to
a UK Cabinet and the amount of time for deliberation,
those two things don't match up. You could not make
decisions in that manner. And they don't.
I don't think even the UK Cabinet puts up much of
a pretence that that's how it works.

Q. The theory, however, of Cabinet being the
decision-making body is, I think, that various different
aspects of government decision-making and, by extension,
Scottish life, or UK life, are represented by different
people, such that different views can be brought to bear
in a decision-making body that then leads to
a collective decision; is that the theory at least?

A. Yes. And I think those discussions do happen.

Ministers, civil servants and others do debate those
issues, but I think the UK style, if you like, is to do
those things before Cabinet and behind closed doors, and
then use Cabinet as a way of ratifying the decisions and
discussions already had.

Q. Yes.

A. The portrayal of the Scottish Cabinet here is different,
at least from the Scottish Government. It is that the
Scottish Cabinet is the place where people have these
debates and make these choices.

Q. Okay.

A. You mentioned there the complexity and volume of
material that was inconsistent with the idea that
UK Cabinet was actually making the decisions. Obviously
within the pandemic, as we've seen, the volume and
complexity of the material was at the extreme end.

A. Yeah.

Q. Do you think, therefore, that Cabinet, proper Cabinet
decision-making, as the Scottish Government purports
happens within its decision-making structures, would
have the advantage of spreading the burden of that
information and allowing its totality and complexity to

LADY HALLETT: They were Cabinet committees, they were
comprised of people, so they -- it wasn't as if they
were just a couple of people in the corridor making
a decision on their own.

A. No, indeed not. But I think that would be --
I think the Scottish Cabinet could be considered to be
the equivalent of that Cabinet committee in terms of the
size and scale. I think they had a Cabinet committee so
they thought: let's have the most important people in
the room, let's make it a manageable process.

Particularly during an emergency.

And I think the idea here is, because the Scottish
Cabinet is already smaller, they could do that without
relying as much on Cabinet committees.

LADY HALLETT: Yes.

MR DAWSON: Could I just go to paragraph 43, one final
matter on this. In this paragraph you are talking about
decisions which would normally be taken at the Cabinet
level. Is there a clear guidance about decisions
requiring to be discussed and made at Cabinet level and
circumstances in which they can be delegated,
for example, to an individual minister? I think here
you suggest perhaps not?

A. I think, well, the language matters here. I think ...

I think from their perspective they're as clear as they

be taken more into account in an ultimate decision than,
say, for example, if you had just an individual
decision-maker?

A. Yes. I think it performed a profoundly important
function, because on the one hand the -- you know,
minute-by-minute day-to-day decisions of ministers could
not be process -- you know, could not all be processed
by a Cabinet, but they were able to process key matters
of principle that would guide all activity. So --

Q. Your evidence there is on the assumption, I think, that
their purported model is the model that actually played
out?

A. Yes.

Q. But we will explore that in the evidence. Your position
is that during the course of the pandemic, that
purported model of Cabinet decision-making would have
been a good one for the reasons that we've discussed?

A. Yes. If working well --

Q. Yes.

A. -- and as described, it would be an excellent way to
make decisions.

LADY HALLETT: With the UK Cabinet, what happened during
Covid was we ended up with the Cabinet committees, like
Covid-O and Covid-S.

A. Yes.
have been established, so this is just a case of making a decision.

Q. Yes.  

A. It's -- I don't have access to, like, a full allocation of the choices made by the First Minister.  

Q. Yes, yes, I'm really trying to address this for the purpose of looking at those sorts of decisions in the abstract with you, to try to work out what would be the advantages and disadvantages, which I think we've covered.  

A. Yeah.  

Q. I would just like to go to paragraph 48, please.  

In this section, you're telling us something about the way in which the civil service works in Scotland.  

The civil service is a reserved matter, is that correct?  

A. Yes.  

Q. Is it correct to say that the civil service at the time of devolution was an important part of the devolution settlement, in that in reserving the civil service to the UK Government's ambit, that was one of the mechanisms by which the primacy of the Westminster Parliament would be thought to be maintained; is that broadly correct?  

A. Certainly the way I would describe it is this is the way to solve most of those problems of intergovernmental

was it changed the ability, the power -- it accorded power to the Scottish Government to be able to appoint its own civil servants?  

A. Yes. I mean, I will admit to being confused by the fine details of this. But my impression has always been that the Scottish Government has delegated responsibility for recruitment, so it essentially operates as -- you know, a -- to some extent autonomous organisation recruiting civil servants according to these rules, and so it's a kind of operational rule within these rules.  

So I think the only time this becomes a problem or a contentious issue is the appointment of the most senior civil servants. So essentially these are supposed to be non-partisan, non-political roles, but I think the most senior civil servant is performing, you know, a very delicate political task, you know, that would have to be managed well.

Q. But to be clear, from 2010, as you set out there, there is a Scottish Government Civil Service Code; is that right?  

A. Yes.  

Q. And the fundamental rule of that is, as a civil servant, you're accountable to Scottish ministers, who are in turn accountable to the Scottish Parliament?  

A. Yes.  

relations we talked about.  

Q. There's an accountability there to the Scottish Ministers, as opposed to the UK Government in some way?  

A. Yes. And that did become an issue in relation to Scottish independence, because the permanent secretary at one time was expressing that language, to say "I am here to support an SNP-led Scottish Government, it is their commitment to foster independence, therefore it is my duty to, you know, foster that". So I think that was -- really symbolised there, in terms of the balance they struck -- very much the way they articulated their role was in relation to the Scottish Government, and they would often downplay their, you know, wider UK role.  

Q. Have these sorts of things given rise generally to concerns, at least about whether the Scottish civil service is too committed to the cause of independence?  

A. I mean, there would be lots of expressed concerns by certain people. So it's hard for me to give, you know, like, a balanced account of that. That's essentially a --

Q. All I'm asking is: is that a matter which is an issue in public discourse, about there are concerns in that regard? I am not asking you to say whether they are well-founded or not, but merely that this is a matter on which political commentators, political experts like
A. Yeah, certainly it would not be difficult to find
critics of the Scottish Government civil service saying
that they were too committed to the SNP government.

Q. Thank you.

A. Okay.

Q. You give again a very useful commentary on this. At
paragraph 206 you refer to other literature which notes
that at times of crisis leaders can be led into a more
presidential style of decision-making and communication,
where the elected leaders seek to personalise their
power.

A. Yes.

Q. In your report, you also note at paragraph 229 that
there is -- you've helpfully told us about some polling
which exists which tends to suggest that Nicola Sturgeon
unconditionally trust a government, you're failing in
your duty to hold them to account.

Q. I think the satisfaction in trust is quite a weak proxy of how things are going, because people may
put their trust in governments without any evidence,
you know, to give them the reason to do it. Or there
are clear differences in terms of trust in governments
according to the extent to which you share their beliefs
or you support the party that they're from.

A. Okay, so you separate that out, there's still this
difference in trust, but they are also looking for
measures of understanding and compliance with the
measures they take and measures over time. So they want
to know: do people understand what we were asking of
them? Do they agree with what we're asking them to do,
or at least are they willing to do it, and are they
doing it?

Q. So those are very different polling data. One is
very general and one is specific on behaviour.

A. I think you say that at least there's limited evidence
of the second type, the ability of the public to
understand the information, whereas there is
a proliferation of evidence from various different
places for public satisfaction, which may be a less
reliable and less helpful indicator; is that correct?

Q. Yeah, well, even if people could not tell you what FACTS
mean, it has raised awareness and the kind of -- they
in her public role certainly compared favourably to
Boris Johnson in terms of public approval, but you make
a distinction there between public satisfaction with
government communication and the ability of the public
to understand the information conveyed by governments.

A. Yeah, so the -- so governments commission essentially
proxies -- proxy information of how well their campaigns
are going. One of them is a question about, you know:
"Do you trust this government and this government to act
in your best interests?" Or something like that.

So the Scottish Government scored consistently
higher in terms of that general trust that this
government was acting in your best interests. So
I think that's -- that's not only work commissioned by
the Scottish Government, but also in independent
polling. I think you might struggle to find someone who
didn't come up with that same kind of picture.

They also commissioned work to try to understand --
because, you know, the issue with trust is -- it is not
all a good thing. So in work that I have reviewed, the
authors prefer this idea of watchful trust, which is you
put enough trust in people that you think they're
competent and sincere, but you always keep an eye on
them as part of your duty. So if you simply
unconditionally trust a government, you're failing in
your duty to hold them to account.

So -- and I think the satisfaction in trust is quite
a weak proxy of how things are going, because people may
put their trust in governments without any evidence,
you know, to give them the reason to do it. Or there
are clear differences in terms of trust in governments
according to the extent to which you share their beliefs
or you support the party that they're from.

Okay, so you separate that out, there's still this
difference in trust, but they are also looking for
measures of understanding and compliance with the
measures they take and measures over time. So they want
to know: do people understand what we were asking of
them? Do they agree with what we're asking them to do,
or at least are they willing to do it, and are they
doing it?

So those are very different polling data. One is
very general and one is specific on behaviour.
kind of know what it means. They know, okay, wear
a face mask, distance yourself, seek a test and so on.
So there’s a lot of that focus from Scottish
Government submissions on: this is generally going okay,
look at the weight of communication that we’re doing,
and – I would say that’s a key theme. Whenever probed
to say “How effective is your campaigning?” the answer
will be, “Oh, look at the amount”, and I think that’s
an issue for me.

MR DAWSON: My last question was going to be whether you
could recount FACTS, but as you inform me you don't want
to do that, that is my last question. Thank you very
much, Professor.

There are no core participant questions, my Lady.

LADY HALLETT: Thank you very much indeed, Professor. We've
hardly touched the surface. You've obviously done
a huge amount of work, for which I'm extremely grateful,
but don't worry about the rest of your written material,
we take into account all the evidence, not just the
oral, the written as well.

THE WITNESS: Thank you.

LADY HALLETT: I'm just sorry I won't have the time to pop
along to Stirling and listen to a seminar or lecture, if
you still give them. So thank you very much for your
help.

If we turn to page 35, there will be a signature
which is beneath the personal data. Is this your
statement?

A. It is.

Q. Are the contents of this statement true to the best of
your knowledge and belief?

A. They are.

Q. I understand, Dr Macaskill, that you wanted to say
something before we get into the substance of your
evidence. Here is an opportunity to do so.

A. Thank you, Mr Tariq.

And I think it's very important, on behalf of
Scottish Care's care home, home care and housing support
members, that I would state at the beginning my own
personal but also our organisation's condolences to the
thousands of individuals who lost their lives as
a direct result of Covid, but also to the tens of
thousands of others who had lost the opportunity to
spend their last few months, weeks of their lives
because of the measures which were undertaken during the
pandemic. So we express our condolences to them.
But I would also want at the same time to recognise
and to underline the amazing dedication of frontline
women and men who went out to care in our care homes and
in other community settings and in individual homes.

They are the best of us. At a time of real fear, when
the novel coronavirus was presenting itself, they left
the comfort of their own homes to care for and support
some of our most valuable citizens. Thank you.

Q. Thank you, Dr Macaskill.

I want to now start with the substance of your
evidence and I want to begin by asking you questions
about Scottish Care.

Scottish Care is a membership organisation
representing the independent care sector in Scotland; is
that right?

A. That's right. So we represent charitable, not for
profit, employee-owned and private providers of older
people's care in care homes, and in the community in
care home and housing support.

Q. As I understand it, Scottish Care has around
350 members; is that correct?

A. Correct.

Q. During the course of the pandemic, your interest lay in
the field of care homes but also those that were being
cared for at home, as your members delivered both of
those services; is that correct?

A. That's correct, yes.

Q. These services were delivered to a wide range of people,
it could be older people, people with long-term health
conditions, people with dementia, people with learning
disabilities and so on.

A. That is correct.
conditions, people with disabilities, people with learning disabilities and people with physical disabilities; is that correct?

A. Correct.

Q. The organisations that Scottish Care represents, they vary in size; is that correct?

A. Absolutely, they vary from single operators, often family-run operators, charitable organisations of various size, all the way up to national and larger corporate bodies.

Q. Over the course of the pandemic, your members were at the forefront of caring for some of the most vulnerable people in our society, both in residential care settings but also in individuals’ homes; is that right?

A. Yes, and the frontline staff employed by our members were very much at the forefront of addressing the challenge of the pandemic.

Q. I now want to turn to the role of Scottish Care in the pandemic. It said in the statement of Scottish Care that Scottish Care was at the heart of the debate and discussion around the social care sector, that it provided a detailed and vocal response to the issues faced by the care sector in Scotland. Your statement explains that Scottish Care attended meetings and regular communications with the Scottish Government on a long period of distrust between particularly the social care sector, that it provided a detailed and vocal response to the issues faced by the care sector in Scotland. Your statement explains that Scottish Care attended meetings and regular communications with the Scottish Government on the key issues affecting the sector. Is that correct?

A. Correct.

Q. I want to turn to the period leading up to 21 April 2020, and in particular look at some of the Scottish Government’s decision-making in that critical period of March 2020 and up to 21 April 2020.

We know that a large number of patients were transferred from hospital to care homes without being tested for the virus in the early stages of the pandemic, and it was not until 21 April 2020 when it became mandatory for hospital patients to have two negative Covid-19 tests before being discharged and for all new care home admissions to be isolated for a period of 14 days.

There is data which shows that between 1 March and 21 April 2020, 82% of the 3,595 patients discharged from hospital to care homes were not tested, and 752 care homes took in untested patients between 1 March and 21 April 2020.

So I hope that that summary contextualises my

Can we turn to the report from Public Health Scotland which is titled “Discharges from NHSScotland Hospitals to Care Homes between 1 March and 31 May 2020”. This report is at INQ000101020, and you will see that the report is on the screen in front of you.

You will see that there is figure 1 on page 6 of the report, and you’ll see that on 13 March it says: "First Clinical Guidance for Care Homes.”

And this is stated as being: social distancing, essential visits only, accept admissions to the care home if safe, close the home if resident tests positive.

So if we can explore some of these further, what was understood within the care home sector to have been meant by "accept admissions to the care home if safe"?

A. So before that development of that guidance, we had made representations -- and you have evidence of my communications with Scottish Government -- that, based on a long period of distrust between particularly residential but also nursing care home providers, we needed a degree of assurance that what was meant by clinical assessment was sufficiently robust. Indeed, in working groups convened by the Scottish Government, it contributed to guidance that was produced by the Scottish Government and Public Health Scotland, which impacted the sector, and it maintained direct and regular communications with the Scottish Government on the key issues affecting the sector. Is that correct?

A. Correct.

Q. I want to turn to the period leading up to 21 April 2020, and in particular look at some of the Scottish Government’s decision-making in that critical period of March 2020 and up to 21 April 2020.

We know that a large number of patients were transferred from hospital to care homes without being tested for the virus in the early stages of the pandemic, and it was not until 21 April 2020 when it became mandatory for hospital patients to have two negative Covid-19 tests before being discharged and for all new care home admissions to be isolated for a period of 14 days.

There is data which shows that between 1 March and 21 April 2020, 82% of the 3,595 patients discharged from hospital to care homes were not tested, and 752 care homes took in untested patients between 1 March and 21 April 2020.

So I hope that that summary contextualises my
population most at risk from this novel coronavirus was our population, whilst at the same time seeking robust assurance that if somebody was discharged from hospital, that we could be as assured as we could be that that person was safe and was not coronavirus positive.

Q. Before we go through the guidance in a bit more detail, I'm interested to find out what your experience and understandings were at the time based on what you were seeing internationally. Are you able to explain that in more detail?

A. I was a member and still am a member of the Global Ageing Network and also the Commonwealth ageing network, and we were in regular contact, in February and into March, exchanging what was happening in different parts of Europe and more widely internationally, and it was known to anybody in the care sector that the population most at risk was our older population.

And we were already, even in late February and certainly in early March, beginning to identify that the classic symptoms demonstrated as being Covid symptoms were not manifesting in the same way in a population which was particularly old and with multiple comorbidities. So added to the usual characteristics of fever and cough and flu-like symptoms, we were evidencing a loss of mobility, confusion, delirium, singulary failed to be understood, certainly at this juncture but I have, unfortunately, to say at several points during the pandemic.

Q. You've touched upon what you describe, I think, as limited engagement in respect of the guidance that came on 13 March. Is it correct that I think you were only consulted, is it, on 12 March, about the draft guidance?

A. Yes, and given a quite tight timeframe of a matter of hours to make comments. And not just in terms of admission, we made comment about the reality of how difficult it was to transfer a system of essentially infection prevention and control methodology developed for an acute sector such as a hospital into an environment such as a care home, particularly a residential but including a nursing home, which was first and foremost somebody's home.

And whilst in words clinicians may have accepted, “Yes, we recognise this isn't a hospital, it's a care home and somebody's home”, what that actually meant in terms of the freedom of movement, in terms of managing and supporting somebody living with later stage dementia, in terms of the importance of mobility and routine and ritual in living in your own home was issues to do with continence, diarrhoea and vomiting, which were more frequently being manifested as symptoms of the new coronavirus.

So the international social care community was very aware, as we were in Scotland, that this was of significance to our sector, which is why Scottish Care became the first body in the UK, and indeed, as far as I'm aware, in Europe, to issue our own guidance at the end of February for our members.

Q. Looking at the guidance that was issued on 13 March, the guidance on 13 March refers to “accept admission to the home if safe”. Is the qualifier, “if safe”, is that a clinical assessment that's being made?

A. So what is meant there is clinical assessment.

I should say that we were disappointed with the process of the development of the guidance on 13 March, and we've presented evidence and papers to the Inquiry to that end.

We found that there was a minimum level of engagement with Public Health Scotland, or HPS at this time, in the development of this guidance, and as was seen both here in the necessity to repeat that guidance. Mainly as a result of our remonstrations later in the month, we found, both here but also throughout the main stage of the pandemic, the lack of engagement and professional respect from Public Health Scotland and its understanding of the social care sector and its unique situation, particularly in relation to infection prevention and control in care homes, to be wholly regrettable.

Q. You've touched upon what you describe, I think, as limited engagement in respect of the guidance that came on 13 March. Is it correct that I think you were only consulted, is it, on 12 March, about the draft guidance?

A. Yes, and given a quite tight timeframe of a matter of hours to make comments. And not just in terms of admission, we made comment about the reality of how difficult it was to transfer a system of essentially infection prevention and control methodology developed for an acute sector such as a hospital into an environment such as a care home, particularly a residential but including a nursing home, which was first and foremost somebody's home.

And whilst in words clinicians may have accepted, “Yes, we recognise this isn't a hospital, it's a care home and somebody's home”, what that actually meant in terms of the freedom of movement, in terms of managing and supporting somebody living with later stage dementia, in terms of the importance of mobility and routine and ritual in living in your own home was
A. It became a massive challenge for most operators and providers to adhere to guidance which was not fit for purpose.

Q. Looking at social distancing, and you’ve touched upon people with dementia, is it correct that many residents within care homes suffer from dementia?

A. So one of the challenges then and now, sadly, is that we don't have sufficient data to properly give an understanding of the number of people living with dementia in our care homes, but practitioners would argue that we’re talking between 80% to 85%. The nature of care homes today, whether residential or nursing, is vastly different from what it was ten years ago. Life expectancy is down at about 14 months compared to about five years ago where life expectancy was three to four years. Very few people move into a care home, hospitals, and to make sure that people who were fit for discharge were able to be admitted into a care home.

Q. You’ve touched upon the pressure being felt by care homes. Jane Morrison, of Scottish Covid Bereaved, yesterday had said that many of the group’s members had experienced family members feeling, in hospitals, pressured into being moved from hospitals into the care environment. Were you aware of similar concerns or pressures faced by patients and their family members?

A. Yeah, we were.

And moving into a care home is a major decision for anyone. It’s in many senses a sense of bereavement and loss, a loss of a relationship, a home, a dynamic that an individual may have had. It’s a process that has to be managed carefully. And care homes are really good at keeping the flow going and prepare us for what many consider to be a huge increase in cases.

Q. Did care homes feel pressure -- you’ve touched upon, I think, the pressures that care homes were feeling in terms of trying to help the NHS create capacity -- to accept patients being transferred from hospitals, and if they did, why?

A. The answer is undeniable pressure, which was a pressure which some even against their best judgements felt that they could not but address.

And that pressure came for many reasons. In Scotland we have got something called the National Care Home Contract, which is a contract nationally between local government, through COSLA, and care providers. It has very clear terms and conditions, 70% of those in a care home fall under the contract, it's paid for by the state, and one of those conditions is that a registered care home as part of the contract should not ordinarily refuse admission unless there were very clear clinical reasons not to do so.

So there was that pressure from health and social care partnerships, who were themselves being pressured by the NHS secondary and acute sector to clear the way so that, they are sensitive to the fact that the importance of choice of the person having as much voice and control as is possible within their capacity, ability.

So this is a process that has to be managed, and critical to that is that family and informal carers are closely involved in the transition from their own home or indeed from a hospital setting into a care home. All of that was cast aside in many instance, and individual care home managers and staff frequently in our contact spoke about the fact that people were being "railroaded", to use the term that one person used with me, to make a choice, which was a very limited choice, of: that care home or no care home.

Q. At this stage, on 13 March 2020, there was no need for a negative test before a patient was transferred from a hospital into a care home. In Scottish Care’s statement, it is said that Scottish Care advocated from early March 2020 that there needed to be a robust clinical assessment -- which you’ve touched upon -- and testing of residents entering into a care home from both the community setting and also the acute NHS setting.

Do you recall when in March 2020 Scottish Care had come to the view that there needed to be testing of admissions coming into care homes?

A. Very early, and indeed probably in late February.
Again, because of what we were aware of internationally. And I have to place this into some sort of context. I talked earlier about a breakdown and a lack of a relationship of trust. And there were many reasons for that and, you know, I appeared before the Scottish Parliament and its Health Committee a few weeks before and spoke about one of the major issues affecting social care provision was the feeling from social care providers that the priority in all instances -- and this is before the pandemic -- was being given to the NHS and not least the issue of delayed discharge and the importance of what was called at the time "bed blocking", and making sure that the flow continued, particularly during winter. So there had always been a pressure to make sure that hospitals were not "blocked".

In that context, many of our members reported to us a lack of trust in the hospital discharge process in normal times, and I've lost count of the instances of hearing from our members of people -- what used to be called the "Friday night discharge", and that was to clear hospitals for the weekend. People were discharged late on a Friday afternoon, often without information being communicated to family, typically and not infrequently without appropriate medication or at least scripts that were able to be taken to a pharmacy out of emergency hours, and in many instances with a lack of or insufficient case notes to enable that transfer to happen positively, both to the community and into care homes. That was the context.

Now, in some parts of the country discharge worked brilliantly, professionally, with a degree of mutual regard and professionalism. In other parts of the country there was simply a lack of trust.

Against that backdrop, we then had the new coronavirus being introduced, and we were very clear as an organisation, listening to our clinical colleagues out in the field, that they needed additional reassurance, and simply saying "We leave this to the professionalism of clinical assessment", I'm sorry, it didn't wash at the time, I communicated that to the Cabinet Secretary, and I indicated that what we wanted and needed was testing, to evidence a negative test. Which with nothing else could mean -- and we appreciate that testing was for in the moment, but it would mean a reduction in the potential period of isolation for an individual in a care home.

Q. You referred to the Cabinet Secretary, that's a reference to Jeane Freeman; is that correct?
A. That's correct.
LADY HALLETT: So on the basis of what we’ve talked about, our lack of trust in the nature of a clinical assessment at point of discharge and in the absence of an agreement to undertake a test, we were encouraging our members to engage in barrier nursing, which is high intensive infection control nursing. But bearing in mind that is only possible in care homes which are nursing care homes and not care homes which are residential care homes, who would neither have access to the relevant PPE or the skills to engage in barrier nursing.

And even those care homes which were nursing care homes would have and did have a limited amount of supply to enable them to barrier nurse. It’s not that care homes, particularly nursing care homes, were not used to infectious disease, very experienced with norovirus, very experienced with flu, but the nature of this novel -- new -- virus meant (a) that there was a lack of understanding within the sector, as there was a restricted number of tests available, that instead of -- sorry, in addition to a focus on the NHS we should also be focusing on social care settings. First of all, on the residents in those settings; secondly, on staff, especially in homes where there had been cases, because for a considerable period it was only after five positive cases had been detected that additional measures were introduced. So we wanted to get ahead of the game by using the limited number of tests that we had available to engage in preventative testing so that we could monitor not just after an outbreak but before an outbreak happened. And we argued with those who would listen that as well as utilising tests in a clinical acute NHS setting, where practice around infection prevention and control should have been more regular and advanced, though admittedly the range of nosocomial infections might question that, that priority needed to be given to social care. But in an environment where the whole concentration was on secondary and acute NHS, that aspiration came to nothing.

Q. In the context of testing for staff, Scottish Care say in its statement that staff working in care homes were likely to pose the greatest risks to those being supported in care settings. Why would you say that?
MR TARIQ: We have spoken a little about staff who were working in care homes. What about staff who were providing services for those in their own homes? Would these types of employees be moving around multiple homes over the course of a day?

Absolutely. And whilst there was a challenge and we've already -- the Inquiry has already heard of the virtual overnight withdrawal of support for individuals in their own home, services which did continue meant that staff were, you know, on a typical day, visiting 12, up to 20 individuals. So that was different households engaging in different levels of care and support. But at this stage, almost certainly, a -- personal care and intimate care and support.

The care at home workforce, I remember using the phrase "they are the forgotten frontline" in late April, early May, because all the focus had been placed on care homes, both in terms of testing and other intervention including PPE. And this workforce, who are significantly larger than the workforce in care homes, had largely been forgotten.

Q. So in terms of your perception of prioritisation, you've got the NHS that was being prioritised, then you've got care homes, but then below that is those that are people that are being cared for at home?

Absolutely.

Q. Now, what was the impact on the workforce in the care sector of staff not being prioritised for testing?

A. I think -- you know, and I've been looking at some of our early video webinars, I think it's really difficult for those of us for whom this has been our world for the last two or three years to forget the sheer terror and fear felt by frontline staff in care homes and going out to visit people in their own home.

Nobody had the depth of knowledge that was needed to give assurance to people about how you contracted this disease, what the risks were to yourself, and the palpable fear that individuals felt in working for care -- in care was extremely high. And it's to their credit that individuals continued to get up in the morning, leave their families, and go out to care homes and to other people's homes. In that context, I think the -- there was a sense of despair and there was a degree of resignation, "Well, of course they're going to prioritise the NHS", because that's what they were experiencing, but there was also a growing sense of anger, that: why should we be putting ourselves at risk without the level of protection which we, as experienced professional clinical staff in care homes and in communities know, even if we're not employed by the NHS?

Q. In the absence of that workforce being prioritised for tests, did that lead to staff having to self-isolate and taking longer absences from work if they came into contact with somebody that was Covid positive, and if so what impact did that have on the care home being able to deliver the services to its residents?

A. One of our arguments for extending testing and for that to include staff was also for it to include staff who had to self-isolate because a family member or they had been in contact with an individual. In early April in particular, we were at a point at which we were facing a very real risk of collapse of our workforce with more and more individuals having to isolate as the virus became more prominent and prevalent in the community. And introducing testing, which eventually did occur, to enable staff to return to work earlier, safe in the knowledge that they weren't at that time positive, would have made an immense difference at a time of real criticality.

Q. At this time of real criticality where there is reduced workforce because people are having to self-isolate, what impact did that have on the residents in care homes?

A. It had a profound impact. We were -- we advised our members to lock down on 12 March, so that was the day before the guidance came out, and it was a couple of weeks before national lockdown. So care homes were used to lockdowns, not least for norovirus, but they were time-limited and they were proportionate to the risk which was occurring. By the time that we'd got to April, a number of us were already beginning to ask the question about: what impact of a long lockdown, what was that going to be? Yes, we were keeping people safe, and I remember writing this, life is not just the ability to draw breath in and out, it's also the relationships, the purpose that you have in continuing to live. And we were hearing from frontline staff as early as April in 2020 that people were turning their face to the wall, that they were losing a sense of desire to continue, they were losing a sense of purpose, because they didn't have contact with their family and they didn't have contact with their wider community.

The burden of that upon staff, who were depleted in number, who were having to manage Covid risk, who were having to manage under a guidance system and an infection prevention and control methodology which was not fit for a social care environment, was massive, when most of them would have wanted to spend time with individuals who -- unlike the patient in an acute setting, who the staff is unlikely to know, these were
people who were known to staff, in some instances, for many years, and they could see that deterioration might occur in front of their eyes.

Q. Were you raising these issues directly with the Scottish Government in March 2020?

A. The issue of deterioration and decline -- so we thought it entirely appropriate that lockdown happened for a period of time because that had been the pattern of behaviour and we felt that it was a legitimate action to achieve an end which was to keep people safe. As April began to -- sorry, as April came and as April began to move forwards with no indication, except actually a worsening of the disease, a number of us -- and I said -- you know, I wrote articles, I appeared in the media, I engaged with a number of individuals at government about "we need to start thinking about ways in which we can manage the pandemic without the level of restrictions on social interaction and engagement", but instead what we got, later on, was the establishment of a clinical approach to care homes which turned them into clinical environments.

Q. We will come back --

A. Yeah.

Q. -- to issues from about May 2020. I want to focus on the initial phase in March leading up to 21 April where the guidance on testing was changed.

The Inquiry understands that you had a meeting with Jeane Freeman, who was the Cabinet Secretary for Health and Social Care, on 18 March 2020 to discuss issues relating to the care sector. Was your broad position at the time that the existing guidance which had been issued by, at the time, HPS on 13 March was not fit for purpose?

A. At that meeting we had had, after the 13th, already two meetings of our members where over 250 members attended virtually, and we were being told -- and we communicated this to the CMO's office and to others, and indeed that communication led to a change in the guidance the following week, that it simply wasn't working, that we needed a degree of more robust clinical assessment at point of admission, that we needed a sensitivity to the implementation of infection prevention and control, that we needed to have a bit of a reality check about how reasonable it was to expect somebody living with dementia to remain in their own room and not to use public environments and not to move around. So there were a whole list of areas which we had especial concern over, but one of the predominant ones was in relation to admission and testing, which is the subject of a considerable amount of the conversation with Jeane Freeman.

Ms Freeman.

Q. Can we look at the briefing paper that was prepared for Ms Freeman in advance of her meeting with you?

A. Yeah.

Q. This briefing paper is at INQ000261341. You will see that it says at the top: "Briefing for Cabinet Secretary for Health and Sport", and it says "Meeting with Scottish Care", on Wednesday 18 March, and the meeting is at 1.30 in the Scottish Parliament.

Can we look at page 2, and under the heading "Testing", here it says, and this is -- by reference "they" is Scottish Care: "They have concerns regarding the current testing arrangements and would like:"

- people tested before they are discharged from hospital to care homes so that care homes feel confident in accepting admissions from hospitals; and
- testing for frontline social care staff in order to avoid 14 day isolation periods to enable them to return quickly to work."

Thereafter, this is then the briefing paper for Ms Freeman, it's telling her what lines to take, and it says: "Testing for patients/people is currently being triaged into four different categories in the following order 1) patients needing critical care/ventilated 2) admissions to hospital with pneumonia/influenza like illness or acute respiratory distress syndrome, 3) clusters of outbreaks such as in care homes and 4) if there is capacity -- testing of staff."

Then bullet point number 2: "Testing for staff -- currently neither health or social care staff are being tested unless they fall under categories 1 or 2. This is mainly due to testing capacity issues with [laboratories] etc, however the policy of testing staff may change."

So at this meeting I think you say that the focus of the meeting was around the admission criteria. Did you explain the sorts of issues you've raised with me today to Ms Freeman at the meeting with her on 18 March?

A. Yes, and as you will have seen from the note, they were expecting the line that I've addressed to you today, which is the lack of trust and our desire to have a more robust process of testing to give clinical assurance.

Q. What was her response?

A. As far as I can recall, Ms Freeman's response was as stated in the lines to be adopted, which was that there was insufficient numbers of tests available and that priority would be given to those who were being admitted.
to hospital who may have manifested pneumonic or other respiratory conditions and that where there was a cluster in the care home.

I remember saying, you know, that's a bit like bolting the door after the horse has bolted. That yes, we need to know if there is an outbreak in a care home and how many individuals may have the virus as a result, and how many staff, though that wasn't considered for testing in that regard in that time. We wanted to get ahead of the game. And I go back to what I said earlier, it wasn't that we were saying "Don't use what tests you have available for the NHS", but begin at least to start thinking about the relative priority which you need to give to social care.

And I remember saying at the time that, you know, the lack of the engagement of social care operators in pandemic planning in all the exercises which we and the Inquiry knows about, is illustrative of the fact that if social care operators are not there and not social care policymakers, if social care operators are not there at the table, then clinical care decisions are going to be misplaced, as it evidenced in this regard.

Q. Do you think she appreciated or understood the gravity of the situation that you were telling her in the early weeks of March leading up to this meeting on 18 March?

A. I’ve absolutely no doubt that Ms Freeman appreciated that what I was telling her was what I believed and what was being communicated to me by our members. I had frequent meetings with Ms Freeman and I think she would probably agree that we did not always agree, we had often robust exchanges, but both of us sought to be constructive and positive in moving things forward.

I understood and understand the emphasis on the NHS from her perspective, but I have to say at the time, as it evidenced here, but also subsequently, I do call into question the prioritisation of the acute and secondary NHS with the limited degree of resource available at the expense of the social care sector and those who it supported.

Q. On the same day that you met with Ms Freeman, the Inquiry has seen a paper that was prepared by Derek Grieve from the Health and Social Care Directorate of the Scottish Government for Ms Sturgeon and Ms Freeman. This is a paper that's dated 18 March 2020.

A. In relation to that specific section, I don't know what the issue for colleagues at HPS would have been, but as you have, I think, heard at different points during the Inquiry, the issue of data in care homes has been a long-lasting issue of concern, and the availability of social care data, and very much, you know, pre-dates the 2020 pandemic.

I sat in many rooms talking about the data gaps which existed in social care. But that gap was itself the result of a myopic concentration and data in the NHS and particularly around delayed discharge. Had we given as much resource to developing datasets and supporting the social care sector to give and develop data, then we would have had more understanding.

But actually in this regard and with regards to testing, I’m not at all convinced, having seen some of the other written evidence statements from other parties, that it was just an issue around availability. And whilst Ms Freeman makes that statement very clearly in her own written statement that "we didn’t have sufficient tests", I note in the statement from Ms Sturgeon, evidence from the CMO at the time, of a resistance to using testing per se because it was a -- there was a danger of it creating a false positive, and indeed that it wouldn't assist the clinical management.
of an individual in a care home whether or not you knew
that they were positive. I'm paraphrasing that.

So I do wonder, and I think it's something that we
need to ask, whether or not there were clinical
resistance to undertaking testing within a care home
environment, or indeed any environment.

From our perspective, we were very clear: testing
wasn't a panacea but it was an additional tool to give
assurance, to help individual residents in a care home
reduce the risk of being isolated for long periods of
time and to enable staff to return to work as quickly as
possible.

Q. You've referred to other evidence that you've seen, and
I think that's a reference to witness statements that
you've seen --
A. Yeah.

Q. -- within this module. But in the context of what you
were being told at the time, and we've seen the lines
that Ms Freeman was given to take in her meeting with
you, was the absence of testing in care homes for
residents that were being discharged from hospital into
care homes, was a reason the absence or lack of testing
capacity?
A. Ms Freeman indicated at the meeting that lack of
capacity was the main reason, but around at the
time there was a clinical discussion around the
effectiveness of testing and the risks attached to it.

Q. If we look at what is being said in the paper, what is
being mentioned is that there are nearly 36,000
residents and it's in that context it says "Testing
a significant proportion or all of these residents would
significantly exceed the available capacity". But what
is not being said here, as far as I can see, is there
being some analysis of one of the positions that
Scottish Care had advanced, which was: we ought to be
prioritising testing of those that were coming from
hospitals into the care homes. Is that correct?
A. That's correct.

Q. We now have seen from later data that was published by
PHS -- this is a report from October 2020 -- that
between 1 March and 21 April 2020, 82% of the 3,595
patients discharged from hospital to care homes were not
tested. Therefore in the context of trying to
prioritise those people for testing, one would have
perhaps only required a much smaller number of tests
than the 36,000-plus that is being discussed in this
briefing paper. Is that right?
A. That would be right.

Q. Whilst the data from PHS around the number of discharges
from hospitals into care homes of people that were
untested only came out in October 2020, would
Scottish Care have been able to assist the Scottish
Government, if the Scottish Government had come to
Scottish Care and said "Can you give us a broad estimate
of the number of admissions that are happening from
hospitals into the care homes over this rough period?"

A. We would technically have had the ability to do so by
asking our members. We probably wouldn't have had the
capacity as a small organisation to engage in that
exercise but local health and social care partnerships
could have gained that information from providers.

Q. So it might have been that whilst -- one doesn't --
needn't wait until October 2020 to at least get a rough
ballpark figure in March 2020 if one is looking for
smaller testing capacity for that limited group of
people being admitted from hospitals into care homes; is
that correct?
A. Yeah, I think so. So if what lies behind is the
assertion that: could we have -- from the limited
capacity that we were told -- have prioritised those
being admitted into care homes, could we have used those
tests, then the numbers certainly say yes. Our argument
was that the lives of those moving into care homes but
also those who were residents and staff in care homes
should have had as equal a priority as those working in
NHS settings.

Q. You have provided documents -- or, before I turn to
documents, there was some evidence yesterday from
Roger Halliday and Scott Heald that data relating to the
number of people going between care homes and hospitals
and the number of people entering care homes from the
community was not available at the time. Is it your
position that whilst the exact numbers might not be
available at the time, that there would be a way, such
as contacting your organisation, so that you then
connect the Scottish Government to some of your members,
where one can get a ballpark figure if needs be?
A. It would have been very difficult, particularly in the
midst of an emergency situation, as we were in at this
time, for that exercise to be carried out. One of the
continual issues facing the care sector, both in
care homes and in home care, is the lack of robust data,
and very little overarching data analysis work has been
undertaken.

So we could have asked the question. Whether there
would have been an ability to respond at local level at
the time would have been challenging. And though data
was developed, what became known as the Turas platform,
that was during the stage -- during a relatively early
stage of the pandemic, in order to give the whole system
I think the dreadful dilemma goes to what I said care homes at this time in March? Can you describe what the dreadful dilemma was facing and the ground. of our members. They were caught between the stirrup and succinctly what was being said by dozens, hundreds Yeah, I think that sentiment articulates very clearly they're 100% to help; is that right? part of assisting in that strategy, your member says creating capacity for the NHS, and that care homes are not safe and breaking so many codes by refusing as well. Residents and we are breaking so many codes by being forced to take in admissions the way we are when it's not safe and breaking so many codes by refusing as well. Dreadful dilemma.” So your member here accepts that there is a focus on creating capacity for the NHS, and that care homes are part of assisting in that strategy, your member says they're 100% to help; is that right?

A. Yeah, I think that sentiment articulates very clearly and succinctly what was being said by dozens, hundreds of our members. They were caught between the stirrup and the ground.

Q. Can you describe what the dreadful dilemma was facing care homes at this time in March?

A. I think the dreadful dilemma goes to what I said earlier, which was we needed guidance which gave us robust assurance that as much as possible, in the constraints of a new virus, that people entering the care home as new residents or as returning residents were Covid-free and as safe as possible.

And the other side of that dilemma was the desire to support the NHS when there was the perception that the NHS could be overtaken by the rise in the number of cases. And the dilemma faced by many managers and staff at local level was: how do you keep people who are existing residents and staff safe and at the same time recognise that -- if somebody's fit for discharge, a hospital's certainly not where they want to be, and they should be discharged, either home to the care home or into the care home for the first time. So how do you balance both of those whilst at the end of the sentence recognising that there were pressures, because of contractual pressures and existing relationships with health and social care partners, not to break, in this case, the National Care Home Contract.

Q. Is that what the reference to breaking codes means?

A. Yeah.

Q. If we read on:

“Scottish Care needs to sort at least Guidance for Homes in my view and be much much more specific and...
nursing/infection control/isolation good practice'. ... I have friends who are Doctors/Intensive Care Staff/Anaesthetists/Nurse lecturers who are as trained as anyone in this in the very short time anyone has had (and have at least had some training previously for such events) and they feel exposed and underprepared in their PPE management and practice with better equipment. Many are frightened by this disease and its potential for spread... never mind an army of Care Home Carers and Elderly Care and Dementia Staff.*

So is the point here that infection control measures that might be appropriate in an acute setting just aren't going to work in a care home?

A. Yes, and it's the sort of issues that I've reflected earlier about, you know, a containable infectious unit in a hospital is "easy", in inverted commas, to manage, to curtail, but when you're talking about an environment with free flow of individuals, with individuals who might remember for a minute what you've said to them but then will forget why they shouldn't touch that or why they shouldn't go and speak to somebody or why they shouldn't go into that room, it becomes really difficult. And I think what the writer is indicating is that with this new virus even those who were very skilled and experienced in infection control and management were really anxious and worried, that fear I spoke about earlier, and even they struggled in such an environment. So why did we expect an under-resourced and understaffed social care sector to be able to step up to the plate when the NHS wanted to clear its decks?

Q. And part of that, in your witness statement, you explain for the cause of this guidance, I think you describe Public Health Scotland as being distant and detached from the care sector during the pandemic and not appreciating the practical requirements of the sector. Is guidance such as this the manifestation of Public Health Scotland not understanding, in your words, the care sector?

A. I think this was the beginning of an evidence that HPS and then Public Health Scotland didn't fully understand the unique particularities of delivering social care. They clearly understood acute and secondary care settings, but at various points what I began to call an IPC fundamentalism failed to appreciate that a care home, or indeed a person's own home, was not equivalent to or the same as an acute sector. And that perhaps was enshrined in an example which I frequently heard, when the process of inspections and scrutiny using these IPC standards began in the care home sector and when the care home sector was literally hung out to
ordinarily they might have been transferred because of
they stay in the Home until the recover or die’ is again
a real worry -- how does that work with the main aim of
‘protecting our elderly and most vulnerable’??? It may
meet the other aim of ‘protect the NHS’ but it doesn’t
meet the first one.
“Again, surely there’s a better way.”
And that’s a matter that’s touched upon in
Scottish Care’s statements, it says that the guidance
that was published from 13 March caused confusion within
the care sector which led to the belief that individual
residents who were Covid-19 positive should not be
transferred to hospitals, and I think in the statement
there’s a reference to a presumption of a blanket ban on
home care transferring residents who had tested
positive to hospitals.
Can you explain why care homes had come to believe
that there was a form of blanket ban on transferring
residents into hospital?
A. They arrived at that belief because it was their
experience, in numerous instances, of attempting to gain
access to a hospital or indeed to a GP to enable
an admission to hospital. There developed very quickly
after the 13 March guidance was produced until later on
in the month where significantly following our
remonstrations and from work that we did with other
MR TARIQ: My Lady, would this be an opportune time to
pause?
LADY HALLETT: How much longer do you think you have?
MR TARIQ: I was planning on being maybe around 15 more
minutes.
LADY HALLETT: And I think there is one question from
Ms Mitchell.
MR TARIQ: Yes.
LADY HALLETT: Very well, we will break now and I shall
return at 3.05.
(2.50 pm)
(A short break)
(3.05 pm)
LADY HALLETT: Mr Tariq.
MR TARIQ: I’m obliged, my Lady.
Are we able to go back to the email that was on
screen that, if you recall, Dr Macaskill, we were
looking at this email. If I can read on from the
paragraph that begins:
"I don't have a problem taking Residents.
Regrettably there were instances where it became clear that assurances that the policy was being implemented were not upheld and people were discharged, as they had been before, without robust clinical assessment, without testing or being tested at an inappropriate time. You know, for instance, there was examples of people being tested when they went into hospital but not at the point of discharge. So and both into the community and into care homes. So by no means, despite a very clear ministerial lead, did clinicians and practitioners in the acute and secondary sector follow the rules at all times.

I now want to turn to another issue that you’ve touched upon, which is around visitor restrictions in care homes, and we know that care home residents were subject to quite severe restrictions for many months, including bans on visits, being unable to leave the home, being cared for primarily in their room. What was the impact of these restrictions on the health and wellbeing of residents?

It was profound. It’s difficult to imagine that level of restriction happening to any of us, but when it happens to somebody with limited or fluctuating cognitive ability, it was deeply traumatic for them. I would also say it was deeply traumatic for staff who quite frequently used phrases like "We felt as if we were seeing what was happening around the world, your view was that this was potentially a disaster waiting to happen. Do you agree with your member’s sentiment?

As we know, on 21 April Ms Freeman announced that Covid-19 patients discharged to care homes should have two negative tests before discharge, and all new admissions should be tested and isolated for 14 days on arrival in the care home. What were you being told about the rationale now, on 21 April, for having two negative tests?

The primary reason given to us was the argument that there was sufficiency of testing availability. What was the impact on residents of Scottish Government admission criteria for care homes in March 2020 as prioritisation of the NHS, the presumption that people should not be transferred to hospitals, the level of presumption around what it was like to manage somebody in a care home, an IPC fundamentalism, I think he was absolutely right, yes.

All I can say is, from the perspective of our members and what we were hearing from frontline staff, was an absolute conviction on their part that unnecessarily people died during that period of time, and I’m very aware of Public Health Scotland’s statistical minimum assessment of discharge impact, but as I said when that report came out, statistics tell one story but if you go and speak to the women and men who worked in care homes, they will tell you a very different story.

We know that beyond 21 April 2020 there were still issues that were arising in relation to discharge of patients from hospitals into care homes. What were those issues that existed after the guidance had been updated?

Regrettably there were instances where it became clear end of March with the additional guidance, we got closer to a set of guidance which was more appropriate. Unfortunately, what we then saw was a period of scrutiny and inspection and implementation of guidance which was just as insensitive to the context of a care home as some of the guidance.

Q. There was between your meeting with Jeane Freeman on 18 March -- sorry, 13 March -- sorry, 18 March -- so between your meeting with Jeane Freeman on 18 March and the change of guidance on 21 April, there was 34 days and -- 34 days that it took from Jeane Freeman’s meeting with you to the Scottish Government’s guidance and the PHS guidance coming to the position that had been suggested by you, which was testing of admissions into care homes.

Why were there, as far as -- to the best of your knowledge, why was there this delay of 34 days between Scottish Care meeting with Ms Freeman and the guidance being updated to reflecting the position that Scottish Care were advocating for?

A. I’m not in a position to answer that, but all I can say is that we continued to make overtures during that period.

Q. And as we know, on 21 April Ms Freeman announced that...
were wardens”. Previous to the pandemic you could count on two hands the number of incidents of complaints around visiting, around access between family members and care homes, and yet instantly over a period of time care home staff were put in an invidious position of keeping people apart who they knew wanted to be together. And they had to do so by following guidance, but they also had to do so because of fear of the violence(sic) and fear of any repercussions that might follow as a result of them appearing to breach the guidance.

So it was an invidious position for staff but, much more traumatically, it was a devastating experience for residents, their families, and undoubtedly caused a harm which, whilst it may not have been brought about by the virus, was certainly brought about by the protective measures.

Q. In Scottish Care’s statement it has said that as early as April 2020 Scottish Care made representation to the Scottish Government that the restrictions on visiting to care homes was disproportionate, that it was failing to meet the pastoral needs of individuals and having a traumatic effect on residents and families. It is also said that Scottish Care called on the Scottish Government to adopt a human rights-based approach to visiting in care homes.

A. You will be aware that previous to the role I undertook at Scottish Care I ran a human rights consultancy for nearly a decade and a half, so I was very aware of what a human rights-based approach should be, and indeed had recently lectured on the difference between the rhetoric of human rights and the reality of implementation. So for me very clearly, in terms of visiting restriction, one demand with which made, which was never listened to, was the necessity of upholding and undertaking a human rights-based assessment. That did not happen on the visiting restrictions.

But the principles of human rights best practice, of enabling voice of ensuring participation, of treating each individual on their own -- in their own right, of ensuring that no harms resulting in terms of Article 3 but also Article 8 in terms of the right to family life, the balancing of appropriate privacy, we continually said we needed to adopt a human rights-based approach which does not treat care home residents as this amorphous group but addresses the particularity of each individual.

Care homes spend most of their time talking about and engaging in person-led or person-centred care and support. Overnight that was thrown out because of the constraints put upon frontline staff and providers of care.

Q. So is it your position that in respect of visiting restrictions the Scottish Government hadn’t adopted a human rights-based approach during much of 2020?

A. That is my conviction.

Q. What was, in the absence of a human rights-based approach, the main driver for the Scottish Government in respect of the policies and guidance around visiting restrictions?

A. Risk aversion, and an inappropriate balancing of what was acceptable.

Now, I know that in a shared environment, in a congregated living environment you have to balance the desires of one individual over and against another. Care homes are really good at doing that. They recognise that there is always a dynamic of give and take in any context. If there had been sufficient trust and regard to the professionalism of frontline care staff and clinical staff in the care sector, if that had been heard and listened to at all periods of the pandemic, then I’m quite convinced that we would have restrict -- we would have withdrawn visiting restrictions much earlier. And I reached a point of personal despair, having drawn up guidance to enable the freeing up of visiting, that after drawing those up it took over six weeks before they began to even being to be considered. We took too long and as a result we limited the lives of people.

Q. Was this guidance, draft guidance that you had prepared, to assist the Scottish Government and PHS around visiting restrictions?

A. The draft guidance was developed as part of the -- a clinical and professional advisory group, and I’m -- myself and three others contributed to the first stage of draft, but we all of us despaired about the length of time it took to turn that guidance into reality, as many in the care home sector and wider care felt that when the rest of society was opening up, care homes were still being closed down.

Q. We know that visitor restrictions were eased in autumn 2020 but the guidance on outbreaks meant that many residents still faced severe restrictions for many weeks. Do you consider that the Scottish Government's approach on this issue in late 2020, going
into 2021 and 2022, did it move towards considering
properly the human rights of the residents and their
families?

Q. Why would you say that the Scottish Government didn’t
move to a human rights-based approach later on in the
pandemic?
A. I think the fear of repeating the trauma of the spring
and of there being a resultant increase in death as
a result of not tightly managing a care environment, was
an overriding concern. And ultimately, as people kept
saying to me, can we live our lives rather than exist in
an imprisoned environment? Which was a sentiment
expressed by staff as much as it was by family,
residents and carers.

Q. I now want to move to a separate topic, and something
that you’ve touched upon several times already, and
that’s around inspections, oversight and investigations.

On 21 April Ms Freeman -- 21 April 2020 -- announced
that NHS directors of public health were required to
taken enhanced leadership for care homes.
Multidisciplinary care and professional oversight teams
were convened, and Scottish Care says in its witness
statement that in addition to inspections from the Care
Inspectorate, care homes were being inspected and
visited by oversight teams and by health improvement
Scotland.

What was the impact on care homes of this increased
regulatory oversight and inspection during the pandemic?
A. Profoundly negative, and we developed a report to
indicate that. It is very rare in an emergency for
significant change and improvement to occur when those
carrying out those inspections and scrutiny are not
respected, have no professional regard, and don’t
understand the context in which they were inspecting.
And that was the experience of having NHS practitioners
assessing the validity or otherwise of IPC measures in
a social care environment.

Q. What impact did this increased regulatory requirements
and inspections have on care home residents?
A. In a sense, it perpetuated and continued a practice of
what I called the clinicalisation of care settings.

Inevitably, in order to comply with a scrutiny approach
which was much more clinical, much more medical in
nature, care homes had to change their practice,
otherwise they would lose their registration. And
a number of us at the time spoke about the fact that new
standards and frameworks were introduced virtually
overnight with minimal consultation, absolutely no
training, learning and development resource in -- on the

part of staff knowledge and awareness, and suddenly
care homes were expected to be able to adhere to
standards which (a) they disagreed with and still
significantly today disagree with and (b) over which
they had no control, and that resulted in a real sense
of de-professionalising individuals working in
care homes.

Q. We also know that in May 2020 the Crown Office initiated
a process of reporting an investigation of deaths that
were occurring in care homes, and it is said within
Scottish Care’s statement that this caused considerable
trauma within the care home sector. What was the impact
on -- the Crown Office investigations on care homes,
what was the impact on care homes and care home staff?
A. So the impact on care homes of an investigation that was
solely directed at the care sector was increased risk
aversion because of the fear of being prosecuted for
criminal action if they were seen to be in breach of any
of the regulations, whether it be on visiting, whether
it be on IPC or on any other area. The impact on staff
was profoundly damaging. And I would have to say, of
the whole pandemic experience, this has been a lasting
damage because it’s still ongoing. I know of a number of,
of hundreds of individuals who have communicated with me
about the mental distress and upset that they have
experienced. I know of dozens who have left the sector
solely as a result of the investigations of the
Crown Office, because a whole sector has been held up as
being culpable for actions -- only in Scotland, in no
other administration that I am aware of national -- in
the UK or internationally.

Yes, it’s appropriate that the public are assured of
best practice and that everything is done, but in order
to achieve that, the holding up of every single worker
in every single care home as potentially culpable has
been emotionally and psychologically hugely damaging.

MR TARIQ: My Lady, that concludes my questions. There is
a question on behalf of Scottish Covid Bereaved.

LADY HALLETT: Ms Mitchell.

Questions from MS MITCHELL KC

MS MITCHELL: I am obliged, and indeed I am obliged to my
learned friend Mr Tariq, who has posed many of the
questions that the Scottish Covid Bereaved wished to be
placed to this witness.

You have already touched upon one of the questions
I really wanted to ask, so it’s really just to explore
it with you a little bit further.

You have spoken about the imposition of visiting
restrictions in care homes and it’s the experience of
the Scottish Covid Bereaved that there was differences,
A. Absolutely, yes. We are very aware that there were some
of our members who simply refused to implement the
restrictions full stop, because they didn’t feel them
acceptable, and there were others who followed them to
the letter because they were frightened to do otherwise.
Q. You have indicated quite clearly in the evidence to this
Inquiry that in relation to Scottish Government and
Public Health Scotland that their provision of guidance
in relation to various matters wasn’t, as you put it,
Informed by the views of those with a proper
understanding of the matter. Would it have been useful
or helpful for your body to have provided any
supervision or specific guidance during the pandemic to
care home providers in relation to the implementation of
visiting restrictions?
A. Apart from the reality that we didn’t have resource or
capacity so to do, what we did do during the pandemic
was, through surgeries and through webinars, to
encourage or members to be as flexible as possible,
recognising that there were issues to do with Operation
Koper, which was a huge negative cloud over them, there
were issues to do with insurance, which we’ve not talked
about because of the withdrawal of multiple insurance
coverage for care homes, which made many more risk
averse of appearing to break guidance.
But we did everything we could, we worked in the
eyear stages with groups like Care Home Relatives
Scotland to try to increase the willingness of our
members to open up when it was appropriate to do so.
I’m sure we could have done more, but we were very clear
that the best interests of individuals was that we
opened care homes as quickly as possible, but it was
extremely difficult to challenge particularly small
providers.
And I think we forget the vast majority of provision
of care homes in Scotland is by small, single operators
or small, double, three operators. It’s very difficult
in that environment to give them the assurance that by
appearing to act against guidance, whose status was
never confirmed, they weren’t at risk of deaths
occurring and Operation Koper investigations resulting.
MS MITCHELL: I’m obliged for the detail given in your
response.
My Lady, a new issue was touched upon, and that is
one insurance. I am loathe to start and I don’t have
provides to open up to visiting.
MS MITCHELL: I’m obliged.
LADY HALLETT: Thank you very much, Ms Mitchell.
Forgive the cough.
Thank you very much, Dr Macaskill, I’m very grateful
to you, and having heard your advocacy I’m surprised
that anyone didn’t pay immediate attention to you, so
thank you very much indeed.
The WITNESS: Thank you, my Lady.
(The witness withdrew)
LADY HALLETT: Mr Tariq,
MR TARIQ: My Lady, may I please call Ms Nicola Dickie.
MS NICOLA DICKIE (affirmed)
LADY HALLETT: Sorry if we’ve kept you waiting.
Questions from COUNSEL TO THE INQUIRY
MR TARIQ: Good afternoon, Ms Dickie. Thank you for your
assistance to the Inquiry to date.
There are a few preliminary matters that I wanted to
discuss with you before we get into the substance of
your evidence. Can you please keep your voice up and
speak slowly, because the evidence is being transcribed.
If any of my questions are unclear, please say so and
I will rephrase.
COSLA has provided the Inquiry with a witness
statement that’s dated 7 September 2023. This is

broad differences in fact, in approaches taken by
different care homes to the implementation of visiting
restrictions.
Were you, first of all, aware of the fact that they
weren’t being implemented uniformly?
A. Were you, first of all, aware of the fact that they
weren’t being implemented uniformly?

authority to start on a new track, but if my Lady would
think it would be of any assistance to the Inquiry to
hear about that issue, I would be happy to ask
a follow-up question in that regard.
LADY HALLETT: My only concern is we have another witness
that we’re trying to get in, so how long do you think it
would take?
MS MITCHELL: Just to ask him to expand upon the issue of
the removal of insurance and what effect that had.
LADY HALLETT: If you can do it in summary, Dr Macaskill.
MS MITCHELL: I’m obliged.
A. Very quickly, at the start of the pandemic there were
multiple providers for insurance for the care sector;
within weeks that reduced to around about half a dozen.
And at the same time there was an exorbitant increase in
the cost of premiums, upwards of 200-300% increases. It
was one of our major headaches. And one of the main
reasons was that insurers would not cover Covid and
insurers set additional conditions including the latest
care inspection report on IPC, and one of the risks to
that was increased visiting access. So we engaged with
insurers both in Scotland and nationally and with the
support of government, Scottish Government, to try to
ease the system, but the lack of – or the issue around
insurance definitely impacted on the willingness of care
A. That's correct.
Q. If we turn to page 18, I was going to say is that your signature, but would that have been your signature?
A. Yes, it would.
Q. COSLA has also provided an addendum to the witness statements dated 24 October 2023, which is at INQ000327643, and this is -- if we turn to page 5, this is again where your signature would be.
A. Are you content for the statement and the addendum to the statement to form your evidence to the Inquiry?
Q. Are the contents of the statement true to the best of your knowledge and belief?
A. They are, yes.
Q. Just before we look at COSLA's role in the pandemic, I just wanted to touch very briefly with you on COSLA as an organisation.
A. Yeah.
Q. It's a membership organisation of all 32 local authorities in Scotland, is that correct?
A. Yes, of course.
Q. What are the functions of COSLA perform for its members in a non-pandemic time?
A. So COSLA is the membership organisation for the 32 local authorities in Scotland. We are a politically-led organisation. The Inquiry I'm sure will have heard from our sister associations across the rest of the UK, the Local Government Association. We provide representation, negotiation, for our members in support of access to legislation, finance and policy that supports the communities that they serve up and down the length and breadth of Scotland. We are also the employers association for the 32 councils, so we negotiate the terms and conditions of the local government workforce and indeed pay.
Q. Would it be possible, Ms Dickie, just to keep the pace slightly slower, because there is a stenographer that is trying to transcribe the evidence.
A. As far as I understand it, you were the chief officer, health and social care, in COSLA between February 2020 and September 2021. What was your role and responsibilities in that position in relation to COSLA's pandemic response?
Q. In October 2021, you became the director of people policy in COSLA. What was your role and responsibility in that position in relation to the pandemic response of COSLA?
A. So the previous role was the chief officer for health and social care. The director sits above that role in the organisation, so -- and I have teams that directly report to me who deal with health and social care, children and young people policy and indeed COSLA's strategic migration team which deals with asylum and refugee issues.
Q. I understand that you remain in that position to this day, is that right?
A. That's correct, yes.
Q. In COSLA’s corporate statement, it is said at paragraph 3.2, I don’t want intend to take you to it but I’ll read out what it said, it says: “COSLA played a key role in the framework set up by the Scottish Government to respond to the pandemic.”

A. So I would describe the Scottish Government's engagement with COSLA throughout the pandemic as vast. There was a lot of conversations, engagement going on both at political and official level. As I've already said, we carry out all of the policy teams and the devolved functions that local government has, and there wasn’t a part of our organisation or the services provided by local government that weren’t touched by the pandemic, so we were in regular contact and there was good engagement both in terms of the formal structures that

Q. How that evidence was then effectively --

A. Yes.

Q. -- going to the key decision-makers who were then making the decisions that affected local government; is that correct?

A. Yes.

Q. We know from COSLA’s statement that it was a member of the National Incident Management Team. These were meetings that were usually chaired by Public Health Scotland's Dr Jim McMenamin, and one of the functions of the National Incident Management Team was to provide strategic public health leadership and to advise the
Scottish Government on measures to control the pandemic.

1. Can we look at the meeting minutes from the NIMT from 2 December 2020. This is at INQ000197243.

2. You, as I understand it, had attended by this stage, I think, a prior NIMT meeting on behalf of COSLA; is that correct?

3. A. Yes, that's correct.

4. Q. And it appears, as we will go through the minutes, that this meeting was attended by Jane O'Donnell. Can you tell me what Ms O'Donnell's position was as at December 2020?

5. A. Yep, so Ms O'Donnell was the director of people policy in COSLA in December 2020.

6. Q. You will see that the document at the top, it's got the logos of Health Protection Scotland and Public Health Scotland. It says "National Incident Management Team", and it's a meeting of 2 December 2020.

7. If we're able to go to page 2, I want to read from the second entry. This says -- and it's attributed to AB, who we understand to be an official from the Scottish Government, it says:

8. "The [Deputy First Minister] will have a call with the local authority Chief Executive -- my understanding is the DPH …"

9. Is that the director of public health?

10. So the concern here of Ms O'Donnell appears to be that if you bring in local authority voice into each of these individual decisions, their position might then conflict with the advice that the NIMT is giving to the Scottish Government; is that correct?

11. A. No, I have to say I don't -- that's not the way I read that, because when I'm talking about local authority colleagues, I think, "putting up," I suspect that's the conversation that the chief executive of the council was having with their council leader. So I don't think this is about when local government's view was being fed into Scottish Government, I think what we're getting at here, having read before and after, is that the directors of public health should be working with the council chief exec so that they're sitting down with their council leader and saying: here are our statistics, this is what this means, here's what our trajectory looks like, and then potentially, for example, and what we're hearing in the public health community is that we've got another wave coming or there's a different -- you know, there's a different variant of concern.

12. So I think the "putting up" there is putting up to their council leader. I don't know that it's feeding into Scottish Government. That was certainly my reading of that and I certainly know that there were conversations in and around about that time to make sure that council leaders had exactly the same information that Scottish ministers were looking at so that they could draw conclusions, as it were.

13. Q. But if we look at the first sentence, the concern seems to be that:

14. "... local authority colleagues are putting up different advice from what advice is given here -- whatever we do -- the NIMT considers the data and that we are only supplementing with local colour. We are cautious we don't act in a way that would be inadvertent."

15. A. That's not what I take from that, and I have to say that the way that the NIMT advice was formulated was that it was done on the basis, as you know, as you can see from the rest of the minute, what are the facts and the figures telling us. We had absolute conversations around about everyone needing to be faced with the facts before they went any conversations around about levels. What I would say is both the documents that...
government published, so the strategic framework
document that laid out the phases early on in the
pandemic, so kind of April, April/May 2020, and then the
subsequent advice that was published around about the
tiering system, both were quite specific around about
engagement with local government.

So it doesn't suggest to me if you're publishing in
a publicly available document that you're going to try
to subvert any information that local systems will be
providing to you.

**Q.** If we then read the entry below, this is from TP, who is
director of public health, and it says:
"... issue is that we are being asked to give advice
in the absence of all the harms."

That's, I think, a reference to the four harms
strategy, and the NIMT is only looking at the first harm
here, and not looking at some of the other harms such as
the economic harms.

"England agreed to share their 3 harms and I think
Scotland should share the harms papers with DPH and
local authorities and then we will have all the
information."

So is this a recognition that actually local
authorities weren't getting the full picture that would
then inform the decision-making that the Scottish

minute would suggest that would be the case. Forgive
me.

**Q.** I appreciate that we're talking about events from some
time ago. If we read on, I want to look at the entry
that is SG, who we understand to be a representative of
HPS, and it says:
"... the calls with [Deputy First Minister] are
essentially political with leaders of each council.
Chief executives when they are invited to speak they
talk about their engagement with the DPHs. Also to
highlight either the CMO or DCMO takes part in that call
and goes through the data -- I think there is a process
of engagement and I'm not entirely sure if we are over
complicating things with having another report."

So is that some effectively -- or what do you
understand or could be meant by the fact that calls
between local authorities and the Deputy First Minister
might be perceived as political in nature?

**A.** The 32 council leaders are politicians first and
foremost, so it's factual that they are calls between
two politicians.

**Q.** But they are elected, and they're trying to do the best
for their --

**A.** Yes.

**Q.** -- whether it's a local authority or whether it's

---

**A.** I think you can take that from that, and the paragraph
before, from Jane, to say that we need all of the
information so that when council leaders are going into
conversations with Scottish ministers that they have the
exact same facts and figures and understanding as
Scottish ministers were.

I think we were coming from the position that if you
provide all of the facts and figures and a reasonable
decision has been taken, I think reasonable people
should come to a similar conclusion, but we needed to
make sure that everybody was aware of the same
information so that we didn't have misunderstandings
unnecessarily because people only had partial
information.

**Q.** And it was the position, as far as I can see from this
minute, that local authorities only did have part of the
information upon which decisions were being made; is
that right?

**A.** At what stage, sorry?

**Q.** At this stage, at this time of this minute, that they
weren't, for instance, having access to the four harms
assessment that was being undertaken, local authorities?

**A.** So I think -- I can't recall exactly at what point all
of the four harms information was going out, but that

---

central government. In the context of a pandemic why
would those calls be necessarily political or
essentially political, as is being said here?

**A.** So I think the fact that you've touched on, local
elected members are first and foremost there to advocate
on behalf of their local community, their local
businesses, the parents, the relatives who were
contacting them. So I suspect that essentially
"political" is a recognition that local elected members
would want to put their point across and be putting
their intelligence from the communities that they were
supporting forward in a way that paid officials were
perhaps not.

**Q.** What you see here is it was being suggested that having
another report, and you'll recall that was the initial
proposal, which outlines the evidence upon which
a decision is made to move a local authority up or down
a level would be, I think what's being suggested here,
overcomplicating things. Is that right?

**A.** Sorry, give me the first part of the question again,
sorry.

**Q.** You recall that the initial proposal --

**A.** Yeah, got that bit.

**Q.** -- was about -- it's the second entry on the page, and
the suggestion was that we could get a short joint paper

---

(47) Pages 185 - 188
agreed by the local authority chief executive and the
DPH about where you think you are and the evidence that
has been done to show why you should move up or down
a level. So that's the suggestion. And then the
response further down in the minutes is that that would
be overcomplicating things with having another report.

Do you see that?

A. I don’t have a view on whether that’s overcomplicating
things or not. I would suggest that providing as much
information as we possibly can to all parts of the
system is the most useful thing that we can do.

Q. And if I then read on to the sixth entry, this
is from Dr Jim McMenamin of PHS, it says:
“... in a paper as yet to be circulated for broader
consideration, on the basis of what Andy has outlined we
can see any opportunity that exists to have alignment of
our thoughts to ensure there is a single public health
interpretation of the data as it stands, how that
summary is used is very much in the hands of Scottish
Government colleagues. Oftentimes case studies can be
helpful and my understanding for Grampian is at least in
some of the discourse I was privy to, sometimes there
were various things that were then suggested
constructively about how things could be improved.
Perhaps the simplest things are on the Thursday on
harms 3 and 4.

So I think what you’re hearing here is local
government saying “We need the complete picture”, but
also Scottish Government and Public Health Scotland
saying as an NIMT if we look at the figures and we say
this is what the figures are saying, but then when the
minister speaks to the council leader or the chief exec
they are then able to provide some information about the
harms that are being caused to community or a particular
business sector, we need to be in a situation where all
of that information is being gathered together at the
one stage.

Q. In the various Scottish Government groups that COSLA was
a member, some of which you attended, did you get the
sense that there was reluctance by the Scottish
Government or others within those groups to engage more
fully with local authorities in relation to the
decisions that affected them?

A. That’s not a sense that I got, no.

Q. It’s been suggested by some in local government that the
Scottish Government’s approach to decision-making was
too centralised, with insufficient input from local
authorities into decision-making process that affected
them. Do you agree with that assessment, that the
decision-making from the Scottish Government was too
centralised?

A. I think I can say that the period of the pandemic was
a long time and I think there were times when the
decision-making and the input from local government was
very good. I think there are times when individual
local authorities felt that their engagement was very
good. I think there were also times when individual
local authorities didn’t feel that things had gone so
well. So I think in the same way that local government
is not a homogeneous group, every decision that was
taken in Scottish Government was not taken through
a standard process because of the speed that we were
moving at.

So I think it does feel like a bit of a mixed
picture. I think there were good engagement, I think
there were genuine intentions there. I think the areas
of decision-making inside government that COSLA and
local government had long-standing relationships with,
so for example education, those were tried and tested
relationships, if you like, we were used to dealing hand
in glove, because the competencies there are very
similar. I think when we got into other areas where we
didn’t have such a close working relationship things got
a bit more difficult. So I don’t think it’s as
straightforward as saying it was good or bad, I think
there were peaks and troughs and I think individual local authorities at times fell one way or another. Depended on where they were in the pandemic, depended on how the engagement was going and ultimately what was happening at a local level.

Q. I want to take you to the report which I've referred to before from Professor Kevin Orr of the University of St Andrews. It's at INQ000351044. And you will see that the report is headed "Good governance during COVID-19: learning from the experience of Scottish Local Authorities". Are you familiar with this report?

A. Yes.

Q. For your Ladyship's information, this is a paper which provides some findings and learning from discussions that the researchers and the authors had with senior officials and the elected members of six local authorities in Scotland, and these six local authorities were chosen for this project to provide a mixture of different geographies, so from the islands, from the mainland, different governance arrangements, and also different political compositions, so it's meant to reflect across the board of the 32 local authorities. The researchers then conducted interviews with representatives of these local authorities, and the purpose of the paper was to help local authorities learn from the experience of the pandemic and to inform future reviews of governance.

The names of the six local authorities and the interviewees have been anonymised in this report to allow them possibly to speak a little bit more freely about their experiences.

Can we look at page 34 of the report, and I want to look at the quote on the second half, so it says:

"One chief executive was directly critical of what was felt to be an unnecessarily centralised approach by the Scottish Government."

The quote reads, and this is based on the interview: "The public face of the pandemic for both governments, was their respective political leader. In Scotland's case, that was the First Minister. It was clear from a delivery partner perspective, that the political involvement in all the decision-making associated with the response was all pervading and on some occasions, the political 'optics' seemed the guiding force. And of course, because of the 24/7 media world we now live in, the respective national political leaders were centre stage of that 24/7 media world. In the gold command structures put in place by the Scottish Government, there was no scope for any departure from Scotland, there has been a growing tension between the Scottish Government and local government and the pandemic has exacerbated that tension not only between respective politicians but also across officials. Local political leaders were being held to account for decisions they had no locus in and privately were being criticised by the Government for not doing enough to support the response, when they were not being treated as a partner in the response."

Did COSLA's members communicate concerns of this nature to COSLA during the pandemic?

A. I think there were times where COSLA leaders collectively raised concerns. I think in evidence we've provided there were times when Mr Swinney came and addressed council leaders to listen to their concerns, when Scotland's Chief Medical Officer or Scotland's clinical leads came to COSLA leaders, so there was an opportunity for COSLA leaders to feed that information in, for us to impart that to government, and at times for the government to hear that direct from council leaders.

Q. But this seems to be at least a criticism that isn't limited to one moment in time or one particular decision, it's an impression of the Scottish Government's approach across the pandemic; is that right?

A. I think that's what that quote is suggesting there, I mean, I think this report is dated December 2020, so that was, you know, first part of the pandemic, I suspect it was wishful thinking on our part that we were through the worst of it and we should take the temperature of local government. I suspect if this had been re-run again you would get a slightly different result. Some of that might be better, some of that might be worse, but I think that's what that is saying there.

I think the other report, Mr Orr's report, Professor Orr's report that you reported to there speaks of the tension around about the revolution settlement that's been around since Scottish Parliament came to fruition. So, as I said earlier on, I think it's a version of something that many across the local government family might recognise.

Q. We will come to other evidence from local authorities
that is being provided to the Inquiry, but do you agree,
does COSLA agree with the statement that the political
involvement in all the decision-making associated with
the response was all pervading and on some occasions the
cpolitical optics seemed to be the guiding force?

A. That's not something that I can agree or disagree on
behalf of COSLA.

Q. Did you get the impression at least that some of the
Scottish Government's decision-making during the
pandemic was at least in part guided by political
considerations of the political optics?

A. I didn't, no, on a personal level, no.

Q. There is a reference here to:
"In the gold command structures put in place by the
Scottish Government, there was no scope for any
departure from the nationally set approach, which was
an unrelenting single focus on health harm rather than
the 4 harms approach that was claimed."

You will have had some insight into the four harms
by attending some of the NIMT meetings. Did you have
an impression that the Scottish Government's focus was
on effectively the first harm to the detriment of the
other harms that are identified in the four harms
approach?

A. I think all of the harms were discussed all of the time.

Q. I think the related point to that is it's not really
a science, is it, the four harms approach? It's not
a decision-making tool that you input in what the harm
is for harm 1, 2, 3, 4 and it tells you what the answer
is, it's more akin to guiding principles; is that right?

A. Yeah, I think that's absolutely right, and I think
that's also one of the reasons that feeding in the
information from local areas was so critical because on
paper harm 4, around about economy, could look like

something specific, but if the local knowledge then told
you that there was -- a particular sector was going to
be -- do you know, if I give the example of fruit
picking, do you know, that's one of the areas that
four harms looked at, and -- and for, do you know,
two-thirds of the councils in Scotland it made no
difference, but it made a difference for the council
areas in Scotland that were waiting to do that. So
I think that's why we were always keen to make sure that
the local concept and what Ms O'Donnell called "colour"
was being fed into those conversations, because
d four harms is -- you're right, it wasn't necessarily
a decision-making tool, it was one way of looking at the
pandemic and the various harms that were being done, but
it was certainly being followed up by some of that
localised and -- intelligence.

Q. So would you then disagree with the sentiment in this
quote that there was no real local decision-making and
no real opportunity to influence the response actions to
be taken?

A. So I think I would go back to the point that the
legislation that was passed was clear that the
decision-making through that emergency legislation was
for Scottish ministers. We didn't have the power to
take decisions at a local area around about stopping

I think it was often not clear what was being weighed in
amongst those harms. I think there were times when the
health -- when harm 1, which were direct Covid harms,
were absolutely front and centre, but I can also
remember being in NIMTs where harm 4, around about
economy, was certainly at the forefront of the
discussions.

I think with hindsight the four harms approach,
understanding what the weighting was in advance would be
something that would be quite useful. So I think we
were discussing and we were feeding in information
across the four harms, but, as I said earlier, not being
party to the decisions that were then taken inside
government, it's difficult for us to work out what was
the weighting that was applied across those harms
throughout.

Q. At the outset you'll recall that I quoted a passage,
I think it was from Professor Cairney's report, which
had described the relationship between central
government and local government as one of the local
government being the subordinate partner. I think you
took issue with that. Would that, in this context, in
the pandemic, is it fair to say local government was the
subordinate partner, if you're explaining that
ultimately the decisions lay with central government?

A. I think that's fair.

Q. If we turn to page 35 of the report, and you will see
the quote at the top:
"Indeed another chief executive commented:
"I think there was a tendency from the government to

(50) Pages 197 - 200
act as though local authorities were the same as NHS boards and they could just say, 'We want you to do this and we want it by Friday,' rather than the way they would normally engage with local authorities."

And then there is another extract from an interview further down the page, where it says:

"One council leader whose area was placed in a local lockdown is also critical of the relationship with central government:

"We got involved in the decision-making process very late in the day. It was frustrating for us that we felt that our voices weren't really being heard. I feel that although a lot was said about partnership working between Scottish Government and local authorities, that didn't really happen on the ground. We were given the opportunity to meet with people, but we didn't really feel that we were able to get the opportunity to influence those decisions. We were just being paid lip service."

Is that sentiment or those impressions, impressions that you formed as being a senior individual within COSLA, who sat on many of these Scottish Government groups?

A. So I think it's fair to say the top quote around about the chief executives, I've already alluded to the fact that we had many ministers and civil servants who had never worked with COSLA or local government closely, I think in some of the reports that I've read as well the recognition around about the democratic mandate that elected members across Scotland's local authorities have -- was not necessarily understood across -- understood to the same extent across all parts of Scottish Government, so I think there was a tendency early on in the pandemic to say "We want this and we want it done by then and this is how we want it to be done". I think that's one of the reasons that COSLA kept our decision-making and governance going, because there is -- no individual in COSLA has executive decision-making powers so everything had to be done using our existing governance structures so that all 32 council leaders were given the opportunity.

So I think there was a tendency right at the start, maybe through a lack of understanding about just how councils are structured and what our democratic mandate is.

I think on -- on the second one, as I said, I think across the piece, across local government, council leaders didn't feel like that all of the time, I think there were fits and starts -- or I think there were differences about how they felt the decision-making process was running, but local government in Scotland don't -- don't tend to shy away from telling people if they think lip service is being paid, so, again, if that was the case, these issues would have been raised by COSLA, raised with the ministers, and the opportunity for council leaders to meet with politicians was provided.

Q. Did you form the impression that only lip service was being paid to the voices of local authorities in the decisions that affected them?

A. No.

Q. If we're then able to turn to page 34 of the report, and it says, if I can read the quote at the top, it says:

"On that tension [and the tension here is referring to the flow of the information from the Scottish Government to local authorities| one chief executive offered the following perspective:

"We were getting no advance insight from the Scottish Government around what was going to happen next in terms of public health measures to be put in place, so we couldn't brief our members in advance of the public announcements. This created a suspicion amongst members, that its own staff were not keeping them briefed -- when in reality, their own staff had no advance notice either. As a staff base, and a delivery partner of Scottish Government being informed at the same time as the public, was hugely frustrating and unhelpful.""

Is this the sort of feedback that COSLA was getting from local authorities during the pandemic about the fact that the Scottish Government's communications to local authorities was not particularly good and in fact was causing all sorts of issues because some local authorities were finding out about restrictions in their local area at the same time as the public?

So I think it's fair to say that there was an element of that. That feedback provided, I mention it in my statement, and indeed the surveys we undertook from the 32 local authorities in advance of these modules, that that comes through loud and clear, certainly from some of those submissions. So I think that's fair to say that that tension was there. COSLA were regularly feeding that back.

At times, there was an element of things were just moving really, really fast, so it might be the case that COSLA's chief executive was aware and perhaps the chair of Solace, as a representative of the 32, where those phone calls or ability to catch up with everybody between a decision being made and it being imparted it was not always a situation that we were able -- so I
Q. If it was the case that local authorities were sometimes finding out about public health measures that were imposed in their local areas at the same time as the public, say for example by watching Nicola Sturgeon’s daily coronavirus briefing, what challenges might this present on the ground for local authorities?

A. So I think again in the surveys from the 32 local authorities the types of challenges were almost immediately from an announcement being made, members of the public were contacting council officers asking for what that meant or what happened next, and that does lead to a level of challenge and frustration in local areas.

What I would say is that where the guidance was directly related to functions of local government, we would normally have a bit more notice than that. So if we take, do you know, the schools being closed, that information was available, but where things were ancillary to what local government was doing, so if it was happening in a transport section or something, that might be slightly different. But it is something that we were throughout, which was colleagues in government would contact us to say “This is potentially where we’re going, this is where we’re thinking”, and then they would provide us with early drafts of what the broad parameters were.

We would then take that out across our professional associations and our member councils, and we would be looking for does it work in general terms for local government, and other issues around about the various regulatory services, access to core services. And then what we would also be doing is we would be looking at the tiering system, not just in the generic functions of local government but also in the specifics for remote and rural communities, for our island communities, making sure that worked for our border authorities, and then feeding that information back to local authorities so that we got, at the point of publication, something that local government could operationalise at a local level. And that meant across all of the tiers and all of the various interventions that local government would have a part to play.

Q. So am I correct to understand that COSLA had quite a significant engagement in relation to the introduction of the five levels system?

A. So COSLA were engaged in that process in the way that we were throughout, which was colleagues in government would contact us to say “This is potentially where we’re going, this is where we’re thinking”, and then they would provide us with early drafts of what the broad parameters were.

We would then take that out across our professional associations and our member councils, and we would be looking for does it work in general terms for local government, and other issues around about the various regulatory services, access to core services. And then what we would also be doing is we would be looking at the tiering system, not just in the generic functions of local government but also in the specifics for remote and rural communities, for our island communities, making sure that worked for our border authorities, and then feeding that information back to local authorities so that we got, at the point of publication, something that local government could operationalise at a local level. And that meant across all of the tiers and all of the various interventions that local government would have a part to play.

Q. So am I correct to understand that COSLA had quite a significant engagement in relation to the introduction of the five levels system?

A. So the introduction of the levels and what those levels meant and the various NPIs that sat against the levels, COSLA was engaged in that and took a sounding from all of our professional associations that would support us.

Q. In mid-October 2020 it was said at the time that the Scottish Government planned to introduce a three-tier system similar to that which had been announced in England, and in fact Nicola Sturgeon was quoted as saying that the Scottish Government was seeking to align as closely as possible with other UK nations on a strategic level, although she stressed that the ultimate decision lay with the devolved government, this is the Scottish Government.

So were you aware that in mid-October 2020 the Scottish Government was contemplating a three-tier system similar to that in England?

A. I don’t recall that off the top of my head.

Q. Do you see that there might be some strategic benefits in having the same three-tier system in Scotland as exists in England, so that it would be easier for the public to understand that roughly Tier 2 means the same north and south of the border?

A. I can see from a strategic perspective how that might’ve been useful.

Q. And in fact, and you’ve touched upon this already, that was an issue throughout the period of the pandemic.

Q. But if it’s a decision, for instance, about a certain area being placed in level 3 instead of level 2, that impacts a local area because it’s a degree of the restrictions in that area, and it would surely cause all sorts of problems for the local authority that needs to implement those restrictions if it’s finding out at the same time as the public?

A. Yeah, I mean, absolutely. I think again in the survey responses that came in from the 32, that was absolutely crystal clear from a number of areas. What I would say is that it was 32 councils and how often that happened it’s difficult to tell because things were changing that often, but any time that feedback was provided to COSLA we were sure to feed that in to colleagues in government and try to make sure it didn’t happen on a future occasion.

Q. I’ll come back to some of the survey response, but I want to just explore the levels system that was introduced in October 2020 in a bit more detail.

A. Yes, we were.

Q. How was COSLA engaged in that process?
changes of levels and having different levels across local authority boundaries caused some confusion, as did it being called 'levels' in Scotland and 'tiers' in England. This caused outbreaks of arguments on our social media channels which we worked hard to contain as there were often contributors giving conflicting information depending on whether they were personally choosing to follow UK Government or Scottish Government guidance."

In kind of similar sentiments, East Lothian Council's response was: "Confusion arose due to UK Government and Scottish Government issuing separate guidance, regulation and imposing different Covid-19 regulations, constraints and effective dates. As a country bordering England, this led to much confusing for local residents, visitors and businesses." So do you agree with these responses, that having a three-tier system in England and a five-level system in Scotland at the same time created public confusion, or at least quite a significant risk of public confusion?

A. I think there was definitely the potential for public confusion.

Q. So we know that from the press coverage, and indeed Nicola Sturgeon is quoted in that press coverage, in the middle of October what is being considered is a three-tier system to align as closely as possible to England for strategic benefits; and then on 23 October 2020 the Scottish Government introduces a bespoke five-level system that didn't align with the system that was being operated in England. Do you know why that decision was made?

A. I can't recall, and I haven't seen any of the -- we're not core participants, so I haven't seen the document that you're referring to --

Q. I'm not talking about a specific document. It was the public announcement on 23 October 2020 when the five levels system came in, and what I was trying to ascertain was: if COSLA was engaged and consulted in the process, was it consulted in how the system came about, whether it was going to be three tiers or five levels?

A. Not that I can recall.

Q. Can we turn to an article from the BBC News website, this is at INQ000351050, it's an article from the BBC News website and it's headed "Nicola Sturgeon: 'Buck stops here' on Scottish Covid tiers", and you will see that it's dated 20 October 2020, and just below the photograph of Nicola Sturgeon it says: "Nicola Sturgeon has insisted that she will have the final say on local Covid-19 restrictions in different parts of Scotland saying 'the buck stops here'."

If we read over the page: "The Scottish first minister said she would not 'offload' decisions about local alert levels onto councils. "A lengthy row has played out between UK ministers and leaders in Manchester over imposing stricter rules there."

"Ms Sturgeon said it was her 'driving ambition' not to repeat this when a new multi-tier system begins in Scotland."

"She said the government would 'consult and be as collaborative as possible', but would ultimately make the decisions and would not be getting into 'standoffs'."

If we then scroll to the top of page 3, and this is a fuller quote from Ms Sturgeon, and it says: "The first minister said: 'I believe it's really important that the really important that the buck for these difficult decisions stops here, with me and the local authorities have provided survey responses to a survey, this was provided to the Inquiry by COSLA, and they'd been asked to answer various questions, and Moray Council said in its survey response: "Changes of levels and having different levels across local authority boundaries caused some confusion, and this is at INQ000351050, it's an article from the BBC News website and it's headed "Nicola Sturgeon: 'Buck stops here' on Scottish Covid tiers", and you will see that it's dated 20 October 2020, and just below the photograph of Nicola Sturgeon it says: "Nicola Sturgeon has insisted that she will have the final say on local Covid-19 restrictions in different parts of Scotland saying 'the buck stops here'."

If we read over the page: "The Scottish first minister said she would not 'offload' decisions about local alert levels onto councils. "A lengthy row has played out between UK ministers and leaders in Manchester over imposing stricter rules there."

"Ms Sturgeon said it was her 'driving ambition' not to repeat this when a new multi-tier system begins in Scotland."

"She said the government would 'consult and be as collaborative as possible', but would ultimately make the decisions and would not be getting into 'standoffs'."

If we then scroll to the top of page 3, and this is a fuller quote from Ms Sturgeon, and it says: "The first minister said: 'I believe it's really important that the really important that the buck for these difficult decisions stops here, with me and government."

"We are asking people to do extraordinary things right now, and it's not fair for me and the government to try to offload those onto other people, be it local authorities or health boards."

"We have to consult and be as collaborative as possible -- we will absolutely be engaging with local authorities. And as we take decisions about which levels apply in which parts of the country we will want that to be collaborative."

"But ultimately we have to be able to take the decisions'."

If we can pause there, so this is quoting Nicola Sturgeon from her daily coronavirus briefing, and her intention is that ultimately the responsibility for these decisions about which level a local authority might find itself in is a matter -- the decision for the Scottish Government, and she says the buck stops with her and the Scottish Government; but she also indicated the Scottish Government wants to be as collaborative as possible with local authorities, and that includes consulting with them in the decision-making process.

Is it fair to say that the local authorities' experience of the Scottish Government's engagement with them in the decision-making process perhaps painted more
of a mixed picture than what Nicola Sturgeon aspired to?

Q. I now want to turn to some of the local authority responses that the Inquiry has received, because this is the local authorities being able to reflect on matters in 2023, when they produced these responses to the Inquiry. And some local authorities, it is fair to say, reported in their survey responses that the Scottish Government did engage with them in relation to decisions about local restrictions, and examples of local authorities falling into that category include Aberdeen City Council, Dundee City Council and the City of Edinburgh Council. However, other local authorities reported very different experiences.

Aberdeen City Council adds:

"The main causes of confusion resulted from the council hearing of new rules, initiatives and restrictions at the same time as the public, specifically UK Government 5 pm briefings and unscheduled Scottish Government briefings. This meant that if the rules were complex, contradictory and/or poorly articulated, the public would look to the council for guidance when we had no further information to give. This was frustrating. It diminished the council's credibility as a trusted source of information and was therefore counterproductive in disseminating key messages."

So what we have here is not just the occasional one-off bad experience; these are local authority responses to the Inquiry given in 2023 which seems to paint -- it's not one local authority, it's numerous local authorities, and in fact there's others which I've not gone through the responses for the sake of time, and their experiences seem to all be that the Scottish Government failed in its intention, as communicated by Nicola Sturgeon, to consult and be as collaborative as possible about which levels applied in their local area.

In that context -- and because it's not one response, it's multiple responses from a range of local authorities from different areas, different geographical areas, different political compositions -- is there not a pattern here that the Scottish Government's rhetoric, Nicola Sturgeon's rhetoric that she was going to be as collaborative as possible wasn't actually borne out in the reality on the ground?

A. I think that those surveys that are being sent in from individual local authorities are their experience, and whether that's a pattern is not for me to determine. I think they've provided their experience of it and, as I said, the engagement protocol that subsequently came in in April 2021 was in and around about exactly what those local authorities have highlighted there.

Q. Yes, but the engagement protocol came in -- there was an engagement protocol COSLA had worked on, is it right, with the Scottish Government and it came in in April 2021, but the evidence of these local authorities isn't in the survey responses that the Scottish Government's engagement fundamentally changed in character post April 2021, is it? Not in their survey responses, they're not making that point?

A. Not in the survey responses, but then I don't know if the survey responses -- I don't think we asked specifically for a date before or after, if I'm ... but it's a long time since I looked at the survey responses on the way out.

Q. But you would expect, for instance, if it was that there
was a fundamental change in the way Scottish Government engaged with local authorities, they might say to local authorities, "Yes, the situation was bad in late 2020, but then COSLA and the Scottish Government introduced this engagement protocol and things significantly improved"; but that's not what is said, is it?

A. That's not what's in the survey responses, no.

Q. In the addendum statement to the witness statement of COSLA, COSLA was asked to explain why some local authorities appeared to be frequently involved in the Scottish Government's decision-making and others appear to have had no involvement in the Scottish Government's decision-making, and the response was:

"Some local authorities were frequently on the cusp of different tiers of restrictions and discussions would be held in relation to the most appropriate way forward. Some local authorities such as North Lanarkshire were never in that position as they had high infection rates throughout the use of the tier system."

That's you explaining why perhaps North Lanarkshire Council were never -- their position is "We were never consulted", and you say: well, the ones that may be consulted were ones that were on the cusp of different tiers. Was that your explanation of why maybe the engagement differed between local authorities?

---

A. Yes, so I think when the original levels system came in, we started out that every local authority in Scotland would have a conversation with Scottish ministers at every review. That quickly became unworkable, given the level of work that was going on for Scottish ministers, and indeed council leaders and their chief execs. Then we moved to a situation where if councils -- council areas were moving through the trajectory as they would expect, so their figures were coming down, they were moving down the levels, and there were no issues with that, then they wouldn't necessarily step forward and ask for a conversation.

Those local authorities who were on the cusp or who were going in the wrong direction, potentially, as it were, in terms of severity of restrictions, could expect that engagement and would be in a situation where they would be able to talk through some of the stuff that we've covered already on the NIMT.

As part of those conversations, that was also an opportunity for local areas to provide information on any other support that they may require, so that included things like if they were going to have to go from one level to another. And that meant that you had to start looking at restaurant premises again, the -- the local authority would be asked do they need some mutual aid from another local authority around about Trading Standards officers, for example, or, as the example I gave earlier is a particular sector, "Is there a particular issue with your local authority that's staying in this tier that Scottish ministers need to be aware of before they make that decision?"

So that was certainly -- we started off with everyone having a call and then we moved to those who were on the cusp, or indeed those who potentially were moving up the way, would have a conversation with Scottish ministers.

LADY HALLETT: Wrap it up or I'm going to have a screaming stenographer. Not screaming because she's remote.

MR TARIQ: I will be just one or two more questions, if your Ladyship allows.

LADY HALLETT: If you could.

MR TARIQ: Yes.

LADY HALLETT: And if you could keep answers to a minimum.

MR TARIQ: So you've given the example of North Lanarkshire Council, it's an authority that didn't have any engagement, it says, with the Scottish Government. But the Inquiry's seen evidence that on 28 October 2020 North and South Lanarkshire Councils published a letter to the Scottish Government urging Nicola Sturgeon not to place the councils in level 4 -- which would have been the strictest -- in level 4. The letter was signed by Scotland's divisional commander for Lanarkshire, the councils argued that they should remain in level 3, and we know the following day Nicola Sturgeon announced that North and South Lanarkshire Councils were placed in level 3. She described it as a borderline decision, which suggests that the local authority was on the cusp of two different tiers, but their position is, as I've said, in the survey responses "We were never consulted in respect of the decision-making".

Do you consider that it would have been better for local authorities such as North Lanarkshire Council and South Lanarkshire Council to be involved in the decision-making process in the first place, as opposed to needing to publicly argue their case with the Scottish Government about not being placed in a higher level?

A. I would say it's always better to engage before decisions are taken and the need for things to get difficult.

Q. Does the fact that some local authorities had to resort to publicly arguing their case not create the risk that, if the Scottish Government didn't accept the case, there might be less compliance in the local area as the public
perceived the restrictions as unfair or unjustified?

A. I think there’s a -- there’s potential for that to happen. The other thing I’ll say is that at a local level, people were coming under sustained pressure from various groups to make sure that they were advocating on behalf of their local areas. So I think both of those things are true, that local elected members and senior leaders had to demonstrate that they were in many respects putting forward the case for their area, but similarly I recognise that that -- doing that publicly does have the potential for compliance to be --

Q. The final question from me: does the fact that some local authorities were not involved in the Scottish Government’s decision-making process but had to resort to publicly arguing their case, does that not create the very risk of the standoffs that Nicola Sturgeon had said that she wished to avoid when she set out her plans for the levels system?

A. I think that does create that risk.

MR TARIQ: There’s no further questions from me.

LADY HALLETT: No, thank you very much indeed.

Thank you for your help, Ms Dickie.

Just one thing: you did say that you didn’t have access to material because you weren’t -- or COSLA weren’t a core participant. COSLA did make an application, but it was nearly a year late, and that was the basis upon which your application was refused. Had you made it earlier, you might well have been made a core participant.

So on that note, I shall return at 10 o’clock tomorrow.

(The witness withdrew)

MR TARIQ: There is one final matter.

LADY HALLETT: Is it publication?

MR TARIQ: Yes. My Lady, I would invite your Ladyship to allow permission to publish all the statements that have been referred to, including the documents that have been referred to in the --

LADY HALLETT: What I did in previous modules, Mr Tariq, just if it helps everybody here, I’m happy to make that the default setting. So unless someone brings to my attention that there’s a good reason not to publish it, either in full or in part, then otherwise they’ll be published.

MR TARIQ: That might make the job of counsel easier.

Thank you.

LADY HALLETT: One less sentence at the end of the day.

Thank you very much, 10 o’clock tomorrow.

(4.33 pm) (The hearing adjourned until 10 am)

---

**INDEX**

**PAGE**

1 PROFESSOR PAUL CAIRNEY (affirmed) .................. 1

2 Questions from LEAD COUNSEL TO THE INQUIRY .... 1

3 for MODULE 2A

4 DR DONALD MACASKILL (sworn) ......................... 106

5 Questions from COUNSEL TO THE INQUIRY ...... 106

6

7 Questions from MS MITCHELL KC ................. 168

8 MS NICOLA DICKIE (affirmed) ...................... 172

9 Questions from COUNSEL TO THE INQUIRY ...... 172

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

223

224
...there's [1] 149/14 1

I'm afraid [1] 38/4
I've [21] 10/11 14/11
36/14 40/10 54/15
79/18 91/6 121/9
130/4 136/18 138/2
150/7 151/14 157/24
178/19 193/6 200/5
210/25 202/3 215/16
229/12 225/2

I've taken [1] 36/14

ICU [1] 150/13

idea [13] 16/18 22/23
25/20 26/20 35/20
35/21 36/4 45/22 48/2
93/16 95/12 102/23
116/22

ideal [1] 50/1
ideally [1] 70/15 150/6
identified [3] 8/25
139/21 197/23

identify [3] 19/1 59/5
113/9


if [172] 19/1 12/7/6
12/14 11/15 21/16/4
16/11 18/5 20/5 20/16
21/14 23/11 24/8
24/24 26/3 26/5 27/5
29/17 32/23 37/3
37/18 38/11 39/11
40/14 40/5 42/9
42/18 42/20 48/15
48/22 53/1 57/22
58/10 60/5 60/25 66/2
66/7 10/17 7/18 14/11
72/13 72/4 73/12
74/1 77/14 77/20 78/9
78/16 78/7 80/23
81/14 82/16 83/21
87/11 87/10 87/12
87/17 87/20 90/23
91/3 91/24 93/5 94/2
94/18 95/2 96/18
96/23 101/9 103/1
104/2 104/2 104/24
105/23 106/19 107/1
110/14 111/4 111/16
111/18 113/3 114/12
114/12 116/3 118/8
123/24 130/25 131/3
131/4 136/5 137/6
137/19 137/20 139/7
139/8 142/3 143/3

25/20 26/20 35/20
35/21 36/4 45/22 48/2
93/16 95/12 102/23
116/22

improve [1] 30/5 205/13

imminent [1] 131/18

impact [17] 2/10 31/6
62/18 130/2 31/5
131/22 131/24 132/7
159/8 159/16 160/18
166/3 166/14 167/12
167/14 167/15 167/20

impacted [4] 55/15
110/4 145/13 171/25

impacts [2] 40/4
206/4

import [1] 195/25

imported [3] 190/8
190/12 204/24

impetus [1] 37/4

implement [3] 13/10
169/7 206/7

implementation [5] 134/17 158/4 162/12
169/2 169/19

implemented [6] 30/6 45/18 157/2
160/1 169/5 195/6

implements [1] 13/5

implicit [1] 96/2

importance [4] 52/13
115/2 120/1 121/12

important [27] 10/14
16/19 21/20 22/8
24/31 18/6 73/7 75/18

increase [4] 119/8
165/9 170/8 171/10

increased [4] 119/8
166/14 167/16 17121

increases [1] 171/16

increasingly [1] 51/16

indeed [34] 6/5 9/20
22/5 31/2 45/17 71/11
80/5 80/5 86/15 95/5
105/11 111/25 114/7
120/7 120/25 134/12
140/25 141/20 152/10
154/21 162/10 168/16
172/8 174/15 175/20
177/11 179/8 200/24
204/13 210/4 214/23
218/6 219/22 211/24

independence [1] 100/4 100/7 100/16

independent [2] 102/17 108/10

independently [1] 145/12

INDEX [1] 223/2
indicate [1] 166/6
indicated [5] 122/17
141/24 149/21 169/11
212/19

indicating [1] 151/23

indicator [1] 133/12

indirectly [1] 10/16

individual [30] 7/11
26/21 40/10 94/2
95/22 96/4 96/11
107/25 119/24 120/8
122/22 131/10 141/1
141/9 150/4 153/2
153/14 154/10 155/2
155/7 162/20 163/2
163/20 183/3 192/5
192/7 193/1 201/21
202/13 216/6

individual's [1] 200/8

information [39] 10/14 23/14 35/10
44/9 52/3 84/10 93/25
102/5 102/9 103/23
104/3 121/23 143/11
145/1 184/2 185/9
185/22 186/4 186/3
186/15 186/18 186/25
189/10 190/1 190/25
190/25 191/8 191/11
193/4 195/25 198/11
198/17 205/15 205/22
207/17 209/11 215/7
219/5 218/20

27/11 76/8 169/15
182/14 204/1

infrequently [1] 121/25

ingress [1] 128/14

included [1] 178/17

ingual [1] 14/15

infected [13] 130/11 197/23

infection [14] 115/3
115/4 125/13 126/4
127/15 132/21 134/17
150/12 151/11 151/11
152/5 153/6 152/12

infectious [1] 127/7

150/23 151/15

influence [9] 25/7
85/16 195/4 199/19
200/5 200/7 200/8
201/18 214/21

influenced [1] 80/17

influences [1] 78/12

influenza [1] 136/3

15/15 28/5 28/6 53/23
57/8 57/14 105/11

informal [1] 120/5

informally [2] 83/21
83/23

I'm... - INQ000249952
N
neurological [1] 118/3
never [10] 25/22
44/12 150/13 162/14 170/20 202/2 217/18
217/21 217/22 220/10
new [35] 16/9 17/13
37/5 37/19 41/8 42/11
43/2 43/2 43/5 43/6
43/9 46/4 47/25 48/15
49/5 49/20 52/5 52/9
53/5 59/17 65/10
110/18 112/3 114/3
122/10 125/4 124/8 13/3
148/4 151/24 159/1
166/17 170/20 171/1
211/15 215/1
news [3] 87/2 210/23
210/25
next [7] 1/4 23/7 57/8
153/23 182/17 203/19
205/15
NHS [34] 31/24
112/6 118/7 118/25
120/21 121/10 123/2
123/4 123/10 123/13
123/22 127/2 127/14
127/20 129/23 130/20
130/25 137/12 138/9
138/13 140/10 144/1
147/8 147/16 148/7
148/9 149/5 152/9
156/1 157/14 165/20
166/11 201/1 220/2
NHS' [1] 154/4
NHS/SW [1] 149/5
NHSScotland [1] 111/3
Nicola [20] 7/3 59/7
101/20 125/17 172/12
172/13 205/8 208/8
210/5 210/25 211/3
211/4 212/4 213/1
215/20 216/2 219/24
220/5 221/6 224/14
Nicola Sturgeon [14] 7/3 101/20 101/25
208/8 210/5 210/25
211/3 211/4 212/4 213/1
215/20 216/2 219/24
220/5 221/6 224/14
Nicola Sturgeon's [2] 205/8 216/2
night [2] 121/21
123/18
NIMT [13] 181/2
181/5 182/22 183/4
184/9 184/14 184/19
185/16 190/10 190/22
191/5 197/20 218/18
NIMTs [1] 198/5
no [52] 11/9 1112
pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]

pandemic... [86]