UK COVID-19 INQUIRY

WITNESS STATEMENT OF KENNETH THOMSON, DIRECTOR-GENERAL, STRATEGY & EXTERNAL AFFAIRS, THE SCOTTISH GOVERNMENT

In relation to the issues raised by the Rule 9 request dated 19 June 2023 in connection with Module 2A, I, Kenneth Thomson, will say as follows.

Background, qualifications and roles

1. My name is KENNETH THOMSON. Until early September 2023, I was Director-General for Strategy & External Affairs in the Scottish Government, St Andrew's House, Regent Road, Edinburgh EH1 1DG. I had held this role, or variants of it, since late 2011. I expect to retire from the Civil Service on 24 November 2023.

2. I joined the Civil Service in October 1988. My first posting was to the (then) Scottish Office within the UK Government. I became a member of the Senior Civil Service in 1997. At the time, I was Principal Private Secretary to the Rt Hon Donald Dewar MP, then Secretary of State for Scotland. I held that role through the creation of the Scottish Parliament until October 1999, by which time Mr Dewar was the first First Minister of Scotland. I have advised and supported Ministers of five political parties within the Scottish Government (formerly the Scottish Executive) and, before devolution, in the UK Government, including Mr Dewar's five successors as First Minister.

3. I hold degrees from the University of St Andrews (MA, 1984) and the Open University (MBA, 2002).

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4. My professional development has included participation in several UK-wide Senior Civil Service development programmes. I have been trained in negotiation, systems thinking and leadership, programme and project management, and for supporting Ministers during emergency responses, including the H1N1 influenza pandemic in 2009.

5. In my Director-General role, from late 2011 until September 2023, I led teams advising and supporting Scottish Ministers on the constitution, culture, major events, external affairs, Europe and legislative drafting.

6. I and my teams also supported the First Minister, Deputy First Minister and Cabinet on issues requiring cross-government work. This is a role analogous to the co-ordinating role of the Cabinet Office within the UK Government. It has covered, (at various times) Cabinet business, legal advice, communications, resilience, the shaping and delivery of the government's policy and legislative programmes, and the Scottish Government's relationships with the UK Government and the other devolved administrations.

7. I and my teams also supported Ministers in relation to the following specific cross-government priorities:

   a. **devolution and constitutional change**, from 2005;

   b. **EU exit**, from 2016;

   c. the **cross-government response to the Covid pandemic** from early 2020 to April 2022, as described in this statement;

   d. aspects of the consequences of **Russia's invasion of Ukraine**, from February 2022; and

   e. the preparation and implementation of plans for **major royal events** in Scotland including those following the death of Her Majesty Queen Elizabeth II in September 2022.

8. I describe later in this statement the evolution of my role in the Scottish Government's decision-making on Covid-19. From late March of 2020, that role

was to lead and co-ordinate cross-government advice to the First Minister, Deputy First Minister and Cabinet on their strategy for responding to the pandemic, and decisions within that strategy.

Scope, structure and exhibits

9. References in this statement to 'the Covid-19 period' are to the period between 21 January 2020, when the World Health Organisation published its first situation report on the novel coronavirus 2019-nCoV, and 18 April 2022, the date when remaining Covid-19 restrictions were lifted in Scotland. As set out below, my role in the Scottish Government's Covid-19 response dated from March of 2020. I assumed responsibility for resilience in the Scottish Government only after the start of my role in the Covid-19 response.

10. In this statement, I describe my Covid-19 role, the context for it, and my experience in it. Specifically, I cover:

   a. my **initial understanding and involvement** in relation to Covid-19 (paragraphs 14-29);

   b. my subsequent **role in the Covid-19 period**, the relationships and communications I had in that role within the Scottish Government and with others, and the pace of decision-making (paragraphs 30-47);

   c. **devolution and the role of the Scottish Government** (paragraphs 48-54), because devolution was the context for the decisions made by Scottish Ministers on Covid-19, and for inter-governmental relationships;

   d. the **decisions made by Scottish Ministers** on its strategy for responding to Covid-19 (paragraphs 55-159), addressing the nature of the challenge; the phases of decision-making; the content of decision-making in each phase, including in relation to the use of non-pharmaceutical interventions ('NPIs'); the process of decision-making, including Cabinet consideration; and other aspects;

   e. **inter-governmental relations** ('IGR'; paragraphs 160-195), addressing how IGR is conducted, the respective responsibilities of the Scottish and

UK Governments, and areas of alignment and difference in their responses to Covid-19;

f. some supplementary comments on **other matters** I understand are of interest to the Inquiry (paragraphs 196-206), covering medical and scientific expertise, data and modelling; Covid-19 public health communications; and public health and coronavirus legislation and regulations;

g. **informal communications and documents** (paragraphs 207-229, covering also my experience of compliance with Covid measures in St Andrew's House (the Scottish Government's principal office) and the relationship of formal and informal channels of communication in my practice and the Scottish Government's decision-making; and, finally,

h. some **reflections** on key challenges and lessons learned arising from my experience in this role (paragraphs 230-269).

11. References to exhibits in this statement are in the form [KT4/000-INQ000000]. References are given at the first mention of an exhibit.

12. I refer at points in this personal statement to earlier statements I gave the Inquiry in my corporate capacity as Director-General for Strategy & External Affairs. Those relate to

a. **modules 2 and 2A** as a whole (dated 22 June 2023; [KT4/001-INQ000215495]);

b. **legislation** (dated 23 June 2023; [KT4/002-INQ000216655]); and

c. **intergovernmental relations, civil contingencies, civil contingencies, and resilience** (dated 18 April 2023; [KT4/003-INQ000184894]).

13. Unless otherwise noted, the facts in this witness statement are within my own knowledge, and are true. Where they are not within my own knowledge, they are derived from sources to which I refer and are true to the best of my knowledge and belief. Except as otherwise indicated, any views given are my own, based on

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my experience in senior roles in the Civil Service during, before and since the Covid-19 period. I do not hold these views out as those of my employer at the time, nor of any of the Ministers I have served.

Initial understanding and involvement

14. In January and February of 2020, I was aware of Covid-19 and of work being done by the Health & Social Care Directorates of the Scottish Government to prepare for it, but was not directly involved in that work.

15. In late February 2020, I knew from discussion at meetings of the Scottish Government's Executive Team (the organisation's senior Civil Service leadership group) that Health & Social Care colleagues were preparing to create and staff a new Directorate to work with the Scottish Government Resilience team to co-ordinate the cross-government response to Covid-19.

16. At this time, I and my teams were responsible for leading cross-government work on organisational readiness for a possible 'no-deal' exit from the European Union. Part of that work had included creating and staffing a new Organisational Readiness Directorate. From that experience, I thought that staffing a new directorate would probably take some weeks.

17. On Friday 28 February, while in London for meetings there, I recall seeing a document, possibly the output of a workshop on Covid-19 led by the Cabinet Office. This set out the decisions and supporting work likely to be needed if the situation moved from a few tracked cases, to sustained transmission, to a widespread outbreak. This material led me to assess the implications of Covid-19 arriving in Scotland, including a possible exponential growth in cases, the possible magnitude of the resulting impacts and the possible scale of the necessary cross-government response.

18. On this assessment, it seemed to me that the existing Scottish Government Health and Resilience teams might soon have to have to do two things at once. They would need to stand up a new Directorate to create additional capacity; and mobilise a wider cross-government response capable of first matching and then outpacing the virus in both speed and impact. From my experience of similar work

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on EU exit, I was concerned on their behalf about whether they would have the capacity to do both things at the same time.

19. I therefore rang colleagues involved in shaping the Scottish Government's Covid-19 response, also on 28 February, to offer to re-task capacity in my own teams to help with mobilising the cross-government response.

20. The first confirmed Covid-19 case in Scotland was identified on Sunday 1 March. I was not directly involved in work to support Ministers over that weekend, but was aware from contact with colleagues of the demands it made of the Health and Resilience teams. These included supporting a short-notice SGoR(M) – that is, a Scottish Government Resilience meeting of Ministers, the equivalent of a COBR meeting in the UK Government.

21. These rapidly-moving events and underlined for me the seriousness of the threat posed by Covid-19, as assessed by my medical and public health policy colleagues. They had of course by then been heavily involved with Covid-19 for some time, and knew a great deal more about it than I did. It also seemed to me that my assessment of the previous Friday was being borne out, perhaps more quickly than I had anticipated

22. I followed up my earlier call with an email sent on Sunday 1 March [KT4/004-INQ000222917] [KT4/004a – INQ000222918]. My email shared, as an attachment, an assessment of the challenge of mobilising a cross-government response. It also set out some offers of practical help, and asked for feedback on these from the lead Directors for Resilience (not then part of my responsibilities) and Organisational Readiness (for EU exit), who were to meet the following day.

23. From the start of the following week (Monday 2 March 2020), I joined some Covid-19 discussions involving lead advisers and Ministers. At this stage, my support for Ministers was focused on their participation in COBR-convened discussions with UK Government Ministers. This was an extension of my role on inter-governmental relations (IGR). As examples of what that involved:

   a. on 5 March, following a discussion with the then First Minister, Cabinet Secretary for Health & Sport, Chief Medical Officer and Director-General

for Health, I emailed senior leaders in the Scottish Government to develop a commission given to them by the team in the Scottish Government Resilience Room (SGoRR) ahead of a forthcoming COBR meeting [KT4/005- INQ000222919]; and

b. on 11 March, I emailed the then First Minister reporting the outcome of a commission from her to liaise with my official counterparts in Wales and Northern Ireland ahead of a COBR meeting the following day [KT4/006- INQ000222920].

24. In other discussions with colleagues and Ministers during early March, we assessed the possible impacts of Covid-19 on the Scottish Government and its priorities. This led to a decision to bring together and strengthen the Scottish Government's resources on Resilience and Organisational Readiness. The focus of the latter team changed from EU exit to supporting the Covid-19 response. This allowed us to bring additional capacity to bear more quickly than through the earlier proposal to staff a new directorate.

25. Covid-19 was declared a pandemic by the World Health Organisation on 11 March. By then, we were engaged in a rapid wider mobilisation of the cross-government response to Covid. This was discussed by the then Permanent Secretary with the then First Minister on Friday 13 March. Material I prepared for that discussion [KT4/007 - INQ000222921] described Covid-19 as 'an unprecedented challenge demanding some radical changes to priorities and ways of working.'

26. The same day, 13 March, saw the first confirmed death of a patient in Scotland with Covid-19, and the introduction of voluntary self-isolation for those with symptoms.

27. Over the next 10 days, the then First Minister and other Scottish Ministers were involved in rapid decision-making in liaison with the UK Government and others. The First Minister was supported in further COBR and other meetings by the then Chief Medical Officer and others, including me in my IGR role. This 10-day period saw:

a. Advice to organisers to cancel large events (15 March);

b. moving NHS Scotland to an emergency footing (17 March);

c. a statement to the Scottish Parliament by the First Minister (also 17 March) in which she urged every citizen to reduce non-essential social contact;

d. the creation of a £350m fund to support people in need (18 March);

e. the closure of schools and nurseries (announced 19 March);

f. a broadcast statement by the then First Minister to the people of Scotland (20 March) in which she described Covid-19 as 'the biggest challenge of our lifetimes';

g. in the same statement, a request from the then First Minister to restaurants, cafés, pubs, gyms and cinemas to close, as part of a request covering the whole of the UK, co-ordinated through COBR; and

h. the requirement to 'stay at home', again co-ordinated through COBR (23 March).

28. On 24 March, the Scottish Parliament gave its legislative consent to provisions on devolved matters in the Coronavirus Act 2020. This was an Act of the UK Parliament, prepared with input from Scottish Government Ministers and officials. It created emergency powers including to give statutory force to the requirement to 'stay at home.'

29. The decision made on 23 March 2020 was referred to at the time as 'lockdown.' Since this term was later used to refer to other, more limited, measures, I refer below instead to the requirement to 'stay at home.'

Role in the Covid-19 period

30. Following and in consequence of the decision to require people to 'stay at home,' the implications and impacts of Covid-19 became rapidly more wide-ranging, extending well beyond the Health portfolio. At the time, this work was framed

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internally as defining the 'exit strategy' from the emergency measures then in force.

31. It became clear that the then First Minister would require, and expect, integration of advice to inform a cross-government strategy and response, rather than – in effect – having to perform that function herself. I treated an email from the First Minister's office on Thursday 2 April 2020 [KT4/010 - INQ000222923] as a commission for such work.

32. From about this point, my role evolved into leading and co-ordinating cross-government advice to the First Minister, Deputy First Minister and Cabinet on their strategy for responding to the pandemic, and decisions within that strategy.

33. This role built on similar roles I had taken on other cross-government challenges, most recently EU exit. It complemented and drew on the advice of the Chief Medical Officer, the National Clinical Director of NHS Scotland, Health policy advisers and other senior advisers across government.

34. After the COBR meetings leading to the 'stay at home' requirement, and as my focus shifted to this role, I generally delegated to colleagues the role of providing support for Scottish Ministers in their contacts with UK Government counterparts. These included, for example, discussions between Health Ministers, and on travel restrictions. I continued to provide occasional personal support to the then First Minister in meetings with the then Prime Minister and the then Chancellor of the Duchy of Lancaster, the Rt Hon Michael Gove MP.

35. From about the time of the 'stay at home' requirement, I regularly attended Cabinet and other meetings of Scottish Ministers and led and co-ordinated the preparation of material for these relating to Covid-19. Other meetings with Ministers were occasionally convened to discuss emerging issues, extant advice, and the scope and options for forthcoming decision-making. Some of these were referred to informally as 'deep dives,' where the purpose was to explore a specific issue or challenge. Others were referred to as 'strategic reviews,' when the coverage was broader.

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36. Later in this statement, I refer to an email I sent to the First Minister on 16 September 2020 [KT4/030 - INQ000245847][KT4/030a – INQ000245848]. Included in that document is another email, of 14 September, which illustrates the scope and nature of a strategic review discussion, and how these were recorded and followed up.

37. In my Covid-19 role, I was also involved in meetings of other groups. In the early stages of mobilising the cross-government response, I co-convened a group of senior officials involved in that work, with the aim of developing and maintaining a shared understanding of the challenge and the actions required.

38. From October 2020, and building on earlier *ad hoc* discussions, I convened the 'Four Harms Group', described later in this statement and referred to in my corporate statement dated 22 June 2023.

39. Throughout the Covid-19 period, I took part in liaison meetings with counterparts in the UK Government and the other devolved administrations, both regular and *ad hoc*, with the aim of sharing information about the strategies and decisions of the four administrations. These covered both Covid-19 and other matters, including EU exit.

40. From an early stage I took part in regular informal discussions on Covid-19 with senior leaders from the Scottish Government and its partner agencies. These included NHS Scotland, local government officials, Police Scotland and the Army. These were not decision-making discussions, but served to develop and maintain situational awareness, make connections, develop relationships with key partners, and identify and deal with actual or potential issues in our joint working, particularly during the phases involving locally varied measures to suppress the virus.

41. The Army was at this stage providing logistical support to some aspects of the Covid-19 response. Before and during the Covid-19 period I also had occasional discussions with senior officers on the Army's approach to 'Mission Command.' This is the command philosophy by which the Army aligns statements of strategic intent with actions to achieve that intent. Much of that philosophy is transferable to work by the civil authorities to set and achieve strategic aims under disruption.

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42. Of the groups described above, only the Cabinet was a decision-making body. the others being advisory or for oversight or liaison. Decisions were also taken by Ministers, as is routine, on the basis of formal written advice submitted to their offices. This advice and the responses from Ministerial offices are recorded in the Scottish Government's secure email and electronic document management systems. The record of the Scottish Government's decision-making is therefore set out in the Scottish Government's systems in the same way as decisions taken outside an emergency response, and is available to the Inquiry.

43. During the Covid period, the Scottish Government's decisions, and the reasons for them, were also set out in statements made by the First Minister and other Ministers and published in the Official Report of the Scottish Parliament and on the Scottish Government's website.

The pace of decision-making

44. Responding to Covid required extraordinary pace and intensity in decision-making. I comment later in this statement on the 71 papers on Covid-19 taken by the Scottish Cabinet in a two-year period. This included months at a time in which Cabinet took significant decisions weekly, and the First Minister and others made significant statements or media briefings daily.

45. In more normal times, there would typically be several months between appearances of a policy issue on the Cabinet's agenda. The intervening period would be used to implement Cabinet's decisions, including through any necessary legislation, and develop further advice and recommendations for future portfolio-level or Cabinet decision-making. During the Covid period, decisions by Cabinet on a Tuesday would often be implemented through regulations made only a few days later, in parallel with the preparation of material for the following week's Cabinet.

46. I refer later in this statement to a petition by KLR & RCR International and others for judicial review of a decision made by the Scottish Ministers on Tuesday 8 December 2020. The chronology of this case provide a further example of the pace of decision-making. The petition was received in the Scottish Government at about 15:30 on Thursday 10 December. The court hearing was at 11:00 the

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following day. The judgement was given later the same day, and thus on the third day following the Ministers' decision. The Inquiry, being familiar with the timescales for judicial review, will recognise this as an especially expedited process, overlaid on an already very rapid decision-making cycle.

47. In short, getting ahead of the virus demanded extraordinarily intense and rapid decision-making, with lives at stake, sustained over many weeks and months. Since nearly all Covid-19 decision-making was necessarily done at that pace, an account limited to the Covid-19 period risks making this pace seem normal. It was not. Many of those involved, Ministers and officials, worked the equivalent of two-shift days (that is, around 16 hours), sometimes six or seven days a week, for weeks or months at a stretch. I reflect later on some impacts of this way of working.

Devolution and the role of the Scottish Government

48. Devolution forms the context for the Scottish Government's role and decision-making, and for inter-governmental relations, both generally and during the Covid-19 period.

49. As set out in my witness statement dated 22 June 2023, referenced above, the intention of devolution is to allow the people of Scotland to elect representatives and leadership that reflect their views and priorities.

50. As provided in the Scotland Act 1998, governments formed from those elected to the Scottish Parliament have executive powers and duties in relation to matters that are devolved (that is, not reserved). Except in certain limited respects, UK Government Ministers do not have executive powers in relation to devolved matters.

51. Each of the four UK administrations takes decisions having regard to the facts and circumstances within its jurisdiction. Each starts from a distinct position, in terms of its responsibilities and the characteristics of the areas, populations, legislation, institutions and services they cover.

52. These characteristics had to be taken into account by Scottish Ministers in framing their response to Covid-19. My email of 5 March 2020, referenced above,

evidences such consideration. For example, Ministers had to assess which demographic groups or geographic areas in Scotland might be disproportionately affected by the virus, or by measures to contain its spread. An enforcement regime for statutory measures had to be created within the distinct Scottish legal and justice systems. Ministers had to consider whether requirements on travel or socialising in urban areas were also necessary, proportionate and justified in relation to Scotland's island and remote rural communities. Similarly, the other UK administrations had to shape their responses to Covid-19 within their own jurisdictions.

53. Devolution does not necessarily imply difference, nor does reserved or centralised decision-making necessarily imply uniformity. The starting point for each government, however, was different in terms of powers and responsibilities, geography, demography and institutions. This was the case not only in relation to health and healthcare systems, but in such other devolved matters as education, justice, transport, business support, relationships with local government, and so on.

54. In short, during the Covid-19 period, each of the four UK administrations was responsible for taking decisions in the interests of the people it served. Each also had the option to align strategics, policies and decision where it considered that would lead to better outcomes. I consider later in this statement the extent to which that happened.

Decisions made by Scottish Ministers

The nature of the challenge

55. My recollection from early discussion with medical and health colleagues, drawing on previous experience, including in the H1N1 pandemic, and on emerging evidence on the characteristics of Covid-19, is that they expected Scotland's experience of the epidemic to be influenced by:

   a. the **characteristics of the virus**, especially its transmissibility and its impact in terms of morbidity and mortality;

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b. **importation risk**, in a relatively open society with good transport links and reliant on trade with near neighbours;

c. **behaviours**, and how these exposed people to the risk of infection;

d. **countermeasures** adopted as part of the response, both pharmaceutical (treatments and vaccines) and 'non-pharmaceutical interventions' such as the 'stay at home' requirement, with the latter more necessary in the early stages, while the former were developed and deployed against a novel virus;

e. **seasonal variation**, since a readily transmissible respiratory disease is likely to spread faster when people are indoors together for longer periods.

f. **immunity**, arising both from infection and from effective vaccines, if and when those became available; and

g. **mutation risk**, which became more significant as the pandemic progressed;

56. The authors of the *Technical report on the COVID-19 pandemic in the UK* [KT4/008- INQ000130955] describe the challenge of estimating the number of deaths likely to result from Covid-19 infections (see Chapter 1, Section 5). Estimates of the Infection Fatality Rate (IFR) converged to about 1% in the late Spring of 2020. For comparison, the IFR for H1N1 influenza in 2009 was between 0.001% and 0.002%. That is, Covid-19 was up to a thousand-fold more deadly.

57. Estimates of the Infection Hospitalisation Rate (IHR) also varied. Analysis in the UK at the end of 2020, drawing on earlier data, put the IHR at 3.5%.

58. In other words, on these figures, for every 1,000 people infected by Covid-19, 35 would be hospitalised, and 10 would die. At the time these figures were becoming clear, there were no vaccines or treatments known to be effective against Covid-19.

59. It was also clear by the Spring of 2020 that Covid-19 was highly infectious, that some cases were asymptomatic, and that there was asymptomatic transmission.

60. It was therefore possible that, without interventions, the number of infections would rise exponentially. If that happened, the number of hospitalisations would also rise exponentially, creating a risk that the NHS would be overwhelmed. There would be large numbers of deaths: not only from Covid, but because of the pressure put on healthcare systems.

61. In the early part of the Covid-19 period, once the virus was in community transmission, only non-pharmaceutical interventions (NPSs) were capable of reducing the number of infections, hospitalisations and deaths.

62. NPIs took many forms, including physical distancing and improved hygiene, all of which were designed to reduce exposure to infection. This in turn reduced the effective 'reproduction number,' or 'R', of Covid-19. R is the number of people infected by each person who has a virus. If R is above 1, the number of infections will grow exponentially. If R is below 1, the number of infections will decay. The 'stay at home' requirement brought R below 1. Numbers of infections began to drop; but the 'stay at home' requirement clearly also imposed unsustainable harms and costs.

63. Thus, the nature of the challenge facing many governments at the time, including the Scottish Government, was how to prevent serious illness and deaths as work continued on vaccines and treatments, while also minimising the impacts of measures taken to suppress the virus.

64. Effective vaccines and other pharmaceutical interventions would later reduce the numbers of infections, the severity of the resulting disease, and the need for NPIs. In the Spring of 2020, however, it was uncertain when, or even whether, effective vaccines would become available.

Phases of decision-making

65. In late March 2020, given the nature of the challenge, it was clear that the Scottish Government's response to Covid-19 would involve a huge amount of decision-making by Ministers. Decisions would not be limited to the Health portfolio: they would be required across government as a whole.

66. It was also clear that, to integrate and co-ordinate that work, Ministers and officials across government would need a strategic framework within which to take decisions, and a high-level aim, or 'strategic intent', to which decisions should contribute.

67. These were set out in the Scottish Government's *Framework for Decision Making* [KT4/017- INQ000131025], published on 23 April 2020, and discussed in more detail below. The *Framework* set out the Scottish Government's strategic intent, which was to 'Suppress the virus through compliance with physical distancing and hygiene measures, ensuring that the reproduction number remains below 1 and that our NHS remains within capacity.'

68. Ministers' strategic framework and intent were further developed through the rest of the Covid-19 period. The Scottish Government's decision-taking thus had several phases, set out below.

   a. Initial strategy development, during the period of the initial response, led to the publication of the Scottish Government's **Framework for Decision-Making** (23 April 2020, referenced above).

   b. Decision-making within this framework was used by Ministers to set out and follow a **'Route Map'** of phased easing of measures from May to August 2020. The 'Route Map' was published on 21 May 2020 [KT4/019-INQ000256709]. Some measures were reintroduced in September and October 2020 in response to a resurgence of positive tests.

   c. These outbreaks prompted further strategy development and the publication of the Scottish Government's **Strategic Framework** on 23 October 2020 [KT4/020- INQ000130910]. This introduced a 'Levels' system measures to enable a proportionate and effective response to local or more widespread resurgences of infections. By designing and communicating these measures in advance of need, Ministers sought to ensure that they were effective in reducing infections, minimised additional harms, and were understood and supported.

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d. Decision-making as part of **the 'Levels' system** took place from November 2020. This included more stringent measures to respond to the emergence of the Alpha variant of the virus (December 2020 to January 2021). These reimposed the 'stay at home' requirement for a time in mainland Scotland, but not island areas: there was therefore no second 'national lockdown' in Scotland. Thereafter, the 'Levels' system was used to implement a phased easing of other measures as vaccination coverage increased (February-April 21). The 'Levels' system was also the basis for the response to the still more infectious Delta variant and surges in infections around the time of the European football championships (May-June 2021).

e. As the protection provided by vaccination continued to grow, Ministers defined a **'gateway condition'** for removing the 'Levels' system. This was set out in an update to the *Strategic Framework* published on 22 June 2021 [KT4/022- INQ000246800] The 'gateway condition' was that adults aged over 40 were protected by two doses of the vaccine. It was met in August 2021, and Scotland moved 'beyond Level 0' on 9 August. In practical terms, this meant that the legal requirements for physical distancing ended, limits on gatherings were removed, and all venues in Scotland were able to re-open. Some protective measures remained in place, including the use of face coverings indoors, the collection of contact details to allow for contact tracing, a 'Covid certification' scheme for indoor hospitality venues, and capacity limits for large events.

f. The appearance of a yet more infectious variant of the virus led to some temporary additional restrictions as part of the **Omicron response** (November 2021 to January 2022).

g. Meeting the 'Gateway condition' had enabled a **'strategic pivot.'** Where earlier the Scottish Government's aim had been to suppress the virus 'to the lowest possible level', in June 2021 its aim become to suppress the virus 'to a level consistent with alleviating its harms while we recover and rebuild for a better future.' Following the Omicron response, decisions consistent with this aim led to the end of the emergency phase of the pandemic and the removal of remaining restrictions (February-April 2022).

69.   The detail of the considerations, options and decisions for Scottish Ministers during each of these phases is set out in other material available to the Inquiry. I comment below on the work I was involved with to support and advise Ministers in formulating and updating their strategy for responding to Covid-19, and in relation to Ministers' decision-making as part of implementing that strategy through the phases set out above.

The Framework for Decision Making

70.   Following the 'stay at home' decision in March of 2020, the challenge facing Ministers was to shape a strategic response to the virus, to save lives while minimising social and economic disruption.

71.   Such a strategy had to support rapid decision-making in the face of disruption caused by the rapid spread of the virus: with, as it turned out, increasing virulence in later variants. Despite the emergency nature of the response, Ministers were committed to ensuring that decisions were taken on the basis of the best available evidence and advice, considered by Ministers including at Cabinet. Ministers recognised that some decisions would have to be taken on limited or uncertain evidence, and would require the exercise of judgement. Ministers wanted their decisions to be put on the record, clearly communicated, and open to scrutiny both by Parliament and by those they affected.

72.   Ministers emphasised to those supporting them in this work the need to develop and maintain parliamentary and public confidence. People needed clear information on what government asked and required of them, and why, if they were to respond in ways ranging from physical distancing to willingness to be vaccinated.

73.   These considerations led to a commission from the First Minister on 15 April 2020 for 'a (reasonably high level) document setting out the principles that will guide our decisions on an exit strategy'. The commission is contained in the email chain exhibited as KT4/016- INQ000222929]. The high-level document referred to in this commission became the Scottish Government's *Framework for Decision-Making*, setting out the approach and principles Ministers would apply in responding to Covid-19 and the harms it caused. The final version was published

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on 23 April 2020, little more than a week from the commission. This was, necessarily, a very rapid timescale for a significant piece of strategic work, the first of several.

74. In parallel with this work, the Deputy First Minister commissioned the development of a framework to support decision-making on the use of NPIs, looking ahead to the point at which emergency measures would have sufficiently suppressed the virus to allow a different approach. This assessment framework is described in a note from the Deputy First Minister to the First Minister, dated 15 April 2020 [KT4/033- INQ000274112] and [KT4/033a – INQ000274113]. This work became the basis of the 'Four Harms' assessments used in later decision-making.

75. The *Framework* set out the Scottish Government's approach and principles on a single A4 page (p.4) immediately following the First Minister's foreword. As well as setting out its intention to suppress the virus, quoted above, this committed Ministers to seek to reach decisions that were safe, lawful, evidence-based, fair and ethical, clear, realistic, and collective. The last of these was a commitment by Ministers to 'work with partners and stakeholders, including the UK Government and other Devolved Nations, ensuring that we meet the specific needs of Scotland' (Section 1).

The 'Four Harms' approach

76. A later section of the *Framework* set out that 'COVID-19 causes harm in at least four ways'. This was the first point at which the Scottish Government set out its 'Four Harms' approach, which became a central part of its framework for evaluating options and reaching decisions in ways that sought to minimise overall harm.

77. The four harms – or categories of harm – were:

   a. **Harm 1:** direct health impacts: not only the illness and death caused by the virus itself, but the direct health impacts of measures taken to contain its spread;

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b. **Harm 2:** wider impacts on health and care systems, Including for example pressures on intensive care units and the effect on non-Covid procedures of measures to prevent and control infection;

c. **Harm 3**: harms caused in wider society, both by the virus and by measures to control it, ranging for example from the effect on children of missing school because of illness or closures, to increased isolation, domestic abuse and worsened inequalities; and

d. **Harm 4**: impacts in the economy, and on personal and public finances, ranging from the effect of sick absence and deep uncertainty on production and economic activity, to impacts on household budgets and poverty for those not able to work.

78.   The *Framework* noted that 'Difficult decisions are required to balance these various, inter-related harms so as to minimise overall harm' (section 2). It noted that 'The harms caused do not impact everyone equally' and committed to take decisions in order to 'protect those most at risk and protect human rights.'

79.   The approach developed by the Scottish Government was to assess different NPI options against the four harms, and to use these assessments, alongside other considerations, to inform decision-making. This approach became known as the 'Four Harms' approach.

80.   This approach aimed to recognise that interventions (or choosing not to intervene) would have multiple, inter-related effects; and that these impacts were non-linear. For example, the 'stay at home' requirement reduced harms 1 and 2, by reducing infections, illness, pressures on hospitals and other healthcare settings, and deaths; but increased harms 3 and 4 by limiting people's ability to live their lives in the way they chose, increasing isolation, and limiting or closing down economic activity, causing economic and financial harm to individuals, organisations and the wider economy, and in other ways. As these impacts extended over time, there was a risk of crossing 'tipping points' beyond which recovery from them would become significantly harder.

81. The 'Four Harms' were used as broad categories within which to assess Covid's harms. The number of categories could have been larger or smaller. As is evident from documents referenced above, early internal Scottish Government analysis was in terms of three harms. This was expanded to four in the course of preparing the *Framework* to provide a set of categories better able to capture multiple impacts. A larger set might have allowed for more granular analysis; but that might have resulted in slower decision-making, when speed was of the essence, because lives were at stake.

82. In principle, it would have been possible to apply quantitative analysis to the calculation of harms, for example through the use of 'quality-adjusted life years' ('QUALYs') or 'well-being adjusted life years' ('WELLBYs'). This approach was proposed in an influential academic paper published in April 2020, as the Scottish Government was developing the 'Four Harms' approach [KT4/018-INQ000222930].[1] In practice, such an approach would have involved repeated calculation and recalculation in the face of uncertainty as to key parameters in the analysis, and under significant pressure to meet deadlines for decisions, often needed weekly.

83. The 'Four Harms' approach was therefore used as an aid in applying judgement to available evidence, in ways that took account of the multiple, inter-related, non-linear impacts of decisions and interventions. Framing decision-making in terms of identifying a set of measures that minimised overall harm proved a useful principle that guided the SG's approach. This approach helped make it possible to take necessarily rapid decisions about the response to the pandemic, particularly in relation to the application of NPIs, despite the complexity, uncertainty and disruption caused by the virus.

84. From the time of publication of the *Framework*, Scottish Government analysts were commissioned to develop options for NPIs based on assessments of their impacts on the different harms (called 'Four Harms Assessments'), enabling Ministers to make judgments about the optimal configuration of measures so as

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[1] Layard, Richard, Clark, Andrew E., De Neve, Jan-Emmanuel, Krekel, Christian, Fancourt, Daisy, Hey, Nancy and O'Donnell, Gus (2020), *When to release the lockdown: a wellbeing framework for analysing costs and benefits.* CEP Occasional Papers (49). London School of Economics and Political Science, London, UK.

to minimise overall harm and remain consistent with the broader principles set out in the Framework for Decision Making.

85.   These assessments were intended to support judgements about which NPIs to tighten, maintain, ease, remove or introduce. This analytical approach was developed in stages and applied in advice to Ministers in support of decision-making on NPIs, particularly at Cabinet.

86.   Setting out the framework for the Scottish Government's response within a few weeks of the first requirement to 'stay at home' helped secure a coherent and effective approach to decision-making, widely understood and supported in Scotland despite the extraordinary nature of both the threat and the response. As Ministers acknowledged at the time, however, given the complexity and intensity of the response, not all these decisions will have gone the right way. One such decision is discussed later in this statement.

87.   To gain access to evidence of the degree of public understanding and support for its decision-making, the Scottish Government commissioned regular externally-conducted research on public attitudes from September 2020. This research showed that the Scottish Government's Covid-19 response and the information it gave to the public was typically trusted by about two-thirds of those surveyed, a level comparable to that for the World Health Organisation ([KT4/018-INQ000222930]: see Figure 24 on page 23).

88.   Having developed the 'Four Harms' approach as part of work on the Framework, the Scottish Government used and further developed it through the pandemic, including as part of work on the *Strategic Framework* and the 'Levels' system, and to inform decisions on the phased withdrawal of NPIs as protection from vaccination came to play a more significant part in the response to Covid.

The 'Route Map'

89.   The *Framework For Decision Making* was followed on 21 May 2020 by *Coronavirus (COVID-19): Scotland's Route Map Through And Out Of The Crisis*, referenced above. This set out Ministers' intended approach to a phased easing of restrictions, based on the principles and approach set out in the Framework.

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90. Scotland moved to Phase 1 of the 'Route Map' on 29 May 2020. At the same time, NHS Scotland's Test & Protect system for contact tracing was deployed across Scotland.

91. Scotland moved to Phase 2 of the 'Route Map' on 19 June 2020. On 22 June 2020, face-coverings became mandatory on public transport.

92. On 24 June 2020, the Scottish government published an updated route map with indicative dates for the remaining stages of Phase 2 and for early Phase 3 measures.

93. On 2 July 2020, a surge of cases in Dumfries & Galloway caused the Scottish Government to implement the first localised delay in the relaxation of measures, while at the same time publishing an updated route map and confirming dates for the remainder of easings within Phase 3.

94. Scotland moved to phase 3 of the route map on 10 July 2020. On the same date, face-coverings became mandatory in shops.

95. Pupils returned to schools in Scotland on 11 August 2020. Face coverings were introduced in schools on 25 August.

96. On 20 August, the Scottish Government announced that Scotland would remain in Phase 3 of the route map, as Covid continued to pose a significant threat to public health.

97. A further update to the 'Route Map' was published on 10 September, with Scotland remaining in Phase 3 and some additional restrictions on indoor and outdoor gatherings.

98. Further restrictions on household visits and a national curfew for pubs, bars and restaurants were announced on 22 September.

The Strategic Framework and 'Protection Levels'

99. In October 2020 the Scottish Government published *Coronavirus (COVID-19): Scotland's Strategic Framework*, referenced above. Consistent with the *Framework for Decision-Making* and drawing on experience to that point, the

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Strategic Framework set out the Scottish Government's strategic intent, the 'four harms' approach, and a system of 'protection levels' to provide 'a more transparent and easily understood framework for managing outbreaks' and to 'allow rapid but proportionate responses to be taken – locally or nationally – using a range of measures and options.'

100. The protection levels were designated Level 0 (the lowest level of protective measures) to Level 4 (the highest).

101. The *Strategic Framework* set out, for each level, the measures that would apply to:

    a. socialising, indoors and outdoors, both in households and in public places;

    b. hospitality settings where food and drink were served, such as pubs and restaurants;

    c. accommodation: hotels, bed & breakfasts, self-catering, and caravan and camp-sites;

    d. travel, with exceptions for essential travel;

    e. transport, in relation to active travel, car-sharing and public transport;

    f. shopping, with exceptions for essential shopping;

    g. close contact services such as hairdressers, barbers, tailors and beauticians;

    h. stadia and events;

    i. places of worship;

    j. life events, such as weddings, civil partnerships and funerals;

    k. early learning and formal childcare;

    l. informal childcare;

m. schools;

n. colleges;

o. universities;

p. sports & exercise; and

q. leisure & entertainment.

102. Compared to the 'stay at home' requirement, the levels were designed with the aim of creating a more gradated set of interventions to suppress the virus and check surges of infection where and when these arose. This would reduce Harm 1. At the same time, more graduated interventions, applied locally to target outbreaks of infection, would minimise the wider adverse impacts both of the virus and these countermeasures (Harms 2-4).

103. Setting out the levels in granular detail, in advance of their use, was intended to allow clarity of communication. It also allowed engagement with those affected by these measures to help ensure they were workable and avoided unintended impacts and consequences so far as possible.

104. The combination of measures for a given level aimed to achieve a certain cumulative effect in reducing infections and minimising overall harm. In principle, the aim was to apply levels in order to reduce R to just below 1. Since measures to reduce R themselves caused harm, aiming to reduce R further, say to zero, would have risked a disproportionate, potentially unlawful, response.

105. In practice, decisions on measures required judgement, since they were necessarily made on the basis of imperfect information about the true number of infections and the effectiveness of countermeasures against the current mix of variants of the virus.

106. As testing capacity grew, testing data provided better insights into the numbers of actual infections. This data came to be complemented by other analysis. For example, analysis of waste water samples to detect viral fragments also gave insight on general levels of infection.

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107. There was effective sharing of data, and some outstanding analytical work was done on it. It remained, however, very hard to know the true level of infections. This was because of the lags between infection, becoming infectious, displaying symptoms, taking a test, and the reporting of test results. It was harder still to forecast future levels of infections, with and without the effect of interventions under consideration. Moreover, all of this work was being done very rapidly. As noted above, typically the decision-making cycle was weekly. Within that, the time between completion of the latest round of analysis and the framing of options and advice for decision-making was often only hours, and those hours were often late in the night.

108. A further challenge arose from the aim of achieving a *cumulative* suppressive effect. Those affected by components of the levels drew comparisons from available data on transmission risk to argue that a setting or activity affected by a given measure was 'less risky' than another activity permitted at the same level, and therefore *both* activities should be permitted. Following that reasoning, however, would have increased the *overall* risk of infection. In turn, that would increase the risk of infections rising to a level requiring stronger counter-measures and leading to greater overall harm.

109. The *Strategic Framework* was updated four times during the Covid-19 period in response to developments in both the pandemic and the response.

   a. An update in **February 2021** [KT4/021 INQ000343890 90] reported on the use of the 'six main tools' for achieving the Scottish Government's strategic intent. These were (i) vaccination, (ii) the effective use of the 'Test & Protect' system, (iii); proportionate protective measures (that is, NPIs), (iv) effective measures to manage the risk of importation of the virus (chiefly measures concerning travel), (v) support for individuals, business and organisations to adhere to protective measures, and (vi) care and support to mitigate the harms caused by the virus.

   b. An update in **June 2021** [KT4/022- INQ000246800] set out the 'strategic pivot' enabled by progress with vaccination and Ministers' intention to move 'beyond Level 0,' the lowest of the protection levels.

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c. An update in **November 2021** [KT4/023-IN INQ000343891 set out a further update on the use of the 'six tools' covered in the February 2021 update.

INQ000343892

d. A final update in **February 2022** [KT4/024-INQ000343892] took stock of the state of the pandemic, including the impact of the Omicron variant, but looked forward to the rest of 2022 'with increased optimism, albeit tempered by the need to remain prepared, vigilant and resilient given the ongoing uncertainties posed by this virus.' This update made a final revision to the Scottish Government's strategic intent, which became to 'manage Covid-19 effectively, primarily through adaptations and health measures that strengthen our resilience and recovery, as we rebuild for a better future' (page 5).

110. The last remaining statutory measures forming part of the Scottish Government's Covid-19 response were removed on 18 April 2022.

The process of decision-making

111. I now summarise my role and experience in relation to the process of making decisions about and within the frameworks and phases described above.

112. Most of these decisions were the subject of Cabinet papers and discussion. Many were implemented through primary and secondary legislation. The process for preparing Cabinet papers and supporting Ministers' decision-making is set out in the corporate statement I made to the Inquiry on behalf of the Scottish Government, dated 22 June 2023 and referenced above. A further corporate statement in my name (dated 23 June 2023, also referenced above) sets out how the legislative framework was put in place and operated in relation to aspects of the response which had statutory force.

113. This involved work by officials and Ministers across all portfolios. Though some of this work was done by teams within my own business areas, most of it was done in the wider Scottish Government. The Health & Social Care Directorates led on testing, contact tracing, vaccination, the management of the NHS Scotland and related work. Other teams led in relation to the economy and wider society, including for example on schools, colleges, universities, and the justice system.

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My role and that of the teams supporting me in it was to lead and co-ordinate this work in response to commissions from the First Minister, Deputy First Minister and Cabinet.

The Four Harms Group

114. As part of this work, and as described in the corporate statements referred to above, I convened the 'Four Harms Group' of senior advisers. This was a forum for the co-ordination and integration of advice on the Scottish Government's response to four interrelated impacts of Covid, or the 'Four Harms': directly to the health of individuals; to healthcare systems; in wider society, and in economic and business activity.

115. This group grew out of earlier discussions involving senior advisers, including in the preparation of the *Framework for Decision Making* and the development of the 'Four Harms' approach. It met for the first time as the 'Four Harms Group' on Saturday 24 October 2020 as part of preparations for implementation of the 'Levels' approach. I wrote to members of the group shortly before that meeting, setting out the group's purpose and role [KT4/025-INQ000222931]. The group typically met weekly from about that point on.

116. The 'Four Harms Group' was not a decision-making body: decisions were for Ministers. Its role was to ensure that advice and options put to Ministers were informed by a full range of expert and professional advice. Its membership and attendance at meetings varied to reflect the key issues under discussion. The core participation included:

   a. for 'Harm 1' and 'Harm 2', lead medical, clinical and public health advisors including the Chief Medical Officer, the National Clinical Director of NHS Scotland, the Chair of the National Incident Management Team, and others.

   b. for 'Harm 3', the Chief Social Policy Adviser and those leading on public services and communities, including in relation to education, justice, communities (including equalities and human rights) and on the Scottish Government's relationships with local government; and

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c. for 'Harm 4', the Chief Economic Adviser and lead policy officials from the Scottish Government's Economy teams.

117. Representatives of the Convention of Scottish Local Authorities (COSLA) and the Society of Local Authority Chief Executives (SOLACE) took part as observers. So too did members of the Scottish Government Legal Directorate, on behalf of the Law Officers, and those leading work on analysis, modelling, communications and other aspects of the response.

118. This range of expertise and inputs was invaluable in helping me and my teams produce rapid integrated advice for and on behalf of Ministers. It helped us and others identify and address the interdependencies and unintended consequences we expected would arise in designing a response to a complex systemic challenge. It also enabled assessments and options to be challenged and tested before being put to Ministers. Through its weekly meetings, it developed and maintained shared understanding of developments ('situational awareness'), their possible significance ('sense-making') and considerations influencing advice, options and actions.

Cabinet consideration

119. Most of this work was to prepare for updates to and decision-making by the Scottish Cabinet. The Cabinet's agenda was dominated by Covid-19 in this period. Other than standing items on current events and Parliamentary business, Covid-19 was by far the most frequently discussed item of Cabinet business.

120. In the course of preparing this statement, I undertook analysis of Cabinet business in this period. The summary that follows is mine, rather than that of the Cabinet Secretariat, the team with the closest knowledge of this business, and should be read with that in mind.

121. In the period from March 2020 to April 2022, Cabinet received 87 oral updates on Covid-19 from the First Minister, Deputy First Minister or Cabinet Secretary for Health. The Chief Medical Officer or one of the deputy CMOs also contributed to these updates.

122. In addition, Cabinet took 71 numbered papers with 'Covid' in the title. Of these:

a. 61 papers were cross-government in scope, prepared by my teams, and presented by the Deputy First Minister or First Minister;

b. 5 further papers were from the Cabinet Secretary for Finance, relating to the impacts of Covid-19 on the Scottish Government's Budget;

c. 4 papers were from the Cabinet Secretary for Health, either early in the Covid-19 period or on specific issues such as NHS mobilisation and vaccine deployment; and

d. the remaining paper was from the Cabinet Secretary for Justice, on border health measures (a subject on which he led).

123. The next most frequent policy topic was the Scottish Government's climate change plan, discussed on 5 occasions in this period.

124. Through these papers, and in addition to oral updates on Covid-19, Cabinet discussed and reached decisions on:

a. the *Framework for Decision-Making* on 21 April 2020, ahead of its publication two days later;

b. the *Route Map* on 19 May 2020, ahead of its publication two days later;

c. progression to phase 2 of the *Route Map*, and a review of the regulations then in force, on 16 June 2020;

d. progression to phase 3 of the *Route Map* and a review of regulations on 8 July 2020;

e. further reviews of phasing and regulations on 29 July, 18 August and 8 September 2020;

f. possible further measures, at a meeting of Cabinet convened for that purpose on 7 October 2020: this discussion was introduced by an oral update from the First Minister and informed by advice to her, circulated to Cabinet members, rather than a numbered Cabinet paper;

g. the Scottish Government's strategic approach to Covid-19, on 21 October 2020, ahead of publication of the *Strategic Framework* on 23 October 2020;

h. reviews of protection levels and regulations, on 17 and 24 November and 1, 8 and 15 December 2020;

i. additional protective measures, on 4, 12 and 19 January 2021;

j. papers on the strategic framework for Covid-19 on 26 January and on 2, 9, 16 and 23 February 2021, ahead of the publication of an update to the *Strategic Framework*, also on 23 February 2021;

k. protective measures, on 2 March 2021;

l. proposed easing of restrictions on 9 March 2021;

m. the timetable for further easings, on 16 March 2021;

n. the Covid-19 Strategic Framework, on 23 March 2021;

o. further reviews of measures, on 22 June, 13 July and 3 August 2021;

p. Covid-19 self-isolation, also on 13 July 2021;

q. papers reviewing work on the Covid-19 response and recovery and next steps, on 24 and 31 August 2021 and 7, 14, 21 and 28 September 2021;

r. vaccine certification, also on 28 September 2021;

s. further papers reviewing the Covid-19 response on 5 and 26 October 2021; 2, 8, 16, 23 and 30 November 2021; 7, 14, 21 and 29 December 2021; 5, 11, 18 and 25 January 2022; and 1, 8 and 17 February 2022;

t. an update to the *Strategic Framework* on 17 and 22 February 2022 ahead of publication of the update on 22 February 2022; and

u. further updates and reviews on 8, 15, 22, 29 and 31 March 2022.

125. Typically, material for Cabinet papers would:

a. arise from to commissions from and/or discussion with the First Minister and/or Deputy First Minister on the priorities for decision-making;

b. draw on data, analysis and expert input from the Four Harms Group, both in its meetings and by email;

c. be shared in draft, in whole or in part, with key advisers for their comments;

d. when available as a complete draft, be reviewed by me and/or senior members of my team, and also by the Scottish Government's Legal Directorate;

e. be put to the First Minister and Deputy First Minister for their comments and clearance, ahead of circulation to the Cabinet and the Law Officers; and

f. be the subject of briefing ahead of Cabinet for portfolio Cabinet Secretaries and Law Officers, typically provided by the relevant participants in the Four Harms Group.

126. As the timeline above shows, this process was often repeated weekly for months at a stretch. Within a weekly decision-making cycle, this process might take roughly two to three days, concentrated in the few days before Cabinet to allow advice to take account of the latest data and analysis. The remainder of the week saw an equally intense process of turning Cabinet's conclusions into material for statements to Parliament and media briefings, and regulations implementing Cabinet's decisions.

127. A more typical timescale for preparing a Cabinet paper would be measured in weeks. While it is always possible to prepare material for Cabinet quickly, the intensity, complexity and duration of the decision-making on Covid was challenging for all those involved, both officials and Ministers.

128. Adhering to the discipline of Cabinet decision-making, however, was important. It ensured that papers were thoroughly prepared and took account of expert advice, including legal advice. There was the opportunity for the whole Cabinet, and the Law Officers, to input to decision-making. Decisions and the reasons for

them were formally recorded. Both the papers and the decisions reached on them thus form part of the public record.

129. At a more personal level, this work provided a rhythm, a sense of purpose and a grounding in professional discipline for people deeply aware of what was at stake: livelihoods, lives, and the functioning and recovery of the economy and wider society.

130. Those involved were ourselves affected by the virus. Nearly all of us were working from home, at risk of isolation from colleagues. Some were also looking after children not at school, or worried about elderly relatives, or themselves vulnerable, for example if they were immunosuppressed. Some, of course, became ill. Some lost colleagues, family and friends in circumstances that made those losses hard to bear.

131. These Cabinet papers and the minutes of the Cabinet meetings are available to the Inquiry, providing an opportunity to assess the Scottish Government's decision-making based on the material Ministers had before them at the time.

Decision-making on non-pharmaceutical interventions

132. The approach to decision-making set out in my corporate statements and summarised above was applied to providing Ministers with information, data, analysis and advice across all aspects of the Covid-19 response.

133. This included updates and decisions on 'Health-led' aspects of the response including in relation to testing, contact tracing and vaccination. Similarly, decisions on other aspects (for example, on the distribution of financial support to businesses, the development of sectoral guidance, and the running of public services ranging from schools to courts) were led by portfolios and reported to Cabinet through papers prepared by my teams. Implementation and further decision-making within the parameters set by Cabinet was handled by portfolio Ministers and their advisors.

134. These matters provided context and inputs to the main focus of the 'Four Harms Group' and much of the material in Cabinet papers, which was on decisions on non-pharmaceutical interventions ('NPIs').

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135. The NPIs proposed for actual or potential use by the Scottish Government were set out in the *Strategic Framework* with updates published as changes became necessary, and the Cabinet papers and conclusions discussed above set out how decisions on these were made. I set out below some supplementary observations on aspects of decision-making in relation to NPIs, drawing on my role and experience during the Covid-19 response.

Design and use of a 'Levels' system for NPIs

136. As described earlier in this statement, as it became necessary to respond to resurgence of Covid-19 infections in the autumn of 2020, the Scottish Government worked to develop a 'Levels' system of variable restrictions (November-December 2020), aimed at achieving a proportionate and effective response with measures developed and communicated in advance of need.

137. This development of the Scottish Government's strategic approach reflected learning from the application of targeted NPIs in response to local outbreaks in the later summer and early autumn of 2020. Achieving a response fast enough to be effective, in an already intense rhythm of decision-making, necessarily compressed the time available for the bespoke design of measures, increasing the risk of responses not being designed in a way which took account of all their impacts, and the interrelationships between these. This was a significant factor leading to the development of the Levels system.

138. The Levels system also drew on international examples, including from Ireland, France, New Zealand and California. These examples are referenced in an email from me to the First Minister dated 16 September 2020 [KT4/030 - INQ000245847][KT4/030a – INQ000245848]. I return to that email later, in discussing the extent to which a 'Levels' system could have been, and was in practice, implemented in a consistent way across the UK.

139. The system of protective levels and the component measures within each level were kept under regular review. This allowed Ministers to apply learning from the experience of applying the system, and to update the system in line with evidence about the transmissibility of new variants of the virus. Ministers therefore did not restrict themselves to the definitions of the protective levels first set out in the

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Strategic Framework in October 2020, but gave regular updates on changes to

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the system, the reasons for these, and how and why it was being used. Broadly speaking, however, the system of protective levels underpinned the design and application of NPIs after the first, phased, release of general restrictions.

140. It was part of the design of the 'Levels' system that different parts of Scotland could be in different levels at the same time, if that was necessary and justified to ensure a proportionate response. The initial assignations were made at local authority level. There was also consideration of the resilience of local healthcare systems, generally at the level of NHS territorial health boards.

141. Health board and local authority areas are not the same throughout Scotland. In additional, travel patterns often cross local authority boundaries. For example, many people who live on the outskirts of Dundee cross the boundary between Dundee and Angus when they leave home to go to work or to make essential purchases. These factors added some complexity to decision-making. So too did the granularity of decision-making applied to each local authority area, including liaison with locally elected representatives and their officials.

142. In practice, the use of the levels system became more regional, in the sense that, broadly, consideration was given to (i) urban areas (ii) more rural areas, taking in the rest of mainland Scotland (iii) island communities, including the three island authorities – Orkney, Shetland and nan Eilean Siar (the Western Isles) – and the 'Clyde islands' within the areas covered by Argyll & Bute Council and NHS Greater Glasgow & Clyde. This more regional approach had benefits in terms of communication and public understanding, while the underpinning analysis continued to assess whether a more granular approach was required on grounds of proportionality.

Consideration of potential or actual wider health, social and economic impacts of NPIs

143. As described above, consideration of the wider health, social and economic impacts both of the virus and of measures to respond to it, including but not limited to NPIs, was from near the outset a principle within the Scottish Government's framework for decision-making. To the best of my recollection, all decisions on NPIs were informed by such 'four harms' consideration. As the

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Framework had foreseen, these were hard decisions, necessarily involving the application of judgement both in the preparation of advice and by Ministers as decision-takers.

The impact of NPIs on 'at risk' and other vulnerable groups, and those with protected characteristics under the Equality Act 2010

144. Consistent with the approach set out in the *Framework for Decision-Making* and the requirements of the Equality Act 2010, the impact of NPIs on 'at risk' and other vulnerable groups, and those with protected characteristics, was considered in the design of NPIs and decisions on their use. This involved a combination of equalities impact assessments, published research, stakeholder engagement, public engagement, and considering within the 'Four Harms' approach described above. This material and these processes informed the preparation of advice and material for Cabinet.

145. The Scottish Government considered from the outset whether NPIs were consistent with the Equality Act 2010 and also considered whether the provisions could constitute indirect discrimination. In many cases, NPIs applied to everyone irrespective of protected characteristics. The *Framework for Decision Making* recognised, however, that harms caused by the pandemic and by countermeasures did not impact everyone equally, and committed Ministers to taking this into account in their decision-making.

146. Again, these were hard decisions, including because the impacts were interrelated and non-linear. There was rarely a clear-cut way to achieve a greater suppressive effect on transmission in order to reduce serious illness and death – the point of NPIs – without also causing impacts on other aspects of personal, social and economic life; and these impacts worsened over time, in ways that could create 'tipping points' into more serious harm.

147. Ministers and advisers had to consider the cumulative suppressive effect of NPIs as a whole, including in relation to vulnerable groups, protected characteristics and fundamental rights, in the prevailing epidemiological conditions, to assess whether the combination of NPIs at a given point was necessary, proportionate and justified in relation to its impacts on harms, activities, lives and rights.

148. In turn this involved consideration of (for example) the interplay between the evidence on increased transmission indoors and through activities involving exertion, deep breathing and close proximity or physical contact, such as singing, dancing or physical exercise; and the fundamental rights and potential vulnerabilities (for example, associated with age) of those likely to be attending (for example) religious observance, gym classes, or night-clubs.

149. The resulting advice and decisions necessarily involved judgements. The available evidence and range of considerations meant decision-making could not be reduced to a calculus. In applying judgement to the available data and in decisions on NPIs, the aim was to combine measures to prevent or arrest exponential growth in infections while at the same time minimising to the greatest extent possible the harms caused by countermeasures. This was done by reference to Ministers' strategic intent and consistent with the principles set out in the *Framework for Decision-Making*.

150. The decision-making process ensured that decisions were tested against the principles set out in the *Framework*, including to take account of impacts on vulnerable and 'at risk' groups and of the need to ensure that any interference with fundamental rights was necessary, proportionate and justified in all the circumstances. However, Ministers acknowledged (at the time and since) that not all these decisions will have gone the right way, including in terms of minimising impacts on vulnerable groups and on the fundamental rights of all those impacted.

151. For this reason, and consistent with good government, these decisions were open to scrutiny, in Parliament and more widely, and to challenge in the courts, to test the reasonableness of Ministers' decision.

Judicial reviews

152. Two petitions for judicial review were brought in relation to Ministers' decisions on NPIs. These cases provided important tests of the Scottish Government's decision-making.

153. The Outer House of the Court of Session gave its judgement on 24 March 2021 [KT4/026-INQ000222932] in relation to a petition brought by the Rev Dr William Philip and others.

154. This petition resulted in a finding against the Scottish Ministers in relation to the closure of places of worship in January 2021. The court found that the regulations challenged in the petition went further than they were lawfully able to do, in the circumstances which existed at the time they were made, by closing places of worship rather than considering restrictions on certain activities within them. The judgement also noted that the matter was finely balanced, and that the finding against Ministers did not imply that it was safe for churches to open, nor that no restrictions at all were justified.

155. Changes in the state of the pandemic had led Ministers to announce the lifting of this measure before they received the court's judgement. The judgement itself, however, informed future decision-making not just in relation to places of worship, but in relation to fundamental rights more generally.

156. A few months earlier, on 11 December 2020, the Outer House gave its judgement in relation to a petition brought by KLR & RCR International and others, being in the main hospitality businesses, against the decision by Scottish Ministers on 8 December 2020 to continue the Level 3 protective measures then applying in the City of Edinburgh [KT4/027-INQ000222933].

157. In response to this petition, the court found for the Scottish Ministers. The judgement noted that Ministers 'have followed their guidance as to how they would go about their decision', that they should be given 'a wide margin of appreciation' within which to exercise judgement on the evidence and advice before them, and that the reasons given for Ministers' actions were 'adequate and rational'. The judgement included extensive reference to the *Framework for Decision-Making* and the *Strategic Framework*, and thus tested the approach set out in those documents. Again, learning from the judgement informed later decision-making.

158. Taken together, these judgements and the material above serve to illustrate:

a. the intensity and complexity of the challenge;

b. the value of maintaining the disciplines of Cabinet decision-making, even under disruption;

c. that some decisions went the wrong way, as the then First Minister acknowledged at the time was likely to be the case, given the intensity and complexity of the decision-making required;

d. that most decisions, however, were accepted as necessary, proportionate and justified following parliamentary scrutiny and without recourse to legal challenge, or (in the second case referred to above) were found lawful by the courts;

e. that these and other such decisions were subject to parliamentary scrutiny and open to challenge in the courts, albeit on accelerated timescales: both are important to ensure democratic accountability and the rule of law; and

f. the value of setting the week-to-week decision-making in a strategic framework which required careful consideration of all the impacts of NPIs on all those affected by them, including vulnerable and 'at risk' groups and those with protected characteristics.

Consideration of public support and compliance

159. From early in the pandemic, decisions on NPIs were informed by regular opinion research, commissioned from and conducted by external social researchers. This work built up a longitudinal dataset of quantitative and qualitative evidence on the views and behaviours of those affected by NPIs and other measures, including in relation to support and compliance. The resulting body of evidence was taken into consideration in both the design and the communication of NPIs, and was frequently drawn on for and referred to in Cabinet papers. As noted earlier in this statement, the opinion research also provided feedback to Ministers and their advisers on the extent to which the Scottish Government's Covid-19 response commanded public trust and confidence.

Inter-governmental relations.

160. As noted earlier, in the context created by devolution, it was in my view necessary for the Scottish Ministers to reach their own decisions on their Covid-19 response. I noted also that it was open to Ministers in all four governments in the UK to align their Covid-19 responses in order to secure public policy gains. Inter-governmental relations, commonly referred to as IGR, are the means through which such alignment can happen.

161. On IGR, there was overlap between my Covid-19 and non-Covid roles. Before, during and after the Covid period, I was the senior lead official for the Scottish Government's relationship with the UK Government and other devolved administrations.

162. I and my teams supported Scottish Government Ministers through advice on IGR aspects of their decision-making and in their meetings with UK Government Ministers, including meetings of the Joint Ministerial Committee and its subordinate and successor formats, and (along with the Scottish Government's Resilience team) in the COBR format.

163. Our role, working along with lead policy teams, was to ensure that Ministers were briefed on relevant issues and relationships and on the agenda and any papers for meetings, and supported in taking any necessary follow-up actions.

164. While much of this work was done by my teams, I personally supported the then First Ministers of Scotland in their first and some subsequent meetings with Prime Ministers Cameron, May, Johnson and Sunak (there was no opportunity for such a meeting with Prime Minister Truss). I draw on this experience, covering the Covid-19 period, the decade before it and the period since, in the following comments on IGR.

165. I set out briefly below:

   a. how IGR is conducted, both generally and in the Covid-19 period; and

   b. examples of alignment and difference in the Covid-19 responses of the Scottish and UK Governments, including some reflections on how these

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arose and the implications for the Scottish Government's response to Covid-19.

How IGR is conducted

166. The ability of the governments to co-operate and align their responsibilities is mediated through the formal and informal channels for intergovernmental relationships. These channels are described in more detail in my corporate statement dated 22 June 2023.

167. IGR takes many forms, ranging from formal multilateral meetings of Ministers through to day-to-day contact by officials with their opposite numbers in other administrations. The means by which governments communicate vary over time. Some of these variations arise from the subject-matter and its urgency. Others arise from the working style of the senior Ministers involved.

168. Soon after devolution, the UK Government and the devolved administrations agreed a Memorandum of Understanding creating various formats of a Joint Ministerial Committee (JMC) to serve as a forum for IGR. The agreement, and the forums, have been revised on several occasions since, and I have contributed to that work. The JMC was replaced towards the end of the Covid period by a Council involving the Prime Minister and the heads of the devolved administrations, and two Interministerial Standing Committees.

169. In practice, much more of the intergovernmental relationship is mediated through extensive day-to-day contact between policy teams and portfolio Ministers than through meetings of the JMC and its successor forums. This was the case in relation to Covid-19. Though the Joint Ministerial Committee on EU Negotiations continued to meet in the Covid-19 period, to the best of my recollection there was no 'heads of government' meeting of the JMC in that time. Such a meeting or meetings might have added value to the relationship; but the quality of the relationship cannot be judged solely on the frequency of JMC meetings.

170. In the case of COVID, the governments communicated and co-ordinated their responses first through COBR, later through participation by Scottish Ministers in Ministerial Implementation Groups ('MIGs') established by the UK Government

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specifically for Covid, and throughout in bilateral communications involving relevant Ministers and officials.

171. There is a long-standing arrangement by which devolved Ministers participate in meetings convened by COBR as a means of aligning responses to emergencies by governments and other public authorities. As Deputy First Minister and Cabinet Secretary for Health, the Rt Hon Nicola Sturgeon MSP had taken part in such meetings at the time of the H1N1 pandemic flu epidemic a decade before Covid-19, and I supported her in some of those.

172. As the response to Covid-19 moved from the first, emergency, phase into the process of managing the pandemic, there was a continuing need for close liaison between governments, for reasons I describe below. The UK Government therefore proposed that devolved Ministers participate in most of the MIGs it set up for this purpose, and Scottish Ministers agreed. These groups are described in more detail in my corporate statement, mentioned above. They generally met about weekly, and involved lead portfolio Ministers rather than heads of government.

173. Also during this period, the practice arose of the heads of the devolved governments meeting regularly – sometimes weekly, sometimes at longer intervals – with the Rt Hon Michael Gove MP in his capacity as the UK Government's lead Cabinet minister on IGR. These meetings covered both Covid and other matters, including for example the consequences of Russia's invasions of Ukraine.

174. These meetings secured particularly effective inter-governmental working on the rapid implementation within the UK Government's visa system of the Scottish Government's 'supersponsor' scheme for Ukrainian refugees. At the time, the then First Minister thanked Mr Gove and his officials for that work, and asked me to pass on her personal thanks to my senior counterparts in the Home Office. This example serves to illustrate that IGR can support effective joint working between governments of different political complexions.

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175. The Covid-19 responses of the Scottish and UK Governments were interdependent. This interdependence arose from their respective devolved and reserved responsibilities. It led to considerable alignment in their responses; but there were also significant differences.

176. The interdependence is best illustrated with examples. Scottish Ministers, not UK Ministers, are responsible for public health and the operation of healthcare systems in Scotland, and were therefore responsible for the treatment of Covid and for the deployment of vaccines and other pharmaceutical interventions. On the other hand, UK Ministers, not Scottish Ministers, held the ability to implement at scale schemes for financial support to businesses subject to closures and individuals unable to work, and to borrow in the short term to pay for such support.

177. Given their respective powers and responsibilities, the UK Government therefore could not (in my view) have deployed vaccines effectively across the whole of the UK without involving the devolved governments. Similarly, the devolved governments could not have operated schemes of support for businesses, including equivalents of the 'furlough' scheme, within devolved financial powers, and therefore had to rely for these on the Treasury and the UK Government. The governments therefore needed to work together, and did so. In doing so, they shaped their responses in accordance with their assessment of the facts and circumstances within their jurisdictions. This resulted in areas of both alignment and difference.

178. My email of 11 March 2020, referenced above, set out four points about the approach to IGR I expected the First Minister might wish to make in a COBR discussion the following day. These were:

    a. 'that decisions are for the Four Nations' Ministers to take, communicate and account for within their respective competences';

    b. the need to 'secure agreement on the timing of the first of the social and behavioural interventions, based on the science and medical and expert advice';

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c. the need for 'the greatest possible clarity and shared understanding on the sequence, timing and implications of the interventions to follow that'; and

d. (a more specific point), 'that she intends to discourage mass gatherings in Scotland,' and her reasons for doing so.

179. Consistent with points (a) to (c) above, the approaches of all four governments were aligned in the initial response to Covid-19, including the design and timing of the requirement to 'stay at home' and the associated closures of businesses and other organisations. As noted above, the devolved governments could not in my view have implemented the 'stay at home' requirement any earlier than the UK Government, since they lacked the necessary financial (rather than legislative) powers. As also noted above, the lead-in to the 'stay at home' decision on 23 March itself involved extraordinarily rapid decision-making on equally extraordinary measures to respond to the threat posed by Covid-19.

180. Following the 'stay at home' requirement, the First Minister's commission for work on how to release that and other emergency measures (in the email from her office of 2 April 2020, referenced above) specifically included consideration of a possible 'Four Nations' approach, by seeking advice on 'the emerging UK approach, and whether there is scope to make common cause with any other Devolved Administration' ahead of a further COBR-convened meeting.

181. In the event, however, the four administrations took different approaches, with the Scottish Government generally adopting a more cautious approach than that of the UK government and releasing earlier measures more slowly. This resulted from the assessment made by each administration of the facts and circumstances obtaining in their jurisdictions.

182. The First Minister continued to press senior Ministers in the UK Government for closer co-operation, including in a discussion with the Prime Minister, the Chancellor of the Duchy of Lancaster and other First Ministers in early May. I and colleagues followed up that discussion with our official counterparts, setting out to them our First Minister's views on 'the need for deeper and more consistent engagement on the aspects of their work which apply across the UK' (from an email of 10 May 2020 from me to the First Minister, reporting on these

discussions, [KT4/028-INQ000222934]). The context for these discussion was the imminent publication by the UK Government of proposals for easing measures then in place in England, with implications for other parts of the UK.

183. The governments aligned more closely in the autumn, reaching agreement on a joint statement published on 25 September 2020 [KT4/029-INQ000222936]. The statement reaffirmed 'our shared commitment to suppressing the virus to the lowest possible level and keeping it there, while we strive to return life to as normal as possible for as many people as possible' and to 'work determinedly, energetically and cooperatively' to that end.

184. Determined and energetic co-operation of the kind referenced by the 'four nations' statement on 25 September 2020 could perhaps have resulted in an aligned system of protection levels or tiers, capable of being applied by both governments (or all four in the UK) within their respective jurisdictions.

185. Such a possibility existed at the time of the 25 September 2020 joint statement, as is evidenced in an email of 16 September 2020 from me to the First Minister, referenced above. This reported on a proposal from UK Government officials for 'a three-tier approach to COVID-19 guidance and restrictions,' and that 'the Secretary of State (Mr Hancock) is keen to move quickly to implement it for England, and is requesting that the devolved administrations adopt this, or a similar, approach at the same time.'

186. In the event, however, the two governments developed systems of local restrictions based on 'tiers' or levels' largely independently of each other, with that for England announced by the then Prime Minister on 12 October and that for Scotland published as part of the *Strategic Framework* on 23 October 2020.

187. The procurement of vaccines and their deployment from December 2020 was closely aligned on a 'four nations' basis, with the vaccines Task Force acting for all four governments, and an integrated approach to trialling of vaccines and their approval for use.

188. There was also generally effective joint working to match vaccine deployment to local circumstances. This is an example of joint working resulting in agreement

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to pursue different approaches to achieving a shared strategic intent. The differences extended to Health Board areas within Scotland, reflecting their different population characteristics and available technology (for example, large-scale refrigerated storage). Strategies were also adapted in the light of learning about vaccine take-up rates, for example to secure better coverage among harder-to-reach groups through co-operation with faith leaders.

189. Recognising that the UK and Ireland effectively operate as a single zone for international travel – the Common Travel Area – Ministers came together to reach decisions on international travel, including in relation to requirements to produce evidence of a negative test or vaccination, and in relation to 'managed quarantine.' Since the purpose of these measures was the protection of public health, they were within the devolved powers and responsibilities of Scottish Ministers in relation to travel to and from Scotland.

190. These meetings, generally weekly, resulted in broadly aligned decision-making, but with some differences of approach. My recollection is that Scottish Ministers would have preferred a more restrictive approach to travel in order to reduce the risk of importation or reimportation of the virus and its variants. However, Scottish Ministers recognised that international travel restrictions could only be operated effectively if broadly aligned at the level of the Common Travel Area, and that the UK Government was unwilling to contemplate tighter restrictions.

191. Though both governments instituted media briefings to communicate their approaches, and there was close liaison between communications teams on the use of other channels such as paid-for advertising, the two governments took different approaches to public health communications, and at various times had different high-level messages.

192. In my experience, there was generally effective exchange of data and analysis and access to scientific expertise. Some of this resulted from formal structures such as SAGE. It was also facilitated by effective professional and personal relationships, for example among the Chief Medical Officers and other professional and policy leads. These exchanges helped improve situational awareness in terms of the state of the pandemic. The quality and granularity of

data, including data exchanged between governments, improved during the Covid-19 period. There have also been examples of effective professional co-operation in drawing out and sharing learning from the experience, as evidenced by the *Technical report on the COVID-19 pandemic in the UK* referenced above and published on 1 December 2022.

193. As a concluding observation, I do not regard differences in Covid-19 approaches as necessarily indicative of sub-optimal IGR. Constructive joint working is achievable between governments of different political complexions. It may result in alignment of approaches; but it may also result in decisions shaped by the circumstances within each government's jurisdiction, and by each government's approach.

194. Joint working – which might still result in different decisions – had the potential to improve the Covid-19 responses of the governments involved in a number of ways. These could be broadly categorised as resulting in one or more of a number of public policy gains (this list is not exhaustive):

    a. **improved situational awareness**, for example through the sharing of data and analysis;

    b. **access to resources**, for example vaccines;

    c. **economies of scale**, for example in relation to testing capacity;

    d. **mutual challenge and learning**, a lot of which happens in informal exchanges among officials, facilitated by shared approaches to professional development, alongside the duties owed by officials under the Civil Service Code to the Ministers of the government they serve;

    e. **co-operation on cross-border issues**, as for example on international travel; and

    f. **clarity of communications**, where this can be achieved.

195. In my experience, IGR during the Covid-19 period secured these benefits to an extent that varied by topic and over time, but did not realise the full potential for

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joint working. The examples given above illustrate that point. A full survey of the topic, however, is beyond the scope of the present statement.

Other matters

196. Under this heading I offer some supplementary comments on a number of matters I am aware are of interest to the Inquiry.

Medical and scientific expertise, data and modelling

197. Medical and scientific expertise, data and modelling were integral to the Covid-19 response, and therefore to the advice and options prepared for Ministers during this period.

198. I and my teams had direct and indirect access to these inputs, through for example the participation of expert advisers in the 'Four Harms Group', and the circulation of data and analysis including relevant material from SAGE and other expert groups, and inputs from Scottish Government analysts.

199. My role and that of my teams was a co-ordinating one: to ensure that medical and scientific expertise, data and modelling were reflected in advice put to Ministers, alongside other relevant considerations including (for example) legal advice, and the views of expert advisers on social and economic policy. These inputs were discussed with relevant expert advisers, for example in meetings of the 'Four Harms Group' or *ad hoc* discussions at earlier stages, then formed into draft integrated advice, the terms of which were circulated for comment to the full group or to relevant expert advisers for their comment and clearance.

200. Data and modelling were of particular importance in understanding the current state of the pandemic and – much harder – assessing its likely future course, both with and without adjustments to measures intended to suppress transmission. The range of outcomes in modelled future scenarios was often wide, and highly sensitive to assumptions made in the course of the modelling. This underlined the importance of applying judgement to the analytical products, and testing judgements against the data and *vice versa*.

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Covid-19 public health communications

201. From the outset, and drawing on her experience in the H1N1 pandemic of 2009-10, the then First Minister placed particular emphasis on clear public health communications, both through her own briefings and statements and through associated media and other work.

202. To ensure that work on policy options and on communications informed each other, I sought to ensure that Scottish Government communications teams were involved in and contributed to the preparation of advice, including through participation in meetings of the 'Four Harms Group.' In turn, advice to Ministers on Covid-19 public health communications was routinely copied to me and my teams, and my teams gave input to those preparing texts for the First Minister's statements and briefings. Beyond making these connections, I was only occasionally directly involved in this work. I did not take part in media briefings, nor did I undertake public health communications.

Public health and coronavirus legislation and regulations

203. My role in advising and supporting Ministers in relation to their Covid-19 response and decision-making is described above. Many of these decisions concerned or led to the promotion of Coronavirus legislation and regulations.

204. I had relatively little direct involvement in the detail of work to instruct, draft and promote such legislation. Much of that work was taken forward by teams within my business area, including the Parliamentary Counsel Office (responsible for the drafting of primary legislation) and the Parliamentary Liaison Unit (responsible for managing the Scottish Ministers' legislative programme and for support to the Minister for Parliamentary Business). Some of my other teams took the policy lead on some of the content of the regulations, for example in relation to travel restrictions. These teams and other colleagues supported Ministers in the process of Parliamentary scrutiny of regulations, and in giving evidence to Parliamentary committees. I was not personally involved in those sessions.

205. Generally, in my view, this process worked effectively despite the speed and complexity of the challenge. In the early part of the Covid-19 period, the Scottish

Government succeeded in refocusing legislation-related resources and effort rapidly on the Covid-19 response, and the Parliament rapidly adapted its ways of working to be compliant with Covid-related guidance and requirements.

206. A good example within the Scottish Government was the leadership shown by the Chief Parliamentary Counsel in tasking his entire team to concurrent drafting of emergency Covid-19 legislation and supporting its parliamentary scrutiny, while at the same time moving to remote working. This gave Scottish Ministers the advantage of provisions written specifically with Covid-19 in mind (albeit that a lot was still to be learned about it at that early stage). The framework for regulations thus created and maintained through the Covid-19 period was the legislative expression of the *Framework for Decision-Making* referred to above.

Informal communications and documents

207. Since the Covid-19 period, there has been interest in the use made of informal messaging by those involved in Covid-19 decision-making, and what they recorded in personal notebooks. I therefore describe here my own experience and practice.

208. From mid-March of 2020, most of the work I was involved in to share information and prepare advice on Covid-19 was done remotely, consistent with the advice, and later the requirement, to 'stay at home.' Many meetings continued to be conducted online beyond the lifting of the 'stay at home' requirement.

209. The few in-person meetings I had in this period were in St Andrew's House in Edinburgh. The Scottish Government Resilience Room, SGoRR, is in this building, along with the government offices of the First Minister and Deputy First Minister. I also had an office there.

210. While the 'stay at home' requirement was in place, I would only travel to St Andrew's House if that was essential in order to support the then First Minister, for example to convene for her a group of advisers (often in a hybrid format, with physical distancing of the small number of those present in person), or to help her prepare for one of the many media briefings or parliamentary statements she made during this period.

211. In light of what has since emerged about practice elsewhere, I should record that, in my experience, Covid-related rules and guidance were consistently followed in St Andrew's House. For example, I recall that hand sanitiser was available from an early stage at the entrance and on meeting tables. Face-coverings were worn while moving around the building, and at other times as necessary. Signs were placed in the building setting limits on room occupancy consistent with physical distancing requirements. Those arranging meetings limited in-person attendance accordingly. There was a 'one-way' system in place for staircases and corridors, to help those using the building maintain physical distancing. Building use was monitored, using data from pass-controlled doors. This showed that very few people were using St Andrew's House. From information I saw in my corporate role, I knew the same to be true of the Scottish Government's other buildings.

212. In short, there was very little in-person contact. This influenced the use of informal communications.

213. Most remote working was mediated by email, as was and is normal in the Scottish Government, and through online meetings, the use of which increased significantly to support remote working. Alongside these channels, informal messaging played a part in mediating exchanges which would otherwise naturally have taken place face-to-face in government buildings, outside formal meeting settings.

214. In my experience and practice, however, messaging platforms were not used to make or record decisions. As I have described above, that process took place with the Scottish Government's formal systems, including those for Cabinet decision-taking.

215. Rather, in my experience, informal messages were used by officials, bilaterally and in some groups, for a number of purposes. These included sharing or highlighting the latest data or other developments; sense-checking the significance or implications of these; checking colleagues' availability for a discussion; highlighting emails needing to be read or replied to; proposing topics for meeting agendas; checking whether actions had been followed up and closed out; and other similar purposes. As is also often the case in teams working under

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intense pressure, some messaging served to share how people were feeling, to 'let off steam,' and to offer support and encouragement to those under the greatest pressure.

216. Most of my own informal messaging relating to Covid-19 was with key members of my own teams, professional advisers and other colleagues and counterparts. By the nature of my pre-Covid role, I also held the personal mobile phone numbers of the then First Minister and Deputy First Minister. As was my practice before Covid, I used these only sparingly, messaging for example to confirm the scope and timing of advice in preparation (usually against very demanding deadlines, both for those preparing it and for Ministerial decision-makers), or to respond to questions of a similar kind from the First Minister or Deputy First Minister. These were bilateral exchanges. To the best of my recollection, I was not a member of any informal messaging groups involving these or other Ministers.

217. As well as occasional exchanges of message, I had some short personal telephone conversations (that is, in distinction to those arranged through private offices) with both the First Minister and the Deputy First Minister during this period. This continued an aspect of my working relationship with them from earlier roles. Typically, these calls would be at their request, to clarify an aspect of a commission for advice, or (in the run-up to a Parliamentary statement or media briefing) to check or clarify the wording of a point, or to commission additional briefing. To the extent that these conversations gave rise to questions or commissions which I could not immediately deal with myself, I would put those into the formal system by sending a secure email.

218. The then First Minister did not take decisions in informal messaging, nor in personal phone-calls. On the contrary: her preferred way of working was to commission formal advice and respond to it through her private office. Her responses and feedback made it plain that she engaged with and scrutinised this material in depth. These exchanges took place and are recorded within the Scottish Government's secure email and electronic filing systems. I have referred to examples earlier in this statement, and there are many more in the material available to the Inquiry.

219. I turn now to note-taking, since I processed notes and informal messages in a similar way.

220. At this period, I used a physical notebook or a memo block to make quick notes: not as a diary or record of decision-making, but as a reminder of points I needed to capture for later action and/or to feed into the Scottish Government's formal systems. As with informal messaging, much of this material was short-lived. Some of it was personal rather than work-related.

221. My practice in the Covid period, and for many years prior to that, was to do a 'weekly review' of work I had in hand, or planned, using a checklist. One action on the checklist was to go back through informal messaging and notes since the previous review, to identify any points arising from these which still required action or recording formally. If a note or message related to something that needed to be transferred to Scottish Government systems, either for the record or as a commission for action, and if that had not already been done, I would do so at this point. That would involve sending a secure email, or occasionally noting a point for an agenda for a later meeting.

222. This was consistent with the Scottish Government's mobile messaging policy, which required that, at least monthly but preferably at the earliest opportunity, the salient points of any business discussions and/or decisions in a mobile messaging app should be transcribed into an email or text document using the Scottish Government's secure systems.

223. Having processed messages and notes in this way, it was not my practice to retain them, for a number of reasons. This practice helped me not mistakenly process notes or messages again at the next review (a risk, given the volume and pace of the work and information flows). It avoided retaining material relating to my Scottish Government role outside secure government systems for any longer than was practically necessary. It protected the confidentiality of personal notes or messages which related to sensitive issues, for example in relation to people's resilience and wellbeing, or informal personal messages sharing feelings, anxieties or frustrations, sent with an expectation ofconfidentiality.

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224. Where informal messaging channels had the facility for clearing or auto-deleting messages, I made use of these to automate some of this work, which could be time-consuming. Similarly, I disposed of memo-block sheets once they were no longer required.

225. With notebooks, my practice was to put a line through each page as I processed notes on it, and start a new notebook when necessary. I have provided to the Inquiry my notebooks covering the Covid period. I hope it is clear from the description given above that this material was not written for anyone other than me. Some of the material, not relating to Covid, is personal and sensitive, for example in relation to staff management or the welfare of colleagues. I have not redacted or sought to withhold any of it. I therefore rely on the Inquiry to respect the confidentiality of any material not relating to its work.

226. It was not my practice to draft written advice or material for Cabinet using notebooks, memo-pads or informal messaging. There will have been occasions during such work when I jotted a note of a point for later inclusion, or tested a point with or sought information from a colleague, especially when working well beyond 'normal' office hours. Much of this drafting work was done late in evenings and/or at weekends, when it was unreasonable to expect people to be monitoring their inboxes. Once I had incorporated any such material in substantive advice, communicated within secure systems, I would delete it for the reasons given above.

227. I drafted advice and other material for colleagues and Ministers within the Scottish Government's systems, generally as emails and occasionally using Microsoft Word and other tools. Typically, a piece of substantive advice would start as a draft by me or one of my teams. This would be circulated to a number of key colleagues for their comments and input, which would be reflected in the final version. Similarly, drafts of material for Cabinet would be shared with key Ministers before circulation to Cabinet, including the Minister in whose name the Cabinet paper would issue. This was necessary in order to ensure that the analysis, options and any recommendations reflected their thinking. The material available to the Inquiry will contain multiple examples of this process.

228. This way of working was how I sought to comply with the Scottish Government's records management policy, including by ensuring that the Scottish Government created accurate, authentic and reliable records of advice and decision-making and maintained these in its secure corporate systems; and that I disposed of records no longer required, in an appropriate manner.

229. The records of advice and decision-making on Covid-19 take the form of written advice to Ministers, their responses, and the papers and proceedings of Cabinet. These materials set out the decisions which were reached, the reasons for those decisions, and the evidence and data used to support them.

Reflections

230. In conclusion, and having in mind the remit of the Inquiry, to identify lessons to be learned to inform preparations for future pandemics, I draw together below some reflections from my own perspective and experience on the challenge of responding to the pandemic in Scotland, what went well, what did not, and what might have been done differently. For the most part, these reprise or expand on points made earlier in this statement. I have framed them here as points about the response to crises more generally, since they are more widely applicable.

231. I do not hold these out as a complete or definitive set of lessons. They are simply my own reflections, based on my experience both of Covid-19 and of earlier cross-government challenges, on areas where learning could be drawn.

232. These points relate to:

   a. the value of **agility and flexibility** in responding to crises, and the need to systematise and maintain the means to mobilise and sustain cross-government crisis responses;

   b. the importance of the **culture of decision-making** and the need to attend to the health of organisation culture during times of crisis;

   c. **discipline and accountability in decision-making** during crises, and the implications of the growth in the use of informal messaging alongside formal organisational systems;

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d. the potential for **joint working** in crises, and the need for 'peace-time' investment by governments in relationships they will need in times of crisis;

e. the need for **proportionality in decision-taking**, to avoid over-elaboration in decisions necessarily made under intense time pressure; and the value of multidisciplinary inputs to the design and delivery of crisis responses; and

f. the importance of early action to sustain the **resilience and wellbeing** of those affected by or involved in the response to a crisis, on whom depends in turn the resilience of organisations, wider systems, communities and society.

Agility and flexibility

233. There is usually a point in a crisis at which the amount of work involved in the response escalates suddenly or very rapidly.

234. Looking back on the Covid-19 period, I think the Scottish Government saw that point coming, but that the speed and scale of the necessary mobilisation stretched our 'peace-time' processes for matching resources to priorities. We succeeded in mobilising an extraordinary response by accelerating those processes, drawing on earlier experience, and, crucially, thanks to many who were willing to 'run towards the fire.' Remembering what we were seeing of experience elsewhere, for example in China and Italy, we could probably have 'called' the need for an extraordinary response earlier.

235. Not every crisis demands such radical reprioritisation and mobilisation, but disruptive crises are becoming more frequent. Looking beyond lessons for pandemic planning, we could draw from the Covid-19 experience the need to systematise and maintain the means to mobilise and sustain a cross-government crisis response, including by drawing resource away from other work.

The culture of decision-making

236. Especially in the early stages, crises often involve incomplete or conflicting information, some of which will turn out to be wrong. They also create stress and uncertainty, with a lot at stake.

237. A culture that values openness with information and in debate is more likely to result in an effective response. This includes openness to hearing bad news, to others' views and contributions, especially when they differ from our own, and to the reality that decisions must be taken, not all of them may go the right way, and that it may not be possible to avoid all harm.

238. Looking back, I think the culture of decision making in the Scottish Government during Covid-19 generally met these challenges, despite the uncertainty and stress inherent in the crisis. Generally, in my experience, people were willing to share information, not hoard it; listen to others' views, as well as advocate their own; offer support as well as challenge; and report problems, not hide them. Accountability and scrutiny, through Parliament and beyond, including in the courts, was seen as necessary and useful. In my experience, these behaviours were modelled by senior leaders, including Ministers. They helped create a sense of shared purpose and commitment to decision-making that met the test of being, in the dry phrase of the Court of Session, adequate and rational.

239. There were, of course, exceptions, and I have emphasised that this was my experience: it may not have been everyone's. The exceptions, however, felt to me like departures from a positive culture, not signs of a toxic one.

240. At the time, I think I took a lot of this for granted, including that we would ourselves follow the rules we were making for others. A lesson we might draw when looking back is the need to attend to the health of organisational culture during times of crisis. Culture matters as much as performance for the effectiveness of an emergency response, and for public confidence in that response. It is too important to leave it until later to discover and address cultural problems.

241. The approach and intentions of senior leaders are not always as visible as we may assume, especially under high pressure. I hope that in the future, those

leading during crises, including those holding roles such as mine during Covid-19, will use their written and other communications to make it clear that calling out 'blind spots' in an organisation's culture is healthy, and that diverse and countercultural viewpoints offered in good faith need to be heard, affirmed as valuable, and followed up consistently.

Discipline and accountability in decision-making

242. Since crises usually involve critical decisions with significant implications, decisions and the reasons for them need to be recorded, including for the purpose of later accountability and learning. In practice, this is challenging, because crises also demand rapid and intense decision-making based on necessarily incomplete information.

243. Looking back, I believe the Scottish Government maintained the discipline of recording its decision-making. We did so largely by using 'peace-time' processes for reaching and recording decisions, but in much more rapid decision-making cycles. This had the benefit of ensuring a record of key decisions and the basis for them. As I note above, it also helped those involved by giving us a professional discipline to maintain in a world upended by Covid.

244. The processes we used – Ministerial submissions and replies, Cabinet papers and conclusions – are those I learned when I joined the Civil Service more than three decades ago. A decade later, during my time as Donald Dewar's Principal Private Secretary, transmission of those documents shifted from messengers to email, shortening decision-making cycles from days to (when necessary) hours. The growth in 'instant' messaging dates from about a decade further on, still a decade before Covid-19: WhatsApp's initial launch was in 2009.

245. As I note above, the requirement to 'stay at home' led to much greater use of informal messaging channels, at a time when decision-making cycles had to shorten. Nevertheless, as I have noted, we continued to reach and record decisions as we did outside emergencies.

246. During the crisis itself, though we did remind staff of their responsibilities under our records management policies, we did not (that I recall) pause to consider

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whether those policies and our practice needed to change in order to ensure their effectiveness in a crisis, or their transparency in later accountability, including given the very different conditions in which work was being done. With hindsight, this created a risk that the same policies and guidance might be interpreted and applied differently, even with a single organisation.

247. On effectiveness, the reason was simply the workload involved. We used existing systems deeply embedded in organisational processes and culture, and accelerated these to support the necessary pace and volume of advice and decision-making.

248. On accountability, we created and retained formal records, and reminded staff of the need to ensure there were effective records of decision-making, despite the speed and disruption caused by Covid-19. Looking back, I think we did not appreciate that key stakeholders – most significantly the families of those who died, and those who suffered serious harm – would want to verify the propriety of decision-making not only through first-hand examination of the formal records, but also by being able to see directly that informal channels were not used inappropriately.

249. With hindsight, this was a mistake. It is hard to 'prove a negative.' I am confident of the propriety and regularity of the decision-making in which I was involved, including in ensuring that decisions and the reasons for them were recorded; but I now wish we could provide those who have suffered loss with even greater assurance of the care and effort that was taken in that work, both informally and formally.

250. There is also learning to take from the growth of multiple digital communications channels, and the implications of that for the records management policies of public authorities, for example in relation to the respective responsibilities of authorities and of staff working for them, and for the retention of records in relation to decisions likely to be subject to a public inquiry .

251. Therefore, as part of preparing for future crises, I hope the Scottish Government and others will consider reviewing their records management policies and

guidance in light of their Covid-19 experience and to take these points into account.

Joint working

252. Systemic crises, as Covid-19 was, demand responses from many public authorities, other organisations, and individuals. Joint working can allow these responses to achieve an effect greater than the sum of the parts. It can be challenging to achieve this, since it requires leaders to work across boundaries just at the point when their attention is taken by what is happening within their own organisations and jurisdictions.

253. Joint working need not mean that responses are identical, or centralised. On the contrary, they are likely to be more effective when decisions are taken as close as possible to the people they affect.

254. Looking back on the Covid period, there are examples of effective co-operation between governments of different political complexions as well as between governments and partner agencies, leading to well-aligned responses. There are also examples of areas in which the potential of joint working was not fully realised; and, regrettably, some evidence of a lack of mutual respect in intergovernmental relations.

255. In my experience, intergovernmental co-operation in a crisis is more effective when decision-makers have an established working relationship. In turn, this is helped by regular and effective engagement outside times of crisis, going beyond 'courtesy calls.' If there was unrealised potential for joint working during the Covid-19 period, then one lesson to draw is the value of 'peace-time' investment by governments in the relationships they will need in times of crisis, including in the culture and processes of inter-governmental relationships.

Proportionality in decision-making

256. Many decision-making systems value precision in the design of interventions, including to ensure that the effects of decisions meet the tests of being necessary, justified and proportionate. This can, however, lead to *dis*proportionate

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elaboration of options and their assessment (the trap known as 'paralysis by analysis').

257. Looking back, I think there were several points in the Scottish Government's decision-making at which it might have been, and perhaps sometimes became, affected by this risk. Examples of areas subject to this risk include the work done on the definition and assessment of harms, the design of measures, the analysis of trends in the data and forecasts based on them, and the geographical application of responses.

258. We found mitigations for that risk in the development of the 'Levels' system rather than bespoke measures, the use of the 'Four Harms' approach as an aid to decision-making rather than for detailed quantitative analysis, and the move towards regional application of measures. On the other hand, the Court of Session judgement on the closure of places of worship was an indication that decision-making had not taken enough account of the possible benefits of a finer-grained approach at that stage.

259. The learning I take from this for the future is the need to give attention to proportionality in the process of decision-making, as well as in its outcomes, and to recognise that what is proportionate will vary through the life of the crisis. This links to my earlier point about diversity of thinking and approaches. Effective decision-making and delivery require rigour and precision in thinking, and also that decisions are designed for rapid and effective execution.

260. In practical terms, this points to the need for the multidisciplinary inputs to the design and delivery of crisis responses, including those of the policy and operational delivery professions in the Civil Service alongside relevant expert professional advice, to help achieve and maintain proportionality in the process of decision making as well as its outputs.

Resilience & wellbeing

261. Covid-19 had impacts on everyone's resilience and wellbeing. In what follows, I focus in particular on the resilience and wellbeing of staff in the Scottish

Government, for whom at the time I and other senior leaders had a duty of care. In so doing, I do not intend in any way to diminish the impacts on others.

262. Responses to crises tend to start with activity that feels like firefighting, which can be a crucial part of the response. There is a challenge for organisations in the fact that the very people likely to 'run towards the fire,' invaluable in a crisis, are also those at risk of feeling that they cannot leave or rest until the fire is out, however long that takes. They may also fail to notice when they and those around them are at risk of burning out.

263. Looking back brings home that Covid was a long crisis: a marathon, not a sprint. Hindsight shows it was a great deal longer than we first anticipated, as is evident from reading my email of 13 March 2020 to the then Permanent Secretary, referenced above. I recall that, at the time, I worried that I might be overstating the possible duration of the crisis by referring to a peak of 12-16 weeks, and recovery over two years. With hindsight, clearly my error was the other way.

264. Just as organisations need to mobilise quickly, they also need to back up the first responders by adding further capability before the fire-fighters burn out. Additional resources have several benefits: they make the response more sustainable; can bring in new thinking; and mitigate the risk arising from being 'one person deep' in some key areas.

265. We did a lot to support resilience and wellbeing throughout the crisis, but I think to start with we prioritised the work on the Covid-19 response, perhaps thinking that 'one more push' would get us through, and then we could recover.

266. Though my email of 13 March identified the likely 'significant impact on wellbeing' of staff, and by May of that year I was concerned that we were reaching the limits of what could be achieved by sprinting, it took me until about November to pull myself out of the decision-making enough to step up actions addressing the resilience and wellbeing of people working on the response, including me. By that time, I and many of those I was working with, like many others, were feeling the effects of the drawn-out intensity of a response that still had 18 months to run.

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267. The learning I take from this is a deeper appreciation of the fact that the resilience and wellbeing of organisations and communities depends on that of the individuals within them. For that reason, supporting and protecting the resilience and wellbeing of everyone affected by a crisis should be seen as *part of* the response, not something done to *support* the response, or to help people recover afterwards.

268. That point was reflected in much of the Scottish Government's work on Covid-19. Three practical actions might help build on that in a future crisis:

   a. match resources to priorities on the assumption that the crisis may last longer than expected, to ensure the response is sustainable from the outset, however long it has to last; including by defining the periods of deployment to emergency work and preparing to rotate people out of it to allow for recovery during, not after, the crisis;

   b. apply the 'Rule of Two': when the work doubles, organisations need to double up cover in key roles (or share out responsibilities), to protect the resilience of individuals, organisations, and the overall response to the crisis;

   c. senior leaders should regularly and explicitly reinforce to their teams the importance of supporting resilience and – just as important – ensure that they take that advice themselves.

269. In drawing out these points, I do not mean to imply that they did not get attention at the time. They are, however, points that, looking back, I believe offer learning for the future.

Conclusion

270. Covid-19 has had very serious impacts on and consequences for Scotland and for many people and organisations in Scotland, as for other countries.

271. I have attempted in this statement to give an account of my experience of the Scottish Government's response and the contribution made by Ministers and civil servants to reducing Covid's harms. Nothing I say here, however, is intended in

any way to diminish the impacts of Covid, including the impacts of decisions made as part of the response.

272. As I have noted above, the Scottish Government acknowledged at the time and since that not all the decisions made as part of its Covid-19 response will have gone the right way.

273. The work of the Covid Inquiries in helping identify lessons from the Covid period is important in preparing governments to respond to similar future challenges. I hope this statement contributes to that work.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Signed:_____ **PD**

Dated:_____09 November 2023_____

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