

Friday, 19 January 2024

1
2 (10.00 am)
3 **LADY HALLETT:** Mr Dawson.
4 **MR DAWSON:** Good morning, my Lady. The first witness this
5 morning is Ms Lesley Fraser.
6 **MS LESLEY FRASER (affirmed)**
7 **Questions from LEAD COUNSEL TO THE INQUIRY for MODULE 2A**
8 **MR DAWSON:** Good morning. You are Lesley Fraser?
9 **A.** I am.
10 **Q.** You have provided us with a number of statements for
11 the Inquiry so far, thank you very much for having done
12 so. If I could just run through them quickly in
13 order --
14 **A.** Yes.
15 **Q.** -- that the references can be put on the transcript for
16 those who are interested to read them.
17 You provided a witness statement dated
18 23 October 2023 which is INQ000320588.
19 You provided a second statement as a corporate
20 statement as Director General of corporate, which has
21 the reference INQ000215474. That's dated 23 June 2023.
22 You then provided an addendum witness statement in
23 that capacity as director on 6 November of this year,
24 INQ000340111.
25 A further statement, again in that capacity, on
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1 legal propriety and ethics, and also you're responsible
2 for the Covid Inquiries Response Directorate. Is all
3 that correct?
4 **A.** All of that is correct, yes.
5 **Q.** Thank you.
6 The Covid Inquiries Response Directorate, as
7 I understand it, is a directorate within the Scottish
8 Government which co-ordinates the Scottish Government's
9 response to this Inquiry and indeed to the
10 Scottish Inquiry?
11 **A.** That's correct, yes.
12 **Q.** I'd like to ask you some questions this morning about
13 a number of documents and practices relating to document
14 retention within the Scottish Government.
15 **A.** Yes.
16 **Q.** As I understand it, this is a matter which falls within
17 your ambit as the Director-General Corporate?
18 **A.** It is, so I am responsible for all aspects of
19 record-keeping but I'm also the senior information risk
20 owner for the organisation, which carries its own
21 responsibilities as well, but all that general area
22 falls within my ambit.
23 **Q.** Thank you very much.
24 Could I just have the 9 November statement,
25 INQ000340122. You say in paragraph 1 of that statement

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1 9 November of this year, INQ000340122.
2 Then finally, again in that capacity, a further
3 statement on 4 January 2024, INQ000391307.
4 You have signed all of these statements, as
5 I understand it; is that correct?
6 **A.** I have, yes.
7 **Q.** You're familiar with their contents?
8 **A.** I am.
9 **Q.** Do the contents of these statements remain true and
10 accurate as far as you're concerned?
11 **A.** They do.
12 **Q.** Thank you.
13 You are the Director General of the Corporate
14 directorate general within the Scottish Government and
15 a full-time civil servant; is that correct?
16 **A.** I am.
17 **Q.** You've held that role since March 2021?
18 **A.** Yes.
19 **Q.** And you originally joined the Scottish Government as
20 a civil servant in 2001; is that correct?
21 **A.** That's correct, yes.
22 **Q.** You explain in some of your statements that the Director
23 General Corporate is responsible for the corporate
24 services required by the Scottish Government, which
25 includes, amongst other things, corporate governance,
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1 that:
2 "The Scottish Government has established policies
3 and guidance in place to support effective information
4 governance and records management. The Scottish
5 Government is committed to openness and transparency,
6 and to cooperating fully with both the UK and Scottish
7 Covid-19 Inquiries."
8 Is that correct?
9 **A.** It is correct, yes.
10 **Q.** The current First Minister of Scotland, and indeed the
11 former First Minister of Scotland, Nicola Sturgeon, have
12 repeatedly committed to these important values as well,
13 including statements made in Parliament to that effect;
14 is that correct?
15 **A.** That is correct.
16 **Q.** These values of accountability and transparency
17 represent a bond of honesty with the people of Scotland;
18 is that correct?
19 **A.** That is correct, they're absolutely fundamental to good
20 government, and a key responsibility as a civil servant,
21 being able to transparently explain what the government
22 has done and why it has done it and how it has done it,
23 and demonstrate that through the record, is
24 fundamentally important to good government.
25 **Q.** And as such, I think it's correct to say that these

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1 principles of openness and transparency and indeed
 2 accountability are embedded within the National
 3 Performance Framework, about which we heard a little
 4 from Professor Cairney yesterday; is that correct?

5 **A.** They are in the National Performance Framework, yes, but
 6 they're in other places as well. So you'll see them in,
 7 for example, the Public Records (Scotland) Act 2011,
 8 which we are responsible for complying with, and in
 9 a range of other areas as well. So it -- it's
 10 fundamental to, as I say, how we operate as civil
 11 servants in the Civil Service Code, also referred to in
 12 the Ministerial Code as well. So cuts in all ways, but
 13 everybody is responsible and accountable for that
 14 openness, transparency and accountability.

15 **Q.** Thank you.

16 I think in fact one sees these principles laid out
 17 in a number of key documents relating to the Covid-19
 18 response. For example, the framework which is called
 19 the four harms framework, from April 2020, and other
 20 such documents.

21 **A.** Yes, exactly so. So the four harms framework is setting
 22 out how the government would seek to balance what were
 23 recognised to be real harms that were happening across
 24 society through this, you know, tragic and unprecedented
 25 set of circumstances. But to illustrate that to the

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1 overseen by the Keeper of the Records of Scotland, who
 2 has a legal responsibility to ensure that we are
 3 conducting ourselves lawfully in respect of our records
 4 management approach.

5 **Q.** Obviously from our perspective we are looking back on
 6 a period of time in the past --

7 **A.** Yes.

8 **Q.** -- and records such as the ones we're talking about are
 9 relevant to our investigation. But is it not also the
 10 case that these records are important when dealing with
 11 a situation like the pandemic, which is a continuous
 12 one, rather than a single incident, to be able to access
 13 records of the kind we have been discussing in order to
 14 inform continuous decision-making?

15 **A.** Absolutely. As I say, it's fundamental to good
 16 government. You need to be able to set out what it is
 17 that, of course, ministers have asked for advice on and
 18 then demonstrate the way in which that advice has been
 19 brought together, and you need to be able to explain and
 20 demonstrate how perhaps challenging and different
 21 perspectives have been reconciled or brought to
 22 ministers' attention, and therefore -- and then you also
 23 need to be able to demonstrate the way in which
 24 ministers have considered that advice and then
 25 ultimately reached a decision, and then of course what

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1 public and indeed of course to Parliament and to others
 2 who would rightly scrutinise us, so that we could be
 3 held to account for the way in which we were
 4 endeavouring to respond.

5 **Q.** When government decisions are taken, it's important that
 6 the people are able to understand how, when, why and by
 7 whom those decisions were taken?

8 **A.** Fundamentally so, and of course we're accountable -- or
 9 rather ministers are directly accountable to the
 10 Scottish Parliament and it was critical throughout the
 11 pandemic that we had a record of, as you say, who, what,
 12 why, when, how. We were regularly sharing that with the
 13 Parliament, and Parliament was therefore able to hold
 14 ministers to account in live time for the way in which
 15 the conduct of the response to the pandemic was being
 16 undertaken.

17 **Q.** As regards accountability, it's hard perhaps to achieve
 18 accountability if inadequate records of these matters
 19 are retained?

20 **A.** Precisely so, and that's why it's a legal responsibility
 21 on the government to maintain a proper record and to be
 22 able to account for decisions and how those were
 23 reached, and to be able to demonstrate that through the
 24 public record. And we produce a plan and regularly
 25 review that, at least annually, and that is then

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1 the government has done about it, what the impact has
 2 been, and so on. You need to be able to demonstrate
 3 that process.

4 **Q.** I think it would be fair to say, however, would it not,
 5 Ms Fraser, that it would be overly burdensome on
 6 an organisation like the Scottish Government if one were
 7 to suggest they should retain every piece of paper and
 8 every electronic piece of documentation relating to its
 9 business?

10 **A.** Absolutely. We could not possibly retain absolutely
 11 everything. For example, I think in relation to the
 12 handling of the Covid pandemic we have well in excess of
 13 a million emails, for example. Now, much of those will
 14 be, you know, inconsequential. The job of records
 15 management is to ensure that the core elements, all of
 16 the relevant information, including when there are
 17 disputes and when things need to be reconciled or you
 18 need to change course, for example, that all of that is
 19 set out and it's clear then to either, for example,
 20 a Parliamentary committee looking in pretty live time at
 21 what's going on, that you can demonstrate what has
 22 happened; or, as now, that some years since, you can
 23 then go back and look at the record and understand how
 24 that journey has been undertaken.

25 **Q.** In order to achieve a balance between retaining

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1 an impossible amount of documentation and documentation
2 of the type that we have been discussing, would it be
3 fair to say that the government and those working for it
4 should be required to consider the kinds of matters
5 we've discussed, the principal aim being that the
6 Scottish public is able to access information which tell
7 them, reasonably, why decisions were taken, by whom
8 decisions were taken, how decisions were taken, when
9 decisions were taken?

10 **A.** Exactly so, and we give guidance through our Records
11 Management Policy and Plan and through training, which
12 is mandatory for all civil servants, and regularly
13 renewed. We also have a direct responsibility on
14 directors in the Scottish Government to ensure that
15 their teams are acting in accordance with Records
16 Management Policy. So that's where the guidance would
17 be found for civil servants seeking to understand, as
18 you say, how you assemble correctly the full record
19 for -- yeah, for inquiries like this, for Parliament,
20 for all the purposes of government.

21 **Q.** I understand, we will come to it in a moment, that there
22 are a number of policies which relate to this subject
23 which existed and were current around about our two and
24 a bit year scope. You are generally responsible for
25 those policies; is that --

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1 efforts were not make to seek that they were complied
2 with on behalf of the government, its directors and
3 other senior officials?

4 **A.** Correct, we'd rely on that compliance in order to be
5 able to create that accurate record, as we are legally
6 required to do.

7 **Q.** We'll come to some of these policies in a moment,
8 Ms Fraser, but as you are responsible for the
9 Covid Inquiries Response Directorate, we have received
10 a number of these policies in what might, I think,
11 fairly be described as something of a piecemeal fashion.
12 In particular, we issued an original corporate request
13 to you for information, including relating to document
14 use, informal use of documents in the management of the
15 pandemic, and we received a single policy in response to
16 that which was dated November 2021. We'll come to that
17 policy in a moment.

18 We then required to issue a further Rule 9 request
19 seeking greater information, and this over time resulted
20 in a number of further policies becoming apparent and,
21 indeed, we received some policies from you only in the
22 last couple of days. I think they were directly from
23 you, actually, as I understand it.

24 Can you please tell us why it is that it has been so
25 difficult, given your responsibility for the Response

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1 **A.** I am indeed, yes.

2 **Q.** And responsible for ensuring that they are complied
3 with?

4 **A.** Yes. I share that responsibility for compliance with my
5 fellow directors general. As I say, the way that --
6 because we're an organisation of 10,000 civil servants,
7 then directors have an accountability for ensuring that
8 Records Management Policy and other policies are fully
9 complied with in their area. And directors then account
10 on an annual basis for compliance through what we call
11 a certificates of assurance process. So that's one way
12 in which compliance would be assured.

13 I also oversee an information governance board for
14 the Scottish Government, and there we look at the ways
15 in which we are encouraging and improving records
16 management across the Scottish Government, where we need
17 to pay particular attention, what needs to be changed in
18 processes that we might have in place.

19 Obviously it's not an issue that ever stands still,
20 technology keeps moving on, and there are new questions
21 and challenges as well that mean that we need to adapt
22 and change our records management approach, but the
23 fundamentals still persist.

24 **Q.** Because as far as compliance is concerned, it wouldn't
25 really serve a great deal of purpose to have policies if

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1 Directorate, to get the policies that we asked for some
2 time ago?

3 **A.** Well, I'm sorry if it has appeared to the Inquiry and
4 indeed to others involved in this process that that has
5 been difficult or complex. That is absolutely not our
6 intention. We've endeavoured throughout to give the
7 Inquiry as well and as quickly as we can precisely the
8 documents that you've been looking for.

9 The fundamental document here is our Records
10 Management Policy. The November 2021 document that you
11 refer to is a -- if you like, a supplement to that that
12 explains in a bit more -- a bit more clearly and
13 precisely how to treat information, mobile messaging,
14 and --

15 **Q.** We'll get on to the detail in a moment, Ms Fraser.

16 **A.** Okay, very good.

17 **Q.** Is the reason why these documents were produced in this
18 piecemeal fashion that those charged with locating them
19 had difficulty locating them?

20 **A.** No, I don't think we've had difficulty locating them.

21 I think our understanding of the focus and requirements
22 of the Inquiry has very much developed over time as,
23 I think, the Inquiry has become more and more specific
24 in your requests of us. The reason why we provided or
25 I provided documents to the Inquiry earlier this week is

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1 because of a different set of searches that we had
 2 undertaken in relation to a Freedom of Information
 3 request which brought up a much longer document which
 4 was produced -- well, not a document actually, a Saltire
 5 article. Saltire is the intranet for Scottish
 6 Government employees. And we produced an article in
 7 April 2020, as our colleagues were moving out of the
 8 office -- I think 97% of people were office-based before
 9 the pandemic, and that switched entirely, obviously,
 10 with lockdown, and this pulled together a whole host of
 11 useful information. You know, how to negotiate with
 12 your broadband, you know, provider, how to get new
 13 technology if you needed it, how to get an adjustable
 14 chair, a whole range of things. But it also said in
 15 terms of staying in touch -- and we were thinking about
 16 people's personal wellbeing, but also the business
 17 contacts that people have -- we were recognising that
 18 applications like Zoom as well as WhatsApp were much
 19 more prevalent and people were adapting and finding ways
 20 to --

21 **LADY HALLETT:** To go back to the point Mr Dawson was
 22 pursuing, the Inquiry asked you for various policies --

23 **A.** Yes.

24 **LADY HALLETT:** -- and you've just said a few minutes ago
 25 said there was one fundamental policy: the Records

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1 last year. But can I check that point, my Lady?

2 **LADY HALLETT:** And also we'll get the team to check it as
 3 well.

4 **A.** Okay, thank you.

5 **MR DAWSON:** If it were the case that one had difficulty
 6 locating document retention policies, it might tend to
 7 suggest that document retention doesn't work very well
 8 in the Scottish Government; would that be fair?

9 **A.** The Records Management Policy is readily available to
 10 colleagues, it's on our intranet site, we train people
 11 on it on a regular basis, my colleagues and I myself, we
 12 must take mandatory annual training. On aspects of data
 13 handling, for example, the Records Management Policy is
 14 referred to through that, so -- in fact I'm pretty
 15 certain it's published on our website as well. So it's
 16 a legal requirement that we have a Records Management
 17 Policy and a Records Management Plan, and that that is
 18 approved by the Keeper of the Records of Scotland. So
 19 it's not a new thing, and it's absolutely fundamental to
 20 the way that we operate.

21 **Q.** Okay, thank you.

22 Can we perhaps look at the policy, it is
 23 INQ000309551.

24 I understand this is the Scottish Government Records
 25 Management Policy. I think this is the one to which you

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1 Management Policy.

2 **A.** Yes.

3 **LADY HALLETT:** But instead of sending the one fundamental
 4 policy, which we'd have thought it was easy to find --
 5 someone would just say, "There's our one fundamental
 6 policy, off to the Inquiry", you sent the 2021 policy
 7 that was about something else. So why was it a member
 8 of your team couldn't find the fundamental policy to
 9 send to the Inquiry when first asked?

10 **A.** I'm sorry, my Lady, I understood that we had provided
 11 the Records Management Policy in good time to
 12 the Inquiry. I've certainly been conscious of referring
 13 to that from my statements from certainly last summer,
 14 I would have expected that to be on any of my
 15 statements.

16 **LADY HALLETT:** It may be I've misunderstood, Mr Dawson.

17 **MR DAWSON:** No, my understanding, my Lady, was that the
 18 policy that was provided originally was the
 19 November 2021 policy, and that the policy to which
 20 Ms Fraser is making reference was provided at a later
 21 date in response to a further request.

22 **A.** That is a surprise to me. I'm --

23 **LADY HALLETT:** Well, it would be surprising, wouldn't it?

24 **A.** It would be very surprising. I would understand that
 25 that would have been provided with my witness statements

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1 made reference as being the go-to document; is that
 2 right?

3 **A.** That is the one, yes.

4 **Q.** There is an October 2019 version, which is the one we
 5 see here.

6 **A.** Yes.

7 **Q.** I understand it may have been updated in September 2020
 8 is that right?

9 **A.** We regularly update it, generally on an annual basis,
 10 and it's reviewed at least every five years by the
 11 Keeper of the Records of Scotland, yeah.

12 **Q.** But this one would have been the one that would have
 13 been current at the time of the --

14 **A.** Yes.

15 **Q.** -- period we're interested in, the beginning of 2020?

16 **A.** Exactly so.

17 **Q.** Could we go to page 3, please. If we see at the top of
 18 the page there it says:

19 "The Scottish Government handles a very large amount
 20 of information. This information relates to specific
 21 topics and individuals as well as records of decisions
 22 made by the Government, actions taken and the rationale
 23 behind these decisions. The Scottish Government
 24 recognises that its records are an important public
 25 asset and are a key resource in the effective operation,

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1 policy making and accountability of the Scottish
2 Government. Like any asset, records require careful
3 management and this policy sets out the Scottish
4 Government's responsibilities and activities in respect
5 of this."

6 Just go back to the original document, jump down
7 a little bit further. Under "Scope" it says:

8 "All employees of the Scottish Government have a
9 responsibility to effectively manage records in
10 accordance with specified legislation and guidelines."

11 In the next section:

12 "This policy applies to all records created,
13 received or maintained by Scottish Government staff in
14 the course of carrying out their functions."

15 It also helps us with the definition, which says:

16 "A record is a piece of recorded information or
17 document, regardless of format, which facilitates the
18 activities and the business carried out by the
19 Government and which is thereafter retained for a set
20 period to provide evidence of a transaction or decision
21 carried out by or on behalf of the Government. Records
22 may be created, received or maintained in hard copy or
23 electronically. Emails, SMS messages, tweets,
24 documents, sound recordings and videos may all be
25 records."

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1 A. Exactly so, yeah.

2 Q. -- of the various ministers and employees; yes?

3 A. Yes.

4 Q. It states that it's important to retain records relating
5 to the business of government.

6 A. Yes.

7 Q. And the business of government contains and creates
8 information which it records about the business of
9 government; is that right?

10 A. Yes.

11 Q. And this information includes records of not only
12 decisions but, as I think we've covered, actions taken
13 and the rationale behind those decisions?

14 A. Yes.

15 Q. As well as how those decisions were reached?

16 A. Yes.

17 Q. Thank you.

18 Could we then go to INQ000274180. Now, as
19 I understand it, this is one of the documents that you
20 were able to provide to us just in the last couple of
21 days. Is that right?

22 A. That's correct, that's the document -- well, it's
23 a snapshot of what was on our intranet site as guidance
24 for colleagues.

25 Q. Indeed, and I think as you told us earlier, this was

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1 The policy says that employees of the government
2 have to retain evidence of transactions or decisions
3 carried out "by or on behalf of ... Government"?

4 A. That's correct.

5 Q. Things done on behalf of government may include making
6 decisions, taking action, and the forming of a rationale
7 behind those decisions; is that correct?

8 A. That's correct.

9 Q. Would all of those things be deemed to be part of
10 transactions or decisions on behalf of the Scottish
11 Government?

12 A. They would all be considered relevant, yes.

13 Q. This policy does not mention WhatsApps or specifically
14 other electronic information, does it?

15 A. It talks about emails, SMS messages, tweets, so it's
16 drawing -- and I guess in October 2019 WhatsApp was
17 perhaps not as prevalent at that point as it
18 subsequently became, and I think by the time we get to
19 September 2020, so a year later, WhatsApp is then
20 included in this list.

21 Q. We'll get to that, Ms Fraser. But the important point
22 I think is that -- what I think we have tried to do is
23 cast the net as widely as possible, to cover all forms
24 of communication which may become prevalent in
25 the prac --

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1 text that was published on the Scottish Government
2 intranet, I think you called it Saltire?

3 A. Saltire we call it, yes.

4 Q. In April 2020, as guidance or a policy to assist with
5 working from home; is that right?

6 A. Yes, I wouldn't say it was policy. It's much more
7 up-to-the-minute guidance for people who are moving from
8 working in the office to moving to working at home. So
9 it is covering things like how to log on, what to do if
10 you can't get your password to work, all of the things
11 that people would have gone to maybe a person in the
12 office to deal with, and we were now explaining how you
13 can do that when everybody is working from home.

14 Q. So this was one of the events that I think you
15 contemplated earlier, where there is still the general
16 policy that we've discussed, but this was attempting to
17 try to deal with the particular circumstances that
18 prevailed at the time?

19 A. This is a lot of questions that are coming in to us,
20 quite understandably, and we're endeavouring to pull
21 lots of information together in a single useful place
22 where people can click on links and get that advice.

23 Q. If we go to page 8, please, it says under the blue
24 passage:

25 "Keeping in touch with colleagues and having social

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1 and business contacts during this time is vitally
2 important. Apps like Zoom, Slack and WhatsApp can be
3 downloaded on your SCOTS mobile, but must be used in a
4 responsible, professional manner. When using them
5 remember:

6 "- apps are for official info only

7 "- messages are only encrypted when in transit -- as
8 soon as they arrive on your device it depends on your
9 security settings

10 "- messages are subject to Freedom of Information
11 (FOI)

12 "-- messages should be transitory and not used as
13 the official record

14 "- messages should be deleted as soon as they are no
15 longer needed."

16 The guidance to Scottish Government officials
17 encourages the deletion of messages which might relate
18 to business, doesn't it?

19 **A.** It tells people, it's -- this is quite shorthand,
20 I would say, so when it says apps are for official
21 information only, that is actually referring,
22 for example, to our security settings. So nothing above
23 official level, so sensitive information or secret
24 information, for example, can be used.

25 It's pointing --

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1 of working, as a civil servant. Government cannot
2 operate unless civil servants are writing the relevant
3 information onto the corporate record, and it's
4 searchable, we can look at it when we're taking forward
5 policy, we can respond to queries and requests, scrutiny
6 in Parliament, Freedom of Information, for example, so
7 the whole way in which government works depends on civil
8 servants ensuring that information is on the record at
9 the earliest opportunity.

10 **Q.** Would this also apply to ministers, surely, as well?

11 **A.** Ministers are not subject to our Records Management
12 Policy, that is a matter for civil servants, so
13 ministers, for example, don't have access to our
14 electronic records management system directly, they
15 could not write information on to the record.

16 Ministers work with their private offices, and when
17 a minister comes into office, their private office
18 explains to them how decision-making, the transfer of
19 their views to other ministers or to stakeholders or to
20 policy officials will happen. That private office will
21 explain that if a minister has a meeting without
22 private office being present, for example, then that
23 information must be relayed to private office at the
24 earliest opportunity so that private office can, one,
25 act on it, and two, also record that for the record.

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1 **Q.** I was focusing slightly more on the final bullet point,
2 Ms Fraser.

3 **A.** Yes, but I think the second to last bullet point is
4 important as well. So they're -- they're transitory,
5 and they're not the official record, therefore you need
6 to write the relevant information into the official
7 record, which is what the Records Management Policy
8 requires you to do, and we are rightly pointing out to
9 colleagues that they are subject to Freedom of
10 Information as well.

11 **Q.** Is it clear here that matters require to be written into
12 the official record, as you said, before they are
13 deleted?

14 **A.** That is -- because we're talking about them being
15 transitory and not the official record, that implies to
16 me that therefore they must be written into the official
17 record if they're relevant to government business.

18 **Q.** Is your position that it is clear?

19 **A.** I think in the context of this, which is a section about
20 connecting with colleagues, yes, that is implied and
21 clear to experienced civil servants.

22 **Q.** The requirement to write it into the official record
23 comes from the first document we looked at, isn't that
24 right?

25 **A.** It comes from that document, but it comes from the way

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1 Because, again, what ministers are doing is of
2 fundamental importance and interest not just to
3 Government but to Parliament and to others who want to
4 scrutinise our activities.

5 **Q.** But these rules that we are looking at must also apply
6 to ministers by extension, is that not correct?

7 **A.** Ministers are required under the Ministerial Code to
8 work positively and productively with the civil service,
9 and they must -- it's clear in the Ministerial Code,
10 for example, that should they have meetings where civil
11 servants are not present, they must relay that to their
12 private office and -- you know, so that the relevant
13 actions can be taken, including the information recorded
14 to the record, and --

15 **Q.** Simply put, do these rules apply to ministers? The
16 reason I'm asking is because we have asked the Scottish
17 Government for its policies relating to the way in which
18 information requires to be retained --

19 **A.** Yes.

20 **Q.** -- for these purposes in its key decision-makers,
21 including ministers and senior advisers.

22 **A.** Indeed.

23 **Q.** So are there policies we have not seen that relate to
24 ministers?

25 **A.** No, there are not. It's -- what I'm trying to explain

24

1 is it's the civil servants who have the responsibility
 2 for record-keeping and not ministers directly.
 3 Ministers have a different set of responsibilities about
 4 how they work with their private offices, and their
 5 private offices have that very important responsibility
 6 for ensuring that the actions of their minister and the
 7 communications from their minister are then recorded in
 8 the record. So I'm just trying to draw that distinction
 9 between responsibilities.

10 **Q.** I understand. So if ministers were to refer to these
 11 policies as their understanding of the rules that
 12 pertained to them, would they be wrong?

13 **A.** They're not wrong, because they provide good, you know,
 14 guidance and advice, which ministers --

15 **Q.** But surely, Ms Fraser, not for them, you're telling me?

16 **A.** Not directly for them in relation to the retention of
 17 records on the corporate records system of the Scottish
 18 Government, but it provides good guidance and advice in
 19 terms of, for example, how you would treat WhatsApp
 20 messages on your private phone if they were relevant to
 21 government business.

22 **Q.** If I were a minister at the beginning of the pandemic,
 23 keen to know how I would comply with my obligations, if
 24 this policy doesn't apply to me, surely I wouldn't look
 25 at it?

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1 ministerial private office do that, working with their
 2 ministers.

3 Ministers would have been able to see the mobile
 4 messaging policy, it's not a secret policy. It's
 5 written from the perspective of civil servants because
 6 civil servants are the ones with the responsibility, but
 7 the good practice guidance would equally apply to
 8 ministers.

9 **Q.** Is the good practice guidance a different document that
 10 we haven't seen?

11 **A.** No, no, it's contained, not in this document that we
 12 have in front of us here, but in the mobile messaging
 13 policy in 2021.

14 **Q.** There were a number of press articles in 2023 when
 15 matters pertaining to retention of documents became
 16 a live issue being addressed by the Scottish Government
 17 where former ministers, including former Health Minister
 18 Alex Neil, suggested that when he was in office he
 19 frankly couldn't understand the policies as to document
 20 retention. Is it really surprising that ministers are
 21 in that position, given the fact that what you have told
 22 us is that these policies relate to civil servants and
 23 that there is some more general obligation, poorly
 24 defined it seems, relating to ministers?

25 **A.** I would say that the obligation on ministers is not

27

1 **A.** You would be made aware of the relevant aspects that --
 2 and as they do apply to ministers by your
 3 private office. So that's a responsibility of
 4 private office and then a responsibility of ministers to
 5 work well and productively, including the transfer of
 6 information to private office so that it can be retained
 7 on the record.

8 **Q.** Where can we see for ministers the obligations defined
 9 in this regard with this degree of specification from
 10 this period?

11 **A.** I'm sorry, I didn't quite ...

12 **Q.** Where can we see applying to ministers the guidance
 13 pertaining to their obligations about the retention of
 14 records with this degree of specification?

15 **A.** So this degree of specification would be well known and
 16 indeed was discussed with ministerial private offices,
 17 and ministerial private offices are then supported to be
 18 able to have the conversations and the discussions with
 19 their ministers about how they will then work.

20 There's of course a degree of personal preference
 21 about how ministers choose to work with the civil
 22 service and choose to work with their private office,
 23 but the fundamental points about ensuring that the
 24 relevant information is then transferred into email,
 25 into the records system, is the critical one, and

26

1 poorly defined, I think it is very clearly defined in
 2 the Ministerial Code that they have a responsibility and
 3 accountability to let their private office know at the
 4 earliest opportunity of meetings and discussions that
 5 they have that are relevant to government business, that
 6 where a civil servant is not present -- if a civil
 7 servant is present then it's the responsibility of the
 8 civil servant to take that note.

9 I think Mr Neil left office in 2016, so potentially
 10 arguably before WhatsApp, for example, became prevalent
 11 as a means of informal communication, but Mr Neil would
 12 at the time have had advice before 2016 about how to
 13 work with his private office and ensure that his
 14 meetings, decisions, views were then transferred into
 15 the record and were acted on by the civil service.

16 **Q.** You've said on a number of occasions that
 17 private offices would do things with regard to speaking
 18 to ministers about their obligations. Do you know that
 19 that is the case, that that happened?

20 **A.** I do know that that is the case, yes.

21 **Q.** It's your job, I think, to oversee that to a certain --

22 **A.** Ministerial private offices sit within my area of
 23 responsibility. So, for example, I know that as part of
 24 the induction process for new ministers after the
 25 May 2021 election, we specifically spoke to ministers

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1 about record -- well, handling data and information well
2 and looking after data securely, and that was part of
3 the induction process for ministers.

4 Fundamentally, and I think actually the Deputy First
5 Minister referred to this in part, if ministers
6 don't tell their private office about every aspect of
7 what they've done, nothing in government will happen.
8 Ministers may talk to each other or talk to
9 a stakeholder; if that's not relayed, then no action
10 will be taken by the civil service.

11 **Q.** What you're telling me is during the period with which
12 we are concerned, ministers were definitely told by
13 their private offices that they required to comply with
14 these policies as regards not only general documentation
15 and information, but the specific types of electronic
16 communications that we have mentioned here?

17 **A.** We would have said -- well, ministers would be aware of
18 the necessity of talking to their private office, as
19 I've said. The level of specification about WhatsApp
20 and the mobile messaging policy was something that was
21 developed towards the end of November 2021, so at that
22 point we would have been discussing that across our
23 organisation, and at that point private offices would be
24 aware of that and discussing it.

25 I think actually in my evidence pack I did see
29

1 you would agree, right, I'll tell my private office to
2 do X, Y or Z as a result of the conversation that we've
3 had, and that is the general way in which information
4 that is perhaps discussed between ministers would be
5 relayed to the civil service so that action could be
6 taken.

7 **LADY HALLETT:** But that may not record the rationale which
8 Mr Dawson got you to agree is one of the things that
9 ought to be recorded, that would just be recording the
10 actions to be taken as a result of our decision.

11 So in other words, things could get lost if the
12 ministers delete their WhatsApp messages without telling
13 private office everything that was discussed or send
14 it -- forwarding them to private office.

15 **A.** Mr Dawson was talking to me earlier about the process of
16 agreeing what's relevant government business here, so
17 ministers couldn't, for example, meet and -- you know,
18 without civil servants in the room, and say "We are
19 determining to set up a new grant scheme here, right,
20 I'll tell my private office, a new grant scheme will be
21 set up", impossible to do that, because there's a whole
22 set of other checks and balances about the expenditure
23 of public money, about the value for money test, about
24 accountable officer responsibilities.

25 So a minister would say "I've spoken to my
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1 an exchange between a private office and a minister
2 where they were discussing precisely this in, at the
3 beginning of January 2022. So that gives me again just
4 a second check that indeed this was being discussed.

5 **LADY HALLETT:** Ms Fraser, I'm afraid I'm not following. I'm
6 a minister and I'm talking to Mr Dawson, who's another
7 minister, in a WhatsApp message and no civil servant is
8 part of the group.

9 **A.** Yes.

10 **LADY HALLETT:** What am I or what is Mr Dawson told to do
11 with our WhatsApp messages? In clear terms, what are we
12 told? Are we told, in accordance with this policy --
13 that seems to be delete them when they're not needed, or
14 are we told to keep them, are we told to tell the civil
15 servants -- our private office about them?

16 What are we told? In clear terms.

17 **A.** Assuming that this is about government business?

18 **LADY HALLETT:** Yes.

19 **A.** Yes.

20 **LADY HALLETT:** Well, chances are if I'm a minister and
21 Mr Dawson is a minister it will be, isn't that right?
22 Unless we're talking about having a cup of tea,
23 I suppose, but ...

24 **A.** You could be having a cup of tea or it could be party
25 business. But assuming it's government business, then
30

1 colleague, we'd be interested in advice on setting up
2 a grant scheme that could do this, will you please get
3 me the relevant advice", and private office would then
4 say "Ministers have spoken, they're keen to do this, can
5 officials please provide the advice".

6 Now all of that then is part of the official systems
7 of the Scottish Government. That is generally handled
8 on email, that's where decisions and advice from
9 ministerial offices comes from, and then the civil
10 service will provide that advice and that is where the
11 decision then would be assessed and taken.

12 **LADY HALLETT:** I'll leave Mr Dawson to pursue that.

13 Can I just pursue one other question that I had in
14 relation to the passage we had highlighted:
15 "- apps are for official info only"

16 You said you thought it was clear to experienced
17 civil servants -- of course not all civil servants are
18 necessarily as experienced as you are -- but I confess
19 that I don't find these rules or principles clear. If
20 messages are subject to Freedom of Information requests,
21 my immediate instinct would be to say, "Well, if it's
22 going to be subject to an FOI then I've got to keep it",
23 yet the final passage says "messages should be deleted
24 as soon as they are no longer needed". That seems to
25 conflict with the fact that they need to be kept in case
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1 somebody, a representative of the media makes, say,
2 a Freedom of Information request. Is that clear?
3 I don't think that's clear.

4 **A.** This is a snapshot of a much longer document which
5 relates to a whole set of issues for people moving home
6 and working from home when they have been working
7 online, and this is a section about connecting with
8 colleagues, both personal colleagues and business
9 colleagues. The "apps are for official [information]
10 only" certainly says to me that's for nothing that is
11 sensitive, nothing that is secret, because those --
12 "official" is a recognised security marking within
13 government.

14 And because messages are transitory and are
15 therefore not part of the official record, that says to
16 me: therefore anything that's relevant must be on the
17 record and then you should be deleting that transitory
18 information as soon as it's no longer required, which is
19 also part of good practice.

20 **LADY HALLETT:** Sorry, I don't think you've addressed my
21 point, but, Mr Dawson, I'll leave it to you.

22 **MR DAWSON:** Thank you very much.

23 Ms Fraser, who monitors compliance with these
24 policies?

25 **A.** As I've explained, the responsibility sits with

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1 policies are being complied with if you know nothing of
2 the correspondence?

3 **A.** If the civil service knows nothing of the correspondence
4 then action will not be able to be taken within
5 government.

6 **Q.** Does that not create a very significant risk, Ms Fraser,
7 given that you've acknowledged that during the course of
8 the pandemic it was known from April 2020 that people
9 were going to be using these various new media of
10 communication, that people could well be corresponding
11 about the business of government and that not being
12 retained on the corporate record?

13 **A.** I think that what I would say here is that the --
14 you know, three things were happening, I think, here.
15 One, we were moving from most people face-to-face in the
16 office to the majority, the vast majority of people
17 working from home. At the same time we had access to
18 new technologies, I particular remember Zoom being
19 fundamental to the way that we were working in
20 government. And there were quite rightly questions
21 about how that would work.

22 I think the third thing is that the process of
23 producing information for this Inquiry, and indeed for
24 the Scottish Inquiry, has made us reflect on the way in
25 which these new digital records are being created. So

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1 directors. We have over 50 directors in the Scottish
2 Government, and they're responsible for ensuring the
3 compliance of their teams with these policies along with
4 a range of other policies. That is then annually
5 assured through a certificate of assurance process.

6 In addition to that, I chair an information
7 governance board of the Scottish Government and we look
8 across the piece at the issues that are emerging, at
9 where we need to make improvements and so on, and we
10 target the resources of government and our actions to
11 ensuring that we are making the necessary improvements.
12 So that's another form of assurance.

13 We also have the opportunity to bring in our
14 internal audit colleagues as well. So, for example, in
15 relation to material that we've provided for this
16 Inquiry, we've on two occasions asked our internal audit
17 colleagues to just check that the approach that we've
18 been taken looks to them to be sensible and in line with
19 the questions that the Inquiries have been giving to us,
20 and then we've been -- obviously acted on the
21 recommendations that have come back.

22 **Q.** How do these compliance bodies know if ministers and/or
23 civil servants are corresponding with each other by
24 WhatsApp, which of course happened during the course of
25 the pandemic, about government business, whether the

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1 I can see from the evidence that I've been referred to
2 in preparation for today that there's a great deal that,
3 you know, is informal, that is preparing for formal
4 meetings, which then I know will have appeared on the
5 record, but nonetheless we're creating a digital
6 footprint, a digital record where previously none,
7 I think, would have occurred before.

8 For that --

9 **Q.** Ms Fraser -- sorry.

10 **A.** For that reason, we are already looking at our Records
11 Management Policy and the way in which WhatsApp and
12 other social -- mobile messaging apps are handled within
13 our records management approach.

14 **Q.** Does this not mean, Ms Fraser -- it is encouraging to
15 hear that Scottish Government --

16 **A.** Yes.

17 **Q.** -- is taking action as a result of its experience with
18 this Inquiry. However, is it not the position that the
19 Scottish Government had no control over the use of these
20 messaging systems and the retention of any messages that
21 were sent via them involving ministers or civil servants
22 during the course of the pandemic?

23 **A.** I disagree, because it was necessary for government to
24 be able to function that information was being relayed
25 to civil servants and was then being handled through the

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1 formal systems of the Scottish Government, our email
2 principally, but records management and so on. No
3 action, no activity of government could happen without
4 that.

5 And at the same point we were ensuring that those
6 records were being added to the record so that we could
7 understand the steps that we had taken during the
8 pandemic, we could be held to account in particle in
9 live time, and we were also then from very early on
10 aware that there was likely to be public inquiries and
11 that we should be preparing for those.

12 So that is why we've got very significant amounts of
13 information that we have been able to provide to
14 the Inquiry, I think more than 19,000 documents of that
15 sort, and that is the very fundamentals of government,
16 those are the decisions and how they were reached, and
17 you can see all of that set out in those records.

18 What I've seen in the WhatsApps exchanges that I've
19 been pointed to is colleagues preparing for those
20 exchanges and then information potentially duplicated on
21 WhatsApp but then clearly going into formal records and
22 on to email, for example.

23 So I wasn't at the time conscious that this was
24 a problem, and believe that we have been able to and we
25 do have a comprehensive record.

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1 **A.** For government business which ministers might want to
2 conduct on a personal phone, the only way that could
3 happen is by installing a secure app on their phone. At
4 the time it was a mobile BlackBerry app that they were
5 using and that enabled them to receive emails to their
6 secure government account on a personal phone. So that
7 was available, I think, until March 2023 as one option
8 for ministers: rather than taking a government phone,
9 they could install this secure app on their personal
10 phone and use that mechanism.

11 **Q.** Would an exchange between a senior minister and
12 a political adviser in September 2020 relating to the
13 number of people who should in Scotland be permitted to
14 attend weddings or funerals fall within the definition
15 of government business?

16 **A.** It would.

17 **Q.** Should that have been retained on the corporate record?

18 **A.** Not necessarily that artefact, but a decision like that,
19 that would have been discussed through our formal
20 processes, so you would see email exchanges on that, you
21 would see evidence and advice on that.

22 The exchange, I think, between Ms Sturgeon and her
23 chief of staff would be -- I wasn't part of that
24 conversation obviously, but it would be for them to
25 explain. But it would be an adjunct to that formal

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1 However, I think that this has shone a spotlight on
2 a really important issue to do with, you know, what
3 these WhatsApp exchanges convey and what that means in
4 terms of the records that government might look to keep
5 in the future, and that's the area that we want to look
6 at now in our review.

7 **Q.** Ministers and civil servants were permitted by the
8 Scottish Government to use these messaging platforms to
9 speak about government business during the course of the
10 pandemic; is that not correct?

11 **A.** That is correct, up to a certain level of security.,
12 yes.

13 **Q.** They were allowed, for example, to use their own mobile
14 phones for that purpose?

15 **A.** Ministers on some occasions chose to use their own
16 mobile phones if they were dealing with --

17 **Q.** I've asked whether they were permitted to do so.

18 **A.** They were permitted to, ministers were permitted to.

19 **Q.** Does it not mean, in these circumstances that, as you've
20 said, none of these issues have arisen during the course
21 of the pandemic for the various compliance bodies that
22 you've mentioned, is it not inevitable that that would
23 be the case when people are using apps, using personal
24 phones over which the government can have no possible
25 control?

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1 process.

2 **Q.** We received in response to a request made of the
3 Covid Inquiries Response Directorate a very helpful
4 table, if I may say so, on 13 October 2023, which
5 I referred to at the third preliminary hearing.

6 The table is to be found at INQ000319509.

7 In that table, your staff, I think, provided us with
8 summaries of the position of a number of senior
9 ministers who were involved in key decision-making
10 during the course of the pandemic, on a number of
11 issues, including their retention of notebooks and
12 things like that, but also in relation to the extent to
13 which they had used or had retained messages relating to
14 the pandemic and how it had been managed.

15 In the summary table that we see here, we can see
16 that under the box "Nicola Sturgeon" it says that:

17 "Messages were not retained, they were deleted in
18 routine tidying up of inboxes or [changes] of phones ...
19 Unable to retrieve messages."

20 So what that tends to suggest is that at a time
21 a request was made, Nicola Sturgeon, the former
22 First Minister of Scotland, had retained no messages
23 whatsoever in connection with her management of the
24 pandemic. Is that correct?

25 **A.** That's what that indicates to me.

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- 1 Q. And when we asked the government whether it had retained
2 any such messages on its corporate record, you provided
3 us with none.
- 4 A. Correct.
- 5 Q. Does that mean that we have no access to the former
6 First Minister of Scotland's messages in connection with
7 her management of the pandemic?
- 8 A. The way in which, I mean, Ms Sturgeon will be able to
9 explain this much better than me --
- 10 Q. I think that's just a matter of logic, Ms Fraser, which
11 I'm asking you to help us with.
- 12 A. Yes. Ms Sturgeon would have worked with her
13 private office in order to ensure that her views and
14 instructions were clearly understood, and they may well
15 have been informed by some of the exchanges that she'd
16 had with her chief of staff or with other ministers, but
17 she would have relayed that to her private office and
18 that would be then the instruction that went from
19 private office and that would be retained --
- 20 Q. Do you know that to have happened?
- 21 A. That is how -- as I say, that's how government works.
22 It's a necessity, for that information to be captured.
- 23 Q. So is the answer to the question do you know that to
24 have happened, no?
- 25 A. It's hard for me to give absolutes in relation to

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- 1 Q. That's not the question.
- 2 A. -- devices. How ministers and private offices chose to
3 manage that on a day-to-day basis would be a matter for
4 them, so it may be that Mr Swinney spoke on a daily
5 basis and explained what he wanted from his
6 private office and then ensured that information was
7 deleted thereafter so that he was able to manage what
8 would quickly, I suppose, become unmanageable amounts of
9 information.
- 10 How ministers work with the private office I think
11 is the critical area.
- 12 Q. You mentioned a moment ago, I think on a few occasions,
13 that it was the responsibility of the directors to
14 ensure compliance; is that right?
- 15 A. Yes.
- 16 Q. And what ultimately that meant was compliance by both
17 ministers and civil servants, although they worked
18 directly with the civil servants who were making sure
19 that the ministers did it; is that correct?
- 20 A. Yeah, so minist -- yes, directors are responsible for
21 ensuring that their teams are absolutely maintaining our
22 corporate policies and approaches, including on records
23 management. That includes the director for ministerial
24 private offices, who would have been ensuring that this
25 was working well through the pandemic.

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- 1 a general question.
- 2 Q. It's just about your own knowledge, Ms Fraser, do you
3 know that to have happened or not?
- 4 A. Well, my experience is that we've been able to find the
5 relevant information and to demonstrate how those
6 decisions were made and to evidence that through emails
7 and other exchanges on our corporate records system.
- 8 Q. But if you don't have access to Ms Sturgeon's messages,
9 and she doesn't have access to them any more, how can
10 you know whether the relevant information has been
11 transposed on to the corporate record? How can you give
12 the answer you've just given?
- 13 A. I can't, no, not having seen all of the information.
- 14 Q. Could I just refer you very briefly to page 2 in
15 connection with the former Deputy First Minister. His
16 position was that:
- 17 "Messages would have been deleted by auto-delete
18 functions or by themselves manually deleting them as
19 they do on a regular basis."
- 20 So the former Deputy First Minister's position
21 appears to be that he had messages set up on
22 an auto-delete function. Was that something that was
23 permitted?
- 24 A. The use of WhatsApp was permitted on Scottish
25 Government --

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- 1 Q. Would it surprise you if it were the case that
2 a director general had encouraged people in a group
3 relating to the management of the pandemic to delete
4 their messages?
- 5 A. I would be surprised if they encouraged them to delete
6 without ensuring that relevant information was retained.
7 I know that some --
- 8 Q. (inaudible)
- 9 A. I know that some WhatsApp exchanges tipped into what
10 I would call banter and, you know, on some instances,
11 I think, personal support for colleagues as well. Now,
12 that I would argue is not relevant for the corporate
13 record of the Scottish Government and, therefore, would
14 not be something that should be retained, and I would
15 expect colleagues to remind people of that as well.
- 16 Q. To follow up on a question that her Ladyship asked
17 earlier, if that material was deemed discoverable by
18 a Freedom of Information request, would it automatically
19 require to be kept on the corporate record?
- 20 A. The matters for the corporate record are the ones that
21 are relevant to government business and the who, what,
22 why, when, how, where. The Freedom of Information
23 requirements do not include what they call ephemeral
24 information, so --
- 25 Q. But on the assumption that it were covered by the FOI

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1 requirements, would that mean that it would require to
 2 be transposed onto the corporate record and, therefore,
 3 not deleted?

4 **A.** We are required to produce anything that we hold, any
 5 information that we hold under the Freedom of
 6 Information response and therefore were, for example,
 7 somebody to ask for all WhatsApps messages pertaining to
 8 a decision on X, then were they held, then those would
 9 be discoverable under Freedom of Information.

10 Now, not all of that information -- if, for example,
 11 it was about the football last night -- would be
 12 relevant and therefore ought to be recorded on the
 13 government records system.

14 **Q.** Does the Scottish Government place any automatic back-up
 15 on government-issued phones?

16 **A.** We automatically back up and indeed sync from our
 17 government systems. So we have a set of government
 18 systems called SCOTS, and whether those are on your
 19 mobile or on your laptop, they will automatically be
 20 backed up for a certain amount of time.

21 **Q.** Was that the case during the course of the pandemic?

22 **A.** Yes.

23 **Q.** For people who used their personal phones for
 24 communications relating to government business, is there
 25 any similar system?

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1 they lost messages as a result of that upgrade.

2 **Q.** That's three individuals in a list of people that this
 3 Inquiry was interested in contacting for their
 4 involvement in decision-making in this pandemic.

5 **A.** Yes.

6 **Q.** There will have been a lot of other individuals but not
 7 people that related to our interest.

8 **A.** Yes, the guidance that people had very clearly alerted
 9 them to the fact that if they had non-government systems
 10 or apps on their phone they would need to back those up
 11 separately, that was, I think, number one instruction --

12 **Q.** The instructions came from you in that regard, I think,
 13 didn't they?

14 **A.** The instructions, yes, came from my digital team, so
 15 we -- yes, we provided training, we provided, again,
 16 Saltire articles and advice, and we sent emails to every
 17 single person affected to explain to them the process
 18 and what they needed to do, step by step.

19 **Q.** Did you ensure that the information that was given was
 20 complied with?

21 **A.** As far as we were able to do, yes. Again, working with
 22 a large number of officials we rely on directors to
 23 ensure that their teams are aware and complying.

24 **Q.** Could I just ask you one final question, Ms Fraser: in
 25 all the circumstances that we have discussed, would you

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1 **A.** Yes, if, for example, ministers were using the secure
 2 app in order to be able to receive emails, then that
 3 would be covered by the back-up system --

4 **Q.** Would WhatsApp message on a personal phone be
 5 automatically backed up to the system?

6 **A.** No, they would not. That would depend on the settings
 7 that the individual put in place.

8 **Q.** Would anything other than the emails on the secure
 9 system that you've just mentioned be backed up to the
 10 secure system?

11 **A.** No, we would not back up information on ministers'
 12 private devices other than the information on the secure
 13 app.

14 **Q.** I understand that between December 2022 and
 15 September 2023 the Scottish Government carried out
 16 an upgrade of its corporate mobile phones; is that
 17 correct?

18 **A.** It is.

19 **Q.** And you've helpfully provided us with a statement in
 20 relation to that.

21 **A.** I have, yes.

22 **Q.** Is the result of that that the messages contained on the
 23 phones of a number of individuals were wiped,
 24 effectively, from their systems?

25 **A.** Yes, I understand that three individuals have said that

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1 accept that the Scottish Government's document retention
 2 policies were simply not fit for purpose during the
 3 course of the Covid-19 pandemic?

4 **A.** I wouldn't accept that they were not fit for purpose
 5 during the pandemic, and I think that's evidenced by the
 6 sheer number of documents that we've been able to
 7 provide and the end-to-end story that that sets out.

8 I would accept, and I think this is very much
 9 learning and understanding, the hurt and frustration
 10 that there has been, as well, of not being able to
 11 receive all the WhatsApp messages, for example, that we
 12 therefore do need to look again at this new, you know,
 13 digital trail that is being left by informal messaging
 14 and to consider what that means for the good operation
 15 of record management within government, and I'd be very
 16 happy to keep the Inquiry updated on that work, if that
 17 would be helpful.

18 **Q.** Thank you very much.

19 In the finest tradition, my Lady, having said that's
 20 the last question, there is one matter I'll return to.
 21 It was on the issue of the records that had been
 22 provided with the first corporate statement. The first
 23 Director General Corporate statement which was provided
 24 by Ms Fraser disclosed one version of the Records
 25 Management Plan, which was undated, the November 2021

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1 messaging apps usage policy to which we referred. The
 2 plan was an operational document and did not set out the
 3 policy itself. Further requests were made by a further
 4 Rule 9 request, which again resulted in a further Rule 9
 5 response from Ms Fraser. The October 2019 Scottish
 6 Government Records Management Policy, which is the main
 7 policy that we have been looking at, was only disclosed
 8 to the Inquiry on 11 October 2023.

9 Is that your understanding, Ms Fraser, or are you
 10 prepared to take from me that that's the case?

11 **A.** I'm sure you've investigated that, thank you. If we've
 12 got any other information on that, we'll of course come
 13 back to you --

14 **Q.** I think the key point about that, as her Ladyship said
 15 earlier, was that if this was the obvious policy one
 16 could quite obviously have reached for it and provided
 17 it to us, along with the November 2021 policy, with the
 18 first Corporate statement; is that not right?

19 **A.** Yes, I think I would like to consult my team and just
 20 check on that point, thank you.

21 **MR DAWSON:** My Lady, I understand that there is one
 22 core participant question.

23 **LADY HALLETT:** There is.

24 **MR DAWSON:** Ms Mitchell.

25 **LADY HALLETT:** Ms Mitchell.

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1 ministers referred publicly to "the UK" or "this
 2 country" or "Britain" when they were actually meaning
 3 England, "England as the UK", I believe, was a phrase
 4 which was used.

5 What I would like to know from you, Ms Fraser, was:
 6 was there any need for a correction of the
 7 UK Government's public health messaging that you were
 8 aware of, and was there any discussion within that, and
 9 any action taken?

10 **A.** I don't have here information about whether there was
 11 a particular instance, but I know that there were
 12 regular weekly meetings between my own communication and
 13 marketing colleagues and their counterparts in the UK,
 14 and a great deal of time and effort was spent on trying
 15 to ensure that there were not contradictory or
 16 misleading messages applied through those -- through
 17 communications and marketing activity.

18 I think, for example, we had in place the FACTS
 19 messaging from -- I think with stakeholders from late
 20 May 2020 and then in use generally in June 2020, and
 21 "Hands, Face, Space" from the UK Government was then
 22 something that they launched later that summer, is my
 23 understanding.

24 Now, clearly we had traction and awareness and
 25 understanding, and employers and other institutions were

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Questions from MS MITCHELL KC

1 **MS MITCHELL:** I'm obliged, my Lady. There is also a Rule 10
 2 application which was made which has been sent to
 3 the Inquiry, so perhaps if I'm asking my first question
 4 they might have a look at that. It was simply arising
 5 from something that was said, my Lady.

6 **LADY HALLETT:** Okay, if somebody could send that to me,
 7 thank you.

8 **MS MITCHELL:** I understand from my junior it's been sent
 9 off.

10 **LADY HALLETT:** I've got shaking heads, but anyway.

11 **MS MITCHELL:** A little. Well, my Lady ...

12 I'm obliged to my learned friend Counsel to the
 13 Inquiry for asking many of the questions which the
 14 Scottish Covid Bereaved were interested in asking.

15 I want to move to a slightly separate issue just
 16 now, and that is the response in relation to public
 17 messaging.

18 You've given us a full statement in relation to
 19 public messaging, but I only have a very narrow issue to
 20 ask you about, and it's this: the UK Government in
 21 an earlier part of the module, Module 2, it was shown
 22 that there were a number of messages which were wrong
 23 that were given publicly, and by that I mean that either
 24 identified the wrong place to which they applied because
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1 bought into and using the FACTS messaging, so there we
 2 worked with the UK Government to try to ensure that
 3 there wasn't confusion by overlaying a separate set of
 4 messages to a population who were already, we were
 5 observing, working very hard in order to comply with
 6 these protective behaviours.

7 **Q.** So I see you understand that detail, but my specific
 8 question related to the difficulty of the problems that
 9 was being evidenced by the UK Government being unable to
 10 distinguish between these on occasions. Do you
 11 personally have any understanding of whether or not that
 12 was addressed by your team?

13 **A.** My team did have regular discussions, for example, about
 14 communities living in the borders, you know, who were,
 15 for example, receiving perhaps, you know, contradictory
 16 information or difficult to understand information
 17 about, for example, train journeys that might cross the
 18 border. So there the teams were working together to try
 19 to ensure that as far as possible we were giving clear,
 20 consistent, actionable advice to people who were keen to
 21 respond properly.

22 **Q.** But I might just press you --

23 **A.** Yes.

24 **Q.** -- focus, in relation to the problem that was identified
 25 of the UK Government getting that message wrong, are you

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1 aware specifically of anything of that nature?
 2 **A.** I would need to check with my teams whether there were
 3 specific examples. I know that generally the position
 4 improved over the course of the pandemic, so it was more
 5 problematic at the outset. I think, for example, the
 6 change from "Stay at Home" message was something that we
 7 were unaware was going to change to "Stay Alert", and
 8 that caused a problem at the outset.
 9 **Q.** Yes, I think the Inquiry is aware of that.
 10 **A.** Okay.
 11 **Q.** So I don't need any further information in that regard.
 12 My Lady, I don't know whether or not --
 13 **LADY HALLETT:** I think the question has landed.
 14 Mr Dawson, you're going to tell me ...
 15 **MR DAWSON:** The position is, I think, although we're very
 16 grateful to Ms Mitchell, the subject has been covered in
 17 the questions we've already put to Ms Fraser and her
 18 extensive statements on the matter.
 19 **LADY HALLETT:** What is the question?
 20 **MR DAWSON:** The question pertains to the deletion policy and
 21 whether it's -- the question is:
 22 "I would like to ask what the rationale was for
 23 deletion given the FOI obligation."
 24 Which I think is --
 25 **LADY HALLETT:** The matter I was pursuing?
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1 and then deleted at the earliest opportunity.
 2 **Q.** And we touched briefly on the issue of FOIs. If, when
 3 someone asks you to show them the retained information
 4 you have --
 5 **A.** Yes.
 6 **Q.** -- it's only relevant at that particular time, so if
 7 it's deleted you don't have that obligation, but you do
 8 have an obligation to do something, to tell them either
 9 when it was deleted or to explain your policy; is that
 10 correct?
 11 **A.** We have a -- yes, we have a general responsibility
 12 actually under the Public Records Act to explain what
 13 our retention and deletion policies are.
 14 **Q.** So prior to 2021, before the addendum came up, how were
 15 people able to know what that policy was?
 16 **A.** So under the Records Management Act, it's clear what the
 17 document retention policies are that we agree with the
 18 Keeper of the Records of Scotland. In relation to
 19 WhatsApp messaging, we would be first of all saying to
 20 people "If it's relevant to government business, get it
 21 on to the government record", that's the number one
 22 thing, because we can't search easily --
 23 **Q.** I understand the issue, what I'm saying is --
 24 **A.** "Once it's on the record, then for security, data
 25 privacy and a whole set of other reasons, please don't
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1 **MR DAWSON:** Indeed. Which I think has been covered as far
 2 as I'm concerned.
 3 **LADY HALLETT:** You've got a minute, Ms Mitchell.
 4 **MS MITCHELL:** Okay.
 5 The question is this: what's the rationale for the
 6 deletion of records when it would seem eminently
 7 sensible simply to hold on to those records in case
 8 someone FOIs you?
 9 **A.** Indeed. We can't physically retain everything --
 10 **Q.** No, I'm talking about individuals on their WhatsApps or
 11 other text messages.
 12 **A.** Yeah. So we're concerned about security. So different
 13 messaging systems can have different vulnerabilities,
 14 and obviously government ministers or civil servants
 15 need to reduce the vulnerabilities if on phones that are
 16 being used for government business.
 17 **Q.** And --
 18 **A.** We're also concerned that if, for example, there are
 19 long WhatsApp exchanges that might contain personal
 20 information, sensitive information about individuals
 21 that would be covered, for example, by the GDPR data
 22 privacy, that those should not be retained. We
 23 shouldn't -- government shouldn't be holding information
 24 that is not relevant to government business and
 25 therefore that should be reviewed, got on to the record
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1 retain information for longer than it's required."
 2 **Q.** But if you have to give an explanation for why such
 3 a policy is in place, for deletion or the fact that it's
 4 been deleted, we don't actually have one directly in
 5 relation to ministers?
 6 **A.** Ministers don't have the responsibility directly to
 7 write information onto the corporate record. That is
 8 the responsibility of civil servants.
 9 **MS MITCHELL:** I think I've taken enough of my Lady's minute.
 10 **LADY HALLETT:** Thank you, Ms Mitchell. In fact the email
 11 was sent to the M2 inbox, not the M2A, that's why it
 12 took a while to track it down.
 13 **MS MITCHELL:** I apologise.
 14 **LADY HALLETT:** Not your fault. I mention it so it doesn't
 15 happen again.
 16 **MS MITCHELL:** Thank you.
 17 **LADY HALLETT:** 11.30.
 18 **MR DAWSON:** Thank you very much.
 19 **LADY HALLETT:** Thank you very much indeed, Ms Fraser.
 20 **THE WITNESS:** Thank you.
 21 (The witness withdrew)
 22 (11.16 am)
 23 (A short break)
 24 (11.30 am)
 25 **LADY HALLETT:** Mr Dawson.
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1 **MR DAWSON:** The next witness, my Lady, is Mr Kenneth Thomson
2 CB.

3 **MR KENNETH THOMSON (affirmed)**

4 **Questions from LEAD COUNSEL TO THE INQUIRY for MODULE 2A**

5 **MR DAWSON:** You are Kenneth Thomson?

6 **A.** Correct.

7 **Q.** Could you please try to speak into the microphone,
8 Mr Thomson, as best you can.

9 You have provided, I think, a number of witness
10 statements to the Inquiry, for which we're very
11 grateful. The position in your regard is slightly
12 complicated in that I think there were some statements
13 which you had some responsibility for compiling but were
14 actually signed off and finalised by others subsequent
15 to you leaving post; is that correct?

16 **A.** I saw those -- they were compiled by others on behalf of
17 the Director General. I saw some of that material
18 before I left post but, as you I think are saying, some
19 of it was signed and submitted to the Inquiry by my
20 successor.

21 **Q.** Yes, let's try to go through and -- just to be
22 absolutely clear which ones you're responsible for and
23 which ones you've had involvement with.

24 There is a witness statement from you dated
25 9 November 2023 under reference INQ000343888. That's

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1 not responsible for, Mr Thomson.

2 The first was a supplemental statement dated
3 26 October 2023. It's INQ000348720. This statement --
4 you may recall this one, I think that you did have
5 an involvement with it -- was a supplemental statement
6 of that date relating to Covid-specific structures of
7 the Scottish Government such as SGoRR, the Covid
8 directors and the four harms group.

9 That was one I think that was compiled by you,
10 possibly, but then signed by your successor, Mr Griffin,
11 is that correct?

12 **A.** It was seen by me and provided in draft, as paragraph 1
13 confirms.

14 **Q.** Thank you very much. And the second statement, similar
15 to that, was INQ000339039, a statement dated
16 1 November 2023.

17 **A.** That's not the statement --

18 **Q.** No, that' (inaudible) I'm afraid. There was a second
19 statement, we'll come back to that.

20 I understand also that two further statements were
21 provided on behalf of the directorate general with which
22 you were previously associated. These were provided by
23 your successor, the first dated 5 November 2023,
24 INQ000366267.

25 **A.** I have a different number in front of me. Yes, I now

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1 your statement?

2 **A.** It is.

3 **Q.** You've provided a number of other corporate witness
4 statements, as you were at the time the
5 Director-General for Strategy and External Affairs for
6 our module. One was dated 22 June of this year,
7 INQ000215495, and a further statement dated 23 June,
8 INQ000216655. These are also statements that were
9 compiled and signed by you?

10 **A.** Yes, they were.

11 **Q.** Do the contents of these statements remain true and
12 accurate as far as you're concerned?

13 **A.** They do.

14 **Q.** Just to clarify, my Lady, the two corporate statements
15 covered slightly different areas which fell within the
16 area of responsibility of Mr Thomson at the time.

17 A further four witness statements have also been
18 provided by, I think, the Director-General for Strategy
19 and External Affairs. We understand you're familiar
20 with two of these statements as you provided them in
21 draft prior to leaving post; is that correct?

22 **A.** I would need to see them to know which ones I saw --

23 **Q.** Let's just run through them, I don't want to --

24 **A.** Yeah, go on, go through them --

25 **Q.** I don't want to be asking questions about ones you're

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1 have 267 before me.

2 **Q.** Yes. Have you seen that statement at least?

3 **A.** That one I think was prepared without my involvement.

4 **Q.** Right. And a further statement dated INQ000362632.
5 This is one dated 6 December providing a correction to
6 the previous one. I think, again, that was provided by
7 your successor. Did you have any involvement in that
8 one?

9 **A.** No, that's highly unlikely.

10 **Q.** Thank you very much. We'll just return to the other
11 number in a moment but deal with your personal
12 background.

13 You initially joined the civil service, as

14 I understand it, in October 1988, is that --

15 **A.** Correct.

16 **Q.** Since late 2011 you held the role as Director-General
17 Constitution and External Affairs, which as I understand
18 it was renamed Strategy and External Affairs in
19 February 2022?

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

21 **Q.** I'll refer to the -- could you just tell us, that's
22 a directorate family, is that correct? It's a term we
23 heard from Professor Cairney yesterday. Is that
24 a directorate family and could you tell us what that is?

25 **A.** It's a family of directorates. So, as Professor Cairney

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1 said, the Scottish Government structure is a number of
2 directorates supporting portfolios -- mapping isn't
3 quite one to one -- and directors, leading directorates,
4 are managed by a director-general, and
5 a director-general's span of command is informally known
6 as a family.

7 **Q.** Right, so you were in charge of a directorate-general
8 and under you will be have been, at different times,
9 a different constellation of directorates?

10 **A.** Yes.

11 **Q.** Thank you.

12 In your work I understand that you supported the
13 First Minister, Deputy First Minister and Cabinet
14 including on cross-governmental work?

15 **A.** I had two broad areas of support to ministers. The
16 first was what you've just summarised, the second was
17 support to a portfolio Cabinet Secretary in relation to
18 a number of different matters, which changed over the
19 period of the Inquiry, but that's probably less
20 relevant.

21 **Q.** Yes, but your responsibility included those matters that
22 I mentioned?

23 **A.** Yes, it did.

24 **Q.** You explain helpfully in your statement ending 343888 at
25 paragraph 6 that this role is analogous to the role of

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1 transparency and accountability; is that not correct?

2 **A.** It is correct.

3 **Q.** These are important documents which lay out principles
4 with regard to the way in which Scottish Government
5 aspires to conduct its business, and these principles
6 apply both to ministers and to civil servants, as you
7 used to be.

8 **A.** Indeed.

9 **Q.** There are a number of documents, I think, that reiterate
10 the commitment to these principles which emanated by
11 means of guidance to the way in which decision-making
12 would be made in the pandemic, for example the framework
13 relating to the four harms strategy from April 2020?

14 **A.** That's correct.

15 **Q.** Indeed, during the course of the pandemic the Scottish
16 Government's public communications strategy was also
17 consistently said to be based on openness, honesty and
18 accountability; is that correct?

19 **A.** Correct.

20 **Q.** We've heard evidence from the current
21 Director-General of Corporate, Ms Fraser, about the
22 government's document retention policies and the
23 importance of keeping records. What is your
24 understanding of the Scottish Government's policy on the
25 use and retention of informal messaging such as

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1 the Cabinet within the UK Government; is that a fair
2 description?

3 **A.** It's broadly fair, it's the best way I have of
4 describing what my role is, but it's not exactly the
5 same. The principal difference is that the
6 Cabinet Office is co-ordinating actions across separate
7 government departments, whereas I and my teams were
8 co-ordinating action within one organisation working
9 across directors, as you've described earlier.

10 **Q.** Thank you.

11 You retired from the civil service in November 2023.

12 **A.** That's correct.

13 **Q.** And I understand that you were awarded the Companion of
14 the Order of the Bath in the most recent New Year's
15 Honours List; is that --

16 **A.** Also correct.

17 **Q.** I'd like to ask you some questions about the subject
18 which we've just been covering with one of your former
19 colleagues, Ms Fraser, which is to do with document
20 retention policy. We heard evidence yesterday about
21 a number of important framework documents which set out
22 the principles which are designed to guide
23 decision-making within the Scottish Government,
24 including the National Performance Framework. These
25 documents include, amongst other things, a commitment to

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1 WhatsApps as at the period with which we're interested,
2 from 2020 to the end of the pandemic in April 2022?

3 **A.** So I think this will be a longer answer than my answers
4 so far. So at the period of the pandemic and the
5 requirement to stay at home, our use of electronic
6 messaging grew very rapidly, for obvious reasons, and at
7 the early part of that period we had a number of
8 corporate tools to make that possible.

9 From memory, the main one was Skype at the time,
10 later replaced by Teams. But in order to co-ordinate
11 the work that we were doing, there was also a need to
12 contact people rapidly, using, for example, messages
13 that would show up on their phone if they were away from
14 their -- where they were working at home and so on. So
15 we used a number of different -- people would use
16 a number of different tools to contact each other.

17 Coming to records management, the key principle
18 there is to create and maintain the formal record of
19 government decisions, what decision was taken, by whom,
20 when and on what evidence. In my experience, corporate
21 decisions were taken in the formal Scottish Government
22 systems, including their IT system, so principally that
23 would be the SCOTS email system, and my understanding of
24 the use of -- or my practice in the use of informal
25 messaging would be, as I describe in my witness

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1 statement, to contact or be contacted by others in order
2 to, you know, share an important piece of information
3 that had just become known or to say "I've sent you
4 something by email, you need to look at it right now" or
5 "The First Minister wants to you at St Andrew's House in
6 two hours' time" or -- messages of that sort, that
7 needed to get into my attention rapidly.

8 **Q.** Okay.

9 **A.** Where -- so most of these messages didn't contain
10 material that would be relevant -- you know, a "salient
11 fact" I think is the way it's captured in the relevant
12 policies. But where there was a salient fact relating
13 to government business or pertaining to a decision that
14 was in contemplation, it would be my practice to
15 transfer that into the corporate systems usually by
16 sending an email within the Scottish Government system
17 saying "The First Minister has asked for additional
18 advice on subject X" or something of that sort, and then
19 having done that I would not retain material relating to
20 government business in non-government systems.

21 Again, as later confirmed in the mobile messaging
22 policy, you know, the instruction to us was to transfer
23 salient points and then to delete the messages. So
24 that's what I did.

25 **LADY HALLETT:** You're very softly spoken, I don't know if
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1 was?

2 **A.** Yes, you're always thinking as a civil servant: what are
3 the decisions under contemplation here? What is the
4 evidence that would go into the public record that that
5 decision was taken by whom? And so on.

6 So if I use as an example, some of the decisions
7 taken by governments, plural, in the course of COBR
8 meetings in March were taken very rapidly, and part of
9 your mind as a supporting official is thinking:
10 a decision in that corporate discussion was taken, it
11 was taken by my First Minister, I need to capture that,
12 I need to make sure that is part of the formal record.

13 So that's what you're doing. In ordinary times most
14 of that is happening routinely -- solely in corporate
15 systems, you don't need to send anybody informal
16 messages about it. But where there are messages which
17 say, for example -- a realistic example would be the
18 First Minister saying -- she might message me to say
19 "We're having a meeting in two hours' time, I need
20 additional briefing on such and such", and if I couldn't
21 provide that to her myself directly immediately, then
22 I would transfer that into the formal system to say,
23 "The First Minister needs briefing on such and such" --
24 now that's not actually our -- that's doesn't --
25 evidence of decision, because there's no decision in
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1 you always were, but if you would speak up a bit more
2 I'd be very grateful.

3 **A.** I'll do my best.

4 **LADY HALLETT:** Thank you.

5 **MR DAWSON:** Just for the sake of clarity, Mr Thomson,
6 I think you may be referring to the paragraph in the
7 November 2021 mobile messaging apps usage policy, about
8 which we've heard a little, where there is stated an
9 obligation at least monthly, but preferably at the
10 earliest opportunity, you must transcribe the salient
11 points of any business discussions and/or decisions.
12 Was that your understanding of the position?

13 **A.** Yes, as the date shows, that policy post-dates the start
14 of lockdown and the work I was doing, but that was my
15 understanding of the application of the Records
16 Management Policy to informal messaging platforms at the
17 time. And indeed is -- you know, has been my practice
18 for many years.

19 **Q.** Yes, so that may have used a particular form of wording
20 but effectively that had been your understanding of the
21 obligation throughout this period?

22 **A.** Yes.

23 **Q.** You use the phrase "salient facts", which might be
24 interpreted slightly differently from that wording, but
25 that wording is what you always thought the obligation
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1 that, but that was my practice, it's the -- always
2 thinking: what do I need to transfer into the formal
3 system?

4 **Q.** I think you talked in your description about the
5 importance of understanding not just the decision but
6 "on what evidence" were the words that you used. I'd
7 just like to clarify what you mean by that.

8 Would you agree with me that that would require the
9 corporate record to contain information relating to the
10 way in which decisions had been taken, by whom they had
11 been taken, the advice that had been tendered and
12 accepted or not accepted, and any discussion which
13 contained information of that nature?

14 **A.** Yes. The gold standard for this is a decision by
15 Cabinet, and it will always be clear, and I believe it
16 is clear from the materials in front of you, that
17 Cabinet would receive a paper which would set out in
18 a lot of detail the evidence, the options, the
19 consideration, the advice, the recommendations, and
20 then, continuing the chain of evidence, as it were, the
21 Cabinet conclusions will set out what decision ministers
22 took and give an account, not a verbatim account but
23 an account of the discussion which had led to those
24 decisions.

25 So when things moved at pace, in such a way that
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1 even on the very intense pace that we were working with
 2 Cabinet at that time, a decision was being taken away
 3 from Cabinet more rapidly, you would want to capture
 4 that same set of evidence. So, for example, just after
 5 the May 2021 election, before the -- the First Minister
 6 was still the First Minister, because there is always
 7 a First Minister, but she had not yet been nominated by
 8 the particle for reappointment, and at that point we had
 9 an emergency within an emergency because the -- we had
 10 information coming from the scientific advisers about
 11 a new variant, the Delta variant. And I think some of
 12 the messages that you have from me at the time show the
 13 Chief Medical Officer contacting me -- I think not in
 14 the messages but separately he had rung me to tell me
 15 this news and the two of us had gone to brief the then
 16 First Minister, and then there's a rapid exchange of
 17 messages about, first of all, how we brief the First
 18 Minister and then, secondly, what -- does this new
 19 information bring back into play decisions that the
 20 government has already taken and announced about moves
 21 between levels and, if it does, on what basis will those
 22 decisions be taken. And I think somewhere in that
 23 message chain there is me commissioning formal advice
 24 from one of my team to the First Minister about that
 25 decision.

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1 a decision. So most of what we were doing was speeding
 2 up the formal decision-making processes that we were
 3 used to using, which would be a written submission,
 4 a reply from the private office or a draft Cabinet
 5 paper, a circulated paper, a discussion and Cabinet
 6 conclusions. So there was little material in my
 7 experience that -- certainly not relating to
 8 decisions -- that needed to be transcribed from my
 9 informal messaging into the corporate record.

10 However, I think I say this in my witness statement,
 11 looking back, the use of these messaging systems was
 12 much greater because we weren't in the same physical
 13 building, and it was possible, and I think the evidence
 14 shows that this happened -- that different people
 15 interpreted the policies in different ways. So although
 16 I had no messages to give you, you found -- recovered
 17 some from others, I see that many of my colleagues were
 18 keeping messages and I wasn't. So that's an example of
 19 the risk that I allude to in my witness statement.

20 **Q.** Okay.

21 Could I take you to some messages, please, to have
 22 a look at them just to understand your approach in this
 23 regard.

24 INQ000331192, please. It's at page 5.

25 This is an exchange from the very beginning or very

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1 From memory, again, that was not a decision taken by
 2 Cabinet because we didn't have a Cabinet. We -- the
 3 Cabinet could have met, that was provided for in the
 4 pre-election guidance, but in the event, because --
 5 including, partly, because she was to be asked an urgent
 6 question in the particle even before having been
 7 nominated, the First Minister would need to be
 8 transparent with particle about her thinking, and in
 9 fact what she decided to do was take a decision and tell
 10 Parliament what that decision was. So we recorded that
 11 decision, and of course it's also apparent in the record
 12 of particle what that decision was.

13 **Q.** Thank you.

14 Ms Fraser told us that it was part of the
 15 responsibilities of directors and directors general to
 16 ensure that there were compliance with these policies
 17 that make sure that all of the matters we've discussed
 18 ultimately ended up on the corporate record. Did you do
 19 that while you were a director general?

20 **A.** Yes, I did. In fact I -- that was not an onerous
 21 responsibility in the sense that the -- most of my
 22 dealings were with the First Minister and the
 23 First Minister didn't take decisions in informal
 24 messaging. She -- it would be very rare that she would
 25 message me at all, never mind in order to make

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1 near the beginning of the pandemic in the first
 2 lockdown, 25 March 2020. This comes from a WhatsApp
 3 group chat that was provided to us and the WhatsApp
 4 group was called "WhatsApp group OROG"; can you recall
 5 what that was to do with?

6 **A.** Yes, I can.

7 **Q.** Could you tell us what it's to do with?

8 **A.** I'm sorry?

9 **Q.** Could you tell us, please, what the group was to do
 10 with, what were the business or the --

11 **A.** The group called OROG was, from memory, a group of
 12 directors and me and some other directors general which
 13 came together shortly after the lockdown decision.
 14 I think OROG stood for operational response oversight
 15 group.

16 It was an informal group, it wasn't a formal part of
 17 the Scottish Government's governance or decision-taking,
 18 and it was really a place in which these directors
 19 could, as you would say, formally maintain situational
 20 awareness so we could understand what was going on and
 21 what needed to be done, so we were keeping an oversight
 22 of all of the different activity that was going on, so
 23 that, for example, within the Health directorates people
 24 were standing up new programmes on shielding, within
 25 other parts of the organisation people were moving

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1 resources from one place to another because of the -- of
2 what we could see we would need to do, and OROG was
3 a group that kept oversight of that.

4 I think it's fed back to directors in written form
5 within the Scottish Government systems, but it also had
6 a WhatsApp group in which, out of our group calls, we
7 were able to share information and I think that's what
8 this thread will be.

9 **Q.** So this is a piece of correspondence between you and
10 someone whose name has been redacted in which you say:

11 "My next strategic prediction: [this particular
12 individual] is about to remind us to clear this
13 thread..."

14 Then a person says:

15 "No need ken you have already done it thank you."

16 This seems to be you acknowledging that there will
17 be clearance of the messages from this group, despite
18 the fact it involves business discussions relating to
19 the pandemic; isn't that right?

20 **A.** No, this is quite an informal group. It is discussions
21 about the pandemic but it's not a forum in which
22 decisions, especially not ministerial decisions, were
23 taken, there are no ministers as part of this group.

24 **Q.** It involved business discussions?

25 **A.** Yes, it's about: do we have the right people in place to

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1 **A.** So the test I'm applying when I'm looking at this
2 material is: does this material need to be part of the
3 record? And the record is described and defined in our
4 Records Management Policy in relation to decisions taken
5 by government.

6 What I'm describing is conversations amongst civil
7 servants about making sure that we're able to support
8 the business of government, so it's business in the
9 sense that it is our work but it doesn't relate to
10 decisions taken by ministers as part of the government,
11 that's the distinction I'm making.

12 **Q.** That's simply not what the policy says. It's
13 discussions, business discussions.

14 If someone, for example, wanted to know what were
15 these directors discussing about this rule of two at the
16 time, perhaps someone had been dissatisfied with what
17 you ultimately decided, they would need to know, would
18 they not, what discussions had taken place in order to
19 know how the ultimate decision had been reached? What
20 you're suggesting here is that there is an early almost
21 pre-discussion clearance of the thread.

22 **A.** No, I don't think so. I think these are business
23 discussions and from them any salient points would need
24 to be transferred into the corporate record, and the
25 test that I'm applying is: we've had a discussion about

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1 do that bit of work? Have we got adequate cover?

2 So, for example, one of the topics I remember being
3 part of this was concern for the welfare of staff in
4 that we know that in emergencies -- if you're running
5 an emergency 24/7 you will need five people to cover one
6 post, allowing for three-shift working and for people to
7 have some recovery time at weekend and for sickness, and
8 at this point we thought that many of our staff might be
9 absent sick.

10 So one of the things we were discussing in this was
11 what later became called the rule of two, in other words
12 have we got key roles doubled up so that we've got some
13 additional resilience.

14 So there's those kinds of discussion going on.

15 **Q.** These are business discussions, are they not,
16 Mr Thomson?

17 **A.** Yes, but they don't lead to -- as I'm describing them
18 here, they don't lead to decisions by government.

19 **Q.** As I read out to you a moment ago, the obligation which
20 you had told me had been the obligation throughout your
21 period as a civil servant, was that you had to
22 transcribe the salient points of any business
23 discussions and/or decisions, so discussions -- salient
24 points of discussions required to be retained on the
25 corporate record, did they not?

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1 how we're doing our business, is there something here
2 that affects -- that needs to be part of the record of
3 the actions of government in responding to the pandemic?
4 If that's "I'm a bit worried about person X, that
5 they've got caring responsibilities and their work's
6 just exploded", that's not -- if I apply the test, does
7 that need to be part of the formal record of government
8 decisions? I don't think it meets that test.

9 **Q.** The test should of course be defined by the policy and
10 not subjectively by you?

11 **A.** I'm making a judgement about the -- whether this example
12 of information meets the criteria set out in the policy
13 to be part of the formal record.

14 **Q.** Okay.

15 Can we go to INQ000268017, please, page 10.

16 Again, there is an exchange here, this is dated
17 a bit later, this is from August of 2020 and there are
18 a number of people in this chat, the group is called
19 "Covid outbreak group", do you remember that group?

20 **A.** I don't recall it, but it sounds entirely likely that
21 I was part of it.

22 **Q.** Yes, you were part of it because we can see the messages
23 from you that -- a number of other people we can see,
24 they include Nicola Steedman, who I think was the Deputy
25 Chief Medical Officer, if I remember correctly; is that

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1 right?

2 **A.** Yes.

3 **Q.** And Jason Leitch, who was the National Clinical
4 Director?

5 **A.** Yes.

6 **Q.** And in this there's a discussion which starts with you
7 saying:

8 "Just to remind you (seriously), this is
9 discoverable under FOI. Know where the 'clear chat'
10 button is..."

11 To which Nicola Steedman replies:
12 "Yes -- absolutely..."

13 Jason Leitch then replies:
14 "DG level input there..."

15 Then you say:
16 "Plausible deniability are my middle names. Now
17 clear it again!"

18 And then Jason Leitch says:
19 "Done."

20 And you say:
21 "Me too."

22 Is this you encouraging people in advance of
23 messages being exchanged relating in a group called
24 "Covid outbreak group" to delete messages in order to
25 defeat FOI requests?

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1 **A.** If it is information held by the government then I would
2 need to probably take some advice on that, but if I run
3 through, supposing that there had been a FOI request for
4 an informal messaging channel, I would first of all make
5 sure that we had clearly what information we held, and
6 that would include information in the form of messaging
7 channels and in people's notebooks and so on. So the
8 first step in dealing with an FOI request is to make
9 sure you know what information you hold. Then you
10 decide -- you apply the terms of the request to
11 discover -- you know, to decide what's in scope,
12 you know, is this information in scope. Then you
13 consider whether there are any relevant exemptions from
14 the FOI legislation, and those are also set out in
15 FOISA, Freedom of Information (Scotland) Act, and then
16 you consider in relation to most of these exemptions
17 whether the public interest test applies and whether
18 given that the information should be disclosed even
19 though there might be a relevant exemption on more than
20 one. So that's the process you go through.

21 **Q.** You used the phrase:
22 "Plausible deniability are my middle names. Now
23 clear it again!"

24 You are suggesting to people in this discussion,
25 prominent people in the Covid response, that they

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1 **A.** No.

2 **Q.** What was your intention when sending this message?

3 **A.** My -- you've shown me one part of this. I think
4 probably what has just been said is something that it
5 might have been a bit of personal disclosure or it might
6 have been something that seemed to me not to be a useful
7 thing to say in a group like this because it might not
8 relate to the purpose of the group. I don't know,
9 I can't see what it was that prompted me to say it.
10 What I have said is that this channel is discoverable
11 under FOI, which I believe to be correct. That doesn't
12 mean it needs to be kept, it needs to be important --
13 there's a -- the FOI rules operate in that way, but the
14 Records Management Policy relates to information which
15 is kept. So I'm reminding my colleagues that this
16 channel is discoverable under FOI, which I think is
17 correct, and then I'm saying in an informal way that my
18 understanding of our approach to these groups is that
19 messages should not be kept -- other than in relation to
20 salient points, as we've just discussed, these messages
21 should not be kept and should therefore be deleted.

22 **Q.** You mentioned the possibility that there had previously
23 been some personal discussion. If there were personal
24 discussion, that wouldn't be recoverable by FOI, would
25 it?

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1 should, as a matter of instinct, clear their messages to
2 defeat FOI requests are you not?

3 **A.** No, I'm responding to Jason Leitch teasing me by saying
4 that's a "DG level input there" by bantering back, if
5 you like, but what I'm saying is: unless material is
6 salient and relevant to the public record, in which case
7 it should be transferred -- and then all of the material
8 should be deleted. That's what the -- I think later our
9 corporate policy would say.

10 **Q.** Thank you.
11 INQ000268025, please.
12 Again, this is a group which is, intriguingly, named
13 "Quantum of Omicron". It says in the group -- starts
14 off with you speaking:
15 "I feel moved at this point to remind you that this
16 channel is FOI-recoverable."
17 To which someone named Penelope responds:
18 "Clear the chat!"
19 Someone called Jim McMenamin says:
20 "Happy to do so -- Lan reduced from 51 to 39 but
21 fair comment."
22 And then Jason Leitch says:
23 "WhatsApp deletion is a pre-bed ritual."
24 Again, does this indicate, Mr Thomson, that there is
25 a culture amongst people who are prominent advisers or

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1 decision-makers in connection with the Covid-19 pandemic
2 in Scotland to delete their messages in order to delete
3 the very purposes for which the policies are set up?

4 **A.** I need to give you a longer answer to this question, but
5 the short answer is no. The longer answer begins on
6 a point of fact. In fact this is not the Quantum of
7 Omicron exchange. It's -- because --

8 **Q.** You may be right about that, Mr --

9 **A.** -- this is much earlier than Omicron. I think this is
10 actually a set of messages about the Delta variant.

11 **Q.** Yes.

12 **A.** So -- and this is relevant to -- to the point I want to
13 make. I think I'd said earlier that we had an emergency
14 within an emergency when Delta emerged in Glasgow just
15 after the Scottish elections, and these messages are
16 from that time, and earlier in this thread, because I do
17 recall this thread, Jason Leitch has posted into the
18 thread a message from Twitter, and I have therefore gone
19 to see what is that message and why has Jason posted it
20 in, and the context here is that we know that there is
21 a new variant of the virus, we think it's in community
22 transmission in Glasgow, we think that it's between --
23 I may be wrong on the details, but it's 40% to 80% more
24 transmissible, it's significantly more transmissible,
25 and it's spreading primarily among members of the Indian

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1 doing -- I accept in an oblique way -- with my reference
2 to the FOI is saying "Take a deep breath before you
3 comment about the tweet you've just posted, Jason."

4 **Q.** The reference to the phrase by Penelope "Clear the
5 chat!" is somehow reminiscent, I think, of the phrase
6 that you used in the previous message: "Now clear it
7 again!" Was that a phrase that was used to describe
8 this ritual of clearing the WhatsApp messages?

9 **A.** Well, it is used there. To repeat a point from earlier,
10 that was in fact the instruction that we were given in
11 the corporate policy, having transferred any salient
12 points to the corporate record.

13 **Q.** Again, the discussion that you are talking about
14 relating to the Delta variant emerging, I think you were
15 putting it in its context, is a business discussion
16 between you and other senior advisers advising the
17 government about their response to Covid, is that not
18 right?

19 **A.** No, I think if you read the whole of that group what you
20 see is a group of colleagues co-ordinating rapidly on
21 logistical matters and -- in fact, yes, it's a business
22 discussion in the sense that you used the term earlier,
23 I should say that, but I think elsewhere in that
24 I say -- I ask my colleagues does this have implications
25 for the decisions already announced by ministers, and we

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1 and Pakistani community, who are very well represented
2 in Glasgow, and the same variant also got a hold in
3 Bolton. And final bit of context, in two days' time
4 Rangers supporters are planning to march through Glasgow
5 to celebrate the fact that their team has just won
6 a trophy. And Jason's tweet is -- well, not his tweet,
7 the tweet that he posted into this group -- is from
8 a die-hard Rangers supporter reporting a food safety
9 expert as saying that there is, therefore, no risk to
10 Rangers fans if they march through Glasgow on Saturday.
11 And I know how -- I guess how Jason is going to feel
12 about that, and he is envisaging what actually happened,
13 which is that thousands of Rangers fans did march,
14 against the regulations then in force, against the
15 advice of the Scottish Government and the police and
16 Rangers Football Club, in -- very closely packed and --
17 you know, thousands of people there, many of them will
18 have had Covid, more of them will have had Covid by the
19 end of that march, and some of them will have got ill
20 and some of them may have died. So I'm imagining how
21 Jason is feeling about that as a clinician and, given
22 his role in communications, that he's going to have to
23 be the person who says "Well, I'm a doctor and I say
24 that you shouldn't march", and they say "Well, there's a
25 sort of doctor who says you can", and what I'm really

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1 have a discussion about whether the UK Government is
2 likely to change its position, and we conclude that it
3 does have implications, and what I then say, somewhere
4 in this group, is then we need advice to our ministers,
5 and I think I commissioned Dominic Munro, who is also
6 a member of this group, to write that advice and to send
7 it to the First Minister within the formal systems, and
8 I think that's what was done, leading to a rapid
9 decision -- I think I referred to it earlier -- in
10 relation to both Murray and Glasgow, as local authority
11 areas. So, yes, it's a business discussion, but there
12 are -- no decisions about the exercise of government
13 power are taken here, there is no decision here about
14 whether Glasgow would remain for longer in level 3,
15 which is the issue in question.

16 But what we identified was a need for ministers to
17 have advice -- in fact the First Minister was telling us
18 in no uncertain terms that she needed advice on this --
19 and we were making dispositions about who was going to
20 cover a meeting, a four nations meeting with the
21 UK Government, who was going to write the advice, who
22 was going to support the First Minister in her
23 preparations for answering an urgent parliamentary
24 question and so on.

25 **Q.** Could I ask you, please, Mr Thomson, to try to speak

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1 slightly more slowly. If it's of any consolation to
 2 you, I'm being similarly admonished. So I'd be very
 3 grateful, just for the sake of the stenographer --
 4 **A.** We will both do our best in that case.
 5 **Q.** Yes, thank you.
 6 Could I just ask you to go over the page, please, to
 7 the second page of this chain, and I think we see there
 8 at 18.19 in the middle -- this is the same chain as we
 9 were looking at before, which you very helpfully
 10 reported out is not Quantum of Omicron, my understanding
 11 is it was subsequently named Quantum of Omicron. It's
 12 a rather odd collection of letters and numbers which is
 13 meaningless.
 14 **A.** I don't think that's correct. There was a group called
 15 Quantum of Omicron. From my memory it was started by
 16 the then Chief Medical Officer in order to share rapidly
 17 emerging information about the Omicron variant, but that
 18 group was not this group.
 19 **Q.** Thank you. I'm looking at the entry there at
 20 14 May 2021 at 18.19, it says:
 21 "Ken Thomson: updated the message timer. New
 22 messages will disappear from this chat 7 days after
 23 they're sent, except when kept."
 24 Is that you putting an auto-delete function on the
 25 message group such as to delete messages automatically,

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1 therefore I switched on something that would save me the
 2 work of coming back to it in a week's time to check
 3 whether anything had arisen.
 4 **Q.** Again just above that you see one you have your
 5 colleagues I think using the phrase "Clearing the chat"
 6 that we saw earlier; is that right?
 7 **A.** So yes, she is confirming that she too is following our
 8 practice and indeed our policy of not retaining messages
 9 that didn't need to be kept.
 10 **Q.** While we're on this exchange I was just quite interested
 11 in some of the things that aren't being discussed there
 12 more substantively, Mr Thomson.
 13 You can see a message from you slightly before that,
 14 at the top, where you say:
 15 "It was really useful to have that full Four Nations
 16 Ministerial call led by the PM to share all the
 17 information and responses so that communications could
 18 be aligned, wasn't it?"
 19 And then you say:
 20 "(Not.)"
 21 And then Gregor Smith, who was the Chief Medical
 22 Officer, says:
 23 "Cobra anyone?"
 24 And then there is a reference to Penelope Cooper
 25 saying:

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1 whether they relate to government business or not?
 2 **A.** It's me doing what I say in my witness statement was my
 3 practice, that what I would do is transfer salient
 4 points into the corporate systems where that was
 5 necessary, and I would do that weekly. The later policy
 6 said at least monthly. And then having done that
 7 I would delete the messages because salient points had
 8 been transferred and the rest didn't need to be kept.
 9 And I say in my witness statement that where there
 10 were -- where the messaging platform provided a way of
 11 automating that process then I would use it.
 12 I think by 14 May the decision in relation to
 13 extending Glasgow's period in level 3 had been taken and
 14 announced. I think it was announced earlier that day.
 15 So I was probably anticipating that there would be
 16 little or no additional traffic on this. In fact, from
 17 memory, the next step in decision-making about Glasgow
 18 and level 3 was at the meeting of the Cabinet on 1 June,
 19 which would have been the first meeting after the
 20 election. And the Cabinet had a long submission from --
 21 unusually not a Cabinet paper, but formal written
 22 advice, 30 to 40 pages of it, on the basis of which
 23 ministers took a decision at that point to move Glasgow
 24 into level 2. So I wasn't anticipating any -- that
 25 there would be much more traffic in this group, and

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1 "I feel a cost benefit for FM would not have been
 2 positive."
 3 I wonder if you could explain to us what it is that
 4 you're discussing at that time. You've already given us
 5 some helpful context what was going on at that point.
 6 There is reference to a four nations ministerial call.
 7 And it seems on our interpretation that you were,
 8 perhaps slightly sarcastically, saying that the meeting
 9 was not useful although the words suggest that it was?
 10 **A.** Sorry, I will try to speak slowly on this, because I've
 11 got a lot to say.
 12 So I was going to say that, yes, looking at that,
 13 I was being a bit sarcastic. I will explain why.
 14 So I've already referred to this being an emergency
 15 within an emergency, and the Delta variant, and
 16 I mentioned Bolton. So relevant to -- and I've also
 17 said that the First Minister had already taken and
 18 announced their decision that Glasgow would move to
 19 level 2 shortly after these exchanges, and the question
 20 that we were considering with the First Minister,
 21 including in a discussion that the CMO and I had had
 22 with her, I think on 12 May, was whether the new
 23 information that we had about the Delta variant called
 24 that decision into question. The reason for that would
 25 be that the level and the NPIs associated with that

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1 level, in which Glasgow currently was, the decision on
2 that would have been taken on the basis of the
3 epidemiological characteristics and situation at the
4 time the decision was taken. And that would have been
5 on the knowledge that we had about the infectiousness of
6 the virus at that point.

7 If the virus -- if there's a new variant of the
8 virus which is, let's say, 50% more transmissible and
9 it's in community transmission among communities that
10 are -- where spread will be -- may be easier because you
11 have larger households or multigenerational households
12 and that might involve more risk, you might have more
13 cases and more risk, and that means, you know, the
14 decision that you had already reached, there is new
15 information here that means that you not only could but
16 you would have to revisit that decision. So that's the
17 context.

18 And the UK Government faces this challenge in
19 relation to England as well, and I've mentioned Bolton,
20 there were other areas too. Very similar
21 considerations, communities and so on. And in that
22 circumstance, if I wind back to the period running up to
23 the original stay-at-home decision and then shortly
24 after that, there was better, at that time, opportunity
25 for governments to align their policies including

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1 **A.** When I say "It was really useful to have that full
2 Four Nations Ministerial call led by the
3 [Prime Minister] to share all the information and
4 responses", what I'm saying is that didn't happen.

5 **Q.** Yes, I follow.

6 **A.** There was a four nations call, I think from memory led
7 by Mr Gove, I wasn't part of it but Penelope Cooper
8 supported the First Minister in that call. The Delta
9 variant was mentioned but -- and all the -- so I knew
10 from Penelope's feedback from that that it was of
11 concern to all four nations but Mr Gove had not
12 indicated what the UK Government's decision in relation
13 to Bolton or anything else to do with Delta would be.

14 So what I'm saying, and I'm trying to be succinct,
15 but what I'm saying is that I did not feel that there
16 had been a useful exchange between the governments of
17 the kind that would have been appropriate in relation to
18 a rapidly emerging new variant.

19 **Q.** This is obviously an important moment, isn't it?
20 There's a significant threat at this stage.

21 **A.** There is.

22 **Q.** I asked you whether this was -- this failure to share
23 information was something that you had experienced
24 before -- this is significantly into the pandemic -- and
25 I think you said yes, that you had had previous problems

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1 through COBR and in relation to -- you know, outside
2 COBR, in relation to these matters through more or less
3 formal calls, sometimes led by Mr Gove.

4 But what we had -- what we were doing, what we had
5 been doing, I think, just shortly before these
6 exchanges, was watching live on the television the
7 Prime Minister making what I think was a delayed
8 announcement, and I think he did -- he'd said -- he gave
9 his assessment of the new variant, but he did not in
10 fact make -- mention any different decisions about
11 restrictions. The first we knew that that was going to
12 be what he said was when he said it live on television.

13 **Q.** So your point, I think, here, to take it succinctly, is
14 that you -- there was information which you obviously
15 had to be able to say that, and you're saying that
16 that's information which it certainly would have been
17 useful for the reasons you've set out, the similarities
18 in the communities, et cetera, to have been shared with
19 you on your four nations ministerial call.

20 Was it a consistent theme of your involvement in
21 those calls that information which would have been
22 useful to you was not always clearly shared by the
23 Prime Minister or representatives of the UK Government?

24 **A.** Yes. Just to give one bit of context here.

25 **Q.** Thank you.

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1 of this nature.

2 What did you in your senior position do to try to
3 improve these meetings and other relations with the
4 UK Government in order to try to access the information
5 which you thought would be important to the Scottish
6 Government's response?

7 **A.** So I think it may be helpful if I answer in two parts.
8 And the first is, at a high level and across the period
9 of the pandemic, to say why I said in passing that
10 I thought that the intergovernmental relations had
11 deteriorated somewhat.

12 **Q.** Yes, please.

13 **A.** And then the second is to answer your point about what
14 did I do about that.

15 So, to be as succinct as I can, I would contrast
16 what I've already said about the position here in
17 relation to Delta, with the exchanges in late March and
18 in April and May, first of all in relation to
19 introducing the stay-at-home requirement and then, and
20 perhaps more pertinently, in relation to the first
21 review of those restrictions and how that would be
22 approached.

23 So I recall a four nations call on 7 May, I think,
24 in which the First Ministers of Scotland, Wales and
25 Northern Ireland and the deputy First Minister of

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1 Northern Ireland were engaged in a discussion with the
2 Prime Minister in which --

3 **Q.** We will return to that particular aspect.

4 **A.** So I can be more succinct in that case.

5 That was a good exchange. And if you're going to
6 come back to it I can unpack what I mean by that.

7 If I contrast that with what I've just described,
8 you will see I think there is a deterioration there. So
9 what did I --

10 **Q.** Just to be clear, a deterioration after the May, the
11 early May exchanges, is that what you're saying?

12 **A.** So I think I would characterise that by saying that in
13 the run-up to lockdown there was pretty good -- albeit
14 that this was all happening extremely fast, but my
15 First Minister was in COBR. Often in other
16 circumstances I might have had to argue for her presence
17 there, which I would do by contacting my counterparts in
18 the Cabinet Office. And so she was there, so that's
19 good.

20 I think -- I've described the May exchange to which
21 we may come back. In that exchange, my First Minister
22 was arguing for continued post liaison so that -- it
23 didn't mean that the decisions of the four governments
24 would be the same but they would have the opportunity to
25 exchange information and their intentions beforehand

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1 insufficient bandwidth in the relationship, was using
2 those contacts, which were both formal and informal, to
3 put the case for more frequent contact and liaison, both
4 formally and informally. So to give examples, if
5 I became aware that, for example, the Prime Minister was
6 going to visit Scotland, because it would be a courtesy
7 that the UK Government would tell us that, then I would
8 contact my opposite numbers and say, "Is there
9 a possibility that we could arrange a discussion? Would
10 the Prime Minister be willing to come and see the First
11 Minister, because if so I'll go and ask the First
12 Minister if she would agree to that". And that did
13 actually happen with Mr Gove. I can't recall that it
14 happened with Mr Johnson.

15 I might also say, "Would it not be useful to have
16 a four nations call about this?" And that did happen in
17 fact. So to nuance what I said about a deterioration,
18 things improved somewhat, from memory, in September of
19 2020 when -- I cover this in my statement -- there was
20 better bandwidth, and that led to a meeting which -- out
21 of which the four governments published a joint
22 statement about their strategic intent in relation to
23 coronavirus. And I thought that was a good thing.

24 From memory I wrote the first draft of that
25 statement and I was pushing my contacts to say "I've

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1 rather than discovering what each was doing by reading
2 the newspapers. But by this point, in May of 2021, that
3 effectively was where we were.

4 **Q.** I would like to ask you a few questions now about
5 a separate subject, thank you very much, which is to do
6 with the --

7 **A.** I'm sorry, Mr Dawson --

8 **Q.** Sorry.

9 **A.** -- I didn't actually give the second part of my
10 answer --

11 **Q.** Oh, I'm sorry. Please.

12 **A.** So there were, during this period -- it was part of my
13 job, I should start by saying, I was responsible for the
14 quality of the relationship between the UK Government
15 and the Scottish Government. I might put that
16 differently by saying I was supported by ministers in
17 that relationship. Now, what the outcome was depended
18 on what ministers did with it. And in that role I had
19 close constructive professional working relationships
20 with a series of opposite numbers and other contacts in
21 the UK Government, largely in the Cabinet Office
22 although, during the pandemic, my counterparts there
23 also moved into Mr Gove's department. And I have
24 a reasonably good network in Whitehall more generally.

25 So what I was doing, as I felt that there was

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1 written something that my First Minister shouldn't have
2 a problem with and I don't think the Prime Minister
3 should have a problem with it either because it just --
4 it brings together what all these ministers have said.
5 Would it not be a good thing if we got all the four
6 First Ministers together and asked them if they agreed
7 that, because then that could be set out publicly as
8 an expression of their commitment to work together?"

9 And indeed that happened, so that was positive. But
10 then shortly after that we had an opportunity, as I say
11 in my witness statement, the governments had
12 an opportunity to align their approach to tiering or to
13 levels, but in the event that didn't happen and there --
14 there was some degree of alignment. I could say more on
15 that now or you may wish to come back to it.

16 **Q.** Could I just ask you in that regard, on the discussion
17 opportunities and decision-making and information
18 sharing mechanisms.

19 Could we go to INQ000233375, please.

(Pause)

21 Sorry, just give me two seconds.

22 **A.** That looks like an internal Scottish Government
23 document.

24 **Q.** Yes, that's not what I'm looking for.

(Pause)

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1 Can we just look for context at INQ000233 -- that's
2 the same reference, sorry. I'll ask you this without
3 necessarily going to the document.

4 You're referring there to there being, I think the
5 general characterisation of your position was that there
6 were early opportunities to be able to use connections
7 that you had to be able to try to promote
8 intergovernmental relations. There was a deterioration
9 in those, in particular I think you pointed things that
10 happened around May; is that correct?

11 **A.** I'm listening carefully to your question. You put it to
12 me that there was a deterioration in my contacts with my
13 opposite numbers, which I would not say was the case.
14 There was a deterioration in the opportunities that
15 ministers had to come together for these discussions.

16 **Q.** Yes. Can you tell us what the nature and state of the
17 relationship between Mr Johnson and Ms Sturgeon was
18 during the course of the pandemic?

19 **A.** I can tell you what my observation of that was.

20 **Q.** Yes, please.

21 **A.** I'm sure you'll take evidence from Ms Sturgeon herself.

22 **Q.** Yes.

23 **A.** So I'm going to go back before the pandemic. I was
24 present supporting Ms Sturgeon at her first meeting with
25 Mr Johnson after he became Prime Minister, and -- so the

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1 of 7 May to which, again, we may come in more detail but
2 I think that was the first point at which I was
3 concerned that the -- well, I'm going to distinguish the
4 decisions and the relationship.

5 It was clear to me in that discussion that it was
6 quite likely that the Prime Minister would decide to
7 release restrictions in England sooner than my
8 First Minister at that point thought was right, given
9 the facts and circumstances before her in Scotland, so
10 there was going to be difference between the approaches
11 of the two governments. That is not in itself
12 a problem, but I thought I could also detect at that
13 point that the course of this relationship was going to
14 go in a different -- they were going to diverge in terms
15 of their ability to do work together, because the
16 Prime Minister was assuring the First Minister that,
17 you know, he wasn't going to release anything on the
18 very day -- and she makes this point in the meeting --
19 when the newspaper had headlines like "Freedom beckons"
20 and "Magic Monday", and I thought, you know, there's
21 not -- something not quite joining up here.

22 And from that point on I think it became harder for
23 there to be the same kind of four governments coming
24 together discussing decisions, taking decisions each for
25 their own jurisdiction, which might or might not be the

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1 context here was, in a conversation after that meeting
2 she and I were contrasting the style of this
3 Prime Minister with his predecessor, and my observation
4 of that description, and the First Minister can confirm
5 this in the conversation afterwards, was that it had
6 been a conversation among two senior politicians --
7 you know, I think the First Minister's phrase to me was,
8 "You can have a debate with him". She was contrasting
9 that with her experience of his predecessor. That
10 doesn't mean that the relationship was warm or that --
11 they were clearly not politicians of the same view, but
12 at that point I think, speaking for myself not
13 Ms Sturgeon, I was more optimistic that it would be
14 possible for that relationship to become productive.
15 I think --

16 **Q.** Did it?

17 **A.** The short answer to that is no, but I think I want to
18 give you a more nuanced answer, which is that in the
19 early stages of the pandemic there was serious
20 engagement between all ministers in the COBR meetings
21 and otherwise. I didn't see party politics in those
22 discussions at all. And that was also present in the
23 early lockdown period as these discussions began to --
24 you know, ministers turned their minds to when would the
25 restrictions be lifted and how. I think in the meeting

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1 same but would have been discussed in that way. And in
2 my statement I use the term "alignment" for this.
3 Alignment doesn't mean the outcome is identical, but
4 there was good alignment, and that alignment -- the
5 opportunities to create it and therefore the alignment
6 deteriorated over the period of the pandemic. With --
7 with the exception of the period around September 2020
8 that I referred to earlier.

9 **Q.** Thank you.

10 There is some documentation in relation to
11 opportunities that there were for the governments to
12 co-ordinate their responses, for example the ministerial
13 implementation groups which we've heard something about
14 in Module 2 already, and some of the documentation
15 suggests that there was a degree of dissatisfaction with
16 those in the Scottish Government, in particular as
17 regards -- the observation made in a number of places
18 that there was no substitute for head of governments
19 getting together and really being able to try to work
20 out a consensus approach.

21 Would you agree that that characterisation, both of
22 the ministerial implementation groups and the fact that
23 there was no substitute for Ms Sturgeon and Mr Johnson
24 getting together to make proper decisions together is
25 an accurate characterisation of the Scottish

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1 Government's position?

2 **A.** Yes. In your earlier question you asked me about the
3 relationship between the two heads of government.

4 **Q.** Yes, indeed.

5 **A.** Yes. So it's useful for me to add, answering this
6 question, that under that there was a good deal of
7 intergovernmental discussion, I don't wish my earlier
8 answer to give the impression that there was no contact,
9 there was a great deal of contact, including through the
10 ministerial implementation groups, and actually also in
11 relation to the JMC, which I know is of interest to the
12 Inquiry. Although the JMC in plenary did not meet in
13 this period, the JMC Europe had been very busy on Brexit
14 business and continued to meet through this period, so
15 there was a lot of that and the participation in --

16 **Q.** Just for clarity, that's the Joint Ministerial Committee
17 on which Scottish Government and the UK Government are
18 both represented; is that correct?

19 **A.** That is correct, it's the forum created by the
20 memorandum of understanding at the time of devolution.

21 **Q.** Thank you.

22 **A.** And it meets in different formats, and JMC(E) it's Joint
23 Ministerial Committee (Europe).

24 **Q.** You were telling us about the relationships between the
25 two --

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1 So part of my job was to try to work out how the
2 UK Government was taking its decisions, and that was
3 quite hard to do and in my experience those decisions
4 tended to be taken quite late in the sense -- I don't
5 mean late in epidemiological terms, I mean if there's
6 a MIG, a ministerial implementation group going to
7 happen, the UK Government will direct its mind to those
8 issues only relatively shortly before the meeting.

9 And then, final point, the UK Government finds it
10 uncomfortable to take its decisions with a Scottish
11 Government minister or Northern Ireland minister in the
12 room, so although our ministers were participating in
13 these meetings, they sometimes had the impression that
14 ministers had decided -- UK ministers had decided
15 beforehand what needed to happen and they were kind of
16 playing that through the discussion once our ministers
17 were involved in it.

18 **Q.** Thank you. I had asked you another element to this,
19 which was whether these ministerial implementation
20 groups, with which you've described a certain degree of
21 dissatisfaction on the part of the Scottish Government,
22 were an adequate substitute for the two leaders coming
23 together to try to work profitably together in the
24 interests of both parts of the United Kingdom, and is
25 your position that the relationship between those two

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1 **A.** Yes. So the -- your question was about the quality of
2 the interaction and the satisfaction with the
3 interaction in the ministerial implementation groups.

4 **Q.** Yes.

5 **A.** That they existed and that Scottish Government ministers
6 took part in them was, I think, welcome and useful, but
7 did they achieve the potential for alignment, to use the
8 language of my statement? I don't think they did.

9 **Q.** What was your interpretation of the reason for that?

10 **A.** I think a combination of factors. I think the
11 UK Government had a significant challenge in reaching
12 these decisions because it had a broader range of
13 responsibilities over a larger geographic area, point
14 one. Point two, a much larger group of ministers in the
15 Cabinet. Point three, a different institutional
16 landscape, with separate departments rather than
17 portfolios and directorates within one organisation.
18 And point four, part of my role was to kind of look in
19 on this and discern what I could when I -- in
20 an informal message I said "strategic prediction".
21 Quite a lot of what I was doing was trying to work out
22 what the UK Government's strategy was or would become so
23 that I could help my ministers to understand that and to
24 align with it or to seek -- consider whether that was
25 relevant to the decisions they were taking.

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1 did not work well, to the detriment of both nations
2 (inaudible)?

3 **A.** So in supporting work between governments -- and this is
4 also relevant to the relationship Ms Sturgeon had with,
5 for example, Mr Drakeford and the First and deputy
6 First Ministers in Northern Ireland -- but in supporting
7 that a number of things are in play. There's a --
8 within government there's a constant pressure for issues
9 to get escalated and there's a constant need, battle on
10 the part of those supporting the heads of government to
11 delegate. So any -- anyone supporting a head of
12 government wants to make sure that their energy and time
13 and attention is only being taken by the things that
14 absolutely have to come to them, and if I put myself in
15 the shoes of my counterparts supporting the
16 Prime Minister, they would be wanting to ensure that his
17 time and attention were not taken up by things that
18 are -- the First Minister of Scotland thought were
19 important but he might not. So that's a fair point.

20 **Q.** When you say they were "making sure" that was the case,
21 can you just clarify what you mean by that?

22 **A.** What I simply mean is that it is part of the role of the
23 people supporting the head of government to triage the
24 issues that were clamouring for attention, and it's
25 entirely proper that those supporting the First Minister

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1 would say, "The First Minister of Scotland wants to
2 speak to you, what priority does that have within other
3 things that are on your agenda?" However -- and my next
4 point is that it's therefore necessary for heads of
5 government to be able to delegate liaison and
6 decision-making and so on, including in
7 intergovernmental forums, and that was part of the
8 purpose of the ministerial implementation groups.

9 So where you do need head of government direct
10 participation and decision-making, as you did in the
11 COBR meeting of 23 March, it doesn't mean that you need
12 it on decisions about travel restrictions to Spain some
13 time later. That's the point I'm trying to make.

14 **Q.** Yes.

15 **A.** That's preparatory to the answer to your question. It
16 is important for there to be a relationship of trust
17 between heads of government such that if my
18 First Minister thinks that actually the Prime Minister
19 does really need to know this, there should be --
20 you know, she should be able to get through to him, and
21 vice versa. And in my experience that didn't happen.
22 You know, it was not ... it was -- the relationship had
23 not been built up in peacetime, as I use as a metaphor
24 in my witness statement, in a way that allowed it to be
25 deployed in the particular circumstances of Covid.

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1 a bit late in the day perhaps but we knew what the
2 UK Government was thinking about. In the event, she
3 concluded that a system of this kind was required in
4 Scotland, that it needed to have more than three levels
5 because I think in her view a level 3 would not be
6 adequate to suppress the virus at all points, you needed
7 a level above that, and also you needed a level below it
8 because you might want to make smaller steps out to make
9 sure that you don't take off restrictions and then have
10 a second spike.

11 What she do, though -- or the reason that the
12 Scottish Government's five-tier system was numbered 0 to
13 4 -- which later was the WHO's recommendation, but
14 that's coincidental -- it was numbered in that way so
15 that levels 1 to 3 would be broadly comparable with
16 the UK Government's tiers 1 to 3, because in the nature
17 of the NPIs applied in them they were broadly
18 comparable.

19 So that was our trying to align, trying to achieve
20 that degree of alignment but it didn't, in my view
21 looking back, it didn't succeed in -- between them, the
22 working between the governments didn't succeed in
23 realising the full potential for that.

24 **Q.** Could I just ask you briefly some questions about the
25 very early period of the pandemic. My understanding is

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1 And to come to your -- the final part of your
2 question, yes, I do think that affected how the --
3 whether the decisions were the best they could have
4 been. I shouldn't say that without particularising why
5 I do say that. So if I come back to levels and tiering,
6 I'm entirely -- I can speak to the reason why the
7 Scottish Government took the decisions it did, and
8 indeed so can Ms Sturgeon, but there was an opportunity,
9 perhaps briefly, for the -- for tiers and levels to be
10 brought together in a system which could have been
11 promulgated for the UK, or at least for Great Britain,
12 with clarity, and that would have been easier for
13 ministers and communication teams to do than having two
14 separate systems, and in the event that didn't happen.

15 But -- and just to expand briefly on two further
16 points, because they do bear on this. It's reported --
17 I think in the Inquiry's documentation there's
18 a reference to the First Minister saying that she
19 proposed to introduce a three-level system. That's not
20 actually correct. It was reported --

21 **Q.** It was reported, that's correct.

22 **A.** What she actually said was "I have been discussing with
23 the Prime Minister their proposal for a three-tier
24 system", or something of that sort. And indeed she
25 had -- or there had been -- we had had information,

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1 that you were involved -- one of the things you were
2 involved in was briefing ministers who were attending
3 COBR; is that correct?

4 **A.** It's not quite correct, but let me explain.

5 So as you know from my witness statement, my
6 involvement in this began over the weekend of the very
7 end of February, and I won't repeat what I say in the
8 statement about how that came about, but from -- so
9 I was not part of meetings that took place over that
10 weekend, I don't think there were any COBR meetings that
11 weekend, and I wasn't part of my COBR meetings on Covid
12 before that, although I have supported ministers in COBR
13 before.

14 From Monday 1 -- no, 2 March, I was concerned to
15 support the First Minister in what was clearly a major
16 emergency and in my then day job, if I can put it that
17 way, my teams and I would have contributed to
18 intergovernmental interactions, usually not so much COBR
19 because the resilience team would lead on that, but
20 I thought that I could be of support to the
21 First Minister by, you know, being around her and in
22 supporting her in COBR. Not -- this is the point
23 I really want to make: not in relation to
24 decision-making on COBR, the Chief Medical Officer and
25 others were there to support her on that, I was

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1 supporting her in my IGR role (intergovernmental
 2 relations) by helping her to read what decisions the
 3 UK Government -- you know, how the UK Government was
 4 responding to this emergency, how its decision-making
 5 was shaping up, what the opportunities would be,
 6 you know, would it be necessary or relevant for her to
 7 seek to influence those decisions, if so how could she
 8 best do that. Those would be the big kinds of
 9 conversations I would have had with her, perhaps before
 10 and after COBR meetings in the very early stages.

11 **Q.** Thank you.

12 I wonder if I might just take you to one document
 13 briefly, please.

14 The document is INQ000346137. I'm looking at
 15 page 14. Thank you.

16 This is a notebook which --

17 **A.** Could you tell me which of those pages is page 14?

18 **Q.** Yes, it's the Wednesday the 26th entry that I'm going to
 19 be looking at, which is at the top left.

20 **A.** Forgive me, Mr Dawson, this is a document you showed me
 21 this morning so --

22 **Q.** Yes, absolutely, I'm just wanting to ask you about this.

23 This is a contemporaneous notebook --

24 **A.** If I may?

25 **Q.** Yes.

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1 in which Mr Grieve is describing the position of the
 2 Scottish Government at this stage.

3 He says in relation to this that he attended the
 4 COBR (M) meeting with Cabinet Secretary Freeman, that's
 5 Jeane Freeman:

6 "It's clear all [departments] in UK Gvt are fully
 7 engaged and mobilised in a way the SG simply isn't."

8 And I'd like to ask you then just to go to the
 9 Thursday the 27th, it's the next note, where he says:

10 "Despite Shirley trying to encourage them, still no
 11 real engagement. They then spent 20 [minutes] talking
 12 about internal SG comms. Completely amazed!"

13 And the page 18, please.

14 It's the Thursday the 5th entry I'm looking at,
 15 where it says in the first entry -- if we could zoom
 16 into that, please:

17 "I attended Directors meeting ... Laid it out
 18 thickly but few believe this is going to be serious."

19 That's Thursday 5 March 2020 we understand it.

20 These entries might be taken, Mr Thomson, to suggest
 21 that Mr Grieve characterised the general mood within the
 22 Scottish Government as being one which was not
 23 particularly engaged with the emerging threat despite
 24 what appeared to be his concerns about it. Was that
 25 an atmosphere which you recognised in the Scottish

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1 **A.** Wednesday the 26th of what?

2 **Q.** This is 2020.

3 **A.** Of February?

4 **Q.** Of February 2020, the period that we were just
 5 discussing.

6 **LADY HALLETT:** Please, I appreciate you didn't have all the
 7 documents in good enough time, but please just say and
 8 Mr Dawson will make sure that all --

9 **Q.** Thank you.

10 **MR DAWSON:** Mr Thomson was kind enough to tell me before we
 11 started, my Lady, that he had had the opportunity to
 12 look at the extracts we gave him, so --

13 **A.** And this was one matter that (inaudible) which month is
 14 being --

15 **Q.** Yes, thank you for asking me to clarify.

16 This is a notebook which we received from
 17 Derek Grieve, who was the deputy director of health
 18 protection division within the Directorate of Population
 19 Health; is that correct? Is that your recollection?

20 **A.** That Derek Grieve had that role, yes.

21 **Q.** Yes?

22 **A.** Yes.

23 **Q.** I'm interested really in just understanding whether your
 24 recollection of that period, given the limitation of the
 25 role that you've described, is consistent with the way

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1 Government at that time as regards the emerging threat
 2 of Covid?

3 **A.** So I will turn to the relevant passage in my witness
 4 statement to answer this.

5 So these straddle the period in which I involved
 6 myself in Covid in the Scottish Government. I was in
 7 London in the week of the first of the entries that you
 8 showed me, so I wasn't part of that COBR meeting, from
 9 recollection --

10 **Q.** I'm not suggesting you were, Mr Thomson, I'm just
 11 suggesting that you might be someone --

12 **A.** Sorry.

13 **Q.** -- given the prominence of your position, to be able to
 14 reflect upon these observations made by Mr Grieve.

15 **A.** Absolutely. So I'm rehearsing in my mind which of these
 16 discussions might I have been involved in. Possibly
 17 5 March, but not the other ones because I wouldn't have
 18 been in Scotland.

19 So to answer your question, and forgive me for my
 20 drawing myself back into the events of the day, I -- as
 21 I say in my witness statement, I was aware of the
 22 preparations that were being made for Covid, in the
 23 sense that at the meetings of the Scottish Government's
 24 executive team I was hearing from my Health and Social
 25 Care counterparts, colleagues, that they were preparing

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1 to ramp up for what Covid would mean for us, and I think
2 I read in Derek's notes here a frustration that that --
3 that the ramping up, the mobilisation of the Scottish
4 Government is not happening as quickly as he would want
5 to see happen.

6 I agree with that. I don't think that means that
7 the Scottish Government in the sense that Derek Grieve
8 and his colleagues -- I think they were very closely
9 involved in consideration of Covid and the threat that
10 it posed. As I said in my witness --

11 **Q.** I think, Mr Thomson, that their consideration doesn't
12 seem to have led to any sense of urgency about it?

13 **A.** Well, I think -- I think they were -- I think -- I took
14 that is -- this is not what you mean, but I think that
15 they thought this was very urgent, and what they're
16 trying to do, and Derek is expressing his frustration
17 about this, is to, if you like, spin the flywheel up.

18 And I shared that concern.

19 **MR DAWSON:** If that's a convenient moment, my Lady.

20 **LADY HALLETT:** It is. I shall return -- I'm sorry we have
21 to break in the middle of your evidence, I hope you were
22 warned you may have to, Mr Thomson. I shall return
23 at 1.45.

24 (12.47 pm)

(The short adjournment)

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1 a quite important period, and it's -- just to put it in
2 context, it's the month after the Scottish Government
3 has launched its four harms framework, and it is the
4 month in which the Scottish Government route map out of
5 the restrictions is published; is that correct, to give
6 context?

7 **A.** That's correct.

8 **Q.** I understand that over this period some meetings took
9 place which led up to the public announcement on behalf
10 of the UK Government about its messaging changing with
11 regard to the way in which they wished to try to explain
12 what people should be doing at that stage. Is that
13 right?

14 **A.** That's correct.

15 **Q.** And the messaging that I'm talking about is the change,
16 broadly speaking, from a Stay at Home to a Stay Alert
17 message, which was issued by the UK Government on
18 10 May 2020?

19 **A.** That's correct.

20 **Q.** I understand that there was a meeting which took place
21 between the First Minister, former First Minister, and
22 former Prime Minister, on 7 May to discuss the position
23 with regard to the pandemic. Is that correct?

24 **A.** My recollection is that it was a four nations meeting,
25 so it was also attended by Mr Drakeford and by probably

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1 (1.45 pm)

2 **LADY HALLETT:** Mr Dawson.

3 **MR DAWSON:** Thank you, my Lady.

4 Mr Thomson, if I could just return to the -- you
5 remember there was one statement we were looking at at
6 the beginning, one of your statements that we didn't
7 manage to get up.

8 If we can just go to INQ000339039.

9 This is a statement dated 6 November. This,
10 I think, falls into the category of one of the ones,
11 Mr Thomson, that you drafted but was ultimately signed
12 by your successor; is that correct?

13 **A.** It was provided in draft by me. It was drafted on my
14 behalf and I commented on that draft.

15 **Q.** Understood. Can I just confirm with you that insofar as
16 the statements were prepared by you, they remain true
17 and accurate at this moment in time?

18 **A.** That is correct.

19 **Q.** Thank you very much.

20 If I could just return to a topic to which we've
21 alluded a few times, Mr Thomson, but we haven't quite
22 arrived at yet, which is the time period around May of
23 2020, you've referred to this a few times in your
24 evidence already but it's a topic I was particularly
25 interested in covering with you. This is, I think,

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1 the First and deputy First Ministers of
2 Northern Ireland, so it was a four nations meeting
3 rather than a bilateral.

4 **Q.** Yes, indeed, but it was a meeting at which there was
5 discussion between the former First Minister and the
6 former Prime Minister about the approach that would be
7 taken.

8 You've very helpfully provided us with some of your
9 notebooks about -- which have your notes of various
10 important junctures in the pandemic.

11 Could we have a look at, please, INQ000371228.

12 **A.** Thank you, Mr Dawson. Whilst that is coming up, perhaps
13 I could just say a word about my notebooks?

14 Although I think you're about to show me a fairly
15 detailed note of this conversation, that wasn't
16 generally how I used them, and I probably noted this
17 particular meeting because I didn't have access to
18 a computer or (inaudible).

19 **Q.** It may be that we don't have to look very carefully,
20 they're really just as an aide memoire for you,
21 Mr Thomson, because there's a few important points
22 I would like to take just to clarify exactly what was
23 going on.

24 I must admit that we struggled slightly with your
25 handwriting. I wonder whether you ever considered

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1 a career in the medical profession.

2 But it may be that we don't need to try to struggle
3 with that today if we can deal with this on the basis of
4 some basic propositions, if I put them to you and you
5 can tell me -- please disagree if I get it wrong, but
6 I'm just trying piece together the narrative.

7 The position I think of the First Minister at this
8 important juncture was broadly that she was concerned
9 about some media reports which had suggested that
10 the UK Government was going to drop its Stay at Home
11 message, and that she was keen -- and your notes back
12 this up -- to try to impress upon others at the meeting,
13 in particular the former Prime Minister, that she would
14 not be prepared to drop that message for Scotland in
15 light of the Scottish Government's interpretation of the
16 threat; is that correct?

17 **A.** That's exactly correct.

18 **Q.** And she -- in fact, I think, these notes suggest that
19 you've noted her as saying something along the lines of
20 "Stay at Home is the foundational message", and in fact
21 she appears to have said that a change would be
22 catastrophic?

23 **A.** Yes, I don't have that page in front of me, but I do
24 recollect that she did say that and I wrote --

25 **Q.** Yes, so that was her position. And it seems from the
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1 position or not; is that broadly correct?

2 **A.** That's the case. And -- and Mr Drakeford said much the
3 same thing. It might actually have been he who said
4 that, but she would have agreed with it.

5 **Q.** So Mr Drakeford was struggling to understand with
6 precision what the UK Government's position on this
7 important matter was as well?

8 **A.** No, I think Mr Drakeford and Ms Sturgeon understood
9 that -- they had a clear sense that the Prime Minister
10 wanted to release restrictions. That wasn't quite what
11 they heard him saying to them. They believed that, you
12 know, he'd been leading the media to expect that that is
13 what would happen I think the following Monday. And
14 they were both clear that, in relation to the conditions
15 and the epidemiology in Wales and Scotland, that was not
16 the right thing to do. So they wanted to be, to get
17 confirmation from the Prime Minister of what he was
18 going to do and impress on him that I think both of
19 them, but certainly Ms Sturgeon, did not agree that that
20 would be the right thing for Scotland at that time and
21 that that would be a decision that she would make rather
22 than he.

23 **Q.** Did you and the First Minister leave that meeting with
24 the impressions that the Stay at Home message would
25 remain the position of the UK Government at that time?
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1 notes that she was attempting to try to convey that
2 position forcefully to the Prime Minister?

3 **A.** Exactly.

4 **Q.** In your notes as well, and we do have other notes of
5 this particular meeting which I think are consistent
6 with this position, is that the Prime Minister in
7 response to this position being advanced by
8 Nicola Sturgeon was that he indicated that he totally
9 understood that Stay at Home remained an important part
10 of the message; was that broadly your understanding of
11 his position at that meeting?

12 **A.** Yes, that is what he said. The First Minister was
13 concerned that there was a gap between what he was
14 saying there and the -- I referred already to the
15 headlines, I refreshed my memory on them, so I don't
16 need to repeat that. I think she also said, and I wrote
17 down, that "The newspapers didn't get" -- you know,
18 "didn't make that up by themselves". So she was
19 pointing to, "You're saying one thing to me but you're
20 leading the newspapers to expect another thing".

21 **Q.** Indeed, I think there's a note to that effect that we
22 managed to make out suggesting that the media wouldn't
23 make that message up so there must be some element of
24 truth to it. And they were trying -- she was trying to
25 ascertain whether that was in fact the UK Government's
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1 **A.** Well, again, there was a gap here. The Prime Minister
2 explained that his concern was that the UK Government's
3 message was actually "Stay at Home (unless you need to
4 go to work)", I paraphrase slightly, and he thought that
5 too many people were interpreting that as just "stay at
6 home". So she was concerned that, you know, if he
7 wanted to soften that message that would have
8 a deleterious effect on the compliance with NPIs
9 you know, she would hope that that would be -- would not
10 feature in Scotland, but she was concerned about that,
11 and I recall her saying to me, possibly at the end of
12 that meeting, she turned to me with some exasperation
13 and said "I can't stand in front of a television camera
14 and tell people to stay alert to something that they
15 can't see". She was thinking about how does this work
16 as a piece of public health communication, and she
17 was -- she said it would be a mistake to depart from
18 that foundational message of Stay at Home.

19 **Q.** So do I take it from what you're saying that her concern
20 was perhaps two-fold: one was that the Stay Alert
21 message she didn't particularly understand herself and
22 therefore couldn't communicate that in a public health
23 communication; is that right?

24 **A.** It fits it very well.

25 **Q.** Also I think that there was a risk that if that were to
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1 remain -- were to become, sorry, the message of the
2 UK Government, that there was a risk that that message
3 would cause confusion in Scotland in particular because
4 her epidemiological advice was to the effect that she
5 should stick with the current regime and the current
6 messaging?

7 **A.** So I would say that there were two points in there. The
8 first is that departing from the Stay at Home message as
9 currently understood and adhered to in Scotland would be
10 the wrong thing to do in terms of the epidemiology in
11 Scotland. And the second was that even if it was the
12 right thing to do in England, the nature of the
13 communications from the Prime Minister publicly might
14 cause confusion because, as she said at the time and as
15 has come out in other evidence, quite often the
16 Prime Minister and others would say "I'm telling people
17 in the country" or "the UK" when actually they meant, in
18 this case, England. That was the confusion.

19 **Q.** Thank you.

20 I understand that on 8 May, which was the day after
21 this meeting, the former First Minister was reported as
22 saying that there was some recognition that each of the
23 four nations would move at different speeds and that she
24 would not be pressured into lifting restrictions
25 prematurely. Is that correct, there was an announcement

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1 which is INQ000222934. I'd like to look at that with
2 you, please.

3 In this you say:

4 "First Minister --

5 "Dominic Munro has given you advice ahead of today's
6 COBR meeting. This note supplements that on one aspect:
7 the framing of the 'Four Nations' approach.

8 "Following your discussion with the Prime Minister,
9 Mr Gove and other First Ministers on Thursday and
10 Friday, as officials we set out to our UKG counterparts
11 the need for deeper and more consistent engagement on
12 the aspects of their work which apply across the UK and
13 affect devolved interests, including (for example)
14 business guidance and border controls:

15 "We acknowledge that some details have been shared
16 through the UKG's Ministerial Implementation Groups and
17 the Four Nations calls, but continue to press for the
18 full detail of the UKG's proposals, which we have not
19 yet received (at the time of writing).

20 "Much of the detail of tomorrow's UKG document will
21 be, in effect, a plan for England (though it will
22 probably continue to mix England-only and UK-wide
23 aspects). We know that UKG officials are conscious of
24 the risk of COBR becoming mired in the detail.

25 "At the level above the detail, the Four Nations are

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1 to that effect by the former First Minister on that day?

2 **A.** I think it might have been a reporting of comments
3 rather than an announcement by her, but --

4 **Q.** Yes.

5 **A.** -- what you say is exactly what she felt at the time,
6 and (inaudible) --

7 **Q.** Were you involved in briefing about that message or
8 advising about that message at that time?

9 **A.** Well, I ... so the word "briefing" has a precise meaning
10 within the civil service. So I didn't brief her on
11 whether it was the right thing or the wrong thing. She
12 gets that advice from my medical colleagues. But I was
13 involved in discussions with her about -- part of my
14 role as I explained earlier was to help her understand
15 what was going on in the UK Government, so I was part of
16 those conversations about what is the UK Government
17 going to do, what is the right thing to do in Scotland,
18 what's the interaction between these two things.

19 **Q.** Would it be correct to say that at that time there was
20 a significant concern or apprehension that there was
21 about to be a significant change in the approach being
22 taken by the UK Government and the Scottish Government
23 to the management of the pandemic?

24 **A.** Yes.

25 **Q.** I think that you sent an email to the First Minister,

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1 moving in broadly similar ways, though to different
2 timescales, and remain reasonably closely aligned. As
3 you emphasised to the Prime Minister, however, each
4 government is responsible and accountable for guidance
5 and regulations within its own jurisdiction.

6 "You may wish to assess during and after COBR,
7 whether there is scope and advantage in consolidating
8 the Four Nations approach, including the emphasis on the
9 separate accountabilities of the four governments.

10 "One way to do so would be to draw on the lines set
11 out below, either by proposing these as a shared basis
12 for media briefing, or consolidating them in a joint
13 statement. These lines go no further than restating the
14 governments' existing programmes, and are consistent
15 with the principles they have published in the past
16 two months (extracts attached)."

17 Then you set out a proposed form of words which
18 relates to the four nations approach trying to set out
19 the characteristics of that as you understand it.

20 What was your thinking in trying to advise the
21 First Minister at this time in this way and what was
22 your apprehension about what was perhaps happening or
23 about to happen?

24 **A.** So it's useful to be reminded of this.

25 In an earlier answer I -- we covered the events

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1 which led to the publication of the joint statement in
2 September. I think this is probably -- in my mind, as
3 I wrote this, was: is that the point we could get to?
4 And you will see that it took us from May to September
5 to get to that point, which in the world of an epidemic
6 is a very long time indeed.

7 **Q.** Mm.

8 **A.** Why was I offering her advice of this kind? I was
9 concerned, as you put it to me earlier, that the two
10 governments might be pulling apart. I don't mean in
11 terms of the decisions because the decisions should be
12 taken on the facts and circumstances before them, but
13 pulling apart in terms of their ability to align and
14 understand and share in advance what those decisions
15 were going to be.

16 And what you see here is the product of
17 conversations or exchanges with my counterparts,
18 including in Wales and Northern Ireland, to say "I'm
19 concerned about that, it would be good if COBR could
20 pull us back to where we, the devolveds, think we need
21 to be", and then I'm saying to the First Minister "You
22 could draw on these lines". And I emphasised to her,
23 because she was concerned about this, that I'm not
24 proposing that she should cede decision-making about
25 Scotland to the UK Government -- which would not be

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1 when, and when it's safe to do so, or how you mitigate
2 the other harms, that's the dance. So decision-making
3 for all these governments, and therefore the interaction
4 between them, was becoming more complex, and just at
5 that time I was concerned that the bandwidth in the
6 relationship, certainly at heads of government level,
7 and below it actually, was inadequate to good alignment
8 given that challenge.

9 **Q.** Would it be fair to say that in advising the Scottish
10 Government it was important to bear in mind that the
11 UK Government would always have, because of the
12 devolution settlement, control over aspects of pandemic
13 management that would inevitably affect Scotland's
14 strategy in fighting the virus?

15 **A.** So you put that to me as the UK Government would have
16 control over, and I'll answer that part and another
17 part.

18 There were certain aspects of pandemic management
19 that were reserved. Incidentally not border controls in
20 relation to public health, one might come to that, but
21 there certainly were some that were reserved and the
22 UK Government had control of those and that was relevant
23 to the Scottish Government's decision-making. Furlough
24 would be an example.

25 But there's also a concern in my mind at this point

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1 right (she would think, and I would agree) -- but I am
2 saying, you know, "There is an opportunity here to join
3 up and here's how you could propose that we do it", and
4 I say "This doesn't actually go any further than each of
5 those administrations has already said, it's just
6 an opportunity to pull together and say this is what we
7 are all trying to do, which is protect our
8 administrations and our people from the impacts of this
9 terrible disease", which would be what you would want
10 your senior politicians to do.

11 **Q.** Did you feel -- it seems from what you're suggesting
12 here that there was a need, not for any innovation but
13 for there to be a reiteration of the four nations
14 approach, as you had understood it before that point?

15 **A.** That's correct.

16 **Q.** Was that because you apprehended that there was about to
17 be a departure from this approach?

18 **A.** It was in part for that reason but in part also because
19 I could see that the decision-making for all the
20 governments was about to -- was going to become over the
21 summer more complex.

22 You know, it's -- there is a reference elsewhere in
23 the evidence to the concept of the hammer and the dance.
24 Now, if lockdown is the hammer, then the decisions about
25 the fine grain of what restrictions you can release and

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1 and in the First Minister's that the decisions that she
2 is taking within devolved responsibilities are within
3 the context of GB or the UK where the UK Government, in
4 its role as, I'm putting this in quotes, the government
5 of England, in other words in its exercise of
6 responsibilities which in Scotland are devolved, it's
7 taking those decisions and because of the -- and when
8 the Prime Minister says something it gets reported
9 through the whole of the UK -- that influences the
10 environment in which she is -- the former First Minister
11 is managing the pandemic. So there's both control but
12 also the interaction of messaging.

13 **Q.** I don't wish to diverge, but you mentioned something
14 which is of interest to me, which is the question of
15 border controls, so if I could just deal with that but
16 come back to this narrative in a moment.

17 The question of border controls is one which we've
18 found slightly difficult to comprehend. Is your
19 position from the answer you've given that border
20 controls were effectively a matter under the control of
21 the Scottish Government during the pandemic, as regards
22 Scotland of course?

23 **A.** Forgive me if I dive into the detail. The detail's
24 complicated but, to address Professor Cairney's word,
25 I don't think it's blurry in relation to this matter,

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1 because the place where what is reserved is set out in
2 schedule 5 of the Scotland Act. And I should say that
3 I was one of the people who contributed to the drafting
4 of that at the time. And in schedule 5 you will find --
5 you will not find "borders" as a word appearing. What
6 you will find reserved is immigration and nationality,
7 under section 6B of the specific reservations, and
8 you'll find the regulation of international trade
9 reserved at paragraph 7 as part of the general
10 reservation of foreign affairs.

11 What that means is that border controls at the
12 border in relation to immigration and nationality and
13 regulation of trade, which is what most border controls
14 are, those are reserved, and the administrative
15 apparatus by which the UK Government deals with that is
16 within its control. But border controls in relation to
17 public health are not reserved, therefore they are
18 devolved, which is why the Scottish Parliament was able
19 to pass an Act, the Public Health etc (Scotland) Act
20 2008, at which section 94 sets out provisions for
21 controls, international it's called, but it includes the
22 ability to make regulations which provide for what
23 happens when a vehicle arrives at the border, including
24 the ability to require that persons in that vehicle
25 should quarantine.

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1 connection with a COBR meeting and I think your
2 aspiration, you said, was that the COBR meeting might be
3 able to bring things back into alignment, as you say; is
4 that right?

5 **A.** Yes, that's fair.

6 **Q.** And the COBR meeting took place on 10 May; is that
7 correct?

8 **A.** I'm relying on you for that, but yes.

9 **Q.** It was very shortly after that period that we have been
10 discussing. We have a note of this, it's from
11 Ms Elizabeth Lloyd, it's quite a useful shorthand and
12 I'm interested to know whether you agree with me as to
13 whether this is what happened.

14 We understand that this relates to -- this is at
15 INQ000346141 at page 114, and we understand that this
16 relates to the 10 May COBR meeting where she says:

17 "COBR is a shambles.

18 "PM ignoring comments.

19 "Welsh plea not to advise people to travel --
20 completely ignored.

21 "NI/SG insisting that it be clear PM is referring to
22 England.

23 "Repeated calls for assurance ignored by PM."

24 Now I'm using that as a swift means to try to
25 characterise what I think happened at that meeting but,

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1 Now, those are the powers that were being used in
2 relation to travel restrictions, and because of the
3 passage of that Act post devolution the UK law officers
4 would have had the opportunity to satisfy themselves as
5 to the -- that Act was within competence. So although
6 it is complicated --

7 **Q.** This is why, Mr Thomson, that when one looks at the
8 restrictions in Scotland at borders, they are exercising
9 control by the Scottish Government, because it relates
10 to the control of public health rather than other
11 matters which might be under the control of the
12 UK Government, such as immigration and nationality?

13 **A.** That is exactly right. And to add one further point,
14 the Scottish Government needed the help and co-operation
15 of the UK Government to make all this work because
16 administratively the means by which you do this involves
17 the input of Border Force and so on.

18 **Q.** Yes.

19 **A.** So that support is necessary. But in terms of the vires
20 for these, that's clear in my mind.

21 **Q.** Thank you. Well, it will be a matter for her Ladyship
22 in due course to determine whether the lines are blurry
23 in that regard, but thank you for the explanation.

24 To return then to our narrative from May, you
25 mentioned that the email you had written was in

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1 Mr Thomson, does that ring true with your understanding
2 of what occurred at that meeting? Despite your
3 aspiration, things went very much the other way?

4 **A.** In short, yes. Just for clarity, as I read this --
5 Liz Lloyd's writing is much better than mine -- but the
6 "NI/SG" means Northern Ireland Executive and Scottish
7 Government --

8 **Q.** Yes, that was our understanding.

9 **A.** Yes, well, I see no reason to disagree with that
10 characterisation of the meeting.

11 **Q.** One of the tasks I suppose which we've set ourselves is
12 to try to understand the point at which -- and I know,
13 I think, from your statement you don't like the word --
14 Scotland diverged from the UK four nations type approach
15 or the UK's approach involving the four nations
16 considerations that you set out in your advice.

17 I'm interested to explore with you, if you can tell
18 me, whether you think that this is the moment at which
19 that divergence occurred? I know you don't like the
20 word "divergence" but please forgive me.

21 **A.** So to be clear, because I am trying to be helpful,
22 I only don't like it in the sense that -- I think
23 Mr Jacobs quoted me in the opening statement -- if it
24 implies that the approach of the UK Government is the
25 orthodox one and somehow if you divert from that you're

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1 becoming unorthodox.

2 But yes, the approaches did diverge. Was this the
3 point at which it happened? So this is 10 May. **(Pause)**
4 So, if I go back to, let's say, 23 March, and the Stay
5 at Home decision, there is no divergence in that. And
6 if I go forward from this point in time to October when
7 the levels and tiers systems were introduced, there's
8 definitely divergence by that point. So it happened
9 somewhere in between those.

10 I think it would be fair to say that in this meeting
11 you can see the start of that process, because if you
12 compare my advice that you showed me a moment ago with
13 Ms Lloyd's description of the meeting you can see that
14 my aspiration for greater alignment was not being
15 realised.

16 To finish with one qualification of that, it wasn't
17 a one-way -- it wasn't a straight line deterioration, if
18 I can put it that way, the quality of interaction did
19 ebb and flow a bit, and it ebbed back in a bit in
20 September, as you've seen, but I've also said that that
21 took a long time and time was not a thing we had.

22 **Q.** Thank you.

23 There is one more matter I'd like to raise with you,
24 please. There are a number of commentators who have
25 suggested that in the Scottish Government's management

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1 all the exchanges I had with her about that advice,
2 there was nothing of that sort present. Indeed,
3 I couldn't give her advice in relation to party politics
4 without breaching the Civil Service Code, which I did
5 not do.

6 And if I then turn to the substance of these
7 decisions -- well, first of all, these were not
8 differences for the sake of being different, they were
9 differences of substance in relation to the timing and
10 the design and the application of NPIs and how you
11 change that as vaccination comes through. This was
12 serious decision-making with clinicians and
13 epidemiologists and scientific advisers and other
14 advisers in relation to economic policy and social
15 policy.

16 So there were real differences, and in this Scotland
17 was not the outlier. Coming back to my dislike of the
18 word "divergence" it was quite often the case, as in
19 these exchanges I think, that two or more of the three
20 devolved administrations were taking one view and it was
21 the Prime Minister and the UK Government that was taking
22 the different view.

23 And then finally, I think not just in the decisions
24 but also in the outcomes there are substantial
25 differences, and I think the Inquiry has that before it

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1 of the pandemic, the pandemic was politicised in order
2 to try to further the cause of independence. I'd be
3 interested to hear your perspective on that criticism
4 which is held certainly by certain sectors of the
5 Scottish public.

6 **A.** So I've heard that criticism made in, with two -- in two
7 forms. The first is that the Scottish Government's
8 attention or energy was in some way devoted to work on
9 independence rather than work on Covid. I was also the
10 Director-General responsible for supporting our
11 ministers in constitutional change and as you can see,
12 I hope, from the materials in front of you, during this
13 period my -- pretty much my entire attention was focused
14 on Covid and that which was not focused on Covid was
15 focused on Brexit, which also has constitutional
16 dimensions. So I don't agree with that.

17 The second way I hear that criticism is that somehow
18 in her decisions the First Minister was seeking to show
19 people -- you know, to make -- to be different for the
20 sake of being different to remind people that Scotland
21 has the ability to take decisions on its own. And
22 I also don't agree with that. I said earlier I didn't
23 see any party politics on the part of any politician in
24 the COBR meetings.

25 In all the advice that I gave the First Minister and

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1 in the expert evidence of Professors Hale and Diamond,
2 where, if you look at age-standardised mortality rates
3 over the period, you see substantial differences in the
4 outcomes of the pandemic in the four nations. And
5 the -- I think it's important to see these differences
6 rather than not see them -- and I'm not saying this to
7 say the Scottish Government did well. None of us --
8 you know, none of us wanted this to be as it was. But
9 I am saying there were real differences in the approach
10 and in the outcomes and we should all learn from all of
11 that and we can't do so if somehow the narrative of the
12 pandemic is that we all ended up in the same place or
13 that the differences were just for the sake of it.
14 That's -- I think in public policy terms that would be
15 a mistake.

16 **Q.** Is it the case that your position is that the Scottish
17 Government's principal focus remained on managing the
18 pandemic from January 2020 to April 2022?

19 **A.** The only other focus -- sorry, give me the dates again?

20 **Q.** It's just the period of our scope, Mr Thomson,
21 January 2020 to April 20 --

22 **A.** So to give you as precise an answer as I can, it was not
23 the only focus and the two other focal points I would
24 give you would be, first of all, Brexit, because you'll
25 remember that during the pandemic period the UK was

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1 preparing for the possibility of a no-deal Brexit, which
2 involved significant work and attention within the
3 Scottish Government.

4 Then secondly I would say during this period the
5 focus of the Scottish Government began to move, and
6 particularly after the May 2021 election, from the
7 response to the pandemic to the concept and the
8 operationalisation of this concept of Covid recovery,
9 and that's reflected in the changes to ministerial
10 titles and roles after that election.

11 **Q.** Thank you.

12 Could I ask you to look, please, briefly at
13 INQ000214408.

14 This is Cabinet minutes, we call -- I think they're
15 called "conclusions" internally -- from 30 June 2020.

16 Can we have a look at page 56, please.

17 **A.** Sorry, just before you move off this page, I'm just
18 looking to see if I was at this meeting. I don't think
19 I was. But that's fine, I can comment on --

20 **Q.** Thank you.

21 Paragraph 56, please.

22 At letter (e), it says that Cabinet:

23 "Agreed that consideration should be given to
24 restarting work on independence and a referendum, with
25 the arguments reflecting the experience of the

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1 for the differences between this and my earlier
2 answer -- I don't think I gave significant time to that,
3 but some of my team who, for example, had been moved
4 from that independence work into work such as travel
5 restrictions might then have resumed work on this
6 because we had been able to adapt our structures and put
7 more people into a team who would take forward travel
8 restrictions further on.

9 **Q.** One further document, and this I think will be the last,
10 Mr Thomson.

11 INQ000371228. I'm afraid we're returning to your
12 notebooks. Page 50, please.

13 The context of this, which I hope you can take from
14 me, is -- I looked at this earlier -- it's dated, we
15 think, 25 May 2021, and we think it is recording
16 a conversation between yourself and the then Deputy
17 First Minister in which, shortly after the election,
18 you're discussing, amongst other things, the very
19 subject that you said was one of the main focuses of the
20 Scottish Government in that period after the election,
21 ie Covid recovery. You will recall -- you will know
22 of course that the Deputy First Minister had been
23 appointed at around that time as the Minister for Covid
24 Recovery I think; is that right?

25 **A.** Yes, that's right.

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1 coronavirus crisis and developments on EU Exit."

2 Is this conclusion reached by Cabinet indicative of
3 the fact that the Scottish Cabinet in June 2020 wished
4 to politicise the coronavirus crisis?

5 **A.** **(Pause)** I'm reading the wording carefully.

6 Consideration should be given to restarting work. So we
7 would then have -- I think there was a set of --

8 **Q.** It's the second half of the sentence I think I'm
9 focusing on, Mr Thomson:

10 "... with the arguments reflecting the experience of
11 the coronavirus crisis ..."

12 **A.** Yes, it's helpful to be reminded of that, so that runs
13 slightly contrary to what I said in my previous answer
14 and I do acknowledge that.

15 My previous answer was in terms of -- I was
16 thinking, you know, what was my focus on, what was the
17 Scottish Government's focus on, what were my team's
18 focus on. The constitutional work at the time, just to
19 give you a bit of context, had been paused, I think I'm
20 right in saying.

21 **Q.** Yes. Mr Russell had done that at the beginning.

22 **A.** Yes, he had. And the -- as we moved out of the lockdown
23 restrictions, more of the ordinary business of the
24 Scottish Government began to resume, including this bit.

25 I think -- I don't think that -- this might account

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1 **Q.** And in that context there is a phrase at the top where
2 you've written:

3 "Indy is back."

4 Does that tend to suggest that in the course of that
5 conversation the Deputy First Minister has indicated to
6 you the policy priority is to now pursue independence
7 again?

8 **A.** So I need to apologise for the fact that my notebooks
9 were written for me rather than for counsel to read.

10 This page is not in fact a record of points made in the
11 discussion with the Deputy First Minister, possibly the
12 previous page is and I've failed to, you know, put a new
13 subject heading at the top. This page, which I remember
14 quite well, is me writing out of my head the reasons
15 I am concerned about my own personal resilience. And
16 I'm doing that just after the election. I'm
17 wondering -- I'm constructing a possibility here which
18 is that people will fall over, including me. I say that
19 three-quarters of the way down the page.

20 **LADY HALLETT:** Mr Thomson, I'm sorry to interrupt, but the
21 question really is a simple one. You have written down
22 what seems to be "Indy is back", which we all assume
23 means independence is back on the agency. Presumably
24 you got that impression from a minister? Which is the
25 point I think Mr Dawson's asking.

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1 **MR DAWSON:** Thank you, my Lady.
 2 **A.** No, I think what I'm listing here is reasons that --
 3 risks, rather than --
 4 **LADY HALLETT:** No, but did you get the impression from
 5 a minister that independence was back on the agenda?
 6 That's the question.
 7 **A.** I can't -- I don't recall that being part of the
 8 discussion with the Deputy First Minister.
 9 **LADY HALLETT:** But did you get that impression from any
 10 other minister? Otherwise why did you make this note?
 11 Because it would only be back on the agenda if
 12 a minister had said it's a policy issue again, wouldn't
 13 it?
 14 **A.** Well --
 15 **LADY HALLETT:** That's the question. It's a simple question,
 16 Mr Thomson.
 17 **A.** Right, I was trying to explain why I had written this
 18 note.
 19 If the question is, was there a possibility that
 20 independence work would resume, yes that's definitely
 21 a possibility. But that's not actually why I wrote it
 22 here.
 23 **MR DAWSON:** Thank you, my Lady.
 24 We've referred to looking at statistical information
 25 and making comparisons about the way in which the

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1 Professor Nick Phin.
 2 **DR JIM MCMENAMIN (sworn)**
 3 **PROFESSOR NICK PHIN (sworn)**
 4 **Questions from LEAD COUNSEL TO THE INQUIRY for MODULE 2A**
 5 **MR DAWSON:** Thank you very much.
 6 This is the second occasion on which we have had two
 7 people give evidence together. I will, as I endeavoured
 8 the first time, attempt to direct my questions as best
 9 I can, but the Inquiry would be very interested to hear
 10 perspectives from both of you, so if there are
 11 observations you wish to make on questions I've
 12 addressed to the other, please indicate and I'd be very
 13 happy to hear from you on those matters too.
 14 You are Dr Jim McMenamin?
 15 **DR MCMENAMIN:** Yes, that's right.
 16 **MR DAWSON:** And you are Professor Nick Phin.
 17 **DR PHIN:** Correct.
 18 **MR DAWSON:** And I understand you both have provided a number
 19 of statements to the Inquiry. In particular,
 20 Dr McMenamin, you have provided a witness statement
 21 under Inquiry number INQ000360968. The statement is
 22 dated 29 November 2023. Is that your statement?
 23 **DR MCMENAMIN:** Yes.
 24 **MR DAWSON:** Does the statement remain true and accurate as
 25 at this date.

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1 pandemic ebbed and flowed in the different nations of
 2 the United Kingdom, and we have heard some detailed
 3 evidence about that from the Scottish Government and its
 4 own Chief Statistician.

5 In the period after this point, Scotland was still
 6 to experience its highest rates of infection. It was
 7 still to experience around a third of its deaths. It
 8 was still to experience incredible hardship and
 9 devastation, including hospitals being overwhelmed, the
 10 military needing to be called in. Is it your position,
 11 as you suggested earlier, that the focus of the Scottish
 12 Government over that period remained on the Covid
 13 pandemic and not on independence?

14 **A.** As I hope I communicated earlier, certainly my work
 15 through that period, as the situation deteriorated,
 16 remained dominated by Covid, and to some extent by
 17 Brexit.

18 **MR DAWSON:** Thank you very much, Mr Thomson, I've no further
 19 questions.

20 **LADY HALLETT:** And I don't think there are any Rule 10s.

21 **MR DAWSON:** Nothing at all, my Lady, thank you.

22 **LADY HALLETT:** Very well. Thank you very much, Mr Thomson.

23 **(The witness withdrew)**

24 **MR DAWSON:** The next two witnesses who will be giving
 25 evidence together are Dr Jim McMenamin and

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1 **DR MCMENAMIN:** Yes, it does.
 2 **MR DAWSON:** Professor Phin, you have also provided
 3 a statement to us, very helpfully. It's dated
 4 6 November 2023, under INQ000339576. Is that your
 5 statement?
 6 **DR PHIN:** That is.
 7 **MR DAWSON:** Do the contents of that statement remain true
 8 and accurate?
 9 **DR PHIN:** They do.
 10 **MR DAWSON:** As I understand it, having been briefed by your
 11 representatives, you were involved, Professor Phin, in
 12 the compilation of some corporate statements which were
 13 helpfully given to the Inquiry on behalf of Public
 14 Health Scotland. Is that correct?
 15 **DR PHIN:** That's correct.
 16 **MR DAWSON:** And they are INQ000300280, a statement dated
 17 2 October 2023, and a supplemental statement dated --
 18 INQ000361394, dated 23 October 2023, and a further PHS
 19 chronology dated INQ000176685.
 20 You contributed to the compilation of these
 21 documents, as I understand it, although it was along
 22 with others, as I understand it?
 23 **DR PHIN:** That's correct, yes.
 24 **MR DAWSON:** Do these remain true and accurate to the best of
 25 your knowledge and belief as at this date?

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1 **DR PHIN:** They do.

2 **MR DAWSON:** Just to understand your respective roles here,
3 you've both therefore provided individual witness
4 statements to the Inquiry, and Dr McMenamain, I intend to
5 ask you questions predominantly relating to your own
6 personal experience of the pandemic but, insofar as it's
7 relevant to discuss PHS's corporate position, I think,
8 Professor Phin, you're able to answer questions as best
9 you can; is that roughly correct?

10 **DR PHIN:** That's -- that'll be -- yes, that's the case.

11 **MR DAWSON:** And Dr McMenamain, that's correct as far as your
12 position is concerned? You were not, as I understand
13 it, involved in the creation of the corporate materials,
14 but you have very helpfully provided what is in fact
15 a very lengthy personal statement and you can speak to
16 that.

17 **DR McMENAMIN:** Yes, that's right.

18 **MR DAWSON:** Thank you very much indeed.
19 So to start with you, Dr McMenamain, I understand you
20 are a consultant epidemiologist; is that correct?

21 **DR McMENAMIN:** Yes.

22 **MR DAWSON:** And that you are the head of Health Protection
23 (Infection Services); is that right?

24 **DR McMENAMIN:** Yes.

25 **MR DAWSON:** And that you were the Public Health Scotland
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1 the Health Protection Scotland response and, thereafter,
2 the response (inaudible) Public Health Scotland.

3 **MR DAWSON:** Was it correct to say, as I said there, that
4 that role was under the guise of Health Protection
5 Scotland rather than Public Health Scotland?

6 **DR McMENAMIN:** Yes, that's initially --

7 **MR DAWSON:** Initially, yes, because as I think we've heard
8 before from other witnesses there was an important
9 reorganisation at around the time the pandemic struck of
10 public health services in Scotland. I'll try and
11 narrate it briefly, but if I get anything wrong, please
12 correct me.
13 There had been a number of agencies involved in the
14 delivery of public health in Scotland, including Public
15 Health Scotland before April 2020; is that right?

16 **DR McMENAMIN:** Yes, correct.

17 **MR DAWSON:** And as part of strategic reorganisation of the
18 way in which public health services were to be
19 delivered, the Scottish Government decided to create
20 a new body called Public Health Scotland.

21 **DR McMENAMIN:** That's correct.

22 **MR DAWSON:** And that body was incorporated in late 2019 as
23 I understand it.

24 **DR McMENAMIN:** Indeed.

25 **MR DAWSON:** And became operational in early April 2020.
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1 Covid-19 strategic incident director; is that correct?

2 **DR McMENAMIN:** Yes, that's correct.

3 **MR DAWSON:** And you have been the strategic lead for the
4 respiratory team within PHS or its predecessors for the
5 past 19 years?

6 **DR McMENAMIN:** Yes, that's right.

7 **MR DAWSON:** You were, as I understand it, during the course
8 of the pandemic, a chair of a body which we will come on
9 to called the National Incident Management Team.

10 **DR McMENAMIN:** Yes, that's correct.

11 **MR DAWSON:** You sat on a number of different bodies which
12 provided advice to government, both UK Government and
13 the Scottish Government, including SAGE.

14 **DR McMENAMIN:** Yes.

15 **MR DAWSON:** And NERVTAG.

16 **DR McMENAMIN:** Yes.

17 **MR DAWSON:** And the Scottish Government Covid Advisory
18 Group.

19 **DR McMENAMIN:** Yes, that's correct.

20 **MR DAWSON:** Amongst others.
21 When the pandemic struck, Dr McMenamain, you acquired
22 the role of public -- I think Health Protection Scotland
23 Covid-19 strategic incident director. What did that
24 particular role entail?

25 **DR McMENAMIN:** It meant overall co-ordination of, initially,
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1 **DR McMENAMIN:** Yes, it did.

2 **MR DAWSON:** Which was a particularly important time as
3 regards public health, because it was shortly into the
4 first lockdown in the pandemic.

5 **DR McMENAMIN:** Yes, that's correct.

6 **MR DAWSON:** How did the role that you had of Covid-19
7 strategic incident director sit alongside other medical
8 advisers who gave advice or provided assistance to the
9 Scottish Government's Covid-19 response, including,
10 for example, the Chief Medical Officer and others?

11 **DR McMENAMIN:** Thank you.
12 The principal route by which we offer advice
13 remained exactly the same before and after to some
14 degree, in that our principal contact through Scottish
15 Government would be both through the offices of the
16 Chief Medical Officer but also in reporting through our
17 policy colleagues in Scottish Government.
18 The only additional reporting requirement that
19 changed as of 1 April became that the co-sponsorship
20 arrangement that we had for who we would report to meant
21 that corporately, in addition to Scottish Government,
22 there was also the involvement of our local authority
23 colleagues and the body COSLA and Solace that were then
24 a part and parcel of that combined reporting that we
25 often did.
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1 **MR DAWSON:** We'll come on to some more detail relating to
 2 the National Incident Management Team of which you were
 3 chair in a moment, Dr McMenamin, but I'm interested to
 4 know, around that time at the beginning of the pandemic
 5 there must have been a clamour on the part of the
 6 Scottish Government for medical advice as to how they
 7 would handle the crisis. Did you find, from your
 8 perspective, and you've just explained how it fitted in
 9 with others, that the medical advisory systems at that
 10 crucial time provided clarity as to who it was that was
 11 to give the ministers who required it the ultimate
 12 medical advice, or was there a confusion perhaps of
 13 medical voices?

14 **DR McMENAMIN:** I certainly don't recall there being any
 15 confusion of medical voices, but rather a clear
 16 reporting arrangement where we were able to have an open
 17 door, effectively, to any urgent contact with the Chief
 18 Medical Officer, and that we had the opportunity through
 19 our Scottish Government policy colleagues to maintain
 20 the relationship with Scottish Government. And that was
 21 a very close working relationship that we had really
 22 from the first moments in January, when we identified
 23 there's something not quite right happening in China,
 24 all the way through to the announcements by Scottish
 25 Government of the arrangements that were to be put in

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1 **MR DAWSON:** I'm very much obliged.
 2 Before that I understand it that you were the
 3 director of the Centre for Infectious Disease
 4 Surveillance and Control at Colindale.

5 **DR PHIN:** Yes, for three and a half years I was the interim
 6 director, I then became deputy director for the National
 7 Infection Service within Public Health England and part
 8 of that was dealing with emerging infections, et cetera.
 9 So my initial involvement, therefore, was I convened the
 10 first national -- well, the IMT in London, within,
 11 I think, four or five days of us getting news of the
 12 developments in China.

13 **MR DAWSON:** So in the early part of the pandemic, before the
 14 role you took up with PHS, you were working within
 15 Public Health England?

16 **DR PHIN:** That's correct.

17 **MR DAWSON:** As a result, in your witness statement you have
 18 been able to provide us with a number of interesting
 19 perspectives about the way in which things were
 20 approached differently in the two nations.

21 **DR PHIN:** That's correct, yes.

22 **MR DAWSON:** Thank you.

23 We've heard some evidence from one of your
 24 colleagues in PHS, Mr Heald, already and so we've
 25 covered some of the functions, in particular the data

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1 place for the emergency powers that Scottish Government
 2 would enact to support the response in Scotland.

3 **MR DAWSON:** Thank you.

4 Could I just ask you some details about your
 5 background, Professor Phin.

6 I understand that you joined Public Health Scotland
 7 as director of public health service on 6 January 2021;
 8 is that right?

9 **DR PHIN:** That's correct, yes.

10 **MR DAWSON:** And in that role you were charged, along with
 11 others, with, as I've said, not only preparing the
 12 corporate response but collating together information to
 13 be able to respond to our questions as directed towards
 14 PHS; is that right?

15 **DR PHIN:** Yes.

16 **MR DAWSON:** Presumably that involved consultation with
 17 others because you yourself had arrived at PHS during
 18 the course of the pandemic.

19 **DR PHIN:** That's correct, yes.

20 **MR DAWSON:** So, in as far as we are asking you questions, we
 21 have to understand that for the first half, if you like,
 22 of the pandemic, you were not personally part of Public
 23 Health Scotland; is that right?

24 **DR PHIN:** Yes, and if there are questions I think are --
 25 might be useful, I can involve my colleague.

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1 side of things, but I wonder if we might just summarise
 2 what the role of PHS is and was.

3 I would attempt to summarise it along these lines:
 4 that during the course of the pandemic PHS received
 5 policy decisions from the Scottish Government and
 6 assisted with the medical side providing advice on the
 7 medical side of those; is that correct?

8 **DR PHIN:** Yes, I mean, medical but also epidemiological --

9 **MR DAWSON:** Yes.

10 **DR PHIN:** -- statistical and other aspects.

11 **MR DAWSON:** It also had a role in issuing advice in the
 12 other direction, if you like, towards hospitals and the
 13 public and other organisations that might wish to
 14 receive advice about the policy of the government at the
 15 time.

16 **DR PHIN:** Yes, I think a key role was trying to translate
 17 some of those policy directions and aspirations into
 18 something that could be used, you know, by external
 19 organisations.

20 **MR DAWSON:** So in effect PHS was providing data and advice
 21 upstream towards the Scottish Government, but also it
 22 was providing it downstream towards institutions,
 23 organisations and the public?

24 **DR PHIN:** That's correct, yes.

25 **MR DAWSON:** As we've heard from Mr Heald, an important part

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1 of that role was that PHS obtained, analysed and
2 published data relating to the pandemic which was used
3 both by the Scottish Government in its assessment of the
4 threat but also by the public.

5 **DR PHIN:** That's right.

6 **MR DAWSON:** And we've heard a good deal about that already
7 from Mr Halliday and Mr Heald.

8 Did the nature of the role of HPS or PHS in any of
9 these capacities change during the pandemic, or did it
10 remain as that?

11 **DR PHIN:** From my perspective -- bearing in mind, as I say,
12 I came in 2021 -- I can't comment what it was like
13 before then, but from 2021 onwards I would say that the
14 role was pretty much unchanged. We continued to provide
15 that advice, translate it into operational, if you like,
16 guidance and provide intelligence and insight where
17 appropriate.

18 **MR DAWSON:** Dr McMenamin, you may be able to assist with
19 this as well.

20 As far as the way that advice was commissioned from
21 HPS, or subsequently PHS, was concerned, from Scottish
22 Government, how was that advice commissioned? Was it
23 advice that was offered or was it specifically
24 requested? How would that advisory function work?

25 **DR McMENAMIN:** I think it would be fair to say that there
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1 **DR McMENAMIN:** Indeed.

2 **MR DAWSON:** What I'm interested in exploring is the extent
3 to which PHS would form its own views based on its data,
4 one assumes, about what to do, and the Scottish
5 Government would make its mind up or take advice
6 separately, or whether that was a collaborative
7 exercise.

8 **DR McMENAMIN:** It's sometimes easy to forget that in the
9 first days of our response, and indeed the first months,
10 that we had no patients that were potentially presenting
11 with infection and that our data then was a nil return
12 thus far, for instance across the months of January and
13 indeed across the month of February, that we had no
14 cases, but rather that we were using the experience of
15 others, whether that was from China or closer to home in
16 Italy, across the month of February and then using the
17 initial cases that were described in England. Our first
18 approach to that was then to use whatever data was
19 available to us to inform that, backed by this
20 international data.

21 Professor Phin and I have had a long working
22 relationship across decades in which making sense of
23 those first cases using a First Few 100s approach was
24 actually something which then was important that we were
25 able to bring to the fore and work collaboratively
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1 was a mixture of different approaches that allowed
2 advice and guidance to be offered, either through
3 recognition, because it was fairly obvious that we would
4 need to support our NHS board and local authority
5 colleagues in the investigation and management of cases,
6 but in particular once we reached the first cases being
7 reported in Scotland and our Scottish Government
8 colleagues increasingly moving towards a stepping up of
9 their response on behalf of government and ultimately
10 the emergency powers that were then enacted to support
11 that, more and more of a transition from a health
12 protection alone response into a societal response that
13 our government colleagues were then very, very much at
14 the forefront of, and in particular through the actions
15 of First Minister, a co-ordination of that communication
16 of messaging that was co-ordinated by our Scottish
17 Government colleagues from some point in March onwards.

18 **MR DAWSON:** Okay.

19 Obviously, as we discussed with Mr Heald and
20 Mr Halliday, there would be a situation where data was
21 available upon which decisions might be made about the
22 best thing to do to manage the pandemic which would
23 emanate from PHS, and that that PHS data would form
24 a subset of the entirety of the information available to
25 the Scottish Government.
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1 across the UK to describe that first series of cases.

2 **MR DAWSON:** I think that's a project, if you like, that
3 the Inquiry's heard some evidence about already in
4 Module 2, so just to understand that, the position is
5 that at the beginning -- as regards access to
6 information in particular -- there was very scant
7 information available and that therefore access to data
8 and information was driven by the need to get one's
9 hands on whatever was available --

10 **DR McMENAMIN:** Absolutely.

11 **MR DAWSON:** -- to inform -- best inform the response.

12 As the pandemic went on, one assumes more local data
13 systems and testing and cases started to emerge, one
14 could advise on and inform about a more local response;
15 is that correct?

16 **DR McMENAMIN:** And that the opportunity was afforded in the
17 short interval to gear things up, to begin to be able to
18 receive and process that information, recognising that
19 this was in the days before declaration of a pandemic,
20 it was very likely we were going to see an increase in
21 cases and we would require to be able to report on all
22 of those cases.

23 **MR DAWSON:** We've heard some evidence from the previous
24 witness, who was a government civil servant, about
25 difficulties that were experienced at a government level
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1 obtaining information from the UK Government.
 2 You mentioned the fact that there was a necessity to
 3 try and rely on whatever evidence one could get, as
 4 hopefully reliable as possible, one would assume.

5 From a scientific perspective, was there over this
 6 period -- and indeed any other period during the
 7 pandemic -- any difficulty which was experienced gaining
 8 information on a scientific basis from the UK Government
 9 or from UK agency -- English or UK based agencies?

10 **DR McMENAMIN:** Not at all from our health protection
 11 colleagues. As you might imagine, in peacetime, outwith
 12 a pandemic setting, there was very good working
 13 relationship with our colleagues at what was Public
 14 Health England and what became the UK Health Security
 15 Agency, and indeed I have been a past chair of
 16 a multicountry group looking to harmonise some of our
 17 surveillance output. So we were using the relationships
 18 that we already had well established to make sure that
 19 we were keeping each other, and indeed the rest of the
 20 four nations -- and indeed a fifth nation, the Irish
 21 Republic -- very well aware of what was developing.

22 **MR DAWSON:** Sorry, Professor Phin.

23 **DR PHIN:** I'm just wanting to say, coming from the other
 24 perspective, when I was in Public Health England at that
 25 particular time we made every effort to try and involve

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1 We asked you some questions about this early period,
 2 which you have helpfully responded to in your statement.
 3 You say that:

4 "Early in the response HPS moved on to an emergency
 5 footing and instituted their Emergency Response Plan.
 6 Sustaining the response over the initial short period of
 7 months significantly taxed the capability of HPS to near
 8 breaking point despite the best efforts of our parent
 9 organisation, National Service Scotland, and the able
 10 assistance provided by our ARHAI colleagues ..."

11 Could you tell us, first of all, which time period
 12 you're referring to?

13 **DR McMENAMIN:** So as an immediate response across the months
 14 of January, February and March.

15 **MR DAWSON:** And you say there that -- this is obviously the
 16 period before the kind of April, PHS comes into
 17 existence --

18 **DR McMENAMIN:** Yes.

19 **MR DAWSON:** -- we're still talking about HPS, that the
 20 position at that stage had stretched HPS to near
 21 breaking point. Can you tell us what you meant by that?

22 **DR McMENAMIN:** I am indebted and will be forever indebted to
 23 just exactly how much and how wholeheartedly all of our
 24 staff threw themselves at addressing all of the issues
 25 of the day. It has become commonplace, I think, we've

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1 the devolved administrations, as we called them, in both
 2 the information sharing and, where time allowed, the
 3 detailed development of policy and guidance.

4 I think it would be fair to say that we didn't start
 5 off with no guidance at the beginning of a pandemic. We
 6 had the 2009 pandemic, and at that point I was leading
 7 the Pandemic Flu Office, and indeed we'd produced
 8 a suite of guidance around how we might manage various
 9 aspects of it.

10 So it was a case of getting that guidance out,
 11 dusting it off, looking at what we now knew about --
 12 what we knew about Covid, and seeing how we could adapt
 13 that existing guidance and use it in a rapid and helpful
 14 way with the response that we would -- that potentially
 15 we could anticipate.

16 **MR DAWSON:** Thank you.

17 So her Ladyship will decide upon this in due course,
 18 but whatever the position as regards governmental
 19 information sharing or relations from a scientific
 20 perspective from both ends, your evidence is that that
 21 worked as well as one could expect?

22 **DR McMENAMIN:** Yes.

23 **MR DAWSON:** I wonder if I could take you, in relation to
 24 this initial period, Dr McMenamin, to paragraph 14.18 of
 25 your witness statement. The statement is INQ000360968.

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1 seen in some of the responses that it became common,
 2 regrettably, that colleagues were working 12 to 14-hour
 3 days for seven days a week and not necessarily having
 4 much in the way of opportunity for any downtime. So
 5 that continued sustained effort over an initial period,
 6 that didn't start with a lockdown but rather started in
 7 January, was a significant effort by all of those staff
 8 that that meant then, for all of my colleagues then,
 9 I can offer nothing but thanks for all of the effort
 10 that they expended.

11 **MR DAWSON:** Could you just assist us with the acronym ARHAI?

12 **DR McMENAMIN:** So Antimicrobial Infection and Healthcare
 13 Associated Infection is the acronym. I hope that the
 14 provision of the glossary in my own statement was then
 15 useful for that purpose to help anyone who might be
 16 reading that.

17 **MR DAWSON:** Yes, thank you.

18 **DR McMENAMIN:** Those colleagues were part of our parent
 19 Health Protection Scotland organisation, but remained
 20 with our NSS colleagues at the creation of Public Health
 21 Scotland, so, if you like --

22 **MR DAWSON:** We'll get on to that in a moment, but I was just
 23 keen to try to understand what the role of that
 24 particular body was. In particular, what was it doing
 25 specifically in the pandemic response and the process

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1 you've described over those early few months?

2 **DR McMENAMIN:** Thank you. The principal role throughout
3 this and the continued role that they had across the
4 pandemic was in the provision of infection prevention
5 and control advice for all of the NHS in Scotland.

6 **MR DAWSON:** Okay.

7 I'd like to ask you a few questions about the
8 reorganisation. You've both given us in your statements
9 helpful explanations of that but, broadly speaking, as
10 I think you've alluded to, there was a reorganisation
11 which meant a number of the public health functions
12 which had previously been HPS moved to PHS; but one of
13 the notable things that did not move was this ARHAI part
14 of the operation, which stayed within --
15 administratively within the ambit of National Services
16 Scotland; is that correct?

17 **DR McMENAMIN:** Yes.

18 **MR DAWSON:** Can I ask you whether, given the role that you
19 have stated was played, an important role, by your ARHAI
20 colleagues, that administrative separation between the
21 two wings, if you like, of this public health response,
22 or two of the wings, whether that caused difficulty when
23 the separation happened? Because previously you were
24 administratively together and you move to being
25 administratively apart.

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1 them in NSS impacted on the ability of PHS to mount
2 an effective response at a critical time during the
3 pandemic. It created artificial barriers to effective
4 working at a time when this was desperately needed.
5 Staff on both sides became distracted by trying to work
6 through new arrangements etc. This was avoidable and
7 unnecessary."

8 In particular --

9 **LADY HALLETT:** I'm sorry to ask, Mr Dawson. I think the
10 public gallery look as if they're being frozen. Can we
11 please -- one lady has already had to leave because she
12 was so cold, and I've seen others shivering. If we
13 could sort that out rather than -- we don't want to
14 freeze our audience.

15 Sorry, Mr Dawson.

16 **MR DAWSON:** I did warn you about coming to Scotland ...

17 **LADY HALLETT:** I don't think it's meant to be that cold
18 indoors, though.

19 **MR DAWSON:** Thank you, sorry.

20 Professor Phin, we were asking you about this
21 administrative change, and in particular in light of the
22 evidence that Dr McMenamain's already given about the
23 earlier period before April and the extent to which the
24 pressures had driven the HPS service to near breaking
25 point.

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1 **DR McMENAMIN:** So this might be considered akin to the most
2 painless separation or divorce that I've ever
3 experienced, because our colleagues continued on
4 a day-to-day basis to work with us, night and day, to be
5 able to deliver what we needed to do. So in those early
6 days, certainly, and that first year of April 2020 to
7 March 2021 was actually something which was barely
8 visible to any external agency, let alone an internal
9 one. We continued to rely on each other to assess the
10 delivery of the things that we did.

11 **MR DAWSON:** But both parts, if you like, if I can describe
12 it as that, played an essential role --

13 **DR McMENAMIN:** Absolutely.

14 **MR DAWSON:** -- over that period.

15 **DR McMENAMIN:** Absolutely.

16 **MR DAWSON:** I think you recognise that in your statement.

17 **DR McMENAMIN:** Yes.

18 **MR DAWSON:** Professor Phin, you in your witness statement,
19 INQ000339576, at paragraph 11.1.2, comment under
20 subparagraph (i) there that:

21 "In my view the separation of ARHAI from PHS should
22 not have gone ahead at the start of the pandemic.
23 Trained and suitably experienced health protection
24 staff, familiar with working in the national health
25 protection structure, were in short supply and leaving

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1 Could you assist us with your apparent view that you
2 think this separation should not have gone ahead, in
3 particular as regards the effect that you think this may
4 have had on the effectiveness of the response?

5 **DR PHIN:** Yes, I think people maintained a very professional
6 approach to this separation, they tried not to let it
7 get in the way of any sort of barriers to useful
8 working. However, what effectively happened was that
9 Health Protection Scotland lost a third of its workforce
10 in -- when we became Public Health Scotland, and over
11 the period of the pandemic we found ourselves going
12 after the same groups of staff. So we were advertising
13 to fill posts, and indeed there was movement from ARHAI,
14 as we describe, ARHAI, to Public Health Scotland and
15 from Public Health Scotland to ARHAI, which I don't
16 think was helpful.

17 I think a decision to defer that would have been
18 useful at the time, and indeed there is a consultation
19 ongoing at the moment which Public Health as a corporate
20 body will be contributing to, and we will await the
21 outcome.

22 What I'm expressing there, I think, is a personal
23 view based on my experience of working in health
24 protection over many years, and that ARHAI equivalent in
25 Public Health England having -- working extremely well

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1 within Public Health England. So again this is
2 a professional perspective.
3 **MR DAWSON:** Because one of the things that the Inquiry is,
4 of course, interested in is the extent to which it might
5 make recommendations to try and make response in any
6 future pandemic better, and I'm sure you are both also
7 engaged in that process regularly. It did occur to us,
8 on reading these comments and others, that this
9 administrative separation -- which of course had been
10 pre-planned many months before, and no one knew there
11 would be a pandemic -- would be something perhaps that
12 we might consider as being something that would improve
13 any future response.

14 Would you agree with that, Professor?

15 **DR PHIN:** I would. I mean, if you look at health
16 protection, health protection is an umbrella term
17 describing all aspects. We cover vaccination, we cover
18 infection control, antimicrobial resistance, we interact
19 with animal health, we interact with the food industry,
20 FSA. So health protection is that umbrella under which
21 we all operate and we all work. Clearly people develop
22 special interests, we have off elements where it's
23 appropriate to develop and garner expertise, but
24 ultimately working as part of that larger health
25 protection organisation, we're able to flex people to

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1 with the limitation that they played some role in that,
2 as I understand what you're saying, but not their
3 priority was hospital (inaudible)?

4 **DR McMENAMIN:** We're probably the wrong people to ask,
5 because given that that separation from 1 April 2020 --
6 but we can perhaps offer our understanding about that,
7 but it would be good to confirm anything that we're
8 saying with our ARHAI colleagues.

9 **MR DAWSON:** Yes. The reason obviously I'm interested in
10 that, to be candid, as you will have worked out,
11 Dr McMenamain, is over the period that we are interested
12 in at the very beginning of the pandemic --

13 **DR McMENAMIN:** Yes.

14 **MR DAWSON:** -- you will be aware that there were many, many
15 infections and deaths in care homes in Scotland.

16 **DR McMENAMIN:** Yes.

17 **MR DAWSON:** That's an important part of the module that
18 we're addressing here, and we'll come on to some
19 elements of that in due course, but --

20 **DR McMENAMIN:** Yes.

21 **MR DAWSON:** -- I'm interested in the extent to which the
22 reorganisation, or indeed inadequacies in the ARHAI role
23 in providing guidance to, rather than to hospitals, to
24 care home settings, created a potential problem, given,
25 as we have heard from witnesses, including

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1 where they may be needed in the event of, let's say,
2 a large food-borne outbreak or, as indeed in this
3 situation, in a pandemic.

4 So being able to have that overarching health
5 protection structure I would say is a key issue going
6 forward.

7 **MR DAWSON:** Thank you.

8 One of the things I just wanted to follow up on was
9 that I think, Dr McMenamain, you said earlier that one of
10 the important functions of ARHAI was development of
11 guidance for infection prevention and control in
12 hospital settings. Did that part of the operation also
13 provide such guidance for social care settings?

14 **DR McMENAMIN:** So, yes, they made a significant contribution
15 potentially to anything that we were offering for
16 setting specific information, but in the main the
17 priority, as the name suggests, of -- for their full
18 name, for their abbreviation, was that their principal
19 focus was always to be in the healthcare settings.

20 So outside of that, they were able to, where it was
21 possible, begin to offer advice, but in the main it was
22 a healthcare offer of that advice.

23 **MR DAWSON:** I think at paragraph 11.4.2 of the corporate
24 statement it suggests that their role covered both
25 health and social care, but is that to be understood

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1 Donald Macaskill of Scottish Care yesterday, that there
2 was a clamour really within the care community for
3 guidance as to how operate effective infection control
4 within an environment such as a care home, which --

5 **DR McMENAMIN:** Yes.

6 **MR DAWSON:** -- as I'm sure you'll be aware, is difficult to
7 do.

8 **DR McMENAMIN:** Yes.

9 **MR DAWSON:** So can you help us, either of you, from
10 a corporate view or from your own personal perspective,
11 Dr McMenamain, as to whether there was a deficiency in
12 the service being provided at that time with regard to
13 guidance, which resulted either from the reorganisation
14 or from the fact that it wasn't clear that guidance to
15 be provided to care homes was a priority in this public
16 health service?

17 **DR McMENAMIN:** So I don't recognise that as being any
18 deficiency. Our colleagues in infection prevention and
19 control were able to make clear a very articulate
20 recommendation about what would be advisable in the
21 setting for health and social care, and they certainly
22 were very much part of the guidance team and the offer
23 of advice that covered this important period across
24 March and April of 2020 onwards.

25 **MR DAWSON:** Just to be clear -- sorry, before I come to you,

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1 Professor -- there might be a difference in the type of
2 guidance being provided, because guidance could be
3 provided to government as to what they should do about
4 it, but I mean guidance being provided to the sector
5 itself.

6 **DR McMENAMIN:** Yes, and indeed my infection prevention and
7 control colleagues were making significant contribution
8 to any of the guidance that was being issued either by
9 Health Protection Scotland before the end of March 2020
10 or thereafter from Public Health Scotland.

11 **MR DAWSON:** Yes, thank you.

12 And, Professor, you have a view?

13 **DR PHIN:** Well, it's just to say that, you know, we didn't
14 start from scratch when the pandemic started.
15 Healthcare in social and healthcare settings have for
16 many, many years been dealing with outbreaks of flu,
17 norovirus, et cetera, in healthcare and in the
18 community. So there are well established processes
19 around infection control within the social care setting.
20 In addition to that, we have local health boards which
21 have got health protection teams, and we made clear in
22 a number of iterations of the guidance that was
23 subsequently issued that healthcare -- social care
24 settings should approach those health protection teams
25 if there was any concerns or if they needed advice

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1 think that such a reorganisation of senior management
2 would have an impact on direction, control and the
3 ability of the organisation to function as fully as one
4 needed at that time.

5 I'd be very interested to hear your perspective on
6 that, whether you agree with it or not, from a corporate
7 or indeed individual perspective.

8 Dr McMEnamin?

9 **DR McMENAMIN:** I recognise everything that you've said that
10 Professor Chris Robertson has written. In practice,
11 I can see much of what Chris has written is something
12 which was either being addressed but was perhaps
13 interrupted, or at least the speed with which people
14 could come to common understanding was interrupted
15 because the pandemic was so demanding of our time. But
16 nonetheless our chief executive and the interim clinical
17 director in Public Health were instrumental in trying to
18 overcome some of the immediate difficulties that we had,
19 particularly about expanding our workforce. Which is
20 always going to take time because you -- the specialists
21 that we needed to grow or acquire from elsewhere were
22 going to take that time.

23 It's certainly unfortunate about the timing of the
24 creation of the organisation, but nonetheless important
25 that we went ahead with that, and that as we pulled

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1 around the implementation or understanding.

2 So, you know, we didn't start from nothing, there
3 was existing principles, there were existing processes
4 in place, and it was simply a case of trying to adapt
5 those to the peculiarities of the themes or the things
6 that were emerging from this particular pandemic.

7 **MR DAWSON:** There's just one other aspect of the
8 reorganisation which I'd just like to give you the
9 opportunity to comment on. I think we may have touched
10 on this already, but Chris Robertson -- who's the
11 Chief Statistician, I think, at HPS -- said in his
12 witness statement to this Inquiry that:

13 "Almost certainly the formation of PHS in April 2020
14 initially had a major negative impact on the management
15 of the pandemic in Scotland, as there was a whole new
16 layer of senior management who the senior consultants
17 had to report to. The management structure of PHS was
18 more complex than HPS, and the whole organisation much
19 larger. In addition, many of the senior leaders on the
20 PHS board did not appear to have extensive experience in
21 managing a pandemic response and were new and external
22 appointments."

23 So this is an aspect of the reorganisation which
24 a witness who was involved is suggesting may have had
25 an impact on the response, and one might reasonably

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1 together, as the teams across all of those organisations
2 coming together, we had very, very good buy-in from all
3 of those team members. So at a practical level we could
4 see the immediate benefits of having increased access to
5 the same workforce who had joined us from NSS, who were
6 part of an original organisation, Information Services
7 Division, but also some of the expertise that our
8 colleagues from Health Scotland were bringing to this,
9 and in particular -- and if opportunity arises in the
10 discussion to talk about inequalities -- their great
11 experience was going to be very, very helpful over those
12 coming months as we began to look at that.

13 **MR DAWSON:** Thank you.

14 I would like to just say to you, Dr McMEnamin, that
15 my question doesn't seek to imply any criticism in any
16 way. This was a pre-planned reorganisation which came
17 at a really extremely unfortunate time. It is part of
18 our remit, however, to explore as a matter of fact --

19 **DR McMENAMIN:** Yes.

20 **MR DAWSON:** -- whether that reorganisation did impact upon
21 the response which this important organisation could
22 provide, and support and advice that it was obviously
23 was called upon to do.

24 Do you think overall that it did as a matter of
25 fact, without suggesting any culpability or anything of

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1 that sort?
 2 **DR McMENAMIN:** It certainly may have affected some of our
 3 initial work, but work before PHS was formed had already
 4 been enabled by the appointment of a chief executive who
 5 was working in the background to make sure that that
 6 transition could be as smooth as possible. But
 7 I certainly could not disagree with you that that was
 8 challenging because we had to expend time and energy
 9 that otherwise we wouldn't have had to -- with getting
 10 to know new colleagues who were going to be instrumental
 11 in helping us doing things.

12 **MR DAWSON:** Thank you, Dr McMenamin.
 13 Professor?

14 **DR PHIN:** Yeah, from a corporate perspective, although not
 15 around at the time, I worked extremely closely with
 16 chief exec and my other colleagues from January 2021
 17 onwards. Looking through and talking to them, it was
 18 very clear that there was a recognition they were new to
 19 this, and therefore they followed almost to the letter
 20 the advice that Jim and his team was giving them about
 21 what was needed, what resources needed to be deployed,
 22 and I saw nothing to suggest that there was any
 23 reticence about moving people into support it.

24 So it's not something I recognise in the sense that
 25 PHS actually provided greater flexibility. There were

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1 Scottish Government but connected with Scotland, and we
 2 are asking you questions to try and understand your role
 3 in that process.

4 In your report, Professor Phin, you say at
 5 paragraph 1.4.4 of the report, INQ000339576, 1.4.4,
 6 where you say, reading from roughly the middle:

7 "PHS had therefore minimal opportunities to provide
 8 Ministers with a first-hand account of the thoughts of
 9 senior staff in PHS or to make them aware of the
 10 practical implications of policy decisions. The main
 11 mechanism by which PHS was able to provide advice to
 12 Scottish Government was through the NIMT."

13 To which I will return imminently.

14 Do you think that PHS could or should have been able
 15 to provide more direct information and advice to
 16 ministers, given their central role in the public health
 17 response?

18 **DR PHIN:** Yes, I was contrasting the approach in Scotland
 19 with that experience then for the 12 months in England,
 20 and right from the start PHE -- either myself as one of
 21 the incident directors, one of my medical director or
 22 director of health protection -- would be involved in
 23 face-to-face discussions with the minister, they would
 24 be attending COBR, the COBR meetings, and there would be
 25 in the room present providing direct advice, based on

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1 more resources to pull on, albeit not trained
 2 specifically in health protection, but everyone made
 3 a contribution and I would say that the establishment of
 4 that team across the wider remit actually helped bolster
 5 the response and, as I say, I saw nothing to indicate
 6 that the advice about how it should be structured, how
 7 it should be resourced was ever rejected, and in fact it
 8 was supported as best was possible at the time.

9 **MR DAWSON:** Thank you, Professor.

10 With my apologies for overrunning, my Lady, that
 11 would be a moment to break.

12 **LADY HALLETT:** No, not at all. People probably don't know
 13 as yet, we may have to sit a little later tonight. So
 14 I shall return at -- we'll have a slightly shorter break
 15 in case we need to have another break later, and I shall
 16 return at 3.20. And by the looks of it, we're not
 17 freezing members of the public gallery any more; good.

18 (3.08 pm)

19 (A short break)

20 (3.20 pm)

21 **LADY HALLETT:** Mr Dawson.22 **MR DAWSON:** Thank you, my Lady.

23 Moving into a slightly different area, we are
 24 of course in this module concerned primarily with
 25 looking at political decisions made by primarily the

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1 largely our experience of: if you were to introduce this
 2 policy, this is what it could mean on the ground, these
 3 are the issues that we'd have to think through.

4 With the greatest of respect to colleagues in
 5 Scottish Government, they were working at a national
 6 level, they were not working -- well, they, I've(?)
 7 understood I think what the local implications, the
 8 restrictions, the limitations indeed, on what could be
 9 done with the public health workforce. So very much
 10 being able to be in the same room, advise, point out the
 11 implications, I think, was really important.

12 **MR DAWSON:** Did that create a situation where decisions may
 13 be made about restrictions which might be incapable of
 14 being delivered on the ground?

15 **DR PHIN:** Yes, I think we've given a couple of examples, one
 16 around borders where there was an expectation that
 17 somehow we would be going out, checking up on people as
 18 to whether they were maintaining quarantine, and I think
 19 there was a reasonably robust exchange between our chief
 20 executive and Scottish Government saying that just
 21 wasn't a feasible option, we didn't have the legal
 22 powers, and in any sense, you know, it wasn't something
 23 that we could do. But nevertheless we were instructed
 24 to try and enquire about people's wellbeing and provide
 25 them with information, but equally if they didn't

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1 respond there was an implication that we should somehow
2 report this to Police Scotland. And again that is
3 outwith anything that we would normally do, and had we
4 been available we could have pointed out some of the
5 limitations of that approach.

6 **MR DAWSON:** Do you think, other than just the practical
7 issues and potential problems that that causes, do you
8 think that that represents perhaps a gap in the
9 knowledge base available to the Scottish ministers in
10 making decisions, because it may be if they were aware
11 of those practical limitations they would have chosen
12 an alternative way of managing the pandemic, for example
13 in the borders situation that you're suggesting?

14 **DR PHIN:** It's possible, and I would be speculating if
15 I gave an opinion one way or the other. I'm simply
16 noting that the difference, the contrast between England
17 and Scotland where, if you like, the public health, the
18 health protection advice was round the table, providing
19 it directly. That's not to say it was always listened
20 to, but at least there was an opportunity to put those
21 points across, and we were working, if you like, through
22 a filter, you know, people were interpreting what they
23 heard and they were then trying to then re-interpret
24 that in the context of what they were being asked.

25 So being there, being able to clarify things at that

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1 given. Another example was in relation to our
2 definition of a patient in hospital with Covid, which
3 was -- the definition that had been used was 28 days, so
4 that was then used to understand occupancy, who was
5 occupying beds in hospital. The reality was that,
6 you know, 28 days is a long time, most people would have
7 been recovered, therefore they weren't occupying a bed
8 because of Covid, and back in November, I think it was,
9 2022 we proposed the change to bring that down to
10 14 days. This was supported by CMO's office but it
11 wasn't until May 2023 that that change was actually
12 introduced. So that was nearly six, seven months, and
13 we reckoned, we estimated that using that original
14 definition we were overestimating the number of people
15 in hospital by something like 24%, and if you're trying
16 to make planning assumptions, that's quite a lot of
17 people that you may be overestimating --

18 **MR DAWSON:** I think perhaps we touched on this with your
19 colleague Mr Heald, it was because the definition of
20 being in hospital 28 days after the test may include
21 people who are no longer suffering from Covid --

22 **DR PHIN:** That's right.

23 **MR DAWSON:** -- but were in hospital for another reason. But
24 the point here is that these were matters on which PHS
25 made representations to the government to try to improve

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1 point, I think could have been extremely beneficial.

2 **MR DAWSON:** I think you mentioned there was another example
3 other than borders that you had considered.

4 **DR PHIN:** Yes, I mean ... yes, there was another, and I'm
5 trying to think what it was. Apologies, I can't
6 remember, but if it comes to me, I'll --

7 **MR DAWSON:** Thank you, I appreciate that.

8 Just staying in your statement there, Professor,
9 there was another issue I wanted to raise with you at
10 paragraph 1.4.3, the immediately preceding paragraph.
11 You enumerate(?) some of the challenges faced by those
12 responding to the pandemic included the need for
13 definitions used for certain key data items, their
14 significance and the frequency of reporting to change
15 over the course of the pandemic; and I think you
16 highlight there, without going through all of the text,
17 that there was an issue in this regard where PHS had
18 suggested that a definition relating to deaths,
19 mortality figures, would appropriately be changed in
20 order to try to maximise accuracy and that that proposal
21 was refused by the Scottish Government because they had
22 become used to the way in which the definition had
23 operated up to that point.

24 Can you add anything to that?

25 **DR PHIN:** Well, yes, I mean, that was one example you've

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1 the system, but that these were rejected.

2 **DR PHIN:** Yes, they were eventually implemented --

3 **MR DAWSON:** Yes.

4 **DR PHIN:** -- but it was after some time --

5 **MR DAWSON:** In the intervening period, PHS's position would
6 be that the data provided was not as accurate as it
7 might have been?

8 **DR PHIN:** Yes.

9 **MR DAWSON:** I wonder if I might then move to the NIMT and
10 I think, Dr McMenamin, in relation to this. You were
11 the chair of this body. The PHS corporate statement
12 states that:

13 "HPS set up a National Incident Management Team that
14 met for the first time on 13 January 2020. The
15 composition of the NIMT was dynamic and adapted to the
16 evolving response to the pandemic. NIMT members include
17 local health board directors of public health, Scottish
18 Government policy and analytical advisers, the CMO and
19 representatives from local government and PHS teams.
20 Attendees changed over time between the initial set-up
21 in January 2020 to the formalisation of the group and
22 the agreement of the terms of reference in
23 September 2020."

24 Was the NIMT a body that was created simply to deal
25 with the Covid crisis, or was it a concept that could be

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1 brought together to deal with an emergency of the nature
 2 of the Covid crisis, the idea of which already existed?
 3 **DR McMENAMIN:** Okay, so in reverse order, I think, to what
 4 you just asked me: the "Managing incidents of public
 5 health concern" which has been in place as a document
 6 that a number of stakeholders assisted us to generate
 7 from the Scottish Health Protection Network was
 8 a long-standing approach for how we dealt with any
 9 incidents, no matter their size, about what should or
 10 could be done and who might be able to assist you in
 11 delivering the response that was required to bring that
 12 issue under control.

13 Our initial incident management team met, as you
 14 said, for the first time in January and I think we've --
 15 we met something like 169 times. I think I might have
 16 been the chair 162 of those 169, and Nick maybe three or
 17 four of those, whenever I got benched to take leave or
 18 something else. So that group was really important in
 19 helping us to deliver everything that we then hoped to
 20 be able to deal with on a national basis, dealing with
 21 whatever the emerging issue was of the time.

22 And certainly from my perspective it was the
 23 privilege of my working lifetime to be able to be the
 24 chair of that group, because I don't think I've ever
 25 come across a group of colleagues who were as dedicated
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1 were seeing, and instances where that was not the fact,
 2 but either that we were seeing an increasing number of
 3 cases, that's to say that whatever policy issues had
 4 been implemented were not having the effect that they
 5 should or, particularly once we had the availability and
 6 deployment of vaccination, just what were we beginning
 7 to see. That allowed us to have the advice that we were
 8 offering from NIMT to come in through the formal
 9 four harms reporting arrangement, which I'm sure that
 10 we've been through over the previous days.

11 **MR DAWSON:** Yes.

12 **DR McMENAMIN:** And offered that opportunity to also have in
 13 that four harms meeting that direct representative, the
 14 CMO, able to give an update to which I, as the chair, or
 15 whoever was attending on behalf of PHS, able to
 16 supplement that with any additional points that were
 17 felt to be important.

18 **MR DAWSON:** When you say that the NIMT was able to report
 19 and feed into the process local experience -- you've
 20 talked about outbreaks, the effect of vaccination -- was
 21 it possible through that mechanism to feed through local
 22 health experience, so in hospitals and the NHS, the
 23 frontline, if we can call it?

24 **DR McMENAMIN:** Indeed. However, within the four harms
 25 exposure of all of that information, our representative
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1 to try and make sure that they managed Covid as best as
 2 was humanly possible to reduce the impact on the
 3 population.

4 **MR DAWSON:** Thank you.

5 Just to tie into one of the answers that
 6 Professor Phin gave a moment ago, my understanding is
 7 that the CMO sat on that group; is that correct?

8 **DR McMENAMIN:** Yes, that's correct.

9 **MR DAWSON:** And you mentioned earlier that one of the
 10 reporting mechanisms of PHS, or HPS as it was at that
 11 time, was through the CMO, and I think the passage we
 12 went to before suggested that because there was not
 13 direct contact with ministers, as there had been in
 14 Professor Phin's experience in England, the NIMT was the
 15 main reporting mechanism.

16 Was it therefore the case that the CMO attended
 17 meetings and that whatever input the group could have
 18 the CMO then took away and fed into the Scottish
 19 Government machine?

20 **DR McMENAMIN:** I think it was both directions, it was
 21 imparting any urgent issues for the incident management
 22 team to be able to address, but also hearing first-hand
 23 what the intelligence was that was being offered in each
 24 of the meetings about what were we seeing, what if
 25 anything was working in control of the cases that we
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1 colleagues, as directors of public health, or I think
 2 from one of the colleagues that you had yesterday on
 3 behalf of COSLA, Solace, hear that local representation
 4 about: yes, this is something that we agree with, or
 5 their opportunity to offer any contrary view.

6 **MR DAWSON:** I'm particularly interested in the extent to
 7 which it was possible to get frontline NHS information
 8 into the machine through that; that was part of it?

9 **DR McMENAMIN:** Absolutely, yes, that is part of that. My
 10 principal role in garnering all of that advice then was
 11 to make sure that we had representation from all of our
 12 NHS boards and, through COSLA and Solace, opportunity to
 13 hear exactly what the intelligence was from those local
 14 areas about just exactly how bad a problem were they
 15 seeing, what was working, what did not, and that allowed
 16 us to contextualise any of the advice that we were then
 17 offering about the societal measures that were
 18 implemented at the time, or later the impact of
 19 vaccines.

20 **MR DAWSON:** Okay, thank you.

21 What prompted the NIMT to be set up on
 22 13 January 2020?

23 **DR McMENAMIN:** As part of our managing incidents of public
 24 health concern, there's a set choreography for what we
 25 would do where: is there a problem? A problem
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1 assessment group, and that can be called by any of the
2 constituent members -- in this instance an internal
3 issue within Health Protection Scotland -- and
4 thereafter say: we think that there's something that at
5 the very least that we need to begin to prepare for,
6 where we can say there's unusual infection in China
7 which is unexplained, appears to be causing severe
8 illness and was a recognised first step then where we
9 implemented that to try and ensure that we were
10 beginning to prepare for dealing with any increase in
11 cases, should we see any.

12 **MR DAWSON:** So do I take it, then, that the instigation was
13 from within HPS itself?

14 **DR McMENAMIN:** Yes.

15 **MR DAWSON:** It wasn't the Scottish Government or anything
16 telling you to do that; you yourselves put that body
17 together?

18 **DR McMENAMIN:** That's correct, and indeed that would be the
19 normal circumstance for almost every incident management
20 team that we've ever created.

21 **MR DAWSON:** What advice generally was being given over the
22 period between January and February, to the end of
23 February let's say, through the NIMT to the government
24 about the nature of the threat?

25 **DR McMENAMIN:** So in I think almost a daily basis that we
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1 given by NIMT at that stage? Because obviously there
2 was little local information.

3 **DR McMENAMIN:** Indeed. I think across the UK, whether it
4 was through Professor Woolhouse directly or whether it
5 was from a variety of colleagues who were reporting to
6 us, Professor Phin in his prior role, or indeed other
7 colleagues in England, but also any feedback that we had
8 from colleagues in the World Health Organisation or
9 elsewhere, where this distillate of information was
10 demonstrating a picture of gradually escalating,
11 a ramping up of concern across the month of January and
12 February, particularly once we saw that this was not
13 just an isolated problem confined to the shores of
14 China, but rather one which was beginning to hit home
15 closer to home, whether that was Italy or elsewhere.

16 **MR DAWSON:** So by the end of February, what advice had been
17 given by NIMT about the threat to Scotland to the CMO or
18 Scottish Government?

19 **DR McMENAMIN:** That there was this gradual escalation of
20 threat that we could see and that the important
21 grouping -- that we haven't yet moved on to consider --
22 is the advice that was coming through from SAGE, the
23 Scientific Advisory Group for Emergencies --

24 **MR DAWSON:** Yes.

25 **DR McMENAMIN:** -- along with any advice from the New and
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1 have opportunity, through our national incident
2 co-ordination, to be able to meet with a variety of
3 stakeholders which included government, not just for the
4 Chief Medical Officer who you've mentioned already, but
5 also for a number of liaison colleagues within the
6 policy side of government to hear exactly what was the
7 feedback from our NHS board or indeed local authority
8 colleagues about just what they were seeing.

9 Now, I've already mentioned that early on, that we
10 necessarily were investigating any returning traveller
11 who might meet a case definition, but the first
12 identification of a new case for the first time in
13 Scotland was not until the report on 1 March of 2020.

14 **MR DAWSON:** So there was little local information one could
15 give, but were you looking at other sources, for example
16 you mentioned earlier getting information from England
17 or internationally, you obviously --

18 **DR PHIN:** Indeed.

19 **MR DAWSON:** -- somehow found out about the virus from China
20 in the first place. So what was the tenor of the advice
21 about the threat? I mean, it seems that there is other
22 evidence which is available to this module from another
23 epidemiologist who was expressing, he says, considerable
24 concern about the threat over this period to the Chief
25 Medical Officer. Was that the tenor of the advice being
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1 Emerging Respiratory Virus Threats Advisory Group
2 (NERVTAG), both of which bodies I was sitting on.

3 That international experience was feeding in through
4 both of those groups, and was being fed in in parallel
5 to anything that we were seeing locally, where that
6 international concern fuelled by any of the modelling
7 scenario output by SPI modelling group was certainly
8 very, very influential in describing what was happening
9 abroad and what might happen next.

10 **MR DAWSON:** Given that international perspective on the
11 threat which you were also part of, as you said, on
12 those committees, and indeed your knowledge about
13 epidemiology, what advice was being tendered at a local
14 level to Scottish Government about the need to consider
15 precautionary measures that would need to be taken,
16 for example the ramping up of PPE, the development of
17 a testing regime during the month of February, let's
18 say?

19 **DR McMENAMIN:** Well, I think, looking back on things, we had
20 not the position that we perhaps enjoyed at the peak of
21 where we were able to do a million tests a day, but
22 rather that we had a limited number of tests from about
23 the middle of February onwards from, you know,
24 February 10, maybe we had to do -- the capability to
25 offer something between 350, 375 tests per day from
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1 a new testing system that was available to be deployed.
 2 And I think that that was reflecting in what we were
 3 advising, which was: we think that there is
 4 an escalating issue internationally. We at that point
 5 had not seen any human cases being identified in
 6 Scotland, but we had seen some cases identified in
 7 England, and indeed across the month of February we were
 8 aware of the first of the death reports that were
 9 beginning to come through about that. So the advice
 10 that we had then was: we need to be prepared to
 11 escalate. It was over to our government colleagues who,
 12 on a societal perspective, were beginning to put the
 13 machinery in place to begin to generate what you've then
 14 taken us into, which is: and what should we do about PPE
 15 which is already stockpiled, what should we do about any
 16 of the other planning that we need to have in place?

17 **MR DAWSON:** One thing that you've alluded on as being the
 18 actual course of events is it does take a while to ramp
 19 up testing, it takes a while to acquire PPE, one needs
 20 to work out what the current state of stocks and
 21 capacity is.

22 Given the emerging nature of the threat -- as you
 23 said, the gradual nature, the emergence of cases in
 24 Europe, deaths in Europe -- to what extent do you think
 25 that the message being given to government from any of

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1 We've got to just reflect back to the 2009 pandemic.
 2 During the 2009 pandemic many people, organisations
 3 globally were heavily criticised for overreacting to
 4 what turned out to be a relatively mild infection.

5 So in the people looking at this, there was the
 6 context: at what point do we say this is mild and it's
 7 going to be a serious condition? So that was going
 8 through people's minds.

9 The second thing is that the information we were
 10 getting out of China suggested that this originated in
 11 a wet market or seafood market -- wet being, you know,
 12 live animals as opposed to wet in the sort of colloquial
 13 sense -- and therefore people were watching and waiting:
 14 is this going to be something where there is evidence of
 15 human-to-human transmission? And once that started to
 16 emerge, that then started to build up a picture that
 17 concern should be taken.

18 The stocks were controlled by UKHSA, and I think it
 19 would be fair to say that in the early weeks UKHSA -- or
 20 PHE, as it was at the time -- would be the organisation
 21 that would take the national, the UK perspective. But
 22 as it gradually started to emerge, the DAs, the devolved
 23 administrations started then to take on responsibility
 24 given that health is a devolved, you know,
 25 responsibility in Scotland.

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1 these bodies on which you were sitting was one of
 2 urgency such that, even although the threat may not
 3 materialise, if it does, one needs to be more ready than
 4 we actually were in Scotland?

5 **DR McMENAMIN:** I think that the primacy of the offer of
 6 advice here was one where we recognised that that prime
 7 influencer of what should happen next needed to be the
 8 SAGE group. They were informed by NERVTAG, informed by
 9 SPI modelling group, of course informed by any of the
 10 national health protection agencies across the UK, but
 11 the primary recommendations were going to stem from what
 12 our SAGE colleagues were saying.

13 **MR DAWSON:** Is that because those bodies had access to the
 14 best available information?

15 **DR McMENAMIN:** It's not just that they, like us, had access
 16 to that information, but rather that they had the brain
 17 power in the room to be able to make that determination
 18 and recommendation or advice that was then going to UK
 19 ministers or being offered to ministers across each of
 20 the devolved administrations.

21 **MR DAWSON:** Thank you.

22 I think the professor is keen to say something on
 23 this subject.

24 **DR PHIN:** I just wonder if a little bit of context might be
 25 helpful here.

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1 So I think in that context, there was a caution,
 2 there was an uncertainty, the information we were
 3 getting was coming out slowly and, you know, caution was
 4 the day.

5 The last point I wanted to make was about testing,
 6 because I think that was something that came up
 7 yesterday. Until we know the genetic sequence of the
 8 virus, you can't develop a test. That came out in the
 9 middle of January. PHE Colindale worked tirelessly to
 10 develop a test. That then had to be field tested, you
 11 needed a virus to be able to test it against, it needed
 12 to be validated, and it wasn't until 10 February that
 13 Scotland carried out its first test. And that
 14 validation is important, because CDC, you know,
 15 globally -- you know, global body that's held in very
 16 high esteem, developed a test which actually turned out
 17 to be faulty and did not deliver it. So these are high
 18 stakes endeavours.

19 So the first test was in Scotland on 10 February.
 20 350 tests by the end of February, I think it was 1,900
 21 by the end of March -- pardon?

22 **DR McMENAMIN:** Daily tests.

23 **DR PHIN:** Sorry, daily tests. These are daily tests, not
 24 weekly tests. Thank you.

25 So wanting to do some of the things that we love to

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1 do was constrained simply by the fact that there wasn't
2 the resource, there wasn't the infrastructure and
3 indeed, as the pandemic evolved in those early months
4 into 2020, supply chains were stretched, we ended up not
5 having enough sample kits because everyone was trying to
6 get their hands on them.

7 So there were multiple factors here that delayed the
8 introduction of testing, which I think we all accept now
9 was an important part of our control response.

10 **MR DAWSON:** Thank you.

11 You mentioned in your response that the position was
12 characterised as one of caution, based on the context
13 that you set out, including 2009. Was it the case and
14 was it important that advice being given to the Scottish
15 Government and other governmental bodies didn't only
16 reflect that caution but reflected an element of
17 precaution, given the possibility that the reliance on
18 previous experiences such as 2009 may not turn out to be
19 how this coronavirus manifested itself?

20 **DR PHIN:** I wasn't party to those discussions, either in PHE
21 or in PHS --

22 **MR DAWSON:** Of course.

23 **DR PHIN:** -- but I was party to the discussions where we
24 looked at the evidence, and there was this initial sense
25 of caution: is this going to be the same as 2009? Have
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1 we were having then with our health protection and
2 director of public health colleagues, while at the same
3 time any discussion that we had with Scottish Government
4 colleagues, whether it was from the CMO's office or from
5 policy side, we could see that this was an escalating
6 concern, and particularly became an escalating concern
7 once we began to see our first home cases identified
8 and, in particular, as Professor Phin has just taken us
9 into, once we had demonstration of community
10 transmission, onward transmission of this infection to
11 others in the population, then, yes, that was coming
12 home to then be truly something which was much more
13 scary for us.

14 **MR DAWSON:** That's a key epidemiological red flag,
15 I suppose, is it?

16 **DR McMENAMIN:** Absolutely.

17 **MR DAWSON:** When did that occur in Scotland?

18 **DR McMENAMIN:** So I think the demonstration that we had is
19 from our first case identification that we had on
20 1 March, the follow-up of those individuals, along with
21 what our colleagues were doing across the rest of the
22 UK, we were then able to demonstrate sustained community
23 transmission by about the middle of the month of march.
24 That meant then that with -- despite anything that was
25 being done in the background, meant that we had to have
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1 we got evidence that there is person-to-person
2 transmission, which would be a key feature of
3 an evolving pandemic? Once we were clear about that,
4 I can't comment on the mechanisms as to how that was fed
5 into either Cabinet Office in England or in Scottish
6 Government. I do know that the CMOs met regularly at
7 that point to consider it, so I would have expected
8 there to have been some information being fed in at that
9 level.

10 **MR DAWSON:** I was holding off on your response, Professor,
11 but perhaps more appropriately for Dr McMenamin: was it
12 your experience, given your involvement in these
13 advisory structures, that Scottish Government was
14 getting a message of precaution as well as caution at
15 this time? Or was, as the professor has suggested, what
16 characterised the advice being one of caution based on
17 the previous experiences to which he's alluded?

18 **DR McMENAMIN:** I think it would be fair to say that both
19 things were happening, it was caution and precaution.
20 Indeed, I caught part of the testimony earlier from
21 Mr Thomson while we were in the waiting area, and
22 I could see then that that gearing up that was being
23 discussed was something that, certainly from the health
24 protection side of public health discussions, was one
25 that we could see that happening within the discussions
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1 some serious discussion then about what further
2 escalation needed to be in place and how incrementally
3 could it be delivered.

4 **MR DAWSON:** You've mentioned your involvement in both SAGE
5 and NERVTAG --

6 **DR McMENAMIN:** Yes.

7 **MR DAWSON:** -- Dr McMenamin. The broad question I'm
8 interested in as regards those bodies is the extent
9 which you and other representatives from Scotland were
10 able to voice issues from a particularly Scottish
11 context in terms of asking questions, seeking
12 information, feeding information in, or whether you
13 thought the Scottish participation was suboptimal from
14 a Scottish public health perspective?

15 **DR McMENAMIN:** I certainly don't think it was suboptimal.
16 Like any new group when it's forming, of course there
17 are teething difficulties or maybe from time to time,
18 because of a delivery method for how you communicate,
19 there can be interruptions in information provision or
20 you drop off of an invite or something, but all of those
21 things were really very quickly remedied, in particular
22 for SAGE.

23 NERVTAG, my status in that group was as a member
24 because I'm an appointed member to that group,
25 whereas --
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1 **MR DAWSON:** In private capacity, was it?
 2 **DR McMENAMIN:** That's right.
 3 **MR DAWSON:** Yes.
 4 **DR McMENAMIN:** So that throughout all of that, that group
 5 was very, very active in looking at any of the new
 6 information. For the SAGE status, I think I'm variably
 7 described either as a member or observer, but the key
 8 thing was that either of the health protection teams in
 9 each of the administrations, along with representatives
 10 of the chief medical officers of the UK and the policy
 11 side were part of those discussions, and I think that
 12 that was a full offer of observer status for those
 13 groups, and that I felt at no point any difficulty about
 14 being able to contribute, particularly when we had
 15 something key to raise, and that in particular when we
 16 began to describe the first of the vaccine effectiveness
 17 studies, that was very, very welcomed by that SAGE
 18 group, as we had something new and important potentially
 19 as a path out of the lockdowns that had been in place,
 20 and relaxation of societal measures.
 21 **MR DAWSON:** Was that through the EAVE II project?
 22 **DR McMENAMIN:** Yes, that's correct.
 23 **MR DAWSON:** We've heard some evidence about that already.
 24 My broad understanding is that that was a project which
 25 was able to deliver early, very early, in fact the
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1 real-time response or did it merely use the same dataset
 2 as was being used in order to inform that response?
 3 **DR McMENAMIN:** Well, Professor Aziz Sheikh and
 4 Professor Chris Robertson are the key architects of this
 5 from the University of Edinburgh, and through
 6 Professor Robertson who worked with us but is
 7 a University of Strathclyde professor of mathematics.
 8 It was using near real-time data to be able to
 9 demonstrate what our vaccine effect was, but also even
 10 before we had vaccines be able to say something about
 11 who is most at risk of the development of complications
 12 of Covid? The identification of those groups most at
 13 risk led to refinement of the some of the advice that
 14 was then able to be offered on a policy basis. We were
 15 able to use that dataset for validation of risk groups
 16 across the UK and, more than that, it's really important
 17 and I think it's become important for everyone that they
 18 have confidence about: is the vaccine that I'm going to
 19 receive going to make me unwell? And it is important,
 20 then we were able to investigate on a whole population
 21 basis things that might not have been picked up in any
 22 of the initial trials of vaccines but, because you were
 23 using a whole population, and even though you might have
 24 a rare side effect, something is one in a million,
 25 you're able to identify that using that whole population
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1 earliest, I think, information about the effectiveness
 2 of the vaccines in February 2021 --
 3 **DR McMENAMIN:** Yes, that's right.
 4 **MR DAWSON:** -- because it was a mechanism that was able to
 5 access information quickly through its previous set-up,
 6 if you like; is that correct?
 7 **DR McMENAMIN:** Indeed, and that first demonstration of
 8 effectiveness is of somewhere between 84% and 92%
 9 effectiveness for one dose of vaccine on a national
 10 basis was really important.
 11 And picking up on something that Nick said
 12 earlier -- I beg your pardon, Professor Phin -- that we
 13 had the forethought to set something up after the 2009
 14 pandemic which was now bearing fruit and was looking at
 15 the whole of the Scottish population to use information
 16 to be able to demonstrate that effect.
 17 **MR DAWSON:** The EAVE project involved reviving, as I think
 18 you mentioned, a previous project and scaling it up, as
 19 I understand it, to be able to access a huge amount of
 20 information to inform us about --
 21 **DR McMENAMIN:** Indeed.
 22 **MR DAWSON:** -- the crisis, and therefore it was in
 23 a position to be able to report quickly on vaccine
 24 effectiveness, as we've discussed.
 25 Was it a tool that was used in order to affect the
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1 basis.
 2 **MR DAWSON:** In the period before that, I think you
 3 identified that the project was able to achieve research
 4 benefit which would assist the general pandemic response
 5 by identifying things through the researchers' efforts,
 6 such as particularly at-risk groups and that sort of
 7 thing, which might not have been something available
 8 elsewhere --
 9 **DR McMENAMIN:** Absolutely.
 10 **MR DAWSON:** -- of the EAVE II project.
 11 **DR McMENAMIN:** Absolutely, and that demonstration of this
 12 surveillance output and the evaluation of the health
 13 policy and health benefit of some of our routine
 14 approaches was then immensely useful. Not just for
 15 Scotland, not just for the UK but was internationally
 16 greeted with the broad consensus that this was a really
 17 dramatic development that globally was then captured in
 18 media reporting.
 19 **MR DAWSON:** We heard from Mr Roger Halliday about the lack
 20 of research opportunities and access to data that might
 21 have benefitted on a wider scale the pandemic response
 22 in Scotland. Would it be fair to say that EAVE II is
 23 the exception to that proposition, very much so?
 24 **DR McMENAMIN:** In fact that I think went much further than
 25 that. It's integral to what Professor Phin and I, with
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1 PHS, are looking at about what should be an important
2 part of what Public Health Scotland is doing routinely
3 in the future for the observations about the impacts and
4 description of risk factors, in particular looking at
5 the health inequalities issues that our own organisation
6 is trying to do to not only identify what the
7 inequalities are, but to assess the interventions that
8 are there to try and address those inequalities.

9 **MR DAWSON:** Thank you very much.

10 I believe, my Lady, we are to have a short break at
11 this stage for the stenographer.

12 **LADY HALLETT:** Because we may be sitting later --

13 **MR DAWSON:** Yes.

14 **LADY HALLETT:** -- the stenographer literally just needs to
15 move her fingers --

16 **MR DAWSON:** A short break --

17 **LADY HALLETT:** -- or she gets very tired.

18 **MR DAWSON:** -- would be convenient.

19 **LADY HALLETT:** So I'm not going to go very far, I suggest
20 other people don't go, and I shall return at 4.05.

21 **MR DAWSON:** Thank you, my Lady.

22 (4.01 pm)

(A short break)

24 (4.05 pm)

25 **LADY HALLETT:** Mr Dawson.
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1 you are assisting us on an informed but slightly
2 second-hand basis. Is that fair?

3 **DR McMENAMIN:** Indeed.

4 **MR DAWSON:** Could I just ask you, first of all, about
5 aspects of your statement to do with the concept of the
6 policy alignment check.

7 In particular, Dr McMenamain, you raise in your
8 statement at paragraph 50.8 some of the challenges that
9 appear to have been experienced by HPS in the early
10 stages of the pandemic, trying to reach consensus in
11 a timely manner. In particular, you refer to some
12 disagreements with the Scottish Government about what
13 precise language there should be and indeed who should
14 take the lead, if you like, in relation to issuing
15 guidance.

16 I wonder if, perhaps in the specific care context
17 a bit more generally, you could explain to us the issues
18 that were experienced, as you understand it, by HPS and
19 subsequently PHS in that regard.

20 **DR McMENAMIN:** Guidance spanned the period from March of
21 2020 onwards. My colleagues within HPS and then PHS
22 from 1 April were then working collaboratively with
23 a number of stakeholders to look at whatever guidance
24 was required in each setting. As you might have already
25 gathered, that increasing appreciation about what steps
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1 **MR DAWSON:** I have some questions for you now, it's about
2 two things that I think are related, broadly speaking:
3 care home related guidance, but also something called
4 the policy alignment check which you cover in your
5 statements.

6 In relation to the care home guidance, we've heard
7 some evidence about this already from Donald Macaskill
8 of Scottish Care, and I think it's fair to say that our
9 understanding of the responses you have provided in this
10 area is that, as per your general position,
11 Professor Phin, you have provided a corporate response
12 but were not part of PHS at the time of the early
13 pandemic; and, Dr McMenamain, your position, as
14 I understand it, is that care home guidance was not
15 a matter that you had direct involvement in, there were
16 others who dealt with that, but that very helpfully you
17 have attempted to answer the question by looking at
18 contemporaneous materials to assist us as best you can
19 with the thinking and process behind care home guidance
20 being issued over that early period.

21 So have I got that correct?

22 **DR McMENAMIN:** Yes.

23 **MR DAWSON:** And I think that's an important caveat to your
24 evidence, that you were not, Dr McMenamain, the person
25 who was actually dealing directly with this, but that
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1 would need to be in place, particularly across the month
2 of March, as we began to appreciate just exactly what we
3 needed to plan for for Covid, meant that very rapidly we
4 were trying to come to a conclusion about what initial
5 guidance might be provided. So, for example, for
6 care home settings, a provision of an initial response
7 in which we were in liaison with Scottish Government,
8 trying to rapidly pull together something for advice.

9 That is something which Professor Phin and all of us
10 working in health protection are very familiar with,
11 whenever you have an initial incident response where you
12 often are giving completely unacceptable timelines to
13 colleagues to rapidly contribute to information,
14 recognising that you'll do the best that you can for the
15 maximum good within the time available to you, knowing
16 that you may yet have opportunity to come back under
17 current revisions, over the course of the rest of that
18 month or later, to try and identify any further wording
19 change or incorporate any of the new things available.

20 And in particular we've already begun to talk about
21 what the testing challenge was for us in that the number
22 of tests that were available per day, talking about the
23 most good that you could make of those tests was
24 something which was incredibly clinically challenging.

25 You might imagine if someone is being managed in
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1 an intensive care or in a hospital bed and clinically
2 there are some decisions to be made about what
3 medicines, et cetera, that they're receiving, that
4 having priority for testing in that limited testing
5 environment available to you becomes important, as is
6 the investigation of incidents and outbreaks.

7 That meant that it's not just our colleagues in
8 Scottish Care but in fact everyone involved in that
9 process who is then saying: what can we do to improve
10 the availability of tests? We might recognise that we
11 might not have them this very moment to be able to help
12 with the care home setting, but what can be done to
13 maximise our availability of those tests, and recognise
14 that in fact that, as it turned out later, that we began
15 to incrementally introduce those tests not just to the
16 individuals receiving the care, but to staff that were
17 also involved to try and make sure that we, as it became
18 available to us, could manage that risk.

19 **MR DAWSON:** You've helpfully told us about the prevailing
20 circumstances with regard to care home guidance.

21 In trying to combine two topics at once, which was
22 my fault, I don't think we've heard from you about the
23 influence, if any, of the policy alignment check,
24 particularly on the care home guidance in March.

25 Is there, based on your researches, an effect on the
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1 changed potentially as of those emergency powers coming
2 in, because the primacy about who had control about the
3 final bit of sign-off then becomes the Scottish
4 ministers, and that that is a key distinction to make
5 between the period before the institution of the
6 emergency powers and the period that preceded it.

7 **MR DAWSON:** So let me just get this right. The emergency
8 powers came in in Scotland on 26 March.

9 **DR McMENAMIN:** Yes.

10 **MR DAWSON:** Which by your interpretation means that that was
11 the point at which the Scottish ministers took
12 responsibility over lockdowns, restrictions and the
13 like?

14 **DR McMENAMIN:** Well, they always did have control about
15 that.

16 **MR DAWSON:** Yes.

17 **DR McMENAMIN:** But rather that they, for guidance purposes,
18 what I'm talking about here, that they had the final say
19 about --

20 **MR DAWSON:** I see.

21 **DR McMENAMIN:** -- what should be communicated.

22 **MR DAWSON:** Right.

23 **DR McMENAMIN:** And communication, then -- as a key part of
24 what you're trying to do with guidance -- was then their
25 responsibility. So that's not to say that of course our
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1 quality or timing of that guidance being provided by
2 HPS?

3 **DR McMENAMIN:** Forgive me, but it does sound as though there
4 might be a misunderstanding about something.

5 **MR DAWSON:** Thank you.

6 **DR McMENAMIN:** I think within the -- I'm straying into
7 territory for Professor Phin. In the corporate response
8 that we outline, the policy alignment check and the
9 arrangements for that were really something which
10 stemmed from the middle of May onwards, rather than in
11 this initial period that you're speaking to for
12 care homes, was something which we were looking at from
13 the middle of March onwards.

14 **MR DAWSON:** Right. So it wasn't an issue, it was simply
15 because there's a sentence in the corporate statement
16 that suggests that the PAC process was a direct
17 consequence of the NHS in Scotland having been placed on
18 an emergency footing during the period from March 2020
19 to April 2022, but that may just reflect the entirety of
20 the pandemic, it may not be that March was when this was
21 actually an operative issue.

22 **DR McMENAMIN:** I think I would understand that the key point
23 that's been made there is that, rather than Public
24 Health Scotland -- or their predecessor, HPS -- being
25 the key body who was responsible for guidance, it
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1 government colleagues didn't have a significant input to
2 anything that we said about guidance as one of our key
3 partners in that period before --

4 **MR DAWSON:** Prior to that period, 26 March, HPS would, with
5 in consultation with others like the government, have
6 issued guidance of this nature by its own action.

7 **DR McMENAMIN:** Indeed.

8 **MR DAWSON:** But then subsequent to that, there was
9 a requirement, given the slightly changed position of
10 the Scottish Government in the management of the
11 pandemic, for there to be greater Scottish Government
12 involvement in the process and effectively an alignment
13 check between what you were proposing and what they were
14 prepared to have put out. Is that broadly the position?

15 **DR McMENAMIN:** Broadly speaking, without the term "policy
16 alignment check" having been formally coined, because
17 that was not coined until some point about the middle of
18 May.

19 **MR DAWSON:** So this did not have an effect on guidance being
20 issued about care homes in March.

21 **DR McMENAMIN:** Correct.

22 **MR DAWSON:** The first such guidance having been issued,
23 I think, on 13 March and that having preceded that
24 period, that was simply issued by HPS itself; is that
25 correct?
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1 **DR McMENAMIN:** It was issued by HPS itself following
2 discussion with a number of our stakeholders.

3 **MR DAWSON:** Thank you.
4 Professor?

5 **DR PHIN:** Yeah, I wasn't there at the time but, like
6 Dr McMEnamin, I've looked at the notes that were
7 available, and I think it's important that the guidance
8 that was issued in March was actually for a care
9 setting. It wasn't simply care homes. It covered
10 services delivered in the home, community services
11 generally. It was a generic document. It wasn't until
12 later, I think until April, that we actually issued
13 specific guidance for the care homes, by which time we
14 were into this situation where sign-off was by Scottish
15 Government.

16 The policy alignment guidance was absolutely key to
17 taking forward guidance because, prior to that time, the
18 challenge that we had was trying to get agreement and
19 trying to get guidance out in a timely fashion, and --
20 I think as you will see from some of the evidence we
21 submitted --there were substantial delays in getting
22 sign-off, which actually resulted in three or four sets
23 of guidance actually not being issued but as moving on
24 to an updated set of guidance. So the whole idea of the
25 policy alignment is to try and speed up, make the

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1 Now, you've given an answer to this, I think,
2 already, but I just want to address it directly.

3 That guidance contains no guidance or suggestion
4 about the possibility of people being tested, or the
5 requirement for a test before being moved from
6 a hospital to a care home; is that right?

7 **DR McMENAMIN:** Yes, that's correct.

8 **MR DAWSON:** What is the reason why there is no element
9 related to testing in that advice from HPS, as you
10 understand it, based on your researches, Dr McMEnamin?

11 **DR McMENAMIN:** Well, my understanding was about availability
12 of the tests that would be able to support such
13 an approach, not just about, as you've just taken us
14 into, discharge from hospital or admission from home to
15 a care setting, but also the thinking that was going on
16 in the background about: what would we need to be able
17 to test not just those individuals who were in that care
18 setting but potentially the staff who would be involved
19 too?

20 **MR DAWSON:** So the issue was that, as you said earlier in
21 your answer, there were no tests and there were
22 difficulties around prioritising testing at that stage;
23 is that --

24 **DR McMENAMIN:** I think it's the latter, that there was
25 certainly significant pressure on test availability,

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1 process more efficient, and to address any concerns.

2 I would say that there was an analogy with Public
3 Health England where we had something called the triple
4 lock, which was an attempt to try and make sure that the
5 organisations were all aligned and so that any guidance
6 that was issued, you know, had the support and clarity
7 from all organisations.

8 **MR DAWSON:** Could we look, please, at INQ000101020. This is
9 the report which her Ladyship has seen before,
10 "Discharges from NHS Scotland hospitals to care homes
11 between 1 March and 31 May 2020", published in
12 October 2020. This is a report that was compiled by
13 Public Health Scotland in connection with the discharge
14 from hospitals to care homes over that period; is that
15 right?

16 **DR McMENAMIN:** That's right.

17 **MR DAWSON:** In this report, it is, I think, set out that
18 guidance was issued by HPS first on 13 March 2020?

19 **DR McMENAMIN:** Yes.

20 **MR DAWSON:** And that it suggested a number of things,
21 including social distancing, essential visits only,
22 accept admissions to the home if safe, and close the
23 home if resident tests positive.

24 **DR McMENAMIN:** Yes.

25 **MR DAWSON:** That's broadly what the guidance was.

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1 dependent upon the setting that we wished to deploy it,
2 and that there had to be effectively a triage, the
3 concentration of where did we think the maximal benefit
4 might derive from that test offer.

5 That's not just from HPS at the time, or ultimately
6 from PHS, but rather across all of the clinical service,
7 about what could or should be done there.

8 **MR DAWSON:** Some might suggest, and indeed have suggested --
9 and I would like to give you the opportunity, both of
10 you, to comment on this -- that at that time it was
11 known that where the greatest need was was care homes,
12 because the most vulnerable were the elderly and it was
13 known or ought to have been known that care homes were
14 generally an environment which had poor infection
15 control, not at the level of a hospital, such that if
16 a positive patient were released they would be exposed
17 to a number of elderly vulnerable patients whom they
18 would be likely to infect.

19 I simply invite your comment on that, because it's
20 a matter that's been said to us by several witnesses.

21 **DR PHIN:** Could I come in on that point? I think -- I don't
22 know if you're aware of it, but there was a consensus
23 statement issued on 26 May 2022, and this was
24 a consensus statement that was commissioned by the
25 Department of Health and Social Care in England and it

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1 was an independent report involving care homes, NHS,
2 et cetera, and this was looking at the discharge of
3 patients from hospital with Covid into care homes. It
4 was a fairly extensive review, it actually used the data
5 that was provided by Public Health Scotland in coming to
6 its conclusions, and I think it draws out a couple of
7 really important issues.

8 I think it recognises that both in care homes and in
9 hospital we have two things, we've got two high contact
10 groups, in other words we've got people being provided
11 by care, very close contact, therefore potential for
12 transmission is high, and they're both dealing with
13 vulnerable populations.

14 The conclusion of this report -- and I'm very happy
15 to forward it to you if you've not already seen it -- is
16 an acknowledgement that at least some care home
17 outbreaks were caused, partly caused or intensified by
18 discharge from hospital to care homes, and I think
19 that's an important issue.

20 They also identified, as was the case in the Public
21 Health Scotland finding, that there is an association
22 between care home size and outbreaks. In other words,
23 the bigger the care home, the bigger the interactions,
24 the more potential for outbreaks to occur.

25 And then finally, which I think is a really key
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1 dominant route of transmission.

2 **MR DAWSON:** Do we see in either of the boxes on 13 or
3 26 March, which helpfully summarise the guidance, the
4 two pieces of guidance issued by Health Protection
5 Scotland, guidance relating to what should be done to
6 minimise the risk of transmission by care home staff or
7 visiting professionals?

8 **DR PHIN:** Sorry, I didn't --

9 **DR McMENAMIN:** For visiting professionals?

10 **MR DAWSON:** Yes, I'm quoting what I understood
11 Professor Phin to have said was the predominant cause of
12 the trans --

13 **DR PHIN:** Yes. That was the conclusion from this
14 consensus --

15 **MR DAWSON:** What I'm asking is whether any guidance was
16 given by this public health body to try to minimise that
17 route of transmission at that time?

18 **DR McMENAMIN:** If you mean --

19 **MR DAWSON:** Because I don't see it in the boxes.

20 **DR McMENAMIN:** Okay. The context here was regarding the
21 care homes, which is what you've put up on the screen.
22 Professor Phin's already taken us into that, there was
23 broader guidance that was available for use across the
24 NHS and other settings, and indeed for the clinical
25 management of individuals in the community. I think
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1 issue, is that there was an acknowledgement that
2 hospital discharges to care homes without testing early
3 in the pandemic is highly likely to have caused some
4 outbreaks. However, looking at two outbreaks that
5 occurred, one in the East of England and one in Norfolk
6 and Suffolk, the conclusion was that this was not the
7 dominant driver, and in fact in the East of England
8 study just under 6% of cases were definitely linked to
9 hospital, and in fact in the Norfolk and Suffolk
10 outbreak two out of 89 cases were linked. And again the
11 conclusion is that hospital discharge was not
12 a prominent feature of transmission in the healthcare
13 setting.

14 Instead, and it's in the report so I'm not -- this
15 is not me saying this -- that care home staff and
16 visiting professionals were probably the cause of many
17 of the introductions and the promulgation of infection
18 within the care homes, and they cite a case in Norfolk
19 where there were six establishments, genetic sequencing
20 identified this was not in the hospital, it was not in
21 the community, it was being transmitted within the
22 hospital setting.

23 So I'm not sure if you're aware of it, I think it's
24 useful, because I think it acknowledges that there was
25 an element but it was not the key, it was not the
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1 that the guidance was perhaps updated five times across
2 the month of March. I'm not quite sure across the month
3 of April how many times. But perhaps either
4 Professor Phin or myself would need to come back to you
5 about the detail of that specific question that you just
6 asked.

7 **MR DAWSON:** It doesn't appear in those boxes.

8 **DR McMENAMIN:** That's correct, it does not appear.

9 **MR DAWSON:** Yes.

10 Just to be clear, there was a second guidance,
11 I think, issued by HPS on 26 March. Did your
12 researches, Dr McMENAMIN, reveal why it was that
13 a second piece of guidance was necessary at that
14 particular point? There was a significant change
15 obviously on 21 April, but why was a second guidance
16 issued at that time?

17 **DR McMENAMIN:** I think it would be fair to say that I'd just
18 covered part of that by saying that each and every
19 opportunity was made to update any of our guidance, and
20 that there were five updates to that across the month of
21 March. Forgive me, but I don't know what the driver was
22 for --

23 **MR DAWSON:** Yes. If you don't know because of your limited
24 involvement, I understand that, Dr McMENAMIN.

25 The other major element of these guidances -- other
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1 than the fact that they don't require negative tests or,
 2 as was subsequently the case, two negative tests before
 3 a patient or a resident would be allowed to be
 4 transferred from a hospital into a care home -- is that
 5 the infection control measures and social distancing
 6 measures which are recommended here are, according to
 7 those who work within the care profession, completely
 8 unrealistic.

9 For example, "essential visits only" is simply
 10 something that many care home patients, many of whom
 11 suffer from dementia, it's simply not something that is
 12 tolerable. Simply also that the vague suggestion that
 13 there should be social distancing in a care home with
 14 many patients with dementia, for example, is something
 15 at the very least -- if not impossible, is something at
 16 the very least on which further specification would be
 17 required.

18 Have your researches indicated that there was any
 19 consideration in the publication of these guidance or
 20 these very practical limitations on the ability of the
 21 care sector to minimise infection within care homes?

22 **DR McMENAMIN:** I think, certainly from what I have been able
 23 to see as communications in the background and from my
 24 own recollection of some of the discussions with
 25 colleagues at the time, of course all of those

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1 more information became available to us, particularly
 2 once we knew about the offer of tests when that became
 3 available to us.

4 **MR DAWSON:** Are there any -- given your answer and what
 5 we've looked at, are there any elements of the public
 6 health services and Scotland's role in providing
 7 guidance and support over this period that PHS, as kind
 8 of a legacy body, is able to identify, and are there any
 9 further expressions of regret which the organisation
 10 would like to advance on behalf of PHS to those who lost
 11 loved ones as a result of that mass outbreak of care
 12 home infections?

13 **DR PHIN:** Yes, I mean, unreservedly. Clearly the pandemic
 14 had an enormous impact and, as you say, a key risk
 15 factor for Covid complications and indeed deaths was
 16 age, older population, those with comorbidities, those
 17 with existing vulnerabilities, and these were the types
 18 of people who actually lived in some of the settings
 19 we're describing at the moment.

20 It's -- I can only offer my sympathy, my
 21 condolences. This was a situation unprecedented. We
 22 were desperately trying to get principles, guidance out
 23 to care homes that they could use and adapt, and I have
 24 to stress that we recognised at the outset we cannot
 25 provide a set of guidance that answers every question,

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1 considerations were articulated, not just by
 2 Scottish Care, but were certainly discussed in a number
 3 of meetings across that time, and there were very
 4 passionate presentation of those views by a number of
 5 colleagues, including by Donald Macaskill, in those
 6 sorts of meetings.

7 I think that there was much sympathy for all of
 8 those views, but in practice what we had at the time was
 9 something which was scary because of the large number of
 10 potential deaths that we may yet go on to see at that
 11 time point, and regrettably -- and it is with much
 12 regret that everyone, myself included, in PHS offer our
 13 deep regret about each and every one of those deaths and
 14 that for all of the families of everyone who was
 15 affected by this dreadful infection, and for the care
 16 staff too who managed all of these much loved
 17 individuals in those settings.

18 I think it would be certainly an instinctively human
 19 reaction that of course all of those things were being
 20 considered in each of those settings, but the key driver
 21 was: do the most good that we can. Understandably our
 22 knowledge at the time was as whatever you've seen
 23 documented, and that what we were then offering was the
 24 best advice at the time to try and deal with it, and
 25 that that then dynamically had to change over time as

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1 because as you have said there were people with
 2 dementia, there were people with other conditions for
 3 whom different types of care were necessary.

4 So what we tried to produce were some principles,
 5 some key pieces of guidance, and advice, that could be
 6 adapted and used in the healthcare setting -- sorry, in
 7 the social care setting, where the people looking after
 8 those people had the better -- had a greater insight
 9 into what they needed and how to adapt those principles
 10 in a practical and sensitive way.

11 So, yes, we -- you know, my condolences on behalf of
 12 the organisation to all those families and individuals
 13 who suffered.

14 **DR McMENAMIN:** One further thing perhaps to add is: you may
 15 recognise from the evidence that we've submitted, Public
 16 Health Scotland's role here is in provision of guidance,
 17 it's our local authority and NHS board colleagues who
 18 had the relationship with the care homes and, as
 19 Professor Phin has just taken us into, that opportunity
 20 for those offering care in the community was to make
 21 a dialogue with their local health protection teams and
 22 their public health departments to go through any issue
 23 that they had. That was certainly a really important
 24 thing for those departments to be able to collect any of
 25 the valuable intelligence there and share that, and

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1 indeed the very welcome component of Cabinet Secretary
2 announcement also was the role to try and co-ordinate
3 activity by the department -- by the department of
4 public health directors locally to try and address such
5 circumstance.

6 **MR DAWSON:** Those provisions, I think you're referring to
7 the 21 April announcement?

8 **DR McMENAMIN:** Yes.

9 **MR DAWSON:** Which is reflected again here. Is there any
10 reason for you to think that those provisions could not
11 have been introduced much earlier, based on your
12 knowledge of the way that public health and these
13 organisations and agencies work?

14 **DR McMENAMIN:** Yeah, I think from the review of the
15 information that I see, an earlier step in retrospect,
16 something which could potentially have been done was
17 that earlier appeal for better co-ordination. That's
18 not to say that any of our colleagues were not doing
19 their best, but rather it was unclear about who had
20 overall primacy in being able to make sure that things
21 were as best co-ordinated as they possibly could be.
22 I've already said that HPS and PHS didn't have -- we
23 certainly don't have any legislative power to be able to
24 do anything for those settings.

25 **MR DAWSON:** Yes.

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1 caused a mass outbreak of infection as had been
2 speculated.

3 Is that the broad conclusion of the report?

4 **DR McMENAMIN:** Indeed, the Nike conference wasn't a ground
5 zero, it was one of at least 200 plus introductions of
6 slightly different variants of the Covid-19 virus into
7 the population. There was some remarkable detective
8 work enabled by whole genomic sequencing, looking at the
9 genetic fingerprints of the different variants at the
10 time which allowed us to demonstrate that the public
11 health actions that were taken limited the effect of the
12 spread.

13 The spread within the Scottish and indeed the UK
14 population was something that appeared to be limited to
15 those individuals who attended or, for instance, to
16 households of those individuals, and that that certainly
17 meant that we instituted a number of local actions to
18 deal with that.

19 It's certainly fair to say that that was certainly
20 assisted later by what we then have all come to see,
21 which is either for Scotland, the rest of the UK or
22 internationally, across the month of March into April,
23 all of the societal measures that then kicked in to try
24 and limit the spread of infection, but we've certainly
25 not seen recurrence of any of that infection --

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1 **DR McMENAMIN:** Another body that is there is able to say
2 something about the care homes, which is the
3 Care Inspectorate. So for them, working in conjunction
4 with those agencies who are responsible for the care of
5 the population, it's the NHS boards and the local
6 authorities.

7 **MR DAWSON:** Thank you for that perspective.

8 I'd like to ask you about one other area. I might
9 be able to cover this without going to the detailed
10 report.

11 You've helpfully given us some very detailed
12 information about a particular aspect of the Covid-19
13 pandemic in Scotland, namely the significance of the
14 Nike conference which took place in late February 2020
15 as regards the transmission of the virus.

16 As I think is reflected in reports which emanate
17 from PHS and you, this is an event which has largely
18 been portrayed as a superspreader event, but as
19 I understand it the -- HPS undertook an investigation
20 into the extent, retrospectively, as to whether that had
21 in fact been the case or not.

22 My understanding is that the broad conclusions were
23 that that proposition was in fact not correct, and that
24 the strain of the virus which had been introduced via
25 that event could be shown to have died out and not

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1 **MR DAWSON:** It was that aspect that, not so much relating to
2 the particular conference strain but the wider
3 investigation that I was interested in, because I think
4 what the report shows is that in Scotland on at least
5 283 occasions during March and February, Covid,
6 SARS-CoV-2 was introduced into Scotland.

7 **DR McMENAMIN:** Yes.

8 **MR DAWSON:** And there is in fact a separate estimate from
9 another group of 307 over that period.

10 **DR McMENAMIN:** Yes.

11 **MR DAWSON:** And that the lineages which were introduced over
12 that period could be traced to mainland Europe,
13 particularly Spain; is that right?

14 **DR McMENAMIN:** I think particularly Italy, Spain and other
15 European countries, yes.

16 **MR DAWSON:** Yes, thank you. Spain is just mentioned, but
17 that -- it is effectively from continental Europe where
18 Covid came into Scotland over that period --

19 **DR McMENAMIN:** Yes.

20 **MR DAWSON:** -- is that what we think?

21 And the study also helpfully indicated that there
22 was community transmission which was likely to have
23 occurred in Scotland undetected up to one to two weeks
24 earlier than the first detected case which was on
25 1 March; is that right?

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1 **DR McMENAMIN:** Yes.

2 **MR DAWSON:** And also it suggests that, considering the 14 to
3 28-day incubation period before seroconversion, the
4 report concludes that it was likely that the virus began
5 circulating in Scotland in late February 2020?

6 **DR McMENAMIN:** Yes, on that basis.

7 **MR DAWSON:** Yes. So it's a helpful indicator as to what was
8 actually going on at that time, although of course
9 unknown.

10 **DR McMENAMIN:** Indeed.

11 **MR DAWSON:** Could I ask you about one further aspect of
12 that, Dr McMenamain? You have in your report some
13 observations. Another aspect of the Nike conference
14 which has caused some degree of public consternation is
15 the fact that information relating to it which was
16 available to HPS in its investigations but Scottish
17 Government and other agencies, other public agencies,
18 was not publicised at that time, which I think created
19 or contributed to the creation of an apprehension that
20 something was being hidden from the public and that it
21 was significant in connection with the way in which
22 Covid spread in Scotland.

23 You suggest in your report I think that there are
24 some positive public health reasons for not publicising
25 the name. I think they include at least the -- your
225

1 agreed with our conclusion which was to keep --

2 **MR DAWSON:** Thank you.

3 **DR McMENAMIN:** -- to keep the information as it was.

4 I do take your point that that is a really important
5 area of keeping the public with us in any of our
6 communication, and certainly our government colleagues
7 were supportive of this at the time too.

8 **MR DAWSON:** Thank you very much. Just bear with me one
9 second.

10 (Pause)

11 Those are my questions. I'm sure I could go on for
12 many hours, but we've reached the end of the day.

13 There is one Rule 10 proposal which we are just
14 dealing with, my Lady, very momentarily, from one of the
15 core participants.

16 **LADY HALLETT:** Which I haven't seen yet?

17 **MR DAWSON:** No.

18 (Pause)

19 **LADY HALLETT:** Are you the source, Ms Mitchell?

20 **MS MITCHELL:** I had assumed that that would be sent. I had
21 checked, it was sent to the right box.

22 Two in the one day, my Lady, but it's just that
23 I had an opportunity that my learned friend didn't have
24 to look at the document that was being referred to by
25 Dr Phin in relation to outbreaks, and --
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1 experience that if one does release details of things
2 like that, that that might reduce the willingness of the
3 agency involved or the company involved to participate
4 in initial investigations, which you have said are
5 important; is that broadly correct?

6 **DR McMENAMIN:** That's correct.

7 **MR DAWSON:** Would it not have been possible, however, to try
8 to find a middle ground? Because the public health
9 communications policy of the Scottish Government
10 subsequent to this was based very much on the idea --
11 the idea -- that the Scottish Government was being
12 honest with the people of Scotland, and the Nike
13 conference experience in many eyes soured that
14 relationship and meant that people did not trust the
15 Scottish Government.

16 Would it not have been possible to deal with those
17 public health concerns that you've pointed out by
18 anonymising but still releasing information so that
19 people were aware that there was a potential threat, and
20 perhaps even to reassure them about the fact that HPS
21 and your colleagues were doing everything they could to
22 try and keep it under control?

23 **DR McMENAMIN:** So in retrospect, yes, that's one certain
24 area that it could have been done, but with the
25 agreement of the Chief Medical Officer of the time they
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1 **LADY HALLETT:** Ask your question, Ms Mitchell.

2 **MS MITCHELL:** I'm obliged. I'll be very, very quick.

3 **Questions from MS MITCHELL KC**

4 **MS MITCHELL:** The report you referred to, just so we can be
5 clear I'm talking about the right document, is the
6 consensus statement on the association between the
7 discharge of patients from hospitals and Covid in
8 care homes published 26 May 2022; is that correct?

9 **DR PHIN:** That's correct, yes.

10 **MS MITCHELL:** You clearly have a detailed knowledge of that
11 report. The report indicates that in relation to the
12 data from which -- the information you gave about
13 discharge into care homes, that has some important
14 limitations; is that correct?

15 **DR PHIN:** Yeah.

16 **MS MITCHELL:** Can you identify what those limitations are?
17 Would it be easier for me to point them out to you, at
18 this time of day, perhaps?

19 **DR PHIN:** Well, I would be happy to take it and give
20 a fuller response.

21 **MS MITCHELL:** Perhaps I can just put it this way: the
22 limitations are, I think, broadly speaking, two-fold in
23 relation to the data.

24 The first of these two, what are described as
25 important features of limitations of the data, is that
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1 there was lone variable levels of testing in care homes'
 2 populations in wave 1, with variations between areas
 3 depending on testing capacity. Typically, symptomatic
 4 residents admitted to hospital were tested but
 5 asymptomatic residents who were admitted for other
 6 reasons were not routinely tested. So there was
 7 a testing problem: if you couldn't test, you didn't know
 8 where Covid might have come from. Is that correct?
 9 **DR PHIN:** Well, yes, generally, but the two instances are
 10 cited where a study was carried out in the East of
 11 England where they were able to demonstrate that 6% of
 12 cases were linked, and that is where whole genome
 13 sequencing would have been an important component.
 14 The other one was an investigation of six
 15 establishments that were linked in Norfolk and Suffolk,
 16 where again two out of 89 were linked through this
 17 genetic fingerprinting --
 18 **MS MITCHELL:** Indeed.
 19 **DR PHIN:** -- able to say these were exactly the same strain
 20 and there was nothing in the community that we were
 21 aware of and there was nothing in the hospital.
 22 I think what these are is a consensus statement,
 23 these are a group of people both NHS, social care,
 24 scientists, and this is their conclusion, looking at
 25 a number of different studies, and ... yeah.

1 Thank you both very much. Thank you or a second
 2 time, Dr McMenammin. I'll try not to call you in every
 3 module, but thank you for your help. Thank you,
 4 Professor, for your help too.
 5 **(The witnesses withdrew)**
 6 **LADY HALLETT:** And I hope that everyone gets as restful
 7 a weekend as possible, and I will see everyone at
 8 10 o'clock on Monday. Thank you.
 9 **(4.48 pm)**
 10 **(The hearing adjourned until 10 am**
 11 **on Monday, 22 January 2024)**

1 **MS MITCHELL:** And indeed their conclusion, that the first
 2 part was that all analysis of the impact of hospital
 3 discharges are limited by two important features of the
 4 available data, the first which was identified, the
 5 second which is no UK country can easily and completely
 6 identify who is resident in care homes or who was
 7 discharged from hospital to care homes because sometimes
 8 the addresses weren't changed. So that is another
 9 limiting factor of the data.
 10 And in fact the report ends by saying none of these
 11 problems are fixable retrospectively, meaning that all
 12 of the analysis done are based in data that are less
 13 than ideal. Is that correct?
 14 **DR PHIN:** That is the conclusion of that group. I would add
 15 though that they additionally looked at international
 16 studies, which actually supported the findings of their
 17 conclusion. So I keep going -- I go back to it's
 18 a consensus group.
 19 I'm simply reporting and I'm -- I think it would be
 20 obviously relevant to this inquiry that they had a copy
 21 of that report, given it does highlight some of the
 22 issues that I think have been raised elsewhere.
 23 **MS MITCHELL:** I'm obliged.
 24 **LADY HALLETT:** Thank you very much, Ms Mitchell.
 25 Thank you, Mr Dawson.

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