

Thursday, 25 January 2024

1  
2 (10.00 am)  
3 **LADY HALLETT:** Mr Tariq.  
4 **MR TARIQ:** Good morning, my Lady. May I please call Rachel  
5 Elizabeth Lloyd.  
6 **MS RACHEL ELIZABETH LLOYD (affirmed)**  
7 **Questions from COUNSEL TO THE INQUIRY**  
8 **MR TARIQ:** Could I check that you're commonly known as  
9 Liz Lloyd?  
10 **A.** I am indeed.  
11 **Q.** There's a few preliminary matters I wanted to discuss  
12 with you before we get to the substance of your  
13 evidence. Can you keep your voice up and can you speak  
14 slowly because there is a stenographer that is taking  
15 the evidence. If any of my questions are unclear,  
16 please say so and I can repeat or rephrase.  
17 You've provided two statements to the Inquiry, and  
18 both these statements are dated 15 November 2023. The  
19 first statement is on screen. This is at INQ000274006,  
20 and this is a statement that explains your role in the  
21 Scottish Government's response to the pandemic.  
22 I understand that there was a correction that you  
23 wanted to make at, is it to paragraph 13?  
24 **A.** Paragraph 13, yes, there's a fairly obvious, I hope,  
25 typographical error. I have used the date "late

1

1 **A.** Yes.  
2 **Q.** And then after a short break, you were back in post as  
3 a special adviser from August 2021 to around  
4 28 March 2023; is that correct?  
5 **A.** That's correct.  
6 **Q.** And you served as the chief of staff to the then  
7 First Minister of Scotland, Nicola Sturgeon, from  
8 January 2015 to 23 March 2021; is that correct?  
9 **A.** Yeah, that's correct.  
10 **Q.** Then you returned to the Scottish Government, as we've  
11 said, in August 2021, and this time your role was as  
12 strategic political and policy adviser to the  
13 First Minister within the special adviser team; is that  
14 correct?  
15 **A.** Yes, that's correct.  
16 **Q.** And you remained in that role until the resignation of  
17 Nicola Sturgeon as First Minister of Scotland at the end  
18 of March 2023, at which point you also chose to leave  
19 government; is that correct?  
20 **A.** That is indeed.  
21 **Q.** And you now work in the private sector, I understand?  
22 **A.** Yes, I do.  
23 **Q.** I now want to turn to ask you about the role of special  
24 advisers more generally before we get to your  
25 involvement in the pandemic.

3

1 2020/early 2021", when that should be "late 2019/early  
2 2020".  
3 **Q.** I think it was obvious to the Inquiry that you were  
4 talking about 2019 into 2020. So subject to that  
5 amendment, can you confirm that this is your statement?  
6 **A.** It is.  
7 **Q.** And are you -- are the contents of this statement true  
8 to the best of your knowledge and belief?  
9 **A.** They are.  
10 **Q.** There's also a second statement that you gave to  
11 the Inquiry, which is also dated 15 November 2023. This  
12 is INQ000274004, and this is a statement about the use  
13 and retention of informal communications such as  
14 WhatsApp messages. Can you confirm that this is your  
15 statement?  
16 **A.** It is.  
17 **Q.** Are the contents of this statement true to the best of  
18 your knowledge and belief?  
19 **A.** They are.  
20 **Q.** Thank you.  
21 I wanted to move on now to discussing your  
22 professional background before we get to your role  
23 during the pandemic. You were employed as a special  
24 adviser to the Scottish Government from January 2012 to,  
25 I believe, 23 March 2021; is that correct?

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1 There is a special advisers' code of conduct; is  
2 that correct?  
3 **A.** There is, yes.  
4 **Q.** And this describes the role of a special adviser as  
5 adding a political dimension to the advice and  
6 assistance available to ministers, and the code notes  
7 that one of the reasons for the role is to reinforce the  
8 political impartiality of the permanent civil service so  
9 that the political advice can come from the special  
10 advisers as opposed to the permanent civil servants; is  
11 that correct?  
12 **A.** That is correct.  
13 **Q.** Professor Paul Cairney gave evidence in week 1 to the  
14 Inquiry, and in his report he says that special advisers  
15 are appointed by the First Minister personally and  
16 ultimately the responsibility for the management of the  
17 special advisers rests with the First Minister. Is that  
18 your understanding?  
19 **A.** That is correct. I would say the day-to-day management  
20 of the special adviser team is delegated to the chief of  
21 staff.  
22 **Q.** Yes, but ultimately the --  
23 **A.** Ultimately, it's the First Minister.  
24 **Q.** -- responsibility rests with the First Minister.  
25 In your first statement, you say, and I'll simply

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1 quote at this stage:  
 2 "Special Advisers are not decision takers but  
 3 support the decision-making process by supporting  
 4 ministerial thinking and assist in the application,  
 5 understanding of and communication of ministerial  
 6 decisions."  
 7 Therefore, am I correct to understand that the role  
 8 of a special adviser is not to take the decisions  
 9 themselves.  
 10 **A.** That is correct, yes.  
 11 **Q.** And there has to be clear boundaries between the  
 12 decision-makers, such as the Scottish ministers, and  
 13 special advisers as it's only the ministers who are  
 14 elected and therefore accountable to the public; is that  
 15 correct?  
 16 **A.** That's correct.  
 17 **Q.** And as special advisers you're neither elected nor  
 18 accountable to the public?  
 19 **A.** That is broadly correct, yes. I always felt accountable  
 20 to the public.  
 21 **Q.** But in terms --  
 22 **A.** But not formally.  
 23 **Q.** Not formally. And your role is generally not meant to  
 24 be public-facing, unlike the politicians, is it?  
 25 **A.** That's correct.

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1 well, would receive advice from scientists, they would  
 2 be looking at, you know, broader information on  
 3 legislative proposals, policy proposals, and sometimes  
 4 ministers need a place or a person where they can  
 5 essentially think out loud without that being taken as  
 6 their definitive view. So my role and the role of other  
 7 special advisers frequently is to engage with them to  
 8 help them stress test ideas, to talk out what might the  
 9 consequences of a particular route of action be, help  
 10 them come to, you know, are there other questions they  
 11 should ask, do they have all the information they need,  
 12 and to help them explore, if you like, the advice and  
 13 information before them.  
 14 **Q.** So in the context of a particular decision that the  
 15 First Minister or another minister needs to make, there  
 16 may be competing considerations, there may be competing  
 17 almost briefings coming from different interests,  
 18 whether it be economic, whether it be scientific or  
 19 medical, and part of the role of the special adviser is  
 20 to be able to almost stress test the different perhaps  
 21 conflicting advice so that the minister can make the  
 22 decision?  
 23 **A.** Yes, yes.  
 24 **Q.** In your statement, and I won't take you to this  
 25 particular part, but I think you say that it would be

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1 **Q.** And some special advisers can build up close  
 2 relationships with their ministers, having worked with  
 3 them over many years; is that correct?  
 4 **A.** That is.  
 5 **Q.** Is it fair to say that your relationship with  
 6 Nicola Sturgeon was particularly close, having worked as  
 7 her chief of staff since 2015?  
 8 **A.** Yes, yes, and certainly by the time of the pandemic.  
 9 **Q.** And is it fair to say that you were one of her closest  
 10 confidantes?  
 11 **A.** Yes, I would say so.  
 12 **Q.** Can we turn to your first statement, which is on the  
 13 screen now, it's paragraph 29, and page 8, and here you  
 14 say:  
 15 "My advice during this period was on the general  
 16 tenor of the actions being taken, managing public  
 17 response and the communication of the actions being  
 18 taken. I played a role on the [First Minister's] behalf  
 19 in asking clinicians and officials for more and better  
 20 advice and raising questions on further action and acted  
 21 as a sounding board/thought partner for the  
 22 First Minister and others."  
 23 Are you able to tell me what you mean by "thought  
 24 partner"?  
 25 **A.** Ministers, the First Minister, but other ministers as

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1 normal for you to attend decision-making meetings with  
 2 the First Minister where she was in attendance, and this  
 3 included meetings with the Scottish Government Cabinet,  
 4 the Scottish Government Resilience Room, the gold  
 5 meetings, COBR meetings, and the four nations calls with  
 6 Boris Johnson and Michael Gove. Is that correct?  
 7 **A.** That's correct.  
 8 **Q.** So it's fair to say that you were a particularly  
 9 important part of the Scottish Government's response to  
 10 the pandemic until at least March 2021; is that correct?  
 11 **A.** That's for others to judge, but I was certainly there  
 12 and certainly participating in the response.  
 13 **Q.** You were there in almost all the --  
 14 **A.** Yes.  
 15 **Q.** -- meetings --  
 16 **A.** Yes.  
 17 **Q.** -- important meetings and in the rooms where the  
 18 decisions were being made?  
 19 **A.** Yes.  
 20 **Q.** And you were the thought partner or the sounding board  
 21 for the First Minister when it came to stress testing  
 22 perhaps the different conflicting advice that was being  
 23 received?  
 24 **A.** Yes.  
 25 **Q.** And there would be, I think, is it fair to say, very few

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1 people within the Scottish Government that would perhaps  
2 be in the room for all the key meetings with the  
3 First Minister during the course of the pandemic?

4 **A.** During the course of the pandemic, it was common for --  
5 there would be a few other people that you would see at  
6 most of the meetings. So the Cabinet Secretary for  
7 Health would be present very frequently, the Deputy  
8 First Minister was present a lot, sometimes remotely  
9 because, for reasons, he would be working from home,  
10 Ken Thomson, the Chief Medical Officer, or one of the  
11 other medical advisers, but there was a core group who  
12 were in St Andrew's House a lot and in a lot of those  
13 meetings together.

14 **Q.** And you were part of that core group?

15 **A.** And I was part of that, yeah.

16 **Q.** Can we turn to your first statement, and it's at  
17 paragraph 36, page 9. Here I think you say:

18 "I would not say I advised on the adoption or not of  
19 specific NPIs [that's non-pharmaceutical interventions],  
20 that was for the clinicians and officials, but I would  
21 have given views at certain points on the interpretation  
22 of the data, of public mood and compliance, of  
23 communications and where there was politics involved --  
24 for example securing the support of other parties or  
25 governments or impact on stakeholders such as through

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1 at funerals, weddings and civil partnerships, and those  
2 rules kicked into force on 14 September 2020, and  
3 Nicola Sturgeon was due to announce new restrictions to  
4 the Scottish Parliament on 22 September 2020, and in  
5 fact the usual briefing time was changed from 12.15 that  
6 day to 2.20 that afternoon, and here we have an exchange  
7 of messages, this is shortly before Nicola Sturgeon was  
8 due to make the announcements about the new restrictions  
9 that day, and this exchange relates to a discussion  
10 about whether the rules should be changed for weddings,  
11 civil partnerships and funerals.

12 If we start by reading the top message, so  
13 Nicola Sturgeon says -- and this is on 22 September at  
14 12.09, so shortly before she's due to make the public  
15 announcement:

16 "We haven't thought about weddings. They are  
17 reducing but not sure what to."

18 You reply:

19 "I think as we only just put them up just leave it."

20 Then you go on to say:

21 "They aren't including churches etc as far as I know  
22 and I think -- though will check -- that they were  
23 higher than us."

24 Then you say:

25 "They had 30...we have 20."

11

1 border controls -- on that aspect."

2 So is it your position that you did not advise on  
3 the adoption or not of specific NPIs?

4 **A.** I think when certain NPIs were on the table in that  
5 thought partner role there would be perhaps  
6 conversations between myself and the First Minister as  
7 to which ones -- or exchanges as to which ones to use.  
8 That could perhaps be considered advice on the adoption,  
9 but it was not -- I think what I meant is I didn't  
10 decide on the adoption.

11 **Q.** Yes, so you advised but I think your position, I think  
12 more accurately, is you didn't make the ultimate  
13 decision?

14 **A.** Yes, and nor did I sort of say "Here is your selected  
15 list of NPIs", they would come in proposals from the  
16 Chief Medical Officer, for example, and we would then  
17 discuss the kind of things that were on the table.

18 **Q.** Can we turn to some WhatsApp messages that you have  
19 disclosed to the Inquiry between yourself and  
20 Nicola Sturgeon. I will come back to the circumstances  
21 of the disclosure later on.

22 **A.** Okay.

23 **Q.** But first of all can we turn to INQ000287766, and we're  
24 looking at page 9. And by way of context, the Scottish  
25 Government announced the rules that permitted 20 people

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1 Then you say:

2 "They are going to 15.

3 "And 30 at funerals -- I think we stay at 20."

4 Does the "they" in this conversation refer to the  
5 UK Government?

6 **A.** Yes, it does.

7 **Q.** So Nicola Sturgeon in this example tells you at around  
8 12.10 the day that she is due to make the announcement  
9 to the public, the usual time being 12.15 but this day  
10 we see that it was moved to 2.20, she tells that you  
11 she's not sure about what to do and you tell her to stay  
12 with 20 attendees, when the UK Government has gone down  
13 from 30 to 15, and that ultimately becomes the decision  
14 that day, because there is no change to the position of  
15 20 as far as the Inquiry is aware.

16 So is this not an example of a decision that was  
17 made very much at the last minute over WhatsApp between  
18 you and Nicola Sturgeon?

19 **A.** So there are a number of aspects to this exchange. The  
20 decision -- I don't view this as the decision because  
21 the decision had been taken, so a decision had been  
22 taken at Cabinet to go to 20, through the normal  
23 processes. And where the First Minister is saying "We  
24 haven't thought about weddings", there had been  
25 significant thought by I think the communities and

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1 equalities team about what were the appropriate numbers  
2 of people at particular services. So that decision had  
3 been taken, that decision had gone through the proper  
4 process, and I give my view that I don't think we need  
5 to essentially re-make that decision.

6 I think the message underneath that says that the  
7 statement is being forwarded to her, which is, I think,  
8 the Prime Minister's statement, and had she still wanted  
9 to take further action she could have come back on that.

10 I also think behind this WhatsApp, if you like,  
11 I was having an exchange with the lead official to make  
12 sure I had the information correct and that the  
13 information I was giving the First Minister was the  
14 right information.

15 **Q.** Is a decision not to change the rules still a decision?

16 **A.** I think there had been a positive, if you like, and  
17 a proactive decision at Cabinet that the position in  
18 Scotland was that there would be 20. There is neither  
19 a confirmation or -- you know, if the First Minister had  
20 come back and said "I agree", then I would support your  
21 view that that was a decision. She actually doesn't  
22 comment and there may be other actions elsewhere.  
23 I don't think it did change, from memory, until later  
24 on, but this to my mind is me giving my advice, my  
25 thought in that thought partnership role that we stay

13

1 seeking scientific advice would have been the  
2 on-the-hoof aspect; suggesting that you stick at the  
3 decision that had been taken based on information was  
4 a more coherent position.

5 **Q.** But we can see that Nicola Sturgeon's first WhatsApp to  
6 you is "We haven't thought about weddings", that seems  
7 to suggest that there wasn't really much thought process  
8 that had gone into the decision until this exchange with  
9 you, which begins at around 12.10?

10 **A.** No, I think she means we haven't thought about changing  
11 weddings, if you like, in response to the UK Government  
12 changing weddings. We had thought about weddings when  
13 the decision had been taken positively and proactively  
14 in Cabinet to set the limit at 20.

15 **Q.** So is it fair to say that because Nicola Sturgeon comes  
16 to you, not being sure what to do, and ultimately, as  
17 the Inquiry has seen, that on this date there was no  
18 change to the rules, and you were the one that suggests  
19 that "we stay at 20", are you effectively the main  
20 driver of this decision?

21 **A.** No, I don't think so. If the First Minister has -- the  
22 First Minister has a strong enough mind that if she had  
23 felt that my advice was not the right advice, she would  
24 have said so or she would have acted in another  
25 capacity, asked for further advice, delayed the position

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1 at 20. If she had wanted to pursue it, to consider it  
2 further, perhaps after receiving the statement she may  
3 have, there would be exchanges in some other fashion.

4 **Q.** There wasn't any scientific briefing that you received  
5 that appears to have informed your view, let's stick  
6 with 20, was there?

7 **A.** There would have been on the decision which had very  
8 recently, I think that, you know, a day or two before,  
9 been taken to set it at 20.

10 **Q.** I believe that the decision to move it down to 20 had  
11 been taken around maybe 10 September, and the decision  
12 had come into force on 14 September, and what we are  
13 talking about is, here, looking at 22 September, and  
14 from the documents that have been disclosed to  
15 the Inquiry, there -- between -- the Inquiry's looked at  
16 all of the documents between 10 September and  
17 23 September, and the Inquiry can see no advice being  
18 given between these dates about whether the number  
19 should remain at 20 or whether it should go up or down.

20 So is this not an example of a decision simply being  
21 made on the hoof, shortly before the First Minister is  
22 meant to be announcing restrictions?

23 **A.** I would think that advising that shortly before the  
24 statement on restrictions was about to be made that  
25 a decision should be taken to change the limit without

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1 on weddings, she would have acted on that. I am  
2 advising. I sought the correct information, if you  
3 like, on the factual basis to give that advice, but the  
4 decision is very much hers.

5 **Q.** If these messages had been deleted by you -- and they  
6 haven't, because that's why we have them -- how would  
7 the Inquiry and the public be able to understand how and  
8 why the decision was made at this time not to change the  
9 number of people that can attend funerals or weddings?

10 **A.** So as I've said in this regard I have recollection of  
11 contacting, I think on Teams, the official responsible  
12 for the sort of framework documents, if you like, to  
13 check my facts, to check what it was. They would be  
14 able to see the decision that was made, which was the  
15 decision to stay at 20 being made previously, as  
16 essentially the decision to set at 20 through the  
17 process of advice and Cabinet papers, so that decision  
18 would be very -- set out in very great detail. The  
19 exchange I will have had the official will have said  
20 "The First Minister is asking about weddings, what's the  
21 position?"

22 **Q.** But ultimately the public, if this message had been  
23 deleted, and the Inquiry, would not know that the  
24 decision -- ultimately the First Minister, as at 12.10  
25 that day, wasn't sure what to do and in fact within

16

1 a couple of hours when she announced the restrictions  
 2 she'd reached a view that the numbers would not be  
 3 changed and all of that had occurred within a very short  
 4 time involving a WhatsApp discussion with you.  
 5 That wouldn't be the sort of insight that the public  
 6 or the Inquiry would have if these messages had been  
 7 deleted; is that correct?  
 8 **A.** I think there may not be that insight into, if you like,  
 9 the moment of "Oh, should we think about this?" The  
 10 sort of -- the reflection on "Is the advice that we have  
 11 at the moment the correct advice?" But they would know  
 12 why the decision on weddings was that there should be  
 13 20 people.  
 14 **Q.** And the reflection is part of the decision-making  
 15 process, isn't it?  
 16 **A.** It can be. I think in this it is, "Are the UK doing  
 17 something that we should be doing?" That will be --  
 18 I would expect to find in notes from officials providing  
 19 "This is what the UK is doing", and considering, in  
 20 slower time, perhaps before the next update of the  
 21 regulations, should we adopt any of this. But that  
 22 split second, if you like, of indecision would not  
 23 necessarily be recorded elsewhere.  
 24 **Q.** Could I just confirm, so do you agree with me that this  
 25 would be an important part of the specific decision that

17

1 **Q.** -- but you've also got the human side that you've  
 2 touched upon, which is as being a thought partner or  
 3 a sounding board, where you get to see people's real  
 4 maybe struggles with the decisions that they're making,  
 5 needing different viewpoints and insights, and together  
 6 that forms the full context to that decision, doesn't  
 7 it?  
 8 **A.** Yes, I think there can be moments where a bit of,  
 9 perhaps, reassurance is required or making sure that we  
 10 essentially don't take informal decisions when formal  
 11 decisions have been taken. So had there been a decision  
 12 here to change, that would have been a decision based on  
 13 no scientific advice at all, taken in, you know, the  
 14 space of 20 minutes. When you have a full, proper  
 15 process this is essentially deferring back to the proper  
 16 formal process.  
 17 **Q.** The formal process which, I think, in this instance, had  
 18 occurred about 12 days before or --  
 19 **A.** Yes.  
 20 **Q.** -- there or thereabouts?  
 21 **A.** Yes.  
 22 **Q.** Can we turn to INQ000287766.  
 23 This is again your WhatsApp messages, we're looking  
 24 at page 35.  
 25 **A.** Sorry, can that be made just a touch bigger?

19

1 was under contemplation here on this date, this  
 2 exchange?  
 3 **A.** I think if it had been -- I don't want to dispute this  
 4 too strongly, but I don't want to over sort of state the  
 5 importance of this particular position. There had  
 6 been a -- you know, every week there was a review of  
 7 what the decisions were, what the appropriate steps  
 8 were, what actions should be taken, and they were done  
 9 in a very meticulous fashion, and there will be  
 10 occasions where people have a moment of, "Oh, is that  
 11 right?" And they might ask a special adviser, they  
 12 might ask a policy official, they might ask the clinical  
 13 adviser that happens to be in the room with them. Those  
 14 moments are quite human. But I wouldn't want to  
 15 overstate the importance of this as opposed to the  
 16 importance of the proper process that was followed that  
 17 set the limit at 20, because that was a very diligent  
 18 process.  
 19 **Q.** Both processes, the formal and the informal, have their  
 20 place, don't they --  
 21 **A.** They do, they do.  
 22 **Q.** -- in the decision-making process? And part of it is  
 23 you have the formal frameworks, whether it's  
 24 a Cabinet --  
 25 **A.** Yeah.

18

1 **Q.** I think they will hopefully come on screen a little bit  
 2 bigger?  
 3 **A.** They're a little blurry.  
 4 **Q.** We are looking at -- does that help?  
 5 **A.** Yes, that does help.  
 6 **Q.** Thank you, helps me as well, so I think we can both  
 7 read.  
 8 So this is a discussion between you and  
 9 Nicola Sturgeon about the number of people who could  
 10 meet indoors from March 2021, so if we look at the first  
 11 message, it's from you saying:  
 12 "When you respond on Cabinet paper -- in June --  
 13 could we make it 6/3 indoors -- it's just much more  
 14 normal!"  
 15 Can I just pause there, what's the significance of  
 16 the numbers 6 and 3?  
 17 **A.** I believe that would be 6 people, 3 households.  
 18 **Q.** And then if we -- Nicola Sturgeon's reply is:  
 19 "That will be after 4/3 mid may I assume?"  
 20 You reply saying:  
 21 "Indoors April 4/2, May 6/2....is what I currently  
 22 have."  
 23 Nicola Sturgeon replies:  
 24 "Is that indoors in pubs etc? thought we were  
 25 waiting til may for indoor households."

20

1 You reply saying:  
 2 "We appear to be waiting till June for indoors at  
 3 home..."  
 4 You also reply:  
 5 "So in pubs etc it's 4/2 in April, 6/2 in May ...and  
 6 then in June it should go to 6/3 and we allow you to  
 7 meet in your own home."  
 8 You reply -- you again say:  
 9 "Cabinet paper doesn't actually run all the way to  
 10 June but my mock graphics do."  
 11 Nicola Sturgeon replies:  
 12 "We should bring indoor houses to mid May."  
 13 You reply saying:  
 14 "Can you make that your feedback or do you want me  
 15 to do it."  
 16 And she replies:  
 17 "I'll do it."  
 18 So if we pause there, in this exchange, you are  
 19 pushing for or maybe advising --  
 20 **A.** Advising.  
 21 **Q.** -- that there is a change of the rules on the amount of  
 22 people who can socialise indoors; is that right?  
 23 **A.** So this refers to a proposal, so the numbers 4/2, 6/2,  
 24 I'm not just pulling those out of the air, this is  
 25 a proposal and a draft of a Cabinet paper and in a draft  
 21

1 they were proposed in the abstract without considering  
 2 the way in which people function in their real life, and  
 3 particularly around how people interact with each other,  
 4 you were seeking to balance caution and protection from  
 5 the virus with the kind of normality that might be good  
 6 for people in a more societal sense.  
 7 **Q.** Was that a consistent theme up until -- your involvement  
 8 till March 2021, that the advice that you were -- the  
 9 scientific and medical advice that you were receiving  
 10 often seemed very much in the abstract, devoid of kind  
 11 of the real world and how people live?  
 12 **A.** I think -- I don't want to suggest that the people  
 13 giving the advice were sort of abstract and devoid of  
 14 understanding, but it was their job to provide,  
 15 you know, what is the appropriate regulation at  
 16 a very -- on a very strict basis, it was not their job  
 17 to consider what does this mean for people's mental  
 18 health, what does it mean for their family  
 19 relationships. They were there to consider what will  
 20 keep the R number to its lowest level, if you like.  
 21 There were other people who would feed in points about  
 22 "Well, actually, if you could make a slight tweak to  
 23 that, does that make it better for people societally or  
 24 in a mental health sense?" and "What's the impact of  
 25 that on -- is that -- does that have serious  
 23

1 set of communications material that I am looking at, and  
 2 suggesting to the First Minister that I don't think the  
 3 final part of the proposal, which is not in the Cabinet  
 4 paper but is in these communications materials, doesn't  
 5 really work, in my view.  
 6 **Q.** I think your reasoning given is:  
 7 "... it's just much more normal!"  
 8 Can you explain what you mean by that?  
 9 **A.** Sometimes when you looked at the advice that was given  
 10 you had to think through what will this mean for people  
 11 living their lives in practice and how might people want  
 12 to function, what would people consider a return to  
 13 normality, if that's what you're trying to do. And  
 14 although we had previously had 6/2 regulations, I think,  
 15 the year before, I actually think what I was reflecting  
 16 on here was 6/3 possibly enabled more of a sort of --  
 17 families to gather in a slightly easier way.  
 18 **Q.** But I think you accept or would you accept that just --  
 19 the explanation being "it's just much more normal" isn't  
 20 very scientific, is it?  
 21 **A.** It is not, I agree, it is not hugely scientific, but one  
 22 of the things that you have to do, or that certainly  
 23 I felt was necessary in this, and this was not  
 24 a function unique to me, is to think when you have a set  
 25 of regulations that you're not -- it often felt like  
 22

1 consequences?" or "Is that a move we have space to  
 2 make?" if you like.  
 3 **Q.** So it wasn't strictly the case that the Scottish  
 4 Government was following the science, because the  
 5 science had a role to play but there was this other  
 6 element that you, for instance, and other special  
 7 advisers, and indeed other stakeholders, would bring  
 8 into the decision that wouldn't necessarily be  
 9 science-based?  
 10 **A.** The science underpinned everything, and if you suggested  
 11 changes, if ministers wanted to do something different,  
 12 there would normally be a sort of referral back to see  
 13 if we could calculate what that might do, if a minister  
 14 proposed something that would push the R -- or that  
 15 would be calculated or modelled to push the R number  
 16 above, then that would likely not be taken forward. So  
 17 you were underpinned by the science and, if you like,  
 18 cautioned by the science in how far you could go.  
 19 **Q.** But not necessarily -- science wasn't the be-all and  
 20 end-all of the Scottish Government's approach?  
 21 **A.** It was dominant but I don't think you can take decisions  
 22 in a situation without being aware of other factors.  
 23 **Q.** And what we see here in this exchange is that there is  
 24 a decision to go to Cabinet with, I think, what yourself  
 25 and the First Minister have discussed and that's going  
 24

1 to be Nicola Sturgeon's view presented to Cabinet in  
2 terms of the change of rules.

3 **A.** Well, this confirms that it's going to be her feedback  
4 to the Cabinet paper. That would create an opportunity,  
5 if the clinicians, for example, thought that was  
6 inappropriate, for them to come back on her feedback --  
7 and this would all be in formal exchanges, if they did  
8 this -- to say "First Minister, actually we would rather  
9 not do that and this is why we would rather not do  
10 that".

11 **Q.** Is it fair to describe the role of the Scottish Cabinet  
12 at times as being a decision-making ratifying body as  
13 opposed to a decision-making body, so it ratified  
14 decisions that had been made elsewhere, whether it's in  
15 informal communications, whether it's in gold command  
16 meetings or in other one-on-one discussions between key  
17 decision-makers, and the role of Cabinet was, at times,  
18 simply just to ratify those decisions?

19 **A.** No, I don't think so. I think everything that went to  
20 Cabinet was a proposal and Cabinet ministers would push  
21 back sometimes, ask for amendments, ask for changes,  
22 some decisions may be deferred because Cabinet members  
23 wanted more information or the First Minister wanted  
24 more information. There was an extensive process of  
25 engagement with clinicians, advisers and Cabinet

25

1 final decision would be delegated to the First or Deputy  
2 First Minister, but Cabinet members would have the  
3 opportunity to comment on the additional information  
4 that came in in between.

5 **Q.** Was an example of a decision that was delegated to  
6 Nicola Sturgeon, or maybe perhaps John Swinney, around  
7 the local restrictions? You'll remember when the levels  
8 system came in and decision-making around, for instance,  
9 whether Glasgow would remain in level 3 or 2 or whether  
10 Edinburgh would go up or down. Is that the sort of  
11 detail that was delegated to the First Minister to make?

12 **A.** You would have a broader discussion around what the  
13 levels would be, but the final check, if you like, on  
14 the morning of the announcement against that day's  
15 figures would be delegated, so to check that there  
16 wasn't a need to adjust, if you like, what had been  
17 agreed in the broader discussion.

18 **Q.** That's maybe an issue that we'll explore with further  
19 later witnesses.

20 I wanted to turn to the political strategy behind  
21 the Scottish Government's response to the pandemic. Is  
22 it fair to say that you spent a lot of your career,  
23 perhaps less so now, strategising about Scottish  
24 independence?

25 **A.** I think supporters of Scottish independence might be

27

1 ministers before the Cabinet paper would come to  
2 Cabinet, so there would be opportunities prior the  
3 Cabinet for people to feed in, but there would also be  
4 genuine discussion at Cabinet.

5 **Q.** Would there often be instances where the ultimate  
6 decision was delegated by Cabinet to, for instance,  
7 Nicola Sturgeon or John Swinney?

8 **A.** There were certainly occasions where Cabinet would agree  
9 to delegate a decision, yes.

10 **Q.** What sorts of decisions do you recall that were  
11 delegated to Nicola Sturgeon or John Swinney during your  
12 involvement in the pandemic?

13 **A.** Decisions that were delegated were, tended to be --  
14 sometimes in the relationship to the communications  
15 around a decision, sometimes in relation to the timing  
16 of the announcement of a decision, and sometimes where  
17 an additional piece of information or a piece of  
18 analysis was to come in, and Cabinet members would have  
19 the chance to put their views in writing or to speak  
20 directly to the First Minister but there would not be  
21 another Cabinet meeting called. If, for example, you  
22 had the Cabinet meeting, say, on the Tuesday and you  
23 were looking at something that you might announce on the  
24 Thursday and an additional piece of information was  
25 requested, you wouldn't necessarily recall Cabinet, the

26

1 disappointed with what my answer is, but not as much as  
2 people would have thought or would have liked. A large  
3 part of my political career's been spent strategising  
4 about what the Scottish Government does in other policy  
5 areas, but yes, I have had a role throughout in the  
6 progress of Scottish independence.

7 **Q.** And how many years would you say that you've had a role  
8 in the strategy for independence?

9 **A.** Probably from around about 2012.

10 **Q.** Could we turn to the Cabinet minute from 30 June 2020.  
11 If we look at the first page, you will see that this  
12 is a Cabinet meeting which is attended by everyone, in  
13 terms of the Cabinet secretaries, that you would expect,  
14 including the First Minister, and you're also in  
15 attendance, you're noted as a special adviser.

16 Can we turn to page 13, paragraph 56(e), and you  
17 will see here that one of the Cabinet conclusions is,  
18 and if it can be -- thank you. If I can read, it says:  
19 "Agreed that consideration should be given to  
20 restarting work on independence and a referendum, with  
21 the arguments reflecting the experience of the  
22 coronavirus crisis and developments on EU exit."  
23 So this is a Cabinet conclusion, and it's from  
24 30 June 2020. Are you able to tell us what the  
25 significance of a Cabinet conclusion is?

28

- 1 **A.** Yes, so you would have a Cabinet paper, I think in this  
2 case it was on EU exit, and at the end of a Cabinet  
3 paper there are normally a set of actions proposed, and  
4 this would have been one of the actions proposed in the  
5 paper on EU exit.
- 6 I -- the fact that something is in the Cabinet  
7 conclusion does not necessarily mean there was an active  
8 discussion on that particular issue. So this is (e), so  
9 there would have been five points in the EU exit paper.  
10 I have -- as you know, I have contemporaneous notes of  
11 some of these meetings. If we had had a discussion on  
12 independence and the constitution, it would have been in  
13 my notes, I was the chief political adviser to the  
14 government. It is not. So my recollection and what  
15 that tells me is that there was no substantive  
16 discussion on issues around independence and  
17 a referendum at this meeting. There was a discussion  
18 around EU exit and this had been included in the paper.
- 19 **Q.** You've already discussed that there's a place for formal  
20 structures and informal discussions within the  
21 decision-making process. One can't get any more formal  
22 in terms of decision-making than what's in the Cabinet  
23 minutes as the agreed actions. Do you accept that?
- 24 **A.** Yes.
- 25 **Q.** And it carries perhaps more weight about what the  
29

- 1 references that I can think of in the programme for  
2 government of the following year, so that would be the  
3 programme for government 2021/2022, where there's maybe  
4 one or two paragraphs, and they make clear that any  
5 action would be contingent on the state of the Covid  
6 pandemic. I don't think anything happens until at least  
7 after the 2021 election.
- 8 **Q.** But there is, from late 2020, some press coverage where  
9 other politician parties are telling the Scottish  
10 Government to stop talking or concentrating on  
11 independence and focusing on the pandemic response. Do  
12 you recall those sorts of press coverage starting from  
13 late 2020 going into early 2021?
- 14 **A.** I think the constitutional position of the Scottish  
15 Government, and I don't mean to be flippant in this  
16 reply, but any breath of the word "independence" would  
17 lead the opposite parties to say "You are focusing on  
18 independence over the pandemic". You could have been  
19 working 18 hours, 20 hours a day on the pandemic, not  
20 seen anything on independence for the course of the  
21 year, it would not stop an opposition member saying that  
22 we were focusing too much on independence.
- 23 **Q.** We'll come back to the topic of independence.  
24 Can we look now at your notebook, and this is at  
25 INQ000346141. Just before we look at the specific page,  
31

- 1 Scottish Government is seeking to do than informal notes  
2 that may exist, this being in a Cabinet meeting minutes?
- 3 **A.** Normally I would agree with you, and in the other points  
4 I do. What strikes me about this point is it was agreed  
5 that "consideration should be given"; it wasn't agreed  
6 that we would do something other than think. And the --  
7 following this period no action is taken on independence  
8 or a referendum during this period, so to the end  
9 of 2020. If it had been, I would have been involved in  
10 it. There is nothing that I am aware of that the  
11 government proactively did. If the government had  
12 proactively done something, there would be much evidence  
13 of it: there would be published papers, there would be  
14 statements and there would be occasions in Parliament.  
15 This was a focus on the fact that we were about to leave  
16 the EU, which was, during 2020, the dominant  
17 constitutional concern of the Scottish Government.
- 18 **Q.** So when do you say that independence became a subject  
19 matter under discussion in the Scottish Government  
20 during the pandemic?
- 21 **A.** It generally didn't. So I worked on the pandemic  
22 March 2020 to March 2021. One of the first steps we did  
23 was suspend work on independence and the referendum.  
24 The team that worked on it was disbanded and sent to  
25 work on Covid-related activities. There are a few  
30

- 1 can you explain what the purpose of your notebook was?
- 2 **A.** I kept notes through most of the year on Covid of  
3 Cabinet meetings, of COBR meetings, of SGoRR meetings,  
4 in essence to keep myself right in what had been agreed,  
5 what had been discussed, what my actions were, what  
6 I should be expecting different parts of the government  
7 to deliver over the week. It was my way of keeping on  
8 top of what was happening.
- 9 **Q.** Can we turn to the entry on page 142, and you'll see at  
10 the top this is headed "Gold Command" and these appear  
11 to be your notes from a gold command meeting that took  
12 place on 28 September 2020.
- 13 Can we now turn over the page. And if we're able to  
14 increase the size on the second page shown on the  
15 screen? Thank you.
- 16 Just by way of, I think -- so just by way of  
17 context, first of all, these are your notes on  
18 a discussion of a potential circuit-breaker lockdown  
19 around -- I think this was being discussed in September  
20 going into October 2020; is that correct?
- 21 **A.** That's correct.
- 22 **Q.** If we are able to look at the -- I'm just waiting for --  
23 it's the next page.  
24 **(Pause)**  
25 It might be if I can read out --  
32



1 A. Yeah.

2 Q. -- your notes, that might assist. I think we almost had  
3 it, but --

4 A. I can just about read this, so carry on.

5 Q. There's a note that's written on --  
6 Yes, I think that's perfect, thank you.  
7 And it reads:  
8 "navigate economy -- avoid blunt instrument[s]."  
9 Then it says, I think -- is it "FM" or "FH No ..."?  
10 A. I think that's FM.  
11 Q. "FM No finances."  
12 A. Oh, no, sorry, that's "FH", the next one down is "FM".  
13 Q. Yes, who -- could you tell us --  
14 A. That would be Fiona Hyslop.  
15 Q. Fiona Hyslop says:  
16 "No finances."  
17 And the First Minister says:  
18 "Starting point -- how do we reduce impact and  
19 spread ... [with] minimal [economic] impact."  
20 And then there's your handwritten notes:  
21 "Political tactics -- calling for things we can't do  
22 to force UK."  
23 Do you see that?  
24 A. Yes.  
25 Q. So your note suggests that the Scottish Government's

33

1 Q. -- is that correct?  
2 We have heard evidence from witnesses, including  
3 Professor Devi Sridhar, of the importance of cohesion in  
4 the response between the UK Government and the Scottish  
5 Government, and this is in the context of public health.  
6 These tactics, whether you can call them political  
7 tactics, of going public would create more division with  
8 the UK Government, wouldn't they?  
9 A. As I said, in an ideal situation the UK Government would  
10 have agreed that funding would be provided so that the  
11 Scottish Government could put in place the public health  
12 restrictions that we wanted and then there would have  
13 been no need for any pressure.  
14 Sorry, the -- it's disappeared from the screen.  
15 The purpose of this is not division, it's not to  
16 have an argument, it's to be able to put in place the  
17 public health restrictions that we were being advised  
18 were required at that time. When private discussions do  
19 not get you to the place where you have access to the  
20 finances that you need to do that, you have to explain  
21 to the public why you're not doing it, and in opening  
22 that up it's to be very clear that it's  
23 the UK Government's decision not to provide finances  
24 that is impacting on your ability to put in place the  
25 public health measures that you want. I don't call that

35

1 political strategy was to create what might be seen as  
2 a public spat with the UK Government to force their  
3 hand. What was the political advantages of that sort of  
4 strategy?  
5 A. It's not about a spat. This would be about putting  
6 pressure on the UK Government. It's not deliberately  
7 falling out; in the ideal world they would have accepted  
8 the points that we were making to them.  
9 For -- if I can give a bit of context and then get  
10 to -- this was weighing up how we could put further  
11 restrictions on, potentially, a circuit-breaker with  
12 minimal economic impact, because the Scottish Government  
13 didn't have the means to provide economic support to  
14 individuals or businesses if we went for the full  
15 circuit-breaker. What we needed was the UK Treasury to  
16 open up additional funding, to extend furlough, to  
17 enable us to take actions to do that. And this,  
18 I think, is about us setting out very clearly what we  
19 wanted to do in public health terms but what we couldn't  
20 do to try to build pressure on the UK Government, who  
21 were not amenable to this discussion in private, to  
22 force a change of position.  
23 Q. And you would need to do that publicly, and that's the  
24 reference to the political tactic --  
25 A. Yes.

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1 a spat.  
2 Although I wrote "political [tactic]", it's not  
3 partisan, it's not about boosting or, you know, knocking  
4 support for one government or one party. It's about  
5 trying to do the job that we were trying to do and  
6 finding ourselves very frustrated in doing.  
7 Q. Why did you feel in terms of intergovernmental  
8 regulations that you needed to go public with your  
9 concerns and you weren't able to raise these privately  
10 with the UK Government?  
11 A. I think there would be a number of issues that we would  
12 resolve privately but this one was not being resolved  
13 privately. We were in this position, the  
14 Welsh Government were in this position, the  
15 Northern Ireland Government were in this position and we  
16 were making no headway, so you reach a point where you  
17 have to say to the people you represent why you are not  
18 able to do something that you are being advised to do.  
19 That means going public on the fact that you can't  
20 afford it, that means going public on the fact that you  
21 may have asked the Treasury for money and they were not  
22 providing it. It's not a "we are doing this to stir up  
23 political contest", it's "we can't do what we're trying  
24 to do and we need to tell you why".  
25 Q. Can we go back to your WhatsApp messages, and this time,

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1 my Lady, I wanted to give a warning that there will be  
 2 some bad language in some of these.  
 3 **LADY HALLETT:** I'm used to it.  
 4 **MR TARIQ:** Yes. I think it's partly for the broadcasters  
 5 rather than your Ladyship.  
 6 **A.** Apologies, I thought I'd been quite restrained.  
 7 **Q.** We're looking at page 20.  
 8 **A.** Oh, it's not my language?  
 9 **Q.** Yes. And just to give some context, on 31 October 2020  
 10 at 6.30 pm the Prime Minister Boris Johnson began his  
 11 address announcing the second national lockdown, and  
 12 I want to pick up the messages between yourself and  
 13 Nicola Sturgeon which starts ten minutes into the  
 14 address.  
 15 So if we read the first message on 31 October at  
 16 6.40 you say:  
 17 "Hitting the 15 [minutes] between the rugby and  
 18 strictly to lock the country up... let us never do this  
 19 like this."  
 20 Nicola Sturgeon replies:  
 21 "Their comms are behind awful. We're not perfect  
 22 but we don't get nearly enough credit for how much  
 23 better than them we are."  
 24 She then replies:  
 25 "This is fucking excruciating -- their comms are  
 37

1 work hard to mitigate, because people in Scotland see  
 2 both. So, yeah, we were clearly not very complimentary  
 3 about their communications handling that day.  
 4 **Q.** Is it fair to say that the relationship between  
 5 Nicola Sturgeon and Boris Johnson by this date had  
 6 completely broken down?  
 7 **A.** I think "broken down" to a degree overstates what was  
 8 there to break. They had met on a number of occasions,  
 9 there was always a politeness, a business-like approach  
 10 to it. When Boris Johnson first became Prime Minister  
 11 and came to meet Nicola Sturgeon in Scotland, they had  
 12 a discussion that I think has been described pub -- as  
 13 it was more like a debate, you know, two intelligent  
 14 people engaged in discuss about policy issues.  
 15 When we got to Covid, I think it was much harder.  
 16 It was evident in his exchanges with the Scottish  
 17 Government, with the First Minister -- and I think with  
 18 the other First Ministers, because we would all be on  
 19 the same call -- that he didn't want to be on those  
 20 calls, he wasn't necessarily well briefed on those  
 21 calls, and he wasn't listening to the points we were  
 22 making on those calls. And so I think engagement with  
 23 him came to be seen as slightly pointless during this  
 24 period.  
 25 **Q.** I think it's going as early as -- it was March 2020,  
 39

1 AWFUL."  
 2 Then she goes on to say:  
 3 "His utter incompetence in every sense is now  
 4 offending me on behalf of politicians everywhere."  
 5 You reply saying:  
 6 "I have a separate whatsapp [the name is redacted]  
 7 and davie and we are offended on behalf of Spads  
 8 everywhere."  
 9 Nicola Sturgeon says:  
 10 "He is a fucking clown."  
 11 So was there a perception amongst Nicola Sturgeon  
 12 and the wider Scottish Government that it was doing so  
 13 much better than the UK Government in the pandemic  
 14 response around this time?  
 15 **A.** I think this refers specifically to the communications  
 16 aspect of the response. And that's sometimes dismissed,  
 17 but communications is very important in a public health  
 18 situation, people need to know what to do and why and to  
 19 understand it and to trust in it, and this was the end  
 20 result of a day that had been quite shambolic in  
 21 the UK Government, and that has an impact on what people  
 22 see and think in Scotland about the pandemic overall.  
 23 So while he was announcing something that was not  
 24 relevant to Scotland, the sort of chaos that appeared  
 25 around some of the decisions they took we then had to  
 38

1 I think, in one of your notes you describe COBR as  
 2 a shambles.  
 3 **A.** Yes.  
 4 **Q.** Was that the view that you had from very early on, from  
 5 March 2020, that the Prime Minister wasn't really  
 6 wanting to engage with --  
 7 **A.** Yes.  
 8 **Q.** -- the Scottish Government?  
 9 **A.** Yes.  
 10 **Q.** How did that then affect, from the Scottish Government,  
 11 its working relationship with the UK Government and the  
 12 working relationship between the First Minister and the  
 13 Prime Minister?  
 14 **A.** I think in relation to the Scottish Government and the  
 15 UK Government in broader terms, there was fairly  
 16 constant and fairly good communication and co-operation.  
 17 I mean, particularly in health this is evident, and at  
 18 times, not always but at times, in the economic space.  
 19 And I think officials at all levels sort of had  
 20 discussions that were quite good. But the discussions  
 21 between the First Minister and the Prime Minister -- and  
 22 other First Ministers, I mean, it was very -- it was  
 23 never bilateral, there were also the First Minister of  
 24 Wales and the First Minister and deputy First Minister  
 25 of Northern Ireland on these calls as well -- they --  
 40

1 they didn't get us anywhere.

2 So we started with a very clear approach that we  
3 should all try to work together, and moving into  
4 lockdown was all done in a co-ordinated fashion, but  
5 when you got to what I think the First Minister wanted  
6 to be substantive discussions about what direction to go  
7 in, a thrashing out of different proposals and different  
8 ideas, that wasn't what we got. We got a Prime Minister  
9 who, it certainly felt at the end of the video screen or  
10 at the end of the line, was reading a script and would  
11 summarise the contributions of the three First Ministers  
12 and the Deputy First Minister from Northern Ireland in  
13 ways which largely ignored the points that they had  
14 made.

15 **Q.** How early on in the pandemic response did you come to  
16 that realisation?

17 **A.** It was difficult -- I mean, it was more effective at the  
18 beginning, sort of March, although it was obvious that  
19 they were not, you know, hugely keen on having us there  
20 and being in the room. It was actually quite effective  
21 with Dominic Raab for the period in which the  
22 Prime Minister was in hospital. And it's when the  
23 Prime Minister sort of re-engages in the discussions  
24 that it is evident, as you're talking about the lifting  
25 of restrictions for example, changes in messaging,

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1 utterly incompetent, that doesn't really create any sort  
2 of functioning relationship between the two leaders of  
3 the respective governments, does it?

4 **A.** I mean, this is later than that point that you raised  
5 earlier about May, by which point I can't think of  
6 conversations in this period that were happening  
7 directly with the Prime Minister, they were happening  
8 with Michael Gove.

9 **Q.** Can we now turn to page 21, and we are now looking --  
10 we've now moved on to 1 November 2020, and I wanted to  
11 look at messages that begin at 6.29 pm. Here you say:

12 "My reason for setting a timeline for them to answer  
13 us on furlough is purely political -- especially as we  
14 expect the answer to be no, it looks awful for them, and  
15 creating that kind of pressure could possibly result in  
16 a yes (though agree we shouldn't bank on it). Think  
17 I just want a good old fashioned rammy so can think  
18 about something other than sick people."

19 Nicola Sturgeon replies:

20 "Yeah I get it. And it might be worth doing. I've  
21 sent a rough formulation of what I might say tomorrow --  
22 I could for it in there."

23 So if we pause there, can you help us, what do you  
24 mean by "good old fashioned rammy" with the  
25 UK Government?

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1 different approaches between Scotland, Wales and  
2 Northern Ireland and the UK, that he is not informed and  
3 doesn't want to be there.

4 **Q.** I think there seems to be kind of a very clear  
5 divergence in messaging from around 10 May 2020. You'll  
6 recall that where the UK Government messaging moved to  
7 Stay Alert, the Scottish Government remained at Stay at  
8 Home. Was that the point, if we're trying to identify  
9 in terms of timeline, where there was now clear  
10 divergence in the approach between the two governments,  
11 or did it occur earlier than that?

12 **A.** I think that's the point where it becomes clear that  
13 there is going to be a difference in approach between  
14 the two governments, that the approach to lifting  
15 restrictions in England is going to be different to the  
16 approach to lifting restrictions in Scotland, Wales and  
17 Northern Ireland, and that I think the sort of  
18 philosophy or ideology behind the lifting of  
19 restrictions was coming from a different place.

20 So that is, I think, the point at which it becomes  
21 clear that we're going to go in slightly different  
22 directions and we have to try to work out how to go in  
23 different directions within the UK as a whole.

24 **Q.** If the First Minister of Scotland thought that the  
25 Prime Minister of the United Kingdom was a clown, or

42

1 **A.** I think this is an expression of frustration that we  
2 were not able to manage the pandemic at this point in  
3 time in the way that we wanted and -- I mean, "a good  
4 old fashioned rammy" is language I would rarely use,  
5 actually, but, you know, is that we needed to have the  
6 argument in public. There were a lot of things in Covid  
7 where we didn't have the argument in public, there were  
8 a lot of things in Covid where the UK Government did  
9 something and we just let it go or they didn't do  
10 something and we just let it go.

11 I particularly felt this issue of furlough at a time  
12 when we wanted to apply restrictions and furlough was  
13 ending was -- was materially important to the handling  
14 of the pandemic. It was a hindrance to our ability to  
15 handle the pandemic. And I can't deny it, I was angry  
16 about that position because it really did block our  
17 ability to do what we wanted to do. So I think the  
18 message reflects that frustration perhaps bubbling over  
19 a little bit.

20 **Q.** Yes, I think earlier on we'd looked at your notebook and  
21 the entry from the gold command from 28 September and  
22 I think you'd said you take an issue with how  
23 I characterised it as a public spat. By this stage on  
24 1 November you are looking for a public spat with the  
25 UK Government; is that fair to say?

44

1 **A.** I am definitely looking -- you know, I'm clearly looking  
 2 to air the issue strongly and publicly, and, as I say,  
 3 in the vague hope that it might get us an answer, might  
 4 get us a yes.

5 **LADY HALLETT:** You were looking for a public spat?

6 **A.** I'm looking for a public spat for a purpose. A public  
 7 spat could often deliver results. If the public  
 8 pressure on the UK Government was there, it had been  
 9 shown in the past that they would sometimes change their  
 10 mind if they felt that pressure, and what I want them to  
 11 do is change their mind.

12 **MR TARIQ:** So the discussion is whether the furlough scheme  
 13 should be available to Scotland, because at this stage  
 14 England had just entered into the second national  
 15 lockdown in England, and you're setting what is  
 16 effectively a political trap for the UK Government if it  
 17 refuses to extend the furlough scheme to Scotland it  
 18 looks awful for them and strengthens the argument for  
 19 independence, because you need to go alone, or if it  
 20 extends the furlough scheme to Scotland there is  
 21 additional funding available to Scotland. Therefore,  
 22 for the Scottish Government, a good old fashioned rammy  
 23 with the UK Government is a win-win situation; is that  
 24 not the essence of the point that you're making here,  
 25 that you're looking at this from purely political

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1 **Q.** Can we turn to now page 23 in these WhatsApp messages,  
 2 and here, just by way of context, what's being discussed  
 3 here is efforts to have a four nations approach to  
 4 restrictions over Christmas in 2020, and you'll see  
 5 messages from you that begin at 9.04 pm and you say:  
 6 "Gove wants to talk tomorrow -- have said to ..."  
 7 And there is a name redacted.  
 8 "... to hold off going back till the morning and  
 9 suggest waiting for the proposal before agreeing."  
 10 Nicola Sturgeon replies:  
 11 "I've just seen the email. I'm happy to do call,  
 12 subject to proposal...but I wonder if we should make  
 13 clear in advance we won't agree anything without cabinet  
 14 approval (and get Wales to sign up to that)."  
 15 You reply:  
 16 "Yep Cabinet Tuesday is a good marker. Tuesday or  
 17 [Wednesday] might not be bad days for us to announce  
 18 either. I am increasingly leaning to just one other  
 19 household after seeing the poll. But I'm also a grinch  
 20 about Christmas."  
 21 Then Nicola Sturgeon replies:  
 22 "I am too -- but on this I (reluctantly) think  
 23 there's merit in uk wide position. Let's see the  
 24 proposal."  
 25 So Nicola Sturgeon's reply to you on 20 November,

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1 perspectives?

2 **A.** I would absolute that there's any issue of independence  
 3 in this. So I am keen, very keen, that we get a yes in  
 4 this situation and that we are able to enact the  
 5 restrictions at the time -- public health restrictions  
 6 at the timing the Scottish Government deems appropriate,  
 7 with the financial support that should come with that.

8 If there is a no, what looks awful for them is that  
 9 they are not enabling us to take public steps at the  
 10 time that we want. If the wider world wants to read  
 11 constitutional implications into that, that is for them,  
 12 but I was not making them.

13 **Q.** It was around this time that I think the furlough scheme  
 14 was extended to Scotland in November; is that correct?

15 **A.** It ultimately was, there was significant pressure,  
 16 public pressure, placed on the UK Government.  
 17 Ultimately it did it because it did it for England, and  
 18 this was the issue, was that finance decisions that  
 19 related to mitigating public health measures were not  
 20 co-ordinated with the decisions each of the four nations  
 21 might make on those public health measures, they were  
 22 only triggered, if you like, when England took  
 23 a decision and Scotland, Wales and Northern Ireland all  
 24 faced significant difficulties during this period for  
 25 that reason.

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1 she seems to be emphasising that she's reluctantly  
 2 seeing the merit in the UK-wide position. Does this not  
 3 suggest that by this stage the default position for the  
 4 Scottish Government was to be different from  
 5 the UK Government?

6 **A.** I think it was the default position for each of the four  
 7 governments to take the decisions that suited their  
 8 geographical and pandemic-related circumstances. It was  
 9 not that we would be different to the UK or different to  
 10 Wales, it was that, in taking the right decisions for  
 11 the people we were responsible to, the Scottish people  
 12 in effect, they were not necessarily the same decisions  
 13 that the UK was taking.

14 **Q.** But Nicola Sturgeon doesn't appear to be very  
 15 enthusiastic about four nations approach by this time,  
 16 does she? She's almost reluctantly having to sign up to  
 17 it.

18 **A.** I think there was a reluctance in general around  
 19 Christmas positioning. We were essentially bounced by  
 20 the UK Government into a position about Christmas.  
 21 Telling people they can't have it when the UK Government  
 22 have said you can was a very difficult situation to be  
 23 put in.

24 There is a reluctance -- and you can see this higher  
 25 up, you know, subject to the proposal, we're reading in

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1 the public domain that people will be getting some  
2 sort of relief from Covid over Christmas. We have not  
3 seen a proposal that we are about to go onto a phone  
4 call and be asked to agree to. So this again goes to  
5 some of that what was to us a chaotic and shambolic  
6 sort of approach. So it's very hard to sign up to  
7 something and to enthusiastically embrace something that  
8 you have had no input into.

9 **Q.** Were your advisers, whether it be scientific, clinical,  
10 medical advisers, advising you about the benefit of  
11 having a cohesive approach across the UK around the  
12 restrictions over Christmas 2020?

13 **A.** Yes, to an extent, in part because of travel, and it was  
14 travel that led us largely to look for a cohesive  
15 approach. What I recall of the advice from advisers  
16 around Christmas was, you know: we don't think this is  
17 a good idea, make it as minimal as you can if you have  
18 to do it at all.

19 **Q.** I now want to move on in the period to, you left your  
20 role as chief of staff in March 2021, and you say that  
21 after a short break you came into the role of strategic  
22 political and policy adviser to the First Minister in  
23 August 2021. I think you say in your statement that you  
24 didn't have any involvement in the pandemic response  
25 beyond this date except for COP26, which took place in

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1 things like the new economic strategy, the draft energy  
2 strategy, the resource spending review. I attended some  
3 of the constitution secretary's independence meetings  
4 but I did very little work on it. It was not my  
5 purpose.

6 **Q.** Just so I understand, in your role as strategic  
7 political and policy adviser to the First Minister, and  
8 this is around the same time that there's movement  
9 towards a second independence referendum, your position  
10 is that you didn't actually do very much work on  
11 independence?

12 **A.** I didn't. There was a delegated special adviser whose  
13 role was the constitution, he covered Brexit, primarily,  
14 and the development of the work on independence.  
15 I think it might be useful to say I had not been in  
16 government over that summer and I think -- there's has  
17 been a reference or material provided -- a BBC article  
18 sort of headlining this independence issue on that date  
19 in September that you remembered -- or cited, which is,  
20 again, the publication of a programme for government.  
21 I had had no involvement in the writing of that  
22 programme for government. Unusually. It was the first  
23 one in probably ten years that I hadn't been part of.

24 And it has maybe a page's worth of references to  
25 independence in a 180-odd page document. It was

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1 Glasgow I think, in November 2021; is that correct?

2 **A.** That's correct.

3 **Q.** On 7 September 2021 Nicola Sturgeon announced that work  
4 would start again on the second independence referendum  
5 campaign. Does this announcement or did this  
6 announcement coincide with your change of position from  
7 chief of staff to becoming the chief political adviser  
8 and strategic --

9 **A.** It broadly coincides in date terms but it doesn't  
10 coincide in reason. I did not take a post -- my post  
11 was not involved in any move on independence.  
12 I attended the odd call, but it was not -- it was far  
13 from the principal purpose of my job.

14 **Q.** What was the principal purpose of your job after  
15 August 2021?

16 **A.** Initially it was the COP26 summit and to lead the sort  
17 of Scottish Government's policy work in preparation work  
18 in preparation for that. It was then to focus -- and  
19 this was something I had felt as chief of staff we were  
20 missing, was to step back from the frontline, from the  
21 media, from the Parliament, from the day-to-day, and to  
22 focus on some of the long-term commitments that we had  
23 as a government and that we'd made in the 2021 election  
24 around moving to renewable energy, around reaching net  
25 zero, around tackling child poverty. So I worked on

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1 a programme for government that set out, as we had in  
2 the election, a number of key policy objectives within  
3 government and I had moved to lead on those policy  
4 objectives because I had a reflection, which the  
5 First Minister had shared, that you needed a special  
6 adviser who could work across portfolios, with her  
7 confidence, to try to inject some energy into them.

8 **Q.** Did the move towards pushing for a second independence  
9 referendum, did that reflect a change of priority for  
10 Nicola Sturgeon away from the pandemic response and to  
11 the second independence referendum campaign in the  
12 middle of 2021?

13 **A.** At that time, no, for her. I mean, I wasn't there day  
14 to day, but my recollection of her in that time is that  
15 she remained incredibly focused on the Covid pandemic.  
16 You can think about more than one thing at a time when  
17 you're First Minister, but she devoted vast amounts of  
18 time to the Covid pandemic during this period, so ...

19 **Q.** Was she devoting vast amounts of time to the  
20 independence strategy around this time?

21 **A.** It was largely led by the Cabinet Secretary for the  
22 Constitution.

23 **Q.** I wanted to move on to another area, and this is around  
24 the public health messaging during the pandemic.

25 You say in your first statement, and I don't intend

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1 to bring this up, that you've considerable experience in  
2 public communications. Is it fair to say that until at  
3 least March 2021 you played an important role in the  
4 Scottish Government's communications strategy in  
5 relation to the pandemic?

6 **A.** Yes.

7 **Q.** And this included leading on, for instance, the  
8 preparations for the daily media briefings; is that  
9 correct?

10 **A.** I would share that responsibility with the head of the  
11 Covid briefing unit, but yes.

12 **Q.** And in fact we've seen some WhatsApp messages that you  
13 were actually one of the people that would decide, for  
14 instance, which adviser would appear on any given day.  
15 Does that accord with your recollection?

16 **A.** "Decide" is possibly strong. I would suggest who would  
17 come on what day, they would tell me what days they were  
18 and were not available and we would work out how we  
19 going to cover the whole week, in co-ordination with the  
20 health communications desk.

21 **Q.** Were you the one effectively choosing, at least before  
22 checking their availability, who would be the one that  
23 would front a particular media briefing?

24 **A.** I generally sought to simply just share it around and  
25 consider what each of them was working on and what we

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1 **A.** Yeah.

2 **Q.** -- various measures; is that correct?

3 **A.** Yeah.

4 **Q.** Can you tell me the importance of honesty, trust, being  
5 clear and transparent with the public in terms of public  
6 health communications strategy?

7 **A.** When -- I think to ask people to do something as extreme  
8 as, you know, stay at home, was something that was very  
9 unusual and unprecedented in people's lives. They had  
10 to have confidence that the people who were asking them  
11 to do that were asking them to do that for the right  
12 reasons and that it was something that we were asking of  
13 everyone, and part of that was helping them to  
14 understand why it was necessary and the impact it was  
15 hoped that following that rule would have.

16 **Q.** Could there be sometimes good reasons not to be open or  
17 candid or transparent with the public, and if so what  
18 sort of scenarios would there be where you wouldn't be  
19 open or transparent with the public?

20 **A.** I think I can perhaps identify where you're taking me  
21 here. There would be occasions around patient  
22 confidentiality, particularly early in the pandemic,  
23 when, not at the time but subsequent to, there have been  
24 arguments that people should have known more, that we  
25 should have said more to the public about certain events

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1 were likely to be speaking about. So if we were going  
2 to be speaking about a, you know, piece of Public Health  
3 Scotland work that had come out, I would probably look  
4 for Professor Smith, Dr Smith, to do that. If it was we  
5 need to give people a general update on a reminder about  
6 behaviours because the polling maybe shows that  
7 behaviours were slipping, I would look for  
8 Professor Leitch to do that.

9 **Q.** So in broad terms what was the Scottish Government's  
10 strategy around public health communications, at least  
11 until the period that you were in position?

12 **A.** It was to be honest, to be clear, to trust people and to  
13 try to build cohesion amongst the public about the  
14 actions we were asking them to take. There was a lot of  
15 focus on explaining to people why we were asking them to  
16 do certain things, because that would boost the  
17 compliance, helping people understand the situation they  
18 were in and that we were in, and encouraging the  
19 behaviours that we needed people to undertake in order  
20 to mitigate the spread of the virus.

21 **Q.** I think you said honest -- to be honest with the people,  
22 to be clear, to trust the people and try to build  
23 cohesion amongst the public so that the public -- you  
24 were able to explain to the public and the public  
25 understood why they were being asked to comply with --

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1 and certain cases. That is an argument that has been  
2 made afterwards, and I think we can say very clearly we  
3 told people about cases. We perhaps didn't tell  
4 everybody about the personal circumstances of individual  
5 cases. So I think that that may be where you're  
6 heading. I think those are the main -- that is the main  
7 issue where you would keep something confidential, is if  
8 there was harm that could be caused to an individual, or  
9 to the process of managing Covid itself, by making  
10 something more public.

11 **Q.** I think you probably were able to anticipate where  
12 I wanted to go. I wanted to ask you some questions  
13 about the Nike conference --

14 **A.** Yeah.

15 **Q.** -- which took place between 25 and 27 February 2020.

16 Can we look at INQ000225995, and what this is is  
17 it's a chain of emails in which -- it's between yourself  
18 and Dr Catherine Calderwood, and you will see that other  
19 people copied in include the First Minister's office and  
20 indeed the Cabinet Secretary for Health.

21 If we look at what has been discussed here is  
22 whether to disclose the link between the conference and  
23 the first outbreak of Covid-19 in Scotland.

24 If we see, this is an email from you saying:

25 "All,

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1 "Cab Sec, FM and Gregor ..."  
 2 If I can pause there, is that Gregor Smith?  
 3 **A.** Yes, it is.  
 4 **Q.** "... (who can discuss directly what we're looking  
 5 for) -- are conscious that a number of Scotland's cases  
 6 now connect to one event -- and that we are at a point  
 7 where that could be reassuring information for the  
 8 public around the increase in numbers, demonstrate we're  
 9 still at containment, that contact tracing works and be  
 10 a legitimate public interest matter.  
 11 "Ahead of the update to numbers at 2pm can FM and  
 12 Cab Sec receive as full information as possible about  
 13 that event, what's been done, the contact tracing,  
 14 success etc. And can consideration be given with comms  
 15 as to what can be said around it."  
 16 So I asked you about Professor Smith. Does this  
 17 indicate that he was providing advice, information and  
 18 advice, on the Nike conference around this time?  
 19 **A.** I think what happened, not specifically on the  
 20 conference, I think the reason I'm referring to cab sec,  
 21 FM and Dr Smith at the same time is, from my  
 22 recollection, he had come from a meeting of SAGE to  
 23 report to the Cabinet secretary and the First Minister  
 24 what had been discussed and to update them, and so they  
 25 were all in one room at this point. At the same time we

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1 **Q.** So he had given you advice saying that this can be --  
 2 the link can be --  
 3 **A.** That's my recollection.  
 4 **Q.** -- disclosed to the public?  
 5 If we then turn to page 1, which is a reply from  
 6 Dr Catherine Calderwood, and you will see that this is  
 7 on 6 March and I wanted to look at the final two, the  
 8 end of that first page, her response is:  
 9 "My strong advice would be not to say anything here  
 10 specifically naming the conference risks breaching  
 11 patient confidentiality as a delegate list will be  
 12 available."  
 13 So you've received some advice from Gregor Smith  
 14 saying that he thinks that this can be disclosed, and  
 15 then the CMO at the time, Dr Calderwood, says her strong  
 16 advice is not to disclose.  
 17 At the time, did you think Dr Calderwood's advice  
 18 about not saying anything was the correct position?  
 19 **A.** I suppose I didn't think it was necessarily for me to  
 20 judge the correct position, I would still have favoured  
 21 making information available, but she was the doctor,  
 22 she was the senior clinician, and she cited patient  
 23 confidentiality, and ultimately the First Minister  
 24 accepted that advice.  
 25 **Q.** Would it not have been entirely possible to tell the

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1 were becoming aware that I think it was the second case  
 2 and then a couple of subsequent cases of Covid  
 3 originated with a particular event. I can't say at the  
 4 time that I knew it was a Nike conference until the  
 5 following email, and in a discussion with the three of  
 6 them we collectively thought, "Well, perhaps we  
 7 should -- if we tell people about this, it might  
 8 reassure them that we don't have Covid springing up in  
 9 lots of different places", although perhaps in hindsight  
 10 we did, but that these three or four cases, I think it  
 11 was, are all from one event.  
 12 **Q.** So at least your email seems to suggest that you and  
 13 potentially the First Minister, the Cabinet Secretary  
 14 for Health Jeane Freeman and perhaps even  
 15 Professor Smith were in favour of telling the public  
 16 about the link between this one event and the number of  
 17 Scotland's first known cases of Covid-19; is that  
 18 correct?  
 19 **A.** Yeah, I think the Cabinet secretary, the First Minister  
 20 and myself were -- and Dr Smith was asked, you know, do  
 21 you think we can and had advised that yes he thought we  
 22 could, hence why I'm saying he can discuss directly what  
 23 we're looking for. He had given us a bit of advice  
 24 on -- verbally on, you know, there will be limits, but  
 25 yes.

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1 public about what had happened without breaching patient  
 2 confidentiality?  
 3 **A.** That was, if you like, the purpose of my request in the  
 4 email, to say "Can we have some advice with comms about  
 5 what can be said?" I think is how it's framed,  
 6 something like that. Well, sorry, that's -- "What is  
 7 the boundary of what we can say? What is the limit?"  
 8 Dr Calderwood I think probably had a concern  
 9 heightened because the first case of Covid in Scotland  
 10 had had media on their doorstep and had, you know, not  
 11 been named as an individual but it was quite well known  
 12 who that person was. This was cases, you know, 2 and 4  
 13 and 5, I think. So I think there was -- her concern was  
 14 that it is quite easy to find people in Scotland and she  
 15 didn't want to open that prospect up. I -- that's my  
 16 speculation as to why she was so strong on the patient  
 17 confidentiality issue here.  
 18 **Q.** Does this not give the impression of a cover-up?  
 19 Because the link only becomes known to the public after  
 20 a BBC Disclosure documentary in 2020, and that's when  
 21 we're still in the first lockdown. Does this not impact  
 22 the public's level of trust in the Scottish Government's  
 23 attitude?  
 24 **A.** As I've said, my preference was to say that there were  
 25 a number of cases connected to a conference. I don't

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1 think this is as you've described it, because the cases  
2 themselves are publicly identified. Like, not  
3 identified as individuals but the fact that there is  
4 an increase in Covid cases, that there have been four or  
5 five cases, is not kept within the government. That is  
6 published in the statistical update that went out every  
7 day. So that is known, as are the health boards in  
8 which those individuals are located.

9 If -- I think I understand why people think,  
10 you know, oh, we should have said this was a conference.  
11 I thought that at the time. But I can also see the view  
12 that Dr Calderwood had, that actually you had people who  
13 were in quite a vulnerable position and you could be  
14 putting undue pressure on them at a time when they were  
15 unwell.

16 **MR TARIQ:** My Lady, I'm conscious of the time. Would this  
17 be a good time to break?

18 **LADY HALLETT:** Certainly.

19 Just I have one question on -- I confess I don't  
20 quite understand Dr Calderwood's advice. The delegate  
21 list would, what, be hundreds on it?

22 **A.** I can't recollect the size of the conference.

23 **LADY HALLETT:** The chances are, if it's an international  
24 company like Nike, it's going to be --

25 **A.** I honestly can't -- I think that is actually contained

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1 again your notebook that we looked at in the morning  
2 session. Can we look at page 37 you will see that this  
3 is an entry that's undated but if you see at the top it  
4 says:

5 "Not to be public.

6 "French national -- other conditions.

7 "Limited factual [information]."

8 Do you see that?

9 **A.** Yes.

10 **Q.** There was an article in the Edinburgh Evening News  
11 suggesting that the first death from Covid-19 in  
12 Scotland was a Frenchman who had attended our rugby  
13 international, I think it was a Six Nations, between  
14 Scotland and France on 8 March 2020. Why were details  
15 not publicised at the time that -- the fact that this  
16 person had travelled from France to Edinburgh to watch  
17 the rugby?

18 **A.** So what was publicised at the time was that  
19 an individual had died and that they had another  
20 condition. This refers to advice -- I can't remember  
21 who I was being given it from, but it's clearly a note  
22 of somebody telling me that we are not to release the  
23 fact that they were French. Again, this is not an issue  
24 about trying to avoid disclosing the fact that they had  
25 been at the rugby. I think, from memory, though my

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1 somewhere in this Freedom of Information request, but

2 I can't recollect it.

3 **LADY HALLETT:** I do understand what you say about easier to  
4 find people in Scotland, I just can't make the link  
5 between a delegate list being available and the patients  
6 being identified. But did you or the First Minister not  
7 challenge that assertion?

8 **A.** I can't remember. This would -- is a question that you  
9 would need to put to the First Minister, that there may  
10 have been a conversation after this advice, but this was  
11 at a time when I think if you were told this was patient  
12 confidentiality, you didn't necessarily feel like you  
13 could challenge that. And, you know, the next day there  
14 were five, ten more cases and it quickly moved on.

15 **LADY HALLETT:** I think you could challenge it, but there we  
16 go.

17 Right, I shall return at 11.30.

18 (11.17 am)

19 (A short break)

20 (11.30 am)

21 **LADY HALLETT:** Mr Tariq.

22 **MR TARIQ:** Good morning again, my Lady.

23 We had just finished speaking about the Nike  
24 conference.

25 I now wanted to move on to INQ000346141, which is

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1 recollection's not entirely clear, that this was either  
2 about family contact or an issue to do with the French  
3 consul and their sort of involvement in the fact that  
4 the person was French and needed -- repatriated. It was  
5 not anything to do with the fact that they had travelled  
6 from France to the rugby. It was some element of the  
7 procedure around the death.

8 **Q.** I think Dr Calderwood had said at the time that the  
9 patient was an older man who died under the care of  
10 NHS Lothian. Did that not give the impression to the  
11 public that the first person to die from Covid-19 in  
12 Scotland was a local person and not a Frenchman?

13 **A.** It may have.

14 **Q.** And had the Scottish Government told the public that the  
15 first person to die from Covid-19 in Scotland was  
16 a French national who had travelled from France to  
17 Edinburgh to watch the rugby, would this not have led to  
18 some uncomfortable questions for the Scottish  
19 Government's role in allowing the match to proceed in  
20 the first place on 8 March 2020?

21 **A.** It may have but that was not the reason for not  
22 disclosing the fact that they were French as far as  
23 I can recall. There was no discussion about, you know,  
24 did this or did this not relate to whether or not the  
25 rugby should have gone ahead, this was an issue about

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1 the patient, the person who had died and, as far as  
 2 I can recall, either their family or the procedures  
 3 around working with the French Government.  
 4 **Q.** But telling the Scottish public that a French national  
 5 had died would not breach patient confidentiality when  
 6 there's potentially hundreds, if not thousands of people  
 7 travelling to the rugby from France, would it?  
 8 **A.** It would not. And again I would say I did not know the  
 9 individual was connected to the rugby until shortly --  
 10 a few days afterwards, from an external source.  
 11 **LADY HALLETT:** Also, if it was to do with the contacting the  
 12 family and the French consul, surely it would be "not to  
 13 be public until family informed" or something of that  
 14 kind, wouldn't it?  
 15 **A.** It may have been, that may have been just shorthand, but  
 16 the death was to be announced kind of straightaway. The  
 17 French part was not to be public, certainly, at that  
 18 time; I can't recollect if there was a "you can say this  
 19 afterwards". But I did not know in this note that they  
 20 were connected to the rugby, so the issue of not  
 21 revealing the rugby was not a consider --  
 22 **MR TARIQ:** But that became --  
 23 **A.** -- in my mind.  
 24 **Q.** -- known pretty soon to the Scottish Government --  
 25 **A.** Yes.

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1 pandemic, and I think you had said -- you had identified  
 2 patient confidentiality, which we've discussed, but you  
 3 also said it might be that one can't tell the public  
 4 because -- for the purpose of the process of managing  
 5 Covid itself, by making something more public. Can you  
 6 explain what you meant by that?  
 7 **A.** One of the issues around the Nike conference, and  
 8 I think it was perhaps the subsequent line of  
 9 Dr Calderwood's email, was the contact tracing, and that  
 10 you -- or certainly clinicians, quite often, at the very  
 11 beginning, wanted this to conclude and to be done in  
 12 a contained way rather than to create some sort of  
 13 panic, if you like, around people who would not be  
 14 contact traced because they hadn't, in their view, been  
 15 exposed.  
 16 **Q.** But does that not contradict what you said earlier on  
 17 about the values of public health communication, being  
 18 clear with the public, trusting the public?  
 19 **A.** It is a balance. So you lean towards always putting the  
 20 information in the public domain -- there has to be  
 21 a reason to not put the information in the public domain  
 22 and that reason has to be, you know, clinical,  
 23 scientific, you know, proven to be worth it. But these  
 24 are, you know, a very small number of examples, and  
 25 I can think of no others, to be honest, where

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1 **Q.** -- didn't it? And there was no decision made that "we  
 2 need to be honest" -- I think your words -- "honest,  
 3 clear with the public, trust them, and tell them that  
 4 the first person that died from Covid-19 was in fact  
 5 a French person who had entered Scotland to watch our  
 6 rugby international", that the Scottish Government  
 7 hadn't tried to stop?  
 8 **A.** I think it became known to me certainly that they were  
 9 from the rugby at the same point it became known to the  
 10 public through other means. I don't disagree with what  
 11 you're saying. The circumstances at the time were that  
 12 we were -- a lot of the time you were simply just  
 13 chasing your tail and you moved from one thing to the  
 14 next very quickly. The moments of reflection that  
 15 you're perhaps suggesting would have led us to say "Oh,  
 16 actually, that death from two days ago, we can now  
 17 confirm this" just didn't occur.  
 18 **Q.** Could another way of looking at it be that this is  
 19 another example of a Scottish Government trying to cover  
 20 up what might be seen as uncomfortable information  
 21 during the early months of the pandemic?  
 22 **A.** That would be an inaccurate way of looking at it.  
 23 **Q.** Before the break I'd asked you about what good reasons  
 24 could exist for not telling the public, not being honest  
 25 with the public about events happening during the

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1 information about Covid cases that we had, particularly  
 2 in the early days -- once you got to larger numbers the  
 3 detailed information was not something that, you know,  
 4 we had, unless there were specific outbreaks -- was not  
 5 put in the public domain.  
 6 **Q.** Does this not suggest that there wasn't really a kind of  
 7 concrete strategy that "We have to be honest, candid  
 8 with the public, transparent at all times", but it was  
 9 just a matter of discretion whether the Scottish  
 10 Government felt perhaps "This is a matter we should not  
 11 disclose" --  
 12 **A.** No.  
 13 **Q.** -- "and this is a matter that we should"?  
 14 **A.** No, the principle was that you were honest and  
 15 transparent and put as much information as -- put in the  
 16 public domain as you could. My understanding, and I'm  
 17 not the doctor here, my understanding of patient  
 18 confidentiality is that is an obligation on clinicians,  
 19 so when they say that they don't want you to release  
 20 something under patient confidentiality you --  
 21 I appreciate you said earlier, my Lady, that you could  
 22 push back -- you do feel obliged to take account of  
 23 that.  
 24 **Q.** I now want to move on to a different topic, and that's  
 25 the use and retention of informal communications

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1 relating to the pandemic, these being, for example,  
2 relevant WhatsApp messages, and I think it's important  
3 I place in context my questions.

4 You voluntarily provided the first batch of your  
5 WhatsApp messages with Nicola Sturgeon along with the  
6 first draft of your statement in July 2020; is that  
7 correct?

8 **A.** That's correct.

9 **Q.** These were messages between yourself and Nicola Sturgeon  
10 dated between 1 September 2020 and 16 March 2021?

11 **A.** That's correct.

12 **Q.** A period of about six and a half months. We've already  
13 looked at some of those messages this morning and those  
14 were the first messages that had been provided by anyone  
15 involved in the Scottish Government's response to the  
16 pandemic to this Inquiry.

17 Then in November 2023, in response to a further  
18 request by the Inquiry, you provided a page of  
19 additional messages between you and the First Minister,  
20 and these were dated over one day, this being  
21 31 August 2020 and 1 September 2020.

22 At the same time you provided some additional  
23 messages between yourself and Jeane Freeman, Kate Forbes  
24 and Shirley-Anne Somerville, and these messages were  
25 provided after the Inquiry had raised, publicly,

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1 **Q.** Were you aware at that stage that she had deleted all  
2 the messages from her phone when you submitted your  
3 messages to the Inquiry and then passed them to the  
4 Scottish Government for her?

5 **A.** Yes, I think I had become aware at that point that she  
6 didn't have the messages any more.

7 **Q.** And are you aware of how then Nicola Sturgeon came into  
8 possession of those messages? Was it through the  
9 Scottish Government?

10 **A.** Yes, I asked the Scottish Government to pass the  
11 messages to Ms Sturgeon.

12 **Q.** Why is it that you retained these messages but she has  
13 not?

14 **A.** I can't speak for her, I'm not going to speculate on the  
15 reasons here, with the one exception of saying that, in  
16 this conversation between us, I am the official and --  
17 she can answer if this is the case -- she may have had  
18 reason to think, "Well, Liz has them, that's the  
19 official part taken care of", because I am the official  
20 in that exchange.

21 I -- to be clear, all the sort of relevant, salient,  
22 Covid management stuff in those emails is in the system  
23 in government -- sorry, WhatsApps -- in other forms.  
24 I retain messages for my reference, initially.

25 You know, it's good to be able to look back -- similar

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1 concerns at the preliminary hearing about the disclosure  
2 of informal communications from the Scottish Government,  
3 and at that stage, when those concerns were raised  
4 publicly, you were still the only person who had  
5 provided any WhatsApp messages from the Scottish  
6 Government to this module.

7 Then, in response to another request to  
8 Nicola Sturgeon for her messages relating to the  
9 pandemic response, she provided in November 2023 copies  
10 of the same first batch of messages that you had  
11 provided to the Inquiry in July 2023, and I think she  
12 had said that those messages were not retained on her  
13 phone but she held copies.

14 Did you discuss with Nicola Sturgeon that you were  
15 going to voluntarily disclose some of the WhatsApp  
16 messages between you and her to the Inquiry, and if so  
17 what was discussed?

18 **A.** I told her that I -- so I received the Inquiry's  
19 request. I told her that I had messages that I was  
20 submitting them to the Inquiry when I submitted them to  
21 the Inquiry. I also submitted them to the government  
22 and asked the government to pass them to the former  
23 First Minister. I asked the government to do the same  
24 with the messages I submitted from Ms Freeman,  
25 Ms Sommerville, Ms Forbes.

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1 to my notebook, you know, I can go back and check: have  
2 things happened as and when they are supposed to have  
3 happened? I then thought I should keep them because of  
4 the nature of this Inquiry.

5 **Q.** So just so I'm clear, we've looked at some of these  
6 messages and I think we've agreed, tell me if I'm  
7 incorrect, that they place important context on some of  
8 the decisions that were being made; do you accept that?

9 **A.** I do.

10 **Q.** And those messages would be important to understand the  
11 how, the whys, the whens, the wheres of how the Scottish  
12 Government came to make certain decisions during the  
13 pandemic. Do you accept that?

14 **A.** I think that they are important but I think that the  
15 how, why, where decisions are made is contained in the  
16 official record, or it certainly should be.

17 **Q.** But they're important context.

18 **A.** Yes.

19 **Q.** And they're part of the decision-making process. They  
20 may not be the only part of the decision-making process  
21 but they're part of the process; do you accept that?

22 **A.** Yes, to an extent, yes.

23 **Q.** You were her chief of staff --

24 **A.** Yes.

25 **Q.** -- during -- up till March 2021. Was it your

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1 understanding of the Scottish Government policies that  
2 these sorts of messages showing the decision-making  
3 should be retained?

4 **A.** I think I, in the second submission to the Inquiry, have  
5 set out my knowledge of Scottish Government policies in  
6 this regard. In relation to records management  
7 policy -- and I'm going to have to talk about the two  
8 policies to give the full context here. In relation to  
9 the records management policy it has always been my  
10 understanding of the need, whatever form the  
11 communication takes, to put salient material into the  
12 official records. It's useless on my phone, it achieves  
13 nothing sitting on my phone, it needs to be somewhere in  
14 the government system to have any form of effect or to  
15 inform government's broader thinking. I, to the best of  
16 my recollection, was not familiar with the mobile  
17 messaging policy.

18 **Q.** Do you know, as Nicola Sturgeon's chief of staff,  
19 whether she was familiar with the mobile messaging  
20 policy?

21 **A.** I couldn't speak to that.

22 **LADY HALLETT:** So you weren't aware of the policy that  
23 others have told me about where they claim the policy  
24 was to delete, "a bedtime ritual"?

25 **A.** I have no recollection. I can't be categoric because  
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1 corporate record?

2 **A.** Yes, largely. It would not -- and I think I set this  
3 out in my evidence -- it's not that I would write an  
4 email saying, "I have had a WhatsApp exchange with  
5 Nicola Sturgeon and ..." It might be "I have been in  
6 discussion with" or, you know, "I have had an exchange  
7 with".

8 It's reflective of the way in which I would have  
9 handled a conversation in the pre-Covid world and  
10 actually during Covid where we were in the same place is  
11 you have a conversation or an exchange of discussion,  
12 information, with the First Minister and for that to be  
13 useful to anyone, including me, it has to go into the  
14 system somehow. It has to be communicated to  
15 an official, to her private office, I might ask her  
16 private office to put it in, I might email an official.

17 Some of this might have been -- so if we go back to  
18 the weddings example, I think I would have been on Teams  
19 to the relevant official saying, "FM's asking me this  
20 question, can you provide me with information?"

21 I think you can see from the exchanges that they are  
22 very much about immediate issues. You know, they tend  
23 to be about things that are happening that day, the next  
24 day, and are about co-ordinating some of those things,  
25 and so me simply knowing that does not facilitate the  
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1 a lot of things in government would pass through my  
2 inbox, but I have no recollection of specifically  
3 reading that policy at any point in time.

4 Private secretaries would, you know, occasionally  
5 remind you to, you know, manage your inboxes, manage  
6 your email. Mine frequently breached the government  
7 limits so, you know, there would be a need to make sure  
8 you were keeping the right stuff, get rid of extraneous  
9 material, not relevant material. But no, I have no  
10 recollection of having seen that policy. I can't say  
11 100% that I didn't, but --

12 **LADY HALLETT:** Even if you had seen it, would you have  
13 deleted matters that might have been subject to an FOI  
14 request?

15 **A.** No, I don't think I would.

16 **LADY HALLETT:** No.

17 **A.** Or certainly not intentionally.

18 **MR TARIQ:** I think you've said that it was your practice  
19 that the salient, perhaps, messages would be recorded on  
20 to the corporate record; is that correct?

21 **A.** Yes.

22 **Q.** So some of the WhatsApp messages that we've seen which  
23 show some of the context or some of the decision-making  
24 process, was it your habit to then record those messages  
25 into an email so it could be uploaded on to the  
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1 business of government. It needs to enter the record to  
2 facilitate the business of government.

3 **Q.** But using that example of the number of people that can  
4 attend funerals or weddings, would it have been your  
5 practice that you would have recorded that there had  
6 been potentially a decision or a view reached that the  
7 number should remain at 20 in a formal -- or an email or  
8 some other form of written communication to somebody  
9 else?

10 **A.** On that specific one there's, I would expect, some form  
11 of written communication between me and an official  
12 checking the facts saying "FM's asking". If there had  
13 then been a push for, you know, "I want more, she wants  
14 more information or she wants to question this", that  
15 would have had to have gone again into the formal record  
16 to say, "Can the First Minister get fresh briefing on  
17 this point" or "Can you ask the CMO to consider this  
18 point for the First Minister?"

19 So it may not have been in that case that  
20 I provided -- you know, I provide the First Minister  
21 with information and she doesn't ultimately respond to  
22 the point, then I said "I gave her to information and  
23 there's nothing back so let's stick with it", but  
24 I would certainly have said "She's asked me for this" so  
25 there is no awareness that the First Minister is asking  
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1 a question about this. And I note in that exchange  
 2 I then say the note from the Prime Minister is coming to  
 3 her -- you know, the Prime Minister's statement is  
 4 coming to her, so I would expect it to be in an exchange  
 5 of "Do we know what they're doing, can we have it" --  
 6 **Q.** But a lot of the context of that decision and whether  
 7 it's a decision, a positive decision, or one not to  
 8 change the restrictions would be -- was within the  
 9 WhatsApp messages and, if I understand your practice  
 10 correctly, that context would not be uploaded on to the  
 11 corporate record?  
 12 **A.** No, I think that context would have been there because  
 13 it would have been the engagement with the official, and  
 14 the subsequent note going to the First Minister about  
 15 the Prime Minister's statement would have been in the  
 16 context of the "Prime Minister's making a statement  
 17 today, the UK are doing this, the FM is asking this",  
 18 et cetera. That would, I expect, all be clear in --  
 19 whether it was an email exchange or a Teams exchange,  
 20 that would, I expect, all be clear.  
 21 **Q.** But not the communications between those two events that  
 22 would place context on how ultimately --  
 23 **A.** I think if you're --  
 24 **Q.** -- the Scottish Government came to a decision not to  
 25 change the numbers?

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1 Nicola Sturgeon cover, as I said, a six and a half month  
 2 period, and that's between 1 September 2020 and  
 3 16 March 2021, and then there's the later additional  
 4 messages spanning one day.  
 5 Is it fair to assume that you were in WhatsApp  
 6 communication with Nicola Sturgeon about the pandemic  
 7 before 1 September 2020?  
 8 **A.** Yes, it would be, I think at a lesser extent and, for  
 9 the record, I would like to say that I regret not being  
 10 able to give the Inquiry those messages. I thought  
 11 I had them, I had sourced them, I have done everything  
 12 that I am able to do, as far as I can, to find them.  
 13 I thought I had retained them and they're not there.  
 14 **Q.** Why do you say that you would be in communication with  
 15 the First Minister before 1 September 2020 over WhatsApp  
 16 to a lesser extent --  
 17 **A.** We were --  
 18 **Q.** -- when we would be going through the first lockdown,  
 19 for instance?  
 20 **A.** Because we were in the same place more than we were at  
 21 a later date. So I think I attended St Andrew's House  
 22 the vast majority of days, including Saturdays and  
 23 Sundays. Every day there would have been a briefing.  
 24 I would have been there from early in the morning until  
 25 late at night and so would she.

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1 **A.** I think if you're asking did I, you know, transcribe  
 2 verbatim, no. I treat those messages in the same way  
 3 that I would have treated a conversation with the  
 4 First Minister and input the material parts of the  
 5 discussion to the system in order that they could  
 6 facilitate the business of government or, you know, be  
 7 recorded in some way.  
 8 **Q.** I now wanted to move on to a related matter. In your  
 9 first statement, you said, and I'll quote this, I won't  
 10 bring the statement up:  
 11 "I have indicated to the Scottish Government that  
 12 I expect all messages to be submitted."  
 13 Why did you feel the need to tell the Inquiry that  
 14 you had indicated to the Scottish Government that your  
 15 expectation was that all of your messages would be  
 16 disclosed to the Inquiry?  
 17 **A.** I think the timing of this correlates to a UK Government  
 18 case about whether they had to provide messages that  
 19 were not Covid related, about who got to do the,  
 20 you know, redacting, if you like, and the Scottish  
 21 Government had said to me that I could wait for the  
 22 conclusion of that before deciding whether to give you  
 23 everything or who was going to do the redactions and my  
 24 view was: just give them it.  
 25 **Q.** The messages that you have produced between yourself and

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1 So, during that very intense period, the majority of  
 2 the discussion that she and I would have about thrashing  
 3 out what we were going to do would have been happening  
 4 in person but there would be some messages. I think  
 5 a lot of them would have been logistical around the  
 6 briefings, who was going to be there, the BBC are  
 7 offering you an address to the nation, that kind of  
 8 thing, if I had been in a different room, for example.  
 9 **Q.** But there would also be, for instance -- you weren't  
 10 working with her through every night, but there would  
 11 be -- you would both go home, there would be messages  
 12 that would continue, the conversations would continue  
 13 sometimes over on WhatsApp. In fact, we've seen many of  
 14 your messages that are late into the night, and those  
 15 would be messages, for instance, around March 2020 that  
 16 would shed perhaps some light on decision-making around  
 17 the first lockdown?  
 18 **A.** I genuinely do not think there would be much of  
 19 significance around early March 2020 in the WhatsApp  
 20 messages between us and around the decision-making on  
 21 lockdown because those discussions and decisions, and  
 22 I remember them very clearly, happened in  
 23 St Andrew's House, normally with Dr Calderwood,  
 24 Jeane Freeman, and, if you like, at that point,  
 25 you know, yes, we did go home but I think there was very

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1 little time left in the day by the time I was going home  
 2 in those occasions.  
 3 **Q.** What happened to those messages that you're not able to  
 4 provide to the Inquiry?  
 5 **A.** As I've said, I genuinely don't know and I regret that  
 6 I thought I had them. I'm not the best administrator of  
 7 devices. I wish I did have them and I can't say what  
 8 happened to them. They're not there. I can't say  
 9 whether I actively deleted them. I can't say whether  
 10 they got lost. I don't know.  
 11 **Q.** What efforts have you made to retrieve those messages?  
 12 **A.** I have used that phone, the phone I have now. There are  
 13 two previous phones with that number. I have sort of  
 14 revived them and searched on them. I have used every  
 15 online tool that tells me how to extract from WhatsApp  
 16 that may be there. I can't get to them and, I mean, as  
 17 I've said in my evidence, I haven't gone to the lengths  
 18 of handing them to somebody to forensically source, but  
 19 I'm content to do that if the Inquiry wants me to.  
 20 **Q.** Were those messages held on a personal device by you,  
 21 a personal mobile phone?  
 22 **A.** Yes.  
 23 **Q.** Did Nicola Sturgeon also use a personal mobile phone to  
 24 communicate with you?  
 25 **A.** I ... I believe so, but I'm not aware of the sort of

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1 Dr Sridhar -- Professor Sridhar -- the other day. I do  
 2 know that those exchanges entered into her formal  
 3 accounts. People can send -- what people externally  
 4 send you something on is for them rather than you, if  
 5 you like. The obligation on you as a government member  
 6 or a civil servant is to then put that into the system.  
 7 **Q.** But if you're openly -- or did she openly volunteer her  
 8 SNP email accounts to others to use to be --  
 9 **A.** You would need to ask the First Minister -- former  
 10 First Minister these questions.  
 11 **Q.** There was one further question I wanted to ask before  
 12 I believe that there is a question from one of the  
 13 core participants, and this was around the -- the  
 14 question is around advisers straying into, perhaps,  
 15 political space. There was a few instances, for  
 16 instance, during the pandemic. I think at one stage  
 17 Jason Leitch got into a Twitter exchange with  
 18 Richard Leonard who was part of, I think -- he was the  
 19 leader of Scottish Labour at the time. And I think  
 20 we've seen WhatsApp messages where I think there is  
 21 reference to you and Nicola Sturgeon speaking to  
 22 Jason Leitch and telling him to stay out of the  
 23 political space. Do you recollect that?  
 24 **A.** I do. It's in, I think, the exchanges of Ms Freeman.  
 25 **Q.** And there's also -- there were instances where I think

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1 details of what phone she had and what from, who  
 2 provided it.  
 3 **Q.** You were her chief of staff, weren't you, for about  
 4 six years?  
 5 **A.** Her phone would be a matter for her private office, not  
 6 for me.  
 7 **Q.** Did she have a government-issued phone?  
 8 **A.** Again, I think she only had one, and who provided that  
 9 phone is not something I can answer.  
 10 **Q.** If she had one phone, and we hear evidence that it was  
 11 a personal phone and that she never had a  
 12 government-issued phone, did she use that one phone to  
 13 conduct government business with you?  
 14 **A.** Evidently we had discussions about government business  
 15 on the phone that she had.  
 16 **Q.** As her chief of staff, did you ever advise her that it  
 17 might be a good idea to use a government-issued phone to  
 18 conduct government business?  
 19 **A.** I don't know that I did. I am aware that on ministers'  
 20 personal phones the government installs a sort of secure  
 21 app, so I would be less concerned with the device and  
 22 more concerned with the security.  
 23 **Q.** Did Nicola Sturgeon also use an SNP email account for  
 24 government business?  
 25 **A.** Not really, no. I'm aware of the exchange with

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1 Professor Sridhar spoke about independence and how  
 2 independence would have led to the Scottish Government  
 3 being able to better address the pandemic response. Do  
 4 you remember those sorts of press articles?  
 5 **A.** I do.  
 6 **Q.** And occasionally I think there was some push-back from  
 7 opposition parties about the fact that an independent  
 8 adviser to the Scottish Government was straying into  
 9 constitutional arguments.  
 10 Was the distinction between politics and medical or  
 11 scientific or clinical advice always clear to the  
 12 Scottish Government's advisers?  
 13 **A.** I think it was. So just -- I had no conversation with  
 14 Professor Sridhar about her articles or any of her  
 15 contributions. I think it is clear, I think it was  
 16 clear. I think Professor Leitch and Dr Smith, they took  
 17 on a communications duty that they were not used to, and  
 18 they made themselves incredibly available to all forms  
 19 of media, and again they weren't used to that, and  
 20 I think their, if you like, enthusiasm to try and give  
 21 the public answers sometimes led to them accidentally  
 22 overstepping a line that they would not be as well  
 23 versed as I might be in seeing.  
 24 So I would occasionally have conversations with  
 25 Professor Leitch, for example, if there was a political

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1 issue running in the day and he was going on the radio,  
 2 to say "If they raise this, you have nothing to say,  
 3 this is not a matter for you, and you refer them back to  
 4 the government or to a politician or to me". And he  
 5 would sometimes ask ahead of things, if he knew that  
 6 something was running today that was political, "How do  
 7 I get away from this subject, because this is not one  
 8 that I should speak to", but occasionally -- and I think  
 9 this is clear from the messages with Ms Freeman -- they  
 10 succumbed to the pressure, I think, of being asked  
 11 questions and feeling that they had an obligation to  
 12 answer because they were out there to try and inform the  
 13 public.

14 **Q.** And that would create issues, potential issues, around  
 15 trust of Scottish Government communications if some of  
 16 the messaging coming from scientific advisers or medical  
 17 advisers or clinical advisers was seen to be -- whether  
 18 it's party political, it was perceived to be that way,  
 19 that would create issues of trust, wouldn't it?

20 **A.** I have, I think, more faith in the Scottish public than  
 21 some people do that they are able to differentiate what  
 22 is political from what is medical and clinical, and they  
 23 watched a lot of information during that time. They  
 24 watched these people give public statements a lot during  
 25 that time and I think the public knew. I don't think

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1 part of an argument for advancing independence and  
 2 therefore using it politically? When you see it's  
 3 associated with EU exit, which obviously a lot of people  
 4 in Scotland who didn't want to leave the European Union  
 5 reckon reflects badly on the UK Government, it does look  
 6 a bit as if -- politicisation of the coronavirus  
 7 pandemic, doesn't it?

8 **A.** I think the fact that this says "consideration should be  
 9 given", my recollection, my view, my understanding, my  
 10 experience of all of this period is that the  
 11 consideration given was: we're not doing this right now.  
 12 There is subsequently much after this, you know, there  
 13 has been a lot said and reflected on about the way in  
 14 which people in Scotland looked to the Scottish  
 15 Government to provide the leadership in the Covid  
 16 pandemic and what they then felt about the  
 17 constitutional situation, but our actions were not  
 18 designed to produce that result. If the public were  
 19 making their own decisions on that, we were not driving  
 20 it through our actions on the pandemic.

21 **LADY HALLETT:** It's not the point of my question, really,  
 22 which is that --

23 **A.** Sorry.

24 **LADY HALLETT:** Well, I understand why you answered in the  
 25 way you did but my question is: doesn't it look as if at

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1 those instances had particular impact on trust.

2 **MR TARIQ:** My Lady, there's no further questions from me.

3 **Questions from THE CHAIR**

4 **LADY HALLETT:** Just before Ms Mitchell asks a question, can  
 5 I just go back to -- I'm afraid I do not have  
 6 the Inquiry number for the document -- the Cabinet  
 7 meeting of 30 June 2020, where there was a reference --  
 8 and I appreciate you weren't part of the conclusion, you  
 9 were there taking notes, observing, advising,  
 10 whatever -- but there are some people who might see the  
 11 conclusion:

12 "Agreed that consideration should be given to  
 13 restarting work on independence and referendum  
 14 reflecting the experience of the coronavirus and  
 15 EU exit".

16 Oh, well done, thank you. I can't remember what  
 17 page it is.

18 **A.** 13, I think.

19 **LADY HALLETT:** Well done to you too.

20 **A.** Sorry.

21 **LADY HALLETT:** No, not at all. I always accept help,  
 22 thank you.

23 Some people might argue that looks as if the Cabinet  
 24 members who agreed to that conclusion were going to use  
 25 the work on the experience of the coronavirus crisis as

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1 least some members of the Cabinet, and eventually the  
 2 Cabinet agreed, to capitalise on the pandemic to advance  
 3 the cause of independence? Doesn't that look --

4 **A.** So, as I say, the consideration given to this was this  
 5 was not done at this time.

6 **LADY HALLETT:** No, but --

7 **A.** I think if you take the discussion that we had earlier  
 8 about the difficulties of funding and financing the  
 9 mitigations required for applying public health  
 10 interventions, that was, at times, not in our  
 11 presentation of it at that time but it did show, and  
 12 arguments could be made at a later date, that there was  
 13 a hampering that would not have been there had we been  
 14 independent.

15 But I would be at lengths to say to you that this  
 16 was not done at this point in time. I have no  
 17 recollection, no notes, no work. If anything had been  
 18 done in this period, it would be publicly available.  
 19 There would be, you know, reams of evidence of the  
 20 Scottish Government going out and selling independence  
 21 during this period, and there just isn't.

22 **LADY HALLETT:** Thank you.

23 Ms Mitchell.

24 **Questions from MS MITCHELL KC**

25 **MS MITCHELL:** I'm obliged.

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1 Ms Lloyd, I appear as instructed by Aamer Anwar &  
 2 Company on behalf of the Scottish Covid Bereaved.  
 3 I'm obliged to my learned friend for his  
 4 questioning, which raises a lot of issues the Scottish  
 5 Covid Bereaved are interested in, but I would just like  
 6 to ask you one thing, and it relates to paragraph 42 of  
 7 your statement. I don't need that brought up but I'll  
 8 just read it out so you can understand the question that  
 9 I'm asking. You say:  
 10 "Communication within Scottish Government and the  
 11 stakeholders whilst strong and effective under  
 12 considerable pressure could at times have been improved,  
 13 particularly around the application of the framework and  
 14 the application or the lifting of restrictions. Teams  
 15 within [Scottish Government] did not always appear to be  
 16 hearing each other, particularly on the interaction  
 17 between economic and Covid harms, and economic teams did  
 18 not seem equipped or prepared to explain to stakeholders  
 19 why certain restrictions were in place and why decisions  
 20 were taken not to lift them."  
 21 Now, can I ask you to expand upon that. In  
 22 particular, why do you think that was, and my second  
 23 question is: if that being so, what could be put in  
 24 place to improve it?  
 25 **A.** When your role, I think, as a civil servant, as a policy  
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1 government's engagement with economic stakeholders,  
 2 which I think the relationship was not great going into  
 3 it, so it deteriorated during it. But I'm not sure you  
 4 can put that in place other than a sort of building the  
 5 confidence of the officials that you are asking to  
 6 explain the situation in the information that you're  
 7 asking them to explain.  
 8 **Q.** The reluctance of those people whose job it was to  
 9 explain that and sort of pass that over on to those who  
 10 were the scientists, as it were, is that a reflection of  
 11 the anxiety about the information or just  
 12 an unwillingness to be the ones who were breaking the  
 13 bad news?  
 14 **A.** I think it's a reflection of the pressure you can feel  
 15 in government. When a group of people are telling you  
 16 that they disagree strongly with the actions that you're  
 17 taking, to be the one that has to then stand up for  
 18 those actions, explain them, defend them, that can,  
 19 I expect -- and I think I understand this -- feel like  
 20 quite a burden on somebody. If you are in a call and  
 21 there are 15 people telling you that they're wrong --  
 22 that you are wrong, they may be right and you have a  
 23 duty to listen to them and to feed that back.  
 24 **Q.** Indeed, but --  
 25 **A.** But if you've been given information to put out there,  
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1 official, is to engage with stakeholders, it often  
 2 becomes your job to listen to them rather than to make  
 3 arguments back as to why the government is doing  
 4 a particular thing. I think that's something I've  
 5 experienced in the Scottish Government frequently, and  
 6 the economic officials I found in particular -- and they  
 7 worked incredibly hard, I don't want to cast any sort of  
 8 aspersions on them -- when they were engaging with  
 9 economic stakeholders, I felt, and had reports back from  
 10 some of the calls, that they would not explain why  
 11 certain things were happening. They would listen to why  
 12 stakeholders perhaps didn't want certain things to  
 13 happen but they would not make the argument for.  
 14 I know that the clinicians who were often on these  
 15 calls felt that they were sort of left to be the bad  
 16 guys, if you like, explaining why we cannot open your  
 17 pub this week, or we cannot allow shops to open just  
 18 yet, and the balance of the virus. In that particular  
 19 case, I think this was -- this was a very difficult  
 20 situation because you were taking actions to save  
 21 people's lives but they impacted people's livelihoods,  
 22 and, you know, you had to acknowledge that was a very  
 23 difficult balance to strike.  
 24 I'm not sure what can be put in place to deal with  
 25 it. I think there are broader reflections on the  
 90

1 it's your duty to put that out there, and I think people  
 2 tended to step back a little bit when confronted with  
 3 arguments against the actions we were taking.  
 4 **Q.** Indeed, one would think it would be an important part of  
 5 the communication between government and stakeholders  
 6 that they listened to what they were saying, and if  
 7 there was a good argument, which no doubt the Scottish  
 8 Government would contend that the argument was good, to  
 9 give that to them so, even if they didn't accept what it  
 10 was, they understood and what you are saying was that  
 11 was lacking within the ministers --  
 12 **A.** I'm not saying they didn't do it, I'm not always  
 13 convinced it was done with a level of detail,  
 14 understanding, explanation, that was helpful. It didn't  
 15 help bring people to a better understanding of what was  
 16 happening.  
 17 **MS MITCHELL:** My Lady.  
 18 **LADY HALLETT:** Thank you, Ms Mitchell.  
 19 **Further questions from THE CHAIR**  
 20 **LADY HALLETT:** Just before you go, Ms Lloyd, may I ask you  
 21 to help me on another matter, in relation to M2.  
 22 As you may have followed, I heard a certain amount  
 23 of evidence about the role of special advisers in  
 24 Number 10 and the role of Mr Dominic Cummings as  
 25 an example. You talked about the -- there's a special  
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1 advisers code that applied to you. I think technically  
2 what happens is that special advisers, as you were and  
3 Dominic Cummings was, are technically part of the civil  
4 service but they don't answer to any of, as it were, the  
5 governance or management structure of the civil service,  
6 they answer to the minister or the First Minister or the  
7 Prime Minister?

8 **A.** Yeah.

9 **LADY HALLETT:** I just find that a bit troubling. I, mean,  
10 don't you end up with a conflict then between ...?

11 **A.** I think it's how you do it. I don't think I ended up  
12 with a conflict. The special adviser code sits  
13 alongside the Civil Service Code. You are governed by  
14 both, with an exemption from certain parts of the Civil  
15 Service Code that enables your political activities, and  
16 you are appointed by the First Minister.

17 I think if you are conscious that the civil servants  
18 around you have to comply with the Civil Service Code,  
19 and they have obligations on them, then a conflict  
20 doesn't arise. And whilst the First Minister is, if you  
21 like, my line manager, the person that appointed me, the  
22 person that could fire me, I was cognisant of the senior  
23 officials in the Scottish Government and my relationship  
24 with them. So as much as I was sort of on a par, if you  
25 like, I knew that, you know, I needed to be aware if

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1 Thank you.

2 (12.11 pm)

3 (The short adjournment)

4 (1.45 pm)

5 **LADY HALLETT:** Mr Dawson.

6 **MR DAWSON:** Good afternoon, my Lady. The next witness is  
7 the Right Honourable Humza Yousaf MSP.

8 **MR HUMZA YOUSAF (sworn)**

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

10 **LADY HALLETT:** I appreciate the other demands on your time,  
11 obviously, and I can guarantee you that everyone is  
12 under strict instructions we'll finish by 4.30 at the  
13 latest.

14 **THE WITNESS:** Thank you, my Lady.

15 **MR DAWSON:** You are Humza Yousaf?

16 **A.** That is right.

17 **Q.** You have helpfully provided two statements to  
18 the Inquiry, if we could just look at these, the first  
19 is INQ000273956. It's a statement dated  
20 2 November 2023. Is that your statement?

21 **A.** That is.

22 **Q.** Have you signed the statement?

23 **A.** I have.

24 **Q.** Can you confirm to her Ladyship that the contents of the  
25 statement remain true and accurate as at today's date?

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1 they were unhappy, perhaps thought a special adviser was  
2 stepping over the line. That is a back and forth  
3 relationship. That's a relationship that exists because  
4 you build that relationship.

5 But I don't think I found a conflict, and I don't  
6 think such a conflict existed in the Scottish  
7 Government.

8 **LADY HALLETT:** So it's not a question of improving  
9 structures or anything, you think it's a personality  
10 matter?

11 **A.** My views on the operation at Number 10 are available in  
12 my notebooks. I don't think I should particularly  
13 comment on the relationship between Dominic Cummings --

14 **LADY HALLETT:** I've probably pressed you too far.

15 Thank you very much indeed, Ms Lloyd, very grateful  
16 for your help.

17 (The witness withdrew)

18 **LADY HALLETT:** Right, I think the next witness is the  
19 First Minister, who has other demands on his time, and  
20 I think the hope is that he will be here by about  
21 1/1.15, so we're going to have to take the usual --

22 **MR TARIQ:** 1.45.

23 **LADY HALLETT:** -- 1.45 start --

24 **MR TARIQ:** Obligated.

25 **LADY HALLETT:** -- so everyone has a longer lunch.

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1 **A.** I can confirm that is the case.

2 **Q.** You provided a second statement, I understand, dated 16  
3 November 2023; is that correct?

4 **A.** That is correct.

5 **Q.** It's under reference INQ000273973, is that your  
6 statement?

7 **A.** That is.

8 **Q.** Have you signed the statement?

9 **A.** I have.

10 **Q.** Do the contents of that statement remain true and  
11 accurate as at today's date?

12 **A.** They do.

13 **Q.** Thank you.

14 You are the current First Minister of Scotland?

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

16 **Q.** You explain in your statement that you are responsible  
17 for leading the Scottish Government with the support of  
18 Cabinet secretaries and ministers; is that correct?

19 **A.** That is correct.

20 **Q.** You became First Minister on 29 March 2023, taking over  
21 the role from former First Minister Nicola Sturgeon; is  
22 that correct?

23 **A.** That is correct.

24 **Q.** During the course of the pandemic, you held two  
25 Cabinet secretary roles, as I understand it; is that

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1 correct?

2 **A.** That is correct.

3 **Q.** The first role was Cabinet Secretary for Justice, which

4 you held from 26 June 2018 to 19 May 2021?

5 **A.** That is correct.

6 **Q.** And the second, following the Scottish Parliamentary

7 election in May 2021, you took over the Health and

8 Social Care portfolio, you took that over from

9 Ms Jeane Freeman, who had held the role during the

10 earlier stages of the pandemic. Is that correct?

11 **A.** That is correct.

12 **Q.** And you held that portfolio until you became

13 First Minister on 28 March 2023?

14 **A.** Absolutely correct.

15 **Q.** Could I just clarify that when Ms Freeman held the role,

16 prior to the election, I understand the role was

17 entitled Cabinet Secretary for Health and Sport, but

18 when you held it, Cabinet Secretary for Health and

19 Social Care; is that correct?

20 **A.** That is correct.

21 **Q.** Is there any significance in the change of name with

22 regard to the portfolios that you covered in your

23 ministerial Cabinet secretary role?

24 **A.** No, I don't think there would have been much of

25 a change, although having taken sport out of the title

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1 include -- it would always include Ms Sturgeon and

2 sometimes include others, including Mr Swinney,

3 yourself, Ms Forbes at various different times?

4 **A.** Absolutely correct.

5 **Q.** Thank you. Could I have a look, please, at paragraph 35

6 of your statement where you provide us a little bit more

7 detail about this. You say at paragraph 35 that:

8 "In relation to how decision-making could have been

9 improved during the pandemic, I believe there were times

10 when a decision made by the former First Minister or

11 discussed within Gold Command was not cascaded to the

12 rest of Cabinet or all Ministers due to the fast nature

13 of decision-making during the pandemic. We did our best

14 to explain the rationale of decision making but the

15 feedback from some groups, in particular the hospitality

16 industry, was that the rules were changing too often,

17 with decisions made before guidance was available. On

18 reflection there may have been instances where we could

19 have worked with industry on guidance before making

20 a final decision on restrictions. I believe this could

21 have been improved. In relation to advisory structures,

22 my experience is that the advice was always ready and

23 available when needed."

24 What do you mean when you suggest that decisions

25 were made by the former First Minister which were not

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1 and replaced it with social care, I did have a minister

2 that took on the title of sport in her title, but

3 ultimately, as the Cabinet secretary, I would have been

4 responsible for the entirety of the portfolio.

5 **Q.** So you and she were both responsible for health,

6 including public health?

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

8 **Q.** And you and she were both responsible for social care?

9 **A.** That's correct.

10 **Q.** Thank you.

11 I'd like to ask you some questions about some of the

12 decision-making structures which existed within the

13 Scottish Government during the course of the pandemic.

14 Some of these are things we've heard about, but we think

15 you might have some insights into how they operated.

16 We've heard some talk, and you mention in your

17 statement, of a group or decision-making body called

18 "gold" or "gold command". Are you aware of what that

19 group did?

20 **A.** I am.

21 **Q.** I understand that you attended that group, not always

22 but sometimes?

23 **A.** Correct.

24 **Q.** Am I correct in understanding that this was a selected

25 group of Cabinet ministers which would tend to

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1 cascaded to the rest of Cabinet?

2 **A.** With my Lady's permission, before I answer the substance

3 of that question, I just wonder if I can begin, before

4 I respond to the first substantial question, by

5 acknowledging the trauma and the grief that so many

6 families and individuals faced and continue to face

7 during the course of the pandemic, particularly those

8 who have been bereaved by Covid. I want to offer my

9 condolences once again to every single person who has

10 been bereaved by Covid. However, let me also

11 acknowledge that it is not sympathies that they require

12 from witnesses but straight answers to straight

13 questions, which of course I endeavour to give during

14 the course of the next few hours.

15 In relation to the substance of the question that

16 you have asked, Mr Dawson, for me, given the fast paced

17 nature of what we were dealing with, therefore the need

18 for urgent decisions to be made, decisions were

19 sometimes delegated to the former First Minister.

20 Cabinet would agree to that and the former

21 First Minister was then entrusted to make those

22 discussions.

23 And there were -- there was the rare occasions where

24 sometimes a decision was made, again responding to

25 a particular development, and it was therefore not

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1 cascaded to the rest of Cabinet until that decision was  
2 announced, and that happened on the rare occasion, but  
3 we were often -- I know special advisers, I know  
4 government officials worked hard to ensure that Cabinet  
5 was informed of decisions when they were made as opposed  
6 to once they were announced.

7 **Q.** So I think you've identified there situations in which  
8 decisions were made by the First Minister, the former  
9 First Minister, based on a delegated authority from  
10 Cabinet. That's one type of decision-making process; is  
11 that right?

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

13 **Q.** And there were other times when I think you  
14 characterised them as being -- because of the pressures  
15 of the pandemic, decisions were taken by the  
16 First Minister where there had not been that delegation  
17 but that that process was necessary because a decision  
18 needed to be made immediately; is that right?

19 **A.** That would be correct.

20 **Q.** So therefore it is the case, I think, that you're saying  
21 that some decisions were made in those circumstances  
22 which did not have the approval of the Cabinet?

23 **A.** So, again, there would have been some decisions that may  
24 have been made in that way. For the most part Cabinet  
25 would agree decisions that had to be made. There may

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1 So discussions were engaging in Cabinet. There was  
2 sometimes differences of opinion, as you can well  
3 imagine, but decisions were made often at Cabinet. Gold  
4 command, though, was there for a reason because the  
5 situation could of course change between one week's  
6 Cabinet meeting and the next, given the fast paced  
7 nature of the virus that we were dealing with.

8 So gold command was an important structure and  
9 ultimately also the First Minister, we knew, was doing  
10 daily briefings, virtually every single day, and  
11 therefore there was also that delegated authority,  
12 should she have to make a decision because of  
13 a development in the virus that particular day.

14 So I think it is, to answer your question, a mixture  
15 of all of those.

16 **Q.** We've heard evidence about the constitutional structure  
17 within which the Scottish Government purports to  
18 operate, from a political expert,  
19 Professor Paul Cairney. He confirmed that the basic  
20 structure is that decisions are to be made in Cabinet,  
21 as is the case within the UK Government, and that there  
22 are good constitutional reasons for that.

23 Do you accept that as a matter of principle, as the  
24 way in which decisions are meant to be made within our  
25 constitutional system?

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1 well be times when the exact detail of a decision, so  
2 for example if we were to -- if Cabinet agreed to impose  
3 restrictions around household numbers mixing indoors,  
4 there may be not be a final decision on the number of  
5 households or the number of people from a certain number  
6 of households, and therefore we would seek to delegate  
7 that decision to the First Minister, to the Deputy First  
8 Minister, Cabinet Secretary for Health to make. And  
9 that may well be because the decision was going to be  
10 announced in a couple or a few days' time and of course  
11 the situation could develop in terms of the epidemiology  
12 of the virus and factors such as the R number, so we  
13 would -- there would be times when we would entrust the  
14 former First Minister to make that decision, on  
15 delegated authority.

16 It would be unusual, rare, very rare, I think, for  
17 the former First Minister to make a decision without  
18 either that delegated authority or without informing  
19 Cabinet. The decision was made before it was announced.

20 **Q.** Were decisions made in Cabinet or were they made by the  
21 First Minister and/or within this gold command  
22 structure?

23 **A.** A variety of all of those. Decisions were made at  
24 Cabinet, and of course the Inquiry has a number of  
25 documents in relation to Cabinet minutes and meetings.

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1 **A.** Yes, I agree that, absolutely, that Cabinet is  
2 an important structure for decision-making.

3 **Q.** Because within Cabinet there are a number of voices that  
4 are able to approach important questions from a number  
5 of perspectives, and if there is real discussion and  
6 debate within that forum, those perspectives can all be  
7 given the respect that they deserve, such that better  
8 decisions can be made; would that be a fair summary of  
9 why the system is as it is?

10 **A.** That is a fair summary, and as somebody who has had  
11 a number of Cabinet secretary positions in the past and  
12 is now in the very privileged position of being  
13 First Minister, there is very good reason for decisions  
14 being made at Cabinet, and that is how decisions are  
15 made on most occasions, particularly during normal  
16 times. We were not of course in normal times in the  
17 course of the pandemic, and therefore there will often  
18 be more delegated decisions made during the pandemic  
19 than you would make in normal times.

20 But I, as First Minister, also will ask Cabinet for  
21 delegated authority of decision-making, most recently  
22 done in the course of the budget last year, where  
23 I asked the Cabinet to delegate final decision-making to  
24 myself and the finance secretary, and Cabinet approved  
25 that.

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1 Q. But, to be clear, you've told us that there were  
 2 occasions on which the First Minister either with or  
 3 without the benefit of discussions within gold command  
 4 took decisions without the delegated authority of the  
 5 Cabinet?

6 A. Again, I think those times would be very rare, very rare  
 7 occasions. Often the former First Minister would seek  
 8 Cabinet's delegated authority, but I think there was  
 9 an understanding in exceptional cases, where the  
 10 epidemiology of the virus had changed, if there had been  
 11 a sudden spike in cases in 24 hours and therefore  
 12 a decision had to be made there and then, that there was  
 13 an understanding that, given this was not normal times,  
 14 that such decisions could be made by the First Minister.

15 Q. You suggested, I think, in your evidence that there was  
 16 a certain regularity with which Cabinet met. Was it not  
 17 possible to convene Cabinet meetings at short notice in  
 18 those urgent situations?

19 A. Of course it could, gold command, in essence, was  
 20 a tighter cast list of Cabinet secretaries that were  
 21 necessary to make a particular decision. Gold command  
 22 and the attendance of gold command, of course, would  
 23 change depending on the decision that was required to be  
 24 made. I attended some gold command meetings in my  
 25 various Cabinet secretary roles and in other I did not,

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1 indeed, of course, any other documentation that might be  
 2 necessary and might have been relevant to any decision  
 3 that was made.

4 Q. Was the Scottish Cabinet during the pandemic  
 5 a decision-ratifying body rather than the main  
 6 decision-making body?

7 A. No, I wouldn't agree with that characterisation. For my  
 8 attendance at Cabinet meetings there was good engaging  
 9 conversation, as I said at times disagreement on the  
 10 approach that was to be taken, but our Cabinet meetings  
 11 were a good discursive fora by which to have those  
 12 discussions. We weren't there simply to ratify. As  
 13 I say, I can think of instances where challenge was  
 14 brought forward and what was in the original submission  
 15 or advice from officials was therefore amended  
 16 accordingly depending on the decision that was then  
 17 taken.

18 Q. Was it the former First Minister's practice to take  
 19 important decisions as a result of discussions with  
 20 a close group of ministerial colleagues, whether in gold  
 21 command or not, not calling upon Cabinet or the wider  
 22 advisory structures available to the Scottish  
 23 Government?

24 A. Again, it will be for the former First Minister  
 25 of course to answer exactly how she would make

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1 because it just depended on the decision that was  
 2 required to be made.

3 Q. Cabinet minutes are a record of discussions taken at  
 4 Cabinet meetings and they are published, are they not?

5 A. That is correct.

6 Q. Discussions within gold command were not generally  
 7 minuted and published; is that correct?

8 A. My understanding was that gold command meetings should  
 9 have been minuted, but if that was not the case, then  
 10 that would not have been the usual protocol for  
 11 government meetings, they should be minuted, and  
 12 of course be available should there be the appropriate  
 13 request.

14 Q. If an interested citizen of Scotland wished to know what  
 15 discussions had taken place within gold command that had  
 16 led to significant decisions which impacted upon  
 17 people's most fundamental freedoms, such a citizen would  
 18 be generally entitled to be able to see how those  
 19 decisions had been made; would you agree?

20 A. Yes.

21 Q. If it transpires to be the case that gold command  
 22 meetings were not minuted, it would be difficult for  
 23 such a citizen to access that information, wouldn't it?

24 A. It would be difficult, but of course there could also be  
 25 requests for information of discussions at Cabinet, or

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1 decisions, but in my experience as a Cabinet secretary  
 2 who served under her, in a variety of roles, she found  
 3 great value in the discursive nature of Cabinet, of gold  
 4 command. But also, equally, if Cabinet as a whole did  
 5 not have to be brought together, given the very precise  
 6 nature of a decision that had to be made, then gold  
 7 command was the -- I think the appropriate fora by which  
 8 to make that decision.

9 Q. Could I have you -- you've provided to the Inquiry  
 10 a number of WhatsApp exchanges in which you were  
 11 involved from the period of the pandemic, as requested  
 12 by the Inquiry; is that not correct?

13 A. That is correct.

14 Q. Thank you.

15 Could we have a look, please, at INQ000334792.

16 This is a record of some WhatsApp exchanges between  
 17 yourself and Professor Jason Leitch, who was the  
 18 National Clinical Director; is that correct?

19 A. That is correct.

20 Q. In fact, I think this comes from the very day on which  
 21 you were appointed as Cabinet Secretary for Health and  
 22 Social Care; is that right?

23 A. I think that is correct.

24 Q. Yes. There's some discussion here which we'll get on to  
 25 in a bit more detail about you arriving at your desk,

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1 approaching the new job and immediately getting stuck  
2 into some of the difficult decisions that you had to  
3 engage in, in particular the context is that you are  
4 discussing figures which have arisen relating to  
5 concerns about the rise in cases in the Glasgow area and  
6 in particular East Renfrewshire, which seemed, on your  
7 analysis, to be indicating a cause for concern as the  
8 cases were going up. Is that a fair summary of the  
9 context?

10 **A.** That is fair.

11 **Q.** You are seeking Professor Leitch's input and counsel on  
12 that decision; is that right?

13 **A.** That is correct, yeah.

14 **Q.** And you refer at 11.52, wrapping up, I think, your  
15 discussion with Professor Leitch on that subject, that  
16 you'll be "on the deep dive", and then Professor Leitch  
17 replies:

18 "Good. There was some FM 'keep it small'  
19 shenanigans as always. She actually wants none of us."

20 This is Professor Leitch giving you guidance and  
21 advice on your first day in the new job; is that right?

22 **A.** Yes.

23 **Q.** And he refers to the First Minister's "'keep it small'  
24 shenanigans" and that "She actually wants none of us".

25 Was this an indication in fact that the First Minister

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1 gold command could often come in or gold command may  
2 well come in, when there was a development in the virus  
3 and a decision had to be made either that evening or  
4 indeed the next day.

5 **Q.** So to put this in this particular context, because one  
6 sees in the period of you being Cabinet Secretary for  
7 Health and Social Care a number of exchanges of this  
8 nature where you are trying to take the counsel of  
9 Professor Leitch in particular around the question of  
10 levels that different areas should be applied -- should  
11 be put into, when you say the principle would be agreed  
12 by Cabinet but the finer detail delegated, in this  
13 context would that mean that the Cabinet had said there  
14 should be a levels system but the First Minister and her  
15 close group would decide which levels would be applied  
16 to which areas?

17 **A.** So, forgive me, I couldn't tell you exactly the -- how  
18 the final decision on this particular --

19 **Q.** I'm talking more broadly about that type of --

20 **A.** Yes --

21 **Q.** -- decision --

22 **A.** -- answer that question.

23 It would often be the case that we would come to  
24 an agreement in Cabinet about exactly what level  
25 a particular area would be in. There would be some

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1 really took decisions in connection with the pandemic  
2 herself or at least would have preferred it that way?

3 **A.** I think that was, as Jason said when he gave evidence to  
4 this very Inquiry, an example of him perhaps  
5 overspeaking. I don't doubt of course that there were  
6 times when the former First Minister needed a tighter  
7 cast list and wanted a tighter cast list to make  
8 a decision on a very specific issue, but I think this  
9 was a classic example of Jason perhaps overspeaking.

10 **Q.** When you talk about the "tighter cast list", are you  
11 talking about the gold command or something similar?

12 **A.** Yes, generally gold command.

13 **Q.** So in essence, as I suggested to you earlier, the  
14 practice was that the decisions would be made by the  
15 First Minister gathering around her a small number of  
16 close advisers rather than putting the matter to Cabinet  
17 or exposing herself to the wider advisory structures of  
18 the Scottish Government; is that correct?

19 **A.** No, I would say that, again, a number of decisions were  
20 taken at Cabinet, particularly in terms of the overall  
21 direction in which the government was going in relation  
22 to restrictions -- or any decision in fact connected to  
23 the pandemic. It may well be that the finer detail of  
24 that decision was then delegated to the First Minister  
25 or indeed other Cabinet secretaries and that's where

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1 areas where, given the thresholds that we'd look at, in  
2 terms of whether a local authority was in one level or  
3 another, that they might well be right on that threshold  
4 or close to that threshold, so there would be the  
5 decision to delegate the final decision on  
6 East Renfrewshire or Glasgow or Moray to gold command or  
7 to First Minister to make that very final decision.

8 **Q.** So in essence it was the small group and the  
9 First Minister who made the decision, which is  
10 important, which is which level the particular area  
11 something into?

12 **A.** Not always. As I said, on a number of occasions Cabinet  
13 would agree the exact level for the exact local  
14 authority to have to go on. There was always going to  
15 be, within 32 local authorities, some that were perhaps  
16 on the cusp of going into level 3, some on the cusp of  
17 level 2. And ultimately, before a decision was made, it  
18 was right that that final decision was delegated, be it  
19 to the First Minister, the Cabinet Secretary for Health  
20 or others, with the most up-to-date information on case  
21 numbers, the R number and test positivity.

22 **Q.** The Inquiry has heard significant evidence about the  
23 principles of transparency and accountability in  
24 documents such as the National Performance Framework.  
25 These are principles to which the Scottish Government is

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1 committed; is that correct?  
 2 **A.** Yes.  
 3 **Q.** We have also seen these principles reiterated throughout  
 4 documents relating to the pandemic response itself.  
 5 For example, the four harms framework of April 2020. Is  
 6 that correct?  
 7 **A.** That is correct.  
 8 **Q.** And that tells us that the Scottish Government's  
 9 position, as far as its public-facing aspect was  
 10 concerned, was that it wished to apply those important  
 11 principles in the way that it handled the pandemic; is  
 12 that correct?  
 13 **A.** That is correct.  
 14 **Q.** And indeed there have been a number of opportunities for  
 15 yourself and others on behalf of the Scottish Government  
 16 to reiterate your commitment to those principles with  
 17 regard to your participation in this very Inquiry; is  
 18 that correct?  
 19 **A.** That is correct.  
 20 **Q.** On 29 June you said to the -- in response to a question  
 21 in the Scottish Parliament:  
 22 "It is important that I abide by the rules of the UK  
 23 public inquiry and the Scottish public inquiry ... to  
 24 ensure that there is simply no doubt whatsoever, any  
 25 material that is asked for -- WhatsApp messages, emails,  
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1 There is no excuse for it, we should have done better,  
 2 and it's why I reiterate that public apology today.  
 3 Ministers are -- and there is awareness amongst  
 4 ministers, amongst Cabinet secretaries, regardless of the  
 5 medium of communication, that any key decision that is  
 6 in relation to government business should be recorded in  
 7 the corporate record, and the salient points recorded on  
 8 the corporate record, and that's usually done via the  
 9 private office or via government officials. But  
 10 I'm afraid for a long time the corporate mindset of the  
 11 government -- the organisational mindset of the  
 12 government was, because the corporate record had those  
 13 key decisions and salient points, that was the only  
 14 thing really that was required to hand over to  
 15 the Inquiry, when the Inquiry made it clear, of course,  
 16 that you were seeking more than that.  
 17 And there is a gap -- regardless of the Records  
 18 Management Plan, the mobile messaging policy, there is  
 19 clearly a gap that exists in relation to how material in  
 20 informal communications should be retained in relation  
 21 to a statutory public inquiry, and that's why I've  
 22 instructed an externally-led review to look at this  
 23 issue and other issues such as what ministers and  
 24 Cabinet secretaries should do should they, for example,  
 25 change device in the midst, particularly, of  
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1 Signal messages, Telegram messages or whatever -- will  
 2 absolutely be handed over to the Covid inquiries and  
 3 handed over to them in full."  
 4 Has that always been your position?  
 5 **A.** That has been my position, yes.  
 6 **Q.** This remains your position?  
 7 **A.** Yes, that any messages we have should be handed over in  
 8 full.  
 9 **Q.** It is important, is it not, not just for the very  
 10 important purpose of engaging with subsequent public  
 11 inquiries such as this and the Scottish Inquiry, but  
 12 also, during the course of a public emergency which does  
 13 not derive from a single event but is continuous, that  
 14 material relating to the way in which decisions were  
 15 taken must be retained so that proper lessons could be  
 16 learned and a better response to the pandemic developed;  
 17 is that correct?  
 18 **A.** That is correct. And perhaps on this issue of informal  
 19 messaging, including of course WhatsApp messages, let me  
 20 reiterate what I have said in the Chamber just a couple  
 21 of hours ago. Let me unreservedly apologise to this  
 22 Inquiry but also to those who are mourning the loss of  
 23 a loved one, that was bereaved by Covid, for the  
 24 government's frankly poor handling of the various Rule 9  
 25 requests in relation to informal messaging, messages.  
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1 an emergency such as a pandemic or anything that is  
 2 analogous to that.  
 3 **Q.** Thank you.  
 4 In answering questions about this area, one of the  
 5 senior civil servants, Ms Fraser, from the Corporate  
 6 directorate general, accepted that it was important in  
 7 the interests of transparency and accountability to the  
 8 Scottish public that information about how decisions  
 9 were reached should be retained. Do you agree with her?  
 10 **A.** I do.  
 11 **Q.** You mentioned in your response there the requirement, as  
 12 I understood you, to retain information within the  
 13 system about key decisions that were made. Would you  
 14 accept that both the policy in existence at the time and  
 15 indeed the principles of transparency and accountability  
 16 require there to be careful record-keeping of how  
 17 decisions are made, meaning that discussions leading to  
 18 decisions also require to be recorded?  
 19 **A.** Yes, and again our record management policy will make  
 20 clear that it's not just the decision that has to be  
 21 recorded but -- I think the wording is used, "the  
 22 salient points of any decisions that are made should  
 23 also be recorded for the corporate record".  
 24 **Q.** There's a difference, though, perhaps, it might be quite  
 25 subtle, but the salient points of a decision is one  
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1 thing, but the salient government business involved in  
2 the process leading to the decision is another. Do you  
3 accept that both categories require to be retained in  
4 order to fulfil the ultimate objective of transparency  
5 and accountability?

6 **A.** Yes, and I accept the point that you're making. I would  
7 say, of course, our Records Management Policy is  
8 important for a couple of reasons: one, of course, for  
9 all of the reasons that you have just articulated in  
10 relation to transparency, good governance, but also for  
11 record management. We cannot possibly, as  
12 an organisation, keep every single piece of  
13 documentation that is produced by the organisation, it  
14 would be very, very challenging and difficult to do so,  
15 so there is a need for that Records Management Policy,  
16 and ultimately there will be a point where it is for the  
17 interpretation -- the interpretation of the receiver of  
18 that information to decide whether or not that should be  
19 recorded in the corporate record or not.

20 **Q.** But those principles of transparency and accountability  
21 should aid in that interpretation?

22 **A.** They should, of course.

23 **Q.** Because if there's material relating to discussions in  
24 the business of government, it would be necessary for  
25 an interested member of the Scottish public to be able

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1 amongst other things in this table what we see is the  
2 Scottish Government's response as to what was used  
3 during the course of the pandemic, and it says there, as  
4 regards your WhatsApp, other informal communication  
5 systems, that you:

6 "Used WhatsApps with Nicola Sturgeon and  
7 John Swinney to discuss matters. Any decisions made  
8 were recorded through the appropriate channels as per  
9 Scot Gov guidance. No other informal communications  
10 platforms were used.

11 "Communicated with Kevin Stewart and Maree Todd  
12 through WhatsApp."

13 Just to pause there, they were ministers who were  
14 working with you in the time as health secretary; is  
15 that right?

16 **A.** That's absolutely right, yeah --

17 **Q.** Yeah --

18 **A.** -- ministers in my portfolio.

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

20 "WhatsApp used to discuss information and advice  
21 relating to Covid-19, more frequently at the beginning  
22 of the pandemic due to restrictions on in person  
23 meetings. Deleted all messages after a month for cyber  
24 security purposes as per their understanding of the  
25 Scottish Government Mobile Messaging Apps Usage and

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1 to access that material in order to know how decisions  
2 were taken and ultimately to know whether decisions were  
3 taken in a way with which they were satisfied?

4 **A.** Yes, I think that's fair.

5 **Q.** As far as your production of WhatsApps and other  
6 informal messages to the Inquiry is concerned, I think  
7 it is apparent, is it not, and I think you have accepted  
8 this, that you are a heavy user of WhatsApp as a means  
9 of communication?

10 **A.** I use it on a daily basis.

11 **Q.** Is it the case that you used your own personal phones,  
12 plural, for WhatsApp messages during the course of the  
13 pandemic rather than a government-issued phone?

14 **A.** Yes, that's correct.

15 **Q.** And I think it has transpired from the material you have  
16 provided that you in fact had multiple phones over the  
17 period from January 2020 to April 2022?

18 **A.** Both personal and government devices, yes.

19 **Q.** Yes.

20 Could I ask you, please, to look at INQ000319509.

21 This is a table that we went to with some previous  
22 witnesses, which was very helpfully produced to us by  
23 the team with whom we are dealing within Scottish  
24 Government, in connection with our enquiries about the  
25 usage of materials -- of informal messaging systems, and

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1 Policy. Does not recall being part of any decision  
2 making via WhatsApp.

3 "Part of 'Health 4 Nations' WhatsApp administered by  
4 Matt Hancock, and this was disbanded after Matt Hancock  
5 left office. Used for information sharing as opposed to  
6 decision making, such as number of Cases, R number etc.  
7 Messages not retained."

8 This document is dated 13 October 2023. This is  
9 what the Scottish Government represented to us as being  
10 your position as at that time, to the effect that you  
11 had retained none of the messages, although that you had  
12 used WhatsApp to discuss information and advice relating  
13 to Covid-19. Is that an accurate representation of your  
14 position as at that time?

15 **A.** Of course that position developed --

16 **Q.** We'll get on to that, I just --

17 **A.** Sure --

18 **Q.** -- this particular --

19 **A.** Sure, mm-hm.

20 **Q.** Is that right, then, this is an accurate representation  
21 of your position?

22 **A.** Yes.

23 **Q.** When you say that -- in the opening paragraph -- "Any  
24 decisions made were recorded through the appropriate  
25 channels as per Scot Gov guidance", does that indicate

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1 that your understanding of the Scottish Government  
2 guidance or policy was that only decisions made required  
3 to be recorded through the appropriate channels?

4 **A.** No, decisions and salient points in relation to  
5 decision-making should have been recorded in the  
6 corporate record.

7 **Q.** Thank you, so the reference to decision there is really  
8 a shorthand for that wider group that we discussed  
9 earlier; is that correct?

10 **A.** Yes.

11 **Q.** When you say "recorded through the appropriate channels"  
12 is that another of way of saying -- we've heard this  
13 expression before, from Ms Fraser and others -- that  
14 that material has been recorded on the corporate record?

15 **A.** Yes.

16 **Q.** And how, as a matter of practice, would you have gone  
17 about transferring the salient points of discussions  
18 relating to important decisions onto the corporate  
19 record as a matter of practicality?

20 **A.** Yes -- and forgive me, I said that this was a statement  
21 that was correct as per 13 October, there's probably  
22 some areas that were obviously updated thereafter which  
23 would abrogate some of what is in here, but I assume --

24 **Q.** I am -- to be absolutely fair, what I'm trying to do is  
25 just understand your position at that time. I will take

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1 after that, and in between the material would be  
2 communicated through your private office and put on the  
3 corporate record by whoever it was in your private  
4 office?

5 **A.** That was the guidance in the mobile messaging policy.

6 **Q.** So at that stage you hadn't produced any messages to us  
7 because they had by that time, 13 October, been deleted  
8 in accordance with the practice that you have laid out?

9 **A.** They were no longer available. Or so I thought  
10 of course.

11 **Q.** Yes, indeed.

12 So after that, there were discussions -- there was  
13 a development in your position, as I understand it, and  
14 you provided a supplementary statement to the Inquiry  
15 explaining what the process had been, because although  
16 your position as at 13 October was that you didn't have  
17 any messages because they weren't available to you, you  
18 found a phone on -- where the messages were  
19 ascertainable; is that right?

20 **A.** I wouldn't say I found, I retained a handset, my  
21 previous handset, that I used up until about the middle  
22 of March --

23 **Q.** Sorry, of?

24 **A.** Of last year.

25 **Q.** So you were aware that you still had in your possession

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1 you to the developments thereafter, I won't --

2 **A.** Of course.

3 In terms of how that was recorded, if there was  
4 a discussion of salient points or a decision that was  
5 made over any informal communication, then it would  
6 often be for one of the Cabinet secretaries or ministers  
7 to inform their private office or another government  
8 official, who would then put it into the corporate  
9 record. No decision could be actioned, of course,  
10 unless it was in some way in the system, and that was  
11 usually done through private office.

12 **Q.** And your position is you did that in connection with all  
13 of the communications that you had but then you deleted  
14 the actual original messages; is that right?

15 **A.** Some messages would have been deleted, still recoverable  
16 but not -- but may well have been deleted.

17 I have to confess in the midst of a global pandemic  
18 and the issues that we were engulfed in at that point,  
19 deleting messages routinely was not always the top  
20 priority.

21 **Q.** But your understanding of the policy was that what you  
22 needed to do was to record the information on the  
23 corporate record through that mechanism, your  
24 private office, and that there was then an obligation to  
25 delete the messages for cybersecurity reasons a month

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1 that handset before 13 October; is that right?

2 **A.** Yeah, that's correct.

3 **Q.** Had you not checked that when you said that all the  
4 messages had been deleted?

5 **A.** I had. And because I had migrated my WhatsApp account  
6 on to the new device, so same number, migrated it on to  
7 the new device, when I went back to the old handset,  
8 when I went back to WhatsApp, there was just -- there  
9 was no messages at all, it was blank. Now, of course  
10 I'm happy to talk to the fact that messages were  
11 recoverable, thankfully, by -- not any amazing technical  
12 wizardry but actually by logging out of the WhatsApp  
13 account in my current handset and logging back in on the  
14 old handset. Because those messages were still on the  
15 phone storage, they would be able -- they were fairly  
16 easily recoverable.

17 **Q.** So you were under the impression that the messages had  
18 been deleted previously in accordance with an existing  
19 government policy, but in fact it transpired that they  
20 had not been deleted and that they were in fact  
21 recoverable relatively easily?

22 **A.** Yes.

23 **Q.** The position then was that you were able to provide us  
24 with a large number of messages, including, for example,  
25 with a number of other people, but including extensive

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1 exchanges between yourself and Professor Leitch, of the  
2 nature that we've looked at already, so that there was  
3 a large number of messages on that handset, although in  
4 some way embedded within it in a way that you couldn't  
5 originally access; is that correct?

6 **A.** In a way that was -- I didn't realise I could access  
7 when I changed device, yes, that's correct.

8 **Q.** Thank you.

9 Your position is, I think, that those messages  
10 were -- or the salient business points relating to  
11 discussions or decisions, were uploaded to the corporate  
12 record at or around the time when they were exchanged  
13 before the 30-day deadline expired --

14 **A.** Yes.

15 **Q.** -- is that right?

16 So we have recovered, as you have said, during the  
17 course of your evidence and, you have said, in other  
18 fora, a significant amount of documentation which the  
19 Scottish Government has provided to us which relates to  
20 decision-making discussions relating to the way that the  
21 Covid-19 pandemic was managed in Scotland; that's  
22 correct, isn't it?

23 **A.** Yes.

24 **Q.** Given the fortuitous revelation of the messages which  
25 were unavailable to you but became available when you

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1 was also discussions relating to decisions, so will that  
2 be included on the corporate record?

3 **A.** I think salient points would be recorded on the records,  
4 salient points, and that includes decision-making but  
5 any other salient points in relation to that decision.

6 **Q.** Will that include the types of discussions or the tenor  
7 of the types of discussions that you have been having  
8 with Professor Leitch in the exhaustive messages that  
9 you have now sent to this Inquiry?

10 **A.** So not every sentence, full stop, apostrophe, would be  
11 recorded, nor would it be required to be recorded, but  
12 if a decision was made and -- any of the salient points  
13 related to that decision being made, they should be  
14 of course recorded on the corporate record.

15 **Q.** Because, of course, you're now telling me that they  
16 should be recorded but you represented previously that  
17 they were on the corporate record; is that right?

18 **A.** I would always endeavour to put them on the corporate  
19 record, yes.

20 **Q.** Yes.

21 **A.** If there was any times that that was not done then that  
22 would have been a mistake made by a Cabinet secretary,  
23 by a minister, if they did not do that, but of course  
24 the guidance is that those decisions made should be  
25 recorded and the salient points in relation to that

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1 followed the process that you've set out, it would now  
2 be possible, would it not, for us to conduct  
3 a comparison between effectively what the government has  
4 given us, the corporate record relating to these  
5 matters, and your messages, in order to ascertain  
6 whether in fact you had recorded the salient points on  
7 the corporate record?

8 **A.** Yes, although I would make the point that salient points  
9 as -- is open to interpretation. Key decisions  
10 of course and salient points relating to that decision  
11 should be noted in the corporate record, but you're  
12 absolutely right, you could cross-reference.

13 **Q.** And we'll find there, will we, that the salient points  
14 of the business you conducted over WhatsApp will be  
15 included within the corporate record?

16 **A.** Key decisions and salient points related to that  
17 decision should, of course, be recorded, and it was my  
18 practice to then inform my private office of those key  
19 decisions of any salient points related to that. And if  
20 I did not do that then of course those decisions would  
21 not be taken forward.

22 **Q.** Just to be clear, again, slightly terminology but it  
23 might be important, again you're talking about decisions  
24 and salient points of decisions, but what I think you  
25 accept you were required to put on the corporate record

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1 decision also.

2 **Q.** And in your case they were so we should find them on  
3 that corporate record?

4 **A.** Certainly that was always my intention to do that.

5 **Q.** But just to be clear, I'm not asking you about your  
6 intention, my understanding is that you have told us in  
7 your evidence and also previously that you did make sure  
8 that the stuff, the relevant material was on the  
9 corporate record?

10 **A.** Yes, we would always, when decisions were made, record  
11 on the corporate record, as per the Records Management  
12 Policy.

13 **Q.** In any event, First Minister, given the fortuitous  
14 discovery of these many messages -- which we've read  
15 with great interest, and we're obliged to you for  
16 producing them subsequently -- we can carry out  
17 a comparison between these two bodies to ascertain  
18 whether that's correct.

19 Could I ask you, you also provided some WhatsApp  
20 messages, not -- although Professor Leitch is a frequent  
21 correspondent, there are others with whom you  
22 corresponded via that mechanism. One of them was the  
23 former First Minister, and you helpfully provided us  
24 with some messages. Helpfully because the former First  
25 Minister's position is that she does not have access to

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1 any of those messages conducted -- the WhatsApp  
2 messages -- involving conversations with you or indeed  
3 anyone else.

4 Did you discuss the production of your WhatsApp  
5 messages to this Inquiry with the First Minister, the  
6 former First Minister?

7 **A.** No.

8 **Q.** We noted in your WhatsApp messages with Professor Leitch  
9 that there were frequently voice notes received from  
10 him. Was that a frequent practice of his, do you  
11 recall?

12 **A.** It was certainly on occasion and I would also  
13 occasionally use voice notes as well.

14 **Q.** Were the contents of those voice notes, in so far as  
15 relating to significant decisions made in the course of  
16 the pandemic or discussions around them, transcribed or  
17 copied into the corporate record?

18 **A.** Again, if there were salient points from those voice  
19 notes, then they would -- and decisions that were made  
20 in those voice notes, then of course we would always  
21 seek to record them on the public record, on the  
22 corporate record.

23 **Q.** You would say you would seek to do so but can you tell  
24 me whether that did happen or not?

25 **A.** Again, when so many decisions were made in the course of  
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1 about the decision that was made after discussion with  
2 the former First Minister, and if there are salient  
3 points to record as well as that decision, then I would  
4 pass them on usually through an email in to my  
5 private office or indeed through a telephone call or  
6 a face-to-face exchange.

7 **Q.** So the process by which the information was passed was  
8 by email, so those emails should also exist showing how  
9 the --

10 **A.** Emails or face-to-face or telephone calls. Granted,  
11 less face-to-face during the early parts of the  
12 pandemic, given the restrictions, but there could be  
13 a number of ways of communicating the decision, or  
14 indeed the salient points, it wouldn't just be by email.  
15 Certainly it was not done by handing a phone over or  
16 copying and pasting a whole WhatsApp exchange. It would  
17 be, again, the decision that was made and the salient  
18 points thereafter.

19 **Q.** Okay. But on the occasions when you did pass that  
20 information by email, those emails would still exist and  
21 we would be able to look at those emails to understand  
22 what you had passed on?

23 **A.** Yes, and I hope they would be passed on to the Inquiry  
24 already if requested.

25 **Q.** Sometimes the exchanges -- a good example actually is  
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1 the pandemic, it would always be the practice that we  
2 would seek to do that, government ministers,  
3 Cabinet secretaries would seek to do that. If there was  
4 occasions when that did not happen -- that, I would  
5 hope, would be the very rare occasion but it should not  
6 happen -- it should be the case that every single  
7 minister, Cabinet secretary, myself included, would  
8 ensure that those decisions and salient points related  
9 to those decisions were indeed on the corporate record.  
10 **Q.** As you used your personal phones, because there were  
11 multiple phones, for conducting these exchanges, and  
12 you've explained to us the process by which the  
13 corporate record would be updated by you passing  
14 material to your private office, who would then include  
15 it in the corporate record, was it your habit then to  
16 give your phone, including these messages and voice  
17 notes, et cetera, to your private office to undertake  
18 that process?

19 **A.** No, because -- that would not be the usual practice,  
20 because, again, it wouldn't be the case that we would  
21 expect every word verbatim, full stop, apostrophe, to be  
22 recorded, it's the salient points. So if I had a voice  
23 note from the former First Minister about a decision  
24 that we had made and it was for me to action, then  
25 I would make sure that I would inform my private office  
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1 the exchange you had on your very first day, where  
2 you're trying to get to grips with some of the complex  
3 information, you were discussing things, thoughts with  
4 Professor Leitch. He is giving you some advice. There  
5 are numerous such exchanges. They can be quite complex  
6 and the thinking expressed within them can be quite  
7 complex.

8 Are you certain that where you conveyed the  
9 information to your private office verbally, as you said  
10 sometimes happened, although perhaps not in the early  
11 stages of the pandemic, it was conveyed such that all of  
12 the salient points relating to the discussion made their  
13 way onto the corporate record?

14 **A.** Again, where there was decisions that were made,  
15 absolutely certain of that, and if there was any  
16 misunderstanding from my private office they would  
17 usually seek clarification. If Jason and I were having  
18 a conversation because I was asking his advice on case  
19 numbers, trajectory or a particular area of clinical  
20 expertise that he had, it's not necessary that that  
21 would be fed back into the private office or the  
22 corporate record. If there was a decision that was made  
23 or a salient point relating to that decision, then that  
24 was recorded on the corporate record.

25 **Q.** These processes are an important part of the Scottish  
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1 Government and its key ministers upholding the  
2 principles of accountability and transparency upon which  
3 their bond of trust with the Scottish people is based;  
4 is that correct?

5 **A.** Yes.

6 **Q.** If it were to transpire that the material which we can  
7 now see in the messages has not been put onto the  
8 corporate record and therefore would not be available  
9 for a citizen to see on the corporate record, would that  
10 bond of trust have been broken?

11 **A.** No, I would disagree with that characterisation.  
12 I think it's important that we record the decisions that  
13 are made and any salient points related to that  
14 decision. We cannot, I don't think, reasonably be  
15 expected as a government to record every single  
16 sentence, as I say, every full stop or apostrophe, nor  
17 is that required of us. I think what's really important  
18 in terms of that bond of trust, and this was  
19 exceptionally important for issues around public  
20 compliance with restrictions, was explaining the  
21 rationale for why we made certain decisions. And that  
22 was done regularly. It was the former First Minister's  
23 practice to, almost daily, do a briefing with the media,  
24 to explain -- they were well watched, as the Inquiry  
25 will know, and therefore exceptionally important that we

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1 situation. You say:

2 "In February 2020, my awareness of the number of  
3 people likely to be infected with Covid-19 in Scotland  
4 and in the UK (including details of any reasonable  
5 worst-case scenario (RWCS)) was dependent on the advice  
6 that we received from the CMO in terms of the forecast  
7 numbers of those affected. The SGoRR paper dated  
8 17 February 2020 noted the RWCS figures and this was  
9 discussed at Cabinet the day after SGoRR met on  
10 18 February 2020. These figures were clearly alarming  
11 and only underlined the rationale for the Government's  
12 focus being dominated by its response to the pandemic."

13 At around this time, can you tell us what steps you  
14 took to try to prepare the justice system for this  
15 clearly alarming situation, in particular because within  
16 the document that was prepared for that very meeting  
17 criminal justice is an entire section that is  
18 highlighted as something likely to be impacted by the  
19 threat?

20 **A.** Yes, there was immediate discussions of course with my  
21 officials, and they focused -- and with stakeholders,  
22 some external and some as part of government bodies and  
23 agencies. They were predominantly focused on three  
24 areas: on the court system, what might be the impact,  
25 although that came slightly later on than this; clearly

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1 demonstrate the rationale for the decisions that were  
2 made. That isn't always done through the corporate  
3 record, maybe it will be done through ministerial  
4 statement, through daily briefing, through questioning  
5 from journalists or parliamentarians.

6 **Q.** Thank you.

7 I'd like to ask you some questions about the  
8 Cabinet Secretary role you held in the early pandemic,  
9 that was the Cabinet Secretary for Justice. I think you  
10 were able to be -- you were present at a number of the  
11 early meetings which took place in February of 2020 when  
12 information about the emerging threat had started to  
13 come through and the Scottish Government was trying to  
14 put together some element of co-ordination of its  
15 response; is that right?

16 **A.** That's correct.

17 **Q.** For example, you attended a meeting of a body called  
18 SGoRR, the Resilience Room, about which we've heard  
19 other evidence, on 17 February. Is that right?

20 **A.** That is correct.

21 **Q.** One of the responsibilities you had was for policing; is  
22 that right?

23 **A.** That is correct.

24 **Q.** Could I have paragraph 143, please, of the statement up,  
25 where you helpfully give us some information about this

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1 in relation to prisons, and that's where some of the  
2 early focus was if this virus spread throughout a prison  
3 population, which I'm afraid to say was and continues to  
4 be overcrowded; and with police.

5 And again I think conversations with the police came  
6 slightly later than this, but those were the areas of  
7 focus for me immediately, once we received this  
8 reasonable worst-case scenario modelling paper.

9 **Q.** Well, that's a very helpful summary, because I was going  
10 to ask you about the prison situation as well, because  
11 that was another thing within your portfolio; is that  
12 right?

13 **A.** That's correct.

14 **Q.** You've touched on the very issue which I wanted to  
15 address with you, which was prisons, for example,  
16 weren't discussed at Cabinet until 17 March. Is it the  
17 case that as far as policing and prisons were concerned,  
18 it was predictable that this alarming threat would  
19 require action both in terms of policing for enforcement  
20 but also in terms of the real risk that it posed to the  
21 prison population, given their particular circumstances,  
22 by this virus?

23 **A.** I think it was immediately clear once we had detail of  
24 the significant threat of Covid how damaging it could be  
25 to a prison population and there was European examples

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1 of where prisons had seen the virus rip through it,  
2 through the prison estate, and therefore that was one of  
3 the earliest conversations I had with my prison  
4 officials and, where necessary, with the Scottish  
5 Prison Service.

6 **Q.** Given that there was no discussion of prisons until  
7 17 March does it suggest that perhaps Scotland was  
8 a little slow off the mark to deal with the policing and  
9 prison situation?

10 **A.** No, no, just because it wasn't discussed at Cabinet,  
11 that didn't stop or inhibit Cabinet secretaries and  
12 myself, as Cabinet Secretary for Justice, from having  
13 those conversations earlier, be it with officials or  
14 indeed with the bodies themselves, be it Police Scotland  
15 or the Scottish Prison Service.

16 **Q.** But what systems were -- discussions, obviously, but  
17 what systems were put in place, first of all, to deal  
18 with what I would suggest would be the inevitable  
19 requirement for the police to be involved in some level  
20 of enforcement of rules, but also the very real threat  
21 that would be posed to the prison population? The  
22 prison population not, in some ways, being that  
23 different from the type of situation one saw with the  
24 Diamond Princess; although it wouldn't necessarily have  
25 an elderly population, it would involve people in

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1 Constable to determine how they enforced and the four Es  
2 approach that they took was an example of a decision  
3 that was made very much by the Chief Constable.

4 **Q.** What concrete plans were put in place with regard to the  
5 police and prisons at this early stage in March?

6 **A.** The discussions were held around -- with clinical  
7 experts to understand what needed to be done to try to  
8 slow the transmission of the virus in a setting such as  
9 a crowded prison estate. So at the time the Scottish  
10 Prison Service tried to use whatever capacity it had,  
11 whatever additional space it had, to try to create,  
12 for example, social distancing measures. We were,  
13 of course, in the early, early days of trying to see  
14 what testing was available, at that stage, of course, in  
15 its development phase.

16 And then regular discussions with Police Scotland --  
17 and I instructed regular discussions with Police  
18 Scotland in order to determine what actions we could  
19 take collectively in relation to enforcement when --  
20 when that became apparent.

21 **Q.** Another area which I think from your statement you had  
22 responsibility for was travel restrictions in that post;  
23 is that right?

24 **A.** For a period, yes.

25 **Q.** Yes -- for a period? Over what period was that?

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1 confined circumstances where the virus may spread  
2 rampantly.

3 **A.** I think this is exactly the point, there was no need for  
4 Cabinet to sign off the Scottish Prison Service looking  
5 to, for example, create extra capacity so they can try  
6 to introduce some sort of measure of be it social  
7 distancing or, for example, to see if they could remove  
8 people from double cells into single cells if possible,  
9 and those decisions wouldn't require a Cabinet decision  
10 to have to be made.

11 Similarly discussions with police. When it came to  
12 issues of potential enforcement when it comes to  
13 legislation being introduced to the Scottish Parliament  
14 and being passed by Scottish Parliament, it wouldn't  
15 necessarily require a Cabinet decision in relation to  
16 the operational independence of the police,  
17 Police Scotland had operational independence to make  
18 decisions based on any legislation that was passed and  
19 the subsequent enforcement action.

20 **Q.** So these matters were, you explain, not necessarily  
21 matters that Cabinet would have to decide but they were  
22 within your remit to decide; is that right?

23 **A.** They were my remit to have an overview. I should stress  
24 the point about operational independence for the police.  
25 I mean, it would absolutely a matter for the Chief

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1 **A.** Yes, I think it should be, I hope, in my statement but  
2 there was a point where later, after a number of months,  
3 I think the transport minister ended up taking  
4 responsibility for measures -- forgive me if I don't  
5 have the exact date before me --

6 **Q.** Yes, I think that may be in the statement,  
7 First Minister, but what I was interested in was the way  
8 in -- over the period for which you were -- when you  
9 were responsible for this, the way in which that worked.  
10 In particular you mention in your statement that there  
11 was a requirement for you to engage in discussions at  
12 a four nations level to deal with travel restrictions.  
13 It's an area in which we have an interest. You explain  
14 in your statement that the engagement was primarily at  
15 the UK Government level for the transport minister but  
16 that you did have limited engagement with Mr Jack, who  
17 was the Secretary of State for Scotland.

18 Was the -- what role did Mr Jack play? Because in  
19 our assessment one might have expected in an area like  
20 this, where there is an obvious need for UK four nations  
21 cross-border co-operation to the extent that it could be  
22 achieved, for the Secretary of State for Scotland to  
23 play some sort of role more than what you describe as  
24 limited engagement?

25 **A.** Yes and I can't obviously speak for the

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1 Secretary of State for Scotland in terms of what  
 2 engagement he had with his UK counterparts. I can only  
 3 speak for the fact that when we're on these four nation  
 4 calls, his engagement was very limited and there would  
 5 often be meetings where he wouldn't say anything at all,  
 6 and perhaps he was there to observe what was said on the  
 7 meetings as opposed to necessarily contribute, but  
 8 of course I couldn't speak to the discussions he was  
 9 involved in privately with colleagues and UK  
 10 counterparts behind the scenes.

11 **Q.** Constitutionally would you have expected the  
 12 Secretary of State for Scotland to have played a more  
 13 prominent role in these discussions, given the  
 14 importance, I think you'll accept, of the need to try to  
 15 come so some sort of consensus over travel restrictions?

16 **A.** I was curious at times why he was on the calls if there  
 17 was no contribution that was being made, call after  
 18 call, if that was the case. But no, ultimately there  
 19 was a devolved responsibility for us in the Scottish  
 20 Government and there was devolved responsibility to  
 21 other governments in terms of their jurisdictions,  
 22 England, Wales and Northern Ireland. With travel it was  
 23 always going to be more difficult for those other  
 24 nations outside of England because whatever decisions  
 25 were made by the UK Government for England were largely

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1 for example, but that was rarely done because ultimately  
 2 there was implications when the UK Government made  
 3 a decision to put a country -- England -- on a green  
 4 list, ultimately if we went -- put that country on  
 5 an amber or red list, people may well just arrive into  
 6 a port in England and come up to Scotland, therefore we  
 7 would be at a disadvantage both in terms of the virus  
 8 but also in terms of our airports as well.

9 So we could make decisions around inbound travel and  
 10 what lists countries were on. Immigration of course  
 11 mattered. It was still a reserved matter and remains  
 12 that way.

13 **Q.** So would you say that in practice and constitutionally  
 14 the question about who ultimately controlled the borders  
 15 was a blurry distinction?

16 **A.** Yes, to an extent I think that's right. I think it was  
 17 known that we could -- when it came to determining  
 18 whether countries were on a particular list, we could,  
 19 as a Scottish Government, make a decision, and that  
 20 decision could be different to other nations in the UK,  
 21 and vice versa, but I think it was also well understood  
 22 that if there was divergence then ultimately the  
 23 decision that was made by the UK Government for England,  
 24 that was going to have an impact on Scotland, Wales and  
 25 Northern Ireland, given the ports of entry.

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1 going to impact the decisions that we made in Scotland,  
 2 particularly around international travel --

3 **Q.** This is what I wanted to focus on, because our  
 4 understanding from the evidence given by  
 5 Mr Kenneth Thomson, who you will know was a senior civil  
 6 servant, was that Scotland always -- the Scottish  
 7 Government always had responsibility for external  
 8 borders, the external border of Scotland, because of the  
 9 fact that public health was a devolved matter, and that  
 10 was effectively a public health decision, even although  
 11 the question of borders, as far as immigration and  
 12 nationality is concerned, is a reserved matter.

13 So as far as we understand the position, from the  
 14 very beginning Scotland effectively controlled its own  
 15 borders, but -- is that correct, is that your  
 16 understanding?

17 **A.** It's a very complex matter, and complex issue, just as  
 18 you have articulated it. Ultimately if we -- when we  
 19 got to the phase of decision-making when we were looking  
 20 at international travel corridors, we were looking at  
 21 various different lists, whether countries should be on  
 22 a green list, an amber list, a red list, you're  
 23 absolutely correct, Scotland could have made a decision  
 24 and there was occasions when we made decisions where we  
 25 put countries on a different list to the UK Government,

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1 **Q.** Yes, so for the reasons you just discussed, which  
 2 I think was people could arrive in England and travel to  
 3 Scotland, and therefore Scotland would still have the  
 4 public health detriment, if you like, of that, so there  
 5 was a need --

6 **A.** -- and economic detriment --

7 **Q.** Yes, yes indeed, the detriments.

8 I think, therefore, that -- is it correct to say  
 9 that this was an area in which there was a requirement  
 10 for good intra-governmental relations to try to be  
 11 consistent about the policy, to try to do the best for  
 12 the people of Scotland to protect them from any of these  
 13 threats?

14 **A.** Yes, it certainly required collaboration in the -- in  
 15 the interest of public health.

16 **Q.** Did you find you got that collaboration?

17 **A.** It was frustrating at times. For me, in my engagement  
 18 with the UK Government -- and if you're asking me  
 19 specifically around international travel --

20 **Q.** Yes.

21 **A.** -- I had a good working relationship, a professional  
 22 relationship. Personally and politically, of course,  
 23 often differences, but we had to just put that aside and  
 24 work collaboratively as best we could in the interests  
 25 of public health. But there were occasions,

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1 particularly in relation to international travel, where  
 2 I was deeply frustrated with the fact that either  
 3 information coming to us -- and it was usually  
 4 information from the JBC, the Joint Biosecurity Centre,  
 5 or other sources -- was coming to us at the absolute  
 6 last minute before a meeting, five, ten minutes before  
 7 a meeting was to start, or we were reading about  
 8 an announcement of a decision already being made by  
 9 the UK Government -- which, again, was their  
 10 prerogative, it was their right to make a decision about  
 11 what countries were on what list for England, but that  
 12 undoubtedly had an impact on decisions that we were then  
 13 going to have to make.

14 **Q.** You say as a result of that phenomenon, at paragraph 53  
 15 of your report, that:  
 16 "... if the UK Government had decided unannounced,  
 17 in relation to international travel restrictions, that  
 18 a country was on the green list, the Scottish Government  
 19 would often have to follow the decision made by the  
 20 UK Government, as international travellers could arrive  
 21 in England and travel domestically to Scotland  
 22 otherwise. This is also an example of decision-making  
 23 by the UK Government which was driven by an England-only  
 24 understanding of policy issues."  
 25 So from that assessment and the analysis you have

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1 Police Scotland, but ultimately it would be  
 2 an operational decision for Police Scotland to determine  
 3 how they might well enforce any ban that may have  
 4 existed between cross-border travel. So my real role  
 5 was with interaction with Police Scotland, accepting  
 6 of course it was an operational decision about how many  
 7 resources or assets they deployed to the border, but  
 8 yes, my main interaction would be with Police Scotland  
 9 in that regard.

10 **Q.** We understand it was certainly reported in December 2020  
 11 that there was a ban from the Scottish Government side  
 12 on travel between Scotland and the rest of the UK; is  
 13 that right?

14 **A.** Yes, I think that's the correct date.

15 **Q.** And you would therefore -- you detail in your statement  
 16 you had very regular contact with Police Scotland  
 17 throughout this and the whole of this period; was that  
 18 something that you discussed with them as regards how  
 19 that would be enforced?

20 **A.** I discussed the decision that was made and the Chief  
 21 Constable informed me of his intention, in terms of how  
 22 to react. My memory, and of course I will correct it if  
 23 I'm wrong, was that he was going to double the number of  
 24 patrols that were near the border at that point.  
 25 Now, there would be no checkpoints and he was very,

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1 given about the way in which these decision were often  
 2 announced before the Scottish Government knowing  
 3 anything about them in the press, it does tend to  
 4 suggest in this regard that there was not a good working  
 5 relationship over this important issue; is that your  
 6 position?

7 **A.** No, again, it was done on occasion and that was  
 8 frustrating but ultimately I found that where we had to  
 9 work together, where we had to collaborate with the  
 10 UK Government, in the areas where I had responsibility,  
 11 as Justice Secretary and as Cabinet Secretary for Health  
 12 and Social Care, often we could collaborate in the  
 13 interests of public health. But, to be frank, it could  
 14 be frustrating on occasion.

15 **Q.** What responsibilities did you have in that post for the  
 16 internal border, the border between Scotland and  
 17 England?

18 **A.** Could you say that again?

19 **Q.** Sorry. What responsibilities did you have in that post  
 20 for the border between Scotland and England, the  
 21 internal border?

22 **A.** Yes, for the internal border, again, where decisions  
 23 were made, and there was periods throughout the pandemic  
 24 where decisions were made around cross-border travel,  
 25 the responsibility I would have would be liaising with

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1 very clear about that, but he was looking to increase  
 2 the number of police assets near the border to  
 3 effectively act as a deterrent.

4 **Q.** So when you say there was a ban, it seems that there was  
 5 a reluctance on the part of Police Scotland to do very  
 6 much about enforcing it; is that correct?

7 **A.** Again, I think there was an understanding also from the  
 8 Scottish Government that police resources were very,  
 9 very stretched. Nobody expected there to be a mass  
 10 deployment of police resources down at the border. We  
 11 understood how busy Police Scotland were and they were  
 12 very integral to our response to ensuring public health  
 13 at the time of the pandemic.

14 **Q.** Thank you.

15 While we're on the subject of enforcement, I had  
 16 a few questions for you about that as well. The  
 17 government, the Scottish Government chose to enforce the  
 18 regulations such as the stay-at-home requirements by way  
 19 of fixed penalty notices; is that correct?

20 **A.** That is correct.

21 **Q.** And we understand from your statement that the level of  
 22 the fixed penalty notices were a matter which you  
 23 decided upon; is that right?

24 **A.** Yes, that's correct.

25 **Q.** A fixed penalty notice is, in essence, an on-the-spot

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1 fine typically issued by police officers in respect of  
 2 minor breaches of the law which does not count as  
 3 a criminal conviction but is recorded on police systems  
 4 and may be disclosed via an enhanced disclosure  
 5 application within a certain period of time; is that  
 6 your broad understanding?

7 **A.** Yes, that is correct.

8 **Q.** Why was it that you chose to enforce -- the Scottish  
 9 Government chose to enforce the regulations in that  
 10 particular way?

11 **A.** Can I say that I understand that there would be very  
 12 different viewpoints on the use of fixed penalty notices  
 13 and, from a government perspective, we had to have some  
 14 sort of deterrent once the regulations were in place, we  
 15 thought that was important in relation to compliance,  
 16 but understanding that the vast majority of compliance  
 17 would take place without any police interaction  
 18 whatsoever.

19 In fact if I went a step further, even when it came  
 20 to police interaction or police activity, the vast  
 21 overwhelming majority of that would be done without  
 22 enforcement. The police had their four Es approach,  
 23 with enforcement being the very last E that they chose  
 24 to deploy. And my understanding from the figures that  
 25 I've seen is that police activity during this period --

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1 more difficult and nuanced question to answer?

2 I'm interested in whether consideration was given  
 3 within the Scottish Government to alternative means of  
 4 trying to ensure that the rules were followed other than  
 5 the FPN system?

6 **A.** Forgive me, I would have to look over previous Cabinet  
 7 discussions, but certainly I know that there was  
 8 certainly an understanding that there was other systems  
 9 available, such as formally recorded police warnings.  
 10 I think for the confidence that we had in police  
 11 officers was that every single day, I suspect, police  
 12 officers have to try to exercise judgement. You're  
 13 right, there are some issues which are just cut and  
 14 paste, they are dry, they are black and white, you  
 15 understand exactly whether or not an offence has been  
 16 committed and therefore a fixed penalty notice must be  
 17 issued, but Police Scotland, police officers I think  
 18 every day probably are in that area where they have to  
 19 make a judgement about whether an offence has been  
 20 committed or not, so there was certainly a belief in  
 21 Police Scotland's ability, if it was necessary to issue  
 22 a fixed penalty notice, that they would do that in the  
 23 correct and appropriate manner.

24 There was also an understanding amongst all of us,  
 25 government, Police Scotland, that enforcement such as

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1 94% of police activity didn't require an FPN, a fixed  
 2 penalty notice, whereas only 6% required that level of  
 3 enforcement action.

4 **Q.** Did you or the Scottish Government more broadly give  
 5 consideration to the possibility of seeking to enforce  
 6 the regulations without using the fixed penalty notices?

7 **A.** I think our -- my recollection is that our concern would  
 8 be that if we used anything else, so, for example,  
 9 a recorded warning, that it would not have the same  
 10 impact or effect or understanding. I think we were very  
 11 conscious that people understood what a fixed penalty  
 12 notice was, people may have had it for speeding,  
 13 littering and so on, so it was an understood -- well  
 14 understood system. Whereas a formal police recorded  
 15 warning might not have the same impact or effect. So it  
 16 was the government's view that a fixed penalty notice  
 17 was the right mechanism to use for deterrence purposes.

18 **Q.** Was it -- was that not precisely potentially the problem  
 19 with fixed penalty notices in this circumstance?

20 Because whereas they might be used and there is  
 21 an existing administrative system to process them for  
 22 things like speeding, speeding offences are relatively  
 23 cut and dry, whereas the question as to whether someone  
 24 is breaking one of these regulations by, for example,  
 25 not being at home without a reasonable excuse, is a much

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1 a fixed penalty notice would only ever be the absolute  
 2 last resort, therefore we did not expect there to be  
 3 a significant amount of fixed penalty notices issued.

4 **Q.** The Inquiry has heard some evidence from Professor McVie  
 5 on the subject of enforcement. In her statement at  
 6 paragraphs 8.1 to 8.2 she suggests that internal  
 7 Scottish Government correspondence suggests that  
 8 Scottish ministers took the lead from the UK Government  
 9 on offences and fixed penalties. Government.

10 At paragraph 13 of a separate document which she  
 11 relies upon, she also suggests that the decision also  
 12 administratively, as you've suggested, fitted in with an  
 13 existing system of anti-social behaviour legislation.

14 What I'm interested to try to explore, First  
 15 Minister, is the extent to which any real consideration  
 16 was given to the possibility of not using this method of  
 17 enforcement or whether it was simply adopted because it  
 18 was the approach the UK Government had decided upon?

19 **A.** I think our default position was to go down the fixed  
 20 penalty notice route, so Professor McVie, whose  
 21 evidence I've read, and summary of her work I've also  
 22 read, makes some very important points for us to  
 23 absolutely reflect on as a government. I think it was  
 24 our default to go to the FPN -- down the FPN route  
 25 because it was well understood and all of our

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1 behavioural scientists would tell us that, in order to  
2 get greater levels of compliance, those decisions,  
3 regulations, guidance, all of that, should be well  
4 understood. And if it's well understood, then there's  
5 a greater chance of compliance.

6 There were some differences in terms of the FPN  
7 structure in Scotland and England, I think we had  
8 different levels of fines. If I remember correctly, our  
9 fine level slightly lower than -- than what was in  
10 England, so slightly different -- slight differences,  
11 but ultimately, yes, the FPN route was the default.

12 **LADY HALLETT:** I've just had a -- the transcript's got  
13 "(Webinar freeze)". Has that transcript got "(Webinar  
14 freeze)" at the bottom? I'm wondering whether we ought  
15 to take the break now.

16 **MR DAWSON:** We're very close to the break anyway, my Lady,  
17 I think that sounds like a good option.

18 **LADY HALLETT:** Sorry about this, but it's obviously  
19 important. I don't know if that means that people  
20 aren't following it -- able to follow it online.

21 **MR DAWSON:** We can look into that, of course, my Lady.

22 **LADY HALLETT:** Thank you. I shall be back in -- provided  
23 everything is up and running -- at 3.10.

24 (2.57 pm)

(A short break)

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1 **A.** Yes, yes, and I think I, in answer to your question,  
2 referenced FOI, because that's exactly how somebody  
3 might be able to obtain some documents. Of course  
4 exemptions do apply to FOI legislation, but yes, that's  
5 correct.

6 **Q.** Thank you very much.

7 We were talking before the short break about the  
8 process which had been undertaken to try to work out how  
9 Scotland would go about enforcing the relations, and you  
10 told us about some of the processes. You intimated that  
11 Scotland had some differences, although the fixed  
12 penalty notice system was broadly similar to that in  
13 England.

14 One other matter which has been brought up with  
15 other witnesses is the fact that one difference was that  
16 Scotland's FPN system applied to 16 to 18-year olds.  
17 This was a matter which, again, was covered with  
18 Professor McVie.

19 What active consideration was given to that  
20 difference between the UK Government system and the  
21 Scottish Government system such that younger people  
22 would be caught by the FPN system in Scotland?

23 **A.** Yes, it's my recollection, though, again, I'll be happy  
24 to be corrected if wrong, but that of course was changed  
25 by regulation --

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1 (3.10 pm)

2 **LADY HALLETT:** I gather we're back up and running,  
3 Mr Dawson. If it happens again, I will continue on the  
4 basis that we can still have a transcript made, because  
5 obviously although I have a duty to make sure these  
6 proceedings are as accessible as possible, there are  
7 limits when technology fails us.

8 **MR DAWSON:** Thank you very much, my Lady.

9 First Minister, if I could just return to a point we  
10 were discussing a little bit earlier in the  
11 conversation, it's been brought to my attention by the  
12 Scottish Government legal team, it related to our  
13 discussion about publication of Cabinet minutes.

14 We were discussing matters on the basis that Cabinet  
15 minutes would be accessible, and they've asked me to  
16 clarify or point out, perhaps, that in fact  
17 automatically Cabinet minutes are not released until  
18 after a period of 15 years. Is that your understanding?

19 **A.** Yes, we just released a whole tranche of papers, in  
20 fact --

21 **Q.** Yes, but -- but for our purposes in our discussion,  
22 I think the material point is: do you accept that  
23 documents which exist are susceptible to a Freedom of  
24 Information request by an interested citizen, documents  
25 which do not exist are not, isn't that right?

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1 **Q.** It was changed subsequently, yes.

2 **A.** Yes -- and pretty early on after regulations were  
3 passed, in order to bring us into line with our  
4 requirements in relation to the United Nations  
5 Convention of the rights of the child, so it was raised  
6 to 18. The reason why that was perhaps not given  
7 consideration early on was the thinking that if this was  
8 to act as a deterrent, it should capture as many people  
9 as possible in order to then subsequently have the  
10 public health benefits. But on reflection that wasn't  
11 the right calculation to make, or the right factors to  
12 consider. The correct factor in relation to those who  
13 are 16 to 18 is, of course, their rights, and that's why  
14 we made the change, as I say, to align us more closely  
15 with the UNCRC.

16 **Q.** So the change was made, you're absolutely right,  
17 First Minister, it was -- the Coronavirus (Scotland)  
18 (No.2) Act amended the existing regulation 9 to raise  
19 the age to 18, which came into effect on 27 May 2020.  
20 However, what I'm interested in is the extent to which  
21 consideration was given to Scotland's -- the Scottish  
22 Government's international obligations with regard to  
23 children in setting the age at 16 at the start. Was  
24 that considered?

25 **A.** Again, my recollection is that the default position that

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1 we landed on at the beginning was FPNs to include 16 to  
2 18-year olds, so we were always, throughout any decision  
3 that was made, always trying to balance a number of  
4 rights. So, again, I would have to look over previous  
5 discussions and minutes. I would be surprised if we did  
6 not consider whether or not we should raise the age at  
7 that point, but decided on balance not to. But  
8 of course that was again subsequently changed upon  
9 further reflection and representations made by the likes  
10 of the Children's Commissioner, Scottish Human Rights  
11 Commission and others.

12 **Q.** In her report Professor McVie suggests at paragraph 8.3  
13 that there is no available evidence to suggest that  
14 Scottish or UK lawmakers gave consideration to equality  
15 issues in respect of the decision to use fixed  
16 penalties. Is that a correct assessment of the  
17 position?

18 **A.** It is technically correct, although we used EQIAs,  
19 equalities impact assessments, across a range of  
20 different decisions. I don't think --

21 **Q.** -- I'm interested in --

22 **A.** -- specifically on the issue around fixed penalty  
23 notices.

24 **Q.** So there was no such assessment and Professor McVie's  
25 impression is correct?

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1 "Maximalist approach" appears in inverted commas;  
2 was that your expression?

3 **A.** I don't recall if it was my expression or another  
4 Cabinet secretary's expression, but I certainly  
5 associated myself with the remarks and with that  
6 approach.

7 **Q.** Whether you used that exact word or not, what was meant  
8 by that approach?

9 **A.** Yes, what was meant by a maximalist approach was -- and,  
10 again, setting the context exactly as you have already  
11 done -- that we were dealing with the resurgence of the  
12 virus, I think at that point a new variant of the virus  
13 recently having been discovered, more transmissible than  
14 the previous, real concern around the spread of that  
15 virus, and therefore a real need to ensure that  
16 restrictions were abided by. So "maximalist approach"  
17 meaning, I suppose, what is said in -- in the rest of  
18 that sentence, that there would be a greater police  
19 resource allocation towards enforcement of the  
20 regulations, and again that enforcement always took that  
21 four Es approach, with enforcement being the very last  
22 resort.

23 **Q.** Does it not suggest that there should be more emphasis  
24 on the enforcement element rather than the other Es in  
25 the policy?

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1 **A.** Her impression is correct.

2 **Q.** Thank you very much.

3 In January 2021, as we know, the Scottish Government  
4 introduced a new stay-at-home order and some  
5 consideration was given around that time, as  
6 I understand it, to the way in which the enforcement  
7 should continue over that period, and you were involved  
8 in that at that time; is that correct?

9 **A.** Yes, that's correct.

10 **Q.** Could I look, please, at INQ000214456. I'm looking at  
11 paragraph 20, please.

12 Excuse me just one second.

13 Yes, sorry, I think I have -- I think it's  
14 subsection (h). This is from the minutes of 4 January.  
15 It says there -- obviously there was a question about  
16 how enforcement should work in the second lockdown,  
17 effectively. You said -- where it says:

18 "Mr Yousaf undertook to speak to the Chief Constable  
19 to ensure that enforcement actions were being taken  
20 forward with due speed and rigour, based on  
21 a 'maximalist' approach, and that it was likely this  
22 would be met with a call for increased police resources.  
23 In addition, Environmental Health Officers, with  
24 appropriate police support, would need to enhance their  
25 monitoring of compliance with local restrictions."

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1 **A.** No, not necessarily. It's a maximalist approach, so  
2 trying to cover -- I think it's trying to cover  
3 geographically as much of the country as we could but  
4 also the various sectors and elements of the society  
5 where regulations impacted and affected, and therefore  
6 a greater coverage of police resource may well be  
7 required, hence the rest of the sentence:

8 "... likely that this would be met with a call for  
9 increased police resources."

10 As opposed to any additional focus on the  
11 enforcement element. That was never a conversation that  
12 was had. The Chief Constable was very, very -- the  
13 former Chief Constable was always very, very keen to  
14 stress to me that he did not want the policing by  
15 consent model to be diluted in any way, shape or form,  
16 and that he and his officers would always put  
17 an emphasis on the first three Es, the engage, the  
18 explain, the encourage, before they would end up at the  
19 enforcement space.

20 **Q.** What equality impact assessment was done of your  
21 proposal that there should be a new maximalist approach?

22 **A.** I don't think there would be an EQIA on a decision to,  
23 for example, increase police resource. There will have  
24 been EQIAs in relation to the regulations themselves,  
25 but you wouldn't necessarily do an equalities impact

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1 assessment on an approach, an operational approach, that  
 2 was perhaps taken.

3 **Q.** It would be important in order to try to adhere to the  
 4 four Es approach that you've referred to that people  
 5 should be able to understand the regulations clearly; is  
 6 that correct?

7 **A.** That is correct.

8 **Q.** What was done at this time in particular to try to  
 9 ensure that people understood precisely what the  
 10 regulations were?

11 **A.** A whole range of activity. Of course, the well watched  
 12 media briefings were going to be important. There was  
 13 communication that would have gone out from the  
 14 government, where necessary from Police Scotland as  
 15 well, and that would be materials not just on the  
 16 television, on the radio, social media assets would be  
 17 deployed as well. So we always endeavoured to do our  
 18 best to ensure that there was as wide understanding as  
 19 possible of the regulations and indeed the guidance, and  
 20 we know that at times and on occasion that could be  
 21 particularly complex.

22 **Q.** The rules required to be clear so that people could  
 23 comply with them; is that correct?

24 **A.** Yes, as clear as they could be would help in relation to  
 25 compliance, yes, that's correct.

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1 face masks, what chance do others have in understanding  
 2 the rules?

3 **A.** Look, again, as -- let me try to wrap some context, if  
 4 I can.

5 As the Cabinet Secretary for Health and Social Care  
 6 I didn't just double check the rules, triple check them,  
 7 I would quadruple check them if I had to, because the  
 8 intensity of the public scrutiny that we were under, as  
 9 politicians of all stripes and colours, but particularly  
 10 as the Cabinet Secretary for Health, I knew that I would  
 11 always be under scrutiny to make sure that I was  
 12 absolutely following every regulation and every  
 13 guidance. And so it should be thus, that is absolutely  
 14 right and I'm not complaining about that. So it would  
 15 not be unusual for me to check in with either the  
 16 National Clinical Director, Professor Leitch, or the CMO  
 17 to, as I say, double, triple, quadruple check my  
 18 understanding of particular nuances in relation to  
 19 guidance. I always wanted to make sure that I was  
 20 absolutely complying. And this was a nuance in  
 21 particular guidance.

22 And I also can't deny, Mr Dawson, that there was  
 23 times when the rules were complex and we got ourselves  
 24 into a position, I remember, during the course of the  
 25 pandemic where we were talking about things like

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1 **Q.** Could I go to INQ000334792, please.

2 This is from a later period when you had moved into  
 3 your new position as the Cabinet Secretary for Health  
 4 and Social Care. I would like to ask you some questions  
 5 about an exchange in this page, on 19 November 2021,  
 6 from 19.58. Again, this is one of your regular  
 7 conversations with Professor Leitch. You ask a question  
 8 of Professor Leitch:

9 "... I know ..."

10 You refer, in the blank passage, to an event that  
 11 you're going to attend, and it says:

12 "... I know sitting at the table i don't need my  
 13 mask. If I'm standing talking to folk need my mask on?"

14 You ask.

15 Professor Leitch says:

16 "Officially yes. But literally no one does. Have  
 17 a drink in your hands at ALL times. Then you're exempt.  
 18 So if someone comes over and you stand, lift your  
 19 drink."

20 And then you say in response to that, after a couple  
 21 of further comments, at 20.05:

22 "That's what I've been doing at the other events  
 23 I'm at...!"

24 When you, the Cabinet Secretary for Health and  
 25 Social Care, feel the need to clarify the rules about

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1 "vertical drinking". I mean, these were phrases that we  
 2 hadn't used before, didn't mean much to folk, and we  
 3 were responding in real time to events, trying to  
 4 balance the four harms as best we possibly could.

5 So I would say on the vast overwhelming majority of  
 6 cases when we produced regulation and the associated  
 7 guidance they were well understood, but clearly --  
 8 I believe one of the lessons we could and should learn  
 9 is that in a development of that guidance could we have  
 10 taken a bit more time, engagement sometimes with  
 11 industry, be it hospitality or others, and was there  
 12 more that we could have done to simplify some of the  
 13 more complex guidance, as this was.

14 But look, my ultimate assertion is that for the vast  
 15 overwhelming majority of cases the rules were well  
 16 understood, aided by media briefing, aided by additional  
 17 marketing, social media campaigns, et cetera.

18 **Q.** The requirement to wear a face mask in certain  
 19 circumstances was a part of the Scottish Government's  
 20 strategy towards fighting the virus at this time?

21 **A.** Yes.

22 **Q.** It was an important part or else it wouldn't have been  
 23 part of the strategy; isn't that right?

24 **A.** That is correct, yes.

25 **Q.** Was it a matter of concern to you that the National

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1 Clinical Director informed you that "literally no one"  
 2 follows this particular rule?  
 3 **A.** Again, for those that know Jason, I think by his own  
 4 admission he would perhaps have a casual way of speaking  
 5 and perhaps overspeak, as he described it. So when he  
 6 says "But literally no one does", that to me suggested  
 7 that yes, on this particular nuance, when it comes to  
 8 being at a dinner or a reception, that when standing  
 9 speaking to people there wasn't people wearing masks as  
 10 per the guidance we had.  
 11 **Q.** You were seeking his counsel as regards what the rule  
 12 was; isn't that right?  
 13 **A.** Yes.  
 14 **Q.** And, as you said already, as the Cabinet Secretary for  
 15 Health and Social Care, you were under particular  
 16 scrutiny to follow the rules to the letter; isn't that  
 17 right?  
 18 **A.** Yes.  
 19 **Q.** Professor Leitch was giving you a loophole or  
 20 a work-around to try to enable you not to comply with  
 21 the rules; isn't that right?  
 22 **A.** No, again, I was asking if I -- just a clear  
 23 clarification on how to comply. He was of course  
 24 telling me how to comply. If someone comes over to you  
 25 and you stand and you lift your drink, so if you have  
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1 they have shown an arrogance and retrograde thinking,  
 2 Chief was livid last night."  
 3 Can you explain, please, in what regard the Scottish  
 4 Police Federation were, in your view, a disgrace?  
 5 **A.** Well, again, this was me expressing my frustration in  
 6 a -- what would have been a private conversation with  
 7 a colleague, and sometimes you -- when you are venting  
 8 those private frustrations to a colleague, you use  
 9 language that you regret.  
 10 Look, I had a good relationship with the Scottish  
 11 Police Federation. We didn't always get along, the  
 12 previous leadership of the Scottish Police Federation --  
 13 in fact I think it's fair to say at times we would have  
 14 very robust disagreements.  
 15 My concern in this particular instance, if  
 16 I remember correctly, was that I didn't think that they  
 17 were being supportive of the Chief Constable, and police  
 18 officers more generally, in relation to enforcement of  
 19 regulations, and I thought that the way they articulated  
 20 that was deeply, deeply unhelpful.  
 21 **Q.** These were the people upon whom you relied, the police  
 22 officers, to enforce the regulations which the  
 23 government had imposed; isn't that right?  
 24 **A.** Police Scotland of course and police officers, as part  
 25 of Police Scotland, were the ones that we relied on. Of  
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1 a drink in your hand, if you're sipping, taking a drink,  
 2 then obviously you cannot do that with a mask. I never  
 3 asked for a work-around or how not to comply, and  
 4 neither would I suggest that he was giving that.  
 5 For me, it was important, given the public scrutiny,  
 6 in my role, that I absolutely double and triple checked  
 7 the rules, and I did that on occasion with Jason,  
 8 sometimes with others as well.  
 9 **Q.** Thank you, First Minister.  
 10 I'm sorry to jump around in the time, in the  
 11 chronology, but I would like to ask you a question about  
 12 something which happened again in your first role,  
 13 before the election.  
 14 Could I look at INQ000334682, please.  
 15 This, again, is in a slightly different format,  
 16 I think, some of the WhatsApp messages that you  
 17 helpfully provided to us. It's a WhatsApp exchange.  
 18 The one I'm looking at is between yourself and  
 19 Mr Swinney. I'm looking at 19/6/2020 at 10.26.  
 20 Mr Swinney says to you that you have just caught up  
 21 with the "latest insight into SPF thinking".  
 22 Is that the Scottish Police Federation?  
 23 **A.** That's correct.  
 24 **Q.** And you reply:  
 25 "They're a disgrace. Right through this pandemic  
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1 course the Scottish Police Federation were the  
 2 professional body that represented police officers. But  
 3 my concern was not with police officers or individual  
 4 police officers, far from it, I had the greatest amount  
 5 and continue to have the greatest amount of respect,  
 6 they were absolutely integral to our public health  
 7 efforts. My concern was with the leadership, at the  
 8 time, of the Scottish Police Federation, with whom, as  
 9 I say, had a good relationship, one where we spoke on --  
 10 on regular occasion had robust exchanges. But at this  
 11 point, as I say, venting a frustration to a colleague in  
 12 a private space.  
 13 **Q.** Thank you.  
 14 I'd like to ask you some more questions, please --  
 15 again, sorry to jump around in the timeline -- about the  
 16 period during which you were Cabinet Secretary for  
 17 Health and Social Care. It might be helpful, first of  
 18 all, to try and place your appointment in some degree of  
 19 context before we do so in terms of what happened over  
 20 the period but in particular what the state of the  
 21 pandemic was at the time of your appointment.  
 22 In April of 2020, Scotland's R number -- sorry,  
 23 2021 -- had fallen for the first time in four weeks,  
 24 dropping from between 1 and 0.8 to 0.7 to 0.9.  
 25 On 25 April free lateral flow kits had been made  
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1 available for anyone without symptoms.  
 2 On 26 April there had been a significant opening up,  
 3 with non-essential shops, gyms, swimming pools, pubs,  
 4 restaurants and cafés allowed to re-open, while travel  
 5 between Scotland and the rest of the UK was also  
 6 permitted again.

7 On 6 May, which was the day of the election, you'll  
 8 recall, First Minister, public health officials warned  
 9 in that Moray they were experiencing an uncontrolled  
 10 sustained community transmission of Covid-19, with  
 11 a case rate of 81 in 100,000.

12 On 17 May most of mainland Scotland, with the  
 13 exception of Moray and Glasgow, moved from level 3 to  
 14 level 2 restrictions, allowing pubs and restaurants to  
 15 open for indoor service.

16 And indeed, as I think we've seen from some earlier  
 17 messages, there was a concern -- really at almost  
 18 exactly the point of your appointment, First Minister --  
 19 about cases started to rise in the Glasgow area.

20 Does that give a fair description as to the  
 21 background of the situation that you walked into, or are  
 22 there any other salient features of the pandemic that  
 23 you would wish to point out?

24 **A.** No, I think that's a fair description of the point by  
 25 which I was appointed. I think the only thing I would  
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1 was associated with the Delta variant of the virus; is  
 2 that your broad recollection?

3 **A.** Yes, it is.

4 **Q.** And as you say correctly, cases remained high, they were  
 5 up and down, but they remained comparatively high in  
 6 Scotland compared with the rest of the United Kingdom  
 7 over that period. Do you remember that being the case?

8 **A.** Over what period?

9 **Q.** The period from the summer till the Omicron arrival  
 10 towards the end of the year that you described.

11 **A.** Yes, cases were fluctuating, rising often. In terms of  
 12 how they compared to the rest of the UK throughout that  
 13 period, from the summer till the arrival of Omicron,  
 14 there will have been, I'm sure, periods where case  
 15 numbers in Scotland -- the R number may well have been  
 16 lower than other nations in the UK, but, for a period,  
 17 absolutely, were higher.

18 **Q.** I'm simply seeking to paint a broad picture,  
 19 First Minister, we have been through the detail of it  
 20 with other witnesses, but, as you say, what then  
 21 happened towards the end of the year is it was a further  
 22 wave of the Omicron which was a much more transmissible  
 23 variant of the virus, resulting in huge increases in the  
 24 number of cases in Scotland; would that be broadly fair?

25 **A.** Yes.  
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1 add to that is there continued to be extreme pressure on  
 2 the health service as well --

3 **Q.** Yes.

4 **A.** -- and usually by spring, outwith the pandemic, you  
 5 could begin to see some sort of easing, though you'd  
 6 tend to have respiratory viruses sometimes during the  
 7 Easter holidays, but you would tend to see a bit of  
 8 easing. That was simply not the case. Other than that,  
 9 I think you've covered the salient points.

10 **Q.** Looking prospectively during the period in which you did  
 11 serve in the post up to April 2022, the period in which  
 12 we are interested in this module --

13 **A.** Yeah.

14 **Q.** -- would it be fair to say that your period in office  
 15 was characterised by very considerable rises in the  
 16 number of cases, broadly speaking, from around about the  
 17 summer of 2021?

18 **A.** Yes, there would be fluctuations, of course there would  
 19 be, but at the time that I was appointed there was  
 20 a number of waves of the pandemic and of course in 2021  
 21 we also then had to deal with the Omicron variant.

22 **Q.** Yes, if we just take it in a stepwise fashion, we've  
 23 seen some evidence from some statistical experts that in  
 24 the summer of 2021, not long after your appointment to  
 25 this post, cases started rising significantly and that  
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1 **Q.** We've seen some statistics that would suggest that at  
 2 the peak of the Omicron wave 8% of people in Scotland  
 3 were infected whereas at the peak of the first wave only  
 4 around 1% were infected, based on analysis of  
 5 retrospective figures. So there were huge numbers of  
 6 infections to deal with. And is that broadly, again,  
 7 your recollection?

8 **A.** Yes, absolutely.

9 **Q.** Again over this period we've seen evidence that although  
 10 the Omicron variant was generally deemed to be less  
 11 virulent, it was much more transmissible, but it also  
 12 resulted in Scotland, in this third wave combined, in  
 13 very nearly as many deaths as had occurred in each of  
 14 the first two waves, with somewhere around about 5,000  
 15 deaths having occurred in each wave, broadly. Again, is  
 16 that broadly your recollection of the experience that  
 17 you had as Cabinet Secretary over that period?

18 **A.** Yes, I couldn't swear by the exact number, but  
 19 broadly -- broadly that's --

20 **Q.** I'm simply seeking to illustrate that, even although  
 21 Omicron was less virulent, it was way more  
 22 transmissible.

23 **A.** Way more transmissible, highly transmissible.

24 **Q.** Which resulted in the same number of deaths in this  
 25 third wave as there had been in each of the first two  
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1 waves; was that broadly your recollection?  
 2 **A.** Yes.  
 3 **Q.** And another characteristic which you touched upon  
 4 yourself of this period was that, in many areas,  
 5 hospitals started to become overwhelmed; isn't that  
 6 right?  
 7 **A.** Extreme pressure on our hospitals, yes.  
 8 **Q.** Many health boards required to suspend non-urgent  
 9 surgery at different times?  
 10 **A.** That is correct. Particularly in the run-up to winter  
 11 they had to make the really difficult decision of  
 12 stopping elective care, in some cases, altogether.  
 13 **Q.** The military required to be called until at times to  
 14 assist?  
 15 **A.** Yes, we made MACA requests at times, in relation to  
 16 ambulance services in particular.  
 17 **Q.** You described at one point over this period as  
 18 Scotland -- the situation as Scotland facing a perfect  
 19 storm; do you recall that?  
 20 **A.** I do.  
 21 **Q.** Given that NHS capacity had been such a priority in the  
 22 strategy which had been adopted in connection with the  
 23 first wave of the virus, why was it that hospitals were  
 24 allowed to become overwhelmed in this wave of the virus?  
 25 **A.** It wasn't the case that they were "allowed to become  
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1 you turned for clinical, rather than medical, advice was  
 2 Professor Leitch?  
 3 **A.** Yes, and the CMO, who would attend virtually every  
 4 Cabinet, but I probably spoke to the National Clinical  
 5 Director more than I spoke to another clinical expert.  
 6 **Q.** But on a day-to-day basis the WhatsApps, which you  
 7 helpfully provided, show you interacting with  
 8 Professor Leitch on a regular basis?  
 9 **A.** Yes.  
 10 **Q.** Sometimes several times an hour in relation to queries  
 11 which have arisen from your analysis of the paperwork or  
 12 the issues and seeking counsel from him. Was that your  
 13 default position, to use your own expression?  
 14 **A.** Yes. It would depend also on the nature of the advice  
 15 that was required, but yes, I would turn to  
 16 Professor Leitch as the health adviser and a clinical  
 17 expert when I needed that health advice. And you're  
 18 right, that could be multiple times a week, it could be  
 19 multiple times a day, depending on what was going on at  
 20 the time.  
 21 **Q.** You say it would depend on the type of advice that would  
 22 be required as to when you would turn to  
 23 Professor Leitch or perhaps others. What advice would  
 24 you seek from others that you wouldn't seek from  
 25 Professor Leitch?  
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1 overwhelmed", we had a perfect storm of issues and  
 2 factors that came together. We had, as you have very  
 3 well articulated, a highly transmissible variant of the  
 4 virus. We had, of course, been opening up society; that  
 5 was right because of the vaccination programme. We had  
 6 some element of other respiratory viruses, although flu  
 7 didn't hit in as big a way as it did in 2022. And  
 8 of course we had the other peak pressures that you tend  
 9 to see during the winter period.  
 10 But when you have a highly transmissible variant, as  
 11 Omicron was, way more transmissible than previous  
 12 variants, hitting you at about the winter time, where  
 13 of course not just where you often see other respiratory  
 14 viruses but people tend to mingle more, go to social  
 15 events more often, Christmas parties, New Year  
 16 functions, then all of these factors coming in together  
 17 made the pressure on the NHS extreme.  
 18 **Q.** You say in your statement at paragraph 23 that you were  
 19 provided with advice, information and evidence from  
 20 a myriad of clinical and scientific experts, Scottish  
 21 and intergovernmental advisory groups and stakeholders.  
 22 Then you say at paragraph 63 that there wasn't a risk of  
 23 information overload or repetition for key  
 24 decision-makers.  
 25 Would it be fair to say that the main person to whom  
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1 **A.** So, for example, if there was issues particularly in  
 2 relation to -- to medicines, to antiviral treatments,  
 3 I may well go to Alison Strath, who was the Chief  
 4 Pharmaceutical Officer at the time. So dependent on  
 5 what was needed or what was required, it'd depend who  
 6 I'd go to.  
 7 But I'm not arguing with your assertion, your  
 8 assertion is correct, but in terms of my health  
 9 advisers -- which I have to say were excellent  
 10 throughout the course of the pandemic -- I would most  
 11 often go to Professor Leitch.  
 12 **Q.** We have looked at the paperwork for the Scottish Covid  
 13 Advisory Group over this period, of which you'll no  
 14 doubt be aware and we've heard evidence from a number of  
 15 its prominent members. One thing which is perhaps  
 16 striking about the frequency of the meetings of that  
 17 group is that they became very less frequent in the  
 18 period when you were in this particular position. From  
 19 June 2021 they met only monthly, although they had met  
 20 much more frequently previously, with the exception of  
 21 a cluster of meetings in December of 2021 in connection  
 22 with the Omicron threat that we've discussed.  
 23 Was it the case that very much less advice was  
 24 sought from that expert group and more reliance was  
 25 placed on the in-house medical and clinical and  
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1 scientific advisers, given the fact that over this  
 2 period attention had turned away from managing the  
 3 threat of the virus and towards managing the recovery  
 4 from Covid?

5 **A.** I think from my perspective it was only natural that the  
 6 C-19 advisory group would be relied on more heavily in  
 7 the early days of the emergency phase of the pandemic,  
 8 while we're still trying to grapple with the  
 9 epidemiology of the virus, the characteristics of the  
 10 virus, and of course work was still ongoing in relation  
 11 to a vaccine, what can you do in relation to NPIs --  
 12 non-pharmaceutical interventions in advance of  
 13 a vaccine, so the reliance on an advisory group that  
 14 would often engage with the CMO or would give written  
 15 submissions to Cabinet secretaries or the government as  
 16 a whole, the reliance on that group would have been far  
 17 greater when the group first set up and in that real  
 18 emergency phase of the pandemic.

19 You're right to point out that the frequency of the  
 20 meetings increased when the Omicron variant came in, and  
 21 that stands to reason, because during the recovery phase  
 22 by this point, by just kind of pre-Omicron, we would  
 23 have had a good handle on understanding the  
 24 characteristics of the virus, we would have had,  
 25 of course, our vaccination programme under way, we would

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1 that recovery phase at this point. But was it a health  
 2 emergency? Was it a health crisis? For sure. We were  
 3 facing the most extreme pressure that the NHS had seen  
 4 at that point in its over 70-year existence. I think,  
 5 again, up until that point, the winter of 2021, I don't  
 6 think the NHS would have had a more difficult winter in  
 7 its history.

8 **Q.** In the period before your appointment we're aware of  
 9 a number of what were called "deep dive" meetings taking  
 10 place -- there were a number of deep dive meetings in  
 11 a number of different areas but the deep dive meetings  
 12 with the Covid-19 Advisory Group?

13 **A.** I was aware of them.

14 **Q.** On various issues, testing and the like?

15 **A.** I was aware of them.

16 **Q.** In the period when you were Cabinet Secretary only one  
 17 such meeting took place as far as we're aware, right at  
 18 the end of the period in which we're interested, to do  
 19 with the future of Covid.

20 Is it the case that in this significant health  
 21 emergency, more reliance should have been placed on that  
 22 expert group in order to assist with the response?

23 **A.** Not necessarily. And the example that you gave I think  
 24 is very pertinent. You mentioned the C-19 group did  
 25 a deep dive, I think you said testing or the like. So

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1 have understood the non-pharmaceutical interventions and  
 2 the impacts that they would have on the virus and  
 3 containment and delay of the spread of the virus. But  
 4 where we needed that C-19 group, for example, if a new  
 5 variant came on, and to understand its impact and  
 6 effects, then we knew we could always rely on the C-19  
 7 group.

8 And there was, of course, other groups, which I know  
 9 the Inquiry is well aware of. Some are UK level, SAGE,  
 10 NERVTAG and the Joint Biosecurity Council(sic), UKHSA,  
 11 and some, of course, at a Scotland level that we could  
 12 rely on too.

13 **Q.** Eight times as many infections as in the first wave,  
 14 almost 5,000 deaths, hospitals overwhelmed, the military  
 15 called in. Why was this not an emergency phase of the  
 16 pandemic?

17 **A.** The emergency phase that we tend to talk about, I think,  
 18 was pre -- when the virus first came and arrived into  
 19 the UK and therefore the very first non-pharmaceutical  
 20 interventions had to be considered. In my experience,  
 21 and I said this, I believe, at the time, this was  
 22 an emergency in relation to our health service, there  
 23 was no doubting that, but you yourself have used the  
 24 phrase that this was seen as the recovery phase.  
 25 I think that's right, we were generally seen as being in

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1 that's right by this point of course we'd have had  
 2 a testing system, Test & Protect, well established, up  
 3 and running, well under way, a vaccination programme  
 4 well understood, well established, well under way, so we  
 5 wouldn't have to call the C-19 Advisory Group back in to  
 6 begin to do deep dives into well-established protocols.

7 Given the Omicron was another wave of the virus,  
 8 although I absolutely accept fully that it was a more  
 9 highly transmissible variant of the virus, we knew what  
 10 we had to do in -- when we were hit with waves: we knew  
 11 we had to look at NPIs, we had to look at the route map,  
 12 we had to look at the four harms considerations that we  
 13 had to take, and we had to make decisions on what action  
 14 we were going to do based on the four harms, protecting  
 15 people's health, the indirect health issues, societal  
 16 impacts and of course the impact on the economy as well.  
 17 But the C-19 group I always knew was available should it  
 18 be required during any point in the pandemic.

19 **Q.** It may have been available, what I'm suggesting to you  
 20 is you didn't use it.

21 **A.** But again I go back to the point of why it wasn't used  
 22 as often. Now, the C-19 group would often engage with  
 23 the CMO. The CMO would then -- I would have regular  
 24 engagement with the CMO and then regular engagement --  
 25 sorry, the CMO would attend Cabinet virtually every

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1 single week during this phase. My point being is that  
 2 the C-19 group, as you yourself said, was there to help  
 3 with deep dives into things like testing. These were  
 4 already established. I wouldn't have to bring the C-19  
 5 group back in to have a deep dive into testing  
 6 established, vaccination established, and so on and so  
 7 forth. But, again, there was advisers available within  
 8 the C-19 group should I have needed them bilaterally as  
 9 well as part of a group.

10 **Q.** Even although systems were in place, would that C-19  
 11 group not have been able to assist with the strategy in  
 12 this further emergency phase of the pandemic?

13 **A.** I think, again, advisers took advice from clinical  
 14 advisers, from the Chief Medical Officer, from the chief  
 15 executive of the NHS, from health boards directly, from  
 16 experts in social care, a range of experts and advisers,  
 17 but I think we knew, given that we were facing this  
 18 highly transmissible variant, one of the pieces of  
 19 advice that we got was that we had to increase quite  
 20 significantly the booster vaccine programme, and that's  
 21 why the decision was taken to implement what was known  
 22 as the "boosted by the bells" programme, effectively,  
 23 getting as many people their booster vaccination before  
 24 the end of the year.

25 **Q.** What briefing did you receive on taking the post about  
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1 the period before that.

2 Was it the case that your impression of the vaccine  
 3 being a game-changer resulted in the fight against the  
 4 virus, harm 1, getting less attention than it ought to  
 5 have done?

6 **A.** It's not my impression at all. And maybe I'm saying  
 7 this as the person who was Cabinet Secretary for Health  
 8 and Social Care, but harm 1 was always the one that was  
 9 at the forefront of my mind. Harm 1 and harm 2 are  
 10 probably the ones that were the most forefront of my  
 11 mind, given that I was Cabinet Secretary for Health and  
 12 Social Care from May 2021 to -- the period of interest  
 13 to you. So for me there was never any dilution,  
 14 diminution of harm 1, it was at the forefront of our  
 15 minds as a government constantly throughout the course  
 16 of the pandemic.

17 **Q.** As far as harm 2 is concerned, which you've mentioned,  
 18 obviously that would fall within your remit as well  
 19 because although it's not Covid harms -- there's other  
 20 health harms --

21 **A.** Yes.

22 **Q.** -- to remind people -- what information were you  
 23 provided with in order to try to manage the extent of  
 24 that harm?

25 **A.** Again, I think when we had conversations, we were alive  
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1 the role that vaccination was likely to play in the  
 2 pandemic in Scotland in that period?

3 **A.** When I first came into role -- again, I would have to  
 4 look back over of course paperwork, but there was no  
 5 doubt at all even before I was in the role as  
 6 health secretary that we all knew what a game-changer  
 7 the vaccination was.

8 Now, the question when a new variant always came  
 9 into play was whether or not it had what was termed at  
 10 the time -- it's still used, the terminology -- immune  
 11 escape, and for me there was no doubting at all when  
 12 I had my first briefing with the Chief Medical Officer,  
 13 with the National Clinical Director and others that  
 14 vaccination was the game-changer in how we respond to  
 15 the virus and open our society back up as best we can in  
 16 the face of Covid-19.

17 **Q.** In her evidence Professor Devi Sridhar, she was  
 18 of course a member of the Covid-19 Advisory Group, she  
 19 explained that at the time when the vaccination  
 20 programme started, which was towards the end of 2020  
 21 increasing into the beginning of 2021, that her advice,  
 22 her role in providing advice relating to what was known  
 23 within the four harms strategy as harm 1, the harm  
 24 caused by the virus, diminished, on the basis that her  
 25 role had been more prominent in fighting the virus in  
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1 and alert to obviously all four harms. In respect to  
 2 harm 2, particularly the impact on mental wellbeing, the  
 3 most important thing that I could do was speak to those  
 4 who were directly impacted, or represented those who  
 5 were directly impacted, by harm 2, in particular if  
 6 I think about the mental wellbeing aspects that people  
 7 suffered, or chronic illnesses that they suffered, then  
 8 I would often engage with those representative groups or  
 9 indeed those with lived experience directly -- as well  
 10 as getting the usual briefing. There would always be  
 11 briefing made available. When you first come into  
 12 position you're given multitudes, plethora of briefing  
 13 to get your head round, but the best briefing, if  
 14 I could put it that way, that I received in relation to  
 15 harm 2 was undoubtedly the engagement with those that  
 16 had been impacted not by the direct effects of Covid-19  
 17 but the perhaps indirect health consequences.

18 **Q.** Given the significant consequences which occurred over  
 19 this period within the health service, non-urgent  
 20 healthcare having to be cancelled in a number of health  
 21 boards, is it not the case that, irrespective of the  
 22 efforts that you have described as having taken with  
 23 regard to harm 2, significant non-Covid harm was caused  
 24 to the people of Scotland over this period?

25 **A.** There's no doubt at all that when you cancel elective  
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1 surgery people waiting on a waiting list is not a benign  
 2 act, there's completely -- there's absolutely an  
 3 impact --

4 **Q.** So the discussion -- sorry.

5 **A.** So there's undoubtedly an impact on their health. It  
 6 may be chronic health, it may be that hip replacement  
 7 that Mrs Smith needed and that she now had to wait  
 8 a year later would undoubtedly mean further  
 9 deterioration, deconditioning and then impacting the  
 10 quality of her life. That was absolutely a harm that we  
 11 had to try to balance, and that's why nobody took the  
 12 decision at that health board level, government level or  
 13 any other level, to stop elective care lightly at all.  
 14 We absolutely understood that if we took these decisions  
 15 to protect people from -- and protect their lives in  
 16 relation to the first harm, harm 1, then that would have  
 17 an impact potentially on other aspects, including those  
 18 that fall under the bracket of harm 2.

19 **Q.** During the period when you were Cabinet Secretary for  
 20 Health and Social Care, significant harm under harm 1  
 21 was done, the virus was rampant, thousands of deaths,  
 22 and record levels compared to the rest of the pandemic  
 23 and the rest of the UK as regards the number of  
 24 infections; is that correct?

25 **A.** Well, I would say that the emergence of Omicron, and  
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1 **Q.** One of the aspects of the management of the pandemic  
 2 over this period was a number of issues and questions  
 3 that you had to address with regard to large scale  
 4 events; would that be fair?

5 **A.** Yes, absolutely.

6 **Q.** There were issues that arose about the Euros and the  
 7 opening of fan zones in particular --

8 **A.** Yes.

9 **Q.** -- is that right?

10 **A.** That's correct.

11 **Q.** And there was also the issue of COP26, which has come up  
 12 a few times in our evidence, and the management of  
 13 infection around that, given the number of people  
 14 involved and the fact that that was obviously an unusual  
 15 event; that's also correct, isn't it?

16 **A.** That is correct, yes.

17 **Q.** Could we look, please, at the Euro fan zone position,  
 18 again some WhatsApps, please.

19 INQ000334792.

20 This is an exchange between yourself and  
 21 Jason Leitch again in which there is some discussion, as  
 22 one sees this regularly, between the two of you about  
 23 what you were going to do and what the solution is, and  
 24 at 13.39 you -- just get that up, yes, thank you, you  
 25 say:

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1 of course the Delta variant that was more transmissible  
 2 than the Alpha variant before it, that was the reason  
 3 why we had high levels of infection, and in terms of  
 4 Covid deaths that was a result of course of the Omicron  
 5 variant, not because -- and I would contend -- of  
 6 particular policy choices that I made as  
 7 Cabinet Secretary for Health and Social Care or indeed  
 8 that the government made. We were dealing with a highly  
 9 transmissible virus that you have rightly described in  
 10 your earlier contributions as being far more  
 11 transmissible than the previous variant.

12 But yes, that resulted, I'm afraid, in a number of  
 13 people losing their lives.

14 **Q.** As far as harm 2 is concerned, again I think the  
 15 position is there was record levels of harm under harm 2  
 16 because of the hospital closures and pressures; is that  
 17 not correct?

18 **A.** Again, your definition of "record levels" but there were  
 19 certainly people because we took decisions to stop  
 20 elective care then they would be added to the waiting  
 21 list. Of course we took action to try to increase,  
 22 for example, spend on mental health, as best we possibly  
 23 could, to try to make sure that we dealt with some of  
 24 the harm 2 impacts, such as on people's mental  
 25 wellbeing.

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1 "At its lowest over the last 7 days we saw Glasgow  
 2 case numbers dip to around 87 new cases, obviously now  
 3 seeing an increase over the last two days -- test  
 4 [percentage] remaining relatively stable?"

5 "Understand FM's worry about losing the dressing  
 6 room, but can't do anything other than leave Glasgow in  
 7 Level 3 for now.

8 "Big question (and opposition are asking it, not  
 9 unreasonably) what is the way out? Are \*we\* doing  
 10 enough here to break the community transmission.  
 11 Instead of just targeting the hotspots does enhanced  
 12 testing/prioritising vaccines etc need to be done  
 13 city-wide?"

14 Then there's a further discussion about all of this.

15 And then at 14.02 this is particularised in relation  
 16 to the question about whether the Euros should be  
 17 allowed to -- well, whether events relating to the Euros  
 18 should be allowed to proceed.

19 Jason Leitch says:

20 "And I agree. If trajectory continues and doesn't  
 21 accelerate everyone down a level. That would allow  
 22 EUROS."

23 He then says:

24 "Cancelling crowds and the fanzone would be VERY  
 25 difficult."

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1 14.04, you say:  
 2 "That's the danger though. Football is on, pubs  
 3 open, lots of people mingling indoors including in  
 4 households to watch the game, all the while Glasgow is  
 5 still picking up 100-odd new cases a day..."  
 6 And there's some surprise .  
 7 Then over the page, at 14.07 you say:  
 8 "All that said, we will lose the dressing room.  
 9 People want to watch the match with friends and family,  
 10 after waiting 23 [years] for Scotland to qualify."  
 11 Further exchanges, and then you say at 14.11:  
 12 "To mitigate the surge in cases, we will possibly  
 13 see as a result of the Euros, not better keeping Glasgow  
 14 in Level 3 as long as possible before the first  
 15 game...fanzone makes that tricky right enough."  
 16 Then at 14.29 Professor Leitch says:  
 17 "So more testing. Case finding. Exactly what we  
 18 want. As trump said, the problem with you public health  
 19 idiots is if you do tests you find disease."  
 20 So this is a discussion between the two of you about  
 21 the case rises in Glasgow and the extent to which it  
 22 would be wise to continue with the planned fan zone in  
 23 Glasgow to allow people to watch the Euros; is that  
 24 right?  
 25 **A.** That's absolutely correct.

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1 "She needs to do it before or at FMQs if at all."  
 2 And you say:  
 3 "I'll tell you what, from knowing her for  
 4 15 [years], it is not often her instincts are wrong."  
 5 And ultimately I think the position is that the fan  
 6 zone is allowed to go ahead.  
 7 Does this exchange show you being very concerned,  
 8 understandably, about the situation in Glasgow, but  
 9 ultimately there being a reliance on the  
 10 First Minister's instincts as to what to do?  
 11 **A.** No, I think the exchange is an understanding that this  
 12 is not an easy call. You've got high case numbers in  
 13 Glasgow, you've got a huge footballing event, for which  
 14 Scotland have qualified for the first time in over  
 15 20 years, and you've got to make a decision about  
 16 whether or not a fan zone, which is an outdoor fairly  
 17 regulated space, and I went to the fan zone to see it  
 18 myself, hand hygiene systems in place, one-way systems  
 19 in place, six -- and so on, we put other mitigations  
 20 which I can talk to as well. Do you have that highly  
 21 regulated space? And if you don't have it, then do more  
 22 people go into spaces which are more conducive to the  
 23 transmission of the virus, ie into pubs or in each  
 24 others' households, less ventilation, less regulation of  
 25 the space? And which one do we go with?

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1 **Q.** And I think your position here, as I understand, is that  
 2 you are quite concerned about whether these events could  
 3 be allowed to go ahead, given the fact that the  
 4 background is there's high levels of cases, and you are  
 5 rightly debating that with Professor Leitch; is that  
 6 right?  
 7 **A.** Very concerned.  
 8 **Q.** Could we then go to pages 12 to 13. I think it's the  
 9 same exchange, yes, 4792, pages 12 to 13.  
 10 This is now on 10 June, I'm looking at 10/6/2021 at  
 11 11.45. Just up at the top there you can see  
 12 Professor Leitch says:  
 13 "And it still goes on...FM wants more advice. Her  
 14 instinct says cancel fanzone. Her office will write  
 15 back (which Ken is writing) to ask for more and then Ken  
 16 will gather the legal etc to reply."  
 17 Then there's a further exchange. You indicate that  
 18 there's been some attention paid to the cost of  
 19 cancelling the event, which might be £6 million. You  
 20 raise the question of whether that would or would not  
 21 include compensation for those who have lost money.  
 22 And then at 11.55 Professor Leitch says:  
 23 "Yep. I think that's costs not profit."  
 24 In the £6 million analysis.  
 25 And then he says:

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1 And ultimately I remember the First Minister was  
 2 asking questions to which, to be frank, you would not be  
 3 able to answer: if you close the fan zone, how many  
 4 people, extra people end up in pubs? And therefore this  
 5 was -- I think the message exchange demonstrates that  
 6 this was not an easy decision to make, and saying that:  
 7 yes, the First Minister who -- the former First Minister  
 8 had shown very good instincts, I believe, in relation to  
 9 decisions being made in regards to the pandemic. There  
 10 was ultimately a decision that had to be made here and  
 11 we had provided her clinical advisers and I had also  
 12 spoken to her, of course, about the fan zone and given  
 13 my view, but it was not an easy decision to make at all.  
 14 I think ultimately the right decision was made, given  
 15 the mitigations that we were able to put in place in  
 16 relation to testing and so on and so forth.  
 17 **Q.** My question was whether ultimately it was a matter which  
 18 relied -- this very difficult situation with lots of  
 19 different considerations, financial, health, moving  
 20 picture -- ultimately that relied on an instinctive  
 21 judgement by the First Minister?  
 22 **A.** No, didn't rely on that. Her instinctive judgement was  
 23 important but it relied on, I think, being -- all of  
 24 those involved in the decision being confident that the  
 25 appropriate mitigations were in place and understanding

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1 the impacts and potential effects of cancelling the  
2 fan zone and what that would mean for public health as  
3 well as other issues too.

4 **Q.** There is a further exchange at page 17, which is  
5 a little bit later, I think after, perhaps, the fan zone  
6 has, at least to some extent, been in existence. This  
7 is now on 24 June, looking at the exchange, which starts  
8 at the 24th at 12.26.

9 You are discussing, I think, the position with  
10 regard to the numbers and you say:

11 "I was certain we'd be well above the 3,000 mark...

12 "Just doesn't feel right that we aren't effectively  
13 able to do anything in the immediate and short term to  
14 drive those numbers down, other than imposing  
15 restrictions, which as the FM says the public just  
16 wouldn't stand for."

17 Professor Leitch says:

18 "Keep your fingers crossed it [is] a temporary Euros  
19 phenomenon."

20 The expression "keep your fingers crossed" is one  
21 which appears on a number of occasions in these  
22 exchanges. Is it the case by this stage that you were  
23 relying on instinct and luck to manage the pandemic?

24 **A.** No, I would reject that charge in its entirety.

25 Look, I'm -- I was the Cabinet Secretary for Health  
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1 of the public such that you just allowed the virus to  
2 run rampant?

3 **A.** No. You see, it's not a case of simply losing the  
4 dressing room, or the public won't stand for it. What  
5 that in effect means, of course, is that we don't -- we  
6 will not have compliance, and that is the worst of both  
7 worlds. So you end up in a position where people aren't  
8 complying, they just won't stand for it -- at this point  
9 we'd been living with the virus for over a year and  
10 people have been through numerous restrictions -- so you  
11 get the worst of both worlds: they don't comply and then  
12 that therefore means that you continue to get increased  
13 levels and numbers of cases.

14 I think that was particularly -- it was more  
15 difficult, I think, to bring forward the NPIs, the  
16 non-pharmaceutical interventions, when we had  
17 a vaccination programme also well under way and  
18 a testing system that was well established as well.

19 But I go back to the central point in this exchange,  
20 that we were facing an incredibly difficult set of  
21 circumstances, with not just the fan zone but, generally  
22 speaking, having lived for over a year with this virus  
23 people's patience, understandably so, with restrictions  
24 wearing relatively thin.

25 **Q.** But at this stage was it not possible to try to mitigate  
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1 and Social Care, I was always going to be the guy in the  
2 Cabinet that pushed for us to go the hardest, the  
3 fastest, to do more in terms of NPIs and restrictions  
4 I suspect that is true of every health secretary right  
5 across the United Kingdom. That was often our position,  
6 and my position as Cabinet Secretary for Health was no  
7 different.

8 So there was occasions in Cabinet and in gold  
9 command other fora where I would be pushing harder, but  
10 ultimately it became a collective decision and in this  
11 case, for example, the First Minister, the former  
12 First Minister's belief that if we had imposed  
13 restrictions, particularly during the Euros, the public  
14 just would not accept it. And that, of course, would be  
15 dangerous for compliance and then we would not just lose  
16 the public, which was important in relation to future  
17 compliance, but we'd also have no impact on the virus  
18 either.

19 **Q.** You used the expression in one of the passages I went to  
20 there, the possibility of "losing the dressing room",  
21 that expression features on a number of occasions in  
22 your exchanges with Professor Leitch. Again, at this  
23 stage, are you effectively suggesting that although  
24 there is good evidence to suggest that more needed to be  
25 done, the concern was that you would lose the confidence  
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1 the possibility of losing the dressing room by using  
2 strategies you suggested were used early in the  
3 pandemic: explaining things to people, explaining what  
4 the data was, explaining why it was in their interests  
5 to adhere to the restrictions. It seems here that there  
6 is a discussion about those risks, a discussion about  
7 that data, but you simply give up and rely on instinct?

8 **A.** No, again, I don't agree that we gave up. There was  
9 first and foremost at this point restrictions in place.  
10 It'd be wrong for anybody to suggest there wasn't any  
11 level of restriction in place. But what we also did was  
12 we took additional measures, particularly in relation to  
13 the fan zone but also of course, you'll be aware, in  
14 addition to the fan zone there was some matches being  
15 played at Hampden, with a reduced capacity, so we made  
16 sure that significant mitigations were put in place in  
17 relation to testing availability, test kits being sent  
18 out to people, mitigations around hand hygiene, one-way  
19 systems, and so on and so forth. We took a number of  
20 mitigations. So this wasn't a case of, "Look, we're not  
21 going to take any action, we just have to live with what  
22 will happen".

23 And ultimately of course the data demonstrates that,  
24 when we look at the Public Health Scotland Covid-19  
25 statistical report of 28 June 2021, that between 11 and  
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1 28 June, 1,991 people in Scotland with a Covid diagnosis  
 2 were identified as having attended one or more Euro 2020  
 3 events during the infectious period, but they were  
 4 tagged in terms of what events they attended, and nearly  
 5 two-thirds of the cases, 1,294 people, reported  
 6 travelling to London for a Euro-related event and game.  
 7 When we look at those who were tagged for the fan zone,  
 8 out of the 1,991, 55 cases came as part of the fan zone  
 9 or travelled to the fan zone, and the Scotland match  
 10 against Croatia, 38 tags, and the Scotland match versus  
 11 the Czech Republic, 37 tags.

12 So really a small proportion of those positive cases  
 13 went to the fan zone or indeed attended a game at  
 14 Hampden, and that, to me, says that the mitigations we  
 15 put in place were relatively effective.

16 **Q.** Could I then follow this attempt to try to understand  
 17 the decision-making process over this period into the  
 18 later variant emergence which you mentioned yourself,  
 19 the Omicron variant, so if we could go then to --  
 20 I think it's the same document, 4792, at page 45.

21 So at this stage late November Omicron has started  
 22 to become the next issue that we have to deal with.  
 23 I think that you say in your statement that there were  
 24 some gaps in data around Omicron which caused some  
 25 issues around that time. Could you tell us, do you

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1 immune escape, such that the vaccines might not work as  
 2 effectively against this new variant. Is that broadly  
 3 correct?

4 **A.** Yes, correct.

5 **Q.** Yes. So at this stage one might think that one required  
 6 to reimpose or reconsider a precautionary approach,  
 7 because of the possibility that the great protector, the  
 8 game-changer, as you described it, the vaccine, may no  
 9 longer be the protection which it might at once have  
 10 been; is that right?

11 **A.** That is one conclusion, yes.

12 **Q.** Is that a fair assessment of the approach which ought to  
 13 have been taken?

14 **A.** Well, again, it depends when the decision was taken  
 15 because every day we were learning more and more about  
 16 the variant, its characteristics, possible immune  
 17 escape, et cetera, et cetera.

18 **Q.** So if I could take you to an exchange, please -- I'd  
 19 taken you to at page 45, sorry, before asking you that  
 20 question -- at 13 December at 19.56.

21 **A.** Yeah.

22 **Q.** Discussion here in this context where you again  
 23 discussing, as we see often, with Professor Leitch:

24 "Keep me updated on what comes out FM call. I will  
 25 be really disappointed if we end up with just window

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1 recall what the gaps in data were around this period  
 2 that caused difficulty in trying to come up with  
 3 a strategy?

4 **A.** In terms of Omicron?

5 **Q.** Yes. I could read the passage out if it's more helpful,  
 6 it might refresh your memory:

7 "I do recall times when there were gaps in the data,  
 8 scientific information or advice, particularly in  
 9 relation to a new variant. For example, when  
 10 information emerged about a new Covid-19 variant,  
 11 Omicron, in late November 2021, advisors were  
 12 understandably unsure about the extent of immune-escape  
 13 or severity of Omicron. The scientific research was  
 14 still in the early stages in South Africa (where Omicron  
 15 was first identified) and while it was quickly  
 16 established that it had a high transmission rate, other  
 17 factors such as how it would impact those who had the  
 18 booster vaccine were unknown. The lack of scientific  
 19 understanding was communicated to Cabinet at the time,  
 20 both from the CMO and in papers provided to Cabinet and  
 21 taken into account when making decisions."

22 So I think you're trying to say there that, simply  
 23 as a result of the fact it was a new variant. There was  
 24 inevitably a lack of data about -- one of the particular  
 25 factors about it was whether there was going to be

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1 dressing."

2 To which, at 20.13, Professor Leitch described:

3 "It's window dressing. We edged her to limiting  
 4 households everywhere we could but it's marginal.  
 5 Nothing significant."

6 You say:

7 "Just don't get it. Take it it's coming down to  
 8 finance? So big events can continue, people can meet in  
 9 as big as numbers as they like in pubs and restaurants?  
 10 Madness."

11 You say:

12 "Working from home?"

13 Professor Leitch says:

14 "All about money."

15 Professor Leitch says:

16 "Yep.

17 "Yes. In regs."

18 You say:

19 "Frustrating. Thought Kate [which I assume is  
 20 a reference to Ms Forbes, is that right?] might have  
 21 pulled something out of the bag. Was she on the call?  
 22 I have might try and call her tonight will have limited  
 23 effect i suspect but be helpful to understand the  
 24 analysis she has done of costs involved."

25 So is the position here that you are suggesting that

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1 greater steps require to be taken to deal with this  
 2 situation but for, amongst other reasons, financial  
 3 reasons those steps are not being taken, which is  
 4 causing you a great deal of frustration?  
 5 **A.** That is a fair summary, so -- and I remember this period  
 6 very, very well, and I go back to the comments I made  
 7 a moment ago in response to a different question that  
 8 you asked. As Cabinet Secretary for Health I was always  
 9 going to be the person round the Cabinet table that was  
 10 pushing the government to go further, to go faster, to  
 11 go harder, given that I was the one that was dealing  
 12 with health on a day-to-day basis and seeing the impacts  
 13 on the health service.

14 I think the other important point of context are in  
 15 funding and finance here, which is exceptionally  
 16 important, is of course by this point I believe the  
 17 UK Government had already significantly reduced, if not  
 18 entirely withdrawn, its funding in relation to business  
 19 support. So therefore if we were going to try to find  
 20 money for business support, if we were going to  
 21 introduce restrictions on hospitality, then we would  
 22 have to find that compensation within the Scottish  
 23 Government's budget, which was already under extreme  
 24 pressure given that we were still -- we had been  
 25 fighting the pandemic that whole year.

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1 limited households -- limiting households everywhere,  
 2 you know, but it's marginal. I would have wanted us to  
 3 go further.

4 I think by this point we also had a better  
 5 understanding about immune escape and that the vaccine  
 6 was still very effective against -- a booster dose of  
 7 that vaccine was incredibly effective against Omicron  
 8 variant. So, again, as well as NPIs, the  
 9 non-pharmaceutical interventions, we were also looking  
 10 at how we would rapidly increase the level of  
 11 vaccination as well.

12 **Q.** There are some further exchanges in this regard  
 13 expressing your frustration with the position the  
 14 First Minister seemed to take. This period -- the  
 15 correspondence goes on in this vein over this period.

16 If I could take you down a bit further, please, to  
 17 5 January 2022 at 1.19 -- sorry 1.18, page 48?

18 1.18, yes:

19 "It is grim [you say] but FM is right, public aren't  
 20 with us. They now hear what they want to hear 'less  
 21 severe' 'one in ICU with Omicron'."

22 Professor Leitch says:

23 "Yep. I agree. And I kind of agree with them.  
 24 I can't find any evidence of ICU increases or deaths  
 25 globally. So...it's a health service problem now."

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1 So there is no doubt that I had thought at this  
 2 period in time that we should have gone further, and I'm  
 3 not sure if it's quite at this time or slightly later in  
 4 the month that we end up with an options paper around  
 5 various different options that Cabinet considers. Now  
 6 it's no surprise that I am the one who opts for what  
 7 I think was option C at the time, which was the one with  
 8 the most restriction in place, including further  
 9 restriction on hospitality and leisure. But we had to  
 10 consider not just all four harms, which was our guiding  
 11 light, but we had to consider whether or not we would be  
 12 able to compensate businesses or not if we added further  
 13 restriction.

14 So, yes, I think your summary is fair, I wanted to  
 15 go further, but ultimately that had to be a collective  
 16 decision that Cabinet would have had in considering all  
 17 of the factors, including finance of course, as well as  
 18 ultimately the priority, which is public health.

19 **Q.** First Minister, over this period, as we describe, there  
 20 was considerable uncertainty as to what might happen.  
 21 There was a threat from a new variant, cases were  
 22 rising; there was a need to take a precautionary  
 23 approach, was there not?

24 **A.** Yes, and that's why further limitations were brought in  
 25 and you can see that from the exchange with Jason,

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1 You say:

2 "So means we have to deal with the consequences, ie  
 3 somehow ensure our NHS doesn't completely collapse. I'm  
 4 not entirely sure we can deliver on that but I'm going  
 5 to have to do everything in my power to make sure it  
 6 doesn't."

7 Then at 1.22 you say:

8 "We have asked a lot of the public. But we've lost  
 9 the dressing room on this one. After 21 months 'save  
 10 the NHS' isn't enough to stop them living their lives as  
 11 close to normal as they can get."

12 Does this exchange indicate, First Minister, that by  
 13 this stage, in light of record numbers of cases and the  
 14 NHS in collapse, you had lost the faith of the Scottish  
 15 people such that the virus was able to run rampant  
 16 without control?

17 **A.** No, that is not the interpretation. The interpretation  
 18 is that we have, as we say in the exchange that's  
 19 highlighted, we have asked a lot of the public. That  
 20 was true. Never, never in my life could I have imagined  
 21 that I would ever be in a position in politics that  
 22 would require me, necessitate me to now have to  
 23 effectively keep people under lockdown. Not in effect;  
 24 we did keep people in lockdown. This was the biggest  
 25 decisions I think a government has ever made, certainly

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1 in recent times, and we didn't just ask the public to do  
2 that once, we asked them to live by these restrictions  
3 on multiple occasions.

4 So there's not a blame here, neither on the public  
5 but nor do I think it is correct to attribute blame to  
6 the government for the fact that the public had had  
7 enough of restrictive measures. But when you have  
8 a vaccination programme in place that was effective,  
9 when you have a testing system that's in place that has  
10 shown to be effective, then -- and when we are seeing  
11 a new variant but that new variant, thankfully, because  
12 of the vaccine, largely down to the vaccine, is not  
13 causing as much severe illness perhaps as if we didn't  
14 have the vaccine, and people are hearing that there's  
15 one person in ICU for example with Omicron, then it  
16 would have been if not virtually impossible, extremely  
17 difficult to impose a level of restriction akin to  
18 lockdown that would have undoubtedly had the impact of  
19 reducing case numbers, but I don't think we would have  
20 had compliance with -- from the public.

21 **Q.** I've two very brief further questions.

22 I understand that during the course of your  
23 evidence, I think you alluded to this earlier in  
24 connection with the WhatsApp situation, that you have  
25 announced an externally led review into the Scottish  
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1 from hospital care. The Scottish Government are aware  
2 that older people were more at risk of serious illness  
3 from the virus, but in the initial stages of the  
4 pandemic there was an evolving understanding of  
5 asymptomatic transmission. As the knowledge and  
6 understanding grew, our testing regime was changed  
7 accordingly in response."

8 Then you explain that this is why there was a change  
9 in routinely testing from those -- from hospital to  
10 care homes who were asymptomatic to testing all people  
11 moving from hospital to care homes on 21 April 2020.

12 We see from our discussion of Cabinet meetings that  
13 the issue of care homes was frequently discussed, and  
14 I would like to ask you, as a member, I appreciate, of  
15 the Cabinet but not as the member who had specific  
16 responsibility for this, but nevertheless a member of  
17 the Cabinet who was making these decisions: what was  
18 your understanding, and when did you become aware of the  
19 possibility of asymptomatic transfer of Covid-19?

20 Now, before you respond to that, I use the word  
21 "possibility" with care. Not when did it become clear  
22 that that was an issue, but can you recall when the live  
23 issue of asymptomatic transfer was a possibility?

24 **A.** Thank you.

25 Can I reiterate, now that I'm speaking directly to  
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1 Government's use of WhatsApp and non-corporate  
2 technology; is that correct?

3 **A.** Yes.

4 **Q.** That review will not have access to WhatsApps which have  
5 been destroyed by ministers and senior officials, will  
6 it?

7 **A.** No.

8 **MR DAWSON:** I have no further questions, my Lady.

9 There are some pre-Rule 10 questions from  
10 Ms Mitchell.

11 **LADY HALLETT:** Yes, there are.

12 Ms Mitchell.

#### 13 Questions from MS MITCHELL KC

14 **MS MITCHELL:** First Minister, I appear as instructed by  
15 Aamer Anwar & Company on behalf of the Scottish Covid  
16 Bereaved.

17 I wish to ask you some questions particularly in  
18 relation to Covid symptoms.

19 I would like a document brought up, please. It is  
20 INQ000273956, paragraph 341.

21 I'll start by explaining that paragraph says:

22 "In 2020, the Cabinet Secretary for Health and Sport  
23 would have received advice from scientific and clinical  
24 experts in relation to the risk of transmission within  
25 care homes of patients being discharged to care homes  
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1 you as the representative of Scottish Covid Bereaved,  
2 can I reiterate that apology that I made at the  
3 beginning for the way that we've handled the WhatsApp  
4 issue. It was not good enough and it has caused,  
5 I know, serious grief and re-trauma for those that you  
6 represent, and there's no excuses from me, that should  
7 have been handled better and in the future will be  
8 handled better.

9 In relation to the substance of your question,  
10 I couldn't give you an absolute date of when the  
11 possibility became clear. As you can imagine, many of  
12 us in government, regardless of whether they were  
13 health secretary at the time or not, have reflected on  
14 this issue and this question of asymptomatic testing for  
15 those who were being discharged from hospitals into  
16 care homes, and there will be a long list of potential  
17 lessons that the government and governments could have  
18 learnt.

19 I think the issue around possible asymptomatic  
20 transmission of the virus was known as a possibility  
21 early on, through various international journals,  
22 through various academic articles, and there will be  
23 a number of things that we could have done better.

24 It is in my view, as the current First Minister,  
25 that we should have been testing those who were leaving  
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1 hospitals, going into care homes who were asymptomatic  
2 sooner than we actually did.

3 **Q.** Can I press you: when you say early, when are we talking  
4 about, January, February?

5 **A.** Forgive me, I couldn't recall exactly when that was --

6 **Q.** So I suppose implicit in your response was that you were  
7 aware of the possibility of asymptomatic transfer at the  
8 time it was decided to move people from hospitals into  
9 care homes?

10 **A.** Yes. Yes, I mean, I would certainly say that  
11 pre-21 April 2020 I think it would be fair to say that  
12 there was a possibility -- and that was the word you  
13 very specifically used -- because it wasn't clear, may  
14 not have been clear well in advance of that date, but it  
15 was certainly a possibility that asymptomatic  
16 transmission could have happened and therefore, as  
17 I say, if there's an area of reflection that I think  
18 about very often, it is whether we should have -- and it  
19 is my view actually we should have -- perhaps more  
20 routinely tested those moving from hospitals to care  
21 homes who were asymptomatic sooner.

22 **Q.** I understand that you've reflected upon that and that's  
23 your view now. Can you explain to the Inquiry what your  
24 thinking -- what the impact of that was at the time,  
25 what your thinking was at the time when you decided:

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1 tests, rapid tests, which became -- again, evolved over  
2 time to become far more accurate than they were.

3 But when it became clearer, because we talked about  
4 a possibility of asymptomatic transmission, when it  
5 became clearer of course we moved to a position of  
6 routinely testing.

7 **Q.** But prior to that time it appears that, balancing things  
8 out, that was a risk you had to take?

9 **A.** We were always trying to balance a number of factors and  
10 risks, overwhelming of the NHS, nosocomial infection,  
11 impact on care homes, and so on and so forth, and --

12 **Q.** May I move on to my next question, and that is in  
13 relation to the changing picture of Covid symptoms over  
14 the piece.

15 Now, we've heard evidence even as early as February  
16 and certainly in March of 2020, we heard evidence from  
17 Dr Donald Macaskill saying that they were aware at  
18 Scottish Care that symptoms demonstrated as being Covid  
19 symptoms were not manifesting in the same way as in  
20 a population which was particularly old and with  
21 multiple comorbidities.

22 We have then at a later stage, June 2020, Public  
23 Health Scotland highlighting the fact that symptoms in  
24 the elderly are different, and also Public Health  
25 Scotland, in June 2021, indicating that older

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1 well, there might be a possibility of asymptomatic  
2 transfer but I'm still going to be a collective part of  
3 a decision to transfer from the hospital environment  
4 into the care home environment?

5 **A.** Yes, so I can try to talk you through that to the best  
6 of my ability. So, first of all, it is the issue around  
7 a possibility. And I should say at this point I also  
8 had a family member in a care home, my wife's gran,  
9 who's in a care home to this day. And therefore we  
10 always try to understand the issues that were affecting  
11 care home relatives, in particular, and those who were  
12 in care homes, because for them it wasn't the care home,  
13 it was their home.

14 In terms of the possibility, the various factors we  
15 had to consider were at this point, in early days of the  
16 pandemic, we were extremely concerned about the  
17 overwhelming of the NHS and whether or not we would have  
18 the sufficient bed capacity or not, particularly in  
19 advance of any vaccine.

20 The other thing that we had to consider was the  
21 testing infrastructure. Now, the testing infrastructure  
22 built up over a period of months and years, even -- but  
23 certainly over a period of months we were able to ramp  
24 it up, but we did have limitations in terms of the  
25 testing infrastructure and also the reliability of

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1 compromised residents may present with atypical or  
2 non-specific symptoms, and list them.

3 My Lady, for reference, that is INQ000241655.

4 After you became Cabinet Secretary for Health and  
5 Social Care in May 2021, you met the group now known as  
6 the Scottish Covid Bereaved on 17 August 2021, and  
7 during the course of that conversation they raised with  
8 you the issue of Covid-19 symptoms being restricted to  
9 temperature, persistent cough and a loss of sense of  
10 taste or smell, and you recall that you confirmed that  
11 the UK Health Security Agency was responsible for the  
12 symptoms and would not at that stage change it.

13 You say that in respect of the steps taken to revise  
14 the symptoms, you recall enquiring of the CMO as to the  
15 potential scope for expanding the line of symptoms.

16 In that regard, this would be Gregor Smith that you  
17 would have been asking, do you recall if you asked him  
18 in person or in writing?

19 **A.** Forgive me, it certainly would have been in person,  
20 I can't remember whether or not there was also a written  
21 exchange, be that over informal communication or  
22 formally, but the Scottish Covid Bereaved of course  
23 raised it, as you rightly say, and that's minuted. It  
24 was also raised by other groups as well that there may  
25 be additional symptoms, and there was of course primary

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1 core symptoms and then what was known sometimes as  
 2 secondary symptoms. But ultimately these were clinical  
 3 decisions. There is no way that I, nor the previous  
 4 DFM, who met Scottish Covid Bereaved --  
 5 **Q.** No, I'm sorry to interrupt you, First Minister, I'm just  
 6 wanting to see whether or not you asked him, and  
 7 presumably he followed that up, because in the paragraph  
 8 you give, we don't hear what the response was. Can you  
 9 remember what the response --  
 10 **A.** Yes, he would have had a discussion with the other CMOs  
 11 of the United Kingdom and for -- the clinical expertise  
 12 would have been to maintain those core symptoms as they  
 13 were. Now, they would have taken a whole raft and range  
 14 of clinical advice and used their clinical expertise to  
 15 come to that decision, and I go back to saying that  
 16 ultimately it was always going to be a clinical  
 17 decision.  
 18 **Q.** Finally, why when health is a devolved matter did it  
 19 require the UK Health Security Agency to identify the  
 20 symptom profile, as fed into it by the four CMOs? Why  
 21 couldn't Scotland go its own way in that regard?  
 22 **A.** Yeah. I think in essence if we had -- if the CMO and  
 23 the clinical advice had come back to say very strongly  
 24 that "We believe that there should be XYZ symptom added  
 25 to the core symptoms", that may have been a possibility.

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1 I think we were very, very keen in this sense to try to  
 2 keep UK alignment, to try to make the issue more simply  
 3 understood in relation to the core symptoms right across  
 4 the UK. But this again, I go back to the point, there's  
 5 always going to be an issue of clinical advice as  
 6 opposed to ministerial decision or direction.

7 **MS MITCHELL:** My Lady, those are my questions.

8 **LADY HALLETT:** Thank you, Ms Mitchell.

9 Thank you very much, First Minister, I'm very  
 10 grateful to you.

11 Sorry about the constant coughing, I'm afraid it's  
 12 been a feature of this Inquiry, certainly in Scotland.

13 I will see everybody on Monday at 10 am.

14 **THE WITNESS:** Thank you my Lady.

15 (The witness withdrew)

16 (4.33 pm)

17 (The hearing adjourned until 10 am  
 18 on Monday, 29 January 2024)

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