

Witness Name: Humza Yousaf

Statement No.: 1

Exhibits: HY

Dated: 2nd November 2023

UK COVID-19 INQUIRY

WITNESS STATEMENT OF HUMZA YOUSAF

In relation to the issues raised by the Rule 9 request dated 28 July 2023 in connection with Module 2A, I, Humza Yousaf, will say as follows: -

- 1 I am Humza Yousaf of the Scottish Parliament, Edinburgh, EH99 1SP. I am currently the First Minister of Scotland and Leader of the Scottish National Party. I am responsible for leading the Scottish Government, with the support of Cabinet Secretaries and Ministers. I have been in this role since March 2023.
- 2 In the preparation of this statement, I have referred to records and material provided to me by the Scottish Government. I have also received assistance from the Scottish Government Covid Inquiry Response Directorate. Due to the significant volume of questions and material that the Inquiry has asked me to consider, I was also assisted in identifying documents and factual information relevant to the questions being asked to assist in the preparation of my statement. However, any views or opinions expressed in this statement are my own. The structure and headings of this statement accords, as requested by the Inquiry, with those set out in its Rule 9 Request.
- 3 Unless stated otherwise, the facts stated in this witness statement are within my own knowledge and are true. Where they are not within my own knowledge, they are derived from sources to which I refer and are true to the best of my knowledge and belief.
- 4 References to exhibits in this statement are in the form [HY/number - INQ000000].

A. Decision-Making Structures

Roles and Responsibilities

- 5 Between 19 May 2021 and 28 March 2023, I served as Cabinet Secretary for Health and Social Care. I held primary responsibility for the Health and Social care Directorates and NHS Scotland. This included Primary Care, Allied Healthcare services, health care and social integration, carers and adult care, child and maternal mental health and medical records.
- 6 I also had lead responsibility for a number of public bodies including NHS Scotland, the Care Inspectorate, the Mental Welfare Commission for Scotland, the Scottish Social Services Council and Sport Scotland.
- 7 Between 28 June 2018 and 19 May 2021, I served as Cabinet Secretary for Justice. I held primary responsibility for a broad portfolio which included policing, fire and rescue services, the justice system, courts and sentencing, youth justice and legal aid.
- 8 I also had lead responsibility for a number of public bodies, including the Scottish Police Authority, the Scottish Fire and Rescue Service, Scottish Courts and Tribunals Service, the Scottish Social Services Council and the Scottish Prison Service.
- 9 Prior to this I served as Minister for Transport and the Islands from 18 May 2016 to 28 June 2018 and my main portfolio responsibilities were public transport, energy, connectivity and cross government co-ordination on islands.
- 10 I served as Minister for Europe and International Development from 21 November 2014 to 18 May 2016 and my main portfolio responsibilities were international development, fair trade and cross government co-ordination on the European Union. I held similar responsibilities from 21 November 2014 to 18 May 2016 as Minister for External Affairs and International Development.

Decision-making structures within the Scottish Government in response to the Covid-19 pandemic

- 11 The role of Ministers, Cabinet, Civil Servants and Special advisors in the Scottish Government's decision-making process is set out in the *Scottish Ministerial Code*,

- provided [HY/001 - INQ000131054], as is the basis of 'collective responsibility' in Cabinet decision-making.
- 12 There was no divergence that I am aware of from the *Scottish Ministerial Code*, or the roles described therein, during the pandemic. Further information is provided in Annex A of the Code [HY/001 – INQ000131054] which outlines the Scottish Government decisions terminology and hierarchy, and also in the Module 2 DG Strategy and External Affairs corporate statement, provided 23 June 2023, which explains the process of decision-making during the pandemic.
 - 13 The primary decision-making structure for core decision-making in Scotland during the pandemic was Scottish Cabinet. If a decision was to be made urgently, Scottish Cabinet would be called to make this decision. On occasion during the pandemic, due to the large membership of Cabinet, a smaller group of core Cabinet members would meet to consider more rapid advice. For example, if there was an update domestically on the evolution of the virus or if there was information about a new and emerging variant. These meetings were informally referred to as 'Gold Command' and attendance would depend on the issue in question. The Scottish Government Resilience Room (SGORR) was also regularly convened to provide situational updates, and were attended by appropriate Cabinet Secretaries and Ministers, and where necessary decisions were also taken and recorded.
 - 14 As Cabinet Secretary for Justice, between January 2020 and May 2021, I was asked by the then First Minister to take responsibility for travel restrictions and exemptions associated with the pandemic response, on top of my responsibilities as Justice Secretary. On that basis, I attended regular calls and meetings with the Four Nations Cabinet Secretaries for Transport. These meetings focused on travel restrictions and exemptions.
 - 15 Later, as Cabinet Secretary for Health and Social Care, from May 2021 to April 2022, I attended regular calls and meetings with the Four Nations Cabinet Secretaries for Health. These meetings were held weekly, and if they could not be held weekly, they were held fortnightly. A timeline which details attendance at these meeting is provided: [HY/002 - INQ000147475].
 - 16 I regularly attended SGORR meetings, where the strategic direction for the Scottish Government's response to the pandemic would be set. My dates of attendance are listed below:

2020	2021	2022
17 February	29 September	05 January
25 February	06 October	26 January
02 March	21 October	
09 March	27 October	
16 March	31 October	
19 March	10 November	
23 March	17 November	
06 April	10 December	
09 April	15 December	
31 July	22 December	
1 September	30 December	
21 December		
23 December		

- 17 I did not attend any COBR(M) meetings during the pandemic as invitations to these were generally only extended to the First Minister or the Cabinet Secretary for Health and Sport, a position held by Ms. Freeman when these meetings occurred in 2020.
- 18 The overarching principle which guided core political and administrative decision-making within the Scottish Government during the pandemic was protecting as many lives as possible and reducing harm as much as possible. This is reflected in the *Covid-19 - A Framework for Decision Making* [HY/003 – INQ000256711] which stipulated that Scottish Government decisions-making should be safe, lawful, evidence-based, fair and ethical, clear, realistic and collective.
- 19 As Cabinet Secretary for Justice, I was responsible for a broad portfolio as outlined above. During the pandemic I was provided with advice, information and evidence from a wide range of experts, stakeholders, and advisory groups to inform key decisions. For example, Justice Analytical Services collected data from a range of partner organisations, such as Police Scotland, to inform Scottish government policy making and published regular statistical reports.
- 20 Another pertinent example is the Independent Advisory Group (IAG) on Police Use of Temporary Powers, established in April 2020 by the former Chief Constable, which reviewed Police Scotland's use of new temporary police powers to tackle coronavirus. The IAG reported directly to the Scottish Police Authority and their

findings were used to reflect and inform the Scottish Government's policy approach to the enforcement of Non-Pharmaceutical Interventions (NPIs).

- 21 I was in regular contact with the former Chief Constable and from March 2020 our regular meetings were extended to a bi-weekly frequency. These allowed the Chief Constable to update me on areas such as public compliance to NPIs, PPE supply for Police Officers, assaults on Officers, feedback on the issuing of Fixed Penalty Notices (FPNs) and providing assurance on Police Scotland's approach to engaging with the public around NPIs.
- 22 Further information has been outlined in the DG Education and Justice (Justice) statement, provided to the Inquiry on 23 June 2023.
- 23 As Cabinet Secretary for Health and Social Care, I was responsible for the health and social care portfolio, including NHS Scotland, as described above. I was provided with advice, information and evidence from a myriad of clinical and scientific experts, Scottish and intergovernmental advisory groups and stakeholders. These have been described in the DG Health and Social Care and DG Strategy and External Affairs corporate statements, provided to the Inquiry on 23 June 2023.
- 24 In my roles as Cabinet Secretary for Justice and as Cabinet Secretary for Health and Social Care, I worked closely with the then First Minister, Nicola Sturgeon, with respect to decision-making. Decision-making during the pandemic was novel in many regards and required consultation with the former First Minister, especially in the early stages of the pandemic.
- 25 I was engaged in regular communications with the former First Minister, with the frequency of interaction increasing after my appointment as Cabinet Secretary for Health and Social Care in May 2021.
- 26 Between January 2020 and April 2022, I had a close working relationship with the then Deputy First Minister, John Swinney. I communicated with him frequently throughout this period. We were both part of Scottish Cabinet and we communicated in Scottish Cabinet meetings. The former Deputy First Minister chaired a regular Covid-19 Public Services Ministerial Group (CPSMG) which comprised of a number of Cabinet Secretaries to discuss the impact of Covid-19 and work across various portfolios. I attended this group both as Cabinet Secretary for Justice and as Cabinet Secretary for Health and Social Care. The former Deputy First Minister and I were also members of SGORR and communicated at those meetings.

- 27 I would communicate with both the former First Minister and the former Deputy First Minister using video call and phone calls, especially during the early stages of the pandemic, when there were restrictions on meeting face to face. When we were back in Parliament and lockdown restrictions had eased, it would be very common to have a quick face-to-face meeting with the former First Minister or the former Deputy First Minister. My preferred method of communication with both of them was face-to-face.
- 28 I also used WhatsApp to discuss matters with the former First Minister and the former Deputy First Minister. If any decisions were made these were recorded using the appropriate channels through our respective private offices.
- 29 In my role as Cabinet Secretary for Health and Social Care I worked closely with Kevin Stewart and Maree Todd, the Ministers for Mental Wellbeing and Social Care and Public Health, Women's Health and Social Care in reaching key political and administrative decisions about the way in which the pandemic was managed in Scotland between May 2021 to April 2022.
- 30 Kevin Stewart, Maree Todd and I were involved in a weekly call with Special Adviser Davie Hutchison. Our offices were next to each other, and we would meet regularly when Covid restrictions eased. Kevin Stewart and I also had a regular call with various Scottish Social Care stakeholder groups, especially relating to recovery from the pandemic. I also had a regular weekly meeting, usually on a Thursday, with NHS Chief Executives and Chairs, as well as local Government representatives. This meeting would include discussion on a range of Covid-19 related issues, including the vaccine programme, pressures within NHS Scotland and recovery. Kevin and Maree would attend this meeting on occasion.
- 31 I primarily communicated with Kevin Stewart and Maree Todd using telephone calls, video calls, face-to-face meetings and WhatsApp messages. My methods of communicating with them depended on the stage of the pandemic. In the stages of the pandemic, when lockdown restrictions were in place, we could not meet face-to-face. When it was permitted, my preferred method of communication was face-to-face. In my experience, key decisions were not routinely made over Whatsapp.
- 32 In my role as Cabinet Secretary for Justice, I worked closely with my special advisers, Justice Ministers, the former First Minister and the former Deputy First Minister. I also worked closely with the Cabinet Secretary for Transport at the time, Michael Matheson.

- 33 In my role as Cabinet Secretary for Health and Social Care, I worked closely with my Junior Ministers, Kevin Stewart and Maree Todd, the former First Minister, the former Deputy First Minister, the Chief Medical Officer (CMO), the National Clinical Director (NCD) and other special advisors. When it was permitted, my preferred method of communication with these individuals was face-to-face.
- 34 The group of key decision-makers within the Scottish Government had good and effective personal and working relationships during the pandemic. There was a good understanding of the pressure everyone in the Scottish Government was working under. Key decision makers trusted each other, and understood the significant pressures we were all under, but in particular the former First Minister, who had rightly in my view, chosen to front up the communication of our response to the pandemic on a daily basis. The Scottish Government also had a good working and personal relationship with its advisors during the pandemic. These good relationships allowed the Scottish Government to make decisions with significant speed. Cabinet Secretaries and Ministers were well empowered within their portfolios, which worked well.
- 35 In relation to how decision-making could have been improved during the pandemic, I believe there were times when a decision made by the former First Minister or discussed within Gold Command was not cascaded to the rest of Cabinet or all Ministers due to the fast nature of decision-making during the pandemic. We did our best to explain the rationale of decision making but the feedback from some groups, in particular the hospitality industry, was that the rules were changing too often, with decisions made before guidance was available. On reflection, there may have been instances where we could have worked with industry on guidance before making a final decision on restrictions. I believe this could have been improved. In relation to advisory structures, my experience is that the advice was always ready and available when needed.
- 36 In relation to information sharing between the Scottish Government and the UK government, I believe there was, in the main, good working relationships during the pandemic. However, there were times when the Scottish Government was not informed about decisions made by the UK government before these decisions were reported in the press. In my role as Cabinet Secretary for Justice, I would often hear from the press about travel restrictions on certain countries before the UK government would inform the Scottish Government about these restrictions in Four Nations calls. It would have been helpful for the Scottish Government to have sight of

these decisions prior to them being reported in the press. We raised this issue with the UK Government during the course of the pandemic.

Informal decision-making and communication

- 37 Key decisions about the Scottish Government response to Covid-19 were made in formal meetings and recorded. In my experience, it was very rare for a decision to be made at informal meetings. I do not recall any key decision being made at an informal meeting without it being appropriately recorded by either an official, special adviser or member of our respective private offices. I would on occasion have discussions with the former First Minister or the former Deputy First Minister during an ad hoc meeting, and a member of our private offices would be present to note any decisions made. If any decisions were made, or follow-up actions were agreed then members of our private offices and relevant ministers would record these decisions using the appropriate channels. If a member of my private office was not present at an informal meeting, I would inform my private office about the subject and contents of the meeting shortly after the conclusion of the meeting, who would record the content in the appropriate format.
- 38 I used the WhatsApp messaging application primarily for discussion of information and advice relating to Covid-19. I also used WhatsApp with my Private Office primarily for logistical purposes. I did not use any other messaging platform to communicate about the Scottish Government response to Covid-19 between January 2020 and April 2022. In my experience, key decisions were not routinely made over Whatsapp, where they were they would have to comply with the necessary record management policy. In terms of the extent to which mobile messaging was used by other key decision makers across the Scottish Government, I cannot comment but the Inquiry has been provided with a corporate statement from DG Corporate which specifically deals with the use of mobile messaging in Scottish Government during the pandemic.
- 39 I do not recall any meeting between core decision-makers, including the First Minister and counterparts in the UK Government between January 2020 and April 2022, to which I would have expected to have been invited in my role as Cabinet Secretary for Justice and then for Health and Social Care to which I was not party.
- 40 Prior to significant meetings, such as Cabinet meetings, I would generally be provided with an agenda, a briefing and/or meeting papers, but this would depend on

the format and nature of the meeting in question. These meetings would be recorded by officials present and the record circulated and retained on our corporate systems. The records would give an overview of the topics discussed and conclusions reached.

- 41 Discussions and decision-making in relation to significant decisions relating to the Scottish Government were made in a formal setting, in that they were recorded, a minute produced, and for the most part with officials present. In that regard, I do not believe there is a list of informal meetings which were significant in terms of the matters discussed.
- 42 . I have no record of being a member of a WhatsApp Group called "Health 4 Nations". However, I was a member of a WhatsApp Group named "Health Ministers Forum" which included Matt Hancock, who was the Group Administrator, Robin Swann the Northern Irish Minister for Health and Eluned Morgan the Welsh Government's Health Secretary. I left the group on 01/07/21 shortly after Matt Hancock resigned from Government. As I became the Cabinet Secretary for Health and Social Care in Scotland in May 2021, I was only in this WhatsApp group for a few weeks. A further four nations WhatsApp Group was set up by Eluned Morgan, and included me, Sajid Javid and Robin Swann, it was titled "Health Ministers UK". These WhatsApp group were used for information sharing as opposed to decision-making. I found WhatsApp a useful messaging app whereby Health Secretaries across the 4 Nations could share data about the spread of the virus in their localities and emerging trends and data in a timeous fashion.
- 43 I was a member of a number of WhatsApp groups with Scottish Government officials, these were mainly used to share information and logistics, and were also used during Parliamentary debates, to share necessary information. I also used WhatsApp to communicate with fellow Cabinet Secretaries on a wide range of subjects, including our response to the pandemic. I also had one-to-one WhatsApp communications with Ministers in the UK Government, other Devolved Administrations, and with oppositions MSPs, these communications were mainly used to share information about Covid-19.
- 44 I am unable to answer for other Ministers, or Scottish Government Officials, however my expectation is that all Ministers and Officials should comply with the relevant record management guidance. Where I have such WhatsApp messages over this timeframe, they are on a phone handset I no longer use, however, I have been able

to recover these messages, which will be passed over the Inquiry in full. I am not aware of any key communication relating to formal or informal meetings that have not been retained on document management systems, with the exception of any communication which is required to be deleted after a specified time as per Scottish Government guidance [HY/004 -INQ000131069].

- 45 Aside from the *Scottish Government Records Management Plan* [HY/005 – INQ000131067], there was no specific training offered in relation to the use of mobile devices during the pandemic response. However, all the records retention guidance was available on the Scottish Government intranet site and there was no change in the expectation that this guidance and the IT Code of Conduct should be adhered to during the pandemic. More information on mobile messaging use during pandemic has been provided in the DG Corporate (Mobile Messaging) corporate statement, provided to the Inquiry on 29 August 2023.
- 46 With regards to whether there are any identifiable gaps in the use of the Scottish Government's Electronic Document & Records Management System, this was outside of the roles I held with Scottish Government between January 2020 and April 2022. I believe officials are better suited to comment on any identifiable gaps as it would be part of their role to use the Scottish Government's Electronic Document & Records Management System.
- 47 I believe informal communications were helpful in sharing information, scheduling meetings, and coordinating diaries especially Four Nations and UK-wide meetings. Outside of the regularly scheduled Four Nations call with other Health Secretaries, it was difficult to find availability to meet with them, and informal communications assisted in this. I would note anything of significance from informal communication of this nature with my private office.

Inter-governmental working between the Scottish Government and (i) the UK Government and (ii) the other devolved administrations in response to the pandemic

- 48 The Scottish Parliament was established in 1998 via the *Scotland Act 1998*, as amended most extensively by the *Scotland Acts 2012* and *2016*. This allows the Scottish parliament to make primary legislation on devolved matters, such as health and education. The UK and devolved governments have agreed a Memorandum of Understanding on devolution and supplementary concordats that establishes

arrangements for liaison and dispute management. A full explanation of the devolution settlement has been provided in the DG Strategy and External Affairs corporate statement, provided 23 June 2023.

- 49 I understand that the Cabinet Office Briefing Room (COBR) is the principal mechanism within the UK Government used to coordinate intergovernmental actions in response to a UK wide crisis, or where events abroad have a significant impact in the UK. During the pandemic, Scottish Ministers were invited to attend COBR(M) (which were Ministerial as opposed to Official) meetings and these invites were generally extended to the former First Minister and the then Cabinet Secretary for Health and Sport.
- 50 During my roles as Cabinet Secretary for Justice and as Cabinet Secretary for Health and Social Care between January 2020 and April 2022, there was a clear understanding within the Scottish Government of our individual responsibilities for our respective portfolios. I believe this allocation within the Scottish Government was effective.
- 51 There was good coordination between myself and my UK counterparts in both roles during the specified time period. It is my view that these relationships worked well. In order to ensure proper coordination and communication on core decision-making amongst the Scottish Government and the UK Government, regular meetings took place between the Four Nations. I believe these regular meetings were helpful.
- 52 Between January 2020 and April 2022, in my roles as Cabinet Secretary for Justice and as Cabinet Secretary for Health and Social Care, I believe there was good communication between the Scottish Government and the UK Government for the most part. However, there were times during this period when this was not the case, and there was a lack of understanding within the Scottish Government about why certain decisions had been made by the UK Government. I can only speak about this in relation to the roles I held during this time period. I noted some frustration within the Scottish Government relating to public communication of decisions by the UK Government. In particular, I recall noting frustration within the Scottish Government in relation to not receiving communication about a decision made by the UK Government prior to its public announcement.
- 53 For example, if the UK Government had decided and announced, in relation to international travel restrictions, that a country was on the green list, the Scottish

- Government would often have to follow the decision made by the UK Government, as international travellers could arrive in England and travel domestically to Scotland otherwise. This is also an example of decision-making by the UK Government which was driven by an England-only understanding of policy issues.
- 54 Another example of when I noted the Scottish Government did not understand the rationale for decisions made by the UK Government was just prior to the Christmas period of 2020. In mid-November the UK Government announced the decision to provide an amnesty to lockdown restrictions across the festive period across England. This would allow individuals to form new social 'bubbles' and travel to see family. There would be a focus on the period on each side of Christmas to drive down infection rates to mitigate the Christmas 'spike' in Covid-19 cases. At this point Scotland was still operating under a graduated levels system and the easing of restrictions in England would have cross-border consequences for Scotland in terms of virus transmission. This decision was contrary to advice which had been provided to the Scottish Government, and in my view, there was a lack of understanding within the Scottish Government as to why this decision had been made.
- 55 In relation to inter-governmental fora working during the pandemic, I believe the ones I directly interacted with worked well. For example, during my time as Cabinet Secretary for Health and Social Care, I believe the meetings between the Four Nations Cabinet Secretaries for Health worked well, in particular around the time of the rollout of the vaccine program, testing and surveillance. It was helpful to have knowledge of the situation, progress, emerging trends and case numbers across the Four Nations. In my role as Cabinet Secretary for Health and Social Care, I believe this was the most helpful forum for inter-governmental working.
- 56 The primary source of clinical information provided to me came from the CMO for Scotland, who was in regular contact with the 4 Nations' Chief Medical Officers. The information received from the Scientific Advisory Group for Emergencies (SAGE), the Joint Committee on Vaccination and Immunisation (JCVI), Joint Biosecurity Centre (JBC) and the UK Health Security Agency (UKHSA) was useful as additional sources of information.
- 57 As well as the Four Nations meetings, I also attended the inter-governmental General Public Sector Ministerial Implementation Group (GPS MIG), which was one of four Ministerial Implementation Groups established by the UK to consider and oversee specific elements of the pandemic response. GPS MIG was chaired by the

Chancellor of the Duchy of Lancaster (CDL) and was attended by the Deputy First Minister and other Scottish Government Ministers, depending on the agenda. I attended six of these meetings on the following dates:

- 31 March 2020
- 03 April 2020
- 04 May 2020
- 05 May 2020
- 12 May 2020
- 18 May 2020

58 The topics discussed are outlined in the document provided: [HY/006-INQ000131023]. As I do not believe it is relevant to me, I have no view on whether the Ministerial Implementation Groups (MIGs) should have remained in place after May 2020.

59 I also joined phone calls with the CDL, when required, although this was infrequent.

60 I believe the discussions in these inter-governmental meetings were helpful in informing the Scottish Government's core decision-making during the pandemic. There was a desire in the Scottish Government to have as much consistency as possible across the Four Nations. It was helpful to understand where and when there were differences across the Four Nations through these inter-governmental meetings, as well as remaining updated on issues of criticality in areas where the UK Government retained the lead responsibility. For example, as the UK government was the one purchasing vaccines on behalf of all four nations, it was useful during these intergovernmental meetings to receive information on vaccine stock levels.

61 Intergovernmental advice was obtained and shared with decision makers through various channels. For example, reports and studies were produced directly from expert intergovernmental advisory groups, such as SAGE, and circulated accordingly to Scottish advisory groups, such as the Scottish Covid-19 Advisory Group (C19AG), who worked with Scottish Government officials to develop submissions and Cabinet papers for Ministers.

- 62 Cabinet meetings were the principal forum for strategic decision making and papers were circulated prior to the meetings to ensure that Ministers were provided with all the information required to make decisions on complex policy issues and that the interests of all relevant portfolios were reflected.
- 63 In my experience there wasn't a risk of information overload or repetition for key decision-makers. I do not recall any practical difficulties that arose with multiple inter-governmental fora operating in parallel.
- 64 In June 2020, I was the Cabinet Secretary for Justice. My primary role in inter-governmental engagement was in relation to Four Nations meetings relating to travel. I would also have infrequent one-to-one discussions with the Secretary of State for Justice and also the Secretary of State for Transport. In addition, I would also have bilateral discussions with Cabinet Secretaries from the other Four Nations. Inter-governmental engagement generally worked well during this period.
- 65 I do not believe that the frequency of communication was the source of the challenge for inter-governmental engagement during this period. As mentioned before in this statement, it is my view that the challenges were related to the Scottish Government's lack of sight and understanding of the rationale behind decisions being made by the UK Government. I found it challenging that the UK Government did not provide the Scottish Government information in sufficient time. This was frequently the case when making decisions around travel restrictions, that the Scottish Government was often provided information at the very last minute ahead of the meeting starting. At times, data was presented at a Four Nations meeting when decisions were required to be made. The Scottish Government would request data and information in advance of these decision-making Four Nations meetings, but this would frequently not be provided. My understanding is that these challenges were raised by the then First Minister and the then Deputy First Minister with their UK Government counterparts.
- 66 On occasion the UK Government took decisions which indirectly affected Scotland or raised cross-border issues without consulting the Scottish Government. I have mentioned previously in this statement about decisions the UK government made in relation to international travel restrictions and red and green list countries. Through my discussions with fellow Cabinet Secretaries, I believe that they also found themselves in a similar position on occasion.

- 67 Another example relates to rules around face coverings on public transport, which created cross-border issues. As restrictions eased in Summer 2021, the use of face coverings remained mandatory on public transport in Scotland while they were not mandatory in other parts of the UK. The Scottish Government had to quickly initiate a high-profile campaign to remind visitors to Scotland that a face covering was required after the border into Scotland had been crossed. I believe that I would have raised concerns about this with the UK Government in my role as Cabinet Secretary for Health and Social Care.
- 68 In my experience as Cabinet Secretary for Justice and as Cabinet Secretary for Health and Social Care between January 2020 and April 2022, I cannot recall a time when I did not receive an invite or agenda in time from the UK Government, though as previously mentioned, meeting papers were sometimes circulated at the last minute. It did appear at times during the pandemic that Devolved Administrations were not considered to be a priority by the UK Government, particularly in cases when the Devolved Administrations were not directly impacted but were indirectly impacted. While I am sympathetic in terms of the pace at which all governments were working during the pandemic, more could have been done to ensure that the Scottish Government and other Devolved Administrations received invites, agendas and papers in time.
- 69 My general experience is that there is not as good an understanding of the devolution settlement within the UK Government as there should be, especially at ministerial level. My experience is also that often UK civil servants have a better understanding of the devolution settlement than UK Government ministers.
- 70 International travel restrictions are example which illustrates how a lack of devolution capabilities hindered engagement between the UK government and the Scottish Government. For instance, I would be advised that I could make a different decision in relation to international travel restrictions for Scotland when this was not practically the case, considering that international travellers could fly into England first and then travel domestically to Scotland.
- 71 I cannot comment on whether there was any collective decision by ministers in the UK Government and the Devolved Administrations to coordinate the timing and content of public announcements as I was not part of these discussions. If an agreement existed, I believe the former First Minister would have followed any agreement on public announcements. At the beginning of the pandemic there was

occasions where press briefing appeared indicating the UK Government was frustrated by the fact the Scottish Government was making announcement ahead of them.

- 72 With respect to when the Scottish Government adhered to a Four Nations approach to the management of the pandemic and when it did not, I can only speak for my experience through the roles I held between January 2020 and April 2022. In the early stages of the pandemic, as Cabinet Secretary for Justice, I believe there was an understanding that there should be coordination between the Four Nations, even though each required flexibility over its jurisdiction. In this early stage, there was an attempt to align the approach where we could and where appropriate and, while we were conscious of the geographic and demographic differences between Scotland and the rest of the UK, this alignment was in line with the advice at the time.
- 73 As understanding and information about the impact of Covid-19 and how to navigate it evolved, each of the Four Nations became more confident in navigating the differences of managing the pandemic. I am not aware that the Scottish Government at any point consciously planned to stop adopting a Four Nations approach. Decisions in the Scottish Government were made on an issue-by-issue basis.
- 74 The Scottish Government was continuously aware of the risks of potential divergence of approach with the UK Government in the management of the pandemic. For example, I recall the Scottish Government considering the risks to public health if rules were more relaxed in England and stricter in Scotland. I also recall the Scottish Government considering the risk to businesses operating cross-border in the case that restrictions were more relaxed in England. The Scottish Government took the view that communication was key in order to mitigate these risks. The First Minister provided a daily briefing to enable communication with the public. I believe the daily briefing was very effective.
- 75 In a Cabinet meeting on 10 May 2020, the then First Minister updated Ministers in relation to the UK's intention to ease lockdown and change messaging in a way that diverged from the more cautious approach taken by the Scottish Government. The Scottish Government maintained the more cautious approach as the reproduction rate of the virus was still too high to justify any significant easing and scientific advice did not support easing at this point. It was therefore very important that public messaging continued to be clear and consistent in this regard. As for the working relationship between the Scottish Government and UK Government, I can only speak

as to the roles I occupied during the course of the pandemic. In that regard, the former First Minister's public criticism of the UK Government's approach did not affect my relationship with UK Government counterparts.

- 76 As Cabinet Secretary for Justice, I had direct and regular contact with the Cabinet Secretaries for Transport for the Four Nations and spoke to them on regular Four Nations calls. I also had direct contact with the UK Government Secretary of State for Transport, Grant Shapps.
- 77 As Cabinet Secretary for Health and Social Care, I had direct and regular contact with the Cabinet Secretaries of Health across the Four Nations. These interactions were effective and useful in providing information across the Four Nations. The nature of the personal and working relationships with these individuals was good. Everyone approached these interactions with openness and professionalism, putting aside political differences to engage in the necessary discussions. I do not recall any personal relationships that made it more challenging to work together.
- 78 Between January 2020 and April 2022, I did not interact much with Alister Jack MP, the Secretary of State for Scotland and his office. We were both present in meetings chaired by the Chancellor of the Duchy of Lancaster, but that was the extent of my interaction with him. I do not have knowledge of the role he and his office played in UK Government's core decision-making, insofar as it related to the management of the pandemic in Scotland or inter-governmental workings between the Scottish Government and the UK Government.

The other Devolved Administrations

- 79 In order to ensure proper coordination and communication on core decision-making amongst the Scottish Government and devolved administrations in Wales and Northern Ireland, the Four Nations Cabinet Secretaries for Health participated in regular Four Nations calls. This was the main method of communication with other Health Secretaries in the Devolved Administrations. These calls were helpful for the Scottish Government to understand when and why the other Devolved Administrations were taking steps in their management of the pandemic. Bilateral or trilateral calls between the Health Secretaries of the Devolved Administrations were not common.
- 80 I recall that bilateral discussions occurred between health officials of the Devolved Administrations. For example, if the position of the Scottish Government and the

Welsh Government was aligned on a specific topic, there would often be a call between officials in advance of the regular Four Nations call in order to agree to raise an issue collectively. It was my experience that if the Devolved Administrations coordinated on specific issues, it was more likely to lead to a positive result in Four Nations calls.

Funding

- 81 The measures taken by the Scottish Government in the management of the pandemic were funded through its own block grant and topped up by UK Government funding for specific measures. The former First Minister and the former Cabinet Secretary for Finance, in consultation with other Cabinet Secretaries, were responsible for budgeting for the way in which the pandemic was managed in Scotland and for securing and allocating funding for it.
- 82 The UK Government was responsible for some significant areas of funding and budgeting which affected the management of the pandemic in Scotland. This included funding related to the furlough scheme, testing and vaccination. For instance, in early 2022 the UK unilaterally announced it would stop population testing for Covid-19 in England from April 2022, in most circumstances. This significantly reduced the available consequential funding for the Scottish Government and constrained the Scottish Government's ability to decide on the length and nature of transition of the Test and Protect scheme. While the Scottish government did continue to fund testing in Scotland for a short period, the lack of budgetary capacity or required borrowing powers meant that the Scottish government had little choice but to also transition away from mass population testing. I raised these concerns publicly and with the UK Government.
- 83 In terms of the Scottish Government funding its pandemic response, one of the difficulties included the extremely high cost involved in responding to a pandemic. The Scottish Government is a devolved government with limited borrowing and taxation powers and requires the UK Government to provide funding. When UK funding was withdrawn for certain programmes, and the Scottish Government was required to provide vaccinations and testing for the Scottish public, it was impossible to fund particular measures if the requisite funding was not provided by the UK Government. The cost of the testing and vaccination programme alone was very high. The Scottish Government's primary concern was protection of public health and

how it could protect the Scottish public from harm, however clearly available funding was a consideration we had to take into account.

- 84 A key example of this situation was during the emergence of the Omicron variant in late November 2021. The furlough scheme had ended on 30 September 2021, and this significantly limited the options available to the Scottish Government in terms of tightening restrictions to control the virus. I understand this was made clear to the UK Government on an emergency four nations call on 12 December 2021 where representations were made by the former First Minister for the furlough scheme to be extended, as was the need for resources to support the increased vaccination and testing requirements. This position was also supported by the First Ministers of Wales and Northern Ireland.
- 85 This was discussed further in a Cabinet meeting on 21 December 2021, when Ministers considered the options available to control the spread on the Omicron variant in Scotland. It was noted that as the UK was not prepared to provide the Devolved Administrations with further access to mechanisms such as furlough funding or borrowing, the strongest option for controlling the Omicron variant (a 'circuit breaker' period) was therefore not considered feasible. Instead, restrictions could only be targeted across the hospitality sector and business closures limited to the nightclub sector. Funding was provided by the Scottish Government, through various funds, for all businesses affected by the restrictions
- 86 Further examples of the numerous representations Scottish Ministers made to the UK Government outlining their concern about the lack of fiscal flexibility and the availability of funding in Scotland throughout the course of the pandemic are outlined in the DG Exchequer (Addendum) corporate statement, provided to the Inquiry in draft on 28 August 2023.

Conclusions and Lessons Learned

- 87 The procedures for considering, recording and implementing core decisions made by the Scottish Government have been outlined in paragraphs 11-36 of this statement and I believe these procedures were fit for purpose.
- 88 In relation to the response to Covid-19, I did not have any concerns regarding the performance of the former First Minister, former Deputy First Minister, any Cabinet Secretary, Minister, senior civil servant, special advisor or individual in charge of a significant aspect of the Scottish response to the pandemic between January 2020

and April 2022. Members of the Scottish Government were all working with the information that they had and tried to make the best decisions possible in responding to a novel virus.

- 89 In relation to the response to Covid-19, I did not have any concerns regarding the performance of any of my counterparts in the UK Government or the Devolved Administrations with whom I had dealings between January 2020 and April 2022. There were of course frustrations in aspects of dealing with the UK Government which I have outlined in previous paragraphs.
- 90 I do not think adopting a pan-UK Civil Contingencies Act approach would have provided sufficient local flexibility and decision making, it is also unclear what benefits there would be from adopting such an approach for responding to the pandemic.

B. Sources of advice: medical and scientific expertise, data and modelling

Advisory bodies

- 91 A wide range of advisory groups were used throughout the pandemic, some of which were in place prior to January 2020 and some which were stood up specifically in response to pandemic.
- 92 As stated earlier in the statement, SAGE was the initial intergovernmental source of information in the early pandemic. During the course of the pandemic, the Scottish Government had regular access to papers produced by SAGE and the output of SAGE meetings. I did not attend any SAGE meetings and it was not usual for Ministers attend. However, officials and advisers were sometimes invited to attend as observers and could draw on the discussion and evidence presented in formulating advice to Scottish Ministers. The CMO Scotland and Deputy Chief Medical Officer (DCMO) were members of SAGE.
- 93 The JCVI and Joint Biosecurity Centre (JBC) were also useful sources of advice and information.
- 94 The CMO was the primary source of clinical information provided to me, often in conjunction with advice from the NCD. The CMO was in regular contact with the Four Nations' Chief Medical Officers and also the C19AG.
- 95 C19AG was established in March 2020 and met to consider the scientific and technical concepts and processes that were key to understanding the evolving Covid-

19 situation and potential impacts in Scotland. This included applying the advice that was received from SAGE and other sources but did not have any involvement in advice relating to political, social or economic aspects. The Chief Scientific Advisor (CSA) for Scotland was a member of C19AG and two of its subgroups and this was her primary mechanism for providing the Scottish Government with advice. The four C19AG subgroups specifically considered issues and provided advice relating to their particular areas:

- Advisory Sub-Group on Public Health Threat Assessment
- Advisory Sub-Group on Education and Children's Issues
- Advisory Sub-Group on Universities and Colleges
- Nosocomial Review Group

96 In terms of how these structures and bodies changed or developed between January 2020 and April 2022, the Scottish Government would have limited insight into the reasons behind changes to the UK Convened Groups. C19AG evolved depending on demand and the phase of the pandemic.

97 It is important to note that over the course of the pandemic the clinical understanding of the virus improved, as did the volume and reliability of the data and subsequent modelling.

C19AG and SAGE

98 In March 2020, as Cabinet Secretary for Justice, knowledge of the timing and rationale for the formation of the C19AG was outside the scope of my responsibilities. As such, I cannot comment on why its first meeting was not earlier, how and by whom the membership of the C19AG was arrived at.

99 I have described above my understanding of how far SAGE provided advice to the Scottish Government. In my role as Cabinet Secretary for Justice, I had limited insight into whether these groups and their sub-groups were appropriate for dealing with a pandemic of this nature, or whether the system by which scientific advice was provided to the Scottish Government in the period before the formation of the C19AG was effective between January 2020 and February 2020.

100 I did not attend any SAGE meetings. I attended the C19AG on one occasion, in my role as Cabinet Secretary for Health and Social Care, on 5 August 2021, where I discussed a number of issues including the balance of easing restrictions whilst

- supporting the continued compliance with NPIs where recommended and the uncertain trajectory of the pandemic.
- 101 The advice that I received from the CSA for Scotland, the CMO for Scotland, the DCMO's for Scotland and the NCD was transparent, clear and readily available throughout the pandemic. A full outline of the CSA, CMO, DCMO and NCD's roles during the pandemic has been provided in the Module 2/2A DG Health and Social Care (CMO/CSO/NCD) and DG Economy (CSA) statements provided to the Inquiry on 23 June 2023.
- 102 I also felt able to challenge their advice properly, however it was more often the case that I and other Cabinet Ministers would probe the advice further in order to gain a better understanding, given not a single Cabinet Secretary or indeed the former First Minister had clinical expertise. I believe that the former First Minister and other core decision makers in the Scottish Government challenged the scientific advice provided to them when necessary. I understand that a broad range of expertise was available from within broader advisory structures to complement clinical advice, however in my role as Cabinet Secretary for Justice I was not close to the composition of all these groups.
- 103 In relation to receiving ethical advice in connection with core decisions taken by the Scottish Government, I and the Scottish Government as a whole was informed by engaging with the third sector, people and groups affected by measures and restrictions, particularly mindful of those who were deemed highly vulnerable. As Cabinet Secretary for Health and Social Care, I had discussions with groups of carers and their families in relation to the impact of imposing or lifting lockdown measures and restrictions. Any specific advice obtained from ethical advisors on the ministerial code including Dame Elish Angiolini and James Hamilton would have been provided to the former First Minister.
- 104 In relation to whether scientific and expert advisory structures available to the Scottish Government were sufficiently representative of various competing interests relating to the management of the pandemic in Scotland, I believe the views of the various competing interests were sufficiently represented. There were occasions where interested parties were critical about their voice being heard or represented within decision making processes, when that became apparent, we tried, as a government, to engage with such groups as best we could.

- 105 I did not have any concerns regarding the adequacy or sufficiency of scientific advice, or other expert advice on which the Scottish Government's response to Covid-19 were based. I believe core decision makers were able to understand and interrogate medical and scientific information to an extent when making decisions relating to the management of the pandemic in Scotland. A large inhibiting factor was that many of us within Scottish Government did not have clinical, medical, or scientific expertise. We would ask for explanations from the CMO for Scotland and for further detail at times from the CMO and other clinical and scientific advisors to further aid our understanding.
- 106 I felt confident that the individuals and bodies making recommendations to the Scottish Government during the pandemic relating to medical and scientific information, advice and data modelling were giving good, relevant and sufficient information. In terms of whether these individuals and bodies were subject to any external assessment or peer review, this is outside my knowledge. I believe these individuals and bodies are better placed to comment on this.
- 107 I cannot recall a specific instance when conflicting medical and scientific information, advice, and data modelling was communicated by advisers to key decision makers within the Scottish Government. I do recall times when there were gaps in the data, scientific information or advice, particularly in relation to a new variant. For example, when information emerged about a new Covid-19 variant, Omicron, in late November 2021, advisors were understandably unsure about the extent of immune-escape or severity of Omicron. The scientific research was still in the early stages in South Africa (where Omicron was first identified) and while it was quickly established that it had a high transmission rate, other factors such as how it would impact those who had the booster vaccine was unknown. The lack of scientific understanding was communicated to Cabinet at the time, both from the CMO and in papers provided to Cabinet and taken into account when making decisions. It was not my experience that the Scottish Government received conflicting medical or scientific advice. In the age of social media, there was always a variety of interpretations of data, and if there was anything of note that we wanted clinical or scientific advisors to explore further that was never met with any resistance.
- 108 In the overall consideration of the balance of the Four Harms, clinical advice on measures to suppress the virus was not followed in isolation. For example, in November 2021 I recall the Scottish Government being provided with advice that if the virus was to be suppressed in its entirety, current restrictions should be continued

rather than planning for an easing of restrictions over the festive period. The Scottish Government considered this against the impact on people's mental and physical health, the economy, and financial implications alongside other considerations. While the overarching and primary source of advice for the Scottish Government was medical, it was considered with other factors in mind. My understanding is that decision makers weighed medical and scientific advice with other considerations when making key strategic decisions in response to the pandemic through its "four harms" approach. As set out in the *Scottish Government Covid-19 Framework For Decision Making – Assessing the Four Harms of the Crisis* (December 2020), provided [HY/007 - INQ000131028].

- 109 Key decision makers within the Scottish Government had access to information, advice and feedback from patient groups or other representative groups about the patient experience within the healthcare system during the pandemic. For example, we considered feedback from these groups on lockdown measures and other measures in place to tackle the virus. There was particular focus on receiving feedback from patients or groups representing those who were most vulnerable, such as input from carers and disabled persons groups.
- 110 I cannot recall any decisions in relation to which medical and scientific information, advice or data modelling was not sought but which ought to have been sought. The CMO and NCD were present at virtually every Cabinet meeting during the height of the Covid pandemic offering advice that helped inform decisions that had to be made.

Data and modelling

- 111 Advice on modelling and data was provided from the Covid-19 Advisory Group (C19AG), the CMO and DCMOs and other experts in various fields. Regular data was supplied by Public Health Scotland and from across the NHS. Drawing on this material, Health and Social Care Analysts (HSCA) provided a suite of statistics on a regular basis which naturally changed throughout the course of the pandemic. The HSCA Hub worked in close collaboration with the Covid-19 Modelling and Analysis Hub which drew on sources of data from across the organisation and beyond.
- 112 With regard to information on transmission, infection, mutation, re-infection and death rates, the HSCA drew on data from a number of sources to provide briefing covering this. This includes data from Public Health Scotland (PHS) on Covid-19 cases, tests, deaths and vaccinations; National Records of Scotland (NRS) data on deaths where

Covid-19 was mentioned on the birth certificate; NHS Boards data on patients in hospital and ICU with Covid-19; care homes data on confirmed cases amongst residents and staff and visiting status of care homes; data from schools on attendance and absence; Office for National Statistics data on infection rates from Covid-19 infection survey, as examples.

- 113 I believe that key decision makers within the Scottish Government had adequate and reliable access to data and modelling information. I do not recall any involvement from the private sector in providing data and modelling information.
- 114 Data was disseminated and presented to me in ministerial briefings, in papers prepared for Cabinet and formed a key element in the regular SGoRR updates. Key data points were also shared directly with Ministers via our Private Offices, sometimes on a daily basis.
- 115 I believe that myself and key decision makers within the Scottish Government were able to understand the data and modelling information advice that had been made available, including the limitations of such data and modelling information. In the event that further clarification was required, we would seek this from the CMO, DCMOs or the NCD.
- 116 With regards to the systems for the collection and dissemination of data amongst the Health and Social Care Directorate, other Scottish Government directorates, the NHS NSS and PHS, from my experience as Cabinet Secretary for Health and Social Care these systems were good and sufficient. I believe that these bodies worked effectively. In my experience as Cabinet Secretary for Health and Social Care, there was good data made available to us in meetings with other organisations.
- 117 In respect of the mathematical modelling of epidemiological outcomes that were made available to key decision makers within the Scottish Government, I believe it was sufficiently reliable. However, this was a modelling and forecasting practice, with its own limitations. In my view, factors, such as economic, societal, educational, non-Covid health related and mental health impacts, were difficult to model. The impacts on the vulnerable and at-risk groups were discussed at length, but were, in my view, difficult to accurately model. We were provided information about the impact of these factors and considered them using the four harms framework. Over time, the modelling evolved and took into account new learning, compared to the modelling at the very beginning of the Covid-19 pandemic.

118 The phrase "following the science" is one that I am familiar with. I do not recall if it was a phrase specifically used by the former First Minister. I believe the phrase was regularly referring to the use of scientific advice as the basis of decision making throughout this time period. If the phrase was used, I believe it was because an emphasis on the use of advice and evidence was central to Scottish Government's decision making process.

Other sources of information and advice

119 The CMO provided frequent updates which assisted in the Scottish Government's understanding of how other countries were responding to Covid-19. It also assisted identifying possible lessons learned to inform our core decision making in relation to the management of the Covid-19 pandemic in Scotland.

120 I am not directly familiar with the role of the International Comparators Joint Unit. However, I understand that this was a joint unit led by the Foreign and Commonwealth Office and Cabinet Office which was tasked with assessing information on the different approaches being taken by comparator countries, in order to inform the UK policy response, especially with regard to NPIs and that ICJU advice was shared with Scottish Government officials for consideration from June 2020.

121 In May 2020 the Joint Biosecurity Centre (JBC) was established to provide independent and evidence based analysis to inform decision making in response the pandemic. Despite health being a devolved matter, the JBC worked collaboratively with Scotland and the other Devolved Administrations and Health Ministers attended the JBC Ministerial Board. When making decisions in both my roles as Cabinet Secretary for Justice and Cabinet Secretary for Health and Social Care, I found the Joint Biosecurity Centre to be effective in being an additional source of analysis and advice on Covid-19 policy and in identifying lessons learned which informed core decision making in Scotland.

122 During the period between January 2020 and March 2020, there were Scottish Cabinet updates and discussions on the responses of other countries to Covid-19, although it was not known as 'Covid-19' at that point. I recall the former CMO updating the Scottish Government on the position of other countries, and we took the most stringent measures we possibly could. I do not recall if there were any specific discussions around whether we were required to be as stringent as other countries. Our approach mirrored many other countries that also initiated a full lockdown in that

period. In making these decisions, we took consideration of decisions made in other parts of the UK.

- 123 The Scottish Government considered the views expressed by interest groups, in relation to core decision-making during the pandemic. I have discussed above the groups of particular relevant to my portfolio. The means by which the outcomes of that process were communicated depended on the group. Portfolio ministers and their supporting officials would meet regularly with relevant stakeholder groups according to the range of their responsibility. The views of stakeholder groups were recorded, disseminated as required to others with an interest and then factored into decision making – and the Scottish Government sought a range of views from a range of groups. For example, I recall the existence of groups focussed on economic recovery which met with the Cabinet Secretary for Finance, and I separately met with members of the Care Home Relatives Group due to my portfolio as did my predecessor. I do not believe that there was a risk of information overload or repetition for key decision makers.
- 124 The Scottish Government also met with Scottish members of Covid Bereaved Families for Justice (CBFFJ), later re-constituted as Scottish Covid Bereaved, between early January 2020 and April 2022.
- 125 Between 17 August 2021 and 24 November 2021, my diary records that I attended one meeting with the CBFFJ on the 17 August 2021. We discussed a number of issues including support for care home managers and the appropriate treatment for hospital patients. The summary notes are provided [HY/008 – INQ000286075]. I am not aware of the specific statistic quoted on the rate of nosocomial deaths compared to the rate of deaths in care homes. However, the Scottish Government did seek to take account of issues around nosocomial infections, including through the work of the Covid-19 Nosocomial Review Group. The terms of reference for this group are provided [HY/009 – INQ000292485].
- 126 I recall that members of CBFFJ raised a query with me in relation to the fact that Covid-19 symptoms were being restricted to temperature, persistent cough and a loss of sense of taste or smell. I recall that I confirmed that the UK Health Security Agency was responsible for the symptom profile and would not, at that stage, change it. In respect of the steps taken to revise the symptom profiles between early January 2020 and April 2022, I recall enquiring with the CMO as to the potential scope for

expanding the list of symptoms. As I understand it, the four UK CMOs would have input to the symptom profile, but this was not a matter for Ministers.

Operation of advisory mechanisms

- 127 I believe the structures available for the provision of medical and other scientific advice to decision makers with the Scottish Government, as described earlier in this statement, enabled decisions to be taken effectively and efficiently.
- 128 As stated previously, the CMO and DCMOs were my primary source of medical and scientific advice, which resulted in an effective structure for communication. Other advisory groups such as SAGE, the C19AG, the JCVI and JBC also providing a useful advisory function. This ensured I was receiving advice that had input from a breadth of sources.
- 129 I received adequate advice and information on which to base my decision making or my contribution to decision making with regard to the response to Covid-19. As mentioned previously in this statement, I believe there were data gaps as we were dealing with an unknown virus, particularly at the beginning of the pandemic. As time went on scientific understanding of the virus evolved and grew, as did the volume, sufficiency and reliability of the data and modelling.
- 130 I believe key decisions were taken by me and other core decision makers after a proper process of advice and consultation.

Conclusions and lessons learned

- 131 I think access to accurate and timely medical and scientific expertise, data and modelling in relation to Covid-19 worked particularly well in relation to the delivery of the vaccine programme. The modelling around numbers eligible for the vaccine at different stages, the stock required to deliver particular run rates for the vaccination programme and the information supplied by the JCVI were particularly helpful during my time as Cabinet Secretary for Health and Social Care. In the early days of our response to the pandemic, there is possibly further, more detailed analysis that could have been done to measure specific non-Covid related health impacts, including the mental and emotional impacts restrictions were having on the population, in particular to those who were isolated from friends and family.

C. Initial understanding within the Scottish Government and responses to Covid-19 in the period from January to March 2020

Initial understanding of the nature and extent of the threat

- 132 I first became aware of Covid-19 through press reports, although it was not called Covid-19 at that point. In my opinion, I received sufficient briefing as to its emergence and potential consequences. The first Cabinet briefing was on the 28 January 2020 where an overview of the evolving situation and the steps being taken in response in the UK and Scotland was provided.
- 133 On 4 February 2020 a further overview of activity being undertaken in response was provided at Cabinet and included advice from the CMO to raise the assessment level from 'low' to 'moderate'. This did not indicate that there was increased risk to people in the UK, but that preparation and planning for a wider outbreak should be escalated.
- 134 Any awareness I had about the implications of Covid-19 for Scotland during this time period came from the former CMO. I was not aware of advice being offered to the former CMO and her staff from experts in the period before the World Health Organisation declared a Public Health Emergency of International Concern on 30 January 2020, aside from that presented in the Cabinet meeting on 28 January.
- 135 I was not aware of the Scottish Government directly liaising with the WHO, other international organisations or my counterparts in other governments in the period between January and March 2020, including China, as this would not have been in my remit as Cabinet Secretary for Justice. The only advice received in January 2020 concerning of the threat posed to Scotland by Covid-19 that I am aware of, was from the CMO presented to Scottish Cabinet as stated above. I do not recall any scientific articles or reports published in January 2020 being brought to my attention.
- 136 Particularly after the initial Scottish Cabinet meeting on 28 January 2020, significant alarm was raised in relation to the potential effect Covid-19 would have. Once it became clear that the virus was spreading beyond East Asia, the concern and alarm that we had around its potential threat to Scotland increased. I became more and more aware of the effects the virus might have and the actions which would be required, in the months that followed. As Cabinet Secretary for Justice, I particularly became aware of the effect the virus would have within prisons, particularly given

how high our prison population was at the time. On 10 March I issued a joint letter with the Cabinet Secretary for Health to NHS Board Chief Executives and Integration Joint Boards relating to the treatment of prisoners with Covid-19, provided [HY/010 - INQ000292493]. The issue of the virus in prisons was discussed in Cabinet in March 2020 and I made a statement to Parliament on 24 March 2020 setting out how the prison service was responding to the emergency situation [HY/011 – INQ000292494].

- 137 It was through Cabinet discussions that I learned of the significance of issues like community transmission, the exponential growth of transmission, the R-rate, particularly the need to keep the R-rate below 1, the potential severity of the consequences of infection. I also became aware of the groups most likely to suffer serious consequences because of infection, for example the elderly or those with pre-existing health conditions. Our understanding of these issues evolved over time, for example in the early days of the pandemic the clinical advice on asymptomatic transmission evolved.
- 138 Scotland's preparedness for a pandemic, including the Scottish Risk Assessment, Resilience Partnerships (RPs) and Scottish Resilience Partnership (SRP), has been discussed in the written and oral evidence the Scottish Government has provided for Module 1 of the Inquiry. This was not part of my portfolio responsibility as Cabinet Secretary for Justice; however my understanding is that in the period from late January to March 2020, RPs and the SRP would have been assessing and preparing their relevant areas under the strategic direction set by the Scottish Government, and this was then fed back into the Scottish Government's coordinating mechanism, SGORR. *The Coronavirus Action Plan* was published on 3 March 2020 and summarises the response arrangements in Scotland, including the roles and responsibilities of the key resilience groups and mechanisms including SGORR, RPs and SRPs, provided [HY/012 - INQ000131020].
- 139 My understanding, and the understanding of the Scottish Government, of the essential features of the virus and disease, especially its asymptomatic nature and means of transmission, was of a developing nature between January and March 2020. This was still an early period of the pandemic, and we were relying on our own CMO, DCMO and external health experts for their medical and scientific advice to better understand the virus and how to tackle it.
- 140 I believe that the Scottish Government reacted appropriately and appreciated the seriousness to the news of the epidemic in China and news of its spread to European

countries like Italy in January 2020. We took these reports seriously. We were dealing with a virus that was moving at a significant pace, and we were acting as quickly as we could with the advice that we had.

- 141 In respect of whether there was an understanding within the Scottish Government that Covid-19 was akin to influenza, I do not recall that level of certainty over the understanding of the virus in January 2020. Our understanding of the virus was based on the clinical advice which was available at the time. It was understood that the virus was novel, presented with symptoms such as shortness of breath, fever and coughing and was spreading at an alarming rate. I am not aware of any contact made by the Scottish Government with the WHO, and any discussions concerning a declaration of a Public Health Emergency of International Concern (PHEIC). This was outside the scope of my knowledge as Cabinet Secretary for Justice. In general, the Scottish Government considered WHO advice and its application to the UK and took it seriously.
- 142 Around the end of January 2020, Covid-19 had become a prominent part of the Scottish Government's priorities. I refer to the Cabinet Meeting on 28 January, that was attended by the CMO. It was not common practice for the CMO to attend a Cabinet Meeting. This was rare and speaks to the priority Covid-19 was given for the Scottish Government at this time. At this point in time, I was very aware and extremely concerned at the alarming spread of the virus, as I believe the entire Cabinet was. While other issues such as the imminent exit from the EU were also prominent in this period, the pandemic rapidly became a key and dominating focus of our discussions.
- 143 In February 2020, my awareness of the number of people likely to be infected with Covid-19 in Scotland and in the UK (including details of any reasonable worst-case scenario (RWCS)) was dependant on the advice that we received from the CMO in terms of the forecast numbers of those affected. The SGoRR paper dated 17 February 2020 noted the RWCS figures and this was discussed at Cabinet the day after SGoRR met on 18 February 2020. These figures were clearly alarming and only underlined the rationale for the Government's focus being dominated by its response to the pandemic.

COBR/SGORR

- 144 I was not involved in COBR, but my understanding is that the Prime Minister would have instigated COBR meetings. As I was not involved in COBR, I cannot comment on the response of the Scottish Government, the former First Minister or core decision makers to its development. I am unaware if the former First Minister was invited to the first COBR meeting.
- 145 With regards to the effect of the Prime Minister's non-attendance at the early COBR meetings and the impact that this may have had on the extent to which Covid-19 was viewed as a serious threat, I believe that when there is Prime Ministerial attendance at a meeting, it does increase any issue's prominence.
- 146 I cannot comment on the non-attendance of the former First Minister at the early COBR meetings; whether she was invited is not something I am aware of. In respect of whether she should have attended, it is my understanding that it would not be usual practice for the First Minister to be invited to attend a COBR meeting the PM is not chairing. The same logic that applies to the PM's attendance at COBR also applies to the First Minister, with the key difference being that COBR is not initiated by the Scottish Government, and we are not the decision makers on who attends and who does not.
- 147 Between January and March 2020, the understanding within the Scottish Government of the respective decision-making responsibilities of it and the UK Government in relation to the management of the pandemic within Scotland was that we had devolved responsibility for the management of the pandemic within Scotland, but if required, we could seek clarification on how this might interact with reserved areas of responsibility, in the early days of the pandemic response this would include issues such as the impact restrictions would have on cross-border freight and travel, particularly for those who lived and worked near the border between Scotland and England.
- 148 Aside from COBR, from January late-March 2020 SGOR(Official) and SGOR(Ministerial) meetings were also in motion to coordinate and support the Scottish Government's emergency response. My attendance at SGORR has been set out previously in this statement.
- 149 It is difficult for me to comment on the similarities between COBR and SGORR as I have not attended many COBR meetings, but my understanding is that SGORR was

intended to coordinate and support the Scottish Government's response to the initial phases of the pandemic, as it would be for any similar emergency. Papers and advice were presented to SGORR for discussion and any decisions or agreed actions recorded and disseminated by the officials present. I attended SGORR as required depending on the issues under discussion and the range of my responsibilities as Cabinet Secretary at the time. My dates of attendance are listed in paragraph 16 of this statement. SGORR was usually instigated by the First Minister or other senior minister as part of SG's plans for responding to emergencies.

Pre-lockdown response

- 150 It is difficult for me to comment on the adequacy of the Covid-19 precautionary measures taken by the UK Government during February and early March 2020 (prior to the lockdown on 23 March 2020), such as the issuing of respiratory and hand hygiene behaviours guidance. This is a matter of clinical assessment. Similar precautions were advised in Scotland over this period and the *Coronavirus Action Plan* published on 3 March 2020, as noted at paragraph 138 above, sets out the joint position.
- 151 I cannot comment on the measures taken by the DHSC and UK Government to carry out surveillance of Covid-19 in the UK during the period January to March 2020. In respect of whether the Scottish Government fully appreciated the degree to which Covid-19 was spreading through the UK during this period, my view is that as the data emerged, the rapid nature of the spread of the virus became clear to us.
- 152 I did not play a role, as Justice Secretary, in the key health preparations made by the Scottish Government in the pre-lockdown period, including, for example, the testing and tracing of infected persons. The Health Secretary at that time would have been involved and working with other Health Secretaries across the UK. As our understanding of the testing and tracing evolved over time, our position also changed and evolved in terms of who we should be testing and tracing.
- 153 On 29 January 2020 COBR agreed to increase planning for a reasonable worst-case scenario using the National Security Risk Assessment as a basis, with the additional information that the elderly and those with existing health conditions will be disproportionately affected.

Flattening the Curve

- 154 'Flattening the curve' was part of the Scottish Government's strategy and was based on clinical advice from the former CMO. The aim of the strategy was to reach a point where we could stem significant growth and spread of the virus.
- 155 The data and information for assessing what the 'curve' was and if, or how, it could be flattened, evolved over time. In the early stages of the pandemic, we were reliant on the data provided to us and initially were obtaining data from only a limited number of sources. The NCD and the CMO were the two primary sources providing advice in relation to this. I consider that the data and information used to assess the curve was adequate at the time. As we progressed through the pandemic, the data sufficiency clearly improved, as we were then obtaining information from more sources. As was noted in the Cabinet minutes on 24 March 2020, suppression of the outbreak was especially important in the early stages, however, in the longer term, it would be critical to find effective anti-viral drugs and ultimately a vaccine.
- 156 I cannot comment on the part played by 'flattening the curve' in the UK Government's response strategy, nor the difference between the Scottish and UK Government's strategies in this regard. This information was outside my Cabinet remit.

Herd Immunity

- 157 The phrase 'herd immunity' is one that I heard about, but not often during the Covid-19 pandemic. My understanding of the concept is that it suggests widespread societal immunity can be achieved to a virus if that virus is allowed to spread through society. This concept clearly came with risks, and for some people, these risks could ultimately be fatal. My recollection is that 'herd immunity' was not considered as part of the Scottish Government's initial strategy. I do recall that the phrase was being used globally at the time.
- 158 With regards to the Scottish Government's subsequent strategy for preventing a second wave following the lifting of social restrictions, the concept of 'herd immunity' was not included in this strategy. I do not believe that 'herd immunity' was a part of Scottish Government's strategy to shield the vulnerable from severe infection. I am not aware of any strategy of 'herd immunity' ever being recommended by SAGE/C19AG. As I have noted above, I do not recall 'herd immunity' ever being

recommended as a strategy for responding to the management of the Covid-19 pandemic in Scotland. As such, I do not believe there is a connection between 'herd immunity' and the absence of a mass testing programme or that it played a role in the Scottish Government's decision making relating to NPIs.

- 159 I am not aware of the part played by 'herd immunity' in the UK Government response strategy. As such, I am not aware of any difference between the Scottish and UK Government's strategies in this regard.
- 160 Regarding the guidance published on 12 March 2020 by the UK Government, advising those with Covid-19 symptoms to self-isolate at home for at least seven days, this would have been outside my responsibilities as Cabinet Secretary for Justice, but I would expect that the Scottish Government considered this guidance based on the information it had at the time. The Scottish Government subsequently made this guidance mandatory, and with hindsight it may have been beneficial to change the advisory nature of this guidance sooner. My recollection of the scientific advice at the time, which was primarily from SAGE, was that the UK was going to see a rapid escalation in the number of cases which meant that more stringent steps were needed to suppress the spread of the virus – to protect and allow time for the NHS to scale up its capacity.
- 161 On moving from the contain to delay phase, again, this advice was given by SAGE and applied to the whole of the UK. This shift had been anticipated and was discussed in Cabinet on 10 March. The CMO wrote to all Health Boards on 15 March 2020 to advise them on the implications of moving to the delay phase.
- 162 While these measures were not within my portfolio at the time, I understand that the locally led 'Test, Trace and Isolate' intervention was paused for the general public as all symptomatic people were advised to stay at home for seven days, regardless of travel and contact. Testing of the general public stopped but was maintained in hospitals for admissions with suspected Covid-19 and all ICU-admissions with upper respiratory conditions. This was for the purposes of clinical care and diagnostics and followed advice from the four UK CMOs.
- 163 Regarding the announcement made by the Scottish Government on 12 March to cancel indoor and outdoor events of 500 people or more, effective from 16 March, while I was not directly involved, my recollection is that while clinical advice at the

time was that cancelling large events would not significantly reduce the transmission of the virus, this decision was made to ensure the resilience of emergency services.

- 164 On the decision to close schools and nurseries, this was announced by the Scottish Government on 18 March 2020, Cabinet had considered the necessity of school closures on 17 March 2020. At that point the epidemiological evidence did not suggest that this measure would slow the transmission the virus to a great extent and might even cause some additional infections, such as increasing children's exposure to grandparents. However, it was noted that the balance of evidence would likely change over the coming days and the matter should be considered further over the coming days. On 18 March the issue was considered by SAGE who advised that the available evidence now supported implementing school closures on a national level to prevent the NHS critical care capacity being overwhelmed, provided [HY/013 – INQ000292486].
- 165 The Scottish Government told cafes, pubs and restaurants to close on 19 March 2020, in alignment with the UK government as part of the wider drive to reduce social contact in an attempt to suppress the virus. This followed SAGE advice.
- 166 Scotland, like the rest of the UK, implemented a national lockdown on 23 March 2020. In Cabinet on 10 March, we noted that the timing and extent of public health measures needed to be carefully judged based on scientific advice and our understanding of the likely behavioural responses to such measures.
- 167 The decision by the Scottish Government to not implement more aggressive measures prior to the first national lockdown, was therefore taken after consideration of various factors, including the impact of more aggressive measures on society, business and the economy. In my view, making the decision to impose a national lockdown was the biggest national policy decision that the Scottish Government has ever made to date, and I would argue in the history of devolution, and it is one that we recognised at the time should not be taken lightly. Additionally, in the period leading up to the first lockdown, a material consideration within the Scottish Government's strategy was the need to follow, as best we could, a consistent approach amongst the four nations of the UK.

Super-spreader events

- 168 During the time period January to March 2020, I was Cabinet Secretary for Justice and as such I am not aware of events identified by the Scottish Government as having the potential to cause significant spread of the Covid-19 virus between January and March 2020. I am not aware of any assessment of the potential effect on transmission of the virus undertaken in advance of specific events between January and March 2020. However, it was generally known that mass gatherings, especially those indoors, were settings where the virus could infect many people and spread quickly, hence guidance was published on 15 March advising that gatherings of more than 500 people should not take place. I was not aware of the Scottish Government's specific strategy to control the spread of Covid-19 at and after these events. This would have been outside the scope of my knowledge at the time and cannot comment on the effectiveness of the specific strategy. As well as the concerns about spread of the virus, there was also concerns about the pressure large scale events might put on emergency services at a time they would already be considerably stretched.
- 169 I do not recall the cancellation by the Italian government of the women's international rugby match between Italy and Scotland, due to take place on 23 February 2020, ever being discussed at Scottish Cabinet. I also do not recall Scottish Cabinet discussing the fact that the equivalent men's international rugby match went ahead on 22 February 2020 in Rome and its potential impact on the transmission in Scotland.
- 170 The Nike Conference took place from 25-27 February 2020. The first case of Covid-19 confirmed in Scotland was not until 1 March. A news release was published to confirm this. On 2 March, Health Protection Scotland (HPS) were alerted that an individual, who was now overseas, had attended the Nike conference and since, tested positive for Covid-19. The following day, HPS recorded a positive case in Scotland of an individual who had also been at the conference. The details of this potential outbreak was confirmed to Ministers on the evening of 3 March.
- 171 I am not aware of the rationale behind the way the Scottish Government communicated with the public in relation to the positive cases following the Nike Conference in Edinburgh on 26 and 27 February 2020 and Scotland v France rugby union international. This would have been outside the scope of my knowledge as Cabinet Secretary for Justice at the time.

D: Testing

- 172 The extent of my involvement in the Scottish Government's testing and tracing strategy in the early days of the pandemic was limited to contributing to discussions in Scottish Cabinet, in particular, though not exclusively, related to my justice portfolio. The decisions relating to the testing and tracing strategy in Scotland was made by others. I agree that testing was vital given the asymptomatic nature of SARS Cov-2.
- 173 The Scottish Government's initial response strategy was developed using the UK Influenza Pandemic Strategy 2011. This framework set out the need for early detection, diagnosis and reporting in the initial response phase, and testing was considered an important response tool in the very early stage of the Scottish Government's response. It was especially important for the 'contain' and 'delay' elements of the UK wide *Coronavirus Action Plan* [HY/012 – INQ000131020] published on 3 March 2020.
- 174 A paper circulated for the 28 January Cabinet meeting stated that that the four UK CMOs had agreed that the four administrations would share data in relation to the numbers of positive and negative cases. Cabinet received regular updates throughout the period of January 2020 to March 2020. The CMO also specifically emphasised how vital testing and tracing was at a Cabinet meeting on 10 March.
- 175 The importance of testing to the initial response strategy was also reflected in the speed at which Scottish Government stood up testing facilities. On 10 February 2020, two labs opened in Edinburgh and Glasgow to ensure a quicker turn around of testing and it was noted in Cabinet on 18 February that the capacity of these facilities could be increased as required.
- 176 The Scottish Cabinet was also aware of and considered WHO advice in relation to the importance of testing as part of information supplied to it, including by the CMO. I recall WHO advice was also referenced in parliamentary debate and discussion in Scotland.
- 177 A full outline of how diagnostic testing developed was provided to the Inquiry in the Module 2/2A DG Health and Social Care corporate statement provided in June 2023. As stated above, I was not directly involved in the specifics of decision making

relating to the testing strategy or its development timeline outside of Cabinet meetings. When I was appointed Cabinet Secretary for Health and Social Care in May 2021 the Test and Protect system was well established in Scotland.

- 178 I am not aware of why there was limited availability of tests in January and February 2020 or why a mass testing programme was not put in place after February 2020. I do not recall playing any role in PHS surveillance and tracing in this period.
- 179 The rationale behind the Test and Protect scheme, launched on 26 May 2020 was to identify individuals with Covid-19 in order to take preventative measures to limit the spread of the virus. I am not aware of why it was not launched until that date, but I understood from Cabinet discussions that the scheme was contingent upon a reliable diagnostic test being developed and available at scale and the testing infrastructure being put in place, both of which required time. The initial development of Test and Protect (assumed to cover the period up to the end of May 2020) was first shaped by the UK Influenza Pandemic Strategy 2011. The UK Government, in collaboration with the Scottish Government, Welsh Government and Northern Irish Executive, developed the UK Influenza Preparedness Strategy 2011, which aimed to reduce the impact of a potential influenza pandemic on the population. This strategy provided a general framework for responding to pandemics. As health is devolved in Scotland, the Scottish Government developed its own strategy to respond to Covid-19.
- 180 I recall there was discussion at the time about whether Scotland could have implemented the Test and Protect scheme sooner. As I have mentioned above, ensuring there was a reliable test, with population level availability as well as appropriate diagnostic facilities, all take time. With hindsight there was perhaps more that could have been done in relation to individuals travelling into Scotland through international air travel, even during the time reliable diagnostic tests were being developed we could have considered more stringent temperature checks at airports, for example.
- 181 The target of 3500 tests a day being processed in Scottish labs across the NHS was exceeded and the normal daily capacity had reached 8350 and was on track to expand further during the month. This was published on the Scottish Government website on 1 May 2020, along with other testing expansion plans, such as sample

testing in case homes without cases of the virus. I cannot comment further on the operationalisation of the system, as this was not within my portfolio at the time.

182 In August 2020 *Scotland's Testing Strategy – Adapting to the Pandemic* [HY/014 - INQ000147448] was published on the Scottish Government website the intention of building laboratory processing capacity to approximately 65,000 tests per day between NHS Scotland laboratories and Lighthouse Lab in Glasgow, ahead of winter 2020.

183 I am not aware of discussions the First Minister was having with the UK Government about COVID testing backlogs in and around September 2020, although the pressure on the testing system was highlighted in Cabinet discussion. The specific steps taken would have been outside the scope of my knowledge as Cabinet Secretary for Justice at the time.

E: Decisions in relation to non-pharmaceutical interventions ("NPIs")

General questions about NPIs

184 The Scottish Government published the way it would take future decisions on its pandemic response on 23 April 2020 in the *Framework for Decision Making* [HY/003 - INQ000256711]. This document set out the Scottish Government's principles and approach to managing the pandemic, particularly in relation to the use of NPIs. The potential wider health, social and economic impact of NPI's were considered as part of the 'four harms', which guided the Scottish Government's decision-making processes. During the course of the pandemic, this was formalised in the work of the Four Harms Group, but it was an important consideration in policy making from the period of the development of the Framework.

185 When considering NPIs, the primary aim was to protect people from health-related harm from the Covid-19 virus, with the wider health, social and economic harms also being balanced and considered within this as part of the four harms approach. Those who were most vulnerable to the virus and the potential long term health consequences, such as Long Covid, were therefore a key consideration when making decisions about which NPIs to impose, to ease and to tighten. The risk of asymptomatic transmission and of airborne transmission were also important

considerations as these were significant factors that impacted the rate at which the virus spread.

- 186 Advice was also taken from behavioural experts in terms of if and how long individuals were likely to comply with different NPIs and this was also something that was considered and discussed when making these decisions.
- 187 I am not aware of the 'hammer and the dance' concept and do not recall it being discussed as influencing the Scottish Government's approach to NPIs. I am not aware of the Scottish Government having any direct dealings with Mr Pueyo.
- 188 The Scottish Government understood the seriousness of the threat of Covid-19 in Scotland in the period between the imposition of the first lockdown in March 2020 and the announcement of the steps to ease the lockdown in May 2020. We understood that the threat was incredibly serious, otherwise we would not have imposed a national lockdown in accordance with the advice provided to us. My understanding of the spread of Covid-19 through Scotland in this period was based on the advice presented to Scottish Cabinet and any other appropriate meetings which I would have attended. During this period, Scottish Cabinet also discussed the ways in which other countries were managing the pandemic, in order to consider decision making related to Scotland. For example, when Cabinet discussed how social distancing measures may evolve in the future on 14 April 2020, reference was made to the President of France's indications that social distancing measures in France would continue until at least mid-May, which was when it was thought there might be sufficient capacity for mass testing. It was noted that the two factors were likely to be connected and the capacity to test reliably and at scale would be a prerequisite for any change in the rules surrounding lockdown.
- 189 While all decisions were made according to the situation in Scotland, considering how other countries were responding to the pandemic provided useful context and information on how different approaches could impact the virus. When the four harms strategy was introduced in April 2020, we considered these decisions routinely using the four harms framework.

- 190 I am not aware of systems that the Scottish Government had for audit of lockdown and other NPI-related harms and their impact across the population and for different population groups.
- 191 In relation to the process for making a decision under a specific delegation from the Scottish Cabinet, a cabinet paper would be circulated in the first instance, the paper would be discussed and usually a decision made at Cabinet. If it was not possible, for whatever reason, at that point to confirm the precise terms of that decision, a specific delegation would be recommended, for example for a specific decision to be delegated to the First Minister once the latest data at a given point became available. Both in pandemic and a non-pandemic situation, decisions would be made under specific delegation by the First Minister, as First Minister myself, I have on occasion asked for the final details of a particular decision to be delegated to me with the consent of Cabinet. Delegations are usually requested for decisions in relation to situations that are fast evolving, or where the final detail can be agreed ahead of the next Cabinet meeting by an individual member or members of the Government. The justification for the First Minister making such decisions was that the pace at which the virus was evolving meant that decisions were required to be made at pace. A timeline of the key decisions made in Cabinet throughout the pandemic has been provided to the Inquiry [HY/015 – INQ000131055] and includes where key decisions were delegated.
- 192 Decisions relating to NPIs would normally be made at Cabinet or delegated to the former First Minister with the consent of Cabinet. The former First Minister would usually consult and liaise with the appropriate Cabinet Secretary in the making of those decisions. The former First Minister may be able to answer more fully as to the advice she received in the making of those decisions.
- 193 I understand that the longer-term effects of Covid-19 ('Long Covid') were first raised towards the end of 2020. In December 2020, the National Institute for Health and Care Excellence (NICE), the Scottish Intercollegiate Guidelines Network (SIGN) and Royal College of General Practitioners (RCGP) published a clinical guideline on the management of long-term effects of Covid-19. The CMO and Deputy National Clinical Director, Scottish Government's Clinical Guidance Cell, Clinical Leads Advisory Group for Scotland (CLAGs) and Professional Advisory Group (PAG) were consulted in the development of the guidance. This was out with my portfolio at the time and

was not discussed in detail at Cabinet, however, it is something I am acutely aware of now given my subsequent role as Cabinet Secretary for Health and Social Care.

- 194 I played a role in discouraging mass gatherings ahead of lockdown in the Muslim community and in particular liaised with a number of mosques in Scotland, particularly in relation to Friday gatherings. My advice and actions would have been informed by advice from the CMO and NCD in relation to mass gatherings. My understanding was that there was emerging scientific evidence that Covid-19 tended to spread most vigorously in indoor environments such as places of worship, where people were likely to socialise in close proximity and/or raise their voices (including, in some places of worship, singing). This raised the risk of transmission in addition to the known increased risk of confined indoor environments. Similar considerations would have applied in the consideration of subsequent NPIs in relation to religious worship.

NHS capacity

- 195 I recall that the possibility of the NHS becoming overwhelmed was a significant factor when it came to the Scottish Government's decision making in relation to the management of the pandemic. This was based on advice from the CMO and Health Boards about the risk that the NHS would not have the capacity or the equipment to deal with the potential impacts of the pandemic. I believe that the measures we took were effective in avoiding the NHS being overwhelmed.
- 196 I had no direct role in the construction of the NHS Louisa Jordan. However, my understanding was that it was intended to provide extra critical care capacity for NHS Scotland during the pandemic. This was because the future forecast trajectory of the pandemic and how in need the NHS would be of the additional capacity were unknown. It was always the intention that critical care would be provided within the existing NHS Scotland estate where possible. During the pandemic, the NHS Louisa Jordan was used for outpatient and diagnostic appointments, Covid-19 vaccinations and healthcare staff training as the NHS managed to maintain the critical care capacity within hospitals and so the NHS Louisa Jordan was not used to treat patients with Covid-19.
- 197 Shortages of ICU beds were certainly a concern that the NHS would become overwhelmed. Part of the rationale for the construction of NHS Louisa Jordan was to

assist with the shortage of ICU beds. During this time period, there were also concerns around global shortages of PPE. The Scottish Government worked on securing domestic PPE suppliers in order to deal with this as best it could. I believe these measures in securing PPE were effective as far as I am aware.

- 198 "Protect the NHS" was a key part of public messaging around the way the pandemic was managed in Scotland because it was one of the key reasons around the Scottish Government's decision making relating to NPIs. It was a message which was understood by the public.

Schools

- 199 The aim of school closures was to reduce the transmission of the virus. The Scottish Government considered that schools offered opportunities for the virus to transmit through classrooms, indoor spaces and pupils mixing in canteens. Our understanding of the severity of the virus on children also evolved over time. I believe these measures were effective in reducing transmission of the virus and we would have seen a greater spread of the virus if schools had been open.

Vulnerable and at risk groups

- 200 When formulating the initial strategy, the impact on vulnerable and at risk groups in Scotland was a key consideration. Vulnerable groups were considered both in the light of specific clinical vulnerability to the virus and in terms of wider equalities considerations. These matters were discussed in detail at Cabinet meetings and other decision making fora. As the pandemic progressed and formal measures came into place, a range of impact assessments were performed for proposed legislation and NPIs. Further information on how these groups were considered has been provided in the DG Communities (EIHRD) corporate statements, provided on 23 June 2023 and 30 August 2023. A number of impact assessments carried out have also been provided to the Inquiry with these statements.
- 201 Equality Impact Assessments were used to support strategic decision making throughout the pandemic and ensured that the potential impacts a change on policy would have on groups with protected characteristics was fully considered within any policy proposal. The impact imposing or easing NPIs would have on the most vulnerable and those part of groups with protected characteristics was at the forefront

of Cabinet's discussions, whether these were set out formally in an EQIA or not. For example, the EQIA completed for the Coronavirus (Scotland) Act 2020, provided [HY/016 – INQ000292495], considered the impact various justice related provisions within the Act, including the emergency release of prisoners, would have on those with protected characteristics. It was stated that for the emergency release of prisoners the "availability of any specialist services in the community may be a factor in release and those with disabilities where a specialist need cannot immediately be met in the limited time available may not be able to be considered for release", but concludes that where there is an impact "such impact has been considered and addressed as far as possible within associated procedures for release."

202 As our understanding of the virus grew over time, so did our knowledge around how it may impact different groups of people. For example, the shielding list was continually informed by the most up to date clinical advice and guidance.

203 In addition to the formal impact assessment process, I consider that the regular engagement with those communities who were most impacted by the virus and our response was integral to ensuring our response strategy was balanced and proportionate. Across the Scottish Government we had engagement during the pandemic with stakeholder groups representing vulnerable and at risk groups, both at official and ministerial level.

204 I believe the former First Minister and other core decision makers in the Scottish Government gave consideration in their decision making throughout the pandemic to the impact of NPIs on at risk and other vulnerable groups in light of existing inequalities. Cabinet would often have lengthy discussions relating to those who were most vulnerable in our society, including at risk and other vulnerable groups.

205 In relation to the comments provided by Age Scotland, I can understand why they felt this way, particularly given the PPE pressures we were facing across sectors, including in social care, in the initial days of the pandemic. It was, however, often the case that the Scottish Government were considering older people, including those in care homes, and also the significant impact of the measures being taken on those who had relatives in care homes and on the staff that work there. Age is a protected characteristic under the Equalities Act and therefore would also have been routinely considered as part of the Equality Impact Assessment process. The Scottish Government's response to the pandemic required a rapid and unprecedented

restructure of how social care worked. This included new PPE sourcing and distribution routes being established to supplement Social Care's existing supply line and to ensure that they had access to the PPE they required.

- 206 In relation to the comments provided by Save the Children Fund UK and Children in Scotland UK, I agree that the Scottish Government could have found a better way to listen to the voices of children and young people during the pandemic, whether that was through organisations such as the Scottish Youth Parliament or direct engagement. The educational impact of NPIs was a significant consideration during the pandemic. The Scottish Government did however engage with the Scottish Youth Parliament who undertook the 'Lockdown Lowdown' national surveys to hear from young people during the pandemic.
- 207 In relation to the comments provided by Scottish Women's Aid, I was aware of the concerns they expressed. In my experience, however, the Scottish Government was very mindful of the impact of the pandemic and NPIs on women and children. I recall as Cabinet Secretary for Justice, considering the impacts on individuals experiencing domestic abuse and in toxic environments. There were services we provided during the pandemic specifically to address these concerns and communications offering support and exemptions from certain restrictions for those seeking help for domestic abuse. This included ensuring there was also a broader response, such as providing guidance to COSLA and a fund to promote the remote jury centres to increase the number of High Court Trials. I summarised the actions taken in a letter to the Covid-19 Committee in September 2020, provided [HY/017 - INQ000292487].
- 208 In relation to the comments provided by Inclusion Scotland, while I believe that there were conversations taking place, I think that more could have been done to engage with disabled people at certain times during the pandemic. We could have engaged with disabled and clinically vulnerable people more directly in relation to the closure of day centres and the impact this had on their wellbeing and access to services.
- 209 In relation to the comments provided by Clinically Vulnerable Families, while I can understand why they felt this way, I do not agree that there was a failure by the Scottish Government to consider strategies to protect clinically vulnerable people. Indeed, I understand during my period as Cabinet Secretary for Health and Social Care there was a significant amount of discussion and dialogue between the Scottish Government and those who were clinically vulnerable and their families, I know this

was engagement also undertaken by my predecessor. Specific measures were taken by the Scottish Government to protect those that were clinically vulnerable during the pandemic, including enhanced communication, and prioritisation during the various vaccination campaigns.

Vulnerabilities relating to pre-existing health conditions

210 As Justice Secretary, I was not involved in the decision making around those who were deemed to be clinically extremely vulnerable, however, having examined materials provided to me from the Scottish Government, the definition of clinically extremely vulnerable (CEV) was decided at the beginning of the pandemic by the four UK CMOs. Regarding the rationale behind the Scottish Government's development of NPIs relating to the medically vulnerable and its shielding strategy during the course of the pandemic, the intention was to protect those at the highest risk of severe illness or death from a Covid-19 infection. The Clinical Leads Advisory Group (CLAGS), which was a group of specialist clinicians with expertise in the conditions covered by the shielding categories, provided advice to the CMO on this approach.

211 I cannot comment on the development of the NPIs relating to the shielding strategy specifically or the medical advice on which this was based as we were no longer asking people to shield when I was appointed Health Secretary in May 2021. Though at that time, there was still a shielding list, this was renamed 'the Highest Risk List' due to some confusion amongst the public about this – as people were not being asked to shield and had not been asked to since August 2020. In May 2022, the Covid Highest Risk List ended. In general, the Scottish Government was focussed on a 'four harms' approach as I have covered earlier in this statement. We considered the harm caused by Covid and also the harm to physical and mental health as well as the impact on the economy and society more generally. At times there was a judgment call to be made based on the impact on various cohorts. We were mindful of this and provided additional protections for the most vulnerable groups.

Decisions relating to the first lockdown

212 A national lockdown was adopted in March 2020 as a Cabinet decision, based on the information and advice presented to Cabinet, which showed a high rate of infection

and outlined concerns that the NHS could become overwhelmed. At this point there was no vaccine and so efforts were focussed on reducing the expected peak in the number of cases over the coming months. This was in order to protect capacity in the NHS, particularly in intensive care, social care and other critical services as well as to delay the incidence of cases into the warmer summer months, so that the NHS would have more capacity to treat the most severe respiratory cases. Ultimately protecting people from harm and protecting the NHS from being overwhelmed was a significant factor in the decision to impose a national lockdown at this time.

213 I supported the decision to impose a national lockdown in March 2020 and believed that it was the right decision based on the clinical advice that we were receiving. I supported the decision as I believed that it would protect people from harm, ultimately helping us to save lives. I also considered the impact that there might be on the NHS if there was no lockdown. During my time in government, the decision to impose lockdowns were the most difficult decisions that we had to make so I, and the Government as a whole, were aware of the weight of the decision.

214 The Scottish Government considered the potential economic implications prior to imposing the first lockdown. Discussions took place with business groups including the Confederation of British Industry, the Federation of Small Businesses and others. Economic considerations were one factor that was taken into consideration but largely the decision to impose the first lockdown was taken to avoid harm from Covid 19 and to avoid the NHS being overwhelmed. There was a substantive discussion about the economic implications of lockdown in Cabinet on 17 March 2020.

215 In terms of the timeliness of the decision to adopt a lockdown in March 2020, in hindsight, I think that there is a question to be asked about whether we could have gone into lockdown earlier and whether that would have made a difference in terms of lives lost and the impact on the NHS. This is hard to quantify but it is a legitimate question to ask. In terms of the timeliness of the implementation of the first national lockdown, we were clearly moving at a pace that conveyed the significant urgency of the situation. I did not feel that we had much time to implement the lockdown strategy, but it was an emergency situation. The situation was fast-moving, with the publication the four nations *Coronavirus Action Plan* on 3 March 2020 [HY/012 – INQ000131020], stating the four phases of the plan; contain, delay, research and mitigate. On 12 March, the response moved from ‘contain’ to ‘delay’ with a series of actions including the cancellation of large events, school closures and closure of hospitality venues in the days that followed. By 23 March, the First Minister addressed the Scottish people

asking them to 'Stay at Home', and on 24 March, the Scottish Parliament gave legislative consent for the UK Coronavirus Bill. On 26 March, the Scottish 'lockdown' regulations were made under the emergency powers that this Bill gave to Scottish Ministers and came into force immediately.

- 216 I do not believe that the first national lockdown could have been avoided. At that point we did not have the best line of defence against the virus, which was the vaccine. Any intervention would not have stopped Covid from arriving and once it arrived it spread quickly. The only way to delay and reduce the spread was for the country to go into lockdown. The only other measure that we could have considered, however it would have required UK-wide cooperation, would have been to stop international travel. However, I cannot be sure if that would have been enough to stop cases from arriving in the country and it certainly would not have stopped the virus spreading once it had arrived.
- 217 There were considerations of strategies short of lockdown in March 2020, as is set out in the *Coronavirus Action Plan* [HY/012 – INQ000131020]. We took action short of lockdown such as asking people to stay at home if they had a respiratory infection for a period and the messaging around hand hygiene. Ultimately though a lockdown was needed to stop the virus running out of control, to stop it harming society and to stop it overwhelming the NHS.
- 218 The Cabinet had regular discussions about our coming out of lockdown but as Justice Secretary at the time I was not specifically involved in discussions around the exit strategy. No explicit exit strategy was included in the *Coronavirus Action Plan*; however, it notes that the response would be guided by expert scientific and clinical advice. Scotland published its own route map through and out of the pandemic in May 2020 [HY/018 - INQ000131072], which supplemented the *Framework for Decision Making* published in April 2020 [HY/003 - [INQ000256711](#)]
- 219 We were concerned about the impact of the resignation of Dr Catherine Calderwood as CMO on 5 April 2020 as we were concerned that it would affect people's trust and damage the Government's credibility and the good adherence and compliance with NPIs if someone as senior as Dr Catherine Calderwood was seen to be not obeying the rules. There was a limited practical impact on Government as we had a

replacement who was known to us, as Deputy CMO and was well respected for his clinical expertise, we also had a number of other key advisers in place.

Continuation of the first lockdown

- 220 In the period between January 2020 and September 2020, as Justice Secretary, I was not involved in discussions around the likelihood and timing of an effective vaccine being discovered and available in sufficient quantities for the Scottish population, or in the development of effective treatments. We would though get updates from the CMO at Cabinet, including updates on trials but up to September, this information was very limited.
- 221 'Zero COVID' was considered as a serious option. We would not have been the only country to have taken a 'zero COVID' approach and given the concern that we had around the harm that Covid could do and the potential impact on the NHS I believe that it was a proportionate option to consider given that we did not have a vaccine in place at that time.
- 222 I believe that the statement from the Director General of Strategy and External Affairs on behalf of the Scottish Government regarding a 'Zero COVID' strategy in Scotland being unlikely to be sustainable was correct. It would have been difficult for one part of the UK to adopt this policy if the others did not, given travel across the border.
- 223 The decisions of 16 April 2020 and 7 May 2020 to extend the first lockdown were decisions made by Cabinet. We were advised in line with the *Framework for Decision-Making* [HY/003 **INQ000256711**] by our CMO and DCMO. The reasons for decision making were communicated in the First Minister's daily briefings, ministerial statements and on social media. On 11 May 2020, shortly after the decision to extend lockdown, the First Minister appealed to the population to stick with the restrictions for "a bit longer". This address was made following changes being made in England and the need to ensure the Scottish population were clear that these changes did not apply here. This was discussed in Cabinet on 10 May.
- 224 We had to clearly articulate the basis on which we were making a judgement on whether to ease lockdown restrictions or not. The 'four harms' articulated the various factors that we had to consider. Scotland separated the harms from Covid-19 into four overarching categories; direct Covid-19 health harms, other health harms caused by the pandemic, societal harm and economic harm. In line with our overall approach to mainstream equalities considerations into all our work, the four harms approach had

inequalities incorporated into the consideration of each harm. We were already aware of the inequalities which were affecting society at various different levels before the pandemic. There were discussions about groups in society who would be disproportionately impacted by the lockdowns, such as those in areas of high deprivation and ethnic minority groups for example. The four harms were identified as a way of simplifying the many complexities of the pandemic to support rational decision making and as being key to the fight against the virus based on the various advice that we received. It was based on an understanding of behavioural science and what would motivate compliance with those behaviours. The strategy was based on the advice of the Covid-19 Advisory Group.

225 The policies and practices which were put in place to implement the strategy set out in the *Framework for Decision-Making* [HY/003 - INQ000256711] were not in my remit as I was the Justice Secretary at that time. I did have involvement in the easing of restrictions in prisons based on the 'four harms' and had discussions with the Chief Constable of Police Scotland in relation to the easing of restrictions and this being policed in a way that was proportionate, the policing and enforcement of restrictions was of course ultimately an operational matter for Police Scotland. A full explanation of the Four Harms approach can be found in the Module 2A DG Strategy and External Affairs statement provided to the Inquiry on 23 June 2023.

226 In relation to the advice given in April 2020 to wear face coverings in public places and transport, this was a decision made collectively by Scottish Ministers. There was cross sector engagement on this and input from the Covid-19 Advisory Groups we had established. Due to my portfolio interests at the time, I was in close liaison with the Chief Constable of Police Scotland about this, although as I have referenced policing is operationally independent of the Scottish Government. As previously stated earlier in the statement, I had a call twice a week with the Chief Constable during the first months of the pandemic.

Effectiveness of the first lockdown

227 In terms of an assessment of the effectiveness of the first lockdown in controlling the spread of Covid-19 in Scotland and minimising serious illness and death, the Scottish Government would have looked at metrics such as the R number, the number of cases and the pressure on the NHS. Regular data was supplied and published online setting out the prevalence of Covid-19 in Scotland. It could be seen from published data that although the impacts of Covid-19, in terms of morbidity and mortality, were already

severe and would remain so for the weeks to come, the lockdown was successful in reducing the R number significantly, meaning there was lower prevalence of the virus from April and into May 2020.

228 I am not sure if there has been any assessment of the outcomes had different or earlier decisions relating to the management of the pandemic in Scotland been taken in the period around the time of the first lockdown.

229 There was an assessment of the wider consequences of lockdown by the Scottish Government. The information used by the Scottish Government in reaching these decisions was published alongside the *Framework for Decision Making* [HY/003 - INQ000256711] in a supporting evidence paper in May 2020 [HY/019 - INQ000131026]. We are still dealing with the impact of non-Covid related health consequences now, for example the decision to pause cancer screening which has resulted in a screening backlog which we are still addressing.

230 While assessment of the impact on vulnerable and at-risk groups was not directly in my remit as Justice Secretary, I was aware that extensive work was done to assess the impact on vulnerable groups such as the shielding population and to address practical and other difficulties they experienced. As is explained fully in the Module 2A DG Communities statement provided on 23 June 2023, Ministers received advice from officials relating to vulnerable or at risk groups. Some examples of advice provided related to funding for Sikhs in Scotland to run the Sikh Food Bank and Helpline which was targeted at older people and homeless people from ethnic minority groups, as well as those in poverty or at high risk; and a marketing campaign to address the under-reporting of Hate Crime. Officials from the Equality, Inclusion and Human Rights Directorate were also involved in scrutinising draft legislation and provided advice on the potential implications of NPIs in respect of groups with particular protected characteristics.

Conclusions and lessons learned

231 There were lessons to be learned from the experience of the first lockdown in terms of the timing of when lockdown took place, when lockdown measures should take place to be most effective, and how to promote compliance with NPIs. There were no doubt lessons to be learned around engagement ahead of the decision to lockdown with the general population, particularly in relation to those most at risk from Covid-19 and

engaging with businesses and other economic actors on the likelihood and implications of lockdown.

- 232 In terms of lessons to be learned from the first lockdown relating to the impact on clinically vulnerable or at risk groups, my personal impression was that the lockdown generated real fear and concern for these groups in a way that I had not experienced in any other situation. We had regular engagement with these groups and sought to address the practical implications of lockdown, including for example supporting arrangements to ensure effective access to food and other supplies. As the pandemic went on, I also feel that these groups experienced an increasing sense that they might potentially be blamed for the fact that we had to have restrictions. I believe that we should reflect on this and consider more targeted messaging to ensure that there is no stigma attached to clinically vulnerable or at risk groups.
- 233 The Scottish Government had to accept that there would be points where the four nations took a differing approach. We would have preferred to have had a better understanding of the clinical rationale as to why the UK Government took decisions that it did, such as the early lifting of restrictions.
- 234 In relation to lessons to be learned from internal and external communications, I thought that external communications were good. The First Minister's daily briefing was a significant undertaking but was crucial to communicate the rationale behind decisions being made. We received advice in relation to behavioural science which informed us that if the rationale behind decisions were explained there was a higher chance of compliance. Internal communications also worked well. In Cabinet, sometimes decision making was delegated to the First Minister, given the pace of what we were dealing with. Sometimes information was provided to Cabinet shortly ahead of the need to make external announcements, though this was to be expected given the pace and often urgency a decision had to be made by. Most of the time though we had structured discussions through Cabinet or other inter-ministerial groups set up for this purpose.
- 235 Our understanding of the nature of the virus evolved over time. Cabinet was kept updated by the CMO as to the various trends of the virus, how it was spreading and on any potential new variants or variants of interest. In terms of lessons to be learned about compliance by the Scottish public with, and the effectiveness of, Covid-19 laws and regulations, the main lesson we could learn is that the more we explained the rationale behind decision making the more likely we were to have greater compliance. Without that explanation there could be times when NPIs looked like they were being

applied in an inconsistent manner, which again would risk a lower degree of compliance.

236 As Cabinet Secretary for Justice, I was not fully aware of any general systems put in place to ensure that any lessons were acted upon in subsequent management of the pandemic. There were various groups to help ensure cohesiveness, including the Covid-19 Public Services Ministerial Group chaired by the then Deputy First Minister and these worked well. In August 2021, when I was Health Secretary, NHS Scotland and the Scottish Government published a document titled "*Lessons Identified from the initial health and social care response to COVID-19 in Scotland*". This set out an evaluation of the Scottish response from March to September 2020 alongside global case studies [HY/020 – INQ000147474].

F. Decisions relating to easing the first lockdown in the period from 29 May 2020 to 7 September 2020

237 The decision was made to lift the first lockdown in Scotland and to ease the restrictions based on a number of factors. These included the R number, the rate at which the virus was spreading, the impact on the NHS as well as considering the impact of lockdown on the physical and mental health of people and the impact on the economy. As I have noted above, the Scottish Government published its '*Route Map through and out of the crisis*' on 21 May 2020 [HY/018 - INQ000131072]. The four phase Route Map (which was then refreshed over the coming months) set out the plan for easing of restrictions, consistent with the principles set out in the *Framework for Decision Making* [HY/003 - INQ000256711]. The easing of restrictions was only to take place when certain conditions had been met – and this was based on six criteria set out by the WHO. The criteria for easing were:

- Evidence shows transmission is controlled;
- Sufficient public health and health system capacities are in place to identify, isolate, test and treat all cases and to trace and quarantine contacts;
- Outbreak risks are minimised in high vulnerability setting such as long term care facilities and congregate settings;
- Preventative measures are established in workplaces with physical distancing, handwashing facilities and respiratory etiquette in place, and potentially thermal monitoring;

- Manage the risk of exporting and importing cases from communities with high risk of transmission; and
- Communities have a voice, are informed, engaged and can participate in the transition.

238 The Route Map was informed by CMO and other expert advice, and a draft of this was considered by Cabinet on 19 May 2020. The finalisation of this paper was delegated by Cabinet to the First Minister and the Deputy First Minister. This plan allowed some degree of forward planning for people, businesses and other organisations.

239 Progress at each stage of the Route Map was agreed by Cabinet. On 16 June, Cabinet discussed progression to Phase 2 of the Route Map. The information presented to Cabinet set out that the R number had been consistently below one, the number of infectious cases was in sustained decline and the WHO criterion that “COVID-19 transmission is controlled” was fulfilled. Again, the decision making on the final progression to phase two was delegated to the First Minister and Deputy First Minister.

240 The questions around the rationale behind the various strategies and NPIs which were implemented over this period are best answered by reference to the Framework for Decision Making and the Route Map. Advice on the various strategies and NPIs was informed by advice from SAGE, the four nations CMOs and the Scottish Government’s Covid-19 Advisory Group.

241 I believe that the restrictions were the fairest way to manage the virus as we balanced the various harms against the direct impact of the virus. The primary consideration for the Scottish Government was the preservation of life and reduction of harm.

242 There was no conscious decision by the Scottish Government to adopt an approach that purposely diverged from the approach of the UK Government and other devolved administrations over this period. Decisions which were made by the Scottish Government were made in the best interests of Scotland. We considered various metrics and relevant factors such as the R number, the number of cases and the impact these were having on the NHS in Scotland. If other governments took different decisions in relation to NPIs then that would of course be for them to explain. We were confident that we were taking the best decisions in Scotland’s interest and were confident of the rationale behind these decisions.

243 In terms of challenges that arose as a result of differing approaches across the UK, we understood that people were fed up and frustrated with restrictions and wanted to move out of lockdown. We were always conscious of the need to communicate clearly why we made the decisions which we did when there was a difference in approach. This was particularly the case in relation to cross border issues and communicating why people in Scotland were still under lockdown restrictions while the UK Government had made a different decision for the people of England, and explaining why businesses in Scotland many of whom operate across borders were subject to different restrictions to businesses in England.

The steps taken to ease the first lockdown

244 As noted above, I was not directly involved in the design of the various phases of the Route Map as Justice Secretary, but I did engage in the Cabinet discussions which developed and confirmed these documents. Based on those discussions, my understanding is that there was advice considered from the CMO and from the C19AG in formulating and updating the various stages of the Route Map. The details were communicated to the public through the regular daily briefings and also through the publication of these documents. The rationale behind the decision by the Scottish Government to replace its “stay at home” with “stay safe” message was to indicate that we were moving to a different stage in the management of the virus, as set out by the First Minister to Parliament on 19 June 2020. The messaging was effective and more accurately reflected the stage of the pandemic we were in. Data was gathered from the public and new research carried out to ensure that our messaging was developed on an ongoing basis based on feedback regarding the clarity of what was being asked. The decision to make face coverings mandatory in shops was discussed in Cabinet through June and July 2020. At this point, it was already mandatory to wear a face covering on public transport and the rationale behind the use of this NPI related to our understanding of the value in reducing transmission and stopping the spread of Covid. In communicating this to the Scottish public from 19 June 2020 we used the acronym FACTS:

- Face coverings in enclosed spaces
- Avoid crowded places
- Clean your hands and surfaces regularly
- Two-metre social distancing
- Self-isolate and book a test if you develop coronavirus symptoms

This decision was made on public health grounds, and I understand that prior engagement with the retail sector was undertaken, though this was not within my portfolio.

245 I was the Justice Secretary as of 30 July 2020, when the Scottish Government announced that schools would be allowed to reopen on 11 August 2020, with all pupils expected to be in class full time from 18 August and therefore this decision did not sit within my portfolio. The re-opening of schools was discussed in Cabinet on 29 July. This plan had been discussed with partners in the Education Recovery Group, ahead of seeking Cabinet agreement. The scientific advice was published on 16 July and built upon an initial summary of key scientific and public health advice published on 26 May 2020. Due to continuing progress being made in the suppression of the virus, it was recommended to Cabinet that a full time return to school was implemented from the start of term on 11 August.

246 On the decision not to impose stricter travel restrictions and border controls during summer 2020, this was not within my remit at the time. However, it was discussed at Cabinet on 8 July. At that point, blanket restrictions with very few exceptions were in place – requiring travellers to quarantine for 14 days on return from all countries outside of the Common Travel Area. The UK Government however, had announced that from 10 July, it would exempt travellers from specified countries they rated as “green” and “amber” from the requirement to self-isolate. The First Minister requested further analysis, based on the data provided by UK Government. The Cabinet agreed to exempt all countries on the UK Government’s list, with effect from 10 July, with the exception of Spain and Serbia. Travel restrictions then continued to be considered during the summer of 2020.

247 With regard to social restrictions, this was discussed at Cabinet on 18 August 2020, as part of the broader review of phasing. Whilst the clinical advice was that we had not satisfied the criteria for a relaxation of restrictions in order to move to phase 4, it was recommended that we stay at phase 3 rather than implement more restrictions.

248 The response to local outbreaks in summer 2020 were not decisions that I made. These were outside my remit; I understand that Public Health Scotland took the lead on responses to local outbreaks. However, they were discussed at Cabinet. As an example, the Aberdeen outbreak in August 2020 was covered by the CMO at the meeting of 11 August – and Cabinet were informed of meetings scheduled to take place later that day to ensure that restrictions in place were proportionate.

Eat Out to Help Out

- 249 Eat Out to Help Out was a UK Government scheme introduced in August 2020, and my understanding is that the Scottish Government had minimal to no input into its design. This was outside of my remit as Justice Secretary at the time. As such, I am unable to comment any further on this scheme as set out below.
- 250 I believe that the Scottish Government expressed some reservations about the Eat Out to Help Out scheme due to the negative impact it could have in relation to the spread of the virus. We did however understand the economic rationale as to why UK Government wanted to introduce the scheme. I was not involved in the Eat Out to Help Out scheme, however, I understand that this was a scheme operated and funded by the UK Government and therefore the Scottish Government would not have been taking decisions on whether and how to introduce the scheme to Scotland. As Justice Secretary, I was not privy to any advice and representations received from scientists and other interested stakeholders on the likely effects of the scheme being implemented in Scotland or in representing views on the proposed scheme in advance of its introduction or on the impact of the scheme. I expect that there would have been a consideration of the impact of the proposed scheme on Covid-19 numbers. At the time, Scottish Government was pushing for further support for households in financial difficulty yet there was no extra funding available for them.
- 251 At the time the scheme was being introduced in Scotland we received regular weekly updates in Cabinet. I believe that the scheme was introduced during the summer recess in 2020 and despite it being the recess we were still having regular meetings in relation to pandemic response. We would have had scientific advice on the scheme from the NCD and the CMO. I do not remember it being suggested at that time that Scotland was Covid-free. As it was not in my remit, I do not know whether the Scottish Government ascertained whether the Treasury had sought scientific advice in respect of the Eat Out to Help Out scheme prior to its implementation.

Conclusions and lessons learned

- 252 I would refer to the general lessons and reflections set out previously. In addition, I believe that there are some specific lessons from the experience of this period. Particularly around how we appropriately communicated differences between our and the UK Government approaches. At times, the Scottish Government put so much

information out into public domain that we needed to better draw attention to specific pieces of advice to explain the rationale behind certain decisions.

G. Decisions relating to the period between 7 September 2020 and the end of 2020

253 The rationale behind the various strategies and NPIs which were implemented by the Scottish Government in the period between 7 September 2020 and the end of 2020 was the same as before - reducing harm and protecting the NHS. I previously set out in this statement the sources of scientific and clinical advice used in Scottish Government decision making and have also explained about the publication of the Route Map and how that informed progress through the various phases of the pandemic. However, we were alive to the risk of a resurgence of cases in the autumn which may have meant that a different approach was required – i.e., more flexible management of restrictions rather than the linear approach set out in the Route Map. This more flexible approach involving five “protection levels” numbered Level 0-4 was set out in the *Scottish Government’s Covid-19 Strategic Framework* published in October 2020 [HY/021 - [INQ000302532](#)] and was used going forward.

254 It is important to note that from April 2020 throughout the entire period of the pandemic, the four harms approach informed decision making relating to NPIs, regardless of which framework we were working to at the time. This approach was incorporated into advice we received, allowing us to consider all options based on the assessed impact of those on a range of harms. As stated, the objective was always to minimise overall harm. From October 2020, a Four Harms Group was specifically convened as a forum for formulating such advice. This supported Cabinet decision making through the consideration of the current and future state of the pandemic. This is covered further in the Module 2A DG Strategy and External Affairs statement provided to the Inquiry on 23 June 2023, who convened this group. Alongside consideration of the four harms, there was also the need to ensure that NPIs being implemented were lawful – in terms of being necessary, proportionate and lawful.

255 The Scottish Government considered that the restrictions effected over this period would be sufficient to suppress cases of Covid-19 based on the scientific advice given at the time and our understanding of the virus.

256 On 7 September 2020, the First Minister announced that it may be necessary to “put the brakes” on the further easing of lockdown measures in Scotland. In her speech, she noted that that there had been significant changes in the number of cases being

recorded. Six weeks prior to this announcement, the average number of cases being recorded per day was 14. Three weeks prior, this had increased to an average of 52 cases per day. Over the seven days between 1-7 September, the average number of cases being reported per day was 152. Although the number of people being treated in hospital and ICU was lower than earlier in the year, we were concerned that continued transmission would mean the virus reaching older and more vulnerable groups, which would translate into more instances of serious illness and ultimately more deaths.

257 As noted earlier in this statement, the Scottish Government's Route Map [HY/018 – INQ000131072] set out clear criteria that need to be met for us to move through the phases. The proposed changes were discussed in Cabinet on 8 September. The changes planned for 14 September would have signified us moving to phase 4. In order to do that, we had to be satisfied that "the virus is no longer considered a significant threat to public health". As the figures noted above indicated, this was not the case. This was confirmed by advice from the CMO. Not only had the level of infection increased significantly since the last review, but it was also likely that we still had not seen the full impact of the easing of restrictions made on 24 and 31 August. We were also seeing importation of the virus from cross-border travel. The changes planned for 14 September, that is the re-opening of theatres, live music venues, indoor soft play and indoor contact sports, were deemed to be relatively high risk, particularly given our knowledge of how the virus spread in indoor spaces where people are in close contact. Therefore, this was postponed until 5 October.

258 The First Minister's announcement on 22 September 2020, that a ban on visiting other houses was to be extended across Scotland from the following day and that a 10pm curfew on pubs and restaurants would follow from 25 September was again based on clinical advice. This was discussed in Cabinet on 22 September 2020, where the CMO noted that the package of measures proposed was intended to provide the best, and earliest hope of stopping the virus from running out of control in the immediate future. In addition, the CMO explained that compliance with these measures would allow the NHS to prepare for the winter months, and the concurrent risks that this period presents for the health service.

259 In relation to the decision to advise students in Scotland not to visit pubs, restaurants and parties and to socialise only with members of their accommodation, this was discussed at Cabinet on 22 September and arose as a result of recent outbreaks in student residences. There also appeared to be a particular issue in relation to younger

age groups (especially 18-39 year olds) which was considered even more important given the start of the new term. As such, the rationale for the restriction around socialising with people in their own accommodation was based around a bubble strategy. We appreciated that after months of restrictions that socialising was important for students, especially for those who had just started that term, but we had to balance this with keeping people safe.

260 I was Justice Secretary as of 7 October 2020 when the Scottish Government announced that bars and restaurants in the central belt would close from 18.00 on 9 October, that the closure would remain in place until 25 October and that licensed premises in other areas could remain open for outdoor service only. This decision was discussed at Cabinet on 7 October following correspondence from the Director-General Constitution and External Affairs the previous evening. This was supplemented by a joint paper from the CMO, the Chief Nursing Officer and the NCD. The latter paper set out the range of information available about the trends in infections, confirmed cases, hospital use, and deaths, and the variations across Scotland. It also considered the evidence available about trends in behaviours and attitudes, and what this may mean for compliance with current and planned social restrictions. The rationale was that in the short term, the path of the Coronavirus needed to be sharply interrupted. As household gatherings were already generally restricted, the opportunity for people to transmit the virus in hospitality venues was the next focus for immediate further action. We were aware that it was extremely difficult for this sector which had been badly affected by lockdown and we were trying to balance this with protecting people. The decisions made were communicated to the public through the daily briefings and ongoing Scottish Government communications activity.

261 The Alpha/Kent variant was first discussed in Cabinet on 15 December 2020. I was not able to attend this meeting, but I understand that, at this point, Cabinet was advised that it was too soon to know if this new variant was more transmissible but there was no evidence that it was likely to cause more serious illness. However, it was highlighted that there could be a need or urgent decisions on possible travel restrictions over Christmas.

262 The term 'circuit-breaker' was not widely used by the Scottish Government. However, in Cabinet on 22 September 2020, the concept was noted. No formal consideration had been given to this type of temporary lockdown at that point, but the First Minister was clear that all feasible ways of controlling the pandemic would be kept under review.

- 263 At the time of the second lockdown in England, the measures taken in Scotland were targeted and proportionate, and in many areas, just as strict as the restrictions in England. Our approach continued to follow the Strategic Framework and to be informed by the scientific and clinical advice we regularly received.
- 264 In general, over this period, the decision to institute any lockdown, as I have commented previously was one of the most difficult decisions any government could make. It is the decision that has weighed most heavily on my mind in my time in government. It was often a finely balanced decision to make, balancing the impact on people's health and the economy of the restrictions in place and being considered, and the overall advice presented across the Four Harms Framework.
- 265 There were lessons to be learned from the first national lockdown when considering whether to impose a circuit breaker or second national lockdown. The first lesson was in relation to communication and how we focussed on explaining the rationale for lockdown to ensure a maximum level of compliance. There were also lessons in relation to the impact on various groups, including the most vulnerable in society, and businesses. Many factors had to be considered when considering whether to put in place further restrictions.
- 266 I am not sure that I would agree with the contention that, to begin with, cross government co-operation within the Scottish Government was informal. The Deputy First Minister chaired the cross portfolio Covid-19 Public Services Ministerial Group from April 2020. These were formal meetings at which notes and actions were taken. Cabinet regularly discussed the four harms, which were included in the Framework for Decision Making from April onwards. Advice which the Scottish Government received often specifically referenced the four harms and was considered on this basis, well in advance of the establishment of the specific 'Four Harms Group'.

The 5-level Covid management system

- 267 The decision-making around the development of the new five level Covid-19 system was not within my remit as Justice Secretary. This five level system was discussed at Cabinet in October 2020, in light of the very real possibility that there could be a resurgence in cases which varied across the country and therefore require a more flexible approach to management.
- 268 I believe that the levels system was effective. It gave us as Cabinet Ministers and the Government an overarching system by which to make decisions in a more phased way

where necessary to appropriately respond to the spread of the virus. I think it also helped in terms of communicating what we were doing so that the public could see and understand the various different phases of our response. I am not aware of whether any assessment was done of the extent to which it differed from similar systems in the rest of the UK.

269 I did not have any specific concerns about the extent to which the creation of the level system would be successful in avoiding the need for a second national lockdown. The system was intended to allow us to react proportionately to the prevalence of the virus in different areas of the country.

270 In terms of any concerns over the public understanding and communications surrounding the levels system, I think that this was a key focus for us anytime that a new strategy was devised. It is fair to say that communications were a key theme and that we returned to this regularly. The corporate statement provided by DG Corporate in June 2023, sets out in detail the communications strategy that was followed throughout the pandemic.

Conclusions and lessons learned

271 I would refer to my broader reflections captured above. With specific regards to this period, I would note the ongoing importance of regular communication with the public at different levels when devising and explaining any new strategy. This is always an evolving process and being able to interpret what has worked and what can be improved on an ongoing basis is critical to success.

H. Decisions relating to Christmas 2020 and the second lockdown (January 2021 to 1 April 2021)

272 It had been agreed on a four nations basis that there would be a temporary relaxation of restrictions from 23-27 December 2020 to allow families to come together over Christmas, where they felt the need to do so. However, in light of a new variant of the virus, at a meeting of Cabinet on 22 December we agreed that the proposals to relax restrictions no longer seemed safe. Whilst data was still emerging, the information we had was that that new variant appeared to be 60-70% more transmissible than previously. In these circumstances it was clear that we would need to balance the significant impacts, including mental health impacts, of restricting people's ability to carry out their Christmas plans with the need to manage the harms and risks arising from the virus. Ultimately, we agreed that there should be a limited relaxation of travel

restrictions in law, for Christmas Day only. The advice that would accompany this was that people should only consider this option if they felt it was genuinely necessary, otherwise, people should stay at home within their existing households.

- 273 From 26 December for a period of three weeks, the proposal was then to place much of Scotland, with the exception of some of the Highlands and Islands which had very low prevalence, into level 4. Cabinet discussed and agreed this approach and delegated responsibility to the First Minister for finalising these proposals. This decision was based on the clinical evidence presented and was communicated to the public as soon as practically possible. This was not an easy decision to make in light of the significant restrictions that had been in place for the majority of the year and given the time of year it was, however, cases were rising, and we were also conscious that any further mixing over Christmas would have been likely to exacerbate the situation further.
- 274 On 4 January 2021, the CMO presented the situation across the UK to Cabinet. Earlier that day, the CMO had met with the other UK CMOs and determined that, based on the advice of the Joint Biosecurity Council, the UK alert system should now move to Level 5 its highest level. This indicated that there was now a significant risk that the NHS could become overwhelmed in the weeks that followed. At this point, the number of cases per 100,000 of the population had increased by some 65% and we were cognisant that the statistics would not yet have reflected any increase in cases we were likely to see as a result of gatherings over Christmas. On this basis, we agreed that mainland Scotland should move to enhanced level four restrictions.
- 275 We also agreed to introduce a new legal requirement forbidding anyone from leaving their home except for essential purposes – the inclusion of this set of exceptions was based on the lesson learned from the first lockdown. Following this meeting I undertook to engage with the Chief Constable to discuss the appropriate enforcement of these restrictions, the proportionate policing of restrictions was a matter I know the Chief Constable was very acutely aware of.
- 276 My view on the timeliness of the decision to impose a move to level four for mainland Scotland was that in November and in the run up to Christmas we were in a difficult position in relation to rising cases. We took the decision to move mainland Scotland to level four, as I have set out above, which indicated the severity of the situation. There is an argument about whether we should have moved sooner, but it was also crucial that we considered the full range of the four harms and carried out appropriate

engagement with sectors who would be impacted by this lockdown including the business community.

- 277 Consideration was given to strategies other than a full lockdown. That had resulted in the development and application of the five level system depending on the R number and the spread of the virus across the country. The protection of the vulnerable was a serious and significant part of our consideration in making these decisions. However, in the event, the levels system was not sufficient to curb the spread of a new and much more transmissible variant of the virus: and this was evident in the extremely high R numbers which we began to see in this period. However, in moving mainland Scotland to level four we were able to maintain a lower level of restrictions for our island communities, reflecting the different prevalence of the virus there at that time.
- 278 I was not aware of the Scottish Government being significantly influenced by the Great Barrington Declaration. We took our decisions based on our own circumstances in Scotland and on the basis of our aim to minimise the harm resulting from the pandemic. If we had let Covid run rampant a significant number of people would have lost their lives. There would also have been likely to be a significant impact on the NHS, with people dying and many seriously ill as a result. At this time, we did not yet have a vaccine.
- 279 We applied lessons learned from the first national lockdown when considering what restrictions to impose in December 2020/January 2021. We were able to draw on the experience of the first national lockdown of non-covid related impacts on people, as well as covid related impacts. These were only better understood after our first national lockdown experience, which had indicated what the impacts on mental health, physical health, public services and the economy could be. We also understood more about compliance and the factors behind this.
- 280 The re-introduction of attendance restrictions at schools at the same time as the move to level four for mainland Scotland, were not within my remit as Justice Secretary, however they were discussed at Cabinet on 4 January 2021. From a review of the Cabinet papers, I understand the rationale for this was in order to reduce transmission of the virus and that this was based on advice from the Covid-19 Advisory Group, the Sub-Group on Education and Children's Issues and the Education Recovery Group. This was further discussed at Cabinet on 19 January where the importance of acting early, decisively and in a precautionary manner was highlighted. We did not yet know

the impact of the new variant on transmission amongst children and were concerned about the high levels of community transmission.

- 281 I believe that the First Minister extended level four restrictions for mainland Scotland until mid-February 2021 in order to relieve pressure on the NHS. Short term modelling was presented at Cabinet on 19 January which suggested that an increase in hospital and ICU admissions could still lead to the potential of the NHS being overwhelmed. We were also concerned about the increased transmissibility of the new Alpha variant, and the percentage of cases that were now composed of the new variant.
- 282 As stated, the re-opening of schools was outside my remit at this time. However, the re-opening of them was subject to Cabinet discussion. Advice received and considered at Cabinet on 19 January, from the Sub-Group on Education and Children's Issues was that it was too early to offer any further advice on the timescale or process for the return of face-to-face learning, given the need for a longer period of time to monitor the effects of current restrictions on reducing community transmission.

The easing of the second lockdown

- 283 In February 2021, Scotland's schools began a phased re-opening, with the youngest pupils returning to classrooms first. Our understanding was that young children were less severely impacted by the virus, which is why the youngest pupils were able to return to the classroom first in February 2021. We were also better able to manage the mixing of younger children as opposed to senior pupils, for example, S5 and S6 pupils would leave the school for lunch, interact in common rooms etc and so there was more scope for mixing among older children than there were with younger children. The lesser severity of illness in young children was also part of the rationale.
- 284 The updated *Strategic Framework* which set out the broad order of priorities for relaxing restrictions and the conditions to be met at each stage was published on 23 February 2021 [HY/022 - INQ000147446]. This update was covered by the First Minister in her daily briefing of 22 February 2021, and was also published on the Scottish Government website.
- 285 The rationale for why the "stay at home" order was lifted in Scotland on 2 April 2021 and replaced with a three week "stay local" order that required people to stay within their local council area was based on clinical and scientific advice. This was discussed at Cabinet on 16 March and was considered to be the most straightforward way to set

out and communicate what the public were being asked to do, including the rationale for trying to reduce spread between different areas.

286 The decision announced on 2 April 2021 that all secondary schools could return full-time to the classroom after the Easter holidays, but should wear face coverings, this was outside my remit as Justice Secretary. However, the *Strategic Framework* update published on 23 February 2021 [HY/022 – INQ000147446] states that part of the protective measures to suppress transmission of the virus is to continue to emphasise the importance of NPIs, which includes the use of face coverings. I have discussed the decision making process in April and May during the pre-election period further in the following section.

Conclusions and lessons learned

287 The purpose of the move to level four for mainland Scotland was to suppress the virus and to protect people from harm, particularly with the spread of the new Alpha variant. If we had not imposed the second national lockdown at this point, I believe that more people would have lost their lives and been severely ill and that people would have suffered greater harm.

288 In terms of the effectiveness of the restrictions, the data showed that in early 2021, there was a decline in the prevalence of the virus. The restriction levels then continued to be reduced across Scotland into Summer 2021.

289 As the understanding of the impact of different NPIs on transmission of the virus improved, this was factored into decision making and reflected in the iterations of the framework for decision making and the underlying evidence. Our assessment of the consequences of the second lockdown not related to the spread of the Covid-19 virus, such economic, social and non-covid health related consequences, was reflected in ongoing consideration of the four harms. The Module 2A DG Strategy and External Affairs corporate statement provided to the Inquiry in June 2023. Similarly, our awareness of potential impacts on those vulnerable or at-risk groups in society continued to evolve, including on the basis of direct engagement with such groups and some examples are set out in the corporate statement provided by DG Communities in June 2023.

290 In terms of lessons which were learned by experience of the second lockdown, we were able to take a more nuanced approach in relation to the easing of it. We were

able to follow the levels process and where necessary we were able to bring in nuance, including travel restrictions around certain council areas.

291 In terms of lessons to be learned from this period by the Scottish Government I feel that many of the lesson have already been captured in my earlier reflections. We could perhaps have learned general lessons in relation to communication when decisions are made at very short notice. For example, in the run up to Christmas, short notice decisions were made, and we were then trying to catch up by moving very quickly in terms of communicating these decisions to the public and explaining the rationale behind them. Given the pace at which events were moving and new information becoming available, this was perhaps unavoidable, but equally there were lessons to be learned in terms of the value of early communication. The more notice that we can give people, the easier it is to explain the rationale of what we are doing.

292 In terms of what systems were put in place to ensure that those lessons were acted upon in the subsequent management of the pandemic, I think that there was a strong emphasis placed on continuous learning in our overall communications approach, as I have set out before.

I. Decisions relating to the period between April 2021 and April 2022

293 Between April 2021 and April 2022, a range of NPIs were still used to control the spread of the virus, including the continuation of the graduated levels system, in line with the *Strategic Framework* [HY/022 – INQ000147446]. The Four Harms approach was still at the forefront of decision making, but the success of the vaccination programme during this period also informed the Scottish Government's response. All decisions were informed by a range of scientific and clinical advice, as described in earlier in this statement, with the CMO presenting advice and explanations regularly to Cabinet and groups such as the C19AG, JCVI, JBC and SAGE feeding into this information and evidence base.

294 Cabinet considered the timetable for easing restrictions on 16 March 2021, ahead of the pre-election period based on evidence on the state of the pandemic, the latest scientific and clinical advice and the progress of the vaccination programme. The timetable included the proposals for reopening schools (which was announced on 2 April as discussed above), the lifting of the stay local rule (announced on 16 April) and various other relaxations including those announced on 20 April. The CMO noted that relaxing restrictions would increase transmission, hence a controlled approach must

be taken. He also noted the positive progress made by the vaccination programme and that ICU admissions were in decline. The timetabled easings Cabinet agreed allowed for a controlled and cautious lifting of restrictions

- 295 I considered that it was right to ease the second national lockdown in mid-April 2021. This was because of the advice that the Scottish Government were receiving in relation to the reduction in the spread of the virus, but also due to the impact of lockdown and the impact it was having on the economy as well as non-Covid health related impacts. For example, in our discussion at Cabinet it was noted that we were now at a 'tipping point' for students in further/higher education to complete their learning for the academic year and should there be an increase in deferrals to the next academic year, it could impact training capacity and impact the wider economy.
- 296 During this meeting it was also agreed that during the pre-election period, as Cabinet meetings would be paused, any further decisions required that were broadly consistent with the *Strategic Framework* [HY/022- INQ000147446] and the indicative easings timetable as agreed by Cabinet would be delegated to the First Minister. The First Minister would be supported by the Gold Group, of which I was included. A virtual Cabinet meeting would be initiated should a decision be made to proceed in a way that diverged from the *Strategic Framework*, or if the state of the pandemic changed significantly. The arrangement was activated on 25 March 2021 and the arrangements were further confirmed by Cabinet on the last meeting before the pre-election period on 23 March 2021.
- 297 However, while many restrictions were relaxed on 16 April 2021 and up to six people from six different households were allowed to meet up outside again, people were still not permitted to stay overnight outside their council area. The advice remained for people to shop within their local council area wherever possible. This was to try to reduce the spread of the virus from council areas that high numbers of cases and R numbers to other council areas with low numbers. We were of the view that people staying overnight in other council areas could have a significant impact on case numbers.
- 298 On 20 April 2021, the First Minister confirmed the reopening of outdoor hospitality, gyms and non-essential retail from Monday 26 April. Non-essential travel between Scotland and the UK's other Home Nations was also permitted again from that date. This would have been a delegated decision by the First Minister, based on the latest data available and in line with *the Strategic Framework* [HY/022 – INQ000147446].

- 299 In terms of Michael Gove stating on 9 May 2021 that another independence referendum was a "massive distraction" from the Covid pandemic, my view is that we continued to focus virtually all of our attention on the management of the pandemic. In terms of the Scottish Government's priorities, attention and resources, our focus as a government was on the monumental effort of managing the pandemic. There was no detrimental impact on that effort and no shift after May 2021.
- 300 On 14 May 2021, the First Minister confirmed that Glasgow and Moray would remain in level 3 restrictions for a further week after the rest of Scotland moved to level 2 on Monday 17 May. This decision was based due to high rates of Covid-19 cases in those areas. Moray at the time had double the national average of cases and the data from Glasgow City indicated an increased rate of infection, driven by the Delta variant. Five days after this, on 19 May 2021, I was appointed as Cabinet Secretary for Health and Social Care.
- 301 The next round of relaxations, announced by the First Minister on 1 June 2021, had been considered by Cabinet earlier that day and guided by the stipulated levels criteria, based on factors such as the case numbers and the R number in each area. Glasgow moved from Level 3 to Level 2 restrictions from Saturday, 5 June, and some areas of Scotland moved to Level 1 restrictions, but thirteen councils in the central belt remained at Level 2 and island communities moved to Level 0.
- 302 It was noted during the Cabinet discussion that the vaccine programme was progressing well but due to the pace of the virus spreading the interval between doses must be reduced and that pace of vaccination in general increased. However, despite the rise in case numbers the numbers of hospitalisations were lower than during the second wave of the pandemic and the ways local outbreaks were managed had improved, in terms of targeted testing and vaccination. On balance, Cabinet agreed it was therefore justified to move areas which met the required criteria to move to a lower level, with those that did not to remain at least until the effects of the vaccination programme had begun to mitigate the increased case rates.
- 303 I am not aware of any audit being undertaken of local restrictions over this period, but we were regularly in touch with bodies such as COSLA and the local authorities themselves. We took advice from the C19AG and analysed levels of compliance.

The move to level zero

- 304 On 19 July 2021, Scotland moved to level zero restrictions, allowing larger numbers of people to meet up indoors as well as attending wedding and funerals. This was a challenging point in the pandemic as while numbers of positive cases were declining in Scotland, they were accelerating globally, and the vaccine programme was still in progress. However, we also had to consider the wider harm restrictions were having on society, the economy and non-Covid health issues. A cautious and gradual approach to level zero, which was perhaps slower than had been anticipated, was deemed to be a better way to progress than reintroducing more severe measures, especially in terms of avoiding greater economic harm.
- 305 There were also baseline risk reduction measures which would be required for some time, as well as other general protective measures, which we strongly encouraged people to adhere to, such as wearing face covering indoors and opening windows, even as we moved to level zero.
- 306 On 9 August 2021, the bulk of pandemic related restrictions were removed in Scotland. This decision was taken by Cabinet and based on the timetable outlined in *Strategic Framework* [HY/022 – INQ000147446]. The CMO had presented Cabinet with an overview of the state of the pandemic on 3 August and a Cabinet paper was circulated prior to the meeting provided a breakdown of the clinical facts, such as positive cases and hospital data and R number. The criteria referred to within the Framework had been met, both in terms of both the state of the pandemic and the completion of the vaccination programme, which was a sufficient watershed in our ability to limit the harm the virus could have on the general population. WHO Criteria one to six (as set out in Section F above) were also assessed as being met.
- 307 However, those measures which formed part of the 'baseline' measures remained. These included compulsory mask wearing in some locations and restrictions surrounding the administration of schools in the early part of the new academic year. By the end of August, we anticipated that the vaccination programme would be completed, and this would be a gamechanger in terms of our handling of the virus.
- 308 Even though restrictions were removed certain protective behaviours were strongly encouraged, such as regular testing, wearing face coverings and ensuring that indoor spaces were ventilated, as well as guidance relating to testing and vaccinations.
- 309 The rationale for the Scottish Government's Covid passport scheme was to try to open up society as much as we could whilst managing the risk of the virus spreading

which was still prevalent in society at the time. The Covid passport scheme was introduced when there had been a number of variants and each variant was, or at the very least seemed to be, more transmissible than previous ones. The rationale was that passport scheme would allow society and business to open up while managing the spread of Covid.

310 Due to the success of the vaccination programme at this point and the need to simplify the traffic light system for international travellers, on 18 September the Scottish Government announced that the green and amber list would merge. Unlike England, Scotland announced that there would be no changes to the rules regarding Covid tests for returning travellers as we felt there was no public health justification for doing so, and that testing remained an important source of surveillance information in terms of emerging variants. It is fair to say that I am not sure that we fully understood the UK Government rationale for changing the testing rules for returning travellers in England.

311 To manage the risk of Covid connected with the COP26 summit which took place in Glasgow between 31 October and 12 November 2021 there were various measures in place including encouraging the use of hand sanitiser and the wearing of face masks. The *COP26 Covid-19 Adaptation Plan*, provided [HY/023 – INQ000292488], sets out a number of measures put in place to mitigate the spread of Covid-19 during the conference. The document was developed by the UK Government and Scottish Government working closely with CMO, NCD, Public Health Scotland, Glasgow City Council and NHS Greater Glasgow and Clyde.

The emergence of the "Omicron" variant

312 The advice and information which was received by the Scottish Government in connection with emergence of the Omicron variant would have been information received from the CMO and other advisers. There would also have been advice from the JBC in relation to the emergence of Omicron.

313 In terms of the existing restrictions being deemed to be the most appropriate way to manage the Omicron threat, I would go back to my previous comments that we took imposing restrictions in any form and particularly lockdown extremely seriously. Thankfully, in this instance, we also had effective vaccines and a well developed vaccination programme in place. We had just started the winter booster campaign and we accelerated this in response to Omicron with our "boosted by the bells" campaign to encourage more people to be boosted by Hogmanay. We had to ensure that the

balance was right between accelerating the vaccine programme, ensuring that adequate testing was in place and keeping society open at a crucial time in terms of when people would be socialising and a time which is also crucial for the wider economy and businesses who had already suffered greatly due to the impact of the virus.

- 314 At a Cabinet meeting on 7 December 2021, the CMO provided an update on the state of the pandemic. He noted the sharp and fast rise in Omicron cases and that while the trend on declining hospital admissions had continued, this was likely due to the expected effect of the Omicron variant not becoming apparent in the figures yet. He also noted evidence that the variant may be capable of infecting large numbers of people attending gatherings in indoor spaces due to its increased transmissibility, as well as its high attack rate and shorter incubation period.
- 315 It was agreed that the current statutory measures should be confirmed for a further period of three weeks and work should therefore continue to develop further potential measures for consideration at the following week's meeting of Cabinet. However, it was also acknowledged that the decision might have to be made sooner, hence it was agreed to delegate the decision-making to the First Minister in the intervening period, with support from Ministers, officials and advisors.
- 316 The First Minister announced in a media statement on 10 December 2021 the measures to be put in place, including a change to the self isolation rules so those who tested positive had to isolate for 10 days. Those who had a negative PCR test but had symptoms would be asked to take another test and if this was positive to self-isolate. The First Minister outlined the rationale for these decisions, namely the much greater transmissibility of the variant. The First Minister also highlighted the Scottish Government evidence paper '*Omicron in Scotland*' [HY/024 – INQ000292489] which was published on 10 December, and where people could find it.
- 317 The rationale for the Scottish Government guidelines for hospitality and retail businesses which advised on the return of social distancing and one-way systems for supermarkets and shops on 16 December 2021 related to our awareness that this time of the year is particularly busy for retail and hospitality. People were meeting indoors in greater numbers than during the rest of the year and, given the high transmission rate of the Omicron variant, this was expected to increase the rate of infection further. This meant in order to restrict the spread of the virus as much as possible, we needed to take steps to reduce contact by putting in place systems such as one way systems,

without unduly disrupting the operation of the retail sector and this was communicated to the public through the daily briefings by the First Minister and through media channels.

- 318 For the same reason we limited the number of spectators at indoor events and allowed a greater number at outdoor events. The numbers were informed by the scientific and clinical evidence, as well as the knowledge that people would want to attend events throughout the festive and New Year period, hence we stipulated that the larger events that were permitted occur outdoors. As ever, we had to strike a balance between keeping society open and containing the spread of the virus. By this date people had received the vaccines and the most vulnerable would have had a booster, and this gave us further encouragement in relation to allowing for gatherings of controlled numbers to occur.
- 319 However, on 21 December 2021, Cabinet had to further consider if additional protection measures were required given rate at which Omicron was spreading in Scotland. At this point it was known that this variant was more transmissible than Delta and it was better at evading vaccine induced antibodies. The impact the booster vaccine would have on the variant was unknown, as was the impact it could have on the NHS and other emergency services over the festive period.
- 320 These further measures included the cancellation of all large events on 26 December 2021. These restrictions relating to attendance at events came into force a day earlier than 27 December to ensure planned events on Boxing Day, such as football matches, were also subject to the same restrictions and there was consistency in messaging and behaviour.
- 321 One metre physical distancing measures were reintroduced for the hospitality and leisure sectors, while hospitality had to provide table service only. Nightclubs were required to close for a period of at least three weeks. Again, these restrictions were based on the very urgent need to contain the spread of the Omicron variant and protect the NHS from potentially being overwhelmed. The hospitality, retail and nighttime economy sector were generally based indoors, traditionally busy over the festive period and more likely to involve alcohol consumption which could make people less cautious in their physical distancing behaviours and these factors were all relevant given our understanding of how the virus spread.

The lifting of the remaining restrictions in April 2022

- 322 On 29 March 2022, Cabinet reviewed the only measures of the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 which remained in force. These were the requirements to wear a face covering in most indoor public places and on public transport.
- 323 The accompanying Cabinet Paper noted that case numbers were high in Scotland, as were the number of people hospitalised with the virus but there were some early signs of improvement. The various options were considered but it was also noted that Office for National Statistics (ONS) survey data would be made available the day before the First Minister's statement to Parliament and the final decision should be taken once this data had been analysed. The final decision was therefore delegated to the First Minister, who could use the ONS data to finalise the terms of her statement to Parliament the next day. In this statement the First Minister announced that from 4 April, it would no longer be a legal requirement to wear a face covering in places of worship or while attending a marriage ceremony, a civil partnership registration, or a funeral service or commemorative event. The wider legal requirement, which applied to shops, certain other indoor settings and public transport would be converted to guidance two weeks later on 18 April.
- 324 The significance of the decision to lift the rules regarding wearing a face coverings in shops and restaurants and on public transport, and the continuing risks, was communicated to the public by the then First Minister's daily briefings and through media statements.

Conclusions and lessons learned

- 325 In terms of what assessments had been undertaken as to the effectiveness of the restrictions implemented over this period in controlling the spread of Covid-19 in Scotland and minimising the serious illness and death, it is important to note that the Scottish Government factored the experiences from the earlier lockdowns and NPI measures into the decision making for this period. The evolving scientific research on the effectiveness of NPIs, both national and international, was also continually taken into account and incorporated into our modelling. Regular polling of people's attitudes towards the continued use of NPIs, including rates of compliance, was also conducted.
- 326 A number of lessons had been learned over the vaccine programme throughout 2021. For instance, our acceleration of the vaccine programme taught us how to deliver the

significant shift in NHS resource, both in terms of people and equipment, which this sort of intervention required.

- 327 I am not aware of any specific assessments that have been completed in regard to the economic, social or non-Covid health related consequences of the restrictions implemented in Scotland over this period, but we were always very mindful of these wider consequences, as per the four harms approach. This was especially true of the Christmas period, as we were very aware that this would be the second disrupted festive period and that this is always an extremely important time for hospitality and businesses.
- 328 As outlined previously in this statement, the impact of NPI measures on vulnerable and at-risk groups was always at the forefront of our considerations when making decisions. It was discussed regularly at Cabinet and formalised through the impact assessments process as outlined previously in this statement. The work undertaken by the Shielding Division to seek feedback from these groups on the various measures imposed or lifted has been outlined within the Module 2/2A Health and Social Care corporate statement provided in June 2023.
- 329 The Scottish Government always considered it to be extremely important that the decisions it made during the pandemic should be fully analysed and assessed. On 14 December 2021, the then Deputy First Minister announced the establishment of a statutory public inquiry into the handling of the Covid-19 pandemic in Scotland. This would scrutinise the decisions taken over the entire pandemic period and produce recommendations for the future.
- 330 As outlined in the Module 2A DG Strategy and External Affairs corporate statement, provided to the Inquiry on 23 June 2023, the timing for tightening or easing NPI measures was always a finely balanced judgement call. This was due to unavoidable uncertainties involved, our evolving scientific understanding of the virus and the reliability and sufficiency of the data available. On the one hand we could take extreme action to suppress the virus which would restrict people's liberty and have significant negative impacts on wider economic, societal and non-Covid health matters, and on the other hand we could impose only loose measures that might not suppress the virus to the desired extent but would have a lesser impact on people and business. The most proportionate and balanced way forward was generally somewhere in between the two positions and I believe we achieved this balance.

- 331 In relation to the national lockdown, this decision was one of the most important and considered decisions I had ever made and will likely ever make. In hindsight I believe there could be an argument made for imposing lockdown earlier, but this would have had also had consequences. Ultimately, there will always be consequences for the choice that is made, but you can only make them with the information that you have available at the time.
- 332 There is also an argument to be made that restrictions could have been less severe or prolonged, and this argument rests more on the economic impact these restrictions had rather than the health impact – as ever as the Scottish Government we tried to reach a balance between the different harms which the pandemic and the measures to tackle it could cause.
- 333 In terms of communication, we tried to give people as much information as possible when we were making decisions, including the intent and rationale behind them, and this was particularly the case around the festive period where there would have naturally been an increase in socialising.
- 334 I also think there are lessons to be learned in relation to the impact of the decisions that were made around this period, such as the decisions on 26 December 2021 to cancel all large events. We tried our best, without the gift of foresight, to understand the reasonable worst case scenario at each point and how this might materialise, whilst trying to give business and industry as much notice as possible about the changes coming into place in a situation that was changing and evolving rapidly. There were some measures the Scottish Government wished to take which it could not because the measures related to reserved matters, a key example being the availability of furlough funding in late 2021 as outlined previously in this statement.
- 335 The Module 2A DG Strategy and External Affairs corporate statement, provided to the Inquiry on 23 June 2023, states that international passengers were able to circumvent tougher restrictions in Scotland by travelling via England and where this happened it reduced the efficacy of Scotland's restrictions to a degree. I agree that this could be the case. One possible way to mitigate against this would have been to have established an independent expert panel making such decisions for the whole of the

UK, including representatives from all areas of the UK. All nations would have to have agreed to abide by its decisions.

- 336 In terms of what has been put in place to ensure lessons learned are acted upon in the subsequent management of the pandemics, in Spring 2021 the Standing Committee on Pandemic Preparedness was formed as a permanent advisory group to the Scottish Government, established to bring together scientists and technical experts to advise the Scottish Government on the future risks from pandemics and to ensure we are as prepared as it is possible to be for these. Furthermore, as noted above, in December 2021 the intent to establish a Scottish public inquiry to examine decision making during the pandemic was announced. This will determine the lessons to be learned and assess whether the systems in place for responding to a similar emergency in future are sufficient.

Conclusions and lessons learned from the use of NPIs in response to the pandemic

- 337 In terms of the general experience of decision making about NPIs in Scotland, and the rest of the UK, most of this has been covered previously in this statement. I believe that the vaccination programme worked well, especially prior to Hogmanay 2021 when we asked NHS colleagues to ramp up the vaccination programme, and we managed to get more people vaccinated in that period than we had in the entire previous period. There were also very good working relations around the vaccine programme among the four nations.
- 338 In terms of obstacles and issues encountered between April 2021 and April 2022, we had to factor into our decisions making that the population had been living with restrictions since March 2020. The management of the pandemic had had a significant impact on their lives, their health, their livelihoods and their education. We had to consider the cumulative effect of all of this in terms of how we decided to manage the period of Omicron. The lack of furlough funding also limited our response options, as stated previously.

J. Care homes and social care

- 339 In the early stages of the pandemic, I was Cabinet Secretary for Justice and therefore not involved in decision making relating to the discharge of people from hospitals to care homes, therefore I am only able to offer limited comment on this period based on my review of relevant Cabinet papers. In Cabinet meetings the Cabinet Secretary for Health and Sport provided updates related to the areas of testing and discharge and

we would have discussed these collectively, but the decisions would have been made by the First Minister and the Cabinet Secretary for Health and Sport.

340 When I became Cabinet Secretary for Health and Social Care on 19 May 2021 an established procedure for testing and discharge was already in place. When we had to transition away from mass population testing in 2022, I made the decision to keep routine testing for those being discharged from hospital into care homes and this remains in place today.

341 In 2020, the Cabinet Secretary for Health and Sport would have received advice from scientific and clinical experts in relation to the risk of transmission within care homes of patients being discharged to care homes from hospital care. The Scottish Government were aware that older people were more at risk of serious illness from the virus, but in the initial stages of the pandemic there was an evolving understanding of asymptomatic transmission. As the knowledge and understanding grew, our testing regime was changed accordingly in response. That is my understanding of why we moved from the position of not routinely testing those moving from hospital to care homes who were asymptomatic to testing all people moving from hospital to care homes on 21 April 2020.

342 In terms of the understanding the Scottish Government had of the domestic care sector and the risk of transmission involving those receiving social care in the community, similar points to care homes apply in terms of the likelihood that those receiving care would be elderly and more susceptible to the virus. There was also an understanding that where care providers were moving between houses and working with people in different settings, there would need to be a level of vigilance that mirrored this increased transmission risk, hence Health Protection Scotland developed specific guidance for social or community care and residential settings.

343 I cannot recall an exact date when we first understood that there was risk of the spread of Covid-19 within the care setting. From early on in the pandemic we were aware that older people were more susceptible to the severe effects of the virus, and we also became more aware of the risk of asymptomatic transmissions as the scientific understanding improved. The announcement made by the Cabinet Secretary for Health and Sport on 21 April relating to routine testing for hospital to care home discharge would have been based on the latest clinical and scientific advice provided to us by our advisors. On 21 April, the Cabinet Secretary told Cabinet that testing for both staff and residents of care homes was being expanded, including all symptomatic

residents, and consideration was being given to testing all new admissions to care homes (including those discharged from hospital). I was not sighted on the advice she received on this matter. The Cabinet Secretary announced her decision in a statement to parliament later that day.

344 Similarly, to the above, I would not have been aware if there was any advice from clinical experts that was not followed when making these decisions as it would not have been within my purview at the time.

345 In terms of the role that the management of transmission in care homes and to those receiving care in the community played in the Scottish Government's overall strategy to limit transmission, it was an important factor that was considered. We were concerned about all sections of society but particularly those who were more susceptible to the worst impacts of the virus. *The Framework for Decision Making* [HY/003 – **INQ000256711**] highlights that care homes are particularly high risk settings, as these usually have many people living under one roof, in a situation where social distancing is difficult. The elderly are among the most vulnerable, and those living in care homes often require personal care.

346 I am not aware if the Scottish Government or its key advisers considered any reports from other countries on their experience of the impact of the virus on care home providers and residents and those receiving social care in the community. This would have been beyond my remit as Cabinet Secretary for Justice. For the same reason I am not aware of what advice was received by the Scottish Government throughout the period on the risk to those in care homes and those receiving social care in the community and the importance and availability of testing.

347 In terms of what communications the Scottish Government had with the social care sector before decisions were made as to how to approach the issue and what advice and information the Scottish Government received from the Social Care Sector, I was not directly involved in those conversations at the time as Cabinet Secretary for Justice. However, when I was Cabinet Secretary for Health and Sport from May 2021 onwards, I did have direct engagement with care homes, their staff, interest groups and Health Boards. This would have included meetings with Scottish Care.

348 I was not aware of any suggestions being made by Scottish Care in March 2020 in relation to the need for robust clinical assessment and testing of residents entering care homes, both from the community and acute NHS settings. I am not aware if or

how such input informed the Scottish Government's decision making, although I am aware the Cabinet Secretary for Health at the time was engaging with Scottish Care. This matter would not have been within my purview at the time as Justice Secretary. However, it would be fair to say that there were conversations being had in the public discourse around transmission within care homes at the time, and our testing regime changed as our understanding of the virus grew.

349 I am not aware of the Scottish Government receiving any other representations or advice that there needed to be robust clinical assessment and testing of residents entering care homes from both the community and acute NHS settings in February or March 2020. As stated above, it would not have been within my remit at this point in time.

350 The Inquiry have asked me to comment on the article published in *The Herald* on 1 May 2020 with the headline "John Swinney: Ministers under cross-party pressure to discharge hospital patients during Covid", where the Deputy First Minister was reported as saying the Scottish Government faced cross-party pressure from all political parties in spring 2020 to discharge patients from hospitals into care homes. In the early stages of the pandemic there were concerns around delayed discharge and hospital capacity, especially if the virus spread significantly, and this was explained to Cabinet by the CMO. I do not doubt that there were cross-party calls around creating additional capacity in hospitals, however the rationale for the Scottish Government trying to increase hospital capacity in acute settings was to prevent the NHS being overwhelmed.

351 I agree with the Deputy First Minister's comments in the same article where he was reported as saying "*we were taking judgments based on the clinical advice that we were receiving, and any decision to discharge a patient was similarly being undertaken after clinical assessment*" and "*ultimately, the decision as to whether a patient left a hospital to go to a care home was fundamentally a decision for clinicians to be undertaken in consultation with care homes and families*". I agree that that the ultimate responsibility for the decision to discharge patients from hospital to care homes fell to clinicians.

352 In terms of whether a change to our approach to testing those who were being discharged from hospitals to care homes should have changed sooner, my understanding is that the decisions were made with advice, evidence and information from our clinical advisors at the time. As stated previously, I would not have been

sighted on this advice in my position as Cabinet for Justice and therefore cannot provide further reflection. Similarly, I cannot comment on the testing of NHS staff in March 2020.

353 In terms of PPE provision for social care in the early pandemic period, this would not have been within my remit either, but I understand the global PPE market was experiencing unprecedented demand and traditional distribution networks were significantly disrupted. Care homes had been responsible for sourcing their own PPE prior to the pandemic but to ensure they had access to the supplies they needed NHS NSS were providing an additional supplementary service where required. Registered social care providers could also access emergency supplies through NHS NSS.

354 Prior to the announcement on 21 April 2020, the Cabinet Secretary for Health and Sport did provide updates at Cabinet meetings around the issue of capacity within hospitals and delayed discharge. I believe advice relating to this would have been primarily by the CMO, with further information provided by the Health Boards. However, the Cabinet Secretary for Health and Sport would have led on this issue at the time, and I would not have been aware of the specific advice and discussions. Similarly, it would be for the Cabinet Secretary for Health and Sport to comment on matters relating to the Scottish Government requiring NHS Directors of Public Health to take enhanced clinical leadership for care homes, the rapid action group that was established and the Scottish Government giving the Care Inspectorate an enhanced role of assurance across the country

355 I am not aware of Scottish Care making specific representations to the Scottish Government as early as April 2020 in relation to a complete restriction of visiting to care homes, save for limited exceptions in relation to end of life care, being increasingly disproportionate and failing to meet the pastoral and care needs of individuals and the traumatic effect that this was having on families. It would not have been within my purview at the time. However, all of Cabinet were very aware of the significant impact which the visiting restrictions in care homes were having on residents, their loved ones and the care staff. We did factor this into the decision-making process.

356 The Inquiry have asked me to comment on criticisms Scottish Care have made in their corporate statement in relation to the arrangements for "enhanced professional clinical and care oversight of care homes", announced by the Cabinet Secretary for Health and Sport in May 2020. These decisions would not have been within my remit. The Cabinet Secretary for Health and Sport provided general updates throughout April and

March on the work undertaken to ensure care homes had the level governance, oversight and management required to reduce the risk to residents and staff as much as possible during the pandemic. Ministers would have been removed from the operational elements of this, which I believe would have more within the remit of Health Boards.

357 I cannot comment on the specific local outbreaks of infections in care homes prior to May 2021 as it would not have been within my remit, nor can I comment on the way the risk from Covid-19 care home residents was managed generally at the time.

358 I cannot comment in detail about the level of engagement with the social care sector prior to becoming Cabinet Secretary for Health and Social Care. However, I can recall my predecessor as Health Secretary regularly referring to her engagement with Scottish Care. The potential impacts on social care of decisions we were considering were brought up during Cabinet discussions. We were trying to respond at pace to a novel virus of which there was initially limited scientific understanding. This understanding evolved as time went on, especially around asymptomatic transmission and the risks around this.

359 I think it is a fair question to ask whether the Scottish Government took the right precautions when patients were discharged from hospitals to care homes. However, as I have stated previously, we could only act with the information we had at the time. We were also trying to manage other conflicting risks, such as delayed discharge and the possibility that the NHS would not have the capacity to admit patients suffering from Covid-19, a novel virus for which there was no vaccine. As the scientific and clinical understanding of the virus evolved, so did our strategy.

360 I am asked to comment on the view expressed by Scottish Care that the lack of testing in care homes where there were no known COVID-19 positive individuals resulted in a failure to adopt a preventative approach to the potential spread of the virus in an area where there was known to be high community transmission. In response I would again refer to the fact that in the early stages of the pandemic we did not have the scientific understanding about the virus and its transmission that we have now. If a different approach had been taken earlier then it may have had a different impact on the spread of the virus, but I reiterate that we could only work with the clinical advice that was available to us at the time.

- 361 I was not involved with discussions with the care sector at the outset of the pandemic. However, from my Cabinet involvement it was not my impression that there was a reluctance by decision makers to take into account the expertise or experience of those operating in the care sector when decisions that affected it were being made. Significant engagement was undertaken with the care sector and there was no reluctance to take on board the experience of those working in the Scottish care sector. While our understanding of the nature of the care home settings and how the spread of the virus could be managed within them evolved over time, it was always the case that Ministers understood a care home to be a resident's home.
- 362 In their corporate statement Scottish Care states that its members were on occasions not provided with sufficient opportunities to engage in the decision-making process and provides an example of when they were approached by Public Health Scotland (PHS) around the dissemination of guidance to social care providers. While this would not have been within my remit at the time and I cannot speak for PHS, I believe the Scottish government had regular and meaningful engagement with Scottish Care and their members which helped to inform our strategy for the sector.
- 363 Similarly, I cannot comment on Scottish Care's opinion of PHS's "distance and detachment" within their corporate statement. This would be something for PHS to comment on. From a Scottish Government perspective, we tried to understand the practical realities facing the social care sector through engagement with Scottish Care and carers themselves.
- 364 As Cabinet Secretary for Justice the systems for the collection and dissemination of data and advice between the Health and Social Care Directorate, other Scottish Government directorates, the NHS NSS, PHS and the care sector would not have been in my purview. However, the Justice Directorate had a good relationship with the NHS in relation to healthcare in our prisons and I do not recall there being an issue with accessing data for these purposes.
- 365 When considering the lessons learned about how the risk from hospitals to care homes and domestic social care was managed, I think we need to ensure that decision makers are looking at a wide range of advice and ensure that our scientific and clinical advisors are taking all available international research into account. I also think that close collaboration with stakeholders on the ground is extremely important, as is

engagement with those who were impacted by the virus and their families, to ensure their experience are heard and understood.

K. Borders

Internal UK Borders

366 I refer to the corporate statement of the Director General Strategy and External Affairs on behalf of the Scottish Government (Strategy and External Affairs), where it is stated that it would never have been practicable to impose a complete ban on travel to and from Scotland, or to and from the UK. My colleague who served as the Transport Minister would have been more involved and would be in a better position than me to comment on this. However, in my experience as a former Transport Minister, I agree with the Director General that it would be very challenging to impose a complete ban on travel to and from Scotland or to and from the UK.

367 On the question of border closures between Scotland and the other nations of the United Kingdom, on Saturday 19 December 2020 the First Minister chaired an emergency meeting of Cabinet to discuss the emergence of a new Covid strain. A four nations meeting had also taken place that morning. After the Cabinet meeting, the First Minister announced tighter restrictions around Christmas gatherings that included “a strict travel ban between Scotland and the rest of the UK”, to “reduce the risk of more of this strain being imported into Scotland”. She added that cross border travel for “all but the most essential purposes” was not permitted.

368 This information was delivered by the First Minister in a public briefing, with a press release, social media and full statement published on the Scottish Government website. Due to the significance of the announcement and impact on people’s Christmas arrangements, it was widely covered by the media.

369 The Inquiry has asked me to comment on comments made by PHS at paragraph 8.5.3 of its corporate statement on the difficulties with England and Scotland placing different controls for quarantine for returning travellers. This was clearly a matter of concern in relation to the different controls, but I cannot recall if it was a significant factor.

International Borders

370 With regards to the roles played by the Scottish Government and the Office of the Secretary of State for Scotland in decision-making around the closure of the UK border,

the closure of the UK international border is a matter reserved to the UK Government. The Scottish Government did make decisions about international travellers requirements to self-isolate when arriving in Scotland and its ports, as was the case for each of the four nations. As described earlier in this statement, I was involved in some of the discussions around red list countries, for example, as Cabinet Secretary for Justice. We largely tried to maintain a Four Nations approach in that regard. I am not aware of any role the Secretary of State for Scotland played around the decision-making relating to the border in Scotland.

371 I was not involved in discussions within the Scottish Government or with the Office of the Secretary of State for Scotland, in considering of the possibility of closing the UK's border as a means of limiting the spread of COVID-19 in the UK between early January and late March 2020.

372 I am asked to comment on the corporate statement of the Director General Health and Social Care on behalf of the Scottish Government, in which it is noted that while the legislative underpinning for restrictions on international travellers was devolved public health powers, their implementation required a shared approach with Border Force, given the fact that immigration is a reserved matter. I agree that this affected the Scottish Government's ability to have adequate control over decisions regarding international borders from Scotland. Immigration is a reserved matter, and so, decisions regarding international borders in Scotland were ultimately decisions for the UK Government to make.

373 Any scientific advice provided to the Scottish Government in relation to closing the UK border to control the spread of Covid-19 in the UK, was a reserved matter and out with the scope of my knowledge as Cabinet Secretary for Justice and Cabinet Secretary for Health and Social Care Between January 2020 and April 2022. I cannot therefore comment on the position of the Scottish Government, the UK Government or the Office of the Secretary of State for Scotland on border closures and whether they remained consistent or varied throughout the pandemic.

374 I think it would have been exceptionally difficult to have made a decision to close the UK borders in January to March 2020, given the importance of freight cargo imports, including items such as PPE, coming into the UK. I think we could have and should have looked at further NPIs that we could have put in place for those that were entering the country.

- 375 In relation to flights between Scotland and China or Wuhan specifically, I do not believe that there were any direct flights between Scotland and China. Generally speaking, I think would have been difficult for the Scottish Government to make a decision to stop flights coming from China into Scotland and as far as I am aware, there were no scheduled direct flights in place at the time that the pandemic emerged. I am not aware of to what extent Chinese New Year on 25 January 2020 was considered to be significant by the Scottish Government in this regard. I do not recall any discussions at Scottish Cabinet relating to this.
- 376 I am not aware if different arrangements were in place, for example for those arriving in the UK from Lombardy, to those arriving from China, or of any consideration of any alternative measures such as “screening” in Scotland.
- 377 As Cabinet Secretary for Justice, I was involved in some discussions relating to quarantine and self-isolation from a Police Scotland perspective. I was also involved in four nations calls relating to this. In terms of challenges, there were clearly impacts to consider on the economy and transport infrastructure such as airports, as well as travellers themselves in addition to the risk of direct harm from the virus. Taking a coordinated four nations approach was challenging at times. Nations outside of England would generally have to comply with England-specific decisions made by the UK Government, if we chose to take a different approach then we risked inbound travellers simply coming to our countries via English airports to avoid quarantine. This would in effect give us a double hit, our aviation industry would be impacted, and we would not end up with the public-health benefits we were aiming for with greater levels of restriction.
- 378 I am not aware of why testing of passengers was not introduced between January and March 2020. My understanding is that testing capacities in both the Scottish and the UK Government were quite limited during this period, and this may have contributed to why testing was not introduced.
- 379 I am not aware of any role the Scottish Government, or the Office of the Secretary of State for Scotland played in the withdrawal of the guidance advising travellers arriving in the UK from Category 1 countries to self-isolate even if asymptomatic and advising travellers arriving from Category 2 countries to self-isolate only if symptomatic. I do not believe the Scottish Government would have played any role as this was UK Government guidance. I do not recall why it was not at that time replaced with a legal requirement for travellers arriving in the UK to self-isolate, as was later the case in both

England and Scotland. I do believe introducing a legal requirement to quarantine at an earlier stage should have been considered.

380 Foreign travel advice is led by the Foreign and Commonwealth Office. At the very outset of the pandemic, I recall that significant decisions were typically made on a four nations basis. The Scottish Government was aware that there was a significant amount of academic research conducted during the pandemic. Ministers regularly received information on new research from, for example, SAGE, which informed discussion on making evidence-based decisions where appropriate.

381 The issue of Public Health Scotland gaining access to passenger details in order to carry out quarantine checks was addressed by Jeane Freeman, as Cabinet Secretary for Health and Sport, when she was a guest on BBC Politics Scotland on 5 July 2020. As Justice Secretary I was not close to this process at the time, but I would expect these issues to have been raised with the Home Office and resolved as soon as was feasible.

382 Stricter travel restrictions and border controls during the summer of 2020 were considered by the Scottish Government to prevent the autumn resurgence of the virus along with various other options available to the Scottish Government. The use of greater internal and external border controls as means of preventing or limiting the influx of new variants was also considered. I believe travel restrictions when enacted were proportionate and necessary. They were considered with care and designed to meet the purpose for which they were imposed. It would be difficult for me to say with absolute certainty whether they met the purpose for which they were enacted in relation to every individual country which they covered, but I consider that overall the rationale underpinning the enactment of travel restrictions was sound.

383 I am asked to comment on the corporate statement of the Director General Strategy and External Affairs on behalf of the Scottish Government, in which it is noted that Scotland at times adopted a more restrictive stance on foreign travel than the UK Government did for England. It is also noted that in those cases, international passengers were able to circumvent tougher restrictions in Scotland by travelling via England. I agree with this statement in that there were times when the Scottish Government took a different approach to the UK Government due to our understanding of the threat of the Covid-19 virus. However, it became clear early in the pandemic that any cases of different decisions made in Scotland relating to international travel risked

international travellers entering from an English port and travelling to Scotland. It was also clear that there would be an impact on the aviation sector from these decisions.

384 In terms of missed opportunities in relation to decision-making about borders, I believe more could have been done to consider potential screening measures, such as temperature testing at airports for international travellers and arrivals. While testing capabilities were limited in the early phase of the pandemic, we could have considered what other opportunities to check for symptoms of Covid-19 might have been possible at airports in an attempt to reduce the number of imported cases.

L. Decision-making between the Scottish Government and (a) the UK Government and (b) the other Devolved Administrations in Wales and Northern Ireland

385 I am aware that there were various forums in place for cooperation between the four nations throughout the pandemic. As I have set out earlier in this statement, this was reflected in the decisions taken and approach adopted, particularly early in the pandemic. With regards to the detailed areas of cooperation noted, I can only comment on those with which I was directly involved. As stated previously in this statement, as Cabinet Secretary for Justice I was involved in four nations calls surrounding international travel restrictions with my counterparts in the other three nations, in this case largely those with responsibility for transport. As Cabinet Secretary for Health and Social Care I was also involved in regular four nations calls with other Health Secretaries. As Cabinet Secretary for Health and Social Care between May 2021 and April 2022, I felt there was a good four nation approach to the Covid-19 response.

386 I am aware that representatives of devolved governments were invited to some COBR meetings. As I have said earlier, I did not attend COBR. However, I understand that the Cabinet Secretary for Health and Sport, Ms Freeman, attended this in relation to Covid-19 on 24 January 2020, and subsequent meetings in January and February. The First Minister participated throughout March. The rhythm of COBR meetings intensified during March in preparation for national lockdowns across the UK.

387 Since these matters sat outside my portfolio responsibility at the time, I am not aware of why the Devolved Administrations were not included in COVID-O and COVID-S meetings as a matter of course and were included on an invite-only basis until September 2020. I am not aware of any consultation which took place with the Scottish Government about these changes in approach. I am not aware to what extent these

changes in UK Government decision-making structures affected the effectiveness of the four nations approach to the Covid-19 response.

- 388 The Scottish Government corporate statements that have been provided to the inquiry explain how intergovernmental liaison arrangements expanded from health and resilience structures such as COBR to include a range of Covid-specific groups at both ministerial and official level as well as extensive day-to-day liaison. A future pandemic requiring government-wide responses would need similar close engagement between the governments and planning for that can build on the relationships and experience developed in relation to Covid as well-tested emergency mechanisms such as devolved governments' participation in COBR.
- 389 Function is more important than form, however. What is essential to success is a co-operative approach from all the governments from the outset that facilitates early and continuing engagement and information-sharing. A 'four nations' response does not require a uniform approach across the four nations with their widely different geographical, administrative and social circumstances, but it does require close liaison of the sort that – on most issues – characterised the four governments' approach to the pandemic. Since early 2022 the four governments have been operating a new, three tier, overarching system of high-level intergovernmental engagement centred on the Prime Minister and Heads of Government Council that has replaced the Joint Ministerial Committee. However, that apparatus, and that it replaced, was not intended to bear the weight of, or replace, the vast range of formal and informal engagement between the four governments.
- 390 As set out in corporate statements the Scottish Government has already provided to the Inquiry, in general the UK Government did not seek to influence or persuade the Scottish Government to follow its approach for England, although on some occasions it did so on public health messaging. More significantly, however, as is also set out in the corporate statements, the UK Government's decisions on funding, for example of the furlough scheme, aligned with its decisions for England rather than the requirements of Scottish restrictions and were therefore a practical constraint on Scottish decisions.
- 391 In relation to the regular meetings held by the Chancellor of the Duchy of Lancaster with the former First Ministers of Scotland and Wales and the First and deputy First Ministers of Northern Ireland, I understand that these meetings were regularly attended by the former First Minister, or if she was unable to do so, by an appropriate substitute.

I do not know why these meetings were chaired by Chancellor of the Duchy of Lancaster rather than the Prime Minister. As I have mentioned previously in this statement, as Cabinet Secretary for Health and Social Care, I used WhatsApp to communicate with other Health Secretaries across the UK, which included my membership of the "Health Ministers Forum" & "Health Ministers UK" WhatsApp groups. This use of WhatsApp was for information sharing as opposed to four nations decision-making.

- 392 I am not aware of why representatives of the Devolved Administrations were not present at initial meetings of SAGE and whether this had any impact on the Scottish Government's understanding of and initial response to the emergence of the pandemic. During the course of the pandemic, Scottish government had regular access to papers produced by SAGE and the output of SAGE meetings. I believe that SAGE was a useful source of evidence and scientific consensus from which the CMO could develop advice for the Scottish Government, however, the drawback was that Scottish Ministers could not ask questions directly of SAGE. It was for this reason that the former First Minister arranged for the then-CMO, Dr Calderwood to set up the Scottish Covid-19 Advisory Group (C19AG).
- 393 I understand from my preparation for this statement that the former First Minister met with the then Health Secretary, Matt Hancock, and Dido Harding on 14 September 2020 to discuss testing and contact tracing. This was outside my portfolio at the time. I am not aware of any further Scottish Government involvement with the three UK 'Tsars' appointed by the UK Government in April 2020 and whether this had any effect on the Scottish Government's pandemic response.
- 394 With reference to the fora I was involved with, I believe sufficient consideration was given during four nations decision-making to the impact of decisions, including NPIs, on 'at risk' and other vulnerable groups in light of existing inequalities, for example in the rollout of the vaccination programme.
- 395 I am not aware of the extent to which four nations decision-making about the response to Covid-19 considered the impact of Covid-19 restrictions for people living and working across internal borders. I was not involved in decision-making relating to this beyond considering policing of arterial routes during the operation of the levels system in late 2020 as Cabinet Secretary for Justice.

- 396 I was not directly involved with four nations discussion on the approach to Covid-19 restrictions over the festive period in December 2020, however I believe that there was ongoing discussion at official level for some time concerning the potential for a coordinated approach. I have set out above how, I was involved as a member of Cabinet in the decisions taken later in December about the adjustment to these plans required as a result of the emergence of the Alpha variant.
- 397 In terms of four nations decision-making seeking to learn lessons from the response to Covid-19 in other countries, I recall that the CMO and NCD would, during their regular Cabinet updates, on occasion use international examples of how the virus was being managed by other countries.
- 398 In my view, the Scottish Government was not involved in influencing core decision-making by the UK Government relating to the pandemic to the extent we would have liked. At times it seemed the Scottish Government was informed of decisions made by the UK Government without being provided an opportunity to contribute to decision-making. At times the Scottish Government would hear about decisions made by the UK Government via the media, for example, as I have mentioned previously in this statement in relation to travel restrictions.
- 399 In relation to the effectiveness of intergovernmental working, coordinated decision-making and communication between the UK Government and the Devolved Administrations throughout the pandemic, this would vary depending on the individual or group I was dealing with. For example, as Cabinet Secretary for Health and Social Care, my relationships with the Health Secretaries and Vaccine Ministers across the four nations were good and constructive. Regardless of the structures in place, I felt able to communicate with them directly if I needed to. If there were any obstacles, these could usually be addressed if Ministers were accessible to each other.

M. Interrelation between the Scottish Government and local government

- 400 I was not directly involved in engagement with local government during the pandemic, as this fell outside my portfolio responsibilities. I understand that there were a variety of ways in which Scottish Government engaged with local authority partners, both at Ministerial and official level, and this was reflected in Cabinet discussions in which I participated. During the operation of the levels system, this was particularly important as Cabinet was asked to set and adjust the level of restrictions in each local authority. I understand that the most appropriate Cabinet Secretaries would engage with the

leaders of those local authorities in relation to the NPIs which should apply, however I was not personally engaged in this process.

- 401 I am not aware of the detail of communication between key Scottish Government decision-making and local authorities during the pandemic, including the extent to which local authorities were involved and consulted by the Scottish Government in decisions to impose or ease NPIs or whether they had access medical and scientific data and expertise available to the Scottish Government. I would expect that as was always the case in our discussions, the potential impact on at risk or vulnerable groups or those with protected characteristics would have been a key part of considerations, including with local authorities, but I was not directly engaged in these conversations.
- 402 The Scottish Government considered concerns raised by local authorities through various routes; including from COSLA or directly from the local authorities to Ministers. Participation in the Four Harms Group allowed local authorities to put forward their views directly for inclusion in the decision making process and this would be reflected in advice provided to Cabinet. I understand that senior officials, including DG Communities made direct contact with local council leadership to understand how things were 'on the ground'.
- 403 In relation to whether local authorities and COSLA played an appropriate role in relation to the core political and administrative decisions which were taken during the pandemic, this is a question for local authorities and COSLA, themselves, to consider.
- 404 How the Scottish Government coordinated and communicated its decisions with local authorities was dependent on the area of delivery in question. For example, when I was Cabinet Secretary for Health and Social Care, for Adult Social Care Scottish Government officials liaised closely with local authorities and COSLA through IJB Chief Officer network meetings and individual meetings. I am aware that COSLA were also represented on a number of Covid-19 related groups, such as the Four Harms Group, to ensure they could input into the material Cabinet would consider when making decisions.
- 405 In general, engagement with Local Authorities and COSLA would be primarily undertaken by outside my portfolio, so there is only limited comment I could make on how effective the coordination and communications between the Scottish Government, Local Authorities and COSLA were during the pandemic.

N. Covid-19 Public health communications

- 406 I am aware that this issue is addressed in depth in a corporate statement and subsequent Addendum provided by DG Corporate. Communications with the general public in Scotland was managed throughout the Covid-19 pandemic by the creation and execution of an evidence-led communication strategy.
- 407 From 23 March 2020, the Strategy and Insight team in the Scottish Government's DG Corporate developed an evolving strategy that informed people about the required protective behaviours needed at each stage of the pandemic, particularly as restrictions shifted over time.
- 408 While Government advice was consistent across the devolved nations at the outset of the pandemic, advice over the subsequent months varied by nation for various reasons. This included different epidemiological conditions and different approaches to NPIs. When policy interventions were available to all four nations, e.g. furlough scheme, Eat Out to Help Out, shared messaging was possible. However, other policy interventions (e.g. restrictions, vaccination programme) were delivered differently in Scotland from other UK nations. In these instances, Scotland-specific public health messaging was necessary to ensure that the general public had the most up-to-date information in relation to the situation in Scotland.
- 409 The communications strategy was devised and developed by a skilled team, to ensure messaging reached the public to prompt the desired actions. A number of different tools were used to monitor the effectiveness of communications. A Covid-19 campaign tracker was set up in April 2020 to evaluate performance of marketing campaigns.
- 410 Regarding the Scottish Government's public communications strategy, early on in the pandemic, I played a role during the discussions around communications held in Scottish Cabinet. The only other role I had in relation to public communications strategy was to occasionally accompany the former First Minister on daily briefings. In my role as Justice Secretary, I was a key voice in the media and even more so as Cabinet Secretary for Health and Social Care. I played a greater role in relation to public communications of health messages as Cabinet Secretary for Health and Social Care.
- 411 Officials from the Scottish Government Communications Directorate would have developed and implemented the Communications Strategy. However, they would have been provided with advice from behavioural experts, as well as clinical experts such

- as the CMO and NCD to ensure that the communications were factually accurate and conveyed the message they needed to.
- 412 I believe that the message promulgated about the Scottish Government's justification for its key strategic decisions, was a fair and accurate reflection of the actual reasons for its decision making.
- 413 I am not aware of restrictions placed on the publication of medical data and studies carried out by the individuals and bodies providing advice to key decision makers within the Scottish Government. In relation to whether there were any key public health communications that went against expert medical or scientific advice, my experience is that the Scottish Government considered medical and scientific evidence from a variety of credible sources in formulating its approach.
- 414 Our public health messaging evolved over time, based on data around effectiveness, compliance and what elements were proving most effective in communicating with the public. Public health messaging was used extensively to explain the importance of vaccination in Scotland. One key example of this messaging was a campaign relating to the vaccine boosters called "Boosted by the Bells", which had a significant impact in increasing vaccination rates during the early period of the Omicron variant.
- 415 In relation to the extent to which the Scottish Government promoted the assertion that it was 'following' or was guided by 'the science,' I recall the former First Minister and other Ministers in the Scottish Government using variations of this phrase in the daily briefing and in our media communications. The phrase was used to convey the scientific rationale for why we were making decisions, it was hoped that this would lead to greater compliance of NPIs.
- 416 In relation to the underlying systems for the management of Scottish Government messaging, further information is contained in the corporate statement provided by DG Corporate in June 2023. This also contains further information on the accessibility of communications, including the use of different languages and formats, the regular use of BSL sign language interpretation at the daily briefings and the various engagement with local community and media channels.
- 417 With regards to the Scottish Government's public health communications, when there was any divergence in messaging from the UK Government, there was a need to ensure that we were explicit around what measures applied to Scotland specifically. If there was a difference of levels, such as in terms of the five level system, explaining

the rationale to the public was important to the Scottish Government's approach to public health communications. I was not involved in the different campaigns by the UK Government and Scottish Government, for example the use of the FACTs campaign in Scotland, and the Hands Face Space campaign by the UK Government.

418 As set out in the corporate statement provided by DG Corporate in June 2023, I understand that there was use of behavioural science advice in the development of the Scottish Government's public messaging. However I was not personally involved in this given my ministerial remit at the time.

419 In my view, the Scottish Government's public health messaging was, on the whole, consistent, clear, and effective. The public messaging was assisted by the daily briefings from the former First Minister. It allowed the Scottish Government to elaborate on the public health messaging that was in place. I believe the daily television briefings were an effective method of communicating health messaging to the public and there is data to support this. The analytics related to the public health messaging suggested that we were reaching a high volume of people through the daily briefing.

Effectiveness of messaging

420 The effectiveness of the Scottish Government's communications and messaging was monitored and assessed through a number of different methods. These included a campaign tracker, website and social media analytics, vaccine update and helpline call data, and opinion polling. From April 2020 to April 2022 opinion polling from YouGov was used to monitor attitudes and reported behaviour, such as trust in Scottish Government, and if people thought the messaging, guidance and advice we gave them was clear. Further details on these monitoring and assessment methods, and a summary of their results, are included in the corporate statement and addendum provided by DG Corporate in June and August 2023.

421 The public perception of its public health communications was a core consideration for the Scottish Government during the course of the pandemic. The data collected on the public perception and effectiveness of our messaging, as noted above, was used to inform our future communications strategy. A good example of feedback being used to shape the communications strategy was the independent online research panel used by Scottish Government Communications. This was comprised of a cross-section of the general public, including those who were considered more vulnerable to the virus and its impacts, such as members of minority ethnic communities and those with

mental health problems. The panel evaluated messages and helped to inform the communications strategy.

Maintaining public confidence

- 422 I believe the messages that the Scottish Government was communicating about its approach to the management of the pandemic promoted public confidence. I think it was extremely important for the Scottish Government to explain the rationale behind its decision-making to the public in order to promote public confidence and although at times I thought this could have been improved, as I have stated earlier in this statement, I think the vast majority of our messaging was effective in this regard. For example, polling undertaken by YouGov showed that a higher proportion of those polled in Scotland completely or mostly trusted the Scottish Government to provide information Covid-19 was higher than that of the UK Government, and this difference was observable throughout the pandemic.
- 423 I believe that publication of modelling data was sufficiently transparent and timely to explain the Scottish Government's strategic decisions in response to the pandemic to the public. With the benefit of hindsight perhaps we were publishing too much information which may not have been easy to navigate for members of the public. However, I believe in general that the dashboard was useful and helpful.
- 424 The Scottish Government did not directly refute misinformation but instead worked to ensure our own, factually correct messages were communicated widely. Further information is provided in the Module 2/2A DG Corporate statement, provided to the Inquiry on 23 June 2023.
- 425 I am asked to comment on any impact alleged breaches may have had on public confidence and maintenance of observance of rules. I recall that there was a concern within the Scottish Government around the breach of rules by the former CMO for Scotland, Dr Catherine Calderwood, given her prominence in public messaging. We were concerned about public confidence, hence why her resignation was right and important.
- 426 In relation to the breaches of regulations by SNP MP Margaret Ferrier, there was no doubt that there were concerns about the impact Margaret remaining a MP would have on public confidence and compliance. This was a key reason why the former First Minister, who was also Leader of the SNP, asked Margaret Ferrier to step down from

her position as an MP, this of course could only be forced by a recall petition which has been successful in Rutherglen and Hamilton West.

427 In relation to the First Minister breaching Covid-19 regulations by removing her face covering at a wake in December 2020, I do not believe this had much impact on public confidence. I believe this was a minor incident and viewed by the public as an honest mistake.

428 I am asked to comment on the Module 2A DG Education and Justice (Justice) corporate statement which quotes the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis stated that over time public messaging became less clear and that high profile breaches diminished public confidence in the effectiveness of the Regulations. While high-profile breaches were concerning and could no doubt dent public confidence in compliance measures, throughout the pandemic there were high levels of compliance to NPIs, including lockdown, and this is demonstrated by data the Scottish Government collected. High-profile breaches of regulations, particularly by those within government or the medical profession, would likely have had an impact and we were concerned about this impact on public confidence. The daily briefings were very important to allow elaboration of the public messaging and to build public confidence in the Scottish Government's response to the pandemic.

Conclusions and lessons learned

429 I believe the daily briefings worked very well and were exceptionally helpful in communicating the rationale behind Scottish Government decision-making to the Scottish public. This worked well because it also included briefings from individuals who were not politicians.

430 In terms of missed opportunities, I believe there was more we could have done around encouraging younger generations around vaccine uptake, particularly in terms of social media influencers and making better use of multi-ethnic channels to engage with ethnic minority groups. I believe we improved on this in the later stages of the pandemic.

O. Public health and coronavirus legislation and regulations

Legislation

431 I participated in Cabinet discussions in relation to Covid-19 legislation and regulations. Cabinet meetings were the primary fora for Scottish Ministers to discuss the strategic response to the pandemic, which included decision making which required the

- enacting, amending or ending of legislation and regulations related to Covid 19. I also discussed the particular provisions in the Coronavirus Bill relating to areas of my responsibility as Justice Secretary as part of the process of drafting and introducing the legislation.
- 432 The Coronavirus Bill 2020 and the Coronavirus Act 2020 were led by the UK Government Department of Health and Social Care. The Scottish Government and other devolved administrations working closely with them in their development. I cannot comment on the role of the Secretary of State for Scotland.
- 433 I was involved with the legislative response to the pandemic in so far as this engaged my ministerial responsibilities as Cabinet Secretary for Justice. For example, arrangements were made for the early release of prisoners and for the remote conduct of various court cases. With regards to the drafting and passage of the Coronavirus Bill 2020 and associated regulations, insofar as they related to Scotland. Michael Russell MSP, then Cabinet Secretary for Brexit, led this legislation work within the Scottish Government and consulted colleagues on the necessary provisions to be included in the legislation. I have no reason to believe that this process was not carried out collaboratively, but I was not close to it personally.
- 434 The Coronavirus (Scotland) Act 2020 (Emergency Provisions) order 2020, the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations, the Coronavirus (Scotland) Act 2020 and the Coronavirus (No 2) (Scotland) Act 2020 were all enacted using emergency procedures due to the nature of the public health emergency. As such, parliamentary scrutiny was undertaken more rapidly, as is allowed for in Standing Orders of the Scottish Parliament. All were negotiated with other political parties with the Scottish Parliament as the Scottish Government did not form a parliamentary majority with the Greens until the election in 2021. Use of emergency procedures often meant that the Scottish Parliament was required to have longer sittings to ensure appropriate scrutiny of legislation. We had to ensure very open communication channels with opposition parties and back benchers to ensure that emergency legislation and regulations could be put in place at pace. The Scottish Government were aware of concerns relating to the lack of time available for parliamentary scrutiny of emergency legislation, particularly through the course of debate, however agreement was sought for the use of emergency procedures on the grounds of the urgent nature of the pandemic response.

- 435 The emergency procedures used to enact regulations during the pandemic were the 'made affirmative' procedure and Emergency Bills procedure. The made affirmative procedure was used in circumstances where due to the nature of the public health emergency regulations needed to be made or amended quicker than the usual procedure, would allow. It was used for both the Covid-19 Health Protection Regulations and International Travel Regulations, and for removing restrictions, as well as imposing them. The DG Strategy and External Affairs (Legislation) corporate statements provide a full overview, including on the number of occasions on which such procedures were used, the number of SSIs approved and the parliamentary commentary on the use of emergency procedures.
- 436 Use of the made affirmative procedure was dependent on the urgency and context of when the regulations were being made. Ministers would have been advised about the procedure and timings for regulations that required their signature via a submission when the regulations were sent to the lead Minister for approval.
- 437 Devolution in Scotland has its basis in the Scotland Act 1998. The 'Sewel Convention' stipulates that the UK Parliament will not legislate on devolved matters without the consent of Scottish Parliament. All such UK legislation that was enacted in relation to Covid-19, such as the Coronavirus Act 2020, was done so with the consent of Scottish Parliament. A more detailed overview of how the devolution settlement affected the enactment of laws and regulations during the pandemic is provided in the DG Strategy and External Affairs corporate statement, provided 23 June 2023.
- 438 A process of further scrutiny for Covid-19 legislation evolved over the course of the pandemic. Scottish Ministers regularly reviewed the operation of relevant provisions in Covid-19 legislation and reports were produced every two months. Initially these would be presented to Parliament with a Ministerial statement and members had the opportunity to ask questions. Later, from August 2021, the reports were no longer presented to Parliament but were scrutinised by the Covid-19 Committee and its successor, the Covid-19 Recovery Committee. Ministers could also be called to present to the Committees, to answer questions and justify the legislation in operation. The Inquiry has been provided with all of the transcripts of my Committee appearances during the pandemic under general disclosure, including the closing debate for the Coronavirus (Scotland) Bill which I was involved in. My understanding is that these reports were no longer presented to Parliament from August 2021 as the peak of the pandemic had now passed. However, there was still communication with Parliament when the reports were published via a letter to the Presiding Officer, and the First

Minister continued to make Parliamentary statements when there were changes in the regulations. I thought this process of scrutiny that developed was effective. Any concerns raised from the opposition parties were listened to and we would try to be as accommodating as we could.

439 I am not aware of any debates in the Scottish Parliament or meetings at Cabinet about the decision to stop ministerial statements to Parliament about the two-monthly reports, nor am I aware of any concerns or objections from Scottish Parliament officials or members of the Scottish Parliament in relation to this matter.

440 The decision to use public health legislation as the legal framework governing the UK Government's response to Covid-19, rather than the framework of the Civil Contingencies Act 2004, was made by UKG in accordance with the Memorandum of Understanding on Devolution and supplementary concordats.

441 EQIAs were carried out for legislation as it was developed, including proposals for enforcement action/sanctions. The Equalities Impact and Human Rights Directorate ensured that concerns raised on behalf of at-risk groups were fed into advice that supporting decision making. Guidance was also updated in response to feedback received from relevant stakeholders. I would be sighted on Equality Impact Assessments that were relevant to my portfolio area and would ultimately approve those for regulations that I was responsible for making. For example, the EQIA for the Community Orders (Coronavirus) (Scotland) Regulations 2021, provided [HY/025 – INQ000292490].

442 Ministers did consider whether certain exemptions to restrictions were necessary in the legislation and regulations that were enacted. For example, the Coronavirus (Scotland) (No 2) Act 2020 added a requirement for Scottish Ministers to take account of information on domestic abuse and to report on the nature and number of instances of domestic abuse occurring during the reporting period. This was to ensure that the specific impact of the pandemic on those experiencing domestic abuse was considered when reviewing the operation of the provisions in the Scottish and UK Acts. Another example can be found in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, which imposed restrictions on indoor public gatherings in a Level 4 area. However, these did not apply where the gathering was for certain purposes, including for the purpose of childcare, for the purpose of providing care or assistance to a vulnerable person, for the purpose of providing emergency or medical assistance, to avoid injury, illness

or escaping a risk of harm, for facilitating shared parenting arrangements, and for gatherings relating to a funeral.

- 443 Regulations were also accompanied by online public-facing guidance. This guidance was updated where necessary in response to stakeholders and the public around the how the regulations applied to vulnerable groups. For example, it was amended to make clear those experiencing domestic abuse that the regulations did not prevent such individuals leaving their homes.

Enforcement

- 444 There was a need for the Scottish Government to explain clearly and effectively to the public the difference between non-legal guidance on restrictions on behaviour and measures which were legal. However, there was a risk this could be confusing for people, especially when we needed messaging to be very clear and consistent. So, on occasion instead of explaining what was non-legal and what was statutory, we would focus on the behaviours we wanted the public to comply with and which behaviours were restricted.
- 445 The Scottish Human Rights Commission raised various concerns around the Scottish Government's response to the pandemic. For instance, in April 2020 the Scottish Human Rights Commission, the Children and Young People's Commissioner and the Head of Scotland Equality and Human Rights Commission sent a joint letter to the Convener of Equalities and Human Rights Committee stating that they were aware of increasing evidence that some groups are experiencing disproportionately negative impacts of the virus and some of the responses to it. For instance, it is stated that "women, children, older and disabled people are among the most impacted by mitigation measures taken by the Scottish Government and others". It also asked the Committee to considering undertaking an inquiry into the equality and human rights implications of Covid-19 in Scotland.
- 446 The Scottish Government did listen and act where concerns were raised around the proportionality, enforcement and compliance of NPIs. For instance, following concerns raised by the Children & Young People's Commissioner Scotland the minimum age for a person to be issued with an FPN in Scotland was raised from 16 to 18 on 27 May 2020. This was intended to bring it into line with the UN Convention on the Rights of the Child, Police Scotland's *'Policing Approach to Children and Young People 2016-*

2020' and respond to calls by the UN to ensure children's rights were safeguarded during the pandemic [HY/026 – INQ000292491].

- 447 Regarding the timeliness of the enacted Covid-19 legislation and regulations and its impact on the circulation of guidance and implementation of enforcement action, at times we had to move at great pace due to the speed at which the virus was spreading. We therefore had to get the message out quickly to the public, industry businesses and sometimes that would involve providing guidance to stakeholders outside of regular business hours, which could sometimes prove challenging. Where possible, contact was also made with businesses in order to provide clearer guidance in advance of public announcement of decisions. The former First Minister's daily briefings were extremely useful in terms of being able to keep the public informed of the state of the pandemic and forewarn them of any easing or tightening of restrictions that was being considered.
- 448 The Scottish Government did not consider criminal sanctions as a starting point for the enforcement of NPIs, and this was reflected in the approach adopted by Police Scotland. Criminal sanctions were only considered if absolutely necessary in order to protect people from harm and if no other enforcement options were adequate. Imposing criminal sanctions would have also required a vote to be held in Parliament.
- 449 Other means of enforcement, such as guidance and civil penalties would have considered and the ultimate decision based on the principles stipulated within the *Framework for Decision Making* – safe, lawful, evidence based, fair and ethical, clear, realistic and collective. NPIs were placed in regulation where it was judged that public compliance with specific restrictions was important enough to reduce transmission as to require mandation and the possibility of legal enforcement. Conversely, guidance or other civil enforcement could be used when it was judged disproportionate or unviable in practice to compel specific behaviours or actions in laws.
- 450 As stated in the Module 2A DG Strategy and External Affairs (Legislation) corporate statement, Police Scotland, the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunal Service would have been consulted during the development of the initial Covid-19 Health Protection Regulations on the design and operability of the enforcement regime, and their feedback would have informed the development of the enforcement regime in the regulations.

- 451 While Scottish Government officials would have led on the drafting of these regulations and decisions on penalties and related issues were taken by Ministers, however, these decisions would have been taken after consultation with the partners names above. For example, in February 2021 I considered raising the FPN fine level for breaches of the regulations and officials liaised with Police Scotland and SCTS around this. Both expressed concerns and stated that raising the level would likely only have a limited impact on adherence to the regulations, as outlined in the document provided [HY/027 – INQ000292492] I reflected on this advice and was content not to raise the FPN fine levels.
- 452 When considering whether to adopt sanctions, the likely impact on people who were at-risk and/or vulnerable and people with protected characteristics was part of the Scottish Government's decision-making at all stages.
- 453 There were differences in the fine levels available under FPN powers created under Scottish regulations to those in rest of the UK. In England FPNs started at £100 (£50 if paid early) and doubled until they reach the maximum of £32000. In Wales they started at £60 (£30 if paid early) and doubled until they reached a maximum of £1950. However, the equivalent FPNs in Scotland started at £60 (£30 if paid early) and doubled until a maximum of £960 was reached. FPNs in Scotland could initially be to people aged 16 and over, while in the rest of the UK they could be issued to people aged 18 and over. As stated previously, this was changed in late May 2020 when the minimum age they could be issued to in Scotland was 18. For the COP26 event Police in Scotland were also granted additional temporary powers relating to the definition of a 'public assembly' and the circumstances in which a senior police officer can be granted a temporary authorisation covering a locality where the commission of offences is anticipated. This actually brought Scotland into line with English and Welsh law temporarily and was required to ensure COP26 was delivered in a safe and secure way.
- 454 The police and the NPCC were consulted on the decision to adopt criminal sanctions. Police Scotland maintain independence in regard to operational policing, but the approach to enforcement was based around the 4Es approach: Engage, Explain, Encourage and (only if absolutely necessary) Enforce.
- 455 I am not aware of any specific behavioural modelling used to determine the proportionality and likely success of proposed sanctions. I am not aware of any specific consultation with C19AG, SAGE, or any other clinical committees in relation to

proposed sanctions. However, we were regularly taking advice from behavioural scientists around compliance and used this to inform our decision-making. In terms of the penalties imposed, we were conscious of making them proportionate in the circumstances, and as mentioned would engage with the likes of the Scottish Human Rights Commission to seek their views.

- 456 The vast majority of NPIs did not involve the enforcement using criminal sanctions and any criminal sanctions that were imposed were done so as last resort. Reducing the spread of the virus and protecting people from harm was always our first consideration and any sanctions imposed for NPIs had to be balanced and proportionate.

Lessons learned regarding Regulations and Enforcement

- 457 I think EQIA are helpful and an important source of information to consider when making decisions about legislation and regulations. However, their immediate application can be limited when dealing with a novel situation, such as that of the Covid-19 pandemic. Novel situations impact people in new and different ways and this may not be appropriately captured within an EQIA. This is why engaging directly with those individuals with protected characteristics, or their representative organisations, is so valuable.

- 458 The impact of legislation and regulations on 'at risk' and other vulnerable groups in light of existing inequalities was considered in all our decision making, not just formally through EQIAs, but through discussions in Cabinet, the Gold Group, and when engaging directly with our stakeholders.

- 459 I think the effectiveness of the of legislation and regulations was very good and I think people showed a very good rate of compliance, especially considering the amount of time restrictions were in place for. However, at times the public did not understand the rationale for certain decisions, and I think this could have been improved. Fully explaining the rationale behind decision-making and working through public messaging better may have increased public compliance even more.

P. Key challenges

- 460 All the substantial points I wanted to make have been covered in this detailed statement.

- 461 Having served in Government in the last eleven years, I can say, without hesitation, that responding to the global pandemic was by far the most difficult issue we have had to deal with. I cannot think of another issue, of this magnitude that has so completely consumed Government, and required decisions to be made that no one entering politics would ever have thought necessary to make, such as severely limiting people's liberty through the imposition of a national lockdown.
- 462 I have, throughout this detailed statement, hopefully been able to provide where I think things worked well and where clear lessons need to be learned in relation to our response to the pandemic, both in regard to the Scottish Government's response and in regard to working with other nations across the UK.
- 463 The Scottish Government is fully committed to identifying and learning the lessons from the handling of the pandemic. As well as our participation in this Inquiry, we have established and are fully engaging with the work of the Scottish COVID-19 Inquiry. Our Standing Committee on Pandemic Preparedness is also due to produce its final report shortly. I look forward to receiving the recommendations of all these bodies, and to taking them forward, in addition to our ongoing work on Covid Recovery, across the range of our responsibilities.
- 464 The key lessons to be learned from the pandemic are captured in this statement, for example our actions in relation to discharge from hospitals to care homes in the early days of the pandemic.
- 465 In terms of a future pandemic, preparedness is key. A clear learning from the response to Covid, is ensuring our pan-UK and Scotland-specific preparations are not simply based on a flu-type virus but encapsulate a broader range of potential pandemic scenarios.
- 466 Given the global nature of pandemics, one of the important learnings we have embedded is shoring up domestic supply chains in relation to PPE, give the global demand and pressure on international supply chains in a future pandemic scenario.
- 467 When dealing with a novel virus, it is clear that initially there will be significant data gaps as our understand of the virus evolves. A more detailed examination of measures other countries are taking, on a precautionary basis, would be wise. Notwithstanding the obvious pressures on testing supplies during the height of a pandemic, where possible a precautionary approach should be taken, particularly in the early days, it is better to over-test than under-test.

- 468 On communications, I felt the daily briefing worked very well. However, it does put the onus on one individual within Government, in this case the former First Minister, and that is an extremely difficult burden for one person to effectively bear. For future pandemics, while understanding the speed at which decisions have to be made, we should ensure that all Cabinet Secretaries, and where appropriate Ministers, are fully briefed about the rationale for decision making, so they too can be more fully involved in the public communication of the messaging when required.
- 469 On decision making itself, it is my opinion that our structures within the Scottish Government worked well. However, an area of improvement would have been greater cross-Cabinet interaction with our advisory groups, such as the Covid-19 Advisory Group. This group largely communicated with the former First Minister, former Deputy First Minister and former Health Secretary. There would have been merit in ensuring a more regular dialogue with all Cabinet Secretaries, given the pandemic affected every area of Government. Understanding the clinical rationale behind any decision on NPIs, was critical to public communication and, in turn, compliance with measures being introduced.
- 470 While regular conversations were taking place with external stakeholders and those most acutely affected by Covid, and our response to it, it is clear that many people simply did not feel truly heard, or worse felt like they were an afterthought when it came to decision making. There is merit in considering how Cabinet more regularly, as a collective, hears and genuinely listens to the voices of those most impacted by a pandemic and the response to it. To my recollection, we never had a Cabinet meeting where external voices were brought to Cabinet, or a post-Cabinet discussion, to hear directly from those impacted. While this would be impractical for every Cabinet discussion, we should explore how more direct, meaningful engagement takes place between Cabinet, as the main decision making body in response to the pandemic, and those most impacted by it, on a more regular basis.
- 471 I would like to end where I started and that is to acknowledge the suffering that many families still face to this day, having lost loved ones to Covid. I would also like to acknowledge the pain and anguish many people are still facing due to the long-term impacts of Covid. Just because we are no longer responding to the emergency phase of the pandemic, does not mean the Scottish Government has forgotten the obligations we have to those who are, and have been, impacted by Covid.

472 My thoughts remain with those who have been bereaved by Covid in particular. I reiterate my Government's willingness to cooperate fully with the public inquiry and acknowledge the importance of it.

Statement of Truth

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

Personal Data

Signed: _____

Dated: _____ 02 November 2023 _____