

Monday, 29 January 2024

1  
2 (10.00 am)  
3 **LADY HALLETT:** Good morning.  
4 **MR DAWSON:** Good morning, my Lady. The first witness this  
5 morning is the Right Honourable Michael Gove MP.  
6 **MR MICHAEL GOVE (sworn)**  
7 **Questions from LEAD COUNSEL TO THE INQUIRY for MODULE 2A**  
8 **LADY HALLETT:** Mr Gove, I'm sorry that we have had to call  
9 you back again.  
10 **THE WITNESS:** Not at all.  
11 **LADY HALLETT:** I do understand the difficulties it may  
12 cause, but it was necessary, I'm afraid.  
13 **THE WITNESS:** Of course. Thank you.  
14 **MR DAWSON:** You are Michael Gove?  
15 **A.** Yes.  
16 **Q.** You have helpfully provided a number of statements to  
17 the Inquiry, but two particularly to this module. The  
18 first, if we could have it up, please, is INQ000371583.  
19 It's a statement dated 14 December 2023. Is that your  
20 statement?  
21 **A.** It is.  
22 **Q.** You have signed the statement?  
23 **A.** Yes.  
24 **Q.** Do the contents of that statement remain true and  
25 accurate as far as you're concerned?

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1 significantly less involved in any aspect of the  
2 pandemic response after September 2021; is that broadly  
3 correct?  
4 **A.** Yes, it is.  
5 **Q.** In the period between January 2020 and September 2021,  
6 you were the Chancellor of the Duchy of Lancaster?  
7 **A.** Yes.  
8 **Q.** From mid-February 2020 you became Minister for the  
9 Cabinet Office?  
10 **A.** Yes.  
11 **Q.** And after September 2021, you continued to have contact  
12 with the devolved administrations, including the  
13 Scottish Government, in your post as minister for  
14 intergovernmental relations, but not in the context of  
15 the pandemic response; is that correct?  
16 **A.** That is correct.  
17 **Q.** As I say, you've given evidence already in connections  
18 with modules 1 and 2, both in statement form and in oral  
19 evidence. You are here today to give evidence in  
20 relation to the Scottish Government's decision-making  
21 and, indeed, the UK Government's decision-making insofar  
22 as it related to Scotland. I understand that you  
23 performed a role during the course of the pandemic as  
24 the minister in the UK Government who acted as something  
25 of a conduit between the two governments. Would that be

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1 **A.** Yes.  
2 **Q.** You have helpfully also provided us with an additional  
3 short statement, supplementary statement, with the  
4 reference INQ000236648. This is a statement dated  
5 25 January 2024. Is that also your statement?  
6 **A.** It is.  
7 **Q.** Have you signed that statement?  
8 **A.** Yes.  
9 **Q.** Do the contents of that statement remain true and  
10 accurate as far as you're concerned?  
11 **A.** They do.  
12 **Q.** Thank you.  
13 You're a member of the UK Parliament for  
14 Surrey Heath?  
15 **A.** Yes.  
16 **Q.** You were first elected to the UK Parliament in 2005; is  
17 that correct?  
18 **A.** Yes.  
19 **Q.** You are currently the Secretary of State for Levelling  
20 up, Housing and Communities?  
21 **A.** Yes.  
22 **Q.** You're also currently the minister for intergovernmental  
23 relations?  
24 **A.** Yes.  
25 **Q.** In your statement, you explain that you became

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1 fair?  
2 **A.** Yes, it would.  
3 **Q.** Over what period did you perform that role?  
4 **A.** Essentially from the very beginning of the pandemic  
5 until the reshuffle in September of 2021 when I was  
6 appointed to my current post.  
7 **Q.** Would it be fair to say that in the exercise of that  
8 particular role, although you didn't hold principal  
9 ministerial responsibility for a number of areas, you  
10 are required to keep abreast of developments within both  
11 the UK Government and the Scottish Government with  
12 regard to the pandemic, so as to be able, intelligently,  
13 to be able to discuss with the Scottish Government  
14 matters relating to the pandemic response across the UK?  
15 **A.** Yes, to the best of my ability.

16 **Q.** Thank you.  
17 I'd like to ask you some questions about the  
18 interaction between the devolution settlement and the  
19 pandemic response. The module has already heard  
20 significant evidence about the devolution settlement.  
21 Is it fair to say, as we've heard from other  
22 witnesses, that although the Scottish Government and the  
23 UK Government make decisions separately as regards  
24 matters within their respective devolved and reserved  
25 competencies, one might say that they share overall

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1 responsibility for policy decisions that impact  
2 Scotland?  
3 **A.** Yes.  
4 **Q.** Reserved UK Government and devolved Scottish Government  
5 policies both impact outcomes in Scotland?  
6 **A.** Yes.  
7 **Q.** And decisions, even decisions made by the UK Government  
8 with regard to its exclusive areas of competence in  
9 other parts of the United Kingdom, will have had  
10 an indirect effect on matters within Scotland as well?  
11 **A.** Yes.  
12 **Q.** That's perhaps because although these structures are  
13 man-made structures, the virus and its epidemiological  
14 flow did not respect those borders and structures?  
15 **A.** Precisely so.  
16 **Q.** At all relevant times during the pandemic, the Scottish  
17 Government had devolved responsibility for public  
18 health, the health of Scotland more generally, the NHS,  
19 including hospitals, schools and the social care sector  
20 is that your understanding?  
21 **A.** Yes.  
22 **Q.** In your evidence to Module 2, you were asked some  
23 questions about this area, and you said on 28 November.  
24 It's at the transcript at page 116, which is available  
25 on the website:

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1 that's worth considering."  
2 Was it fair to say that, in advance of the pandemic,  
3 it was reasonably foreseeable that in a health emergency  
4 of the nature of the pandemic which the UK faced, it  
5 would require, given the underlying devolution  
6 settlement, a degree of cross-border co-operation?  
7 **A.** Yes.  
8 **Q.** Would you say that it was necessary for there to be  
9 clarity as regards precisely what fell within the ambit  
10 of the Scottish Government's responsibility under the  
11 devolution settlement and what it was that the  
12 UK Government would do insofar as impacted upon  
13 Scotland?  
14 **A.** Yes, and I think that there is a case for greater  
15 clarity overall about devolved and reserved  
16 responsibilities.  
17 **Q.** Would it have been possible for greater clarity in that  
18 regard to have been achieved, given the fact that it was  
19 reasonably foreseeable in such a situation that  
20 cross-border co-operation would be necessary?  
21 **A.** Yes, I think that, again, we dealt with a virus which  
22 was unprecedented in the speed with which it spread and  
23 also its lethality, but it is certainly the case that  
24 the devolution settlement evolves over time and we can  
25 learn from how we responded to this virus to consider

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1 "... health is devolved and public health is  
2 devolved, but there is a distinction, I think, between  
3 two different types of public health intervention. On  
4 the one hand there's the straightforward public health  
5 intervention, like keeping ourselves healthier, how much  
6 fruit do we eat and so on. That's quite properly  
7 a matter for the devolved administrations.  
8 "But when you are dealing with a pandemic and  
9 a pandemic which is raging across one island,  
10 Great Britain, then I do think that there is a case for  
11 saying that there can and should be certain UK-wide  
12 powers exercised at the centre.  
13 I think that it is an open question, to draw that  
14 distinction between two different types of public health  
15 interventions because, again, one of the points that  
16 Michelle O'Neill makes, very fairly, is that the island  
17 of Ireland is a single epidemiological area. It was  
18 always regarded so in forms of animal health and  
19 *a fortiori* in terms of human health. So, again, these  
20 are difficult issues to manage and I wouldn't say that  
21 this was a view that I hold passionately but I do think  
22 that the whole question about how you can ensure that  
23 the UK Government, short of the Civil Contingencies Act,  
24 can say, 'Look, we need to override some of the  
25 independent decision-making you might make', I think

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1 how the devolution settlement might be improved in the  
2 future. It is of course perfectly open to conclude that  
3 no constitutional settlement will ever be perfect and  
4 that the current division of responsibilities is broadly  
5 right.  
6 **Q.** But clarity in this regard, in order to maximise the  
7 effectiveness of the response, is really key, isn't it?  
8 **A.** Clarity is always helpful.  
9 **Q.** Is the distinction that you made in your evidence in  
10 Module 2 between public health matters, which are  
11 clearly devolved, eating more fruit you refer to -- we  
12 actually heard from Professor Devi Sridhar, public  
13 health expert, who talked about measures to fight  
14 obesity, smoking, alcohol consumption, all of which she  
15 had some involvement in. Is the distinction between  
16 that type of public health responsibility and some other  
17 type of public health responsibility a constitutional  
18 legal principle as far as you're concerned?  
19 **A.** No, I believe that it's a practical operational  
20 question, and it relates of course to how we can protect  
21 the health of everyone within a particular geographic  
22 entity, in this case the island that is Great Britain.  
23 So a case has been made, and it's one for which I'm  
24 sympathetic, that when one is thinking of some  
25 biosecurity measures in respect of dealing with a virus,

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1 for example questions over international travel or  
 2 testing at the border, that there is a case for saying  
 3 that that should be a UK-wide responsibility, exercised  
 4 by the UK Government, and I submit to the Inquiry that  
 5 this is a legitimate and respectable point of view, but,  
 6 as I say, there can be arguments either way about the  
 7 wisdom of going down that route, but it is certainly  
 8 a case with which I have sympathy.

9 **Q.** As far as the position of the UK Government during the  
 10 course of the pandemic is concerned, was it your and the  
 11 UK Government's position that the Scottish Government  
 12 was responsible for matters of public health such as  
 13 eating more fruit, but overall the UK Government  
 14 retained responsibility for the management of the virus?

15 **A.** No, I think that it was clear from what happened during  
 16 the course of the pandemic that the Scottish Government  
 17 was responsible for deciding the non-pharmaceutical  
 18 interventions that it believed were necessary in order  
 19 to curtail the spread of the virus.

20 **Q.** Did issues around the division of responsibility in this  
 21 regard remain contentious or difficult throughout the  
 22 pandemic, in particular as a result of your particular  
 23 experience of dealing with the Scottish Government in  
 24 your four nations meetings?

25 **A.** No, I think in my evidence I make the point that of

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1 presenting effective decision-making and an effective  
 2 response.

3 **Q.** You mentioned in your earlier evidence the possibility,  
 4 which I know you've discussed already with others in  
 5 previous modules, that the way in which the pandemic  
 6 management division, if you like, could have been  
 7 approached was the use of the Civil Contingencies Act.  
 8 You mention something "short of the Civil Contingencies  
 9 Act" in your previous evidence. Would it not have  
 10 been -- if the UK Government wished to exercise a wider  
 11 control over matters of public health, would it not have  
 12 been an option, a preferable option, for the  
 13 UK Government to have approached the division of  
 14 responsibilities through that legal mechanism, about  
 15 which we have, again, heard a little from previous  
 16 witnesses?

17 **A.** Yes, I do believe so. The Civil Contingencies Act is  
 18 designed to deal with a catastrophic coming from a clear  
 19 blue sky, a terrorist incident or a hostile state actor  
 20 unleashing the sort of havoc that requires an immediate  
 21 emergency response, and also it involves the curtailment  
 22 of independent action and liberty to an extent that  
 23 I think most people would find difficult to take, save  
 24 in such a particular emergency. But I do think that  
 25 it's worth looking at the operation of the Civil

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1 course there were differences in approach and of course  
 2 we had different political parties operating across the  
 3 United Kingdom, but the day-to-day management of the  
 4 virus and the day-to-day responsibilities exercised by  
 5 ministers in the devolved administrations and in the  
 6 UK Government was for the most part constructive.

7 **Q.** My question was directed at trying to understand whether  
 8 there was difficulty as regards the constitutional  
 9 divide, rather than -- a subject we'll get on to -- the  
 10 personal interrelationships between people involved.  
 11 What I was seeking to get at was: did it remain an issue  
 12 as to what was the UK Government's responsibility, what  
 13 was the Scottish Government's responsibility, which may  
 14 of course have affected the -- impacted upon the  
 15 effectiveness of the overall response?

16 **A.** I wouldn't want to jump the gun, but I suspect that some  
 17 might, in this module, want to make a point about the  
 18 degree of fiscal devolution that the Scottish Government  
 19 enjoys and whether or not that should be greater and  
 20 whether or not that would enable the Scottish Government  
 21 or a future Scottish Government to respond more  
 22 effectively. I've outlined my views on that question  
 23 and I'm happy to return to them and, indeed, expand on  
 24 them. But during the course of the pandemic I did not  
 25 see any real angst about the constitutional situation

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1 Contingencies Act and considering whether or not,  
 2 between that quite powerful intervention and the other  
 3 interventions that we saw exercised during the course of  
 4 the pandemic, might there be a need for a new mechanism  
 5 or a new way of operating in order to deal with  
 6 potential future threats to public health or safety.

7 **Q.** Was this not literally a catastrophe that came from  
 8 a clear blue sky?

9 **A.** No, because while it was undoubtedly a horrendous period  
 10 in the life of our nations and the loss of life and the  
 11 pain suffered by many was momentous, the threshold for  
 12 the Civil Contingencies Act I think is rightly very  
 13 high, and it is the case that, whatever successes or  
 14 failures there were in the management of the pandemic,  
 15 we could see the pandemic coming. It wasn't as though  
 16 it were, as I say, like a terrorist attack, when you  
 17 move from a moment of peace and serenity to the sudden,  
 18 dramatic loss of life that such an intervention might  
 19 precipitate, or, as I say, a foreign state actor  
 20 attacking. And the Civil Contingencies Act, by its very  
 21 nature, leads to the centralisation of powers, the  
 22 restrictions of liberties, but one would have to clear  
 23 a very high threshold before initiating.

24 So my own view is that the Civil Contingencies Act  
 25 is too draconian an instrument in many cases for the

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1 sorts of challenges that we might face in the future.

2 **Q.** The practical result, had that course been followed,

3 I think you've already explained to us, but just to be

4 clear, would have been that the UK Government would have

5 had greater power over the way in which the pandemic was

6 managed across the nations of the United Kingdom. Is

7 that broadly correct?

8 **A.** It would have done, and --

9 **Q.** Yes, it would --

10 **A.** Yeah, and it would have had greater power over and

11 control over the actions of local government and

12 individuals and civil society. It is, as I say, a -- by

13 "draconian" I don't mean to say that it's never capable

14 of being used, but it should only be used in very

15 sparing and exceptional circumstances.

16 **Q.** In the end, the way in which the pandemic was managed --

17 we've heard some evidence from a political expert who

18 talked about the civil contingencies route or the public

19 health route --

20 **A.** Yes.

21 **Q.** -- being two options. The public health route was

22 ultimately the one that was taken, if we can use that as

23 a label; is that fair?

24 **A.** Yes.

25 **Q.** What happened was that legislation went through the

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1 **Q.** So as far as the legislative framework is concerned, the

2 powers to manage matters of public health, to impose

3 restriction, lockdowns or anything short of a lockdown

4 became clear, at least, on 26 March; is that correct?

5 **A.** It certainly -- they were further clarified. I think

6 one of my experiences of devolution is that at different

7 points, in issues arguably less important, the Scottish

8 Government has pushed at the boundaries of the

9 devolution settlement in order to establish that which

10 it can do. It's inherent in the Scotland Act that those

11 things which are reserved are listed and specified, but

12 not those things which are devolved, and there is

13 an argument put forward by the Scottish Government and

14 others that anything that is not explicitly reserved is

15 devolved and, therefore, it is open to the Scottish

16 Government to -- and the Scottish Parliament, to

17 legislate in those areas. I won't stray further into

18 that debate now, but --

19 **Q.** Thank you.

20 **A.** -- it is certainly the case that some would have argued

21 that even if the UK Government had been idle, that the

22 Scottish Government and the Scottish Parliament would

23 have been empowered to legislate in this area.

24 **Q.** Despite, as I think you've accepted, the reasonable

25 foreseeability of the need to have a cohesive,

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1 UK Parliament, which became the Coronavirus Act 2020.

2 In the schedules to that Act, specific powers to do

3 things like impose restrictions and ultimately lockdowns

4 were accorded to the Scottish Government; is that

5 correct?

6 **A.** Yes.

7 **Q.** And those powers became vested in the Scottish

8 Government on 26 March 2020?

9 **A.** Yes.

10 **Q.** Was it your understanding of the Scottish Government's

11 position prior to that point that it was of the view

12 that it had the constitutional power to impose

13 restrictions and lockdowns in any event?

14 **A.** I believe that -- I don't know what the Scottish

15 Government thought, but I do believe that the Scottish

16 Government, if the UK Government had chosen not to act,

17 would undoubtedly have pressed us to grant them powers

18 in order to be able to have the sorts of interventions,

19 the non-pharmaceutical interventions, the lockdown

20 powers that were subsequently exercised.

21 **Q.** But your understanding, do I take from that, was that

22 the -- of their position -- Scottish Government thought

23 that those powers would require to be granted to them,

24 ie they did not have them?

25 **A.** Yes.

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1 co-ordinated UK response in an emergency such as this,

2 and the preferability at least of clarity around

3 devolved and reserved competencies, this was not

4 a matter which had been discussed or sorted out between

5 the governments before the pandemic arrived, was it?

6 **A.** No, but there were regular occasions where the

7 UK Government and devolved administrations would work

8 together to consider how to deal with civil

9 contingencies, and there were also arrangements to

10 discuss how they might deal with pandemics,

11 particularly, as has been discussed elsewhere, the

12 prospect of a flu pandemic, which was the principal

13 operating assumption when it came to a public health

14 emergency that the UK Government was operating to.

15 **Q.** If there were a concern on the part of the UK Government

16 that the Scottish Government tended to try to push the

17 boundaries of devolution based on previous experience,

18 it would have been perfectly open to the UK Government

19 to clarify the boundaries between each government's area

20 of responsibility in advance as part of those

21 preparedness exercises, would it not?

22 **A.** It would be possible, however precisely given the

23 tendency, particularly under the Scottish National

24 Party, to see if the devolution boundaries can be

25 pushed, one can't anticipate all of the areas where

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1 a Scottish Government might choose to push those  
2 boundaries. Again, one of the emerging challenges that  
3 we all face across the world at the moment is artificial  
4 intelligence. At the time of the Scotland Act AI was  
5 not a concept with which any of us were particularly  
6 familiar. There is an open question, probably not for  
7 this Inquiry so I shan't labour the point, as to whether  
8 or not artificial intelligence and the threat that it  
9 potentially poses if not properly regulated should be  
10 regulated at a UK level or at a Scotland or devolved  
11 administration level. Again, my argument would be that  
12 we should have that discussion now, but we can't always  
13 anticipate every future challenge that we may have to  
14 face, or indeed every future initiative that a duly  
15 elected Scottish Government might wish to press.

16 **Q.** In contradistinction to the concept of artificial  
17 intelligence, Mr Gove, public health was a matter  
18 which -- to which, as you've said, a considerable amount  
19 of attention was paid in advance of the pandemic,  
20 therefore it was entirely predictable that public health  
21 was a matter which required a degree of clarification as  
22 to the constitutional boundaries?

23 **A.** Yes, but I don't believe that in the response to the  
24 pandemic that the constitutional questions, which are  
25 of course of great interest, actually impeded day-to-day

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1 Can we just look at these, please. These messages  
2 say -- if we start at 30 May, 2.14 pm, it is said there  
3 that the owner of the cellphone, who we understand to be  
4 Mr Hancock, says:

5 "Yes. It should be a UK body like MI5. Pandemic  
6 response is a reserved responsibility. It's the actions  
7 taken in response that are devolved."

8 To which you respond:

9 "The sub (which I think should have gone 2 u) takes  
10 a different view -- based on 'legal advice'. Do let me  
11 know if you haven't been sent it."

12 Then the response thereafter from Mr Hancock is:

13 "I've now read the sub. I'm very unhappy with it.  
14 The JBC is designed as a UK institution that gathers and  
15 analyses data. It executes via many different agencies,  
16 local authorities, devolveds, OGDs etc. But there is no  
17 need for it to be run through a committee of the four  
18 nations. We wouldn't put English local authorities on  
19 the board!"

20 Then at 9.01 Mr Hancock says:

21 "The advice this sub is based on wrongly states that  
22 'public health is devolved'. That is not true. Parts  
23 of public health are devolved (fat fighting; local  
24 response) but public health emergencies are a reserved  
25 matter. How can a sub on such an important matter miss

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1 our response. So yes, in a perfect world, a greater  
2 degree of constitutional clarity on some of these  
3 questions would be preferable, but in the practical  
4 day-to-day operation of responding to the pandemic and  
5 the virus, I don't believe that these were material  
6 considerations.

7 **Q.** Could I -- you'll be pleased to hear, Mr Gove, I don't  
8 intend to take you through vast reams of WhatsApp  
9 messages, but I will take you to a few.

10 If we could turn, please, to INQ000163134, please.

11 These are messages that I understand were provided  
12 to the Inquiry by Mr Hancock, and they relate to  
13 discussions around a four nations approach to the  
14 governance of the Joint Biosecurity Centre in May 2020.

15 Do you recall the discussions around that issue at  
16 that time?

17 **A.** I do.

18 **Q.** The Joint Biosecurity Centre, I think, was formed as  
19 a new directorate within the Department of Health and  
20 Social Care in June 2020, eventually, to bring together  
21 data science assessment and public health information  
22 and expertise to assist in the fight against the virus.  
23 Is that a fair description, broadly?

24 **A.** Totally.

25 **Q.** Thank you.

18

1 such a critical part of the devolution settlement?

2 "Let's discuss in the morning -- this clearly needs  
3 sorting out."

4 So, broadly speaking, what's happening here is  
5 there's a discussion over the extent to which this is --  
6 the Joint Biosecurity Centre would be a matter for  
7 UK Government control; is that right?

8 **A.** Yes.

9 **Q.** And Mr Hancock has seen this as part of a more general  
10 attitude that he appears to have towards the way in  
11 which the public health response is being co-ordinated,  
12 saying, "The JBC falls within our remit" -- the  
13 UK Government remit -- "because the public health  
14 response more generally, in terms of policymaking, falls  
15 within our remit"; is that broadly correct?

16 **A.** That was Matt's view --

17 **Q.** Yes.

18 **A.** Yes.

19 **Q.** And what you are doing here is you are bringing to his  
20 attention a submission, it would appear to be a legal  
21 submission, a piece of advice, which tends to suggest  
22 that that interpretation of the devolution settlement  
23 may not be correct; is that right?

24 **A.** Yes. And I think this goes very much to our earlier  
25 discussion. In the end, when the JBC was set up, as

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1 I think I mention in paragraph 74 of my evidence to this  
 2 module, health ministers from all four administrations  
 3 were on a ministerial board and the devolved  
 4 administrations were represented on the Joint  
 5 Biosecurity Centre steering board and technical board.  
 6 So Matt, again -- as the Inquiry has heard, Matt, and  
 7 I think this was a good thing, was a bullish,  
 8 determined, energetic minister who wanted to ensure that  
 9 there was rapid and effective action taken in dealing  
 10 with the virus. My responsibility was to seek to make  
 11 sure that we worked effectively with all of the devolved  
 12 administrations, so I didn't seek to temper Matt's  
 13 energy, but I did seek to ensure that we were operating  
 14 on all fours with the devolved administrations, and in  
 15 the end we had an effective JBC broadly in line with  
 16 Matt's wishes but one which also involved the devolved  
 17 administrations and which benefitted all.

18 **Q.** Is this, Mr Gove, indicative of a wider attitude within  
 19 the UK Government, at least up to this point, that the  
 20 UK Government was really in control of policy across the  
 21 United Kingdom with regard to the management of the  
 22 pandemic?

23 **A.** No, I don't believe so, no. I think that at different  
 24 times, naturally, there were some within the  
 25 UK Government that occasionally found it irksome that

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1 **A.** Yes, but I think I would balance that against the  
 2 formidable array of evidence which shows Matt working  
 3 collaboratively and effectively with health ministers  
 4 across the United Kingdom. So Matt expresses a view,  
 5 that view is born of his desire to press ahead  
 6 energetically, but at the same time this is one  
 7 conversation, an important one, but set against that  
 8 there are the multiple, not just conversations but  
 9 agreements and shared actions that Matt, Jeane Freeman,  
 10 Humza Yousaf and others were responsible for.

11 So a single conversation of this kind shouldn't be  
 12 taken as evidence of the broader attitude that either  
 13 Matt or the UK Government took to effective and  
 14 co-ordinated work.

15 **Q.** It's your understanding and perspective, as you said,  
 16 that Mr Hancock and others in the UK Government worked  
 17 collaboratively and effectively with the Scottish  
 18 Government, and indeed the other devolved  
 19 administrations, over this period. It is a consistent  
 20 theme, however, of the Scottish Government evidence  
 21 that, when attending or engaging in these apparently --  
 22 or -- these collaborative exercises, they felt very much  
 23 that decisions had already been made by  
 24 the UK Government and that they were simply being  
 25 invited to be told what those decisions were. Their

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1 they might have to deal with devolved administrations  
 2 taking a different view, but overall the way in which  
 3 the UK Government worked was respectful towards and  
 4 inclusive towards the devolved administrations. So  
 5 there may have been moments when individuals  
 6 expressed -- as energetic and determined individuals,  
 7 anxious to see action this day, they may have expressed  
 8 irritation at the need to, you know, take account of the  
 9 devolved administrations but they would also at  
 10 different times have expressed perhaps irritation with  
 11 how Public Health England or another part of the  
 12 government machinery were operating. It's not, I think,  
 13 a fundamental lack of respect, it's simply an outworking  
 14 of the energetic impulse of well meaning and public  
 15 spirited individuals.

16 **Q.** It may not be a question of lack of respect, Mr Gove,  
 17 but it is, I think, an indication as to Mr Hancock, who,  
 18 let's be fair, was a central part of the UK Government's  
 19 response --

20 **A.** Oh, yes.

21 **Q.** -- it's an indication of his understanding of the  
 22 constitutional position. Despite legal advice to the  
 23 contrary he is of the view that public health is  
 24 devolved, and that -- that public health is not devolved  
 25 and that that statement was incorrect?

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1 position is, in effect, as Mr Hancock seems to be  
 2 expressing here, that the UK Government thought itself  
 3 responsible for the public health response across the  
 4 United Kingdom and that they were merely to be told what  
 5 the decisions had already been, what they already were.

6 **A.** I don't think that the -- the actual evidence would  
 7 justify that. It was the case, at different points,  
 8 that the Scottish Government, and indeed other devolved  
 9 administrations, chose a different path. My view was --  
 10 and I think, to be fair, the view of most of those  
 11 working in the devolved administrations was -- that  
 12 effective co-ordination and indeed a unified approach  
 13 wherever possible was desirable, however there were  
 14 occasions where the Scottish Government chose  
 15 a different communication strategy, a different set of  
 16 lockdown metrics, different ratios for when people could  
 17 meet outside and so on, and we not only respected that  
 18 but sought to work with the devolved administrations in  
 19 that area. There were other areas, though, where it was  
 20 undoubtedly the case that it was the strength of the  
 21 UK Government that was enable -- that was able to help  
 22 everyone within the UK to respond better. We would not  
 23 have been able to secure the effective vaccine roll-out  
 24 that we did without the UK Government playing the role  
 25 that it did in setting up the Vaccine Taskforce and so

24

1 on. Of course the Scottish Government and those working  
2 within the Scottish NHS played a heroic role in  
3 supporting that, I would take nothing away from them,  
4 but I think it is important to recognise that there were  
5 critical elements of the pandemic response where we  
6 benefitted from having the broad shoulders of the  
7 UK Treasury and indeed the international negotiating and  
8 purchasing power of the UK Government.

9 **Q.** I think the timeline is potentially significant here,  
10 Mr Gove. What I'm interested in -- you referenced the  
11 fact that there were times, either as regards public  
12 communications policy or the substantive strategy  
13 towards the management of the virus more generally, the  
14 Scottish Government took a different path. The timing  
15 of this is significant, in that we've already heard  
16 evidence that it was around May 2020 where that  
17 divergence, which was not a phrase that the Scottish  
18 Government witnesses liked very much, but that  
19 divergence started really substantively to occur.

20 What I'm interested in is why that divergence took  
21 place. Is it your position, Mr Gove, that there is no  
22 substance to the Scottish Government's criticism of the  
23 UK Government in that in the period up to this point  
24 they were excluded from decision-making such that they  
25 had to take their own path?

25

1 a slightly more energetic or a slightly more liberal  
2 response.

3 **Q.** You mentioned something of the intensity of the initial  
4 discussions, we may return to that in a few moments,  
5 Mr Gove. You, as you've already given evidence in  
6 Module 2, were heavily engaged -- principally engaged,  
7 I think, in what are known as the four nations  
8 meetings --

9 **A.** Yes.

10 **Q.** -- that took place. We know that these took place at  
11 different times, with a different level of regularity,  
12 and we know some of the matters that were discussed at  
13 these meetings.

14 Was your mission in setting up these four nations  
15 meetings to try to do something about the fact that the  
16 existing systems for Scottish Government/UK Government  
17 collaboration had failed?

18 **A.** No, I don't think they had failed. Prior to the  
19 pandemic, my role as Chancellor of the Duchy of  
20 Lancaster had been to prepare for Britain's departure  
21 from the European Union and the potential eventuality of  
22 a no-deal Brexit. In that work, I had a series of  
23 meetings, conference calls, Cabinet committee meetings,  
24 with representatives, ministers and officials from the  
25 devolved administrations, and while of course the

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1 **A.** No, I don't think that's a fair characterisation. We  
2 strove always to make sure that the views of devolved  
3 administrations were heard, respected and fed into  
4 UK Government decision-making. There was an intensity  
5 to the range of conversations at the beginning of the  
6 pandemic response that diminished a little as we moved  
7 into a period where it appeared that the virus was in  
8 retreat, and then, as the intensity of infection  
9 recurred, so the intensity of meetings recurred.

10 But the UK was not unique in having conversations  
11 between the central government and devolved or regional  
12 or other governments in how to respond, and again one of  
13 the points that I made in my evidence is that the  
14 Federal Chancellery in Germany sometimes had to deal  
15 with the fact that different Länder were pursuing  
16 different policies, and ensuring that there was an  
17 effective and unified response across the whole of  
18 Germany was a challenge.

19 So, yes, if you have devolution of any kind, and  
20 there were similar situations in France and Spain, then  
21 you will sometimes have divergent responses because, as  
22 administrations acquire more information about how to  
23 fight the virus, though -- more options become  
24 available, and it is possible for public spirited  
25 individuals in different jurisdictions to argue for

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1 Scottish Government and the Welsh Government opposed the  
2 course we were on, they recognised that the UK as  
3 a whole had made that decision and we worked, I think,  
4 constructively during that period, even when it was  
5 a very politically contested goal to make sure that we  
6 were ready for every eventuality at that time.

7 And I think that of course it's open to the Scottish  
8 Government to feel that they were not as involved as  
9 they should have been at certain points, but I think the  
10 reality is that there was frank and open discussion of  
11 the delivery options available to us in that scenario,  
12 as there was subsequently in Covid.

13 **Q.** I think it to be the case that although some meetings  
14 took place before this, this is in fact around the time  
15 when the regularity of those meetings started to pick  
16 up --

17 **A.** Yes.

18 **Q.** -- is that broadly correct? As I say, they weren't  
19 absolutely every week or anything like that --

20 **A.** No.

21 **Q.** -- but one might say that from May onwards that was  
22 a period in which your engagement in those meetings and  
23 your efforts in those meetings were -- that was the  
24 period when you were ramping that up to an extent.

25 **A.** Yes, with respect specifically to Covid, there were

28

1 a series of meetings that took place, whether through  
 2 the forum of COBR or otherwise, to agree the initial  
 3 escalation towards the first lockdown, then subsequent  
 4 to that ministerial implementation groups were set up in  
 5 order to deal with the consequences of lockdown for  
 6 public services, for the health service and so on. Then  
 7 the ministerial implementation groups were wound down.  
 8 That was partly because, as I say, the virus appeared to  
 9 be in retreat, but partly also because these were quite  
 10 cumbersome structures and we then moved to a different  
 11 rhythm of meetings in the late summer and autumn  
 12 of 2020.

13 **Q.** So in that narrative, just to make sure we're getting  
 14 the timing correct, you talked about the initial period,  
 15 the ministerial implementation groups lasted over what  
 16 period roughly?

17 **A.** I think from -- until I suppose the second half of the  
 18 spring of -- into early summer of 2020.

19 **Q.** Right, and then you omitted to tell us about the  
 20 COBR-O (sic) and COBR-S (sic) -- Covid-O and Covid-S  
 21 committees that were ones which were, I think, part of  
 22 the Cabinet structure in the UK Government?

23 **A.** Yes, they superseded the ministerial implementation  
 24 groups. And, again, one of the views that I had was  
 25 that we needed to have a Covid Taskforce at the centre

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1 in the narrative, that the meetings, the four nations  
 2 meetings which you were principally involved with,  
 3 started to pick up pace as a means of communicating with  
 4 the devolved nations?

5 **A.** Yes, exactly so. As well as the Covid-O meetings,  
 6 I would hold regular calls with representatives,  
 7 normally the First Ministers, in order to be sure that  
 8 issues which were not necessarily on the Covid-O agenda  
 9 but which mattered to them were ventilated and aired.

10 It would normally be the case the territorial offices,  
 11 the secretaries of state for Scotland, Wales and  
 12 Northern Ireland, would attend, and also officials,  
 13 sometimes from the Treasury and sometimes from other  
 14 departments.

15 **Q.** Despite the fact that, as you've accepted, there was  
 16 a need in a pandemic of this nature to maximise and  
 17 achieve effective co-ordination between the nations of  
 18 the United Kingdom and their administrations, do you  
 19 accept, Mr Gove, that the structures which had existed  
 20 before this point that we're talking about had failed  
 21 and that your attempts to rectify these failed  
 22 decision-making structures through your meetings were  
 23 really an attempt to make the best of a bad lot?

24 **A.** No, I wouldn't say they had failed but I would say that  
 25 the approach that we took was a process of iterative

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1 of the UK Government and that we should move towards  
 2 a system similar to that which we'd had in order to  
 3 prepare for our departure from the European Union, the  
 4 so-called XO and XS split, but there were others who  
 5 were more involved in the design and re-design of these  
 6 structures in order to make sure that we had effective  
 7 decision-making.

8 **Q.** The COBR meetings were attended by ministers from the  
 9 Scottish Government?

10 **A.** Yes.

11 **Q.** The MIGs, the ministerial implementation groups,  
 12 attended by ministers from the Scottish Government?

13 **A.** Yes.

14 **Q.** The Covid-O and Covid-S groups were not?

15 **A.** Covid-O did involve conversations with and attendance  
 16 from Scottish ministers at certain points.

17 **Q.** These were effectively the UK Cabinet subcommittees; is  
 18 that not correct?

19 **A.** Yes, to which Scottish Government and other devolved  
 20 administration ministers were in attendance. Much as  
 21 they had been with the XO meetings that occurred in the  
 22 run-up to our departure from the European Union.

23 **Q.** And after the timeline we've been talking about, the  
 24 structural timeline, is it fair to say, as I suggested  
 25 at the beginning, that at about the point we've reached

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1 improvement. I think to say that the approach had  
 2 failed is -- and again, I don't want to police other  
 3 people's responses, but for people who believe in  
 4 Scotland's constitutional future as an independent  
 5 nation, supporters of the SNP and other parties and  
 6 organisations aligned behind independence, it is  
 7 necessary to prove that the United Kingdom is  
 8 a dysfunctional entity, and therefore the SNP and its  
 9 supporters will often, when dealing with a situation  
 10 that is not perfect, say "It's a failure, this is  
 11 a proof that the UK as a constitutional entity is  
 12 broken". As I say, the differences of opinion that  
 13 occurred between the UK Government and the Scottish  
 14 Government on day-to-day management of the pandemic were  
 15 no greater than differences between the Federal  
 16 Chancellery in Germany and the Länder in Germany or the  
 17 Élysée in France and the respective regional  
 18 administrators.

19 But, while I have great respect for the integrity  
 20 and professionalism of Scottish Government ministers  
 21 when it came to the handling of individual pandemic  
 22 choices, we have to bear in mind that the political aim  
 23 of the SNP is to destroy the United Kingdom, and from  
 24 time to time they will make political points to that  
 25 end.

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- 1 **Q.** So if the Inquiry were to hear evidence from ministers  
2 and officials within the Scottish Government to the  
3 effect that the co-operation and co-ordination  
4 structures before this point had failed, are you  
5 suggesting that that evidence would be politically  
6 motivated?
- 7 **A.** I think one would have to look at each individual piece  
8 of evidence, but it is undoubtedly the case that the  
9 Inquiry has already heard evidence which shows that  
10 people within the Scottish Government were, at certain  
11 moments, looking at the political as well as the policy  
12 consequences of their choices.
- 13 **Q.** Does your apparent assumption that the Scottish  
14 Government and its ministers' motivations are  
15 politically motivated, it would appear, in everything  
16 they do, would it not rather indicate that there was  
17 a completely dysfunctional relationship between the two  
18 governments at the time?
- 19 **A.** No. And again I hope I that I said, and your question  
20 gives me the opportunity to make clear, I don't believe  
21 they're politically motivated in everything they do.  
22 I think, as I hope I made clear earlier, that I have  
23 great respect for the professionalism with which many  
24 Scottish Government ministers conducted themselves and  
25 I do believe that their overwhelming motivation was to

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- 1 Government and their dedication to keeping people safe,  
2 but this Inquiry has heard and seen direct evidence of  
3 the Scottish Government thinking politically, and again,  
4 as I say, it would be naive to assume that people who  
5 have dedicated their whole life to the cause of Scottish  
6 independence would not at certain points see the  
7 political component to some of the decisions and some of  
8 the points that were being made.
- 9 **Q.** Did the UK Government seek to do the same thing to  
10 promote its agenda to keep the UK together?
- 11 **A.** No, because I think the most important thing that we  
12 felt was that it was important to ensure that lives were  
13 saved across the United Kingdom. I mentioned earlier my  
14 own view that the existence of pan-UK structures helped  
15 to ensure that -- from the vaccine delivery through to  
16 the way in which eventually, after many difficulties,  
17 PPE was procured, helped. But I also think there's  
18 a difference, and the difference is this: that to  
19 believe in the integrity and to believe in the  
20 protection of a state, a political unit like the  
21 United Kingdom, is a responsibility that I have and all  
22 UK Government ministers have. It's not a small P  
23 political thing, it is a matter of duty.
- 24 **Q.** Ms Sturgeon is actually relatively complimentary of your  
25 role, Mr Gove, in the way in which you conducted

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- 1 protect the people of Scotland from a virus. However,  
2 there are and were occasions when the Scottish  
3 Government, as we can see, was thinking politically, and  
4 of course it is the case that the SNP, as a political  
5 mission -- which is to achieve Scotland's independence,  
6 ie to destroy the United Kingdom, and -- it would be  
7 naive not to be aware that highly skilled politicians,  
8 including those at the top of the Scottish Government,  
9 might well seek what they perceive to be political  
10 advantage at certain points. But I think it's important  
11 that recognise that while that did occur at certain  
12 points, the day-to-day management of the pandemic  
13 preoccupied them as it preoccupied other ministers, so  
14 it's a matter of proportion and a matter of precision  
15 rather than a broad assault of the kind that the  
16 question invited me to agree with.
- 17 **Q.** Is your evidence a thinly veiled assertion that the  
18 First Minister of Scotland managed the pandemic in  
19 Scotland in order to further the cause of independence?
- 20 **A.** No. I think it is the case, though, that evidence that  
21 we have heard shows that the First Minister and those  
22 working for her at particular times were thinking  
23 politically. And, again, in my own earlier evidence  
24 I made it clear that I had and have respect for the  
25 immensely hard work put in by many in the Scottish

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- 1 yourself, but I think it fair to say that the statements  
2 that we've seen from Scottish Government ministers would  
3 suggest, as I've put to you, that although your efforts  
4 in the four nations calls were appreciated, they were  
5 seeking to make the best of a bad lot, as had existed  
6 before that point.
- 7 **A.** Again, to be fair to the then First Minister and others,  
8 they were -- expressed irritation sometimes, and those  
9 irritations, as I say, may well have come from a good  
10 faith position in disagreeing with the UK Government  
11 over the precise measures that we were taking. And, as  
12 I say, I respected very much the determination of each  
13 First Minister to do, on a day-to-day basis, their very  
14 best to protect their citizens, and if frustrations were  
15 expressed I always sought to ensure that those  
16 frustrations were communicated to my colleagues in the  
17 UK Government and that, wherever possible, we were able  
18 to work together and to accommodate a unified approach.
- 19 **Q.** Thank you.
- 20 On 23 July 2020, Boris Johnson, the then Prime  
21 Minister, visited Scotland. Nicola Sturgeon did not  
22 want to meet him, as I understand it, during the visit.  
23 Is that your understanding?
- 24 **A.** That is my understanding.
- 25 **Q.** What intergovernmental discussion took place about the

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1 visit?

2 **A.** I don't recall any.

3 **Q.** What was its purpose, from this perspective, of the

4 UK Government?

5 **A.** The Prime Minister of the United Kingdom should be able

6 to visit any part of the United Kingdom at any time.

7 **Q.** But what was its purpose at that particular time?

8 **A.** I believe that the Prime Minister visited Orkney, and

9 I believe that he also was involved -- I don't know if

10 it was at that time, but certainly on a subsequent

11 visit, he wished to thank those involved in the vaccine

12 response.

13 **Q.** Could we have a look, please, at INQ000274143. This is

14 a Twitter post relating to the visit from 23 July 2020

15 by the former First Minister of Scotland, she said:

16 "I welcome the PM to Scotland today. One of the key

17 arguments for independence is the ability of Scotland to

18 take our own decisions, rather than having our future

19 decided by politicians we didn't vote for, taking us

20 down a path we haven't chosen. His presence highlights

21 that."

22 Were you aware of that tweet having been released on

23 that day?

24 **A.** I'm sure I saw it. If not at the time that it was

25 released, subsequently yes.

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1 party, with whose aims I profoundly disagree, to pass

2 comment in this way. Of course. And I think I make the

3 point in my evidence that from time to time during the

4 pandemic, or at any point, SNP politicians would make

5 the case for independence in -- in broad terms, of

6 course, perfectly entitled to do that, and I wouldn't

7 take exception to this tweet.

8 **Q.** You've mentioned the vaccine roll-out on several

9 occasions, although I haven't asked you any questions

10 about it. Just for the sake of clarity, this was in

11 July 2020.

12 **A.** Mm.

13 **Q.** This -- I think you suggested that this might be

14 connected to the vaccine roll-out. I think this may be

15 quite considerably before the time when --

16 **A.** I think you're right, and my apologies. I think --

17 I remember that the Prime Minister visited Scotland --

18 the then Prime Minister, Mr Johnson, visited Scotland on

19 a number of occasions.

20 **Q.** Yes.

21 **A.** One of those occasions I'm pretty sure, subsequently,

22 was to go to Livingston to thank those involved in the

23 vaccine roll-out, but I think on this occasion the

24 Prime Minister was visiting Orkney and I think he spent

25 some time with crab fishermen there, and I think one of

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1 **Q.** During the visit the then Prime Minister spoke about the

2 "sheer might" and "merit" of the Union.

3 **A.** Mm.

4 **Q.** Do these iterations show that both the UK Government and

5 the Scottish Government were playing politics at this

6 key time in the pandemic response?

7 **A.** No, I don't -- well, firstly, I don't believe that's

8 true of the UK Government. I think it was

9 a straightforward -- an important matter of fact that

10 the UK Government, whether or not it was led by

11 a Conservative administration or by any other

12 administration, by the nature of the unified strength,

13 weight, presence that we had, was able -- I mentioned

14 the vaccine roll-out, PPE -- to provide protection for

15 all of the UK's citizens, and I think it's important

16 that everyone, whatever their views on the

17 constitutional future of Scotland or any part of the

18 United Kingdom, everyone who is a citizen of the

19 United Kingdom is protected by the United Kingdom, and

20 whether or not they voted for the Prime Minister of the

21 United Kingdom, he or she is their Prime Minister.

22 Now, on this particular tweet, I recognise the

23 political point that Nicola Sturgeon is making, but

24 I don't object to that point being made. I think that

25 it is perfectly legitimate for the leader of a political

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1 the points that he wanted to better understand as -- as

2 we moved towards a different approach towards fisheries

3 outside the European Union, he wanted to get, as it

4 were, on-the-ground feedback from those who were

5 involved at the sharp end.

6 **Q.** We understand it to be the case that on 18 March 2020.

7 Cabinet Secretary for the Constitution, Europe and

8 External Affairs, Mr Michael Russell, wrote to you in

9 your capacity as the Chancellor of the Duchy of

10 Lancaster setting out the Scottish Government's

11 intention to pause campaigning for a second independence

12 referendum in light of the threat.

13 **A.** Yes.

14 **Q.** Is that broadly correct as to your understanding of the

15 Scottish Government's position in that regard at this

16 time?

17 **A.** Yes.

18 **Q.** Did you consider this tweet to be consistent with that

19 undertaking?

20 **A.** Yes, as I say, I ... I wouldn't consider it inconsistent

21 at all. Again, if it helps the Inquiry just to clarify,

22 there will be moments when someone in Nicola Sturgeon's

23 position is either asked or involved in a political

24 conversation and she will assert her faith in or support

25 for independence. I don't think this is a fundamental

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1 distraction from the work that she or anyone else was  
2 undertaking on the pandemic. I think the reason why  
3 Mike Russell wrote that letter is to say that  
4 individuals who had been working within the Scottish  
5 Government on an independence strategy were going to be  
6 stood down and transferred to Covid functions. I think  
7 that was the right thing to do. Obviously not  
8 a decision for me, but I was grateful to him for  
9 communicating it.

10 I think, and again I wouldn't want to labour the  
11 point, the Inquiry has heard, however, about one or two  
12 other occasions where particular responses during the  
13 Covid pandemic were seen through a particular lens, so  
14 the distinction that I would draw is the commitment to  
15 upholding a set of political principles on which you  
16 were elected and which are your motivation and then, on  
17 certain occasions, seeing an opportunity to advance  
18 those political principles and potentially taking  
19 decisions through that lens.

20 **Q.** Was the purpose of the letter as you understood it not  
21 to communicate to you, and indeed to the Scottish and  
22 wider UK public, that although the SNP government in  
23 Scotland may have been elected on the basis of certain  
24 political principles and their principal policy of  
25 seeking independence, that those political

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1 was a search for political conflict rather than simply  
2 a divergence in policy conclusions.  
3 **Q.** Her explanation of the messages to which you're  
4 referring is that -- although she was asked questions  
5 about the possibility that may have a constitutional  
6 political significance, that what she was seeking to do  
7 at that time was to try to bring to public consciousness  
8 the difficulties that the Scottish Government was having  
9 with regard to accessing particularly furlough funding  
10 in the event that they wished, as appeared to have been  
11 their right under the 2020 Act, to pursue different  
12 restrictions from the UK. So her position was that that  
13 was not meant in a constitutional political sense but in  
14 a more narrow political sense, in seeking to try to  
15 achieve better outcomes on funding for the people of  
16 Scotland.

17 Do you have anything to add to that, or is it your  
18 interpretation of that material that the constitutional  
19 political angle or argument that you've put forward is  
20 the correct interpretation, based on your experience  
21 from the time?

22 **A.** I will leave it to fair-minded observers to decide.

23 **Q.** But do you have anything to add based on your experience  
24 of that period? I'm trying to understand whether that  
25 period is one of the periods that you're identifying as

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1 considerations would be put to one side in the interests  
2 of the extreme public health emergency the nation was  
3 facing?

4 **A.** Yes. Well, again, I'm striving to be fair to the  
5 Scottish Government, with whom I have fundamental  
6 constitutional differences. I don't think that either  
7 Mike Russell or Nicola Sturgeon could excise from their  
8 thinking at any point their desire to see Scotland  
9 independent in due course, but what they did do was to  
10 shift the resources that were being devoted to pursuing  
11 that to Covid, and I think that was the right thing to  
12 do. However, there were other occasions where, as  
13 I say, trying to be fair but not naive, the Scottish  
14 Government looked at things through a particular  
15 political prism with respect to whether or not the case  
16 could be made, in due course, for independence, and that  
17 therefore there were certain occasions where divergence  
18 was being considered through a political lens.

19 **Q.** Are there any particular occasions on which you think  
20 that was a problem?

21 **A.** Well, again, I think that the evidence that was  
22 discussed in this Inquiry last week with the former  
23 First Minister's former chief of staff and special  
24 adviser would lead a fair minded person to conclude that  
25 the words "good old fashioned rammy" suggest that there

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1 this being an issue. Your understanding of that period.  
2 In that period did you have concerns in this regard?

3 **A. (Pause).** I always wanted to put to one side, wherever  
4 possible, considerations of this kind. But I made the  
5 point earlier that one should not be overly naive.  
6 As I say, it is possible, and I think this is the case,  
7 to have in the Scottish Government both a commitment  
8 from people who are public servants first to seeking to  
9 do their best for their fellow citizens, but also, given  
10 the cause to which they've devoted their lives, then the  
11 temptation at certain points to seek political  
12 advantage -- is clearly there. And I think that the  
13 language used, the desire to have a "good old fashioned  
14 rammy" with the UK Government, and some of the other  
15 language used, which I shan't repeat now, does lead me  
16 to believe that at that point there was a desire to  
17 pursue differentiation for the sake of advancing  
18 a particular political agenda.

19 But of course the First Minister, former  
20 First Minister, will be here later this week and I want  
21 to take as balanced an approach as I can, paying tribute  
22 to her energy and hard work in seeking to do what was  
23 right, while at the same time acknowledging that the SNP  
24 as a political movement has a clear goal and its members  
25 and its leadership have seldom missed an opportunity in

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1 other times to seek differentiation in order to advance  
2 that cause.

3 **Q.** We've heard some evidence from materials within the  
4 Scottish Government operation that, in trying to achieve  
5 good intergovernmental relations, certainly within the  
6 United Kingdom, there is often really no substitute for  
7 the heads of respective governments seeking to resolve  
8 differences, find solutions and find ways through in the  
9 interests of the people. Would you agree with that?

10 **A.** I think it depends on circumstance. And I think it also  
11 is the case that the UK Prime Minister has a range of  
12 responsibilities, whoever he or she is, greater than  
13 that of the First Ministers of any devolved  
14 administration. I think it is a good thing for the  
15 UK Prime Minister to have as good relations as possible  
16 with First Ministers. That obviously depends on  
17 a variety of factors, but it will often be the case,  
18 particularly when you're dealing with an emergency like  
19 Covid-19, particularly when the Prime Minister will be  
20 leading the Vaccine Taskforce or operating, you know,  
21 24/7 in a number of areas, it will often be the case  
22 that there will be a division of responsibilities, and  
23 in that division of responsibilities he may well choose  
24 to appoint, as he did, another minister to deal with the  
25 conversations with devolved colleagues.

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1 **Q.** Can you give a little greater specification to the  
2 meaning of the words "in due course"?

3 **A.** Well, we wanted to make sure that we could get a vaccine  
4 as quickly as possible, and there were competing  
5 judgements about how quickly a vaccine could be secured,  
6 competing scientific judgements, but again the hope was  
7 that if we secured that vaccine then we would be able to  
8 put any thought of further lockdowns behind us.

9 **Q.** In his Module 1 evidence, the former Deputy  
10 First Minister, Mr Swinney, stated that:  
11 "... generally relationships ..."  
12 This is referring to really the period at the  
13 beginning of the pandemic, which of course Module 1 was  
14 predominantly concerned with.  
15 "... generally relationships between the  
16 administrations were pretty poor by that point. Poor in  
17 the aftermath of Brexit, because obviously constituent  
18 parts of the United Kingdom -- well, we were -- in  
19 Scotland we were not happy with Brexit at all, or not  
20 happy with the -- and you obviously had to spend a lot  
21 of time on the no-deal Brexit, as the Inquiry heard this  
22 morning from Nicola Sturgeon. But generally relations  
23 were pretty poor."  
24 Would you agree with the assertion that generally,  
25 not just in relation to particular personalities, that

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1 **Q.** I'm not keeping a running score, but is there a reason  
2 why you keep mentioning the vaccines, although I'm not  
3 asking you about it?

4 **A.** Purely because that was one of the most important  
5 elements in our response to the pandemic, and also  
6 because I think that if one were to look at the whole  
7 history of our response to the pandemic, then I think  
8 it's important -- my own view, I don't want to suggest  
9 that the Inquiry should apportion its time in any  
10 particular way -- but it's important to look both at how  
11 we responded in a way which enabled us to successfully  
12 exit lockdown and non-pharmaceutical interventions as  
13 well as obviously looking at some of the  
14 decision-making, flawed and otherwise, that meant that  
15 perhaps we didn't lock down at the time that we should  
16 have done, in the way that we should have done.

17 **Q.** What was the UK Government's exit strategy from the  
18 first lockdown, in particular with regard to the likely  
19 availability of a vaccine?

20 **A.** Well, we believed that it was important overall to seek  
21 to reduce infection to a manageable level, reduce R  
22 below 1, and to buy time, because we believed that it  
23 would be possible to secure a vaccine in due course and  
24 that was the goal towards which so much effort was  
25 directed.

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1 relations between the governments at the outbreak of the  
2 pandemic were pretty poor?

3 **A.** No, I don't think that -- for the reasons that the  
4 former Deputy First Minister quite rightly points out,  
5 I don't think that the relationships were as strong as  
6 they might have been, because of the divergent political  
7 views on Brexit. However, I would say two things.  
8 The first is that day-to-day working on a variety of  
9 issues across all of the administrations was effective.  
10 And, again, I appreciated the professionalism and  
11 commitment of Scottish Government ministers to dealing  
12 with what might have been the consequences of  
13 a no-deal Brexit, even as they devoutly wished to avoid  
14 that outcome. I also wished to avoid that outcome, but  
15 there was, of course, a difference in political  
16 analysis.  
17 The second thing, though, I would say is that  
18 personalities do matter in politics, and you can have  
19 people from different political traditions and different  
20 political parties whose style or whose outlook means  
21 that co-operation can be easier, and it is certainly my  
22 experience that there were people in the Scottish  
23 Government who were sometimes much more constructive  
24 than one or two others. And again, the Inquiry can draw  
25 its own conclusions in due course about how important

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1 personalities are, but personalities do matter when  
 2 you're dealing with tensions which inevitably involve  
 3 some degree of politically divergent thinking.

4 **Q.** Can you identify those who within the Scottish  
 5 Government, amongst senior ministers at least, were more  
 6 constructive and those who were less constructive?

7 **A.** Well, I think the person who was undoubtedly one of the  
 8 most constructive was Kate Forbes.

9 **Q.** Can you explain why you would single her out?

10 **A.** Well, I fear I may be straying into political commentary  
 11 here, but --

12 **Q.** Well, please try to avoid that, Mr Gove. I've asked  
 13 a question about the pandemic response.

14 **A.** Of course. **(Pause)**. It was the case that in all  
 15 conversations with Kate Forbes, she would eschew any  
 16 political -- what's the word -- not point scoring but  
 17 point making, and concentrate on the business in hand.  
 18 There were some other ministers who would sometimes --  
 19 even as we could come to a satisfactory conclusion,  
 20 would sometimes preface their points with some political  
 21 point making.

22 So, again, I would say that she stood out, but also  
 23 that, I think that, to be fair I know that my colleague  
 24 Matthew Hancock found that both dealing with  
 25 Jeane Freeman and Humza Yousaf in their roles to be very

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1 by Mr Swinney to the effect that Brexit and the very  
 2 recent, at least temporarily, conclusion of the Brexit  
 3 work at the end of January may have caused difficulties  
 4 for those who had been involved in those difficult  
 5 negotiations, if you like, between the Scottish  
 6 Government and the UK Government at that time, in  
 7 particular as regards the decision to repurpose those  
 8 very people --

9 **A.** Yes.

10 **Q.** -- into another difficult intergovernmental situation,  
 11 as you described.

12 Is that your understanding of what broadly happened  
 13 in terms of repurposing of staff and did you feel that  
 14 there were lingering issues relating to Brexit as  
 15 a result?

16 **A.** No, I didn't detect any, no. So again, obviously it's  
 17 for the Scottish Government to decide how civil servants  
 18 working for the Scottish Government should be deployed,  
 19 and I think it was the case, yes, that there were some  
 20 who, as I understood it, had been working on Brexit  
 21 preparations who were repurposed and also some who had  
 22 been working on the case for independence who were  
 23 redeployed as well. And again I don't know the numbers,  
 24 but I think that is a welcome thing. But I didn't  
 25 detect that the experience of having worked on

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1 straightforward as well.

2 **Q.** Do I take it then that other senior ministers whom  
 3 you've not mentioned fall into the other category?

4 **A.** No, I think it's fair to say that the Deputy First  
 5 Minister, John Swinney, was also very professional.

6 **Q.** Do I take it then that the First Minister falls into the  
 7 category of other types of people --

8 **A.** The First Minister again was, as I characterised  
 9 earlier, someone who was undoubtedly a focused and  
 10 disciplined minister, but it would sometimes be the  
 11 case, yes, that there would be a political complexion to  
 12 some of the points she chose to make.

13 **Q.** I think you mentioned a moment ago when we were  
 14 discussing the letter that was sent by Mr Russell at the  
 15 beginning --

16 **A.** Mm.

17 **Q.** -- that you had an understanding that some of the  
 18 officials who had been working on Brexit within the  
 19 Scottish Government were repurposed to working on  
 20 Covid --

21 **A.** Yes.

22 **Q.** -- was that correct? I should say, I think that's  
 23 broadly consistent with our understanding as well.

24 **A.** Yes.

25 **Q.** I just wanted to reflect on the particular comment made

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1 no-deal Brexit led to any lack of commitment or  
 2 professionalism or any additional anxiety within the  
 3 operation of the Scottish Government towards the  
 4 UK Government in its Covid response.

5 **Q.** We discussed a moment ago, and I think we were in  
 6 agreement, that there is a significant importance in our  
 7 system when seeking to promote good intergovernmental  
 8 relations that the heads of the Scottish Government and  
 9 UK Government are able to interact in a way which is  
 10 productive. Is that your position?

11 **A.** Ideally, yes.

12 **Q.** You say in your statement at paragraph 61 that:

13 "While Boris Johnson and Nicola Sturgeon were not  
 14 soulmates, they were generally always able to secure  
 15 pretty effective coordination of substantive policy,  
 16 respecting devolved and reserved competencies."

17 Is the description that "Boris Johnson and  
 18 Nicola Sturgeon were not soulmates" something of  
 19 an understatement?

20 **A.** Understatement is sometimes the most effective means of  
 21 communication.

22 **Q.** Is it fair to say, and we've obviously, as you know,  
 23 addressed this somewhat from the other perspective in  
 24 some of the evidence we've heard already, that they  
 25 simply did not get on at all?

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1 A. No, I think ... on one level they're very different  
2 figures. On another level, though, they're both skilled  
3 politicians, fired by passion, but they're also people  
4 who knew at a moment or moments of crisis the importance  
5 of respecting -- insofar as possible, and working  
6 together insofar as possible -- respecting each others'  
7 positions, working together.

8 I would say two things briefly. The first is that  
9 I think when the former First Minister's former chief of  
10 staff was giving evidence last week, she observed that  
11 the first time that Boris Johnson and Nicola Sturgeon  
12 met, which of course was preceding the pandemic, they  
13 had, in effect, a debate in Bute House, and, you know,  
14 there was a -- as I've observed before, the former  
15 Prime Minister enjoys debate, can hold his own, and it's  
16 a sign of respect for someone else that he's engaging in  
17 that debate. So he undoubtedly had a degree of respect  
18 for the First Minister. However, it is also the case,  
19 as the Inquiry has heard, my second point, that at times  
20 the First Minister expressed her disapproval of the way  
21 in which the Prime Minister was operating, and it was  
22 also the case that there were some people in our  
23 government and some people working for the  
24 Prime Minister who had a low or critical opinion of the  
25 First Minister. My view is that it was important to, in

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1 "You need to chair daily meetings in the Cabinet  
2 room -- not COBRA -- on this from tomorrow. [I'm] going  
3 to tell the system this.

4 "NOT with the DAs on the [fucking] phone all the  
5 time either so people [can't] tell you the truth."

6 Why was Boris Johnson being advised that daily  
7 meetings at this vital time during the pandemic should  
8 be reorganised so that they took place in the Cabinet  
9 Room and away from COBR so that the devolved  
10 administrations, who were represented at COBR, would not  
11 be on the line to allow advisers to speak more freely  
12 with him?

13 A. Well, I think Mr Cummings himself was asked about this  
14 exchange in a previous module --

15 Q. Yes.

16 A. -- and gave his account. The point he made then, which  
17 I think was a fair one, was that there needed to be  
18 a space in which the Prime Minister could interrogate  
19 data and recommendations, and different propositions  
20 could be put to him, and the Prime Minister could seek  
21 to test the strength of argument A or test the strength  
22 of argument B in confidence, before then coming to  
23 a conclusion about what he thought might be the right  
24 course.

25 It's important to say two other things: that at the

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1 the interests of everyone, keep relations on as  
2 professional a footing as possible, and my observation  
3 is that in the formal settings where they interacted,  
4 that applied.

5 Q. Was the former Prime Minister advised against engaging  
6 more with the Scottish Government or other devolved  
7 administrations more generally during the pandemic?

8 A. There were one or two people who did take that view,  
9 yes.

10 Q. Could we look, please, at INQ000048313.

11 This is an exchange which I think we've seen before  
12 in previous hearings. It is an exchange between  
13 Dominic Cummings and Mr Johnson regarding the  
14 Cabinet Office on 12 March.

15 The passage at the top -- if we could just see that  
16 briefly, the passage at the top -- you may remember,  
17 Mr Gove, was one that was looked at. It reflected  
18 issues which Mr Cummings had with the way in which the  
19 Cabinet Office was responding. That's been looked at  
20 obviously in some detail in Module 2. I'm just trying  
21 to give this some context.

22 So that was on 12 March. Then on the same day at  
23 the bottom there's an exchange, and again, as happened  
24 in Module 2, may I in advance apologise for the  
25 language. Mr Cummings said:

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1 same time as Dominic was making this case, there was  
2 also a regular tempo of meetings with the devolved  
3 administrations' ministers and representatives. And  
4 I think it's also the case, as we discussed in  
5 a previous module, that sometimes it's appropriate for  
6 the decision-makers in any jurisdiction to have a safe  
7 space in which they can float different ideas without  
8 fear of those ideas being taken out of context and you  
9 depict them in a particular way.

10 Now, again, different people may conclude that that  
11 is or is not an effective form of decision-making, but  
12 it is certainly the case that, whatever Dominic's views  
13 and intentions -- and, as I say, I think he fairly set  
14 them out in a previous module -- it was not the case  
15 that we abandoned, nor do I really think that he was  
16 arguing that we should abandon, having regular meetings  
17 with the devolved administrations.

18 Q. Just to be clear, because I think there was a little  
19 difficulty in picking up something of what you said  
20 there, but you said it was important, I think -- please  
21 tell me if I've got this wrong -- that it was important  
22 that decision-makers would have a safe space in which  
23 they can float different ideas without fear of those  
24 ideas being taken out of context and to depict them in  
25 a particular way; is that right?

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1 A. Yes.

2 Q. Sorry, it was just I think that we missed a couple of  
3 the words there.

4 Was there a concern that if these conversations took  
5 place with Nicola Sturgeon in the room, that she would  
6 seek to depict the then Prime Minister in a particular  
7 way?

8 A. Well, again, I can't speak to Dominic's particular  
9 concerns, but it's a function of government that the  
10 more people there are in a meeting, the greater the risk  
11 of a leak. When you have devolved administration  
12 colleagues on a call, obviously Scotland, Wales and  
13 Northern Ireland represented, ministers from each  
14 jurisdiction, and officials, people from the territorial  
15 offices, I think -- I have to be careful here -- I think  
16 that actually Dominic's concerns -- though of course, as  
17 I say, I don't want to speak for him directly, but  
18 I think they were slightly more to do with the Sinn Féin  
19 Deputy First Minister of Northern Ireland being on the  
20 call than the SNP First Minister of Scotland. But  
21 I think that, as I say, whatever was in his mind, it is  
22 a fair point to say that if you have a smaller and more  
23 intimate meeting, then you can allow the Prime Minister  
24 to interrogate certain propositions with the risk of  
25 leaking being proportionately lesser, but at the same

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1 Q. Putting aside the concerns, legitimate or otherwise,  
2 about leaks, does this -- is this exchange not  
3 consistent with the Scottish Government's position that  
4 the UK Government made decisions and merely communicated  
5 what those decisions were to the Scottish Government in  
6 subsequent meetings rather than engaging them in the  
7 decision-making process?

8 A. No, because, firstly, Dominic was one voice,  
9 an influential one, but one voice amongst many.  
10 Secondly, and I don't say this as a matter of criticism,  
11 but the Scottish Government will -- did -- have  
12 discussions and deliberations, whether at Cabinet level  
13 or otherwise, to which the UK Government wasn't privy,  
14 nor should we have been. So some of the decisions that  
15 the Scottish Government will have made about when to or  
16 how to exit lockdown will have been decisions that they  
17 will have made -- on a shared basis, with shared  
18 information and an understanding of where other  
19 jurisdictions wished to go, but they will have made  
20 their own decisions. I respect that.

21 Someone could say, well, suddenly the UK Government  
22 is having to deal with the fact that the Scottish  
23 Government have presented them with a fait accompli.  
24 You could depict it in that way, but I think that would  
25 be ungenerous. I think that one has to respect that

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1 time you can have regular, focused and effective,  
2 business-like meetings with others.

3 As we noted, there was an unfortunate leak of the  
4 decision to go for a second lockdown in the autumn of  
5 2020, and I think that the fact of that information  
6 leaking, though it had absolutely nothing to do with  
7 devolved administrations, I think reflects, with the  
8 benefit of hindsight, an understandable concern on the  
9 part of prime ministerial advisers to give  
10 a Prime Minister, or for that matter a First Minister,  
11 a certain space to kick around some very sensitive  
12 issues.

13 Q. This message demonstrates an aspiration not to keep any  
14 particular devolved administration out, but all of them;  
15 is that not correct?

16 A. Yes. But to be fair, and I think this is reflected in  
17 some other evidence, while there were sometimes  
18 bilateral calls, the nature of a COBR meeting is that  
19 all of the devolved administrations would be  
20 represented. So it's either Scotland, Wales and  
21 Northern Ireland and the UK Government, or just  
22 the UK Government, as it were. So again, I'm sure if  
23 Dominic were asked to provide further evidence on that,  
24 I'm sure he would, but, as I say, I think that his  
25 account in a previous module speaks for itself.

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1 there will be, at different levels of government,  
2 moments when, within that level of government,  
3 a decision will be taken or decisions will be taken  
4 about what is properly the level of government's  
5 responsibility, but that at other points, before  
6 decisions are taken, views are garnered, conversations  
7 ensue, and thought, care and consideration is given.

8 Q. We've talked about the concept of Scottish Government  
9 divergence from the UK's position about matters. Did  
10 this exchange represent a divergence on the part of the  
11 UK Government from the COBR system and in particular the  
12 devolved administrations' involvement in it, which had  
13 been an important part of the pre-pandemic emergency  
14 planning system?

15 A. I do believe so, and I think again the point that was  
16 made by Dominic Cummings in his evidence is that,  
17 firstly, the COBR system can describe a way of bringing  
18 different parts of government and, indeed, different  
19 governments together, so it can describe a process, but  
20 it also describes literally a room. In his evidence  
21 Dominic made clear some of the deficiencies of COBR as  
22 a location for decision-making. But the broader point  
23 of bringing in the devolved administrations and others  
24 to critical decisions, that principle was maintained  
25 throughout.

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1 I think it's fair to say that the frequency of those  
2 meetings at certain points or the nature of those  
3 meetings was not what certain First Ministers wanted.  
4 Mark Drakeford wrote to me in order to ask for  
5 an improved tempo. We agreed. So, again, I'm not  
6 claiming that our system was perfect, but the aim, the  
7 desire always to ensure that we could co-ordinate  
8 effectively was there, and if I or the UK Government  
9 fell short at any point in the eyes of First Ministers,  
10 we always sought to listen respectfully, make good, and  
11 create structures that worked.

12 **MR DAWSON:** If that's a convenient movement, my Lady,  
13 thank you.

14 **LADY HALLETT:** Yes, of course. 11.40, please.

15 (11.22 am)

(A short break)

17 (11.40 am)

18 **LADY HALLETT:** Mr Dawson.

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

20 Mr Gove, before the short break, we were discussing  
21 some of the messaging in the early period of the  
22 pandemic, and in particular early meetings and  
23 discussions around COBR. So I'd like to continue on  
24 that theme, but move into a slightly later time period  
25 than the one we were discussing.

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1 workers were able to prioritise the response to  
2 COVID-19."

3 During that aspect of the discussion, there was  
4 a lot of other matters being discussed?

5 **A.** I do.

6 **Q.** Yes.

7 Could we also go a little bit further down page 6,  
8 from the words "That the public", and that there was  
9 a concern also raised that the public had not grasped  
10 how cancelling mass gatherings would or would not impact  
11 upon the peak and that there needed to be more  
12 consistent messaging on this across the four nations, as  
13 it might be sensible to announce self-isolation and mass  
14 gatherings, recognising how this would support the  
15 resilience of the emergency services going forward?

16 **A.** Yes.

17 **Q.** Then it says below:

18 "That cancelling mass gatherings may possibly impact  
19 upon people's behaviours and so the group should  
20 continue when this policy should come into play."

21 And then it says:

22 "So far government policy had been science led and  
23 as the evidence was not there for cancelling mass  
24 gatherings there would need to be a clear basis for  
25 taking this action. If this action was taken, there

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1 Could we look, please, at INQ000056221.

2 These are the minutes of a Cabinet Office meeting  
3 chaired by -- sorry, COBR, Cabinet Office Briefing Room  
4 meeting chaired by the Prime Minister on Thursday,  
5 12 March; is that right?

6 **A.** Yes.

7 **Q.** We can see at the top that the meeting started at 1.15.  
8 Is that right?

9 **A.** Yes.

10 **Q.** And in attendance, amongst others, are Nicola Sturgeon,  
11 Cabinet Secretary for Health in the Scottish Government,  
12 Jeane Freeman, Chief Medical Officer of Scotland,  
13 Dr Catherine Calderwood, and the Secretary of State of  
14 Scotland, Alister Jack, amongst others?

15 **A.** Yes.

16 **Q.** Could we turn to page 6, please.

17 I'd like to look at a passage, please. There is  
18 some discussion around, obviously, the order of the day  
19 being what might happen in order to try to suppress the  
20 virus and deal with the impending threat or emerging  
21 threat. It states there that -- it was stated at the  
22 meeting:

23 "That the Scottish Government was minded to advise  
24 against gatherings of more than 500 people. Their  
25 rationale for this to ensure the frontline emergency

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1 would be consequences for a range of sectors ..."

2 And then just some other details on this on page 7,  
3 over the page.

4 It states that -- up at point 6:

5 "The, CHAIR said that the advice was SAGE was that  
6 there was low confidence in the effectiveness of  
7 cancelling mass gatherings on limiting the spread of the  
8 virus."

9 So overall, the snippets that we've taken there tend  
10 to suggest that there was a significant discussion at  
11 that meeting around the possibility of cancelling mass  
12 gatherings, the Scottish Government indicating that they  
13 were broadly in favour but the UK Government suggesting  
14 that the scientific advice did not support such a move  
15 at that stage.

16 Is that broadly the flavour of the meeting as you  
17 recall it?

18 **A.** Yes.

19 **Q.** On page 8 it states that -- under "Continuing" at  
20 paragraph 15:

21 "Continuing the CHAIR said that the GCSA should use  
22 the announcement to set out what stage two would be, and  
23 begin socialising options three and four to protect the  
24 most vulnerable. That the general public would not be  
25 asked to options two, three, or four immediately, but

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1 that these policies would come in the next few weeks.  
 2 He respected the Scottish Government's decision to  
 3 cancel mass gathering to manage pressure on emergency  
 4 responders, noting that as the epidemic progresses this  
 5 approach may need to be taken by the whole UK to protect  
 6 public services. However it was crucial for the  
 7 government to stick to the SAGE advice and as far as  
 8 possible, the Four Nations should try to stick together  
 9 as one United Kingdom."

10 Then on page 10, this is in the list of actions from  
 11 the meeting, it states at point 1 at the top:

12 "CHIEF MEDICAL OFFICERS for all Four Nations,  
 13 DEPARTMENT FOR HEALTH AND SOCIAL CARE and DEPARTMENT FOR  
 14 DIGITAL, CULTURE, MEDIA AND SPORT to prepare advice for  
 15 consideration by COBR on approach to mass gatherings."

16 Then at page 10 there is an indication under  
 17 "Decisions" that:

18 "COBR will keep under review the policy towards mass  
 19 gatherings, with particular reference to their impact on  
 20 public and emergency services."

21 Does it appear, therefore, that the minutes show  
 22 that an agreed position had been reached to continue  
 23 consideration of the cancelling of mass gatherings and  
 24 that the chief medical officers of the four nations were  
 25 to prepare advice to assist in making that decision?

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1 evidence statement that I give I make the point that, in  
 2 fairness to the First Minister, she'd clearly indicated  
 3 a minded to intent on mass gatherings, but whether or  
 4 not she hoped that that was a clear indication of the  
 5 direction that the Scottish Government would go down,  
 6 the minutes record the fact that we agreed that we would  
 7 defer any announcement until further consideration, and  
 8 it certainly wasn't the case that the First Minister had  
 9 indicated that immediately after that meeting that she  
 10 would announce such a policy.

11 **Q.** And the reason for the deferral is also stated at the  
 12 very page we can see there. It was to be consistent,  
 13 I think, with the approach taken to that point to try to  
 14 understand and follow the science as best one could --

15 **A.** Yes.

16 **Q.** -- and that there was a concrete plan that not just the  
 17 CMO for the UK Government but that all four CMOs --

18 **A.** Yes.

19 **Q.** -- would input into an advice about the utility, the  
 20 perceived utility of that move; is that correct?

21 **A.** Yes.

22 **Q.** What was the reaction within the UK Government to the  
 23 announcement of Nicola Sturgeon to which I've referred?

24 **A.** Discomfiture.

25 **Q.** Did this create an impression that there were issues

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1 **A.** Yes.

2 **Q.** As far as you can recall, are these minutes an accurate  
 3 representation of the discussion and the planning around  
 4 that issue?

5 **A.** Yes.

6 **Q.** If the Scottish Government during the course of the  
 7 meeting had said it was going to make an announcement  
 8 that mass gatherings should be cancelled and not defer  
 9 consideration for the advice to be received from  
 10 the CMOs, that would be reflected in the minute, would  
 11 it?

12 **A.** One would hope so.

13 **Q.** Shortly after the meeting concluded, we understand that  
 14 Nicola Sturgeon announced at 3.20 pm that mass  
 15 gatherings of more than 500 people would be banned in  
 16 Scotland. She also provided some other updates from the  
 17 COBR meeting such as the decision not immediately to  
 18 close schools, and she made these announcements before  
 19 Boris Johnson was due to speak to the public about the  
 20 outcomes from the very same meeting.

21 Did Nicola Sturgeon's announcement about mass  
 22 gatherings contradict your understanding of the agreed  
 23 position reached amongst the four nations at the  
 24 meeting?

25 **A.** It was certainly divergent, and I think in the fourth

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1 with the Scottish Government being trusted about  
 2 four nations discussions with regard to the way in which  
 3 the pandemic should be managed?

4 **A.** Yes, it did. There were colleagues of mine, ministerial  
 5 and other colleagues, who were unhappy about the jumping  
 6 of the gun, as it were. One can look at it in different  
 7 ways. Was it right that Scotland should diverge in this  
 8 way? Was it right that the First Minister should  
 9 announce that divergence in the way that she did? Was  
 10 it right that the First Minister should brief  
 11 immediately after COBR, before the Prime Minister had  
 12 an opportunity to address the country or before the  
 13 Government's Chief Scientific Adviser had an opportunity  
 14 to address the country?

15 I think it's important to stress that sometimes with  
 16 politicians there can be amour propre. So I think that  
 17 sometimes there will be a consideration on the part of  
 18 one minister about another making an announcement before  
 19 they do. But sometimes it's more than amour propre,  
 20 sometimes it can lead to a weakness in effective  
 21 communication overall.

22 My own view is that, while I can completely  
 23 understand the irritation, and it would have been  
 24 preferable if the First Minister had not made that  
 25 announcement at that time, that also we should also

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1 exercise or seek to exercise a degree of forbearance as  
2 well. So of those who expressed disquiet and  
3 discomfort, I was one of those who said, you know, in  
4 a pandemic, in a situation like this, sometimes there  
5 will be moments where others won't necessarily act in  
6 a way that we would like, but let's not -- let's not be  
7 too -- what's the word -- critical or too unforgiving  
8 about that.

9 **Q.** Was there an expectation on the part of  
10 the UK Government ministers and officials, of which you  
11 were one, attending this meeting that the discussions  
12 would be confidential?

13 **A.** Yes.

14 **Q.** Did the announcement, as far as you're concerned, break  
15 that bond of confidentiality?

16 **A.** Again, I would always strive to be fair. I think it was  
17 unwise for the First Minister to issue that briefing in  
18 the way in which she did. However, it's entirely  
19 possible that the First Minister may have felt that it  
20 was necessary to do so in order to be clear about the  
21 way in which Scotland was pursuing its mass gatherings  
22 policy and that that was different from the rest of the  
23 United Kingdom, and she may have felt that it was  
24 necessary to get that message out as quickly as  
25 possible.

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1 that might have been driven by political considerations.

2 I don't see any direct evidence that on this  
3 occasion there were political considerations of the kind  
4 that I alluded to earlier that were operating in the  
5 First Minister's mind, but again I can't know what the  
6 motivation was, and on that occasion I was inclined to,  
7 wherever possible, give the First Minister the benefit  
8 of any doubt.

9 **Q.** This is a crucial time, obviously --

10 **A.** Yes.

11 **Q.** -- in the approach to the pandemic strategy. We know  
12 from evidence from Module 2 that an awful lot was going  
13 on within the UK Government: SAGE was sitting, advice  
14 was being -- coming in regularly --

15 **A.** Yes.

16 **Q.** -- it was updated at new advice became available.

17 What I'm interested in exploring, Mr Gove, is the  
18 extent to which, at that crucial time, this event caused  
19 tension and difficulties between the governments which  
20 then followed on through the rest of the pandemic.

21 **A.** I think it was certainly the case that for some within  
22 the UK Government it was a -- as I say, a moment of  
23 discomfort which generated disappointment, but my  
24 approach then, and I hope my approach generally, was not  
25 to allow moments of irritation or disappointment to

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1 As I say, I believe that it would have been  
2 preferable for either that intention to have been more  
3 clearly communicated in the meeting, or for there not to  
4 have been that briefing thereafter. But again, while  
5 I do think that it was an error on her part, I wouldn't  
6 want to lay massive blame or huge opprobrium towards her  
7 on that. I think it's important to get these things in  
8 proportion, and, as I say, I'm one of those who is  
9 inclined -- or on that occasion I was inclined to say  
10 that we shouldn't allow regret over this to prejudice  
11 continued good working overall.

12 **Q.** That is your position, Mr Gove -- but you mentioned also  
13 that others were irritated --

14 **A.** Yes.

15 **Q.** -- by this. Who were the others amongst key  
16 decision-makers in the UK Government that were irritated  
17 by this move?

18 **A.** I think other Cabinet colleagues were irritated, and  
19 I -- again, I can't recall perfectly, but I'm pretty  
20 sure that there was irritation within Number 10.

21 And also, if I remember rightly, I think that the  
22 Secretary of State for Scotland, Alister Jack, was  
23 concerned as well, because, as I mentioned, there was  
24 a worry at different times throughout the pandemic that  
25 divergence might be pursued for divergence's sake and

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1 curdle. It was important to accept that when dealing  
2 with different administrations, different politicians  
3 and so on, that you -- sometimes you would not get  
4 perfect co-ordination -- perfect co-ordination was  
5 preferable, but if it didn't occur, to put things behind  
6 one and to concentrate on effective working in the  
7 future rather than dwelling on any disappointment.

8 **LADY HALLETT:** Mr Gove, forgive my interrupting, but some  
9 might think that's being rather generous.

10 It wasn't just that the then First Minister  
11 announced the decision about mass gathering in Scotland,  
12 it was the breach of confidentiality.

13 **A.** Yes.

14 **LADY HALLETT:** You, as a long-standing and very experienced  
15 government minister, know the importance of  
16 confidentiality to government decision-making.

17 **A.** Yes, and my Lady, you are right that there were a number  
18 of people within government, including not just  
19 ministers, others, who were disappointed.

20 As I say, I think that I was aware that we were  
21 likely to be in this situation for the long haul, that  
22 we would need to work with the Scotland Government, and  
23 that while this was disappointing, and it certainly led  
24 some to believe that there should be a greater degree of  
25 care and caution in how we worked with the

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1 First Minister, my view was that we should try to  
 2 maintain the best possible working relationship.  
 3 **MR DAWSON:** I think you used the expression earlier, when  
 4 I asked you about irritation, irritation within  
 5 Number 10.  
 6 **A.** Yes.  
 7 **Q.** Does that mean that the Prime Minister, then  
 8 Prime Minister, was irritated with this statement?  
 9 **A.** I believe he was. One of the things about the then  
 10 Prime Minister is that, again to be fair to him, he  
 11 would often express irritation but he would seldom bear  
 12 grudges, so he would sometimes express how disappointed  
 13 he was but then quickly move on to the task in hand.  
 14 **Q.** We looked earlier at the messages which you've seen  
 15 before in which Dominic Cummings is suggesting that  
 16 discussions should take place outwith COBR, you have  
 17 talked about the debate. Is there a connection between  
 18 the air of suspicion and the perception of breach of  
 19 confidentiality here on the part of the Scottish  
 20 Government and the desire on Mr Cummings' part to advise  
 21 the Prime Minister to undertake his discussions about  
 22 pandemic management outwith the ears of the Scottish  
 23 Government and other devolved administrations?  
 24 **A.** Well, I think that the message from Dominic Cummings to  
 25 Boris Johnson occurred in the morning of 12 March --

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1 door of anyone in any of the devolved administrations.  
 2 It may well be that that happened, but I can't recall  
 3 another incident.  
 4 **Q.** But whether that was the case or not, did it create  
 5 an apprehension on the part of key decision-making  
 6 UK Government ministers that the Scottish Government  
 7 effectively was not to be trusted?  
 8 **A.** Well, there were some people who would say, not that it  
 9 was not to be trusted, but ca'canny when you are  
 10 communicating with the Scottish Government on these  
 11 issue, but, as I say, my view was that we've got to work  
 12 together, we've got to rub along, there will be certain  
 13 risks, of course, but it's more important to seek to  
 14 work collectively together.  
 15 And again, to be fair, the bigger the meeting of any  
 16 kind, the greater the risk of leaks, and there were  
 17 leaks at certain points, as we alluded to earlier, from  
 18 within the UK Government that obviously had absolutely  
 19 nothing to do with the devolved administrations and  
 20 which sometimes impeded the effective delivery of  
 21 policy.  
 22 But you have to accept that at certain times you  
 23 have to broaden the cast list to bring people in, and  
 24 that that risk of leaking increases proportionately.

25 **Q.** We've talked about the role that you played in meetings

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1 **Q.** Yes.  
 2 **A.** -- and then Nicola Sturgeon's press briefing occurred  
 3 later --  
 4 **Q.** That's my understanding, yes.  
 5 **A.** COBR occurred later. So in a way, one could argue that  
 6 Dominic's fears, as expressed in that message, were  
 7 reinforced by Nicola Sturgeon's action later that day.  
 8 I think that were there to have been, which I'm sure  
 9 there must have been, a conversation between Dominic and  
 10 the Prime Minister subsequently, Dominic could have  
 11 pointed to the then First Minister's actions and could  
 12 have said "Well ... "  
 13 **Q.** This is evidence for the proposal that I've made to you  
 14 earlier this morning?  
 15 **A.** He -- I'm sure he probably expressed views similar to  
 16 that, yes.  
 17 **Q.** Okay. Did issues of confidentiality, leaking  
 18 information from joint meetings, remain through the  
 19 pandemic a concern on the part of the UK Government as  
 20 regards the position of the Scottish Government?  
 21 **A.** There were concerns, and again that event I think was  
 22 the sort of wellspring for those concerns.  
 23 But I don't recall -- even though there were  
 24 disagreements on certain issues, I don't recall any  
 25 particularly damaging leak that could be laid at the

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1 from roughly April/May onwards, the four nations  
 2 meetings. We have also heard other evidence from  
 3 a senior civil servant in the Scottish Government about  
 4 attempts made around the May period where he  
 5 characterised the position as being one of divergence --  
 6 **A.** Yes.  
 7 **Q.** -- to try to make sure that the four nations message was  
 8 reiterated from the Scottish Government perspective.  
 9 First of all, at this time, were attempts made to  
 10 try to smooth over any irritation or concern such that  
 11 the important relationship between the governments would  
 12 be able to flourish as best as possible despite them?  
 13 **A.** Yes, and I think that some evidence for that would be  
 14 the meetings of the ministerial implementation groups  
 15 and the fact that they were meeting at that time  
 16 relatively regularly to discuss support for the shielded  
 17 vulnerable and the operation of other public services.  
 18 That, I think, was evidence of a commitment on the part  
 19 of every government to seeking, wherever possible, to  
 20 work together. But of course the additional  
 21 understanding that each jurisdiction had of the virus as  
 22 the pandemic developed led to a difference of emphasis  
 23 amongst some of the jurisdictions in how to handle it.

24 And again, as we touched on, it is both the case  
 25 that at some points the Scottish Government were looking

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1 at things through a political prism. However, I think  
 2 it is also the case that there were people both advising  
 3 the Scottish Government and, for that matter, the  
 4 Welsh Government, and people within the  
 5 Welsh Government, who worried that the UK Government's  
 6 path out of lockdown, and certainly our decisions later  
 7 that year, were insufficiently cautious. And again,  
 8 I wouldn't attribute to the Welsh Government anything  
 9 other than a sincere level of caution slightly greater  
 10 than that of the UK Government. I don't think that  
 11 their decision-making was influenced by anything other  
 12 than their interpretation of the facts before them. And  
 13 it was certainly the case, as we know, that the  
 14 First Minister of Scotland was receiving advice from  
 15 people who believed that a greater degree of caution and  
 16 bearing down on the virus was necessary, so again, as  
 17 we've also heard, there were other scientific and  
 18 medical advisers who argued that the Scottish  
 19 Government's approach needn't have been quite as  
 20 restrictive as it was for as long as it was.

21 **Q.** We'll come to that in just a moment, Mr Gove, but on  
 22 this subject of the irritation, degree of concern,  
 23 mistrust, one might say, you say in your M2A statement  
 24 at paragraph 39:  
 25 "It became a particular irritation that many

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1 terms of the ongoing conversations that we had,  
 2 I wouldn't want to be in a position where I could state  
 3 or overstate the concern expressed by either Boris or  
 4 Alister. I know Alister is appearing later this week,  
 5 so he'll be able to offer his own perspective.

6 **Q.** Would it be fair to say, obviously as we've discussed,  
 7 you were the principal, if you like, involved in those  
 8 discussions in the period thereafter in the four nations  
 9 meetings. Whereas you've told us you were prepared or  
 10 able to put those concerns to one side, did it remain  
 11 the position of other key decision-makers that they were  
 12 not?

13 **A.** No, I think they did put them to one side actually.  
 14 I think that ... there was no evidence of anyone seeking  
 15 to restrict attendance to any meeting or to restrict  
 16 access to information. An expression of irritation is  
 17 one thing, then seeking to act on it in a way that might  
 18 be -- what's the word -- long-term counterproductive is  
 19 another, and there was no actual evidence of our being  
 20 anything other than open and inclusive with information  
 21 and seeking to include people in meetings wherever  
 22 possible. And again, I think that both Number 10 and  
 23 the Office of the Secretary of State for Scotland were  
 24 committed to making sure that the relationships worked,  
 25 whatever previous irritation might have been expressed.

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1 meetings relating to travel policy and 'red list'  
 2 policies leaked. But it was also a sad reality that  
 3 UKG-only meetings sometimes leaked."  
 4 As you said.

5 **A.** Mm.

6 **Q.** "Nevertheless, we tried to include DAs in meetings  
 7 wherever appropriate and sought to select attendees to  
 8 ensure appropriate discussion even if that came at the  
 9 risk of some leaking."

10 **A.** Yes.

11 **Q.** Were your concerns about leaking of information relating  
 12 to travel policies, the red list and the like related to  
 13 the Scottish Government?

14 **A.** No. I think that, again, it was simply a fact, and  
 15 I hope that the statement reflects that, that the bigger  
 16 the cast list, the greater the risk. So I did not feel  
 17 intrinsically that having the Scottish Government in  
 18 conversations was a particular additional risk, but, as  
 19 we've discussed, the experience of 12 March meant that  
 20 there were those in the UK Government who did have that  
 21 concern.

22 **Q.** And those included the Prime Minister and the  
 23 Secretary of State for Scotland?

24 **A.** Well, the Prime Minister and the Secretary of State for  
 25 Scotland were concerned after 12 March but I think in

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1 **Q.** We have heard evidence in this module already, Mr Gove,  
 2 on behalf of officials within the Scottish Government  
 3 who were involved in the pandemic response at this stage  
 4 and subsequently, that there were issues, as far as they  
 5 were concerned, with accessing information in particular  
 6 which was held by the UK Government which would be of  
 7 assistance to the Scottish Government's response.

8 Is that an accusation or a charge which you  
 9 recognise to any extent?

10 **A.** No. The way in which SAGE operated, the way in which  
 11 information was shared, there was never, that I was  
 12 aware of, any scientific or public health information  
 13 that the UK Government had that wasn't shared, whether  
 14 at the level of scientific advisers, chief medical  
 15 officers, or ministers. So again, if anyone could point  
 16 me to specific examples of information that should have  
 17 been shared that wasn't, then I could consider those,  
 18 but I'm not aware of any -- certainly of any significant  
 19 withholding of information.

20 **Q.** Well, I was interested to know from your perspective,  
 21 Mr Gove, as being someone who, at this stage, played an  
 22 important role and, subsequently, a particularly  
 23 important role with regard to intergovernmental  
 24 relations, whether the issue of information flow from  
 25 the UK Government and its various structures to the

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1 Scottish Government had ever been -- whether that was  
 2 ever a matter that was raised with you, a matter of  
 3 concern on substantive, important matters at least?  
 4 **A.** No, and I did -- I think that there might have been  
 5 discussion about economic modelling at certain points,  
 6 but the actual information, scientific information that  
 7 we had, and of course some of that information was  
 8 provisional, some of it was modelling, I think was  
 9 always shared. And I think the whole basis on which  
 10 SAGE operated, indeed the whole basis on which the  
 11 medical profession and scientists operated, is that  
 12 collaboration and information sharing is central to  
 13 their professional ethos.  
 14 **Q.** Although we've heard variable evidence in this regard,  
 15 some suggesting that SAGE and its subgroups worked quite  
 16 well for those who were on the groups, as far as  
 17 Scotland was concerned, but others have suggested that,  
 18 for example, as far as Scotland was concerned, questions  
 19 would have to be submitted in advance to SAGE such that  
 20 there wasn't the room for the kind of discussion which  
 21 you've suggested is important in the political sphere.  
 22 Again, is that something that was raised with you or are  
 23 you aware of from your involvement at this period as  
 24 being a concern from the Scottish Government's end of  
 25 the operation?

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1 I'm interested in understanding, Mr Gove, from your  
 2 perspective, whether that was something, a phenomenon  
 3 that you recognise, that the level of activity that was  
 4 going on end of February, into March, in the  
 5 UK Government, whether that appeared to be something  
 6 with which the Scottish ministers and officials with  
 7 whom you were speaking were equally engaged?  
 8 **A.** No, I think in the period, and it has been touched on  
 9 elsewhere in the Inquiry, in the period late February,  
 10 early March it is a fair charge that across the UK we  
 11 did not act as quickly as we might have done to deal  
 12 with the virus, but I don't recall any reason for  
 13 believing that the Scottish Government or any devolved  
 14 administration was somehow dragging its feet  
 15 particularly at that point in comparison to the  
 16 UK Government. But others who have been more directly  
 17 involved in preparations will have a better overall  
 18 sense of that.  
 19 **Q.** At around that time and in light of the resilience  
 20 structures which had existed prior to the pandemic, what  
 21 would the UK Government's position have been with regard  
 22 to the Scottish Government's powers to impose rather  
 23 than simply recommend social distancing measures, up to  
 24 and including lockdown?  
 25 **A.** I think our view would have been that any response to

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1 **A.** No. I don't recall it featuring. There may have been  
 2 requests or comments made about the need for information  
 3 sharing, but I don't recall any particular obstacle.  
 4 Again, as the Inquiry has heard, when SAGE meets, except  
 5 for, you know, one or two occasions, it meets without  
 6 the presence of ministers and it meets with the CMO or  
 7 the CSA there. SAGE will consider the questions put to  
 8 it by different parts of government, but it's important  
 9 that it be a free and -- free-ranging discussion with  
 10 the clinicians, scientists and others in the room.  
 11 **Q.** We've heard -- I'm interested in this particular early  
 12 period in time, because you were involved in a lot of  
 13 meetings and involved in a lot of discussions around  
 14 that period, I'm interested in trying to explore with  
 15 you your perspective on a particular matter. We have  
 16 seen within some of the documentation, the noted  
 17 documentation that we've seen, that there is at least  
 18 one official who within Scottish Government thought in  
 19 the period around about February leading into March that  
 20 there -- although there was significant activity at  
 21 UK Government level, that -- as -- as expressed on  
 22 26 February -- all departments in the UK Government are  
 23 fully engaged and mobilised in a way that the Scottish  
 24 Government simply isn't. That comes from  
 25 26 February 2020.

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1 a UK-wide threat should be effectively co-ordinated.  
 2 And again, as it turned out, one of the things that we  
 3 would do is have conversations with Scottish Government  
 4 ministers and officials, and indeed Northern Ireland  
 5 Executive and Welsh Government officials, and seek to  
 6 thrash out what the appropriate level of responsibility  
 7 was and if people had the resources and powers required,  
 8 as indeed we sought to do during the course of the  
 9 pandemic with those -- albeit that it's a different set  
 10 of questions -- who had powers as mayor. So one of the  
 11 things that we were discussing right at the very  
 12 beginning of the pandemic is whether or not London  
 13 should go first into lockdown, and there were  
 14 conversations with the Mayor of London who was brought  
 15 into COBR and so on.  
 16 I'm not suggesting for a moment that one should  
 17 consider London, great city as it is, on a par with  
 18 Scotland. You know, the nature of Scotland's political,  
 19 constitutional, historic character is different, so  
 20 I wouldn't want anyone to infer from that that I was  
 21 suggesting and sort of constitutional parity. I'm just  
 22 saying that, in operational terms, you would sometimes  
 23 be faced with a new crisis, albeit that some aspects of  
 24 it could have been anticipated -- you just, through  
 25 conversation, work out where are the correct levers for

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1 dealing with an issue of this kind.

2 **Q.** What I'm interested in exploring, Mr Gove, is the extent  
3 to which, at that stage, certainly from the  
4 UK Government's perspective, it was anticipated, based  
5 on pre-pandemic resilience planning, that effectively  
6 the UK Government would be responsible for policy,  
7 deciding whether or not --

8 **A.** Oh yes.

9 **Q.** -- there should be restrictions, and that the Scottish  
10 Government's involvement would be in the implementation  
11 or operationalisation of that policy as opposed to  
12 fixing the policy itself?

13 **A.** No, I don't think so, and I think that for those who  
14 would have given it a great deal of thought, there would  
15 have been an appreciation that health is devolved, and  
16 that the -- a lot of the decisions would have been for  
17 the Scottish Government, quite rightly, to take.

18 So there may have been a haziness in some minds, and  
19 it may be that some might not have given every aspect of  
20 pandemic preparation all of the thought that might be  
21 required, but I think there was a pretty good general  
22 understanding of the need to respect the competences of  
23 the devolved administrations.

24 **Q.** But at that stage would it have been anticipated that  
25 Scotland, if it were necessary to impose social

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1 side --

2 **A.** Yes.

3 **Q.** -- and simply think about the possibility of using  
4 social distancing measures short of a lockdown --

5 **A.** Yes.

6 **Q.** -- so, for example, the cancelling of mass gatherings,  
7 was that something over which the UK Government's  
8 position was that it would make the policy decisions,  
9 and that would merely be operationalised through  
10 existing resilience partnerships and arrangements within  
11 Scotland?

12 **A.** I don't think so, but there may have been different  
13 views amongst those who were giving consideration to  
14 that question.

15 **Q.** Okay. In the period after the lockdown had been  
16 imposed -- I'd like to take you through some various  
17 elements over time periods to get your broad impressions  
18 of the Scottish position.

19 In the period after the lockdown was imposed, we've  
20 heard evidence that a number of things were done within  
21 the Scottish Government operation, including the setting  
22 up of new directorates to deal with the Covid response,  
23 and indeed the creation of a new Scottish Covid advisory  
24 body, about which we've heard considerable evidence  
25 during the course of that week.

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1 distancing measures, would have the power to do that as  
2 opposed merely to operationalise policies made by the  
3 UK Government in that regard?

4 **A.** I think the point has been made in previous evidence  
5 sessions that lockdown itself was a novel and  
6 contentious policy and that the overall approach towards  
7 the pandemic had been to seek to use testing, contact  
8 tracing and so on to mitigate its impact and to seek to  
9 control it. It was only after observing what had  
10 happened in East Asian countries that lockdown became  
11 a policy tool that was considered, obviously  
12 a controversial one.

13 So in a way, while the Inquiry I'm sure will have  
14 a number of judgements to make about the extent to which  
15 a crisis of this kind was foreseeable and the extent to  
16 which different types of preparation might have been put  
17 in place, there wasn't anyone really anywhere in the  
18 western world who was thinking about lockdown as  
19 a desirable policy tool, and therefore the question, had  
20 we thought about, you know, if lockdown was required  
21 should the Scottish Government have this power or that  
22 power, wouldn't have arisen, because people weren't  
23 thinking about lockdown as the sort of policy that would  
24 need to be pursued.

25 **Q.** But if one were to put lockdown as a concept to one

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1 Was there a perception within the UK Government at  
2 this time, this is late March, early April, when that  
3 was being put together, the structures being developed  
4 over that rough period, was there a perception within  
5 the UK Government at that time that the Scottish  
6 Government was seeking to put together its own  
7 structures so as to be able to diverge its response away  
8 from the UK Government's response?

9 **A.** I don't recall anyone thinking that -- that, no.

10 As I said, there was a concern at certain points that  
11 divergence might be sought for its own sake, but I also  
12 think, to be fair, for Scottish Government ministers,  
13 knowing that they had direct responsibilities, there  
14 would have been a question in their mind: have we taken  
15 all the advice that we possibly can in order to know  
16 whether it's right to maintain alignment with the UK or  
17 to diverge in any way? If I had been a minister in the  
18 Scottish Government at that time, admittedly  
19 an extremely unlikely eventuality, but had I been, then  
20 I think I would have wanted a second or a third opinion  
21 as well before I took particular steps. As I say, there  
22 were, I'm sure, temptations at certain points to think  
23 politically and to seek divergence for its own sake, but  
24 I don't think setting up those structures is in itself  
25 a bad thing.

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1 Q. You've used the expression "seeking divergences for its  
2 own sake" on a number of occasions.

3 A. Yes.

4 Q. Are we to take you to mean, when you've used that  
5 expression, that there was a perception, at least within  
6 the UK Government, that the Scottish Government diverged  
7 in order to try to further its aims for political  
8 independence rather than in the public health interest  
9 of the people of Scotland?

10 A. I think that most of the time, almost all of the time,  
11 decisions were made in the public health interest of the  
12 people of Scotland, but, as we touched on earlier,  
13 I think that temptation existed.

14 I think it's also the case, to be fair, that the  
15 Scottish Government believed that its handling of these  
16 matters was somehow superior to that of the  
17 UK Government, that people would appreciate and  
18 recognise that, and therefore people would be prompted  
19 to think, "Well, how much better might life be if we  
20 gave the Scottish Government more powers and we moved  
21 further down the path towards independence?"

22 So there are two things. The first is that within  
23 the minds of Scottish ministers I believe it was the  
24 case that they thought "If we demonstrate that we are  
25 more efficient and more compassionate, people will

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1 So why was it that the UK Government seemed to have  
2 a perception that this was divergent for divergence's  
3 sake rather than for the purpose of achieving a more  
4 effective and compassionate response?

5 A. I think we're not at variance, really. I mean, I think  
6 there are two overlapping elements to it.

7 So the first thing to say is that sometimes, and  
8 this is the whole point of devolution, you can have  
9 policy innovation in one jurisdiction that others can  
10 learn from, and that is not a bad thing, and sometimes  
11 that ability to vary policy and to learn can help every  
12 part of the United Kingdom to improve.

13 Now, of course during a pandemic, when clarity of  
14 communication and co-ordination of response is so  
15 important, then there is far more of an incentive to  
16 work together than to experiment in that way.

17 However, I think it is the case, and I think the  
18 First Minister at the time almost made this case, that  
19 she believed that Scotland's, as she believed it to be,  
20 superior response would make the case for greater  
21 autonomy in due course. But it was also the case, as we  
22 heard from the evidence from Liz Lloyd, that at certain  
23 points the Scottish Government were tempted to go down  
24 a course where they would engineer a potential row,  
25 a rammy, in order to reinforce that political point as

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1 think, hmm, give the Scottish Government more power".  
2 And secondly, I think that they thought, at certain  
3 points, "We can demonstrate by our divergence the  
4 benefits of separating oneself from the UK".

5 Now, again, the day-to-day outworkings of  
6 decision-making by the Scottish Government I believe  
7 were overwhelmingly driven by a desire to do the right  
8 thing, but, as I say, when one is dealing with  
9 a political movement that has a single overriding  
10 objective in the way that the Scottish National Party  
11 has, and when one looks at how the Scottish National  
12 Party operates and the way in which it looks at every  
13 political issue, through the prism of achieving  
14 independence, then that has to be borne in mind. The  
15 weight given to that obviously depends on individual  
16 judgement.

17 Q. To be fair, Mr Gove, I'm not sure what you're describing  
18 there is in fact divergence for divergence's sake. What  
19 you're describing is a situation in which --  
20 a hypothetical situation, I think, in which, if the  
21 Scottish Government dealt with the pandemic more  
22 effectively and more compassionately, which surely would  
23 be something that the people of Scotland would want,  
24 that there might at some later date be some political  
25 advantage.

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1 well.

2 As I say, it's in the nature of the SNP as  
3 a political movement that it thinks slightly differently  
4 from other political parties, but it's also in the  
5 nature of people who are public servants, like all of  
6 those who served in the Scottish Government, that they  
7 do so from a sense of duty and vocation, and I think  
8 that it's important to try to take a balanced  
9 perspective on all of those questions.

10 And, as I say, this is my perspective, but I would  
11 respect those who would take a different view.

12 Q. It will be a matter for her Ladyship in due course,  
13 Mr Gove, but I suspect that the fact of temptation to go  
14 down a political course isn't really what we're  
15 interested in. What we're interested in is whether the  
16 Scottish Government, in your view, gave in to that  
17 temptation, and whether giving in to that temptation  
18 resulted in a poorer management strategy than the  
19 Scottish people ought to have expected?

20 A. I think firstly if one looks overall at the response of  
21 the Scottish Government and then the outcomes in  
22 Scotland, outcomes at the end of the pandemic were not  
23 radically different in Scotland than from the rest of  
24 the United Kingdom.

25 And again, it's not my place to say whether, in the

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1 handling of care home deaths or in the handling of other  
2 issues, Scotland's approach was significantly better or  
3 worse than in other parts of the United Kingdom, but in  
4 the end, the number of -- the tragic number of excess  
5 deaths across the United Kingdom was broadly -- broadly  
6 similar. One could consider why those factors were  
7 there.

8 But I do think that the Scottish Government did  
9 think politically. Whether or not that had the impact  
10 of their management of the outbreak being significantly  
11 worse or better than it might otherwise have been,  
12 I cannot conclude.

13 So your point that of course my Lady will consider  
14 all of this evidence in the round, I absolutely  
15 understand. What I'm not seeking to do is to try to  
16 push the Inquiry towards any particular conclusion, I'm  
17 simply seeking to explain how I, as a politician,  
18 perceived or understood decision-making to take place,  
19 and there will be a weight of evidence that the Inquiry  
20 will want to look at, I'm sure, to conclude whether or  
21 not I'm being unduly critical. I hope I'm not.

22 **Q.** But the height of your evidence, I think, Mr Gove, is  
23 that you can indicate that your impression was that  
24 there was a temptation to diverge for a political  
25 motivation but you cannot point to any circumstance in

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1 Government's position is that the UK Government had been  
2 less than candid about its intention to move away from  
3 the Stay at Home message towards the Stay Alert message  
4 which it ultimately adopted.

5 I would be interested to understand your perspective  
6 as a UK Government minister on that accusation.

7 **A.** I think both Liz Lloyd and, in her written evidence, the  
8 former First Minister have said that they felt that they  
9 had an issue with the Stay Alert message, but I think  
10 actually, of all of the things that one can point to  
11 during the course of the pandemic, a quibble over that  
12 wording at that time doesn't seem to me to be one of the  
13 most important issues that arose, and indeed I think, as  
14 has been pointed out, the critique of the Stay Alert  
15 message was considered before any of the additional  
16 messaging around it was in place.

17 And again, the views of both the -- both  
18 Nicola Sturgeon and Liz Lloyd about the UK Government  
19 and about Boris Johnson were always inclined to be  
20 critical, as I mentioned earlier, they came from a very  
21 different starting point. And as we know, in their  
22 private communications they were very critical. But the  
23 reality, I think, is that actually UK Government  
24 communications were at least as good as Scottish  
25 Government or any other administration's communications.

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1 which the Scottish Government gave in to that  
2 temptation, with particular results?

3 **A.** I think -- there are two thing. There was a  
4 temptation -- there were moments when the Scottish  
5 Government diverged. Did they diverge for political  
6 reasons or not I can't conclude because I can't make  
7 windows of men's or women's souls.

8 **Q.** In the period after the period we've just touched on,  
9 which was April 2020, we start to get into the period we  
10 were discussing earlier, when your involvement in the  
11 four nations meetings started to ramp up somewhat and  
12 continued to do so.

13 We've had a considerable amount of detailed evidence  
14 already from the Scottish Government in respect of --  
15 particularly from a senior civil servant called  
16 Mr Kenneth Thomson, related to difficulties which  
17 emerged around about a week into May, in particular  
18 a meeting at which the Prime Minister and First Minister  
19 attended, and an announcement made on 8 May by the  
20 First Minister of Scotland that the nations may start to  
21 diverge from this point.

22 There was then, you will no doubt recall, a COBR  
23 meeting on the 10th which was described by Ms Lloyd, who  
24 we mentioned earlier, in her notebook as a shambles.

25 At that stage, as I understand it, the Scottish

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1 Later on, I think, in the pandemic there was a debate  
2 over Hands, Face, Space versus FACTS, and I think  
3 I touched in previous evidence on the fact that, while  
4 the Scottish Government was at that time a more trusted  
5 source of information within Scotland than  
6 the UK Government, the UK Government's message was  
7 clearer, easier to grasp and so on.

8 So, again, we can have a long conversation about the  
9 finer points of communications here and the divergence  
10 and difference between them, but in the end I don't  
11 think it was that material to the way in which the  
12 pandemic played out.

13 **Q.** You'll be pleased to hear, Mr Gove, that I don't think  
14 we need to have a long conversation --

15 **A.** Sorry.

16 **Q.** -- about it, because my point is less to do with the  
17 communications element of this and more, as I'm sure  
18 you're aware, to do with the Scottish Government's  
19 position that around this issue they felt that they had  
20 been misled by the Prime Minister when he said -- he  
21 emphasised in meetings the need to stick to the  
22 Stay at Home message and did not indicate that he was  
23 going to go down the Stay Alert route. That is a matter  
24 of confidence and trust about which we've said quite  
25 a lot today, and you've said quite a lot already. So

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1 rather than focusing on the marketing message, what is  
 2 the UK Government's position as regards the accusation  
 3 that there was a genuine basis upon which they lost  
 4 faith in the UK Government's approach based around the  
 5 messaging in this regard?  
 6 **A.** I think I mentioned earlier that, given what -- the  
 7 events on March 12, the best thing to do was to exercise  
 8 forbearance. During the course of policymaking, during  
 9 a pandemic or certainly any other crisis, it will  
 10 sometimes be the case that individuals will make errors,  
 11 that information that might have been shared isn't  
 12 shared, not out of malice or a desire for secrecy, but  
 13 just because of the way in which rapid decision-making  
 14 occurs. On the whole, I think it is better to err on  
 15 the side of forgiveness or forbearance. Obviously on  
 16 that occasion the First Minister and her team felt  
 17 irritated, but I don't believe there was any intent to  
 18 provoke or deceive. I can't recall all of the details  
 19 of that time, but I suspect that it was rather more to  
 20 do with the pace of decision-making than anything else.  
 21 **Q.** We've touched earlier -- I think you touched in your  
 22 evidence on the developments after this period --  
 23 **A.** Yes.  
 24 **Q.** -- in particular the divergence or difference in  
 25 approach to the management of the pandemic and indeed

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1 something that was ever expressed to you, that concept  
 2 of Scottish people having a different attitude or  
 3 tolerance towards restrictions, in your capacity as the  
 4 main conduit of information between the two governments?  
 5 **A.** No, I don't recall that ever having been said per se.  
 6 I mean, I think obviously the Scottish Government  
 7 pursued a slightly different approach, but ... it is  
 8 often asserted that there is a huge difference in values  
 9 between people in Scotland and people in the rest of the  
 10 United Kingdom, and my experience is that that is  
 11 nationalist mythmaking, and that people in Newcastle or  
 12 Liverpool or Manchester have the same values as people  
 13 in Aberdeen or Broughty Ferry or Glasgow. And the --  
 14 but it is sometimes the case that the SNP and their  
 15 supporters seek to suggest that there is something about  
 16 the national community in Scotland that is somehow  
 17 different, more compassionate, more tolerant, than  
 18 people in England, and I think that is divisive  
 19 nonsense.  
 20 **Q.** We talked earlier about the details of the  
 21 Prime Minister's visit to Scotland on 23 July 2020, and  
 22 it was put to you that the Prime Minister's comments  
 23 about the Union were an example of the United Kingdom  
 24 Government politicising the pandemic response, and we  
 25 had a discussion about that, and your position, as

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1 Scotland's more cautious exiting --  
 2 **A.** Yes.  
 3 **Q.** -- of the lockdown, and its development of what  
 4 subsequently became known as the zero Covid policy.  
 5 **A.** Yes.  
 6 **Q.** This was a period in which you were actively engaged in  
 7 four nations meetings. I was interested to know from  
 8 your perspective what your understanding was of the  
 9 rationale behind, and indeed the achievability of,  
 10 Scotland's elimination or zero Covid policy?  
 11 **A.** I remember conversations with the First Minister about  
 12 the use of the word "elimination", and I was seeking to  
 13 understand what it was that the Scottish Government  
 14 hoped to achieve. My own view is that, absent the  
 15 vaccine, you couldn't have an effective elimination  
 16 strategy. And again I know that we've heard evidence  
 17 about the seesaw analogy and so on. So I think that the  
 18 pursuit of zero Covid was misconceived, but I don't  
 19 think it was illegitimate of the First Minister to seek  
 20 to find from scientists and others different views about  
 21 what the right policy was.  
 22 **Q.** We've heard a fair bit of evidence, both orally and in  
 23 writing, that there was a perception within the Scottish  
 24 Government that the Scottish people had a different  
 25 tolerance level perhaps towards restrictions. Was that

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1 I understood it, was that the United Kingdom Government  
 2 did not use the pandemic response to further arguments  
 3 about the Union. Is that correct?  
 4 **A.** It was the case that some of what we were doing was  
 5 self-evidently a consequence of the strength of the  
 6 Union, so it would have been -- what's the word --  
 7 curious to be reticent about that.  
 8 **Q.** Could we look at INQ000089054, please.  
 9 This is a paper entitled, I think, "State of the  
 10 Union", presented at a meeting of the Cabinet Office,  
 11 held on 21 July 2020, two days before the  
 12 Prime Minister's visit to Scotland; is that correct?  
 13 **A.** Yes.  
 14 **Q.** It's a paper presented by you?  
 15 **A.** Yes.  
 16 **Q.** Could we turn, please, to page 2. It says there:  
 17 "Perceptions of the Government's and the devolved  
 18 administrations' response to COVID-19 reflect wider  
 19 challenges in microcosm. In Scotland, only 27% of  
 20 people think that the UK Government is putting in place  
 21 the right measures to protect the UK from COVID-19, but  
 22 70% of respondents believe the Scottish Government is  
 23 putting in place the right measures to protect Scotland.  
 24 In Wales, these figures are 29% to 65%, and in  
 25 Northern Ireland 36% to 61%."

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1 Could we turn to page 5, please. A proposal is made  
2 at paragraph (d) saying:

3 "We need to change perceptions of our response to  
4 COVID-19. There is a real opportunity to outline how  
5 being part of the Union has significantly reduced the  
6 hardship faced by individuals and businesses across the  
7 UK, and will continue to do so. But as outlined in  
8 paragraph two, satisfaction with the UK Government  
9 response to COVID-19 in Scotland, Wales and Northern  
10 Ireland is low. Building on the work of the Treasury,  
11 we need to generate further, tangible examples of where  
12 we have acted in the interests of citizens across all  
13 four nations, and all departments should review their  
14 COVID-19 response to identify examples that could be  
15 utilised in future communications."

16 Page 7, please. The page before that.  
17 Paragraph 17, I think. Yes, sorry, down at the bottom.

18 "Conclusions

19 "17. Absent COVID-19, I am firmly of the view that  
20 the risk to the Union would be the greatest challenge  
21 this Government needed to confront -- and unfortunately  
22 it is in no way lessened by the parallel demands of the  
23 epidemic and our economic recovery. In the lead up to  
24 May next year, and throughout this Parliament,  
25 protecting and strengthening the Union must be

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1 to counteract a general impression that seemed to exist,  
2 in polling at least, of the Scottish people that opinion  
3 of the UK Government's response was low. Is that what  
4 you've tried to do in your evidence today by constantly  
5 referring to the vaccine roll-out, Mr Gove?

6 **A.** No, I think that there are a number of cases where the  
7 UK Government's response was significant and helpful  
8 across the United Kingdom, so I think the Covid business  
9 intervention loan scheme would be one such. The -- our  
10 whole approach that we took towards furlough. I think  
11 it would also be the case that the way in which we  
12 managed in a competitive international environment to  
13 source PPE would be another.

14 It's my responsibility as a minister of the  
15 UK Government to uphold the United Kingdom and to point  
16 out from time to time that to dismantle its institutions  
17 and its structures would be harmful and deleterious to  
18 all of its citizens. But when it comes to something  
19 like the pandemic, I not only think it's necessary to  
20 demonstrate how we've benefitted, I think it's also  
21 necessary to concentrate on making sure that those  
22 benefits are spread equally across the whole  
23 United Kingdom, which is why I believe that one needs to  
24 work constructively and openly with those in devolved  
25 administrations, respecting their role and their mandate

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1 a cornerstone of all that we do. This paper therefore  
2 asks Cabinet to agree the need to act, to endorse the  
3 strategic approach described in paragraph six, and to  
4 take forward the specific actions detailed above and  
5 summarised at Annex A."

6 In this paper, you are setting out the strategy of  
7 the United Kingdom Government to use the Covid-19  
8 pandemic as a means to strengthen its arguments in  
9 favour of the Union; is that not correct?

10 **A.** I think it's the case that I am seeking to make sure  
11 that people appreciate the way in which the existence of  
12 the United Kingdom and its institutions has enabled us  
13 to deal effectively with the Covid pandemic, pointing  
14 out that the degree of trust and support for the  
15 UK Government and for devolved administrations when it  
16 comes to response to Covid is divergent, and seeking to  
17 ensure that the fact that we'd been, to an extent,  
18 hiding our light under a bushel was something that we  
19 should seek to address.

20 **Q.** This was the reason for the Prime Minister's trip to  
21 Scotland on 23 July, wasn't it?

22 **A.** I don't believe so, no.

23 **Q.** You mention in this paper the need to try to highlight  
24 some of the things which the UK Government thought it  
25 had done well in the pandemic response in order to try

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1 but also being clear that to be passive in the face of  
2 an attempt to break up the United Kingdom is not to be  
3 even-handed, it is to quit the field when there is  
4 a direct danger to the wellbeing of every citizen of the  
5 United Kingdom.

6 **MR DAWSON:** Thank you, Mr Gove.

7 I have no further questions. There are some  
8 core participant questions.

#### 9 Questions from THE CHAIR

10 **LADY HALLETT:** I have one, just before Ms Mitchell comes.  
11 Mr Gove, I noticed when we were looking at your third  
12 witness statement that you mentioned at paragraph 39 --  
13 I'm sorry, I haven't got any reference, I don't think we  
14 need to bring it up -- that the -- when we were talking  
15 earlier about Nicola Sturgeon making the announcement  
16 about the mass gatherings and then about whether or not  
17 schools would be closed, we talked about breach of  
18 confidentiality, but I noticed that in your witness  
19 statement you said that devolved administration  
20 ministers didn't consider themselves bound by  
21 confidentiality, because the Ministerial Code that you  
22 consider makes it bound applies to UK ministers not to  
23 the devolved nations, so that could explain why  
24 Nicola Sturgeon didn't consider herself bound by  
25 confidentiality; is that right?

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1 A. It could. So I think it is manifestly the case that the  
2 Ministerial Code does not apply to ministers in devolved  
3 administrations, but one would have hoped that the  
4 nature of the discussion and the sensitivity of the  
5 matters under discussion would have meant that at the  
6 very least a degree of, if not confidentiality,  
7 certainly respect for the conclusions of the meeting  
8 might have led her to wait until after there had been  
9 a formal announcement by the UK Government.

10 **LADY HALLETT:** I understand that.

11 Secondly, if devolved administration ministers don't  
12 consider them bound by a duty of con -- it -- wouldn't  
13 it be possible to set up a meeting whereby -- just like  
14 we would at a meeting say that the Chatham House rule  
15 applies, that one could say this meeting is bound by  
16 confidentiality, isn't that possible?

17 A. Yes, it is. And I think it's also the case that there  
18 was a sort of broad understanding that when you're  
19 meeting at any sort of -- what's the word -- joint  
20 ministerial level that if there's going to be  
21 communication afterwards, that you have an agreement,  
22 formal or informal, about whether or not there's going  
23 to be a communique or a press conference or whether or  
24 not someone is going to be allowed to brief the media in  
25 a particular way. So that's generally done in an ad hoc

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1 devolved administrations is happy with the way in which,  
2 for example, the Barnett formula works and the way in  
3 which their respective tax varying powers can be  
4 deployed.

5 Q. Is that post-pandemic that work has been done?

6 A. I think that work is continuing, so I think it is the  
7 case that, throughout the development of devolution,  
8 there have been both conversations at an official and  
9 ministerial level about making sure that people can  
10 understand how the fiscal framework can be improved and  
11 how understanding of, for example, the Scottish  
12 Government's borrowing powers can be appreciated and, if  
13 necessary, deployed.

14 Q. And is the financial clarity, not simply the financial  
15 clarity of those within Scotland but also within the  
16 UK Government, as to where the lines are drawn, is the  
17 conversation two-way, I suppose?

18 A. I think it's at least four-way, but yes.

19 Q. And where do you see the four-way?

20 A. With Wales and Northern Ireland as well.

21 Q. I see.

22 Moving on to question number 2, we heard you earlier  
23 give evidence that, in the context of leaks by the  
24 Scottish Government and, in fairness, the UK Government,  
25 but in the particular instance of leaks by the Scottish

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1 way, but it could be formalised.

2 **LADY HALLETT:** Thank you.

3 Ms Mitchell.

4 **Questions from MS MITCHELL KC**

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

6 I appear as instructed by Aamer Anwar & Company on  
7 behalf of the Scottish Covid Bereaved.

8 Mr Gove, I wonder if I can ask you a question  
9 arising from your statement where you talk about the  
10 issue of financial clarity.

11 Now, just to allow you a moment to remember the  
12 context of this, you set out a proposed memorandum of  
13 understanding of what issues we might like to consider  
14 in relation to any future pandemic and how we might be  
15 able to think of various issues in advance to reduce,  
16 I suppose, any issues that might be problematic. In  
17 that regard, you say "financial clarity for each DA".

18 Can you first of all explain what you mean by  
19 financial clarity?

20 A. Yes. I think that it's important for the widest  
21 possible understanding to exist of how public services  
22 are funded within each of the devolved administrations  
23 and what the flexibility is that each of the devolved  
24 administrations have. And work has been done by the UK  
25 Treasury in order to ensure that each of the individual

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1 Government, the UK Government might have to ca'canny in  
2 communication with the Scottish Government.

3 I'd like to ask you about a comment that you've made  
4 in your statement where you say:

5 "I accept there were occasions where materials were  
6 distributed shortly before meetings. It seems to me  
7 that there were probably good reasons for this,  
8 including the incredible fast pace of events, and in  
9 some cases the need for security and confidentiality of  
10 the material to prevent leaks to the media."

11 And you go on to explain that there were such delays  
12 and last minute documents given also to the  
13 UK Government, it wasn't simply those that involved the  
14 devolved administrations.

15 Can I ask, in what instance would it have been  
16 appropriate to hold back documents for a meeting to  
17 prevent leaks to the media. And secondly, can you  
18 provide any instances of this occurring that you're  
19 aware of?

20 A. Yes, throughout government it will often be the case  
21 that documents will be held back. There have been  
22 a number of occasions when there have been  
23 UK Government-specific discussions, not about Covid but  
24 about other matters, where the paper before the meeting  
25 which will be the basis for discussion is shared only

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1 with ministers an hour beforehand, sometimes ministers  
2 are invited into a reading room and given an opportunity  
3 to absorb the information and the proposition before  
4 then going into general discussion.

5 It is the case that most civil services overall  
6 dislike the idea of decision-making being affected by  
7 leaks. Most civil services believe that they serve  
8 their government well by making sure that  
9 confidentiality is respected. And I think that is  
10 absolutely right and it would have been, I think, for  
11 the Scottish Government civil service and for  
12 the UK Government civil service just a matter of  
13 propriety that they, when dealing with sensitive issues,  
14 would restrict the circulation of those papers, which  
15 would often be, you know, containing policy discussions,  
16 in such a way as to minimise that leak.

17 However, when we're dealing with an issue like  
18 Covid, the overwhelming majority of the information  
19 required, the background information that will feed into  
20 a discussion, would have been shared and widely known  
21 before getting into that detailed policy discussion.

22 **Q.** And in relation to the second part of my question, can  
23 you give any specific instances of this that you're  
24 aware of?

25 **A.** I could. I can't recall at the moment but I can  
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1 strains and new information. So it's entirely possible  
2 that lessons can be learned about better  
3 intergovernmental working, but, as we discussed earlier,  
4 (a) quite a lot depends on the nature of the crisis  
5 being dealt with, and then also something depends on  
6 what people's ultimate goal is.

7 So my view is that intergovernmental working is  
8 there to make sure that devolution serves the people of  
9 Scotland and the United Kingdom Government serves all of  
10 its citizens.

11 Mark Drakeford in Wales will take the same view,  
12 even though his view of devolution might be slightly  
13 different, because he too is committed to making  
14 devolution work and making intergovernmental relations  
15 work.

16 With the best will in the world, the SNP, even  
17 though on the day-to-day basis they want to serve the  
18 people of Scotland, don't want intergovernmental  
19 relations to work because their ultimate goal is to  
20 break up the United Kingdom.

21 **Q.** Well, I'd prefer if we tried to look more positively at  
22 the way in which, going forward, intergovernmental  
23 relationships can be taken.

24 **A.** Yes.

25 **Q.** Minimising party politics and minimising the politics of  
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1 certainly write back to you and to the Inquiry with  
2 further and better particulars.

3 **Q.** I'm obliged.

4 I move on, briefly on to question number 3.

5 You talk in your statement about the issue of parity  
6 of decision-making between the Scottish Government and  
7 the UK, and effectively the issue of the Scottish  
8 Government being involved in UK decisions and whether or  
9 not that should mean that the UK Government be involved  
10 in Scottish decision-making.

11 Does this point us to a position where really the  
12 best way to deal with these things when we're dealing  
13 with a pandemic, a cross-UK issue, is the involvement of  
14 the body such as the Joint Ministerial Committee or  
15 something of that name going forward in these instances?

16 **A.** I think it is open to debate what the best method is.  
17 As I mentioned earlier, other countries have similar  
18 challenges, and even when you have a federal  
19 constitution like that in Germany, it was still the case  
20 that there were tensions between what the Federal  
21 Chancellery sought to do and what the individual Länder  
22 sought to do at particular times.

23 It's very rare in politics that you can design  
24 a piece of constitutional or governmental machinery  
25 which doesn't then need to evolve to take account of new  
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1 personality, could you give your view to this Inquiry as  
2 to what best format that might take? Would it take  
3 simply getting all the people involved round the table  
4 and making decisions together, like the Joint  
5 Ministerial Committee, or can you think of any other  
6 body or type of way of decision-making that would  
7 assist?

8 **A.** I think that it's certainly the case that that helps,  
9 and it is -- it is the case that following on from  
10 Lord Dunlop's review that we now have in place a tempo  
11 of meetings and a set of structures to ensure that  
12 intergovernmental relations work effectively. And  
13 I think that it's perfectly possible to say that that  
14 can be improved, but for the moment, I'm not -- I don't  
15 want to be Panglossian about it, but for the moment  
16 I think that that is an effective and workable means of  
17 reconciling different policies and bringing discussions  
18 together.

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

20 My Lady, I'm obliged.

21 **LADY HALLETT:** Thank you, Ms Mitchell.

22 Thank you very much indeed, Mr Gove. I hope we  
23 won't have to call upon you again. I'm not giving  
24 a guarantee, but I don't think it's likely, so thank you  
25 for your help.  
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1 **THE WITNESS:** Not at all. Thank you very much, my Lady.

2 Thank you.

3 **LADY HALLETT:** Right, 1.45.

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

5 (12.52 pm)

6 (The short adjournment)

7 (1.45 pm)

8 Procedural matter

9 **MR DAWSON:** My Lady, before we get to this afternoon's  
10 witness, there is one procedural matter that I would  
11 just like to clarify, if that's okay.

12 On Friday 19 January the Inquiry heard evidence from  
13 Dr Jim McMenamin, as your Ladyship will recall, who had  
14 previously provided the Inquiry with a witness statement  
15 and accompanying documentation, including some WhatsApp  
16 messages. An extract of those WhatsApp messages was put  
17 to Jason Leitch on 23 March and subsequently published  
18 on the Inquiry's website the same day. The specific  
19 extract is from INQ000268025.

20 In the published extract, the formatting of the  
21 messages may make it appear as though Dr McMenamin is  
22 agreeing to a suggested deletion of WhatsApp messages.  
23 Our interpretation is that this is not the case.  
24 Dr McMenamin was replying to another message earlier in  
25 the chain of correspondence not shown in the extracted

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1 **Q.** Have you signed that statement?

2 **A.** I have.

3 **Q.** Do the contents of the statement remain true and  
4 accurate as far as you're concerned?

5 **A.** They do.

6 **Q.** You have also provided a further witness statement to  
7 this module of the Inquiry which is dated  
8 21 November 2023 under INQ000347982. Is that your  
9 further statement?

10 **A.** It is.

11 **Q.** Have you signed that statement?

12 **A.** Yes.

13 **Q.** And do the contents of that statement remain true and  
14 accurate as far as you're concerned?

15 **A.** They do.

16 **Q.** You previously gave evidence to Module 1, as  
17 I understand?

18 **A.** I did.

19 **Q.** You're currently the dean of strategic community  
20 engagement and economic development at the University of  
21 Glasgow?

22 **A.** I am.

23 **Q.** You've held that role since February 2022?

24 **A.** Yes.

25 **Q.** From June 2018 until May 2021 you head the post of

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1 text. The formatting of this WhatsApp message for  
2 presentation in evidence makes the message appear  
3 chronologically and does not illustrate direct responses  
4 to other messages out of sequence in the chain of  
5 correspondence. For the avoidance of doubt I wish to  
6 make sure that the evidence shows that Dr McMenamin did  
7 not delete any messages. It is in fact Dr McMenamin who  
8 provided the Inquiry with the WhatsApp messages  
9 contained within that document via his employer, Public  
10 Health Scotland.

11 **LADY HALLETT:** Thank you very much, Mr Dawson.

12 **MR DAWSON:** Thank you, my Lady. The witness this afternoon  
13 is Ms Jeane Freeman OBE.

14 **MS JEANE FREEMAN (sworn)**

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

16 **LADY HALLETT:** I hope we haven't kept you waiting too long,  
17 Ms Freeman.

18 **THE WITNESS:** Not at all, my Lady.

19 **MR DAWSON:** You are Jeane Freeman?

20 **A.** I am.

21 **Q.** You have helpfully provided some statements to this  
22 module of the Inquiry, in particular a witness statement  
23 dated 16 November 2023 under reference INQ000273984. Is  
24 that your statement?

25 **A.** It is.

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1 Cabinet Secretary for Health and Sport within the  
2 Scottish Government?

3 **A.** I did.

4 **Q.** You left that role in May 2021, prior to the Scottish  
5 Parliamentary election in which you did not stand; is  
6 that correct?

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

8 **Q.** Prior to holding that role, you were the minister for  
9 social security within the Scottish Government between  
10 18 May 2016 and 26 June 2018?

11 **A.** I was.

12 **Q.** Your current post is a post in academia?

13 **A.** Yes.

14 **Q.** As Cabinet Secretary for Health and Sport, your  
15 responsibilities included the NHS and its performance,  
16 national clinical strategy, carers and adult care and  
17 support; is that correct?

18 **A.** That's correct.

19 **Q.** Thank you.

20 I'd like to ask you some questions about your use of  
21 informal communications --

22 **A.** Yes.

23 **Q.** -- during the course of the pandemic, and also your  
24 retention of them.

25 The Inquiry has seen on a number of occasions

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1 a table that was helpfully produced by the Scottish  
2 Government indicating the position with regard to usage  
3 and retention of a number of different things, including  
4 informal messaging. Now, this is dated from October of  
5 this year.

6 As at that time, the position communicated to us was  
7 that the Scottish Government, as it states there,  
8 understood that some WhatsApp and text messages had been  
9 retained and the Scottish Government was currently  
10 clarifying the volume but did not expect it to be large.  
11 They indicated that you had been part of a WhatsApp  
12 group of Cabinet secretaries for health of the  
13 four nations, to facilitate meeting running, and they  
14 confirmed to us that no other WhatsApp groups -- that  
15 you had not been part of any other WhatsApp groups or  
16 other informal messaging with key decision-makers.

17 Now, obviously the position has moved on somewhat,  
18 we'll get into that in a moment, but as at October of  
19 this year, was that the position that you held as  
20 communicated to us by the Scottish Government?

21 **A.** Yes, it was. I was always clear and knew that the only  
22 WhatsApp group I was a member of was with the other  
23 health secretaries, the four nations group. But then  
24 subsequently I checked the rest of the WhatsApp messages  
25 I could access and, as you know, disclosed all of those

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1 connected to the Scottish Government secure server for  
2 the retention of Scottish Government email to the Scot  
3 electronic records management system; is that right?

4 **A.** That would be the Scottish Government issued tablet that  
5 I used. I -- and the mobile phone emails were  
6 MSP emails, so that was for the purpose of conducting my  
7 constituency business. But the tablet was a Scottish  
8 Government issued tablet that was then connected into  
9 the Scottish Government system. So if I used that for  
10 any emails, they were recorded into the Scottish  
11 Government system.

12 **Q.** So as far as email usage is concerned, is it the case  
13 that, as far as the conduct of your Scottish Government  
14 business, you used the tablet for those emails or were  
15 other devices used for emails?

16 **A.** No, occasionally the phone would be a copy, so an email  
17 might be sent to me on Scottish Government business  
18 through the tablet and copied to the mobile phone, but  
19 it was already in the tablet. And that would be emails  
20 coming predominantly from my government private office.

21 **Q.** And as I understand the position, that would mean if it  
22 came via the tablet that email would already be recorded  
23 automatically within the Scottish Government system?

24 **A.** Yes, yes, yes.

25 **Q.** Thank you.

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1 to the Inquiry.

2 **Q.** Thank you, yes. We'll have a little look in a moment at  
3 the variety of -- types of messages, with whom, and that  
4 at that sort of thing, but as at October of this year,  
5 this was the position, and then subsequent to that you  
6 managed a find a number of messages, which you've  
7 provided to us; is that broadly correct?

8 **A.** Yes.

9 **Q.** As far as your phone usage is concerned, you tell us,  
10 I think, that you used Scottish Parliament issued phone  
11 for government business, which you handed back to the  
12 Parliament when you left in May 2021; is that right?

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

14 **Q.** Why did you not use a Scottish Government issued phone?

15 **A.** I didn't feel there was a need to. I didn't really want  
16 to have two phones running, and the number I had for the  
17 Scottish Parliament phone was actually the mobile phone  
18 number I have had, I think, since 1993, when I got  
19 a mobile phone after my father died, and so it was the  
20 number known to family and friends as well as anyone  
21 else, and so I wanted to retain the number and I didn't  
22 want to have more than one mobile phone that I was  
23 using.

24 **Q.** I see. And our understanding from your statements is  
25 that the Scottish Parliament phone that you used was

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1 You say in your witness statement dated 21 November  
2 at paragraph 9:

3 "... my Scottish Parliament phone was returned to  
4 them when I demitted office and while the What's App and  
5 text messages, I have noted at Q13 are retained on what  
6 is now my personal phone, I do not have access to those  
7 with Gregor Smith or Jason Leitch, or to the few text  
8 messages between me and Nicola Sturgeon."

9 We'll get in a minute to -- there's a big list, we  
10 won't go through all of them, of people with whom you  
11 exchanged messages of some sort during the course of the  
12 pandemic, but it appears from that statement, as  
13 I understand it, that some messages which would have  
14 been exchanged on your Scottish Parliament phone somehow  
15 made their way onto your personal phone but some did  
16 not. Is that correct?

17 **A.** So the ones that did not, did not because, as you know,  
18 both Dr Smith and Professor Leitch had, I think,  
19 auto-delete or took steps to delete messages, and -- so  
20 I did not have those on my phone, what was now my  
21 personal phone, it still had the same phone number, and  
22 so when I purchased that, everything was downloaded from  
23 the cloud, and that then produced the WhatsApp messages  
24 that I gave to the Inquiry.

25 **Q.** So that's the reason why some of the messages appear

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1 there but not those you exchanged with Professor Smith  
 2 or Professor Leitch?  
 3 **A.** That's correct.  
 4 **Q.** What about the messages you exchanged with the former  
 5 First Minister, Nicola Sturgeon?  
 6 **A.** So those would be very small number of text messages.  
 7 Ms Sturgeon and I were in each other's company every  
 8 day, and so most of the business we conducted between us  
 9 was conducted verbally, or by telephone call on  
 10 occasion, and those text messages I couldn't find a way  
 11 to recover those but I do know that they would be very  
 12 short and they were usually operational, inasmuch as me  
 13 confirming to her that something she had asked to be  
 14 done I had done it, or something that she was concerned  
 15 about had now been fixed or resolved.  
 16 **Q.** I see.  
 17 So you also told us in your statement that:  
 18 "A WhatsApp group existed for the  
 19 Cabinet Secretaries for Health of the Four Nations. All  
 20 four health ministers agreed to the formulation of this  
 21 group. The WhatsApp group was used to facilitate the  
 22 running of the weekly meetings over Zoom."  
 23 You provided us with those messages which you still  
 24 held. You say:  
 25 "I am providing the messages I still hold with these  
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1 mentioned in your statement. Do we take it, then, we  
 2 don't know the answer to this, they must have emanated  
 3 from another source rather than yourself?  
 4 **A.** Yes. I searched all of those, I searched every single  
 5 Cabinet Secretary on my phone to double check, and given  
 6 the time lapse I couldn't be certain of everyone that  
 7 I might have exchanged messages with. I didn't find any  
 8 on my phone for either Ms Forbes or Mr Yousaf or  
 9 Mr Foggo, but they came, as you've said, from other  
 10 sources and I have seen those.  
 11 **Q.** Yes, and do you then have any explanation as to why  
 12 those ones appear not to be in your possession but  
 13 a number of other conversations were?  
 14 **A.** No, I don't. I did not delete messages.  
 15 **Q.** Okay.  
 16 **A.** Primarily because it never occurred to me to do so.  
 17 **Q.** Were you aware of any Scottish Government policy which  
 18 suggested that you should delete messages, whether sent  
 19 by way of text or WhatsApp or any similar platform?  
 20 **A.** I wasn't aware of that policy. That's not to say that  
 21 I hadn't been given that policy, but in the -- in the  
 22 pace of the pandemic, there were some documents like  
 23 that that I may not have paid as much attention to as  
 24 I did rightly to others. So I wasn't aware of that  
 25 policy, and I did not delete WhatsApp messages.  
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1 individuals to the Inquiry."  
 2 And you did provide us with those messages; yes?  
 3 And you also provided us with group chats called "Health  
 4 team" and "Covid-19 health", involving junior health  
 5 ministers, officials and special advisers?  
 6 **A.** Yes.  
 7 **Q.** Thank you.  
 8 You, as I say, provided us with a lengthy list of  
 9 people with whom you corresponded by various different  
 10 means, including text and WhatsApp, and the position, as  
 11 I understand it, as you've already told us, is that you  
 12 exchanged a few messages with Nicola Sturgeon by text;  
 13 is that right? And that the main means of communication  
 14 between you and her, because you were, I think, in the  
 15 same building as her during the course of the pandemic,  
 16 was, I think you said, phone calls and verbal exchanges?  
 17 **A.** Yeah -- excuse me -- it was primarily verbal meeting,  
 18 you know, one-to-one or with others, and occasional  
 19 phone calls and very occasional text messages.  
 20 **Q.** We'll just get back to that in a moment, but the Inquiry  
 21 has also been provided through the Scottish Government  
 22 with WhatsApp conversations between herself and  
 23 Humza Yousaf, yourself and Kate Forbes, and text  
 24 messages between yourself and Richard Foggo.  
 25 The reason I mention those is because those aren't  
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1 **Q.** But in any event you didn't delete text or WhatsApp  
 2 messages?  
 3 **A.** No.  
 4 **Q.** And you've explained the reasons why, the technological  
 5 reasons why you've not been able to produce some of the  
 6 exchanges which you recognise you had?  
 7 **A.** As best I can.  
 8 I have to be completely frank with you, my Lady,  
 9 Mr Dawson, I am not the most technologically gifted  
 10 member of the Scottish Government at that time, and so  
 11 I searched as best I could and as best as I understood  
 12 it and then provided to yourself and to the Inquiry  
 13 everything that I found.  
 14 **Q.** You say in your witness statement at paragraph 17,  
 15 page 6:  
 16 "All of the noted informal communications [which are  
 17 the ones listed there] covered variously, progress of  
 18 the pandemic, progress on pandemic response delivery,  
 19 information exchange, factual and clinical or scientific  
 20 information, clarification on clinical and/or scientific  
 21 advice received or problem/issue resolution -- all  
 22 dependent on with whom I had the exchange. No decisions  
 23 were made in any of these informal communications which  
 24 were not then entered into the Scottish Government  
 25 system, the process necessary to record and instruct  
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1 action."

2 Do you accept that these exchanges are likely,  
3 therefore, to hold and to have held important  
4 information about the way in which decisions were  
5 reached, in particular the scientific basis upon which  
6 decisions were arrived at?

7 **A.** Do you mean the messages?

8 **Q.** Yes.

9 **A.** No, I don't think that's entirely fair. They were  
10 primarily operational. The Inquiry has seen,  
11 for example, a very long set of text messages exchanged  
12 between myself and John Connaghan, who was the principal  
13 operating officer for the NHS at that point, which are  
14 all about operational matters, about whether or not  
15 ventilators have arrived or hospital beds or whatever it  
16 might be. We weren't reaching decisions in those  
17 exchanges, because there would be no point in reaching  
18 decisions in those exchanges unless you then entered  
19 them into the system, because only by entering them into  
20 the system could you ensure that they were acted on.

21 Now, I had an agreement with my private office that  
22 if, for example, I had a phone call with Mr Macaskill or  
23 one of the health union leaders that I would then tell  
24 the private office what the outcome of that call was so  
25 that they could keep that record.

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1 pandemic, the "progress on pandemic response delivery,  
2 information exchange and factual and clinical or  
3 scientific information, clarification on clinical and/or  
4 scientific advice received or problem/issue resolution",  
5 all of these things, including as you mentioned earlier  
6 things about PPE procurement and the like, all of those  
7 things are important context, are they not, to the  
8 environment and background against which decisions would  
9 ultimately be taken?

10 **A.** They were all important, because they were about the  
11 matters that I've set out, but you will also, I'm sure,  
12 find the context for decisions recorded in the official  
13 record, whether that is in Cabinet papers or in email  
14 exchanges or whatever it might be, because that was the  
15 only way to make things happen. You had to put it into  
16 the system in order to ensure that action would then be  
17 taken.

18 **Q.** But your position, as I understand your evidence, is  
19 that the obligation as you understood it was not limited  
20 to recording exchanges which showed decisions being  
21 taken, it was wider than that, isn't that right?

22 **A.** Yes, yes.

23 **Q.** And that the width of the obligation included the  
24 obligation to record the context, as you've put it?

25 **A.** Yes, well, for example, if I had -- and I did have

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1 **Q.** When you say the "outcome" of the call, do you mean any  
2 decision that had been reached?

3 **A.** Anything that I wanted to then happen. Usually those  
4 calls were either confirmatory of decisions that already  
5 had been reached or the individuals in those examples  
6 I've given you were raising with me concerns that they  
7 might have around, for example, the distribution of PPE,  
8 "The systems were in place but care home X or hospital  
9 section Y hadn't received their supply". And so then  
10 I would tell my private office, and ask for officials to  
11 investigate that and sort it out.

12 **Q.** But were you under the impression that the obligation to  
13 record information on the corporate record was limited  
14 to information which showed that a decision had been  
15 taken?

16 **A.** No, I don't think the obligation to record on the  
17 corporate record was only decisions. In the corporate  
18 record for meetings, for example, or from Cabinet  
19 meetings, in that I know the Inquiry has the minutes of  
20 all the relevant Scottish Cabinet meetings, would always  
21 have a bit of text or often have a bit of text that said  
22 "in discussion the following points were made" and then  
23 the decision or the action. So that was often the case.

24 **Q.** Because in the passage that I've just taken you to,  
25 information exchanged about the progress of the

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1 frequent phone calls, usually on my way home at night,  
2 perhaps with a health trade union leader or with  
3 Mr Macaskill, the context for that, the subsequent email  
4 that would go from my private office to the relevant  
5 officials would be to set out the context. I'm not  
6 quoting exactly here, you understand, but, for example,  
7 "Ms Freeman spoke to whoever last night on her way home,  
8 they're raising concerns about ... can you do the  
9 following".

10 **Q.** So the corporate --

11 **A.** The context would be recorded as well as --

12 **Q.** I see --

13 **A.** -- "Just please do".

14 **Q.** Just to be clear -- thank you for the explanation --  
15 that the context, as you say, which would ultimately be  
16 recorded on the formal record by an email or some other  
17 means, would include the sort of information that you're  
18 identifying there as having been communicated  
19 informally --

20 **A.** Yes.

21 **Q.** -- but it would then be recorded formally?

22 **A.** Yes, yes.

23 **Q.** Thank you.

24 You mentioned already and you say it in your  
25 statement at paragraph 21 that:

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1 "Where pertinent issues arose as a result of any of  
2 these informal communications that required action by  
3 me, these will be retained in the Scottish government  
4 corporate record by my private office."  
5 Could you just, I think you've touched on this, but  
6 explain the process by which you or your private office  
7 transcribed or transferred pertinent issues which arose  
8 in your WhatsApps or texts into the corporate record?  
9 **A.** So one of the examples I've already given, and it did  
10 come up in some of those calls or conversations,  
11 informal conversations, would be around the distribution  
12 of PPE. As you know, and we may come to this, we set up  
13 a number of additional distribution routes from  
14 pre-Covid times. They did not always work as  
15 effectively or slickly as we might want. There was  
16 a helpline to record issues, but also specific problems  
17 might be raised directly with me and I encouraged that.  
18 So I would then say to my private office "I have just  
19 spoken to, for example, Donald Macaskill, and he is  
20 telling me that care home X hasn't received what they  
21 asked for, can you get onto NSS or whichever official it  
22 might be and ask them to double check this, find out  
23 what's going on and fix it". And they would then put  
24 that into an email and give that context, "Ms Freeman  
25 has just spoken to ..."

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1 have been involved?  
2 **A.** So the First Minister and I would be in St Andrew's  
3 House seven days a week, in fact. We would also have  
4 our private offices with us. But in addition you would  
5 have the CMO, National Clinical Director, Chief Nursing  
6 Officer, some senior officials. Now, that cast list, if  
7 you like, would vary, and they wouldn't necessarily be  
8 there every one of those seven days, but they would be  
9 there certainly most days, because the practice was that  
10 the First Minister and I would have a meeting at 11 --  
11 round about 11 o'clock every morning where we were  
12 looking at the data that had come in overnight from  
13 Public Health Scotland on case numbers, occupancy rates  
14 in hospitals, whatever the issues were. We would  
15 then -- as you know, regular media briefings were  
16 instituted. We would then have a very brief discussion  
17 just before those and then a follow-on discussion  
18 afterwards, and may then subsequently meet again later  
19 in the day, depending on what issues we were dealing  
20 with.  
21 **Q.** So you would have meetings and conversations with,  
22 amongst others, no doubt, the key people that you've  
23 just mentioned in that list, who may have not been there  
24 all the time, but will have been there part of the time;  
25 is that fair?

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1 **Q.** I see.  
2 **A.** And then the reply would come back.  
3 **Q.** You've given a helpful example of a hypothetical or  
4 unhypothetical situation where you're discussing  
5 important matters relating to pandemic management.  
6 You've mentioned that you were often, in the period when  
7 you were Cabinet Secretary, physically present in the  
8 same place as other important decision-makers, including  
9 the First Minister; is that correct?  
10 **A.** Yes.  
11 **Q.** Just to expand on that a little bit, just to explain the  
12 physical situation, a number of people including  
13 ministers over that time will have been working  
14 remotely, isn't that right?  
15 **A.** Yes.  
16 **Q.** But a number of people tended to be based in  
17 a centralised office building of the Scottish  
18 Government; is that right?  
19 **A.** Yes, that's correct.  
20 **Q.** And that would include yourself?  
21 **A.** Yes.  
22 **Q.** And the First Minister?  
23 **A.** Yes.  
24 **Q.** And what other key advisers or decision-makers, without  
25 naming them, just broadly the types of people that would

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1 **A.** Yes.  
2 **Q.** What mechanisms existed for transcribing into the  
3 corporate record verbal conversations or, I think you  
4 mentioned also, telephone conversations, the type of  
5 information that I think we've -- we both think required  
6 to be incorporated into the record, discussions around  
7 decision-making?  
8 **A.** So from that, for example, from that usually 11 o'clock  
9 in the morning meeting, there would be further -- often  
10 further requests for more information that the  
11 First Minister or I or both of us thought we needed,  
12 specific things checked, for example, so that we were  
13 absolutely sure of what we were doing and the data that  
14 we were basing our actions on. That would then be  
15 communicated into the system from primarily the  
16 First Minister's private office, not necessarily mine,  
17 but the First Minister's private office. And if we had  
18 a senior official -- or it might be the Chief Medical  
19 Officer's directorate, and their office, if we had  
20 a senior policy official then they -- and they were  
21 tasked with finding something out, taking some kind of  
22 action, then they would then put that into the system to  
23 their team to do whatever was necessary.  
24 **Q.** You see. I think what you are talking about there is  
25 information that would be obtained externally from

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1 whatever the appropriate body was to try to augment your  
2 knowledge, data or other such information. What I'm  
3 interested in is the extent to which there was a system  
4 which aimed to record on the corporate record the nature  
5 of discussions taken between or amongst the key  
6 individuals whom you have described as being involved in  
7 the pandemic response at that stage, about your views on  
8 things, the way in which the pandemic seemed to be  
9 going, decisions you might take or might not take, why  
10 it is that you think one course would be better than the  
11 other. If these happened predominantly verbally or on  
12 telephones, there was a risk, I think, that they may not  
13 have been properly transcribed into the corporate  
14 record.

15 **A.** So they rarely, if at all, happened between me and the  
16 First Minister by telephone. In fact, I can't recall  
17 any discussion quite as you've described it, they would  
18 be in-person discussions, and they would be transcribed  
19 into the system as part of the context for the ask that  
20 was now being made.

21 So, for instance, "The First Minister and the  
22 Cabinet Secretary are unclear as to whatever this data  
23 is actually telling us, can you please provide more  
24 information in order to help them, help their  
25 consideration", or whatever it might be.

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1 of crisis that was coming over the horizon; is that  
2 correct?

3 **A.** That's correct.

4 **Q.** And at that time, we understand from other evidence that  
5 you were involved in a number of early meetings of COBR?

6 **A.** Yes.

7 **Q.** And also, as we'll come to, a number of meetings of the  
8 Scottish Cabinet and similar emergency meetings  
9 including SGoRR, the Resilience Room within the Scottish  
10 Government?

11 **A.** Yes.

12 **Q.** And over that period, you received a considerable amount  
13 of emerging information from --

14 **A.** Yes.

15 **Q.** -- other sources, and our understanding is that, broadly  
16 speaking, insofar as one required medical advice, that  
17 medical advice was coming to you through Dr Calderwood,  
18 the Chief Medical Officer?

19 **A.** Yes.

20 **Q.** Could I ask you, please, to have a look at INQ000352450.

21 This is an exchange we've looked at before, but  
22 I would be interested in your perspective on this. If  
23 we go down to the final page, please, page 5 -- I think  
24 this may be it, in fact.

25 This is an exchange of emails that the Inquiry has

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1 **Q.** So the instruction to the external body for more data,  
2 information, would be recorded but the --

3 **A.** The context for it would also be recorded.

4 **Q.** Right, in what form?

5 **A.** In the form I've just described, in the form of -- so --  
6 and this is important for everyone we were asking things  
7 of. They were working extremely hard, whether they were  
8 civil servants, public health officials in PHS, whatever  
9 they might be doing, they were very, very busy, so you  
10 can't just issue an instruction for "X" without  
11 explaining to them why you want it. And that also gives  
12 them a feel for, "Well, they want this, that must mean  
13 that we've not been clear enough so far, so let's give  
14 them a bit more information to explain what it is we're  
15 telling them".

16 **Q.** So we should be able to find that context on the  
17 corporate record?

18 **A.** I would expect so, yes.

19 **Q.** Thank you.

20 I'd like to ask you some questions about the very  
21 early period when the threat of the virus started to  
22 emerge. You were the Cabinet Secretary for Health and  
23 Sport at that time?

24 **A.** Yes.

25 **Q.** You were holding a very important position in a moment

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1 seen already between Dr Calderwood and a consultant  
2 epidemiologist at Edinburgh University called  
3 Professor Mark Woolhouse, who no doubt you will know  
4 from his involvement in many different spheres, but in  
5 particular the Scottish Covid Advisory Group  
6 subsequently.

7 **A.** Yes.

8 **Q.** In this correspondence, as we've already gone through in  
9 some detail with Professor Woolhouse, what he is trying  
10 to do, it would appear, is bring to Dr Calderwood's  
11 attention concerns, an obvious concern, as you see  
12 expressed there, about the developments that are coming  
13 to his attention about the threat, and he says:

14 "The obvious concern (increased by yesterday's not  
15 unexpected announcement of human-human transmission) is  
16 that this will become a pandemic, and therefore will  
17 affect Scotland. This is not yet certain, but in my  
18 judgement it is likely, certainly sufficiently likely  
19 that we should be prepared for the eventuality. Other  
20 colleagues share this view.

21 "There are some instructive parallels with the H1N1  
22 pandemic in 2009-10. Indeed, one possibility is that  
23 this could turn out to be quite similar in some key  
24 respects: a widespread epidemic fuelled by mild cases  
25 but with mortality among vulnerable patients."

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1 As you will, I hope, be aware, there is a series of  
 2 correspondence in this vein that then comes over the  
 3 next few days, some of which we might look at. Were you  
 4 aware of this correspondence having taken place?  
 5 **A.** I don't believe I was aware of the specific  
 6 correspondence, in terms of having sight of that email  
 7 or the correspondence, but I did know from Dr Calderwood  
 8 that Professor Woolhouse had been in touch with her, as  
 9 had others, or she had also reached out to others,  
 10 experts in this field, that she was aware of, and  
 11 clearly her colleague CMOs in the four nations.  
 12 **Q.** When did you become aware of these exchanges? This is  
 13 21 January 2020.  
 14 **A.** I can't recall the specific dates, but I would think  
 15 around about the same time as these exchanges. I mean,  
 16 we were conscious that this -- I can't think of another  
 17 way of putting it -- this thing that appeared to be  
 18 emerging from China and appearing elsewhere was  
 19 potentially very, very serious indeed, and of course his  
 20 reference to the H1N1 pandemic resonated with the former  
 21 First Minister, Ms Sturgeon, because she had been  
 22 Health Secretary during that time.  
 23 **Q.** What was the significance of the H1N1 pandemic in the  
 24 assessment of the level of the threat?  
 25 **A.** So people were -- I clearly was not in government -- or  
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1 that, you say "Well, it might be", but the other voice  
 2 in your head is saying "But it might not, let's find  
 3 out, let's keep finding out till we know".  
 4 **Q.** Obviously it is correct to point out, Ms Freeman, that  
 5 you're not a clinician, but of course you were in  
 6 a position to receive medical, clinical and scientific  
 7 advice --  
 8 **A.** Yes, of course.  
 9 **Q.** -- from, amongst others, the Chief Medical Officer. Was  
 10 she explaining to you at this time the potential  
 11 significance of an epidemic fuelled by mild cases?  
 12 **A.** No, not in as categoric terms as those. She was  
 13 explaining what she knew had happened when it was H1N1,  
 14 but also keeping very much open the door in our mind and  
 15 in her own that this may not be the same kind of  
 16 epidemic, and in fact became a pandemic.  
 17 **Q.** Professor Woolhouse also mentioned the possibility of  
 18 mortality among vulnerable patients. What did you  
 19 consider -- what did you understand from Dr Calderwood  
 20 or otherwise this class of vulnerable patients to  
 21 constitute? Who were these people that he was talking  
 22 about?  
 23 **A.** Those would be, I understood it to be, and in my own  
 24 mind would think it to be, people who had other serious  
 25 clinical conditions, comorbidities, and that would also  
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1 wasn't an MSP at that time. People were referring back  
 2 to that, and referring to the concern that they had  
 3 around the seriousness of it at the point, which did not  
 4 then play out in practice, but were also very clear that  
 5 that may have been the case then but we don't know that  
 6 this one's going to be the same. And of course as you  
 7 know and I'm sure we will come to, subsequent modelling  
 8 of the Covid-19 virus produced some very stark numbers  
 9 about its likely level of impact on the population.  
 10 **Q.** We'll get to that in a moment, yes. Is it fair to say,  
 11 therefore, that the H1N1 experience provided a degree of  
 12 reassurance in the approach, given that it had not  
 13 turned out in Scotland to be as serious as it might have  
 14 been?  
 15 **A.** I did not find it reassuring. I found it interesting to  
 16 understand what had happened then, but my primary  
 17 position was: that was then, this is now, and we don't  
 18 know it's going to be the same.  
 19 **Q.** What was your understanding of, at this time, the  
 20 significance of the possibility raised by  
 21 Professor Woolhouse that the epidemic may be fuelled by  
 22 mild cases?  
 23 **A.** At that point, I don't think, as a non-clinician and not  
 24 a scientist, I don't think I had a particular view.  
 25 I think it's one of those situations where you hear  
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1 include those who were elderly, but not exclusively  
 2 those who were elderly.  
 3 **Q.** Thank you.  
 4 If we could scroll up, please, to the 25 January  
 5 email, page 4, I think. Maybe 3.  
 6 **(Pause)**  
 7 So this is a further piece of correspondence, again  
 8 from Professor Woolhouse to the Chief Medical Officer,  
 9 Dr Calderwood. In this, he reports some further  
 10 information relevant to the epidemiology, including the  
 11 basic reproduction number, of which there was a central  
 12 estimate of 2, the R<sub>0</sub>, and a case fatality rate of 4%.  
 13 Again, were these things that were brought to your  
 14 attention at that time, and was the significance of  
 15 these figures explained to you?  
 16 **A.** Yes, they were, and in those numbers, around the  
 17 R number, as I think we all came to clearly understand  
 18 it and talk about it, the ranges were there. Of course  
 19 Dr Calderwood was receiving information not only from  
 20 Professor Woolhouse but from others, and all our  
 21 science, epidemiologist, virologist colleagues and chief  
 22 medical officers were working hard to try to get a grasp  
 23 of what we were dealing with, so we were often dealing  
 24 with a range of information. It could be "Between this  
 25 and this", for example. In any event, as I heard it,  
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1 I heard it as "this is very serious".

2 **Q.** You say that advice was being received from others at  
3 this time. Could you recall who were the other advisers  
4 that were providing input similar -- on the same  
5 subjects at least as Professor Woolhouse?

6 **A.** So Dr Calderwood would be attending discussions with the  
7 other CMOs and of course the Chief Scientist, including  
8 discussion with the Chief Scientist for health, and  
9 there would be others that she was in touch with as  
10 a consequence of her career. I don't have the names of  
11 those, but she would mention them, who she had been  
12 speaking to and the calls that she had been involved in,  
13 and what she was understanding from all of that  
14 information that she was gathering in.

15 **Q.** The message which we've seen on a couple of occasions in  
16 the sort middle paragraph, here in the bottom half of  
17 the page, relates to putting the numbers I've just  
18 mentioned into an epidemiological model for Scotland,  
19 and that the prediction would mean:

20 "... over about a year, at least half the population  
21 will become infected, the gross mortality rate will  
22 triple (more at the epidemic peak) and the health system  
23 will become completely overwhelmed. We can formalise  
24 those predictions (and there are many caveats to them)  
25 but those are the ballpark numbers based on information

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1 a significant proportion of the population, a very high  
2 proportion of the population, would be infected, that  
3 a significant proportion of that number would require  
4 hospital treatment, including intensive care treatment,  
5 and that a proportion of that number would also die.  
6 And so that told me that I had to begin work, undertake  
7 work with our health service colleagues, our NHS  
8 colleagues, to look at: what is our current bed  
9 capacity; what do we need to do to increase that bed  
10 capacity so that we can take people who are ill? What  
11 is our current position in terms of ventilators and ICU  
12 and what do we need to do to increase that?

13 In both those figures, the obvious answer, the clear  
14 answer was we need to increase bed capacity and we need  
15 to increase ICU capacity. And so work began to look at:  
16 how do we do that.

17 **Q.** Just to be clear as best you can, with a bit more  
18 precision, to be fair to you, about the timeline, when  
19 was it that -- you mentioned ventilators, ICU capacity  
20 was being a primary consideration in light of this  
21 information; when did it start to be that that was your  
22 focus and you started to take steps to try to  
23 investigate what the capacity was and what you might do  
24 about it? Was it at this time in January or was it  
25 later?

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1 from WHO. Please not that this is NOT a worst case  
2 scenario, this is based on WHO's central estimates and  
3 currently available evidence. The worst case scenario  
4 is considerably worse."

5 I'm not sure, Ms Freeman, one requires to be  
6 a clinician to read that passage with a considerable  
7 amount of trepidation about the position.

8 **A.** No, you do not, and I think as I've already said, I had  
9 a growing feeling of trepidation about what we were  
10 about to have to deal with all through that month of  
11 January. And that feeling on my part was not in any  
12 respect undermined by Dr Calderwood, who herself was  
13 increasingly clear with me and with her colleagues in  
14 the health directorate about just how serious this could  
15 end up being, and to quickly disabuse ourselves of any  
16 notion that this might be a repeat of H1N1.

17 **Q.** What steps were you, practical steps, advised that  
18 Scotland should start to take in order to deal with this  
19 threat?

20 **A.** So the numbers that are indicated here and the numbers  
21 that then fed into the four nation action plan that was  
22 published, I think, at the very beginning of March.  
23 **Q.** 3 March, perhaps.

24 **A.** Those numbers were emerging, they weren't finalised but  
25 they were emerging, and what that told me was that

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1 **A.** January into February.

2 **Q.** Right.

3 **A.** I think we had -- I'm not sure if I have it with me, but  
4 we had an early number in February, an estimate of the  
5 size of the population in Scotland that would be  
6 affected, infected by this virus. And of course then  
7 there was, as I said, the modelling in the three nation  
8 plan -- four nation plan.

9 **Q.** Was the modelling that was done around that time simply  
10 taking the UK figures and scaling them down for the  
11 relative size of the Scottish population or was it based  
12 on specific Scottish information?

13 **A.** So at that point, in the early days, it would be looking  
14 at how the UK-wide figures would be apportioned in  
15 Scotland, but then work was undertaken to factor in  
16 other factors, for example the levels of comorbidity  
17 amongst our population, the level of health inequality  
18 amongst our population and so on, to refine the figures.  
19 But the bottom line is the figures are high.

20 **Q.** Yes.

21 **A.** And you can model them to make appropriate changes, that  
22 doesn't alter the fact the figures are high. And as you  
23 know, the 3 March modelling, reasonable worst-case  
24 scenario was 80% infected, 4% requiring ICU (4% of that  
25 80%), 1% deaths.

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1 Q. Yes.

2 A. Those are big numbers. And the February modelling  
3 number that I received was 75,950 hospital admissions in  
4 Scotland.

5 Q. Right.

6 A. Now, they're not all admissions at the one time,  
7 of course, but over the piece that's -- what was  
8 expected, and we had a bed capacity of 3,000.

9 Q. Right.

10 You mentioned that there was a point at which what  
11 one might describe as local data was taken into  
12 consideration and one wasn't deriving it simply from the  
13 UK data scaled down. I think you recognised that it was  
14 important to do that based on the demographics of  
15 Scotland's population, in particular its elderly  
16 population and the existence of a number of  
17 comorbidities and health inequalities. Did I pick you  
18 up correctly?

19 A. Yes.

20 Q. When was it that that local data started to be factored  
21 into the planning?

22 A. So the analysts would begin doing that through February,  
23 I mean, hence we had a number given to us in February as  
24 a possible, a modelling number, and the -- you know,  
25 analysts were quite clear, quite rightly, modelling was

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1 measures that you might take. So, whether you're  
2 looking at the impact of the virus on a particular part  
3 of, for example, Glasgow, where we know the health  
4 inequalities are higher than another part of Glasgow, it  
5 doesn't really matter too much in terms of hospital  
6 admissions and ICU demand. You know what you're going  
7 to get. Where it does matter is when you are looking at  
8 vaccine take-up, access to testing and so on further  
9 down the line. And also your communication, so that  
10 what you were trying to ask the public to do is  
11 communicated as widely as possible in order to reach all  
12 areas of the population.

13 Q. Just to be clear, again, and to try, if we can, to put  
14 this in the timeline.

15 A. Mm.

16 Q. You mention there, for example, obviously access to  
17 vaccines came much later, although very much under your  
18 watch, if you like. As far as access to testing is  
19 concerned, you've mentioned, I think, that that was  
20 something that was being considered for more vulnerable  
21 people further down the line. When did access to  
22 testing for more vulnerable people become part of the  
23 narrative?

24 A. So, to be clear, so we don't misunderstand each other,  
25 access to testing was significant in my mind from the

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1 not a prediction, it was a model, but it gives you  
2 an idea of what you might be dealing with, and they  
3 would then begin to factor in some of those other  
4 factors to see what changes that might make.

5 But from my point of view, I didn't see that  
6 modelled number of just under 76,000 coming down because  
7 Scotland has a higher comorbidity, a more elderly  
8 population, greater health inequalities. I could only  
9 see it rising.

10 Q. Yes.

11 A. So let's just deal with this. It doesn't matter if you  
12 add 10,000 on to this, or whatever you do, this is a big  
13 number and we need to do serious work to try to deal  
14 with this.

15 Q. You were focusing, quite rightly, on the question of ICU  
16 capacity, ventilators, hospital capacity, but of course  
17 there were other more specific measures that might be  
18 taken into consideration in order to try to deal with  
19 the particularly vulnerable individuals whom we've  
20 identified. What steps were taken to try to understand  
21 the extent of Scotland's vulnerable population in order  
22 to try to inform the best measures that might be taken  
23 to try to protect them?

24 A. So that understanding, if you like, or that work comes  
25 into play when you start to look at the specific

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1 outset, not least because we did not have sufficient  
2 testing capacity and capability. So my initial concern  
3 was not who is going to be able to be tested, but  
4 initially how can we increase our testing capacity.

5 That -- that was the first and most important thing to  
6 focus on, we started out with a per day testing capacity  
7 of around 350 tests. The very initial -- the very, very  
8 early tests for Covid were sent I believe to Colindale,  
9 and I think you have heard from other witnesses as well  
10 that tests were being developed for this particular  
11 virus, as they have to be for all particular viruses.

12 But particularly, in answer to your question, my primary  
13 concern initially around testing was our capacity and  
14 capability to process tests speedily and in a higher  
15 volume than the 350 that we started out with in  
16 February.

17 Q. So was that -- the capacity for testing throughout  
18 February was 350 a day; is that right? And how long did  
19 that last for, do you recall?

20 A. So that was our starting point. By 18 March we had  
21 a 780 capacity per day of PCR tests across three of our  
22 NHS labs. We increased that by the end of April to  
23 4,350. And of course by that point the Glasgow  
24 Lighthouse lab, part of the UK Lighthouse Network, was  
25 being established and, as the NHS laboratory testing

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1 increased, the Lighthouse Laboratory testing also came  
2 in, not exclusively for Scotland for tests -- to process  
3 tests taken in Scotland, but a significant proportion,  
4 but it was part of the UK network.

5 So the capacity increased exponentially from that  
6 point, but in those early days and months, the capacity  
7 was low.

8 **LADY HALLETT:** Did you ask anyone why you had such limited  
9 capacity at the beginning?

10 **A.** I did, and, my Lady, I probably asked them in fairly  
11 robust terms. And I think, in fairness -- I can't  
12 recall the specific answer, but I think, in fairness,  
13 the answer would be that, in the prioritisation of NHS  
14 resource over the years previously, it had not  
15 necessarily featured highly, and the resource, limited  
16 resource, for our health service had been prioritised  
17 elsewhere.

18 **LADY HALLETT:** So one of your predecessors?

19 **A.** It could have been many of my predecessors, from the  
20 point when the Scottish Parliament reconvened in 2000.  
21 I think it is one of the significant lessons, if I may,  
22 and my apologies if I'm jumping ahead, but one of the  
23 significant lessons is the importance of retaining  
24 a core testing capacity that you can scale up. Now,  
25 that's not straightforward, it's about the skills, it's

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1 that was in the NHS labs in Glasgow, Edinburgh and  
2 Dundee, and then by the end of April every one of our  
3 territorial boards had local access to that testing.

4 Processing of tests is actually, strictly speaking, what  
5 it is.

6 **Q.** If could we go back -- sorry, it's my fault for not  
7 asking to cue it up -- to INQ000352450 again, this is  
8 the Professor Woolhouse emails.

9 I'm looking now at page 2, please. There are  
10 various scenarios -- this again is another one in the  
11 chain of correspondence with Professor Woolhouse where  
12 he sets out various scenarios. He talks about a third,  
13 a SARS scenario, and talks about various things that  
14 might be done. This is -- he says there:

15 "This is the scenario that I outlined for you  
16 yesterday (though I didn't give you the worst case  
17 version of it). This is what we have to expect if the  
18 current case fatality rates are roughly correct. The  
19 measures we could consider are:

20 "A vaccine."

21 And then, going over the page, various other  
22 antivirals.

23 And then effectively he rolls that out as being  
24 something that's open at the moment. And so he says  
25 back to public health measures. And he points out there

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1 about the kit, as well as -- so it's about the  
2 capability as well as the actual capacity, and so it is  
3 disappointing to me that the Glasgow Lighthouse lab  
4 wasn't retained, because I believe -- it was  
5 a UK Government decision, but I believe it could have  
6 been re-purposed for other important tests in Scotland.

7 Now, regional laboratories were built up, NHS  
8 regional laboratories were built up, and part of the  
9 thinking behind that was to retain a core capacity  
10 post-pandemic.

11 But, Mr Dawson, you're rightly pointing me to where  
12 we were at the outset, and that is where we were.

13 **MR DAWSON:** Thank you.

14 Is it the case, therefore -- because you've  
15 highlighted that there are a number of component parts  
16 one has to have to an effective testing system -- is it  
17 the case that at this stage Scotland did not have the  
18 skills, the kit or the capability to carry out adequate  
19 testing?

20 **A.** Well, I would say Scotland certainly did have the skills  
21 and the Glasgow Lighthouse is testimony to that in how  
22 it could bring skilled personnel in so quickly. What we  
23 did not have was the physical space or the kit in order  
24 to do that. And so we began the increase in our  
25 existing NHS laboratories with that increase to 780,

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1 that public health measures which ought to be used are  
2 case isolation, infection control and contact tracing,  
3 public messaging and social distancing.

4 So these are -- you talked about the testing  
5 capacity being built up subsequent to this, but at this  
6 stage what is being suggested is that there needs to be  
7 case isolation, which means test -- which means there  
8 requires to be testing before one could find out what  
9 the cases are, isn't that right?

10 **A.** That is right.

11 **Q.** And there also needs to be a system put in place of  
12 infection control involving contact tracing so finding  
13 people that might have been infected by the index case;  
14 is that correct?

15 **A.** Yes.

16 **Q.** As far as -- we've talked about the testing capacity but  
17 as far as contact tracing systems were concerned, our  
18 understanding is that that wasn't put in place until  
19 much later, when the Test & Protect system started; is  
20 that correct?

21 **A.** Not quite. It was certainly scaled up at that point,  
22 but Scotland has always had, through our public health  
23 system, a capacity for contact tracing. It's used  
24 through our local incident management teams who may  
25 be -- at this very moment may be undergoing contact

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1 tracing perhaps for sexually transmitted disease in  
2 a particular area or for other viruses that arise. So  
3 we had that system in place that undertook contact  
4 tracing, and it was that system that we used to build.

5 So contact tracing, as I know you know, was used for  
6 the cases that came from the Nike conference. That was  
7 the use of a system already in place.

8 **Q.** What efforts were made at this time to try to expand  
9 that existing contact tracing system or build a new  
10 contact tracing system to the level and scale of the  
11 sorts of prognosis or prediction that  
12 Professor Woolhouse was making?

13 **A.** So in the first phase of the four nation plan is about  
14 containment and that rests a lot on contact tracing.

15 Of course contact tracing begins with a positive  
16 test, and so where you have limited test capacity your  
17 contact tracing is, from the outset, limited. So the  
18 scaleup, limited though we might see it as being at this  
19 point, with hindsight, was part also of being able to  
20 have more contact tracing if that was what was needed.

21 **Q.** Why is it necessary to look at the deficiencies in the  
22 scaleup of the contact tracing system in hindsight?  
23 Because what you had here was a recommendation from  
24 a recognised epidemiological expert as to the kind of  
25 scale that you might be looking at and the need for

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1 Professor Woolhouse was also of the view that this was  
2 tremendously important.

3 **A.** Yeah.

4 **Q.** You've mentioned the Nike conference and the public  
5 messaging around that. What public messaging about the  
6 threat took place in February?

7 **A.** To be honest, Mr Dawson, I can't recall. Certainly  
8 I know that I had alerted Cabinet colleagues to the  
9 virus through our Scan system, which I think you're  
10 familiar with. It's basically a notification system for  
11 every Cabinet meeting to every Cabinet Secretary on  
12 issues of importance that you think your colleagues need  
13 to know about but no decisions need to be taken at this  
14 point. So the first Scans that raises Covid-19 is  
15 28 January, so I was certainly alerting Cabinet  
16 colleagues at that point to this matter. But I can't  
17 recall at that point if there was specific public  
18 messaging.

19 **Q.** Cabinet colleagues were, of course, members of the  
20 public, but telling Cabinet colleagues is absolutely not  
21 public messaging, is it?

22 **A.** No, no, it's not.

23 **Q.** So, I mean, you will know that we've heard evidence  
24 around the way in which the outbreak at the Nike  
25 conference was handled in terms of public messaging, but

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1 contact tracing to try to prevent that. At the time it  
2 was known that that would be necessary, isn't that  
3 right?

4 **A.** Yes, so with respect what you said I said is not what  
5 I said, if I may.

6 What I said was that in order to scale up contact  
7 tracing, you have to scale up testing. And, you know,  
8 as we look at it now, going from 350 in February to 780  
9 by 18 March may not look like a significant increase,  
10 and it wasn't a significant increase, but it was the  
11 best that we could do in that -- at that point, with the  
12 resources that we had. We then increased that, as  
13 I say, significantly by the time we got to April, but  
14 that is about acquiring premises, kit, and people. But  
15 that's fundamental to a number of things in responding  
16 to the pandemic, but it is fundamental to contact  
17 tracing.

18 **Q.** To be clear, when you talk about a lack of resources  
19 you're talking about a lack of premises, kit and people;  
20 is that right?

21 **A.** Yes.

22 **Q.** So that's what you had to build, because it wasn't there  
23 before?

24 **A.** Yes.

25 **Q.** As far as public messaging is concerned,

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1 in effect there was no public messaging of the threat  
2 until the first case was announced on 1 March; isn't  
3 that right?

4 **A.** I believe that is correct. There was a lot of work  
5 going on to reach four nation agreement around the first  
6 four nation plan, and a lot of agreement around -- or  
7 work going on to reach collective agreement, where we  
8 could, about the information that we would base our plan  
9 on, but also the information that would be used to  
10 communicate with the public.

11 **Q.** It was subsequently, as I understand it, an important  
12 principle of the Scottish Government's public  
13 communication policy that there be honesty and  
14 truthfulness about what was going on with the people; is  
15 that fair?

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

17 **Q.** Why was there not a similar approach to alerting people  
18 to the threat in particular in light of the fact that  
19 Professor Woolhouse had already alerted you to the fact  
20 that it was tremendously important?

21 **A.** Well, to be fair, Professor Woolhouse had alerted  
22 Dr Calderwood to that fact. We were not --

23 **Q.** Were you not aware of that?

24 **A.** As I said earlier, I don't recall seeing his  
25 correspondence, as such. I do recall Dr Calderwood

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1 telling me about hearing from Professor Woolhouse and  
 2 broadly what he was saying, along with others that she  
 3 was also hearing from, and I think we know that the  
 4 scientific community and the academic community was  
 5 engaged in constant discussion, where there was not  
 6 always agreement -- understandably so, I mean, science  
 7 is an iterative process. So we understood the emerging  
 8 seriousness of the problem, as I think I've already  
 9 indicated, but you have to be clear of your ground  
 10 before you communicate that more widely. It's not  
 11 overly helpful to people to say "We think there might be  
 12 a problem but we can't really tell you at this point  
 13 exactly the size of it".

14 **Q.** Is it your position that you were aware that  
 15 recommendations were being made, a recommendation had  
 16 been made by Professor Woolhouse or others that public  
 17 messaging was tremendously important as at towards the  
 18 end of January?

19 **A.** I don't recall specifically being made aware of that,  
 20 but I am personally very aware of public messaging being  
 21 important.

22 **Q.** Could I then look, please, at another document, which is  
 23 INQ000238707.

24 This is, I think, as we've clarified with other  
 25 witnesses, effectively a Cabinet minute, which tend to

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1 correspondence from Professor Woolhouse, and this  
 2 apparent development that there may be transmission in  
 3 the incubation period before symptoms began to show, as  
 4 regards the difficulties that one might experience in  
 5 any response?

6 **A.** Yes, so that was emerging information. I mean, we had  
 7 had, I think on 24 January, pretty categoric advice from  
 8 policy officials but based on -- yeah, 24 January, clear  
 9 advice with respect to the scientific knowledge at that  
 10 time that people carrying the virus are only infectious  
 11 to others when experiencing symptoms. So that was  
 12 pretty categoric advice that there was no asymptomatic  
 13 transmission. That, of course, began to change as  
 14 various experts in the field understood the virus  
 15 better.

16 **Q.** You used the expression a moment ago that science is  
 17 an iterative process, and no doubt that's the case. Is  
 18 it not very important in moments like this to understand  
 19 that if one waits to see a hard scientific conclusion  
 20 that it's likely to be too late to do anything about it?

21 **A.** It is important to not wait unnecessarily for a hard  
 22 scientific conclusion, as you put it, and I think as the  
 23 pandemic progressed we increasingly understood the  
 24 importance of acting fast, but at this time it still  
 25 felt like there was a degree of uncertainty around about

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1 be called, in Scottish Government, "conclusions", as  
 2 I picked up from other similar documents.

3 This is minutes effectively of the Scottish Cabinet  
 4 meeting on 28 January 2020. Could I look at page 5,  
 5 please -- if we actually, sorry, look at page 4 first.

6 As far as coronavirus outbreak is concerned, you  
 7 presented a paper about this at this particular Cabinet  
 8 meeting; is that right?

9 **A.** No, this is the Scans note.

10 **Q.** Yes, but you're speaking to the Cabinet meeting about  
 11 that?

12 **A.** Yes.

13 **Q.** On page 5, please, paragraph 17, over the page:  
 14 "In discussion the following points were made:  
 15 "(a) The rate at which the virus was spreading in  
 16 China was alarming, as was the suggestion from Chinese  
 17 officials that the virus might be infectious in its  
 18 incubation period, before symptoms began to show. If  
 19 confirmed, this would make controlling the virus much  
 20 more challenging. It would be important for Scottish  
 21 Government messaging to be consistent with the latest  
 22 evidence concerning how the virus spread."

23 What was your understanding at that stage of the  
 24 significance, first of all, of human-to-human  
 25 transmission, which we had seen in the previous

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1 exactly the nature of this virus in terms of how it  
 2 would behave, and therefore what did we need to do.

3 **Q.** So the conclusions about what one should do at this  
 4 stage were based on what you felt; is that right?

5 **A.** But also -- no, not entirely, I don't think that is  
 6 fair. We also had the benefit of the CMO's advice from  
 7 her discussions with her colleagues in the rest of  
 8 the UK, and with Professor Van-Tam of course, as the  
 9 Chief Scientist, and others. So we had the benefit of  
 10 her advice that this was an emerging serious situation.

11 **Q.** Just to be clear, I think the advisory systems of which  
 12 we're aware at this stage were predominantly Chief  
 13 Medical Officer to Chief Medical Officer, so it would  
 14 have been Dr Calderwood dealing with Professor Whitty?

15 **A.** Yes.

16 **Q.** And you mentioned the Chief Scientific Officer, that at  
 17 the time would have been Sir Patrick Vallance.

18 **A.** Yes.

19 **Q.** Who I think was also heavily --

20 **A.** Yes.

21 **Q.** -- at this time. So those would be --

22 **A.** Yes.

23 **Q.** Is that -- am I right in thinking that --

24 **A.** Yes, you are --

25 **Q.** -- Van-Tam --

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1 A. Yes, you are, my apologies.  
 2 Q. It's said at paragraph (b):  
 3 "It was likely that, in time, the virus would reach  
 4 the UK. The Scottish Government was putting in place  
 5 appropriate measures in all parts of the country, to  
 6 minimise the risk of contracting the virus and to  
 7 control the spread of any outbreak."

8 Which of the measures that Professor Woolhouse  
 9 mentioned in his prior email that would achieve those  
 10 aims were the Scottish Government putting in place?  
 11 What were these appropriate measures?

12 A. So we would -- we were beginning at that point to look  
 13 in some detail at what we might need to do in terms of  
 14 our NHS in order to increase capacity in the health  
 15 service, as well as increasing kit, like ventilators.  
 16 We were looking at what this might mean for our PPE  
 17 procurement, and we were also actively looking at our  
 18 testing capacity and what we needed to do to increase  
 19 that.

20 Q. Subject to the limitations that we explained a moment  
 21 ago?

22 A. Yes, but also how could we get round those limitations,  
 23 what was available in Scotland by way of private sector  
 24 testing, and there were one or two facilities, as  
 25 I recall, perhaps more, like that in Scotland, of

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1 been made in light of the apparent urgency and severity  
 2 of the threat to access testing and tracing capacity in  
 3 the private sector.

4 A. My understanding is that what the private sector could  
 5 provide was testing. Contact tracing is a skilled  
 6 exercise that was undertaken by our public health  
 7 colleagues and, as I've already said, we already had  
 8 a network, a local network, through our local incident  
 9 management teams, public health incident management  
 10 teams, that worked on contact tracing continuously where  
 11 there was a requirement for that, and so we wanted to  
 12 use that expertise to expand the contact tracing  
 13 capacity. But to do that you need to expand testing.

14 Q. And did these forays into the private sector in this  
 15 period result in any further testing being done beyond  
 16 the capacity that you've already mentioned?

17 A. We -- from memory we did use at least one lab. But  
 18 whether or not we used -- I don't believe we used it in  
 19 this time period, which is January, but we --

20 Q. I was talking about the period that you were talking  
 21 about, where you gave figures for January, February and  
 22 March and April.

23 A. Yes.

24 Q. Over that period were private facilities used?

25 A. Yes, yes.

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1 limited capacity but nonetheless they existed, and  
 2 whether or not we could contract with them to provide  
 3 their service to the NHS.

4 Q. I wanted to ask you about that, actually, the private  
 5 sector. Did it become -- did it turn out that there  
 6 were any private sector facilities for undertaking  
 7 testing or any of the other processes required within  
 8 the private sector?

9 A. So from my memory, there was at least one, possibly two,  
 10 private testing facilities. I think one subsequently  
 11 was also used by St Andrews University, but I may be  
 12 wrong about that. We also --

13 Q. (inaudible) over this period in particular.

14 A. Yeah. Over this period, I think there were one or two.  
 15 We also were, of course, looking at private health  
 16 facilities in terms of bed space, not for Covid but for  
 17 other procedures, and whether or not we could, if you  
 18 like, buy up those beds for the NHS.

19 Q. Because, as I think you've candidly accepted, there were  
 20 issues with the NHS's capacity to undertake testing and  
 21 ultimately tracing --

22 A. Yes.

23 Q. -- which existed at that time?

24 A. Yes.

25 Q. It might be suggested that greater efforts should have

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1 Q. To what extent, therefore, did they boost the numbers  
 2 that you have talked --

3 A. Their numbers were very small but we were not in the  
 4 business of cavilling at small numbers, we needed all  
 5 the capacity we could get.

6 Q. Thank you.

7 Just before we take this away, there's one aspect of  
 8 this I just wanted to follow up with you. You've  
 9 mentioned already the collaboration with people like  
 10 Patrick Vallance and Chris Whitty, this minute records  
 11 at paragraph (e):

12 "While there had been good collaborative working  
 13 between the UK's Chief Medical Officers, the UK  
 14 Government had not been sufficiently responsive to  
 15 requests from Scottish Government for information  
 16 (including about UK nationals currently in China) and  
 17 had not fulfilled a number of the commitments it had  
 18 made at the Cabinet Office Briefing Room meeting held on  
 19 24 January. This point would need to be raised urgently  
 20 at senior official level."

21 This is something we've seen from other witnesses,  
 22 that there seemed at this a period and, if I recall the  
 23 evidence going forward, to be issues with access to  
 24 information which the Scottish Government needed from  
 25 the UK Government. Can you recall what the details of

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1 this were? Can you elaborate on what sort of  
2 information was lacking and how that was impeding  
3 Scotland's response?  
4 **A.** So the particular meeting that's referred to there is  
5 the first -- I believe the first COBR meeting which was  
6 chaired by Mr Hancock and which I and the Scottish Chief  
7 Medical Officer attended.

8 My feeling at that meeting was that there wasn't  
9 sufficient urgency from the UK Government, and I do  
10 recall raising in that meeting or querying their  
11 intention to focus on flights into the UK from Wuhan,  
12 and suggesting that international travellers often  
13 travelled via hub centres like Schipol or Dubai, and  
14 that we should be looking at flights from there too if  
15 we were talking about trying to ensure that we knew  
16 whether the virus was coming in via any of those routes,  
17 and that not being considered the right thing to do.  
18 I believed that was wrong, and said so. But of course  
19 that was not within my purview as a Scottish  
20 Health Secretary.

21 And there were times then, and subsequently, when  
22 Scottish Government officials were frustrated by slow  
23 information or the absence of information. To be  
24 entirely fair, in my dealings with Mr Hancock subsequent  
25 to that COBR meeting, where I think we had a bit of  
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1 so usually, under the leadership of Mr Connaghan, those  
2 phone calls would be made, he would come and tell me,  
3 I would agree, "Go contract them". So looking at and  
4 doing were often a matter of a day, hours, between one  
5 and the other.

6 **LADY HALLETT:** Thank you.

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

8 **LADY HALLETT:** Break now until 3.15, please.

9 (3.00 pm)

(A short break)

11 (3.15 pm)

12 **LADY HALLETT:** Mr Dawson.

13 **MR DAWSON:** Ms Freeman, I'd like to move on just a little  
14 bit in the timeline into February. We understand that  
15 on 12 February 2020 there was a ministerial tabletop  
16 exercise called Exercise Nimbus which took place. The  
17 intention of this exercise was to test the  
18 decision-making process by COBR, in response to  
19 a fictional scenario drawn from the real reasonable  
20 worst-case scenario pandemic influenza plans.

21 Now, we understand that you did not attend this and  
22 one of your junior ministers --

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

24 **Q.** Do you have any understanding as to -- we have various  
25 documents about this, but, broadly speaking, do you  
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1 a disagreement, but subsequent to that COBR meeting  
2 I found that if I spoke to him directly on matters then  
3 we could resolve them.

4 **Q.** In the period between January and March 2020, did this  
5 information flow issue from the UK Government constitute  
6 an impediment to Scotland's preparation and  
7 understanding in connection with the pandemic?

8 **A.** None that I was aware of.

9 **MR DAWSON:** Thank you.

10 If that's an appropriate moment, my Lady.

11 **LADY HALLETT:** Certainly.

12 Just before we break, Ms Freeman, looking at (b),  
13 Mr Dawson asked you about what measures were put in  
14 place. The statement in the minutes is that the  
15 Scottish Government was putting in place appropriate  
16 measures. When you answered his question I wrote down  
17 your words, not literally verbatim, but that "we were  
18 beginning to look at" or "were looking at". Given that  
19 you were still at very early stages, was putting in  
20 place appropriate measures something of  
21 an overstatement?

22 **A.** No, I don't believe it is, because I think that as we  
23 looked at things we agreed things pretty quickly. So  
24 looking at, for example, would it be possible to use  
25 private laboratories to increase our testing capacity --  
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1 understand what the significance of this exercise was in  
2 pandemic planning for the real pandemic, given that it  
3 was a hypothetical exercise, though based in  
4 a hypothesis that was actually quite close to reality?

5 **A.** Yeah, so I understood it to be an attempt, if you like,  
6 to almost update or double check planning against the  
7 flu pandemic, the potential of the flu pandemic, which  
8 had informed most of government planning prior to  
9 Covid-19.

10 **Q.** Given the circumstances and the severity of the  
11 circumstances in reality that you've just understood was  
12 your -- you just explained was your apprehension of the  
13 Professor Woolhouse and other medical information you  
14 were privy to, was it not important that you attend that  
15 in order to make sure that Scotland's position was as up  
16 to date as it possibly could be in the planning?

17 **A.** I think it was important that a Scottish minister  
18 attended and that's why Mr Fitzpatrick did. I can't  
19 recall -- I don't have my diary with me -- as to what  
20 else I was doing at that time, but I would have made  
21 a decision that whatever else that was required my  
22 personal attention more than this did, and I of course  
23 had confidence in my health minister to attend, to  
24 ensure that any points that we wanted raised were  
25 raised, and to feed back to me on the outcome of that.  
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1 Q. The minutes or the note of the meeting record the  
 2 exploration, I think, of a whole load of different  
 3 agencies and departments of the UK Government that might  
 4 need to be engaged in a response, so "For this part we  
 5 need to engage with this part of government". There is  
 6 only one reference that we could find to the Scottish  
 7 Government, which is -- it says:  
 8 "SCOTTISH GOVERNMENT (SG) outlined that they had  
 9 activated their response and were thinking about the  
 10 same issues. There had been good collaboration across  
 11 CMOs. They emphasised that everyone had to be clear  
 12 about priorities before decisions were made."  
 13 Now, to be clear, as I understand it, this is  
 14 a hypothetical position of the Scottish Government in  
 15 a hypothetical exercise, although one would have  
 16 expected, would one not, if the purpose of this exercise  
 17 was trying to update the planning and apply it more to  
 18 the potential real life situation that was evolving,  
 19 that the Scottish Government would have had more to  
 20 contribute and say than simply that?  
 21 A. I'm not sure if that would be fair. It wasn't the  
 22 Scottish Government responding hypothetically, it was  
 23 the Scottish Government saying that, for example, our  
 24 Resilience Room had been set up, and the purpose -- one  
 25 of the purposes of our Resilience Room is to draw

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1 escalate either along the lines of Professor Woolhouse's  
 2 predictions or something similar to that, that  
 3 Scotland's role would be to allow the UK Government to  
 4 decide on policy and for it to implement an operational  
 5 response within Scotland?  
 6 A. No, that wasn't the understanding on 12 January. The  
 7 understanding at that point, in my mind, would be that  
 8 we would see four nations collaboration in response to  
 9 a virus. And what that means is that as far as possible  
 10 we would share information, share decision-making, agree  
 11 the direction and the response that we would take,  
 12 co-ordinate that where that was possible, but as -- and,  
 13 as it turned out, each of the four nations caveating  
 14 that approach by saying "But in addition we may diverge  
 15 one from the other depending on our judgement as to what  
 16 is right for the population that we serve".  
 17 Q. If that was the Scottish Government's position, should  
 18 it not have set it out as part of Exercise Nimbus?  
 19 A. Arguably so, but it does not appear from the note that  
 20 we did.  
 21 Q. Thank you.  
 22 There was a civil servant, I understand, who worked  
 23 alongside you called Derek Grieve --  
 24 A. Yes.  
 25 Q. -- is that correct? He was the deputy director for

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1 together different relevant parts of government to focus  
 2 on and co-ordinate action in response to. So it would  
 3 do that on flooding, for example, it did it when there  
 4 was the attack on Glasgow Airport, and it was stood up  
 5 for Covid.

6 So it brings -- if you like, it co-ordinates the  
 7 different parts of the Scottish Government. So we don't  
 8 need to go through a big list of different bits of  
 9 Scottish Government that need to do things, the  
 10 Resilience Room does that.

11 Q. But if this exercise -- the UK Government seemed to list  
 12 all the various different things it was going to do. If  
 13 Scotland was going to play an active part in that, would  
 14 it not need to be absolutely clear in the updated plan  
 15 exactly what it was that the Scottish Government was  
 16 going to be relied upon to do?

17 A. Well, it would be clear in the updated Scottish  
 18 Government plan. And whatever came from that Nimbus  
 19 Exercise Nimbus would feed back into that and that would  
 20 include giving me feedback from the exercise itself, so  
 21 I knew what the UK Government was planning and was  
 22 able -- would be able to check that we were paralleling  
 23 that, if you like, as well as anything else that we  
 24 might be doing.

25 Q. Was it anticipated at this stage, that if matters did  
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1 health protection division within the directorate of  
 2 population health; is that correct?

3 A. Yes.

4 Q. We have looked already at some notes he kept in his  
 5 notebook over this period, and they are at INQ000346137.  
 6 He attended a number of key meetings around this period  
 7 with you and was generally engaged in the Scottish  
 8 response; is that fair?

9 A. Yes.

10 Q. Page 14, he says -- this is the Wednesday 26 February we  
 11 understand it:

12 "Attended COBR (M) meeting with Cab Sec."  
 13 That would be you?

14 A. Yes.

15 Q. And:

16 "It's clear all [departments] in UK [Government] are  
 17 fully engaged [and] mobilised in a way that the SG  
 18 simply isn't."

19 Then in the next day it refers to someone trying to  
 20 encourage them but with "no real engagement".

21 "They then spent 20 [minutes] talking about internal  
 22 SG comms. Completely amazed!"

23 Then on page 18, this skips forward a week or so to  
 24 Thursday 5 March, where he says that:

25 "I attended Directors meeting [I think this was the  
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1 top] ... Laid it out thickly but few believe this is  
 2 going to be serious."  
 3 It appears here that Mr Grieve is suggesting that  
 4 within his department, within your department --  
 5 directorate I should say, that there was a general lack  
 6 of awareness of the severity of the situation, in  
 7 contradistinction, it would appear, to the position in  
 8 the UK Government.  
 9 **A.** Well, certainly if that's the case, it is in  
 10 contradistinction to the position of health ministers,  
 11 myself included, or the First Minister or the Deputy  
 12 First Minister for that matter. It's clearly  
 13 Mr Grieve's feeling and view, and I'm not going to cavil  
 14 against that. I think he was reasonably frustrated that  
 15 other parts of the directorate -- it's a very big  
 16 directorate -- were -- appeared to him to be taking  
 17 a view that this was a public health matter and  
 18 therefore not for them. And that was probably fair in  
 19 those early days, but of course the directorate had to  
 20 come together fairly quickly because in the same way as  
 21 we had to redeploy NHS staff to respond to Covid, we had  
 22 to redeploy -- not I personally, obviously, the senior  
 23 civil service had to redeploy civil servants to  
 24 strengthen parts of the directorate that were responding  
 25 directly to the pandemic.

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1 virus in northern Italy?  
 2 **A.** Yes -- excuse me -- yes, it was.  
 3 **Q.** What advice did you receive about the dangers that might  
 4 be created by groups of people -- not just, of course,  
 5 the teams and people themselves, but the supporters that  
 6 would be going to the game, possibly going to Italy and  
 7 coming back to Scotland subsequently?  
 8 **A.** Yes, so the advice I received which came from the CMO,  
 9 but also was advice, through her, from Health Protection  
 10 Scotland, and I believe some of this was at least  
 11 discussed at SGoRR meetings, was that the risk of spread  
 12 in an outdoor setting was less than that when people  
 13 were indoors, that people were already coming here, and  
 14 if we cancelled the actual match more of them would  
 15 concentrate or congregate for longer in an indoor  
 16 setting, where the risk was higher.  
 17 **Q.** I wonder whether we might be at slight cross-purposes  
 18 here, Ms Freeman, I wonder whether the response you're  
 19 giving relates to a later rugby match that was taking  
 20 place in Scotland. What I'm talking is, in the  
 21 international season the matches take place every week  
 22 or two weeks.  
 23 **A.** Okay.  
 24 **Q.** We'll get on to that in a moment. But what I was asking  
 25 about was matches that took place towards the end of

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1 **Q.** And officials required to take forward practical actions  
 2 based on the threat, such as the testing programme,  
 3 et cetera, that we discussed earlier?  
 4 **A.** Yes.  
 5 **Q.** And these would be the officials that he's talking about  
 6 who had have required to take those important practical  
 7 actions forward on your instruction or otherwise?  
 8 **A.** Well, they would be under the leadership of the  
 9 director-general at that time, and also of Mr Connaghan,  
 10 and both of those individual I had a great deal of  
 11 confidence in their ability to corral individuals to  
 12 take the action -- not just take the action that we  
 13 required them to but to do so speedily. And of course  
 14 Mr Connaghan was in daily contact with our NHS boards as  
 15 well, where a lot of the action had to take place too.  
 16 **Q.** You may recall, I hope you recall, that two  
 17 international rugby matches took place towards the end  
 18 of February or were due to take place towards the end of  
 19 February in Italy: the Scotland men's international  
 20 rugby team played in Rome on 22 February; the women's  
 21 international rugby team had been due to have a match on  
 22 23 February, also in Italy, which was eventually  
 23 cancelled due to local concerns about Covid.

24 Was this a matter that was on your radar at the time  
 25 in particular in light of concerns about the spreading

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1 February -- or one took place, one was due to take  
 2 place -- of the Scotland men's and women's teams in  
 3 Italy --  
 4 **A.** Ah, yes.  
 5 **Q.** -- so away matches. So I wondered whether that was  
 6 a matter that had been brought to your attention,  
 7 because of course a number of people would go to those  
 8 matches, supporters as well as those actually  
 9 participating, and they would come back to Scotland  
 10 subsequently. So was that a matter that you received --  
 11 **A.** Yes.  
 12 **Q.** -- advice about?  
 13 **A.** Yes, my apologies, yes, I was aware of those matches,  
 14 and of the risk, if you like, of people returning from  
 15 those matches, but also people returning from skiing  
 16 holidays, for example, which often took place around  
 17 about that time.  
 18 **Q.** We're aware from the PHS report into the circumstances  
 19 of the Nike conference that somewhere in the region  
 20 of -- there were somewhere in the region of 300 entry  
 21 points for Covid -- in reality, subsequently found  
 22 out -- that came from continental Europe, and therefore  
 23 would it not, at least in hindsight, be something upon  
 24 which you might have a comment as regards the  
 25 advisability of sending large groups of people to

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1 northern Italy, which was the very area that was  
 2 associated with outbreaks at that time?  
 3 **A.** I'm not quite sure what you're asking --  
 4 **Q.** What I'm asking you --  
 5 **A.** -- we should have stopped people going --  
 6 **Q.** Yes.  
 7 **A.** We could have issued advice to people not to go. We  
 8 couldn't actually stop people going. And in a similar  
 9 vein, people returning, we would require that  
 10 information to come from the UK Government so that we  
 11 could, had we had the capacity, have tested them on  
 12 their return. So it was not something entirely at the  
 13 hand of the Scottish Government.  
 14 **Q.** When you say that you could have advised but not could  
 15 have stopped them, what was your understanding of the  
 16 powers of the Scottish Government at that time with  
 17 regard to controlling its borders in that way?  
 18 **A.** So my understanding at that time was that the Scottish  
 19 Government -- that the UK Government controlled the  
 20 borders into the UK, and --  
 21 **Q.** For all purposes? For all purposes?  
 22 **A.** Yes.  
 23 **Q.** Thank you.  
 24 **A.** And the Scottish Government's responsibility was for  
 25 public health measures inside Scotland.

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1 there, Ms Freeman, it says:  
 2 "Although Containment remained the highest priority,  
 3 it was likely that the response to the outbreak would  
 4 move into the Delay phase in the near future. The  
 5 objective during that phase would be to maximise the  
 6 NHS's ability to cope with the outbreak by spreading the  
 7 number of cases over a longer period. Ideally, it would  
 8 be best to delay the spread of the disease into the  
 9 summer months, when it was thought that the medical  
 10 effects might be less severe (although this was as yet  
 11 not proven). Delay would also bring nearer the time  
 12 when research into a possible vaccine might be closer to  
 13 bearing fruit.  
 14 "16. During the Delay phase, the authorities'  
 15 principal tool was likely to be 'social distancing',  
 16 which could include restrictions on large scale  
 17 gatherings such as sporting fixtures or cultural events,  
 18 but it would be important not to implement such measures  
 19 prematurely."  
 20 And at paragraph 19 on page 4 it says:  
 21 "(c) It appeared likely that, over the next few  
 22 months, there would be a relatively slow increase in the  
 23 number of cases from the current very low base, given  
 24 the efforts that were being put into containment.  
 25 At present, there was little evidence of community

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1 **Q.** Thank you.  
 2 There is subsequently a meeting on -- of the Cabinet  
 3 on 3 March. There is just one aspect of that -- we  
 4 might not have to go to the minutes for this. There is  
 5 a record on page 5, this is on 3 March. Again, this is  
 6 updating again with further information that's becoming  
 7 apparent, similar to the minute we looked at before.  
 8 It says there that:  
 9 "COVID-19 would also have a differential impact on  
 10 different groups within society, such as the most  
 11 vulnerable and older people (unlike influenza, the new  
 12 coronavirus appeared not to pose a serious risk to young  
 13 people but had a disproportionately serious effect on  
 14 those in their 70s, 80s and over)."  
 15 That's very helpfully been put up.  
 16 Just to be clear, is that, does that reflect your  
 17 understanding of the risk profile, if you like, as the  
 18 science was showing at that point?  
 19 **A.** Yes.  
 20 **Q.** That's 3 March.  
 21 **A.** Yes, it does.  
 22 **Q.** Thank you.  
 23 Could I also please, in that minute, go to  
 24 paragraph 15. Just to be clear, it's INQ000232901.  
 25 Page 4. Thank you very much. Just the top paragraph

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1 transmission in the UK, and new cases tended to be in  
 2 'clusters' -- hence the continued importance of contact  
 3 tracing as one of the main containment strategies it  
 4 was, however, likely that containment would reach its  
 5 practical limits over coming weeks."  
 6 So do we take it from this that as at 3 March the  
 7 Scottish Government was under the impression, first of  
 8 all, that it would be important not to implement  
 9 measures prematurely?  
 10 **A.** Yes.  
 11 **Q.** Sorry, I was just going to ask what the basis of that  
 12 understanding --  
 13 **A.** So there was continuously all through the response to  
 14 the pandemic -- in as far as the time period that I was  
 15 involved in it, there was a continuous discussion  
 16 between -- a judgement between what I said earlier about  
 17 act fast, act decisively, but an argument that said: if  
 18 you act too quickly, ie prematurely, then you don't have  
 19 enough evidence and rationale to convince the public  
 20 that they should comply with what you were asking them  
 21 to do, and so the tension, if you like, is between the  
 22 urging to act fast and act decisively and the other  
 23 argument that comes that says "But people won't know why  
 24 you're stopping them from doing things, and if they  
 25 don't believe it's a good reason they're not going to

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- 1 comply with that". And we don't want to get into  
2 a situation where -- we need to be, in public health, in  
3 a situation where people believe there is a basis for  
4 what you're asking them to do that is about protecting  
5 themselves but also protecting others.
- 6 **Q.** One of the reflections that Professor Smith, when he  
7 gave evidence to the Inquiry, shared with us was that he  
8 was under the impression that one of the things that one  
9 might do better in the future, if you like, was that  
10 greater reliance could be placed on behavioural science  
11 in order to try to assist, I think, with the balance  
12 that you're trying to point out. Was the position that  
13 it would be important not to implement such measures  
14 prematurely based on any scientific advice?
- 15 **A.** I believe so. I believe it was discussions that -- that  
16 had been held in SAGE, but also, I believe, between the  
17 four chief medical officers. It was certainly part of  
18 the discussions that I had with the CMO and with the  
19 First Minister. And of course, as you know from  
20 a previous witness, we did reach out to gain expertise  
21 in terms of behavioural science as we progressed.
- 22 **Q.** Yes, we've heard from Professor Reicher who was a member  
23 of SPI-B but also served on the Scottish Covid Advisory  
24 Group?
- 25 **A.** Yes.

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- 1 **Q.** I see, that was part of your understanding of the  
2 strategy -- or part of the strategy at that time was to  
3 spread out the peak over a longer period into the summer  
4 months was the objective; is that right?
- 5 **A.** As long as you believed it was necessary. So it wasn't  
6 necessarily into the summer months, it was spreaded so  
7 that the peak is smooth, the curve is flattened --  
8 I think is the phrase I used in Parliament, the curve is  
9 flattened -- so that we can cope with that.
- 10 There was also the view, as I've outlined before,  
11 that the summer months, when more people are outside,  
12 transmission is lower than when we are gathered together  
13 in confined spaces.
- 14 **Q.** Thank you.
- 15 The idea, I think, as we see in this paragraph, is  
16 that the anticipation was that there would be  
17 a relatively slow increase in the number of cases from  
18 the current very low base, given the efforts that were  
19 being put into containment. So if one followed this  
20 practice to try to push the peak into the summer months,  
21 there would be a relatively slow increase over that  
22 period?
- 23 **A.** No, not quite. So the thinking that there would be  
24 a relatively slow increase in cases was during the  
25 containment phase for as long as contact tracing was

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- 1 **Q.** That of course wasn't constituted in Scotland until  
2 later. But your understanding was that there was  
3 scientific evidence that would suggest that it was  
4 important from a behavioural scientific perspective not  
5 to implement such measures prematurely, that was your  
6 impression at that time?
- 7 **A.** My impression at that time was that there had been  
8 discussions in those forums.
- 9 **Q.** Thank you.
- 10 As regards the apparent Scottish Cabinet impression  
11 that there was a need to spread the number of cases over  
12 a long period, ideally it would be best to delay the  
13 spread of the disease until the summer months, was there  
14 an impression at that stage that that was a goal that  
15 was achievable, extending the peak into the summer  
16 months?
- 17 **A.** So that was part of what was considered as the delay  
18 phase, where you introduce a number of  
19 non-pharmaceutical -- NPI -- interventions in order to  
20 restrict social movement and congregation, and what that  
21 does is it spreads out the peak of the expected numbers  
22 of the virus. In other words, you lengthen the period  
23 when you will have the virus, but you don't have a peak  
24 of numbers, and that -- that goes to not -- attempting  
25 not to overwhelm our National Health Service --

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- 1 sufficient to contain the virus. Because contact  
2 tracing is trying to capture into one place everyone who  
3 might be infected, give them the necessary advice about  
4 what they need to do so they don't infect others, and  
5 therefore contain spread in that group, if you like.  
6 But there comes a point where that isn't going to work  
7 any longer, which I think the paper refers to, at which  
8 point contact tracing isn't going to work to contain the  
9 virus, you need to take other steps.
- 10 **Q.** Yes. And given the document refers to "given the  
11 efforts ... put into containment", that there would be  
12 this relatively slow increase, I think, what efforts  
13 were being put into containment? I think we've already  
14 discussed that there weren't very many; is that right?
- 15 **A.** No, what we've discussed is that the efforts were around  
16 contact tracing --
- 17 **Q.** Yes.
- 18 **A.** -- at that point.
- 19 **Q.** Yes, but what were the efforts being put into  
20 containment then?
- 21 **A.** Okay, so where cases were notified, then contact tracing  
22 contacts the individual and asks them to tell them where  
23 they have been in the most recent period. There was  
24 a change in that, I think, from "Where have you been  
25 from the time when your symptoms first appeared?"

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1 Subsequently it was a "Where have you been and who have  
2 you been with from one or two days before your symptoms?  
3 Who were these people? What were you doing?" And then  
4 contacting those individuals and giving them the public  
5 health advice about isolating and not contacting others.

6 **Q.** I think we've discussed already that there were a number  
7 of limitations within the Scottish system of testing and  
8 tracing at that time; is that right, yes?

9 **A.** Yes, that's right, but it is also fair to say that, with  
10 reference to the Nike conference, it was contact tracing  
11 that prevented the strains of virus prevalent in the  
12 individual who were affected from that conference from  
13 spreading any further.

14 **Q.** There is some comfort I think being taken in this  
15 paragraph from the efforts that were being put into  
16 containment; is that right?

17 **A.** I'm not -- no. I would have been one of the people "in  
18 discussion the following points were made". At no point  
19 in 18 months did I feel comfortable.

20 **Q.** But in that paragraph what's being suggested, that  
21 "given the efforts that were being put into  
22 containment", it's "likely that, over the next few  
23 months, there would be a relatively slow increase in the  
24 number of cases from the current very low base"?

25 **A.** Yes.

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1 this period as well, to do with the spread of Covid-19  
2 in care settings. In particular, to be clear, I'm  
3 interested in care homes obviously, but I'm also  
4 interested in prevention measures that were taken to try  
5 and protect people that were having care in their own  
6 home.

7 **A.** Yes.

8 **Q.** So we have already established, I think, that it had  
9 been known from the minutes from at least early March,  
10 if not before, that the elderly were particularly  
11 vulnerable to the virus; that was established?

12 **A.** Yes.

13 **Q.** And I think that it had been known, had it not, from  
14 sources including the Diamond Princess episode towards  
15 the end of February, that elderly people who were put in  
16 confined spaces indoors were particularly at risk, as  
17 that episode had rather shown. Professor Sridhar  
18 I think described it as almost like an experiment that  
19 would show you quite a lot that one wouldn't have wished  
20 to have happened, but from which one could derive quite  
21 a lot of information.

22 Is that a fair background to where we were, say, by  
23 the beginning of March?

24 **A.** Yes.

25 **Q.** Thank you.

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1 **Q.** So the containment efforts will result in this objective  
2 that I think we've identified as being to try to squash  
3 the sombrero, or whatever one calls it, to get the peak  
4 further into the summer, and those eff -- some reliance  
5 is being placed on those efforts as being something that  
6 makes it likely that that will be achievable?

7 **A.** So --

8 **Q.** -- what it says on the page.

9 **A.** Yes, I absolutely --

10 "... a ... slow increase in the number of cases from  
11 the current very low base, given the efforts ..."

12 And you're right, it does say "over the next few  
13 months". That was a mistake. The efforts being put  
14 into containment would not see us through the next few  
15 months, because the virus was transmitting far too  
16 quickly for that.

17 **Q.** And the -- sorry.

18 **A.** Sorry. Again to be sure that we're understanding each  
19 other, the flattening of the peak is part of the delay  
20 phase, that is the point of those non-pharmaceutical  
21 interventions is to slow down transmission. Containment  
22 is about trying to contain it.

23 **Q.** Thank you.

24 I'd like to ask you -- move on to a slightly  
25 different though connected area, which comes in around

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1 Could I turn, please, to the Cabinet minute from  
2 10 March, which is INQ000238706. One second.

3 **(Pause)**

4 It's INQ000078529, sorry, my fault. This is in  
5 fact, sorry, the Cabinet meeting from 17 March.

6 **A.** Yeah.

7 **Q.** If we could go to page 3, paragraph 12, please, so  
8 there's some discussion at this Cabinet meeting where it  
9 says:

10 "Social care presented particular problems,  
11 including those associated with residents in care homes  
12 and similar settings. COSLA had been invited to provide  
13 a co-ordination role across Scottish local authorities'  
14 social care services, and bodies such as Scottish Care  
15 were already working with COSLA to achieve the best  
16 outcomes for those in care."

17 This appears, from our analysis, to be the first  
18 substantive recognition in Cabinet that there are  
19 particular problems associated with residents in  
20 care homes and similar settings. The Cabinet minutes  
21 contain no further consideration of these problems.

22 Is it correct to say that around this time there was  
23 no urgency or prioritisation of the issues that would be  
24 posed for those who were in care, using that broad  
25 definition I gave a moment ago?

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1 A. No, I don't believe that is correct. Guidance had been  
2 issued to care homes on 13 March advising social  
3 distancing or physical distancing, visiting  
4 restrictions. I had written on 13 March that patients  
5 should be screened clinically to ensure that they  
6 weren't being transferred inappropriately to care homes.

7 Q. This is --

8 A. So this Cabinet meeting is after that guidance was  
9 issued. So I don't think it's fair to say that this is  
10 the first time consideration was being given to this  
11 situation. That had not been the case, from my  
12 perspective as the Health Secretary, or indeed I believe  
13 from the First Minister.

14 Q. Thank you. Well, we'll get on to the guidance in  
15 a second.

16 INQ000250859, please. This is a chain of emails  
17 from slightly earlier. If we could go to page 4,  
18 please, so there's a chain of emails here relating to  
19 contact which it appears has happened on 10 March. It  
20 states -- this is sent on behalf of the First Minister  
21 to the CMO, and it states:

22 "The First Minister would be grateful for advice on  
23 the following issue as a matter of urgency. A friend of  
24 the First Minister whose relative is in a care home  
25 received the letter below from the home today.

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1 Service, it is a mixed economy, local authorities have  
2 a significant responsibility for commissioning that  
3 service and have a significant locus in that service, as  
4 does the Care Inspectorate.

5 So consideration was being given early on about what  
6 we could do in that sector for those residents, bearing  
7 in mind this is their home, about how we could institute  
8 measures in addition to the national manual of infection  
9 prevention and control -- which is part of their  
10 contract, all providers are required to abide by -- what  
11 else could we do that would assist them to protect their  
12 residents.

13 And I would like to say at this point -- I have said  
14 it before, but I want it read into the record here --  
15 that I was personally very concerned about our  
16 care sector, both our residential care sector and the  
17 care at home sector for adults, not all of whom were  
18 elderly, and regret very much, and will do for the rest  
19 of my life, any deaths that occurred there because of  
20 action that the Scottish Government didn't take or did  
21 take but could have done better.

22 Q. Thank you.

23 On the subject of the deaths, of course we know that  
24 50% of the deaths in Scotland in the first wave of the  
25 pandemic occurred in care homes.

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1 "[First Minister] said it rather makes the point  
2 that people are starting to vote with their feet. But  
3 it also begs the question of whether we need to issue  
4 some additional urgent advice to the care home sector?  
5 FM would be grateful for thoughts/advice?"

6 In fact, without going into the details, it's  
7 a letter where a care home has sent material or  
8 a notification to a relative of someone in a care home  
9 relating to issues and an escalation of preventative  
10 measures which may cause some anxiety.

11 Is it the case that this email correspondence, which  
12 seems to have come to the First Minister from a friend,  
13 was the first indication or the first matter which  
14 provoked the need to try to issue some guidance?

15 A. No, it wasn't.

16 Q. Well, when did the concern about care homes and those in  
17 care start within the Scottish Government?

18 A. So -- excuse me -- it started most definitely in -- in  
19 and around February. The Chief Nursing Officer was the  
20 lead official in this, given her responsibility or the  
21 responsibility of that post for infection prevention and  
22 control, and discussions were beginning with  
23 Scottish Care and with COSLA.

24 You'll recall, I know, that the care home sector and  
25 the care at home sector is not like our National Health

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1 A. Yes.

2 Q. You mentioned the idiosyncrasies, if you like, of the  
3 way in which care -- the care sector is organised in  
4 Scotland, not part of public service entirely but  
5 a combination of public and private delivery. It is the  
6 case, however, that the threat to people in care homes  
7 which resulted in those deaths is a public health matter  
8 for which the Scottish Government had overall  
9 responsibility?

10 A. Yes, that's correct.

11 Q. And which fell within your remit --

12 A. Yes.

13 Q. -- as Cabinet Secretary?

14 A. Yes.

15 Q. When you say you were concerned in February, I think you  
16 said, about the care sector in the -- with the wide  
17 definition I've given to it, it is correct to say that  
18 despite the concern that you've indicated that you had,  
19 no guidance was issued to that sector until 13 March,  
20 which was after the date upon which the email was sent  
21 to the First Minister from her friend which indicated  
22 there were concerns within the sector; is that correct?

23 A. That is correct. Part of the difficulty that Scottish  
24 Government -- we had in Scottish Government at that  
25 point was because of the devolved nature, I think it's

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1 probably fair to say, of the governance and management  
2 of that sector, the data that Scottish Government held  
3 was limited, about the exact number of care homes, and  
4 I believe we actually for the first time got the  
5 information from Dr Macaskill in Scottish Care about his  
6 membership and about the size and spread of those  
7 care homes, in other words the number of residents they  
8 might have, their staffing levels and so on. So  
9 centrally we had limited data, much more limited than we  
10 had about the National Health Service.

11 **Q.** Was it not possible -- we've heard evidence already  
12 about the limitations on the Scottish Government's  
13 access to data in the care sector. Was it not possible  
14 to try to get some of that information from the likes of  
15 Dr Macaskill, who was engaged in the sector?

16 **A.** Well, as I've just said, yes, we did, and officials were  
17 actively working to get that information, and of course  
18 Dr Macaskill and I had previously worked together before  
19 the pandemic, so it was entirely possible and we did  
20 converse frequently over the whole period of the  
21 pandemic.

22 **Q.** There was a particular concern, I think, from those  
23 early stages about the possibility that the transfer of  
24 patients into care homes, either from the community or  
25 more particularly from hospital settings, may pose

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1 should be social distancing, essential visits only, that  
2 the home should accept admissions to the home if safe,  
3 and that the home should be closed if residents test  
4 positive. There is no requirement in that for  
5 transfers, from either the community or hospital  
6 setting, to have a negative test before there is  
7 an admission; is that correct?

8 **A.** No, that's correct, and that partly goes back to our  
9 earlier conversation about the availability of testing  
10 capacity.

11 **Q.** We'll get back on to that in a second.

12 Just as regards these particular measures, you  
13 mentioned a moment ago the possibility that residents of  
14 care homes who are patients in hospital may suffer from  
15 confusion. To what extent were there -- was there  
16 understanding within the Scottish Government about  
17 whether it would be practically possible for social  
18 distancing to take place, either as a result of patients  
19 suffering, for example, from dementia or other such  
20 conditions, and as regards the capacity and ability of  
21 care homes to enforce such social distancing in those  
22 environments?

23 **A.** So our understanding was that -- or my understanding  
24 was, primarily through discussions with Dr Macaskill,  
25 that it would be possible to do that but we needed to

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1 a risk to those care homes, given that patients who  
2 are -- residents who are being transferred may have  
3 acquired the virus in another setting. Is that correct?

4 **A.** So there was two-fold concern. One was that patients  
5 who were ready to be discharged from hospital because  
6 they no longer required hospital-based clinical  
7 treatment should not stay in hospital any longer -- now,  
8 this was a pre-Covid concern -- any longer than they  
9 needed to, especially if they were elderly or frail,  
10 because a longer stay in hospital diminished their  
11 muscle capabilities, could produce confusion in those  
12 who had not previously experienced that, and so on.

13 In terms of Covid, the concern was that that made  
14 them more vulnerable to acquiring the infection in  
15 hospital. Against that was the risk of transferring  
16 people to care homes who had not been tested, and what  
17 we attempted to do was to put in place additional  
18 mitigation measures to the national manual on infection  
19 prevention and control which all care homes were  
20 required to follow, and those additional mitigation  
21 measures are the ones that are set out, initially in the  
22 13 March guidance, but then increased significantly over  
23 a relatively short timescale.

24 **Q.** The 13 March guidance, as we've seen in documents  
25 already, you'll recall includes guidance that there

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1 have some flexibility, particularly around patients --  
2 or residents, I should say, who suffered from dementia  
3 who may find the lack of communal gathering upsetting  
4 and distressing, and at some point that feeds into the  
5 visiting guidance as well.

6 **Q.** What did the guidance mean when it referred to  
7 "essential visits only"?

8 **A.** So "essential visits only" referred to both end of life  
9 visits by family, but also those visits that might be  
10 necessary from a family member where an individual  
11 resident was distressed; it could also mean clinical  
12 visits from a local medical practitioner.

13 **Q.** Was consideration given to the difficulty that there  
14 might be explaining that requirement to residents of  
15 care homes who may have dementia?

16 **A.** Well, yes. But in none of this was there a risk-free  
17 choice. In none of this, at any point. So, yes,  
18 I understood very well the difficulty and the distress  
19 that might be caused to residents, and certainly the  
20 distress to their families by asking for physical  
21 distancing, the ending of communal dining, the ending of  
22 communal association, the ending of some of the external  
23 visits that residents do a great deal from, whether that  
24 was in terms of physical -- physiotherapy, or local  
25 schools visiting, or what it might be.

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1 So I understood that, but I also believed to allow  
2 that to continue was to increase the risk of  
3 transmission of the virus into the care home and  
4 transmission of the virus within the care home.

5 **Q.** Did the guidance, either on 13 March or indeed the  
6 subsequent one which I think was dated 26 March, include  
7 any guidance relating to requirements to minimise the  
8 risk of infection from staff in the care homes?

9 **A.** So both sets of guidance, as I recall, covered the use  
10 of PPE and guidance to staff on what PPE might be  
11 required, and the putting on and the taking off of PPE,  
12 particularly if as a staff member you were dealing with  
13 more than one resident, you had to take everything off  
14 and put on a new set. Clear guidance obviously that's  
15 in the manual but it's -- was repeated about hand  
16 washing and so on.

17 **Q.** What was the Scottish Government's understanding of the  
18 availability of that PPE in order to meet those  
19 requirements?

20 **A.** So up until, pre-Covid, care homes and the social -- the  
21 adult social care at home sector, that mix of, I think,  
22 80% private providers, 20% local authorities and the  
23 rest were third sector, independent providers, all of  
24 them were responsible for the provision of their own PPE  
25 and for their contracts. But Mr Macaskill primarily,

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1 availability; although of course you say that the  
2 Scottish Government is using its purchasing power, it  
3 would be necessary to actually procure that, as you say,  
4 in a global pandemic?

5 **A.** No, NSS, our national services, which is the procurement  
6 arm of the NHS in Scotland, had stockpiles of PPE, and  
7 so introducing that on 19 March meant that they could  
8 provide from their stockpiles PPE to care homes, and  
9 that triage service.

10 Now, as we subsequently see, it was changed later  
11 because it was a reactive service so it relied on  
12 care homes to ask for what they needed. But the  
13 national -- or NSS, the procurement arm, could already  
14 provide from its stockpile. What it then had to do was  
15 increase its orders coming in, in order to keep the  
16 stockpile at the level that was needed.

17 **Q.** As at the date of the 13 March guidance, I think you've  
18 described that the guidance pointed out that PPE would  
19 be necessary for staff in order to minimise the risk of  
20 infection, how it should be used in order to try to  
21 achieve that aim. So the requirement for it was known,  
22 but as far as the guidance was concerned the position at  
23 that date was: you're on your own?

24 **A.** I wouldn't put it as bluntly as that, Mr Dawson, because  
25 that implies a careless attitude on my part or anyone

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1 but not only him, drew my attention to the problem that  
2 at that point some were having with sourcing PPE.  
3 Because this is a global pandemic, the demand for PPE is  
4 very high, the price is soaring, and the orders that  
5 they had were pretty low value orders in terms of the  
6 amount, so they were getting squeezed. And it was at  
7 that point, I think 19 March, when we introduced the  
8 triage service. In other words, we decide -- I decided  
9 that our national procurement service which procured in  
10 volume PPE for our NHS would now procure PPE, additional  
11 amounts of PPE, to try and help the social care sector,  
12 because (a) it was a known provider and purchaser of  
13 PPE, it did it in high volume, it had known suppliers  
14 who would want to continue to be suppliers post the  
15 pandemic, so the chances of being knocked off their  
16 list, if you like, or pushed down the list for delivery  
17 was lower, and they had the strength, if you like, to  
18 increase their PPE volume so that we could begin to  
19 offer it not just to the social care sector but also to  
20 primary care in the community --

21 **Q.** That -- sorry.

22 **A.** -- including our pharmacies and so on.

23 **Q.** That initiative was instigated on 19 March, did you say,  
24 and that will have taken some time to feed PPE into the  
25 system because there would need to be negotiations about

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1 else's, and we certainly didn't have that. What that  
2 reflects is the pre-pandemic position, and as soon as it  
3 was made clear to me that that pre-pandemic position was  
4 struggling to produce the level of PPE in the quantity  
5 or of the type that was required, by Dr Macaskill and  
6 others, then we acted to change that so that the  
7 national procurement service for the NHS could provide  
8 PPE to our care sector, both adult social care at home  
9 but also residential care.

10 **Q.** I wonder if I could draw your attention to an email  
11 which was received, as I understand it, by Scottish Care  
12 from one of its members on -- dated 25 March 2020. It's  
13 INQ000249952. This email -- as I say, dated 25 March --  
14 sets out a number of the issues which one of the members  
15 of Scottish Care is having at that time.

16 Now, we've looked at this before, but I'd  
17 particularly like to take you to the passage under the  
18 slightly understated comment, "A few worrying points",  
19 just below where we are at the moment, and over to the  
20 next page, please.

21 So these are -- this is what this particular  
22 care home is being told, and just over to the next page,  
23 it says:

24 "... 'as long as staff wear the appropriate  
25 PPE' ..."

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1 Which is effectively shorthand for that element of  
2 the guidance. It says:

3 "... That's not possible. No Care Home has the  
4 appropriate equipment. None. A low grade face mask,  
5 a plastic apron and a pair of latex gloves is not the  
6 appropriate equipment for barrier nursing a potential  
7 carrier transferred from a high risk area in the middle  
8 of a deadly, highly contagious Pandemic by a Care  
9 Assistant with no training in High Risk Infectious  
10 Diseases in a Care Home not equipped or designed for  
11 such."

12 Does that, Ms Freeman, adequately explain the  
13 difficulties that were being experienced with the  
14 guidance, the difficulties that were being experienced  
15 with PPE, and frankly the completely unrealistic  
16 expectation of the Scottish Government as regards this  
17 particular sector and the risk to the residents of  
18 care homes?

19 **A.** I think what it tells us is that there were serious  
20 issues being raised that needed to be taken seriously.  
21 PPE guidance did not come -- I did not write PPE  
22 guidance. For the very reasons we've touched on before,  
23 PPE guidance came through our Chief Nursing Officer  
24 Directorate, based on their clinical understanding of  
25 infection prevention and control, informed by all the

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1 a care home, which of course is not the same as  
2 a hospital.

3 **A.** No, it is not, it is a resident's home. But what was  
4 not being suggested to me at that point, from  
5 Dr Macaskill or anyone else, was an alternative to those  
6 mitigating measures that I had to put in place until our  
7 testing capacity increased to the level that we could  
8 undertake testing prior to discharge or admission to  
9 care homes.

10 **Q.** Another consequence of the policies, the guidance which  
11 Dr Macaskill of Scottish Care pointed out in his  
12 evidence was that the 13 March guidance caused confusion  
13 within the care sector, which led to the belief that  
14 individual residents who were Covid-19 positive should  
15 not be transferred to hospitals. He talked of  
16 a presumption of a blanket ban on care homes  
17 transferring residents who had tested positive to  
18 hospitals, which meant that they were unable to access  
19 required medical care.

20 Was this an issue that was brought to your  
21 attention?

22 **A.** It was, and I believe our CMO acted on that, and having  
23 read the guidance I can understand why that concern was  
24 raised. What was intended, as I understood it, by the  
25 particular paragraph was that, as it is -- as I have

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1 emerging and constantly emerging information about the  
2 nature of the virus. So PPE guidance changed over time,  
3 and the guidance that would have been in that issued on  
4 those various dates reflects the advice that I was being  
5 given about the kind of PPE that was needed.

6 Now, there were instances raised with me, not least  
7 in terms of care at home, about PPE and (a) the  
8 availability of it and (b) the lack of allowing those  
9 care at home staff to exercise their professional  
10 judgement about what they needed, that I sought to  
11 resolve and sought to resolve quickly.

12 But wherever issues were raised, whether they were  
13 directly with me, whether it was through the PPE  
14 helpline, whether it came from Dr Macaskill, through his  
15 members, or any other route, then my response was to  
16 double-check what the concern was and, if there was  
17 a problem in terms of receiving PPE or the adequacy of  
18 PPE, to try and resolve that.

19 **Q.** But these are more than just simple practical issues.  
20 These are -- this is an indication which has been  
21 presented by Dr Macaskill in his evidence, as  
22 I understand it accepted, this was from one care home  
23 but representative of problems experienced across the  
24 sector, that it was simply not possible, as it says  
25 here, for that type of system to be instituted within

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1 recently experienced, indeed -- it is not always  
2 appropriate for an elderly person who is seriously ill  
3 to be transferred to hospital, where the risk of that  
4 transfer increases to their health, than to be provided  
5 care in their own home. That is what that paragraph  
6 intended to convey. The manner in which it is written,  
7 I can see why it would be taken precisely as people were  
8 concerned.

9 **Q.** What did you do in response, as regards that particular  
10 aspect of the guidance?

11 **A.** So I asked our CMO first of all to describe to me what  
12 was meant by that, and then to make sure, through her  
13 channels and her reach, that it was clear what was  
14 intended by that, that it was a clinical judgement  
15 whether an individual should be transferred from any  
16 setting into hospital, just as it is a clinical  
17 judgement whether or not an individual is ready for  
18 discharge. It's not for anyone else to make those  
19 judgements.

20 **Q.** To be clear, you're referring on a number of occasions  
21 to advice from the CMO or the Chief Nursing Officer;  
22 ultimately you and the Scottish Government are  
23 responsible for the guidance. Do you accept that?

24 **A.** I do, I have never caviled from that in any respect.  
25 I was the Cabinet Secretary for Health --

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1 Q. Yes.  
 2 A. -- so I am and was responsible.  
 3 Q. Thank you.  
 4 We understand from his evidence, again, that you met  
 5 with Dr Macaskill on 18 March; do you recall that?  
 6 A. Yes, I did.  
 7 Q. Could we have a look, please, at INQ000261341, page 2,  
 8 and I'd like to address the testing aspect.  
 9 Before we go to the text, just to clarify, I've read  
 10 out to you the broad provisions of the 13 March  
 11 guidance, and is it correct to say that neither the  
 12 13 March nor the 26 March guidance contained any  
 13 requirement for there to be a negative test or indeed  
 14 more than one negative test before a patient was moved  
 15 from a care home -- from a hospital into a care home?  
 16 A. That's correct. The 26 March guidance introduced the  
 17 isolation period, and I think Dr Macaskill refers to the  
 18 aspect of it which is seven days --  
 19 Q. Yes.  
 20 A. -- in what we're about to look at.  
 21 Q. Well, I simply want to confirm with you that the  
 22 guidance did not require there to be negative tests  
 23 before hospital discharge, and indeed no test was  
 24 required for admission to a care home from community  
 25 either?

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1 triaged into four different categories ...  
 2 "- Testing for staff -- currently neither health or  
 3 social care staff are being tested unless they fall  
 4 under categories 1 and 2 [above]."  
 5 If we could turn, then, to page 2, paragraph 11,  
 6 please, it's the passage starting "If our aim ..."  
 7 Maybe over the page.  
 8 (Pause)  
 9 Sorry, just one second.  
 10 (Pause)  
 11 Sorry, it's a different document I'd like to go to,  
 12 if I could. It's INQ000222973. Sorry, this is  
 13 a different paper, which is prepared by Mr Grieve, in  
 14 fact, for Nicola Sturgeon and you on 18 March, so the  
 15 same day. So it's putting it in some context, we've  
 16 seen already that a meeting is being set up, there are  
 17 a number of things which are going to be discussed,  
 18 various options are presented. And on page 2,  
 19 paragraph 11, sorry, it says:  
 20 "If our aim is ultimately to contribute to saving  
 21 lives then we will not be able to limit testing to  
 22 hospitals. A substantial proportion of those who are  
 23 likely to be infected by the virus will remain in  
 24 a community setting, in particular care homes.  
 25 Colleagues in HPS are currently modelling this demand.

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1 A. That's correct.  
 2 Q. That changed subsequently --  
 3 A. Yes.  
 4 Q. -- in the 28 April guidance --  
 5 A. Yes.  
 6 Q. -- where there was a requirement in fact for two  
 7 negative tests, is that right, just to put this into  
 8 context?  
 9 A. Yes, that's correct.  
 10 Q. Thank you.  
 11 So look at this document, please, this is a document  
 12 that was prepared for you, a briefing in advance of the  
 13 meeting that you attended with Dr Macaskill, and in this  
 14 it is stated under "Testing":  
 15 "They have concerns regarding the current testing  
 16 arrangements and would like:  
 17 "- people tested before they are discharged from  
 18 hospital to care homes so that care homes feel confident  
 19 in accepting admissions from hospitals; and  
 20 "- testing for frontline social care staff in order  
 21 to avoid 14 day isolation periods to enable them to  
 22 return quickly to work."  
 23 Then it says, "Lines to Take", and outlines various  
 24 options relating to:  
 25 "- Testing for patients/people is currently being

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1 What we know is that there are 35,989 residents in 1,142  
 2 care homes. Testing a significant proportion or all of  
 3 these residents would significantly exceed the available  
 4 capacity in laboratories."  
 5 This paragraph starts with the conditional, "If our  
 6 aim is ultimately to contribute to saving lives ..."  
 7 Can we take it that that was the aim of --  
 8 A. It absolutely was. I've no idea why Mr Grieve would put  
 9 "if" in that sentence.  
 10 Q. Care home residence has, of course, has been assessed as  
 11 high risk from early on in the period that we've been  
 12 looking at; is that correct?  
 13 A. Yes.  
 14 Q. And, as far as this is concerned, it seems to identify  
 15 that lives will be lost if more is not done; is that  
 16 correct?  
 17 A. Yes.  
 18 Q. And that the issue, the sole issue at this stage is  
 19 testing capacity; is that right?  
 20 A. The primary issue at that stage is testing capacity,  
 21 yes.  
 22 Q. As we said earlier, testing capacity is something that  
 23 effort could have been put into at an earlier stage in  
 24 order to try and ramp it up beyond the levels we  
 25 discussed; it could have happened at an earlier stage?

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1 **A.** I'm not -- I'm not sure I agree with you. There is --  
 2 you cannot magic out of thin air appropriate buildings,  
 3 appropriate kit and skilled individuals. A lot of  
 4 effort was put into increasing our capacity for testing,  
 5 because even if I hadn't understood the vulnerabilities  
 6 in our care homes and other closed settings,  
 7 I understood the vulnerabilities of those caring for  
 8 individuals in terms, not only of PPE but of knowing  
 9 whether or not they were themselves infectious and  
 10 posing a risk not only to themselves, their families but  
 11 also to those they cared for, and I believe that we  
 12 moved as quickly as we could, actually could, to  
 13 increase our testing capacity. And it has never been  
 14 put to me that there was testing capacity available  
 15 somewhere else that we could have used and didn't use.  
 16 We did our very best to increase that, and of course  
 17 managed in the end to do that, and as you've noted -- we  
 18 will sure come on to it -- in April we were able to  
 19 introduce testing for admissions. But the whole issue  
 20 of transmission and health and death in care homes is  
 21 a complex issue.

22 If I can just make the point, and even at that point  
 23 from Mr Grieve, his known number of care homes is  
 24 inaccurate. There actually were 1,084 care homes, 843  
 25 of them had discharges from hospital, 348 of those had  
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1 many -- for many, not all -- but for the vast majority,  
 2 because of their age, their frailty, other conditions  
 3 they might have, were vulnerable to this virus.

4 **Q.** You do not know or did not know at the time the number  
 5 of patients, not the total number of residents but the  
 6 number of patients who would be transferred from  
 7 hospital to care homes, did you?

8 **A.** No.

9 **Q.** That was the relevant figure that you needed in order to  
 10 be able to ascertain how many tests you would need?

11 **A.** No, not necessarily, because I would also want to know  
 12 that people who were being discharged into the community  
 13 had also been tested.

14 **Q.** But in order to try to -- well, you would need to know  
 15 that figure too, but in order to try and work out the  
 16 issue of the number of tests that would be required for  
 17 people who were coming from hospitals -- this is the  
 18 topic that we're discussing -- you would need to know  
 19 the figure of transfers, not the total number of  
 20 residents; isn't that right?

21 **A.** That's right, yes.

22 **Q.** We know already from other evidence that you did not  
 23 have access to that information. Did you seek to try to  
 24 understand the numbers that might be involved,  
 25 for example, from Dr Macaskill?

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1 outbreaks, 321 had deaths, of those who took discharges  
 2 from hospital.

3 What that tells us is that some care homes that  
 4 received discharges from hospital during this time did  
 5 not have outbreaks, because the issue is a complex one,  
 6 not complex in terms of the professionalism, the  
 7 commitment or the care of care home staff, but complex  
 8 as a subsequent independent report also reveals in terms  
 9 of size of care home as well as the availability of PPE  
 10 and so on.

11 I am not -- and I need to be clear -- I am not  
 12 saying that the discharge from hospital without a test  
 13 into care homes had no impact. What I am saying is that  
 14 it was one of the factors, and I think a Public Health  
 15 Scotland witness that you had before you previously,  
 16 my Lady, said that it was, but actually in their  
 17 analysis and the independent analysis the size of the  
 18 care home was a more significant factor.

19 So this is a complex issue that testing on its own  
 20 does not help us understand as well as we need to.

21 **Q.** The figure given to you there that there were 35,989  
 22 residents in care homes, what's the relevance of your  
 23 figure to your assessment at the time?

24 **A.** That we were worrying about a great number of people who  
 25 were residents in care homes and who, because of, for  
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1 **A.** I can't recall if I had that conversation with him. We  
 2 talked a lot about discharges and admissions to  
 3 care homes, but I can't recall if he gave me that number  
 4 or if we discussed a number.

5 **Q.** We heard some evidence from an individual you'll be  
 6 familiar with, Caroline Lamb, who told us that there was  
 7 a degree of prioritisation of tests within the Test &  
 8 Protect strategy. She said that she was not involved in  
 9 the prioritisation discussions for the testing around  
 10 this time. Were you responsible for deciding who should  
 11 be prioritised for tests?

12 **A.** No. That was a clinical decision, as it should be, and  
 13 in the early days the prioritisation was to assist with  
 14 diagnosis, and there were two other categories I can't  
 15 quite recall, I'm sure you have them, but --

16 **Q.** So when you say it was a clinical decision, do you mean  
 17 that that was a decision you made based on clinical  
 18 advice from the Chief Medical Officer and perhaps  
 19 others?

20 **A.** Yes.

21 **Q.** So a prioritisation was given to people other than the  
 22 residents of care homes who might have been tested, even  
 23 although it was known that the residents of care homes  
 24 were within the highest risk category?

25 **A.** Admissions of elderly people to hospitals would also be  
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1 in that high risk category, and testing them in order to  
2 diagnose what needed to be done but also to identify if  
3 they were -- if they had the virus and protect other  
4 patients by appropriate pathways for the individual was  
5 also a priority.

6 **Q.** You've referred already to the fact that the strategy  
7 changed in April. We understand that a deep dive  
8 meeting into care took place on 15 April. There's  
9 a reference to that in one of the SGoRR sitreps. You  
10 might remember those documents that provide --

11 **A.** I do.

12 **Q.** -- information.

13 What was it that prompted the deep dive meeting to  
14 happen on 14 April?

15 **A.** So by that time we had introduced testing for all health  
16 and social care staff, and those that we were seeking to  
17 return back, perhaps individuals who had retired or  
18 those final year medical or nursing students, to ensure  
19 that they were tested.

20 We'd also introduced the -- a situation or  
21 a requirement that all symptomatic residents were tested  
22 where that was appropriate. Bear in mind at this point  
23 the test was both -- you had to swab both the nose and  
24 the back of the throat, so for some individuals that was  
25 a very distressing experience, and that's what "if  
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1 member of staff, but it is the case that in some  
2 instances, as the figures I gave you earlier indicate,  
3 some of our care homes were responding to the guidance  
4 more fully than others, for a variety of reasons that we  
5 sought to understand through discussions with  
6 Dr Macaskill or individually with some of the providers,  
7 and sought to try and help support them to do that.

8 **Q.** Despite that background, the additional measures didn't  
9 come in til 21 April; that's correct?

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

11 **Q.** Those we've talked about, the testing element which, as  
12 I understand it, is based on a lack of availability of  
13 testing until that time, that's why that changed. Is  
14 that right?

15 **A.** Yes.

16 **Q.** As other elements of that guidance included increased  
17 oversight in order to try to make sure that the various  
18 measures that were required within care homes could be  
19 carried out properly, is there any reason why that  
20 oversight could not have been put in place much earlier?

21 **A.** Until that point, or until the period running up to that  
22 point, I think I mentioned earlier that Scottish  
23 Government's knowledge of and complete understanding of  
24 how the adult social care sector operated was not as  
25 adequate at the outset as we needed it to be. And so  
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1 appropriate" meant.

2 The deep dive at that point in April was around  
3 bringing together all the information we had about what  
4 we were doing, what more needed to be done, whether we  
5 were able to do it, and then focus the actions around  
6 that.

7 **Q.** Was the deep dive meeting indicative of a realisation in  
8 the Scottish Government that insufficient efforts had  
9 been made to protect those in care homes and many, many  
10 residents had died?

11 **A.** There was certainly a realisation of that, but that  
12 realisation didn't suddenly happen on 15 April. I don't  
13 think 15 April was a sudden dawning on the part of  
14 Scottish Government, Scottish ministers, myself or the  
15 First Minister that this was a serious issue. I think  
16 I've explained that for some weeks this had been  
17 considered by me as a very serious issue, but we were  
18 now at a point where it might be possible that our  
19 testing capacity was such that we could add that  
20 additional measure.

21 It was also a realisation or a growing understanding  
22 that the understanding and application of basic  
23 infection prevention and control was not necessarily  
24 consistent across all residential settings. Again, to  
25 be very clear, that is not a criticism by me of any  
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1 there were some presumptions made that, as we worked  
2 through the days, became clear were -- could not stand.

3 One of the presumptions that I made, and I regret  
4 this, is that the national manual for basic infection  
5 prevention and control was widely understood and  
6 practised. I think, again for reasons I've indicated  
7 and with no criticism at all of individual staff, that  
8 was not consistently the case.

9 Some other areas of our understanding of  
10 particularly the care at home sector was not adequate at  
11 the outset, and so we had to work through, with  
12 Scottish Care of course but also with COSLA, to increase  
13 our understanding and identify the deficiencies in how  
14 the system was operating, and one of those deficiencies  
15 required greater clinical support to the care home  
16 setting. Hence that part of the guidance that requires  
17 directors of public health -- each health board has  
18 a director of public health -- to take a direct  
19 engagement with the care homes in their area, to look at  
20 what more support might be needed.

21 **Q.** As had been the case in the early months of the  
22 pandemic, Ms Freeman, the Scottish Government's response  
23 to the care home crisis and the need for people who are  
24 vulnerable or elderly to be protected was completely  
25 inadequate, was it not?  
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1 **A.** It was not as adequate as I would have wished it to be.  
2 I believe it was all that could be done with the  
3 resources available to us at that point, and that  
4 improved as time passed.

5 **MR DAWSON:** Thank you.

6 Those are my questions. As I understand it, there  
7 are some pre-Rule 10s. Thank you, my Lady.

8 **LADY HALLETT:** There are.

9 Ms Mitchell.

10 **Questions from MS MITCHELL KC**

11 **(Mic not on)**

12 **MS MITCHELL:** -- for asking many questions the Scottish  
13 Covid Bereaved wished to have answered.

14 I appear as instructed by Amer Anwar & Company on  
15 behalf of the Scottish Covid Bereaved.

16 I'd like to ask you, please, about communication  
17 strategy within Scottish Government, in particular  
18 misinformation was an important issue in the pandemic,  
19 particularly with the prevalence of people getting  
20 information from social media which couldn't be properly  
21 regulated.

22 The First Minister, current First Minister's written  
23 evidence is -- has been submitted before this Inquiry,  
24 states:

25 "The Scottish Government did not directly refute  
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1 answer those concerns directly to them, and webinars  
2 were used a great deal by Scottish Care and ourselves,  
3 or open meetings with trade union members where they  
4 could -- through Zoom or whatever it might be -- ask  
5 a number of questions rather than have a social media,  
6 or any kind of media, tit-for-tat argument which I don't  
7 think would have served anybody particularly well.

8 **Q.** I'll move on to my next question.

9 The Inquiry has already heard evidence given by the  
10 First Minister, then Minister or Cabinet Secretary for  
11 Health and Mr Swinney, who is still to give evidence,  
12 met with the Scottish Covid Bereaved on 17 August 2021.  
13 At that meeting, members of the group expressed their  
14 concerns about the classification of the three cardinal  
15 symptoms of Covid: cough, temperature and the loss of  
16 the sense of smell and taste. Their concern was that  
17 these three cardinal symptoms were too restrictive, and  
18 they were raising that to see whether or not anything  
19 could be addressed.

20 Were you aware of the concerns raised by the  
21 Scottish Covid Bereaved in this regard?

22 **A.** Well, of course in August 2021 I was no longer an MSP or  
23 in government, but I recall from re-reading the guidance  
24 in preparation for today and for my witness statement  
25 that there is -- and I can't be certain whether it

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1 misinformation, but instead worked to ensure our own  
2 factually correct messages were communicated widely."

3 What I would like to know, first of all, was: was  
4 this a tactical decision taken by the Scottish  
5 Government not to refute misinformation in relation to  
6 issues during the pandemic? And secondly, if so, what  
7 were the reasons for that tactical decision?

8 **A.** So the principal reason for not directly refuting in  
9 that -- through social media, if you like --  
10 misinformation was really to avoid getting into a "he  
11 said, she said" situation. But, for example, in the  
12 care sector, there was a lot of concern and anxiety  
13 around what was misinformation, for example, about  
14 vaccines. And so, rather than have a social media  
15 argument about that, with the support of Scottish Care  
16 we set up a series of webinars which simply allowed  
17 staff to ask questions that they had, concerns that they  
18 had. They may have received information that was wrong,  
19 they may have just straightforward concerns about  
20 vaccine efficacy, around the speed with which vaccines  
21 were produced, people had some concerns about whether  
22 they were as safe as pre-Covid; and that was the  
23 approach that we took to dealing with misinformation,  
24 was simply to try and find opportunities where people  
25 could ask questions about their concerns, that we could

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1 begins with the first guidance or whether it appears in  
2 the second, but there are sections which remind the  
3 reader that in elderly people the symptoms may be  
4 different, they may manifest themselves in a different  
5 way. That could be increased confusion, it could be  
6 more falls. So we were alert to the fact that the  
7 standard symptoms -- that you shouldn't confine yourself  
8 to saying: well, that person hasn't got a cough and  
9 their sense of smell's fine, so they must be all right,  
10 there's something else happening; you needed to think  
11 more widely, particularly if you were dealing with  
12 elderly or frail people.

13 **Q.** Did you play any part in considering the issue of Covid  
14 symptoms, for example in discussions with the CMO or  
15 Mr Macaskill, or anything of that nature? Did you  
16 discuss with them the cardinal symptoms and whether or  
17 not they should be expanded?

18 **A.** I do recall, I believe, discussions with Mr Macaskill,  
19 because he wanted to ensure that the guidance took  
20 account of that. I don't recall particular discussions  
21 with the CMO on that, although we did have discussions  
22 about the symptoms that we were alerting the general  
23 public to, because I think -- in fact I'm sure -- the  
24 list changed at one point during the pandemic, a new one  
25 was introduced.

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1 **Q.** Indeed, and I think when we were asking questions of  
 2 a witness before, the Inquiry has evidence that that is  
 3 the case, in 2021 it changed, and indeed the Inquiry has  
 4 also heard evidence from Mr Macaskill about the issue of  
 5 the difference in symptoms that were being identified as  
 6 Covid symptoms, but they were different and not  
 7 manifesting in the same way in a population which was  
 8 older, with multiple comorbidities. He says that that  
 9 was aware to him, late February and certainly early  
 10 March 2020, but a change didn't occur til 2021.

11 Can you tell me, if he raised this with you, why it  
 12 took so long for changes to be considered?

13 **A.** So, well, before 2021, as I've already said, the  
 14 guidance that was issued to the care sector did mention  
 15 this, and did raise to be alert that the standard Covid  
 16 symptoms, if you like, may not manifest themselves in  
 17 elderly or frail people and they had to look  
 18 otherwise --

19 **Q.** That was June 2020, and then the actual symptoms were  
 20 a year later. But in those early days, was there any  
 21 consideration given to changing, as it were, those  
 22 symptoms and advice?

23 **A.** So the symptoms of Covid, from memory, came to us from  
 24 the four CMO discussions, and I don't think --  
 25 I certainly didn't feel competent to question whether it

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1 **LADY HALLETT:** Thank you.

2 (The witness withdrew)

3 **LADY HALLETT:** 10 o'clock tomorrow, please.

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

5 (4.36 pm)

6 (The hearing adjourned until 10 am  
 7 on Tuesday, 30 January 2024)

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1 was a cough or not a cough, or a sense of smell or  
 2 whatever, but I did discuss with Mr Macaskill prior to  
 3 June 2020, and I believe the guidance prior to June 2020  
 4 did mention that for those who were elderly you had to  
 5 look beyond the standard symptoms that were being  
 6 advised to the wider public.

7 **MS MITCHELL:** My Lady, those are my questions.

8 **LADY HALLETT:** Thank you very much, Ms Mitchell.

9 I think that completes the evidence for today,  
 10 Mr Dawson.

11 Thank you very much, Ms Freeman. I appreciate I've  
 12 asked you to attend twice now. I'm not sure I can say  
 13 I won't ask you again, so thank you very much for your  
 14 help.

15 **THE WITNESS:** My Lady, if I may just take the opportunity to  
 16 apologise. The last time I did attend, I did so  
 17 virtually and we had some internet issues. I just, for  
 18 the sake of my colleagues at the University of Glasgow,  
 19 I need to be clear that was not their fault.

20 **LADY HALLETT:** Right. I think someone was blaming Scotland  
 21 rather than Glasgow University.

22 **THE WITNESS:** I don't think it was the country's fault  
 23 either, but it was certainly --

24 **LADY HALLETT:** I didn't think it was the country's fault.

25 **THE WITNESS:** Thank you very much.

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