
WRITTEN CLOSING STATEMENT

on behalf of

THE SCOTTISH MINISTERS

Introduction

1. The Scottish Government set out in its Opening Statement its commitment to listen to the evidence, to learn lessons for the future, and to assist the Chair in identifying recommendations to support decision making in the event of a future pandemic. That commitment remains. The Scottish Government has listened carefully to all the evidence that has been led and wishes to acknowledge once again the loss and harm suffered by many people in Scotland and the rest of the United Kingdom during the pandemic. The central place of the bereaved and all those affected by the pandemic in this Inquiry is of the utmost importance to the Scottish Government. The Inquiry will hear from Scottish Government witnesses about decision-making, strategy and overarching issues relating to the pandemic response from the perspective of Scotland during Module 2A hearings in January and February 2024 in Edinburgh. The Scottish Government is committed to assisting the Chair with that.
2. In its Opening Statement to the Inquiry, the Scottish Government addressed the Chair on five key themes: devolution, intergovernmental relations, the role of data in decision-making, public health communications, and inequalities. This Written Closing Statement will revisit those themes in light of the evidence. Before doing so, however, the Scottish Government wishes to make some introductory remarks on its framework for decision-making.
3. The Scottish Government's Framework for Decision Making

The Scottish Government's strategic objective in responding to the pandemic was to contain and suppress the virus to minimise the overall harm it could do taking into consideration the available scientific, clinical and public health advice which was fully integrated into the four harms approach. The Scottish Government published its "Framework for Decision Making" in April 2020¹. A key part of that was the four harms approach which provided a framework to ensure that a balanced approach was taken, as far as possible, and that due consideration

¹ INQ000131025

was given to vulnerable and at-risk groups as part of the decision-making process. The four harms were direct Covid-19 health harm, other health harm caused by the pandemic, societal harm, and economic harm. The Scottish Government took practical steps to embed this framework in its decision-making process. Consideration of the balance of these harms was a question of judgement for the elected representatives of the people of Scotland.

4. As both the nature of the Covid-19 crisis changed and the Scottish Government's overall strategy evolved in response, so too did its approach to imposing and easing NPIs, from the initial lockdown of March 2020, through to the lifting of the remaining legal measures on 18th April 2022. The crisis developed and changed quickly, and the Scottish Government required to respond. All steps were guided by the consideration of the Four Harms. Thus, in 2020 and the first half of 2021, the priority was to suppress the prevalence of the virus, even in recognition that such an approach might cause broader harms. With the success of vaccines, particularly in the older age-groups, and the reduction in health risk to individuals, in particular older, vaccinated individuals, the Scottish Government's strategic intent was adjusted in June 2021 to 'suppress the virus to a level consistent with alleviating its harms while we recover and rebuild for a better future'. In February 2022 the strategic intent was revised for the last time 'to manage Covid-19 effectively, primarily through adaptations and health measures that strengthen our resilience and recovery, as we rebuild for a better future'. This recognised that after two years of the pandemic, and in light of developments in vaccines and treatments, a strategy that was overly focused on suppression of the virus would have a disproportionate impact on the other harms.

5. The strategic objective allowed officials across government through the four harms approach to advise consistently on managing the pandemic in line with that intent. This was a rational approach with decisions made by Cabinet based on advice, which was formally recorded, in pursuit of a stated objective. With the benefit of hindsight, there are of course lessons to be learned and the Scottish Government recognises this and has listened to all the evidence and opinions expressed in the Inquiry carefully in order to learn and to save lives and prevent harm in any future pandemic. Of course, scientific advice was one of a range of considerations that the Scottish Government was able to take into account. Practical considerations in support of effective implementation were also important. Decisions of the Scottish Government during the pandemic were generally made in meetings of Cabinet, or in response to policy submissions. Decisions in Cabinet are recorded in the minutes of those meetings, and were informed by detailed papers setting out proposals, relevant evidence, legal issues and related matters. There has not been discussion of these

documents in the Module 2 hearings, but the Scottish Government looks forward to these being considered fully in Module 2A.

Devolution

6. Devolution is the context for UK decision-making during the pandemic and is relevant to Module 2. The merits of devolution do not form part of the terms of reference of the Inquiry. Rather it is the response of government to the pandemic within a devolved framework that is in issue. The Scottish Government's decisions and actions in relation to its devolved responsibilities will be examined in Module 2A. The ability to make use of the devolved powers to respond to the pandemic in Scotland made a significant and positive difference. Scotland's geography, demography and many of its institutions have never been the same as those of England. The NHS in Scotland is a distinct healthcare system and public health legislation differs across the UK. These differences predate devolution.

7. Devolution reflects the will of the Scottish people in the referendum of 1997, subsequently enacted in the Scotland Act 1998. The intention of devolution is to allow the people of Scotland to elect representatives that reflect their priorities. The 1998 Act created an equality of responsibilities between the Scottish and UK Governments in their respective spheres. Health and Public health are devolved, i.e. not reserved, matters. As a result many aspects of the responsibility in responding to the pandemic fell to the Scottish Government. Public health is intimately connected to Scotland's distinctive systems of healthcare, justice, policing, education and local government, and to the Scottish Government's responsibilities for economic development and most public services. Public health is also a devolved matter in Wales and Northern Ireland.

8. Devolution is now a fundamental pillar in the constitution of the UK and the effect of devolution is that each of the governments in the four nations can take decisions having regard to the facts and circumstances within its area of responsibility and to be held to account by its respective legislature.

9. The Scottish Government is strongly of the view that devolved control was essential to the effective public health response to Covid-19 in Scotland, and that such control should be maintained and indeed strengthened for future public health crises. This is important given the intimate connection of the matter with the responsibilities of the Scottish Government and Parliament for Scotland's distinctive systems of healthcare, justice, policing, education and local government, and with the Scottish Government's responsibilities for economic

development and most public services. We note the evidence of Rishi Sunak and Michael Gove in which they referred to a COBR meeting in which it was agreed that powers under the Civil Contingencies Act powers were not available to the UK Government for use in Scotland for the pandemic. That accords with the Scottish Government's understanding of the UK Government's position at the time. The Scottish Government submits that use by the UK Government of any powers to impose solutions in devolved areas of responsibility would not be appropriate, particularly where the administrative and policy expertise and established relationships with relevant Scottish bodies all lie with the Scottish Government. The clear democratic accountability of the Scottish Ministers to the Scottish Parliament for the response to public health crises in Scotland was a crucial part of good government in this area and should not be muddied by superimposing a layer of UK Government control.

10. The Scottish Government, by acting under its own powers, was able to map a distinct course to protect the people of Scotland and by doing so, or having the potential to do so, on some occasions helped to steer the UK Government away from some policies which were not well thought through. To take one example it was suggested by Matt Hancock to Boris Johnson that the First Minister was “going soft on mass gatherings” on 11 March 2020², in other words she thought that those should stop. UK Health officials agreed that with the benefit of hindsight it was sensible for mass gatherings to be banned³ so as not to send out mixed messages to the public that life should carry on as normal by allowing mass gatherings to proceed when there was a danger from the virus. A further example is that the UK Government initially gave exemption from quarantine to health workers which significantly increased the risk to patients. The Scottish Government made the arguments against following this path and did not follow it and the UK Government changed its policy after 3 weeks and required health workers to quarantine. The Scottish Government was not simply reacting to UK Government policies and proposals; Scottish Government policies were developed in the light of the evidence to hand and its own assessment of how the interests of people in Scotland could be best protected, and the Scottish Government helped shape the pandemic response across the UK, which was better because of that.

11. The position of the Scottish Government is that this Inquiry should not make a recommendation that would mean that the powers and responsibilities of the Scottish Government under the devolution settlement would be restricted in a response to a future pandemic. There is simply no credible basis for such a recommendation. The devolution settlement allows the Scottish Government to take decisions in the best interests of the

² INQ000129230 WhatsApp from Matt Hancock to Boris Johnson dated 11 March 2020.

³ Evidence of Professor Sir Chris Whitty, Transcript 23/189/1- 23/190/2.

people of Scotland even if that results in a different position from that of the UK Government for England. A good example of this is that Scotland's NPI strategy from autumn 2020 differed fundamentally from that of England. The Scottish Government took a significantly different approach to extending NPIs in September and October 2020 at a time when it is suggested that there was a delay in the UK Government acting.

12. In this context, a key question that can be asked of the current devolution framework is, *did it help save lives?* This is a complex question, but we can begin to answer it by considering the Age-standardised Mortality Rates (ASMRs) for the four nations, across the period of the pandemic. Age-standardised Mortality Rates are a better measure of mortality than numbers of deaths, as they account for the population size and age structure and provide more reliable comparisons between groups or over time.
13. When considering the outcome of the pandemic across the four nations, Sir Iain Diamond (in his additional witness statement M2/03/UKSA; 11/09/2023) detailed that England had the highest Age-standardised Mortality Rates for deaths involving COVID-19 of the four nations, 145.0 per 100,000 people followed by Wales (144.6), Northern Ireland (130.7) and Scotland (124.9), between March 2020 and February 2022.⁴
14. The expert report provided to the Inquiry by Professor Hale⁵ also detailed international comparison of deaths per capita noting that over the three-year period from 2020 to 2022, England experienced the 19th highest number of deaths per capita on a global scale and was 15th amongst European countries while Scotland experienced the 38th highest number of deaths on the global scale, and the 27th among European nations.
15. Furthermore, these outcomes occurred in spite of the relatively high levels of poverty-related ill health in Scotland, which might have been expected, everything else being equal, to result in a higher, rather than lower, Age-standardised Mortality Rate.
16. While this does not demonstrate conclusively that devolved control was essential, it does suggest that it was helpful for the Scottish Government to be able to take the approach it considered best in the Scottish context, rather than being required to follow a common UK-wide approach. It also suggests that maintaining these arrangements is likely to be beneficial in responding to the demands of any future pandemic.

⁴ INQ000271436.

⁵ INQ000257925.

17. The Scottish and UK Governments worked together to use the Coronavirus Act 2020 (with legislative consent from the Scottish Parliament under the Sewel Convention) as the legislative vehicle to put in place powers for Scottish Ministers to make regulations to implement NPIs. But this was not about the UK Government or the Westminster Parliament granting devolved powers that could not alternatively have been put in place by the Scottish Parliament itself (as has since been done, following the expiry of the 2020 Act, by the Coronavirus (Recovery and Reform) (Scotland) Act 2022). Nor was it about transferring powers away from UK Ministers. The 2020 Act was used as a rapid legislative vehicle, building on earlier work between the four governments on draft legislation for a flu pandemic. Public health is a devolved matter in Wales and Northern Ireland too. The powers that the 2020 Act conferred on the Scottish Ministers replicated those of UK Ministers for England and Welsh Ministers for Wales respectively under the Public Health (Control of Diseases) Act 1984 (as amended).
18. It was suggested by some, including Mr Johnson, that the Civil Contingencies Act should have been used⁶ but he accepted on reflection that it was not a viable approach. That accords with what the Scottish Government understood of the UK Government's position at the time, as confirmed by Mr Sunak and Mr Gove in their oral evidence⁷.
19. The Scottish Government submits that use by the UK Government of any powers to impose solutions in devolved areas of responsibility would not be appropriate, particularly where the administrative and policy expertise and established relationships with relevant Scottish bodies all lie with the Scottish Government. The Scottish Government's view is that it was right for public health legislation to be used.
20. The effect of devolution is that each of the four nations can take decisions having regard to the facts and circumstances within their respective areas of responsibility. Each has the option to align or combine with others, or to pursue different policies if it considers those best meet the needs of the people they serve. Each, however, starts from a distinct position, in terms of its responsibilities and the characteristics of the areas, populations, legislation, institutions and services within its jurisdiction. Scotland's population and geography are distinctive within the UK. Broadly speaking and compared to England, people in Scotland are older, have more co-morbidities and are less healthy.

⁶ Statement of Boris Johnson INQ000255836 at §153 and §155

⁷ Evidence of Michael Gove, Transcript [27/111/6-22]

21. These and other differences had to be taken into account by the Scottish Government in framing its response to the pandemic. They were taken into account, for example in order to assess which demographic groups or geographic areas in Scotland might be disproportionately affected by the virus, or by measures to contain its spread; to create an enforcement regime for legislative restrictions within the separate Scottish legal and justice systems; and to ensure that restrictions on travel or socialising were necessary, justified and proportionate in relation to the different circumstances of Scotland's urban, rural and island communities, taking account also of factors such as the amount and nature of travel into and out of these areas, the extent of interpersonal contact and the resilience of local healthcare systems. A key driver of different NPI decisions was responding to different epidemiological conditions in Scotland and within different parts of Scotland (compared to elsewhere in the UK) as well as the fundamental characteristics such as geography, socio-economic and demographic profile.
22. In setting NPIs, there was objectively no single, correct solution. It was always a matter of judgement and different, democratically elected governments reached reasonable decisions on NPIs based on judgements about the information with which they were presented. They did not make different decisions solely because their jurisdictions had the differing fundamental characteristics set out at para 20 above. This is not to say that divergence or geographical tailoring was necessarily always the best approach, but it provides a rationale for why it could often be considered appropriate and, indeed, necessary when NPIs were open to legal challenge for their necessity and proportionality. The World Health Organisation recommended local approaches to NPIs where practicable.⁸
23. It should therefore be expected that devolved decision-making in Scotland, by a distinct government in relation to distinct services and institutions, for a distinct demographic and over a distinct geographical area, would result in some alignment but also in decisions different from those taken by the UK Government for England; and that there would be differences within Scotland as well as between Scotland and other UK administrations. The governments in Wales and Northern Ireland also took approaches that were significantly different from those in England. Moreover, geographical variation in restrictions was a feature of the pandemic response within each part of the UK and, for example, Ireland.

⁸ INQ000233091 – Report from the World Health Organisation, titled considerations for implementing and adjusting public health and social measures in the context of COVID-19, dated 04/11/2020 [Publicly available].

24. Devolution played a pivotal and helpful role in the UK's response to the pandemic. Put shortly, the four governments in the UK were able to cooperate, assist and learn from each other. The Scotland Act 1998 creates an equality of responsibilities between the Scottish and UK Governments in their respective spheres. What could be more desirable than the devolved administrations working in co-operation with the UK Government while, at the same time, protecting the health, interests and needs of their domestic populations?
25. There was a particularly significant interaction between devolved decisions on public health measures affecting businesses and workplaces, and reserved decisions in relation to public expenditure and borrowing. In effect, this meant that the Scottish Government could not deploy certain measures, even if it considered them to be justified by the state of the pandemic, without financial support from the UK Government; and such support was in practice only available when similar measures were deployed for England. The Scottish Government was reliant on UK Government funding for measures that would likely involve significant costs, for example, the "furlough" scheme, high volumes of PPE, testing and vaccines. For measures such as the use of face coverings, hand hygiene and ventilation, it was less dependent on UK Government funding as they could be achieved through guidance, messaging, and legislation without prohibitive financial outlay. Each of the four UK governments was responsible for deciding on NPIs within its own territory, but only one of the four had the full discretion make funding decisions to support these interventions. The most significant funding interventions, such as furlough, were only in the UK Government's control. All three devolved governments raised concerns about this asymmetry during the pandemic. If not addressed it will negatively affect the response to future emergencies

Intergovernmental relations

26. The issue of intergovernmental relations is closely related to that of devolution. Devolution allows each of the four UK governments to take decisions having regard to the facts and circumstances within its areas of responsibility. The four governments reached agreement on key elements of their strategy at several points in the pandemic, for example the Coronavirus Action Plan of March 2020⁹, the joint decision on the so-called "lockdown" from 23 March 2020, and a Joint Statement prepared at the suggestion of Ms Sturgeon and published on 25 September 2020¹⁰ setting out their shared commitment to "suppressing the

⁹ INQ000182380-Exhibit MS/53; Paper from the Department of Health and Social Care titled "Coronavirus: action plan- A guide to what you can expect across the UK" dated 03.03.2020. Produced in the witness statement of Lord Mark Sedwill former Cabinet Secretary at INQ000250229

¹⁰ Exhibit MG/139: CO statement titled Joint statement on coronavirus (Covid-19), dated 25 September 2020 [Publicly available document, referenced by Simon Case in the Cabinet Office

virus to the lowest possible level and keeping it there”. The four governments also worked together on many aspects of the response to the pandemic, such as vaccination and testing, but they took varying approaches to NPIs.

27. The Inquiry has heard comments questioning the necessity and motivation of the devolved governments taking different approaches from those in England on some issues. The rationale for the Scottish Government's approach will be explored and explained in Module 2A. The Scottish Government's approach was based on assessment of what was the right approach for Scotland rather than on being different for the sake of it. A key example where there were distinctive approaches in different nations is that of NPIs. The Scottish ‘Levels’ were not the same as the ‘Tiers’ in England. Scotland had five levels – including greater restrictions on activities involving social mixing – from the outset whereas England had three tiers to begin with and later added a fourth tier. Scotland’s Levels system endured (with adjustments to measures in each level) from November 2020 to August 2021, including in early 2021 where certain islands were kept at Levels below that subject to a Stay-at-Home requirement. There were also other differences in approach, for example on shielding and the exclusion in Scotland of children under 12 in a household from the limits on social gathering numbers. Ann Longfield, the Children’s Commissioner¹¹ made this point in the context of the earlier relaxation of lockdown restrictions for children by the Scottish Government at the time of the English and Northern Irish “Rule of 6”. Simon Ridley, former Head of the Cabinet Office Covid-19 Taskforce, acknowledged that he was aware of this rule in Scotland¹². After the initial 4 Nations approach, e.g. with close collaboration on shielding, each nation implemented its own interventions and those interventions changed as NPIs were relaxed.

28. Mr Thomas (Week 2) suggested that there was a structural gap in how central government engaged with the Devolved Administrations and local government due to failings in co-ordination and the failure to use the JMC¹³. Dominic Cummings in Week 4 described COBR as “a Potemkin process of handling the Devolved Administrations”¹⁴. It was suggested to him that he intentionally “ran down” COBR and replaced it by morning meetings and the Covid Taskforce. More generally, Mr Cummings suggested that the problem was a “structural one” and COBR “just didn’t scale to what was needed”¹⁵. Other

Corporate statement at INQ000092893]. Exhibited within the statement of Michael Gove INQ000259848.

¹¹ Evidence of Anne Longfield, Transcript [4/41/7-20]

¹² Evidence of Simon Ridley, Transcript [19/123/3- 19/127/5]

¹³ Evidence of Alex Thomas, Transcript [9/66/10-20]

¹⁴ Evidence of Dominic Cummings, Transcript [15/117/10-11].

¹⁵ Transcript [15/118/4 – 11].

structures were created. The UK-wide Co-ordination Forum for officials was one of a number of four-government liaison mechanisms. Ministerial Implementation Groups (MIGs) including devolved ministers were also formed, which Helen MacNamara described as a way “to manage the DAs” acknowledging in her oral testimony that this was an “uncomfortable” expression.¹⁶

29. Despite the deficiencies in intergovernmental relations, the Scottish Government managed to work effectively with the UK Government in the difficult context of the health emergency. During this Inquiry there has been an inevitable focus on differences of view which masks the fact that day to day cooperation on multiple levels and on a multitude of issues was constructive and effective. In practice, much of the intergovernmental relationship is conducted through extensive day-to-day contact between policy teams and portfolio Ministers. The evidence suggests that generally, these arrangements worked effectively to share information, inform decision-making, and identify and address issues.

30. A point worth noting is that it would not be correct to treat the UK Government's approach for England as somehow being the orthodox or correct approach from which other parts of the UK “diverged”. The Inquiry has heard comments questioning the necessity and motivation of the devolved governments taking different approaches from those in England on some issues. Yet as a matter of fact, on a range of significant matters through the pandemic the positions of the three devolved administrations were similar, if not identical, and it was the UK Government's approach for England that was different. Compared to Scotland, Wales and Northern Ireland, the UK Government's approach relaxed restrictions more rapidly in the spring/summer of 2020 and again in spring 2021. In May 2020 Scotland, Wales and Northern Ireland all declined to replace “Stay-at-Home” messaging with the more confusing “Stay Alert” message adopted by the UK Government. In Scotland, Wales and Northern Ireland legal requirements for face-coverings on public transport and certain public places were maintained throughout 2021 and into early 2022 whereas in England they were lifted from 18 July to 30 November 2021. Over autumn/winter 2020-21 Wales, Scotland and Northern Ireland introduced a range of legal restrictions on travel to restrict the spread of the virus, whereas England relied on guidance to discourage travel except during the second and third lockdowns. Scotland, Wales and Northern Ireland all went further than England in reimposing restrictions in response to the Omicron variant in late 2021, for example by closing nightclubs. The four nations had differing messaging with regards to working from home. The UK Government encouraged a return to offices in England more than once in 2020, whereas more cautious messaging was adopted in Scotland. These are all significant

¹⁶ Transcript [16/100/20 – 16/101/21].

differences, not ones of detail or timing. In each case it was the UK Government's approach for England that was the outlier. The Inquiry will be able to consider the effectiveness of the different approaches.

31. There is no hierarchy in devolved matters and the UK Government was not the senior partner in the four nations context. Mr Johnson has suggested that there should be one uniform UK response to a pandemic¹⁷. This suggestion should be rejected. It does not take account of the practical application of devolution, the intimate connection between public health and other devolved responsibilities, or the varying geographical circumstances across the UK which amongst other things led the UK Government to put in place locally tailored measures in different parts of England.
32. Another good example of a distinctive approach is the Scottish Government's approach to shielding. The four CMOs agreed common minimum criteria for those covered, but the Scottish approach built on existing administrative arrangements and enabled clinicians to identify additional individuals at risk and put in place specific Scottish contact (SMS and helpline) and support arrangements, based on local resilience partnerships and informed by lived experience.
33. If the view of some in the UK Government was that that the devolved governments required to be "managed" that is a matter of great concern. The overall experience of the Scottish Government of intergovernmental working was a wide range of close, effective relationships and collaboration, at both Ministerial and official level, with effective range of intergovernmental engagement mechanisms that played essential roles. The Scottish Government is grateful to the many people across the three other governments who worked with it at a strategic, policy and operational level on the pandemic. Having said that, it is also the case that there were at times significant gaps in the UK Government's engagement with the devolved governments. The Scottish and the other devolved governments consistently and repeatedly sought timely engagement from the UK Government on co-ordinated – though not necessarily identical – action, and such engagement was not always forthcoming. For example, on 4 April 2020 the heads of the three devolved governments wrote jointly to the Prime Minister to seek a COBR meeting to allow for proper individual and joint analysis at heads of government level for the forthcoming review of restrictions and a transparent and collaborative approach. It is the case that ministerial COBR meetings were held in April and May, and that there was other contact between officials, for example, in four nations calls

¹⁷ See, for example, statement of Boris Johnson INQ000255836 at §153 and Transcript [31/154/5 – 19 and 31/156/ 9 – 19].

convened by Mr Gove, but the transparent and collaborative process sought by the devolved heads of government did not happen for the April or subsequent reviews, and the next COBR meeting between the Prime Minister and the heads of the devolved governments was on 22 September 2020.

34. While it was certainly not the case that intergovernmental collaboration and liaison broke down – quite the contrary – there were shortcomings at that strategic level. There was also according to Ms Sturgeon a lack of parity of esteem. The role of Mr Gove became more prominent as the pandemic developed and it appears from the evidence that has been provided that Mr Johnson delegated engagement with the Devolved Administrations to him. Evidence has also been provided to the inquiry reporting that the Prime Minister refused to engage directly with the devolved governments on the grounds of ‘optics’¹⁸. In her oral testimony, Prof Henderson described as the ‘most remarkable document I’ve read in a number of years’¹⁹ a document showing a readout of a call including Mr Michael Gove, along with Secretaries of State for Wales, Scotland and Northern Ireland discussing a proposal from Mark Drakeford on 20 April 2020 to have a “regular rhythm” to meetings between the devolved governments and the UK Government²⁰. Mr Gove suggested that regular meetings with the Devolved Administrations could be a ‘potential federalist Trojan horse’²¹. Professor Henderson commented that it looked like positions were being taken in the call on intergovernmental relations and how the Devolved Administrations should be integrated within a UK-wide response that were not driven necessarily by what would be best able to respond to an epidemiological event²².

35. The Inquiry has heard evidence about whether the UK Government acted too late in imposing greater restrictions in the autumn and winter of 2020. There was engagement between the four governments including in three Ministerial COBR meetings in September, October and November. On 23 September the First Minister wrote to the Prime Minister to seek urgent four nations discussion and agreement on necessary actions to bring the R number below one and on support for affected sectors. The letter also asked that if agreement was not possible on measures to reduce R below one there should be funding flexibility to allow the devolved governments to take essential public health decisions. The Scottish Government did not have the financial capability to provide funding for furlough, for

¹⁸ Statement of Boris Johnson, INQ000255836 at §188

¹⁹ Evidence of Professor Ailsa Henderson, Transcript [5/150/20- 5/151/3]

²⁰ INQ000091348- Email chain from SoS NI Private office to NOI Leadership team, re Readout from CDL Union Call with SoS, TOs and Chloe Smith dated 22/04/2022

²¹ INQ000091348 at page 2.

²² Evidence of Professor Ailsa Henderson, Transcript, [5/151/9-15]

example, which was key in proportionately and lawfully restricting places of work. A fully satisfactory resolution to the furlough issue was not reached though the UK Government did extend the scheme when England went into its autumn “lockdown”. In the event the four governments took different approaches to responding to the increased prevalence of the virus and, as part of that, first Wales and then Scotland introduced legal restrictions on non-essential travel to and from virus hot spots in Wales and Scotland respectively and elsewhere in the UK. The effectiveness of the Scottish approach will be for consideration in Module 2A.

Professional Relationship between the First Minister and the Prime Minister during the pandemic

36. The Inquiry has heard evidence on the professional relationship between Ms Sturgeon and Mr Johnson. In a time of crisis the best relationships are tested, and it is inevitable that there were differences of opinion. While Ms Sturgeon has made clear that she found the meetings with Mr Gove valuable, we have heard that there was a reluctance by Mr Johnson to engage with her and the other heads of the devolved governments.
37. It has been suggested that the Scottish Government’s approach was politically motivated. Such suggestions are unsubstantiated and incorrect. Ultimately, decisions involved judgement by Ministers informed by scientific and other considerations, including through the Scottish Four Harms process. This was the norm in democratic countries. The Scottish Government re-affirms the position that its actions were evidence-based, founded on a rational, documented approach to decision-making, and guided by a desire to protect the health and wellbeing of the people of Scotland.
38. One of the criticisms levelled at the UK Government has been a lack of diversity amongst decisionmakers, and in SAGE and its subgroups which adopted a consensus approach. We have heard evidence about how a lack of diversity and of life experience can impact decision-making. The Scottish Government recognises the value that greater diversity and lived experience can bring to policy.

Role of data in decision making

39. The UK is in a unique position to realise the potential of health data, thanks to the NHS and its cradle to the grave records. At the start of the pandemic there was a need for up-to-date data. This requires systems that can track pandemic activity in real time. Important progress on this was made during the pandemic throughout the UK. Since the start of 2012, the

ethnicity of the deceased person has been collected, on a voluntary basis, when a death is registered in Scotland. National Records of Scotland used this information and linked it with Census data to provide insights on COVID-19 deaths and how they varied by ethnic group. NHS systems in Scotland are expected to collect data routinely on ethnicity, but the quality of those data can be variable. In Scotland, the development of the Vaccination Management Tool provided real-time data on COVID-19 vaccination uptake including capturing ethnicity data at the point of vaccination to understand variation across equality groups.

40. Data sharing requires collaboration, and evidence has been heard as to the EAVE II study which was an excellent example in Scotland of this collaboration. EAVE II was the first, national, real-time, multi-dimensional surveillance platform in the world with data from nearly all people resident in Scotland and it was praised by Sir Patrick Vallance²³. Sir Chris Whitty recognised the quality of the data from Scotland and that any difficulty accessing data at the start of the pandemic was not unique to Scotland.
41. Nevertheless, the sharing of data has been an ongoing issue for many years, one recognised by the Scottish Government. The Scottish Government Standing Committee for Pandemic Preparedness has recommended building on Scotland's existing data and analytics strengths to advance the development of these as core infrastructure for future pandemics. The Scottish Government will pay careful attention to any recommendations by the committee and the Inquiry.

Public Health Communications

42. The Scottish Government believes that in some matters, differences of approach between the four nations of the UK could have been more effectively handled by the UK Government. On a number of occasions during the pandemic the Scottish Government sought clearer communication by the UK Government on the geographical extent of the measures it was announcing for England.
43. Mr Johnson stated in his evidence that he considered that in a future pandemic a unified approach should be taken to public messaging for reasons of clarity²⁴. This is an example of the UK Government considering that its approach was, by definition, the orthodox approach and that a uniform approach was preferred. Decisions on NPIs in Scotland were not within the remit of the UK Government because health is a devolved matter. Much, if not all, of the

²³ Evidence of Sir Patrick Vallance, Transcript [14/166/18-25]

²⁴ Statement of Boris Johnson INQ000255836 at §126: "By allowing for at least the appearance of a divergence between the various parts of the UK, we were risking considerable public confusion and frustration – when clarity of message was crucial".

confusion on public messaging resulted from the UK Government and its repeated failure to clarify when the NPIs it was announcing applied only to England. For example, in her report, Professor Ailsa Henderson states that “An analysis of the texts of prepared speeches throughout 2020 shows that those speaking on behalf of the UK government did an incomplete job of outlining the territorial scope of their data, information or guidance. In the first months, there was almost no mention of the devolved administrations or their First Ministers. There was little attempt to outline what applied UK-wide and what applied only to England”²⁵. By contrast the Former First Minister explained in clear and straightforward terms the public health conditions and restrictions that applied in Scotland and communicated decisions to the public as quickly as possible.

44. On 10 May 2020, the UK Government changed the slogan “Stay at Home, Protect the NHS, Save Lives” to “Stay Alert, Control the Virus, Save Lives” without providing advance notice²⁶ to the Scottish Government which did not adopt this message. As health is devolved, it was inappropriate for the UK Government to communicate public health messages for another nation of the UK without proper notice and agreement by the Scottish Government. It was reasonable for Scotland not to use the “Stay Alert” message. This decision was borne out by the expert evidence. Dr David Halpern called it “the worst of all worlds” because it told the public to worry but not what to do²⁷. This example reflects use of the term UK to describe decisions relating to England only, something which Mr Johnson did when giving evidence. Scotland was not alone in taking a different approach to England. The Welsh and Northern Irish declined to use the “Stay Alert” message too and like Scotland retained “Stay at Home”. This is an example of a confusion caused by the actions of the UK Government.
45. Prof Henderson summarised evidence from polling that the Scottish and Welsh electorates trusted the respective Devolved Governments’ responses to the pandemic significantly more than that of the UK Government. The Scottish Government was seen as trustworthy by most of its electorate and the First Minister was perceived to provide steady leadership through her daily press conferences²⁸. The Scottish Government used British Sign Language in these to support accessibility, an approach that the UK Government later adopted.

Inequalities

²⁵ INQ000269372 at §151.

²⁶ Evidence of Michael Gove, Transcript [27/129/3-6]

²⁷ David Halpern, Transcript [16/186/21-16/187/4] Similarly see evidence of Professor Lucy Yardley, Transcript [12/144/7 – 12/148/19]

²⁸ Report by Professor Ailsa Henderson dated 2 September 2023, INQ000269372, §154-159

46. The Scottish Government has listened carefully to the evidence of expert witnesses in respect of structural inequalities, and to the ways in which the pandemic and the government response affected at risk and vulnerable groups. It welcomes the Inquiry's commitment to ensuring such evidence is fully considered and is committed to learning lessons for the future. The Scottish Government has been committed to the eradication of inequalities in health and social care over a number of years and it considers the Inquiry to be a further opportunity to make changes to address them. The Scottish Government acknowledges that there remains work to be done. During the pandemic, consideration of inequalities was an integral part of the Four Harms decision-making approach and the Framework for Decision Making recognised that harms caused by the pandemic do not impact everyone equally.
47. The first set of NPI regulations were necessarily developed quickly, but with consideration of equalities and human rights. Thereafter, consideration of equalities was included in the Framework for decision-making, the Route Map, the Strategic Framework and the Four Harms decision-making process. The Scottish Government considered Equality Impact Assessments which were fundamental to the design of the NPI regulations and guidance. When taking strategic decisions in the pandemic, the Scottish Government was mindful of Section 1 of the Equality Act 2010, to have due regard to reducing inequalities of outcome resulting from socio-economic disadvantage. The duty came into force in Scotland in April 2018 but is not yet in force in England.
48. Through a combination of Equality Impact Assessments – well over a hundred of which were published during the pandemic – Child Rights and Wellbeing Impact Assessments, Island Communities Impact Assessments, published research from across the UK, stakeholder engagement, public engagement and the Four Harms advice provided to Cabinet, the Scottish Government sought to consider the issues of inequality and vulnerability when making decisions which the Scottish Government was aware would have the most significant impact on the lives of its population.
49. There has been an English focus for much of the expert evidence on inequalities. In Scotland there are different demographic and circumstances. The Scottish Government looks forward to the opportunity for deeper engagement with the theme as part of future modules.

Conclusion

50. The Scottish Government will consider closely the findings and recommendations that the Inquiry makes in relation to Module 2. In closing, it understands that the most meaningful way to recognise the loss, hurt and suffering of the people of Scotland, and of the wider UK population during the pandemic, is to learn from the evidence and to make improvements to core decision-making for the UK. To that end, the Scottish Government considers that in a future pandemic response, the governments of the four nations must play an integral role in decision-making with full engagement and cooperation between them in a structure that ensures parity of status for the Devolved Administrations within their spheres of competence. The Scottish Government looks forward to welcoming the Inquiry to Edinburgh for Module 2A and the opportunity to discuss decision-making, strategy and overarching issues relating to the pandemic response from the perspective of Scotland in more detail. It reiterates its commitment to the Inquiry and its readiness to learn lessons from all modules.

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