

Tuesday, 30 January 2024

1  
2 (10.00 am)  
3 **LADY HALLETT:** Good morning.  
4 **MR DAWSON:** Good morning, my Lady. The first witness today  
5 is Ms Kate Forbes MSP.  
6 **MS KATE FORBES (sworn)**  
7 **Questions from LEAD COUNSEL TO THE INQUIRY for MODULE 2A**  
8 **MR DAWSON:** You are Kate Forbes?  
9 **A.** I am.  
10 **Q.** You have helpfully provided a witness statement to  
11 the Inquiry which is under reference INQ000273982, dated  
12 16 November 2023. Is that your statement?  
13 **A.** That is my statement.  
14 **Q.** Have you signed the statement?  
15 **A.** I believe I have signed the statement.  
16 **Q.** And do the contents of this statement remain true and  
17 accurate as at today's date?  
18 **A.** They do.  
19 **Q.** You were appointed Cabinet Secretary for Finance on  
20 17 February 2020; is that correct?  
21 **A.** That is correct.  
22 **Q.** Until taking the role as Cabinet Secretary, you were  
23 minister for public finance and digital economy. In  
24 that role you had responsibility for fully devolved  
25 taxes; is that correct?

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1 engagement with business and with trade unions, and also  
2 took on more responsibility for the guidance that was  
3 being given to businesses and places of work in terms of  
4 how to keep the guidance and the rules around the Covid  
5 pandemic.  
6 **Q.** Thank you.  
7 You explain in your statement that you remained in  
8 the role of Cabinet Secretary for Finance and the  
9 Economy for the remainder of the pandemic, indeed you  
10 remained in the role until 28 March 2023; is that  
11 correct?  
12 **A.** That is correct.  
13 **Q.** Thank you.  
14 Your appointment to the Cabinet Secretary position  
15 followed on from the sudden resignation of your  
16 predecessor, which took place on the day of the Scottish  
17 budget, 6 February 2020. Is that correct?  
18 **A.** That's correct.  
19 **Q.** Due to that unforeseen situation, you stepped in to  
20 deliver the Scottish budget that day?  
21 **A.** Correct.  
22 **Q.** You presumably had had some role in contributing to the  
23 preparation of the budget when you were minister for  
24 public finance and digital economy; is that correct?  
25 **A.** I would say very little in terms of contributing to the

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1 **A.** That's correct.  
2 **Q.** You served in the role as Cabinet Secretary until  
3 May 2021 when the role was expanded to take into account  
4 additional responsibility for economy, the role became  
5 Cabinet Secretary for Finance and Economy; is that  
6 correct?  
7 **A.** That's correct.  
8 **Q.** As at May 2021 clearly the economy was in turmoil,  
9 Scotland was emerging from its second lockdown, there  
10 were -- significant business support had required to be  
11 provided. Is that a fair summary?  
12 **A.** Yes, that would be --  
13 **Q.** Thank you.  
14 **A.** -- a fair summary.  
15 **Q.** Can you describe how -- if and how your role changed  
16 when you took on the responsibility for the economy  
17 portfolio after May 2021?  
18 **A.** Yes. Up until that point I had primarily been,  
19 obviously, responsible for funding the pandemic, but  
20 I had taken on quite considerable responsibility for  
21 direct business support. So although that would have  
22 previously been under the economy portfolio in a sense  
23 it continued when I became economy secretary too.  
24 The thing that changed was probably my direct  
25 engagement with business, so I increased my direct

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1 budget.  
2 **Q.** As at -- we've heard from other evidence that as at that  
3 date, 6 February 2020, there was some emerging evidence  
4 available to the Scottish Government through various  
5 sources, in particular from a consultant epidemiologist  
6 called Professor Woolhouse, about the basic threat of  
7 the virus and what it might mean for Scotland.  
8 When you stepped into that role, were you aware of  
9 that information, either broadly or the specifics?  
10 **A.** Not that I recall being aware of, no, beyond what might  
11 have been just generally discussed in the public domain.  
12 **Q.** Was any provision made in the budget delivered on  
13 6 February 2020 for the emerging threat?  
14 **A.** Not that I recall.  
15 **Q.** So insofar as that information was available, it hadn't  
16 penetrated yet the financial side of the operation?  
17 **A.** I don't remember anything in the budget that  
18 I presented, which I'd only had sight of for a few hours  
19 at that point. I don't recall any reference. There may  
20 have been some passing reference as the budget developed  
21 over the subsequent month --  
22 **Q.** Yes.  
23 **A.** -- but not in that initial statement.  
24 **Q.** We'll get on to that important period in a moment.  
25 Before doing so I'd just like to ask you some

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1 questions about messaging and indeed the retention of  
 2 WhatsApp messages.  
 3 You have provided some WhatsApp messages that you  
 4 retained to the Inquiry; is that correct?  
 5 **A.** That's correct.  
 6 **Q.** And these are WhatsApp messages which fell within the  
 7 ambit of our request for messages relating to  
 8 decision-making about the pandemic?  
 9 **A.** That's correct.  
 10 **Q.** You've provided, as I understand it, some exchanges with  
 11 Professor Leitch, from whom we've heard, limited  
 12 exchanges with the former First Minister, Ms Sturgeon,  
 13 exchanges with Ms Freeman, from whom we heard yesterday,  
 14 and with officials such as Alyson Stafford, who was the  
 15 director general within the Scottish Exchequer. Is that  
 16 a broad summary, I think, of what you've provided?  
 17 **A.** Yeah, I think there's maybe a few more, but --  
 18 **Q.** Yes --  
 19 **A.** -- that's generally --  
 20 **Q.** Thank you.  
 21 Your position, as I understand it, is that you did  
 22 not delete any of your WhatsApp messages; is that right?  
 23 **A.** I did not delete any of the WhatsApp messages with  
 24 Cabinet secretaries, with special advisers, and with  
 25 private office until January 2022, after all of the

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1 **Q.** I understand.  
 2 So do I take it from what you've said that you  
 3 became aware of a policy in around January 2022 which  
 4 required the deletion of messages?  
 5 **A.** The -- in January 2022 a junior member of my  
 6 private office stated that it was now required  
 7 government policy for messages with private office to be  
 8 deleted, going forward, to which I acquiesced because  
 9 I believed it was an instruction. And that only applied  
 10 to that particular member, a junior member of  
 11 private office, and I don't recall it applying to  
 12 anybody else in and around the Cabinet or government.  
 13 **Q.** So as far as you're concerned, therefore, with regard to  
 14 the messages we were more interested in, which is ones  
 15 you were sharing with senior officials or with other  
 16 Cabinet secretaries or other ministers, your position  
 17 has been that your understanding is that there has been  
 18 no policy either mandating or suggesting the deletion of  
 19 those messages at all up till today?  
 20 **A.** Correct.  
 21 **Q.** I'd like to understand a little bit more about precisely  
 22 the role that you were playing during the pandemic.  
 23 Your helpful statement sets this out to some extent, but  
 24 I wanted to try to summarise, if possible, the various  
 25 different aspects of the role, and it may of course be,

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1 major Covid decisions were taken, which was the point at  
 2 which a member of my private office, I think you have  
 3 the reference -- the relevant message, which -- the  
 4 message deletion policy was given to me, and that was  
 5 a point at which -- the first point at which I knew  
 6 there was any policy governing messages.  
 7 **Q.** But given that you were able to provide messages to us  
 8 subsequently, those messages must still have existed in  
 9 some form?  
 10 **A.** Yes, that's right, they -- I did not retrospectively  
 11 delete anything.  
 12 **Q.** Yes. So you started deleting the messages that were  
 13 sent after January 2022 but you didn't delete any of  
 14 them that you held that had been sent before that  
 15 period?  
 16 **A.** Precisely, yeah.  
 17 **Q.** Obviously that coincides roughly with the period in  
 18 which we're interested, which goes up to April 2022, so  
 19 the ones that you've provided are all from before  
 20 January 2022?  
 21 **A.** Yes. And I should say that that -- I only shared that  
 22 in the spirit of being completely open, but I should  
 23 also state that that only applied to that particular  
 24 individual in private office, and not generally to the  
 25 rest of government.

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1 as we've highlighted already, that the role changed to  
 2 an extent when your title changed after the May 2021  
 3 election, but just to be clear as to exactly what it was  
 4 you were responsible for, I'd like to go through various  
 5 bits.  
 6 My understanding primarily is that you were  
 7 responsible for allocating funding for aspects of the  
 8 pandemic response or, indeed, with regard to effects of  
 9 countermeasures taken to combat it. Is that broadly  
 10 correct?  
 11 **A.** That's correct.  
 12 **Q.** So, for example, you would have been the person  
 13 responsible if one wanted to get funding for testing and  
 14 tracing mechanisms, for example?  
 15 **A.** To an extent. The NHS or the health portfolio is  
 16 approximately just under 50% of the overall budget, and  
 17 so the financing of health response was largely taken by  
 18 the Health Secretary. So I would have engagement with  
 19 the Health Secretary at the time in terms of the overall  
 20 quantum of funding that he or she determined that they  
 21 might need for the various responses, and then it was  
 22 their responsibility to determine from within that  
 23 quantum whether it should be spent on, for example, Test  
 24 & Protect, vaccinations and so on.  
 25 **Q.** So what I'm trying to get at is that during the course

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1 of the pandemic there would be things that couldn't have  
2 been anticipated that there would be funding required  
3 for; is that right?

4 **A.** That's true.

5 **Q.** And I gave an example of increased testing capacity;  
6 that wouldn't have been required before the Covid virus  
7 was known?

8 **A.** That's right, yeah.

9 **Q.** So what you're telling me is that there was a system  
10 whereby the Health Secretary, be that Ms Freeman or  
11 later on Mr Yousaf, they would come up with a sort of  
12 list in their own minds of all of the things that they  
13 needed funding for which were additional to the budget  
14 they already had, and they would come to you with  
15 a figure, and you -- what -- your job would be to work  
16 out whether that overall figure was one that you could  
17 cope with in the general budgeting of the Scottish  
18 Government?

19 **A.** I think that's a fair characterisation.

20 **Q.** Thank you.

21 So the list of things that they might have, and  
22 of course this would extend across all of government to  
23 focus on some of the things, that would have included  
24 the additional funding that might be required for  
25 testing or tracing mechanisms that weren't required

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1 **Q.** And that started to meet and provide that function  
2 formally in October of 2020?

3 **A.** Correct.

4 **Q.** I'd be interested to know the extent to which your role  
5 involved an element of analysis and assessment in  
6 particular in relation to the fourth harm, which seems  
7 to sit most neatly with your portfolio.

8 **A.** Yes, so from just before the announcement of lockdown,  
9 the Economy Sub-Cabinet Group was established, and that  
10 was chaired by my colleague Fiona Hyslop, who was the  
11 Economy Secretary, but I had a role in meeting weekly  
12 with the First Minister as well as with the Chief  
13 Economist to discuss the impact to the economy and also  
14 to look at what recovery might look like, and that  
15 obviously shaped our discussions around how the funding  
16 should be spent in order to try to mitigate the harms  
17 that workers and businesses were experiencing.

18 **Q.** Because these two aspects that we've discussed so far  
19 are interconnected, aren't they? If you have a certain  
20 amount of money you want to spend it in the right place  
21 to deal with fighting the virus but you also want to  
22 have some consideration of whether it's being spent in  
23 the right place to minimise overall or -- either short,  
24 medium or long-term economic harm?

25 **A.** Absolutely.

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1 before the pandemic?

2 **A.** Indeed.

3 **Q.** It might also include things like the requirement for  
4 extra money to provide sanitation, infection control in  
5 hospitals or schools or care homes?

6 **A.** Yes, it --

7 **Q.** Which, again, wouldn't have been necessary, necessarily,  
8 in advance of the pandemic but became necessary as time  
9 went on?

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

11 **Q.** Thank you.

12 We've heard a lot, I'm sure we'll hear more today,  
13 about the four harms framework, and this is no doubt  
14 a structure which you are familiar with; yes?

15 **A.** Yes, yes.

16 **Q.** It was introduced, we understand, in April of 2020, and  
17 one of the four harms, the fourth harm, was the economic  
18 harm which was being caused either by the virus or by  
19 the countermeasures taken to combat it; is that broadly  
20 correct?

21 **A.** That's correct.

22 **Q.** We know that there was a four harms group set up that  
23 provided advice and analysis to government  
24 decision-making about the four harms; is that right?

25 **A.** That's correct.

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1 **Q.** And you would have been involved, along with your  
2 colleague Ms Hyslop, in providing analysis, assessment,  
3 input into the overall government strategy as to where  
4 the funding would be best placed with a view to putting  
5 it in the right place for fighting the virus but also  
6 giving some consideration to the fourth harm?

7 **A.** Absolutely.

8 **Q.** Thank you.

9 In your role, I understand it that you were  
10 responsible -- we'll get on to issues about the Treasury  
11 and contact with the UK Government in a moment, but  
12 I understand that in your role you were responsible for  
13 allocating funding to support businesses in order to try  
14 to minimise the effect on the economy in the short and  
15 medium and long term; is that correct?

16 **A.** That's right.

17 **Q.** Because, again, if one looks at the amount of money  
18 that's available in order to try to work out where that  
19 money needs to be directed from the overall budget, one  
20 requires to think, well, where would it be best spent in  
21 order to try to deal with what needs to be dealt with  
22 today but also deal with the longer-term economic harm,  
23 harm 4, that was part of the strategy?

24 **A.** Yes.

25 **Q.** Is that broadly right?

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1 A. That is broadly right.

2 Q. And that role involved, I think you said, possibly in  
3 your particular case, more, after May 2021, contact with  
4 stakeholder businesses and organisations representing  
5 business or workers in order to try to understand and  
6 inform your analysis of the best place to spend the  
7 budget that was available so as to achieve those aims?

8 A. Yes.

9 Q. Thank you.

10 I've mentioned already that Her Majesty's Treasury  
11 is a reserved matter; is that right?

12 A. That's right.

13 Q. And what that means -- again, I'll try and analyse this  
14 complicated subject in a moment as well, but it meant,  
15 in effect, that you also were involved in discussions  
16 with ministers and other representatives from  
17 Her Majesty's Treasury about how Scotland was to access  
18 funding from the UK Government in order to comprise the  
19 budget that you were then handing out to the various  
20 directorates and ministers --

21 A. Yes.

22 Q. -- is that right?

23 In performing this role, these various roles  
24 I should say, you had available to you a team of people,  
25 including -- you've mentioned an advisory group, but

13

1 that in a second.

2 In your statement you say on page 29 at  
3 paragraph 76, if we could have that up, please, just in  
4 connection with the role of these bodies and the  
5 Cabinet:

6 "At times, waiting for the weekly meeting of Cabinet  
7 or waiting for an extraordinary meeting of Cabinet was  
8 deemed to be too slow for a decision to be made.  
9 Furthermore, sometimes Cabinet would discuss all the  
10 factors related to a decision and agree that the final  
11 decision would rest with the First Minister. This  
12 wasn't an uncommon way of working during the pandemic."

13 I'd just like to explore a little bit more precisely  
14 what that means.

15 Is it not the case that in order that decisions  
16 should be made within Cabinet, Cabinet could have been  
17 convened at relatively short notice?

18 A. Yes, and it frequently was, particularly where the --  
19 for example, the evidence was still emerging or there  
20 was new information that hadn't been considered at  
21 a previous meeting of Cabinet. There was quite a number  
22 of extraordinary meetings of Cabinet.

23 Q. Right. What do you mean when you say that "all of the  
24 factors related to a decision would be discussed in  
25 Cabinet"?

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1 also civil servants within, presumably, a number of  
2 different directorates who were able to provide you with  
3 data, information, analysis, in order to inform your  
4 input into discussions about how best decisions should  
5 be made about using money. Is that correct?

6 A. Yes, my primary source of advice was the  
7 director-general of the Exchequer and the Exchequer  
8 team.

9 Q. Okay, and as we've heard broadly already there's  
10 a system in the Scottish Government of  
11 directorates-general, and under those sit a number of  
12 different directorates, it's been described as a system  
13 of "director families" by a previous witness, and you  
14 had a directorate-general that would presumably be most  
15 closely associated with your particular role?

16 A. Ab -- yes, yeah.

17 Q. Thank you.

18 I understand that as Cabinet Secretary you attended,  
19 on occasion, the SGoRR meetings that we've also heard  
20 of?

21 A. Yes, I did.

22 Q. And you also attended meetings of another body called  
23 either gold or gold command?

24 A. Yes, perhaps later on in the pandemic.

25 Q. Yes, I wanted to ask you some questions, we'll get on to

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1 A. Well, I think whenever there was a decision to be made,  
2 for example, introducing new non-pharmaceutical  
3 interventions or discussing a circuit-breaker or  
4 lockdown, Cabinet would meet and I would of course  
5 contribute some of the points around the finance, the  
6 Health Secretary would contribute in terms of the health  
7 factor, we would discuss that, there would be a very  
8 frank conversation, but you will often see in Cabinet  
9 papers that there was an agreement that Cabinet would  
10 delegate to the First Minister --

11 Q. That is right.

12 A. -- for final agreement or final sign-off. Or where  
13 there was a very tight decision being made, for example  
14 whether a particular local authority area should go into  
15 level 3 or stay in level 2, often those decisions would  
16 be delegated to the First Minister.

17 Q. That's what you mean by there being all the factors  
18 related to a -- there's a discussion that takes place in  
19 Cabinet about those factors, there is then a delegation,  
20 the decision is then made elsewhere, is that broadly the  
21 process that you say was not an uncommon way of working  
22 during the pandemic?

23 A. Roughly. I think that the bulk of the decision would  
24 always be made by Cabinet, but when there were fine  
25 points that Cabinet hadn't come to an agreement on, that

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1 final decision would rest with the First Minister.

2 **Q.** This is really what we're interested in, because we've  
3 seen a number of expressions like this which don't  
4 define with any degree of precision what you mean by  
5 "the bulk of the decision". There may well -- it may  
6 well be, for example, this is a hypothetical example,  
7 that if the position were that the Cabinet were to agree  
8 that "We should do something about this virus", and then  
9 everything from that point on was left to the  
10 First Minister or a close group of advisers, then that  
11 might accurately be characterised as Cabinet not really  
12 having made any part of the decision at all and all of  
13 the operative parts of the decision had been made  
14 outwith Cabinet. In that hypothetical situation do you  
15 agree with the proposition that that's what that would  
16 be?

17 **A.** I wouldn't agree that that would be a fair  
18 characterisation of how things operated.

19 **Q.** Indeed.

20 **A.** I would suggest that Cabinet had a key role in terms of  
21 making the decisions. The example that I gave earlier  
22 is probably a good example of the nature of a decision,  
23 where Cabinet might have agreed, for example, that some  
24 local authorities should move up or down a level, but  
25 that there was a few local authorities where it was

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1 recall sort of summary emails being sent out afterwards  
2 in terms of the main issues that were discussed. And  
3 perhaps if I could also just say, as a Cabinet  
4 Secretary, these summaries and minutes and so on were  
5 extremely important in terms of retrospectively  
6 considering how a decision had been arrived at.

7 **Q.** Yes, because it's important, isn't it, in particular in  
8 a continuing threat like a pandemic, that there is the  
9 material available in, one would imagine, formal  
10 minutes, to be able to assess whether the way we went  
11 about it last month or six months ago was right so that,  
12 as the threat continued, there could be an internal  
13 assessment of "Well, how do we do it the next time"?

14 **A.** Absolutely, corporate memory was critical, so I was  
15 Cabinet Secretary for the two and a half years but  
16 of course officials would come and go, teams would  
17 sometimes change, and if individual officials couldn't  
18 recall how things had been approached the last time the  
19 decision was made, then it would be much more  
20 challenging to make the decision again.

21 **Q.** Thank you.

22 As far as the gold or -- gold or gold command it  
23 seems to be called, again we don't have minutes of those  
24 meetings although we see them referred to in various  
25 places. There are, for example, Cabinet meetings saying

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1 very, very tight and finely balanced. That's an example  
2 where it would be delegated to the First Minister.

3 **Q.** Neither the SGoRR nor the gold group meetings are  
4 minuted; is that correct?

5 **A.** Well, that surprises me, and this would be the first of  
6 me hearing it.

7 **Q.** Right. The reason that we think that that's the case is  
8 we've obviously asked the Scottish Government for all of  
9 its papers concerning these matters, and although we  
10 have, for example, Cabinet minutes, of course, we don't  
11 have minuted records of either of those groups. So  
12 therefore it becomes difficult to understand what  
13 precisely the ultimate decision-making process is when  
14 there is no record of how those decisions were  
15 ultimately taken.

16 **A.** And I can understand that frustration.

17 **Q.** Do you think those meetings should be minuted in future,  
18 for what it's worth?

19 **A.** I think that every meeting of that nature in the  
20 Scottish Government should be minuted and, as I say, I'm  
21 surprised to hear that they weren't.

22 **Q.** So your expectation, after having participated in some  
23 of them, was that they would be minuted in the same way  
24 as Cabinet is minuted?

25 **A.** My expectation would be as you've described. I also

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1 "Well, there was a meeting of gold that discussed this",  
2 and so you can pick up information.

3 You have provided us helpfully with a list of the  
4 gold meetings you attended with the material that you've  
5 provided. From that we can see that you attended gold  
6 on 11 occasions. These meetings were in mid-2021 and in  
7 late 2021 and early 2022. You did not attend any gold  
8 meetings in 2020, is that correct?

9 **A.** Well, this list is drawn directly from the diary, so  
10 I don't recall attending gold, I don't recall even being  
11 aware that it existed until later on in the pandemic.

12 **Q.** Again, this has been the effort of looking through the  
13 material that we do have because we don't have minutes,  
14 but we've certainly ascertained that there were at least  
15 six such meetings in the period between September 2020  
16 and January 2021, that there may be more, but we're  
17 trying to piece together what all of these actually  
18 were.

19 You didn't input into the discussions at those  
20 meetings then because you didn't attend them; is that  
21 correct?

22 **A.** If I wasn't there, I won't have inputted, no.

23 **Q.** Okay.

24 Over that period, at least, the meetings from  
25 September 2020 to January 2021, again, as I often try to

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1 do, to put it into the context of where we were in the  
2 pandemic, that was a period which started with the  
3 First Minister announcing on 7 September that there  
4 needed to be a slowing down of the easing of lockdown  
5 because there had started to be an increase in cases.  
6 It was subsequently shown that that was connected  
7 largely with foreign travel. And then as the year went  
8 on, with cases going up and up, Scotland started to feel  
9 the effects of the Alpha variant, which then led into  
10 the second lockdown.

11 Over that period, we've seen evidence that there  
12 were a number of discussions about a number of potential  
13 things that might be done, advice tendered then  
14 ultimately withdrawn about a circuit-breaker, the way in  
15 which local restrictions might be used.

16 These are all matters that would have significant  
17 economic impacts on Scotland, isn't that right?

18 **A.** Correct.

19 **Q.** All matters in which one would imagine, given our  
20 discussion about the roles you played, input from you  
21 would have been significant and the absence of input  
22 might have had significant consequences?

23 **A.** Well, I assume that that might lead from the fact that  
24 there wasn't a finance minister present. What I can't  
25 answer for is whether or not Ms Hyslop, the

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1 **Q.** That's right, yes, the period I've tried to define as  
2 best I can for you.

3 **A.** Yeah.

4 **Q.** But over that whole period there were discussions about  
5 what should be done in light of rising cases. It  
6 culminated in the second lockdown but there were  
7 significant funding aspects to the decision-making over  
8 that period; yes?

9 **A.** Yes, there were.

10 **Q.** And indeed, of course, to look at the slightly different  
11 aspect from your perspective, a further lockdown  
12 would -- it would have been predictable that a further  
13 lockdown would have economic consequences for the  
14 country, fourth harm type harms?

15 **A.** Very much so.

16 **Q.** Yes.

17 Could I ask you some questions, please, about  
18 generally the way in which public services in Scotland  
19 are funded?

20 **A.** Yes.

21 **Q.** I'm going to try, as I did before, to take you through  
22 some general propositions to see if our understanding,  
23 our current understanding about it is correct. I'm sure  
24 if we entered into a discussion about it we'd be here  
25 for many hours, but hopefully this is roughly correct.

23

1 Economy Secretary, was present at those meetings.

2 **Q.** Thank you.

3 There were issues -- we'll come back to this general  
4 topic, but there were issues around that time in  
5 particular connected to whether the furlough scheme  
6 would continue to be available if Scotland decided to  
7 have any further lockdown or significant restrictions.

8 Do you remember that period?

9 **A.** Very much.

10 **Q.** We'll look back on that. It seems in paperwork that  
11 we've seen to be represented that the impression that  
12 the Scottish Government had that if it were to impose  
13 another lockdown, circuit-breaker, firebreak lockdown or  
14 whatever, that there would be an impediment to that  
15 course of action because furlough funding would not  
16 necessarily be available from the UK Government.

17 We'll get on to the details of that in due course,  
18 but that was a very important matter in which you had  
19 had involvement, as I understand it?

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

21 **Q.** And it appears from the paperwork it was central in the  
22 decision-making about whether to have a lockdown or not  
23 at all?

24 **A.** Correct, in terms of the subsequent lockdown. I'm  
25 assuming we're talking about late 2020 here?

22

1 As I understand it the Scottish Government receives  
2 a fixed budget which means that it cannot overspend that  
3 budget, and it requires to spend only what it is  
4 allocated for a particular year?

5 **A.** That's correct, it has to be a fixed budget.

6 **Q.** Yes, and that budget, which I understand is called  
7 a block grant, comes from Her Majesty's Treasury part of  
8 the UK Government?

9 **A.** Correct.

10 **Q.** So every year there is an allocation of a certain amount  
11 of money for Scotland, and your role, part of your role,  
12 would have been to have that amount of money in normal  
13 times, if you like, and allocate that the way that the  
14 Scottish Government wished to, amongst its various  
15 different commitments?

16 **A.** Primarily through the budget.

17 **Q.** Yes. And the Scottish Government then, with this  
18 general sum of money, has the ability to decide what it  
19 wants to use the money for?

20 **A.** Correct.

21 **Q.** And, for example, as I think you've said already,  
22 health, the health budget often in Scotland is seen as  
23 requiring a higher percentage spend than is spent  
24 per capita, if you like, in other parts of the  
25 United Kingdom?

24

1 **A.** Correct.

2 **Q.** And what that means is if -- if Scotland, the Scottish  
3 Government, is choosing to spend more on health, what  
4 that means is one has to try to find money in another  
5 place where less is spent in order to balance the books  
6 at the end of the day?

7 **A.** Correct. It's sort of like a fixed pie and you can only  
8 cut from within that pie.

9 **Q.** Yes. And that was very much your function, to try to  
10 work out the way in which the pie would be cut up?

11 **A.** Yes. Of course the complication in Covid was that  
12 additional funding was often announced unexpectedly,  
13 very rarely was it announced expectedly, and so we were  
14 repeating the budget process numerous times.

15 **Q.** Yes, because in normal times, as I've said, there is  
16 this one block grant that comes from the United Kingdom  
17 Government, and it is then allocated in accordance with  
18 the priorities of the Scottish Government; is that  
19 right, broadly?

20 **A.** Correct.

21 **Q.** But in times of emergency, where additional funding is  
22 required to deal with things that couldn't have been  
23 anticipated as being part of the normal budgetary  
24 processes, there requires to be further funding made  
25 available from the UK Treasury to Scotland to fund those

25

1 **A.** Yes.

2 **Q.** We'll return to the details of that in a moment but  
3 that's very helpful.

4 Does the Scottish Government have powers to borrow  
5 money?

6 **A.** Very limited, and not resource borrowing, which is  
7 obviously what largely funded the response to the Covid  
8 pandemic. So we have some limited capital borrowing,  
9 which was not overly useful in a pandemic, and we can  
10 borrow for reasons that weren't useful in a pandemic.  
11 So, for example, for cash management, which was never  
12 an issue.

13 **Q.** But the UK Government can borrow money?

14 **A.** They can.

15 **Q.** And in Covid the UK Government was able to borrow money  
16 to fund the emergency elements of the Covid response  
17 that were necessary?

18 **A.** That's right.

19 **Q.** But in order for the Scottish Government to get part of  
20 that, it had to rely on the arrangements the  
21 UK Government had for borrowing money?

22 **A.** Yes, so Barnett formula was the only mechanism by which  
23 money was provided to the Scottish Government during the  
24 pandemic.

25 **Q.** You're jumping a line --

27

1 additional requirements?

2 **A.** Indeed.

3 **Q.** Is it the case that where these -- if I call those  
4 emergency funding grants -- if those emergency funding  
5 grants were made available, was it within the gift of  
6 the Scottish Government to decide what they would be  
7 used for?

8 **A.** Yes.

9 **Q.** It is also the case, is it not, that it -- because of  
10 the devolution settlement, the United Kingdom Government  
11 has the ability to spend directly in Scotland?

12 **A.** Yes.

13 **Q.** And so what that means is that that's -- if the  
14 United Kingdom Government has a certain amount of money  
15 that it wants to spend on an initiative, it can do so,  
16 and it doesn't form part of that budgetary process with  
17 the Scottish Government that I've just tried to explain?

18 **A.** Indeed.

19 **Q.** An example of that to which we'll also return is the  
20 Eat Out to Help Out scheme.

21 **A.** Exactly.

22 **Q.** That, as we've heard from a political expert who gave  
23 evidence from the University of Stirling,  
24 Professor Cairney, was an example of a direct  
25 UK Government spend in Scotland?

26

1 **A.** Sorry.

2 **Q.** You're ahead of me, but thank you.

3 It is, as I understand it, also the case that  
4 Scotland has limited -- the Scottish Government has  
5 limited tax-raising powers?

6 **A.** Correct.

7 **Q.** To what extent were those tax-raising powers effective  
8 or really relevant to the pandemic response in Scotland?

9 **A.** I would say they were almost irrelevant during the  
10 pandemic.

11 **Q.** Can you explain broadly, if you can, why that is.

12 **A.** Well, largely because income tax is only reconciled  
13 about 18 months after the year has passed, so we are  
14 budgeted for the -- we budget for the period of the  
15 pandemic on the basis of forecasts of what we think we  
16 might get. So of course we were monitoring those  
17 forecasts in real times but it doesn't have a bearing on  
18 the actual substantive funding you have in front of you.  
19 And then non-domestic rates was the other big tax, but  
20 of course there were record levels of non-domestic rates  
21 relief in place to support businesses.

22 **Q.** So the issue with the Scottish Government's tax-raising  
23 powers in these areas, including income tax, was if  
24 money was needed it was needed there and then --

25 **A.** Precisely.

28

- 1 **Q.** -- and these changes would have taken too long to filter  
2 through; is that broadly correct?  
3 **A.** Precisely.  
4 **Q.** So if it were to be suggested in any other evidence that  
5 Scotland's tax-raising powers were a way in which it  
6 could have itself funded the response, I assume you  
7 would disagree with that proposition?  
8 **A.** I would disagree.  
9 **Q.** With for the reasons you've said?  
10 **A.** Yes.  
11 **Q.** Funding from the UK Government is allocated to the  
12 Scottish Government by way of the Barnett formula that  
13 you've mentioned?  
14 **A.** That's correct.  
15 **Q.** Again, as I tried with Professor Cairney, can we try not  
16 to get into the controversy surrounding that, as I know  
17 there are many, but effectively my understanding is that  
18 this is a means by which the percentage of what is spent  
19 in the UK Government, in England effectively, is  
20 allocated to Scotland. So you work out how much is  
21 spent overall in England and a certain Barnett  
22 percentage is applied to that and that's what results in  
23 Scotland's block grant; is that correct?  
24 **A.** That's correct.  
25 **Q.** And is it -- is it the case that where one is dealing

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- 1 **Q.** I'll go to a passage about this in your statement in  
2 a moment, but do I understand it correctly that broadly  
3 the position is whereas the Barnett formula -- and there  
4 are people who don't like that, but it might in some  
5 eyes be deemed to be appropriate for a block grant, for  
6 the reasons we've discussed, it logically really doesn't  
7 necessarily apply to more specific funding because one  
8 might be able to demonstrate in that specific area that  
9 the need in one constituent part of United Kingdom is  
10 different from the English need upon which the amount is  
11 calculated?  
12 **A.** Absolutely. And if I could add, our primary concern was  
13 less to do with the quantum and more to do with the  
14 timing of when the Barnett allocation would be  
15 triggered, because it's only triggered when there is  
16 spending on England-only areas. So where there might be  
17 funding that was triggered at a particular point, that  
18 may have been several weeks later or several weeks  
19 earlier than we might have needed to access it. So my  
20 primary concern with Barnett formula was around the  
21 timing and how we might access that funding. We did  
22 have discussions, for example, with the Treasury as to  
23 how, therefore, we could continue to use Barnett but  
24 resolve the timing issue by, for example, drawing down  
25 some funding which would then be netted off future

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- 1 with a block grant, which deals with all of Scotland's  
2 public spending, as we've discussed, that there may be  
3 swings and roundabouts and balances that can be  
4 incorporated in? So if, for example, you get a certain  
5 amount of money every year, you have to balance the  
6 books at the end of the year; yes?  
7 **A.** Yes.  
8 **Q.** But you can do that by choosing "I'll spend more in  
9 area A but I'll spend less in area Z", and that's a way  
10 of balancing the books?  
11 **A.** Yes, it's the only way, really, of balancing the books.  
12 **Q.** Yes. But to what extent is it by operation of law or  
13 convention automatic that the Barnett formula should be  
14 applied to grants of emergency funding, such as the ones  
15 that were made available by the UK Government during the  
16 pandemic?  
17 **A.** Well, it was the only mechanism that was considered,  
18 I think, by the UK Government for allocating funding to  
19 Scotland. As you may come on to later, there was  
20 extensive discussion between myself and Treasury about  
21 looking at alternative means of allocating funding to  
22 Scotland. But there was no effort, I would suggest, in  
23 order to develop those alternatives, despite  
24 representations from the Welsh, Northern Irish and  
25 myself.

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- 1 Barnett allocations. But that didn't progress.  
2 **Q.** Right. Professor Cairney provided us with a very  
3 helpful analysis of a number of these issues in his  
4 expert report. He mentioned something called a Barnett  
5 guarantee. Could you explain what the concept was and  
6 whether that was something you favoured and ultimately  
7 whether that ever happened?  
8 **A.** The Barnett guarantee was enormously helpful, and it was  
9 agreed in the summer of 2020. I should say that when  
10 the Scottish Government is allocated funding, it's only  
11 actually at the end of the year that we know precisely  
12 how much funding we will be given, because we don't get  
13 a share of what's announced, we get a share of what's  
14 actually spent. And like every government, you only  
15 know what you actually spend at the end of the year. So  
16 there means that there can be negative consequentials.  
17 So if, for example, the UK Government is looking for  
18 savings in a particular area, then they're going to  
19 spend less, and there was a risk that we would have to  
20 give back money.  
21 So for that first part of the pandemic we weren't  
22 just in receipt of funding, but we were also being told  
23 that we might have to give back. The guarantee  
24 said: You won't have to give back to the UK Government,  
25 so when we make an announcement, we can promise you that

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1 that's what you will receive and so you can budget with  
2 a lot more certainty.

3 Which was transformational in that first year.

4 **Q.** When did that element of the arrangement kick in?

5 **A.** It kicked in from the summer, I think it was July 2020.

6 **Q.** Right. But there are, I think, still other concerns  
7 that you had -- would have about the way in which the  
8 Barnett formula's applied. Am I right?

9 **A.** Well, it continued to be the case that the UK Government  
10 would understandably inform us that there would be no  
11 additional funding, and we would budget on that basis,  
12 and then a few weeks later, or indeed, in some cases,  
13 a few days later, there would be an announcement of  
14 additional funding. And it would have aided planning  
15 considerably if we had known the full extent of the  
16 funding that we had available to access.

17 That wasn't a question of personalities, I had very  
18 constructive relationships, but it was a question of the  
19 systems, where the systems were just not set up to give  
20 us the budget guarantee that we needed.

21 **Q.** In his report, Professor Cairney in his analysis, his  
22 detailed analysis, suggests that the use of the Barnett  
23 formula -- he describes it as a political solution  
24 rather than a coherent financial solution. Is that  
25 a proposition with which you would agree?

33

1 **Q.** Yes, this is what I was trying to get at when I asked  
2 you were there other dissatisfactions with the Barnett  
3 arrangement applied in an emergency situation.

4 What -- we're obviously very interested in this  
5 Inquiry in trying to think about how things would work  
6 better if another pandemic were to come along, and in  
7 order to assist with that I was keen to understand  
8 more -- put the guarantee to one side, we've dealt with  
9 that, but what these other flexibilities were that you  
10 think would have been useful to incorporate within the  
11 system which, as I understand it, you say were never  
12 implemented?

13 **A.** Yeah. So the flexibilities that we proposed were all  
14 solutions, but perhaps it would be more useful to the  
15 Inquiry if I outline just the problems, because there  
16 may be better solutions to them.

17 But the first one was around managing a budget  
18 between years. So at the moment the Scottish Government  
19 has to have a fixed budget, it cannot overspend on that  
20 budget, and we can't carry forward very much budget into  
21 the next year. So we can only draw down about  
22 £250 million in a new year. Remember, that's in the  
23 context of a £55 billion budget.

24 On 15 February 2021, the UK Government announced  
25 an additional £1.1 billion of Barnett, which obviously

35

1 **A.** I don't necessarily follow the sort of political point,  
2 but I would say that it wasn't a sufficiently flexible  
3 system for an emergency.

4 **Q.** It may be slightly elusive as to precisely what he means  
5 by that, but what I take him to mean by that is that, in  
6 the circumstances of the pandemic, because people were  
7 used to using the Barnett formula as part of a mechanism  
8 for providing funding but also to give a percentage that  
9 you could apply, it was an easy ready reckoner to use  
10 rather than trying to develop on the hoof, if you like,  
11 a more sophisticated system that would have targeted  
12 funding to the right places.

13 Do you think that that's fair? Was what your  
14 experience of the use of the Barnett formula?

15 **A.** Yes, I think from the very -- yes, by and large, but  
16 I think from the very beginning my Welsh and  
17 Northern Irish counterparts and I all agreed that it  
18 couldn't bear the weight of an emergency, and we  
19 suggested a number of flexibilities that could be  
20 adapted and adopted in and around Barnett, so that  
21 Barnett remained the basis on which funding was provided  
22 but there were flexibilities around it. And it remains  
23 an element of disappointment that only the guarantee was  
24 implemented of those various flexibilities that we had  
25 suggested.

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1 was hugely welcome, but that is six weeks away from the  
2 end of the financial year, and we can't carry money  
3 forward. So that was an example of a flexibility that  
4 we asked for: can we carry forward funding across years?  
5 Because otherwise you're in the situation of having to  
6 figure out how to spend that money before the end of the  
7 financial year when it might better be spent in April.

8 That was the first one. The second one --

9 **Q.** Just on that --

10 **A.** Yeah.

11 **Q.** -- are you saying then that you weren't able to carry  
12 forward that allocation of funding to be used after  
13 April 2020?

14 **A.** So we could in March, it was finally granted to us to be  
15 able to carry forward that £1.1 billion as a one-off.  
16 But I think the principle still stands that if the  
17 government can manage funding across years, that would  
18 strike me as an eminently sensible adaptation to Barnett  
19 which doesn't compromise the core principles of Barnett.

20 **Q.** Okay.

21 **A.** And the second big one was this point around being able  
22 to spend money when it was required rather than when the  
23 UK Government announced it. So I recall, for example,  
24 in December 2021, you will remember that the Omicron  
25 variant was posing real concerns, and I had engaged

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1 extensively with the chief secretary to the Treasury to  
 2 look to see if any additional funding might be granted,  
 3 and was told that there wouldn't be any funding granted,  
 4 so we had to make decisions on that basis.  
 5 And then I think it was in -- on 14 December, about  
 6 £220 million was -- we were told that £220 million was  
 7 coming. Five days later it was doubled to £440 million.  
 8 So rather than waiting for the UK Government to allocate  
 9 funding, it would have been far easier for us to just  
 10 say: look, we will spend this funding as it is required  
 11 and the UK Government would have said "That's okay, we  
 12 understand that, you can pay that off over a longer  
 13 period of time".  
 14 **Q.** I see. If we could just look -- you have mentioned the  
 15 Omicron period, which is one that we've looked at with  
 16 other witnesses and I was wanting to ask you some  
 17 questions about that, we'll return to the general  
 18 discussion in a moment. But just to understand your  
 19 evidence there, the difficulty you had with the  
 20 UK Government, as I understand it, was there was  
 21 a suggestion you would get £220 million, no doubt that  
 22 was welcome, but that doubled, and it would have been  
 23 good to have known that you were going to get double the  
 24 amount, to assist with planning earlier than that; is  
 25 that right?

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1 was news to me and obviously news to the FM who wasn't  
 2 best pleased. Somewhat embarrassing...can you try and  
 3 get to the root of what Mr Yousaf was offering and  
 4 perhaps use it as a lever [I think it's meant to say] to  
 5 get £100 [million] off health."  
 6 To which Ms Stafford replies:  
 7 "Of course.... news to us all!!!!"  
 8 You say:  
 9 "He's done it before...but this time he did it in  
 10 front of the FM so I think we should ensure we get £100m  
 11 this time."  
 12 Then you further say:  
 13 "Anyway, I've never seen the FM this angry in all my  
 14 cabinets...for good reason."  
 15 Is this around the period that we were discussing?  
 16 There are some previous exchanges, and indeed minutes --  
 17 we've looked at an exchange with the current  
 18 First Minister between himself and Professor Leitch  
 19 around this time where they are talking about the need  
 20 to get more funding and do more to try to deal with this  
 21 emerging threat, there are various references to this  
 22 difficult Cabinet meeting, and is the position that  
 23 you're seeking to get funding from the UK Government at  
 24 this stage, there is reference to you trying to source  
 25 money but having trouble with it, but that the current

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1 **A.** That's right. And the initial 220 was itself, I think,  
 2 a couple of days after the Cabinet discussion where we  
 3 agreed that action needed to be taken.  
 4 I see.  
 5 Could I look, please, at INQ000334573, at page 9.  
 6 **(Pause)**  
 7 It will just come up in a second.  
 8 This is some WhatsApp exchanges that you had with  
 9 Alyson Stafford.  
 10 **A.** That's correct.  
 11 **Q.** Who was she?  
 12 **A.** She was the director-general of the Exchequer.  
 13 **Q.** Thank you. And these -- the messages I'm interested in,  
 14 this is the period that you're talking about, I think,  
 15 when the Omicron variant was starting to -- around about  
 16 this time I think had just become the dominant variant  
 17 in Scotland and the cases were rocketing.  
 18 **A.** Yes.  
 19 **Q.** Is that roughly right?  
 20 There are some messages from the 14th that you  
 21 exchange there that refer to what we've just been  
 22 looking at. You message Ms Stafford saying:  
 23 "Hi Alyson, a very awkward discussion at cabinet  
 24 where mr Yousaf said that health had identified  
 25 a further £100 [million] for business support -- which

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1 First Minister found £100 million in his health budget  
 2 that you weren't aware existed?  
 3 **A.** Well, I think if I could just make one point of context  
 4 here, furlough didn't apply, furlough didn't exist, so  
 5 we had -- I had been tasked with trying to source  
 6 funding in any part of government, in any portfolio,  
 7 over the previous week or so, maybe two weeks, to  
 8 identify funding that could be used for business  
 9 support. We had identified between £86 million and  
 10 £100 million, but we considered that that would largely  
 11 just about cover the self-isolation support grant and  
 12 anything of the remainder would cover business, but we  
 13 didn't think there would be much left from that.  
 14 So I had gone to that Cabinet, as I recall, making  
 15 the point that we had very limited funding available.  
 16 I think that, if I remember correctly, I had cover to  
 17 perhaps provide about £100 million perhaps at risk, at  
 18 risk meaning it wasn't guaranteed that we would have  
 19 that £100 million sourced from the UK Government or  
 20 otherwise, but the emergency nature of this meant that  
 21 I put up £100 million, and then in that particular  
 22 Cabinet meeting, the current First Minister, former  
 23 Health Secretary, was trying to be helpful in saying  
 24 that perhaps Health could look at providing  
 25 £100 million, knowing that this would have a significant

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1 positive impact on the pandemic, and therefore on the  
 2 health portfolio more generally.  
 3 It was often the case that surprises were never  
 4 welcome at Cabinet, and so what I'm alluding to there in  
 5 terms of the embarrassment and so on was the fact that  
 6 it had been a comment that hadn't been drafted in the  
 7 papers, that it had perhaps come from left field.  
 8 **Q.** I see. So just to be clear, the £100 million that was  
 9 identified for business support, you've explained why  
 10 that was necessary, but was he saying that he had access  
 11 to that £100 million, which is why you say "We can use  
 12 this as a level to get £100 million off health"?  
 13 **A.** Well, health, in my view, was -- you know, they were  
 14 always in need of additional funding, as you would  
 15 understand, for this full scale of the response, and so  
 16 when I had gone to all the portfolios asking if there  
 17 was anything that they could free up, I had got a blank  
 18 response from every part of the government --  
 19 **Q.** Yes.  
 20 **A.** -- because they were extremely stretched. And so my  
 21 understanding was, from that exchange, that Mr Yousaf  
 22 had offered £100 million from Health. I don't know if  
 23 it goes into it in that exchange, I don't think it does,  
 24 but in perhaps the papers you will then see a very rapid  
 25 working with Health finance to identify where they might

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1 anywhere else in the UK, it had led to issues around  
 2 hospitals having to cancel non-emergency surgery, the  
 3 military being called in to assist with the running of  
 4 hospitals.  
 5 What -- was it -- over this period, were there  
 6 discussions about the need to have further considerable  
 7 social distancing or even lockdowns?  
 8 **A.** Yes, I remember that autumn as a period of constant  
 9 engagement with business organisations, and obviously  
 10 there was the introduction of various changes in terms  
 11 of NPIs, social distancing, and so on. So, yes, I think  
 12 that over the course of the autumn things had been  
 13 tightening up.  
 14 **Q.** Yes. We've already been through with Mr Yousaf, again  
 15 helpfully illustrated through his WhatsApp exchanges  
 16 with Professor Leitch, which were frequent, a growing  
 17 concern on their part, from the Health perspective,  
 18 about whether we were really doing enough to deal with  
 19 this emerging threat, these record cases, this effect on  
 20 the NHS. We looked in particular at discussions around  
 21 the possibility of cancelling the EURO fan zone in the  
 22 summer of 2021, there was also the COP26 in November,  
 23 there are discussions around that.  
 24 So, in light of that, there were concerns expressed  
 25 by them as to whether these additional measures could or

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1 find that £100 million.  
 2 **Q.** But his position, to everyone's surprise, it appears, at  
 3 the Cabinet meeting, or the meeting, was that he had,  
 4 contrary to what your impression was, about whether  
 5 there was anything left in the back of the cupboard,  
 6 that he did, in fact, have £100 million that he could  
 7 make available for this purpose, and the irritation was  
 8 based on the fact that this had not been made clear  
 9 beforehand?  
 10 **A.** I think that would be a fair characterisation, although  
 11 I would say that the intention, I think, was to be  
 12 helpful and not in any way to undermine the process.  
 13 **Q.** I see.  
 14 Just as we're on this period and as you've mentioned  
 15 it, I'd like to ask you some more questions in due  
 16 course about furlough and how all that worked, but at  
 17 this stage it appears to be the case that, as I think  
 18 you said, there was no furlough available for dealing  
 19 with a third wave of Covid; is that correct?  
 20 **A.** That's correct.  
 21 **Q.** It had been the case, by this point, December 2021, that  
 22 Scotland had had record cases, really from the summer  
 23 onwards, which had initially been caused by the Delta  
 24 wave, which had caused, really, Scotland's cases, as  
 25 we've seen some statistical evidence, to go higher than

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1 should be imposed. Ultimately, the fan zone was allowed  
 2 to go ahead. There was a rise in cases. As far as  
 3 you're concerned, were you having discussions at this  
 4 stage with the UK Government about the possibility that  
 5 Scotland may need to go further, have a lockdown even,  
 6 and that therefore funding which would be associated  
 7 with a lockdown, including for things like furlough,  
 8 might need to be made available again?  
 9 **A.** Yes, I think I made at least one, if not a number of  
 10 public requests for furlough to be extended or at least  
 11 reintroduced in that period.  
 12 But secondly, you will see from any table of the  
 13 consequential funding that was being allocated over that  
 14 period that the quantum decreases, in other words there  
 15 was less being spent on business support in England, and  
 16 therefore generating less funding, so there was less  
 17 funding available to in any way mitigate losses that  
 18 were being experienced by businesses over that period.  
 19 And so that meant that in the discussion about what  
 20 Scotland should do with the rising numbers, we were also  
 21 balancing these other challenges.  
 22 **Q.** Right.  
 23 Could I go again to INQ000334572, this time at  
 24 page 10. This again is an exchange between yourself and  
 25 Ms Stafford from 18 December, so a few days later. It

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1 will come up in a moment.

2 (Pause)

3 I'm looking at the one starting at 9.54.53 on the  
4 18th. This looks like it is Ms Stafford forwarding on  
5 something from Sue Gray. Does that look right?

6 A. I -- oh, yes -- sorry, yes, I see it now.

7 Q. You see it?

8 A. Yes, I do.

9 Q. Who was Sue Gray?

10 A. Sue Gray would have been, at that point -- I don't  
11 actually recall her specific title at that point, but  
12 she obviously was a point of contact in terms of  
13 devolved funding.

14 Q. I see. And it looks like Ms Stafford is forwarding  
15 something on to you from Sue Gray which says:

16 "HMT to engage DAs before COBR. COBR expected to be  
17 Sunday. Jackie's aware too. Jackie checking in with  
18 Ben at HMT at 11.30 this morning to see how things have  
19 progressed post FM/PM Friday call.

20 Then Ms Stafford says:

21 "Last night, HMT were saying we'd hear at the  
22 beginning of the week and it would be only a modest  
23 adjustment to what was committed last week.

24 Then she says:

25 "The only other point I'd add is that seeking

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1 A. That's right.

2 Q. Okay.

3 Of course at this stage the Scottish Government had  
4 become, one would imagine, quite experienced at dealing  
5 with the threat of the pandemic, there having been two  
6 waves before, and indeed one would imagine quite  
7 experienced at dealing with anyone they required to deal  
8 with in the Treasury in order to try to anticipate the  
9 requirements from a financial point of view.

10 It I think would be fair to say that one must have  
11 learned or should have learned from the previous waves  
12 that the waves would often come quickly, they would  
13 often need urgent action, financial or otherwise, and so  
14 good preparation was absolutely mandatory; is that  
15 correct?

16 A. Absolutely.

17 Q. Given the fact that although it is fair to say my  
18 understanding is that this is when Scotland started to  
19 feel the full force of Omicron for the first time, given  
20 that Scotland had been in the grip of Delta for some  
21 months before this, to what extent had efforts along  
22 these lines been made in those previous several months  
23 to try to anticipate the need for furlough that might  
24 arise as a result of Delta, never mind Omicron?

25 A. There had been extensive engagement over that autumn

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1 funding for targeted initiatives is likely to be better  
2 received by HMT....

3 "There's no appetite for, in fact quite an allergic  
4 reaction to furlough."

5 So does this indicate that Ms Stafford is reporting  
6 to you efforts that she's making at an official civil  
7 servant level to try to explore the possibility of  
8 furlough funding being made available from the  
9 UK Government at this crucial time in Scotland?

10 A. That's right --

11 Q. And what she got was "quite an allergic reaction to  
12 furlough"?

13 A. Yes, I think there was an intense effort over these days  
14 between officials and ministers to engage with the  
15 UK Government, and -- she obviously characterises the  
16 response to requesting reintroduction of furlough.

17 I was also requesting additional funding for us to  
18 be able to not necessarily set up something which was  
19 akin to furlough but which would provide sufficient  
20 funding to businesses in order to keep their staff  
21 employed over that period.

22 Q. I see. And there's a suggestion that more targeted  
23 initiatives would be likely to be received, so it's not  
24 a closed door on the possibility of more funding, but  
25 furlough was off the table?

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1 period in terms of requesting what I would call the  
2 tools to be able to respond, and my tool was primarily  
3 funding that could help mitigate the losses experienced  
4 by households as well as businesses. So there certainly  
5 was extensive engagement. I imagine that this point  
6 would have been raised in every conversation I had with  
7 the chief secretary to the Treasury and was frequently  
8 raised between officials as well.

9 Q. Was it the case, generally speaking, that the reaction  
10 that you got was along these lines in that period too,  
11 because of course Scotland had higher cases in Delta,  
12 and therefore one might imagine, logically, that you  
13 would have experienced the same problems, because  
14 English funding was being made available presumably in  
15 accordance with spending priorities for the English  
16 situation, as you explained, but to what extent was  
17 there any progress in trying to persuade Her Majesty's  
18 Treasury that Scotland was in a different position and  
19 therefore needed to be treated differently?

20 A. Well, we had sought to persuade the UK Government,  
21 probably over the entirety of the pandemic, that funding  
22 should be aligned with when it was needed in Scotland  
23 rather than when it was needed in England.

24 But perhaps if I could make one point, which is that  
25 I often thought that the engagement with the chief

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1 secretary to the Treasury and with his officials that  
 2 were tasked with devolved finance were always good.  
 3 I would suggest that one major learning is that they  
 4 were not always -- the devolved finance officials were  
 5 very seldom sighted on what the UK Government might be  
 6 about to do financially more generally. So they would  
 7 give us their best evidence, they would seek to be  
 8 helpful, and they would speak honestly and truthfully  
 9 when they said no further funding would be provided.  
 10 And when it was provided 24 hours later, it was largely  
 11 because they didn't know rather than because they were  
 12 in any way being deceptive.

13 **Q.** Right, I see. When you were speaking there, it sounded  
 14 as if it was slightly reminiscent of some of the other  
 15 evidence we've heard from people in the Scottish  
 16 Government about information not being shared or not  
 17 being shared till the last minute, but as I understand  
 18 your evidence what you're saying is that happened as  
 19 a matter of fact but you accept from a financial  
 20 perspective that that was reasonable in the  
 21 circumstances; is that correct?

22 **A.** It was a breakdown between -- amongst officials within  
 23 Treasury rather than a breakdown between Treasury  
 24 officials and the Scottish Government, is what I'm  
 25 trying to say.

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1 already there was, there is evidence available to  
 2 the Inquiry of increasing concern amongst medical  
 3 specialists about the position. We have heard evidence,  
 4 or we've seen evidence from an individual who was  
 5 a civil servant within the health directorate,  
 6 Mr Grieve, who suggested -- whose entries in his  
 7 notebook suggest that over the period of February there  
 8 was generally a lethargy, and in fact a relative  
 9 lethargy when compared with the UK Government, with whom  
 10 he was having frequent contact, about the way in which  
 11 the Scottish Government operation was warming up to the  
 12 threat.

13 I'd be interested to know from your perspective, in  
 14 what, for you, was a new role, within the directorates  
 15 which you were involved in, whether that was a general  
 16 impression that you would share. Obviously against the  
 17 background of emerging information, but some of which  
 18 we've looked at and would suggest emerging information  
 19 which was a basis for considerable alarm.

20 **A.** The challenges posed -- so I was appointed 17 February  
 21 and, as you can imagine, being thrust into a job like  
 22 that and having to complete a budget meant that my  
 23 primary focus was getting the budget through Parliament.  
 24 The budget was then nailed down, I believe, on 6 March,  
 25 and within probably a couple of days the UK Government

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1 **Q.** Thank you.

2 **LADY HALLETT:** (inaudible) shared by the UK Government with  
 3 its own officials?

4 **A.** Precisely.

5 **MR DAWSON:** When you were, at a ministerial level, dealing  
 6 with the UK Government, you were dealing with the chief  
 7 secretary to the Treasury, was that Mr Barclay for large  
 8 periods?

9 **A.** It was Mr Barclay and then Mr Clarke.

10 **Q.** Right. You were not dealing with the Chancellor?

11 **A.** Not directly, no.

12 **Q.** Right. Is that the normal line of communication or ...

13 **A.** Well, in terms of, I would sometimes be in wider  
 14 meetings with the Chancellor, but in terms of my  
 15 face-to-face engagement, discussion and so on, it would  
 16 always be with the chief secretary to the Treasury,  
 17 although that didn't stop me from seeking meetings with  
 18 the Chancellor or writing directly to the Chancellor.

19 **Q.** Can I take you chronologically right back to the  
 20 beginning. I'm sorry to jump around, but the  
 21 opportunity to look at Omicron came up from your  
 22 evidence.

23 Right back at the beginning, you had obviously, as  
 24 we've explained, somewhat been thrust into the role that  
 25 you held for the rest of the pandemic, and as I've said

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1 announced the first tranche of funding for Covid. So  
 2 from an Exchequer perspective, in a sense we never  
 3 stopped being in that budget period, and almost  
 4 immediately we went straight into budgeting for  
 5 a pandemic.

6 So from an Exchequer perspective we basically  
 7 respond to the policy priorities of other parts of the  
 8 government, and I think it would be fair to say that  
 9 over the period of February, in hindsight, there should  
 10 have been a lot more discussion about how to budget for  
 11 the pandemic, and it was indeed in response to the  
 12 funding that was made available on 11 March that we  
 13 really got into that territory.

14 So I do think that that is a learning and a lesson  
 15 that we should have, in that first budget, be  
 16 considering a lot more around how we might have to  
 17 budget in response to the pandemic.

18 **Q.** We've discussed with other witnesses in their specific  
 19 portfolios, in particular with Ms Freeman, connected to  
 20 health and other medical and scientific advisers,  
 21 whether appropriate steps were being taken over that  
 22 period to try to put in place the kinds of structures  
 23 that experts were suggesting would be necessary to deal  
 24 with the threat based on past pandemics and the  
 25 information that was available. These included things

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1 like putting in place, first of all, testing but  
2 subsequently tracing facilities, the ramping up of the  
3 acquisition of PPE for hospitals, but more widely for  
4 the care sector and the like.

5 One might deduce from the evidence that we've heard  
6 that in that regard there was a degree of lethargy. Was  
7 that lethargy connected to an extent with lack of  
8 funding? And to what extent for these unusual events  
9 over that period could additional funding have been  
10 sought, looked for in a cupboard in another department,  
11 so as to be able to try to move more quickly as, on one  
12 view, the evidence might suggest should have happened?

13 **A.** I'm not sure that I would agree with that, for the  
14 reason that when it came to, for example, procuring PPE  
15 and ventilators, I would suggest that the Scottish  
16 Government kicked into gear very rapidly, and kicked  
17 into gear several months before we had actually acquired  
18 any funding for the PPE and so on. So in that regard,  
19 I think it was an example where understanding the  
20 immediate need for PPE -- it was my colleague Ivan McKee  
21 that immediately looked for Scottish supply chains,  
22 worked with business to start manufacturing PPE, and it  
23 was only really until the April or the May that we  
24 received Barnett consequentials to cover the PPE.

25 **Q.** You say that, but of course the Scottish health

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1 pressure.

2 **Q.** Yes, of course.

3 So I'd just like to explore the concept which one  
4 sees in many places that you can't go ahead with doing  
5 things because you don't have funding for that specific  
6 thing. I think we've discussed that isn't quite the way  
7 the system works. You can choose to prioritise  
8 something, you can choose to try to get guarantees from  
9 you about the need for testing, the need for testing  
10 systems, genomic sequencing, for PPE. You don't have to  
11 wait until the UK Government gives you the money for  
12 that specific thing, because once funding has been  
13 allocated or allocated to a department, they can choose  
14 to prioritise that any way they want?

15 **A.** To an extent. The difference with the pandemic was  
16 a question of risk. That may work in normal times,  
17 where the risk that you're holding is in the tens of  
18 millions of pounds. The risk we were holding in the  
19 pandemic started running to the billions of pounds. So  
20 that's why I use the PPE example, that at the point  
21 where it was estimated that they had spent £160 million  
22 on PPE, and that may indeed rise to £200 million, that's  
23 when I started engaging extremely intensively with the  
24 UK Government, because the UK Government had agreed to  
25 supply the PPE and therefore there would be no Barnett

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1 directorate will have had available to it a budget which  
2 it was entitled to spend any way it wanted?

3 **A.** That's right, yes.

4 **Q.** And it could, I think, in accordance with the procedures  
5 that we've looked at from a later period, have said  
6 "There's a big problem, we absolutely need to get  
7 access, can you try to find some money, please" -- to  
8 you -- "within other budgets, because this needs to take  
9 absolute priority"; that could have happened?

10 **A.** To an extent, and I think we -- we did that. My point  
11 being that if you are funding something, then it means  
12 an equal and opposite reduction of funding in another  
13 area, and within the health portfolio in particular  
14 there was nowhere that could justify an equal and  
15 opposite reduction in funding. And so, much of this was  
16 done at risk, by which I mean they went ahead to procure  
17 the PPE before there was agreement with the  
18 UK Government around the Barnett consequentials. At  
19 risk, I held the corporate risk. And therefore they  
20 had, as it were, agreement to go ahead and procure it,  
21 even though the funding wasn't lined up, reflecting the  
22 emergency and the urgent nature of the issue.

23 **Q.** So if they required to commit to spending beyond budget,  
24 they needed to get your agreement to that? Was that --

25 **A.** Yes, they did. Well, it had to held as a corporate

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1 consequentials, because that's UK-wide funding, but  
2 I made that point that we had procured our own PPE in  
3 order to be prepared and therefore we needed a Barnett  
4 share.

5 So I think the distinction I would make is on risk.  
6 You can take some risk but when it starts to mount up  
7 and you have a fixed budget to deliver, that becomes  
8 more of a concern.

9 **Q.** Were you required or asked to provide further funding to  
10 improve testing over this period?

11 **A.** That was -- that would have been held within the --  
12 I don't recall any specific requests to me in terms of  
13 a corporate pressure, so that would have been managed  
14 within --

15 **Q.** The existing budget.

16 **A.** -- the Health budget.

17 **Q.** But a request, in the same way as I understand a request  
18 was made, effectively, for additional funding by way of  
19 your corporate guarantee, additional funding could have  
20 been asked for in the testing sphere?

21 **A.** I --

22 **Q.** It could have been?

23 **A.** I don't recall any specific asks for testing. I do  
24 recall the health portfolio constantly asking for  
25 additional funding more generally.

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1 Q. Okay.

2 There are various references that we've looked at in  
3 early documents, Cabinet minutes and the like -- there  
4 are occasional references in these amongst the various  
5 health information to thought, in a broad sense,  
6 starting to turn to what the potential financial  
7 implications of whatever it was that was coming would  
8 be.

9 It is our general impression of these, without going  
10 to the specific mentions, that there seemed to be little  
11 consideration of the likely overall economic impact at  
12 that stage, and also that, insofar as any initial  
13 attempt at modelling that might be concerned, it seemed  
14 to be based on a number of things which, on one view,  
15 might be deemed to be broadly analogous but not directly  
16 analogous, including the fallout of the 2008 banking  
17 crisis, severe weather events, and the like.

18 In -- I think you may have said something about this  
19 earlier, but in those early stages was modelling of the  
20 likely financial impact done to any extent?  
21 Recognising, of course, that this is a situation of  
22 urgency.

23 A. Yes, but I don't think it captured the full extent of  
24 the pandemic that unfolded. So, for example, I recall  
25 after -- on one occasion, the health budget considering

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1 financial assistance to survive?

2 A. I don't recall any specific modelling, but I know that  
3 it was well understood that vulnerable people would be  
4 particularly hit by the pandemic, and it's part of the  
5 reason why I think one of our first major financial  
6 announcements was about £350 million to go towards,  
7 for example, food for those that were shielding and  
8 support for charities that were working in communities  
9 to help with social isolation and so on. So it was  
10 certainly uppermost in my mind that sufficient budget  
11 had to be made available for, as it were, social support  
12 for those alongside the business support.

13 Q. You mentioned charities there. We have been given  
14 a number of statements by charitable organisations in  
15 Scotland and, without wishing to summarise them all too  
16 broadly, I think it fair to say that the tenor of what  
17 they say is actually relatively complimentary about the  
18 provision of funding, although there were certain delays  
19 in certain cases.

20 Was it the view of the Scottish Government at that  
21 stage that the charitable organisations could be given  
22 relatively small amounts of money to deal with the all  
23 the difficulties that various vulnerable groups would  
24 experience, because systems did not exist for the  
25 government to assist those people themselves?

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1 that it might need sort of an additional £800 million or  
2 so, and we ended up spending over £5 billion on health.

3 The general modelling of the impact on the economy  
4 I think was pretty consistent with what actually  
5 unfolded. So from memory I think Gary Gillespie  
6 suggested that about 900,000 jobs would be affected,  
7 there would be sort of a 25% or so impact on the  
8 economy. But that modelling was probably in late March.  
9 So prior to late March I think you're right in saying  
10 that the economic modelling did not capture the full  
11 extent of a two and a half year impact on the economy.

12 Q. There's mention in Cabinet minutes and indeed other  
13 documentation of the impending likelihood that the virus  
14 would affect what are usually broadly referred to as  
15 "vulnerable people" the most, and certainly we've seen  
16 very early indications in the medical information being  
17 provided to government that that was part of the  
18 unfolding picture really from January onwards.

19 To what extent are you aware of whether any  
20 assessment was done in the period up to March of the  
21 likely financial requirements which would flow from the  
22 fact that vulnerable people, particularly in Scotland,  
23 with its elderly population and considerable health  
24 inequalities, would be hit the hardest, and as regards  
25 the possibility that they would require significant

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1 A. I think that's fair. And it also meant that it was  
2 a very devolved approach. So I could speak to,  
3 for example, the charities that operated in my own rural  
4 patch that were best placed to respond, and we --  
5 I think the first announcement was about £20 million for  
6 the third sector in that first tranche of funding.

7 MR DAWSON: Thank you.

8 If that's a convenient moment, my Lady.

9 LADY HALLETT: Certainly. I will return at 11.30.

10 (11.16 am)

(A short break)

12 (11.30 am)

13 LADY HALLETT: Mr Dawson.

14 MR DAWSON: Thank you, my Lady.

15 Ms Forbes, we had reached, before the break, some  
16 discussions about some of the early period, the  
17 developing understanding of what the wider financial  
18 impacts might be but also the immediate spending  
19 priorities.

20 If I could take you, please, to INQ000214556.

21 This is -- again, we call them minutes, the  
22 government seems to call them conclusions, of a Cabinet  
23 meeting from 7 April. Could we go -- you were in  
24 attendance. Could we go to page 6, please.

25 There is a section here entitled "The Scottish

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1 Budget and COVID-19". It says at paragraph 24:  
 2 "In relation to the item in paper SC(20)43  
 3 concerning the impact of the COVID-19 pandemic on the  
 4 Scottish Budget, Ms Forbes noted that the projected net  
 5 shortfall in the 2020-21 Resource Departmental  
 6 Expenditure Limit (DEL) budget of £1.6 billion was the  
 7 highest ever recorded by the Scottish Government at the  
 8 opening of a financial year, and represented an increase  
 9 of some £900 million beyond what had been expected when  
 10 the Budget Bill was approved by the Parliament.

11 "25. On the basis of discussions with  
 12 [Her Majesty's] Treasury to date, it was not expected  
 13 that there would be any further significant  
 14 consequential beyond those included in arriving at that  
 15 position. In addition, any cost estimates were -- due  
 16 to the nature of the outbreak -- highly susceptible to  
 17 change.

18 "26. Further reprioritisation and savings options  
 19 would be essential in order to move towards delivering  
 20 a balanced budget. To this end, a series of targeted  
 21 interventions were to be launched at portfolio level to  
 22 identify further options, the outcome of which were to  
 23 be included in a paper for consideration by Cabinet  
 24 later in April."

25 I was just keen to try to understand a little bit

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1 consequential were received, but at this point I think  
 2 it would have been in the region of about over  
 3 £3 billion, and so that's why we were -- we were  
 4 considering where we might find additional funding from  
 5 within our own portfolios.

6 **Q.** So you had received that consequential, but for the  
 7 forthcoming year your understanding was that that was  
 8 all of them extra money you were going to get, so  
 9 therefore because there was a shortfall in your  
 10 projections you would have to find that money from  
 11 elsewhere?

12 **A.** That would be correct. And also if I could also  
 13 mention, I said earlier, the risk of negative  
 14 consequential. So if the UK Government was itself  
 15 looking for savings, bearing in mind we only receive  
 16 what's actually spent, if they had found savings and we  
 17 understood that the UK Government was doing that, then  
 18 the risk wasn't just that there would be no additional  
 19 money but that we might be in a position where there was  
 20 negative consequential.

21 **Q.** That's at this point, but that --

22 **A.** That's at this point.

23 **Q.** -- was subsequently resolved by the guarantee point  
 24 discussed earlier --

25 **A.** Indeed, in the summer.

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1 more, there is a lot of complexity around what's  
 2 happening at this time obviously, about where we were  
 3 financially. Obviously you mention the budget being the  
 4 highest ever recorded by the Scottish Government and  
 5 some funding having been made available, what was the  
 6 position at this time as regards where we were in budget  
 7 terms, what had been made available, what was the  
 8 projected deficit, obviously subject to the fact that  
 9 things were obviously about to be quite turbulent?

10 **A.** Yeah. I think a number of points. One is that we had  
 11 understood that, as it were, the full quantum of Covid  
 12 consequential had been granted and therefore the only  
 13 option to fund any additional Covid costs would have to  
 14 come from within our own budget, which we did. And  
 15 I should stress that that came almost entirely from  
 16 non-Covid areas, so work that had been planned had to be  
 17 re-prioritised.

18 It was a really phenomenally challenging time,  
 19 because it was quite clear that the cost to respond to  
 20 the pandemic, particularly in Health, were continuing to  
 21 grow, and there was no access to emergency funding at  
 22 that point.

23 Now, I should say that when we look back  
 24 retrospectively, it seems remarkable because we know  
 25 over the course of the pandemic over £14 billion in

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1 **Q.** In the summer.

2 Just to understand, the concept of finding money  
 3 from elsewhere always seems like a difficult one, but  
 4 presumably were you at this stage able to predict to any  
 5 extent, because of the fact that in the pandemic there  
 6 would be certain things that couldn't be done because of  
 7 lockdown, capital projects and things, presumably it  
 8 is -- it was possible to find funding in the budget more  
 9 easily than would normally be the case; is that correct?

10 **A.** Well, it was a lot easier to find capital, but of course  
 11 it's not capital you need in an emergency like this, you  
 12 need resource. And so, yes, major infrastructure  
 13 projects could be parked, but it didn't actually relieve  
 14 the pressure. There were areas -- so, for example, the  
 15 expansion of early learning in childcare would be  
 16 an example which was deprioritised and it freed up  
 17 funding that could be reinvested and it was resource,  
 18 which is what we needed.

19 **Q.** The reason I was interested in that particular area  
 20 really relates to our discussion earlier about the  
 21 fourth harm, because obviously -- the particular example  
 22 you gave is a good one, but the need to deprioritise  
 23 things like that will have negative consequences further  
 24 down the line. So if the government, as you say, was  
 25 planning investment in early learning for children, that

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1 then didn't happen, which presumably will have  
2 exacerbated the difficulties of those children not being  
3 able to access that learning, such that whatever should  
4 have been there for them wouldn't be there at the end;  
5 is that right?

6 **A.** Well, I think in this case it was postponed by a year,  
7 if I recall, which actually made sense, because it  
8 probably couldn't have been rolled out anyway in light  
9 of the fact that children were not attending school. It  
10 may also be helpful to state that about half the  
11 Scottish Government's budget is pay bill, so it's  
12 people.

13 In light of what the whole government was trying to  
14 do in terms of keeping people in work, quite clearly  
15 that funding was guaranteed, and we didn't look to make  
16 savings in that respect, which then meant the rest of  
17 the budget was under considerable strain.

18 **Q.** I see.

19 I think in your statement you mention, paragraph 25,  
20 pages 9 to 10, that -- this is INQ000273982. Thank you  
21 very much. From the words "we often", I think it might  
22 be over the page. Yes.

23 You say there:

24 "... we often provided funding to mitigate the  
25 impact of NPIs rather than avoid the harms of NPIs.

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1 Education Secretary, but some local authorities provided  
2 digital devices, some didn't, which meant it was  
3 a patchwork. Now, a year later the Scottish Government  
4 committed to providing everybody with a digital device,  
5 but in the weeks prior to lockdown, assuming that  
6 lockdown would be short, it wasn't considered to be  
7 a priority to build brand new systems which, inevitably  
8 in the public sector, as you will know, can take quite  
9 a long time, and also be very expensive, and we needed  
10 to get the money out to relieve the harms, if that makes  
11 sense.

12 **Q.** Yes. Indeed.

13 You mentioned in the statement also the possibility  
14 of better technology upfront for Test & Protect.  
15 Professor Mark Woolhouse gave evidence to the effect  
16 that it was thought that even in, by autumn 2020, the  
17 Scottish Government was only finding half of the cases  
18 because of deficiencies in the system of testing and  
19 tracing. Again, is it the case that better investment  
20 in that regard would have helped with the mitigation of  
21 what became known as harm 1, but also, as a result, the  
22 mitigation of other harms as well?

23 **A.** I think it's a principle that I would apply to  
24 everything from Test & Protect to education, that if in  
25 the first weeks of the pandemic we had invested in the

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1 For example, if we had invested in better technology  
2 upfront for Test and Protect or in Education so that  
3 children's education wasn't disrupted, the harms might  
4 have been less pronounced."

5 I'm trying to put this in the context of that  
6 period, where you had a lot of difficulty in working out  
7 where the money was going to come from. There seems to  
8 be a recognition there that there are certain areas  
9 where you think greater investment could and should have  
10 been made. (a) is that correct, are there other areas  
11 that fall into these categories? And (b) why was  
12 investment not made in those, given that it would be  
13 almost inevitable, wouldn't it, that, for example,  
14 children who are at home, not having learning, perhaps  
15 digitally excluded, would suffer significantly?

16 **A.** So I think this is one of my primary lessons, I think.  
17 That, going back, the response to the initial lockdown  
18 was very much to do what we could in order to prevent  
19 the spread of the virus. It wasn't to invest in brand  
20 new systems. So I think that principle applies very  
21 much to business support as well, that actually if we  
22 had invested in systems at the outset that would have  
23 lasted the two and a half years, I do believe that some  
24 of the other harms would have been lessened.

25 I mention education. Of course I'm not the

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1 infrastructure, then we might have -- and expected the  
2 length of the pandemic, then I think we would have  
3 lessened harms. I suppose my point would be that in  
4 those first few weeks I don't think, as Finance  
5 Secretary, I would have been permitted to do that by  
6 anybody, because immediately cash had to get to  
7 businesses, cash had to get to those charities, cash had  
8 to get to the PPE. And so we weren't sitting with  
9 considerable sums of money and the time and capacity to  
10 build systems.

11 **Q.** You mention there something about the expected length of  
12 the pandemic. What was the expected length of the  
13 pandemic around the April period that we were  
14 discussing?

15 **A.** Well, I think by April we were looking at starting to  
16 emerge from the first lockdown, and there was a lot of  
17 hope. And I think at the time our eyes were firmly set  
18 on getting to the summer and emerging from lockdown.  
19 You will recall the various documents that were  
20 published in terms of a framework for decision-making  
21 and the route map out of lockdown.

22 I do recall comments being made about a second wave,  
23 though, so I think that the risk of a second wave was  
24 very much on the periphery of our discussions, it wasn't  
25 that it didn't exist. But at that point it was trying

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1 to emerge from the first lockdown.  
 2 **Q.** Because one might reasonably argue that in the torrid  
 3 period of February/March a lot of this was new, systems  
 4 had to be created, there was a lot of pressure,  
 5 uncertainty, planning for second wave or other  
 6 subsequent lockdowns or restrictions, that did in fact  
 7 happen, it might be slightly more difficult to defend  
 8 those in circumstances where they were more predictable  
 9 and not quite so torrid. Do you think that would be  
 10 a fair point?

11 **A.** And I think we start to see some of those systems emerge  
 12 over that summer. So as we came out of lockdown, that  
 13 first lockdown, over the summer months, I recall,  
 14 for example, discussions about what systems would be  
 15 best for providing business support going forward, and  
 16 so we adopted a new model, which was the levels, where  
 17 you got a different amount depending on what level you  
 18 were in when the levels emerged.

19 But I do think it's fair that in that summer we  
 20 could have done even more in terms of building  
 21 structures and systems. It did feel to an extent like  
 22 we never actually emerged fully from that lockdown,  
 23 because Aberdeen then was placed in restrictions,  
 24 Glasgow, and so on. So I guess the perception was that  
 25 we didn't actually ever get to a point of reprieve, the

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1 ought to have done more in recognition, and in the  
 2 knowledge of what happened in the early part of the  
 3 first wave, to protect the most vulnerable and indeed  
 4 invest sums of money to ensure that that happened?

5 **A.** Yes. And can I use the opportunity to express my  
 6 immense sorrow at the devastation that was wreaked  
 7 amongst so many families but also the personal cost and  
 8 loss for those that had to shield, those that had to  
 9 isolate, and particularly those that were separated from  
 10 family over that period. And I do agree -- I recall,  
 11 for example, some additional investment in, for example,  
 12 care homes to assist them with digital resources to  
 13 connect with families, but that seems small in  
 14 comparison with the billions of pounds that were being  
 15 spent, for example, on financial support for businesses  
 16 and so on.

17 **Q.** If groups like that or members of Scottish society more  
 18 widely wanted to know what it was that the Scottish  
 19 Government had spent its money on, the additional money  
 20 that we're talking about, the budgeted money as it  
 21 changed and more money came through, it would be  
 22 important, would it not, that the Scottish people would  
 23 be able to access the information about what it had been  
 24 spent on?

25 **A.** Yes.

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1 pressures continued.

2 **Q.** Over the summer, of course, it appeared that -- from  
 3 documents we've seen that the priority was trying to  
 4 eliminate the virus within the Scottish Government; is  
 5 that fair?

6 **A.** I think in terms of the objectives of the Cabinet, that  
 7 may have been a priority. I suppose from my  
 8 perspective, not being in and around the health  
 9 elements, my priority continued to be just ensuring that  
 10 there was sufficient funding for whatever our response  
 11 was, and clearly other areas went into lockdown and we  
 12 needed to continue to fund it.

13 **Q.** Because one of the phenomena that comes through in the  
 14 evidence we've seen from disabled groups, other  
 15 vulnerable people, ethnic minorities, children, women,  
 16 elderly people, is that they saw no tangible improvement  
 17 in the support that was provided for them throughout the  
 18 two years plus of the entire pandemic. And, as I say,  
 19 whereas one might, and I think they might, be relatively  
 20 sympathetic to the torrid times of February and March,  
 21 the tenor of their evidence is that they are far from  
 22 sympathetic about what the Scottish Government did for  
 23 them in the later part of the pandemic, from summer 2020  
 24 onwards.

25 Is it your position that the Scottish Government

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1 **Q.** In his, again, helpful analysis of matters,  
 2 Professor Cairney drew our attention to an Audit  
 3 Scotland report which identified a range of unresolved  
 4 concerns about Covid-19 governance effectively to do  
 5 with the ability of that body to access what the money  
 6 had actually been spent on. No doubt complex. But was  
 7 that, or is that, as far as you're concerned, an issue  
 8 which remains unresolved, justifying to people who will  
 9 have had promises made to them that investment would be  
 10 made in their sector, to help their children or their  
 11 family or their disabled relative or whatever, their  
 12 relative in a care home, that they are now not able to  
 13 access information which tells them whether that money  
 14 was actually spent in the way that they expected?  
 15 **A.** Well, it's obviously a very complex picture, but I agree  
 16 with the principle that it is absolutely imperative that  
 17 everybody in Scotland can understand where the funding  
 18 was spent.

19 There was a number of initiatives that we took to  
 20 try to make that clearer, so for example where we  
 21 normally had two budget revisions we increased it to  
 22 three. But one of the challenges in making it  
 23 crystal clear is the way in which the funding was both  
 24 informally and formally being dealt with. So often at  
 25 the point that an announcement was made, it may have

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1 already been the case that we had informally allocated  
2 that funding on the basis of Treasury conversations, and  
3 it was also the case that, when we moved into the  
4 guarantee period, announcements were made which created  
5 a basic expectation, which was then spent. So I think  
6 the challenge with the complex picture, and obviously  
7 Audit Scotland has considered this in great deal, is  
8 that it was -- there was a lot of moving pieces and  
9 every time we took a snapshot it was out of date  
10 probably within a matter of hours, if not days.

11 So during the pandemic, it was extremely complicated  
12 to try to pinpoint precisely what was happening.

13 **Q.** Those might well be reasons why if commitments were  
14 made, changing circumstances meant that those couldn't  
15 always be fulfilled, because other things came along or  
16 what you expected to get from the UK Government wasn't  
17 quite what you ended up getting, but it's not quite the  
18 same question as being able to work out in the end  
19 whether or not monies were spent as they had been  
20 committed. It is important that people are able to  
21 understand that information, is it not?

22 **A.** Absolutely.

23 **Q.** In particular because a number of representative  
24 organisations, some of the charitable organisations  
25 referred to earlier, spent a considerable amount of time

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1 I can obviously say with complete commitment that  
2 every single penny of Covid consequential was spent on  
3 tackling Covid. And I can also say that there was --  
4 even with £14 billion, it could not in any way  
5 compensate for losses that have been experienced by any  
6 part of society.

7 **Q.** Thank you.

8 In your evidence broadly I think you've mentioned  
9 this already, I understand that, perhaps unlike some of  
10 your ministerial colleagues, you I think enjoyed  
11 a generally quite positive relationship with the  
12 UK Government ministers with whom you interacted; would  
13 that be fair?

14 **A.** Well, I had a priority to keep it constructive because  
15 my end goal was ensuring that there was adequate  
16 funding, so ...

17 **Q.** Yes, yes, I'm just trying to understand, would that be  
18 a fair reflection of your position --

19 **A.** I think it would be fair, I think it would be fair that  
20 it was constructive.

21 **Q.** Yes. I would like to ask you some questions about the  
22 furlough scheme, which we've touched on already in  
23 connection to the Omicron wave and the apparent  
24 non-availability of furlough funding.

25 This was a considerable issue around the period we

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1 and effort trying to lobby government to make sure that  
2 funding would be available, presenting arguments as  
3 convincingly as they could as to why that money was  
4 required, obtaining what they considered to be  
5 guarantees that it would be spent to meet the needs  
6 which they had identified and argued for, and they find  
7 themselves in a position of not being able to know  
8 whether that ever happened, and also in a position  
9 where, because of the considerable harms experienced  
10 within their particular constituency, they have  
11 a lingering suspicion that money was not spent as it was  
12 promised.

13 **A.** I'm very sorry to hear how much efforts those groups  
14 have gone to to try to get answers to their questions,  
15 and I -- I don't think there's any way but to say that  
16 it should be clear where promises were made how the  
17 funding was spent.

18 There are a number of documents that are published  
19 in terms of, for example, the Scottish Government  
20 accounts which will obviously go through in detail what  
21 money was spent and where, but if there are specific  
22 areas, then I don't disagree with the premise of your  
23 question that that is probably a lesson that should be  
24 learned in terms of the clarity of public accounting and  
25 public budgeting in terms of linking funding.

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1 looked at earlier, around September, October and into  
2 the end of the year, when, as we understand it from  
3 previous evidence given to the Inquiry in Module 2,  
4 advice was tendered by SAGE, the advisory body, that  
5 there should be a firebreak or circuit-breaker lockdown  
6 to try to deal with the rise in cases at that time.

7 As we know, Scotland was also experiencing a rise in  
8 cases which, as I said earlier, led to the  
9 First Minister announcing on 7 September that there  
10 would require to be a slowdown of the easing of  
11 lockdown, and subsequently we know cases started to rise  
12 further.

13 Over this period we understand that it was the  
14 Scottish Government's position that it had concerns  
15 about whether, if it required to impose a further  
16 lockdown, which was advised at one stage by the Chief  
17 Medical Officer and other medical advisers, that that  
18 would be difficult in the absence of any guarantees  
19 about funding. And on 1 November a public statement was  
20 made by the First Minister related to this issue which,  
21 as I understand it, was responded to the very same day  
22 by the Prime Minister, giving commitments that any  
23 devolved nation lockdown would be -- would attract  
24 furlough funding.

25 Because this is an area in which you had significant

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1 engagement, I was interested to explore your perspective  
 2 on it. Was it before 1 November -- if my narrative is  
 3 broadly in accordance with your recollection, was it  
 4 before 1 November the Scottish Government's position  
 5 that it legitimately did not understand whether furlough  
 6 funding would be available if a lockdown was necessary  
 7 in Scotland?

8 **A.** I would push that further and make the point that we  
 9 believed it would not be available.

10 **Q.** What was the basis for that understanding?

11 **A.** The Chancellor had announced, if I recall correctly, on  
 12 25 September that the furlough scheme was due to come to  
 13 an end on 31 October, to be replaced by the Job Support  
 14 Scheme, and over that month of October we intensely  
 15 lobbied the chief secretary to the Treasury to ask that  
 16 furlough be extended, and if it couldn't be extended for  
 17 the whole of the UK, it would be extended for those  
 18 devolved governments that needed it.

19 Our concern was that it severely constrained the  
 20 period within which we might be able to introduce some  
 21 form of lockdown, because in the previous lockdown  
 22 furlough had been absolutely critical. So we, in that  
 23 October -- and by that point also furlough had been  
 24 reduced, so employers were being expected to compensate  
 25 for more of the replacement of furlough. So in that

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1 quite constrained financially at that point.

2 **Q.** It seemed to us to be slightly politically odd, in the  
 3 circumstances where the UK Government in terms of the  
 4 2020 Act had accorded in the schedules to that Act  
 5 significant powers to the Scottish Government to impose  
 6 social distancing restrictions and up to and including  
 7 a lockdown, and that, as you say, by that stage there  
 8 appeared to be an acceptance, if I understand your  
 9 evidence correctly, that furlough was an essential part  
 10 of a lockdown, that politically it would really be  
 11 possible for the UK Government in those circumstances  
 12 not to fund it, in particular in circumstances where at  
 13 some future time England might have to have a lockdown  
 14 and it be funded.

15 Would you agree with that assessment and was that  
 16 the Scottish Government's position at the time?

17 **A.** Yes, and it did seem strange, because we were making the  
 18 arguments throughout that period of the need for  
 19 financial or economic support to match the health  
 20 response, and so it seemed somewhat remarkable that our  
 21 prophetic comments actually resulted in our fears  
 22 happening where furlough was only extended on the eve of  
 23 an announcement of lockdown in England.

24 **Q.** Had discussions taken place about the possible  
 25 requirement for furlough, the UK Government's position

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1 October break, we obviously announced some financial  
 2 support, and also part of that was very much tailored to  
 3 try to compensate for the top-up on furlough that had  
 4 been removed.

5 But in those engagements, I think if I recall  
 6 correctly in one meeting the Welsh Finance Secretary  
 7 actually saying that they would fund a replacement for  
 8 furlough themselves. The difficulty for all of us is  
 9 that none of us could control the administration of  
 10 furlough, because it was HMRC, and that was reserved.

11 **Q.** So just to be clear, over that period of October at  
 12 least, you were lobbying the UK Government for  
 13 commitments in this regard, but you -- not only did not  
 14 get a commitment you got a positive no, if you like?

15 **A.** Yes, there was no inch given that I can recall, there  
 16 was no hint that it would be extended, there was no  
 17 suggestion. And indeed where we had suggested  
 18 alternatives, for example, doing a top-up ourselves but  
 19 needing help with the administration, even that was not  
 20 supported.

21 **Q.** So you made suggestions that you would fund it yourself  
 22 as long as they helped with the administration?

23 **A.** Well, we were open to all alternatives. I think the  
 24 example I gave was actually from the Welsh  
 25 Finance Secretary rather than from me, because we were

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1 in that regard, before October?

2 **A.** It had taken place over the -- our conversations about  
 3 furlough probably took place right throughout the  
 4 summer, I would suggest, because we had been told that  
 5 it would come to an end at some point, and --

6 **Q.** What I mean, to be clear, is discussions about the  
 7 possibility of the need for a further furlough scheme in  
 8 connection with further lockdowns rather than the one  
 9 that was still in Scotland, certainly going on in the  
 10 summer of 2020?

11 **A.** Yes. Largely because we had seen the need for localised  
 12 lockdown in Aberdeen and in Glasgow. So my memory of  
 13 the summer is that we never actually came out of some  
 14 form of lockdown because of those localised outbreaks,  
 15 and so it felt like the proof of the need was there.

16 **Q.** You mentioned that the -- the Welsh situation, which  
 17 certainly seemed to us to be relevant, that Wales  
 18 of course had a firebreak lockdown for 17 days starting  
 19 on 23 October, and we have some information in  
 20 a statement from Mark Drakeford, First Minister of  
 21 Wales, where he said that he wrote to the Chancellor of  
 22 the Exchequer to seek an extension of the job support  
 23 scheme for the firebreak lockdown proposed in Wales, and  
 24 claims that the Chancellor refused. He says that the  
 25 firebreak lockdown came into effect on 23 October

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1 without the financial support of the UK Government and  
 2 he states that the Chancellor of the Exchequer refused  
 3 to fund the consequences of a public health decision  
 4 taken in Wales. And he described that decision as one  
 5 of the most misguided decisions of the whole pandemic,  
 6 saying that the Treasury was acting as a Treasury for  
 7 England not a Treasury for the UK.

8 Now, you've already mentioned the Welsh position.  
 9 Would you say, although Scotland didn't have a lockdown  
 10 at that time so it didn't suffer that particular  
 11 consequence, was that -- does that indicate the same  
 12 sense of frustration in this regard that the Scottish  
 13 Government had around this issue at that time?

14 **A.** I would say so, yes.

15 **Q.** Was it a matter, and we've heard evidence that this  
 16 happened on over occasions, on which the devolved  
 17 administrations rather stood together and the  
 18 UK Government took a position that they couldn't quite  
 19 fathom?

20 **A.** Very much so.

21 **Q.** Thank you.

22 You do say in your statement at paragraph --  
 23 page 19, paragraph 46, you say:

24 "Ultimately, I don't believe that a lack of clarity  
 25 or standardised mechanisms had a material impact on

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1 impacts and reducing the impact of the Covid health  
 2 harms, and I think was often braver in doing what needed  
 3 to be done irrespective of some of the other challenging  
 4 situations facing businesses.

5 **Q.** Just to be clear, you mentioned a circuit-breaker there.  
 6 Scotland didn't have a circuit-breaker at this time.

7 **A.** This was at the October, I'm talking about the October.

8 **Q.** But we didn't have a circuit-breaker at that time.

9 **A.** We -- well, in terms of the measures that were taken  
 10 over the October holidays, is what I'm referencing.

11 **Q.** Yes.

12 **A.** The restrictions that were introduced --

13 **Q.** Yes --

14 **A.** -- sorry --

15 **Q.** -- there were, of course, restrictions --

16 **A.** Yes, the restrictions that were introduced, apologies.

17 **Q.** But to be clear, your position is that ultimately,  
 18 although these added risk, you say, and one can  
 19 understand why that's the case, they didn't ultimately  
 20 affect the decision that the Scottish Government  
 21 considered was the best decision to take in the  
 22 interests of harm 1, minimising the effects of the  
 23 virus --

24 **A.** Not in a material way, no.

25 **Q.** Right, thank you.

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1 decisions about managing the health harms of the  
 2 pandemic, but it added risk to the decision-making  
 3 process and may have affected other harms like economic  
 4 harms."

5 Is that you in this regard, as we understand it,  
 6 bringing together the fact that although this was  
 7 a problem, and you've explained why it was a problem,  
 8 ultimately it didn't affect decisions about restrictions  
 9 or lockdowns, as it appears to have done in Wales,  
 10 because Scotland wouldn't otherwise have done anything  
 11 any differently as regards to the restrictions, based on  
 12 the medical advice it had at the time?

13 **A.** I think by and large, yes, that is the case. So in  
 14 terms of the examples, that circuit-breaker, we -- it  
 15 was still introduced despite the fact that I think only  
 16 £27 million were sourced to fund business support.  
 17 Compare that with the £2.2 billion at the beginning of  
 18 the first lockdown.

19 So that measure was still introduced. It did mean,  
 20 however -- I mean, there was no way during the Covid  
 21 lockdowns we could in any way compensate for loss of  
 22 trade for business, but we could try to mitigate the  
 23 harms. So I do think that the decisions were still  
 24 made. And I think, if I could add, the First Minister  
 25 was ultimately I think absolutely focused on the health

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1 You mentioned there the determination of the  
 2 First Minister to combat harm 1 and to have her own  
 3 strategies around that, and we've heard a lot about that  
 4 in the evidence we've already had. Do you think that,  
 5 in particular given the fact that the Treasury is  
 6 a reserved matter, Scotland adopted a policy of "Fight  
 7 the virus now, worry about the financial consequences  
 8 later"?

9 **A.** Well, they certainly took an approach of "Fight the  
 10 virus now", but I can assure you I did a lot of worrying  
 11 about the finances throughout the pandemic.

12 **Q.** I'm sure you did, but as regards -- you mentioned  
 13 earlier that it was the First Minister who was the one  
 14 who was driving the strategy, and I'm asking you whether  
 15 that strategy, which ultimately became Scotland's  
 16 restrictions strategy, which of course differed from  
 17 other nations in the United Kingdom, whether that  
 18 strategy -- it obviously prioritised harm 1, but whether  
 19 it did that unreasonably to the detriment of other  
 20 harms, including economic harms?

21 **A.** I think that with every new introduction of an NPI,  
 22 there was no harm-free option ever before us. And I saw  
 23 my job as trying to ensure there was sufficient funding  
 24 for whatever decision was deemed to be the best for the  
 25 health reasons. So, in that sense, I do think that

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1 harm 1 was prioritised over everything else. But the  
2 justification for me was that the only way to ultimately  
3 resolve harms 2, 3 and 4 was to manage the Covid impact.  
4 So in prioritising harm 1, and trying to ensure we dealt  
5 with harm 1, we could hope to emerge from whatever NPI  
6 it was, whether it was lockdown or otherwise, and then  
7 start the road to recovery for all the other harms.

8 **Q.** There might be something of a logical issue with that,  
9 in the sense that what you're suggesting is that the  
10 premise was as long as you deal with harm 1 everything  
11 else will take care of itself, but what is required, is  
12 it not, in terms of the four harms strategy, if nothing  
13 else, is a balancing of whether what is done for harm 1  
14 is proportionate to what happens to harms 2 to 4?

15 **A.** Yeah.

16 **Q.** Are you suggesting that the prioritisation, certainly in  
17 2020, which is the period we have been looking at, of  
18 harm 1 was done at the decision-making stage without  
19 adequate consideration of the other harms?

20 **A.** No, I think there was a lot of consideration, but --  
21 you know, there was -- it was never the case that --  
22 let's take harm 4, it was never the case that the  
23 economy could recover or be free of harm for as long as  
24 Covid existed. So any financial support that we could  
25 identify would never compensate for loss. It could only

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1 decision-making was not balanced or proportionate.

2 The owners of those businesses with whom you were  
3 meeting, many, many small businesses closed in the  
4 pandemic. The owners of those businesses might well  
5 suggest that a greater degree of priority should have  
6 been given in the weighing of the balance of allowing  
7 their business to open up to some extent, keeping some  
8 social distancing in place to manage harm 1, but that  
9 that would have been a more equitable balance.

10 Is your position that harm 1 was always prioritised  
11 on the assumption that the other harms would take care  
12 of themselves thereafter?

13 **A.** Certainly not that they would "take care of themselves",  
14 but I think where this became really concentrated was  
15 in, for example, the route map out of lockdown, and many  
16 businesses would have wanted to re-open earlier than  
17 they were able to. I think also going forward -- in the  
18 first lockdown there was widespread acceptance of the  
19 need to lock down, and going forward, having suffered  
20 catastrophic losses in the first lockdown, businesses  
21 just did not have the resilience. And so I think  
22 that -- I certainly believe I tried to weigh up all of  
23 the harms, but there was no harm-free option ever on the  
24 table, and so it was trying to figure out how to lessen  
25 the harm rather than to eradicate it completely.

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1 mitigate the harm.

2 **Q.** Yes.

3 **A.** And what businesses wanted was ultimately to be able to  
4 trade completely freely, but it wasn't within anybody's  
5 gift to enable that for as long as Covid existed,  
6 because even when we came out of lockdown, there were  
7 other NPIs in terms of distancing that had an impact on  
8 them.

9 And that's -- my logic here is that -- and,  
10 you know, I faced off to businesses, I met businesses  
11 probably on a daily basis, particularly when I became  
12 Economy Secretary, so I heard their stories of anguish,  
13 the harm -- harm 4 is often characterised as business  
14 and the economy, it was people, it was workers, it was  
15 their mental health, and the pressure on an employer to  
16 give their workers reassurance.

17 So throughout the two and a half years, whether we  
18 were in lockdown or out of lockdown, there was  
19 an economic harm, and the only way to ultimately resolve  
20 that was to deal with the Covid health harm.

21 **Q.** What some might suggest is that that is a process  
22 whereby, although of course information was being  
23 gathered about the various harms and was on the table,  
24 the ultimate decision-making only focused on harm 1 and  
25 that ultimately what that meant was that the

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1 **Q.** That might have been the process going on in your head,  
2 but you weren't present at any of the gold meetings that  
3 took place in 2020, were you?

4 **A.** I wasn't.

5 **Q.** Okay.

6 So I just have a couple of areas that I'd like to  
7 try and cover with you, if I can.

8 **LADY HALLETT:** Before you do, Mr Dawson.

9 Given your seniority in the Scottish Government, why  
10 weren't you at the command meetings in 2020?

11 **A.** I don't recall -- well, I wasn't obviously invited.

12 **LADY HALLETT:** Well, you obviously don't know because you  
13 didn't make the decision, but do you have any idea?

14 **A.** I don't. I wasn't invited. I'm not even sure I was  
15 aware that they existed, because I remember, when I was  
16 invited to my first one, not really knowing what it was  
17 until somebody explained it.

18 **LADY HALLETT:** You would have expected to be invited,  
19 wouldn't you?

20 **A.** Well, I would have expected to be invited to any meeting  
21 where there were significant financial implications.

22 **LADY HALLETT:** Sorry, Mr Dawson.

23 **MR DAWSON:** Thank you.

24 A couple of areas. The first one I was going to try  
25 to cover with you was Eat Out to Help Out. We mentioned

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1 this earlier. This was a -- as I understand it,  
 2 an example that I cited earlier of a direct  
 3 UK Government spend in Scotland. Is that right?  
 4 **A.** Yes.  
 5 **Q.** And in your statement you say at paragraph 77 on page 29  
 6 that:  
 7 "We recognised the significant economic opportunity  
 8 of the scheme but reservations were expressed about how  
 9 it might encourage the spread of Covid-19. It was  
 10 introduced on a UK-wide basis, without any  
 11 decision-making or funding implications for the Scottish  
 12 Government."  
 13 So what that means is you didn't need to find money  
 14 in the budget for it, the budget came directly from  
 15 the UK Government, but to what extent were you aware  
 16 before it was introduced, I think on 3 August, that this  
 17 was something the UK Government was going to do?  
 18 **A.** I had no knowledge.  
 19 **Q.** As far as you understand it, is that the position across  
 20 the Scottish Government.  
 21 **A.** It's certainly the position of anybody I've ever spoken  
 22 to about it.  
 23 **Q.** Is it correct to say, given your expression there about  
 24 reservations to do with the possibility it may encourage  
 25 the spread of Covid-19, that this was not consistent

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1 impacts on them?  
 2 **A.** I would characterise it as extensive and constant.  
 3 So prior to the -- my new role in May 2021, I still  
 4 engaged. I would suggest that officials were engaging  
 5 with the main business organisations on a daily basis.  
 6 We would often seek their input to business support,  
 7 for example. There was at least twice-weekly engagement  
 8 between me and those business organisations, when  
 9 I became Economy Secretary, to discuss what they were  
 10 experiencing and why the Scottish Government was  
 11 adopting certain policies.  
 12 **Q.** And before that I think you said that that was part of  
 13 your role although not as prominent a part of your role;  
 14 is that right?  
 15 **A.** Yeah. Yeah.  
 16 **Q.** And before that, and perhaps after that, other ministers  
 17 would have been doing something similar?  
 18 **A.** Yes, I would have assumed so.  
 19 **Q.** Yes. And we've heard some evidence in the sessions that  
 20 we've had from a representative of the STUC who told  
 21 the Inquiry that they felt that there was a degree of  
 22 consultation, as you've mentioned, but when they were  
 23 consulted they felt as if the decision had already been  
 24 made. Do you recognise those concerns and do you have  
 25 any explanation as to why they exist?

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1 with the Scottish Government's then policy, strategy if  
 2 you like, to seek to ease the lockdown slowly in order  
 3 to try to suppress the virus?  
 4 **A.** Well, that -- that would -- the reservations that I was  
 5 conscious of was that it was likely to result in more  
 6 people meeting together and therefore the virus  
 7 spreading.  
 8 I should also say, though, that recalling all the  
 9 meetings I had had with those businesses who had  
 10 suffered catastrophic losses and the anguish they faced  
 11 in some cases meant that it was largely popular amongst  
 12 the stakeholders that -- the business stakeholders that  
 13 I was engaging with.  
 14 **Q.** That's why you say that you recognised the significant  
 15 economic opportunity from that perspective; is that  
 16 right?  
 17 **A.** Yes.  
 18 **Q.** The last thing I'd like to cover with you quickly,  
 19 another area that we've covered, and you've explained  
 20 that your role in this somewhat evolved before and after  
 21 the election, it's engagement with stakeholder bodies.  
 22 What was the policy as regards you or other  
 23 ministers in your department engaging throughout the  
 24 pandemic with business or representatives of business in  
 25 order to get as full a picture as possible about the

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1 **A.** Yeah, I think that tension existed with nearly all of  
 2 the stakeholder engagement work we did, including with  
 3 the STUC. Largely because -- each representative  
 4 organisation obviously had concerns, they had desires  
 5 for change, and we would then take that back to Cabinet,  
 6 or we would have come from Cabinet, where those were  
 7 also being balanced with other considerations across the  
 8 four harms. So I would say that we tried to feed in all  
 9 of those concerns and issues, but for every individual  
 10 that said one thing there was another individual that  
 11 would say the opposite, and in Cabinet we were trying to  
 12 balance all of that. I think we tried to get the  
 13 balance right, but it often left stakeholders  
 14 disappointed that their particular issue hadn't been  
 15 delivered in full as they envisaged.  
 16 **Q.** You obviously can't please all of the people all of the  
 17 time, Ms Forbes, but is it perhaps the case that the  
 18 STUC's concern was based on the fact that no doubt they  
 19 were lobbying on behalf of workers across Scotland,  
 20 their various -- parts of their organisation, that what  
 21 they felt was that the decision had already been made  
 22 because the decision was always to prioritise harm 1 and  
 23 never deal with the concerns that the workers they  
 24 represented were raising with them?  
 25 **A.** I wouldn't agree with that latter part in terms of never

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1 prioritising workers, because I think that throughout  
 2 the pandemic we did seek to prioritise workers and  
 3 workers' rights.  
 4 What I would say in terms of balancing those harms,  
 5 I would say that towards the middle of the pandemic  
 6 there was an active shift -- I certainly tried to  
 7 deliver -- which was to discuss a decision with  
 8 a stakeholder group before it was made. There were  
 9 always some elements of risk in terms of  
 10 confidentiality, announcing decisions before you  
 11 announce it to Parliament, but to try to bring issues to  
 12 those stakeholder groups before it was made rather than  
 13 after. And I think there was a bit of a mix throughout  
 14 the pandemic of the point at which we engaged  
 15 stakeholders.  
 16 **Q.** When did that shift occur? I mean, in the middle, might  
 17 be about the time of the election, something like that?  
 18 **A.** No, it would have been after the election, I would say.  
 19 I remember trying to implement that shift in  
 20 summer 2021. I was newly in post, Cabinet Secretary for  
 21 the economy, and thinking: wait, can we build more of  
 22 a trust here? And say, "Look, these are the problems  
 23 that we're trying to resolve, what do you think?" And  
 24 then taking that into Cabinet.  
 25 **Q.** Do you think it would be fair to say that that --

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1 **THE WITNESS:** Not at all, my Lady.  
 2 **MR DAWSON:** You are John Swinney?  
 3 **A.** I am.  
 4 **Q.** You have helpfully provided two witness statements, to  
 5 this module at least of the Inquiry. The first is under  
 6 the number INQ000287771 and is dated 3 October. Is that  
 7 your statement?  
 8 **A.** That is my statement.  
 9 I'm very grateful, Mr Dawson, for the Inquiry  
 10 allowing me to complete a sentence which I was mortified  
 11 to read at the weekend that I had not completed. So  
 12 that has been amended in this version --  
 13 **Q.** Thank you.  
 14 **A.** I'm grateful to the Inquiry for --  
 15 **Q.** I was going to ask you whether you've signed the  
 16 statement?  
 17 **A.** I have signed it, but I signed the one without the --  
 18 **Q.** Yes.  
 19 **A.** -- completed sentence.  
 20 **Q.** I understand that you realised you'd missed out half  
 21 a sentence and you have helpfully included that in the  
 22 final version, if you like. Does the statement with the  
 23 inclusion of that final half sentence remain true and  
 24 accurate as of today's date?  
 25 **A.** It does.

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1 although that was obviously a personal initiative on  
 2 your part, that would be part of a wider government  
 3 initiative at that stage to try to turn the attentions  
 4 more on the other harms and away from managing the virus  
 5 itself, to achieve a better balance?  
 6 **A.** Yeah, I think harm 1 obviously continued to be  
 7 prioritised but I do think that there was more interest  
 8 in proportionality, although that had probably started  
 9 to shift in the previous October, I would suggest.  
 10 **MR DAWSON:** Thank you.  
 11 Those are my questions, my Lady. I don't understand  
 12 there are any CP questions.  
 13 **LADY HALLETT:** I don't think so. Thank you very much  
 14 indeed.  
 15 Thank you, Ms Forbes, I'm deeply grateful for your  
 16 help.  
 17 **THE WITNESS:** Thank you.  
 18 **LADY HALLETT:** Thank you very much.  
 19 **(The witness withdrew)**  
 20 **MR DAWSON:** The next witness, my Lady, is the  
 21 Right Honourable John Swinney MSP.  
 22 **MR JOHN RAMSAY SWINNEY (sworn)**  
 23 **Questions from LEAD COUNSEL TO THE INQUIRY for MODULE 2A**  
 24 **LADY HALLETT:** I hope we haven't kept you waiting too long,  
 25 Mr Swinney.

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1 **Q.** You provided a further statement to the Inquiry on  
 2 16 November 2023 under reference INQ000273979; is that  
 3 correct?  
 4 **A.** That's correct.  
 5 **Q.** Is that your statement?  
 6 **A.** That is my statement.  
 7 **Q.** Have you signed that further statement?  
 8 **A.** I have sign --  
 9 **Q.** And does it remain true and accurate as at today's date?  
 10 **A.** It does.  
 11 **Q.** We also have had a number of corporate statements from  
 12 various directorates of the Scottish Government  
 13 connected to matters that were within your very broad  
 14 ambit during the course of the pandemic, to which I may  
 15 make reference as we go along, and you helpfully also  
 16 provided a statement to Module 1 in which you also gave  
 17 oral evidence dated 5 May, which we've already looked at  
 18 in previous hearings.  
 19 **A.** That's correct.  
 20 **Q.** Can I ask you a little bit, first of all, just about  
 21 your background. You were the Deputy First Minister of  
 22 the Scottish Government between November of 2014 and  
 23 March 2023?  
 24 **A.** That is correct.  
 25 **Q.** You were Cabinet Secretary for Finance and Sustainable

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- 1 Growth from May 2007 to May 2016?
- 2 **A.** That's correct.
- 3 **Q.** You were Cabinet Secretary for Education and Skills from
- 4 May 2016 until May 2021?
- 5 **A.** That is also correct.
- 6 **Q.** You were Cabinet Secretary for Covid Recovery from
- 7 May 2021 to March 2023?
- 8 **A.** That is also correct.
- 9 **Q.** And you are a Member of the Scottish Parliament for
- 10 Perthshire North?
- 11 **A.** I am.
- 12 **Q.** You set out in your statement a number of the
- 13 ministerial responsibilities you had over different
- 14 areas, and as they evolved during the course of the
- 15 pandemic.
- 16 You say in your statement of 3 October at page,
- 17 between pages 1 and 2, paragraph 9 and at pages 4 to 5,
- 18 that you led the policy response within Scottish
- 19 education from the start of the pandemic to May 2021.
- 20 Is that correct?
- 21 **A.** That's correct, yes.
- 22 **Q.** You also participated in your various capacities in the
- 23 collective decision-making of the Scottish Government in
- 24 response to the pandemic?
- 25 **A.** I did.

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- 1 **A.** That's correct, yes.
- 2 **Q.** What -- as far as the strategy of the Scottish
- 3 Government towards the pandemic was concerned, what was
- 4 your understanding of the reason why you had been
- 5 appointed to that post, and what does that tell us about
- 6 the overall direction of the strategy and how it was
- 7 evolving?
- 8 **A.** My appointment in May 2021 to the role as
- 9 Cabinet Secretary for Covid Recovery I think was
- 10 a recognition by the First Minister that we needed to
- 11 ever more turn our attention to recovering from Covid
- 12 and to make sure there was a whole-government response
- 13 in a co-ordinated and cohesive way to that effort.
- 14 So what I think we had learned during the course of
- 15 the pandemic was the importance of cross-governmental
- 16 working that took place on an ongoing basis, it was
- 17 an essential characteristic of how we handled the
- 18 pandemic. And the First Minister was keen to make sure
- 19 that that approach was maintained in the period of Covid
- 20 recovery, which we considered that we were in or we had
- 21 to get ourselves into, notwithstanding the fact that the
- 22 pandemic wasn't in any way over, it was still very much
- 23 present, but we had to be mindful of the importance of
- 24 recovery. And I think also, lastly, the First Minister
- 25 took the view that the approach which you referred to,

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- 1 **Q.** You led the process of recovery from Covid, including
- 2 the relaxation of restrictions from May 2021?
- 3 **A.** I did.
- 4 **Q.** You were accountable for the handling of the pandemic on
- 5 a resilience basis?
- 6 **A.** That is correct.
- 7 **Q.** And you were involved in the development and
- 8 implementation of something we've heard a lot about, the
- 9 four harms framework?
- 10 **A.** I was.
- 11 **Q.** You say in your statement:
- 12 "As Deputy First Minister, I would generally be
- 13 involved in other matters that required leadership and
- 14 direction where that matter did not immediately fall
- 15 within the responsibilities of any of my Ministerial
- 16 colleagues."
- 17 Is that correct?
- 18 **A.** That is correct.
- 19 **Q.** You provided a core function in the taking of key
- 20 decisions and the development of the Scottish
- 21 Government's Covid pandemic strategy?
- 22 **A.** I think that would be a fair comment, yes.
- 23 **Q.** Just on one aspect of what we've just looked at, you
- 24 were appointed as the minister for Covid recovery after
- 25 the May 2021 election; is that right?

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- 1 Mr Dawson, about the four harms, which I had been
- 2 instrumental in putting together on the government's
- 3 behalf, provided a foundation that enabled us to
- 4 consider the basis of how a recovery would be
- 5 constructed. And I think that would sum up the reasons
- 6 why that particular post was identified and I was
- 7 appointed to it.
- 8 **Q.** As far as the four harms were concerned, we'll come back
- 9 to look at this in a bit more detail, Mr Swinney, but
- 10 just on this particular passage or period of time, would
- 11 it be fair to say that for a variety of reasons,
- 12 including the emergence of the virus and the threat,
- 13 that in the period before the election the focus had
- 14 remained on what is defined as harm 1, the fighting of
- 15 the virus, whereas in the period after the election,
- 16 coincident with your appointment as Covid recovery
- 17 minister, the focus turned in earnest to the other harms
- 18 which had been done by what had occurred over the
- 19 previous year?
- 20 **A.** I wouldn't say that would be my view. The four harms
- 21 framework was launched in April 2020, and it provided
- 22 a basis for us to take decisions, which I think really,
- 23 from that moment on, allowed us to rationalise what
- 24 those choices could be, given the prevalence of the
- 25 pandemic. So there was a -- when the country faced the

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1 circumstances that we faced in March 2020 and went into  
2 lockdown, there was a very clear, obvious, perilous  
3 threat to health from Covid which had to be addressed.  
4 Without that, you know -- I'm sure we'll talk about  
5 these things -- there would have been very significant  
6 and damaging consequences for more people than there  
7 already were as a result of Covid.

8 But we recognised, I think quite early on, that  
9 there were other harms being done, hence the  
10 construction of the four harms framework to give us  
11 a basis of beginning to think about: how do we move out  
12 of that dire emergency into a situation where we could  
13 begin to relax restrictions to any extent?

14 And I would cite in all of that, a question which  
15 was very intimate to my responsibilities at the time  
16 in 2020 was the issue about school closures and school  
17 re-opening, because I would contend the government's  
18 actions in that respect were addressing the other harms  
19 beyond the immediate health harm of Covid, and those  
20 were decisions that were taken in the summer of 2020, so  
21 in advance of my appointment as Cabinet Secretary for  
22 Covid Recovery. So I think the -- I think what I would  
23 say is that the four harms framework began to have its  
24 effect in 2020, prior to the election.

25 Q. You mentioned there your response -- particular  
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1 your contact with Nicola Sturgeon:

2 "... tended to be in person conversations or by  
3 telephone, and there would be likely be a text message  
4 exchange to arrange a conversation. I do not believe we  
5 ever communicated by WhatsApp."

6 Are those text messages with Nicola Sturgeon still  
7 available to you?

8 A. They're not available, Mr Dawson.

9 Q. Have they been deleted?

10 A. They have been deleted.

11 Q. Were they deleted manually or by some auto-delete  
12 function?

13 A. They were deleted manually.

14 Q. Why?

15 A. Because I was always advised by my private office that  
16 I should not hold information that was not -- that was  
17 relevant to the government's official record in what are  
18 called ungoverned sources. So throughout my ministerial  
19 career, I have deleted material once I have made sure  
20 that any relevant information was placed on the official  
21 record of the government, and that was the approach that  
22 I was advised was the appropriate approach for me to  
23 take, which was to put all relevant material onto the  
24 government's official record and then to delete it.

25 Q. What was your understanding of the source of that  
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1 responsibility for education during the period before  
2 the election. Did the multiplicity of roles and  
3 responsibilities that you had mean that it was difficult  
4 for you to be able to devote the requisite energy that  
5 was obviously required to address any one single  
6 component part of your various portfolios, in particular  
7 education?

8 A. I wouldn't say so. I worked all the hours that God sent  
9 at that time, seven days a week, from early in the  
10 morning to very late at night, and I gave it my all --

11 Q. You wouldn't say though it was difficult? I asked  
12 whether it was difficult.

13 A. It was challenging, there were multiple demands on my  
14 time, and obviously in that period there were huge  
15 demands from a whole variety of different directions,  
16 but I gave it my level best.

17 Q. Could I ask you some questions, please, about the ways  
18 in which you communicated with other people when you  
19 were acting in your various responsibilities during the  
20 course of the pandemic.

21 You have helpfully provided us with the witness  
22 statement of 16 November, which is INQ000273979, and you  
23 tell us in that statement about various different ways  
24 in which you communicated with other ministers and  
25 senior advisers. You tell us there, for example, that  
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1 obligation?

2 A. That was advice given to me by my private office, as far  
3 back as 2007, when I entered government, and it was also  
4 consistent, in my view, with the government's record  
5 management policy, which makes it clear that information  
6 that is held in ungoverned sources should be placed on  
7 the official record of the government, and then deleted.  
8 And I also think it's consistent with the obligations of  
9 the Ministerial Code, which indicates that where a civil  
10 servant is not present for a conversation involving  
11 a minister, any relevant information should be placed on  
12 the official record and -- and -- through dialogue with  
13 the private office, which would be -- the primary  
14 channel of my dialogue with the government would be  
15 through my private office.

16 Q. What do you mean by "ungoverned sources"? It seems  
17 slightly concerning there would be any ungoverned  
18 sources of the conduct of Scottish Government business.

19 A. Well, that's anything that's not on the official record  
20 of the government, is what I think would be the  
21 definition of "ungoverned sources".

22 Q. So what you mean by that is telephones and things like  
23 that which are not controlled by the Scottish  
24 Government?

25 A. No, what I'm saying is that anything that's not on the  
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1 official record of the government is essentially  
 2 an ungoverned source.  
 3 **Q.** So that would include absolutely everything, would it  
 4 not, until it was included on the official record?  
 5 **A.** That's correct, yes.  
 6 **Q.** When you say that material was placed on the official  
 7 record and then deleted, can you explain what your  
 8 understanding is of what material you required to place  
 9 on the official record?  
 10 **A.** What I would consider that to be is any material that is  
 11 relevant to the contact or the dialogue that has taken  
 12 place, and I would essentially do that by sending  
 13 an email to my private office. I make reference in my  
 14 statement to the email account that I used, it's  
 15 a Scottish Government email account. I would email from  
 16 that email account -- you know, I wouldn't be surprised  
 17 if I emailed from that email account hundreds of times  
 18 a day -- to submit material to my private office on  
 19 responses to submissions, on instructions that I wished  
 20 to be undertaken, on any questions that I had, or on any  
 21 information that I believed had to be added to the  
 22 official record of the government.  
 23 **Q.** So amongst those hundreds of emails a day there will be  
 24 some that contain the process of you conveying to your  
 25 private office important information which has taken

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1 once Mr Yousaf had made the public statement that he had  
 2 retained his messages, I asked if I could have a copy of  
 3 any that were relevant to me, and I've made those  
 4 available to the Inquiry.  
 5 **Q.** Yes, yes. So he was able to provide messages over the  
 6 period that I've indicated because he found them on his  
 7 device, but they were not on your device?  
 8 **A.** They were not.  
 9 **Q.** They had been deleted --  
 10 **A.** They had been --  
 11 **Q.** -- in accordance with the policy that you've outlined  
 12 already. Was it the case that these messages were  
 13 deleted one by one manually or were they subject to some  
 14 sort of auto-delete function, which I understand one can  
 15 apply to WhatsApp messages?  
 16 **A.** They would be deleted by periodic deletion once I was  
 17 satisfied I had told the -- my private office any  
 18 material that was relevant. And I would be doing that  
 19 on an ongoing basis so that I was not facing, you know,  
 20 a large number of messages that I potentially would have  
 21 to delete on one occasion.  
 22 **Q.** Thank you.

23 You tell us about exchanges, helpfully, with  
 24 a number of other individuals and the means by which you  
 25 communicated. I think broadly speaking the case is that

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1 place in these ungoverned sources which needs to be  
 2 placed on the official record by them?  
 3 **A.** That is correct, yes.  
 4 **Q.** Okay. You say that you had infrequent text messages  
 5 with Jeane Freeman, Ms Jeane Freeman, and have provided  
 6 us with one WhatsApp exchange between you and her. This  
 7 consists of four messages exchanged on 7 April 2020, and  
 8 two messages exchanged on 24 December 2021.  
 9 Is that the extent of the communications you had via  
 10 WhatsApp with Ms Freeman or did you manually delete  
 11 messages and this is all that remains?  
 12 **A.** That's all the exchanges with Ms Freeman.  
 13 **Q.** It's the full extent of the exchanges that occurred?  
 14 **A.** Yes, yeah.  
 15 **Q.** You had reasonably frequent WhatsApp messages with the  
 16 now First Minister, Mr Yousaf. You were not able to  
 17 provide any of those messages, but we saw some of those  
 18 messages last week when the now First Minister gave  
 19 evidence. He retained these messages and fortuitously  
 20 discovered them on an old handset.  
 21 There are 18 pages of WhatsApp messages between  
 22 19 June 2020 and 6 April 2022. Did you message  
 23 Humza Yousaf before June 2020 via any informal means?  
 24 **A.** I can't recall if that is the case, but I should also  
 25 probably state for the record and for completeness, that

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1 you have not been able to provide us with those  
 2 messages, although again some of the correspondents have  
 3 been able to provide some of the messages to us. Is  
 4 that broadly correct?  
 5 **A.** That's correct, because of the approach that I was  
 6 taking to the recording of information that was relevant  
 7 to the government's official record.  
 8 **Q.** It would be possible, would it not, in light of the fact  
 9 that these messages have been retained by others, for us  
 10 to look at the messages that we have, not retained by  
 11 you, and look at the emails by which you communicated  
 12 what needed to go on to the official record and work out  
 13 whether the right material had been put on to the  
 14 official record; that would be possible, wouldn't it?  
 15 **A.** I'm sure that would be, yes.  
 16 **Q.** And indeed, given the fact that the Inquiry has  
 17 requested materials held by the Scottish Government  
 18 pertaining to the process around and ultimately  
 19 decisions taken by the Scottish Government in the  
 20 management of the pandemic, we should have available to  
 21 you -- to us the emails in which you communicated the  
 22 information that needed to be put on the official record  
 23 to your private office?  
 24 **A.** That should be the case, yes.  
 25 **Q.** Because, as you said, that was communicated via your

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1 Scottish Government email address, so that would be part  
2 of -- is it the Scot system or some sort of -- the  
3 electronic system whereby the emails are able to be  
4 located?

5 **A.** Yes.

6 **Q.** Thank you.

7 You were also a member of a number of group chats,  
8 three of which we have been provided access to by the  
9 Scottish Government, with officials, which are of  
10 a limited time nature, for specific debates or committee  
11 meetings, instead of notes being passed up to you. You  
12 state in your statement that categorically you were not  
13 a member of any group chats with ministers, civil  
14 servants and officials that considered ongoing issues in  
15 relation to the pandemic. Is that your understanding of  
16 the position?

17 **A.** That is my understanding, yes.

18 **Q.** So did you not think that those group chats were  
19 included in that definition?

20 **A.** I think I was -- I think I was answering a specific  
21 question, I think, which was what group chats was  
22 I a part of, and what I was saying was that there were  
23 a small number of group chats that were established to  
24 provide me with a channel of communication with  
25 officials during parliamentary committee sessions where

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1 evidence of decisions or something broader than that?

2 **A.** I think the Inquiry would want to see evidence of  
3 decisions and the -- some of the preparatory information  
4 that went into those decisions. And that would take  
5 a number of different forms: it would take the form of  
6 perhaps briefing papers, it would take the form of  
7 instructions that I had perhaps given to civil servants,  
8 it might take the form of other documentation that came  
9 out of other forums within government. And that  
10 the Inquiry would form a view around about that  
11 material.

12 **Q.** Because whether it's for the purposes of the Inquiry or  
13 not, it's important, isn't it, that a record be kept of  
14 the way in which decisions are either arrived at, or  
15 ultimately perhaps not arrived at, so that the Scottish  
16 public, the people who ultimately you are serving, would  
17 be able to know the process by which decisions had been  
18 reached so as to be able to judge for themselves whether  
19 they thought that process was acceptable to them or not?

20 **A.** Yeah, I think that's right, and I think the Scottish  
21 Government captures a very significant amount of  
22 information that enables such a judgement to be arrived  
23 at, and publishes a large amount of that information.  
24 But then for the purposes of this Inquiry, for example,  
25 it makes available a huge amount of information, most of

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1 I would ordinarily have officials sitting with me who  
2 would be able to pass me notes with relevant information  
3 or points to make, or that I would have, in  
4 a parliamentary debate, officials sitting at the back of  
5 the chamber able and empowered to pass notes to me when  
6 I was sitting on the front bench, which I would use and  
7 had used for many years. So these were group chats that  
8 were established for, you know, a day which were  
9 designed to provide me with that information and it was  
10 for that purpose alone.

11 **Q.** Right, so just to be clear, I think -- I said you gave  
12 a particular definition of you were not a member of any  
13 group chats with ministers, civil servants and officials  
14 that considered ongoing issues in relation to the  
15 pandemic, and you did not consider those groups to fall  
16 within that definition; is that right?

17 **A.** My apologies, I misunderstood. I didn't consider them  
18 to be passing that test of being --

19 **Q.** Yes, that's --

20 **A.** -- discussing -- sorry, my apologies. That the -- those  
21 were technical information feeds of relevant answers to  
22 points, they were not ongoing discussions about the  
23 development of the pandemic, no.

24 **Q.** Well, just to be clear around definitions, was it your  
25 understanding of what required to be produced to us was

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1 which would not be available for a formidable period of  
2 time because of the nature of its internal government  
3 business. Cabinet minutes, for example, they're not  
4 routinely published but obviously have been made  
5 available to the Inquiry, entirely appropriately for  
6 the Inquiry, but wouldn't be available for a 15-year  
7 period. I've just been looking at the Cabinet papers  
8 that were -- the Cabinet minutes, et cetera, that were  
9 published at the turn of the year as part of the 15-year  
10 disclosure arrangements.

11 So I think it is important that that information is  
12 available for people to see.

13 **Q.** The then First Minister made statements about the  
14 inevitability of there being a public inquiry into the  
15 Scottish Government's handling of the pandemic as early  
16 as March 2020 when questions were raised with her about  
17 the way in which the Scottish Government was handling  
18 and had handled the care home infection issues.  
19 Therefore, was it not the case that everyone within  
20 Scottish Government was on notice that material needed  
21 to be retained so that an exhaustive examination of how  
22 decisions had been made would be possible?

23 **A.** Could I just clarify in your question, Mr Dawson?  
24 I think you said March 2020.

25 **Q.** Yes, that's correct.

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1 **A.** I -- okay. I would say that my view in all of that was  
 2 that the steps I was taking in relation to the way in  
 3 which I was handling information was consistent with  
 4 that approach of ensuring that whatever information  
 5 I had was available for and placed on the official  
 6 record of the government to make sure that was available  
 7 for the Inquiry or for any other purposes in due course.  
 8 **Q.** Which we will now be able to check against messages  
 9 retained by other people. Is that right?  
 10 **A.** Yes, that's correct, yes.  
 11 **MR DAWSON:** If that's a convenient moment, my Lady.  
 12 **LADY HALLETT:** Just after I've asked one question.  
 13 Mr Swinney, once you realised there was going to be  
 14 an inquiry, statutory inquiry or inquiries, did you not  
 15 think to question the policy of deletion? Did you not  
 16 ask somebody: "This is what we do in normal times, but  
 17 what do we do now?"  
 18 **A.** I think the view I took -- in answer to your question,  
 19 my Lady, I didn't ask that question. I took the view  
 20 that the approach that I had been advised to take all  
 21 through my ministerial career was the appropriate one  
 22 because nobody had ever said to me to the contrary, and  
 23 that I was -- I believed I was furnishing the record  
 24 with any relevant information that would be necessary  
 25 for the Inquiry.

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1 **MR DAWSON:** Thank you.  
 2 Thank you, my Lady.  
 3 **LADY HALLETT:** Thank you. 1.45, please.  
 4 (12.46 pm)  
 5 (The short adjournment)  
 6 (1.45 pm)  
 7 **LADY HALLETT:** Mr Dawson.  
 8 **MR DAWSON:** Thank you, my Lady.  
 9 Mr Swinney, we had got to the conclusion of the  
 10 discussion around text messaging and WhatsApp messaging  
 11 just before the break.  
 12 If I could pick up with you, please, paragraph 18,  
 13 page 8 of your second statement, 979 at the end.  
 14 Yes, this again is related to informal means of  
 15 communication, in this instance telephone discussions,  
 16 you say:  
 17 "All of my discussions were focused on taking  
 18 forward the direction that had been set by Cabinet and  
 19 addressing practical issues that arose as a consequence.  
 20 Many of these informal discussions would be by telephone  
 21 and if there was any relevant information that was  
 22 required to be placed on the corporate record, this  
 23 would be undertaken by me issuing an email to my  
 24 Private Office or an Official recording the necessary  
 25 information."

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1 But could I perhaps take this opportunity, my Lady,  
 2 to say that if I have misunderstood the policy of the  
 3 Scottish Government in this respect, then I would  
 4 apologise unreservedly for so doing, because my  
 5 intention was never to do anything other than to make  
 6 sure the official record was furnished with all of the  
 7 information that it needed to have.

8 **LADY HALLETT:** Thank you.

9 **MR DAWSON:** If I could just ask one -- very briefly --  
 10 follow-up, my Lady.

11 **LADY HALLETT:** Yes, of course.

12 **MR DAWSON:** It is, of course, entirely possible, is it not,  
 13 Mr Swinney, that the defect may lie in the policy rather  
 14 than in your implementation of it, it's possible that  
 15 the policy doesn't require people to retain enough  
 16 information and, even if you adhered to it to the  
 17 letter, it may be that adequate information has not been  
 18 retained?

19 **A.** That might well be the case, Mr Dawson, and what I would  
 20 say to the Inquiry is that I believed what I was doing  
 21 was consistent with that policy, and that I was doing  
 22 nothing during Covid that I wasn't doing at any stage in  
 23 the previous 13 years of my ministerial life, and the --  
 24 my handling of information had at no stage ever been  
 25 questioned in that process.

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1 So as far as telephone conversations were concerned,  
 2 a similar process to the one that we discussed earlier,  
 3 is that broadly --  
 4 **A.** That's correct, yes.  
 5 **Q.** You go on then to list the individuals you conversed  
 6 with, including Ms Sturgeon, Ms Freeman and Mr Yourself,  
 7 and you accept that you discussed matters around the  
 8 progress of the pandemic in Scotland, commented upon the  
 9 advice received in relation to the pandemic in Scotland,  
 10 commend upon the nature of decisions that the Scottish  
 11 Government might have to take, make any -- you made any  
 12 decisions about the Scottish Government's response to  
 13 the pandemic, and commented upon the decisions which the  
 14 Scottish Government had taken, and then you state:  
 15 "Any decisions taken were consistent with the  
 16 Cabinet direction and were always recorded in the  
 17 corporate record."

18 So is it correct to understand that all of the  
 19 matters that I've listed you accept were part of those  
 20 telephone discussions?

21 **A.** I do, yes.

22 **Q.** Thank you.

23 I'd be interested just to explore with you a little,  
 24 come back to talking about Cabinet a bit later, but you  
 25 say there that decisions taken via this means, and by

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1 others, were based on the direction set by Cabinet. Can  
2 you give us some indication as to what that actually  
3 means in terms of what was the expectation of what would  
4 be done at Cabinet and what was the expectation of what  
5 would be done in other fora, including these telephone  
6 conversations, by way of decision-making?

7 **A.** Well, cabinet was the decision-making forum, so that's  
8 where decisions were arrived at, other than where  
9 Cabinet took a decision to delegate that to another  
10 individual, invariably the First Minister and/or myself,  
11 in certain circumstances, but Cabinet was the  
12 decision-making body and it would set out the direction  
13 of travel that we were taking, and that, at one moment  
14 in the pandemic, could be the application of very tight  
15 restrictions of the nature that we experienced in the  
16 early part of the pandemic, or it might be taking  
17 decisions about relaxing some of those restrictions.  
18 And what would follow from that in any other subsequent  
19 conversations were discussions about how we turned that  
20 into operational or practical reality or any issues that  
21 arose as a consequence that we could resolve within the  
22 framework or the direction that Cabinet had set.

23 **Q.** Because in the context of the pandemic in particular, it  
24 may be -- you assert, of course, your position is that  
25 the Cabinet took the decisions other than where there

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1 concerned, is it your position that all of those things,  
2 discussions around the progress of the pandemic,  
3 comments upon advice, commenting upon the nature of  
4 decisions the Scottish Government might take, the  
5 Scottish Government did take, and decisions the Scottish  
6 Government had taken, is your position that all of the  
7 salient features of those discussions are on the  
8 corporate record?

9 **A.** I would say so, yes.

10 **Q.** Okay.

11 And of course, as I said earlier, as similarly as  
12 regards the WhatsApps, we would be able to check that by  
13 checking the corporate record, the paperwork we've been  
14 given by the Inquiry about the management of the  
15 pandemic, with what we can see from others' messages,  
16 because your messages generally aren't available through  
17 you; yes?

18 **A.** Yes.

19 **Q.** Could I just, as a point of clarification -- you rightly  
20 pulled me up earlier when I was asking you a question  
21 about the point at which the First Minister announced  
22 there would be likely to be a public inquiry and you  
23 asked about the month. You were absolutely right to do  
24 so, because I insisted, frankly, that it was March;  
25 I think in fact it was May of 2020 when those comments

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1 was a delegation, but it might not be other people's  
2 interpretation as to precisely what happened, in the  
3 sense that if the Cabinet said "We see cases are rising,  
4 we think that there should be something done about  
5 that", that might be deemed to be the direction, but all  
6 of the means by which the rise in cases were then  
7 combatted, the various means open to government to be  
8 able to do that, if those decisions about those  
9 practical aspects are taken elsewhere, really all the  
10 decisions are taken outwith Cabinet, isn't that right?  
11 **A.** I wouldn't accept that, no, because I think the nature  
12 of the -- and the content of Cabinet minutes will show  
13 that I think both of the elements that you raise in your  
14 question, Mr Dawson, are happening at Cabinet.

15 Cabinet is saying "We are concerned about the rising  
16 cases and we need to do something about it and here are  
17 the things that we are going to do about it", and then  
18 what might be left to delegation might be what I would  
19 describe, and I think I used the word in my statement,  
20 marginal questions, which would then be the subject of  
21 perhaps further interaction with advisers and then the  
22 minuting of what is the conclusion of that process of  
23 delegation.

24 **Q.** As far as the matters that I've listed which you  
25 accepted were part of these telephone conversations were

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1 were made, which of course would be much more  
2 consistent, I think, with the way in which information  
3 about the care home situation arose. Is that broadly  
4 right?

5 **A.** That was -- that was -- that was just what confused --

6 **Q.** Yes, yes, because --

7 **A.** -- me, because --

8 **Q.** -- also what confused me, because it was March when  
9 a lot of the people in the care homes were being  
10 infected and ultimately dying; is that right?

11 **A.** Obviously there was -- it was -- there was a period  
12 where there was some acute pressure within care homes,  
13 and that -- well, that went on for a very long time, but  
14 there was, I suppose, an intense period of pressure  
15 which would be in that March to April --

16 **Q.** So the period where a lot of the infections were  
17 occurring which ultimately led to 50% of the deaths in  
18 the first wave in Scotland occurred March/April; is that  
19 your understanding?

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

21 **Q.** And it was only in May, when the First Minister made the  
22 comments to which I referred earlier about the  
23 likelihood of a public inquiry, that that was coming to  
24 light and being discussed openly in the Parliament and  
25 in other places.

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1 As regards one further aspect to do with your phone  
2 before I move on to other areas, the phone, as  
3 I understand it, that you used throughout this period  
4 was a personal phone; is that right?  
5 **A.** That's correct, yes.  
6 **Q.** And you give an explanation in one of your statements to  
7 the effect that it was convenient for you to use  
8 a personal phone because you had a particular BlackBerry  
9 app that you used and it was easier to use that in  
10 conjunction with your personal phone; is that --  
11 **A.** That's correct, yes.  
12 **Q.** Do you broadly, given your vast ministerial experience,  
13 think that there may well be other concerns about senior  
14 ministers like yourself using personal phones and that  
15 that might be something that would be looked at by the  
16 Scottish Government in future?  
17 **A.** I understand that unease, and the issues for me were  
18 practical issues. I could access with one device my  
19 Scottish Government email account, which is the one, as  
20 I've said in the session before lunch, I used  
21 habitually, I was use -- on it all the time, to submit  
22 emails and respond to emails from my private office.  
23 I had that securely on my personal device, and it meant  
24 I only had one phone number and one phone to carry  
25 about, because the dangers of losing phones are enormous

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1 **Q.** -- which was involved in discussing, preparing the way  
2 in which resilience might work; is that correct?  
3 **A.** If I can perhaps provide some detail on this.  
4 **Q.** That would be very helpful.  
5 **A.** The Cabinet in the period up until about 2010 had  
6 an operational Cabinet subcommittee on resilience, and  
7 that met very infrequently, but it was essentially  
8 looking at strategic preparations for the -- for any  
9 resilience event, whatever that might be. We have  
10 more -- we're more accustomed to winter weather  
11 resilience arrangements than to pandemics. We have  
12 a lot of them.  
13 **Q.** That's why SGoRR itself did meet, is it not?  
14 **A.** Correct. But then what we began to find after 2010 was  
15 that SGoRR was meeting on a regular basis, the same cast  
16 list was largely round the table that would be round the  
17 table for the Cabinet subcommittee, so all business  
18 really got transacted in SGoRR, which met very  
19 frequently over the years after 2010. So the idea that  
20 somehow our resilience grouping stopped in 2010 and  
21 nothing else happened, that was not the case. The  
22 resilience activity was undertaken under the umbrella of  
23 SGoRR, which tended to have the First Minister, the  
24 Deputy First Minister, relevant Cabinet members round  
25 the table with senior officials, and that met very

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1 the more you have.  
2 **Q.** But there may also be dangers associated with using  
3 personal phones which are not fully within the control  
4 of the Scottish Government?  
5 **A.** I understand that, yes.  
6 **Q.** Thank you.  
7 Could I move on then, Mr Swinney, to something I've  
8 touched on. It's to do with the decision-making  
9 processes of which you are, as you've accepted,  
10 a fundamental part.  
11 I'd like to ask you first of all, by way of  
12 clarification to an extent, of some of the evidence that  
13 you gave in Module 1, if we could sort of start off  
14 where we left off with you there and then move into the  
15 actual decision-making process which happened during the  
16 Covid period.  
17 You gave some evidence in Module 1, as I understand  
18 it, that obviously you had a responsibility for  
19 resilience matters prior to the pandemic; is that right?  
20 **A.** That's correct, yes.  
21 **Q.** And you gave some evidence related -- this is the point  
22 of clarification -- not to the SGoRR system, the  
23 Resilience Room system itself, but to a Scottish  
24 Government Resilience Cabinet Subcommittee --  
25 **A.** Yes.

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1 frequently in the aftermath of 2010.  
2 **Q.** But this subcommittee that we're talking about, it had  
3 a role in organising, preparing for the way in which  
4 resilience would work, there was an operational role for  
5 that body as opposed to SGoRR itself?  
6 **A.** I would say there were -- that's probably a fair  
7 assessment, but what the SGoRR arrangements did was they  
8 provided -- they recognised the fact that we had to have  
9 a whole range of different players involved in our  
10 resilience activity, so we tended to develop our  
11 strategic thinking around the Scottish Resilience  
12 Partnership which, I think I put on the record to the  
13 Module 1 hearings, drew together figures from local  
14 government, from Police Scotland, the Scottish Fire and  
15 Rescue Service, the Scottish Environmental Protection  
16 Agency, the local authority chief officers, and other  
17 organisations who were critical to enabling us to have  
18 effective resilience arrangements.  
19 And from that initiatives such as the Scottish Risk  
20 Assessment emerged, which was a strategic overview of  
21 what were the likely potential threats or resilience  
22 issues that Scotland may have to face, and that became  
23 a focal point for our planning for future events.  
24 **Q.** Was it the case that -- the fact that the Scottish  
25 Government Resilience Cabinet Subcommittee had not met

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1 since 2010, was it the case that that created something  
2 of a deficit in the organisational aspects of the way  
3 that any resilience response would be in fact conducted  
4 through SGoRR?

5 **A.** I don't think that's the case, because there was  
6 engagement at the most senior level in the Scottish  
7 Resilience Partnership and also within SGoRR about all  
8 of these issues on an ongoing basis, and from time to  
9 time these issues would also come to Cabinet as well.  
10 So the Scottish Risk Assessment, if my memory serves  
11 me right, I'm pretty certain went to Cabinet. All the  
12 resilience thinking around about that would have gone to  
13 Cabinet as well.

14 **Q.** Is it the case, as I understand the evidence from  
15 Module 1 that you and others gave, that resilience was,  
16 effectively, in a broad sense, a reserved matter?

17 **A.** I wouldn't say -- there's, I suppose, in a legislative  
18 sense there will be certain legislative instruments  
19 which will be wholly reserved, and the civil  
20 contingencies legislation, for example, will be wholly  
21 reserved. But when it comes to responding to the  
22 practicalities of resilience arrangements, many of the  
23 issues are devolved and wholly devolved.

24 **Q.** Well, this is exactly what I wanted to try to clarify  
25 with you, Mr Swinney, because if there were, prior to  
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1 House of Commons -- the House of Lords, for provision  
2 through the Civil Contingencies Act.

3 But if there were practical issues that had to be  
4 addressed by the devolved public services in Scotland,  
5 that would have to take into account the constitutional  
6 arrangements that we have, that in short the Scottish  
7 Government runs those things.

8 **Q.** Yes, so you would organise the practical arrangements  
9 within health or police or fire services, whatever would  
10 be needed to be able to respond?

11 **A.** If it was taken forward in -- under the umbrella of the  
12 Civil Contingencies Act.

13 **Q.** Yes.

14 **A.** But my contention is that that wouldn't be  
15 a particularly effective way to do that because of the  
16 fact that there is policy responsibility as well as  
17 operational responsibility vested in the Scottish  
18 Parliament and the Scottish Government for the exercise  
19 of those functions consistent with the Scotland Act of  
20 1998 and successive legislation.

21 **Q.** But as we've discussed with other witnesses, including  
22 Mr Gove yesterday, it was a possibility that the  
23 pandemic might have been dealt with as a Civil  
24 Contingencies Act situation. It might have been.

25 **A.** Might. But I think Mr Gove also said that he didn't  
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1 the pandemic, hypothetically speaking, to be a response  
2 to a national emergency, would it be the case that the  
3 respirations would be delivered on an operational level  
4 through the various partnerships in Scotland that you've  
5 described but that if that emergency had been --  
6 emergency response had been instigated through the Civil  
7 Contingencies Act, that the policies connected with how  
8 something would be managed at a higher policy level  
9 would generally be a matter for the UK Government to  
10 decide?

11 **A.** I think it would depend on the nature of the  
12 circumstances. If, for example, there was any  
13 requirement for there to be a response in the resilience  
14 arrangement from public services that were devolved to  
15 the Scottish Parliament (for ease of reference, health,  
16 education, police, fire, transport, local government),  
17 the involvement and the engagement of the Scottish  
18 Government and the Scottish Parliamentary arrangements  
19 would be critical, because the constitutional  
20 arrangements that we have today make it clear that those  
21 are all devolved functions. And in my view it would be  
22 antidemocratic for that not to be the case.

23 I do accept, however, there may be certain steps  
24 taken by the United Kingdom Government properly under  
25 the existing legislative framework approved by the  
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1 think that would be appropriate.

2 **Q.** Well, eventually we knew that he and his government did  
3 not think it was appropriate and, as I understand it,  
4 neither did the Scottish Government?

5 **A.** We did not, no.

6 **Q.** One other aspect of your M1 evidence before I move on to  
7 the substance of what we're looking at, you were asked  
8 about, in your Module 1 evidence, the state of  
9 relationships between the two governments, the Scottish  
10 Government and the UK Government, as at the beginning of  
11 the pandemic, and you said that:

12 "... generally relationships between the  
13 administrations were pretty poor by that point. Poor in  
14 the aftermath of Brexit, because obviously constituent  
15 parts of the United Kingdom -- well, we were -- in  
16 Scotland we were not happy with Brexit at all, or not  
17 happy with the -- and you obviously had to spend a lot  
18 of time on the no-deal Brexit, as the Inquiry heard this  
19 morning from Nicola Sturgeon. But generally relations  
20 were pretty poor."

21 I just wanted to clarify with you that that remains  
22 your understanding of the position, and in particular  
23 I wanted just to clarify with you the generality of the  
24 evidence that you've already given to the extent that  
25 you don't limit that, for example, to personal  
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1 relationships between any individuals, but generally  
2 between the governments you suggest that the relations  
3 were pretty poor?

4 **A.** Well, I think it would be fair to say that things were  
5 pretty strained after the no-deal Brexit experience, and  
6 there was a ... you know, I think a "strain" is the best  
7 way to put it.

8 I think, however, and I think one of the other  
9 points that I put on the record in my Module 1 evidence,  
10 was that generally on resilience issues we all tended to  
11 work collaboratively with each other, and my experience  
12 of interacting with UK ministers on resilience issues,  
13 of which, you know, there had been on quite a number of  
14 occasions, we generally managed to -- to work on  
15 a collaborative basis.

16 **Q.** Did that continue to be your experience as regards the  
17 extent to which you had to work with any UK Government  
18 ministers or officials during the course of the  
19 pandemic? Because we've heard conflicting evidence  
20 about that.

21 **A.** I think it varied, you know, and I think on -- you know,  
22 for example, as Education Secretary I had quite a lot of  
23 interaction with the -- well, reasonable amount of  
24 interaction with the UK Secretary of State for Education  
25 and my counterparts in Wales and Northern Ireland, and  
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1 time, where there would be a sense that we were -- we  
2 had to take account of the different circumstances in  
3 different parts of the United Kingdom.

4 **Q.** That had always, of course, been a possibility because  
5 the legislation enabled Scotland to take a different  
6 path if it was thought appropriate?

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

8 **Q.** Could I ask then some questions about the  
9 decision-making during the course of the pandemic  
10 itself. I have already referred to the Cabinet. In  
11 your evidence you suggest that:

12 "Members of the Cabinet would be invited to express  
13 their views on all matters before Cabinet. The  
14 First Minister would generally sum up the discussion and  
15 an agreed position would be arrived at. While different  
16 views and proposals would often be considered, Cabinet  
17 never held a vote on any issue in connection with  
18 Covid-19 or any other issue for that matter."

19 Can you please explain to us why it was that Cabinet  
20 never voted on any matter related to Covid, given your  
21 position that Cabinet was the main decision-making body?

22 **A.** Because Cabinet aired its views, we had the evidence in  
23 front of us, and the First Minister would get to  
24 a summary position and if -- and that would be a summary  
25 position that would be informed by the evidence and from  
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1 these were always very helpful and collaborative and  
2 courteous conversations, and I've set out in other  
3 respects areas where we were able to make some headway,  
4 other areas where it was a bit more difficult to make  
5 some headway.

6 **Q.** What were the areas in which there was difficulty?

7 **A.** I think often -- I think if I look at the pandemic,  
8 I think there was a sense in March 2020 that we would  
9 have liked things to be moving faster, to move to  
10 a response to Covid, and then I think when we got to the  
11 moment of lockdown, that was agreed on a collaborative  
12 basis. I think the relaxation of lockdown was difficult  
13 because there were different circumstances in different  
14 parts of the United Kingdom which made it difficult for  
15 there to be a one size fits all, it didn't suit  
16 everybody to be moving at the same pace because of the  
17 condition of the pandemic, and that added to, you know,  
18 that made things a bit tense.

19 **Q.** Just on that latter point, we've heard some evidence  
20 about tensions which seemed to be apparent from  
21 materials that we've looked at around the May period  
22 of 2020. Would that be coincident with your second  
23 category there, when restrictions were being eased, or  
24 are you talking about a different period?

25 **A.** I think it probably would have started around about that  
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1 had been expressed at Cabinet. And I suppose,  
2 you know -- and my comment which you've read out,  
3 Mr Dawson, is absolutely correct. In my 16 years in the  
4 Cabinet there wasn't a single vote on any single issue,  
5 because that's not how Cabinet did its business, it did  
6 its business by trying to come to a point of agreement.  
7 And I suppose if a member of Cabinet felt they just  
8 could not go along with what had been agreed, then --  
9 you know, we all know how the system works: once Cabinet  
10 decides, collective responsibility kicks in, and if you  
11 can't live with it then you have to resign from the  
12 Cabinet.

13 **Q.** Yes.

14 **A.** And no member chose to do so.

15 So I think we all -- I think all of us in the  
16 Cabinet would be entirely cognisant of the working  
17 approaches of the Cabinet and would know what was the  
18 course of action to take if we didn't agree with it.

19 **Q.** Was it the case that -- I think Cabinet meetings, other  
20 than extraordinary meetings of which there were some  
21 examples, generally took place on a Tuesday; is that  
22 correct?

23 **A.** That's correct, Tuesday morning at 9.30.

24 **Q.** I think there was, as we understand it from the  
25 paperwork, a certain process by which materials would be  
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1 put together for the purpose of Cabinet, and it would  
2 possibly tend to involve meetings of a smaller group of  
3 Cabinet, tending to involve the First Minister and  
4 usually, as we understand it, yourself and certain  
5 others to discuss matters which might then be put before  
6 Cabinet. Is that broadly correct? That is  
7 an interpretation of the materials that we have. Is  
8 that --

9 **A.** Broadly I would say that that is a fair summary, that --  
10 not in -- not in all cases but certainly at some of the  
11 key moments of the handling of the pandemic in relation  
12 to the relaxation of restrictions there might be  
13 a discussion that would be convened involving the  
14 First Minister and myself, the Health Secretary. There  
15 would at different stages be either the finance minister  
16 or the economy minister, and latterly those two jobs  
17 were combined by Kate Forbes, along with some senior  
18 officials and senior advisers. And we would tend to  
19 look at evidence presented to us about the state of the  
20 pandemic and what were the -- you know, what were the  
21 possible choices that we might have in front of us at  
22 that particular moment in time. And that would be  
23 invariably informed by a slide presentation of  
24 information that would be led by senior officials about  
25 what was the, you know, the current state of the

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1 occasions, lots of uncertainty about what might be  
2 provided for. That would result -- that would  
3 invariably take place maybe towards the end of a week or  
4 in the early part of the weekend, and then over the  
5 weekend a very detailed Cabinet paper, which I'm certain  
6 the Inquiry must have access to, would be prepared which  
7 would give all members of Cabinet the evidence base and  
8 then draw out of that evidence base what were the  
9 possible actions that could be taken and those issues  
10 would be put to Cabinet, which would then -- as  
11 the Inquiry will see from the Cabinet minutes, a very  
12 extensive discussion would be had at those Cabinet  
13 meetings.

14 And in that Cabinet meeting, I think it would be  
15 fair to say we were wrestling with the dilemmas about to  
16 what extent could restrictions be relaxed, given the  
17 state of the pandemic. Or the other side of the coin:  
18 given the state of the pandemic what do we need to do to  
19 apply greater restrictions? And Cabinet would come to  
20 a position on that. And if there was any marginal  
21 detail, and I stress the word "marginal" detail, that  
22 needed to be clarified in the aftermath of a Cabinet  
23 discussion, and that might be particularly when it came  
24 to the settling of what local authority areas were in  
25 what particular levels, that might require some further

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1 pandemic and, particularly when it came to questions  
2 around about relaxing restrictions, whether there was  
3 any scope available to us to relax restrictions given  
4 the prevalence of the pandemic and given the strategic  
5 direction set by Cabinet that we were trying to suppress  
6 Covid to an extent that would allow us to have a bit  
7 more normality than any of us were experiencing at that  
8 time.

9 **Q.** Our interpretation of the paperwork, as we understand  
10 it, is that these prior meetings resulted in material  
11 then being put to Cabinet based on effectively what that  
12 group had thought would be the right thing to do,  
13 Cabinet looking at those and then often delegating  
14 responsibility back to the First Minister or yourself,  
15 who were usually members of the initial group.

16 Is that a fair summary of the process? And to what  
17 extent would it be a legitimate conclusion from that,  
18 that decisions were made in this other body beforehand,  
19 merely ratified by Cabinet, and then ultimately the  
20 detail of the decision being made by the same individual  
21 members of that body that met before?

22 **A.** I wouldn't accept that characterisation. What would  
23 happen is that there would be an early discussion about  
24 some of the evidence base and about some of the options  
25 that were available, and there would be, on many

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1 interrogation of data, it might have to wait for the  
2 data of the day to emerge, which might come about maybe  
3 12 o'clock on a Tuesday, and there would be limited  
4 scope delegated to the First Minister or my -- and/or  
5 myself to take that final decision.

6 **Q.** Thank you.

7 There are good reasons, are there --

8 **A.** My --

9 **Q.** Sorry?

10 **A.** Might I also add, Mr Dawson, that that position would  
11 then also invariably lead to very open public  
12 communication about the issues involved as  
13 a consequence.

14 **Q.** There are good reasons, are there not, why  
15 decision-making in Cabinet is part of our system?

16 **A.** There are.

17 **Q.** Amongst possibly others, those reasons include the  
18 importance of all Cabinet ministers being able to bring  
19 the perspective of their particular portfolio to the  
20 discussion; is that right?

21 **A.** That's correct, yes.

22 **Q.** And if it were to be the case, hypothetically, that  
23 discussions took place and decisions reached in smaller  
24 groups, that that would be a matter which wouldn't  
25 derive the benefit of being able to draw on the

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1 experience, insight and viewpoint of all of the Cabinet  
 2 members which represent really the main cross-sections  
 3 or parts of society?  
 4 **A.** I think that would be a problem, but that wasn't what  
 5 happened in the Scottish Government.  
 6 **Q.** Did the system that I think we're agreed on broadly  
 7 happening, although we're, I think, not agreeing on  
 8 precisely where the decisions were taken, the system of  
 9 a discussion taking place beforehand, the Cabinet  
 10 meeting taking place and some element of decision-making  
 11 being delegated, give rise to a system whereby you, the  
 12 First Minister and a small group of selected others  
 13 effectively made the decisions about how the pandemic  
 14 should be managed in Scotland?  
 15 **A.** I wouldn't accept that characterisation at all. I think  
 16 the decisions were taken by the Cabinet, and if there  
 17 was anything not undertaken by the Cabinet it was of  
 18 a marginal detail in relation to any decision-making.  
 19 With the exception of a couple of instances at the start  
 20 of the pandemic, which I've narrated in my witness  
 21 statement for -- for completeness, where decisions were  
 22 taken with such urgency that they were taken amongst  
 23 smaller groups, and I've been open with the Inquiry  
 24 about where that was the case.  
 25 **Q.** I appreciate that, Mr Swinney.

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1 Professor Leitch, whom you will know, obviously.  
 2 This is on 14 December 2021 at 14.07, in amongst  
 3 a discussion about what had happened at that time in  
 4 a Cabinet meeting. The context of this, Mr Swinney, as  
 5 we looked at with Ms Forbes earlier, is the emerging  
 6 threat of Omicron, you'll remember, in December 2021,  
 7 that although Scotland when already lived with the  
 8 period of high cases as a result of the Delta variant  
 9 that the Omicron threat was creating an even more  
 10 pressing situation, and the context is discussions  
 11 amongst the then Cabinet Secretary for Health and Social  
 12 Care and the National Clinical Director about what  
 13 should be done about that.

14 Mr Yousaf said:

15 "I took a hell of a bullet at Cabinet (!) But might  
 16 be able to strengthen the measures, even if its just  
 17 slightly. We think we can find £100m within the  
 18 portfolio not sure if thats enough but ive pushed to ask  
 19 if it is enough to move limits on gatherings in  
 20 households and hospitality into regs for at least the  
 21 next 4 weeks."

22 He then says:

23 "Dont know if itll happen this last minute and FM  
 24 not remotely happy its at this last stage but let's see  
 25 if it strengthens a package of measures that are far too

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1 Was it the case that where ministers brought matters  
 2 up in Cabinet, the First Minister was often, if she  
 3 disagreed with that point of view, often sought to trump  
 4 the view with her own view as to how matters should be  
 5 undertaken?  
 6 **A.** Not in my experience. The First Minister encouraged  
 7 an open discussion at Cabinet, and very different points  
 8 of view were expressed, because these are -- these were  
 9 not perfect or ideal choices. We talked earlier today  
 10 about the four harms framework. I think that was a very  
 11 helpful framework for us to structure our  
 12 decision-making --  
 13 **Q.** We will turn to that.  
 14 **A.** We will. But all that did was assemble the dilemma.  
 15 You know, it assembled the dilemmas in front of us, it  
 16 didn't give us a perfect pathway. It assembled the  
 17 dilemmas and we had to try to take the decisions that  
 18 would allow us to navigate through those challenges.  
 19 **Q.** Might one say that the four harms framework pointed out  
 20 the problem but didn't help with the solution?  
 21 **A.** I think it pointed out the problem and it helped with  
 22 the solution.  
 23 **Q.** Okay. Could I look, please, at INQ000334792.

24 This is an exchange which took place in messages  
 25 which are frequent between the now First Minister and

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1 weak as things stand."  
 2 To which Professor Leitch responds:  
 3 "I was listening. I almost intervened to deflect  
 4 for you. She was ridiculous. Absolutely ridiculous."  
 5 And he replies:  
 6 "And yes to the principle."  
 7 And Mr Yousaf said he didn't realise he was on the  
 8 call:  
 9 "Ack that's just the way it is. Her ranting at me  
 10 isn't the problem, i can take it its whether the quantum  
 11 at this stage helps us strengthen [the] package. Though  
 12 feel free to defend me at a later stage.  
 13 "Todays numbers lower than expected. Suspect some  
 14 [people] are not testing given xmas round the corner."  
 15 Do these messages not show the culture of the  
 16 Scottish Cabinet was driven by Nicola Sturgeon's  
 17 strong-mindedness, when challenging her was seen as  
 18 taking a bullet?

19 **A.** No, because I think that particular morning, if  
 20 I remember it correctly, I think the First Minister was  
 21 just a little bit surprised that the health portfolio  
 22 had been able to find £100 million to transfer to,  
 23 I think, to business support, which in -- you know, in  
 24 all my nine years, ten years of handling the public  
 25 finances of Scotland, the Health Secretary never offered

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1 me £100 million in return for anything. I think it  
2 probably surprised the First Minister. So that would be  
3 not my sense about how business was transacted. Cabinet  
4 had open and full discussions.

5 And again, I'm sorry, I suspect I might exhaust your  
6 patience, Mr Dawson, on the four harms framework, but we  
7 would constantly be wrestling with the dilemmas that  
8 would be involved in establishing a path out of the  
9 situation that we found ourselves in, because there was  
10 no easy answer.

11 **Q.** Do these messages show that whilst Cabinet secretaries  
12 might complain in private, as in the exchange we've just  
13 looked at, they would ultimately fall back in line  
14 behind the First Minister who was really calling the  
15 shots?

16 **A.** Well, if -- I come back to the answer I gave earlier on,  
17 if a member of the Cabinet can't live with a Cabinet  
18 decision, then we all know what the rules are: you  
19 resign from the Cabinet.

20 **Q.** Would it be accurate to say that given the volume and  
21 complexity of the information that was available to take  
22 into account in decision-making, that sharing that  
23 burden of responsibility amongst Cabinet members, rather  
24 than expecting it to be assimilated and borne by one or  
25 two people, would be a sensible way to govern?

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1 would be prepared, which would be invariably, in my  
2 recollection, a minute from Ken Thomson, the  
3 director-general who the Inquiry heard from a couple  
4 of weeks ago, which would then be issued to those who  
5 participated. And I think we actually -- actually we'd  
6 have had wider circulation than that, because more  
7 people needed to hear the contents of those discussions.  
8 So that would be the process of recording the gold  
9 discussions.

10 Now, I think I would accept that I -- I certainly  
11 felt I saw that traffic, all those follow-up notes, for  
12 a substantial period of the pandemic, I'm not sure I saw  
13 it for the whole of the pandemic. So I would accept  
14 there may be times where there isn't all of that  
15 information that's there. But there should be, and  
16 I accept that point.

17 When it comes to SGoRR, SGoRR tends to be a place  
18 where operational decisions are taken and then a list of  
19 actions identified as to what is to be taken forward,  
20 and that would be the approach that would be taken.

21 **Q.** But again, there are no minutes of the discussion that  
22 took place, so whether one can see the outcomes from  
23 documents that may or may not be available from certain  
24 periods, one doesn't know what the nature of the  
25 discussion was and therefore the basis upon which any

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1 **A.** That's why we had extensive Cabinet papers. In total  
2 71 papers were put to Cabinet with comprehensive  
3 evidence, background and recommendations, 61 of them  
4 authored by me, to enable Cabinet to come to -- to have  
5 those -- those very discussions about the dilemmas,  
6 because it was accepted that these were difficult  
7 dilemmas and they had to be -- and we had to establish  
8 a way through them.

9 **Q.** And we should be able to see the nature and extent of  
10 those discussions in Cabinet from the Cabinet minutes?

11 **A.** I would have said so, yes.

12 **Q.** We are not, however, able to see the extent of the  
13 discussions that took place in other important bodies,  
14 such as the group that I mentioned -- referred to at  
15 times as the gold group or gold command, and indeed the  
16 SGoRR group, for which there are no minutes?

17 **A.** I think on the -- on the gold meetings, my view would be  
18 that in a large amount of my experience -- the format  
19 for a gold discussion was that essentially a slide deck  
20 would be gone through in -- these meetings all took  
21 place -- well, invariably took place on -- on Teams. So  
22 a slide deck would be presented to us all remotely and  
23 we would interact with that and discuss and debate the  
24 different issues that were in front of us. And then in  
25 the aftermath of that there would be -- a summary note

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1 operational decisions or other decisions then presented  
2 to Cabinet were made?

3 **A.** Well, I think if you take the -- if you take the gold  
4 discussions, what I've said there is that the process  
5 of -- you know, there would be a presentation of  
6 evidence, which I'm certain will be available, there  
7 will be a summary note of the points that arose and were  
8 concluded as a consequence, and then that would  
9 essentially be the drafting blocks of the Cabinet paper  
10 that would then go to Cabinet.

11 So the Inquiry would be able to see, I would think,  
12 through all of that a clear line of sight of the  
13 thinking that was going into the conclusions that were  
14 being arrived at and ultimately, in the Cabinet paper,  
15 a relationship between the evidence that was being  
16 gathered, the conclusions drawn, and the actions that  
17 were being proposed as a consequence.

18 **Q.** Why were these meetings not minuted?

19 **A.** Well, I've explained the basis of which I think they  
20 were being recorded, so that there was a -- you know,  
21 essentially the gold meetings were preparing material  
22 that would go to Cabinet, and the Inquiry will see those  
23 Cabinet papers, and the Cabinet minutes that arise out  
24 of them, and I can certainly -- I can recall various  
25 notes which summarised the discussions that took place

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1 within the gold meetings, which again flowed into the  
 2 drafting of the Cabinet papers as a consequence.

3 **Q.** In the same way as in the emails to your private office,  
 4 you summarised matters that you wished to put on the  
 5 corporate record?

6 **A.** Yes.

7 **Q.** Could I ask you some questions about something I think  
 8 you referred to earlier, some of the early  
 9 decision-making very early in March 2020, and the  
 10 delegation of decision-making in that regard.

11 There was a decision taken, as I understand it, to  
 12 recommend a ban on mass gatherings on 12 March 2020; is  
 13 that right?

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

15 **Q.** And that decision was made outwith Cabinet; is that  
 16 correct?

17 **A.** That's correct, yes.

18 **Q.** I understand that the decision to cancel mass gatherings  
 19 of more than 500 people was taken by the  
 20 Cabinet Secretary for Health and Sport and the  
 21 First Minister, with input from the Chief Medical  
 22 Officer, on the morning of 12 March 2020; is that  
 23 correct?

24 **A.** That's correct, yes.

25 **Q.** A Cabinet meeting took place on 10 March 2020, which is

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1 I was called away from Parliament because my mother's  
 2 health had deteriorated and unfortunately she died on  
 3 the morning of 12 March, so I was not in close proximity  
 4 to the decision-making that was being taken on 12 March.

5 So --

6 **Q.** My condolences in that regard, Mr Swinney. However, I'm  
 7 simply asking whether this is a decision that ought to  
 8 have been taken in Cabinet, which doesn't really require  
 9 any actual involvement.

10 **A.** I don't think a decision of that nature, given the pace  
 11 of events at that time, would necessarily need to be  
 12 made in the Cabinet, because the Cabinet minute says  
 13 "Paragraph 7 of the paper made clear that, while current  
 14 scientific evidence did not suggest that closing schools  
 15 or cancelling large scale events would have  
 16 a significant effect, this should be kept under review."

17 So the Cabinet has essentially opened up that  
 18 question -- and I suspect, you know, we may come on to  
 19 the issues in relation to the sequencing of decisions  
 20 about school closures, because the wording is not  
 21 dissimilar in relation to that question, and I think  
 22 what -- so there was scope being left for that issue to  
 23 be looked at further. And I think, as I understand it  
 24 and as I've looked at the explanation given for the  
 25 announcement of the cancellation of large-scale events,

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1 INQ000238706, looking at page 3, paragraph 10. You're  
 2 listed as attending that meeting.

3 It says:

4 "Paragraph 7 of the paper made clear that, while  
 5 current scientific evidence did not suggest that closing  
 6 schools or cancelling large scale events would have  
 7 a significant effect, this should be kept under review.  
 8 In addition, even though the epidemiological evidence  
 9 might not yet imply the cancellation of large scale  
 10 events, other factors might apply -- notably behavioural  
 11 ones: there might, for example, be a problem with the  
 12 credibility of a public message advising significant  
 13 restrictions of personal behaviour while allowing  
 14 a 'business as usual' approach for large events."

15 So the Cabinet on 10 March discusses the  
 16 cancellation of mass gatherings and I think decides to  
 17 keep it under review as there is not the scientific  
 18 evidence to support the ban; is that the position as at  
 19 that stage?

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

21 **Q.** Two days later Nicola Sturgeon and others have made that  
 22 decision. Is this not an example of a decision that  
 23 ought to have been made in Cabinet?

24 **A.** I'm in a difficult position to answer questions in  
 25 detail about this particular moment because on 11 March

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1 the conclusion that was arrived at was about the risk of  
 2 pressure on the emergency services at that particular  
 3 time, and as a consequence it was judged that that was  
 4 the right step to take.

5 **Q.** If I can move on to the way in which decisions were  
 6 delegated at other times, the Scottish Cabinet began  
 7 regularly to delegate decision-making to you and/or the  
 8 First Minister, isn't that right?

9 **A.** On -- as I said earlier on, on marginal questions and  
 10 finalising the detail of changes to be made.

11 **Q.** Could we look at INQ000232744, please, page 7. These  
 12 are minutes of a Cabinet meeting held on  
 13 19 December 2020. Paragraph 24:

14 "Cabinet:

15 "(a) Agreed to delegate to the First Minister the  
 16 responsibility for finalising proposals in response to  
 17 the threat posed by the new variant of the virus [that  
 18 as the Alpha variant at that time of course] and all  
 19 decisions that might be required in advance of her  
 20 planned public statement later that afternoon;

21 "(b) Delegated to the First Minister and Mr Swinney  
 22 the responsibility for any further decisions that might  
 23 be required to take into account any material changes in  
 24 circumstances of which they might become aware ..."

25 This is, in effect, a delegation of all

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- 1 decision-making power at that stage, isn't it?
- 2 **A.** No. What I would say is that in -- all of this is  
3 consistent within the strategic framework that Cabinet  
4 has considered, which is referred to in paragraph (c),  
5 and Cabinet has also had a full discussion about the  
6 circumstances and the issues that we are confronting.
- 7 And when -- so that particular moment is taking,  
8 you know, the Cabinet's had its discussion, it is  
9 establishing what are the challenges and the  
10 difficulties that we face, it's airing the type of  
11 changes that we have got to encounter, because the  
12 Cabinet paper will have narrated those particular  
13 choices, and then is essentially within that framework  
14 saying to the First Minister and to I, to finalise any  
15 of those particular points before public communication.
- 16 **Q.** This is, in effect, the Cabinet saying at this very  
17 important time, as the Alpha variant is starting to  
18 become part of the picture, shortly before ultimately  
19 the second lockdown in Scotland, "We agree that you need  
20 to do something about it, it's up to you and Ms Sturgeon  
21 to work out what"?
- 22 **A.** I think the -- can I just be reminded of the date of  
23 that Cabinet meeting, please?
- 24 **Q.** 19 December --
- 25 **A.** 2020?

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- 1 Minister concluded that urgent further action would be  
2 required to curb and reverse the strong growth in  
3 transmission; that proposals should be put to Cabinet  
4 for collective discussion and decision-making on 4  
5 January; and that the Presiding Officer should be asked  
6 to recall Parliament to consider them later that day."
- 7 At paragraph 20(c) if we could go to that, please.
- 8 **(Pause)**
- 9 Sorry, Mr Swinney.
- 10 **(Pause)**
- 11 Over the page, I think.
- 12 **(Pause)**
- 13 The outcome -- there is a discussion in this paper  
14 where effectively there is a recommendation put to  
15 Cabinet as a result of the gold meeting to strengthen to  
16 protection level 4, and as I recall the outcome of this  
17 is that final decisions were delegated to the  
18 First Minister for announcement to the Parliament on  
19 that day. Is that right?
- 20 **A.** I think I would -- I can't see that from the document --
- 21 **Q.** Yes, that's my understanding of the conclusion of this.
- 22 **A.** But I think what the -- but the Cabinet would have had  
23 in front of it proposals for the application of further  
24 restrictions --
- 25 **Q.** Yes.

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- 1 **Q.** Of 2020, that's right.
- 2 **A.** Because what the -- there then proceeds to be further  
3 dialogue after that which results in a Cabinet meeting,  
4 if my memory serves me right, on Monday 4 January 2021  
5 that takes explicit decisions about the handling of the  
6 arrangements thereafter which resulted in the second  
7 lockdown. So the second lockdown arrangements are not  
8 agreed by the Cabinet on 19 December, they are agreed by  
9 the Cabinet on 4 January 2021.
- 10 **Q.** There was a gold command meeting in advance of that on  
11 2 January, as I --
- 12 **A.** That's correct, yes.
- 13 **Q.** That was not attended by Ms Forbes, we learned earlier;  
14 is that right, do you recall?
- 15 **A.** I can't recall.
- 16 **Q.** If we go to INQ000232688, this is a paper presented to  
17 Cabinet on 4 January by you, as I understand it. Is  
18 that right?
- 19 **A.** That's correct, yes.
- 20 **Q.** Paragraph 5 on page 1 says:  
21 "In light of further data on case numbers across  
22 Scotland over the past week and further emerging  
23 evidence on the new strain, Ministers met chief clinical  
24 advisers and lead policy officials in 'Gold Command'  
25 format on 2 January. At that meeting, the First

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- 1 **A.** -- and the Cabinet would have considered those, and if  
2 the Cabinet had any issue or concern about the contents  
3 of those proposals, Cabinet would have concluded to that  
4 effect. But if Cabinet -- well, you know, Cabinet is --  
5 well, I think the crucial --
- 6 **Q.** There it is, Mr Swinney, sorry.
- 7 **A.** Yes.
- 8 The first part of it, paragraph (a), consider the  
9 recommendations for emergency action, so Cabinet has  
10 obviously had that in front of it, note the proposed  
11 timing for discussion of the wider review of the  
12 strategic framework, and to delegate final decisions to  
13 the First Minister for announcement to Parliament on  
14 4 January, having heard Cabinet's consideration of the  
15 recommendations for emergency action.
- 16 **Q.** So there's detailed discussion two days before this  
17 where evidence is presented and a recommendation drawn  
18 up; is that right?
- 19 **A.** Well, if I could -- if I could possibly go through the  
20 sequence of events, because I think it might help the  
21 Inquiry in understanding how we found ourselves at this  
22 position.
- 23 On 19 December the previous Cabinet minutes, which  
24 took place on a Saturday, the Cabinet was being briefed  
25 and was taking decisions about the -- as I recall it, at

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1 that moment -- delaying the return of schools after the  
2 school holiday, the Christmas holiday.  
3 The Cabinet then met the following week, which would  
4 be on its normal Tuesday meeting, and then Parliament  
5 rose for the Christmas recess but returned just before  
6 New Year, I think on 30 December, to consider issues in  
7 relation to Brexit.

8 And then on, I think, the Saturday thereafter,  
9 possibly -- you know, either the Friday or the Saturday,  
10 we were asked to participate in a gold meeting because  
11 of an acute deterioration in the condition of the  
12 pandemic which was causing our chief advisers and our  
13 clinical advisers acute concern about the sustainability  
14 of the National Health Service.

15 So in the space of a relatively short space in time  
16 the condition of the pandemic deteriorated and it was  
17 judged necessary for us to take the emergency action  
18 that was required, and hence the calling of that Cabinet  
19 meeting in the morning of 4 January and the recall of  
20 Parliament that afternoon.

21 **Q.** To return to my question, if I may, the position is that  
22 there is a detailed consideration in advance of this of  
23 materials relevant to the decision that needs to be made  
24 at this stage, in a couple of days before; was that  
25 right?

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1 in those circumstances.

2 But none of that pertains here, because the Cabinet  
3 came to -- the Cabinet heard that evidence and accepted  
4 that we were in a position where we needed to take  
5 emergency action and the finalisation of that was left  
6 to the First Minister.

7 **Q.** We looked last week with the now First Minister at  
8 an exchange between him and Professor Leitch in May 2021  
9 in which, shortly after his appointment as the  
10 Cabinet Secretary for Health and Social Care, Mr Yousaf  
11 was discussing with Professor Leitch a number of matters  
12 pertaining to rises in cases particularly in the Glasgow  
13 area. There was a deep dive meeting that was due to  
14 take place shortly thereafter. Mr Yousaf said:

15 "Okay. I'll be on the deep dive."

16 To which Professor Leitch responded:

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

19 Is this, in a private conversation that  
20 Professor Leitch probably never thought would come to  
21 light, an indication of the actual decision-making  
22 process, in which the First Minister, the then  
23 First Minister, effectively expected to take the  
24 decisions herself?

25 **A.** No, because -- well, if that had been the case, then

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1 **A.** Yes.

2 **Q.** Yes, and then that recommendation is put to Cabinet, and  
3 at the end of the day the final decision is delegated to  
4 the First Minister?

5 **A.** Well, the --

6 **Q.** My question, if I could, is: does this not demonstrate  
7 that in fact the Scottish Cabinet was merely  
8 a decision-ratifying body and not a decision-taking  
9 body?

10 **A.** No, because I think there's one example being identified  
11 here where particular decisions were being delegated to  
12 the First Minister, but the First Minister was making  
13 that announcement having heard the details of the  
14 Cabinet discussion and conversation about it.

15 Now, to look at this a slightly different way, if  
16 there was a member of the Cabinet who believed that  
17 fundamentally these decisions were unwarranted, then  
18 that would appear in the Cabinet minutes, that would be  
19 there for us all to see, because the member of the  
20 Cabinet would have made it clear that what was being  
21 proposed in the recommendations for action were just not  
22 on, if they thought that to be the case, that's what  
23 a minute would capture, and there would be Cabinet  
24 minutes for that occasion. But what they -- and  
25 therefore the individual concerned would know what to do

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1 I would have had an awful lot more time on my hands than  
2 I had during the course of the pandemic because I,  
3 Professor Leitch, Gregor Smith, Mr Yousaf, Ms Freeman,  
4 Ms Forbes, Ms Hyslop, were frequently on, and many  
5 others, frequently on very long calls wrestling with  
6 these questions, so the idea of a -- of there being  
7 a small cast list about who was discussing these points  
8 is not one that I would accept.

9 **Q.** We've seen exchanges between the then First Minister and  
10 Ms Lloyd connected with decision-making around,  
11 for example, the number of people who might be allowed  
12 to attend weddings and funerals, which appear to  
13 demonstrate that the decision is taken in the  
14 conversation without apparent explanation of the  
15 scientific basis between the two of them; was that  
16 a regular occurrence?

17 **A.** I don't think it would be, no. I think that probably  
18 would be one of these details that would be -- you know,  
19 it wouldn't surprise me if that was a detail that had  
20 not been included in the long list of specific  
21 commitments that would be made based on scientific  
22 advice and had arisen and had to be resolved. But if  
23 you look at the Cabinet papers, the Cabinet papers  
24 contain extensive very specific details about what  
25 should be permitted when. Now, I think there's --

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1 you know, I would accept that in some of those cases it  
2 might be that there was probably -- potentially too much  
3 specificity about how many people here, there, or  
4 whatever circumstances happened to be. But we were also  
5 being asked countless detail-specific questions because  
6 people generally wanted to do the right thing, they  
7 wanted to know what was the right thing to do, and we  
8 therefore felt obliged to give as much clarity as we  
9 possibly could.

10 But all of these conversations would take place  
11 within the context of a knowledge of how the pandemic  
12 was progressing and what the -- whether we had any scope  
13 to relax or a necessity to apply restrictions to deal  
14 with that situation.

15 **Q.** I suspect those who at that time wished to attend the  
16 weddings or funerals of their loved ones wouldn't  
17 consider the number of people that the Scottish  
18 Government prescribed be allowed to attend as a detail.  
19 Do you agree?

20 **A.** I think these are unfortunately necessary details which  
21 the Scottish Government had to wrestle with. These  
22 are -- you know, I -- you know, from, in the period  
23 between the death of my mother and her funeral, we had  
24 to completely and utterly change the arrangements for  
25 her funeral to the extent that only then seven of us

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1 all of that but of course I very much want to hear your  
2 perspective on the framework and where you saw it  
3 fitting in.

4 Our understanding broadly, to remind the audience,  
5 is that in April 2020 the Scottish Government developed  
6 this four harms framework in order to try to identify  
7 four separate harms which were caused either by the  
8 virus itself or by the countermeasures which had been  
9 taken to combat the virus, in order to assist in the  
10 future process of weighing up the competing harms in  
11 these different four areas. Is that broadly correct?

12 **A.** That's correct. I think the only point I would add is  
13 that the decision-making that led to lockdown on  
14 23 March 2020 was exclusively taken on the basis of the  
15 health -- the direct health harm that would arise out of  
16 Covid-19 and the necessity of protecting population  
17 health. And I 100% support that, and I think that was  
18 absolutely the right decision to take. But we  
19 recognised that there was a complexity about how we  
20 navigated our way back from that whilst also recognising  
21 some of the issues that you just put to me, Mr Dawson,  
22 about the fact that there were multiple harms that arose  
23 out of the correct decision, in my view, to lock down on  
24 23 March, but which gave rise to wider complications or  
25 implications in the later stages of the -- in the weeks

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1 attended my mother's funeral, because things changed in  
2 front of us in March 2020. So I accept the agony that  
3 causes for people. I unreservedly accept the agony that  
4 causes for people. But unfortunately, in the  
5 circumstances we found ourselves in, we had to make some  
6 of those very specific decisions, and in some cases we  
7 would have got that right, in other cases we would not  
8 have got that right. And I'm sorry if we caused any  
9 offence to anybody by the way in which we went about  
10 that but the government was being asked for specific  
11 provisions and we felt the need to offer those.

12 **Q.** And those who found themselves, like you, in that tragic  
13 situation, would want to and would be entitled to know  
14 how the decision was reached as to how many people were  
15 allowed to attend; would you accept that?

16 **A.** I would, yes.

17 **Q.** Thank you.

18 As I have trailed already, we're turning now to the  
19 four harms framework which I think you are able to  
20 provide considerable assistance on, Mr Swinney.

21 We have already looked, in a number of other  
22 evidence sessions, at the four harms framework, at least  
23 to understand its broad context, its timing, its  
24 intentions, and other witnesses have given us a good  
25 deal of evidence as to that, so I don't want to rehearse

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1 after the pandemic started.

2 **Q.** Thank you.

3 So as I understand it, what you're saying is that  
4 the decision to lock down on 23 March was -- to use the  
5 subsequent language from the four harms, was taken  
6 solely on harm 1 related grounds?

7 **A.** Correct.

8 **Q.** But in April there was a realisation that there were  
9 being caused and would subsequently be caused other  
10 harms which were perhaps more indirectly caused by the  
11 virus, including those other harms being non-Covid  
12 health-related harms, social harms and economic harms?

13 **A.** I think the only -- yes. I think the only thing I would  
14 add to that is that I think in the period running up to  
15 the decision around lockdown, there was also  
16 an understanding at that time, pre-23 March, that whilst  
17 harm 1 may be the decision-making issue about lockdown,  
18 there were -- we were aware at that time of other harms  
19 that were likely to arise.

20 So, as Education Secretary, I was aware from advice  
21 and evidence that I saw prior to lockdown of the damage  
22 that would be done as a consequence of school closures,  
23 but I -- but I was aware of that at the time.

24 **Q.** Were you aware -- obviously in broad terms, it wouldn't  
25 take a lot of advice to assist you with reaching the

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1 conclusion -- that closing schools would be bad for  
 2 children's development and education?  
 3 **A.** Well, it was part of the advice from SAGE that I had on  
 4 17 March.  
 5 **Q.** Yes, but when -- I'm just interested in finding out  
 6 whether that was in any way assessed or quantified at  
 7 that stage?  
 8 **A.** That's essentially the point I'm making, that it was  
 9 not --  
 10 **Q.** Yes.  
 11 **A.** -- because the overwhelming and answerable case was to  
 12 address harm 1, whereas what the four harms framework  
 13 was an attempt to do was to give us a basis of  
 14 reconciling some of those other harms with the acute  
 15 health harm of Covid.  
 16 **Q.** As far as the position in March was concerned, obviously  
 17 what you're trying to tell me, I think, is that there  
 18 was an awareness that these other harms would be caused,  
 19 but there wasn't the opportunity to undertake  
 20 assessments and that the strategy that was introduced in  
 21 April was in order to try to assess the extent of these  
 22 harms more, is that broadly --  
 23 **A.** That -- that's a fair representation of my position,  
 24 yes.  
 25 **Q.** It would be fair to say, would it not, that there would

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1 we had data which showed the damaging effect of Covid on  
 2 those with vulnerabilities. What I cannot be specific  
 3 about is just how granular that detail was at that  
 4 particular time.  
 5 **Q.** But the position as regards the other harms, although  
 6 you're aware that there would be other harms caused,  
 7 there was no assessment done for any of those groups or  
 8 in fact anyone of the likely impact of those other  
 9 harms?  
 10 **A.** That's correct.  
 11 **Q.** Thank you.  
 12 As regards the framework itself, one of the things  
 13 that you tell us in your statement is that:  
 14 "Ministers established clear frameworks within which  
 15 to consider the evidence for example the Strategic  
 16 Framework and the Four Harms Framework. These were  
 17 rational, evidence-based and published frameworks that  
 18 enabled Ministers to rationalise competing advice and  
 19 establish clear direction of activity."  
 20 So as regards the four harms framework, can you  
 21 explain to us what you mean when you say that the four  
 22 harms framework enabled ministers to rationalise  
 23 competing advice and establish clear direction of  
 24 activity, rather than simply pointing out what the  
 25 evidence was in each of the areas?

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1 be in particular -- certain vulnerable sectors of  
 2 society that would sustain harm as a result of the virus  
 3 but also would sustain harm as a result of the other  
 4 harms that are caused by the countermeasures; is that  
 5 right?  
 6 **A.** Yes.  
 7 **Q.** To what extent was an assessment of harm done,  
 8 for example, the likely harm to elderly people or  
 9 disabled people as regards the virus itself, putting  
 10 aside for one moment the effects of the countermeasures  
 11 at the time of the lockdown in March 2020?  
 12 **A.** That was essentially the core of the modelling and  
 13 information and data that was presented to us prior to  
 14 lockdown.  
 15 **Q.** So you had modelling as regards an assessment of the  
 16 likely harm of the virus on the disabled community?  
 17 **A.** Yes.  
 18 **Q.** You had modelling on the likely harm of the virus on  
 19 ethnic minorities?  
 20 **A.** I -- I think it might be better if I -- if I say --  
 21 **Q.** That's a yes or no --  
 22 **A.** Well, I don't know if -- I don't know if we had  
 23 information as specific as that, that's the point I'm  
 24 just about to arrive at. What I'm -- what I think is a  
 25 better way for me to express it for the Inquiry is that

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1 **A.** The -- I think two things were done in that respect.  
 2 One was that a complete evidence picture was assembled  
 3 to show what were the various harms that were being  
 4 experienced within society. So there would be in the  
 5 immediate aftermath of Covid, there were -- the pandemic  
 6 starting, there were very clear -- there was very clear  
 7 availability of information about the effect that Covid  
 8 was having on individuals, and on society. And that was  
 9 able to be -- you know, we could interact with that  
 10 information to judge the course of the pandemic --  
 11 **Q.** Just to be clear, sorry, one point about timing, that  
 12 was from April, was it, from April?  
 13 **A.** No, I'm talking really about the information on cases  
 14 and infection rates, cases per hundred thousand,  
 15 fatalities, all that information was available from --  
 16 within March.  
 17 **Q.** Yes, but then as regards the harms that were being  
 18 caused to society in general or particular elements of  
 19 society falling within harms 2, 3 and 4, when did that  
 20 information become available?  
 21 **A.** That would begin to be assembled in the four harms  
 22 framework in the aftermath of 23 April 2020 when the  
 23 framework was launched.  
 24 **Q.** What I was interested in is the extent to which you feel  
 25 able to assert that the framework enabled ministers to

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1 rationalise competing advice and evidence to establish  
 2 a clear direction of activity. It seems that this is  
 3 a laudable attempt to try to assemble information about  
 4 that, which may have taken some time to become  
 5 available, but how does it enable ministers to  
 6 rationalise all of that information and to make better  
 7 decisions as to how to manage the pandemic?  
 8 **A.** Because what it allows ministers to do is to look at the  
 9 state of the pandemic, which is the intense datasets  
 10 about the number of cases, cases per hundred thousand,  
 11 fatalities, the R number, the progression of the  
 12 pandemic in different parts of the country, and to  
 13 establish -- within the strategic intent of the  
 14 government to suppress the virus to an extent where it  
 15 does not provide a threat to public health and to --  
 16 enables individuals to live their lives closer to  
 17 normality than had been the case, can then -- you know,  
 18 given that -- that we could never allow the pandemic to  
 19 run rampant, we had to try to suppress it, but there was  
 20 a fine judgement to be made about the degree to which we  
 21 could relax other measures to enable people to live life  
 22 more normally and to address some of the harms, the  
 23 other harms in Covid. If we did that, we would  
 24 essentially be opening up the opportunities for the  
 25 virus to thrive.

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1 **Q.** A four harms group was put together which I know you  
 2 were intimately involved with. It started to meet in  
 3 October 2020; is that correct?  
 4 **A.** That's correct, yes.  
 5 **Q.** Why was it that there was a delay between the creation  
 6 of the framework and the group starting to do its  
 7 important work?  
 8 **A.** I think to all intents and purposes a lot of that work  
 9 was going on in the period between April and October,  
 10 although I think it was formalised into the four harms  
 11 group in October, but the Cabinet papers that we saw  
 12 between April -- you know, late April, when the  
 13 framework was established, would have led to  
 14 decision-making that was consistent with the four harms  
 15 framework, particularly in relation to questions,  
 16 you know, such as the return of school education or  
 17 whatever the other decisions were, in the interim  
 18 period. So the advisers were gathering together,  
 19 putting that material together, but it established  
 20 a formal structure in October.  
 21 **Q.** Would it be -- would the following be a fair  
 22 characterisation of what happened over this period:  
 23 there was a realisation in April that other harms were  
 24 being caused and there required to be a framework --  
 25 **A.** Yes.

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1 And that's really what I mean when I use the word  
 2 "rationalise", that we can actually construct a basis of  
 3 decision-making that says: given the state of the  
 4 pandemic -- let's for argument's sake say it is  
 5 receding -- we can afford to take some decisions on the  
 6 other harms that will allow people to live life a bit  
 7 more normally, to address some of those harms, without  
 8 the risk of inflaming the course of the pandemic.

9 **Q.** Thank you.

10 In his expert assessment, Professor Paul Cairney  
 11 suggested that the four harms strategy was mostly  
 12 a statement of the problem rather than a statement of  
 13 the solution. Do you agree?

14 **A.** No.

15 **Q.** Why?

16 **A.** Because the framework enabled us to gather evidence of  
 17 the impacts of the various harms on society and then to  
 18 begin to consider how particular measures of relaxation,  
 19 if we had the headroom to do that, could make  
 20 a difference in addressing those harms. So it would  
 21 provide us with a framework that enabled us to take  
 22 a considered set of judgements based on the very clearly  
 23 articulated priorities of the government about where we  
 24 would want to act first to try to reduce harm that was  
 25 being felt within society.

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1 **Q.** -- as to how to assemble information about the extent of  
 2 those harms?  
 3 **A.** Yes.  
 4 **Q.** In the period thereafter, the policy of the  
 5 UK Government was to prioritise harm 1 in furtherance of  
 6 a zero Covid policy -- sorry, Scotland -- in furtherance  
 7 of a zero Covid policy?  
 8 **A.** I think that's probably a fair assessment, yes.  
 9 **Q.** By the time the operative mechanism to try to implement  
 10 addressing the other harms had been put in place in  
 11 October, in the form of the four harms group, the virus  
 12 had returned such that harm 1 required to be prioritised  
 13 again?  
 14 **A.** Well, that misses out what happened between April 2020  
 15 and autumn 2020. Crucially, in that period, from my  
 16 policy perspective, schools had returned in August, so  
 17 for me a really, really big harm was being addressed by  
 18 the return of full-time education for children and young  
 19 people in Scotland. So that had -- so what had happened  
 20 after April was that the prevalence of the virus  
 21 declined towards the summer, indeed when -- in the  
 22 period between the formulation of a plan for the return  
 23 of schooling in the early part of -- in the middle of  
 24 2020, the number of people who were able to transmit the  
 25 infection were estimated to be about 20,000, by June

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1 that number had fallen by 90% to 2,000. So we'd seen  
 2 a dramatic fall in prevalence over the summer, which  
 3 enabled us to do, in my view, one of the most important  
 4 things we did, which was to re-open schools and to  
 5 re-open them early, on 11 August. And -- but we then  
 6 experienced increases in the prevalence of the virus in  
 7 subsequent weeks, for which we took measures in applying  
 8 restrictions, starting principally in the west of  
 9 Scotland, in September 2020, which were designed to  
 10 arrest that, because -- and that essentially makes my  
 11 point that we were -- yes, we had harm 1, we knew what  
 12 that looked like, it was a devastating virus that we had  
 13 to suppress, but we had to try to enable people to live  
 14 lives slightly more normally than they were without  
 15 inflaming the path of the virus, and that was the  
 16 sensitive balance we were trying to construct. And  
 17 crucially the decision to return schools in August may  
 18 well have contributed to that rise in the virus, I have  
 19 to accept that point, but it did so in a fashion that  
 20 allowed us to take other steps to tackle harm 1.

21 **MR DAWSON:** Thank you.

22 If that's a convenient moment, my Lady.

23 **LADY HALLETT:** Yes, certainly. I shall return at 3.15.

24 **MR DAWSON:** Thank you.

25 **(3.02 pm)**

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1 taking action to try to maximise the support as far as  
 2 we could within the restrictions to support individuals  
 3 who faced particular vulnerabilities. So, for example,  
 4 the steps in relation to supporting the population who  
 5 were shielding was one aspect of that. There would also  
 6 be, in relation to my own portfolio, measures in place  
 7 to ensure that local authorities were properly  
 8 supporting children who were on the child protection  
 9 register to make sure that in the -- given the change to  
 10 services and arrangements, that we could ensure that  
 11 people were properly supported in that context. And  
 12 there was other support which we navigated with our  
 13 local authority partners around food support for people  
 14 with vulnerabilities and other such provisions.  
 15 **Q.** The reason I ask, Mr Swinney about that particular  
 16 element is because not only is it an important part of  
 17 the scope of the module but a number of groups who have  
 18 an interest in the module, including core participants,  
 19 have raised with us the question to ask you why it was  
 20 that inequality wasn't specifically listed amongst the  
 21 four harms, perhaps as a fifth harm, which I understand  
 22 may have been the position in a similar framework in  
 23 Wales?

24 **A.** I understand that point, and the reassurance that  
 25 I would give is that the legislative obligations of the

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1 **(A short break)**

2 **(3.15 pm)**

3 **LADY HALLETT:** Mr Dawson.

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

5 We were speaking, Mr Swinney, about the four harms  
 6 framework. You told us helpfully that, although there  
 7 was an awareness in March 2020 that harms would be  
 8 caused by the restrictions, that no assessments could --  
 9 were done at that time and that the four harms framework  
 10 was an attempt to start to address those other harms.

11 You -- was it apparent that there would be harm  
 12 done, a greater, disproportionate harm, to people who  
 13 suffered inequalities or were in protected groups?

14 **A.** There would be an anxiety that that would be the case,  
 15 and one of the duties of the Scottish Government in all  
 16 of our actions is that we must act consistent with the  
 17 legislative framework in which we operate, one element  
 18 of which is the Equality Act -- the Equality Act 2010,  
 19 as well as the provisions of the Human Rights Act 1998.  
 20 So these factors -- these considerations are absolutely  
 21 fundamental to decision-making that the Scottish  
 22 Government has got to undertake, so they would be  
 23 underpinned in the four harms framework.

24 But I think it's also important to say that, as the  
 25 events of the pandemic were taking their course, we were

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1 Scottish Government to act consistent with the  
 2 provisions of the Equalities Act and therefore the other  
 3 obligations that we carry in relation to exercising our  
 4 responsibilities in that respect were essentially  
 5 underpinning the decision-making being made in the four  
 6 harms framework. But if there is a concern that we did  
 7 not take adequate steps to ensure that was the case, or  
 8 that -- by the fact that we didn't have a fifth harm,  
 9 but that we underpinned equalities considerations in our  
 10 framework, if that led to a perception amongst groups  
 11 that we did not take adequate -- did not give adequate  
 12 consideration to their interests, then I would apologise  
 13 for that.

14 **Q.** Thank you. But you accept, I think, that there was  
 15 an obligation -- both legal and, one might say, moral --  
 16 on the government to take account of the particular  
 17 harms, the greater harms, as I think has been  
 18 demonstrated subsequent to the pandemic by vulnerable  
 19 groups in particular groups with protected  
 20 characteristics?

21 **A.** I accept that point, yes.

22 **Q.** We've heard a lot of evidence from these groups, some in  
 23 person and some in written form that throughout the  
 24 pandemic groups which fall within that categorisation  
 25 feel that the government did -- took inadequate steps to

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1 take account of that extra harm. In the opening video  
2 that we played at the beginning of the module, one  
3 gentleman who came from a background of having mental  
4 health difficulties, but I think his statement is  
5 broader, said that "The Scottish Government, when we  
6 started to emerge from lockdown, didn't look around to  
7 see whom we had left behind".

8 Why is it, if the four harms framework had running  
9 through its core these legal and moral obligations, more  
10 was not done to address the concerns of these groups  
11 whose interests one could have predicted would be more  
12 acute than the general society?

13 **A.** Firstly, I'm sorry if any individual feels in that way,  
14 and I obviously am familiar with the material that you  
15 put to me, Mr Dawson, and I respect individuals for what  
16 they've said, I greatly admire them for that, so I'm  
17 sorry if our actions left people feeling in that way.  
18 What the government was trying to do was to return  
19 society to as much normality as we could whilst  
20 continuing to suppress the virus. And I -- you know,  
21 I obviously, I took the best decisions I could at the  
22 time, and was involved in taking the best decisions that  
23 I could. I'm not going to sit here and say that we  
24 didn't get all of those decisions correct in trying to  
25 exercise that judgement.

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1 of the impact of non-pharmaceutical interventions (NPIs)  
2 often involved too much uncertainty to make a proper  
3 four harms assessment ..."

4 The conclusion that Professor Cairney reached was  
5 that the four harms assessment, based on the materials  
6 which had been produced to him by the Scottish  
7 Government in its response to this module, had not  
8 formed a part of the decision-making around having the  
9 second lockdown, and therefore that the Scottish  
10 Government had not learned the lessons from its  
11 inability to make those assessments with regard to the  
12 first lockdown. I'd be interested in your views on  
13 that.

14 **A.** I don't really share that view, because, as I narrated  
15 in the session just after -- just before the break  
16 there, I was talking about the situation that we faced  
17 in the Cabinet of 4 January which took the decision to  
18 move into the second lockdown, I found that an almost --  
19 well, I did find that a terrifying couple of days,  
20 between the briefing that I got about the likely course  
21 of the pandemic, which is back to harm 1, to put it into  
22 the language we've used all of this afternoon. The  
23 harm 1 evidence was absolutely terrifying about what was  
24 coming our way in the course of January 2021, and in  
25 a sense the circumstances were very similar, if not

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1 **Q.** When you say you're sorry that your actions left people  
2 feeling that way, do you mean that you're sorry that  
3 that was the experience, that that is what happened to  
4 people?

5 **A.** Of course, yes. You know, that -- that's exactly the  
6 point I'm making, yes.

7 **Q.** Thank you. In his assessment which I've referred to  
8 already, our political expert in this module,  
9 Professor Cairney, said in his report that:

10 "While [the four harms] framework was useful to help  
11 plan the release of lockdown measures, there was still  
12 high uncertainty about the policy problem ([ie] the  
13 likely spread and impact of Covid-19) and likely impact  
14 of policy instruments (to address Covid-19), which  
15 'justified a role for the application of judgement in  
16 decision-making, taking all factors into consideration,  
17 including those that were difficult to quantify with  
18 much accuracy or confidence. This uncertainty also  
19 provided justification for adopting a cautious approach,  
20 particularly at stages during the pandemic when the risk  
21 to public health was potentially extreme' ... For  
22 example, the four harms approach was not a strong  
23 feature [in his view] of the emergency decision-making  
24 associated with lockdowns in March 2020 (it was produced  
25 by April 2020) or January 2021, and routine assessments

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1 identical, to the situation that we faced in March 2020  
2 where, whichever way you looked at the evidence, it was  
3 just impossible to see any way through it other than  
4 having to take significant intervention to arrest the  
5 pace of the pandemic, because it would then go on to  
6 create even more significant harm than we'd experienced  
7 before.

8 So in that period, I understand the point that  
9 Professor Cairney is making, but the four harms  
10 framework acknowledged and accepted that there was one  
11 very direct acute harm which is caused by the virus, and  
12 the rest of the framework is about trying to help us to  
13 navigate our way out of those -- the difficulties caused  
14 by that set of circumstances if we've managed to get the  
15 acute threat of the pandemic under control, and at that  
16 moment on 4 January we were not in that position.

17 **Q.** Is it correct to say, given the circumstances, the very  
18 pressing circumstances at that time, that the decision  
19 that was made was based solely on considerations of  
20 trying to suppress the virus and took no consideration  
21 or assessment of the other harms that would be done and  
22 were known would be done by a further lockdown?

23 **A.** I think that's -- that is a way of looking at it, but  
24 I think there's also another way of looking at it, which  
25 is to say that we faced an acute and serious situation

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1 which we had to address or there would have been even  
 2 greater harm caused in direct Covid implications.  
 3 **LADY HALLETT:** Is the answer to Mr Dawson's question yes?  
 4 **A.** I wasn't --  
 5 **LADY HALLETT:** -- way of looking at it is --  
 6 **A.** I wasn't --  
 7 **LADY HALLETT:** -- the question?  
 8 **A.** I wasn't keen on choosing Mr Dawson's words, my Lady,  
 9 but I suppose the answer is yes to that question, that  
 10 we took a decision which was based on the direct health  
 11 harm, that's what we -- because of the extremity of the  
 12 position we faced on 4 January.  
 13 **MR DAWSON:** Thank you.  
 14 Ultimately, when decisions are made relating to the  
 15 way in which the harms should be balanced, those were  
 16 decisions that were made by politicians including  
 17 yourself, isn't that right?  
 18 **A.** That's correct, yes.  
 19 **Q.** So the four harms gives you the ability to see where  
 20 harms may be occurring or may occur based on different  
 21 decisions but the decision, the balancing as you put it,  
 22 requires to be a political decision at the end of the  
 23 day?  
 24 **A.** Yes.  
 25 **Q.** We've heard evidence both, again, in written form and in  
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1 arrest the difficult situation we were in, and we just  
 2 had to be open with them about how -- what were the,  
 3 you know, the nature of the challenges, the severity of  
 4 the situation that we found ourselves facing.  
 5 **Q.** When he gave evidence to the Inquiry, epidemiologist  
 6 Professor Mark Woolhouse was asked about the four harms  
 7 framework and indeed its implementation in  
 8 decision-making. His position as regards the framework  
 9 itself was that he thought to a large extent the four  
 10 harms policy -- he said "When the four harms policy were  
 11 mentioned, I was greatly encouraged", so the  
 12 announcement of the concept in April was something that  
 13 really encouraged him. But then he went on to say, as  
 14 regards the question as to whether he felt it made  
 15 a difference, it improved decision-making, in particular  
 16 with regard to taking into account the other harms that  
 17 would be done by lockdowns or other restrictions, he  
 18 said:  
 19 "I was thinking -- it was rhetoric, it was rhetoric.  
 20 The emphasis was overwhelmingly on harm 1, even when,  
 21 particularly during summer 2020, the public health  
 22 benefits of continuing to suppress the virus were  
 23 extremely small."  
 24 Do you have any comment on the suggestion that the  
 25 four harms framework, in particular its implementation,  
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1 oral evidence, in particular from Professor Smith, that  
 2 decisions about restrictions were often taken based, in  
 3 part at least, on some perception amongst  
 4 decision-makers of the tolerance of the Scottish people.  
 5 Was that a concept which featured in your  
 6 decision-making around restrictions?  
 7 **A.** I -- I wouldn't say that I was particularly influenced  
 8 by that. I felt that people were prepared -- people  
 9 realised the seriousness of the situation we faced and  
 10 had shown remarkable willingness to play their part in  
 11 trying to arrest this very difficult situation that we  
 12 faced. And I felt if people were given -- I understood  
 13 frustration, you know, I heard it from people that  
 14 I have the privilege to represent about how frustrated  
 15 they were by lockdown and by other issues, so  
 16 I understand the frustrations. But I can't say I was  
 17 influenced by what -- about that sentiment.  
 18 **Q.** It would be difficult, would it not, if one were to  
 19 factor into decision-making a concept as nebulous as the  
 20 tolerance of the Scottish people, to understand what --  
 21 how accurate that assessment could ever be and indeed  
 22 what weight to place on it?  
 23 **A.** Because it will vary from one individual to another, and  
 24 therefore trying to get some -- but my general sense was  
 25 that people had really played their part in trying to  
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1 was mere rhetoric?  
 2 **A.** I don't agree with that. I think if I address the point  
 3 that Professor Woolhouse makes about the summer of 2020,  
 4 it perhaps will help the Inquiry to understand what was  
 5 driving government decision-making.  
 6 In the summer of 2020 the government was absolutely  
 7 focused on getting schools back on 11 August. That was  
 8 our overwhelming interest. So in terms of the point  
 9 that Professor Woolhouse is making, there is  
 10 a legitimacy in his argument where he might say, well,  
 11 the government could have relaxed restrictions --  
 12 I think Professor Woolhouse was making particular points  
 13 about outdoor leisure activities --  
 14 **Q.** His position was that there should never have been any  
 15 restriction.  
 16 **A.** Well, so -- well, I couldn't have gone along with that  
 17 because I wanted to make sure that we could get the  
 18 schools back on 11 August. That was a big issue for me.  
 19 Now, if we had too much virus, too many cases, too much  
 20 difficulty coming from the prevalence of the virus, the  
 21 ability of the government to sustain the argument about  
 22 a safe return to schooling on 11 August would have been  
 23 challenged by that. So in a sense I'm partly agreeing  
 24 with Professor Woolhouse that there's choices to be made  
 25 in there, there are choices, and the government made its  
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1 choices very clear about what we wanted to prioritise.  
 2 **Q.** I think the part where you disagree -- I think you would  
 3 agree that there were choices but I think perhaps you're  
 4 disagreeing on the proposition that I think he would  
 5 make, is that the wrong choices were made by the  
 6 Scottish Government?  
 7 **A.** I do disagree with that, yes.  
 8 **Q.** He is an expert epidemiologist.  
 9 **A.** I understand that, but the Inquiry's also heard other  
 10 evidence from other epidemiologists who take a very  
 11 different view about the -- the impact of the decisions  
 12 that were made, particularly in relation to, you know,  
 13 issues that mattered to me around about the school  
 14 closures, for example.  
 15 **Q.** He was the epidemiologist whom evidence shows was  
 16 plugged into the Scottish Government decision-making  
 17 framework from 21 January 2020, explaining to  
 18 Catherine Calderwood, the then Chief Medical Officer,  
 19 that what was going to happen was disastrous and  
 20 measures needed to be taken which ultimately were taken,  
 21 but not at the time he was suggesting.  
 22 **A.** Listen, I have no interest in having a disagreement with  
 23 Professor Woolhouse, I'm simply saying that in the  
 24 particular scenario of the summer there was a particular  
 25 decision that I -- I made a particular choice at that

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1 of those difficult choices and chart a way out of the  
 2 acute difficulties that we had faced.  
 3 **Q.** Thank you, Mr Swinney.  
 4 I'd like to turn now to the question of school  
 5 closures that we discussed earlier. As well as being  
 6 Deputy First Minister, you were until May 2021 the  
 7 Cabinet Secretary for Education and Skills; is that  
 8 correct?  
 9 **A.** That's correct, yes.  
 10 **Q.** We covered that already.  
 11 Could we turn to INQ000362664, thank you very much.  
 12 This is the -- these are the minutes, again attended  
 13 by you, of the Cabinet meeting held on Tuesday  
 14 17 March 2020.  
 15 Page 5, paragraph 18, please.  
 16 At subparagraph (c) it says there:  
 17 "Very active consideration was being given to the  
 18 possible closure of schools and other educational  
 19 establishments, but the evidence was not yet clear. The  
 20 epidemiological evidence did not suggest that this  
 21 measure would slow the transmission of COVID-19 down to  
 22 a great extent (and might in fact cause some additional  
 23 infections -- for example by increasing children's  
 24 exposure to grandparents over 70)."  
 25 At page 9, paragraph 19(d), it says:

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1 time, and I supported that particular choice being made,  
 2 which I understand he doesn't agree with.  
 3 **LADY HALLETT:** Can you pause, Mr Dawson.  
 4 Are we freezing the public gallery again? Could  
 5 someone please check if there's something we can do to  
 6 stop them developing icicles on their noses.  
 7 **MR DAWSON:** Thank you, my Lady.  
 8 What I was going to suggest is that, although you  
 9 don't wish to have a disagreement with  
 10 Professor Woolhouse, I think it would be fair to say  
 11 that Professor Woolhouse has a disagreement with you,  
 12 and the Scottish Government, in that his view is that  
 13 the strategy that was adopted was the incorrect strategy  
 14 throughout, that it wasn't based on epidemiological  
 15 evidence, which he was in a position to provide to the  
 16 Scottish Government, and that that resulted in a great  
 17 deal of hardship in particular with regards to harms 2  
 18 to 4?  
 19 **A.** I think what I would say is that we faced, in  
 20 March 2020, and on various other occasions, a very acute  
 21 direct harm which was affecting and had the potential to  
 22 affect a very substantial proportion of the population,  
 23 and we had to act to suppress the effect of that harm.  
 24 There were wider consequences, but what the four harms  
 25 framework enabled us to do was to try to reconcile some

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1 "The advantages [this is in the Cabinet agreement]  
 2 and drawbacks of closing schools and other educational  
 3 establishments should be considered further over coming  
 4 days in light of emerging evidence across the UK ..."  
 5 In your witness statement at paragraph 19 on page 9  
 6 you say:  
 7 "... I felt the dialogue I had with Nicola Sturgeon  
 8 about the closure of schools with effect from  
 9 20 March 2020 was a significant matter and was the  
 10 product of informal communication. The circumstances  
 11 were deteriorating quickly, school attendance was  
 12 falling, staff anxieties were growing and we needed to  
 13 come to a definitive conclusion about whether schools  
 14 should remain open. Nicola Sturgeon and I discussed the  
 15 issue in person in the aftermath of Cabinet of 17 March  
 16 and again on 18 March. We took a decision that she  
 17 should say on 18 March the likelihood that was that  
 18 schools would close on Friday 20 March and I confirmed  
 19 this closure would take place in a statement to  
 20 Parliament on 19 March."  
 21 In light of the evidence that we've seen that on  
 22 17 March the Cabinet minutes record that the  
 23 epidemiological evidence did not suggest that this  
 24 measure would slow the transmission of Covid-19 to  
 25 a great extent, and it might in fact cause some

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1 additional issues, what epidemiological evidence were  
 2 you and Nicola Sturgeon given on 17 or 18 March that  
 3 underpinned the decision which I understand you both  
 4 took to close schools?  
 5 **A.** In the evening of 17 March I was provided with further  
 6 advice from my education officials about wider dialogue  
 7 they were engaged with, with the United Kingdom  
 8 Government and the other devolved administrations, about  
 9 the issue of school closures and the possibility, and as  
 10 part of that advice they indicated to me that they  
 11 thought it likely that SAGE on 18 March would conclude  
 12 that the epidemiological case was in place for the  
 13 closure of schools and that that would in fact bring  
 14 an advantage.

15 The other -- so that was the different -- so when --  
 16 I received some information from my officials, I think  
 17 on 9 March, which indicated to me that SAGE were not --  
 18 of -- largely replicating the point you made to me,  
 19 Mr Dawson, from the Cabinet minutes of -- that the  
 20 evidence didn't exist, that was largely the advisory  
 21 position from SAGE in correspondence to me, I think, on  
 22 9 March, and then on 17 March after the Cabinet meeting  
 23 I received this update which indicated that there was  
 24 a growing assumption that SAGE on the 18th would provide  
 25 the epidemiological advice that it would be advantageous

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1 the 18th.

2 I think also, for completeness, I discussed the  
 3 issue with the Secretary of State for Education on the  
 4 17th, and we both shared our perspective about where  
 5 things were heading at that time.

6 **Q.** On what authority was the decision made?

7 **A.** On the 18th?

8 **Q.** The decision to close schools, yes.

9 **A.** It was made as a consequence of direct discussion  
 10 between the First Minister and I.

11 **Q.** But not on the basis of a delegation of authority to  
 12 make that decision if the situation changed from  
 13 Cabinet?

14 **A.** That is fair, but my justification would be that events  
 15 were moving at an absolutely ferocious pace and I had to  
 16 give clarity to the education system about what was  
 17 likely to be pertaining in the days to come.

18 **Q.** Was the advice from SAGE based on Scottish information  
 19 and data?

20 **A.** I don't know the answer to that question.

21 **Q.** The position that we understand at this stage is that  
 22 effectively English data was used in order to try to  
 23 work out the threat of the pandemic at that stage and  
 24 that obviously, as we know, subsequently Scotland  
 25 developed its own data systems and advisory systems to

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1 to close schools.

2 I was dealing with a deteriorating position, as my  
 3 witness statement says. During the course of Tuesday,  
 4 I was receiving data on school attendance, which was  
 5 declining, and had been declining. There was a decline  
 6 in staff attendance. And when there's uncertainty in  
 7 the number of staff attending and the ratio of pupils,  
 8 that begins to make the opening of schools on a stable  
 9 operational basis quite challenging.

10 My officials were in discussion with directors of  
 11 education around the country. Indeed, one director of  
 12 education in Shetland had had to move the school system  
 13 in Shetland on the previous Friday to a hub model  
 14 because of staff illness and the school estate could not  
 15 be run safely.

16 So during the course of the 17th I was becoming  
 17 increasingly concerned that we were receiving data which  
 18 was making the school estate unstable, and also  
 19 epidemiological advice that indicated to us it would be  
 20 advantageous to close schools. And on 18 March the data  
 21 was deteriorating further about school attendance and  
 22 I was concerned that we were in danger of operating  
 23 an unsafe situation, and for that reason the  
 24 First Minister and I concluded in conversation that it  
 25 would be appropriate for her to make that point clear on

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1 try to address that.

2 **A.** Yeah.

3 **Q.** But at this stage I think the position is that that  
 4 would be based on English data?

5 **A.** I don't know that case, but obviously my officials were  
 6 receiving advice from our clinical advisers, principally  
 7 the Chief Medical Officer at that time, who took the  
 8 view that was reflected in the advice that came to me  
 9 that there was -- that the appropriate step to take was  
 10 to announce the closure of schools.

11 **Q.** But you relied on the SAGE advice, I think you said?

12 **A.** I did, that's correct, yes.

13 **Q.** Did you have the opportunity to interrogate SAGE about  
 14 the application of that advice to Scotland?

15 **A.** I did not.

16 **Q.** The position generally, epidemiologically, was that  
 17 certainly London was considerably ahead of Scotland at  
 18 that time in terms of the threat, therefore was it  
 19 appropriate to base a decision on a conclusion reached  
 20 by SAGE without interrogating it further?

21 **A.** I think it was, because I think it was pretty clear that  
 22 what was happening in London was coming our way and it  
 23 would be coming our way pretty shortly thereafter.

24 **Q.** What equality impact assessment was done on the likely  
 25 effects on children's learning and development of the

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1 schools being closed?

2 **A.** At that moment we did not have the time or the  
3 opportunity to carry out that assessment.

4 **Q.** Does that mean none? None?

5 **A.** None, that's correct, yes.

6 **Q.** What equality impact assessment was done on the state of  
7 preparedness to counteract those harms, including access  
8 to digital inclusion if schools were closed?

9 **A.** We did not carry out a formal assessment but local  
10 authorities were encouraged to ensure that appropriate  
11 provision of education was put in place to support  
12 children and young people at that time.

13 **Q.** Were any equality impact assessments done for children's  
14 mental health, those with disabilities or learning  
15 difficulties in particular?

16 **A.** Not at that moment, no.

17 **Q.** What was the Scottish Government's exit strategy at this  
18 stage from this policy?

19 **A.** We -- we wanted, and we made clear, that the resumption  
20 of full-time face-to-face education was of the highest  
21 priority for the Scottish Government, and essentially  
22 the development of the four harms framework was designed  
23 to provide us with the rational basis that would enable  
24 us to take decisions to restore full-time education at  
25 the earliest possible opportunity.

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1 So we essentially made that announcement, it didn't  
2 have legislative underpinning, it was an expression of  
3 leadership in a desperate moment where parental anxiety  
4 was very high, staff anxiety was very high and the  
5 concern for the wellbeing of children and young people  
6 was very high as well. And we took that decision to try  
7 to avoid some of the effects of coronavirus and its  
8 impact on the wider population.

9 **Q.** Would it be reasonable to conclude, Mr Swinney, that at  
10 this time, and these are not my words, the Scottish  
11 Government was in a state of complete panic?

12 **A.** No. We were very anxious about the situation, we had  
13 a severe problem on our hands, but we were trying to  
14 take an orderly set of decisions that would provide  
15 clarity to those who required to have clarity from us.

16 **LADY HALLETT:** Mr Swinney, did you ever consider  
17 an alternative to a complete closure of schools?  
18 For example, certain year groups or mornings or  
19 afternoons, anything of that kind?

20 **A.** Not at that moment, my Lady, because we felt that the  
21 severity of the situation that we were facing was of  
22 such a magnitude. Now, we did consider all of those  
23 questions at later stages for the return of pupils,  
24 which we envisaged potentially coming back on  
25 an approach which was called blended learning, which

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1 **Q.** Thank you.

2 A point that's been made to us by the Children and  
3 Young People's Commissioner Scotland related to the fact  
4 that no education closure direction was made, which  
5 meant the necessity and proportionality of the decision  
6 to close schools was not scrutinised by Parliament. Is  
7 that factually correct and why was no such assessment  
8 made? Sorry, no such direction made, I should say.

9 **A.** Yeah. Well, the direction -- like, it's one of these  
10 interesting points that -- at that moment we announced  
11 the closure of schools with the consent of local  
12 government, and I think that the statutory arrangements  
13 that are in place for a school closure are largely that  
14 a local authority has to close a school if there is  
15 an outbreak of a health nature, driven by a direction  
16 from a director of public health in an individual local  
17 authority area. So that's the formal position for the  
18 closure of one individual school. The situation we  
19 faced here was altogether different, and we did not have  
20 the statutory powers to enable that to happen. Those  
21 statutory powers essentially only came on a -- you know,  
22 on a Scotland-wide basis with the Coronavirus Act, which  
23 was yet to come into legislative force -- yet to be  
24 passed by the Scottish Parliament and yet to come into  
25 legislative force.

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1 meant that some children would be in some days sometimes  
2 and not others, but eventually got to the point where we  
3 were able to return all pupils to full-time learning.

4 **LADY HALLETT:** Thank you.

5 **MR DAWSON:** As regards the -- you've mentioned already the  
6 consideration that went into the re-opening of schools  
7 on 11 August. In that regard, what medical,  
8 epidemiological, scientific evidence were you aware of  
9 earlier in the year, in April or May, with regard to the  
10 extent that schools were contributing to the spread of  
11 the virus?

12 **A.** The -- I think it was difficult for there to be  
13 a specific analysis given to that effect, although I do  
14 see in other evidence that the Inquiry has indicated --  
15 has heard that there are studies which have indicated  
16 that school closures contributed beneficially to the  
17 reduction in the rate of fatalities as a consequence of  
18 Covid. But when we looked at the whole sequence of  
19 steps in relation to the re-opening of schools, we did  
20 have the benefit of advice from a specific Scottish  
21 Covid education advisory group who were a subgroup of  
22 the Chief Medical Adviser's group within the -- which  
23 was convened by Professor Andrew Morris, the education  
24 group was convened by Professor Carol Tannahill, the  
25 Chief Social Policy Adviser to the Scottish Government,

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1 and which included epidemiological advice and a variety  
2 of child psychology and educational advice that provided  
3 the underpinning for the re-opening of schools in  
4 August.

5 **Q.** So presumably that subcommittee, chaired by  
6 Professor Tannahill and others, child psychologists,  
7 et cetera, presumably the general tenor of their  
8 position would have been that it was important to do  
9 what we could, in the balancing exercise, to try to get  
10 children back to school, because it was almost  
11 self-evident that children not being in school would  
12 affect not only their learning but their development and  
13 put them at social harm, et cetera, as we've seen in all  
14 the evidence; was that broadly their position?

15 **A.** I -- I never participated in their discussions,  
16 I thought it was important that --

17 **Q.** But we'll have got something of their --

18 **A.** Wait, I'll come to that -- but I never participated in  
19 their discussions so I never -- I never heard their --  
20 the exchanges that went on. But the advice that they  
21 were providing to me left me with the impression they  
22 were coming at this from the perspective of they saw and  
23 acknowledged the benefits of the return to schooling of  
24 children and young people and they wanted to make sure  
25 that could happen at the earliest and safest available

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1 not an essential element of our lockdown.

2 "So in my view, and I -- well, we're going to this,  
3 I argued it repeatedly and frequently over that whole  
4 summer, schools in Scotland could have re-opened in  
5 May 2020, just as they did in Denmark."

6 Why was it that you didn't take account of that  
7 advice, Mr Swinney?

8 **A.** Well, some school pupils were back before the summer  
9 break, because we put a premium on young people who were  
10 making the transition from primary to secondary  
11 education, which is a challenging transition for many  
12 young people, was that they would be able to come back  
13 to experience some full-time -- sorry, face-to-face  
14 learning in advance of the summer break.

15 So we did actually -- it's not just the case that  
16 pupils all came back on 11 August, we did take steps to  
17 get some pupils back before the summer break,  
18 recognising the beneficial element that that could be.

19 **Q.** With respect, Mr Swinney, that's not an answer to my  
20 question. I asked you why it was you hadn't taken the  
21 epidemiological advice into account in considering  
22 sending all children back to school?

23 **A.** Well, I didn't -- I didn't have that epidemiological  
24 advice from the advisory sources that were advising the  
25 Scottish Government, so I didn't have that from the

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1 moment.

2 **Q.** So from a -- one might call that a harm 3 perspective,  
3 it was a good thing to try to get children back to  
4 school as soon as one could, but that had to be balanced  
5 against harm 1, which was the predominant consideration?

6 **A.** And that was my point about the summer of 2020, when we  
7 were having our exchanges about Professor Woolhouse,  
8 that I was desperate to make sure that we could get  
9 schools back on 11 August, for all the legitimate  
10 reasons that you put to me.

11 **Q.** What I'm interested in is why that didn't happen  
12 earlier, Mr Swinney, because Professor Woolhouse in his  
13 evidence on 24 January told us:

14 "And it quickly became apparent through April and  
15 May 2020 that schools were contributing a little to the  
16 spread of the virus, but so little that there was  
17 essentially no danger that re-opening schools would take  
18 us past the tipping point."

19 He said:

20 "So closing schools I accept as a -- potentially as  
21 a precautionary element of the first lockdown, because,  
22 let's face it, we were practically panicking at that  
23 stage, it was necessary, or justifiable, but we should  
24 have realised much, much more quickly, based on the  
25 evidence emerging from around the world, that this was

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1 group that was led by Professor Morris, I did not have  
2 that from the group led by Professor Tannahill, so  
3 I felt that I should follow -- take account of the  
4 advice that I had in front of me that was offered to me  
5 from a wide range of disciplines.

6 **Q.** Professor Woolhouse was a member of the group that was  
7 chaired by Professor Morris.

8 **A.** Well, I did not have advice in front of me which said  
9 I could safely bring back schools earlier.

10 **Q.** Presumably it must have been the position of  
11 Professor Tannahill's group, if it existed at the time,  
12 that it would be a good idea from a harm 3 perspective  
13 to get children back to school as early as possible?

14 **A.** Of course, yes, and that's the way they represented  
15 their advice to me, but it had to be done in a way that  
16 was compatible with the safety of everybody concerned  
17 and also with the overall effort within the -- across  
18 the policy spectrum to suppress the prevalence of the  
19 virus.

20 **Q.** Of course, so that harm 3 consideration needed to be  
21 balanced against the harm 1 consideration; yes?

22 **A.** Yes, but --

23 **Q.** But what Professor Woolhouse is telling us is that from  
24 an epidemiological point of view it would have been safe  
25 to do it earlier in the --

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1 **A.** Well, that's not the advice that I had in front of me,  
2 and the -- and if I also come back to the point I made  
3 earlier on, that there was a very different position  
4 about the number of people able to transmit the  
5 infection in the period to which you're referring,  
6 Mr Dawson, in early May, compared to in late June when  
7 I took a decision that schools should return full-time  
8 in August.

9 **Q.** Over the summer of 2020, the Scottish Government's focus  
10 was on attempting to achieve elimination of the virus  
11 such that considerations of harm 3 were put to one side?

12 **A.** No, because the Scottish Government's intent on  
13 suppressing the virus was designed to enable us to  
14 return people's lives to something resembling normality,  
15 and a key part of that was enabling children to return  
16 to school, which they successfully did on  
17 11 August 2020.

18 **Q.** I suspect, Mr Swinney, that those who take an interest  
19 in the business of this Inquiry are more interested in  
20 effect than intent. Would you agree?

21 **A.** Well, that's what happened, the schools came back on  
22 11 August.

23 **Q.** As regards the closure of schools in the period we  
24 discussed earlier at the beginning of the second  
25 lockdown, we looked at the Cabinet conclusions.

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1 of this particular situation and the evidence that you  
2 had; is that right?

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

4 **Q.** To what extent once the lockdown was announced did you  
5 take account of medical advice about whether and the  
6 extent to which school closures were assisting in the  
7 lockdown and their contribution to the overall spread of  
8 the virus in January 2020?

9 **A.** That would have been part of the assessment about the  
10 prevalence of the virus and then led into the  
11 consideration of what was the right moment at which we  
12 could begin to restore full-time learning for children  
13 and young people.

14 **Q.** Yes, so -- because again Professor Woolhouse told us  
15 that although it might have been legitimate to be  
16 cautious about the extent to which the Alpha variant,  
17 which was becoming -- had become the dominant variant at  
18 this stage, might behave differently from the previous  
19 variant with which we dealt in March, he said:  
20 "... it very quickly became apparent in that second  
21 wave that schools did not need to remain closed and we  
22 could still control the virus, and yet they weren't  
23 fully re-opened here until May 2021. This was  
24 unnecessary. The -- well ... forgive me, this is one of  
25 the aspects of the pandemic management that I --

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1 INQ000214456.  
2 If we could look at that again, just to understand  
3 again what it was we were looking at.  
4 Paragraph 14:  
5 "The final change which the First Minister planned  
6 to announce that afternoon was a requirement for all  
7 schools to continue to use remote learning (except for  
8 vulnerable children and children of key workers)  
9 until -- at the earliest -- 1 February, instead of the  
10 current planned date of 18 January. This was necessary  
11 both because of the scale of community transmission of  
12 the new variant and because of the uncertainties  
13 currently surrounding the ease and extent of  
14 transmission of the new variant between symptomless  
15 young people.  
16 "Mr Swinney noted that the current position was  
17 deeply serious and, arguably presented a set of problems  
18 of greater magnitude than in the spring of 2020. One of  
19 the main challenges over the coming few months would be  
20 to get across to the public at large that, despite  
21 almost ten months of severe restrictions, now was not  
22 the time to relax observance, despite the arrival of  
23 vaccines."

24 Does -- that paragraph I think encapsulates the  
25 sentiment that you expressed earlier about the urgency

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1 I really feel very strongly, what we did to the  
2 children. And it would be bad enough if there was  
3 a detectable and measurable public health benefit to  
4 this, but there wasn't. This wasn't necessary, and we  
5 did it anyway."  
6 To what extent were you aware of that  
7 epidemiological information that suggested that the  
8 ongoing closure of schools was not conferring a public  
9 health benefit on the management of the pandemic?

10 **A.** Well, the issues in relation to the prevalence of the  
11 pandemic were at the very heart of decision-making on  
12 this question, so the -- you know, the whole assessment  
13 about what steps we could take to re-open schools was  
14 a product of what was the epidemiological assessment of  
15 the pandemic.  
16 So in terms of the analysis that would be  
17 constructed by all of those who were looking at these  
18 questions, looking at it through the four harms  
19 framework, recognising the premium the government  
20 attached to the return of full-time schooling, those --  
21 what would flow from that information was the decisions  
22 that we could take about the timing for the re-opening  
23 of schools. And we started the re-opening of schools,  
24 if my memory serves me right -- well, actually, in the  
25 second lockdown the number of pupils who were being

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1 educated within schools was significantly greater than  
 2 during the first lockdown, by a factor of I think 3, so  
 3 about 8% of pupils were being educated in school in the  
 4 second lockdown because of the arrangements that we had  
 5 for the hub provisions in schools. So schools across  
 6 the country were open, more schools were open in the  
 7 second lockdown than the first lockdown, and then we  
 8 essentially moved to a phased re-opening of schools with  
 9 some year groups coming in, if my memory serves me  
 10 right, on 15 February, and then there were different  
 11 stages thereafter.

12 So the epidemiological information and the condition  
 13 of the pandemic were driving the decisions that I was  
 14 able to take in relation to school re-opening.

15 **Q.** So the basis of your extensive involvement in pandemic  
 16 recovery, and indeed ongoing committees and things like  
 17 that which relate to the recovery from the pandemic, is  
 18 it possible even remotely to quantify, now, the extent  
 19 to which the prolonged closures of schools have affected  
 20 the development and learning of children in Scotland?

21 **A.** Well, we have undertaken in the course of the -- well,  
 22 we did undertake within the government in the course of  
 23 the pandemic 13 children's rights and wellbeing  
 24 assessments to consider these issues. We also in the  
 25 summer of 2020 undertook an equity audit which explored  
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1 As regards the assessment done of the further harms  
 2 that would be caused by a second lockdown, was  
 3 an assessment done of those harms at the time the second  
 4 lockdown was imposed and schools were closed for  
 5 a second prolonged period?

6 **A.** Well, at that moment I asked Her Majesty's Inspectorate  
 7 of Education to review the delivery of remote learning  
 8 and to particularly explore issues around the health and  
 9 wellbeing of pupils and of staff, and of the  
 10 availability of digital devices. The government put in  
 11 place new resources which were designed to fill the gaps  
 12 in relation to access to digital devices, and we  
 13 of course had access to extensive amounts of online  
 14 learning through e-Sgoil venture, which the government  
 15 had invested heavily in and which the teaching  
 16 population around the country significantly supported to  
 17 make sure that in the second lockdown there was a much  
 18 stronger platform for digital learning that was  
 19 available to children and young people.

20 **Q.** Thank you, Mr Swinney.

21 I would like to ask you about another element now of  
 22 what I understand is your portfolio, namely the  
 23 relationship and dealings with local government.

24 We've already heard evidence about the fact that  
 25 a levels system was introduced in Scotland in  
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1 the impact of school closures and then led to the  
 2 reconfiguration of the curriculum in the autumn of 20 --  
 3 sorry, in August of 2020 to enable a much greater focus  
 4 on supporting the wellbeing of children and young people  
 5 who were returning to school after the first lockdown.

6 In addition to that, I asked Her Majesty --

7 **Q.** Can I pause at that stage to ask about that.

8 So in the summer of 2020 you had done an assessment,  
 9 I think you said, about the impact of the first lockdown  
 10 as it was coming to an end on children. Did that tell  
 11 you there had been a significant impact on children's  
 12 learning and development?

13 **A.** It told us there had been an impact, a negative impact  
 14 on children's learning and development, yes, it did, and  
 15 therefore --

16 **Q.** So you knew that at the time you closed schools in the  
 17 second lockdown; yes?

18 **A.** Yes, but I -- but I did not feel I had an alternative  
 19 because of the gravity that I express at paragraph 15 of  
 20 the Cabinet minute about the deeply serious situation  
 21 that we faced. And I didn't, in all honesty, think that  
 22 I could ignore the epidemiological advice that was being  
 23 put in front of me at that particular moment. I think  
 24 that would have been frankly reckless on my part --

25 **Q.** I understand that that's your position, Mr Swinney.  
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1 October 2020; is that correct?

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

3 **Q.** And if I get the nomenclature right, it was called the  
 4 levels system, there was a similar system which existed  
 5 in England called the tiers system; is that correct?

6 **A.** That's correct, yes.

7 **Q.** And in the lead-up to the levels system being introduced  
 8 there were some discussions I think, of which we have  
 9 evidence, between amongst others the Chancellor of the  
 10 Duchy of Lancaster about the UK Government's plans and  
 11 indeed the Scottish Government's plans, which had given  
 12 rise to documents which suggest -- and also a press  
 13 reporting on 12 October 2020 -- that Scotland intended  
 14 to implement and introduce a three-tier system similar  
 15 to the one that England had -- that the UK Government  
 16 had proposed as at that point; was that correct?

17 **A.** I'm not sure that we'd actually had -- come to any  
 18 formal conclusions on that. I'd have to check --

19 **Q.** But that is a matter of intention, I think, the  
 20 intention was that that's what would happen?

21 **A.** I'm not sure we'd come to a --

22 **Q.** In the event it didn't --

23 **A.** We knew we were going to have a levels system --

24 **Q.** Yes.

25 **A.** -- because we knew we had to have some gradation of  
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1 restrictions in different localities --  
 2 **Q.** Indeed, indeed, as was the approach in the UK Government  
 3 at the time.

4 Why was it that the Scottish Government decided to  
 5 have the five levels system rather than the three-tier  
 6 system?

7 **A.** We judged that we needed to have a sufficient amount of  
 8 variation between levels to take account of some really  
 9 very different circumstances in Scotland.  
 10 Geographically and in demographic terms Scotland is  
 11 a very diverse country. The circumstances that pertain  
 12 in the Orkney Islands are very, very different to those  
 13 that pertain in central Glasgow, and indeed the  
 14 circumstances that pertain in central Glasgow can be  
 15 very different to those that pertain in rural  
 16 Perthshire, where I have the privilege to represent.

17 So we judged that we needed to have a range of  
 18 circumstances that would reflect that diversity and able  
 19 to -- and enable us to exercise sufficient influence  
 20 on -- offer any restrictions to be able to exercise  
 21 sufficient influence.

22 **Q.** And that wouldn't have been served, in your view, by the  
 23 three-tier system which you knew about that was going to  
 24 be introduced --

25 **A.** I don't think -- I don't think the range would have been  
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1 English three-tier system?

2 **A.** No, for the reasons that I've set out about the  
 3 diversity of geography and demography in our country.

4 **Q.** As far as the relationship with local government was  
 5 concerned, you say in your statement that there was good  
 6 and effective communication and partnership; is that  
 7 your position?

8 **A.** That is my position, yes.

9 **Q.** You had some involvement in that aspect of the  
 10 management of the pandemic; is that correct?

11 **A.** I had a lot of -- I think my involvement with local  
 12 government would fit into three categories. One,  
 13 a strategic relationship with the political leadership  
 14 of local government and the president and vice president  
 15 of the Convention of Scottish Local Authorities, who  
 16 I spoke to frequently and who I always made clear to  
 17 I would listen to at any time.

18 Secondly, I was the joint chair of the Covid  
 19 education recovery group with Councillor Stephen McCabe  
 20 who was the Convention of Scottish Local Authorities  
 21 education spokesperson.

22 And, thirdly, I had quite a lot of dialogue with  
 23 local authority leaders about the application of the  
 24 levels.

25 **Q.** Thank you.  
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1 sufficient, because of the point I've made about --

2 **Q.** Thank you.

3 **A.** -- the span between Orkney and Glasgow with Stirling and  
 4 Perthshire in the middle.

5 **Q.** Presumably there must be similar differences between  
 6 central London and rural parts, say, of the north of  
 7 England?

8 **A.** I'm not sure the acute challenge -- the acute  
 9 differences of the island communities particularly  
 10 pertain in England compared to the diversity of  
 11 circumstance that pertains here, and we were anxious to  
 12 make sure that we had a framework that would apply right  
 13 across the country.

14 **Q.** Was consideration given to the fact that in particular  
 15 those who might spend time or live around the border,  
 16 this would be incredibly confusing?

17 **A.** That was acknowledged, yes, and it was a source of,  
 18 you know, some considerable attention during these  
 19 periods, yes.

20 **Q.** Mr Gove in his evidence yesterday said that the  
 21 UK Government's perception of the Scottish Government's  
 22 position was at times that it sought to create  
 23 difference for no particular apparent benefit. Was this  
 24 a situation in which Scotland wished to have  
 25 a five levels system just to be different from the  
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1 The Inquiry has, is aware of a report by  
 2 Professor Kevin Orr of the University of St Andrews  
 3 which is entitled "*Good governance during COVID-19:  
 4 learning from the experience of Scottish Local  
 5 Authorities*". Are you aware of this report?

6 **A.** I have seen that, yes.

7 **Q.** Could we look at page 34 of the report, please.

8 The report is one which provides findings and  
 9 learning from discussions with senior officers and  
 10 elected members in six Scottish local authorities; is  
 11 that correct? Is that your understanding?

12 **A.** That's my understanding.

13 **Q.** And my understanding, certainly -- I hope you agree with  
 14 me -- is that the six local authorities were chosen for  
 15 this project to provide a mixture of different  
 16 geographies, governance arrangements and political  
 17 compositions; is that right?

18 **A.** Yes.

19 **Q.** As far as you understand it.

20 Page 34, he notes that:

21 "One chief executive was directly critical of what  
 22 was felt to be an unnecessarily centralised approach by  
 23 Scottish Government."

24 It says:

25 "'The public face of the pandemic for both  
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1 governments, was their respective political leader. In  
 2 Scotland's case, that was the First Minister. It was  
 3 clear from a delivery partner perspective, that the  
 4 political involvement in all the decision-making  
 5 associated with the response was all pervading and on  
 6 some occasions, the political "optics" seemed the  
 7 guiding force. And of course, because of the 24/7 media  
 8 world we now live in, the respective national political  
 9 leaders were centre stage of that 24/7 media world. In  
 10 the gold command structures put in place by the Scottish  
 11 Government, there was no scope for any departure from  
 12 the nationally set approach, which was an unrelenting  
 13 single focus on health harm rather than the 4 harms  
 14 approach that was claimed. There was no real local  
 15 decision-making and no real opportunity to influence the  
 16 response actions to be taken. It was a here it is and  
 17 it's to be implemented. Since devolution in Scotland,  
 18 there has been a growing tension between Scottish  
 19 Government and local government and the pandemic has  
 20 exacerbated that tension not only between respective  
 21 politicians but also across officials. Local political  
 22 leaders were being held to account for decisions they  
 23 had no locus in and privately were being criticised by  
 24 the Government for not doing enough to support the  
 25 response, when they were not being treated as a partner

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1 So I'm disappointed that people don't share my view  
 2 that there was a good partnership, but I put a lot of  
 3 effort into chairing the Covid recovery group, you know,  
 4 I don't know -- I don't know how many times we met,  
 5 actually it must be about, I don't know, probably about  
 6 50 or 60 times, with, you know, a group of people from  
 7 national and local government totally focused on the  
 8 solutions and wrestling with the problems, working  
 9 together, not a -- you know, a very constructive  
 10 atmosphere.

11 So I'm really disappointed to see kind of text of  
 12 this type, because it's not my feeling. President of  
 13 COSLA: if I look back at my diary I was speaking to the  
 14 president of COSLA on 3 March 2020 to make sure that  
 15 COSLA were bound into the resilience arrangements for  
 16 handling the pandemic because I realised how significant  
 17 they would be, and if I had -- you know, I was involved  
 18 in one conference call with local government leaders.  
 19 I couldn't begin to count how many I was involved in.

20 So I'm very disappointed to hear that conclusion.  
 21 I think that's also -- that quote that you've read to  
 22 me, Mr Dawson, I have to say sits quite at odds with the  
 23 evidence that I think was led from the Convention of  
 24 Scottish Local Authorities to the Inquiry some time ago,  
 25 which I think was of a very different character to that,

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1 in the response'."

2 We have available to us in this Inquiry a number of  
 3 responses from a number of councils -- including  
 4 Aberdeenshire Council, North Lanarkshire Council,  
 5 South Lanarkshire Council, West Dunbartonshire Council  
 6 and Angus Council -- the general tenor of which is that  
 7 they felt they had no involvement in Scottish Government  
 8 decisions which would affect their local authorities.

9 Does this suggest, Mr Swinney, that your assertion  
 10 that there was a good working relationship during the  
 11 course of the pandemic with local authorities is  
 12 misguided?

13 **A.** I don't think it does. I'm sorry that's how they feel,  
 14 but let me just talk a little bit about the  
 15 circumstances around the Covid education recovery group.  
 16 That was, you know, a gathering jointly chaired by  
 17 myself and a representative of local government. The  
 18 Auditor General of Scotland said:

19 "... in my ... report with the Accounts Commission  
 20 *Improving Outcomes for young people through school  
 21 education* we highlighted effective joint working by the  
 22 Education Recovery Group ... during the pandemic."

23 "This strong foundation helped in the delivery of  
 24 a rapid and nationally co-ordinated response to the  
 25 pandemic in exceptionally challenging circumstances."

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1 which would largely have reflected my impression.

2 But, you know, I valued what Scottish local  
 3 government did. I saw, you know, in my own community  
 4 about how the local authority that in my area adapted to  
 5 respond to the local circumstances.

6 There would inevitably be tension about levels,  
 7 because somebody had to take a decision about what was  
 8 going to be the appropriate levels, and that fell to the  
 9 Scottish Government, we were being scrutinised about it  
 10 in the -- as your commentator here says -- in the 24/7  
 11 media world, and we did our best to engage with local  
 12 authority leaders about the contents of that.

13 **Q.** Is your assertion that the Scottish Government enjoyed  
 14 a good constructive working relationship with local  
 15 government during the pandemic mere rhetoric?

16 **A.** No, it's a statement of my honest view.

17 **Q.** It is a common theme of the Scottish Government's  
 18 statements to this Inquiry that, in its dealings with  
 19 the UK Government, the Scottish Government felt far from  
 20 an active participant in decision-making. Is that  
 21 broadly the tenor of some disappointment that the  
 22 Scottish Government has expressed?

23 **A.** I think it's -- I think it's slightly more nuanced than  
 24 that. I think there's some of that, yes, but there's  
 25 also other evidence of good and constructive working.

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1 **Q.** Is the evidence that we have seen not indicative of the  
2 fact that the Scottish Government adopted that very same  
3 approach to local authorities?

4 **A.** I wouldn't say so, because we provided the opportunities  
5 for meaningful engagement and involvement by Scottish  
6 local government in the decision-making process in which  
7 we were involved.

8 **MR DAWSON:** Thank you, Mr Swinney.

9 Those are my questions. There are some  
10 core participant questions, as I understand it.

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

12 Ms Mitchell.

13 Mr Swinney, don't worry, you're not alone in this,  
14 but you're inclined to give very long answers. Maybe  
15 it's a politicians thing, I don't know.

16 Ms Mitchell has limited time, so to be fair to those  
17 whom she represents, Scottish Bereaved, please could you  
18 try to focus on her questions.

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

20 **THE WITNESS:** My apologies.

21 **MS MITCHELL:** Very much obliged, my Lady.

22 **Questions from MS MITCHELL KC**

23 **MS MITCHELL:** Mr Swinney, I appear as instructed by  
24 Aamer Anwar & Company on behalf of the Scottish Covid  
25 Bereaved.

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1 that good, accurate Scottish data was available at all  
2 times. Now, I don't know if -- it may be that the  
3 Secretary of State for Scotland is making that remark in  
4 relation to information that was available to the  
5 United Kingdom Government, but certainly in the Scottish  
6 Government I felt we had very good Scottish data  
7 available to us at all times.

8 **Q.** I think he was making it in relation to decisions that  
9 were being taken by the UK Government in relation to  
10 matters which also affected Scotland and that only had  
11 English data.

12 You say that Scotland had Scottish data at all  
13 times, but it's clear from the evidence in the previous  
14 module and from this module that they didn't have access  
15 to Scottish data to assist them in that decision-making  
16 process.

17 **A.** Well, certainly I felt in Scotland we got datasets  
18 really very quickly in the pandemic that were developed  
19 and that we had available to us. I obviously am not  
20 intimate about what was going on in the United Kingdom  
21 Government and what information was available there.  
22 I think it's a very good example. If there was  
23 a problem with Scottish data being available for the  
24 United Kingdom Government, you know, that -- bluntly,  
25 that's an issue for the Secretary of State for Scotland

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1 In your written evidence to this Inquiry you say  
2 that you experienced no tangible presence of  
3 Alister Jack, Secretary of State for Scotland, in any  
4 aspect of the work of handling the pandemic in Scotland.

5 My question to you is: were there efforts made to  
6 engage him in this process? If so, what?

7 **A.** I think the ... the short answer is probably no, because  
8 there was no real value in it. Because, as I explain in  
9 my witness statement, if the Scottish Government had  
10 a problem with the UK Government, the best way to solve  
11 it was to go directly to the person in the UK  
12 Government, and indeed we had interlocutors who were  
13 quite helpful in trying to help resolve these issues.  
14 In my experience, the Secretary of State for Scotland  
15 would have contributed nothing of any useful value in  
16 assisting us in that process.

17 **Q.** Well, the Secretary of State for Scotland indicated that  
18 he was concerned in relation to data not being  
19 available, Scottish data not being available, and that  
20 not being a satisfactory basis for decisions in  
21 Scotland, ie England-only data being used, and my  
22 learned friend touched on that with you earlier.  
23 Were you aware of his concerns in that regard?

24 **A.** I wasn't aware of his concerns, but what I do know is  
25 that significant efforts were put in place to ensure

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1 to try to address because that's supposed to be his job.

2 **Q.** Do you not think that it's a loss of good use of someone  
3 who has that contact with the UK Government to use as  
4 a conduit for issues exactly on that basis?

5 **A.** In my experience of dealing with the current  
6 Secretary of State for Scotland -- and I would not be  
7 saying this about his predecessor -- is that the current  
8 Secretary of State for Scotland is not a help to get  
9 things resolved. His predecessor was. His predecessor,  
10 the Right Honourable David Mundell, was of enormous  
11 assistance in trying to get things sorted out.  
12 I don't -- I've not -- it's not been my experience of  
13 the current Secretary of State for Scotland.

14 **Q.** But it's your evidence that you didn't try, you didn't  
15 try and engage with him to assist?

16 **A.** Because of my experience before the pandemic.

17 **Q.** Moving on to my next question.

18 Were you aware of, by the start of March, a growing  
19 concern that decisions on the pandemic response were  
20 being taken too slowly by the Prime Minister?

21 What I'm trying to get is your sense of what was  
22 going on at that time.

23 **A.** I think there was a -- during February, during January  
24 and February, there was a growing alarm about the  
25 situation, and -- I'm talking about in Scotland -- and

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1 there was growing preparations to deal with what we  
2 thought would be a very serious situation coming in our  
3 direction.

4 As we got into March -- now, during January and  
5 February, I think it was very difficult to be certain  
6 what was the right moment to absolutely escalate and  
7 operationalise those decisions.

8 By the end of February, the beginning of March, it  
9 became apparent we were in that zone, and the point --

10 **Q.** Well --

11 **A.** Please forgive me, Ms Mitchell.

12 And essentially there was growing frustration within  
13 the Scottish Government that we felt we needed to be  
14 doing more. We might not have the crystallisation of  
15 the case load and the problem in Scotland, but it was  
16 growing, and therefore there was a frustration that  
17 things were not moving fast enough.

18 **Q.** Well, speaking of frustration, were you aware of the  
19 views of Professor Sridhar and Mark Woolhouse at the  
20 speed of which actions should be being taken but weren't  
21 yet being taken by March?

22 **A.** I was aware of those views being expressed publicly, and  
23 indeed was paying particular attention to those views,  
24 and was considering, as the rest of the government were  
25 considering, what were the right steps and the moment to

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1 what are the things we have got to do, and -- as I've  
2 just rehearsed with Mr Dawson in detail -- the dilemma  
3 about school closures in which the position changed  
4 dramatically. You know, if we'd had a conversation on  
5 the morning of 17 March, I would have been saying,  
6 you know, I'm not persuaded of the argument for school  
7 closures; but the morning of 18 March, I'd be having  
8 a very different conversation, and such was the pace at  
9 which events were changing in front of us.

10 **Q.** If I may ask you about a specific issue, and that's in  
11 relation to mass gatherings. I know my learned friend's  
12 already touched upon this with you as well.

13 In your evidence to this Inquiry, written evidence,  
14 you say:

15 "The Scottish Government took the decision that all  
16 indoor and outdoor events of more than 500 people should  
17 be cancelled to protect emergency service capacity."

18 I would like to know a bit more about why that  
19 decision was taken. Was in part that decision taken, in  
20 part or in whole, by the fact that large venues and  
21 those in the entertainment industry, artists, et cetera,  
22 were starting to take the initiative themselves to,  
23 for example, cancel gigs or to close venues to protect  
24 the public, and it was only after this that the Scottish  
25 Government acted?

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1 escalate, for all the reasons that we've talked about  
2 today about the moments to capture public attention and  
3 public involvement.

4 **Q.** Well, you speak of their comments publicly. If I may  
5 take you to the private conversations in relation to the  
6 CMO or Deputy CMO, were you aware as to their views on  
7 whether action should have been taken earlier by the  
8 Scottish Government?

9 **A.** I don't think it -- I certainly felt I was being briefed  
10 by the Chief Medical Officer at the time of the growing  
11 severity of the issue and we were wrestling collectively  
12 with what was the right moment at which to act, and we  
13 felt that it would be impossible for Scotland to move  
14 into a period of lockdown without doing that on  
15 a United Kingdom basis. We thought that would be  
16 incredibly difficult for us to put into effect, not just  
17 in legislative effect but in terms of how that would  
18 have been perceived by people in Scotland and whether it  
19 would have secured compliance if the United Kingdom  
20 Government was not doing the same thing.

21 **Q.** And those were views being exhibited internally in the  
22 Scottish Government at that time that they were  
23 considering lockdown?

24 **A.** Well, we were considering what was the -- you know, what  
25 are the stages of escalation we have got to go through,

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1 **A.** As I said to Mr Dawson, I wasn't intimately involved in  
2 that decision, for the reasons that I set out. But  
3 I think, as with the situation in our schools, there  
4 was -- people were beginning to take their own course of  
5 action, and I certainly felt on the school issue that  
6 there was a danger of there being real uncertainty about  
7 whether schools were open or closed unless we gave some  
8 leadership to it, and that -- it may well have been the  
9 case that that was part of the consideration in relation  
10 to the issue on the limit on 500 people. But, as I say,  
11 I'm not in a strong position to give detail --

12 **Q.** Have you heard evidence that it was said by those in the  
13 UK Government that that decision in relation to mass  
14 closures at the time was totemic? Were you aware of  
15 that and, if so, what do you think about that?

16 **A.** I haven't heard it being described as totemic. I don't  
17 quite understand why that would be the case. It doesn't  
18 sound like something I would describe as a totemic  
19 decision.

20 **Q.** Moving on to question 4.

21 I want to ask you further about intergovernmental  
22 relations. In your written evidence, you say:

23 "At different stages in the pandemic there would be  
24 issues of real concern about the conduct of the  
25 pandemic, and Scottish Ministers would raise the

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1 concerns we held. Often the means of resolution  
2 involved escalating these issues to calls that would  
3 take place between the First Minister and the  
4 Prime Minister [Rt Hon Boris [Johnson] MP] or the  
5 Chancellor of the Duchy of Lancaster [Rt Hon  
6 Michael Gove MP]. This was not an efficient or  
7 effective way to manage the pandemic response. These  
8 meetings took the format of many of my experiences of  
9 dealing with the UK Government which was that the  
10 meetings were not meetings of equals or partners."

11 I'd like to ask you a little more about this.

12 Firstly, can you please give the Inquiry examples about  
13 the issues of real concern which had to be escalated in  
14 the way you describe? What were these issues?

15 **A.** They would be issues perhaps about funding, which I know  
16 the Inquiry heard with Kate Forbes earlier on today.  
17 They may also be issues in relation to the relaxation of  
18 restrictions, so there may be concerns about how that  
19 was, you know, proceeding and what the level of  
20 engagement and knowledge would be about that.

21 The contrast of all of this is really with,  
22 I suppose, the decision in relation to taking of  
23 lockdown. That was a decision taken on a collaborative  
24 basis by the four governments of the United Kingdom.

25 **Q.** Well, what I'm really more interested in is focusing on  
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1 happened --

2 **LADY HALLETT:** Could we avoid going into politics,  
3 Mr Swinney.

4 **MS MITCHELL:** I'm obliged to my Lady.

5 If I could just ask this final question, then: given  
6 that you've said about this collaborative approach,  
7 doesn't that point directly squarely in the direction  
8 that the Joint Ministerial Committee way of coming to  
9 decisions ought to have been used during the pandemic?

10 **A.** I think that would be greatly advantageous, if it had  
11 operated in a fashion where governments were treated as  
12 equals; and the problem in a lot of the discussions that  
13 we had was that governments, all governments were not  
14 treated as equals in the process.

15 **Q.** And did the Scottish Government ask for those Joint  
16 Ministerial Committee meetings?

17 **A.** We have worked assiduously -- I say "we", I'm no longer  
18 in the Scottish Government -- but the Scottish  
19 Government has worked assiduously to try to improve  
20 intergovernmental frameworks, for all the years I was  
21 a minister, because I've -- you know, I would be able to  
22 establish that my good experiences are in the minority  
23 of intergovernmental experiences.

24 **Q.** Forgive me, but I asked the specific question, with  
25 my Lady's forbearance: did the Scottish Government  
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1 the -- what you raise in relation to the idea that this  
2 way of doing things wasn't a good way of resolving  
3 matters, and what you've said at, I think, a later stage  
4 in your statement is that there need to be urgent and  
5 wide-ranging reforms of intragovernmental structures.

6 Given your position that this escalation to the  
7 small group of people wasn't a good idea, have you given  
8 consideration as to the mechanism that would be good in  
9 those circumstances?

10 **A.** I think a format, which is collaborative in its nature,  
11 that treats different governments as having legitimate  
12 interests in arriving at a consensus decision-making  
13 approach would be an advantage.

14 **Q.** Isn't that --

15 **A.** What happens -- if I can explain. In my experience as  
16 finance minister, essentially we could have four nation  
17 discussions but if we couldn't persuade the Treasury  
18 then it was a lost cause. They had the veto. Now, in  
19 the fiscal framework in 2016, I secured in the  
20 Smith Commission a provision that the fiscal framework  
21 had to be agreed with the Scottish Government. That  
22 gave us equal status with the Scottish -- with the  
23 United Kingdom Government in establishing a fiscal  
24 framework for the operation of Scotland's public  
25 finances. That's protected Scotland, and it only  
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1 directly address the issue of the use of Joint  
2 Ministerial Committees and ask that they be used in  
3 these sorts of circumstances to create the sort of  
4 partnerships of equals that you suggest is the proper  
5 way forward?

6 **A.** I think that will have been the case. I'm pretty sure  
7 the former First Minister will have advanced that  
8 argument in her discussions, but I can't be definitive  
9 about that.

10 **Q.** So you, as Deputy First Minister, aren't aware of that?

11 **A.** I can't be definitive about that, but I'm pretty sure it  
12 will be the case.

13 **MS MITCHELL:** No further questions, my Lady.

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

15 That completes the evidence for today.

16 Thank you very much, Mr Swinney. I know we've now  
17 imposed upon you twice. I can't guarantee that we won't  
18 again, but I think it's unlikely, looking at the nature  
19 of the future modules. It's just possible education,  
20 I suppose, when we come to that. But thank you very  
21 much for your help so far.

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

23 **(The witness withdrew)**

24 **LADY HALLETT:** 10 o'clock tomorrow, please.

25 **MR DAWSON:** Thank you, my Lady.  
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1 (4.30 pm)  
 2 (The hearing adjourned until 10 am  
 3 on Wednesday, 31 January 2024)  
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<p><b>Y</b></p> <p><b>yes... [66]</b> 122/5  122/20 122/25 127/8  127/13 131/7 132/13  136/21 140/6 142/11  145/6 145/14 145/17  145/24 146/20 150/12  150/19 151/21 151/25  152/7 154/1 154/2  158/16 160/13 161/5  161/10 161/24 162/6  162/17 162/21 164/17  167/4 167/25 168/3  168/8 169/11 169/23  172/21 174/5 174/6  177/3 177/9 177/18  177/24 181/7 183/9  187/8 188/12 189/5  196/14 196/21 196/22  199/3 199/14 202/14  202/17 202/18 204/2  204/6 204/24 206/17  206/19 207/8 208/6  208/18 212/24</p> <p><b>yesterday [3]</b> 5/13  127/22 206/20</p> <p><b>yet [8]</b> 4/16 146/9  183/19 190/23 190/23  190/24 199/22 217/21</p> <p><b>you [598]</b></p> <p><b>you know [49]</b> 41/13  85/21 86/10 101/4  105/16 107/19 110/8  129/6 129/13 129/21  129/21 130/17 132/2  133/20 133/25 140/23  144/5 144/20 147/18  149/8 152/4 153/9  156/18 157/1 157/22  157/22 164/9 165/17  167/12 167/16 173/20  178/13 179/3 181/12  190/21 200/12 206/18  210/16 211/3 211/6  211/9 211/17 212/2  212/3 215/24 218/24  219/6 221/19 223/21</p> <p><b>you'd [1]</b> 95/20</p> <p><b>you'll [1]</b> 139/6</p> <p><b>you're [23]</b> 7/13 9/9  27/25 28/2 36/5 38/14  39/23 44/3 49/18  55/17 58/9 72/7 85/9  146/1 160/3 161/17  163/6 174/1 174/2  181/3 197/5 213/13  213/14</p> <p><b>you've [27]</b> 5/10 5/16  6/19 7/2 13/25 18/25  20/4 24/21 29/9 29/13  41/9 42/14 75/8 81/8  82/7 90/19 91/22  95/15 107/11 122/9</p>	<p>126/4 128/24 132/2  192/5 211/21 222/3  223/6</p> <p><b>young [12]</b> 168/18  189/12 190/3 191/5  193/24 195/9 195/12  198/15 199/13 202/4  203/19 210/20</p> <p><b>your [130]</b> 1/12 2/15  3/7 3/14 3/15 5/21  5/22 7/16 7/17 7/23  8/2 9/15 11/4 11/7  12/1 12/9 12/12 13/3  13/6 14/3 14/15 15/2  18/22 23/11 24/11  24/11 25/9 31/1 34/13  37/18 42/4 49/18  50/21 51/13 54/24  56/19 63/7 63/9 65/19  70/25 74/22 75/8  75/10 75/18 77/1 77/3  79/8 81/22 83/17  87/10 88/1 88/9 89/5  89/23 90/20 90/23  91/13 91/13 94/2  94/15 95/7 96/5 96/13  96/21 97/12 97/16  97/22 98/11 99/4  100/16 101/25 102/6  102/19 103/1 103/25  105/7 105/24 107/7  108/23 108/25 109/12  109/15 110/24 112/23  113/18 114/14 115/13  117/24 118/13 119/1  119/6 119/16 120/19  121/1 121/6 121/10  121/12 128/6 128/8  128/22 129/16 130/22  131/11 131/20 141/5  145/3 159/1 163/13  174/1 175/12 178/5  184/5 201/15 202/25  203/22 205/22 207/5  207/7 208/11 210/9  212/10 212/13 214/1  216/14 216/21 219/13  220/22 222/4 222/6  224/21</p> <p><b>yourself [7]</b> 44/24  78/21 116/6 121/14  133/4 134/14 177/17</p> <p><b>Yousaf [13]</b> 9/11  38/24 39/3 41/21  43/14 106/16 106/23  107/1 139/14 140/7  155/10 155/14 156/3</p> <hr/> <p><b>Z</b></p> <p><b>zero [2]</b> 168/6 168/7</p> <p><b>zone [3]</b> 43/21 44/1  217/9</p>			
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