

Thursday, 1 February 2024

1
2 (9.59 am)
3 **LADY HALLETT:** Mr Dawson.
4 **MR DAWSON:** Good morning, my Lady.
5 This morning's witness is the Right Honourable
6 Alister Jack DL MP.
7 **MR ALISTER JACK (sworn)**
8 **Questions from LEAD COUNSEL TO THE INQUIRY for MODULE 2A**
9 **MR DAWSON:** You are Alister Jack?
10 **A.** Yes.
11 **Q.** You've helpfully provided a witness statement to
12 the Inquiry under reference INQ000360600. It's dated
13 29 November 2023. Is that your witness statement?
14 **A.** Yes.
15 **Q.** Have you signed it?
16 **A.** Yes.
17 **Q.** Do the contents of that statement remain true and
18 accurate as at today's date?
19 **A.** Yes.
20 **Q.** The Office of the Secretary of State for Scotland also
21 provided a further statement to the Inquiry under the
22 name of Laurence Rockey, who is the director of the
23 Office of the Secretary of State for Scotland. It was
24 dated 4 August 2023 and is under reference INQ000232507.
25 Are you familiar with the contents of this statement?

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1 In your statement at paragraph 3 you say that in that
2 role you act as Scotland's voice in Whitehall and
3 represent the interests of Scotland at Cabinet. Is it
4 fair to say that you are Scotland's main representative
5 in the United Kingdom Government?
6 **A.** Yes. And could I just -- my Lady, could I just, before
7 I give my evidence, just express my sadness for those
8 that lost their lives during the pandemic, and also
9 express my condolences to those who were bereaved, who
10 lost loved ones.
11 And to answer your question, yes.
12 **Q.** You also say at paragraph 3 that you champion the
13 UK Government in Scotland, and advocate for the
14 UK Government's policies in Scotland.
15 Is it fair to say, then, that you are the
16 United Kingdom Government's main representative in
17 Scotland?
18 **A.** Yes.
19 **Q.** You say also that the Scotland Office is not
20 a policymaking department. How does that work in
21 practice as regards the role which it plays in Scottish
22 affairs?
23 **A.** So the Scotland Office's role is to be the defender, if
24 you like, the safeguarder of devolution. And it's also
25 the Scotland Office's role to work across Whitehall --

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1 **A.** Yes.
2 **Q.** Thank you.
3 You have been a member of the UK Parliament for
4 Dumfries and Galloway since 2017?
5 **A.** Yes.
6 **Q.** You are the Secretary of State for Scotland and have
7 been since July 2019?
8 **A.** Correct.
9 **Q.** Before holding that position, you served as
10 parliamentary private secretary to the Leader of the
11 House of Lords, Assistant Government Whip and
12 Lord Commissioner of Her Majesty's Treasury?
13 **A.** Correct.
14 **Q.** Mr Jack, can I just confirm with you that you had been
15 scheduled to give evidence to the Inquiry last Thursday,
16 25 January, but due to a family bereavement we
17 required -- you were unavailable on that day and we
18 required to rearrange your evidence for today?
19 **A.** Correct.
20 **Q.** My condolences.
21 **A.** Thank you.
22 **LADY HALLETT:** And mine.
23 **A.** Thank you.
24 **MR DAWSON:** I want to begin by asking you some questions
25 about the role of the Secretary of State for Scotland.

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1 the lines of devolution are sometimes blurred, the
2 understanding of Whitehall departments as ministers
3 change can often -- they often need, you know, as
4 they're bringing legislation forward, direction from us
5 on how devolution plays out, and respecting it, which is
6 very important.
7 That's -- I mean, we have many roles within the
8 Scotland Office, but within Whitehall we are always, and
9 my job is always to press the case to get the best deal
10 for Scotland, but also, when we're making legislation
11 across the UK, to make sure we don't cut across the
12 devolution settlement. And likewise, through section 33
13 and section 35 of the Scotland Act, my job is to make
14 sure that the devolved administration in Scotland
15 doesn't either stray into reserved areas with their
16 legislation, or indeed, as we saw in January last year
17 when I used a section 35 order for the first time in the
18 history of devolution, they go and cut across existing
19 UK or GB-wide legislation.
20 **Q.** Thank you.
21 As far as the respective responsibilities of the
22 Scottish Government and the UK Government in relation to
23 Scottish affairs in the pandemic are concerned, we have
24 heard that some of the areas, some of the boundaries
25 were perhaps blurry at times. Would you agree?

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1 A. Yes, I think -- I think that was inevitable with the
 2 nature of public health being devolved.
 3 Q. It's perhaps the result of public health being devolved
 4 but also the all-encompassing societal nature of the
 5 virus, insofar as it impinged on almost every area of
 6 our lives?
 7 A. Yes, the virus -- I mean, the virus knew no boundaries,
 8 and within the United Kingdom I was always keen that
 9 wherever possible we were aligned, and a lot of the
 10 effort I put into it was to try to have an aligned
 11 response across the UK. And, as I say, you know, I --
 12 there was much debate with the Scottish Government
 13 around the "border", as they called it. Well, I mean,
 14 to me, and I said this many times then, it's
 15 a geographical border, not a physical border, and
 16 certainly the virus didn't respect any borders. So
 17 I wanted us to be aligned as much as we possibly could
 18 be, understanding that under the public health response,
 19 which is the route that we went down, the public health
 20 was devolved to all the administrations.
 21 Q. Before the pandemic struck, it would have been
 22 predictable, would it not, that a viral threat of this
 23 general nature would not respect man-made boundaries
 24 like borders or political constitutional settlements; is
 25 that fair?

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1 public. I think we need to move away from that, have
 2 more of a centralised response and use the devolved
 3 legislation for the delivery of that centralised
 4 response, and that would be a recommendation I have for
 5 the future.
 6 Q. Do I take it from your suggestion that there were
 7 different rules for the sake of it that that's your
 8 assessment of the Scottish Government's approach to its
 9 public health responsibilities?
 10 A. I felt very strongly that the Scottish Government
 11 were -- we would meet with them and tell them what our
 12 plans were to -- you know, in terms of as we moved the
 13 rules and regulations, and I felt that they absorbed the
 14 information and then worked out how they could do it
 15 just slightly differently, and I felt that that was
 16 a political manoeuvre on their behalf. I think I've
 17 said that in my witness statement as well.
 18 Q. We've heard a considerable body of evidence from
 19 ministers within the Scottish Government who would
 20 suggest that your assertion that you made clear to them
 21 in advance what the UK Government's position was going
 22 to be was simply inaccurate. They would -- they have
 23 often complained in their evidence that they didn't know
 24 or understand the UK Government's position as regards
 25 what restrictions, for example, it intended to impose

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1 A. That's very fair.
 2 Q. What efforts were made in advance of the pandemic in
 3 order to try to clarify the respective areas of the
 4 responsibility of the Scottish Government and the
 5 UK Government in the event that such a pandemic would
 6 hit?
 7 A. So I think that was an area that could have been better
 8 prepared for. I -- obviously the devolution settlement
 9 happened in 1999. I don't -- I think that would be one
 10 area that hadn't been prepared for. There was, within
 11 schedule 5 of the devolution settlement -- there is,
 12 should I say, the reservation of emergency powers, the
 13 Civil Contingencies Act is reserved, health and safety
 14 is reserved across the United Kingdom, and maybe we
 15 could have used one of those to deal with the pandemic
 16 response. We didn't, we went with the devolved public
 17 health position.
 18 And I think -- I would hope -- and I think it's in
 19 my recommendations in my witness statement -- I would
 20 hope that we can plan better for another such event,
 21 where we have a more centralised approach to our
 22 response, which will reduce the confusion that we saw
 23 with different rules. That I didn't think made much
 24 difference to the outcomes, and the statistics prove
 25 that, different rules for the sake of it, confusing the

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1 till the very last minute.
 2 A. Well, these situations are dynamic, and we did have
 3 officials talking to officials on the way through to
 4 coming to those meetings. We then had meetings where we
 5 agreed our position and then we put forward as our
 6 spokesman at those meetings -- because, remember, we're
 7 meeting ministers or First Ministers from all the
 8 devolved administrations -- we are -- we would -- the
 9 Minister for Intergovernmental Relations, Michael Gove,
 10 would have been the spokesman at those meetings and we
 11 intended to make clear what our proposal was. We hoped
 12 that they would follow our proposal.
 13 If there was a misinterpretation of whatever we're
 14 discussing that's when I would often step up and try and
 15 straighten what I thought was the position that we
 16 were -- we were trying to get over, if it was being
 17 I felt misinterpreted or misunderstood.
 18 But at all times we were giving the information of
 19 how we felt the regulations should be changed and not
 20 a lot of information came back the other way. The --
 21 particularly from Wales and Scotland. They waited to --
 22 they didn't tell us what they were proposing to do.
 23 Because, obviously, it was devolved, we had to respect
 24 that, but we always knew it would be something similar
 25 but just slightly different, and that's why I said "for

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1 the sake of it".

2 **Q.** Could I perhaps give you an example, Mr Jack.
3 In May of 2020, it's, as I understand it, the
4 Scottish Government's position that the Prime Minister
5 gave the strong indication at a meeting with the
6 Scottish Government that the UK Government intended to
7 stick with the message that people should stay at home,
8 but that in fact at the very last minute, unbeknown to
9 them, he decided to change the tenor of the message and
10 indeed the tenor of the strategy from Stay at Home to
11 Stay Alert. What's your comment on their assessment of
12 that situation?

13 **A.** Well, on that I think -- I think the Scottish Government
14 have a fair point. I think it was a matter of regret
15 that we trailed Stay Alert in the papers the day before,
16 and that -- there was, at that point, to go a step
17 further, there was a -- there was a level of mistrust
18 sort of baked into the system, with -- after what had
19 happened on March 12, the COBR meeting, where the
20 First Minister had gone out and announced quite a lot of
21 things in her 3 o'clock statement. We felt that broke
22 the memorandum of understanding, paragraph 12, which
23 states that, you know, we have a sort of duty of
24 confidentiality amongst us.

25 And that -- that was the day that -- on the back of
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1 with each other?

2 **A.** No, I don't think that's fair, but I think it -- what it
3 characterised was that we -- you know, as you said at
4 the beginning, my job is to go out and strengthen the
5 United Kingdom and sustain the United Kingdom, and I do
6 that every day of my working life. The First Minister's
7 job, and I've said this at the despatch box and on other
8 occasions, is she at the time saw her job, as the leader
9 of a nationalist government, to break up the
10 United Kingdom. That's what the Scottish National Party
11 exists to do. And so it was inevitable that there would
12 be tensions -- and there always are in government.
13 Devolution works very well, but it works very well when
14 governments want to work together. When one government
15 wants to destroy the United Kingdom and destroy
16 devolution, then there are tensions. So those tensions
17 existed before the pandemic, during the pandemic and
18 they exist now today.

19 **Q.** You will be fully aware, no doubt, Mr Jack, that the
20 former First Minister of Scotland, in what might well be
21 described as an emotional passage of her evidence,
22 described yesterday that, despite the fact that she
23 believed in Scottish independence to her very core, she
24 was, in this medical emergency, able to put aside those
25 political convictions and prioritise the health and

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1 that meeting then, I went to Edinburgh in the evening
2 and met with Jeane Freeman. I was with her for I think
3 two hours. For one of those hours the Health Secretary,
4 Matt Hancock, was with us, that meeting on March 12.

5 Another thing that had happened which came to light
6 in May at that meeting was that, despite being with the
7 then Health Secretary for two hours, at no point did she
8 mention that they had discovered an outbreak at the Nike
9 conference in Edinburgh. The Health Secretary, and
10 I confirmed this with him yesterday afternoon,
11 discovered that when the newspapers contacted him some
12 time later.

13 So, you know, these -- you can understand there was
14 a feeling -- with each side there was -- from that --
15 well, let me put it that way, from that meeting then,
16 going forwards, we were cautious, because we didn't want
17 announcements to be released early or to jump the gun
18 before everything had been agreed across Whitehall. And
19 I think that speaks to what happened with the Stay Alert
20 statement, it was just -- it was part and parcel of us
21 being cautious as we announced things.

22 **Q.** Mr Jack, would it be fair, given that explanation, to
23 characterise the way in which the UK Government and
24 Scottish Government interacted during this unprecedented
25 medical emergency as tit-for-tat or children squabbling

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1 safety of the people of Scotland. Did your pre-existing
2 assumption about her political convictions result in you
3 failing to be able to believe that she could do that?

4 **A.** I didn't -- I watched that yesterday and I saw that
5 passage and I don't believe -- I didn't believe it for
6 a minute. I mean, I looked at that passage and I've
7 thought back in my experiences and I looked at her
8 performance and I thought she could cry from one eye if
9 she wanted to.

10 **Q.** Mr Jack, you mentioned a moment ago, and you indeed
11 mention in your statement, that UK departments at times
12 have a limited understanding of the devolution
13 settlement; is that fair?

14 **A.** I think -- I think there's often clarity required --
15 it's very complicated, the devolution settlement, and
16 there's often clarity required, and that comes from my
17 office, where we have the Advocate General, and that can
18 often be in legal -- a legal sense, or we will look when
19 we're doing -- for instance, at the moment it's the
20 vaping Bill, we're looking about concurrent -- or
21 mechanisms for the Scottish Government. So this is
22 happening all the time where -- on environmental
23 matters, that's another very grey area within the
24 devolution settlement -- we're constantly working with
25 the Scottish Government as to how that works.

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1 And it's particularly so more complicated now
2 because of the UK Internal Market Act, which has the
3 principles of mutual recognition and non-discrimination,
4 so we're -- on a weekly basis officials are meeting with
5 the -- meeting the Scottish Government to discuss the
6 impact of decisions within the U -- I mean, obviously
7 the -- recently the most significant one was the deposit
8 returns scheme and how that impacted a single drinks
9 industry across the UK, and I stepped in quite heavily
10 on that one. But I had to do that because we had to
11 protect a single drinks industry across the UK.

12 So now with the -- in the world outside the
13 European Union and with our own single market, which is
14 so important to Scotland, and this is the last point
15 I'll make on this, it's -- 60% of our trade is with the
16 rest of the UK, it is important that we work with
17 departments taking decisions to -- to protect the
18 devolution settlement.

19 **Q.** You describe yourself as a champion of devolution; is
20 that correct?

21 **A.** Yes.

22 **Q.** Is it the case --

23 **A.** Well, I don't like -- I don't like the alternative.

24 **Q.** You described a moment ago the legislative arrangements
25 that were put in place at the beginning of the pandemic,

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1 by a UK Act of Parliament, that the course being taken
2 by the UK Government to the management of the pandemic
3 was somehow the orthodox one and therefore, despite
4 those powers having been accorded to the Scottish
5 Government and Parliament, any divergence from it was
6 a divergence from the orthodox position?

7 **A.** No, we didn't take that view at all, because we
8 recognise -- we respected the devolution settlement. It
9 was just -- we felt it was at times quite frustrating
10 that we had minor changes to the overall structure of
11 the regulations which caused confusion and -- for
12 certain people. And, you know, those -- especially as
13 we came -- when we were out of lockdown and we had
14 regulations throughout the summer and autumn of 2020,
15 people were moving around the UK again, and -- and
16 I particularly feel it living in Dumfries and Galloway,
17 where people are moving backwards and forwards across
18 the border, we just felt it would have been better for
19 all if we were following the -- aligned on the
20 restrictions.

21 **Q.** But you had accord -- the UK Parliament had accorded the
22 power --

23 **A.** Yes.

24 **Q.** -- to the Scottish Government and Parliament to take a
25 different approach, had it not?

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1 which of course built on the existing devolution
2 settlement. Public health was a matter which was
3 devolved to the Scottish Government; yes?

4 **A.** Correct.

5 **Q.** And --

6 **A.** And that was reflected in the work we did on the
7 Coronavirus Act. And when the Scottish Government
8 produced their Coronavirus Act, I -- instead of taking
9 30 days, as is normally the legal process before it goes
10 for Royal Assent, I fast-tracked it.

11 **Q.** The Coronavirus Act, the UK Parliament Coronavirus Act,
12 accords, in its schedules, powers, given the public
13 health route that you described the UK Government having
14 decided to take, to the Scottish Government to impose
15 restrictions in the interests of public health during
16 the course of the crisis; is that correct?

17 **A.** Correct.

18 **Q.** Therefore, matters were devolved to the Scottish
19 Government and the Scottish Parliament, who had the
20 ability to manage the pandemic in Scotland in the way
21 that they saw fit?

22 **A.** Correct.

23 **Q.** Is that a fair assessment?

24 Was it the predominant view within the
25 UK Government, despite those powers having been accorded

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1 **A.** Yes, and I say in my recommendations that I think in
2 future that would be something that should be looked at
3 again. Respecting devolution as much as the delivery
4 of -- of what had to be done, in whatever the emergency
5 was, would be -- would respect devolution, but the
6 decision-making we should all come together to make the
7 decisions, would be my position.

8 And an example of -- if I go back into that period
9 that I mentioned, we proposed tiers 1, 2 and 3, and the
10 Scottish Government had moved to this, I thought,
11 unrealistic zero Covid strategy, elimination,
12 eradication, so they decided to have levels 0, 1, 2, 3.
13 Again, confusing. And -- and level 0 still wasn't zero,
14 it was still wearing masks for the foreseeable future.
15 And we had this position where, you know, those getting
16 on the train in Glasgow were taking their masks off just
17 north of Carlisle, and coming back up from Euston, as
18 I often did on the train, and everyone coming north of
19 Carlisle pulling the trains off -- masks off, sorry, in
20 the same carriage. You know, it was sort of farcical,
21 really. And it sort of spoke to me about some of the,
22 you know, just unnecessary -- it achieved nothing, it
23 just spoke to me about unnecessarily affecting people's
24 behaviour. And of course it impacted on things like
25 hospitality. You know, it had -- these things have

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1 impacts and they had impacts on the economy.

2 **Q.** Just to be clear with you, as a matter of our
3 understanding of the timeline, you mentioned that there
4 had been -- there were tree tiers in the UK Government
5 strategy, that is of course correct, there were five
6 levels in the Scottish strategy, you seem to have --

7 **A.** Sorry, four -- 0, 1, 2, 3, 4, you're absolutely right.

8 **Q.** You seem to have elided, Mr Jack, the zero Covid period
9 which occurred in Scotland in the summer of 2020 with
10 the announcement of the levels scheme, which in fact
11 didn't happen till October 2020. So those were
12 different time periods. Is that your --

13 **A.** Well, the -- so the zero Covid strategy ran from the
14 summer of 2020. It was actually only finally dumped in
15 the spring of May 2021, the sort of elimination
16 strategy, and we had it -- we were trying in the summer
17 of 2020, in my witness statement I cover it, to get --
18 start to plan directions for people for Christmas,
19 because we know within the United Kingdom people travel
20 for Christmas, and we -- it took months for us to agree
21 with the Scottish Government a Christmas statement
22 because they were keen to get their elimination strategy
23 into the Christmas statement, and we obviously didn't
24 agree with that and the then Chief Medical Officer,
25 Sir Chris Whitty, said to me that it was completely

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1 the prevalence in Scotland was five times lower than the
2 rest of the UK, but the statistics authority came --
3 you know, came out and said that was completely untrue.
4 And so, you know, it was -- this mistaken information
5 was guiling the public into believing that the
6 elimination strategy was working; it wasn't working at
7 all and the details show that.

8 **Q.** You have asserted, Mr Jack, that the decisions as
9 regards the restrictions of the Scottish Government were
10 politically motivated. Is that your position?

11 **A.** Yes. A lot of them, yes.

12 **Q.** You have asserted that differences between the Scottish
13 Government's restrictions plan and the UK Government's
14 restrictions plan were for the sake of it; is that
15 right?

16 **A.** Yeah, I think -- I think -- I don't think there was
17 any ... I don't think it was achieving anything that was
18 necessarily being successful in suppressing the virus,
19 it was just to appear different.

20 **Q.** Did you seek to understand the rationale behind these
21 restrictions, which you appear to have assumed were
22 different from the UK Government's position for the sake
23 of it?

24 **A.** Yes, I mean -- I mean, we obviously -- we -- we looked
25 at -- in detail at the difference -- but it was -- you

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1 unfeasible, an elimination strategy, not because
2 Scotland was part of the United Kingdom but because
3 there had been no elimination of a virus in the history
4 of the human race other than smallpox, and that was --
5 the elimination worked because there was a sterilising
6 vaccine and we didn't have a sterilising vaccine.

7 **Q.** There is, of course, scientific evidence that would tend
8 to suggest that the virus was in fact eliminated from
9 Scotland, on the basis that the original strains which
10 caused the first wave in Scotland were completely --
11 completely died out. Are you aware of that evidence?

12 **A.** But -- but it -- but the small -- smallpox was
13 eliminated, whereas --

14 **Q.** Obviously we're more interested in Covid --

15 **A.** Well, no, I know, but the point is the point you make is
16 not relevant because the virus mutated. Smallpox was
17 mutating when it was eradicated. This -- Covid was
18 mutating and it was not eradicated.

19 **Q.** Well, what's wrong with a strategy that seeks -- whether
20 it seeks elimination or maximum suppression of the
21 virus? Is that not a laudable aim?

22 **A.** Well, it didn't make any difference to the -- to the
23 statistics in terms of how Scotland was performing
24 against the rest of the United Kingdom. There was
25 a misleading assertion from the then First Minister that

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1 know, we're talking about differences about -- you know,
2 I might be being flippant here and not entirely
3 accurate, but it was the -- you know, whether you have
4 six people or eight people in your garden, you know,
5 when we're outside and there's fresh air blowing around,
6 whether you -- whether they were allowed to go into the
7 house and -- to use the loo or not, and on it went.
8 These were -- these were -- they were things on the
9 margin that we just -- didn't seem to be effective in
10 suppressing the virus. And we know that the virus moved
11 broadly across the UK in -- in waves, that showed that
12 its impact was not -- by any devolved administration was
13 not suppressed.

14 **Q.** But you personally, did you make efforts to try to
15 understand why it was there were differences in the
16 Scottish Government's approach to that of the
17 UK Government?

18 **A.** No, I fully understood, I didn't have to make any effort
19 to understand.

20 **Q.** You fully understood?

21 **A.** I fully understood that it was being done to appear
22 different to the UK Government.

23 **Q.** The reason I ask is because in his evidence to this
24 Inquiry, the former Deputy First Minister Mr Swinney
25 said that he experienced no tangible presence from you

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1 in any aspect of the work handling the pandemic in
2 Scotland. He was asked, when he gave evidence, whether
3 he had made efforts to engage you in the pandemic
4 response and he answered:

5 "I think the ... the short answer is probably no,
6 because there was no real value in it. Because, as
7 I explain in my witness statement, if the Scottish
8 Government had a problem with the UK Government, the
9 best way to solve it was to go directly to the person in
10 the UK Government, and indeed we had interlocutors who
11 were quite helpful in trying to help resolve these
12 issues. In my experience, the Secretary of State for
13 Scotland would have contributed nothing of any useful
14 value in assisting us in that process."

15 Is that an accurate reflection of what you did on
16 behalf of the people of Scotland during the course of
17 the pandemic, Mr Jack?

18 **A.** No, absolutely not. I mean, let's put some context on
19 this. The former First Minister and the former Deputy
20 First Minister, I'm not, you know, on their Christmas
21 card list. They were pretty -- I mean, I -- I ended up
22 in court with them four times -- well, three times, and
23 then the fourth one was the gender recognition, but
24 I won on all occasions. John Swinney on the section 33
25 and something he was dealing with, and then there was

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1 Scotland to England you wanted your vaccine passport to
2 work wherever you lived and to go travelling. And there
3 were many areas where I pressed, on international
4 travel, on borders. I pressed back on the idea there
5 was a physical border between Scotland and England:
6 we're one common travel area, it's just a geographical
7 border. And the pushbacks or the encouragement to get
8 alignment was not well appreciated.

9 And to your point about going direct to Whitehall
10 departments, since 2011 they've always gone direct to
11 Whitehall departments because they want -- they don't
12 like the Scotland Office and they don't like my powers
13 and they make that very clear. And all that happens is
14 the Whitehall departments come straight back to us. So
15 the strategy does -- I mean, it's back to the tensions
16 I talked about earlier -- their strategy doesn't work,
17 because the Whitehall departments immediately refer to
18 us for guidance and advice and -- and so -- and so we go
19 on.

20 **Q.** In fact Mr Swinney's wasn't quite as you describe,
21 because his position was that it was only you that were
22 the problem. He in fact made quite clear that he
23 considered there to have been good relationships between
24 the Scottish Government and the Scotland Office under
25 your predecessor's position?

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1 the Supreme Court case that we won, and obviously there
2 was the section 35. And then he and the First Minister
3 were gone shortly after.

4 And I am not -- they're not my fans, and
5 I understand that, but to be clear I -- I put in a lot
6 of work running into meetings. As I said earlier, I met
7 with Jeane Freeman on 12 March, Matt Hancock and I met
8 that evening -- not that we heard anything about the
9 outbreak that they knew about at the Nike conference in
10 Edinburgh in February. I had -- I attended many -- all
11 the Covid-O meetings, I attended the First Minister
12 calls. I spoke up, for instance, on vaccines and
13 vaccine delivery. And when the First Minister was
14 saying there was a shortage of vaccines I was -- I spoke
15 to the vaccine minister, I established there was no
16 shortage of vaccines for Scotland, I published every
17 week the number of vaccines available. The -- then --
18 we can see how many vaccines were being administered.
19 It proved that there was no shortage of vaccines.

20 On Covid passports I tried to get us all on the same
21 page. They were reluctant, they wanted to have
22 a Scottish vaccine passport, and they said the
23 architecture and structure of the NHS software meant
24 they couldn't do that. But, again, I was pressing that
25 because I felt if you had a -- if you moved from

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1 **A.** Yes.

2 **Q.** So --

3 **A.** Can I pick up on that?

4 **Q.** Yes, you certainly --

5 **A.** My predecessor found -- experienced exactly the same as
6 me and when I took over in July 2019 and discussed with
7 him the role. He made the very point to me that I've
8 just made to you. So I'm not sure he would agree that
9 his position was respected by the Scottish National
10 Party or the Scottish Government at that time.

11 **Q.** Given, Mr Jack, that you represent and speak for the
12 Scottish people, and no doubt seek to act in their
13 interests, would you agree with me that it may well not
14 really matter in their view the rights and wrongs of the
15 particular regulations or restrictions and who's
16 diverged from whom? They may interpret your evidence as
17 an indication that during the course of the pandemic
18 there was a complete lack of any proper
19 intergovernmental relation between the Scottish
20 Government and the UK Government?

21 **A.** The health secretaries across the United Kingdom met
22 every week, sometimes more than once a week. The CMOs
23 and the CSAs, the scientific and the medical officers,
24 met again once a week and sometimes, often, more than
25 once a week. Covid-O, Covid operations, met -- its

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1 predecessor, the ministerial implementation group, met
2 weekly -- I was at those meetings -- the -- and we had
3 representations from the devolved administrations at
4 those meetings. From I think it was June 2020, maybe
5 July 2020 onwards, we also had a weekly meeting with --
6 on a Wednesday evening, 5 o'clock, with the
7 First Ministers of the devolved administrations. That
8 call would last an hour -- and so the idea that we
9 weren't communicating with them is, you know,
10 ridiculous.

11 **Q.** I suspect people may be more interested in the
12 effectiveness of the communication rather than the
13 communication itself. How effective was the
14 communication in light of the views that you've
15 expressed about the UK Government's position on the
16 Scottish Government's restrictions, regulations and
17 management of the pandemic?

18 **A.** Well, as I said, we -- we -- we told them what we were
19 proposing in terms of restrictions or regulations,
20 but -- but in the areas where it was devolved we
21 respected their right to diverge. We -- we didn't -- we
22 didn't think it was a good idea, we tried to get
23 alignment, but we were respectful of the position.

24 Other meetings were about other things, like, for
25 instance, one of the things my office was heavily

25

1 **A.** Again we -- it was discussed -- it was discussed at one
2 of the Covid-O meetings. And as to -- I -- as to the
3 amount of notice we gave them, I couldn't -- I mean,
4 I could write to you on that, I can't remember.

5 **Q.** In her evidence the First Minister has said she wasn't
6 told about it; is that --

7 **A.** It's possible. The health -- I would expect we
8 discussed it with the health minister.

9 **Q.** In her evidence, Ms Forbes, the Finance
10 Cabinet Secretary, also said she didn't know about it.

11 **A.** Right.

12 **Q.** Is that correct?

13 **A.** Well, I -- Eat Out to Help Out was done by -- was
14 a Treasury initiative --

15 **Q.** That's correct.

16 **A.** And I -- I would have to look at the details of who was
17 told when, to -- and write to you on that.

18 **Q.** But did you tell anyone about it?

19 **A.** I don't recall telling anyone about it, no. I --
20 I don't recall.

21 **Q.** At the time when the Eat Out to Help Out scheme was
22 introduced directly by the UK Government in Scotland on
23 3 August 2020 --

24 **A.** Yeah.

25 **Q.** -- Scotland was, in accordance with your evidence, still

27

1 engaged in was -- and my role is to endorse them -- is
2 military assistance for civil authorities requests, and
3 there was -- a huge amount of work went into, whether it
4 was the roll-out of the vaccine, delivering testing
5 centres, delivering PPE, emergency situations, getting
6 someone off an island who was in a coma, et cetera,
7 et cetera. Those things happened through my office.
8 And when there was a real demand and a stretch on the
9 army, because they were wanted in Wales and England as
10 well, I would press hard with -- directly with the
11 Secretary of State for Defence to make sure that
12 Scotland got all the soldiers and -- and army personnel
13 they required.

14 So these things were going on the whole time. The
15 idea that there wasn't any communication or help from
16 the UK Government is -- is wrong. And actually if you
17 look in my witness statement, my letter on
18 2 February 2021 for the vaccine roll-out, I wrote to the
19 Scottish Government and offered military help because
20 the vaccine at that -- roll-out at that time was going
21 more slowly than it was in other parts of the UK and
22 I wanted to speed it up.

23 **Q.** What notice was given by you or the UK Government to the
24 Scottish Government about the introduction of the Eat
25 Out to Help Out scheme?

26

1 pursuing its elimination strategy, as you understood it;
2 is that right?

3 **A.** Yes.

4 **Q.** That strategy sought to try to deal with the economic
5 harm of the lockdown by seeking to try to revitalise
6 business and redress the balance, I think, between the
7 economic harm and the harm done by the virus; that was
8 the theory behind it, I think.

9 **A.** Yes, the harm was to the hospitality trade, and the
10 hospitality trade had suffered a lot of harm, and they
11 very much welcomed Eat Out to Help Out.

12 **Q.** Yes, in her evidence Ms Forbes recognised that there
13 could be economic advantage associated with the concept.

14 **A.** Yeah. Well, there was.

15 **Q.** However, it was completely contrary to the Scottish
16 Government's management strategy of the pandemic at that
17 time, was it not?

18 **A.** Well, they -- you know, they could have -- they could
19 have stopped Eat Out to Help Out in Scotland, under the
20 public health -- they could have said "We don't want the
21 voucher system to be available in Scotland" at the time.
22 They -- I've got no recollection of them pushing back
23 and saying "We don't want that".

24 **Q.** It was a direct UK action in Scotland, Mr Jack.

25 **A.** Well, it was, but -- but the -- the Treasury officials

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1 will have discussed it with the officials in the
 2 devolved administrations, and it will have needed to --
 3 you know, with the detail that went on behind it, it
 4 will have needed across-government work. I mean, it is
 5 a -- it's a question that I would ask of the Treasury
 6 and Treasury officials. But it won't have come as
 7 a complete surprise and nor do I feel they were -- the
 8 Scottish Government were bounced into it. I have no
 9 recollection at the time of them saying "This is
 10 a terrible idea and we disagree with it", but may --
 11 but, that -- you know ...

12 **Q.** It seems logically unlikely that that could possibly
 13 have been their position when, as I think you accepted,
 14 the introduction or imposition of the scheme on Scotland
 15 was completely contrary to Scotland's management scheme
 16 and strategy at that point?

17 **A.** But I don't recall at the time anyone saying "We don't
 18 want this scheme and it's not welcome". I have no
 19 recollection of having to defend the scheme at the time.

20 **LADY HALLETT:** Could I just ask, Mr Jack, can you go back
 21 to -- you say they could have stopped it. What, just by
 22 using their general powers to close pubs or restaurants?

23 **A.** Yes, yes. There were many restrictions put on the
 24 hospitality trade and they could have -- I'm sure the --
 25 if they had they could have -- or they could have said

29

1 pandemic?

2 **A.** Yes. Broadly.

3 **Q.** Yes.

4 You tell us in the statement, indeed, that the
 5 Scotland Office has a technical role in the
 6 administration of funds to Scotland, which is to ensure
 7 that the funds are transferred appropriately and that
 8 transfers are recorded correctly in the UK Government's
 9 accounts; is that right?

10 **A.** Yes.

11 **Q.** So although these would be Treasury decisions, the money
 12 would effectively go through the Scotland Office and
 13 therefore through you; is that -- is that correct?

14 **A.** Correct.

15 **Q.** To what extent, despite the fact that the UK Government
 16 had accorded clear powers to the Scottish Government to
 17 manage the strategy in terms of the schedules of the
 18 2020 Act, did the way in which funding was allocated for
 19 that strategy to be implemented limit the Scottish
 20 Government's policy freedom?

21 **A.** Well, the £14.6 billion of Barnett consequential, that
 22 came on the back of a record block grant, that money was
 23 entirely for the Scottish Government to spend as they
 24 saw fit. And I -- you know, there was money that would
 25 have been Barnettised for support for culture and media

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1 to the UK Government "We feel that this will bring too
 2 many people into the -- into the hospitality trade", for
 3 whatever reason. As it was, there were restrictions so,
 4 you know, within hospitality there were curfews, there
 5 was mask wearing to go -- to get up from the table and
 6 go to the loo, the -- you know, so they could have
 7 either imposed further restrictions or they could have
 8 said to the UK Government "That's not one for us". But
 9 I have no recollection of that happening or me having to
 10 defend it.

11 **MR DAWSON:** We've heard a considerable amount of evidence
 12 from a number of witnesses about the funding -- the
 13 general funding arrangements that exist between
 14 Her Majesty's Treasury and the Scottish Government.

15 **A.** Yeah.

16 **Q.** And indeed we've heard quite a lot of evidence about the
 17 specific way in which funding worked during the course
 18 of the pandemic. Generally the evidence tends to
 19 suggest that emergency funding awards were made by
 20 Her Majesty's Treasury -- of course a reserved matter --
 21 and that, in trying to ascertain how much would be given
 22 to Scotland, the general approach of applying the
 23 Barnett formula was generally the way in which it was
 24 done. Is that your understanding, broadly, of the way
 25 in which funding worked during the course of the

30

1 and the arts in England. I think the first amount was
 2 about £70 million-odd but it went up to £97 million.
 3 There was money for hospitality support and --
 4 et cetera, et cetera. But that was Barnettised, it went
 5 to the Scottish Government. They didn't have to spend
 6 it on culture and the arts, and some members --
 7 businesses in culture and the arts would complain about
 8 that in the press and hospitality felt they didn't get
 9 their fair share and on it went. But that's -- how the
 10 Scottish Government chose to allocate that money was
 11 entirely a matter for them, as is the way the block
 12 grant is delivered in Scotland. The block grant,
 13 £41.6 billion, goes to Scotland -- the Scottish
 14 Government, and they decide how to carve up the pie.

15 **Q.** Yes. Why did the UK Government fail to provide the
 16 Scottish Government with advance clarity as to the
 17 nature and extent of funding which it would provide for
 18 the Scottish Government to spend in its pandemic
 19 management role?

20 **A.** Well, again, that's a question for the Treasury, but my
 21 understanding is that each time we made an announcement,
 22 and I used to communicate these figures, and I would do
 23 it in interviews with the media as well, we would know
 24 what the approximate Barnett amount was, and we would
 25 declare that, so they would know what was coming.

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1 Q. Until the summer of 2020, Ms Forbes told us that the
2 figures that were projected were not figures that would
3 necessarily result -- would be the result of the funding
4 given to Scotland because, in fact, what would come to
5 Scotland would be the appropriate Barnett percentage of
6 what was spent rather than what was projected.

7 A. Correct.

8 Q. She told us that that caused considerable difficulty in
9 the management of the pandemic in Scotland?

10 A. Well, that's -- that's how Barnett consequentials work,
11 that's how the system operates. And actually the fiscal
12 framework has just been reviewed and the Scottish
13 Government have agreed to a continuation of that.

14 Barnett is effectively a look-back on what was spent
15 and how the division works, and then adjustments are
16 made. So there's constantly money going to the devolved
17 administrations over and above the block grant, and then
18 there will be adjustments made when you look back on
19 what the spending was, and that will be -- affect
20 future -- future payments, some will go up, some will go
21 down. I mean, it's -- that's the nature of the Barnett
22 formula. That's all - that's not -- it shouldn't come
23 as a surprise to Kate Forbes or anyone else because
24 that's always been the nature of the Barnett formula.

25 There was at the beginning though, I remember, you

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1 Q. We've heard from a number of ministerial witnesses
2 within the Scottish Government that considerable efforts
3 were made by them in the period when cases started to
4 rise again, in around September 2020, to seek to secure
5 guarantees from the UK Government that furlough funding
6 would be made available in the event of the Scottish
7 Government's assessment that the situation merited
8 further lockdowns. Were you involved in those
9 discussions and why did those appeals go unheeded?

10 A. I was involved in those discussions with the Chancellor,
11 and I felt that we were tackling the pandemic -- from
12 the Treasury's perspective, furlough was a UK-wide
13 policy, it supported 900,000 jobs in Scotland, it
14 supported 137,000 self-employed jobs in Scotland, and
15 I wanted that money to go directly to the businesses and
16 the people, particularly the self-employed people, who
17 needed -- who needed that money. I wanted it to be
18 a Treasury payment directly to them, because I felt that
19 was the best way to go. I felt that -- I felt, as I've
20 said before, that the virus across the United Kingdom
21 moved in waves, but -- but furlough should be a UK-wide
22 scheme, and it should be determined by the Treasury, who
23 ultimately are responsible for the public finances, and
24 remember we spent the thick end of £400 billion in our
25 response, but it's for the Treasury to determine what

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1 know, clear instructions as -- the Scottish Government
2 were given by, I think it was, Steve Barclay, who was
3 the chief secretary to the Treasury, and he wrote to
4 Kate Forbes a very good letter, which if you want --
5 which we could send to you, where he made it very clear
6 how -- you know, what sums were guaranteed and what sums
7 would be --

8 Q. Well, indeed, Mr Jack, I might be able to help you with
9 that. What Ms Forbes told us was that there was in fact
10 a very useful guarantee given by the chief secretary to
11 the Treasury --

12 A. Yeah.

13 Q. -- that they would get the Barnett consequentials on the
14 projected spending irrespective of actual spend --

15 A. Correct.

16 Q. -- but that that did not occur until the summer of 2020.

17 My question was why did it not occur before then?

18 A. Well, that's a matter for the Treasury.

19 Q. But you were intimately involved --

20 A. But the Treasury -- but the Treasury -- the Treasury
21 determined the payments based on the calculations
22 they're doing, but there's always a flow of funds -- as
23 I say, it's a rolling flow of funds and the adjustments
24 are made on the look-back. That's how the Barnett
25 formula works.

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1 the nation can afford and how long furlough could
2 continue for, and at what percentages, and I felt very
3 strongly we should stick with that because we were
4 talking about billions of pounds of support.

5 Q. Did that not effectively rob the Scottish Government of
6 its ability to decide that there should be a lockdown
7 because it had no guarantee that furlough, an inherent
8 part of a lockdown by that stage, would be paid?

9 A. Well, furlough continued for a lot longer than anyone
10 expected it to, and in that time the Scottish Government
11 had the options to do whatever they wanted to do in
12 terms of restrictions and lockdowns. But furlough --
13 furlough lasted well into 2021, and it was ... the
14 support was, I felt, proportionate at the time, and --
15 and I felt when furlough came to an end, it was --
16 looking at how the vaccine had impacted the spread of
17 the virus or the -- how lethal the virus was, along with
18 the contribution of antivirals, I felt the judgement of
19 the Chancellor in winding down furlough when he did was
20 the right judgement.

21 And as I say, we -- you know, you're balancing the
22 economy with -- with public health, and we -- I think
23 most people looking back on it will think fairly that
24 we, that we extended furlough for a considerable length
25 of time and it gave a huge support to people and

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1 financial support to people at a difficult time.

2 **Q.** Ultimately furlough was extended by the Treasury as
3 a result of the fact that the Scottish Government went
4 public with its position on 1 November 2020, which then
5 led to the Prime Minister announcing that furlough from
6 that point forward, at a time when there was of course
7 a circuit-breaker lockdown in England, would be made
8 available as a consequential. I'm interested in the
9 period before that, Mr Jack, when you said you were
10 involved in the discussion --

11 **A.** I was involved in --

12 **Q.** Could I finish my question, please.

13 **A.** Sorry.

14 **Q.** I'd be interested in the period before that, and what
15 I would like to know is why no guarantees were given to
16 the Scottish Government that if, in the exercise of its
17 public health function, it deemed it necessary that
18 there should be a lockdown, that furlough would be paid?

19 **A.** Well, we -- I was involved in those discussions with the
20 Prime Minister as I -- sorry, I apologise for
21 interrupting you -- and the situation was at the
22 beginning we -- furlough was running for six months. It
23 was coming -- I think, from memory, it came to end at
24 the end of October. We then were -- there was
25 deliberations obviously about how long to extend it for,

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1 Prime Minister behaved, and it certainly wasn't how
2 I was going to behave.

3 **Q.** Well, why didn't you just tell them that when they asked
4 you about the position in September and October then?

5 **A.** Because in September and October we were working out
6 which was the best scheme to go forward for the next
7 phase. Furlough wasn't the only scheme available and
8 it -- other European countries were doing other things.
9 But, you know, there was no suggestion that we were
10 going to ever leave any part of the UK in lockdown
11 without furlough. That was never a suggestion.

12 **Q.** There was, of course, a firebreak lockdown in Wales
13 which went on for 17 days from 23 October. The
14 Chancellor of the Exchequer -- Mark Drakeford, the
15 First Minister of Wales, made a statement to the effect
16 that the Chancellor of the Exchequer refused to fund the
17 consequences of this public health decision taken in
18 Wales, which he described as one of the most misguided
19 decisions of the whole of the pandemic, saying that the
20 Treasury was acting as a Treasury for England, not
21 a Treasury for the UK. Was he correct?

22 **A.** Which date was that in October?

23 **Q.** 23 October is when the Welsh firebreak lockdown --

24 **A.** In 2020?

25 **Q.** 2020, that's right.

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1 and on what terms it would be extended. You know, there
2 would have been different thoughts whether it should be
3 at 80% or 70% or 60%, but it continued on the same terms
4 at -- when it was due for extension, but the Treasury
5 obviously at that time were running the slide rule over
6 it and coming to their decision.

7 But I was always clear in Cabinet that furlough --
8 first of all, we needed to continue furlough for longer,
9 and I was also clear in Cabinet that furlough would
10 be -- carry on being a UK-wide scheme, and we wouldn't
11 regionalise it, because I felt that route -- if we went
12 down that route -- you know, then Andy Burnham's wanting
13 furlough for Manchester and Andy Street's wanting
14 furlough for Birmingham and on it goes, and everyone's
15 having to -- well, different furlough schemes and coming
16 up with different reasons as to why -- you know, and the
17 Treasury lose complete control of the public finances.

18 So I think we made the right decision at the right
19 time but there was at no point -- I think it was a bit
20 of a manufactured grievance by the Scottish
21 Government -- there was at no point any reason that they
22 couldn't, if they had to bring in a lockdown, bring in
23 a lockdown, because there was -- we were never going to
24 say "You're in lockdown and we're cancelling furlough".
25 I mean, that wasn't how the Chancellor behaved, the now

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1 **A.** But we had a furlough scheme.

2 **Q.** Well, that -- his position is that that was not
3 available and there was a refusal on the part of the
4 Chancellor to extend it to Wales over that period.

5 **A.** Furlough?

6 **Q.** Yes.

7 **A.** In October 2020?

8 **Q.** That's correct.

9 **A.** But we had furlough.

10 **Q.** That's not his position.

11 **A.** Well, I don't understand his position.

12 **Q.** If Scotland had wished to have a firebreak lockdown in
13 the autumn of 2020, would it have had furlough made
14 available to it?

15 **A.** Yes.

16 **Q.** Could I ask you some questions, please, Mr Jack, as
17 I have of other witnesses, about your informal
18 communications in the conduct of your business during
19 the course of the pandemic.

20 In your statement you say that you use WhatsApps to
21 communicate with your colleagues; is that correct?

22 **A.** Yes, yes.

23 **Q.** You say that you did not use WhatsApp to discuss the
24 pandemic response in Scotland; is that correct?

25 **A.** Yes.

40

1 Q. What policies did you understand existed covering
 2 ministers in the UK Government with regard to the
 3 retention of information relating to their conduct of
 4 government business during the pandemic?
 5 A. Well, I -- I understood latterly that -- I think you're
 6 referring to WhatsApps and WhatsApp deletion in this
 7 question?
 8 Q. Yes, that's correct.
 9 A. Yeah, no, well, the -- the -- I mean, the position's
 10 quite clear. I, in 2021, with a 64 gigabyte phone, and
 11 no storage capacity on it, I asked a friend how I could
 12 increase my --
 13 Q. Sorry --
 14 A. Do you want me to answer this question?
 15 Q. Just to -- before we get to the actual process, I was
 16 just asking you about what your understanding was of the
 17 obligations. We've gone through with Scottish
 18 Government ministers the very specific obligations --
 19 A. Yeah.
 20 Q. -- on them and I just wanted to understand, from
 21 a UK Government ministerial position, whether similar or
 22 the same obligations existed with regard to the
 23 retention of informal messaging?
 24 A. Well, I wasn't aware of any in 2021.
 25 Q. I'm looking obviously at the period from January 2020 to

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1 And -- and I didn't do it -- just to be clear, I did
 2 not do government by WhatsApp. I'm a person who picks
 3 up the telephone or I go through -- Michael Gove's
 4 office was 30 metres from mine, I would pop through and
 5 have a meeting with him or vice versa, with a -- with
 6 an official present. I'd pick up the telephone to
 7 Ben Wallace to press the case on a MACA -- to get a MACA
 8 decision done quickly if I was in Scotland and he was
 9 somewhere else. That's how I did -- how I do my
 10 business, you've heard it probably from lots of people,
 11 but that's genuinely how I do my business and those that
 12 know me know that's how I do it.
 13 Q. Right. So when you deleted the messages, just to be
 14 clear, your position is that you knew that there was
 15 nothing on those WhatsApp messages which could relate to
 16 your government business in the --
 17 A. Well, I didn't, I think -- to be fair, back in 2021 that
 18 wasn't really a consideration, so -- but I just deleted
 19 it because I wanted my phone to work. And, as I say --
 20 you know, I know there is a WhatsApp group that I was
 21 a part of for a couple of days that -- that -- from
 22 Matt Hancock's -- Matthew Hancock's WhatsApps you have
 23 the detail on that, and, you know, I'm happy to talk to
 24 that, but it was -- that -- I was only feeding in what
 25 the Scottish Government's rules and regulations were to

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1 April 2022, so over that whole period you weren't aware
 2 of any or did you become aware of any?
 3 A. Well, I don't -- I wasn't -- no, I was not aware of any
 4 that ...
 5 Q. And I think you were going on to tell us that there was
 6 a process by which you got rid of some of the
 7 messages --
 8 A. Well, no, I didn't -- I didn't delete some of the
 9 messages, no, I deleted all of them.
 10 Q. Right.
 11 A. I didn't delete all of them from Matt Hancock, which --
 12 you have my messages from him -- or Michael Gove, or
 13 Boris Johnson, I deleted all of them. I deleted all
 14 my What -- because I had -- 16 -- I was told that
 15 16 megabytes had become free on my phone, which, as
 16 I said, hit capacity, and there were lots of -- you
 17 know, obviously photographs and whatever -- you know,
 18 things that were bogging down the -- making it -- the
 19 WhatsApps -- the WhatsApp storage capacity very
 20 demanding. And I deleted WhatsApps from my mother, my
 21 wife, my children, my friends. I mean, I just deleted
 22 all my WhatsApps. Because that created the capacity
 23 that allowed my phone to carry on. I now have
 24 a 512 gigabyte capacity phone and that's made life a lot
 25 better, but at the time I didn't think anything of it.

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1 that -- to that WhatsApp, so they could decide how to
 2 proceed.
 3 Q. I was interested to know, Mr Jack, when you deleted the
 4 messages in 2021 to make the room on your phone as
 5 you've explained --
 6 A. Yeah.
 7 Q. -- whether you took the time to work out whether there
 8 had in fact been any informal messaging, via WhatsApp or
 9 otherwise, using your devices, which would relate to
 10 your role in the management of the pandemic in the
 11 United Kingdom or Scotland?
 12 A. Well, I know -- because I didn't do government by
 13 WhatsApp and decision-making by WhatsApp, I knew that
 14 that wasn't a concern. And when I deleted the WhatsApp
 15 group I referred to, the one that -- that
 16 Matthew Hancock and I were on, I read through it and
 17 there was -- my contribution to it was purely technical
 18 and it was of no relevance.
 19 Q. So if you deleted --
 20 A. And nor was a decision taken.
 21 Q. Yes. If you deleted that group, which of course was
 22 related to the pandemic management, can we be sure that
 23 the other messages you deleted did not contain --
 24 A. Yes.
 25 Q. -- any information that --

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1 A. You could --

2 Q. If I could just finish the question.

3 A. Sorry.

4 Q. Any information that would be salient to the way in
5 which you conducted government business during the
6 course of the pandemic?

7 A. Yes.

8 Q. As regards the telephone conversations and individual
9 conversations that you describe with other ministers, to
10 what extent were the salient points of those
11 conversations recorded on the corporate record of the
12 UK Government?

13 A. So where I would speak to Ben Wallace about a MACA
14 request or speak to Michael Gove or the Chancellor or
15 the Prime Minister I would tell my private office about
16 the conversation and what we may or may not have agreed
17 or what we had disagreed on and that would then be fed
18 in and would be reflected in the advice minute for
19 any -- ahead of any discussions for any Covid-O meeting
20 or -- or ministerial implementation group.

21 Q. Just --

22 A. I'm a delegator, I operated at all times with -- with my
23 office fully in the picture.

24 Q. Just to be clear, I think, when you answered those
25 questions, you referred to some specific things like the

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1 the -- because it's not possible to do a free port
2 structure -- and they then take that information and go
3 back, officials to officials, whether it's in DLUHC or
4 the Northern Ireland Office, in this case -- both DLUHC
5 and the Northern Ireland -- so investment zones are
6 DLUHC, in Northern Ireland Office -- obviously regarding
7 the negotiations. They then go back and cement what
8 I -- what we -- what I think we have agreed.

9 Q. I don't think I'm any further forward in response to my
10 question, Mr Jack. I'm simply trying to ascertain
11 whether, in the conduct of all of your government
12 business relating to the management of the pandemic --

13 A. Yeah.

14 Q. -- you would, as you have described for the MACA
15 requests, have made sure that the salient aspects of any
16 conversations, personal or on the telephone, would be
17 recorded on the corporate record?

18 A. And I said yes. I thought I'd answered that one, sorry.

19 Q. Thank you.

20 A. I wasn't sure about your question, to be honest.

21 Q. It's okay, thank you.

22 I'd just like to conclude by asking you some
23 questions about a matter you've mentioned already, which
24 is a matter, again, we've addressed with some other
25 witnesses, which is to do with the internal border

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1 MACA, which we know about, the Ministry of Defence
2 aspect of things, is your response restricted only to
3 those types of requests or to any government business in
4 the course of the pandemic?

5 A. My response --

6 Q. Because in your response I asked you whether the salient
7 details of those conversations, either in person or on
8 the telephone, were recorded in the corporate record of
9 the UK Government, and in your response you referred
10 only to certain types of conversations, you said,
11 for example, about the MACA requests. Does it -- is it
12 only about those types of requests or does your position
13 as you reflected it apply more generally to the business
14 you conducted, whether to do with MACA or anything else?

15 A. When -- when I conduct business, I inform my office.
16 So, for instance, in the -- in last -- in the last
17 ten days I have had conversations with the
18 Secretary of State for Northern Ireland directly about
19 including Stranraer and Cairnryan in an investment zone
20 for Northern Ireland, as we move towards Stormont
21 hopefully being up and running again, and I had
22 a conversation with Jeffrey Donaldson and I then come
23 back to -- speak to my office directly and inform them
24 that I'm trying to have Stranraer and Cairnryan included
25 in an investment zone for Northern Ireland as part of

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1 between Scotland and England during the course of the
2 pandemic.

3 A. Yeah.

4 Q. Do you consider that it was within the competence of the
5 Scottish Government effectively to close the border and
6 tell people not to cross the border from Scotland to
7 England?

8 A. No.

9 Q. To what extent -- well, can you explain why that's the
10 case as a matter of legal principle?

11 A. Well, UK borders and Border Force are reserved within
12 schedule 5 of the Scotland Act and we have a common
13 travel area, which is very clear in the Scotland Act,
14 and we are one United Kingdom -- and I said before, the
15 virus doesn't respect borders, but --

16 Q. Do --

17 A. -- we are --

18 Q. -- to --

19 A. -- I also said earlier, living in Dumfries and Galloway,
20 many people will live in Carlisle and work in Annan or
21 Dumfries or vice versa, you know, and they -- they are
22 just -- that's their life. And the border, to me, and
23 I'm absolutely sure this is right, is that it's
24 a geographical border it's not a physical border, so
25 there is no border control.

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1 **Q.** Yes, I understand the position. If it were to be the
 2 case that the Scottish Government had asserted that
 3 people could not cross the border, effectively closing
 4 the border, is your position that you understood they
 5 didn't have the legal power to do that?

6 **A.** That -- that was -- that was our feeling at the time,
 7 was that the border had to remain open. I mean,
 8 obviously in a lockdown and a travel restriction area of
 9 maybe -- or -- or if there were travel restrictions of
 10 5 miles, those just -- those travel restrictions were
 11 relevant but -- but, you know, if you lived in
 12 Coldstream and across the bridge in Coldstream was where
 13 you got your newspaper from, that -- and your travel
 14 restriction was 1 mile, you could still go and get your
 15 newspaper. You know, and to -- and I didn't, I thought
 16 the whole border thing was -- played very much to the
 17 trying to appear like Scotland was a separate country,
 18 a land apart. I felt that was the direction of travel
 19 that the Scottish Government were going down.

20 You know, the -- and it became the case also when
 21 the First Minister decided that -- or decreed that
 22 people should not travel to Manchester or Bolton. And
 23 the irony was the prevalence of the virus at the time
 24 was higher in Dundee, I think, than it was in
 25 Greater Manchester, and Andy Burnham -- and I was on the

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1 they thought it was going to play well to their
 2 audience, and -- whoever that may be, and it --
 3 you know, it was a period that we went through but it
 4 wasn't a time when -- you know, it wasn't --
 5 you know ... relations were strained, as I've said
 6 before already, so it was just -- just another thing
 7 where we were saying "Well, actually, you know, there is
 8 not a physical border, there will not be border checks
 9 and border control, that's not happening".

10 **Q.** I suspect, Mr Jack, if the Scottish Government were able
 11 to address your point, they might suggest that the
 12 audience to whom they were playing were the people of
 13 Scotland. Was that not entirely legitimate?

14 **A.** Well, I'm not sure everyone in Scotland would have been
 15 signed up to the idea, and certainly the people in --
 16 in -- in the Scottish Borders and Dumfries and Galloway
 17 weren't necessarily signed up if they needed to cross
 18 the border for business. You know, as simple as that.

19 **Q.** I'd like to ask you about a couple of passages which
 20 were included in the Scotland Office response to
 21 the Inquiry, where they make some suggestions about the
 22 way in which things might be done better in the future.

23 If we could look please at INQ000232507 at
 24 paragraph 126 and 127.

25 I'd be interested in your reflections on these

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1 call the evening we had the meeting, but Andy Burnham --
 2 you could have sold popcorn for Andy Burnham's
 3 performance. He was not best pleased. And he won the
 4 argument resoundingly and the Scottish Government backed
 5 down very quickly. Because the reality was they
 6 couldn't tell people they couldn't travel to Manchester.
 7 That just -- within the United Kingdom they did not have
 8 that power.

9 **Q.** As you've said, there were, of course, general examples
 10 of this at times when the Scottish Government said: the
 11 border is closed, full stop. And more specific
 12 examples: the border is closed if you're travelling to
 13 certain places. And Mr Burnham has already given
 14 evidence about that in a previous module --

15 **A.** Yeah, I mean, it was just -- that was about politics, it
 16 wasn't about anything else.

17 **Q.** To what extent -- you mentioned some discussions to
 18 which you were party, to what extent did you make
 19 the UK Government's position clear in that regard, and
 20 how were these matters ultimately resolved? Because
 21 they did seem to occur more than once.

22 **A.** Well, we -- we pushed -- we just kept pushing back in
 23 discussions. I was quite vocal on the fact that it was
 24 a geographical not a physical border. But, you know,
 25 the Scottish Government had come up with a strategy,

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1 passages, where it says paragraph 126, just the second
 2 half:

3 "In addition, UK departments drafted a large number
 4 of officials into the response from across the civil
 5 service, meaning that knowledge and experience of
 6 devolution often varied, even on a shift-by-shift basis.
 7 This was particularly the case in the early stages of
 8 the response but as the engagement structure settled and
 9 officers from the UKGG were deployed into the COVID-19
 10 Secretariat, this improved greatly."

11 And in paragraph 127:

12 "Embedding an understanding of the devolution
 13 settlements early and at the core of response structures
 14 will allow the UK Government to better engage the
 15 Scottish Government. Future planning should consider
 16 the inclusion of liaison officers from either the
 17 territorial offices of departmental devolution teams
 18 into UK Government departments leading the response to
 19 ensure that senior officials have devolution expertise
 20 available to them."

21 This seemed to us to be a helpful reflection on some
 22 difficulties the UK Government had experienced and I was
 23 interested to try to explore, based on your experience
 24 of engagement with the Scottish Government, whether you
 25 agree with this proposal and how you would see that

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1 working.

2 **A.** Well, I do agree with it, obviously, and I think --

3 I mean, the next emergency, national emergency may be

4 very different, but if -- if it were another -- let's

5 just -- because it's an Inquiry about Covid, let's

6 imagine it's another pandemic.

7 **Q.** Thank you.

8 **A.** I believe that the -- we pulled together the devolved

9 administrations into one centralised -- with -- with the

10 UK Government -- one centralised decision-making body,

11 and we -- we used the devolved powers and the mechanisms

12 within devolution for delivery of response. But the

13 response is agreed centrally, more joined up, if you

14 like, than -- than happened this time. I think this

15 goes right back to one of your very early questions.

16 And -- and I think we -- we could have done a lot better

17 if the emergency response plan had -- or -- or whatever

18 it's called, the lead government department's plan -- if

19 that had been designed with devolution in mind and

20 around public health. I think -- I think that would

21 have been a better way -- and that's a recommendation

22 I make -- a better way would have been to be prepared

23 for that and to have pulled everyone together.

24 And because it was a -- you know, a terrible virus

25 and it was destroying families and lives, it -- it --

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1 Ms Mitchell.

2 **Questions from MS MITCHELL KC**

3 **MS MITCHELL:** Mr Jack, I appear as instructed by Aamer Anwar

4 & Company on behalf of the Scottish Covid Bereaved.

5 Mr Jack, I don't wish to take up any more time than

6 necessary of the Inquiry's time in relation to

7 WhatsApps, so my questions are very brief.

8 The first one of these is: when did you clear your

9 messages?

10 **A.** Well, that's in my witness statement. It was in

11 November 2021, on 15 November -- or the 17th -- it's in

12 my witness statement.

13 **Q.** Thank you, and when you did that, did you consider the

14 information that you held may be relevant to a possible

15 future inquiry, and if so did you have any thought

16 process about "Maybe it would be a good idea to save

17 these to help me recall contemporaneous events",

18 et cetera?

19 **A.** No, I didn't, I was quite keen for my -- obviously, my

20 phone to start working again. More importantly, I knew

21 that I did not take government decisions by WhatsApp,

22 and that will be borne out by the WhatsApps of ministers

23 that you do have. You will see that that was not

24 something that I was in the habit of doing and

25 I certainly had not done.

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1 absolutely, we would have made decisions collectively,

2 I think. We would have been seen to make -- we would

3 have made good decisions collectively, because that's

4 the responsibility as public servants, that's the duty

5 that's upon us.

6 **Q.** And -- that's a very helpful suggestion, Mr Jack, but if

7 this suggestion, a practical suggestion, were to work,

8 it would of course require both the Scottish Government

9 and the UK Government to demonstrate a willingness and

10 actually act in a way --

11 **A.** Yeah.

12 **Q.** -- which sought to try to act in the best interests of

13 the Scottish people rather than --

14 **A.** Yes.

15 **Q.** -- their more parochial concerns?

16 **A.** Yes, and under -- you're absolutely right on that. And

17 under schedule 5, you know, the emergency powers are

18 reserved, and those reserved emergency powers should not

19 be used, in my view, by the UK Government alone, it

20 should be used by pulling together the devolved

21 administrations and teamwork.

22 **MR DAWSON:** Those are my questions. Thank you, Mr Jack.

23 **THE WITNESS:** Thank you.

24 **MR DAWSON:** There are some CP questions.

25 **LADY HALLETT:** There are.

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1 **Q.** Well, we certainly have limited access indeed to some

2 WhatsApp messages that you were involved in.

3 **A.** Yeah.

4 **Q.** But you gave evidence in your written statement,

5 for example, that you recall sending messages to Cabinet

6 colleagues about specific policy matters and I'm just

7 wondering, if we could perhaps take it away from your

8 specific circumstance of your phone not working, do you

9 think it's a good idea if these contemporaneous records

10 are somehow available and kept to be stored so that in

11 the event of a public inquiry those matters can be

12 placed before an Inquiry?

13 **A.** I do, and I think if I could turn the clock back,

14 knowing what I know now, I would have sought a different

15 solution for my lack of storage capacity. I mean, I'm

16 not -- I'm a bit of a Luddite. I'm the only member of

17 the Cabinet not to have any social media accounts.

18 Okay. It's not something I'm -- you know, I -- but

19 that's no excuse, the reality is, you know, I regret

20 that I deleted my entire account. For a number of

21 reasons. I regret it because of the Inquiry, I regret

22 it because actually I hadn't saved some sort of family

23 photographs and bits and pieces that maybe I should have

24 done, but that's -- that's how it -- that's how it

25 transpired because, as I said, I deleted absolutely

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1 everything to get storage capacity. In future, to
 2 answer to your question, it would -- I think these
 3 matters -- all matters relating to an event like this
 4 should be put on -- should be recorded within, within
 5 the offices of the ministers, relevant ministers.

6 **Q.** Moving on, in relation to paragraph 29 of your
 7 statement -- we don't need to bring it up, it's
 8 a question I simply want to ask you about it -- you
 9 said:

10 "My Office would also assist and facilitate other UK
 11 Government departments with the task of consulting with
 12 and liaising with the correct contacts in the Scottish
 13 Government. For instance, early in the pandemic my
 14 officials helped source information from the Scottish
 15 Government as requested by the Department for Health and
 16 Social Care."

17 Can you provide examples of what information the
 18 Department of Health and Social Care asked your office
 19 to obtain. What sort of information were they looking
 20 for?

21 **A.** Well, I will send that to you, what the -- what requests
 22 were there, which are in my witness statement, I will
 23 send you the details.

24 **Q.** What I'm wondering is: are there, for example, specific
 25 examples where things could be done better by collating

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1 UK Parliament or seek implementation of any of those
 2 policies?

3 **A.** No.

4 **Q.** Can I ask you why?

5 **A.** Because it was a policy for the -- for the -- for the
 6 Scottish Government for Scotland and it was for them to
 7 implement, I didn't want to interfere.

8 **Q.** I think though the document itself was about ten
 9 principles that it proposed not internally for itself
 10 but also for the UK Government.

11 **A.** Well, the UK Government had -- the Treasury had their
 12 own strategy, the Chancellor had his own plans, and,
 13 you know, that -- in terms of respecting devolution,
 14 you know, we were respecting devolution, but -- but --
 15 but that -- that broader position was, I would say, was
 16 broadly reserved. I mean, it's always blurred lines
 17 within the devolution settlement but it was broadly
 18 reserved to the UK Government. But it was for -- if the
 19 Scottish Government wanted to follow their -- those
 20 economic plans that they had, which they want to do,
 21 that's for them, but it wasn't -- it wasn't for the --
 22 you know, the Treasury had their own plans.

23 **Q.** Yes, I think it wasn't really -- it wasn't plans, it
 24 wasn't specific plans, it was a group of guiding
 25 principles that they thought would be helpful to state

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1 things, for example, on a database?

2 **A.** So I -- I nearly gave you that answer but I'm not sure
 3 if that was what you were referring to.

4 I -- we were -- we were keen to have data, and I did
 5 press this case with -- with Scottish Government
 6 ministers, we were keen to have data that was able to be
 7 used in an apples for apple -- like -- apples, pears for
 8 pears position across the UK. And if you remember the
 9 10 o'clock news back in -- during the Covid pandemic,
 10 the early stages of the Covid pandemic, it would say --
 11 the stats would come up, on cases and deaths, on the
 12 10 o'clock news, and there would be an asterisk and it
 13 would say below "excludes Scotland". I was very keen
 14 that we got the same information, recorded in the same
 15 way, on a UK-wide basis, and I think that was -- that --
 16 that was certainly something that I was pressing on
 17 behalf of the Department of Health.

18 **Q.** Can I then ask you, in June 2020 the Scottish Government
 19 set out ten principles that it proposed the
 20 UK Government should follow to support the UK economy,
 21 and of course with that Scotland, and public finances as
 22 they began to recover from the impacts of Covid-19.
 23 Did you do any work as a result of that document
 24 being made available? For example, did you consult on
 25 it or discuss it with your colleagues in the

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1 to assist the UK Government to follow to support the
 2 UK economy and public finances --

3 **A.** Well, I mean --

4 **Q.** -- not engage in --

5 **A.** -- if -- if we went through them one by one, we might
 6 find that quite a lot of them we were already doing
 7 anyway, and some of them we may have disagreed with, but
 8 I haven't -- without having them in front of me ...

9 **Q.** I see, but did you do any work on them at the time?
 10 Like, did you think, "Oh, I should maybe speak to
 11 someone about these", or "implement them" or -- did that
 12 thought process come to you or did you simply not engage
 13 with --

14 **A.** The Scottish Government did not send it to me, and I did
 15 not do anything with it.

16 **Q.** The Inquiry has heard evidence from Mr Swinney, he was
 17 unaware of your concern about data being England-only
 18 when some UK decisions were taken. Were you involved in
 19 any part in trying to ensure the easy flow of data?
 20 Because we've heard quite a lot in Module 2 the
 21 difficulties initially, early, about data in Scotland
 22 not being able to be used by the UK Government. Did you
 23 form any part in trying to assist in that process?

24 **A.** Yes, I -- I pressed and my officials pressed to
 25 standardise data across the UK. There has been

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1 a subsequent Bill in Parliament coming forward on data
2 and I'm still trying to get us all on the same datasets
3 going forward. Part of the -- I mean, there was
4 resistance from the Scottish Government, they wanted to
5 measure -- they measure the Covid deaths in relation to
6 those that had contracted the virus differently, and we
7 had to --

8 **Q.** I think by "differently", do you mean in different
9 timescales?

10 **A.** In different timescales, sorry, yes, you're absolutely
11 right.

12 And I was keen that we all got onto the same page.
13 But, you know -- because you weren't comparing apples
14 with apples, as I said earlier. But that wasn't
15 possible bec -- and, as I say, ultimately it was
16 devolved and therefore I had to respect that.

17 **Q.** How quickly were you able to act upon -- it became clear
18 pretty quickly that there were being UK decisions that
19 needed to be made, with England-only data, and a problem
20 with Scotland; how quickly was the Scottish Office, your
21 office, able to react to that and to try to assist?

22 **A.** Well, we -- it was a matter -- I mean, it was
23 a matter -- in the early months it was an ongoing --
24 you know, we were looking at this, the data, the CRIPs
25 as they're called, on a weekly basis, sometimes on

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1 and PPE prices -- remember I was long in business before
2 I came into politics in 2017 and I understand supply and
3 demand -- and PPE prices were spiking, and I wanted the
4 Treasury to be obviously responsible for the purchase of
5 that PPE, which was one of -- that's what happened, but
6 I wanted to be sure that the PPE was fairly distributed
7 across the United Kingdom, and that the Scottish
8 Government weren't having to spend -- you know, in what
9 was an expensive market, spend money that I would rather
10 have been spent on other things. So for that reason
11 I pressed hard for the -- for a -- for a structure that
12 made the distribution of PPE fair and equal.

13 Now, it's very easy to say, well, that should have
14 happened anyway, and it should have -- and it did
15 happen, and it's -- and it's very possible to say that
16 was the only thing that was ever going to happen, but it
17 doesn't change the fact that, you know, I -- there were
18 concerns relayed through officials to my office about
19 fair distribution of PPE and rather than react
20 afterwards, should it have not been the case, and by the
21 way it wasn't -- it was distributed fairly, I got on the
22 front foot and made sure that that was -- rather like
23 I did with the vaccines, the vaccines were stored in
24 England, in --

25 **Q.** Well --

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1 a daily basis, and it was a matter of frustration that
2 the Scottish data was not being submitted.

3 **Q.** You say in your statement -- again, I don't need it to
4 be brought up, but I'll just refresh your memory as to
5 what was said, it said:

6 "My officials also identified that a PPE plan
7 prepared by [the Department of Health and Social Care]
8 did not dealing with the challenging issues of
9 monitoring stock across the UK or the equitable
10 distribution between the four nations and was 'Whitehall
11 centric'. They worked with Scottish Government
12 officials to suggest amendments to make it work for all
13 parts of the UK."

14 Given we now know some of the difficulties that
15 the UK Government has gotten into in respect of PPE, is
16 this an example -- the decision to, as it were, go their
17 own way on PPE, is this not an example where each of the
18 devolved administrations, Scotland in particular, as I'm
19 speaking to you, made a reasonable choice to go their
20 own way rather than it being a problem doing it
21 themselves?

22 **A.** I, I wanted the -- it to be equitable, the distribution
23 of PPE across the United Kingdom, and I was concerned
24 that due to the -- if you like, the might of the -- the
25 broad shoulders of the UK Government Treasury, that --

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1 **A.** -- in -- you want to come on to that, do you?

2 **Q.** No, sorry, I was just hoping to restrict my answer.
3 My Lady is dealing with a very tight --

4 **A.** Oh, sorry.

5 **Q.** -- timescale and --

6 **A.** I'll just say, the same with the vaccines, I ensured
7 that vaccine distribution was fair for Scotland. They
8 were stored centrally in England and available
9 overnight -- to be called overnight.

10 **Q.** I --

11 **A.** The same thing.

12 **Q.** I think the focus of my question was more really to
13 address the question of whether or not the plan -- and
14 it was a plan which had already been produced by the
15 Department of Health and Social Care, which was
16 Whitehall-centric, that had already been done -- was
17 there a basis or do you think there is a basis for
18 suggesting that in fact it was the right way to go for
19 Scotland to simply say "We're going to deal with this
20 now from now on, get our own PPE and deal with
21 distribution ourselves"?

22 **A.** No, because -- because of the spike in prices and the
23 purchasing power as one United Kingdom, I felt it was
24 important that two things happened: one,
25 the UK Government did the purchasing and hopefully got

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1 better prices; and -- and secondly, that
 2 the UK Government bore the cost of that for the
 3 whole UK.
 4 **Q.** Well, no doubt that will come to be examined in
 5 future --
 6 **A.** Okay.
 7 **Q.** -- modules.
 8 You have already indicated to my learned friend your
 9 involvement, as it were, in the Eat Out to Help Out
 10 scheme, and you mentioned involvement, I think, at the
 11 Covid-O meeting. Is that correct?
 12 Can you give us any information on what was
 13 discussed in terms of the needs of and the impact on the
 14 people and business in Scotland, in particular in
 15 relation to Eat Out to Help Out scheme? The reason why
 16 I ask is everybody we've asked to date, almost every
 17 person has said that they were unaware of the scheme
 18 before the Treasury announced it. So it would be
 19 helpful if you're able to give us some insight into what
 20 involvement you had in relation to Scotland --
 21 **A.** Well, I -- I was -- I was at Cabinet when it was
 22 approved. I was keen that it was a UK-wide scheme. My
 23 personal position was it was -- I was keen it was
 24 a UK-wide scheme because I wanted the Treasury to give
 25 support to hospitality businesses in Scotland, who

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1 11.45. Thank you.
 2 **(11.23 am)**

3 **(A short break)**

4 **(11.45 am)**

5 **LADY HALLETT:** We now begin closing submissions.
 6 For those who are following proceedings, just so
 7 they understand, the core participants can make closing
 8 submissions either orally or in writing or both, and now
 9 what's going to happen is four core participants have
 10 chosen to make oral submissions, but they will be
 11 supplemented by their written submissions so they can
 12 just focus on the main highlights.
 13 Ms Mitchell.
 14 **Submissions on behalf of Scottish Covid Bereaved by**
 15 **MS MITCHELL KC**
 16 **MS MITCHELL:** I'm obliged, my Lady. I appear on behalf of
 17 the Scottish Covid Bereaved, as instructed by the
 18 Inquiries team at Aamer Anwar & Company.
 19 At the outset of this module, Counsel to the Inquiry
 20 set out in stark terms the devastating impact of the
 21 pandemic on the people of Scotland, at this time, with
 22 the total number of Covid deaths reported in Scotland up
 23 to 31 March 2022 being 14,130. While it may be tempting
 24 for some to think that the days of Covid deaths are
 25 behind us, in the week ending 21 January 2024 there were

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1 I knew, from their communications with me, were
 2 struggling terribly.
 3 As to the point about the Scottish Government being
 4 taken by surprise, I would have expected that Treasury
 5 officials were talking to Scottish Government officials
 6 about it and about the implementation of it, because
 7 these things can't just happen without proper
 8 implementation and planning.
 9 **Q.** In fairness, Mr Jack, I don't think it was just the
 10 Scottish Government that was taken by surprise but
 11 senior members of the UK Government too.
 12 **A.** Well, I -- I mean, I am also surprised that officials
 13 were not talking to officials within the devolved
 14 administrations about the implementation of it.
 15 **MS MITCHELL:** My Lady, those are my questions.
 16 **LADY HALLETT:** Thank you very much, Ms Mitchell.
 17 Thank you very much, Mr Jack. I don't think I'll
 18 have to call on you again, but thank you for your help.
 19 **THE WITNESS:** Thank you very much.
 20 **(The witness withdrew)**
 21 **LADY HALLETT:** Very well, we shall rise now and I shall
 22 return at 11.40, when we'll hear closing submissions --
 23 would you like 11.45, Ms Mitchell?
 24 **MS MITCHELL:** That might be helpful, my Lady.
 25 **LADY HALLETT:** It's only an extra five minutes, but okay,

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1 23 Covid deaths in Scotland. Many more, some with us
 2 here today, are suffering from the effects of
 3 Long Covid.

4 Whilst during the course of the pandemic some wanted
 5 "a good old fashioned rammy so they could think about
 6 something other than sick people", the bereaved did not
 7 have that luxury. For those whose loved ones died in
 8 hospitals, in care homes or in prison, alone or
 9 surrounded by strangers in face masks and gowns, all
 10 they now have are their thoughts and their memories of
 11 their loved ones. They do not wish them to be just
 12 another statistic or another sick person. For the
 13 bereaved of course they were far more: mum, dad,
 14 partner, husband, wife, brother, sister, son, daughter.
 15 It was in memory of those loved ones that the
 16 bereaved campaigned for a public inquiry, because they
 17 wanted answers. They did not campaign for this Inquiry
 18 to discuss WhatsApps and the minutiae of Scottish
 19 Government guidelines. It is a matter of deep regret
 20 for the bereaved that these important matters have been,
 21 through no fault of the Inquiry, overshadowed by the
 22 absence of WhatsApps.
 23 Some of the best evidence in Module 2 came from
 24 informal communications, unguarded, contemporaneous
 25 messages which helped provide answers to the questions

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1 of what was happening in Whitehall and why. The actions
2 of Nicola Sturgeon, Liz Lloyd, Jason Leitch,
3 John Swinney and others have robbed the bereaved of
4 those contemporaneous messages, and with them answers to
5 questions.

6 The Scottish Covid Bereaved, like many Scots, tuned
7 in almost religiously to Nicola Sturgeon's daily Covid
8 briefings. During the pandemic, many of us saw more of
9 the First Minister and Professor Leitch than we did of
10 our own families.

11 It was at one of these daily briefings that
12 Nicola Sturgeon was asked if she could guarantee to the
13 bereaved that she would disclose private emails and
14 WhatsApps, that nothing would be off limits to a public
15 inquiry. The SCB took her at her word.

16 The Scottish Covid Bereaved say that when
17 Nicola Sturgeon told the Scottish public that she was
18 prepared to give an assurance she would disclose
19 messages that she knew she had deleted, this was not
20 just a failing to be clear in an answer. It ought to
21 have been made clear that she and other Scottish
22 ministers routinely deleted important information
23 relating to the pandemic, and that it was beyond the
24 reach of Freedom of Information legislation and public
25 inquiries.

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1 13 March 2020 to the issue of the stay-at-home order as
2 being ten deadly days of delay. It was with disbelief
3 that the Scottish Covid Bereaved learned that the dither
4 and delay at the heart of the Scottish Government
5 started long before then.

6 On 21 January 2020 Mark Woolhouse, professor of
7 infectious disease epidemiology, contacted Dr Catherine
8 Calderwood, the Scottish Government's Chief Medical
9 Officer. Professor Woolhouse was concerned about the
10 emergence of a new virus. From round about January 10,
11 2020, he thought it was very likely that we would have
12 a pandemic and thought the Scottish Government needed to
13 quickly engage with it. Professor Woolhouse gave
14 evidence of the warnings he gave to Dr Calderwood that
15 the virus was completely different magnitude of the
16 problem in swine flu, the risk of mortality among
17 vulnerable patients, epidemiological modelling predicted
18 at least half of the population would become infected,
19 the gross mortality rate would triple and the health
20 system would become completely overwhelmed.

21 On 26 January 2020 Professor Woolhouse sent
22 a further email to Dr Calderwood setting out the
23 non-pharmaceutical interventions required to deal with
24 the situation. Despite these credible and dire
25 warnings, there was a lack of urgency on the part of the

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1 My Lady, in concluding in relation to this issue,
2 it's hoped that those within the Scottish Government
3 reflect on the fact that each minute this Inquiry spent
4 at these hearings -- very properly, of course --
5 addressing the deletion of WhatsApp messages was
6 a minute that could not have been spent exploring
7 substantive matters, a minute that brought the bereaved
8 no closer to the answers they seek.

9 These past three weeks have revealed, however much
10 the Scottish Government may seek to differentiate itself
11 from the UK Government, that many of the same mistakes
12 were made in Edinburgh as were made in London: a failure
13 to learn lessons from previous outbreaks; a failure to
14 have a proper pandemic plan in place; a failure to have
15 a proper testing regime, if indeed any ability to test;
16 a failure to lock down in time; a failure to recognise
17 the specific impact on health and social care sector;
18 a failure to protect the most vulnerable; and a failure
19 to properly consider the effect of their decisions taken
20 on loved ones, for example, those unable to visit loved
21 ones in hospital, and of course the effect of the
22 transfer of vulnerable people into care homes.

23 In our closing submissions to the Inquiry in
24 Module 2, the Scottish Covid Bereaved described
25 the UK Government's response from the period of

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1 Scottish Government. So frustrated was
2 Professor Woolhouse that he had to email Dame Sally
3 Davies, the UK Government's former CMO, and ask her to
4 get Dr Calderwood in effect to listen to him.

5 We can only wonder how many lives could have been
6 saved if Professor Woolhouse's warnings were taken
7 seriously at the time.

8 The evidence led before the Inquiry has left the
9 Scottish Covid Bereaved with a great many questions
10 played(sic) about the part of Dr Calderwood and the
11 information provided as the main conduit, as she was
12 described, of information on medical matters to the then
13 First Minister. This module is not whole without her
14 evidence, and the SCB look forward to hearing her
15 evidence in due course.

16 The Inquiry will have to consider whether the
17 Scottish Government had the right advisers. During the
18 pandemic, it was clear to anyone who turned on the TV or
19 radio the extent to which First Minister was reliant
20 upon the advice of the CMOs, Professor Smith and
21 Professor Leitch. While these advisers had experience
22 in public health, their backgrounds were in obstetrics,
23 general practice and dentistry. Were they the right
24 experts to help a government fight a deadly disease such
25 as Covid-19?

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1 From the evidence led, it appears that at least one
2 expert did have direct access to the First Minister,
3 Professor Sridhar. The SCBA thanked her for selflessly
4 placing herself in the front line against the pandemic.

5 The Inquiry must turn its mind and consider whether
6 time was spent wasted in pursuit of what may have been
7 an unachievable strategy of zero Covid.

8 The deletion of WhatsApps as aforementioned are
9 symptomatic of a wider culture within the Scottish
10 Government, and that is one of secrecy. Whether in
11 relation to the Nike conference or rugby internationals,
12 the Scottish Government's first instinct was to keep
13 information from the people of Scotland. The Scottish
14 Covid Bereaved will never know how and why decisions
15 were made in relation to gold command meetings, they
16 went unminuted, with no record of the discussions that
17 took place at those meetings.

18 While the First Minister thought that there was
19 undoubtedly a learning point for the Scottish
20 Government, it ought have been obvious to ministers and
21 civil servants that those meetings required to be
22 minuted. The Scottish Covid Bereaved are left with
23 simply a question: what is trying to be hidden?

24 Civil servants boasted of plausible deniability and
25 putting messages beyond the reach of FOIs. The National

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1 The Scottish Covid Bereaved will develop what has
2 been said in our written submissions.

3 It's clear to the Scottish Covid Bereaved that the
4 evidence led has demonstrated that the Scottish
5 Government was too slow to act, that despite their
6 political and constitutional differences they fell into
7 the slipstream of the UK Government and took clear steps
8 to hide information from the people of Scotland.

9 The Scottish Covid Bereaved are not interested in
10 arguments in relation to independence or unionism.

11 They're interested in finding out what decisions were
12 taken in relation to their loved ones and whether
13 different decisions ought to have been taken and what
14 can be learned for future generations.

15 My Lady, the Scottish Covid Bereaved are tired of
16 being in the middle of a political debate. They fight
17 for those who lost their lives to Covid.

18 The Scottish Covid Bereaved hope the legacy of this
19 Inquiry is that the Scottish Government will have in
20 place a proper plan for dealing with the next pandemic
21 when it arrives, and it is in that hope, my Lady, that
22 the Scottish Covid Bereaved suggest a number of
23 recommendations that relate to governance and
24 infrastructure.

25 Now, my Lady, I'm going to mention a few of these,

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1 Clinical Director gave the now First Minister a how-to
2 guide on breaking the rules that the rest of us had to
3 follow. The Scottish Government moved from a Cabinet
4 system to a presidential one where decisions were being
5 taken by a small number of people and rubber stamped.

6 This module deals with government but it did raise
7 and touch on other issues, my Lady, and of course the
8 Scottish Covid Bereaved are aware that further modules
9 will deal with matters particularly in relation to the
10 evidence of Dr Macaskill. But questions obviously posed
11 and what the bereaved are keen to hear about are: were
12 the risks of placing positive patients into care homes
13 not obvious? Why was so little thought given to
14 allowing families to be with their loved ones in their
15 dying moments? In some instances, weeks went by where
16 people went into hospitals, yet loved ones were denied
17 access.

18 A question here is indeed whether or not their human
19 rights, their right to family life, were breached, and
20 my Lady may know that that's already been considered
21 elsewhere.

22 Rather than waiting for Downing Street to act, why
23 was no thought given to how to use Scottish Parliament's
24 public health powers to protect our borders and slow the
25 spread of the virus?

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1 but it's not to be taken in any order of preference or
2 in any way a comprehensive list. The list goes on,
3 my Lady, a lot longer than the 20 minutes allow, but
4 I'll give my Lady a few examples of things that have
5 come forward in the evidence.

6 For example, as a result of the evidence of
7 Professor Paul Cairney about the dissatisfaction of
8 Audit Scotland, it must be possible to establish
9 a system to account for funds from the UK Government
10 spent by the Scottish Government. It ought not to be
11 something that Audit Scotland indicates that they have
12 difficulty following, so there must be some ability to
13 put something in place.

14 In respect of what was said by Mr Macaskill, it
15 appears that an urgent review of the systems, processes
16 and governance of care homes in Scotland are required.
17 Are they fit for purpose?

18 It of course would come as no surprise to my Lady
19 that one of the suggestions is that Scotland has to have
20 its own testing facility, maintained and ready to deal
21 with scaling up, to have a draft written strategy on
22 testing. My Lady will recall the somewhat surprising
23 evidence that was described as an informal policy, and
24 I think my Lady interjected to say that perhaps there
25 hadn't been one, that an informal unwritten policy was

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1 in fact not fit for purpose.

2 Of course, as said before, one of the
3 recommendations the Scottish Covid Bereaved are keen to
4 see implemented is a change to Scottish Government
5 policy requiring retention of any electronic
6 communications which relate to the business of
7 government; and also for consideration to be given to
8 change the FOI policies that are currently in place,
9 because, as we heard in evidence, those are only
10 required of civil servants, and it meant that each
11 individual minister -- with regards to whether or not
12 they were obtempering guidance or not -- decided whether
13 to delete or not to delete their messages.

14 As suggested by expert witnesses McMenamin and Phin,
15 it is suggested that the Scottish Government should
16 consider having an overarching health protection
17 structure to be put in place.

18 Further, as my Lady has heard, flowing through this
19 and Module 2, recommendations in relation to the
20 improvement of data, and particularly data as it applies
21 to healthcare in relation to adult social care and
22 care homes where there seemed to be a particular lack of
23 information.

24 Sheila Rowan suggested -- in perhaps more eloquent
25 terms than we did at the end of Module 2 -- that there

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1 my Lady heard the evidence of the expert who agreed,
2 I think, with my Lady's propositions about the
3 unintelligibility of legislation in respect of what
4 people should do to not fall foul of the criminal law.
5 Of course criminal law has to be Article 7 compliant; in
6 a pandemic, of all times, people ought to be certain
7 that they know what the law is and what behaviour is
8 likely to breach it. Draft legislation could be drawn
9 up in non-pandemic times and adapted, rather than have
10 rushed legislation which was not comprehensible.

11 My Lady, further, the Scottish Covid Bereaved
12 consider that a body should be set up, as with the
13 UK Government, to oversee special advisers. The
14 Scottish Covid Bereaved consider that the special
15 advisers code is not sufficient for purpose, my Lady, to
16 ensure that there is proper consideration given to the
17 oversight of special advisers in the Scottish
18 Government.

19 The Scottish Covid Bereaved consider that there
20 ought to be a review of the Scottish Government
21 personality. Its secrecy, my Lady, is out of step with
22 what the public want. The public want transparency in
23 government, and the FOI jokes show a government
24 unwilling to be scrutinised; and it is clear, my Lady,
25 with difficulties even on obtaining disclosure, that

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1 should be a cross referencing of expertise. I think we
2 called it, as lawyers sometimes do, hot tubbing; having
3 experts from different areas come together to see how
4 their ideas, if implemented, would affect other areas.
5 She suggested a chief advisers group to get an overview
6 and a crossover of policies to improve knowledge across
7 the board, for there to be the CMO, the CSA, the Chief
8 Scientist, the Chief Economist and Statistician, all to
9 liaise together in a one body so that decisions taken
10 could be tested on all those fronts rather than
11 individual decisions being taken; and that, my Lady,
12 could only assist in circumstances where politicians are
13 being asked to balance harms if they have the experts to
14 together looking at those matters and coming, if not
15 with a concluded view, to have those different views
16 expressed.

17 Another interesting feature of Scottish legislation
18 and something the Scottish Covid Bereaved consider
19 should be worthy of recommendations of review is
20 a review of the made affirmative procedure, to consider
21 a restriction on this to ensure that legislature that
22 cuts across human rights can't be made without
23 parliamentary oversight and can't be rolled over to
24 avoid challenge.

25 Staying on the issue of legislation, my Lady,

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1 there must be a better focus placed on allowing people
2 to understand the detail of what goes on. These are
3 meetings on behalf of the Scottish people, for the
4 Scottish people, and there's no reason that there should
5 be any secrecy in that regard.

6 My Lady, I'll conclude, just within time, with two
7 further suggestions.

8 Consideration of what was being described as
9 pandemic budgeting agreement.

10 My Lady will have heard the evidence of Kate Forbes
11 and the efforts that were made to assist in the problems
12 of pandemic budgeting. It's respectfully submitted that
13 if such a body is put up in place, at this time, or
14 a budgeting agreement is put in place to allow the flow
15 of money in an easier way, that would be one of the most
16 basic ways in which issues that don't need to be
17 problematic in a pandemic and don't need to draw focus
18 of time and effort could be dealt with in advance, in
19 order that the focus can be placed simply on the virus.

20 Kate Forbes also mentioned that, in order to provide
21 a proper system of governance, I suppose, it means
22 proper investment in infrastructure of government, and
23 she was clear that this should be done before the next
24 pandemic and we shouldn't be on the hoof trying to make
25 up new systems when they were there.

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1 Before the Scottish Covid Bereaved finalise our
2 submissions in writing to you, my Lady, we wish to
3 ensure that we've considered all the disclosure and we
4 have also listened carefully today to the views
5 expressed by other core participants.

6 My Lady, the Scottish Covid Bereaved are obliged to
7 the Inquiry for coming to Scotland. Indeed, I think
8 members of the Scottish Covid Bereaved have written on
9 their own to express their thanks, not only, my Lady, to
10 those at front of house, as it were, but those behind
11 the scenes who have assisted what has been at times
12 a very difficult experience for them in coming to hear
13 evidence.

14 I conclude simply by saying that those are the
15 submissions at this stage on behalf of the Scottish
16 Covid Bereaved.

17 **LADY HALLETT:** Thank you very much indeed, Ms Mitchell, and
18 indeed we have received messages, and they've been very
19 welcome and very touching. We're very grateful.

20 Mr Friedman.

21 **Submissions on behalf of Disabled People's Organisations by**

22 **MR FRIEDMAN KC**

23 **MR FRIEDMAN:** Thank you.

24 We act for Inclusion Scotland and Disability Rights
25 UK; they are national organisations run by and for

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1 about Covid health risk was a matter of national
2 cultural concern as much as clinical concern. We do not
3 criticise that. But in the midst of an emergency, it
4 was the concern that trumped all else. It meant that
5 despite disabled people already being in a dire state of
6 crisis pre-pandemic, and Scottish Government being aware
7 of that, the impact of the NPIs on disabled people was
8 not sufficiently mitigated.

9 Third, in Module 1 Nicola Sturgeon said that what
10 she worried about literally every day during the
11 pandemic was not so much that the government did not
12 have a plan, but that Scotland did not have the
13 underlying capabilities to discharge a plan.

14 My Lady has now studied the scenarios for
15 approaching lockdown differently, especially Professor
16 Woolhouse's suggested approach of cocooning to protect
17 the clinically vulnerable rather than a universal
18 lockdown.

19 What these alternatives scenarios do not always take
20 into account is the lack of infrastructure and services
21 in Scotland, and in the whole UK, that prevented the
22 state from acting differently. Taking disabled people
23 as the stress tester for the idea, how can you create
24 cocooned supershielding when you do not have the
25 sufficient data, adequate engagement or proper support

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1 disabled people.

2 My Lady, where were the disabled people of Scotland
3 in the pandemic disaster management system? The answer
4 is that, whatever their recognition as citizens, their
5 protection was not solid enough. The notion that no one
6 should be left behind was effectively thwarted before
7 the crisis started. That situation produced a chain
8 reaction across all aspects of decision-making and
9 government services, because everything that followed
10 was reactive government, not proactive, and despite
11 intentions not especially collaborative.

12 Three features of the overall system are worthy of
13 note.

14 First, while health inequalities and their
15 implications for disabled people were recognised in
16 Scotland through human rights policy and public health
17 doctrine, as Caroline Lamb accepted in Module 1 and as
18 this module's evidence makes clear, core pandemic
19 planning and emergency systems encompassing health
20 inequalities did not yet exist in 2020.

21 Second, in this overall lower income and less
22 clinically robust part of the UK, Scotland knew its
23 health limitations, and therefore government put its
24 fear of people dying from Covid above all other harms.
25 Indeed, Dr Smith's position was that Scottish concern

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1 systems for those in care homes or those cared for at
2 home to deliver such a strategy?

3 The proposed national care service would be the
4 beginning of that capability, but in the summer of 2020,
5 let alone the first six weeks of 2020, one-size
6 lockdowns were as good as anywhere in the four nations
7 of the UK could get.

8 What happened once Scotland had to plan and respond
9 to a pandemic from scratch? In that assessment, it
10 finds an important critical friend in Professor Cairney.
11 Of the four harms policy and the general requirement to
12 promote human rights and equality in the National
13 Performance Frameworks, he asked rhetorically: who
14 wouldn't want a human rights approach? His criticism
15 was that the detail of how government made choices about
16 human rights is, to use his language, laudable, but what
17 was far from visible is how the decisions were being
18 made.

19 For disabled people, the answer requires unpacking.
20 Human rights are part of the moral compass of the
21 so-called Scottish model of government and style of
22 politics. The situation is far more complicated in
23 Westminster, where government often expresses itself as
24 ambivalent about human rights issues. The quality of
25 the conversation on disability rights was better in

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1 Scotland, as was the level of awareness of what needed
2 to be done. However, Scotland did not show itself to be
3 particularly progressive in the actual delivery of human
4 rights. The Covid response investigation by the
5 Scottish commission for human rights found that the
6 government could have been better in mainstreaming and
7 cascading human rights compliance across different areas
8 of decision-making and delivery. The Scottish state is
9 considerate in its value of rights, but not yet
10 systematic or necessarily skilled in their
11 implementation.

12 During the pandemic, the government had its four
13 harms framework that conceptualised trade-offs between
14 harms, but it did not from the outset create a discrete
15 Covid plan for disabled people that anticipated and
16 prevented hardship. There was no plan to cater for the
17 foreseeable collapse in care, or to deal with food and
18 other resource scarcity that befell those beyond and off
19 the highest risk list. There was no plan to immediately
20 obviate digital exclusion. To paraphrase
21 Dr Jim Elder-Woodward, government did not prevent
22 excessive utilitarianism in healthcare and/or
23 social care provision, nor did it enroll the DPO as
24 emergency co-responders as part of the plan.

25 Since devolution, Scotland has constructed a new
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1 of the UK, also churns through ministers and civil
2 servants, jeopardising institutional knowledge and
3 continuity. The statement that "equality is the duty of
4 everyone in Scottish Government" is all well and good,
5 but especially in an emergency how does co-ordinated
6 action for marginalised groups get done without being
7 the function of a particular minister and lead group of
8 civil servants? Christina McKelvie, as Minister for
9 Older People and Equalities, could issue a memo to all
10 government reminding it to comply with human rights and
11 to leave no one behind in Covid decision-making, but
12 there was no machinery to drive through a formal
13 disability policy to ensure that Covid decision-making
14 was actually governed by disability rights.

15 Thirdly, whatever the qualities of the relationship
16 between central and local government in Scotland, it was
17 not sufficiently developed to withstand a whole-system
18 emergency, certainly no better than England. Not
19 surprisingly, Nicola Dickie recognised on behalf of
20 Scottish local authorities that partnership with the
21 third sector lacked consistent coverage and could be
22 variable. What is surprising is the repeated references
23 in her statements without any criticism that most local
24 authorities in self-assessments regarded themselves as
25 ready to respond to the needs of vulnerable groups in

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1 machinery of government. How did those structures
2 affect the ability of decision-makers to deliver on
3 their human rights aims?

4 First, the Scottish model of government may be
5 considerably more similar to Westminster than it wants
6 to be, especially during crisis. Professor Cairney has
7 broad observations to offer on this, but for the DPO
8 there is much to be said that as a result of the lack of
9 anticipatory and preventative planning, policy and
10 infrastructure, government veered into centralised and
11 top-down behaviour. This initially led to the relative
12 disengagement from DPO compared to pre-pandemic
13 collaboration; it also led to a number of witnesses
14 being unsustainably positive about areas where Scottish
15 Government was objectively weak, and certainly not
16 significantly better than the rest of the UK. On this
17 we include data in relation to disabled people and the
18 overall quality of inclusive communications. Engagement
19 with DPO for the purpose of co-production and co-design
20 would never have led to such conclusions, or indeed such
21 weaknesses.

22 Secondly, for disabled people it remains unclear how
23 the Scottish directorate system led to their needs being
24 freed from the general governmental tendency to silo and
25 after-think on minority rights. Scotland, like the rest
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1 an emergency, including disabled people. In March 2020,
2 the Cabinet was far too sanguine that this would happen.
3 Local government responders cannot be left to
4 self-assess their own readiness in that way, not least
5 because their optimism bias and states of denial can
6 then become the optimism bias and denial of central
7 government.

8 Turning to expertise.

9 The DPO do not take issue with the integrity of the
10 advice or the degree to which pluralist views were
11 shared about how best to suppress the virus. It was the
12 lack of expert advice on mitigating NPIs that concerns
13 them. The Chief Social Policy Adviser,
14 Dr Carol Tannahill, whose role was to lead in government
15 on the consideration of social harm, has admitted her
16 sense that the capacity of the expert meetings to fully
17 consider and understand the impacts on different
18 population subgroups was less than ideal, and that more
19 weight was placed on statistical modelling and
20 biomedical science than on wider human experience and
21 social science. Even when it came to creating
22 subgroups, they were made for race and ethnicity, and
23 children and young people in education, but not for
24 disabled people, which of course echoes some of the
25 prioritisation seen in Westminster.

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1 Disabled people of Scotland therefore endured
 2 a pandemic paradox in that their situation was
 3 simultaneously recognised and overlooked by government,
 4 and in that respect the weakness of the Scottish model
 5 and style of politics is revealed. Government was good
 6 at speaking of "we" not "I", at galvanising collective
 7 resilience, including civic connectedness; it empathised
 8 with disabled people, and articulated a social model
 9 that disability and vulnerability are both made and
 10 chosen. All of that is positive. But there was a gulf
 11 between aspiration and deed, and it was all the more
 12 experienced by disabled people because government's
 13 actual decision-making was focused so highly on
 14 a medical orientated model of saving life, it was not
 15 particularly inventive or mitigated in its prevention of
 16 social harm.

17 Taking the quality of engagement with DPO as one
 18 indicator of this, there is a consensus in Scotland
 19 amongst politicians, civil servants and stakeholders
 20 that consultation is a good thing and that it is
 21 incumbent on government to build wide policy
 22 communities. Developed engagement with civil society is
 23 regarded as a Scottish political virtue, not just to
 24 enhance the social contract but to improve the quality
 25 of decision-making.

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1 For disabled people, that exemplifies what was
 2 surely missed out on by the absence of co-production
 3 structures. When ground level community networks, local
 4 authorities and central government combine in the
 5 collection of data, that not only binds and builds
 6 trust, but it promotes insight.

7 Professor(?) Freeguard has talked about this in the
 8 conclusion to his report to you. Almost every lesson
 9 learned document has said the same. Pandemics teach us
 10 that data is absolutely an issue of human rights and
 11 humanity. Finding trustworthy and collaborative ways to
 12 know it and use it should become one of the great
 13 priorities of our time.

14 My Lady, in consequence of all these system
 15 weaknesses, levels of protection for disabled people in
 16 Scotland were simply not what they could or should have
 17 been.

18 You have the personal accounts from those on the
 19 impact video. Idrees told you, in his words, his world
 20 was turned upside-down.

21 Dr Elder-Woodward used the phrase "avalanche of
 22 issues" in the emails he wrote with increasing
 23 desperation.

24 The survey of 800 disabled people conducted by
 25 Inclusion Scotland across the month of April 2020 showed

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1 The granting of access, of having a meeting and
 2 remaining in a conversation is valuable, but that is not
 3 co-production and co-design. DPO are not equal partners
 4 in policymaking. Whilst there are exceptions, DPO are
 5 not generally informed about the consequences of their
 6 interventions. There are no feedback loops, agreed
 7 methodology or external review. As DPO do not have
 8 secured funding to do this, they cannot sustain their
 9 seat at the table even when it is given. Engagement, in
 10 Dr Elder-Woodward's terms, is started and ended by the
 11 authority of the state. It is a gift without obligation
 12 or accountability, as opposed to a human right and
 13 a means to make delivery of protection more real.

14 As in the rest of the UK, there were serious
 15 shortcomings of data collection and deployment on behalf
 16 of disabled people in Scotland. The data infrastructure
 17 was minimal in 2020. Public Health Scotland still call
 18 it "a work in progress". As a public health data
 19 specialist, Professor Morris, describes data collection
 20 as "still in the foothills" of where it needs to be and
 21 lacks a sufficient data infrastructure to create new
 22 insights, it is a defining feature of residential and
 23 domiciliary care of how little is known, how much people
 24 are not counted and consequently, whatever our
 25 aspirations, the uncounted count for less.

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1 that 50.4% of respondents were no longer receiving
 2 health or care visits to the home, and that one in eight
 3 of them broke shielding rules out of necessity in order
 4 to acquire food or medicine.

5 Dr Elder-Woodward's final point in evidence was that
 6 human rights mean nothing without social and economic
 7 rights. Recognition of disabled people as equal
 8 citizens will never be enough without redistribution.

9 On this, the Scottish Government points to
 10 an anomaly of devolution. In its current form, Scottish
 11 Government is responsible for public health but, due to
 12 lack of UK Government funding, was unable to fund large
 13 structural responses to Covid; not just prolonged
 14 furlough, but paying the care sector workforce
 15 a sufficient sum not to work, or substantially raising
 16 carers' allowance including the capacity to pay for
 17 temporary carers to step in when the voluntary carers
 18 caught Covid.

19 However, the Scottish commission on human rights and
 20 the Feeley commission on social care have both made it
 21 clear that Scottish Government must be disciplined to
 22 find ways to secure social and economic rights, to the
 23 extent that it has the power.

24 For instance, there is a human rights method to
 25 co-produce and co-design the way that budgets are made

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1 and spent. At the early stages of Covid, Scottish
 2 Government announced the £350 million that would be made
 3 available to support depleted local services.
 4 Similarly, £100 million was released to councils to stop
 5 social care from being withdrawn or reduced. Obviously
 6 these are important sums, but the money was not
 7 accompanied by sufficiently detailed programmes of how
 8 to channel it to the harder to reach, and how to
 9 transparently audit its effectiveness. It was not
 10 designed with and for DPO and disabled people, who would
 11 know how to do that. Its result was not as sufficiently
 12 redistributive or effective as it could have been.

13 My Lady, where does that then leave us, midway in
 14 your journey across this country's four nations of Covid
 15 government response? In the Westminster module to this
 16 Inquiry, the DPO challenged the extent to which the UK
 17 state ignored their rights. Now in this module they
 18 challenge the extent to which the devolved aspect of the
 19 state in Scotland has failed to deliver on their rights,
 20 despite wanting to do so. Declaring that government
 21 cares about human rights, which is indeed the case in
 22 Scotland, is not enough.

23 These governors in Scotland must therefore, we say
 24 with respect, acquire the competence and the systems to
 25 deliver on their values. The DPO see full incorporation

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1 about caring and being cared for, and that we should
 2 favour such politics, economics and systems that sustain
 3 that way of relating to one another.

4 The evidence in this Inquiry lays bare that the
 5 pandemic and its countermeasures were wretchedly unjust.

6 So, as you continue your journey, we ask you to keep
 7 thinking about how we all are vulnerable to some degree
 8 at some time, that the capacity to care is at least as
 9 fundamental to what it means to be human as the capacity
 10 to reason.

11 And so, to do justice to the unequal harms of Covid,
 12 this Inquiry, along with the public it serves, must find
 13 ways to enable the ethics and practice of mutual care to
 14 become both more possible and more sustainable.

15 **LADY HALLETT:** Thank you very much indeed, Mr Friedman, very
 16 grateful.

17 I think it's Mr Phillips next.

18 **Submissions on behalf of the National Police Chiefs' Council**
 19 **by MR PHILLIPS KC**

20 **MR PHILLIPS:** My Lady, by this time you'll be more than
 21 familiar with the roles and function of the NPCC, and
 22 there is, I think, no need for me to remind you of any
 23 of that. And you know too that in this module it
 24 represents the interests of the Police Service of
 25 Scotland, which again I'll refer to as Police Scotland,

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1 of the UNCRPD as a means to institutionalise their
 2 rights more formally, and for government to learn to
 3 better respect human rights. To return to
 4 Professor Cairney's critique, justiciable rights are one
 5 of the means that ensure that words become deeds.

6 But what of this suggestion that human rights will
 7 never be enough without social and economic rights, that
 8 the woes of Covid governance essentially come down to
 9 economic determinism, that there has been a failure of
 10 the dominant free market philosophies in the wealthier
 11 western nations to protect the poorer parts of their
 12 populations?

13 My Lady, we are in the nation of Adam Smith, and the
 14 city that many in this room would tell you is the
 15 birthplace of the enlightenment. Smith may be famous
 16 for extolling the virtues of the invisible hand of the
 17 free markets in his *The Wealth of Nations*, but his
 18 earlier book on morals, *The Theory of Moral Sentiments*
 19 published in 1759, has something to say about the ethics
 20 of care as the source of both a good life and good
 21 governance. He told his 18th century audience that the
 22 secret of happiness was to be loved and to be lovely.
 23 Broadly translated into modern language, that accords
 24 with a submission we have already made to you, that the
 25 principal value of good government should be to care

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1 And finally you know that, as I predicted in my opening
 2 submissions, policing has played a very minor part in
 3 the evidence which you've heard here in the last weeks.

4 So in these brief closing submissions, I'd like to
 5 highlight some of the themes which have emerged from
 6 that evidence. But before that, if I may, may I just
 7 make some points by way of context.

8 The first is that, of course, most of the challenges
 9 faced by policing during the pandemic had to be faced by
 10 the police throughout the UK. So the experience of
 11 Police Scotland mirrors, to a very large extent, the
 12 experience of the English forces which you heard about
 13 in Module 2, and which will no doubt be repeated in what
 14 you hear in the next two modules.

15 My Lady, that leads to my next general point, which
 16 is that the work of the police in Scotland and elsewhere
 17 during that pandemic encompassed far more than the
 18 question of the enforcement of the coronavirus
 19 regulations, which features as a sub-issue on your list
 20 of issues in this module, as it did in Module 2.

21 Normal policing activity had to carry on, so far as
 22 possible, despite the difficult conditions, and
 23 of course police leaders knew that it would continue to
 24 carry on once the pandemic came to an end, whenever that
 25 was. Which takes me to my final general point which, in

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1 my submission, has to be borne in mind when considering
2 all questions concerning policing during the pandemic,
3 and it's that in this country we have policing by
4 consent.

5 In the specific context of the Covid regulations in
6 which the police found themselves in the unfamiliar
7 territory of public health policing, the formidable task
8 faced here in Scotland, as in every part of the UK, was
9 to encourage the public to comply with the regulations
10 whilst also retaining their trust.

11 So turning, then, to the evidence about policing
12 which you've heard in this module, I'd like to start, if
13 I may, with the NPCC's four Es guidance, which was
14 adopted at the start of the pandemic by Police Scotland
15 and from which, as you've heard, the police never
16 wavered during the various stages of the crisis.

17 Underpinning that guidance was the same fundamental
18 principle of policing by consent. The aim of the
19 guidance was compliance and not enforcement, which was
20 and remained the last resort.

21 The statistics which you've heard in the evidence
22 suggest that the guidance was effective and successful
23 in achieving that aim. And here we are on firm ground
24 because of the CVI system, which was established by
25 Police Scotland in the early days of the pandemic, with

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1 they took to their work throughout the course of the
2 pandemic.

3 There's perhaps no better example of that approach,
4 you may think, that the independent Advisory Group on
5 Police Use of Temporary Powers, the IAG, about which
6 you've heard in evidence.

7 It was established early on in order to assist the
8 police in the difficult task they faced in dealing with
9 these novel and often changing regulations, and to give
10 assurance to the public via the Police Authority to
11 which it reported. It met regularly during the pandemic
12 under distinguished and independent leadership. Its
13 membership, as you've heard, was varied and expert. And
14 Police Scotland were able to draw on its work as the
15 pandemic continued and, as I noted in my opening
16 submissions, they also set up an extensive lesson
17 learning exercise so that best practice could be
18 identified and any necessary changes implemented in
19 a process which continued after the crisis had passed.

20 My Lady, we'll put in detailed written submissions
21 next month, but at this stage, and having drawn out some
22 of the main themes of the evidence you've heard here, my
23 submission to you is that Police Scotland are to be
24 commended and not criticised for the way in which they
25 met the challenge they faced during the pandemic.

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1 great foresight if I may say so, and which recorded all
2 encounters between the police and the public in relation
3 to the regulations, ie each of the four Es. And the
4 data generated as a result shows that the vast majority
5 of encounters were resolved before the fourth E,
6 enforcement, was reached.

7 The police's figures, which may indeed be
8 conservative, suggest that 88% of such encounters were
9 resolved short of enforcement, and you heard the current
10 First Minister say that the figure might be as high
11 as 94%.

12 My Lady, it follows from this that when considering
13 the evidence concerning fixed penalty notices given by
14 non-police witnesses last week, you're concerned with
15 a tiny minority of the occasions on which the police
16 interacted with the public in relation to the
17 regulations, and that means in turn that all of the
18 statistical analysis subsequently produced in which the
19 total number of FPNs has been broken down by reference
20 to certain categories of recipient, is itself concerned
21 with small percentages of that small minority of cases.

22 Now, this academic and analytical effort was
23 of course only made possible because Police Scotland
24 provided the data in a way which was, I'd suggest,
25 consistent with the open and transparent approach which

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1 **LADY HALLETT:** Thank you very much indeed, Mr Phillips.
2 Mr Mitchell, I think you complete the submissions.

3 **Submissions on behalf of Scottish Ministers by MR MITCHELL**
4 **KC**

5 **MR MITCHELL:** Thank you, my Lady. These are the oral
6 submissions on behalf of the Scottish Government.

7 To begin where this module began, three weeks ago,
8 with the impact film, the poignant testimonies, together
9 with the evidence of Jane Morrison, all of whom spoke
10 with palpable love for those whom they had lost, could
11 not fail to move, nor could anyone have but the greatest
12 sympathy for those who suffered and suffer today from
13 Long Covid or mental health issues as a result of this
14 virus.

15 Their participation in the film and their evidence
16 showed a bravery that an onlooker may not fully
17 understand and that perhaps we who appear regularly in
18 courtrooms across the country do not always appreciate
19 or come to take for granted.

20 It is of course by continuing to speak of the people
21 we have lost that we keep their memories fresh and
22 alive, so on behalf of the Scottish Government we pay
23 tribute to the representatives of Scottish Covid
24 Bereaved who have attended these hearings over the last
25 three weeks. We also pass our deep sympathies and

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1 condolences to the others, the many thousands who have
2 lost loved ones, who have suffered and who continue to
3 suffer.

4 What more can the Scottish Government do than offer
5 its sympathies? Well, it can learn. The Scottish
6 Government does listen, it does learn, and it does
7 adapt. Throughout the pandemic, the Scottish
8 Government's prime focus and intention was to protect
9 the public, the people of Scotland, as best it could
10 from the harms of the disease. The Scottish Government
11 acknowledges that it did not get everything right.
12 Where there were missteps, it deeply regrets them.
13 Decisions were taken in good faith. Some, and
14 acknowledging the limitations of a hindsight judgement,
15 would be taken differently today.

16 It is important to remember, as we have heard many
17 times, that there was no single simple and certain way
18 to respond. The very fact that so many different views
19 have been expressed on the steps and measures taken, so
20 many different opinions on what should or should not
21 have been done by the Scottish Government and the other
22 governments of the four nations surely demonstrates this
23 very point.

24 In this oral closing statement, the Scottish
25 Government revisits the themes that it set out in its

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1 support and incentives for employers and workers would
2 have been essential. So, practical financial
3 considerations would have remained.

4 However, linked to this and an issue which may merit
5 consideration, is how devolved governments can have the
6 conditions in place to provide the flexibility and the
7 real ability to respond to a future pandemic in a way
8 that suits the particular demographics of that country.
9 In practical terms, if the Scottish Government felt
10 compelled to put in place a stay-at-home requirement in
11 a future pandemic, how would the UK-held funding and
12 administrative capacity for essential supporting
13 features such as furlough be guaranteed?

14 There were many distressing situations that were
15 caused by the virus and the measures taken to limit its
16 spread. The situation specific to care homes caused
17 both by the virus and by the measures taken to limit the
18 spread was captured in the evidence of Dr McMenamin and
19 Professor Phin. The dilemma facing decision-makers was
20 set out in the evidence of Ms Jeane Freeman. I do not
21 repeat that here, except to note the point that studies
22 such as the PHS report on discharges to care homes
23 referred to by Professor Phin showed that discharge from
24 hospitals was not the driving factor in care home
25 outbreaks in Scotland. Care home size was much more

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1 opening statement, and makes a number of observations on
2 the evidence that has been heard, which it ties in with
3 the themes that were identified by Mr Dawson on Day 1 of
4 the module. It does so in order constructively to
5 assist the Inquiry in making recommendations, which will
6 help a future Scottish Government in responding to the
7 next global health emergency. A fully considered
8 written statement will be provided to the Inquiry by
9 23 February.

10 So the first theme that we looked at in the opening
11 statement was the period January to March 2020.
12 Ministers recognised that a great deal of evidence has
13 been led in respect of the timing of the first
14 intervention to stop the spread of the virus. Knowing
15 what is known now, Scottish Ministers would have wished
16 to move faster in March 2020 in issuing a stay-at-home
17 instruction. The evidence before the Inquiry shows that
18 the medical and scientific advice which the Scottish
19 Ministers had access to came through the UK's scientific
20 advisory structures, principally by way of the COBR
21 briefings. That scientific advice did not recommend
22 lockdown until very shortly before that decision was
23 made.

24 In the context of a lockdown by Scotland,
25 independent of the rest of the United Kingdom, financial

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1 strongly associated with the risk of an outbreak than
2 all other care home characteristics, including hospital
3 discharge.

4 Nonetheless, the lessons of having a testing
5 infrastructure in place and the need to prioritise some
6 of the most vulnerable in our society are there for all
7 to see.

8 The second theme that we looked at in the opening
9 statement was leadership, the underpinning structures
10 and decision-making. It is no part of our submission to
11 say that every decision taken by Ministers was correct,
12 but we invite the Inquiry to accept that Ministers took
13 their decision-making duty seriously. We do not believe
14 that there is evidence that could contradict that.

15 The evidence also showed that they put in place
16 structures and systems to give them access to extensive
17 and integrated expert advice, all to support rapid
18 decision-making.

19 Important decisions were taken at Cabinet, unless
20 Cabinet took the view that it was proper to delegate
21 that responsibility to the First Minister or to the
22 Deputy First Minister. The ultimate -- structures were
23 put in place to ensure that Ministers, as the ultimate
24 decision-makers, received those balancing factors and
25 that due weight was paid to all of them.

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1 Evidence of Cabinet decision-making and the
2 rationale behind and supporting those decisions is
3 contained in the many detailed Cabinet papers which
4 the Inquiry has. The Scottish Ministers would welcome
5 the Inquiry's consideration of these. They identify
6 when decisions were taken and the supporting information
7 that Ministers had access to. We will set out the INQ
8 numbers for these Cabinet papers and the related
9 material when we come to submit our written submission.

10 In relation to informal messaging it is undeniable
11 that the messages show people working together
12 constructively and intensely at all hours of the day and
13 night to support Ministers in their decision-making.
14 Further, as Lesley Fraser pointed out, it would in
15 practice be near impossible for a decision to be carried
16 out by or on behalf of government without evidence of
17 that appearing in formal records.

18 The Inquiry has material before it which will enable
19 it to ascertain whether the decisions carried out by the
20 Scottish Government are those recorded in its formal
21 systems.

22 In compliance with legislation, policies and plans
23 on document retention and management have been in place
24 for several years. As Lesley Fraser explained, it is
25 taken very seriously. The requirement to transfer the

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1 different from that of the UK Government for England for
2 good reason and not for the sake simply of being
3 different.

4 The Scottish Government did not pursue a zero Covid
5 policy -- which, as we heard from the former
6 First Minister yesterday, was not meant literally -- to
7 the exclusion of consideration of the harm that that
8 would do to the economy and society, including
9 disproportionate harm to those who experienced
10 inequalities. Nor, in late 2020 and early 2021, did it
11 make the same mistakes twice. Rather, it anticipated
12 the potential for a second wave and put in a carefully
13 thought through set of NPIs drawing on experience of
14 earlier in the pandemic.

15 Nor, later in 2021, did it simply give up. It put
16 in place a strong NPI response, but its options were
17 constrained by the funding of the furlough scheme. More
18 generally, the Scottish Ministers sought to suppress the
19 virus to a very low level while minimising broader
20 harms. In the autumn of 2020, for example, therefore,
21 Ministers had to consider both the need for more
22 stringent actions to suppress the second wave and the
23 additional harm that stringent action would entail,
24 including to those who felt these effects most keenly.

25 Similarly, in the autumn and winter of 2021, facing

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1 salient points of any business discussion and/or
2 decision to the formal records system is set out. The
3 chief difficulty appears to have been that not all
4 individuals followed it or there was inconsistent
5 interpretation of its meaning.

6 It is right and proper that the Scottish Government
7 acknowledges both the Inquiry's and the public's
8 consternation with regard to informal messaging use
9 during the pandemic. It is clear to the Scottish
10 Government that it must learn lessons in this area. And
11 as the First Minister said in evidence last week,
12 an external review has been commissioned.

13 The third theme that we looked at in the opening
14 statement was the Scottish Government's strategies and
15 decisions during the pandemic. As this Inquiry has
16 recognised, by the very existence of Modules 2A, 2B and
17 2C, devolved governments are responsible for a large
18 portion of the pandemic response across three of the
19 four nations of the UK. The Scottish Ministers not only
20 had the powers to take the decisions they did in the
21 pandemic, but they had the duty to exercise these powers
22 and to reach decisions on the basis of the facts and
23 circumstances in Scotland. Often those facts and
24 circumstances were different from those prevailing in
25 other parts of the UK. That approach was significantly

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1 still more infectious variants but also beginning to see
2 the effects of the vaccines in weakening the link
3 between infections and deaths, Ministers had to consider
4 all four harms and not solely the pressures faced by
5 hospitals, significant though these were, while they set
6 out their strategy. As Professor Sir Gregor Smith, the
7 Chief Medical Officer, noted in his evidence, we should
8 bear in mind that risk is dynamic, it altered over time
9 influenced by therapeutics and the vaccine which came
10 into play at about that point, thus the balance of harms
11 had changed and with it the proportionality of certain
12 measures.

13 Outcomes were also different, as the Module 2
14 evidence of Sir Ian Diamond, chief executive of the
15 UK Statistics Authority, showed. In particular,
16 age-standardised mortality rates, or ASMRs, take account
17 of differences in population size and age structure, and
18 therefore allow comparisons to be made between the
19 four nations in a way that other mortality outcomes data
20 do not. A macabre statistic, but Sir Ian's evidence
21 showed that over the period March 2020 to February 2022,
22 Scotland had the lowest age-standardised mortality rates
23 for deaths involving Covid-19 of the four nations, at
24 124.9 per 100,000 people compared to a rate of
25 145 per 100,000 people for England, not a statistic to

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1 be trumpeted but prima facie evidence that outcomes were
2 different.

3 Ministers were aware throughout the pandemic of
4 their duties under equalities legislation and of the
5 importance of impact assessments to decision-making.
6 But the decisions taken in relation to inequalities
7 were, as with all decisions during the pandemic, not
8 easy. The Scottish Ministers recognise that the
9 interventions to limit the spread of Covid-19 themselves
10 caused harm, exacerbated inequalities and
11 disproportionately affected the most vulnerable people
12 in Scotland. Ministers sought to consider the full
13 range of impacts of those interventions and to ensure
14 that they were necessary and proportionate. Ministers
15 sought to minimise the harm experienced by everyone in
16 society, and especially those at greater risk of harm,
17 not only from the virus but from the isolation, reduced
18 access to care and support, and other impacts of
19 suppression measures.

20 But the Scottish Government recognises that,
21 pandemic or no pandemic, more has to be done for the
22 most vulnerable in society, as was made clear in the
23 evidence of Dr Donald Macaskill of Scottish Care and
24 Dr Jim Elder-Woodward.

25 The fourth theme that we looked at in the opening
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1 devolved responsibilities.

2 That aside, the Scottish Government wishes to place
3 on record its thanks and appreciation for the work of
4 those in all four governments and of scientists,
5 academics and clinicians more generally from across
6 the UK who worked together to share data and expertise
7 in order to understand and suppress the virus.

8 The fifth theme that we looked at in our opening
9 statement was data. When this pandemic initially came
10 to our shores, there were limited data available.
11 Public Health Scotland and the Scottish Government
12 worked at pace and under great pressure to draw data
13 together in order to provide ministers with the
14 information they required to take informed decisions.
15 We note the Public Health Scotland dashboard is one
16 example of this. Evidence has shown that at times
17 access to data was not as timely and straightforward as
18 it could be. The need for further improvements to UK
19 and Scottish data infrastructure and the processes in
20 place to access data were identified and the Inquiry may
21 wish to highlight the need for this work to continue at
22 pace.

23 The sixth and final theme that we looked at in our
24 opening statement was public communications. No
25 decision or action by government can be effective if not

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1 statement was working with other governments and local
2 authorities. The Scottish Government recognises that
3 the best way to work with partners and stakeholders in
4 a crisis is to invest in constructive, effective
5 relationships in calmer times and to listen and engage
6 with those close to local communities.

7 We acknowledge the evidence of the STUC and COSLA
8 that the Scottish Government went to lengths to engage
9 with employees and local authorities while accepting
10 that the intensity of the emergency affected both the
11 amount and the quality of the engagement that was
12 possible.

13 It is, we think, fair to say that a recurring theme
14 of governmental exchanges was the concern of the
15 devolved governments that decisions on funding and the
16 furlough scheme were driven by the UK Government's
17 decisions for England.

18 We have already set out that we consider that
19 matters in the gift of the UK Government, such as
20 flexibility in funding arrangements for devolved
21 administrations in emergencies and for schemes such as
22 furlough, may warrant a particular focus.

23 Ministers are also clear that in a future pandemic
24 devolved governments ought to be true partners in
25 situations where decisions taken at a UK level affect

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1 effectively communicated, whether in relation to
2 adherence with NPIs or persuading people to come forward
3 for initial, second and booster doses of vaccine.

4 Professor Reicher gave supportive evidence of the
5 way in which the former First Minister delivered her
6 public messages. Trust in the government's messages
7 remained high and citizens undertook significant
8 sacrifices as part of the national effort to limit the
9 spread of the virus.

10 My Lady, those are our overall submissions, which we
11 will supplement in writing, but before I sit down,
12 certain thanks are due.

13 On behalf of the Scottish Government, I take this
14 opportunity to thank you and your team for coming to
15 Scotland, for your hard work in delivering this module,
16 but of course the module could not have been run without
17 the support of the staff, the ushers, the managers, the
18 witness support staff and the technicians from RTS, and
19 we thank them for their assistance to us over the past
20 few weeks. We thank the witnesses who gave of their
21 time to come to give evidence. We thank the many
22 Scottish Government employees, the partners, including
23 the other three governments of the UK, and the
24 stakeholders, who worked tirelessly to steer Scotland
25 through the pandemic. And most of all we thank the

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1 people of Scotland for their trust, forbearance,
2 co-operation and fortitude during a very difficult and
3 at times very dark period in our nation's history.

4 Thank you.

5 **LADY HALLETT:** Thank you, Mr Mitchell.

6 Mr Dawson.

7 **Closing remarks by LEAD COUNSEL TO THE INQUIRY for MODULE 2A**

8 **MR DAWSON:** My Lady, I have some very brief closing remarks.

9 First of all, a clarification.

10 Yesterday during the evidence of Ms Sturgeon she was
11 taken to a document, INQ000292564. It might help if we
12 can have that put up. This was, you will recall,
13 my Lady, an email chain beginning on 19 July.

14 We can see on page 6 an email that -- which
15 indicates that the Deputy First Minister, Mr Swinney,
16 had requested a call to discuss international travel and
17 that the then First Minister was copied into this chain.

18 We then looked at another email connected to this
19 subject on page 5. This email reads, as your Ladyship
20 will recall:

21 "It won't matter how much ministers might justify it
22 on health grounds, the Spanish Government will conclude
23 it is entirely political; they won't forget; there is
24 a real possibility they will never approve EU membership
25 for an independent Scotland as a result."

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1 adduce in evidence and publish the documents set out in
2 the final list of materials on the Inquiry's website.

3 If your Ladyship will indulge me for one further
4 moment, may I also please pay tribute to all of the
5 members of the Inquiry team, who have worked tirelessly
6 in playing their part in the conduct of these important
7 hearings for the people of Scotland. They all have my
8 thanks for their work and their dedication in conducting
9 it despite, in the case of those who journeyed north,
10 the cold, both outside and at times inside this
11 building.

12 In particular, may I express publicly my thanks to
13 the paralegals, the solicitor team, and my learned
14 juniors, Mr Tariq, Mrs Arlidge, Ms Condron, Ms Painter
15 and Mr McWhirter. All members of the legal team have
16 given their all in the delivery of these evidential
17 sessions. We hope that those who have lost loved ones
18 in the Covid-19 pandemic, and those who have otherwise
19 been harmed by the virus or the countermeasures taken by
20 government to fight it, agree. They deserve no less
21 than our very best.

22 **Closing remarks by THE CHAIR**

23 **LADY HALLETT:** Thank you very much indeed, Mr Dawson, I'm
24 very grateful.

25 That completes the evidence and the oral submissions

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1 I can clarify that this particular email was sent to
2 Ken Thomson, the director-general for constitutional and
3 external affairs, from a Scott Wightman, the director
4 for external affairs, both civil servants, and not
5 Mr Swinney or his office.

6 With your permission, the Inquiry has already
7 adduced in evidence and published a number of documents
8 through the course of these hearings. In short, this
9 comprises pages of documents brought up on the screen
10 during the hearings, and the statements of witnesses who
11 have given oral evidence.

12 As with previous modules, we expect you will
13 inevitably wish to have in evidence a wider body of
14 material than this for the purposes of writing your
15 report. The M2A team have provisionally identified
16 a list of additional documents which we will seek your
17 permission to adduce.

18 These include around 114 statements of witnesses who
19 have not given oral evidence, but whose statements you
20 may wish to rely upon when compiling your report. We
21 propose to circulate a list of these documents to
22 core participants, so they have an opportunity to review
23 it and either object to or propose additional documents
24 for inclusion on the list.

25 Thereafter, with your permission, the Inquiry will

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1 in this Module 2A. The team and I will now consider all
2 the material, the written material already published,
3 the written material to which Mr Dawson has just
4 referred, and of course the oral evidence and the oral
5 submissions.

6 We will begin drafting the report that will be
7 published as soon as reasonably possible. The entire
8 Inquiry team know of my determination to make my
9 findings and any recommendations public as soon as
10 possible, and we will do that, and we will work hard.
11 I think the ability to work hard by the Inquiry team has
12 been proved by the efforts of the Module 2A team, but
13 I'm sure, as everybody will understand, we must do it
14 properly. So we'll get it out as soon as we can, but we
15 will do it properly.

16 I'm glad that we were able to bring the UK Inquiry
17 to Scotland, even if I was accused by one politician of
18 taking my rock band on tour. The clue is in the name,
19 it's the UK Covid Inquiry, and that's why it was
20 important for us to bring the Inquiry to Scotland.

21 I too would like to thank the people Mr Dawson has
22 thanked and Mr Mitchell has thanked.

23 I'd like to thank the people of Scotland for the
24 warmth of their welcome, if not, as Mr Dawson mentioned,
25 the warmth of the weather and sometimes, as he said, the

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1 warmth of this building.
 2 I would also like to thank the witnesses for their
 3 co-operation, some of whom I've imposed on more than
 4 once in this Inquiry; the Inquiry team for their
 5 extraordinary industry; the core participants for their
 6 very considerable help; the technical team, who have
 7 done an amazing job; the staff here at the Edinburgh
 8 International Conference Centre; and of course the
 9 members of the public who have followed us here in
 10 person -- I think we've got at least one person who has
 11 been with us throughout. There may be more. I'm sorry
 12 if I hadn't spotted you. Many of you have been here an
 13 awful lot -- and those who followed online.
 14 Without the help of so many of you, we could not
 15 have completed these hearings on time, and I do know
 16 considerable effort has gone into everything that's been
 17 done; and in my view this Inquiry team, with the help of
 18 the people I've mentioned, have I hope produced the kind
 19 of results that the people of Scotland would have
 20 wanted.
 21 So that completes this module.
 22 The next substantive hearings of the Inquiry, the
 23 Covid Inquiry UK, will be in Cardiff on 27 February for
 24 Module 2B, where we shall be considering key
 25 decision-making in Wales.

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1 So thank you, everybody.
 2 (12.58 pm)
 3 (The hearing concluded)
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