

Module 2

**CLOSING SUBMISSION ON BEHALF OF DISABLED PEOPLE'S ORGANISATIONS:
DISABILITY RIGHTS UK, INCLUSION SCOTLAND, DISABILITY WALES & DISABILITY
ACTION (NORTHERN IRELAND)**

INTRODUCTION

1. CHOICE: Disabled people¹ have lived through and died of Covid with the knowledge that what happened to them, as 60% of the Covid fatalities, and what happens to them in the future, as 20% of the population, is largely a matter of political and social choice. Like other groups who were disproportionately impacted upon by the state's pandemic response, many Disabled people are socially excluded and internally isolated. For Disabled people, Covid's primary revelation is that they are de facto not full citizens. Their governing – as misgovernance – is characterised by being overlooked and all too often an afterthought. For them, and those that care for them, neither Covid nor this misgovernance is over.
2. TREATMENT: The written submissions are split into two parts. PART A deals with the treatment of Disabled people by the Covid emergency state. The DPO make nine criticisms, each of which provides a lens into the oversight and afterthought that characterised Disabled people's experience during the pandemic and which, without change in law, structure and values, will continue to be their default situation.
3. REFLECTION: PART B reflects more broadly on what the treatment of Disabled people during the pandemic tells us about the state we live in and why the UK could not have done much better than it did in its response to the pandemic, and will not do much better in the future, until it changes the way it governs and the values that it governs by.

¹ Each of the above are organisations run by and for Disabled people ('DPO'). They are to be distinguished from charities that represent Disabled people, however well, rather than enabling them to represent themselves.

PART A: TREATMENT

4. **OVERVIEW**: In their written opening submission, the DPO produced an inventory of nine failures of the Covid emergency state. They concern a profound lack of (1) System, (2) Planning, (3) Machinery, (4) Expertise, (5) Recognition, (6) Engagement, (7) Data, (8) Protection and (9) Redistribution. The evidence the Inquiry has heard in this module confirm and reinforce the nine criticisms.

[1]. SYSTEM

5. **REACTIVE STATE**: For the Inquiry to evaluate the “*core decision making and political governance*” during the pandemic response, some consideration must be given to overall systems. For a generation the UK’s post-1945 welfare state heritage has been steadily eroded. That condition hit hard during the pandemic because the public sector, and the consequential social integration that accrues from its effectiveness, was considerably run down at the pandemic’s outset. State policies and practices had to be “*cobbled together*” in reaction to, and under the pressure of, an emergency situation.² In contrast to the expenditure and existential level of concern afforded to terrorist and analogous security threats, the UK had failed to prioritise building natural disaster infrastructure and administrative capability with the same degree of financial and collective psychological capital.³ Central Government lacked comprehension or command of how adult social care would operate in national crisis.⁴ The state was not as responsive to the needs of Disabled people, and other acutely affected groups, as it would have been with greater planning, infrastructure and integration between different parts of society.
6. **EMERGENCY STATE**: Although a state of emergency was never formally declared, the reference to an ‘Emergency State’ (so titled in Adam Wagner’s book⁵) is apt here. That is not only because of the unparalleled peace time threat that Covid engendered, but also the extent of government powers, especially under Part 2A of the Public Health (Contagious Diseases) Act 1984 to make wide ranging law through secondary legislation. These powers were often subject to ex post facto and limited legislative supervision, and

² Farrar [M1/T12/9/15-10/10]

³ Whitty [T23/163/13-171/8] Hancock [T29/180/18-182/11]: see also Letwin [M1/T6/18/14-19/20]

⁴ Abrahams [INQ000281296/11 §27 [16-17 §§39.1.1-39.3.1] [T3/190/18] Harries [INQ000273807/174 §§ 14.2-14.4] [T28/38/4-15]: see also Care England [INQ000099684/8 §§8.4-8.6] [11 §§10.2.1-10.2.4] National Care Forum [INQ000099701/4-5 §§5(1), 5(4)] [7-8 §8] Williams [INQ000207511/4 §9]

⁵ A. Wagner, *Emergency State – How We Lost Our Freedoms in the Pandemic and Why It Matters* (Bodley Head, 2022)

reduced judicial checks on the basis that courts are deemed incompetent, for reasons of constitutional separation of powers and expertise, to adjudicate upon executive choices concerning emergency conditions.⁶ That cumulative situation was likely to more profoundly impact those at the margins of society. They simultaneously have less means to influence government in real time and are more at risk of any profound social and economic change that a catastrophic emergency brings about.

7. DISASTER MANAGEMENT: The reactive and emergency qualities of government response were a consequence of there being no adequate government structure and capability to manage a nation-wide “whole-system” crisis. The Inquiry has considered vertical gaps at the centre of government, associated with the difficulties of synchronising Downing Street, the Cabinet Office and individual departments. It is also essential to consider the gaps between central and local power. The civil contingency system was overly dependent on local readiness and effectiveness, without adequate checks that local systems were in place. The so-called Local Resilience Forums were mere meetings, not organisations.⁷ They could not sufficiently link the centre and locality.⁸ That was especially so given the previous removal of the regional resilience structures⁹ and because regulations required planners only to “*have regard*” to the voluntary and community sector as opposed to enrolling them into emergency co-partnership.¹⁰ With no independent auditing of local planning, no one had any idea how LRFs would deliver.¹¹ Helen Whately, as Minister for Social Care, called in early March for local authority plans for social care. She received just two examples - both of which were manifestly not good enough – which contributed to the realisation in Central Government that the system would not be able to cope.¹²

⁶ See, generally, Sir Michael Fordham, *Judicial Review Handbook* (7th Ed. 2020) (Hart) [13.1.5] [13.5.2] and *R (Dolan) v SSHSC* [2020] EWCA Civ 1605 [2021] WLR 2326 §§86-90

⁷ Alexander and Mann [INQ000203349/40 §§93-94] confirmed by Jenrick in the first GPSMIG meeting on 17.03.20 [INQ000056023/6]: see also Sedwill [INQ000250229/17 §64] Case [INQ000207294/23 §3.23.2] Wormald [INQ000280628/120 §§38-9] Lloyd [INQ000177803/43 §160]

⁸ Thomas [INQ000236243/36 §129] [42 §142.3] Lloyd [INQ000215538/8 §§25-32] Case [INQ000207294/23 §3.23.2] Burnham [INQ000216991/8 §23] [12 §41] [T26/109/15-113/22] Khan [INQ000221436/76 §350] [77 §355] [T26/12/16-25] [T26/9/2-20/8] Rotheram [T26/189/24-192/1]

⁹ Alexander and Mann [INQ000203349/42 §101] [109-110 §§305-307] [M1/T3/142/13-143/19] and Letwin [M1/T6/55/16-57/5]

¹⁰ Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 (‘CCR 2005’) Reg 23. Cf. Alexander and Mann [T3/126/14-20] and Adamson [INQ000182613/10 §§40-49] [M1/T21/118/12-119/10] [M1/T21/125/18-126/20]

¹¹ Thomas [INQ000236243/18-19 §61]

¹² Whately [INQ000273897/11-12 §§44-46]: see also Hancock [INQ000232194/55 §230].

8. DISABLED PEOPLES' SITUATION: A reactive and emergency state, incapable of disaster management, had suboptimum prospects of properly addressing the predicaments of marginalised populations, but the situation was particularly calamitous for Disabled people. The risks were well understood. First, Disabled people are known to fare worse in disaster and emergency situations,¹³ which is why dedicated disaster preparation for Disabled people is enshrined as a duty of states under international law and is agreed global practice.¹⁴ Second, Disabled people were more exposed to a viral pandemic, both to the pandemic itself and government countermeasures.¹⁵ The clinical vulnerability of some Disabled people to SARS-like infection, especially the elderly and those with intellectual disabilities, and other groups with a high prevalence of co-morbidity, was well known.¹⁶ Broader social vulnerability in terms of degraded access to, and quality of, requisite health and social care caused by decline in public spending,¹⁷ as well as the consequence of more general deprivation,¹⁸ was also well known, but staggeringly unaccounted for in planning.¹⁹ While clinical vulnerability is partly inherent to the individual body, levels of protection from clinical ill-health are situational and socially determined, as is the extent to which poverty determines health and vice versa.²⁰ Similarly the hardships of NPIs were socially determined in that their application was universal but their impact hugely variable because of differences of need and inequality of assets to enable resilience.²¹ The Government medical advisers knew these matters to be axiomatic – “*normal things to think about if you are publicly health trained*”.²² Central Government equally must have known that catastrophic social consequences would lie in the lottery of local authority capability and resources, especially as regards social care, and especially with no overall knowledge of how Central Government could monitor and guide Local Government.²³

¹³ Watson and Shakespeare [INQ000280067/12 §37]

¹⁴ UNCRPD Art. 11 Sendai Framework for Disaster Risk Reduction 2015-2030 (March 2015) §§7, 19(d), 19(g), 32, 35 and 36(a)(iii) and DPO M2 Opening Submission 26.09.23 §§2.6 and 2.8

¹⁵ Watson and Shakespeare [INQ000280067/3 §§1-2] [T5/3/17-9/10]

¹⁶ Watson and Shakespeare [INQ000280067/4-5 §7-11] [T5/13/18-19/18]

¹⁷ Watson and Shakespeare [INQ000280067/5 §§12-14] [T5/20/1-21/2] [T5/29/21-33/2]

¹⁸ Watson and Shakespeare [INQ000280067/5-9 §§15-29] and [10-11 §§30-36] [T5/16/2-8] [T5/25/18-29/19]: see also DPO M2 Opening Submission 26.09.23 §1.6 and Glasby et al (2021). *A lost decade? A renewed case for adult social care reform in England*. *Journal of Social Policy*, 50, 2, 406-407 and 418-419

¹⁹ For the general criticism, see Adamson [INQ000182613/13 §54] [19 §68]

²⁰ Watson and Shakespeare [T5/16/2-9]

²¹ Mallick [INQ000280035/25 §85] [T5/66/5-10] and DPO M2 Opening Submission 26.09.23 §1.9-10

²² Harries [T28/2/2-5/4]

²³ Harries [INQ000273807/174 § 14.2-14.4] [T28/38/4-15] Cf. [49/16-50/1] and [50/21-52/18]

9. AFTERTHOUGHT SYNDROME: For the adverse consequences of NPIs, there was an obvious risk that Disabled people would be an afterthought in the provisions, introduced as they were to lock down *normal* ways of life amongst the general population, without thoroughly considering Disabled people's particular needs, and after a decade of eroded funding and services for Disabled people.²⁴ The treatment of Disabled people as an "*afterthought*" was a syndrome identified by a House of Lords Select Committee in 2017,²⁵ and warned against by the United Nations Committee on the Rights of Persons with Disabilities in 2017 when it found the UK to be in breach of, amongst other substantive obligations, the emergency planning duties under Article 11 of the United Nations Convention of the Rights of Persons with Disabilities ('UNCRPD'). Despite these warnings Disabled people did not exist in UK emergency pandemic planning prior to 2020. The Disability Unit ('DU') and the Minister for Disabled People were not consulted at any time on pandemics prior to 2020, and played no strategic role in any decision or significant operational event during the first wave and lock down.²⁶ For the vulnerable and at-risk in society the issue of how they would withstand the impact of lockdowns was "*appallingly neglected by the entire planning system*".²⁷ As Dominic Cummings discovered, there "*was effectively no plans or any plan even to get a plan*." The words on the White Board that moved around the corridors of power on the weekend 13 to 15 March, were "*Who looks after the people who can't survive alone??*".²⁸ Any system of pandemic governance of the myriad risks to Disabled people, was to be built thereafter from "*scratch*".²⁹
10. FORESIGHT: To a certain extent, all of the Inquiry's modules from hereon are the disastrous epilogues of the lack of pandemic preparedness discovered in Module 1. For Disabled people this lack of preparedness was particularly unjust because there was foresight that they needed to be planned for, derived from the disciplines of public health and human rights, but that foresight was not acted upon. Firstly, health inequalities that the SAGE advisers told the Inquiry were obvious to them,³⁰ which have been recognised as orthodoxy

²⁴ Watson and Shakespeare [T5/9/10-22] and [INQ000280067/12 §41]

²⁵ House of Lords - The Equality Act 2010: the impact on disabled people - Select Committee on the Equality Act 2010 and Disability **Report of Session 2015-16 (March 2016) HL Ch. 1 §16**

²⁶ Bell [INQ000174833/4 §5] Tomlinson [T20/170/20-171/7] and [T20/208/20-209/5]

²⁷ Cummings [T15/142/21-24]

²⁸ Cummings [INQ000048313/3]

²⁹ Cummings [T15/250/6-21] [INQ000273872/84 §§400-408]

³⁰ Vallance [INQ000238826/180 §552] [T22/173/24-175/11] [M1/T8/165/5-23] Whitty [M1/T23/115/11-116/6] Harries [INQ000273807/150 §11.1] McLean [INQ000309529/26 §85] Semple [INQ000260637/19 §5.1] Hayward [INQ000267868/35 §§9.1-9.3] Khunti [INQ000252609/4 §2.11]

by the WHO and also public health experts at all delivery levels for 20 years,³¹ had fundamentally failed to mainstream into civil service advice or ministerial knowledge at the beginning of the pandemic. Matt Hancock and his Permanent Secretary emphasised that “*central work*” was planned on the subject which had spawned “*a lot of thinking*” within their own department, but there was a complete absence of any reference to health inequalities in any of the planning documents or specialist advice on the issue prior to 2020.³² Secondly, the UK signed the UNCRPD in 2006 and ratified it in 2009.³³ The basics of what would happen to Disabled people during Covid were foretold by the UN Committee on the Rights of People with Disabilities in 2017. It effectively found the UK in breach of its legal duties under the UNCRPD over consultation, data collection and emergency planning.³⁴ However, at no stage in any of the papers does anyone recognise these rights, or the fact that the UK could conceivably breach them, and nor does any Whitehall political or administrative decision maker even advocate for pandemic policies based on the need to comply with the Convention, either in their Inquiry evidence or elsewhere.

[2]. PLANNING

11. AFTERTHOUGHT: The second failure is that when the pandemic broke out not only was there no plan for Disabled people, but the failure to plan was not recognised then and it is not fully recognised still. The answers on this were to continuously place Disabled people in some broader category or abstraction. The “plan” was to keep the virus prevalence low,³⁵ to shield the clinically vulnerable,³⁶ to do all that was included in wider government actions.³⁷ All of these were laudable aims and arrived at with some pace once, finally, the nature of the threat was realised. However, Government only belatedly mapped and formulated a policy concerning the non-shielding/socially vulnerable.³⁸ Also, there was never a cross-government strategy and programme for Disabled people despite the obvious need for such a plan. The Minister for Disabled People was not a permanent

³¹ DPO M2 Opening Submission 26.09.23 §1.11

³² Bamba and Marmot [INQ000195843/61 §146] [64 §§148-149] [M1/T4/54/8-25] Hancock [M1/T10/99/7-24] Wormald [M1/5/150/5-151/25]

³³ DPO M2 Opening Submission 26.09.23 §§2.1-2.12

³⁴ UNCRPD Committee Report, Concluding observations on the initial report of the United Kingdom of Great Britain and North Ireland, dated 03/10/2017. Watson and Shakespeare [INQ000280067/6 §16] [T5/17/21-21/17]: see also UNCRPD Committee Op. Protocol Report dated 24/10/2017. p.18 §§113

³⁵ Vallance [T22/189/24-190/6]

³⁶ Hancock [M1/T10/101/6-8] [T30/73/24-75/2] Whitty [T24/130/24-131/15]

³⁷ Tomlinson [T20/215/17-23]

³⁸ See paragraphs 28-9 below

member of the General Public Sector Ministerial Implementation Group ('GPSMIG') and neither the terms of reference of that Committee nor its Healthcare equivalent ('HMIG') dedicated any focus upon the predicament of Disabled people.³⁹ Rather, the latter was to deal with the 1.4 million estimated "*shielding vulnerable*", and the former was to deal with all other "*vulnerable groups*", and in the "*scratch*" list of issues Disabled people got no mention.⁴⁰ At no time throughout the first wave was there a clear and unequivocal reckoning with the fact that no plan for Disabled people existed, that Disabled people across age ranges and different impairments were in danger of dying disproportionately, but also in danger of profoundly compromised living. It was left largely to the DPO to bring such matters to both Government and the public attention.^{41 42}

12. A THOUGHT EXPERIMENT: What should have happened? Proper recognition of Disabled people's situation would have: (1) publicly confronted from the outset that cuts to benefits and social services compromised the resilience of Disabled people to deal with the life changes that the NPIs were about to create;⁴³ (2) declared clearly that the fact that there was no whole society pandemic planning for the UK would rebound badly on Disabled people, because what would be unusual challenges to general living would pose existential ones to the routines and services of Disabled people;⁴⁴ (3) warned unequivocally that care settings were likely to be at high risk of virus transmission between those being cared for and the insecurely employed essential staff and unpaid carers providing care;⁴⁵ (4) identified deficiencies in the gathering and use of data as the key decision making impediment going forward;⁴⁶ (5) assembled DPOs and other parts of the third sector into an emergency network for the purposes of co-designing policy, with properly funded participation, and coordination between representative leaders and groups, dedicated experts and the right members of government;⁴⁷ (6) immediately made clear that if a significant connection between the Covid state and society was going to take place on the

³⁹ GPSMIG TOR U/D [INQ000087167] Healthcare MIG TOR 18.03.2020 [INQ000055917/2-3]

⁴⁰ GPSMIG Minute 17.03.20 [INQ000056023/2-3]

⁴¹ Watson and Shakespeare [INQ000280067/12 §38]: see also Cullingworth, J et al "*They have been a saving grace in all this: the role of the third sector in disabled people's experiences of COVID-19 and implications for sector-state relations*, (2022) Voluntary Sector Review, 2022: 1–18, pp 1-2 and 15

⁴² Mallick [INQ000280035/6-13 §§19-41]: and see forthcoming further evidence in M2A, M2B and M2C

⁴³ Watson and Shakespeare [INQ000280067/10 §§31-36, 41] [T5/31/6-35/2]

⁴⁴ Mallick [INQ000280035/24 §82] Watson and Shakespeare [T5/20/1-9] [T28/24/21-33/2]

⁴⁵ Lansbury et al [INQ000269388] Nazroo [T3/145/6-152/14] Mallick [INQ000280035/6 §19] and Ex. KM/3 [INQ000238504] [T5/48/12-55/21]

⁴⁶ Watson and Shakespeare [T5/33/6-34/5] Mallick [T5/59/19-60/8]: see also Bell [M1/T20/20/19-24]

⁴⁷ Mallick [INQ000280035/26 §§86-88]

internet, then a large part of the disabled population were going to be disenfranchised, unable to access essential services, and not able to work from home;⁴⁸ and (7) done everything not only to *recognise* the predicament of Disabled people but to substantially *redistribute* financial resources to meet their basic needs, in the knowledge that not only do Disabled people have less income, but it costs them more to live, and would cost them more to live through Covid.⁴⁹

13. EASEMENTS: Not only was there no plan for Disabled people, but the most significant initial government action on their behalf was to take their rights away. In the first months of lockdown the major public facing statement by Government to Disabled people was to tell them on 31 March 2020 that the Coronavirus Act had introduced the ‘*easement*’ of local authority duties.⁵⁰ What that meant was that local authorities could legally jettison the needs of those entitled to services under the Care Act, the Mental Health Act and the assessment for Special Education Needs and Disabilities.⁵¹ The March letter supposedly reassured its recipients that local authorities still had “*to meet everyone’s Human Rights as an absolute minimum*”, but in practice that meant the only way easements could legally be challenged was if the person was able to go to court and establish that the cessation of their care would amount to inhuman and degrading treatment.⁵² For this to be the single public statement for Disabled people is telling. It is no declaration of a plan; it is a reactive statement to reassure. The statement contains no measures to enhance rights or protect all Disabled people in the face of the virus and NPIs.
14. MINISTERIAL OVERSIGHT: Meetings when Ministers discretely considered Disabled people were few in number and delayed. The first meeting was on 21 May 2020 and meetings thereafter not until 30 October and 8 December 2020.⁵³ In May 2021 the presentation of the issue by the Minister for Disabled People (which he did not even mention in his statement⁵⁴) was far too sanguine. By that time surveys were already showing adverse effects of NPIs on Disabled people. The need for impact assessments and stakeholder insight was considered “*vital*”. Online services were known to be accessible to some

⁴⁸ Watson and Shakespeare [INQ000280067/8 §§25-26] [T5/35/16-40/8] Mallick [INQ000280035/28 §91]

⁴⁹ Watson and Shakespeare [INQ000280067/6 §19] [T5/26/9-18]

⁵⁰ Tomlinson [INQ000233735/24 §79] [INQ000187624] Mallick [INQ000280035/30 §96]

⁵¹ Coronavirus Act 2020 Schedules 8 and 12

⁵² R (McDonald) v Royal Borough of Kensington and Chelsea [2011] UKSC 33 [2011] 4 All ER 881 §18

⁵³ Bell [INQ000198850/25-28 §§60, 63-65]

⁵⁴ Tomlinson [INQ000233735/17 §56]

Disabled people but “*not all*”.⁵⁵ DPOs and other Disabled people had told the Government how marooned they were in lockdown in terms of basic assistance and food supply.⁵⁶ However, at this meeting senior Ministers were told that “*Engagement with stakeholders suggests there is a positive view of the Covid-19 response, especially the pace at which new initiatives had been put in place*” and that the “*Covid response presents both risks and opportunities for disabled people - some changes that would have taken years to implement in ‘normal times’ have been made possible very quickly*”.⁵⁷ Michael Gove accepts that the outcome of the meeting was recognition that social distancing and lockdown measures were disproportionately affecting Disabled people, but that Government needed a better understanding of the impact of Covid-19 on Disabled people including their health, employment and education needs, and that engagement with disability stakeholders needed to be maintained and strengthened.⁵⁸ That being the case, it was dilatory for the next steps to be for each Department to develop plans with the DU to address gaps in evidence and for a further Ministerial meeting to take place in “*about 6 weeks*”.⁵⁹ In fact there was no dedicated meeting on Disabled people for 5 months.

15. EMERGING DATA: During the spring and summer of 2020 the DU began to obtain data about the harm being done to Disabled people during the pandemic.⁶⁰ Disabled people made up 59.2% of the first wave fatalities⁶¹ and lifestyle surveys showed that they experienced higher degrees of stress, anxiety and isolation compared to Non-Disabled people.⁶² From July to September 2020 the DU commissioned research from the Policy Lab that (unlike the PHE work on disparities and ethnicities) was not published until July 2021.⁶³ The study established that the pandemic had exposed and exacerbated existing inequalities experienced by Disabled people, creating new social barriers to inclusion. These studies raised key questions for Government, including:⁶⁴ “*How can we acknowledge and protect people who are at higher risk of disease without reinforcing a*

⁵⁵ The Impact of C19 on Disabled People 21.05.20 [INQ000083584/3, 5, 6]

⁵⁶ As to home assistance, Mallick [INQ000280035/7 §21] and Campbell [INQ000279964]; and as to food scarcity, see Mallick [INQ000280035/8 §24/ 28 §93] [INQ000238539] [INQ000280035/28 §93]

⁵⁷ GPSPMIG Meeting Note 21.05.20 [INQ000083626/5]

⁵⁸ Gove [INQ000259848/30 §48n]

⁵⁹ The Impact of C19 on Disabled People 21.05.20 [INQ000083584/7]

⁶⁰ Bell [INQ000198850/27 §§ 61-62]

⁶¹ ONS Death rate 19.06.20 [INQ000089756]

⁶² ONS Opinion and Lifestyle survey April – May 2020 [INQ000089755]

⁶³ Bell [INQ000198850/26 §62] and Ex. MB/49 DU [INQ000089747] 'The lived experience of disabled people during the COVID-19 pandemic' 20.09.21 (first published 28.07.21 according to Gov.UK website)

⁶⁴ [INQ000089757/14, 20 and 25-26]

deficit model of disability”? “How can we ensure consistency and continuity of vital services such as social care during a crisis”? “How can we improve communication to meet Disabled people’s specific needs and address long-term inequalities”? “How can we ensure pandemic-related rules do not conflict with Disabled people’s different access and support needs”?

16. TERRIBLE MISSED OPPORTUNITY: Despite this data emerging in July and September 2020 it was not actioned into any emergency winter planning and the coming of Covid’s second wave. The ministerial Covid-O meeting was informed of the key information on 24 September 2020.⁶⁵ This generated a letter from Michael Gove in mid-October 2020 challenging Departments to “*raise their game*” and bring forth “*an ambitious package of interventions*”. Its failure to occur already was described as a “*terrible missed opportunity*” as “*time [was] running out for the second wave*”. Secretaries of State and their Departments were expected “*to bring much more ambitious and far-reaching proposals*” for future Covid-O discussion.⁶⁶ Subsequent evidence shows that time absolutely did then run out.
17. DU PROPOSAL REJECTION: The DU used its licence to be ambitious to propose three measures in a paper of 12 November 2020, that called for highly developed data commissioning, a National Panel of Disabled people and a National Centre for Digital Access.⁶⁷ None of that happened. Although witnesses resisted any interpretation of lesser priority, the program for Disabled people was still to operate on a “*slower time*” in comparison to work being done on race and ethnicity,⁶⁸ because the decision-making and policy lagged behind. The lightest of suggestions by the DU on 30 October that Disabled people needed some form of more generous “*financial package*”,⁶⁹ as with its other more ambitious proposals, were still conditional upon necessary negotiations with the Treasury. There is an internal memo of January 2021 that encouraged publication of the measures that had been taken, or remained subject to treasury funding.⁷⁰ The Annex to that Memo lists some of the measures, including £2.5 million to reduce digital exclusion, £5 million into the family fund, the training of new special education needs trainers, and the finding of some community champions. That clearly does not amount to an ambitious package or

⁶⁵ Covid O Minute [INQ000090183/5]

⁶⁶ Gove [INQ000083956/8-9] [T27/133/9-136/12]

⁶⁷ Covid-O DU Submission 12.11.20 [INQ000083918/1 §§3-5 and esp. 3.1-3.3]

⁶⁸ Email Covid 19 Taskforce Secretariat – Focus on Disabled People. 05.11.20 [INQ000083917/2]

⁶⁹ Disproportionate Impacts on Disabled People 30.10.20 [INQ000083956/5-6]

⁷⁰ Tomlinson [INQ000233735/18 §61] [INQ000083896/2 §9 and Table at p. 9]

plan to offset the impending threat of a second wave, which is what Gove's letter ostensibly required.

18. MINISTERIAL RESPONSE: Overall, the testimony of Ministerial witnesses produced highly problematic answers to why it did not matter that there was no plan. Chief amongst them from Tomlinson, Badenoch, Gove and Johnson, was essentially that the risks of Covid to Disabled people were such a given that all of Government was no doubt working on them.⁷¹ As such, they were *obvious to everyone but the responsibility of no one*. The consequence of such assumptions was that Disabled people were repeatedly overlooked. For the aged and the frail, there may also have been – at least in some quarters at some points – resistance to doing too much under the apprehension of the inevitable. Helen MacNamara worried about the view that disproportionate harm done to certain parts of society by Government decisions was considered as a “*naturally occurring phenomena*”, especially for those in later life.⁷² Notably Boris Johnson, on multiple occasions, expressed the view privately on WhatsApps and in key meetings that the economy was being damaged on behalf of people who were going to die anyway.⁷³ His suggestion in evidence that he used such language on behalf of lay people ‘in the street’ to test with experts the need for further lockdowns does not bear scrutiny. Such testing did not require disparaging remarks about the premature death of the elderly, which in any event was not the only group at risk. Private communication with Lee Cain or Imran Shafi had nothing to do with interrogating experts.⁷⁴ Even if those were his reasons, such sentiment – when deployed so often, gratuitously, in jibe and disrespect - is reprehensible, and was part of the chaos of leadership that failed to formulate clear strategy and planning with regard to those who were particularly at risk.⁷⁵
19. HOW GOVERNMENT WORKS: Justin Tomlinson's defence of the DPO's core criticism as to the failure to plan, as Minister for Disabled people, and the witness nominally responsible for producing a plan, was to repeatedly respond to questioning as to why there was no plan with the admonishment “*That's not how government works*”.⁷⁶ The stance betrays a

⁷¹ Tomlinson [T20/177/15-24] [188/22-189/6] [224/18-24] Badenoch [T25/214/11-215/17] Gove [T27/192/7-14] Johnson [T31/171/22-172/9]

⁷² McNamara [INQ000273841/54 §106]

⁷³ Johnson WhatsApp 26.08.20 [INQ000102231/3 8:48am] Johnson WhatsApp to Cain 15.10.20 [INQ000283369/67-68 18:53pm] Vallance Diaries 10.10.20 [INQ000273901/234] 25.10.20 [INQ000273901/245] Imran Shafi notebooks 19.03.20 [INQ000146636/92]

⁷⁴ Johnson [T32/41/17-43/7] [T32/77/24-79/1]

⁷⁵ Johnson [T32/178/19-185/6]

⁷⁶ Tomlinson [T20/213/7] [T20/223/20-21]: see also [T20/14/8-23] [T20/170/4-11]

lack of understanding of emergency government, because extraordinary challenges cannot depend on ordinary policy guidance by a civil service drawing a Minister's attention to potential issues under conventional processes and tempos.

[3]. MACHINERY

20. STRUCTURE: The Minister's defence of "*that is not how government works*" leads to the third criticism, of the machinery of government. Instead of a Department of State for Inequalities, which includes Disabled people in its portfolio, there was a Disability Unit that deals only with policy and has no operative function.⁷⁷ It had been created only in November 2019, transferring from a previous role inside the DWP, and because it was recognised that it was necessary "*to try and improve the quality of cross-cutting policy on disability from the Cabinet Office*".⁷⁸ Justin Tomlinson and Kamran Mallick were in agreement that this fragmented combination of dedicated government for Disabled people did not suffice.⁷⁹ Mark Sedwill accepted that there was "*clearly a case*" for a Department of Equality.⁸⁰ Professor Vallance believed (wrongly) that the DU was responsible for both policy *and* operations, which it was not.⁸¹ To borrow Michael Gove's analogy, equality issues were and remain shoved into the Cabinet Office portmanteau⁸² and are then divided inefficiently across other Departments.
21. LEADERSHIP: Justin Tomlinson was not a lead Minister for Disabled People, he was, in effect, a Minister for Disability Benefits who did some front of house meetings with Disabled groups, mostly not run by Disabled people (as evidenced in his statement and in his repeated references to the Disability Charities Consortium – 'DCC' – which are run and controlled by non-Disabled people⁸³). Beyond the DWP work his responsibilities were piecemeal, under the amorphous notion of 'championing' and with no direct authority or leadership role in relation to the DU.⁸⁴ His statement suggests that he deferred to the DU on the most essential matters,⁸⁵ and in evidence he confirmed that core issues – such as

⁷⁷ Bell [INQ000198850/3-4 §§7-8] confirming [INQ000089733/15 Q83]

⁷⁸ Bell [M1/T20/3/18-23] [INQ000198850/2 §4(b)]

⁷⁹ Tomlinson [T20/167/18-169/3] Mallick [T5/67/1-69/19]

⁸⁰ Sedwill [T20/156/3-4]

⁸¹ Vallance [T22/186/19-187/7] [187/16-19] [189/2-8]

⁸² Gove [T27/9/6-9]

⁸³ Tomlinson [T20/178/8-12] [179/11-12] [188/15-21] [206/10-23] Cf. Mallick [INQ000280035/8-9 §§24-25] [13-17 §§42-50] [T5/60/18-63/18]

⁸⁴ Tomlinson [T20/163/16-164/15] [T20/166/25-167/14]

⁸⁵ E.g. Tomlinson delegated to officials contact with the EHRC [INQ000233735/6 §17], translating stakeholder engagement into influence on policy [12 §41], ensuring appropriate exemptions within Covid Regulations were included [15 §50], collaboration with the ONS [17 §54], drafting of PSED impact

the easement of local authority care duties introduced under the Coronavirus Act 2020 and the collection of disability data - were not in his “realm”.⁸⁶ For Disabled people the post was low profile, with frequently rotating incumbents, and compromised by its seat in the DWP as a benefits focused department.⁸⁷ Just this December 2023, the Government announced it was further downgrading the post.⁸⁸

22. DIRECTORATE GOVERNMENT: This was limited Directorate and not full Departmental Government. The DU (albeit only with 20 staff⁸⁹) ought in theory to have led on the generic response to Covid, especially as the crisis unfolded in March 2020, to tell other Departments and SAGE where the exposure was likely to be and seek co-ordinated action on the subject. Instead, some of its staff were deployed to other departments for the first weeks of the pandemic, as well as its Director General Marcus Bell (who was away for 3 months). For Tomlinson and Bell to suggest that this made no difference to the Covid response,⁹⁰ in circumstances where Disabled people’s situation was completely unplanned for and where, in the critical first few weeks neither the DU, nor the Minister took any steps at all to table the reality facing Disabled people as an urgent government issue to be registered at Cabinet Committee level, demonstrates a blithe dismissal of the governmental response that Disabled people required.
23. BENEFIT FOCUS: Neither the DWP⁹¹, nor the Secretary of State when she attended the Cabinet Committees, recognised their particular responsibility for the NPIs. Tomlinson was wrong to suggest that the Disability brief was somehow championed by Thérèse Coffey in his absence.⁹² Nothing in the minutes of the GPSMIG or Covid-O evidence suggests that it was. Moreover, DU attendance at the GPSMIG (like Tomlinson) was limited to 21 May 2020, and then again, not until the Autumn of 2020.⁹³ DWP’s key planning aim before and during the pandemic was to plan for the continuity of its own operations.⁹⁴ Its key pandemic contribution was to pay and ease the payment of benefits.⁹⁵ Hence, Tomlinson’s repeated

assessments relating to Covid 19 legislation [25 §82] lessons learned exercises in the EH [26 §88], and was unaware of data being captured regarding the impact of Long Covid [6 §18]

⁸⁶ Tomlinson [T20/172/13-19] [T20/193/14-24]

⁸⁷ Mallick [INQ000280035/27 §90] [T5/54/9-56/14]

⁸⁸ <https://www.theguardian.com/society/2023/dec/14/sunak-scraps-dedicated-minister-disabled-people-government> 14.12.23

⁸⁹ Bell [M1/T20/17/21-22]

⁹⁰ Bell [INQ000198850/13-15 §§28-32] [M1/T20/16/22-18/21] Tomlinson [T20/173/12-174/23]

⁹¹ Couling [INQ000217285/17 §3.46]

⁹² Tomlinson [INQ000233735/6 §14] [pp 17 §56] [T20/169/13-170/16]

⁹³ Bell [INQ000198850/25 §60] and [INQ000198850/27 §§63-66]

⁹⁴ Couling [INQ000217285/8-10 §§3.11-3.18]

⁹⁵ Couling [INQ000217285/17-18 §§3.47-3.48] [22 §3.61]

reference to benefit payments in his evidence.⁹⁶ None of that is necessarily to be criticised, but the DWP is not a Government Department for Equality, it was not planning for Disabled people; and it was not creating a whole society strategy for preventing the syndrome of how, even in normal times, Disabled people's needs will be forgotten. Lastly, with the best will in the world, the DWP and its focus on benefit management is sadly not a department that most Disabled people associate with acting in their best interests.

24. DISPARITIES: The oversight of Disabled people by Kemi Badenoch's investigation into Covid disparities is illustrative of governmental structural problems. The terms of reference were inclusive of all disparities.⁹⁷ Emails between the CMO and DHSC of May 2020 show concern that the PHE report had failed to deal with Disabled people.⁹⁸ So who directed their exclusion? Badenoch said she discussed it with Liz Truss, who as Minister for Women and Equalities was not concerned with Disability issues, which fell under the rubric of the Minister for Disabled People.⁹⁹ If a discussion took place, no written record of the decision has been disclosed.¹⁰⁰ Tomlinson knew nothing about the decision and was not consulted.¹⁰¹ Hancock, who saw the purpose of Badenoch's review "*to improve understanding of drivers for disparities to inform decision-making*" was never told that those drivers for Disabled people were going to be overlooked.¹⁰² Boris Johnson did not know why they were either, but wanted to reassure that the issue was being covered elsewhere, which it was not.¹⁰³ There may have been some sensitivity about the issue because in a footnote of the final review in December 2021 the public were informed that the situation of Disabled people continued to be monitored across Government and that "*a separate strand of work to ensure the needs of disabled people are considered in the government's response to, and recovery from COVID-19*".¹⁰⁴ No product of this work has ever transpired, and in any event to carry it out at the end of 2021 in a form that would not be published (unlike the Badenoch reviews), meant that the product was never open to engagement or indeed criticism.

⁹⁶ Tomlinson [T20/204/15-25] [209/18-210/7] [211/3-13] [214/17-23] [220/17-221/1] [223/1-23]

⁹⁷ [INQ000089741/2]

⁹⁸ Emails of CMO and DHSC 08.05.20 and 26.05.20 [INQ000069420/1 and 4] Doyle [T17/207/12-208/12]

⁹⁹ Badenoch [T25/212/12-24] Bell [INQ000198850/9-10 §17] Truss [INQ000218370/3 §7] and [4 §8(b)(iv)]

¹⁰⁰ Badenoch [T25/213/9-22]

¹⁰¹ Tomlinson [T20/223/22-224/4]

¹⁰² Hancock [T30/81/25-82/15]

¹⁰³ Johnson [T31/171/15-172/9]

¹⁰⁴ [INQ000089747/32 fn. 62] Badenoch [T25/213/22-214/7]

[4]. EXPERTISE

25. THEORY: The fourth criticism concerns expertise. Not the integrity with which it was provided, but its gaps and unexposed assumptions. Pandemic science is not socially neutral. That is because the impact of pandemics is fundamentally determined by inequalities, such that the outcomes of “clinical” advice cannot be hermetically sealed from social consequences. Biology is not only a natural science, although it is often thought to be. It is also a social science. These distinctions matter, because the scientific discipline can often be exemplary in its open mindedness to self-correction and evidence based verification (recall Professor McLean’s mantra “*Tell me why I am wrong*”¹⁰⁵). However, it can also be too slow in its recognition of a paradigm shifting event – a revolution or Black Swan¹⁰⁶ – which initially, on isolated and incomplete evidence, foreshadowed devastating consequences (hence the Jeremy Farrar dubbed tension between “*the waiting and wading in*”¹⁰⁷). There is a scientist’s mentality that can be predisposed to wait for higher degrees of verification than precautionary government should be willing to bear.¹⁰⁸ Thus, the greater the risk, the bolder the advice must sometimes be - notwithstanding the evidence gaps – and hence the “*earlier, harder, broader...than you would like*” formulation advocated as the experts’ lesson learned.¹⁰⁹
26. PRACTICE: During the pandemic, wider forms of expertise were absolutely required. That is not least because Government fetishised a notion of ‘following the science’, as an excuse when it got things wrong, and an accolade when it got things right.¹¹⁰ That is why the case for more diverse representation of expertise in the provision of advice was so strong, not only for those within the advisory groups to contemplate the broad horizons of what they were advising about, but – as Professor Vallance noted - for those within government structures to ask the pertinent questions of their advisers.¹¹¹ What was

¹⁰⁵ McLean [INQ000309529/7 §22] [T25/24/17-26/14] Vallance [INQ000238826/218 §680] [M1/T8/136/23-137/14]

¹⁰⁶ Letwin [M1/T6/17-22/23] described this as a shortcoming of economic cost benefits analysis but it also applies to scientific mindset, for which see [M1/T6/31/25-32/19]

¹⁰⁷ Farrar *Spike: The Virus vs. The People* [INQ000214802/89-90] Vallance [T22/41/11-44/21] Whitty [M1/T8/89/3-14] McLean [INQ000309529/38 §§128-129] Hayward [INQ000267868/8 §§4.4-4.6] IfG *Science Advice in Crisis* [INQ000075385/18]

¹⁰⁸ IfG *Science Advice in Crisis* [INQ000075385/18]

¹⁰⁹ Vallance [INQ000238826/97 §§299 and 132 §394]

¹¹⁰ Thomas [INQ000236243/35-36 §§120-128] [42 §142.6] IfG *Science Advice in Crisis* [INQ000075385/16-21] MacNamara [INQ000273841/22 §39]

¹¹¹ Vallance [T22/185/16-191/8]

needed was a multi-disciplinary approach right from the start.¹¹² However, the whole notion of “insider” expertise in the service of government remains at risk of being over conformist, unaccountable, and elite.¹¹³ Professor Whitty’s unplanned comments that promulgated an intuitive and unevidenced notion of behavioural fatigue that UK Ministers relied on to delay the first lock down are a significant example of expertise going wrong.¹¹⁴ The disclosure of the Inquiry’s 150 questionnaires replied to by SAGE participants reveals that not many of them even realised there was a problem of lack of diversity, and when they did, they saw it as underrepresentation on lines of race, ethnicity and gender and comparative absence of actual public health service providers, but not underrepresentation of Disabled people.¹¹⁵ Khamlish Khunti was invited to chair a SAGE Ethnicity Subgroup in August 2020 when the disproportionate impact of Covid-19 on Black and South Asian ethnic minorities had become apparent.¹¹⁶ No such initiative occurred in relation to disability, despite the clear evidence of disproportionate impact of both the virus and the counter-measures that emerged at the same time and despite the fact that the UK has world leading departments of Disability Studies in London, Glasgow and Leeds, as well as particularly strong DPO and networks across the four nations.

27. CONSEQUENCE: Diversity of expertise really mattered to Disabled people because their struggles are so often rationalised as inevitable due to their conditions, rather than socially conditioned by treatment of them by institutions, policies and attitudes. Requisite expertise should have extended to the lived experience of Disabled people, for which see the recommendations already made to the Inquiry by Professors Marmot and Bambra, and disaster management guidance already characterised as best practice under global initiatives.¹¹⁷ Despite this existing guidance, the height of the critique of expertise that the Inquiry heard was Professor Hayward’s evidence that there were grounds from the outset to be concerned over the lack of interaction between academics in SAGE and its

¹¹² O’Donnell [T6/19/19-24] [INQ000215548/13 §60] [INQ000189722/10-11] [INQ000189723/16-17] Thomas [INQ000236243/36 §128] Hayward [INQ000267868/11 §4.14] [29 §7.29] Vallance [INQ000238826/220 §685] Woolhouse [INQ000250231/5 §§22-25] and IfG *Science Advice in Crisis* [INQ000075385/24 §1]

¹¹³ Cairney *The UK Government’s COVID-19 Policy: What Does “Guided by the Science” Mean in Practice?* (2021) *Front. Polit. Sci.* 3 pp. 1-2, 5-6 and 11: and see forthcoming M2A expert report

¹¹⁴ Johnson [INQ000255836/30 §128 /85 §§321-326] [T31/94/19-95/8] Hancock [INQ000232194/6 §23] [T29/159/8-160/5]. Cf. Reicher [INQ000273800/21 §§59-61 and 53 §159]: see also Rubin [T12/57/17-77/10] Halpern [T16/171/15-174/2] Cummings [T15/185/14-186/23]

¹¹⁵ E.g. Rubin [INQ000056547/32 §6.4] Bear [INQ000056563/7 §7(a)]

¹¹⁶ Khunti [INQ000252609/4 §§2.8-2.9] [T7/19/8-19]

¹¹⁷ Bambra and Marmot [INQ000195843/83 §199.4] and Sendai Framework, fn. 14 §19(d)

subgroups and public health practitioners who had spent working lives connected to vulnerable groups and communities.¹¹⁸ He also thought there was a need for mechanisms to allow views of the general public, specific population subgroups, industry, education and others to be taken more systematically into account by SAGE.¹¹⁹ Even for the still practicing doctor and highly engaged Professor Whitty, when asked of his contact with healthcare colleagues from “*multiple...cultural groups*” whether he had engaged with any run by and for Disabled doctors, could not immediately register the importance of the issue, or that he had ever consulted with such self-declaring Disabled practitioners or experts during the pandemic.¹²⁰ There is a fundamental problem for Disabled people, when even the scientific and medical advisers to Government do not bear their discrete perspective in mind. The post pandemic Technical Report now acknowledges the resource intensive but nevertheless great value of informant interviews, focus group discussions, and early engagement with at-risk health communities, all of which is regarded as “*vital to effectively tailoring interventions and anticipating future challenges in implementing any large-scale intervention*”, but these mechanisms were not in place during the pandemic.¹²¹

[5]. RECOGNITION

28. AFTERTHOUGHT: The fifth criticism is that in real time the predicaments of Disabled people went largely unrecognised. As the lead government department, the original DHSC Battleplan of March 2020 only focussed on the clinically vulnerable. Broader health and social inequalities were not part of initial planning and only included in later versions of the plan produced in May 2020.¹²² This was despite the fact that Government knew that beyond the 1.4 million shielding persons, there were 2.3 million Disabled people unable to work, 4.4 million Disabled people in work and 850K adults in need of social care.¹²³ Strategies to protect the vulnerable – and the overlaps and distinctions between clinical and social vulnerability – were far slower in coming in terms of comprehension, let alone action. Invariably this impacted Disabled people, who had to *fit* into categories of ‘vulnerability’ to secure entitlement. Having been dropped from legislative language in the

¹¹⁸ Hayward [IN0000267868/9 §4.9] [T10/184/5-186/7]

¹¹⁹ Hayward [IN0000267868/10 §4.12]

¹²⁰ Whitty [T24/130/6-132/3] Cf. Whitty [INQ000251645/204 §11.12] makes no mention of direct contact with Disabled doctors self-identifying as such

¹²¹ CMO/CSO Technical Report (December 2022) (‘Technical Report’) [INQ000087225/96]

¹²² Wormald [INQ000144792/94 §§296-297] Battleplan 22.3.20 [INQ000106286/2 and 15] Battleplan ‘Version 2.0’ 04.05.20 [INQ000106902/3]

¹²³ Food and Essential Supplies – Vulnerability Taskforce Paper [INQ000083377/9 Annex B]

Care Act 2014, which refers only to those “*in need*”, the “*nomenclature of vulnerability*” suddenly became very active across Government departments to refer to a myriad of things.¹²⁴ The Policy Lab study of September 2020 recognised that during the pandemic, Disabled people had negative experiences of being classified as ‘vulnerable’, a term that was classed as functioning as “*a ticket to things, but diminishing as a label and as a social ethic*”.¹²⁵ A dispute in the British Medical Journal in 2021 erupted where it was argued that describing people with a learning disability simply as “*vulnerable to the virus*” made vulnerability the problem, and responsibility, of those who had learning disabilities.¹²⁶

29. VULNERABILITY: From the outset the notion of vulnerability was under theorised and not the beneficiary of joined up thinking or clear government ownership. Early briefing to Michael Gove as chair of the GPSMIG underscored the absence of a cross-government approach or satisfactory definition.¹²⁷ Beyond its concern for clinical vulnerability, the DHSC did not lead on the full range of problems facing Disabled people.¹²⁸ The notion of ‘Non-Shielding Vulnerable’ was an idea that was barely mastered until Simon Case arrived in Government in early April.¹²⁹ A telephone conference between Gove and Ministers on 26 March 2020 established that there was no departmental ownership of the issue and that what was “*clear*” about leadership is that it was “*unclear*”.¹³⁰ The matter was not considered by the GPSMIG until 3 April 2020, when it was still described as at the stage of “*mapping*”.¹³¹ Mark Sedwill could say no more than that the conceptual recognition of the issue predated Case’s arrival, but his appointment was required to give it “*heft*”.¹³² Case was privately more critical, including in his characterisation to Matt Hancock of “*the shielding/non-shielding madness*” that was “*a continuum, not black and white*” and therefore aggravated by MHCLG insistence “*on strict and counter-productive separation of effort*”, which was

¹²⁴ Harries [INQ000273807/85 §8.65]

¹²⁵ [INQ000089757/7]

¹²⁶ Scherer, Watson, Shakespeare et al., ‘*Do they ever think about people like us?: The experiences of people with learning disabilities in England and Scotland during the COVID-19 pandemic.* (2023) Critical Social Policy, 43(3), 423–447 pp 4-5

¹²⁷ E.g. GPSMIG Briefing 25.03.20 {INQ000056041/1-2}

¹²⁸ Hancock [T30/76/15-77/16] and Hancock-Case WhatsApp 29.04.20 08.28am [INQ000129289/2]

¹²⁹ Gove [INQ000259848/28 §48(j)] Email Case to Gove 07.04.20 [INQ000137204/1-2]

Case [INQ000207294/5 §2.2]

¹³⁰ Cabinet Office Email chain 27.03.20 [INQ000198022/2]

¹³¹ Gove [INQ000259848/28 §48(j)] Mapping of non-shielded vulnerable groups 03.04.20 [INQ000083379/2] Food and Essential Supplies Vulnerability Taskforce 03.04.2020 [INQ000083377/9] GPSMIG Note 03.04.20 [INQ000083613/2]

¹³² Sedwill [T20/156/8-157/24]

“both clinically wrong and is leading to people falling between the cracks”.¹³³ Case’s memorandum, presented to the GPSMIG on 24 April 2020, sought to fix the problem by urging the identification of *“unmet need”* and the building of *“new solutions”* to be *“developed in partnership with relevant delivery departments, local government and working with the voluntary and community sector”*.¹³⁴ However, that did not produce any kind of fundamental change. The major work before October 2020 was to try to gain more data.¹³⁵ By late October/early November, Government knew it was falling short, as attested to by Gove’s criticisms in the ‘Terrible Missed Opportunity’ letter but also the lack of actual differences the letter made.

30. DOWN’S SYNDROME: As an example of the extent to which recognition of vulnerability was far more problematic than witnesses were prepared to admit, the Inquiry is asked to consider Down’s Syndrome. Prior to the pandemic respiratory disorders were known to be the predominant cause of death for people with an intellectual disability.¹³⁶ From an early stage they were earmarked as a risk for clinical vulnerability.¹³⁷ In early April 2020, DHSC exchanged information from Spain and Italy that showed a disproportionate mortality rate for those with learning disabilities and/or Autism and asked the question *“how can we be more proactive and what can we do?”*¹³⁸ By June 2020, the modelling evidence was indicating a *“high risk”*.¹³⁹ However, the granularity of evidence remained limited.¹⁴⁰ In the absence of adequate data collecting architecture, Government experts therefore waited on the development of the QCovid data stratification tool which was commissioned in May 2020, but not sufficiently developed to produce its first reports until late September 2020.¹⁴¹ Given that studies only made available by the end of September 2020 indicated a 10 fold greater likelihood of death from Covid¹⁴² and the PHE study published in November 2020

¹³³ Case-Hancock WhatsApp 06.05.20 7:13pm [INQ000129309]

¹³⁴ Non-Shielded Vulnerable (NSV) Groups paper presented to GPSMIG 24.04.20 [INQ000088666/1 §4] Case [INQ000207294/5-7 §§2.4.2, 2.5, 2.7 and 2.9] and Gove [INQ000259848/30 §48n]

¹³⁵ Bell [INQ000198850/47-48 §§114-116]

¹³⁶ Watson and Shakespeare [INQ000280067/4 §8] [12 §39]

¹³⁷ Submission to SSHSC 08.03.20 [INQ000106161/6 §27] Letter to GPs 16.03.20 [INQ000048143]

¹³⁸ Minutes of a meeting between DHSC Task and Finish Group regarding Care Providers for those with Learning Difficulties and Autism 07.04.20 [INQ000049998/1]

¹³⁹ Minutes of NERV/TAG Subgroup on Clinical Risk Stratification 22.06.2020 [INQ000221762/3 §4.9] NHS Letter 02.11.20 [INQ000058815/1]

¹⁴⁰ [INQ000109794/3]

¹⁴¹ Whitty [INQ000248853/98 §6.46] Harries [INQ000273807/167 §11.63]

¹⁴² Submission from Dr Nisha Mehta, Clinical Advisor to the Chief Medical Officer (England) to UK CMOs regarding UK Clinical Review Panel Recommendations - QCOVID Date for strategy in respect of highest risk patients, 30.09.2020 [INQ000109794/3]

(even with doubts about the consistency of the underlying data gathering) indicated that a person with learning disabilities between 18 to 34 years old was thirty times more likely to die from the virus,¹⁴³ this must be classed as one of Covid's great disasters. Whatever the inconsistency in early available data, this was an area that required a "*precautionary approach*",¹⁴⁴ which continues to beg the question why Government could not have been advised to act sooner.

31. LESSONS: The approach to Down's Syndrome teaches a lesson in itself, but also broader lessons about the lack of both sufficient medical and social recognition of Disabled people. The question for the medical officers was not who is to blame for why people with Down's were not designated as 'Clinically Extremely Vulnerable' earlier than November 2020, when the potential risk was flagged in June 2020, if not earlier. The question was *what could have been done to speed that designation up?* Professor Whitty's answer was that the delay was caused by the need to balance the nature of the risk with the social imposition of lockdown.¹⁴⁵ He and Professor Harries were genuinely concerned with how little the state was ready to look after vulnerable locked down people.¹⁴⁶ Yet it was the duty of the medics to advise on the risks. It was then the responsibility of Government to facilitate a sufficient shielding package. In other parts of his evidence, Whitty described this as the division of tasks between the technocratic and the political.¹⁴⁷ Harries' answer was that the epidemiological situation was too uncertain before an earlier date. Apart from anything, the Secretary of State received the recommendation to add Down's Syndrome to the CEV list as of 1 October, the matter was decided at the Covid-O meeting on 9 October, but the letter did not go out until a month later, apparently because "*engagement with specialist charities and patient groups was underway*".¹⁴⁸ The answer is arguably simpler than the Government medical officers were prepared to acknowledge. The delay was caused by the absence of sufficient granulated data collecting systems that had to be constructed, the unavailability of alternative reliable means to collect data quickly enough, and the lack of coordination with the Down's community and their carers to get that data

¹⁴³ PHE, Deaths of people identified as having learning disabilities with COVID-19 in England in the spring of 2020 26.11.20 [INQ000089700/39 §2]

¹⁴⁴ Harries [INQ000273807/167 §11.64]

¹⁴⁵ Whitty [T24/132/17-133/1] [T25/135/9-11]

¹⁴⁶ Harries [INQ000273807/59 §7.71] [60 §7.74-7.75] [62 §7.80]

¹⁴⁷ Whitty [T23/91/19-23] [T23/130/1-18]

¹⁴⁸ Future Protection of the Clinically Extremely Vulnerable 01.10.20 [INQ000058432/5 §23] and Summary Steering Brief for the CEV at Covid-O [INQ000058508/1 §4]

earlier and work on better shielding packages. All of those deficits could be remedied in the future.

[6]. ENGAGEMENT

32. CONSULTATION: Our sixth criticism is the lack of real engagement. The Government now recognises the importance of increased participation through “*Enhancing our engagement with disabled people*”,¹⁴⁹ as does the principal civil servant in the DU, Marcus Bell, who characterises the matters as a prerequisite for trust.¹⁵⁰ However, when people refer to consultation, they often do not mean the same thing. When government and civil servants talk about consultation they can mean set piece meetings, where at best established ideas are stress tested, something of a notch up from focus groups. During Covid this meant “*briefings to advise civil society groups of what was planned but no proper engagement in the lead up to the decision being taken*”.¹⁵¹ Otherwise they mean discussions with intermediary elites – experts such as public health officials, charities and academics who speak *for* people, rather than speaking with the people themselves.¹⁵² Most often they mean some form of template questionnaire on the internet, often not produced with Easy Read or other reasonable adjustments.¹⁵³
33. CO-PRODUCTION AND CO-DESIGN: When DPOs (and other representative groups of marginalised people) talk of consultation they mean collaboration as equals between elected officials, experts and themselves. They mean co-production and co-design. Kamran Mallick described it as “*the idea.. that you don't bring people in at the end, once you've already designed something, you actually bring people in right at the outset. ... And it's about kind of ongoing conversations, so these are not consultations or meetings, these are ongoing processes, structured processes, where civil society is funded to engage with government*.”¹⁵⁴ The language of co-production and co-design was used by Mark Sedwill,¹⁵⁵ Justin Tomlinson,¹⁵⁶ the Cabinet Office,¹⁵⁷ and in the Scottish Government's

¹⁴⁹ [INQ000089722/19 and 94] “*Increase participation*” through “*Enhancing our engagement with disabled people*”

¹⁵⁰ Bell [M1/T20/20/13-18]

¹⁵¹ Mallick [INQ000280035/26 §86]

¹⁵² E.g. Whitty [T24/130/6-132/3] and paragraph 27 above

¹⁵³ *Westminster Government Civil Society Shadow Report* (March 2022) [INQ000279965/11 §§20-21]

¹⁵⁴ Mallick [T5/64/15-65/16]

¹⁵⁵ Sedwill, Blavatnik School of Government (July 2020) [INQ000182382/6] [T20/151/16-153/20]

¹⁵⁶ Tomlinson [T20/207/5-208/9]

¹⁵⁷ Cabinet Office, *Innovation and Lessons Learned from the government's response to COVID-19* (June 2022) [INQ000180306/29 and 32]

approach to decision making based on “*common purpose*” and “*collaborative forums*”.¹⁵⁸ It was advocated in substance by both Gus O’Donnell (“*Are there suitable mechanisms through which stakeholders (including the public) can access and review the system in its actual and proposed forms?*”¹⁵⁹), the Institute for Government (“*broader participation makes for better government decisions*”)¹⁶⁰ and it is regarded as an essential element of social consensus building by social and group psychologists¹⁶¹ and other SAGE experts.¹⁶² The language reflects the method to make the needed change happen. Entitlement to “*closely consult and actively involve*” Disabled people in law and policy that impacts on them also represents a human right under the UNCRPD,¹⁶³ as opposed to some sort of discretionary gift of Government.¹⁶⁴

34. THE LOST PROPOSAL: By the autumn of 2020, civil servants inside the DU clearly wanted this type of change. They also do not appear to have considered the level of engagement with Disabled people and their representatives to be as positive as Justin Tomlinson has presented to the Inquiry and elsewhere.¹⁶⁵ Consequently, the DU advocated for a National Panel for Disabled People as a core part of the ambitious proposals called for in October 2020.¹⁶⁶ The Panel’s function would have been to “*place lived experience of disability at the core of C19 disability policy and related future interventions which has both a direct and indirect impact on disabled people; ...facilitate collaborative policy-making with disabled citizens to tackle C19 disparities; include groups who are typically disengaged with current government networks to ensure an inclusive approach; provide a route for government to “test and refine” C19 policy which impacts on disabled groups; and demonstrate the government’s commitment to working with disabled people to address the disproportionate impact of C19 on their daily lives and health and wellbeing*”. The

¹⁵⁸ Swinney M1 [INQ000185352/9 §26]

¹⁵⁹ O’Donnell and Begg *Far from Well: The UK since COVID-19, and Learning to Follow the Science(s)* [INQ000189723/36 §8]; see also O’Donnell *The Covid Tragedy: following the science or the sciences?*, IFS Annual Lecture [INQ000189722/20-21]

¹⁶⁰ IfG: *Responding to Shocks: 10 lessons for government* [INQ000075372/7-9] and IfG *Decision making in a crisis* [INQ000075340/50]

¹⁶¹ Reicher [IN000273800/16 §47] [67 §198] [INQ000056484/3 §7] Bear et al [INQ000273376] Drury [INQ000056551/10 §7(1-4)] [Johnson [INQ000056516/29-30 §7.3(2)] Mackie [INQ000056609/13-14 §6.16]

¹⁶² Holgate [INQ000056483/12 §7.2(1)] Mitchie [INQ000056609/13-14 §6.16] Mills [INQ000056575/51-53 §§7.18-7.22] and Farrar [INQ000056616/6 §7]

¹⁶³ UNCRPD Art. 4(3) [INQ000279959/7] and UNCRPD Committee Gen Comment No. 7 [INQ000279951/3 §15] DPO M2 Opening Submission 26.09.23 §2.5. Cf. Mallick [INQ000280035/26 §87]

¹⁶⁴ *SSDWP v Eveleigh* [2023] EWCA Civ 810 [2023] WLR 3599

¹⁶⁵ Tomlinson [INQ000233735/11 §37] Cf. Mallick [INQ000280035/13-17 §§42-50] *Westminster Government Civil Society Shadow Report* (March 2022) [INQ000279965/69 §§147-148]

¹⁶⁶ [INQ000083918/1 §3.2 and Annex B pp 6-10] see paragraph 17 and fn. 67 above

approach was commended to enable “*more meaningful engagement*” to better understand the impact of Covid than had been possible through meetings with the DCC, DPO Forum and Regional Stakeholder Networks. The Panel was needed to “(1) *Address key gaps in the government's understanding of how C19 is impacting people with disabilities across England; (2) Coordinate Departments across Government to engage directly with disabled people on C19 policy that impacts them; (3) Allow for fast-paced reactive engagement with disabled people as C19 issues and policy implementation emerges. This is a current gap in C19 policy formulation; (4) Feed in views at a formative stage of policy development through working with Departments, acting as a sounding board for policy proposals prior to implementation and engaging with disabled people to evaluate implementation across a broad range of C19 policy. (5) Build trust with disabled communities across the country, ensuring that they are being heard in C19 planning and that their needs are being taken into account; and (6) Increase legitimacy, transparency and awareness of overall C19 policy and future interventions which will have input from the Citizen Panel*”. As with other aspects of the ambitious package, the proposal was never implemented. Likewise, in its submission and subsequent rejection, none of the civil servants thought it apposite to tell Ministers that the idea was a matter of UNCRPD human rights compliance.

[7]. DATA

35. DELAY: The seventh criticism concerns data. Neither the DU nor a Minister came out from the outset to say data deficiency will expose Disabled people to danger. Even if obliged to plan for Disabled people from scratch, Government could have known more about clinical and social risks earlier. It could have engaged more with local communities and representative groups to acquire data and build trust about its use, and consequently been more intelligent about the consequences of its decisions.¹⁶⁷ Data gathering, its questionable quality, and lack of effective deployment undeniably caused problems for multiple aspects of pandemic decision making.¹⁶⁸ That said, it was a shortcoming of Government service to Disabled people that the DU did not fully comprehend until June

¹⁶⁷ Cf. Freeguard [INQ000260629/48 §§95, 97] [52 §§113-4] Bell [M1/T20/19-24] Harries [T28/38/16-39/2] O'Donnell *The Covid Tragedy: following the science or the sciences?*, IFS Annual Lecture [INQ000189722/21-22]

¹⁶⁸ Vallance [M1/T8/167/7-24] [INQ000238826/20 §§47] Harries [INQ000273807/32 §6.13] [33 §6.15] [33 §6.17] [INQ000251906/187-90 §§788-799] Davies [M1/T6/168/5-171/17] Technical Report [INQ000087225/148-150,158-160]: see also Cummings [INQ000273872/25 §114] [86 §418]

2020 the extent to which data on disability was fragmented and did not allow for comparisons to be made across departments.¹⁶⁹ Moreover, initial data gathering spearheaded by the Coronavirus Clinical Information Network (CO-CIN) used forms that did not register self-declared disability, only co-morbidity and frailty, and as such disability did not feature in its reports to SAGE and other bodies.¹⁷⁰

36. FAILURE: Neither the DU nor a Minister ever found a solution to the data problem. As of 21 May 2020, the DU identified “key” data gaps and proposed the action (as adopted) to “*develop a plan*” to address the issue.¹⁷¹ That plan was still being developed on 30 October 2020, when it was acknowledged that there were still significant knowledge gaps concerning the possible impacts of both the pandemic and HMG Covid policy responses.¹⁷² As of 12 November 2020, the DU proposed a developed data commissioning initiative to understand factors driving increased mortality risk and improving on data collected by the ONS.¹⁷³ That proposal (part of the called for “*ambitious*” package) identified information gaps that hampered communication with Disabled people and posed wider reputational risk. It sought to commission a range of data comparisons between Disabled and non-Disabled people across geography, age, sex, race and ethnicity and income with the benefit of standardised references to different types of impairment. The proposal was not acted upon. On 30 March 2021, the DU still expressed concern about data deficiency and advocated the need for a data improvement program.¹⁷⁴ In July 2021, the DU published the National Disability Strategy, that committed to “*strengthen the data and evidence base to support policies that will transform outcomes for disabled people*” but it did not say how it would do so.¹⁷⁵ The position is still not resolved. A June 2022 ONS paper found that the health service is still not collecting data on individual impairments and fails to take into account other social factors.¹⁷⁶
37. HUMAN RIGHTS: If data was Covid decision making’s Achilles heel, the DPO press again that not one witness has recognised that data collection and utilisation in this area is a

¹⁶⁹ Bell [INQ000198850/26 §62]

¹⁷⁰ Sample [INQ000260637/22 §5.6]

¹⁷¹ Impact of Covid-19 on Disabled People, GPSMIG (21.05.20) [INQ000083584/3 and 7]

¹⁷² Disproportionate Impacts of Covid-19 on Disabled People, Briefing (30.10.20) [INQ000083956/2 §7]

¹⁷³ [INQ000083918/1 §3.1 and Annex A pp 2-6] see paragraph 17 and fn. 67 above

¹⁷⁴ Disability and Covid-19 Deep Dive, DU, (30.03.21) [INQ000083885/15 and 32-6]

¹⁷⁵ National Disability Strategy (July 2021) [INQ000089722/87]

¹⁷⁶ Bell [INQ000198850/48 §116] ONS (07.06.22) [INQ000089787/17, 22 and 23]

human right of Disabled people.¹⁷⁷ Gavin Freeguard summarised Government reports over three decades,¹⁷⁸ including 15 published since the UK signed the UNCRPD, none of which mention Article 31 of that Convention and the UN Committee’s commentary on the right, which requires the collection of data based on individual impairment; but additionally embodies a duty to collect data that relates disability to a range of other characteristics and circumstances including race, sex, gender, income and geography, in order to properly understand it.¹⁷⁹ When the DU sought funding for ambitious data commissioning that would have looked at such matters, it made no mention of the UNCRPD.¹⁸⁰ Covid’s lesson is that data collection and intersectional analysis in decision making is a right to life issue. However, on this issue of equality and human rights the UK remains in a state of designed ignorance.

[8]. PROTECTION

38. WORLD TURNED UPSIDE DOWN: The eighth criticism, is that in fundamental ways, Disabled people were left without protection during Covid. In due course, the Inquiry will need to refer to *Every Story Matters* to do justice to what this meant at the individual level, but in essence it concerned assisted living and basic services and routines, long fought for, being turned upside down overnight.¹⁸¹ What was lost in the failure to engage early with Disabled people and their organisations were some of the most significant protections.
39. FOOD: Of these, food insecurity stands out. Disability Rights UK have repeatedly emphasised that they could have assisted earlier to prevent Disabled people confined to their homes, who were not initially registered as CEV, being left without food to the extent that they were. They wrote to the Secretary of State on 27 March 2020 outlining that it would be insufficient to only offer support to those who were medically more vulnerable to Covid and that the Government should adhere to the social model of disability and make arrangements for those who were Disabled and not shielding, but who still required this support.¹⁸² There was undoubted delay in Government on the issue, as COBR recognised

¹⁷⁷ UNCRPD Art. 31 [INQ000279959/23] UNCRPD Committee UK Country Report [INQ000182691/10 §§64-65]

¹⁷⁸ Freeguard [INQ000260629/8 §§12-13]

¹⁷⁹ Bamba and Marmot [INQ000195843/83 §199.6] [M1/T4/14/10-19] [M1/T4/68/22-69/10] [M1/T4/15/14-17]: see also Sendai Framework, fn. 14 §19(g) and WHO Report on Disability (2011), fn. 14 pp 45-47 and 267: for recognition of the need for comparative data understanding, see Harries [INQ000273807/150/ § 11.3]

¹⁸⁰ Badenoch [T25/215/18—220/4] accepting that multivariate analysis must be routine

¹⁸¹ Mallick [INQ000280035/24 §82]

¹⁸² Mallick [INQ000280035/8-9 §24-25] [28 §93] and EX. KM/11 [INQ000238539]

the general problem of food shortages for anyone socially isolating on 4 March 2020,¹⁸³ but the GPSMIG minutes show that the actions seriously begun in April did not begin to come into effect until the end of the month.¹⁸⁴

40. DEVASTATING ACTION: Of all the failed protections of the pandemic response, the deaths of and harms to those in residential and domiciliary care is one of the most acute. It was not wrong to try to protect hospitals. What was wrong was to do so little to protect those in care in the name of protecting hospitals.¹⁸⁵ In their evidence both Professors Van Tam and Harries had to confront how obvious it would have been to any public health practitioners (and exemplified by the Van Tam 2017 co-authored article) that mass release of hospital patients into care settings would create “*devastating*” consequences both through patient infection, and multiple movements of the workforce.¹⁸⁶ In prescient terms, Disability Rights UK wrote to Minister Whately on 16 March 2020 to describe near enough precisely what would happen in care homes.¹⁸⁷ In the situation of Mid-March 2020, despite Harries admitting its “*awfulness*”, neither she, Van Tam nor others in Government advanced any practical alternative. Available facilities and structures offered none.¹⁸⁸ Based on the fact that suspected mass infected patients and workers were being tested neither in hospitals nor receiving care settings, Jeremy Farrar goes further than “*awful*” and describes the situation as “*Faustian*”.¹⁸⁹ But neither the scientists, nor the politicians, sounded that awful truth to the public; nor engaged the voluntary and community sector into a required exceptional peace time emergency battle to prevent what would otherwise be the inevitable.
41. DEVASTATED SECTOR: The politicians and civil servants do not dispute that the social care sector was weak in its capacity to deal with the pandemic.¹⁹⁰ The Technical Report by the CMO and CSO described it as being “*complex, large, varied, fragmented and in places... fragile*” prior to the pandemic, with a high turnover workforce operating in multiple settings

¹⁸³ COBR Minutes 04.03.20 [INQ000056218/9 §§18-19] and [10 §§7-8]

¹⁸⁴ DEFRA 03.04.20 [INQ000083377] [INQ000083379] 21.04.20 [INQ000083476] and 21.05.20 [INQ000083585] [INQ000083611/5]

¹⁸⁵ Thomas [INQ000236243/41 §142.1] refers to the distorted effect of using the health service as a “proxy” for a range of unclear decision making

¹⁸⁶ Lansbury et al [INQ000269388] Nazroo [T3/145/5-152/14]: see also Alexander and Mann [M1/T3/196/13-21] and [M1/T3/199/1-200/5]

¹⁸⁷ Mallick [INQ000280035/6 §19] and Ex. KM/3 [INQ000238504] [T5/48/12-55/21]

¹⁸⁸ Van Tam [INQ000269203/123 §9.13 and fn. 4] [T24/242/2-19] Harries [T28/8/13-16/6] [INQ000151606] [INQ000273807/136 § 9.42]: see also McLean [INQ000309529/28 §§92-93, 98-99]

¹⁸⁹ Farrar *Spike: The Virus vs The People* [INQ000214802/144]

¹⁹⁰ Hancock [INQ000232194/122 §§490-491] Whately [INQ000273897/55 §§238-241] Wormald [INQ000280628/42 §83] [88 §168] [107 §204]

and a high number of agency staff.¹⁹¹ This became particularly clear as a result of the Vivaldi study that reported in July 2020.¹⁹² Key findings during the first wave of the pandemic were that care homes that did not pay staff during periods of sickness absence had higher levels of Covid-19 and greater risk of outbreaks. It further identified that homes which had high numbers of agency staff (who work in a variety of homes) had a higher risk of Covid-19 outbreaks. From September to December of 2020, as part of the Winter Plan, DHSC therefore worked on Regulations to prevent care workers moving between settings. As the responsible Minister, Helen Whately identified that a balance was needed between stopping movement and protecting people in a profession where many staff worked part time, on zero hours contracts and “*the majority of [that] workforce are women, [and] working for often low levels of pay.*”¹⁹³ Whately, with her Secretary of State’s backing, in December 2020 recommended a furlough type scheme that would directly compensate workers for lost earnings as a result of no longer being able to work in two places.¹⁹⁴

42. ECONOMICS: The Treasury did not accept that proposal¹⁹⁵, despite recognition by Covid-O in its minutes of 22 December 2020 that there was a “*clear and shared understanding of the need to stop staff movement between care homes*”.¹⁹⁶ Its action was for further work to be done by the DHSC and HMT to identify a way to find some other way to compensate care staff who were going to be effectively compelled not to work under the Draft Regulations. The DHSC then proposed a compensation scheme that involved a ringfenced fund for care home providers to be administered by local authorities. It would pay 100% of the salary of care workers who had to stop work to comply with the proposed regulations.¹⁹⁷ This also did not get HMT approval. It made an alternative proposal in January 2021 of a fund to increase the supply of care workers.¹⁹⁸ That fund of £120 million to supply additional labour force was brought into being¹⁹⁹, but no payment to not work was ever established and ultimately no regulations introduced to stop movement between homes. In short, some funding to deal with understaffing, but no additional

¹⁹¹ Technical Report (December 2022) [INQ000087225/296]

¹⁹² Hayward [INQ000267868/6 §§3.9-3.10] and [INQ000211984]: Technical Report (December 2022) [INQ000087225/297-298]

¹⁹³ Whately [INQ000273897/ 52-53 §§224, 229]

¹⁹⁴ Whately [INQ000273897/54-55 §§236 to 239] Hancock [INQ000232194/121-122 §§486-492]

¹⁹⁵ Whately [INQ000273897/55 §237]

¹⁹⁶ Covid-O Action and Decisions 22.12.20 [INQ000091096/1]

¹⁹⁷ Ex. HW/300 30.12.20 [INQ000328028/3 §8]

¹⁹⁸ Ex. HW/301 05.01.21 [INQ000328028/3 §5]

¹⁹⁹ Whately [INQ000273897/56 §243]

funding to support not working, and no regulations. Instead there was just voluntary guidance to employees. Rishi Sunak – as Prime Minister now and Chancellor then – was extremely reluctant to acknowledge that low pay drove care staff to work in multiple locations, inadvertently spreading the virus. Rather than finding a safe furlough type solution to a problem that may have killed more people of Covid than anything else, the Treasury obstructed sufficient control of the labour market.²⁰⁰

[9]. REDISTRIBUTION

43. DISCOURSE: The DPO's final criticism concerns pandemic economics and its deliberate failure to redistribute to those most in need. Mr Sunak, when Chancellor of the Exchequer, on 11 March 2020 made a promise "*to support...the most vulnerable people in the form of a safety net for those who could not work, whether they were ill themselves or not at work as they were self-isolating.*"²⁰¹ Those words are revealing. The safety net would only exist for those who had been *able* to work, but were *able* to do so no longer. The provision of extra funding was to maintain the economic status quo for *these* people, to provide temporary assistance to the politically idealised person under our contemporary economics, who is autonomous, independent and self-sufficient.²⁰² There was no proper safety net for those deemed "*unproductive*", or recognition that those only just scraping by after a decade of cuts to benefits and services would face further financial hardship. Hence the primary steps taken by the DWP to support "*vulnerable individuals*" were easements to conditions and procedures for claiming benefits and not losing entitlements,²⁰³ which in normal times are notoriously harsh for those obliged to comply with them.²⁰⁴
44. STATUS QUO: The Government's actual Covid economics were not radical at all. They funded the status quo. For spending comparisons, during the pandemic 1.5 million Bounce Back Loans worth £47 billion were provided to business. In contrast the £9.3 billion additional DWP spending during the Covid period was allocated predominantly to the in-work population, who were deemed temporarily unable to work.²⁰⁵ For adults over 25, Universal credit was topped up by twenty pounds a week, but there was no equivalent top up for those on legacy benefits.²⁰⁶ Neither was there top up for Carer's Allowance in

²⁰⁰ Sunak [T33/163/21-168/22] [T33/194/5-196/9] Cf. Technical Report [INQ000087225/305 §3]

²⁰¹ Cabinet Meeting Minutes 11.03.2020 [INQ000056132/4]

²⁰² DPO M2 Opening Submission 26.09.23 §1.9

²⁰³ Couling [INQ000217285/23-24 §3.64] and [36 §3.100]

²⁰⁴ *Westminster Government Civil Society Shadow Report* (March 2022) [INQ000279965/61 §127]

²⁰⁵ Couling [INQ000217285/24-25 §3.65]

²⁰⁶ Couling [INQ000217285/26-27 §§3.67-3.71] Mallick [INQ000280035/31]

England, despite demand on carers' responsibilities and time increasing sharply. The Government did no more than refrain from penalising carers who had a temporary break in caring as a result of Covid necessitated isolation and otherwise allowed carers to carry out some of their requisite 35 hours through emotional contact and support (e.g. online meeting or shopping) as opposed to providing purely physical presence and assistance.²⁰⁷ As well developed by both the TUC²⁰⁸ and SAGE,²⁰⁹ the eligibility criteria and amounts of financial sick pay, could not prevent part time and zero-hours workers, already in poverty, continuing to work with fatal consequences.

45. MORAL ECONOMY: Helen MacNamara's evidence referred to decision makers often failing to see the human consequences of decisions.²¹⁰ Covid economic policy involved a chronic failure of imagination and empathy. A failure to think through what it means if you or the person you care for can no longer get supermarket deliveries so you have to go to your corner shop, which is more expensive. If you have to stay inside because public spaces are closed, so your heating bills go up. If you have to pay for taxis because public transport is unsafe. In the early days of the pandemic 100,000 unpaid carers were using foodbanks and 226,000 cut back on food just to get by. That arose from governmental choice. Wales and Scotland made additional payments to unpaid carers during the pandemic.²¹¹ England did not. £67.25 per week for full time unpaid care was apparently enough.²¹²

PART B: REFLECTION

46. What does this treatment of Disabled people, and other marginalised groups during Covid, tell us about how this country has come to be governed and the values it is governed by?

GOVERNANCE

47. GOVERNORS: First, the quality of the Government response was compromised by the shortcoming of the governors and the broader political circumstances that they sought to govern in. The pandemic occurred during a storm of political instability, with significant splits across both major political parties, relative inexperience in the Johnson administration and the still acute complexities of Brexit. Fear and animosity in the

²⁰⁷ Couling [INQ000217285/33-34 §§3.88-3.90]

²⁰⁸ Kate Bell [INQ000215036/43-49 §§147-167] [T4/68/16-77/7] [INQ000192239]: see also [T4/55/16-56/19]

²⁰⁹ Vallance [INQ000273901/164] Khunti [T7/29/16-20]: see also Cummings [INQ000273872/85 §412]

²¹⁰ MacNamara [INQ000273841/18 §32(iv)] and paragraph 51 below

²¹¹ <https://www.gov.scot/news/extra-payment-for-unpaid-carers> [https://carers.org/downloads/finance-briefing-\(eng\).pdf](https://carers.org/downloads/finance-briefing-(eng).pdf)

²¹² <https://www.gov.uk/government/publications/benefit-and-pension-rates-2020-to-2021/benefit-and-pension-rates-2020-to-2021>

governing group of politicians and administrators created acute personal tension. In an inexperienced, non-diverse, overworked, supercharged elite and claustrophobic environment,²¹³ there was every risk of breakdown between each other and disconnection between the governors and the governed. During the pandemic there should ideally have been a National Government, or at least dynamic involvement of Opposition politicians. The previous 5 years of UK political life made that impossible. Instead we had people often overcome by the worst versions of themselves, whatever their talents or commitments. Too much trying to be the hero in the story.²¹⁴ On this the country was unlucky, but must learn a hard lesson that the quality of politics is easy to break, but difficult to mend, and the consequences can be terrible, especially once crisis comes.

48. LEADERSHIP: Second, there was a want of resilient leadership at the heart of Government.²¹⁵ The Prime Minister and Dominic Cummings were a bad combination for any kind of stability in crisis. In their own words, “*an orgy of narcissism*”.²¹⁶ Their two Cabinet Secretaries discussed that they had never seen “*a bunch of people less well equipped to run the country*”.²¹⁷ Johnson could not admit to his profound shortcomings as leader.²¹⁸ Cummings had minimal insight into how his own behaviour was part of the problem.²¹⁹ His excuse for putting Johnson into power and leaving him there despite not being in any objective sense fit for office - that “*politics is about choices*”- was nevertheless a dark truth.²²⁰ At this point when Downing Street was so dysfunctional, Ministers and civil servants were also not secure in their position.²²¹ The extensive reshuffle in February 2020 brought new leadership into treasury, food and agriculture, social care and local government, with Michael Gove taking responsibility for the whole of the Cabinet Office for the first time.²²² Between March and September 2020 there was also an exodus of the highest echelons of the civil service, whether through dismissal (Mark Sedwill), resignation

²¹³ Thomas [INQ000236243/27-28 §§85-87] [T9/74/12-75/6] MacNamara [INQ000273841/9 §§17-23]

²¹⁴ MacNamara Memo [INQ000136755] [T16/68/24-69/15] [INQ000273841/52 §102] [71 §146]

²¹⁵ Thomas [INQ000236243/43 §142.10] [T9/78/24-79/12] O'Donnell [T6/64/2-65/6]

²¹⁶ Johnson-Cummings WhatsApp 16:23pm 15.11.20 [INQ000283282/26] Cummings [T15/232/2-12]

²¹⁷ Case-Sedwill WhatsApp 02.07.20 20:06pm [INQ000303245/9]

²¹⁸ MacNamara [INQ000273841/90 §183] [T16/139/14-141/15] Cain [T15/36/15-37/11] Shaffi [T14/121/16-122/19] Case [INQ000207294/53 §5.8] and Sedwill [T20/120/3-122/24] [T20/124/25-126/6] Sedwill-Case WhatsApp 18.05.20 08:16am [INQ000303245/1] and 02.07.20 20:04pm [INQ000303245/9] Thomas [INQ000236243/27 §85] O'Donnell [T6/17/22-20/13]

²¹⁹ Cummings [INQ000273872/111] Cf. Cummings [T15/217/5-221/17]

²²⁰ Cummings [T15/230/10-232/15] [T15/237/11-13]

²²¹ MacNamara [INQ000273841/11 §20] [29 §50] [T16/10/20-11/25] Hancock [T29/82/24-84/19] Martin Reynolds [T14/37/12-38/8]

²²² Gove [T27/14/18-20/7]

in protest (Philip Rutman from the Home Office and Jonathan Jones as Treasury Solicitor) or early retirement (Simon Macdonald from the FCO and Jonathan Slater from DoE). Side by side with Johnson not being good enough to do the job was the absence of an effective Cabinet Secretary. Since the death of Jeremy Heywood holders of the office, despite their talents, have been unable to play the “*vital and very difficult [multifaceted] role*” of principal adviser to the Prime Minister and head of the civil service and secretary to the Cabinet,²²³ all without clear constitutional rules as to how to discharge the role.²²⁴ Sedwill was the shortest serving Cabinet Secretary on record, who did not enjoy the confidence of his Prime Minister or senior adviser.²²⁵ Simon Case, with little Permanent Secretary or indeed management experience,²²⁶ took the job in the absence of any other serious candidates applying and with grave misgivings about his political charges.²²⁷

49. GOVERNMENT: Third, while it is tempting to believe that replacement of bad leadership will necessarily lead to better outcomes, this disaster was a long time in the making. Our system of government now has fundamental flaws. The whole notion of an unwritten constitution is a lawyer’s label that hides the fact that many of our institutions have been allowed to form incrementally to the point of chaos and fragmentation with no means to correct constitutional crisis in real time and no obvious pathways to change. The Cabinet Manual of 2011 and the Ministerial Code are simply not enough. Particular problems evidenced in this module include the downgrading of Cabinet Government,²²⁸ the incessant (patronage based) rotation of those in Ministerial office with consequences for in-depth experience and competency,²²⁹ the overinflation and dysfunctionality of Downing Street and the Cabinet Office as centres of power,²³⁰ the lack of integration between

²²³ Thomas [T9/10/111/20] [INQ000236243/12 §32]

²²⁴ Thomas [T9/12/7-13/25]

²²⁵ Sedwill [T20/135/6-136/10] E.g. Cumming-Johnson WhatsApp 12.03.20 [INQ000048313/22] and 14.03.20 [INQ000048313/7]: see also Thomas [T9/14/11-15/6] [T9/17/15-18/3][T9/19/16-20/7]

²²⁶ Cummings [INQ000273872/102 § 509] Thomas [INQ000236243/10-11 §26] Cummings-Johnson WhatsApp 29.07.20 11:31am [INQ000283282/12]

²²⁷ Cummings [INQ000273872/102 §510] Case-Sedwill WhatsApp 18.05.20 08:29am [INQ000303245/1] and 05.06.20 15:09 [INQ000303245/6] Cummings-Case-Cane WhatsApp 08.09.20 [INQ000048313/54] Vallance Diaries 11.11.20 [INQ000273901/273]

²²⁸ MacNamara [INQ000273841/5-9 §§9-15] [64 §129] [40 §74(v)] [91 §183] [17 §64] [T15/90/21-95/1] Sedwill [T20/1424-17/20] Cummings [INQ000273872]

²²⁹ Letwin [M1/6/15-8-17/19] O’Donnell and Begg *Far from Well* [INQ000189723/25-26] O’Donnell [T6/20/18-25/25]

²³⁰ MacNamara [INQ000136755] MacNamara [INQ000273841/40 §74(i) and (iv)] Gove [T27/10/24-11/5]: see Case [INQ000273872/8 §3] [INQ000273872/19-20 §§71-78] [T15/97/8-98/18]

Cabinet Office and other Departments,²³¹ and institutional tolerance of macho and sexist workplace bullying and disrespect, which women have criticised and in various ways others have normalised.²³² At the very least the challenges of No-Deal Brexit disrupted the Cabinet Office and other parts of Government,²³³ and in MacNamara's words bent the UK governing system "*out of shape*".²³⁴ In the case of emergency planning, especially regarding care homes, Brexit caused work to be put on hold.²³⁵ The combination of Brexit, Covid and (now) four different Government administrations in 4 years has left a civil service with low morale, gutted of some of its greatest talents, which continues to score highly on international comparators, but actually marks lower for features that were so crucial to this emergency like crisis and risk management, digital services, capabilities and inclusiveness.²³⁶ The DPO would add that no one in UK Government was internally championing compliance with international human rights law for Disabled people despite the general requirement of the Cabinet Manual, the expectation upon the DU and recommendations to the same effect by Parliament.²³⁷ Against long term decline it was therefore hubris to think that the system could handle this type of crisis;²³⁸ and it would be even greater hubris to think it can in the future.

50. STATE: Fourth, closely aligned with our outdated systems this country presently lacks a positive vision of the state. We do not see it as a source of public good, and when it was called upon to be just that, not surprisingly, it faltered. There are a number of reasons to doubt Professor Woolhouse's well-meant intervention on so-called super shielding, in which the excesses of lockdown for all might be avoided by a more targeted lockdown for the most vulnerable accompanied by sufficiently reliable and scalable test and trace. The basic weakness of the idea – not always squarely confronted by the libertarian critics of lockdowns – is that we could not have generated a more sophisticated and better approach

²³¹ Case-Hancock WhatsApp 29.04.20 8:27pm [INQ000129289/2] Cummings 13.07.20 [INQ000048313/56-57] MacNamara [INQ000273841/6 §10] [7 §14] [40 §74(iv)] [INQ000136755/1-2] Reynolds [T14/46/13-47/22] [T14/48/4-49/12] O'Donnell [T6/28/18-30/17] Thomas [INQ000236243/30 §98]

²³² MacNamara [INQ000136755] [INQ000273841/50 §§99-102] [53 § 105] [T16/67/23-68/23] [INQ000286044] [T16/69/16-75/1] [T16/77/22-81/8] Cf. Thomas [T9/21/1-15] [T9/59/23-60/2] Johnson [T32/184/16-185/6]

²³³ Thomas [INQ000236243/12 §§33, 60, 112]

²³⁴ MacNamara [T16/10/9-15]

²³⁵ Wormold [M1/5/139/15-146/19] Hancock [M1/10/37/8-21] [M1/10/58/2-59/4-24]

²³⁶ International Civil Service Effectiveness Index ('InCiSE') Report 2019 [INQ000189721/23-29 and 68]

²³⁷ Cabinet Manual [INQ000182315/78 §9.13-9.14] WESC *Levelling Up and equality: a new framework for change* 22.09.21 [INQ000089734/21 §§47-49] and [26 §64]

²³⁸ Farrar *The Virus vs The People* [INQ000214802/124 and 129] MacNamara [INQ000273841/13 §§24-31] [T16/16/22/16-19/23]

than we did. Not only did we not have the infrastructure²³⁹ (which Oliver Letwin in Module 1 described as “wildly under-resilient”²⁴⁰) but Central Government – whether within the Department of Health and Social Services, or elsewhere, is reluctant to take any responsibility for social care.²⁴¹ More broadly, in contrast to matters of treasury, security and foreign policy, the centre of power lacks understanding of social policy and the ‘operational’ management of the state.²⁴² There are also fundamental weaknesses in the capabilities of many of our public institutions and the connection to society they are there to serve.²⁴³ At present our governance from the centre to the local, from public sectors to communities, our data awareness, our communications, and our overall integration as a society, was just not good enough to provide a more targeted system of lockdown.

51. BUREAUCRACY: Fifth, there is what MacNamara has called a want of humanity as a feature of the bureaucratic mindset. As she puts it, “*Bureaucracies are by their nature inhuman: the purpose is to regulate and organise into the mechanical in order to operate at scale.*” It is such that “*Thinking about how people will be impacted and planning to minimise harm is a professional skill that is chronically undervalued in the machinery of government.*”²⁴⁴ The lack of diversity in government personnel is therefore not only wrong in itself, but leads to significant lack of awareness of the human implications of decision making.²⁴⁵ Even the language used is indicative of the problem; not just the catch-all of ‘vulnerability’, but the label ‘non-pharmaceutical interventions’ was unhelpfully reductive of the human impact that NPIs entailed.²⁴⁶ Not until the creation of the Covid Taskforce in the summer of 2020 was the euphemism of ‘disparities’ remedied in the phrase “*socially disproportionate impact*”.²⁴⁷ The impact was starkly unequal.
52. DEMOCRACY: Sixth, disasters of this nature expose the shortcomings of modern democracy and particularly the extent to which the political and bureaucratic classes are not properly engaged with the society they govern. Consequently the social contract is weak. Elites are too sanguine about the problem, because they have far more connection to (and therefore

²³⁹ Vallance [INQ000238826/76 §240] McLean [INQ000309529/37] [INQ000089734/4]

²⁴⁰ Letwin [M1/6/11/22-24]

²⁴¹ Hancock [M1/10/45-49/9] [M30/31/24-32/4]

²⁴² MacNamara [INQ000273841/39 §71] [T16/112/15-114/16] Sedwill [INQ000250229/4 §11]

²⁴³ O'Donnell and Begg *Far from Well* [INQ000189723/28-35] Adamson [M1/T21/129/6-131/6] and Adamson [INQ000182613/15 §57]

²⁴⁴ MacNamara [INQ000273841/18 §32(iv)] [40 §74(vii)] [T16/49/19-50/13]

²⁴⁵ MacNamara [INQ000273841/54 §107] [T16/115/12-25] [T16/117/8-19]: see also [INQ000273841/29 §§52-53] [52 §§103-104, 106] and Cain [T15/56/12-58/25]

²⁴⁶ MacNamara [INQ000273841/31 §57]

²⁴⁷ For earliest references see 21.08.20 [INQ000083902/1] and 28.08.20 [INQ000053734/3]

engagement with) those who govern. MacNamara's call for greater humanity in decision making is similar to what was argued for by bereaved and surviving residents of the Grenfell Tower fire. It aligns with the advocacy of the British Red Cross since the Grenfell Tower fire and Manchester Arena bombing, of the need for a human centred approach to disaster planning and response.²⁴⁸ One of the lessons of this module is that we still tolerate an old fashioned elite system of club government (literally in a Georgian town house) where "good chaps",²⁴⁹ willing to ask their "stupid laddie questions" of civil servants and experts, even in language they are ashamed of when made public, is regarded as somehow enough, and even something to aspire to. Covid showed all too painfully that it is not. The practical benefit of co-production and co-design would have been to bring diverse lived experience and, where necessary, rebel voices into the room. Red-Teaming, with bureaucrats playacting as 'devil's advocates'²⁵⁰ is no substitute for DPO (and other such groups) bringing forth people with lived experience capable of speaking to elites as equals, without simulation and without mediation. In a fast moving emergency that type of engagement can provide vital knowledge to Government that will otherwise only be recognised after the damage is done. However, the key lesson for the future is to make those relationships now, rather than having to build them once the emergency begins.²⁵¹

VALUES

53. Crisis: The crisis of Governance during the Covid Emergency State was not behavioural fatigue, or diminishment of gross national product, or the temporary cessation of liberties, that those with less power and freedom have not been able to take for granted anyway. The crisis was the emergence of data in the summer of 2020 for all the world to see that the marginalised people of our society – those who care for us and those most in need of our caring - had been killed by Covid and run aground by its counter-measures. The UK was soon to be shown to have fared worse than many other Western societies.²⁵² It was in that moment, with scientists warning in September 2020 that more had to be done

²⁴⁸ Adamson [INQ000182613/19 §67]

²⁴⁹ O'Donnell [T6/64/19-65/1] citing Lord Peter Hennessey

²⁵⁰ Letwin [M1/T6/33/21-35/1] Cummings [INQ000048313/55] Ferguson [INQ000249526/130 §§444-445] Halpern [INQ000188738/3 §13] Thomas [INQ000236243/27-28 §87] IfG *Science Advice in Crisis* [INQ000075385/38]

²⁵¹ Adamson [M1/T21/114/2-8] [INQ000182613/17 §63]

²⁵² UKHSA [INQ000283367/7] O'Donnell and Begg *Far from Well* (November 2020) [INQ000189723/4-5] Nuffield Trust report – *Resuming Health Services during the Covid-19 pandemic* (July 2020) [INQ000283191/7] Aron et al (2020) *A pandemic primer on excess mortality statistics and their comparability across countries* [INQ000280416/20]

sooner, harder, and broader, that it was disclosed to Cabinet members that Covid death and hardship had been - and was going to continue to be - extraordinarily discriminating. This was the seminal political crisis of Government during the pandemic, for it was not feasible to say we don't really care about that; and yet equally difficult to confront the long term structural reasons as to why it was so.

54. VALUES: The evidence of Professors Marmot and Bambra demonstrated that the suffering of Disabled and other marginalised people during Covid-19 was entirely foreseeable given health inequalities. Covid's 'syndemic' was a virus that "*acted synergistically with existing socio-economic and health inequalities to exacerbate and amplify the impacts of the pandemic but also the impacts of those existing inequalities*".²⁵³ For Disabled people this profound failure of foresight was not just an error of planning. It was an error of values. The damage to their wellbeing was chosen. Their human rights were violated.
55. PUBLIC HEALTH: Firstly, health inequalities as public health doctrine is really about inequities and raises stark issues of values. As Professor Marmot put it in his report to the previous Government in 2010, "*the fundamental drivers that give rise to [social inequalities in health are] inequities in power, money and resources*", and "*serious engagement with those inequities requires that power and resources be redistributed from those at the top to those lower down on the social ladder*".²⁵⁴ The wellbeing economics outlined by the experts on health inequalities effectively advises a form of New Deal re-setting of the relationship between state and society that has not been on the economic agenda in this country for more than 40 years.²⁵⁵ Bambra and Marmot told the Inquiry in Module 1 that what was needed in the pandemic response was 'universal proportionalism' so that mitigations were delivered for the whole population (universalism) but enhanced for those most in need (proportionalism).²⁵⁶ To discharge such a response requires a reframed ethic of government, as much as new policies and structures. The latter cannot happen without the former.
56. HUMAN RIGHTS: Secondly, human wellbeing and human rights are inextricably connected. The modern law of human rights combines respect for the inherent dignity of all people and practical and effective solutions to countenance social problems. It was a discipline

²⁵³ Bambra and Marmot [INQ000195843/75 §181] and [M1/T4/55/6-10]

²⁵⁴ Marmot et al, *Fair Society, Healthy Lives: Strategic Review of Health Inequalities in England Post 2010* (February 2010) p. 16, and Nathanson. C, Hopper. K – *The Marmot Review – Social revolution by Stealth* *Social Science & Medicine* 71 (2010) 1237-1239 p.151

²⁵⁵ Bambra and Marmot [INQ000195843/82 §199.1] [M1/T4/63/8-13] Khunti [INQ000252609/11 §2.41]

²⁵⁶ Bambra and Marmot [INQ000195843/82 §199.3] [M1/T4/63/21-64/15]

that needed to be applied to the difficult choices of the pandemic, but was not. The findings of the UNCRPD Committee against the United Kingdom in 2017 were landmark findings by a UN body against a Western State. The failure of politicians to register the issue and the caution of the civil service in pressing it are not an accident. The UNCRPD is not only a law against discrimination. It is law encompassing social and economic rights. The rights of Disabled people to consultation, data collection and emergency planning, all of which were highly significant during the pandemic, do not form any part of domestic discrimination laws.²⁵⁷ The UNCRPD is the globally endorsed program for equity-based real change, but the Government has refused to recognise its breaches and did not take the requisite steps before Covid to mainstream the UNCRPD into all policies, systems and services.²⁵⁸ The Inquiry is therefore witness to an impasse. Rights as legal duties are there to ameliorate the narrow perspective of governors and government that can all too easily overlook the less powerful, especially in crisis.²⁵⁹ As the UNCRPD is unincorporated international law Disabled people could not enforce their rights in domestic courts, even though ignoring these rights and the criticism of their non-compliance form an essential part of the factual matrix that gave rise to the pandemic's disparate outcomes for Disabled people. Given its reporting function under section 2 of the Inquiries Act and the fact that through Government design this is an issue that is beyond legal remedy, it is particularly important for the Inquiry to report on the matter. Finally, the Chair will appreciate that the UNCRPD was not only overlooked by government, but it is by and large unknown to the public. For future pandemics, it is this Inquiry that could correct that.

CONCLUSION

57. THE DUTY OF CARE: The Covid saga ultimately reveals a dire confusion of values a long time in the making; and in the end begs the question of what we as a collective of people care about. Certainly for now - *caring about caring and being cared for* - is not recognised as the primary value of social life and central principle of any form of good governance, but it should be. For Disabled people, who know that the question on that White Board – “*who will look after [those] who cannot survive alone*” – was never properly answered, the imperative to care about caring and being cared for, for them, is a fundamental one. All lawyers know of the famous negligence case *Donoghue v Stevenson* (1932) that gave rise

²⁵⁷ DPO M2 Opening Op Cit §2.11 and Tomlinson to EHRC [INQ000213340] replying to [INQ000185329]

²⁵⁸ Cf. WHO 2011 Global Report on Disability pp 9-11 and rec. p. 264-5

²⁵⁹ MacNamara [T16/131/16-132/6]

to a legal notion of a duty of care that focused on the question: who is my neighbour? In private law this generally receives a narrow answer in terms of taking care not to positively cause foreseeable harm. In human rights law the answer is extended to create positive obligations on the state to obviate vulnerability of the individuals and groups that it is in a position to reasonably alter. Covid's ultimate lesson is that in political and social life the duty and ethic of care needs to have a much broader reach and encompass more extensive duties of protection from harm, and a greater premium placed on caring relationships.²⁶⁰

58. VULNERABILITY: More than any other feature of what can be learned from Covid, this affects us all. We are all born *vulnerable*, we are *vulnerable* at the end of life, and face *vulnerability* at any moment in our lives.²⁶¹ However, until a person is disabled, or otherwise marginalised in our society, they are often able to live in a state of denial about that. Covid temporarily lifted the veil of ignorance. It showed us how much we are dependent upon and cared for by others and the extent to which society and economics are adjusted to our needs, albeit often at their expense. As the *other* to Disabled people, we are all the temporarily non-disabled. There is a profound value – and increasing need – to create a more responsive and integrated way of living together.²⁶²

59. CITIZENSHIP: The treatment of Disabled people during Covid reflects how vulnerable our political systems have become for vast parts of our society. The chastisement that “*You don't understand how government works*” is actually a demand for certain categories of people to accept misgovernance and with it a compromised form of citizenship. The fragmented structures that represent Disabled people in Government are tailor made to produce a disempowered and disempowering form of decision-making. It is government that sees equality only as an issue of opportunity. That intellectually battles against the evidence that various forms of discrimination compound one another. That disregards human rights as any kind of fundamental discipline. That otherwise absolutely lacks vision for the wellbeing and dignity of Disabled people. These disagreements raise broader issues of values that this Inquiry cannot, and should not overlook. If this is how government works, then it is a system that is not committed to addressing inequality and it is forever endorsing a status quo rather than acting to change it.

²⁶⁰ Peter Hennesey, *A Duty of Care - Britain Before and After Covid* (Allen Lane 2022) xv-xviii

²⁶¹ DPO M2 Opening Submission 26.09.23 §§1.10-1.11 and 4.5

²⁶² DPO M2 Opening Submission 26.09.23 §1.9 and Fineman M. (2008) *The vulnerable subject: Anchoring equality in the human condition*. *Yale Journal of Law & Feminism* 20(1): 8–40

60. INQUIRY: *What do these matters have to do with the Inquiry, and why are they relevant to it fulfilling its function? With respect to its important aims, the Inquiry process cannot just produce a brilliant chronology with intermittent criticisms. It holds a pen over the way we live, and in substantial ways, the way we can die. Mention has been made that the Inquiry cannot be political or be expected to solve all manner of problems. The DPO understand, but have important caveats. *Being non-political is being political when it takes the status quo as a given.* It is political not to say anything in reporting about the extent to which inequalities – including their denial and diminishment – played a causative role in Covid's outcomes. Equally, *declaring that one cannot change the world is a means of overlooking the ways in which you can.* The resignation that these matters are too big for this Inquiry should never be accepted. *If not in this forum*, despite the compelling expert and witness evidence which links negative Covid outcomes to chosen societal inequality, *when* or *where* could such matters truly be engaged with? That is what this Inquiry is particularly empowered to do, and should do. It must make the necessary findings and recommendations in the search for new governmental structures and values that were too often lacking in the Covid response.*

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15 JANUARY 2024