

13. However, while consistency was always a desirable objective, it was not the primary driver of decision-making in Wales. Our primary objective was always arriving at the right response for the people of Wales. Quite often, what was the right response turned out to be the same in different parts of the UK and so consistency of messaging could be achieved – but achieving consistency of messaging at the expense of doing the right thing was not an option for the Welsh Government. The UK Government and the devolved governments were in agreement that different jurisdictions might move at different pace depending on the progress of disease in those Nations – see paragraphs 90 – 91 and 145 of my first statement in Module 2.
14. It is therefore disappointing that Mr Johnson felt the need to say in his statement at paragraph 153 that there was a risk of the devolved governments being “*different for the sake of being different*”. The need to be different for the sake of being different was never part of my thinking nor that of the Welsh Government.
15. There were two primary reasons why the Welsh Government made different decisions. Firstly, and most significantly, the circumstances in Wales were different to elsewhere in the United Kingdom and so the Welsh Government responded to the facts on the ground in Wales. The impact of the pandemic was not uniform across the United Kingdom. Secondly, there was a contrasting underlying approach between the UK Government and the Welsh Government. Our approach was careful, cautious and guided by the science to make sure that we did everything we could to protect lives.
16. I consider that Mr Johnson’s comment at paragraph 186 of his statement that the “*DAs needed to be handled with care*” betrays a cast of mind. It appears to me that his thinking, as the then Prime Minister of the United Kingdom, was not that the UK Government needed to co-operate effectively with the devolved governments as equal partners who should be properly involved in decision-making, but that they had to be handled with care like a set of unruly, unreliable adolescents whose judgements were flawed. This cast of mind is further demonstrated by his comment that it was somehow “*optically wrong*” for the Prime Minister to be seen meeting with the First Ministers of the devolved governments, for fear it would give a false impression that the UK was a federal state. In my view, this demonstrates both a flawed sense of the proper governance of the United Kingdom and that the then Prime Minister had a hierarchal view of the UK, with the UK Government at the top of the structure. In this he was more influenced by status anxiety than by the substance of good decision-making. This

mindset completely overlooks the fact that for the most part when responding to the pandemic the devolved governments had their own legitimate powers and responsibilities for decision making. Once that is understood, then the Prime Minister should have met regularly with the First Ministers to discuss common positions and to co-ordinate announcements where it was helpful to do so.

17. I am taken aback and frustrated by the idea that Mr Johnson chose not to meet because he was worried about whether it looked right, rather than whether it was the right thing to do. As detailed in my first statement in Module 2 at paragraph 97, I wrote to the Prime Minister on 12 May 2020 making the point that if an effort was made to meet regularly with the devolved governments, public confusion might have been avoided with better outcomes for all. In those circumstances, I consider that the Prime Minister's deliberate choice not to meet with us did affect outcomes for the public. I consider that the decision-making process would have worked better if there had been an established history of joint working with the Prime Minister upon which we could have drawn in a crisis. Unfortunately, that history did not exist. I have already provided evidence in my first statement in Module 2 on the failure of the UK Government to follow the Sewel Convention and the fact that JMC meetings stopped once Mr Johnson became Prime Minister.

18. Once it is understood that Mr Johnson made a deliberate choice not to meet with the First Ministers, then the failure to hold JMC meetings, even though he accepted a recommendation that he should – see paragraphs 367 – 370 of his statement – is explained. It is disappointing that Mr Johnson behaved in that way and that he did not apparently realise until writing his statement that there were no JMC meetings during the pandemic. The JMC structure had been very extensively used in the immediate run up to this period to deal with Brexit and the no-deal preparations. It met very regularly and made decisions in relation to Brexit negotiations. It was the vehicle that the Rt Hon Theresa May MP's UK Government initiated and serviced to bring the four Nations together in a decision-making process. I explain how it was used in more detail in my first statement in Module 2 at paragraph 14. I wrote to Mr Gove making this point on 12 June 2020 – see paragraph 105 of my first statement in Module 2. I also raised this point at the four Nations summit in June 2021 – see paragraph 157 of my first statement in Module 2.

19. I never argued for weekly meetings with the then Prime Minister. My concern was that in order to take a view across UK-wide activities, there was a need for regular

checkpoints which only the then Prime Minister could provide. My intention is not to devalue the other meetings, which were useful, but to emphasise that the absence of the then Prime Minister and meetings with him created a vacuum at that final pan-government level. He was absent at key points when he should have been present. He met with the First Ministers when the situation was deteriorating significantly, but he failed to do so to discuss the path out of restrictions.

20. At paragraphs 496 – 497 and 529 Mr Johnson makes the point that in the future the UK should be treated as a single epidemiological unit and that the best approach is a UK-wide one with no differences between the four Nations. In light of his understanding of the reasons why different decisions were made in Wales, the justification for the statement is not made out and is not explained by Mr Johnson. He regrets the decision not to use the Civil Contingencies Act 2004 and opines that the arguments made against the use of that Act at the time were weak – see paragraphs 153 and 155 of his statement. As I have already explained, the decision to disperse decision-making under the health protection legislation, rather than centralising decision-making through the Civil Contingencies Act, rested with the UK Government.
21. There is an important point to be made about the extent to which the people of Wales trust the Welsh Government to take decisions which are in their best interests. In Wales, we strive for a partnership between citizens and government and thus seek to develop high trust relationships where individuals and their public services are regarded as jointly involved in a shared endeavour. In the extraordinary circumstances of a pandemic when a government needs to persuade the public that they should give up their freedoms in a way that had hitherto not been contemplated, the key currency that allows that to happen is trust. The survey evidence clearly showed that the people of Wales trusted the Welsh Government in a way they did not trust the UK Government. The Ipsos MORI periodical surveys, exhibit **MD2/05-INQ000281775** and exhibit **MD2/06-INQ000281936** refer, produced results which demonstrated that from May 2020 onwards, when governments were easing restrictions, trust in the Welsh Government increased to around 80% whereas trust in the UK Government was around 40% – a marked difference. If the UK Government had made all decisions on behalf of the United Kingdom, it would not benefit from the same relationship of trust that existed between the Welsh Government and the people of Wales - in my view, that would impact upon the efficacy of its decisions.

22. As for the suggestion made by Mr Johnson at paragraph 528 of his witness statement that the infection rate in Wales in December 2020 suggested that the firebreak had not worked, he is factually wrong – the Lancet article published in April 2021 rehearses the effective reduction in the reproduction number following the Wales lockdown model, exhibit **MD2/07- INQ000282016** refers. The Welsh firebreak produced the gains which had been expected through early action. Those gains, however, were more short-lived than the modelling available to the Welsh Government had anticipated, with a rapid return to rising Covid-19 transmission. While not apparent at the time, I believe that this escalation in infections demonstrated the already-present impact of the new 'Kent' variant of the disease in Wales, with its increased transmissibility and additional virulence.

Michael Gove MP

23. Mr Gove recognises at paragraph 184 of his witness statement:

“There were significant regional differences within the nations and between the nations in terms of infection rate, and different considerations including for example the capacity of the NHS in each of the four nations or school term dates. It was therefore reasonable for the different governments to take decisions, within their competence under the devolution settlement, that they considered necessary to respond to the situation in their countries.”

24. He makes much the same point at paragraphs 61 and 106 – indeed, in the latter paragraph he sets out his understanding that the decision of the Welsh Government to introduce a circuit breaker earlier than England was a carefully considered one.

25. It is, therefore, somewhat incongruous for him to argue at paragraph 176 that the UK Government's backstop powers should be strengthened – this is even more so when one considers that the decision not to use the Civil Contingencies Act 2004 was the UK Government's.

26. I had envisaged that the Coronavirus Act 2020 would reflect the principles in the Civil Contingencies Act 2004, but it did not – see paragraphs 23 and 53 - 54 of my first statement in Module 2. I do not accept the argument that the backstop powers of the UK Government need to be strengthened. That argument is based on a false premise. Any regret that UK Government ministers may have about the ability to make UK-wide decisions flows from their collective decision not to use UK-wide legislation which was available. It is notable that Mr Johnson reflects at paragraph 155 of his statement that

the arguments made at the time against using the Civil Contingency Act 2004 were weak.

27. The view as expressed by Mr Gove amounts to a denial of devolution – the backstop powers he envisages are powers which would allow the UK Government to override the devolution settlement. I have described in my first statement for Module 2 at paragraph 13 the difficulties that the Welsh Government have encountered with this UK Government in relation to devolution and its history of legislating in breach of the Sewel Convention. Fundamentally, this UK Government seems to believe that the devolution settlement is paper thin and that the UK Government should reach over it whenever they like. However, the Senedd is democratically elected by the people of Wales. In two referendums, the people of Wales have voted to establish the National Assembly for Wales, now known as Senedd Cymru, and then secondly to give it the power to make primary legislation. It has a democratic mandate of its own, which the UK Government, wrongly, increasingly disrespects.
28. Although I agree with Mr Gove at paragraph 178 of his statement that the meetings that did take place were collegiate and worked reasonably well, in my view that is the wrong question. As I have explained in detail in my first statement in Module 2 at paragraphs 15, 72 – 73, 77, 81, 84, 95, 97, 99 and 124, there were large periods of time when there was no regular rhythm of ministerial meetings between the four governments, and I repeatedly called for that to change. Mr Gove states at paragraph 182 that the devolved governments “*shared the UK Government’s view from around September 2020 that participation in committee meetings needed to be regularised*”, the documentary evidence detailed in my first statement in Module 2 shows that the reality is that the UK Government established regular meetings with Mr Gove because the devolved governments were insisting on it. In fact, I set out at paragraphs 77 - 78 of my first statement in Module 2 a letter that I wrote to Mr Gove on 20 April 2020 making this very point. As I explain at paragraph 85 of my first statement in Module 2, my preference was to stay aligned with the UK Government, but the lack of formal engagement made that difficult and made it increasingly likely that we in Wales would need to develop an approach in response to the situation in Wales.
29. Save for the meetings which were established with Mr Gove, the substance of the meetings from an inter-governmental point of view was inadequate – a point with which Mr Gove seems to agree at paragraphs 173 and 187. Such meetings were often called at short notice and consisted of the UK Government presenting Anglo-centric decisions