

THE UK COVID-19 INQUIRY

TRADES UNION CONGRESS AND WALES TRADES UNION CONGRESS: JOINT OPENING SUBMISSION IN MODULE 2B

INTRODUCTION

1. This is the opening statement of the Trades Union Congress ('the TUC') and the Wales Trades Union Congress ('the Wales TUC') in Module 2B of the UK Covid-19 Inquiry. The Wales TUC is an integral part of the TUC but is autonomous in matters devolved to the Welsh Government, which include health, education, transport, economic development and local government. The 48 unions affiliated to the TUC represent over 5 million working people, across a range of sectors, and across the four corners of the UK. The Wales TUC represents around 400,000 workers in Wales through its affiliated unions. According to ONS data, 36% of all workers in Wales are members of a union.
2. Both the TUC and the Wales TUC aim to provide a voice for working people, and to shine a light on the consequences of decision-making upon the experiences of those at work. In Modules 1 and 2, the Inquiry heard evidence from Kate Bell, Assistant General Secretary of the TUC. In this module, the Inquiry is to hear evidence from Shavanah Taj, General Secretary of the Wales TUC.
3. The pandemic response in Wales shared very many of the experiences and challenges of the pandemic response of the UK Government ('UKG'). Inevitably, insofar as Modules 2, 2A, 2B and 2C are concerned with examining the decision-making processes of central government, the differing approaches of the UKG and Devolved Administrations ('DAs') provide illuminating counterpoints. Module 2 has heard evidence of shocking dysfunction in the UKG response, with decision-makers repeatedly oscillating between the pursuit of varying objectives, all against a background of bitter squabbling resembling something of a playground politics. The decision-making in respect of Wales is yet to be explored in the oral hearings, but the indications thus far are of a more open and consultative form of government, operated in pursuit of a more coherent purpose.
4. The themes upon which we make submissions in this module are similar to those made in Module 2A by the TUC and the Scottish TUC: there are striking similarities with respect to the treatment of the DAs by the UKG and the cultural differences to be observed between the DAs and UKG.

5. This written opening submission addresses: (a) social partnership and pandemic response in the workplace, (b) cultural contrast between Westminster and the Senedd, and (c) devolution and collaboration in decision-making.
6. This submission does not address the lasting impacts of austerity upon the ability of public services to respond to a crisis, as has been considered, particularly, in Module 1 of this Inquiry. It is right to acknowledge, however, that the Welsh experience equally reinforces the lessons to be learned about the impact of austerity policies on resilience of key public services including local authorities, social care, and health services to deal with a pandemic. Despite attempts by the WG to protect the NHS by maintaining and, where possible, increasing spending year-on-year, the policy of austerity had a crippling effect on Welsh public services, undermining resilience at the outset of the pandemic.¹ Whatever the strengths of the processes of decision-making and approach to social partnership, the effects of the pandemic were obviously devastating, and the response was hamstrung by the twin effects of a lack of pandemic planning and preparedness, and public services at breaking point going into the pandemic.

SOCIAL PARTNERSHIP AND PANDEMIC RESPONSE IN THE WORKPLACE

7. As Shavanah Taj describes, an important feature of the pandemic response in Wales was the culture of social partnership which was “*well-embedded*” before the pandemic. Social partnership is “*about delivering change by finding shared goals and listening in order to negotiate the best possible outcome. From the start of the pandemic, Wales’ social partnership model quickly became an effective way of dealing with the enormity of the situation. It demonstrated the effectiveness of ensuring that the balance was struck between the interests of employers and the interests of workers. Decisions were ultimately, of course, taken by the Welsh Government’s cabinet, but we believe that the quality of decisions was often improved from the input provided by social partners.*”² A pre-pandemic study of the value of trade unions in Wales was published in October 2019 by the Wales Centre for Public Policy.³
8. That view as to the value of social partnership appears to be shared by WG. Mark Drakeford describes that: ‘*Our long history of social partnership working underpinned a consistent effort to apply the public service ethos across the full range of responsibilities exercised during the pandemic. I remain of the view that the sense of common purpose and determination to mobilise every effort in pursuit of shared goals was one of the most*

¹ INQ000177804/9, paras. 34-35.

² INQ000273633/2, para. 6.

³ INQ000180904.

striking characteristics of the Welsh response to the pandemic.⁴ The TUC and Wales TUC agree.

9. As a result of the longstanding culture of social partnership in Wales, the WG benefitted from pre-existing structures and processes, which were mobilised at the beginning of the pandemic to ensure that it had access to advice from a range of sources on the ground, including unions.
10. One such pre-existing body is the Workforce Partnership Council ('WPC'), a tripartite social partnership structure of the trade unions, employers and WG covering the devolved public services in Wales.⁵ Its terms of reference describe: *'Social partnership in Wales is a way of working, a set of behaviours which all partners commit to uphold in supporting our dedicated public service workforce to deliver strong, effective public services. It forms part of the overarching social partnership approach adopted in Wales. The WPC operates in equal partnership between Welsh Government, Employers and Trade Unions — respecting the sovereignty and decision making structure of each partner*'.⁶ The Wales TUC attended meetings of the WPC throughout the pandemic.
11. There is also the overarching Shadow Social Partnership Council ('SSPC'). It was established before the pandemic to discuss strategic issues relating to fair work and social partnership. It was chaired by the First Minister, and other ministers attend as necessary. As Ken Skates explains, the SSPC *"comprised of union, employer and government representatives, all of whom would subsequently have to work closely and collaboratively in responding to the pandemic in Wales"*.⁷ During the meeting of the SSPC on 14 May 2020 it was agreed that membership should be extended due to the exceptional circumstances presented by the pandemic. Mark Drakeford describes that the SSPC *"became a very important vehicle during the pandemic"*. Further, that:

*"In addition to public and private sector employers and trade unions, the expanded Shadow Social Partnership Council consisted of third sector partners, and the Future Generations, Welsh Language, Older People's and Children's Commissioners. It was an attempt to bring together a wider set of social partners whose daily lives were affected by the decisions we were making and who would have a view on how very finely balanced decisions should be calibrated. My experience was that while maintaining the frequency and complexity of meetings could be exhausting, overall they were both challenging and constructive. [...] The Council heard, in advance of publication, about how and why the Government was thinking of making decisions. Having listened to their views, decisions were adapted where good reasons for doing so emerged from that deliberation. We told them of announcements to be made and I can only recall one occasion when that confidence was broken."*⁸

⁴ INQ000371209/91, para. 293.

⁵ For a chronology of its meetings during the Covid-19 pandemic, please see: INQ000101238.

⁶ INQ000180905/paras.1.1-1.2.

⁷ INQ000365994/8, para. 23.

⁸ INQ000371209/8, para. 23.

12. As explained in a letter of the Minister for Housing and Local Government of 10 June 2020, it was thought by WG to be *“vital that we get a full and rounded view of the issues facing the public, private and voluntary sectors going forward”* and the SSPC *“provides an opportunity for social partners to engage on recovery from the Covid19 outbreak at a high level and to explore how social partnership can contribute to the more detailed planning which needs to take place”*.⁹
13. The First Minister also established a ‘Core Ministerial Group’ as a forum for information sharing between partners.¹⁰ It evolved to include a representative of the Welsh Local Government Association, the CEO for Wales Council for Voluntary Action, representatives of the police, the Secretary of State for Wales, and Shavanah Taj as the General Secretary of the Wales TUC.¹¹
14. The Wales TUC and its affiliated unions also engaged in a number of sector-specific fora, including the Social Care Forum (established during the pandemic). Communication between the Wales TUC and its affiliated unions and the WG, also occurred via ad hoc communications, such as phone calls, conference calls, and the exchange of briefing documents.¹²
15. The result was that the Wales TUC generally felt able to advocate for the rights and safety of workers at the very top levels of decision-making and felt that their input was taken into account. The Wales TUC was able to contribute to the advice upon which decisions by WG could be made, providing on-the-ground information and feedback about NPIs. The TUC and Wales TUC consider that this was a critical aspect of the decision-making process in Wales, which was lacking in the UKG context.
16. More broadly than the decision-making within the very centre of WG, there were also specific stakeholder groups. For example, the Violence Against Women, Domestic Abuse and Sexual Violence Stakeholder Group was established early in the pandemic and first met on March 2020.¹³ Jane Hutt remarks (the TUC and Wales TUC suggests with a sound basis) that *‘These daily meetings and the forums and committees ... all enabled effective two-way communication, provided me with evidence and lived experience of the impact of Covid-19 on the lives of vulnerable people and those with protected characteristics under the Equality Act 2010, and allowed me to seek the views of different groups of possible changes to regulations, which I would share in Cabinet discussions (or which fed into equality impact assessments). They also helped me to*

⁹ INQ000068446. And see: INQ000273633/8, para. 25.

¹⁰ See WS of Mark Drakeford INQ000371209 /14-15, para. 42.

¹¹ See WS of Jane Hutt INQ000366148/11, para. 38.

¹² For examples see paragraphs 17 to 33 of Shavanah Taj’s witness statement in this module.

¹³ WS of Jane Hutt, INQ000366148/9, para. 32.

understand the impact of regulations, including unintended consequences, as they were implemented'.¹⁴

17. Others also describe a positive experience of consultation with the WG. The BMA describes “*well-established forums*” for liaison on which the BMA participated.¹⁵ In Module 2, the former Children’s Commissioner for England, Anne Longfield, highlighted in oral evidence that ‘*The Children’s Commissioners [in Scotland and Wales] were consulted much more, especially in Wales when it’s hard to think a decision would have been made without that conversation taking place. And when it came down to making those decisions, that showed, because it showed in terms of the decision to exempt children from the rule of six and other restrictions, but also really understand the need for support for families, understand the need for support for families in poverty*’.¹⁶
18. Similarly, Chris Llewelyn, Chief Executive of the Welsh Local Government Association, describes the view that “*political consultation and dialogue was constructive and effective, with Welsh Ministers regularly seeking the views of local authority leaders, either bilaterally or through the WLGA convened leaders’ meetings*”, although, as the Wales TUC experienced, consultation on draft guidance documents was often late, rather than co-produced from an earlier point.¹⁷ Further: “*The general view was that Welsh approach to partnership and regular engagement between local government and the Welsh Government, particularly at a political level, was a model that was not common across the UK*”.¹⁸

Sectoral guidance and enforcement

19. The TUC’s opening and closing submissions in Module 2 emphasised the evidence as to occupational exposure being a key risk factor both in transmission of the virus, and its deadly effects. Further, the risk of occupational exposure did not fall equally. In particular, occupations less likely to be able to work from home had higher mortality rates, as did those which involve a higher degree of physical proximity to others. Across England and Wales, process, plant and machine operative occupations had the highest rates of mortality from Covid-19. Caring, leisure and other service occupations had the largest number of deaths of all the major groups.¹⁹ That unequal impact intersected with disproportionately higher representation in those sectors of certain groups, including a number of ethnic minority groups and migrant workers.²⁰

¹⁴ INQ000366148/10-11, para. 37.

¹⁵ INQ000228384/19-20, para. 72-75.

¹⁶ Day 4 Transcript, p.50, lines 1-7.

¹⁷ INQ000273741/36, para. 108. As to the latter, see, similarly: Mark Lloyd of the LGA: INQ000215538/8, para. 25 and 28

¹⁸ INQ000273741/44-45, para. 137.

¹⁹ NQ000224407/6. Equivalent data specific to Wales is not available.

²⁰ INQ000280057/20, para. 63.

20. In Module 2, the TUC has described that workplace guidance was too often late, lacking in understanding of the practical realities of workplaces, and too discretionary and generic to properly protect workers, particularly those in low-paid and insecure work who are less empowered to raise issues of workplace safety with their employers.
21. In Wales, there was a legal requirement to observe 2-metre social distancing in the workplace, which was introduced on 4 April 2020. This requirement formed part of a package of rules specific to the workplace on which unions had opportunities to meaningfully engage. In introducing this law, Wales provided a strength of protection for workers at an early stage in the pandemic which resulted from the practice of social partnership. The work of the WG and the Wales TUC was collaborative in this respect, as the Wales TUC set up a 'whistleblowing hotline' in advance of this announcement, enabling workers to report incidents of breaches of the social distancing requirement. This contrasts with the situation in England, where workforce social distancing requirements were set out in guidance and only needed to be followed '*where possible*'.²¹
22. Another key example of collaboration between the Wales TUC and the WG on matters of workplace health and safety was the preparation of a risk assessment tool, designed for use in the NHS, but which was used more widely as the pandemic progressed. The Wales TUC assisted the health and social care sub-group of the First Minister's BAME advisory group to design a tool which could be used to assess the risk posed by Covid-19 in workplaces. As Jane Hutt sets out in her witness statement, the tool was '*reviewed by the Chief Medical Officer (Wales) and Andrew Goodall, Director General of Health and Social Services Group within the Welsh Government and Chief Executive of the NHS in Wales. The Risk Assessment Tool was published online on 26 May 2020. It was widely used throughout the pandemic to accurately assess the risk posed to NHS and later social care staff in their workplaces, so that those risks could be properly managed*'.²²
23. Furthermore, the fora of the WPC and SSPC meetings and parallel consultations by the WG enabled more meaningful engagement by the Wales TUC and its affiliated unions on sector-specific guidance. For example, input from discussions in meetings of the SSPC informed guidance specific to the manufacturing, construction, and retail sectors in Wales.²³
24. As for enforcement, the TUC has repeatedly pointed the Inquiry to the importance of systemic underfunding of the Health and Safety Executive and the implications of that for

²¹ See, further, TUC written closing statement in Module 2, paragraphs 22-24: INQ000399530.

²² INQ000366148/32, para. 99.

²³ INQ000180856/2, para. 12.

pandemic response. It is a view shared by the Wales TUC, and which equally impacted upon workplaces in Wales: As Shavanah Taj describes in her statement:²⁴

'A further and very significant challenge was the inadequacies in the mechanisms available for monitoring and enforcement of health and safety in workplaces. Whatever the efficacy or otherwise of the political decision-making processes around NPIs, there will be a deficiency in the effectiveness of those NPIs if there is no adequate means of monitoring and enforcement in workplaces [...] [HSE] and local authority environmental health protection officers were not able to adequately enforce coronavirus regulations designed to safeguard workers and the public at any point during the period in question, in substantial part further to pre-existing shortages of resources due to department cutbacks of HSE funding'.

25. The affiliated unions found consistent evidence that a significant number of employers failed to take sufficient precautions against the disease throughout the pandemic. Workers repeatedly reported that they were not being consulted – as legally mandated – on Covid risk assessments. Despite clear evidence of regulations not being adhered to, the WG was unable to change or improve the situation.

Financial support for workers

26. The evidence in Module 2 revealed a widespread concern as to the adequacy of financial support for self-isolation, but an intransigence (largely on the part of the Treasury) to address it. The lack of financial support for self-isolation, owing in part to the inadequacy of statutory sick pay, was a key barrier to self-isolation which particularly affected lower income workers in higher risk occupations. The Inquiry is directed to the TUC's Module 2 closing submissions.²⁵
27. Professor Ann John describes Spi-B and RCBI seeking to understand the barriers to behaviour change, *"for example people could not isolate if they were self-employed unless their pay was covered and received immediately"*.²⁶ A Wales-specific study by Public Health Wales found that two of the top five reasons Welsh participants felt they would face challenges in self-isolating were the impact of self-isolation on work or business and financial problems.²⁷ The study noted that these impacts were most pronounced for those with high levels of income precarity, who were *'more likely to report financial concerns, mental health difficulties, work not supporting self-isolation and having no access to food or medication during self-isolation'*.²⁸

²⁴ INQ000273633/3, para. 9.

²⁵ See, in particular, paras. 30 to 75

²⁶ INQ000286066/43, para. 7.24.

²⁷ INQ000056337/4.

²⁸ INQ000056337/6.

28. As with the TUC and the UK government, the issue was raised by the Wales TUC with the WG in early March 2020 and continued to be a focus of meetings and correspondence throughout the pandemic.²⁹
29. WG did not have a more effective response to the issue than UKG. In England, the Self-Isolation Support Scheme was introduced in September 2020 with a payment of £500 for those eligible. The scheme suffered from a number of practical challenges which have been described elsewhere:³⁰ primarily, the scheme purportedly designed to influence behaviour was one of which very few workers were even aware. The WG introduced the same (inadequate) scheme a month later in November 2020. Through correspondence, the publication of reports and engagement during the SSPC meetings, the Wales TUC sought to draw the WG's attention to practical problems with the Self-Isolation Support Scheme. On 7 August 2021, the Welsh Government increased self-isolation support from £500 to £750. This was later reduced back to £500 when the self-isolation period was reduced from 7 days to 5 days, but represented a more generous amount than was offered in the England during that period.
30. The WG was also later to introduce the Covid-19 Statutory Sick Pay Enhancement Scheme, to provide full pay to social care workers required to self-isolate. The scheme was introduced in England in May 2020, but not introduced in Wales until November 2020 (and notwithstanding having been raised with WG in March 2020 by GMB).³¹ The WG had, however, introduced more timely financial support in the form of one-off £500 payments made to social care workers from 15 March 2020 *'to recognise and reward the[ir] hard work and commitment'*.³²
31. The Wales TUC does not have a clear understanding as to the reasons for the delay of the WG in respect of financial support for self-isolation, and invites some consideration of the issue in the hearings. It may have been impacted by the financial aspects of the devolution settlement for Wales. It is noted that Rebecca Evans, Minister for Finance and Local Government, has reported difficulties in relation to communication between the UKG and the WG on Barnett consequential and in relation to forecasting of the same, which led to unnecessarily cautious decisions around spending at the beginning of the financial year, due to uncertainty around the budget – often the WG only felt empowered to take more radical decisions around spending closer to the middle or end of the financial year.³³ Regardless, the TUC and Wales TUC consider that in a future pandemic

²⁹ See INQ000273633/22-26, paras. 69-82.

³⁰ See TUC closing written submissions in Module 2 at paras. 46 to 57.

³¹ INQ000068442/2, para. 2.7

³² See INQ000081223. See also: INQ000180855/4, para. 11.

³³ INQ000346272/15-16, paras. 45-47.

more must be done to prioritise financial support for low-paid workers, particularly given the equality implications of the gaps in support in the statutory sick pay system.

32. Wales TUC welcomed the introduction of a fund to fund to support creative freelancers affected by Covid-19, which had been called for by unions in the sector. The fund was available to freelancers in the sub sectors of arts, creative industries, arts and heritage events, culture and heritage, whose work has direct creative/cultural outcomes.³⁴
33. Wales TUC also welcomed the extension of eligibility for the emergency business fund to taxi drivers, which had been called for by their union.
34. Furlough payments were a critically important mechanism of financial support for workers during the pandemic. However, in Wales, as in Scotland, the devolution settlement meant that although the WG was responsible for public health, the UKG maintained control over wage support. The Wales TUC is of the view that these arrangements constrained efforts in Wales to tackle the pandemic. For example, in the instance of the 'firebreak' lockdown in Wales in October 2020, the UKG *'refused to raise wage support'*.³⁵ In practice, the ability of WG to enter 'lockdown' was constrained by UKG willingness, or lack thereof, to provide the necessary financial support.

The focus in Wales on the unequal impact of the pandemic

35. As described above, the pandemic had an unequal impact, disproportionately disadvantaging particular groups, including workers from BAME backgrounds, disabled workers, and those on lower incomes and in insecure work. ONS data from 2019 indicates that 5.8% of the population of Wales identified as BAME, as compared to 16.1% in England. However, the equality implications of a pandemic and the focus needed to address it is essentially the same. In that respect, the TUC and Wales TUC commend to the Inquiry the statement of Professor James Nazroo and Professor Laia Bécares that: *'given that processes of racialisation and racism, and the patterning of ethnic inequalities, are as equally applicable to Scotland, Northern Ireland and Wales as they are to England, there is no evidence to suggest that the implications of these pre-existent ethnic inequalities for the Covid-19 pandemic would be different across the UK nations'*.³⁶
36. The Wales TUC did see, at first hand, a close focus by WG upon the need to tackle inequality and consider equality implications in the decision-making process. Jane Hutt chaired the Race Equality Forum, the Disability Equality Forum, the Faith Communities

³⁴ See, for example, the WG audit report at INQ000022595.

³⁵ INQ000273633/27, para. 85.

³⁶ INQ000280057, para. 5.

Forum, the Third Sector Partnership Council, the Refugee and Asylum Seeker Taskforce, and the Policing Partnership Board.³⁷ She describes that *“the publication of the socioeconomic report published by the Socio-economic sub-group of the Black, Asian and Minority Ethnic Advisory Group on 22 June 2020 was crucial in highlighting wider socio-economic impacts of structural racism that were revealed in its recommendations”*.³⁸ In Wales the Black, Asian and Minority Ethnic Covid-19 Advisory group was set up in April 2020.³⁹ It will be observed that Mark Drakeford’s statement makes frequent references to the detail of equality impact assessments in the context of WG decisions (references which are conspicuously absent in Mr Johnson’s statement).

37. The focus on tackling inequality is perhaps derived, in part, from statute: the Senedd *‘has a unique legal obligation included in the Government of Wales Act of 1998 to have due regard to the principle that there should be equality of opportunity for all in relation to all devolved functions’*.⁴⁰
38. Social partnership contributed to the attempts to address the inequalities of the pandemic. On 1 April 2020, WG invited union evidence on equality impact. The Wales TUC response highlighted the disproportionate impact on a range of groups, including BAME workers, pregnant women, parents and carers, disabled people, and migrant workers. Jane Hutt⁴¹ committed to sharing the Wales TUC paper and issues raised during discussion with her Cabinet colleagues.⁴² The Wales TUC also launched a survey for BAME workers to share experiences.⁴³
39. The Wales TUC raised the need for improved data on the impact of the pandemic on vulnerable groups. For example, in an SSPC meeting on 14 May 2020, Shavanah Taj welcomed the publication of data by ONS on vulnerable workers but conveyed the need for specific analysis of the increased risks posed by Covid-19 in respect of BAME workers.⁴⁴
40. Shavanah Taj attended the majority of the meetings of the BAME Covid-19 Advisory Group and assisted the Chair of the socio-economic subgroup, Professor Emmanuel Ogbonna, in preparing the report of that subgroup.⁴⁵
41. A catalyst for the Covid-19 risk assessment tool (discussed at paragraph 22 above) was concerns raised with the Wales TUC regarding migrant workers in the NHS, many of

³⁷ INQ000366148/8, para. 28.

³⁸ INQ000366148/11, para. 39.

³⁹ WS of Mark Drakeford INQ000371209, para. 28.

⁴⁰ INQ000280057/3, para. 3.

⁴¹ INQ000366148/28, para. 86.

⁴² INQ000273633/16-17, para. 46.

⁴³ INQ000068466.

⁴⁴ INQ000180855/2, para. 4.

⁴⁵ INQ000273633/16, para. 45, see the report at INQ000068463.

whom had no recourse to public funds. This meant that in order to maintain an adequate income they had no choice but to accept additional shifts, which exposed them to additional risk from Covid-19. The Wales TUC reported these concerns to the WG via the BAME Advisory Group. The Inquiry has heard evidence in Module 2 that BAME workers in healthcare settings were much less likely to have had an adequate risk assessment, and faced barriers caused by structural racism in having their risk assessments upheld.⁴⁶ Implementing and publicising the existence of a Covid-specific risk assessment was an important step in promoting the health and safety of BAME workers during the pandemic.

CULTURAL CONTRAST BETWEEN WESTMINSTER AND WALES

42. The different approach of the WG to consultation with stakeholders such as unions is an example of a divergent (and more effective) approach to decision making. There appears also, to have been others.
43. First, we set out in our submission in Module 2A that the Scottish Government (SG) appears to have been quicker to work within clear and agreed frameworks for decision-making.⁴⁷ The same also appears to have been the case for the WG. An example is the commitment to a 21-day review period to seek to provide, as Mark Drakeford describes, *“an orderly and predictable process for decision-making, and one which was aligned as much as possible to provision and consideration of advice”* and the views of key organisations outside of central government.⁴⁸ Other examples include the five harms framework,⁴⁹ the lockdown roadmap and traffic light system.⁵⁰
44. Second, some of the evidence suggests that the meetings of the Welsh Cabinet appear to have been, in substance, decision-making meetings, which were genuine forums for the exchange of views. For example, Rebecca Evans described the First Minister not speaking first and seeking the views of colleagues, and seeking to establish where the weight of opinion lay and to agree a consensus position.⁵¹ It contrasts with the ‘Potemkin’ UKG cabinet meetings described by Mr Cummings, and the COBR meetings which *“became even more scripted, formulaic, and pointless than the normal Cabinet. They were ‘handling’ meetings rather than the place where issues were really hashed out”*.⁵² The use of formal decision-making forums also contrasts with ever-diminishing circle of

⁴⁶ Transcript of oral hearings in Module 2 [3/92/1]-[3/92/4] and [3/114/23 – 3/115/6].

⁴⁷ See, generally, the evidence of Liz Lalley at INQ000320500/12, para. 48.

⁴⁸ INQ000371209/50, para. 162. Further, Andrew Goodhall’s statement at INQ000346272/33, para. 111.

⁴⁹ INQ000356177/47, para. 181.

⁵⁰ INQ000180855/2, para. 4, and, for example, WS of Rebecca Evans: INQ000346272/10, para. 22.

⁵¹ INQ000346272/32, para. 107. See, similarly, Mark Drakeford at INQ000371209, paras. 30 and 58, and Eluned Morgan at INQ000371645, para. 15.

⁵² INQ000273872/19, para. 82.

decision-makers in No.10, often meeting informally, and the apparent belief that the intellect of a very small few will out.⁵³ It contrasts with what Helen McNamara described as a ‘macho and heroic’ culture within UKG, which *‘meant debate and discussion was limited [...] and everything was contaminated by ego [...] when the country needed thoughtful and reflective decision-making’*.⁵⁴

45. Third, there appears to have been an important, basic professionalism. Rebecca Evans describes the First Minister setting *“the tone”* for WG with an approach that *“was careful, considered and compassionate”*. She describes having been *“proud to work with my colleagues who are good people, committed to public service”*.⁵⁵ There is not the same evidence of factional infighting as in relation to UKG heard in Module 2. It contrasts with Boris Johnson’s oral evidence that: *“if you’re Prime Minister, you are constantly being lobbied by somebody to sack somebody else. It’s just what, I’m afraid, happens, and it’s part of life. Everybody’s constantly militating against some other individual for some reason of their own. It’s just -- I’m afraid that’s the nature of it”*.⁵⁶ It does not seem to have been part of the life of the First Minister.
46. Fourth, the WG does not seem to have suffered from the same pattern of rule breaking as UKG. As the closing submission of the TUC and its sister organisations emphasised in Module 2, the government in Westminster and in No.10 suffered from a lack of professionalism, leadership, and effective structures for collective decision-making. That is not to say that the WG was perfect in its performance throughout the pandemic; the Wales TUC was on many occasions during the pandemic frustrated that the WG did not implement the decisions the Wales TUC recommended and encountered particular difficulty in enacting the outcomes it felt were necessary to protect workers at the outset of the pandemic in respect of PPE and testing. However, the WG, as with the SG, does appear to have been isolated from many of the systemic cultural issues revealed by Module 2 in relation to UKG.
47. This stark difference in culture and working practices may be reflected in contemporaneous polling around the public’s confidence in UKG as compared to WG. As Mark Drakeford, and a number of other witnesses to Module 2B have highlighted: *“The Ipsos MORI periodical surveys ... 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”*.⁵⁷ More broadly, Linda Bauld (Chief Social Policy Adviser to

⁵³ INQ000137221/7.

⁵⁴ Transcript: Module 2, Day 16, p.17, lines 4-10.

⁵⁵ INQ000346272, para. 225.

⁵⁶ Transcript of oral hearings in Module 2 [31/36/17-22].

⁵⁷ INQ000371209/61-62, para. 197.

the SG and adviser to the COVID-19 Committee of the Scottish Parliament) included in her witness statement a graph which demonstrates that public confidence was higher in the WG and SG than the UKG throughout the period from March 2020 to March 2022.⁵⁸

DEVOLUTION AND COLLABORATIVE DECISION-MAKING

48. The Wales TUC considers that the pandemic response in Wales, though benefitting from a generally more effective decision-making process, was hamstrung by limits in the arrangements for devolution and the financial settlement for Wales. As Shavanah Taj sets out in her witness statement: *“it was clear during the pandemic that the Welsh Government wished to support workers and organisations financially, above and beyond the measures the UK Government had introduced. However, the UK Government’s financial settlement for Wales is such that the Welsh Government’s hands were tied”*.⁵⁹ Similarly, Rebecca Evans offers the reflection that *“the UK Government’s refusal to use its levers to enable the Welsh Government to follow the expert advice and protect the people of Wales in the way it saw fit, is that it did not show proper respect for devolution. I am regularly frustrated by the fact that the UK Government - and particularly HM Treasury - appears to treat the Welsh Government as ‘just another Whitehall department.’ It fails to recognise that we are an elected government, scrutinised by the Senedd, and answerable to the people of Wales”*.⁶⁰
49. It is recognised that this Inquiry is unlikely to review the arrangements for devolution, save to the extent that is necessary for the purposes of understanding the relevant decision-making. It is necessary, however, to address the narrative suggested by some (Mr Johnson and others) that the approach in the DAs (a) frustrated the pandemic response by adopting differences in approach, and (b) that those differences in approach cynically served political rather than public health objectives. In this module, an example is the evidence of Simon Hart, Parliamentary Secretary to the Treasury (Chief Whip): *“increasingly over time, I was left with the feeling that Welsh Ministers actively sought differentiation in their approach compared to the UK Government’s in England for no other reason than to be different and to set Wales apart from other nations in the UK”*.⁶¹
50. As to that narrative, the TUC and Wales TUC make the following observations:
51. First, some evidence suggests that the difference may not have been a result of difference for differences sake, but a different (and legitimate) view as to balancing the importance of saving lives, and of saving livelihoods. As Mark Drakeford explained: *“For*

⁵⁸ INQ000346395/37, para. 116.

⁵⁹ INQ000273633/3, para. 8.

⁶⁰ INQ000346272/40, para. 138

⁶¹ INQ000270271/10, para. 41

the Welsh Government there was never a tension between these two objectives: if lives could not be saved, then livelihoods would be badly undermined because staff would become unavailable, and customers would cease to be customers. For some in the UK Government, I believe the debate was between either saving lives or saving livelihoods, as if these were mutually exclusive objectives".⁶² Similarly, Eluned Morgan describes that: *"On occasion, I had the sense that the UK Government considered the need to protect the airline industry and to protect the tourism sector in London to be more important than public health considerations. In the Welsh Government we took the view that if the pandemic was not under control, then the economy would suffer considerable consequences anyway. Public health was always our overriding concern"*.⁶³ A number within UKG shared that view (see, for example, the evidence of Matt Hancock) but it was, generally, in contrast to the approach of UKG.

52. Second, many of the 'divergent' decisions appear to have been founded upon appropriate public health considerations. Quentin Sandifer (Consultant Advisor – Pandemic and International Health, Public Health Wales) suggests that: *"In relation to the ending of the national lockdown, I was concerned at the speed the UK Government was lifting restrictions in England and I think the more cautious approach taken by the Welsh Government on this, and other policy decisions, worked well"*.⁶⁴
53. One of the key divergences was the 'firebreak' of Autumn 2020. Many within UKG were calling for a similar approach, with many recognising that the reality of the choice in September and October 2020 was that failing to take action would result, ultimately, in the necessity for a longer and more damaging lockdown. It was arguably when decision making within UKG was at its most dysfunctional. Professor Michael Gravenor suggests, with some justification, that: *"In retrospect, the timing of the firebreak does appear reasonable, at a time when the trajectory was clearly concerning (and trajectory inevitable), but before it was overwhelming. In retrospect, a longer firebreak would have been very useful. The effect on R in Wales at the time was very significant, driving transmission rates down to levels similar to the first lockdown, and R well below 1. If it had lasted only another week or 2, then it is likely that the additional suppression of transmission would have meant that the rebound afterwards, the return to pre-firebreak levels, would have been delayed by several weeks, pushing it deep into December"*.⁶⁵

⁶² INQ000371209/90, para. 290.

⁶³ INQ000371645/51, para. 195

⁶⁴ INQ000267867/15, para. 59.

⁶⁵ INQ000347979/32, para. 105.

See, similarly, the evidence of Andrew Goodhall (Chief Executive NHS Wales)⁶⁶, Dr Robert Orford,⁶⁷ and Mark Drakeford.⁶⁸

54. Rather than divergence demonstrating political opportunism, it reflected better decision-making processes including more effective and meaningful consultation with others, and an appropriately precautionary approach to pandemic response.
55. It is right to acknowledge that divergence did contribute to public uncertainty and confusion as to the measures being applied, including in the workplace. However, there is some force in the observation of Mark Drakeford that: *'The problem was not divergence. The problem was a lack of clarity in public health messaging by the UK Government about the geographical application of its decisions'*.⁶⁹
56. Third, divergence may also have reflected limitations in co-operation. DAs were not participants in Covid-O and Covid-S meetings. Mark Drakeford observes that *"The Welsh Government argued, from the outset, for a pattern of reliable contact between all four UK governments. I have since learned, to my astonishment, that these requests were not simply overlooked by the Prime Minister and his senior colleagues but considered and rejected"*.⁷⁰ Mr Johnson did not engage in meetings with the leaders of the DAs for fear of it appearing to be a 'mini-EU' and he described such meetings during oral evidence as *"constitutionally a bit weird"*.⁷¹ The TUC and Wales TUC consider that this approach bares similarities to the dismissive, at times oppositional, approach which Mr Johnson instilled in respect of engagement with unions and other representative bodies – it reflects a failure to appreciate that transparent, open communication and effective collaboration and consultation lead to improved decision-making, including, indeed especially, in the crisis context.
57. Fourth, it might also be observed that the DAs were often in step with one another. As Nicola Sturgeon observed: *"throughout the pandemic the positions of the three DAs were often, if not identical, then very similar, with the UK government being the outlier - and yet the UK government behaved as if it was the DAs that were diverging"*.⁷² Similarly, Mark Drakeford states: *"That is not how government in the UK works - it is no longer a place where England is the benchmark, and the devolved governments have to justify taking a different position"*.⁷³

⁶⁶ INQ000319643/56, para. 180.

⁶⁷ INQ000356177/39, paras. 65, 151, 255.

⁶⁸ INQ000280190/8, para. 22.

⁶⁹ INQ000280190/4, para. 10.

⁷⁰ INQ000371209/92, para. 295.

⁷¹ Transcript: Module 2, Day 31, p.156, lines 5-8.

⁷² INQ000339033,23-24, para. 55(d).

⁷³ INQ000280190/2, para. 3.

58. There are, of course, additional considerations in evaluating divergence in approaches between the UKG and the DAs. The WG is, ultimately, accountable to the Senedd and its electorate, a sentiment shared by many in the SG and emphasised by Nicola Sturgeon in her oral evidence in Module 2A.⁷⁴

59. Further, the clarity of national boundaries may also provide an effective opportunity for localised responses – the value of which was pursued by the UKG in implementing the regional tier system – but which benefits from democratic legitimacy and localised knowledge: as Mark Drakeford puts it: “*the fundamental issue of trust in persuading individuals to take actions necessary to protect their own lives and those of others*”.⁷⁵

CONCLUSION

60. To some witnesses in Module 2, the deeply unattractive side of the internal dysfunction within UKG was ‘*just Westminster*’, or an inevitable part of government. As with Module 2A, the evidence in Module 2B demonstrates that a more mature, professional and open form of central government is achievable. It is submitted that the evidence in Module 2B demonstrates the value of a form of government that is open to and meaningfully engages with the views of stakeholders, including trade unions. It is welcome that the Welsh Government has confirmed this approach for the future by establishing the Social Partnership Council in law and placing a social partnership duty on devolved public bodies. It is an approach of consultation and engagement which should be embraced and strengthened in a future pandemic.

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20 February 2024

⁷⁴ “*my responsibility as First Minister was to the Scottish people, not to Boris Johnson*”, Transcript: Module 2A, Day 11, p.146, lines 9-11.

⁷⁵ INQ000371209/93, para. 297.