

IN THE UK-COVID 19 INQUIRY

Before the Right Honourable Baroness Hallett D.B.E.

MODULE 2B

THE WELSH GOVERNMENT’S MODULE 2B OPENING STATEMENT

1. Module 2B will consider the Welsh Government’s core political and administrative decision-making in relation to the Covid-19 pandemic between early January 2020 and May 2022. In particular, the Inquiry will examine decision-making of key groups and individuals within the Welsh Government (including the First Minister and other Welsh Ministers) between early January and late March 2020 when the first national lockdown was imposed.
2. The Welsh Government welcomes the Inquiry’s examination of its decision-making. Scrutiny may sometimes be difficult, even uncomfortable, but it is necessary. That is because fair, but unsparing, scrutiny is vital to make sure the four nations of the United Kingdom are best prepared for any future emergency. This module’s importance is obvious, but as its work begins it is worthwhile to re-state why. As the First Minister said:

“The pandemic touched the lives of everyone: my own, my colleagues, our communities, but none more so than the many families who lost loved ones. I want to acknowledge this loss at the outset of this statement, just as I have in my previous statements and take this opportunity to express my personal sympathies and sincere condolences, to those affected, and to all who sadly lost loved ones, across the nations. The pain and sadness of their losses will last a lifetime and I will continue to recognise this at every opportunity. Sadly, too many families have lost loved ones. This cruel virus has stolen lives and it has left their loved ones with questions, which they rightly want answered. I would also like to take an opportunity to recognise the suffering of those who continue to live with the debilitating after-effects of the virus. We continue to learn not only of the impacts on our health but on our society as whole. I, and the Welsh Government, are committed and will remain committed to this Inquiry and to learn lessons for the future.”¹

¹ Drakeford (Module 2, 1st statement), para. 1 [INQ000273747].

Overarching matters

The role of the Senedd and parliamentary scrutiny of the Welsh Government

3. From the outset, it is important to properly acknowledge the constitutional and political role of the Senedd in scrutinising the Welsh Government’s response to the pandemic. During the course of the pandemic, the Senedd discharged its responsibilities to hold Ministers to account although, for obvious reasons, the format adapted to the changed circumstances.² The Senedd’s Plenary continued to meet, including during traditional periods of recess, reflecting the emphasis placed on its important role of scrutiny.

“Divergence” from the UK Government’s policies and approach

4. The devolution settlements in Wales, Scotland and Northern Ireland have been well-established for nearly a quarter-century so module 2B cannot be a crude exercise in comparing the Welsh Government’s decisions against those of the UK Government. England is not the benchmark against which the decisions of the Welsh Government and the other devolved governments should be judged.
5. The Welsh Government was reassured by the Chair’s statement that there is an obvious value in assessing decision-making across the four nations and the interactions between them. The approach the Chair proposed last August had the advantage of reflecting how government in the UK works. In responding to the pandemic, the four governments had for the most part their own powers and responsibilities. Using those powers, they made decisions that they considered to be in the best interests of their nations.
6. The Welsh Government is, however, concerned that the concept of “divergence” was frequently used in examination of witnesses in modules 2 and 2A which suggests that, in practice, the investigation is proceeding on the flawed basis that England is the benchmark against which the Welsh Government’s decision-making will and should be considered. For that reason, the Welsh Government should be grateful for confirmation that examination will reflect the constitutional, legal

² A Plenary meeting took place on 24 March, where oral questions were transferred for written answer, and First Minister’s Questions were replaced by weekly Covid-19 statements by the First Minister and other Ministers. Topical questions returned on 6 May 2020 and oral questions to Ministers resumed on 24 June, together with questions to the First Minister. The Senedd was recalled on 5 August and 26 August; in both cases to receive a coronavirus statement by the First Minister and to approve a series of amendments to coronavirus regulations. Plenary sat virtually from the 8th April 2020, with plenary meetings taking place through April, May, June, July and August of 2020 and from 15 September 2020, the standard pattern of twice-weekly Plenary sessions and First Minister’s Questions on Tuesday and Ministerial Questions on Wednesday resumed.

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and political realities of devolution and that in due course the Chair will judge its decision-making on its own merits.

Characteristics of Wales which affected decision-making

7. The size of Wales and the stability of the Welsh political structure and the stability of relationships between individuals and public bodies (particularly in the NHS in Wales) was a significant benefit to effective and efficient decision-making in the pandemic.³ In making the decisions in Wales, the Welsh Ministers felt daily how decisions were impacting the people of Wales and how their interactions informed decisions being made for the people of Wales.
8. Cross-party co-operation is commonplace in the Senedd and working with local authorities, with different political leadership, is the norm rather than the exception in Wales (as demonstrated by composition of the statutory Partnership Council for Wales).⁴ For that reason, leaders of the Senedd opposition parties attended the Core Covid-19 group and were regularly briefed on the pandemic, the relevant data and intended decisions.
9. The Shadow Social Partnership Council (“SSPC”) was an important vehicle during the pandemic. Its membership was expanded, and its operations were radically altered to provide a weekly forum for consultation and, notably, informed and open discussion of forthcoming decisions. It was attended by a broad cross-section of the community including public and private sector employers, trade unions, third sector parties and the Future Generations, Welsh Language, Older People’s Commissioners and Children’s Commissioners. The SSPC had direct access to Welsh Ministers and senior officials such as the Chief Medical Officer, the Chief Scientific Adviser for Health and the Chief Executive of NHS Wales. In the First Minister’s words, meetings were challenging and constructive. The SSPC heard, in advance of publication, about how and why the Welsh Government was thinking of making decisions.⁵

Inequalities and the response to the pandemic

10. The Inquiry will rightly shine a light on the impact of the pandemic and the response on health and other inequalities. Since the start of devolution in 1999, the Welsh Government has focused on addressing entrenched health and socio-economic inequalities through the law (for example, the

³ Drakeford (Module 2B statement), paras. 19-23; see also Foster [INQ000274189], para. 92.

⁴ Drakeford (Module 2B statement), para. 22.

⁵ Drakeford (Module 2B statement), para. 23.

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Wellbeing of Future Generations (Wales) Act 2015 promotes equality as an objective for society) and by policy and funding programmes.⁶ From the start, the Welsh Government’s approach to, and understanding of, the pandemic was informed by the knowledge that every widespread disease outbreak is more likely to produce disproportionately adverse effects on those who are economically disadvantaged or suffering from some other pre-existing health condition.

11. Since 2010 and uniquely in the UK, Welsh Ministers have been required by law to have regard to the UN Convention of the Rights of the Child in their decision-making. They were well used to doing so by the time of the pandemic but Ministers’ specific appreciation of the impact of Covid-19 on children developed as evidence of that impact was gathered and analysed.⁷
12. Throughout the course of the pandemic, the Welsh Government was acutely conscious of the impact of restrictions on all sectors of society and ensuring that those most at risk were protected was a major and constant consideration in decision-making. That imperative came into sharp focus early in the pandemic because of the emerging evidence of the differential impact of the pandemic on Black, Asian and Minority Ethnic communities.
13. Evidence emerged from prominent clinicians who observed that Black, Asian and Minority Ethnic colleagues were more vulnerable to catching the disease and its more serious consequences. In April 2020, the Welsh Government established a Black, Asian and Minority Ethnic Covid-19 Advisory Group to examine the disproportionate impact of the virus. The group had two sub-groups: the socio-economic sub-group looked at the broader context of the disproportionate impact and on 18 June 2020 submitted its report⁸ whose recommendations were immediately taken forward for implementation.⁹ Another sub-group developed a risk assessment tool to help health and social care workers decide whether they were at higher risk from the virus.
14. During the pandemic, the Welsh Government’s pre-existing Disability Equality Forum (“**DEF**”) was adapted to provide a means of communication and consultation with disabled people, a means “not available to disabled people in other parts of the country.”¹⁰ In June 2020, Prof. Debbie Foster was asked by the DEF to write a report about the experiences of disabled people in Wales during the

⁶ Drakeford (Module 2B statement), para. 18(e); Hutt, generally.

⁷ Drakeford (Module 2B statement), para. 84.

⁸ [INQ000227599].

⁹ [INQ000282184].

¹⁰ Foster [INQ000274189], para.92.

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pandemic.¹¹ The subsequent report made for powerful testimony. The Welsh Government committed to implement its recommendations; it reaffirmed its commitment to the Social Model of Disability and established the Disability Rights Taskforce to implement the report’s recommendations. Its valuable and necessary work, sponsored by the Minister for Social Justice, continues.

15. There is a higher proportion of older people in Wales than the rest of the UK and so concern about the impact of the virus and the response on their health and wellbeing was of critical importance throughout the pandemic. Data and modelling in Wales took account of the higher proportion of older people in the population which informed decision-making. The Older People’s Commissioner was a member of the SSPC. In that forum and elsewhere, she was a forthright and respected advocate of the interests of older people even though neither she nor the Welsh Government always agreed with the other’s position.
16. It is against this background that the Welsh Government expresses its concern that the experts’ reports that consider inequalities either deal with Wales cursorily or not at all. It would be grateful for clarification as to how, absent any detailed evidence, the Inquiry intends to consider the complex question of inequalities in the equally complex context of the pandemic in Wales.

WhatsApp and informal forms of communication

17. WhatsApp messages and other informal forms of communication have received sustained and intense interest in the Inquiry and, as a result, more broadly. For the purposes of module 2B, three points are relevant: first, the Welsh Government has disclosed all extant messages that the Inquiry has requested; secondly, at the relevant time (and to this day) Welsh Government issued mobile telephones are not permitted to access WhatsApp; thirdly and most importantly, it is clear from a calm consideration of the documents (including WhatsApp and other messages) that neither Welsh Ministers nor officials used WhatsApp (or any other form of informal communication) as a substitute for or supplemental means of formal decision-making.

Part 1 – the Welsh Government’s decision-making

18. Cabinet was the central decision-making body and the collective forum for Welsh Ministers to decide significant issues and to inform colleagues about important matters, which were discussed, either because they raised significant issues of policy or because they were of critical importance to the public. It was chaired by the First Minister and following the announcement on the 23 March 2020, a

¹¹ Foster [INQ000274189], para. 1.

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conscious decision was taken that cabinet meetings would include the whole Ministerial team and not just Cabinet Ministers. Ministers are expected to exercise portfolio responsibilities themselves except where a decision requires cross-government resolutions for Cabinet to consider and agree, or it raises issues which are so significant that they need to be discussed at Cabinet.

19. The Star Chamber was established in March 2020 to oversee and co-ordinate the fiscal response to the pandemic. It was recognised that the response would place unprecedented pressure on the Welsh Government’s budget for 2020-21 due to the volume of significant finance-related decisions that would need to be taken by Ministers, and the challenge of assessing and prioritising these to maximise the impact of available resources.
20. The Covid-19 Core Group comprised those Ministers most involved in developing the pandemic response and key officials. The Group evolved to include Andrew Morgan as a representative of the Welsh Local Government Association, Ruth Marks as a representative of the Wales Council for Voluntary Action and the two leaders of the opposition parties in the Senedd. It was for information sharing, rather than decision-making. It met weekly between 2 March and 14 September 2020.
21. The Technical Advisory Group (“TAG”) comprised civil servants and external scientific and technical experts. Drawing on Welsh resources, TAG was responsible for providing independent science advice and guidance to the Welsh Government in response to COVID-19, interpreting SAGE advice for the Welsh context and utilising Secure Anonymised Information Linkage provided by Swansea University.
22. Daily ministerial calls, from 6 April 2020, ensured that the whole Ministerial team continued to operate together, sharing information and contributing to the process of decision-making. The fast-moving nature of the crisis, and the many ways in which problems required a response across different portfolios, meant that a daily call, at the start of each day, involving all Ministers proved invaluable in assisting responsive and collaborative decision-making.

The establishment of the decision-making process on non-pharmaceutical interventions

23. Before the 21-day review duty was set in legislation at the end of March, the First Minister ensured he committed the Welsh Government to action only when he believed that he had a mandate from Cabinet.

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24. On 17 March 2020, the First Minister made an announcement advising the public to limit non-essential contact, work from home where possible and avoid social venues, as a direct result of the agreement reached at COBR on 16 March 2020.
25. On 18 March 2020, the Minister for Education announced schools would be re-repurposed and remain open for the children of key workers and vulnerable children. The policy was made in the context that local authorities had started unilaterally to close schools, so national-level direction was required to ensure an orderly transition to provide for the children of key workers and vulnerable children. At COBR later that day, all four governments agreed to such action.
26. On 20 March 2020, the First Minister agreed at COBR to make public health regulations to stop people gathering, as there had not been full compliance with the earlier guidance. The First Minister announced that evening the Welsh Government would exercise public health powers to close restaurants, pubs, bars and other facilities where people gathered. This also included leisure centres, gyms, cinemas, theatres, and betting shops. The regulations were drafted over the weekend and made on 21 March 2020. This was the point at which the die was cast and the response to the pandemic became a devolved matter.
27. Cabinet met on 23 March 2020 and considered regulations to close the hospitality industry, work to prepare for lockdown and a letter to be sent to 150,000 vulnerable people in Wales about self-isolation, medical advice and detail on social support arrangements.
28. Later at COBR the four nations agreed to enter full lockdown across the UK. The Prime Minister informed the First Ministers that he would announce a lockdown in England and asked them to use their respective powers to do the same. The First Minister felt able to give that commitment on behalf of the Welsh Government knowing that the decision had the support of the Welsh Cabinet. The First Minister discussed the decision to lockdown with the Minister for Health and Social Services and the Chief Medical Officer for Wales who both attended COBR, before making the announcement that evening. The COBR minutes record that there needed to be joint guidance on how the guidance would affect vulnerable groups, along with highlighting the position of vulnerable school children who would need to be receiving free school meals.
29. Cabinet met on 24 March 2020 to discuss the decision to lockdown and agreed to make the required regulations on 26 March 2020. Cabinet identified the need for guidance to local authorities on supporting vulnerable adults who were shielding and the cost of providing food and other essential

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items to those individuals. Support would need to be in place for young adults leaving care and those fleeing domestic violence.

30. On 7 April 2020, at a meeting of the First Minister and the Minister for Health and Social Services, seven principles were identified to be used in the review of restrictions, one of which was that measures should have a positive equality impact. These principles formed the basis of the recovery framework that was published on 24 April 2020.
31. The first 21-day review was carried out on 16 April 2020. The First Minister decided that in the light of SAGE’s view that the evidence could not yet fully capture the impacts of the lockdown, the full package of restrictions should remain in place.
32. On 24 April 2020, the Welsh Government published *Leading Wales out of the Coronavirus pandemic: A Framework for Recovery*. It set out the evidence, principles and public health approach the Welsh Government would apply when considering whether/how to lift restrictions. Firstly, it set out the measures and evidence by which the current infection level and transmission rates were judged in Wales. Secondly, it published seven principles the Welsh Government would apply to examine proposed measures to ease the current restrictions, taking into account scientific evidence, wider social and economic impacts, and whether a measure had a positive equality impact. Thirdly, it explained how the Welsh Government would enhance its public health surveillance and response system to enable it to track the virus closely as restrictions were eased. It would be based on consideration of four harms: direct harm to individuals from Covid-19; harm flowing from the NHS becoming overwhelmed; harms from non-Covid-19 illness through lack of diagnosis and treatment of other conditions; and socioeconomic and other societal harms. The Welsh Government confirmed that its preference for all four nations to retain a common approach to the lifting of restrictions, but its overarching commitment was to take the right decisions for the people of Wales.
33. On 7 May 2020, Cabinet carried the second 21-day review. Cabinet was able to test the advice, raise and discuss additional considerations and request further information. It was of fundamental importance to the First Minister that when difficult decisions had to be made, every Minister felt that they had a full opportunity to test the arguments or to voice concerns.¹² Decisions were subject to the greatest possible scrutiny and that full debate led to a coherent and reasoned conclusion that every Minister was comfortable to support and defend.

¹² Drakeford (Module 2B statement, para. 30).

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34. On 15 May 2020, the Welsh Government published *Unlocking our society and economy: continuing the conversation*, which included a “traffic light” guide for moving out of lockdown.
35. On 18 August 2020, the Welsh Government published the *Coronavirus Control Action Plan* for Wales, which set out the principles that would be applied for local interventions. As numbers started to rise again in the autumn, some local interventions were imposed using the principles in the plan during September and October 2020.
36. On 12 October 2020, COBR was advised by the Chief Scientific Adviser to the UK Government that a three-week circuit breaker would reduce the R rate below 1. Although the Prime Minister decided to continue the tiered approach in England, the Welsh Government established the Firebreak Implementation Group on 14 October 2020. Thereafter, on 15, 18 and 19 October 2020 Cabinet discussed a firebreak which was agreed on 23 October 2020. Cabinet was informed on 16 November 2020 that the firebreak had successfully reduced the R rate below 1 and had delivered the gains anticipated from it. Unfortunately, the discovery of the more transmissible Kent variant in November meant that the gains of the firebreak were more short-lived than modelling had anticipated.
37. Cabinet continued its winter planning on 26, 27 and 29 November 2020 and agreed to adopt a tier system in Wales from 4 December 2020. Cabinet further discussed the alert levels and ‘traffic-light system’ on 9 and 10 December 2020 and agreed to adopt the recommended alert levels, and place Wales into alert level 4 on 28 December 2020. An updated Coronavirus Control Action Plan was published on 14 December 2020. However, on 19 December 2020 Cabinet were advised that the consequences of the Kent variant meant that Wales should be placed in alert level 4 from 20 December 2020 (instead of 28 December) to which Cabinet agreed.
38. Thereafter, as set out in the Welsh Government’s witness evidence, restrictions were gradually eased on the basis of the scientific and technical advice and following full Cabinet discussion.

Part 2 – effectiveness of inter-governmental arrangements

39. From the perspective of the Welsh Government, three particular issues arise:
 - (a) The nature, extent and timing of the UK Government’s dealings with the Welsh Government in relation to the imposition and relaxation of non-pharmaceutical interventions. In

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particular, whether and, if so, to what degree opportunities for effective inter-governmental working were lost;

- (b) The funding arrangements governing the response to civil emergencies between HM Treasury and the devolved governments; and
- (c) The realities and benefits of effective devolved decision-making.

The nature of co-operation between the UK Government and the Welsh Government

40. Until May 2020, the then Prime Minister met the First Ministers of the devolved governments in COBR. In May 2020, the UK Government unilaterally decided to reorganise its Cabinet structures. Despite the Prime Minister agreeing to use the Joint Ministerial Committee structure to engage with devolved governments,¹³ no use was made of it at all, even though this mechanism was in relatively good working order because it had been used and expanded during Brexit. Instead, in May 2020, as easements out of lock down were being engaged the practical consequence of ending, not only the First Ministers’ attendance at COBR, but the opportunity for strategic engagement within the UK, eroded the opportunity for a co-ordinated approach by governments across the UK resulting in different approaches and timescales for easements.
41. As several witnesses have explained, it did not matter whether the meetings with the First Ministers were in COBR, Joint Ministerial Committee meetings or otherwise. What mattered was the need for a regime of regular meetings, attended by the Prime Minister and the First Ministers, in which the heads of the four governments were able to raise, discuss and pursue matters of mutual interest and concern. That is what the First Minister of Wales regularly called for.¹⁴
42. Notwithstanding the clear and pressing need, there were no meetings between the heads of government between May and September 2020. It is profoundly unfortunate that no such meetings were convened by the Prime Minister with whom the institutional initiative lay to organise them. Thereafter, the First Ministers were invited only to Covid-O meetings, chaired by Michael Gove MP, then the Chancellor of the Duchy of Lancaster. However, Lord Sedwill explained that the “big” decisions were made by the Prime Minister in Covid-S.¹⁵ By contrast, the “second order” decisions that could be made by lower-ranking ministers were considered at Covid-O. Put differently, the

¹³ Johnson statement, para. 368 [INQ000255836].

¹⁴ Drakeford (Module 2, 2nd statement), para.18.

¹⁵ Transcript, p. 114.

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devolved governments were invited to the forum that dealt with implementation, rather than one that set strategic direction.

43. As Professor Henderson pointed out in her oral evidence in module 2, Mr Gove complained about a problem created by the UK Government but in whose hands the remedy lay. Devolved governments were not asking to be included within UK Government decision-making structures (COBR excluded) and they were not seeking a particular form for those meetings. Arrangements were needed to allow the heads of governments to participate in strategic consideration of how best to respond to the pandemic.
44. Boris Johnson was more forthcoming about the reason why he did not meet the First Ministers for long periods. He wanted to avoid creating the impression that the UK was a federal state,¹⁶ an apprehension shared by the territorial Secretaries of State who described regular meetings between the Prime Minister and the First Ministers as a “potential federalist Trojan horse”.¹⁷ Mr Johnson’s concern with appearances did not recognise, and so did not meet, the scale of the events confronting the four nations. As a reflection of the UK Government’s attitude to the need for close and effective co-ordination between the heads of the four governments, Mr Johnson’s evidence is telling if also depressing. Upon taking office, the Prime Minister also took the new title ‘Minister for the Union’; his actions positively undermined the title he had claimed to advance.

Funding arrangements between HM Treasury and the devolved governments

45. The Welsh Government recognises the scale of the financial assistance provided by the UK Government. Overall, there were examples where the system worked well, such as the introduction of the Covid-19 Guarantee.
46. However, the legitimacy of the UK fiscal framework is undermined by the way HM Treasury operates UK-wide, directed by, and solely accountable to, UK Ministers. In that regard, two distinct matters arise: first, the level of funding for public health measures being consequential on funding being provided by the UK Government in England; secondly, the funding and operation of UK-wide programmes by the UK Government.

¹⁶ Johnson, para. 188 [INQ000255836].

¹⁷ [INQ000091348].

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47. The Welsh Government has set out in detail the limitations imposed by the funding arrangements and the unresponsiveness of HM Treasury and restrictions of UK-wide programmes, some of which were illustrated by the discussions which led to the firebreak in Wales in October 2020. The enhanced Job Support Scheme was a UK-wide scheme, implemented by HM Treasury, due to start on 1 November 2020. Following the Welsh Cabinet’s decision in principle to introduce a firebreak in Wales when the UK Government did not intend to take the same action, on 16 October 2020 the First Minister asked Rishi Sunak MP, then the Chancellor of the Exchequer, to bring forward the start of the scheme by one week to coincide with the beginning of the firebreak in Wales. He explained why many staff in Wales would not be able to make claims on the job retention scheme for that period. He even made an offer to reimburse HM Treasury the additional cost of bringing the scheme forward. The request was declined due to “limitation on HMRC delivery timelines”. The First Minister expressed his disappointment and explained that this decision was likely to lead to redundancies in the hospitality and leisure sectors. Mr Sunak in his evidence on 11 December 2023 suggested that the Welsh Government could have used the up-front guarantee of additional funding to address the absence of the enhanced job support scheme during the initial period of the Welsh firebreak. That was never a practical possibility: the problem was not solely the amount of money provided by the UK Government, but the timing of public health decisions in Wales and the availability of operational support from HMRC.
48. Although this was a significant example of the problems that could be caused by the existing funding arrangements, unfortunately, the October 2020 firebreak was not the only instance¹⁸ and the issue remains unresolved. These limitations are a flaw in the system, not a single point of failure of the system. HM Treasury’s unresponsiveness to the needs and public health requirements of the devolved governments meant that actions taken by HM Treasury to put in place interventions were based solely on instructions from the UK Government.

The reality and benefits of effective devolved decision-making

49. Some current and former ministers of the UK Government have suggested that in a future pandemic legislative power should solely rest with the UK Government. As set out above, the UK Government chose to use the 1984 Act in the full knowledge that executive power under that Act had been transferred to the Welsh Government.¹⁹

¹⁸ Drakeford (Module 2, 1st statement), paras. 124, 141 and 181 [INQ000273747].

¹⁹ Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 and section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

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50. Professor Henderson points to the fact that the deliberate decision of the UK Government positively facilitated different decision-making by the four nations. For example, the Coronavirus Act 2020 anticipated variation between the four nations and a consensual approach between them.²⁰ The Coronavirus Action Plan, published on 3 March 2020, also provided for differentiation of approach between the nations of the United Kingdom.²¹
51. There are decisive reasons of principle and practicality as to why it is right that the devolved governments exercised public health powers in response to the Covid-19 pandemic:
- (a) Firstly, within the UK there are now four legislatures and governments, each democratically accountable to the people they serve. Under the Welsh constitutional settlement, responsibility for health and public health matters in Wales rests with Welsh Ministers, and the Welsh Government is expected to respond to any development that threatens the health of the people of Wales.
 - (b) Secondly, the sectors most affected by the public health emergency (the NHS in Wales; education; social care and local government) were devolved and had been for more than 20 years when Covid-19 struck. None of these sectors had been controlled by Whitehall for more than two decades and each of them operated under different legislative, administrative, policy and funding arrangements from England and the rest of the UK. As the UK Government was unfamiliar with those arrangements the idea that central government could in some way intervene and make decisions for Wales is misconceived.
 - (c) Thirdly, the Welsh Government is responsible for the operation of the NHS in Wales.²² The Welsh Government was best placed to ensure the Welsh NHS was not overwhelmed. The NHS in Wales is structured and operates differently to other parts of the UK, and public services are also delivered by public sector partners differently. The SSPC is a very strong example of how sectors engage closely with each other in Wales.
 - (d) Fourthly, although Matt Hancock was correct to observe that the virus did not respect borders, its pattern of spread across the UK did differ. No good reason has been advanced why the principle of subsidiarity should not lead to different governments, accountable to local populations, exercising their powers to respond according to local circumstances. Indeed, the Inquiry has already received evidence that electorates of the devolved nations had significantly higher trust in the devolved governments than the UK Government.²³

²⁰ Transcript, Professor Henderson p. 139.

²¹ Transcript, Professor Henderson p. 143.

²² National Health Service (Wales) Act 2006.

²³ Transcript, Professor Henderson, p. 173.

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- (e) Fifthly, gaining public confidence is an important aspect of the implementation of interventions by government. The principle of subsidiarity was important during the pandemic, where government could demonstrate to the public it had considered matters relevant to local circumstances, thus enabling decisions to be made closer to those affected by them – so decisions affecting those in Wales being made in Wales.

52. Current and former ministers of the UK Government recognise that differences in approach, pace and emphasis between the four nations were reasonable and the weight of the evidence is that the principle of subsidiarity, to use Boris Johnson’s language, “overwhelmingly...worked well”. Further:

- (a) Boris Johnson stated that the interests of the devolved governments did not always align with those of England, and that was an inevitable part of a devolved system.²⁴ He also said that he understood why, given that the incidence of the virus was rising in Wales and tiering had not worked well, the Welsh Government had imposed the firebreak.²⁵
- (b) Michael Gove acknowledged that in May 2020 the UK Government accepted that measures needed to change in different ways at different times in different parts of the UK.²⁶ Mr Gove fairly said that he understood the reasoning behind the Welsh firebreak and that he did not seek to dissuade the Welsh Government from taking that course as he was aware that the measure had been under consideration for some time.²⁷
- (c) Dominic Raab MP stated that as a result of his experience during the pandemic, he was not persuaded that decision-making should be centralised because there were benefits in the devolved governments taking difficult decisions and working with the UK Government.²⁸ In evidence, Mr Raab reiterated that he felt that the devolved governments worked effectively with the UK Government and there were strong examples of teamwork. He thought that the case for more centralised power in similar circumstances in the future had not been made.²⁹

53. There is an important point about how differences in the four nations are to be communicated. In general, the absence of a clear message from the UK Government when its measures applied exclusively to England was a more significant contribution to confusion in the minds of the public.³⁰

²⁴ Johnson, para. 191 [INQ000255836].

²⁵ Johnson, para. 519 [INQ000255836].

²⁶ Gove, para. 61 [INQ000259848].

²⁷ Gove, para. 106 [INQ000259848].

²⁸ Raab, para. 230 [INQ000268041].

²⁹ Transcript, pp. 233 – 234 and 257.

³⁰ Report, Professor Henderson, paras. 151 and 153 [INQ000269372].

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Lee Cain told the Inquiry that Boris Johnson was told about the objections of the devolved governments to England-only measures being announced on a UK-wide basis, but for purely political reasons he disregarded those objections.³¹ In short, Mr Johnson wilfully contributed to the confusion. There have been devolved laws for more than 20 years now, and the populations of Wales, Scotland and Northern Ireland are well used to different laws applying in their respective countries and they should not cause any difficulty provided that public health messages are sufficiently clear.

54. By not engaging with the devolved nations the UK Government denied itself the opportunity to develop common approaches. Its refusal to co-ordinate communication with the devolved governments was reflected in its routine failure to make it clear when the UK Government’s rules and messaging applied only to England. HM Treasury’s unresponsiveness to the needs and public health requirements of the devolved governments meant that it treated the needs and public health requirements of England with a different degree of priority to those of the other nations of the UK.

Recommendations

55. The First Minister has proposed two recommendations touching upon reform of inter-governmental relations and arrangements that allow the devolved governments equal and fair access to funding in the event of a future public health emergency.³²
56. A fundamental part of the Inquiry’s work is the formulation of efficient and effective recommendations to put right any deficiencies or flaws that are found to exist. Consideration of recommendations will not, therefore, be a straight-forward exercise. At the start of modules 1 and 2 the Welsh Government asked the Inquiry to publish details of its proposed arrangements for the consideration of recommendations and it would make that request again.

Dated 20 February 2024

³¹ Transcript, Lee Cain, p. 51.

³² Drakeford (Module 2B statement), paras. 298 and 299.