

COVID-19 PUBLIC INQUIRY

Module 2B

OPENING SUBMISSIONS OF DISABLED PEOPLE'S ORGANISATIONS: DISABILITY WALES (ANABLEDD CYMRU) AND DISABILITY RIGHTS UK

INTRODUCTION

- 1.1. OVERVIEW: Further to the DPO's approach in previous modules, this submission considers the Welsh Government's Covid response through the prism of [A] CONTEXT and [B] GOVERNMENT, with particular focus on nine ways in which government is prone to overlook and fail to act upon issues affecting Disabled people generally, and all the more so during emergency. Those areas are (1) SYSTEM, (2) PLANNING, (3) MACHINERY, (4) EXPERTISE, (5) RECOGNITION, (6) ENGAGEMENT, (7) DATA, (8) PROTECTION and (9) REDISTRIBUTION.
- 1.2. CONTEXT: On death rate and other adverse impacts of pandemic counter-measures, Wales did not fare better than other nations within the UK. 68% of Covid deaths in Wales between 2 March 2020 and 14 July 2020 were Disabled people. People with a learning disability were between 3 and 8 times more likely to die of Covid than the population as a whole.¹ In addition to fatal outcomes, Disabled people experienced reduced access to routine health care and rehabilitation as well as other adverse social impacts of NPIs. As in Scotland, Wales entered the pandemic with an "*older, poorer and sicker*"² population than England but with a greater recognition of health inequalities, commitment to human rights and the wellbeing of future generations, and with better engagement between government and people and emphasis on cross-governmental and societal partnerships than is presently valued or provided for by the UK Government.
- 1.3. GOVERNMENT: Welsh Government decision-making and effectiveness was nevertheless still compromised by the lack of a pre-existing system of disaster management. In crisis, certain core principles that were central to the "Welsh model" of government such as the concept of 'Voice, Choice and Control' within the Social Services and Well-Being in Wales Act 2014 (SSWB 2014) were seriously eroded, and basic rights of Disabled people, in particular the basic right to independent living, were threatened.³

¹ Coronavirus (COVID-19) and the impact on disabled people [INQ000371211/17, 22]

² Drakeford [INQ000371209/38 §124] Gething [INQ000226492/143 §542(g)]

³ Foster [INQ000274189/9 §21] Locked Out [INQ000142176/7]

1.4. DEVOLUTION: As in Scotland, Covid exposed weaknesses in current devolution arrangements in Wales and how they operate in crisis. Welsh Government decision making operated in the “*shadow*” of Treasury spending decisions, which limited both its pandemic preparation and management choices, most significantly with regard to the October 2020 Firebreak.⁴ The UK Government accuses the Welsh Government of adopting different policies for the sake of being different,⁵ but the counter-argument is that difference was born out of unequal spread of health inequality and different political culture, with the pandemic exposing for Disabled people the limiting effects of devolution arrangements on the ability to confront ableism in Wales and enjoy joined up government to achieve lasting change.⁶

PART [A]: CONTEXT

2.1. DISABLED PEOPLE’S SITUATION IN WALES: In September 2020, there were an estimated 415,600 Disabled people aged 16 to 64 in Wales, representing 21.9% of that part of the population.⁷ As in the rest of the UK, Disabled people in Wales went into the pandemic facing substantial inequalities.⁸ Consultations in 2017-18 demonstrated that there were overall lower rates of educational attainment, employment and economic activity amongst Disabled people and lack of meaningful paid work.⁹ In 2018, 39% of Disabled people in Wales were in poverty compared with 22% of non-disabled people, and the poverty rate amongst Disabled people was the highest in the UK.¹⁰ Disabled people faced barriers in accessing healthcare, including access to health checks, suitably trained staff and rehabilitation services.¹¹

2.2. COMPROMISED RESILIENCE: There can be no doubt that Disabled people’s resilience to Covid-19 and its countermeasures was compromised by cuts in benefits and services, occasioned by UK austerity budgeting.¹² Although the Welsh Government put in place (to the extent that they were able, social security being a reserved matter) mitigating measures to limit cuts, the consequences were still fundamentally damaging to Disabled people.¹³ Between 2009-2019 adult social care expenditure declined by £440 million.¹⁴ The

⁴ Wincott [Final] [§§25, 34, 63-66] Drakeford [INQ000177804/9 §34] Bennée [INQ000366137/59 §199]

⁵ Hart [INQ000270271/10 §41] Wincott [Final] [§§26, 33, 45]

⁶ Foster [INQ000274189/15 §§41, §94-5] Locked Out [INQ000142176/39, 54]

⁷ Coronavirus (COVID-19) and the Impact on Disabled People 11.03.21 [INQ000371211/3]

⁸ DPO M2B PH Submission 22.03.23 §1.2

⁹ Action on Disability: Framework and Action Plan (2019) [INQ000177837/20, 24]

¹⁰ Joseph Rowntree: Poverty in Wales 2018 <https://www.jrf.org.uk/report/poverty-wales-2018>

¹¹ <https://www.gov.wales/sites/default/files/statistics-and-research/2018-12/151015-review-evidence-inequalities-access-healthcare-sevices-disabled-people-summary-en.pdf>

¹² Watson & Shakespeare [INQ000280067/6 §16] [M2/T5/29/20-33/2] UNCRPD [INQ000365997/20 §113]

¹³ DPO M2B PH Submission 22.03.23 [§1.4] UNCRPD [INQ000365997/16 §94]

¹⁴ Watson & Shakespeare [INQ000280067/10 §32]

employment gap in Wales was at 32.1 percentage points and the pay gap 9.9%.¹⁵ Disabled people were especially affected by both reduced living standards and a growing personal debt crisis.¹⁶ Lower income was aggravated by relative higher cost of being Disabled, assessed in the UK in 2018 as £570 per month for impairment-related expenses.¹⁷ Disabled people in Wales were more likely to be living in rented and overcrowded housing, and to live in deprived areas.¹⁸

2.3. HUMAN RIGHTS: Welsh Government considers itself to have a distinct approach to government and human rights, which includes a commitment to government action to craft collective solutions to social inequalities, partnership and co-production between citizens and government, and substantive equality rather than merely equality of opportunity.¹⁹ These values have manifested in both policy and legislation. The 2013 *Framework For Action on Independent Living*, updated in 2019, sets out the governmental commitment to the social model of disability and principles of co-design and co-production; and has the declared ambition to work for continuous improvement in how Wales fulfils its obligations with regard to UNCRPD and ensure that Disabled people are supported in being (1) prosperous and secure (2) healthy and active (3) ambitious and learning and (4) united and connected.²⁰ In this respect, like Scotland, Wales has a Delivery Plan for the UNCRPD, whereas the UK does not.²¹ The SSWB 2014 requires, through its Part 2 Code of Practice, that local authorities have due regard to the UNCRPD when exercising their social services functions in relation to Disabled people and Disabled carers. In March 2021 Wales brought into force (for the first time anywhere in the UK) the socio-economic duty contained in section 1 of the Equality Act 2010 that requires public bodies to have due regard to exercising powers in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.

2.4. DELIVERY: Despite these commitments, particularly in the early days of the pandemic, there was a dissonance between governmental assurances that communities would be safeguarded and the most vulnerable people protected,²² and what Disabled people experienced on the ground, namely medical discrimination, restricted access to public services, social support

¹⁵ Coronavirus and the Impact on Disabled People [INQ000371211/4-5]

¹⁶ Coronavirus and the Impact on Disabled People [INQ000371211/13-14]

¹⁷ Watson & Shakespeare [INQ000280067/6 §18]: the 2019 figure was assessed at £582

¹⁸ COVID-19 and the Impact on Disabled People [INQ000371211/11-12, 14] Watson & Shakespeare [INQ000280067/7 §20]

¹⁹ Drakeford [INQ000371209/5 §18]

²⁰ Action on Disability: Framework and Action Plan [INQ000177837/7-9,11, 35-53]

²¹ Hutt [INQ000366148/49 §153] Civil Society Shadow Report on UNCRPD (2017) [INQ000365996/5]

²² First Minister Statement on Coronavirus 24.03.20 [INQ000350705]

and food resources, exclusion from public spaces and public life, restrictions on independent living and increased levels of poverty.²³ This is not to dismiss the efforts the Welsh government made to consult with and involve Disabled people regarding the pandemic response,²⁴ however the implementation of policy decisions by local authorities and agencies was inconsistent in its inclusion of Disabled people throughout the pandemic.²⁵ This was not simply the fault of local delivery divorced from central government decision making. The problems were more systemic, including the lack of bespoke disaster planning for Disabled people despite the requirements of Article 11 of the UNCRPD and global governance standards,²⁶ tensions arising from devolution, a lack of data and a lack of clarity regarding accountability mechanisms for local authorities implementing central government policy.

2.5. LEARNING: As in Scotland, why and with what consequences the deficit between aspiration and delivery occurred is important for both Wales and the whole of the UK. For Wales it is important because its Covid Reconstruction Plan committed to focusing “*our efforts on supporting those who have been most adversely affected by the Covid-19 crisis, including children and young people, women, those in low paid and insecure employment, BAME people and disabled people*”.²⁷ That is a laudable aim but only achievable with clear understanding of why Disabled people fared so badly in the pandemic in the first place and of how governmental commitment to human rights and substantive equality did not prevent damage to Disabled people. It is also important to the whole of the UK, because future prevention of the disproportionate impact of emergency state practice in the face of whole system disaster depends on a combination of values and delivery.

PART [B]: GOVERNMENT

[1]. SYSTEM

3.1. DEVOLUTION: The Phillips Inquiry report into BSE made a particular recommendation to ensure that devolution did not compromise a synchronised response to UK-wide risk.²⁸ The pandemic demonstrates that this recommendation was not followed through. As analysed by Professor Wincott, although the Welsh Government had practical experience of

²³ Locked Out [INQ000142176/11, 49, 59-61,63-4,67-8]: Davies [INQ000410946/34 §§91,97-99102-3,106]

²⁴ R. Davies [INQ000410946/24 §66] Foster [INQ000274189/23 §70]

²⁵ R. Davies [INQ000410946/24 §66]

²⁶ UNCRPD Art. 11 and Sendai Framework for Disaster Risk Reduction 2015-2030 (March 2015) §§7, 19(d), 19(g), 32, 35 and 36(a)(iii): see also DPO M2 Opening Submission 26.09.23 [§§2.6 and 2.8] Watson & Shakespeare [INQ000280067/12 §37]

²⁷ Covid Reconstruction, Challenges and Priorities (October 2020) [INQ000066123/4]

²⁸ The Inquiry into BSE and variant CJD in the UK Vol. 1 Findings and Conclusions, Ch. 14 §§1280-1282

emergency planning and management, the devolution framework in Wales did not provide for a full set of institutions and arrangements able to support devolved institutions' ability to mount a 'whole of government' emergency response.²⁹ In addition, devolution in Wales has developed in a piecemeal and ad hoc manner which has left areas of incompleteness and incoherence in the operation and structure of Welsh government.³⁰ This was apparent in the area of emergency planning. In 2018 the responsibilities within Part 1 of the Civil Contingencies Act 2004 ('CCA') were devolved to Wales, but as accepted in Module 1 Wales did not have the resources, capacity or systems to discharge those functions, with serious consequences for its ability to mount a full scale pandemic response.³¹

3.2. CONFUSION: One of the consequences was confusion as to whether the pandemic response was to be a 'Four Nations' response or managed more locally. The decision to govern the pandemic via public health powers rather than utilising the emergency powers under the CCA 2004 required the Welsh Government to respond to local circumstances as health was devolved,³² but there was an initial expectation that counter-pandemic measures such as lockdown and mitigation strategies would be coordinated at a Four Nations level. This proved not always to be the case. On 24 March 2020 the UK Government announced it would provide food to those who were shielding in England. The Welsh Government had wrongly operated on the assumption that such a programme would be UK wide and had to develop its own system at short notice.³³ Welsh Ministers describe how this lack of clarity over respective functions between Devolved and Westminster government continued throughout March to May 2020, giving rise to uncertainty for those impacted by NPIs, but also impacting planning.³⁴

3.3. BUDGET: As in Scotland, the most significant systemic weakness for Wales during the Covid crisis was the financial arrangements of devolution. In the decade before the pandemic the Welsh Government faced reducing budgets every year, with devolved authorities in Wales receiving lower levels of funding for public services relative to need than their counterparts in England.³⁵ The different levels of need present in Wales meant its authorities faced a more challenging context than their counterparts in England.³⁶ Application of the Barnett formula

²⁹ Wincott [Final] [4 §8]: see also Henderson [INQ000269372/19-20 §46] [42 §131]

³⁰ Wincott [Final] [11 §§26-27]

³¹ Goodall [M1/T14/19/20-20/15]

³² Drakeford [INQ000177804/5 §18] Wincott [Final] [37 §105]

³³ Drakeford [INQ000371209/137 §42]: Ministerial advice regarding Wales wide scheme to provide essential foodstuffs to shielding people 27.03.20 [INQ000216599/3 §§3-4]

³⁴ Runeckles [INQ000320679/16 §57] Drakeford [INQ000177804/6 §§24-5]

³⁵ Drakeford [INQ000177804/9 §34] Wincott [Final] [25 §64]

³⁶ Wincott [Final] [26 §66]

did not permit the Welsh Government to build up a significant reserve to respond to unforeseen events such as a pandemic.³⁷ During the pandemic devolved funding arrangements limited Wales's ability to implement public health actions it thought necessary, or required it to make public health announcements “*at risk*” without clarity as to whether measures could be funded.³⁸ The Welsh Government sought to pursue sustainable funding arrangements for key areas such as the Third Sector before and during the pandemic, but funding arrangements compromised its ability to carry out long term planning.³⁹

[2]. PLANNING

3.4. REACTIVE STATE: As in the rest of the UK, in Wales there was a fundamental failure to plan for a national emergency that would require a cross-societal response, and key structures and plans had to be created at short notice.⁴⁰ Key civil contingency documents including the communicable disease plan, the 2011 strategy, the Health and Social Services Group pandemic influenza response plan, had not been updated since 2014.⁴¹ A Welsh Audit Office report in 2012 had identified issues regarding the complexity of the Resilience Framework, problems with inefficiency and effectiveness, and doubts over availability of resources, but these had not been remedied.⁴² The failure of the system to plan was especially damaging for Disabled people, and contrary to the Welsh Government's stated commitment to partnership and co-production between citizens and government. Despite the 2017 UNCRPD Committee Report that criticised the UK generally for failing to plan or establish roles for DPO during an emergency, the Welsh Government and local government failed to consult at all with Welsh DPO in pandemic planning.⁴³ As highlighted in the Locked Out Report, many of the issues and problems faced by Disabled people during the pandemic may not have arisen had they been involved in planning from the outset.⁴⁴

3.5. COMPLACENCY: In part the lack of crisis preparation arose from the issues regarding devolution (see §3.1 above). However Professor Wincott also identifies the risk of small nation government becoming “*cosy*”⁴⁵ and there is an element of this running through the Welsh Government witness statements; that long standing relationships between local

³⁷ R Evans [INQ000346272/19 §§59-60]

³⁸ Drakeford [INQ000371209/70 §227; 93 §299] R Evans [INQ000346272/21 §§66, 138]

³⁹ Inquiry into the impact of the COVID-19 outbreak, and its management, on health and social care in Wales March 2021 [INQ000137009/55 §§165-7] R Evans [INQ000346272/16 §§46-50]

⁴⁰ Drakeford [M1/T14/196/19-197/20]

⁴¹ Goodall [M1/T14/19/20-20/21] [M1/T14/22/11-18]

⁴² Drakeford [M1/T14/196/19-198/23]

⁴³ R Davies M1 Statement [INQ000183426/3 §5] [8 §22]

⁴⁴ Foster [INQ000274189/28 §92]

⁴⁵ Wincott [Final] [27 §69, 33 §91]

authorities and political figures, while beneficial in enabling partnership in any emergency response,⁴⁶ perhaps led to a degree of complacency regarding emergency preparedness.⁴⁷ In addition, preparations for a no-deal exit from the EU in January 2020 inhibited the Welsh Government's ability to ascertain the state of Wales's emergency preparedness to deal with the pandemic.⁴⁸ There was a hesitancy in standing up the emergency structures that were in place,⁴⁹ and a failure to take advantage of the advance notice that Wales had of the situation in England to prepare better in Wales.⁵⁰

3.6. ADOPTION OF FRAMEWORK: Having begun the pandemic without strategic planning, the Welsh Government created processes for decision making which included expanded Cabinet meetings; a discrete Star Chamber to oversee financial decisions; a Covid-19 Core Ministerial Group; daily ministerial calls and a weekly meeting with a shadow Social Partnership Council.⁵¹ The Welsh Government published its Policy and Strategy Framework for Recovery on 24 April 2020. The primary consideration was preventing further harm in terms of direct effects from the virus, but also required consideration of whether any changes in restrictions would have a high positive equality impact.⁵² The Coronavirus Control Plan of August 2020 contained a commitment to considering the impact on people with protected characteristics, children's rights and equality and human rights.⁵³ The October 2020 Covid Reconstruction Plan emphasised "*supporting those who have been most adversely affected by the Covid-19 crisis, including children and young people, women, those in low paid and insecure employment, BAME people and disabled people*".⁵⁴ These strategic documents indicate that the Welsh Government acknowledged the role socio-economic factors played in the pandemic significantly quicker than the UK Government⁵⁵ and also functioned to provide transparency to the public as to how decisions were being made.

3.7. EQUALITY FOCUS: The Welsh Minister responsible for equality and liaison with the EHRC (Jane Hutt) was involved in key government decision making as Chief Whip and Deputy Minister. Unlike the absence of UK Equality Ministers from the Covid-O Ministerial group, and the similar absence of the Minister for Older People and Equality from the equivalent

⁴⁶ Drakeford [INQ000371209/7 §22] S Morgan [INQ000185340/8 §27]

⁴⁷ Drakeford [M1/T14/163/19-164/2] [M1/T14/198/16-23]

⁴⁸ Hutt [INQ000366148/15 §53]

⁴⁹ Sandifer [INQ000267867/34 §§145-147]

⁵⁰ Cooper [INQ000276282/16 §73]

⁵¹ Drakeford [INQ000371209/13 §§36-37, 41-3]

⁵² Leading Wales out of the coronavirus pandemic: A Framework for Recovery, 24.04.20 [INQ000066064/4,7]

⁵³ Coombs [INQ000252723/8 §25]: Coronavirus Control Plan for Wales 21.08.20 [INQ000349837/21]

⁵⁴ COVID-19 Reconstruction: Challenges and Priorities (October 2020) [INQ000066123/4]

⁵⁵ Foster [INQ000274189/29 §94]

Ministerial Group in Scotland, the Deputy Minister was present at daily ministerial calls and Covid-19 Core Group meetings, but also chaired the Race Equality Forum and Disability Equality Forum ('DEF'), and co-sponsored the Covid Moral and Ethical Advisory Group ('CMEAG').⁵⁶ In addition, the Deputy Minister had daily meetings with officials from the Poverty and Tackling Communities Directorate.⁵⁷

3.8. SOCIAL PARTNERSHIP: What Welsh Government overlooked in crisis planning, it was able to somewhat mitigate as due to the pre-pandemic greater emphasis on social partnerships, there was a better system and apparently more effective practice of collaboration with Third Sector groups than within England.⁵⁸ For Disabled people there was regular engagement with stakeholder groups affected by the pandemic. This started with weekly meetings with DPO beginning in early April 2020. Existing structures such as the DEF were also used more frequently and dynamically from April 2020 onwards.⁵⁹ Where necessary new structures were created such as the CMEAG and Accessible Communications Group. It was Welsh Government that uniquely in the UK commissioned a DPO led study of the effects of the pandemic response on Disabled people, which became the Locked Out Report (see §3.16 below)⁶⁰ and then based on the recommendations of the Report, set up a joint Government-Civil Society Disability Taskforce. What occurred discretely in relation to DPO, was mirrored more widely with Welsh Government positively engaging with the Older People's and Children's Commissioners, the Equality and Human Rights Commission, and the Equality Local Government and Communities Committee.⁶¹

[3]. MACHINERY

3.9. WELSH MODEL OF GOVERNMENT: Like the Scottish system, the Welsh system eschews departmental silos. Aside from the Office of the First Minister, it is generally organised into multi-disciplinary 'Groups' which are, in turn, each formed of several more focused 'Directorates', with fewer Groups than Welsh Ministers. Groups are not 'led' politically by a designated 'departmental-type' cabinet minister.⁶² As in Scotland, an issue for this Module is how well that worked for Wales in a whole system emergency, but also what

⁵⁶ Hutt [INQ000366148/1 §§1, 7, 24-25, 28-9]

⁵⁷ Luxton [INQ000369755/4 §17]

⁵⁸ Hutt [INQ000366148/5 §§14,16] Drakeford [INQ000177804/10 §§39-41] [INQ000371209/7 §§22-23] Wincott [Final] [§§19, 21, 40, 49, 71-72]

⁵⁹ R Davies [INQ000410946/6 §§19, 24-26]

⁶⁰ Hutt [INQ000366148/8 §§28, 34] Burke [INQ000273937/25 §§88-90] R Davies [INQ000410946/12 §§36, 48, 66, 79-80] Luxton [INQ000369755/8 §§33-38, 44-52, 65-66] Foster [INQ000274189/23 §§70, 92]

⁶¹ Holland [INQ000361393/5 §2.1] Herklots [INQ000276281/47 §§11.39, 14.3.2] Coombs [INQ000252723/7 §§22-23, 107] Response regarding EHRC recommendations 23.09.2020 [INQ000136957]

⁶² Wincott [Final] [27 §68]

lessons might it have for the government of other parts of the UK. Moreover, while Jane Hutt, as DFM and Chief Whip, played a critical role on leading on disability equality issues during the pandemic, there was no dedicated Minister for Disabled people. That may partly explain why Wales was not more prepared prior to the pandemic, but also indicates what is necessary to secure a systematic and joined up approach to the social model and the UNCRPD going forward.⁶³

3.10. LOCAL AUTHORITIES: A strong partnership (described as such in positive terms by Ministers) between local and central Welsh government was said to be key to the delivery of services and pandemic counter-measures on the ground.⁶⁴ However, experience of individuals receiving services from local authorities during the pandemic was hugely variable (potentially related to the fact that Wales is generally accepted to have too many local authorities, some of which are very small⁶⁵), particularly in the area of social care. Disabled people had abrupt withdrawal of social care and assessments, but were then informed either that care packages had *not* been withdrawn or that any care package ‘adjustments’ had been carried out in consultation with recipient.⁶⁶ There was no system to ascertain the extent to which individual local authorities relied on the easement of care duties under Schedule 12 of the Coronavirus Act, which removed the statutory responsibility on local authorities to assess and support Disabled people (see §3.20 below).⁶⁷ Overall there was insufficient mechanism to audit what local authorities were delivering on the ground and to investigate the disparity between what central government was being told about withdrawal of services and what Disabled people were actually experiencing.

[4]. EXPERTISE

3.11. WELSH ADVICE: SAGE was not Welsh focused or Wales dedicated. Early solutions were oriented towards England rather than all four nations, with issues arising from a lack of Wales-specific input to SAGE⁶⁸ and Welsh access to data held by the UK government.⁶⁹ As a result the Technical Advisory Group (‘TAG’) and Technical Advisory Cell (‘TAC’) was created.⁷⁰ The small size of TAG is said to have enabled it to work closely with

⁶³ R Davies [INQ000410946/42 §112]

⁶⁴ J Morgan [INQ000371581/45 §164] R Evans [INQ000346272/63 §§212-215]

⁶⁵ Wincott [Final] [24 §61]

⁶⁶ R Davies [INQ000410946/34 §§91, 98] Locked Out [INQ000142176/63-64] Actions from meetings on vulnerable people, vulnerable children and economically vulnerable people (April 2020) [INQ000282233/1]

⁶⁷ Luxton [INQ000369755/10 §§39-43] R Davies [INQ000410946/34 §§90, 98, §§103-104]

⁶⁸ Bennée [INQ000366137/11 §§39, 46]

⁶⁹ Kilpatrick [[INQ000274156/64 §209]

⁷⁰ Goodall [INQ000327735/44 §152] Orford [INQ000356177 /3 §12]

ministers to give holistic advice leading to more nuanced understanding of the role of data and scientific advice in Ministerial decision making.⁷¹ Concepts such as behavioural fatigue did not appear to take hold in Wales. However, as in Scotland, Wales was dependent on UK economic packages to support NPIs, hence SAGE advice would trump Welsh advice, because Wales could not afford to fund significant countermeasures that were not part of UK-wide virus suppression decisions (see §3.3 above).

- 3.12. SOCIAL AWARENESS: TAG registered early awareness of the considerable broader risks facing vulnerable and at risk groups. It identified in mid-March that there were ‘vulnerable’ groups who should be isolated because of a medical condition or age, but also ‘vulnerable’ groups who were at risk in isolation, including anyone needing daily support to live independently.⁷² In October 2020 TAC produced a paper looking at Covid-19 and health inequalities and recommended long term policies to improve health and financial resilience across the population. In June 2021 it added a fifth harm - the harm from increased inequalities arising from the “*syndemic*” nature of Covid-19 - to its own original four harms approach as used by Scottish CAG, which was similar to the analysis adopted in SAGE.⁷³ However TAG still lacked a diversity of expertise. Members recognised the problem, but as with SAGE and its subgroups the expansion of expertise occurred in relation to ethnic minorities rather than groups such as Disabled people.⁷⁴ At the same time, Ministers and the CMO benefitted from the expert advice of Jon Luxton as the only Special Adviser on Disability appointed by any of the Four Nation governments, and with more immediate and dynamic contact with DPO, especially via the DEF.⁷⁵
- 3.13. MEDICAL MODEL: There was still an over-reliance on medical opinion and perspectives during the pandemic, reflected in the first order decision that preventing deaths and the prevention of direct harm via infection was the most important priority.⁷⁶ This prioritisation was understandable given that Wales had an older population than the rest of the four nations,⁷⁷ but for DPO it resulted in regrettable reversion to the medical model of disability in key areas including the linkage of vital services to being on the shielding list (defined as a list of medical conditions), and the misuse of DNARs, as given UK wide prominence by

⁷¹ Bennée [INQ000366137/19 §70] Drakeford [INQ000371209/21 §§63-6]

⁷² Email chain on Vulnerable groups 16.03.20 [INQ000376454], [INQ000376455]

⁷³ TAG 09.07.21 [INQ000410946] Email on HSSC 16.12.21 [INQ000376595/2] Bennée [INQ000366137 §80]

⁷⁴ John [INQ000286066/37 §§6.75-6.79] Bennée [INQ000366137/18 §66]

⁷⁵ Luxton [INQ000369755/3 §12] and §3.7 above

⁷⁶ Locked Out [INQ000142176/18-22] Payne [INQ000319846/8 §32] S Morgan [INQ000371233/9 §32]:

Framework for Recovery 24.04.2020 [INQ000066064/4]

⁷⁷ Gething [INQ000391237/89 §204]

letters issued by a GP surgery in Maesteg, which targeted scarce resources on the young and fit who were said to “*have a greater chance*”.⁷⁸

[5]. RECOGNITION

- 3.14. SHORTFALL: Bearing in mind that Wales had committed to the social model of governing for the interests of the Disabled people since 2002, there were disappointing shortfalls in recognising and responding to need, particularly in March-May 2020. These included difficulties accessing communications about shielding, delays in being able to access food and medication because of not being on the shielding list,⁷⁹ the withdrawal of social care and assessments, and a lack of access to public transport, maternity services, GP surgeries, emergency and telephone helplines.⁸⁰
- 3.15. VALUES: To some extent the Welsh Government was able to remedy, or at least recognise the issues faced by Disabled people, for example responding to issues raised by the DEF.⁸¹ Compared to England, the situation of Disabled people was more recognised in Wales, and there was earlier acknowledgment that social inequalities would be highly deterministic of outcomes.⁸² Yet as outlined above there was definite tension between recognition of the wider social aspects of the pandemic and the emphasis on direct harm of infection in managing it which saw a lapse back to the medical model of disability. Mechanisms were created that sought to remedy this tension. For example, the Covid CMEAG was established in April 2020. Rather than adopting UK guidance CMEAG sought to reflect a Welsh context. It recognised from the outset that there was tension between the Welsh Government’s commitment to the social model and aspects of its management of Covid-19, with many existing guidance documents based on the medical model.⁸³ CMEAG served to remind Ministers and Officials of the importance of partnerships with broader communities, ensuring that Disabled people were not deemed to be of less value and simply labelled as ‘vulnerable’ rather than equal partners, and embedding the social model within clinical care.⁸⁴
- 3.16. LOCKED OUT: Dedicated contemporary investigation into the disproportionate impact of the pandemic and its countermeasures on Disabled people was grasped as important by

⁷⁸ R Davies [INQ000410946/13 §§40-1] BBC 01.04.20 [INQ000400633] Foster [INQ000274189/6 §§14-16, 93] Locked Out [INQ000142176/33]

⁷⁹ R Davies [INQ000410946/4 §12] CCW Response to Committee Enquiry re. impact of Covid-19 03.06.2020 [INQ000191145/12-13]: Coronavirus and Me, September 2020 [INQ000191152/1]

⁸⁰ Locked Out [INQ000142176/6, 35, 60-1] R Davies [INQ000410946/37 §§97-8]

⁸¹ R Davies [INQ000410946/17 §§52, 60]

⁸² Drakeford [INQ000371209/6 §§18e, 124]

⁸³ Luxton [INQ000369755/15 §56] Email Luxton-Hutt 07.04.20 [INQ000352984/2]

⁸⁴ CMEAG 23.04.20 [INQ000353044/2] 24.09.20 [INQ000353428/2] 08.10.20 [INQ000353429/2]

Welsh Government to a degree that did not occur in England. In June 2020, following discussions at the DEF, a steering group was formed to collect evidence and report in a manner that involved genuine co-production with DPO and lived expertise.⁸⁵ The investigation resulted in the Locked Out Report. It was presented to the Welsh Government in March 2021, that committed to establishing a Disability Rights Taskforce to address the issues and recommendations within the Report.⁸⁶ The Welsh Government also published ‘Covid-19 and the Impact on Disabled People’ in March 2021.⁸⁷ There was however a delay in publishing the Locked Out Report until July 2021 for reasons which were unclear, and a further delay of eight months between the Taskforce being announced in March 2021 and constituted in November 2021, and ongoing delays in its operation and work.⁸⁸ Further, the fact remains that despite Welsh Government efforts to report on and recognise the issues faced by Disabled people during the pandemic, those issues could have been mitigated had Disabled people been involved in pandemic planning. The reporting, while valuable, was after the event.

[6]. ENGAGEMENT

3.17. CO-PRODUCTION AND CO-DESIGN: Despite not consulting DPO on pandemic planning, the Welsh Government quickly committed itself to engagement and partnership with the Third Sector and voluntary groups during the pandemic.⁸⁹ While it accomplished this to a considerably greater extent than the rest of the UK, it failed to consistently and timeously feedback on whether recommendations from such groups were adopted and input was often missed at the point of policy formation/planning. Instead consultation was sought about decisions already made.⁹⁰ Grassroots DPO and other Third Sector also lacked financial capacity to participate.⁹¹ Despite Welsh government practice of more developed engagement than the rest of the UK, Wales is therefore still to enjoy co-production and co-design as recommended by global disaster management guidance,⁹² required under the UNCRPD,⁹³ and with tentative promise being aimed for by its Disability Taskforce.⁹⁴

⁸⁵ Foster [INQ000274189/2 §§2-13, 54-55, 59] DEF Minutes 24.06.20 [INQ000400654/3 §§3.1-3.8]

⁸⁶ Hutt 24.03.2021 [INQ000371215]

⁸⁷ Covid-19 and the Impact on Disabled People 11.03.21 [INQ000371211]

⁸⁸ Foster [INQ000274189/21 §§62-70] R Davies [INQ000410946/30 §82]

⁸⁹ Email chain regarding Third Sector and equality issues 18.03.20 [INQ000222500]: Hutt [INQ000366148/ 5 §16, 10 §37] Drakeford [INQ000177804/10 §§39-41]

⁹⁰ R Davies [INQ000410946/9 §§26, 78] Foster [INQ000274189/28 §92]

⁹¹ R Davies [INQ000410946/44 §115]

⁹² Bambra and Marmot [INQ000195843/83 §199.4] and Sendai Framework 2015-2030 (March 2015) §19(d)

⁹³ UNCRPD Art. 4(3) and UNCRPD UK Country Report (2017) [M2 - INQ000182691/4 §§28-29]

⁹⁴ Foster [INQ000274189/24 §§73-77]

[7]. DATA

3.18. DEFICIT: Wales, like the rest of the UK, experienced significant data problems. Firstly, as with England and Scotland, access to reliable, timely data on Care Homes and the broader care sector was not available to decision makers. The Care Inspectorate for Wales could not guarantee that all deaths in care homes were notified to them. There was no single data collection process which would enable information to be collected from social care providers and used by different agencies.⁹⁵ TAG was still trying to access complete care home data in May 2020.⁹⁶ Secondly, there was deficient collection of hospital discharge data, including data regarding protected characteristics either because systems were not in place to collect it, or the accuracy of collected data was questionable.⁹⁷ Thirdly, data sharing arrangements in Wales were described as a “*patchwork that had not finished being sewn together*” which made data sharing across health boards and government difficult, and resulted in a lack of rapid data sharing arrangements to provide information to TAG.⁹⁸ There were additional difficulties getting data from England, with data providers in Wales judging that they were providing data but getting little reciprocal data in return.⁹⁹ Fourthly, Wales had limited data analytical capacity and the pandemic hit at a time when the post of official lead of Knowledge and Analytical Services was vacant,¹⁰⁰ thereby limiting the ability to build a data dashboard to provide a user friendly summary of national intelligence and data.¹⁰¹ The various developments in terms of dashboard capability and the creation of a discrete data repository had to be built from scratch with limited resources, and too late.¹⁰²

[8]. PROTECTION

3.19. DISSONANCE: That the Welsh Government was aware of the risk that both the Covid-19 virus itself and NPIs would disproportionately impact Disabled people did not in many ways limit the harm that was done by them. There were delays in individuals being informed that they should shield, difficulties in getting onto the shielding list to access key services and limited assistance for those both shielding and non-shielding who were

⁹⁵ Baranski [INQ000335481/13 §§46-8, 41 §139]

⁹⁶ Tag Meeting 11.05.2020 [INQ000349426/1]

⁹⁷ A Jones [INQ000280064/19 §61] Baranski [INQ000335481/13 §47] Bennée [INQ000366137/64 §§216-7] Connor [INQ000346111/55 §§170-72]

⁹⁸ Bennée [INQ000366137/30-36 §§107-120]

⁹⁹ Kilpatrick [INQ000274156/64 §209] Bennée 07.09.20 [INQ000376526] Bennée [INQ000366137/37 §125-6]

¹⁰⁰ Wincott [Final] [11 §24]

¹⁰¹ Orford [INQ000356177/22 §77-8]

¹⁰² Orford [INQ000356177/22 §§79, 100] Burke [INQ000273937/42 §§151-159]

directed to rely on family and friends first before asking for local authority support.¹⁰³ Access to social and physical health care was curtailed, in ways that could be both fatal but also damaging to human rights.¹⁰⁴ DNARS were issued without consultation and with inadequate accountability.¹⁰⁵ Education and wellbeing for Disabled children was severely compromised.¹⁰⁶ Disabled people faced greater levels of economic precarity and digital exclusion.¹⁰⁷

3.20. THOUGHTLESSNESS: The Locked Out Report concluded that the root cause of the discrimination and exclusion that Disabled people experienced in the pandemic was “*simple thoughtlessness, ultimately robbing disabled people of access to public spaces and a sense of basic citizenship.*”¹⁰⁸ That thoughtlessness especially manifested in the initial acquiescence of the Welsh Government in the enactment of Schedule 12 of the Coronavirus Act 2020.¹⁰⁹ “*We passed an act*” as Jane Hutt lamented, “*which singles out disabled peoples' most basic rights as something that can be switched off when expedient to do so.*”¹¹⁰ Along with other cumulative deficits in pandemic protection of Disabled people key lessons are: (1) as with issues of race and gender, Wales has not reached a default position of inclusive egalitarianism; and (2) dynamic and effective engagement with DPO remains essential to correct attitudinal barriers, as much as physical barriers, that prevail in state and society.

[9]. REDISTRIBUTION

3.21. STATUS QUO: The DPO criticism of UK pandemic economics is that rather than being radical, as presented (and sometimes criticised), it involved a deliberate failure to redistribute to those most in need.¹¹¹ For Disabled people furlough payments were focused on those able to work or temporarily unable to work in standard wage sectors and did not reach lower, informal or non-wage earning people. The increase in Universal Credit was small compared to sums spent on business. The Welsh Government did put in place certain redistributive measures, for example a Carers Support Fund for unpaid carers in October

¹⁰³ WLGA 20.03.20 [INQ000089874/2] Impact of the Covid-19 outbreak, and its management, on health and social care in Wales (July 2020) [INQ000147250/51 §§172, 177-82] R. Davies [INQ000410946/9 §28]

¹⁰⁴ R. Davies [INQ000410946/34 §§91, 97-99, 102-3, 106] Herklots [INQ000276281/41 §§11.1-2] Coombs [INQ000252723/27 §108]

¹⁰⁵ See §3.13 Fn. 78 Above

¹⁰⁶ Holland [INQ000361393/63 §7.4]

¹⁰⁷ Locked Out [INQ000142176/11, 49, 67-8]

¹⁰⁸ Locked Out [INQ000142176/7]

¹⁰⁹ R. Davies [INQ000410946/32 §§87-94] Luxton [INQ000369755/5-8 §§19-32] Hutt [INQ000349992]

¹¹⁰ Hutt-Morgan correspondence 11.11.20 [INQ000349992] Luxton [INQ000369755/7 §29]

¹¹¹ DPO M2 Closing Written Submission 15.01.24 [M2 - INQ000399541/28 §§43-45]

2020, and was advised to enhance statutory sick pay for social care staff.¹¹² It also adopted a co-production approach to human rights budgeting partnering with Disability Wales to distribute funds to grassroots DPO.¹¹³ However, for the reasons developed in §3.3 above the pandemic exposed the economic limits of Welsh devolution not only in its ability to deploy NPIs to lower rates of infection but also in terms of its ability to deploy economic levers in the areas of welfare and employment to mitigate the effects of such NPIs.¹¹⁴

CONCLUSION

- 4.1. CITIZENSHIP: The pandemic humbled the devolved state in Wales to the extent that its vaunted “*stability*”¹¹⁵ still allowed for Disabled people’s lives to become too readily superfluous. The Locked Out Report condemned “*a real loss of power, voice, choice and citizenship*” causing Disabled people to “*become disenfranchised, socially and physically excluded and `othered*” with common declaration by Disabled people during the pandemic that “*the clock had been turned back twenty years in terms of their citizenship.*”¹¹⁶
- 4.2. FUTURE: The Welsh Government has committed to acting upon the recommendations of the Locked Out Report via the Disability Rights Taskforce, which is all to the good. However, by their own account the pandemic shook Welsh DPO and Disabled people to the core, because however bad austerity had been they enjoyed an effective partnership with their government in a way that can largely be commended to the UK, and should be studied by this Inquiry as such; and yet Disabled people in Wales suffered considerable death and other harm. That begs serious questions as to whether disability rights and equality can be delivered in the UK without both more equitable and effective devolution and incorporation of the UNCRPD across all four nations.

DANNY FRIEDMAN KC

ANITA DAVIES

DANIELLE MANSON

MATRIX CHAMBERS

SHAMIK DUTTA

CHARLOTTE HOWARTH HIRD

BHATT MURPHY

20 FEBRUARY 2024

¹¹² J Morgan [INQ000371581/35 §§124, 129]

¹¹³ R. Davies [INQ000410946/2 §6]

¹¹⁴ Bennée [INQ000366137/59 §199] Foster [INQ000274189/15 §41] [29 §§94-5]

¹¹⁵ Drakeford [INQ000371209/6 §19]

¹¹⁶ Locked Out [INQ000142176/60]