Tuesday, 27 February 2024

(10.00 am)

(Proceedings delayed)

(10.10 am)

Opening remarks by THE CHAIR

LADY HALLETT: Good morning. Do we still have a problem?

MR POOLE: No, my Lady, it's been resolved.

LADY HALLETT: Thank you very much.

Good morning, everyone here with us at the hearing centre in Cardiff and to those who are following online. We are holding the hearings on the outskirts of Cardiff, which I know is not ideal for everyone, but our priority was to get these hearings on, and we have provided transport for those who need it to and from the city centre, and I'm sure that we shall be well looked after here at the hotel, and the team, the Inquiry team and the staff here, will do their utmost to ensure that every possible need is catered -- well, maybe not every possible need, but most needs are catered for.

Today we begin the substantive hearings into Module 2B, core decision-making in Wales. I know that some had hoped for an independent Welsh Inquiry, but that, as everyone knows, is not a decision for me. I can promise, however, that the UK Inquiry will do its utmost to investigate and analyse fully and fairly the

most significant issues that concern the people of Wales.

It's probably appropriate that we begin these hearings in Wales in a week that includes St David's Day, but also includes the National Day of Reflection, on Sunday, when we remember those who lost their lives during the pandemic. And it is because we have to remember those who died and those who suffered that the Inquiry has impact films at the beginning of each module, and we shall begin this module in the same way, with an impact film where people describe their suffering.

It is extremely moving, as its predecessors were, and it reminds us all why we are here. It lasts for about 20 minutes or just over, so if you do not want to watch the impact film, and you're following online, please press pause. If you're here with us in the hearing room, please leave, and we'll make sure you have proper notice, when the film is concluded, to come back into the room.

After the impact film has been played, Mr Tom Poole King's Counsel, Leading Counsel to the Inquiry for this module, will explain the issues that we shall be examining during the course of the next three weeks, and he will be followed by those core participants who wish

to make oral submissions today. Tomorrow we shall begin with the evidence. We start with the evidence of some of those who were most impacted by the pandemic.

So I shall now pause, if anybody present in the hearing room wishes to leave, and those online can press pause.

(Pause)

Thank you. Could we now play the impact film, please.

(Video played)

LADY HALLETT: Thank you. We shall now resume the hearing, streaming of the hearing. As I said, extremely moving.

Mr Poole.

Opening statement by LEAD COUNSEL TO THE INQUIRY for MODULE 2B

MR POOLE: The Inquiry turns today to its examination of the Welsh Government's core political and administrative decision-making in relation to the pandemic in the period between January 2020 and May 2022.

The purpose of this opening statement is to first explain the scope of this module, Module 2B, how it picks up where Module 1 left off, and how it links to and intersects with Module 2.

Second, to provide some context to the evidence that your Ladyship will hear regarding the stark reality of

the pandemic in Wales.

Third, summarise but not repeat the evidence that the Inquiry has already heard in Modules 1 and 2, both the context and also substance, and also for the benefit of those who might be turning to the Inquiry for the first time today.

Fourth, to give a narrative chronology of key events and decisions that impacted on Wales during the pandemic.

And finally, to highlight some of the key issues that will be explored in evidence over the next three weeks here in Cardiff.

So the scope of this module.

In these hearings, the Inquiry will analyse the core decisions which were taken in the discharge of the Welsh Government's duty of protecting the lives of the people of Wales. In so doing, we will enquire into, probe and challenge these core decisions to see if they were made on the best information, after proper consultation, as part of a well ordered process, and without undue delay or unnecessary prevarication.

As part of this Inquiry, we will be looking at the threat posed to the people of Wales, not just the threats of harm and actual harm caused by the virus, but also of the countermeasures adopted by the

Welsh Government designed to protect against them.

We will question key decision-makers, including the First Minister, and other members of the Welsh Cabinet, and the advice received from political and scientific advisers that informed Wales' strategic response to the crisis that wrought devastation across the country.

In Module 1, the Inquiry considered the state of the UK's emergency preparedness, response and resilience structures at the time just before Covid arrived in the UK, in January 2020. Module 1 covered the role that both the UK Government and the Welsh Government had in planning for a civil emergency such as the pandemic. The question posed in Module 1, namely whether the right groundwork had been laid and the extent to which civil contingencies framework anticipated a pandemic of this nature, was not only a necessary prior question but one that provides important context for the decisions which the Welsh Government had to make as the pandemic took hold.

In Module 2, the Inquiry examined the effectiveness of the UK Government's strategic response to the pandemic. In so doing, the Inquiry received detailed evidence from government ministers, senior civil servants and other advisers relating to key UK Government decisions which had both direct and

indirect effects on the management of the pandemic in Wales.

This module, Module 2B, is focused on the decision-making of the Welsh Government, which was the predominant means by which the pandemic was managed here in Wales. It would be artificial, however, for the evidence of Welsh ministers and their advisers to be heard in complete isolation. The reality of the devolution settlement, coupled with the sweeping nature of the pandemic which affected all aspects of society, resulted in both the UK and Welsh Governments having control over the management of the pandemic in Wales.

Though this module's predominant focus will be on the evidence of Welsh ministers and their political and scientific advisers, an examination of the management of the pandemic in Wales will entail an examination of the Welsh Government's perspective on key decisions and structures within the UK Government, as well as an analysis of intergovernmental structures and relations between the four governments of the UK.

To an extent, this has already been examined with the UK Government ministers and experts in Module 2, but this module will also examine specific aspects of intergovernmental relations. My Lady, this will not be a re-run of the evidence heard by you already in

Module 2, but will draw upon that evidence and seek to look at key aspects of the interrelationship between the UK and Welsh Governments insofar as relevant to the Welsh Government's strategic response to the pandemic.

The more detailed scrutiny of the Welsh NHS response, the care sector, children and education, shielding, vaccines, PPE, procurement, test and trace, financial and business support, and many other matters, is for later modules. However, the general epidemiological flow of the pandemic, the spread of infection, death and morbidity caused in its wake and the core high level political decisions which were taken by the Welsh Government to try to combat the virus will be examined in detail in this module.

Of course, there will be exploration of the broad reasons why core decisions were taken or not taken in such fields as health, social care and education, but the detailed examination of the merits of that process and of the operational impact of such decisions is outside the scope of this module.

How is the Inquiry to measure how well the Welsh Government discharged its duty of safeguarding the life and health of its citizens? The virus left in its wake of course not just death but injury, incalculable hardship and misery, as those heartfelt and horrendous

recollections of a few moments ago remind us.

However, if the protection of life is the pre-eminent duty which every government owes to its people, then the numbers of those who died is the marker against which the Welsh Government's response must be judged. This is the simple metric which matters most. Death was the inevitable consequence of a runaway high-consequence infectious disease and prevention of death should arguably have been the Welsh Government's primary obligation.

The number of deaths across Wales, calculated by whether Covid-19 is mentioned on the death certificate, is now over 12,300. That is by any measure a shocking figure and a terrible loss of life. The testimonies which we have just heard remind us that each represents the loss of an individual, often in circumstances that made their death even harder to bear for their families and friends, and which multiplied their grief many times over.

Such loss of life demands the question: did it have to be that way? That question must be enquired into and answered by this Inquiry. Those who suffered infection, hardship and bereavement in Wales, of whom there are very many in number, are absolutely entitled to nothing less.

The consequences of the lockdowns were of course grievous too. In societal terms there was an explosion of mental health disorders, an entire generation of educational prospects were harmed, and pre-existing societal inequalities were seriously exacerbated. Non-Covid health conditions went untreated and undiagnosed. In economic terms, there was a 10% fall in GDP in 2020, public finances were severely damaged and massive debts were incurred. Were these dreadful consequences avoidable?

A related vital issue in this module is the position of the vulnerable and at-risk groups and the extent to which the Welsh Government assessed the likely impacts upon them of its contemplated non-pharmaceutical interventions. Given the importance of this issue and because it lies at the core of this module, I introduce it now and will return to it later.

How was the danger to health posed by the virus weighed up against the risk of societal and economic damage to vulnerable and at-risk groups? To what extent was the possibility of serious long-term health consequences arising from the imposition of NPIs foreseen and addressed?

My Lady, tomorrow you will hear from representative witnesses of Covid Bereaved Families for Justice Cymru,

you will hear evidence relating to the impact of the pandemic from organisations and individuals such as the Disability Rights Taskforce, Race Council Wales, the Children's Commissioner for Wales and the Older People's Commissioner for Wales. Their evidence will address pre-existing structural inequalities that vulnerable and at-risk groups faced before January 2020 and the exacerbation of those inequalities caused by the pandemic and the measures taken to combat it, in particular the lockdowns.

I've referred to the Welsh Government's core decision-making, and I must emphasise that the focus of Module 2B is on the important strategic decisions that were made, in essence the Cardiff Bay decision-making that had the potential for the widest effect, had the greatest impact, and which caused the greatest public concern.

To this end your Ladyship will be hearing from key decision-makers, such as the First Minister, Mark Drakeford, the former health and social services minister, Vaughan Gething, and a range of scientific advisers. These will include senior figures from Public Health Wales, a key body in Wales' public health response to the virus. You will also hear from Sir Frank Atherton, Wales' Chief Medical Officer,

Dr Robert Orford, Wales' Chief Scientific Adviser for Health, and Dr Andrew Goodall, former permanent secretary of the Welsh Civil Service and NHS Wales' chief executive.

As I will come to deal with in more detail later, Wales formed its own scientific and technical advisory group in late February 2020, the Technical Advisory Group, known as TAG, supported by the Technical Advisory Cell, known as TAC. TAG comprised a number of scientific and technical experts who provided scientific advice and guidance to the Welsh Government in response to the pandemic. The Inquiry has obtained statements from a number of them, some of whom also sat on UK advisory groups such as SAGE, SPI-M, and SPI-B, about which your Ladyship has already heard evidence in Module 2.

Later this week your Ladyship will hear oral evidence from a number of TAG members, including experts in the fields of epidemiology, modelling, behavioural science and public health.

With that introduction, may I now say something about the stark reality of the pandemic in Wales?

Could we please have INQ000412042 on the screen, please.

These first charts from the official Covid dashboard

show deaths where Covid-19 was mentioned as one of the causes of death on the death certificate for Wales and the whole of the UK. As the top chart shows, in Wales the peak of the first wave was 12 April 2020, with 73 deaths occurring on that day, the peak of the second wave was 11 January 2021, with 83 deaths, smaller waves occurred from late 2021 onwards, the highest peaking on 15 September 2021, with 21 deaths.

We can have the following chart, please.

Based on ONS data, this shows all the deaths that occurred in Wales, not just caused by Covid. The grey area shows those deaths not involving Covid. The blue area shows the number of deaths involving Covid, and then the combined areas show the total deaths at that time in Wales. The black dashboard line is the five-year average for that period. So the areas of the graph, both colours, above that black dashed line indicate excess deaths, in other words the increased number of weekly deaths that could have reasonably been expected had the pandemic not happened.

As this chart shows, the peak of deaths in the first wave was considerably higher, reaching almost 1,150 a week, nearly 73% more than the five-year average.

Having said that, the peak was only slightly lower in the second wave, but it lasted for a longer period,

leading to over 900 more excess deaths in the second wave than the first wave.

We can have the next chart, please.

These charts show the daily count of how many Covid patients were in hospital across Wales in the UK from 1 April 2020.

In Wales, the peak of the first wave was the week commencing 15 April 2020, with 884 patients in hospital, 150 of them in mechanical ventilation beds.

The peak of the second wave in Wales was the week of 13 January 2021, with 1,949 patients in hospital.

In the same week, Wales hit the peak of mechanical ventilation beds, with 145 people intubated and ventilated due to severe Covid.

Now, it's important to note that these graphs do not show the number of staff per bed or how many empty beds were available to take all of these patients, but, as we can see on the charts, the Omicron variant led to further large peaks in hospitalised patients as high as 1,059 on 13 April 2022, although far fewer of these patients needed admission to ICU or died of Covid than in the initial waves.

Up to September 2022 there were 41,839 Covid-related admissions across Wales. That figure is now well in excess of 43,000.

We can have the next chart, please, which shows the reported number of new infections per day across Wales and the whole of the UK.

As can be seen, the peak of the first wave in Wales was 9 April 20, with 391 newly confirmed cases. However, under-reporting of cases was particularly severe in the first wave and, as with excess deaths, we'll explore the limitations of this data in evidence later this week.

The Alpha variant first emerged in Kent around September 2020 and by the time of the peak of the second wave in Wales it was responsible for the vast majority of infections nationally. The next wave, primarily of the Delta variant, peaked on 14 July 2021 in Wales with 1,206 confirmed cases.

That was followed by the huge Omicron wave which in Wales peaked on 29 December 2021 with 16,252 confirmed cases. It is worth noting that by this time around 7.5% of confirmed cases were thought to be reinfections.

We can have the next chart, please.

This shows the results of the ONS Infection Survey for England, Wales, Scotland and Northern Ireland. It gives a much more accurate estimate of the true proportion of the population who are infected with the virus at that time by taking a representative sample.

It also identifies people with no symptoms, who account for more than a third of those infected. It did not start reporting data until after the first wave was over, and antibody surveillance has shown that approximately 6% of the UK population had been infected by July 2020, ten-fold higher than the reported positive tests.

Results were available for England in May 2020, for Wales in early August, and for Northern Ireland in September and Scotland in October. These were all shown by the coloured arrows.

Despite what we saw on the previous chart, at the peak of the second wave, there were probably over 44,000 people infected in Wales, and at the peak of the Omicron wave, namely 29 December 2021, it was around 160,000 people.

The ONS have also published an estimate that 1.7 million people in total across Wales were infected from the time they started the survey until February 2022. This equated to 56% of the Welsh population, and many more have been infected since.

My Lady, you will hear evidence later this week from Professor Ian Diamond, the UK's National Statistician and Stephanie Howarth, Chief Statistician at the Welsh Government, who will present evidence relating to the

way the pandemic affected Wales, the number of infections and deaths, the way that infection and death rates ebbed and flowed over time and the way that the pandemic affected different sectors of Welsh society differently.

Their evidence will expand on the summary I've sought to give and provide a more detailed analysis of the data and what it tells us about the devastating impact of the pandemic on the people of Wales.

I will in due course present a summary of the evidence which the Inquiry has gathered so far concerning the key events and decisions taken in the management of the pandemic in Wales, but before doing so I propose to summarise some of the key evidence already heard by the Inquiry which forms the backdrop to the evidence which we will hear in this module.

Whilst doing my best to avoid unnecessary repetition, I'm also sensitive to the fact that some core participants and members of the wider public audience here in Wales might well be tuning into the Inquiry for the first time and therefore not have had the context of other evidence which did not have a Welsh focus.

Module 1, preparedness evidence.

As already mentioned, in Module 1 the Inquiry

considered the state of the UK's emergency preparedness, response and resilience structures prior to the arrival of the virus in January 2020. Module 1 considered the whole of the UK, looking both at UK-wide systems for handling an emergency, which also applied to Wales, but also the systems which existed within Wales.

Module 1 heard detailed Welsh-specific evidence, including from the First Minister, the former Minister for Health and Social Services, the director for local government in Wales, and the Chief Medical Officer for Wales.

As evidence in Module 1 showed, there was prior to the pandemic no Welsh National Risk Register to take into account the specific circumstances in Wales. Although the risk of pandemic influenza was included in the risk register of the Welsh Government's Health and Social Services Group, it was not identified as an important cross-government issue.

The evidence appears to be that the Welsh Government had not assessed how a pandemic had the potential to impact the individual profile of Wales and its population based, for example, on grounds of resources, age, socioeconomic status or underlying health.

It is of course a matter for my Lady how Welsh preparedness affected the Welsh Government's strategic

response to the pandemic.

In Module 1 your Ladyship heard evidence from Professor Clare Bambra and Sir Michael Marmot on health inequalities. This evidence provides an important backdrop to the evidence that you will hear about the reaction to the emergency health crisis in Wales from January 2020. Their evidence was to the effect that there is a clear socio-spatial gradient in health in the UK: the more deprived local authorities have worse health than the less deprived. For example, ONS data shows that for 2017 to 2019 male life expectancy was highest in Monmouthshire, at 81.5 years, and lowest in Blaenau Gwent, at 76.5 years. That is a difference in life expectancy of 4.9 years.

These health inequalities are also evident at a smaller neighbourhood scale. In Wales the gap in life expectancy between the most and least deprived areas was nine years for men and seven and a half years for women.

You also heard evidence, my Lady, about the Well-being of Future Generations (Wales) Act, which was passed in 2015, and focused on "improving the social, economic, environmental and cultural wellbeing of Wales". The Act puts a well-being duty on public bodies, which means the bodies covered by the Act must work to improve the economic, social, environmental and

cultural well-being of Wales. However, it was concluded by Professors Bambra and Marmot that, with some exceptions, the specialist structures concerned with risk management and civil emergency planning did not properly consider societal, economic and health impacts in light of pre-existing inequalities. In their opinion:

"The UK Government and the devolved administrations and relevant public health bodies did not systematically or comprehensively assess pre-existing social and economic inequalities and the vulnerabilities of different groups during a pandemic in their planning or risk assessment processes."

Turning next to some of the relevant evidence adduced in Module 2.

As indicated in previous preliminary hearings for this module, a number of experts were jointly instructed by Modules 2, 2A, 2B and 2C to report on pre-existing structural discrimination against groups with protected characteristics in UK society. In October last year the experts gave oral evidence during the Module 2 public hearings to supplement their written reports. The experts are not being called again in this module, but given the relevance of their evidence to matters which will be canvassed with witnesses that will be called in

this module, I propose to briefly summarise their expert evidence insofar as relevant to Wales and the scope of Module 2B.

Professor James Nazroo and Professor Laia Bécares gave evidence on pre-pandemic inequalities by race and ageing, including the role of structural racism. Professors Nazroo and Bécares expressed the view that while ethnic minority populations are smaller and more geographically concentrated in Wales compared to England, and data was generally limited in relation to Wales alone, the data which they accessed indicated that processes of racialisation and racism are equally relevant across all four nations of the UK. There is no evidence to suggest that they operate differently in the different nations.

They expressed the view that ethnic inequalities in health in the UK are longstanding and persistent, they have been researched and documented for several decades, and that ethnic inequalities in health are most pronounced at older ages in the UK.

Professor Nazroo also provided expert evidence on pre-pandemic structural discrimination against elderly people. He was of the view that the evidence produced in his report about later life and ageism and the conclusions drawn are relevant, again, to each nation of

the UK.

Professor Nazroo identified that people living in care homes were a population who were at particular risk of complications or death if they experienced a respiratory viral infection. This is particularly the case for those living in nursing homes because of their higher level for medical need. He opined that residents in care homes were also at much greater risk of infection compared to those living in private accommodation, because of close quarter living arrangements and other factors.

As had been the case in his report on racism, Professor Nazroo identified a number of missed opportunities in the UK-wide response to the pandemic as regards the particular needs of older groups. He expressed the view that an investigation of which groups of older people were at particular risk of infection, complications and mortality, and that greater risk of adverse consequences of NPI control measures would have allowed targeted protections to be put in place.

Professor Thomas Shakespeare and Professor Nick Watson gave evidence on pre-pandemic inequalities associated with disabilities. Professors Shakespeare and Watson reported that in 2020, 22% of the UK's population reported a disability. Of the four nations,

the figure was highest in Wales, at 28%. In oral evidence Professor Shakespeare commented that:

"I think that, generally speaking, people in Scotland and Wales tend to have a higher rate of disability than people in England, because disability is related to deprivation, there's a strong poverty gradient, and therefore you can see that Wales has got the highest figure."

Professors Shakespeare and Watson opined that evidence supported the proposition that disabled people tended to be more likely to be unemployed or paid less in employment, live in worse socioeconomic conditions and poorer housing, which in turn increased the likelihood of respiratory illness.

Their analysis showed that the increased vulnerabilities to Covid faced by disabled people led to disproportionate impact, particularly on people with intellectual disabilities.

Professor Bécares also provided expertise on pre-pandemic inequalities for members of the LGBTQ+ community. Professor Bécares reported that it was known prior to the pandemic that LGBTQ+ people reported worse general health than their heterosexual peers. Like others, Professor Bécares reported significant missed opportunities in the management of the pandemic across

the UK. She expressed the view that, due to increased prevalence of pre-existing physical and mental health conditions, LGBTQ+ people, particularly disabled people, minoritised ethnic people, young and older people, should have been identified as a vulnerable group and measures should have been adopted to reduce their risk of infection.

Dr Clare Wenham gave evidence on pre-pandemic gender inequalities. Dr Wenham opined that the disproportionate of epidemics and pandemics on women was established prior to Covid-19. This included the effects of changes to health services, in particular sexual and reproductive health, and increases in domestic violence.

Women were also known to suffer worse economic impacts as they disproportionately held roles involving face-to-face contact, which also involved being exposed to an increased risk of contracting the virus, and tended to bear the economic impacts of sickness as they tended to bear childcare responsibilities. She presented an evidence-based analysis that gender inequality and discrimination was pervasive across UK society prior to the onset of the Covid-19 pandemic.

Professor David Taylor-Robinson gave evidence on pre-pandemic childhood inequalities.

Professor Taylor-Robinson reported that in the five years pre-pandemic there was concern regarding deteriorating child health in the UK which had been preceded by a period of improvement. This was linked in large part to socioeconomic inequalities that have been exacerbated by the pandemic.

As regards missed opportunities and impacts of the pandemic, Professor Taylor-Robinson provided a detailed view of the shortcomings. Although children were not considered a vulnerable group in terms of susceptibility to the virus itself, children were susceptible to the wider impact of disruption to the broader determinants of health, and so children's health and well-being should have been considered in strategies to contain or delay the spread of the virus.

Also amongst those who suffered and indeed continue to suffer from Covid are the victims of the syndrome known as Long Covid. By March 2023, the ONS estimated that 1.9 million people were suffering from self-reported Long Covid. As such, further expert evidence was heard in Module 2 from Professor Chris Brightling and Dr Rachael Evans in relation to Long Covid. In their report the experts concluded that Long Covid was foreseeable, that it remains a major health problem, and there was and is minimal focus on

preparedness for long-term consequences of viral outbreaks such as the pandemic and insufficient surveillance for Long Covid planned at the outset of the pandemic.

Expert evidence was also heard in Module 2 in the form of written reports and subsequent oral testimony from Professor Ailsa Henderson and Professor Thomas Hale. Both experts were instructed to provide evidence on behalf of Module 2B, as well as Modules 2, 2A and 2C.

Professor Henderson provided a detailed history of devolution in Wales, Scotland and Northern Ireland, which I do not intend to rehearse here. In this regard, my Lady, you will hear evidence later this week from Professor Daniel Wincott, professor of law and society in the School of Law and Politics at Cardiff University. Professor Wincott will give evidence on political decision-making in the management of the pandemic in Wales. His evidence will supplement and expand on that already given by Professor Henderson.

Professor Hale reported on international data relating to the Covid-19 pandemic, in particular in analysing the effectiveness of the decision-making of the UK Government and the governments of the devolved administrations in comparison to other countries.

Professor Hale opined that as far as the stringency, speed and effect of the UK response to Covid was concerned, the UK was slower than the average country to adopt distributor measures across nearly every domain of response. Tragically, Professor Hale reported that Wales had the 30th highest death rate per capita globally and it was 57th in the world for stringency of its restrictions, with the highest number of days with a stringency index of above 70 out of all four nations of the UK.

Turning to the factual witness evidence in Module 2, the bulk of hearing time was taken up hearing evidence from UK Government ministers, senior civil servants and political advisers and scientific and medical advisers relating to key UK Government decisions. Time of course does not permit me to summarise that evidence here. We will, however, endeavour to put key themes arising out of that evidence to witnesses giving evidence in this module, as time allows, in order to see their responses to matters which involved them and had an effect on the management of the pandemic in Wales.

Before turning to the chronology of key events and core decisions, I propose to say something about the evidence available to this module as to the impact of the pandemic on the people of Wales and their

experiences.

As mentioned earlier, the impact of the pandemic will not be examined in detail in this module. The detail of the varied and considerable impacts on Welsh society deserve close attention, and they will be given this at a later stage of the Inquiry, not least by the Inquiry's Every Story Matters listening project. Impact, however, does have a part to play in this module. The evidence heard by the Inquiry to this point shows that those in more vulnerable positions in society did worse. My Lady will hear evidence tomorrow about attempts made by certain groups to draw to the attention of the Welsh Government the significant harms which were experienced by different sectors of Welsh society. The extent to which the information about the significant impacts was properly taken into account by the Welsh Government when managing the pandemic is very much part of what we are here to consider in this module.

As was the case in Module 2, the extent to which the Welsh Government identified and assessed the likely impacts on these groups is a key part of this module's scope. We intend to consider both those who were at risk because of previous health conditions, as set out in the evidence given by Professors Bambra and Marmot to which I've referred, and also those who were vulnerable

due to protected characteristics such as age, sex, disability, ethnicity and sexual orientation, as well as those who needed particular consideration due to both.

In addition to the moving accounts given in the impact film and the evidence that will be heard over the next three weeks, the Inquiry has received 53 Rule 9 responses from UK-wide and Wales-specific impact organisations evidencing the real impact of the pandemic on older groups, those in receipt of care, children and young people, ethnic minorities, women and disabled people.

Having summarised some of the key themes arising from the evidence heard in Modules 1 and 2 and some of the evidence, I propose to move next to the chronology of key events and decisions.

As already stated, this module picks up where Module 1 left off, namely January 2020. At this stage, as Module 1 evidence shows, the Welsh Government's ability to react to the early emerging signs of danger was largely bound to the emergency structures at UK Government level. The evidence, however, shows that as the pandemic progressed the Welsh Government pursued its own strategies to fight the virus, its own regulations and restrictions, and its own mechanisms for communicating with the public about them.

The Inquiry has already looked at the key questions in Module 2 of whether the UK Government reacted with sufficient speed in the early months of 2020 on learning of the emergence of the virus in China and whether it was provided with the right information to enable it to do so.

These questions apply equally in this module when looking at the Welsh Government response.

Given the Welsh Government's later adoption of an autonomous approach, ought it to have taken heed earlier of advice and information received directly from experts or via the UK Government systems to which it had access, such as COBR and SAGE?

Given the demographic characteristics of the Welsh population, specifically the differences in health and age profiles in Wales, and its pre-existing autonomous structures to deal with public health emergencies, ought the Welsh Government to have done more to make plans to deal with the virus earlier?

Ought it to have done more to seek to influence decision-makers in key positions within UK Government in the best interests of the people of Wales?

Had the Welsh Government taken a different approach, might it have been able in the critical early months of January and February to alter the course of the pandemic

significantly? This is of central importance, because some argue that had it reacted with greater urgency and to greater effect in January and February, it might not have been forced into making the extraordinarily far-reaching decisions that it later felt itself obliged to take in lockstep with the UK Government and the governments of Scotland and Northern Ireland.

My Lady, is that an appropriate point?

LADY HALLETT: I was just wondering, as we started later, but I suspect it is probably the best moment to pause.

For those haven't followed our proceedings before, we take a break, usually every hour and a quarter or so, for the sake of the stenographer, but we also have translators, or interpreters, and so we need to break for them as well.

Very well, I shall return at -- I can't see what the time is -- 11.25.

(11.11 am)

(A short break)

(11.28 am)

LADY HALLETT: Sorry if I'm slightly late, I was warming up. I hope everybody is slightly warmer now. I'm afraid in Scotland we did end up freezing people for a while, so ... as long as you don't get too warm. Please tell me if it now gets too hot and we can try to change it

again.

Mr Poole.

MR POOLE: Thank you, my Lady.

So we move to January 2020. Evidence heard by your Ladyship in Module 2 indicates that from the very early days of January 2020, UK Government scientists and medical officers were already communicating with each other, public health bodies in the devolved administrations and a handful of external scientists and academics about a new viral pneumonia outbreak.

On 8 January 2020 Public Health Wales issued a briefing concerning a cluster of pneumonia cases of unknown aetiology in Wuhan City, China. It recommended that any patients presenting with pneumonia who had travelled to China in the 14 days prior to the onset of symptoms should have a detailed travel and exposure history taken. This briefing went to the Welsh Government.

On 9 January the World Health Organisation issued a statement. It did not recommend any specific measures for travellers and advised against application of any travel or trade restrictions on China.

On 11 January Chinese media reported the first death from the novel coronavirus.

On 13 January the UK scientific body NERVTAG met for

the first time. It noted that the last official report from China had noted 41 cases of illness due to the novel coronavirus. Of the hospitalised patients, two had been discharged, seven were severely ill and one had died. It also noted that it had been stated that there had been no "significant" human-to-human transmission, which implied there may be some evidence of limited human-to-human transmission.

On 16 January the novel coronavirus was classified as a high-consequence infectious disease, requiring barrier care and the use of limited specialist units. Professor Neil Ferguson and his colleagues at Imperial College calculated that Wuhan was likely to have been harbouring more than 1,100 cases by 6 January, more than ten times the official figure, and they sent their report to the UK Chief Scientific Adviser, the UK Chief Medical Officer and others.

On 21 January the WHO published its first Novel Coronavirus 2019 report and tweeted that it was now very clear that there was at least some human-to-human transmission. The reported number of confirmed global cases had risen to 283 and there were six reported deaths worldwide.

NERVTAG met again, noting that there was clear evidence of person-to-person transmission, but that the

degree of transmissibility was not clear. The case fatality rate was also not clear, as most of the cases had not yet reached conclusion in either death or recovery, not all cases were being tested or reported, and there was a delay in the external reporting.

On the same day, 21 January, a meeting of the NHS Wales executive board took place, at which Dr Andrew Goodall reflected on the pressure that the NHS in Wales had been under at the turn of the year. He noted that many would have felt the system was at a difficult tipping point, requiring system-wide actions. Dr Atherton provided an update on the Wuhan coronavirus in China and advised that plans for isolation and ambulances would be sent shortly in the event that the virus came to the UK. Dr Atherton noted that this area would become of increasing importance.

On 22 January the first Scientific Advisory Group for Emergencies (SAGE) was activated on a precautionary basis, ie without formal activation by COBR.

If we can, please, have the SAGE minutes on screen. They are INQ000309706. At point 7 the minutes record:

"There is evidence of person-to-person transmission. It is unknown whether transmission is sustainable."

Then at point 12:

"There is no evidence yet on whether individuals are

infectious prior to showing symptoms."

Point 13:

"There is no evidence that individuals are more infectious when symptoms are more severe, but that is likely."

On the same day, 22 January, Public Health England raised the current threat level from very low to low, stating that:

"The risk to the UK population has been assessed as low, based on the emerging evidence regarding case numbers, potential sources and human to human transmission."

The second report from Imperial College estimated that there were 4,000 cases in Wuhan and advised that self-sustaining human-to-human transmission should not be ruled out.

Although there was no Welsh representative present at the precautionary SAGE meeting of 22 January, the minutes of that meeting were shared with the Welsh scientific adviser for health, Dr Rob Orford, on 24 January, and passed on to the Chief Medical Officer for Wales, Sir Frank Atherton and Andrew Goodall, among others.

Also on 22 January, Dr Quentin Sandifer, who between January and November 2020 was the lead strategic

director in Public Health Wales for Covid-19, invoked the Public Health Wales Emergency Response Plan at enhanced level.

On 23 January, public transport, including outbound trains and flights, were suspended in Wuhan. The WHO issued a statement announced that its emergency committee had been unable to agree that the event constituted a public health emergency of international concern.

In London, the Secretary of State for Health and Social Care, Matt Hancock, was told by the UK CMO that there was a 50/50 chance that the Wuhan quarantine would not work. In other words, there was a 50/50 chance that there was no practical means by which the further escape of the virus could be prevented, a 50/50 chance of a global outbreak.

Imperial College's third report, which was shared with the UK Government, estimated that the basic reproduction number, the R number, was above 1, indicating self-sustaining human-to-human transmission, and most likely in the range of 2 to 3. This implied that control measures needed to block well over 60% of transmission to be effective in controlling the outbreak.

On 24 January, COBR met for the first time, chaired

by Mr Hancock as the Secretary of State for the lead government department. The Welsh Government was represented at this meeting by Vaughan Gething as Minister for Health and Social Services.

COBR agreed a series of actions to be put in place for when certain trigger points were reached, and that these trigger points would be shared quickly with the chief medical officers of all four nations.

Also on 24 January, France reported the first confirmed Covid-19 cases in the WHO European region and *The Lancet* published an article entitled "A novel coronavirus outbreak of global health concern", which reported that the detection of infection in at least one household cluster in China and infections in healthcare workers caring for patients with Covid-19 indicated human-to-human transmission and thus the risk of much wider spread of the disease.

The article stated:

"... we need to be wary of the current outbreak turning into a sustained epidemic or even a pandemic. ... Every effort should be given to understand and control the disease, and the time to act is now."

It was also on this date, 24 January, that Dr Atherton advised the First Minister that there was a significant risk that the virus would arrive in Wales,

and Mr Gething issued a statement saying that the Welsh Government was closely monitoring the emergence of a novel coronavirus.

On 25 January the WHO regional director for Europe issued a public statement outlining the importance of being ready at local and at national levels for detecting cases, testing samples and clinical management. Officials in the UK starting putting preparations in place for the repatriation of UK nationals from Wuhan and surrounding areas.

On 27 January the WHO Novel Coronavirus Situation Report reported 80 deaths in China, but none outside. An extraordinary meeting of the UK SPI-M-O committee took place. No Welsh scientists were in attendance at this meeting. Current epidemiological work was discussed and the need for further data and the commencement of modelling work agreed.

On 28 January, SAGE, having now been formally convened, met again. There was no Welsh representative present at this meeting. SAGE was informed that 50% of new cases in China were now occurring outside Wuhan, and that a specific test should be ready by the end of the week, with capacity to run 400 to 500 tests per day.

SAGE debated the epidemiological characteristics of the virus, including the reproduction rate, which was

estimated to be between 2 and 3, that the doubling rate was estimated to be between three to four days, and that there was limited evidence of asymptomatic transmission.

The reasonable worst-case scenario was assessed by SAGE to be similar to that for pandemic influenza, where no vaccine or specific treatment was available.

SAGE agreed that a rapid change in the UK Government's approach would be required in the event of sustained human-to-human transmission outside China or a severe case in the UK.

On 29 January, *New England Journal of Medicine* published an article by the Chinese Covid-19 Outbreak Joint Field Epidemiology Investigation Team. The article estimated, based on research of the first 425 cases, that the basic reproduction number was 2.2. That is to say, one person will infect, on average, 2.2 other non-immune people. And they stated that there was evidence of human-to-human transmission that had occurred among close contacts since the middle of December 2019.

The same day COBR met again and an update was provided on the UK's reasonable worst-case scenario planning. The Welsh Government was represented at this meeting by Mr Gething, along with Dr Atherton. The minutes record in part that the UK should prepare for

the reasonable worst-case scenario, and that the real risk to the UK comes from China losing control of the situation rather than flights.

On 30 January the WHO declared a public health emergency of international concern. On this day too the first case of infection with the virus in the UK was confirmed: two members of the same family, one a 23-year old Chinese student who had travelled back to York from the family home in Hubei.

On 31 January the novel coronavirus was discussed by the UK Government Cabinet for the first time. The evidence suggests that Covid was not discussed by the Welsh Cabinet until nearly a whole month later, on 25 February.

On 31 January the UK CMO publicly confirmed that two patients in the UK, members of the same family, had tested positive for Covid. By the end of January it appears -- it is of course a matter for you, my Lady -- that it was clear that a fatal respiratory disease was spreading across the world and, to quote the advice given by Dr Atherton to the First Minister on 24 January, there was a significant risk the virus would arrive in Wales.

A number of questions arise. Was the fact that the virus would most likely spread to Wales properly

appreciated by the Welsh Government? Were the consequences of the lack of any control measures adequately understood? Does the fact that Covid was not discussed by the Welsh Cabinet throughout January indicate that the threat posed by the virus was not taken as seriously as it ought to have been, or that the Welsh Government thought the UK Government had things under control and there was no need to take independent action? Was there a lack of national strategic leadership and co-ordination from the Welsh Government in this crucial early period? Should consideration have been given, even at this relatively early stage, not just to gearing up NHS preparedness but to declaring a major incident for health in Wales and standing up the Emergency Coordination Centre?

During February, the evidence suggests that the virus was still not a priority of the Welsh Government.

On 2 February the WHO gave a technical briefing. In the UK, a public information campaign was launched by the UK DHSC, advising the population to adopt respiratory and hand hygiene behaviours. The Welsh Government announced that it was working with Public Health Wales to support the campaign. A group of UK senior ministers, the ministerial quad, met for the first time.

At the SAGE meeting of 4 February the UK CMO, Deputy CMO and CSA and certain other scientists, including representatives of the Imperial and London School of Hygiene and Tropical Medicine teams agreed that UK-only China-focused measures would likely only achieve minor delays in slowing UK transmission, but that impacts would be greater if multiple countries took concerted action. There was no Welsh representative at this SAGE meeting.

If we can, please, have INQ000074895 on the screen, please.

We can see there a consensus statement from SPI-M-O dated 3 February. At paragraph 1, it reads:

"The number of confirmed cases of 2019-nCoV in China is estimated to be at least 10 times higher than the number currently [estimated]."

Then at paragraph 7, please:

"It is unclear whether outbreaks can be contained by isolation and contact tracing. If a high proportion of asymptomatic cases are infectious, then containment is unlikely video these policies. Countries with less effective healthcare systems are less likely to be able to contain sustained outbreaks."

On 6 February it was announced that the first UK national had caught Covid-19 in Asia and had travelled

back to the UK via the Alps. SAGE was advised of a third UK case of a positive test. Public Health England announced the development of novel coronavirus diagnostic test.

On 10 February the team of epidemiologists at Imperial College provided a first estimate of the severity of the virus giving an overall case fatality rate in all infections, so symptomatic or asymptomatic, of around 1%. That is to say, 1 in 100 of every confirmed case, as opposed to those who are infected, will die.

SPI-M-O estimated that the number of confirmed Covid-19 cases in China was ten times higher than the number currently confirmed.

If we can, please, have INQ000237386 on the screen.

The minutes of this meeting also state -- if we look at paragraph 7:

"It is a realistic probability that outbreaks outside China cannot be contained by isolation and contact tracing. If a high proportion of asymptomatic cases are infectious, then containment is unlikely via these policies."

Then if we go down to paragraph 13, please:

"It is a realistic probability that there is already sustained transmission in the UK, or that it will become

established in the coming weeks."

The sixth meeting of SAGE, on 11 February, which was attended by Dr Orford, noted that it was not possible for the UK to accelerate diagnostic capability to include Covid-19 alongside regular flu testing in time for the onset of winter flu season 2020/2021.

On 12 February a ministerial tabletop exercise was held in London. Mr Gething and Dr Atherton took part on behalf of the Welsh Government. The evidence suggests that this exercise focused on the likely impact on the NHS and there was no discussion about infection control measures.

Also on 12 February, the first meeting of the Welsh Government countermeasures group took place, the purpose of this group was to monitor and advise on pandemic stocks and ensure that they are deployed according to ministerial agreement.

On 13 February the seventh meeting of SAGE took place, again attended by Dr Orford. It debated, in the context of a discussion of how to delay the peak of the epidemic (as opposed to seeking to suppress the spread of the virus), the impact of mass school closures, restricting mass gatherings and mask wearing. It advised that travel restrictions within the UK and prevention of mass gatherings would not be effective in

limiting transmission.

The SAGE planning assumptions, which advised that Covid-19 would likely infect 80% of the population, in contrast to pandemic influenza that would infect 50% of the population, was shared with the Welsh Government.

If we can, please, have INQ000320721 on the screen.

We can see in that bottom email that the SAGE planning assumptions prompted Reg Kilpatrick to email Dr Atherton, stating, among other things:

"This material needs to be shared internally and rapidly. The DGs need to be aware and so does the Perm [the Permanent Secretary, Shan Morgan] both for information and to underline the potential seriousness of the issue ...

"One key lesson from the last two years of dealing with Brexit is that without the free flow of information to trusted individuals within Welsh Government, we will always find ourselves unable to match the UK government in our preparedness; or to have a reasonable and informed discussion about what our next steps should be. And of course we will put our Ministers in a weak -- or negligible -- negotiating position if we are unable to brief quickly and comprehensively."

SPI-M-O on 17 February noted that the current estimates of the average case fatality rate seen to date

were in the range of 0.25% to 4%. The minutes state.

"There were differing views within the group about the likelihood of sustained transmission in the UK both currently and in the near future. Some believe it [will be] a realistic possibility that sustained transmission in the UK will become established in the coming weeks while others believe this likelihood is higher and there may already be sustained transmission."

The fourth meeting of COBR was held on 18 February. This meeting was attended by the First Minister, as well as Dr Atherton. The UK CMO noted that escalation to a global pandemic and isolation of the majority of cases to China both remained realistic possibilities. Nine positive cases had been confirmed at this point in the UK.

SPI-M-O noted on 19 February that the magnitude of the impact certain school closures would have on the UK epidemic of Covid-19 was very uncertain and that detailed forecast of the likely impact would only be possible once there had been several weeks of sustained transmission within the UK.

On 21 February news emerged of a cluster of locally transmitted cases in Lombardy, Italy. A lockdown began in Italy covering ten municipalities of the province of Lodi in Lombardy and one in the province of Padua.

On 22 February UK passengers from the cruise ship the Diamond Princess arrived back in the UK. The Diamond Princess had been quarantined on 3 February by the Japanese Government after a passenger from Hong Kong tested positive for Covid-19 after having earlier left the ship on 25 January. Of the 2,600 passengers and 1,000 crew, over 500 people became infected. Early reports showed, however, that around 18% of the people infected had showed no symptoms.

On 23 February the UK DHSC confirmed a total of 13 Covid-19 cases in UK. The tenth meeting of SAGE, on 25 February, discussed a report from Imperial College which addressed measures for closing schools and universities, home isolation of cases for seven days, home isolation of other members of the household of index cases for 14 days, and mass social distancing, to try to achieve a reduction of 75% of all interpersonal contacts other than in the home, school, university or workplace, and a 25% reduction in the workplace.

The report noted that aggressive NPIs may have a substantial impact on Covid-19 transmission, potentially dramatically slowing epidemic growth, but that when lifted transmission would resume giving rise to another full peak in the winter months. SAGE therefore focused thereafter on modelling and examining

a flattening the peak strategy, namely a mitigation of the viral outbreak, as opposed to a suppression strategy.

Also on 25 February the Welsh Cabinet convened and discussed the virus for the first time. Mr Gething updated the Cabinet that the worldwide response was still in the containment stage.

At the COBR meeting on 26 February attended by Mr Gething and Dr Atherton, the UK Deputy CMO reported that official data from China showed that case numbers were continuing to increase. Internationally, case numbers in South Korea, Iran and Italy highlighted clear person-to-person transmission and sustained human-to-human transmission in Italy, which received a high number of travellers to and from the UK. The conclusion was that it is still difficult to predict when or if case numbers would increase in the UK.

On 27 February SAGE endorsed planning assumptions of an overall 1% case fatality rate and that 80% of the UK population may become infected.

Also on 27 February TAC was set up, which -- along with TAG, led by Fliss Bennee and Dr Orford. As mentioned earlier, the purpose of TAG and TAC was to provide scientific and technical information interpreted for Wales in adherence to the advice provided by SAGE.

We intend in this module to examine the reasons why this new advisory group was set up, why it was thought necessary, how it worked alongside SAGE, why it was constituted as it was, how it operated as an advisory body, and how effective it was in guiding the Welsh Government's pandemic response.

We will also examine the role of TAG and TAC in the overall divergence of Welsh Government policy from the priorities and strategy of the UK Government, the reasons for that, and the reasonableness of such divergence in the context of a global viral pandemic.

I will return to the theme of divergence in due course.

Returning then to the chronology. On 28 February, four years ago tomorrow, the first case of Covid-19 in Wales was reported. An adult returning from northern Italy with links to Swansea's Bishop Gore School.

On 29 February the total number of confirmed cases in the UK rose to 23. Dr Orford also emailed colleagues at Public Health Wales stating that he had not received a read-out from the latest SAGE meeting, which concerned him.

By the end of February the evidence suggests that there was a growing awareness of the threat the new virus posed to Wales. As such, a number of questions

arise. Given this increasing appreciation of the imminent threat of the new virus, what powers did the Welsh Government have to impose its own suppression strategies before the national lockdown on 23 March? Why did Welsh ministers not seek to persuade the UK Government of the need to take swifter decisive action? What more ought the Welsh Government have done in February 2020 to seek the mitigate the effect of the new virus spreading across Wales?

On Monday 2 March the Prime Minister chaired a COBR meeting for the first time. The First Minister and Mr Gething attended. The WHO raised its alert to "very high". In Wales the First Minister established the Covid-19 core group, and at the First Minister's regular Monday press briefing the First Minister mentioned coronavirus for the first time and reported the first confirmed case in Wales.

The First Minister said that the Welsh Government had been working hard to prepare for the arrival of the novel virus in Wales for many weeks, and that Wales and the UK were well prepared for these types of incidents, with robust infection control measures in place to protect the public.

On 3 March a multi-agency tabletop exercise was held in Wales. The aim of the exercise was to explore the

multi-agency response to a request to put an urban setting in lockdown in response to Covid-19.

Also on 3 March, TAC provided an update note for Dr Atherton which advised that a reasonable worst-case scenario for Wales would see 1.25 million people symptomatic and 162,500 people hospitalised, and infections during the peak week of 250,000.

TAC advised that if Covid followed the same patterns as seasonal flu then Wales would see a one to two-week lag in epidemic peak compared to areas of England.

On the same day, 3 March, the UK Government's coronavirus action plan was published. This plan set out the UK Government's broad strategic approach, namely contain, delay, research, mitigate. However, by the beginning of March, it appears that containment had failed. In this regard, this module will look at what input the Welsh Government had into this action plan and what consideration was given to Welsh considerations, risks and requirements.

On 4 March Mr Gething chaired a Welsh Cabinet meeting which discussed a SAGE report from the previous day summarising the current understanding of the virus, namely that 80% of the population would be infected, 80% would have mild symptoms and the remaining 20% would likely require hospitalisation. That would equate to

around 160,000 people in Wales requiring some form of hospitalisation. Of those, 133,000 would require oxygen, and 14,000 ventilator support. The same modelling suggested somewhere in the region of 25,000 deaths.

On 5 March the Health Protection (Notification) (Wales) (Amendment) Regulations 2020 were made, which made Covid-19 a notifiable disease in Wales. The first death of a patient with Covid-19 in England was also announced. SAGE recommended implementation of individual home isolation and whole family isolation, followed by social isolation of over 65s and those with underlying medical conditions. The issue of mass gatherings was also debated again, and SAGE concluded that there was no evidence that banning very large gatherings would reduce transmission.

On 6 March the Welsh Government Coronavirus Planning and Response Group met. Public Health Wales provided an operations update and reported that the current modelling predicted that the epidemic will peak around 10-12 weeks after it has begun. The reasonable worst-case scenario model predicted an infection rate of 80% across Wales, with a hospitalisation rate of 30% and a fatality rate of 1%. In a worst-case scenario situation it was estimated that 50,000 beds would be

needed to satisfy demand at peak times, which would see over 6,000 hospitalisations per day.

It should be noted that in Wales the average daily available hospital beds is around 10,000. Peak demand would therefore exceed this capacity by approximately five-fold. The demand for ventilation would be considerably higher than capacity, approximately 50-fold, a point which was noted by Dr Orford in an email to Public Health Wales on 7 March.

Also on 7 March the England versus Wales Men's Six Nations rugby match took place at Twickenham Stadium in London, attended by 81,000 people, including the then Prime Minister, Mr Johnson.

On 9 March the eighth meeting of COBR took place, chaired by the Prime Minister and attended by the First Minister, Mr Gething and the Welsh CMO. The merits of seeking to delay the peak of the Covid-19 outbreak until the summer were debated. The same day a national lockdown was announced in Italy and the Welsh CMO issued a statement confirming two more people in Wales had tested positive for coronavirus.

The following day, 10 March, the Welsh Cabinet met. The First Minister provided an update on Covid and said, with six cases in Wales, now was not the time to introduce more restrictive measures on movement. If

they were used prematurely, it would likely lead to the population being less receptive to messages at a time when the spread of the virus was more virulent.

On 11 March the WHO declared Covid-19 a pandemic. Wales had its first case of community transmission when a patient at Caerphilly with no travel history tested positive for Covid-19. Dr Atherton provided an update to a meeting of the Welsh Government Covid-19 core group. Dr Atherton confirmed that there were 15 known cases in Wales with some community transmission. Wales remained in its containment phase of its management strategy, and it would be up to COBR to decide whether to move to the delay phase. Dr Atherton advised that given the events in Italy there was a need to prepare for the reasonable worst-case scenario.

Also on 11 March, Dr Atherton provided the First Minister with a technical briefing on mass gatherings and behavioural and social interventions.

Could we, please, have INQ000271613 on the screen.

We can see there, in the first paragraph:

"In the event of a severe epidemic, the NHS will be unable to meet all demands placed on it. In the reasonable worst-case scenario, demand on beds is likely to overtake supply well before the peak is reached. Currently the [reasonable worst-case] is also considered

within the bounds of a likely scenario."

If we can move to paragraph 3, please:

"Applying behavioural interventions could be helpful in containing an epidemic ... or changing the shape of the epidemiological curve, potentially making the response of the NHS and other sectors more sustainable."

Then, at paragraph 4, the first objective is to "contain":

"... (note -- this is unlikely to be achievable) ..."

This briefing also discussed behavioural control measures and noted that restrictions of mass gatherings would likely reduce infection-related deaths by 2%, whereas self-isolation of those with symptoms would have a greater impact, likely reducing deaths by 11%.

Also on 11 March, Public Health Wales produced an evidential summary of the key considerations to guide any decision on the declaration of a major incident for health in Wales. Public Health Wales concluded that objectively the demographic characteristics of the Welsh population and specifically the age profile of the population over 65, health and economic status, and dependency responsibilities, are such that Wales may experience disproportionate levels of impact from Covid.

On 12 March a patient at Wrexham Maelor Hospital

tested positive for Covid-19. This was the first case in North Wales.

COBR met again on 12 March, attended by the First Minister. The UK CSA provided a situation update. The number of cases in the UK was increasing. It was estimated that there were 5,000 to 10,000 cases within the UK. Numbers would increase quickly. SAGE advice was that the UK was approximately four weeks behind Italy and expected the UK to follow a similar trajectory in terms of the number of cases. COBR minutes note that the UK Government's strategy was to seek to change the shape of the curve as opposed to completely suppress the spread, as that wasn't going to be possible and could lead to a larger second peak.

Accordingly, the UK moved from "contain" to "delay", meaning that rather than trying to stop the virus altogether, the government's strategy switched to trying to manage its spread through the population. Contact tracing was no longer a priority, and testing resources were directed towards hospitalised patients instead of being used to identify new cases in the community.

The UK CMOs also raised the risk to the UK from "moderate" to "high", and new advice was also issued advising self-isolation for seven days if someone developed a high temperature or a new continuous cough.

On 12 March COBR also debated the cancellation of mass gatherings. COBR minutes note that the Scottish Government was minded to advise against gatherings of more than 500 people, to ensure frontline emergency workers were able to prioritise the response to the pandemic. The UK Government took the decision not to prohibit mass gatherings at this stage.

Following COBR, the First Minister announced that the annual Welsh Labour conference, due to be held in Llandudno at the end of March, was postponed. This prompted Lee Waters, the Welsh Government Deputy Minister for Economy and Transport, to send a WhatsApp stating:

"I do think it's an odd signal to send that we're cancelling conference but allowing 70,000 to gather in Cardiff on Saturday."

70,000 people gathering in Cardiff was a reference to the Six Nations Men's rugby match between Wales and Scotland due to take place on Saturday, 14 March 2020, at the Principality Stadium in Cardiff. In fact, the match was called off by the Welsh Rugby Union at lunchtime on Friday, 13 March (the day before kick-off), but not before 20,000 Scottish rugby facts had travelled from Scotland to Cardiff.

An issue for the Inquiry is whether mass gatherings

should have been banned earlier, and a specific issue for this module is whether the Welsh Government ought to have advised against the Wales and Scotland rugby match and other mass gatherings in Wales, such as two Stereophonics concerts held at the Motorpoint Arena in Cardiff on 14 and 15 March going ahead.

It is right to say that the scientific advice in early March had indicated that the benefits of such a ban were not particularly significant. But gatherings were not without some risk and a ban would have reinforced other social distancing good practice, as well as ensuring frontline emergency workers were able to prioritise the response to the pandemic.

On Friday 13 March the Welsh Coronavirus Planning and Response Group met. Dr Orford advised that the reasonable worst-case scenario had been reassessed and estimated a mortality figure of around 36,000.

Also on 13 March, Mr Gething made a public statement announcing a framework of actions aimed at allowing health and social care providers in Wales to make decisions to assist with timely preparations for the expected number of confirmed cases of Covid. This framework included measures such as the suspension of non-urgent outpatients and surgical care in Wales, the expedition of vulnerable patients from acute and

community hospitals, and the suspension of the current protocol which gave patients the right to choice of a care home.

The care sector is for a later module, but it is convenient to examine in part one of the major decisions affecting the care sector in this module, given the debate over the extent to which core decision-makers were aware of it and of its catastrophic consequences. It is this decision to discharge hospital patients into social care.

There is evidence that more than 1,000 Welsh patients were discharged from hospital to care homes without a test during March and April 2020. As of 5 June, ONS figures suggest that nearly a third of Wales Covid-19 deaths had been within care homes. There is no doubt that there was a massive failure of infection control, contributed at least in part to the influx of infected but untested patients. The Welsh Government's position is that it was advised that testing would not be effective for those who were asymptomatic, and there was in any event a lack of testing capacity. It is an issue for the Inquiry whether this belief could have been genuinely or sensibly held. There is clear evidence that by early April 2020 it was known that only testing those with symptoms missed up to half of

care home infections.

Was there clinical or scientific advice that testing would not work? Was there a lack of capacity? Did a greater number of infections come from staff and were they contributed to by PPE shortages? Was isolation the proper route?

Final resolution of these issues is a matter for the later care module. However, evidence will be called in this module to explore the broad reasons why core decisions were taken in this regard and why it was not until 29 April 2020 that the Welsh Government policy changed to testing all patients discharged from hospital to a care home, regardless of whether they were showing symptoms. This was nearly two weeks later than the change in policy in England.

Returning to the chronology and Saturday 14 March, a national lockdown was announced in Spain and an open letter from scientists was published expressing concern over further delay in the imposition of social distancing measures.

If we can, please, have INQ000309816 on the screen.

This is an email sent from the Welsh HSSG on 15 March recording the actions from a meeting of TAC earlier that day.

We can look at item 3, please.

This notes that the initial ballpark estimate is that Wales is two to three weeks on the curve, approximately eight to nine weeks from the peak, and three weeks from outstripping intensive care capacity in Wales.

If we could go over the page to page 2 and the first item on page 2. There is a general concern that further delay in implementing household quarantine and protection of vulnerable could affect Wales more than England.

Then Dr Orford agrees to include a recommendation in the COBR briefing that the introduction of these interventions in Wales should be with immediate effect.

COBR met on 16 March, attended by the First Minister. The UK CMO advised that the UK was on the cusp of the fast upward swing of infections. There had been 35 confirmed deaths in the UK, including the first Covid-19-related death recorded in Wales that day, in Wrexham Maelor Hospital.

COBR agreed that a stricter package of measures should be implemented, including self-isolation, household quarantining and shielding older groups and over 70s. The Stay Home, Protect the NHS, Save Lives campaign was launched.

TAC advice to the Welsh Government was that with

these social interventions in place there would be a 66% reduction in the reasonable worst-case scenario.

Following this COBR meeting, four ministerial implementation groups, or MIGs, were established to aid collective government decision-making.

On Tuesday 17 March France and the Netherlands announced national lockdowns. In the UK, the Coronavirus Bill 2020 was published. The UK Government advised against all international travel and the National Assembly for Wales was closed to the public.

On Wednesday 18 March the Covid-19 core group met. Dr Atherton advised that the virus was probably circulating in the community. There were 136 reported cases in Wales and two recorded deaths.

Scientific advice had strengthened in its predictions that, despite the low numbers, a far more significant surge in patients suffering from the virus would have become apparent in the weeks ahead.

Levels of infection in the south east of England were already elevated and advice suggested that the same pattern would become apparent in Wales with a time lag of at least seven days between Wales and England. Dr Orford advised that modelling suggested the UK was four weeks into the curve and it was expected to be another 11 weeks before the spread of the virus peaked,

whereas the NHS in Wales was four to five weeks away from maximum capacity.

The decision was taken to close schools in Wales early for Easter. Kirsty Williams, Minister for Education, made this announcement the same day.

The issue of school closures and its obvious impact will be addressed in detail in a later module. However, it is necessary to examine in this module how the decisions on schools came to be considered and decided by the Welsh Government and what its general approach was.

From a relatively early stage, the possibility of closing schools was being discussed by SAGE. It was discussed repeatedly at SAGE and SPI-M-O meetings in February, and the possibility was referred to in the "contain" plan of 3 March. The evidence suggests that the Welsh Government's assumption was that schools would not close and that the focus was on how to keep them open. Only very late in the day, on 18 March, was the decision taken to close schools in Wales. This was two days after it had been agreed at COBR that keeping schools open was very important, particularly as frontline workers would have school-aged children.

These are matters for you, my Lady. What changed between 16 and 18 March? Why wasn't advance thought

given to the possibility of this very major step? Were the serious consequences of closing schools properly considered and debated at Cabinet? The Inquiry will also want to consider not just whether schools should have been closed but for how long and whether it was right to allow non-essential shops to re-open in June 2020 so that children were allowed to go shopping but not go to school.

Returning to the chronology, as of Friday 20 March Wales had 345 confirmed cases of Covid-19 and 12 deaths had been reported. TAC noted an increase of 30-50 confirmed cases per day. It was on this day that COBR agreed that hospitality ought to close that evening across the UK.

COBR minutes note that the UK Government recommended that public health powers would be used as the legal basis for government action responding to the pandemic, rather than the Civil Contingencies Act.

The evidence suggests that the decision led to powers being exercised differently in different parts of the UK. An issue for this module will be the extent to which this was foreseen and the impact, if any, it had on the Welsh Government's strategic response to the pandemic.

Also on 20 March, the First Minister announced the

closure of hospitality, entertainment and leisure businesses across Wales.

On 23 March, with the death toll across the whole of the UK reaching 335 deaths and 35 deaths in Wales, the then Prime Minister announced the nationwide stay-at-home order would come into effect as of midnight and would be reviewed every three weeks thereafter.

The Welsh Government also announced a full national lockdown, closure of hospitality and non-essential retail, a requirement to stay at home, work from home where possible, and restrictions on indoor and outdoor gatherings.

The First Minister's press conference on 24 March advised the people of Wales to "stay at home to protect yourself and to protect the NHS".

On the same day Mr Gething sent himself an email recording the stark observations of a Welsh hospital consultant.

If we could, please, have INQ000299062.

The email reads:

"Complete chaos at our hospital. No protection for nurses -- very low moral as being asked to care for patient admitted to Orthopaedic wards by medics with respiratory symptoms. Mask not being released."

We will examine in this module the powers and the

strategy of the Welsh Government with regard to the management of the pandemic over this period, the reasons why it acted as it did, how it perceived its role as against that of the UK Government, its access to advice and the limitations on that. We will also ask what more, if anything, could the Welsh Government have done over this initial period January to March 2020 to protect the people of Wales from the virus. What consideration was given to alternative strategies?

April saw the introduction of daily ministerial calls instigated by the First Minister. The first of these calls took place on 6 April.

On 16 April the Welsh Government agreed that the full package of lockdown restrictions should remain in place.

On 24 April the conditional plan for lifting lockdown in Wales was announced, with the Welsh Government publishing *Leading Wales out of the Coronavirus pandemic: A Framework for Recovery*. The First Minister's foreword explained that the Welsh plan was based on three pillars: measures and evidence; principles to evaluate changes to the restrictions; and public health response.

On the same day, the Secretary of State for Wales, Simon Hart, wrote to the First Minister noting that the

Welsh framework for recovery did not mention the UK Government once and stating that unless the evidence being relied on by the Welsh Government to diverge from a UK-wide plan is explained, then the Welsh Government will be guilty of adding confusion to an already challenging period of recovery.

On 28 April the First Minister wrote to the former Prime Minister attaching the framework of recovery, stating:

"Our view is that steps taken at the end of the current three-week period should necessarily be modest and cautious."

Notwithstanding this letter, two days later the Prime Minister announced that the UK Government would set out a comprehensive plan the following week for re-opening the economy, schools and travel. This announcement appears to have been made without any consultation with the Welsh Government.

The list of issues for this module pose a number of questions in relation to how the governments of Westminster and Cardiff Bay engaged with each other: what was the extent of co-ordination and communication between the UK Government and the Welsh Government, to what extent did the Welsh Government seek and receive advice from the UK Government and the other devolved

administrations? Were key decisions taken by the UK Government after a proper process of advice and/or consultation with the devolved administrations?

The starting point is that the UK Government could not readily exercise direct control over pandemic management throughout Wales. Health is a devolved matter and the UK Government's decision to use public health legislation and the Coronavirus Act to respond to the pandemic rather than the Civil Contingencies Act confirmed that the response would remain devolved.

As the pandemic progressed, the devolved administrations started to go their own way in terms of imposition of NPIs, a clear example of this being the Welsh firebreak, which we shall look at a little later.

The Welsh Government also took a different approach to local lockdowns. Now, as your Ladyship heard in Module 2, a number of UK Government witnesses, including the former Prime Minister, suggested that this divergence represented a regrettable failure to ensure consistency of approach across the UK. Welsh ministers, on the other hand, insist that divergence was an inevitable consequence of the different way in which the virus spread across Wales and that in implementing policies that diverged from those of the Westminster government, they were simply properly exercising their

devolved powers.

These are issues which were explored in Module 2 and also Module 2A in respect of Scotland. They will be further explored in this module from a Welsh perspective.

The evidence suggests that the devolved administrations were not updated on some important UK Government decisions before they were announced publicly. For example, the change in public health messaging from "Stay at Home" to "Stay Alert" in May 2020, which we will come on to in the chronology in a minute. There was also a lack of clarity over which UK Government announcements applied only to people in England, prompting the First Minister to make multiple requests for the UK Government to make this clear in public communications.

The Welsh Government was represented at COBR as a general rule, but, my Lady, as you heard in Module 2, concerns about the former First Minister of Scotland briefing the media afterwards led, apparently, to a general disinclination to want to thrash issues out in that forum and meetings became more scripted and formulaic. Some UK ministers were concerned that the devolved administrations were diverging from UK Government policy for the sake of being different,

a point that is strongly denied by Welsh ministers.

In any event, COBR quickly lost its importance and was replaced by the MIGs and then, later, Covid-O and Covid-S. It did not meet between 10 May and 22 September 2020. The devolved administrations were not invited to Covid-S, although they were invited to Covid-O meetings, initially only when UK-wide issues were to be discussed but latterly, from October 2020, on a weekly basis.

Representatives of the devolved administrations were not invited to the 9.15 am Prime Ministerial meetings, which became the dominant UK Government decision-making body and where much of the strategy was mapped out.

The primary historical forum for meetings between UK ministers and First Ministers of the devolved administrations, the JMC, was not used throughout the pandemic. Mr Johnson said in his witness statement in Module 2 that he chose not to meet with the First Ministers of the devolved administrations because in his view this would have been "optically wrong" for fear that this would give a false impression that the UK was a "kind of mini EU of four nations and we were meeting as a 'council' in a federal structure". There is also evidence from within Whitehall that regular meetings with the devolved administrations could be

a "potential federalist trojan horse" .

Instead, four nation meetings were held, chaired in the main by Michael Gove, the Chancellor of the Duchy of Lancaster, who also chaired Covid-O. It does not appear that, whilst he did chair some of the meetings, Mr Johnson was prepared to lead this group.

The view of the First Minister and other Welsh ministers is that some of the meetings held between the UK Government and the Welsh Government were little more than opportunities for the Welsh Government to be provided with information about decisions that had already been taken. There was, it seemed to the Welsh Government, insufficient meaningful input into UK Government decision-making.

The UK Government also made unilateral decisions to relax requirements governing international travel, an area of devolved competence, which had the practical effect of obliging the Welsh Government to adopt the same position against its better judgement. The evidence suggests that realistically the Welsh Government could not adopt a position which best addressed the situation in Wales because most international travel into Wales came from England.

As for SAGE, Dr Orford did not attend SAGE until its sixth meeting, on 11 February. Most of the academic

representatives on SAGE were from England and more than half of the subcommittees had no representatives from a devolved administration at all. The expert evidence from Professor Henderson is to the effect that there was a predominantly English frame of reference, and a focus on English-only data. The evidence may be that SAGE advice tended, as a result, to consider only the implications on England of the various options that were considered. As a result, SAGE advice tended, according to one attendee, to be translated into different policies by different nations.

The evidence suggests, however, that there was ample communication between the UK Government and the Welsh Government at the health minister and CMO level, and of course in the Covid-O meetings.

As for local government, the written evidence appears to suggest that the Welsh Government actively engaged with local leaders on decision-making. My Lady will, however, wish to consider whether there was any delay on the part of the Welsh Government in engaging with local government, and explore whether there was a missed opportunity for local authorities to have meaningful input into the decisions taken by the Welsh Government that ultimately were the responsibility of local authorities to implement, deliver and enforce.

Returning to the chronology and, as already mentioned, on 10 May 2020 the UK Government updated its coronavirus message from "Stay at Home, Protect the NHS, Save Lives" to "Stay Alert, Control the Virus, Save Lives". The leaders of the devolved governments in Wales, Scotland and Northern Ireland decided to keep the original slogan. This new messaging represented a significant divergence in strategy on the part of the UK and Welsh Governments, the former signalling a move towards easing the lockdown and the latter sticking with the existing restrictions.

Having decided to keep the "Stay at Home" message, and given that there was very little in the UK Government's announcements to suggest that the new measures only applied in England, there was a lot of public confusion, particularly for those living in and around the border of England and Wales.

By way of explanation for the Welsh Government's position, on 11 May the First Minister made a public address to the nation.

If we can please have INQ000090562 on the screen. If we can look at the sixth bullet point, the First Minister said:

"There has been a lot of focus over the weekend about the differences between the way the regulations

are being updated in Wales and in other parts of the UK.

"The fundamental direction of travel is the same here as in other parts of the UK -- the stay-at-home regulations remain in place ...

"However, there are differences in the messaging between Wales and England and I am concerned this may confuse people."

If we can go to page 2, please, at the top of the page, the First Minister said:

"I want to be clear -- in Wales, Welsh rules will apply ...

"We will continue to make decisions, which are right for Wales, using information and expert advice about how coronavirus is circulating here to keep us safe.

"The health of the public is paramount. It will inform our decisions and we will continue to inform you as we plan for our future in the weeks ahead."

Restrictions across the UK were eased over the late spring and early summer of 2020. Some differences between the four nations were simply a matter of timing. For example, garden centres, the first non-essential retail outlets to be permitted to re-open, were allowed to re-open from 12 May in Wales, 13 May in England, 28 May in Northern Ireland and 29 May in Scotland.

There were, however, some more substantive

differences in the way lockdown restrictions were eased. Rules on how many people could meet and from how many households varied notably. From 13 May two people from different households were permitted to meet outdoors in England. A week later the Northern Ireland Executive permitted up to six people to meet outdoors. The Scottish and Welsh Governments did not allow meetings between two households until 29 May and 1 June respectively.

There was a similar pattern when one looks at the manner and timing of the re-opening of pubs, cafes and restaurants across the UK. Pubs in Northern Ireland were the first to re-open on 3 July, followed by England on 4 July. Scotland and Wales took a more staged approach, opening outdoor areas first on 6 and 13 July respectively, followed by indoor areas on 15 July and 3 August respectively.

The general pattern was that England and Northern Ireland eased restrictions and re-opened the economy first, followed next by Scotland, and then Wales. We will examine the extent to which divergence was based on proper advice and a reasonable balancing of the competing considerations, whether there truly was separate Welsh evidence which justified a different Welsh approach, whether points of difference were

substantive or merely cosmetic, whether they led to different outcomes, and whether they were to any extent motivated by any factors other than the very best response to the virus for the safety of the people of Wales.

On 4 July the UK Government decided to change its advice on social distancing from 2 metres to 1 metre. The Welsh Government decided not to make this change and retained the 2-metre rule. As with the easing of other restrictions, the decision was of course a balance between the transmission risks and the economic consequences of not changing the rule. At the heart of the debate was the recognition that the scientific advice was that the 2-metre rule provided greater protection but that if the 2-metre rule remained it would be economically hugely damaging. It will be an issue for this module whether the economic impacts as well as the public health impacts were properly debated within Welsh Government.

On 3 August the UK Government introduced the Eat Out to Help Out scheme. Its policy objectives were obvious: to support economic recovery by stimulating consumption in the hospitality sector. However, the Welsh Government was not consulted and, as you heard in Module 2, it doesn't appear to have been discussed with

the UK CMO or CSA, and it was not the subject of advice from SAGE, SPI-M or SPI-B.

The First Minister's evidence is that had he been consulted he would not have supported the scheme and believed that it was designed by Her Majesty's Treasury to play well with elements in the Conservative Party and the right-wing press, who were instinctively opposed to public health measures.

Of course this Inquiry is completely politically agnostic in its approach, it has absolutely no personal or political inclination or disinclination towards any of the primary actors in the appalling tale of this pandemic. There has been enough politicisation and polarisation of the public discourse surrounding the government response to the pandemic already.

Furthermore, the evidence as to whether the scheme had a noticeable impact on the rates of infection is unclear. There is, however, a wider, more important point, which was explored in Module 2, with the consequence that other ongoing measures were indirectly weakened. Was it a wise policy, is one of the questions to be asked, when restrictions were still in place?

Issues for this module will be whether the scheme was something that the Welsh Government should have expected to be consulted on, and why, if the Welsh

Government did not support the scheme, did it not raise concerns or choose to opt out of the scheme?

On 18 August the Welsh Government published its Coronavirus Control Plan. The plan was designed to tackle the steady increase in cases from late summer 2020 as people returned from holidays abroad and were socialising more at home and with friends. In late August and early September there was a significant increase in cases in the Caerphilly Borough Council area. Initially this was tackled by the local authority, Public Health Wales and the Aneurin Bevan University Health Board putting in place measures such as additional testing capacity, additional protective measures in care homes, and a targeted public appeal reiterating behaviours that people should take to keep safe.

However, those measures were not enough to reduce transmission and on 7 September Mr Gething announced the first local lockdown in Caerphilly.

Throughout September and early October, the Welsh Government responded to subsequent outbreaks by imposing further local health protection areas. These were put in place in Rhondda Cynon Taf, Merthyr Tydfil, Newport, Bridgend and Blaenau Gwent, Swansea, Cardiff, Llanelli, Neath Port Talbot, Bangor and the Vale of Glamorgan.

The First Minister in his written evidence describes these local measures as a failed experiment.

The Inquiry has also received written evidence from Professor Michael Gravenor that the Swansea modelling team were not commissioned to model the impact of local lockdowns. Professor Gravenor has told the Inquiry:

"I think this would be a useful area to explore retrospectively, as it was clear at times that there was considerable variation across Wales due to north/south geography and its links to different urban centres in England) and rural-urban contrasts. I would aim for a Wales model to have these explicitly included in [the] future."

Issues for this module will be why the Welsh Government adopted a local lockdown strategy and why this wasn't the subject of modelling.

On 14 September the modelling team at the University of Warwick published a paper titled "*Circuit Breakers: Implementing (partial) lockdown for two weeks over half term".* The paper concluded that:

"... a well timed and strong lockdown for a two-week period coinciding with half term could have a very notable impact on the number of future cases, hospitalisations and deaths. It provide[d] a useful break if cases are rising too rapidly; however, the

impact on deaths is often subject to long delays -- so deaths may not decline until after the break."

On 16 September SPI-M-O's consensus estimate was that the number of infections in the UK was growing by 2% and 7% per day, and that the doubling time could be as fast as seven days nationally. SPI-M-O agreed that a planned circuit-breaker period where strict NPIs are introduced for two weeks around the October half term has the potential to reduce prevalence and subsequent hospitalisations and deaths reaching high levels whilst balancing non-Covid harms.

With case numbers increasing, on 18 September TAC advised the Welsh Government that the situation was serious and that a package of NPIs on both a local and national scale may be needed to bring the R rate below 1. TAC's advice was that action would be most effective if implemented early.

On 21 September the 58th SAGE meeting considered a paper entitled "*Summary of the effectiveness and harms of different [NPIs*]". Fliss Bennee attend on behalf of TAC. The SAGE minutes provide a shortlist of NPIs that should be considered for immediate introduction, including a circuit-breaker, advice to work from home for all those that can, banning all contact within the home with members of other households, closure of all

bars, restaurants, cafes, indoor gyms, and personal services ... and all university and college teaching to be online unless face-to-face teaching is absolutely essential.

SAGE noted that Covid-19 incidence was increasing across the country in all age groups and that the effect of the opening of schools, colleges and universities had only just begun to affect this increase. Even so, the latest data suggested that the doubling time for new infections could currently be as short as seven days nationally. Covid-19-related hospitalisations and intensive care bed usage had started to rise. A package of stringent interventions would need to be adopted to reverse the exponential rise in cases.

Four days later, on 25 September, the need for early intervention was reiterated by TAC, advising that:

"If the current measures do not bring R below 1 then further restrictions will be needed to control the epidemic in Wales. The earlier additional measures are introduced, the more effective they will be."

A week later, on 2 October, TAC gave a rather starker warning. TAC's advice to the Welsh Government was that:

"Unless measures bring R back below 1, it is possible that infection incidence and hospital

admissions may exceed scenario planning levels."

In other words, unless further steps, such as a circuit-breaker, were Implemented, infection incidence and hospital admissions may exceed scenario planning levels. In short, the NHS in Wales would be overwhelmed."

Despite this advice, the Welsh Cabinet did not meet to discuss a circuit-breaker until 15 October. The advice from TAC didn't get any better. A week later, 9 October, TAC advised that there was still exponential growth, with hospital admissions continuing to rise, and that further control measures were needed. For the first time in this wave of infections, the incidence for Wales was higher than 100 cases per 100,000 people, and the total test positivity for Wales as 7.8%. All local authorities had seen more than 25 cases per 100,000 over the past week and had a 2.5% test positivity.

On 12 October Public Health Wales advised Dr Atherton that the reproduction rate in Wales was 1.45 and that restrictions needed to be applied within the next two weeks, and for at least three weeks to achieve a reproduction rate below 1.

Notes from the daily ministerial call of 13 October record the First Minister updating Welsh ministers on the COBR meeting the previous day, during which meeting

the UK CSA and CMO advised the Prime Minister that Tier 3 measures would not be enough to reduce the R number below 1, but that a circuit-breaker would. The First Minister invited Welsh ministers to consider a circuit-breaker. Dr Atherton informed the meeting that the four CMOs of the UK supported a circuit-breaker. Public Health Wales, TAC and SAGE all agreed that that was the right approach.

On 15 October, a Welsh circuit-breaker was discussed in Cabinet and an in principle decision was made to introduce a circuit-breaker on 23 October to cover three weekends. This in principle decision was not formally approved until Cabinet met again on Monday 19 October and the First Minister announced that evening that the Welsh firebreak lockdown would take effect from Friday 23 October for two weeks.

Issues for this module to consider will be whether the need for a firebreak lockdown could have been avoided had different decisions in the easing of restrictions been taken in late summer 2020. Given the advice that had been received by the Welsh Government in mid-September that a circuit-breaker was needed and would be most effective if implemented early and deeply, was the delay in implementing a circuit-breaker justified? Why did it take four days to formally make

the decision to implement the firebreak lockdown?

The Inquiry will also need to consider whether the funding arrangements between the UK Government and the Welsh Government played any part in the timing and length of the Welsh firebreak. This is because although devolved governments have a direct and immediate responsibility for responding to a pandemic, they do not always have the funding to support decisions if money over and above the Barnett consequential funding is needed.

Her Majesty's HM Treasury operates on the basis that when the UK Government wishes to implement a policy in England, consequential funding is made available to the devolved governments. The process does not, however, operate in reverse.

Welsh ministers will say that the limitations imposed by these funding arrangements is illustrated by the discussions which led to the Welsh firebreak. The Job Support Scheme, which was to be the successor to the Coronavirus Job Retention Scheme, was due to start on 1 November 2020. Further to the Welsh Cabinet's decision in principle to introduce a firebreak in Wales, the First Minister asked the Chancellor of the Exchequer to start the scheme earlier in Wales, a request which was declined.

The First Minister described the effect of that decision in his written evidence as one of the most misguided decisions of the whole pandemic, demonstrating in his view that HM Treasury was in effect acting as a Treasury for England, not a Treasury for the UK.

This is denied by UK Government ministers, including the Prime Minister, Mr Sunak, who has provided written evidence to this module stating that Wales received £5.2 billion additional upfront spending by 8 January 2021, and that there was no temporal gap in financial support as the Coronavirus Job Retention Scheme was extended with effect from 31 October 2020.

Returning to the chronology, on 24 November the four nations reached a joint decision on a package of relaxations over the festive period. The core element of this package was a relaxation of mixing in private houses to allow three households to form a bubble from 23 to 27 December. Travel restrictions were also to be lifted across the UK for this period to allow families from across the country to form a bubble.

In order to allow some mixing over the festive period, the Welsh Cabinet met on 27 November to discuss the imposition of NPIs in the pre-Christmas period. The Cabinet minutes note that if the rise in the number of infections was left unchecked it would overwhelm

an already stretched NHS, which would lead to a greater spread and higher incidence in older age groups. The Welsh Cabinet agreed that the most appropriate approach was to draw on the Scottish level 3 model, but to create a bespoke solution for Wales.

TAC advice was commissioned. Based on modelling, TAC advised that introducing Tier 3 restrictions, so namely the closure of hospitality and entertainment and a reduction in mixing, prior to the relaxation of restrictions before Christmas, would reduce the number of hospital and ICU beds required for Covid-19 patients and also the number of deaths.

As such, Tier 3 restrictions were introduced in Wales with effect from 4 December.

On 9 December, Dr Atherton updated the Welsh Cabinet on current transmission rates. In summary, the number of cases was continuing to rise, with 2,000 new infections reported the previous day. Infection rates were now greater than prior to the start of the firebreak, whereas in Scotland rates were significantly lower. Cabinet, therefore, agreed in principle that Wales would move to alert level 4 restrictions from 28 December if infection rates did not significantly fall by then.

On the same day Mr Gething received letters from the

chairs of two local health boards letting him know their concerns that the health system could be overwhelmed. Dr Goodall also emailed Mr Gething stating that there was a visible increase in overall and confirmed cases and that cases were in fact running ahead of the number that he had shared with Cabinet as his personal worst-case scenario.

The following day, 10 December, Mr Gething was sent information from Public Health Wales containing worrying information about the R number and doubling time. The advice from Public Health Wales was to introduce a suite of additional restrictions, essentially to impose a firebreak prior to Christmas.

At a Cabinet meeting on 10 December, Mr Gething reported that infection rates across Wales now exceeded 370 in every 100,000 people. The decision was taken to move secondary schools and colleges to online learning from Monday 14 December.

On 14 December Mr Gething was informed that there was a new variant of Covid-19 circulating in the UK and this new variant was more transmissible.

On 15 December, Public Health Wales advised that level 4 restrictions should be brought in immediately. During a ministerial call that evening Dr Atherton also advised an immediate move to level 4 restrictions and a

change to Christmas easing of restrictions.

The following day, 16 December, the First Minister announced that Wales would move into alert level 4, a lockdown from Christmas Day, and that a smaller Christmas was a safer Christmas.

On Saturday 19 December the First Minister updated Cabinet following an earlier meeting with Mr Gove, the First Ministers of Scotland and Northern Ireland, along with the UK CMO and CSA. As a result of a new strain of the virus, the First Minister informed Cabinet that the UK Government would be announcing significant new measures that would see parts of England, including London, move into Tier 4 restrictions, in effect a full lockdown.

In Wales, hospital admissions were running ahead of the reasonable worst-case scenario and there was significant pressure on the social care sector. Rates per 100,000 in some areas of Wales were higher than in some of the English Tier 3 areas that had been moved into Tier 4. In the circumstances, the decision was taken to bring forward alert level 4 restrictions for the whole of Wales from midnight that night. The First Minister describes in his written evidence to this module as this being one of the hardest decisions the Welsh Government faced during the whole pandemic.

Whilst the management of the first lockdown was undertaken largely on a UK basis, with Welsh Government decision-makers relying heavily on the advisory systems available to them via the UK Government, these later outbreaks took place at a time when the Welsh Government's strategy for the management of the pandemic had diverged from that of the UK Government. Whilst decision-makers may claim, and have claimed, that the early pandemic involved them being overwhelmed by the new virus, in these later parts of the pandemic the Welsh Government had at least the experience of the first wave to call upon in order to ameliorate its response. Issues for this module will be whether the Welsh Government learned from these previous experiences to prepare for and respond better to subsequent waves of the virus in the interest of preventing infection and ultimately saving lives? Whether a further lockdown in Wales was necessary? Should the decision to lock down have been taken earlier?

Moving into 2021, on 6 January, in light of cases remaining very high in most parts of Wales, with rapid increases in North-East Wales, the Welsh Cabinet decided to maintain alert level 4 restrictions across the whole of Wales for another three weeks. Fortunately, as Wales moved into spring 2021, restrictions were able to be

eased and schools in Wales were able to resume face-to-face teaching in late February 2021.

Heading into the winter, Omicron emerged as a variant of concern. Such were the concerns that the First Minister and First Minister of Scotland wrote a joint letter on 29 November to the Prime Minister calling for a COBR meeting to discuss the risks posed by Omicron.

On 10 December COBR met for the first time since January. COBR minutes record the UK CMO confirming with high confidence that Omicron was growing rapidly across the UK and infections were likely even for those who had two vaccines. Dr Atherton confirmed that Wales only had a small number of Omicron cases, 13 in total.

COBR met again on 19 December. The Covid-19 Taskforce reported that there had been a number of Covid-19 cases across the UK over the previous five days and that the two days prior broke the record for the highest number of cases in a single day since the start of the pandemic.

Dr Atherton reported that Wales was still experiencing high but stable community transmission of Covid-19 cases and confirmed Omicron were rising, but from a low baseline.

On 21 December, given the increased transmissibility

of Omicron, the Welsh Cabinet decided to move to alert level 2 from Boxing Day in order to slow transmission.

Fortunately, by the time of the 21-day review on 13 January 2022 there had been a rapid change in the trajectory of the data, and infection rates in Wales were falling. Gradually, restrictions were eased throughout the spring of 2022, with the last restrictions in Wales lifted in May 2022.

Having given that whistle-stop tour of the key decisions and events of January 2020 through to May 2022, I propose to next explain some of the other key areas that will be explored in evidence in this module.

The Inquiry has already heard evidence in Module 1 about structures which existed at UK Government level and within the Welsh Government to deal with emergencies such as the Covid-19 pandemic. The evidence which has been heard included national entities like COBR, in which it was envisaged that the Welsh Government would play a part, but also local entities, like the Shadow Social Partnership Council, which was set up to bring together employers, employees and the voluntary sector and which met regularly during the pandemic.

As well as existing structures, new entities were created to deal with and respond to the pandemic when it

struck. I've already mentioned the Covid-19 core group, which consisted of the Welsh ministers and key officials most involved in developing the Welsh Government pandemic response.

In addition, the First Minister established the Star Chamber in March 2020 to oversee and co-ordinate the Welsh Government's fiscal response to the pandemic. The BAME Covid-19 Advisory Group was also set up under the leadership of Judge Ray Singh, with its two sub-groups chaired by Professor Keshav Singhal and Professor Emmanuel Ogbonna, who your Ladyship will be hearing evidence from tomorrow.

The Inquiry also received evidence about the Disability Equality Forum, which met regularly over the course of the pandemic, chaired by Jane Hutt. Following a meeting of the Disability Equality Forum on 23 June 2020, work began to produce a report about the devastating impact of the pandemic on disabled people. My Lady will be hearing from the author of that report, Professor Debbie Foster, also tomorrow.

As part of the Inquiry's examination of Welsh Government decision-making, we will be examining the extent to which informal communication such as WhatsApp messaging played a role in core decision-making and how effective and appropriate such means of communication

were. To this end, the Inquiry has disclosed hundreds of WhatsApp and text messages from numerous messaging groups, including messages from prominent Welsh Government ministers, including the First Minister, and others in key advisory roles within the Welsh Government. Although it does not appear that text or WhatsApp exchanges were used as an alternative to formal decision-making processes, the messages do shed light on and provide relevant context to some of the key decisions which the Inquiry will be examining in this module.

There are instances where the Inquiry has received evidence that informal communications have been deleted by the participants. The Inquiry will wish to know why and how such messages are now not available for inspection.

The Inquiry has also received copies of Welsh Government policies about the use and retention of informal communications. The Inquiry will wish to know the extent to which these policies have been complied with and compliance with them policed.

The importance of the advice provided to the Welsh Government is a matter upon which I've already touched. In this module we will examine the advisory systems which the Welsh ministers had access to in formulating

their strategy to combat the virus. In particular, we will look at the extent to which established advisory systems available to the Welsh Government via UK-wide structures such as SAGE and NERVTAG provided Wales with a reasonable opportunity to seek and receive appropriate advice upon which to base its decisions, the circumstances in which Wales came, during the course of a public health emergency, to form its own, new bespoke advisory systems, in the form of TAG and TAC, the operation of those systems, the composition of key advisory bodies, the advice which they provided, the extent to which it was appropriately communicated, understood and acted upon.

The significance of data, and in particular local data and modelling, will be examined as well as whether adequate local data was available to assist in the Welsh Government's strategic response.

The limited testing capacity at the start of the pandemic meant it was hard to know how the virus was spreading and where. The extent to which systems for data collection and assimilation were adequately improved as the pandemic went on will be considered, as well as the extent to which data was reasonably publicised and explained in order to maximise the public's understanding of the threat and steps being

taken to combat.

The role of cross-border data collection and analysis exercises will also be considered, including the extent to which these worked in the best interests of Wales to make sure that a combination of local data and data beyond Wales was being used efficiently to understand the nature of the threat both generally and specifically to the people of Wales.

The Inquiry will seek to ask how effective the Welsh Government's public health communications were. Were the rules on meeting outdoors, social distancing and staying local so complex as to be unwieldy and counterproductive? Were the public health communications accessible for vulnerable and minority groups? What, finally, was the impact of alleged or proved breaches of rules and standards by ministers, officials and advisers?

Turning, finally, to the issue of enforcement. The list of issues for this module identifies the following questions: how and by what means were coronavirus laws and regulations enforced in Wales? Why did the Welsh Government decide that criminal sanctions were necessary? When making this decision, what consideration was given to vulnerable and at-risk groups? In general terms, was the enforcement of

coronavirus laws and regulations in Wales proportionate?

The Coronavirus Act had its genesis in the draft Pandemic Influenza Bill, work on which was ongoing for some time. Some argue that ministers were able as a result to impose significant restrictions on the public with less parliamentary scrutiny. Was this the case? If so, was this appropriate and understood? Did a lack of clarity in legislation and regulations make it difficult for the Welsh public to know what was criminalised and what was not, and also to lead to uneven enforcement? How was the balance struck between incentivising people to adhere to social restrictions such as self-isolation and punishing them for breaches? Were the rules enforced fairly?

Having been through some of the key events and core decisions, and identified the issues, I now need to make some points about the way in which the Inquiry will approach its task.

At the outset, the Inquiry recognises that there were no easy decisions. The Welsh Government, in common with all other governments, was required to make extremely serious and far-reaching decisions about how it would respond. It faced terrible dilemmas in the knowledge that a wrong or ill-judged step could prove to be extremely damaging, perhaps in entirely unintended

ways. Its decisions were literally matters of life and death.

This module will not be attempting to substitute its own judgement for that of the Welsh Government decision-makers. It will be examining instead whether the key decisions were not just open to the decision-makers to take, but well reasoned, that is to say sufficiently well thought out, sufficiently speedy but taken after suitable consideration and thought, and justifiable in the context in which they were made and in light of the knowledge then available.

There may not have been a single right answer in the exercise of the Welsh Government's high level strategic decision-making, but there could certainly have been bad answers, decisions that were not properly justified or answers that were unnecessarily delayed. Whether there were will have to await the evidence.

The point about knowledge is critical. The Inquiry does not intend to enquire through the distorted lens of hindsight. For this reason, in the particular context of lockdown decision-making, counterfactual scenarios such as how many deaths would have occurred if the government had done or not done that must be treated with particular caution.

The evidence may show that the odds were always

stacked against Wales because the demographic characteristics of the Welsh population, in particular the differences in health and age profile in Wales, meant the impact of the virus was always likely to be more acute. But the evidence may also show -- we will have to see -- that there was actually a failure of technical insight. Was the inevitable spread of the virus after the end of January properly appreciated by the Welsh Government? Were the consequences of the likely lack of control measures adequately understood? Was there a failure to scale up resources? Was there a failure of process? Was there a failure to obtain and consider specialist non-scientific advice, such as societal, economic, education impact and real world events, alongside the advice from TAG, TAC and SAGE? Was a proactive strategy adopted and pursued, or did the Welsh Government simply follow the UK Government's lead? Was there a failure of leadership and decision-making?

The Inquiry will need to enquire whether there was a lack of national strategic leadership and co-ordination from the Welsh Government in January and February 2020. The Inquiry will enquire into whether the Welsh Government demonstrated sufficient leadership when it came to the events of March 2020, the first lockdown, the re-emergence of the virus in September,

the firebreak in October, and the lockdown of January 2021.

Finally, we must pay thanks to the individual efforts and heroism of civil and public servants and health and social care workers who put their lives on the line to battle the pandemic, the scientists, medics and commercial companies who were able to produce life-saving treatments and ultimately vaccines, the local authority workers and volunteers who delivered food and medicine to elderly and vulnerable people and who vaccinated the population, and the emergency services, transport workers, teachers, food and medicinal industry workers and other key workers who kept Wales going through the darkest of days.

Through this Inquiry we seek not only answers but also hope. Never again can a virus be allowed to lead to so many deaths and so much suffering. In the face of unprecedented challenges we must uncover the truth, learn from our experiences and chart a path forward that ensures the safety, well-being and resilience of Wales.

LADY HALLETT: Thank you very much indeed, Mr Poole.

We'll break now, and I shall return at 2 o'clock to hear from Ms Gowman.

(12.58 pm)

(The short adjournment)

(2.00 pm)

LADY HALLETT: Ms Gowman.

Submissions on behalf of Covid-19 Bereaved Families for Justice Cymru by MS GOWMAN

MS GOWMAN: Thank you, my Lady.

Prynhawn da a chroeso i Gymru, good afternoon and welcome to Wales, my Lady. I appear on behalf of Covid-19 Bereaved Families for Justice Cymru.

12,510, the number of deaths registered in Wales where Covid-19 is mentioned on the death certificate as at 2 February 2024. Countless lives lost and so many more shattered. Against this context, the Welsh bereaved are still fighting for truth, justice and accountability.

Module 2B will scrutinise the Welsh Government pandemic response. During the pandemic, the Welsh Government asserted its right to do things differently using its devolved powers, it claims to have adopted an evidence-based approach to pandemic response measures tailored to Wales. The Cymru group has significant misgivings and considers that harmful mistakes were made.

Any government would be hard pressed to match the shocking display of arrogance and central government toxicity within Westminster at that crucial time,

however the Inquiry must guard against unhelpful comparisons. The Westminster yardstick sets the bar particularly low. The Welsh Government must be judged not solely by comparison to what was happening in Westminster but by its own standards, its own evidence, by what it knew and when.

This module is particularly important for the Cymru group, as it remains bitterly disappointed that despite repeated calls from the Welsh bereaved and political community, the Welsh Government has refused to open itself to scrutiny by establishing a Wales-specific inquiry. The Welsh Government has established a special purpose committee to supplement the work of the UK Inquiry, however it lacks teeth and has been likened by one of its own members to using a sticking plaster to treat a bad wound. The Cymru group considers that the Welsh Government seeks to thwart a granular inspection of Welsh decision-making, seeking instead to hide behind and deflect blame onto the UK Government, and within this context it is very much welcomed that this Inquiry will shine a spotlight on the decision-making in Wales and will do its utmost to investigate and analyse fully and fairly the most significant issues impacting Wales.

The Inquiry's ongoing commitment to facilitating the participation of the Welsh bereaved is also welcomed.

The decisions made by Welsh Government must be understood through the lived experiences of the Welsh people. The Welsh bereaved saw first-hand consequences of deficiencies in preparedness and response. They witnessed individual and systemic failures as Covid-19 spread like wildfire through hospitals and care homes, fuelled by derisory testing regimes and inadequate PPE. The voices of the bereaved in Wales must, have and will continue to be heard in the powerful testimony to come.

Some of the most insightful evidence, my Lady, in Module 2 came from contemporaneous informal communications such as WhatsApp and text message. The Welsh Government claims to have disclosed all material within its possession. However, the disclosed material, we say, is belated and dubiously limited. Some in Welsh Government deny the use of informal communication for government business, but this does not ring true or bear scrutiny. Others claim that messages were simply deleted. This is questionable and contrary to the words of the First Minister's official spokesman who said to the press on 7 November 2023 that staff were regularly reminded of the need to maintain and retain robust records relating to decisions taken throughout the pandemic.

The limited messages that have been disclosed

clearly show WhatsApp and text messages used to discuss government business where they shouldn't have been. They show Welsh Government's senior special advisers suspiciously and systemically deleting communications. They show special advisers reminding themselves and others that they had agreed "to clear out WhatsApp chat once a week". They show Jane Runeckles, the most senior special adviser for the First Minister for Wales, and Vaughan Gething, Minister for Health, turning on disappearing messages. They show that despite asserting to the Senedd that he did not use WhatsApp, Mr Drakeford was regularly using WhatsApp to discuss policy, announcements and even to seek clarification on the rules. This beggars belief.

The Welsh bereaved look forward to hearing how the Welsh Government justify the use of informal communications for government business, and to understand why full access to all informal communication has not been made available to allow for full scrutiny of policy discussions and decision-making via this forum.

On science and modelling, TAG, TAC and its subgroups were established "not to re-create all the SAGE mechanisms but to allow us to just simply translate the implications of that into the Welsh context". Was

SAGE's English-centric focus justifiable? And was the establishment of TAG and TAC necessary and effective in achieving its aims?

Documents disclosed to the Inquiry point to deficiencies in respect of TAG and TAC, with concerns raised in respect of independence, expertise, capacity and co-ordination. Disclosure from one subgroup suggests that the engagement with TAG was never really formalised and the commissioning of work was almost completely informal and haphazard. Many requests were verbal and responding to some specific point, with almost a knee jerk or panic flavour to them.

Further, it is suggested that Wales struggled to have its voice heard at UK scientific fora, a small fish in a larger pond. And what impact did that have?

The Inquiry should also examine the interface between science advice and policy. Did policymakers ask the right questions, and were they able to effectively translate scientific advice into robust policies? The Cymru group is concerned to read that there has only been a low level of challenge from policy teams to scientific advice, which suggests a sign of policy weakness.

Finally on this topic, it is also of real concern that at the start of the pandemic the disclosure

suggests that Wales did not have any modelling capability, leading to over-reliance on SPI-M models, notwithstanding the "poor fit" for Wales.

Did Welsh Government act quickly to identify modelling needs and mobilise expertise? If not, what impact did this have on the Welsh Government's response? There must be close scrutiny of the Welsh Government's early response to the threat of the virus, including whether valuable time was lost in January, February and March 2020.

The Inquiry heard in Module 2 that by late January 2020, and by 4 February at the very latest, the UK Government should have been electrified into action, and the Welsh Government should equally have been so electrified.

On the contrary, the disclosure suggests that the Welsh Government's initial response was slow, chaotic and disjointed, notwithstanding clear evidence that the NHS in Wales was imminently to become overwhelmed. The CTI has stated that the evidence suggests that during February 2020 the virus was not a priority for the Welsh Government, and the Cymru group agrees. The observations of Public Health Wales' then lead strategic director are also telling. He states:

"What I think was missing in the first few weeks

from 8 January 2020 when I first became aware to 20 February 2020 when the [Health and Social Services Group] Coronavirus Planning and Response Group first met, was national strategic leadership and co-ordination from Welsh government."

A view also seemingly echoed by the Chief Scientific Adviser for Health.

After the first case in Wales was reported on 28 February 2020, the disclosure suggests that the response continued to be slow and the Welsh Government, led by the nose of a clumsy UK Government, failed to act with focus and speed required to anticipate and prepare for the interventions that became necessary. Armed with scientific data, it was open to the Welsh Government as a devolved administration to act sooner. Why didn't it? Why did it blindly follow the UK Government in a case of the blind leading the blind?

Why, for example, was the Welsh Government so slow to ban mass gatherings, declining to cancel the Wales versus Scotland rugby match and two Stereophonics concerts in mid-March, despite the increasing rates of community transmission evident at that time?

Third, what were the consequences of inadequate early response? The disclosure suggests that by reason of the Welsh Government's deficient response it was

deprived of precious time to armour up for battle, to prepare the interventions required. During this lost time, decision-makers in Wales could and should have been liaising with key partners, establishing effective consultative fora, and formulating co-produced plans on a whole range of non-pharmaceutical interventions, including track, trace and isolate and PPE, and bolstering the fragmented health and social care sector against the foreseeable demands to be placed on it.

Finally, leading the charge on the pandemic was the First Minister for Wales, his Cabinet and his special advisers. In Wales, we have a saying, [Welsh spoken], which translates to "A man without prudence is a ship without an anchor". The Inquiry will consider whether this First Minister effectively steered the Welsh ship through the pandemic storm, and did the Cabinet and special advisers serve him well as his second mate. The Cymru group is unconvinced, perturbed instead by its perception of chaos.

Moving on to transmission, the Cymru group asks the Inquiry to examine the evidence which was available at all stages of the pandemic in relation to asymptomatic and airborne transmission. The disclosure is clear that as early as 28 January 2020, SAGE and in turn the Chief Scientific Adviser for Wales, were aware of asymptomatic

transmission. The Cymru group wishes to understand the steps which could and should have been taken from that moment on.

Mr Drakeford in his witness statement states that there needed to be sufficiency of evidence before operational decisions could be based on it. In the absence of certainty on asymptomatic transmission, but in the context of clear risk evidence, decision-makers could and should have erred on the side of caution. And I note, my Lady, that this was an argument traversed at length in Module 2, and Mr Drakeford's observations in that regard didn't hold up to scrutiny.

The failure to heed the risk is unacceptable. One area where the failure to acknowledge risk of asymptomatic transmission had devastating consequences in Wales was in respect of the decision taken to discharge people from hospital into care homes without testing. The accounts of the bereaved are stark. One member of the Cymru group states:

"My father, and others, were discharged from hospital to care homes across the borough to make room for anticipated Covid patients. None of these people who were discharged were tested."

In respect of discharge to care homes, guidance issued in Wales on 8 April 2020 raised that negative

tests were not required prior to transfers or admissions into the residential setting. Thus essentially endorsing the discharge of potentially infectious asymptomatic and symptomatic patients into care homes. The Welsh Government's eventual decisions on 22 and 29 April 2020 to firstly test everybody being discharged to a care home and, later, to provide step-down facilities for those who had tested positive, was a change that came later in Wales than in England.

Similarly, the decision to extend testing to all staff and residents in care homes was not taken until 16 May 2020, again slower than the other three nations. Why did Welsh Government delay in changing its policies to factor in the risks of asymptomatic transmission? Did the Welsh Government give thought to the likelihood of the rapid spread of the virus amongst the most vulnerable? The perception of the Cymru group is that the delay was akin to a death warrant for the elderly, and a stark message from the Welsh Government that they did not matter.

A further area which saw similarly disastrous consequences was in respect of the failure to provide timely testing for healthcare workers. One Cymru member states:

"My father caught Covid while in hospital. The

nursing staff were quite open about the circumstances -- the nurses had gone to work thinking they had a cold, when really they had Covid."

Next the Cymru group asks the Inquiry to scrutinise the issue of airborne transmission. The evidence from Module 2 established that the possibility of Covid-19 being airborne should have been recognised from an early stage. Given what was known, the Cymru group states that stronger measures should have been taken at an early stage to mitigate against the risk of airborne transmission, including public messaging, guidance, targeted NPIs, for example mandating the use of FFP2 and FFP3 masks for healthcare workers. Did Welsh Government decision-making accurately reflect the scientific understanding of transmission as it unfolded and adequately mitigate the risks? If not, why not?

Next, the events of autumn 2020. In the face of mounting concerns regarding the increasing prevalence of the virus on 21 September 2020, SAGE recommended a firebreak. What followed was an unacceptable delay by the Welsh Government in the face of failed lockdowns, as it ignored TAC warnings and unjustifiably dragged its feet, with the announcement of a firebreak eventually being made almost one month later on 19 October.

Welsh Government had again let cases get too high

before imposing a lockdown. Did it learn nothing from wave 1?

The Welsh Government appears to blame the UK Government funding decisions for the delay but there is clear evidence to refute this suggestion which we hope will be put to witnesses.

Further, the group wishes to understand why the restrictions introduced following the autumn firebreak were, in the words of Wales' Chief Scientific Adviser for Health, "insufficient to control the growth of the epidemic". What controls should have been put in place and why weren't they?

There are many areas of divergence in non-pharmaceutical interventions between the Welsh Government and the UK Government, for example on testing, face coverings, circuit-breakers and relaxation of restrictions. The bereaved want to understand the justification for Welsh Government divergent decision-making when the core science was the same.

Further, crucial decisions made by the Welsh Government such as on testing and face coverings, as I've already indicated, were made later than the corresponding decisions in the rest of the UK. Why? And in particular, the bereaved want to see the rationale for not mandating low harm precautionary

measures such as mask wearing at an earlier stage robustly challenged.

There was also significant scope for confusion, disruption, and increased risk to those living in Wales by reason of the divergence in NPIs. Given the need for consistent, clear communication with the public, there should have been good reason for any areas of divergence in policy between the four nations. The Inquiry must examine whether divergences were based on sound reason or whether, for example, they were politically motivated or otherwise misguided. The Inquiry must examine, bearing in mind the risk of confusion, whether the Welsh Government did all it could to seek to prevent repeated and avoidable ambiguity in the UK Government's public messaging and to ensure that its own messaging was crystal clear.

Turning to my final topic, my Lady, intergovernmental relations. The way in which the UK and devolved administrations interacted with each other in a time of prolonged crisis is a vitally important area of examination. We know from Module 2 that there wasn't a formal structure for regular meetings between First Ministers of the devolved administrations and the Prime Minister of the UK Government, especially after May 2020, when COBR ceased to meet regularly. Despite

this, the evidence in Module 2 suggests that there were plenty of opportunities for regular contact between Welsh Government and UK Government at many levels. Is that correct? If not, if the Welsh Government had concerns about the level of engagement, what did it do about it?

The wider question is whether the Welsh Government genuinely sought to forge relations that would enable the best chance of alignment of policy where necessary, or whether there was a tendency towards silos and anti-Tory default position of one-upping and blaming the UK Government. There should have been no place for playing party politics in a pandemic, with lives at stake, and the Cymru group wishes to understand the extent to which party politics and public perception impacted on the Welsh Government's willingness to engage with and approach the UK Government in a spirit of collaboration.

My Lady, my conclusion will be delivered in Welsh, followed by English, and I'm told that I must pause to allow anybody who wants to listen via the headset to plug in.

LADY HALLETT: Unless the English is a translation of the Welsh.

MS GOWMAN: It is.

LADY HALLETT: Otherwise we can wait for the English.
MS GOWMAN: Absolutely.
(Interpreted): My Lady, there has been some acknowledgement by some witnesses that some errors were made by the Welsh Government in response to the pandemic, however the Cymru group considers the general tenor of the Welsh Government's evidence to be a gloss minimisation or the heavy caveat of hindsight; unacceptable diversion from accountability. The Cymru group is concerned that the Welsh Government has failed to meaningfully reflect on its decision-making during the pandemic to identify learnings. This concern is somewhat supported by the Welsh Local Government Association's evidence, which suggests that lessons learned exercises completed by Welsh Government have been carried out without input from its key partners.
The reality is that disclosure shared with this Inquiry suggests that errors were made. These errors caused unnecessary pain and suffering to the deceased and their loved ones. We invite the live witnesses to be reflective, accountable and to give full and transparent answers to this Inquiry so that lessons can be learnt. And there will be lessons to be learnt, and the Inquiry must make findings to prompt change.
To cite another Welsh proverb, [Welsh spoken],

"Adversity brings knowledge, and knowledge, wisdom". Changes must be made speedily in the light of any findings so that when the next pandemic strikes, as it inevitably will, the people of Wales will be better protected from harm and loss of life.
(In English): My Lady, there has been some acknowledgement by some witnesses that some errors were made by the Welsh Government in the response to the pandemic, however the Cymru group considers that the general tenor of the Welsh Government's evidence is one of gloss, minimisation or the heavy caveat of hindsight, unacceptable divergence from accountability.
The Cymru group is concerned that the Welsh Government has failed to meaningfully reflect on its decision-making during the pandemic to identify learnings. This concern is somewhat supported by the Welsh Local Government Association's evidence, which suggests that lessons learned exercises completed by Welsh Government have been carried out without input from its key partners.
The reality is that disclosure shared with the Inquiry suggests that errors were made. These errors caused unnecessary pain and suffering to the deceased and their loved ones. We invite the live witnesses to be reflective, accountable and to give full and

transparent answers to this Inquiry so that lessons can be learnt, because there will be lessons to be learnt, and the Inquiry must make findings to prompt change.
To cite another Welsh proverb, [Welsh spoken], "Adversity brings knowledge, and knowledge, wisdom". Changes must be made speedily in the light of any findings so that when the next pandemic strikes, as it inevitably will, the people of Wales will be better protected from harm and loss of life.
Diolch am wrando, thank you for listening, my Lady.
LADY HALLETT: Thank you very much indeed, Ms Gowman. Very grateful.
Mr Straw, any Welsh passages from you?
Submissions on behalf of John's Campaign and Care Rights UK by MR STRAW KC
MR STRAW: My Lady, I represent John's Campaign and Care Rights UK.
I'd like to start by reading some excerpts from two letters. The first is from Mrs Jenny Davies about her husband Meirion Davies to the First Minister of Wales and Mr Gething on 28 September.
(Pause)
Thanks very much.
The first letter is from Mrs Jenny Davies about her husband Meirion Davies to the First Minister and

Mr Gething on 28 September 2020. She says:
"Do you know when I can see my husband in his nursing home again? I have achieved one 15-minute indoor visit in six months. At the moment there are no visits allowed because of lockdown. How would any human being like it if they received a phone call which in effect meant 'Sorry, you can't see your husband any more, and we're keeping him locked up here'. Baroness Ros Altmann, member of the House of Lords, had the courage to say on television recently that loneliness and starvation would be more likely to cause death than Covid-19. A great many people agree with this. The government really needs to listen to John's Campaign and authorise one family caregiver to have the right to visit and to be recognised as a key worker. Care home residents are being kept like prisoners and being denied their human rights."
That's from Mrs Jenny Davies' letter in 2020.
On 22 May 2022, a coalition of 60 MPs signed a letter produced by Care Rights UK and John's Campaign referring to the devastating harm and harrowing experiences which the restrictions were continuing to cause for those in care. Still, nearly two years on, the problem identified by Mrs Davies hadn't been properly addressed, and the letter maintained the call

for a right to a care supporter, in other words a family or friend to provide care.

My Lady, I start with those two letters because we respectfully submit that the Inquiry should focus on people, the individuals who were affected by the pandemic. Core decisions are only significant when they impact on people, and it's important that those decisions are seen through that lens. In this context, we warmly welcome the fact that this module has started with a video of the experiences of individuals affected by the pandemic.

The two letters also illustrate several themes which I'd like to come back to. For example, for those needing care, the Covid restrictions caused severe and disproportionate indirect harm. There was a failure by core decision-makers to take it into account and, more broadly, to take proper account of input from stakeholders. There was also a failure by core decision-makers to adjust restrictions in light of that indirect harm.

My submissions focus on people needing and providing care. Now, that's not just those in care homes, it's also people receiving care at home, in hospitals, in mental health units, or otherwise. It's not just the old, but it's also young people who are in need of care

as well. And we focus on care in part because it's a useful context to illustrate the broader problems in core decision-making. But we also focus on care because this group really was at the sharp end of the pandemic. It perhaps suffered more than any other group as a result of Covid and the response to it.

That's supported by statistics, for example, those which we set out at paragraphs 5 to 8 of our written submissions. For example, in the first three months of the pandemic, 39% of deaths in the UK were of care home residents. Many more were deaths of those receiving care outside the care home, for example in domiciliary care. There was a far higher rate of death of care home residents than in hospitals. There was also devastating indirect harm.

This was an emergency within an emergency, and it should have received central attention by decision-makers, but it didn't. In many ways the care sector was overlooked.

I'd like to come to some specific examples now, but to summarise those, they show three core things. Firstly, those needing or providing care weren't given sufficient attention. Secondly, core decisions about those in care were flawed. And thirdly, these examples help understand the broader flaws that there were in

core decision-making.

So the first example is indirect harm. Core decision-makers failed to pay sufficient attention to indirect harm and to mitigate it. The government obtained detailed evidence about Covid and the extent to which restrictions would tackle it, but comparatively little evidence was obtained about indirect harms. Covid was often the overriding consideration but decisions should have been made by balancing not just the harm caused by Covid but the harm that would be caused by the restrictions that would be imposed in response.

That point is well illustrated, we say, by reference to those needing care. Restrictions led to severe indirect harm on those needing care and that's set out in more detail in paragraphs 14 to 21 and 38 of our submissions.

Notwithstanding the high proportion of overall deaths from Covid of those needing care, Covid wasn't the biggest problem for them. In fact, it was only a small proportion of the overall deaths of those in care homes. 83.3% of care home deaths were from causes other than Covid during the pandemic. In Welsh care homes, dementia and Alzheimer's remained the highest causes of death throughout the whole period.

Similarly, in domiciliary care, there was a 225% increase in excess deaths in the first wave. The great majority of that was from non-Covid causes, 77%. Yet Covid was prioritised over all else.

The restrictions that were imposed caused severe interruptions to medical care and treatment. The number awaiting medical treatment, including serious conditions such as cancer, increased nine-fold. Restrictions also prevented contact with essential or family carers, and that meant a loss of critical care and support for those who needed it most.

The specifics of this are explained in more detail by the Older People's Commissioner and by John's Campaign in their witness statements. For example, they explain that these carers check for health problems, check for sores, dehydration, for pain, help communicate, help to explain whether the individual was suffering pain or to identify medical problems that they suffered. The carers helped to provide medical care, for example medicine or physiotherapy. The restrictions interrupted that critical care that they could provide.

This, together with the isolation itself, had many adverse consequences which were raised from an early stage. For example by Age UK, they explained that the restrictions had a profound impact on physical and

mental health. Amnesty, in 2020, recorded that every single one of the family members and care home staff interviewed by Amnesty International expressed the concern that the prolonged isolation of care home residents had devastating consequences.

Similar concerns were raised by many other stakeholders, Mencap, the Older People's Commissioner, John's Campaign, Care Forum Wales, Care Rights UK, the Patients Association, the Alzheimer's Society and others, and yet those concerns were either not listened to or not properly responded to.

It was not only a physical and mental deterioration that the restrictions led to, but in addition there was the emotional point of spending the last months of one's life alone and in pain with no support of one's loved ones. That, for many, was a critical factor which was forgotten.

So there are two issues we say really concerning indirect harm. The first is that a number of the core decisions about restrictions were inappropriate in light of the indirect harm. I'll come back to that in more detail in a moment.

The second issue is that there was insufficient understanding of indirect harm by core decision-makers and/or a failure to take it into account. That's the

view of many stakeholders. It's also the view of a number of those in government. For example, the Chief Information Officer, Mr Nelson, TAG's policy modelling group, Professor John Watkins, Dr Chris Williams from Public Health Wales, Dr Rob Orford, the Chief Scientific Adviser, Professor Michael Gravenor, all expressed the concern that not enough was done to understand indirect harms.

Even as late as July 2021 TAG expressed the concerns that indirect harms are less well understood and measured, and that was within its five harms guidance.

So the explanation isn't that this information wasn't unobtainable, it was readily available from an early stage. We look forward to exploring in evidence in more detail why it was that this evidence was overlooked.

It appears that this is linked to a broader procedural flaw, which is a failure to take into account information from stakeholders or experts. There were, in this context, in the care context, some opportunities at least to provide comments, and that was positive, for example the Care Forum Wales, Older People's Commissioner and the mid-2021 Locked Out report were opportunities for some people in this area to provide feedback. But that wasn't sufficient. Firstly it was

limited, few people were invited to provide input, it wasn't a focused consultation on specific issues. But perhaps more importantly, it was ignored, it didn't feed into the core decisions. And that's the view of many stakeholders in this area, including Professor Wincott, who said there was an absence of data on social care, and this was a serious gap in the evidence base for policymaking in Wales.

A third issue, a third specific example, is the discharge decision in March/April 2020 without prior testing. We agree with Mr Poole King's Counsel that there is no doubt that there was a massive failure of infection control, contributed at least in part to the influx of infected but untested patients into care homes. And we say that was obvious, for three key reasons.

Firstly, there were very high rates of Covid-19 in hospitals at the time; secondly, those in care were obviously highly vulnerable to Covid-19; and, thirdly, asymptomatic transmission was well recognised by 17 March.

That was the date on which it was announced that people would be discharged without prior testing. The policy was maintained from 17 March until the start of May. Large numbers of people as a result were

discharged into care homes.

Now, the reason for the May 2020 decision, the reversal, which was to test people who -- even people who were asymptomatic, was because of the recognition of the risk of asymptomatic transmission. But we say that risk was well known well before May 2020, indeed it was well known before 17 March 2020.

The evidence of that has been usefully summarised in a decision of the Divisional Court in the case of Gardner. Paragraphs 34 to 125 set out extensive evidence that that was known before.

There's other evidence that's before the Inquiry. To give a few examples, Professor Watkins on 28 February 2020 in the British Medical Journal wrote an article which was widely cited which recognised the risk of asymptomatic transfer. The Chief Scientific Adviser for Health was told on 1 April 2020 that there are potentially a high proportion of infectious people who are symptomatic. Yet despite that -- we say it's inexplicable that there was a month's further delay in responding to that at a critical time.

So we understand that it will be uncontroversial that the government failed to identify or take into account evidence of asymptomatic transmission, and that's because a Welsh Government scientific evidence

advice report in November 2022 itself accepted that discharge without prior testing overlooked the potential risk for asymptomatic transmission.

This again illustrates a broader problem in core decision-making: the failure to properly consult stakeholders and experts and the failure to take that information into account.

One specific example of that is that on 22 March 2020 Mr Heaney told Mr Gething that isolation facilities in care homes would be put in place to manage these discharges. It appears that was one of Mr Gething's reasons behind the decision. But in fact up to 58% of care homes did not feel able to effectively isolate suspected Covid-19 residents. That's from an Alzheimer's Society survey in May 2020. Again, that information was available, had the government properly consulted people. But it didn't.

A fourth example, fourth specific example, concerns restrictions on visits for those needing and providing care. There were stringent restrictions in place, essentially a blanket ban, for much of the time, from March 23, 2020 until May 2021, and onerous restrictions continued thereafter. The adverse effect of those restrictions had been made clear by mid-2020, perhaps earlier. Many stakeholders had told the government or

made public statements identifying the adverse effects, and I've covered some of those earlier in my submissions. They weren't taken into account, they didn't lead to appropriate changes.

The blanket ban continued until 28 August 2020. At that point, there was a relaxation in the sense that local risk assessments took place, but those risk assessments were only about the risk of Covid, there was no recognition of the problems with indirect harm, there was no balance between that indirect harm and the risks of Covid.

In October 2020 the blanket ban was imposed again and continued for a very long time, and in our submissions at paragraph 39 we identify a number of changes that ought to have been made to that ban. One of them was the essential caregiver point that the John's Campaign had been calling for, for some time, in other words an individual who can be permitted to visit their relative, with a prior negative test, at any time, who is provided with PPE in the same way as ordinary staff is provided with it.

Another measure that ought to have been taken, we say, is that risk assessments in individual cases should have been carried out. There ought to have been a balance on the one hand of the risk of Covid against,

on the other hand, the harm that the restriction would cause, the harm that no visits would cause.

In addition, the personal wishes, the autonomy of the individual affected ought to have been taken into account. So, for example, the question should have been raised: does the person prefer to spend their last months isolated, in severe decline, with the increasing risk of death from non-Covid or face an increased risk of Covid? We say that ought to have been taken into account.

And again these illustrate wider problems with core decision-making: evidence from stakeholders being overlooked, indirect harm being overlooked, and an inflexible blanket approach being taken which led to the wrong results.

A fifth example is PPE shortages. Sufficient PPE was not made available to those providing care, among others, during the first few months of the pandemic. The evidence of that is in paragraphs 41 to 42 of our submissions. And that appears to be accepted by the government, Mr Gething in particular. The main question is why. Mr Gething suggests the answers include problems in systems for the distribution to social care, so PPE was sent to local authorities but they did not forward it to care providers. We hope to explore

whether this is a broader flaw in the decentralised nature of social care in Wales and something which ought to be challenged.

Other answers were given by Care Forum Wales, one of which was that England took precedence.

The sixth example is inadequate guidance. There was a delay at the outset of the pandemic in sufficient guidance being produced for those in the care sector. So there was no helpful guidance until 15 April 2020, and that was despite a number of requests from stakeholders and despite the great vulnerability of people in this sector.

Care Forum Wales and the Older People's Commissioner both indicated the government was slower to respond to the concerns of the care sector in producing guidance than it ought to have been. Once guidance did come in, at times it was conflicting and confusing. The Older People's Commissioner drew attention to this early on and to the importance of clarity. Her 21 June 2020 report noted that guidance was often confusing and contradictory. Care Forum Wales mirrored this, guidance was impossible to follow, and many others did, and yet the guidance continued to be unclear.

We have set out particular examples of this, but to pick on two of them, the first is whether unpaid carers

should have been given priority for vaccinations, and the guidance really vacillated between whether or not that was the case over a short period.

Similarly, John's Campaign called for more specifics on what the "end of life" meant in terms of visits, and that was because that was being interpreted in a very narrow way on the ground, causing real problems, and despite multiple efforts by John's Campaign there was no clarification of the guidance.

Again, this indicates concerns of stakeholders were not being listened to by central government or properly responded to.

Should there have been a single person within government who was responsible for clarity and consistency of guidance? Should there have been a single person responsible for ensuring guidance was understandable for those who may have difficulty in understanding it? These are questions we hope to explore in evidence.

The seventh and final example is a more general lack of support for the care sector. We give various examples of this, but they include: care workers were not key workers until October 2020; they were denied testing that was provided to the NHS; unpaid care was particularly neglected, even though it was the largest

source of adult care provision in Wales and the rest of the UK it was largely overlooked by ministers. A series of concerns were raised about that area, for example by Carers UK, but they weren't -- but very little was done to help.

If one takes together the numerous examples that I've touched on above of the care sector being overlooked or deprioritised, it raises some important questions which we hope to explore.

Firstly, this was such an important group by size, vulnerability and the severity of the adverse impact, it should have been given greater attention.

Secondly, were the lives of those in care valued less? Were they considered to be less important due to age or illness?

Thirdly, were the duties in the Equalities Act and the Human Rights Act not complied with? The Children's Commissioner's opening submissions indicate that that's the case, at paragraph 6, and we endorse the opening submissions.

The disabled people's organisations, similarly, note the -- draw attention to the Welsh Government's laudable commitment to human rights, but know that it wasn't delivered, it wasn't effected on the ground, and we also endorse those.

So we look forward to exploring these questions in evidence and being able to revisit them in closing submissions.

LADY HALLETT: Thank you very much indeed, Mr Straw. A number of the issues you raise, as I'm sure you appreciate and you've alerted your lay clients, a number of the issues cross over different modules. And it comes with the modular structure, we all know that, there's bound to be overlap, but we'll try hard to make sure that some of the issues you mention may get dealt with in a later module but we'll see how they fit in with the core decision-making. But thank you very much indeed.

Right, Mr Friedman.

Submissions on behalf of Disability Wales and Disability Rights UK by MR FRIEDMAN KC

MR FRIEDMAN: We act for Disability Wales and Disability Rights UK. They are national disabled people's organisations, DPO, led by and for disabled people.

They thank my Lady and your team for creating this stage of the Inquiry in Wales, as they thank the teams who have done the same in England, Scotland and are preparing Northern Ireland. As in Scotland, now in Wales, this Inquiry is concerned with both a crisis of devolution and a crisis for disabled people. Nothing

indicates those two things more profoundly than the figures for Wales that emerged in the summer of 2020: 68% of the people who had died of Covid were disabled people, a terrible ratio of seven out of ten deceased in Wales compared to the still shocking six out of ten across the UK as a whole.

Learning disabled people, when age is taken out of the equation, were at least three times more likely to die of Covid in Wales than non-disabled people, but that number, said the statisticians, could be as much as eight times.

When age is placed back into the equations, these figures reflect the UK's debt to the elder Welsh people, many of whom suffer from respiratory disease because of coal mining and were part of the 20th century's industrial workforce. Once Covid began, awareness of that health legacy did not escape either the Chief Medical Officer of Wales or the Technical Advisory Group.

The statements of the Welsh ministers, as well as their professional backgrounds, show a culture of government in Wales that is very different in tone and working practices to the environment that my Lady looked at in Westminster.

From the First Minister, who trained as a social

worker and is a professor of social science, through to the group of civil servants who assisted the politicians, this is not a governing class that was divorced from the humanities of everyday life, and yet the vaunted social democracy of Wales and the humanist aspirations it has for the role that the state can play in people's lives could not prevent both mass death and real suffering. Why was that so? And what does that tell us about the government of Wales and the Union alike?

Starting with the place of disabled people in the overall system of Welsh Government, first, that system has evolved in a piecemeal and incomplete fashion. That was particularly apparent in emergency planning. The Welsh Government had only taken on Civil Contingencies Act responsibilities in 2018. It had no better pandemic plan than its UK counterpart, but never acknowledged as much. What was said in Scotland can be said again here: if Wales knew that it had an older, poorer population, why did it not make itself more ready to protect them? And if it declared its commitment to comply with the United Nations convention on the rights of disabled people, why did it overlook international law obligations contained in the convention concerning planning, data collection and engagement with disabled

people for the purposes of pandemic preparedness?

Second, this was a very bad moment for the four nations to unite in jointly governing a pandemic of this unprecedented nature. Wales, especially its population of disabled people, was seriously compromised in its resilience as a result of austerity. Going into 2020, Brexit had soured relations and monopolised resources. The different geography of UK inequalities was pronounced. The gulf in politics and economics that was blamed for those inequalities was deep. The power imbalance between the devolved administrations and the UK state was significant.

Third, Welsh Government may have political commitment to developing equality and human rights, but it is not straightforward to create those things when so much of Welsh public law and economics remain part of the law and economics of England. That is the case even though the Senedd now has lawmaking powers.

In Scotland, my Lady had Professor Cairney saying: who doesn't like human rights? But emphasising that the critical question is: how are they being enforced? In Wales, my Lady has the previous Lord Chief Justice of England and Wales, Lord Thomas, questioning the benefit of aspirational Wales legislation such as the Social Services and Well-being (Wales) Act and the Well-being

of Future Generations (Wales) Act.

These laws use the language of rights without it being sufficiently precise to make any rights described justiciable. Indeed, Professor David Feldman goes so far as to call this legislation which bears no law.

Finally, on system, there are features of intergovernmental relations that pulled in disastrously different directions. They range from extraordinary oversights like not inviting Welsh representatives to the first five SAGE meetings, to truly fatal disputes about the timing of furlough funding in mid-October 2020.

All core participants will want the Inquiry to look at the rights and wrongs of these matters, but the stance of disabled people's organisations is that humanity is sovereign over state.

It is morally imperative to involve intergovernmental relations within the United Kingdom that assure best endeavours to protect people from being killed or harmed irrespective of where or who they are.

Like all four nations, when Wales had to start its Covid planning from scratch, it made mistakes. It thought food packages for those shielding would be distributed by the UK Government, only to have to catch up with England when that assumption proved to be wrong.

While its experts knew that care homes would be the greatest places of risk, Welsh Government introduced testing later than other nations, although all of them were too late.

What Welsh Government did well, and in many ways better than in other nations, was to partner with its people. For disabled people, civil servants reached out to DPOs in mid-March to find out what the government needed to learn. Regular meetings between Jane Hutt, the Deputy First Minister and Chief Whip, and DPOs started in early April 2020. Existing structures such as the Disability Equality Forum were used more frequently and dynamically also from April 2020 onwards, and new structures on inclusive communication and Covid morals and ethics were created based on liaison with DPO.

This is fundamentally different from what the UK Government did, and it contrasts with the extent to which Scottish Government disengaged from civil society groups in the first weeks of the crisis. 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. And on the recommendations of the report it was Welsh Government that set up a disability taskforce, again

unprecedented in the UK.

The outcome of this premium placed by government on social partnering is what the Welsh Government overlooked in crisis planning it was able to somewhat remedy in scaling up its existing relationships, but the DPO join the other parties in submissions today to observe that relying too heavily on good relations was not enough.

Like the Scottish machinery of government, the Welsh system does not have departments, it is organised into multidisciplinary groups which in turn each form the several more focused directorates. The turnover or churn of ministers is seemingly not as problematic as in the rest of the UK. Most ministers serve for the duration of the Senedd. Vaughan Gething worked on the health portfolio for six years. Rebecca Evans had led local government and finance since 2018. The size of the government was such that all decisions could be taken through the Cabinet. Jane Hutt, as lead minister on equality issues, was present on the daily calls and was part of the Covid core group, but there was never a dedicated minister for disabled people, which may explain partly why Wales was not prepared prior to the pandemic. Further, without a dedicated minister, what worked was left too much to chance, based on the

accident of Jane Hutt, who was committed to make things happen, which might equally have led to different outcomes if certain core personalities like her were not in place.

There was also a lack of proper auditing by the centre of government on what services were being delivered and withdrawn on the ground via local government. Again, this was outcomes based on relationships and personality and, we say, not necessarily enough on process.

The Welsh ministers make their case for small state machinery and long-standing collaborative cultures. The question on the one hand posed by Professor Wincott is: was that machinery compromised by cosiness? But the broader question for Wales and the UK is: does government by social partnership scale up in crisis? The DPO want the Inquiry to consider how it can, and why it must.

Turning to expertise, like Scotland, Wales set up its own scientific advice mechanism to ensure local focus on local data. The accusations against SAGE, without criticism of its integrity, is that it was too Anglo-centric in terms of its people, its knowledge and actual product. Like SAGE advice, the Welsh Technical Advisory Group could not escape the constraints of UK

Treasury funding, and on this all the scientists were unsuccessful in persuading the UK Government in September and October 2020 to act more forcefully and earlier to stop the second wave.

In terms of recognising the discrete experience and rights of disabled people, Wales was arguably more advanced than the rest of the UK. Since 2002 it has sought to govern in accordance with the social model that holds disability to be a societal construct rather than inherent to the challenges of individual medical condition or impairment. The complaint of disabled people in Wales is that during Covid-19 the so-called "medical model" made a considerable comeback. The reversion can be seen in the linkage of vital services to being on the shielding list, defined as a list of medical conditions. It was Welsh Government that initially acquiesced in the passing of Part 2 of Schedule 12 of the Coronavirus Act, which suspended statutory duties relevant to protecting disabled people at a point when those duties actually needed enhancing. We passed an Act, as Jane Hutt, lamented, which singles out disabled people's most basic rights as something that can be switched off when expedient to do so.

Although not the act of government, it was under Welsh Government's watch that the use of Do Not

Resuscitate notices proliferated in an unaccountable fashion. The issue was given UK-wide prominence by letters issued by a GP surgery in Maesteg, which suggested to elderly, frail and disabled people that it was better to use resources on the young and fit, who were said to "have a greater chance of survival".

While Welsh Government quickly committed itself to engagement and partnership with disabled people, to a considerably greater extent than the rest of the UK, there are still lessons to learn on how best to do that. Mark Drakeford tells you in his statement that the relationship between the state and the citizen in Wales should be one of co-production and that expertise never lies solely on the part of the provider. But in order to get beyond aspiration, co-production and co-design need to be treated as a discipline, skill and law.

However more developed that endeavour is in Wales, its practice failed to consistently and timeously feed back on whether recommendations from partners were adopted. Input was still missed at the point of policy formation and planning. Consultation was too often sought about decisions already made. Grassroots DPOs and other third sector also lacked financial capacity to participate.

The lesson of all these modules is also that

co-production and co-design cannot work without capacity and infrastructure, and on this data is critical.

Wales, like the rest of the UK, made decisions under too much uncertainty, not just about the virus, but about who was where, in what circumstances, when decisions were made.

In Wales, there were startling gaps. No modelling was done for Welsh care homes because the data was not available. The Care Inspectorate for Wales confesses in its statement to the Inquiry that it cannot guarantee that all deaths in care homes were notified to them. Felicity Bennee, an important witness, who co-chaired TAG and TAC, described data sharing in Wales as patchwork that had not finished being sown together.

There was a shortage of data analysts, a sense, real or otherwise, that data was not being properly shared from England and a view, at least held by Bennee, that Wales had not yet worked out how to work as collaboratively with the subjects of data as it should.

If my Lady then considers protection of disabled people in Wales during the pandemic, despite awareness of the risks the issues already seen elsewhere in the UK, including lack of access to food and essential resources, collapse of health care and independent living services and the suspension of disabled people's

rights, all happened here.

That lack of protection in what is otherwise a progressive state committed to the social model creates puzzles for this Inquiry, including for those advocating for a change of values as important in its own right. To be considered in this module are therefore the following:

First, as with issues of race and gender, Wales has not reached a default position of inclusivity. The Locked Out report concluded that the root cause of this is "simple thoughtlessness" about the position of disabled people.

Second, dynamic and effective engagement with DPO remains essential to correct attitudinal barriers as much as physical barriers that prevail in state and society.

Third, missed opportunities to properly use data creates its own dangers at least as much as misuse of data. It has taken Covid-19 to really bring that to light.

And fourth, as was pressed upon my Lady in Scotland, human rights are not enough if they do not contain socioeconomic rights.

On that point of redistribution, the DPO have now made the case several times that UK Covid economics was

not radical economics but limited intervention to maintain some aspect of ordinary wage earning with considerable support of businesses. That was valid, but it was never going to protect disabled people and their low paid or unpaid carers.

From the Welsh Government perspective, the UK Covid economics also put profit and expedience over care when it resisted for those few crucial weeks the scientific advice from both SAGE and the TAG to introduce an autumn 2020 firebreak. In Wales, for Felicity Bennee, who knew the numbers, it was, in her words, overwhelmingly painful that the UK was insufficiently flexible to enable a one-month Welsh firebreak only to go into its own a few days later. Whether this was a Treasury for England rather than a Treasury for the UK, as the First Minister alleges, will be for my Lady to decide, but the hierarchy of power in this relationship is unmistakable, and the tragedy of the delay is not disputed.

My Lady, at the beginning of the address we said the DPO were thankful for the work that you and the Inquiry teams in the four nations were doing, but we did not say why. There are two reasons in particular, being gratitude.

First, what the evidence is showing, as the Inquiry

moves across the United Kingdom, is that in many ways this country of nations has stopped knowing about itself culturally, economically and politically. The possibilities and challenges of what is happening in each of the four nations are largely not comprehended by governors, academics, lawyers and businesses, let alone the wider public. It is this Inquiry, occasioned and focused as it is on the Covid state of emergency, that's putting together for the first time a proper account of what the devolved United Kingdom is and how it is run.

Second, in the UK's lost comprehension of itself, disabled people across the four nations have suffered because inequalities have been allowed to grow, aggravated by unequal geographies of income, infrastructure, and co-morbidities. Covid was not the great leveler of inequality and division, it was the great revealer of those things. Disabled people constitute the lived and deceased evidence of that reality. It is this Inquiry that can help people across the UK to understand why different parts of society have been chosen to suffer profoundly different human experience.

Thank you, my Lady.

LADY HALLETT: Thank you very much indeed, Mr Friedman.

Mr Gardner, can we fit you in before we take

a break?

MR GARDNER: I planned 20 minutes, my Lady.

LADY HALLETT: Okay.

Submissions on behalf of the Children's Commissioner for Wales by MR GARDNER

MR GARDNER: My Lady, I appear before you on behalf of the Children's Commissioner for Wales.

The office of the Children's Commissioner for Wales was established via the Care Standards Act 2000 following the Waterhouse Inquiry. This was a judge-led Inquiry which concluded that the children in Wales needed an independent champion to ensure that their rights are respected and upheld.

Wales was the first country of the UK to establish the post of Children's Commissioner. The Children's Commissioner for Wales is a national human rights institution compliant with the Paris principles. Independence from government has always been a key tenet of the office's role. The Inquiry will hear evidence about how the working relationship between the Commissioner's office and the Welsh Government altered during the pandemic, but the Paris principles, particularly around independence, remained an important aspect for the commissioner to maintain in scrutinising and holding the government to account.

This module will hear evidence from Professor Sally Holland, who was the Children's Commissioner for Wales throughout the period with which the Inquiry is concerned.

My Lady, the Office of the High Commissioner for Human Rights recognises that in humanitarian crises, including pandemics, human rights issues will often arise. This is both because of the crisis itself and that measures to manage the crisis are likely to have a greater impact upon more vulnerable groups within the population, which includes of course children and young persons.

During the response to any humanitarian crisis protecting and upholding human rights should be an overarching and key aim of the state. It is essential after the event that human rights are adequately considered and reflected upon in order to strengthen the nation's resilience against future crises.

The Commissioner's legal points include the ability to review how the Welsh Government has exercised its functions. The Commissioner is required to have regard to the United Nations Convention on the Rights of the Child, or CNCRC(sic), in doing so.

It is through this power that the Commissioner's

office advises government on draft guidance and legislation through consultation processes and dialogue with officials and ministers. The urgent nature of decision-making in the pandemic necessitated that the office worked closely alongside government to discharge this responsibility and hold the government to account on behalf of children and young people across Wales.

In practice, this meant that the Commissioner's office was asked to comment on draft guidance and public messaging at very short notice throughout the pandemic. For the avoidance of doubt, the Commissioner and her office were not a part of the formal decision-making process at any point. But through the document review process, the Commissioner and her team were able to question to what extent and how the potential impact of decisions on children's rights were considered. Where this review process didn't result in greater clarity, the Commissioner would follow this up in writing with officials, ministers or the Chief Medical Officer.

The Commissioner had decided at the start of the pandemic that the office had an important role to play in ensuring that children's rights were actively considered in a fast paced decision-making process. At such a crisis point she wanted the government to get things right for children rather than potentially

getting things wrong or miss key considerations and then be critical from the sidelines.

I turn then to children's rights in Wales.

The Rights of Children and Young Persons (Wales) Measure 2011 requires the Welsh ministers to have due regard to the children's rights under the CNCRC -- sorry, I apologise, the UNCRC -- in exercising all of their functions. In this way, the individual articles of the UNCRC are incorporated into Welsh law through the Measure. The Brown principles set out how due regard should be exercised in practice, requiring decision-makers to be actively aware of their duties, and to be actively aware in advance of taking decisions as well as having this in mind when taking the decision.

It requires a conscious approach and state of mind. Crucially, a duty bearer cannot satisfy the duty by justifying a decision after it has been taken. Regard to equality generally will not be sufficient to discharge the duty, and it is not a matter of just ticking boxes.

It is good practice to keep an accurate and timely record of decision-making and how relevant questions have been considered but the record in itself may not satisfy or demonstrate how the duty has been exercised if the principles have not been complied with.

The primary way in which due regard under the Measure is demonstrated in Wales is through a children's rights impact assessment, or CRIA. The Welsh Government's children's scheme which accompanies the Measure describes a CRIA as "the tool officials are expected to use to support Welsh ministers in ensuring the due regard duty is fulfilled".

The scheme also requires the Welsh Government to undertake and publish CRIAs on the government website in order to promote transparency. Officials are expected to record their reasons if a CRIA has not been undertaken. The duties under the Measure would have applied to all decision-making processes, actions and omissions that fall within the scope of this module.

The experience of the Children's Commissioner, as noted in Professor Holland's written evidence, is that CRIA were often completed late, were far removed from the original decisions, and reflected back on the relevant decision. Retrofitting CRIA analysis to fit a decision already taken was not a unique phenomenon to the pandemic, but this was exacerbated by the condensed timeframes for decision-making during the pandemic. For some major decisions, such as school operations, no CRIA was completed at the time.

A fully completed template setting out the articles

of the UNCRC and available research evidence completed many, many months after the decision had passed would not advance or uphold children's rights in decision-making processes as this did not feed into the decision at the time. This does not satisfy the Brown principles of due regard, nor does it make decision-making compliant with the duties on Welsh ministers under the Measure.

The Commissioner's team gave initial advice to the Welsh Government to this effect in both April 2020 and again in May 2020.

Decisions around opening or partial opening of schools and the use of face coverings within schools are examples of where it was sometimes difficult to follow the rationale behind governmental decision-making, or even what had actually been decided.

The Commissioner did not and does not suggest the scientific evidence should not be used to make decisions of this nature. Nonetheless, the Commissioner expected all decisions to carefully and consistently consider the potential impact on children's rights and to clearly communicate the rationale behind any measure that may impede children's actions to their rights where this was deemed unavoidable.

It was more apparent for decisions directly

affecting children that their rights had been considered during the decision-making processes. Now, this includes decisions such as to fund free school meal equivalents during the school holiday periods and the re-opening of libraries, which many children had said were of great benefit and importance to them.

However, where decisions were in respect of the whole population, such as decisions to re-open hospitality settings in summer 2020 prior to re-opening schools, it was less clear how children's rights had been considered. The practice of completing a CRIA as part of a decision-making process that is compliant with and proactively takes account of children's rights is of prime importance to the Commissioner, and it is anticipated and hoped that it will be further explored by this Inquiry.

I turn to public health considerations.

During the pandemic, public-facing guidance was issued from both the Welsh Government and Public Health Wales. The Commissioner considered it was a difficult process at times to ascertain whether decision-making sat with the government or with Public Health Wales. Queries would be raised by the Commissioner's office with the government, who would say that this was a public health matter. Meetings with public health

officials, however, would say that they needed the government to take decisions and direct them in issuing guidance.

When seeking to scrutinise or influence decisions and the resulting guidance at this time, it was difficult for the Commissioner to understand who held responsibility for what and therefore where to take the concerns that children and families across Wales were bringing to the Commissioner and her team.

This was particularly the case around children's homes. The Welsh Government would issue general guidance pursuant to the legislation around social distancing and other mitigating measures. However, Public Health Wales issued guidance to professionals around their role in managing coronavirus infections.

In practice, this meant that children's care homes were in receipt of guidance from both institutions that was not worded the same, leading to confusion over the rules that they should be applying. This at times led to a more restrictive interpretation being followed to ensure compliance and without necessarily actively considering children's rights and experiences. This is a matter that could usefully be clarified through the Inquiry process to aid communications in future public health crises.

I turn to the crossover between reserved and devolved matters, because there were increased areas where the jagged edge of devolution caused practical difficulties when implementing new legislation and guidance in Wales.

One sector in which this became apparent was youth justice, specifically youth custody settings. In Wales, there is one youth offending institution, HMP Parc in Bridgend, and there is one secure children's home, Hillside in Neath Port Talbot. Guidance for all justice settings was issued by the UK Government in March 2020 at the outbreak of the pandemic. It essentially confined inmates, including young offenders, to their cells for 23 hours a day. This failed to take into account children's human rights.

The Commissioner was involved in discussions with the Youth Custody Service, who instituted a different regime in HMP Parc, and they did so swiftly, whereby the boys were grouped into family cohorts, to allow them to have exercise, showers and association time in limited and managed groups. This was in March 2020, well before the bubbles concept had arisen for the population at large. It showed what could be done if thought was given to how the health risk profiles might differ in smaller settings of young people, and if primary thought

was given to how to safely manage the public health risks but with children's rights being factored in.

More practical difficulties arose and persisted for Hillside Secure Children's Home, as they provide both youth justice places and secure welfare beds. They straddle the guidelines between justice, under the UK Government, and welfare, under the Welsh Government and local authorities. Practically this impacted upon staff in the setting and also directly upon the welfare of young people placed in their care.

The setting should be commended on the efforts they made to manage these constraints as best they could to support the young people during the time, but a confusion between jurisdictions inevitably caused confusion on the ground.

Previous modules and witnesses have explored the possibility of reverting control over decision-making in public health events like a pandemic to the UK Government to achieve consistency. In the view of the Commissioner, this risks oversimplifying the existing devolution settlement. The approach to youth justice is just one example that illustrates how the approach in Wales to children's health and care is inherently different. Guided by the UNCRC rights-based approach, it would not be straightforward, or desirable

for children in Wales, to row back on the devolution settlement in a pandemic.

The issues seen in youth justice settings also come back to the decision-making processes and resultant guidance not proactively considering or taking into account the differing health risk profiles for children and young people in small group children's homes as compared to large residential care or nursing homes accommodating the elderly and vulnerable.

A one-size-fits-all approach has been shown throughout the Covid pandemic not to be suitable or to meet children's individual needs and rights.

I turn to the divergence in governmental approaches.

Social partnership is a foundational principle the Welsh Government's approach. It is a common -- it is common for public sector organisations such as the Children's Commissioner to be actively involved and consulted during policy and legislative development. This continued into the pandemic and beyond and is a key feature of the approach here in Wales. The size and scale of the public sector in Wales allows this to be done in a manageable way. This allowed for the Commissioner to be proactively consulted in response to a range of issues affecting children in Wales. Within days, weekly calls had been set up with senior

government officials and the Commissioner. This evolved into proactive sharing of matters arising whereby the Commissioner's office was feeding in families' experiences and queries in real time to the government, allowing for these to be reflected upon, and this in turn did allow for appropriate changes in Welsh Government's legislation and guidance. The Inquiry may wish to weigh up to what extent this was beneficial and should be preserved, maintained or even extended in the future.

Notwithstanding the difference in approach here in Wales, it is apparent that many of the primary decisions were taken by the UK Government, and the Welsh Government were either expected to or chose to fall into line with those decisions. Clear examples in this regard relate to the proposed suspension of social care protections and safeguards and support for children with additional learning needs. The Welsh Government initially proposed to follow the decisions in England relating to fostering and adoption medical assessments and the support for additional learning needs, and sought to inform rather than consult the Commissioner's office on its decision.

To its credit, the Welsh Government pulled back on these proposals following constructive challenge but the

initial decision had only involved local authorities not children and families or those who work on their behalf such as the Commissioner's office. Had a CRIA been undertaken as part of this initial decision-making process, this may have prompted consideration of wider viewpoints and children's rights issues at that initial stage.

I turn to the convergence of care settings and risk profile.

Now, Module 6 will specifically focus on the care sector, but in relation to decision-making as falls within this module, it is important to reflect on the generic approaches to risk profiles.

The Commissioner wishes to highlight that a one-size-fits-all approach to the legislation and guidance fell short of due regard for children's rights. A care or nursing home for the elderly or those with additional vulnerabilities is a clear risk factor when dealing with a public health emergency. However, the majority of children's homes in Wales are small settings, often two to four beds, usually accommodating teenagers. Larger or group providers may have their own education provision, meaning that the young people are only mixing in limited and consistent groups, much like the bubble system or the rule of six. Requiring

children in these settings through official guidance to self-isolate for a minimum of 14 days upon every contact with Covid and to have their contact with their families completely stopped for lengthy and repeat periods of up to 28 days following any sort of outbreak was inconsistent with their risk profiles and their human rights.

Despite many professionals in Welsh Government, Public Health Wales and other public sector agencies recognising this, the guidance was not changed or amended as matters developed and understanding of transmission and risks evolved. Again, we invite the Inquiry to consider whether or not this blanket approach to all paid due regard to children's specific and unique rights and whether it was proportionate to continue with this approach throughout the pandemic.

I turn to the voice of children and young people, because Module 2 heard evidence from the former Children's Commissioner for England, Anne Longfield, reflecting her frustrations or disappointment at the UK Government not listening to the need to hear from and speak to children directly. She described governmental indifference to children and their needs. By contrast, there were a number of ways in which the Welsh Government did actively engage with children and young

people in sharing messages and listening to their views, such as televised press conferences with the then education minister, Kirsty Williams, two large-scale nationwide surveys of children and young people, organised by the Commissioner's office, and ministerial meetings with children and young people facilitated by the Commissioner's office.

None of this would have happened without the direct involvement and support of the Commissioner's office but it is notable that the government was open to working in this way and to listening to children and young people in making their decisions. The Commissioner encourages the Inquiry to consider how this practice can be protected and sustained or even built upon.

I turn to my final point on scientific evidence and messaging, because it is clear that both the UK and Welsh Governments had access to scientific data and advice to inform their decision-making processes, but the Commissioner and her team were frequently called upon to comment on or advise on decisions and guidance at very short notice, where scientific evidence on which decisions were made was often not available at that point or at all, which meant that actual decisions themselves could not be adequately scrutinised.

The Commissioner was always careful to put out clear

and reassuring messages to children and young people at every available occasion but at times this was hampered by a lack of clarity around the basis of government decisions.

Governments will hold all of the information and advice that has led to their decisions and they are therefore best placed to provide clarity and transparency. This Inquiry may wish to consider how that clarity and transparency may assist in clearer public messaging going forward.

In conclusion, my Lady, children's lives were affected in every way by the decisions of the pandemic. Whilst efforts to reach out to them, to hear their voices and to listen to their needs were made by Welsh Government, often following encouragement or support of the Commissioner to do so, the Commissioner remains concerned as to whether, when and how their rights were properly considered and fed into the decisions which were made which directly affected them. The Inquiry will weigh up how well this was done and whether this could or should be done differently in the future.

I'm grateful, my Lady.

LADY HALLETT: Thank you very much indeed, Mr Gardner.

Right, we'll take a break now. Shall I be generous or not generous? 3.40. I'll be generous.

(3.22 pm)

(A short break)

(3.40 pm)

LADY HALLETT: Mr Jacobs. I'm not going to look over to the right as I would normally do.

Submissions on behalf of the Trades Union Congress and Wales Trades Union Congress by MR JACOBS

MR JACOBS: Good afternoon, my Lady.

This is the opening statement of the Trades Union Congress, the TUC, and the Wales TUC. The Wales TUC is part of the TUC, but is autonomous in matters that are devolved to the Welsh 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.

The TUC and Wales TUC aim to provide a voice for working people and to shine a light on the consequences of government 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.

This opening submission will highlight the loss and sacrifice of those in the workplace in Wales, and focus on the approach to decision-making within the Welsh Government.

From the union perspective, as with the Scottish TUC and the Scottish Government considered a few weeks ago in Module 2A, the process of decision-making in Wales was one which no doubt had its deficiencies but was nonetheless underpinned by a process of meaningful engagement and partnership, which was welcome and valuable.

As with our opening submissions in each of the substantive hearings thus far in this Inquiry, we begin by acknowledging the loss and sacrifice during the pandemic in the workplace. We pay tribute and express gratitude to those who conveyed their stories so powerfully in the impact film this morning. It was a difficult but important reminder of the horrors of the pandemic, and the human stories that unfolded across so many parts of our society.

Those in workplace across a number of sectors played their part in the pandemic response. Those in healthcare were well and truly on the frontline and endured the dangerous, shocking and exhausting experiences of caring for those who were acutely unwell.

As John said in the impact film this morning, "Thank God for the nurses that were there. You should see what the nurses were going through".

The social care workforce also suffered. It is a workforce that is generally undervalued and underpaid, yet during the pandemic the burden was monumental. As described by many, there were appalling problems with PPE.

Kate Bell's supplementary statement in Module 2 gave an account of a member of GMB who worked in social care and described being given a plastic pinny that appeared to be the same that was used in the catering sector for sandwich making. The worker described how distressing it was trying to support those dying in the care home as the virus ripped through it, how it felt knowing that no doctor or nurse would enter the building to administer anything to ease the pain for a dying resident.

As a workforce, many in social care felt forgotten, with little press coverage even at the time regarding district and community nurses, reablement, home care and residential care. The worker said:

"Covid has left a lasting impression on care. So many staff have left, as they have been sickened by the way it was dealt with. Many staff have said that if Covid hits us hard again, they will walk out of work and

never go back in. Who can blame them? I think Covid will always affect us in whatever we go on to do in life. I've had flashbacks from writing this, and a few tears remembering."

Of course, there were those in other sectors who faced increased occupational exposure to the virus. Data regarding mortality rates across sectors indicates that process plant and machine operative occupations had the highest rate of mortality from Covid. Caring, leisure and other service occupations had the largest number of deaths of all the major occupational groups.

The Inquiry has already heard evidence as to the intersection between occupational exposure and socioeconomic inequalities. It was often the poorest in society who had the least ability to comply with measures, the least opportunity to work from home, and were most exposed to the virus in health settings and in service jobs.

There is also an ethnicity dimension. Professors Nazroo and Bécares have described that those in ethnic minorities were more likely to be employed in sectors that increased their risk of exposure to an infectious agent, such as in transport and delivery jobs, or working as healthcare assistants, hospital cleaners, social care workers, and in nursing and medical jobs.

It all points, my Lady, to one of the profound consequences of the pandemic: that those who were generally less well off, with greater disadvantage and vulnerability, paid the greater price. It was the price paid by people who kept parcels being delivered to our door, who transported key workers to work, who processed our food, who stacked our shelves, who cared for our sick and elderly, and many others.

My Lady, two further points of context are, first, the lack of resilience of public services going into the pandemic and, second, the lack of advance planning. These issues have been the subject of Module 1 and will be the subject of a report from this Inquiry. Though not the focus of this module, these issues nonetheless loom large.

Whatever the deficiencies and virtues of the processes for decision-making in Wales, very little can be done to eliminate a profound lack of preparedness and resilience. As in England, services in Wales have been hollowed out by austerity; the waiting lists for healthcare and the consequences of such terrible waiting lists, which were touched on in the impact film this morning, were worsened by the pandemic but were not caused by it. There is a simple and inalienable truth that healthcare and social care services that are

creaking in peacetime will struggle to avoid collapse if a pandemic hits.

The report from Module 1 is eagerly awaited, but it appears that the pandemic planning in Wales was as poor as it was in England. The essence if it is simple: effective pandemic response requires a quick response, but a quick response will be frustrated if there has not been the necessary planning. Many of the real opportunities to reduce the devastating effect of a pandemic such as Covid-19 lie in better advance preparation and planning for a future pandemic.

My Lady, we turn to the issue of government consultation and partnership with the unions and the pandemic response in the workplace.

An important feature of the pandemic response in Wales was the culture of social partnership which was well embedded before the pandemic. Boris Johnson's unfortunate words in private meetings were that he could not have "the bollocks of consulting with unions". In contrast, the approach in Wales was a shared sense of purpose common to government, unions and other partners. As Shavanah Taj describes, it is about delivering change by finding shared goals and listening in order to negotiate the best possible outcomes. Mark Drakeford appropriately describes this aspect as one of the most

striking characteristics of the Welsh response to the pandemic.

As the pandemic hit, the structures supportive of social partnership were in fact strengthened and increased. The Shadow Social Partnership Council -- chaired by the First Minister and comprising of union, employer and government representatives -- was extended early in the pandemic with third sector partners and the Older People's Commissioners and Children's Commissioners. It was a sensible attempt to expand the breadth of views in forming the far-reaching decisions that the government were called upon to make during the pandemic.

The Wales TUC participated in various general and sector or issue-specific fora for decision with the government, which we have described in more detail in our written opening. 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.

Like all meaningful relationships, it had its frictions, and that can be seen in the evidence; but that, my Lady, is a symptom of consulting meaningfully and at pace. Placatory and empty consultation is easy.

Meaningful partnership can come with challenges.

The Welsh Government's comparatively open approach to consultation and seeking agreement and common purpose is a story told by a number of stakeholders. The Children's Commissioner for Wales has described being proactively consulted, as has the Welsh Local Government Association, the disabled people's organisations and the John's Campaign, although there have rightly been observations about how the processes need to be improved.

In the arena of workplace safety, the approach to social partnership bore some advantages. In Wales, the 2-metre social distancing in the workplace was introduced at an early stage as a legal requirement rather than discretionary guidance, as in England. The Wales TUC, working with the Welsh Government, set up a whistleblowing hotline enabling workers to report incidents of breach. The Wales TUC and Welsh Government also collaborated to introduce a risk assessment tool designed for staff in the NHS, but also used more widely to accurately assess the risk posed to NHS and social care staff. That was intended to enhance staff safety and ameliorate some of the disproportionate impacts.

One area of intense frustration, however, was the

lack of enforcement of workplace safety. As the TUC and Wales TUC has pointed to on numerous occasions, the Health and Safety Executive is severely underfunded. During the pandemic, unions in Wales found consistent evidence that a significant number of employers were failing to take sufficient precautions against the disease, and workers repeatedly reported not being consulted on workplace Covid risk assessments. Despite clear evidence of the lack of adherence to regulations, the Welsh Government was unable to improve the situation.

Another important issue was that of financial support for those required to self-isolate, particularly those on low incomes in higher risk workplaces with inadequate provision for sick pay. A study by Public Health Wales noted the most common challenges for self-isolation included financial difficulty and the problem was pronounced for those in precarious work who were more likely to report financial concerns, more likely to report mental health difficulties, and more likely to report having no access to food or medication during self-isolation.

The issue was raised repeatedly by the Wales TUC with the government, but the response was mixed, and ultimately no more effective than that of the UK

Government.

In Wales, the same ineffective Test and Trace Support Payment Scheme was introduced, albeit even later than in England. It was not introduced until November 2020. The reasons for that should be explored, and it may have been influenced by the financial aspects of the devolution settlement for Wales.

There were some positives. The Welsh Government did increase the payment from the £500 in England to £750, and the Wales TUC also welcomed the introduction of a fund to support creative freelancers affected by Covid-19.

Separately, social partnership contributed to the attempts to address the inequalities of the pandemic. On 1 April 2020, the Welsh Government invited union evidence on equality impact. The Wales TUC response highlighted the disproportionate impact on a range of groups, including the particular impacts on BAME workers, pregnant women, parents and carers, disabled people, and migrant workers. The Wales TUC also launched a survey to enable BAME workers to share their experiences.

Next, my Lady, we touch briefly on the differences in culture between the Welsh Government and Westminster.

We agree with the observation made by some,

including this afternoon by the Welsh bereaved families group, that the dysfunction in Westminster should not be taken as some sort of barometer or baseline for assessing government; that would be to set an unacceptably low standard for the governments of our four nations.

We do observe, however, that the Welsh Government appears to have avoided some of the dysfunction seen in Westminster. As described, it was more open to partnership with others, but it was also quicker to work within agreed frameworks for decision-making, and there appears generally to have been appropriately formal and reflective discussion within government.

Finally, we touch on the issue of collaboration between the Welsh and Westminster governments.

We urge a cautious approach to the narrative suggested by Mr Johnson and others that differences were being sought for difference's sake. The differences may have resulted from a different approach to the balancing of the imperatives of saving lives and of saving livelihoods.

As the pandemic progressed, the UK Government -- at least the Prime Minister and Chancellor -- appear to have seen decisions as a choice between saving lives and saving the economy. Some within UK Government saw that

as a false dichotomy, and that appears to have been the view also of the Welsh Government.

As Mark Drakeford has said, for 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, the debate was between either saving lives or saving livelihoods, as if these were mutually exclusive objectives.

My Lady, the flaws of that approach have been considered in Module 2.

My Lady, we conclude with this observation: to some witnesses in Module 2, the deeply unattractive side of the internal dysfunction within the UK Government 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 this module demonstrates the value of a form of government that is open to and meaningfully engages with the views of stakeholders, including trade unions, but also of course many others.

In that respect, 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.

Unsurprisingly, there is room for improvement. Earlier this afternoon, John's Campaign highlighted areas where greater consultation was required, and we say that the approach of consultation and engagement is one which should be embraced but also strengthened in a future pandemic.

My Lady, that's our opening statement.

LADY HALLETT: Thank you very much indeed, Mr Jacobs.

Mr Allen.

Submissions on behalf of the Welsh Local Government Association by MR ALLEN KC

MR ALLEN: Good afternoon, my Lady, and thank you.

As in Module 1 of this Inquiry, I represent the interests of the Welsh Local Government Association, which welcomes the opportunity to be a core participant and looks forward to assisting you in any way it can.

During Module 1, it was widely acknowledged that the UK's preparedness and resilience for a pandemic was ill focused and inadequate. In this module, the WLGA asks you and the Inquiry team to look at how the Welsh Government could have better used the great knowledge and experience that the WLGA and its members, the WLGA

being the representative of all Welsh local authorities, could have provided.

Its position, my Lady, on this is nuanced. The WLGA accepts that from the outset there was considerable engagement by the Welsh Government with it, and with local government more generally. There is, though, a qualification to this point: the nature of this engagement changed over time from initially being a process of sharing information to later a more meaningful dialogue, and eventually to a recognition of local government as a trusted delivery partner.

In short, the WLGA considers that fuller and earlier engagement could well have been more effective. Its position is, therefore, that in any future similar emergency, such engagement should be early enough for it to inform and influence strategy and decision-making, and be undertaken systematically and consistently at both the political and official levels.

You will see most fully how the WLGA develops these points in the first and very extensive witness statement from its chief executive in due course, and also in the shorter second witness statement, the latter prepared after reading witness statements from others, including those working in and for the Welsh Government.

But today, in these opening remarks, there are three

aspects of the WLGA's position that I wish to state now.

First, the WLGA does, of course, recognise that during the pandemic the Welsh Government had to make decisions under great pressure, time and circumstance, and that this process of hindsight does not readily capture the pressure of the moment; and others today have made the same point.

Next, it also recognises that the Welsh Government, though it had extensive devolved powers, had to work in partnership with the London-based administration on some issues and, where this was so, it had significant consequences for the effectiveness and efficiency of government in Wales.

Thirdly, the WLGA reminds you that whatever policies were announced centrally, they had to be delivered locally. It is this third aspect, a key point, that I must develop in these opening remarks.

In short, the WLGA submits that, however apt and well designed central government policies may appear to be, the success of their delivery will always depend on the capacity of those organisations tasked with their operationalisation.

If policymaking, whether by the Welsh Government or the London administration, overlooked the need for partnership with local government, its delivery was

likely to be suboptimal. Put the point the other way around, it was the extent to which the Welsh Government co-designed its policies with local councils having responsibility for their delivery that was a determining factor in their success.

This can be encapsulated in two overarching questions for this module, and we note actually that these two questions match closely questions posed by Mr Poole this morning.

First, how significant at each stage between early 2020 and summer 2022 actually was that engagement?

Secondly, could a more extensive engagement have enriched policymaking and delivery?

These are questions about the extent to which co-design between those operationalising and those posing(?) policy could have been.

The WLGA's submission is that initially engagement was not as extensive as it could have been, and that had greater use been made of local knowledge and expertise, there would have been a better, swifter impact on communities, though it also acknowledges that later in the pandemic there was a significantly increased degree of engagement.

I make a few points about these submissions. For instance, my Lady, you will see from the evidence that

the Welsh Government created work groups that operated in a somewhat insular manner for too long before consulting with others. It could sooner have harnessed the local authority directors of public protection, and there are areas where these bodies could have done more had they known more about the disease and the measures chosen to mitigate its impact, including having more expert resource prepared and available, along with the provision of advice on social gatherings and events.

Of course it must be kept in mind that the Welsh Government was never fully autonomous during the pandemic. Nonetheless, it is submitted further that a more open dialogue with the WLGA and its local council members about the issues that arose from these matters would have resulted in better decisions.

For instance, local authorities were not engaged early enough as the pandemic developed. Knowledge and preparations were at times based on what was in the media. The Welsh Government did not involve key response partners early enough. Local authorities were aware of conversations and preparations to consider the impact of a pandemic, but were not privy to the detail of potential response needed. The concepts of a lockdown and the component elements of such a response were not relayed effectively by government. And had

a more involved dialogue existed, they could have reviewed resource arrangements around care homes, reviewed systems for engaging and protecting vulnerable people, and prepared enforcement officers to deal with the restrictions on trade and movement.

This planning could have gone on at local level for some weeks before the decisions made on March 23.

Moreover, involvement in the creation and content of the regulations, such as the 21-day reviews, as they progressed, would have avoided so many minor amendments to the number 2 regulations during the lifting of the restrictions and the re-opening of the economy.

Before making decisions about the need for rainbow hospitals, the Welsh Government could have reduced the extent to which there was a failure to meet demand, used existing resource more effectively, and created extra time for the consideration of the views of others, such as local authorities.

Local authorities and colleagues from the police had a vital role in terms of enforcement and enacting decisions, and yet at times they were informed of changes at the very last moment, or even at the same time as the media, leaving enforcement officers to interpret regulations and guidance, often without an understanding of policy intent and direction.

There are six specific issues I need to develop in a little greater detail.

The first of these is test, trace and protect, TTP. Now, this initiative was very important, yet the national health protection plan was drafted without any full understanding of how it would be scaled up across the whole of Wales. In fact, by May 2020 it was still envisioned as being solely by Public Health Wales. Only eventually was local government asked to help and subsequently, when this occurred, it led on many of the initiatives associated with TTP. This could have happened earlier, and local authority expertise in managing and operating call centres utilised sooner.

Next, there are many issues concerning money and resources and, running through all the relevant issues of this module, this is a key theme. The current dire straits of many local authorities are suddenly more in the news, but it isn't a new story. You will be aware from Module 1 that, prior to the pandemic, all local authorities had suffered austerity, budgets under significant pressure, for too many years.

The point is they had of course done their best to cope, and as a result there was a dangerous assumption that local authorities were adequately resourced to deliver the tasks arising from the pandemic controls

even whilst maintaining service continuity, and this assumption was never subjected to any detailed forensic analysis.

Some points, though, about this are now quite clear:

Local authorities are aware that permanent funding was given to Public Health Wales, whereas local authorities only received some temporary funding for the period, now discontinued.

Many of the officers deployed to work in health protection supporting care homes, providing expert advice to TTP, enforcing the coronavirus regulations, have left the profession, and the pressures facing public protection services in Wales are set out clearly in the directorate of public protection report of 2021, *Building for the Future*. Their recommendations, we suggest, must inform the basis of resource planning with the Welsh Government for the future.

So investment is now required before a future pandemic emerges so as to avoid uncertainties, complexities and variability such as happened in 2020.

My Lady, I emphasise that this isn't just a money issue, but one of capacity and of time and process. The WLGA says that legislation should be drafted now, in conjunction with the police, and investment should be made accordingly, and a rolling programme of secondments

from local authorities and the health boards into a Welsh Government contingency team would build better relationships, develop a pool of expertise and enhance understanding across the public sector.

Thirdly, my Lady, I want to say something about data and communications, such as some others have raised today. It's another area requiring significant investment. It was a key issue during the pandemic, and this is why a better regime is now needed to understand fully the risks and transmission issues and how these can be best explained locally in the future.

The picture during the pandemic was again nuanced. The information that was collected and shared did improve over time, and this permitted a greater understanding of both the prevalence and spread of the disease. However, when local authorities and other stakeholders submitted evidence and feedback, it was not so clear where it went and how it was used, or whether it had influenced policy direction.

So that's why the WLGA argues that investment in a better understanding of the public health and public protection roles of local authorities is also critical, and that this must address data sharing in detail.

My Lady, this is a theme you've heard before from me.

Local authorities acknowledge that the Welsh Government did use partners to send its key communication messages to them, and to specific audiences and communities, though the role that they took in advising the business community should not be overlooked.

Finally on this particular point, the WLGA argues that it's a significant consequence of the diverse nature of our communities that regular TV briefings can only have a limited reach to many of those most vulnerable. Public confusion had to be resolved locally during the pandemic, and the same applied to queries from business about the substantive effect of regulations.

My Lady, my fourth point concerns the PPE. It's been said that the market was flooded with fraudulent or substandard PPE, and indeed the supply and control of it was inconsistent, failed to meet the required standards on some occasions, and was often described falsely. This of course must not be allowed to recur, and there is much that could be done. Local authorities have a better understanding of the trade sectors and the enforcement responsibility to challenge non-compliant product. For instance, the role of the local directors of public protection through their trading standard

services has been overlooked. Early communication by the Welsh Government could have led to an advanced market surveillance regime being introduced, and to more interventions being made.

Fifthly, NPIs.

My Lady, before I conclude, I want to stand back from these points for a moment to consider NPIs from a different angle.

First, NPIs are more than just an issue for local authority engagement with the Welsh Government or for better investment for the future. They have, as you've heard, an intergovernmental aspect. The Inquiry will surely note the uncertainty on the scope of NPIs, particularly in border areas, though in fact they diverged both across borders and with further differences between urban and rural areas. It is surely obvious that workability about cross-border issues was essential -- there was some note of that, of course, in the film at the beginning this morning -- yet border local authorities received neither advance warning nor time to prepare, nor time to adapt local arrangements. Better engagement with local authorities would have provided more insight into potential consequences around decisions to stay local, the 5-mile guide, and the impact upon the vulnerable, along with the restrictions

on the sale of certain goods. Local authorities' input could have avoided failure associated with these policies.

The next point about NPIs is that they had of course significant and social and economic impacts. So a more extensive engagement with local authorities would have had a more positive impact on a range of social and economic issues, such as the impact of -- from school closures, the impact on those who were vulnerable, and the consequences for the local economies. More communication with local authorities on the option of lockdown would have enabled them to use that opportunity to look at remote working options earlier.

Finally, I finish with some comments about compliance with those NPIs that were in fact imposed. In practice, local partnership with the police provided invaluable insight on local similarities and differences, and the complementary powers of enforcement agencies provided more effective outputs. Local authority engagement with the four Welsh police forces was initially a bottom-up approach with local engagement from the National Police Chiefs' Council or the CPS. However, meetings between the Welsh Government, the WLGA leaders and the Welsh Police and Crime Commissioners became a good example of joined-up and regular

discussion in relation to pressing enforcement issues.

Overall, local authorities in Wales believe they adopted a proportionate and mature approach, providing guidance and advice alongside more robust enforcement when appropriate. Their aim for the future is to do that and to do it better, my Lady.

Thank you. We look forward to assisting you during this module.

LADY HALLETT: Very grateful, Mr Allen, thank you very much.

Mr Kinnier, I think you finish today's proceedings.

Submissions on behalf of the Welsh Government by MR KINNIER KC

MR KINNIER: My Lady, thank you.

The Welsh Government welcomes you to Wales, and in particular it welcomes the Inquiry's examination of its decision-making during the pandemic. Scrutiny may sometimes be difficult, even uncomfortable, but it is necessary. That is because fair but unsparing scrutiny is vital to make sure that the four nations of the United Kingdom learn the lessons of the pandemic and do so effectively.

This module's importance is obvious, but as its work begins, it is worthwhile to re-state why, and as the First Minister himself said in his statement:

"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 ... 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 [side effects and] after-effects of the virus. We continue to learn not only of the impacts on our health but on our society as a whole. I, and the Welsh Government, are committed and will remain committed to this Inquiry and to learn lessons for the future."

To that end, my Lady, the First Minister and other Welsh ministers, together with senior officials from the Welsh Government, have given statements, disclosed documents, and they will attend to be examined by Counsel to the Inquiry over the course of the next three weeks.

Fair scrutiny requires a careful examination of the evidence and analysis that was available to decision-makers and their advisers at the time the decisions were made and advice given.

As Mr Poole rightly recognised this morning, scrutiny is not and cannot be an exercise in the application of hindsight, knowing what we now know, four years or so since the pandemic started.

In answering the Inquiry's questions, the First Minister and other Welsh ministers will set out the reasons for their decisions, and senior civil servants from the Welsh Government will explain the advice that they gave, and they stand ready to be examined on the evidence they give.

In their opening statements, the Bereaved Families for Justice Cymru, John's Campaign and Care Rights UK and others have raised questions that fall to be answered in this and also in later modules. The precise dividing line between the subject matter of this module and Module 3 and Module 6 is for you to decide, but whichever part of this Inquiry you decide the questions are best put, the Welsh Government will continue to answer them in its statements, by its disclosure and in evidence.

My Lady, the devolution settlements in Wales,

Scotland and Northern Ireland have been well established now for more than 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 standard against which the decisions of the Welsh Government, and indeed the other devolved governments, should be judged.

The Welsh Government was reassured by your statement last year that there is an obvious value in assessing decision-making across the four nations and the interactions between them. The approach you 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 the decisions that they considered to be in the best interests of their nations.

The Welsh Government is, however, concerned that the concept of divergence was used in examination of witnesses in Modules 2 and 2A, and indeed in opening this morning, which suggests that the policy of the UK Government is the benchmark against which the decisions which the Welsh Government's decision-making will and indeed should be considered.

For that reason, the Welsh Government should be

grateful for the assurance that the substance of examination will reflect the constitutional, legal and political realities of the Welsh devolution settlement.

The size of Wales, the stability of its political structures, and particularly the stability of relationships between individuals and public bodies, especially in the NHS in Wales, became a significant feature of decision-making in the pandemic. In making the decisions that affected Wales, Welsh ministers knew daily how decisions were impacting the people they serve. Well established relationships between the Welsh Government and those on the frontline of the response not only enabled a productive conversation, but also robust challenge.

The Welsh TUC vigorously advocated for the rights and safety of all workers, and importantly considered that they were listened to by ministers. That view is also reflected in the evidence of other parties from whom you will hear evidence, including the British Medical Association, the Welsh LGA and others.

Cross-party co-operation is commonplace in the Senedd, and working with local authorities with different political leaderships to the Welsh Government is the norm rather than the exception. For that reason, leaders of the Senedd opposition parties, together with

representatives of other bodies such as the Welsh TUC, the Welsh LGA, the Wales Council for Voluntary Action and the police, attended the core Covid-19 group and were regularly briefed on the pandemic, the relevant data and intended decisions.

As has been commented upon by the Welsh TUC and other CPs, the Shadow Social Partnership Council was an important element that contributed to decision-making in Wales during the pandemic. Its membership was expanded and its operations were radically altered to provide a weekly forum for consultation, and notably informed an open discussion of forthcoming decisions. It was attended by a broad cross-section of the community, including the CBI, the Federation of Small Businesses, trade unions, third sector parties, and the future generations, Welsh language, Older Persons Commissioners and the Children's Commissioner. The council 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 the NHS in Wales. In the First Minister's own words, meetings were challenging but constructive. The council heard in advance of publication about the substance and timing of intended decisions.

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, the Welsh Government has focused on addressing entrenched health and socioeconomic inequalities through the law -- for example, the Well-being of Future Generations (Wales) Act 2015 promotes equality as an objective for society -- and also by policy and other funding arrangements.

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.

Since 2010, and uniquely in the UK, Welsh ministers have been required by law to have regard to the UN Convention on the Rights of the Child in their decision-making. They were well used to doing so by the time of the pandemic, and ministers' specific appreciation of the impact of the virus on children inevitably developed as evidence of that impact was gathered and analysed.

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. That imperative came into sharp focus early in the pandemic because of the emerging evidence of the differential impact of the virus on Black, Asian and ethnic minority communities. Evidence emerged from prominent clinicians who observed that Black, Asian and minority ethnic colleagues were more vulnerable to catching the disease and suffering from 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 subgroups. The socioeconomic subgroup looked at the broader context of the disproportionate impact, and on 18 June 2020 it submitted its report, whose recommendations were immediately implemented. Another subgroup developed a risk assessment tool to help health and social care workers decide whether they were at higher risk from the virus, and that too was swiftly implemented.

The Welsh Government's pre-existing Disability Equality Forum was adapted to provide a means of communication and consultation with disabled people; a means, in Professor Debbie Foster's words, not available to disabled people in other parts of the

country.

In June 2020, Professor Foster was asked by the forum to write a report about the experiences of disabled people in Wales during the pandemic. On any view, the subsequent report made for powerful reading. 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. That valuable and necessary work, sponsored by the Minister for Social Justice, continues.

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 well-being was of critical importance throughout. Data and modelling in Wales took account of the higher proportion of older people in the population, which in turn informed decision-making. The Older People's Commissioner was a member of the Shadow Social Partnership Council, and in that forum -- and indeed elsewhere -- she was a forthright and respected advocate of the interests of older people.

My Lady, may I turn briefly to the question of informal communication and WhatsApp messages.

These have received sustained and intense interest

in the Inquiry, and for that reason elsewhere. Given that interest, one point is clear and, as was indicated by Mr Poole in opening this morning, a careful consideration of the documents including WhatsApps and other messages shows that neither Welsh ministers nor senior officials used WhatsApp or indeed any other form of informal communication as a substitute for or a supplemental means of decision-making.

My Lady, the Welsh Government has addressed you in Module 2 and in writing in this module about the issues which, from its perspective, affected intergovernmental decision-making during the pandemic. As the First Minister repeatedly said at the time, there were obvious and necessary advantages to establishing a regular rhythm of meetings between the heads of government. That was not done, and it was not done because the then Prime Minister was anxious to avoid creating the impression that the UK was a federal state. That concern with appearances did not recognise, and so did not meet, the scale of events confronting all four nations.

As was also discussed in Module 2, although there was much to commend the Treasury's response to the pandemic, equally the pandemic reinforced and illustrated the unresponsiveness of the Treasury and the

restrictions of UK-wide programmes.

That problem is best demonstrated 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 the 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, then the Chancellor, to bring forward the start of the scheme by one week to coincide with the beginning of the firebreak in Wales. The First Minister 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 the Treasury the additional cost of bringing the scheme forward. The request was declined due to "limitation on HMRC delivery timeline". Quite what that meant has never been explained by the Treasury.

Mr Sunak's recent suggestion that the Welsh Government could and should have used an upfront guarantee 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. Undoubtedly Mr Sunak's evidence will be discussed with the First Minister in due course.

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 incidence, and the problem remains to this day unresolved. These limitations are flaws in the system, not a single point of failure. The Treasury's unresponsiveness to the need and public health requirements of the devolved governments meant that actions taken by the Treasury to put in place interventions were based solely on instructions from central government.

My Lady, finally, may I turn to the not straightforward question of recommendations.

The First Minister has proposed two recommendations touching upon reform of intergovernmental relations and arrangements that allow the devolved governments equal and fair access to funding in the event of a future public health emergency. Undoubtedly the evidence will reveal others.

A fundamental part of the Inquiry's work is the formulation of efficient and effective recommendations to put right any deficiencies or flaws that have been identified in the evidence. Consideration of

recommendations is never straightforward, as my Lady may recall from previous experiences. At the start of Modules 1 and 2, the Welsh Government asked the Inquiry to publish details of its proposed arrangements for consideration of recommendations, and I repeat that request to you today.

My Lady, since the start of the Inquiry the Welsh Government has provided more than 100 statements and thousands of documents to the Inquiry. Over the next three weeks, you will hear evidence from the First Minister and other Welsh ministers as well as senior officials. As I said at the start, scrutiny is necessary and it can be uncomfortable, and the Welsh Government will continue to provide you and this Inquiry with every assistance, and crucially to answer the questions that the people of Wales rightly want asked.

Thank you.

LADY HALLETT: Thank you, Mr Kinnier.

Please try to allay the concerns of the Welsh Government in relation to divergence. Yes, you will have heard the word, and I've considered it in other modules, as you indicated, but I did say something in 2A that may be of some comfort to the Welsh Government. I think I commented at one stage: just because there's a divergence doesn't mean that England is right and

Scotland or Wales or Northern Ireland are wrong. So it's merely recording the fact that there is a divergence; it's not suggesting any particular nation is to blame for it. It may well be in some cases there is some responsibility attached, but it doesn't necessarily mean the devolved nation has got it wrong by going a different way from England.

MR KINNIER: I'm very grateful for that, my Lady.

LADY HALLETT: Thank you.

Thank you, everybody. I think you must be one of the most timely groups of core participants and Counsel to the Inquiry: finished almost on the dot of the time we had expected.

So thank you all very much indeed for your submissions, they were all instructive and sensible and I shall obviously bear them all very much in mind, and of course I shall bear in mind any of the written submissions that I have received, either supplementing your submissions today or if they are instead of any oral submissions from other core participants.

So thank you all very much indeed. 10 o'clock tomorrow.

(4.33 pm)

(The hearing adjourned until 10 am on Wednesday, 28 February 2024)

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