

Expert Report for the UK Covid-19 Public Inquiry

Module 2B: Welsh Government core political and administrative decision-making in relation to the Covid-19 pandemic

Author: Professor Daniel Wincott

About the author

I am Professor of Law and Society in the School of Law and Politics at Cardiff University. I hold undergraduate and masters degrees from the University of Manchester and a PhD from the London School of Economics. I am a Fellow of the Learned Society of Wales and a Fellow of the Academy of Social Sciences. I have published extensively on a range of subjects including on the Law and Politics of territorial governance in the UK and comparatively as well as on public attitudes to devolution. I have been a member of the Economic and Social Research Council's Research Committee and of its Strategic Advisory Panel, and of the Leverhulme Trust's Advisory Panel. I sat on the panel that reviewed 'urgency grant' applications to the Economic and Social Research Council on Covid-19 during the first year of the pandemic. I have directed and participated in research projects funded by the Economic and Social Research Council (ESRC), Arts and Humanities Research Council, Nuffield Foundation and British Academy, including a recent collaborative ESRC large grant project 'Between two Unions' and the ESRC funded Welsh Election Study. Since 2017 I have held an ESRC grant for a 'Leadership Fellowship' on Governance and Brexit research. In this role I designed and directed a major programme of social science research that encompassed 17 projects in two phases at universities across the UK. The Fellowship has also involved close collaboration with the ESRC funded 'UK in a Changing Europe' initiative, based at Kings College, London. I coordinated a suite of 25 Brexit urgency grants for the UK in a Changing Europe and, for a period, acted as its Research Director. My Leadership Fellowship will finish at the end of January 2024. I have published or contributed to a range of reports, articles, papers and other public domain material that is relevant to the response of the Welsh Government to the Covid-19 pandemic, mostly focused on the implications of the response to Covid-19 for devolution and the UK's territorial constitution. These can be found in the appendix to this report.

Author statement

I confirm that this is my own work and that the facts stated in the report are within my own knowledge. I understand my duty to provide independent evidence and have complied with that duty. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Professor Daniel Wincott

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Overview

1. Devolution in Wales remains an ongoing process; it has developed gradually and piecemeal, without a clear overarching rationale for the structure in place at any particular time. Until around 2017-18, the broad direction of change was of widening and deepening devolution. That trajectory changed, particularly sharply from 2019. The heightened political atmosphere associated with Brexit was a major cause of this change. Advocates and supporters of Brexit tend to emphasise the sovereignty of the British state, that of the Westminster Parliament and the authority of governing institutions at Whitehall. That emphasis tends to be linked to scepticism about Welsh devolution (and also to Scottish devolution, the position in relation to Northern Ireland is more complex). During the pandemic the UK parliament passed UK government legislation (the UK Internal Market Act, 2020) that altered the constitutional position of the devolved governments over objections from the Welsh Government and despite the Senedd withholding consent from it. Evidence provided to earlier Inquiry modules suggests that during the pandemic senior members of the UK government expressed disquiet about devolution arrangements.
2. The formal structures for intergovernmental relations in the UK are weak; informally, UK level politics and policy have powerful 'spillover' effects in Wales. Most directly, UK government choices between expansive or 'austere' public spending options have a powerful impact on the level of public expenditure in Wales. More indirectly, expectations might develop in Wales based on, say, education and health policies made by the UK government for England, which are often reported in UK-level media as simply 'the government's' policies.
3. Wales now has a strong parliament ('the Senedd') and government with primary responsibility for such public services as health, education and local government, but with fewer devolved powers than Scotland and Northern Ireland. Policing, justice and welfare are reserved to the UK level, although aspects of some of these policy fields are also devolved. Moreover, in practice important relationships exist between the devolved authorities and those exercising powers for which the UK government is formally responsible (such as policing).
4. For many purposes it is helpful to think of the Welsh Government as the central government for Wales – it serves as the nodal point at the centre of many aspects of the governance of Wales.
5. Every Welsh First Minister (originally styled as 'First Secretary') has been leader of the Labour Party in Wales. Rather than having had a working majority in the Welsh legislature, Labour has variously worked with either the Liberal Democrats or Plaid Cymru both in formal coalition and in other forms of agreed cooperation or has operated as a minority government. Labour-led governments in Wales have generally presented their objectives as 'progressive', including, notably, in relation to their counterparts at the UK level, whether led by Labour or the Conservatives.
6. The devolved government and devolved public services in Wales are mostly funded by a block grant from the UK Treasury. Historically, the size of that grant is calculated

by the Treasury; that calculation has been based on a population share of the level of funding provided in England for services that have been devolved to Wales. From 2018-19 a needs-based element was added to the block grant for the Welsh Government in the block grant provided to it by the UK Treasury from 2018-19 (this element of the block grant is unique to Wales; the grants to Northern Ireland and Scotland do not include a needs-based element). The addition of a needs-based element implies that previously devolved services in Wales had been comparatively underfunded relative to need.

7. Shortly before the Covid-19 pandemic hit, the Welsh Government was given legal responsibility for key aspects of emergency planning in relation to Wales; *de facto* it seems to have been playing many aspects of this role for some time before these changes were made (for example in relation to the Wales Resilience Forum). It is unclear whether there was then a legal basis for these aspects of the Welsh Government's role. Those familiar with the history of devolution in Wales are unlikely to find this lack of clarity about the basis, scope and limits of devolved authority and responsibility particularly surprising. The Welsh Government practice within this kind of a context arguably reflects its (*'de facto'*) position as the primary locus of domestic central government functions with respect to Wales.
8. Although the Welsh Government had practical experience of emergency planning and of managing emergencies, the UK's devolution arrangements appear to have been under-prepared for an emergency that required a 'whole of government' response within and across each of the four governments responsible for central government-type functions. Prior to the pandemic, the statutory framework for devolution to Wales did not provide for a full set of institutions and arrangements able to support devolved institutions' ability to mount a 'whole of government' emergency response (for example, there was neither a facility for the Welsh Government to require or request Wales-focused analysis from SAGE nor any existing structure to provide that technical or expert advice in a dedicated manner for Wales).
 - Existing arrangements for managing emergencies envisaged the Emergency Coordination Centre (Wales) (hereinafter ECC(W)) and a framework of local centres associated with the four Local Resilience Fora (LRF) and Strategic Coordination Groups (SCGs) in Wales as their focal locations. This infrastructure initially appears to have been COBR-facing and played a role linking Whitehall and Wales.
 - ECC(W) seems rapidly to have pivoted to a different role, described by the Welsh Government Director of Local Government as more 'outward' facing (INQ000336351, para 22). Early in March 2020 it was described as 'working two shifts and processing a great deal of information from Whitehall (INQ000215171, para 13). The ECC(W) and SCG infrastructure brought together a range of 'devolved' (eg local authority) and 'reserved' (eg the Police and the Military – described as 'now engaged with the ECC(W)' in the Core Group minutes for 25-03-20 at para 23) responders. It played a key role in managing practical arrangements for excess deaths and the development and implementation of Test, Trace and Protect (TTP) in Wales. Faced by a sustained 'whole of government' emergency, the ECC(W) became one part of

the Welsh Government (and wider) response, rather than serving as a focal location as it might have done for a less wide-ranging and/or more time-limited emergency. It may be that the Director of Local Government's description of 'outward' facing role refers to the ECC(W) engaging with a wider range of actors and institutions within Wales.

9. Making sense of the response to the Covid-19 pandemic in Wales has not been straightforward. Very little academic or other research (such as investigative journalistic work) has been conducted on the public administration of Wales, still less into emergency response structures in the context of devolution to Wales. There is not, in other words, a large body of prior research or analysis that helps us to understand the standard operation public administration in Wales, or its emergency response structures, against which its operation during the pandemic could be assessed. The initial phase of my work on this document was based largely on publicly accessible official documents and journalistic output. These sources provide, at best, a small window glazed with distorting glass on the relevant structures and processes in relation to Wales. Material provided to this Inquiry (and by the Inquiry to me) – both in the form of witness statements and contemporaneously produced records of decision-making processes – provide a much more complete set of perspectives on the relevant structures and processes. I have, I believe, reconstructed the main lines of decision and policymaking in Wales during the pandemic. Having worked through a range of public domain and Inquiry-generated evidence I hope I have generated something of an overview of these decision and policymaking processes. Before gaining access to the Inquiry material my impression was that decision-making processes in Wales during the emergency were overly complex. Having worked through the full body of material to which I have been given access, evidence of a rather more coherent pattern of response from the Welsh Government has come into focus. The ever-changing backdrop of the structure of devolution in Wales also adds to the impression of complexity, particularly, I imagine, for those not otherwise familiar with this history.
10. Assessing the complexity of decision-making processes differs from any process of weighing up 'effectiveness' or 'success' of the response in Wales against metrics of the impacts of the pandemic or in comparison with other places. Almost inevitably, commentary on governmental responses to the Covid-19 pandemic are coloured by and get drawn into comparative assessments of effectiveness and success. Since the impact of the pandemic and pandemic response in human and social terms has been – and is – complex and complex and multi-dimensional. Commentary cast in terms of assessments of this kind is often premature or partial. The Welsh Government's Technical Advisory Cell published an analysis of the *Impact of COVID-19 Protections in Wales* in November 2023. It compares patterns of Covid-19 infections (figure 2, p11 and 3, p12) and deaths (figure 6, p15) in Wales with those it treats as comparable regions of England (the North East and South West). It makes some specific claims: that Covid-19 case rates decreasing after the firebreak lockdown in October 2020, while they 'continued to increase in North East and South West England'; that 'case rates were notably lower in Wales compared with England in July 2021' after restrictions had been eased in England and shortly before they were eased in Wales (TAC 2023: pp 2-3). The paper does not attempt to test whether these results are

analytically robust. The overall pattern of results appear relatively alike across these territories. The paper offers a thoughtful discussion of a wider range of harms from Covid-19 and Covid-19 response policies, but it does not compare Wales with the North East and South West of England in these areas.

11. In non-emergency times, the processes by which governments set priorities and turn them into policies are complex and contested. Professor Cairney's evidence to Module 2A usefully contrasts a neat 'ideal-type' description of the 'policy cycle' with the messiness of 'real world policymaking' (INQ000274154: para 69-70). Professor Cairney also identifies '*uncertainty* ... a lack of information on' or, indeed of knowledge and grasp of 'a problem' and '*ambiguity* ... a lack of agreement on how to define' the problem as sources of difficulty that generate limited understandings of the 'size, severity, urgency and cause' of a policy problem (INQ000274154: para 135). An effective response to an emergency situation might pivot on a sharper identification of policy priorities than Professor Cairney's analysis suggests is usual. Equally, by narrowing the focus of government action, the setting of priorities during an emergency could lead to a neglect of other matters, which might also turn out to be consequential.

12. Making sense of how UK and Welsh policymakers defined and made sense of the policy problem(s) or challenge(s) posed by Covid-19 is far from straightforward. Again, this difficulty is a specific example of a general policy challenge: that of producing 'coherent policy via *joined-up, holistic, or integrated* policymaking' (again, see Professor Cairney at INQ000274154: para 138). Across UK governments, the response to Covid-19 generated myriad 'action plans', 'approaches', 'frameworks' and 'strategies', which had, variously, organisational and substantive elements. In organisational terms, some represented attempts to inform decision-makers and bring them together, others to establish a hierarchy of authority, or to separate the setting of aims and objectives (often described as 'strategy') from its delivery (otherwise 'implementation' or 'operation'). Organisationally, in broad terms, the UK government began with a 'Four Nations approach' using COBR and, from March 2020 'Ministerial Implementation Groups' (MIGs) within which the Welsh and other devolved governments participated. In June 2020 it moved to more centralised arrangements. Following a pattern characteristic of the UK government that attempts to separate 'strategy' from delivery or 'operations' (INQ000274154: para 139), a senior committee called COVID-S, chaired by the Prime Minister (described in Mark Drakeford's M2 witness statement INQ000273747: para 104 as 'the Prime Minister's Strategy Group') and an Operations Committee (COVID-O), chaired by the Chancellor of the Duchy of Lancaster (to which the devolved governments were sometimes invited) were put in place (see Michael Gove's M2 evidence INQ000185354: para 28 for the COVID-S and COVID-O terminology). This separation of 'strategy' from 'operations' by the UK government, the non-involvement of devolved actors in COVID-S and the choice not to make use of COBR over summer 2020 meant that the Welsh Government did not contribute to UK-level policy priority setting processes, or observe those processes directly, during this period. This structure made cross-UK policy alignment highly unlikely (unless devolved governments mirrored UK-level decisions, typically with a time lag). Regular four nations meetings chaired by Michael Gove from early summer 2020 provided a forum within which policy across all parts of the UK was discussed,

but it did not allow for direct contributions by devolved politicians to UK-level strategic decision making about the pandemic. (Drakeford also makes reference to an earlier 'Prime Minister's Covid-19 Strategy Meeting' from which he saw a minute on 20 March 2020, INQ000273747: para 51).

13. 'Strategy' is also sometimes used to name specific approaches to either general pandemic policy or policies for specific aspects of the pandemic. At the more general level, these 'strategies' are approaches to the pandemic that were considered or implemented by one government or another in the UK. For example, Mark Drakeford describes 'a herd immunity strategy' and a 'lockdown strategy' as options considered by UK government decision makers (INQ000273747, para 38 and 59). It is worth adding that Drakeford seems to treat an attempt at 'flattening the curve and delaying the peak' as a 'herd immunity strategy', (INQ000273747, para 37). While Boris Johnson has called the reporting of herd immunity as a goal or strategy a major misunderstanding, he defines it as letting the virus rip through the population and naturally breed immunity by the open approach (INQ000255836 para 170). (Chris Whitty provides a clear overview of the epidemiological conception of herd or population immunity (INQ000248853, paras 5.15-6.26)). In my view, this unhelpfully oversimplifies the complexity of policy problems. It lends a misleadingly overarching and, perhaps, grandiose quality to particular tools or concepts. It distracts attention from the reality that a 'lockdown' could be used to 'flatten the curve' and delay the peak of a pandemic. The language of strategy is also used, in my view more helpfully, for more specific interventions, such as 'Test, Trace and Protect' or 'Vaccine Rollout'.
14. At ministerial level, the evidence suggests that the Welsh Government did separate consideration of 'strategy' from 'operations' in the manner of the UK government from June 2020. There is relatively little use of the language of strategy in the Welsh Government documents I have reviewed. For example, discussion of 'an exit strategy to help manage the recovery phase' at the Welsh Government's COVID 19 Core Group meeting dated 01-04-2020 (INQ000311845: para 3) resulted in a published document *Leading Wales of the coronavirus pandemic* described as a framework for recovery (Welsh Government 2020a) followed by *Unlocking our society and economy: continuing the conversation* (Welsh Government 2020b). While I would not wish to place undue weight on the choice of words, the language used by the Welsh Government may reflect a relatively greater emphasis on partnership and collaboration matched by less emphasis on authority and hierarchy than some other governments in the UK. (Andrew Goodall's witness statement (INQ000130469) does make extensive use of the language of strategy, perhaps reflecting its wider usage across the senior civil service.)
15. Some of the complexity of the impact of the pandemic and pandemic response is reflected in the conceptualisation of the multiple types of 'harm' it generated. The Scottish Government (2020) used the language of 'four harms', while the UK government Department of Health and Social Care (2022) distinguished direct and indirect health impacts in four categories, labelled A-D). Although the analysis for England concentrates on health and the framework for Scotland ranges more broadly, the matters covered overlap substantially even where they do not completely coincide. In Wales, the language of 'four harms', later 'five harms', was used.

- a. Early on (April 2020) the Welsh Government (2020a) conceptualised four harms as: **‘direct harm to individuals from SARS-CoV2’**; the consequences **‘if services including the NHS became overwhelmed’**; **‘harms from non-COVID illness’**; **‘socioeconomic and other societal harms’**. (The Chief Medical Officer (Wales) identified ‘four harms’ in similar terms in January 2021, perhaps with more of a health/health-care focus – Atherton 2021: p21).
 - b. In July 2021, a Technical Advisory Group paper identified five harms, it did so in slightly different and somewhat broader terms, encompassing: direct harms from SARS-CoV2 infections; indirect COVID-19 harms due to surge pressures on health and social care as well as changes (such as delays) to other healthcare activity; harms from population based health protection measures (e.g. lockdown) such as educational harm, psychological harm, isolation; direct (COVID-19) and indirect (lockdown) economic harms; plus a fifth set of cross-cutting harms due to COVID-19 exacerbating existing inequalities or introducing new inequalities (TAG 2021: p3).
 - c. The range of these harms and the changing understanding of them illustrates the difficulty of assessing ‘effectiveness’ and ‘success’. Ultimately, any such judgement would require a fully specified understanding of the specific context and challenges posed by the pandemic in Wales. Such a full specification would require rigorous comparative analysis. Even so, my sense is that ‘effectiveness’ or ‘success’ varied over time and to some extent across places and sectors within Wales. The Welsh Government identified and considered multiple harms relative early in the pandemic. Even so during the immediate response to the initial emergence of the pandemic, as well as expanding acute and critical care capacity, including for invasive ventilation, NHS capacity was reorganised fundamentally to prevent it being overwhelmed by Covid-19 cases. Minutes of the COVID-19 Core Group meetings suggest that more NHS critical beds were occupied by non-Covid-19, than by Covid-19 cases even during April 2020. These minutes also suggest that as re-structured, at the level of health boards, the NHS remained at ‘Green, level 1’ throughout 2020 (although individual hospital sites went to levels 2 and 3). The temporary reorganising/repurposing of the NHS appears to have been critical to these outcomes. When, from July and August 2020, the NHS in Wales sought to move towards a more normal level of service, NHS capacity indicators suggested a higher level of strain (see, for example, the Briefing Notes prepared for a COVID-19 Core Group meeting on 4 August 2020 (INQ000310296) (not held, in the event) – and discussion below) The period from late summer/early autumn 2020 until the winter months of 2021 seems to have been particularly challenging for the authorities in Wales (in addition they faced challenges in working alongside and, it seems, at times against the rhythms and patterns of UK government decision-making over these months).
16. The Welsh Government rapidly restructured its operation to provide a ‘whole of government’ response to the pandemic. Organisational changes (such as the creation of a Covid-19 Core Group) began as early as the first half of March 2020 and over the following months included the creation of a ‘Star Chamber’ on internal Welsh Government resource allocation, the creation of the First Minister’s Covid-19 BAME

Advisory Group, the creation of a Technical Advisory Cell (TAC) and then a Technical Advisory Group (TAG), and the repurposing of the Shadow Social Partnership Council, as well as a host of changes to Welsh public services (especially within the NHS). The Cabinet sat at the heart of this response, with the First Minister playing the key 'first among equals' role in a system of collective decision-making. The Welsh Government established a three-week planning cycle around which its pandemic policy was organised.

17. The Welsh Cabinet's regular weekly formal meeting on Mondays was supplemented by daily ministerial 'calls' which brought Ministers together. A wide-ranging process of re-assessing spending priorities within the Welsh Government (an Advisory Group to the Finance Minister) was established on 25 March 2020 and placed on a more formal footing in April 2020), known as the 'Star Chamber'. It was chaired by Rebecca Evans, Minister for Finance (as well as Trefnydd until mid-May 2021 when she instead took on the Minister for Local Government role alongside her responsibilities for Finance) who led the 'Star Chamber' in partnership, initially with Jeremy Miles, Counsel General and Minister for the European Transition. After he stood down from the role later in April 2020, Miles was replaced by Eluned Morgan who was, at the time, Minister for the Welsh Language.
18. In addition to adapting its decision-making processes, the Welsh Government/Welsh Ministers undertook to report regularly to the Senedd, to allow elected members to discuss and scrutinise its policies (although the Coronavirus Act did not formally require this element of scrutiny in Wales).
19. The Welsh Government also adapted or developed wholly new consultative, advisory and analytical structures.
 - a. Core Covid Group was an advisory group, generally held on Wednesdays, made up of Welsh Government Ministers and officials together with some key political, social and economic actors in Wales, such as a representative of civil society organisations and one for local government. In addition, the leaders of the two largest opposition political party groups in the Senedd were invited to attend, and are listed on the minutes of some group meetings as having attended. It seems to have met more or less on a weekly basis between early March and mid September 2020. I have been informed that no meeting took place on 27 May 2020. I have seen minutes of its meetings from 11 March to 25 August 2020. Meetings held in July 2020 included the leadership of the Military (INQ000349671) and Police (INQ000311825) in Wales as well as, for part of these two meetings, a member of the UK government (the Parliamentary Under Secretary of State for Wales – note that this participation occurred at a time when the relationship between the UK government and the Welsh Government might be generally described as weak, even dysfunctional). It is unclear to me why this group was disbanded, although some of its role may have overlapped with that of the Shadow Partnership Council.
 - b. The Shadow Social Partnership Council had been established to prefigure a planned Partnership Council to bring together representatives of business and the trade unions. During the pandemic its membership was extended, notably

to include civil society organisations, and it met much more frequently than previously.

- c. The Welsh Government established a Technical Advisory Cell (TAC) within the administration and then a Technical Advisory Group (TAG) that drew in external experts to provide Wales-specific scientific and technical advice in support of its pandemic policymaking. Such capacity did not exist, nor, so far as I can tell, was it envisaged (especially in relation to TAG) prior to the pandemic.
20. The Welsh Government had updated its IT systems shortly before the pandemic struck. The new system allowed for remote working and collaboration in a manner that would not previously have been possible in Wales. These changes allowed for secure communication across places and may have made such facilities as the ECC(W) (which provides a focal location in which key individuals and information can be gathered) less central to the response than they might have been at an earlier time.
 21. Wales is a much smaller ('small nation') scale system than the UK/England, with a clearly distinct sense of national identity and a sustained record of seeking to operate through partnerships. Some key individuals – notably the First Minister – had long experience of operating at the heart of Wales's devolved system. These factors meant that many of the key actors across the Welsh Government, Welsh politics, local government and the wider public, private and voluntary sectors knew one another – making a relatively rapid shift to collaborative emergency governance possible. In this respect, small nation/small scale governance was, in my view, an advantage. (The Welsh polity's small scale may be connected to the relative lack of emphasis placed on distinguishing strategy from operations and greater emphasis on partnership, consultation and collaboration.)
 22. Care needs to be taken in comparing the size and capacity of the Welsh Government with other executives or governments within the UK. For example, initially stark-looking differences between the number of civil servants working for the governments in Scotland (around 27,500) and Welsh Government (just over 6000) need to be understood in the context of differences in their policy responsibilities. Focusing on data for Scottish and Welsh Government (excluding agencies) immediately reduces the difference to just over 9000 and just under 6000 respectively (differences in the policy scope of the two governments will still explain some of the remaining variation – see Cabinet Office 2023). Much more research would be needed adequately to compare the scale and capacity of official support for governments across the UK. Even so, there is some evidence of capacity being stretched in Wales.
 23. The scale at which governance in Wales operates may also have contributed to the ability of the Welsh Government to track the spatial diffusion of the pandemic, which is understood to travel from East to West and South to North across Wales. It allowed decision-makers to operate at a level of granularity impossible for, say, the UK government in relation to England. For example, decision-makers at the highest level of government in Wales were able to consider Covid-19 outbreaks in several specific

food/meat processing factories in Ynys Môn, Wrexham and Merthyr Tydfil, and work with relevant partners to address them. It might be helpful to imagine a counterfactual situation in which the UK government in London had taken direct charge of pandemic decision-making and policy-making for Wales. It is unclear, in these counterfactual circumstances, how far the administration in London would have sought to acquire detailed knowledge about/understanding of local conditions in Wales. Had they chosen to do so, building up that knowledge and understanding would have had significant opportunity costs.

24. The scale of the Welsh Government also creates risks and disadvantages relative to larger scale systems. For example, analytical capacity in the form of the Knowledge and Analytical Services Profession within the Welsh Government is concentrated in a relatively small number of people. The pandemic hit at a time when the official lead of Knowledge and Analytical Services was vacant. Glyn Jones states: 'The number of analysts in the Welsh Government is considered to be small when compared to the Scottish Government and major UK government departments' (INQ000274147: para 19). The Welsh Government did re-deploy its resources to fill some important potential gaps in analytical capacity – it also paused some non-pandemic analytical work, Jones describes 'an unprecedented reprioritisation of analytical resources' (INQ000274147: para 20). My sense is that this capacity was stretched close to breaking point at times – and that better and more timely evidence and analysis might have been provided by a larger team. Equally, Wales's small scale may have facilitated cooperation beyond government, for example SAIL and Administrative Data Research Wales (established collaborations between academia and government) provided Welsh Government analysts access to linked administrative datasets (INQ000274147: para 92) – more surprisingly this statement suggests it was also the way Welsh Government analysts accessed analytical software such as Python and R. Moreover, given that they were created quickly 'on the hoof', key advisory and expert structures proved remarkably effective. The ability to mix Wales-based capacity (including the development of the 'Swansea model' for analysing the pandemic's specific impact in Wales) with working alongside experts from beyond Wales was key.
25. Pandemic decision-making in Wales was coordinated with that of the UK government and other devolved governments at some times, but not at others. Even when not formally coordinated, Welsh decision-making took place 'in the shadow' of the UK government approach. The 'shadow' was cast by both formal structures (such as the implications of Treasury spending decisions taken for England for resources 'consequently' provided to the Welsh Government) and informally (broadly various 'spillovers' from UK government decisions, ranging from the changing pattern of Covid-19 infections in England to expectations generated by the powerful influence of UK government communications in Wales).
26. Aspects of the UK context for devolved governance of the Covid-19 pandemic generated benefits in Wales – examples include the UK Treasury's ability to borrow to finance emergency spending and the operation of the Vaccine Task Force in securing a variety of Covid-19 vaccines in large quantities. Equally, this context was also challenging in some institutional, political and cultural respects:

- a. Institutionally, though devolution in Wales has generally grown in scope and depth since the start of the 21st century, it has developed in a piecemeal, *ad hoc* and at times contested fashion, which has left legacies of incoherence and incompleteness in the operation, organisation and structure of the governance of Wales; since around 2017, and especially after 2019 (including during the Covid-19 pandemic emergency), a series of changes have been made to the structure of devolution in Wales that were contested, and in key instances rejected, by the devolved institutions which broadly perceived them as ‘rolling back’ devolution;
 - b. Devolution in Wales has always been marked by political differences between Cardiff and London (INQ000177804: para 18):
 - i. these differences have been particularly clear when Conservative Prime Ministers have led the administration in London, when ‘Labour-run Wales’ provides the basis for Conservative criticism of Labour in general (former Secretary of State for Wales, Stephen Crabb, has described a Conservative anti-Labour ‘playbook’ which occludes the ‘truth’ which is a ‘story’ that includes ‘some quite positive cooperation’ and encompasses ‘good and bad’ (in Bloom 2023))
 - ii. differences were also evident when Welsh Labour sought to distinguish itself from ‘New Labour’ administrations in London, reflected in the language of ‘clear red water’ between the two;
 - c. Though it is difficult to grasp (or alter – though changing institutional arrangements generally may require cultural change to be effective in practice) the cultural context for devolution is crucial; the former Civil Servant, now Professor at Oxford University’s Blavatnik School of Government, Ciaran Martin articulated something of the cultural attitude of those at the centre of UK government towards the UK Union and devolution in the following terms ‘many English unionists portray the union as such an obvious, self-evident good it requires no explanation beyond soundbites about togetherness and a precious bond’ (Martin, 2021); treating the Union as a self-evident good constructs those opposed to it, or who take a different view of its operation, as ‘narrowly political’ and unlikely to act in good faith.
27. Evidence provided to this Inquiry by the then UK Prime Minister (INQ000255836) and the then Chancellor of the Duchy of Lancaster (CDL) (INQ000185354) suggests that they view governing arrangements for the UK in strongly hierarchical terms. Gove depicts the First Ministers of the devolved governments as ‘local leaders’ on a par with mayors of combined authorities and, in some sense, subordinate to ‘the’ Government. He describes the ‘need’ for ‘an emergency structure for Government to engage with local leaders both in the DAs and Mayoral Combined Authorities’ (INQ00185354: para 35). The standard language used in Whitehall (and also sometimes by politicians in the devolved institutions themselves) to describe the devolved governments as Devolved Administrations – or DAs — tends to reinforce this sense of devolution as a subordinate level. Michael Gove’s understanding of the dynamics when the ‘UK-Government’ reached ‘agreement first’ and then worked ‘with

the DAs' (which inevitably appeared as if decisions were being 'imposed') is revealing (INQ000185354: para 24). In these circumstances, Gove observes, 'it was hard to avoid the dynamic of Scottish and Welsh Government resisting a decision the UK Government was keen to pursue with urgency' (INQ000185354: para 25). At least in relation to devolved matters, the reality of this 'dynamic' seems to me simply to be that the devolved governments might make their own decisions, which might differ from those made in London.

28. This evidence from Boris Johnson and Michael Gove indicates that they would prefer that a future pandemic emergency be managed more centrally by the UK government. Gove grounds his view in the UK government's 'responsibility to all of its citizens across all nations' (INQ000185354: para 36). In the former Prime Minister's view 'there will be considerable advantages to treating the UK (or at least the island of Britain) as a single epidemiological unit' (INQ000255836: para 496). The mixing of geographical and political units in this statement suggests it is grounded in something more, or other, than epidemiology.
29. Michael Gove argues that there is no perfect system for territorial governance of a pandemic and, at least implicitly, acknowledges that a more UK government-centred approach would be 'heavily resisted by the DAs' (INQ000185354: para 35). He states: 'I was and remain a strong supporter of devolution both across the UK and within England' (INQ000185354: para 36). Equally, his view of decision-making in pandemic conditions seems to cut into the operation of devolution in 'normal' times. The UK government has responsibilities to all citizens across all nations in non-emergency times as well. He describes the 'devolution settlement' as a set of arrangements that 'fundamentally exacerbated' the 'problems' of balancing UK and devolved government interests during the pandemic. Devolved governments are not included in UK government decision making, which can seem to be imposed on them. While there are plenty of examples of projects and processes on which UK and devolved governments work well together, relationships between them are also often marked by tension. For example, during the pandemic the UK government developed and Westminster passed legislation on the UK Internal Market which was resisted by devolved governments and refused legislative consent by devolved legislatures.
30. Evidence from the then Prime Minister and CDL also indicates that party political matters weighed in their consideration of the pandemic. For example, Boris Johnson's political sensitivity to the Scottish First Minister is illustrated by an annotation he made to a note of 9 March 2020 concerned with emergency legislation, as follows '*Make sure STURGEON and DAs stay locked in*' (INQ000255836: para 125). Michael Gove has observed that Scottish Government 'at times seemed to have political interests in divergence from a wider UK position' (INQ000185354: para 32, also Module 2 day 27 transcript: p130). He has also stated that it 'was fair and legitimate ... to point out ... the nature of Sinn Fein ... to approach issues with a set of particular assumptions' and 'the political traditions from which' they 'spring' (Module 2 day 27 transcript: p 161-2). Equally he noted that 'everyone whom I encountered with executive responsibility from the DAs behaved with the public interest first and foremost, but it's difficult for politicians, elected politicians to set aside completely the perspective, sometimes unconscious, biases that they bring to the table' (Module 2 day 27 transcript: p 163). There does not seem to be a

recognition on Michael Gove's part, or that of other UK government ministers, that the same point could be made about their perspectives and, sometimes unconscious, biases.

31. Due to Mark Drakeford's political commitment to the UK union, evidence from Michael Gove to this Inquiry does not emphasise this kind of political dimension in relation to the Welsh First Minister or Government (see Module 2 day 27, p131). Boris Johnson described his relations with Mark Drakeford as 'excellent' (Module 2 day 32, p118), a view that is not easy to reconcile with other Inquiry and wider evidence, including on close collaboration between all devolved governments, but especially those in Scotland and Wales. Without underplaying differences with UK government attitudes towards 'nationalist' parties that aspire to Scotland or Northern Ireland leaving the UK, there is evidence of Welsh pandemic policies being viewed through political 'optics' from Westminster and Whitehall. For example, alongside describing the Welsh 'firebreak lockdown' in October 2020 as 'correct' and 'decisive' Lee Cain, former special communications adviser to the UK Prime Minister, also called it 'politically advantageous' (Jones, 2023).
32. Some evidence suggests that decision makers in Wales were also aware of the (political) 'optics' of Anglo-Welsh comparisons. (For example, the Welsh Government's COVID19 Core Group Meeting on 01.04.2020 'noted that, pro rata, Wales was testing more than England' (INQ000311845, para 11 p 2).) The possibility that 'optics' played a role in decision-making in Wales cannot be excluded.
33. There seems to be a propensity for decision-makers in London to perceive Welsh (and other devolved politicians) as behaving 'politically' in an inappropriate or damaging way when advocating for or taking an approach that differs from that of the UK government. Though the structure of territorial decision-making means differences are unavoidable, when devolved political leaders argue their position (say, in Four Nations arrangements) or (especially when those arrangements were operating at a diminished scale), pursuing policies tailored to their territories, these actions sometimes appear as or are deemed to be 'political' at Westminster and Whitehall. It is easy to appear naïve when dealing with 'political' questions of this kind. Equally, the Welsh Government's decision to invite the leaders of Plaid Cymru and the Welsh Conservatives – the main opposition parties in Wales – suggests that a more inclusive approach is not impossible.
34. For all UK countries, the disposition of resources and quality of infrastructure, particularly for health and social care provision, prior to the pandemic shaped the prospects for and effectiveness of the response to Covid-19. In Wales, Health and Social Care policy, institutions and infrastructure became the responsibility of the devolved authorities as soon as those authorities came into being. Equally, the devolved institutions inherited institutions and infrastructure from the pre-devolution era. The level of funding for public services in Wales is set by the UK government. The UK government agreed to the addition of a needs-based element for Wales (and Wales alone, not, that is, for Scotland or Northern Ireland) in 2018-19. The addition of this needs-based element suggests or implies that devolution (and devolved public services) in Wales had previously been underfunded relative to need. If, and to the extent that, public services had been underfunded by the UK government prior to

2018-19, we might expect to see an impact on the baseline from the public service response to the pandemic was made in Wales.

35. Governmental responses to the Covid-19 pandemic depended heavily on the willingness of people to change their behaviour. While legal regulations that prohibit some activities are important tools in a government's kit, they are unlikely to prove effective or sustainable unless people are prepared to accept and agree to them. Acceptance and agreement clearly have an individual-level dimension, but they are also a feature of group membership. Across the UK, the NHS is a highly valued institution and symbol, for the sake of which people appear, collectively, to have been willing to accept significant restrictions on their previous patterns of life. In this sense, the NHS serves as an important symbol of national identity in the UK. Equally, the UK is a state that contains multiple territorially-based national identities. Most people who live in Wales identify as some mixture of being Welsh and/or British, and a significant number identify as English in national terms. The Welsh Government consistently emphasised that its pandemic policy was for Wales, that is for the people of Wales or Welsh citizens. The sharp increase in awareness of the devolved arrangements in Wales – and of Mark Drakeford as an individual politician – suggests that this emphasis had a significant impact. Additional research would be needed, I think, to assess whether – and to what extent – this form of appeal engendered a solidaristic or community-oriented (perhaps based on national identity) response to the pandemic in Wales, and what the patterns were in other parts of the UK.

The context of devolution in Wales

36. It is essential, in my view, to set the framework for core political and administrative decision-making related to Wales during the pandemic in the context of the wider pattern and history of Welsh devolution. The structure and operation of politics, public administration and policy in Wales is distinctive and not widely discussed or analysed. Devolution is an ongoing process across the UK; in Wales it is particularly strongly characterised by recent and extensive changes, including changes which pertain specifically to capacities to plan for and respond to emergencies. Wales now has a Parliament – the Senedd – with full primary law making powers in its areas of responsibility and a devolved Government serves as the central authority for a range of key public services, such as health, education and local government. The devolved authorities in Wales have less extensive powers than those in Scotland – or in Northern Ireland, when the devolved institutions there are functioning. Powers that are reserved to the UK for Wales, but devolved elsewhere include policing, justice and aspects of welfare provision. Powers exercised at Westminster and Whitehall were crucial to the pandemic response right across the UK. The recent acquisition of powers and the absence of some others mean that the Welsh Government was relatively more constrained in its pandemic response than other governments.
37. Since gaining primary-type powers, some of the legislation passed by the Welsh legislature (then, the ‘National Assembly for Wales’) has embodied ambitious aspirations for certain public services (notably, for present purposes, including policies related to care) and aspects of Wales’s national future. Examples of innovative legislation with ‘progressive’ aims relevant to the Welsh Government’s response to the Covid-19 pandemic include the Mental Health (Wales) Measure (2010), Social Services and Well-being (Wales) Act 2014, Well-being of Future Generations (Wales) Act (2015). Welsh legislation of this kind has attracted a mix of praise and criticism: praised for its ambition (and often for the novel ‘rights’ set out), criticised as ‘aspirational’. Calling legislation ‘aspirational’ in this critical sense suggests that it sets out ambitious aims without providing sufficiently the means to achieve them. More specifically, critics with legal expertise articulate concern about use of the language of rights without it being sufficiently precise to make any rights described justiciable (see Lord Thomas of Cwmgiedd 2019, including discussion of the Well-being of Future Generations (Wales) Act (2015)). The lower-level of funding relative to need (largely through the Treasury block grant) of, and dispensation of budgetary powers, to the Welsh Government and therefore for public services in Wales is, in my view, a relevant consideration here: justiciable rights can give rise to expensive claims against public authorities.
- a. The Mental Health (Wales) Measure (2015) created an ambitious new system for Local Primary Mental Health Support Services (LPMHSS), based on partnership between Local Authorities and Local Health Board. It is worth noting that the The legislation placed new duties on these partnerships. Sue O’Leary (Mind Cymru 2022: 3), Director of Mind Cymru, described the Measure as ‘a bold piece of legislation that aimed to deliver real and meaningful changes for those of us with mental health problems. ... Unlike other mental health legislation, the Measure focuses on improving people’s rights ...’. Mind Cymru

has assessed the Measure as having 'had a positive impact on mental health services in Wales' while describing its impact as 'uneven' (2022: 7). Specifically, 'children and young people have faced significantly longer waits than adults for both assessment and treatment within the LPMHSS. We also found a significant gap between the number of people referred to LPMHSS and the number of assessments undertaken. In secondary care, we found that whilst most people have a care and treatment plan, their quality is generally poor and require significant improvements' (2022: 7). Mind Cymru cites a National Assembly for Wales Health and Social Care Committee report from January 2015 which argued that 'more work' was needed 'to ensure that there is sufficient capacity within mental health services' if 'the aims of the Measure are to be fully achieved' (Mind Cymru 2022: p5),

- b. The Social Services and Well-being (Wales) Act (2014) provided the statutory underpinning for a new approach to social care services in Wales. The new approach emphasised 'voice and control' as 'a guiding principle for social care', with 'the idea of 'consumer' choice ... explicitly rejected' and 'a shift towards a discourse of solidarity (Tarrant 2022: p683 – in contrast, the UK government's policies for England was framed in terms of 'choice and control'). More specifically, policy in Wales repudiated 'personalisation' of services as 'too closely associated with a market-led model of consumer choice, preferring to stress "citizen control" over support': relatedly, '[p]ersonal budgets were not discussed, and the approach to direct payments ... [had become] less enthusiastic' (Tarrant 2022: p684). Welsh legislation and policy has not always been well understood by all experts in UK social care provision, though recent research (Tarrant 2022) has now brought it into the daylight. In the end, the 2014 Act did create 'a right for people to use direct payments to purchase residential care' but 'did not incorporate their use where funding is provided by the NHS' (Tarrant 2022: 685). Equally, 'personal budgets ... have not been adopted in Wales' (in contrast to 'the Care Act 2014 which *obliges* local authorities to calculate and allocate a personal budget to everyone eligible for local authority-funded social care' in England – Tarrant 2022: p686).
- c. The Well-being of Future Generations (Wales) Act (2015) has attracted considerable international attention. For example, Nikhil Seth, United Nations Head of Sustainable Development, said: 'We hope that what Wales is doing today the world will do tomorrow' (cited in Howe 2018, also see OECD 2023). It operates as a framework to which the Welsh Government and other public bodies in Wales should have regard, with respect to sustainability and the impact of current policies on future generations. It provides the statutory basis for a 'Future Generations Commissioner'. As her term in office as the first Commissioner came to an end, Sophie Howe identified a number of 'big wins' associated with the Act, including the halting of 55 road schemes as part of an 'active travel' strategy, the announcement of publicly owned renewable energy company in Wales, the launch of a 'Basic Income pilot for care-leavers' and Wales coming '3rd in the World for recycling' (Howe 2023). On the other hand, the legislation has been criticised as 'aspirational' because it does not provide the basis for well-defined on which individuals can rely in courts (Lord Thomas

of Cwmgiedd 2019). Across 'several attempts to use' this legislation 'to protect' 1) wildlife and natural reserves and 2) schools the relevant public authorities have argued successfully that the Act's 'well-being duty' as 'too general ... to be enforceable' (ab Owen 2022, who described the reserves and schools as 'community' assets).

38. Something of a pattern may emerge from looking across these pieces of Welsh legislation: each sets out ambitious objectives and provides a framework to guide policy and provision; they appear to avoid the creation of legally enforceable rights and entitlements for individuals, or perhaps to limit/minimise the legal enforceability of those rights and entitlements. Any such pattern may reflect an ideological preference for collective, community and public sector provision over market-led, private/'privatised' alternatives. Equally, cost concerns and the potential for unpredictable and potentially large-scale demands on the Welsh Government's budget may also help to explain it. Mind Cymru's commentary on the Mental Health (Wales) Measure (2010) raises important questions about the robustness of the arrangements it put in place. Despite describing the legislation as 'rights based', Mind Cymru stated that while 'mental health services remained essential during the pandemic, limited access to GPs brought a stark decline in referrals to the LPMHSS. Further highlighting the need to better understand and tackle the barrier that people face in accessing support in primary care. Similarly, in highlighting and compounding existing inequalities, the pandemic has reaffirmed the need for mental health services to proactively address inequalities as envisioned by the Measure's guiding principles' (Mind Cymru 2022: p7).
39. While valuable academic research studies politics and public opinion, constitutional aspects of Welsh devolution and, increasingly on political economy and public spending, significant gaps exist particularly in the knowledge-base on public administration in Wales and the structure and practice of political and public institutions in Wales (evidence provided by Andrew Goodall to an earlier module of this Inquiry is, in my view, a significant statement of the structure and (to a lesser extent) practice of public administration in Wales (INQ000130469). In addition, there is only a small number of Wales-focused think tanks and the Wales-focused media is also limited in size. This inquiry has already gathered an unparalleled body of evidence on public administration in Wales. There is a large volume of diverse and scattered sources of evidence on the Covid-19 pandemic in Wales, which needs to be understood against the backdrop of the weak basic knowledge-base on the operation of political institutions and public administration in Wales. I will draw on these diverse and scattered sources in this report. I will also indicate where gaps exist.
40. Practical knowledge of how to operate Welsh public administration has built up over the period of devolution. These practices engage actors beyond the formal institutions of government, particularly in the Welsh universities and civil society organisations, sometimes described as characteristics of 'small nation' governance. The sustained position of Welsh Labour as the party of government has also contributed to this practical knowledge. These various features provide strengths and weaknesses for governance.

Ambiguities and asymmetries of devolution, problematic intergovernmental relations

41. Although the phrase 'devolution settlement' is widely used to describe them, something close to a consensus exists in academic research that the arrangements for devolution in the UK are profoundly ambiguous. That is, mutually inconsistent constitutional principles and traditions co-exist. For example, the Scotland Act 2016 and Wales Act 2017 reaffirmed Westminster's Parliamentary sovereignty and states that devolution is permanent in Scotland and Wales respectively. At a constitutional level, then, the claim that the UK is a voluntary union of nations co-existed with the idea that the Parliament in London is sovereign. Some argue that in day-to-day practice these ambiguities have been 'constructive' or 'productive', in the sense of facilitating the operation of UK territorial governance (Bell and Cavanaugh, 1998; Wincott, Davies *et. al* 2021; Morgan and Wyn Jones, 2023). Ambiguities about the relationship between devolution and a sovereign UK centre have meant that key questions of principle about the location of power were deferred, not clarified.
42. The Whitehall aphorism 'devolve and forget' (see Rycroft 2021) evokes a governing culture that helped to sustain constitutional ambiguities around devolution. It captures a sense that the UK administration saw policy responsibilities as relatively encapsulated and able to be parcelled out in discrete packages. The UK government's continued responsibility for policy in England, and England's sheer size within the state, meant that Whitehall could continue its activities largely unchanged after devolution. The 'devolve and forget' mindset was also reflected in the fact that the arrangements put in place to manage intergovernmental relations (IGR) after devolution – specifically the Joint Ministerial Committee (JMC) – did not develop into an IGR 'system' in practice.
43. The JMC was established by 'memorandum of understanding' in 1999. Rather than amounting to a formal structure of government or a decision-making body, it served mostly as a discussion forum in which information was shared among ministers in the UK and devolved governments. A dispute-resolution protocol was introduced in 2010. Chaired by the Prime Minister, JMC plenary meetings were attended by the devolved first ministers (and Northern Ireland's Deputy First Minister). At various times the JMC also met in specialised configurations, including for general domestic policy, health, the knowledge economy and poverty. Sometimes described in UK government publications as JMC 'formats' (see Cabinet Office 2021), they are also sometimes defined more formally as 'sub-committees' of the plenary JMC. Emphasising these formalities is, though, potentially misleading, since the JMC practice rarely reflected them. For example, a *Devolution Factsheet* published by the Cabinet Office 'Devolution and You' team (Cabinet Office, not dated) does not present the plenary JMC as superior to other JMC formats, as might be expected of 'sub-committees'. Since the JMC plenary met so irregularly as to be effectively in abeyance for long periods, a formal conceptualisation of other JMC formats as its sub-committees risks attributing more coherence and structure to the arrangements than their practice merited. Theresa May made more use of the plenary JMC while she was Prime Minister, than others who have held that office in recent years, including meetings in March and December 2018. To my knowledge the plenary JMC did not meet again after December 2018. Of the various JMC forms/formats/sub-committees that have existed, almost all had ceased operation long before the Covid-19 pandemic struck.

Over recent decades, at least until the 2016 Brexit referendum, the JMC (Europe) met much more often/regularly than any other JMC format. A new format, styled as the JMC (European Negotiations), was created in 2016. Despite its name, this configuration of the JMC did not contribute much to the UK's negotiating position on exiting the EU. It was, in practice, mostly concerned with the implications of Brexit for internal UK territorial governance. Over their full history, the JMC arrangements offered a limited and light touch form of IGR (Centre on Constitutional Change nd, Paun, Sargeant and Shuttleworth 2017). Even so, it is likely that regular or routine use of the JMC would have drawn more attention to ambiguities about devolution and the location of power. A review of intergovernmental relations completed in January 2022 (Cabinet Office and Department for Levelling Up, Housing and Communities 2022) inaugurated a new framework and set of structures for IGR. It replaced JMC arrangements that had largely ceased to function, particularly outside the domain of policy concerned with UK-EU relations (Paun and Henderson 2022). Initially, considerable time and effort was put into these new arrangements. They did not function while Liz Truss was UK Prime Minister, since then they have been revived somewhat. Whether they are now capable of functioning as initially envisaged is an open question.

44. Though often 'productive', ambiguities about the distribution of power under devolution also create governance problems, typically where the division of formal policy responsibilities cuts across the functional requirements for a particular policy, sometimes described in the language of 'jagged edges' of devolution (see below). Various forms of 'partnership' (see below) have operated across 'jagged edges'. Even so, the coexistence of different basic views of the nature of the UK state also meant that the possibility of friction between governments was always present.
45. Particularly during periods of Conservative-led UK administrations and Labour-led Welsh administrations, there has also been a political dimension to this friction. From David Cameron on, every Conservative UK Prime Minister has criticised the performance of Labour administrations in Wales, with attention typically focused on the NHS and education. We have already seen that Stephen Crabb, formerly David Cameron's Secretary of State for Wales, has described criticisms of Labour in Wales as a Conservative 'playbook' (quoted in Bloom 2023). Typically, the primary audience for these criticisms seems to be voters in England. Often, in other words, they are used as examples of Labour failure rather than to illustrate the problems of devolved government. Even so, they add friction to relations between the governments.
46. The ambiguities of devolution do not exist only at the constitutional or overarching organisational level. They also touch upon a myriad of detailed aspects of administrative and political practice (as the administrative arrangements for civil contingencies in Wales illustrate, see paragraphs 67-73 below). Historically much more tightly integrated into English administrative and legal practices than either Scotland or Wales, the operational policy boundaries of devolution are often not clearly defined in Wales.
47. UK devolution is also generally described as asymmetrical. That is, UK devolution has different historical and structural features in Northern Ireland, Scotland and Wales. A tension exists between political and legal pressures to identify

'commonalities' in devolved arrangements across the UK and the reality of differences across the three systems. Equally, many aspects of the constitutional arrangements for devolution are shared across the devolved systems, perhaps particularly those for which the UK Supreme Court has provided a definition. For example, the statutory principle that Westminster will not normally legislate on devolved matters without the explicit consent of the relevant devolution legislature is non-justiciable across the systems.

Relentless, gradual and *ad hoc*: the trajectory of devolution in Wales

48. Initially the devolved institutions in Wales had comparatively weak formal capabilities and responsibilities. They were limited to executive/secondary legislative powers, operated by a single 'Body Corporate' in which the elected assembly was not distinguished from the executive. The devolved institutions rapidly acquired practical roles in many aspects of central government in Wales. Though initially lacking a basis in statute, a *de facto* government emerged from the National Assembly for Wales. In practice, it gradually became the focal point of central government-type functions in Wales. Widely, if only informally, described as the Welsh Assembly Government from around 2002, the *de jure* separation of the Assembly from the Welsh Assembly Government was made by the Government of Wales Act (GOWA) 2006.
49. Devolution legislation for Wales provided a statutory basis for partnership between the new devolved institutions and local government, voluntary sector, trade unions and business organisations. Partnership was emphasised from the start, the Assembly's first leader, Alun Michael spoke of 'golden threads of partnership (LGC 2019), perhaps partly reflecting limits to the Assembly's own capacities due to its initially weak form powers. Though complicated – and at times contested, at others arguably too cosy – partnership arrangements continue to feature prominently in Welsh policymaking processes (Sanders, 2019; Martin, 2022).
50. The political realities of Welsh electoral politics have tended to reinforce the theme of partnership in the governance of Wales. Though Labour is consistently and clearly the strongest party in Wales, it has never governed alone with a comfortable majority. It has governed in coalition with the Liberal Democrats and Plaid Cymru and formed minority governments. A Labour-Liberal Democrat coalition, in which the Assembly's sole Liberal Democrat member was a cabinet member, held power at the start of the Covid-19 pandemic. Its one-member majority depended on Lord Elis-Thomas, elected on a Plaid Cymru ticket for the Dwyfor Meirionnydd constituency seat, who left Plaid to support the new administration and later joined its Cabinet. Lord Elis-Thomas returned to Plaid Cymru in 2023. Mark Drakeford established a minority government after the 2021 Welsh election, later underpinned by a cooperation agreement with Plaid Cymru (a shared policy programme that does not amount to a formal coalition). Since politics in Scotland generally garners much more attention in the UK level media than politics in Wales, the contrast in Welsh Labour's relations with Plaid Cymru to those of the Labour Party in Scotland with the Scottish National Party merits emphasis: Labour-SNP cooperation is very hard to imagine, Labour and Plaid collaboration is commonplace and has helped motivate major changes in the structure of Welsh devolution.

51. Wales has experienced a distinctively wide-ranging and continuous process of constitutional and institutional change since democratic devolution was established. Broadly speaking, these changes reflect a gradual administrative and legal disentangling of Wales from England. From the Welsh Government's perspective, this process remains incomplete, particularly in relation to Justice Policy and questions of legal administration.
52. Even so, Welsh devolution has been transformed in the decades since it was established; its underlying constitutional form has become much more like the basic structure of devolution in Scotland. The basic changes made in Wales have been enacted through four major constitutional statutes for Wales during this: the Government of Wales Act (GOWA) 1998, GOWA 2006 and Wales Acts in 2014 and 2017.
53. Welsh devolution was set up initially on a local government model, which included a form of cabinet, but no distinction between government and opposition. At the start, the National Assembly for Wales had no primary law-making powers.
54. The 'model' of devolution in Wales rapidly passed through a complicated and politically contested series of reforms. These changes started with the legal separation of legislature and executive. The National Assembly's legislative powers were changed in stages. First, the Assembly acquired the ability to make a novel form of legislation (Welsh Measures) on 'Matters' within 'Fields' set out in GOWA 2006. Matters were gradually added to the Fields after GOWA 2006 came into force. Measures could have all the effects of a primary 'Act'. Following a referendum, 'full' legislative powers were conferred on the Assembly. These powers were 'full' in two senses. First, the Fields were converted into Subjects, within which the Assembly enjoyed full legislative competence. Second, this legislation took the form of Acts of the National Assembly. The Wales Act 2017 provided for a change from the 'conferred' powers approach (where devolved legislation be made only in those substantive policy fields for which the devolved legislature has been given specific authority) to a 'reserved powers' model (in which they have legal authority in all areas aside from those specifically retained exclusively to Westminster) for Welsh devolution. The new model for Wales remained distinctive in that the powers reserved remain much more extensive than those retained exclusively by Westminster for Scotland or Northern Ireland. After May 2020, the National Assembly for Wales became the Senedd Cymru/Welsh Parliament, generally known as Y Senedd or in English as the Senedd. These fundamental and far-reaching changes have not exhausted the interest in further devolution for Wales.
55. From a relatively early stage, a series of independent Commissions have considered the constitutional, financial and institutional structures of Welsh devolution. They have played a prominent and influential role in motivating change, though their recommendations have never been implemented in full. Successive Welsh Governments established a Commission on the Powers and Electoral Arrangements of the National Assembly for Wales the 'Richard Commission' (which reported in 2004), the 'All Wales Convention' (2009), the 'Holtham Commission' (2010) and the 'Thomas Commission' (2019) as well as the on-going Commission on the

Constitutional Future of Wales. The UK government-established Silk Commission published two reports (2012 and 2014).

56. Since the start of devolution, the boundary between devolved and non-devolved competences has raised issues and problems in relation to all the devolved systems. These issues, cast by the Richard Commission as ‘jagged edges, where policy objectives span devolved and non-devolved areas’ of competence (2004: 118), have been a source of particularly wide-ranging and enduring challenges in Wales. In ‘many cases’ the report went on ‘the relationship between the Assembly and UK or England and Wales bodies that impact on its responsibilities is unclear and lacks a statutory basis – and the picture is becoming more complex’.
57. Though the Silk Commission eschewed ‘jagged edge’ language, it also recognised challenges for Wales around the devolution ‘boundary’. The bilateral UK and Welsh Government ‘Welsh Intergovernmental Committee’ proposed to address Wales-specific boundary issues was not created. Silk presented The North-South Ministerial Council established under the Belfast/Good Friday Agreement which brings together the Irish Government and Northern Ireland Executive provided something of a model for Wales. The Commission was impressed by its ‘focus on the needs of the citizen’ and specifically its benefits for ‘people on both sides of the border, by encouraging cross-border cooperation in areas such as health, transport and civil contingencies’ (Silk report II: pp50-51).
58. ‘Jagged edge’ issues remain contentious, notably in relation to policing and wider justice policy issues which are not devolved in Wales. The Richard and Silk commissions, initiated by the Welsh and UK governments respectively both recommended some devolution of powers over the police. Since the 2019 Thomas Commission report, jagged edge issues have been debated around justice policy, broadly defined. The Welsh Government has called for extensive further devolution in this field, while UK government ministers have argued that implementing Thomas would exacerbate or worsen the jagged edge problem since the majority of the body of law applies to England and Wales. Though there is no agreement between them on the devolution of justice, in 2022 the UK and Welsh governments decided to work together on some of the Thomas recommendations ‘to ensure that the reserved justice system operates effectively in Wales’ (Department for Levelling Up, Housing and Communities (DLUHC), 2022: p13). At least implicitly, this move suggests that the UK government’s acceptance that aspects of the England and Wales system had been operating sub-optimally in Wales. The UK government has celebrated this collaboration as an example of ‘good engagement between the UK Government and the devolved administrations’. By describing this engagement as serving ‘to ensure that devolution meets the needs of citizens in ... Wales’, this statement discloses something about Whitehall’s governing disposition. The justice policy collaboration is a response to long-standing structural problems in Wales, revealed by an independent review commissioned by the devolved government. If successful it will improve the operation of reserved powers for citizens in Wales.
59. The process of constitutional change to Welsh devolution arrangements has been as gradual as it has been continuous. Significant effort has been invested in independent commissions on devolution arrangements for Wales. The 2004 Richard Commission

triggered a reasonably quick legislative response in the 2006 Government of Wales Act, as did Silk I (2012) and Silk II (2014) in the Wales Acts 2014 and 2017 respectively. However, with the partial exception of fiscal devolution, the legislation did not encompass the full recommendations for change from the Commission reports. Generally, matters left behind by the legislation have remained on the political agenda, with some key recommendations taken up by later Commissions and in subsequent legislation. As a result, the devolution arrangements in place for Wales do not reflect a systematic design. By diverting attention and resources from other government business, the pattern of complex, *ad hoc* changes made to the devolution arrangements in Wales has had significant opportunity costs. It has, for example, absorbed resources that might otherwise have been focused on improving public services. We shall see below that these general features of its devolution dispensation, which are related to its *ad hoc* and piecemeal development, are also evident in the arrangements for managing emergencies in Wales. It is hard to avoid the conclusion that robust arrangements for managing emergencies in general, and a 'whole of government' emergency like the Covid-19 pandemic (with clear lines of responsibility and authority as well as the ability to call on financial and other resources as need) have not given been a high priority by those responsible for the overall structure of political arrangements in relation to Wales since 1998.

Complex patterns of authority for, and territorial structure of, public services in Wales

60. The devolved government works with a complex set of public sector governance structures within Wales. Responsibility for local authorities and the NHS were devolved by the Government of Wales Act 1998. Responsibility for the Fire and Rescue Service, which is organised into three territorial branches (Mid and West Wales, North Wales and South Wales), was devolved to Wales in 2004. A third 'blue light' service – policing is not devolved. There are four Police forces in Wales (South Wales, North Wales, Dyfed-Powys and Gwent).
61. At its creation, the National Assembly inherited a local government structure that had been reorganised into 22 single-tier authorities. Wales is widely regarded as having too many local authorities, some of which are very small. The resources of small authorities are more likely to be stretched and fragile – potentially contingent on a very small number of key individuals – during an emergency than those of larger ones. (On the other hand, it may be easier for small authorities to adapt or innovate under emergency conditions – individual leaders may have more influence, for good or ill; moreover, small scale authorities may make particular episodes easier to identify – Merthyr Tidful and Ynys Mon are two of the smallest authorities in Wales, Covid-19 outbreaks in food processing businesses in these authorities may have garnered more attention as a result of their impacts on overall rates of infection in small local authorities.) Reforming the structure of local government has been a perennial issue in Wales. Independent commissions have variously proposed functional cooperation across different scales – local, regional and national – in public service delivery (Simpson Report, 2011) and merging local authorities and reducing the number from 22 to between 10 and 12 (Williams Report, 2014). The Welsh Government's draft Local Government (Wales) Bill (2015) proposed mergers to

reduce the number of local authorities to 8 or 9. Plans for enforced mergers were dropped in January 2017, when a White Paper proposed forming regional bodies to facilitate cooperation between authorities. A 2018 Green Paper returned to the merger issue, including for voluntary and compulsory routes. The Local Government and Elections (Wales) Act 2021 did not propose mergers, but made provision for authorities to merge voluntarily. It also created a framework for regional coordination through 'Corporate Joint Committees'. In April 2021 four Corporate Joint Committees were created (for North, Mid-, South West and South East Wales). They operate on a different territorial footprint to the four police authorities.

62. The National Health Service (NHS) in Wales has also experienced restructuring under devolution. Initially, the Welsh NHS was organised into five Health Authorities. A new structure, based on 22 local health boards which shared boundaries with local government and seven NHS trusts. A further reorganisation in 2009 replaced this structure with seven Local Health Boards, plus a series of specialist NHS trusts, including the Welsh Ambulance Service and the Velindre University NHS Trust providing Wales-wide cancer services and the Welsh Blood Service.

Financing for public services in Wales

63. Until recently, national devolution in the UK has been largely funded by block grants provided to the devolved authorities by the Treasury. Devolved budgets were based on a population share of spending in England on policies under devolved control in Northern Ireland, Scotland and Wales respectively. Widely known as the 'Barnett formula', the Treasury adopted this approach in the context of referendums on devolution in Scotland and Wales in the 1970s. This approach to the territorial distribution of public spending did not take patterns of relative need into account. While per head spending in Wales has been higher than in England, the relative need in Wales is also generally regarded as significantly higher, to the point of Wales receiving comparatively less per head funding relative to need than England (see the Holtham Report). Higher need in Wales is due to a combination of an older population, that is generally less affluent, and lives with worse health as well as more poverty. Large parts of Wales are also rural in character, with dispersed populations living in remote locations.
64. In the context of the devolution of significant powers over income tax to Wales, negotiations on the 'Fiscal Framework' held in 2016 led to the inclusion of an unprecedented 'needs-based factor' in the calculation of the Welsh block grant (no such element currently exists for Northern Ireland or Scotland). This change also seems to confirm that, over a longer period, the devolved authorities in Wales have received lower levels of funding for public services relative to need than the counterparts of those services in England. Other things being equal, this relatively lower level of funding may have meant that Wales started from a lower baseline in responding to the pandemic.
65. Decisions taken by the UK government about the trajectory of public spending after 2010 are widely described as a policy of austerity. At least initially, the Welsh Assembly Government took a clearly distinctive approach to implementing this austerity policy. Unlike the UK government for England, the Welsh authorities chose

not to 'ring-fence' spending on the NHS, instead imposing smaller reductions in grants to local authorities (which include school funding in Wales, but not in England) (Travers 2010). Perhaps resulting from a mix of the extended period of austerity and sustained criticism from the UK government, the Welsh Government changed course. Having chosen not to ring-fence NHS spending between 2010 and 2015 (the choice made by the UK government for England), in 2015 the Welsh Government announced extra funding for the NHS and made larger cuts elsewhere, including 2% cuts to its local authority grants (Morris 2015).

66. In their evidence to this inquiry, Bambra and Marmot emphasised the vulnerable or weakened condition of the NHS across the UK as a problematic aspect of the UK's ability to respond to the pandemic. The longer-term funding environment and different levels of need present in Wales might suggest that its authorities faced a more challenging context than their counterparts in England.

Arrangements as at 1 January 2020 and during early 2020

Welsh central government structure and functions immediately prior to the pandemic

67. The executive structure of Wales' central government is distinctive. The First Minister leads a small Cabinet of eight other ministers and five deputy ministers drawn from a 60-member Senedd. The Cabinet meets as a whole and also operates through sub-committees.
68. The Welsh Government encompasses a civil service that supports Welsh Ministers. Since the civil service is a matter reserved to Westminster, the work of these officials is governed by the same rules and customs of civil servants serving the UK government. The civil service serving the Welsh Government is relatively small. (I make no claim about size relative to function, since the latter differ significantly across the UK's devolved governments). The organisational structure of the civil service serving the Welsh Government contrasts to the pattern in Whitehall. Aside from the Office of the First Minister, it is generally organised into multi-disciplinary 'Groups' which are, in turn, each formed of several more focused 'Directorates'. There are, generally, fewer Groups than Welsh Ministers. As a corollary, Groups are not 'led' politically by a designated 'departmental-type' cabinet minister. This design, perhaps together with the small overall size of the Welsh Government's public service, cuts against tendencies to create silos around areas of policy. This structure may also mean that special advisers are a particularly significant part in supporting the work of the Welsh Ministers. Though they generally remain in the background of politics and policymaking in Wales, the quality and prior experience of these advisers is an important element of the effective functioning of the Welsh Government.
69. The comparatively small scale of the central institutions of the Welsh Government has, in my view, contributed to lending a collaborative pattern to its decision-making processes. Collaboration is often identified as a strength of 'small-nation' government. In principle, small-nation relationships could become overly 'cosy', perhaps with the risk of reducing the element of challenge within these systems. Within this structure, the role of the First Minister is pivotal – the First Minister's capacity to work across a range of domains and to balance political and expert views is key. Equally, in a small government of this kind, actively contributing to detailed substantive decision-making also forms part of the First Minister's role.
70. The Welsh Government is advised by several permanent scientific and medical experts, including a Chief Medical Officer role that pre-dates devolution whose office now sits within the Welsh Government's Health & Social Services Group (HSSG), a Chief Scientific Adviser and a Chief Scientific Adviser for Health. Even so, the Wales-specific capacity to provide scientific and technical advice to the Welsh Government at the start of the pandemic proved insufficient to the scale of the challenge posed by Covid-19 emergency. The Welsh Government responded rapidly by creating the Technical Advisory Cell and Technical Advisory Group (these are the only such arrangements on which I have been instructed to comment that did not pre-date the pandemic).

71. Emphasis has been placed on statute-grounded partnerships between the political institutions and non-governmental organisations from the start of devolution. These arrangements have further contributed to the emphasis on collaboration and partnership work within Wales. For example, a shadow Social Partnership Council bringing together employers, employees and the voluntary sector had been set up during the summer of 2019 (Wales TUC 2019). It was created to prefigure the planned creation of a statutory council. The shadow Social Partnership Council met regularly through the pandemic. The Welsh Government clearly regards this council as having played a valuable role during the pandemic (Welsh Government 2023b). I have not been able to find evidence sufficient to come to my own assessment.
72. It is, in my view, helpful to distinguish between organisations and apparatus within the Welsh Government on the one hand and a variety of partnership bodies and various groups drawing on external expertise. The latter include partnerships collaborations between the Welsh Government and other public sector bodies (such as the Partnership Council for Wales), various partnerships focused beyond the public sector per se (such as the shadow Social Partnership Council, the Disability Equality Forum), various groups drawing on external experts to advise the Welsh Government (the Technical Advisory Group and the First Minister's BAME Covid-19 Advisory Group) and then organisations, groups or forums that reach or potentially reach across levels of government (UK, Welsh and local, forms of public service and the voluntary and private sectors) typically with a focus on 'emergencies'. I was not able to find sufficiently detailed evidence in the public domain to make a broad assessment of the role of some organisations or facilities that contributed to the Welsh Government's response to the Covid-19 pandemic (such as the the Shadow Social Partnership Council, the Emergency Coordination Centre (Wales), the Wales Civil Contingencies Committee, the Nosocomial Infection Group, the Disability and Equality Forum). Subsequent access to evidence supplied to the Inquiry brought the roles played by and work of such bodies as the Welsh Government's Core Covid-19 Group, the First Ministers BME Covid-19 Advisory Group and the Shadow Partnership Council and the Welsh Government's general approach to the decision-making during the pandemic into much sharper focus.
73. Based on (1) my prior research into and experience of UK territorial governance and devolution in Wales and (2) the specific work I have done in the context of the inquiry, the Welsh Cabinet and, in particular, the First Minister and the First Minister's Office provided the fulcrum around which Welsh Government decision-making turned during the pandemic. The coordination of work across Welsh Government, as well as with local authorities, service providers and the public, private and civil society sectors by the First Minister/First Ministers Office was critical in drawing together the range of relationships and sources of evidence that fed into decision-making in Wales. It seems likely that the arrangements would have not have operated as effectively with a less experienced First Minister in office.

The role of the UK government

74. A large number of UK government structures play significant roles in the government of Wales. Some – such as the Cabinet Office, Cabinet Secretary and the Civil Contingencies Secretariat, as well as the Secretary of State for Wales and the Office of the Secretary of State for Wales (Wales Office) have formal roles and relationships with devolved authorities in Wales. The Prime Minister, No. 10 and the Prime Minister's Office, COBR and SAGE cover Wales as part of the UK. Even where formal roles exist – for example of the Cabinet Office's Civil Contingencies Secretariat with the Wales Resilience Forum, or the role of the Secretary of State for Wales in relation to the pandemic – it is often not clear how significant or helpful a contribution these institutions made to pandemic governance in Wales in practice. The real quality or character of the relationship between these structures can be hard to pin down, not least since it can be contingent on the preferences and attitudes of the individuals holding particular roles.
75. In relation to expert advice, there is, for example, a strong sense that the Chief Medical Officers to the four UK central governments routinely work together closely and well (reflected in evidence presented at the House of Commons Science and Technology Committee, 24 April 2020). By contrast, Welsh concerns can appear marginal in UK government bodies and the advice on which they draw (such as COBR, SAGE and the Chief Scientific Advisers (CSA) Network). Two types of example of this phenomena are:
 - a. England is both the largest part of the UK (roughly 85% by population) and is governed by UK state institutions. Concerns and data about England rightly bulk large in the work of the UK government. For example, to my knowledge, SAGE did not develop models off/for Wales. It is unclear to me whether/how data on Wales featured in pandemic modelling undertaken by SAGE.
 - b. Devolved governments are treated as equivalent to Whitehall departments for some significant purposes. For instance, only the overall CSA to the Welsh Government is a member of the CSA Network. Whether or not that treatment strikes the right balance between the UK and Welsh levels in normal times, a case can be made for facilitating interaction of relevant senior specialist scientific advisers from across the UK in a public health emergency. Initially the CMO for Wales was identified as the country's active member of SAGE. Early on (February 2020) it was agreed that the Welsh CSA for Health would attend SAGE as Wales's representative in place of the CMO. The Welsh CSA for Health was invited to attend SAGE with observer status in February 2020; he was listed as a member/expert from 5 March 2020 onwards (Orford TAC/TAG 2023: paras 13-16, pp 4-5, see also para 99 below).
76. Equally, members of SAGE and its sub-groups joined Wales's Technical Advisory Group (or its sub-groups) once it was (they were) established. There is also some evidence that relations between the new Welsh body and SAGE were positive (see Solomon's evidence, discussed at para 139 and 163 below).
77. The Treasury is a key UK government institution – both pre-pandemic and during the Covid-19 emergency. It played a defining role facilitating full lockdowns in spring 2020

and winter 2020-2021 as well as in relation to Welsh Government decision making at other key points during the pandemic, especially around the distinctive autumn 2020 'firebreak' in Wales, to which I will return below. Within the UK's system of government, the Treasury has the distinctive capacity to provide financial support. Without support of this kind, 'lockdown' type restrictions, including any 'firebreak', would be likely to cause significant economic harms. Without support, a firebreak might prove unsustainable, perhaps by engendering significant non-compliance. The relationship between UK-level authority over public finance and Wales-level authority for many other aspects of emergency rule-making was critically important for 'lockdown' type policies.

Recent history of civil contingency management and planning for Wales

78. The recent history of planning for and management of civil contingencies and emergencies illustrates many issues around intergovernmental relations, the distribution of formal authority and partnership working in Wales. The Civil Contingencies Act (2004) formalised its four police force areas as the primary locus for coordination of emergency responders in Wales, each as a Local Resilience Forum (LRF). This approach, which defined the police, fire and rescue services, local authorities and the health sector as 'Category One' responders, is essentially parallel to the arrangements put in place in England. In its response to the final draft of this report, the Welsh Government stated that it was responsible for establishing the Wales Resilience Forum (WRF), although I should note that the 2004 Act did not devolve responsibility for civil contingencies to it. As a country-wide entity, WRF had been in place some time before 2018, when responsibilities under part one of the Civil Contingencies Act were devolved to Wales. Part one of the Act defines 'category 1 responders' – generally the emergency services and local authorities – and places them under a legal obligation to:
- assess the risks of emergencies,
 - plan for emergencies and conduct exercises in preparation for them,
 - inform the public about emergencies,
 - make continuity plans,
 - manage business continuity.
79. Even before the devolution of civil contingency powers in 2018, in practice the Welsh Government played a key coordination role, including through the WRF. To make the same point the other way round, the Forum provided a setting within which the Welsh Government was able to convene diverse actors to focus on planning for civil contingencies.
80. The Welsh Government's involvement, and the leading intervention of the First Minister, in the foot and mouth outbreak in 2001 was an example of the Welsh Government taking the lead during major emergencies that affect Wales. Since then, a reasonable expectation from the public sector and from citizens that the Welsh Government will lead during major emergencies that affect Wales has become firmly

and widely established. Organisations involved in planning for and responding to emergencies appear to expect the Welsh Government to lead in this way.

81. The statutory framework for civil contingencies seems to have been at odds with expectations of citizens and organisations involved in planning for and responding to emergencies (where those expectations should have been directed at the UK government but were instead focused on the Welsh Government). In other words, Welsh Government leadership on certain aspects of civil contingencies sat uneasily with, even contradicted its statutory role. An argument can be made that the legislations and Cabinet Office guidance did not accurately reflect the role of Welsh Government for civil contingencies.
82. The Cabinet Office by contrast considered the civil contingency legislation to be clear in that the Welsh Government has no express role while acknowledging in practice and in its guidance a role for the Welsh Government. UK government evidence to its Commission on Devolution in Wales (Silk Commission) argued that the 'respective roles of devolved and non-devolved bodies in the response phase of an emergency may not always be clear in advance. Clarity of roles and responsibilities is important, as is the ability to work together in planning for emergencies and to build, as far as possible, on day-to-day arrangements in the response phase. While the Government believes that no major change is necessary, understanding of how these arrangements might work better in practice would be helpful.'
83. By contrast, the Welsh Government emphasised its 'very limited formal powers in respect of civil contingencies' alongside a 'de facto role of leadership and coordination.' It called for the transfer of Ministerial function in Part 1 of the Civil Contingencies Act 2004. The Commission itself noted that the Welsh Government 'now coordinates cross-cutting activities as well as the work undertaken by Local Resilience Forums.' (Silk report II: p135).
84. This lack of clarity and complexity of leadership arrangements raises questions about the effectiveness of policy for civil contingencies in Wales, it made exploiting opportunities for increased efficiency in local delivery more difficult. The issue of whether all local authorities had the capacity to act as effective Category One responders was particularly significant in Wales, given the large number of local authorities, some of a very small size. This issue was raised by the Simpson Commission. The Welsh Government followed its broad suggestion to use regional co-ordination as means of managing issues around emergency response and the number and scale of local authorities in Wales.
85. Equally, the complexity of leadership arrangements and ambiguity or lack of clarity over roles had not prevented the Welsh Government from providing effective support for the partners delivering the Civil Contingencies Act 2004. Some have noted the competent response from the Welsh Government and its partner organisation is responding to a wide range of emergencies. In his 2018 statement following the devolution of powers under part one of the 2004 Act, First Minister Carwyn Jones noted that the 'very limited formal powers' previously exercised by Welsh Ministers had 'not prevented us from exercising a de facto leadership and co-ordination role ... evidence by the work of the Wales Resilience Forum, which I chair' (2018). It is

unclear whether the Forum has always been chaired by the First Minister, or whether it was ever chaired by a member of the UK Cabinet Office's Civil Contingencies Secretariat, which appears to be the only body within the UK government proper that is represented on the Forum.

86. The WRF is a planning forum, not an emergency response body. It met once during the pandemic, in December 2021, for routine business (Andrew Goodall statement, INQ000319643: para 104).
87. Despite the statutory position, Welsh Government provision of £10.4 million of funding for three dedicated strategic coordination centres located at Colwyn Bay, Cardiff and Carmarthen, linked to the Emergency Coordination Centre (Wales) in Cardiff provides one example of *de facto* Welsh Government leadership. These centres, which opened in September 2011, were co-funded by the three police forces involved (Gwent Police shared in the Cardiff local centre), to the tune of more than £14 million.
88. My sense of the Welsh Government's position is that it understood its evolving *de facto* leadership and co-ordination role as reflecting the need to show leadership rather than resulting from a sense of entitlement to the role.
89. The devolution of part one powers under the Civil Contingency Act 2004 came in June 2018, less than two years before the Covid-19 emergency. Carwyn Jones described it as an 'opportunity to provide a less ambiguous constitutional platform from which to develop preparedness across all agencies and so strengthen resilience against the growing risks'. After noting the new opportunity 'to develop our own guidance and regulations in relation to the various civil contingencies functions', the First Minister emphasised the need to take these developments forward 'in close collaboration with emergency services, local authorities and other responder agencies. How these functions will be exercised in practice will be an evolving process. I want to work closely with Local Resilience Forums and individual responder agencies to understand where the new powers can add value. I want to obtain assurance of consistent and acceptable performance standards being maintained across devolved services in relation to the duties under this Act. I wish to look at ways we can move away from a self-assessment scrutiny process to one where Welsh Government takes a more active role in the performance management of devolved services' (Jones 2018). There is, of course, an implication here that the previous arrangement of powers and responsibilities allowed standards to be inconsistent and unacceptable and that self-scrutiny provided an insufficiently rigorous assessment of these capacities. Moreover, Andrew Goodall (INQ000130469: para 153) noted that 'despite the requests of the Welsh Government, no additional funding from the UK Government was provided' when part one powers under the 2004 Act were devolved. 'That meant the cost of all civil contingencies work undertaken after the introduction of the TFO, including the wider pandemic planning, had to be met from existing Welsh Government budgets.'
90. By contrast, at the start of the pandemic neither the Northern Ireland Executive nor the Scottish Government held powers equivalent to those exercised by the Welsh Government impose restrictive regulations (lockdown-type regulations) under the

Public Health (Control of Diseases) Act (1984), as amended by the Health and Social Care Act (2008). Executive powers under the 1984 Act were among the many and various powers in the original 'National Assembly for Wales (Transfer of Functions) Order 1999 (No. 672)' (powers under section 28 and the Treasury function under section 73(4) were excepted from this transfer – see <https://www.legislation.gov.uk/uksi/1999/672/schedule/1/made>). The 1999 TFO provided the initial substantive policy content of Welsh devolution. Until the Government of Wales Act (2006) came into force, these powers were exercisable by the Assembly itself as a body corporate. After its executive and legislative roles were separated by the Government of Wales Act (2006), these executive powers were passed to the Welsh Ministers. The 2006 Act established in principle that the National Assembly could make a type of primary legislation. Assembly legislation during that period took the form of 'Measures', which it could make within a set of 'Fields' conferred on it by 2006 Act. Assembly legislative competence was, however, further limited to (more-or-less specific) 'Matters' that were gradually being added to the Fields. While Field 9 of Schedule 5 to the 2006 Act covered 'Health and Health Services', by the middle of 2008 only one Matter had been added to it (related to redress without recourse to civil proceedings, not to public health). In other words, competence legislating on matters of public health had yet to be conferred on the National Assembly at the time that the Health and Social Care Act (2008). At that date, Westminster was the sole legislature with competence to change the powers of the Welsh Ministers in relation to matters of public health.

91. The Welsh Government seems to have developed a reasonably effective set of arrangements and partnerships for managing emergencies within Wales. The balance of risks and benefits associated with a dense network of partnership arrangements in a small country like Wales is difficult to assess. The pattern of dense relationships might be seen as overly 'cosy' reducing 'challenge' within the system and/or supporting richly textured cooperation and collaboration. It is worth emphasising that the emphasis on partnership is not unique to policymaking for the Covid-19 emergency; it is a general feature of the system of governance in Wales. As a consequence, established leaders in Wales will be used to operating in a context that, from the outside, may appear more complex than it seems to those on the inside.
92. The Welsh Government adapted its partnerships practices to the Covid-19 pandemic against this backdrop. Some new practices, such as those around the Shadow Partnership Council, built on and re-purposed arrangements that were being developed prior to the pandemic. By contrast, the Covid-19 Core Group sat largely within the Welsh Government, though it opened membership and/or participation to politicians from other political parties in Wales, representatives of local government and the voluntary sector, a member of the UK government and members of the armed forces and police forces in Wales. Wales was led by a First Minister, Mark Drakeford, with very extensive high-level experience through most of the previous history of devolution in Wales. Drakeford's experience encompassed the chief Special Advisor role to the First Minister who dominated the first decade of devolution, Rhodri Morgan, and then serving as an elected member and senior minister in subsequent Welsh administrations. A less experienced First Minister might have found the

arrangements more difficult to operate. The First Minister's senior special adviser through the pandemic, Jane Runeckles, also had long- and wide-experience of public and political life in Wales.

Exercise Cygnus

93. Exercise Cygnus was a pandemic influenza planning exercise delivered by Public Health England for the (then) Department of Health. It involved devolved institutions from across the UK. It was initiated in 2014, then paused as a consequence of the Ebola outbreak. The Exercise was restarted in 2015 and, following smaller scale preparation (Exercise Cygnet, August 2014) was carried out in October 2016.
94. Welsh involvement in Exercise Cygnus was complex. It appears that significant work was carried out under the Exercise in Wales during the initial phase in 2014, a phase that was not active elsewhere in the UK. According to evidence submitted to this Inquiry by Andrew Goodall, a decision to establish a Wales Pandemic Flu Task and Finish Group was made in November 2011. 'The work of the group culminated in the testing of the reviewed plans during Exercise Cygnus in Wales in 2014; the work of the group also provided 'the basis of wider Exercise Cygnus in 2016 ...' (INQ000130469: para 189). More 'extensive preparatory training for the exercise' appears to have been conducted in Wales than in most other organisations involved in Exercise Cygnus (PHE 2017: p10).
95. Public Health England (PHE) states that 'Devolved Administrations ... own response plans ... were not examined at the local level during the exercise' but that 'Wales had already tested their local response arrangements following Exercise Cygnet held earlier in the year' (PHE 2017: p7). I have found no evidence of a specific local response test in Wales following Exercise Cygnet in August 2016 before Exercise Cygnus in October 2016; the reference here may be to 'a national workshop' run in Wales 'as part of the work-up for Exercise Cygnus in 2016 (PHE 2017: p10).
96. PHE set out four overarching 'lessons' from Exercise Cygnus, the first three related to preparedness and the final one on response (2017). Its high-level statement of these lessons mentioned devolution in two (L1 on Pandemic Concept of Operations and L2 on legislative easements and regulatory changes) but not on the other two (L3 on public reaction or L4 on capability and capacity to surge resources).
97. The treatment of devolution matters in Exercise Cygnus was inconsistent. Though lesson 1 makes reference to preparations in Wales, the report's first three lessons identified on training and exercising, multi-agency planning and links between local and national levels do not mention devolution (PHE 2017: pp10-12). PHE itself noted this inconsistency explicitly in the next section of the report's Appendix A on the Four Nations response (PHE 2017, A.1.3, LI 4, pp 12-13). There, it stated that meetings of the four Chief Medical Officers and the invitation of the devolved governments to a 'Health Tri-partite (DH, NHS England and PHE) ... in preparation for each of the anticipated COBR meetings ... should be considered best practice and be continue and would build on existing strong cooperation between the Administrations ...' However, 'due to exercise limitations the Devolved Administrations were not invited to attend and this was an oversight' (PHE 2017, p12). The phrase 'existing strong

cooperation' seems much more apt for the relationships among the four government's CMOs than in relation to other dimensions of health administration. Though 'contrary to the established best practice' it 'was agreed during the exercise planning phase that for logistical reasons it would not be possible to schedule a meeting of the four Health Ministers.' 'Instead it was agreed that the Devolved Administrations would contribute directly to the COBR discussions' (PHE 2017, p13). Whatever forms of involvement were developed for devolved actors, they do not appear to have been sufficient, since 'the Devolved Administrations reported that they felt they had been left out from some key decisions taken during the exercise' (PHE 2017, p13). PHE concluded that 'consideration should be given to developing a mechanism to enable shared preparedness policies and plans to be developed on issues relating to surge and excess death management' (PHE 2017, p13). Lessons across the domain of communications (p. 18, where there is a call for consistency of messages 'across the four Nations'), social care provision (p. 24) and the role of the voluntary sector (p. 25) appear to be based on the experience in England. Though each refers to institutional teams for England working 'alongside colleagues from' or 'with colleagues' or 'relevant authorities in' 'the Devolved Administrations', they do not go on to flesh out these headline statements. I cannot rule out the possibility that a more consistent approach to Exercise Cygnus with respect to devolution might have contributed to a more effective and more rapid initial response to the pandemic. On balance, though, I am more inclined to regard the record of this Exercise as a reflection of a broader pattern of UK territorial governance, here particularly in relation to Wales. I doubt that even a differently run Exercise Cygnus would have been able to transform that broader pattern in a way that would give me confidence about its suitability for the management of a 'whole of government' pandemic emergency.

98. Andrew Goodall (INQ000130469; para 190) has reported on work undertaken in Wales under the UK Pandemic Flu Review Board 'to take forward recommendations from Exercise Cygnus' across five key areas. Even so, most of this work appears to have been focused within Wales, rather than involving 'shared' work with UK-level institutions. The exceptions are work on health care demand being done by the UK Department of Health and Social Care and NHS England for the four CMOs (INQ000130469: para 190.1) and Welsh Government-Cabinet Office collaboration on 'devolved and reserved areas of legislative asks' for 'a Pandemic Flu Bill' (INQ000130469: para 190.4). This preparatory work was undoubtedly worthwhile; how far it changed the underlying administrative culture that led to the oversight of not inviting devolved governments to the Exercise Cygnus Health Tri-partite is less clear.
99. The planning for a Pandemic Influenza Bill that followed Exercise Cygnus provided a partial template for the Coronavirus Bill 2020, particularly in relation to legislative easements and regulatory changes for a pandemic emergency, for example around professional regulation.

Brexit

100. Considerable time and resource were devoted to planning for Brexit, including contingency plans for a 'no deal' Brexit (Operation Yellowhammer). This work seems to have had mixed consequences across the UK, including in Wales. On the one

hand, governing resources were stretched thin by this 'civil contingency' work. On the other hand, some specific areas of planning, including around provision for the NHS, may have been placed on a better footing by this work, before the Covid-19 pandemic hit.

101. We have seen that relations between the Welsh and UK governments had long been complicated and lacked clarity. By early 2020 Welsh Government ministers described relations with the UK government as being at a historic low point, the two governments were at odds over Brexit and its implications for patterns and structures of territorial governance within the UK.
102. Relations between the UK and Welsh governments remained fraught during the pandemic in the Brexit-related policy space. The Welsh Government continued with emergency planning for a 'no-deal' Brexit through most of 2020. During 2020, the UK government also developed and legislated for the UK Internal Market Act (2020) despite objections from the Welsh Government (and Scottish Government). The UK government engaged with Welsh counterparts on this legislation in the early months of 2020, but stopped that engagement prior to the publication of their White Paper on the Internal Market in June 2020.

Overall position at the outset of the pandemic

103. In my view a balanced assessment of the situation in Wales at the onset of the Covid-19 pandemic should emphasise:
 - a. the sustained pressure on public services in Wales over the prior period;
 - b. that no previous emergency faced by the Welsh Government was on a scale remotely like that of the Covid-19 pandemic;
 - c. the complex, but reasonably effective set of arrangements for dealing with emergencies *within* Wales existed as at 1 January 2020, although how well those arrangements matched up to the requirements of a 'whole of government' emergency is a different question;
 - d. moreover, the legislative and regulatory framework within which the Welsh Government operated 1) had been subject to continuous change since the establishment of devolution, including very recent changes to the legal basis of its role in emergencies 2) typically mixed a more extensive *de facto* role than might be expected from *de jure* authority, albeit with *de jure* responsibilities tending to 'catch up' with *de facto* realities over time 3) was, in a range of important respects contingent on the operation of the UK government-level emergency response (for example through COBR and through the choice of its legislative basis – Coronavirus Act rather than the CCA) and therefore 4) during the initial pandemic response period lacked clarity about its (the Welsh Government's) role;
 - e. the lack of clarity over the role of the UK government in Wales and the structure of UK-Welsh government relations in the event of an emergency on a UK-wide or global scale; this remains an important issue.

1 January to 23 March 2020

Early patterns of intergovernmental work across UK governments

104. Relations between the UK and devolved governments are generally regarded as operating smoothly and well during the early phases of the Covid-19 pandemic. There are clear examples of effective collaboration during this period.
105. In evidence to this inquiry, Mark Drakeford has stated that 'at the start of the pandemic' he expected 'that decisions about governmental responses to the pandemic, including lockdowns, would be taken on a UK-wide basis by the UK Government' (INQ000273747, para 53. Drakeford has described his understanding of the discussion of the need for an emergency Coronavirus Act at the 26 February COBR meeting. That discussion considered the need for emergency legislation in the light of the 'basic principle' that 'if an emergency could be foreseen, then other legislation should be brought forward to deal with it' (INQ000273747, para 23). Even so, Drakeford reports his 'impression, at the time' as being 'that the Coronavirus Bill would mirror the essential scheme of the Civil Contingencies Act and that the primary decision-making power would remain with the UK Government, to be implemented by the devolved governments (INQ000273747 para 23). More generally, Drakeford states his 'expectation' 'that decisions about governmental responses to the pandemic, including lockdowns, would be taken on a UK-wide basis by the UK Government. Looking back now, I think that assumption was based on my recollection that previous planning for pandemics appeared to assume that civil contingency powers would be the primary instrument used within a wide scale pandemic. It seemed to me that this was a generally held assumption amongst governments across the United Kingdom' (INQ000273747, para 53).
106. The UK Government's decision to ground the pandemic response on public health powers through the Coronavirus Act (2020) meant that devolved governments, including the Welsh Government, became the primary locus of pandemic governance for their respective territories, alongside the UK government for England. Evidence provided to Module 2a suggests that the Scottish Government believes that the Scottish Parliament could have chosen to legislate for the pandemic under its own competence in the domain of public health. The Welsh Government does not seem to have considered this possibility, or at least I have seen no evidence or discussion that suggests it had.
107. Drakeford states that the UK government changed its approach on (or around) 20 March 2020: the COBR meeting on that date 'recommended that the Public Health Act 1984 be used rather than the Civil Contingencies Act 2004 as the legal basis for government action responding to the pandemic (INQ000371209, para 52) He reports that COBR meeting as having 'suggested the Secretary of State would make ...[lockdown-type] ... regulations for England'. Identified as 'a practical and proportionate way forward' according to Drakeford, the Welsh Government anticipated receiving the English regulations, which 'would be modified for Wales and signed by the First Minister (INQ000371209, para 108).

108. The note of the 20 March COBR meeting (assuming the relevant meeting was COBR COVID-19 (M)(20)(13) - INQ000056212) makes it clear that the concerns about the legal powers to enforce the measures were raised in the context of devolution, and that Northern Ireland's First Minister specifically requested a conversation with the Attorney General to discuss 'legal powers and how they would be implemented in Northern Ireland'. The note is not clear on how the measures would be put in place for England, nor does it make any mention of Wales or Welsh Government participation. Drakeford has also described 'a minute of the Prime Minister's Strategy Meeting' he received on 20 March 2020. This minute refers to the PM's 'consideration to taking further measures beyond those' previously 'considered' which 'related to the closure of hospitality businesses, and mandating closures and extending it to other businesses'. In response Drakeford asked, *inter alia*, 'for clarification on the legislative process under the Coronavirus Act'. He states that 'it is therefore clear that before COBR it was not anticipated that the public health legislation would be used for these purposes' (INQ000371209, para 110 – taking the reference to 'COBR' here to mean the 20 March 2020 meeting).
109. Vaughan Gething describes a debate about 'the use of a UK Bill' at the COBR(M) meeting on 2 March 2020, reporting a statement that the Civil Contingencies Act would provide a 'problematic' legal basis for action. While his text implies that the rationale for any such legislation would be health-based, Gething does not discuss specifically or explicitly whether this choice meant that Public Health Act (1984) powers and structures would be used rather than Civil Contingencies Act (2004)-type alternatives (INQ000391237).
110. It seems to me that Drakeford is making a specific and otherwise rather overlooked point in relation to the choice of public health or civil contingency type powers. From his perspective, even if the Civil Contingencies Act (2004) did not provide an appropriate basis for the pandemic response, in itself, that did not necessarily require the UK government to default to Public Health Act (1984)-type powers. Instead, the emergency legislation might have been modelled on Civil Contingency-type powers (implying 'primary decision-making' with the UK government and implementation by devolved governments). I have seen no evidence that the UK government considered this alternative. Drakeford's position suggests that, on choosing not to use the Civil Contingencies Act (2004), the UK government seems to have defaulted to Public Health Act (1984) powers. Even though the Coronavirus Act (2020) included specific new regulation-making powers for the Scottish Government and Northern Ireland Executive, Drakeford's position implies that the UK government was not fully seized of the implications for devolution of taking the public health route. Drakeford, for example of 'the unintended consequences of this decision for divergence' and, in terms, that it 'was not clear to' him 'that, when this decision was taken' [to use public health powers] 'the UK government fully appreciated the extent to which decision would then be made by the devolved governments' (INQ0000273747 paras 23 & 54).
111. The Secretary of State for Wales seems to have played a limited role in pandemic policymaking. The First Minister remarks on the 'number of enquiries' being made 'of me and my special adviser' by the Secretary of State and his special adviser 'early on during the pandemic', including one on the 16 March 2020 'asking me to convene a meeting with him and representatives of business and trade unions in Wales'. The

First Minister's description of his response suggests he regarded this request as a potential 'distraction to the efforts that were already underway', though he would also 'invite the Wales Office [to meetings] where it would be mutually beneficial' (INQ000273747, para 46).

112. Initial substantive decisions were largely synchronised across the UK's four central governments, both at an overarching level and specifically within health and social services. Many commentators describe them as coordinated effectively. Andrew Goodhall describes the HSSG Public Health Division meeting daily with Public Health Wales from 24 January, with three of five strategic aims (specifically, monitoring and assessing the risk to public health in Wales, facilitation of detection and immediate case managing and isolation to prevent transmission in Wales and provision of robust guidance and information for health professionals and the public in Wales). He states this work 'part of the UK response'. The development of a suitable diagnostic pathway for the novel strain and facilitation of PHW and Welsh Government communications and actions (cross government, NHS, and wider partners) (INQ000319643: para 92). The initial introduction of restrictions (initial lockdown) was synchronised across the UK's four central governments.
113. The UK government's Coronavirus Job Retention Scheme ('Furlough'), introduced by the Treasury on 20 March 2020 (and backdated to 1 March), provided the foundation for pandemic governance across the UK, including in Wales. At least over the first wave of Covid-19, Treasury policy provided a reasonably robust framework for all central governments across the UK. Other Treasury schemes to support businesses were also important.
114. Limits to its budgetary flexibility – such as the (normal) maximum size (£350 million) of the Welsh Reserve, the inability to draw down the full Welsh Reserve in a single year, the annual borrowing limit of £150 million and aggregate ceiling – were a matter of concern for the Welsh Government. The Treasury introduced a 'Barnett' or 'Coronavirus Guarantee' that grants made to the devolved governments consequent on funds allocated to UK departments would not be clawed back should UK departments not spend the allocated funds in full. This guarantee was first introduced by the Treasury in July 2020 (HM Treasury 2021).
115. The evidence I have seen does not allow me to see a full picture of these relationships, it remains incomplete in important respects – and, notwithstanding synchronisation, we shall see that in some respects relations between the UK and Welsh authorities were not entirely smooth or straightforward from early in the pandemic. Examples include interactions between Welsh bodies (Welsh Government, Public Health Wales) and those for England/the UK (Public Health England, the UK government) in March 2020 over procuring Covid-19 tests from Roche and the commissioning of a Covid-19 testing centre in Cardiff by the UK government.
116. Cooperation between the four governments' CMOs appears to be effective, rooted in long-standing interaction. It seems to be the most consistent and effective aspect of the relationship between the four governments.

117. Even so, I was not able to clarify aspects of the communication of understandings of risk within the CMO arrangements. For example, Lord Bethell has stated that the UK government's CMO 'came in' to advise the DHSC about Covid-19 in the first week of January 2020 and that by 'about mid-January, we in the top floor of the DH had a pretty clear idea of what ... was ... coming down the tracks' (Institute for Government 2023). This observation appears inconsistent with evidence provided to the Inquiry by CMOs for England and for Wales. In evidence to Module 2, the CMO(E) set out a detailed timeline of activities between 1 and 21 January 2021 (INQ000248853 paras 5.57-5.90), it describes: '65 ... people reported as infected, 3 outside China with 2 deaths' as at 19 January; 'the first DHSC Permanent Secretary led meeting on COVID-19 .. held on the basis of increased perception of risk' on 20 January; GO-Science being alerted of the CMO(E)'s view that 'a pre-SAGE (a SAGE meeting in advance of a formal request form Cabinet Office to activate SAGE) should be held, also on 20 January; and that by 21 January '282 people were reported as infected, 4 outside China' and '6 reported deaths' (INQ000248853: paras 5.87-5.90). Evidence from the CMO (W) states that the collective assessment of the UK CMO network was 'the outbreak .. in Wuhan' could have 'three potential outcomes: ... just fizzle out, ... lead to limited regional spread in other Asian countries, or ... become a more widespread global issue. Our early view, based on the experience from SARS, was that it would most likely fizzle out or be limited to Asia' (INQ000391115: para 40). This evidence describes discussions among the UK CMOs and DCMOs that began 'sometime between Christmas 2019 and the New Year' and notes that the DCMO(E) was monitoring the situation and keeping the UK CMOs up to date with developments' (INQ000391115: paras 39). A CMO alert issued by Chris Whitty on 23 January was 'copied' to 'the UK CMOs' and followed by a UK CMOs call about 'Wuhan coronavirus', which 'was the start of a regular pattern of very frequent and sometimes daily meetings for the first few weeks of the pandemic'. CMO(W) reports that there 'is no agreed record of the meetings' and that he did not share or circulate any personal notes he may have made with colleagues in the Welsh Government (INQ000391115, paras 37-43). There is evidence of some early communication of the possibility of the virus spreading to Wales: Mark Drakeford has recorded that by '24 January' (prior, that is, to the World Health Organisation declaring a public health emergency on 30 January) the CMO(W) 'had ... advised ... that there was a significant risk the virus would arrive in Wales' (INQ000273747, para 16). It is not clear whether, how and how far discussions within the CMO network from earlier in January fed into Welsh Government policy processes; evidence provided by the First Minister and CMO(W) suggests that COVID-19 was identified from 24 January as matter with which the Welsh Government would be likely to have to engage although this date is later than that at which Lord Bethell suggests parts of the UK Department of Health and Social Care had developed their 'clear idea', it appears to be consisis by mid-January were also at that stage present within Welsh Government. It is not clear precisely how or how far wider CMO discussions from early into the Welsh Government's general policy processes.
118. COBR met some 15 times between 24 January and 10 May 2020. The Welsh Minister of Health and Social Services attended the first three meetings (24 and 29 January, 5 February; Drakeford first attended COBR on 18 February. Welsh Government was, it seems, invited to subsequent meetings, and chose who would

attend on its behalf. (Attendees listed for the COBR meeting on 20 March 2020 do not include anyone from the Welsh Government and there are no obvious redactions that might conceal their participation (see INQ000056212); Vaughan Gething describes his participation in that meeting and a follow-up meeting with other Welsh Government participants - 2023 paras 220-221, 223p. 55). No COBR meetings were held between 10 May and 22 September (INQ000327735, para 182).

119. SAGE is tasked with providing analysis and evaluating evidence for the UK as-a-whole. Relatively few people who work at universities in Wales sit on SAGE or its sub-committees (in contrast, proportionately larger numbers of academics from Scottish universities are members of SAGE). There was no Welsh Government-related representation on the first five SAGE meetings (from 22 January 2020); during the pandemic Wales gained some official representation on SAGE. Reflecting its remit, SAGE conducts little if any Wales-specific analysis.
120. The Welsh Government established a Technical Advisory Cell (TAC) of Welsh Government Officials, including key scientific advisors on 27 February 2020; its first meeting was held on 3 March (INQ000356177: paras 12 and 21); compare with Cabinet Office 2007 guidance on the establishment of Science and Technical Advice Cells (STACs) in Local Resilience Forum areas). The decision to create TAC reflects the lack of dedicated and Wales-focused evidence and analysis. It was followed by the establishment of a Welsh Technical Advisory Group (TAG) that drew in experts from outside government.
121. TAC and TAG were created to fill a gap for Welsh decision-makers; they had little or no access to Wales-focused evidence and analysis. Few people with expertise on Wales were members of the UK SAGE in its various configurations. SAGE provided little or no specifically Wales-focused evidence – its role was to provide UK-wide advice. Arguably, SAGE focused mostly on England (INQ000269372: paras 139-140) describes SAGE as having an English frame of reference). Given that in effect ‘all health and disease control decision making in Wales was fully devolved to’ it (Swansea University 2021), the Welsh Government required tailored evidence, analysis and advice.
122. Problematic aspects of these relationships include the absence of an established principle that Welsh officials would be members of or involved in SAGE. Rob Orford, Welsh CSA for Health, was listed as an expert from 5 March 2020; Fliss Bennee’s SAGE participation was not always recorded accurately (INQ000356177: para 58). Welsh Government officials ‘did not have access to papers under development in SAGE subgroups, key Welsh officials and experts did not have access to minutes and papers directly from NERVTAG (which reports to the UK Department of Health and Social Care) (INQ000356177: paras 59 and 66).

Early issues in intergovernmental relations

123. The mainstream view is that the UK government and devolved governments worked together effectively over the early stages of the pandemic up to the late spring/early summer of 2020. Particularly given intergovernmental tensions over Brexit, there is a good deal of truth in this view. There were, however, examples of tensions between

the governments from an early stage. Early efforts to procure tests for Covid-19 infection provide one significant example. On 21 March 2020 Welsh Health Minister Vaughan Gething announced the Welsh Government would have access to 6000 Covid-19 tests a day by 1 April, rising to 8000 (Williams 2020). This announcement appears to have been based on an agreement that the Welsh Government has said it agreed, or was negotiating, with the Swiss pharmaceutical company Roche. The Welsh Government and Public Health Wales (PHW), the UK government and Roche have expressed different and sharply mutually inconsistent views of this episode. It is, in my view, very difficult to get to the bottom of this saga. I will not rehearse it in full here. Vaughan Gething refers to this episode briefly in his witness statement to Module 2B (INQ000391237: paras 469-470), as does Jo-Anne Daniels (INQ000263371, para 33). A Twitter thread from April 2021 by Andy Davies, a Channel 4 News correspondent, is an important source of information on this saga.

124. An email disclosed to journalist Andy Davies under Freedom of Information (FOI) sent on 22 March 2020 from the Head of PHW to senior health officials in Wales, including the Welsh CMO, states that PHW had been in 'discussions with Roche since 2 March' with a view to providing 'up to 5000 Covid-19 tests per day' (Davies, 2021). Jo-Anne Daniels has provided evidence to this Inquiry to the effect that during 'March 2020 PHW' was 'in dialogue with Roche ... to procure kits' (para 33). If the 2 March data is correct, it suggests that PHW was pursuing capacity sufficient for a large-scale autonomous test and trace system in Wales at a relatively early stage.
125. Davies discussed a PHW report of hearing, 'in mid-March that 'Roche had been called into a meeting with UK Gov ... & were instructed to reserve all the additional tests they had to be used in England and after, by agreement with DAs [Devolved Admins]'. Tracey Cooper of PHW has claimed that this understanding of events was confirmed to her on 18 March by Alex Sienkiewicz, then Director of Public Health England (PHE) at Porton Down.
126. Cooper has further claimed that a 'trade-off' was then agreed (on 18 March) involving Wales 'lending' one of the testing machines held by the Welsh Blood Service at Magden Park in Llantrisant which could be adapted to test for Covid-19 in return for PHE help 'reviving' the Welsh 5000 tests per day deal with Roche. (Prior to the pandemic, Roche worked with Magden Park on these machines for other tests; according to PHW, part of the agreement was that Roche would reconfigure the machines to test for Covid-19). By FOI, Davies has obtained emails that seem to suggest Alex Sienkiewicz shared this understanding of the 'trade-off'.
127. On 22 March, according to Cooper, the possibility of Wales receiving 5000 tests per day disappeared. Nor did Roche have plans to reconfigure the Magen Park equipment. Instead, Roche would supply 5000 tests a day to the UK government.
128. According to Davies (2021) PHE's position is that they were approached by Roche on 12 March advising that they had a new Real Time PCR test that operated on their existing high throughput automated machines. The PHE/UK government position is that in mid-March – with a meeting in Downing Street on 17 March – Roche offered to supply, initially, 5000 tests per day for the whole UK. PHE denies any knowledge of prior discussions between PHW/Welsh Government and Roche.

129. Roche has denied having an agreement with PHW/the Welsh Government to supply tests directly to Wales. The company's position is that in March 2020 Roche and PHW 'were in communication ... only to discuss the setting up of equipment to run COVID-19 testing' (Davies, 2021).
130. It is difficult to reconcile the positions of the Welsh Government/PHW, the UK government/PHE and Roche on the basis of the available evidence.
131. The context for this saga was fraught and uncertain. Even so, the episode suggests that the standard narrative about the effectiveness of intergovernmental coordination in the first pandemic's first phase may require modification. It is not clear when/whether the UK government had set a clear intergovernmental framework (whether UK-wide or fully/partially devolved) for the procurement of tests or a testing system. Notwithstanding the Welsh First Minister's expectations that the UK government would take more of a lead in the pandemic context, by their own accounts PHW and the Welsh Government sought to develop autonomous testing capacity from an early stage of the pandemic (perhaps as early as 2 March 2020). The episode raises questions about whether there were arrangements in place to integrate, coordinate or allow the various governments to pursue autonomous strategies, and if so whether they were followed. We will see that this was not the only episode to strain the relationship between the UK and Welsh governments over Covid-19 testing.

NHS transformation, residential social care and nosocomial Covid-19 transmission

132. During March 2020 the management of the pandemic in Wales followed similar tracks to other parts of the UK across a number of domains. These similarities seem to have owed more to structural similarities in public service provision and shared elements of public debate as to explicit coordination between the authorities. In Wales, and across the UK, concerns about the risk of the NHS being 'overwhelmed' by emergency Covid-19 cases dominated early decision-making during the pandemic. The example of pressure on hospitals in northern Italy bulked large in public discussion of the possible impact of the disease.
133. Andrew Goodall's witness statement for HSSG details the establishment of a Covid-19 Planning and Response Group within this Directorate, which met first on 20 February 2020 and established seven subgroups (Primary & Community Care, Acute Secondary Care, Social Care, Workforce Deployment and Well-being, Digital Services, Health Countermeasures, Essential Services (Non-Covid Services)) (INQ000319643: paras 100-107; compare Vaughan Gething's witness statement dates the Planning & Response Group to 21 February 2020 (INQ000391237, para 162). This Planning and Response framework provided for some external participation, including from devolved and non-devolved public institutions, such military liaison officers and local government, directors of social services and from outside government, including representatives of voluntary and private sector providers.
134. As elsewhere in the UK, planned surgery in the NHS was cancelled. In Wales this surgery was cancelled on 13 March to gear the NHS for Covid-19 (BBC, 2020a).

135. A variety of changes were made, particularly with a view to clearing NHS beds, including: prioritising the use of non-emergency patient transport to focus on hospital discharges, expediting discharge of vulnerable patients from acute and community hospitals, and fast-tracking placements to care homes by suspending the protocol which gives a right to a choice of home (BBC, 2020a).
136. As we have seen, devolution created space for Welsh governments to pursue policies based on 'a set of distinctive values an approach to the exercise of government decision-making', marked by an aspiration that 'the relationship between [the] individual and public services should be one of citizenship and not consumerism' (INQ000371209, para 18). Even so, some broad structural similarities seem to exist across the UK: for example, although some local authority provision remains, across the UK, a substantial proportion of social care provision is provided outside the public sector by a range of private and voluntary sector organisations. In contrast to the NHS, residential social care is, in general, only partly supported by public funds. A diverse social care sector interacts with the NHS and its hospitals in all parts of the UK. The balance of larger, multi-site commercial providers, smaller-scale proprietors and voluntary sector provision varies considerably across the UK's four territories: in Wales, small-scale, proprietor-operations bulk larger in the sector than elsewhere in the UK.
137. In Wales, and across the UK, during March and April 2020 government decision-maker's attention was heavily focused on the potential for the NHS to be overwhelmed. The fast-tacking of discharges from hospitals to care homes in Wales broadly parallels similar processes in other parts of the UK. Vaughan Gething has described these processes in broad terms (INQ000391237: paras 203-204) and discussed advice he was given in some detail (paras 492-503). For example, Gething has said that 'testing of asymptomatic patients being discharged from hospital was not discussed with' him at the time of the 13 March decision (para 493).
138. Countries outside the UK which experienced lower death rates among care home residents over this period seem to have both higher bed-capacity in hospitals and stronger, longer-established testing systems. Assessing the relative contributions of these two elements in Wales and across the UK is beyond the scope of this Report. It is unclear whether the evidence or the resources available to decision-makers differed as between Wales and England in a way that would explain the reason for discharge tests being introduced later in Wales than in England.
139. The role played by limited testing capacity in Wales at this early stage is unclear or contested. Some reports suggest that Health Minister Vaughan Gething 'has insisted' that 'the lack of testing capacity' in Wales 'did not play a part in his thinking' (Hayward and James, 2020). Gething's M2B witness statement states that '8' (INQ000391237, para 502).
140. Alongside the priority apparently given to preventing the NHS from being overwhelmed, Welsh Government did consider matters of social care during the early stages of the pandemic. The Covid-19 Planning and Response Group within the Welsh Government's Health and Social Services Group (INQ000319643, para 98, this group met first on 20 February 2020) included a Social Care subgroup (as one of

seven) which encompassed stakeholders from the social care sector as well as the voluntary sector in Wales (INQ000319643, para 101).

141. A TAG paper published in March 2022 looking back at deaths in Wales during earlier phases of the Covid-19 pandemic identified 'a pronounced peak in excess deaths in care homes during the first peak period of the pandemic (around April 2020), with a much lower number of excess death during the second peak period. For the rest of the period, deaths were generally similar to or below average' (TAG 2022: p 11). The same analysis also identifies an increase in excess deaths to 'above average at the start of the pandemic' which was sustained ('remained so'). Unlike those 'in hospitals (and to some extent care homes), the excess deaths at home is largely driven by deaths not involving COVID-19': for '2020, the leading cause of death at home with the biggest proportional increase compared with the average was dementia and Alzheimer's disease (TAG 2022: pp 11-12). A combination of factors including 'health service disruption, people choosing to stay away from health care settings or terminally ill people staying at home rather than being admitted to other settings for end of life care' could explain 'the consistently high number of deaths above average in private homes' (TAG 2022: p12).
142. After some discussion of the issues of the discharge of untested patients from NHS to care home settings in his M2B statement, Gething concludes that with 'hindsight' 'we could have made different arrangements ... to ensure the necessary flow out of hospital' (INQ000391237, para 502) – he enters a caveat related to limited availability of Covid-19 tests in Wales at the time. Gething also states: 'We were mindful that Wales has a larger older population than the other home nations. This was also reflected in the age profiles with the health and social care workforce. The measures announced above [ie on 13 March 2020] were taken directly to protect those vulnerable groups' (INQ000391237, para 204).
143. As in other parts of the UK, the Welsh Government commissioned the creation of large-scale temporary or field hospitals at sites across Wales. The conversion of the Principality Stadium in Cardiff into the Ysbyty Calon y Ddraig/Dragon's Heart Hospital received most attention. Planning for the conversion of the Principality Stadium began in late March, possibly before the 24th. Though the policy of providing large-scale field hospitals was similar across the UK, they were developed in Wales through a distinct decision-making process. The symbolism around this provision emphasised their specifically Welsh character. The Welsh authorities chose not to adopt the symbolic language of Nightingale Hospitals used in England (and Northern Ireland).

Large-scale events in Wales

144. Large scale events in Wales: Scotland-Wales Six Nations Rugby due to be played on the 14 March was cancelled the day before by the Welsh Rugby Union (WRU). The Welsh Government position remained that it was not necessary to cancel the event based on the scientific advice. However, by the 13 March most other major sporting events for the weekend of 14/15 March had been cancelled and the WRU decided to follow that lead. Significant numbers of fans had already travelled from Scotland to Wales (Thomas, 2021).

145. Two nights of concert performances by the Stereophonics went ahead in Cardiff on the 14 and 15 March 2020.
146. In short, at mid-March the Welsh Government position was not to cancel large-scale events to which significant numbers of people travelled.

24 March to 23 October 2020

Entering 'lockdown'

147. Wales entered 'lockdown' alongside all other parts of the UK, under the shared slogan 'Stay Home, Protect the NHS, Save Lives'. Based on minutes of its Covid-19 Core Group, the Welsh Government had two main and interlinked priorities in responding to the pandemic during the initial lockdown period. They were preventing the NHS from being overwhelmed (in the sense having insufficient critical and intensive care capacity to treat seriously ill patients from Covid-19) and reducing the rate of Covid-19 transmission in Wales. The latter aim was understood as essential to preventing the NHS from being overwhelmed as well as being significant in its own right. Increasing critical and intensive care capacity within the NHS was a significant part of meeting the first aim. Welsh Government also pursued other issues and priorities during this period, though they were less of a priority.
148. An emergency meeting of the National Assembly on the 24 March approved new emergency powers for the Welsh Government under the Coronavirus Act 2020. Reasonable consideration was given in the National Assembly to the process of legislating for the Coronavirus Act 2020. Several members expressed concern about the extent of executive powers being taken up by the Welsh Government but recognised that they were appropriate in the pandemic context while arguing that the Government should submit itself to regular scrutiny by the Assembly. From the start of April, the National Assembly switched to operating virtually from 1 April, using the Zoom platform. The Assembly (after May 2020 the Senedd) seemed to sustain its scrutiny of the Welsh Government reasonably effectively through this period.
149. There is evidence that the relationship between the Secretary of State for Wales and First Minister and other Welsh Ministers was somewhat dysfunctional from early on in the pandemic. The First Minister has argued that 'the Secretary of State for Wales perceived his role as scrutineer of the actions of the Welsh Government' and that this was an inaccurate or inappropriate understanding of the role (INQ000273747, para 70). Drakeford gives various examples as illustrations this issue, including the Secretary of State: 'asking me why the Welsh Government was adopting a different scheme for NHS volunteers to the UK government' on 25 March 2020; 'questioning our decision not to extend business rate relief to businesses with a rateable value of £500,000 and above' on 27 March 2020 (INQ000273747, paras 64-5).
150. The First Minister describes arrangements he put in place to manage what he clearly regarded as some unnecessary and unhelpful activities pursued by the Secretary of State for Wales. On 25 March 2020 he 'asked Ken Skates, the Minister for the Economy and Transport, to hold weekly calls with the Secretary of State for Wales in order to discourage the random queries, and I would hold a monthly call with him' (INQ000273747, para 64). He goes on to describe the 'ongoing correspondence with the Secretary of State for Wales' as coming 'to a head on 2 April 2020 in a call between him and the Minister for health and Social Services. The Secretary of State was informed during this call that responding to his letter could not be a priority action for the Welsh Government at this critical point in the pandemic. Nor could

information be provided to the Wales office as an interlocutor for the relevant department of the UK Government' (INQ000273747 para 70).

151. In principle, the Office of the Secretary of State for Wales can provide a link between the Welsh Government and key services – the police and the military – that are reserved to the UK level. In practice, the Welsh Government has a well developed relationship with the four police forces in Wales (note that all four Police and Crime Commissioners are in favour of devolving policing to Wales). The UK government has a key role in triggering/authorising Military Aid to the Civilian Authorities (MACA). I have not seen evidence setting out how those triggering/authorising decisions were taken during the pandemic in relation to Wales. Equally, the Police and the Military made substantive contributions to Welsh Government Covid-19 Core Group meetings (on 22 and 29 April 2020, respectively - INQ000311833 and INQ000311831) and were, it seems, willing to do so despite there being no representation from the UK government at those meetings. The Parliamentary Under Secretary did attend those parts of Core Group meetings held in July 2020 that covered the Military (1 July) and Policing (8 July). The fact that the Office of the Secretary of State for Wales was represented by the Under Secretary rather than by the Secretary of State might suggest that some tension remained in relations between the Welsh Government and the Office.
152. This evidence does not negate the effective adoption of a 'four nations approach' for many aspects of the UK's response to the pandemic at this stage. It does, however, raise serious and substantial questions about the appropriateness of the structures and relationships for territorial governance across the devolved government and the UK government's territorial department. It suggests that there was a lack of clarity about how the relationship might work effectively during a whole of government pandemic. There has been little or no recent academic research on the role of the Office of the Secretary of State for Wales. Equally, analysis from early in the devolution process, reveals that experts saw the existence of separate territorial offices as largely vestigial – a legacy of the past. They were likely to be – and should be – amalgamated: Robert Hazell argued that the 'Scottish Secretary is the most obviously redundant', as the Welsh Security would be 'once the Welsh Assembly has been granted legislative powers. Northern Ireland is likely to remain a special case, requiring as separate Minister', 'This suggests an initial merger of the Offices of Scottish and Welsh Secretary' (Hazell, 2001). Nearly 25 years on, there is no evidence of movement towards this merger. General institutional change of a constitutionally significant kind may be outside the scope of this Inquiry: reflecting on how the relationship between the devolved government and UK level territorial department might be better structured for pandemic governance is, in my view, a serious matter that should be within scope.
153. From the start of April 2020 the Plaid Cymru and the Welsh Conservative leaders joined the Welsh Government's 'Covid Core Group'. Addressing a video conference meeting of the Senedd, Mark Drakeford states 'The Cabinet Covid Group meets each Wednesday morning. It receives reports of the latest developments from the Chief Medical Officer, the Chief Executive of NHS Wales, the Emergency Coordinating Centre and the Welsh Local Government Association. In recognition of the uniquely serious position we face, I have invited the leaders of the Welsh Conservatives and

Plaid Cymru to join that Group' (ITV News, 2020a). Liberal Democrat Kirsty Williams was Education Minister in the Welsh Government, so four parties that cover almost the whole political spectrum in Wales were encompassed in key organisational structures for Covid decision-making. In the broader context of British politics, the inclusion of opposition leaders in this Group is distinctive. The role and contribution of non-governing political party leaders in subsequent pandemic governance in Wales is unclear, though they are recorded as attending all subsequent meetings of the Welsh Government's Covid-19 Core Group about which I have seen evidence (that is, until the end of August 2020) no substantive intervention either might have had is recorded in the minutes. I would say that these minutes represent some of the most useful evidence with which I have been supplied through this Inquiry. They provide a distinctive contemporaneous source that helps to make sense of Welsh Government thinking, their relationships with relevant other actors/institutions and the perspectives/information it gathered from them. That might suggest it was a useful forum, but does not necessarily do so. The Group was disbanded in mid-September 2020. I have seen no explanation for the choice to wind-down this Group.

154. From early in the pandemic, the Welsh Government was working to a three-week review cycle of testing, refining and revising their regulatory framework for managing the Covid-19 pandemic (based, *inter alia*, on a sense of the length of time needed to begin to evaluate the impact of measures adopted on the development of the pandemic). This three-week (sometimes referred to as the 21-day) cycle provided the basic working rhythm for pandemic governance in Wales (Jones, 2020), including for the provision of technical advice to decision-makers. Equally, Mark Drakeford described the cycle as a 'framework and not a straightjacket', stating it should not prevent looking 'ahead beyond the next three weeks' (Nation Cymru, 2020).
155. The UK government and Deloitte set up a testing centre in the carpark of Cardiff City Football Club that opened on 7 April 2020 (Hayward, 2020a). It did so 'without communication with the Welsh Government and Public Health Wales' (Hayward, 2021b, 2021a – see also evidence provided to the Inquiry by Jo-Anne Daniels, (INQ000263371, para 35) and Clare Jenkins (INQ000315607, paras 106-7). PHW subsequently took over management of the site.
156. Initially, the UK government's system of 'Lighthouse Labs' created to process Covid-19 test 'results didn't link into Welsh clinical records making monitoring harder'. For a time, Wales 'had a dual system ... with both the UK Government and Welsh Government responsible ultimately for different centres' (Hayward, 2021a).
157. I am not aware of evidence about how and why the UK government took decisions on the creation of the Cardiff test centre and why, assuming these reports are correct, it did not communicate those decisions with the relevant authorities in Wales. Neither is it clear whether the requirements of the NHS clinical records system in Wales were considered in the processes of setting up the 'Lighthouse Labs'. It is hard to avoid drawing critical conclusions about the quality of intergovernmental coordination from these episodes.
158. On 19 April 2020 Matt Hancock published an article on *Wales Online*. 'Right from the start', it opened, 'the battle against coronavirus has been a shared UK fight. ... So far,

working together, we have succeeded' (Hancock, 2020). The bulk of the article concerned PPE, with Hancock denying 'reports that PPE shipments to England' were 'being prioritised over Wales' as 'simply wrong'. Hancock also cited testing as 'another area where the four nations are working together'. In contrast to reports that the UK government had not communicated about the Cardiff testing centre with the Welsh authorities, Hancock cited the UK government setting up the centre 'as part of this work'. Hancock concluded with a call to work together: 'We are all on the same team and we will all get through this together, as one United Kingdom.' His penultimate sentence conveyed a similar idea. 'In the end it's not a Welsh Health Service or an English Health Service but a National Health Service'. Hancock's view may reflect a social or political view of some shared history and ethos of the NHS, although not one necessarily shared by his political counterparts in Wales. It is not an accurate account of the organisation of NHS provision in England and Wales. Expressing this social or political view risked misdirecting Wales Online's readership about the location of responsibility for the Health Service in Wales. Hancock's article was published before significant policy divergence over lockdown had emerged.

159. From 'the beginning of lockdown' Ceredigion Council established a local Covid-19 infection contact tracing and support system; it seems to have worked relatively effectively, and was taken up as a model by Ynys Môn, Pembrokeshire and Carmarthenshire councils (ITV News, 2020b). All these councils operate in rural, low population density areas in west Wales, localities to which the virus arrived relatively late, having generally arrived first in eastern and southern parts of Wales.
160. Overall, as we have seen, a significant number of people were discharged from NHS hospitals to residential care homes in Wales in March 2020, without having been tested for Covid-19. An approach of fast-tracking discharge to increase capacity in NHS hospitals began at least as early as mid-March and continued during April 2020. Perhaps reflecting a sense that it was under particular pressure, Welsh 'Ministers were considering what additional support could be provided to the Social Care Sector in Wales' by the start of April (COVID19 Core Group Meeting minutes, dates 01-04-2020, INQ000311845: para 14). Routine Covid-19 testing before discharging people to a residential care setting was introduced on 29 April, two weeks after England (Hayward and James, 2021). Scientific evidence was 'being circulated on ... SAGE expressly recognises the contribution that asymptomatic people posed to the presence of coronavirus within hospitals' 'as early as 31 March' (Hayward and James, 2021).
161. Glyn Jones states that: 'The Chief Statistician and other KAS statisticians also worked closely with Care Inspectorate Wales ("CIW") to make the data they held about care homes available publicly ... thanks to the joint working of both KAS and CIW, regular data on notifications of Covid-19 related deaths (and later, Covid-19 infections) was made available in the public domain from 3 May 2020. This data was also shared with ONS to support their work on mortality and care homes' (INQ000274147, para 34)
162. Later SAGE analysis (from September 2020) suggested 'that some groups particularly care home workers were more likely linked to transmission, than the discharge of patients into care homes from hospitals' (INQ000390618 para 137) I

have not seen the exhibit (INQ000353392) to which Orford alludes here. Even so, infection control and prevention in care home settings Analysis by 'the Wales/SAIL [Secure Anonymised Information Linkage] care pathway research group' contributed to the work of the SAGE Social Care Working Group (2020 para 2.1) from September 2020.

163. The availability of data, and capacity to analyse it in a sufficiently timely fashion to inform policy making, was a continuing issue across the UK and in Wales; perhaps reflecting the structure of the sector these issues seem to have been particularly acute in relation to social care (Bell et al, 2020). The collection and publication of 'Transfers of care data was halted in February 2020' for England and Wales, David Bell and colleagues report (2020 p 20), suggesting that we lack critical evidence related to the movement of people from hospitals to care homes. SAGE described the data issues as follows in September 2020: 'Poor data linkage, caused by data deficits, lack of standardisation and governance issues, remains a barrier to understanding the situation in care homes. Current data pathways do not provide the evidence required to reach key conclusions, such as on risk associated with discharge from hospital to care homes. There is a particular need to obtain better genomic data, which may require operational changes to testing systems' (SAGE 2020, para 49).
164. Moving to the creation of temporary emergency hospitals in Wales, as with the cancellation of non-emergency NHS treatment and discharge of patients from NHS hospitals to free capacity to treat Covid-19 patients, the creation of these large-scale facilities broadly followed a common pattern across the UK. Welsh Government decision-making seems to have followed a pattern already established in England. The hospitals in Wales opened after the first 'Nightingale' hospitals in England. They reflected similar concerns about the possibility of a large surge in Covid-19 cases that would overwhelm existing NHS hospitals. It is unclear to me how far developments of this kind were envisaged in early 'surge' planning, such as that envisaged after Exercise Cygnus – or whether they reflected perceptions that Covid-19 presented a previously unanticipated threat and required the new response. They certainly illustrate the priority given to hospital capacity by policymakers across the UK over the early months of the pandemic. I will touch on three features of the Welsh experience of these emergency hospitals.
165. First, emergency processes in Wales were successful in the rapid creation of large-scale emergency hospitals. There seems to have been effective cooperation across levels of government and with relevant non-governmental bodies, including the Welsh Rugby Union and with the British military in the creation of the hospitals.
166. Second, as in other parts of the UK, these facilities were not put to very much use. The most prominent of the Welsh hospitals, the Dragon's Heart in Cardiff, seems to have treated fewer than 50 patients. It opened in early April 2020 and was decommissioned by November of the same year. This record might raise questions about the accuracy of the modelling that informed the creation of these hospitals. Evidence from the Welsh Government's Covid-19 Core Group suggests that throughout the initial lockdown period, the Welsh NHS maintained significant capacity to treat additional patients seriously ill with Covid-19 (in the context, of course, of

having temporarily re-purposed the NHS to focus on this illness). Equally, the threat posed by an exponentially-spreading infectious disease means that hospital facilities operating with apparently significant spare capacity could be overwhelmed very rapidly. The fact that only marginal use was made of these facilities does mean that their effectiveness in practice was not tested, particularly in relation to staffing (if scaling up the availability of hospital beds is challenging, rapidly increasing the number of specialised staff is next to impossible). New modular capacity was opened at the University Hospital of Wales. These facilities were closed at the time of the second Covid-19 wave.

167. Third, across the UK, these hospitals served as a symbol of governmental responses to the pandemic. In Wales, some hospitals were named through public processes. Though they are sometimes described as ‘Nightingale’ hospitals (the term used in England and Northern Ireland), that is not a term used by the Welsh Government. This difference may reflect a sense of relations between the UK and Welsh Governments at this time, perhaps raising questions about the extent and quality of cooperation between them.

The Welsh Government emphasised ‘territorial’ non pharmaceutical interventions (NPIs) from an early stage in the pandemic

168. Wales has a mix of densely populated urban areas and large lightly populated rural regions. Many of the rural areas are holiday destinations and places with a large proportion of second homes and static caravans. Their hospital capacity is also limited. My assessment of the evidence is that these aspects of the pandemic – and of pandemic governance – bulked large in Welsh Government decision making from an early stage and then throughout the pandemic period. Early on:
- a. There was a perception that Newport and other areas of Gwent were an early Covid-19 hotspot in Wales, with the Royal Gwent Hospital identified as at risk of being overwhelmed (BBC, 2020b).
 - b. Perceptions of higher rates of infection and hospitalisation in urban South Wales also raised the possibility of the transmission of infection from these areas to rural regions.
 - c. Concerns were expressed, for example in a letter sent by doctors to the First Minister in late April (Evans, 2020a), that people with second homes were relocating to them and thereby risking raising rates of infection in places relatively poorly equipped to deal with Covid-19. Although non-essential travel was not permitted, using second homes was not specifically banned at the time.
169. The distribution of population and forms of residential tenure across Wales may have contributed to a greater emphasis on restricting movement within Wales by the devolved government than on equivalent restrictions for most of England by its UK government counterpart.

Development of analytic/advisory capacity in Wales to support Covid-19 emergency policymaking

170. A need for novel structures and capacities was identified rapidly. On the one hand, there was a need to go beyond existing policy making structures, including extant arrangements to address emergencies and, on the other, that new processes were developed and put in place fairly rapidly.
171. In his statement on the TAC/TAG structure, Rob Orford states that it 'quickly became clear that the traditional STAC (Science and Technical Advisory Cell) concept would not have worked for an emergency of this magnitude and a separate advice-giving structure was required for the Welsh Government. Orford 'discussed with the CMO and Public Health Wales (PHW) the need to establish a Technical Advisory Cell (TAC) to be able to collate, created and mobilise knowledge related to the pandemic, including Welsh specific information, to support decision making with the Welsh Government by Welsh Ministers. ... TAC was established on 27 February with myself, and Matthew Ager (Welsh Government) and support from three Public Health Wales (PHW) experts (Dr Chris Williams, Dr Giri Shankar and Andrew Jones).' TAC partly echoed, but also modified, the standard 'STAC' (Scientific and Technical Advisory Cell) terminology used to describe arrangements for advice to multi agency category one responder Strategic Coordination Groups (SCGs). The need for advice and analysis went beyond the 'internal' capacity of the Welsh Government and PHW encompassed within TAC. Though its relationship to TAC was not immediately clear, the need for 'a wider technical advisory group (TAG) ... to draw on the relevant expertise' was also 'agreed'. 'The size and scale of the demand for scientific information and lack of national coordination function to meet this demand ultimately led to the formation of TAG, formalised by Terms of Reference approved in Ministerial Advice on 28 April 2020.' (INQ000356177, para 12). The role and scope of TAG activities developed and expanded during the pandemic.
172. SAIL is a databank based at Swansea University co-funded by the Welsh Government and the Economic and Social Research Council (part of UK Research and Innovation). It includes and links a variety of datasets to create a much more valuable source of evidence than any individual datasets could offer. The record of collaboration between the Welsh Government and academic institutions in creating usable anonymised linked administrative data is, in my judgement, longer and, hence, stronger than equivalent projects in England (Goodall notes SAIL 'was established by the Population Data Science group at Swansea University ... in 2007' (INQ000319643, para 352). It formed the basis for a 'One Wales' approach, which brought together data and expertise across the Welsh Government, NHS, academic and those working public health in Wales (Office for Statistics Regulation, 2021, p 15). Glyn Jones describes 'the work of KAS and the wider 'One Wales ' evidence approach benefited significantly from the foundations laid over the previous decade and more in developing a trusted secure research environment for data linking in Wales (the SAIL Databank), along with the partnerships which had been developed around SAIL including through Administrative Data Research Wales' (INQ000274147 para 92). Gething has described SAIL as providing 'the Welsh Government's data analysis using anonymised health data' and examining 'the impact of Covid-19 on society and the NHS' (INQ000391237, para 12). On 25 March 2020 TAC identified

SAIL as a valuable source of evidence/expertise 'to identify high-risk groups in Wales and measure the effectiveness of the interventions within that group'. SAIL provided data in relation to health, behavioural, education and social care which influenced the policy decision made in those areas (INQ000391237, para 121). Andrew Goodall mentions 'education attendance data' and 'School Workforce Annual Census' as administrative data included in SAIL. He also describes ONS depositing 2011 Census data in SAIL 'following discussions with the ONS led by the Chief Statistician' (INQ000319643, para 352; INQ000274147, para 85). Covid-19 'test results were automatically linked to the individual patient records through ... existing IT systems and were available in an anonymised way through' SAIL 'to support analyses conducted through that PHW and by extension Welsh Government had access to data about community transmission' (INQ000315607, para 105).

173. On the other hand, Craiger Solomons' witness statement suggests that the Welsh authorities 'did not have social care data (workforce, population, covid cases), which also reduced our ability to model for the sector' (INQ000291490, para 127). As well as limiting the ability of Welsh officials to support the development of the SAGE Social Care Subgroup, these observations beg serious questions about Welsh Government's ability to manage social care-related aspects of the pandemic. Its report published in November 2020 – 'A strategic approach to social care data in Wales' – indicates that Social Care Wales was addressing questions around data for social care prior to the pandemic. Equally, that report describes 'experience of trying to access or share data' as "Like pulling teeth", it states the 'quality and accuracy of data is widely considered to be highly variable, as it access to it' and not that there 'is no clear national lead for social care data, and national direction is felt to be unclear or missing' (Social Care Wales, 2020, p. 13, 19).
174. More generally, Glyn Jones notes the 'lack of data engineering capacity' as a 'barrier' which 'meant we lack the skills to process data in the most efficient way and create automated data "pipelines" for large datasets to reduce the data manipulation burden on analysts' (INQ000274147, para 89).
175. Glyn Jones also identifies as the 'biggest challenges' examples of 'nascent' or 'not ... close' working relationships within Welsh public administration. Though the Welsh Government's KAS-PHW (particularly the surveillance team) relationship 'proved to be one of the most important ... over the period of the pandemic ... it was challenging to develop the timely appropriate follows of data in the right format to support the analytical work of KAS. This led to significant manual work across the system, such as being unable to access a regular feed of raw data on testing and therefore PHW providing an extract for us on a regular basis to enable KAS to produce the official statistics outputs.' Different organisational priorities also led to difficulties 'PHW focused on using data for surveillance purposes, it was often not a priority of theirs to support responses to media requests, or support Ministerial briefings, whereas statisticians in Welsh Government were being asked to urgently provide the data to support such situations' (INQ000274147 paras 86-7)
176. Despite Welsh Government officials being part of the same Civil Service, their collaboration with Whitehall departments, specifically the Department of Work and Pensions, was less straightforward. Glynn Jones states: 'In April 2020 we requested

timely information from DWP including on Universal Credit and other unemployment benefits, by different characteristics and regions of Wales. This was to help understand the real-time economic impact of the pandemic, and to estimate additional pressure on support services. Whilst some data was provided very early, the data feed was not consistent and not to the detail requested. This issue .. too several interventions at Ministerial and Chief Statistician level for a routine flow to be provided to Devolved Governments. ... It was not resolved until June 2020' (INQ000274147, para 91).

The First Minister's Black, Asian and Minority Ethnic COVID-19 Advisory Group

177. In response to concerns about the disproportionate impact of Covid-19 on Black, Asian and ethnic minority people in Wales, the Welsh Government set up a Black, Asian and ethnic minority Covid-19 Advisory Group Chaired by Judge Ray Singh CBE and Dr Heather Payne (known as the First Ministers Black, Asian and Minority Ethnic COVID-19 Advisory Group).
178. Socio-economic and Scientific Risk Assessment subgroups were created, chaired, respectively by Prof Emmanuel Ogbonna and Prof Keshav Singhal MBE, the latter group set up on 29 April 2020 (Singhal, 2021). A Social Care Implementation Subgroup was also established, initially chaired by Andrea Street (Singh, 2021).
179. The Scientific Risk Assessment Subgroup developed a self-administered Risk Assessment tool (RA Tool) at pace. Its full version – the All-Wales Covid-19 Risk Assessment Tool - was launched by the Welsh Government for use by all NHS/Social Care staff on 27 May 2020. This RA Tool was used by all NHS and Social Care staff with minor updates/modifications throughout the first year of the Covid-19 emergency.
180. In June 2020 the Socio-economic subgroup report addressed the quality of data on ethnicity, racial inequalities and representation in Wales (Ogbonna, 2020). It analysed the disproportionate impact of Covid-19 on BAME people in Wales, identified evidentiary and structural underpinnings of these outcomes and made recommendations addressing them. The report fed into the Race Equality Plan for Wales (2020-2025 (Singh, 2021)).

The Technical Advisory Cell and Technical Advisory Group

181. As we have seen, TAC was established in February 2020. The first public reference to TAC I have found was dated 7 May 2020 (TAC, 2020a). TAC provided technical advice to the Welsh Government rather than the Wales Resilience Forum, whereas local STACs would provide advice to Local Resilience Forums (Cabinet Office, 2007). Moreover, although the relationship between TAC and the 'Technical Advisory Group' (TAG) was not entirely clear initially, TAC came to coordinate a wider TAG made up of scientific and technical experts, mostly drawn from Welsh Government, NHS Wales and academia (based both within and outside Wales). TAG operated through several sub-groups. It was a significant innovation which enlarged the pool of Wales-focused scientific and technical expertise on which the Welsh Government could draw.

182. The need for Wales-focused TAC/TAG should not be taken to imply that TAC/TAG had troublesome relations with SAGE and other aspects of the UK-level scientific and technical advice structure. Though not always straightforward, generally, science advisors to the UK and Welsh governments seem to have worked well together (as did those working for other devolved governments) – with UK groups providing support for the development of Wales-focused capacity and individual experts giving their time both to UK level and Wales-focused expert groups. For example, Glyn Jones describes ‘close relationships across Wales and with the rest of the GSS’ as ‘an important factor in enabling data sharing and acquisition’ with ‘networks and existing relationships’ ensuring ‘the Chief Statistician could rapidly work with other peers across the UK as required’ (INQ000274147, para 85). It is, on the other hand, much less clear that data sources were effectively structured and linked in ways that facilitated UK-wide analysis, or researchers to drill down from the UK level to analyse Welsh specificities.
183. A key TAC function was to interpret SAGE outputs in the Welsh context, especially for Welsh decisionmakers. TAC (2020a) described itself as providing ‘regular weekly updates to senior Welsh Government officials about emerging SAGE outputs, Welsh modelling forecasts and up-to-date situation reports’ as well as ‘modelling forecasts for NHS Wales Local Resilience Forums and Strategic Coordination groups’, ‘technical briefings to external stakeholders to inform discussion’ and ‘advice about SAGE outputs for policy officials’.
184. TAC also provided leadership for TAG, which met twice-weekly in its main configuration, as well as meeting in a number of specialised sub-groups.
185. Initially, the Welsh Government lacked dedicated capacity to model the development of the pandemic in Wales. These characteristics reflect its relatively small size, resource constraints and the legacies of history (specifically the origins of the Welsh Government’s administrative capacity in structures of the pre-devolution Welsh Office). It both faced challenges and had some advantages in developing bespoke, Wales-focused modelling capacity. For example, Welsh Government access to super-computing facilities was limited, they did not have direct access to standard coding software (R and Python) and were unable to use Google products (being restricted to Microsoft products for security reasons). The Welsh Government’s Head of Profession for Operational Research was vacant from 5 March 2020, when Kate Chamberlain became interim CEO of the Independent Monitoring Authority. While there are relatively few established modelling groups in the Welsh universities, close relationships exist between relevant capacity in the universities and the Welsh Government. For example, Craiger Solomons, who was Lead Analyst and Co-chair of the TAC Modelling Cell from between March 2020 and April 2022, had been Head of the Administrative Data Research Unit (a data-linkage and data-science partnership between the Welsh Government and academia) at Swansea University. Considerable Wales-focused data analytic and modelling was built up at pace, often involving creative working-around limits to basic facilities. Capacity was created within Welsh Government and contracted to external providers, including the establishment of the ‘Swansea Modelling Team’ (Swansea University, 2021).

186. Scientists and technical experts in Wales seem to have had good working relationships with their peers elsewhere in the UK, including support for developing modelling capacity, adapting models, access to relevant data and quality assurance. Work across governments seems to have been more variable in quality. In evidence to the inquiry, Craiger Solomons has noted that ‘Ministers in Wales and Scotland were content with’ technical experts ‘being quite open with each other’ which ‘lead to .. developing out communication tools much more efficiently and effectively’ and ‘supported ... the provision of modelling, such as the Imperial model, which Scotland ran on ... behalf’ of the Welsh Government. Solomons also describes how he ‘began to establish the 4-Nations Modelling group’ in March 2020 through the 4 CMOs and ‘provided a secretariat for the group’. It was, he says, ‘most useful as a method of peer review’. It has ‘good representation’ from Scotland, Northern Ireland, Public Health England and the Department for Education’. Solomons states that (UK) ‘Cabinet Office colleagues were invited and attended only once or twice’ (it would be helpful to clarify whether Cabinet Office colleagues were routinely invited). A ‘quite key’ function of intergovernmental work was the discussion of ‘differences between different indicators and how we should interpret the different counts’ since, critically, ‘the UK data rarely matched the quality assured PHW data’. Solomons notes that subsequently the ‘JBC/UKHSA took on the administration of this meeting once they were fully established, seeing it as the key forum for communicating with devolved administration analysts’ all quotations from Solomons’ evidence (INQ000291490, para 128). That these four nations’ arrangements appear to have been created *ad hoc*, is in my view, a matter of concern about territorial structures for emergency governance in the UK.
187. JBC (the Joint Biosecurity Centre) was established by the UK government in May 2020; on 18 August 2020 the UK government announced that the UKHSA (UK Health Security Agency) which embraced JBC’s analytical capacity ‘would start work immediately with a single command structure to advance the country’s response to the COVID-19 pandemic’ (UK government, undated). UKHSA was formally established and took over PHE’s functions on 1 April 2021. JBC was led initially by a counter-terror security expert rather than someone with a scientific background; its security orientation was not universally welcomed (Sabbagh and Sample, 2020). Although the JBC took a ‘four nations’ approach, at least until it was subsumed within the UKHSA, Solomons describes working with JBC as ‘difficult at times’ part ‘of the problem’ being that ‘JBC has little understanding of devolution’ (INQ000291490, paras 48-9). He describes ‘steps taken to improve this working relations’ including being ‘invited to some of the JBC team meetings and an organisation wide Show and Tell meeting to discuss Devolution and our evidence requirements’ (INQ000291490, para 49). Even so, problems continued (INQ000291490, paras 50-3, paras 128-38) – both with JBC and UKHSA.

Divergence from early May Onwards

188. On 8 May, Mark Drakeford announced the Covid-19 lockdown in Wales would be extended for another three weeks (reflecting the three-week review cycle in Wales).

189. On 10 May the UK Prime Minister announced lockdown easing measures on UK television. He did not explain that these changes applied only in England.
190. Relatedly, from late spring/early summer the UK government's appetite for a co-ordinated 'Four Nations' approach seems to have diminished substantially. The Ministerial Implementation Groups (MIGs: three of which – for Health, general Public Services and the Economy – had devolved government participation) were superseded by UK Cabinet Committees for Covid Strategy (Covid-S, chaired by the Prime Minister, although previously there had been a daily Covid-19 meeting for Boris Johnson) and Operations (Covid-O, chaired by the Chancellor of the Duchy of Lancaster). The upshot of these changes was that the approaches taken by the UK's four 'central' governments diverged from one another. My assessment is that the sharpest differences were between the new approach taken by the UK government in its policies for England and those of the three devolved governments. There were, though, also differences of approach or emphasis as between the devolved governments in Northern Ireland, Scotland and Wales.
191. While the UK government changed its main slogan to 'Stay Alert, Control the Virus, Save Lives', the Welsh Government continued with the original 'Stay Home, Protect the NHS, Save Lives'. The Welsh Government maintained restrictions longer than the UK government did for England and eased them much more gradually, from the start of June. Restrictions included 'stay local' (so called 'five mile') elements; these travel restrictions to, from and around Wales were removed on 6 July (a decision prefigured on 19 June). Pubs and restaurants were permitted to open outdoors from mid-July.
192. It is more difficult to identify clear overriding Welsh Government priorities for pandemic response over the period from early May 2020 onwards. Framing policy as aiming to minimise harms by 'balancing' different types of harm could be described as a strategic choice. Equally, rather than providing a detailed or specific guide for policy choice, the 'four harms' concept is better understood as the general framework within which the Welsh Government sought to make particular choices. This framework guides policymakers' attention to the difficult choices involved in seeking to balance out different harms which often 'trade off' against one another.
193. The stay local rule and restrictions on travelling between England and Wales may reflect concerns about 'East-West' transmission of the virus in Wales. Wales has a few densely populated urban areas with relatively greater hospital provision and large remote and rural areas, within which there are some towns. Tourism and leisure are a major feature of the economies of the latter areas. The possible seeding of infection from outside to these areas and the limited infrastructure they have for coping with a local outbreak was a significant concern for decision-makers and for medical doctors in Wales, including as we have already seen in relation to second homes (Evans, 2020a).
194. A 'mass brawl' took place at Ogmore-by-Sea beach in Wales in late June, after a large crowd gathered in breach of Covid-19 regulations, leading Mark Drakeford to issue a warning that large gatherings could prevent lockdown restrictions from being eased (Drake, 2020).

195. Wales has four significant points of entry from other states – three ferry ports with crossings to Ireland and Cardiff International Airport. Entry into Wales otherwise comes across the long, relatively heavily populated, complex border with England. This border runs through some towns and villages. The issue of Covid-19 infections spreading from England into Wales was a matter of concern for policymakers in Wales. I have not been able to nail down precise details of how and when this concern was formed and articulated or of the specific evidence on which it was based. It became more clearly articulated as an issue as rules were eased in England while more restrictions were maintained in Wales from May 2020.
196. In combination, the lifting of restrictions in England and their maintenance in Wales created a travel border between the two countries. There were reports of confusion about how rules applied to people who live on the border, or who normally live in Wales and work in England (Smith and Hughes, 2020). Similar reports emerged again in the autumn, when lockdown rules applied first in Wales, but not on the English side of the border and then the other way round (Hughes and Burkitt, 2020). Though it may exist, I have not found evidence of advice or guidance specifically tailored to the situation of those living on and across the border from either government. For instance, whether those living in villages on it could exercise and shop in the places they would normally use across the border. The border became politically contentious.
197. The Welsh Government made it clear that people travelling to the border and then crossing it for the purposes of leisure or exercise (say, using a parking lot in England and walking across the border) would be breaking Welsh Covid-19 rules.
198. The Conservative MP for a Shropshire constituency, Daniel Kawczynski, complained that the Welsh Government's approach to Covid-19 regulations was 'undermining' the UK Prime Minister (Andrews, 2020) and the 'good balance between those who wanted the lockdown restrictions eased, and those who were concerned that doing so could aid the spread of the virus' he felt was struck by Johnson's May 2020 statement on Covid-19 regulation. Kawczynski was frustrated that Welsh rules meant his constituents were not allowed to travel to beaches in Wales. Stating that he had 'spoken to many people in Wales who would also like to see' devolution 'abolished, and said the time had come for the people of Wales to have another vote', 'a fresh referendum' on the matter (Andrews, 2020).
199. Differences and divergences in pandemic policy became a matter of widespread public debate. Mark Drakeford has observed that after speaking with the Prime Minister on 28 May, their direct contact fell away. Drakeford has been quoted to the effect that did not speak to Johnson between 28 May and 10 July 2020 (O'Brien, 2020). A further report suggests the two men spoke on one occasion between 28 May and 18 September 2020 (Morris and Brooks, 2020).
200. Tensions between the UK and Welsh Governments were not confined to policies around Covid-19 at the time; they were also evident in other policy domains. The UK government was developing a new approach to internal economic regulation – reflected in the UK Internal Market White Paper it published in July 2020 and in constitutionally significant legislation in this field published in autumn 2020. Prior to

the White Paper's publication, the UK government stopped engaging with Welsh Government officials on this policy. The White Paper prefigured the UK Internal Market Bill which proved contentious at Westminster over autumn 2020. In the event, the UK Internal Market Act was passed in December 2020, but without consent from the devolved legislatures in Scotland and Wales.

Wales focused technical advice between late May and October 2020

201. By late May 2020, the Welsh Government seems to have established a regular rhythm of pandemic governance and review. TAC and TAG structures and processes appear to be setting into a regular pattern. Some more specialist analytical and technical capacity came to fruition over summer 2020. Advice of this kind informed distinctive policy positions in Wales over this period, including on face coverings and, drawing on Wales-focused modelling and genomic evidence, for other NPIs in Wales.
202. The Welsh Government introduced advice and requirements for face coverings relatively later than other UK governments. Expert advice across the UK suggested that 'some evidence' supported the use of face masks and face coverings, but that it was 'weak and highly situational' to quote a Parliamentary Office of Science and Technology (POST) rapid response update of 24 July 2020. 'Face masks', this report went on 'are no substitute for social distancing. Hand hygiene and good respiratory etiquette, remain the best ways to limit the spread of coronavirus' (Hobbs and Bunn, 2020b). The evidence synthesised to inform policy amounted to something like a consensus that if generally worn masks and face coverings tended to reduce virus transmission in poorly ventilated and crowded indoor spaces, but that the protective value of many face masks and of face coverings for the wearer was more limited and uncertain. In other words, the benefits of most face coverings and masks were primarily social rather than individual. Expert advice also warned of face mask wearing creating a danger of complacency and increasing engagement in otherwise risky behaviours. In addition, face masks and coverings might be used inappropriately – including fit, handling, disposal, cleaning of reusable masks and coverings and poorly made masks and coverings.
203. Variations between individuals and across societies in personal and cultural beliefs shape public attitudes towards face masks/coverings (Hobbs and Bunn, 2020b). Rules requiring them were introduced relatively late in the UK. The powerfully expressed opposition from some Conservative MPs (Allegretti, 2020) to their introduction for England at Westminster in July 2020 was widely reported. UK government communication over face mask/covering requirements was of questionable clarity; political contention over the introduction of face mask/covering requirements further complicated this communication.
204. Evidence on the characteristics of different types of face masks was in the public domain, including through official sources, and easily accessible. For example, on 29 April 2020 POST described the differences between FFP3 masks, N95 masks and surgical masks (Hobbs and Bunn, 2020a). To my knowledge, neither the UK nor the Welsh government promoted information on the potentially higher protective value of FFP3 or FFP2/N95 masks for the wearer; neither have I come across any evidence of these issues having been discussed by the relevant advisory structures to these

governments. Concerns about diverting scarce forms of Personal Protective Equipment from higher risk clinical and care settings may be relevant here. Questions of equity around the promotion of higher cost PPE may also have been a factor.

205. Consideration of evidence around face masks also engages the understanding of the main routes of Covid-19 transmission. The consensus presented by public health organisations – notably the World Health Organisation (WHO) (WHO 2020) – identified two main routes of transmission – droplet transmission (when someone is in close contact (within 1 m) of someone who coughs or sneezes) and contact (fomite) transmission (by touching contaminated surfaces and then mouth, nose or eyes) (Hobbs and Bunn, 2020a). The possibility of aerosol transmission from coughing, sneezing or other respiratory events seems not to have received much consideration (though the WHO 2020 considered aerosol transmission in the context of aerosol-generating medical interventions). Assessment of the different potential transmission routes is not within my area of expertise. My lay understanding of the evidence on transmission that the fomite route was less significant than public health advice during the pandemic suggested and that aerosol transmission may have been more significant, which seems consistent with ‘superspreading’ events in poorly ventilated, enclosed/indoor spaces. If aerosol transmission is a significant transmission route, appropriately used face masks might be a more important element of the approach to protection of individuals and groups or the amelioration of risk.
206. Rules requiring face coverings were introduced later in Wales than elsewhere in the UK. They were mandated for public transport and in taxis from 27 July 2020 (Hobbs and Bunn, 2020b). TAC advice on face coverings provided a balanced assessment of potential benefits and concerns (TAC, 2020a).
207. Guidance from the UK’s four central governments on face masks/coverings diverged from late April 2020, when the Scottish Government recommended the wearing of face masks in social spaces where social distancing was difficult to achieve, though the Scottish First Minister said there was ‘no ‘divide or split’ with UK advice’ (Brooks, 2020). This subject is one on which clarity of communication and messaging is critical. Differences in timing and scope across the rules introduced by the four central governments during the summer of 2020 indicate that ‘four nations’ cooperation was not working effectively. Lack of clarity arising from differences in messaging from the UK and devolved governments will have been particularly problematic in Wales, given the comparative weakness of Wales-specific media and the penetration of London-based and England-oriented media in Wales.
208. By summer 2020, the Wales-focused modelling capacity nurtured by the Welsh Government, including through TAC/TAG, was coming on stream. Specifically, the ‘Swansea Modelling Group’s’ main research tool – the ‘Swansea Model’ – was in operation from July 2020 (Swansea University, 2021). This body of work grew during summer and autumn 2020.
209. In addition, Wales-focused genomic evidence also contributed to the body of work guiding policy makers in Wales over this period (O’Connor et al, 2020). Analysts drew the following conclusion from this evidence: ‘the full lockdown and when limits on

movement remained in Wales helped reduce long-distance transmission within/into Wales. Within our data, over the summer months, we also observe increased signatures of importation, which coincide with lockdown restrictions easing' (O'Connor et al, 2020: 5).

210. In August 2020, a scenario ('C3') developed by 'Swansea Model' was signed off as the Reasonable Worst Case (RWC) for Wales. It was chosen against other candidate RWC models – from SAGE, the Academy of Medical Sciences and ArmaKuni. The Swansea model used Welsh data, whereas the SAGE model did not. Even so, these two models generated values in between higher values generated by ArmaKuni and lower ones from the Academic of Medical Sciences model. The ArmaKuni model was commissioned by the Welsh Government, since the latter did not have access to supercomputing power required to run the model itself. However, ArmaKuni's use of Google products which the Welsh Government didn't support within its secure environment made that cooperation problematic. (INQ000291490, paras 82-90) – this evidence suggests that the UK Cabinet Office used the RWC modelled by SAGE). In addition, only the Swansea Modelling Team could provide evidence to the Welsh Government on timescales that dovetailed with its 21-day review cycle.
211. The Swansea Model provided key evidence during this period which underpinned the autumn 'Firebreak' lockdown in Wales (Swansea, 2021;INQ000291490, para 71). The Northern Ireland authorities initiated similar, but longer lasting restrictions before the Welsh Firebreak and SAGE also considered measures of this kind at its 21 September 2020 meeting (Hughes, 2020).
212. Welsh scientific/technical analysis influenced UK-wide advice on the length of self-isolation periods. Evidence to the Inquiry from Craiger Solomons states that after a 'request from Jo-Anne Daniels (Director for tracing policy)' in 'approximately October 2020 he reconsidered evidence for a 14-day self-isolation period. That period was defined by 'two serial intervals' of seven days each, understood to be needed to interrupt onward transmission. Solomons states that he highlighted evidence that onward transmission 'was happening, on average, around day 2, and that there was evidence to support' a 10-day self-isolation period. The view was that this shorter period would increase compliance with tracing policy. Evidence 'pulled together' by the Welsh team was presented 'to SAGE in November 2020' and led to SAGE updating their 'advice for the UK' (INQ000291490, para 111).
213. Craiger Solomons reports an absence of data on social care in Wales of sufficient quality to model the impacts of Covid-19 and related policy choices on that sector. This gap in data may also reflect limited Wales-focused modelling capacity in relation to health and social care generally before the pandemic (INQ000291490, para 127). As reported, this is a serious gap in the evidence base for policy making in Wales.

Pandemic governance in Wales from summer 2020

214. The rising number of Covid-19 cases during September created a new context for pandemic governance in Wales. Rather than a clear sense of moving towards stronger NPIs to manage the pandemic, as with other governments, other policy priorities – such as the treatment of non-Covid medical conditions - were pressing

increasingly powerfully on the Welsh Government. Given that both Covid-19 and NPIs have costs – and cause harms – as well as benefits, the Welsh Government was attempting to strike a balance of harms (TAG 2020a, p. 6).

215. Following divergence from late spring 2020, the UK government and three devolved governments were starting from different policy positions. The evidence suggests that cooperation and communication between the UK and Welsh Governments was limited, or more limited than it would be reasonable to expect within a state responding to a global pandemic. Michael Gove has characterised the level of engagement of the UK government with Welsh Ministers as ‘good’, but that it was not at the level of predictability that First Minister Mark Drakeford wanted. Mr Gove said that there had been a ‘diminution but not a halt’ to contact between May and October 2020’ (Module 2 day 27 transcript: lines 16-17, 6-8). Diminished contact might reasonably be interpreted as implying a larger scope of independent decision-making by the Welsh Government. There is evidence of significant tension between the Welsh and UK governments over this period, but of better relations between the Welsh and Scottish governments.
216. For example, by late summer 2020 Covid-19 restrictions had been substantially eased or lifted in Wales. During August 2020 the Treasury’s ‘Eat out to Help Out’ scheme operated across the UK, including Wales. The priority given by the UK Treasury to mitigating economic harms to the hospitality sector effectively occupied some of the policy space within which the Welsh Government sought to make policy. For example, the ‘space’ or ‘headroom’ for policies to mitigate, say, Covid-19 and lockdown impacts in education was likely to have been limited by choices made at UK government level by the Treasury. It appears that these choices were made largely within the Treasury, perhaps in consultation with the Prime Minister/Cabinet Office. They appear to have been made without input from the Welsh Government.
217. Levels of Covid-19 started to rise sharply in some localities in Wales from early September 2020, starting in Caerphilly. Restrictions based on the local authority were announced at 6pm on 7 September 2020 and came into effect 24 hours later in Caerphilly (Birt, 2021). This change was followed quickly by restrictions in further south Wales Valleys local authorities and then from 22 September spreading in steps across many local authorities in Wales.
218. Local area restrictions had long been in place in some parts of England. For example, Leicester experienced more-or-less continuous restrictions. Those living under local restrictions in Wales were not allowed to leave their local area without a ‘reasonable excuse’. Guidance to those living under local restrictions – such as higher tier restrictions – in England was to avoid travelling outside their locality, but there was no formal prohibition on doing so during autumn 2020. People in these areas were legally allowed to travel to areas with lower infection levels in England and also in Wales (Hayward, 2020b). The notes of the Welsh Government’s Covid-19 Core Group show the leadership of the Police forces in Wales repeated emphasising that the majority of their enforcement actions (fixed penalties issues after following an ‘engage, educate, encourage, enforce’ approach) with people breaking ‘lockdown’ regulations were people who had travelled into Wales from England. In mid-October 2020 Mark Drakeford called on Boris Johnson to introduce travel restrictions on

people living in places in England under restrictions due to high levels of Covid-19 infection, so that they were not allowed to travel to parts of Wales not under local restrictions to take a holiday. The issue was discussed at a COBR meeting on 12 October 2020 attended by Boris Johnson and Mark Drakeford (ITV News, 2020c). Johnson chose not to introduce formal legal restrictions, reportedly on the grounds that he did not 'want to impose travel restrictions within the UK generally.' 'We are all one country, people should exercise their common sense. They should follow the guidance. And that's what we're going to do' (Evans, 2020b). The Welsh Government was considering the introduction of a prohibition of people from parts of England under higher level Covid-19 restrictions from entering Wales without a 'reasonable excuse' (work was treated as a reasonable excuse, taking a holiday or visiting family were not). Downing Street called these plans 'disappointing', the Police Federation of England and Wales described them as 'unenforceable' (Johnson, 2020). Speaking for the UK government at Westminster Jacob Rees-Mogg described the restrictions as 'unconstitutional' and stated that we 'should not have ... borders between different parts of the United Kingdom' (Owen, 2020).

219. Subsequent analysis of genomic data on 'UK Lineages' suggests that its spread in Caerphilly occurred primarily through community transmission, rather than the introduction of infection to the area multiple times (O'Connor et al, 2020, p. 5). Rapid analysis of the local restrictions indicated with medium confidence that local restrictions have less impact than Wales-wide rules and that in 'no Local Authority (LA) were the restrictions alone effective enough to bring the incidence and positivity of Covid-19 low enough to warrant removing the restrictions' (TAG 2020c, p. 2).
220. 'It is beyond the scope of this report to Module 2B to consider detailed information on the management of healthcare in Wales during the pandemic. Equally, the Welsh Government's general approach to pandemic policymaking involved consideration of the consequences of 'reopening' the NHS to provide a 'normal' range of treatments covering non-Covid-19 illnesses and conditions from May 2020 onwards. Over the summer of 2020, Welsh Government policymaking made was informed by evidence about the impact of these changes. Brief evidence of this matter includes the following.
 - A statement attributed to Andrew Goodall in early August 2020 sets out this changed context: 'The NHS is noticeably busier with a normal level of work, but in the context of continuing to manage COVID-19 environments and pathways For a long period during the pandemic response the NHS was reporting green/level 1 for the majority of sites. Normal activity means that these levels are reporting generally at higher levels. Of 19 hospital sites: 1 is currently at level 4; 5 sites are level 3; and 8 sites are level 2. Whilst this will change and often de-escalate it shows the NHS is needing to respond to normal and COVID-19 pressures and pressures over recent days have switched across areas and sites' (INQ000310296, briefing notes from Welsh Government Officials, COVID 19 Core Group Meeting Dated 04/08/2020 pp 1-2).
 - Planning for reintroducing a range of non-Covid-19 NHS services had begun at least from May 2020: Covid-19 Core Group minutes dated 20-05-2020 note that 'Health Boards had submitted their operational frameworks, which were being

considered. Once confirmed, these frameworks would enable the NHS to reinstate a wider range of services (INQ000221152, para 13).

- The Covid-19 Core Group minutes from 3rd June 2020 note that 'Emergency Departments had witnessed a 32% recovery in daily average attendance in May, when compared to April' and that all 'hospitals were now working to their recovery framework plans and hospital referrals were increasing. It was noted that cancer referral and treatment rates had been maintained to some extent during the peak of the pandemic' (INQ000311860, para 13).
- The process of 'continuing to upscale services in line with the operational frameworks' (COVID19 Core Group Meeting minutes Dated 10-06-2020, INQ000314525, para 7 p 1) continued through the summer. By the COVID-19 Core Group Meeting dated 24-06-2020 'Cancer referrals were returning to normal and average attendance at Accident and Emergency Departments was beginning to rise. However, hospital admissions, outpatient appointments and GP attendance was still lower than normal ... optometry and dental services had moved to the next phase of recovery' (INQ000311872, para 11).
- By the start of July the Accident and Emergency Departments and the Ambulance Series were reporting near normal levels of activity. Cancer referral and treatment rates were being reported as high, with some exceeding pre-COVID-19 levels. Out-patient waiting times had inevitably increased due to the policy decision to scale back routine referrals' (INQ000349671, para 13 p 2). Equally hospitals were preparing for a second wave of the virus in the Autumn, including creating COVID-19 free areas, considering how to step up critical care capacity beyond the 350 beds that had been available at the peak of the virus. The NHS could still be overwhelmed with only a small growth in cases' (INQ000349671, para 12).
- The COVID19 Core Group minutes of 08-07-2020 record 'a general recovery of services, especially with mental health, cardiac and cancer treatments, the latter was not only 10% lower than normal' (INQ000311825, para 14, p3). Subsequently, hospitals were described as 'returning to more normal levels of activity' (COVID19 Core Group Meeting 14-07-2020 INQ000312134 para 10, p 2).

221. Genomic analysis of UK Covid-19 lineages in Wales published on 14 October 2020 stated that 'Recent hospital outbreaks have been caused by the same lineages circulating in the community, although in some cases it appears that there may be multiple introductions into hospitals, emphasising the challenges faced by IPC staff to prevent COVID-19 cases spreading in hospitals, especially when cases rapidly increase in numbers' (O'Connor et al, 2020, p. 6).

222. Some reports suggest that management of patients in hospitals was particularly problematic during this period. An outbreak of Covid-19 at the Royal Glamorgan Hospital in Llantrisant in late September provides an example of these challenges. News reports describe 8 Covid-19 deaths, 60 hospital acquired infections in a total of

82 cases in the hospital. As a result, most of the hospital's usual staff was stopped or diverted elsewhere (BBC, 2020c).

223. A retrospective 'lessons learned' analysis by Public Health Wales identified five key themes in relation to Covid-19 transmission in hospital settings between September 2020 and April 2021. Four relate to difficulties faced by hospitals in Wales: asymptomatic patients (including as disease presentation changed, especially after widespread vaccination); patient placement (including non-adherence to 'patient triage pathways' due to 'capacity issues' and 'operational need'); staff (including high levels of staff sickness and use of bank/agency workers); hospital infrastructure factors (lack of infrastructure to deal with highly transmissible respiratory infection' and the 'structure, design and function of patient-facing facilities' making 'application of IPC measures difficult) (HARP 2022, pp. 3-7). The fifth key theme relates to the use of genomic analysis and role of Pathogen Genomics Unit and advocates the systematic use of this analysis/Unit. It reports evidence that 'patients nursed on the same ward but without direct contact (i.e. in different bays or isolation rooms) had identical sequences, despite application of IPC restriction to affected bays. This may be suggestive of transmission via secondary pathways, such as staff, equipment or environment' (HARP 2022, p. 7).
224. Overall, evidence suggests that hospitals in Wales were under particular strain from late summer 2020 until early spring 2021, as they sought to deliver general (including elective) hospital provision through the pandemic's second wave. Some of the reasons for the hospital performance in Wales over this period relate to the long-term legacy of hospital infrastructure in Wales, others to shorter-term operational decisions. The problems associated with the legacy of old hospital infrastructure in Wales, and, especially outside a small number of more densely populated areas, of smaller scale hospitals are, in part, a reflection of the long term lower level of investment relative to need of the UK Treasury block grant to Wales, as implicitly acknowledged by the introduction of a new needs-based element to the block grant in 2018-19. PHW/HARP (2022, p. 8) concluded that 'not all lessons identified at the end of wave one were actioned successfully. There is evidence of unnecessary patient movement linked to outbreaks in wave two. Hospital infrastructure continues to be a challenge in terms of infection control among both patients and staff. Furthermore, clinical and operational teams in healthcare settings need to engage with data from community settings, using these as an early-warning system to act proactively against increases in COVID-19 infection rates, as opposed to reactively responding once nosocomial cases have been identified.'

24 October to 20 December 2020

225. The Welsh Government introduced a Wales-wide 'Firebreak' starting at 6pm on Friday 23 October 2020, ending on Monday 9 November. This Firebreak included a week-long extension of the half-term break for secondary school pupils in Year 9 and above. A four-week 'circuit breaker' lockdown has already been introduced in Northern Ireland, starting on Friday 16 October. There is evidence that the political leaders of the Northern Ireland Executive also requested meetings with senior members of the UK government – I do not know whether any such meetings took place. I understand the UK Prime Minister was involved in discussions about Northern Ireland with his counterpart in the Irish government.
226. The decision in Wales to implement the 'Firebreak' took place in the shadow of the UK government not making a similar choice, despite advice from SAGE in support of such a move. In the UK political and media context, the Welsh Government's choice would be seen and assessed as a 'divergence' from that of the UK government, casting it as a contentious choice rather than one primarily based on an assessment of the evidence.
227. The Welsh Government also faced practical constraints limiting their ability to introduce a Firebreak. Political leaders from both Northern Ireland and Wales argued that periods of general lockdown required financial support, such as 'furlough' type schemes to maintain the employment of people unable to work. The Treasury reduced the level of support it offered in stages from 1 August 2020. The scheme was due to end on 31 October 2020. The Treasury did not agree to extend it to cover the Welsh Firebreak period (Searle, 2020). In the event, the Treasury did extend the scheme on 31 October, as the Prime Minister announced new general restrictions in England.
228. There was an exchange of letters between the Welsh First Minister and the Chancellor of the Exchequer, with Drakeford writing on 16 October 2020, receiving a reply on 19 October and sending a further letter requesting the Treasury 'bring forward the new UK Jobs Support Scheme' to underpin the Firebreak planned for Wales. It 'is likely' Drakeford argued 'that many staff who will be laid off as a result of the necessary decision to close down all non-essential businesses from October 23 will not fulfil the eligibility criteria to be enrolled in the Job Retention Scheme (JRS) for its last week of operation. Employers with no income will be faced with the difficult decision of paying all of the wage costs of these employees or making them redundant.' Drakeford suggested either waiving the requirement for employees to have been on furlough for at least three weeks prior to June 30 or allowing the qualifying criteria for the new Job Support Scheme to apply' ((Smith, 2020) - which includes the text of Drakeford's final letter).
229. Clear differences of opinion exist on whether the Welsh Firebreak lockdown was successful. Commentary by some journalists is sharply critical of the Firebreak. One headline described it as an 'experiment that utterly failed' (Lewis, 2021; Hayward, 2021b). This commentary argues that the Firebreak came too late: 'over a month after ... SAGE ... advice calling for a circuit breaker lockdown'. The Welsh

Government has also been criticised for requiring supermarkets to sell only essential items (on the rationale that they would have an unfair advantage over local shops, some of which would have to close, if they could sell a wider range of items). The Welsh Government also insisted that it would lift restrictions decisively at the end of the Firebreak – with some arguing that ‘in hindsight’ the post-Firebreak restrictions in Wales were ‘too lenient’, with the result that ‘by 29 November ... Wales was back above the level of cases it had been when it went into the fire-break’ (Lewis, 2021). The UK government was moving England into a stricter set of restrictions as Wales moved out of its Firebreak period.

230. Swansea University has argued that the “Firebreak’ in Wales was enacted following evidence from the model’. It presents a more upbeat perspective on the Firebreak: ‘it resulted in an estimated 5000 fewer hospital admissions, 350 fewer ICU admissions, a 33% reduction in peak ICU occupancy and 1100 fewer deaths’ (Swansea University 2021, p. 1).
231. More generally, the ‘Swansea’ model identified early warning of severe hospital demand, made at a time when COVID-19 numbers were very low (only 25 per day in August), and the risk of a ‘second wave’ was uncertain’. ‘The result of using the RWC was successfully meeting winter demand, with an efficient provision. The RWC impacted tactical (3-6 months) and operational (1-42 day) decisions across all Welsh hospitals’. Swansea University cites quantitative analysis by CWM Taf Morgannwg Health Board as showing that the ‘Swansea Model enabled accurate estimates of inter-arrival rates for COVID-19, and determined the need to increase critical care capacity by 150% in December.’ By 1 October ‘Swansea ... modelling indicated ... that in every scenario for December’ the Welsh Ambulance Service NHS Trust ‘would find it difficult to meet demands without additional resources’. Without planning informed by the Swansea Model ‘there would have been a significantly higher compromise to patient safety’ (Swansea University, 2021, p.4).
232. Both accounts may be correct, in their own terms. Much depends on what each implicitly treats as the counterfactual – what would or should have happened instead of the events that did take place. Lewis (2021) and Hayward (2021b) seem to suggest a counterfactual of the earlier introduction of a Firebreak, while the Swansea University (2021) account suggests that without the Swansea Model the Welsh Government might not have introduced a Firebreak at all. Hayward (2021b) also states that that the Welsh Government’s approach to the immediate post-Firebreak policy was too lax. ‘The model was also used to inform the follow-up interventions, that brought the epidemic under control by late December, after challenging winter and new-variant increases in transmission rates’ according to Swansea University (2021, p. 1).
233. The Welsh Government’s orientation to immediate post-Firebreak policy seems to have been shaped by a strong concern to adhere to pre-announced policies (TAG 2020a; TAG 2020b). Various factors might, plausibly, have influenced the strength of this concern. They include providing a clear steer to businesses, a sense of what was required to maintain trust and confidence of the Welsh population, both perhaps informed by behavioural analysis.

234. The Welsh Government may have felt constraints, especially in the context of UK government policy. These constraints seem likely to have included the absence of financial support for a further lockdown from the Treasury at the time when the Firebreak was being planned. The Treasury may have been institutionally focused more on economics than public health harms. Generally, UK government ministers were openly critical of Welsh Government policies, criticism that was also articulated across large parts of the London-based media, particularly the press-media, including in the Mail and the Sun, the first and third most widely-read outlets in Wales (MacMath, 2020; Hodges, 2020). In other words, policy in Wales was being made against a background which amplified UK government communications of policy for England, which the UK government rarely specified as only applying to England. Critics of Welsh Government recognise these constraints to some extent: Lewis describes their Firebreak decision as 'brave', on grounds of this kind: 'No other part of the UK had taken such measures and the Welsh Government was really going it alone' (2021) (a statement that seems to me to misread rule changes that had already been made in Northern Ireland). UK government ministers seemed to treat distinctive policy options developed in Wales as less acceptable than similarly distinctive policies pursued by the Northern Ireland Executive. The treatment of the Welsh policy as contentious by UK government ministers and officials and by MPs from England is unlikely to have enhanced its effectiveness.
235. There is evidence that decision-makers in Wales believed that the country experienced comparatively lower death-rates during the first wave than other parts of the UK, especially England (see discussions in TAG 2022 and Hayward 2021b). This perception may have increased the confidence with which the Welsh Government approached its policies to manage the pandemic over the summer and autumn of 2020. I would strongly caution against drawing general conclusions about the role played by government pandemic response policies in generating these outcomes from description of these data. Beyond age-standardisation, differences in the pattern of introduction of the Covid-19 virus into populations across the UK, the geographical distribution and socio-economic characteristics of these populations and prior patterns of health care and other social infrastructure would all need to be considered. The Welsh Government was able to activate, operate and sustain an emergency response, while developing key capacity 'on the hoof' during the first phase of the pandemic. Public institutions in Wales may have found shifting out of first phase restrictions from summer 2020 more challenging. Despite – or perhaps because – it had greater confidence in its early performance and the bespoke expert advice it was receiving, the Welsh Government may have over-extended itself – for example (1) in relation to managing Covid-19 infections in hospitals while also seeking to provide wider medical services (in contrast to the first wave) or (2) managing policy differences with the UK government for England. In this new context through the autumn and early winter of 2020 it seems to have been less sure-footed in its policy and communication. The Welsh Government had to manage the pandemic in Wales during this period against the backdrop of a UK government that, from the outside, did not appear to have a settled or coherent approach to pandemic governance.

The run-up to Christmas 2020

236. Concern about a second wave of Covid-19 and new variants grew during the late autumn/early winter towards the end of 2020. A 5 November report in *The Guardian* referred to Boris Johnson describing the 'four nations' as working together on a plan for Christmas (Walker, 2020). BBC reported on a 'UK nations' Christmas get-together plan on 22 November (BBC, 2020d). The report's detail described a 'shared objective of facilitating some limited additional household bubbling for a small number of days' and a Scottish Government statement that 'no agreement has been reached' (BBC, 2020d). According to media reports, agreement was reached two days later (BBC, 2020). This process seems to be at odds with the apparent absence of joint work or cooperation in other aspects of the Welsh and UK governments in relation to pandemic policies. I have not found any detailed discussion or analysis of the four nations Christmas planning process in public domain documents or in the material released to me by the Inquiry. I cannot, therefore, comment on the mechanics of these discussions or the political leaders and officials involved. Jane Runeckles (INQ000320679, para 65) reports all devolved governments calling for a return to 'a joint four nations plan' on 21 November, which may refer to a wider planning process rather than specific planning for Christmas.
237. The four nations plan announced on 24 November permitted household groups to travel across the UK to meet for the holiday and for three household groups to spend the Christmas period together.
238. As the case rate in Wales grew through late November and early December, the Welsh Government came under pressure to increase the stringency of its rules. On 15 December separate BBC reports suggested that the Christmas rules in Wales were 'set to be strengthened' (BBC, 2020e) and that Mark Drakeford had said he would not change the Christmas rules 'lightly' and noted that 'harm would be done "in either direction"' (presumably meaning that continuing with the plans and varying from them would cause 'harms'), including 'harm ... to ... people's sense of mental health' (BBC, 2020f). Drakeford also expressed concerns about a 'free-for-all, in which ... people simply aren't willing to go along with what is proposed and therefore make the rules up for themselves' (BBC, 2020e).
239. The First Minister's final Module 2B statement refers (INQ000371209, para 244) to Cabinet meetings to discuss 'Winter planning' on 26, 27 and 29 November. It also mentions a recommendations paper, a benefit and harms analysis, an equality impact assessment and a children's rights impact assessment, which suggests that Cabinet was considering a range of evidence and aspects of the situation (I have sight of the Witness statement, but not the papers it mentions). Mark Drakeford states that Cabinet was informed 'that the firebreak had the intended impact of a short, sharp early intervention to push back the epidemic by three weeks, however, the benefits of this period of negative growth had now largely been lost.' Test and trace results 'indicated' that transmission 'was predominantly ... in households, hospitality and workplaces'. SAGE advised that the highest level of tiered restrictions in England and Scotland had been effective. 'Cabinet agreed to adopt a tier system on an all-Wales basis' from '4 December'.

240. On 16 December the mixing limit for households over Christmas was reduced in Wales from 3 to 2 (plus a single person household) (BBC, 2020g); wide-ranging new lockdown restrictions were also announced for the post-Christmas period, including for the Boxing Day Sales (BBC 2020h).
241. By 19 December plans to relax rules from 23 to 27 December were replaced by provisions allowing two households meeting on Christmas day alone, following 'urgent talks with ministers over a new variant of coronavirus' (BBC, 2020j).
242. The First Minister's Module 2B Inquiry statement sets out a sequence of Cabinet discussions and decisions in December 2020 – and makes reference to a range of evidence and discussion documents considered in these meetings (INQ000371209, paras 245-50). I have not had direct access to these documents and therefore have not been able to develop a complete picture of the specific expert or technical advice on anticipated behaviours that underpinned decisions in late November and December 2020. Advice offered by TAC/TAG in October 2020 recommended a post-Firebreak phase of 'a new simpler, national approach to behaviours and restrictions. Simpler messaging and regulations are expected to be easier to understand and comply with. Some existing restrictions may be removed if they are shown to be less effective or more harmful than originally expected' (TAG, 2020a, p 13). On 29 October, TAG had published behavioural advice for the post-Firebreak period which mentioned, but also questioned, the concept of 'pandemic fatigue'. It also described 'the majority of people' wanting 'to do what is being asked of them', before suggesting that they 'may be unable to do so due to lack of support, non-enabling environments or misunderstanding of increasingly complex restrictions with variation across nations. Building and maintaining confidence in government is therefore key in managing the ongoing pandemic' (TAG, 2020b, p. 2). - The First Minister referenced 'the modelling' – cited as a reference to the Swansea Model (Swansea University, 2021, p 5) – in explaining the dangers of 'boxing day sales'. It may be the case that the earlier ambition consistently to pursue a simpler approach to restrictions had the opposite effect in the complex situation that unfolded in Wales from late November until after Christmas in 2020. Ultimately, the Welsh Government made a series of changes often in a rapid sequence that moved substantially away from the 'simpler' position it had espoused initially for the post-Firebreak period.
243. Balancing harms from Covid-19 and measures to contain and manage its impact is inherently and unavoidably difficult. The challenges of trying to strike this balance were particularly acute for the Welsh Government over the period from late November through to the start of 2021. In his Module 2B statement, the First Minister describes the decision to 'bring forward tier 4 restrictions from 28 December to midnight on 20 December' as 'one of the hardest decisions we faced during the whole pandemic' (INQ000371209, paras 250-1).
244. 11,000 positive Covid-19 tests taken between 9 and 15 December were added to Welsh figures on 17 December. The BBC reported a 'big jump in case rates' as a result and described Welsh Conservatives calling the news 'staggering' and Plaid Cymru needing 'urgent reassurance that the failings have been addressed'. Public Health Wales stated that the delay resulted from 'planned maintenance of the NHS Welsh Laboratory Information Management System' that the previous system was 'on

its last legs' and that they 'knew it was going to have an impact' about which they communicated before it actually happened' (BBC 2020i). 'As at 17th December 2020' TAC reported that 'planned system maintenance' meant 'trends for this week should be interpreted with caution' (TAC 2020b p. 12).

21 December 2020 to May 2022

245. I will paint an image of this period in broader brush strokes than the earlier phases of the pandemic, touching on post-Christmas lockdown rules, the treatment of schools, examples of rule-breaking and related matters and the vaccine roll-out. Again, it is difficult to distil a list of clear Welsh Government priorities for this period.
246. As we have seen, Covid-19 related rules for the Christmas period gradually tightened in the run up to 23 December 2020. On 20 December Wales level four restrictions were introduced nationally across Wales. In retrospect, TAG treated the period from 26 September 2020 to 26 March 2021 as the second peak period in Wales (TAG, 2022, p. 7). On 10 February, Andrew Goodall, then NHS Wales Chief Executive described 'encouraging signs' of Covid-19 cases falling in Wales (BBC, 2021c). Limited easing of some restrictions began from mid-March. Next, the 'stay local' rule in Wales was lifted from 27 March – the first UK nation to ease restrictions in this way. Some self-contained tourist accommodation was permitted to reopen at this point. The second part of this TAG period in Wales involves the post-Christmas lockdown.
247. Policy for schools was a focus of media attention during this phase of the pandemic.
- On 31 December, the Welsh Government described its approach to the return of pupils to secondary schools as 'flexible', with plans for some to open from 6 January and many by 11 January, potentially 'a week earlier than those in England and Scotland' (BBC, 2020k). On 4 January schools in Wales were closed and replaced with on-line teaching until 18 January (BBC, 2021b). On 7 January school closure was extended until after the February half-term.
 - On 20 January Education Minister Kirsty Williams announced that GCSE, AS and A level exams in summer 2021 would be based on teacher assessment.
 - Pupils aged three to seven returned to school on 22 February 2021.
 - At the end of March school leaders and teaching unions expressed concerns that teacher-based exam assessment was putting too much pressure on students and schools. Rather than focusing on learning, schools scheduled tests for the post-Easter break period, to provide an evidence-base for exams that were normally external.
 - Nearly half of A-Levels awarded in Wales in summer 2021 were A* or A grade (ITV News, 2021).
248. The Welsh Government provided guidance on 'testing, masks and social distancing, with measures based on local risk' for the 2021-22 school year.

- Schools were expected to plan to ‘escalate or ease measures depending on the level of risk, which has drawn criticism from teaching unions’.
- Secondary pupils and staff were expected to test for Covid-19 before the start of term and then ‘take twice-weekly lateral flow tests’.
- While staff in primary schools were expected to test regularly, this expectation did not apply to pupils.
- Pupils who tested positive for Covid-19 were required ‘to isolate at home for 10 days.’
- ‘Measures and rules around ‘bubble’ or ‘contact’ groups’ in schools were ‘eased’, with ‘the test, trace and protect (TTP) system applying instead.’
- Masks were ‘no longer routinely advised for staff or pupils in Wales schools’ they were ‘still recommended in crowded spaces like school buses’ (BBC, 2021k).

249. Schooling in Wales continued to be significantly disrupted by Covid-19 in 2021-22.

- On 1 October 2021 it was reported that more than 10000 cases of Covid-19 had been recorded among pupils and staff in Welsh schools, partly reflecting a high rate of community infection. The report also referred to Cwm Taf Morgannwg health board re-introducing face mask wearing for secondary school pupils ‘including wearing them during lessons’ (BBC, 2021l).
- In January 2022 Jeremy Miles, Welsh Government Education Minister, confirmed that exams would go ahead in schools in Wales (ITV News, 2022).

Rule-breaking and enforcement

250. At earlier stages of the pandemic, policy and practice in Wales was to focus on education and engagement, with formal enforcement held back as a last resort. Enforcement seems to have become a stronger theme after Christmas 2020. In the absence of appropriate comparative data either over time within Wales or across the UK’s territorial political systems, it is unclear whether reported numbers of incidents involving enforcement actions or the scale of individual enforcement actions should be regarded as large.

- a. A BBC report stated that police in Wales had been ‘turning away’ people who had travelled to Wales from various parts of England around the New Year –representatives of policing in England and Wales had previously described them as ‘unenforceable’. It also described 240 reports made by the public to South Wales Police on New Year’s Eve and stated that 43 fixed penalty notices had been issued for that day, with 430 issued in December (BBC, 2021a).
- b. On a sunny weekend in late February 2021 while Covid-19 restrictions stated that people could go out only for essential reasons and local exercise, ‘crowds’ were reported at beaches and beauty spots; the police requested that local authorities closed car parks close to these places and issued fines (BBC, 2021d).

- c. South Wales Police reported that more than 350 people had been fined over the end-of-February weekend. House parties in the Cathays area of Cardiff attracted 105 of those fines, while fines were issued both to people for travelling beyond their local area in Wales and for people coming to Wales from England (South Wales Police, 2021).
 - d. When 'stay local' restrictions were lifted within Wales on 27 March, some self-contained tourist accommodation was reopened to people within Wales. Beauty spots and beaches were crowded again on 2 April (BBC, 2021f). Border controls with England were lifted on 12 April 2021.
 - e. On 30 March police broke-up a large crowd that had gathered in Cardiff Bay. Three officers were hurt and two arrests were made (BBC, 2021e). A crowd gathered again at Cardiff Bay on 2 April (BBC, 2021h). Police were given additional powers to stop crowds after these incidents (BBC 2021i). Extra police were mobilised for the May bank holiday, which fell on the first weekend after pubs re-opened in Wales (BBC, 2021j); it seemed to pass off without serious incident.
251. On the one hand, these incidents illustrate the reality of Welsh Government concerns about the risks of imposing rules that people do not follow. On the other hand, these incidents do not seem to have altered the pattern of easing of restrictions. Notwithstanding the non-devolution of policing, overall the relationship between the Welsh Government and the police services in Wales seems to have been relatively good. Broadly speaking, the police seem to have implemented Welsh Government policies, on to the point of enforcement on occasions where they deemed enforcement necessary.
252. In general, the Home Office – and the wider UK government – do not seem to have been involved in the policing and enforcement of pandemic rules in Wales by the relevant policing and justice authorities. I am aware of one exception to this general pattern, related to the use of the Single Justice Procedure (SJP). Introduced by the Criminal Justice and Courts Act, 2015, the SJP provides a quick method for Magistrates England and Wales to deal with very minor summary offences. The SJP has been criticised for a lack of transparency. Written evidence to module 2B submitted by Jeremy Miles notes the Welsh Government had agreed to designate the Chief Constables in Wales to bring proceedings for offences under the Principal Regulations. Moreover, the First Minister agreed to a request from the UK Attorney General 'to make such proceedings 'specified proceedings' so that the police could prosecute them under the Single Justice Procedure' (INQ000389184, para 192). The First Minister signed letters sent to each of the four police forces in Wales to put this process in place.
253. This arrangement had lapsed by January 2021. Jeremy Miles (INQ000389184, paras 325-328) reports that, at some point on or before 19 January, the UK Attorney General had instructed officials to make provision for the SJP to apply to prosecutions under the Coronavirus Regulations across England and Wales. On 25 January UK government officials contacted Welsh Government officials to ascertain whether the Welsh Government intended to use the SJP. On 27 January, Jeremy Miles reported being copied into a communication recommending that the First Minister not agree to

the use of the SJP for prosecutions under the Welsh Coronavirus Regulations. Evidence of mistakes under the SJP were offered as the rationale for this discussion. Such mistakes included: convictions for behaviour that was not an offence at the time of its conduct, prosecutions under guidance rather than law, fines of over the maximum amount allowed by law and convictions in England for activities in England under Welsh Regulations. On 8 February 2021 a letter from the Lord Chancellor and Attorney General informed the First Minister that the SJP would be adopted for offences under the Welsh Regulations, which was implemented on 9 February when the Attorney General signed the Prosecution of Offences Act 1985 (Specified Proceedings) (Coronavirus) (Amendment) Order 2021. Jeremy Miles describes this episode as extraordinary; even so he agreed not to withdraw the Welsh Government's authorisation to prosecute these offences from the police in Wales, since doing so 'could have given the public the wrong impression that Ministers did not trust the police in Wales to enforce breaches of the Covid-19 rules.'

254. The sense that Covid-19 regulations and guidance applied to those in positions of power and influence was an important element of public trust and confidence during the pandemic. Some incidents in Wales raised questions about the applicability of rules to those in positions of power. Understanding how they were handled is an important element of reviewing the governance of Wales during the emergency period. One such incident involved Senedd members and took place in late 2020. In January 2021 evidence became public that a small number of elected members had consumed alcohol in the licensed Senedd tearoom on 8 December 2020, four days after a ban on the sale, supply and consumption of alcohol in licensed premises in Wales (Morris 2020).

- Alun Davies, a Labour MS, met with Paul Davies, then the Welsh Conservative leader and Darren Millar, the Conservative chief whip and Paul Smith, the Conservative chief of staff in Wales. They drank alcohol with a meal while discussing proposed legislation. Alun Davies has said that the consumption of food and alcohol (which is reported not to have been bought on the premises or served by catering staff) was not in breach of coronavirus regulations at the time and that social distancing was observed at the meeting (Morris 2020).
- Alun Davies was suspended from the Senedd Labour group while the incident was investigated. His membership was reinstated in February 2020.
- Initially Paul Davies, Millar and Smith apologised, saying 'We are profoundly sorry for our actions. While we did not break the rules, we recognised that what was part of a day's work would not be seen to be following the spirit of them, especially given the tough time the country has been going through' (Morris 2020).
- A few days later Paul Davies stood down as Conservative leader, saying the incident had become a distraction. Darren Millar also resigned from his Chief Whip position. Both remained Senedd members and Millar returned to his role as Chief Whip. While Davies was replaced by Andrew RT Davies, he has since served as acting leader (Mosalski 2022).

- Though not meeting with Alun Davies, another Conservative MP, Nick Ramsay, was also eating and consumed alcohol in the tearoom at the same time on 8 December 2020 and was implicated in the investigation. He was de-selected by his constituency party and thus not re-elected in 2021 (Mosalski 2022).
- A member of Senedd catering staff was unable to work until July 2021 (Mosalski 2021).
- All Senedd members were cleared of breaching the rules by the Standards Commissioner (Mosalski 2022).

Welsh Government decision-making on Vaccine Rollout

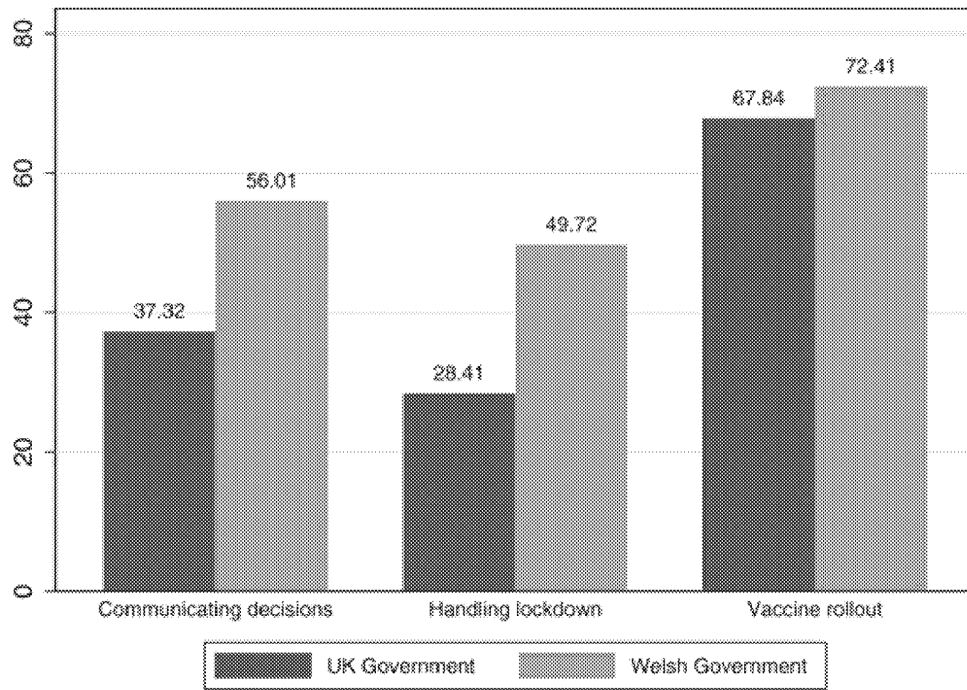
255. Medicine procurement is normally a devolved responsibility. Early in the pandemic, the four governments agreed that the Vaccine Task Force act on behalf of all four parts of the UK in this respect. Policy to rollout vaccines to relevant professional groups and the general public was largely devolved.

- a. The ability of the Welsh Government to conduct a Covid-19 vaccine programme relied on the UK government sponsored Vaccine Taskforce and the related procurement of a supply of vaccines of various types by the UK government.
- b. Initially, the Welsh Government was widely criticised for the perceived slow pace of its vaccine rollout. Members of the government responded somewhat defensively to this early criticism.
- c. By 26 January, Vaughan Gething, Welsh Health Minister stated that Wales was delivering Covid-19 vaccines at the fastest rate in the UK (Nation Cymru, 2021a). By June 2021, the vaccine rollout in Wales was among the fastest in the world.
- d. In evidence to the Inquiry, Craiger Solomons stated that Welsh Government officials developed an operational 'Welsh Government and Local Health Board ... level model' 'agreed by TAG on 23 October 2020' and 'used to support Ministerial discussion around the vaccine roll out and potential different approaches' (INQ000291490, paras 112-14).
- e. Matt Hancock, Health Secretary in the UK government, stated that the slower rollout in England than Wales was 'due to England's 'buffer' of supply. The Welsh Government said Mr Hancock's assessment was 'wrong'. Instead, Wales had been 'more efficient in using ... supply with minimal wastage.' It was a result of 'excellent planning and the sheer hard work and dedication of the vaccine teams around Wales' (Wells, 2021).
- f. Vaccine procurement provides a more straightforward argument for the benefits of the 'whole-of-UK approach' to which Mr Hancock averred. Hancock's move to claim some credit for the perceived success of the Welsh vaccine roll out programme and the ensuing exchange with representatives of the Welsh Government is an indication of sensitive and political aspects of the relations between the governments.

Welsh Government Covid-19 Communication

256. Compared to Scotland and Northern Ireland, the Wales-specific media is weak, especially in relation to newspapers. The Mail, Guardian and Sun are the three mostly widely-read outlets in Wales (Nation Cymru, 2021b). No London-based newspaper produces a distinct Welsh edition (in contrast to, say, Scotland); those reading them will not receive Wales-focused news. The Western Mail is the best established and most widely read Wales-focused daily paper, and fourth mostly widely read in Wales (read by 9% of the population). It is plausible to argue that the news agenda in Wales is set by issues dominating the news in London to a greater extent than is the case for Northern Ireland or Scotland. Wales has distinct radio provision and distinct TV provision, particularly in the Welsh language.
257. On 26 March 2020, BBC Wales announced that from 30 March it would broadcast daily Welsh Government press conferences between 12.30pm and 1pm and repeat the broadcast across its platforms. It reported 'unprecedented demand for its news output' with more 'than 700,000 viewers tuning in each day to BBC Wales Today' (BBC Wales, 2020). This dedicated, Wales-focused output provided a key source of information on the guidance in place and regulations in force in Wales – particularly against the backdrop of the otherwise general dominance of London-based news media within Wales, which at times (and perhaps often) reported UK government policy for England as if it applied to the UK as a whole (for example, by using such ambiguous terms as regulations in force *across the country*). The BBC broadcasts also helped to raise the profile of the Welsh Government – and particularly of Mark Drakeford as First Minister – during the pandemic.
258. There were several episodes during which Welsh Government communication was criticised within Wales. Some, such as the communication around supermarkets not being allowed to sell non-essential items at times during autumn 2020, have been discussed earlier in this report. Welsh Government policy was also criticised both internally within Wales and by members of the UK government and Conservative MPs at Westminster.
259. While opinion polls indicated that Drakeford's popularity dipped briefly in Wales at the start of the Covid-19 pandemic (and Boris Johnson's increased), his ratings then increased sharply. Both awareness of devolution and Mark Drakeford and approval of the First Minister increased through the pandemic. In keeping with their approach at other times, Mark Drakeford and his ministerial colleagues addressed their communication to Wales, the people of Wales and Welsh citizens. This framing suggests they regarded Wales as a nation with which people would identify; they sought to appeal to Wales as a community of solidarity.
260. The Welsh Election Study (WES) is the main Economic and Social Research Council funded academic survey of public attitudes to politics in Wales. (I am a member of the WES team.) WES data provides a basis on which to compare public attitudes in Wales towards the UK and Welsh government's handling of Covid-19 policies. They show a clear common pattern of higher approval levels for the Welsh than the UK government, as the following figure from Larner *et al* (2022, p. 6) indicates.

Figure 1: Percentage of respondents agreeing that UK / Welsh Government had done a good job of handling Covid-19 policy areas



Source: Lerner et al 2022

261. While many people in Wales expressed concerns about and disagreement with the Welsh Government's approach to Covid-19, the trajectory and pattern of public attitudes suggests that the balance of opinion was supportive, with clear majority support in many areas, aside from the handling of lockdown.

Summary context and possible lessons

262. Many lessons and recommendations that relate to the governance of Wales during a pandemic concern the broader territorial structure of the UK, its constitutional arrangements and governance arrangements; given the structure of module 2b, the recommendations I make below are focused on the Welsh Government rather than on these wider and fundamental matters.
263. The Welsh Government has day-to-day responsibility for – and familiarity with – major public services in Wales. In this context it would not, in my view, be sensible to respond to a pandemic emergency such as Covid-19 by centralising decision-making that involves these services in Whitehall, not least since devolution means those in Whitehall lack routine experience of those services. In this context, arrangements for cross-government work in a pandemic context require urgent and serious attention. Addressing issues around the involvement of devolved government politicians (and, to a lesser extent, officials) in UK government committees and groups – or, perhaps better, the creation of intergovernmental structures designed for these circumstances – should be an urgent priority. Even if fundamental reform of Whitehall’s territorial offices and Secretaries of State is not possible (and it has not been a priority for any UK government over the past 25 years), serious consideration of their role, and relationship to devolved government, during a pandemic emergency is needed.
264. In contrast to the choice made by the UK government not to make a transfer of funding alongside the transfer in 2018 of some responsibilities under the Civil Contingencies Act (2004), the UK government should ensure that adequate financial resources are made available to the Welsh Government for reviewing its pandemic preparedness, organisation of emergency response and related advice structures. Adequate funding is an essential corollary of the recommendations set out below.
265. I will also say that understandings of the existing arrangement for UK territorial governance differ profoundly within and across the UK. These differences have political and cultural roots. Recommending cultural change would be trite. These issues have significant implications for the disposition of resources. They:
- pervade political, administrative and cultural/media contexts
 - generate uneven knowledge about and understanding of the territories that make up the UK (during the second wave of Covid-19 journalist Sam Coates (2020) captured something of the background attitudes to these issues at the UK’s centre, describing a ‘conversation about devolution’ as ‘much-needed’, while calling the subject ‘immensely dull and complex’: ‘Devolution in all its forms is a mess – precisely because it is just so boring and complex to sort out.’ ‘Westminster was, and is, vaguely in favour of the devolution of power, but cannot decide where and how decisions should be made, and ministers always have an aversion to anything that looks or smells like an alternative powerbase.’)
266. This Inquiry has brought a large body of significant evidence to light on the structure, culture and practice of territorial governance across the UK. In conducting this work,

the Inquiry needed to start somewhere. The UK government was a good place to start. Equally, my work on Module 2B (and consideration of some evidence from Module 2A) suggests that evidence gathered in them raises additional questions about matters considered in Module 2.

267. Some aspects of the response to the Covid-19 pandemic cut through these differences in the spirit of working together, particularly during the initial phase of the pandemic over the winter/spring of 2020, in other responses differing understandings of and preferences about the character of the UK union compromised and weakened the ability of public institutions to respond to the Covid-19 pandemic. For example, different views of the arrangements related to people travelling from areas outside Wales with high rates of Covid-19 into parts of Wales with low rates caused friction and confusion. Differences between the Welsh and UK governments over the need for, timing of and financial support for the Welsh 'Firebreak' suggest that the wider UK context within which policies to manage Covid-19 were made in Wales was far from optimal.
268. Ambiguity about the locus of responsibility for the governance of an emergency on the scale of the Covid-19 pandemic meant that appropriate structures did not exist, waiting to be activated when the emergency struck. For example, prior investment in some forms of data and analytical capacity developed before the pandemic served Wales well; the comparatively long history of collaborative work in such areas as SAIL and Administrative Data Research in Wales may have lessons for other parts of the UK. Equally, limited analytic capacity (personal and equipment) within the Welsh Government seems to have constrained its access to bespoke advice. The limited availability of Wales-specific data in such domains as social care may also have had a constraining effect on the provision of analysis to inform the Welsh Government's policies. As an area in which service delivery is fragmented and government plays a more remote role, the data routinely gathered on social care provision may not have been sufficient to adequately inform pandemic policymaking in Wales (or elsewhere in the UK). Moves were made in Wales, often rapidly and reasonably effectively to fill some gaps in evidence and deficits in analytic capacity within and outside the Welsh Government that limited its access to bespoke expert advice and analysis as the pandemic hit.
269. The structure, culture and practice of UK devolution continues to be defined by ambiguity. Institutional and constitutional changes made during and after the pandemic reflect and reproduce these ambiguities at least as much as addressing them. Specific recommendations for change can be made to address particular issues. Even so, in my view, the broader success of a programme of change to improve the capacity of the UK territorial state to respond to a Covid-19-type emergency will need to consider and address its ambiguities and the political and cultural differences in which they are rooted.
270. The pandemic response in Wales was conditioned by the structural condition of key public services in Wales, especially for health and social care. These conditions reflect long term investment patterns over the whole period of devolution and back beyond it.

271. Work within Welsh Government and devolved institutions (Harp, 2022; TAC, 2023) and commissioned by it from external experts (Haymann and Hayes, 2023) has analysed aspects of the response to the Covid-19 pandemic in Wales. These reviews have focused mostly on health, hospitals and the health protection system in Wales. I am aware that additional review work ('deep dives' into challenging issues and 'lessons learned' exercises) may have been conducted by officials in the Welsh Government. However, since I have not seen substantive evidence from them, I do not know of their scope, content or recommendations.

Recommendations

272. Lesson learning

R1. The Welsh Government should review the role and effectiveness of new and adapted arrangements put in place for pandemic governance during 2020 and 2021, encompassing, among any others, the Covid-19 Core Group (including the rationale ending this Group), 'Star Chamber', Shadow Partnership Council, First Minister's BAME Covid-19 Advisory Group, TAC and TAG.

R2. The Welsh Government should review the role and effectiveness of local authority responses to the pandemic in Wales, across the UK and, to the extent that it may be relevant, elsewhere in the world. In particular, the effectiveness of early local contact tracing and support systems by local authorities in western parts of Wales merits attention, as does whether these arrangements or others might be adapted to urban, industrial or post-industrial places.

R3. The Welsh Government should review the strengths and weaknesses of 'small country' governance during the pandemic. There is, in my view, some evidence that a comparatively finely textured understanding of the population and living conditions across Wales was a helpful influence on Welsh Government decision-making during the pandemic, especially as the capacity for tailored expert advice developed (governments across the UK could usefully reflect on these issues – comparing and contrasting the response of the UK's three devolved governments would be particularly valuable, including the leaders of metropolitan devolution in England might also add to the value of an analysis of this kind).

273. Capacity

R4. The Welsh Government should review its own capacity around data and analysis both through its Knowledge and Analytic Services team and in partnership with academic and commercial institutions, and ensure that adequate capacity is developed and maintained, to include adequate secure data analysis facilities, hardware and software.

R5. The Welsh Government should ensure that adequate data is gathered and analysed regularly for Wales on key health, social (including, critically for social care), economic and education variables.

R6. For hospital, health care and social care capacity, the Welsh Government should ensure that the 'structure, design and function of patient-facing [and other user-facing] facilities' allow for the application of effective Infection Prevention and Control protocols and social distancing for staff and patients/users as it develops and/or regulates the development of new capacity and renovates existing capacity (that is, to implement recommendations set out in HARP 2022, including those at pp 6-7).

274. Structures for 'whole of government' emergencies in Wales: The Welsh Government

R7. Partly on the basis of work undertaken to address Recommendation 1, the Welsh Government should have robust plans in place to enable a rapid response to a 'whole of government' emergency. These should include:

- a. decision-making structures within Welsh Government, where cabinet-based processes seemed to have been robust in the face of the Covid-19 pandemic,
- b. structures to review and reallocate resources within the Welsh Government (the 'Star Chamber' function),
- c. the organisation of consultation and information sharing (the Covid-19 Core Group, First Minister's BAME advisory group, Social Partnership Council),
- d. review and possible adaptation of existing emergency response facilities, including the ECC(W) and facilities for LRFs, not least in the context of developing communication technology,
- e. structures for the interpretation of expert analysis and advice generated at the UK level and for the provision of expert analysis and advice specifically focused on Wales (the TAC and TAG structures),
- f. local authority and regional response structures,
- g. plans for the: interaction of social care and NHS facilities, re-purposing NHS facilities and the creation of temporary hospital capacity in the event of an emergency surge in demand for this provision.

R8. I agree with Shan Morgan's recommendation (INQ000185340, para 30) that the Welsh Government should hold 'regular semi-live exercises to test systems, structures and communications' for possible future pandemics – or other emergencies requiring a 'whole of government' response.

Materials

In order to compile this report, I have been given access by the Inquiry to the following materials which relate to the matters on which my opinion has been sought:

INQ000056212	COBR Covid-19 (M)(20)(13) 20 March
INQ000066086	Organogram of the Welsh Government as at November 2019
INQ000083851	COBR meeting held on 12 October and attended by Mr Drakeford
INQ000130469	Witness Statement of Dr Andrew Goodall, module 1. 14/03/2023
INQ000177804	Exhibit MD/15: Witness Statement of Mark Drakeford, Minister for Health. Module 1
INQ000185340	Module 2B Final Statement of Shan Morgan 04/05/2023
INQ000185354	Witness statement of The Rt Hon Michael Gove MP
INQ000215171	COVID 19 Core Group Meeting, dated 11-03-2020.
INQ000215646	Exhibit IH/20: Terms of Reference for SAGE Social Care Working Group, dated 10/09/2020.
INQ000216492	Exhibit MD/15: Summary Note from COBR (M)
INQ000216554	First Minister Letter to Chancellor seeking an extension to the Job Support Scheme for the proposed firebreak, dated 16 Oct
INQ000216555	Chancellor's response dated 23 October to First Minister seeking an extension to the Job Support Scheme for the proposed firebreak
INQ000221152	Covid-19 Core Group minutes dated 20-05-2020
INQ000227962	TAC's Terms of Reference
INQ000228013	Letter from Mr Drakeford, dated 16 December 2021
INQ000232492	Public Health Wales Corporate witness statement 1 Aug 2023
INQ000248853	Witness statement of Professor Sir Chris Whitty, 15/08/2023
INQ000255836	Witness statement of The Rt Hon Boris Johnson
INQ000256942	Exhibit MD/04: Minutes of a Joint Ministerial Committee meeting
INQ000256943	Exhibit MD/05: Minutes of a Joint Ministerial Committee meeting
INQ000259848	Second witness statement of the Rt Hon. Michael Gove MP
INQ000263371	Final signed witness statement of Jo-Anne Daniels. 1 September 2023.
INQ000263372	Witness Statement of Helen Anne Lentle 25.08.2023
INQ000269372	Expert report prepared by Professor Henderson for Module 2
INQ000273747	Witness Statement of Mark Drakeford, First Minister of Wales
INQ000274147	Final Signed Statement of Glyn Jones Knowledge and Analytical Services dated 8.12.23
INQ000274154	Expert report prepared by Professor Cairney for Module 2A
INQ000274178	Final Welsh Treasury Statement (Andrew Goodall) 22 September 2023
INQ000280190	Exhibit MD/05: Supplementary witness statement from Mark Drakeford

INQ000282461	Final Signed Statement Thomas Smithson 25.09.23
INQ000291490	Final signed statement Craiger Solomon 19/9/2023
INQ000310296	Briefing notes from Welsh Government Officials, COVID19 Core Group Meeting. Dated 04082020.
INQ000311825	COVID19 Core Group Meeting. dated 08-07-2020.
INQ000311831	COVID19 - Core Group meeting. dated 29-04-2020
INQ000311833	COVID19 Core Group meeting, dated 22-04-2020.
INQ000311845	COVID19 core group meeting minutes 01-04-2020
INQ000311860	COVID19 Core Group Meeting. Dated 03-06-2020
INQ000311872	COVID19 core group meeting minutes 24-06-2020
INQ000312134	COVID19 core group meeting minutes 14-07-2020
INQ000314525	COVID19 core group meeting minutes 10-06-2020
INQ000315607	Final Statement of Clare Jenkins dated 13.10.2023
INQ000319413	Christopher William Morgan Final Witness Statement 18.10.23
INQ000319643	HSSG Final signed Statement of Andrew Goodall 29.09.23
INQ000320500	Liz Lalley Welsh Government Final Statement 20.10.2023
INQ000320679	Final Witness Statement Jane Runeckles 20.10.23
INQ000327736	Final Witness Statement of Dr Gillian Richardson 21.09.2023
INQ000336351	COVID19 Core Group meeting, dated 25-03-2020.
INQ000349671	COVID19 Core Group Meeting. dated 01-07-2020.
INQ000356177	Rob Orford TAC and TAG final signed 23.11.2023
INQ000371209	Mark Drakeford Final Statement 13.12.2023
INQ000371584	Brendan Collins Final Statement 8.12.2023
INQ000371646	Andrew Slade Welsh Treasury final signed statement 13.12.2023
INQ000389184	Jeremy Miles Signed Statement 13.12.2023
INQ000390618	Rob Orford Final Witness Statement 19.12.2023
INQ000391115	Final Signed Statement of Sir Frank Atherton CMO Wales 18.12.23
INQ000391237	Final Statement of Vaughan Gething 3 Jan 2024

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Appendix

Papers by the author on a range of reports, articles, papers and other public domain material that is relevant to the response of the Welsh Government to the Covid-19 pandemic:

- 'Coronavirus: the challenges for devolution' 09 April 2020 UK in a Changing Europe Blog (with Dr Alan Wager)
<https://ukandeu.ac.uk/coronavirus-the-challenges-for-devolution/>
- Contribution to Episode 7 of the Matrix Law Podcast 'United or Divided? The Virus and Devolution' on 18 May 2020
(<https://www.matrixlaw.co.uk/resource/the-matrix-law-podcast-episode-7-united-or-divided-the-virus-and-devolution/>)
- 'What has Covid-19 meant for devolution in Wales?' 17 July 2020 UK in a Changing Europe Blog
<https://ukandeu.ac.uk/what-has-covid-19-meant-for-devolution-in-wales/>
- 'After Brexit and Covid-19' *Progressive Review* 15 December 2020 (with Professor Ailsa Henderson) <https://onlinelibrary.wiley.com/doi/10.1111/newe.12222>
- Oral evidence to the House of Lords Constitution Committee on the Constitutional implications of Covid-19 on 16 December 2020
(<https://committees.parliament.uk/oralevidence/1457/html/>)
- 'The possible break-up of the United Kingdom' 19 December 2020 UK in a Changing Europe Long Read
<https://ukandeu.ac.uk/long-read/the-possible-break-up-of-the-united-kingdom/>
- 'The UK's Union: major challenges ahead' 22 January 2021 UK in a Changing Europe Blog <https://ukandeu.ac.uk/the-uks-union-major-challenges-ahead/>
- UK territorial governance damaged by Covid-19' 26 January 2021 UK in a Changing Europe Blog <https://ukandeu.ac.uk/uk-territorial-governance-damaged-by-covid-19/>
- I chaired a UK in a Changing Europe online event 'Devolution: change, continuity and crisis' on 25 March 2021
<https://ukandeu.ac.uk/events/devolution-change-continuity-and-crisis/>
- 'The Anglo-British State, Welsh Devolution, and the Covid-19 Pandemic in England and Wales' In *Covid-19 in Europe and North America* edited by Veronique Molinari and Pierre-Alexandre Beylier (De Gruyter Oldenbourg, 2022)
<https://www.degruyter.com/document/doi/10.1515/9783110745085-010/html?lang=en>