

UK Covid-19 Inquiry Before Baroness Heather Hallett
Module 2A Hearings: January 2024

WRITTEN CLOSING STATEMENT
on behalf of
THE SCOTTISH GOVERNMENT

Introduction

1. On behalf of the Scottish Government, we begin by offering again a tribute to the representatives of Scottish Covid Bereaved. We also pass our deep sympathies and condolences to the others, the many thousands, who have lost loved ones, who have suffered and who continue to suffer as a result of Covid-19.
2. In its oral closing statement, the Scottish Government addressed six key themes arising in the context of Module 2A, which it now revisits and develops. We have sought to identify certain key pieces of evidence. We do so in order to place in proper context, and to give an alternate view of, some of the evidence that was led in Module 2A. We do this in order to assist the Inquiry, so as to ensure that it has as “rounded” and complete a picture of the Scottish Government’s handling of the pandemic as is possible. We have also tried to identify certain lines that the Inquiry may choose to pursue in its recommendations.
3. The Scottish Government understands that it was not possible for the Inquiry to refer in evidence to all the many thousands of documents produced by it at the Module 2A hearings. It is grateful for the Chair’s assurances that she and her Inquiry team will consider all of the written and oral evidence that was submitted. As indicated in its oral submission, the Scottish Government has set out below the INQ numbers for key documents, many of which are Cabinet papers evidencing decisions taken, which it respectfully highlights for consideration by the Inquiry.

THEME 1: THE PERIOD JANUARY to MARCH 2020

The Scottish Government took the emerging threat seriously

4. The Inquiry has been provided with extensive evidence, including advice from senior officials on 24 January,¹ Cabinet papers from 4 February 2020,² and the SGORR agenda dated 29 January 2020,³ that demonstrate clearly that the Scottish Government was taking the concerns about the emerging threat from Covid-19 very seriously, from an early stage.
5. The Inquiry heard evidence from Professor Mark Woolhouse that raised concerns about whether the Scottish Government’s response was sufficiently serious. Professor Woolhouse was referred to emails between himself and the former Chief Medical Officer (“CMO”), Dr Catherine Calderwood and Professor Sir Gregor Smith, current CMO (and Deputy CMO from January to March 2020). The

¹ INQ000147345

² INQ000238704

³ INQ000221695

Inquiry has the CMO group WhatsApp messages.⁴ These messages show that on 30 January 2020, Dr Calderwood was "*speaking to an epidemiology expert [i.e. Prof Woolhouse] today.*" On 1 February she asks the CMO group if "*any news overnight*". On 5 March she says, "*Lots of news from COBR(O). Can we pls stick close on this. Need pragmatic approach for society.*" Professor Woolhouse was not taken in his evidence to these messages, which also showed that Dr Calderwood offered to meet him, which meeting took place shortly thereafter. In summary, Professor Woolhouse expressed concern that his comments were not being taken seriously enough. Yet, it is clear from WhatsApp exchanges that his concerns *were* being taken seriously by Dr Calderwood, at a time when a number of experts were offering their advice (as they were to all the CMOs of the UK nations). That Professor Woolhouse had a serious contribution to make in advising the Scottish Government was recognised shortly after these exchanges in his appointment by the CMO to the Covid-19 Advisory Group ("C19-AG").

The Scottish Government co-operated with the UK Government on the legislative "route" to lockdown for sound legislative and practical reasons

6. In its Opening Statement, the Scottish Government stated that, possessed with current knowledge of the virus, it would have wanted to impose a lockdown earlier. This was spoken to in evidence by the former First Minister, Ms Sturgeon.⁵ The Scottish Ministers did not have the *powers* to enforce a lockdown through regulations until the Coronavirus Act 2020 came into force. That happened late on 25 March, after the relevant bill had completed its final stage in the Lords and been given Royal Assent (which was notified at 5.30 pm). The Scottish regulations were made and came into force at 7.15 pm the next day, 26 March. The equivalent English and Welsh regulations came into force a little earlier on the same day, and the Northern Irish regulations on 28 March.

7. It would have been possible for the Scottish Government to *advise* people to stay at home, businesses to close, etc earlier than 23 March. Indeed, from its announcement on 23 March, the "lockdown" was the subject of *guidance* rather than law for several days across the UK. A prolonged arrangement based on guidance would have required continued co-operation from businesses and other organisations, as well as from individuals.
8. There is no doubt that the Scottish Parliament possessed the *legislative competence* to legislate for an earlier lockdown, either directly or by empowering the Scottish Ministers to make regulations. However, for such legislation to come into force quickly, the UK and Scottish Law Officers, and the Secretary of State in terms of his powers under section 35 of the Scotland Act, would have had to agree to the shortening of the statutory four-week period between the passing of a bill and its submission by the Presiding Officer for Royal Assent (such a process *was* followed, for example, for the Coronavirus (Scotland) Act 2020, in April 2020). That would have required the agreement and cooperation of the UK Government, which could not have been taken for granted. In addition, an

⁴ INQ000334553

⁵ Mod 2A Transcript, 11/159/7-13

earlier lockdown would have needed financial support and incentives that would not have been affordable or practicable within the Scottish Government's resources at that time.

9. Therefore, a lockdown imposed by the Scottish Parliament or Government, earlier than the rest of the UK, would have been far from straightforward, raising practical and legal considerations. It is clear from the papers for the meetings of Cabinet from 10 March 2020,⁶ and for the COBR meetings between that date and 23 March 2020,⁷ that during this period the Scottish Government was working intensely and co-operatively, and at great pace, with the UK Government on the legislative "route." This route was based on the proposed pandemic flu legislation, work on which had been on-going, in collaboration with the UK Government. The result of this legislative route gave Scottish Ministers regulation-making powers equivalent to those available in the other three nations - namely, the devolved legislatures gave legislative consent under the Sewel Convention to a Westminster Bill that made provision for devolved matters.⁸ Moreover, the scientific and clinical advice recommending "lockdown" was put before Ministers, for the first time, at the COBR meeting on 23 March 2020.⁹ Thus, the question of a separate Scottish Bill enabling an earlier lockdown did not arise.
10. Similarly, unilateral early imposition of restrictions on international travel, on the basis of devolved health powers without UK Government co-operation, would not have been a realistic option (e.g. practical impediments relating to pre-notification by international travellers of their arrival in Scotland; policing of arrivals at Scottish ports of entry was the responsibility of UK Border Force). The interaction of devolved and reserved responsibilities for international travel was explained by Mr Thomson in his oral evidence on 19 January.¹⁰

The decision to close schools made a significant contribution to suppressing the virus

11. In relation to the decision to close schools, the Inquiry has a paper dated 17 March 2020 from SPI-M-O to the Scottish Government setting out the (consensus) view, and recommending school closures.¹¹ This paper was in line with SAGE advice. Former Deputy First Minister, John Swinney, gave evidence that this was a very difficult decision. Such was the pace at which the situation was developing, the need to close schools was deemed necessary within a very short time frame.¹² It was not a decision that was taken lightly. It is worth noting that the Module 2 report, provided to the Inquiry by Professor Thomas Hale on the effectiveness of NPIs,¹³ set out evidence that school closures contributed towards lower cumulative mortality during the first wave of the pandemic.¹⁴ His

⁶ INQ000238706

⁷ INQ000056220, INQ000056210, INQ000273617, INQ000362664, INQ000056211, INQ000056212, INQ000056213.

⁸ Statements INQ000184894 (paras 9-10), INQ000215495 (paras 9-10), INQ000216655 (paras 5-11) and INQ000366267 (paras 13-20) from the DG for Strategy and External Affairs (DGSEA) describe the Sewel Convention and the development, parliamentary consideration and provisions of the 2020 Act

⁹ INQ000056213 – the CoBR Minutes of 23rd March

¹⁰ Mod 2A Transcript, 4/129/11-25

¹¹ INQ000302529

¹² Mod 2A Transcript, 10/184/5 – 10/188/23. See INQ000339039 paras 109-126 for more detail.

¹³ Mod 2, INQ000257925.

¹⁴ *Supra*, at para. 20.

report also cited multiple international studies which identified school closures as one of the most effective policy interventions in mitigating Covid-19's adverse health outcomes.¹⁵

Decisions on sporting events, conferences and cancellation of mass gatherings reflected advice before Ministers

12. The evidence of Professor Phin and Dr McMenamin for Public Health Scotland ("PHS") was that the strain of Covid-19 associated with the NIKE conference in Edinburgh was traced and then effectively died out. The Scottish Government submits that the decision not to make a public announcement about the NIKE conference (attended by only 71 people, 10 of them from Scotland), whilst one that Ms. Sturgeon acknowledged she may have taken differently with hindsight,¹⁶ was based on the grounds of patient confidentiality and, as such, was not unreasonable. There was certainly no evidence of any desire or intention to conceal it.¹⁷ It was reasonable to ask the CMO for advice and to proceed according to her view of the matter. Similarly, the rugby match on 8 March at Murrayfield requires to be viewed in the context of expert advice, that at this time was not recommending cancellation of mass gatherings or sporting events. Ms. Sturgeon gave evidence that the open-air nature of the event was considered, and that this, and other decisions "*were balanced decisions we were seeking to make for the best possible reasons.*"¹⁸
13. The minutes of a COBR meeting on 12 March 2020¹⁹ were put to both Michael Gove and Ms. Sturgeon. By this time, the Scottish Government had decided that the proper approach was to cancel mass gatherings. Both agreed that Ms. Sturgeon had indicated to COBR at the outset that it was the intention of the Scottish Government to cancel mass gatherings. Michael Gove said, "*in fairness to the First Minister, she'd clearly indicated a minded to intent [sic] on mass gatherings.*"²⁰ Ms Sturgeon was clear there was no agreement to defer. Moreover, it is submitted that focusing on particular events such as a rugby match or a conference appears of limited value in assessing the Scottish Government's overall performance. There was multiple seeding.²¹ The Inquiry heard evidence in Module 2 that due to the global "connectedness" of the UK economy and culture it would not have been possible for the UK to avoid the virus. The view of Professor Ferguson, a member of SAGE and eminent epidemiologist, communicated to Professor Woolhouse and others, was that by 27 February 2020, he was 95% sure that transmission of Covid-19 was already established in the UK.²²

Infection spread in care homes was not driven primarily by hospital discharges

14. The Scottish Government is very aware of the public's concern about decisions relating to care homes. The Inquiry heard evidence in Module 2A from Jeane Freeman (former health secretary) and

¹⁵ *Supra*, at para. 24.

¹⁶ Mod 2A Transcript, 11/107/9-14

¹⁷ See Mod 2A Transcript, per Liz Lloyd, 8/57/19 - 8/62/14, and per Ms Sturgeon, 11/109/13-24

¹⁸ Mod 2A Transcript, 11/111/10 – 11/112/17

¹⁹ INQ000056221

²⁰ Mod 2A Transcript, 9/67/2-3

²¹ Mod 2A Transcript, per Dr McMenamin, 4/224/4-12

²² INQ000148984

Professor Phin and Dr McMenamin of PHS, in addition to the evidence of Dr MacAskill, who gave evidence on behalf of Scottish Care. While the Scottish Government acknowledges that mistakes were made, and that lessons must be learned, it has to be recognised that the PHS report referred to in evidence,²³ together with the “Consensus Statement” commissioned by the department of Health and Social Care in England and referred to in evidence by Professor Phin,²⁴ suggest that infection spread in care homes was not driven primarily by hospital discharges, and that care home size was much more strongly associated with the risk of an outbreak than other care home characteristics, including hospital discharge. In terms of lessons, Ms. Freeman spoke of the lack of testing capacity and capability.²⁵ Not only were the tests themselves required, but also buildings (where the testing could be processed) and suitable staff. Had the testing infrastructure been there, it would have been used. Whilst the Scottish Government sought to scale up as quickly as it could, in the future it would want to ensure that the appropriate testing and other infrastructure is in place, to scale up at pace if required. Ms. Freeman, Prof Gregor Smith and Ms. Sturgeon spoke to the desirability of this, and it is respectfully suggested that the Inquiry may wish to consider recommendations on this issue, having regard to the roles and responsibilities of both the UK and devolved governments. Finally, and while acknowledging the importance of testing, care should be taken in assuming that more testing would, of itself, have completely prevented infection in care homes, for the reasons spoken to in evidence by Ms. Sturgeon.²⁶

The Scottish Government’s work on independence remained paused long after June 2020

15. The Inquiry heard evidence that on 18 March 2020, the Scottish Government wrote to the UK Government to advise that it had paused work on preparing for an independence referendum that year, shortly after the WHO declared Covid-19 a pandemic, and before lockdown on 23 March 2020.²⁷ The Cabinet paper dated 30 June 2020, paragraph 56(e) related to EU exit²⁸ was put to several witnesses. For example, Liz Lloyd said, “*If we had had a discussion on independence and the constitution, it would have been in my notes, I was the chief political adviser to the government. It is not....there was no substantive discussion on issues around independence and a referendum at this meeting.*”²⁹ This evidence was consistent with the evidence of Ms Sturgeon.³⁰ The Inquiry is invited to accept that, if there had in fact been an agreement to re-start work on independence, there would be some documentary evidence of this having occurred, which is absent. A single reference to consideration of it in a Cabinet Paper on EU Exit is not persuasive evidence of work on independence having resumed, *a fortiori* in the light of the oral testimony of several Scottish Government witnesses.

²³ INQ000101020 – “Discharges from NHS Scotland Hospitals to Care Homes between 1 March and 31 May 2020”

²⁴ Mod 2A Transcript, 4/212/21-25

²⁵ Mod 2A Transcript, 9/209/1-21

²⁶ Mod 2A Transcript, 11/215/21 - 11/221/15

²⁷ INQ000346158

²⁸ INQ000214408

²⁹ Mod 2A Transcript, 8/29/11-17

³⁰ Mod 2A Transcript, 11/163/12-19

16. In answer to an oral parliamentary question on 20 August 2020, the Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell) referred back to the 18 March letter and said that *“as the member also knows, that pandemic is far from over. The Scottish Government’s position remains the same. We will return to the issue when it is appropriate to do so.”*³¹ The Scottish Programme for Government for 2020-21 (1 September 2020)³² noted that it would clearly not be possible to hold an independence referendum before the end of the Parliamentary term (May 2021), but that before then the Government would publish a draft bill to set out the terms of a future referendum. Ms. Sturgeon, in her oral evidence, referred to that focused piece of work. It took place in early 2021 and drew mainly on work from before the pandemic. With that exception, proactive work on policy development for independence did not recommence until the autumn of 2021.
17. There is no persuasive evidence of decisions to manage the pandemic in Scotland being influenced by or taken *“through the prism of independence.”* Bringing political pressure to bear on the UK Government for an end, *relating to the pandemic*, (as in autumn 2020 and again in 2021 the devolved governments sought to do to secure the extension of the “furlough” scheme), is an entirely different thing, and entirely legitimate. Nor is there evidence of “divergence for divergence’s sake”. Retaining the “Stay At Home” message, when the UK Government adopted “Stay Alert” in its place for England, was said to have been an example. But, as the Inquiry has heard, it was England that was the outlier in this regard, with Wales, Scotland and Northern Ireland retaining “Stay at Home.” As Ms. Sturgeon said when it was put to her whether it is possible for her *“to take decisions on any matter without seeing them through the prism of Scottish Independence and [her] burning desire to achieve that?”*, her evidence was clear. She replied, *“Yes I know for a fact it is,I don’t think in my entire life have I ever thought less about politics generally and independence in particular than I did during the course of the pandemic, particularly in those early stages of the pandemic.”*³³ As Michael Gove said in his evidence about decision making in Scotland, the Scottish Government appeared to him to be *“overwhelmingly driven by a desire to do the right thing”*.³⁴

THEME 2: LEADERSHIP, UNDERPINNING STRUCTURES AND DECISION MAKING

The Four Harms approach provided the Scottish Government with an essential organising principle for decision making

18. The Four Harms approach provided a framework enabling integrated advice, consideration and decision-making.³⁵ It covered every aspect of how, in practice, Scottish Government was able to assemble a wide range of data and evidence, gather input from advisers and clinicians, take account of the legal duties on Scottish Ministers, and construct advice for Cabinet. This Four Harms approach

³¹ INQ000346158

³²The aims of the Programme for Government are outlined in the First Minister’s speech to Parliament at INQ000253932.

³³ Mod 2A Transcript, 11/159/20 - 11/160/8. See also Ms Sturgeon’s fourth witness statement, INQ000339033, para 392, page 137

³⁴ Mod 2A Transcript, 9/90/7-8

³⁵ See Witness statements on behalf of the DG Strategy and External Affairs INQ000215495 para 72-139, INQ000348720 para 102-112, INQ000339039, para 1-25.

was described in the Scottish Government's *Framework for Decision Making and Strategic Framework*, published on 23 April and 23 October 2020, respectively.³⁶ It is referred to in, and shaped, many of the papers submitted to the Scottish Cabinet in this period.

The former First Minister provided serious, purposeful leadership

19. Ms. Sturgeon gave evidence that she sought to lead from the front and that she took her responsibilities very seriously. The Inquiry may consider that her demeanour demonstrated a purposeful, hardworking leader who strove to do her very best and expected the same from others. She displayed self-reflection, a readiness to learn from missteps, and compassion for those who have suffered and continue to suffer. She was human. She also spoke (when being asked about her discussions with Prof Sridhar) of a *"thirst to understand"* and to learn as much as possible about the disease to help her make the best decisions she could to protect the public.³⁷

The Scottish Government took and recorded decisions formally and properly

20. The evidence shows that the Scottish Government put in place structures and systems to give decision-makers access to extensive and integrated expert advice, all to support rapid decision-making, including setting up the C-19AG. Cabinet was given its proper place under the Scottish Ministerial Code³⁸ (for example, with decisions about changes to domestic NPIs being taken at Cabinet, unless Cabinet took the view that it was proper to delegate that responsibility to the First Minister or Deputy First Minister). Structures were put in place to ensure that ministers as *"the ultimate [...] decision-makers get all those balancing factors and that weight is paid to all of them,"* as the Chair put it when Lord Sedwill was giving evidence in Module 2.³⁹

21. Between January 2020 and March 2022, Covid-19 was discussed at over 100 meetings of Cabinet. Evidence of Cabinet decision making, and their supporting rationale, is contained in the many, detailed, Cabinet papers, which the Inquiry has. The Scottish Ministers would welcome the Inquiry's consideration of these. They identify when decisions were taken, and the supporting information Ministers had access to. These are summarised at paragraph 124 of Ken Thomson's witness statement of 9 November 2023.⁴⁰ We will provide the relative INQ numbers under separate cover. The Inquiry has heard evidence about the "Gold" or "Gold command" meetings. In this context, it is important to recall that this was not a formally constituted group within the Scottish Government. Rather, "Gold" was an informal label for discussions convened for Ministers to take stock with advisers and officials of work being taken forward preparatory to formal decision-making. As Ms. Sturgeon said in evidence, *"I mean this in the nicest possible way, of the civil service often attaching names, grand names to meetings that are otherwise routine"*.⁴¹

³⁶ INQ000256711 and INQ000249320

³⁷ Mod 2A Transcript, 11/50/14 - 11/51/6

³⁸ INQ000102901

³⁹ Mod 2 Transcript, 20/141/15-17

⁴⁰ INQ000343888

⁴¹ Mod 2A Transcript, 11/65/20-23

22. These discussions were not convened to make decisions to apply or lift measures: these were made primarily by Cabinet on the basis of full papers; by Ministers on the basis of submissions; or by the First Minister or Deputy First Minister, generally under a specific delegation from Cabinet. In the extremely rapid process of drawing together advice for Cabinet, however, the “Gold” format was useful in order for advisors to set out the latest position, and for Ministers to indicate what they wanted to see covered in formal advice, including in drafts of Cabinet papers seeking formal decisions. It is not the Scottish Government’s normal practice to keep *verbatim* minutes of such discussions between Ministers. Working at huge pace in the context of an emergency, what is essential is that action points are identified, and quickly circulated as necessary to those not already aware of them. This is what was done. The material before the Inquiry includes such documents (together with documentation prepared to inform those meetings).
23. Ms. Sturgeon made the point in oral evidence that *“in a sense the output of those meetings [is the] papers that then go to Cabinet for decision.”*⁴² Examination of the Cabinet papers referred to above, alongside materials for “Gold” meetings, confirms this to have been the case. One example is as follows. Following intense work in September and October of 2020 to develop the “Levels” approach, a “Gold” meeting was convened on 20 October for Ms. Sturgeon to take stock of progress, with the preparation of material for Cabinet the following day, 21 October. Mr. Swinney and the Cabinet Secretaries for Health, the Economy and Finance, together with key officials, were invited. Papers included a partial draft of the levels framework.⁴³ The discussion informed work to finalise the draft Cabinet paper, sent to Mr. Swinney the same evening for his clearance. That was circulated to Cabinet as SC(20)122, “COVID-19 – Strategic Approach”⁴⁴ *“to inform discussion and decisions on the proposed COVID-19 Strategic Approach”*. It is a detailed, formal paper of 13 pages, with a further 53 pages of Annexes, including a draft publication setting out Ministers’ proposed approach. In SC(20)40th Conclusions⁴⁵ the Secretariat sets out, over nine pages, the points made in discussion at Cabinet. These were taken into account in finalising and publishing the *Strategic Framework* document.⁴⁶ A full reading of the material before the Inquiry will show this to be one among many examples.
24. We submit that the Scottish Government’s decision-making in response to the pandemic was formally and extensively recorded in these and similar documents, which require to be considered in detail, to inform a proper assessment of that response.

Informal messaging was not a substitute for formal decision making

25. In relation to informal messaging, it is undeniable that the messages show people working together constructively and intensely, at all hours of the day and night, to support Ministers in their formal decision-making. Further, as Lesley Fraser pointed out in evidence, it would in practice be near

⁴² Mod 2A transcript, 11/72/4-7

⁴³ INQ000245545 and INQ000245546

⁴⁴ INQ000078369

⁴⁵ INQ000214452

⁴⁶ INQ000245551

impossible for a decision to be “*carried out by or on behalf of Government*” without evidence of that appearing in formal records.⁴⁷ The Inquiry has material before it, which will enable it to ascertain whether the decisions carried out by the Scottish Government are those recorded in its formal systems. It is simply not the case that significant decisions about the Scottish Government’s Covid response, and its exercise of statutory powers, were reached in informal messaging. Nor indeed could they have been, without a formal record of them being kept. The Scottish Government firmly believes that it has a comprehensive record of its decisions, and the processes of its decision making, within the corporate record.

26. In compliance with legislation, policies and plans on document retention and management have been in place for many years. As Lesley Fraser explained, it is taken very seriously.⁴⁸ The requirement to transfer the salient points of any business discussion and/or decision to the formal record system is set out, along with the requirement to delete informal messages from non-government systems when they are no longer required. The chief difficulty appears to have been that there was inconsistent interpretation and application of these policies, at a time when those involved were working with extraordinary intensity, in unprecedented circumstances, that prevented them from meeting and communicating in person, while lives were at stake. It is right and proper, however, that the Scottish Government acknowledges both the Inquiry’s, and the public’s, concern with regard to informal messaging use during the pandemic. It is clear to the Scottish Government that it must learn lessons in this area. As the First Minister said in evidence, an “*externally-led review*” has been instructed.⁴⁹

Decisions on international travel restrictions for public health purposes are devolved

27. Although immigration and nationality are reserved by section B6 of Schedule 5 to the Scotland Act 1998, border measures for devolved purposes, including public health, fall within devolved competence. The Inquiry heard evidence from, amongst others, Ken Thomson and the First Minister concerning the Scottish Government’s exercise of powers created by the Public Health etc. (Scotland) Act 2008, s.94 (“International Travel”).⁵⁰ In Module 2, the Inquiry heard evidence from Sir Patrick Vallance concerning the potential importance of border measures where one country has a much higher prevalence of the virus than another, or where a new variant has emerged in another country.⁵¹ Although the Scottish Government generally sought to align itself with the approaches of the other three governments in the UK to border restrictions, it was appropriate for the Scottish Government to apply its mind independently to what restrictions were necessary for Scotland - particularly where rates of prevalence between the nations were significantly different.

⁴⁷ Mod 2A Transcript, 4/31/15-24

⁴⁸ Mod 2A Transcript, 4/6/20 - 4/7/4

⁴⁹ Mod 2A Transcript, 8/115/17-23

⁵⁰ Mod 2A Transcript, per Ken Thomson, 4/129/11-25; per Ms Sturgeon, 11/171/4-9. See also witness statements on behalf of the DG Strategy and External Affairs INQ000215495 (paras 152-6), INQ000216655 (paras 58-64), INQ000366267 (paras 91-3) and INQ000348720 (paras 86-90).

⁵¹ Mod 2 Transcript, 22/170/1-10

28. Evidence was led in Module 2A regarding the different travel restrictions that the Scottish Government applied to Spain in July 2020. Attention focused on an email from Scott Wightman, Director for External Affairs, that was sent (solely) to civil service colleagues.⁵² The context and background to that email was explained and set in context by the statement of Roger Halliday, together with the oral evidence of Ms Sturgeon.⁵³ Taken together, it showed that travel restrictions for Spain changed over a very short space of time, and during a period when the data pointed in different directions. It showed further that the Scottish Government always took decisions on a public health basis, informed by the data available at the time to the governments of the four nations. Paragraph 31 of Mr Halliday's statement explains: "*My judgement at the time was that the modelling was the primary source of data, given that arrangements for covid testing were so different around the world. The modelling was pretty good, but I do remember having a time during July 2020 when a figure produced by the modelling for Spain was much higher than neighbouring countries. Audrey MacDougall challenged this with UK Government officials [who] supported the modelled estimates. This meant that decisions on foreign travel were taken with the best data at the time, but this was later shown not to be accurate.*"

THEME 3: THE SCOTTISH GOVERNMENT'S STRATEGIES AND DECISIONS DURING THE PANDEMIC

Scottish Ministers addressed the facts and circumstances within their responsibilities

29. As this Inquiry has recognised by the very existence of Modules 2A, B and C, devolved governments are responsible for significant aspects of the pandemic response across three of the four nations of the United Kingdom. The Scottish Ministers not only had the **powers** to take the decisions they did in the pandemic, but had a **duty** to consider the exercise of those powers; and to reach decisions on the basis of the facts and circumstances in Scotland.⁵⁴ Often those facts and circumstances were different from those prevailing in one or more other parts of the UK. That approach was significantly different from that of the UK government for England for good reason, and not for the sake of being different.⁵⁵ This process sought to optimise measures for the specific geographical and population circumstances of Scotland, and the epidemiological situation at the time. Measures were also frequently different in *different parts* of Scotland, where this was needed to reflect different circumstances across the country.⁵⁶ This allowed Ministers to consider measures and make

⁵² INQ000292564; and Mod 2A Transcript, 12/114/1-5 (re clarification of sender and recipient).

⁵³ Mod 2A Transcript, 11/174/3 - 11/181/13

⁵⁴ See witness statements on behalf of the DG Strategy and External Affairs, INQ000215495 (paras 68-156) for an overview of the Scottish Government's approach to NPIs, and INQ000216655, INQ000366267, INQ000348720, INQ000339039 and INQ000362632 for further detail.

⁵⁵ See witness statements on behalf of the DG Strategy and External Affairs, INQ000215495 (paras 159-176) and INQ000339039 (para 80-95) for detailed evidence on the reasons for taking a distinctive approach from that in England, and examples.

⁵⁶ See the witness statement of Ken Thomson dated 9th November (INQ000343888), paras. 48-54.

decisions within the legal requirements that applied – that measures be necessary, justified and proportionate – and that took account of fundamental human rights.⁵⁷

30. The differences were not minor or presentational, and were not done for the sake of it, or to make constitutional points. The Scottish “levels” framework was significantly different from the English “tiers” because the Scottish Government concluded that five levels, not three, were necessary in order to manage the pandemic. There was a ‘top’ level with significantly more stringent measures than the English system. The framework proved to be a durable tool that was employed from November 2020 to August 2021.⁵⁸ By contrast, the UK Government suspended its “tiers” system, introduced on 14 October 2020, when it re-imposed a national lockdown on 5 November 2020.
31. Scotland was not generally the “outlier” amongst the four nations in its approach. England was. For example, legal requirements for face-coverings on public transport and in certain public places were maintained in Scotland, Wales and Northern Ireland throughout 2021 and well into 2022, whereas in England they were lifted from 18 July 2021, and then reimposed from 30 November 2021 to 27 January 2022 in response to the Omicron variant. On domestic travel restrictions, the UK Government generally relied on guidance to discourage domestic travel, whereas Scotland and Wales (like the Republic of Ireland, the Channel Islands and the Isle of Man) used legal restrictions on non-essential travel to provide clarity on what was permitted, rather than leaving judgements to individuals about whether their travel was necessary.⁵⁹

The Scottish Government set out its purpose clearly and updated it as circumstances changed

32. The Scottish Government set out its approach in its *Framework for Decision Making*. Its objective was “to contain and suppress the virus in order to minimise the harm it can do [...] while restoring as much normality to everyday life as possible.”⁶⁰ As will be clear from its use of the “Four Harms” framework, the Scottish Government did not pursue a “Zero-Covid” policy in Summer 2020, to the exclusion of consideration of the harm that would do to the economy and society, including disproportionate harm to those who experience inequalities. Pursuing “Zero Covid” was a “stretch aim,” and not a policy. As Professor Sridhar said in her evidence, the meaning was “*maximum suppression*.”⁶¹ The basis of the policy was to suppress the virus, that is, to reduce the number of infections, as much as possible, until the availability of the vaccine. This evidence was also given by Ms. Sturgeon.⁶² The four UK Governments’ common approach to this matter was published in a statement on 25 September 2020 reaffirming their “*shared commitment to suppressing the virus to the lowest possible level and keeping it there.*”⁶³

⁵⁷ See the witness statement of Ken Thomson dated 9th November (INQ000343888), paras. 144 to 151.

⁵⁸ See the witness statement of Ken Thomson dated 9th November (INQ000343888), paras. 65 to 68.

⁵⁹ See witness statements on behalf of the DG Strategy and External Affairs, INQ000215495 (paras 152-157) and INQ000339039 (paras 84-95).

⁶⁰ INQ000256711, page 6.

⁶¹ Mod 2A Transcript, 6/152/23

⁶² Mod 2A Transcript, 11/187/2-6

⁶³ INQ000131053

The Scottish Government anticipated a second wave, and responded effectively

33. The Scottish Government did not “*make the same mistakes twice.*” The Inquiry focused on two periods: autumn 2020 and autumn 2021. The Scottish Government anticipated a second wave in the design of its *Framework for Decision-Making*.⁶⁴ In autumn 2020, faced with the second wave, Scotland responded early and significantly, by reintroducing restrictions from early September in the West of Scotland, and later in September and again in October, by introducing increasingly stringent national restrictions. Importantly, the data show that new cases and hospitalisations began to decline from late October in Scotland. It is against this backdrop, of Scotland moving early and significantly and succeeding in bringing epidemiological indicators down (so that the Alpha wave started from a lower level of infections), that comparisons should be made with the lockdowns applied in Wales and later in England, and the measures taken in Northern Ireland. Of course, in Scotland as elsewhere, the subsequent arrival of the Alpha variant posed new challenges as the winter of 2020 approached. Over the same period the UK Government introduced, first, its Three Tier system, and then the second England-wide lockdown. On the former, Sir Patrick Vallance in his second Mod. 2 witness statement states that he and Sir Chris Whitty had “*both anticipated that some areas in Tier 2 would progress into Tier 3 in the absence of stronger NPIs, and that Tier 3 was likely to prove insufficient to prevent rapid growth of the virus in affected areas.*”⁶⁵

34. In autumn 2021, countries across the world continued to vary their NPIs to respond to the virus. Scotland had in place baseline measures (for example, face coverings; the gathering of contact details gathered in hospitality; a requirement on businesses, places of worship and service providers to have regard to Scottish Government Covid-19 guidance; capacity limits on live events and the certification scheme). From mid-December these were added to by “Omicron measures”, to the extent possible within financial restrictions, and the absence of the UK Government’s furlough scheme. By contrast, in England, there were no measures in place in the autumn. To address Omicron in December, the UK Government reintroduced face covering requirements and “Plan B” measures, which included the NHS Covid Pass. In Scotland, the response to Omicron included a stronger set of measures, including the closure of nightclubs. Wales and Northern Ireland also went further than England, for example by closing nightclubs. As Professor Sir Gregor Smith noted in his evidence, we should bear in mind that risk is dynamic. It altered over time, influenced by therapeutics and the vaccine, which came into play at that point. Thus, the balance of harms had changed, and with it the proportionality of certain measures.⁶⁶

The Scottish government assessed and addressed issues of inequalities and differential impacts

35. Throughout the pandemic, issues of inequalities and differential impacts were considered by the Scottish Government, and acted upon. Equalities considerations were integral to the “Four Harms”

⁶⁴ See, for example, the “Graphical representation of our approach” at page 25 of INQ000131026, published paper from the Scottish Government titled “Covid-19: Framework for Decision-Making – Further Information,” dated 05/05/2020.

⁶⁵ Mod 2, INQ000238826, at para. 383.

⁶⁶ Mod 2A Transcript, 5/167/11-22

approach and to the design and implementation of measures including NPIs and legislation,⁶⁷ and communications with the public.⁶⁸ While many are available, some examples may illustrate this point. In the spring of 2020, following representations from disability groups, the Scottish Government changed the stay-at-home guidance on how often one could leave one's home – recognising its therapeutic importance to people with disabilities. From June 2020, when the requirement to wear a face covering on public transport was introduced, exemptions included situations where, because of physical or mental illness, impairment or disability a person could not wear a face covering without severe distress. In January 2022 the "Distance Aware" scheme was introduced, following user research and engagement with disabled people's organisations, to support those concerned about mixing with others, or those who would prefer others to take extra care around them. Such considerations were supported by the development and updating throughout the pandemic of many, detailed impact assessments.⁶⁹ The extent and depth of these assessments sought to ensure that decisions were informed by an appropriate understanding of the potential inequalities impacts of the measures in question.

There were differences in the outcomes across the four nations

36. There were differences in the outcomes across the four nations. In evidence, Ken Thomson said, *"there were real differences in the approach and in the outcomes and we should all learn from all of that and we can't do so if somehow the narrative of the pandemic is that we all ended up in the same place or that the differences were just for the sake of it."*⁷⁰

37. In Module 2, the evidence of Sir Ian Diamond, the National Statistician, showed that excess deaths were lower in Scotland compared to the UK as a whole between March to June 2020 and August to December 2020 (including the first two periods when lockdowns were in place across some or all of the UK), despite the influence of the Alpha variant towards the end of the second period. Over the whole period March 2020 to February 2022, excess deaths from all causes were 9.5% in Scotland and 11.9% in England. However, these excess deaths data are not "age-standardised" to take account of Scotland's older age profile. Age Standardised Mortality Rates ("ASMR's") take account of differences in population size and age structure, and therefore allow comparisons to be made between the four nations in a way that other mortality outcomes data do not. Thus, over the same period, between March 2020 and February 2022, Scotland had the lowest age-standardised rate of excess mortality from all causes of the four UK nations (at 3.9% above average), followed by Northern Ireland (4.0%), Wales (4.9%) and England (6.5%). Focusing in on Covid-19 deaths, Sir Ian's evidence showed that, again over the same period March 2020 and February 2022, England

⁶⁷ See witness statements on behalf of the DG Strategy and External Affairs, INQ000366267 para 69-93 and 106-108, INQ000215495 para 72-85.

⁶⁸ See witness statement of Lesley Fraser, INQ000340111 para 14-28; and witness statement on behalf of the DG Strategy and External Affairs, INQ000215495 para 50-54.

⁶⁹ See witness statements on behalf of the DG Strategy and External Affairs, INQ000215495 (para.85), INQ000366267 (para 83-90), and witness statement of the DG Communities INQ000340113 (para 55-60). More than 145 Equalities Impact Assessments and Children's Rights and Wellbeing Assessments were undertaken in total.

⁷⁰ Mod 2A Transcript, 4/136/9-13

had the highest Age Standardised Mortality Rates for deaths involving Covid-19 of the four nations at 145.0 per 100,000 population. Scotland had the lowest at 124.9 per 100,000 population.⁷¹

The decision to close schools in January 2021 was soundly based

38. The evidence of Mr Swinney was clear in this regard.⁷² The Inquiry is invited to accept that the decision to close schools was taken very seriously. On Saturday 12 December 2020, the Cabinet met to take decisions about delaying return of schools after the Christmas holidays. Cabinet then met the following week, before Parliament rose for the Christmas break, and returned on 30 December 2020 to consider issues regarding EU Exit. At the weekend, he was asked to participate in a Gold meeting due to the concern of Scottish Government advisers around the increase in infections, and the quickly deteriorating picture. The Cabinet accepted that the Scottish Government was in a position such that it needed to take decisive action. It was considered necessary to close schools having regard to the medical and scientific advice received. In this regard, the suggestion that the same mistakes were made twice is refuted. On close analysis, it is not clear where the evidence for this assertion, by witnesses such as Professor Cairney and Professor Woolhouse, is to be found.

To respond effectively to the virus, it was essential to implement legislative changes quickly

39. As the Inquiry will appreciate, it was vital that any legislative changes could be made quickly. Ministers were making decisions on the basis of data that were as up to date as possible.⁷³ This meant that quick action was required. Delay would have led to the virus causing even more harm. And delay in removing restrictions would have allowed a measure which was no longer proportionate to remain in place, which could itself cause harm and which could be unlawful. Parliamentary scrutiny was, of course, essential and in autumn 2020 procedures were agreed with the Parliament to enhance scrutiny. But it is submitted that the made affirmative procedure was an appropriate procedure available to the Scottish Government when urgent action was required. Additional safeguards are included the Coronavirus (Recovery and Reform) (Scotland) Act 2022.

The enforcement regime was carefully considered

40. Criminal sanctions were included in the Covid regulations in the context of a need for stringent action to protect public health by reducing the spread of a deadly virus.⁷⁴ Ministers considered that the FPN regime was appropriate, justified and proportionate as part of that. FPNs are already commonly used for lower-level offences in Scotland, and are well understood by the public. However, the Scottish Government did choose to set a lower level of fine in Scotland than in England. Penalty levels were

⁷¹ See Mod 2, INQ000271436 (Additional witness statement of Prof Sir Ian Diamond, 11 Sept 2023, para. 45); and Mod 2 Transcript, 6/112/13-21

⁷² Mod 2A Transcript, 10/152/8-15

⁷³ See witness statements on behalf of the DG Strategy and External Affairs, INQ000366267 paras 10-31 and 56-64 on the "made affirmative" procedure and parliamentary consideration thereof.

⁷⁴ See witness statements on behalf of the DG Strategy and External Affairs INQ000216655 para 47-54, INQ000366267, para 101-116, and INQ000215495 para 72-131 and 154-8 on sanctions and enforcement, including consideration of impacts on particular groups, and differences from England.

reviewed in October 2020 and February 2021, and it was decided on both occasions not to adjust the level of FPN fines. The FPN provision in the domestic NPI regulations was amended by the Coronavirus (Scotland) (No. 2) Act 2020 to ensure that 16- and 17-year-olds could not be issued with FPNs, which had been the case up to that point. This demonstrated the Scottish Parliament's willingness to listen and act on concerns about equality impacts of FPNs, following representations made by the Children & Young People's Commissioner for Scotland.

THEME 4: INTERGOVERNMENTAL WORKING AND STAKEHOLDER ENGAGEMENT

The Scottish Government sought constructive and co-operative engagement with its partners

41. We acknowledge the evidence of the Scottish Trades Union congress ("STUC") and the Convention of Scottish Local Authorities ("COSLA") that the Scottish Government went to lengths to engage with employees and local authorities, while accepting that the intensity of the emergency affected both the amount and the quality of the engagement that was possible. The evidence from the STUC's Assistant General Secretary, Ms. Foyer, was that engagement between the Scottish Government and trade unions was intense and constructive.⁷⁵ The Scottish Government, on Ms. Foyer's evidence, sees trade unions as a key social partner. The Scottish Ministers would like to place on record their sincere thanks to the STUC for their assistance and advice during this period of emergency.
42. In relation to local authorities, Ms. Dickie's evidence was that the Scottish Government's engagement with COSLA throughout the pandemic was "vast".⁷⁶ It took place between officials and elected politicians in the different spheres of government. COSLA's evidence was that there was good engagement from the Scottish Government, both in terms of the formal structures and political relationships. Ms. Dickie's evidence was that COSLA was satisfied that it had sufficient opportunities to communicate the views and concerns of local government to the Scottish Government during the pandemic,⁷⁷ and that there was a concerted effort on the part of the Scottish Government to bring the views of the local government sector into the decision-making process.⁷⁸ Crucially, that approach involved proper transparency with local government in relation to the advice and evidence on which decisions were being made.⁷⁹
43. Constructive and co-operative engagement, of the sort enjoyed with trade unions and local government, was also sought with the UK Government. We set out in Module 2 that the Scottish Government consistently sought engagement from the UK Government on a co-ordinated – albeit not necessarily identical – approach, but that after March 2020 that strategic engagement was less forthcoming in respect of NPIs. At the outset, the four governments of the UK worked hard to approach matters in an aligned way. As Ms. Sturgeon said: *"My understanding of four nations working is we aligned our approaches where we could, and where we were, for legitimate reasons,*

⁷⁵ Module 2A Transcript, 2/31/13-14

⁷⁶ Module 2A Transcript, 3/178/16-17

⁷⁷ Module 2A Transcript, 3/179/7-14

⁷⁸ Module 2A Transcript, 3/179/14-17

⁷⁹ Module 2A Transcript, 3/179/17-22

*taking different approaches, we tried to nevertheless work together, understand each other's position and co-ordinate where we could.*⁸⁰

44. It is submitted that it was the right approach. That it was the right approach is acknowledged in the witness statement of Michael Gove MP (for Module 2).⁸¹ Very early in the pandemic, COBR was used to facilitate discussion between the UK and devolved governments. These meetings were noted to permit discussion between senior ministers of the four nations.⁸² Ms. Sturgeon gave evidence that at the COBR meeting of 23 March it was agreed that the Prime Minister would make the first public communication about “lockdown”, which was respected by all involved.⁸³ There were no further agreements in subsequent discussions as to which leader would communicate any agreement first.
45. The Inquiry has heard in this module from Mr. Swinney that tensions between the Scottish and UK governments did emerge in the spring of 2020 as the governments had to take account of the reality that there were different circumstances in different parts of the United Kingdom.⁸⁴ The issue was explored in the evidence of Ken Thomson, that from May 2020 onwards, and despite the joint statement agreed by the four administrations in September 2020, there was insufficient “bandwidth” in inter-governmental relations to consider the extent of alignment in the respective policies being pursued.⁸⁵ The heads of the devolved governments wrote jointly to the Prime Minister in April 2020⁸⁶ to seek a mechanism for engagement at that level but while a range of useful liaison mechanisms at Ministerial and official level were put in place, it is a matter of concern that meetings at Head of Government level – whether in COBR or in another format – were sporadic after May 2020. The Inquiry has heard evidence that the UK Government moved to an approach whereby its pandemic response measures were decided internally, and then communicated to the devolved administrations, rather than being subject to a constructive dialogue.⁸⁷ One of the Scottish Government’s most senior civil servants, Ken Thomson, required to use his professional networks in Whitehall to put the case for further and better dialogue between the UK Government and the Scottish Government.⁸⁸ It is submitted that this encapsulates the difficulty which the Scottish Government had, after the close of the very early stage of the pandemic, in its attempt to be treated as a partner by the UK Government.
46. Evidence was presented to the effect that at least one decision taken by the Scottish Government and communicated by Ms. Sturgeon was “*irritating*” to Boris Johnson.⁸⁹ That was not the intention.

⁸⁰ Mod 2A Transcript, 11/150/13-18. See also: witness statements on behalf of the DG Strategy and External Affairs, INQ000215495 (paras 41-67) and INQ000339039 (paras 73-108) for detail on intergovernmental working; INQ000366267, for detail on legislation; witness statement of DG Health and Social Care INQ000215470, for detail on health; and witness statements of DG Scottish Exchequer INQ000215484 and INQ000216653 for detail on finance.

⁸¹ Mod 2, INQ000259848, at para. 184.

⁸² Module 2A Transcript, 4/98/18-21

⁸³ Module 2A Transcript, 11/148/9-17

⁸⁴ Module 2A Transcript, 10/131/1-3

⁸⁵ Module 2A Transcript, 4/95/1

⁸⁶ INQ000217032

⁸⁷ Module 2A Transcript, 4/103/9-17

⁸⁸ Module 2A Transcript, 4/95/1-4

⁸⁹ Module 2A Transcript, 9/73/9-13

However, the frank evidence of Ms. Sturgeon was that the only route to have avoided this would have been to adopt his preferred approach at every turn,⁹⁰ even when in the view of the Scottish Government his approach was not the correct one. The UK government's decision to move away from COBR meetings was noted by Ms. Sturgeon as a matter of regret, and as noted above the period during which COBR met was characterised by a more open dialogue between ministers. It may be a valuable recommendation to consider whether there should be a standing forum for intergovernmental communication at a high-level during crises such as a pandemic.

47. A particular matter where existing mechanisms did not meet the particular circumstances of the pandemic related to the flexibility of funding arrangements. Kate Forbes, the then-Finance Secretary, gave evidence to the effect that the UK government was, despite representations from Scottish, Welsh and Northern Irish devolved administrations, unwilling to consider any alternative to the Barnett formula to fund emergency measures in the devolved nations.⁹¹ These arrangements were problematic because they meant that additional funding was triggered only when there was a change in comparable expenditure in England by the UK Government. Those decisions would be governed by what the UK Government considered was appropriate in relation to the needs of England at that time. Under the Barnett formula, such additional spending in England triggers a proportional allocation of additional funds to Scotland, but could not be driven by the particular needs of Scotland. Indeed, a further aspect of the unpredictable nature of this funding arrangement was that - until the "Barnett Guarantee" was agreed in the summer of 2020 - the Scottish Government was in receipt of funding in relation to pandemic response, which it was warned it may have to return to the UK Government at the end of the year. From July 2020 until January 2021, that particular difficulty was resolved by the "Barnett Guarantee" agreement, whereby some funding certainty was provided in advance of it being committed in England. Nonetheless, the unpredictable timing of additional funding continued to cause problems. By December 2021, when the Scottish Government was seeking to deal with the Omicron variant, there had been no fundamental solution to the inflexible and uncertain way in which funding was allocated to the pandemic response. The evidence of Ms. Forbes was that at this time the additional sums made available by HM Treasury suddenly increased from £220 million to £440 million in the period of a few days.⁹² It is clear from the evidence that ministers found it much harder to budget and to spend as required in the face of the emergency, because of the uncertainty over UK Government funding.
48. Separately, from the issue of Barnett funding, was the matter of the furlough scheme. This was a direct spend from the UK Government, and so did not involve the Scottish Government. Furlough was, however, a key economic support for the NPIs which were judged necessary across the UK. The availability of this scheme was solely in the gift of the UK Government. There were occasions where the Scottish Government was constrained in its response to the pandemic as a result of this. There was, notably, no furlough scheme in operation during Scotland's response to the Omicron

⁹⁰ Module 2A Transcript, 11/154/22-24

⁹¹ Module 2A Transcript, 10/30/19-25

⁹² Module 2A Transcript, 10/37/5-7

variant in the second half of 2021. The Scottish Government understood that, even if Scotland required to go into lockdown as a result of the Omicron variant, then no furlough scheme would be available.⁹³ That would mean that large swathes of the economy would be effectively closed, yet no programme would exist in order to ensure that workers remained paid and employed. Again, in 2020, even after the Prime Minister's statements of 31 October and 2 November 2020, which indicated that furlough would be available, Ms. Sturgeon's evidence was to the effect that there was no clarity about what the availability of furlough to Scotland actually meant. It was not clear to her whether it was a commitment to full funding, nor whether it might be simply a "*sweeping statement*" rather than a considered policy.⁹⁴

49. Health is devolved, yet when the Scottish Government considered issuing a stay-at-home order, it could not know whether funding to support businesses would be in place. Given the framework of the "four harms", an essential part of that decision making matrix was an unknown. The Scottish Ministers submit that Scotland requires the economic levers to support the nation through a full lockdown if a future pandemic makes that necessary. On this basis, we consider that matters in the gift of the UK Government, such as flexibility in funding arrangements for devolved administrations in emergencies, and for schemes such as furlough, may warrant a particular focus in the Inquiry's recommendations.
50. A matter that the Scottish Government wishes to emphasise is the constructive sharing of expertise and data across the UK by the scientific and clinical community. Professor Andrew Morris spoke in his evidence of reciprocity in relation to data between the Scottish and UK scientific advice groups. The methodology for data modelling was also shared, which allowed the SAGE modelling methodology to be applied to Scottish data.⁹⁵ The result was that the Scottish Ministers had access to high-quality scientific data and advice on which to found their decisions. Professor Sir Gregor Smith explained in his evidence that the epidemiological evidence was used in order to understand how the virus might transmit in different parts of the population, whereas the clinical evidence helped decision-makers to understand the effective treatments for people who fell ill with the virus.⁹⁶
51. The Scottish Government submits that there has been no evidence which is supportive of a centralised UK approach to a future pandemic. The Inquiry heard from Mr. Swinney that this would not be effective, for the reason that there is policy responsibility as well as operational responsibility vested in the Scottish Parliament and the Scottish Government for the exercise of the required health, education, police, fire, transport, and local government powers.⁹⁷ Ministers are also clear that in a future pandemic, the UK Government should engage with devolved governments as true partners, in situations where decisions taken at a UK-level affect devolved responsibilities. That aside, the Scottish Government wishes to place on record its thanks and appreciation for the work of

⁹³ Module 2A Transcript, 10/36/23 – 10/37/4, evidence of Kate Forbes MSP.

⁹⁴ Module 2A Transcript, 11/82/17-18

⁹⁵ Module 2A Transcript, 6/190/16-22

⁹⁶ Module 2A Transcript, 5/81/2-23

⁹⁷ Module 2A Transcript, 10/126/12-21

those in all four governments, and of scientists, academics and clinicians more generally from across the UK who worked together, in order to understand and suppress the Covid-19 virus.

THEME 5: DATA

Rapid mobilisation of data infrastructure is essential in a pandemic

52. When experts spoke of data, there were two different broad types to which they referred. The first category was data used to track the disease and the response to it. This included matters like numbers of infections, number of people in hospital and ICU with a positive test, and the numbers of those who sadly died with the disease. When this pandemic initially came to our shores, there were of course, limited data available. Public Health Scotland and the Scottish Government worked at pace and under great pressure to draw data together in order to provide ministers with the information they required to take informed decisions. Mr. Heald gave evidence that the Public Health Scotland “dashboard” displayed data at a Scotland-wide and locality level, showing the prevalence of the virus in particular areas.⁹⁸ Data on the numbers of infections, hospitalisations and deaths were published. That publication and the daily briefings from the First Minister, which updated on the latest data, were emblematic of the transparent approach that the Scottish Government adopted in its response to the virus. That data also contributed to decision-making, through its “input” into the modelling that ministers were provided with. Some of those datasets, in time, formed some of the basis for decision-making in respect of the levels approach.⁹⁹
53. The second, and equally important, area of data which this Inquiry heard evidence on was in relation to health research data. That relates to datasets which are used in order to learn about the virus and who in the population it was affecting, for purposes including medical research. Evidence was heard from Andrew Morris that the United Kingdom remains “*in the foothills*” of being able to use data in a sufficiently agile and real-time way to derive research insights which could improve people’s lives in the event of a future pandemic.¹⁰⁰
54. Professor Morris explained that the Early Pandemic Evaluation and Enhanced Surveillance (“EAVE II”) research partnership between the University of Edinburgh and Public Health Scotland was able to link together primary care data, vaccination data, antigen status data, hospitalisation and death data, in near real time. This partnership, based in Scotland, had an international influence on the pandemic response. However, even at this time of acute need, Professor Morris explained that “mobilisation” of EAVE II took a period of 137 days.¹⁰¹ The Inquiry was told that the reason for this was that 21 different requests for approval were required to gather those data, and then enable their use for research and analysis. That was a period of 137 days in which the datasets were not available for research into the disease, because of bureaucratic obstacles. There can be efficiencies in how data

⁹⁸ Module 2A Transcript, 2/84/1-6

⁹⁹ Module 2A Transcript, 2/81/16-19

¹⁰⁰ Module 2A Transcript, 6/182/20-23

¹⁰¹ Module 2A Transcript, 6/183/20-21

protection is governed, which would allow scientists to use the population's data in an ethical, efficient way to research the next emerging pandemic threat. The Scottish Government would respectfully urge that careful consideration be given by the Inquiry to a recommendation that would permit the full, and rapid mobilisation of the UK's research data infrastructure as a matter of priority in the event of a future pandemic.

THEME 6: PUBLIC COMMUNICATIONS

The Scottish Government communicated effectively, with clarity and transparency

55. Prof Reicher's evidence was supportive of the way that Ms Sturgeon delivered her public messaging. He said that: "*...the Scottish Government did far more, both in terms of this general notion of treating the public with respect and as a partner, than the UK Government did... on the one hand, the Prime Minister tends to tell people off and to threaten to punish them, the First Minister tends to recognise the difficulty people have, the efforts that they are putting into compliance, and encourages them to continue with those efforts for the sake of the community. So by and large, comparatively at least, I would say that the Scottish Government did better than the UK Government*".¹⁰² The many Parliamentary statements and media briefings by Ms Sturgeon (70 and 250, respectively) throughout the pandemic evidence the principles of clarity and transparency to which the Scottish Government committed itself.¹⁰³ These provided information and guidance, acknowledged uncertainty, gave reassurance where possible, and underpinned both Parliamentary scrutiny and public understanding. There was also a wide range of publications on strategy and data, and as noted in the evidence of Dr Grez, the Scottish Government published a comprehensive, bi-monthly Report¹⁰⁴ to the Parliament on the operation of the Coronavirus Acts.¹⁰⁵

Conclusion

56. On behalf of the Scottish Government, we thank the witnesses who gave of their time to come to give evidence. We thank the many Scottish Government employees, the partners – including in the other three governments of the UK – and the stakeholders who worked tirelessly to steer Scotland through

¹⁰² Module 2A Transcript, 7/106/11-25

¹⁰³ For evidence on wider public communications activity, see also witness statements of Lesley Fraser, DG Corporate INQ000340111 (paras 1-59), and INQ000320588 (paras 30-43); witness statement of Louise Fraser, DG Communities, INQ000340113 (paras 50-54); and witness statement on behalf of DG Strategy and External Affairs, INQ000366267 (para 105). For evidence on public and sectoral guidance, see witness statements on behalf of DG Strategy and External Affairs, INQ000215495 (paras 80-2, 141, 156), INQ000216655 (paras 40-43) and INQ000366267 (paras 69-90); and for evidence on behavioural insights, see witness statement on behalf of DG Strategy and External Affairs, INQ000339039 (paras 37-53).

¹⁰⁴ See INQ000215495 (paras 144-5) and INQ000366267 (paras 96-100)

¹⁰⁵ Module 2A Transcript, 7/159/23 - 7/160/18. See also Dr Grez's witness statement (INQ000369759 paras 67-72) which observed that the reports went beyond what was required by the legislation and "strike by their breath and depth, when compared with their English counterparts".

the pandemic. And, most of all, we thank the people of Scotland for their trust, forbearance, cooperation and fortitude during a very difficult and, at times, very dark period in our nation's history.

23 February 2024

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