

Witness Name: Dominic Munro

Statement No.: 1

Exhibits: DM

Dated: 9 November 2023

UK COVID-19 INQUIRY

WITNESS STATEMENT OF DOMINIC MUNRO

In relation to the issues raised by the Rule 9 request dated 20 June 2023 in connection with Module 2A, I, Dominic Munro, will say as follows: -

1. I am currently the Director for Constitution in the Scottish Government and also the Head of the Policy Profession for the Scottish Government.
2. I have prepared this statement myself by reference to information available to me within the Scottish Government. I have also received assistance from the Scottish Government Covid Inquiry Information Governance Division and Scottish Government Legal Directorate.
3. Unless stated otherwise, the facts stated in this witness statement are within my own knowledge and are true. Where they are not within my own knowledge, they are derived from sources to which I refer and are true to the best of my knowledge and belief.
4. This statement responds to the questions posed to me in the corresponding Rule 9 request. References to exhibits in this statement are in the form [DM/number - INQ000000].

Background, qualifications and role during the Covid-19 pandemic

5. I have been a civil servant for approximately 26 years. During this time I have held roles in both the UK Government ('UKG') and the Scottish Government ('SG') and its predecessor, the Scottish Executive.
6. Within the Scottish Government (SG) I have had a broad range of experience in both policy and analysis including as Director for Fair Work, Employability and Skills and as a Deputy Director (i.e. Head) of Better Homes Division, Justice Analytical Services Division and Communities Analytical Services Division. These latter two roles involved responsibility for various types of analysis undertaken in the divisions: statistics; social research; operations research; and economic analysis. I have also led the SG's central economic team responsible for analysis of the Scottish, UK and international economy. I have led the development of strategy in various areas of government including justice, the labour market and international policy. In terms of significant formal academic qualifications, I have an MA in Economics and an MSc in Economic and Social Policy Analysis. I have been for a long time a member of the Government Economic Service.
7. This combination of skills and experience was relevant to the role that I undertook in the Scottish Government in response to the Covid-19 pandemic, which involved significant use of analysis, policy advice and formulation of strategy. In particular, economics as a discipline is useful for considering trade-offs between different options that have different costs and benefits. This was, in my view, relevant for consideration of the very difficult policy choices relating to the pandemic, the potential responses to it, and their associated impacts.
8. I worked for the Scottish Government for the whole period from January 2020 to April 2022. Until the end of March 2020 I was the Director for Fair Work, Employability and Skills. In that role I had some limited involvement in the early pandemic response because of the impact of the pandemic on the labour market, an impact that was becoming increasingly evident, even at an early stage. There was a particular policy interest in identifying key workers as they would have special status in relation to some COVID measures (in particular, some schools

would continue to remain open for the children of key workers to enable those workers to continue their essential work).

9. In early April 2020 I was redeployed rapidly within the SG to assist with the cross-government Covid-19 response, working to the then Director General for Constitution & External Affairs, Ken Thomson, who by that time had a lead role in the co-ordination of the cross-government response to the pandemic at official level. Initially my responsibility was described as 'Social Distancing' (essentially, responsibility for non-pharmaceutical interventions, 'NPIs', which were also referred to as social distancing measures), but I agreed with my line manager (Ken Thomson) that my responsibility would be better described as Covid-19 'Exit Strategy' as at that stage – when Scotland and the whole of the UK had been placed into 'lockdown' – there was perceived to be an urgent need to develop an 'exit strategy' from the crisis. (See for example, the following contemporary headlines: *Imperial's Neil Ferguson: "We don't have a clear exit strategy"*, Financial Times, 7 April 2020; *The exit strategy: how countries around the world are preparing for life after Covid-19*, The Guardian, 18 April 2020). The SG's exit strategy would initially be focused on how best to adjust NPIs to move the country out of 'lockdown'. I retained this director role, with its broader responsibility for the SG's strategy on NPIs, until April 2022, when the last of the Covid-19 legal measures was lifted in Scotland and I became the SG's Director for Strategy (i.e. a more general strategic role).
10. During the period from early April 2020 to April 2022, I was responsible for providing advice primarily on the use of non-pharmaceutical interventions (NPIs) in Scotland. My role was located in what was effectively the 'centre' of the Scottish Government, reporting to the First Minister and Deputy First Minister rather than to any portfolio Ministers, which was important in terms of providing 'cross-government' advice that deliberately was not routed through one of the 'portfolios' (such as health, or the economy, or education). I created a small team of relatively senior-graded staff to support me in this work (averaging around a dozen staff).
11. In this role, I was responsible for, and often the primary author of, a range of policy advice to Ministers on the use of NPIs, including numerous Cabinet Papers. I was not the sole provider of such advice – in the same area of overall NPI response,

my line manager would also provide advice as would my deputies – i.e. it was a team approach. Moreover, NPIs cover a broad sweep of government interventions, both regulation and guidance, and colleagues elsewhere in the organization would provide advice on specific NPIs (e.g. on the detail within particular sectors or in relation to particular activities) and others would provide specific advice on legislation (i.e. the Covid-19 regulations). Consequently the advice that I and my ‘central’ Exit Strategy colleagues provided on NPIs would both draw upon advice and analysis from across the Scottish Government on specific sectors and activities and be supplemented by such advice. My responsibility primarily related to domestic NPIs – i.e. NPIs applied within Scotland. NPIs concerning international travel became the responsibility of colleagues leading on the SG’s international policy though I retained an interest in them due to their bearing on epidemiological developments and hence the need for domestic NPIs.

12. It is worth noting that there were two short but significant episodes where I did not lead on the advice on the overall approach to domestic NPIs – firstly, the special arrangements concerning Christmas 2020 and the subsequent tightening of measures from Boxing Day 2020 and in early January 2021 and, secondly, the temporary tightening of measures in response to the Omicron variant in late 2021 and early 2022.
13. In my Director for Covid-19 Exit Strategy role I led the production of the Scottish Government’s key publications that set out its overall approach to responding to the pandemic. These publications began with the Covid-19 Framework for Decision Making in April 2020 [DM/001 - INQ000131025, DM/002 - INQ000131026], then included the ‘Route Map’ series of publications from May 2020 to October 2020 [DM/003 - INQ000131072, DM/004 - INQ000339829, DM/005 - INQ000261349, DM/006 - INQ000339834, DM/007 - INQ000339835, DM/008 - INQ000339836], and finally the ‘Covid-19’ Strategic Framework series of publications from October 2020 to February 2022 [DM/009 - INQ000339830, DM/010 - INQ000339831, DM/011 - INQ000339832, DM/012 - INQ000339833, DM/013 - INQ000339837] - all of which are in the public domain.
14. In terms of underlying strategy, at official level, I led the development of the ‘four harms’ approach that became central to the Scottish Government’s approach to

considering NPIs. I led the development of strategy set out in the 'Route Map' that involved a series of conditional, staged easings of NPIs and was implemented (with modifications) from May 2020 to October 2020. I also led the development of the 'Levels' approach to geographically gradated sets of NPIs across Scotland in place from November 2020 to August 2021. I was involved in developing the 'baseline measures' (i.e. the limited number of NPIs) that continued from August 2021 until the last legal measure was lifted in April 2022. I was closely involved in the development of the (Covid-19) threat assessment approach for Scotland in spring 2022 (with consideration of how NPIs would need to respond to different assessed threat levels). And more generally I was responsible for articulating the SG's overall response through the Strategic Framework publications (including NPIs and also vaccination, testing and financial support – though I was not responsible for policy in these other areas, which was led by other colleagues elsewhere in the SG).

15. In my role I would often attend (observe) Scottish Cabinet meetings and participated in Covid-19 related SGORR meetings, 'Gold' meetings and Four Harms Group meetings. My role was primarily to provide information and advice when required at these meetings on the SG's approach to NPIs. I also chaired the Four Harms Group on occasion when my line manager was unavailable. Documentation concerning these meetings has already been provided for use by the Covid-19 public inquiries.
16. I occasionally participated in 'four nations' meetings of officials and attended 'four nations' ministerial meetings in support of the First Minister or Deputy First Minister, but in the main I tended to leave that participation to other colleagues. (A Director for Covid-19 Co-ordination role, whom I worked closely with, was established to lead on this four-nations Covid-19 engagement, inter alia).
17. On two occasions I gave evidence at the Scottish Parliament's Covid-19 Recovery Committee, supporting the then Deputy First Minister (John Swinney MSP).

B. Initial Understanding and response to Covid-19 (January 2020 to March 2020).

18. In the period in question, from January 2020 to mid-March 2020, I was still in my Director for Fair Work, Employability and Skills role (in DG Economy). In that capacity I was party to cross-SG updates on the pandemic and participated in other meetings where Covid-19 was discussed. More generally I was aware of Covid-19 through external media coverage from January 2020. I and colleagues (in DG Economy) were considering the impacts of the pandemic on the labour market. In that role we supported the then Cabinet Secretary for the Economy, Fair Work and Culture (Fiona Hyslop MSP), including on engagement with trades unions about the pandemic response.
19. During this early period, I would not consider that I was actively involved in any key decisions or advice in relation to Module 2A (i.e. to NPIs in Scotland). I was aware, for example through the weekly SG Directors Network Meetings and my 'labour market' contribution to the developing response, that the SG was taking the threat of Covid-19 seriously from an early stage. In relation to the specific questions posed: I was not party to information or decision-making at the time around the NIKE conference or the Scotland-France rugby match. Nor do I have knowledge from this time about the adoption of herd immunity as a pandemic response.
20. In response to the question requesting my views about the timing of the initial lockdown in March 2020, at the time, based on my observation of developments abroad, particularly in northern Italy, I felt that the UK (including Scotland) waited too long to go into lockdown and that this was therefore a 'missed opportunity' to limit the spread of the virus. I was not sighted on the advice that the UK and Scottish Governments would have weighed up at the time concerning the optimal timing for lockdown, which I accept is a difficult decision given competing factors.
21. That we waited too long to lock down in March 2020 remains my view now, supported by the experience of having worked on NPIs during the remainder of the pandemic. However, that experience taught me how difficult it is, based on limited information, to judge the optimal timing for introducing restrictive measures, up to and including lockdown, given the wider harms that those restrictive measures are

likely to cause to the economy and broader society, and not knowing how the population will react to those measures. While there are clear benefits to moving quickly and decisively to introduce restrictions in some epidemiological conditions, in other epidemiological conditions such actions might cause more overall harm than they mitigate (when broader harms to health, the economy and society are all taken into account). With imperfect information, such as in the early stages of a pandemic, this makes decisions concerning the optimal timing and stringency of restrictive NPIs (such as lockdowns) very difficult judgements.

22. I cannot comment with knowledge from the time about the degree of alignment of the SG and UKG's approach (i.e. up to end March 2020). However, since I believe that a lockdown should have been implemented earlier, and given that health is a devolved policy area to Scotland, it seems reasonable to take the view that the SG would have been better placed to respond if it had had the capability to apply a lockdown for Scotland independently of the UKG, if that is what was deemed necessary and appropriate. It is not clear to me that the Scottish Government did have the legal powers necessary to 'lock down' before late March 2020. My understanding (from hindsight) is that the Scottish Government was specifically given additional powers to legislate for the lockdown towards the end of March 2020, which it then used immediately.

23. Even if the SG had had the legal powers to 'lock down' Scotland before that time (e.g. using 'civil contingency powers'), I think it would have been a very difficult decision for the SG to take to 'lock down' Scotland separately from UKG at that stage of the pandemic (March 2020). This is because the SG lacked the fiscal capability to provide financial support measures on the scale required to meaningfully alleviate the impacts of NPIs on individuals, business and other organisations that only the UK Government realistically had the fiscal means to provide. The provision of financial support (or the lack of it) remained a factor in considering the proportionality of NPIs, and hence their lawfulness.

C. Role in relation to non-pharmaceutical interventions (“NPIs”)

24. As noted above, I moved into my Director for Covid-19 Exit Strategy role (with responsibility for the SG’s general strategy concerning NPIs) in early April 2020, by which time Scotland (and the rest of the UK) had been placed in a lockdown (in March 2020). Therefore, I can only comment in relation to questions about the initial lockdown from the perspective of someone who observed developments at the time but only worked on NPIs from shortly thereafter (and until April 2022). I have already commented above that based on what I observed at the time, particularly developments abroad, I was of the view that the UK, including Scotland, should have implemented a lockdown earlier. But, as noted, whether Scotland, in practice, had the financial and legal means to implement a lockdown independently of the UK Government in March 2020 is not clear to me. I recall that, during mid to late March 2020, Scotland did move separately and more quickly on a few NPIs, using guidance, but this was well short of imposing a full lockdown.
25. My view from the time has been reinforced with hindsight, as – through my work – I came to better appreciate the role of NPIs in controlling the spread of the virus. The logic is therefore straightforward in my mind: the virus was serious enough in terms of its direct health impacts and rate of transmission to require to be suppressed; the most important available means at the time for suppressing the virus (in the absence of an effective vaccine) were NPIs; and a stringent set of NPIs such as a lockdown was required to suppress transmission of the virus (in technical terms, to reduce the effective reproduction number (R_t) below 1).
26. In terms of the timeliness of the implementation of NPIs, this was a subject that I had cause to consider more generally through my work thereafter. The timing of implementing NPIs is difficult because significant NPIs (such as a lockdown) may cause significant wider harms, to the economy, society and broader health. This means that there is both a risk of not intervening quickly enough (and/or stringently enough) resulting in otherwise avoidable direct Covid-19 health harm and a risk of intervening too much and causing otherwise avoidable broader harms. If, hypothetically, NPIs did not incur these broader harms to livelihoods, education,

businesses etc. then it would be a much easier decision to take a precautionary approach and intervene rapidly and robustly. But because these wider harms caused by the NPIs are real, the optimal timing and extent of interventions is a difficult judgement. This difficulty is compounded by timing considerations when it is factored in that intervening faster with NPIs may incur less broader harm over time than delaying and/or intervening initially too lightly and then having to intervene more stringently later, resulting in both greater direct Covid-19 harm and greater broader harm.

27. The competing factors around the timing of NPIs (particularly a significant imposition or tightening of NPIs) and the uncertainties involved makes such decisions for Ministers very difficult. Faced with a rapidly spreading virus or a new variant of a virus, waiting for the data that would give confidence that a significant NPI response (such as a lockdown) is required may mean that the intervention happens too late, and may need to be more severe as a consequence. Sometimes, therefore, a decision to impose NPIs will have to be made on imperfect or limited information, when Ministers cannot be fully confident either that it is required at that stage or that it is required with a particular degree of stringency, but with the knowledge that the measures introduced will cause broader harms. Only in hindsight (perhaps weeks or months later) will it become clearer whether the intervention was too little or too much, too quick or too slow.

28. There is a question posed about the implementation of the lockdown in Scotland in January 2021. It should be noted that, strictly speaking, this was not a national lockdown. (There was only one 'national' lockdown in Scotland.) In January 2021 Scotland was implementing a geographically variable 'Levels' system of graded NPIs (which had some similarities with the tiers system in England). Most of Scotland did move into what has been described as a 'Level 4 plus' set of restrictions, akin to a 'lockdown', but a number of island communities in Scotland remained at Level 3 – thereby falling short of what might generally be perceived as 'lockdown' conditions. In principle, any local area in 'Level 4' could have been moved to lower levels of restrictions if epidemiological conditions supported that; indeed, the legislation required this. However, the vast majority of the population in Scotland did experience lockdown-type restrictions in January 2021.

29. As to the timeliness of the lockdown in January 2021, I only worked on the response for part of the period when this response was being prepared (up to 19 December 2020) and was therefore involved to an extent in preparing for the 'Boxing Day' measures but much less so in preparing for the additional measures introduced from 5 January 2021. In hindsight it seems clear that what later became known as the Alpha variant, which had a much higher basic reproduction number ('R0', i.e. much higher transmissibility) than the previous dominant strain of the virus, could not be rapidly suppressed in mainland Scotland other than with more stringent restrictions than were then provided by the Levels (including Level 4, before it was strengthened). However, the much higher transmissibility (R0) of Alpha did not become clear until around mid-December 2020, and even then with limited confidence. Without that information it was not immediately clear that restrictions needed to be significantly tightened (as they were later tightened in the form of 'Level 4 plus'). Once the situation became clearer, Scottish Ministers acted rapidly to respond.

30. Due to my role, as set out above, I was closely involved – and often leading – in advice to Scottish Ministers on decisions concerning NPIs from April 2020 to April 2022 (other than in two aforementioned periods around Christmas 2020/New Year – which reduced my involvement in the response to Alpha – and then during the first half of December 2021 – which limited my involvement in the response to Omicron). I was closely involved in advice about bespoke, localized restrictions (such as those in Aberdeen and the West of Scotland in late summer/early autumn 2020). I led the development of the more systematized approach to localized restrictions in Scotland (the 'Levels' approach) and was then closely involved in its implementation. In response to the specific questions on my role: I and my team were closely involved in advice on NPIs concerning general person-to-person contact/social distancing, on the general closure and opening of schools and other education settings, on the use of face coverings and, initially, on the use of border controls (though this latter area of work passed to colleagues working elsewhere in the SG). I was less involved in self-isolation requirements, that being an area led by Health colleagues within the SG.

31. In answer to the question about the wider health, social and economic impacts of NPIs, there was early recognition that the harm of the pandemic was multi-faceted. It was firstly a health crisis, causing serious health harm and hence the urgent need to protect life, but it was quickly apparent that the crisis was much more than that. It was recognized as an economic crisis and a crisis for society more generally, affecting for example education, inequalities, social isolation and many other aspects of life. In order to succeed in minimising the overall harm from the pandemic (consistent with the aims set out in the COVID-19 Framework for Decision Making publication in April 2020 [DM/001 - INQ000131025]), the SG had to take these broader aspects of harm into account in determining its responses to the pandemic.
32. The Deputy First Minister (John Swinney) requested the development of a framework to support rational decision making by the SG on the use of NPIs. I led the development of the SG's approach to assessing NPI options against what became known as the 'four harms' – a framing that I proposed – to inform decision making, alongside wider considerations. The first harm was the direct Covid-19 health harm; the second harm was to wider health; the third harm was to society and the fourth harm was to the economy. The essence of this approach was communicated publicly in the Framework for Decision Making. The categorisation of harms into the 'four harms' approach was not perfect but, in my view, provided a practicable means to take account of the many and varied harms of the pandemic in decision making.
33. Four harms assessments were incorporated into decision making from an early stage (from late April 2020) and a dedicated group including lead experts on the various harms - the 'Four Harms Group' – formed later in 2020 to help inform advice to Ministers, a group that I regularly participated in and occasionally chaired (in the absence of my line manager who was the regular chair).
34. Additional complexities also needed to be recognised and addressed. One such complexity was that the harms were often 'non-linear': i.e. they did not increase or decrease over time at a steady pace. For example, a business might survive a fortnight of enforced closure but not two months. Consequently the economy might

see an *accelerating* increase in harm the longer that restrictive measures on business were in place. Other examples of complexity stemmed from the uncertainty surrounding many of the parameters needed to assess harm and from the reality that the relative harms were adjusting over time – for example as increasing vaccination coverage and improved treatments reduced the direct Covid-19 health harm ('harm 1' in the four harms approach) relative to the other harms (harms 2, 3 and 4) for a given level of prevalence of the virus in Scotland.

35. In addition to considering the impacts of NPIs on the four harms in making decisions about which to apply and when, other factors also needed to be taken into account as set out in the *Framework for Decision Making*. These included the need to ensure that the decisions on NPIs were lawful (which included requiring measures to be necessary, proportionate and justifiable) – particularly as many of the NPIs set in regulations, while beneficial in suppressing the virus, interfered with fundamental rights as set out by the European Convention on Human Rights (ECHR). Equalities considerations also needed to be taken into account, though they may also have surfaced through the four harms assessments. Decisions concerning NPIs also needed to be 'clear' to support understanding and compliance by people and organisations: it was recognized that the degree of compliance was a key parameter in considering the impact of NPIs on suppression of the virus. Therefore, in sum, the SG's decisions on NPIs were judgements that took four harms considerations and other factors into account.
36. Decisions concerning NPIs also needed to take account of the impacts of measures on different sectors, communities and groups within the population. This included the group initially known as the 'Shielding' group who were assessed as being at greater health risk from the virus. Over the course of the pandemic, decision-making was supported by various types of impact assessment including Business Regulatory (BRIA); Equality (EQIA) or Equality & Fairer Scotland (EQFSIA); Children's Rights and Wellbeing (CRWIA) and Island impact assessments, which were published. Due to the fast-moving nature of the pandemic, the rapid pace of decision-making meant that formal impact assessments could not always be undertaken in advance of decision-making; however, processes such as the four harms assessments enabled impacts (for

example, on groups with protected characteristics) to be discussed in relation to each of the harms.

37. In response to the question on areas that went well concerning NPIs, in my opinion:

- There was strong SG Ministerial leadership around NPIs: a clear sense of overall strategic direction from the then First Minister (supported by the Deputy First Minister) who had a strong grasp of the details, was open minded to the evidence, was willing to devote the time required to consideration of the NPI response, and who made clear that she was willing to take decisions that were regarded as right (i.e. in terms of reducing harm) even if they were unpopular.
- The Scottish Government was generally able to co-ordinate its analysis and advice on NPIs to Cabinet to enable effective decision-making. The four-harms approach seemed to work well as a means of quickly synthesizing divergent views in order to provide co-ordinated advice. Tensions existed over the inevitable trade-offs involved but these tensions were arguably healthy for robust decision-making and effective working relationships were maintained across the SG. In this respect, I believe the SG benefitted from being one organization without departmental boundaries.
- The SG was able to provide rapid and timely advice to Ministers on decision-making concerning NPIs (though this was often produced under significant time pressure). This, in turn, enabled timely decisions, when time really was of the essence (for example concerning the tightening of NPIs in autumn 2020).
- Advice on decision-making was supported by timely epidemiological statistics and broader evidence on the pandemic and by access to expert advice (including through the Covid-19 Advisory Group and SAGE). The Chief Medical Officer, for example, had a regular place at Cabinet meetings where decisions on NPIs were discussed and made, and Ministers were, in my view, always receptive to expert advice.

- There was clear, balanced public communication of the SG’s approach to NPIs, led by the First Minister’s daily press briefings and weekly statements to parliament. This was reinforced by wider public communication (for example by Jason Leitch and the Deputy First Minister) including on social media. The SG’s approach was also set out in SG publications including the *Framework for Decision-Making*, ‘*Route Map*’ series, and ‘*Strategic Framework*’ series of publications, which were widely downloaded and discussed. There was, in my view, a willingness of SG communicators to ‘tell it straight’ to people and to ‘treat the public like adults’, rather than eschew giving bad news or seek to put an undue gloss on a difficult situation. The public and organisations were understandably keen to have a sense of the SG’s plans for the future management of the pandemic, so that they could themselves plan ahead – notwithstanding the caveats and uncertainties. The SG provided those plans (such as the *Route Map*) and explained its approach, which was important for securing trust and compliance with the measures, the extent of which was measured in regular polling undertaken by YouGov for the Scottish Government. The results of this polling were published on the Scottish Government’s website. [DM/014 - INQ000281254]. (The sample for this polling was demographically and geographically representative of adults aged 18 and over across Scotland, with around 1000 responses each week.)
- There was regular stakeholder and partner engagement, with individual sectors (such as business and faith leaders) and with local government and local public health directors (the latter two having representation on the Four Harms Group). Although they may not always have agreed with the Scottish Government’s approach, this enabled stakeholders to express views (which could have a bearing on aspects of the development and implementation of NPIs) and to understand why the SG was making the decisions that it was. In particular, there was engagement with local authority leaders in the implementation of the Levels approach to NPIs.
- The geographically tailored approach to NPIs in the form of the variable ‘Levels’, implemented across Scotland from November 2020 to August 2021, enabled a proportionate approach to managing the pandemic that was

intended to reduce overall harm in a lawful way and that could adjust rapidly to epidemiological developments. In my view this was an effective approach to applying NPIs and was consistent with World Health Organization advice. [DM/015 – INQ000078466]

38. In response to the question on areas that went less well concerning NPIs (where there were 'issues, obstacles or missed opportunities... both within Scotland and between the Scottish and UK Governments'), in my opinion:

- As noted, the March 2020 lockdown could have been implemented sooner but it is not clear to me that at that time the Scottish Government had the means – legally or financially – to do this independently of the UK Government.
- Lack of access to the adequate financial resources by the SG (such as the means to run a furlough scheme independently of the UKG when UKG was not providing it) was a limiting factor on occasion in tailoring NPIs to what were judged to be Scotland's needs.
- The SG as an organization could have deployed more staff, with the right skills into the critical Covid-19 response roles within the SG more quickly (including staff working on NPIs, given the very significant impact of such interventions on the country).
- Due to open or at least porous borders within the UK, epidemiological outcomes in Scotland were inevitably affected by UK Government decisions concerning NPIs and hence epidemiological outcomes for England. (The effect worked the other way too but is likely to have been less significant given relative population sizes). This point is generally applicable but is particularly relevant for certain decisions. For example, the UK Government's decisions concerning requirements for international air passengers during spring 2021 when the Delta variant was taking hold (including those travelling onwards to Scotland via English airports) may have had significant epidemiological implications for Scotland, when the Scottish Government made clear that it wanted to take a more stringent approach.

D. Divergence

39. On the matter of divergence, I think it is important to state at the outset that asking about when the Scottish Government's approach diverged from UK Government's could be read as implying that it was the SG that was moving away from a 'mainstream' or 'orthodox' approach, namely that of the UKG. However, since the matters in question were largely or wholly devolved, the question might equally be asked: when did the UK Government's approach diverge from the Scottish Government's or from the Welsh Government's? And what factors led the UK Government to take a divergent approach? Therefore when I discuss divergence below, it is from a perspective of parity across the four governments on these devolved matters.
40. From my knowledge of what happened in March 2020 as reported in the media at the time (though not being personally directly involved at that stage), there is a sense that the SG was already beginning to diverge from mid March 2020 by going further and/or faster in introducing some restrictive measures (in guidance at least, where, in my understanding, the SG did not yet have the legal powers to make regulations).
41. It is important to state that divergence in NPIs was never an aim for the Scottish Government. Rather, as set out in the *Framework for Decision Making* document (April 2020), the intention was as follows:

Taking careful account of all the harms caused by the virus, the Scottish Government will participate in the UK four nations expert advisory groups and collective decision-making process. On occasion, expert advice may point to different approaches reflecting the specific circumstances in each country or to different optimal timings for easing or tightening restrictions across the varying geography of the UK. On such occasions, the Scottish Government would consider the appropriate course of action to best meet Scotland's specific needs and circumstances. There may also be some actions that require co-ordination and co-operation with the UK government which the Scottish Government considers necessary, for example border

control and health surveillance of people coming into the UK. In these circumstances, we will seek support for such measures through the four nations framework.

42. From the time that I started working on NPIs in early April 2020, while there was useful information sharing across the four nations, it was not clear that in general there was an effective 'collective decision-making process' concerning NPIs to participate in. (My initial expectation had been that COBR would be more prominent in this regard.) Moreover, in practice the four governments increasingly adopted 'different approaches reflecting the specific circumstances in each country or... different optimal timings for easing or tightening restrictions' (borrowing the words above extracted from the *Framework for Decision Making*). In my view, that was justifiable where it was the case that it was judged that the benefits (in terms of harm mitigation) from tailoring approaches to differing circumstances across the four nations outweighed any benefits from adopting uniform approaches across the whole of the UK. A similar logic later justified the introduction of geographically tailored sets of NPIs at a localized level below the national level (i.e. 'Levels' in Scotland, similar to the 'Tiers' in England). At times during the pandemic it was arguably legally necessary to pursue such a tailored approach, else stringent restrictions imposed in a blanket way on areas where epidemiological conditions were less severe might be challenged in the courts as disproportionate (and hence unlawful).
43. Uniformity in approach in NPIs would arguably be beneficial if various conditions were all met: similar socio-demographic profiles; similar geography; similar epidemiological conditions; similar NHS capacity. But if one or more of those conditions were not met then a differentiated approach (or divergence) could potentially be beneficial for outcomes (i.e. for mitigating harm) – for each of the four nations or at a more localized, sub-national level.
44. Moreover, political judgement – and democracy – also had a legitimate role to play in divergent responses on NPIs. Decision-making concerning NPIs happened in the context of both uncertainty and complex, competing factors affecting different fundamental rights, meaning that there was rarely an objectively 'right' decision. In such circumstances, judgement by the decision-makers (e.g. Cabinet) was

necessary and was exercised. As with other governments – even though it was informed by evidence – that judgement was likely to reflect to some degree the political standpoint of the decision-makers (for example, whether they are inclined to be more or less interventionist), and also to reflect in turn the views of the electorate whom they represent and to whom they are accountable through parliament. To the extent that those political standpoints varied between leaders of the different governments across the four nations, this could provide another explanatory factor behind divergent positions on NPIs.

45. It is worth noting that, in my view, the above arguments are also a justification for the devolution of healthcare more generally – so that it can better reflect the circumstances in the jurisdiction that it is devolved to (e.g. geography, socio-demographic factors) and so that it can better reflect the views of the electorate in that jurisdiction.

46. This is not to say that divergence or geographical tailoring was necessarily always the best approach, but it provides a rationale for why it could often be considered appropriate and, indeed, necessary from a legal standpoint when NPIs were open to legal challenge for their necessity and proportionality. In this context, it is noteworthy that the WHO recommended localized approaches to NPIs where practicable in its publication - *Considerations for implementing and adjusting public health and social measures in the context of COVID-19: interim guidance*, 4 November 2020:

‘It is recommended to systematically assess these criteria at least biweekly at the lowest operational subnational administrative level that is practical to inform tailored local responses’ [DM/015A - INQ000249262].

47. One factor weighing against divergence would be if it were judged to be the case that a uniform, cross-UK approach would likely secure greater compliance and hence greater effectiveness for the NPIs concerned. This was, in my view, a key rationale for the genuine attempt to co-ordinate the special measures around Christmas 2020 across the four nations (even though this approach broke down as epidemiological differences both within England itself and across the four nations ultimately led to divergent responses). However, the benefits to

compliance of a uniform approach are debatable: for example, to what degree would people in one part of the UK with low prevalence continue to comply with stringent, uniform NPIs set to address high prevalence of the virus in another part of the UK? The benefits to compliance from a uniform approach would likely increase to the extent that the whole country appeared to be faced with similar (severe) epidemiological conditions, creating the potential for high compliance with (uniform) NPIs. This, however, was often not the case. Moreover, it could be argued that compliance would likely be higher with NPIs set by a devolved government, if that devolved government were more trusted. YouGov polling data (as already referred to) indicated that trust in the Scottish Government ('a great deal' or 'quite a lot') to work in Scotland's best interests in relation to the coronavirus pandemic was at 78% in July 2020, falling to 67% in March 2021 and to 59% in January 2022, remaining at around 60% throughout 2022.

48. In my view, divergent approaches on NPIs were consistent with the principles of the devolution settlement (particularly concerning healthcare) and enabled devolved governments (and the UKG for England) to better tailor NPIs to the circumstances within their jurisdictions. Therefore, other things being equal (such as the quality of advice and decision making), I believe that devolved or divergent approaches to NPIs are likely in principle to have led to better overall outcomes from the pandemic for the UK as a whole and for each of the four nations individually than a uniform, UK-wide approach would have produced.

49. In Scotland, the SG developed its approach to NPIs, informed by the 'four harms' approach to weighing up competing factors. The SG developed its own Route Map for easing measures in mid 2020. It developed its own Levels approach, which was sustained (with modification) from November 2020 through to August 2021 when Scotland moved beyond 'Level Zero'. Like numerous other countries, Scotland was able to introduce COVID certification for certain venues as an extra NPI measure in autumn 2021. Scotland was able to introduce mandatory face covering requirements when the evidence indicated that this was appropriate. And Scotland had one national lockdown (although it came very close to a second in January 2021, when only a few island communities remained in non-lockdown conditions.) As polling data above indicates, trust in the Scottish Government's approach to the

pandemic remained relatively high, which was considered important for compliance.

50. Arguably, co-ordination of NPIs across governments would be most appropriate when the activities they seek to limit are 'cross-border' in nature. This provided a rationale for the attempt to co-ordinate special measures for Christmas 2020, when many people were expected to travel across borders within the UK. NPIs affecting international travel are another example of this, and an area where there was, over time, a high degree of co-ordination between the four governments. However, there was also a risk in this that the UK Government's views could dominate such 'co-ordination', even though the consequences would be experienced across the four nations (including in devolved areas).

E. Role in relation to medical and scientific expertise, data and modelling.

51. In my role I, and the team I led, was responsible for providing strategic advice on NPIs to Ministers that incorporated medical and scientific expertise and data and modelling. This was particularly evident in the Cabinet Papers on NPIs that my team drafted from May 2020, which generally incorporated expert advice and analysis provided by respective experts and analytical leads. In summer 2020, the Outbreak Management Directorate, later called COVID Co-ordination Directorate, was created in parallel to my directorate at the centre of the SG (a development that I supported to increase staff capacity). Over time that directorate took on the regular drafting of Cabinet Papers concerning NPIs, continuing to incorporate expert advice and analysis. I continued to provide advice on NPIs both to be incorporated into those Cabinet Papers and also on a more ad hoc basis, reflecting changing epidemiological conditions. I maintained a particular interest in assessing the impact of NPIs (for example, their impact on the effective Reproduction number (R_t), which was key to our considerations about the overall NPI response. Such considerations were important in developing the Levels approach to NPIs, which was in place from November 2020 to August 2021.

52. As noted, the Scottish Government adopted the 'four harms' approach, which I led the development of at the request of the then Deputy First Minister, as a means to

assess the often conflicting impacts of NPI options. In April 2020, I commissioned analysts in the SG to provide four harms assessments to inform NPI decisions, with each harm assessment under the leadership of the respective expert: the Chief Medical Officer for health impacts (direct COVID and indirect health impacts); the Chief Social Policy Adviser for societal impacts; and the Chief Economist for economic impacts. (In practice the respective 'chiefs' often delegated these responsibilities.)

53. In general, I felt that the four harms approach and the evidence and analysis underpinning it served us well, both in providing a rational basis for decision making and in enabling the synthesizing of divergent views from across the government.
54. I felt that we were particularly well served with epidemiological statistics (including data on the health system in Scotland: bed use, testing etc). Having timely data on Covid-19 cases, bed use and mortality was very useful for identifying trends. Estimates of the R number and the prevalence of the virus (from the ONS Infection Survey) were invaluable. The arrival, later, of waste-water data was also useful, particularly in triangulating with other data sources. My impression was that our modelling team worked well with 'SPI-M' colleagues (for example in estimating the R number). Modelling of future projections for the pandemic (cases, deaths, bed use etc) was also helpful – and was incorporated into advice. I worked closely with the modellers within the SG to ensure that we were providing sound analysis and evidence in our policy advice to Ministers.
55. We were also well served in terms of research and statistics on what was happening abroad, both epidemiologically and in terms of other countries' NPI responses. There was very useful production and dissemination of such research within the SG. In addition, we had access to international, publicly available research and statistics (such as the 'COVID-19 Data Explorer' on the Our World in Data website), and I had access to very useful epidemiological statistics for the UK (including areas of England) provided by the UKG Cabinet Office.
56. I was able to see SAGE reports and to draw upon the advice of the SG's COVID-19 Advisory Group: on occasion our key strategic NPI proposals were put before

the Advisory Group for comment before becoming formal advice and we were also able to put questions direct to the Advisory Group for answers. Sessions with external health experts (Sir Jeremy Farrar and Sir David Nabarro, for example) were particularly useful.

57. I do not think that the SG was restricted or prevented from understanding the full scientific picture. However, in my view, the 'full scientific picture' was often uncertain and would rarely point to a specific course of action concerning NPIs. Even if the epidemiological picture had been clear, the fact that NPIs would cause broader harms to the economy and society meant that there was no objectively 'right' course of action that could, in my view, be derived from 'the science' alone. Judgement always had to be applied by Ministers, informed by the science and evidence, to take into consideration all the factors and uncertainties involved, and it was in my view right that democratically elected and accountable Ministers (in any government) should be the ones to make those difficult judgements.

F. Role in COVID-19 public health communications

58. I was never a direct communicator with the public in relation to the COVID-19 response but I had a role in such communications in a number of ways.

59. I was the official responsible for producing a number of key Scottish Government documents that explained our pandemic response to the public (and which are all publicly available). These were widely downloaded and reported and were often the basis for public health communications and discussion. They included (see references in paragraph 13 above):

- The *Coronavirus (COVID-19): Framework for Decision Making* (April 2020)
- The 'Route Map' series of publications (from May to October 2020) – Full title: '*Coronavirus (COVID-19): Scotland's route map through and out of the crisis*'
- The 'Strategic Framework' series of publications (From October 2020 to February 2022). Full title: *Coronavirus (COVID-19): Scotland's Strategic Framework*.

60. In addition, in relation to public health communications (for example by the First Minister in her daily press conferences), I would also be involved alongside other SG colleagues in fact-checking speeches, news releases and social media (e.g. to check that they were conveying our NPI responses accurately).
61. In my view the First Minister, Nicola Sturgeon, communicated public health messages and the SG's NPI responses very well, supported by the Deputy First Minister, Cabinet Secretary for Health and others, including key officials such as Jason Leitch and Gregor Smith. These communications were often delivered under very challenging circumstances (e.g. with complex information to convey in short order). Regular polling data gave an indication of how the public in Scotland were understanding the COVID messaging by the Scottish Government, their trust in the Scottish Government and their (self-reported) compliance with the COVID rules and guidance. Trust ('completely' or 'mostly') in the Scottish Government to provide information on coronavirus was at 72% at the end of July 2020 when first measured and fell to 54% when last measured in June 2022. (Comparable figures for trust in the UKG from the same source were much lower and fluctuated over time: at 26% at the end of July 2020 and 23% at the end of June 2022 – but peaking at 34% in February/March 2021.)
62. There were challenges to communicating the position, or positions, on NPIs. The rules and guidance were sometimes complex and needed to change in response to the evolution of the pandemic e.g. to remain proportionate (and hence lawful). There was a risk of the public being confused. The Levels approach was in part motivated by the need to communicate geographically differentiated NPIs clearly to the public (in advance) to aid understanding and compliance: the alternative of bespoke, localized responses would have made clear communication much more difficult. In general, I believe that the rules were clearly communicated. The (self-reported) polling indicated that the majority of people in Scotland understood them [DM/016 - INQ000249263].
63. In response to the question concerning the impacts of publicized breaches of the rules on compliance, I do not feel qualified to comment beyond saying that it is

unlikely to have been positive. I am not aware to what extent such breaches actually affected public behaviour though data could be assessed to see whether there were any reductions in (self-reported) compliance in the population after breaches had been reported in the media.

G. Role in public health and coronavirus legislation and regulations

64. I was not directly involved in providing legal advice or drafting regulations. My contribution instead related to the overall NPI response and advice on which NPIs to deploy and when. This advice was provided through Cabinet Papers and other submissions. The conversion of this advice (following relevant decisions) into legislation was undertaken by other colleagues within the Scottish Government.

65. I was involved in the regular reviews of the COVID regulations, including to ensure that they remained lawful (i.e. justifiable, necessary and proportionate). Advice concerning these reviews would be included as part of the wider advice on the COVID response (typically in Cabinet Papers). This approach therefore incorporated an explicit check on proportionality into the regular decision-making process concerning NPIs.

66. The need to ensure proportionality had an important bearing in shaping the design of the Scottish Government's approach to NPIs. It was a key factor behind the application of the 'Levels' approach of graduated sets of NPIs, which were designed to be geographically variable so that they could be tailored proportionately to local circumstances. Under the Levels approach, areas would not be subjected to more stringent NPIs than they themselves required simply because another part of the country required those more stringent NPIs – consequently for much of the pandemic response this was considered to be a more proportionate approach than a 'blanket' approach.

67. In practice, NPIs were made into law in regulations when it was judged that adherence with the specific requirements or restrictions was important enough for

reducing transmission as to require mandation and the possibility of legal enforcement if they were not complied with.

68. In contrast, guidance could be used when it was judged disproportionate or unviable in practice to compel specific behaviours or actions in law. This could be because the use of an NPI was judged to fall short of the 'necessary and proportionate' standard required for measures to be given effect in regulations. In turn, this could be either because the problem the NPI was addressing was not judged severe enough to warrant necessity and/or because the impact of the NPI, while positive in terms of reducing transmission, was not judged likely to be significant enough given the associated harm and interference in ECHR rights to be deemed proportionate as a regulation.

69. The degree of compliance with or adherence to NPIs was recognized as an important factor contributing to suppression of the virus. Police Scotland's stated approach supported compliance with legal NPIs through the so-called '4 'E's' - *Engage, Explain, Encourage and, only where necessary, Enforce* – with the aim of building public trust and understanding. In addition, the SG legislated to provide additional powers to Environmental Health Officers and Trading Standards Officers to assist enforcement and provided additional funding to local authorities to support enforcement activity, particularly with a view to creating safer workplaces. I am aware that the use of Fixed Penalty Notices for breaching COVID regulations was kept under review.

H. Key challenges and lessons learned

70. I can recall attending two Scottish Parliament committees to give evidence about the SG's COVID response:

- Covid Recovery Committee - Meeting date: Thursday, 2 September 2021
- COVID-19 Recovery Committee - Meeting date: Thursday, February 24, 2022

71. My comments at those committees are available on the Official Record of the Scottish Parliament for these dates [DM/017 - INQ000249264, DM/018 - INQ000249265].

72. 'Lessons learned' activity that I was involved in tended to be ongoing and 'on the job' during the emergency phase of the pandemic. For example, the regular process for reviewing regulations enabled the SG to adjust its response to changing epidemiological conditions or information. I was always keen to support improvement in the analysis of the pandemic (particularly in relation to NPIs). For example, at the end of August 2020 I commissioned analytical leads to update their estimates for NPI impacts in light of experience and new information. And my colleagues led a quick, cross-government review of the various NPIs contained in the Levels in early 2021, in light of experience to date (including the advent of the much more transmissible Alpha variant). Separately, I can recall contributing to an early corporate lessons learned exercise in late spring/ summer 2000.

73. The pandemic posed various significant challenges in terms of the NPI response. I set out a number of them below:

- i. **Pace:** faced with a virus that could spread with rapid, exponential growth, it was critical that decisions on NPIs could be made and then implemented rapidly. This meant that analysis and advice had to be made available to Ministers rapidly, on an ongoing basis. Government decision-making processes had to adapt in response: for example, the normal, multi-week process for preparing SG Cabinet papers was often reduced to a matter of days (with drafting frequently taking place over a weekend). Normal processes for incorporating advice from officials across the government therefore also had to be accelerated. In general, I think the SG adjusted well to the needs for this increased pace in decision making.
- ii. **Pressure on staff:** the need to produce rapid advice on NPIs, on an ongoing basis, throughout the week (i.e. including weekends) and over extended working days created a lot of pressure over a sustained period on a relatively small number of staff responsible for providing such advice. While efforts were made to increase staff resource, the burden remained intense, particularly so on a number of key officials (and also on Ministers and Special Advisers). Adding to this work pressure, the often contentious nature of the NPI response

meant that there was near constant criticism of the approach from both directions: from those who thought the restrictions were too tight and from those who thought that the restrictions were too loose. And the pressure intensified due to the grave nature of the advice and decision-making: to repeat a well-used phrase – this was about ‘lives and livelihoods’. In future, in my view, the Scottish Government should find more sustainable ways to resource the response to crises, particularly those that endure over a prolonged period.

- iii. **Uncertainty:** Notwithstanding the valuable, timely information that was available on the epidemiology of the pandemic, decision-making was still confronted with uncertainty because of the fast-moving nature of the virus and the risk of new variants with different characteristics. If the basic reproduction number (R_0) of a new variant was 6, for example, then this could dramatically change the NPI response required from a situation where the existing dominant strain had an R_0 of 3 – but estimating the R_0 number for new variants took time, possibly more time than was available for an effective early response. And if the rate of transmission appeared to be increasing then it might not be clear whether this was due to falling compliance, increased transmissibility (R_0), waning immunity, seasonality, or another factor or a combination of such factors. Another source of uncertainty concerned the impacts of different NPIs on transmission of the virus. In combination, this meant that difficult judgements often had to be made in the context of uncertainty because to wait for greater confidence about the right response might increase harm (for example during periods of rapid, exponential growth). However, taking a precautionary response risked causing unnecessary broader harms to the economy and broader society (e.g. through closing schools or businesses unnecessarily and so unduly harming education and livelihoods) if it later became clear that the extent of the response was unnecessary. In the early stages of the pandemic there was also significant uncertainty over when or indeed whether there would be effective vaccines or effective therapeutics, which added uncertainty to planning the long-term strategic response.
- iv. **Importation:** Having an open or at least porous border with the rest of the UK (and the broader Common Travel Area) meant that Scotland was vulnerable to

importing the virus (and new variants of the virus) at times when the prevalence of the virus was lower in Scotland than elsewhere (and vice versa). This increased the difficulty of managing the pandemic response within Scotland.

- v. **Communication:** Clear communication of NPIs was important for compliance/adherence, which was in turn important for suppression of the virus. However, communication of NPIs could be complex because the rules both often needed to change and often needed to be nuanced. This need was in part driven by the requirement for the NPIs to remain lawful, through being justifiable, necessary and proportionate. For example, if NPIs didn't ease sufficiently quickly in response to improving epidemiological conditions then they risked being deemed unlawful due to a lack of necessity and/or proportionality. And if the NPIs were too general (even though that made them simpler and easier to communicate and understand) then that might again make them unlawful if they were judged to be disproportionate and/or unnecessary for particular sectors or sections of society where more specific NPIs would have been more proportionate (but harder to communicate). The necessarily frequent changes and complexity of the NPIs made communicating them challenging. Both the 'Route map' and 'Levels' were published to aid communication and understanding of the NPIs. On balance I think the SG generally communicated about NPIs well, though it was a challenging task.

- vi. **Lawfulness:** Retaining the lawfulness of NPIs was an ongoing challenge that was addressed both through careful design of interventions and through regularly reviewing the NPI regulations to ensure they were justifiable, proportionate and necessary. Because NPIs by their nature tended to interfere with certain fundamental rights (in order to protect another fundamental right – the right to life), this made them susceptible to legal challenge. This meant that allowing NPIs to err on the side of caution (from a COVID health perspective) might lead to legal challenge if they were deemed to be disproportionate or unnecessary given the epidemiological conditions. Therefore NPIs had to be demonstrably proportionate and necessary, even when there was uncertainty over epidemiological conditions. In the main I think the SG succeeded in doing

this, though it notably lost one legal challenge (concerning places of worship, in early 2021).

- vii. **Policy tensions:** Due to the different harms caused both directly by the virus and indirectly by the NPI responses to it, different policy areas could be in tension about how best to mitigate harm. Tensions could arise when there was a trade-off between harms (because rarely would an NPI decision incur no harm to any policy area). This policy tension was managed reasonably well, in my view, in the Scottish Government through the four harms approach. This enabled the relevant experts and policy representatives to convene, to hear each other's views concerning the different harms, and then for advice to be developed for Ministers that synthesized the advice on the various harms. I am sure that colleagues at times felt that the process was imperfect but in the main this four-harms process 'held the ring' for the various policy tensions and supported ongoing collaboration across the government through general buy-in to the process. It also provided a means to explain to stakeholders (who generally – and understandably – sought to mitigate harm for their particular interest) why particular decisions around NPIs had been made.

74. In terms of what went well in terms of the Scottish Government's NPI response, I would suggest a number of areas for consideration:

- **The overall political leadership of the response to the crisis**, led by the then First Minister with support from the Deputy First Minister and other Ministers. The First Minister (Nicola Sturgeon) set the strategic direction, as set out in the Framework for Decision Making in April 2020 and in subsequent strategic publications and her own public statements. She had a very strong grasp of the detail of different aspects of the pandemic and was willing to take timely and, if necessary, unpopular decisions (typically involving tightening NPIs) where circumstances required. Polling data in Scotland (as referred to above) would support the conclusion that Ministers' strong communication of both the situation and the Scottish Government's response secured fairly high levels of public trust, which was likely important for adherence and hence the effectiveness of NPIs in suppressing the virus. From the polling data already

cited, trust in the Scottish Government ('a great deal' or 'quite a lot') to work in Scotland's best interests in relation to the coronavirus pandemic was at 78% in July 2020, falling to 67% in March 2021 and to 59% in January 2022, remaining at around 60% throughout 2022.

- **Clear articulation of the SG's strategic approach to NPIs**, set out in the Framework for Decision Making, the Route Map series, and the Strategic Framework series (the latter setting out NPIs in the context of the SG's wider response to the pandemic). The SG's approach was also set out in the First Minister's daily press conferences and parliamentary statements and was reinforced by wider Ministerial communications and social media. The SG's strategic approach rightly adapted over the course of the pandemic, as reflected in the evolution of the 'strategic intent' set out in the Strategic Framework publications. Based on the polling data for Scotland referred to above, trust in the Scottish Government to provide information on the pandemic remained relatively high.
- **Generally effective use of NPIs** in response to the evolving epidemiological situation, tailored to Scotland's particular needs and circumstances – first through the Route Map and then through the Levels approach to NPIs set out in the Strategic Framework. The Route Map was superseded by the Levels approach when a systematic approach for varying NPIs (both tightening and easing) at a local level was judged to be necessary. The Levels approach was itself modified to deal with the (unexpected) increase in transmissibility of the Alpha variant. Arguably the delay in the use of NPIs to lock down the country during the initial surge during March 2020 was one of the weaker elements of the NPI response, but this was one of the rare instances where NPIs for Scotland were not led separately by the Scottish Government but rather were part of a UK-wide approach.

75. In response to the question concerning lessons that I have learned from the experience of my role during the pandemic on NPIs, I would offer the following:

- I. Be prepared to intervene with NPIs earlier than the data gives you confidence to, particularly if the judgement is that epidemiological conditions are likely to

deteriorate rapidly. However, to always err on the side of caution may cause unnecessary wider harms to the economy and society, may prove unlawful (if found to be disproportionate) and may erode public confidence in the approach and hence compliance with NPIs in future. So careful, balanced judgement, based on the available evidence and analysis, is key.

- II. Be prepared for a virus that you are grappling with to mutate unexpectedly and be ready to rapidly vary your NPI response accordingly. For example, the much higher transmissibility of what became known as the Alpha variant was not widely anticipated and required a swift adjustment in response.
- III. Set a clear overall strategic aim for government (e.g. 'minimisation of overall harm' or 'suppression of the virus to the lowest possible level') so that various sub-strategies and plans across government can consistently flow from that, rather than have competing overall aims and hence policies across government. And be ready to adjust the overall strategic aim as circumstances evolve over time.
- IV. If different parts of the organization are going to have conflicting policy interests, ensure that effective governance is in place that can 'hold the ring' for the ensuing tensions. This should enable colleagues to feel that their views have been heard even if they don't get everything they want from the synthesized advice, so that they are able to continue working together constructively as one organization going forwards. As a relevant aside, I believe the Scottish Government benefitted from being one organization, without departmental boundaries, and with a scale that was small enough such that the lead officials with conflicting policy interests could all nevertheless regard each other as colleagues. In my view, it also helped that the ministerial team appeared generally to be one team rather than competing factions, special advisers likewise, and that that sense of one team extended to the way they worked with civil servants.
- V. The government needs to get the right number of staff in place, with the right skills, to deal with the nature of the crisis faced. From the COVID experience,

it took too long to get the right number of staff in place and those staff may not have always come with the right skill sets (although most would have come with the willingness to work hard to help manage the crisis and to be flexible, which was important).

- VI. The Scottish Government's NPI response benefited by being informed by excellent statistical resources. In future crises, similar statistical and research resources should again be instigated (with appropriate funding where required) from the outset.

I Informal Communications and Documents

76. As far as I am aware, informal communications media (such as WhatsApp or SMS text messages) were not used for decision-making or other formal purposes by the Scottish Government during the response to the pandemic. All correspondence that I can recall concerning formal decision making was in the form of advice conveyed through Cabinet Papers and submissions (i.e. formal documents) and through email correspondence, such as responses by email to a formal submission. To the best of my knowledge, that formal advice has been made available to the UK Covid-19 Public Inquiry (and the Scottish Inquiry).

77. Informal communications such as WhatsApp or SMS text messages were, as far as I am aware, used for informal purposes. As the information contained was transient in nature, these informal messages were routinely deleted (which I believe to have been consistent with our information retention policies in the Scottish Government).

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Personal Data

Signed: _____

Dated: _____ 9 November 2023 _____

Annex C: Request for documents

78. SG colleagues and I have already provided for use by the COVID Inquiries (UK and Scottish) the correspondence and papers that I wrote that constituted formal advice in relation to COVID (and the issues discussed in this witness statement). This included numerous Cabinet Papers for which I was the lead (official) author and submissions of formal advice to Ministers. I was also the lead author for a range of SG COVID publications (e.g. Route Map series; Strategic Framework series) which are all in the public domain and referenced in paragraph 13.

79. In addition, as requested, I provide the following contemporaneous notes (for which I was the lead author, though potentially with contributions from other Scottish Government colleagues). Some of these notes were not provided as advice but were instead internal notes written both to clarify my own thinking and for consideration by colleagues (officials) and therefore were not seen by Ministers but are nevertheless relevant to this statement. As is shown, sometimes these documents were in the form of Powerpoint slidepacks. Several are still shown as being in draft as they remained liable to be updated (e.g. following feedback from colleagues) and had no specific completion date:

- a. a Powerpoint slide pack that I created in mid April 2020 to clarify my own thinking about the NPI (or Social Distancing, hence 'SD') response to the pandemic [DM/019 - INQ000249266]. I don't think this was ever formally shared with Ministers.
- b. A paper from May 2020 setting out the general principles for phasing the easing of restrictions as set out in the Route Map [DM/020 - INQ000249260]. This was not formal advice as such but was shared with Ministers.
- c. A paper to the SG's Executive Team (i.e. senior officials) dated 24 July 2020, which takes stock of the COVID situation and offers some personal reflections and suggested actions to mitigate a future resurgence of the virus [DM/021 - INQ000249267].

- d. A note on the principles of our approach to our COVID Exit Strategy from February 2021 [DM/022 - INQ000249268].
- e. A note on the principles of SG policy on border measures (NPIs), also from February 2021 [DM/023 - INQ000249269].
- f. A note setting out considerations about the geographical approach to easing restrictions (e.g. a nationwide vs a locally differentiated approach) from April 2021 [DM/024 - INQ000249270].
- g. A note setting out the rationale for the (continued) mandation of face coverings in certain settings, from August 2021 [DM/025 - INQ000249271].
- h. A note from April 2020 commissioning SG analysts to conduct four-harms assessments of NPI options [DM/026 – INQ000249272], and a later commission requesting updates to these assessments [DM/027 - INQ000249273].
- i. A set of Powerpoint slides used in an introductory, internal briefing by me to a number of new SG Ministers (of any portfolio) in August 2021 [DM/028 - INQ000249274].
- j. A set of Powerpoint slides from early 2022 developing (for internal use) a simple 'logic model' for our strategic approach to responding to the pandemic in this later period of the emergency phase of the pandemic [DM/029 - INQ000249275].
- k. A set of internal Powerpoint slides from February 2022 (prepared with Dave Signorini who was temporarily assigned to work with my team) considering the optimal timing for NPI interventions to deal with new variants of the virus. This analysis weighs up the harm that would be caused from imposing what appeared in hindsight to be an unnecessary intervention against the harm that would be caused from not intervening or from imposing an intervention that was not sufficiently timely or stringent [DM/030 - INQ000249276].

- i. A set of Powerpoint slides used to brief a number of Green MSPs in February 2022 as the latest Strategic Framework document was being prepared [DM/031 - INQ000249277].