

Tuesday, 12 March 2024

1

2 (10.00 am)

3 **LADY HALLETT:** Ms Cecil.

4 **MS CECIL:** Indeed, good morning, may I call Minister Morgan,
5 please.

6 **BARONESS ELUNED MORGAN (sworn)**

7 **Questions from COUNSEL TO THE INQUIRY**

8 **MS CECIL:** Your name?

9 **A.** My name is Eluned Morgan.

10 **Q.** Thank you, and thank you for attending today and
11 assisting the Inquiry.

12 While you give your evidence today, if you could
13 keep your voice up. If I ask you to pause or slow down
14 it's because there is a stenographer who is undertaking
15 the note for the Inquiry, and also your voice needs to
16 be clearly received by the microphone because there is
17 a recording.

18 If I ask you anything that is not clear, please just
19 ask me to repeat it or rephrase it and of course I will
20 do so.

21 If I could just ask for your witness statement,
22 please, to be pulled up on the screen for one moment.

23 INQ000371645.

24 You signed this statement on 14 December of last
25 year. Is it true to the best of your knowledge and

1

1 Language.

2 I understand that you wish to say a few words in
3 relation to your ministerial responsibilities with
4 regard to the Welsh language in Welsh. Would you like
5 to do so now, Minister?

6 **A. (Interpreted):** Thank you.

7 Thank you for this opportunity to provide evidence
8 for this. I know that many people are anxious to get
9 replies to questions as a result of what all we went
10 through, as a country, as a result of Covid.

11 As you heard, I changed my role during the pandemic
12 on several occasions. In the first place I was
13 responsible for international affairs and the Welsh
14 language; obviously much of that portfolio closed down
15 during the pandemic, and I spent a lot of that time at
16 the beginning of the pandemic helping my deputy, who was
17 responsible for culture, tourism, and of course there
18 was nobody to take responsibility for hospitality, so
19 I stepped into that role. I spent a lot of my time on
20 that.

21 As you outlined, I spent time then from October as
22 a minister for mental health and welfare, and then in
23 May I took over as Minister for Health and Social
24 Services.

25 I think it's fair also to say I still -- I'm still

3

1 recollection?

2 **A.** It is.

3 **Q.** Thank you. I will touch today on a number of topics but
4 you will also be aware that the Inquiry has your written
5 statement and indeed the other documents and exhibits
6 that you provided to the Inquiry, and that will form
7 part of the evidence in due course.

8 If I may begin, firstly, by touching upon your
9 professional background and indeed the roles you played
10 in the pandemic.

11 First of all, if I may, in terms of the background,
12 from November 2017 to December 2018 you served as
13 Minister for Welsh Language and Lifelong Learning; is
14 that right?

15 **A.** That's right.

16 **Q.** From 2018 to October 2020 you were the Minister for
17 International Relations and the Welsh Language. Then
18 from October 2020 to May 2021 you were the Minister for
19 Mental Health, Wellbeing and the Welsh Language.

20 You will appreciate that it is your roles in the
21 more recent, those last two ministerial roles, that we
22 are interested in today.

23 If I can begin, therefore, by looking at the January
24 to October of 2020 period, that was when you were the
25 Minister for International Relations and the Welsh

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1 in that role. I don't think many people who were in
2 that role as health minister who's still in role today.

3 And to me the pandemic isn't over. We hope that -- over
4 the next few days to give the 10 million of
5 vaccinations. There are still waves of Covid affecting
6 us in the NHS. A few weeks ago, with the latest data,
7 there were 10 deaths as a result of Covid. That's in
8 the context of about 700 people per week who have died.
9 We're dealing with Long Covid. So there are lots of
10 things where we're still dealing with Covid, and that's
11 part of my responsibility to date.

12 **Q.** What I wish to do is to take you back, if I may, to the
13 beginning of the pandemic, and your role in Welsh
14 Government or -- decision-making.

15 You were a member of Welsh Cabinet; that's correct,
16 isn't it?

17 **A.** It is.

18 **Q.** We've heard evidence already from Vaughan Gething that
19 decisions taken by Cabinet were collective decisions?

20 **A.** They were.

21 **Q.** Indeed.

22 In addition to attending those Cabinet meetings, you
23 also attended daily ministerial calls.

24 **A.** Mm-hmm.

25 **Q.** Those were the ones that were first instigated in early

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1 April until June of 2020. You were engaged in the group
2 known as the Star Chamber, and indeed we're going to be
3 hearing more about that from Rebecca Evans, the minister
4 for finance, later this morning. Then also the weekly
5 core Covid-19 group that we've also heard a little bit
6 of evidence in relation to.

7 Upon taking up your role as Minister for Health and
8 Social Services in May of 2021, you then began to attend
9 the weekly meetings of the Covid update group; is that
10 correct?

11 **A.** That's correct.

12 **Q.** And that was with the First Minister, the Chief Medical
13 Officer for Wales, Dr Atherton, and Andrew Goodall?

14 **A.** That's correct.

15 **Q.** We will touch upon those as we move through.

16 First of all, if I may, as I say, take you back to
17 that beginning period and January to March of 2020, so
18 the period leading up to the first national lockdown.

19 With regard to your awareness of Covid-19, and the
20 first case of Covid-19 within the UK, am I right that
21 that came to your attention on around 29 January?

22 **A.** So the first case of Covid in the UK, yes.

23 **Q.** Indeed. And when it came to Wales, the first case was
24 approximately a month later, 28 February?

25 **A.** That's correct.

5

1 responsibility was to make sure we had very close
2 relationships internationally, St David's Day is a key
3 time for us to go and beat the drum for Wales abroad,
4 and so that was something that I carried out. So
5 I missed the first Cabinet meeting where Covid was
6 discussed.

7 **Q.** In terms of 23 February, did you consider at that point
8 Covid to be a real threat to either the UK or, more
9 specifically, Wales?

10 **A.** On 23 February, I don't think I did at that point, no.

11 **Q.** Indeed, and that's where you undertook the overseas
12 trips to Canada and the United States.

13 You then returned at the beginning of March, indeed
14 St David's Day, as I understand it, and then you made
15 a second trip to Ireland, on 11 March.

16 Now, this obviously postdated that first case of
17 Covid-19 in Wales. At that point did you again see
18 Covid-19 as being a significant threat to either the UK
19 or Wales specifically?

20 **A.** I think even at that point we hadn't realised quite how
21 much of a threat it was. The Foreign and Commonwealth
22 Office were not suggesting that people didn't travel
23 abroad at that time, so, again, this was a key
24 relationship for me to go and make sure that we had very
25 strong relationships with our Irish counterparts, our

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1 **Q.** Although you were not responsible or, indeed, involved,
2 as I understand it, in the Welsh Government's
3 preparedness plans, did you believe at that point, at
4 the end of February, that it would be possible to trace
5 and control those isolated cases, essentially
6 containment?

7 **A.** Well, I think there was -- I think at the time there was
8 an effort to do that. Whether we'd have been successful
9 I'm not sure, but at the time there was an effort to
10 contain it. But at that point we didn't have any cases
11 in Wales until 28 February.

12 **Q.** Indeed.

13 Now, following on from 28 February, you've also
14 described in your witness statement how, for you,
15 St David's Day, 1 March, was a key and critical time
16 because of your role as Minister for International
17 Relations and the Welsh Language.

18 So we've had the first case in Wales on 28 February,
19 you then make during that period, or over that period,
20 two international trips; is that right?

21 **A.** Well, one was -- took place before that first case, so
22 from -- I was out --

23 **Q.** 23 February --

24 **A.** 23 February. I think this was quite important, in the
25 sense that we'd just come out of Brexit, my chief

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1 nearest neighbours, straight after Brexit.

2 **Q.** And in terms of your state of knowledge with regard to
3 Covid-19 around that period of time, so up until around
4 11 March, that week that followed, how well did you
5 understand the threat to be, yourself personally?

6 **A.** I think I started to understand how serious the threat
7 was on my return from Ireland. Clearly that was the
8 week when there was a lot of discussion about whether
9 the rugby should go ahead, but on 11 March, you know, we
10 were still suggesting -- the rugby was still supposed to
11 be taking place a few days subsequent to that.

12 **Q.** Do you consider that the Welsh Government was slow to
13 recognise the serious public health threat that Covid
14 presented at that point?

15 **A.** I think if we had our time again, we ... we recognise
16 that we probably should have been making earlier
17 preparations.

18 **Q.** Now turning, if I may, to the lockdown itself, you
19 explain within your witness statement, it's at
20 paragraph 65, if that assists, page 16, that Covid was
21 widespread in Wales by the middle of March of 2020, and
22 you note that had there not been a lockdown at that
23 point, the impact would have been -- on "hospitals and
24 public services would have been overwhelming and many
25 more people would have died".

8

1 Just dealing with the timing of that lockdown,
2 firstly, do you consider that lockdown ought to have
3 been earlier than when it was instituted and could Wales
4 have done that in advance of the UK Government's
5 decision?

6 **A.** Well, at the time, it was very late when we realised
7 that the Welsh Government would have responsibility
8 effectively for being able -- for managing how we
9 responded to the pandemic. I think there was
10 an assumption that it would have come under civil
11 contingencies. So I think also there has to be
12 an awareness that in Wales lots of people get their
13 information from the UK press, and for us to have
14 initiated something prior to England would have been
15 very difficult, I think.

16 So, in retrospect, I think there's an agreement
17 across the United Kingdom that, given our time again, we
18 would have gone into lockdown slightly earlier.

19 **Q.** Thank you.

20 Just dealing with the assumption that you refer to
21 in relation to the Civil Contingencies Act, were there
22 any attempts by you or the Welsh Government to ascertain
23 how the pandemic would be dealt with in terms of
24 a lockdown or the use of NPIs, and whether it would
25 indeed be through the Civil Contingencies Act or Wales

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1 of concern in relation to presumably tourists visiting;
2 is that right?

3 **A.** Mm-hm.

4 **Q.** The following day, on 22 March, you sent a further
5 message, this time to the First Minister, reading:

6 "Mark ..."

7 It's INQ000376650.

8 "Mark, Tenby is full of visitors and the Daily Mail
9 is recommending the Welsh wilderness as a place to
10 escape. I have been asking for a statement on this
11 since Thursday. Please can we discourage people from
12 coming."

13 You explain the health board is very -- "extremely
14 concerned" about that.

15 We then see the reply which explain:

16 "We are meeting later today to receive reports from
17 local authorities and health boards, and to get legal
18 advice on powers available to us to act.

19 "Of course we are discouraging people from
20 travelling, as we have been since the start. We will
21 issue advice to caravan park owners, as fast as
22 possible. Thereafter, or ability to do more than advise
23 and Discourage depends entirely on our legal powers to
24 do so."

25 It continues -- I'm afraid it's cut off on this one,

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1 utilising its own devolved powers?

2 **A.** Well, I think that was very much more in the space of
3 the health minister's responsibility at the time, so
4 that was not something that I became involved with.

5 **LADY HALLETT:** When you say given your time again, could
6 have locked down slightly earlier, do you want to give
7 any timing on it? Some people have talked about a week
8 earlier, some two weeks earlier. Are you talking about
9 days earlier?

10 **A.** I think it's very difficult without the data. Obviously
11 with the benefit of hindsight I think in all cases there
12 were opportun -- there ... we would have -- we would
13 have done something perhaps a week earlier.

14 **LADY HALLETT:** Thank you.

15 **MS CECIL:** Moving through March, if I can bring up, please,
16 a WhatsApp message that you sent in the Welsh
17 ministerial WhatsApp group, what you have to say there
18 is in relation to the position in Wales, and you've
19 explained that Covid-19 was fairly widespread at this
20 stage, and we see that the message is dated on 21 March
21 and you're sending a message saying:

22 "We really need to stop people from coming to Wales
23 on holidays. Two bus loads of pensioners arrived in St
24 Davids on Friday."

25 Firstly, obviously, you were expressing some level

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1 but it continues, just so that we have the complete
2 picture, to say:

3 "We will know more about that by the end of the day.

4 I will be talking to Nicola Sturgeon about the approach
5 they are taking in Scotland. Thanks, Mark."

6 Two questions, if I may, that arise or two issues
7 that arise from that.

8 The first relates to the response by the
9 First Minister. To place this in context for you, on
10 20 March the First Minister had used devolved powers to
11 close restaurants, bars and cinemas, but with what we
12 see here is a further reference to getting legal advice
13 on the powers available to act.

14 At this point, is it the position that the Welsh
15 Government were not clear whether they had the legal
16 power to prevent people travelling into Wales?

17 **A.** Well, that's certainly what the text suggests. I think
18 it's probably worth emphasising on 16 March there had
19 already been a requirement for people to not undertake
20 unnecessary travel, and what was clear is that people
21 were not adhering to that. I think I was supersensitive
22 to this, because I live in St Davids in Pembrokeshire,
23 where there's a huge number of visitors, and they were
24 still streaming in at that point, which is why it was
25 something that I was particularly keen to look at.

12

1 But yes, in relation to the legal powers, the text
 2 from the First Minister suggests that we were still
 3 looking for our ability to enforce it. We -- it's not
 4 just about being able to make a statement, it's about
 5 our ability to make sure that people actually follow
 6 through on what we've asked them to do.

7 **Q.** Firstly, it's unclear what legal powers were available
 8 to stop it and, secondly, what legal powers were,
 9 therefore, available to enforce it. So at that point
 10 the Welsh Government were not clear as to either set of
 11 those powers; is that -- that's a summary of what you've
 12 just explained --

13 **A.** That seems to be the suggestion from the text.

14 **Q.** The second matter that really arises from that is that
 15 you are making it plain that you've been calling for
 16 a statement to be put out to try to stop people coming,
 17 and that statement you had been requesting since at
 18 least Thursday 19 March, a few days prior.

19 Firstly, in relation to that, do you think that
 20 firstly getting that message out even on 19 March was
 21 too late?

22 **A.** Well, there had already been a requirement for people to
 23 not undertake unnecessary travel from 16 March, so this
 24 was reinforcing a statement that had already been made.

25 **Q.** But just dealing with that secondly, did you have

13

1 minister for international relations, again around this
 2 time.

3 To place it in context, you attended the
 4 UK governmental ministerial international Covid response
 5 meetings. Those were chaired by the foreign and
 6 Commonwealth minister at the time. How regular were
 7 those meetings?

8 **A.** They weren't very regular, they were quite sporadic,
 9 they -- we didn't have much warning in terms of
 10 paperwork. Quite often there wasn't even a very clear
 11 agenda. I did get a sense that they were just
 12 responding almost to some of the questions coming up.

13 There was a lot of work initially in relation to
 14 repatriation of citizens who were stuck abroad. There
 15 was some general talk about vaccination and, when that
 16 would be developed, whether it would be available to
 17 developing countries.

18 I kept on asking for information from them to see if
 19 we could learn from other countries in terms of what
 20 they were doing and what lessons we could learn. That
 21 wasn't forthcoming, so I commissioned work from our own
 22 international offices to -- for them to undertake some
 23 work to see what we could learn from what countries had
 24 done abroad, in particular later on when it came to
 25 re-opening after -- after the end of lockdown.

15

1 concerns that your concerns were not being acted upon?
 2 In short, that you had requested a statement and yet
 3 that still had not been undertaken, given everything you
 4 were seeing about people flooding into your -- even into
 5 the area that you lived?

6 **A.** I was really aware that, by this time, the Welsh
 7 Government was in full swing in terms of trying to
 8 mitigate against some of the worst effects that may be
 9 coming our way, and so I think they were firing on all
 10 cylinders. This might have been one of those areas
 11 where work had already -- you know, the announcement had
 12 been made. It was reinforcing an announcement that
 13 I was looking for.

14 **Q.** But obviously it's a message that you are sending saying
 15 "I have been asking for a statement on this since
 16 Thursday". It was something that you considered to be
 17 of fairly significant importance. Do you consider the
 18 First Minister was taking it as seriously as you were at
 19 that point?

20 **A.** I think the First Minister was taking it seriously, but
 21 I think he had a huge number of other issues that he had
 22 to consider at the same time.

23 **Q.** Thank you.

24 I now want to ask you about international relations
 25 and communications that you had within your role as

14

1 **Q.** Thank you. Just picking up on what you've explained
 2 there, do you know why the information you requested was
 3 not forthcoming from the FCO at that point?

4 **A.** I don't know why it wasn't forthcoming, no.

5 **LADY HALLETT:** Was it necessarily the right source? I'm
 6 wondering whether -- would it have been the FCDO or
 7 would it have been scientists working in a different
 8 group? I'm just wondering whether it was the right ...

9 **A.** It might have been, but it was the only forum I had
 10 access to, so why wouldn't I ask the question within
 11 that forum.

12 **LADY HALLETT:** I understand. Yes.

13 **A.** So I think it would have been up -- should have been up
 14 to the FCO then to go and ask the scientists. Our
 15 scientists also, later on, did some of that
 16 international work as well, but I guess right at the
 17 beginning of the pandemic, you know, the international
 18 relations portfolio was clearly not an area -- and it's
 19 a reserved area, so already, you know, there are
 20 limitations on how much we can do within that -- that
 21 portfolio.

22 So I was -- I was looking for work. I was looking
 23 for ways to contribute to what I knew to be a very
 24 serious situation. I thought this may be a way that
 25 I could contribute through the networks that I had on my

16

1 availability.

2 **MS CECIL:** Indeed, you do mention also within your statement

3 that you were not always sighted on all available

4 information at UK level in relation to these meetings,

5 you also refer to PPE procurement and distribution.

6 Other evidence that the Inquiry has heard indicates that

7 DHSC, the Department of Health and Social Care, was

8 fairly involved within that role instead of the FCDO.

9 Was that something that you were aware of, or was there

10 a lack of clarity over which departments were dealing

11 with which issues?

12 **A.** I think there was an understanding that that was being

13 led from a different department. The opportunity was

14 for the FCO and for us, in our international offices, to

15 try and do some work within those nations to try to

16 identify if we could get some protective equipment

17 directly from them. If we found sources, then we

18 suggested that they went via our Life Sciences Hub, so

19 that was a very clear method for them to -- for the

20 Welsh Government to procure.

21 **Q.** Just dealing then and picking back up on the advice that

22 you commissioned, with regard to that, firstly, was it

23 effective? Was it productive? Did you receive useful

24 information from overseas? And to follow up on that, so

25 that you understand why I'm asking you the question, how

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1 were planning to open up in relation to tourism,

2 Catalonia, they were telling us about how they were

3 using technology in relation to contact tracing, the

4 Basque Country, New Zealand, so I was trying to do some

5 bilaterals to learn also directly from people, my

6 counterparts in those countries.

7 **Q.** With regard to those bilaterals, those were with

8 countries that Wales had an established relationship

9 with; is that right?

10 **A.** That's right.

11 **Q.** And you've mentioned Brittany, Catalonia, the Basque

12 Country, and there's a common link with language?

13 **A.** Yeah.

14 **Q.** Overall, what learning did you take away from other

15 countries' experiences in terms of the easing of the

16 lockdown measures that you've already touched upon, and

17 education?

18 **A.** Well, I think there was some learning around things like

19 ventilation, face coverings. There --

20 **Q.** I'll just pause you there for one moment. Ventilation,

21 do you mean ventilation of buildings as opposed to

22 medical treatment?

23 **A.** Ventilation in terms of buildings, yes, school

24 buildings, yes.

25 **Q.** Sorry, face coverings, and were there any other areas?

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1 did that information then inform Welsh Government

2 decision-making?

3 **A.** I think it -- I think it was found to be useful.

4 I distributed it to my colleagues across the Cabinet, so

5 that they had it directly, but also I shared it with the

6 Chief Medical Officer. I think one of the areas where

7 it proved particularly useful was in relation to

8 education and how we'd re-open education settings and

9 how learn from how other countries had fared in that

10 area.

11 **Q.** Thank you.

12 Again, just picking up with regard to international

13 approaches, the Inquiry has heard from Dr Roland Salmon

14 in relation to advocating for an approach that more

15 closely resembled the Swedish response to the pandemic.

16 Is that a matter that at that point you considered, or

17 at any point during the pandemic?

18 **A.** It wasn't a serious consideration by the Welsh

19 Government. I can't remember us having a conversation

20 around the Swedish model, and we don't have any offices

21 in Sweden, so we wouldn't have had any evidence from

22 there. But what we did do, what I did do, was to try to

23 follow up with some of the areas where we have much

24 closer relationships, so, for example, Brittany,

25 conversations with Brittany authorities about how they

18

1 **A.** Those are the areas that really stood out to me as areas

2 where I think it was fed into the education department.

3 **Q.** If I may now turn to government decision-making and the

4 role of medical and scientific advice, please. A theme

5 throughout your witness statement relates to the

6 limitations available -- of the data and evidence

7 available to you in the Welsh Government and how that

8 then impacted on the decision-making that you undertook.

9 If I can bring up, please, paragraph 6, please, of

10 your statement. It's at page 2. You explain there,

11 approximately halfway down, that:

12 "The Welsh Government's leadership was deliberately

13 cautious in its response ... in particular where there

14 were recognised limitations in the scientific advice and

15 data ... particularly the case when it came to making

16 decisions about easing lockdown restrictions, and that

17 seemed to be a tone which was in keeping and chimed with

18 the majority of people in Wales."

19 You continue to explain that often decision-taking

20 was made "without always having as definitive or

21 comprehensive evidence base that, in an ideal world,

22 [you] would have liked". So in relation to

23 decision-making, when you say it was "deliberately

24 cautious", do you mean in retaining restrictions for

25 longer?

20

1 **A.** Before every meeting when we were discussing in the
2 21-day reviews, we were reminded by the First Minister
3 of the limitations of the legal powers that we had, and
4 one of those is that we should act proportionately, and
5 so we were very aware of that.

6 I think just in relation to being deliberately
7 cautious, I think if the evidence wasn't as clear as
8 we'd like, we would err on the side of caution, and
9 I think we were aware that the scientists generally were
10 just one step ahead of us on the information that we
11 were being given.

12 **Q.** Thank you.

13 Just comparatively, the Inquiry has heard evidence
14 that the general pattern in relation to the easing of
15 restrictions, which is what we're discussing, was that
16 England and Northern Ireland would ease restrictions and
17 they re-opened the economy first, followed by Scotland
18 and then Wales. Is that right?

19 **A.** That's my understanding. I don't think any of it was
20 deliberate, in terms of us comparing ourselves with
21 others. We were trying to do what was right for Wales.
22 And that cautious approach seemed to chime with the
23 people of Wales as well.

24 **Q.** Indeed. And that follows -- that perhaps answers my
25 next question to some extent, which is why you think it

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1 Picking up on the point of balance, do you consider
2 that other harms, such as the ones you've just
3 identified, from non-Covid related illness, another one,
4 and socioeconomic and other societal harms, were also
5 afforded equal weight or given proper consideration when
6 making those decisions about NPIs?

7 **A.** I think we did try to make those decisions in the round,
8 but I think there was also an understanding that if you
9 didn't bring Covid under control, then it would have
10 an impact on the economy. So we didn't -- we thought
11 that the link was very strong of one with another. So
12 we -- I think, in terms of the balance, we were very
13 aware that the public health requirements was something
14 that we should consider, on balance, probably very
15 seriously, compared to some of the other areas that we
16 were also concerned about, like the emotional wellbeing,
17 the economic wellbeing of the nation.

18 **Q.** You were clearly receiving a significant amount of
19 scientific advice and datasets. Do you consider that
20 you were equally served with respect to inputs in
21 relation to those other societal harms? Were you
22 receiving similar like advice?

23 **A.** I think we were. I mean, just if you look at the
24 scientific advice, we had -- the Technical Advisory Cell
25 were giving us very comprehensive information, perhaps

23

1 was that it followed that pattern generally. You've
2 explained that you were taking, as far as you were
3 concerned and the Welsh Government, decisions that were
4 right for Wales, but more generally why do you think
5 that that followed that pattern, that Wales would
6 typically be the last one to re-open or ease those
7 restrictions?

8 **A.** I don't think it was a deliberate decision to do it in
9 comparison to any other countries. We were doing what
10 was right for our nation. We were looking at the data,
11 looking at the evidence, looking at the spread, looking
12 at the ability of the NHS to cope, so those were the
13 things that were determining our -- our decision-making.

14 And it wasn't just about that, we were also trying
15 to make sure that we had a balanced approach. We knew
16 that lockdown was affecting people emotionally,
17 economically, physically, and so we -- we had to balance
18 the public health requirements with all of those other
19 requirements.

20 **Q.** With regard to the Cabinet decision-making, a large
21 number of those papers clearly demonstrate that data,
22 scientific data and modelling formed a substantial part
23 of those discussions, and indeed was given considerable
24 weight when it came to making the decisions in relation
25 to the NPIs and relaxation.

22

1 20 pages, before every 21-day reviews, we had the KAS
2 information, we had the information, a statement from
3 the Chief Medical Officer, prior to every 21-day review.
4 We had the SAIL database, which was giving us that
5 modelling that tried to project what would happen in
6 future. The NHS also told us what the situation was.
7 But then on top of that, we did have feedback in terms
8 of, you know, the impact assessments, we had equality
9 impact assessments, we had extensive conversations with
10 our social partners and with economic partners as well.

11 So it wasn't just one aspect that we were looking
12 at; we had evidence from all of those. And one of the
13 things that we did very carefully and very seriously was
14 to have really comprehensive discussions with our
15 stakeholders before we implemented any changes.

16 So, you know, they made it very clear to us,
17 particularly in my dealings, for example, in relation to
18 opening hospitality, you know, how difficult it was for
19 us, for them, and how practically we could open
20 whilst -- whilst protecting people and trying to
21 mitigate the possibilities for the virus to spread.

22 **Q.** Thank you.

23 I want to move now, if I may, to the use of
24 wastewater sampling, wastewater sampling having been
25 used throughout the pandemic in Wales as one of the

24

1 primary surveillance methods in relation to tracking the
2 virus; is that right?

3 **A.** That's right.

4 **Q.** Again, that was a scheme that was led by Bangor
5 University, it had Welsh Government funding, included
6 Cardiff University, Public Health Wales and Welsh Water.

7 Can you just briefly explain how wastewater sampling
8 was used by the Welsh Government in its decision-making
9 in relation to NPIs.

10 **A.** So there are about 48 places where samples were taken
11 from waste water, and that gave us insight into about
12 80% of the population of Wales, so we got a really good
13 coverage. And the real benefit of this is that it
14 didn't depend on how much testing was happening within
15 the communities.

16 What was interesting initially, because this was
17 quite a new science, was actually comparing it with the
18 ONS data, and it did seem to track the ONS data, but the
19 difference was that actually this was very much real
20 time, but also gave us an insight into what kind of
21 variants were circulating in Wales. So we had early
22 sight of when Omicron had hit, but it wasn't just about
23 Omicron, we can see lots of other things within that
24 waste water.

25 It was helpful, I think, more than anything, in

25

1 budgets, and we've had to make some really, really
2 difficult decisions. You know, this is not a cheap way
3 of monitoring, so -- I think we'd spent about £5 million
4 on it -- so, with real reluctance, we did switch that
5 off. But then actually we were concerned at the
6 beginning of December that there may be a new variant,
7 and I was really concerned that we didn't have the kind
8 of monitoring, so we've actually switched it back on
9 now, but obviously not with quite the same ability to
10 monitor as we did before because we haven't put as much
11 investment into it.

12 But I just think it's quite -- it's worth
13 remembering that even the tools that we have, that we
14 found really useful, have to be balanced against the
15 day-to-day activity that we have to provide to the
16 public of Wales in terms of serving them and the NHS.

17 **Q.** So at the moment it is currently operating --

18 **A.** It is --

19 **Q.** -- limited degree, is that --

20 **A.** It is, exactly.

21 **Q.** Following on from that, is it ready and available,
22 therefore, to be stood up in the event of a future
23 pandemic?

24 **A.** We could do that, but obviously there's a danger,
25 because you need to make sure that you've got the

27

1 giving us the confidence of when we could relax some of
2 the -- some of the restrictions, because we could note
3 where, across the whole of Wales, the virus was at its
4 peak. So we knew it was coming down so we could relax
5 with a bit more confidence.

6 **Q.** So you could monitor the decrease, effectively, through
7 the wastewater sampling --

8 **A.** Exactly.

9 **Q.** -- localised sampling also gave you some insight into
10 the regional variations and indeed, as you say, the
11 various different variants?

12 **A.** Absolutely. So, you know, just to give you an example,
13 later on when the Omicron variants hit, you know, there
14 was a huge peak in terms of the number of cases but it
15 came down very, very quickly which meant that we were
16 able to relax some of the conditions around -- during
17 that time, because we were confident because we had the
18 readings from the waste water.

19 **Q.** Indeed.

20 Then plainly it was something -- a very useful tool,
21 and valuable tool in your view. It's the Inquiry's
22 understanding that the scheme was ended last August, and
23 so no longer continues. Is that correct?

24 **A.** So this was really difficult for us. We are massively
25 challenged financially in relation to the two NHS

26

1 scientists, and once you lose the scientists, then
2 obviously that's more difficult to switch on. But there
3 is now a clear skeleton system that we can build up.

4 **Q.** And potential standing capacity?

5 **A.** That's right.

6 **Q.** Just if I may now turn to the Welsh language.

7 And I appreciate again, Chair, this is a position
8 whereby we may switch to the Welsh language. So could
9 I ask that everybody utilises their headphones that
10 needs to.

11 Just in relation, please, to the impact upon the
12 Welsh language, the Culture, Welsh Language and
13 Communications Committee considered the impact of
14 Covid-19 on those speaking the Welsh language, there's
15 a report that was published in December of 2020.

16 And that can be found at INQ000066501.

17 But in short, the report made six recommendations.

18 The need to reinstate budgets for support in
19 promoting the Welsh language, because of reallocation
20 during the response.

21 The need to promote the Welsh language in the
22 post-pandemic economic recovery plan.

23 And the need to update the digital Welsh language
24 strategy.

25 Just focusing on those three for a moment, have

28

1 those recommendations been implemented?

2 A. Sorry, I ...

3 (Interpreted): I'll just change to Welsh. I will
4 answer in Welsh. Is that okay? I will answer this in
5 Welsh.

6 Obviously the money has gone back to the budgets,
7 certainly in terms of technology, we are very aware that
8 working with technology has become an exceptionally
9 important part of all our lives, and it's incredibly
10 important to understand how that can help us with the
11 language, and one of the elements that became apparent
12 within the Covid was millions of people were try --
13 starting learning the Welsh language online, which was
14 something quite novel really. And those recommendations
15 have been taken seriously.

16 Can I also say on a more general point relating to
17 the Welsh language, about 440,000 people speak Welsh,
18 440,000, sorry, so 17% of the population. So we've got
19 our -- we're very keen to get a million speakers by
20 2050, and one of our concerns ...

21 (In English): I was going to go on to say how Covid
22 had impacted the Welsh language, but that's fine.

23 Q. Indeed, you set out in any event within your witness
24 statement the impact of it, but more broadly the report
25 sets it out in some detail, including those

29

1 A. No, I don't accept that. I think that the -- well,
2 I know that mental health was always considered
3 an essential service, we take mental health very
4 seriously in Wales, we have a ringfenced allocation for
5 it. But there were concerns that fewer people were
6 being directed to mental health services, we saw that
7 there were more self-referrals. And we very aware that
8 there were people who were struggling, there were people
9 who were dealing with bereavement, there were people who
10 were dealing with financial challenges, and all of these
11 things were having an impact on people's mental health.
12 We were particularly concerned about young people and
13 a survey was carried out. I think in late October,
14 which suggested that 50% of the people of Wales were
15 concerned about their mental health, and that, when it
16 came to young people, three-quarters of people between
17 the age of 18 and 25 were concerned about their mental
18 health. So it was an issue that we wanted to take very
19 seriously.

20 We -- just before I was appointed, there was
21 a refresh of the Together for Mental Health strategy,
22 which deliberately targeted some additional resources
23 towards supporting people's mental health, particularly
24 telling people about the CALL Mental Health Helpline,
25 making sure that we gave more resources to the tier 0

31

1 recommendations, and my focus was, as a consequence,
2 predominantly on those recommendations, to see what had
3 actually been undertaken.

4 If I may then move to the period of October 2020 to
5 May of 2021, on 9 October you were appointed to a newly
6 created ministerial position, and that was for mental
7 health, wellbeing and the Welsh language. That was, as
8 I understand it, specifically created to allow
9 Vaughan Gething, in his role as Minister for Health and
10 Social Services, to focus on pandemic issues,
11 NHS delivery and performance.

12 Was the ministerial post created directly as
13 a result of the pandemic and concerns in relation to
14 mental health and wellbeing, or was it a post that had
15 already been considered prior to the pandemic?

16 A. That's a question that you'll have to make to the
17 First Minister who has responsibility for organising how
18 portfolios are determined.

19 Q. Thank you.

20 Given that it was a newly created post with regard
21 to mental health, do you consider, looking back over the
22 period that -- in the run-up to October 2020, so
23 January 2020 to October of 2020, that mental health may
24 not have been given enough focus by the Welsh Government
25 over that period?

30

1 and tier 1, which is the kind of third sector support
2 that can be given, making sure that we had cognitive
3 behavioural therapy online, and also reaching out to
4 those communities that perhaps had not reached out for
5 mental health support, including, for example, people
6 from the black, Asian and minority ethnic communities.

7 Schools were also really important to us, so we
8 increased the funding available for mental health in
9 schools. So there were a huge number of areas where we
10 were concerned. And also we were concerned about the
11 mental health of people on the frontline in our health
12 and care services. So we put an extra -- we put
13 £1 million into support for them and also for school
14 teachers.

15 LADY HALLETT: You mentioned the mental health of those
16 suffering from bereavement. Was there any specific
17 bereavement support?

18 A. There is a specific bereavement support available for --
19 for people within Wales. If they contacted the CALL
20 Mental Health Helpline, then they would have been
21 directed.

22 LADY HALLETT: During the pandemic?

23 A. Yes.

24 LADY HALLETT: So it wasn't specific to bereavement, it
25 was: if you're suffering from bereavement, it's

32

1 affecting your mental health, then you have to go to the
2 mental health hotline?
3 **A.** Yes.
4 **MS CECIL:** Was it advertised or flagged as being bereavement
5 support or was it simply mental health support?
6 **A.** I think it was more mental health support, and I made
7 a point if I ever did the briefings to make sure that
8 everybody had access to the number. So we did make
9 a real effort to try to make sure that people had access
10 to the number.
11 **LADY HALLETT:** It's just that a lot of bereaved wouldn't
12 consider that if they're going through grief -- and the
13 grief during the pandemic, as I'm sure you'll
14 appreciate, was exacerbated by the circumstances -- they
15 wouldn't consider they were mental health issues,
16 therefore they may not think about contacting a mental
17 health line. They had specific bereavement problems
18 that needed support.
19 **A.** Yeah.
20 **LADY HALLETT:** Do you accept that?
21 **A.** I accept that, yes.
22 **MS CECIL:** I now want to turn, if I may, to later in the
23 year in terms of the firebreak. So I'm looking at the
24 autumn period, in short, of 2020, and then the second
25 lockdown.

33

1 in October.
2 So it's difficult to say, if we'd have gone earlier,
3 we hadn't actually tested them out much prior to that
4 event, and by 15 October we had an agreement in
5 principle to go into a firebreak.
6 **Q.** Now, in relation to looking at the rest of the UK and
7 the NPIs that were being undertaken at that point, were
8 you aware that in relation to the localised tier system
9 that was in place across England, that the scientific
10 advice was that those measures would simply not be
11 enough? Were you aware of that?
12 **A.** I was aware of that on 15 October when we had the
13 discussion in Cabinet. I don't think I was aware before
14 that, because I remember very clearly that I think we
15 were told that Sir Patrick Vallance had suggested that
16 that should be what we were doing. I don't think I'd
17 heard it prior to that.
18 **Q.** When you say that Sir Patrick Vallance had suggested
19 that that was what you should have been doing, what
20 measures are you referring to?
21 **A.** To the introduction of a firebreak.
22 **Q.** Firebreak. That was the first time that you were aware
23 of that advice?
24 **A.** I think that was the first time I was aware of that
25 advice.

35

1 With regard, firstly, to the timing, do you consider
2 that the firebreak was timely or ought that to have been
3 instituted earlier?
4 **A.** I think we were still trying to work out whether the
5 local restrictions were effective. There were parts of
6 Wales where actually the virus wasn't very strong at the
7 time, so we had to work out at what point the firebreak
8 should be instigated because there were parts of Wales
9 where the rates were very low, and at all times we had
10 to act proportionately, so I think that was something
11 for us to consider as well.
12 **Q.** There has been evidence of scientific and medical advice
13 from both the CMO and the CSA, so Dr Atherton,
14 Dr Orford, that ultimately NPIs action should have been
15 taken sooner and for longer, and indeed, in relation to
16 the local health protection areas, the First Minister
17 has described those, such as in Llanelli, as a failed
18 experiment. Do you agree with that?
19 **A.** Well, they clearly didn't work, which was why we needed
20 to go into a firebreak. So I think we were all learning
21 at this point, they were still very much a tool that was
22 being used in England. We had our first, kind of, local
23 lockdown in Caerphilly on 8 September and we were still
24 putting -- starting to put some local authorities in at
25 the start of October, so we were still putting them in

34

1 **Q.** Looking back now, do you consider that different
2 decisions should have been taken throughout September
3 and October of 2020?
4 **A.** At the time, I think us going into a firebreak before
5 England was quite a brave decision. We were still not
6 sure whether the Welsh public would follow us. This --
7 you know, going into a lockdown at the same time, on
8 23 March, we went in together. We came out more slowly.
9 Would they follow us, going into winter, a difficult
10 time, into another lockdown? And obviously we were
11 really concerned about the financial ability -- of the
12 firepower of the Welsh Government at the time to be able
13 to sustain a lockdown for as long as was necessary. And
14 I think the scientists were suggesting that we should be
15 doing it for three weeks and I think we didn't have the
16 economic power to maintain a three-week firebreak.
17 And, you know, it was really disappointing that
18 the UK Government did not -- was not forthcoming in
19 terms of financial support. And then two weeks later,
20 when they wanted to go into a firebreak, they suddenly
21 announced a very different approach. And I think that
22 was a very difficult time for us as a nation, because
23 there were -- I think people felt like we were
24 second-class citizens in the context of the
25 UK Government. What was suitable for them was not

36

1 suitable for us two weeks earlier, and I think that was
2 a huge disappointment to us.
3 **LADY HALLETT:** I think I need to point out there is another
4 side to that debate. I have heard evidence that
5 suggests the UK Government weren't taking that approach,
6 but I think I'll just put that on record at this stage.

7 **MS CECIL:** Indeed.
8 Then of course there is other evidence before
9 the Inquiry.

10 May I also just touch upon some aspects within your
11 witness statement, because you suggest in your witness
12 statement that actually a big factor in limiting the
13 firebreak to two weeks as opposed to three was actually
14 not financial but was to balance the harms of not
15 locking down against the harms of locking down,
16 effectively with one eye, for example, on people's
17 mental health and other implications and repercussions.

18 So with regard to that aspect, was that a primary
19 factor, as far as you were concerned, in limiting it to
20 two weeks as opposed to three weeks?

21 **A.** I think what was more important for me is that we were
22 very clear that it would be a short period of time. So
23 I was very concerned about people's mental health, going
24 into a cold, dark winter, so locking down then was very
25 different from locking down going into spring. So for

37

1 **Q.** But overall, given that advice had been received as
2 early as mid-September that a circuit-breaker was needed
3 and would be most effectively implemented early and
4 deeply -- and I'm sure you've heard more broadly the
5 evidence in relation to interventions being early,
6 deeper, harder -- do you consider the delay in
7 implementing a circuit-breaker in Wales to be justified?

8 **A.** I do think that we can justify the circuit-breaker in
9 Wales.

10 **Q.** The delay. Not the circuit-breaker but the delay --

11 **A.** The delay --

12 **Q.** Taking it from the initial advice, in mid-September, all
13 the way through until 23 October?

14 **A.** One of the considerations was about the half term
15 holiday and whether that would help or hinder the spread
16 of the virus, so that was the area that we wanted more
17 advice on, which is why I think there was a greater
18 delay.

19 **Q.** Is your evidence, therefore, that the delay is justified
20 by the need for further advice, as opposed to being in
21 receipt of that scientific advice, as I say, in
22 mid-September?

23 **A.** In retrospect, we probably should have gone a week
24 earlier and should have gone for longer, but there were
25 reasons why that wasn't the case.

39

1 me the most important factor was to manage expectations,
2 whether that was around two weeks or three weeks.

3 I think it was more the economic argument and
4 concerns that led us to have the two-week restriction
5 rather than three weeks.

6 **Q.** Just dealing, if I may, with the timing of that
7 decision, a firebreak was agreed to in principle by
8 Cabinet on 15 October, due to start and commence on
9 23 October, but that in-principle decision was not
10 formally approved until 19 October, so effectively it
11 took those four days to actually make that decision into
12 a formal decision.

13 Am I right that the delay there was because you say
14 there was insufficient information to make a fully
15 informed decision at that point, that you wanted further
16 advice on risks of transmission from schoolchildren?

17 **A.** Yep, so that was a consideration. We wanted to be clear
18 whether there was a greater risk of having children in
19 unregulated environments, where they'd be mixing, rather
20 than a regulated environment, in relation to being in
21 school. So we wanted further advice on that, and that
22 advice was forthcoming. So I think -- 15 October was
23 a Thursday, and clearly people must have worked very
24 hard over the weekend to give us that advice, which was
25 given to us on the following Monday.

38

1 **Q.** Now if I may turn to slightly later in the chronology
2 and look at Omicron, and bring us back into summer of
3 2021 into winter of 2021.

4 Can I ask for [INQ000388561], please.

5 This is in relation to 14 July 2021. This is a few
6 months after you became the Minister for Health and
7 Social Services. There is a Covid-O meeting about
8 relaxing inbound border health measures for vaccinated
9 travellers and that same day we see you texting
10 Ms Jenkins and saying:

11 "On covid O. We are all fucked!!"

12 What prompted that text?

13 **A.** Can I first apologise for my fruity language, I don't
14 think that's going to go down very well with my husband,
15 who's a priest. And being a vicar's daughter, that's
16 probably not what you want to see.

17 But this was quite early on after my appointment, so
18 on this particular Covid-O, there were some very
19 interesting discussions, there was a suggestion that we
20 should be opening up our borders to travellers coming
21 from France and the introduction of a pilot programme
22 where we would recognise vaccination certificates from
23 France and allow travel to recommence. But on the same
24 day there was a discussion in a different Covid-O about
25 whether France should be put onto the red list. So

40

1 I just found that a massive contradiction and very, very
2 worrying.

3 There was also the issue about whether we should
4 allow visitors to come from the United States and
5 whether we should recognise their vaccination
6 certificates. I think they had a certificate called the
7 CDC, and it was made very clear on Covid-O that there
8 was real opportunity for fraud in relation to the use of
9 the CDC. So, again, that was something that concerned
10 me.

11 The third thing was that there was a very clear
12 concern on that meeting that the Border Force services
13 were not ready for the kind of ramp-up so there was no
14 operational problems.

15 So I think that was the context in which I was
16 making that very fruity remark.

17 **Q.** Thank you.

18 I'm now going to go into winter, and that's when,
19 of course, Omicron first emerged. We don't need to turn
20 to it, but the First Minister for Wales and the
21 First Minister for Scotland wrote a joint letter to the
22 Prime Minister on 29 November in relation to the risks
23 posed by Omicron.

24 On 27 November, which was also the date incidentally
25 when the first variant of Omicron was identified in the

41

1 countries on the red list, which meant that they had to
2 go into quarantine, they had to take a test on day 2 and
3 day 8, we brought forward the booster campaign, and we
4 agreed to look at the regulations on a weekly basis
5 because we were so concerned about the changes.

6 And you referred there to a request by the
7 First Minister to ask for a COBR meeting from -- with
8 the UK Government, that I don't think happened till
9 later.

10 **Q.** If it assists, the COBR took place subsequently, on
11 10 December.

12 **A.** Later, later.

13 **Q.** Yeah. And the letter was on 29 November.

14 You refer in your statement to there being various
15 information gaps at that point in relation to Omicron,
16 including the efficacy of vaccinations, so whether the
17 vaccine would work, and other matters, including the
18 severity, essentially, of the variant.

19 What decisions do you consider would have been made
20 differently had there not been those information gaps
21 there?

22 **A.** So we didn't know about the efficacy of the vaccine and
23 we didn't know how long the protection was in the people
24 who were vaccinated, so waning, we were very worried
25 about waning, in particular amongst the most vulnerable.

43

1 UK, you sent a WhatsApp message to the Northern Irish
2 minister for health, Robin Swann -- if I can call that
3 up, please -- at INQ000331060, stating:

4 "We are doomed!"

5 Then we see a response of:

6 "mix of that [we're doomed] and 'don't panic'."

7 Do you recall what that was in relation to? Was
8 that Omicron?

9 **A.** That was absolutely Omicron. So the first case we'd
10 heard of had been identified in South Africa on
11 22 November, the first case in the United Kingdom was on
12 27 November. What we did know is that this was
13 a variant that transmitted very quickly and I was really
14 concerned at this point that we would see some quite
15 considerable peaks as a result of Omicron entering our
16 country.

17 **Q.** You explain that you were very concerned. Was there at
18 that point a fatalistic mindset within the Welsh
19 Government that there was going to be a future wave and
20 more restrictions were necessary, rather than waiting to
21 see what the evidence was or scientific advice was as it
22 unfolded?

23 **A.** We -- there was no fatalism at all. We got onto a very
24 serious footing. We held, I think, four or five Cabinet
25 meetings within a week. We -- first of all, we put ten

42

1 So we -- as I say, what we did is to bring forward the
2 booster vaccination.

3 Sorry, did I answer your question properly?

4 **Q.** My question was: which decisions would you have made
5 differently?

6 **A.** I don't think we would have made many differently.
7 I think you can see from the evidence that I put forward
8 that there was a very concentrated increase in terms of
9 the drumbeat of tightening up the restrictions, so,
10 for example, we made it a legal requirement for people
11 to be able to work from home, we put more guidance in
12 place around what kind of face coverings should be worn.
13 We already had Covid passes that were necessary to go
14 into cinemas and theatres and nightclubs. We encouraged
15 people to use lateral flow tests. So there were a whole
16 series of things that we tightened up ready for what we
17 knew was going to be quite a challenging time.

18 **Q.** If I may ask you, please, about nightclubs, one of the
19 matters that you've just mentioned.

20 And if I could take you to INQ000376661.

21 You explain about tightening up various restrictions
22 and the Covid passes. Nightclubs were forced to close
23 from 27 December. You'll appreciate that's probably one
24 of their busiest times of year, it's the New Year
25 period.

44

1 I just want to deal with your text message here,
2 please, if I may, you say:
3 "Mark, I am concerned that if we keep nightclubs
4 open we lose our moral authority to ask people to limit
5 contacts. I was hoping that the papers might have given
6 that as an option."

7 So was the decision in relation to nightclubs one
8 based essentially on moral authority or perception as
9 opposed to dealing with the scientific advice or
10 evidence in relation to the risks that were posed in
11 such environments, through use of the Covid passes,
12 for example?

13 **A.** No, I mean, we'd had TAC advice previously, in the
14 previous July, that set out some of the risks around
15 nightclubs, that they were areas where there was
16 a potential for greater spread of the disease, because
17 of loud music and singing -- we like to sing in Wales,
18 as you know -- the closer interaction, the humidity, the
19 lack of ventilation potentially. So there were all of
20 these things that made them vectors for further
21 transmission. So, you know, I always had a concern
22 around these.

23 We'd obviously introduced the vaccine certificate on
24 11 October, so those were already in place, but because
25 we didn't know at the time whether the vaccines would be

45

1 **Q.** Thank you.

2 I now want to move to the topic of four nations
3 engagement, if I may, and informal communications.

4 In summary, you're complimentary within your witness
5 statement of both health secretaries, Matt Hancock and
6 Sajid Javid, in relation to your interactions with them
7 and communications; is that right, you found them to be
8 productive, fruitful relationships?

9 **A.** I certainly did, yes.

10 **Q.** You explain that you were a member of two WhatsApp
11 groups with the various ministers, the first with
12 Matt Hancock and the other four nations health
13 ministers, and then the second with Sajid Javid.

14 You do not have either of those chats any more. Why
15 is that?

16 **A.** Those have been deleted, but I do understand that you
17 have got copies of those from other people, so those are
18 available to you. And you'll see from them that there's
19 nothing in them that I would consider to be problematic.

20 **Q.** No, my questions are really focused on the failure to
21 retain potentially relevant information that goes to
22 issues of --

23 **A.** Sure.

24 **Q.** -- governmental decision-making.

25 **A.** Yeah.

47

1 effective, then I was really concerned about what the
2 impact might be if we allowed people to gather in great
3 numbers.

4 **Q.** But being clear about this, obviously that was advice
5 from July; by this point, as you've explained, you had
6 the vaccination, the Covid passes in place and in play.
7 Your message very clearly speaks about moral authority
8 and limiting of contacts as opposed to any risk. So I'm
9 asking: was that the primary issue for you at that
10 stage, in relation to nightclubs?

11 **A.** No, I don't think it was all about moral authority,
12 although I think that it was difficult to ask people to
13 limit their contacts if you were still allowing people
14 to gather in significant numbers.

15 But there were difficulties around nightclubs. One
16 of them was an issue around the definition, what is
17 a nightclub, because you can have pubs where people can
18 dance and whether that is a nightclub. We were really
19 concerned also about the border issues. So in Cardiff,
20 for example, you're very close to Bristol, so there was
21 a possibility that people would cross the border. And
22 there's also the issue of whether you would displace
23 activity into unregulated house parties.

24 So these were all things that we had to balance in
25 terms of risks. It wasn't a one-way risk either.

46

1 **Q.** Would you accept that that failure is a shortcoming?

2 **A.** I think in terms of decision-making, I can give you
3 an assurance that no decisions were made on WhatsApps.
4 But obviously, you know, I have provided the Inquiry
5 with reams of WhatsApp messages and hundreds of pages of
6 notes, so in terms of transparency, I think, you know,
7 I've been almost as transparent as I can be.

8 I'm sad that I wasn't -- that I don't have those,
9 but, as I say, you do have the evidence from other
10 people, so you can see what I said.

11 **Q.** Now, Matt Hancock resigned in June 2021 and was replaced
12 by Sajid Javid as the health minister. From 11 December
13 you created a new group for health ministers, with
14 Sajid Javid, inviting him to join. You sent him
15 a message saying "we thought we should set up a new one
16 without Matt Hancock on it!!!"

17 Does that mean that Matt Hancock was still within
18 your communications, with the --

19 **A.** I don't think --

20 **Q.** -- earlier group?

21 **A.** I don't think so, I think we probably -- no, I don't
22 think we -- I can't remember that we communicated a lot
23 during that time. So the reason for setting one up was
24 because we knew we were heading into difficult territory
25 with Omicron.

48

1 Q. Okay.

2 Dealing then also with other methods and other
3 communication, indeed record-keeping, as you've
4 explained you provided various documents to the Inquiry
5 including a notebook. I'd just like to ask you about
6 two of those entries, if I may, please.

7 It's INQ000327594, page 8.

8 And on this page we see, on page 8 of the notebook,
9 and we see two entries, here we are:

10 "Is Matt Hancock hopeless?"

11 Then:

12 "Prime Minister ... chaos."

13 Doing the best that we can in relation to the dates
14 and looking at the material around it, on 16 June 2021
15 Dominic Cummings published various text messages between
16 him and the then Prime Minister, Boris Johnson, in which
17 Boris Johnson referred to Hancock as "totally fucking
18 hopeless", and in addition he also criticised the
19 Prime Minister, this is Dominic Cummings, for chronic
20 dysfunction, Number 10 lies, and so on and so forth.

21 In relation to your question, "Is Matt Hancock
22 hopeless?", firstly, is that a reference to that
23 Dominic Cummings material?

24 A. I'm guessing it must have been. I can't remember, but
25 I'm guessing it must have been, and it would make sense

49

1 media? Did you raise that with the health minister at
2 the time?

3 A. I raised it in several Covid-O meetings. We were being
4 invited very late, we were being given information
5 sometimes minutes before the meetings and, as clearly
6 I've stated there, we weren't even invited to -- to that
7 particular meeting.

8 I do -- I am aware that in one meeting I was very
9 concerned that the thing that was driving decisions was
10 actually the economy and, more than that, it was tourism
11 in London and the need to reinstate and to encourage
12 more tourism in London.

13 And, as I say, quite often on those meetings I was
14 actually a lone voice. So there were occasions when the
15 devolved nations would be in the same position as me,
16 but there were occasions where ... where the public
17 health concern was -- was being expressed by Wales, and
18 sometimes, to be fair, by the health minister, but they
19 were often out-spoken by the other representatives on
20 the group, which represented the economy and transport
21 and all kinds of other areas. And, you know, that's
22 allowed, it's just that the -- it's clear that the
23 majority would come out against the kind of public
24 health position because of the make-up of the people on
25 the committee.

51

1 in terms of the timing. But I used these notebooks
2 to -- for all kinds of things, and a lot of it was about
3 preparing to, for example, speak to my political
4 colleagues, so clearly it -- they would be more
5 political in nature. So it may be -- may have been that
6 I was setting this out as something to say to my
7 political group, just to remind me that those were the
8 kind of things that were happening at the time.

9 Q. There are similar entries that relate to what appears to
10 be 19 July, Freedom Day, self-isolation and chaos at
11 that point, but the one that I'm next interested in,
12 please, is page 59, you make an entry under the heading
13 "Foreign Travel". It relates to the Covid-O meeting.
14 And what you say there is that generally -- a different
15 page. I can read it to you:

16 "Generally invited to meetings.

17 "Have our own analysis [and] access to data so can
18 make own conclusions.

19 "On this occasion we were not invited.

20 "--> learnt of English moves via the media.

21 "Wholly unsatisfactory situation.

22 "Unapologetic --> not being driven by public
23 health."

24 Why was it unsatisfactory that the Welsh Government,
25 if they were, were learning of decisions through the

50

1 Q. I just want to now turn to the final topic, if I may,
2 and it's a theme that we touched upon at the beginning
3 of your evidence, and it relates to the understanding of
4 regulations and the clarity of regulations.

5 If I can call up INQ000316403.

6 These are messages with Rebecca Evans in relation to
7 what was and was not allowed. I make it clear it's not
8 just her, there are other similar types of questions
9 from other individuals such as Kirsty Williams,
10 Lesley Griffiths, Lee Waters and so on, and these are
11 just a handful of examples, but what we see on
12 5 July 2020, at 11.45.48, for those looking at the
13 screen, she asks:

14 "Just checking that this remains correct: that
15 people can go to stay at their own static caravans etc
16 from 6th July (but can't rent them out until 11th).
17 I have had a few queries as the guidance on the website
18 isn't 100% clear. Many thanks!"

19 You reply and you say:

20 "You can't go and stay in your own static caravan
21 until the 11th. You can go and prepare it if the site
22 manager allows but can't stay. FAQ on this published on
23 Friday."

24 So, in short, you're correcting your colleague's
25 understanding; is that a fair characterisation?

52

1 **A.** I think that shows that actually the answer was already
 2 public, so there was an invitation there to go and look
 3 at the information that was already in the public arena.
 4 **Q.** It does show that it was already public but it also
 5 shows that individuals within government did not
 6 understand or were aware of the own regulations that the
 7 government was passing; is that a fair comment?
 8 **A.** We were -- we were going through really detailed
 9 questions, and there were lots and lots of different
 10 aspects to those questions, and if people needed clarity
 11 I don't think there's a problem with making those
 12 situations more clear for people --
 13 **Q.** I'll give you another example.
 14 Page 52, please, it's 18.37.20, Ms Evans asked:
 15 "Since you're all here, can children leave the
 16 country for swimming lessons?!"
 17 You reply shortly thereafter, at 18.50 -- so 6.50 --
 18 01:
 19 "People shouldn't be crossing county borders to do
 20 sport unless they are professionals -- including
 21 children swimming I'm afraid."
 22 The point here is, would you agree that members of
 23 the public who were being asked to follow these rules
 24 may be frustrated that the Welsh Government itself was
 25 on occasion confused by the rules, that there was not,

53

1 at 11.35.
 2 **(11.20 am)**
 3 **(A short break)**
 4 **(11.35 am)**
 5 **LADY HALLETT:** Ms Heaven.
 6 **Questions from MS HEAVEN**
 7 **MS HEAVEN:** Thank you.
 8 Good morning, Ms Morgan, I represent the Covid-19
 9 Bereaved Families for Justice Cymru.
 10 I appreciate you were only in post in May 2021, but
 11 we understand you were a member of the Cabinet, so
 12 I just want to ask you if, as part of the Cabinet, you
 13 became aware of a letter that came in, a document that
 14 was published by the Commissioner for Older People,
 15 Helena Herklots, in April 2020.
 16 So if we can have to up INQ000181739, please.
 17 If you can just indicate, my screen's gone blank --
 18 oh, no, there it is.
 19 We know that this was published by Helena Herklots
 20 on 15 April because she's explained to the Inquiry she
 21 was so concerned about what was happening in care homes.
 22 And just to have a very quick look at it before I ask
 23 you whether or not you knew about it at the time, you
 24 can see there, can't you, that she's saying:
 25 "Older people and their families continue to raise

55

1 in short, clarity over what was and was not allowed?
 2 **A.** I think the clarity was probably there in the
 3 regulations, but quite often people wanted us to read
 4 the regulations for them. So the rules were clear,
 5 people needed to go and read the rules that were set out
 6 and the guidelines that were set out. And we spent
 7 a huge amount of time talking to stakeholders about
 8 those regulations. So I'm not sure if that's fair.
 9 I think we --
 10 **Q.** Sadly --
 11 **A.** -- the information was available.
 12 **Q.** Sadly it's clearly a problem, though, if your own
 13 ministers and members of government do not simply go, as
 14 you say, to public information to find it but need to
 15 speak to their colleagues. It's not a happy situation.
 16 **A.** I think they were just trying to take shortcuts to
 17 gather information.
 18 **MS CECIL:** Chair, those are the questions that I have for
 19 you, Minister. There are some further questions.
 20 **LADY HALLETT:** I was hoping to finish you before the break,
 21 Baroness Morgan, because I know, as a serving minister,
 22 you'll have other duties. Can you bear if we take
 23 a short break now and then come back to finish?
 24 **THE WITNESS:** Sure.
 25 **LADY HALLETT:** Thank you very much. I shall return

54

1 significant concerns about the issues currently facing
 2 care homes ..."
 3 She's raising concerns around testing, availability
 4 of PPE. And if we just look down at the list, again PPE
 5 and testing amongst other things being raised.
 6 If we just look at the last bullet point, she's also
 7 saying:
 8 "Information is captured and published about levels
 9 of infection and deaths, so there is transparency and so
 10 that the data informs decisions including on resource
 11 allocation."
 12 If you look slightly below that she's asking the
 13 Welsh Government to publish a specific action plan and
 14 citing, just below that, that there are now suspected
 15 nearly a third of care homes in Wales have coronavirus.
 16 So my question to you is: as a member of Cabinet,
 17 did this document come to your attention at the time?
 18 To assist, we can't see it was being discussed in
 19 Cabinet minutes, so do you remember whether it was
 20 brought up in Cabinet?
 21 **A.** I can't recall that coming up in Cabinet. There were
 22 general discussions about care homes, I can't remember
 23 whether this particular statement came before us.
 24 **Q.** But do you agree that as a minister it should have been
 25 brought to your attention? And I know you obviously

56

1 were not responsible at this point, but just generally
2 in the Cabinet do you think this sort of a document
3 should be something that's raised in Cabinet, bearing in
4 mind where it was coming from and the concerns that were
5 being raised?

6 **A.** Well, we all have different ministerial responsibilities
7 and the deputy minister responsible would certainly have
8 had sight of this and I'm sure would have drawn
9 people's -- the relevant people's attention to it. When
10 I did step into the role as health minister, I have met
11 with the Older People's Commissioners and have
12 correspondence with her.

13 **Q.** Now, the Inquiry's seen that the response did come from
14 Julie Morgan, the deputy, and we're not going to look at
15 that letter now, but essentially the response was that
16 she was not convinced that an additional action plan
17 above the existing arrangements would add value.

18 Just to assist, this is what Helena Herklots told
19 the Inquiry, she said:

20 "I thought that was inadequate ..."

21 And that she was:

22 "... angered actually by the notion that working on
23 an action plan, producing an action plan, bringing the
24 work together, would add no value, at a time when people
25 were dying in care homes where families were distraught.

57

1 Social Care and Sport Committee reports into the Welsh
2 Government's response to Covid-19 in care homes in
3 Wales.

4 Now, you rightly acknowledged a moment ago, when you
5 gave evidence in Welsh, that many people are anxious to
6 get replies to questions, and you very fairly say in
7 your witness statement there is a need to provide
8 answers to those who have lost loved ones.

9 So bearing this in mind, can I ask you this, and
10 it's whether you consider that the Welsh Government made
11 any mistakes in how they dealt with care homes in 2020
12 in response to the Covid-19 pandemic and whether there
13 are lessons to be learnt?

14 Just to be clear, this is not a question about
15 hindsight, which of course we've heard a lot about in
16 this Inquiry, it's about whether you think mistakes were
17 made in respect of the management of care homes on what
18 was known by the Welsh Government at the time.

19 **A.** Well, I know that the health minister gave evidence
20 yesterday around the issue of testing and he was the one
21 in a position to be able to make decisions in relation
22 to that. What I can tell you is in relation to the time
23 when I was health minister I did try and learn some of
24 the lessons. So, for example, when Omicron hit, one of
25 the things we did was to tighten up guidelines around

59

1 I just thought the response was inadequate."

2 So again my question is this: was Cabinet sighted on
3 the response that was to go out to Helena Herklots, do
4 you recall?

5 **A.** That wouldn't have been normal practice for us, to see
6 letters that go out in response from --

7 **Q.** Was it discussed?

8 **A.** I can't recall that it was discussed.

9 **Q.** Okay.

10 Second topic, please, is learning of lessons.

11 Now, as I said earlier, it's understood that you
12 came into post in May 2021 as Minister for Health and
13 Social Services. Now, you will understand that the
14 people in Wales who lost loved ones from Covid-19 are
15 looking to this Inquiry, and indeed members of the Welsh
16 Government like yourself, for answers as to not just
17 what went wrong but also to see if the Welsh Government
18 has reflected and considered what you could have done
19 better, and of course you'll understand the trauma of
20 those who lost loved ones in care homes.

21 I've just taken you to some of the very serious
22 concerns being raised by Helena Herklots. Now, no doubt
23 when you came into your role in 2021 you will have
24 reflected on these issues, and you will of course have
25 reflected on the critical findings of the Senedd Health,

58

1 people who visited multiple sites, and that included
2 care homes. So that was something that I know we tried
3 to learn the lesson of.

4 **Q.** But what lessons were learnt by the Welsh Government?
5 I know you were in post in May 2021, but you must have
6 had to reflect back, because we know the Senedd was
7 undertaking enquiries, so you must have had to reflect
8 back. Are you able to tell the bereaved in Wales and
9 indeed this Inquiry what lessons your department learnt
10 about how this was managed in care homes in 2020?

11 **A.** So the example I've just given you is an example of the
12 lessons learnt. So one of the things that we were
13 concerned with is the potential for people who moved
14 from one care home to another to be carrying the virus,
15 and that's why when Omicron hit we tightened up the
16 guidelines around the visiting of multiple sites.

17 **Q.** What about testing, PPE, discharging of people into
18 care homes with Covid symptoms in 2020? Were any
19 lessons learned about that, do you think?

20 **A.** Well, later on a lot of that was put in place. So at
21 the beginning of the pandemic there may have been issues
22 in relation to the testing opportunities. That wasn't
23 true later on in the pandemic.

24 **MS HEAVEN:** Thank you very much, my Lady.

25 **LADY HALLETT:** Thank you.

60

1 Thank you, Ms Heaven.

2 **Questions from THE CHAIR**

3 **LADY HALLETT:** A couple of questions from me,
4 Baroness Morgan.

5 You mentioned in your evidence in answering
6 questions from Ms Cecil that you got what you called
7 learning from your international relations, which, as
8 you said -- you mentioned two things, ventilation and
9 face coverings. What was the learning you got in
10 relation to face coverings from international
11 experience?

12 **A.** What we were looking for there was not -- was what other
13 people were doing rather than -- and then I fed that to
14 the appropriate department at the time. So it wasn't
15 what I learnt, it was information that I then passed on.
16 And it was up to them to determine that.

17 **LADY HALLETT:** Were you getting the impression that the
18 international experience was that use of face coverings
19 was a good idea?

20 **A.** I wasn't making any judgements on it, I was just passing
21 on the information of what other people were doing.

22 **LADY HALLETT:** I appreciate you weren't making a judgement,
23 but did you get the impression that international
24 experience was suggesting that people in foreign
25 countries were saying that face coverings were a good

61

1 **A.** I can't help on that, no, apart from what's in my
2 evidence.

3 **LADY HALLETT:** Right.

4 Thank you very much for your help. You're now free
5 to go.

6 **THE WITNESS:** Diolch, thank you.

7 **(The witness withdrew)**

8 **LADY HALLETT:** Yes, Ms Cecil.

9 **MS CECIL:** Thank you. May I call Rebecca Evans, please.

10 **MS REBECCA EVANS (sworn)**

11 **Questions from COUNSEL TO THE INQUIRY**

12 **LADY HALLETT:** I hope we haven't kept you waiting for too
13 long.

14 **THE WITNESS:** No.

15 **MS CECIL:** Good afternoon, Minister. If you could please
16 give us your full name.

17 **A.** Yes, Rebecca Mary Evans.

18 **Q.** Thank you for attending today and assisting the Inquiry.
19 While you give your evidence, if you could please keep
20 your voice up and into the microphone, and there is
21 a recording being taken, and indeed a note as well, of
22 your evidence today. If I ask you anything that is not
23 clear or you need me to repeat anything, please just
24 say.

25 **A.** I will, thank you.

63

1 idea?

2 **A.** In some instances that was the case, particularly
3 perhaps in educational establishments.

4 **Q.** And you passed that on to your colleagues?

5 **A.** I did pass that on to my colleagues.

6 **LADY HALLETT:** You talked about the cautious approach of the
7 Welsh Government. It doesn't seem to have acted on that
8 kind of experience when it came to face coverings.

9 **A.** We were following a lot of the advice given to us by the
10 Chief Medical Officer.

11 **LADY HALLETT:** Right.

12 The only other question I have, and just to be fair
13 to you, you said that you had deleted your WhatsApp
14 messages, why did you delete them?

15 **A.** I think -- I mean, I didn't delete anything
16 deliberately. I think I've handed over reams of --

17 **LADY HALLETT:** I understand that, I just -- really it's
18 a simple question, to be fair to you, because, as you
19 know, WhatsApp messages cause a lot of interest in
20 certain circles, so it's just really why and when did
21 you delete them.

22 **A.** I think, I don't know quite why or when, but clearly
23 there were only a couple of examples where that happened
24 and you do have the information from those.

25 **LADY HALLETT:** Right. So you can't help on why or when?

62

1 **Q.** Minister, you provided a witness statement,
2 INQ000346272, for the Inquiry. It was signed on
3 1 November of 2023. I understand that there is one
4 correction that needs to be made to that statement, and
5 it's on paragraph 232 of the statement, and where it
6 reads "public sector" in relation to contracts, it
7 should read "private"?

8 **A.** That's correct.

9 **Q.** So replace "public" with "private"?

10 **A.** That's right, thank you.

11 **Q.** With the exception of that, is your statement true to
12 the best of your knowledge and recollection?

13 **A.** Yes, it is.

14 **Q.** Thank you very much.

15 Minister, you were asked to provide a statement to
16 this module in your capacity as Minister for Finance and
17 Trefnydd, and, latterly, Minister for Finance and Local
18 Government during the period that spanned January of
19 2020 to May of 2022; is that right?

20 **A.** Yes, that's right.

21 **Q.** Prior to your appointment as the Minister for Finance
22 and Trefnydd, you held a number of portfolio roles and
23 other ministerial roles; is that correct?

24 **A.** Correct.

25 **Q.** Having initially been first appointed to Welsh

64

1 Government in June 2014?
 2 **A.** Correct.
 3 **Q.** You have been in government for quite some time now?
 4 **A.** Yes.
 5 **Q.** Thank you.
 6 You were appointed to the role of Minister for
 7 Finance and Trefnydd in December of 2018. That was when
 8 Mark Drakeford became First Minister?
 9 **A.** Correct.
 10 **Q.** With regard to your responsibilities in that role, can
 11 you just give us a very short overview firstly in
 12 relation to your ministerial role in relation to finance
 13 and then, secondly, I'll move on to your role with
 14 regard to Trefnydd?
 15 **A.** Yes, so in relation to my role in finance, I'm in charge
 16 of the Welsh Treasury, I have responsibility for the
 17 strategic direction of the use of Welsh Government
 18 resources, budget monitoring and management, strategic
 19 investment, taxation policy, and also relationships with
 20 HMT and HMRC, to name just a few.
 21 **Q.** For those who are following outside of Wales, can you
 22 assist us with what the Trefnydd is, please?
 23 **A.** Yes, the Trefnydd is our Senedd equivalent to the Leader
 24 of the House, so I would represent the Welsh Government
 25 and the Labour group on the Business Committee, and also

65

1 finance-related discussions on behalf of Wales?
 2 **A.** Yes.
 3 **Q.** And the main forum through which those discussions were
 4 held were the Finance Ministers Quadrilateral; is that
 5 right?
 6 **A.** Yes, that's correct.
 7 **Q.** Just touching on those meetings for a moment, the
 8 quadrilaterals, do you think those meetings took place
 9 frequently enough over the duration of the pandemic?
 10 **A.** It was certainly an improvement in terms of what came
 11 before. When I came into post in December 2018, the
 12 finance quadrilateral hadn't met for a year,
 13 I understand, so that concerned me, so to my first
 14 meeting I took a paper which essentially set out some
 15 proposed terms of reference for future working, which
 16 would have been much more frequent meeting,
 17 a relationship of parity, rotating chairs, a shared
 18 secretariat and so on, and we did make progress on that.
 19 So over the course of the pandemic, the quadrilateral
 20 met much more frequently, so things improved in terms of
 21 the frequency of meetings, but the quality of meetings
 22 is always variable.

23 I will say that things have continued to improve in
 24 terms of frequency, and sometimes in terms of the
 25 quality of those meetings, following the

67

1 respond to requests every Tuesday from colleagues in the
 2 Senedd asking for statements from the government on
 3 a whole range of issues.
 4 **Q.** Indeed, that role was subsequently transferred away from
 5 you in May 2021, when you inherited, instead, the
 6 responsibilities for local government; is that right?
 7 **A.** That's correct, yes.
 8 **Q.** But focusing, if I may, then, on your role with regard
 9 to finance, did that broadly stay the same throughout
 10 that period, January 2020, through the elections in May
 11 of 2021, to mid-February 2022?
 12 **A.** Yes, and to this day, in fact.
 13 **Q.** Thank you.
 14 You will understand that it's in your role as
 15 minister for finance that I'm going to concentrate my
 16 questions on today, but of course if your answers will
 17 be assisted by any other issues that fell within your
 18 portfolio, please feel free to mention those. But
 19 generally speaking, your financial portfolio during that
 20 period of January 2020 to May of 2022, which is
 21 of course the date range the Inquiry is interested in,
 22 your portfolio was focused on managing the Welsh
 23 Government's financial response to the pandemic?
 24 **A.** Yes, that's correct.
 25 **Q.** It's also right that you led on all intergovernmental

66

1 intergovernmental review work as well, which has really
 2 helped put that finance group on a more -- more formal
 3 footing, which has become more useful over time, so
 4 things definitely improved over the course of the
 5 pandemic.
 6 **Q.** Indeed, and it's been formalised now, hasn't it, as
 7 a standing committee, the Finance: Interministerial
 8 Standing Committee?
 9 **A.** That's correct, yes.
 10 **Q.** How frequently, broadly speaking, were you meeting
 11 during the pandemic period?
 12 **A.** Over the course of the pandemic I think we would
 13 probably meet -- I think we met around six times in the
 14 first six months, and then I think it was around four
 15 times in the next six months, so monthly every
 16 six weeks, something like that.
 17 **Q.** With regard to the formalisation into the standing
 18 committee, is that a structure that you consider would
 19 have assisted during the pandemic and will assist in the
 20 future?
 21 **A.** Yes, definitely, I think the relations, certainly in
 22 terms of that structure, are definitely on a better
 23 footing for the next pandemic.
 24 **Q.** Thank you.

25 The next topic that I wish to touch upon, please,

68

1 with you are sources of funding, so looking at the
2 financial situation set-up between the UK Government and
3 the Welsh Government and the fiscal framework.

4 The fiscal framework was agreed in December 2016,
5 and that establishes the financial powers of the Welsh
6 Government; is that right?

7 **A.** That's right.

8 **Q.** Just if I may summarise, obviously in headline form,
9 because these issues can get very complicated, but
10 trying to take them as simply as possible, there are
11 four primary sources of funding for the Welsh
12 Government; is that right?

13 **A.** That's right.

14 **Q.** Just breaking them down, we first have what are called
15 the block grant which are funds that are granted by the
16 UK Government.

17 **A.** Yes.

18 **Q.** The second are those funds that are raised internally
19 within Wales by means of taxation or other charges. The
20 third is borrowing capacity by the Welsh Government.
21 And the fourth is European Union structural funds that
22 become available.

23 **A.** Correct.

24 **Q.** So perhaps if I can concentrate, if I may, on the block
25 grant and the relationships between Wales and the UK.

69

1 expenditure within the UK, the Welsh Government also
2 receives what's called the Barnett consequential funding
3 element, and that can be both positive and negative,
4 that's why I say it can get complicated, but in very
5 short form what is Barnett consequential funding?

6 **A.** So the block grant is the funding as you've described,
7 and we would normally have that through a comprehensive
8 spending review or a single-year funding round, but then
9 applied to that we have changes that are made through
10 the year and they're formalised then at supplementary
11 estimates, which happens right at the end of the year,
12 usually around February time. And basically, if the
13 UK Government departments increase spending in areas
14 which are devolved, then we will receive that share,
15 population plus the needs-based, but also, equally, if
16 the UK Government departments underspend or money is
17 shifted away from those areas where we have devolved
18 responsibility, then our budget will be reduced as well.
19 So that does make it very difficult, even in a normal
20 year, to manage the budget, especially when you only get
21 clarity at the very end of the financial year.

22 **Q.** Indeed. So positive funding, just giving an example,
23 plucked out of the air for the moment, is, for example,
24 where the UK Government allocates funding, as you say,
25 for a policy area that is devolved within Wales, it

71

1 Just very briefly, what is the annual block grant?

2 **A.** So at the time of the pandemic it was around £20 billion
3 but now that's increased to around £23 billion.

4 **Q.** Just dealing with --

5 **A.** Sorry, I should say the 23 includes the money that we
6 raise through tax so it would have been £18 billion in
7 terms of block grant and the rest would have been raised
8 in tax and around 20 now.

9 **Q.** Just so that everyone understands what a block grant is
10 in principle, that's a level of public expenditure that
11 is decided by the UK Government through the Treasury to
12 be allocated to Wales each year; is that right?

13 **A.** Yes, that's right, it's very much a function of how much
14 the UK Government decides is needed to be spent in
15 England in particular, so the overall amount of money
16 spent within the UK is definitely decided by
17 the UK Government, and the block grant really does give
18 us a population share of that, but also with
19 a needs-based formula attached to that as well. So for
20 every £100 spent in England we will have a population
21 share of around 5.6, and then when you apply the
22 needs-based element over that, it's around 5.8.

23 **Q.** Thank you.

24 And in addition to that annual block grant, which as
25 you say is a share, effectively, of the overall public

70

1 could be health, it could be education, and as
2 a consequence there is then an additional sum that is
3 provided to the devolved nation, applying what's called
4 the Barnett formula?

5 **A.** Exactly.

6 **Q.** And that, for example, could be positive, but ultimately
7 it's for the devolved government to decide how to spend
8 that money once it's allocated. Alternatively, as you
9 say, where there is an underspend within one of those
10 policy areas within English budgets, then there will be
11 a clawback situation or a negative formula that's
12 applied to the allocation of funding?

13 **A.** Yes, that's correct, but sometimes those things will
14 balance each other out at the end of the financial year
15 as well, so you really are almost waiting until the end
16 of the year to know what your budget is for the year
17 that you've just been through.

18 **Q.** That's because those supplementary estimates that you've
19 referred to come in January or February, towards the end
20 of the financial year?

21 **A.** That's correct. And one of the flexibilities that we
22 have been asking the UK Government to consider, and
23 which I think would be helpful for future years, would
24 be for any additional funding which comes through
25 following an autumn statement, so anything that comes

72

1 through in supplementary estimates, or even reductions
2 that come through in supplementary estimates, that we're
3 able to take those through into the next financial year.

4 So we did see some of that in the pandemic, so at
5 the end of the 2020/21 financial year we were able to
6 negotiate with the chief secretaries to the Treasury to
7 take forward £600 million which had been announced very
8 late in the financial year. It wouldn't have made good
9 sense for us to try to deploy that -- I mean, that's
10 a huge amount of money for us -- very late in the
11 financial year, so it was agreed by exception that we
12 could carry it over and it helped with our response in
13 the next financial year.

14 So what we would prefer would be a situation where
15 you're not having to negotiate those kinds of things
16 every time, but just as a part of the mechanism, if
17 things come through very late, then you can manage over
18 the financial years.

19 **Q.** Just dealing with that for one moment and putting it in
20 context, you said that that was an exception, and what
21 are the normal limits on carry-overs into the following
22 financial year?

23 **A.** So as part of the fiscal framework, we have the Wales
24 Reserve. The Wales Reserve is able to hold overall
25 £350 million. And crucially, the size of the Wales

73

1 **A.** Yeah, just to say the reason I am talking about it is to
2 try to give some ideas for things that would help
3 a government better respond to a pandemic in future.

4 **Q.** Absolutely. And I'm sure that's been taken on board.

5 If I may, though, deal with the upshot in relation
6 to 2020 through to 2021, and the financial position with
7 regard to Wales in relation to the pandemic response, if
8 I can just take you please to paragraph 51 of your
9 witness statement.

10 You give an example, going back to what you were
11 saying before, of underspend and effectively money being
12 recouped, and you explain that:

13 "The total underspend in 2020-21 by all
14 UK government departments was £25bn -- the UK Department
15 for Health and Social Care alone underspent by over 9%,
16 returning £18.6bn to the Treasury. Overall,
17 UK departments returned almost 6% of their funding to
18 the Treasury that year. In Wales, the figure returned
19 represented only 1% of our available resources.
20 A Barnett share of the funding returned to Treasury by
21 UK departments would have been well in excess of £1bn,
22 rather than the much lower £155m ..."

23 Which was returned.

24 So is it correct that by the end of that 2020/2021
25 financial year, and I'm going to bring you into the

75

1 Reserve hasn't grown at all since the time it was
2 established, which means that actually in the next
3 financial year it will be worth 23% less than it was at
4 the time it was set. And you can -- imagine trying to
5 land your budget £23 billion on a Wales Reserve of
6 £350 million. That's a pretty high wire act in normal
7 circumstances.

8 So, again, something that I think would help for the
9 future would be for that Wales Reserve just to be
10 uprated in line with inflation and then for that
11 uprating in line with inflation to happen every year
12 after that. And that's something that it's not just the
13 Welsh Government calling for, it's something that the
14 IFS has said would be a good idea, the Wales Governance
15 Centre, and actually it's not a political point at all
16 because recently in the Senedd we had a debate which
17 was --

18 **Q.** Perhaps I could just pause you there, Minister, only
19 because you'll appreciate that those very high-level
20 issues are likely to be outside of the scope ultimately
21 of this Inquiry, in terms of the bigger issues, and of
22 course what this Inquiry's focusing on is in relation to
23 the pandemic. And of course financial flexibility in
24 relation to the pandemic is one of those aspects, but
25 you're talking about much more significant issues.

74

1 finances in relation to the pandemic in due course,
2 there was a return of £155 million to HM Treasury?

3 **A.** There was, but that only happened at least a year or
4 perhaps even two years after that.

5 **Q.** Indeed.

6 **A.** And that was because -- there were discussions that were
7 undertaken at official level with the UK Government
8 whereby we would be able to switch revenue to capital at
9 the end of the year, which is a normal thing, it happens
10 all the time, but unfortunately in this year, because
11 of course we do need the Chief Secretary's agreement to
12 do that, it was denied. Had we been able to switch that
13 money from revenue to capital, then actually we would
14 have sent nothing back at all to Treasury.

15 I think that this also, though, speaks to the
16 importance of the Barnett guarantee as well, because can
17 you imagine a situation where, right at the end of the
18 year, supplementary estimates, we're being asked to send
19 £1 billion back to Treasury, that would have been
20 completely unmanageable. So I think it does show how
21 valuable the Barnett guarantee was for us as well.

22 **Q.** Indeed, and that's what we're going to come on to.

23 Really it's really just to lay the groundwork and the
24 foundations for what we're going to be talking about in
25 due course.

76

1 I do want to just pick up, if I may, before going
2 into the detail of that, on one aspect within your
3 statement, and it's at paragraph 53, page 18, where you
4 say that you considered that Wales had been treated
5 unfairly. And that -- and that's because:

6 "There is a general approach from HM Treasury which
7 treats devolved governments as 'just another spending
8 department'."

9 What do you mean by that?

10 **LADY HALLETT:** Again, we seem to be straying from Covid-19,
11 unless you're going to say this does affect the
12 pandemic. This seems to be quite a big question about
13 the devolution settlement and ...

14 **MS CECIL:** I can certainly bring it back to the pandemic,
15 because that's why I say it's contextual as opposed to
16 anything else.

17 Just in relation to the pandemic, was that something
18 that you experienced or not?

19 **A.** I think it's definitely the case from a finance
20 perspective, because the UK Government I don't think
21 recognises that we are responsible to the Senedd, that
22 we have an incredible amount of scrutiny from the Welsh
23 media, we have the Welsh public very interested in the
24 choices that we make. And I think that in treating us
25 like another UK Government department, it doesn't

77

1 you have collective responsibility for those decisions
2 which are taken.

3 **Q.** How do you consider that you struck the balance in your
4 contributions then in Cabinet between considering, as
5 I say, your portfolio responsibilities of financial and
6 economic considerations and how NPIs or any other
7 intervention could be delivered in terms of finances
8 available and that of public health concerns and
9 scientific advice?

10 **A.** I think there are good examples where of course we had
11 to consider the financial implications of the choices
12 available to us, and I know there's an intention to come
13 on to the firebreak and potentially Omicron in the
14 session as well, and I think that those will give
15 examples as to where the financial considerations were
16 particularly acute in those discussions.

17 **Q.** Did you undertake any modelling of NPIs in relation to
18 the financial impacts of acting or not acting,
19 essentially both sides of the coin, did you undertake
20 any financial and economic modelling in that respect?

21 **A.** So I didn't do that myself, but of course we've got --

22 **Q.** Within your team.

23 **A.** We've got Welsh Treasury, and we've got a team of
24 analysts, we've got the Chief Economist and his team of
25 economists within the Welsh Treasury as well, and they

79

1 necessarily recognise the unique context that we have
2 here in Wales -- and the fact that we are a government,
3 we're not just another department.

4 **Q.** I'm going to bring you now, if I may, into the pandemic
5 response and financial issues, and firstly then deal
6 with your role in Cabinet and the Star Chamber.

7 You obviously, along with other Welsh ministers,
8 were members of the Welsh Cabinet. Each minister, we've
9 heard, has their own portfolio areas. Generally
10 speaking, to what extent do you believe your
11 contribution at meetings of Cabinet or in the
12 ministerial calls were guided in the main by financial
13 considerations? How were you putting forward your
14 portfolio? Or were you looking at the broader picture?

15 **A.** I think that ministers in Cabinet have two distinct but
16 important roles: so on the one hand you're custodian of
17 your own portfolio, so I was responsible for all finance
18 matters, but equally then, you know, you take part in
19 those Cabinet-wide discussions which require a Cabinet
20 view.

21 So 21-day reviews would be a really good example of
22 those discussions which we had Cabinet-wide. Of course
23 the health minister would bring a particular
24 perspective, I would bring a financial perspective, but
25 then you also consider it in the round as well, because

78

1 would undertake analysis.

2 What I will say as well is that they were involved
3 very early on and they worked with the policy leads for
4 various things. So the Economic Resilience Fund,
5 for example, they'd be working very early on with the
6 policy leads to undertake the analysis there, rather
7 than being presented with a proposal which is almost
8 done and then considering the economic impacts of it.

9 **Q.** Thank you. I'm going to move now to the Star Chamber,
10 and it was established by the First Minister on
11 23 March 2020, so relatively early in terms of the
12 pandemic, and that was to oversee and co-ordinate the
13 Welsh Government's overall fiscal response to the
14 crisis; is that right?

15 **A.** That's correct.

16 **Q.** Can you assist with why it was established at that
17 point? It's obviously a new meeting point.

18 **A.** It was, it was clear by that point that the response to
19 the pandemic was going to require significant, you know,
20 significant fiscal response, so it really was to have
21 that forum where we could have those discussions, and
22 one of the first things that we did through the
23 Star Chamber was undertake the re-prioritisation
24 exercise --

25 **Q.** I'm going to come on to that in just a moment, so I'll

80

1 just pause you there.

2 In relation to the composition or make-up and
3 purpose of the Star Chamber, essentially it was so that
4 a small group could assess the various financial papers,
5 proposals, budgets, as you say, fiscal considerations
6 within that small group and provide advice to you; is
7 that right?

8 **A.** Yes, that's correct.

9 **Q.** In terms of decision-making within the Star Chamber, did
10 the Star Chamber take those decisions or did you take
11 decisions?

12 **A.** No, I took the decisions. The membership of the
13 Star Chamber, other than having one other minister
14 there, was officials and also one external person and
15 special advisers, so they wouldn't have had the
16 authority to take those decisions in any case.

17 **Q.** Thank you.

18 Just I'm asking for your opinion for one moment, do
19 you think the Star Chamber should have taken those
20 decisions collectively, like the Cabinet, in terms of
21 those financial decisions, or were there benefits to
22 final decisions being vested in you alone?

23 **A.** No, I definitely think that those are decisions for the
24 finance minister rather than decisions which should be
25 taken by anyone else.

81

1 colleagues would re-prioritise within their own budgets
2 as well.

3 **Q.** Thank you.

4 Did the response reserve also include the money from
5 the UK Government that came in?

6 **A.** Yes, it did, as well as realignment of WEFO budgets as
7 well.

8 **Q.** Of what, sorry?

9 **A.** European funding budgets.

10 **Q.** Thank you, European funding budgets.

11 With regard to the re-prioritisation exercise, what
12 considerations did the Star Chamber have in mind when
13 considering that exercise?

14 **A.** So we set some principles by which colleagues should --
15 and when I say colleagues, I mean my ministerial
16 colleagues -- should undertake re-prioritisation within
17 their portfolios. The first of those, that we should
18 obviously continue to do those life and limb things
19 which needed to be undertaken, and then also we couldn't
20 really touch our statutory commitments, and then also we
21 needed to protect as far as possible our key programme
22 for government commitments, but beyond that I asked
23 colleagues to look through their budgets to see what
24 could be repurposed, and I've given in my written
25 evidence a range of examples there.

83

1 **Q.** Thank you.

2 I'm going to turn now to the re-prioritisation
3 exercise that you've just mentioned, and indeed just
4 dealing with that.

5 That exercise was to identify areas of Welsh
6 Government spending, both revenue and capital spending,
7 which could be repurposed, in short, in order to assist
8 with the Covid-19 response; is that right?

9 **A.** Correct, yes.

10 **Q.** Those funds would then be repurposed and held in what
11 was called the Covid-19 response reserve?

12 **A.** Yes.

13 **Q.** Was that exercise, that re-prioritisation exercise,
14 completed once or at various points throughout the
15 pandemic?

16 **A.** In the end it was only needed the once, so we undertook
17 that at the start of the pandemic, and it resulted in
18 around a quarter of a billion pounds going into the
19 Covid-19 response reserve.

20 I did warn colleagues at the time that it might be
21 something that we would need to revisit and have another
22 round of re-prioritisation, but in the event, because of
23 the consequential funding which was coming through and
24 also the Barnett guarantee, which came later, we didn't
25 need to undertake any further re-prioritisation, but

82

1 **Q.** Indeed, and the Star Chamber then in turn reviewed those
2 ministerial -- the ministerial advice that was coming in
3 from each department in relation to the
4 re-prioritisation; is that right?

5 **A.** That's correct, and I think I had a meeting with each
6 minister as well to talk through their proposals, what
7 the implications would be, and to push a little bit
8 further to see if there was anything else they could
9 give up at that point as well.

10 **Q.** And if -- just dealing with pandemic responses and
11 interventions, if a minister wished to fund such
12 a pandemic intervention from within their existing
13 budgetary allocations, so, for example, the
14 re-prioritisation within their existing budget, not to
15 put it to the Reserve but to deal with an intervention
16 themselves, so it was cost neutral or had a cost, did
17 they have to seek your approval or were they ministerial
18 decisions within departmental governmental
19 decision-making?

20 **A.** No, so I allowed colleagues to re-prioritise within
21 their own budgets, and again I've got some examples in
22 the paper. So the education minister, for example, was
23 able to re-prioritise some funding from within her
24 budget at the time towards providing children with IT
25 kit in schools. So I just needed to be informed of

84

1 those choices which were being made, I didn't have to
 2 approve them.

3 **Q.** Were there any financial limitations in relation to the
 4 extent to which individual ministers could repurpose
 5 their own budgets?

6 **A.** No, beyond what they'd already given up, there was
 7 nothing that they couldn't do there.

8 **Q.** With regard to the Star Chamber, how frequently did the
 9 Star Chamber meet?

10 **A.** So at one point we were meeting every day, and then
 11 I think it was a couple of times a week at least then
 12 through the pandemic, for quite some time, until October
 13 of 2020, when we met for the last time. And the reason
 14 for that, really, was that the systems were well set up,
 15 we had already funded then some of the big programmes
 16 that we needed to fund, so it was just a case of making
 17 sure that those programmes had enough money to keep
 18 going, it didn't need that kind of level of scrutiny and
 19 interrogation that late on, because it was all
 20 functioning.

21 **Q.** You are aware that there were some criticisms or
 22 concerns in relation to how the Star Chamber was
 23 operating, whether it was transparent, for example, how
 24 decisions were being made, how individual requests for
 25 funding were being dealt with. Did you take any steps

85

1 a financial dashboard, is that right too, setting out,
 2 in short, resources that the Welsh Government had
 3 available to respond to the pandemic, and the aggregate
 4 and detailed allocations that had been made to date, so
 5 that other ministers and individuals could easily access
 6 and see where finances were being allocated?

7 **A.** That's correct. And I shared it with Cabinet on
 8 a weekly basis, so everybody had the latest picture.

9 **Q.** Did that dashboard contain, in your view, all of the
 10 relevant information in terms of fiscal information and
 11 economic, financial information that was required by
 12 ministers to assist in their decision-making, or do you
 13 consider that further information would have been
 14 helpful?

15 **A.** So I think that the purpose of the dashboard really was
 16 transparency for colleagues. I think it was mainly
 17 there to help me in my decision-making, but also wanting
 18 to be clear with colleagues as to where we were overall
 19 and to explain to colleagues, I suppose, if there were
 20 times when I wasn't able to provide them with additional
 21 funding.

22 So I think that it did provide, you know, a really
 23 year, of where the funding was going, and it showed the
 24 sources of the funding. But then we had four pillars
 25 where the funding went to: supporting the economy,

87

1 to address those concerns?

2 **A.** Yes, so I knew that some colleagues felt a bit uneasy
 3 about the Star Chamber process, and I think that's
 4 understandable because it was such a diversion from the
 5 way in which we would normally go about setting the
 6 budgets, which -- you know, we have our normal
 7 budget-setting process, when my colleagues have their
 8 budgets then they manage them through the year. This
 9 was a completely different approach. So I understood
 10 the concern there.

11 In the terms of reference for the Star Chamber, it
 12 said that other ministers could be -- could attend the
 13 Star Chamber by invitation. We changed that pretty
 14 quickly so that other ministers could attend the
 15 Star Chamber at their requests, and many of them did,
 16 and it was to talk through some of those proposals,
 17 because also it meant that we were able to ask those
 18 questions in real time, it wasn't a case then of, you
 19 know, potentially holding up things, we definitely
 20 didn't want to do that.

21 So we did change that approach over time to try to
 22 make colleagues feel more comfortable with what was
 23 a very new approach to allocating funding.

24 **Q.** Thank you.

25 You also developed during the course of the pandemic

86

1 health and public services, the voluntary sector and
 2 communities, and transport. And those were our four
 3 pillars of the response to the pandemic, if you like.

4 **Q.** And essentially a visual aid?

5 **A.** Yes, yeah.

6 **Q.** Thank you.

7 Now if I can turn, please, to March of 2020 and just
 8 deal briefly with your interactions with the then
 9 Chancellor, Rishi Sunak, in relation to funding and
 10 planning with regard to the potential impact of the
 11 pandemic. You wrote a letter on 6 March. We can see
 12 that on the screen there.

13 Is that the first time that funding for the pandemic
 14 was raised between the Welsh Government and
 15 the UK Government?

16 **A.** Probably. I couldn't say for sure. I can't tell if
 17 there was a finance quadrilateral before that date. If
 18 there was, it would have been raised there. But in
 19 writing I think that's the first time that it's raised.

20 **Q.** That was followed up by a written statement on 11 March,
 21 which explained that you were working closely with the
 22 UK Government and other devolved administrations to
 23 prepare for the Covid-19 response. But you say in
 24 relation to those measures, that would be enacted in
 25 terms of the NHS and other measures for business support

88

1 and individual support, that further clarity was needed.
2 Can you recall now what was the issue in relation to
3 a lack of clarity?

4 **A.** Yes, so the letter that I wrote to the Chancellor on
5 6 March was ahead of the spring budget, so that's almost
6 a set piece letter that I write ahead of every fiscal
7 event setting out the priorities for Wales, and in that
8 I do recognise that there would be an impact beyond
9 health and social care of the pandemic and I do say that
10 it would require a significant fiscal remedial package
11 from the UK based on need. And then 11 March, and the
12 significance of this written statement is that that was
13 the day of the UK Government's spring statement.

14 Now, although the Chancellor announced some measures
15 in that in relation to support for business, and also
16 was clear that the NHS would get all of the support it
17 needed, actually there was no funding which came through
18 in the spring statement. That funding would come later
19 through the form of the Barnett guarantee, so it was
20 that kind of clarity that we were after really --

21 **Q.** Thank you.

22 **A.** -- but I should say that we do -- we did make it clear
23 that we were welcoming those early remarks about the
24 health service and also about support for business as
25 well.

89

1 here".

2 So there's all that as well. But I think,
3 importantly, in that letter, I do set out that Treasury
4 is in a unique position to enable or prevent the
5 devolved governments from taking timely decisions to
6 respond to the crisis. So we're even setting that out
7 in March, and of course that would become important
8 later on through the firebreak and Omicron and so on.

9 **Q.** Can you recall when clarity was provided?

10 **A.** So ultimately clarity came in the autumn statement of
11 that year when we had the transparency tables through.
12 So all the way through March, April, May, June, July we
13 were having small amounts of information coming through,
14 and that would happen quite regularly but it was often
15 the case, and I've seen notes from officials about their
16 meetings with the devolved team in Treasury, that
17 sometimes even the devolved team in Treasury wasn't
18 aware of announcements which were coming through, so
19 getting the right information was really tough.

20 When we got to the Barnett guarantee, that helped
21 a lot, but even after that we were pressing for
22 a reconciliation, which is essentially where they set
23 out the different sums that have been -- or the
24 different interventions that have been provided for
25 through the guarantee, so that we can look at it and see

91

1 **Q.** Indeed.

2 In your subsequent correspondence between you and
3 the Chief Secretary to the Treasury in relation to --
4 I don't need to necessarily have that brought up, but
5 that's very helpful -- setting out, essentially, what
6 you believe the various allocations of funding according
7 to the Barnett formula would be.

8 When did you first receive confirmation about the
9 extra funding that would be available and received by
10 you, the Welsh Government?

11 **A.** So we received small amounts of information over
12 a period of time, so this was one of the real challenges
13 that we had at the start of the pandemic, was
14 understanding what the size of the consequential funding
15 was and, you know, what it applied to, if you like. So
16 you can see actually in the letter that you've referred
17 to on the 13th that I wrote to the Chief Secretary to
18 the Treasury, I'm actually in that letter sharing my
19 planning assumptions, because we didn't have any
20 concrete information from Treasury so we had to set out
21 what we assumed would be coming to Wales, having applied
22 the Barnett formula for our own calculations to make
23 that understanding, and I'm saying to the Chancellor
24 there essentially, "This is what we're factoring into
25 our assumptions, you need to tell us if we're wrong

90

1 what's included and what isn't. Because sometimes there
2 were big ticket items, for example additional funding
3 for Transport for London, now, that would lead to
4 significant consequentials for us but we didn't know if
5 it was included, so, you know, that made it difficult
6 for us.

7 **Q.** Thank you. And just dealing then, as I say, going back
8 to the March position, so before the Barnett guarantee
9 and so on, the Economic Resilience Fund was announced by
10 the First Minister on 30 March of 2020, so still
11 relatively early in the pandemic. That was, in short,
12 the Welsh Government's business support scheme; is that
13 right?

14 **A.** Yes.

15 **Q.** In relation to that, what was the purpose of the ERF,
16 the Economic Resilience Fund?

17 **A.** So the minister for economy was in charge of the
18 Economic Resilience Fund, my role was about releasing
19 the funding and ensuring that the interventions were
20 affordable to the Welsh Government, so, you know, using
21 things like the dashboard and the Star Chamber and so
22 on. But the purpose of the fund really was to support
23 businesses in a number of ways. One, if a business was
24 in lockdown, for example, we'd support their operational
25 costs. It's really important to recognise that the

92

1 Welsh Government is not responsible for wage costs, so
2 UK Government is in charge of wage costs, so furlough,
3 for example --

4 **Q.** So those were UK Governmental schemes that applied
5 across the whole of the United Kingdom?

6 **A.** Yeah, and we wouldn't have the systems or the fiscal
7 power to do that, what we could do was support operating
8 costs. And we always looked to see if there were ways
9 in which we could potentially fill the gaps in some
10 support as well. So I think I recall -- and the economy
11 minister would be better off to answer these questions,
12 but support, for example, around start-ups and so on.
13 So we tried to fill the gaps wherever we could.

14 **Q.** Essentially an additional funding resource to that which
15 was being provided across the United Kingdom by the
16 UK Government in its overarching response?

17 **A.** That's right, yes.

18 **Q.** Thank you.

19 One of the themes that does arise within the minutes
20 of the Star Chambers is the potential for duplication
21 between the different forms of financial support,
22 including the ERF. Was that something that concerned
23 you, effectively that you had a number of funds that
24 could all be utilised by the same individuals, so you
25 had that duplication?

93

1 considered the position to be uncertain generally; is
2 there any way that that could have been mitigated in May
3 and June of 2020?

4 **A.** I think much clearer indications from UK Government in
5 terms of the interventions that it was making, what the
6 funding would be, where the funding was coming from. So
7 you'll see in those minutes that I describe my concern
8 about the fact that the UK Government's
9 re-prioritisation exercise to which you refer might have
10 included health and local government. Now, those are
11 two really big spending blocks for the UK Government,
12 extra important for us here in Wales comparatively, so
13 if the UK Government was to be reducing funding through
14 parts of health or parts of local government, then it
15 would have a knock-on impact for us in the way that you
16 described at the start about those negative
17 consequential, so that was our real concern there.

18 **Q.** In terms of the impact that all of those different
19 factors had on decisions the Welsh Government was taking
20 at this stage of the pandemic, did that actually have
21 any impact on decision-making in relation to NPIs or any
22 of the bigger decisions that were taken?

23 **A.** So I don't think it impacted on the big decisions that
24 we were taking at this point, but we were carrying
25 an awful lot of risk in terms of the allocations that

95

1 **A.** I think that really showed part of the value of the
2 Star Chamber, in the sense that we would have that
3 overview across all of the interventions which were
4 taking place. And we were very clear. For example,
5 you'll see in the minutes of some of the Star Chamber
6 meetings we would have proposals for financial support
7 for a particular sector, but we would ask first: well,
8 hang on, are the staff able to be furloughed? And,
9 you know, asking those kind of questions, to avoid
10 duplication, we were very careful to do that. And
11 I think that was one of the benefits of the
12 Star Chamber.

13 **Q.** Thank you.

14 I now want to move, if I may, to the May/June period
15 of 2020, so moving through the pandemic, and in the
16 Cabinet meetings that took place on 4 May 2020,
17 uncertainty was noted with regard to the prospect of
18 further consequential owing to a Treasury-based
19 re-prioritisation exercise across Whitehall, and a risk,
20 therefore, was identified to the Welsh Government that
21 it could overcommit to the response and recovery
22 measures early in the financial year, with limited
23 opportunity to free up resources from elsewhere later.

24 Firstly, at that point, you've already explained,
25 all the way through until the Barnett guarantee you

94

1 we'd already made and the commitments that we'd already
2 made. So it was a very, very uncomfortable place to be
3 when you don't have the certainty that the funding's
4 going to be there. But we were making those decisions
5 in any case.

6 **Q.** At that point, really towards the end -- coming towards
7 the end of the summer, was a second wave being foreseen,
8 or was that something that was still some time away from
9 being predicted, from your recollection?

10 **A.** So are we talking July or ...?

11 **Q.** June. June 2020.

12 **A.** Let me see. Well, on 4 June I did, alongside
13 Ken Skates, write to the Chancellor, and at that point
14 I was asking about the intention to revive the
15 Coronavirus Job Retention Scheme, so furlough, or the
16 self-employed support scheme as well in the event of
17 a second peak or of the need for local lockdowns, so
18 obviously we were thinking about that as early as
19 June 4th.

20 **Q.** There were a number of communications between you and
21 the UK Government and your colleagues, actually, across
22 the devolved administrations, in relation to funding
23 through the pandemic. And indeed, just picking up on
24 the letters that you were writing on 3 July 2020, you
25 sent a letter to the Chancellor of the Exchequer.

96

1 And that's INQ000066172.

2 You talk about the general current economic
3 conditions. Of course this is after coming out of
4 lockdown essentially, moving through.

5 And it talks about, as I say, the UK economy and the
6 retraction there, the recession. It then continues to
7 speak on and deals with employment support schemes and
8 the Coronavirus Job Retention Scheme, the self-employed
9 income support scheme.

10 Those are topics that we will revisit, but if I can
11 just deal with one aspect there. You asked them for
12 clarification as to whether there is an intention to
13 revive the JRS and SEISS schemes if there is a second
14 peak or local lockdowns.

15 Did you receive, firstly, the JRS and the SEISS?
16 Those were UK Treasury-wide schemes; is that right?

17 **A.** That's correct.

18 **Q.** They're the furlough schemes and those that are related
19 to self-employment --

20 **A.** Yes.

21 **Q.** -- support also.

22 To what extent was the Welsh Government, if at all,
23 involved in decision-making regarding those schemes?

24 **A.** So the first thing to say is we didn't receive
25 a response to the letter to which I refer, which is on

97

1 weren't available, then the impacts of locking down and
2 preventing businesses from operating would have been
3 awful. But in the sense of, you know, large-scale
4 business closures, you'd have, you know, large-scale
5 unemployment, you'd have businesses closing and just not
6 being able to re-employ their staff again. So furlough
7 was absolutely critical in terms of allowing
8 businesses -- we called it hibernating -- to hibernate
9 and then come back.

10 **Q.** So essentially you saw them as closely related to
11 lockdown --

12 **A.** Yes.

13 **Q.** -- decisions? Thank you.

14 There were a number, then, of further conversations
15 with your counterparts in other devolved
16 administrations, government departments and indeed the
17 Treasury, and eventually there came a stage where there
18 was a Barnett guarantee that was agreed upon.

19 Firstly, what was the Barnett guarantee?

20 **A.** So the Barnett guarantee reflected the consequential
21 funding which would come to Wales as a result of
22 decisions taken by the UK Government in areas which were
23 devolved to Wales. But, as you've described, the
24 difficulty was there in terms of getting a proper
25 understanding as to what funding exactly would be coming

99

1 the screen at the moment, which was sent on 4 June.

2 We weren't involved in the setting up of the
3 furlough schemes or the self-employed support schemes.
4 Those are very much UK Government functions in the sense
5 that those wage support schemes and those -- you know,
6 benefits and welfare, it is a reserved function, so we
7 wouldn't expect to be, you know, deeply involved in the
8 detail of that, but nonetheless you would expect to have
9 at least some kind of discussion about what might be --
10 you know, what might be helpful for the response in
11 Wales. But those kind of discussions really were about
12 UK Government telling us, through the finance
13 quadrilateral meetings, what their intentions were
14 rather than, you know, exploring with us the shape of
15 those, those schemes.

16 **Q.** Thank you.

17 Just dealing with those schemes, what sorts of
18 decisions, in terms of the decisions that the Welsh
19 Government would be taking, would those schemes have
20 an impact on?

21 **A.** So those schemes, and we've been really clear that we
22 absolutely welcomed them, they were the right thing for
23 the UK Government to do, those schemes allowed us, when
24 they were available, to take decisions, for example,
25 about lockdown. The challenges came when those schemes

98

1 to Wales, and we needed that to be able to plan.

2 I should say the scale of the additional funding
3 which came to Wales in that financial year 2020/21 was
4 huge, it was £5.2 billion, a quarter of our normal
5 budget, so we did need that kind of certainty. What the
6 Barnett guarantee did was say that: for the rest of the
7 financial year your Barnett consequentials will not fall
8 below this particular point.

9 So when that arrived it was very useful. It should
10 have happened earlier and we should have had that kind
11 of reconciliation earlier than we did then, which came
12 at the autumn statement. So it was definitely a huge
13 step forward, really helpful, but even more clarity was
14 needed than we were given.

15 **Q.** What additional clarity or flexibility would you --
16 well, firstly, did you ask for and, secondly, did you
17 receive?

18 **A.** So in terms of clarity we were asking all the way
19 through the year, both ministerial level and at
20 official level for that reconciliation, because that
21 really does tell you where you are in terms of the
22 consequential funding. So that didn't come till the
23 autumn, which was unfortunate. You know, were there to
24 be another pandemic, if we could have those
25 reconciliations every -- every couple of months, that

100

1 would help a lot in terms of that clarity and
 2 transparency.
 3 In terms of the fiscal flexibilities, what we did --
 4 asked about was that carrying over at the end of the
 5 financial year, which I talked about previously. We
 6 asked to increase our borrowing limit, bearing in mind,
 7 of course, we can only borrow for capital investment,
 8 which is essentially infrastructure rather than
 9 day-to-day spend.
 10 We also asked for full access to the Wales Reserve.
 11 So I've described how that's worth £350 million. That
 12 would have helped a bit, especially at the start of the
 13 pandemic, but in any financial year you're only able to
 14 draw down £125 million revenue and £50 million capital.
 15 So those seemed pretty arbitrary in terms of drawdown
 16 limits. And the Chief Secretary to the Treasury can
 17 agree for you to draw down the entire amount from the
 18 Wales Reserve. They didn't agree during the pandemic
 19 but they did agree in this financial year because of the
 20 cost of living crisis, so there doesn't seem to be any
 21 real rhyme or reason, so I think there are things we
 22 should do in future related to the fiscal framework
 23 which just make things clearer and don't rely on how
 24 well disposed to devolution the CST of the day is, for
 25 example, how helpful the CST of the day is. We have the

101

1 **A.** Not to my knowledge. I do know it was, you know,
 2 a popular scheme amongst businesses in Wales, so you
 3 should recognise that as well. But, you know, this was
 4 a UK Government scheme, it's for the UK Government to
 5 defend its scheme.

6 **Q.** Thank you.
 7 Moving now to firebreak, please, and the firebreak
 8 that took place in late October of 2020. The decision
 9 was taken in principle to institute a firebreak in
 10 a meeting that took place on 15 October 2020. There
 11 were a number of proposals that were considered within
 12 the meeting, but if I can just please call up the paper
 13 that was considered.

14 It's at INQ00048876.

15 It's entitled "Fire Break Options and Analysis".
 16 You can see it, hopefully, on the screen in front of
 17 you.

18 Turning to page 2, if I may, one consideration in
 19 relevance to the firebreak, and you've alluded to it
 20 already, was that relating to the support for businesses
 21 and employees in the event that restrictions were
 22 reintroduced. What it states here is that:

23 "The scope to support businesses and employees in
 24 the event of national restrictions being reintroduced is
 25 largely dependent ... [Document read] ... impacted by

103

1 systems there and the systems work, regardless of
 2 personalities.

3 **Q.** Thank you.

4 Moving on then from the Barnett guarantee and just
 5 on to one specific topic of policy, Eat Out to Help Out.
 6 In relation to that, was there any involvement by the
 7 Welsh Government in the Eat Out to Help Out decision?

8 **A.** So not to my knowledge, certainly not from a finance
 9 perspective, but then there isn't really a particular
 10 finance angle to that, it's more economic, and I'm sure
 11 that the UK Government would have had its own health
 12 advice on that as well.

13 I did see in the evidence that the Prime Minister
 14 has given to the Inquiry that Wales didn't ask to opt
 15 out, which I thought was a curious thing to say, because
 16 there's no mechanism within the devolution settlement
 17 for us to opt in or out of UK Government programmes and
 18 decisions. So that was a curious thing I think to say.

19 Devolution would look very different if we were able
 20 to opt in and out of choices that the UK Government
 21 makes, but that's not devolution.

22 **Q.** May I just ask, to the best of your knowledge, were any
 23 objections raised to the scheme by either you, with your
 24 finance hat on, or by the Welsh Government more
 25 generally?

102

1 national restrictions."

2 We see as it goes -- continues down the page, that
 3 there are references to a new scheme in relation to the
 4 enhanced job support scheme that was announced by the
 5 Chancellor on 9 October, dealing with wage costs,
 6 furlough costs, and so on and so forth.

7 That scheme was to commence on 1 November, so
 8 approximately two to three weeks later. One of the
 9 issues that was debated at length was the length of the
 10 firebreak. The minutes of the Cabinet meeting reflect
 11 that and they also record the fact that scientific
 12 advice was that a minimum of two weeks was required but
 13 three weeks was preferable. Then it speaks about
 14 balancing, essentially, the need to consider that the
 15 longer restrictions remain in place the greater the
 16 economic, financial and social impact on the wellbeing
 17 of individuals. But, as I say, nonetheless it was
 18 decided in principle that a circuit-breaker would be
 19 introduced. And that was on 15 October.

20 It was after that decision that there was then
 21 a series of correspondence between the First Minister
 22 and the Chancellor about income support for that
 23 firebreak. But with regard to the length of that
 24 firebreak, two or three weeks, that had already been
 25 decided prior to those discussions, hadn't it, within

104

1 that Cabinet meeting on 15 October?
 2 **A.** So the purpose of the Cabinet meeting on 15 October was
 3 to take in principle a decision so that further work
 4 could be done and then we met the next week then to
 5 agree the substantive decision. And you're absolutely
 6 right, it was the case that the advice was that there
 7 should be a minimum of two weeks. Three weeks would be
 8 preferable. But if it was two weeks then the advice
 9 should be stay home, if it was three weeks it could be
 10 stay local. So those were the considerations we were
 11 making at the time. But, you know, the longer the
 12 firebreak, as you said, the greater the economic harm as
 13 well, so we were very aware of those things.

14 And it's worth remembering as well at this point we
 15 had large parts of Wales under those local restrictions
 16 as well, so I think that one of the challenges that we
 17 didn't know at the time, I think, was that the Kent
 18 variant was starting to become more significant, and
 19 I think that that impacted on the success or otherwise
 20 of the firebreak, because although it did push back the
 21 pandemic by, I think it was three weeks, I understand,
 22 you know, some of that gain wasn't as significant as
 23 we'd expected, because of the Kent variant being --
 24 you know, taking hold.

25 **LADY HALLETT:** I think Ms Cecil's question was: had the
 105

1 an inability to bring the claims date forward from the
 2 commencement of 1 November to 23 October or earlier than
 3 that; that's correct, isn't it?

4 **A.** Can you repeat the question?

5 **Q.** Yes, of course, sorry, it may have got a little bit
 6 muddled, let me deal with that again.

7 The new schemes that were being announced by
 8 the UK Government had been announced on 9 October, so
 9 prior to the Cabinet meeting on 15 October where the
 10 decision for the firebreak was undertaken.

11 Prior to the announcement of that new scheme on
 12 9 October, the devolved administrations had been briefed
 13 on that scheme; that's correct, isn't it?

14 **A.** Right.

15 **Q.** As part of that briefing, the devolved administrations
 16 had been told that that job support scheme could not be
 17 brought forward, owing to difficulties in HMRC's
 18 delivery timelines; is that right?

19 **A.** Yes.

20 **Q.** So that decision on 15 October was taken with the full
 21 knowledge that that JRS scheme could not be brought
 22 forward; that's correct, isn't it?

23 **A.** So the letter that we had in response from the
 24 Chancellor said that they couldn't bring the enhanced
 25 JSS forward due to limitations in HMRC delivery times,
 107

1 decision in principle been taken on 15 October for
 2 a two-week firebreak?

3 **A.** So in principle I think that's the decision that we
 4 took. Because Swansea University modelling told us in
 5 that Cabinet paper on the 15th that two weeks would
 6 bring R down from 1.4 to 0.8, and the purpose of the
 7 firebreak would be to both bring R under 1 but then also
 8 to consider how we revised the national rules so that we
 9 could look into, you know, going into winter. But, as
 10 you've seen there, things were more difficult than we'd
 11 expected.

12 **MS CECIL:** Correspondence was then only entered into with
 13 the UK Government and the Chancellor subsequent to that
 14 decision in principle; do you accept that, Minister?

15 **A.** Yeah, that seems to be the case, because, as you say,
 16 the letter went from the FM on the 16th.

17 **Q.** Indeed. And that letter requested that the scheme, the
 18 new scheme, be brought forward to 23 October, to start
 19 essentially the same date as that firebreak. And
 20 without getting into the detail of it, there were
 21 otherwise two parallel schemes, potentially, running for
 22 that period.

23 Dealing with that very briefly, at the point on
 24 15 October when the decision for a firebreak was taken,
 25 the Cabinet were already aware that there was
 106

1 but -- that letter is undated from the Chancellor, but
 2 I'm assuming it was after the 16th.

3 **Q.** Perhaps I can assist in relation to the letter.

4 If I can bring that up, it's INQ000216555, please.

5 The response -- this is the response of 19 October,
 6 if that helps. It's the response to the letter, you can
 7 see, of 16 October from the First Minister. If we read
 8 down, it says:

9 "Unfortunately, as the Chief Secretary to the
 10 Treasury and I referenced in our briefing with the
 11 Devolved Administrations in ... [Document read] ...
 12 limitations in HMRC delivery timelines."

13 Then what is being referenced there is the briefing
 14 that took place prior to the scheme being announced and
 15 the scheme was announced on 9 October.

16 **A.** Okay.

17 **Q.** We've established that the devolved administrations,
 18 you've agreed, were given advance notification and
 19 briefed on that scheme, so the point that I'm putting to
 20 you is that when you took the decision on 15 October,
 21 you were already aware that those timelines could not be
 22 brought forward, and it was only after that that again
 23 you then entered into subsequent correspondence?

24 **A.** Well, I think there are questions to be asked of HMRC as
 25 to whether those timelines could be brought forward.
 108

1 Had they needed to be brought forward for England,
2 I think HMRC could certainly have potentially pulled out
3 the stops to do that. We don't know, that's not
4 a question that I can answer, but I think that,
5 you know, there's absolutely no harm at all in doing
6 what we should do, which was to press.

7 And the reason why we were asking for that scheme to
8 be brought forward, because it was more generous, so it
9 would have been better for employees and also employers,
10 who wouldn't have had to pay the contribution that they
11 had to pay under the Coronavirus Job Retention Scheme,
12 which is again why I found it curious that the
13 Prime Minister has said in his written evidence to the
14 Inquiry that the Welsh Government didn't ask for the
15 CJRS to be extended. Well, why would we? Because that
16 was less generous. What we wanted was a better deal for
17 businesses in Wales.

18 And in the end, you know, we did have to undertake
19 the action that we did, despite the fact that it was
20 unreasonable to ask employers to apply for two schemes
21 for the same employee. But, you know, these were some
22 of the -- some of the difficulties. And it is what the
23 FM talks about in terms of Treasury operating for
24 England. Because when the UK Government decided then it
25 would take action, then of course the CJRS was changed

109

1 two weeks, three weeks, four weeks, whatever, there
2 would have been a job retention scheme in place?

3 **A.** There would, yes.

4 **LADY HALLETT:** And it was all about how much money those in
5 receipt of payments got either under the job retention
6 scheme or under the new scheme, which was more generous?

7 **A.** Yes, the new scheme would have been more generous. But
8 also the Coronavirus Job Retention Scheme required
9 employer contributions, whereas the scheme which we were
10 asking to be brought forward wouldn't. So again, that
11 would have been better --

12 **LADY HALLETT:** But it's not that the UK Government wasn't
13 providing financial support, it was simply that you
14 wanted the new amount of money that would come under the
15 new scheme?

16 **A.** That's correct, and we also didn't want businesses to
17 have to apply twice for the same person. But also some
18 of the worst affected sectors had staff who, because of
19 the -- who weren't eligible for the Coronavirus Job
20 Retention Scheme, because that required staff to have
21 been furloughed before 30 June -- and of course we're
22 talking about tourism, retail, hospitality businesses
23 here, which were, you know, recruiting after that date,
24 so there were potentially employees who wouldn't have
25 been eligible for support under that CJRS.

111

1 and there was a better package available.

2 **Q.** I've got just one final question in relation to that,
3 please, and that is simply: was it reasonable to expect
4 the UK Government to be able to change the operation of
5 that scheme in one week, decision made in principle on
6 the 15th, when it could be brought into force
7 effectively, the firebreak, on the 23rd?

8 **A.** Yes, I think that is absolutely reasonable, or at least
9 to ask the UK Government to set out in a bit more detail
10 what the operational problems are.

11 And one of the things I think is really interesting
12 is that in the UK Government's evidence they often talk
13 about the level of consequential funding that we'd had
14 at this point, as if that would help us, you know,
15 provide a scheme of our own. So if HMRC can't change
16 the operational data within a week, how on earth is the
17 Welsh Government going to have powers devolved to us to
18 set up an entirely new operation and department to be
19 able to do this kind of thing for ourselves? We need
20 the UK Government to be working with us in order to
21 protect businesses.

22 **MS CECIL:** Thank you, Minister --

23 **LADY HALLETT:** -- all about the amount of money in the
24 scheme. So the job retention scheme was going to go on
25 until 31 October. So had you had a firebreak of

110

1 **MS CECIL:** Thank you.

2 I've no further questions, Chair, but there are some
3 questions on behalf of core participants.

4 **LADY HALLETT:** There are.

5 Ms Heaven, I think -- I think you've got a question
6 that on my list originally was in the wrong -- for the
7 wrong witness. So I think -- have you got three
8 questions or two?

9 **MS HEAVEN:** Only two now, I've reduced them down.

10 **LADY HALLETT:** All right, thank you.

11 Questions from MS HEAVEN

12 **MS HEAVEN:** Thank you.

13 Good afternoon, Ms Evans, I represent Covid-19
14 Bereaved Families for Justice Cymru.

15 The first topic, please, is WhatsApps. So I'm just
16 going to read to you paragraph 40 of your first witness
17 statement, because you obviously did two witness
18 statements. So your first witness statement said:

19 "I would use WhatsApp or text in my Trefnydd role
20 during plenary to let ministers who were not in chamber
21 know when they had ... [Document read] ... in a press
22 conference, for example."

23 You then -- and that statement of course was signed
24 true to the best of your knowledge and belief.

25 You then provided the Inquiry with a second

112

1 statement. The first statement was 1 November 2023.
 2 Second statement was 15 December 2023, where you change
 3 your evidence to the Inquiry in relation to WhatsApps.
 4 And here at paragraph 10, I'll read it again to you, you
 5 say that you:

6 "... used WhatsApps on a personal phone and these
 7 comprised messages to my Cabinet colleagues ...
 8 [Document read] ... with support."

9 But that you didn't make decision via informal
 10 messaging platforms.

11 Now, we've obviously -- I don't know if you were in
 12 the Inquiry when Eluned Morgan gave evidence but we did
 13 just look at some WhatsApps between yourself and
 14 Eluned Morgan where you're very clearly asking for
 15 clarity on the rules and the guidance. I think we had
 16 one on static caravans, we had one on swimming lessons.

17 I just want to ask you about one or two more,
 18 please.

19 So if we could have INQ000303219, and the first one
 20 is at page 15.

21 So that will just pop up on your screen there. Is
 22 it up on your screen?

23 **A.** Yes.

24 **Q.** It's the top of the page. It's another query from
 25 yourself:

113

1 seeing here has absolutely nothing to do with the
 2 Covid Inquiry.

3 **Q.** Just let --

4 **A.** If I may. This relates to the legislature and I think
 5 it relates to votes at 16 and 17, so that has nothing to
 6 do --

7 **Q.** You're making government decisions --

8 **A.** -- Covid-19 --

9 **Q.** You're making decisions here with Vaughan Gething,
 10 aren't you, on WhatsApp. That's what that shows.
 11 I know it's not in relation to --

12 **A.** No, that is a discussion, and I say it's for the
 13 legislature, it's clearly not a matter for
 14 the executive, as in us as Welsh Government ministers.

15 **Q.** But my question that I was -- just so you understand
 16 what I was putting to you -- I appreciate you've changed
 17 your evidence, you've provided a second statement, but
 18 what I was suggesting to you was that your first
 19 statement was not correct, because you were simply
 20 saying that you were only using WhatsApp to send
 21 messages to remind people that they had five minutes or
 22 of a personal nature. That's what you said in your
 23 first statement. So I'm just simply asking you whether
 24 you agree that that first statement was incorrect in
 25 terms of what you were in fact using WhatsApp for. And

115

1 "One more question ... a socially distanced outdoor
 2 concert for 30 people... allowed or not allowed?
 3 I think not allowed, but don't want to be wrong this as
 4 it is for charity. As you can see, I am clearing some
 5 casework!"

6 Then if we just turn to page 24, please, for the
 7 final one, and it's at the very bottom. Thank you.
 8 Here we have yourself, and it's 5 October 2020:

9 "For FM and VG mostly, but following up from
 10 Cabinet: Mick is v opposed to debating 16 and 17
 11 tomorrow because it bypasses his [committee] and their
 12 opportunity to scrutinise. I do share his concerns
 13 about bypassing scrutiny ..."

14 And then you go on, and then Mr Gething says this:

15 "I think we should say ... [Document read] ...
 16 earlier vote."

17 Then he goes on. And then you say in response:

18 "I agree it's for the legislature."

19 Pausing there, would you agree with me that the
 20 first statement you gave to the Inquiry about your use
 21 of text messages was wrong and misleading, wasn't it?

22 **A.** No, I don't agree with that at all. I would say that
 23 I expanded on the evidence that I gave and I would also
 24 like it put on record that I have provided the Inquiry
 25 with extensive WhatsApp and text messages. What you're

114

1 I've taken you to some of them, for example you were
 2 clearly asking for clarity on regulations, but that
 3 doesn't appear in your first statement, does it?

4 **A.** I expanded in my second statement. And I think what you
 5 see, really, is a conscientious member of the Senedd, so
 6 just to be clear, we have two completely separate jobs:
 7 we're members of the Senedd and we're also members of
 8 the Welsh Government. We have different offices, we
 9 have different staff, different email addresses,
 10 different diaries, the whole thing are separate. So
 11 I spent hours every day, on top of my government work,
 12 working as a member of the Senedd responding to queries
 13 from constituents, and what you see a lot of the time is
 14 what happens when you've got legislation and guidance
 15 which is being made at pace, making contact with reality
 16 and real people's lives. And so we had all kinds of
 17 queries, so the example which was given previously,
 18 which related to swimming lessons, the last sentence
 19 wasn't read out, and the next question was -- so the
 20 constituent is telling me that swimming is on the
 21 curriculum. This should be treated as an education
 22 matter rather than a recreation matter.

23 **Q.** Can I --

24 **A.** Those kind of questions I think are legitimate for
 25 a conscientious member of the Senedd to be following up.

116

1 **Q.** Well, I think you've given your evidence. Can I just
2 move on, finally, to one more topic, please, and it's
3 your views on face coverings. As you're aware,
4 Frank Atherton had certain views in relation to face
5 coverings, and it would seem from the WhatsApps that you
6 took a slightly different view. So if I can ask you
7 about one, please.

8 It's INQ000316403, and it's page 45, please.

9 It's just at the top, a few lines down, and
10 Lee Waters introduces "Some polling on masks" -- there
11 we are -- and you say as follows:

12 "Interesting. For me, one benefit of masks is that
13 ... [Document read] ... though we can't see it."

14 If I can just ask you about one more entry, please,
15 which is at page 46, and this is part way down, it says:

16 "Rebecca Evans: Def CP end as we are all ...
17 [Document read] ... correspondence on this."

18 And then if you see a little bit further down,
19 Lesley Griffiths has said:

20 "Can see you Rebecca. Have ... [Document read] ...
21 hear the answer."

22 So, first of all, what correspondence were you
23 getting, and why weren't members of the public
24 concerned? And also, were you trying to, on this
25 occasion, or indeed others, put your views forward to

117

1 **LADY HALLETT:** All right, I think yes, you had better, for
2 the transcript.

3 **MR JACOBS:** Yes.

4 Ms Evans, an issue on which the TUC and the
5 Wales TUC called for action during the pandemic was for
6 financial support for those needing to self-isolate.
7 The concern was that those on lower incomes and in
8 insecure work in particular would struggle to
9 self-isolate if for two weeks of self-isolation they had
10 no or little income, would struggle to pay for food and
11 rent and so on.

12 Was that a concern shared by the Welsh Government?

13 **A.** Yes, it was.

14 **Q.** The concern in particular was that it particularly
15 impacted lower income, higher risk sectors in which
16 health outcomes were already poorer: those working in
17 food processing plants, cleaners, porters, those in
18 transport, social care and so on. Was that aspect of
19 the concern one shared by the Welsh Government?

20 **A.** Yes.

21 **Q.** Ms Evans, the Welsh Government introduced the
22 self-isolation support payment scheme, didn't it?

23 **A.** It did, yes.

24 **Q.** And that was towards the end of October 2020; is that
25 right?

119

1 Frank about the importance of face coverings?

2 **A.** So, again, this is me operating in my member of the
3 Senedd role, which is separate, in the sense that I'm
4 saying I get a lot of correspondence on it. I would
5 have to go back and check through my records what
6 correspondence I was receiving, but my own view is
7 that -- as I've said here, is that masks I thought were
8 a really good visual reminder to people. Masks said to
9 people as well that "I care about you", because, as you
10 remember, masks you wear to protect others rather than
11 yourself, and I thought it was a good visual sign,
12 really, that we could be looking after each other in the
13 community. So I always was on the more cautious end of
14 things when masks were concerned.

15 **MS HEAVEN:** Okay.

16 Thank you very much, my Lady.

17 Thank you.

18 **LADY HALLETT:** Thank you, Ms Heaven.

19 Mr Jacobs.

20 Questions from MR JACOBS

21 **MR JACOBS:** (Inaudible - microphone not on).

22 **LADY HALLETT:** Is your microphone on, Mr Jacobs?

23 **MR JACOBS:** -- question again --

24 **LADY HALLETT:** Okay.

25 **MR JACOBS:** -- maybe.

118

1 **A.** Yes, correct.

2 **Q.** That was eight months after self-isolation was first
3 introduced as a key NPI in response to the pandemic.
4 Was that far too late?

5 **A.** I certainly would have wanted to have been able to do
6 that -- that sooner, and I've been thinking very much
7 about this, and I think that one of the challenges we
8 had at the time was that by the time we got to July we
9 were facing -- and you'll see it in some of the
10 documents I've shared with the Inquiry -- that we were
11 facing up to £1 billion to £1.5 billion of forecast
12 pressures on the Welsh Government's budget. That didn't
13 even include what we might need if there was a second
14 lockdown or if you include extra pressures on Welsh
15 Government resources, for example job losses leading to
16 higher claims on various types of support.

17 So there were huge pressures at the time, and
18 I remember looking recently at some documents where
19 the -- where Welsh Government officials were looking at
20 that £600 million which was announced by the
21 UK Government for infection control in care homes, and
22 I think that that was one area where we were trying to
23 get clarity as to whether or not that included
24 consequential funding for the self-isolation within
25 those care homes as well, so I think it is some --

120

1 a scheme that we definitely we would have wished to have
2 brought in earlier. I think that it demonstrates one of
3 the tough decisions we had to make, from a financial
4 perspective, in terms of being able to agree to
5 an open-ended financial commitment, which could be
6 significant, when you don't have the clarity of the
7 budget available to service it.

8 **Q.** Ms Evans, clearly significant budgetary pressures, but
9 for those first eight months the additional sums spent
10 on financial support for those in work needing to
11 self-isolate was zero, wasn't it? Whatever the
12 financial pressures, could it not have been more than
13 that?

14 **A.** I think that, you know, were we to look back and be able
15 to do things again, you know, we could have looked at
16 that -- we could have looked at that earlier, that's
17 definitely fair to say.

18 From a financial management perspective, that would
19 have increased the risk even further. When I say,
20 you know, £1 billion of pressures and up to £1.5 billion
21 of forecast pressures, without even a second lockdown,
22 that is huge. And, you know --

23 **Q.** Yes.

24 **A.** -- I think that that is really, you know, what we need
25 to be considering as well. So it does demonstrate some

121

1 unfortunately always one of the things that we have to
2 think about when we're looking at supporting different
3 programmes.

4 **MR JACOBS:** I think I'm at my time, thank you very much.

5 **LADY HALLETT:** Thank you, Mr Jacobs.

6 Thank you very much indeed, Ms Evans, very grateful
7 for your help.

8 **THE WITNESS:** Thank you.

9 (The witness withdrew)

10 **LADY HALLETT:** We shall adjourn now until 1.50.

11 (1.01 pm)

12 (The short adjournment)

13 (1.50 pm)

14 **MR POOLE:** Could I call Jeremy Miles, please.

15 **MR JEREMY MILES (sworn)**

16 **Questions from LEAD COUNSEL TO THE INQUIRY for MODULE 2B**

17 **LADY HALLETT:** (Inaudible - microphone switch delay) -- to
18 ask you to come and give evidence this week. As I said
19 to Mr Gething, I appreciate it's not the best week.

20 **MR POOLE:** Could you start with giving us your full name,
21 please.

22 **A.** My name is Jeremy Miles.

23 **Q.** Mr Miles, thank you for attending today and assisting
24 the Inquiry. You have provided a witness statement. We
25 can see that at INQ000389184. That was signed on

123

1 of the tough financial choices you have to make in these
2 circumstances.

3 **Q.** Would the Barnett guarantee in July 2020 have been
4 an opportunity to take some action on the issue of
5 financial support for self-isolation?

6 **A.** Again, it ... I'd go back and think about it. It could
7 have been a point at which we could have done that. But
8 even when we got to July and had that Barnett guarantee
9 we were still well beyond the Barnett guarantee in terms
10 of the funding that was required as well.

11 **Q.** Just finally, in the latter part of the pandemic you
12 will recall, I'm sure, that the Welsh Government
13 increased the £500 self-isolation support payment to
14 £750. Can you help us with the rationale for that and
15 was there concern in particular that even a £500 payment
16 wasn't sufficient to remove the financial barriers to
17 self-isolation?

18 **A.** So it would have been my colleague, the minister with
19 responsibility for social services at the time, who
20 would have been responsible for asking us to increase
21 that funding. But at that point affordability was
22 different, so we had -- you know, we had the Barnett
23 guarantee, then we had uplifts to the Barnett guarantee
24 to the point at which we were even carrying money over
25 at the end of the financial year, so affordability is

122

1 13 December last year. Are the contents of that witness
2 statement true to the best of your knowledge and belief?

3 **A.** They are.

4 **Q.** In terms of your professional background, you studied
5 law at Oxford before teaching law at Warsaw University
6 and then practising as a solicitor in private practice.
7 You were first elected to the Senedd for the Neath
8 constituency in 2016, and you have been a member of
9 a number of Senedd committees, including the Economy,
10 Skills and Infrastructure Committee, the Culture and
11 Welsh Language and Communications Committee, and the
12 External Affairs Committee.

13 You were sworn in as Counsel General on
14 13 December 2017, and on the election of Mark Drakeford
15 as Welsh Labour leader and First Minister in
16 December 2018, you retained the role of Counsel General
17 and assumed the new post of Brexit minister, and
18 I understand that post was renamed a year later as
19 Minister for European Transition, and then in 2021 you
20 were re-elected as a Member of the Senedd for Neath, and
21 in May of that year you were appointed as Minister for
22 Education and the Welsh language.

23 Is all of that right?

24 **A.** It is correct.

25 **Q.** Start, if I may, by asking you some questions, then,

124

1 about the role of Counsel General. And in fact before
2 we go to that, perhaps some questions about your use of
3 informal methods of communication, so WhatsApp and text
4 messages.

5 You deal with this at paragraph 25 of your witness
6 statement, and you say there that while the Welsh
7 Government does not permit the use of WhatsApp on Welsh
8 Government mobile phones, you used your personal mobile
9 phone to send WhatsApp messages, and we have seen --
10 the Inquiry has seen exchanges between yourself and
11 Welsh ministers on a Welsh minister WhatsApp group and
12 other individual exchanges of WhatsApps between other
13 officials, for example, Jane Hutt, Helen Lentle.

14 Dame Shan Morgan was taken to a number of Welsh
15 Government policies concerning the use of informal
16 methods of communication, and also the importance of
17 ensuring that any messages concerning Welsh Government
18 business are maintained on the corporate record by,
19 for example, uploading to iShare.

20 I suppose the first question: do you accept that it
21 was wrong to have used WhatsApp on your personal mobile
22 phone to discuss government business?

23 **A.** Well, the Welsh Government's policy is not to allow
24 WhatsApp to be downloaded onto Welsh Government phones,
25 so, as you say, in my case, that was on my personal

125

1 Inquiry's considerations, that there's a broader --
2 there's a broader net, if you like, which captures all
3 of that communication, but that certainly wasn't my
4 appreciation at the time.

5 **Q.** You say, also in paragraph 25 of your witness statement,
6 that from time to time, I think prior to but also during
7 the pandemic, you would manually delete or clear out
8 messages, and that from an unknown point in time you had
9 automatic deletion turned on for messages, which is also
10 known as disappearing messages.

11 The Inquiry understands that disappearing messages
12 could be enabled from November 2020. Are you able to
13 assist, would that have been when you enabled
14 disappearing messages?

15 **A.** I'm afraid I don't know the answer to that question
16 specifically. The context for this, though, is it's my
17 personal phone and I'd had my phone stolen in 2017 and
18 was sensitive to having on my phone anything which
19 somebody picking up the private phone of a public figure
20 might be interested to read, so whether that was work
21 colleagues' messages or personal messages, I was in
22 the -- my practice was to delete that.

23 **Q.** Given your legal background and legal training, did it
24 not perhaps occur to you that the events of a pandemic
25 may one day be the subject of an Inquiry such as this,

127

1 phone, my private phone, not my Senedd phone. So I was
2 having colleagues messaging me on my personal phone
3 effectively.

4 I'm not aware of the guidance I think you're
5 referring to -- well, I certainly wasn't previous to the
6 hearing, the Inquiry -- which was the guidance from
7 2009, I believe. So I was not aware at the time that we
8 were exchanging messages that that was inappropriate or
9 contrary to that guidance, though obviously I've seen
10 that guidance subsequently.

11 **Q.** I think you make the distinction that we've heard
12 a number of ministers and officials make, that you say
13 decisions were not taken by WhatsApp. The Inquiry has,
14 however, seen a number of exchanges involving you and
15 ministerial colleagues that discuss Welsh Government
16 decisions and also air concerns and confusion, perhaps,
17 about certain policies and certain decisions that were
18 taken during the pandemic.

19 Do you accept that those discussions should be
20 retained and recorded for the corporate record?

21 **A.** Well, I can see that now. At the time I regarded that
22 as chat between work colleagues and not the sort of
23 content which I would regard as being relevant to
24 decision-making.

25 I understand, of course, in the light of the

126

1 which would require full disclosure, including
2 disclosure of such messages even on a personal mobile
3 phone?

4 **A.** Well, I suppose I regarded the kind of things that were
5 being talked about as not being, you know, public
6 records in that sense, they were chats between work
7 colleagues. I obviously know in light of the
8 discussions in this Inquiry that was the wrong
9 assumption to make, but that was my understanding at the
10 time.

11 **Q.** Mr Gething told the Inquiry yesterday that it was a real
12 embarrassment for him not to have access to his
13 WhatsApps during the period that he was Minister for
14 Health and Social Services. Is it an embarrassment to
15 you to have deleted messages and turned on disappearing
16 messages during the pandemic?

17 **A.** Well, certainly in light of subsequent events I wish
18 I had kept them, but I just want to say the reason that
19 I was in the practice of deleting was, having had my
20 phone stolen a few years before, I was particularly
21 sensitive to material being on there which, you know,
22 somebody stealing or finding a phone in the gym or
23 whatever might be interested in. So that's the context
24 for it.

25 **Q.** Mr Miles, if I turn then to your role as

128

1 Counsel General, as I understand it, Counsel General is
2 the principal legal adviser to the Welsh Government. As
3 well as providing legal advice to the Welsh Government,
4 the Counsel General has a role to play in: first,
5 legislative drafting; second, protecting the devolution
6 settlement; and, third, generally overseeing the legal
7 aspects of government operations and ensuring compliance
8 with the law. Is that a fair summary?

9 **A.** It is indeed yes.

10 **Q.** Although not a Welsh minister, as Counsel General you
11 were a member of the Welsh Government and, as such,
12 participated in Cabinet meetings, I understand, at the
13 invitation of the First Minister; is that right?

14 **A.** Yes, it was a standing invitation under the current
15 First Minister and, certainly in my time, under the
16 previous First Minister as well.

17 **Q.** You say at paragraph 9 of your witness statement:

18 "Collective possibility applies to the
19 Counsel General save that there are certain functions in
20 respect of which the Ministerial Code expressly exempts
21 the Counsel General's functions so that he can act
22 independently."

23 That reference again, as I understand it, to acting
24 independently of the Welsh Government, and those
25 exemptions that are referred to there, the

129

1 this Inquiry the Welsh Government and Welsh ministers
2 have agreed to provide the Inquiry with privileged
3 material; again that's right?

4 **A.** We have, yes.

5 **Q.** Now, you liaised closely during your time as
6 Counsel General with Helen Lentle, who was director of
7 Legal Services. Can you just briefly outline to
8 the Inquiry the role that Legal Services performed
9 during the pandemic?

10 **A.** Certainly. Well, I think it's probably useful as
11 context for the discussion generally to know that there
12 isn't a separate office of the Counsel General, so there
13 isn't -- when I became Counsel General I considered
14 establishing that but I couldn't really justify, on the
15 number of lawyers that we have at our disposal, running
16 two different infrastructures, if you like.

17 So each of the government ministers has the ability
18 to draw on a team of lawyers who are expert in
19 education, local government, environmental law, and they
20 all report in to Helen Lentle, who is the director of
21 Legal Services for the Welsh Government, and therefore
22 the most senior public lawyer providing advice to the
23 government, and it was my practice to meet with her
24 regularly so that we would discuss legal issues, either
25 legal issues which were coming up across the

131

1 Ministerial Code relates to instances where you, as
2 Counsel General, might consider it appropriate, and I'm
3 quoting:

4 "... for the protection of or promotion of the
5 public interest to defend or appear in legal proceedings
6 and also when scrutinising Bills."

7 Is that right?

8 **A.** Yes, it is. I haven't personally appeared in legal
9 proceedings but one of the key roles of the
10 Counsel General, in the context of legislation, is to
11 form a view on whether the legislation proposed by the
12 government is, for example, within our legal powers, and
13 one of the powers of the Counsel General is to refer
14 that matter to the Supreme Court for determination. So
15 that element of independence from the government,
16 for example, in that context would be important.

17 **Q.** So save for that function when you're scrutinising
18 Bills, collective responsibility applies to you and you
19 are bound by the Ministerial Code; is that right?

20 **A.** For all intents and purposes, yes.

21 **Q.** Is it right to say that legal advice that you provided
22 to the Welsh Government is covered by legal professional
23 privilege; that's right?

24 **A.** It is, yes.

25 **Q.** However, we should be clear that for the purposes of

130

1 government's business generally or specifically in
2 relation to Cabinet meetings, Cabinet papers, but also
3 legislation. So I would have that periodic regular
4 discussion so that I was able to shape the advice, test
5 the advice, discuss what was -- what I felt were the
6 priorities for us, so I would have that relationship
7 with Helen Lentle and I would have an equivalent
8 relationship with the First Legislative Counsel,
9 Dylan Hughes, in relation to the legislative programme.

10 **Q.** Am I right that the Office of the Legislative Counsel,
11 that sits within the directorate -- within the office of
12 the First Minister; is that --

13 **A.** It does, yes.

14 **Q.** As you say, Dylan Hughes, he was Welsh First Legislative
15 Counsel, and you interacted with him alongside
16 Helen Lentle during the pandemic?

17 **A.** Indeed. I mean, for most days, during the most intense
18 period of activity, we would meet, either the three of
19 us or, you know, myself with one of them, certainly most
20 days.

21 **Q.** The Inquiry has heard evidence already about the
22 ministerial advice process, so namely the process by
23 which civil servants and government officials would
24 provide legal policy and advice to Welsh ministers.

25 I just want to understand the role that you played in

132

1 that process, obviously specifically during the
2 pandemic. Would you have had sight of all ministerial
3 advices produced during the pandemic?

4 **A.** Well, there are two capacities in which I operate
5 here -- or three probably, actually. So, firstly, the
6 Counsel General's office is a mandatory copy on all
7 ministerial advices across the government. You know,
8 many of those are not controversial and so I wouldn't
9 expect to see those, but of that where I'm simply
10 a mandatory copy, I would probably see about 60% of
11 those, and I would be able to comment on them in the
12 usual way.

13 There's another category in which I was specifically
14 copied under the name of the deciding minister, so you
15 will have seen a number of examples where the First
16 Minister is taking a decision and I am copied on that.
17 So I would obviously have seen all of those.

18 And then when there is legal advice of any
19 significance or materiality in the ministerial advice --
20 and during the Covid period obviously that was very
21 often the case -- I would either have specifically
22 cleared the legal advice before it appeared in the
23 memorandum -- in the ministerial advice or it was based
24 on another document which I had approved or was
25 sufficiently close to the discussions that I'd had with

133

1 discussion and decision making process".

2 Did you ever find it difficult during the pandemic
3 to fulfil those two roles? So on the one hand being the
4 provider of legal advice but on the other acting as
5 a collective decision-maker?

6 **A.** Well, I think that my role in providing and explaining
7 the legal advice in Cabinet during the Covid period,
8 from recollection, at the start of the Covid period,
9 when the Cabinet itself was developing an understanding
10 of the basis on which regulations should be reviewed,
11 for example, much of the work I did to explain to
12 colleagues what the legal structure, legal requirements
13 were, happened then.

14 I think over time the Cabinet obviously developed
15 its own understanding of that, and had the legal advice
16 in front of it generally in any event, and so I would
17 participate in that broader discussion. So I was
18 careful to take the two things separately.

19 But as we went through the -- into the, you know,
20 the months of Covid, there was more scope for that
21 broader discussion, because I felt that the legal
22 principles were understood by colleagues.

23 **Q.** I want to change topic and ask you now about some of the
24 input that you had into specific decisions that were
25 taken in the period February to March 2020 and start, if

135

1 the legal advisers that I was content for that to
2 proceed.

3 **Q.** I understand.

4 Presumably there were instances during the pandemic
5 when Welsh ministers came to you directly for advice; is
6 that right?

7 **A.** Well, not very often. I mean, occasionally I would have
8 someone saying "I've had this advice, do you agree with
9 it?", perhaps. "Do you think there's another way of
10 dealing with this?" Maybe asking if the advice was
11 perhaps too cautious. And my practice was always to
12 listen -- if I was able to confirm that I agreed with
13 the advice, obviously I would do that, but if there was
14 something to take away and consider, I would often do
15 that but do that through the Legal Services team, and so
16 I didn't want to establish a separate legal channel, if
17 you like. It's obviously important that that's all
18 consistent. So the response to that discussion would
19 then come through Legal Services.

20 **Q.** As regards your role in Cabinet, you describe this in
21 your witness statement as being twofold. You say,
22 first, it was explaining "in simple and practical terms
23 what the legal advice was and why, and [also] the
24 implications ... for the matters under consideration".
25 And second, playing "a full part in the substantive

134

1 I may, with the Coronavirus Bill.

2 You say at paragraph 83 of your witness statement,
3 you explain that:

4 "On 24 February 2020, [you] were asked to Chair
5 a Cabinet Sub-Committee on the Welsh Government's
6 legislative programme in the First Minister's absence."

7 And you say:

8 "I recall that there was an item on the agenda about
9 the Coronavirus Bill ... being prepared by the UK
10 Government."

11 But that you were "not directly involved in the Bill
12 at that point". Then you say:

13 "... (I was to become involved soon after), but
14 I was told by lawyers in Welsh Government Legal Services
15 that at that point we had good input into the
16 preparation of that legislation."

17 I just want to understand, what involvement did you
18 have in respect of the Coronavirus Bill?

19 **A.** At that point I was aware that we'd had the first print
20 of the Bill I think a week before and I was aware that
21 Helen Lentle was in regular discussion, I think, with
22 the First Minister and the health minister about the
23 contents of the Bill, and -- at that point that was my
24 understanding, and that was gleaned through the regular
25 meetings and discussions that I had with Helen Lentle as

136

1 part of my role. You know, after that period I think
 2 the intensity of working on the Bill increased in any
 3 event, and that was developed very rapidly through March
 4 and there were a number of issues on which I was engaged
 5 during that period in relation to some aspects of the
 6 Bill were retrospective, some aspects of it were areas
 7 in which we were able to persuade the UK Government to
 8 change their position, so some of the education
 9 provisions, there were provisions in relation to
 10 protection of tenancies, in relation to financial
 11 support. So there were a number of areas in which I had
 12 been involved subsequently, but at that point I was
 13 aware of it -- of the work that lawyers were doing
 14 through my regular discussions with Helen Lentle.

15 **Q.** Would you say generally that the Welsh Government had
 16 good input into the final product of the
 17 Coronavirus Bill that then became the Coronavirus Act?

18 **A.** Yes, it happened very quickly but I think it was
 19 an example of good cross-government working.

20 There was -- inevitably perhaps when you're working
 21 to that kind of constrained timetable set by the
 22 Parliamentary timetable in Westminster, it wasn't
 23 particularly convenient for our Senedd timetable, but,
 24 you know, in these circumstances, one accommodates that,
 25 naturally. But there were, you know, many examples --

137

1 read] ... at the latest on 20 March ..."

2 It then goes on to say -- thank you -- second
 3 paragraph down:

4 "Today's decision will help ... [Document read] ...
 5 ahead of the early break."

6 Would you agree that that doesn't sound like
 7 a policy announcement advising that schools should
 8 close, that sounds more like a mandatory directive, and
 9 the language was "schools across Wales will close for
 10 the statutory provision of education"?

11 **A.** Well, I suppose I bring some experience of hindsight on
 12 this as well, having been -- being education minister at
 13 the moment. The statement in Kirsty's statement is
 14 correct. I think what the press announcement is doing
 15 is seeking to give a very clear sense of direction to
 16 the education system generally. The context for this
 17 was, from memory, that schools had, if you like, started
 18 to close themselves. This was happening right across
 19 Wales. And so my understanding of the purpose of the
 20 statement is to shape that, give a sense of direction
 21 and a sense of order to that, and so I think the
 22 language needs to be seen in that context.

23 **Q.** Now, you say in your witness statement, it's
 24 paragraph 102, we don't need to go to it, that you were
 25 not asked to advise on this decision to close schools

139

1 I think of policy instructions coming through and then
 2 having to be very rapidly shared amongst policy --
 3 ministerial colleagues with policy responsibilities for
 4 their inputs, and ... but I do think there was good
 5 joint working and I do think that the input of Welsh
 6 Government lawyers helped shape the Bill and improve the
 7 Bill as well.

8 **Q.** I want to ask you next about school closures. The
 9 Inquiry's heard that on 18 March 2020, the then
 10 education minister, Kirsty Williams, issued a statement
 11 closing schools for face-to-face learning. In her
 12 witness statement, so Kirsty Williams' witness
 13 statement -- which we have at INQ000362237, we're
 14 looking at paragraph 99 -- it says:

15 "The Welsh Ministers do not run individual schools
 16 in Wales ... and I did not have the power to direct
 17 schools to close ... [Document read] ... to implement
 18 that policy."

19 If we could just have a look, please, at the actual
 20 statement, so this is the announcement that
 21 Kirsty Williams gave on 18 March.

22 I think it's INQ000349180.

23 I think I'm looking at the -- yes, so the top of
 24 that page, starting "Today", it says:

25 "Today, I can announce we are bringing ... [Document
 138

1 and nor were Legal Services. That's right, isn't it?

2 **A.** It is.

3 **Q.** Now, although we appreciate matters were moving very
 4 quickly at this point in mid-March, Ms Williams says in
 5 her witness statement that officials were already
 6 planning for school closures and the impact on the
 7 examination system on 4 March. Are you surprised that
 8 a decision was taken on 18 March to close schools
 9 without any legal advice?

10 **A.** Well, I would have preferred for there to have been
 11 a legal advice taken in relation to that. There had
 12 been a Cabinet on the -- a couple of days before where
 13 it didn't feel like that decision was imminent, but
 14 I think, from memory, the position changed very rapidly
 15 in the intervening period. But I certainly think it
 16 would have been preferable for there to have been legal
 17 advice even though there wasn't a formal exercise of
 18 a legal power.

19 **Q.** If we can, please, have another look at a separate
 20 passage of Ms Williams' witness statement.

21 It's paragraph 108, thank you.

22 It says here:

23 "On 17 and 18 March 2020, matters were moving so
 24 quickly that there was no time for officials to prepare
 25 a formal ... [Document read] ... sent to me on

140

1 23 March 2020 ..."

2 So, is it fair to say that the advice that was
3 provided was retrospective?

4 **A.** I think from the chronology as set out in
5 Kirsty Williams' statement that's the inevitable
6 conclusion.

7 **Q.** If we could have a look at that ministerial advice,
8 please, it's INQ000145342. If we can turn -- it looks
9 like quite a long document, so if we can turn to --
10 sorry, paragraph 32 but page 7, I'm grateful. It states
11 here:

12 "It should also be noted that the [Department of
13 Education] are also experiencing a similar situation
14 following Wednesday's announcement. It is important to
15 note schools have not been close, they have been
16 repurposed at a time of national crisis ... [Document
17 read] ... schools and others will respond positively to
18 this guidance."

19 And perhaps the next paragraph, please:

20 "We do [not] intend to take a power in the COVID-19
21 Bill that would give us the power to ... [Document read]
22 ... scale and urgency of the emergency ..."

23 Then if we can skip down to paragraph 37 on that
24 same page, confirming here:

25 "No legal advice was sought before these
141

1 18 March; is that right?

2 **A.** Yes, and what the minister is doing is giving
3 a direction to local authorities -- I shouldn't use the
4 term "direction" -- but essentially sent, gave a clear
5 statement of policy about what the government wishes to
6 see and I think, from recollection, that that was
7 welcomed because, as I was saying earlier, schools were
8 taking their own decisions to close.

9 So giving it a sense of purpose and a sense that
10 this was happening on a national basis I think was part
11 of the rationale for that. But, as I say, there was not
12 a power of the minister to close the schools directly
13 but, notwithstanding that, I think it would have been
14 helpful for legal advice to have been taken.

15 **Q.** I want to turn to mass gatherings and the legal advice
16 that you gave about mass gatherings next, if I may. You
17 deal with this at paragraph 94 of your witness
18 statement. We don't need to bring it up. Let me just
19 read to you what you say. You say:

20 "By 13 March 2020, concerns had been raised about
21 public events attended by large numbers of people,
22 including sporting fixtures."

23 And:

24 "... that day, I asked my Private Office to email
25 Helen Lentle for advice as to whether the Senedd had
143

1 statements ... were released."

2 Then the next paragraph, paragraph 38:

3 "The power to vary the dates of school holidays is
4 a local authority or school governing body power, not
5 a Welsh Ministers power. The relevant power ...
6 [Document read] ... but Legal Services are not aware
7 that such consultation had taken place."

8 It is fair to say we know, don't we, that local
9 authorities and governing bodies had not been consulted
10 prior to the announcement on 18 March?

11 **A.** I can't myself tell you that I know first-hand what
12 level of consultation had taken place.

13 **Q.** If we -- same document, ministerial advice but over the
14 page, paragraph 40, please:

15 "There are temporary school closure powers ...
16 [Document read] ... not provide legal cover to the
17 Minister's announcements/statements."

18 Was this a ministerial advice that you saw at the
19 time or were you asked to contribute to this ministerial
20 advice?

21 **A.** I'm trying to recollect. I think I will have seen it
22 before it was sent to the minister, but I can't remember
23 specifically, I'm afraid.

24 **Q.** So it appears, from what is set out here, that the Welsh
25 Government did not have the power to close schools on
142

1 legislative competence to limit mass gatherings."

2 We can see this request. It was 13 March. It's
3 INQ000376453. If we go to the bottom of page 2, we see
4 there:

5 "Counsel General has asked if we have any competence
6 in relation to limiting mass gatherings due to
7 coronavirus."

8 Then if we go up to the top, we can see the advice
9 that comes back -- thank you, page 1.

10 So this is sent on behalf of Helen Lentle. Perhaps
11 if I can just summarise it and then you can tell me if
12 I've got it right. The advice was that any legislation
13 passed by the Senedd to restrict mass gatherings was
14 likely to engage reserved matters, whereas the draft
15 Coronavirus Bill would contain powers for the Welsh
16 ministers to regulate mass gatherings and exercising
17 powers under the Bill was preferable in the interests of
18 being able to act coherently and comprehensively because
19 it wouldn't raise any question about legislative
20 comments. Is that a fair summary of the advice?

21 **A.** I think it is.

22 **Q.** Was that advice, so Helen Lentle's advice, conveyed to
23 the First Minister and Welsh ministers, do you know?

24 **A.** I don't know.

25 **Q.** On 20 March, the First Minister requested advice on the
144

1 legal powers that Welsh ministers had to announce and
2 enforce a lockdown in Wales.

3 And, again, if we can just look at the request, it's
4 INQ000336318.

5 If we can have a look at the bottom email -- yes,
6 page 4. So this is the request that is made to
7 Helen Lentle. It refers to:

8 "... a meeting yesterday, attended by the
9 First Minister, Permanent Secretary, and several Welsh
10 Ministers, the question of lockdown legal powers [was
11 focusing then] on the Civil Contingencies Act ...
12 [refers] to emergency powers for public health crises."

13 And states:

14 "However, we need clarity on what relevant powers
15 Welsh ministers would have in this scenario."

16 And a response, we see that in bold, on that email,
17 a response is requested at the latest 3 pm the same day.
18 So that email sent at 13.27, so it's an extremely quick
19 turnaround being requested. And we in fact see, if we
20 go up the page to page 2 -- as the first line says -- so
21 this is now 14.51. As the first line says:

22 "... below is a short summary of the position with
23 regard to the current and anticipated powers."

24 Again, perhaps if I just summarise the advice and
25 you can confirm if I've got it right, so the powers

145

1 thank you for correcting me.

2 **A.** The assumption at this point was that the civil
3 contingencies legislation would be the relevant
4 legislation effectively.

5 **Q.** Absolutely. And then that email chain was forwarded on
6 to you and I think we see at the top of the page we've
7 still got up "Helpful thanks".

8 Again, this advice presumably was passed on to the
9 First Minister?

10 **A.** I think his office is copied in on the response from
11 Legal Services.

12 **Q.** Is that right? Certainly his senior special adviser is,
13 Jane Runeckles.

14 **A.** And the head of his office --

15 **Q.** Yes. Were you asked to advise on the powers available
16 to Welsh ministers to implement a national lockdown?

17 **A.** No, not beyond the advice, not beyond the commission
18 that had gone directly to Legal Services.

19 **Q.** That advice that we've just seen, that we've just
20 summarised, did you have input into that or was that
21 a product of Legal Services?

22 **A.** That was a product of Legal Services, but I was not
23 surprised to see the advice, because the assumption was
24 that the Civil Contingencies Act would be relevant,
25 although by the time we got to the end of the day the

147

1 under the Civil Contingencies Act are devolved and
2 therefore not exercisable by Welsh ministers. Powers
3 under the Public Health Act can be used to keep
4 an individual or group of people in isolation, if
5 necessary or proportionate to reduce the risk of
6 infection, but the advice was these powers could not be
7 applied to all citizens and therefore could not be used
8 to lock down the whole of Wales. And then it went on to
9 say that powers under the Coronavirus Bill could be used
10 to restrict the movement of people if they're
11 potentially infectious and could also be used to direct
12 the closure of premises and restrict gatherings; again,
13 is that a fair summary of the advice?

14 **A.** Well, the advice is that the powers in the Civil
15 Contingencies Act are not devolved. They're reserved to
16 UK Government ministers and therefore are not available
17 to Welsh ministers.

18 **Q.** Indeed.

19 **A.** And in relation to the public health provisions, I read
20 the email to say that the existing regulations aren't
21 sufficiently broad to capture the intended purpose.

22 **LADY HALLETT:** I think you omitted a "not" in your question.

23 **MR POOLE:** I apologise. Thank you for clarifying.

24 **LADY HALLETT:** You said they are devolved.

25 **MR POOLE:** No, sorry. That's entirely my mistake, so

146

1 matters had moved on because of the meeting at COBR.

2 **Q.** Because, as we know, public health powers were in fact
3 used by Welsh ministers --

4 **A.** They were.

5 **Q.** -- to close restaurants, pubs, bars, other facilities,
6 and also to then implement the national lockdown on
7 23 March.

8 So just casting your mind back to those two pieces
9 of advice we've just been looking at, so first on
10 13 March that dealt with mass gatherings and then on
11 20 March dealing with generally lockdown, was it wrong
12 to advise against using public health powers to limit
13 mass gatherings and implement a lockdown?

14 **A.** In relation to the -- to both events? Well, I think in
15 practice in relation to mass gatherings, although
16 I think that was on the Friday, the advice came through.
17 On the Monday there was still the advice from the
18 UK Government was that they were not recommending the
19 closure -- cancelling of mass gatherings. I think by
20 the Friday, effectively on the 20th, we'd used the
21 public health legislation, you know, to have
22 substantially that effect, certainly in relation to
23 certain premises.

24 **Q.** But the advice we've just looked at on 20 March was
25 that, when addressing this point about public health

148

1 powers, that they could be used to keep an individual in
2 isolation but those powers could not be applied to all
3 citizens and therefore could not be used to lock down
4 the whole of Wales, and yet three days later those are
5 the powers that are used to implement a national
6 lockdown.

7 I suppose my question is this: can you answer
8 definitively whether the Welsh Government had the legal
9 powers to impose a lockdown ahead of the UK Government?

10 **A.** Well, I think the point in the letter, in the email of
11 the 20th is that it's not talking about public health
12 legislation more generally, it's referring to the Health
13 Protection Coronavirus Wales Regulations that had been
14 made. That's my understanding. So it's not making,
15 I think, the broader point.

16 But it's certainly the case that we had the powers
17 in order to bring about the lockdown. We exercised
18 those through the public health legislation of 1984, and
19 indeed used those on the Monday ahead of the
20 UK Government using equivalent powers when we did that
21 to close caravan parks and footpaths.

22 **Q.** If we can have a look, please, at your witness
23 statement, it's INQ000389184, looking at paragraph 115,
24 you say here:

25 "The Regulations I have described above were all
149

1 amongst those who were invited to it.

2 As I say, our understanding was that the civil
3 contingencies legislation would be the legislation that
4 was going to be used, but during the course of that day,
5 on the back of the conversations which took place at
6 COBR, as I understand it, the UK Government decided to
7 use the public health legislation. And I think if you
8 were to look back at that decision and undertake a legal
9 analysis, I think that makes sense because, you know,
10 there are specific powers in the public health
11 legislation, and indeed we were seeking to supplement
12 that in the Coronavirus Bill which would provide even
13 more specific powers, and what we know is the civil
14 contingencies legislation is available in the absence of
15 specific power, so, you know, where we have those powers
16 it's preferable to use them.

17 **Q.** The Inquiry has heard some evidence from in particular
18 UK Government ministers and former ministers in Module 2
19 that they in fact regret the decision not to use the
20 Civil Contingencies Act to respond to the pandemic.

21 In the event of a future pandemic, would you
22 advocate in favour or against the use of the Civil
23 Contingencies Act?

24 **A.** Well, I don't know if they can, you know, if the
25 analysis as I set out is correct that where there are

151

1 made under the Public Health (Control of Diseases) Act
2 1984, and not the Civil Contingencies Act 2004 ..."

3 You say:

4 "My understanding is that the decision to use public
5 health legislation as the legal framework instead of the
6 CCA was taken by the UK Government at COBR on
7 20 March 2020. The decision whether to use the CCA or
8 not was not a decision for the Welsh Ministers."

9 You then go on to say:

10 "As far as I am aware, the Welsh Government was
11 never asked for our view on this legislative choice.
12 I was certainly never consulted by the UK Government
13 about it."

14 Now, you make the point about a lack of consultation
15 there. As Counsel General for Wales, would you have
16 expected the UK Government to involve you or at least
17 consult with you about the choice of legislation to
18 respond to the pandemic?

19 **A.** I think that would have been preferable, but what was
20 happening I think on the Friday, which is when
21 I understand the decision was taken, was that there was
22 a discussion at COBR. I wasn't in attendance. I think
23 that is because of the way in which COBR is convened,
24 it's convened at the direction of the UK Government and
25 there's a very limited number of invitees and I wasn't

150

1 more specific powers than the Act isn't available,
2 I think that would be challenging for them to use that,
3 even if they wished to. But I think there is
4 a democratic question here, which is that health is
5 devolved to Wales, people of Wales would look to the
6 Welsh Government to respond in relation to a health
7 pandemic, and so it is preferable for those decisions to
8 be in the hands of Welsh ministers. But there's also
9 a practical application to this question as well, which
10 is whoever's exercising the powers, there are a set of
11 operational relationships which are critical to being
12 able to deliver the outcomes which those powers are
13 there to bring about, and I don't think that is possible
14 in the context of a UK Government, you know, looking at
15 using civil contingencies legislation more generally and
16 Welsh ministers having those powers.

17 Now, that's a view which I think I have in
18 hindsight, in a sense, having gone through the pandemic
19 and seen how in practice this could operate, and then
20 you ask yourself the question: well, if the assumption
21 going into this was that the civil contingencies
22 legislation would be the right way forward, it isn't
23 clear to me now how practically that could have been
24 delivered.

25 **Q.** I understand.

152

1 Mr Miles, changing topic and dealing next, if I can,
2 with the -- first, the co-ordination dashboard and then
3 the data monitor.

4 We've seen minutes of a Cabinet meeting of 6 April
5 that reflects a number of new workstreams that the
6 First Minister asked you to take the lead on. Don't
7 need to display those minutes.

8 The First Minister is recorded as referring to
9 a paper on Covid-19 policy coordination, and informing
10 ministers that he had asked you to provide the
11 overarching ministerial lead on the delivery of the
12 workstreams, and you also confirm in your witness
13 statement that the First Minister -- I think, in your
14 words -- asked you to provide the overarching
15 ministerial lead on the delivery of cross-cutting
16 workstreams.

17 Briefly unpack that for us: what does that actually
18 mean in practice?

19 **A.** Well, as well as being Counsel General, I was also
20 Minister for European Transition at this time, and had
21 been required to work in a very cross-government way in
22 order to prepare for the prospect of leaving the
23 European Union, and so there were significant projects
24 happening right across the government which required
25 collaboration between ministers in order to deliver the

153

1 develop a plan to do that, and then the responsibilities
2 would be portfolio ministers' responsibilities to make
3 the contributions they needed to make.

4 **Q.** And the co-ordination dashboard -- I'm not going to ask
5 for it to be displayed, it's a rather unwieldy
6 spreadsheet, but I'll give the reference just so that we
7 have it on the record, it's INQ000048968.

8 Can you briefly explain to us, though, what the
9 dashboard was and how it was used in decision-making?

10 **A.** Certainly. So I think the first one was presented on
11 6 April at the meeting that you've referred to, and it
12 was the product of officials across the government
13 compiling this record of where all this activity sat,
14 and it ranged across the entire work of the government.

15 So the dashboard was presented weekly, I think, for
16 many eight weeks until things had stabilised in terms of
17 the delivery of those projects, and then was presented
18 on a more ad hoc basis after that, and it enabled
19 government colleagues to have a sense of whether there
20 were any gaps in the work that needed to be done, where
21 the projects which we had agreed to do were, you know,
22 on track, where there needed to be additional focus. So
23 it was RAG rated to tell colleagues whether it was in
24 the red, amber or green category, that would be capable
25 of being challenged, and then each time it was presented

155

1 outcomes that we wanted.

2 So I think with that context in mind, the
3 First Minister was asking me to identify with colleagues
4 where there were projects which engaged more than one
5 portfolio and which then required some cross-government
6 co-ordination effectively, so each minister had their
7 own policy responsibilities, a number of the things we
8 were trying to achieve engaged many ministers, so in
9 relation to the provision of food boxes to those who
10 were shielded or who were isolated, that engaged,
11 you know, five or six different portfolios, and the
12 First Minister was asking me to do two things: first,
13 provide that overview, working with officials, on what
14 those joint projects were, giving Cabinet
15 an understanding of where progress was happening well
16 and where it was challenging, and then there were
17 a handful of particular projects where it was, I think,
18 helpful to have a member of the Cabinet who did not have
19 his own policy portfolio and was therefore able to bring
20 colleagues together to resolve some particular
21 challenges, and there were two or three of those in
22 particular that he asked me to lead on, which I did.
23 That entailed, you know, a number of meetings over
24 a period of weeks with colleagues to identify the
25 problem, identify what the solutions might be and

154

1 there would be a short paper that demonstrated whether,
2 you know, things were moving from green to red or red to
3 amber on the key project.

4 So it was a way for colleagues rapidly to get
5 a sense of where the cross-government activity was, and
6 to bring focus to bear to moving things forward when
7 that was challenging.

8 **Q.** And in terms of this being presented and challenges
9 being able to be made, was this at Cabinet, was this at
10 core Covid meetings, when was this --

11 **A.** This was a Cabinet paper, so it was circulated in
12 advance to colleagues with that covering paper.

13 **Q.** The data monitor next.

14 Again, those minutes that I've referred to a moment
15 ago, the 6 April minutes, as well as referring to this
16 co-ordination dashboard you've just explained, they also
17 refer to a new data monitor which sat alongside the
18 co-ordination dashboard. Can you tell us what that was
19 and how that fed into decision-making as well?

20 **A.** So this was a simple mechanism for providing Cabinet
21 with data on performance against a range of objectives
22 across the government. So my own role in relation to it
23 was simply to put it on the agenda for Cabinet. I had
24 no, if you like, ownership of it. It was a product of
25 the team that we have in the Welsh Government who is

156

1 there to collate data, which touched on everything from
2 number of deaths to number of food boxes that had been
3 commissioned, to the number of journeys on the public
4 rail network. It covered, you know, the entirety, if
5 you like, of Welsh life in the context of Covid so that
6 colleagues could have a shared understanding of the
7 picture right across Wales.

8 **Q.** I think perhaps it will assist to have an example
9 brought up. It's INQ000048827. So this is an example
10 from 20 April. If we could have a look at the second
11 page, please.

12 So this provides a summary of all the data that's
13 then grouped into six categories. You can see: "Cases &
14 Deaths", "Attitudes & Behaviours", Health & Social
15 Care", "Economy & Labour Market", "Shielded & Vulnerable
16 People" and "Public Services".

17 So if one wanted more information about one of those
18 subjects then -- say, for example, shielding and
19 vulnerable people -- we could navigate to the specific
20 section dealing with that --

21 **A.** Yes.

22 **Q.** -- and there you see more detailed data and analysis; is
23 that right?

24 **A.** Yes, absolutely.

25 **Q.** Again, this accompanied the co-ordination dashboard, so
157

1 undertaken under the supervision of Debra Carter, he
2 confirmed that Mr Smithson didn't have a team beneath
3 him, but his evidence was that Mr Smithson had a group
4 of people around him.

5 Now, my question is this: looking at what is said
6 there about the lack of a framework or process, is that
7 fair? Is that something you recognise, that there
8 wasn't at this stage, the first 21-day review,
9 a framework or process in place?

10 **A.** Well, certainly from my -- for the 6 April Cabinet
11 meeting, which is the one that you were talking about
12 earlier where Cabinet agreed that I would co-ordinate
13 the review, through to the review happening on the 16th,
14 although the MA went to the First Minister on the 14th,
15 we're talking about less than ten days for that, so
16 I think it is fair to say that the resource which we
17 were able to bring to bear later on wasn't in place in
18 that first cycle, but that was not surprising. The
19 whole point was to establish that process, that cycle of
20 reviews, and it was clear in that first review that we
21 were not going to be in a position to change the
22 regulations in any substantive way because the data
23 wasn't telling us anything different from the position
24 at which we'd gone into lockdown originally, as
25 I recall.
159

1 this would be presented in advance of a Cabinet meeting
2 for Cabinet discussion?

3 **A.** Yes.

4 **Q.** I'm grateful.

5 Changing topic, then, and moving to 21-day review
6 process and your input into that.

7 The First Minister asked you, as I understand it, to
8 co-ordinate the formal review of regulations; that's
9 right, isn't it?

10 **A.** It is.

11 **Q.** Now, Thomas Smithson, who is a senior civil servant, he
12 was asked to carry out the first 21-day review, and he's
13 provided a witness statement to the Inquiry. Perhaps if
14 we can just pull that up, it's INQ000282461, and it's
15 paragraph 10 in particular. Mr Smithson says here:

16 "The first substantive piece of work I was asked to
17 undertake was the first review of ... regulations.
18 I did not have any team, and this became my principal
19 task, drawing on others' views and evidence. There was
20 no framework or process established, with my approach
21 guided by legal advice on the obligations in the
22 regulations, and public health and scientific advice on
23 the progression of the pandemic."

24 Now, the Inquiry heard evidence last week from
25 Reg Kilpatrick, he told the Inquiry that this work was
158

1 So my task in relation to this was to make sure that
2 we had the legal advice being fed into the system, I was
3 I think asked to co-ordinate the work because, as a law
4 officer, this was something which the regulations
5 required and the First Minister I think made the obvious
6 link between the two responsibilities.

7 So providing legal advice into that cycle so that
8 the review could take place in accordance with the
9 regulations was critical, but then we also had,
10 you know, meetings with the First Minister, with the
11 permanent secretary and others where it was about
12 mapping out what the work needed to look like, and so
13 there were a number of -- there was a meeting on
14 the 14th, I think, the day the First Minister was sent
15 the ministerial advice where, you know, I suggested we
16 needed to look at the Easter review, which is the one
17 that we were doing at the time, but also developing
18 a cyclical systematic approach to the next sequence of
19 three-week reviews. Some of that would be around
20 identifying early on what candidate easements might be,
21 some of it would be around what I was calling a kind of
22 snag list in terms of regulations, things which might
23 not be working quite the way they should, so that we
24 could come back to them quickly. But then alongside
25 that we identified the need to provide guidance, and
160

1 also to have an eye on the longer term as well.
 2 So on the back of that meeting, one of the
 3 First Minister's senior civil servants then distilled
 4 that down into three workstreams. One was what we call
 5 the kind of nuts and bolts, which is the practical
 6 application of the regulations; one was the cyclical
 7 review; and then the third was that longer term
 8 continuity and recovery work. And, you know, at points
 9 they had a bearing one on another, as you would expect
 10 and then officials were allocated to lead on each of
 11 those three workstreams.

12 So as soon as we got -- this probably happened
 13 before the end of the first review period, but certainly
 14 at the start of the second review period we'd developed
 15 that, at official level, regular sequence of I think
 16 weekly meetings at that point where people would come
 17 together and work through the points that needed to be
 18 taken into account for the review, drawing on all the
 19 evidence that we needed to draw on, and applying that in
 20 the context of the legal advice; and then over the
 21 subsequent two review cycles, I think, we refined the
 22 guidance which we were giving from Legal Services to
 23 officials about how to think through the mass of
 24 evidence and candidates for regulatory change and how to
 25 marshall all of that for ministers in a way which

161

1 clear here that the economy at this stage was very much
 2 a secondary concern to public health considerations.

3 First of all, is that a fair summary of that advice?
 4 **A.** Well, I don't think they're making a policy choice,
 5 they're describing what they think the law requires, and
 6 the consideration in the regulations is that it's
 7 a public health rationale which needs to underpin the
 8 regulations.

9 So, firstly, is the regulation, the restriction,
 10 necessary to achieve the public health outcome and, if
 11 it is, is it proportionate? And there are a set of
 12 ancillary considerations which are broader than that,
 13 but that's where ministers need to focus their efforts
 14 in decision-making.

15 This note was, I think, the first of a sequence of
 16 notes which spell that out in increasingly practical
 17 terms for colleagues.

18 **Q.** Looking back, and knowing what we know, and just how
 19 much lockdowns and restrictions impacted upon not only
 20 the Welsh economy but what we know now about indirect
 21 harms, for example, of lockdowns, do you agree with this
 22 advice here that primary consideration has to be public
 23 health considerations, and other considerations such as
 24 economy, economic recovery, hardship, are very much
 25 secondary considerations?

163

1 complied with the legal tests, translating the
 2 regulations into a practical set of guidance for
 3 officials to bring that together.

4 **Q.** Thank you, Mr Miles, and we'll look at some of those
 5 documents and some of that guidance.

6 I think you've got a tendency to speed up slightly
 7 when you're giving your answers, so I've been asked to
 8 just ask you to slow down.

9 **A.** Certainly.

10 **Q.** But I think I need to slow down with my questions as
 11 well, so it will be a joint endeavour on both of our
 12 parts.

13 Now, Mr Smithson says that his approach was guided
 14 by legal advice on the obligations in the regulations,
 15 which I think is a reference to legal advice given by
 16 Helen Lentle on 11 April. If we could just have a look
 17 at that, it's INQ000349314, please. If we have a look
 18 at the second page of this document, at the ninth
 19 paragraph at the bottom -- thank you -- it says here:

20 "Ministers' reasons for ending the Regulations in
 21 whole or in part will need to be firmly rooted in public
 22 health considerations as required by the legislation as
 23 explained above. Whilst ... [Document read] ... greater
 24 consideration than the public health matters."

25 So legal advice, Legal Services' advice, pretty

162

1 **A.** Well, this is a balance of harms in the way that you
 2 described it, and in later documents, which we published
 3 as a government, we spelled out how the legal advice fed
 4 into the broader set of considerations which we took as
 5 a government.

6 So there was a -- I think within a very short time
 7 after this advice was given, a guide was published by
 8 the Welsh Government, which I think is pretty clearly
 9 rooted in the legal advice which we have here, but which
 10 does talk about the broader considerations as well.

11 So I think it is that balance of harms, and it's
 12 critical to recognise the indirect harms of Covid and of
 13 the lockdown as well, or of those restrictions.

14 **Q.** This legal advice -- and I accept what you say that this
 15 is perhaps the first iteration of a series of guidance
 16 documents and advices that we will have a look at some
 17 of in a moment -- but this legal advice doesn't refer to
 18 the impact of the pandemic on vulnerable groups or those
 19 with protected characteristics as a relevant
 20 consideration, and we know that there was no equality
 21 impact assessment carried out at this stage for this
 22 first review of the regulations.

23 Now, why was that?

24 **A.** Well, I think it was the pace at which everyone was
 25 working at this point. The document at an earlier stage

164

1 talks about the importance of equality of treatment and
2 being able to explain the differential impact of
3 restrictions on different groups of people. So I think
4 there is an acknowledgement in this initial document of
5 that, and, as you will know, by the time we got to the
6 second review that was very much more clearly set out,
7 both in the legal advice provided but also in the papers
8 which were provided to support the decision-making.

9 **Q.** We have a look, then, at the next review which was to
10 take place on 7 May.

11 If we have a look at INQ000349494, please, we see
12 here it sets out four steps that must be considered
13 before a decision is taken by ministers.

14 If we have a look at page 2, please. So:

15 "Step 1 involves an assessment of the extent to
16 which [the] restrictions are necessary to contain [the
17 virus]."

18 Then:

19 "Steps 2 and 3 involve an assessment of whether
20 restrictions are proportionate on public health
21 grounds."

22 And then step 4 involved an assessment of, first,
23 the extent to which a restriction may be
24 disproportionate and then, secondly, the public sector
25 equality duty.

165

1 a discussion at that Cabinet on the second review, which
2 was clear that we needed to get to that position very
3 quickly, that we needed to make sure that we had that
4 better understanding.

5 There was a lot of activity working separately to
6 the discussions in Cabinet where ministers were talking
7 to their own stakeholder groups in order to make sure
8 that we understood from them how the restrictions were
9 affecting them, but none of us -- you know, we
10 recognised the importance of that stakeholder engagement
11 and the importance of hearing the voices of others in
12 this, but clearly none of us thought that we'd got to
13 the stage where the level of impact assessment was
14 adequate yet at this point.

15 **Q.** I think you say in fact in your witness statement, it's
16 paragraph 161, that the lack of an equality impact
17 assessment at this second review was an issue that you
18 yourself raised with Cabinet.

19 If we perhaps have a look at the legal advice that
20 accompanied the 7 May review, it's INQ000227609. If we
21 have a look at, on page 1, (iii). Thank you.

22 "At present there is very limited information on the
23 equalities impact of proposals. Carrying ... [Document
24 read] ... vulnerable in an event of a challenge."

25 If we could have a look, please, at (iv), I think

167

1 It's right that this paper formed the basis for the
2 next review then of the regulations?

3 **A.** It did.

4 **Q.** There was still at this point on 7 May no equality
5 impact assessment carried out. Why is that?

6 **A.** Well, there was a high level analysis of the impact of
7 restrictions on groups with protected characteristics,
8 but it was not a comprehensive equality impact
9 assessment, and I think there are two reasons for that.

10 Firstly, the continuing pressure on resources and
11 the ability of the team to respond under that
12 pressurised -- in that pressurised context; but,
13 secondly, the advice which went, with the note that you
14 just talked about, went to -- as part of the ministerial
15 advice, and may have gone to Cabinet -- I can't now
16 recall specifically that -- talks about the need for us
17 to put in place those equality impact assessments and
18 acknowledges, I think, that up until this point we
19 haven't really been talking about significant easements,
20 we have been maintaining that set of restrictions, and
21 I think acknowledges the reality that as we look at what
22 choices we can make to withdraw some of those
23 restrictions or amend them, that set of choices needs to
24 be more clearly guided by an understanding of the impact
25 from an equalities perspective. And there was

166

1 same page, it says here:

2 "Any other factor insofar as it informs that key
3 decision-making ... [Document read] ... of the longer
4 term recovery of society and business."

5 I mean, that suggests that factors could only inform
6 decision-making if they were, as it says there,
7 complementary to and did not go against the science.
8 Did that seem an appropriate balance, in your view?

9 **A.** Well, I think that -- what I think the impact assessment
10 tells you is the need, where those two things are
11 intention, to look for ways of mitigating that and to
12 ensure that the steps that we are taking as a government
13 is proportionate, in the light of the impact that the
14 restrictions will have on, you know, all cohorts of
15 people with protected characteristics, for example. And
16 advice had been given earlier than this, by the way,
17 I think on the 16th, which was a sort of proportionate
18 version of this longer form legal advice which would
19 apply in the context of what everyone recognised to be
20 an emergency.

21 So it was clear to officials, even from that first
22 advice which pre-dates this that, you know, it wasn't
23 an option not to assess impact, it was a question of how
24 you did that, and doing it in the context of emergency
25 required a different approach from, you know, from more

168

1 normal times. But by this stage we were getting to the
2 point where we were recognising we needed to move on to
3 the next, you know, level of depth, if you like, in
4 relation to equality impacts in particular.

5 **Q.** You explain in your witness statement, it's
6 paragraph 177 -- we don't need it pulled up, thank
7 you -- on 22 May you say that further refinements were
8 made to the process and governance arrangements for the
9 21-day reviews, following an update to the
10 decision-making process document that we have just
11 looked at a moment ago.

12 That updated paper, we've got that, it's
13 INQ000349505, please, and if we can have a look at
14 page 2.

15 This outlines again the four steps. It notes that
16 a similar decision-making process has been adopted in
17 Northern Ireland, but then it says:

18 "For reasons that are not totally clear (because we
19 don't understand them), those ... [Document read] ...
20 adopt this process."

21 Can you help us understand, what were the problems
22 that were being faced at this point in time?

23 **A.** So this document is not the next iteration of the legal
24 advice, this document is a note which was written for me
25 in order to have a discussion specifically with legal

169

1 that had been taken into account in the way the analysis
2 was presented to ministers in the next cycle.

3 **Q.** The next 21-day review took place on 27 May. You deal
4 with this in your witness statement, it's paragraph 178,
5 and you say:

6 "... papers put before Cabinet were prepared in
7 accordance with the revised decision making process, and
8 expressly considered the impact of decisions on groups
9 with protected characteristics (even though a full IIA
10 was not completed)."

11 IIA, that's an integrated impact assessment. So
12 again there is no formal equality impact assessment at
13 this stage. Why is that?

14 **A.** Well, earlier in the week or before I'd sent that note
15 into the system, I had also had -- prompted by a request
16 for myself for an update on how progress was going in
17 relation to strengthening our approach to equality
18 impact assessments -- I had had a note from officials
19 which, from memory, said that on a policy level within
20 portfolios there was work happening which was uneven, so
21 there was no suggestion that it was happening in every
22 case, but that it was improved to put in place
23 an integrated impact assessment, and that what would be
24 the ambition was to be able to do that at a global level
25 across the entirety of the review process, but that we

171

1 services colleagues on the concerns which they had
2 raised with me, and there is a second document which is
3 in fact an update to the one we've just been speaking
4 about, but this was a bespoke note to draw this issue to
5 my attention, and I think what the note was telling me
6 was that a tendency had developed to look at the legal
7 framework as being somehow additional or supplementary
8 to the work of figuring out what easements needed to be
9 made, what the effects of those choices would be, what
10 the medical, scientific underpinning for those choices
11 would be, and lawyers are indicating a concern about the
12 two parts of the process with being too separate in
13 their view.

14 So in light of this, I sent a note through my
15 private office to Cabinet colleagues and officials to
16 make it clear that I expected to see the framework which
17 had been developed by legal services being the tool by
18 which officials would collate, assess and present that
19 advice to ministers, because the legal underpinning of
20 the regulations is obviously fundamental to it.

21 **Q.** What was the response to your intervention to your
22 ministerial colleagues at this stage?

23 **A.** I think I remember that there was a note in the next
24 Cabinet papers or ministerial advice which acknowledged
25 the fact that I'd expected this to happen, and I think

170

1 weren't in a position yet to do that because of the
2 pressures that the team and the system were under.

3 But I saw in the 27 May papers evidence of,
4 you know, an increasing focus on equality impact
5 assessments, not the full IIA. I think this was the
6 last of the reviews, which didn't have that fuller
7 assessment, and I think by the next review we were
8 publishing alongside the reviews themselves the summary
9 impact assessments.

10 So I think everyone recognised the need to move as
11 rapidly as possible. We were getting external challenge
12 as well at this point. So, from memory, we'd had
13 a correspondence from one of the Senedd committees and
14 the ECHR had also been writing to us to encourage us to
15 publish the assessments, so there was a clear
16 recognition that we needed to strengthen that aspect and
17 were moving in that direction, but we hadn't reached
18 there at this point.

19 **Q.** Fast forwarding a little bit, you attended Cabinet on
20 15 October, that was to consider are the imposition of
21 a firebreak across Wales, and you say in your witness
22 statement you were glad to see that Cabinet was provided
23 with an equality impact assessment.

24 You say at paragraph 243 of your witness statement,
25 and I'll just read it to you:

172

1 "I was glad to see this as I had reminded officials
2 in late September about the need for impact assessments
3 (as they had not always been produced for decisions on
4 local restrictions, given the urgency with which the
5 local restrictions had been imposed)."

6 So obviously what you're saying there is that the
7 issue about lack of equality impact assessments arose
8 again in September; is that right?

9 **A.** I think it's a slightly more -- it's a slightly
10 different context because these were local lockdowns, so
11 there was a question of proportionality about whether
12 you would do a full impact assessment for each of those
13 individual decisions, or whether you would draw on
14 a clear understanding of what similar restrictions
15 applied on a larger footprint would, you know, what
16 impact they would have.

17 So I think by that stage we were saying, or the
18 advice coming from me was: we'll do a summary impact
19 assessment across the entirety of the national
20 regulations and the review process for that, there'll be
21 a set of more detailed impact assessments at a portfolio
22 level, and by this stage a number of those had also been
23 published as well -- I think from memory there was
24 a number in the education space, but in others as
25 well -- and the question was: at a local level was it

173

1 streamlined approach informed by legal advice to how one
2 could develop integrated impact assessments on the
3 other.

4 So there were some practical suggestions in there
5 which then led to, you know, what I think was fair to
6 say a step change by the autumn in terms of our approach
7 to equality assessments, and the point where we then
8 went into the traffic light, the alert level regime from
9 the end of the year onwards, there was a more consistent
10 package of restrictions against which to measure those
11 impact assessments and that was, you know, a much more
12 streamlined approach, I think.

13 **MR POOLE:** Mr Miles, we're going to change topic.

14 My Lady, if that's an appropriate moment for the
15 break.

16 **LADY HALLETT:** Yes, of course.

17 We take breaks quite regularly for stenographers,
18 translators, the rest of us, and so I shall return at,
19 well, 3.15, and I promise you we will complete your
20 evidence today, because I am conscious you have many
21 other duties.

22 **THE WITNESS:** Thank you.

23 (2.58 pm)

(A short break)

25 (3.15 pm)

175

1 proportionate to do a full impact assessment? I think
2 at that point the conclusion was that that would be
3 a challenge.

4 **Q.** You, just finishing up on this topic, say at
5 paragraph 338 of your witness statement -- this is
6 a section of your witness statement dealing with
7 reflections and lessons learned -- you say during your
8 time as Counsel General:

9 "If we were ever to face a similar challenge again
10 in future, I would want us to establish an earlier
11 pattern of formal impact assessments (both equality and
12 children's rights impact assessments, as well as
13 socio-economic impact assessments under the new
14 socio-economic duty)."

15 Do you envisage any practical methods by which this
16 could be done in the event of a future pandemic?

17 **A.** Well, I think what happened probably in early June,
18 there was a paper to the project board which I was
19 chairing at that point which looked at impact
20 assessments and how we could strengthen our approach to
21 it, and there were some very practical suggestions in
22 that about the way in which the support available to
23 officials from our data team and others could be more,
24 you know, clearly identified and, you know, signposted
25 and available, on the one hand, but then a more

174

1 **MR POOLE:** Mr Miles, change of topic, regulations and
2 guidance, please.

3 Now, we know that regulations were obviously
4 supplemented by guidance, and you explain at
5 paragraph 181 of your witness statement that there was
6 a policy issued on 22 May 2020 to help co-ordinate the
7 approach to guidance.

8 If we can have a look, please, it's INQ000349531.
9 If we can have a look at page 4, please. Oh, we are --
10 sorry -- already there. It says here:

11 "With material being published online at such pace,
12 there has ... been some inconsistencies between
13 different pieces of guidance and some confusion over
14 ownership of the guidance ... [Document read] ...
15 correct legal position."

16 Now, as a lawyer, obviously that would be, you would
17 agree, a very worrying position to be in. How did the
18 Welsh Government end up in the position where that was
19 the case?

20 **A.** Well, anything which was new or controversial ought to
21 have been sent to me, at this point I was taking quite
22 a hands-on approach to guidance, I think, depending on
23 the timing of this, probably the end of May.

24 **Q.** 22 May.

25 **A.** Thank you. But people are working at great pace and

176

1 people are amending guidance that's already online, so
2 it may have resulted from that.

3 **Q.** One particular aspect of guidance that I'd like to ask
4 you about next is the so-called 5-mile rule.

5 At paragraph 195 of your witness statement, you say
6 about the 21-day review on 27 May 2020:

7 "We agreed to change the 'Stay at Home' provisions
8 to 'Stay Local', to allow for outdoor activity within an
9 area local to where the person lives, providing social
10 distancing rules were maintained."

11 If we can have a look at, I think, the next --
12 another passage, so it's paragraph 196 of your witness
13 statement. Thank you very much. You say here:

14 "Given the significance of the proposed change there
15 would be a need for clear public messaging and Guidance
16 on what was meant by local, while reinforcing the need
17 for the two metre physical distancing rule to be
18 maintained. It was not possible to legislate to define
19 'local' as it would mean different things in different
20 parts of Wales, depending for example on whether it was
21 an urban or rural area. A distance of five miles was
22 proposed for the guidance, but with a recognition that
23 this would vary in more rural areas, where people were
24 already travelling greater distances for provisions. As
25 this was provided for in Guidance not Regulations, we

177

1 at all?

2 **A.** Well, because we had experience in the last set of
3 reviews, the last review before this, we had provided
4 for exercise to be undertaken locally, and had not
5 defined what "locally" meant in that context, and that
6 was confusing to people as well.

7 So in a rapidly changing regulatory environment,
8 where you're legislating in a novel way, in ways which
9 touch all aspects of someone's life, breadth can be
10 confusing and specificity can be confusing.

11 I think the term that we had here was "it's a rule
12 of thumb", seemed to me to be an intuitive way of
13 communicating to people: it kind of depends on your
14 circumstances, but if you're asking for some guidance
15 from us, 5 miles is a pretty good guide.

16 **LADY HALLETT:** But isn't the problem -- we had this in
17 Module 2 when I looked at some of the regulations. I've
18 spent nearly 50 years as a barrister and judge in
19 criminal justice, and I couldn't have enforced the
20 regulations. Some of them were extraordinarily
21 complicated, and the problem comes when you fine people
22 for breaching what isn't clear. Isn't that the problem?
23 It's not necessarily just the inconsistency between
24 guidance and rules, it's that: how can you fine someone
25 for not being local when you haven't defined what local

179

1 often referred to this as 'less a rule more a rule of
2 thumb'."

3 Now it's fair to say that this particular piece of
4 guidance garnered quite a lot of attention from the
5 Welsh public and the media, and the First Minister was
6 asked questions about the 5-mile rule at a press
7 conference on 19 June.

8 Now, we can see a summary of that press conference.

9 It's INQ000090582.

10 We see -- I think it's on the second page --
11 a question asked:

12 "I wonder if I could ask you for more clarity ...

13 [Document read] ... of your home."

14 Then the First Minister's answer:

15 "So the five miles is advice, and not a rule. The
16 ... [Document read] ... geographies of Wales."

17 Then later on, three lines from the bottom of that
18 quote:

19 "How do you know what is local ... [Document read]
20 ... what staying local might mean."

21 If the logic behind the regulations was that people
22 have to interpret the rule in their own circumstances
23 under very different geographies of Wales, do you think
24 that suggesting a distance of 5 miles just created
25 confusion? Why was there a need to specify a distance

178

1 is?

2 **A.** Well, it's a difficult situation, isn't it, and these
3 are unprecedented circumstances and I think governments
4 everywhere, certainly speaking for the Welsh Government,
5 are trying to reconcile those, you know, competing
6 priorities: one which is to ensure that there is
7 a sanction so people have a sense of the seriousness of
8 the need to comply; but on the other, you know,
9 recognising that because it's so broad, because the
10 breadth of the regulations are what they are, they apply
11 in all aspects of life, there is just a compromise in
12 a sense.

13 I do think it's fair to say that, you know, the UCL
14 report, amongst others, said that actually the
15 understanding of the law in Wales was comparatively
16 positive, good, and the work that we did to red-line the
17 regulations, at least for the benefit of lawyers and
18 enforcement authorities, I think was also appreciated
19 and I think was also unprecedented in the context.
20 Because we were trying to grapple with ways in which to
21 make, you know, what are very stringent regulations
22 practically applicable in people's lives and, you know,
23 some of it is very complex.

24 But I think the evidence that we have here in the
25 press conference isn't so much about the complexity of

180

1 it, it's often about the novelty of it. People having
2 rules, you know, brought forward every three weeks and
3 they're naturally thinking: what does this mean? What
4 can I do? What can't I do? And I think some of this is
5 about that.

6 **LADY HALLETT:** I understand all the difficulties and the
7 pressure everyone was under, I just have this
8 long-standing allergy to criminal offences -- which is
9 effectively what they are if you're going to fine
10 people -- which just aren't clear. It just seems to me
11 wrong. Shouldn't a government in that situation say,
12 "We can't go with 'local' because it's just not
13 sufficiently clear and we're going to fine people if we
14 think they're not local, even if they think they are,
15 we're just going to have to decide on a distance",
16 because you can't just leave it to individuals, to
17 police officers, to whatever, to enforce what is
18 an unenforceable rule, can you?

19 **A.** Well, the guidance was intended to give some --

20 **LADY HALLETT:** I'm talking about the rules.

21 **A.** -- direction to the interpretation --

22 **LADY HALLETT:** The rules if you're in breach.

23 **A.** No, I understand.

24 **LADY HALLETT:** You get fined.

25 **A.** But the tension which we're trying to reconcile is that

181

1 So effectively it looks as though 5 miles was chosen
2 by the Welsh Government in order to align with what had
3 been introduced by the Scottish Government; is that
4 fair?

5 **A.** Well, I think the points that we've just been discussing
6 about whether it's possible to define more precisely in
7 legislation is, you know, even more critical if we
8 acknowledge, as we do, that there isn't science that
9 says that 5 miles as opposed to 5.1 miles or 4.9 miles
10 is the right distance.

11 So what you're trying to do is find a distance which
12 is defensible, because it allows people to go about
13 their daily lives and do the things that we want them to
14 do without putting yourself in a position where there
15 are no restrictions. So it's that practical balance
16 that we are trying to strike.

17 Elsewhere during the Covid time there were calls for
18 governments not to choose rules and regulations and
19 distances and measurements which were different from
20 other governments just for the sake of it. So I think
21 this is a sense in which we are looking at what another
22 government has decided and thinking: well, this feels
23 like it might be workable for us here in Wales. Is it?
24 We think it is, then we'll go with it.

25 **Q.** Another point arising from this same piece of advice, if

183

1 5 miles in all parts of Wales doesn't get you to the
2 shop that --

3 **LADY HALLETT:** I know, because of the geography.

4 **A.** Yeah. So that's the challenge, and it's an imperfect
5 context, but that's the rationale behind the thinking.

6 **LADY HALLETT:** Sorry, it's one of my hobby horses, as you
7 may have guessed.

8 **MR POOLE:** Mr Miles, 5 miles wasn't chosen on the basis of
9 any scientific evidence, was it?

10 **A.** There isn't a science that says that 5 miles
11 specifically is the right distance, but the science does
12 support the view that, you know, limiting travel long
13 distances is positive in terms of limiting transmission.

14 **Q.** If we could just have a look at the advice given to
15 Cabinet in respect of this policy.

16 INQ000215411, yes, page 5. Thank you very much.

17 It's the bottom paragraph. I am going to pick it up
18 five lines down on the right-hand side:

19 "Setting a specific distance in regulations ...

20 [Document read] ... allows for reasonable
21 interpretation."

22 Then if we can turn over the page, please, page 6,
23 first paragraph:

24 "There is no specific evidence ... [Document read]
25 ... such as rurality)."

182

1 we can have a look at page 4, and I think it's the
2 penultimate paragraph. So this is now dealing with
3 2-metre social distancing, and I'm picking it up
4 six lines down, please, where it says:

5 "It appears that most people believe ... [Document
6 read] ... being seen as optional."

7 It suggests there that reliance was being put on the
8 public not actually appreciating the difference between
9 regulations and guidance; is that right?

10 **A.** Well, it's recognising the reality that 2-metre physical
11 distancing had been, you know, perhaps the single most
12 identifiable Covid requirement from early on, and it had
13 become so entrenched in people's understanding of what
14 they needed to do that people had assumed it was law.
15 You get to a point where, if you're going to say
16 "Actually we're now going to legislate", it changes that
17 understanding, and what became clear to us over the
18 course of the months in 2020 was that we needed to have
19 a set of, you know, behavioural responses which people
20 could intuitively understand and feel were reasonable,
21 sensible and they could, you know, they could comply
22 with. And so that's what's beneath this: people were
23 responding to that, despite the fact it was in guidance
24 not regulation, so why would you take a step which
25 risked undermining that? Because of course in Wales the

184

1 2-metre physical distancing wasn't, from an individual's
 2 point of view, the subject of enforcement.
 3 **Q.** I understand.
 4 I'd like to change topic now and ask you some
 5 questions about border issues.
 6 In October 2020, there was an issue that arose
 7 whereby those living in high prevalence areas in England
 8 were not legally prevented from entering areas of low
 9 prevalence in Wales, and this is something that the
 10 First Minister wrote to the then Prime Minister about --
 11 and we'll look at that with the First Minister
 12 tomorrow -- but legal advice was sought as to what the
 13 Welsh Government could do about this in the event that
 14 the UK Government was not willing to act.
 15 If we can have a look at that advice, it's
 16 12 October.
 17 And it's INQ000349939. If we can have a look at
 18 paragraph 5, thank you:
 19 "... Welsh Ministers have power to make ...
 20 [Document read] ... could constitute an offence."
 21 Were you sighted on this advice?
 22 **A.** Yes.
 23 **Q.** And you agree with the advice that was given?
 24 **A.** Yes.
 25 **Q.** The firebreak prevented travel to and from Wales without
 185

1 considered ... [Document read] ... given the absence of
 2 statutory provision in Wales."
 3 As I understand it, Cabinet didn't decide to make
 4 self-isolation a legal requirement until 29 October;
 5 that's right, isn't it?
 6 **A.** At some point in October certainly, yes.
 7 **Q.** Again, why -- this advice on 12 October, why wasn't that
 8 actioned sooner than it was?
 9 **A.** Well, this is just telling us what the current disparity
 10 is. I think it's likely what will have happened is
 11 after Cabinet those proposals will have been developed
 12 in light of this advice.
 13 **Q.** Changing topic again and dealing now with the effect of
 14 differing restrictions in England and Wales,
 15 the Inquiry's heard evidence that there was that problem
 16 with public health communications during the pandemic in
 17 respect of clearly outlining and informing members of
 18 the public which were, say, UK-wide rules,
 19 English-specific rules or Welsh-specific rules.
 20 You wrote to the UK Attorney General,
 21 Suella Braverman, on 13 May about this. We don't need
 22 your letter up, but I'll just quote. You say:
 23 "... I urge you to take steps to ensure that your
 24 government ... [Document read] ... England and in
 25 Wales."
 187

1 a reasonable excuse but, as we know, the firebreak was
 2 only in place between 23 October and 9 November 2020.
 3 On exiting the firebreak, the Welsh Government did
 4 decide to legislate in the way envisaged in the advice
 5 we've just looked at. That decision, however, was not
 6 taken until 2 December, the firebreak obviously ending
 7 on 9 November.
 8 Given the concerns about the rapid rise of infection
 9 levels coming out of firebreak and how that might have
 10 contributed -- be contributed to by this migration or
 11 travel from high prevalence areas in England into Wales,
 12 why was this not legislated for sooner?
 13 **A.** Well, we legislated for Tier 3 restrictions -- sorry,
 14 for areas that were in Tier 3 limitat -- restrictions in
 15 England for travel to and from those areas to be -- to
 16 be restricted in Wales, so that, you know, people
 17 travelling into Wales for that purpose would be
 18 committing an offence. I don't recall at this point why
 19 that decision wasn't taken sooner, but I would be very
 20 happy to consult -- to reflect on it.
 21 **Q.** If we can return to this -- yes, it is this document --
 22 so this is the legal advice on 12 October. We're now
 23 looking at a slightly different point, it's
 24 paragraph 13. It says here:
 25 "There is one further which matter which needs to be
 186

1 That's 13 May. Was that letter prompted by
 2 the UK Government's announcement on 10 May that it would
 3 be changing its public health message from stay home to
 4 stay alert?
 5 **A.** It was, and the message was, you know, perhaps
 6 inevitably broadcast into every, you know, home in the
 7 UK without it being clear that these were restrictions
 8 which -- sorry, these were changes which were applicable
 9 to England only, and we were concerned at a development
 10 which subsequently came to pass, which is, you know,
 11 significant numbers of people crossing into Wales,
 12 driving into Wales for leisure purposes and in doing so
 13 breaching the regulations in place in Wales.
 14 **Q.** So that was your letter of 13 May and, just for the
 15 record, that's INQ000349454.
 16 You received a response to your letter on 5 June --
 17 again I'm not going to ask for it to be displayed, but
 18 it's INQ000349548 -- and Ms Braverman said in response:
 19 "Your letter also encouraged me to take steps to
 20 ensure that the UK government ... [Document read] ...
 21 lockdown in England and in Wales."
 22 So this is now 5 June. Did you see an improvement
 23 in the clarity of UK Government public health messaging,
 24 having raised this issue with the Attorney General?
 25 **A.** I don't think I could say that I did particularly, no.
 188

1 Q. We're going to look at enforcement of legislation,
2 regulations and the topic of fixed penalties in
3 a moment, but leading into that topic, you had cause to
4 write to the UK Attorney General again on 29 June and
5 perhaps if we could see that, it's INQ000349651. The
6 second paragraph, you say:
7 "I have become aware of the recent review ...
8 [Document read] ... interfacing with the justice
9 system."
10 So it would appear, therefore, that the police on
11 both sides of the border were confused which regulations
12 applied in England and which applied in Wales; would
13 that be fair?
14 A. It would.
15 Q. What was done to address this?
16 A. From memory, the next letter from the Attorney General
17 tells me that she had been in contact with the College
18 of Policing, as I understand it, and what we were doing
19 as a government in Wales was to make sure that,
20 you know, the tools which we have, which don't reach
21 into homes right across the UK in terms of the
22 communications, were, you know, being deployed in order
23 to minimise the risk of this. So we had at various
24 points signs on motorway -- on the side of motorways
25 telling people that, you know, there were different

189

1 the severity and would provide the deterrent we hoped in
2 doing so as well that, you know, they were important
3 behaviours that people needed to comply with in order to
4 keep one another safe.
5 Q. You say at paragraph 192 of your witness statement, if
6 I just read that to you:
7 "The UK Government increased the sums payable under
8 the Fixed Penalty Notice regime for breach of
9 coronavirus restrictions, with sums increasing rapidly
10 after a first ... [Document read] ... I exhibit[ed] the
11 document ..."
12 If we just go to that ministerial advice, please.
13 It's INQ000145221.
14 Looking at the fourth paragraph:
15 "There has been an increasing call from both Police
16 and Crime ... [Document read] ... in Wales which is
17 making enforcement difficult."
18 Did you recognise the concerns expressed in that
19 paragraph?
20 A. Yes, I think so.
21 Q. A decision was taken in Wales to increase the fines to
22 £120 for a second offence, and that was then to double
23 for each further offence to the level of £1,920 for
24 a sixth or subsequent offence.
25 Now, that was different to England, England had

191

1 restrictions in Wales, but also using or social media
2 channels, the First Minister's press conferences,
3 announcements and so on, to make it clear what the law
4 was in Wales and also working through our channels with
5 the police in Wales to make sure they understood,
6 you know, in as near real time as possible what the
7 changes were in Wales. But, you know, the scale of the
8 changes that we were bringing in on both sides of the
9 border and the rapidity with which that was happening
10 inevitably is going to create some confusion, but it's
11 the task of governments to minimise that.
12 Q. The response you refer to from the Attorney General,
13 just again for the record, it was a letter of 28 July,
14 and it's INQ000349748. And in terms of those incorrect
15 police charges, I think Ms Braverman said that mistakes
16 were still being made but this had reduced in number.
17 Let's move on, then, to the topic of enforcement
18 during the pandemic. I suppose the first question: why
19 was it felt that criminal sanctions were necessary for
20 breaches of the regulations?
21 A. It was felt they were necessary because of the
22 implications on public health of regulations not being
23 complied with, and we felt that the fixed penalty regime
24 and the levels at which they were set in Wales were
25 a proportionate way of doing that but also would signal

190

1 an upper limit of £3,200; different again to Scotland,
2 which obviously shared the border with England, that had
3 an upper limit of £960.
4 What was the rationale for Wales setting a different
5 limit to England and a different limit to Scotland?
6 A. Well, just to say this wasn't the point at which the
7 fine rose to £120 for the second offence, that was prior
8 to this. But the advice in the -- in this document
9 also, I think, told us that there wasn't a particular
10 case which suggested that parity was compelling, and --
11 but that there was a case for increasing fines in order
12 to be able to meet the objections -- meet the objectives
13 which the police and others were telling us were real.
14 So this was a decision taken by the First Minister,
15 it's obviously the culmination of correspondence between
16 his office and the police -- policing in Wales, through
17 the Commissioners and the chief constables, and it seems
18 to me the advice doesn't make a compelling case for the
19 entirety of the increase but makes a pretty strong case
20 for an increase, and I think that's the balance that was
21 struck in the First Minister's decision.
22 Q. Organising an unlicensed music event in Wales had
23 a penalty of £10,000; breach of passenger information
24 regulations, a penalty of £4,000; and failing to isolate
25 following international travel from certain countries

192

1 abroad, a penalty of £1,000.

2 In light of the civil libertarian issues, the public
3 health context, and the fact that these fines were being
4 produced and imposed for breaches of social movement, in
5 your view, were the level of fines in Wales
6 proportionate?

7 **A.** Well, these were difficult questions and judgements to
8 reach. I think overall they were. The £10,000 fine for
9 the unlicensed music event, the risks which would arise
10 from such an event were so considerable that we felt
11 that it was acceptable to have a notice at that level,
12 because of course there were court proceedings available
13 if an individual didn't wish to accept the notice. And
14 it was a matter of days, I think, after the decision was
15 taken that there was a -- there'd been an example in the
16 days preceding this decision for the £10,000 fine, and
17 I think a day or so after there was an event -- as it
18 happens, in my own constituency -- which I think the
19 fine was levied at then. So we felt that was such
20 an egregious risk to public health that a fine at that
21 exceptional level was merited.

22 **Q.** Can we have another look at your witness statement,
23 INQ000389184, this time paragraph 193. You say here:

24 "On 23 May 2020 I was copied in to an MA that was
25 sent to the First Minister ... where the First Minister

193

1 **Q.** That was undertaken on 6 October 2020. We can see that,
2 it's INQ000349910. Who undertook that review?

3 **A.** So I think the document that I'm looking at now was not
4 the product, which I don't think -- which came to us as
5 ministers. I think this was the internal document for
6 officials, I think. It was undertaken by one of the
7 officials in the Welsh Government.

8 **Q.** We can have a look at this first page, there's
9 a detailed analysis there of fixed penalty notices
10 issued in Wales between 27 March and 21 September 2020.

11 If we could have a look, please, at page 12 of this
12 document, if we go to the -- I think it's the fifth
13 paragraph, the review concluded:

14 "The picture painted above is deliberately stark ...
15 [Document read] ... fear being fined or prosecuted for
16 caring for others."

17 Now, one of the things noted in this paper is that
18 the mass protests that were taking place across the
19 country, for example Black Lives Matter, were not
20 resulting in mass issuing of fixed penalty notices. So
21 that's some context for what is said there.

22 If we can have a look, please, over the page,
23 page 13, first paragraph:

24 "Such inconsistency risks totally undermining the
25 cultural norm of British Society which ... [Document

195

1 was asked to designate Chief Constables in Wales to
2 permit them to bring proceedings for offences under the
3 Principal Regulations and to agree to a request by the
4 Attorney General to make such proceedings 'specified
5 proceedings' so that the police could prosecute them
6 under the Single Justice Procedure. This was agreed,
7 and letters to each of the four Welsh police forces
8 designating them for this purpose were signed by the
9 First Minister."

10 Now, the single justice procedure is a legal
11 procedure in England and Wales that allows certain low
12 level criminal cases to be dealt with without the need
13 for a full court hearing.

14 Now, what was the rationale for agreeing to the
15 Attorney General's request to use the single justice
16 procedure for breaches of coronavirus regulations?

17 **A.** I think, from memory, it was the pressure on the courts
18 system for the number of offences that were coming
19 through and potential for that to increase in the
20 future, and I think, mindful of the availability of full
21 court proceedings as an alternative, that will have been
22 the basis of the decision.

23 **Q.** You refer in your witness statement to a rapid review of
24 fixed penalty notices.

25 **A.** Yes.

194

1 read] ... feel is reasonable for them to do and
2 legitimises an individual approach to the rule of law
3 and to justice."

4 Then the same page, last paragraph, please:

5 "The genie is very much out of the bottle and for
6 the public sector to regain the confidence of the public
7 ... [Document read] ... a new approach needs to be
8 developed."

9 Now, the right to protest, there's an obvious
10 balance between the individual right to protest and the
11 government response to public health emergencies.

12 Do you assess that the use of regulations and the
13 operational activities of the police in Wales, that
14 balance was correctly struck? And I'm thinking with
15 particular reference to Black Lives Matter protests,
16 June 2020; there were then protests later, I think it
17 was April 2021, calling for a quicker relaxation of the
18 rules.

19 Was the balance correctly struck, in your view?

20 **A.** Well, we wanted to make sure, I think, that -- or the
21 police wanted to make sure that the right to protest
22 was, you know, a real right. These are difficult
23 balances to strike and judgements to reach. Just to say
24 the text in this document is not one which I think I've
25 seen before, and the last sentence talks about a new

196

1 approach needing to be developed and I think at this
2 time in our approach generally we were taking
3 a different approach, which was around, as I mentioned
4 earlier, moving from a model based solely on regulation
5 to one which is more behavioural and intuitive for
6 people. So I think that that point was being borne out
7 in government thinking more broadly. But there is --
8 you know, it is a difficult balance to strike, I think.

9 **Q.** There was a further review of fixed penalty notices
10 carried out in November 2020.

11 If we can have a look at INQ000350014.

12 Again, was this -- similarly to the last document we
13 looked at, was this something that you've seen or was
14 this at a lower level? Was this just for --

15 **A.** This I have seen. I believe that the earlier document
16 was -- led to this, but I didn't write it so I can't
17 vouch for it.

18 **Q.** No, I understand.

19 If we can have a look, then, please, at the second
20 page, paragraph 12, beginning there "Key findings", it
21 sets out the key findings.

22 So it's fair to say that this review had identified
23 a number of concerns that remained at this stage, so
24 this is November 2020. Those concerns included
25 disproportionate impact on those with protected

197

1 unlicensed music gatherings; another is, from memory,
2 self-isolating after travel; and there were some
3 business offences as well. And this is the product of
4 the review which underpins the advice to ministers which
5 led to some changes being made.

6 **Q.** Let's perhaps focus then on the £10,000 fine for
7 unlicensed music events, because we can see at page 5,
8 paragraph 20, there is recognition there that £10,000
9 remains an exceptionally high sum for any individual or
10 business.

11 Then the next paragraph, paragraph 21, just to
12 summarise what's said there, effectively the police
13 wanted to retain the ability to impose a £10,000 fine.

14 And if we can go over the page to paragraph 22,
15 there's a recommendation to remove the £10,000 fixed
16 penalty notice for unlicensed music events:

17 "... and communicating to the police that that we
18 consider these offences are so serious that in some
19 circumstances they do warrant prosecution,
20 notwithstanding the operational imperative to minimise
21 those circumstances."

22 The ministerial advice I think that followed on from
23 this review explicitly recommended removal of the
24 £10,000 fixed penalty notice for unlicensed music
25 events, and to be replaced with a requirement for

199

1 characteristics, whether cases were in fact being
2 correctly charged and reliance on enforcement officers
3 to determine what is a reasonable excuse.

4 Just focusing on a particular aspect of those
5 concerns, if we can have a look at subparagraph b on
6 page 3. Thank you. So "grounds for concern" were
7 expressed here about the extent of the disparity in the
8 distribution of fixed penalty notices based on protected
9 characteristics.

10 Did the Welsh Government recognise this disparity in
11 the distribution of fixed penalty notices?

12 **A.** Yes, and it was something we were concerned about, and
13 I know that it's something which my ministerial
14 colleague with responsibility for the relationship with
15 the police was raising in discussions with them as well.

16 **Q.** Is that Reg Kilpatrick?

17 **A.** No, that will have been Jane Hutt.

18 **Q.** Can you help us with what actual steps were taken,
19 particularly in regard to the concerns we see set out
20 there?

21 **A.** Well, this led to a -- this document, I believe, is
22 appended to advice to ministers to advocate for
23 a different approach in relation to fixed penalty
24 notices for a small number of offences. So one is the
25 one which you've talked about already, which is

198

1 criminal prosecution.

2 I don't need that advice displayed, but just to read
3 from it:

4 "Legal services considered that any step to ensure
5 that such events are enforced by means of prosecution
6 rather than simply a fixed penalty would appear to be
7 a proportionate one, notwithstanding the potential
8 deterrent effect of having a large fixed penalty."

9 Do you recall the First Minister in fact sought your
10 views on this issue?

11 If we can have a look at INQ000350094, please.

12 I think we're looking at the second from last email
13 that was sent, so it was sent on 19 November.

14 Thank you.

15 "... the First Minister does not feel able to agree
16 in principle to the amendments ... without some further
17 discussion. He has asked for:

18 "1. The view of the [Counsel General]."

19 Your view.

20 Then we see your advice in the next email up the
21 chain -- thank you, yes -- so second paragraph there:

22 "On the unlicensed music events, following further
23 information ... [Document read] ... retained (contrary
24 to the advice in the MA)."

25 So this is an example of your advice differing from

200

1 that presumably with legal services that informed the
 2 advice in the ministerial advice; is that right?
 3 **A.** Yes, the advice from legal services was one in which
 4 they were saying that there was a recognition in the
 5 advice that court proceedings were available, and that's
 6 the point that's being echoed in my comment here, and
 7 I'm giving weight to the deterrent effect of a penalty
 8 set at that level for an offence which generally
 9 speaking it's hard to commit, you know, inadvertently.
 10 The theme, completely understandably, underpinning
 11 the review was some of the offences for which people are
 12 being fined are the ones which are perhaps easier to
 13 spot, but are they the most egregious? That was the
 14 theme in the advice, and it seemed to me that here we
 15 have an offence which it's very hard to commit by
 16 accident and is particularly egregious, and so the
 17 deterrent effect, coupled with the availability of court
 18 process, which is obviously essential, struck the right
 19 balance, and that's the view which the First Minister
 20 then took as well.
 21 **Q.** Returning to the issue we've touched on upon the single
 22 justice procedure, that was revisited in January 2021
 23 when UK Government officials contacted Welsh Government
 24 officials to ascertain whether the Welsh Government
 25 intended that prosecutions under various sets of

201

1 regulations, and I think you say in your witness
 2 statement that you agreed with that advice?
 3 **A.** Yes, but the premise for the advice was that we were
 4 seeking data and information enabling us to evaluate
 5 whether this analysis, which it's described here as
 6 being anecdotal, was in fact the case. So that was the
 7 underpinning for the decision. We are not able to form
 8 our own view in Wales of the enforcement implications in
 9 relation to offences which we are ourselves legislating
 10 for, and so being asked to make a decision in the
 11 absence of that isn't the right approach.
 12 We also understood that this had been an active
 13 decision under consideration by the UK Government for
 14 some weeks, I think months, at this point and this was
 15 a request being made of us with a matter of days to go,
 16 which we felt there was a case for having more
 17 information so that we could reach a concluded view, and
 18 in the absence of that that this was the right approach.
 19 **Q.** I understand, and on 8 February 2021 the Lord Chancellor
 20 and the UK Attorney General wrote to the First Minister.
 21 We see that letter.
 22 It's INQ000104062.
 23 If we can have a look at the second paragraph,
 24 please, essentially this says that, despite the concerns
 25 raised by the Welsh Government, the UK Government had

203

1 regulations would take place under the single justice
 2 procedure.
 3 There was a ministerial advice prepared on the
 4 issue.
 5 If we can see that, it's INQ000145526.
 6 We can see from that first page it was sent to you.
 7 We can see the summary, Welsh Government had been asked
 8 whether it wants Single Justice Procedure to apply to
 9 fines under the Welsh regulations.
 10 If we can have a look, please, at page 3,
 11 paragraph 9:
 12 "In practice, though, we know that decisions on
 13 whether to ... [Document read] ... as they are
 14 non-custodial offences ..."
 15 Then skipping a sentence:
 16 "This will generate significant pressure ...
 17 [Document read] ... a reasonable excuse for their
 18 actions."
 19 Now, please, the next paragraph, paragraph 10:
 20 "We are aware at least anecdotally from media
 21 reporting of offences being brought under the SJP ...
 22 [Document read] ... police had failed to provide signed
 23 statements."
 24 The advice was that the single justice procedure
 25 should not be applied to fines under the Welsh

202

1 decided to continue to use the Single Justice Procedure
 2 across England and Wales.
 3 Now, you describe this as an extraordinary letter in
 4 your witness statement. Now, given that criminal
 5 justice matters are reserved to the UK Government, why
 6 did you find this letter to be extraordinary?
 7 **A.** Because a set of legitimate concerns had been raised and
 8 had been dismissed and overridden without providing the
 9 evidence and data which the First Minister had very
 10 reasonably asked for.
 11 **Q.** We have a look at the second page, third paragraph
 12 please. Well, yes, third bullet point. It starts
 13 "Police Forces ...", thank you:
 14 "Police Forces, through the National Police Chiefs
 15 Council ... have also taken steps to address concerns
 16 around disproportionality and mis-charging."
 17 Were you of the opinion that enough had been done to
 18 ensure that the Welsh Government could have confidence
 19 in the SJP?
 20 **A.** In what sense?
 21 **Q.** In the sense that you're being told here that the UK --
 22 by the UK Attorney General and the Lord Chancellor, that
 23 steps had been taken to address concerns about
 24 disproportionality and mischarging, and we obviously
 25 looked at the data that had been collected in the

204

1 ministerial advice that formed the view that the SJP
2 should not be used within Wales in respect of fines
3 under the regulations.

4 So my question is simply: when you received this
5 letter, were you satisfied that enough had been done to
6 quell those concerns?

7 **A.** I think the point is we hadn't been given the
8 information which we'd been asking for and which seemed
9 a very reasonable request that could have been met and
10 wasn't.

11 **Q.** Having discussed the matter with you, the First Minister
12 responded to the Lord Chancellor and the Attorney
13 General, that's a response of 2 March.

14 We see that, INQ000350632. If we have a look,
15 please, at the second page, third paragraph from the
16 bottom -- yes. "There is", thank you.

17 "There is still no practical option ... [Document
18 read] ... are properly taken into account."

19 Now, without going into any arguments about the pros
20 and cons of devolution, what were the practical
21 implications of the Welsh Government being able to make
22 a law but having limited powers about the methods of
23 prosecuting those offences?

24 **A.** Well, it seems to me right that the ability to make
25 legislation as a government and the ability to enforce
205

1 **A.** It is.

2 **Q.** On 20 April 2020 Cabinet met and considered a paper
3 entitled "*Response to Covid-19: preparation for future
4 recovery*". I don't need that displayed. That paper
5 drew on work that you'd been asked to undertake.

6 Now, just by the date of that paper, that's
7 20 April 2020, work for recovery therefore started very
8 early in the pandemic.

9 Now, whilst obviously no doubt you do need to
10 prepare for recovery, do you think that work began too
11 soon?

12 **A.** This took a different form at this stage. We wanted to
13 make sure that the choices that were being made around
14 the regulations and the removal of restrictions,
15 you know, that we understood the impact of that on
16 policy thinking into the medium term as well. There was
17 a set of implications which the necessary diversion of
18 energy and resource within the Welsh Government to
19 respond to Covid was having on the government's other
20 activity and priorities, and so we needed to understand
21 what that meant. So that's how this began.

22 There were two strands to this. One was a set of
23 meetings that I would chair with officials to make sure
24 we were cognisant of that and the implications of
25 lifting the restrictions on those policies, on the one
207

1 that legislation go hand in hand, because there are
2 interdependencies between the two; we touched on some of
3 them in the discussion that we've had today. But this
4 paragraph in the First Minister's letter I think
5 recognises the complexity of being in a situation where,
6 you know, fixed penalties are a proportionate response
7 to the kinds of offences that we're talking about, but
8 they do come with other challenging implications, as the
9 letter sets out.

10 **Q.** Had the Welsh Government not wanted the single justice
11 procedure to apply to fines under the Welsh regulations,
12 it could have withdrawn from the police in Wales the
13 authorisation to prosecute those offences, so
14 effectively leaving all prosecutions in the hands of the
15 CPS. Realistically, was that an option?

16 **A.** Well, it was an option that was considered in general
17 terms but then decided against, because we were fearful
18 that would send the wrong signal around confidence in
19 the police to manage the process which was being
20 described here, and we felt that would be undermining
21 and decided against it.

22 **Q.** Changing topic and moving to my last topic, which is
23 about future recovery, Mr Miles.

24 It's right, isn't it, that you were tasked with
25 co-ordinating work on preparation for future recovery?
206

1 hand, but then separately an external process which
2 involved somewhat later, a few weeks later than this,
3 I think, a set of external experts testing our
4 assumptions on what this meant, which actually was very
5 helpful and useful, and then, you know, bore fruit later
6 on.

7 So I think it was a proportionate way of planning
8 for, you know, a better time without making any
9 assumptions about when that would arise, because at this
10 point clearly we didn't know.

11 **Q.** You say external experts, so experts out of the Welsh
12 Government?

13 **A.** Yes, so the form-up which it took was a set of six
14 roundtables initially with ten experts per roundtable --
15 some of them were from overseas, some of them were from
16 Wales, none of them were in the Welsh Government --
17 testing our approach to policy and what we felt as
18 a government would be an appropriate policy response to
19 some of the challenges and pressures and changes that
20 Covid had brought about; and then that was distilled
21 down to a group of four people who really helped us
22 deep dive into some of those challenges and there were
23 maybe three or four, five of those meetings. That led
24 to a publication in the autumn which set out our
25 priorities for how we would respond to the consequences
208

1 of Covid on young people, on old people, on some of the
2 more marginalised socioeconomic communities, on black,
3 Asian, minority ethnic communities.

4 So that was the purpose of that, and, you know, many
5 of those interventions have since been taken up or are
6 in development.

7 **MR POOLE:** Mr Miles, they're all the questions I've got for
8 you, but there are some questions from the
9 core participants.

10 **LADY HALLETT:** Mr Straw, I think you have a couple of
11 questions of your own, and you're going to ask one for
12 disabled people's organisations.

13 **MR STRAW:** Yes, thank you very much.

14 **LADY HALLETT:** Thank you.

15 **Questions from MR STRAW KC**

16 **MR STRAW:** Good afternoon, Minister, I represent
17 John's Campaign and also Care Rights UK.

18 You discussed earlier inconsistencies and confusion
19 in respect of guidance in particular in May 2020, and
20 a number of stakeholders such as the Older People's
21 Commissioner have complained that regulations and
22 guidance, particularly for people needing care and older
23 people, was confusing and contradictory.

24 Could you explain, what were the problems or the
25 factors that led to the guidance being confusing and
209

1 I do, and sometimes fine distinctions which can be hard
2 to explain, inherently. The longer people live with
3 that way of organising their lives and society, I think
4 the more challenging it becomes, and I think, as I was
5 mentioning to Mr Poole earlier, by the time we'd got to
6 the latter stages of 2020 we recognised perhaps that,
7 you know, a simpler, smaller number of messages would be
8 more appropriate for that point, you know, taking into
9 account the experience people had had for the last six,
10 seven, eight months. So we sought at every point to try
11 and learn those lessons.

12 **Q.** To pick a systemic example of a potential lesson to be
13 learned, was there a single person within government who
14 had clear responsibility for ensuring that guidance was
15 consistent, readily understandable, and if not do you
16 agree that there ought to be?

17 **A.** Well, I think in practice lawyers were very heavily
18 involved in sort of writing of the guidance as well,
19 including me as the Counsel General, so I wasn't the
20 person responsible for the entirety of the output, but
21 there was a recognition that the sorts of judgements we
22 were making both in terms of the regulations but also in
23 explaining the regulations, you know, was raising
24 questions as we went along which needed to be answered
25 and refined.

211

1 contradictory?

2 **A.** Well, I think it's a matter of judgement whether people
3 find the guidance confusing and contradictory. Our
4 objective as a government was to seek to make sure that
5 regulations which were often necessarily complex could
6 be understood by people, whatever their situation,
7 through guidance which was more accessible and a set of
8 FAQs which was intended to be very helpful. There will
9 have been occasions on which we didn't achieve the
10 fullest extent of our ambition, but that was certainly
11 what we aimed to do and, you know, my involvement was
12 quite hands-on at points in the guidance with a view to
13 seeking to achieve that. I'm sure we didn't always
14 strike the right balance, but that was certainly our
15 intention.

16 **Q.** For the purpose of learning lessons, in light of those
17 concerns that had been raised, the complaints that there
18 was this confusion, what should be done better next time
19 to ensure that guidance is clearer and more consistent?

20 **A.** Well, I think the situation improved over time within
21 the period of Covid, we learned lessons as we went
22 along, I think. I think there is a larger reflection,
23 which is that a trajectory of the virus which started
24 necessarily with a regulatory response, which then takes
25 you into the territory of: what can I do, what can't
210

210

1 So I'm not sure I know enough about the structure
2 which officials had for marshalling inputs and comments
3 and ownership of that process, but I think it generally
4 worked well, but there will obviously have been
5 exceptions.

6 **Q.** Okay.

7 A different topic. You say at paragraph 234 that
8 the pandemic exacerbated existing inequalities and the
9 most vulnerable had been the hardest hit.

10 The impact of the pandemic and its response on
11 social care was devastating. For example, in the first
12 three months of the pandemic, about 39% of deaths in the
13 UK involved Covid-19, were deaths of care home
14 residents.

15 When you said that the most vulnerable had been the
16 hardest hit, were you referring to this group among
17 others?

18 **A.** There were a number of groups whose situation, whose
19 experience was exacerbated by Covid. Much of the work
20 that I was doing in the future recovery work, you know,
21 was very much rooted in that recognition that there
22 were, you know, the burdens and impact of Covid
23 certainly had not been equally borne by everyone in
24 society, and some of our response to that in the medium
25 term and longer term aimed to take that into account,
212

212

1 and to learn those lessons as we went, in the way that
 2 you were asking me about earlier.

3 **Q.** Also at paragraph 234 you referred to the October 2020
 4 government reconstruction plan, and that plan at page 12
 5 states:

6 "Respondents highlighted the importance of
 7 increasing the status of social care and recognising the
 8 contribution made by paid carers."

9 Does that indicate that at that point social care
 10 wasn't given sufficient status, and the contribution
 11 made by carers had not been properly recognised?

12 **A.** No, I don't think that would be an accurate way of
 13 summarising that point. I think it was a recognition
 14 that more could be done by a government that was
 15 committed to supporting the social care sector. I'm not
 16 the social care minister, so I'm not best placed to
 17 answer the detail of your question, but I don't think
 18 the way you've put it would be a fair reflection of the
 19 government's assessment at that time.

20 **Q.** Moving on, at paragraph 154 you note that on 5 May 2020
 21 you convened a meeting of ministers to consider the
 22 non-shielding vulnerable cohort.

23 Now, concerns have been raised that people from this
 24 cohort, such as people with dementia, were prevented by
 25 the operation of regulations or guidance from accessing

213

1 mitigate the impacts for digitally excluded disabled
 2 people of the increased shift online of access to key
 3 information and services?

4 **A.** Well, I accept the point, the premise of your question.
 5 We recognised that very early on, and in the work in
 6 particular that I was doing, which I'm best placed to
 7 answer for this today, a concern that we had was that
 8 when we were seeking to provide that additional support
 9 across the government in different ways to a cohort of
 10 individuals who weren't shielding but who we were
 11 expecting to isolate and had, you know, particular
 12 health needs or disabilities, we recognised that the
 13 good work that local authorities were doing right across
 14 Wales to try and advertise and signpost the support that
 15 was available often was depending on online channels of
 16 communication, and so we were concerned about that for
 17 the reason that you give.

18 So over the course of the weeks in which we worked
 19 through that workstream, we worked with councils to
 20 identify the best practice that many of them were
 21 already practising and to spread that. So some of that
 22 was around -- some of them were even doing radio
 23 adverts, some of them were doing leaflet drops to
 24 people's homes, some of them were working with the local
 25 voluntary councils to identify people who were disabled

215

1 essential care and informal support, which was of huge
 2 importance to them.

3 Just to give a specific example, the 5-mile guidance
 4 that you mentioned earlier, there were reports in
 5 January 2021 of Welsh police fining a daughter for
 6 visiting her 94-year old mother with dementia in
 7 a care home that was 7 miles away.

8 Do you accept that there were shortcomings in the
 9 regulations and guidance in respect of this cohort?

10 **A.** We did amend the regulations in order to support members
 11 of the public to go visit family members outside the
 12 5-mile rule of thumb, you know, drawing on the kinds of
 13 experiences no doubt that you've mentioned today, so
 14 there was a recognition early on that we needed to
 15 adjust some of the regulations in order to reflect that,
 16 certainly.

17 **Q.** The last question -- and, my Lady, this is the disabled
 18 people's organisations' question -- one of the
 19 workstreams you were responsible for was mitigating
 20 digital exclusion for vulnerable people. Disabled
 21 people experienced higher levels of digital exclusion
 22 than non-disabled people. See, for example, there's
 23 a report by Watson and Shakespeare which is in the
 24 bundles.

25 Could you explain what work was done, if any, to

214

1 or had particular needs who were known to them, and
 2 trying to build a much richer means of communicating
 3 with individuals. But it was very challenging, and
 4 there were -- there was good practice happening, the
 5 task we'd set ourselves was to try and spread that as
 6 widely as we could, and I think over that time we did
 7 make significant progress, though we were also conscious
 8 that there was a cohort of people who -- which we were
 9 not able to meet, given the limitations we were all in
 10 society working under at the time.

11 **MR STRAW:** Thank you very much, no further questions.

12 **LADY HALLETT:** Thank you, Mr Straw.

13 I think that completes the questions for Mr Miles.

14 **MR POOLE:** My Lady, it does. There's just one correction to
 15 the record, but I'll let Mr Miles go.

16 **LADY HALLETT:** Thank you very much indeed for your help,
 17 Mr Miles, very grateful.

18 **THE WITNESS:** Thank you very much, my Lady.

19 **(The witness withdrew)**

20 **MR POOLE:** My Lady, yes.

21 During questions from CTI to Eluned Morgan this
 22 morning, I think an incorrect INQ reference was given.
 23 The correct document was displayed, but the wrong INQ,
 24 so if I can just correct that: INQ000055222 was said;
 25 the INQ reference should have been INQ000388561.

216

1 **LADY HALLETT:** I of course spotted that, Mr Poole.
 2 10 o'clock tomorrow, please.
 3 **(4.12 pm)**
 4 **(The hearing adjourned until 10 am**
 5 **on Wednesday, 13 March 2024)**
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 22
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 24
 25

INDEX	PAGE
3 BARONESS ELUNED MORGAN (sworn)	1
5 Questions from COUNSEL TO THE INQUIRY	1
7 Questions from MS HEAVEN	55
9 Questions from THE CHAIR	61
11 MS REBECCA EVANS (sworn)	63
13 Questions from COUNSEL TO THE INQUIRY	63
15 Questions from MS HEAVEN	112
17 Questions from MR JACOBS	118
19 MR JEREMY MILES (sworn)	123
21 Questions from LEAD COUNSEL TO THE INQUIRY .123 for MODULE 2B	
24 Questions from MR STRAW KC	209

	113/1	14th [2] 159/14 160/14	2	149/11
LADY HALLETT:	1,000 [1] 193/1	15 [1] 113/20	2 December [1] 186/6	21 [4] 73/5 75/13 100/3 199/11
[54] 1/3 10/5 10/14 16/5 16/12 32/15 32/22 32/24 33/11 33/20 37/3 54/20 54/25 55/5 60/25 61/3 61/17 61/22 62/6 62/11 62/17 62/25 63/3 63/8 63/12 77/10 105/25 110/23 111/4 111/12 112/4 112/10 118/18 118/22 118/24 119/1 123/5 123/10 123/17 146/22 146/24 175/16 179/16 181/6 181/20 181/22 181/24 182/3 182/6 209/10 209/14 216/12 216/16 217/1	1,920 [1] 191/23 1.01 pm [1] 123/11 1.4 [1] 106/6 1.5 billion [2] 120/11 121/20 1.50 [1] 123/10 1.50 pm [1] 123/13 10 [5] 4/7 49/20 113/4 158/15 202/19 10 am [1] 217/4 10 December [1] 43/11 10 May [1] 188/2 10 million [1] 4/4 10 o'clock [1] 217/2 10,000 [8] 192/23 193/8 193/16 199/6 199/8 199/13 199/15 199/24 10.00 am [1] 1/2 100 [2] 52/18 70/20 102 [1] 139/24 108 [1] 140/21 11 April [1] 162/16 11 December [1] 48/12 11 March [5] 7/15 8/4 8/9 88/20 89/11 11 October [1] 45/24 11.20 am [1] 55/2 11.35 [1] 55/1 11.35 am [1] 55/4 11.45.48 [1] 52/12 115 [1] 149/23 11th [2] 52/16 52/21 12 [3] 195/11 197/20 213/4 12 March 2024 [1] 1/1 12 October [3] 185/16 186/22 187/7 120 [2] 191/22 192/7 125 million [1] 101/14 13 [3] 143/20 186/24 195/23 13 December [1] 124/1 13 December 2017 [1] 124/14 13 March [2] 144/2 148/10 13 March 2024 [1] 217/5 13 May [3] 187/21 188/1 188/14 13.27 [1] 145/18 13th [1] 90/17 14 [1] 40/5 14 December [1] 1/24 14.51 [1] 145/21	15 April [1] 55/20 15 December 2023 [1] 113/2 15 October [13] 35/4 35/12 38/8 38/22 104/19 105/1 105/2 106/1 106/24 107/9 107/20 108/20 172/20 15 October 2020 [1] 103/10 154 [1] 213/20 155 million [1] 76/2 155m [1] 75/22 15th [2] 106/5 110/6 115/5 16 [3] 8/20 114/10 115/5 16 June 2021 [1] 49/14 16 March [2] 12/18 13/23 16 October [1] 108/7 161 [1] 167/16 16th [4] 106/16 108/2 159/13 168/17 17 [4] 29/18 114/10 115/5 140/23 177 [1] 169/6 178 [1] 171/4 18 [3] 31/17 77/3 138/21 18 billion [1] 70/6 18 March [3] 140/8 142/10 143/1 18 March 2020 [2] 138/9 140/23 18.37.20 [1] 53/14 18.50 [1] 53/17 18.6bn [1] 75/16 181 [1] 176/5 19 [23] 5/5 5/19 5/20 7/17 7/18 8/3 10/19 28/14 55/8 58/14 59/2 59/12 77/10 82/8 82/11 82/19 88/23 112/13 115/8 141/20 153/9 207/3 212/13 19 July [1] 50/10 19 June [1] 178/7 19 March [2] 13/18 13/20 19 November [1] 200/13 19 October [2] 38/10 108/5 192 [1] 191/5 193 [1] 193/23 195 [1] 177/5 196 [1] 177/12 1984 [2] 149/18 150/2 1bn [1] 75/21	2-metre [3] 184/3 184/10 185/1 2.58 pm [1] 175/23 20 [2] 70/8 199/8 20 April [1] 157/10 20 April 2020 [2] 207/2 207/7 20 billion [1] 70/2 20 March [5] 12/10 139/1 144/25 148/11 148/24 20 March 2020 [1] 150/7 20 pages [1] 24/1 2004 [1] 150/2 2009 [1] 126/7 2014 [1] 65/1 2016 [2] 69/4 124/8 2017 [3] 2/12 124/14 127/17 2018 [5] 2/12 2/16 65/7 67/11 124/16 2020 [61] 2/16 2/18 2/24 5/1 5/17 8/21 28/15 30/4 30/22 30/23 30/23 33/24 36/3 52/12 55/15 59/11 60/10 60/18 64/19 66/10 66/20 75/6 80/11 85/13 88/7 92/10 94/15 94/16 95/3 96/11 96/24 103/8 103/10 114/8 119/24 122/3 127/12 135/25 136/4 138/9 140/23 141/1 143/20 150/7 176/6 177/6 184/18 185/6 186/2 193/24 195/1 195/10 196/16 197/10 197/24 207/2 207/7 209/19 211/6 213/3 213/20 2020-21 [1] 75/13 2020/2021 [1] 75/24 2020/21 [2] 73/5 100/3 2021 [21] 2/18 5/8 30/5 40/3 40/3 40/5 48/11 49/14 55/10 58/12 58/23 60/5 66/5 66/11 75/6 75/24 124/19 196/17 201/22 203/19 214/5 2022 [3] 64/19 66/11 66/20 2023 [3] 64/3 113/1 113/2 2024 [2] 1/1 217/5 2050 [1] 29/20 20th [2] 148/20	21 March [1] 10/20 21 September 2020 [1] 195/10 21-day [10] 21/2 24/1 24/3 78/21 158/5 158/12 159/8 169/9 171/3 177/6 22 [1] 199/14 22 March [1] 11/4 22 May [2] 169/7 176/24 22 May 2020 [1] 176/6 22 November [1] 42/11 23 [4] 6/23 70/5 74/3 186/2 23 billion [2] 70/3 74/5 23 February [3] 6/24 7/7 7/10 23 March [2] 36/8 148/7 23 March 2020 [2] 80/11 141/1 23 May 2020 [1] 193/24 23 October [4] 38/9 39/13 106/18 107/2 232 [1] 64/5 234 [2] 212/7 213/3 23rd [1] 110/7 24 [1] 114/6 24 February 2020 [1] 136/4 243 [1] 172/24 25 [3] 31/17 125/5 127/5 25bn [1] 75/14 27 December [1] 44/23 27 March [1] 195/10 27 May [2] 171/3 172/3 27 May 2020 [1] 177/6 27 November [2] 41/24 42/12 28 February [4] 5/24 6/11 6/13 6/18 28 July [1] 190/13 29 January [1] 5/21 29 June [1] 189/4 29 November [2] 41/22 43/13 29 October [1] 187/4 2B [2] 123/16 218/22
0				
0.8 [1] 106/6 01 [1] 53/18				
1				
1 billion [2] 120/11 121/20 1 March [1] 6/15 1 million [1] 32/13 1 November [3] 64/3 104/7 107/2 1 November 2023 [1]				
'				
'don't [1] 42/6 'just [1] 77/7 'less [1] 178/1 'local' [2] 177/19 181/12 'specified [1] 194/4 'Stay [2] 177/7 177/8				
3				3 3 July 2020 [1] 96/24 3 pm [1] 145/17

3 3,200 [1] 192/1 3.15 [1] 175/19 3.15 pm [1] 175/25 30 [1] 114/2 30 June [1] 111/21 30 March [1] 92/10 31 October [1] 110/25 32 [1] 141/10 338 [1] 174/5 350 million [3] 73/25 74/6 101/11 37 [1] 141/23 38 [1] 142/2 39 [1] 212/12	6 March [2] 88/11 89/5 6 October 2020 [1] 195/1 6.50 [1] 53/17 60 [1] 133/10 600 million [2] 73/7 120/20 65 [1] 8/20 6th [1] 52/16	25/10 25/11 25/22 27/3 29/17 31/12 31/15 31/17 31/24 32/10 33/16 36/11 37/23 39/14 40/7 40/24 41/3 43/5 43/22 43/25 44/18 44/21 46/1 46/4 46/7 46/11 46/19 49/5 50/2 54/7 55/21 55/23 56/1 56/8 56/22 59/14 59/15 59/16 60/10 60/17 60/19 62/6 74/25 75/1 76/24 77/12 86/3 86/5 89/23 89/24 90/8 91/15 92/18 95/8 95/16 96/14 96/18 97/2 97/5 98/9 98/11 98/25 101/4 101/5 104/13 104/22 109/23 110/13 110/23 111/4 111/22 113/17 114/13 114/20 117/7 117/14 118/1 118/9 120/7 122/6 123/2 125/1 125/2 126/17 128/5 132/21 133/10 135/23 136/8 136/22 138/8 143/5 143/16 143/20 144/19 148/25 149/11 149/17 150/13 150/14 150/17 152/13 157/17 159/6 159/11 159/15 160/11 161/23 163/20 164/10 165/1 166/14 166/16 166/19 170/4 170/11 173/2 173/7 173/11 174/22 177/4 177/6 178/6 180/25 181/1 181/5 181/20 183/6 183/12 185/5 185/10 185/13 186/8 187/21 196/25 198/7 198/12 198/25 204/23 205/19 205/22 206/7 206/23 208/9 208/20 212/1 212/12 213/2 215/16	acceptable [1] 193/11 access [8] 16/10 33/8 33/9 50/17 87/5 101/10 128/12 215/2 accessible [1] 210/7 accessing [1] 213/25 accident [1] 201/16 accommodates [1] 137/24 accompanied [2] 157/25 167/20 accordance [2] 160/8 171/7 according [1] 90/6 account [5] 161/18 171/1 205/18 211/9 212/25 accurate [1] 213/12 achieve [4] 154/8 163/10 210/9 210/13 acknowledge [1] 183/8 acknowledged [2] 59/4 170/24 acknowledgement [1] 165/4 acknowledges [2] 166/18 166/21 across [26] 9/17 18/4 26/3 35/9 93/5 93/15 94/3 94/19 96/21 131/25 133/7 139/9 139/18 153/24 155/12 155/14 156/22 157/7 171/25 172/21 173/19 189/21 195/18 204/2 215/9 215/13 act [21] 9/21 9/25 11/18 12/13 21/4 34/10 74/6 129/21 137/17 144/18 145/11 146/1 146/3 146/15 147/24 150/1 150/2 151/20 151/23 152/1 185/14 acted [2] 14/1 62/7 acting [4] 79/18 79/18 129/23 135/4 action [9] 34/14 56/13 57/16 57/23 57/23 109/19 109/25 119/5 122/4 actioned [1] 187/8 actions [1] 202/18 active [1] 203/12 activities [1] 196/13 activity [8] 27/15 46/23 132/18 155/13 156/5 167/5 177/8 207/20 actual [2] 138/19 198/18 actually [29] 13/5	25/17 25/19 27/5 27/8 30/3 34/6 35/3 37/12 37/13 38/11 51/10 51/14 53/1 57/22 74/2 74/15 76/13 89/17 90/16 90/18 95/20 96/21 133/5 153/17 180/14 184/8 184/16 208/4 acute [1] 79/16 ad [1] 155/18 ad hoc [1] 155/18 add [2] 57/17 57/24 addition [3] 4/22 49/18 70/24 additional [13] 31/22 57/16 72/2 72/24 87/20 92/2 93/14 100/2 100/15 121/9 155/22 170/7 215/8 address [4] 86/1 189/15 204/15 204/23 addresses [1] 116/9 addressing [1] 148/25 adequate [1] 167/14 adhering [1] 12/21 adjourn [1] 123/10 adjourned [1] 217/4 adjournment [1] 123/12 adjust [1] 214/15 administerial [1] 100/19 administrations [7] 88/22 96/22 99/16 107/12 107/15 108/11 108/17 adopt [1] 169/20 adopted [1] 169/16 advance [4] 9/4 108/18 156/12 158/1 advertise [1] 215/14 advertised [1] 33/4 adverts [1] 215/23 advice [143] 11/18 11/21 12/12 17/21 20/4 20/14 23/19 23/22 23/24 34/12 35/10 35/23 35/25 38/16 38/21 38/22 38/24 39/1 39/12 39/17 39/20 39/21 42/21 45/9 45/13 46/4 62/9 79/9 81/6 84/2 102/12 104/12 105/6 105/8 129/3 130/21 131/22 132/4 132/5 132/22 132/24 133/18 133/19 133/22 133/23 134/5 134/8 134/10 134/13 134/23 135/4 135/7 135/15 140/9 140/11 140/17 141/2	
4 4 June [2] 96/12 98/1 4 March [1] 140/7 4 May 2020 [1] 94/16 4,000 [1] 192/24 4.12 pm [1] 217/3 4.9 miles [1] 183/9 40 [2] 112/16 142/14 440,000 [2] 29/17 29/18 45 [1] 117/8 46 [1] 117/15 48 [1] 25/10 4th [1] 96/19	7 7 May [3] 165/10 166/4 167/20 7 miles [1] 214/7 700 [1] 4/8 750 [1] 122/14	56/22 59/14 59/15 59/16 60/10 60/17 60/19 62/6 74/25 75/1 76/24 77/12 86/3 86/5 89/23 89/24 90/8 91/15 92/18 95/8 95/16 96/14 96/18 97/2 97/5 98/9 98/11 98/25 101/4 101/5 104/13 104/22 109/23 110/13 110/23 111/4 111/22 113/17 114/13 114/20 117/7 117/14 118/1 118/9 120/7 122/6 123/2 125/1 125/2 126/17 128/5 132/21 133/10 135/23 136/8 136/22 138/8 143/5 143/16 143/20 144/19 148/25 149/11 149/17 150/13 150/14 150/17 152/13 157/17 159/6 159/11 159/15 160/11 161/23 163/20 164/10 165/1 166/14 166/16 166/19 170/4 170/11 173/2 173/7 173/11 174/22 177/4 177/6 178/6 180/25 181/1 181/5 181/20 183/6 183/12 185/5 185/10 185/13 186/8 187/21 196/25 198/7 198/12 198/25 204/23 205/19 205/22 206/7 206/23 208/9 208/20 212/1 212/12 213/2 215/16	8 8 February 2021 [1] 203/19 8 September [1] 34/23 80 [1] 25/12 83 [1] 136/2	8 8 February 2021 [1] 203/19 8 September [1] 34/23 80 [1] 25/12 83 [1] 136/2	122/6 123/2 125/1 125/2 126/17 128/5 132/21 133/10 135/23 136/8 136/22 138/8 143/5 143/16 143/20 144/19 148/25 149/11 149/17 150/13 150/14 150/17 152/13 157/17 159/6 159/11 159/15 160/11 161/23 163/20 164/10 165/1 166/14 166/16 166/19 170/4 170/11 173/2 173/7 173/11 174/22 177/4 177/6 178/6 180/25 181/1 181/5 181/20 183/6 183/12 185/5 185/10 185/13 186/8 187/21 196/25 198/7 198/12 198/25 204/23 205/19 205/22 206/7 206/23 208/9 208/20 212/1 212/12 213/2 215/16
5 5 July 2020 [1] 52/12 5 June [2] 188/16 188/22 5 May 2020 [1] 213/20 5 miles [7] 178/24 179/15 182/1 182/8 182/10 183/1 183/9 5 million [1] 27/3 5 October 2020 [1] 114/8 5-mile [4] 177/4 178/6 214/3 214/12 5.1 miles [1] 183/9 5.2 [1] 100/4 5.6 [1] 70/21 5.8 [1] 70/22 50 [1] 31/14 50 million [1] 101/14 50 years [1] 179/18 500 [2] 122/13 122/15 51 [1] 75/8 52 [1] 53/14 53 [1] 77/3 59 [1] 50/12	9 9 November [1] 186/7 9 November 2020 [1] 186/2 9 October [5] 30/5 104/5 107/8 107/12 108/15 94 [1] 143/17 94-year [1] 214/6 960 [1] 192/3 99 [1] 138/14	56/22 59/14 59/15 59/16 60/10 60/17 60/19 62/6 74/25 75/1 76/24 77/12 86/3 86/5 89/23 89/24 90/8 91/15 92/18 95/8 95/16 96/14 96/18 97/2 97/5 98/9 98/11 98/25 101/4 101/5 104/13 104/22 109/23 110/13 110/23 111/4 111/22 113/17 114/13 114/20 117/7 117/14 118/1 118/9 120/7 122/6 123/2 125/1 125/2 126/17 128/5 132/21 133/10 135/23 136/8 136/22 138/8 143/5 143/16 143/20 144/19 148/25 149/11 149/17 150/13 150/14 150/17 152/13 157/17 159/6 159/11 159/15 160/11 161/23 163/20 164/10 165/1 166/14 166/16 166/19 170/4 170/11 173/2 173/7 173/11 174/22 177/4 177/6 178/6 180/25 181/1 181/5 181/20 183/6 183/12 185/5 185/10 185/13 186/8 187/21 196/25 198/7 198/12 198/25 204/23 205/19 205/22 206/7 206/23 208/9 208/20 212/1 212/12 213/2 215/16	9 9 November [1] 186/7 9 November 2020 [1] 186/2 9 October [5] 30/5 104/5 107/8 107/12 108/15 94 [1] 143/17 94-year [1] 214/6 960 [1] 192/3 99 [1] 138/14	9 9 November [1] 186/7 9 November 2020 [1] 186/2 9 October [5] 30/5 104/5 107/8 107/12 108/15 94 [1] 143/17 94-year [1] 214/6 960 [1] 192/3 99 [1] 138/14	122/6 123/2 125/1 125/2 126/17 128/5 132/21 133/10 135/23 136/8 136/22 138/8 143/5 143/16 143/20 144/19 148/25 149/11 149/17 150/13 150/14 150/17 152/13 157/17 159/6 159/11 159/15 160/11 161/23 163/20 164/10 165/1 166/14 166/16 166/19 170/4 170/11 173/2 173/7 173/11 174/22 177/4 177/6 178/6 180/25 181/1 181/5 181/20 183/6 183/12 185/5 185/10 185/13 186/8 187/21 196/25 198/7 198/12 198/25 204/23 205/19 205/22 206/7 206/23 208/9 208/20 212/1 212/12 213/2 215/16
6 6 April [4] 153/4 155/11 156/15 159/10	A ability [11] 11/22 13/3 13/5 22/12 27/9 36/11 131/17 166/11 199/13 205/24 205/25 able [42] 9/8 13/4 26/16 36/12 44/11 59/21 60/8 73/3 73/5 73/24 76/8 76/12 84/23 86/17 87/20 94/8 99/6 100/1 101/13 102/19 110/4 110/19 120/5 121/4 121/14 127/12 132/4 133/11 134/12 137/7 144/18 152/12 154/19 156/9 159/17 165/2 171/24 192/12 200/15 203/7 205/21 216/9 about [168] 4/8 5/3 8/8 10/7 10/8 11/14 12/3 12/4 13/4 13/4 14/4 14/24 15/15 18/25 19/2 20/16 22/14 23/6 23/16	122/6 123/2 125/1 125/2 126/17 128/5 132/21 133/10 135/23 136/8 136/22 138/8 143/5 143/16 143/20 144/19 148/25 149/11 149/17 150/13 150/14 150/17 152/13 157/17 159/6 159/11 159/15 160/11 161/23 163/20 164/10 165/1 166/14 166/16 166/19 170/4 170/11 173/2 173/7 173/11 174/22 177/4 177/6 178/6 180/25 181/1 181/5 181/20 183/6 183/12 185/5 185/10 185/13 186/8 187/21 196/25 198/7 198/12 198/25 204/23 205/19 205/22 206/7 206/23 208/9 208/20 212/1 212/12 213/2 215/16	A ability [11] 11/22 13/3 13/5 22/12 27/9 36/11 131/17 166/11 199/13 205/24 205/25 able [42] 9/8 13/4 26/16 36/12 44/11 59/21 60/8 73/3 73/5 73/24 76/8 76/12 84/23 86/17 87/20 94/8 99/6 100/1 101/13 102/19 110/4 110/19 120/5 121/4 121/14 127/12 132/4 133/11 134/12 137/7 144/18 152/12 154/19 156/9 159/17 165/2 171/24 192/12 200/15 203/7 205/21 216/9 about [168] 4/8 5/3 8/8 10/7 10/8 11/14 12/3 12/4 13/4 13/4 14/4 14/24 15/15 18/25 19/2 20/16 22/14 23/6 23/16	A ability [11] 11/22 13/3 13/5 22/12 27/9 36/11 131/17 166/11 199/13 205/24 205/25 able [42] 9/8 13/4 26/16 36/12 44/11 59/21 60/8 73/3 73/5 73/24 76/8 76/12 84/23 86/17 87/20 94/8 99/6 100/1 101/13 102/19 110/4 110/19 120/5 121/4 121/14 127/12 132/4 133/11 134/12 137/7 144/18 152/12 154/19 156/9 159/17 165/2 171/24 192/12 200/15 203/7 205/21 216/9 about [168] 4/8 5/3 8/8 10/7 10/8 11/14 12/3 12/4 13/4 13/4 14/4 14/24 15/15 18/25 19/2 20/16 22/14 23/6 23/16	122/6 123/2 125/1 125/2 126/17 128/5 132/21 133/10 135/23 136/8 136/22 138/8 143/5 143/16 143/20 144/19 148/25 149/11 149/17 150/13 150/14 150/17 152/13 157/17 159/6 159/11 159/15 160/11 161/23 163/20 164/10 165/1 166/14 166/16 166/19 170/4 170/11 173/2 173/7 173/11 174/22 177/4 177/6 178/6 180/25 181/1 181/5 181/20 183/6 183/12 185/5 185/10 185/13 186/8 187/21 196/25 198/7 198/12 198/25 204/23 205/19 205/22 206/7 206/23 208/9 208/20 212/1 212/12 213/2 215/16

A	137/1 155/18 164/7 187/11 191/10 193/14 193/17 199/2	78/17 85/19 87/9 89/16 91/2 91/12 93/24 94/3 94/25 95/18 97/22 100/18 109/5 110/23 111/4 112/10 114/22 116/16 117/16 117/22 119/1 124/23 127/2 130/20 131/20 133/2 133/6 133/17 134/17 146/7 149/2 149/25 155/13 157/12 161/18 161/25 163/3 168/14 179/1 179/9 180/11 181/6 182/1 206/14 209/7 216/9	56/6 58/17 65/19 65/25 66/25 70/18 71/1 71/15 76/15 78/25 81/14 82/24 83/4 83/19 83/20 86/17 86/25 87/17 89/15 89/24 97/21 101/10 104/11 106/7 109/9 111/8 111/16 111/17 114/23 116/7 117/24 125/16 126/16 127/5 127/6 127/9 130/6 132/2 134/23 141/12 141/13 146/11 148/6 152/8 153/12 153/19 156/16 160/9 160/17 161/1 165/7 171/15 172/14 173/22 180/18 180/19 188/19 190/1 190/4 190/25 192/9 203/12 204/15 209/17 211/22 213/3 216/7	analysts [1] 79/24 ancillary [1] 163/12 Andrew [1] 5/13 Andrew Goodall [1] 5/13 anecdotal [1] 203/6 anecdotally [1] 202/20 angered [1] 57/22 angle [1] 102/10 announce [2] 138/25 145/1 announced [10] 36/21 73/7 89/14 92/9 104/4 107/7 107/8 108/14 108/15 120/20 announcement [9] 14/11 14/12 107/11 138/20 139/7 139/14 141/14 142/10 188/2 announcements [3] 91/18 142/17 190/3 announcements/stat ements [1] 142/17 annual [2] 70/1 70/24 another [23] 23/3 23/11 36/10 37/3 53/13 60/14 77/7 77/25 78/3 82/21 100/24 113/24 133/13 133/24 134/9 140/19 161/9 177/12 183/21 183/25 191/4 193/22 199/1 answer [12] 29/4 29/4 44/3 53/1 93/11 109/4 117/21 127/15 149/7 178/14 213/17 215/7 answered [1] 211/24 answering [1] 61/5 answers [5] 21/24 58/16 59/8 66/16 162/7 anticipated [1] 145/23 anxious [2] 3/8 59/5 any [54] 6/10 9/22 10/7 18/17 18/20 18/21 19/25 21/19 22/9 24/15 29/23 32/16 46/8 47/14 59/11 60/18 61/20 66/17 72/24 79/6 79/17 79/20 81/16 82/25 85/3 85/25 90/19 95/2 95/21 95/21 96/5 101/13 101/20 102/6 102/22 125/17 133/18 135/16 137/2 140/9 144/5 144/12 144/19 155/20 158/18 159/22 168/2 174/15 182/9 199/9
advice... [86] 141/7 141/25 142/13 142/18 142/20 143/14 143/15 143/25 144/8 144/12 144/20 144/22 144/22 144/25 145/24 146/6 146/13 146/14 147/8 147/17 147/19 147/23 148/9 148/16 148/17 148/24 158/21 158/22 160/2 160/7 160/15 161/20 162/14 162/15 162/25 162/25 163/3 163/22 164/3 164/7 164/9 164/14 164/17 165/7 166/13 166/15 167/19 168/16 168/18 168/22 169/24 170/19 170/24 173/18 175/1 178/15 182/14 183/25 185/12 185/15 185/21 185/23 186/4 186/22 187/7 187/12 191/12 192/8 192/18 198/22 199/4 199/22 200/2 200/20 200/24 200/25 201/2 201/2 201/3 201/5 201/14 202/3 202/24 203/2 203/3 205/1	afternoon [3] 63/15 112/13 209/16 again [44] 7/17 7/23 8/15 9/17 10/5 15/1 18/12 25/4 28/7 41/9 56/4 58/2 74/8 77/10 84/21 99/6 107/6 108/22 109/12 111/10 113/4 118/2 118/23 121/15 122/6 129/23 131/3 145/3 145/24 146/12 147/8 156/14 157/25 169/15 171/12 173/8 174/9 187/7 187/13 188/17 189/4 190/13 192/1 197/12 against [11] 14/8 27/14 37/15 51/23 148/12 151/22 156/21 168/7 175/10 206/17 206/21 age [1] 31/17 agenda [3] 15/11 136/8 156/23 aggregate [1] 87/3 ago [4] 4/6 59/4 156/15 169/11 agree [20] 34/18 53/22 56/24 101/17 101/18 101/19 105/5 114/18 114/19 114/22 115/24 121/4 134/8 139/6 163/21 176/17 185/23 194/3 200/15 211/16 agreed [13] 38/7 43/4 69/4 73/11 99/18 108/18 131/2 134/12 155/21 159/12 177/7 194/6 203/2 agreeing [1] 194/14 agreement [3] 9/16 35/4 76/11 ahead [7] 8/9 21/10 89/5 89/6 139/5 149/9 149/19 aid [1] 88/4 aimed [2] 210/11 212/25 air [2] 71/23 126/16 alert [2] 175/8 188/4 align [1] 183/2 all [75] 2/11 3/9 5/16 10/11 14/9 17/3 22/18 24/12 29/9 31/10 34/9 34/20 39/12 40/11 42/23 42/25 45/19 46/11 46/24 50/2 51/21 53/15 57/6 66/25 74/1 74/15 75/13 76/10 76/14	All right [1] 112/10 allergy [1] 181/8 allocated [4] 70/12 72/8 87/6 161/10 allocates [1] 71/24 allocating [1] 86/23 allocation [3] 31/4 56/11 72/12 allocations [4] 84/13 87/4 90/6 95/25 allow [5] 30/8 40/23 41/4 125/23 177/8 allowed [9] 46/2 51/22 52/7 54/1 84/20 98/23 114/2 114/2 114/3 allowing [2] 46/13 99/7 allows [4] 52/22 182/20 183/12 194/11 alluded [1] 103/19 almost [6] 15/12 48/7 72/15 75/17 80/7 89/5 75/15 81/22 alone [2] 78/7 210/22 211/24 alongside [5] 96/12 132/15 156/17 160/24 172/8 already [30] 4/18 12/19 13/22 13/24 14/11 16/19 19/16 30/15 44/13 45/24 53/1 53/3 53/4 85/6 85/15 94/24 96/1 96/1 103/20 104/24 106/25 108/21 119/16 132/21 140/5 176/10 177/1 177/24 198/25 215/21 also [100] 1/15 2/4 3/25 4/23 5/4 5/5 6/13 9/11 16/15 17/2 17/5 18/5 19/5 22/14 23/4 23/8 23/16 24/6 25/20 26/9 29/16 32/3 32/7 32/10 32/13 37/10 41/3 41/24 46/19 46/22 49/2 49/18 53/4	am [15] 1/2 5/20 38/13 45/3 51/8 55/2 55/4 75/1 114/4 132/10 133/16 150/10 175/20 182/17 217/4 amber [2] 155/24 156/3 ambition [2] 171/24 210/10 amend [2] 166/23 214/10 amending [1] 177/1 amendments [1] 200/16 among [1] 212/16 amongst [6] 43/25 56/5 103/2 138/2 151/1 180/14 amount [8] 23/18 54/7 70/15 73/10 77/22 101/17 110/23 111/14 amounts [2] 90/11 91/13 analysis [11] 50/17 80/1 80/6 103/15 151/9 151/25 157/22 166/6 171/1 195/9 203/5	

A	18/13	16/19 18/10 39/16 71/25 120/22 177/9 177/21	158/7 158/12 158/16 160/3 162/7 178/6 178/11 194/1 200/17 202/7 203/10 204/10 207/5	attached [1] 70/19 attempts [1] 9/22 attend [3] 5/8 86/12 86/14 attendance [1] 150/22 attended [5] 4/23 15/3 143/21 145/8 172/19 attending [4] 1/10 4/22 63/18 123/23 attention [6] 5/21 56/17 56/25 57/9 170/5 178/4 Attitudes [1] 157/14 Attorney [10] 187/20 188/24 189/4 189/16 190/12 194/4 194/15 203/20 204/22 205/12 Attorney General [4] 187/20 189/4 203/20 204/22 Attorney General's [1] 194/15 August [1] 26/22 authorisation [1] 206/13 authorities [7] 11/17 18/25 34/24 142/9 143/3 180/18 215/13 authority [6] 45/4 45/8 46/7 46/11 81/16 142/4 automatic [1] 127/9 autumn [7] 33/24 72/25 91/10 100/12 100/23 175/6 208/24 availability [4] 17/1 56/3 194/20 201/17 available [32] 11/18 12/13 13/7 13/9 15/16 17/3 20/6 20/7 27/21 32/8 32/18 47/18 54/11 69/22 75/19 79/8 79/12 87/3 90/9 98/24 99/1 110/1 121/7 146/16 147/15 151/14 152/1 174/22 174/25 193/12 201/5 215/15 avoid [1] 94/9 aware [32] 2/4 14/6 17/9 21/5 21/9 23/13 29/7 31/7 35/8 35/11 35/12 35/13 35/22 35/24 51/8 53/6 55/13 85/21 91/18 105/13 106/25 108/21 117/3 126/4 126/7 136/19 136/20 137/13 142/6 150/10 189/7 202/20 awareness [2] 5/19 9/12 away [6] 19/14 66/4
any... [4] 200/4 205/19 208/8 214/25 anyone [1] 81/25 anything [11] 1/18 25/25 62/15 63/22 63/23 72/25 77/16 84/8 127/18 159/23 176/20 apart [1] 63/1 apologise [2] 40/13 146/23 apparent [1] 29/11 appear [4] 116/3 130/5 189/10 200/6 appeared [2] 130/8 133/22 appears [3] 50/9 142/24 184/5 appended [1] 198/22 applicable [2] 180/22 188/8 application [2] 152/9 161/6 applied [11] 71/9 72/12 90/15 90/21 93/4 146/7 149/2 173/15 189/12 189/12 202/25 applies [2] 129/18 130/18 apply [7] 70/21 109/20 111/17 168/19 180/10 202/8 206/11 applying [2] 72/3 161/19 appointed [5] 30/5 31/20 64/25 65/6 124/21 appointment [2] 40/17 64/21 appreciate [10] 2/20 28/7 33/14 44/23 55/10 61/22 74/19 115/16 123/19 140/3 appreciated [1] 180/18 appreciating [1] 184/8 appreciation [1] 127/4 approach [31] 12/4 18/14 21/22 22/15 36/21 37/5 62/6 77/6 86/9 86/21 86/23 158/20 160/18 162/13 168/25 171/17 174/20 175/1 175/6 175/12 176/7 176/22 196/2 196/7 197/1 197/2 197/3 198/23 203/11 203/18 208/17 approaches [1]	appropriate [6] 61/14 130/2 168/8 175/14 208/18 211/8 approval [1] 84/17 approve [1] 85/2 approved [2] 38/10 133/24 approximately [3] 5/24 20/11 104/8 April [13] 5/1 55/15 55/20 91/12 153/4 155/11 156/15 157/10 159/10 162/16 196/17 207/2 207/7 April 2020 [1] 55/15 April 2021 [1] 196/17 arbitrary [1] 101/15 are [138] 2/22 3/8 4/5 4/9 10/8 11/16 11/19 12/5 13/15 14/14 16/19 20/1 25/10 26/24 29/7 30/18 35/20 40/11 42/4 47/17 47/20 49/9 50/9 52/6 52/8 52/10 53/20 54/18 54/19 56/14 58/14 59/5 59/13 60/8 65/21 68/22 69/1 69/10 69/14 69/15 69/15 69/18 69/18 71/9 71/14 72/15 73/21 74/20 77/21 78/2 79/2 79/10 81/23 85/21 94/8 95/10 96/10 97/10 97/18 98/4 100/21 101/21 104/3 108/24 110/10 112/2 112/4 116/10 116/24 117/11 117/16 124/1 124/3 125/18 127/12 129/19 129/25 130/19 131/18 133/4 133/8 138/25 140/7 141/13 142/6 142/15 146/1 146/15 146/16 146/24 149/4 149/5 151/10 151/25 152/10 152/11 152/12 163/11 163/12 163/24 165/16 165/20 166/9 168/10 168/12 169/18 170/11 172/20 176/9 176/25 177/1 180/3 180/5 180/10 180/10 180/21 181/9 181/14 183/15 183/16 183/21 196/22 199/18 200/5 201/11 201/12 201/12 201/13 202/13 202/20 203/7 203/9 204/5 205/18 206/1 206/6 209/5 209/8 area [9] 14/5 16/18	areas [25] 14/10 18/6 18/23 19/25 20/1 20/1 23/15 32/9 34/16 45/15 51/21 71/13 71/17 72/10 78/9 82/5 99/22 137/6 137/11 177/23 185/7 185/8 186/11 186/14 186/15 aren't [3] 115/10 146/20 181/10 arena [1] 53/3 argument [1] 38/3 arguments [1] 205/19 arise [5] 12/6 12/7 93/19 193/9 208/9 arises [1] 13/14 arising [1] 183/25 arose [2] 173/7 185/6 around [36] 5/21 8/3 8/3 15/1 18/20 19/18 26/16 38/2 44/12 45/14 45/22 46/15 46/16 49/14 56/3 59/20 59/25 60/16 68/13 68/14 70/2 70/3 70/8 70/21 70/22 71/12 82/18 93/12 159/4 160/19 160/21 197/3 204/16 206/18 207/13 215/22 arrangements [2] 57/17 169/8 arrived [2] 10/23 100/9 as [308] As I say [1] 151/2 ascertain [2] 9/22 201/24 Asian [2] 32/6 209/3 ask [40] 1/13 1/18 1/19 1/21 14/24 16/10 16/14 28/9 40/4 43/7 44/18 45/4 46/12 49/5 55/12 55/22 59/9 63/22 86/17 94/7 100/16 102/14 102/22 109/14 109/20 110/9 113/17 117/6 117/14 123/18 135/23 138/8 152/20 155/4 162/8 177/3 178/12 185/4 188/17 209/11 asked [35] 13/6 53/14 53/23 64/15 76/18 83/22 97/11 101/4 101/6 101/10 108/24 136/4 139/25 142/19 143/24 144/5 147/15 150/11 153/6 153/10 153/14 154/22	asking [25] 11/10 14/15 15/18 17/25 46/9 56/12 66/2 72/22 81/18 94/9 96/14 100/18 109/7 111/10 113/14 115/23 116/2 122/20 124/25 134/10 154/3 154/12 179/14 205/8 213/2 asks [1] 52/13 aspect [8] 24/11 37/18 77/2 97/11 119/18 172/16 177/3 198/4 aspects [8] 37/10 53/10 74/24 129/7 137/5 137/6 179/9 180/11 assess [4] 81/4 168/23 170/18 196/12 assessment [18] 164/21 165/15 165/19 165/22 166/5 166/9 167/13 167/17 168/9 171/11 171/12 171/23 172/7 172/23 173/12 173/19 174/1 213/19 assessments [17] 24/8 24/9 166/17 171/18 172/5 172/9 172/15 173/2 173/7 173/21 174/11 174/12 174/13 174/20 175/2 175/7 175/11 assist [10] 56/18 57/18 65/22 68/19 80/16 82/7 87/12 108/3 127/13 157/8 assisted [2] 66/17 68/19 assisting [3] 1/11 63/18 123/23 assists [2] 8/20 43/10 assumed [3] 90/21 124/17 184/14 assuming [1] 108/2 assumption [6] 9/10 9/20 128/9 147/2 147/23 152/20 assumptions [4] 90/19 90/25 208/4 208/9 assurance [1] 48/3 at [327] at 11.35 [1] 55/1 At present [1] 167/22 Atherton [3] 5/13 34/13 117/4	

A	131/13 137/17 158/18 184/17	139/12 140/10 140/12 140/16 140/16 141/15 141/15 142/9 143/13 143/14 143/20 148/9 149/13 150/19 152/23 153/21 157/2 162/7 166/19 166/20 168/16 169/16 170/3 170/17 171/1 172/14 173/3 173/5 173/22 176/12 176/21 183/3 183/5 184/11 187/11 189/17 191/15 193/15 194/21 198/17 202/7 203/12 204/7 204/8 204/17 204/23 204/25 205/5 205/7 205/8 205/9 207/5 209/5 210/9 210/17 212/4 212/9 212/15 212/23 213/11 213/23 216/25	153/19 155/25 156/8 156/9 160/2 165/2 169/22 170/7 170/12 170/17 176/11 179/25 184/6 184/7 188/7 189/22 190/16 190/22 193/3 195/15 197/6 198/1 199/5 201/6 201/12 202/21 203/6 203/10 203/15 204/21 205/21 206/5 206/19 207/13 209/25	141/21 144/15 144/17 146/9 151/12 billion [11] 70/2 70/3 70/6 74/5 76/19 82/18 100/4 120/11 120/11 121/20 121/20 Bills [2] 130/6 130/18 bit [9] 5/5 26/5 84/7 86/2 101/12 107/5 110/9 117/18 172/19 black [4] 32/6 195/19 196/15 209/2 blank [1] 55/17 block [8] 69/15 69/24 70/1 70/7 70/9 70/17 70/24 71/6 blocks [1] 95/11 board [3] 11/13 75/4 174/18 boards [1] 11/17 bodies [1] 142/9 body [1] 142/4 bold [1] 145/16 bolts [1] 161/5 booster [2] 43/3 44/2 border [8] 40/8 41/12 46/19 46/21 185/5 189/11 190/9 192/2 borders [2] 40/20 53/19 bore [1] 208/5 Boris [2] 49/16 49/17 Boris Johnson [2] 49/16 49/17 borne [2] 197/6 212/23 borrow [1] 101/7 borrowing [2] 69/20 101/6 both [15] 34/13 47/5 71/3 79/19 82/6 100/19 106/7 148/14 162/11 165/7 174/11 189/11 190/8 191/15 211/22 bottle [1] 196/5 bottom [7] 114/7 144/3 145/5 162/19 178/17 182/17 205/16 bound [1] 130/19 boxes [2] 154/9 157/2 brave [1] 36/5 Braverman [3] 187/21 188/18 190/15 breach [3] 181/22 191/8 192/23 breaches [3] 190/20 193/4 194/16 breaching [2] 179/22 188/13 breadth [2] 179/9 180/10 break [7] 54/20 54/23
away... [4] 71/17 96/8 134/14 214/7 awful [2] 95/25 99/3	because [90] 1/14 1/16 6/16 12/22 25/16 26/2 26/17 26/17 27/10 27/25 28/19 34/8 35/14 36/22 37/11 38/13 43/5 45/16 45/24 46/17 48/24 51/24 54/21 55/20 60/6 62/18 69/9 72/18 74/16 74/19 76/6 76/10 76/16 77/5 77/15 77/20 78/25 82/22 85/19 86/4 86/17 90/19 92/1 100/20 101/19 102/15 105/20 105/23 106/4 106/15 109/8 109/15 109/24 111/18 111/20 112/17 114/11 115/19 118/9 135/21 143/7 144/18 147/23 148/1 148/2 150/23 151/9 159/22 160/3 169/18 170/19 172/1 173/10 175/20 179/2 180/9 180/9 180/20 181/12 181/16 182/3 183/12 184/25 190/21 193/12 199/7 204/7 206/1 206/17 208/9	belief [2] 112/24 124/2 believe [7] 6/3 78/10 90/6 126/7 184/5 197/15 198/21 below [4] 56/12 56/14 100/8 145/22 beneath [2] 159/2 184/22 benefit [4] 10/11 25/13 117/12 180/17 benefits [3] 81/21 94/11 98/6 bereaved [4] 33/11 55/9 60/8 112/14 bereavement [8] 31/9 32/16 32/17 32/18 32/24 32/25 33/4 33/17 bespoke [1] 170/4 best [10] 1/25 49/13 64/12 102/22 112/24 123/19 124/2 213/16 215/6 215/20 better [12] 58/19 68/22 75/3 93/11 109/9 109/16 110/1 111/11 119/1 167/4 208/8 210/18 between [25] 31/16 49/15 69/2 69/25 79/4 88/14 90/2 93/21 96/20 104/21 113/13 125/10 125/12 126/22 128/6 153/25 160/6 176/12 179/23 184/8 186/2 192/15 195/10 196/10 206/2 beyond [6] 83/22 85/6 89/8 122/9 147/17 147/17 big [6] 37/12 77/12 85/15 92/2 95/11 95/23 bigger [2] 74/21 95/22 bilaterals [2] 19/5 19/7 Bill [16] 136/1 136/9 136/11 136/18 136/20 136/23 137/2 137/6 137/17 138/6 138/7	become [8] 29/8 68/3 69/22 91/7 105/18 136/13 184/13 189/7 becomes [1] 211/4 been [152] 6/8 8/16 8/22 8/23 8/24 9/3 9/14 11/10 11/20 12/19 13/15 13/17 13/22 13/24 14/3 14/10 14/12 14/15 16/6 16/7 16/9 16/13 16/13 24/24 29/1 29/15 30/3 30/15 30/24 32/20 34/2 34/12 34/14 35/19 36/2 39/1 42/10 43/19 43/20 47/16 48/7 49/24 49/25 50/5 56/24 58/5 60/21 64/25 65/3 67/16 68/6 70/6 70/7 72/17 72/22 73/7 75/4 75/21 76/12 76/19 77/4 87/4 87/13 88/18 91/23 91/24 95/2 98/21 99/2 104/24 106/1 107/8 107/12 107/16 109/9 111/2 111/7 111/11 111/21 111/25 120/5 120/6 121/12 122/3 122/7 122/18 122/20 124/8 127/13 137/12	
B				
back [28] 4/12 5/16 17/21 27/8 29/6 30/21 36/1 40/2 54/23 60/6 60/8 75/10 76/14 76/19 77/14 92/7 99/9 105/20 118/5 121/14 122/6 144/9 148/8 151/5 151/8 160/24 161/2 163/18 background [4] 2/9 2/11 124/4 127/23 balance [19] 22/17 23/1 23/12 23/14 37/14 46/24 72/14 79/3 164/1 164/11 168/8 183/15 192/20 196/10 196/14 196/19 197/8 201/19 210/14 balanced [2] 22/15 27/14 balances [1] 196/23 balancing [1] 104/14 Bangor [1] 25/4 Barnett [24] 71/2 71/5 72/4 75/20 76/16 76/21 82/24 89/19 90/7 90/22 91/20 92/8 94/25 99/18 99/19 99/20 100/6 100/7 102/4 122/3 122/8 122/9 122/22 122/23 BARONESS [4] 1/6 54/21 61/4 218/3 Baroness Morgan [2] 54/21 61/4 barriers [1] 122/16 barrister [1] 179/18 bars [2] 12/11 148/5 base [1] 20/21 based [9] 45/8 70/19 70/22 71/15 89/11 94/18 133/23 197/4 198/8 basically [1] 71/12 basis [8] 43/4 87/8 135/10 143/10 155/18 166/1 182/8 194/22 Basque [2] 19/4 19/11 be [248] bear [3] 54/22 156/6 159/17 bearing [4] 57/3 59/9 101/6 161/9 beat [1] 7/3 became [9] 10/4 29/11 40/6 55/13 65/8				

B	buildings [3] 19/21 19/23 19/24	55/13 56/23 58/12 58/23 62/8 67/10 67/11 82/24 83/5 89/17 91/10 98/25 99/17 100/3 100/11 134/5 148/16 188/10 195/4	161/24	casting [1] 148/8
break... [5] 55/3 103/15 139/5 175/15 175/24	bullet [2] 56/6 204/12	campaign [2] 43/3 209/17	capable [1] 155/24	Catalonia [2] 19/2 19/11
breaker [5] 39/2 39/7 39/8 39/10 104/18	bundles [1] 214/24	can [131] 2/23 10/15 11/11 16/20 20/9 25/7 25/23 28/3 28/16 29/10 29/16 32/2 39/8 40/4 40/13 42/2 44/7 46/17 46/17 48/2 48/7 48/10 49/13 50/15 50/17 52/5 52/15 52/21 53/15 54/22 55/16 55/17 55/24 59/9 59/22 65/10 65/21 69/9 69/24 71/3 71/4 73/17 74/4 75/8 76/16 77/14 80/16 88/7 88/11 89/2 90/16 91/9 91/25 97/10 101/7 101/16 103/12 103/16 107/4 108/3 108/4 108/6 109/4 114/4 116/23 117/1 117/6 117/14 117/20 122/14 123/25 126/21 129/21 131/7 138/25 140/19 141/8 141/9 141/23 144/2 144/8 144/11 144/11 145/3 145/5 145/25 146/3 149/7 149/22 151/24 153/1 155/8 156/18 157/13 158/14 166/22 169/13 169/21 176/8 176/9 177/11 178/8 179/9 179/10 179/24 181/4 181/18 182/22 184/1 185/15 185/17 186/21 193/22 195/1 195/8 195/22 197/11 197/19 198/5 198/18 199/7 199/14 200/11 202/5 202/6 202/7 202/10 203/23 210/25 211/1 216/24	capacity [1] 133/4	categories [1] 157/13
breast [5] 39/2 39/7 39/8 39/10 104/18	busiest [1] 44/24	can't [24] 18/19 48/22 49/24 52/16 52/20 52/22 55/24 56/18 56/21 56/22 58/8 62/25 63/1 88/16 110/15 117/13 142/11 142/22 166/15 181/4 181/12 181/16 197/16 210/25	capacity [3] 28/4 64/16 69/20	category [2] 133/13 155/24
breaking [1] 69/14	business [13] 65/25 88/25 89/15 89/24 92/12 92/23 99/4 125/18 125/22 132/1 168/4 199/3 199/10	Canada [1] 7/12	capital [5] 76/8 76/13 82/6 101/7 101/14	cause [2] 62/19 189/3
breaks [1] 175/17	businesses [11] 92/23 99/2 99/5 99/8 103/2 103/20 103/23 109/17 110/21 111/16 111/22	cancelling [1] 148/19	capture [1] 146/21	caution [1] 21/8
Brexit [3] 6/25 8/1 124/17	but [250]	candidate [1] 160/20	captured [1] 56/8	cautious [7] 20/13 20/24 21/7 21/22 62/6 118/13 134/11
briefed [2] 107/12 108/19	bypasses [1] 114/11	candidates [1]	captures [1] 127/2	CCA [2] 150/6 150/7
briefing [3] 107/15 108/10 108/13	bypassing [1] 114/13		caravan [3] 11/21 52/20 149/21	CDC [2] 41/7 41/9
briefings [1] 33/7	C		caravans [2] 52/15 113/16	Cecil [3] 1/3 61/6 63/8
briefly [7] 25/7 70/1 88/8 106/23 131/7 153/17 155/8	Cabinet [70] 4/15 4/19 4/22 7/5 18/4 22/20 35/13 38/8 42/24 55/11 55/12 56/16 56/19 56/20 56/21 57/2 57/3 58/2 78/6 78/8 78/11 78/15 78/19 78/19 78/22 79/4 81/20 87/7 94/16 104/10 105/1 105/2 106/5 106/25 107/9 113/7 114/10 129/12 132/2 132/2 134/20 135/7 135/9 135/14 136/5 140/12 153/4 154/14 154/18 156/9 156/11 156/20 156/23 158/1 158/2 159/10 159/12 166/15 167/1 167/6 167/18 170/15 170/24 171/6 172/19 172/22 182/15 187/3 187/11 207/2		Cardiff [2] 25/6 46/19	Cecil's [1] 105/25
bring [24] 10/15 20/9 23/9 40/2 44/1 75/25 77/14 78/4 78/23 78/24 106/6 106/7 107/1 107/24 108/4 139/11 143/18 149/17 152/13 154/19 156/6 159/17 162/3 194/2	Cabinet-wide [2] 78/19 78/22		Cardiff University [1] 25/6	Cell [1] 23/24
bringing [3] 57/23 138/25 190/8	Caerphilly [1] 34/23		care [33] 17/7 32/12 55/21 56/2 56/15 56/22 57/25 58/20 59/1 59/2 59/11 59/17 60/2 60/10 60/14 60/18 75/15 89/9 118/9 119/18 120/21 120/25 157/15 209/17 209/22 212/11 212/13 213/7 213/9 213/15 213/16 214/1 214/7	Centre [1] 74/15
Bristol [1] 46/20	calculations [1] 90/22		care home [2] 60/14 212/13	certain [8] 62/20 117/4 126/17 126/17 129/19 148/23 192/25 194/11
British [1] 195/25	call [10] 1/4 31/24 32/19 42/2 52/5 63/9 103/12 123/14 161/4 191/15		care homes [12] 55/21 56/2 56/15 56/22 58/20 59/2 59/11 59/17 60/2 60/10 60/18 120/21	certainly [31] 12/17 29/7 47/9 57/7 67/10 68/21 77/14 102/8 109/2 120/5 126/5 127/3 128/17 129/15 131/10 132/19 140/15 147/12 148/22 149/16 150/12 155/10 159/10 161/13 162/9 180/4 187/6 210/10 210/14 212/23 214/16
Brittany [3] 18/24 18/25 19/11	called [9] 41/6 61/6 69/14 71/2 72/3 82/11 99/8 119/5 177/4		careful [2] 94/10 135/18	certainty [2] 96/3 100/5
broad [2] 146/21 180/9	calling [4] 13/15 74/13 160/21 196/17		carefully [1] 24/13	certificate [2] 41/6 45/23
broadcast [1] 188/6	calls [3] 4/23 78/12 183/17		carers [2] 213/8 213/11	certificates [2] 40/22 41/6
broader [9] 78/14 127/1 127/2 135/17 135/21 149/15 163/12 164/4 164/10	came [27] 5/21 5/23 15/24 20/15 22/24 26/15 31/16 36/8		caring [1] 195/16	chain [2] 147/5 200/21
broadly [5] 29/24 39/4 66/9 68/10 197/7			carried [5] 7/4 31/13 164/21 166/5 197/10	chair [7] 28/7 54/18 61/2 112/2 136/4 207/23 218/9
brought [18] 43/3 56/20 56/25 90/4 106/18 107/17 107/21 108/22 108/25 109/1 109/8 110/6 111/10 121/2 157/9 181/2 202/21 208/20			carry [3] 73/12 73/21 158/12	chaired [1] 15/5
budget [12] 65/18 71/18 71/20 72/16 74/5 84/14 84/24 86/7 89/5 100/5 120/12 121/7			carry-overs [1] 73/21	chairing [1] 174/19
budget-setting [1] 86/7			carrying [5] 60/14 95/24 101/4 122/24 167/23	chairs [1] 67/17
budgetary [2] 84/13 121/8			Carter [1] 159/1	challenge [5] 167/24 172/11 174/3 174/9 182/4
budgets [14] 27/1 28/18 29/6 72/10 81/5 83/1 83/6 83/9 83/10 83/23 84/21 85/5 86/6 86/8			case [30] 5/20 5/22 5/23 6/18 6/21 7/16 20/15 39/25 42/9 42/11 62/2 77/19 81/16 85/16 86/18 91/15 96/5 105/6 106/15 125/25 133/21 149/16 171/22 176/19 192/10 192/11 192/18 192/19 203/6 203/16	challenged [2] 26/25 155/25
build [2] 28/3 216/2			cases [7] 6/5 6/10 10/11 26/14 157/13 194/12 198/1	challenges [9] 31/10 90/12 98/25 105/16 120/7 154/21 156/8 208/19 208/22

C	choice [3] 150/11 150/17 163/4	163/1 167/2 168/21 169/18 170/16 172/15 173/14 177/15 179/22 181/10 181/13 184/17 188/7 190/3 211/14	153/25	201/15
chamber... [15] 81/19 83/12 84/1 85/8 85/9 85/22 86/3 86/11 86/13 86/15 92/21 94/2 94/5 94/12 112/20	choices [10] 77/24 79/11 85/1 102/20 122/1 166/22 166/23 170/9 170/10 207/13	cleared [1] 133/22 clearer [3] 95/4 101/23 210/19	collate [2] 157/1 170/18	commitment [1] 121/5
Chambers [1] 93/20	choose [1] 183/18	clearing [1] 114/4	colleague [2] 122/18 198/14	commitments [3] 83/20 83/22 96/1
Chancellor [14] 88/9 89/4 89/14 90/23 96/13 96/25 104/5 104/22 106/13 107/24 108/1 203/19 204/22 205/12	chosen [2] 182/8 183/1	clearly [24] 1/16 8/7 16/18 22/21 23/18 34/19 35/14 38/23 46/7 50/4 51/5 54/12 62/22 113/14 115/13 116/2 121/8 164/8 165/6 166/24 167/12 174/24 187/17 208/10	colleague's [1] 52/24 colleagues [40] 18/4 50/4 54/15 62/4 62/5 66/1 82/20 83/1 83/14 83/15 83/16 83/23 84/20 86/2 86/7 86/22 87/16 87/18 87/19 96/21 113/7 126/2 126/15 126/22 128/7 135/12 135/22 138/3 154/3 154/20 154/24 155/19 155/23 156/4 156/12 157/6 163/17 170/1 170/15 170/22	committed [1] 213/15
change [15] 29/3 86/21 110/4 110/15 113/2 135/23 137/8 159/21 161/24 175/6 175/13 176/1 177/7 177/14 185/4	circles [1] 62/20	close [17] 7/1 12/11 44/22 46/20 133/25 138/17 139/8 139/9 139/18 139/25 140/8 141/15 142/25 143/8 143/12 148/5 149/21	colleagues' [1] 127/21	committee [12] 28/13 51/25 59/1 65/25 68/7 68/8 68/18 114/11 124/10 124/11 124/12 136/5
changed [5] 3/11 86/13 109/25 115/16 140/14	circuit [5] 39/2 39/7 39/8 39/10 104/18	closed [1] 3/14	collected [1] 204/25	committing [1] 186/18
changes [9] 24/15 43/5 71/9 184/16 188/8 190/7 190/8 199/5 208/19	circuit-breaker [2] 39/8 39/10	closely [4] 18/15 88/21 99/10 131/5	collective [5] 4/19 79/1 129/18 130/18 135/5	common [1] 19/12
changing [6] 153/1 158/5 179/7 187/13 188/3 206/22	circulated [1] 156/11	closer [2] 18/24 45/18	collectively [1] 81/20	Commonwealth [2] 7/21 15/6
channel [1] 134/16	circulating [1] 25/21	closing [2] 99/5 138/11	College [1] 189/17	communicated [1] 48/22
channels [3] 190/2 190/4 215/15	circumstances [9] 33/14 74/7 122/2 137/24 178/22 179/14 180/3 199/19 199/21	closure [3] 142/15 146/12 148/19	come [23] 6/25 9/10 41/4 51/23 54/23 56/17 57/13 72/19 73/2 73/17 76/22 79/12 80/25 89/18 99/9 99/21 100/22 111/14 123/18 134/19 160/24 161/16 206/8	communicating [3] 179/13 199/17 216/2
chaos [2] 49/12 50/10	citing [1] 56/14	closure [3] 99/4 138/8 140/6	comfortable [1] 86/22	communication [5] 49/3 125/3 125/16 127/3 215/16
characterisation [1] 52/25	citizens [4] 15/14 36/24 146/7 149/3	CMO [1] 34/13	coming [23] 10/22 11/12 13/16 14/9 15/12 26/4 40/20 56/21 57/4 82/23 84/2 90/21 91/13 91/18 95/6 96/6 97/3 99/25 131/25 138/1 173/18 186/9 194/18	communications [9] 14/25 28/13 47/3 47/7 48/18 96/20 124/11 187/16 189/22
characteristics [6] 164/19 166/7 168/15 171/9 198/1 198/9	civil [19] 9/10 9/21 9/25 132/23 145/11 146/1 146/14 147/2 147/24 150/2 151/2 151/13 151/20 151/22 152/15 152/21 158/11 161/3 193/2	co [12] 80/12 153/2 154/6 155/4 156/16 156/18 157/25 158/8 159/12 160/3 176/6 206/25	comes [4] 72/24 72/25 144/9 179/21	communities [6] 25/15 32/4 32/6 88/2 209/2 209/3
charge [3] 65/15 92/17 93/2	CJRS [3] 109/15 109/25 111/25	co-ordinate [5] 80/12 158/8 159/12 160/3 176/6	comfortable [1] 86/22	community [1] 118/13
charged [1] 198/2	claims [2] 107/1 120/16	co-ordinating [1] 206/25	coming [23] 10/22 11/12 13/16 14/9 15/12 26/4 40/20 56/21 57/4 82/23 84/2 90/21 91/13 91/18 95/6 96/6 97/3 99/25 131/25 138/1 173/18 186/9 194/18	comparatively [3] 21/13 95/12 180/15
charges [2] 69/19 190/15	clarification [1] 97/12	co-ordination [6] 153/2 154/6 155/4 156/16 156/18 157/25	community [1] 118/13	compared [1] 23/15
charging [1] 204/16	clarifying [1] 146/23	COBR [7] 43/7 43/10 148/1 150/6 150/22 150/23 151/6	community [1] 118/13	comparing [2] 21/20 25/17
charity [1] 114/4	clarity [22] 17/10 52/4 53/10 54/1 54/2 71/21 89/1 89/3 89/20 91/9 91/10 100/13 100/15 100/18 101/1 113/15 116/2 120/23 121/6 145/14 178/12 188/23	Code [3] 129/20 130/1 130/19	community [1] 118/13	comparison [1] 22/9
chat [1] 126/22	clarity [22] 17/10 52/4 53/10 54/1 54/2 71/21 89/1 89/3 89/20 91/9 91/10 100/13 100/15 100/18 101/1 113/15 116/2 120/23 121/6 145/14 178/12 188/23	cognisant [1] 207/24	community [1] 118/13	compelling [2] 192/10 192/18
chats [2] 47/14 128/6	class [1] 36/24	cognitive [1] 32/2	community [1] 118/13	competence [2] 144/1 144/5
cheap [1] 27/2	clawback [1] 72/11	coherently [1] 144/18	community [1] 118/13	competing [1] 180/5
check [1] 118/5	cleaners [1] 119/17	cohort [5] 213/22 213/24 214/9 215/9 216/8	community [1] 118/13	compiling [1] 155/13
checking [1] 52/14	clear [49] 1/18 12/15 12/20 13/10 15/10 17/19 21/7 24/16 28/3 37/22 38/17 41/7 41/11 46/4 51/22 52/7 52/18 53/12 54/4 59/14 63/23 80/18 87/18 89/16 89/22 94/4 98/21 116/6 127/7 130/25 139/15 143/4 152/23 159/20	cohort [5] 213/22 213/24 214/9 215/9 216/8	community [1] 118/13	complained [1] 209/21
chief [14] 5/12 6/25 18/6 24/3 62/10 73/6 76/11 79/24 90/3 90/17 101/16 108/9 192/17 194/1	cinemas [2] 12/11 44/14	cohort [5] 213/22 213/24 214/9 215/9 216/8	community [1] 118/13	complaints [1] 210/17
Chiefs [1] 204/14	circles [1] 62/20	cohort [5] 213/22 213/24 214/9 215/9 216/8	community [1] 118/13	complementary [1] 168/7
children [4] 38/18 53/15 53/21 84/24	circuit [5] 39/2 39/7 39/8 39/10 104/18	cohort [5] 213/22 213/24 214/9 215/9 216/8	community [1] 118/13	complete [2] 12/1 175/19
children's [1] 174/12	circuit-breaker [2] 39/8 39/10	cohort [5] 213/22 213/24 214/9 215/9 216/8	community [1] 118/13	completed [2] 82/14 171/10
chime [1] 21/22	circulated [1] 156/11	cohort [5] 213/22 213/24 214/9 215/9 216/8	community [1] 118/13	completely [4] 76/20 86/9 116/6 201/10
chimed [1] 20/17	circulating [1] 25/21	cohort [5] 213/22 213/24 214/9 215/9 216/8	community [1] 118/13	completes [1] 216/13

C				
<p>compliance [1] 129/7 complicated [3] 69/9 71/4 179/21 complied [2] 162/1 190/23 complimentary [1] 47/4 comply [3] 180/8 184/21 191/3 composition [1] 81/2 comprehensive [5] 20/21 23/25 24/14 71/7 166/8 comprehensively [1] 144/18 comprised [1] 113/7 compromise [1] 180/11 concentrate [2] 66/15 69/24 concentrated [1] 44/8 concern [16] 11/1 41/12 45/21 51/17 86/10 95/7 95/17 119/7 119/12 119/14 119/19 122/15 163/2 170/11 198/6 215/7 concerned [30] 11/14 22/3 23/16 27/5 27/7 31/12 31/15 31/17 32/10 32/10 36/11 37/19 37/23 41/9 42/14 42/17 43/5 45/3 46/1 46/19 51/9 55/21 60/13 67/13 93/22 117/24 118/14 188/9 198/12 215/16 concerning [2] 125/15 125/17 concerns [30] 14/1 14/1 29/20 30/13 31/5 38/4 56/1 56/3 57/4 58/22 79/8 85/22 86/1 114/12 126/16 143/20 170/1 186/8 191/18 197/23 197/24 198/5 198/19 203/24 204/7 204/15 204/23 205/6 210/17 213/23 concert [1] 114/2 concluded [2] 195/13 203/17 conclusion [2] 141/6 174/2 conclusions [1] 50/18 concrete [1] 90/20 conditions [2] 26/16 97/3 conference [4] 112/22 178/7 178/8</p>	<p>180/25 conferences [1] 190/2 confidence [5] 26/1 26/5 196/6 204/18 206/18 confident [1] 26/17 confirm [3] 134/12 145/25 153/12 confirmation [1] 90/8 confirmed [1] 159/2 confirming [1] 141/24 confused [2] 53/25 189/11 confusing [6] 179/6 179/10 179/10 209/23 209/25 210/3 confusion [6] 126/16 176/13 178/25 190/10 209/18 210/18 cons [1] 205/20 conscientious [2] 116/5 116/25 conscious [2] 175/20 216/7 consequence [2] 30/1 72/2 consequences [1] 208/25 consequential [8] 71/2 71/5 82/23 90/14 99/20 100/22 110/13 120/24 consequentials [4] 92/4 94/18 95/17 100/7 consider [31] 7/7 8/12 9/2 14/17 14/22 23/1 23/14 23/19 30/21 33/12 33/15 34/1 34/11 36/1 39/6 43/19 47/19 59/10 68/18 72/22 78/25 79/3 79/11 87/13 104/14 106/8 130/2 134/14 172/20 199/18 213/21 considerable [3] 22/23 42/15 193/10 consideration [10] 18/18 23/5 38/17 103/18 134/24 162/24 163/6 163/22 164/20 203/13 considerations [16] 39/14 78/13 79/6 79/15 81/5 83/12 105/10 127/1 162/22 163/2 163/12 163/23 163/23 163/25 164/4 164/10 considered [17] 14/16 18/16 28/13</p>	<p>30/15 31/2 58/18 77/4 95/1 103/11 103/13 131/13 165/12 171/8 187/1 200/4 206/16 207/2 considering [4] 79/4 80/8 83/13 121/25 consistent [4] 134/18 175/9 210/19 211/15 constables [2] 192/17 194/1 constituency [2] 124/8 193/18 constituent [1] 116/20 constituents [1] 116/13 constitute [1] 185/20 constrained [1] 137/21 consult [2] 150/17 186/20 consultation [3] 142/7 142/12 150/14 consulted [2] 142/9 150/12 contact [3] 19/3 116/15 189/17 contacted [2] 32/19 201/23 contacting [1] 33/16 contacts [3] 45/5 46/8 46/13 contain [4] 6/10 87/9 144/15 165/16 containment [1] 6/6 content [2] 126/23 134/1 contents [2] 124/1 136/23 context [27] 4/8 12/9 15/3 36/24 41/15 73/20 78/1 127/16 128/23 130/10 130/16 131/11 139/16 139/22 152/14 154/2 157/5 161/20 166/12 168/19 168/24 173/10 179/5 180/19 182/5 193/3 195/21 contextual [1] 77/15 contingencies [15] 9/11 9/21 9/25 145/11 146/1 146/15 147/3 147/24 150/2 151/3 151/14 151/20 151/23 152/15 152/21 continue [4] 20/19 55/25 83/18 204/1 continued [1] 67/23 continues [5] 11/25 12/1 26/23 97/6 104/2 continuing [1]</p>	<p>166/10 continuity [1] 161/8 contracts [1] 64/6 contradiction [1] 41/1 contradictory [3] 209/23 210/1 210/3 contrary [2] 126/9 200/23 contribute [3] 16/23 16/25 142/19 contributed [2] 186/10 186/10 contribution [4] 78/11 109/10 213/8 213/10 contributions [3] 79/4 111/9 155/3 control [4] 6/5 23/9 120/21 150/1 controversial [2] 133/8 176/20 convened [3] 150/23 150/24 213/21 convenient [1] 137/23 conversation [1] 18/19 conversations [4] 18/25 24/9 99/14 151/5 conveyed [1] 144/22 convinced [1] 57/16 coordination [1] 153/9 cope [1] 22/12 copied [4] 133/14 133/16 147/10 193/24 copies [1] 47/17 copy [2] 133/6 133/10 core [4] 5/5 112/3 156/10 209/9 core participants [1] 209/9 coronavirus [18] 56/15 96/15 97/8 109/11 111/8 111/19 136/1 136/9 136/18 137/17 137/17 144/7 144/15 146/9 149/13 151/12 191/9 194/16 Coronavirus Bill [6] 136/1 136/18 137/17 144/15 146/9 151/12 corporate [2] 125/18 126/20 correct [38] 4/15 5/10 5/11 5/14 5/25 26/23 52/14 64/8 64/23 64/24 65/2 65/9 66/7 66/24 67/6 68/9 69/23 72/13 72/21 75/24 80/15 81/8 82/9</p>	<p>84/5 87/7 97/17 107/3 107/13 107/22 111/16 115/19 120/1 124/24 139/14 151/25 176/15 216/23 216/24 correcting [2] 52/24 147/1 correction [2] 64/4 216/14 correctly [3] 196/14 196/19 198/2 correspondence [11] 57/12 90/2 104/21 106/12 108/23 117/17 117/22 118/4 118/6 172/13 192/15 cost [3] 84/16 84/16 101/20 costs [6] 92/25 93/1 93/2 93/8 104/5 104/6 could [106] 1/12 1/21 9/3 10/5 15/19 15/20 15/23 16/25 17/16 24/19 26/1 26/2 26/4 26/6 27/24 28/8 44/20 58/18 63/15 63/19 72/1 72/1 72/6 73/12 74/18 79/7 80/21 81/4 82/7 83/24 84/8 85/4 86/12 86/12 86/14 87/5 93/7 93/9 93/13 93/24 94/21 95/2 100/24 105/4 105/9 106/9 107/16 107/21 108/21 108/25 109/2 110/6 113/19 118/12 121/5 121/12 121/15 121/16 122/6 122/7 123/14 123/20 127/12 138/19 141/7 146/6 146/7 146/9 146/11 149/1 149/2 149/3 152/19 152/23 157/6 157/10 157/19 160/8 160/24 162/16 167/25 168/5 174/16 174/20 174/23 175/2 178/12 182/14 184/20 184/21 184/21 185/13 185/20 188/25 189/5 194/5 195/11 203/17 204/18 205/9 206/12 209/24 210/5 213/14 214/25 216/6 couldn't [6] 83/19 85/7 88/16 107/24 131/14 179/19 Council [1] 204/15 councils [2] 215/19 215/25 COUNSEL [31] 1/7 63/11 123/16 124/13 124/16 125/1 129/1 129/1 129/4 129/10</p>

C	118/1	CST [2] 101/24 101/25	daughter [2] 40/15 214/5	109/24 151/6 183/22 204/1 206/17 206/21
COUNSEL... [21]	covid [67] 3/10 4/5 4/7 4/9 4/10 5/5 5/9 5/19 5/20 5/22 7/5 7/8 7/17 7/18 8/3 8/13 8/20 10/19 15/4 23/3 23/9 28/14 29/12 29/21 40/7 40/11 40/18 40/24 41/7 44/13 44/22 45/11 46/6 50/13 51/3 55/8 58/14 59/2 59/12 60/18 77/10 82/8 82/11 82/19 88/23 112/13 115/2 115/8 133/20 135/7 135/8 135/20 141/20 153/9 156/10 157/5 164/12 183/17 184/12 207/3 207/19 208/20 209/1 210/21 212/13 212/19 212/22	CTI [1] 216/21	David's [3] 6/15 7/2 7/14	decides [1] 70/14
129/19 129/21 130/2 130/10 130/13 131/6 131/12 131/13 132/8 132/10 132/15 133/6 144/5 150/15 153/19 174/8 200/18 211/19 218/5 218/13 218/21	culmination [1] 192/15	current [4] 97/2 129/14 145/23 187/9	Davids [2] 10/24 12/22	deciding [1] 133/14
Counsel General [16]	cultural [1] 195/25	currently [2] 27/17 56/1	day [37] 6/15 7/2 7/14 11/4 12/3 21/2 24/1 24/3 27/15 27/15 40/9 40/24 43/2 43/3 50/10 66/12 78/21 85/10 89/13 101/9 101/9 101/24 101/25 116/11 127/25 143/24 145/17 147/25 151/4 158/5 158/12 159/8 160/14 169/9 171/3 177/6 193/17	decision [75] 4/14 9/5 18/2 20/3 20/8 20/19 20/23 22/8 22/13 22/20 25/8 36/5 38/7 38/9 38/11 38/12 38/15 45/7 47/24 48/2 81/9 84/19 87/12 87/17 95/21 97/23 102/7 103/8 104/20 105/3 105/5 106/1 106/3 106/14 106/24 107/10 107/20 108/20 110/5 113/9 126/24 133/16 135/1 135/5 139/4 139/25 140/8 140/13 150/4 150/7 150/8 150/21 151/8 151/19 155/9 156/19 163/14 165/8 165/13 168/3 168/6 169/10 169/16 171/7 186/5 186/19 191/21 192/14 192/21 193/14 193/16 194/22 203/7 203/10 203/13
124/13 124/16 125/1 129/1 129/1 129/10 129/19 130/2 130/10 130/13 131/6 131/12 131/13 153/19 174/8 211/19	curious [3] 102/15 102/18 109/12	curriculum [1] 116/21	day 2 [1] 43/2	decision-maker [1] 135/5
Counsel General for [1] 150/15	current [4] 97/2 129/14 145/23 187/9	custodial [1] 202/14	day 8 [1] 43/3	decision-making [25] 4/14 18/2 20/3 20/8 20/23 22/13 22/20 25/8 47/24 48/2 81/9 84/19 87/12 87/17 95/21 97/23 126/24 155/9 156/19 163/14 165/8 168/3 168/6 169/10 169/16
Counsel General has [2] 129/4 144/5	currently [2] 27/17 56/1	custodian [1] 78/16	days [13] 4/4 8/11 10/9 13/18 38/11 132/17 132/20 140/12 149/4 159/15 193/14 193/16 203/15	192/21 193/14 193/16 194/22 203/7 203/10 203/13
Counsel General's [1] 133/6	cut [1] 11/25	Cymru [2] 55/9 112/14	dealing [27] 4/9 4/10 9/1 9/20 13/25 17/10 17/21 31/9 31/10 38/6 45/9 49/2 70/4 73/19 82/4 84/10 92/7 98/17 104/5 106/23 134/10 148/11 153/1 157/20 174/6 184/2 187/13	decisions [52] 4/19 4/19 20/16 22/3 22/24 23/6 23/7 27/2 36/2 43/19 44/4 48/3 50/25 51/9 56/10 59/21 79/1 81/10 81/11 81/12 81/16 81/20 81/21 81/22 81/23 81/24 84/18 85/24 91/5 95/19 95/22 95/23 96/4 98/18 98/18 98/24 99/13 99/22 102/18 115/7 115/9 121/3 126/13 126/16 126/17 135/24 143/8 152/7 171/8 173/3 173/13 202/12
counterparts [3] 7/25 19/6 99/15	cutting [1] 153/15	D	deals [1] 97/7	decrease [1] 26/6
countries [10] 15/17 15/19 15/23 18/9 19/6 19/8 22/9 43/1 61/25 192/25	cycle [4] 159/18 159/19 160/7 171/2	daily [3] 4/23 11/8 183/13	dealt [5] 9/23 59/11 85/25 148/10 194/12	deep [1] 208/22
countries' [1] 19/15	cycles [1] 161/21	Daily Mail [1] 11/8	deaths [6] 4/7 56/9 157/2 157/14 212/12 212/13	deep dive [1] 208/22
country [6] 3/10 19/4 19/12 42/16 53/16 195/19	cyclical [2] 160/18 161/6	Dame [1] 125/14	debate [2] 37/4 74/16	deeper [1] 39/6
county [1] 53/19	cylinders [1] 14/10	Dame Shan Morgan [1] 125/14	debated [1] 104/9	deeply [2] 39/4 98/7
couple [6] 61/3 62/23 85/11 100/25 140/12 209/10	Cymru [2] 55/9 112/14	dance [1] 46/18	debating [1] 114/10	
coupled [1] 201/17	COVID-19 [23] 5/5 5/19 5/20 7/17 7/18 8/3 10/19 28/14 55/8 58/14 59/2 59/12 77/10 82/8 82/11 82/19 88/23 112/13 115/8 141/20 153/9 207/3 212/13	danger [1] 27/24	Debra [1] 159/1	
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	CP [1] 117/16	dark [1] 37/24	Debra Carter [1] 159/1	
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	CPS [1] 206/15	dashboard [11] 87/1 87/9 87/15 92/21 153/2 155/4 155/9 155/15 156/16 156/18 157/25	December [15] 1/24 2/12 27/6 28/15 43/11 44/23 48/12 65/7 67/11 69/4 113/2 124/1 124/14 124/16 186/6	
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	create [1] 190/10	data [24] 4/6 10/10 20/6 20/15 22/10 22/21 22/22 25/18 25/18 50/17 56/10 110/16 153/3 156/13 156/17 156/21 157/1 157/12 157/22 159/22 174/23 203/4 204/9 204/25	December 2016 [1] 69/4	
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	created [6] 30/6 30/8 30/12 30/20 48/13 178/24	date [9] 4/11 41/24 66/21 87/4 88/17 106/19 107/1 111/23 207/6	December 2018 [3] 2/12 67/11 124/16	
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	Crime [1] 191/16	dated [1] 10/20	decide [4] 72/7 181/15 186/4 187/3	
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	criminal [6] 179/19 181/8 190/19 194/12 200/1 204/4	dates [3] 49/13 142/3 168/22	decided [10] 70/11 70/16 104/18 104/25	
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	crises [1] 145/12			
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	crisis [4] 80/14 91/6 101/20 141/16			
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	critical [7] 6/15 58/25 99/7 152/11 160/9 164/12 183/7			
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	criticised [1] 49/18			
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	criticisms [1] 85/21			
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	cross [6] 46/21 137/19 153/15 153/21 154/5 156/5			
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	cross-cutting [1] 153/15			
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	cross-government [4] 137/19 153/21 154/5 156/5			
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	crossing [2] 53/19 188/11			
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	crucially [1] 73/25			
course [38] 1/19 2/7 3/17 11/19 37/8 41/19 58/19 58/24 59/15 66/16 66/21 67/19 68/4 68/12 74/22 74/23 76/1 76/11 76/25 78/22 79/10 79/21 86/25 91/7 97/3 101/7 107/5 109/25 111/21 112/23 126/25 151/4 175/16 184/18 184/25 193/12 215/18 217/1	CSA [1] 34/13			

D			
Def [1] 117/16	depending [3] 176/22 177/20 215/15	18/22 18/22 19/14	differing [2] 187/14
defend [2] 103/5	depends [2] 11/23	23/7 24/7 24/13 25/18	200/25
130/5	179/13	27/4 27/10 33/7 33/8	difficult [20] 9/15
defensible [1] 183/12	deploy [1] 73/9	36/18 42/12 44/1 44/3	10/10 24/18 26/24
define [2] 177/18	deployed [1] 189/22	47/9 51/1 53/5 56/17	27/2 28/2 35/2 36/9
183/6	depth [1] 169/3	57/10 57/13 59/23	36/22 46/12 48/24
defined [2] 179/5	deputy [3] 3/16 57/7	59/25 61/23 62/5	71/19 92/5 106/10
179/25	57/14	62/14 62/20 66/9	135/2 180/2 191/17
definitely [10] 68/4	describe [3] 95/7	67/18 73/4 79/17	193/7 196/22 197/8
68/21 68/22 70/16	134/20 204/3	79/19 80/22 81/9	difficulties [4] 46/15
77/19 81/23 86/19	described [10] 6/14	81/10 82/20 83/4 83/6	107/17 109/22 181/6
100/12 121/1 121/17	34/17 71/6 95/16	83/12 84/16 85/8	difficulty [1] 99/24
definition [1] 46/16	99/23 101/11 149/25	85/25 86/15 86/21	digital [3] 28/23
definitive [1] 20/20	164/2 203/5 206/20	87/9 87/22 89/22 90/8	214/20 214/21
definitively [1] 149/8	describing [1] 163/5	95/20 96/12 97/15	digitally [1] 215/1
degree [1] 27/19	designate [1] 194/1	100/5 100/6 100/11	Diolch [1] 63/6
delay [8] 38/13 39/6	designating [1]	100/16 100/16 101/3	direct [2] 138/16
39/10 39/10 39/11	194/8	101/19 102/13 105/20	146/11
39/18 39/19 123/17	despite [3] 109/19	109/18 109/19 112/17	directed [2] 31/6
delete [5] 62/14	184/23 203/24	113/12 119/23 127/23	32/21
62/15 62/21 127/7	detail [6] 29/25 77/2	135/2 135/11 136/17	direction [8] 65/17
127/22	98/8 106/20 110/9	138/16 142/25 147/20	139/15 139/20 143/3
deleted [3] 47/16	213/17	149/20 154/18 154/22	143/4 150/24 172/17
62/13 128/15	detailed [5] 53/8 87/4	158/18 166/3 168/7	181/21
deleting [1] 128/19	157/22 173/21 195/9	168/8 168/24 176/17	directive [1] 139/8
deletion [1] 127/9	determination [1]	180/16 186/3 188/22	directly [8] 17/17
deliberate [2] 21/20	130/14	188/25 191/18 198/10	18/5 19/5 30/12 134/5
22/8	determine [2] 61/16	204/6 214/10 216/6	136/11 143/12 147/18
deliberately [6] 20/12	198/3	didn't [40] 6/10 7/22	director [2] 131/6
20/23 21/6 31/22	determined [1] 30/18	15/9 23/9 23/10 25/14	131/20
62/16 195/14	determining [1]	27/7 34/19 36/15	directorate [1]
deliver [2] 152/12	22/13	43/22 43/23 45/25	132/11
153/25	deterrent [4] 191/1	62/15 79/21 82/24	disabilities [1]
delivered [2] 79/7	200/8 201/7 201/17	85/1 85/18 86/20	215/12
152/24	devastating [1]	90/19 92/4 97/24	disabled [6] 209/12
delivery [7] 30/11	212/11	100/22 101/18 102/14	214/17 214/20 214/22
107/18 107/25 108/12	develop [2] 155/1	105/17 109/14 111/16	215/1 215/25
153/11 153/15 155/17	175/2	113/9 119/22 120/12	disappearing [4]
dementia [2] 213/24	developed [10] 15/16	134/16 140/13 159/2	127/10 127/11 127/14
214/6	86/25 135/14 137/3	172/6 187/3 193/13	128/15
democratic [1] 152/4	161/14 170/6 170/17	197/16 208/10 210/9	disappointing [1]
demonstrate [2]	187/11 196/8 197/1	210/13	36/17
22/21 121/25	developing [3] 15/17	died [2] 4/8 8/25	disappointment [1]
demonstrated [1]	135/9 160/17	difference [2] 25/19	37/2
156/1	development [2]	184/8	discharging [1]
demonstrates [1]	188/9 209/6	different [45] 16/7	60/17
121/2	devolution [7] 77/13	17/13 26/11 36/1	disclosure [2] 128/1
denied [1] 76/12	101/24 102/16 102/19	36/21 37/25 40/24	128/2
department [11] 17/7	102/21 129/5 205/20	50/14 53/9 57/6 86/9	discourage [2] 11/11
17/13 20/2 60/9 61/14	devolved [25] 10/1	91/23 91/24 93/21	11/23
75/14 77/25 78/3 84/3	12/10 51/15 71/14	95/18 102/19 116/8	discouraging [1]
110/18 141/12	71/17 71/25 72/3 72/7	116/9 116/9 116/10	11/19
department' [1] 77/8	77/7 88/22 91/5 91/16	117/6 122/22 123/2	discuss [4] 125/22
departmental [1]	91/17 96/22 99/15	131/16 154/11 159/23	126/15 131/24 132/5
84/18	99/23 107/12 107/15	165/3 168/25 173/10	discussed [6] 7/6
departments [7]	108/11 108/17 110/17	176/13 177/19 177/19	56/18 58/7 58/8
17/10 71/13 71/16	146/1 146/15 146/24	178/23 183/19 186/23	205/11 209/18
75/14 75/17 75/21	152/5	189/25 191/25 192/1	discussing [3] 21/1
99/16	DHSC [1] 17/7	192/4 192/5 197/3	21/15 183/5
depend [1] 25/14	diaries [1] 116/10	198/23 207/12 212/7	discussion [18] 8/8
dependent [1]	did [100] 6/3 7/7 7/10	215/9	35/13 40/24 98/9
103/25	7/17 8/4 13/25 15/11	differential [1] 165/2	115/12 131/11 132/4
	16/15 17/23 18/1	differently [3] 43/20	134/18 135/1 135/17
		44/5 44/6	135/21 136/21 150/22
			158/2 167/1 169/25
			200/17 206/3
			discussions [20]
			22/23 24/14 40/19
			56/22 67/1 67/3 76/6
			78/19 78/22 79/16
			80/21 98/11 104/25
			126/19 128/8 133/25
			136/25 137/14 167/6
			198/15
			disease [1] 45/16
			Diseases [1] 150/1
			dismissed [1] 204/8
			disparity [3] 187/9
			198/7 198/10
			displace [1] 46/22
			display [1] 153/7
			displayed [5] 155/5
			188/17 200/2 207/4
			216/23
			disposal [1] 131/15
			disposed [1] 101/24
			disproportionality [2]
			204/16 204/24
			disproportionate [2]
			165/24 197/25
			distance [8] 177/21
			178/24 178/25 181/15
			182/11 182/19 183/10
			183/11
			distanced [1] 114/1
			distances [3] 177/24
			182/13 183/19
			distancing [5] 177/10
			177/17 184/3 184/11
			185/1
			distilled [2] 161/3
			208/20
			distinct [1] 78/15
			distinction [1]
			126/11
			distinctions [1]
			211/1
			distraught [1] 57/25
			distributed [1] 18/4
			distribution [3] 17/5
			198/8 198/11
			dive [1] 208/22
			diversion [2] 86/4
			207/17
			do [125] 1/20 3/5
			4/12 6/8 8/12 9/2 10/6
			11/22 11/24 13/6
			13/19 14/17 16/2
			16/20 17/2 17/15
			18/22 18/22 19/4
			19/21 20/24 21/21
			22/4 22/8 23/1 23/19
			27/24 30/21 33/20
			34/1 34/18 36/1 39/6
			39/8 42/7 43/19 47/14
			47/16 48/9 51/8 53/19
			54/13 56/19 56/24
			57/2 58/3 60/19 62/24

D	doing [23] 15/20 22/9 35/16 35/19 36/15 49/13 61/13 61/21 109/5 137/13 139/14 143/2 160/17 168/24 188/12 189/18 190/25 191/2 212/20 215/6 215/13 215/22 215/23	draw [6] 101/14 101/17 131/18 161/19 170/4 173/13	80/3 80/5 80/11 89/23 92/11 94/22 96/18 139/5 160/20 174/17 184/12 207/8 214/14 215/5	eight weeks [1] 155/16
do... [77] 67/8 76/11 76/12 77/1 77/9 78/10 79/3 79/21 81/18 83/18 85/7 86/20 87/12 89/8 89/9 89/22 91/3 93/7 93/7 94/10 98/23 101/22 103/1 106/14 109/3 109/6 110/19 114/12 115/1 115/6 120/5 121/15 125/20 126/19 134/8 134/9 134/13 134/14 134/15 138/4 138/5 138/15 141/20 144/23 154/12 155/1 155/21 163/21 171/24 172/1 173/12 173/18 174/1 174/15 178/19 178/23 180/13 181/4 181/4 183/8 183/11 183/13 183/14 184/14 185/13 196/1 196/12 199/19 200/9 206/8 207/9 207/10 210/11 210/25 211/1 211/15 214/8	Dominic [3] 49/15 49/19 49/23	drawdown [1] 101/15	earth [1] 110/16	either [10] 7/8 7/18 13/10 46/25 47/14 102/23 111/5 131/24 132/18 133/21
document [66] 55/13 56/17 57/2 103/25 108/11 112/21 113/8 114/15 117/13 117/17 117/20 133/24 138/17 138/25 139/4 140/25 141/9 141/16 141/21 142/6 142/13 142/16 162/18 162/23 164/25 165/4 167/23 168/3 169/10 169/19 169/23 169/24 170/2 176/14 178/13 178/16 178/19 182/20 182/24 184/5 185/20 186/21 187/1 187/24 188/20 189/8 191/10 191/11 191/16 192/8 195/3 195/5 195/12 195/15 195/25 196/7 196/24 197/12 197/15 198/21 200/23 202/13 202/17 202/22 205/17 216/23	Dominic Cummings [3] 49/15 49/19 49/23	drawing [3] 158/19 161/18 214/12	ease [2] 21/16 22/6	elected [2] 124/7 124/20
documents [7] 2/5 49/4 120/10 120/18 162/5 164/2 164/16	don't [50] 4/1 7/10 16/4 18/20 21/19 22/8 31/1 35/13 35/16 40/13 41/19 43/8 44/6 46/11 48/8 48/19 48/21 48/21 53/11 62/22 77/20 90/4 95/23 96/3 101/23 109/3 113/11 114/3 114/22 121/6 127/15 139/24 142/8 143/18 144/24 151/24 152/13 153/6 163/4 169/6 169/19 186/18 187/21 188/25 189/20 195/4 200/2 207/4 213/12 213/17	drew [1] 57/8	easements [3] 160/20 166/19 170/8	election [1] 124/14
does [19] 48/17 53/4 70/17 71/19 76/20 77/11 93/19 100/21 116/3 121/25 125/7 132/13 153/17 164/10 181/3 182/11 200/15 213/9 216/14	done [15] 9/4 10/13 15/24 58/18 80/8 105/4 122/7 155/20 174/16 189/15 204/17 205/5 210/18 213/14 214/25	driven [1] 50/22	easier [1] 201/12	elections [1] 66/10
doesn't [8] 62/7 77/25 101/20 116/3 139/6 164/17 182/1 192/18	doubt [3] 58/22 207/9 214/13	driving [2] 51/9 188/12	easily [1] 87/5	element [3] 70/22 71/3 130/15
	down [33] 1/13 3/14 10/6 20/11 26/4 26/15 37/15 37/15 37/24 37/25 40/14 56/4 69/14 99/1 101/14 101/17 104/2 106/6 108/8 112/9 117/9 117/15 117/18 139/3 141/23 146/8 149/3 161/4 162/8 162/10 182/18 184/4 208/21	drops [1] 215/23	easing [3] 19/15 20/16 21/14	elements [1] 29/11
	downloaded [1] 125/24	drum [1] 7/3	Easter [1] 160/16	eligible [2] 111/19 111/25
	Dr [4] 5/13 18/13 34/13 34/14	drumbeat [1] 44/9	Eat [2] 102/5 102/7	else [3] 77/16 81/25 84/8
	Dr Atherton [2] 5/13 34/13	due [6] 2/7 38/8 76/1 76/25 107/25 144/6	echoed [1] 201/6	elsewhere [2] 94/23 183/17
	Dr Orford [1] 34/14	duplication [3] 93/20 93/25 94/10	ECHR [1] 172/14	ELUNED [6] 1/6 1/9 113/12 113/14 216/21 218/3
	Dr Roland Salmon [1] 18/13	duration [1] 67/9	economic [20] 23/17 24/10 28/22 36/16 38/3 79/6 79/20 80/4 80/8 87/11 92/9 92/16 92/18 97/2 102/10 104/16 105/12 163/24 174/13 174/14	Eluned Morgan [4] 1/9 113/12 113/14 216/21
	draft [1] 144/14	during [38] 3/11 3/15 6/19 18/17 26/16 28/20 32/22 33/13 48/23 64/18 66/19 68/11 68/19 86/25 101/18 112/20 119/5 126/18 127/6 128/13 128/16 131/5 131/9 132/16 132/17 133/1 133/3 133/20 134/4 135/2 135/7 137/5 151/4 174/7 183/17 187/16 190/18 216/21	economically [1] 22/17	email [10] 116/9 143/24 145/5 145/16 145/18 146/20 147/5 149/10 200/12 200/20
	drafting [1] 129/5	duties [2] 54/22 175/21	Economist [1] 79/24	embarrassment [2] 128/12 128/14
	Drakeford [2] 65/8 124/14	duty [2] 165/25 174/14	economists [1] 79/25	emerged [1] 41/19
		dying [1] 57/25	economy [13] 21/17 23/10 51/10 51/20 87/25 92/17 93/10 97/5 124/9 157/15 163/1 163/20 163/24	emergencies [1] 196/11
		Dylan [2] 132/9 132/14	ed [1] 191/10	emergency [4] 141/22 145/12 168/20 168/24
		Dylan Hughes [2] 132/9 132/14	education [16] 18/8 18/8 19/17 20/2 72/1 84/22 116/21 124/22 131/19 137/8 138/10 139/10 139/12 139/16 141/13 173/24	emotionally [1] 23/16
		dysfunction [1] 49/20	educational [1] 62/3	emotionally [1] 22/16
		E	effect [5] 148/22 187/13 200/8 201/7 201/17	emphasising [1] 12/18
		each [13] 70/12 72/14 78/8 84/3 84/5 118/12 131/17 154/6 155/25 161/10 173/12 191/23 194/7	effective [3] 17/23 34/5 46/1	employ [1] 99/6
		earlier [32] 8/16 9/3 9/18 10/6 10/8 10/8 10/9 10/13 34/3 35/2 37/1 39/24 48/20 58/11 100/10 100/11 107/2 114/16 121/2 121/16 143/7 159/12 164/25 168/16 171/14 174/10 197/4 197/15 209/18 211/5 213/2 214/4	effectively [17] 9/8 26/6 37/16 38/10 39/3 70/25 75/11 93/23 110/7 126/3 147/4 148/20 154/6 181/9 183/1 199/12 206/14	employed [3] 96/16 97/8 98/3
		early [20] 4/25 25/21 39/2 39/3 39/5 40/17	effects [2] 14/8 170/9	employee [1] 109/21
			efficacy [2] 43/16 43/22	employees [4] 103/21 103/23 109/9 111/24
			effort [3] 6/8 6/9 33/9	employer [1] 111/9
			efforts [1] 163/13	employers [2] 109/9 109/20
			egregious [3] 193/20 201/13 201/16	employment [2] 97/7 97/19
			eight [4] 120/2 121/9 155/16 211/10	enable [1] 91/4
			eight months [3] 120/2 121/9 211/10	enabled [3] 127/12 127/13 155/18
				enabling [1] 203/4
				enacted [1] 88/24
				encourage [2] 51/11 172/14
				encouraged [2] 44/14 188/19
				end [26] 6/4 12/3 15/25 71/11 71/21

E	171/25 173/19 192/19 211/20	69/21 153/23	27/20 72/5 99/25	expectations [1] 38/1
end... [21] 72/14 72/15 72/19 73/5 75/24 76/9 76/17 82/16 96/6 96/7 101/4 109/18 117/16 118/13 119/24 122/25 147/25 161/13 175/9 176/18 176/23	entitled [2] 103/15 207/3	evaluate [1] 203/4	examination [1] 140/7	expected [5] 105/23 106/11 150/16 170/16 170/25
endeavour [1] 162/11	entrenched [1] 184/13	Evans [13] 5/3 52/6 53/14 63/9 63/10 63/17 112/13 117/16 119/4 119/21 121/8 123/6 218/11	example [52] 18/24 24/17 26/12 32/5 37/16 44/10 45/12 46/20 50/3 53/13 59/24 60/11 60/11 71/22 71/23 72/6 75/10 78/21 80/5 84/13 84/22 85/23 92/2 92/24 93/3 93/12 94/4 98/24 101/25 112/22 116/1 116/17 120/15 125/13 125/19 130/12 130/16 135/11 137/19 157/8 157/9 157/18 163/21 168/15 177/20 193/15 195/19 200/25 211/12 212/11 214/3 214/22	expecting [1] 215/11
ended [2] 26/22 121/5	entries [3] 49/6 49/9 50/9	even [28] 7/20 13/20 14/4 15/10 27/13 51/6 71/19 73/1 76/4 91/6 91/17 91/21 100/13 120/13 121/19 121/21 122/8 122/15 122/24 128/2 140/17 151/12 152/3 168/21 171/9 181/14 183/7 215/22	expenditure [2] 70/10 71/1	experiencing [1] 141/13
ending [2] 162/20 186/6	entry [2] 50/12 117/14	event [18] 27/22 29/23 35/4 82/22 89/7 96/16 103/21 103/24 135/16 137/3 151/21 167/24 174/16 185/13 192/22 193/9 193/10 193/17	experience [8] 61/11 61/18 61/24 62/8 139/11 179/2 211/9 212/19	experienced [2] 77/18 214/21
energy [1] 207/18	environment [2] 38/20 179/7	eventually [1] 99/17	experiences [2] 19/15 214/13	experiment [1] 34/18
enforce [5] 13/3 13/9 145/2 181/17 205/25	environmental [1] 131/19	ever [3] 33/7 135/2 174/9	experiencing [1] 141/13	experiment [1] 34/18
enforced [2] 179/19 200/5	environmets [2] 38/19 45/11	events [9] 127/24 128/17 143/21 148/14 199/7 199/16 199/25 200/5 200/22	experiment [1] 34/18	expert [1] 131/18
enforcement [7] 180/18 185/2 189/1 190/17 191/17 198/2 203/8	envisage [1] 174/15	eventually [1] 99/17	experts [4] 208/3 208/11 208/11 208/14	explain [20] 8/19 11/13 11/15 20/10 20/19 25/7 42/17 44/21 47/10 75/12 87/19 135/11 136/3 155/8 165/2 169/5 176/4 209/24 211/2 214/25
engaged [5] 5/1 137/4 154/4 154/8 154/10	envisaged [1] 186/4	every [17] 21/1 24/1 24/3 66/1 68/15 70/20 73/16 74/11 85/10 89/6 100/25 100/25 116/11 171/21 181/2 188/6 211/10	explained [11] 10/19 13/12 16/1 22/2 46/5 49/4 55/20 88/21 94/24 156/16 162/23	explaining [3] 134/22 135/6 211/23
engagement [2] 47/3 167/10	equal [1] 23/5	everybody [3] 28/9 33/8 87/8	explains [3] 134/22 135/6 211/23	explicitly [1] 199/23
England [23] 9/14 21/16 34/22 35/9 36/5 70/15 70/20 109/1 109/24 185/7 186/11 186/15 187/14 187/24 188/9 188/21 189/12 191/25 191/25 192/2 192/5 194/11 204/2	equalities [2] 166/25 167/23	everyone [6] 70/9 164/24 168/19 172/10 181/7 212/23	exploring [1] 98/14	expressed [3] 51/17 191/18 198/7
English [4] 29/21 50/20 72/10 187/19	equality [16] 24/8 164/20 165/1 165/25 166/4 166/8 166/17 167/16 169/4 171/12 171/17 172/4 172/23 173/7 174/11 175/7	everything [2] 14/3 157/1	expressing [1] 10/25	expressly [2] 129/20 171/8
English-specific [1] 187/19	equally [4] 23/20 71/15 78/18 212/23	everywhere [1] 180/4	expressly [2] 129/20 171/8	extended [1] 109/15
enhanced [2] 104/4 107/24	equipment [1] 17/16	evidence [53] 1/12 2/7 3/7 4/18 5/6 17/6 18/21 20/6 20/21 21/7 21/13 22/11 24/12 34/12 37/4 37/8 39/5 39/19 42/21 44/7 45/10 48/9 52/3 59/5 59/19 61/5 63/2 63/19 63/22 83/25 102/13 109/13 110/12 113/3 113/12 114/23 115/17 117/1 123/18 132/21 151/17 158/19 158/24 159/3 161/19 161/24 172/3 175/20 180/24 182/9 182/24 187/15 204/9	extended [1] 109/15	extensive [2] 24/9 114/25
enough [7] 30/24 35/11 67/9 85/17 204/17 205/5 212/1	equivalent [3] 65/23 132/7 149/20	exactly [4] 26/8	extending [3] 134/22 135/6 211/23	extent [8] 21/25 78/10 85/4 97/22 165/15 165/23 198/7 210/10
enquiries [1] 60/7	ERF [2] 92/15 93/22		explaining [3] 134/22 135/6 211/23	external [6] 81/14 124/12 172/11 208/1 208/3 208/11
ensure [7] 168/12 180/6 187/23 188/20 200/4 204/18 210/19	err [1] 21/8		explains [3] 134/22 135/6 211/23	extra [4] 32/12 90/9 95/12 120/14
ensuring [4] 92/19 125/17 129/7 211/14	escape [1] 11/10		explicitly [1] 199/23	extraordinarily [1] 179/20
entailed [1] 154/23	especially [2] 71/20 101/12		exploring [1] 98/14	extraordinary [2] 204/3 204/6
entered [2] 106/12 108/23	essential [3] 31/3 201/18 214/1		expressed [3] 51/17 191/18 198/7	extremely [2] 11/13 145/18
entering [2] 42/15 185/8	essentially [19] 6/5 43/18 45/8 57/15 67/14 79/19 81/3 88/4 90/5 90/24 91/22 93/14 97/4 99/10 101/8 104/14 106/19 143/4 203/24		expressing [1] 10/25	eye [2] 37/16 161/1
entire [2] 101/17 155/14	establish [3] 134/16 159/19 174/10		expressly [2] 129/20 171/8	
entirely [3] 11/23 110/18 146/25	established [6] 19/8 74/2 80/10 80/16 108/17 158/20			
entirety [5] 157/4	establishes [1] 69/5			
	establishing [1] 131/14			
	establishments [1] 62/3			
	estimates [5] 71/11 72/18 73/1 73/2 76/18			
	etc [1] 52/15			
	ethnic [2] 32/6 209/3			
	European [6] 69/21 83/9 83/10 124/19 153/20 153/23			
	European Union [2]			

F	132/5 135/21 190/19 190/21 190/23 193/10 193/19 203/16 206/20 208/17 few [11] 3/2 4/4 4/6 8/11 13/18 40/5 52/17 65/20 117/9 128/20 208/2 fewer [1] 31/5 fifth [1] 195/12 figure [2] 75/18 127/19 figuring [1] 170/8 fill [2] 93/9 93/13 final [5] 52/1 81/22 110/2 114/7 137/16 finally [2] 117/2 122/11 finance [22] 5/4 64/16 64/17 64/21 65/7 65/12 65/15 66/9 66/15 67/1 67/4 67/12 68/2 68/7 77/19 78/17 81/24 88/17 98/12 102/8 102/10 102/24 finance-related [1] 67/1 finances [3] 76/1 79/7 87/6 financial [56] 31/10 36/11 36/19 37/14 66/19 66/23 69/2 69/5 71/21 72/14 72/20 73/3 73/5 73/8 73/11 73/13 73/18 73/22 74/3 74/23 75/6 75/25 78/5 78/12 78/24 79/5 79/11 79/15 79/18 79/20 81/4 81/21 85/3 87/1 87/11 93/21 94/6 94/22 100/3 100/7 101/5 101/13 101/19 104/16 111/13 119/6 121/3 121/5 121/10 121/12 121/18 122/1 122/5 122/16 122/25 137/10 financially [1] 26/25 find [5] 54/14 135/2 183/11 204/6 210/3 finding [1] 128/22 findings [3] 58/25 197/20 197/21 fine [13] 29/22 179/21 179/24 181/9 181/13 192/7 193/8 193/16 193/19 193/20 199/6 199/13 211/1 fined [3] 181/24 195/15 201/12 fines [8] 191/21 192/11 193/3 193/5 202/9 202/25 205/2 206/11	fining [1] 214/5 finish [2] 54/20 54/23 finishing [1] 174/4 Fire [1] 103/15 firebreak [36] 33/23 34/2 34/7 34/20 35/5 35/21 35/22 36/4 36/16 36/20 37/13 38/7 79/13 91/8 103/7 103/7 103/9 103/19 104/10 104/23 104/24 105/12 105/20 106/2 106/7 106/19 106/24 107/10 110/7 110/25 172/21 185/25 186/1 186/3 186/6 186/9 firepower [1] 36/12 firing [1] 14/9 firmly [1] 162/21 first [140] 2/11 3/12 4/25 5/12 5/16 5/18 5/20 5/22 5/23 6/18 6/21 7/5 7/16 11/5 12/8 12/9 12/10 13/2 14/18 14/20 21/2 21/17 30/17 34/16 34/22 35/22 35/24 40/13 41/19 41/20 41/21 41/25 42/9 42/11 42/25 43/7 47/11 64/25 65/8 67/13 68/14 69/14 80/10 80/22 83/17 88/13 88/19 90/8 92/10 94/7 97/24 104/21 108/7 112/15 112/16 112/18 113/1 113/19 114/20 115/18 115/23 115/24 116/3 117/22 120/2 121/9 124/7 124/15 125/20 129/4 129/13 129/15 129/16 132/8 132/12 132/14 133/15 134/22 136/6 136/19 136/22 142/11 144/23 144/25 145/9 145/20 145/21 147/9 148/9 153/2 153/6 153/8 153/13 154/3 154/12 154/12 155/10 158/7 158/12 158/16 158/17 159/8 159/14 159/18 159/20 160/5 160/10 160/14 161/3 161/13 163/3 163/15 164/15 164/22 165/22 168/21 178/5 178/14 182/23 185/10 185/11 190/2 190/18 191/10 192/14 192/21 193/25 193/25 194/9 195/8 195/23 200/9 200/15 201/19 202/6 203/20 204/9 205/11	206/4 212/11 First Minister [47] 5/12 11/5 12/9 12/10 13/2 14/18 14/20 21/2 30/17 34/16 41/20 41/21 43/7 65/8 80/10 92/10 104/21 108/7 129/13 129/15 129/16 132/12 136/22 144/23 144/25 145/9 147/9 153/6 153/8 153/13 154/3 154/12 158/7 159/14 160/5 160/10 160/14 178/5 185/10 185/11 192/14 194/9 200/9 200/15 201/19 204/9 205/11 First Minister's [5] 161/3 178/14 190/2 192/21 206/4 first-hand [1] 142/11 firstly [18] 2/8 9/2 10/25 13/7 13/19 13/20 17/22 34/1 49/22 65/11 78/5 94/24 97/15 99/19 100/16 133/5 163/9 166/10 fiscal [12] 69/3 69/4 73/23 80/13 80/20 81/5 87/10 89/6 89/10 93/6 101/3 101/22 five [7] 42/24 115/21 154/11 177/21 178/15 182/18 208/23 five minutes [1] 115/21 fixed [15] 189/2 190/23 191/8 194/24 195/9 195/20 197/9 198/8 198/11 198/23 199/15 199/24 200/6 200/8 206/6 fixtures [1] 143/22 flagged [1] 33/4 flexibilities [2] 72/21 101/3 flexibility [2] 74/23 100/15 flooding [1] 14/4 flow [1] 44/15 FM [3] 106/16 109/23 114/9 focus [8] 30/1 30/10 30/24 155/22 156/6 163/13 172/4 199/6 focused [2] 47/20 66/22 focusing [5] 28/25 66/8 74/22 145/11 198/4 follow [6] 13/5 17/24 18/23 36/6 36/9 53/23 followed [6] 8/4	21/17 22/1 22/5 88/20 199/22 following [15] 6/13 11/4 27/21 38/25 62/9 65/21 67/25 72/25 73/21 114/9 116/25 141/14 169/9 192/25 200/22 follows [2] 21/24 117/11 food [4] 119/10 119/17 154/9 157/2 footing [3] 42/24 68/3 68/23 footpaths [1] 149/21 footprint [1] 173/15 force [2] 41/12 110/6 forced [1] 44/22 forces [3] 194/7 204/13 204/14 forecast [2] 120/11 121/21 foreign [4] 7/21 15/5 50/13 61/24 foreseen [1] 96/7 form [9] 2/6 69/8 71/5 89/19 130/11 168/18 203/7 207/12 208/13 form-up [1] 208/13 formal [7] 38/12 68/2 140/17 140/25 158/8 171/12 174/11 formalisation [1] 68/17 formalised [2] 68/6 71/10 formally [1] 38/10 formed [3] 22/22 166/1 205/1 former [1] 151/18 forms [1] 93/21 formula [5] 70/19 72/4 72/11 90/7 90/22 forth [2] 49/20 104/6 forthcoming [5] 15/21 16/3 16/4 36/18 38/22 forum [4] 16/9 16/11 67/3 80/21 forward [20] 43/3 44/1 44/7 73/7 78/13 100/13 106/18 107/1 107/17 107/22 107/25 108/22 108/25 109/1 109/8 111/10 117/25 152/22 156/6 181/2 forwarded [1] 147/5 forwarding [1] 172/19 found [7] 17/17 18/3 27/14 28/16 41/1 47/7 109/12 foundations [1]
----------	--	---	--	--

F	fundamental [1] 170/20	129/19 130/2 130/10 130/13 131/6 131/12 131/13 144/5 150/15 153/19 174/8 187/20 188/24 189/4 189/16 190/12 194/4 200/18 203/20 204/22 205/13 206/16 211/19	glad [2] 172/22 173/1 gleaned [1] 136/24 global [1] 171/24 go [44] 7/3 7/24 8/9 16/14 29/21 33/1 34/20 35/5 36/20 40/14 41/18 43/2 44/13 52/15 52/20 52/21 53/2 54/5 54/13 58/3 58/6 63/5 86/5 110/24 114/14 118/5 122/6 125/2 139/24 144/3 144/8 145/20 150/9 168/7 181/12 183/12 183/24 191/12 195/12 199/14 203/15 206/1 214/11 216/15	government [213] 4/14 8/12 9/7 9/22 12/15 13/10 14/7 17/20 18/1 18/19 20/3 20/7 22/3 25/5 25/8 30/24 36/12 36/18 36/25 37/5 42/19 43/8 50/24 53/5 53/7 53/24 54/13 56/13 58/16 58/17 59/10 59/18 60/4 62/7 64/18 65/1 65/3 65/17 65/24 66/2 66/6 69/2 69/3 69/6 69/12 69/16 69/20 70/11 70/14 70/17 71/1 71/13 71/16 71/24 72/7 72/22 74/13 75/3 75/14 76/7 77/20 77/25 78/2 82/6 83/5 83/22 87/2 88/14 88/15 88/22 90/10 92/20 93/1 93/2 93/16 94/20 95/4 95/10 95/11 95/13 95/14 95/19 96/21 97/22 98/4 98/12 98/19 98/23 99/16 99/22 102/7 102/11 102/17 102/20 102/24 103/4 103/4 106/13 107/8 109/14 109/24 110/4 110/9 110/17 110/20 111/12 115/7 115/14 116/8 116/11 119/12 119/19 119/21 120/15 120/19 120/21 122/12 125/7 125/8 125/15 125/17 125/22 125/24 126/15 129/2 129/3 129/7 129/11 129/24 130/12 130/15 130/22 131/1 131/17 131/19 131/21 131/23 132/23 133/7 136/10 136/14 137/7 137/15 137/19 138/6 142/25 143/5 146/16 148/18 149/8 149/9 149/20 150/6 150/10 150/12 150/16 150/24 151/6 151/18 152/6 152/14 153/21 153/24 154/5 155/12 155/14 155/19 156/5 156/22 156/25 164/3 164/5 164/8 168/12 176/18 180/4 181/11 183/2 183/3 183/22 185/13 185/14 186/3 187/24 188/20 188/23 189/19 191/7 195/7 196/11 197/7 198/10 201/23 201/23 201/24 202/7 203/13 203/25 203/25 204/5 204/18
foundations... [1] 76/24	funded [1] 85/15	General's [3] 129/21 133/6 194/15		
four [14] 38/11 42/24 47/2 47/12 68/14 69/11 87/24 88/2 111/1 165/12 169/15 194/7 208/21 208/23	funding [46] 25/5 32/8 69/1 69/11 71/2 71/5 71/6 71/8 71/22 71/24 72/12 72/24 75/17 75/20 82/23 83/9 83/10 84/23 85/25 86/23 87/21 87/23 87/24 87/25 88/9 88/13 89/17 89/18 90/6 90/9 90/14 92/2 92/19 93/14 95/6 95/6 95/13 96/22 99/21 99/25 100/2 100/22 110/13 120/24 122/10 122/21	22/1 22/4 50/14 50/16 57/1 66/19 78/9 95/1 102/25 129/6 131/11 132/1 135/16 137/15 139/16 148/11 149/12 152/15 197/2 201/8 212/3		
four days [1] 38/11	funding's [1] 96/3	generate [1] 202/16		
four nations [2] 47/2 47/12	funds [5] 69/15 69/18 69/21 82/10 93/23	generous [4] 109/8 109/16 111/6 111/7		
four weeks [1] 111/1	furlough [6] 93/2 96/15 97/18 98/3 99/6 104/6	genie [1] 196/5		
fourth [2] 69/21 191/14	furloughed [2] 94/8 111/21	geographies [2] 178/16 178/23		
framework [10] 69/3 69/4 73/23 101/22 150/5 158/20 159/6 159/9 170/7 170/16	further [24] 11/4 12/12 38/15 38/21 39/20 45/20 54/19 82/25 84/8 87/13 89/1 94/18 99/14 105/3 112/2 117/18 121/19 169/7 186/25 191/23 197/9 200/16 200/22 216/11	geography [1] 182/3 get [19] 3/8 9/12 11/17 15/11 17/16 29/19 59/6 61/23 69/9 71/4 71/20 89/16 118/4 120/23 156/4 167/2 181/24 182/1 184/15		
France [3] 40/21 40/23 40/25	future [17] 24/6 27/22 42/19 67/15 68/20 72/23 74/9 75/3 101/22 151/21 174/10 174/16 194/20 206/23 206/25 207/3 212/20	Gething [6] 4/18 30/9 114/14 115/9 123/19 128/11		
Frank [2] 117/4 118/1	G	getting [9] 12/12 13/20 61/17 91/19 99/24 106/20 117/23 169/1 172/11		
Frank Atherton [1] 117/4	gain [1] 105/22	give [23] 1/12 4/4 10/6 26/12 38/24 48/2 53/13 63/16 63/19 65/11 70/17 75/2 75/10 79/14 84/9 123/18 139/15 139/20 141/21 155/6 181/19 214/3 215/17		
fraud [1] 41/8	gaps [5] 43/15 43/20 93/9 93/13 155/20	given [37] 9/17 10/5 14/3 21/11 22/23 23/5 30/20 30/24 32/2 38/25 39/1 45/5 51/4 60/11 62/9 83/24 85/6 100/14 102/14 108/18 116/17 117/1 127/23 162/15 164/7 168/16 173/4 177/14 182/14 185/23 186/8 187/1 204/4 205/7 213/10 216/9 216/22		
free [3] 63/4 66/18 94/23	garnered [1] 178/4	giving [11] 23/25 24/4 26/1 71/22 123/20 143/2 143/9 154/14 161/22 162/7 201/7		
Freedom [1] 50/10	gather [3] 46/2 46/14 54/17			
Freedom Day [1] 50/10	gatherings [12] 143/15 143/16 144/1 144/6 144/13 144/16 146/12 148/10 148/13 148/15 148/19 199/1	Goodall [1] 5/13		
frequency [2] 67/21 67/24	gathered [1] 178/4	got [32] 25/12 27/25 29/18 42/23 47/17 61/6 61/9 79/21 79/23 79/23 79/24 84/21 91/20 107/5 110/2 111/5 112/5 112/7 116/14 120/8 122/8 144/12 145/25 147/7 147/25 161/12 162/6 165/5 167/12 169/12 209/7 211/5		
frequent [1] 67/16	gathered [1] 178/4	governance [2] 74/14 169/8		
frequently [4] 67/9 67/20 68/10 85/8	gathered [1] 178/4	governing [2] 142/4 142/9		
Friday [5] 10/24 52/23 148/16 148/20 150/20	gathered [1] 178/4			
front [2] 103/16 135/16	gathered [1] 178/4			
frontline [1] 32/11	gathered [1] 178/4			
fruit [1] 208/5	gathered [1] 178/4			
fruitful [1] 47/8	gathered [1] 178/4			
fruity [2] 40/13 41/16	gathered [1] 178/4			
frustrated [1] 53/24	gathered [1] 178/4			
fucked [1] 40/11	gathered [1] 178/4			
fucking [1] 49/17	gathered [1] 178/4			
fulfil [1] 135/3	gathered [1] 178/4			
full [14] 11/8 14/7 63/16 101/10 107/20 123/20 128/1 134/25 171/9 172/5 173/12 174/1 194/13 194/20	gathered [1] 178/4			
fuller [1] 172/6	gathered [1] 178/4			
fullest [1] 210/10	gathered [1] 178/4			
fully [1] 38/14	gathered [1] 178/4			
function [3] 70/13 98/6 130/17	gathered [1] 178/4			
functioning [1] 85/20	gathered [1] 178/4			
functions [3] 98/4 129/19 129/21	gathered [1] 178/4			
fund [7] 80/4 84/11 85/16 92/9 92/16 92/18 92/22	gathered [1] 178/4			

<p>G</p> <p>government... [12] 205/21 205/25 206/10 207/18 208/12 208/16 208/18 210/4 211/13 213/4 213/14 215/9</p> <p>government's [17] 6/2 9/4 20/12 59/2 66/23 80/13 89/13 92/12 95/8 110/12 120/12 125/23 132/1 136/5 188/2 207/19 213/19</p> <p>governmental [4] 15/4 47/24 84/18 93/4</p> <p>governments [6] 77/7 91/5 180/3 183/18 183/20 190/11</p> <p>grant [8] 69/15 69/25 70/1 70/7 70/9 70/17 70/24 71/6</p> <p>granted [1] 69/15</p> <p>grapple [1] 180/20</p> <p>grateful [4] 123/6 141/10 158/4 216/17</p> <p>great [2] 46/2 176/25</p> <p>greater [7] 38/18 39/17 45/16 104/15 105/12 162/23 177/24</p> <p>green [2] 155/24 156/2</p> <p>grief [2] 33/12 33/13</p> <p>Griffiths [2] 52/10 117/19</p> <p>grounds [2] 165/21 198/6</p> <p>groundwork [1] 76/23</p> <p>group [18] 5/1 5/5 5/9 10/17 16/8 48/13 48/20 50/7 51/20 65/25 68/2 81/4 81/6 125/11 146/4 159/3 208/21 212/16</p> <p>grouped [1] 157/13</p> <p>groups [7] 47/11 164/18 165/3 166/7 167/7 171/8 212/18</p> <p>grown [1] 74/1</p> <p>guarantee [18] 76/16 76/21 82/24 89/19 91/20 91/25 92/8 94/25 99/18 99/19 99/20 100/6 102/4 122/3 122/8 122/9 122/23 122/23</p> <p>guess [1] 16/16</p> <p>guessed [1] 182/7</p> <p>guessing [2] 49/24 49/25</p> <p>guidance [43] 44/11 52/17 113/15 116/14 126/4 126/6 126/9</p>	<p>126/10 141/18 160/25 161/22 162/2 162/5 164/15 176/2 176/4 176/7 176/13 176/14 176/22 177/1 177/3 177/15 177/22 177/25 178/4 179/14 179/24 181/19 184/9 184/23 209/19 209/22 209/25 210/3 210/7 210/12 210/19 211/14 211/18 213/25 214/3 214/9</p> <p>guide [2] 164/7 179/15</p> <p>guided [4] 78/12 158/21 162/13 166/24</p> <p>guidelines [3] 54/6 59/25 60/16</p> <p>gym [1] 128/22</p> <hr/> <p>H</p> <p>had [220]</p> <p>hadn't [6] 7/20 35/3 67/12 104/25 172/17 205/7</p> <p>half [1] 39/14</p> <p>half term [1] 39/14</p> <p>halfway [1] 20/11</p> <p>Hancock [8] 47/5 47/12 48/11 48/16 48/17 49/10 49/17 49/21</p> <p>hand [8] 78/16 135/3 142/11 174/25 182/18 206/1 206/1 208/1</p> <p>handed [1] 62/16</p> <p>handful [2] 52/11 154/17</p> <p>hands [4] 152/8 176/22 206/14 210/12</p> <p>hands-on [1] 210/12</p> <p>hang [1] 94/8</p> <p>happen [4] 24/5 74/11 91/14 170/25</p> <p>happened [9] 43/8 62/23 76/3 100/10 135/13 137/18 161/12 174/17 187/10</p> <p>happening [13] 25/14 50/8 55/21 139/18 143/10 150/20 153/24 154/15 159/13 171/20 171/21 190/9 216/4</p> <p>happens [4] 71/11 76/9 116/14 193/18</p> <p>happy [2] 54/15 186/20</p> <p>hard [4] 38/24 201/9 201/15 211/1</p> <p>harder [1] 39/6</p> <p>hardest [2] 212/9 212/16</p> <p>hardship [1] 163/24</p>	<p>harm [2] 105/12 109/5</p> <p>harms [9] 23/2 23/4 23/21 37/14 37/15 163/21 164/1 164/11 164/12</p> <p>has [33] 2/4 9/11 17/6 18/13 21/13 29/6 29/8 30/17 34/12 34/17 58/18 68/1 68/3 74/14 78/9 102/14 109/13 115/1 115/5 117/19 125/10 126/13 129/4 131/17 132/21 144/5 151/17 163/22 169/16 176/12 183/22 191/15 200/17</p> <p>hasn't [2] 68/6 74/1</p> <p>hat [1] 102/24</p> <p>have [320]</p> <p>haven't [5] 27/10 63/12 130/8 166/19 179/25</p> <p>having [24] 18/19 20/20 24/24 31/11 38/18 64/25 73/15 81/13 90/21 91/13 126/2 127/18 128/19 138/2 139/12 152/16 152/18 181/1 188/24 200/8 203/16 205/11 205/22 207/19</p> <p>he [14] 14/21 14/21 49/18 59/20 114/17 128/13 129/21 132/14 153/10 154/22 158/11 158/25 159/1 200/17</p> <p>he's [1] 158/12</p> <p>head [1] 147/14</p> <p>heading [2] 48/24 50/12</p> <p>headline [1] 69/8</p> <p>headphones [1] 28/9</p> <p>health [105] 2/19 3/22 3/23 4/2 5/7 8/13 10/3 11/13 11/17 17/7 22/18 23/13 25/6 30/7 30/9 30/14 30/21 30/23 31/2 31/3 31/6 31/11 31/15 31/18 31/21 31/23 31/24 32/5 32/8 32/11 32/11 32/15 32/20 33/1 33/2 33/5 33/6 33/15 33/17 34/16 37/17 37/23 40/6 40/8 42/2 47/5 47/12 48/12 48/13 50/23 51/1 51/17 51/18 51/24 57/10 58/12 58/25 59/19 59/23 72/1 75/15 78/23 79/8 88/1 89/9 89/24 95/10 95/14 102/11 119/16 128/14</p>	<p>136/22 145/12 146/3 146/19 148/2 148/12 148/21 148/25 149/11 149/12 149/18 150/1 150/5 151/7 151/10 152/4 152/6 157/14 158/22 162/22 162/24 163/2 163/7 163/10 163/23 165/20 187/16 188/3 188/23 190/22 193/3 193/20 196/11 215/12</p> <p>health secretaries [1] 47/5</p> <p>hear [1] 117/21</p> <p>heard [18] 3/11 4/18 5/5 17/6 18/13 21/13 35/17 37/4 39/4 42/10 59/15 78/9 126/11 132/21 138/9 151/17 158/24 187/15</p> <p>hearing [5] 5/3 126/6 167/11 194/13 217/4</p> <p>Heaven [8] 55/5 55/6 61/1 112/5 112/11 118/18 218/7 218/15</p> <p>heavily [1] 211/17</p> <p>held [4] 42/24 64/22 67/4 82/10</p> <p>Helen [13] 125/13 131/6 131/20 132/7 132/16 136/21 136/25 137/14 143/25 144/10 144/22 145/7 162/16</p> <p>Helen Lentle [12] 125/13 131/6 131/20 132/7 132/16 136/21 136/25 137/14 143/25 144/10 145/7 162/16</p> <p>Helen Lentle's [1] 144/22</p> <p>Helena [5] 55/15 55/19 57/18 58/3 58/22</p> <p>Helena Herklots [5] 55/15 55/19 57/18 58/3 58/22</p> <p>help [19] 29/10 39/15 62/25 63/1 63/4 74/8 75/2 87/17 101/1 102/5 102/7 110/14 122/14 123/7 139/4 169/21 176/6 198/18 216/16</p> <p>helped [6] 68/2 73/12 91/20 101/12 138/6 208/21</p> <p>helpful [12] 25/25 72/23 87/14 90/5 98/10 100/13 101/25 143/14 147/7 154/18 208/5 210/8</p> <p>helping [1] 3/16</p> <p>Helpline [2] 31/24</p>	<p>32/20</p> <p>helps [1] 108/6</p> <p>her [7] 52/8 57/12 84/23 131/23 138/11 140/5 214/6</p> <p>here [42] 12/12 45/1 49/9 53/15 53/22 78/2 91/1 95/12 103/22 111/23 113/4 114/8 115/1 115/9 118/7 133/5 140/22 141/11 141/24 142/24 149/24 152/4 158/15 162/19 163/1 163/22 164/9 165/12 168/1 176/10 177/13 179/11 180/24 183/23 186/24 193/23 198/7 201/6 201/14 203/5 204/21 206/20</p> <p>Herklots [5] 55/15 55/19 57/18 58/3 58/22</p> <p>hibernate [1] 99/8</p> <p>hibernating [1] 99/8</p> <p>high [6] 74/6 74/19 166/6 185/7 186/11 199/9</p> <p>high-level [1] 74/19</p> <p>higher [3] 119/15 120/16 214/21</p> <p>highlighted [1] 213/6</p> <p>him [7] 48/14 48/14 49/16 128/12 132/15 159/3 159/4</p> <p>hinder [1] 39/15</p> <p>hindsight [4] 10/11 59/15 139/11 152/18</p> <p>his [13] 30/9 79/24 109/13 114/11 114/12 128/12 147/10 147/12 147/14 154/19 159/3 162/13 192/16</p> <p>hit [6] 25/22 26/13 59/24 60/15 212/9 212/16</p> <p>hm [3] 11/3 76/2 77/6</p> <p>HM Treasury [1] 76/2</p> <p>hmm [1] 4/24</p> <p>HMRC [6] 65/20 107/25 108/12 108/24 109/2 110/15</p> <p>HMRC's [1] 107/17</p> <p>HMT [1] 65/20</p> <p>hobby [1] 182/6</p> <p>hoc [1] 155/18</p> <p>hold [2] 73/24 105/24</p> <p>holding [1] 86/19</p> <p>holiday [1] 39/15</p> <p>holidays [2] 10/23 142/3</p> <p>home [8] 44/11 60/14 105/9 178/13 188/3 188/6 212/13 214/7</p> <p>Home [1] 177/7</p>
---	--	---	---	---

H	118/13	I don't [35] 4/1 7/10 16/4 21/19 22/8 31/1 35/13 35/16 40/13 43/8 44/6 46/11 48/8 48/19 48/21 48/21 53/11 62/22 77/20 90/4 95/23 113/11 114/22 127/15 144/24 151/24 152/13 163/4 186/18 188/25 195/4 200/2 207/4 213/12 213/17	197/3 I missed [1] 7/5 I need [2] 37/3 162/10 I now [3] 14/24 33/22 47/2 I obviously [1] 128/7 I operate [1] 133/4 I promise [1] 175/19 I put [1] 44/7 I raised [1] 51/3 I read [1] 146/19 I recall [2] 93/10 159/25 I refer [1] 97/25 I regarded [2] 126/21 128/4 I remember [3] 35/14 120/18 170/23 I represent [3] 55/8 112/13 209/16 I right [3] 5/20 38/13 132/10 I said [2] 48/10 58/11 I saw [1] 172/3 I say [14] 5/16 39/21 44/1 51/13 71/4 77/15 79/5 83/15 92/7 97/5 104/17 115/12 121/19 143/11 I sent [1] 170/14 I set [1] 151/25 I shall [2] 54/25 175/18 I shared [2] 18/5 87/7 I should [3] 70/5 89/22 100/2 I shouldn't [1] 143/3 I spent [4] 3/15 3/19 3/21 116/11 I started [1] 8/6 I stepped [1] 3/19 I still [1] 3/25 I suggested [1] 160/15 I suppose [6] 87/19 125/20 128/4 139/11 149/7 190/18 I talked [1] 101/5 I then [1] 61/15 I think [249] I thought [5] 16/24 57/20 102/15 118/7 118/11 I took [3] 3/23 67/14 81/12 I turn [1] 128/25 I understand [26] 3/2 6/2 7/14 16/12 30/8 62/17 64/3 67/13 105/21 124/18 126/25 129/1 129/12 129/23 134/3 150/21 151/6 152/25 158/7 181/6	181/23 185/3 187/3 189/18 197/18 203/19 I understood [1] 86/9 I urge [1] 187/23 I used [1] 50/1 I want [4] 24/23 135/23 138/8 143/15 I was [61] 3/12 6/22 12/21 12/25 14/6 14/13 16/22 16/22 16/22 19/4 27/7 29/21 31/20 35/12 35/13 35/24 37/23 41/15 42/13 46/1 50/6 51/8 51/13 54/20 59/23 61/20 78/17 96/14 115/15 115/16 115/18 118/6 126/1 126/7 127/21 128/19 128/20 132/4 133/13 134/1 134/12 135/17 136/14 136/19 136/20 137/4 137/12 143/7 147/22 150/12 153/19 158/16 160/2 160/21 173/1 174/18 176/21 193/24 211/4 212/20 215/6 I wasn't [6] 48/8 61/20 87/20 150/22 150/25 211/19 I will [8] 1/19 2/3 12/4 29/3 63/25 67/23 80/2 142/21 I wish [3] 4/12 68/25 128/17 I wonder [1] 178/12 I would [22] 47/19 65/24 78/24 112/19 114/22 114/23 118/4 126/23 132/3 132/6 132/7 133/10 133/11 133/21 134/7 134/13 134/14 135/16 140/10 159/12 186/19 207/23 I wouldn't [1] 133/8 I write [1] 89/6 I wrote [2] 89/4 90/17 I'd [9] 35/16 49/5 122/6 127/17 133/25 170/25 171/14 177/3 185/4 I'd had [1] 127/17 I'll [11] 19/20 29/3 37/6 53/13 65/13 80/25 113/4 155/6 172/25 187/22 216/15 I'm [58] 3/25 6/9 11/25 16/5 16/8 17/25 33/13 33/23 39/4 41/18 46/8 48/8 49/24 49/25 50/11 53/21 54/8 57/8 65/15 66/15 75/4 75/25 78/4 80/9 80/25 81/18 82/2
homes [16] 55/21 56/2 56/15 56/22 57/25 58/20 59/2 59/11 59/17 60/2 60/10 60/18 120/21 120/25 189/21 215/24	I am [6] 51/8 75/1 114/4 150/10 175/20 182/17 I answer [1] 44/3 I apologise [1] 146/23 I appreciate [4] 28/7 55/10 115/16 123/19 I ask [7] 1/13 1/18 28/9 40/4 55/22 59/9 63/22 I asked [2] 83/22 143/24 I became [2] 10/4 131/13 I believe [3] 126/7 197/15 198/21 I bring [1] 139/11 I call [3] 1/4 63/9 123/14 I came [1] 67/11 I can [23] 2/23 10/15 20/9 42/2 48/2 48/7 50/15 52/5 59/22 69/24 75/8 77/14 88/7 97/10 103/12 108/3 108/4 109/4 117/14 126/21 138/25 144/11 153/1 I can't [12] 18/19 48/22 49/24 56/21 56/22 58/8 63/1 88/16 142/11 142/22 166/15 197/16 I care [1] 118/9 I carried [1] 7/4 I certainly [4] 47/9 120/5 126/5 140/15 I changed [1] 3/11 I commissioned [1] 15/21 I considered [1] 131/13 I could [5] 1/21 16/25 44/20 178/12 188/25 I couldn't [3] 88/16 131/14 179/19 I definitely [1] 81/23 I describe [1] 95/7 I did [13] 7/10 15/11 18/22 57/10 59/23 62/5 82/20 96/12 102/13 135/11 154/22 158/18 188/25 I didn't [5] 62/15 79/21 85/1 134/16 197/16 I distributed [1] 18/4 I do [15] 39/8 47/16 51/8 77/1 89/8 89/9 91/3 103/1 138/4 138/5 180/13 181/4 181/4 210/25 211/1	I don't [35] 4/1 7/10 16/4 21/19 22/8 31/1 35/13 35/16 40/13 43/8 44/6 46/11 48/8 48/19 48/21 48/21 53/11 62/22 77/20 90/4 95/23 113/11 114/22 127/15 144/24 151/24 152/13 163/4 186/18 188/25 195/4 200/2 207/4 213/12 213/17 I ever [1] 33/7 I exhibit [1] 191/10 I expanded [2] 114/23 116/4 I expected [1] 170/16 I fed [1] 61/13 I felt [2] 132/5 135/21 I first [1] 40/13 I found [1] 109/12 I gave [1] 114/23 I get [1] 118/4 I guess [1] 16/16 I had [10] 16/9 16/25 84/5 128/18 133/24 136/25 137/11 156/23 171/15 171/18 I have [13] 14/15 37/4 48/4 52/17 54/18 57/10 62/12 65/16 114/24 149/25 152/17 189/7 197/15 I haven't [1] 130/8 I hope [1] 63/12 I just [16] 27/12 41/1 45/1 52/1 55/12 58/1 62/17 84/25 102/22 113/17 128/18 132/25 136/17 145/24 181/7 191/6 I kept [1] 15/18 I knew [2] 16/23 86/2 I know [13] 3/8 31/2 54/21 56/25 59/19 60/2 60/5 79/12 115/11 142/11 182/3 198/13 212/1 I learnt [1] 61/15 I live [1] 12/22 I made [1] 33/6 I make [1] 52/7 I may [27] 2/8 2/11 4/12 5/16 8/18 12/6 20/3 24/23 28/6 30/4 33/22 40/1 44/18 45/2 47/3 49/6 52/1 66/8 69/8 69/24 75/5 77/1 103/18 115/4 124/25 136/1 143/16 I mean [7] 23/23 45/13 62/15 83/15 132/17 134/7 168/5 I mentioned [1]	197/3 I missed [1] 7/5 I need [2] 37/3 162/10 I now [3] 14/24 33/22 47/2 I obviously [1] 128/7 I operate [1] 133/4 I promise [1] 175/19 I put [1] 44/7 I raised [1] 51/3 I read [1] 146/19 I recall [2] 93/10 159/25 I refer [1] 97/25 I regarded [2] 126/21 128/4 I remember [3] 35/14 120/18 170/23 I represent [3] 55/8 112/13 209/16 I right [3] 5/20 38/13 132/10 I said [2] 48/10 58/11 I saw [1] 172/3 I say [14] 5/16 39/21 44/1 51/13 71/4 77/15 79/5 83/15 92/7 97/5 104/17 115/12 121/19 143/11 I sent [1] 170/14 I set [1] 151/25 I shall [2] 54/25 175/18 I shared [2] 18/5 87/7 I should [3] 70/5 89/22 100/2 I shouldn't [1] 143/3 I spent [4] 3/15 3/19 3/21 116/11 I started [1] 8/6 I stepped [1] 3/19 I still [1] 3/25 I suggested [1] 160/15 I suppose [6] 87/19 125/20 128/4 139/11 149/7 190/18 I talked [1] 101/5 I then [1] 61/15 I think [249] I thought [5] 16/24 57/20 102/15 118/7 118/11 I took [3] 3/23 67/14 81/12 I turn [1] 128/25 I understand [26] 3/2 6/2 7/14 16/12 30/8 62/17 64/3 67/13 105/21 124/18 126/25 129/1 129/12 129/23 134/3 150/21 151/6 152/25 158/7 181/6	
hope [2] 4/3 63/12 hoped [1] 191/1 hopefully [1] 103/16 hopeless [3] 49/10 49/18 49/22 hoping [2] 45/5 54/20 horses [1] 182/6 hospitality [3] 3/18 24/18 111/22 hospitals [1] 8/23 hotline [1] 33/2 hours [1] 116/11 house [2] 46/23 65/24 how [61] 6/14 7/20 8/4 8/6 9/8 9/23 15/6 16/20 17/25 18/8 18/9 18/9 18/25 19/2 20/7 24/18 24/19 25/7 25/14 29/10 29/21 30/17 43/23 59/11 60/10 68/10 70/13 72/7 76/20 78/13 79/3 79/6 85/8 85/22 85/23 85/24 101/11 101/23 101/25 106/8 110/16 111/4 152/19 152/23 155/9 156/19 161/23 161/24 163/18 164/3 167/8 168/23 171/16 174/20 175/1 176/17 178/19 179/24 186/9 207/21 208/25 however [4] 126/14 130/25 145/14 186/5 Hub [1] 17/18 huge [12] 12/23 14/21 26/14 32/9 37/2 54/7 73/10 100/4 100/12 120/17 121/22 214/1 Hughes [2] 132/9 132/14 humidity [1] 45/18 hundreds [1] 48/5 husband [1] 40/14 Hutt [2] 125/13 198/17	I	I accept [3] 33/21 164/14 215/4 I agreed [1] 134/12 I allowed [1] 84/20 I also [2] 29/16 37/10 I always [2] 45/21		

<p>I</p> <p>I'm... [31] 90/18 90/23 102/10 108/2 108/19 112/15 115/23 118/3 122/12 123/4 126/4 127/15 130/2 133/9 138/23 141/10 142/21 142/23 155/4 158/4 181/20 184/3 188/17 195/3 196/14 201/7 210/13 212/1 213/15 213/16 215/6</p> <p>I'm afraid [2] 11/25 53/21</p> <p>I'm guessing [2] 49/24 49/25</p> <p>I've [25] 48/7 51/6 58/21 60/11 62/16 83/24 84/21 91/15 101/11 110/2 112/2 112/9 116/1 118/7 120/6 120/10 126/9 134/8 144/12 145/25 156/14 162/7 179/17 196/24 209/7</p> <p>idea [3] 61/19 62/1 74/14</p> <p>ideal [1] 20/21</p> <p>ideas [1] 75/2</p> <p>identifiable [1] 184/12</p> <p>identified [7] 23/3 41/25 42/10 94/20 160/25 174/24 197/22</p> <p>identify [7] 17/16 82/5 154/3 154/24 154/25 215/20 215/25</p> <p>identifying [1] 160/20</p> <p>if [204] 1/12 1/13 1/18 1/21 2/8 2/11 2/23 4/12 5/16 8/15 8/18 8/20 10/15 12/6 15/18 17/16 17/17 20/3 20/9 21/7 23/8 23/23 24/23 28/6 30/4 32/19 32/25 33/7 33/12 33/22 35/2 38/6 40/1 42/2 43/10 44/18 44/20 45/2 45/3 46/2 46/13 47/3 49/6 50/25 52/1 52/5 52/21 53/10 54/8 54/12 54/22 55/12 55/16 55/17 56/4 56/6 56/12 58/17 63/15 63/19 63/22 66/8 66/16 69/8 69/24 69/24 71/12 71/15 73/16 75/5 75/7 77/1 78/4 84/8 84/10 84/11 87/19 88/3 88/7 88/16 88/17 90/15 90/25 92/4 92/23 93/8 94/14</p>	<p>95/13 97/10 97/13 97/22 100/24 102/19 103/12 103/18 105/8 105/9 108/4 108/6 108/7 110/14 110/15 113/11 113/19 114/6 115/4 117/6 117/14 117/18 119/9 120/13 120/14 124/25 127/2 128/25 131/16 134/10 134/12 134/13 134/16 135/25 138/19 139/17 140/19 141/7 141/8 141/9 141/23 142/13 143/16 144/3 144/5 144/8 144/11 144/11 145/3 145/5 145/19 145/24 145/25 146/4 146/10 149/22 151/7 151/24 151/24 152/3 152/20 153/1 156/24 157/4 157/10 157/17 158/13 162/16 162/17 163/10 165/11 165/14 167/19 167/20 167/25 168/6 169/3 169/13 174/9 175/14 176/8 176/9 177/11 178/12 178/21 179/14 181/9 181/13 181/14 181/22 182/14 182/22 183/7 183/25 184/15 185/15 185/17 186/21 189/5 191/5 191/12 193/13 195/11 195/12 195/22 197/11 197/19 198/5 199/14 200/11 202/5 202/10 203/23 205/14 211/15 214/25 216/24</p> <p>IFS [1] 74/14</p> <p>IIA [3] 171/9 171/11 172/5</p> <p>iii [1] 167/21</p> <p>illness [1] 23/3</p> <p>imagine [2] 74/4 76/17</p> <p>imminent [1] 140/13</p> <p>impact [56] 8/23 23/10 24/8 24/9 28/11 28/13 29/24 31/11 46/2 88/10 89/8 95/15 95/18 95/21 98/20 104/16 140/6 164/18 164/21 165/2 166/5 166/6 166/8 166/17 166/24 167/13 167/16 167/23 168/9 168/13 168/23 171/8 171/11 171/12 171/18 171/23 172/4 172/9 172/23 173/2 173/7 173/12 173/16 173/18 173/21 174/1 174/11 174/12 174/13 174/19 175/2</p>	<p>175/11 197/25 207/15 212/10 212/22</p> <p>impacted [7] 20/8 29/22 95/23 103/25 105/19 119/15 163/19</p> <p>impacts [5] 79/18 80/8 99/1 169/4 215/1</p> <p>imperative [1] 199/20</p> <p>imperfect [1] 182/4</p> <p>implement [5] 138/17 147/16 148/6 148/13 149/5</p> <p>implemented [3] 24/15 29/1 39/3</p> <p>implementing [1] 39/7</p> <p>implications [10] 37/17 79/11 84/7 134/24 190/22 203/8 205/21 206/8 207/17 207/24</p> <p>importance [9] 14/17 76/16 118/1 125/16 165/1 167/10 167/11 213/6 214/2</p> <p>important [14] 6/24 29/9 29/10 32/7 37/21 38/1 78/16 91/7 92/25 95/12 130/16 134/17 141/14 191/2</p> <p>importantly [1] 91/3</p> <p>impose [2] 149/9 199/13</p> <p>imposed [2] 173/5 193/4</p> <p>imposition [1] 172/20</p> <p>impression [2] 61/17 61/23</p> <p>improve [2] 67/23 138/6</p> <p>improved [4] 67/20 68/4 171/22 210/20</p> <p>improvement [2] 67/10 188/22</p> <p>inability [1] 107/1</p> <p>inadequate [2] 57/20 58/1</p> <p>inadvertently [1] 201/9</p> <p>inappropriate [1] 126/8</p> <p>Inaudible [2] 118/21 123/17</p> <p>inbound [1] 40/8</p> <p>incidentally [1] 41/24</p> <p>include [3] 83/4 120/13 120/14</p> <p>included [7] 25/5 60/1 92/1 92/5 95/10 120/23 197/24</p> <p>includes [1] 70/5</p> <p>including [12] 29/25</p>	<p>32/5 43/16 43/17 49/5 53/20 56/10 93/22 124/9 128/1 143/22 211/19</p> <p>income [4] 97/9 104/22 119/10 119/15</p> <p>incomes [1] 119/7</p> <p>inconsistencies [2] 176/12 209/18</p> <p>inconsistency [2] 179/23 195/24</p> <p>incorrect [3] 115/24 190/14 216/22</p> <p>increase [8] 44/8 71/13 101/6 122/20 191/21 192/19 192/20 194/19</p> <p>increased [7] 32/8 70/3 121/19 122/13 137/2 191/7 215/2</p> <p>increasing [5] 172/4 191/9 191/15 192/11 213/7</p> <p>increasingly [1] 163/16</p> <p>incredible [1] 77/22</p> <p>incredibly [1] 29/9</p> <p>indeed [42] 1/4 2/5 2/9 4/21 5/2 5/23 6/1 6/12 7/11 7/13 9/25 17/2 21/24 22/23 26/10 26/19 29/23 34/15 37/7 49/3 58/15 60/9 63/21 66/4 68/6 71/22 76/5 76/22 82/3 84/1 90/1 96/23 99/16 106/17 117/25 123/6 129/9 132/17 146/18 149/19 151/11 216/16</p> <p>independence [1] 130/15</p> <p>independently [2] 129/22 129/24</p> <p>INDEX [1] 217/6</p> <p>indicate [2] 55/17 213/9</p> <p>indicates [1] 17/6</p> <p>indicating [1] 170/11</p> <p>indications [1] 95/4</p> <p>indirect [2] 163/20 164/12</p> <p>individual [12] 85/4 85/24 89/1 125/12 138/15 146/4 149/1 173/13 193/13 196/2 196/10 199/9</p> <p>individual's [1] 185/1</p> <p>individuals [8] 52/9 53/5 87/5 93/24 104/17 181/16 215/10 216/3</p> <p>inequalities [1] 212/8</p> <p>inevitable [1] 141/5</p> <p>inevitably [3] 137/20</p>	<p>188/6 190/10</p> <p>infection [4] 56/9 120/21 146/6 186/8</p> <p>infectious [1] 146/11</p> <p>inflation [2] 74/10 74/11</p> <p>inform [2] 18/1 168/5</p> <p>informal [5] 47/3 113/9 125/3 125/15 214/1</p> <p>information [39] 9/13 15/18 16/2 17/4 17/24 18/1 21/10 23/25 24/2 24/2 38/14 43/15 43/20 47/21 51/4 53/3 54/11 54/14 54/17 56/8 61/15 61/21 62/24 87/10 87/10 87/11 87/13 90/11 90/20 91/13 91/19 157/17 167/22 192/23 200/23 203/4 203/17 205/8 215/3</p> <p>informed [4] 38/15 84/25 175/1 201/1</p> <p>informing [2] 153/9 187/17</p> <p>informs [2] 56/10 168/2</p> <p>infrastructure [2] 101/8 124/10</p> <p>infrastructures [1] 131/16</p> <p>inherently [1] 211/2</p> <p>inherited [1] 66/5</p> <p>initial [2] 39/12 165/4</p> <p>initially [4] 15/13 25/16 64/25 208/14</p> <p>initiated [1] 9/14</p> <p>input [6] 135/24 136/15 137/16 138/5 147/20 158/6</p> <p>inputs [3] 23/20 138/4 212/2</p> <p>INQ [3] 216/22 216/23 216/25</p> <p>INQ000048827 [1] 157/9</p> <p>INQ000048876 [1] 103/14</p> <p>INQ000048968 [1] 155/7</p> <p>INQ000055222 [1] 216/24</p> <p>INQ000066172 [1] 97/1</p> <p>INQ000066501 [1] 28/16</p> <p>INQ000090582 [1] 178/9</p> <p>INQ000104062 [1] 203/22</p> <p>INQ000145221 [1] 191/13</p>
--	---	---	--	--

I	INQ000376661 [1] 44/20	127/20 128/23	introduces [1] 117/10	66/17 69/9 74/20 74/21 74/25 78/5 104/9 131/24 131/25 137/4 185/5 193/2
INQ000145342 [1] 141/8	INQ000388561 [2] 40/4 216/25	interesting [4] 25/16 40/19 110/11 117/12	introduction [2] 35/21 40/21	issuing [1] 195/20
INQ000145526 [1] 202/5	INQ000389184 [3] 123/25 149/23 193/23	interests [1] 144/17	intuitive [2] 179/12 197/5	it [480]
INQ000181739 [1] 55/16	INQUIRY [50] 1/7 1/11 1/15 2/4 2/6 17/6	interfacing [1] 189/8	intuitively [1] 184/20	it's [147] 1/14 3/25
INQ000215411 [1] 182/16	18/13 21/13 37/9 48/4	intergovernmental [2] 66/25 68/1	investment [3] 27/11 65/19 101/7	8/19 10/10 11/7 11/25 12/18 13/3 13/4 13/7 14/14 16/18 20/10 26/21 27/12 27/12 29/9 32/25 33/11 35/2 44/24 49/7 51/22 51/22 52/2 52/7 53/14 54/12 54/15 58/11 59/10 59/16 62/17 62/20 64/5 66/14 66/25 68/6 70/13 70/22 72/7 72/8 74/12 74/13 74/15 76/23 77/3 77/15 77/19 80/17 88/19 92/25 102/10 103/4 103/14 103/15 105/14 108/4 108/6 111/12 113/24 113/24 114/7 114/8 114/18 115/11 115/12 115/13 117/2 117/8 117/8 117/9 123/19 127/16 131/10 134/17 138/22 139/23 140/21 141/8 144/2 145/3 145/18 149/11 149/12 149/14 149/16 149/23 150/24 151/16 155/5 155/7 157/9 158/14 158/14 162/17 163/6 164/11 166/1 167/15 167/20 169/5 169/12 171/4 173/9 173/9 176/8 177/12 178/3 178/9 178/10 179/11 179/23 179/24 180/2 180/9 180/13 181/1 181/12 182/4 182/6 182/17 183/6 183/15 184/1 184/10 185/15 185/17 186/23 187/10 188/18 189/5 190/10 190/14 191/13 192/15 195/2 195/12 197/22 198/13 201/9 201/15 202/5 203/5 203/22 206/24 210/2
INQ000216555 [1] 108/4	49/4 55/20 57/19	Interministerial [1] 68/7	invited [5] 50/16 50/19 51/4 51/6 151/1	item [1] 136/8
INQ000227609 [1] 167/20	58/15 59/16 60/9	internal [1] 195/5	invites [1] 150/25	items [1] 92/2
INQ000282461 [1] 158/14	63/11 63/18 64/2	internally [1] 69/18	inviting [1] 48/14	iteration [2] 164/15 169/23
INQ000303219 [1] 113/19	66/21 74/21 102/14	international [18] 2/17 2/25 3/13 6/16	involve [2] 150/16 165/19	its [10] 10/1 20/13 25/8 26/3 93/16 102/11 103/5 135/15 188/3 212/10
INQ000316403 [2] 52/5 117/8	109/14 112/25 113/3	6/20 14/24 15/1 15/4	involved [14] 6/1 10/4 17/8 80/2 97/23 98/2 98/7 136/11 136/13 137/12 165/22 208/2 211/18 212/13	itself [3] 8/18 53/24 135/9
INQ000327594 [1] 49/7	113/12 114/20 114/24	15/22 16/16 16/17	Irish [2] 7/25 42/1	
INQ000331060 [1] 42/3	115/2 120/10 123/16	17/14 18/12 61/7	is [370]	
INQ000336318 [1] 145/4	123/24 125/10 126/6	61/10 61/18 61/23	iShare [1] 125/19	
INQ000346272 [1] 64/2	126/13 127/11 127/25	192/25	isn't [24] 4/3 4/16 52/18 92/1 102/9 107/3 107/13 107/22 131/12 131/13 140/1 152/1 152/22 158/9 179/16 179/22 179/22 180/2 180/25 182/10 183/8 187/5 203/11 206/24	
INQ000349180 [1] 138/22	128/8 128/11 131/1	internationally [1] 7/2	isolate [5] 119/6 119/9 121/11 192/24 215/11	
INQ000349314 [1] 162/17	131/2 131/8 132/21	interpret [1] 178/22	isolated [2] 6/5 154/10	
INQ000349454 [1] 188/15	151/17 158/13 158/24	interpretation [2] 181/21 182/21	isolating [1] 199/2	
INQ000349494 [1] 165/11	158/25 218/5 218/13	Interpreted [2] 3/6 29/3	isolation [11] 50/10 119/9 119/22 120/2 120/24 122/5 122/13 122/17 146/4 149/2 187/4	
INQ000349505 [1] 169/13	218/21	interrogation [1] 85/19	issue [18] 11/21 31/18 41/3 46/9 46/16 46/22 59/20 89/2 119/4 122/4 167/17 170/4 173/7 185/6 188/24 200/10 201/21 202/4	
INQ000349531 [1] 176/8	Inquiry's [6] 26/21 57/13 74/22 127/1 138/9 187/15	intervening [1] 140/15	issued [3] 138/10 176/6 195/10	
INQ000349548 [1] 188/18	insecure [1] 119/8	intervention [4] 79/7 84/12 84/15 170/21	issues [23] 12/6 14/21 17/11 30/10 33/15 46/19 47/22 56/1 58/24 60/21 66/3	
INQ000349651 [1] 189/5	insight [3] 25/11 25/20 26/9	interventions [7] 39/5 84/11 91/24 92/19 94/3 95/5 209/5		
INQ000349748 [1] 190/14	insight [3] 25/11 25/20 26/9	into [82] 3/19 9/18 12/16 14/4 14/4 20/2 25/11 25/20 26/9 27/11 32/13 34/20 35/5 36/4 36/7 36/9 36/10 36/20 37/24 37/25 38/11 40/2 40/3 41/18 43/2 44/14 46/23 48/24 57/10 58/12 58/23 59/1 60/17 63/20 67/11 68/17 73/3 73/21 75/25 77/2 78/4 82/18 90/24 106/9 106/9 106/12 106/20 108/23 110/6 135/19 135/24 136/15 137/16 147/20 152/21 156/19 157/13 158/6 159/24 160/2 160/7 161/4 161/18 162/2 164/4 171/1 171/15 175/8 186/11 186/17 188/6 188/11 188/12 189/3 189/21 205/18 205/19 207/16 208/22 210/25 211/8 212/25		
INQ000349910 [1] 195/2	insofar [1] 168/2	international [18] 2/17 2/25 3/13 6/16		
INQ000349939 [1] 185/17	instances [3] 62/2 130/1 134/4	6/20 14/24 15/1 15/4		
INQ000350014 [1] 197/11	instead [3] 17/8 66/5 150/5	15/22 16/16 16/17		
INQ000350094 [1] 200/11	instigated [2] 4/25 34/8	17/14 18/12 61/7		
INQ000350632 [1] 205/14	instigate [2] 4/25 34/8	61/10 61/18 61/23		
INQ000362237 [1] 138/13	institute [1] 103/9	192/25		
INQ000371645 [1] 1/23	instituted [2] 9/3 34/3	internationally [1] 7/2		
INQ000376453 [1] 144/3	instructions [1] 138/1	interpret [1] 178/22		
INQ000376650 [1] 11/7	insufficient [1] 38/14	interpretation [2] 181/21 182/21		
	integrated [3] 171/11 171/23 175/2	Interpreted [2] 3/6 29/3		
	intend [1] 141/20	interrogation [1] 85/19		
	intended [4] 146/21 181/19 201/25 210/8	intervening [1] 140/15		
	intense [1] 132/17	intervention [4] 79/7 84/12 84/15 170/21		
	intensity [1] 137/2	interventions [7] 39/5 84/11 91/24 92/19 94/3 95/5 209/5		
	intention [5] 79/12 96/14 97/12 168/11 210/15	into [82] 3/19 9/18 12/16 14/4 14/4 20/2 25/11 25/20 26/9 27/11 32/13 34/20 35/5 36/4 36/7 36/9 36/10 36/20 37/24 37/25 38/11 40/2 40/3 41/18 43/2 44/14 46/23 48/24 57/10 58/12 58/23 59/1 60/17 63/20 67/11 68/17 73/3 73/21 75/25 77/2 78/4 82/18 90/24 106/9 106/9 106/12 106/20 108/23 110/6 135/19 135/24 136/15 137/16 147/20 152/21 156/19 157/13 158/6 159/24 160/2 160/7 161/4 161/18 162/2 164/4 171/1 171/15 175/8 186/11 186/17 188/6 188/11 188/12 189/3 189/21 205/18 205/19 207/16 208/22 210/25 211/8 212/25		
	intentions [1] 98/13	interrogation [1] 85/19		
	intents [1] 130/20	intervening [1] 140/15		
	interacted [1] 132/15	intervention [4] 79/7 84/12 84/15 170/21		
	interaction [1] 45/18	interventions [7] 39/5 84/11 91/24 92/19 94/3 95/5 209/5		
	interactions [2] 47/6 88/8	into [82] 3/19 9/18 12/16 14/4 14/4 20/2 25/11 25/20 26/9 27/11 32/13 34/20 35/5 36/4 36/7 36/9 36/10 36/20 37/24 37/25 38/11 40/2 40/3 41/18 43/2 44/14 46/23 48/24 57/10 58/12 58/23 59/1 60/17 63/20 67/11 68/17 73/3 73/21 75/25 77/2 78/4 82/18 90/24 106/9 106/9 106/12 106/20 108/23 110/6 135/19 135/24 136/15 137/16 147/20 152/21 156/19 157/13 158/6 159/24 160/2 160/7 161/4 161/18 162/2 164/4 171/1 171/15 175/8 186/11 186/17 188/6 188/11 188/12 189/3 189/21 205/18 205/19 207/16 208/22 210/25 211/8 212/25		
	interdependencies [1] 206/2	interrogation [1] 85/19		
	interest [2] 62/19 130/5	intervening [1] 140/15		
	interested [6] 2/22 50/11 66/21 77/23	intervention [4] 79/7 84/12 84/15 170/21		

<p>I iv [1] 167/25</p>	<p>96/11 96/12 96/19 98/1 111/21 174/17 178/7 188/16 188/22 189/4 196/16</p>	<p>202/8 202/24 204/1 204/5 206/10 Justice Cymru [2] 55/9 112/14</p>	<p>54/21 55/19 56/25 59/19 60/2 60/5 60/6 62/19 62/22 72/16 78/18 79/12 80/19 86/6 86/19 87/22 90/15 92/4 92/5 92/20 94/9 98/5 98/7 98/10 98/14 99/3 99/4 100/23 103/1 103/1 103/3 105/11 105/17 105/22 105/24 106/9 109/3 109/5 109/18 109/21 110/14 111/23 112/21 113/11 115/11 121/14 121/15 121/20 121/22 121/24 122/22 127/15 128/5 128/7 128/21 131/11 132/19 133/7 135/19 137/1 137/24 137/25 142/8 142/11 144/23 144/24 148/2 148/21 151/9 151/13 151/15 151/24 151/24 152/14 154/11 154/23 155/21 156/2 157/4 160/10 160/15 161/8 163/18 163/20 164/20 165/5 167/9 168/14 168/22 168/25 169/3 172/4 173/15 174/24 174/24 175/5 175/11 176/3 178/19 180/5 180/8 180/13 180/21 180/22 181/2 182/3 182/12 183/7 184/11 184/19 184/21 186/1 186/16 188/5 188/6 188/10 189/20 189/22 189/25 190/6 190/7 191/2 196/22 197/8 198/13 201/9 202/12 206/6 207/15 208/5 208/8 208/10 209/4 210/11 211/7 211/8 211/23 212/1 212/20 212/22 214/12 215/11</p>	<p>land [1] 74/5 language [26] 2/13 2/17 2/19 3/1 3/4 3/14 6/17 19/12 28/6 28/8 28/12 28/12 28/14 28/19 28/21 28/23 29/11 29/13 29/17 29/22 30/7 40/13 124/11 124/22 139/9 139/22 large [6] 22/20 99/3 99/4 105/15 143/21 200/8 large-scale [2] 99/3 99/4 largely [1] 103/25 larger [2] 173/15 210/22 last [19] 1/24 2/21 22/6 26/22 56/6 85/13 116/18 124/1 158/24 172/6 179/2 179/3 196/4 196/25 197/12 200/12 206/22 211/9 214/17 late [11] 9/6 13/21 31/13 51/4 73/8 73/10 73/17 85/19 103/8 120/4 173/2 later [28] 5/4 5/24 11/16 15/24 16/15 26/13 33/22 36/19 40/1 43/9 43/12 43/12 60/20 60/23 82/24 89/18 91/8 94/23 104/8 124/18 149/4 159/17 164/2 178/17 196/16 208/2 208/2 208/5 lateral [1] 44/15 latest [4] 4/6 87/8 139/1 145/17 latter [2] 122/11 211/6 latterly [1] 64/17 law [11] 124/5 124/5 129/8 131/19 160/3 163/5 180/15 184/14 190/3 196/2 205/22 lawyer [2] 131/22 176/16 lawyers [8] 131/15 131/18 136/14 137/13 138/6 170/11 180/17 211/17 lay [1] 76/23 lead [8] 92/3 123/16 153/6 153/11 153/15 154/22 161/10 218/21 leader [2] 65/23 124/15 leadership [1] 20/12 leading [3] 5/18 120/15 189/3</p>
<p>J Jacobs [5] 118/19 118/20 118/22 123/5 218/17 Jane [3] 125/13 147/13 198/17 Jane Hutt [2] 125/13 198/17 Jane Runeckles [1] 147/13 January [10] 2/23 5/17 5/21 30/23 64/18 66/10 66/20 72/19 201/22 214/5 January 2020 [3] 30/23 66/10 66/20 January 2021 [2] 201/22 214/5 Javid [4] 47/6 47/13 48/12 48/14 Jenkins [1] 40/10 Jeremy [4] 123/14 123/15 123/22 218/19 Jeremy Miles [2] 123/14 123/22 job [11] 96/15 97/8 104/4 107/16 109/11 110/24 111/2 111/5 111/8 111/19 120/15 jobs [1] 116/6 John's [1] 209/17 John's Campaign [1] 209/17 Johnson [2] 49/16 49/17 join [1] 48/14 joint [4] 41/21 138/5 154/14 162/11 journeys [1] 157/3 JRS [3] 97/13 97/15 107/21 JSS [1] 107/25 judge [1] 179/18 judgement [2] 61/22 210/2 judgements [4] 61/20 193/7 196/23 211/21 Julie [1] 57/14 Julie Morgan [1] 57/14 July [13] 40/5 45/14 46/5 50/10 52/12 52/16 91/12 96/10 96/24 120/8 122/3 122/8 190/13 July 2020 [1] 122/3 June [19] 5/1 48/11 49/14 65/1 91/12 94/14 95/3 96/11</p>	<p>June 2014 [1] 65/1 June 2020 [1] 196/16 June 2021 [1] 48/11 June 4th [1] 96/19 just [171] 1/18 1/21 6/25 9/1 9/20 12/1 13/4 13/12 13/25 15/11 16/1 16/8 17/21 18/12 19/20 21/6 21/10 21/13 22/14 23/2 23/23 24/11 25/7 25/22 26/12 27/12 28/6 28/11 28/25 29/3 31/20 33/11 37/6 37/10 38/6 41/1 44/19 45/1 49/5 50/7 51/22 52/1 52/8 52/11 52/14 54/16 55/12 55/17 55/22 56/4 56/6 56/14 57/1 57/18 58/1 58/16 58/21 59/14 60/11 61/20 62/12 62/17 62/20 63/23 65/11 65/20 67/7 69/8 69/14 70/1 70/4 70/9 71/22 72/17 73/16 73/19 74/9 74/12 74/18 75/1 75/8 76/23 77/1 77/17 78/3 80/25 81/1 81/18 82/3 82/3 84/10 84/25 85/16 88/7 92/7 96/23 97/11 98/17 99/5 101/23 102/4 102/22 103/12 110/2 112/15 113/13 113/17 113/21 114/6 115/3 115/15 115/23 116/6 117/1 117/9 117/14 122/11 128/18 131/7 132/25 136/17 138/19 143/18 144/11 145/3 145/24 147/19 147/19 148/8 148/9 148/24 155/6 156/16 158/14 162/8 162/16 163/18 166/14 169/10 170/3 172/25 174/4 178/24 179/23 180/11 181/7 181/10 181/10 181/12 181/15 181/16 182/14 183/5 183/20 186/5 187/9 187/22 188/14 190/13 191/6 191/12 192/6 196/23 197/14 198/4 199/11 200/2 207/6 214/3 216/14 216/24 justice [15] 55/9 112/14 179/19 189/8 194/6 194/10 194/15 196/3 201/22 202/1</p>	<p>justified [2] 39/7 39/19 justify [2] 39/8 131/14</p> <p>K KAS [1] 24/1 KC [2] 209/15 218/24 keen [2] 12/25 29/19 keep [7] 1/13 45/3 63/19 85/17 146/3 149/1 191/4 keeping [2] 20/17 49/3 Ken [1] 96/13 Ken Skates [1] 96/13 Kent [2] 105/17 105/23 kept [3] 15/18 63/12 128/18 key [11] 6/15 7/2 7/23 83/21 120/3 130/9 156/3 168/2 197/20 197/21 215/2 Kilpatrick [2] 158/25 198/16 kind [23] 25/20 27/7 32/1 34/22 41/13 44/12 50/8 51/23 62/8 85/18 89/20 94/9 98/9 98/11 100/5 100/10 110/19 116/24 128/4 137/21 160/21 161/5 179/13 kinds [6] 50/2 51/21 73/15 116/16 206/7 214/12 Kingdom [4] 9/17 42/11 93/5 93/15 Kirsty [5] 52/9 138/10 138/12 138/21 141/5 Kirsty Williams [3] 52/9 138/10 138/21 Kirsty Williams' [2] 138/12 141/5 Kirsty's [1] 139/13 kit [1] 84/25 knew [7] 16/23 22/15 26/4 44/17 48/24 55/23 86/2 knock [1] 95/15 know [168] 3/8 8/9 12/3 14/11 16/2 16/4 16/17 16/19 24/8 24/16 24/18 26/12 26/13 27/2 31/2 36/7 36/17 42/12 43/22 43/23 45/18 45/21 45/25 48/4 48/6 51/21</p>	<p>Labour [3] 65/25 124/15 157/15 lack [7] 17/10 45/19 89/3 150/14 159/6 167/16 173/7 Lady [7] 60/24 118/16 175/14 214/17 216/14 216/18 216/20</p>	

L	186/13	70/10 74/19 76/7	107/5 117/18 119/10	56/4 56/6 56/12 57/14
leads [2] 80/3 80/6	legislating [2] 179/8	85/18 100/19 100/20	172/19	83/23 91/25 102/19
leaflet [1] 215/23	203/9	110/13 142/12 161/15	live [2] 12/22 211/2	106/9 113/13 121/14
learn [9] 15/19 15/20	legislation [25]	166/6 167/13 169/3	lived [1] 14/5	138/19 140/19 141/7
15/23 18/9 19/5 59/23	116/14 130/10 130/11	171/19 171/24 173/22	lives [8] 29/9 116/16	145/3 145/5 149/22
60/3 211/11 213/1	132/3 136/16 144/12	173/25 175/8 191/23	177/9 180/22 183/13	151/8 152/5 157/10
learned [4] 60/19	147/3 147/4 148/21	193/5 193/11 193/21	195/19 196/15 211/3	160/12 160/16 162/4
174/7 210/21 211/13	149/12 149/18 150/5	194/12 197/14 201/8	living [2] 101/20	162/16 162/17 164/16
learning [11] 2/13	150/17 151/3 151/3	levels [4] 56/8 186/9	185/7	165/9 165/11 165/14
19/14 19/18 29/13	151/7 151/11 151/14	190/24 214/21	Llanelli [1] 34/17	166/21 167/19 167/21
34/20 50/25 58/10	152/15 152/22 162/22	levied [1] 193/19	loads [1] 10/23	167/25 168/11 169/13
61/7 61/9 138/11	183/7 189/1 205/25	liaised [1] 131/5	local [30] 11/17 34/5	170/6 176/8 176/9
210/16	206/1	libertarian [1] 193/2	34/16 34/22 34/24	177/11 182/14 184/1
learnt [6] 50/20 59/13	legislative [9] 129/5	lies [1] 49/20	64/17 66/6 95/10	185/11 185/15 185/17
60/4 60/9 60/12 61/15	132/8 132/9 132/10	life [5] 17/18 83/18	95/14 96/17 97/14	189/1 193/22 195/8
least [8] 13/18 76/3	132/14 136/6 144/1	157/5 179/9 180/11	105/10 105/15 131/19	195/11 195/22 197/11
85/11 98/9 110/8	144/19 150/11	Lifelong [1] 2/13	142/4 142/8 143/3	197/19 198/5 200/11
150/16 180/17 202/20	legislature [3]	lifting [1] 207/25	173/4 173/5 173/10	202/10 203/23 204/11
leave [2] 53/15	114/18 115/4 115/13	light [9] 126/25 128/7	173/25 177/9 177/16	205/14
181/16	legitimate [2] 116/24	128/17 168/13 170/14	178/19 178/20 179/25	looked [10] 93/8
leaving [2] 153/22	204/7	175/8 187/12 193/2	179/25 181/14 215/13	121/15 121/16 148/24
206/14	legitimises [1] 196/2	210/16	215/24	169/11 174/19 179/17
led [10] 17/13 25/4	leisure [1] 188/12	like [31] 3/4 19/18	Local' [1] 177/8	186/5 197/13 204/25
38/4 66/25 175/5	length [3] 104/9	21/8 23/16 23/22	localised [2] 26/9	looking [36] 2/23
197/16 198/21 199/5	104/9 104/23	36/23 45/17 49/5	35/8	13/3 14/13 16/22
208/23 209/25	Lentle [12] 125/13	58/16 68/16 77/25	locally [2] 179/4	16/22 22/10 22/11
Lee [2] 52/10 117/10	131/6 131/20 132/7	81/20 88/3 90/15	179/5	22/11 22/11 24/11
Lee Waters [2] 52/10	132/16 136/21 136/25	92/21 114/24 127/2	lock [2] 146/8 149/3	30/21 33/23 35/6 36/1
117/10	137/14 143/25 144/10	131/16 134/17 139/6	lockdown [34] 5/18	49/14 52/12 58/15
legal [89] 11/17	145/7 162/16	139/8 139/17 140/13	8/18 8/22 9/1 9/2 9/18	61/12 69/1 78/14
11/23 12/12 12/15	Lentle's [1] 144/22	141/9 156/24 157/5	9/24 15/25 19/16	118/12 120/18 120/19
13/1 13/7 13/8 21/3	Lesley [2] 52/10	160/12 169/3 177/3	20/16 22/16 33/25	123/2 138/14 138/23
44/10 127/23 127/23	117/19	183/23 185/4	34/23 36/7 36/10	148/9 149/23 152/14
129/2 129/3 129/6	Lesley Griffiths [1]	liked [1] 20/22	36/13 92/24 97/4	159/5 163/18 183/21
130/5 130/8 130/12	52/10	likely [3] 74/20	98/25 99/11 120/14	186/23 191/14 195/3
130/21 130/22 131/7	less [3] 74/3 109/16	144/14 187/10	121/21 145/2 145/10	200/12
131/8 131/21 131/24	159/15	limb [1] 83/18	147/16 148/6 148/11	looks [2] 141/8 183/1
131/25 132/24 133/18	lesson [2] 60/3	limit [9] 45/4 46/13	148/13 149/6 149/9	Lord [3] 203/19
133/22 134/1 134/15	211/12	101/6 144/1 148/12	149/17 159/24 164/13	204/22 205/12
134/16 134/19 134/23	lessons [16] 15/20	192/1 192/3 192/5	188/21	Lord Chancellor [3]
135/4 135/7 135/12	53/16 58/10 59/13	192/5	lockdowns [5] 96/17	203/19 204/22 205/12
135/12 135/15 135/21	59/24 60/4 60/9 60/12	limitat [1] 186/14	97/14 163/19 163/21	lose [2] 28/1 45/4
136/14 140/1 140/9	60/19 113/16 116/18	limitations [8] 16/20	173/10	losses [1] 120/15
140/11 140/16 140/18	174/7 210/16 210/21	20/6 20/14 21/3 85/3	locked [1] 10/6	lost [3] 58/14 58/20
141/25 142/6 142/16	211/11 213/1	107/25 108/12 216/9	locking [5] 37/15	59/8
143/14 143/15 145/1	let [6] 96/12 107/6	limited [5] 27/19	37/15 37/24 37/25	lot [18] 3/15 3/19 8/8
145/10 147/11 147/18	112/20 115/3 143/18	94/22 150/25 167/22	99/1	15/13 33/11 48/22
147/21 147/22 149/8	216/15	205/22	logic [1] 178/21	50/2 59/15 60/20 62/9
150/5 151/8 158/21	Let's [2] 190/17	limiting [6] 37/12	London [3] 51/11	62/19 91/21 95/25
160/2 160/7 161/20	199/6	37/19 46/8 144/6	51/12 92/3	101/1 116/13 118/4
161/22 162/1 162/14	letter [32] 41/21	182/12 182/13	lone [1] 51/14	167/5 178/4
162/15 162/25 162/25	43/13 55/13 57/15	limits [2] 73/21	long [7] 4/9 36/13	lots [5] 4/9 9/12
164/3 164/9 164/14	88/11 89/4 89/6 90/16	101/16	43/23 63/13 141/9	25/23 53/9 53/9
164/17 165/7 167/19	90/18 91/3 96/25	line [6] 33/17 74/10	181/8 182/12	loud [1] 45/17
168/18 169/23 169/25	97/25 106/16 106/17	74/11 145/20 145/21	Long Covid [1] 4/9	loved [3] 58/14 58/20
170/6 170/17 170/19	107/23 108/1 108/3	180/16	long-standing [1]	59/8
175/1 176/15 185/12	108/6 149/10 187/22	lines [4] 117/9	181/8	low [3] 34/9 185/8
186/22 187/4 194/10	188/1 188/14 188/16	178/17 182/18 184/4	longer [12] 20/25	194/11
200/4 201/1 201/3	188/19 189/16 190/13	link [3] 19/12 23/11	26/23 34/15 39/24	lower [4] 75/22 119/7
legally [1] 185/8	203/21 204/3 204/6	160/6	104/15 105/11 161/1	119/15 197/14
legislate [3] 177/18	205/5 206/4 206/9	list [5] 40/25 43/1	161/7 168/3 168/18	
184/16 186/4	letters [3] 58/6 96/24	56/4 112/6 160/22	211/2 212/25	M
legislated [2] 186/12	194/7	listen [1] 134/12	look [62] 12/25 23/23	MA [3] 159/14 193/24
	level [26] 10/25 17/4	little [6] 5/5 84/7	40/2 43/4 53/2 55/22	200/24

M	169/16 171/7 191/17 208/8 211/22	48/11 48/16 48/17 49/10 49/21	178/20 181/3	30/6 30/14 30/21 30/23 31/2 31/3 31/6 31/11 31/15 31/17 31/21 31/23 31/24 32/5 32/8 32/11 32/15 32/20 33/1 33/2 33/5 33/6 33/15 33/16 37/17 37/23
made [40] 7/14 13/24 14/12 20/20 24/16 28/17 33/6 41/7 43/19 44/4 44/6 44/10 45/20 48/3 59/10 59/17 64/4 71/9 73/8 85/1 85/24 87/4 92/5 96/1 96/2 110/5 116/15 145/6 149/14 150/1 156/9 160/5 169/8 170/9 190/16 199/5 203/15 207/13 213/8 213/11	manage [5] 38/1 71/20 73/17 86/8 206/19 managed [1] 60/10 management [3] 59/17 65/18 121/18 manager [1] 52/22 managing [2] 9/8 66/22 mandatory [3] 133/6 133/10 139/8 manually [1] 127/7 many [14] 3/8 4/1 8/24 44/6 52/18 59/5 86/15 133/8 137/25 154/8 155/16 175/20 209/4 215/20 mapping [1] 160/12 March [50] 1/1 5/17 6/15 7/13 7/15 8/4 8/9 8/21 10/15 10/20 11/4 12/10 12/18 13/18 13/20 13/23 36/8 80/11 88/7 88/11 88/20 89/5 89/11 91/7 91/12 92/8 92/10 135/25 137/3 138/9 138/21 139/1 140/4 140/7 140/8 140/23 141/1 142/10 143/1 143/20 144/2 144/25 148/7 148/10 148/11 148/24 150/7 195/10 205/13 217/5 March 2020 [1] 135/25 marginalised [1] 209/2 Mark [6] 11/6 11/8 12/5 45/3 65/8 124/14 Mark Drakeford [2] 65/8 124/14 Market [1] 157/15 marshall [1] 161/25 marshalling [1] 212/2 Mary [1] 63/17 masks [6] 117/10 117/12 118/7 118/8 118/10 118/14 mass [13] 143/15 143/16 144/1 144/6 144/13 144/16 148/10 148/13 148/15 148/19 161/23 195/18 195/20 massive [1] 41/1 massively [1] 26/24 material [5] 49/14 49/23 128/21 131/3 176/11 materiality [1] 133/19 Matt [7] 47/5 47/12	Matt Hancock [7] 47/5 47/12 48/11 48/16 48/17 49/10 49/21 matter [13] 13/14 18/16 115/13 116/22 116/22 130/14 186/25 193/14 195/19 196/15 203/15 205/11 210/2 matters [10] 43/17 44/19 78/18 134/24 140/3 140/23 144/14 148/1 162/24 204/5 may [83] 1/4 2/8 2/11 2/18 3/23 4/12 5/8 5/16 8/18 12/6 14/8 16/24 20/3 24/23 27/6 28/6 28/8 30/4 30/5 30/23 33/16 33/22 37/10 38/6 40/1 44/18 45/2 47/3 49/6 50/5 50/5 52/1 53/24 55/10 58/12 60/5 60/21 63/9 64/19 66/5 66/8 66/10 66/20 69/8 69/24 75/5 77/1 78/4 91/12 94/14 94/14 94/16 95/2 102/22 103/18 107/5 115/4 124/21 124/25 127/25 136/1 143/16 165/10 165/23 166/4 166/15 167/20 169/7 171/3 172/3 176/6 176/23 176/24 177/2 177/6 182/7 187/21 188/1 188/2 188/14 193/24 209/19 213/20 May 2020 [1] 209/19 May 2021 [4] 2/18 58/12 60/5 66/5 May/June [1] 94/14 maybe [3] 118/25 134/10 208/23 me [42] 1/19 4/3 7/24 20/1 37/21 38/1 41/10 50/7 51/15 61/3 63/23 67/13 87/17 96/12 107/6 114/19 116/20 117/12 118/2 126/2 140/25 143/18 144/11 147/1 152/23 154/3 154/12 154/22 169/24 170/2 170/5 173/18 176/21 179/12 181/10 188/19 189/17 192/18 201/14 205/24 211/19 213/2 mean [16] 19/21 20/24 23/23 45/13 48/17 62/15 73/9 77/9 83/15 132/17 134/7 153/18 168/5 177/19	means [4] 69/19 74/2 200/5 216/2 meant [7] 26/15 43/1 86/17 177/16 179/5 207/21 208/4 measure [1] 175/10 measurements [1] 183/19 measures [8] 19/16 35/10 35/20 40/8 88/24 88/25 89/14 94/22 mechanism [3] 73/16 102/16 156/20 media [6] 50/20 51/1 77/23 178/5 190/1 202/20 medical [8] 5/12 18/6 19/22 20/4 24/3 34/12 62/10 170/10 medium [2] 207/16 212/24 meet [7] 68/13 85/9 131/23 132/18 192/12 192/12 216/9 meeting [30] 7/5 11/16 21/1 40/7 41/12 43/7 50/13 51/7 51/8 67/14 67/16 68/10 80/17 84/5 85/10 103/10 103/12 104/10 105/1 105/2 107/9 145/8 148/1 153/4 155/11 158/1 159/11 160/13 161/2 213/21 meetings [29] 4/22 5/9 15/5 15/7 17/4 42/25 50/16 51/3 51/5 51/13 67/7 67/8 67/21 67/21 67/25 78/11 91/16 94/6 94/16 98/13 129/12 132/2 136/25 154/23 156/10 160/10 161/16 207/23 208/23 member [12] 4/15 47/10 55/11 56/16 116/5 116/12 116/25 118/2 124/8 124/20 129/11 154/18 members [10] 53/22 54/13 58/15 78/8 116/7 116/7 117/23 187/17 214/10 214/11 membership [1] 81/12 memorandum [1] 133/23 memory [8] 139/17 140/14 171/19 172/12 173/23 189/16 194/17 199/1 mental [28] 2/19 3/22	mention [2] 17/2 66/18 mentioned [9] 19/11 32/15 44/19 61/5 61/8 82/3 197/3 214/4 214/13 mentioning [1] 211/5 merited [1] 193/21 message [12] 10/16 10/20 10/21 11/5 13/20 14/14 42/1 45/1 46/7 48/15 188/3 188/5 messages [24] 48/5 49/15 52/6 62/14 62/19 113/7 114/21 114/25 115/21 125/4 125/9 125/17 126/8 127/8 127/9 127/10 127/11 127/14 127/21 127/21 128/2 128/15 128/16 211/7 messaging [4] 113/10 126/2 177/15 188/23 met [8] 57/10 67/12 67/20 68/13 85/13 105/4 205/9 207/2 method [1] 17/19 methods [6] 25/1 49/2 125/3 125/16 174/15 205/22 metre [4] 177/17 184/3 184/10 185/1 Mick [1] 114/10 microphone [5] 1/16 63/20 118/21 118/22 123/17 mid [5] 39/2 39/12 39/22 66/11 140/4 mid-February [1] 66/11 mid-March [1] 140/4 mid-September [3] 39/2 39/12 39/22 middle [1] 8/21 might [18] 14/10 16/9 45/5 46/2 82/20 95/9 98/9 98/10 120/13 127/20 128/23 130/2 154/25 160/20 160/22 178/20 183/23 186/9 migration [1] 186/10 mile [4] 177/4 178/6 214/3 214/12 miles [28] 123/14

M	200/15 201/19 203/20 204/9 205/11 209/16 213/16	mitigated [1] 95/2 mitigating [2] 168/11 214/19	152/15 154/4 155/18 157/17 157/22 165/6 166/24 168/25 173/9 173/21 174/23 174/25 175/9 175/11 177/23 178/1 178/12 183/6 183/7 197/5 197/7 203/16 209/2 210/7 210/19 211/4 211/8 213/14	158/15 159/2 159/3 162/13 Mr Straw [2] 209/10 216/12 Ms [26] 1/3 40/10 53/14 55/5 55/6 55/8 61/1 61/6 63/8 63/10 105/25 112/5 112/11 112/13 118/18 119/4 119/21 121/8 123/6 140/4 140/20 188/18 190/15 218/7 218/11 218/15
miles... [27] 123/15 123/22 123/23 128/25 153/1 162/4 175/13 176/1 177/21 178/15 178/24 179/15 182/1 182/8 182/8 182/10 183/1 183/9 183/9 183/9 206/23 209/7 214/7 216/13 216/15 216/17 218/19	Minister Morgan [1] 1/4 minister's [8] 10/3 136/6 142/17 161/3 178/14 190/2 192/21 206/4 ministerial [41] 2/21 3/3 4/23 10/17 15/4 30/6 30/12 57/6 64/23 65/12 78/12 83/15 84/2 84/2 84/17 126/15 129/20 130/1 130/19 132/22 133/2 133/7 133/19 133/23 138/3 141/7 142/13 142/18 142/19 153/11 153/15 160/15 166/14 170/22 170/24 191/12 198/13 199/22 201/2 202/3 205/1	mix [1] 42/6 mixing [1] 38/19 Mm [2] 4/24 11/3 Mm-hm [1] 11/3 Mm-hmm [1] 4/24 mobile [4] 125/8 125/8 125/21 128/2 model [2] 18/20 197/4 modelling [5] 22/22 24/5 79/17 79/20 106/4 module [5] 64/16 123/16 151/18 179/17 218/22 Module 2 [2] 151/18 179/17 moment [17] 1/22 19/20 27/17 28/25 59/4 67/7 71/23 73/19 80/25 81/18 98/1 139/13 156/14 164/17 169/11 175/14 189/3	Morgan [12] 1/4 1/6 1/9 54/21 55/8 57/14 61/4 113/12 113/14 125/14 216/21 218/3 morning [4] 1/4 5/4 55/8 216/22 most [12] 38/1 39/3 43/25 131/22 132/17 132/17 132/19 184/5 184/11 201/13 212/9 212/15 mostly [1] 114/9 mother [1] 214/6 motorway [1] 189/24 motorways [1] 189/24 move [11] 5/15 24/23 30/4 47/2 65/13 80/9 94/14 117/2 169/2 172/10 190/17 moved [2] 60/13 148/1 movement [2] 146/10 193/4 moves [1] 50/20 moving [14] 10/15 94/15 97/4 102/4 103/7 140/3 140/23 156/2 156/6 158/5 172/17 197/4 206/22 213/20	Ms Braverman [2] 188/18 190/15 Ms Cecil [3] 1/3 61/6 63/8 Ms Cecil's [1] 105/25 Ms Evans [6] 53/14 112/13 119/4 119/21 121/8 123/6 Ms Heaven [2] 55/5 61/1 Ms Jenkins [1] 40/10 Ms Williams [1] 140/4 Ms Williams' [1] 140/20 much [45] 3/14 7/21 10/2 15/9 16/20 18/23 25/14 25/19 27/10 34/21 35/3 54/25 60/24 63/4 64/14 67/16 67/20 70/13 70/13 74/25 75/22 95/4 98/4 111/4 118/16 120/6 123/4 123/6 135/11 163/1 163/19 163/24 165/6 175/11 177/13 180/25 182/16 196/5 209/13 212/19 212/21 216/2 216/11 216/16 216/18
million [12] 4/4 27/3 29/19 32/13 73/7 73/25 74/6 76/2 101/11 101/14 101/14 120/20 millions [1] 29/12 mind [6] 57/4 59/9 83/12 101/6 148/8 154/2 mindful [1] 194/20 mindset [1] 42/18 minimise [3] 189/23 190/11 199/20 minimum [2] 104/12 105/7 minister [125] 1/4 2/13 2/16 2/18 2/25 3/5 3/22 3/23 4/2 5/3 5/7 5/12 6/16 11/5 12/9 12/10 13/2 14/18 14/20 15/1 15/6 21/2 30/9 30/17 34/16 40/6 41/20 41/21 41/22 42/2 43/7 48/12 49/12 49/16 49/19 51/1 51/18 54/19 54/21 56/24 57/7 57/10 58/12 59/19 59/23 63/15 64/1 64/15 64/16 64/17 64/21 65/6 65/8 66/15 74/18 78/8 78/23 80/10 81/13 81/24 84/6 84/11 84/22 92/10 92/17 93/11 102/13 104/21 106/14 108/7 109/13 110/22 122/18 124/15 124/17 124/19 124/21 125/11 128/13 129/10 129/13 129/15 129/16 132/12 133/14 133/16 136/22 136/22 138/10 139/12 142/22 143/2 143/12 144/23 144/25 145/9 147/9 153/6 153/8 153/13 153/20 154/3 154/6 154/12 158/7 159/14 160/5 160/10 160/14 178/5 185/10 185/10 185/11 192/14 193/25 193/25 194/9 200/9	ministers [51] 47/11 47/13 48/13 54/13 67/4 78/7 78/15 85/4 86/12 86/14 87/5 87/12 112/20 115/14 125/11 126/12 131/1 131/17 132/24 134/5 138/15 142/5 144/16 144/23 145/1 145/10 145/15 146/2 146/16 146/17 147/16 148/3 150/8 151/18 151/18 152/8 152/16 153/10 153/25 154/8 161/25 163/13 165/13 167/6 170/19 171/2 185/19 195/5 198/22 199/4 213/21 ministers' [2] 155/2 162/20 minority [2] 32/6 209/3 minutes [11] 51/5 56/19 93/19 94/5 95/7 104/10 115/21 153/4 153/7 156/14 156/15 mis [1] 204/16 mis-charging [1] 204/16 mischarging [1] 204/24 misleading [1] 114/21 missed [1] 7/5 mistake [1] 146/25 mistakes [3] 59/11 59/16 190/15 mitigate [3] 14/8 24/21 215/1	Monday [3] 38/25 148/17 149/19 money [14] 29/6 70/5 70/15 71/16 72/8 73/10 75/11 76/13 83/4 85/17 110/23 111/4 111/14 122/24 monitor [5] 26/6 27/10 153/3 156/13 156/17 monitoring [3] 27/3 27/8 65/18 month [1] 5/24 monthly [1] 68/15 months [11] 40/6 68/14 68/15 100/25 120/2 121/9 135/20 184/18 203/14 211/10 212/12 moral [4] 45/4 45/8 46/7 46/11 more [84] 2/21 5/3 7/8 8/25 10/2 11/22 12/3 18/14 22/4 25/25 26/5 28/2 29/16 29/24 31/7 31/25 33/6 36/8 37/21 38/3 39/4 39/16 42/20 44/11 47/14 50/4 51/10 51/12 53/12 67/16 67/20 68/2 68/2 68/3 74/25 86/22 100/13 102/10 102/24 105/18 106/10 109/8 110/9 111/6 111/7 113/17 114/1 117/2 117/14 118/13 121/12 135/20 139/8 149/12 151/13 152/1	move [11] 5/15 24/23 30/4 47/2 65/13 80/9 94/14 117/2 169/2 172/10 190/17 moved [2] 60/13 148/1 movement [2] 146/10 193/4 moves [1] 50/20 moving [14] 10/15 94/15 97/4 102/4 103/7 140/3 140/23 156/2 156/6 158/5 172/17 197/4 206/22 213/20 Mr [32] 114/14 118/19 118/20 118/22 123/5 123/15 123/19 123/23 128/11 128/25 153/1 158/15 159/2 159/3 162/4 162/13 175/13 176/1 182/8 206/23 209/7 209/10 209/15 211/5 216/12 216/13 216/15 216/17 217/1 218/17 218/19 218/24 Mr Gething [2] 114/14 128/11 Mr Jacobs [2] 118/22 123/5 Mr Miles [11] 123/23 128/25 153/1 162/4 175/13 176/1 182/8 206/23 209/7 216/13 216/17 Mr Poole [1] 211/5 Mr Smithson [4]	Mr Straw [2] 209/10 216/12 Ms [26] 1/3 40/10 53/14 55/5 55/6 55/8 61/1 61/6 63/8 63/10 105/25 112/5 112/11 112/13 118/18 119/4 119/21 121/8 123/6 140/4 140/20 188/18 190/15 218/7 218/11 218/15 Ms Braverman [2] 188/18 190/15 Ms Cecil [3] 1/3 61/6 63/8 Ms Cecil's [1] 105/25 Ms Evans [6] 53/14 112/13 119/4 119/21 121/8 123/6 Ms Heaven [2] 55/5 61/1 Ms Jenkins [1] 40/10 Ms Williams [1] 140/4 Ms Williams' [1] 140/20 much [45] 3/14 7/21 10/2 15/9 16/20 18/23 25/14 25/19 27/10 34/21 35/3 54/25 60/24 63/4 64/14 67/16 67/20 70/13 70/13 74/25 75/22 95/4 98/4 111/4 118/16 120/6 123/4 123/6 135/11 163/1 163/19 163/24 165/6 175/11 177/13 180/25 182/16 196/5 209/13 212/19 212/21 216/2 216/11 216/16 216/18 muddled [1] 107/6 multiple [2] 60/1 60/16 music [8] 45/17 192/22 193/9 199/1 199/7 199/16 199/24 200/22 must [6] 38/23 49/24 49/25 60/5 60/7 165/12 my [98] 1/9 3/11 3/16 3/19 4/11 6/25 8/7 16/25 18/4 19/5 21/19 21/24 24/17 30/1 40/13 40/14 40/17 44/4 47/20 50/3 50/6 55/17 56/16 58/2 60/24 62/5 63/1 65/15 66/15 67/13 83/15 83/24 86/7 87/17 90/18 92/18 95/7

M	59/7 63/23 76/11 82/21 82/25 85/18 89/11 90/4 90/25 96/17 100/5 104/14 110/19 120/13 121/24 139/24 143/18 145/14 153/7 160/25 162/10 162/21 163/13 166/16 168/10 169/6 172/10 173/2 177/15 177/16 178/25 180/8 187/21 194/12 200/2 207/4 207/9	165/9 166/2 169/3 169/23 170/23 171/2 171/3 172/7 177/4 177/11 189/16 199/11 200/20 202/19 210/18 next week [1] 105/4 NHS [8] 4/6 22/12 24/6 26/25 27/16 30/11 88/25 89/16 NHS delivery [1] 30/11 Nicola [1] 12/4 Nicola Sturgeon [1] 12/4 nightclub [2] 46/17 46/18 nightclubs [8] 44/14 44/18 44/22 45/3 45/7 45/15 46/10 46/15 ninth [1] 162/18 no [48] 7/10 16/4 26/23 31/1 41/13 42/23 45/13 46/11 47/20 48/3 48/21 55/18 57/24 58/22 63/1 63/14 81/12 81/23 84/20 85/6 89/17 102/16 109/5 112/2 114/22 115/12 119/10 140/24 141/25 146/25 147/17 156/24 158/20 164/20 166/4 171/12 171/21 181/23 182/24 183/15 188/25 197/18 198/17 205/17 207/9 213/12 214/13 216/11 nobody [1] 3/18 non [4] 23/3 202/14 213/22 214/22 non-Covid [1] 23/3 non-custodial [1] 202/14 non-disabled [1] 214/22 non-shielding [1] 213/22 none [3] 167/9 167/12 208/16 nonetheless [2] 98/8 104/17 nor [1] 140/1 norm [1] 195/25 normal [8] 58/5 71/19 73/21 74/6 76/9 86/6 100/4 169/1 normally [2] 71/7 86/5 Northern [3] 21/16 42/1 169/17 Northern Ireland [2] 21/16 169/17 Northern Irish [1] 42/1	not [172] 1/18 6/1 6/9 7/22 8/22 10/4 12/15 12/19 12/21 13/3 13/10 13/23 14/1 14/3 16/3 16/18 17/3 27/2 27/9 30/24 32/4 33/16 35/10 36/5 36/18 36/18 36/25 37/14 37/14 38/9 39/10 40/16 41/13 43/20 47/14 50/19 50/22 52/7 52/7 53/5 53/25 54/1 54/8 54/13 54/15 55/23 57/1 57/14 57/16 58/16 59/14 61/12 63/22 73/15 74/12 74/15 77/18 78/3 79/18 84/14 93/1 99/5 100/7 102/8 102/8 102/21 103/1 107/16 107/21 108/21 109/3 111/12 112/20 114/2 114/3 115/11 115/13 115/19 118/21 120/23 121/12 123/19 125/7 125/23 126/1 126/4 126/7 126/13 126/22 127/24 128/5 128/12 129/10 133/8 134/7 136/11 138/15 138/16 139/25 141/15 141/20 142/4 142/6 142/9 142/16 142/25 143/11 146/2 146/6 146/7 146/15 146/16 146/22 147/17 147/17 147/22 148/18 149/2 149/3 149/11 149/14 150/2 150/8 150/8 151/19 154/18 155/4 158/18 159/18 159/21 160/23 163/19 166/8 168/7 168/23 169/18 169/23 171/10 172/5 173/3 177/18 177/25 178/15 179/4 179/23 179/25 181/12 181/14 183/18 184/8 184/24 185/8 185/14 186/5 186/12 188/17 190/22 195/3 195/19 196/24 200/15 202/25 203/7 205/2 206/10 211/15 212/1 212/23 213/11 213/15 213/16 216/9 note [15] 1/15 8/22 26/2 63/21 141/15 163/15 166/13 169/24 170/4 170/5 170/14 170/23 171/14 171/18 213/20 notebook [2] 49/5 49/8 notebooks [1] 50/1	noted [3] 94/17 141/12 195/17 notes [4] 48/6 91/15 163/16 169/15 nothing [5] 47/19 76/14 85/7 115/1 115/5 notice [5] 191/8 193/11 193/13 199/16 199/24 notices [7] 194/24 195/9 195/20 197/9 198/8 198/11 198/24 notification [1] 108/18 notion [1] 57/22 notwithstanding [3] 143/13 199/20 200/7 novel [2] 29/14 179/8 novelty [1] 181/1 November [16] 2/12 41/22 41/24 42/11 42/12 43/13 64/3 104/7 107/2 113/1 127/12 186/2 186/7 197/10 197/24 200/13 November 2017 [1] 2/12 November 2020 [3] 127/12 197/10 197/24 now [83] 3/5 6/13 7/16 8/18 14/24 20/3 24/23 27/9 28/3 28/6 33/22 35/6 36/1 40/1 41/18 47/2 48/11 52/1 54/23 56/14 57/13 57/15 58/11 58/13 58/22 59/4 63/4 65/3 68/6 70/3 70/8 78/4 80/9 82/2 88/7 89/2 89/14 92/3 94/14 95/10 103/7 112/9 113/11 123/10 126/21 131/5 135/23 139/23 140/3 145/21 150/14 152/17 152/23 158/11 158/24 159/5 162/13 163/20 164/23 166/15 176/3 176/16 178/3 178/8 184/2 184/16 185/4 186/22 187/13 188/22 191/25 194/10 194/14 195/3 195/17 196/9 202/19 204/3 204/4 205/19 207/6 207/9 213/23 NPI [1] 120/3 NPIs [9] 9/24 22/25 23/6 25/9 34/14 35/7 79/6 79/17 95/21 number [40] 2/3 12/23 14/21 22/21 26/14 32/9 33/8 33/10 49/20 64/22 92/23
my... [61] 102/8 103/1 112/6 112/19 113/7 115/15 116/4 116/11 118/2 118/5 118/6 118/16 122/18 123/4 123/22 125/25 125/25 126/1 126/1 126/2 127/3 127/16 127/17 127/18 127/22 128/9 128/19 129/15 131/23 134/11 135/6 136/23 137/1 137/14 139/19 143/24 146/25 149/7 149/14 150/4 156/22 158/18 158/20 159/5 159/10 160/1 162/10 170/5 170/14 175/14 182/6 193/18 198/13 201/6 205/4 206/22 210/11 214/17 216/14 216/18 216/20 my Lady [4] 60/24 175/14 216/14 216/18 myself [4] 79/21 132/19 142/11 171/16	needed [34] 33/18 34/19 39/2 53/10 54/5 70/14 82/16 83/19 83/21 84/25 85/16 89/1 89/17 100/1 100/14 109/1 155/3 155/20 155/22 160/12 160/16 161/17 161/19 167/2 167/3 169/2 170/8 172/16 184/14 184/18 191/3 207/20 211/24 214/14 needing [4] 119/6 121/10 197/1 209/22 needs [13] 1/15 28/10 64/4 70/19 70/22 71/15 139/22 163/7 166/23 186/25 196/7 215/12 216/1 needs-based [2] 70/22 71/15 negative [3] 71/3 72/11 95/16 negotiate [2] 73/6 73/15 neighbours [1] 8/1 net [1] 127/2 network [1] 157/4 networks [1] 16/25 neutral [1] 84/16 never [2] 150/11 150/12 new [24] 19/4 25/17 27/6 44/24 48/13 48/15 80/17 86/23 104/3 106/18 107/7 107/11 110/18 111/6 111/7 111/14 111/15 124/17 153/5 156/17 174/13 176/20 196/7 196/25 New Year [1] 44/24 New Zealand [1] 19/4 newly [2] 30/5 30/20 next [33] 4/4 21/25 50/11 68/15 68/23 68/25 73/3 73/13 74/2 105/4 116/19 138/8 141/19 142/2 143/16 153/1 156/13 160/18	noted [3] 94/17 141/12 195/17 notes [4] 48/6 91/15 163/16 169/15 nothing [5] 47/19 76/14 85/7 115/1 115/5 notice [5] 191/8 193/11 193/13 199/16 199/24 notices [7] 194/24 195/9 195/20 197/9 198/8 198/11 198/24 notification [1] 108/18 notion [1] 57/22 notwithstanding [3] 143/13 199/20 200/7 novel [2] 29/14 179/8 novelty [1] 181/1 November [16] 2/12 41/22 41/24 42/11 42/12 43/13 64/3 104/7 107/2 113/1 127/12 186/2 186/7 197/10 197/24 200/13 November 2017 [1] 2/12 November 2020 [3] 127/12 197/10 197/24 now [83] 3/5 6/13 7/16 8/18 14/24 20/3 24/23 27/9 28/3 28/6 33/22 35/6 36/1 40/1 41/18 47/2 48/11 52/1 54/23 56/14 57/13 57/15 58/11 58/13 58/22 59/4 63/4 65/3 68/6 70/3 70/8 78/4 80/9 82/2 88/7 89/2 89/14 92/3 94/14 95/10 103/7 112/9 113/11 123/10 126/21 131/5 135/23 139/23 140/3 145/21 150/14 152/17 152/23 158/11 158/24 159/5 162/13 163/20 164/23 166/15 176/3 176/16 178/3 178/8 184/2 184/16 185/4 186/22 187/13 188/22 191/25 194/10 194/14 195/3 195/17 196/9 202/19 204/3 204/4 205/19 207/6 207/9 213/23 NPI [1] 120/3 NPIs [9] 9/24 22/25 23/6 25/9 34/14 35/7 79/6 79/17 95/21 number [40] 2/3 12/23 14/21 22/21 26/14 32/9 33/8 33/10 49/20 64/22 92/23		
N				
name [7] 1/8 1/9 63/16 65/20 123/20 123/22 133/14 namely [1] 132/22 nation [4] 22/10 23/17 36/22 72/3 national [11] 5/18 103/24 104/1 106/8 141/16 143/10 147/16 148/6 149/5 173/19 204/14 nations [4] 17/15 47/2 47/12 51/15 naturally [2] 137/25 181/3 nature [2] 50/5 115/22 navigate [1] 157/19 near [1] 190/6 nearest [1] 8/1 nearly [2] 56/15 179/18 Neath [2] 124/7 124/20 necessarily [6] 16/5 78/1 90/4 179/23 210/5 210/24 necessary [9] 36/13 42/20 44/13 146/5 163/10 165/16 190/19 190/21 207/17 need [47] 10/22 27/25 28/18 28/21 28/23 37/3 39/20 41/19 51/11 54/14				

N	186/22 187/4 187/6 187/7 195/1 213/3 October 2020 [7] 2/16 2/18 30/4 30/22 119/24 185/6 213/3 off [3] 11/25 27/5 93/11 offence [8] 185/20 186/18 191/22 191/23 191/24 192/7 201/8 201/15 offences [13] 181/8 194/2 194/18 198/24 199/3 199/18 201/11 202/14 202/21 203/9 205/23 206/7 206/13 office [10] 7/22 131/12 132/10 132/11 133/6 143/24 147/10 147/14 170/15 192/16 officer [5] 5/13 18/6 24/3 62/10 160/4 officers [2] 181/17 198/2 offices [4] 15/22 17/14 18/20 116/8 official [3] 76/7 100/20 161/15 officials [25] 81/14 91/15 120/19 125/13 126/12 132/23 140/5 140/24 154/13 155/12 161/10 161/23 162/3 168/21 170/15 170/18 171/18 173/1 174/23 195/6 195/7 201/23 201/24 207/23 212/2 often [14] 15/10 20/19 51/13 51/19 54/3 91/14 110/12 133/21 134/7 134/14 178/1 181/1 210/5 215/15 oh [2] 55/18 176/9 okay [7] 29/4 49/1 58/9 108/16 118/15 118/24 212/6 old [2] 209/1 214/6 older [5] 55/14 55/25 57/11 209/20 209/22 Omicron [16] 25/22 25/23 26/13 40/2 41/19 41/23 41/25 42/8 42/9 42/15 43/15 48/25 59/24 60/15 79/13 91/8 omitted [1] 146/22 on [446] once [4] 28/1 72/8 82/14 82/16 one [108] 1/22 6/21 11/25 14/10 18/6 19/20 21/4 21/10 22/6 23/3 23/11 24/11	24/12 24/25 29/11 29/20 37/16 39/14 44/18 44/23 45/7 46/15 46/25 48/15 48/23 50/11 51/8 59/20 59/24 60/12 60/14 64/3 72/9 72/21 73/19 74/24 77/2 78/16 80/22 81/13 81/14 81/18 85/10 90/12 92/23 93/19 94/11 97/11 102/5 103/18 104/8 105/16 110/2 110/5 110/11 113/16 113/16 113/17 113/19 114/1 114/7 117/2 117/7 117/12 117/14 119/19 120/7 120/22 121/2 123/1 127/25 130/9 130/13 132/19 135/3 137/24 154/4 155/10 157/17 157/17 159/11 160/16 161/2 161/4 161/6 161/9 170/3 172/13 174/25 175/1 177/3 180/6 182/6 186/25 191/4 195/6 195/17 196/24 197/5 198/24 198/25 200/7 201/3 207/22 207/25 209/11 214/18 216/14 one day [1] 127/25 one week [1] 110/5 ones [6] 4/25 23/2 58/14 58/20 59/8 201/12 online [6] 29/13 32/3 176/11 177/1 215/2 215/15 only [19] 16/9 55/10 62/12 62/23 71/20 74/18 75/19 76/3 82/16 101/7 101/13 106/12 108/22 112/9 115/20 163/19 168/5 186/2 188/9 ONS [2] 25/18 25/18 onto [3] 40/25 42/23 125/24 onwards [1] 175/9 open [6] 18/8 19/1 22/6 24/19 45/4 121/5 opened [1] 21/17 opening [3] 15/25 24/18 40/20 operate [2] 133/4 152/19 operating [6] 27/17 85/23 93/7 99/2 109/23 118/2 operation [3] 110/4 110/18 213/25 operational [7] 41/14	92/24 110/10 110/16 152/11 196/13 199/20 operations [1] 129/7 opinion [2] 81/18 204/17 opportun [1] 10/12 opportunities [1] 60/22 opportunity [6] 3/7 17/13 41/8 94/23 114/12 122/4 opposed [9] 19/21 37/13 37/20 39/20 45/9 46/8 77/15 114/10 183/9 opt [3] 102/14 102/17 102/20 option [5] 45/6 168/23 205/17 206/15 206/16 optional [1] 184/6 Options [1] 103/15 or [138] 1/13 1/19 4/14 6/1 6/19 7/8 7/19 9/22 9/24 9/25 11/22 12/6 16/6 17/9 18/16 20/20 22/6 23/5 30/14 33/4 33/5 34/2 38/2 39/15 42/21 42/24 45/8 45/9 53/6 55/23 62/22 62/25 63/23 69/19 71/8 71/16 72/11 72/19 73/1 76/3 77/18 78/11 78/14 79/6 79/18 81/2 81/10 81/21 82/14 84/16 84/17 85/21 87/12 91/4 91/23 93/6 95/14 95/21 96/8 96/10 96/15 96/17 97/14 98/3 100/15 101/21 102/17 102/24 104/24 105/19 107/2 110/8 111/6 112/8 112/19 113/17 114/2 115/21 117/25 119/10 120/14 120/23 126/8 127/7 127/21 128/22 128/22 130/4 130/5 132/1 132/19 133/5 133/19 133/23 133/24 142/4 142/19 146/4 146/5 147/20 150/7 150/16 151/22 154/10 154/11 154/21 155/24 156/2 158/20 159/6 159/9 162/21 164/13 164/18 166/23 170/7 170/24 171/14 173/13 173/17 176/20 177/21 183/9 186/10 187/19 190/1 191/24 193/17 195/15 196/20 197/13 199/9 208/23 209/5 209/24	213/25 215/12 216/1 order [14] 82/7 110/20 139/21 149/17 153/22 153/25 167/7 169/25 183/2 189/22 191/3 192/11 214/10 214/15 ordinate [5] 80/12 158/8 159/12 160/3 176/6 ordinating [1] 206/25 ordination [6] 153/2 154/6 155/4 156/16 156/18 157/25 Orford [1] 34/14 organisations [1] 209/12 organisations' [1] 214/18 organising [3] 30/17 192/22 211/3 originally [2] 112/6 159/24 other [58] 2/5 14/21 15/19 17/6 18/9 19/14 19/25 22/9 22/18 23/2 23/4 23/15 23/21 25/23 37/8 37/17 43/17 47/12 47/17 48/9 49/2 49/2 51/19 51/21 52/8 52/9 54/22 56/5 61/12 61/21 62/12 64/23 66/17 69/19 72/14 78/7 79/6 81/13 81/13 86/12 86/14 87/5 88/22 88/25 99/15 118/12 125/12 125/12 135/4 148/5 163/23 168/2 175/3 175/21 180/8 183/20 206/8 207/19 others [12] 21/21 117/25 118/10 141/17 160/11 167/11 173/24 174/23 180/14 192/13 195/16 212/17 others' [1] 158/19 otherwise [2] 105/19 106/21 ought [4] 9/2 34/2 176/20 211/16 our [61] 7/25 7/25 8/15 9/17 11/23 13/3 13/5 14/9 15/21 16/14 17/14 17/18 22/10 22/13 22/13 24/10 24/14 29/9 29/19 29/20 32/11 34/22 40/20 42/15 45/4 50/17 65/23 71/18 73/12 75/19 83/20 83/21 86/6 88/2 90/22 90/25 95/17 100/4 101/6 108/10 110/15
----------	---	--	---	---

O	93/16 153/11 153/14 overcommit [1] 94/21 overridden [1] 204/8 overs [1] 73/21 overseas [3] 7/11 17/24 208/15 oversee [1] 80/12 overseeing [1] 129/6 overview [3] 65/11 94/3 154/13 overwhelming [1] 8/24 owing [2] 94/18 107/17 own [27] 10/1 15/21 50/17 50/18 52/15 52/20 53/6 54/12 78/9 78/17 83/1 84/21 85/5 90/22 102/11 110/15 118/6 135/15 143/8 154/7 154/19 156/22 167/7 178/22 193/18 203/8 209/11 owners [1] 11/21 ownership [3] 156/24 176/14 212/3 Oxford [1] 124/5	page 3 [2] 198/6 202/10 page 4 [3] 145/6 176/9 184/1 page 45 [1] 117/8 page 46 [1] 117/15 page 5 [2] 182/16 199/7 Page 52 [1] 53/14 page 59 [1] 50/12 page 6 [1] 182/22 page 7 [1] 141/10 page 8 [2] 49/7 49/8 pages [2] 24/1 48/5 paid [1] 213/8 painted [1] 195/14 pandemic [90] 2/10 3/11 3/15 3/16 4/3 4/13 9/9 9/23 16/17 18/15 18/17 24/25 27/23 28/22 30/10 30/13 30/15 32/22 33/13 59/12 60/21 60/23 66/23 67/9 67/19 68/5 68/11 68/12 68/19 68/23 70/2 73/4 74/23 74/24 75/3 75/7 76/1 77/12 77/14 77/17 78/4 80/12 80/19 82/15 82/17 84/10 84/12 85/12 86/25 87/3 88/3 88/11 88/13 89/9 90/13 92/11 94/15 95/20 96/23 100/24 101/13 101/18 105/21 119/5 120/3 122/11 126/18 127/7 127/24 128/16 131/9 132/16 133/2 133/3 134/4 135/2 150/18 151/20 151/21 152/7 152/18 158/23 164/18 174/16 187/16 190/18 207/8 212/8 212/10 212/12 panic' [1] 42/6 paper [15] 67/14 84/22 103/12 106/5 153/9 156/1 156/11 156/12 166/1 169/12 174/18 195/17 207/2 207/4 207/6 papers [8] 22/21 45/5 81/4 132/2 165/7 170/24 171/6 172/3 paperwork [1] 15/10 paragraph [62] 8/20 20/9 64/5 75/8 77/3 112/16 113/4 125/5 127/5 129/17 136/2 138/14 139/3 139/24 140/21 141/10 141/19 141/23 142/2 142/2 142/14 143/17 149/23	158/15 162/19 167/16 169/6 171/4 172/24 174/5 176/5 177/5 177/12 182/17 182/23 184/2 185/18 186/24 189/6 191/5 191/14 191/19 193/23 195/13 195/23 196/4 197/20 199/8 199/11 199/11 199/14 200/21 202/11 202/19 202/19 203/23 204/11 205/15 206/4 212/7 213/3 213/20 paragraph 10 [3] 113/4 158/15 202/19 paragraph 102 [1] 139/24 paragraph 108 [1] 140/21 paragraph 115 [1] 149/23 paragraph 12 [1] 197/20 paragraph 13 [1] 186/24 paragraph 154 [1] 213/20 paragraph 161 [1] 167/16 paragraph 177 [1] 169/6 paragraph 178 [1] 171/4 paragraph 181 [1] 176/5 paragraph 192 [1] 191/5 paragraph 193 [1] 193/23 paragraph 196 [1] 177/12 paragraph 20 [1] 199/8 paragraph 21 [1] 199/11 paragraph 232 [1] 64/5 paragraph 234 [2] 212/7 213/3 paragraph 243 [1] 172/24 paragraph 25 [2] 125/5 127/5 paragraph 32 [1] 141/10 paragraph 338 [1] 174/5 paragraph 37 [1] 141/23 paragraph 38 [1] 142/2 paragraph 40 [2] 112/16 142/14 paragraph 5 [1]	185/18 paragraph 51 [1] 75/8 paragraph 53 [1] 77/3 paragraph 6 [1] 20/9 paragraph 65 [1] 8/20 paragraph 83 [1] 136/2 paragraph 9 [2] 129/17 202/11 paragraph 94 [1] 143/17 paragraph 99 [1] 138/14 parallel [1] 106/21 parity [2] 67/17 192/10 park [1] 11/21 parks [1] 149/21 Parliamentary [1] 137/22 part [17] 2/7 4/11 22/22 29/9 55/12 73/16 73/23 78/18 94/1 107/15 117/15 122/11 134/25 137/1 143/10 162/21 166/14 participants [2] 112/3 209/9 participate [1] 135/17 participated [1] 129/12 particular [29] 15/24 20/13 40/18 43/25 51/7 56/23 70/15 78/23 94/7 100/8 102/9 119/8 119/14 122/15 151/17 154/17 154/20 154/22 158/15 169/4 177/3 178/3 192/9 196/15 198/4 209/19 215/6 215/11 216/1 particularly [15] 12/25 18/7 20/15 24/17 31/12 31/23 62/2 79/16 119/14 128/20 137/23 188/25 198/19 201/16 209/22 parties [1] 46/23 partners [2] 24/10 24/10 parts [9] 34/5 34/8 95/14 95/14 105/15 162/12 170/12 177/20 182/1 pass [2] 62/5 188/10 passage [2] 140/20 177/12 passed [4] 61/15 62/4 144/13 147/8
----------	---	---	--	---

P	178/21 179/6 179/13 179/21 180/7 181/1 181/10 181/13 183/12 184/5 184/14 184/19 184/22 186/16 188/11 189/25 191/3 197/6 201/11 208/21 209/1 209/1 209/22 209/23 210/2 210/6 211/2 211/9 213/23 213/24 214/20 214/21 214/22 215/2 215/25 216/8 people's [14] 31/11 31/23 37/16 37/23 57/9 57/9 57/11 116/16 180/22 184/13 209/12 209/20 214/18 215/24 per [2] 4/8 208/14 perception [1] 45/8 performance [2] 30/11 156/21 performed [1] 131/8 perhaps [28] 10/13 21/24 23/25 32/4 62/3 69/24 74/18 76/4 108/3 125/2 126/16 127/24 134/9 134/11 137/20 141/19 144/10 145/24 157/8 158/13 164/15 167/19 184/11 188/5 189/5 199/6 201/12 211/6 period [32] 2/24 5/17 5/18 6/19 6/19 8/3 30/4 30/22 30/25 33/24 37/22 44/25 64/18 66/10 66/20 68/11 90/12 94/14 106/22 128/13 132/18 133/20 135/7 135/8 135/25 137/1 137/5 140/15 154/24 161/13 161/14 210/21 periodic [1] 132/3 permanent [2] 145/9 160/11 permanent secretary [2] 145/9 160/11 permit [2] 125/7 194/2 person [5] 81/14 111/17 177/9 211/13 211/20 personal [9] 113/6 115/22 125/8 125/21 125/25 126/2 127/17 127/21 128/2 personalities [1] 102/2 personally [2] 8/5 130/8 perspective [7] 77/20 78/24 78/24	102/9 121/4 121/18 166/25 persuade [1] 137/7 phone [14] 113/6 125/9 125/22 126/1 126/1 126/1 126/2 127/17 127/17 127/18 127/19 128/3 128/20 128/22 phones [2] 125/8 125/24 physical [3] 177/17 184/10 185/1 physically [1] 22/17 pick [3] 77/1 182/17 211/12 picking [7] 16/1 17/21 18/12 23/1 96/23 127/19 184/3 picture [5] 12/2 78/14 87/8 157/7 195/14 piece [4] 89/6 158/16 178/3 183/25 pieces [2] 148/8 176/13 pillars [2] 87/24 88/3 pilot [1] 40/21 place [35] 3/12 6/21 8/11 11/9 12/9 15/3 35/9 43/10 44/12 45/24 46/6 60/20 67/8 94/4 94/16 96/2 103/8 103/10 104/15 108/14 111/2 142/7 142/12 151/5 159/9 159/17 160/8 165/10 166/17 171/3 171/22 186/2 188/13 195/18 202/1 placed [2] 213/16 215/6 places [1] 25/10 plain [1] 13/15 plainly [1] 26/20 plan [9] 28/22 56/13 57/16 57/23 57/23 100/1 155/1 213/4 213/4 planning [5] 19/1 88/10 90/19 140/6 208/7 plans [1] 6/3 plants [1] 119/17 platforms [1] 113/10 play [2] 46/6 129/4 played [2] 2/9 132/25 playing [1] 134/25 please [69] 1/5 1/18 1/22 10/15 11/11 20/4 20/9 20/9 28/11 40/4 42/3 44/18 45/2 49/6 50/12 53/14 55/16 58/10 63/9 63/15 63/19 63/23 65/22	66/18 68/25 75/8 88/7 103/7 103/12 108/4 110/3 112/15 113/18 114/6 117/2 117/7 117/8 117/14 123/14 123/21 138/19 140/19 141/8 141/19 142/14 149/22 157/11 162/17 165/11 165/14 167/25 169/13 176/2 176/8 176/9 182/22 184/4 191/12 195/11 195/22 196/4 197/19 200/11 202/10 202/19 203/24 204/12 205/15 217/2 plenary [1] 112/20 plucked [1] 71/23 plus [1] 71/15 pm [6] 123/11 123/13 145/17 175/23 175/25 217/3 point [93] 6/3 6/10 7/7 7/10 7/17 7/20 8/14 8/23 12/14 12/24 13/9 14/19 16/3 18/16 18/17 23/1 29/16 33/7 34/7 34/21 35/7 37/3 38/15 42/14 42/18 43/15 46/5 50/11 53/22 56/6 57/1 74/15 80/17 80/17 80/18 84/9 85/10 94/24 95/24 96/6 96/13 100/8 105/14 106/23 108/19 110/14 122/7 122/21 122/24 127/8 136/12 136/15 136/19 136/23 137/12 140/4 147/2 148/25 149/10 149/15 150/14 159/19 161/16 164/25 166/4 166/18 167/14 169/2 169/22 172/12 172/18 174/2 174/19 175/7 176/21 183/25 184/15 185/2 186/18 186/23 187/6 192/6 197/6 201/6 203/14 204/12 205/7 208/10 211/8 211/10 213/9 213/13 215/4 points [6] 82/14 161/8 161/17 183/5 189/24 210/12 police [21] 181/17 189/10 190/5 190/15 191/15 192/13 192/16 194/5 194/7 196/13 196/21 198/15 199/12 199/17 202/22 204/13 204/14 204/14 206/12 206/19 214/5 policies [3] 125/15 126/17 207/25	policing [2] 189/18 192/16 policy [24] 65/19 71/25 72/10 80/3 80/6 102/5 125/23 132/24 138/1 138/2 138/3 138/18 139/7 143/5 153/9 154/7 154/19 163/4 171/19 176/6 182/15 207/16 208/17 208/18 political [4] 50/3 50/5 50/7 74/15 polling [1] 117/10 Poole [2] 211/5 217/1 poorer [1] 119/16 pop [1] 113/21 popular [1] 103/2 population [5] 25/12 29/18 70/18 70/20 71/15 porters [1] 119/17 portfolio [15] 3/14 16/18 16/21 64/22 66/18 66/19 66/22 78/9 78/14 78/17 79/5 154/5 154/19 155/2 173/21 portfolios [4] 30/18 83/17 154/11 171/20 posed [2] 41/23 45/10 position [22] 10/18 12/14 28/7 30/6 51/15 51/24 59/21 75/6 91/4 92/8 95/1 137/8 140/14 145/22 159/21 159/23 167/2 172/1 176/15 176/17 176/18 183/14 positive [5] 71/3 71/22 72/6 180/16 182/13 positively [1] 141/17 possibilities [1] 24/21 possibility [2] 46/21 129/18 possible [9] 6/4 11/22 69/10 83/21 152/13 172/11 177/18 183/6 190/6 post [10] 28/22 30/12 30/14 30/20 55/10 58/12 60/5 67/11 124/17 124/18 post-pandemic [1] 28/22 postdated [1] 7/16 potential [8] 28/4 45/16 60/13 88/10 93/20 194/19 200/7 211/12 potentially [9] 45/19
----------	---	---	--	---

P	88/23 140/24 153/22 207/10	107/11 108/14 127/6 142/10 192/7	productive [2] 17/23 47/8	protection [5] 34/16 43/23 130/4 137/10 149/13
potentially... [8] 47/21 79/13 86/19 93/9 106/21 109/2 111/24 146/11	prepared [3] 136/9 171/6 202/3	priorities [5] 89/7 132/6 180/6 207/20 208/25	professional [3] 2/9 124/4 130/22	protective [1] 17/16
pounds [1] 82/18	preparedness [1] 6/3	prioritisation [11] 80/23 82/2 82/13 82/22 82/25 83/11 83/16 84/4 84/14 94/19 95/9	professionals [1] 53/20	protest [3] 196/9 196/10 196/21
power [15] 12/16 36/16 93/7 138/16 140/18 141/20 141/21 142/3 142/4 142/5 142/5 142/25 143/12 151/15 185/19	preparing [1] 50/3	prioritise [3] 83/1 84/20 84/23	programme [4] 40/21 83/21 132/9 136/6	protests [3] 195/18 196/15 196/16
press [8] 9/13 109/6 112/21 139/14 178/6 178/8 180/25 190/2	present [2] 167/22 170/18	private [7] 64/7 64/9 124/6 126/1 127/19 143/24 170/15	programmes [4] 85/15 85/17 102/17 123/3	proved [1] 18/7
pressing [1] 91/21	presented [9] 8/14 80/7 155/10 155/15 155/17 155/25 156/8 158/1 171/2	private office [1] 170/15	progress [4] 67/18 154/15 171/16 216/7	provide [19] 3/7 27/15 59/7 64/15 81/6 87/20 87/22 110/15 131/2 132/24 142/16 151/12 153/10 153/14 154/13 160/25 191/1 202/22 215/8
pressure [4] 166/10 181/7 194/17 202/16	pressurised [2] 166/12 166/12	privilege [1] 130/23	prompted [3] 40/12 171/15 188/1	provided [20] 2/6 48/4 49/4 64/1 72/3 91/9 91/24 93/15 112/25 114/24 115/17 123/24 130/21 141/3 158/13 165/7 165/8 172/22 177/25 179/3
pressures [9] 120/12 120/14 120/17 121/8 121/12 121/20 121/21 172/2 208/19	presumably [4] 11/1 134/4 147/8 201/1	privileged [1] 131/2	proper [2] 23/5 99/24	provides [1] 157/12
pretty [7] 74/6 86/13 101/15 162/25 164/8 179/15 192/19	prevalence [3] 185/7 185/9 186/11	probably [16] 8/16 12/18 23/14 39/23 40/16 44/23 48/21 54/2 68/13 88/16 131/10 133/5 133/10 161/12 174/17 176/23	properly [3] 44/3 205/18 213/11	providing [9] 84/24 111/13 129/3 131/22 135/6 156/20 160/7 177/9 204/8
prevalence [3] 185/7 185/9 186/11	prevent [2] 12/16 91/4	problem [7] 53/11 54/12 154/25 179/16 179/21 179/22 187/15	proportionality [1] 173/11	provision [3] 139/10 154/9 187/2
prevented [3] 185/8 185/25 213/24	preventing [1] 99/2	problematic [1] 47/19	proportionate [11] 146/5 163/11 165/20 168/13 168/17 174/1 190/25 193/6 200/7 206/6 208/7	provisions [5] 137/9 137/9 146/19 177/7 177/24
previously [3] 45/13 101/5 116/17	previous [3] 45/14 126/5 129/16	problems [5] 33/17 41/14 110/10 169/21 209/24	proportionately [2] 21/4 34/10	public [66] 8/13 8/24 22/18 23/13 25/6 27/16 36/6 50/22 51/16 51/23 53/2 53/3 53/4 53/23 54/14 64/6 64/9 70/10 70/25 77/23 79/8 88/1 117/23 127/19 128/5 130/5 131/22 143/21 145/12 146/3 146/19 148/2 148/12 148/21 148/25 149/11 149/18 150/1 150/4 151/7 151/10 157/3 157/16 158/22 162/21 162/24 163/2 163/7 163/10 163/22 165/20 165/24 177/15 178/5 184/8 187/16 187/18 188/3 188/23 190/22 193/2 193/20 196/6 196/6 196/11 214/11
priest [1] 40/15	primary [5] 25/1 37/18 46/9 69/11 163/22	procedure [10] 194/6 194/10 194/11 194/16 201/22 202/2 202/8 202/24 204/1 206/11	proposal [1] 80/7	publication [1] 208/24
primary [5] 25/1 37/18 46/9 69/11 163/22	Prime [7] 41/22 49/12 49/16 49/19 102/13 109/13 185/10	proceed [1] 134/2	proposals [7] 81/5 84/6 86/16 94/6 103/11 167/23 187/11	publish [2] 56/13 172/15
principal [3] 129/2 158/18 194/3	Prime Minister [7] 41/22 49/12 49/16 49/19 102/13 109/13 185/10	proceedings [7] 130/5 130/9 193/12 194/2 194/4 194/21 201/5	proposed [4] 67/15 130/11 177/14 177/22	published [10] 28/15 49/15 52/22 55/14 55/19 56/8 164/2 164/7 173/23 176/11
principle [12] 35/5 38/7 38/9 70/10 103/9 104/18 105/3 106/1 106/3 106/14 110/5 200/16	principles [2] 83/14 135/22	proceedings' [1] 194/5	pros [1] 205/19	
print [1] 136/19	prior [14] 9/14 13/18 24/3 30/15 35/3 35/17 64/21 104/25 107/9	process [23] 86/3 86/7 132/22 132/22 133/1 135/1 158/6 158/20 159/6 159/9 159/19 169/8 169/10 169/16 169/20 170/12 171/7 171/25 173/20 201/18 206/19 208/1 212/3	prosecute [2] 194/5 206/13	
		processing [1] 119/17	prosecuted [1] 195/15	
		procure [1] 17/20	prosecuting [1] 205/23	
		procurement [1] 17/5	prosecution [3] 199/19 200/1 200/5	
		produced [3] 133/3 173/3 193/4	prosecutions [2] 201/25 206/14	
		producing [1] 57/23	prospect [2] 94/17 153/22	
		product [7] 137/16 147/21 147/22 155/12 156/24 195/4 199/3	protect [3] 83/21 110/21 118/10	
			protected [6] 164/19 166/7 168/15 171/9 197/25 198/8	
			protecting [2] 24/20 129/5	

P	112/8 112/11 116/24 118/20 123/16 124/25 125/2 162/10 178/6 185/5 193/7 209/7 209/8 209/11 209/15 211/24 216/11 216/13 216/21 218/5 218/7 218/9 218/13 218/15 218/17 218/21 218/24	re [20] 15/25 18/8 21/17 22/6 80/23 82/2 82/13 82/22 82/25 83/1 83/11 83/16 84/4 84/14 84/20 84/23 94/19 95/9 99/6 124/20	25/12 26/24 27/1 27/1 27/7 27/14 29/14 32/7 36/11 36/17 42/13 46/1 46/18 47/20 53/8 62/17 62/20 68/1 70/17 72/15 76/23 76/23 78/21 80/20 83/20 85/14 87/15 87/22 89/20 91/19 92/22 92/25 94/1 95/11 96/6 98/11 98/21 100/13 100/21 102/9 110/11 116/5 118/8 118/12 121/24 131/14 166/19 208/21	206/5 recognising [4] 169/2 180/9 184/10 213/7 recognition [8] 172/16 177/22 199/8 201/4 211/21 212/21 213/13 214/14 recollect [1] 142/21 recollection [5] 2/1 64/12 96/9 135/8 143/6 recommence [1] 40/23 recommendation [1] 199/15 recommendations [5] 28/17 29/1 29/14 30/1 30/2 recommended [1] 199/23 recommending [2] 11/9 148/18 reconcile [2] 180/5 181/25 reconciliation [3] 91/22 100/11 100/20 reconciliations [1] 100/25 reconstruction [1] 213/4 record [11] 37/6 49/3 104/11 114/24 125/18 126/20 155/7 155/13 188/15 190/13 216/15 record-keeping [1] 49/3 recorded [2] 126/20 153/8 recording [2] 1/17 63/21 records [2] 118/5 128/6 recouped [1] 75/12 recovery [11] 28/22 94/21 161/8 163/24 168/4 206/23 206/25 207/4 207/7 207/10 212/20 recreation [1] 116/22 recruiting [1] 111/23 red [6] 40/25 43/1 155/24 156/2 156/2 180/16 red-line [1] 180/16 reduce [1] 146/5 reduced [3] 71/18 112/9 190/16 reducing [1] 95/13 reductions [1] 73/1 refer [10] 9/20 17/5 43/14 95/9 97/25 130/13 156/17 164/17 190/12 194/23
publishing [1] 172/8 pubs [2] 46/17 148/5 pull [1] 158/14 pulled [3] 1/22 109/2 169/6 purpose [13] 81/3 87/15 92/15 92/22 105/2 106/6 139/19 143/9 146/21 186/17 194/8 209/4 210/16 purposes [3] 130/20 130/25 188/12 push [2] 84/7 105/20 put [21] 13/16 27/10 32/12 32/12 34/24 37/6 40/25 42/25 44/7 44/11 60/20 68/2 84/15 114/24 117/25 156/23 166/17 171/6 171/22 184/7 213/18 putting [7] 34/24 34/25 73/19 78/13 108/19 115/16 183/14	quick [2] 55/22 145/18 quicker [1] 196/17 quickly [8] 26/15 42/13 86/14 137/18 140/4 140/24 160/24 167/3 quite [25] 6/24 7/20 15/8 15/10 25/17 27/9 27/12 29/14 36/5 40/17 42/14 44/17 51/13 54/3 62/22 65/3 77/12 85/12 91/14 141/9 160/23 175/17 176/21 178/4 210/12 quote [2] 178/18 187/22 quoting [1] 130/3	re-elected [1] 124/20 re-employ [1] 99/6 re-open [2] 18/8 22/6 re-opened [1] 21/17 re-opening [1] 15/25 re-prioritisation [11] 80/23 82/2 82/13 82/22 82/25 83/11 83/16 84/4 84/14 94/19 95/9 re-prioritise [3] 83/1 84/20 84/23 reach [4] 189/20 193/8 196/23 203/17 reached [2] 32/4 172/17 reaching [1] 32/3 read [56] 50/15 54/3 54/5 64/7 103/25 108/7 108/11 112/16 112/21 113/4 113/8 114/15 116/19 117/13 117/17 117/20 127/20 138/17 139/1 139/4 140/25 141/17 141/21 142/6 142/16 143/19 146/19 162/23 167/24 168/3 169/19 172/25 176/14 178/13 178/16 178/19 182/20 182/24 184/6 185/20 187/1 187/24 188/20 189/8 191/6 191/10 191/16 195/15 196/1 196/7 200/2 200/23 202/13 202/17 202/22 205/18 readily [1] 211/15 reading [1] 11/5 readings [1] 26/18 reads [1] 64/6 ready [3] 27/21 41/13 44/16 real [15] 7/8 25/13 25/19 27/4 33/9 41/8 86/18 90/12 95/17 101/21 116/16 128/11 190/6 192/13 196/22 realignment [1] 83/6 realised [2] 7/20 9/6 Realistically [1] 206/15 reality [3] 116/15 166/21 184/10 reallocation [1] 28/19 really [53] 10/22 13/14 14/6 20/1 24/14	reams [2] 48/5 62/16 reason [7] 48/23 75/1 85/13 101/21 109/7 128/18 215/17 reasonable [9] 110/3 110/8 182/20 184/20 186/1 196/1 198/3 202/17 205/9 reasonably [1] 204/10 reasons [4] 39/25 162/20 166/9 169/18 Rebecca [8] 5/3 52/6 63/9 63/10 63/17 117/16 117/20 218/11 Rebecca Evans [4] 5/3 52/6 63/9 117/16 Rebecca Mary [1] 63/17 recall [13] 42/7 56/21 58/4 58/8 89/2 91/9 93/10 122/12 136/8 159/25 166/16 186/18 200/9 receipt [2] 39/21 111/5 receive [7] 11/16 17/23 71/14 90/8 97/15 97/24 100/17 received [6] 1/16 39/1 90/9 90/11 188/16 205/4 receives [1] 71/2 receiving [3] 23/18 23/22 118/6 recent [2] 2/21 189/7 recently [2] 74/16 120/18 recession [1] 97/6 recognise [12] 8/13 8/15 40/22 41/5 78/1 89/8 92/25 103/3 159/7 164/12 191/18 198/10 recognised [8] 20/14 167/10 168/19 172/10 211/6 213/11 215/5 215/12 recognises [2] 77/21	
Q	quadrilateral [5] 67/4 67/12 67/19 88/17 98/13 quadrilaterals [1] 67/8 quality [2] 67/21 67/25 quarantine [1] 43/2 quarter [2] 82/18 100/4 quarters [1] 31/16 quell [1] 205/6 queries [3] 52/17 116/12 116/17 query [1] 113/24 question [42] 16/10 17/25 21/25 30/16 44/3 44/4 49/21 56/16 58/2 59/14 62/12 62/18 77/12 105/25 107/4 109/4 110/2 112/5 114/1 115/15 116/19 118/23 125/20 127/15 144/19 145/10 146/22 149/7 152/4 152/9 152/20 159/5 168/23 173/11 173/25 178/11 190/18 205/4 213/17 214/17 214/18 215/4 questions [50] 1/7 3/9 12/6 15/12 47/20 52/8 53/9 53/10 54/18 54/19 55/6 59/6 61/2 61/3 61/6 63/11 66/16 86/18 93/11 94/9 108/24 112/2 112/3	R radio [1] 215/22 RAG [1] 155/23 rail [1] 157/4 raise [4] 51/1 55/25 70/6 144/19 raised [19] 51/3 56/5 57/3 57/5 58/22 69/18 70/7 88/14 88/18 88/19 102/23 143/20 167/18 170/2 188/24 203/25 204/7 210/17 213/23 raising [3] 56/3 198/15 211/23 ramp [1] 41/13 ramp-up [1] 41/13 range [4] 66/3 66/21 83/25 156/21 ranged [1] 155/14 rapid [2] 186/8 194/23 rapidity [1] 190/9 rapidly [7] 137/3 138/2 140/14 156/4 172/11 179/7 191/9 rated [1] 155/23 rates [1] 34/9 rather [13] 38/5 38/19 42/20 61/13 75/22 80/6 81/24 98/14 101/8 116/22 118/10 155/5 200/6 rationale [6] 122/14 143/11 163/7 182/5 192/4 194/14		

<p>R</p> <p>reference [10] 12/12 49/22 67/15 86/11 129/23 155/6 162/15 196/15 216/22 216/25</p> <p>referenced [2] 108/10 108/13</p> <p>references [1] 104/3</p> <p>referrals [1] 31/7</p> <p>referred [9] 43/6 49/17 72/19 90/16 129/25 155/11 156/14 178/1 213/3</p> <p>referring [6] 35/20 126/5 149/12 153/8 156/15 212/16</p> <p>refers [2] 145/7 145/12</p> <p>refined [2] 161/21 211/25</p> <p>refinements [1] 169/7</p> <p>reflect [5] 60/6 60/7 104/10 186/20 214/15</p> <p>reflected [4] 58/18 58/24 58/25 99/20</p> <p>reflection [2] 210/22 213/18</p> <p>reflections [1] 174/7</p> <p>reflects [1] 153/5</p> <p>refresh [1] 31/21</p> <p>Reg [2] 158/25 198/16</p> <p>Reg Kilpatrick [2] 158/25 198/16</p> <p>regain [1] 196/6</p> <p>regard [23] 3/4 5/19 8/2 17/22 18/12 19/7 22/20 30/20 34/1 37/18 65/10 65/14 66/8 68/17 75/7 83/11 85/8 88/10 94/17 104/23 126/23 145/23 198/19</p> <p>regarded [2] 126/21 128/4</p> <p>regarding [1] 97/23</p> <p>regardless [1] 102/1</p> <p>regards [1] 134/20</p> <p>regime [3] 175/8 190/23 191/8</p> <p>regional [1] 26/10</p> <p>regret [1] 151/19</p> <p>regular [7] 15/6 15/8 132/3 136/21 136/24 137/14 161/15</p> <p>regularly [3] 91/14 131/24 175/17</p> <p>regulate [1] 144/16</p> <p>regulated [1] 38/20</p> <p>regulation [3] 163/9 184/24 197/4</p> <p>regulations [64] 43/4</p>	<p>52/4 52/4 53/6 54/3 54/4 54/8 116/2 135/10 146/20 149/13 149/25 158/8 158/17 158/22 159/22 160/4 160/9 160/22 161/6 162/2 162/14 162/20 163/6 163/8 164/22 166/2 170/20 173/20 176/1 176/3 177/25 178/21 179/17 179/20 180/10 180/17 180/21 182/19 183/18 184/9 188/13 189/2 189/11 190/20 190/22 192/24 194/3 194/16 196/12 202/1 202/9 203/1 205/3 206/11 207/14 209/21 210/5 211/22 211/23 213/25 214/9 214/10 214/15</p> <p>regulatory [3] 161/24 179/7 210/24</p> <p>reinforcing [3] 13/24 14/12 177/16</p> <p>reinstate [2] 28/18 51/11</p> <p>reintroduced [2] 103/22 103/24</p> <p>relate [1] 50/9</p> <p>related [6] 23/3 67/1 97/18 99/10 101/22 116/18</p> <p>relates [7] 12/8 20/5 50/13 52/3 115/4 115/5 130/1</p> <p>relating [2] 29/16 103/20</p> <p>relation [94] 3/3 5/6 9/21 10/18 11/1 13/1 13/19 15/13 17/4 18/7 18/14 19/1 19/3 20/22 21/6 21/14 22/24 23/21 24/17 25/1 25/9 26/25 28/11 30/13 34/15 35/6 35/8 38/20 39/5 40/5 41/8 41/22 42/7 43/15 45/7 45/10 46/10 47/6 49/13 49/21 52/6 59/21 59/22 60/22 61/10 64/6 65/12 65/12 65/15 74/22 74/24 75/5 75/7 76/1 77/17 79/17 81/2 84/3 85/3 85/22 88/9 88/24 89/2 89/15 90/3 92/15 95/21 96/22 102/6 104/3 108/3 110/2 113/3 115/11 117/4 132/2 132/9 137/5 137/9 137/10 140/11 144/6 146/19 148/14 148/15 148/22 152/6</p>	<p>154/9 156/22 160/1 169/4 171/17 198/23 203/9</p> <p>relations [8] 2/17 2/25 6/17 14/24 15/1 16/18 61/7 68/21</p> <p>relationship [6] 7/24 19/8 67/17 132/6 132/8 198/14</p> <p>relationships [7] 7/2 7/25 18/24 47/8 65/19 69/25 152/11</p> <p>relatively [2] 80/11 92/11</p> <p>relax [3] 26/1 26/4 26/16</p> <p>relaxation [2] 22/25 196/17</p> <p>relaxing [1] 40/8</p> <p>released [1] 142/1</p> <p>releasing [1] 92/18</p> <p>relevance [1] 103/19</p> <p>relevant [9] 47/21 57/9 87/10 126/23 142/5 145/14 147/3 147/24 164/19</p> <p>reliance [2] 184/7 198/2</p> <p>reluctance [1] 27/4</p> <p>rely [1] 101/23</p> <p>remain [1] 104/15</p> <p>remained [1] 197/23</p> <p>remains [2] 52/14 199/9</p> <p>remark [1] 41/16</p> <p>remarks [1] 89/23</p> <p>remedial [1] 89/10</p> <p>remember [10] 18/19 35/14 48/22 49/24 56/19 56/22 118/10 120/18 142/22 170/23</p> <p>remembering [2] 27/13 105/14</p> <p>remind [2] 50/7 115/21</p> <p>reminded [2] 21/2 173/1</p> <p>reminder [1] 118/8</p> <p>removal [2] 199/23 207/14</p> <p>remove [2] 122/16 199/15</p> <p>renamed [1] 124/18</p> <p>rent [2] 52/16 119/11</p> <p>repatriation [1] 15/14</p> <p>repeat [3] 1/19 63/23 107/4</p> <p>repercussions [1] 37/17</p> <p>rephrase [1] 1/19</p> <p>replace [1] 64/9</p> <p>replaced [2] 48/11 199/25</p> <p>replies [2] 3/9 59/6</p>	<p>reply [3] 11/15 52/19 53/17</p> <p>report [6] 28/15 28/17 29/24 131/20 180/14 214/23</p> <p>reporting [1] 202/21</p> <p>reports [3] 11/16 59/1 214/4</p> <p>represent [4] 55/8 65/24 112/13 209/16</p> <p>representatives [1] 51/19</p> <p>represented [2] 51/20 75/19</p> <p>repurpose [1] 85/4</p> <p>repurposed [4] 82/7 82/10 83/24 141/16</p> <p>request [9] 43/6 144/2 145/3 145/6 171/15 194/3 194/15 203/15 205/9</p> <p>requested [6] 14/2 16/2 106/17 144/25 145/17 145/19</p> <p>requesting [1] 13/17</p> <p>requests [3] 66/1 85/24 86/15</p> <p>require [4] 78/19 80/19 89/10 128/1</p> <p>required [11] 87/11 104/12 111/8 111/20 122/10 153/21 153/24 154/5 160/5 162/22 168/25</p> <p>requirement [6] 12/19 13/22 44/10 184/12 187/4 199/25</p> <p>requirements [4] 22/18 22/19 23/13 135/12</p> <p>requires [1] 163/5</p> <p>resembled [1] 18/15</p> <p>reserve [11] 73/24 73/24 74/1 74/5 74/9 82/11 82/19 83/4 84/15 101/10 101/18</p> <p>reserved [5] 16/19 98/6 144/14 146/15 204/5</p> <p>residents [1] 212/14</p> <p>resigned [1] 48/11</p> <p>Resilience [4] 80/4 92/9 92/16 92/18</p> <p>resolve [1] 154/20</p> <p>resource [4] 56/10 93/14 159/16 207/18</p> <p>resources [8] 31/22 31/25 65/18 75/19 87/2 94/23 120/15 166/10</p> <p>respect [10] 23/20 59/17 79/20 129/20 136/18 182/15 187/17 205/2 209/19 214/9</p>	<p>respond [11] 66/1 75/3 87/3 91/6 141/17 150/18 151/20 152/6 166/11 207/19 208/25</p> <p>responded [2] 9/9 205/12</p> <p>Respondents [1] 213/6</p> <p>responding [3] 15/12 116/12 184/23</p> <p>response [52] 12/8 15/4 18/15 20/13 28/20 42/5 57/13 57/15 58/1 58/3 58/6 59/2 59/12 66/23 73/12 75/7 78/5 80/13 80/18 80/20 82/8 82/11 82/19 83/4 88/3 88/23 93/16 94/21 97/25 98/10 107/23 108/5 108/5 108/6 114/17 120/3 134/18 145/16 145/17 147/10 170/21 188/16 188/18 190/12 196/11 205/13 206/6 207/3 208/18 210/24 212/10 212/24</p> <p>responses [2] 84/10 184/19</p> <p>responsibilities [10] 3/3 57/6 65/10 66/6 79/5 138/3 154/7 155/1 155/2 160/6</p> <p>responsibility [13] 3/18 4/11 7/1 9/7 10/3 30/17 65/16 71/18 79/1 122/19 130/18 198/14 211/14</p> <p>responsible [11] 3/13 3/17 6/1 57/1 57/7 77/21 78/17 93/1 122/20 211/20 214/19</p> <p>rest [4] 35/6 70/7 100/6 175/18</p> <p>restaurants [2] 12/11 148/5</p> <p>restrict [3] 144/13 146/10 146/12</p> <p>restricted [1] 186/16</p> <p>restriction [3] 38/4 163/9 165/23</p> <p>restrictions [38] 20/16 20/24 21/15 21/16 22/7 26/2 34/5 42/20 44/9 44/21 103/21 103/24 104/1 104/15 105/15 163/19 164/13 165/3 165/16 165/20 166/7 166/20 166/23 167/8 168/14 173/4 173/5 173/14 175/10 183/15 186/13 186/14 187/14 188/7 190/1 191/9 207/14</p>
--	---	---	--	---

R	16/8 16/16 19/9 19/10 21/18 21/21 22/4 22/10 25/2 25/3 28/5 38/13 47/7 62/11 62/25 63/3 64/10 64/19 64/20 66/6 66/25 67/5 69/6 69/7 69/12 69/13 70/12 70/13 71/11 76/17 80/14 81/7 82/8 84/4 87/1 91/19 92/13 93/17 97/16 98/22 105/6 107/14 107/18 112/10 119/1 119/25 124/23 129/13 130/7 130/19 130/21 130/23 131/3 132/10 134/6 139/18 140/1 143/1 144/12 145/25 147/12 152/22 153/24 157/7 157/23 158/9 166/1 173/8 182/11 182/18 183/10 184/9 187/5 189/21 196/9 196/10 196/21 196/22 201/2 201/18 203/11 203/18 205/24 206/24 210/14 215/13	rose [1] 192/7 rotating [1] 67/17 round [4] 23/7 71/8 78/25 82/22 roundtable [1] 208/14 roundtables [1] 208/14 rugby [2] 8/9 8/10 rule [11] 177/4 177/17 178/1 178/1 178/6 178/15 178/22 179/11 181/18 196/2 214/12 rules [16] 53/23 53/25 54/4 54/5 106/8 113/15 177/10 179/24 181/2 181/20 181/22 183/18 187/18 187/19 187/19 196/18 run [2] 30/22 138/15 run-up [1] 30/22 Runeckles [1] 147/13 running [2] 106/21 131/15 rural [2] 177/21 177/23 rurality [1] 182/25	save [2] 129/19 130/17 saw [4] 31/6 99/10 142/18 172/3 say [114] 3/2 3/25 5/16 10/5 10/17 12/2 20/23 26/10 29/16 29/21 35/2 35/18 38/13 39/21 44/1 45/2 48/9 50/6 50/14 51/13 52/19 54/14 59/6 63/24 67/23 70/5 70/25 71/4 71/24 72/9 75/1 77/4 77/11 77/15 79/5 80/2 81/5 83/15 88/16 88/23 89/9 89/22 92/7 97/5 97/24 100/2 100/6 102/15 102/18 104/17 106/15 113/5 114/15 114/17 114/22 115/12 117/11 121/17 121/19 125/6 125/25 126/12 127/5 128/18 129/17 130/21 132/14 134/21 136/2 136/7 136/12 137/15 139/2 139/23 141/2 142/8 143/11 143/19 143/19 146/9 146/20 149/24 150/3 150/9 151/2 157/18 159/16 164/14 167/15 169/7 171/5 172/21 172/24 174/4 174/7 175/6 177/5 177/13 178/3 180/13 181/11 184/15 187/18 187/22 188/25 189/6 191/5 192/6 193/23 196/23 197/22 203/1 208/11 212/7 saying [16] 10/21 14/14 40/10 48/15 55/24 56/7 61/25 75/11 90/23 115/20 118/4 134/8 143/7 173/6 173/17 201/4 says [21] 108/8 114/14 117/15 138/14 138/24 140/4 140/22 145/20 145/21 158/15 162/13 162/19 168/1 168/6 169/17 176/10 182/10 183/9 184/4 186/24 203/24 scale [5] 99/3 99/4 100/2 141/22 190/7 scenario [1] 145/15 scheme [39] 25/4 26/22 92/12 96/15 96/16 97/8 97/9 102/23 103/2 103/4 103/5 104/3 104/4 104/7 106/17 106/18 107/11 107/13 107/16	107/21 108/14 108/15 108/19 109/7 109/11 110/5 110/15 110/24 110/24 111/2 111/6 111/6 111/7 111/8 111/9 111/15 111/20 119/22 121/1 schemes [18] 93/4 97/7 97/13 97/16 97/18 97/23 98/3 98/3 98/5 98/15 98/17 98/19 98/21 98/23 98/25 106/21 107/7 109/20 school [8] 19/23 32/13 38/21 138/8 140/6 142/3 142/4 142/15 schoolchildren [1] 38/16 schools [16] 32/7 32/9 84/25 138/11 138/15 138/17 139/7 139/9 139/17 139/25 140/8 141/15 141/17 142/25 143/7 143/12 science [5] 25/17 168/7 182/10 182/11 183/8 Sciences [1] 17/18 scientific [15] 20/4 20/14 22/22 23/19 23/24 34/12 35/9 39/21 42/21 45/9 79/9 104/11 158/22 170/10 182/9 scientists [7] 16/7 16/14 16/15 21/9 28/1 28/1 36/14 scope [3] 74/20 103/23 135/20 Scotland [5] 12/5 21/17 41/21 192/1 192/5 Scottish [1] 183/3 screen [7] 1/22 52/13 88/12 98/1 103/16 113/21 113/22 screen's [1] 55/17 scrutinise [1] 114/12 scrutinising [2] 130/6 130/17 scrutiny [3] 77/22 85/18 114/13 second [36] 7/15 13/14 33/24 36/24 47/13 58/10 69/18 96/7 96/17 97/13 112/25 113/2 115/17 116/4 120/13 121/21 129/5 134/25 139/2 157/10 161/14 162/18 165/6 167/1 167/17 170/2 178/10 189/6
	right-hand [1] 182/18 rightly [1] 59/4 rights [2] 174/12 209/17 ringfenced [1] 31/4 rise [1] 186/8 Rishi [1] 88/9 Rishi Sunak [1] 88/9 risk [10] 38/18 46/8 46/25 94/19 95/25 119/15 121/19 146/5 189/23 193/20 risked [1] 184/25 risks [7] 38/16 41/22 45/10 45/14 46/25 193/9 195/24 Robin [1] 42/2 Robin Swann [1] 42/2 Roland [1] 18/13 role [36] 3/11 3/19 4/1 4/2 4/2 4/13 5/7 6/16 14/25 17/8 20/4 30/9 57/10 58/23 65/6 65/10 65/12 65/13 65/15 66/4 66/8 66/14 78/6 92/18 112/19 118/3 124/16 125/1 128/25 129/4 131/8 132/25 134/20 135/6 137/1 156/22 roles [8] 2/9 2/20 2/21 64/22 64/23 78/16 130/9 135/3 rooted [3] 162/21 164/9 212/21	S sad [1] 48/8 Sadly [2] 54/10 54/12 safe [1] 191/4 said [27] 48/10 57/19 58/11 61/8 62/13 73/20 74/14 86/12 105/12 107/24 109/13 112/18 115/22 117/19 118/7 118/8 123/18 146/24 159/5 171/19 180/14 188/18 190/15 195/21 199/12 212/15 216/24 SAIL [1] 24/4 Sajid [4] 47/6 47/13 48/12 48/14 Sajid Javid [4] 47/6 47/13 48/12 48/14 sake [1] 183/20 Salmon [1] 18/13 same [17] 14/22 27/9 36/7 40/9 40/23 51/15 66/9 93/24 106/19 109/21 111/17 141/24 142/13 145/17 168/1 183/25 196/4 samples [1] 25/10 sampling [5] 24/24 24/24 25/7 26/7 26/9 sanction [1] 180/7 sanctions [1] 190/19 sat [2] 155/13 156/17 satisfied [1] 205/5		

S				
<p>second... [8] 191/22 192/7 197/19 200/12 200/21 203/23 204/11 205/15</p> <p>second-class [1] 36/24</p> <p>secondary [2] 163/2 163/25</p> <p>secondly [6] 13/8 13/25 65/13 100/16 165/24 166/13</p> <p>secretariat [1] 67/18</p> <p>secretaries [2] 47/5 73/6</p> <p>secretary [6] 90/3 90/17 101/16 108/9 145/9 160/11</p> <p>Secretary's [1] 76/11</p> <p>section [2] 157/20 174/6</p> <p>sector [7] 32/1 64/6 88/1 94/7 165/24 196/6 213/15</p> <p>sectors [2] 111/18 119/15</p> <p>see [77] 7/17 10/20 11/15 12/12 15/18 15/23 25/23 30/2 40/9 40/16 42/5 42/14 42/21 44/7 47/18 48/10 49/8 49/9 52/11 55/24 56/18 58/5 58/17 73/4 83/23 84/8 87/6 88/11 90/16 91/25 93/8 94/5 95/7 96/12 102/13 103/16 104/2 108/7 114/4 116/5 116/13 117/13 117/18 117/20 120/9 123/25 126/21 133/9 133/10 143/6 144/2 144/3 144/8 145/16 145/19 147/6 147/23 157/13 157/22 165/11 170/16 172/22 173/1 178/8 178/10 188/22 189/5 195/1 198/19 199/7 200/20 202/5 202/6 202/7 203/21 205/14 214/22</p> <p>seeing [2] 14/4 115/1</p> <p>seek [2] 84/17 210/4</p> <p>seeking [5] 139/15 151/11 203/4 210/13 215/8</p> <p>seem [6] 25/18 62/7 77/10 101/20 117/5 168/8</p> <p>seemed [6] 20/17 21/22 101/15 179/12 201/14 205/8</p> <p>seems [6] 13/13</p>	<p>77/12 106/15 181/10 192/17 205/24</p> <p>seen [18] 57/13 91/15 106/10 125/9 125/10 126/9 126/14 133/15 133/17 139/22 142/21 147/19 152/19 153/4 184/6 196/25 197/13 197/15</p> <p>SEISS [2] 97/13 97/15</p> <p>self [18] 31/7 50/10 96/16 97/8 97/19 98/3 119/6 119/9 119/9 119/22 120/2 120/24 121/11 122/5 122/13 122/17 187/4 199/2</p> <p>self-employed [3] 96/16 97/8 98/3</p> <p>self-employment [1] 97/19</p> <p>self-isolate [3] 119/6 119/9 121/11</p> <p>self-isolating [1] 199/2</p> <p>self-isolation [9] 50/10 119/9 119/22 120/2 120/24 122/5 122/13 122/17 187/4</p> <p>self-referrals [1] 31/7</p> <p>send [4] 76/18 115/20 125/9 206/18</p> <p>sending [2] 10/21 14/14</p> <p>Senedd [19] 58/25 60/6 65/23 66/2 74/16 77/21 116/5 116/7 116/12 116/25 118/3 124/7 124/9 124/20 126/1 137/23 143/25 144/13 172/13</p> <p>senior [4] 131/22 147/12 158/11 161/3</p> <p>sense [23] 6/25 15/11 49/25 73/9 94/2 98/4 99/3 118/3 128/6 139/15 139/20 139/21 143/9 143/9 151/9 152/18 155/19 156/5 180/7 180/12 183/21 204/20 204/21</p> <p>sensible [1] 184/21</p> <p>sensitive [2] 127/18 128/21</p> <p>sent [20] 10/16 11/4 42/1 48/14 76/14 96/25 98/1 140/25 142/22 143/4 144/10 145/18 160/14 170/14 171/14 176/21 193/25 200/13 200/13 202/6</p> <p>sentence [3] 116/18 196/25 202/15</p> <p>separate [7] 116/6</p>	<p>116/10 118/3 131/12 134/16 140/19 170/12</p> <p>separately [3] 135/18 167/5 208/1</p> <p>September [8] 34/23 36/2 39/2 39/12 39/22 173/2 173/8 195/10</p> <p>sequence [3] 160/18 161/15 163/15</p> <p>series [3] 44/16 104/21 164/15</p> <p>serious [7] 8/6 8/13 16/24 18/18 42/24 58/21 199/18</p> <p>seriously [7] 14/18 14/20 23/15 24/13 29/15 31/4 31/19</p> <p>seriousness [1] 180/7</p> <p>servant [1] 158/11</p> <p>servants [2] 132/23 161/3</p> <p>served [2] 2/12 23/20</p> <p>service [3] 31/3 89/24 121/7</p> <p>services [32] 3/24 5/8 8/24 30/10 31/6 32/12 40/7 41/12 58/13 88/1 122/19 128/14 131/7 131/8 131/21 134/15 134/19 136/14 140/1 142/6 147/11 147/18 147/21 147/22 157/16 161/22 170/1 170/17 200/4 201/1 201/3 215/3</p> <p>Services' [1] 162/25</p> <p>serving [2] 27/16 54/21</p> <p>session [1] 79/14</p> <p>set [42] 13/10 29/23 45/14 48/15 54/5 54/6 67/14 69/2 74/4 83/14 85/14 89/6 90/20 91/3 91/22 110/9 110/18 137/21 141/4 142/24 151/25 152/10 162/2 163/11 164/4 165/6 166/20 166/23 173/21 179/2 184/19 190/24 198/19 201/8 204/7 207/17 207/22 208/3 208/13 208/24 210/7 216/5</p> <p>set-up [1] 69/2</p> <p>sets [5] 29/25 165/12 197/21 201/25 206/9</p> <p>setting [11] 48/23 50/6 86/5 86/7 87/1 89/7 90/5 91/6 98/2 182/19 192/4</p> <p>settings [1] 18/8</p> <p>settlement [3] 77/13 102/16 129/6</p>	<p>seven [1] 211/10</p> <p>several [3] 3/12 51/3 145/9</p> <p>severity [2] 43/18 191/1</p> <p>Shakespeare [1] 214/23</p> <p>shall [3] 54/25 123/10 175/18</p> <p>Shan [1] 125/14</p> <p>shape [4] 98/14 132/4 138/6 139/20</p> <p>share [6] 70/18 70/21 70/25 71/14 75/20 114/12</p> <p>shared [9] 18/5 67/17 87/7 119/12 119/19 120/10 138/2 157/6 192/2</p> <p>sharing [1] 90/18</p> <p>she [6] 52/13 55/20 57/16 57/19 57/21 189/17</p> <p>she's [5] 55/20 55/24 56/3 56/6 56/12</p> <p>shielded [2] 154/10 157/15</p> <p>shielding [3] 157/18 213/22 215/10</p> <p>shift [1] 215/2</p> <p>shifted [1] 71/17</p> <p>shop [1] 182/2</p> <p>short [18] 14/2 28/17 33/24 37/22 52/24 54/1 54/23 55/3 65/11 71/5 82/7 87/2 92/11 123/12 145/22 156/1 164/6 175/24</p> <p>shortcoming [1] 48/1</p> <p>shortcomings [1] 214/8</p> <p>shortcuts [1] 54/16</p> <p>shortly [1] 53/17</p> <p>should [49] 8/9 8/16 16/13 21/4 23/14 34/8 34/14 35/16 35/19 36/2 36/14 39/23 39/24 40/20 40/25 41/3 41/5 44/12 48/15 56/24 57/3 64/7 70/5 81/19 81/24 83/14 83/16 83/17 89/22 100/2 100/9 100/10 101/22 103/3 105/7 105/9 109/6 114/15 116/21 126/19 130/25 135/10 139/7 141/12 160/23 202/25 205/2 210/18 216/25</p> <p>shouldn't [3] 53/19 143/3 181/11</p> <p>show [2] 53/4 76/20</p> <p>showed [2] 87/23 94/1</p>	<p>shows [3] 53/1 53/5 115/10</p> <p>side [4] 21/8 37/4 182/18 189/24</p> <p>sides [3] 79/19 189/11 190/8</p> <p>sight [3] 25/22 57/8 133/2</p> <p>sighted [3] 17/3 58/2 185/21</p> <p>sign [1] 118/11</p> <p>signal [2] 190/25 206/18</p> <p>signed [6] 1/24 64/2 112/23 123/25 194/8 202/22</p> <p>significance [3] 89/12 133/19 177/14</p> <p>significant [19] 7/18 14/17 23/18 46/14 56/1 74/25 80/19 80/20 89/10 92/4 105/18 105/22 121/6 121/8 153/23 166/19 188/11 202/16 216/7</p> <p>signpost [1] 215/14</p> <p>signposted [1] 174/24</p> <p>signs [1] 189/24</p> <p>similar [7] 23/22 50/9 52/8 141/13 169/16 173/14 174/9</p> <p>similarly [1] 197/12</p> <p>simple [3] 62/18 134/22 156/20</p> <p>simpler [1] 211/7</p> <p>simply [12] 33/5 35/10 54/13 69/10 110/3 111/13 115/19 115/23 133/9 156/23 200/6 205/4</p> <p>since [7] 11/11 11/20 13/17 14/15 53/15 74/1 209/5</p> <p>sing [1] 45/17</p> <p>singing [1] 45/17</p> <p>single [12] 71/8 184/11 194/6 194/10 194/15 201/21 202/1 202/8 202/24 204/1 206/10 211/13</p> <p>Sir [2] 35/15 35/18</p> <p>Sir Patrick Vallance [2] 35/15 35/18</p> <p>site [1] 52/21</p> <p>sites [2] 60/1 60/16</p> <p>sits [1] 132/11</p> <p>situation [15] 16/24 24/6 50/21 54/15 69/2 72/11 73/14 76/17 141/13 180/2 181/11 206/5 210/6 210/20 212/18</p> <p>situations [1] 53/12</p>

S	10/25 14/8 15/12 15/15 15/22 16/15 17/15 17/16 18/23 19/4 19/18 21/25 23/15 26/1 26/2 26/9 26/16 27/1 29/25 31/22 34/24 37/10 40/18 42/14 45/14 54/19 58/21 59/23 62/2 65/3 67/14 73/4 75/2 83/14 84/21 84/23 85/12 85/15 85/21 86/2 86/16 89/14 93/9 94/5 96/8 98/9 105/22 109/21 109/22 111/17 112/2 113/13 114/4 116/1 117/10 120/9 120/18 120/25 121/25 122/4 124/25 125/2 135/23 137/5 137/6 137/8 139/11 151/17 154/5 154/20 160/19 160/21 162/4 162/5 164/16 166/22 174/21 175/4 176/12 176/13 179/14 179/17 179/20 180/23 181/4 181/19 185/4 187/6 190/10 195/21 199/2 199/5 199/18 200/16 201/11 203/14 206/2 208/15 208/15 208/19 208/22 209/1 209/8 212/24 214/15 215/21 215/22 215/23 215/24	176/10 182/6 186/13 188/8 sort [4] 57/2 126/22 168/17 211/18 sort of [2] 126/22 211/18 sorts [2] 98/17 211/21 sought [4] 141/25 185/12 200/9 211/10 sound [1] 139/6 sounds [1] 139/8 source [1] 16/5 sources [4] 17/17 69/1 69/11 87/24 South [1] 42/10 South Africa [1] 42/10 space [2] 10/2 173/24 spanned [1] 64/18 speak [4] 29/17 50/3 54/15 97/7 speakers [1] 29/19 speaking [7] 28/14 66/19 68/10 78/10 170/3 180/4 201/9 speaks [3] 46/7 76/15 104/13 special [2] 81/15 147/12 specific [17] 32/16 32/18 32/24 33/17 56/13 102/5 135/24 151/10 151/13 151/15 152/1 157/19 182/19 182/24 187/19 187/19 214/3 specifically [12] 7/9 7/19 30/8 127/16 132/1 133/1 133/13 133/21 142/23 166/16 169/25 182/11 specificity [1] 179/10 specify [1] 178/25 speed [1] 162/6 spell [1] 163/16 spelled [1] 164/3 spend [2] 72/7 101/9 spending [6] 71/8 71/13 77/7 82/6 82/6 95/11 spent [11] 3/15 3/19 3/21 27/3 54/6 70/14 70/16 70/20 116/11 121/9 179/18 spoken [1] 51/19 sporadic [1] 15/8 sport [2] 53/20 59/1 sporting [1] 143/22 spot [1] 201/13 spotted [1] 217/1 spread [6] 22/11 24/21 39/15 45/16	215/21 216/5 spreadsheet [1] 155/6 spring [4] 37/25 89/5 89/13 89/18 St [5] 6/15 7/2 7/14 10/23 12/22 St David's [3] 6/15 7/2 7/14 St Davids [1] 12/22 stabilised [1] 155/16 staff [5] 94/8 99/6 111/18 111/20 116/9 stage [17] 10/20 37/6 46/10 95/20 99/17 159/8 163/1 164/21 164/25 167/13 169/1 170/22 171/13 173/17 173/22 197/23 207/12 stages [1] 211/6 stakeholder [2] 167/7 167/10 stakeholders [3] 24/15 54/7 209/20 standing [6] 28/4 68/7 68/8 68/17 129/14 181/8 Star [23] 5/2 78/6 80/9 80/23 81/3 81/9 81/10 81/13 81/19 83/12 84/1 85/8 85/9 85/22 86/3 86/11 86/13 86/15 92/21 93/20 94/2 94/5 94/12 Star Chamber [22] 5/2 78/6 80/9 80/23 81/3 81/9 81/10 81/13 81/19 83/12 84/1 85/8 85/9 85/22 86/3 86/11 86/13 86/15 92/21 94/2 94/5 94/12 Star Chambers [1] 93/20 stark [1] 195/14 start [14] 11/20 34/25 38/8 82/17 90/13 93/12 95/16 101/12 106/18 123/20 124/25 135/8 135/25 161/14 start-ups [1] 93/12 started [4] 8/6 139/17 207/7 210/23 starting [4] 29/13 34/24 105/18 138/24 starts [1] 204/12 state [1] 8/2 stated [1] 51/6 statement [88] 1/21 1/24 2/5 6/14 8/19 11/10 13/4 13/16 13/17 13/24 14/2 14/15 17/2 20/5 20/10 24/2 29/24 37/11 37/12 43/14 47/5	56/23 59/7 64/1 64/4 64/5 64/11 64/15 72/25 75/9 77/3 88/20 89/12 89/13 89/18 91/10 100/12 112/17 112/18 112/23 113/1 113/1 113/2 114/20 115/17 115/19 115/23 115/24 116/3 116/4 123/24 124/2 125/6 127/5 129/17 134/21 136/2 138/10 138/12 138/13 138/20 139/13 139/13 139/20 139/23 140/5 140/20 141/5 143/5 143/18 149/23 153/13 158/13 167/15 169/5 171/4 172/22 172/24 174/5 174/6 176/5 177/5 177/13 191/5 193/22 194/23 203/2 204/4 statements [5] 66/2 112/18 142/1 142/17 202/23 states [6] 7/12 41/4 103/22 141/10 145/13 213/5 static [3] 52/15 52/20 113/16 stating [1] 42/3 status [2] 213/7 213/10 statutory [3] 83/20 139/10 187/2 stay [8] 52/15 52/20 52/22 66/9 105/9 105/10 188/3 188/4 staying [1] 178/20 stealing [1] 128/22 stenographer [1] 1/14 stenographers [1] 175/17 step [8] 21/10 57/10 100/13 165/15 165/22 175/6 184/24 200/4 Step 1 [1] 165/15 step 4 [1] 165/22 stepped [1] 3/19 steps [10] 85/25 165/12 165/19 168/12 169/15 187/23 188/19 198/18 204/15 204/23 still [25] 3/25 3/25 4/2 4/5 4/10 8/10 8/10 12/24 13/2 14/3 34/4 34/21 34/23 34/25 36/5 46/13 48/17 92/10 96/8 122/9 147/7 148/17 166/4 190/16 205/17 stolen [2] 127/17 128/20
----------	---	---	---	--

S	127/25 128/2 129/11 142/7 163/23 176/11 182/25 193/10 193/19 194/4 195/24 200/5 209/20 213/24 suddenly [1] 36/20 Suella [1] 187/21 Suella Braverman [1] 187/21 suffering [2] 32/16 32/25 sufficient [2] 122/16 213/10 sufficiently [3] 133/25 146/21 181/13 suggest [1] 37/11 suggested [6] 17/18 31/14 35/15 35/18 160/15 192/10 suggesting [6] 7/22 8/10 36/14 61/24 115/18 178/24 suggestion [3] 13/13 40/19 171/21 suggestions [2] 174/21 175/4 suggests [5] 12/17 13/2 37/5 168/5 184/7 suitable [2] 36/25 37/1 sum [2] 72/2 199/9 summarise [4] 69/8 144/11 145/24 199/12 summarised [1] 147/20 summarising [1] 213/13 summary [12] 13/11 47/4 129/8 144/20 145/22 146/13 157/12 163/3 172/8 173/18 178/8 202/7 summer [2] 40/2 96/7 sums [4] 91/23 121/9 191/7 191/9 Sunak [1] 88/9 supersensitive [1] 12/21 supervision [1] 159/1 supplement [1] 151/11 supplementary [6] 71/10 72/18 73/1 73/2 76/18 170/7 supplemented [1] 176/4 support [52] 28/18 32/1 32/5 32/13 32/17 32/18 33/5 33/5 33/6 33/18 36/19 88/25 89/1 89/15 89/16 89/24 92/12 92/22	92/24 93/7 93/10 93/12 93/21 94/6 96/16 97/7 97/9 97/21 98/3 98/5 103/20 103/23 104/4 104/22 107/16 111/13 111/25 113/8 119/6 119/22 120/16 121/10 122/5 122/13 137/11 165/8 174/22 182/12 214/1 214/10 215/8 215/14 supporting [4] 31/23 87/25 123/2 213/15 suppose [6] 87/19 125/20 128/4 139/11 149/7 190/18 supposed [1] 8/10 Supreme [1] 130/14 Supreme Court [1] 130/14 sure [34] 6/9 7/1 7/24 13/5 22/15 27/25 31/25 32/2 33/7 33/9 33/13 36/6 39/4 47/23 54/8 54/24 57/8 75/4 85/17 88/16 102/10 122/12 160/1 167/3 167/7 189/19 190/5 196/20 196/21 207/13 207/23 210/4 210/13 212/1 surprised [2] 140/7 147/23 surprising [1] 159/18 surveillance [1] 25/1 survey [1] 31/13 suspected [1] 56/14 sustain [1] 36/13 Swann [1] 42/2 Swansea [1] 106/4 Swansea University [1] 106/4 Sweden [1] 18/21 Swedish [2] 18/15 18/20 swimming [5] 53/16 53/21 113/16 116/18 116/20 swing [1] 14/7 switch [6] 27/4 28/2 28/8 76/8 76/12 123/17 switched [1] 27/8 sworn [7] 1/6 63/10 123/15 124/13 218/3 218/11 218/19 symptoms [1] 60/18 system [9] 28/3 35/8 139/16 140/7 160/2 171/15 172/2 189/9 194/18 systematic [1] 160/18 systemic [1] 211/12	systems [4] 85/14 93/6 102/1 102/1	T	tables [1] 91/11 TAC [1] 45/13 take [35] 3/18 4/12 5/16 19/14 31/3 31/18 43/2 44/20 54/16 54/22 69/10 73/3 73/7 75/8 78/18 81/10 81/10 81/16 85/25 98/24 105/3 109/25 122/4 134/14 135/18 141/20 153/6 160/8 165/10 175/17 184/24 187/23 188/19 202/1 212/25 taken [42] 4/19 25/10 29/15 34/15 36/2 58/21 63/21 75/4 79/2 81/19 81/25 95/22 99/22 103/9 106/1 106/24 107/20 116/1 125/14 126/13 126/18 135/25 140/8 140/11 142/7 142/12 143/14 150/6 150/21 161/18 165/13 171/1 186/6 186/19 191/21 192/14 193/15 198/18 204/15 204/23 205/18 209/5 takes [1] 210/24 taking [22] 5/7 8/11 12/5 14/18 14/20 20/19 22/2 37/5 39/12 91/5 94/4 95/19 95/24 98/19 105/24 133/16 143/8 168/12 176/21 195/18 197/2 211/8 talk [6] 15/15 84/6 86/16 97/2 110/12 164/10 talked [6] 10/7 62/6 101/5 128/5 166/14 198/25 talking [15] 10/8 12/4 54/7 74/25 75/1 76/24 96/10 111/22 149/11 159/11 159/15 166/19 167/6 181/20 206/7 talks [5] 97/5 109/23 165/1 166/16 196/25 targeted [1] 31/22 task [4] 158/19 160/1 190/11 216/5 tasked [1] 206/24 tax [2] 70/6 70/8 taxation [2] 65/19 69/19 teachers [1] 32/14 teaching [1] 124/5 team [13] 79/22 79/23 79/24 91/16	91/17 131/18 134/15 156/25 158/18 159/2 166/11 172/2 174/23 Technical [1] 23/24 technology [3] 19/3 29/7 29/8 tell [9] 59/22 60/8 88/16 90/25 100/21 142/11 144/11 155/23 156/18 telling [9] 19/2 31/24 98/12 116/20 159/23 170/5 187/9 189/25 192/13 tells [2] 168/10 189/17 temporary [1] 142/15 ten [3] 42/25 159/15 208/14 ten days [1] 159/15 tenancies [1] 137/10 Tenby [1] 11/8 tendency [2] 162/6 170/6 tension [1] 181/25 term [9] 39/14 143/4 161/1 161/7 168/4 179/11 207/16 212/25 212/25 terms [64] 2/11 7/7 8/2 9/23 14/7 15/9 15/19 19/15 19/23 21/20 23/12 24/7 26/14 27/16 29/7 33/23 36/19 44/8 46/25 48/2 48/6 50/1 67/10 67/15 67/20 67/24 67/24 68/22 70/7 74/21 79/7 80/11 81/9 81/20 86/11 87/10 88/25 95/5 95/18 95/25 98/18 99/7 99/24 100/18 100/21 101/1 101/3 101/15 109/23 115/25 121/4 122/9 124/4 134/22 155/16 156/8 160/22 163/17 175/6 182/13 189/21 190/14 206/17 211/22 territory [2] 48/24 210/25 test [2] 43/2 132/4 tested [1] 35/3 testing [8] 25/14 56/3 56/5 59/20 60/17 60/22 208/3 208/17 tests [2] 44/15 162/1 text [11] 12/17 13/1 13/13 40/12 45/1 49/15 112/19 114/21 114/25 125/3 196/24 texting [1] 40/9 than [31] 9/3 11/22
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T	that's [100] 2/15 4/7 4/10 4/15 5/11 5/14 5/25 7/11 12/17 13/11 19/10 21/19 25/3 28/2 28/5 29/22 30/16 40/14 40/15 41/18 44/23 51/21 54/8 57/3 60/15 64/8 64/10 64/20 66/7 66/24 67/6 68/9 69/7 69/13 70/3 70/10 70/13 71/4 72/11 72/13 72/18 72/21 73/9 74/6 74/12 75/4 76/22 77/5 77/15 80/15 81/8 84/5 86/3 87/7 88/19 89/5 90/5 93/17 97/1 97/17 101/11 102/21 106/3 107/3 107/13 107/22 109/3 111/16 115/10 115/22 121/16 128/23 130/23 131/3 134/17 140/1 141/5 146/25 149/14 152/17 157/12 158/8 163/13 171/11 175/14 177/1 182/4 182/5 184/22 187/5 188/1 188/15 192/20 195/21 201/5 201/6 201/19 205/13 207/6 207/21	215/24 216/1 theme [4] 20/4 52/2 201/10 201/14 themes [1] 93/19 themselves [3] 84/16 139/18 172/8 then [164] 2/17 3/21 3/22 5/4 5/8 6/19 7/13 7/14 11/15 16/14 17/17 17/21 18/1 20/8 21/18 23/9 24/7 26/20 27/5 28/1 30/4 32/20 33/1 33/24 36/19 37/8 37/24 42/5 46/1 47/13 49/2 49/11 49/16 54/23 61/13 61/15 65/13 66/8 68/14 70/21 71/8 71/10 71/14 71/18 72/2 72/10 73/17 74/10 76/13 78/5 78/18 78/25 79/4 80/8 82/10 83/19 83/20 84/1 85/10 85/11 85/15 86/8 86/18 87/24 88/8 89/11 92/7 95/14 97/6 99/1 99/9 99/14 100/11 102/4 102/9 104/13 104/20 105/4 105/4 105/8 106/7 106/12 108/13 108/23 109/24 109/25 112/23 112/25 114/6 114/14 114/14 114/17 114/17 117/18 122/23 124/6 124/19 124/25 128/25 133/18 134/19 135/13 136/12 137/17 138/1 138/9 139/2 141/23 142/2 144/8 144/11 145/11 146/8 147/5 148/6 148/10 150/9 152/1 152/19 153/2 154/5 154/16 155/1 155/17 155/25 157/13 157/18 158/5 160/9 160/24 161/3 161/7 161/10 161/20 165/9 165/18 165/22 165/24 166/2 169/17 174/25 175/5 175/7 178/14 178/17 182/22 183/24 185/10 190/17 191/22 193/19 196/4 196/16 197/19 199/6 199/11 200/20 201/20 202/15 206/17 208/1 208/5 208/20 210/24 therapy [1] 32/3 there [308] there'd [1] 193/15 there'll [1] 173/20 there's [23] 9/16 12/23 19/12 27/24	28/14 46/22 47/18 53/11 79/12 91/2 102/16 109/5 127/1 127/2 133/13 134/9 150/25 152/8 195/8 196/9 199/15 214/22 216/14 thereafter [2] 11/22 53/17 therefore [14] 2/23 13/9 27/22 33/16 39/19 94/20 131/21 146/2 146/7 146/16 149/3 154/19 189/10 207/7 these [26] 17/4 31/10 45/20 45/22 46/24 50/1 52/6 52/10 53/23 58/24 69/9 93/11 109/21 113/6 122/1 137/24 141/25 146/6 173/10 180/2 188/7 188/8 193/3 193/7 196/22 199/18 they [98] 4/20 12/5 12/15 12/23 14/9 15/8 15/8 15/9 15/11 15/20 17/18 18/5 18/25 19/2 19/2 21/17 24/16 32/19 32/20 33/14 33/15 33/16 33/17 34/19 34/21 36/9 36/20 36/20 41/6 43/1 43/2 45/15 50/4 50/25 51/18 53/20 54/16 59/11 79/25 80/2 80/3 81/15 84/8 84/17 84/17 85/7 86/8 91/22 98/22 98/24 101/18 101/19 104/11 107/24 109/1 109/10 110/12 112/21 115/21 119/9 124/3 128/6 131/19 141/15 146/24 148/4 148/18 149/1 151/19 151/24 152/3 155/3 156/16 160/23 161/9 163/5 168/6 170/1 173/3 173/16 180/10 180/10 181/9 181/14 181/14 184/14 184/21 184/21 190/5 190/21 190/24 191/2 193/8 199/19 201/4 201/13 202/13 206/8 they'd [3] 38/19 80/5 85/6 they're [10] 33/12 71/10 97/18 146/10 146/15 163/4 163/5 181/3 181/14 209/7 thing [9] 41/11 51/9 76/9 97/24 98/22 102/15 102/18 110/19	116/10 things [47] 4/10 19/18 22/13 24/13 25/23 31/11 44/16 45/20 46/24 50/2 50/8 56/5 59/25 60/12 61/8 67/20 67/23 68/4 72/13 73/15 73/17 75/2 80/4 80/22 83/18 86/19 92/21 101/21 101/23 105/13 106/10 110/11 118/14 121/15 123/1 128/4 135/18 154/7 154/12 155/16 156/2 156/6 160/22 168/10 177/19 183/13 195/17 think [308] thinking [8] 96/18 120/6 181/3 182/5 183/22 196/14 197/7 207/16 third [9] 32/1 41/11 56/15 69/20 129/6 161/7 204/11 204/12 205/15 this [277] Thomas [1] 158/11 Thomas Smithson [1] 158/11 those [186] 2/21 4/22 4/25 5/15 6/5 13/11 14/10 15/5 15/7 17/15 19/6 19/7 19/7 20/1 21/4 22/6 22/12 22/18 22/21 22/23 23/6 23/7 23/21 24/12 28/14 28/25 29/1 29/14 29/25 30/2 32/4 32/15 34/17 35/10 38/11 43/20 45/24 47/14 47/16 47/17 47/17 48/8 49/6 50/7 51/13 52/12 53/10 53/11 54/8 54/18 58/20 59/8 62/24 65/21 66/18 67/3 67/7 67/8 67/25 69/18 71/17 72/9 72/13 72/18 73/3 73/15 74/19 74/24 78/19 78/22 79/1 79/14 79/16 80/21 81/10 81/16 81/19 81/21 81/23 82/10 83/17 83/18 84/1 85/1 85/17 86/1 86/16 86/17 88/2 88/24 89/23 93/4 94/9 95/7 95/10 95/16 95/18 96/4 97/10 97/16 97/18 97/23 98/4 98/5 98/5 98/11 98/15 98/15 98/17 98/19 98/21 98/23 98/25
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T	53/8 66/10 67/3 70/6 70/11 71/7 71/9 72/17 72/24 73/1 73/2 73/3 73/17 75/6 80/22 82/23 83/23 84/6 85/12 86/8 86/16 89/17 89/19 91/8 91/11 91/12 91/13 91/18 91/25 94/15 94/25 95/13 96/23 97/4 98/12 100/19 118/5 134/15 134/19 135/19 136/24 137/3 137/14 138/1 148/16 149/18 152/18 159/13 161/17 161/23 170/14 190/4 192/16 194/19 204/14 210/7 215/19	169/22 174/8 183/17 190/6 193/23 197/2 208/8 210/18 210/20 211/5 213/19 216/6 216/10 timelines [4] 107/18 108/12 108/21 108/25 timely [2] 34/2 91/5 times [8] 34/9 44/24 68/13 68/15 85/11 87/20 107/25 169/1 timetable [3] 137/21 137/22 137/23 timing [6] 9/1 10/7 34/1 38/6 50/1 176/23 today [16] 1/10 1/12 2/3 2/22 4/2 11/16 63/18 63/22 66/16 123/23 138/24 138/25 175/20 206/3 214/13 215/7 Today's [1] 139/4 together [6] 31/21 36/8 57/24 154/20 161/17 162/3 told [10] 24/6 35/15 57/18 106/4 107/16 128/11 136/14 158/25 192/9 204/21 tomorrow [3] 114/11 185/12 217/2 tone [1] 20/17 too [7] 13/21 63/12 87/1 120/4 134/11 170/12 207/10 took [20] 3/23 6/21 38/11 43/10 67/8 67/14 81/12 94/16 103/8 103/10 106/4 108/14 108/20 117/6 151/5 164/4 171/3 201/20 207/12 208/13 tool [4] 26/20 26/21 34/21 170/17 tools [2] 27/13 189/20 top [7] 24/7 113/24 116/11 117/9 138/23 144/8 147/6 topic [21] 47/2 52/1 58/10 68/25 102/5 112/15 117/2 135/23 153/1 158/5 174/4 175/13 176/1 185/4 187/13 189/2 189/3 190/17 206/22 206/22 212/7 topics [2] 2/3 97/10 total [1] 75/13 totally [3] 49/17 169/18 195/24 touch [6] 2/3 5/15 37/10 68/25 83/20 179/9	touched [5] 19/16 52/2 157/1 201/21 206/2 touching [2] 2/8 67/7 tough [3] 91/19 121/3 122/1 tourism [5] 3/17 19/1 51/10 51/12 111/22 tourists [1] 11/1 towards [6] 31/23 72/19 84/24 96/6 96/6 119/24 trace [1] 6/4 tracing [1] 19/3 track [2] 25/18 155/22 tracking [1] 25/1 traffic [1] 175/8 training [1] 127/23 trajectory [1] 210/23 transcript [1] 119/2 transferred [1] 66/4 Transition [2] 124/19 153/20 translating [1] 162/1 translators [1] 175/18 transmission [3] 38/16 45/21 182/13 transmitted [1] 42/13 transparency [5] 48/6 56/9 87/16 91/11 101/2 transparent [2] 48/7 85/23 transport [4] 51/20 88/2 92/3 119/18 trauma [1] 58/19 travel [11] 7/22 12/20 13/23 40/23 50/13 182/12 185/25 186/11 186/15 192/25 199/2 travellers [2] 40/9 40/20 travelling [4] 11/20 12/16 177/24 186/17 Treasury [24] 65/16 70/11 73/6 75/16 75/18 75/20 76/2 76/14 76/19 77/6 79/23 79/25 90/3 90/18 90/20 91/3 91/16 91/17 94/18 97/16 99/17 101/16 108/10 109/23 Treasury-wide [1] 97/16 treated [2] 77/4 116/21 treating [1] 77/24 treatment [2] 19/22 165/1 treats [1] 77/7 Trefnydd [7] 64/17	64/22 65/7 65/14 65/22 65/23 112/19 tried [3] 24/5 60/2 93/13 trip [1] 7/15 trips [2] 6/20 7/12 true [5] 1/25 60/23 64/11 112/24 124/2 try [14] 13/16 17/15 17/15 18/22 23/7 29/12 33/9 59/23 73/9 75/2 86/21 211/10 215/14 216/5 trying [19] 14/7 19/4 21/21 22/14 24/20 34/4 54/16 69/10 74/4 117/24 120/22 142/21 154/8 180/5 180/20 181/25 183/11 183/16 216/2 TUC [2] 119/4 119/5 Tuesday [2] 1/1 66/1 turn [15] 20/3 28/6 33/22 40/1 41/19 52/1 82/2 84/1 88/7 114/6 128/25 141/8 141/9 143/15 182/22 turnaround [1] 145/19 turned [2] 127/9 128/15 turning [2] 8/18 103/18 twice [1] 111/17 two [51] 2/21 6/20 10/8 10/23 12/6 12/6 26/25 36/19 37/1 37/13 37/20 38/2 38/4 47/10 49/6 49/9 61/8 76/4 78/15 95/11 104/8 104/12 104/24 105/7 105/8 106/2 106/5 106/21 109/20 111/1 112/8 112/9 112/17 113/17 116/6 119/9 131/16 133/4 135/3 135/18 148/8 154/12 154/21 160/6 161/21 166/9 168/10 170/12 177/17 206/2 207/22 two weeks [12] 10/8 36/19 37/1 37/13 37/20 38/2 104/12 105/7 105/8 106/5 111/1 119/9 two years [1] 76/4 two-week [1] 38/4 twofold [1] 134/21 types [2] 52/8 120/16 typically [1] 22/6
			U	
			UCL [1] 180/13	

U				
<p>UK [98] 5/20 5/22 7/8 7/18 9/4 9/13 15/4 17/4 35/6 36/18 36/25 37/5 42/1 43/8 69/2 69/16 69/25 70/11 70/14 70/16 70/17 71/1 71/13 71/16 71/24 72/22 75/14 75/14 75/17 75/21 76/7 77/20 77/25 83/5 88/15 88/22 89/11 89/13 93/2 93/4 93/16 95/4 95/8 95/11 95/13 96/21 97/5 97/16 98/4 98/12 98/23 99/22 102/11 102/17 102/20 103/4 103/4 106/13 107/8 109/24 110/4 110/9 110/12 110/20 111/12 120/21 136/9 137/7 146/16 148/18 149/9 149/20 150/6 150/12 150/16 150/24 151/6 151/18 152/14 185/14 187/18 187/20 188/2 188/7 188/20 188/23 189/4 189/21 191/7 201/23 203/13 203/20 203/25 204/5 204/21 204/22 209/17 212/13</p>	<p>109/11 111/5 111/6 111/14 111/25 129/14 129/15 133/14 134/24 144/17 146/1 146/3 146/9 150/1 159/1 166/11 172/2 174/13 178/23 181/7 191/7 194/2 194/6 201/25 202/1 202/9 202/21 202/25 203/13 205/3 206/11 216/10</p> <p>undermining [3] 184/25 195/24 206/20</p> <p>underpin [1] 163/7</p> <p>underpinning [4] 170/10 170/19 201/10 203/7</p> <p>underpins [1] 199/4</p> <p>underspend [4] 71/16 72/9 75/11 75/13</p> <p>underspent [1] 75/15</p> <p>understand [43] 3/2 6/2 7/14 8/5 8/6 16/12 17/25 29/10 30/8 47/16 53/6 55/11 58/13 58/19 62/17 64/3 66/14 67/13 105/21 115/15 124/18 126/25 129/1 129/12 129/23 132/25 134/3 136/17 150/21 151/6 152/25 158/7 169/19 169/21 181/6 181/23 184/20 185/3 187/3 189/18 197/18 203/19 207/20</p> <p>understandable [2] 86/4 211/15</p> <p>understandably [1] 201/10</p> <p>understanding [25] 17/12 21/19 23/8 26/22 52/3 52/25 90/14 90/23 99/25 128/9 135/9 135/15 136/24 139/19 149/14 150/4 151/2 154/15 157/6 166/24 167/4 173/14 180/15 184/13 184/17</p> <p>understands [2] 70/9 127/11</p> <p>understood [8] 58/11 86/9 135/22 167/8 190/5 203/12 207/15 210/6</p> <p>undertake [14] 12/19 13/23 15/22 79/17 79/19 80/1 80/6 80/23 82/25 83/16 109/18 151/8 158/17 207/5</p> <p>undertaken [10] 14/3 30/3 35/7 76/7 83/19</p>	<p>107/10 159/1 179/4 195/1 195/6</p> <p>undertaking [2] 1/14 60/7</p> <p>undertook [4] 7/11 20/8 82/16 195/2</p> <p>uneasy [1] 86/2</p> <p>unemployment [1] 99/5</p> <p>unenforceable [1] 181/18</p> <p>uneven [1] 171/20</p> <p>unfairly [1] 77/5</p> <p>unfolded [1] 42/22</p> <p>unfortunate [1] 100/23</p> <p>unfortunately [3] 76/10 108/9 123/1</p> <p>Union [2] 69/21 153/23</p> <p>unique [2] 78/1 91/4</p> <p>United [6] 7/12 9/17 41/4 42/11 93/5 93/15</p> <p>United Kingdom [4] 9/17 42/11 93/5 93/15</p> <p>United States [2] 7/12 41/4</p> <p>University [4] 25/5 25/6 106/4 124/5</p> <p>unknown [1] 127/8</p> <p>unless [2] 53/20 77/11</p> <p>unlicensed [7] 192/22 193/9 199/1 199/7 199/16 199/24 200/22</p> <p>unmanageable [1] 76/20</p> <p>unnecessary [2] 12/20 13/23</p> <p>unpack [1] 153/17</p> <p>unprecedented [2] 180/3 180/19</p> <p>unreasonable [1] 109/20</p> <p>unregulated [2] 38/19 46/23</p> <p>unsatisfactory [2] 50/21 50/24</p> <p>until [17] 5/1 6/11 8/3 38/10 39/13 52/16 52/21 72/15 85/12 94/25 110/25 123/10 155/16 166/18 186/6 187/4 217/4</p> <p>unwieldy [1] 155/5</p> <p>up [77] 1/13 1/22 5/7 5/18 8/3 10/15 15/12 16/1 16/13 16/13 17/21 17/24 18/12 18/23 19/1 20/9 23/1 27/22 28/3 30/22 40/20 41/13 42/3 44/9 44/16 44/21 48/15</p>	<p>48/23 51/24 52/5 55/16 56/20 56/21 59/25 60/15 61/16 63/20 69/2 77/1 81/2 84/9 85/6 85/14 86/19 88/20 90/4 94/23 96/23 98/2 103/12 108/4 110/18 113/21 113/22 114/9 116/25 120/11 121/20 127/19 131/25 143/18 144/8 145/20 147/7 157/9 158/14 162/6 166/18 169/6 174/4 176/18 182/17 184/3 187/22 200/20 208/13 209/5</p> <p>update [5] 5/9 28/23 169/9 170/3 171/16</p> <p>updated [1] 169/12</p> <p>uplifts [1] 122/23</p> <p>uploading [1] 125/19</p> <p>upon [12] 2/8 5/7 5/15 14/1 19/16 28/11 37/10 52/2 68/25 99/18 163/19 201/21</p> <p>upper [2] 192/1 192/3</p> <p>uprated [1] 74/10</p> <p>uprating [1] 74/11</p> <p>ups [1] 93/12</p> <p>upshot [1] 75/5</p> <p>urban [1] 177/21</p> <p>urge [1] 187/23</p> <p>urgency [2] 141/22 173/4</p> <p>us [87] 4/6 7/3 9/13 11/18 17/14 18/19 19/2 21/10 21/20 23/25 24/4 24/6 24/16 24/19 25/11 25/20 26/1 26/24 29/10 32/7 34/11 36/4 36/6 36/9 36/22 37/1 37/2 38/4 38/24 38/25 40/2 54/3 56/23 58/5 62/9 63/16 65/11 65/22 70/18 73/9 73/10 76/21 77/24 79/12 90/25 92/4 92/6 95/12 95/15 98/12 98/14 98/23 102/17 106/4 110/14 110/17 110/20 115/14 122/14 122/20 123/20 132/6 132/19 141/21 153/17 155/8 156/18 159/23 166/16 167/9 167/12 169/21 172/14 172/14 174/10 175/18 179/15 183/23 184/17 187/9 192/9 192/13 195/4 198/18 203/4 203/15 208/21</p> <p>use [23] 9/24 24/23 41/8 44/15 45/11</p>	<p>61/18 65/17 112/19 114/20 125/2 125/7 125/15 143/3 150/4 150/7 151/7 151/16 151/19 151/22 152/2 194/15 196/12 204/1</p> <p>used [21] 12/10 24/25 25/8 34/22 50/1 113/6 125/8 125/21 146/3 146/7 146/9 146/11 148/3 148/20 149/1 149/3 149/5 149/19 151/4 155/9 205/2</p> <p>useful [9] 17/23 18/3 18/7 26/20 27/14 68/3 100/9 131/10 208/5</p> <p>using [8] 19/3 92/20 115/20 115/25 148/12 149/20 152/15 190/1</p> <p>usual [1] 133/12</p> <p>usually [1] 71/12</p> <p>utilised [1] 93/24</p> <p>utilises [1] 28/9</p> <p>utilising [1] 10/1</p>
<p>UK departments [2] 75/17 75/21</p> <p>UK Government [33] 36/25 37/5 43/8 69/16 70/11 70/14 71/13 71/16 75/14 77/20 77/25 88/22 93/2 93/16 95/4 95/13 96/21 98/4 98/12 99/22 102/17 110/4 110/20 120/21 146/16 148/18 149/9 149/20 150/12 150/24 151/18 188/23 201/23</p> <p>UK Government's [3] 9/4 89/13 95/8</p> <p>UK governmental [2] 15/4 93/4</p> <p>UK-wide [1] 187/18</p> <p>ultimately [4] 34/14 72/6 74/20 91/10</p> <p>Unapologetic [1] 50/22</p> <p>uncertain [1] 95/1</p> <p>uncertainty [1] 94/17</p> <p>unclear [1] 13/7</p> <p>uncomfortable [1] 96/2</p> <p>undated [1] 108/1</p> <p>under [37] 9/10 23/9 50/12 105/15 106/7</p>				<p>V</p> <p>vaccinated [2] 40/8 43/24</p> <p>vaccination [5] 15/15 40/22 41/5 44/2 46/6</p> <p>vaccinations [2] 4/5 43/16</p> <p>vaccine [3] 43/17 43/22 45/23</p> <p>vaccines [1] 45/25</p> <p>Vallance [2] 35/15 35/18</p> <p>valuable [2] 26/21 76/21</p> <p>value [3] 57/17 57/24 94/1</p> <p>variable [1] 67/22</p> <p>variant [6] 27/6 41/25 42/13 43/18 105/18 105/23</p> <p>variants [3] 25/21 26/11 26/13</p> <p>variations [1] 26/10</p> <p>various [13] 26/11 43/14 44/21 47/11 49/4 49/15 80/4 81/4 82/14 90/6 120/16 189/23 201/25</p> <p>vary [2] 142/3 177/23</p> <p>Vaughan [3] 4/18 30/9 115/9</p> <p>Vaughan Gething [3] 4/18 30/9 115/9</p> <p>vectors [1] 45/20</p> <p>ventilation [6] 19/19 19/20 19/21 19/23 45/19 61/8</p> <p>version [1] 168/18</p>

V	visiting [3] 11/1 60/16 214/6	Wales TUC [1] 119/5	164/1 168/16 171/1	106/5 111/1 111/1
very [133] 7/1 7/24	visitors [3] 11/8	waning [2] 43/24	174/22 179/8 179/12	111/1 119/9 154/24
9/6 9/15 10/2 10/10	12/23 41/4	43/25	186/4 190/25 208/7	155/16 181/2 203/14
11/13 15/8 15/10	visual [3] 88/4 118/8	want [24] 10/6 14/24	211/3 213/1 213/12	208/2 215/18
16/23 17/19 21/5	118/11	24/23 33/22 40/16	213/18	WEFO [1] 83/6
23/11 23/12 23/14	voice [4] 1/13 1/15	45/1 47/2 52/1 55/12	ways [7] 16/23 92/23	weight [3] 22/24 23/5
23/25 24/13 24/13	51/14 63/20	77/1 86/20 94/14	93/8 168/11 179/8	201/7
24/16 25/19 26/15	voices [1] 167/11	111/16 113/17 114/3	180/20 215/9	welcomed [2] 98/22
26/15 26/20 29/7	voluntary [2] 88/1	128/18 132/25 134/16	we [615]	143/7
29/19 31/3 31/7 31/18	215/25	135/23 136/17 138/8	we understand [1]	welcoming [1] 89/23
34/6 34/9 34/21 35/14	vote [1] 114/16	143/15 174/10 183/13	55/11	welfare [2] 3/22 98/6
36/21 36/22 37/22	votes [1] 115/5	wanted [17] 31/18	we'd [24] 6/8 6/25	well [128] 6/7 6/21
37/23 37/24 38/23	vouch [1] 197/17	36/20 38/15 38/17	18/8 21/8 27/3 35/2	8/4 9/6 10/2 12/17
40/14 40/18 41/1 41/1	vulnerable [9] 43/25	38/21 39/16 54/3	42/9 45/13 45/23	13/22 16/16 19/18
41/7 41/11 41/16	157/15 157/19 164/18	109/16 111/14 120/5	92/24 96/1 96/1	21/23 24/10 31/1
42/13 42/17 42/23	167/24 212/9 212/15	154/1 157/17 196/20	105/23 106/10 110/13	34/11 34/19 40/14
43/24 44/8 46/7 46/20	213/22 214/20	196/21 199/13 206/10	136/19 148/20 159/24	57/6 59/19 60/20
51/4 51/8 54/25 55/22	W	207/12	161/14 167/12 172/12	63/21 68/1 70/19
58/21 59/6 60/24 63/4	wage [4] 93/1 93/2	wanting [1] 87/17	205/8 211/5 216/5	71/18 72/15 75/21
64/14 65/11 69/9 70/1	98/5 104/5	wants [1] 202/8	we'll [4] 162/4 173/18	76/16 76/21 78/25
70/13 71/4 71/19	waiting [3] 42/20	warn [1] 82/20	183/24 185/11	79/14 79/25 80/2 83/2
71/21 73/7 73/10	63/12 72/15	warning [1] 15/9	we're [30] 4/9 4/10	83/6 83/7 84/6 84/9
73/17 74/19 77/23	Wales [127] 5/13	warrant [1] 199/19	5/2 21/15 29/19 42/6	85/14 89/25 91/2
80/3 80/5 86/23 90/5	5/23 6/11 6/18 7/3 7/9	Warsaw [1] 124/5	57/14 73/2 76/18	93/10 94/7 96/12
94/4 94/10 96/2 96/2	7/17 7/19 8/21 9/3	Warsaw University	76/22 76/24 78/3	96/16 100/16 101/24
98/4 100/9 102/19	9/12 9/25 10/18 10/22	[1] 124/5	90/24 90/25 91/6	102/12 103/3 105/13
105/13 106/23 113/14	12/16 19/8 20/18	was [814]	111/21 116/7 116/7	105/14 105/16 108/24
114/7 118/16 120/6	21/18 21/21 21/23	was: [1] 32/25	123/2 138/13 159/15	109/15 117/1 118/9
123/4 123/6 123/6	22/4 22/5 24/25 25/6	was: if [1] 32/25	175/13 181/13 181/15	120/25 121/25 122/9
133/20 134/7 137/3	25/12 25/21 26/3	wasn't [44] 15/10	181/25 184/16 186/22	122/10 125/23 126/5
137/18 138/2 139/15	27/16 31/4 31/14	15/21 16/4 18/18 21/7	189/1 200/12 206/7	126/21 128/4 128/17
140/3 140/14 150/25	32/19 34/6 34/8 39/7	22/14 24/11 25/22	we've [29] 4/18 5/5	129/3 129/16 131/10
153/21 163/1 163/24	39/9 41/20 45/17	32/24 34/6 39/25	6/18 13/6 27/1 27/8	133/4 134/7 135/6
164/6 165/6 167/2	51/17 56/15 58/14	46/25 48/8 60/22	29/18 59/15 78/8	138/7 139/11 139/12
167/22 174/21 176/17	59/3 60/8 65/21 67/1	61/14 61/20 86/18	79/21 79/23 79/23	140/10 146/14 148/14
177/13 178/23 180/21	69/19 69/25 70/12	87/20 91/17 105/22	79/24 98/21 108/17	149/10 151/24 152/9
180/23 182/16 186/19	71/25 73/23 73/24	111/12 114/21 116/19	113/11 126/11 147/6	152/20 153/19 153/19
196/5 201/15 204/9	73/25 74/5 74/9 74/14	121/11 122/16 126/5	147/19 147/19 148/9	154/15 156/15 156/19
205/9 207/7 208/4	75/7 75/18 77/4 78/2	127/3 137/22 140/17	148/24 153/4 169/12	159/10 161/1 162/11
209/13 210/8 211/17	89/7 90/21 95/12	150/22 150/25 159/8	170/3 183/5 186/5	163/4 164/1 164/10
212/21 215/5 216/3	98/11 99/21 99/23	159/17 159/23 168/22	201/21 206/3	164/13 164/24 166/6
216/11 216/16 216/17	100/1 100/3 101/10	182/8 185/1 186/19	wear [1] 118/10	168/9 171/14 172/12
216/18	101/18 102/14 103/2	187/7 192/6 192/9	website [1] 52/17	173/23 173/25 174/12
vested [1] 81/22	105/15 109/17 119/5	205/10 211/19 213/10	Wednesday [1] 217/5	174/17 175/19 176/20
VG [1] 114/9	138/16 139/9 139/19	waste [3] 25/11	Wednesday's [1]	179/2 179/6 180/2
via [3] 17/18 50/20	145/2 146/8 149/4	25/24 26/18	141/14	181/19 183/5 183/22
113/9	149/13 150/15 152/5	waste water [3]	week [20] 4/8 8/4 8/8	184/10 186/13 187/9
vicar's [1] 40/15	152/5 157/7 172/21	25/11 25/24 26/18	10/7 10/13 36/16 38/4	191/2 192/6 193/7
view [21] 26/21 78/20	177/20 178/16 178/23	wastewater [4] 24/24	39/23 42/25 85/11	196/20 198/15 198/21
87/9 117/6 118/6	180/15 182/1 183/23	24/24 25/7 26/7	105/4 106/2 110/5	199/3 201/20 204/12
130/11 150/11 152/17	184/25 185/9 185/25	water [4] 25/6 25/11	110/16 123/18 123/19	205/24 206/16 207/16
168/8 170/13 182/12	186/11 186/16 186/17	25/24 26/18	136/20 158/24 160/19	210/2 210/20 211/17
185/2 193/5 196/19	187/2 187/14 187/25	Waters [2] 52/10	171/14	211/18 212/4 215/4
200/18 200/19 201/19	188/11 188/12 188/13	117/10	weekend [1] 38/24	wellbeing [6] 2/19
203/8 203/17 205/1	188/21 189/12 189/19	Watson [1] 214/23	weekly [6] 5/4 5/9	23/16 23/17 30/7
210/12	190/1 190/4 190/5	wave [2] 42/19 96/7	43/4 87/8 155/15	30/14 104/16
views [5] 117/3 117/4	190/7 190/24 191/16	waves [1] 4/5	161/16	Welsh [176] 2/13
117/25 158/19 200/10	191/21 192/4 192/16	way [34] 14/9 16/24	weeks [32] 4/6 10/8	2/17 2/19 2/25 3/4 3/4
virus [8] 24/21 25/2	192/22 193/5 194/1	27/2 39/13 46/25 86/5	36/15 36/19 37/1	3/13 4/13 4/15 6/2
26/3 34/6 39/16 60/14	194/11 195/10 196/13	91/12 94/25 95/2	37/13 37/20 37/20	6/17 8/12 9/7 9/22
165/17 210/23	203/8 204/2 205/2	95/15 100/18 117/15	38/2 38/2 38/5 68/16	10/16 11/9 12/14
visit [1] 214/11	206/12 208/16 215/14	133/12 134/9 150/23	104/8 104/12 104/13	13/10 14/6 17/20 18/1
visited [1] 60/1		152/22 153/21 156/4	104/24 105/7 105/7	18/18 20/7 20/12 22/3
		159/22 160/23 161/25	105/8 105/9 105/21	25/5 25/6 25/8 28/6

W	99/1 111/19 117/23 172/1 215/10	189/15 189/18 190/3 190/6 192/4 194/14 195/21 198/3 198/18 204/20 205/20 207/21 208/4 208/17 209/24 210/11 210/18 210/25 210/25 214/25	100/21 107/9 113/2 113/14 120/18 120/19 120/22 130/1 133/9 133/15 140/12 151/15 151/25 154/4 154/15 154/16 154/17 155/13 155/20 155/22 156/5 159/12 160/11 160/15 161/16 163/13 167/6 167/13 168/10 169/2 175/7 176/18 177/9 177/23 179/8 183/14 184/4 184/15 193/25 206/5	16/4 16/10 17/25 21/25 22/4 34/19 39/17 39/25 47/14 50/24 60/15 62/14 62/20 62/22 62/25 71/4 77/15 80/16 109/7 109/12 109/15 117/23 134/23 164/23 166/5 171/13 178/25 184/24 186/12 186/18 187/7 187/7 190/18 204/5	
Welsh... [147] 28/8 28/12 28/12 28/14 28/19 28/21 28/23 29/3 29/4 29/5 29/13 29/17 29/17 29/22 30/7 30/24 36/6 36/12 42/18 50/24 53/24 56/13 58/15 58/17 59/1 59/5 59/10 59/18 60/4 62/7 64/25 65/16 65/17 65/24 66/22 69/3 69/5 69/11 69/20 71/1 74/13 77/22 77/23 78/7 78/8 79/23 79/25 80/13 82/5 87/2 88/14 90/10 92/12 92/20 93/1 94/20 95/19 97/22 98/18 102/7 102/24 109/14 110/17 115/14 116/8 119/12 119/19 119/21 120/12 120/14 120/19 122/12 124/11 124/15 124/22 125/6 125/7 125/11 125/11 125/14 125/17 125/23 125/24 126/15 129/2 129/3 129/10 129/11 129/24 130/22 131/1 131/1 131/21 132/14 132/24 134/5 136/5 136/14 137/15 138/5 138/15 142/5 142/24 144/15 144/23 145/1 145/9 145/15 146/2 146/17 147/16 148/3 149/8 150/8 150/10 152/6 152/8 152/16 156/25 157/5 163/20 164/8 176/18 178/5 180/4 183/2 185/13 185/19 186/3 187/19 194/7 195/7 198/10 201/23 201/24 202/7 202/9 202/25 203/25 204/18 205/21 206/10 206/11 207/18 208/11 208/16 214/5	Westminster [1] 137/22	what [211] 3/9 4/12 10/17 12/11 12/17 12/20 13/6 13/7 13/8 13/11 15/19 15/20 15/23 15/23 16/1 16/23 18/22 18/22 19/14 21/15 21/21 22/9 24/5 24/6 25/16 25/20 30/2 34/7 35/16 35/19 35/19 36/25 37/21 40/12 40/16 42/7 42/12 42/21 43/19 44/1 44/12 44/16 46/1 46/16 48/10 50/9 50/14 52/7 52/11 54/1 55/21 57/18 58/17 58/18 59/17 59/22 60/4 60/9 60/17 61/6 61/9 61/12 61/12 61/15 61/21 65/22 67/10 69/14 70/1 70/9 71/5 72/16 73/14 73/20 74/22 75/10 76/22 76/24 77/9 78/10 80/2 82/10 83/8 83/11 83/23 84/6 85/6 86/22 89/2 90/5 90/14 90/15 90/21 90/24 92/1 92/15 93/7 95/5 97/22 98/9 98/10 98/13 98/17 99/19 99/25 100/5 100/15 101/3 103/22 108/13 109/6 109/16 109/22 110/10 114/25 115/10 115/16 115/18 115/22 115/25 116/4 116/13 116/14 117/22 118/5 120/13 121/24 132/5 132/5 134/23 135/12 136/17 139/14 142/11 142/24 143/2 143/5 143/19 145/14 150/19 151/13 153/17 154/13 154/25 155/8 156/18 159/5 160/12 160/20 160/21 161/4 163/5 163/18 163/20 164/14 166/21 168/9 168/19 169/21 170/5 170/8 170/9 170/9 170/21 171/23 173/6 173/14 173/15 174/17 175/5 177/16 178/19 178/20 179/5 179/22 179/25 180/10 180/21 181/3 181/3 181/4 181/9 181/17 183/2 183/11 183/21 184/13 184/17 185/12 187/9 187/10	WhatsApp [19] 10/16 10/17 42/1 47/10 48/5 62/13 62/19 112/19 114/25 115/10 115/20 115/25 125/3 125/7 125/9 125/11 125/21 125/24 126/13	whereas [2] 111/9 144/14	wide [4] 78/19 78/22 97/16 187/18
Welsh Treasury [3] 65/16 79/23 79/25	what's [6] 63/1 71/2 72/3 92/1 184/22 199/12	whereby [3] 28/8 76/8 185/7	wherever [1] 93/13	widely [1] 216/6	
Welsh Water [1] 25/6	Whatever [5] 111/1 121/11 128/23 181/17 210/6	whereby [3] 28/8 76/8 185/7	whether [49] 6/8 8/8 9/24 12/15 15/16 16/6 16/8 34/4 36/6 38/2 38/18 39/15 40/25 41/3 41/5 43/16 45/25 46/18 46/22 55/23 56/19 56/23 59/10 59/12 59/16 85/23 97/12 108/25 115/23 120/23 127/20 130/11 143/25 149/8 150/7 155/19 155/23 156/1 165/19 173/11 173/13 177/20 183/6 198/1 201/24 202/8 202/13 203/5 210/2	widespread [2] 8/21 10/19	
Welsh-specific [1] 187/19	WhatsApps [8] 48/3 112/15 113/3 113/6 113/13 117/5 125/12 128/13	whereby [3] 28/8 76/8 185/7	whenever [1] 93/13	wilderness [1] 11/9	
went [15] 3/9 17/18 36/8 58/17 87/25 106/16 135/19 146/8 159/14 166/13 166/14 175/8 210/21 211/24 213/1	when [86] 2/24 5/23 8/8 9/3 9/6 10/5 15/15 15/24 20/15 20/23 21/1 22/24 23/5 25/22 26/1 26/13 31/15 35/12 35/18 36/20 41/18 41/25 51/14 57/9 57/24 58/23 59/4 59/23 59/24 60/15 62/8 62/20 62/22 62/25 65/7 66/5 67/11 70/21 71/20 83/12 83/15 85/13 86/7 87/20 90/8 91/9 91/11 91/20 96/3 98/23 98/25 100/9 106/24 108/20 109/24 110/6 112/21 113/12 116/14 118/14 121/6 121/19 122/8 123/2 127/13 130/6 130/17 131/13 133/18 134/5 135/9 137/20 148/25 149/20 150/20 156/6 156/10 162/7 179/17 179/21 179/25 201/23 205/4 208/9 212/15 215/8	whereby [3] 28/8 76/8 185/7	whether [49] 6/8 8/8 9/24 12/15 15/16 16/6 16/8 34/4 36/6 38/2 38/18 39/15 40/25 41/3 41/5 43/16 45/25 46/18 46/22 55/23 56/19 56/23 59/10 59/12 59/16 85/23 97/12 108/25 115/23 120/23 127/20 130/11 143/25 149/8 150/7 155/19 155/23 156/1 165/19 173/11 173/13 177/20 183/6 198/1 201/24 202/8 202/13 203/5 210/2	will [50] 1/19 2/3 2/4 2/6 2/20 5/15 11/20 12/3 12/4 29/3 29/4 58/13 58/23 58/24 63/25 66/14 66/16 67/23 68/19 70/20 71/14 71/18 72/10 72/13 74/3 79/14 80/2 97/10 100/7 113/21 122/12 133/15 139/4 139/9 141/17 142/21 157/8 162/11 162/21 164/16 165/5 168/14 175/19 187/10 187/11 194/21 198/17 202/16 210/8 212/4	
were [442]	where [80] 4/10 7/5 7/11 12/23 14/11 18/6 18/23 20/2 20/13 25/10 26/3 32/9 34/6 34/9 38/19 40/22 45/15 46/17 51/16 51/16 57/4 57/25 62/23 64/5 71/17 71/24 72/9 73/14 76/17 77/3 79/10 79/15 80/21 87/6 87/18 87/23 87/25 91/22 95/6 99/17	whereby [3] 28/8 76/8 185/7	which [248]	Williams [4] 52/9 138/10 138/21 140/4	
weren't [10] 15/8 37/5 51/6 61/22 98/2		whereby [3] 28/8 76/8 185/7	while [4] 1/12 63/19 125/6 177/16	Williams' [3] 138/12 140/20 141/5	

<p>W</p> <p>within... [14] 103/11 104/25 110/16 120/24 130/12 132/11 132/11 164/6 171/19 177/8 205/2 207/18 210/20 211/13</p> <p>without [14] 10/10 20/20 48/16 106/20 121/21 140/9 183/14 185/25 188/7 194/12 200/16 204/8 205/19 208/8</p> <p>witness [49] 1/21 6/14 8/19 20/5 29/23 37/11 37/11 47/4 59/7 63/7 64/1 75/9 112/7 112/16 112/17 112/18 123/9 123/24 124/1 125/5 127/5 129/17 134/21 136/2 138/12 138/12 139/23 140/5 140/20 143/17 149/22 153/12 158/13 167/15 169/5 171/4 172/21 172/24 174/5 174/6 176/5 177/5 177/12 191/5 193/22 194/23 203/1 204/4 216/19</p> <p>wonder [1] 178/12</p> <p>wondering [2] 16/6 16/8</p> <p>words [2] 3/2 153/14</p> <p>work [45] 14/11 15/13 15/21 15/23 16/16 16/22 17/15 34/4 34/7 34/19 43/17 44/11 57/24 68/1 102/1 105/3 116/11 119/8 121/10 126/22 127/20 128/6 135/11 137/13 153/21 155/14 155/20 158/16 158/25 160/3 160/12 161/8 161/17 170/8 171/20 180/16 206/25 207/5 207/7 207/10 212/19 212/20 214/25 215/5 215/13</p> <p>workable [1] 183/23</p> <p>worked [5] 38/23 80/3 212/4 215/18 215/19</p> <p>working [21] 16/7 29/8 57/22 67/15 80/5 88/21 110/20 116/12 119/16 137/2 137/19 137/20 138/5 154/13 160/23 164/25 167/5 176/25 190/4 215/24 216/10</p> <p>workstream [1] 215/19</p>	<p>workstreams [6] 153/5 153/12 153/16 161/4 161/11 214/19</p> <p>world [1] 20/21</p> <p>worn [1] 44/12</p> <p>worried [1] 43/24</p> <p>worrying [2] 41/2 176/17</p> <p>worst [2] 14/8 111/18</p> <p>worth [5] 12/18 27/12 74/3 101/11 105/14</p> <p>would [221]</p> <p>wouldn't [14] 16/10 18/21 33/11 33/15 58/5 73/8 81/15 93/6 98/7 109/10 111/10 111/24 133/8 144/19</p> <p>write [4] 89/6 96/13 189/4 197/16</p> <p>writing [4] 88/19 96/24 172/14 211/18</p> <p>written [6] 2/4 83/24 88/20 89/12 109/13 169/24</p> <p>wrong [12] 58/17 90/25 112/6 112/7 114/3 114/21 125/21 128/8 148/11 181/11 206/18 216/23</p> <p>wrote [7] 41/21 88/11 89/4 90/17 185/10 187/20 203/20</p> <hr/> <p>Y</p> <p>yeah [9] 19/13 33/19 43/13 47/25 75/1 88/5 93/6 106/15 182/4</p> <p>year [45] 1/25 33/23 44/24 44/24 67/12 70/12 71/8 71/10 71/11 71/20 71/21 72/14 72/16 72/16 72/20 73/3 73/5 73/8 73/11 73/13 73/22 74/3 74/11 75/18 75/25 76/3 76/9 76/10 76/18 86/8 87/23 91/11 94/22 100/3 100/7 100/19 101/5 101/13 101/19 122/25 124/1 124/18 124/21 175/9 214/6</p> <p>years [5] 72/23 73/18 76/4 128/20 179/18</p> <p>Yep [1] 38/17</p> <p>yes [82] 5/22 13/1 16/12 19/23 19/24 32/23 33/3 33/21 47/9 63/8 63/17 64/13 64/20 65/4 65/15 65/23 66/7 66/12 66/24 67/2 67/6 68/9 68/21 69/17 70/13 72/13 81/8 82/9 82/12</p>	<p>83/6 86/2 88/5 89/4 92/14 93/17 97/20 99/12 107/5 107/19 110/8 111/3 111/7 113/23 119/1 119/3 119/13 119/20 119/23 120/1 121/23 129/9 129/14 130/8 130/20 130/24 131/4 132/13 137/18 138/23 143/2 145/5 147/15 157/21 157/24 158/3 175/16 182/16 185/22 185/24 186/21 187/6 191/20 194/25 198/12 200/21 201/3 203/3 204/12 205/16 208/13 209/13 216/20</p> <p>yesterday [3] 59/20 128/11 145/8</p> <p>yet [4] 14/2 149/4 167/14 172/1</p> <p>you [793]</p> <p>you know [108] 8/9 14/11 16/17 16/19 24/8 24/16 24/18 26/12 36/7 36/17 45/21 48/4 48/6 51/21 78/18 80/19 87/22 90/15 92/5 92/20 94/9 98/5 98/7 98/10 98/14 99/3 99/4 100/23 103/1 103/3 105/22 105/24 109/5 109/18 109/21 110/14 111/23 121/14 121/15 121/20 121/22 121/24 122/22 128/21 132/19 133/7 135/19 137/1 137/25 148/21 151/9 151/15 151/24 152/14 154/11 154/23 155/21 157/4 160/10 160/15 161/8 167/9 168/14 168/22 168/25 169/3 172/4 173/15 174/24 174/24 175/5 175/11 180/5 180/8 180/13 180/21 180/22 181/2 182/12 183/7 184/11 184/19 184/21 186/16 188/5 188/6 188/10 189/20 189/22 189/25 190/6 191/2 196/22 197/8 201/9 206/6 207/15 208/5 208/8 209/4 210/11 211/7 211/8 211/23 212/20 212/22 214/12 215/11</p> <p>you'd [3] 99/4 99/5 207/5</p> <p>you'll [10] 30/16 33/13 44/23 47/18 54/22 58/19 74/19</p>	<p>94/5 95/7 120/9</p> <p>you're [31] 10/21 32/25 46/20 47/4 52/24 53/15 63/4 73/15 74/25 77/11 78/16 101/13 105/5 113/14 114/25 115/7 115/9 117/3 126/4 130/17 137/20 162/7 173/6 179/8 179/14 181/9 181/22 183/11 184/15 204/21 209/11</p> <p>you've [36] 6/13 10/18 13/11 13/15 16/1 19/11 19/16 22/1 23/2 27/25 39/4 44/19 46/5 49/3 71/6 72/17 72/18 82/3 90/16 94/24 99/23 103/19 106/10 108/18 112/5 115/16 115/17 116/14 117/1 155/11 156/16 162/6 197/13 198/25 213/18 214/13</p> <p>young [3] 31/12 31/16 209/1</p> <p>your [169] 1/8 1/12 1/13 1/15 1/21 1/25 2/4 2/8 2/20 3/3 4/13 5/7 5/19 5/21 6/14 6/16 8/2 8/19 10/5 14/1 14/4 14/25 17/2 20/5 20/10 26/21 29/23 33/1 37/10 37/11 39/19 43/14 44/3 45/1 46/7 47/4 47/6 48/18 49/21 52/3 52/20 52/24 54/12 56/17 56/25 58/23 59/7 60/9 61/5 61/7 62/4 62/13 63/4 63/16 63/19 63/20 63/22 64/11 64/12 64/16 64/21 65/10 65/12 65/13 66/8 66/14 66/16 66/17 66/19 66/22 72/16 74/5 75/8 77/2 78/6 78/10 78/13 78/17 79/3 79/5 79/22 81/18 84/17 87/9 88/8 90/2 96/9 96/21 99/15 100/7 102/22 102/23 112/16 112/18 112/24 113/3 113/21 113/22 114/20 115/17 115/18 115/22 116/3 117/1 117/3 117/25 118/22 123/7 123/20 124/2 124/4 125/2 125/5 125/8 125/21 127/5 127/23 128/25 129/17 131/5 134/20 134/21 136/2 139/23 143/17 146/22 148/8 149/22</p>	<p>153/12 153/13 158/6 162/7 167/15 168/8 169/5 170/21 170/21 171/4 172/21 172/24 174/5 174/6 174/7 175/19 176/5 177/5 177/12 178/13 179/13 187/22 187/23 188/14 188/16 188/19 191/5 193/5 193/22 194/23 196/19 200/9 200/19 200/20 200/25 203/1 204/4 209/11 213/17 215/4 216/16</p> <p>yourself [10] 8/5 58/16 113/13 113/25 114/8 118/11 125/10 152/20 167/18 183/14</p> <hr/> <p>Z</p> <p>Zealand [1] 19/4</p> <p>zero [1] 121/11</p>
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