

Witness Name: Rt Hon Mark Drakeford MS

Statement No: 2 in Module 2

Exhibits: 7

Dated: 21 September 2023

UK COVID-19 PUBLIC INQUIRY

WITNESS STATEMENT OF THE RT HON MARK DRAKEFORD MS

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 1 September 2023 and referenced M2 – DRAKEFORD – 02.

I, the Rt Hon Mark Drakeford MS, will say as follows: -

1. The written request for evidence from the Inquiry provides me with a number of excerpts from the witness statements of Boris Johnson, Michael Gove MP, Dominic Rabb MP and Dominic Cummings. They contain a number of expressions of opinion by those witnesses on inter-governmental relations, and I am asked to comment myself on those opinions. Since receipt of the Rule 9, so relatively recently, I have had the benefit of the signed statements of Mr Johnson, Mr Gove and Mr Raab. Those statements have been read by my legal team and the key paragraphs within those statements which are relevant to this Rule 9 have been drawn to my attention. Accordingly, I note that in the case of Mr Gove there are variations in the substance of the excerpts provided to me by the Inquiry in the Rule 9 and the content of the actual paragraphs in his signed statement, so within this statement I refer to paragraphs of the signed witness statements.
2. I have provided an earlier detailed witness statement in Module 2 which sets out the relevant documentary evidence, upon which my comments in that witness statement are based. Where it has been possible, I have tried to provide an evidence-based response. I shall answer the questions in this, the second Rule 9 request in Module 2, by cross-referencing to my first statement. My first statement was a full statement and many of the answers to the questions posed by the Inquiry can be found in that statement.

3. In answering this Rule 9 I consider it important that I make a general observation at the outset. I consider that the questions asked of me are founded on a fundamental misconception of how a devolved United Kingdom works and is designed to work. It is wrong in principle to approach an examination of the inter-governmental relationships between the governments of England, Wales, Scotland and Northern Ireland, and the decisions taken by each of them, through the perspective of ascertaining what the UK Government did and then comparing the actions of the devolved governments to the actions of the UK Government. That is not how government in the UK works – it is no longer a place where England is the benchmark, and the devolved governments have to justify taking a different position. For the most part, each of the governments, so far as the subject matter of this Inquiry is concerned, had their own extensive powers and responsibilities, and made the decisions that they each considered were in the best interests of each of their electorates. The relevant question is how each government made decisions on behalf of the people they served and how well they did that, rather than how and why their decisions diverged from the UK Government.
4. On or around 2 March 2020 the UK Government made the decision not to use the Civil Contingencies Act 2004, which would have placed the bulk of decision-making power in the hands of the UK Government, to be implemented by each of the devolved governments. Instead, on 20 March 2020 the UK Government decided to legislate using the powers of secondary legislation contained in the Health Protection (Control of Disease) Act 1984, exhibit **MD2/01-INQ000056212** refers. That was the UK Government's choice. The UK Government did not realise then, and it is apparent from the excerpts of statements that I have seen, that some ministers and former ministers still do not realise now, the consequences of the legislative choice they made and the impact it had for the decisions that would fall to be made by each of the four governments. The UK Government's choice to use public health legislation rather than the Civil Contingencies Act placed the legal and constitutional responsibility upon each government to make decisions in relation to restrictions on the basis of scientific and medical advice relating to their respective countries. It was not for the devolved governments to simply adopt the decisions of the UK Government and decide whether they wanted to 'diverge' from any decision of the UK Government, for political reasons or otherwise. It would have been a failure of constitutional and legal responsibility to have acted in that way. Each of the four governments had its own legal powers and responsibilities because of the UK Government's legislative choice and each had to exercise those powers and thus make decisions on the information available to them for the benefit of their respective countries.

5. When that is understood, then it becomes clear why questions that are based on the actions of the UK Government which ask why a divergent decision was made start from the wrong point and risk following a linear path to a fundamentally wrong conclusion.
6. At my request, the Welsh Government made written submissions asking the Chair to call me to give oral evidence in Module 2. In those written submissions the Welsh Government made the point that it is important to hear evidence from each of the four governments contemporaneously in order to develop a proper understanding of inter-governmental relations and decision-making across the UK. I remain committed to the offer to give oral evidence to the Inquiry, in order to assist the Inquiry in its understanding of inter-governmental relations during the pandemic and to derive a fair picture of how devolution worked and how governments across the United Kingdom made decisions. I trust that the possibility of giving oral evidence will be kept under review as Module 2 progresses.
7. I now turn to provide the responses to the specific questions asked of me by the second Rule 9 I have received in Module 2. In doing so I shall use the sub-headings used in the request for ease of reference.

Boris Johnson

8. I agree with Mr Johnson in his statement when at paragraph 153 he states that the four Nations were in reality more united than divided. From my perspective, we always agreed on the direction of travel so far as restrictions were concerned. The difference between us was the pace of implementation. The pace of implementation was dictated not by politics but by the need to react to the circumstances and evidence then existing in our respective countries.
9. I also note that Mr Johnson states at paragraphs 157, 191 and 519 that he understood why the Welsh Government made different decisions to the UK Government based on incidence of the virus in Wales and because our interests did not always align with those of England. In fact, Mr Johnson told the First Ministers of the devolved governments on 28 May 2020 that he “*fully appreciated*” the different ways in which the devolved governments were responding based on different transmission rates and that he would communicate that clearly – see paragraph 102 of my first statement in Module 2.

10. The problem was not divergence. The problem was a lack of clarity in public health messaging by the UK Government about the geographical application of its decisions. The UK Government had a tendency to make decisions without adequate consultation with the devolved governments and without giving adequate notice of the decision. I address examples of this at paragraphs 63, 82, 109 and 111 of my first statement in Module 2. The conclusion expressed by Mr Johnson at paragraph 529 of his statement, and the way the questions are asked of me in relation to divergence, ignore the actions of the UK Government in making decisions without giving notice to the devolved governments, which led to decisions being implemented at different times across the UK. This fed into public health messaging because decisions made by the UK Government were sometimes communicated to the public in a confusing way suggesting applicability to the UK as a whole when they only applied in England. This was a problem of the UK Government's making and could have been avoided relatively easily. On the part of the UK Government, there was an inability or an unwillingness to be clear in the information they provided to the public as to whether the decisions being communicated applied only to England or whether they applied for the whole of the UK. So, as I see it, the problem was not divergence, but the way in which difference was communicated – or not communicated - by the UK Government in its own publicity.
11. On international travel, the UK Government engagement with the devolved governments was usually late in the decision-making process and the UK Government did not listen when concerns were raised. They made unilateral decisions to relax requirements in relation to international travel, which had the practical effect of obliging the Welsh Government to adopt the same position, against our better judgement, because we could not practically adopt a different position, given most international travel into Wales comes from or through England – see paragraphs 160, 162, 172 and 182 of my first statement in Module 2.
12. In light of Mr Johnson's comments at paragraph 153 of his statement that divergence was a presentational problem, I am asked by the Inquiry whether more consistency between the four Nations was desirable and if so, how it could have been achieved. I accept that consistency in messaging across the UK was desirable. I agreed on this at COBR on 9 March 2020, exhibit **MD2/02-INQ000056219**, 9 April 2020, exhibit **MD2/03-INQ000083830** and exhibit **MD2/04-INQ000083827**, 16 April 2020 refer. The Inquiry is taken to paragraph 161 of my first witness statement in Module 2.

13. However, while consistency was always a desirable objective, it was not the primary driver of decision-making in Wales. Our primary objective was always arriving at the right response for the people of Wales. Quite often, what was the right response turned out to be the same in different parts of the UK and so consistency of messaging could be achieved – but achieving consistency of messaging at the expense of doing the right thing was not an option for the Welsh Government. The UK Government and the devolved governments were in agreement that different jurisdictions might move at different pace depending on the progress of disease in those Nations – see paragraphs 90 – 91 and 145 of my first statement in Module 2.
14. It is therefore disappointing that Mr Johnson felt the need to say in his statement at paragraph 153 that there was a risk of the devolved governments being “*different for the sake of being different*”. The need to be different for the sake of being different was never part of my thinking nor that of the Welsh Government.
15. There were two primary reasons why the Welsh Government made different decisions. Firstly, and most significantly, the circumstances in Wales were different to elsewhere in the United Kingdom and so the Welsh Government responded to the facts on the ground in Wales. The impact of the pandemic was not uniform across the United Kingdom. Secondly, there was a contrasting underlying approach between the UK Government and the Welsh Government. Our approach was careful, cautious and guided by the science to make sure that we did everything we could to protect lives.
16. I consider that Mr Johnson’s comment at paragraph 186 of his statement that the “*DAs needed to be handled with care*” betrays a cast of mind. It appears to me that his thinking, as the then Prime Minister of the United Kingdom, was not that the UK Government needed to co-operate effectively with the devolved governments as equal partners who should be properly involved in decision-making, but that they had to be handled with care like a set of unruly, unreliable adolescents whose judgements were flawed. This cast of mind is further demonstrated by his comment that it was somehow “*optically wrong*” for the Prime Minister to be seen meeting with the First Ministers of the devolved governments, for fear it would give a false impression that the UK was a federal state. In my view, this demonstrates both a flawed sense of the proper governance of the United Kingdom and that the then Prime Minister had a hierarchal view of the UK, with the UK Government at the top of the structure. In this he was more influenced by status anxiety than by the substance of good decision-making. This

mindset completely overlooks the fact that for the most part when responding to the pandemic the devolved governments had their own legitimate powers and responsibilities for decision making. Once that is understood, then the Prime Minister should have met regularly with the First Ministers to discuss common positions and to co-ordinate announcements where it was helpful to do so.

17. I am taken aback and frustrated by the idea that Mr Johnson chose not to meet because he was worried about whether it looked right, rather than whether it was the right thing to do. As detailed in my first statement in Module 2 at paragraph 97, I wrote to the Prime Minister on 12 May 2020 making the point that if an effort was made to meet regularly with the devolved governments, public confusion might have been avoided with better outcomes for all. In those circumstances, I consider that the Prime Minister's deliberate choice not to meet with us did affect outcomes for the public. I consider that the decision-making process would have worked better if there had been an established history of joint working with the Prime Minister upon which we could have drawn in a crisis. Unfortunately, that history did not exist. I have already provided evidence in my first statement in Module 2 on the failure of the UK Government to follow the Sewel Convention and the fact that JMC meetings stopped once Mr Johnson became Prime Minister.
18. Once it is understood that Mr Johnson made a deliberate choice not to meet with the First Ministers, then the failure to hold JMC meetings, even though he accepted a recommendation that he should – see paragraphs 367 – 370 of his statement – is explained. It is disappointing that Mr Johnson behaved in that way and that he did not apparently realise until writing his statement that there were no JMC meetings during the pandemic. The JMC structure had been very extensively used in the immediate run up to this period to deal with Brexit and the no-deal preparations. It met very regularly and made decisions in relation to Brexit negotiations. It was the vehicle that the Rt Hon Theresa May MP's UK Government initiated and serviced to bring the four Nations together in a decision-making process. I explain how it was used in more detail in my first statement in Module 2 at paragraph 14. I wrote to Mr Gove making this point on 12 June 2020 – see paragraph 105 of my first statement in Module 2. I also raised this point at the four Nations summit in June 2021 – see paragraph 157 of my first statement in Module 2.
19. I never argued for weekly meetings with the then Prime Minister. My concern was that in order to take a view across UK-wide activities, there was a need for regular

checkpoints which only the then Prime Minister could provide. My intention is not to devalue the other meetings, which were useful, but to emphasise that the absence of the then Prime Minister and meetings with him created a vacuum at that final pan-government level. He was absent at key points when he should have been present. He met with the First Ministers when the situation was deteriorating significantly, but he failed to do so to discuss the path out of restrictions.

20. At paragraphs 496 – 497 and 529 Mr Johnson makes the point that in the future the UK should be treated as a single epidemiological unit and that the best approach is a UK-wide one with no differences between the four Nations. In light of his understanding of the reasons why different decisions were made in Wales, the justification for the statement is not made out and is not explained by Mr Johnson. He regrets the decision not to use the Civil Contingencies Act 2004 and opines that the arguments made against the use of that Act at the time were weak – see paragraphs 153 and 155 of his statement. As I have already explained, the decision to disperse decision-making under the health protection legislation, rather than centralising decision-making through the Civil Contingencies Act, rested with the UK Government.

21. There is an important point to be made about the extent to which the people of Wales trust the Welsh Government to take decisions which are in their best interests. In Wales, we strive for a partnership between citizens and government and thus seek to develop high trust relationships where individuals and their public services are regarded as jointly involved in a shared endeavour. In the extraordinary circumstances of a pandemic when a government needs to persuade the public that they should give up their freedoms in a way that had hitherto not been contemplated, the key currency that allows that to happen is trust. The survey evidence clearly showed that the people of Wales trusted the Welsh Government in a way they did not trust the UK Government. The Ipsos MORI periodical surveys, exhibit **MD2/05-INQ000281775** and exhibit **MD2/06-INQ000281936** refer, produced results which demonstrated that from May 2020 onwards, when governments were easing restrictions, trust in the Welsh Government increased to around 80% whereas trust in the UK Government was around 40% – a marked difference. If the UK Government had made all decisions on behalf of the United Kingdom, it would not benefit from the same relationship of trust that existed between the Welsh Government and the people of Wales - in my view, that would impact upon the efficacy of its decisions.

22. As for the suggestion made by Mr Johnson at paragraph 528 of his witness statement that the infection rate in Wales in December 2020 suggested that the firebreak had not worked, he is factually wrong – the Lancet article published in April 2021 rehearses the effective reduction in the reproduction number following the Wales lockdown model, exhibit **MD2/07- INQ000282016** refers. The Welsh firebreak produced the gains which had been expected through early action. Those gains, however, were more short-lived than the modelling available to the Welsh Government had anticipated, with a rapid return to rising Covid-19 transmission. While not apparent at the time, I believe that this escalation in infections demonstrated the already-present impact of the new 'Kent' variant of the disease in Wales, with its increased transmissibility and additional virulence.

Michael Gove MP

23. Mr Gove recognises at paragraph 184 of his witness statement:

“There were significant regional differences within the nations and between the nations in terms of infection rate, and different considerations including for example the capacity of the NHS in each of the four nations or school term dates. It was therefore reasonable for the different governments to take decisions, within their competence under the devolution settlement, that they considered necessary to respond to the situation in their countries.”

24. He makes much the same point at paragraphs 61 and 106 – indeed, in the latter paragraph he sets out his understanding that the decision of the Welsh Government to introduce a circuit breaker earlier than England was a carefully considered one.

25. It is, therefore, somewhat incongruous for him to argue at paragraph 176 that the UK Government's backstop powers should be strengthened – this is even more so when one considers that the decision not to use the Civil Contingencies Act 2004 was the UK Government's.

26. I had envisaged that the Coronavirus Act 2020 would reflect the principles in the Civil Contingencies Act 2004, but it did not – see paragraphs 23 and 53 - 54 of my first statement in Module 2. I do not accept the argument that the backstop powers of the UK Government need to be strengthened. That argument is based on a false premise. Any regret that UK Government ministers may have about the ability to make UK-wide decisions flows from their collective decision not to use UK-wide legislation which was available. It is notable that Mr Johnson reflects at paragraph 155 of his statement that

the arguments made at the time against using the Civil Contingency Act 2004 were weak.

27. The view as expressed by Mr Gove amounts to a denial of devolution – the backstop powers he envisages are powers which would allow the UK Government to override the devolution settlement. I have described in my first statement for Module 2 at paragraph 13 the difficulties that the Welsh Government have encountered with this UK Government in relation to devolution and its history of legislating in breach of the Sewel Convention. Fundamentally, this UK Government seems to believe that the devolution settlement is paper thin and that the UK Government should reach over it whenever they like. However, the Senedd is democratically elected by the people of Wales. In two referendums, the people of Wales have voted to establish the National Assembly for Wales, now known as Senedd Cymru, and then secondly to give it the power to make primary legislation. It has a democratic mandate of its own, which the UK Government, wrongly, increasingly disrespects.
28. Although I agree with Mr Gove at paragraph 178 of his statement that the meetings that did take place were collegiate and worked reasonably well, in my view that is the wrong question. As I have explained in detail in my first statement in Module 2 at paragraphs 15, 72 – 73, 77, 81, 84, 95, 97, 99 and 124, there were large periods of time when there was no regular rhythm of ministerial meetings between the four governments, and I repeatedly called for that to change. Mr Gove states at paragraph 182 that the devolved governments “*shared the UK Government’s view from around September 2020 that participation in committee meetings needed to be regularised*”, the documentary evidence detailed in my first statement in Module 2 shows that the reality is that the UK Government established regular meetings with Mr Gove because the devolved governments were insisting on it. In fact, I set out at paragraphs 77 - 78 of my first statement in Module 2 a letter that I wrote to Mr Gove on 20 April 2020 making this very point. As I explain at paragraph 85 of my first statement in Module 2, my preference was to stay aligned with the UK Government, but the lack of formal engagement made that difficult and made it increasingly likely that we in Wales would need to develop an approach in response to the situation in Wales.
29. Save for the meetings which were established with Mr Gove, the substance of the meetings from an inter-governmental point of view was inadequate – a point with which Mr Gove seems to agree at paragraphs 173 and 187. Such meetings were often called at short notice and consisted of the UK Government presenting Anglo-centric decisions

to the devolved governments and many decisions of the UK Government were not even discussed at such meetings – see paragraph 45 of my first statement in Module 2. Where decisions were made that impacted the devolved governments, such as on international travel, we could raise our objections, but they were largely ignored. Following on from the point raised in the previous paragraph, SAGE advice at such meetings concentrated on England. One of the risks of Mr Gove's suggested strengthened backstop powers is that decisions would not be based on the specific geographical needs of Wales, Scotland and Northern Ireland as they were during the pandemic.

30. The meetings held with Mr Gove on the other hand were less London centric. They presented more opportunity to discuss matters that were not yet fixed – we were not turning up to be told what had already been decided whether we liked it or not. These meetings should have supplemented COBR meetings chaired by the then Prime Minister. However, the then Prime Minister disengaged the COBR machinery at a crucial point, which I consider was a mistake for the reasons I have already given – see paragraphs 123 and 196 of my first statement in Module 2.
31. Mr Gove tries to explain the failure to hold JMC meetings at paragraph 181 of his statement on the basis that it was not "*practicable*" for the then Prime Minister to chair them. That is inconsistent with what Mr Johnson says. It is also inconsistent with what Mr Gove said in the excerpt in the Rule 9 at paragraph 167 (which I assume was a draft because the comment has been omitted from the signed statement) – that there was no obvious mechanism. Had Mr Johnson been willing to meet with the First Ministers and not been overly influenced by status, the JMC which was long established forum would have been better.
32. Unfortunately, notwithstanding the fact that the reasons for decision-making by the devolved Governments were well understood by Mr Gove, he expresses the same opinion as Mr Johnson that we, the devolved administrations, were "*diverging for the sake of being different*". I repeat the point I made earlier that this comment betrays a fundamental cast of mind within the UK Government at the time. Each part of the United Kingdom used their powers to make decisions based on their own assessments of what was best for the people of the country for which they were responsible, and for which they had been elected to make those decisions. It was not a question of whether this was divergent. As a matter of law, the relevant consideration was the scientific and medical advice in Wales – the Welsh Government was responsible for the safety

of the Welsh public as a result of the UK Government's decision to use the public health legislation rather than the Civil Contingencies Act.

Dominic Raab MP

33. In relation to Mr Raab's comment at paragraph 229 of his statement that "*it became irritating as the pandemic went on that Scotland and Wales wanted to do things slightly differently or with different timings for what appeared to be political reasons*", my reflection is that it is disappointing and concerning that a UK Minister should believe that their own sense of irritation is a yardstick against which inter-governmental relations should be judged. It suggests a view of the UK where, as well as failing to grasp the legal position, the smaller nations should be willing to follow the inherently and inevitably superior wisdom of England – neither position suggests a mature basis for conducting inter-governmental relations. Whichever it is, I consider it unpalatable.
34. At paragraph 75 of my first statement in Module 2 I deal with a very clear example of where the devolved governments took a different approach to the UK Government on 'stay at home' messaging at a COBR meeting on 9 April, chaired by Mr Raab. Whether or not he found that experience frustrating, there were sound reasons for the position adopted by all the devolved governments – on that occasion, it was the UK Government that was being different, as they are entitled to do, of course, for England. The UK Government adopted 'stay alert' messaging, in contrast to the devolved governments, on 10 May – see paragraph 94 of my first statement in Module 2.
35. The fact that all three of Messrs Johnson, Gove and Raab view the independent decision-making of the devolved governments as in some way motivated only by political reasons, is a poor reflection of the regard that this UK Government has for the elected devolved governments and the work that they did for the people they served, and of the care they gave to understanding the reasons for the decisions made by the devolved governments. Having read the extracts to which the Inquiry has referred me, it appears that the root of their objections is to devolution itself.
36. Nevertheless, Mr Raab does disagree with Mr Johnson and Mr Gove about what should happen in response to any future epidemic. He states at paragraphs 229 – 230 that he is not persuaded, to the requisite degree, that centralised decision-making by the UK Government would be more efficacious. He notes that devolution has its

benefits and that all devolved governments work together to make serious decisions. On that, we agree.

Dominic Cummings

37. In relation to Mr Cummings, I do not regard his views as authoritative. I did not and have never had the benefit of a conversation with him. In my opinion, if anyone felt COBR functioned badly, the solution lay in the hands of the UK Government who were responsible for COBR - when it was called, what it discussed and how it operated. The Welsh Government was represented at COBR by 2 or 3 individuals who participated in a much bigger meeting. My view is that COBR functioned badly because the UK Government did not use it in the most effective way.

Reflections

38. Having considered the statements referenced above, I have reflected on mechanisms that could be used in the future in the event of another pandemic.

39. In my view COBR is a mechanism for dealing with short term emergencies and was supported by the Civil Contingencies Secretariat. It was not a vehicle for managing sustained problems over many months. That is the main reason why it was not effective for dealing with the response to Covid-19. It works very well when focusing on short-term emergencies and operates by bringing around the table ministers and other emergency services who are mobilised as part of the emergency response. All participants have equal access to all information. The UK Government does not access the information first and devise a response which is disseminated at COBR. My view is that COBR machinery should be confined to dealing with short-term civil contingency emergencies.

40. I consider that the JMC would have provided an appropriate mechanism for inter-governmental relationships at a First Minister level. It should have been used during the Covid-19 Pandemic.

41. I would also add that the reformed Intergovernmental Relations machinery should be brought rapidly to maturity, so that it provides a well-established and functioning mechanism for responding to sustained crises.

Statement of Truth

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

Signed:

Personal Data

Dated: 21 September 2023