

Thursday, 14 March 2024

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2 (10.00 am)

3 **LADY HALLETT:** I'll check that it's 10 o'clock. Yes, it is.

4 I gather there has been a slight change to the order.

5 Mr Straw, I think you're going first.

6 **Submissions on behalf of John's Campaign and Care Rights UK**
7 **by MR STRAW KC**

8 **MR STRAW:** Thank you very much, my Lady.

9 This module concerns core decision-making but I'm
10 focusing on those needing and providing care for two
11 reasons.

12 Firstly this group perhaps suffered more severely as
13 a result of the pandemic and the response to it than any
14 other. It should, in consequence, have had a central
15 place in decision-making. It did not; it was often
16 overlooked, or when it was considered it was treated
17 less favourably than others.

18 Secondly, this group of people is a useful
19 microscope through which the Inquiry can examine what
20 went wrong with core decision-making more broadly. The
21 problems in this area are often symptomatic of core
22 flaws. Those in need of care should have been
23 a priority for decision-makers from the very start of
24 the pandemic because of their exceptional vulnerability
25 both to Covid-19 and to the restrictions imposed in

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1 evidence by the time of the 17 March 2020 decision. We
2 detail this in our written closings.

3 Contrary to the suggestion of some witnesses, the
4 evidence was not only of asymptomatic illness, it was
5 also of asymptomatic transmission. It is clear that
6 this evidence was overlooked at some level. Whether
7 that failure occurred at the level of the scientific
8 advisers or of core decision-makers is, perhaps, open to
9 question.

10 I should note the World Health Organisation was less
11 sure of the risks until July 2020, but applying the
12 precautionary principle and given the great
13 vulnerability of those in care homes, prior testing was
14 in any event necessary.

15 Ministers were plainly aware of serious concerns
16 that had been raised by stakeholders from an early stage
17 about discharge without prior testing and the great
18 vulnerability of those in care homes to the introduction
19 of disease by this route. Those stakeholders included
20 the Older People's Commissioner, Care Forum Wales,
21 Care Inspectorate Wales, numerous providers and local
22 government leaders. Those concerns should have been
23 listened to and acted upon, but they were not.

24 There had been suggestions that the decision not to
25 test may have been linked to limitation on the

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1 response. The Welsh Government was made aware of this
2 vulnerability and the need to urgently protect those
3 needing care from an early stage.

4 To pick just one example among many, on
5 11 March 2020, Public Health Wales produced a paper
6 which drew attention to the extremely serious likely
7 impact on older people and those with comorbidities, in
8 terms of hospitalisation and mortality. As
9 a consequence, Public Health Wales strongly advocated
10 urgent attention directed at the elderly population
11 cared for in residential and nursing homes in Wales.

12 Despite this clear and stark warning, which
13 reflected the concerns of many others on the ground, the
14 Welsh Government continued to look the other way. Those
15 concerns either were not listened to or, if they were
16 listened to, nothing was done about them.

17 With much of the government's response, our clients
18 were left asking the same question that your Ladyship
19 had to repeatedly ask Mr Goodall, Mr Gething and other
20 witnesses: what did you do? All too often, no concrete
21 or substantive action was identified in response. I will
22 consider eight examples of this now.

23 Firstly, discharge from hospitals to care homes.
24 Asymptomatic transmission and the consequent importance
25 of testing were well recognised in the scientific

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1 availability of tests, but Dr Goodall indicated that
2 there were about 1,800 tests available a day in
3 mid-March, and the number dramatically increased from
4 the beginning of April. As we explain in more detail in
5 our written closings there were only about 18 patients
6 discharged per day without a prior test in March 2020
7 and about 11 a day in April 2020 in Wales. So those
8 discharged constituted, as a maximum, only 100th of the
9 available testing capacity.

10 The importance of not sending infectious patients
11 into the tinder box of a care home was so great that
12 allocating this relatively tiny handful of the available
13 tests to this context was plainly justified. And indeed
14 the First Minister agreed with this yesterday, he
15 described this as a fair point and accepted how
16 vulnerable those in care were.

17 Alternatively, if your Ladyship considers that there
18 were not sufficient tests, then it's important to ask
19 why not. A similar issue, as Mr Gething put it, is the
20 woefully inadequate levels of PPE. Having a big enough
21 stockpile of tests and PPE is a fundamental basis for an
22 effective response to a pandemic. The need to ensure
23 the UK has enough access to tests and PPE for any future
24 pandemic ought, in our respectful submission, to be
25 a key recommendation made by this Inquiry. The costs of

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1 not being properly prepared going into a pandemic,
2 for example the huge number of additional deaths and the
3 need to close down the economy, plainly hugely outweigh
4 the costs of being properly prepared by having enough
5 stockpiles of PPE and tests.

6 The second example is data. There was, as the
7 Office for Statistics Regulation put it, a data chasm in
8 social care. Deaths from Covid-19 were not properly
9 counted at an early stage. Dr Cooper said data in the
10 care home sector was a "significant challenge":

11 "... there wasn't a system that really could be
12 relied upon for us to help inform action or look at the
13 reality of what was happening in any sort of systemised
14 data way [on the ground]."

15 The third example, stakeholders and the
16 implementation gap. There was some limited stakeholder
17 engagement by the government. For example, the
18 government consulted with the Older People's
19 Commissioner and Care Forum Wales and later, in 2021,
20 with the Disability Equality Forum.

21 This was a good start, and contrasts to the lack of
22 any significant engagement by the UK Government. But it
23 did not go anywhere near far enough. There remained two
24 serious deficiencies. So, firstly, the involvement of
25 stakeholders was too limited. The commissioner, while

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1 also needed to act.

2 The First Minister yesterday certainly agreed, in
3 his words, that there was an implementation gap, and
4 indicated that there were many contributory reasons for
5 it. He accepted lessons should be learned. They
6 included that the ownership pattern of care homes in
7 Wales was problematic, and it meant that, firstly, the
8 views of the disparate audience were not sufficiently
9 represented and, secondly, the complex pattern of
10 intermediaries, as he put it, made it difficult to
11 distribute things like PPE.

12 He made suggestions for improvements including
13 a central register of care homes and care councils. We
14 very much agree that there should be improvements but
15 respectfully suggest that these problems should already
16 have been rectified.

17 There was a wider lack of co-ordination across the
18 Welsh Government and with local authorities.
19 Mr Llewelyn explained that there was a failure to
20 properly engage with local authorities from an early
21 stage. He said that there was experience and capacity
22 within local government and had it been used at
23 an earlier point then it would have led to better
24 regulations and better guidance.

25 Dame Morgan accepted that there was inadequate

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1 of course very important, does not have a formal
2 structure which ensures that government understands the
3 concerns of all those in care, she doesn't represent
4 younger or all of the disabled people.

5 Professor Foster considered that disabled people
6 were not adequately represented in political
7 decision-making. She explained a number of problems
8 which may have been avoided, had there been better
9 representation. Those problems included the failure to
10 think about the consequences of the restrictions and the
11 removal of the human rights of those in residential
12 institutions.

13 Similarly, Dr Cooper accepted that the government
14 should have set up settings-based meetings with people
15 with lived experience of care homes.

16 The second deficiency was what's been called
17 an implementation gap. Professor Foster explained that
18 this was "the area we are really worried about",
19 referring to the authors of the Locked Out report. The
20 input of stakeholders at the core policy level was not
21 being implemented. This concern was echoed by
22 Ms Herklots, who said that there was a significant
23 disconnect between what was being promised at policy
24 level and what was being delivered on the ground. It
25 was not enough for the government just to listen, they

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1 co-ordination, including with the Welsh Local Government
2 Association.

3 The document, "*A Review of the Health & Social
4 Services Response Structure to COVID-19*", which was in
5 September 2020, identified a number of problems with
6 internal co-ordination in the government's response
7 structure. This included a lack of clear accountability
8 as to the roles of cells, which included the planning
9 and response cell and its social care subgroup, and the
10 report accepted that at times this created confusion.

11 The fourth example is indirect harm. Core
12 decision-makers, in our submission, failed to properly
13 recognise and investigate indirect harm, failed to pay
14 sufficient attention to it and consistently made
15 decisions which ignored or devalued that harm.

16 The core decisions, especially early in the
17 pandemic, were normally made solely or largely on the
18 basis of whether they would reduce Covid-19 or whether
19 they would stop the NHS from being overwhelmed.

20 Other harms, for example dementia or cancer, or
21 devastating the care sector, were ignored initially and
22 later given insufficient weight. While this may have
23 been understandable to begin with, given the challenge
24 that Covid-19 posed, that doesn't mean it was right.

25 A death due to dementia is no less important than

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1 a death from Covid-19 and it should not have been
2 devalued.

3 Recommendations. This is a sub-part of this fourth
4 example. The Inquiry is respectfully invited to
5 consider making a recommendation to the following
6 effect:

7 Restrictions should not be imposed unless all
8 reasonable efforts have been made to identify the harms
9 that would arise, and that's both Covid-19 and indirect
10 harms.

11 Secondly, there should be a balance between the
12 benefit in reducing Covid-19, of the restriction,
13 against the indirect harm that should be caused by the
14 restriction.

15 Thirdly, the balance should take into account
16 personal autonomy and individual needs given the
17 fundamental importance of those factors. That
18 importance is well illustrated in the care sector. The
19 decision, for example, whether a care home resident will
20 spend their last months isolated, in severe decline,
21 with an increased risk of death from non-Covid-19
22 causes, or face an increased risk of Covid, is a very
23 difficult and fundamental decision, and the resident
24 should have a central say in it.

25 The fifth example is conflicting and unclear
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1 allowed safe visiting. Just to give one example, they
2 included that an essential caregiver should have been
3 given the right to visit a person in care. The
4 essential caregiver would have been provided with the
5 same testing and PPE as an ordinary member of staff and
6 may be expected to limit contact with others. Although
7 that recommendation was made from a very early stage it
8 wasn't implemented and there has been no good reason why
9 not.

10 The seventh example is parity with the NHS. There
11 were many ways in which the care sector was put in
12 second place behind the NHS. Mr Llewelyn said
13 social care workers felt that they were neglected by the
14 government and did not have parity of esteem with other
15 care workers. Similarly Ms Herklots explained that
16 social care was definitely seen as secondary to the
17 health service in a number of different ways. She gave
18 examples and they include social workers or essential
19 carers were not recognised as key workers in the same
20 way as NHS workers, staff and visitors to those in care
21 were not given equivalent testing, and social care staff
22 were not given their pay for sickness absence associated
23 with Covid-19. Similarly, the NHS was prioritised for
24 supplies of PPE and testing over the care sector.

25 The eighth and final example is a group, other
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1 guidance. There were many calls for clear and
2 consistent guidelines for those needing care, from
3 March 2020, which were not heeded. For example,
4 Ms Herklots' request on 14 April 2020 for an urgent
5 action plan met with a wholly inadequate response, and
6 an action plan was not published until 30 July 2020.

7 Guidelines and regulations were unclear,
8 contradictory and confusing. Vague definitions of
9 criminal offences caused confusion and unfair
10 prosecutions. The Welsh Local Government Association
11 offered to provide their expertise to help prepare and
12 draft legislation, but this was overlooked by the
13 government.

14 There ought to have been an individual in central
15 government who had specific responsibility for ensuring
16 that communications about Covid-19, and about rules or
17 guidance, were clear and consistent, and that individual
18 should have understood how to communicate with people
19 who may have difficulties in understanding. It appears
20 that there was no such specific individual.

21 The sixth example is restrictions on visits.
22 Preventing contact between those needing care and their
23 carers or loved ones caused very serious harm. The
24 government was repeatedly invited to make certain
25 specific changes from an early stage which would have
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1 examples of systemic, less favourable treatment of those
2 in care. There was deeply worrying evidence that, at
3 least at the start of the pandemic, positive decisions
4 were made not to make healthcare available to those
5 needing care. Ms Herklots explained that health
6 professionals had stopped visiting care homes.
7 Ms Provis, Ms Grant, and the Amnesty report drew
8 attention to a range of evidence that critically ill
9 care home residents were refused all sorts of medical
10 care, ambulances, transfer to hospital and so on, on
11 a blanket basis and for no good reason.

12 Similarly, there was widespread evidence of "Do not
13 attempt CPR" forms being imposed on those in care
14 without their consent. Unpaid carers were particularly
15 neglected by core decision-makers. They should have
16 been an important issue for the government, because of
17 the huge number of unpaid carers, particularly in the
18 pandemic, and because of the particular vulnerabilities
19 of those giving and receiving unpaid care. The problems
20 had been brought to the government's attention but
21 really nothing or very little was done about them.

22 In summary, as these eight examples show, there were
23 many respects in which those in care were neglected.
24 An important question for this Inquiry is why. One
25 answer is that, taken cumulatively, those examples
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1 indicate discrimination against those who needed care
2 and against older people, ageism. Professor Foster said
3 disabled people were generally seen throughout Covid as
4 dispensable. The Locked Out report details evidence of
5 disabled people experiencing medical discrimination,
6 restricted access to public services and social support,
7 and an erosion of basic human rights. Ms Herklots had
8 serious concerns about ageism and that older people's
9 rights were not being sufficiently protected.

10 Another linked answer to the question is that core
11 decision-makers abandoned the duties in the Equality Act
12 and Human Rights Act. There is little evidence of those
13 duties being considered within the Covid response.
14 For example, we've seen no recognition of the right to
15 respect for family life by core decision-makers, that
16 restrictions must be the least onerous necessary, and
17 the important principle within that right of personal
18 autonomy.

19 The Locked Out report concluded:

20 "Disabled people's human rights, including the basic
21 right to independent living, have been discarded during
22 the pandemic."

23 And we agree.

24 Similarly, the public sector equality duty was
25 repeatedly not complied with. The Locked Out report

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1 Just so everybody appreciates, you've mentioned
2 there your written closing submissions, I will obviously
3 be taking into account the written submissions very
4 carefully and the idea of the oral submissions is to
5 highlight the features that appear in your written
6 submission, and that applies to all core participants.

7 Thank you very much.

8 **MR STRAW:** Thank you.

9 **LADY HALLETT:** Mr Friedman, are you going next?

10 **MR FRIEDMAN:** Yes, my Lady.

11 **Submissions on behalf of Disabled People's Organisations by**
12 **MR FRIEDMAN KC**

13 **MR FRIEDMAN:** In this module we act for two disabled
14 people's organisations or DPO, they are Disability Wales
15 and Disability Rights UK.

16 All the governments you have studied purported to
17 champion their categories of vulnerable people and to
18 act on their behalf. The Inquiry will evaluate the
19 success of various endeavours, but for disabled people
20 there is a real basis to fear that in Wales this is as
21 good as it gets, and it was not good enough.

22 The Welsh Government system of civil contingency was
23 not resilient. In spite of its humanist values and
24 collaborative practices, government could not deliver
25 quickly and widely enough to its population. We want to

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1 concluded:

2 "The use of Equality Impact Assessments ... during
3 the pandemic have been conspicuously absent."

4 "... I think had they been undertaken, some of the
5 issues that we raised in the report would have been
6 discovered", Professor Foster said.

7 Ms Herklots echoed those concerns, and Mr Miles
8 accepted that, in future, the government should
9 establish an earlier pattern of each type of formal
10 impact assessment. While abandoning human rights and
11 equality duties must have been the easy option, if
12 anything, those duties were even more critical in a time
13 of crisis than otherwise. Protected groups are at far
14 greater risk, and decision-makers are most in need at
15 this time of a framework to help them draw these
16 difficult balances.

17 In conclusion, my Lady, as Baroness Morgan said on
18 12 March, the pandemic isn't over. That is especially
19 true for people in care who remain subject to
20 restrictions. We respectfully invite you to carefully
21 consider making recommendations not just for a future
22 pandemic but also for those who are still suffering
23 because of this one.

24 Those are my submissions.

25 **LADY HALLETT:** Thank you very much, Mr Straw.

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1 address you on some of the reasons why that was so, but
2 we also want to ask, because it is a question that we
3 think my Lady must ask, what is it that would render
4 emergency systems in Wales and the UK more resilient in
5 the future?

6 Starting with why Wales was not resilient.

7 This module shows that the small state quality of
8 Welsh Government, presiding over some 3 million people
9 and with embedded close relations, has both
10 possibilities and challenges. Certainly social
11 partnership meant something in Wales when different
12 groups came together to assist government response as
13 well as they could. You see this collaboration during
14 the pandemic when the Social Partnership Council
15 expanded beyond its traditional membership of unions and
16 commerce to include various statutory commissioners and
17 the council for voluntary action, although not the DPO.

18 Helena Herklots, as the Commissioner for Older
19 People, was able to tilt the minister to introduce more
20 concrete planning for the needs of older people when the
21 minister's original inclination was not to do so.

22 Likewise, it was in Wales and not England or
23 Scotland that close and dynamic collaborative meetings
24 took place between DPO and government. Those meetings
25 with Deputy Minister Hutt started in early April 2020.

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1 The UK Government did not even table a discussion on the
2 pandemic's impact on disabled people with ministers
3 until 21 May, and did not start meetings with DPO until
4 July, before they promptly finished them.

5 However, the problem for Wales during the pandemic
6 is that it was too small, both in terms of the power it
7 held and its capacity to do things differently. It was
8 too small not to be taken for granted by Westminster.
9 In Welsh unionism, the UK Government did not face the
10 nationalist challenge of the Scottish Government or the
11 perennial special measures necessitated for the
12 Northern Irish one. The result was Wales being informed
13 about decisions rather than being consulted upon them on
14 numerous occasions. It was not invited to SAGE for its
15 first five meetings. It learned, barely days before
16 enactment, that devolved public health law and not
17 reserved aspects of UK civil contingency law would
18 govern lockdowns.

19 Wales could have gone for a sooner and longer
20 October firebreak, but it stumbled in political and
21 economic headwinds which made it cautious about acting,
22 and especially so when it felt unsupported by the
23 UK Government. Wales was also too small to escape being
24 parochial and limited in what it could do locally to
25 really change its outcomes. There was not a world-class

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1 in its care homes from the outset. In line with the UK,
2 it still does not systematically gather health data on
3 individual impairment and did not gather information to
4 reflect the social model of disability to ascertain what
5 disabled people might need, even though Wales has led
6 the UK on the importance of the social model for over
7 20 years.

8 Like the rest of the UK, the Welsh Government's lack
9 of situational awareness of its care sector was fatal.
10 However, unlike the rest of the UK, Wales in 2015
11 incorporated a requirement to have due regard to the
12 United Nations convention on the rights of disabled
13 people into the code of conduct under the Social
14 Services and Well-being (Wales) Act.

15 My Lady can return to this in Module 6 but it is not
16 clear at all how Welsh government or the social services
17 of Wales interpreted that convention, especially with
18 regard to data collection and emergency planning.

19 My Lady, these queries of Wales raise serious
20 questions for devolution, because, regardless of what
21 one calls it, we live in a United Kingdom with a lower
22 case federalist division of powers and responsibilities.
23 It would neither be possible or sensible for public
24 health choices to be made by state apparatus not steeped
25 in and accountable to the local population. And yet the

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1 epidemiologist like Mark Woolhouse to email the Chief
2 Medical Officer early on and focus minds.
3 Sir Frank Atherton and Dr Orford did not have the
4 difficult ministerial client that Professors Whitty and
5 Vallance had, but it seems that they did not make clear
6 the gravity of Covid-19 as early and as rigorously as
7 they should have done.

8 For all the real value that can be placed on the
9 close relationships that facilitate small government in
10 Wales, they did not always lead to joined-up planning.
11 The leadership of Public Health Wales was constantly in
12 conversations with the CMO in January and February 2020,
13 knowing how much Wales was going to be exposed in terms
14 of its population profile, but these conversations did
15 not translate into consequential advice to the Welsh
16 Government about the level of the threat. On
17 24 January, 3 March and, even to his astonishment,
18 11 March, Quentin Sandifer failed in his attempt to turn
19 a crisis framed as a health issue into a multi-agency,
20 full-society response that it had to become.

21 The data gaps in Wales were poor to the point where
22 it is hard to trust that its tragic numbers were not in
23 fact worse. Wales did not routinely collect data on
24 protected characteristics with regard to hospitalisation
25 and ICU treatment. It did not register all Covid deaths

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1 people on the margins of each part of this system were
2 rendered vulnerable by its flaws, and in that we include
3 disabled people.

4 The DPO therefore ask: what would make the system
5 more resilient in a future pandemic or similar
6 whole-society crisis? That is your ultimate question.
7 The DPO use Welsh Government as the case study. They
8 use disabled people as the litmus test, as that is their
9 concern, but also because vulnerability and impairment
10 are part of the universal life cycle, although the
11 disproportionate impact of that vulnerability is
12 socially determined.

13 A state that is truly responsive to that reality
14 needs this Inquiry to help it find the co-ordinates of
15 change.

16 First, the case of the DPO during these government
17 modules is that the system was vulnerable, not people.
18 The opposite of vulnerability is resilience. Resilience
19 is not a natural phenomenon. Some organisations,
20 families or individuals might be more robust than others
21 but resilience is about assets, and it is the state that
22 plays a key role in generating, protecting and
23 facilitating those assets. This is truly the starting
24 point. Overlooking this enables individualising the
25 problem, overestimating that something will happen

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1 without intervention or, worse, accepting that nothing
2 can be done.

3 Second, while it is tempting to think that things
4 could be done better if there were only better people in
5 place -- and Minister Jane Hutt was valued by DPO in
6 this regard, and others have been criticised -- a system
7 that overly relies on personality lacks resilience,
8 because it is too dependent on singular points of
9 failure or singular points of success.

10 In a whole-system crisis there clearly needs to be
11 a better way than hoping our leaders make the right
12 judgement calls. The necessary surge of services must
13 happen because of pre-planning and practice, not chaotic
14 improvisation. Different levels of political and civil
15 society must come together despite their differences.
16 There needs to be a more integrated system of collective
17 resilience.

18 Our third point is that the beginning of that system
19 would involve dedicated machinery with a core aim of
20 generating resilience in UK devolved and regional
21 governments. The machinery has to be intergovernmental,
22 irrespective of whether UK central government takes
23 a leading or facilitating role. It needs dedicated
24 ministers at each level of government to mitigate the
25 consequences of inequality. It has to be assisted by

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1 funding and external auditing. There were in Wales, as
2 in all other nations, assumptions about the readiness
3 and capacities of local authorities, health boards and
4 care settings which were essentially intuitive. They
5 should have been informed by periodic inspection. DPO,
6 but also other third sector groups, must be enrolled
7 into all these organisations with status and funding.
8 They can no longer be seen as some sort of amorphous
9 voluntary populus whose views might be considered
10 without any structured core participation.

11 Fifth, if government wants state organisations and
12 their personnel to deliver on resilience against
13 inequality, they need to provide continuous training and
14 learning about how to do so. In terms of who is to give
15 the training, it is crucial that it includes lived
16 experience expertise, including from DPO and third
17 sector, but also bereaved families and frontline
18 workers.

19 Sixth, as part of treating, training and learning,
20 government, civil servants, third sector and private
21 sector all need to develop a far greater skill in the
22 practice of co-production and co-design. This language
23 of co-production is not just an idea, it is a central
24 tenet of Welsh Government policy and has been commended
25 by a range of state and non-state actors in other

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1 executive agencies that operate in partnership with
2 local organisations. The matter can be reviewed after
3 the Northern Ireland module, but it requires revamped
4 commissions concerned with equality and human rights
5 which, amongst other things, need more effective powers.
6 With all that machinery, we need disabled people as
7 leaders and managers rather than still too often managed
8 and led.

9 Fourth, the effectiveness of any resilience system
10 involves synchronisation between the centre and the
11 locality. You cannot have situations as befell the
12 Welsh Local Government Association, where those who will
13 have to deliver emergency services are the last to know
14 about them.

15 Likewise, the notion of whether Welsh local
16 authorities relied on the easement of care duties under
17 schedule 12 of the Coronavirus Act remain just that,
18 a notion. No local authorities filled out a form to say
19 it was withdrawing services, yet no audit has been done
20 of the manner in which services and easements were
21 curtailed. That is the Welsh version of the problem.
22 My Lady knows it happened elsewhere.

23 The answer lies in creating a structure of national,
24 regional and local resilience organisations, not mere
25 meetings. They must have statutory duties, adequate

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1 modules. It is a method, important to DPO and central
2 to the latest developments in key international human
3 rights law, but its relevance is broader than that.

4 In disaster management, the aim of co-production and
5 co-design is not just to be kind, but to be smart. In
6 the provision of scientific advice it ensures that
7 advice remains grounded in social reality. In response
8 to an emergency, as the British Red Cross would put it,
9 it's about making your friends before you need them.

10 It is also not just about talking. As Jane Hutt
11 suggests, it concerns acknowledgement of information
12 shared, consideration of its relevance, and feedback on
13 what then happens. It mitigates the lack of diversity
14 and potential biases that will occur when politicians
15 and experts hold conversations only amongst themselves,
16 and it creates better outcomes if decisions have been
17 stress tested by the people who will potentially live
18 and die by them.

19 My Lady should recall that the Disability Unit in
20 the UK Cabinet Office wanted to create a national
21 disabled people's panel as part of its "ambitious
22 planning" that was never taken up. There needs to be UK
23 and devolved nation convened taskforces with DPO to
24 coproduce emergency risk assessments and planning for
25 disabled people and that work then needs to be

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1 channelled into general planning at various national,
2 devolved and regional levels of state.

3 Seventh, human rights protection of disabled people
4 matters in pandemics because they are the people that
5 are disproportionately affected. If governments are
6 committed to those rights, they need to specifically
7 show how they comply with them in this field, admit the
8 gaps, and create legally enforceable means to resolve
9 disputes of contested interpretation, otherwise rights
10 remain merely aspirational rather than practical.

11 Wales has codified a requirement to consider the
12 United Nations Convention on the rights of disabled
13 people, it has created an obligation to have due regard
14 to the UN Convention on the Rights of the Child since
15 2011, but these rights are not yet embedded in real-time
16 decision-making, especially as regards emergency
17 planning and data in relation to disabled people.

18 To secure those rights before they are needed, they
19 need to be incorporated into the law of Wales but also
20 the law of the whole of the UK.

21 Further, if one is serious about equality and
22 non-discrimination, then the form filling and absence of
23 real-time scrutiny that have made the method of impact
24 assessments impotent has to end. Across a range of
25 equality and rights-based mandatory considerations,

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1 data-informed, inclusive and valued connection between
2 the centres of power and the critical parts of the human
3 geography that whole-society crisis response must be
4 able to reach and collaborate across. That includes
5 independent experts and agencies, those who deliver on
6 the ground, whether it's local government, other
7 Category 1 responders, the third or the private sector,
8 but also the people, families, streets and communities
9 that make up everyday ordinary life, the very essence of
10 what government is there to protect.

11 That leads to our final point, which is the moral
12 economics of all of this. My Lady has heard our
13 submissions that human rights will not be enough in
14 a pandemic without social and economic rights. You will
15 come to your own view of whether or how much to express
16 that in accordance with your terms of reference. In
17 concrete terms, the DPO want equality and human rights
18 impact assessments to be applied to budgeting, including
19 the duties to consider socioeconomic disadvantage under
20 section 1 of the Equality Act, and they want all
21 governments to practice co-production and co-design of
22 economics with all its people and not just more powerful
23 interests.

24 My Lady, economics can, of course, be the subject of
25 political differences, but the recommendations we and

27

1 impact assessments should involve both thinking and
2 collaboration with the third sector to make the
3 discipline the centre of gravity of good governance and
4 the source of real resilience.

5 Our eighth point concerns the gaps in data systems
6 and analysis that are truly profound. Neither local
7 resilience nor effective delivery to the people who need
8 it will properly exist without a more sophisticated
9 system of data collection and its deployment. The ONS
10 did a good job at the top of the structure, but there
11 needs to be a far wider network of data collection,
12 distribution and analysis with the technology to assist
13 it. We are supposed to be in the midst of
14 an information revolution, but its possibilities have
15 not reached yet the interests of marginalised people.

16 There also needs to be a practice of co-production
17 and co-design of services by DPO and other
18 representative groups to enable national data projects
19 to happen in a way that can be trusted not only by
20 government but also by those who are governed.

21 Our ninth point concerns people. Harnessing the
22 positive qualities of people and groups requires proper
23 integration between state and society. This is not
24 merely a communication exercise; it's about structure
25 and action. There needs to be organised, practised,

26

1 others are putting to you are actually about coalition
2 and society recognising its greater interconnectedness,
3 its sense of shared ethics and the price that was paid
4 for not putting value on things that should have been
5 more valued.

6 On any view, the changes now needed to avoid
7 pandemic inequalities must involve considerable and
8 progressive effort to make democracy more social again,
9 and more socially connected than it has been for some
10 time now.

11 Rhodri Morgan, one of the architects of the modern
12 government of Wales, said that devolution would create
13 a living laboratory in which different policy ideas
14 could be explored. The Covid pandemic caused some of
15 the great and tragic living experiments of our time. It
16 is this Inquiry that must gather the learning up and
17 make its recommendations.

18 **LADY HALLETT:** Thank you very much, Mr Friedman.

19 Ms Heaven.

20 **Submissions on behalf of Covid-19 Bereaved Families for
21 Justice Cymru by MS HEAVEN**

22 **MS HEAVEN:** Thank you, my Lady.

23 The Covid-19 Bereaved Families for Justice Cymru
24 have come to this Inquiry seeking truth, justice and
25 accountability for all those bereaved by Covid-19 in

28

1 Wales. At the outset of this module we set out in stark
2 terms the total number of Covid-19 deaths registered in
3 Wales up to 2 February 2022: 12,510. That figure
4 increased to 12,559 by 16 February 2024.

5 The impact film and the powerful evidence of
6 Elizabeth Grant and Amanda Provis served as a tangible
7 heartbreaking reminder of the tremendous loss of life
8 and trauma experienced by the bereaved. As Elizabeth
9 Grant reminded us, thousands of deaths on the dashboard
10 were desensitising people to the fact that this was
11 actually people, they were loved people, they'd just
12 become statistics and numbers.

13 The deceased must not be reduced to statistics and
14 the trauma experienced by the Welsh bereaved must not go
15 unheard. The Welsh bereaved witnessed day after day the
16 individual and systematic failure to adequately protect
17 their loved ones as Covid-19 spread like wildfire
18 through hospitals and care homes, fuelled by inadequate
19 testing regimes and insufficient PPE. The Welsh
20 bereaved want answers.

21 Against this poignant backdrop, the Welsh Government
22 has repeatedly shirked a granular inspection of Welsh
23 decision-making by refusing to open itself up to
24 scrutiny in a Welsh-specific Inquiry, seeking instead to
25 blame the UK Government.

29

1 accept that mistakes were made, which they undoubtedly
2 were. Much like the tenor of the Welsh Government's
3 written evidence, its oral evidence has been laden with
4 the heavy caveat of hindsight, whilst seeking to deflect
5 blame on to others. The Welsh Government has approached
6 this Inquiry determined to robustly defend their
7 decisions.

8 This was most starkly illustrated by the way
9 Mr Drakeford and Mr Gething gave their evidence to you.
10 Both refused to accept that any mistakes had been made.
11 For example, they refused to accept that a precautionary
12 approach should have been taken to asymptomatic
13 transmission in April 2020, which is simply staggering
14 given the evidence we know they had from SAGE, the
15 UK Government and their own advisers.

16 Between them they also refused to accept a failure
17 in planning for this pandemic. Mr Drakeford did not
18 accept that he should have cancelled mass gatherings and
19 Mr Gething only accepted this with the qualification of
20 hindsight.

21 They both defended the delays by the Welsh
22 Government on introducing testing in care homes and
23 tried to explain away the Welsh Government's obviously
24 illogical divergence on face coverings.

25 Mr Drakeford even failed to accept that he should

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1 It is also regrettable that this Inquiry, and indeed
2 this module, has been forced to spend so much time
3 asking about missing evidence and destroyed WhatsApps.
4 The Welsh Government has consistently sought to deflect
5 blame by asserting what appears to have been a party
6 line, that decision-making was not made on WhatsApp. As
7 you rightly identified, my Lady, the real issue is one
8 of record-keeping and public accountability, and it is
9 worrying that many of the witnesses before you,
10 including the First Minister for Wales, Mr Drakeford,
11 did not appear to appreciate this. It was not the
12 policy that was wrong, what was wrong was that
13 government communication during a national emergency was
14 deleted.

15 My Lady, we invite the Inquiry to publish all the
16 WhatsApps so that the Welsh people can see what their
17 government was using informal messaging for.

18 At the outset of this hearing, the Welsh bereaved
19 invited witnesses to be transparent, reflective and
20 accountable. A reasonable request of Wales' democratic
21 leaders one might think. The Welsh Government does not
22 appear to have heeded this plea. The evidence given to
23 this Inquiry can be characterised by a lack of
24 willingness, in many quarters of Welsh Government, to
25 give open accounts of what went wrong and why, and to

30

1 have attended COBR early, whilst in the same breath
2 criticising Boris Johnson for exactly the same thing.
3 In all the other modules, my Lady, you've heard some
4 reflection and some acceptance that mistakes were made,
5 and it is deeply worrying to the Welsh bereaved that
6 their government seems incapable of doing the same.
7 This ought to raise a real concern that lessons have not
8 truly been learnt here in Wales.

9 Now, early response. The Welsh Government's initial
10 response can be summarised in three words: passive, slow
11 and disjointed. Valuable time was lost in January,
12 February and the early part of March 2020, when the
13 virus was allowed to spread, with ministers and advisers
14 complacently waiting for the first case to arrive in
15 Wales and, thereafter, responding with sloth-like
16 urgency. It was obvious from late January 2020 that
17 what was happening internationally could soon happen in
18 Wales.

19 The Chief Medical Officer for Wales, Frank Atherton,
20 warned the First Minister by 24 January 2020 that there
21 was a significant risk the virus would arrive in Wales.

22 At the 29 January 2020 COBR meeting, the
23 UK Government confirmed its intention to prepare for the
24 reasonable worst-case scenario.

25 The Welsh Government should have been electrified at

32

1 this point, but it was not. Instead, it took
2 a laissez-faire approach, only discussing Covid-19 in
3 Cabinet on 25 February, notwithstanding the clear risk
4 and the evidence that the NHS in Wales was at risk of
5 becoming overwhelmed.

6 Mr Drakeford's response was to refer to informal
7 chats in the corridors of power and a suggestion that
8 Covid-19 was happening elsewhere, suggesting that the
9 signals were not there at the time, as it was low risk
10 and so "not pressing". Mr Drakeford appears to have
11 conveniently forgotten that on 31 January 2020 his Chief
12 Medical Officer, Frank Atherton, formally increased the
13 risk level from low to moderate, alongside the other UK
14 chief medical officers, and issued a press statement on
15 that date stating that this meant the UK should plan for
16 all eventualities. INQ000048722.

17 We invite the Inquiry to publish this notice from
18 Sir Frank of 31 January so that the public can see the
19 evidence for themselves.

20 The Welsh Government could and should have acted
21 sooner in the areas where they did have responsibility,
22 namely health and social care. They could have ensured
23 infection prevention and control measures were in place,
24 that hospitals were prepared, that there was surge
25 capacity, that care homes knew what to do in the event

33

1 have been borne out by the evidence that you have heard:
2 "What I think was missing in the first few weeks,
3 from 8 January 2020 when I first became aware to
4 20 February 2020 when the [Health and Social Services
5 Group] Coronavirus Planning & Response Group first met,
6 was national strategic leadership and co-ordination from
7 the Welsh Government."

8 Now, Mr Drakeford was very dismissive of
9 Dr Quentin Sandifer in his evidence to the Inquiry, but
10 on his own admission little was being done in that early
11 period. It might be suggested that, rather than
12 gallivanting around Brussels attending cultural events
13 on St David's Day on 4 March 2020, Mr Drakeford would
14 have better served the Welsh people by attending COBR
15 and also communicating with Public Health Wales and
16 Dr Sandifer.

17 Now, in relation to lockdown, Dr Hoyle, Dr Williams,
18 Dr Cooper and Professor Gravenor all say that the
19 national lockdown should have been introduced two weeks
20 earlier as a minimum. Mr Drakeford in his evidence said
21 that it was only on 21 and 22 March 2020 that he and
22 Nicola Sturgeon were calling for a national lockdown.
23 The Welsh bereaved question why on earth was more
24 pressure not being exerted earlier by the Welsh
25 Government on the UK Government?

35

1 of an outbreak. They could have started earlier to
2 count up the PPE. They could have liaised with key
3 partners, establishing effective consultative fora, and
4 formulated co-produced plans on a whole range of
5 non-pharmaceutical interventions. Instead, they did not
6 act with urgency at this stage but waited for the virus
7 to arrive. This was not national strategic leadership.

8 Chris Williams and Tracey Cooper from Public Health
9 Wales were aware of the looming threat of Covid-19 and
10 were mobilising from mid to late January 2020. In
11 a call to arms they called for prompt action from the
12 Welsh Government. The frustration felt by
13 Chris Williams and Tracey Cooper was palpable in their
14 evidence to this Inquiry. If Public Health Wales could
15 see the threat "coming down the line", why couldn't the
16 Welsh Government?

17 Mr Drakeford in his evidence suggested the reason he
18 didn't hear from Public Health Wales was because their
19 concerns were not being passed to him by his Chief
20 Medical Officer. This was a very poor example of
21 blaming others, and another example of deflection from
22 Mr Drakeford. Again, this was not national strategic
23 leadership.

24 The sentiments expressed by Dr Quentin Sandifer,
25 then lead strategic director of Public Health Wales,

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1 PPE. By the end of January 2020 at the very latest
2 it must have been obvious that if Covid-19 arrived in
3 Wales, PPE was bound to be needed and potentially in
4 large quantities and very quickly, however we heard that
5 the Welsh Government's health countermeasures group,
6 which was tasked with operational co-ordination and
7 oversight for PPE, did not start that work until
8 12 February 2020.

9 The lack of urgency this shows in thinking through
10 the supply and delivery of PPE is difficult to
11 understand. Why was this crucial work not started at
12 the very first opportunity?

13 As regards PPE for social care, the evidence showed
14 the first decision by the Welsh Government to provide
15 substantial help to the sector was not taken until
16 19 March 2020. Care providers could approach local
17 health boards for PPE, but only if a case of Covid-19
18 had been confirmed. Well into April 2020 serious
19 problems with PPE continued, as evidenced by the Welsh
20 local governments' call for action and the joint
21 statement on 12 April 2020 from the British Medical
22 Association and Wales TUC, calling for assurances from
23 the Welsh Government that health and social care staff
24 would get the PPE they needed.

25 There is no doubt that those in dire need of PPE in

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1 these early weeks were profoundly failed by the Welsh
 2 Government.
 3 Mass gatherings. The Welsh Government was slow to
 4 ban mass gatherings in the face of known rising rates of
 5 community transmission. The scientific evidence by
 6 11 March 2020 was that banning mass gatherings could
 7 result in a reduction in infection-related deaths by 2%.
 8 The Scottish Government took the decision to cancel mass
 9 gatherings of over 500 people to release pressures on
 10 the emergency services. Notwithstanding these known
 11 benefits, the Welsh Government recklessly declined to
 12 take the initiative to cancel a Wales v Scotland rugby
 13 match scheduled for 14 March 2020 in the face of
 14 significant concerns raised and a recommendation to do
 15 so by Public Health Wales, leaving it to the Welsh Rugby
 16 Union to make the decision whether to do so, which
 17 of course they did.

18 In his evidence, Frank Atherton and indeed
 19 Mr Drakeford clung desperately to the absence of direct
 20 SAGE advice on banning mass gatherings to justify the
 21 position, accepting only with the caveat of hindsight
 22 that banning mass gatherings would have given the
 23 correct signal to the public. In his evidence,
 24 Mr Gething drew comparison between indoor and outdoor
 25 events and the cultural significance of rugby. This

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1 It is deeply upsetting to those who lost loved ones
 2 in care homes to hear Frank Atherton dismiss their
 3 concerns because "the numbers were not large", and
 4 assert that there was PPE when we know this was simply
 5 not consistently the case, and then to pass the buck on
 6 to Public Health Wales who apparently were left to give
 7 some advice on infection control.

8 The obvious questions were simply not asked.
 9 For example, who was going to care for the sick
 10 supposedly isolated residents? It was of course the
 11 healthcare workers, who would also be caring for many
 12 others in a context where there were no tests and quite
 13 possibly no adequate PPE.

14 The Welsh Government's decisions on 22 and
 15 29 April 2020 to test everyone being discharged to
 16 a care home and provide step-down facilities for those
 17 who tested positive was a change that came later in
 18 Wales as compared to England. Similarly, the decision
 19 to extend testing to all staff and residents in
 20 care homes was not taken until 16 May 2020, slower than
 21 all the other three nations.

22 Why did the Welsh Government simply wait for
 23 leadership from the UK Government on these matters? Why
 24 was it not leading the field in the area of testing and
 25 being proactive rather than reactive? The Welsh

39

1 does not explain why the Welsh Government allowed two
 2 Stereophonics concerts to proceed on 14 and
 3 15 March 2020. This was not national strategic
 4 leadership but rather a total abdication of
 5 responsibility by the Welsh Government.

6 Care homes. It is of course the case that the Welsh
 7 Government had to protect hospitals, but this should not
 8 have been at the expense of vulnerable care home
 9 residents who were in effect locked in without visitors
 10 and without a voice.

11 The Welsh Government had a duty to protect all
 12 vulnerable people, yet when the virus erupted in March
 13 and April 2020, the Welsh Government recklessly exposed
 14 those in care homes to Covid-19 when on 9 April 2020
 15 they introduced a policy directing care homes to accept
 16 people with symptoms of Covid-19.

17 This was at a time when they knew from the Welsh
 18 Local Government Association and the Older People's
 19 Commissioner, Helena Herklots, that the virus was
 20 spreading like wildfire in care homes. This was also at
 21 a time when they knew there was an inadequate and
 22 inconsistent supply of PPE, that there was no testing
 23 regime, and that residents were dying in circumstances
 24 where, in the words of Ms Herklots, those deaths were
 25 not even being counted.

38

1 Government wants to be compared in this Inquiry to the
 2 UK Government, and indeed all the other four nations.
 3 Well, in respect of testing in care homes and of health
 4 care workers, the Welsh Government clearly came last.

5 Transmission. As early as 28 January 2020, SAGE and
 6 in turn the Chief Scientific Adviser for Wales were
 7 aware of the possibility of asymptomatic transmission.
 8 In the absence of certainty on asymptomatic
 9 transmission, but in the context of clear evidence of
 10 risk, Welsh Government decision-makers could and should
 11 have adopted a precautionary approach. The failure to
 12 do so is unacceptable and had devastating consequences
 13 in Wales.

14 Mr Gething was presented in this Inquiry with
 15 a wealth of evidence demonstrating a growing awareness
 16 of asymptomatic transmission from as early as
 17 4 February 2020. Mr Gething accepts that he knew about
 18 much of this evidence, and at an early stage, and on his
 19 own admission he knew about the CDC report of
 20 27 March 2020, which clearly stated that asymptomatic
 21 transmission is real and should be assumed and "once
 22 Covid is introduced into a long-term nursing facility,
 23 rapid transmission can occur".

24 It is difficult to understand, then, how Mr Gething
 25 could think it appropriate to make a public press

40

1 statement on 2 May 2020 stating:

2 "At the moment, the evidence does not support the
3 blanket testing of everyone who does not have symptoms."

4 When a different position was being taken by the
5 UK Government in England, this was a clear failure in
6 public health messaging which directly conflicted with
7 the four nations approach.

8 Despite the overwhelming evidence at his disposal,
9 Mr Gething was unable to share Matt Hancock's biggest
10 regret of not pushing harder for asymptomatic
11 transmission to be a baseline assumption. Instead,
12 Mr Gething referred again to hindsight, and sought to
13 fall back on the advice he claimed to be receiving, and
14 the fact that he was not being told to act, again
15 seeking to blame others. But why did Mr Gething need to
16 be told what to do by his advisers? And why was he
17 looking for scientific certainty on asymptomatic
18 transmission and taking a pick and mix approach to the
19 science?

20 As soon as it became obvious that the UK Government
21 had changed its approach to testing, why did Mr Gething
22 not simply ring up Matt Hancock as a matter of urgency
23 to understand the rationale for the change and to better
24 understand the science and to understand what immediate
25 action was required in Wales? Sitting back and simply

41

1 the reality that the Welsh Government was trying to hide
2 from the Welsh people their chaotic response and the
3 fact that they were lagging behind the United Kingdom
4 Government?

5 Masks. Engaging in unjustifiable divergence is most
6 starkly illustrated by the approach to face coverings
7 taken by the Welsh Government, with Frank Atherton at
8 the helm. There is simply no justification for there to
9 have been any divergence on face coverings in the
10 community across the four nations. Divergence on face
11 coverings would obviously confuse the public and
12 undermine public trust in the science. It was
13 divergence and weak public messaging that created a risk
14 of mask discrimination or face mask militancy in
15 a public who didn't understand or trust the inconsistent
16 and contradictory advice they were being given.

17 It ought to have been obvious that to leave the
18 public mystified by the so-called scientific advice
19 would do untold damage to the public's willingness to
20 trust their government. There was, in truth, no
21 downside to mandating face coverings in the community.
22 These things ought to have been obvious to
23 Frank Atherton and to the First Minister for Wales,
24 Mark Drakeford, and indeed to the whole Welsh
25 Government, and it's simply incredible to the Welsh

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1 waiting is not an example of ministerial leadership.

2 Mr Drakeford also relied on hindsight and said with
3 no caveats or nuance that when it came to asymptomatic
4 transmission the scientific evidence simply wasn't there
5 in April 2020, and we know that he told the Senedd on
6 29 April 2020 that there was no value in testing
7 asymptomatic patients. Again, we know from the evidence
8 disclosed to this Inquiry that this was simply not the
9 case. How could Mr Drakeford have been so ignorant of
10 what the evidence and the science showed, we ask?

11 My Lady, we ask you pay very close attention to the
12 witness statement of Albert Heaney, the then director of
13 social services. This is a very important statement,
14 but it clearly tells you that on 23 to 24 April Public
15 Health England shared the results of a survey of
16 care homes which indicated asymptomatic transmission
17 with NERVTAG and with the Welsh Government, and it noted
18 growing international evidence of asymptomatic
19 transmission of Covid-19 in care homes.

20 The Welsh bereaved want to know why Mr Drakeford and
21 Mr Gething did not tell the Welsh people the unvarnished
22 truth, which was that there was evidence that the virus
23 might be spreading asymptotically and that testing was
24 crucial. The people of Wales needed to know this
25 information in order to best protect themselves. Was

42

1 bereaved that not even on this topic could
2 Frank Atherton accept that he had failed the Welsh
3 people, but he only accepted that, looking back, "I do
4 wonder whether it would have been a better decision just
5 to simply align".

6 As for Mr Drakeford, this is another area in which
7 leadership was simply absent. It is also deeply
8 concerning to the Welsh bereaved that in early June 2020
9 TAC advice was apparently amended following discussions
10 with Mr Gething resulting in the Welsh public not being
11 told that the World Health Organisation was recommending
12 that vulnerable people in the community, where they
13 were 60 and had underlying comorbidities, needed access
14 to medical masks. The Welsh bereaved ask: when was the
15 Welsh public actually given this piece of information?

16 Autumn firebreak. The Welsh Government knew in
17 September 2020 from SAGE and TAG that they needed to act
18 decisively, they knew local lockdowns were a failed
19 experiment, but when the Welsh Government did decide to
20 diverge and go it alone on a firebreak, they did so in
21 a way that was slow and ineffectual, waiting too long
22 for the lead to be taken by the UK Government, such that
23 the steps that were taken were too little and too late.
24 The modelling request was delayed, the parameters were
25 overly limited, and there's no evidence of advance

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1 planning on financial scope for action. It is simply
2 not good enough for the Welsh Government to blame the
3 UK Government for the timing of the firebreak. The
4 evidence simply does not support this assertion.

5 The Inquiry's not been able to get to the bottom of
6 whether ministers knew that four weeks would push the
7 virus deep into December, close to the time when the
8 vaccine would arrive. This was an obvious and vital
9 piece of information that ministers ought to have at
10 least weighed in the balance. The consequences of not
11 doing so will not be lost on the Inquiry, given the high
12 death rates in Wales in late 2020 and early 2021. And
13 of course then when it came to easing restrictions after
14 the firebreak, the Welsh Government opened up society
15 too quickly, contrary to the advice of Frank Atherton
16 and the Chief Scientific Adviser for Health, Rob Orford.

17 Now, the Covid-19 Bereaved Families for Justice
18 Cymru wish to make clear, on this topic of firebreak and
19 modelling more widely, that the Swansea modelling team
20 did their absolute best and this should be recognised by
21 the Inquiry, as should the disregard at the way these
22 academics were treated by the Welsh Government, who had
23 to work for free in their evenings whilst also living
24 through a pandemic. These were dedicated professional
25 members of the Welsh public who stepped up to fill the

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1 **MR GARDNER:** My Lady, the voices and rights of children and
2 young people are often forgotten. This is all too easy
3 because children may not have the information or
4 platforms available to them to have their voices heard.

5 On Day 1 of this module sitting here in Cardiff this
6 Inquiry played an incredibly moving impact film. The
7 impact of the pandemic on those who spoke on that film
8 was stark and the loss experienced cannot be measured.
9 But this said, there was an important omission from that
10 film: it did not include a child or young person
11 discussing the impact of the pandemic on them.

12 Now, the pandemic had an immediate impact on all
13 children and young people in Wales, inequalities caused
14 by poverty and disability in children became more
15 pronounced, children lost many activities that we all
16 took for granted in childhood. As Professor Holland
17 said, these are not nice to have, but they are
18 an important part of the development of children, and
19 that's recognised in Article 31 of the United Nations
20 Convention on the Rights of the Child. Professor
21 Holland also highlighted that we are seeing
22 a longer-term adverse impact on children's confidence,
23 their school attendance and mental health since the
24 pandemic.

25 Whilst the pandemic had an immediate and devastating

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1 void caused by the Welsh Governments' woeful planning
2 failures. They were treated badly and this is nothing
3 short of a scandal.

4 Intergovernmental relations. The Welsh bereaved
5 question whether the Welsh Government genuinely did seek
6 to forge relations that would enable the best chance of
7 alignment of policy and public messaging with the
8 UK Government or whether there was in fact a tendency
9 towards silos and a default position of one upping and
10 blaming the UK Government. There should have been no
11 place for playing politics in a pandemic with lives at
12 stake.

13 So, finally, my Lady, as you know, the Welsh
14 bereaved are incredibly grateful for your efforts and
15 that of the Inquiry team in coming to Wales and bringing
16 some scrutiny to bear on the handling of the pandemic.
17 The Welsh bereaved feel very keenly that you have gone
18 to great lengths to listen to the Welsh people and to
19 hear their stories of bereavement and for that they are
20 very grateful.

21 Thank you, my Lady.

22 **LADY HALLETT:** Thank you very much, Ms Heaven.

23 Mr Gardner.

24 **Submissions on behalf of the Children's Commissioner for**
25 **Wales by MR GARDNER**

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1 impact on older generations, on the disabled and on
2 those who require care, equally the impacts will be had
3 on children for a generation.

4 So what was the risk and what was the impact on
5 children? The Inquiry has received detailed evidence on
6 risks generally. Dr Chris Williams stated that the risk
7 from infection to children is low and it must be put in
8 the context of the relatively low severity, the burden
9 on children and the negative effects of school closures.

10 The evidence before the Inquiry also suggests that
11 schools themselves were not environments driving
12 transmission of Covid-19 at particularly great rates.
13 That is shown in the SAGE advice of 16 October 2020 and
14 again in the Public Health Wales advisory note for
15 1 November 2021.

16 The latter of those notes that the closure of
17 educational institutions in the second wave only
18 resulted in a 7% reduction in infections compared to
19 business closures, which resulted in a 35% reduction.

20 Indeed, yesterday Counsel to the Inquiry referred
21 the First Minister to a TAG report of 7 January 2021
22 which advised that schools should not be used as
23 a control measure for reducing R, particularly if
24 non-pharmaceutical interventions are being observed.

25 Now, of course any reduction in contact will reduce

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1 infections in some way, but the actual risks need to be
2 considered against the hidden harms.
3 The TAC report dated 3 June 2020 identified that
4 school closures were having a significant harmful impact
5 on children. The impact included severe impairment to
6 learning, adverse impact on those with additional
7 learning needs, the digital gap exacerbating
8 socioeconomic inequality, and the loss of social
9 engagement, as well as the impact on mental wellbeing
10 and the loss of the protective environment of schools
11 for vulnerable children.

12 As the report noted, the longer that schools are
13 closed, the more profound the difficulties will be and
14 the greater the cost and challenge to overcome them.

15 With a view to understanding the impact of the
16 pandemic on children, the commissioner conducted two
17 surveys entitled "*Coronavirus and Me*" with children and
18 young persons across Wales. They were in May 2020 and
19 January 2021. The Commissioner also conducted
20 a firebreak lockdown listening day with children. These
21 surveys and interventions showed that the impact of
22 Covid-19 on children in Wales was indeed profound.
23 Children reported that they were feeling lonely and
24 isolated by the restrictions that were put in place.

25 There was, however, an additional important piece of
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1 that of her counterpart in England. The social
2 partnership model and the willingness of the Welsh
3 Government to listen and learn in order to inform
4 decisions she says should be commended.

5 From mid-March 20 onwards the commissioner had
6 regular engagement with ministers and officials,
7 including weekly telephone calls. To the credit of the
8 Welsh Government, as time went on officials and
9 ministers saw that the commissioner could bring
10 something to the table and displayed an eagerness and
11 willingness to hear the experiences of children.

12 The commissioner commends to the Inquiry the model
13 of the Social Partnership Council, which allowed
14 ministers, officials and the Chief Medical Officer to
15 explain the rules, the latest evidence and major
16 decisions which were to be announced and allowed, and it
17 allowed those stakeholders present to raise issues and
18 concerns. This was an effective way to make sure
19 leaders across all sectors were engaged and had input
20 into vital decisions.

21 Nonetheless, the Commissioner would respectfully
22 adopt the statement made in oral evidence by
23 Professor Debbie Foster that what was lacking in the
24 pandemic was proactivity, there was a lot of reactivity.

25 Whilst commending the Welsh Government's willingness
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1 information arising from these initiatives. Many
2 children had a strong sense of fairness. They thought
3 it was fair that there were measures in place to protect
4 older people, but they were also filled with a sense of
5 injustice linked to the appearance that economic
6 necessities, such as opening businesses and hospitality,
7 were being given priority over their long-term education
8 and social needs. This was exacerbated at times when it
9 wasn't always clear to children when, how or why
10 decisions had been reached.

11 As a group, it was apparent that children and young
12 people were willing to make great sacrifices, not
13 because Covid-19 was such a threat to them, but because
14 if they did not it was a threat to others. This
15 attitude is to the great credit of our youngest
16 generation. When children and young people said that
17 they were willing to make this great sacrifice,
18 the commissioner asks: what was done in return to help
19 them, and was it enough?

20 My Lady, I turn to the role and the experience of
21 the commissioner in the pandemic and the liaison with
22 the Welsh Government.

23 The commissioner considers that the liaison with the
24 Welsh Government and its willingness to learn and adapt
25 is a different and far more positive experience than
50

1 to engage with key stakeholders, there is still learning
2 which can come from the handling and consideration of
3 the rights of children during the pandemic and in
4 particular in the initial days of the pandemic.

5 The commissioner's written closing submissions will
6 provide more detailed submissions on discrete issues
7 such as face coverings, the clarity and application of
8 guidance around contact with family in children's homes,
9 and for children in care and youth justice issues, but
10 today the commissioner highlights some themes where
11 improvement could be made.

12 Theme one is the timing of initial action and Welsh
13 Government preparedness. Concerning evidence has arisen
14 as to the Welsh Government's preparedness and timing for
15 its initial decision on 18 March 2020 to close schools.

16 Firstly, it is concerning that the decision to close
17 schools was taken on 18 March 2020 without any legal
18 advice. This is in contrast to the decisions to close
19 businesses, caravan parks and even footpaths where legal
20 advice was taken, as indeed confirmed by Mr Miles in his
21 statement.

22 It is presumably due to this lack of legal advice
23 that the decision to close schools was taken by the
24 Welsh Government when, in the absence of the
25 Coronavirus Act 2020, it did not have the power to do
52

1 so.

2 I pause to note the collective response from the

3 Welsh ministers who appeared before the Inquiry that

4 there was no such decision, only clear advice.

5 The education minister's published announcement on

6 18 March reads as follows:

7 "Today, I can announce that we are bringing forward

8 the Easter break for schools in Wales. Schools across

9 Wales will close for statutory provision of education at

10 the latest on 20 March 2020.

11 "Today's decision will help ensure an orderly

12 closure ..."

13 With that information, I leave it to the Inquiry to

14 draw its own conclusions as to whether a decision had

15 been made.

16 The lack of legal advice also denied the minister

17 the opportunity to be reminded of her legal duties to

18 children and the Rights of Children and Young Persons

19 (Wales) Measure 2011, to which I will return.

20 Secondly, it is concerning the decision to close

21 schools was taken at such a rushed pace. It is

22 recognised that COBR was not recommending school

23 closures as late as 16 March 2020. Nonetheless, it

24 appears that there had been no contingency planning in

25 the months of January and February 2020 despite, as

53

1 which decisions were having to be made. The

2 commissioner does not doubt the pressures of that

3 period, nonetheless the commissioner questions whether

4 the necessity to work at such pace is largely

5 self-inflicted and down to the lack of preparedness and

6 planning. This was to be to the significant detriment

7 to the children of Wales.

8 My Lady, theme two is the voice of children and

9 young persons. Article 12 of the United Nations

10 Convention on the Rights of the Child guarantees

11 children and young persons the right to express their

12 views freely in all matters affecting the child, the

13 views of the child being given due weight in accordance

14 with the age and maturity of the child.

15 This right and all other rights under the UNCRC must

16 be given due regard in all decisions made by the Welsh

17 Government as they affect children by virtue of the

18 Rights of Children Measure.

19 The practical importance of listening to children

20 was set out in the report "*Protecting the mental*

21 *wellbeing of our future generations*", July 2022, in

22 which the executive summary states:

23 "Having opportunities to express views, and have

24 their views valued is identified by young people as

25 being beneficial for mental wellbeing and can lead to

55

1 the Inquiry was informed by Vaughan Gething in evidence,

2 that school closures were a possibility under the

3 response plan and discussions highlighting the

4 possibility of school closures had been taking place

5 since at least mid-February if not sooner.

6 If proper contingency planning had been started at

7 that time, school closures may have been shorter or even

8 avoided. They may have been implemented in a smoother

9 way, with legal advice and putting in place support for

10 children and young people which they would need for

11 a long period of time away from school.

12 Further, if proper contingency planning had taken

13 place, the Welsh Government would have had time to

14 assess, understand and consider the impact on children

15 and their rights by involving the commissioner in the

16 decision and by undertaking a children's rights impact

17 assessment. A lack of early planning and conversation

18 with the commissioner, who was in regular contact with

19 children from diverse backgrounds, would have

20 highlighted the need for mitigations relating to the

21 digital divide, disabled children's access to online

22 lessons and the safety and wellbeing of children for

23 whom school is a haven.

24 Several ministers have come before this Inquiry to

25 suggest that these oversights were due to the pace at

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1 more effective policy responses."

2 At the outset of the pandemic, it's clear that the

3 voices of children and young people in Wales were not

4 being sought or considered. When the decision to close

5 schools was taken on 18 March, where were the voices of

6 children in that decision which would affect them so

7 significantly? As was confirmed by Professor Holland in

8 her oral evidence, the Children's Commissioner was not

9 consulted on the decision. Jane Runeckles confirms in

10 her evidence that no consideration was given to whether

11 to consult the commissioner. So to confirm, the

12 statutory advocate of children's rights in Wales under

13 the Care Standards Act 2000 was not consulted in the

14 most significant decision affecting children in living

15 memory.

16 Communication with children and young people around

17 restrictions requires their involvement. As

18 Professor Ann John highlighted in her statement:

19 "Designing effective communication and interventions

20 with young people will require an appreciation of young

21 peoples' own understanding of the situation and their

22 losses. Outputs need to be age appropriate and there is

23 a need for simple behavioural instructions framed in

24 a contextually relevant way."

25 As well as consulting the commissioner, an example

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1 of how this could be done is the listening day organised
2 in response to the announcement of the autumn 2020
3 firebreak and indeed the "Coronavirus and Me" surveys.

4 My Lady, theme three is the consideration of the
5 rights of young people and children's rights impact
6 assessments. In Wales the Inquiry will be aware that
7 there is a duty under the Rights of Children and Young
8 Persons (Wales) Measure 2011 on the Welsh Government to
9 have regards to the rights of children under the UNCRC
10 in exercising its functions. The Children's Rights
11 Scheme 2021, at paragraph 3.1, also requires the Welsh
12 Government to undertake a children's rights impact
13 assessment (CRIA) to understand the social, economics,
14 cultural and environmental effects of decisions on
15 children.

16 Professor Holland observed in her oral evidence that
17 a CRIA should be started as soon as a new policy or
18 decision is being considered. It is a tool for thinking
19 about the impact on children and their rights. It
20 should think about mitigation of adverse impacts which
21 are identified as part of the assessment. It should be
22 an active, live document.

23 The CRIA document itself is important, but more
24 important is the substantive consideration of rights and
25 needs of children. The duty under the 2011 Measure is

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1 learning needs, the use of face masks in schools, and
2 the impact of self-isolation on children.

3 Further, as noted in Professor Holland's evidence
4 when CRIA were completed they were often completed late,
5 they were far removed from the original decisions and
6 reflected back.

7 They raised concerns that the CRIAs were being --
8 weren't being content -- completed -- I apologise.

9 The commissioner raised concern that the CRIAs were
10 being completed retrospectively. A CRIA should not be
11 about retrofitting children's rights/considerations into
12 decisions, that they never had this in mind at the time.

13 This defeats the purpose of the CRIA, which is to
14 ensure that the rights of children are at the forefronts
15 of minds of decision-makers and may lead them to
16 consider and mitigate the impact of the decisions on
17 children before those decisions are taken and
18 implemented.

19 The Commissioner is concerned that these important
20 duties as they apply in Wales are not sufficiently
21 understood or consistently applied in either substance
22 or a procedural sense within the Welsh Government.
23 The Inquiry is asked to consider the significant and
24 consistent evidence of failures to apply the
25 2011 Measure, and whether more substantive training and

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1 one of substance, not form. There is an obligation on
2 the Welsh Government to consider children's rights and
3 doing so contemporaneously will lead to better
4 decision-making. If this is done contemporaneously in
5 a CRIA document, then that will help to assist
6 evidencing compliance with the duty, but it is not
7 definitive. It is consideration of the substantive
8 rights and mitigation measures feeding into
9 decision-making at the time that will constitute
10 exercise of the duty.

11 This Inquiry has heard concerning evidence relating
12 to failings in the use of assessments during the
13 pandemic. In evidence a number of ministers and
14 officials were asked in the absence of undertaking
15 a contemporaneous CRIA whether they considered the
16 duties under the 2011 measure. They repeated the same
17 point: there was no time to prepare the forms but they
18 had the issues on their mind.

19 The Inquiry will have to grapple with whether such
20 vague, after-the-event assurances are sufficient in the
21 absence of documentary evidence of the same.

22 We do know that for several major decisions no CRIA
23 was created at the time. Four examples set out in
24 Professor Holland's evidence are: the initial decision
25 to close schools, support for children with additional

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1 understanding of the same in the Welsh Government is
2 required, and whether structural alterations are
3 required to ensure these important duties are applied.

4 My Lady, my final topic is whether things could have
5 been done differently, what lessons can be learnt, could
6 children's experiences have been different.

7 Now, in times of great adversity and significant
8 pressure on decision-makers, it is all the more
9 important the systems are in place to ensure the rights
10 and protections of the most vulnerable in society are
11 upheld, as they are the ones who will be most impacted
12 by monumental shifts and pressures on society. In that
13 light, the failings identified by the commissioner are
14 important for two reasons.

15 Firstly, listening to the voices of children,
16 contemporaneous and active consideration of children's
17 rights and contemporaneous CRIAs are important
18 safeguards built into the law in Wales which, if adhered
19 to as part of a timely and prepared decision, may have
20 mitigated the impact of the pandemic on children.

21 In particular, adherence at the point of the first
22 school closure would have reminded decision-makers that
23 schools are more than educational and allowed time to
24 put mitigation measures in place. The digital gap could
25 have been addressed, financial and emotional support

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1 could have been put in place, safeguarding measures
2 could have been introduced. Indeed, adherence when
3 considering the easing of restrictions may have led to
4 the re-opening of schools earlier than they were and
5 certainly before businesses and hospitality were able to
6 re-open. This would have lessened the educational,
7 developmental, emotional and mental health harms
8 inflicted.

9 Secondly, the failings identified are not simply
10 a feature of the pandemic. Whilst giving oral evidence
11 yesterday, the First Minister proudly announced that
12 Wales introduced a scheme to provide free holiday school
13 meals and this ran for longer than any other nation; he
14 did not mention that on 27 February 2024, in the case of
15 The King (on the application of RLQ) v Welsh Ministers,
16 case number AC-2023-CDF-000107, the High Court declared
17 that the Welsh Government's decision on 28 June 2023 to
18 end that provision was unlawful because in taking the
19 decision the Welsh Government failed to consider the
20 rights of children under the 2011 Measure and under the
21 public sector equality duty.

22 When taking that decision, the Welsh Government left
23 the announcement to the last minute, they did not
24 consult with the commissioner, they did not obtain the
25 views of children or young persons or any persons with

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1 Finally, the Children's Commissioner should be
2 engaged and consulted early and used as a resource in
3 good decision-making relating to children.

4 My Lady, the commissioner thanks the Inquiry for
5 allowing her involvement as a core participant of this
6 module and hopes her submissions and assistance help
7 guide the Inquiry to make recommendations for a better
8 decision-making system and support children better in
9 the future.

10 My Lady, diolch yn fawr.

11 **LADY HALLETT:** Thank you, Mr Gardener.

12 Just one thing: you mentioned that the impact film
13 played at the beginning didn't include the experience of
14 a child. As you know, this module is focusing on key
15 decision-making, and the Inquiry is very conscious of
16 the impact on children and later investigations will put
17 the focus firmly on children and young people and the
18 loss of social development and the like from closing of
19 schools as well as the loss of education.

20 And also the Inquiry team are working hard to
21 capture the experiences of children now. From my work
22 as a barrister and as a judge, I'm very conscious that
23 you need to get these memories recorded before memories
24 fade, so thank you very much.

25 **MR GARDNER:** My Lady, two quick observations.

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1 protected characteristics, and they did not undertake
2 an integrated impact assessment, a CRIA or an EIA.

3 The complaints sound worryingly familiar and
4 illustrate that the problem is systemic and persists to
5 date.

6 My Lady, in conclusion the commissioner respectfully
7 recommends to the Inquiry the following lessons.

8 There is a need for CRIAs to be undertaken at the
9 time of decisions and for the voice and rights of
10 children to be considered when decisions are taken
11 relating to children. This action is not simply
12 reflective of legal obligations in Wales, it is
13 a necessary conduit to better decision-making around
14 children and mitigation of adverse measures which may
15 impact them.

16 There is a need when making decisions about children
17 and young persons to do things differently depending on
18 age, living arrangements and existing inequalities. The
19 impact of school closures is significant and
20 decision-makers must, from the very beginning, and
21 continuously, weigh the risk to life against the risks
22 we know school closures pose to children.

23 Schools must be ready for online learning. Digital
24 connectivity for pupils and staff is key and those who
25 do not have it must receive support.

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1 One, no criticism was intended; it was
2 an illustrative tool.

3 Two, I have a seven year old son, Jacob, who I am
4 sure would be delighted to be in the film.

5 I'm grateful.

6 **LADY HALLETT:** A lot of people offer to give evidence,
7 Mr Gardner, but I haven't had a 7-year old yet.

8 Thank you, I will return at 11.40.

9 (11.25 am)

(A short break)

11 (11.40 am)

12 **LADY HALLETT:** Mr Jacobs.

13 **Submissions on behalf of the Trades Union Congress and Wales**
14 **Trades Union Congress by MR JACOBS**

15 **MR JACOBS:** My Lady, these are the observations in closing
16 of the Trades Union Congress, the TUC, and the
17 Wales TUC. I appear with Ms Ruby Peacock, instructed by
18 Thompsons Solicitors.

19 From the perspective of the TUC and the Wales TUC,
20 looking through the lens of those who worked through the
21 pandemic, with a particular focus on those sectors in
22 which workers faced the greatest risk, the story of this
23 module is of the strengths of social partnership but
24 also of some ways in which workers in Wales were failed
25 in the pandemic response.

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1 We start with social partnership and how we say this
2 Inquiry should assess its contribution to
3 decision-making processes of the Welsh Government during
4 the pandemic.

5 In questioning of general secretary of the
6 Wales TUC, Shavanah Taj, Counsel to the Inquiry went
7 through a list of requests made of the Welsh Government
8 by the Wales TUC and enquired about the extent to which
9 each were actioned.

10 That was an entirely appropriate line of
11 questioning. This Inquiry clearly and properly appears
12 to have a tight focus on actions: what action was taken,
13 what action ought to have been taken. But assessing the
14 value and role of social partnership requires more than
15 a narrow analysis of what was requested and what was
16 therefore changed. Inputs and outputs in core political
17 decision-making are multifactorial, a request made of
18 the Government being answered may well be indicative of
19 the value of social partnership, but a request being
20 unanswered does not disprove its value.

21 Foundationally, social partnership is more than
22 a mechanism for demands, it is about sharing views and
23 seeking a shared understanding and approach. That
24 enhances decision-making in direct but also indirect
25 ways. It enables government to be more responsive to

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1 an early engagement with a number of stakeholders,
2 including unions, on issues relating to the
3 disproportionate impacts upon black and minority ethnic
4 groups. The key example was the Wales TUC's
5 contribution to the health and social care subgroup of
6 the First Minister's BAME advisory group to design
7 a tool which could be used to assess the risk posed by
8 Covid-19 in the workplace and help protect those at
9 greater risk. It was used widely throughout Wales
10 following its introduction in May 2020.

11 As we set out in our opening statement, the physical
12 distancing requirement in the workplace in Wales was
13 supported by concrete steps to ensure it was observed.
14 It was introduced as a legal requirement on 4 April 2020
15 which formed part of a package of specific rules to
16 support workplace health and safety upon which unions
17 had had an opportunity to meaningfully engage. The
18 equivalent provision in England was set out in guidance
19 and only required observation of social distancing where
20 possible.

21 In advance of the legal requirement coming into
22 effect, the Wales TUC had advance notice of the
23 provision, having been consulted on it, and had the
24 opportunity to establish a whistleblowing hotline to
25 enable workers to report breaches of the legal

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1 the needs of those at work, but also serves public
2 confidence in the government, and there is clear
3 evidence of that in Wales during the pandemic.

4 The health minister was accurate in his evidence
5 when he explained that the Shadow Social Partnership
6 Council was a good forum for sharing information and
7 good practice and for the consideration, challenge and
8 enhancement of policy developed in response to the
9 pandemic. It gathered all the main stakeholders and
10 helped to provide similar timing and consistency of
11 message.

12 Social partnership, that pursuit of shared
13 understanding, also avoids the distrust and attrition
14 between government and stakeholders that can be so
15 destructive of good decision-making. This Inquiry has
16 not heard, in this module, of decision-making driven by
17 a corrosive lack of trust between government and its
18 partners. In contrast to the evidence in Module 2 in
19 relation to the UK Government, the Inquiry has not seen
20 a government in the mode of "no surrender to the
21 unions", making bad decisions out of an instinctive
22 desire to be oppositional.

23 None of that is to say, of course, that social
24 partnership did not also have concrete benefits.
25 The Inquiry has heard, for example, that there was

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1 requirements.

2 In relation to financial support for self-isolation
3 there are errors which we will come on to but there was
4 also evidence of a responsiveness and an understanding,
5 albeit belated, as to the need to support those
6 continuing to attend work.

7 In the evidence of Rebecca Evans, there was at least
8 some recognition that adequate financial support would
9 likely have a positive impact upon suppressing
10 transmission of the virus, and goes some way to
11 ameliorating the unequal impacts of the pandemic.

12 That acknowledgement and understanding, to a point,
13 contributed to the pandemic response. The
14 self-isolation support payment was increased to £750 in
15 August 2021, a change reflecting an understanding of how
16 the scheme was operating on the ground and the fact that
17 there remained a financial disincentive for
18 self-isolation.

19 There is also some evidence that, via closer
20 partnership with local authorities, the scheme in Wales
21 was a more accessible one.

22 A further concrete way in which Welsh Government
23 responded to the repeatedly expressed concerns of social
24 partners, including the Wales TUC, was the establishment
25 of a social partnership group to report on the provision

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1 of PPE. As Shavanah Taj set out in oral evidence, this
2 group enabled the Welsh Government to inform key
3 partners about the stock levels of PPE, efforts being
4 made to procure more, how PPE was being distributed and
5 when further supplies could be expected.

6 Although this did not immediately resolve the supply
7 issues, it was a reassuring avenue of communication
8 which enabled social partners to further disseminate the
9 information, ultimately offering reassurance and
10 increasing public confidence. It contributed to
11 improvements at least in the provisions of PPE.

12 However, it is clear that notwithstanding some of
13 the advantages of social partnership, there were key
14 areas in which workers in Wales could have been better
15 supported. The context is not just the many who lost
16 their lives, but also those who suffered trauma in
17 responding to the pandemic, and the many who suffered
18 and continue to suffer from Long Covid.

19 First, PPE delivery. In his opening remarks,
20 Counsel to the Inquiry reflected upon a message sent by
21 the health minister to himself recording the
22 observations of a Welsh hospital consultant: complete
23 chaos at our hospital, no protection for nurses, very
24 low morale, masks not being released.

25 This account is reminiscent of the reports unions
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1 the Wales TUC felt they had to keep pressing the Welsh
2 Government, although it is right to acknowledge that
3 significant progress was ultimately made.

4 Second, though the provision of financial support
5 for self-isolation had its strengths from the Welsh
6 perspective, it also had its failures. This was more
7 than a matter of fairness. Poor adherence to
8 self-isolation placed an upward pressure on the R rate,
9 and so it was a matter of keeping that R rate under
10 control.

11 Self-isolation was a means of suppressing the R rate
12 which did not have the awful impacts of measures such as
13 closing schools, and that was all the more reason for it
14 to have been a focus. It was also an issue that
15 affected those on lower incomes in high risk jobs had
16 already faced poorer health outcomes, and so it was also
17 a matter of taking measures that lessened some of the
18 disparate impacts of the pandemic.

19 The UK Government was far too slow to respond to
20 this issue, with a financial support scheme not
21 introduced until September 2020. But in Wales the
22 response was even slower. In Wales the main financial
23 support scheme was brought in a month later and
24 eight months after self-isolation was introduced as
25 a key NPI.

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1 were receiving from frontline workers, not only those in
2 healthcare, but in social care and the many other
3 sectors which continued to work at the early stage of
4 the pandemic, notwithstanding the difficulties they were
5 facing in accessing PPE.

6 In her evidence, Shavanah Taj described the instance
7 where the Wales TUC was contacted by the husband of
8 a mental health nurse who had been in physical contact
9 with a patient who had later tested positive for
10 Covid-19 but had not been wearing PPE, due to
11 an assumption during the early stage of the pandemic
12 that it was not necessary in that setting for PPE to be
13 worn.

14 So the issue was not only scarcity of supply, but
15 also of inadequate workplace guidance on the
16 circumstances in which PPE was required.

17 In the instance involving the mental health nurse
18 and in relation to many other reports of lack of access
19 to PPE in the workplace, Wales TUC was able to convey
20 that report to the relevant organisations and action was
21 taken to resolve that individual case.

22 However, lack of access to PPE and accurate guidance
23 regarding its use was an issue which, although it
24 gradually improved, required numerous interventions, as
25 Ms Taj explained in oral evidence, it was an area where

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1 Tellingly, countries that properly supported
2 self-isolation did better, South Korea being an example.
3 Surprisingly, Mark Drakeford was dismissive of the idea
4 that lessons could have been learned during a pandemic
5 from such countries, suggesting that the differences
6 were a feature of different cultural norms. We don't
7 agree. Supporting self-isolation, as an example, made
8 just as much sense in Wales and there were no cultural
9 barriers to doing so.

10 In response to questions, the Minister for Finance
11 and Local Government Rebecca Evans accepted that she
12 would have wanted to provide financial support sooner
13 and further accepted that the point of the Barnett
14 guarantee in July 2020 could have been a point at which
15 financial support was introduced. That at least is
16 welcome.

17 The third, my Lady, relates to those working in the
18 social care sector. The need in Module 6 of this
19 Inquiry to consider the structural problems within
20 social care is ever clearer. It is striking,
21 for example, that the health minister saw it as
22 government going above and beyond its role in
23 an unprecedented way to take any steps at all to support
24 the provision of PPE to those in social care. Perhaps
25 that may be right, but it shows the void that needed to

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1 be filled.

2 In a similar vein, in turning to try to address some
3 of the demands in the social care sector, the Welsh
4 Government did not have even the starting point of
5 knowing who the providers of care were. As the
6 First Minister said in his evidence, there was no single
7 register of where every care home in Wales is located.

8 This was all reflected in the oral evidence of the
9 chief executive of the Welsh Local Government
10 Association, Dr Chris Llewelyn, who explained:

11 "... there was a general sense that the needs of
12 social care staff as a whole weren't being taken into
13 account ... there was a sense within the workforce that
14 they were being neglected ..."

15 And:

16 "... an issue of parity of esteem with other
17 healthcare workers."

18 The Wales TUC encountered significant difficulties
19 advocating on behalf of social care workers. As
20 Shavanah Taj explained in her evidence, it requested
21 that Welsh Government utilise the consequential funding
22 from the infection prevention and control fund
23 introduced in England in May 2020 to provide equivalent
24 funding for care sector workers in Wales, but as of
25 October 2020 still did not have a clear explanation as

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1 proper enforcement, both by Health and Safety Executive
2 and by local authority enforcement health protection
3 officers. Inadequate funding of bodies able to enforce
4 health and safety standards in workplaces has resulted
5 in enormous reductions in the occurrence of in-person
6 workplace inspections and enforcement actions. There is
7 a desperate need for enforcement to be adequately
8 resourced.

9 As a result, many workers faced unsafe conditions
10 during the pandemic and had very little recourse to
11 report workplace health and safety issues other than to
12 their union representatives.

13 Concluding, my Lady, it is unquestionably the case
14 that these features of the pandemic response, and no
15 doubt many others, gives rise to a need for robust
16 recommendations and lesson learning by government. It
17 is hoped by my clients that the Welsh Government will
18 take forward your recommendations with the benefit of
19 social partnership to ensure that the planning benefits
20 from the experiences of frontline workers who were in
21 the thick of the pandemic response.

22 My Lady, those are the closing remarks of the TUC
23 and the Wales TUC. They have been grateful for the
24 opportunity to contribute in this module of the Inquiry.

25 **LADY HALLETT:** Thank you very much, Mr Jacobs.

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1 to the cause of the delay.

2 There has been evidence, my Lady, in this module
3 about the sensitive topic of ingress of the virus into
4 care homes and the most significant route being via care
5 staff. The narrative that sees care staff merely as
6 vectors of the virus is one, my Lady, that looks through
7 the wrong end of the telescope. It will inevitably
8 compound the feeling in the sector of staff being
9 undervalued and unappreciated.

10 Particularly with asymptomatic transmission, care
11 staff carrying the virus is unavoidable, so the question
12 is: what could have been done about it? The narrative
13 should be one that asks why it is that we have
14 a care sector serviced by so many in insecure work,
15 working across several homes; why so little was done to
16 support the sector in restricting movement of staff
17 between homes; why was there not better PPE to protect
18 both staff and residents?

19 Those are the relevant questions, my Lady, not: did
20 care staff carry the virus?

21 The fourth relates to enforcement of health and
22 safety in the workplace. The Wales TUC found consistent
23 evidence that a significant number of employers failed
24 to take sufficient infection prevention and control
25 measures during the pandemic. There was a dearth of

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1 I think the next speaker is Mr Allen, who's
2 attending remotely, I think. Mr Allen.

3 **Submissions on behalf of the Welsh Local Government**
4 **Association by MR ALLEN KC**

5 **MR ALLEN:** My Lady, can you hear me?

6 **LADY HALLETT:** Hear you but can't see -- ah, yes. Got you,
7 both hear you and see you.

8 **MR ALLEN:** Ah, good, thank you.

9 Well, good morning. I must thank you, first, for
10 your work so far on this module, which is so important
11 for all people in Wales.

12 Your report will be read in due course by a wide
13 audience, including the families of the bereaved and
14 those seriously ill with Covid and Long Covid,
15 politicians and officers past and present, and many
16 volunteers who were involved and may be again, and their
17 organisations, and others in civil society, and
18 of course key officers in the Welsh local authorities
19 and their partner organisations who did so much to
20 respond to the emergency and support their communities
21 throughout.

22 The WLGA, the Welsh Local Government Association,
23 that I represent, is sure that your report will provide
24 a comprehensive and critical understanding and
25 description of the key events in Wales during the

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1 pandemic. Yet, my Lady, we all know that while the past
2 can be understood, it cannot be undone. So in the
3 WLGA's submission, what may well prove to be most
4 important are the recommendations for future action that
5 will emerge from this understanding.

6 That is especially so if they are clear, meaningful
7 and purposeful, as we expect they will be, so that if
8 and when the people of Wales were ever to suffer another
9 pandemic, its governance would prove to be better
10 prepared and more focused and able to act more swiftly
11 and effectively.

12 The WLGA therefore sees this module as our
13 collective chance to think hard about what is necessary
14 to make that better future a real possibility. That
15 said, my closing remarks do not need to be very long.
16 The WLGA has already made detailed submissions, which
17 I do not need to repeat. These are in the closings
18 submissions for Module 1, my opening remarks for this
19 module, and the two witness statements from its chief
20 executive, Dr Llewelyn and, indeed, his evidence, which
21 actually has been referred to several times this
22 morning.

23 The WLGA hopes and believes that you will find that
24 those recommendations made in those submissions and
25 evidence are both detailed and appropriately targeted.

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1 understand how policy proposals could be best
2 operationalised. The failure to do this was
3 a significant oversight and it led to delay and to
4 a suboptimal national response, and must not be
5 repeated.

6 This is a call for a major change of perspective.
7 The WLGA seeks a better and earlier engagement built on
8 trust and a respect for the capabilities,
9 resourcefulness and flexibility of local government.
10 Welsh Government should set strategy and describe rather
11 than prescribe detailed policy if they are to allow, as
12 they must, local authorities and their partners to be
13 agile and adaptable in responding to local circumstances
14 with urgency.

15 And as local government has significant resource
16 issues, so it must also be understood that if new tasks
17 are to be undertaken while the old are maintained, then
18 either more resource will be needed or it will be
19 necessary to have shared co-operative thinking to
20 re-align existing resources to those new tasks.

21 Later in the pandemic, as the WLGA has said
22 explicitly, the need to engage at the formative stage
23 with local government did begin to be better understood
24 within and across Welsh Government. Had there been
25 fuller, early and consistent involvement of local

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1 Nothing has been said in either the written or oral
2 evidence in this module that has caused the association
3 to want to go back on them, so I don't need to amend,
4 paraphrase or repeat them now.

5 Today in my closing remarks I have only four points
6 to make for the WLGA.

7 The association thinks it's likely that you will
8 already have them well in mind, so we do add that these
9 points are made orally as much for the no less
10 important, collateral purpose of ensuring that the Welsh
11 Government and relevant national bodies see where we
12 stand and pick up on them. Each is a call for urgent
13 consideration for their immediate adoption.

14 Firstly, there is a fundamental issue concerning the
15 timing and degree of engagement by significant Welsh
16 bodies with the WLGA and its member local authorities.
17 On this, the WLGA submits that though strategic
18 engagement between local government leaders and Welsh
19 Government ministers, including the First Minister, was
20 good and improved throughout the crisis, yet this was
21 not always reflected within and across government at
22 official level.

23 From the very beginning, the Welsh Government, the
24 NHS and Public Health Wales should have had a much
25 richer engagement with local government in order to

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1 government across all aspects of Welsh Government, then
2 national preparedness would have been more resilient.
3 The WLGA has noted, as we feel sure you have, that there
4 has been some recognition of this point in the oral
5 evidence you've received. There has certainly been no
6 contrary argument. And there must be no danger of that
7 recognition being lost; it needs to be known that there
8 is comprehensive organisational learning throughout all
9 the layers of Welsh Government concerning early
10 engagement, the need for trust in local government, and
11 how this can and must be utilised to ensure the most
12 practical and effective policy development.

13 My Lady, there's a consequential second point here.
14 This concerns the process of review and capture of the
15 lessons that should be learnt. As the WLGA said in its
16 written closing submissions in Module 1, see generally
17 paragraph 147, the value in such early co-working and
18 co-design must be captured and owned collectively at all
19 levels of government in Wales. It is relevant to policy
20 decisions concerning all the main issues, such as
21 stand-up arrangements, operational delivery, financial,
22 technology issues, staffing and communication skills.

23 Unfortunately, you will have heard that, although
24 there have been lessons learnt reviews, these have not
25 been conducted on a fully inclusive basis, planning

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1 together for the future.

2 My Lady, that has to be put right straightaway,
3 because the process of learning from the past is
4 a whole-system issue, and not merely one for the Welsh
5 Government alone.

6 To aid this, the WLGA has discussed and recommended,
7 see particularly Dr Llewelyn's second witness statement
8 at paragraphs 47 to 54, that there should be a programme
9 of secondments and multi-agency learning, and we commend
10 these proposals to you.

11 Thirdly, while a focus on the health service is
12 important, this must not obscure the need for an equal
13 focus on the services provided by local authorities. It
14 was inevitable, given the terrible statistics about the
15 potential for hospitals to be overrun, that there was
16 a heightened awareness of the precious role of the
17 health service, and the WLGA does not in any way
18 criticise this heightened awareness. Yet it is
19 submitted that it is also absolutely important that
20 central government politicians need, in such times of
21 crisis, to give equal consideration to the critical
22 roles of the wider public sector and local government in
23 particular.

24 The evidence before this Inquiry has made it obvious
25 why this is so: people desperately needed support in the

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1 response and recovery phases.

2 Now, the Civil Contingencies Act is not the only
3 enactment that requires reconsideration. It is
4 an equally important task for the Inquiry to consider
5 the efficacy of existing public health legislation,
6 which, though adequate similarly for controlling
7 small-scale communicable disease transmissions, was not
8 designed for a global pandemic.

9 There are several important issues concerning this
10 which have been set out in the evidence and submissions.
11 One key concern that must be mentioned today is the
12 interrelationship of this legislation with other
13 crisis-related measures. For instance, there is
14 a significant issue as to whether, in the event of
15 a future pandemic, public health legislation should have
16 primacy over the Civil Contingencies Act, or whatever
17 may replace it in due course, and, if not, what
18 relationship it should have.

19 The urgent enactment of a new Coronavirus Act in
20 2020 to meet the Covid-19 emergencies has already
21 demonstrated that both pieces of legislation did not
22 meet the test of being fully fit for purpose in such
23 a global pandemic. So the WLGA sees it as being
24 a significant challenge for the Inquiry to make
25 recommendations that would fill that void by providing

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1 community in almost every way that it's possible to
2 imagine, and that responsibility fell to local
3 government. It played a role fully comparable in
4 importance to that of the health service in managing
5 issues such as schools, hubs, free school meals,
6 key workers, shielding, logistics for testing, NPI
7 enforcement, and of course business support.

8 The last point, my Lady, that the WLGA wishes to
9 make in these oral submissions is that the pre-existing
10 legislation is not fit for purpose of supporting the
11 country through global emergencies of equivalent scale
12 and length of time. It is an issue of legislative
13 adequacy. I'll mention the Civil Contingencies Act
14 first.

15 Through both Modules 1 and 2B, the WLGA has
16 commented and Dr Llewelyn has explained that the Civil
17 Contingencies Act, whilst adequate for short-term local
18 emergencies controlling small-scale communicable disease
19 transmissions, was not designed for a prolonged and
20 profound emergency such as a global pandemic.

21 This is because it lacks a key political dimension:
22 it fails to recognise, and so to accommodate, the
23 importance of political leadership, both in the
24 development and ownership of strategy and in the
25 oversight of key decision-making during both the

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1 a much greater preparedness for the future and avoiding
2 any need again to enact emergency legislation. And
3 these should aim to put local government on a firmer and
4 more confident footing, so as to be able to act with
5 legal competence from the outset and thus to undertake
6 their key task of protecting local communities and the
7 vulnerable from the kinds of harm that they endured.
8 And, of course, it must be said yet again that local
9 government must be adequately resourced to fulfil their
10 roles.

11 My Lady, those are our submissions, and I must
12 thank you and the Inquiry team again for undertaking
13 this task that is so important to Wales. And, on a more
14 personal note, for permitting me to make these
15 submissions to you virtually rather than in person.

16 Thank you.

17 **LADY HALLETT:** Thank you, Mr Allen. Thank you very much for
18 your help.

19 Right, I think we now have Mr Kinnier.

20 **Submissions on behalf of the Welsh Government by MR KINNIER**

KC

22 **MR KINNIER:** My Lady, if you lost a loved one to Covid-19,
23 if you continue to suffer from impact of the virus, or
24 if your livelihood was or continues to be affected by
25 that virus, you will rightly want to know whether the

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1 Welsh Government could have done more sooner or more
2 effectively or differently so that your loved one would
3 not have died or the long-term adverse effects of the
4 virus would have been stopped or your job and livelihood
5 preserved.

6 Welsh ministers recognise that the difficult
7 decisions they made in response to the pandemic caused
8 very significant disruption to and change in people's
9 lives and livelihoods. Communities and local services
10 suffered, and indeed continue to suffer. On more than
11 one occasion the First Minister has said that if he knew
12 in early 2020 what he knows now in 2024, of course the
13 Welsh Government would have acted differently.
14 For example, Mr Drakeford explained that local lockdowns
15 did not work as he had hoped, but faced with rising
16 incidence of the virus in certain areas, a concern to
17 open up society as swiftly as caution allowed, and in
18 an effort to strike a balance between the competing
19 harms, local lockdowns were a worthwhile measure worth
20 taking.

21 In evidence, all witnesses from the Welsh Government
22 set out how they would have acted differently had they
23 had the benefit of the knowledge which we now have about
24 the virus, including, for example, its long term
25 after-effects. But the decisions made by the Welsh

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1 was no single right answer. In particular, no decision
2 was free from consequence. None could have guaranteed
3 that no one would have lost their life to the virus.

4 Some suggested alternative actions were, on
5 analysis, unrealistic. To take one example, there was
6 no real prospect that the Welsh Government could have
7 unilaterally locked down Wales before the UK Government
8 itself acted on 23 March 2020. It was far from certain
9 that the population would have accepted the severe
10 restrictions of a lockdown before one had been imposed
11 elsewhere in the UK and at a time when Wales was yet to
12 reported any confirmed cases of the virus.

13 To have imposed the most draconian restrictions on
14 individual liberty in peacetime, in one of the parts of
15 the UK least affected by the disease, when such actions
16 had not been taken in those parts most affected by the
17 virus, for example the southeast and London in
18 particular, was, in the First Minister's words,
19 "entirely unfeasible". There was no possibility of
20 Wales sealing itself off from the rest of the UK and the
21 wider world and waiting for a vaccine.

22 On some occasions it was suggested to Welsh
23 Government witnesses that they should have learned and
24 applied the lessons of the first lockdown to later
25 lockdowns. The evidence shows the Welsh Government

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1 Government are to be judged by what was known at the
2 time about the nature of the virus, which was very
3 little indeed in early 2020, and in circumstances where
4 swift action and hard decisions were necessary to
5 protect the people of Wales.

6 In opening, Counsel to the Inquiry said that there
7 may have been any number of right decisions in response
8 to the pandemic. Ultimately the question is whether,
9 taking into account the many relevant and often
10 conflicting factors, but especially rapidly evolving
11 knowledge of the virus, the Welsh Government's decisions
12 were reasonable. Self-evidently, different decisions
13 could have been made, all of which were nonetheless
14 reasonable responses to the unprecedented challenge of
15 Covid-19 to civil society.

16 To have taken one reasonable course when
17 an alternative reasonable option was also available does
18 not make the course taken wrong or in some way flawed.
19 The answers to the questions posed rightly by Counsel to
20 the Inquiry in opening are complex and we will set out
21 our answers in detail in our written statement.

22 To do justice to that complexity and in order to
23 make effective recommendations in due course,
24 the Inquiry will consider the fine detail of both the
25 written and the oral evidence. For each decision, there

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1 learning from its previous decisions and taking steps to
2 inform itself and, indeed, change.

3 In just one example, Eluned Morgan described how,
4 learning from the first wave of the pandemic,
5 restrictions were placed on staff moving between care
6 homes when facing the emergence of the Omicron variant.

7 Lessons learned exercises took place during the
8 period under consideration by this module which enabled
9 the Welsh Government to reflect on its response,
10 including what worked well and where change was
11 necessary.

12 But the criticism that lessons from the first
13 lockdown specifically ought to have been applied to the
14 later lockdown is misplaced, for reasons which were
15 carefully explained by the Inquiry's expert, Professor
16 Wincott.

17 In the first lockdown in March 2020, the governments
18 of the United Kingdom were seeking a wholesale
19 reordering of society in order to combat the virus. By
20 the time of the autumn firebreak in October 2020 and the
21 Christmas lockdown, the public policy challenge was
22 seeking to strike the sensitive and difficult balance
23 between the safe re-opening of society whilst reducing
24 at the same time the incidence of the virus.

25 In short, a simplistic comparison between the policy

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1 responses in March 2020, October 2020 and late 2020 and
2 early 2021 is not comparing like with like.

3 On other occasions it was suggested that in some way
4 the evidence was more definitive or clearer than in fact
5 it was. There was never any sense, once the initial
6 lockdown was over, that scientific and expert opinion
7 was of one mind. Within the Welsh Government,
8 ministers, officials, clinicians and scientists had to
9 grapple with evidence that was often volatile, sometimes
10 contradictory and frequently incomplete. But decisions
11 had to be made, and they were made in good faith and
12 with the best understanding possible at that time,
13 whilst balancing the very real harms that the Inquiry
14 has examined over the last three weeks.

15 Some criticisms have reflected the diverse and in
16 some respects conflicting range of views held among the
17 core participants before you. The timing and length of
18 the firebreak in October 2020 is one such example.

19 The BFJ Cymru group questioned the Welsh
20 Government's justification for the timing, length of the
21 firebreak, and questioned the significance of the
22 decision made by the UK Government not to bring forward
23 the start of the job support scheme to coincide with the
24 start of the firebreak in Wales.

25 By contrast, the Children's Commissioner's concern
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1 Consideration of the needs of the vulnerable and
2 disadvantaged was fundamental to the Welsh Government's
3 decision-making throughout. My Lady has asked witnesses
4 what action was taken to protect those needs, and the
5 detail of the responses can be seen in the 86 witness
6 statements that the Welsh Government has provided to
7 this Inquiry for the purposes of this module. But to
8 give some non-exhaustive examples:

9 First, the Welsh Government worked with local
10 authorities and others to identify the most vulnerable
11 children and ensure that they could still attend school.

12 It ensured that children who were entitled to free
13 school meals would receive meals when schools were
14 closed, including through the summer holidays.

15 Children with additional learning needs had their
16 rights protected in Wales throughout the pandemic.

17 A digital offer to pupils in Wales was implemented
18 quickly, and steps were taken to tackle digital
19 exclusion with laptops and internet dongles.

20 These actions were underpinned by the need to
21 support the safety of students and teachers alike, the
22 physical and mental wellbeing of students and staff, the
23 ability of pupils to keep on learning and, crucially, to
24 return to their school and on to the next stages in
25 their education.

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1 is the consequences of the timing and length of the
2 firebreak on children's education, and in particular
3 years 9 and above who were asked to stay at home during
4 the firebreak, and how the reasons for that decision
5 were explained to the public.

6 My Lady, faced with the evidence of increasing
7 incidence in September 2020, and in light of SAGE and
8 TAC advice about the benefits of a firebreak or
9 circuit-breaker, Welsh ministers decided to impose
10 a 17-day firebreak which was the shortest possible
11 length consistent with achieving a sharp and deep effect
12 on the incidence of the virus. That reflected the
13 consistent effort to strike a reasonable balance between
14 protecting lives, protecting livelihoods, and re-opening
15 society safely.

16 The Welsh Government sought to achieve that balance
17 by keeping children in childcare, primary and special
18 schools open, and secondary schools, which were only
19 open to years 7 and 8 after half term and also to those
20 taking public exams. The balance was struck in that way
21 because other secondary children in years 9 upwards were
22 thought to be more mature and more able to engage with
23 self-directed learning for one week.

24 My Lady, that is just one example of the many
25 balancing decisions that had to be made.

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1 Secondly, in April 2020 the First Minister
2 established the Black, Asian and Minority Ethnic
3 Covid-19 Advisory Group to examine the disproportionate
4 impact of the virus on minority ethnic people and
5 communities, and implemented the recommendations of its
6 subgroups.

7 Thirdly, Jane Hutt, the present Minister for Social
8 Justice, led the Welsh Government's Disability Equality
9 Forum and, after Wales was locked down, adapted it to
10 provide a means of communication and consultation with
11 disabled people and their representatives. The
12 recommendations in Professor Foster's report,
13 commissioned by Jane Hutt, I think in June 2020, are
14 being implemented.

15 Fourthly, as has been explained, data modelling in
16 Wales took account of the higher proportion of older
17 people in the population which informed decision-making.
18 The Older People's Commissioner was a member of the
19 Shadow Social Partnership Council, and in that forum and
20 indeed elsewhere she was a forthright and respected
21 advocate of the interests of older people.

22 Fifthly, the Shadow Social Partnership Council was
23 an invaluable means of bringing together the Welsh Local
24 Government Association, the CBI, the Federation of Small
25 Businesses, TUC Cymru, third sector representatives, the

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1 Future Generations, Welsh Language, Older People's and
2 Children's Commissioners.

3 What other criticisms have been made of the Welsh
4 Government's actions elsewhere? There is a degree of
5 unanimity that the council served its purpose well.
6 That forum allowed for open, constructive and often
7 robustly challenging discussions about how best to
8 protect the interests of the vulnerable and all other
9 sections of society. Crucially, those discussions took
10 place before decisions were made.

11 My Lady, the Inquiry has received evidence regarding
12 the closeness of the working relationships between
13 individuals within the Welsh Government and public
14 bodies and their representatives, particularly in the
15 NHS in Wales. Those strong and close working
16 relationships, in part enabled by the geographical size
17 of Wales, meant that Welsh ministers heard directly and
18 on a daily basis how the pandemic was impacting on
19 different communities and within different sectors at
20 different times. Those accounts were crucial in
21 informing the key decisions that were made as part of
22 the Welsh Government's response to the virus.

23 This extended to close cross-party co-operation and
24 information sharing, as the Inquiry has also heard, in
25 the form of the Covid core group that was established by

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1 decision-making structure to be introduced.

2 My Lady, in closing, the final word from the Welsh
3 Government must be to remember the very many families
4 who lost loved ones, and to recognise those who have
5 suffered and continue to suffer the effects of the
6 pandemic in every part of Wales.

7 My Lady, thank you.

8 **LADY HALLETT:** Thank you very much, Mr Kinnier.

9 Mr Poole.

10 **Closing remarks by LEAD COUNSEL TO THE INQUIRY for MODULE 2B**

11 **MR POOLE:** My Lady, only a couple of short points from me.

12 With your permission, the Inquiry has already
13 adduced in evidence and also published a number of
14 documents through the course of these hearings. This
15 comprises pages of documents brought up on the screen
16 during the hearings, statements of witnesses who have
17 given oral evidence. As with previous modules, we
18 expect that you will inevitably wish to have in evidence
19 a wider body of material than that to -- for the
20 purposes of writing your report.

21 The Module 2B team has therefore already
22 provisionally identified a list of additional documents
23 which we seek your permission to adduce. These include
24 around 120 statements of witnesses who have not given
25 oral evidence but whose statements you may wish to rely

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1 the First Minister in the early stages of the pandemic.

2 The group included, as well as the key ministers with
3 responsibility for developing the government's response,
4 representatives of stakeholder bodies, and that was in
5 addition to the wide range of views sought through the
6 Social Partnership Council.

7 My Lady, one point which is important is that
8 throughout the course of the pandemic, the Welsh
9 Government was subject to robust parliamentary scrutiny
10 in the Senedd. That was effective, and as my Lady is
11 aware, towards the winter of 2020 there was no easy
12 consensus in the Senedd on how best to respond to the
13 continuing pandemic.

14 The close working relationships are a defining
15 feature of the way in which decisions are made by the
16 Welsh Government and they enabled ministers to act on
17 relevant, up-to-date information received from the
18 bodies that were best placed to provide it.

19 That is a particular and important strength of the
20 structures that exist in Wales which the Welsh
21 Government would respectfully urge the Inquiry to keep
22 in the forefront of its mind when considering
23 decision-making systems and structures more generally.
24 These are benefits that would inevitably be diluted, if
25 not lost altogether, were a more centralised emergency

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1 on when compiling your report, as well as full versions
2 of documents which have been part adduced during the
3 hearing.

4 We have also written to core participants to give
5 them the opportunity to propose additional documents for
6 publication, and we ask core participants to provide
7 such requests to the legal team, including those
8 mentioned in oral submissions today, and then, in the
9 normal way, the extent to which those will be published
10 will obviously be a matter for your Ladyship and you
11 will, of course, need to have regard to any
12 sensitivities in those documents and their relevance.

13 If your Ladyship will indulge me for one further
14 moment, I would like to pay tribute to all those who
15 have made these hearings in Cardiff possible and have
16 either been here with us or behind the scenes.

17 All the members of the Inquiry team have worked
18 tirelessly in playing their part in the conduct of these
19 vitally importance hearings for the people of Wales.
20 They all have my sincere thanks for their hard work and
21 dedication. In particular, may I express publicly my
22 thanks to the Module 2B solicitor and paralegal team,
23 brilliantly led by Charlotte Whitaker and, last but
24 certainly not least, my amazing counsel team,
25 Laura Paisley, Louise Cowen, Helena Spector and

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1 Lauren Hitchman, and also Kate Wilson and Abi Johnson
 2 who were unfortunately not able to join us here in
 3 Cardiff.

4 **Closing remarks by THE CHAIR**

5 **LADY HALLETT:** Thank you very much indeed, Mr Poole, I'm
 6 very grateful to everybody.

7 That completes the oral evidence and submissions in
 8 Module 2B, key decision-making in Wales.

9 I hope that the people of Wales feel that we have
 10 addressed most of their significant concerns, albeit
 11 I have always said we may not be able to address them
 12 all.

13 I will now assess all the evidence, both the oral
 14 and written evidence, and also the submissions before
 15 reaching any conclusions; and I have to emphasise that
 16 I have yet again to say, because the message doesn't
 17 seem to be getting through, I have yet to reach any
 18 conclusions and I am not acting on any assumptions, and
 19 I will consider all the material that has been provided.

20 People focus on the oral evidence for understandable
 21 reasons, because it's so much in the public eye, but it
 22 is just one part of the process. It's an important
 23 part, because it enables Counsel to the Inquiry and for
 24 the core participants to test the evidence in public.
 25 They ask their questions -- not my questions, their

1 I think it's lastly, let me just check, I think it is --
 2 the members of the public who have been with us in
 3 person and online, and I know how much the interest and
 4 support of members of the public, particularly a number
 5 of members of the Welsh bereaved, have been to
 6 the Inquiry. They may not always agree with my
 7 decisions, but that's fair enough, and that's
 8 inevitable, but they do accept them and they're always
 9 constructive, and I am very grateful to them.

10 So that completes these hearings. The next
 11 substantive hearings will be in Belfast on 30 April.

12 Thank you all again.

13 **(12.30 pm)**

14 **(The hearing concluded)**

1 questions -- to help me eventually reach what I hope
 2 people will accept are fair and reasoned conclusions,
 3 and I promise to publish those conclusions as soon as we
 4 reasonably can.

5 Finally, I'd like to echo the gratitude expressed by
 6 Mr Poole just a moment ago. I'd like to thank so many
 7 people -- I'll sound like an Oscar winner in a minute --
 8 so many people for helping get these Inquiries completed
 9 on time here in Cardiff.

10 The Inquiry team, obviously, both the secretariat
 11 and the legal team. I don't think people always realise
 12 what goes on behind the scenes to get hearings like this
 13 heard effectively, but a huge amount of work goes on.
 14 I know the Inquiry team have worked extraordinarily
 15 hard, and I know that the core participants have
 16 obviously also worked extraordinarily hard and made
 17 their usual substantial contribution.

18 There are others: there are the tech team, as I'm
 19 going to call them, who have survived -- with only one
 20 hiccup -- being overheated, as I insisted on not having
 21 arctic conditions; and the stenographer, obviously; the
 22 interpreters in our booth, I think they've also been
 23 getting quite hot at times, so I'm sorry to them, it
 24 seems we had an Inquiry of two parts when it comes to
 25 temperature; the staff at the hotel; and lastly --

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