IN THE UK COVID-19 PUBLIC INQUIRY

On behalf of NI Covid-19 Bereaved Families for Justice
MODULE 2C OPENING SUBMISSIONS

A: INTRODUCTION

1. Northern Ireland was in a unique position when it came to responding to Covid-19. On paper it had access to the UK's crisis response expertise such as SAGE and COBR, the financial backing of one of the world's top economies whilst also benefitting from a delayed arrival of Covid into the island of Ireland, with the first positive test in NI occurring one month after the UK's first case.

2. On the other hand, Module 2 demonstrated that NI, together with the other devolved administrations, was largely treated as an afterthought by the UK Government, or worse, with the approach towards NI informed by how the then deputy First Minister was viewed politically rather than being purely an objective assessment of what was most beneficial as a pandemic response. The Inquiry may want to examine whether the detriment caused by that approach was further compounded by the political dysfunction and flawed response to the virus in NI itself.

B: POLITICAL DYSFUNCTION

3. It is not possible to examine the political system in NI without bearing in mind its "troubled past" As Grey and O'Connor note: "*Northern Ireland has unique set of political and administrative structures that have meant that its political and policy responses do not emerge from the same working environment as the rest of the UK. …[it] is governed by a multiparty forced coalition where governing parties often do not share perspectives on the nature of policy interventions, the role of the state, social policies or national identities.*"

4. NICBFFJ represents families from across communities and across the political spectrum in Northern Ireland. There is no suggestion that the current system of multiparty forced coalition is likely to change in the near future. The present political reality is that, in the main, parties in this jurisdiction remain divided depending on their view of NI's constitutional future, and decisions are often seen through that lens. We recognise that any recommendations this Inquiry may wish to make, to ensure that any failings it identifies in NI's response to Covid are not repeated, will have to take account of these realities.

5. However, NICBFFJ do not consider that these distinctive political circumstances excuse any failings in the response to Covid. Consequently, although the Inquiry may be tempted to shy away from issues which appear political, NICBFFJ believe that, where failures in the operation of the mandatory coalition contributed to a defective response, or where parties focused on point-scoring on the constitutional issue over agreeing a coherent and effective pandemic response, the Inquiry should make this clear. In circumstances where there may be limited mechanisms which could operate in practice to prevent these failings reoccurring, the most important contribution the Inquiry can make may be to establish the truth of what occurred, and identify the detriment which was caused as a result.

(i) The consequence of the democratic deficit prior to January 2020

6. The most obvious evidence of this dysfunction is that there had been no functioning devolved government in NI for 3 years until the Executive was re-established on 10th January 2020. During this period political decisions were largely taken by civil servants, leading to a lack of democratic governance and accountability.

7. The Inquiry will want to consider the extent to which this democratic deficit contributed to NI being poorly placed to respond to the pandemic by leading to:
   (i) the neglect of important civil contingency planning;
   (ii) The non-implementation of long overdue and necessary healthcare reforms;
   (iii) A newly appointed, and relatively inexperienced, political Executive at the onset of the pandemic;

8. NICBFFJ emphasise that they do not consider that this history absolves decision-makers of responsibility, but they do believe the Inquiry should make clear that this dysfunction ensured that the people of NI had not been best served, hindering the prospects of a successful response at the outset. Some evidence before the Inquiry puts this in stark terms.

9. Baroness Foster noted: "*the main impact of the absence of power-sharing was on the implementation of the recommendations in the Bengoa Report…which was published October 2016*" and "*made clear that the health and social care system in Northern Ireland required (and still requires) to be radically transformed to improve quality and sustainability. While some preparations could be made in the absence of Ministers, the bringing down of the Executive in January 2017 no doubt significantly hampered design and delivery of reforms in the period leading up to January 2020, as there was a resulting lack of political accountability and decision-making.*"[1]

10. Similarly, on 20 November 2019, Bernie Rooney, a senior civil servant in the TEO who was conducting a strategic review of CCPB, described the state of civil contingency arrangements in this way *"... I have been assessing the CCPB(NI) work 'put on hold' due to the EU planning work and C3 Project. The overall position is dire, There has been systemic failure to invest funding and resources in CCPB (NI) over a number of years and the current position is that at a time of focus, the lack of investment I regret to have to advise you has left it not fit for purpose...*"[2] The issues she went on to identify were fundamental, including "*the backlog of work, lack of resources and lack of staff equipped with the required skills*." The suggestion that civil contingences in NI were somehow better placed as a result of no deal Brexit planning must be judged against that stark reality.

(ii) <u>The consequences of mandatory coalition</u>

11. Once an Executive was formed, it was made up of a mandatory coalition of five parties. Notably in Module 2 some UK Government Ministers suggested that there were problems in relationships with the devolved administrations as they were each run by different political parties. The NI Executive had to deal with that challenge within a single administration. One concern of many of our lay clients is that, at times, the newly appointed Ministers who made up the Executive appeared more concerned about scoring political points against each other than presenting a united public health response against

[1] INQ000418976 §15
[2] INQ000183597, p. 1

a potentially fatal pandemic which as the Minister for Justice put it in her statement "*did not discriminate on the basis of the constitutional position*."[3]

12. Notably, the Minister for Health was not a member of either of the two largest parties on the Executive. As a consequence of the d'Hondt system of government, the fact that neither of the two main parties chose to manage the Department of Health when the Assembly was re-formed in January 2020, and the fact that each government department adopts a 'silo' approach to work, there was (and notably still is) a lack of control by the Executive Office over any DOH response to major health emergencies.[4] The Inquiry will want to consider whether, during the pandemic, this contributed to political infighting at the cost of a united public health response. Certainly, there were complaints that there was a reluctance on the part of the DOH to share health data on a timely basis which in itself led to delays in Executive meetings and dissatisfaction from not only the two largest parties, but also the other minority parties.[5] The Inquiry may wish to consider whether those complaints were justified, and whether this stemmed from ~~to~~ concerns about leaking and ultimately about party political interests. Evidence suggests that the extent of the concern at this lack of control on the part of the two largest parties was such that, as early as late March 2020, it led to civil service musings of unpalatable responses, such as re-running the d'Hondt ministerial selection process to ensure that one of the big two held the health portfolio.[6]

(iii) The lack of a united front

13. The concerns about party political motivation are not limited to one party or single issues. It was notable that the deputy First Minister "broke ranks" with her executive colleagues to call for the implementation of measures being imposed in the Republic of Ireland on a number of occasions.[7] Whilst many NICBFFJ members agree with the sentiment that action should have been taken more quickly to combat the pandemic, the Inquiry may wish to consider whether these actions operated to assist or to cause detriment to the pandemic response, by making it more difficult to reach agreement on necessary measures, including those measures which the dFM claimed to be seeking to persuade her executive colleagues to implement. It was certainly clear to the civil service that this was the net effect. By way of example, the evidence shows a whatsapp exchange on 5th May between the then head of the NI Civil Service and Peter May, after noting another "solo run" by the dFM, state: "*Michelle saying she wanted to have the same plan as the South just means that cannot happen." "Yep, I almost wonder if this is a tactical ploy. She knows she can't get the plan she wants in the time available, so engineer a row and then blame the DUP.*"[8]

14. When the Taoiseach announced school closures in the Republic of Ireland on the 12th March he stated that he was acting on the advice of his own National Public Health Emergency team. It is not clear to what extent that advice was available to the deputy First Minister, and others, when they broke ranks the following day. However, the assertion by those opposed to following the actions of the Irish government that there was

[3] INQ000308439 p2
[4] INQ000411509 at §93
[5] INQ000411509 at §95
[6] INQ000287536
[7] INQ000436641 at §50
[8] INQ000308439 p. 15

no medical/scientific evidence to support these measures[9] appears, at best, unlikely and perhaps underlines that even at this early stage the response required to the pandemic was being viewed through the lens of differing views on the constitutional issue rather than purely on the science.

15. Other examples of dysfunction arising from the apparent sectarianisation of the pandemic are perhaps even more glaring. Evidence suggests that by the autumn of 2020 members of the Executive described, at best dubiously, a difference in infection rates between nationalist and unionist areas,[10] which unhelpfully tended to sectarianise the pandemic.

16. By November 2020, the parties had become so polarised that the DUP thought it appropriate to insist on a cross-community vote on public health measures so they could exercise a veto over the implementation of the NI CMO's advice, supported by the Minister of Health, in relation to a proposed circuit-breaker.[11] Once more, the clear impression was created that party politics mattered more than "following the science". The following month, a proposal by Sinn Fein ministers to implement travel restrictions from GB (where a new variant was in circulation) failed. In what looked to some as a fit of pique, the dFM apparently refused to sign a 4 nations joint statement in advance of Christmas 2020.[12]

17. This all suggests that at important points of the pandemic, the parties in the Executive were distracted by their own party political interests, rather than taking careful and informed decisions about what would ensure the most effective response to the pandemic and how that was to be implemented in practice. These flaws appear to be self-perpetuating, with uncertainty and disagreement about who should lead on the response fuelling frustrations, leading to public criticism as well as leaking, all of which reinforced the lack of trust.

C: THE LOST MONTH OF FEBRUARY

18. The Independent Panel for Pandemic Preparedness and Response, established by the WHO Director-General, described February as a "*lost month*".[13] They noted that declaring a PHEIC on 30 January was the loudest alarm the WHO could sound, given that International Health Regulations under which they operate does not use or define the term "pandemic". The Panel stated: "*The declaration of a PHEIC by the WHO Director-General on 30 January 2020 was not followed by a forceful and immediate emergency response in most countries despite the mounting evidence that a highly contagious new pathogen was spreading around the world. For a strikingly large number of countries, it was not until March 2020, after Covid-19 was characterised as a pandemic, and when they already had widespread cases locally and/or reports of growing transmission elsewhere in the world, and/or their hospitals were beginning to fill with desperately ill patients, that concerted government action was finally taken.*"[14]

19. It is not at all clear from the witness statements in this Module that there is any appreciation, from the main witnesses involved, that the NI response was flawed in this

[9] INQ000232525 p. 1
[10] INQ000425627
[11] INQ000048497 e.g. p. 3
[12] INQ000432641 §186 and §187
[13] INQ000183545_0026§2.
[14] INQ000183545_0024§3, 5

regard, or any real understanding that its response fits within the Independent Panel's unfavourable description. The Inquiry may conclude that such criticisms as there are, of delays in response to the pandemic, focus largely on the measures introduced by the Republic of Ireland on 12 March, not on the failure to take appropriate steps from the end of January.

(i) Phase 0?

20. As though to reinforce the criticism that the errors and missed opportunities in late January and throughout February have still not been understood, TEO corporate statement includes their own table dividing the pandemic into phases, and shows that they still consider the period between 1 January 2020 and 18 March 2020 as "Phase 0."[15] On this view, Phase 0 extended almost 7 weeks after the WHO declared a PHEIC; almost 6 weeks after the NI HOCS messaged the senior civil servant in the DOH to advise that the UK CMO's advice was that China had lost control and the virus would become a pandemic[16]; almost three weeks after NI had its first case, and one week after the WHO declared a global pandemic, SAGE had identified that the UK had moved from containment to delay, and NI had ceased test and trace. Respectfully, the acknowledgement that TEO was still in Phase 0 by 18 March amounts to an admission of a failure to appreciate the risk from the pandemic in real time, as well as a lack of awareness of this obvious reality even in retrospect.

21. The WHO's Independent Panel did offer some explanation for the "lost month": "*The panel's analysis suggests that the failure of most countries to respond during February was a combination of two things. One was that they did not sufficiently appreciate the threat and know how to respond. The second was that, in the absence of certainty about how serious this new pathogen would be, "wait and see" seemed a less costly and less consequential choice than a concerted public health action.*"[17]

22. In terms of the latter point, the Inquiry will note that in an email on 29 January the UK CMO made clear that "*the economic consequences of over calling can be substantial but the mortality and social consequences of under-calling are even more substantial.*"[18]

23. In some ways the Independent Panel's finding raises more questions than answers for NI, as there was good reason to conclude that neither issue identified should have impacted NI's pandemic response. In order to identify the real issues, it is useful to consider the information that was available and the actions that were taken.

(ii) The information available

24. It appears to be suggested by some witnesses that NI simply did not know enough at an early stage about the threat they were facing. Sir David Sterling, NI HOCS, states "*The Executive in Northern Ireland, in common with the other jurisdictions in the UK was expecting a winter flu-type pandemic until late February. In simple terms the expectation was that an illness of this nature would see 20% of the workforce incapacitated at any one time with hospitalisation and death rates much lower than were experienced*."[19]

[15] INQ000438174_0069
[16] INQ000308436 pp. 2-3
[17] INQ000183545_0029
[18] INQ000047585
[19] INQ000449440 §214

25. The NI CMO in his evidence suggests that initially there were limited proven facts about how the virus behaved so that "*initial risk assessments were based on what was already known about similar viruses*",[20] and appears to justify initial flaws in the NI pandemic response as being the result of the lack of information in the early months of the pandemic.

26. However, it is not clear that these excuses are justifiable. On one view, the technical report authored by UK CMOs (including the NI CMO) and the UK CSA arguably does not sit easily with the NI CMO's suggestion. It says: "*Fortunately identification and initial characterisation of the causative virus came swiftly. This early virological information fed into risk assessments about the nature of the virus and its risk to the population, when and whether it would be imported into the UK, as well as supporting the development of a diagnostic molecular test. ... the speed of international information flow from the start of 2020 was impressive*."[21]

27. Nor could it be said that the issue of asymptomatic transmission was a complete surprise or that there was any real doubt that the response should proceed on the basis of that assumption. During the UK CMO's whatsapp discussion on 28th January the NI CMO identified a case in Germany that "*appears to be consistent with asymptomatic transmission during the incubation period*." The UK CMO agreed the case was probable asymptomatic transmission. Even if there was uncertainty about this he added "*we should now assume it may be happening*."[22]

(iii) RWCS and Comparisons to Flu

28. The evidence that action was required by the end of January (and that the threat was not simply of a flu with significant work absences) was also there to be seen. The email from Professor Woolhouse to the Scottish CMO on 25th January 2020, later circulated to the NI CMO (INQ000047559 at p. 2), noted the WHO's figures for the reproduction number (R0=2) and the case fatality rate (4%), and identified what those figures meant in practice (hundreds of thousands of deaths in Scotland) noting this was not the worst case scenario.

29. Within a matter of days, by 28th January, the UK CMO had identified to Downing Street that there were only two realistic options, either China brings a major outbreak under control with only isolated cases outside of China, or that it spreads outside of China, with R of 2-3, mortality of maybe 2%, doubling time of 3-5 days and incubation of mean 5 days, meaning it could "*within the next few weeks become widespread and turn into a significant pandemic relatively quickly*."

30. The two realistic scenarios identified by the UK CMO on 28th February were recorded in a DOH memo sent to departmental leads on 5th February 2020.[23] The following day the NI HOCS messaged Richard Pengelly to identify more recent advice from the CMO: "*the Chinese government has not got to grips with this and that it will almost certainly become a global pandemic. ...*"[24] That suggested that the possibility of containment in China was no more.

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[20] INQ000421704 at §130
[21] INQ000177534 p. 22
[22] INQ000282744 pp. 2-3
[23] INQ000425583 _0002
[24] INQ000308436 p. 2

31. As for knowing how to react, the Independent Panel itself noted that on 30 January 2020, the WHO COVID-19 IHR Emergency Committee stated its view that it was "*still possible to interrupt virus spread, provided that countries put in place strong measures to detect disease early, isolate and treat cases, trace contacts and promote social distancing commensurate with the risk. Most countries did not seem to get that message...*"[25]

32. On the same date as that advice, a memo was forwarded to (among others) the NI HOCS, to provide an update from the COBR meeting on 29th January.[26] The update noted that the WHO was likely to declare the PHEIC imminently. That update also noted (p. 4, final paragraph), that it was "*considered prudent for… all devolved administrations to review reasonable Worst Case Scenario (RWCS) pandemic plans for preparedness*."[27] As a matter of logic, updating RWCS scenario plans required consideration of what the RWCS was for this pandemic. The Inquiry is invited to ask whether from this point, there is any real excuse for NI failing to appreciate the risk faced.

33. In his whatsapp conversation with the then HOCS, Richard Pengelly, suggested that advice continues to be that pandemic flu plans are appropriate, that at peak time the virus would present 'only' as a bad flu, as opposed to anything more sinister.[28] NICBFFJ urges the Inquiry to consider whether this advice and approach disclosed fundamental errors at an early stage to react in an appropriate way to the evidence. The Inquiry heard evidence in Module 2 that SAGE advice was that pandemic flu plans should form a basis for the response but required modification. One major modification is that pandemic flu plans did not focus on test and trace. The Inquiry may wish to consider whether incorrect advice was coming from the UK CMO at this stage that pandemic flu plans were appropriate without modification, or whether Mr Sterling and Mr Pengelly had misunderstood the advice that was being provided both to them and the NI CMO. In either case the reason for the confusion may be important to ensure that such errors are not repeated in future.

(iv) Early awareness of Care Home vulnerability

34. The same whatsapp exchange is also significant as it identifies "*the problem will be if (when) it hits care homes and hospitals.*" (INQ000398422 at p. 2) Despite this, the evidence, including the lived experience of many NICBFFJ members, is that many of those in hospitals and care homes were not adequately protected from the virus, even many months into the pandemic. Whatever the explanation for those failings, it cannot be said that the risk was not appreciated at an early stage.

35. Even if the RWCS was not filtering from SAGE and COBR to the Executive, the information demonstrating the need to act (and how to act) was clearly available from early February. By 17 February 2020 a briefing was circulated from TEO, identifying the RWCS, including an estimate of an 80% infection rate and 2-3% fatality rate.[29]

36. In summary, the evidence suggests that steps should have been initiated by the end of January, to review reasonable worst case scenario pandemic plans, and to put in place strong measures to detect disease early, isolate and treat cases, trace contacts and promote

[25] INQ000183545 p. 28 §2
[26] INQ000232515 p. 4
[27] INQ000232515 p. 4 final paragraph
[28] INQ000308436 at p. 3
[29] INQ000398434

social distancing commensurate with the risk. It also suggests that it was clear that hospitals and care homes required particular protection. The WHO noted many countries did not get the message. NI was among those who did not appear to act on this warning. The Inquiry is invited to consider why not in order that the lessons, demonstrated by Northern Ireland's decision-making in the period between January and March 2020, can be properly learned.

D: EVIDENCE OF THE DELAYED RESPONSE

37. In contrast to the CMO warning to Downing Street on 28th January, the NI HOCS witness statement identifies: "*Aside from media commentary, I do not recall any major activity arising from the Wuhan outbreak during January...*"[30]

38. The Inquiry heard evidence from the then Prime Minister, Boris Johnson, that the reason there had been no discussion about "*the nuts and bolts of stopping the virus spreading irrevocably throughout the UK now it had left China in early February was that they were "not yet believing that the RWCS or anything like it is going to happen, and that's – that's fundamentally the problem*."[31] Whatever conclusions the Inquiry reaches about this evidence, the response of the Executive is perhaps even more concerning. The Minister for Health's statement identifies at [65]: "*The Executive Committee held its first substantive discussion about Covid-19 on 2 March 2020* and during that discussion, the [CMO] observed: "Most people – minor illness like cold. 98% will get better. 5% hospital care… Fatality rate – cd be 2-3%... Modelling -UK/ROI – widespread. Not inevitable. Need to be prepared for weeks/months…"[32]

39. This is not just striking because it identifies that the Executive failed to have a substantive discussion about Covid long after this should have taken place. It is also striking because cross-cutting decisions were required in order to inform the type of response the pandemic required, and therefore a substantive discussion by the Executive was not just a necessary step but was the starting point for determining measures to combat the pandemic.

40. For example, at SAGE 9 on **20 February**, the minutes note that "*before consideration of measures to reduce spread is undertaken"* it is *"essential to understand the objectives behind seeking to manage the epidemiological curve (for example flattening the peak, spreading the duration, avoiding winter), informed by key challenges the NHS is seeking to mitigate*."[33] Those objectives were matters for elected representatives and predictably properly a matter for the whole executive, not least because the measures which would be required to meet each objective would necessarily be cross-cutting. The Inquiry is invited to explore whether detailed consideration of Covid by the Executive should properly have occurred *before consideration of measures to reduce spread* was undertaken. Any conclusion that this did not take place suggests either that the Executive was not properly informed of the need for these decisions, or that consideration of the necessary measures had not even begun by 2nd March (long after it was clear that Covid would sweep these islands, and after Covid was present in NI).

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[30] INQ000449440_35§110
[31] Module 2 hearings, Day 31, page 72 line 23 – page 76 line 3
[32] INQ000412903 at §
[33] INQ000089720_0050 at §§7-8

41. Indeed Baroness Foster's 2024 statement suggests that different options were not even considered, but rather the UK approach was followed without meaningful consideration of whether it was appropriate. She notes: *"While I do not recall express discussion on the strategy, the UK Government's general approach was relayed to the Executive and this likely lead to its adoption in Northern Ireland* ***in the absence of any significant discussion or alternative means of proceeding being presented.*** *This for example, at the 16 March 2020 meeting, the Justice Minister said: delay until after Winter pressures."*[34]

42. That conclusion finds support from the Commissioner for Older People NI, who records a meeting on 16 March 2020 attended by his Chief Executive with CMO, DOH and PHA officials to discuss guidance to be published for care homes. The Chief Executive is said to have drawn attention to the large numbers of older people contracting Covid 19 and dying from it in Italy. The Commissioner reports that there was an "*air of unreality*" in that meeting, with PHA expressing the view "*that it won't happen here, they have a completely different system over there*"[35]. In the event, testing of all care home staff and residents in cases of outbreak did not start until **27th April 2020.**[36]

43. The failure to react appropriately from late January, throughout February and indeed into March left decision-makers scrambling at the last minute to take urgent and apparently unexpected decisions. By way of example, on 6th March the Cabinet Office had requested information by 1pm the following day on the impacts and potential mitigations in relation to specific NPIs, including 1. Home isolation of symptomatic cases (7 day duration); 2. Whole household isolation where there is a symptomatic case (14 day duration); and 3. Social distancing for vulnerable groups [in line with DHSC description of policy options]. NI did not respond to that request by the deadline, because "[*t]he CMO ... advised that there is no particular need for this work to be completed in the timescale set by the CO and that it would be impossible to produce something with any precision at short notice*."[37]

44. There are two concerns about this response. Firstly it suggests that such work had not been already considered. That raises the question of what work had been considered in relation to NPIs at this stage. It also suggests a failure to appreciate that the work was urgent as consideration about whether to implement measures was required at that stage. A response to the effect that the impact wasn't known and that there was no urgency may be thought to suggest a fundamental failure to appreciate the ongoing risk of the virus.

45. Of further significant concern, is that, according to her statement to this Inquiry, the deputy First Minister does "*not recall plans being put in place for how the Executive would function*" in response to the pandemic prior to the Sir David Sterling's outlining the same at the Executive Committee meeting held on 19 March 2020.[38]

46. The recollection of the dFM would appear to be entirely accurate. Notwithstanding that: it was known in Autumn 2019 that NI Civil Contingencies were not fit for purpose [see the Rooney memo above]; that it was acknowledged on 6 February 2020 that the time to activate NICCMA would come when NI had its first confirmed case of Covid and its

[34] INQ000418976 §41
[35] INQ000267978 at §68
[36] INQ000226184 at §54
[37] INQ000398439, p. 1
[38] INQ000065737 §68

impact was felt[39]; that it was known in mid-February 2020 that there was a need for a "scaled activation of the NI Hub as the NI co-ordination centre supporting CCG(NI) as the strategic decision making body"[40]; that a proposal for a review of NI civil contingency arrangements was presented to TEO Board on 25 February 2020[41]; and that Covid was confirmed in NI on 27 February, it would appear that little meaningful effort was made to 'stand up' a civil contingencies response to the pandemic until the weekend of 14 March 2020 (when David Sterling contacted Karen Pearson to ask for her assistance). In this regard, the Inquiry might note with concern the apparent tension between the statements of the DOH / Richard Pengelly, and TEO in relation to who held the responsibility for activating NICCMA.

47. Those concerns are reinforced as we now know that the paper Sir David presented on 19 March 2020 had been urgently drafted by Karen Pearson on or about 17 March 2020 after she had been contacted on 14 March 2020 to request that she assist with NI Civil Contingency Arrangements. It seems, on drafting that paper on St Patrick's Day less than a week before the lockdown was to commence, she had nothing to go on inasmuch as no previous draft existed and no ground work had been laid.

48. Karen Pearson and her team had also conducted a "rapid risk assessment of all foreseeable risks which might need ministerial decisions or interventions and departmental coordination, assessed for likelihood and impact with colour coding on a grid structure. This was approved on 23 March".[42] Arguably the fact that this basic work appears only to have been undertaken in late March is evidence of a failure to take appropriate action throughout February and well into March. As will be seen below, the delay in undertaking work of this nature also meant there was limited time to implement policies which were effective in addressing the impacts identified.

49. The agreed position in relation to NICCMA, as at 6 February 2020, was that the time to activate NICCMA was when Covid arrived in NI and its impacts were experienced here[43] [INQ000218470]. The TEO apparently decided to simply leave this decision to the DOH rather than exercise their own discretion on the issue. That decision still has not been adequately explained, either in February or until activation in March. Since 6th February, the WHO had reported on 24 February 2020, following its international mission to Wuhan, that countries should "*immediately activate the highest level of national Response Management protocols to ensure the all-of-government and all of society approach needed to contain COVID-19 with non-pharmaceutical public health measures*".[44] Covid then officially arrived in NI on 27 February. Even if it could be suggested that its impacts were not experienced in the jurisdiction immediately, it is difficult to see why that continued to be the assessment once contact tracing was suspended on 12 March. Despite this, the NICCMA was only activated on or around 18 March 2020.

E: CAN THE GOVERNMENT RESPONSE TO COVID IN NI PROPERLY BE DESCRIBED AS "REACTIVE"?

[39] INQ000218470 p. 2 §4
[40] INQ000398423
[41] INQ000205712
[42] INQ000449440 162 p. 55; para 187 p. 64; see also Heat map reference: INQ000398430
[43] INQ000218470
[44] INQ000412903 at p. 25 §63

50. The then First Minister disagrees with the criticism made on 12 March that the Executive "*always seems to be reacting, not leading*". However she also identifies that until 23 March "*the Executive had not been advised that a lockdown was, or would be, required. … Lockdown was not a word or phrase used within official advice during January, February or early March in Northern Ireland.*"[45] It is not at all clear what the then first Minister believed would happen once test, trace and isolate had been suspended, but it may be thought difficult to think of clearer confirmation that, even in late March, the Executive was reacting rather than implementing a coherent strategy, planned in advance.

51. This finds support from the WHO warning on 24 February referred to previously (at §49). The Inquiry might want to compare the Executive's consideration of NPIs against this advice and ask why one month later it appears that the word "lockdown" had not even been mentioned in advice to the Executive, let alone its implications considered and methods of implementation identified.

52. The failure to act throughout February, leading to last minute decisions, combined with the political dysfunction within the Executive was clearly not conducive to a coherent response. Indeed, on 24 March the NI CMO messaged the NI HOCS and Richard Pengelly to suggest that the Executive were: *"now frankly getting in the way of a co-ordinated effective response and making demands on my time and our team in health that we simply can't facilitate. They are asking for certainty where there is none."*[46]

F: TEST, TRACE & ISOLATE ("TTI")

53. As noted above, on 30th January WHO had emphasised the importance of TTI of positive cases and contacts. The WHO on 24 February reinforced this advice, identifying that countries should, as well as activating the highest level of response management protocols, "*(2) Prioritise active, exhaustive case finding and immediate testing and isolation, painstaking contact tracing and rigorous quarantine of close contacts.*"[47]

54. The NI CMO's statement asserts "*I was aware of this report at the time and as outlined above action across all of these areas was already being progressed in NI by the Department or was under preparation and was actioned in the following days."* [48]The Inquiry might consider whether this assertion accords with reality, given that community test and trace was halted within less than three weeks, after only 16 positive tests.

55. The suspension of testing in particular raises the question of what work was done, and whether more could have been done, from the end of January to scale up test and trace in light of the risk from the virus and the warnings from the WHO, including the reproduction number and doubling time. Evidence in Module 2 showed that SAGE 8 (18 February 2020)[49] had identified PHE test and trace capacity. That statement of capacity was apparently based on a 12 February PHE document entitled "Recommendations on the continuing use of case-identification/contact-tracing/case and contact isolation (CCI) management to mitigate the impact of imported cases of Covid-19."[50] This document

[45] INQ000418976 at §65, §75, §77
[46] INQ000308444 p3
[47] INQ000412903 at p. 25 §63
[48] INQ000412 p. 124 §175
[49] INQ000106114
[50] INQ000119729

notes the limits referred to in SAGE 8, and also explicitly identified that, based on estimates of R0=1.5 or R0=3, those limits would be reached within 2 or 4 weeks.

56. What is not clear is what NI capacity for test and trace was understood to be at this time. The evidence in Module 2 suggested that SAGE does not appear to have considered NI's test and trace capacity at all during this period. NICBFFJ criticised this approach in Module 2, suggesting that SAGE was acting on behalf of England rather than considering the position throughout the UK. We noted not only that this was a failing on the part of SAGE, but also the UK government who did not appear to question the fact that they were being given England-only information, and who did not react to the provision of English only information by requesting information about the devolved administrations. We maintain that this is properly a matter for criticism, however a similar lack of knowledge or even interest among NI elected representatives themselves is even more concerning. The Inquiry may want to examine whether, although the Executive was informed that test and trace had been suspended after the fact, there was any enquiry by the Executive to establish whether and for how long the test and trace system could cope before it was shut down. It may be thought that an absence of such enquiry is difficult to explain given the importance of test, trace and isolate in this pandemic response.

57. It appears that, rather than engage the Executive in a discussion of test and trace capacity and identifying what was required to scale up resources to meet the threat, a decision was taken, without the Executive foreknowledge let alone input, to suspend test and trace on 12 March. The CMO cited the DOH Wave 1 Corporate statement (at [195])as setting out the rationale for stopping contact tracing on 12 March. That statement suggests the "*decision was underpinned by the UK-wide agreed Protocol for Moving from Contain to Delay... This was followed shortly afterwards on 23 March by the introduction of the first UK-wide lockdown. The decision to pause contact tracing was integrally linked to the decisions to move the delay phase and to introduce population wide lockdown measures*." However the UK-wide agreed Protocol does not contain any requirement, or even a suggestion, that the result of moving from Contain to Delay will be that testing and contact tracing are stopped. Nor does it suggest that the move to delay will necessarily coincide with behavioural interventions, in fact it explicitly makes clear these may not be simultaneous[51] (see INQ000346695, under Heading 4 "Interaction with Behavioural and social Interventions"). Other behavioural interventions were not implemented the day contact tracing was stopped, nor were they implemented for a number of days afterwards.

58. The MOH gave a different explanation for suspension when the Executive eventually was informed, on 16 March. Handwritten notes record that he would prefer to "*focus resources on combatting Covid 19 rather than counting*"[52]. The Inquiry may want to consider whether that statement reveals a misunderstanding of the importance of TTI both for combating the virus and for holding out the prospect of avoiding prolonged lockdown measures. TTI is not only a measure to inform response, it limits virus transmission in itself. Either way, the Inquiry may conclude that the suspension of Test and Trace on 12 March serves to confirm that there was a failure to react appropriately to the pandemic at this early stage.

G: CONSEQUENCES OF THE NI GOVERNMENT RESPONSE

[51] INQ000346695, under Heading 4 "Interaction with Behavioural and social Interventions"
[52] INQ000226010 p.2

59. The Inquiry may conclude that there were a number of serious adverse consequences to the way the NI government's response to Covid developed including the fact that repeated delays led to longer lockdowns and ensured that their associated detrimental effects were intensified.[53]

60. Additionally this meant there was limited time to consider and implement measures which would offset those negative consequences, or would assist the more vulnerable in society who would suffer the greatest consequences from the measures imposed. This was particularly important given the pressures the health and care system would face, a factor that was identified in the Sterling-Pengelly message on 5 February 2020, referenced above. By way of example, by 2 March the NI CMO was informing the Executive of the "*need for the Health and Social Services Boards to take difficult decisions on prioritisation, clinical decisions and ethical issues. He spoke about the need to be prepared for weeks/months and that we were dealing with a very transmissible virus*."[54]

(i) Consequences for the older and vulnerable population

61. As the Inquiry will be aware, many members of NICBFFJ are concerned that their relatives were effectively given up on, or that some lives were "prioritised" over others. There was a particular concern for older people and disabled. Such concerns include those identified in NICBFFJ's evidence and rule 9 responses for Module 1, 2 and 2c, and does not require to be recited in its entirety, however it includes:
    (i) Concern at the isolation of vulnerable and older people in care homes, in circumstances where this not only failed to protect them from the virus, but simultaneously resulted in the deterioration of mental and physical health, having been deprived of access to their loved ones;
    (ii) Concerns at the implementation of policies which failed to protect the vulnerable in care homes from the virus, for example, requiring PPE only where an individual was symptomatic, thereby risking asymptomatic transmission;
    (iii) The failure to impose effective measures to prevent nosocomial infection, resulting in many older individuals, or those who were vulnerable due to underlying conditions, being protected by their family only to be exposed when they attended hospital for necessary treatment unrelated to Covid;
    (iv) The failure to provide treatment for Covid for those who were considered too vulnerable, giving the impression that loved ones had been abandoned;
    (v) The use of DNRs and life ending drugs, in circumstances where patients were deprived of family contact, and therefore what would normally be an effective safeguard for the vulnerable against treatment which would be against their wishes.

(ii) S75 Equality Act 1998

62. These concerns clearly raised issues of inequality and discrimination for older people and disabled. There was not just a moral duty to consider how best to protect such individuals, there was a legal duty on departments to promote equality of opportunity for such individuals under s.75 of the NI Act 1998. This obliges public authorities to promote equality of opportunity, including between persons of different ages, and between persons with a disability and persons without. It is appreciated that these specific issues may be considered in more detail in further modules, however it is appropriate to consider in this

[53] INQ000257925 at e.g. §51.
[54] INQ000436821 §79

Module whether a systemic failure to plan in advance hindered consideration of equality issues, and effectively ensured that these duties were not satisfied.

63. TEO is the department responsible for equality policy and legislation in the NI Executive and the sponsor of the Equality Commission (who in their evidence confirmed that equality duties should have been complied with and could not be suspended as a result of the pandemic). The dFM in her 2024 statement notes that these equality issues were not satisfied, and asserts: "*Due to the need for a speedy response to the pandemic we could not carry out formal Equality Impact Assessments (EQIAs)*."[55]

64. The Inquiry may consider that there are fundamental problems with this explanation. Firstly the need for a speedy response in March arguably flowed from the failure to react appropriately at the end of January until early March. Furthermore, these duties are ongoing, and any difficulty in considering them in advance should not have prevented them being considered and complied with retrospectively. Such an approach would have ensured balance between the need for urgency, and the need to protect vulnerable individuals from particularly detrimental consequences of the measures imposed to combat the virus.

65. The second issue is that this explanation could only really justify such failings in or around January – March 2020. Evidence suggests that by April 2020 (at the latest) preparations had begun for a second surge.[56] It is not at all clear why consideration of how to reduce the detrimental consequences of their decisions for the vulnerable, older people, and disabled was not undertaken at that stage and therefore could have informed the response to the second wave. This is particularly so, given that by that April 2020 it was already apparent that that older people and those residing in care homes were being hardest hit by the pandemic.

(iii) RQIA

66. Many of those we represent are baffled by the CMO's decision on 20th March 2020 that the RQIA should cease all non-statutory inspections of care homes[57] to provide "regulatory flexibility".[58] The result of this policy was that care homes were subject to significantly reduced regulatory oversight and inspection between March and June 2020. Again, this decision appears to be the result of a failure to adequately prepare for the pandemic in early 2020, and also operated to the detriment of vulnerable in care homes, by removing an important safeguard at the same time as they were being deprived of potentially their greatest safeguard of all, namely family contact.

67. Marion Reynolds of the NICBFFJ puts a human face to these concerns.[59] She describes her aunt Marie going in to hospital with pneumonia in September 2020 where she then contracted Covid. Her aunt was deaf, but members of staff were still wearing masks which prevented her aunt from lip-reading. Her aunt was then admitted to a care home in circumstances where Marion was not permitted to visit, partly due to a failure to advise Marion about DOH Care Partner guidance or to ensure it was implemented in practice. When she did get access she found her aunt near death. She believes it was not merely the

[55] INQ000436641 at §84, §331
[56] Ibid §120
[57] INQ000137312
[58] INQ000226184 at §31
[59] INQ000417116

social isolation that was detrimental to her aunt, but also the lack of visiting meant that family members were not there to be able to identify when their relatives were being treated poorly. Whilst that Care Partner Guidance, if effectively implemented, may have lessened the detrimental consequences of isolation, the repeated experience of NICBFFJ members was that it was not implemented or adhered to in practice. We emphasise that the treatment described is sadly not unusual among those we represent, but Marion's aunt's experience demonstrates a variety of failings to comply with equality duties, to someone who was disabled, who was vulnerable and who should have been protected.

H: DIGNITY IN DEATH

68. The reactive approach was not just a problem for equality issues. Many of NICBFFJ's members continue to suffer from significant distress due to the denial or severely limited restriction on rituals in the form of wakes and funerals. Examples were identified in the statement of Marion Reynolds, as they were in NICBFFJ's evidence in previous Modules. NICBFFJ members believe that this denial of ritual and social interaction has prolonged the grieving process, and prevented many bereaved from coming to terms with the death of their loved ones. It is a particular concern given that from January it was apparent that this was a highly transmissible virus, that there was a reasonable likelihood that it would cause large numbers of deaths, and that these would occur in circumstances where NPIs to deter social mixing were likely. That this was obviously an issue was demonstrated in the fact that issues for dignity in death were identified as one of the most likely risks from the pandemic in the hastily prepared TEO heat-map from March 2020. It is therefore significantly concerning that there were continued failings in ensuring the dignity of the deceased and the bereaved both at the outset of the pandemic, and as the pandemic progressed. NICBFFJ consider that this has caused lasting and significant damage to many individuals and families in our society.

69. We would therefore urge the Inquiry to examine this issue, and include recommendations to ensure as far as possible that in any future pandemic this issue receives the attention it deserves. The fundamental need for individuals and communities to say an appropriate farewell to their loved ones should be recognised in any measures which require to be imposed.

I: TRUST & MESSAGING

70. It is in this context that the decision of senior members of the Executive to attend a mass funeral of one of their party colleagues on the 30th June 2020 has caused great anger among the members of NICBFFJ and the general public. Just as Westminster's party-gate undoubtedly damaged the public's trust and goodwill towards those charged with imposing restrictive public health measures so did the decision of senior experienced politicians to attend a predictably large-scale event in circumstances which inevitably ran the risk of being against the spirit if not the letter of the very restrictions they had agreed just days earlier. Witness statements from the then deputy First Minister[60] and Minister for Communities[61] emphasise their close friendship with Mr Storey and assert that their attendance was in a personal capacity without seeming to fully recognise that the general public in Northern Ireland also lost friends and loved ones during this period but chose to take every step possible to ensure that they undoubtedly complied with these inevitably painful restrictions - not for personal reasons but for the greater good.

[60] INQ000436641 §394
[61] INQ000436131 §209

71. Finally, the Inquiry is aware that it has not been provided with all the "potential evidence" of phone communications between important decision-makers in the pandemic response. It will hear evidence as to the timings and explanations for this, as well as the extent of any other evidence available to "plug the gaps". Although, members of NICBFFJ view the history of this matter with a mixture of surprise and scepticism we will listen with interest to the evidence placed before the Inquiry before making any more formal representations.

J: CONCLUSION

72. NICBFFJ believes that, considered as a whole, the combined responses of the NI and UK government failed to protect the most vulnerable in society, with a lack of preparedness and delayed response leading to last minute decision-making, exacerbated by unnecessary party in-fighting which contributed to a greater loss of life than was necessary, in circumstances which has caused many members of NICBFFJ, and many others in our society, lasting trauma. NICBFFJ urges the Inquiry to fearlessly investigate these issues, establish the truth of what occurred, and to make recommendations which ensure, as far as possible, that these failings are never repeated.

73. We would also take a final moment to remind the Inquiry of the human suffering and desire for answers at the heart of the pandemic and indeed the work of the NICBFFJ. As Catriona Myles said in her evidence for Module 2 "*I hope that today you will remember every mother, father, brother, sister, husband, wife, that are feeling how I feel or have suffered and lost, and the -- ultimately I am telling my father's story because he's not here to tell it, and we want to know why our loved ones aren't here*."[62]

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20 April 2024

[62] M2 hearings, Day 1, p. 20 lines 3-9