

Wednesday, 1 May 2024

1
2 (10.00 am)
3 **LADY HALLETT:** Good morning. Sorry, I am not quite with it.
4 Ms Treanor.
5 **MS TREANOR:** My Lady, just before we begin, there is one
6 housekeeping matter I would like to draw your attention
7 to. The provisional timetable for today indicates that
8 Sir David Sterling's evidence should begin at 2 pm. He
9 will now commence giving his evidence at 11.45, just to
10 make you aware.
11 **LADY HALLETT:** Thank you very much.
12 **MS TREANOR:** My Lady, may I call Eddie Lynch.
13 **MR EDDIE LYNCH (sworn)**
14 **Questions from COUNSEL TO THE INQUIRY**
15 **MS TREANOR:** Good morning, Commissioner. Thank you for
16 attending today and for your assistance to the Inquiry.
17 At the outset, could I just remind you to try to speak
18 slowly and speak into the microphone so that our
19 stenographer can hear you for the transcript.
20 You have provided Module 2C with one witness
21 statement which we have at INQ000267978. You can now
22 see that on the screen. If we turn to page 42, we can
23 see that you signed that statement on 6 September 2023.
24 Are the contents of that statement true to the best of
25 your knowledge and belief?

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1 And I suppose part of my role is to constantly
2 review the services that older people receive, and to
3 influence policy, practice and legislation that affect
4 the needs of older people in Northern Ireland.
5 **Q.** Thank you.
6 In the legislation, the primary definition of "older
7 person" is a person aged 60 or over, and in your
8 statement you have indicated that as of March 2021,
9 Northern Ireland had an over 60s population of just
10 under 440,000, or about 23% of our total population. Is
11 that right?
12 **A.** That's correct, yes.
13 **Q.** Clearly that's a very large constituency and will
14 capture a broad range of experiences and personal
15 circumstances. In a few sentences, can you give us
16 a brief overview of the characteristics of that older
17 population in Northern Ireland?
18 **A.** Well, it's a very diverse population. Over 60 is
19 a large category in terms of 60 to 100, there's
20 obviously many different issues for people of different
21 ages. We're living in an ageing population, which is
22 a good news story, and people are living longer,
23 healthier lives, but there's clearly a lot of issues
24 that affect older people in that age group as well,
25 particularly when you get into the 70s and 80s plus

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1 **A.** Yes, they are.
2 **Q.** Mr Lynch, since June 2016, you have been the
3 Commissioner for Older People in Northern Ireland.
4 Prior to that, you were the chief executive of
5 Age Sector Platform, a charity representing the
6 interests of older people; is that right?
7 **A.** That's correct, yeah.
8 **Q.** And the Commissioner for Older People is an independent
9 statutory role established by the Commissioner for Older
10 People Act (Northern Ireland) 2011 and the principal aim
11 of your role is to safeguard the interests of older
12 people in Northern Ireland, and as Commissioner you have
13 a number of mandatory statutory duties and powers.
14 Could you provide us with a brief overview of your
15 general powers and duties in illustrating what your role
16 looks like in practice?
17 **A.** Yes, of course. As Commissioner, my principal aim is to
18 safeguard and promote the interests of older people in
19 Northern Ireland and part of this role, one of my roles
20 is to advise government on older people's issues, to
21 commission research into issues that I feel are of
22 importance, make recommendations to government on issues
23 that affect older people here and I've also legal powers
24 in relation to investigations that I can conduct, formal
25 and informal investigations, as well.

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1 group, a lot of issues around health and social care,
2 a lot of major challenges in Northern Ireland in terms
3 of meeting the needs of that ageing population.
4 So whilst there are lots of positives with ageing
5 population and what it can provide to society, there are
6 a lot of challenges that come with it that government
7 needs to really address, and I think a lot of the issues
8 that came up in the pandemic were reflective of some of
9 the failings there have been in those issues.
10 **Q.** Well, let's turn then to look at your role during the
11 pandemic. During that time, how did you go about
12 gathering information as to the impact of the pandemic
13 on older people?
14 **A.** It came in various ways, you know, as an independent
15 body we rely very much heavily on what people bring to
16 us, so we will have heard -- we would have had a lot of
17 older people themselves coming to us with concerns,
18 particularly as the pandemic approached, we would have
19 a lot of families with concerns in relation to care
20 homes and domiciliary care packages and things like
21 that, but we'd also have had a lot of organisations that
22 would have come to us as well and would express any
23 concerns. So for example on the care home side of
24 things, the independent healthcare providers would have
25 been in contact with my office on numerous occasions in

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1 those early stages of the pandemic and they would have
2 been reflecting issues that they were hearing on the
3 ground in relation of the preparedness of that sector
4 to -- for Covid.

5 So really my office, we also would have reached out
6 to any people with expertise, you know, none of us are
7 trained professionals in epidemiology or virology, so we
8 would quite often have reached out to experts in those
9 fields as well, as well as taking in the media, because
10 obviously there was a lot of media coverage at the time
11 about Covid and it was a steep learning curve for us
12 all, but our aim was to try to provide as strong a role
13 as possible to ensure that older people were protected
14 as best they could be.

15 **Q.** In addition to that, you also participated in weekly
16 four nations meetings of the UK network of older
17 people's organisations. Very briefly, was that
18 an effective forum for information sharing and to what
19 extent did that inform your work?

20 **A.** It was very effective, it came together organically,
21 I suppose, it was an informal meeting with myself, the
22 Welsh Commissioner for Older People and many of the
23 other older people's organisations across the UK, and it
24 was a very useful forum for sharing what was happening.
25 This was new to everybody, the pandemic was something we

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1 initiatives progressed to try to mitigate some of those
2 impacts. Very briefly, what is your view of the
3 efficacy of those mitigations? Was this something about
4 which you were receiving any feedback from older people
5 and their families?

6 **A.** Yes. I mean, clearly the impact of lockdown was really
7 significant in older people for many different reasons.
8 It affected everyone in society, but for older people it
9 affected them a lot more severely. More older people
10 were -- would be living alone than others in society.
11 They were also living with the fear of Covid; they were
12 very aware through the media that they were in the group
13 most vulnerable, and at risk.

14 There were a lot of very good community initiatives
15 that were set up in the early stages. There was
16 a really good response around from the community and
17 charity sectors about trying to assist older people,
18 you know, with their shopping, making sure that they
19 were calling in on them, making sure they were okay.
20 But clearly there was still, you know, much higher
21 levels of fear and loneliness caused by Covid.

22 I think the other major issue was, you know, a lot
23 of older people still had not accessed the internet and
24 that closed them off from the world a lot more than many
25 other groups, and I think that made it even more

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1 hadn't experienced before. The challenges it brought
2 were new for a lot of us, and it was very useful to
3 compare and contrast the different approaches being
4 taken by different governments in different regions of
5 the UK.

6 **Q.** In terms of the impact, then, of Covid-19 on older
7 people, you've said in your statement that statistics
8 and lived experience would suggest that your
9 constituents are uniquely vulnerable to experiencing
10 long-term physical or mental health conditions,
11 loneliness and to feel more significant physical impacts
12 of being required to shield. Is that a fair summary?

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

14 **Q.** If we could have on screen, please, I think
15 INQ000237823.

16 Now, Commissioner, this graphic is an extract from
17 a survey that your office commissioned in September 2023
18 entitled "Impact of [Covid-19] on Older People", and I'd
19 just like to highlight a few of the key findings.

20 So 32% of respondents experienced increased
21 loneliness, 20% found it quite or very difficult getting
22 shopping or other household necessities during Covid and
23 lockdown, 25% find it harder than previously to access
24 medical services such as GP surgeries.

25 Now, the Inquiry knows there were various

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1 distressing for them, and I think that contributed to
2 higher levels of anxiety, fear and depression.

3 So that -- they were all factors.

4 It was an extremely difficult time, and I think as
5 well as we talk about, you know, the hospitals and the
6 care homes, it is really important to reflect on how
7 lockdown affected people in the community as well.

8 **Q.** You've just touched on the issue in care homes.

9 Perhaps we can take the document down now, thank
10 you.

11 You explain in your statement that, at the outset of
12 the pandemic, your office began to receive a large
13 volume of complaints from older people, care providers
14 and families on a range of concerns, and one of the
15 first issues to emerge, it appears, was the discharge of
16 patients from hospitals into care homes. You explain in
17 your statement that this was being raised with you on
18 two fronts, firstly by care home providers who reported
19 feeling under pressure to accept new residents into
20 their homes in the absence of adequate testing, and
21 secondly by the families of people residing in care
22 homes.

23 What were the concerns being identified to you about
24 discharge into care homes and testing at that time, at
25 the outset?

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1 A. Yeah, this was a very serious concern, as you say,
2 raised by both families and providers, and I think --
3 you know, this was the early stages where there was
4 a lot of awareness about the vulnerability of people
5 living in care home settings and how vulnerable they
6 would be if Covid got into care home settings, given how
7 quickly it could spread and how much at risk those
8 people would be.

9 It did come to my attention several times about the
10 hospitals being cleared out, as it was, to make space
11 for a possible surge of Covid patients, and part of that
12 seemed to be discharging people into care homes where
13 they could.

14 I was very concerned, and so were the care home
15 providers, that those people were put into those
16 settings without testing. It was very clear and obvious
17 at that stage -- whilst there were lots of things in
18 this pandemic that were very new and, you know, would
19 have taken hindsight, I don't think it was -- I think it
20 was very clear cut that the policy of discharging people
21 without testing into those settings was a potentially
22 disastrous one. I think it was quite reckless
23 a decision to take to allow that to happen. I think the
24 reports that I was getting from the care home providers
25 themselves showed that, because they were very much

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1 Europe the impact that Covid could have when it got into
2 a care home setting. So that decision was really borne
3 out of a desire to protect life.

4 I think when you look back and then the learning, as
5 the pandemic went into a number of months, it was clear
6 that there was negative impacts with that as well, that
7 the impact of no social contact between residents and
8 their families had a very detrimental effect on both,
9 and I think one of the -- you know, that lasted for
10 a long period of time. We were aware of many cases that
11 came to us that were really distressing cases where
12 families were desperate to get in to see their loved
13 ones, that they could see their loved ones
14 deteriorating, and they couldn't do anything about it or
15 they couldn't be there to comfort them and that was
16 deeply distressing. And I think I would think that one
17 of the things that I would like to see come out of this
18 Inquiry would be how that sort of situation could be
19 managed better in future, because whilst we had to have
20 the ring of steel around homes and try to keep out
21 infections, and I think initially that was the right
22 decision, I do think, you know, we saw the devastating
23 impact on the residents, many of whom lived their last
24 months of their lives without that family and social
25 contact.

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1 aware of the risks that this policy could have on their
2 residents.

3 And I think that is something that is a learning
4 from this, that this Inquiry would look at, to see,
5 you know, if this was to happen again, clearly decisions
6 like this need to be thought through and the
7 consequences of making those decisions need to be
8 thought through, and I'm sure that that policy alone
9 contributed to a lot of negative outcomes in homes.

10 Q. Now, we'll return in just a moment to talk about your
11 engagement with government on these issues, but in terms
12 of the issues being raised at the outset, was the issue
13 of restrictions on visiting also raised with you, and if
14 so, what were you hearing about the impact of that on
15 older people?

16 A. Yes, at the start the issue of visiting, it was very
17 clear that the best chance to protect life in care homes
18 was to reduce the amount of people, the amount of
19 footfall into care home settings, and the authorities
20 were pretty unanimous in saying that to try to protect
21 the residents and try to reduce the number of
22 infections, that they would have to suspend all
23 visiting. I thought that was probably the only decision
24 that could be taken at the time, given that we,
25 you know, had no vaccine, we had already saw across

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1 LADY HALLETT: Have you had any thoughts -- by the sounds of
2 it you think a lot about this subject, Mr Lynch -- about
3 how you can -- so on the one hand you're protecting
4 physical life, as it were, as opposed to death, but on
5 the other hand you've got the mental issues of both --
6 as you say, on the residents and the family. I mean, do
7 you draw a distinction between when a resident has got
8 Covid? I mean, have you thought about how you might
9 change the rules for the future, what guidance might be
10 given in the future?

11 A. I think if -- I think this comes down to preparedness
12 for the pandemic as well, and it was new, we weren't
13 experienced in any way of dealing with this. There was
14 steps that were taken by government, for example, making
15 some money available to care homes so we talked about
16 the ability for care homes to create visiting pods and
17 spaces and safer spaces, I think in the future that
18 would be something that you'd want to see expanded.
19 I think now that we've been through this experience,
20 I think looking back on that, you need to be thinking:
21 well, if this was to happen again, here's several ways
22 that we could bring in some level of contact with
23 families. You know, I think the situation was taken for
24 the right reasons in terms of suspending visiting, but
25 there's no doubt the consequence of that was devastating

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1 for many people.

2 So I think -- you know, having been through it,
3 I think there are ways that contact could be increased.
4 There are, you know, with the right infection control
5 measures in place, there were things that came in later
6 on in the pandemic that worked quite well, but I think
7 one of the things that I would say is, whilst, you know,
8 there were many people, my office was getting a very
9 mixed response from families in relation to this,
10 you know, whilst many people wanted changes and lifting
11 of visiting restrictions there was an equally large
12 number of people who wanted them kept in place and
13 wanted the ring of steel, if you like, kept for longer.
14 But I think it's very clear now as we look at the
15 evidence that it's not hard to visualise the impact that
16 had on so many residents, many of whom wouldn't have had
17 capacity to know what was going on, and I think that was
18 what was so distressing for both them and their
19 families.

20 So I think -- I don't have all the answers, but
21 I think there are certain things that could be done in
22 those settings that would allow care home providers and
23 government to work more quickly in a future situation.

24 The other thing that I would say is I think that the
25 care home providers themselves should have been engaged

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1 standards are being met, but I actually think there's
2 nothing that beats the families on the ground being in
3 there on a regular basis to ensure everything is well.

4 I think it was one of the unfortunate consequences
5 of the restrictions that that oversight of care within
6 homes was certainly reduced, and that was an added fear
7 for family members in that situation.

8 Again, looking back, would it still have been better
9 to have a degree of inspections going in? That may have
10 been the case. Again, it's weighing up the risk. But
11 I think it did raise major concerns that there wasn't
12 that scrutiny and oversight at the time. My office was
13 conscious of that. What we did a lot with was we were
14 working with the care home providers as an organisation,
15 we wanted to be as supportive as possible, we wanted the
16 care homes to get as much support as they could get,
17 because I think one of the things we were very conscious
18 about at that time was the response to the pandemic was
19 adding costs to care homes. You know, just by the
20 extra, you know, the extra work they had to do, the
21 infection control, they were under major pressure in
22 terms of staffing as well, you know; a lot of care
23 workers got Covid themselves. So the conditions that
24 they were working in were very -- extremely difficult
25 and I think again that's where, you know, I think they

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1 with at a higher level than they were. I think there
2 was guidance produced, we -- myself and my team -- we
3 had sight of that only a day before it was published.
4 I know the providers would have liked a lot more
5 opportunity to influence that guidance, so when it was
6 introduced, it was more effective.

7 So I think there are -- there are things that could
8 work, that could happen now, parts of work that actually
9 could foresee a future pandemic and could think outside
10 the box about the different ways and different methods
11 that we could keep some sort of human -- human response.

12 **LADY HALLETT:** Thank you.

13 **MS TREANOR:** Commissioner, just picking up on what you've
14 just been talking about, it's clear from your statement
15 that the families of older people are a particularly
16 important part of your network. They are very often,
17 you say, the first to raise an issue; they are perhaps
18 your eyes and ears. Recognising the importance of
19 families as a source of intelligence for you, how did
20 restrictions on visiting impact your ability to perform
21 your function as Commissioner during the pandemic?

22 **A.** Well, you know, as you say, the families are the eyes
23 and ears on the ground and, you know, in our social care
24 system, particularly within care home settings, we have,
25 you know, the RQIA who do the inspections and ensure

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1 would have -- it would be better for them to get
2 a higher level of support in any future to ensure that
3 they could do their jobs as best as possible and keep
4 people safe.

5 **Q.** Thank you.

6 I'll just move on then to look at your engagement
7 with government throughout the pandemic. In your
8 statement you describe various difficulties in terms of
9 your ability to engage meaningfully with government
10 throughout the pandemic, and if I may summarise your
11 evidence like this: you refer to the absence of
12 a designated single point of contact within the
13 Department of Health, which you say curtailed your
14 ability to get in touch with the right people. You
15 describe occasions where you felt you had no choice but
16 to have recourse to the media in order to present your
17 concerns. You explain how at times, and I think you've
18 just touched on this, guidance was circulated to your
19 office at such late notice as to really preclude
20 meaningful consideration and response. And you also
21 suggest that there was no proper forum for you to
22 present your concerns in a constructive way.

23 Now, in your statement you referred to having
24 established trusted lines of communication with, amongst
25 others, the Chief Social Work Officer and the Director

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1 of Mental Health, Disability and Older People within the
2 Department of Health, and you say that those pre-dated
3 the pandemic and you relied on those during the
4 pandemic. Is that right?

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

6 **Q.** Picking up on the point about the absence of a single
7 point of contact, is it not the case that the Chief
8 Social Work Officer and the Director of Mental Health,
9 Disability and Older People were the appropriate points
10 of contact for you during the pandemic?

11 **A.** There was a lot of issues coming to my office at the
12 time and the Health Department is a big department and
13 a lot of the issues I remember we weren't sure ourselves
14 who were the right people to speak to in the health
15 service, so whilst it's true to say that we had fairly
16 regular meetings with some key officials, the speed and
17 frantic nature of the pandemic meant issues were coming
18 up on a daily basis, on an hourly basis at times, and
19 there was times when we felt that we needed an urgent
20 answer to things, and there were certainly times where
21 we felt frustrated that we couldn't get speaking to the
22 right person or took some time to get responses to
23 things.

24 So there was a sense, I think, that whilst we did
25 have, you know, several meetings and contacts, because

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1 correct?

2 **A.** That's correct, I was meeting the minister at the time.

3 **Q.** "... and it soon became clear that that some of these
4 issues had simply not been considered before, nor had
5 sufficient thought been given to the practical
6 outworking of the guidance. Importantly, the lack of
7 consultation with the sector was raised. I, and indeed
8 my team, regarded the draft guidance as unrealistic and
9 impractical. In our view it required consultation.
10 More significantly, COPNI was informed that there was
11 simply not enough time to address the points being made
12 as the guidance had to be issued the next day, which was
13 St Patrick's Day. My Chief Executive reported orally to
14 me after that meeting that despite her drawing attention
15 to the high numbers of elderly in Italy who were
16 contracting and dying of Covid-19, there was an 'air of
17 unreality'. The view expressed by PHA seemed to be
18 'that won't happen here, they have a completely
19 different system over there'."

20 Pausing here, may I ask you this: might that suggest
21 that, due to a lack of preparedness on those issues,
22 there was perhaps a failure to appreciate what actions
23 may be required in the event of a pandemic?

24 **A.** Absolutely. This guidance had been developed really
25 quickly, literally within days, but, as you say, this

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1 of the nature of what we were dealing with, we felt
2 sometimes frustrated that we couldn't get the answers
3 that we wanted, and I certainly felt at times it took
4 a while before we could get answers to certain
5 questions.

6 Also some of the concerns that I was raising
7 of course I didn't get the answers that I wanted or
8 I wasn't assured that maybe enough work was going on in
9 certain areas. So that sort of fed into that sort of
10 sense of: could the communication between myself and my
11 team and the department have been streamlined and
12 improved?

13 **Q.** Well, perhaps let's look at an example which might
14 demonstrate your point.

15 If we can have up on screen, please, INQ000267978.

16 Now, this is your statement. At paragraph 68 you
17 are referring to a meeting that you were invited to by
18 the Chief Medical Officer on 16 March 2020, and the
19 purpose of that meeting was to discuss guidance which
20 was forthcoming for care homes. I'll just read what
21 you've said about that. You say:

22 "The officials were unable to address many of the
23 issues [the Commissioner] raised ..."

24 I will pause here. Your chief executive attended
25 this meeting in your stead, it wasn't you; is that

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1 was the middle of March at this stage. At this stage we
2 had known for several weeks that the pandemic was
3 going -- was coming, and we certainly had a lot of
4 concerns with regard to the care home sector given that
5 we had the advantage of seeing what had happened in
6 other countries, as it came towards Northern Ireland.
7 We were very frustrated that we didn't have more time to
8 engage with the department on that guidance. Rather
9 than issuing it the next day, I think the focus should
10 have been on getting that guidance as good -- make it as
11 good as possible, rather than just getting it out.

12 We had met with the -- my chief executive had met
13 with independent healthcare providers on it, they had
14 raised significant concerns about it, they felt that the
15 guidance was actually going to be very confusing for
16 care home operators, but also in many ways totally
17 unrealistic. There was also a fear that if they
18 couldn't meet the guidance what would happen to them as
19 well. So this is a good example of something that
20 I felt should have been done much earlier, it should
21 have been in place; in proper planning for a pandemic
22 situation, we should have had guidance like this sitting
23 there ready to go. But even in the absence of that
24 I think there would have been sufficient time through
25 January and February to have worked on that guidance,

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1 worked with the key -- the key stakeholders which, in
2 this case, would have been the care home providers, and
3 actually develop something that was very much more
4 workable on the ground, and then -- and therefore more
5 effective in managing care in this challenging
6 situation.

7 **Q.** You've just reiterated there your point that you thought
8 the guidance was unrealistic and impractical. Very
9 briefly, why did you think that?

10 **A.** It was -- it was putting a lot of extra responsibilities
11 on the care homes without proper consultation with them.
12 So we weren't experts in running care homes, but the
13 providers were, so there was a lot of things in the
14 guidance that they just felt was impractical, that was
15 harder to deliver, certainly hard to deliver, you know,
16 overnight practically. Clearly there was, there were
17 big challenges that they were facing at this time, that
18 they were very keen to get into discussion on, one of
19 the big issues that they were raising was again the
20 ongoing lack of PPE equipment that they were facing.
21 They had raised concerns at this time around testing as
22 well. So there was a lot of things being put on to them
23 but they actually felt there were some really big issues
24 that weren't being addressed, and there really was
25 a willingness on the care home side to really engage on

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1 it would have been -- we would have ended up with a lot
2 more strong guidance if there had been allowed,
3 you know, an extra week, for instance, to go through
4 what care homes were required to do and how -- more
5 importantly, how it was going to be done, because
6 guidance is fine on paper, but if it can't be put into
7 practice, then it's not much use.

8 **Q.** Okay.

9 One of the issues this module is examining is the
10 absence of power-sharing immediately prior to the
11 pandemic in terms of the response to the pandemic
12 thereafter. In your statement, you suggest that
13 weaknesses in the social care system were evident from
14 a number of previous reports prepared both by your
15 office and indeed the Bengoa report, and you say this:

16 "Therefore, when the transmission rate of Covid-19
17 started to rise markedly and a government response was
18 required, those weaknesses in the structure for
19 delivering adult social care ... and their implications
20 should have been appreciated and factored into planning
21 to avoid potentially disastrous outcomes for older
22 people."

23 Firstly, can it be taken from your evidence there
24 that those pre-existing weaknesses hadn't been addressed
25 in the interim and were in fact still very much present

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1 these issues, they wanted to work with government to
2 ensure that they could do their job as best they could.

3 This was a very worrying time, not least, you know,
4 they had concerns around their own staff, their own
5 workforce, you know, the implications of staff leaving
6 or staff getting sick with Covid and their ability to
7 manage this. So I think the approach should have been
8 a lot more iterative, really, and really there should
9 have been a more of a partnership approach to this, and
10 I think more of a partnership approach to getting care
11 right would have actually been much more effective on
12 the ground and would introduce new practices a lot more
13 quickly than they actually ended up being.

14 **Q.** Just picking up on that point about the need for
15 consultation and engagement, do you suggest it would
16 have been appropriate for the department to have delayed
17 the issue of that guidance to facilitate further
18 consultation and engagement, or do you not consider
19 that --

20 **A.** Yes, I do. I don't think the guidance when it was
21 introduced was effective. I think it needed -- it
22 needed a lot of work after that to actually put into
23 place and practice good practices. So whilst I would
24 have preferred if that engagement process had happened
25 much sooner, you know, maybe through February, I think

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1 at the outset of the pandemic in 2020?

2 **A.** Yes, absolutely, they were horribly exposed and I think,
3 as you say, my office had been calling for several years
4 about major changes that were needed to fix the system,
5 and I think the absence of government over that time
6 and -- didn't allow progress to be made against the
7 recommendations that came out of several reports
8 advising the change that was needed.

9 **Q.** And without diverting into the substance of previous
10 reports and their recommendations, to what extent do you
11 consider that those weaknesses had been appreciated and
12 factored into planning and decision-making by the
13 department during the pandemic?

14 **A.** I'm not sure, I mean, I think the pandemic was such
15 a shock, I think there was very much a reactive response
16 from the department to planning and protecting people.
17 I think one of the most striking features of the early
18 months of the pandemic was the difference in how the NHS
19 was viewed and how the social care sector was viewed.
20 I mean, Northern Ireland's often put up as different
21 from the rest of the UK, that it has an integrated
22 health and social care system, but I think what the
23 pandemic showed was just the dividing line between the
24 two, and the approach taken by the department, there was
25 clearly a focus on protecting the NHS, the concern was

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1 clearly about hospital capacity, but as a result of that
 2 we saw a lot of the care home and social care sector
 3 really struggle, and I had many care home providers,
 4 both care home providers and domiciliary care providers,
 5 coming to my office a lot in those early weeks saying
 6 that in their words they felt high and dry, that they
 7 were being left to fend for themselves, not least the
 8 issues around PPE where they felt they weren't getting
 9 the support, despite reassures that the trust, the
 10 health trust should have been providing that. On the
 11 ground, that clearly wasn't happening and it did take
 12 several weeks to sort that issue out.

13 **Q.** You've touched there on the issue of the integrated
 14 health and social care system that we have here in
 15 Northern Ireland, which is distinct. Can you give us
 16 your views as to whether there may have been any
 17 untapped advantages inherent in that system which could
 18 have been exploited during the pandemic, and if you do
 19 think that that's the case, your views on the extent to
 20 which those were sufficiently capitalised upon by
 21 decision-makers?

22 **A.** I think there was a lot of things that could have been
 23 done better. I think the fact that, for a start,
 24 Northern Ireland's not a very big place, the fact we had
 25 an integrated health and social care sector, that there

25

1 It has been touched upon briefly in your evidence
 2 already, and you stated -- I think it's paragraph 31 of
 3 your statement, if we want to bring it up -- that there
 4 are a series of historic COPNI reports that in fact
 5 pre-date your tenure as Commissioner that have
 6 highlighted serious and long-standing concerns about the
 7 provision of care to older people in our society and
 8 also identify recommendations for reform. I want to
 9 look at one of them.

10 I don't require it to be put up on screen, but it's
 11 the 2015 document that I'm sure you're familiar with
 12 about "*Prepared to care? Modernising Adult Social Care
 13 in Northern Ireland*". You exhibit it in your statement.
 14 That review identifies the following: that legislation
 15 and policy guidance surrounding adult social care is, in
 16 the North, outdated, confusing and fragmented, and that
 17 it need to be fully updated to reflect and meet the
 18 needs of our modern society.

19 Now, you're nodding your head. That was the
 20 situation in 2015. Is it still the situation today?

21 **A.** There have been, I mean, I think there -- the lack of
 22 progress has been frustrating for me in terms of adult
 23 social care. There are things that are happening now in
 24 terms of reform of adult social care but, as you say,
 25 this is nine years on from that report. There have been

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1 was those relationships in place, that people knew,
 2 there was definitely clear relationships and clear
 3 contact, I don't think those contacts were maximised in
 4 the way they could have been. I think there was a lot
 5 of expertise out there, not just in the care home
 6 sector, but across different fields, you know,
 7 academics, you know, experts in the transmission of
 8 diseases like this, and I don't think a lot of that was
 9 tapped into in the response from government. There was
 10 a lot of guidance developed, but, as we've talked about
 11 already, a lot of the times that guidance when it hit
 12 the ground didn't actually deliver effective results and
 13 it needed to be revised several times, and I think that
 14 was something that was a theme of the early stages, that
 15 there could have been a lot more bringing together of
 16 expertise and producing more effective responses.

17 **MS TREANOR:** Thank you, Commissioner.

18 My Lady, I have no further questions. You have
 19 already granted permission for a number.

20 **LADY HALLETT:** Thank you very much.

21 Ms Campbell.

22 **Questions from MS CAMPBELL KC**

23 **MS CAMPBELL:** Thank you, my Lady, and thank you, Mr Lynch.

24 My name is Brenda Campbell and I represent the
 25 Northern Ireland Covid Bereaved.

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1 some steps taken. For instance, there's an Adult
 2 Protection Bill that is close to being finalised that
 3 hopefully will be going through the Assembly and that's
 4 around adult safeguarding legislation. Hopefully that
 5 will be coming into law within the -- in the foreseeable
 6 future.

7 But I have been, through my eight years as
 8 Commissioner, frustrated with how slow the process has
 9 been to address the very clear issues in adult social
 10 care and it has been exposed several times. As you
 11 know, as you mentioned, there's been a number of
 12 reports. My investigation into Dunmurry Manor in my
 13 "*Home Truths*" report outlined over 50 recommendations
 14 for change as well, some of which are happening. But,
 15 again, the pace of change is slow and, in an ageing
 16 population, one of the things that I have been saying
 17 consistently is: these issues are issues now, but with
 18 an ageing population these issues are only going to
 19 become more serious if more action is not taken and more
 20 focus is not taken on these areas, and we can't
 21 afford -- I think what the pandemic showed, we can't
 22 afford to sit on these issues any longer, we need
 23 actions and real change to be brought into play to best
 24 protect some of the most vulnerable in society.

25 **Q.** I suppose one of the consequences that your 2015 report

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1 identified, and I suspect you've identified on a number
2 of occasions since, is that the effect of legislation
3 that's out of date and that doesn't meet the needs of
4 our ageing population is to disadvantage older people in
5 terms of accessing what social care services are
6 available to them, and also their loved ones in terms of
7 understanding their route through that system. Is that
8 something that you recognise as a problem?

9 **A.** Yes, it is a problem. And I think one of the other
10 things in Northern Ireland specifically is we don't have
11 age discrimination legislation in goods, facilities and
12 services, so we still remain the only part of the UK or
13 Ireland that doesn't have that protection, and it leaves
14 people vulnerable and not as protected as they could be.

15 There are other areas. For instance, in the last
16 couple of months I've produced, published a report in
17 relation to older people's rights in care homes in
18 relation to their ten-year contract, the contract, and
19 how they have very little rights in terms of -- and we
20 have seen, as a result of that, issues around people
21 being evicted from care homes, being moved out, being
22 sent to hospital and then being refused admission back
23 to their own home.

24 So these are all clearly deeply worrying aspects of
25 the system that we have, and all of these issues need to
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1 this role and my previous role who have worked in the
2 health system and actually were very frustrated and
3 actually felt quite often they'd got into campaigning
4 organisations to try to change that and try to change
5 that culture.

6 **Q.** Ms Treanor, and I'm grateful to her, has focused on
7 paragraph 68 of your statement, where we looked at that
8 early guidance in March 2020, but I wonder if we could
9 just move along in terms of the timeline to the period
10 of autumn 2020 when again in your statement you draw
11 attention to a letter that you had drafted to the
12 Minister of Health, Mr Swann, on 8 October in which you
13 highlight concerns in respect of the on-the-ground
14 feasibility of the care partner guidance. Okay? We've
15 heard something about that, and I know her Ladyship is
16 familiar with it.

17 Again, I won't ask for it to be put on screen, but
18 you say to the minister on 8 October that your office
19 has spent the past four weeks dealing with calls from
20 families in distress and they are angry when their care
21 providers cannot deliver the access to their loved ones
22 that they believe they should be entitled to and in fact
23 under the guidance I think were entitled to.

24 You also are dealing with calls from home providers
25 stating that they can't safely deliver the visiting
31

1 be focused on going forward.

2 **Q.** Her Ladyship heard evidence yesterday from
3 Marion Reynolds, who explained that -- I don't know if
4 you heard it yourself, Commissioner, but she had a long
5 history of employment in the health and social care
6 sector as a senior social worker, but notwithstanding
7 her experience she found that the process of trying to
8 access care for her aunt was really, I think,
9 disempowering and difficult. Would that surprise you?
10 **A.** Unfortunately not. A lot of the cases that come to my
11 office are with people dealing with the health system
12 and the barriers that they face in raising legitimate
13 concerns about care and treatment. It's very worrying.
14 Again, I found that a lot in my Dunmurry Manor
15 investigation, it was very obvious that people, family
16 members who were actually very strong advocates for
17 their loved ones found it very difficult to get anywhere
18 with the system, to hear their genuine concerns to be
19 heard, and not only that but the evidence I got in that
20 investigation also showed that people working in the
21 system felt the same way as well, people working in the
22 system would have raised concerns at times and those
23 concerns went unheeded, and that's deeply worrying so,
24 you know, the likes of Marion giving evidence yesterday,
25 unfortunately I have come across many older people in
30

1 arrangements that the guidance outlined, and you detail
2 the distress on all sides when that guidance wasn't able
3 to be put into practice, and we heard again something of
4 that yesterday through the evidence of Marion Reynolds,
5 and I think you'll know that it's also an area of
6 significant concern to many of our client group,
7 including Martina Ferguson, who I think has been in
8 contact with you about her inability to visit her mother
9 over a nine-month period.

10 Is it correct to say that as a consequence of that
11 Department of Health issued guidance in September 2020,
12 members of the public ought to have a legitimate
13 expectation to get in to see their loved ones, to care
14 for them again, after a large period in which they were
15 denied that opportunity?

16 **A.** Yes, and I remember that period very well, because it
17 had been becoming increasingly obvious to me that the
18 lack of visiting was having a negative impact on the
19 residents and the families, and I remember the Care
20 Partner scheme being developed and it was a very welcome
21 scheme. There was clearly lots of communication
22 problems around that scheme. We did get several people
23 coming to the office who were saying that the care home
24 that their loved one was in was saying that they hadn't
25 heard of the scheme, that they weren't aware of it, they
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1 weren't introducing it. So there was a mixed picture
2 out there. The Care Partner scheme was a step forward
3 in at least getting some family contact again, but
4 I remember still that there was ongoing issues, and
5 Martina was one of the people who came to our office
6 and, you know, was desperate to visit her mother,
7 Ursula, in the home, and there was clearly still a lot
8 of uncertainty out there in the care home sector about
9 what they could do.

10 There was also a lot of fear, because a lot of care
11 home providers were coming back around liability issues,
12 insurance issues, there was a lot of uncertainty from
13 their behalf. But there was clearly some homes doing it
14 better than others, and I think some homes certainly
15 communicating that service was available better than
16 others, because when it worked, it worked well.

17 **Q.** Did those problems persist significantly after your
18 letter of 8 October and further into the winter?
19 **A.** It was a gradual process. I remember that whole
20 situation with visiting for months on end, it was
21 gradually getting better, but it did take several months
22 before it seemed to go through the system. And there
23 was a lack of consistency, and I think, I don't know
24 whether some of that was down to care homes having the
25 staffing arrangements, the resources in place to put it

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1 **LADY HALLETT:** Thank you.

2 **(The witness withdrew)**

3 **LADY HALLETT:** Don't get comfy, you're going to have to
4 stand again, I'm afraid.
5 Ms Dhanoa.

6 **MS DHANOA:** Thank you, my Lady. May I please call
7 Mr Gerry Murphy.

8 **MR GERRY MURPHY (affirmed)**

9 **Questions from COUNSEL TO THE INQUIRY**

10 **MS DHANOA:** Thank you for attending today, Mr Murphy, and
11 for your assistance to the Inquiry.

12 Before I begin with my questions, there are just
13 a few matters I want to bring to your attention. Whilst
14 giving your evidence, please keep your voice up and
15 speak into the microphone so that the stenographer can
16 hear you for the transcript. If any question that I ask
17 is unclear, please do say so, and I will rephrase it.
18 If you would like a break at any time, please just say
19 so.

20 You have provided this module of the Inquiry,
21 Mr Murphy, with a witness statement. You should see
22 that in front of you on the screen. If we scroll down
23 to the last page, page 17, we can see there it's dated
24 17 August 2023. Can you confirm, Mr Murphy, that the
25 statement is true to the best of your knowledge and

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1 in place. I think there was certainly part of that
2 where homes were struggling in terms of staff numbers,
3 and again that's something that we need to reflect on,
4 because we need to have a stronger social care workforce
5 going forward in the future in terms of, you know,
6 providing them with better pay and conditions and, you
7 know, reflecting on the brilliant role that social care
8 workers played throughout the pandemic. So -- but that
9 whole issue of visiting was a very complicated one.
10 I remember there was an ongoing group with members of
11 the families, you know, with the department, with the
12 Public Health Agency, and was clearly by that stage
13 an area that we were very aware of and the families were
14 very conscious of as well.

15 **Q.** Just finally picking up on the question from
16 her Ladyship earlier, that is surely an area that we can
17 work on to do better in the future?

18 **A.** Absolutely, I think that issue of human contact and
19 visiting would have to be something that in a future
20 pandemic needs to get better.

21 **MS CAMPBELL:** Thank you, my Lady.

22 **LADY HALLETT:** Thank you, Ms Campbell.

23 Thank you, Mr Lynch, for all you did and tried to
24 do, and don't give up, keep banging the drum.

25 **THE WITNESS:** Thanks very much, my Lady.

34

1 belief?

2 **A.** I can.

3 **Q.** Thank you.

4 Mr Murphy, you are the assistant general secretary
5 of the Irish Congress of Trade Unions; is that correct?

6 **A.** That is indeed correct.

7 **Q.** You've held this position since 13 March 2020/23?

8 **A.** Yes.

9 **Q.** Previously you held the roles of chairperson of the
10 Northern Ireland Committee of the Irish Congress of
11 Trade Unions as well as president of the same
12 organisation?

13 **A.** Correct.

14 **Q.** For the purposes of your evidence, Mr Murphy, I'll refer
15 to the Irish Congress of Trade Unions as ICTU and for
16 my Lady as well to note. It's correct that the Northern
17 Ireland Committee of ICTU is a separate organisation to
18 the Trades Union Congress, but in fact the organisations
19 work together and have shared objectives. Is that
20 correct?

21 **A.** That is indeed correct.

22 **Q.** Putting it simply, the Northern Ireland Committee of
23 ICTU's role is simply to represent and advance the
24 interests of workers. Is that a fair sort of brief
25 summary?

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1 A. Indeed it is.

2 Q. In terms of the membership, Mr Murphy, ICTU is in fact
3 the largest civil society organisation on the island of
4 Ireland, it has 44 affiliated unions, north and south of
5 the border, and it covers a wide cross-section of
6 professions and sectors.

7 A. Yes.

8 Q. The Northern Ireland Committee of ICTU is the
9 representative body for 34 trade unions and it has over
10 200,000 members across Northern Ireland.

11 A. Correct again, yes.

12 Q. Mr Murphy, I want to now move to consider the Strategic
13 Engagement Forum. It was established in April 2020, and
14 it brought together employers, trade unions and
15 statutory bodies, including the Health and Safety
16 Executive for Northern Ireland, and the Public Health
17 Agency.

18 Please could you explain why it was created and what
19 its purpose was.

20 A. Before I do that, today is May Day, International
21 Workers' Day, and I would like to acknowledge the fact
22 that 400 people of working age, that is those aged
23 between 18 and 65, died over the course of this
24 pandemic. I do sincerely hope that the evidence that
25 I give here today, and indeed the work of this Inquiry

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1 We did that, we produced some very valuable work. We
2 were the people who identified the list of key workers.
3 We were the people who provided the list of essential
4 sectors. We developed particular guidances around
5 health advice, viral mitigations, to be distributed to
6 the workforce and, you know, how that might be done and
7 how it would be best shared and who needed to be
8 informed. All of that was done by the Engagement Forum
9 and done in a remarkably short period of time,
10 considering how long it sometimes takes to get
11 a decision made in this place. That was done in
12 a matter of weeks.

13 Two weeks --

14 Q. I'm just going to stop you there, Mr Murphy. It's all
15 extremely helpful. Was there any engagement of this
16 kind, in the sense of a forum, that was in place between
17 the Executive and trade unions before the pandemic?

18 A. No, indeed there wasn't. And this forum, that was the
19 one which we are now talking about, didn't survive
20 terribly long either. Effectively by the middle of
21 2020, this forum had ceased to function effectively at
22 all and was, indeed, only meeting intermittently and
23 was, by 2021, being referred -- or the Department of the
24 Economy had referred it for review to an academic in the
25 University of Ulster, effectively ending the functioning

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1 as a whole, will aid the creation of a set of
2 circumstances where such a situation will never arise
3 again.

4 In respect, then, to the Engagement Forum, the
5 Engagement Forum was something which we at the Irish
6 Congress of Trade Unions had long called for, indeed far
7 in advance of the outbreak of any pandemic. We believe
8 and continue to believe that there is a need for
9 systematic and long-term triumvirate engagement, if you
10 like, between the government, employers and trade
11 unions, something which we believe is in the best
12 interests of workers and their families, but also
13 society as a whole, the economy in general, and good
14 governance.

15 The Engagement Forum was established in March
16 of 2020. I was a participant. There were five -- six,
17 actually, trade union representatives on the body as
18 a whole. It was tasked with providing advice and
19 counsel to the government of Northern Ireland around how
20 their response to the pandemic could be managed across
21 the economy and the workforce, the labour market.

22 It initially did some really good work. It
23 confirmed, from a trade union point of view, which was
24 much gratifying, that it was possible to work
25 collaboratively with the government and the employers.

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1 of that body, the Engagement Forum.

2 It was particularly disappointing from a trade union
3 point of view, because it had done some very good work,
4 it had confirmed a loss and it had confirmed we believe
5 to the government and to the employers that
6 collaborative working across these three key sectors was
7 possible. But it was ad hoc in nature, not what we
8 really wanted and not what we want going forward,
9 because we would still maintain that this is
10 an effective way to get things done in terms of the
11 labour market.

12 Q. Thank you. Mr Murphy, you helpfully set out a short
13 while ago the sort of work that the forum was engaged in
14 and what it managed to achieve, and you noted two
15 particular pieces of work, preparing a list of
16 key workers and essential and non-essential businesses,
17 and it also established an emergency code of practice to
18 assist businesses and their workforces in complying with
19 Covid-19 related guidance and regulations, and that work
20 was achieved.

21 I want to now look at INQ000279384. You will see
22 that up on your screen. It's a note of a meeting that
23 took place on 10 June, so some time after the forum had
24 been established in April 2020, and this was a meeting
25 that was requested by the Northern Ireland Committee of

40

1 ICTU, and the deputy First Minister, Michelle O'Neill,
2 was present, including yourself as a representative of
3 the National Teachers' Organisation; that's correct?

4 **A.** That's correct, yes.

5 **Q.** If we look on this first page at paragraph 2, it sets
6 out there that Owen Reidy outlined three issues, as you
7 said, that the forum was seen as a very helpful way in
8 which to continue the engagement between the trade
9 unions and the Executive, and there was a request for
10 more formal quarterly engagement, an acknowledgement
11 about what the forum was set up to do.

12 If we look further on at paragraph 3, I think that's
13 across the page, the deputy First Minister herself paid
14 tribute to workers, particularly those on the frontline,
15 and we'll look further into that later on, and she
16 indicated her support for more regular formal engagement
17 with trade unions and acknowledged the work that had
18 been undertaken, and she was supportive of the idea of
19 it continuing beyond the pandemic.

20 If we look also at paragraph 8, please, so that's
21 the last one, it looks there as if it's in draft form,
22 but it says:

23 "The meeting concluded with the deputy
24 First Minister confirming she [would] speak to the
25 Health Minister Robin [Swann] about the issues raised

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1 articulated in the passages that I read out from this
2 meeting in June.

3 **A.** I'm not really sure why it didn't continue, and I would
4 suggest respectfully that, you know, that's possibly
5 a question that needs to be addressed to Ms Foster or
6 Ms O'Neill, you know, in their role. We felt certainly
7 that the Engagement Forum, as the deputy First Minister
8 reflected or is reflected in the note, that was very
9 useful, notwithstanding the limitations which I pointed
10 out. But, you know, I really can't speak for them, and
11 I don't really have a view as to why they didn't wish to
12 see it continue.

13 **Q.** Mr Murphy, since the forum in 2021, as you have
14 explained, drew to a close in the way it had been
15 established, has there been anything else since of its
16 kind?

17 **A.** There was the -- there was quite a long hiatus really
18 from the middle of 2020 until just recently, and in the
19 last number of weeks we have, along with the employers
20 and the Labour Relations Agency and the Department for
21 the Economy, gone back to a body similar in nature to
22 the Engagement Forum, indeed it's probably going --
23 we're in the very initial stages of establishing this
24 body, we haven't even got so far as to formally
25 confirming a name, but it's likely to be -- to include

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1 that will have significant impact in the event of
2 a second wave ... and reiterated her commitment to
3 effective engagement ... going forward."

4 You noted earlier, when discussing the work of the
5 forum, that what we know ended up happening was that it
6 didn't continue. Having now looked at what was
7 discussed and acknowledged by the deputy First Minister
8 herself, it seemed to be positively received in the
9 sense of what it created in terms of engagement between
10 trade unions and the Executive.

11 In your statement, you note that, of course, after
12 the initial work that was undertaken, the forum was
13 unfortunately largely ignored by the Executive, which
14 you've alluded to.

15 Why do you think this was?

16 **A.** The note of the meeting there is from June. We had made
17 numerous requests by that point to meet with the office
18 of the First and deputy First Minister, the
19 First Minister and indeed the two junior ministers in
20 that office met with us on that date, and as you can
21 see -- well, I'm not going to rehash what's in the
22 thing. Your question is why ... why ...

23 **Q.** It was why you thought that the engagement didn't
24 continue, given the positive reception that at least
25 deputy Minister Michelle O'Neill had acknowledged and

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1 the Engagement Forum moniker, I suppose.

2 So we've had that hiatus really from 2020 until now.
3 There is a recognition on the part of the Department for
4 the Economy of what the deputy First Minister reflected
5 in that note of the June meeting, you know, reflected
6 the positive benefits of that social dialogue model. So
7 it's taken a while, but we appear to have the beginnings
8 of such a model developing again.

9 **Q.** Thank you, Mr Murphy.

10 I want to move on to now briefly consider briefings
11 that were made by the Northern Ireland Committee of ICTU
12 to the government in Northern Ireland.

13 Was the committee involved or made aware in any way
14 in advance of the strategy that the government in
15 Northern Ireland was going to adopt in response to the
16 pandemic? So in the period sort of January to March, or
17 before the forum was established in April 2020.

18 **A.** The short answer to your question is no, we were not.
19 We were not involved in any planning, as I, you know, in
20 my evidence to Module 1, you know, said.

21 So we weren't involved in any planning and we
22 weren't involved in the initial stages of the response,
23 the very initial stages of the response, apart from us
24 communicating to them concerns that we had about,
25 you know, the risks being faced by the workforce and

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1 indeed their families and society more generally. But
 2 they did not formally reach out to us, no.
 3 **Q.** The Northern Ireland Committee of ICTU in terms of its
 4 structure has policy subcommittees and they briefed
 5 committees of the Northern Ireland Assembly in a number
 6 of areas, so the health unions briefed members of the
 7 Legislative Assembly on the Health Scrutiny Committee on
 8 general NPI matters -- that's non-pharmaceutical
 9 interventions -- in May and June of 2020, and were also
 10 asked to give detailed evidence on the situation
 11 developing inside care homes.

12 There were also briefings in relation to education
 13 and the situation arising inside schools in August and
 14 September of 2020, and there was also the Retired
 15 Workers Committee which was in dialogue with the
 16 Northern Ireland Older People's Commissioner, who we
 17 just heard evidence from.

18 Mr Murphy, to what extent do you think that these
 19 briefings impacted decision-making?

20 **A.** Well, the committees to which you refer, or to which you
 21 were referring to, perform extremely valuable work and
 22 what they do is they reflect the views of the membership
 23 of the trade unions, and what they were doing to those
 24 Stormont scrutiny committees was reflecting those views.

25 The degree to which they impacted decision-making,
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1 was the voice of the worker directly feeding in, so it
 2 wasn't feeding in, for example, at the level of the
 3 First and deputy First Minister, it was feeding in to
 4 a degree across some of the departments, because some of
 5 the departments, particularly those departments with
 6 established bargaining processes, you know, and
 7 established -- established lines of communication,
 8 you know, allowed for -- there was a mechanism to feed
 9 in at that point, but in other areas, Health and Safety
 10 Executive for Northern Ireland being an example,
 11 you know, it has a board for which there is provision in
 12 its underpinnings for three worker representatives, but
 13 for over a decade there wasn't any worker
 14 representatives on that board. So vital workplace and
 15 workforce intelligence wasn't available to them. So
 16 there were ... there were some opportunities to feed in,
 17 and -- but there wasn't a systematic or government wide
 18 or joined up approach to that.

19 **Q.** Thank you.

20 Mr Murphy, I want to move on now to consider the
 21 workforce during the pandemic in a little more detail.
 22 There are 30,000 workers in Northern Ireland who are
 23 employed through employment agencies, and a large
 24 proportion of them during the pandemic were migrant
 25 workers who worked in agriculture and food processing.
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1 I think it would be fair to say was fairly limited
 2 insofar as, you know, there was no ... the committee --
 3 the committee was looking at what was coming forward,
 4 the situation was so fluid and moving so quickly that
 5 the information that the committee was gathering was in
 6 many cases already out of date probably, you know, as
 7 near as you could describe it. But it was nonetheless
 8 valuable because what it was, it was reflecting the
 9 experience of workers and their families to the
 10 Legislative Assembly and therefore informing to some
 11 degree the decision-making, but, as I was saying -- or
 12 as I'm suggesting here, it was in many cases after
 13 decisions had been taken or, you know, as decisions were
 14 playing out, actually, in realtime. So limited is
 15 I think what I'm suggesting.

16 **Q.** Can you provide perhaps a particular example of an area
 17 where briefings were made and albeit, as you've said,
 18 decisions may have already been taken or the briefings
 19 that were being given were perhaps a step behind, they
 20 were still positively received or able to make --

21 **A.** Well, I think the interactions between the ICTU health
 22 committee and the scrutiny committee in health are
 23 particularly helpful, they were helpful for both because
 24 what was lacking or one of the things I feel that was
 25 lacking across government in terms of decision-making
 46

1 So they were on the frontline. Is that right?

2 **A.** That the absolutely correct, yes.

3 **Q.** And as you alluded to earlier, it's also right that the
 4 highest proportion of deaths amongst people of working
 5 age in Northern Ireland were among workers from
 6 processing plants and machine operatives, as I've said.

7 **A.** Yes, 13.4% of that 400 who lost their lives were in that
 8 sector.

9 **Q.** Mr Murphy, I just want to take a look now at a letter
 10 that was sent by Kevin Doherty, who was from the Migrant
 11 Workers Support Unit of ICTU, and it was sent to the
 12 minister, as you can see there on the screen, for
 13 communities, Carál Ní Chuilín, regarding -- you'll
 14 perhaps note from this letter, if you've seen it before,
 15 it was regarding the decision to halt the issuing of
 16 National Insurance numbers, the impact on new workers,
 17 and, more generally, the spread of the pandemic in
 18 workplaces. And you can see it's dated 27 October 2020.

19 On that first page, the penultimate paragraph
 20 describes there some of the concerns that were
 21 articulated to the Minister for Communities, in
 22 particular regarding their inability to access national
 23 insurance numbers, which meant that they couldn't
 24 qualify for statutory sick pay when they became ill.
 25 Other difficulties faced included: not being able to
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1 register with a GP, access free health services that
2 they were entitled to; inability to open bank accounts
3 if they could not provide proof of residence; and some
4 were experiencing complications trying to register
5 benefits for their families.

6 Mr Murphy, were these concerns that you were aware
7 of?

8 **A.** Yes, they were. The letter which my colleague
9 Kevin Doherty wrote to Carál Ní Chuilín, the minister at
10 the time, reflects concerns that were coming to us from
11 the work which we were undertaking through the Migrants
12 Support Unit. As the letter outlines, that was
13 a project we -- a European-funded project we were
14 engaged in with a number of other partners called
15 Crossing Borders, Breaking Boundaries, that was about
16 addressing or seeking to assist migrant workers in the
17 labour force, of whom there were quite a number: 50,000
18 at the time, 23,000 -- almost 24,000 of whom came from
19 the EU, 26 of them, and the remainder were basically
20 people who had come in from the rest of the world.

21 What we discovered in that work -- so the project
22 was about, as I said, then, addressing, you know,
23 discrimination, other issues that were presenting here
24 for those individuals, exploitation and the like. What
25 we had discovered was that -- what you're highlighting

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1 **LADY HALLETT:** The usual morning break?

2 **MS DHANOA:** I think, yes. I think that would assist the
3 stenographer, I'm sure.

4 **LADY HALLETT:** You were mid-sentence, Mr Murphy. Did you
5 want to ...?

6 **THE WITNESS:** I'm at your ...

7 **MS DHANOA:** Mr Murphy, you were moving on to a matter I was
8 going to consider in terms of health and safety in
9 workplaces, so unless you wanted to say anything else,
10 I think we can come back to that as I move along.

11 **LADY HALLETT:** Very well. I shall return at 11.30.

12 (11.15 am)

(A short break)

14 (11.30 am)

15 **LADY HALLETT:** Ms Dhanoa.

16 **MS DHANOA:** Thank you, my Lady.

17 Thank you, Mr Murphy. Before we took the break we
18 were looking at one particular area of concern for
19 workers and we looked at a letter sent by Kevin Doherty
20 of the Migrant Workers Support Unit, which was in
21 relation to National Insurance numbers and what the
22 widespread ramifications were of new workers on the
23 frontline who didn't have those.

24 As you expressed, that was just one particular issue
25 that you were aware of as an organisation.

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1 here was one issue, so the absence of the National
2 Insurance numbers was having serious implications, like
3 the inability to register for a GP at this point was
4 lethal for some of these people. The benefits, not
5 being able to access benefit was equally, you know, just
6 very difficult for some families.

7 There was the issue of statutory sick pay,
8 of course, as well, which some of them weren't able to
9 qualify for.

10 By the way, the statutory sick payment at that time
11 was £94.25 a week, it rose to a whole £95.85 by the end
12 of the pandemic, completely inadequate in the modern
13 world, not sufficient in any way to support a family or
14 even an individual. Despite us, by the way, raising the
15 issue of statutory sick pay a number of times separately
16 with the government of Northern Ireland. So there was
17 those two issues.

18 There was also the issue that these migrant workers
19 were bringing to our attention around what they felt was
20 disregard on the part of some employers for health and
21 safety advices that was provided to them, you know, from
22 the Public Health Agency and other people, including us.

23 **MS DHANOA:** Mr Murphy, I'm just going to stop you there.

24 My Lady, I've been asked if we can take a short
25 break, and this would be a convenient moment to do so.

50

1 One of the notable impacts of the pandemic was how
2 it affected workplaces, and those in frontline roles
3 doing essential work. Those engaged in that sort of
4 work tended to be in lower paid roles and tended to be
5 already suffering with exacerbated health issues, and
6 they of course couldn't work from home doing the
7 essential work that they were.

8 Agrifood was a sector of that kind that required
9 people to be at their place of work. In doing that
10 sort of work, how did it affect those who were part of
11 that workforce during the pandemic that you became aware
12 of? What sort of issues were they facing?

13 **A.** Okay, well, that particular sector of the workforce
14 tended to be -- tended to have a very high proportion of
15 migrant workers in it, so a lot of EU26 and a lot of
16 rest of the world migrant workers working there, a lot
17 of them actually working for agencies as well, which,
18 again, lessened the protections available to them, in
19 our view.

20 The issues that they were facing, in addition to
21 those already outlined, included struggling with the
22 language, which made communication difficult. It
23 also -- they also felt, and were communicating to us,
24 particularly through the Migrant Services Unit, that
25 they were being, on occasion, misadvised around what

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1 their entitlements were. They felt very strongly that
2 the health and safety protections available to them
3 weren't always at a level which was entirely appropriate
4 and indeed necessary.

5 They -- it became clear also, in the course of our
6 interactions with that community, that the Public Health
7 Agency, for example, appeared to have a very poor
8 dataset around, you know, their vulnerabilities, indeed
9 how many of them there were, and where they were
10 located. We wrote to them and brought that to their
11 attention. And then of course the other issue was the
12 access to statutory sick pay and other welfare
13 entitlements.

14 Can I just make a further point about statutory sick
15 pay? It had a number of -- well, there were a number of
16 consequences which flowed from that very low rate of
17 statutory sick pay which I think would be of interest to
18 the Inquiry. The first of those was that, because it
19 was so low, it meant that a lot of workers felt they had
20 no option, even though they were sick, but go to work.
21 The consequences of that were that the risk to their
22 fellow workers in their place of work increased, so the
23 virus spread further, but it spread beyond the
24 workplace, because these workers -- because it was
25 asymptomatic, of course, these workers were taking the

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1 of Unite the Union, on the workers' behalf, was making
2 the point that there should be mass testing in that
3 sector. That never happened. That there should be more
4 unannounced inspections. That didn't happen either.
5 And that, you know, there was, they felt, Unite the
6 Union felt, and we shared this view up to a point as
7 well, that there was some wilful disregarding of the
8 advice on the part of some people, some of the
9 employers.

10 So there was -- interestingly, those workers,
11 you know, working in those processing plants were
12 particularly at risk, as were those who were in
13 front-facing occupations such as retail. You know, that
14 was the other big proportion of those 400 lives that
15 were lost that I referred to, I think that was 12 --
16 over 12% of that 400 were in retail and service.

17 Interestingly, that -- there's a couple of things
18 about that number which I think bear looking at as well.
19 The first of those is that those were by and large rest
20 of the world migrant and low paid workers, so not EU26,
21 and we believe that a very high proportion of those
22 people were actually women, and the disproportionate
23 impact of this virus on women in particular in those low
24 paid and migrant sectors of the economy is something
25 which we feel has been completely under-investigated and

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1 virus home with them, so it was spreading out beyond
2 that.

3 I seem to recall Dr McBride may have made
4 a similar -- or may have made that point as well in his
5 evidence, I think in his evidence to this module, or
6 perhaps Module 1, I can't exactly recall, there's so
7 much paper here.

8 So, in the agrifood sector, manufacturing, service
9 industries and retail, you had very high concentrations
10 of low paid and migrant workers and, as I previously
11 pointed out there, a very large part of the 400 people
12 who lost their lives were in those particular sectors.

13 The migrant worker population there in the agrifood
14 was largely EU26 in nature -- in origin, rather, and one
15 of those workers in particular lost his life in
16 a Moy Park processing plant in Dungannon in County
17 Tyrone in very early 2020, in March of 2020. I believe
18 the senior Unite the Union official in the North here,
19 since retired, Jackie Pollock, wrote to the
20 First Minister and the deputy First Minister, and indeed
21 copied in the Minister for the Economy, I believe,
22 raising concerns which Unite the Union had which reflect
23 the concerns which we had been reflecting as a Congress
24 on behalf of all the unions to the same people.

25 You know, and Jackie Pollock in his letter on behalf

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1 under-reported, possibly. We -- unfortunately, while
2 there are some general figures from the Northern Ireland
3 Health and Safety Executive, we don't have very complete
4 sets of data from them, so it's impossible to tell what
5 we in congress or ICTU are of the view that it's
6 certainly an area which bears further examination.

7 **Q.** Thank you, Mr Murphy.

8 Would it be fair to say, from all that you've said,
9 that those on the frontline and in lower paid roles were
10 left behind?

11 **A.** I think that that is a fair enough description here, and
12 left behind, that is despite the very huge effort on the
13 part of their trade union representatives and belatedly
14 on the part of the government, if you like, and the
15 employers too, in fairness, but I think help such as it
16 was when it came to that sector of the labour force was
17 too late, the harm had already been done.

18 **Q.** Mr Murphy, I just want to raise or explore another
19 concern which was in relation to the impact of the
20 pandemic on black, Asian and minority ethnic people, in
21 particular there was a lack of specific data on the
22 actual impact that Covid was having on these groups and
23 migrant worker communities in Northern Ireland.

24 There was a letter sent to the health minister,
25 Robin Swann, on 28 October 2020, in which a request was

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1 made for ethnicity and occupation to be recorded in
2 Covid-19 data collection systems for health and social
3 care in Northern Ireland.

4 The letter was responded to, and the health
5 minister, Robin Swann, articulated that that work was
6 under way and recognised the need for it.

7 How important was it to have such data, and was that
8 then included in the data collection systems?

9 **A.** The letter that you're referring to reflects the
10 concerns which my colleague, Kevin Doherty, had
11 previously articulated in his communication as well. It
12 was very important, we felt, that this data would be
13 collected, simply because these workers were in the
14 lowest paid occupations, they were in what we now know
15 but we suspected at the time to be the highest risk
16 occupations. We also know that they were living in the
17 most deprived communities and the figures then and now
18 confirm that, you know, they were at two-thirds,
19 you know, more risk than those that were living in the
20 best or in the least deprived areas.

21 So the collection of basic data like how many
22 people, black, ethnic minority people, are we talking
23 about here, you know, where are they located, what age,
24 you know, what age groups are they falling into, all of
25 this would have greatly assisted and informed

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1 intelligence and workforce intelligence wasn't made
2 available directly to, you know, the key
3 decision-makers. Indeed, once the Assembly was -- or
4 the Executive was restored in January of 2020, until --
5 up until the period when it collapsed again in early
6 2022, we weren't successful in getting a meeting with
7 the Office of the First and deputy First Ministers
8 during that period. It also impacted -- it undermined
9 already fragile political relationships, and threatened
10 community cohesion, right at the very wrong time for
11 everyone. It impacted negatively on policymaker
12 policymaking and on policy development, so, for example,
13 during this period, immediately preceding this period
14 you had the publication of Bengoa, the Bengoa report
15 into the health service, and the very necessary reforms
16 there which, you know, had come about as a consequence
17 of underfunding, demographic changes and other
18 pressures, historical and otherwise, on the system. So
19 there was nobody and no Executive to enact those
20 necessary changes. So it meant, for example, that the
21 health service going into the pandemic was ... was
22 struggling, you know, Robin Swann I think said operating
23 on a hand to mouth basis, I don't think I could disagree
24 with that.

25 Further, then, the fact that there was no Executive

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1 a response, a more targeted and complete response not
2 only for working people, whom we represent, but also
3 their families and indeed the community as a whole.

4 So was it fed in? I'm not entirely sure. But to be
5 quite honest with you, I haven't seen where it was fed
6 in. All I can tell you is that I know that both our
7 experience of the PHA's data, as, you know, articulated
8 by Kevin Doherty in his communication, and our
9 experience of the Health and Safety Executive in NI and
10 indeed confirmed by the HSENI's own evidence to this
11 module, it would suggest that those datasets are less
12 complete than might have been optimum.

13 **Q.** Thank you.

14 Mr Murphy, one of the particular issues that this
15 module is considering is the absence of a functioning
16 Executive, so between the three years preceding the
17 pandemic, 2017 through January 2020.

18 In your view, how did the absence of a functioning
19 Executive impact the response to the pandemic, but in
20 particular in relation to the interests of workers?

21 **A.** I think the absence of a functioning Executive was
22 extremely negative to the experience of workers during
23 Covid. First of all, the absence of the Executive meant
24 that, well, it was a failure of political leadership, in
25 our view. On top of that, it meant that vital workplace

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1 meant that a very dire public finance situation couldn't
2 really be addressed so we lurched from one annual budget
3 to the next annual budget, there was no strategic
4 planning in financial terms over the piece which had
5 allowed, you know, some effort to be made to address
6 clear inadequacies and deficiencies across the entirety
7 of the public services, not only health.

8 **Q.** Thank you.

9 Mr Murphy, I just want to end on this note by
10 looking ahead. You refer in your witness statement to
11 the Fire Brigades Union who have a tripartite
12 arrangement in place: they represent firefighters across
13 the UK, and the arrangement that they have which applies
14 in Northern Ireland is one which they work with
15 employers and fire officers.

16 In your view, how successful is this, and would you
17 recommend a similar arrangement for the Northern Ireland
18 Committee of ICTU and the Executive?

19 **A.** I think what you're pointing to is one of the things
20 that we need to do going forward, and yes, it was
21 extremely successful. You can tell it was successful --
22 or the evidence for its success is the fact that, right
23 across the British Isles, not one single member of the
24 fire and rescue service lost their lives during this
25 period as a result of the virus. It's a tripartite

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1 arrangement that they entered with the Fire Brigades
2 Union with their employers and with the Chief Fire
3 Officers. It meant that when the pandemic kicked in
4 they were able to implement system wide mitigations
5 which worked extremely effectively in preventing any
6 disruption to either cover or, you know, the health of
7 individual firefighters.

8 So it was pretty -- it's a pretty effective approach
9 and one which we would certainly advocate, but it's only
10 one, and it needs to be replicated, we believe, at
11 a system wide, economy wide, government wide level,
12 you know, this tripartite approach, you know, we began
13 actually with this when your very first question was
14 about the Engagement Forum, I'm suggesting that that
15 model or a model very similar to that is essential going
16 forward.

17 Other things I think which we would really want to
18 consider here is, you know, an active inclusion of the
19 workers' voice in the planning going forward for future
20 pandemic scenarios in the hope of course that we never
21 find ourselves back there, but I think it would be
22 essential that the workers' voice would be included in
23 any planning for that.

24 Additionally, we need to address some of the other
25 issues, the issues around sick pay, around access to

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1 **Q.** I know, Sir David, you have said that you would rather
2 not be referred to as "Sir David", but I think it's only
3 right that we do refer to you by your formal title in
4 these proceedings?

5 **A.** That's fine.

6 **Q.** Could I ask you to just look in front of you, I think
7 there's a witness statement there that you've signed on
8 20 March 2024.

9 **A.** Yes.

10 **Q.** Can you confirm that the contents of that statement are
11 true to the best of your knowledge and belief?

12 **A.** I can, yes.

13 **Q.** Sir David, there's quite a lot to get through this
14 morning and we are going to go to some documents as
15 well. If at any point I refer to a document that
16 I haven't gone to or if at any point you need me to slow
17 down so that you can properly read something, will you
18 please say.

19 I think it's right that you became the head of the
20 civil service in Northern Ireland in 2017?

21 **A.** That's right, in the -- 17 June, I think it was.

22 **Q.** I think that was at a point whenever the power-sharing
23 arrangements were under suspension?

24 **A.** That's correct.

25 **Q.** In fact, it wasn't until 2020, until they were resumed,

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1 services and benefits, particularly from those who are
2 new to our country who have come from other places, we
3 need to be more considerate of that. And, you know, the
4 other thing I think which we need to do is be a lot
5 kinder to those that we work with more generally.

6 **MS DHANOA:** Thank you, Mr Murphy.

7 My Lady, those are all the questions I have.

8 I understand there are no pre-approved Rule 10s, and
9 neither have any come in during the course of the
10 evidence.

11 **LADY HALLETT:** Thank you, Ms Dhanoa.

12 Thank you very much for your help, Mr Murphy.

13 **THE WITNESS:** Thank you.

14 **(The witness withdrew)**

15 **MS DOBBIN:** My Lady, may I call the next witness, please,
16 Sir David Sterling.

17 **SIR DAVID STERLING (affirmed)**

18 **Questions from LEAD COUNSEL TO THE INQUIRY for MODULE 2C**

19 **LADY HALLETT:** Sir David, I don't know if you had to make
20 significant changes to your arrangements, but if you
21 did, thank you very much for coming forward earlier.

22 **THE WITNESS:** Not at all, my Lady.

23 **MS DOBBIN:** Could I ask you to give your full name to the
24 Inquiry, please.

25 **A.** It's David Sterling.

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1 that you became head of civil service with a functioning
2 Executive committee?

3 **A.** That's correct, on 11 January 2020.

4 **Q.** Just in terms of your general role, then, I think it's
5 three-fold: first of all, you acted as principal adviser
6 to the First Minister and the deputy First Minister?

7 **A.** Yes.

8 **Q.** Right. I'll come back to that. You were also head of
9 the Executive Office; is that correct?

10 **A.** That's correct.

11 **Q.** And can you just tell me this: does that have
12 an analogue, so to speak, at Westminster or is it
13 something very specific to Northern Ireland?

14 **A.** It would have some similarities to the Cabinet Office
15 and maybe to Number 10, but in many respects it would be
16 different.

17 **Q.** Sorry, I didn't mean to stop you. Can you just help us,
18 then, with what the overlap might be in terms of the
19 Cabinet Office or what it shares in terms of its
20 functions with the Cabinet Office?

21 **A.** Well, yes, in my role I would have performed many of the
22 functions that would have been carried out by the
23 Cabinet Secretary, and -- but I would have had
24 an overarching responsibility for the Northern Ireland
25 Civil Service, which was perhaps a little different to

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1 the role that the Cabinet Secretary would have had.
 2 Certainly for some periods of time the management of the
 3 civil service in Whitehall would have been carried out
 4 by a different person, and the Cabinet Office would have
 5 had a different set of responsibilities compared with
 6 the Executive Office in Northern Ireland.

7 **Q.** Can you just help me then with what the main differences
 8 might be with the Cabinet Office and the TEO?

9 **A.** Your ... my knowledge of the Cabinet Office today is
 10 a little limited, but certainly the Cabinet Office would
 11 have had responsibility for co-ordinating certain
 12 actions against -- sorry, across Whitehall.

13 **Q.** Right.

14 **A.** Which we wouldn't necessarily have had in the Executive
 15 Office. The Executive Office's broad responsibilities
 16 were providing support to the Executive, there were then
 17 a range of functions which had been accumulated in the
 18 Executive Office over the years to do with maintaining
 19 good relations and a variety of other things as well.

20 **Q.** All right. Then can you help me with what parts of the
 21 Executive Office might overlap with Downing Street as
 22 well or the -- I think you said that there was some
 23 overlap with Cabinet Office, some overlap with something
 24 analogous to Downing Street, could you help me with
 25 that?

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1 distinct role of civil servants in Northern Ireland, but
 2 if we can just focus for a moment on that departmental
 3 issue. You deal with it at paragraph 6 of your
 4 statement, but can I just check, please, that I have it
 5 right.

6 So in Northern Ireland each governmental department
 7 is headed by its minister, and it's the minister
 8 essentially who has autonomy or who has control over
 9 that department. The permanent secretary of that
 10 department is accountable to the minister; is that
 11 right? And only the minister?

12 **A.** That is broadly correct. The Departments Order 1999,
 13 I think it's section 4, requires or provides that the
 14 department is at all times under the direction and
 15 control of its minister.

16 Where the head of the Civil Service might have
 17 influence over departments would be if, for example,
 18 there's a programme for government in place, and if you
 19 have a programme for government which has been agreed by
 20 the Executive, it would be expected that the head of the
 21 Civil Service would hold permanent secretaries to
 22 account for the delivery of the commitments which fall
 23 to particular departments within that programme for
 24 government. But as head of the Civil Service, I would
 25 have no powers of direction over the permanent

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1 **A.** Well, I suppose in Number 10 they would be providing
 2 support to the Prime Minister, and you would have had
 3 a secretariat there that would -- and you would have had
 4 communications facilities, if you like, support for the
 5 Prime Minister. And we had -- in the Executive Office
 6 we had, obviously, an Executive secretariat, which would
 7 have been performing similar roles, and we had the
 8 Executive information services, which was responsible
 9 for providing communication support to the
 10 First Minister and deputy First Minister but also to the
 11 other departments as well.

12 **Q.** All right, so is the principal difference, then, that
 13 lack, as it were of, cross-departmental overreach or
 14 co-ordination?

15 **A.** Yes, that would be the main difference, and obviously
 16 the administration in Northern Ireland is a multiparty
 17 Executive, whereas in recent times, you know, the
 18 Prime Minister has normally commanded a government from
 19 the same party. I think the exception would have been
 20 the Lib Dem/Conservative coalition between 2010 and
 21 2015.

22 **Q.** All right. I'm going to come back to that issue of
 23 cross-departmental control, but I think you've just
 24 referred really to your third function, which was head
 25 of the Civil Service, and I'm going to come back to the

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1 secretaries in the other eight departments.

2 **Q.** All right. We'll come back to how that operated in the
 3 context of the pandemic.

4 So really there are two issues, then: you can't
 5 direct permanent secretaries; correct?

6 **A.** That's --

7 **Q.** Save for the circumstances in which you've just
 8 mentioned --

9 **A.** Yes.

10 **Q.** -- when it comes to programmes for government. Equally,
 11 is it right that the First Minister and the deputy
 12 First Minister, that they can't direct the minister
 13 either, that they effectively have operational control
 14 over their department?

15 **A.** Do you mean the First Minister and deputy First Minister
 16 obviously have direction control over the Executive
 17 Office?

18 **Q.** No, sorry, forgive me if I confused you. No, in terms
 19 of -- do they have control over departments, might be
 20 the most simple way to put it?

21 **A.** Not -- not in strict legal terms, but obviously as First
 22 and deputy First Minister, they would have influence
 23 over the other departments and, you know, again, if
 24 there's a programme for government in place, they, as
 25 the sort of co-chairs of the Executive Committee, will

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1 have, again, that influence that sits within the
2 Executive Committee.
3 **Q.** I'm going to take you in due course to an email exchange
4 that relates to the deputy First Minister, and indeed
5 the First Minister, where there is, certainly, a sense
6 of them feeling impotent -- and that's my word, not the
7 words in the email -- in terms of their ability to
8 control what was -- the Department of Health during the
9 pandemic. And there's reference in that email to the
10 operational independence of the health minister.

11 Is that an accurate way of putting it, that
12 effectively they are operationally independent of the
13 First Minister and the deputy First Minister?
14 **A.** Yes, they would. Each departmental minister would have
15 a certain degree of independence, but obviously there is
16 a requirement that any matters which are cross-cutting,
17 in other words which affect more than one department,
18 which are novel or contentious, you know, any issues
19 like that which would require a decision, there's
20 a requirement that they be brought to the Executive
21 Committee. So in that sense, you know, the
22 First Minister and deputy First Minister have a degree
23 of control over issues which, as I say, are
24 cross-cutting, novel or contentious. But on issues
25 which fall entirely within the remit of a department,

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1 issues at the moment, if I may.

2 You've set out in your statement that the concept of
3 collective cabinet responsibility just doesn't have
4 application to the Executive Committee; is that right?

5 **A.** That's correct, it doesn't apply in the same way that it
6 would in Westminster.
7 **Q.** And that's effectively because there is no government of
8 the day, so to speak, whom everyone serves; correct?

9 **A.** Yes, and I think it's also in recognition of the fact
10 that our form of government, which is a mandatory
11 coalition, it would be more difficult to apply that type
12 of collective responsibility.

13 **Q.** I think the concept of collective responsibility breaks
14 down into two parts: the first part of it is that all
15 discussions in cabinet are confidential, and there's
16 an expectation that what's discussed around the cabinet
17 table will stay confidential between ministers; that's
18 the first part of it.

19 The second, that once a position has been agreed in
20 cabinet, that all ministers are expected to abide by
21 whatever decision is made.

22 I think you're nodding, you're familiar with those
23 two key characteristics?

24 **A.** Yes.

25 **Q.** Can I first of all ask you about the requirement of

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1 then individual ministers do have a certain discretion.

2 **Q.** All right, we'll come back and look at that perhaps in
3 context.

4 **A.** Sure.

5 **Q.** I'm just going to go back, if I may, to the composition
6 of the Executive, then, which formed in January 2020.

7 You obviously had ministers from five different
8 parties; correct? Three of those ministers were from
9 minority parties, so to speak. I think five of the ten
10 of them didn't have any ministerial responsibility at
11 all. Is that also correct?

12 **A.** That's my recollection, yes.

13 **Q.** And I assume in addition to all of that these were
14 individuals who obviously weren't used to working with
15 each other in that context either?

16 **A.** They wouldn't have been used to working with each other
17 within that sort of Executive framework but they all
18 knew each other, you know, Northern Ireland's a small
19 place politically and a lot of them would obviously have
20 known the other ministers pretty well, and some might
21 have worked indeed in councils together, that sort of
22 thing.

23 **Q.** All right. Again we will come back and look at just how
24 the committee operated when we get past January 2020,
25 I just want to stick on some general principles or

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1 confidentiality and look at that in terms of the
2 ministerial pledge of office that's taken in
3 Northern Ireland. Is there again an analogue to that
4 part of collective cabinet responsibility?

5 **A.** Yes, whilst we don't have collective cabinet
6 responsibility in the sort of Whitehall/Westminster
7 sense, there is a requirement within the
8 Ministerial Code that ministers do not criticise
9 decisions taken by the Executive outside the Executive.
10 There would also be a requirement that papers which are
11 submitted to the Executive are not disclosed outside,
12 they should remain confidential to members of the
13 Executive.

14 **Q.** We will see or it's quite clear from the minutes of the
15 meeting that there's constant reference to leaking and
16 this is during Executive Committee meetings, just to be
17 clear, and reference, for example, to discussions being
18 tweeted as they're happening as well, obviously by
19 parties external. Was that a normal feature of
20 Executive Committee meetings in other times, in other
21 words outside the pandemic, or was that something very
22 specific to the pandemic?

23 **A.** Certainly discussions I have had with my predecessors
24 going back a number of years, back even to the
25 Executive, back in 1999/2000, there has been

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1 a persistent problem of papers being leaked. It's
 2 probably fair to say that the problem has got worse in
 3 more recent times, particularly when we have, you know,
 4 mobile phones with cameras, when we have social media,
 5 that kind of thing. I don't have any hard evidence to
 6 show that there's been an increase but certainly the
 7 perception amongst my former colleagues would be that
 8 the problem has become more difficult in recent times.

9 **Q.** The reason why it exists is obviously so that there can
 10 be full and frank discussions between ministers without
 11 fear of it being put into the public domain. Does it or
 12 did it have an inhibiting effect during the pandemic,
 13 that ministers couldn't trust that that principle would
 14 hold?

15 **A.** I think there was a -- there was a practical impact, and
 16 that was, I would have detected a tendency amongst
 17 ministers bringing papers to the Executive to submit
 18 them as late as possible, just to reduce the chance that
 19 they would leak, and that of course creates difficulties
 20 for other ministers who maybe were not getting papers
 21 until very close to the start of the meeting, even right
 22 up to the actual due time that a meeting was meant to
 23 start. And, yes, I think there probably was
 24 an inhibiting factor as well, you know, that ministers
 25 were reluctant to bring forward items which were

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1 difficult decisions, and I think because they get fixed
 2 with the difficult decision as opposed to colleagues in
 3 a cabinet or a government being fixed with a difficult
 4 decision.

5 Is that right?

6 **A.** That would be my clear perception and my experience is
 7 that there is a reluctance, in my view, amongst all the
 8 political parties to do things which they would perceive
 9 would have a negative -- give rise to a negative public
 10 reaction, and that could be, you know, the
 11 reconfiguration of a public service such as health or
 12 education. There has been, I think, a reluctance in the
 13 past to do some things which, you know, reviews,
 14 strategic reviews and other things have suggested need
 15 to be done.

16 So, yes, I have seen that.

17 **Q.** Right.
 18 One of the issues that's probably going to be quite
 19 important, certainly in the course of your evidence, is
 20 the suggestion again by some of the witnesses and by the
 21 experts in Module 2C that departments in
 22 Northern Ireland did operate in quite
 23 a compartmentalised way, and that there were a number of
 24 reasons for that. I'm going to ask you about the
 25 reasons in a moment, but can I just ask whether or not

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1 extremely sensitive.

2 **Q.** But that did have a real consequence, didn't it, during
 3 Executive Committee meetings during the pandemic,
 4 because quite often I think it was Ministers Long and
 5 Mallon, for example, wouldn't have had the papers until
 6 quite late in the day and sometimes that meant that
 7 meetings, for example, had to be adjourned even if they
 8 were quite urgent?

9 **A.** It didn't happen on all occasions --

10 **Q.** No.

11 **A.** -- but it did happen fairly regularly that some
 12 ministers would say, I think with justification, that
 13 they hadn't had sufficient time to read the papers and
 14 that there would then have been an agreed adjournment,
 15 and in fairness the First Minister and deputy
 16 First Minister were usually quite happy to concede such
 17 adjournments, although it obviously did make -- it made
 18 it harder to do business efficiently.

19 **Q.** All right.

20 I'm just going to come back, if I may, to some of
 21 the more constitutional issues, Sir David. I think one
 22 of the things you suggest in your witness statement, and
 23 certainly the experts in Module 2C suggest, is that the
 24 departmental structure in Northern Ireland means that
 25 ministers are often quite reluctant to confront

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1 you agree with that observation that has been made?

2 **A.** I agree with it to an extent, but I would say in the
 3 early weeks of the new administration one of the
 4 immediate tasks was to prepare a programme for
 5 government, we hadn't had a programme for government
 6 since the one that applied between 2012 and 2016 and --

7 **Q.** I'm just conscious and I apologise for interrupting you,
 8 but it's probably sensible if you explain what
 9 a programme for government is.

10 **A.** Sorry, yes.

11 **Q.** I assume it's something akin to a manifesto that's
 12 agreed between the --

13 **A.** A programme for government in simple terms is a plan and
 14 it is a plan which the Executive would agree for
 15 a period of usually three years or more. It should
 16 usually contain a statement of what the Executive's
 17 priorities are, what the commitments and actions it
 18 is -- it has agreed to take over that three-year period,
 19 and ideally it should be linked to a budget, so in other
 20 words there should be a clear linkage which shows how
 21 the commitments which are set out in the programme for
 22 government are going to be paid for, in very simple
 23 terms.

24 I think the point I was going to make in the
 25 early weeks was that I actually did detect a strong

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1 desire amongst the new ministerial team to work
2 together. I think they clearly felt that after three --
3 a three-year absence they needed to step up, they
4 recognised that there was a lack of public confidence in
5 the institutions, and for example we held two away days,
6 one in January, one in February, where we were exploring
7 what would need to go into the next programme for
8 government, and I was quite impressed with the sort of
9 collegiality that was on view on those two days.

10 Unfortunately, the onset of Covid meant that we were
11 actually never able to translate all that preliminary
12 work into a programme for government at that particular
13 time.

14 **Q.** All right, so essentially what you're saying is that if
15 there is a tendency or if these departments have quite
16 a lot of autonomy and independence, nonetheless that
17 ability to work together is something that can occur and
18 it's just a question of willingness on the part of the
19 ministers to overcome any of those --

20 **A.** Yes, "willingness" I think is a very good word, and what
21 I would have found is that a lot would have depended on
22 the personality of individual ministers and the extent
23 to which people had built relationships with each other,
24 which crossed maybe party boundaries. But, as I say, in
25 those early weeks I was quite encouraged by what I was

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1 that, you know, a mandatory four or five-party coalition
2 is an inherently more difficult form of government to
3 manage than, say, a single party type of government that
4 you would usually see in London.

5 So there wasn't a sort of set of tools or levers
6 that we would pull to do this, but I think we all in our
7 own way felt that we had a responsibility to encourage
8 ministers to work together within the framework of the
9 programme for government, et cetera.

10 **Q.** But presumably then a key part of your role is that idea
11 of forging compromise so that you can get all of the
12 parties fundamentally to agree common positions with
13 each other?

14 **A.** Yes, certainly, and my own experience over the years in
15 different departments, I would have always thought it
16 important to work across departmental boundaries, and
17 the reality is on most occasions ministers are willing
18 to do that, I think sometimes this idea that ministers
19 operate in departmental silos is a little overstated.
20 In my experience, the ministers I worked with, was that
21 they were keen to work across boundaries, and there are
22 practical reasons for that, and that is that there are
23 very few things that ministers want to do that they can
24 do solely within the powers and responsibilities that
25 they have within their own department.

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1 seeing.

2 **Q.** All right, obviously the fundamental question is whether
3 or not that willingness held up as time progressed, but
4 perhaps if again I can just stick to some of the really
5 fundamental constitutional issues and then we'll revisit
6 that. I wanted to ask you -- and again it's
7 an important point about the role of civil servants then
8 in Northern Ireland and their distinct position from
9 counterparts in Westminster, and again I wonder if you
10 could help me with that, that this idea that what
11 distinguishes the civil servant in Northern Ireland, is
12 that part of their role, being to help maintain or to
13 facilitate power-sharing or to mediate political
14 relationships? Could you explain a bit more about that,
15 and whether you agree with it, of course?

16 **A.** Yes. I don't -- I'm not sure anything is written down
17 which makes that a clear responsibility of
18 Northern Ireland civil servants, you know, at its
19 simplest level we are there under the direction and
20 control of our ministers to serve our ministers to the
21 best of our ability, but certainly custom and practice,
22 you are going back 24 years to the first Executive post
23 the Good Friday Agreement, there was always a strong
24 sense amongst the Civil Service that our role was to
25 help make the institutions work, you know, recognising

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1 If you look at the big issues, the big challenges in
2 Northern Ireland, most of them require
3 a cross-departmental response, so yes, at times you
4 would see people retreating into departmental silos, but
5 it wasn't, that wasn't something that was always
6 evident.

7 **Q.** All right, I just wanted to come back to the point you
8 made in your witness statement, this idea that sometimes
9 the need for compromise could drive decision-making
10 towards the lowest common denominator. Is that right?
11 I mean, those are your words.

12 **A.** Yes, unfortunately there was evident and it would be
13 particularly evident where we were maybe -- let me
14 think.

(Pause)

15 Think of an example, let's say in the Executive
16 Office issues around culture, language, et cetera, could
17 be quite difficult, and what you might tend to see is it
18 would be difficult to get agreement on a way forward on
19 issues of that sensitive nature, you know, flags,
20 symbols, emblems, all that type of thing. That would
21 require quite a bit of effort to try and find common
22 ground, and, you know, I think history shows that on
23 occasion that common ground simply cannot be found. On
24 other issues what you might find is that one party, and
25

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1 I'm talking about the Executive Office again, which,
 2 you know, in my time would have always been -- we'd
 3 always had a sort of Sinn Féin/DUP partnership there.
 4 You might have found that a difficult thing for one
 5 party might be conceded if a difficult thing for the
 6 other party was, you know, traded, if you like.

7 **Q.** So it's a sort of bargaining process --

8 **A.** Bargaining process you would get. So, you know, what
 9 you would find is the difficult issues, they might just
 10 not be agreed or it might be that they were agreed on
 11 the basis that something else was being agreed.

12 **Q.** Right.

13 I'm going to move on then to a distinct topic, which
 14 is the absence of ministers between 2017 and 2020, and
 15 I think you've been candid in your witness statement, as
 16 I think you've been before, before the Inquiry about the
 17 impact that that had on public services in particular in
 18 Northern Ireland up until the eve of the pandemic.

19 Is that right?

20 **A.** Yes, I felt that I had to be candid about this. When
 21 I came to the Executive Office in June 2017, the
 22 ministers had been away for six months or so. Nobody
 23 thought it would last much longer than that, and there
 24 were political talks that summer, there were high hopes
 25 that would reach a conclusion, didn't prove to be the

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1 radical reform in Northern Ireland health services and
 2 particularly -- in particular the Bengoa report.

3 I mean, first of all, was there a need for radical
 4 reform? Was that an imperative before 2020?

5 **A.** Yes, very much so, and in fact in my witness statement
 6 I have set out an extract from Fiscal Council's report,
 7 a sustainability report they did on the health service,
 8 and that actually itemises a number of strategic reviews
 9 which have been carried out on the health service going
 10 back, I think, maybe 30 or 40 years, and there has been
 11 common theme to a lot of those reports: basically they
 12 are suggesting that the health service needs to be
 13 reconfigured, that there needs to be greater focus given
 14 to primary care, that there needs to be the collection
 15 of specialisms in specialised units. You know, a range
 16 of things like that. And sadly, that transformation has
 17 not happened and the Bengoa report is now eight years
 18 old.

19 **Q.** So I think there are two aspects to that. I think the
 20 first question is whether or not, in your view, the
 21 state that services had reached prior to January 2020,
 22 whether or not that conditioned in part the response to
 23 the pandemic thereafter?

24 **A.** I think the absence of ministers for those three years
 25 left the health service in a weaker position than it

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1 case, and I would have said regularly in my role at the
 2 time that I thought this was totally unacceptable that
 3 civil servants were being left to operate, to --
 4 you know, to run a government without the direction and
 5 control that would normally be expected from ministers.

6 I never believed at that stage that it would be
 7 allowed to go on for three years, and I said at the time
 8 I can't imagine in any other part of the United Kingdom
 9 such a thing would have been allowed to prevail.

10 Nonetheless, it did, but it has had consequences,
 11 and the fact that, you know, we had that three-year
 12 hiatus and then another three-year -- sorry, another
 13 two-year hiatus, which only ended earlier this year in
 14 February, has, in my view, left public services in
 15 a very bad state. I talked about stagnation and decay.

16 **Q.** Yes.

17 **A.** But I think that the problems that you're seeing in
 18 particularly our health service and in our educational
 19 services but in pretty much all our other services are,
 20 to a large extent, in part down to the fact that for
 21 five years out of the last seven we have had not had
 22 ministerial direction.

23 **Q.** I just want to go back to the period before the onset of
 24 the pandemic in January 2020. The Inquiry is aware that
 25 obviously there had been a number of papers advocating

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1 ideally would have been in to deal with a pandemic.

2 Now, I would much prefer to defer to my Department
 3 of Health colleagues to talk about that in more detail,
 4 because, you know, my knowledge wouldn't be as good as
 5 theirs, and obviously I'm now three and a half years
 6 retired as well, so I wouldn't want to be seen as
 7 an authority on just how bad things were in the health
 8 service, but I don't think it would be an understatement
 9 to say that the health service -- that the neglect that
 10 it suffered for three years left it less well prepared
 11 to deal with a pandemic than it otherwise should have
 12 been.

13 **Q.** All right. And just -- there's a second part to the
 14 question, which is obviously when power-sharing then
 15 resumed in January 2020, it was with all of the work
 16 that had accrued over the previous three years that
 17 required ministerial decision-making, presumably, and
 18 I take it that's what your programme for government was
 19 intended then to address in that first year; is that
 20 right?

21 **A.** Yes. And again, in fairness, there was -- as I've
 22 already said, I detected a really strong willingness
 23 among ministers to tackle some of these big issues. And
 24 it's also worth noting that we had the *New Decade, New*
 25 *Approach* agreement in place; that contained some

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1 financial resources to help address some of the problems
2 in the health service, and it contained commitments as
3 well to address some of the particular challenges facing
4 the health service at the time.

5 So, you know, that was a piece of work which needed
6 to be developed and taken forward, and I saw that as
7 something that would sit alongside the development of
8 a new programme for government, and I would have seen
9 those two things being brought together as a means of
10 addressing the big structural challenges in the health
11 service. And indeed in other services as well.

12 **Q.** All right, and I think one of the issues that's linked
13 to that was that there had previously been an absence of
14 multi-year budgets as well; is that correct?

15 **A.** Yes, we hadn't had a -- the last programme for
16 government had been agreed in March 2012, the last
17 multi-year budget had been agreed in the previous year,
18 2011. Now, the absence of multi-year budgets in
19 Northern Ireland wasn't solely down to issues here.
20 There would have been quite a number of years where the
21 Treasury would not have produced spending reviews,
22 you know, spanning more than one year, so there had been
23 a number of single year budgets in Whitehall, which
24 obviously meant that Northern Ireland couldn't produce
25 a multi-year budget either.

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1 priorities, if not the top priority. We had had strikes
2 in the health service which had just been settled, in
3 part due to the finances that were put forward in the
4 *New Decade, New Approach* package, but we also were -- we
5 were seeing very high waiting lists, which, again,
6 I think, there was a clear desire to tackle. So that --
7 you know, those issues and then the knowledge that the
8 Bengoa report was sitting on the shelf waiting to be
9 taken forward would have been at the front of, I think,
10 all ministers' minds in January/February 2020.

11 **Q.** As the pandemic started to unfold in January and
12 February 2020, do you think that there was cognisance or
13 thought about the extent to which the fragility of the
14 health service might actually be a really important
15 thing for the entire Executive Committee or the
16 Executive Office to also think about in terms of what
17 was unfolding?

18 **A.** Yeah, I think the -- I think there would have been
19 a recognition, there would have been an understanding
20 that particularly as we got to understand the nature of
21 the coronavirus, that the health service would be under
22 particular stress, and that that stress would in a sense
23 have been exacerbated by the structural problems which
24 had built up over a number of years.

25 **Q.** I think in your witness statement, but forgive me if I'm

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1 **Q.** And the consequence of that is simply your ability to
2 pre-plan any reforms is limited because you can only say
3 "This is what we can do in the year to come"?

4 **A.** Well, indeed, and if you're looking at big, complex
5 services like the health service or like education, it
6 is much more difficult to plan if you only know what
7 your -- you know, what your financial envelope is going
8 to be for the next year. And, indeed, one of the other
9 problems we've had in recent years has been that
10 we haven't even had single year budgets agreed well in
11 advance of the start of the financial year, and that
12 makes it incredibly hard for those who are running
13 public services to manage those services. Like,
14 for example, the budget for 2024/2025 has just been
15 agreed by the Executive and we're at the beginning of
16 May.

17 **Q.** Right.

18 That idea or the understanding about the fragility
19 of the health service in January 2020, was that one of
20 the principal concerns then of the Executive Committee?
21 I mean, was that one of the key issues that needed to be
22 addressed at the start of that year?

23 **A.** Yes, I would have said at the start of 2020 the problems
24 in the health service would have been considered by
25 pretty much all ministers as one of their top

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1 wrong about this, I think you say that that
2 understanding crystallised in and around the start of
3 March. Is that right?

4 **A.** Yes, I think that's fair.

5 **Q.** All right. I'm going to come back and ask you about
6 that in more detail.

7 **A.** Yep.

8 **Q.** Just again I'm going to move on to ask you about civil
9 contingency arrangements, but before I do, I think one
10 of the other things that is suggested by the Module 2C
11 experts is that not having had ministers in place before
12 January 2020 also meant that they hadn't been able to
13 develop relationships with counterparts either in
14 Westminster or in the Republic of Ireland as well.
15 I wanted to ask you, from your experience, whether or
16 not those kind of relationships, those individual
17 relationships, are actually important and matter in
18 government in Northern Ireland?

19 **A.** They are important. Their importance will vary
20 depending on the particular portfolio that a minister
21 has. So, for example, if I take the Minister of
22 Agriculture, Environment and Rural Affairs, you know,
23 just given the history, you know, our history in the EU
24 and then having now left the EU, there would have been
25 a very close relationship between local agriculture and

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1 environment ministers and the DEFRA minister in
2 Westminster. There would equally have been strong
3 relationships in that regard on the North/South,
4 Belfast/Dublin basis as well.

5 Other departments would have relationships as well,
6 like, for example, the economy minister would have had
7 strong relationships with the economy departments in
8 London and perhaps in Dublin as well. A lot would have
9 depended -- sorry, the extent to which those
10 relationships were developed would have depended, in my
11 experience, on the personality of the individual
12 minister, but also their party affiliation.

13 **Q.** I see, so in effect, I don't want to simplify this, but
14 you would expect those politicians who were of
15 a Nationalist background to more naturally want to
16 foster relationships with counterparts in the Republic,
17 and vice versa, or is that too simplistic?

18 **A.** It's not too simplistic, it wouldn't completely
19 accurately portray what was actually happening. There
20 would have been that tendency that, you know, that
21 ministers from a Nationalist background would have
22 looked to Dublin, Unionist ministers would have looked
23 to London, but there would have been plenty of examples
24 where that didn't hold entirely and there would have
25 been examples I can think of, of Unionist ministers have

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1 hadn't had an opportunity to establish relationships
2 with their counterparts, whether or not that mattered?

3 **A.** I'm not sure that would be a major issue, because if you
4 take the First and deputy First Minister in
5 January 2020, Michelle O'Neill and Arlene Foster, they
6 would have known each other very well, they were both
7 ministers in previous Executives, they would have known
8 their counterparts in Dublin pretty well through the
9 talks processes that had gone on over -- on and off,
10 over the previous three years. So the personalities
11 would have been known. There would have been
12 relationships there which could have been built on.
13 What you wouldn't have had would have been the
14 relationships that you would expect to deliver,
15 you know, from two people who were responsible for
16 similar portfolios in different jurisdictions, and that
17 obviously would require a bit more development.

18 **Q.** Can I just ask you again, then, coming back to
19 January 2020, what the state of general relationships
20 were like, and I'm referring here to ministers, in terms
21 of their Republic of Ireland counterparts, or if it's
22 possible to characterise the relationship generally or
23 not?

24 **A.** Let's say the two health departments, I think my
25 understanding was that the Northern Ireland health

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1 very strong relationships, for example, with their
2 health counterparts in Dublin, and equally, you know,
3 I can think of examples where, say, a Sinn Féin
4 agriculture minister would have had a good relationship
5 with a DEFRA minister in London. So there's an element
6 of truth to it, but it's --

7 **Q.** It's slim.

8 **A.** Yeah.

9 **Q.** So there's probably a pragmatic consideration, first of
10 all, and then a question of willingness again on the
11 other ...

12 **A.** Yes, and I suppose it goes back to one of my earlier
13 points, that ministers in wanting to do things will
14 often find that they need the co-operation of people in
15 London and Dublin or even Cardiff and Edinburgh, and
16 that, you know, whatever their party affiliations, they
17 will build relationships with that aim in mind.

18 **Q.** Before I leave this topic, then, can I ask you about the
19 First Minister and the deputy First Minister role, and
20 ordinarily or whether it mattered here that those
21 relationships didn't exist prior to January 2020 in
22 terms of counterparts with the Republic of Ireland and
23 Westminster as well?

24 Sorry, that was a clumsily put question, but
25 I suppose what I'm asking you is whether or not they

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1 minister fairly quickly established a good working
2 relationship with his counterpart in the South. Now,
3 I stand to be corrected by Robin Swann if that's not the
4 case, but that's my understanding. I know certainly as
5 we moved through the year the relationship between the
6 two departments at both official and ministerial level
7 was good.

8 If you look at the First Minister and deputy
9 First Minister, again the relationship between the
10 First Minister, Arlene Foster at the time, and the
11 Dublin administration, on a personal level, I think
12 Arlene Foster got on really well with Leo Varadkar and
13 with Simon Coveney, but at a political level there would
14 have been tensions there.

15 **Q.** Is that because of EU exit?

16 **A.** Yes, it would have been over EU exit, and again I'm
17 sort of wary about making -- sort of passing comment on
18 these issues, but my sense would be that there would
19 have been, you know, a good working relationship between
20 the deputy First Minister and the Taoiseach at the time,
21 but then you've got to bear in mind that the
22 political -- the political arithmetic in Dublin is also
23 a factor there, you know, given Sinn Féin's growing
24 strength in Ireland.

25 **Q.** Yes, so a complicating factor was the fact that

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1 Sinn Féin were an oppositional party to the government
2 in Dublin --

3 **A.** Correct.

4 **Q.** -- at the same time?

5 **A.** Correct.

6 **Q.** And I think we might see that play out then a bit later
7 in events in the pandemic when Northern Ireland is
8 perhaps not informed about steps that the
9 Republic of Ireland is taking in response to the
10 pandemic?

11 **A.** Yes, although I think those party differences, as we've
12 moved into the pandemic, were of less relevance,
13 you know, they were less evident to me than the
14 differences that might have occurred between what was
15 being done North and South.

16 **Q.** All right. I'm going to move on, then, if I may, to ask
17 you about some of the arrangements for civil
18 contingencies in Northern Ireland, and I think we've got
19 ten minutes before lunch, so let's see if we can fit
20 those in.

21 I wonder if I could ask to be brought up on screen,
22 please, INQ000092739.

23 I think you said, Sir David, in your witness
24 statement, that you were familiar with this protocol,
25 and you've referred to it in your witness statement.

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1 there is a prepare phase, then a response phase, then
2 a recovery phase.

3 **Q.** Yes.

4 **A.** So in early January/February we would have been very
5 much in the prepare phase.

6 **Q.** But nonetheless guided by this protocol?

7 **A.** Yes, absolutely.

8 **Q.** Right. So this protocol does apply whenever you're at
9 that prepare phase?

10 **A.** Yes.

11 **Q.** All right. If we look at paragraph 2, I'm just
12 mentioning this because we'll hear plenty of reference
13 to it, the arrangements were known as NICCMA; yes?

14 **A.** Yes.

15 **Q.** If we look at paragraph 3, it sets out that:

16 "The First Minister and the deputy First Minister or
17 the TEO may activate NICCMA following a request to do so
18 from the Executive ..."

19 Correct?

20 **A.** Yes.

21 **Q.** And I think if we look to the very last line of that
22 paragraph, in the absence of any such requests whenever
23 TEO judges it appropriate to do so?

24 **A.** Yes.

25 **Q.** Yes, so in other words there's no -- we'll come to the

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1 Can I just check, though, was this the key protocol
2 from the perspective of the TEO that would guide the
3 response to the pandemic?

4 **A.** Yes, that would be correct.

5 **Q.** All right, and we can see that it's dated
6 September 2016. If we could just go to the first page
7 of it, that's page 3, sorry. So we can see from this
8 that this protocol applies, first of all, at
9 paragraph 1, Sir David, when an emergency has occurred
10 or is anticipated which is likely to have a serious
11 impact either on part or the whole of Northern Ireland;
12 yes?

13 **A.** Yes.

14 **Q.** And it sets out that the arrangements can be activated
15 as required, and then the first bullet point is to:

16 "... provide strategic co-ordination of the
17 response ... or recovery across [Northern Ireland]
18 departments ..."

19 Just looking at paragraph 1, obviously the emergency
20 doesn't have to have eventuated, does it, it can be
21 an anticipated emergency, something that's coming down
22 the line?

23 **A.** No, certainly if you're dealing with a contingency,
24 whether it's one that is happening or one that's
25 emerging, you would normally go through a process where

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1 lead department in a moment, but it doesn't require the
2 lead department, so to speak, to ask the First Minister
3 and the deputy First Minister to activate these
4 arrangements, they have the power to do that?

5 **A.** That's correct.

6 **Q.** If we just go over the page, please, and if we look at
7 paragraph 9, we see that this applies to two types of
8 emergencies, the local one and then over the page the
9 strategic one. Again I think that's put in very broad
10 terms, Sir David, at the top, that the government role
11 in this kicks in whenever strategic level intervention
12 is required; is that right?

13 **A.** Yes.

14 **Q.** Then if we go over the page, please, to paragraph 12,
15 again it's set out there the sorts of things that might
16 require a strategic level approach and, as you might
17 expect, things like very large numbers of people
18 affected; yes? I think if we see, as we work through
19 this, a high degree of public anxiety or implications
20 beyond Northern Ireland; yes?

21 **A.** Yes.

22 **Q.** Then if we look at paragraph 13 it sets out the
23 different levels of strategic emergency, and maybe if we
24 just look at "serious", and that's defined whenever
25 a number of sectors might be affected or impacted; yes?

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1 A. Yes.

2 Q. Or a number of organisations might be involved in
3 responding.

4 Then level 3, catastrophic, so that applies to
5 an emergency which has or which threatens catastrophic
6 impact; correct?

7 A. Yes.

8 Q. And it sets out there:

9 "TEO will facilitate the strategic multi-agency
10 co-ordination through the activation of the NICCMA.
11 UK-wide co-ordination will be delivered through
12 activation of the Cabinet Office Briefing Room ...
13 arrangements."

14 We know obviously that those COBR arrangements began
15 in January 2020.

16 A. Yes.

17 Q. Level 3 suggests that there's some parity of arrangement
18 or that this will kick in at the same time that COBR
19 kicks in; is that your understanding as well?

20 A. Yes. It depends what you mean by "kicking in".

21 Q. All right. What this tends to suggest is when
22 an emergency reaches this stage --

23 A. Yes.

24 Q. -- that COBR will be operating in the United Kingdom,
25 and that these arrangements will be expected to be in

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1 pandemics of that nature. So in a sense, Department of
2 Health was taking the lead in responding, in preparing
3 for and responding to the pandemic, and we were in,
4 you know, regular contact with the Department of Health,
5 like daily contact, so we would have been, you know,
6 liaising very closely with them, and I was always very
7 clear that at any point in time they asked us to
8 activate NICCMA, and by that I mean establish the Civil
9 Contingencies Group and set up the Northern Ireland hub,
10 we would have done so.

11 Now, it's now a matter of record that we didn't do
12 that until, you know, the third week in March, and,
13 you know, I think that was felt to be appropriate at the
14 time but I'm sure you'll want to push me on that.

15 Q. No, you're covered quite a lot of ground and I've got
16 quite a lot that I want to ask you about almost
17 everything that you have said. I'm just focusing at the
18 minute on this document, Sir David. But I don't think
19 it's -- I mean, there's no question, there wasn't
20 an analogue, so to speak, to COBR operating in
21 Northern Ireland from January, and I think the first CCG
22 meeting took place on 20 February.

23 A. That's correct, yes.

24 Q. And then I think there was another one on 12 March, that
25 was a ministerial one?

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1 place, again as a sort of -- I'm sorry to keep using
2 this word -- but as an analogue to the COBR
3 arrangements. Is that also your understanding?

4 A. Yes, we will be in this process, but I think what --
5 when people talk about activating NICCMA, I think what
6 they quite often mean is the setting up -- sorry, the
7 establishment of the Civil Contingencies Group.

8 Q. Yes.

9 A. And also the establishment of the Northern Ireland hub.

10 Q. Yes.

11 A. My view would be that you don't need to do either of
12 those two things, which are response functions, until
13 you've moved out of the prepare phase. So, you know, my
14 view would be that, yes, we were clearly being invited
15 to attend COBRs, we were getting the briefings that were
16 coming from them, but we had not reached the stage in
17 sort of January/February where in my view it was
18 appropriate to activate NICCMA in the sense of
19 establishing the Civil Contingencies Group, and the --
20 setting up the Northern Ireland hub, and certainly
21 I think it's also mentioned earlier in the document
22 here, the role of the lead government department --

23 Q. Yes.

24 A. -- and for a health pandemic it was well established
25 that the Department of Health would lead on health

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1 A. That's correct.

2 Q. All right. We'll cover the ground probably in a bit
3 more detail after lunch. But I'm just -- I don't know
4 if I've got time to just finish this document and then
5 we can come back, having done it, but if we look at
6 paragraph 16 we can see that in terms of the
7 Northern Ireland Executive role as foreseen in this
8 protocol, at paragraph 16 it refers to them possibly --
9 or:

10 "... may wish to meet to consider the impacts of the
11 emergency and to offer ... support to members of the
12 public affected ..."

13 I'll come back in a second to that, if I may.

14 Then just if we continue over the page, please, to
15 page 8, and we look at paragraph 19, again that sets out
16 that:

17 "Level 2 and Level 3 emergencies require direction,
18 co-ordination and effective decision-making at
19 government level."

20 Yes?

21 A. Yes.

22 Q. And, again, presumably that applies as much to the
23 preparedness phase as it does to the --

24 A. Yes.

25 Q. -- response phase.

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1 Then at paragraph 21 it sets out the structures for
2 responding, and we can just see, if we follow that down
3 to paragraph 22, certainly I think this protocol
4 suggested that the Civil Contingencies Group was the
5 strategic co-ordination group; yes?

6 **A.** Yes.

7 **Q.** That it would be responsible for the overarching
8 strategy; yes?

9 **A.** That's correct.

10 **Q.** And also that it would direct --

11 **A.** When we'd moved into the response phase, yes.

12 **Q.** And it says there it would direct the response and
13 commit resources across Northern Ireland; yes?

14 **A.** Yes.

15 **Q.** Then it sets out the various roles that it might have,
16 so, for example, directing and co-ordinating the efforts
17 of government -- sorry, of departments, and then,
18 second, assessing the wider impact of events as well.

19 In terms of your delineation between preparedness
20 and responding, obviously this protocol doesn't set out
21 any such delineation, the premise of it is that it will
22 apply when an emergency is anticipated. Why do you say
23 that paragraph 22 is whenever the government is in
24 response mode?

25 **A.** In a health -- sorry, in the circumstances we were
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1 absence of volunteer -- sorry, the immediate shortage of
2 volunteers quickly.

3 **Q.** I'm just going to stop you because we will come back and
4 deal with staffing in more detail. I think the point,
5 really, though, is that this foresees the setting of
6 an overarching strategy. Why isn't that as much a part
7 of preparedness as it is of responding?

8 **A.** Well, the -- it's the preparedness phase where you will
9 be, in a sense, developing your planned response. And
10 again, we can talk about resources later, but the people
11 who were doing the preparation work in the Executive
12 Office but also in departments would have been the same
13 people that would have been staffing up the hub. So our
14 reluctance to -- not reluctance, but the decision to
15 establish CCG when we did was in part because we wanted
16 to use the resources available to us to best effect.
17 So, for example, in early March we had commissioned
18 impact assessments from all departments. There had been
19 a workshop on 6 March, facilitated by Chris Stewart and
20 the CCPB team, which was looking at how we actually
21 co-ordinate that exercise across departments. So that
22 work was part of the preparedness work, and had we
23 established the hub and Civil Contingencies Group
24 earlier, it might have compromised that work.

25 **MS DOBBIN:** All right. I think that's --
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1 facing, where there was an emerging pandemic, the role
2 of CCG, you know, led by the Executive Office, would
3 have been to co-ordinate the work of the departments
4 other than the Health Department. You know, the Health
5 Department would still have been in the lead when it
6 came to the actual health response to the pandemic.

7 So, you know, the view I would have had at the time,
8 and with my colleagues in that area, was that you don't
9 want to establish CCG until that point in time where
10 there is a need for departmental co-ordination in terms
11 of response.

12 Now, we didn't actually establish CCG until it was
13 18 March.

14 **Q.** Yes.

15 **A.** I will concede now that it would probably have been
16 prudent to have established it a few days earlier,
17 perhaps at the end of the previous week, and I say that
18 for two reasons. Firstly, and again this is knowing
19 what we know now, we didn't get the number of volunteers
20 coming forward to staff up the hub, which provides
21 support to CCG, that we had anticipated, and for that
22 reason it would have been sensible, I think, to have
23 established it a little earlier, so that we could have
24 known this and mitigated it sooner than we did.

25 Now, in my view, we did mitigate the immediate
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1 **LADY HALLETT:** I think it's too important a subject to try
2 to get you to squeeze it in before lunch, Ms Dobbin.

3 I'm sorry, Sir David, as you know we have to take
4 regular breaks, so we will break now for lunch and
5 I will return at 1.50.

6 (12.52 pm)

(The short adjournment)

8 (1.50 pm)

9 **LADY HALLETT:** Ms Dobbin.

10 **MS DOBBIN:** Thank you.

11 Sir David, just before the short adjournment we were
12 looking at the protocol, if I could just go back to
13 that, please, and ask for it to be brought up on screen.

14 It's INQ000092739, and page 9, please.

15 So we were just looking at paragraph 22, Sir David,
16 so the role of the Civil Contingencies Group, and
17 I think that you agreed that this protocol certainly
18 foresaw at least that it would direct the response to
19 the emergency, commit resources and that it would have
20 a strategic decision-making role as well, and that as
21 part of its role -- and we see that at the first
22 subparagraph -- that it would have the ability to direct
23 and co-ordinate the efforts of the other government
24 departments as well. Again, I think uncontroversial
25 between us that that also could be done as part of the
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1 preparedness phase.

2 **A.** Yes.

3 **Q.** If we just go on in this document, please, to

4 paragraph 36, that's page 14.

5 Again, if we look at paragraph 36, it foresees the

6 linkage between NICCMA, doesn't it, and COBR? And

7 specifically it foresees that the Northern Ireland

8 arrangements will feed directly into COBR. Correct?

9 **A.** Yes.

10 **Q.** And again, just coming back to the fact that COBR had

11 been on foot since January 2020, who was then -- who had

12 that role in the absence of the NICCMA arrangements

13 having been stood up at that phase? Who was providing

14 that government feed, as it were, into COBR?

15 **A.** There had been a number of meetings of COBR from late

16 January onwards, and -- I don't have the exact numbers

17 in front of me, but in most of the COBR meetings there

18 would have been somebody from Northern Ireland. So on

19 some occasions there would have been the First Minister,

20 deputy First Minister, on some occasions there would

21 have been the health minister. There would usually have

22 been somebody from the Civil Contingencies Planning

23 Branch accompanying ministers, and some occasions,

24 sorry, the minister for health would have been there.

25 So on most of those occasions where COBRs took place and

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1 the lead government in NICCMA?

2 Again, I think it's right, it's set out in fairly

3 simple terms, isn't it, that it has that role because it

4 has expert knowledge of the cause of the emergency?

5 **A.** Yes.

6 **Q.** Which -- it can inform the response by formulating

7 a prognosis, so allowing other emergency responders to

8 understand the implications for their sectors. Then it

9 also goes on to say that under NICCMA it is possible

10 that there could be multiple lead departments as well?

11 **A.** Yes.

12 **Q.** All right.

13 In terms overall of this protocol, you're obviously

14 very familiar with it, do you agree that it was wholly

15 inadequate for dealing with an emergency like

16 a pandemic, because it does only seem to foresee or

17 apply to the sort of very short-term type of emergencies

18 like floods and that kind of thing?

19 **A.** Yeah, I think that's generally a fair comment. I think

20 we would have recognised that there was a need to update

21 the protocol. We had operated the civil contingencies

22 arrangements for an extended period during 2018 and

23 2019, in anticipation of the risk of the UK leaving the

24 EU without a deal with Europe, the sort of no-deal

25 Brexit that was talked about, and we had in 2019

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1 Northern Ireland had been invited, there would have been

2 ministers -- sorry, there would have been ministers

3 present supported by officials as well.

4 **Q.** All right. So I think the short answer to that is it

5 would depend on who was going to COBR, and if it was the

6 health minister you would expect him to feed in to COBR;

7 is that right?

8 **A.** Yes.

9 **Q.** He would present the position on behalf of

10 Northern Ireland, and then when the First Minister and

11 the deputy First Minister started to go, I don't think

12 that was until March, you would then expect them to take

13 that role on; is that right?

14 **A.** Yes. I think it's fair to say that the perception from

15 ministers who attended COBR during that period was that

16 they were being advised what UK Government was up to,

17 but there wasn't much two-way transmission of

18 information. I think some ministers have been quoted as

19 saying they felt that their attendance at COBR was often

20 a tick box exercise.

21 **Q.** All right, we'll come back to that, if I may, and

22 address that in the context of some of the evidence and

23 communications with the Cabinet Office. I just wanted

24 to finish, if I may, in terms of the document, on

25 paragraph 41, and that sets out, doesn't it, the role of

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1 commissioned a review of the arrangements, there was

2 a report done by PwC --

3 **Q.** It's been referred to in this Inquiry as "the futures

4 report".

5 **A.** Indeed. There was a recognition in early January that

6 there was a need, as I say, to update our arrangements.

7 That didn't happen for a variety of factors. One was

8 CCPB was short of resource, and I'm happy to talk about

9 the context for that, but also the other factor was the

10 emerging Covid pandemic, which really required us to

11 activate the arrangements and they were not subsequently

12 updated until 2021, and in part I helped to facilitate

13 that by re-directing a senior civil servant from

14 elsewhere in the Executive Office into CCPB in

15 August 2020, Mr Andy Cole, and he over the next year

16 actually did update those arrangements and there are --

17 there's a new protocol in place since, I think,

18 August 2021, and I think I understand that has been

19 further updated in autumn 2023.

20 **Q.** But just going back to the position as it stood in

21 January 2020, that report had made 85 recommendations

22 about civil contingency planning in Northern Ireland,

23 none of which had been acted on by the time the pandemic

24 had started to unfold; is that right?

25 **A.** I -- I'm not sure none of them had been acted upon, but

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1 certainly I would accept that there had been at very
 2 best very limited implementation of those
 3 recommendations.
 4 **Q.** Okay, and I think we will come to, if we don't come to
 5 it with you, but certainly we know that Mr Stewart put
 6 forward a proposal on 25 January --
 7 **A.** He did.
 8 **Q.** -- setting out the need for there to be a review of the
 9 arrangements; is that right?
 10 **A.** That's correct.
 11 **Q.** So notwithstanding there had been that report making
 12 those recommendations, the recommendation in January was
 13 that there be a further review in order to determine how
 14 those arrangements could be improved or made more
 15 robust; is that right?
 16 **A.** Yes. That could make it sound as if Mr Stewart was in
 17 a sense delaying the implementation of the PwC
 18 recommendations, but I think what he meant was there
 19 that the review would make sure that the arrangements
 20 were updated, not necessarily implementing all of the 85
 21 recommendations, because from memory I don't think we
 22 agreed that all of them would be needed in the revised
 23 arrangements.
 24 **Q.** One of the things that he identified in his paper -- and
 25 I'll touch on it now, because you've raised it -- was

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1 **A.** Yes.
 2 **Q.** -- through those arrangements, and it foresaw that the
 3 CCG would be the strategic body that had set the
 4 strategy for the response?
 5 **A.** Yes.
 6 **Q.** But again that could obviously be in advance of any
 7 emergency eventuating; yes?
 8 **A.** Yes, and I think when you're talking about strategy
 9 here, there was probably two elements to that. The most
 10 important strategy, in my view, would have been at that
 11 time the strategy that was being prepared by the
 12 Department of Health to deal with the pandemic, to deal
 13 with the health impacts of the pandemic. What we were
 14 doing in the Executive Office, under Mr Stewart's lead,
 15 was assessing the readiness of departments, and that's
 16 why the impact assessments had been commissioned, and
 17 why the workshop on 6 February was convened. But
 18 I think it's worth recognising that, as we moved on into
 19 March, you know, into the second, third week of March,
 20 and it became increasingly clear just the magnitude of
 21 what we were having to deal with was going to be so much
 22 greater, I recognised that we needed additional resource
 23 just to deal with this, and for that reason I had asked
 24 the permanent secretary of the Department of Justice, if
 25 he could release one of his members of staff,

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1 the need to think about the role of the Executive within
 2 the civil contingency arrangements, and was that because
 3 it was recognised that it wasn't clear what its role and
 4 what the role of the Executive Committee was supposed to
 5 be in an emergency?
 6 **A.** Yes, that's fair comment. The emergencies that I had
 7 been involved in over the years tended to be weather
 8 events, storms, that sort of thing, floods, they tended
 9 to be short in duration, they tended to be events where
 10 it was quite clear who needed to do what and ministerial
 11 involvement was not a significant issue, but clearly the
 12 pandemic was of a completely different order of
 13 magnitude, and our experience in dealing with the first
 14 wave I think did indicate that we needed to be much
 15 clearer about what the role of ministers would be in
 16 similar contingencies in the future.
 17 **Q.** All right. So I'm just going to stop there, and in
 18 terms of where we've reached about the arrangement that
 19 we've just looked at, the protocol, I think you agree
 20 with me it's a document that applies to planning and
 21 response as well?
 22 **A.** Yes.
 23 **Q.** As it sets out that in the case of a threatened
 24 emergency it provides that the TEO will facilitate
 25 multi-agency co-ordination --

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1 Mr Anthony Harbinson, to become the chief of staff for
 2 the hub, and that was in recognition that there was
 3 going to be just too much for Chris Stewart alone to
 4 deal with.
 5 **Q.** Yes.
 6 **A.** And around about the same time I also asked
 7 Dr Andrew McCormick if he would release Ms Karen Pearson
 8 who was leading on our Brexit preparations to also join
 9 the pandemic effort, because she and her team had
 10 particular expertise in risk assessment, in dealing with
 11 cumulative impact assessment, in looking at cross-sector
 12 resilience and planning and co-ordinating around that.
 13 So I moved from the position where there was, in
 14 a sense, Mr Stewart alone in this area to having three
 15 people by the end of the week beginning the 16 March.
 16 **Q.** I just want to be clear about this, if I may, that when
 17 it comes to the -- in terms of this idea that there
 18 needs to be a cross-departmental strategy, that you
 19 didn't consider that that needed to be in place until
 20 18 March?
 21 **A.** No, no, sorry. Sorry if I've misled you. The
 22 preparatory work that was being done, led by Mr Stewart
 23 and CCPB, was in a sense preparing that
 24 cross-departmental strategy, built on the impact
 25 assessments that we had commissioned from departments.

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1 I think my point would be that we did not feel that we
 2 needed to formally activate CCG(NI), to do that
 3 preparatory planning work.

4 **Q.** All right. Well, I'm going to come to the planning in
 5 due course.

6 **A.** Yeah.

7 **Q.** One of the things that happened quite early on, so at
 8 this point in time, in January 2020, was that
 9 Sir Chris Whitty had sent an email, you might be
 10 familiar with it, on 28 January where he set out
 11 essentially two scenarios that he foresaw could play
 12 out. So one of them was China would experience
 13 a widespread break-out but would nonetheless be able to
 14 control it; or the other one, which was the worst-case
 15 scenario, which was that there would be a break-out and
 16 China wouldn't be able to control it. Those were the
 17 binary options as he saw them at that point in time.

18 Can I just ask you how much awareness there was on
 19 the part of the TEO at the end of January that
 20 effectively that's what the UK CMO was seeing as the two
 21 possible courses that the pandemic could take, obviously
 22 the uncontrolled outbreak being the reasonable
 23 worst-case scenario?

24 **A.** I think there was general awareness. Obviously we were
 25 relying in Northern Ireland on advice from the

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1 importance of this letter is over the page, and -- yes.

2 So that was certainly, it appears to be the advice
 3 that was being given by the Department of Health on
 4 6 February, and we see there that the author is saying
 5 she didn't:

6 "... consider it was necessary to activate NICCMA
 7 arrangements at this time unless and until the infection
 8 appears in [Northern Ireland] and impacts are
 9 experienced here."

10 And then goes on to say that the CCPB have oversight
 11 of civil contingencies and if we read down, says that it
 12 would be helpful to consider setting up a multi-agency
 13 meeting.

14 Can I just ask: was that the basis upon which the
 15 TEO was working at that point in time; in other words,
 16 in accordance with this advice, that there wouldn't be
 17 any need or that the civil contingency arrangements
 18 wouldn't need to be set up unless and until the virus
 19 had arrived in Northern Ireland and started to impact?

20 **A.** Yeah, I think as I mentioned earlier, this letter is
 21 significant, but as I mentioned earlier we would have
 22 been in pretty much daily contact with our colleagues in
 23 the Department of Health and we would have been
 24 reviewing things on a regular basis, and we were not
 25 being asked to activate the NICCMA arrangements really

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1 Department of Health, we knew that the Chief Medical
 2 Officer, through his connections with his counterparts
 3 in Great Britain, was keeping abreast of what was going
 4 on. So, you know, it would be through that sort of
 5 arrangement that we would have been being kept aware of
 6 what was happening.

7 Now, I think in my evidence bundle there's a note
 8 that I sent to the permanent secretary of the Department
 9 of Health on 6 February, I had been to a meeting in
 10 London of --

11 **Q.** I'm going to stop you, I'm going to come to that in
 12 a moment.

13 **A.** Okay.

14 **Q.** Because we're moving on in a bit, aren't we, to
 15 5 February and I do want to ask you about that.

16 Before I do, though, I did just want to ask you
 17 about a communication that comes around about that time.
 18 If I could ask for this to be put on screen, please,
 19 it's INQ000218470.

20 Have you seen this, I think you might have?

21 **A.** I have, yes, I am familiar with the letter.

22 **Q.** So we know that it's from the Director of Population
 23 Health, we see that at the very top left-hand corner, of
 24 the Department of Health. If we, just so obviously
 25 setting out about sector resilience, but I think the

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1 until March. So, you know, the letter is significant,
 2 but it needs to be seen in a context where there was
 3 active and ongoing engagement pretty much on a daily
 4 basis.

5 **Q.** We've just seen from the protocol obviously you didn't
 6 need to wait for the Department of Health to ask for
 7 civil contingency arrangements to be stood up.

8 **A.** Yeah. Sorry, I think a point I want to make here is
 9 some people are maybe thinking that because we didn't
 10 activate the NICCMA arrangements nothing was going on.
 11 That is not the case. There was a lot of preparatory
 12 and planning work going on. It's quite a big step to
 13 activate CCG and establish the hub, it requires the
 14 redirection of a lot of resource. That resource at the
 15 time was in departments and in the Executive Office, and
 16 it was working on the preparatory stage of dealing with
 17 all of this.

18 When we did actually activate the hub on 18 March,
 19 and begin the daily CCG meetings, again, as I say, that
 20 was a significant step. It required quite a lot of
 21 effort to support that. I did concede earlier that it
 22 would probably have been prudent to have maybe done it
 23 a few days earlier, but I'm talking a few days, not
 24 a few weeks, and I think I would make the point as well
 25 that the Chief Medical Officer didn't ask us to activate

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1 NICCMA until, I think it was, the end of the week
2 beginning 9 March. So somewhere around 14/15 March.

3 **Q.** So can you help me, then, when all of this preparation
4 was going on in, say, January and February, who had
5 oversight of all of the different plans that were going
6 on in departments, and who was pulling those together to
7 make sure that they were intersecting with each other?

8 **A.** Well, Mr Stewart in CCPB would have been co-ordinating
9 the work that was being commissioned from departments,
10 but we would have been, at that stage, relying on
11 departments, you know, in a sense preparing the plans
12 that they needed. So, for example, as it became clear
13 that we might be looking at a scenario where our schools
14 would be closed, it was the permanent secretary in the
15 Department of Education that was leading on that, and
16 that was quite appropriate because the permanent
17 secretary in the Department of Education is best placed
18 to prepare the plans that deal with the consequences of
19 schools being closed.

20 Similarly, the permanent secretary in the Department
21 for Infrastructure was best placed to deal with the
22 plans that would be necessary to ensure that public
23 transport continued, that our water and sewerage
24 services continued to be delivered, and that our ports
25 and airports continued to function.

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1 moment.

2 **Q.** 20 February for an official one.

3 **A.** Yeah.

4 **Q.** I think it's 12 March for a ministerial one.

5 **A.** Yes, sorry, that's right, 20 February. But the daily
6 CCGs began on 18 March.

7 **Q.** Yes.

8 **A.** And it was at that stage that we were getting the daily
9 reports on the management of impacts across all
10 departments, and indeed local authorities, the blue
11 light services, et cetera.

12 **Q.** And can you just help me, in terms of the planning that
13 you've referred to that was going on, whilst there were
14 no civil contingency arrangements, when do you say that
15 planning actually started in earnest in departments?

16 **A.** Well, the impact assessments were commissioned, I think,
17 around the end of February, beginning of March, and
18 there was the workshop on 6 February, but I think the
19 other point I would want to make is this was an
20 intensely fast-moving period. You know, out of
21 42 years' service, I cannot remember as demanding or
22 challenging a period in my career as those two or
23 three weeks. And when you think about it, we were
24 planning for something that was changing on a daily
25 basis. I don't think any of us had certainty that we

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1 The Department for Communities had a clear
2 responsibility in terms of looking after the interests
3 of vulnerable people.

4 What we were doing at the centre was, in a sense,
5 co-ordinating that work, but we did not have the
6 expertise, nor were we in a position to sort of
7 second-guess, if you like, how credible the plans being
8 drawn up in departments were.

9 **Q.** But I think the answer to my question, who has over all
10 of the plans and who understands how they intersect with
11 each other, I think the answer to that, then, is no one
12 had that role?

13 **A.** Well, Mr Stewart is here tomorrow but certainly I think
14 he was the person who would most closely have had that
15 role, and I would accept, as the later chair of Civil
16 Contingencies Group, I had an overarching responsibility
17 to make sure that the co-ordination of effort across all
18 departments was being managed efficiently and, in
19 a sense, that's what CCG(NI) was doing in conjunction
20 with the hub.

21 **Q.** I think we've agreed that there wasn't a meeting of that
22 until 20 February. That was the first meeting of the
23 CCG.

24 **A.** Was it? I thought it might have been the 18th. I stand
25 to be corrected. My head is full of dates at the

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1 would go into a full "everyone must stay at home"
2 lockdown until that was announced by the Prime Minister
3 on the Monday 23 March. So up to that point the plans
4 we were preparing would not necessarily have anticipated
5 the type of lockdown that we were actually dealing with.

6 So it may sound as if I'm being evasive here, but we
7 were trying to work in a very fast-moving environment,
8 where things were changing rapidly on a daily basis.
9 Plans that we would have produced at the end of February
10 would have been on the basis of a pandemic flu, not the
11 coronavirus that we had to deal with, as it emerged.

12 **Q.** We'll look at some of the material --

13 **A.** Yes.

14 **Q.** -- that was sent during that --

15 **LADY HALLETT:** Can I just interrupt for a second? I'm
16 sorry. The passage that's still up on the screen,
17 Sir David, as a principle it just -- I'm not experienced
18 in running these matters, obviously, but the principle
19 of activating the NICCMA arrangements, ie arrangements
20 to deal with a catastrophic event, the principle of
21 waiting until that event has arrived in Northern Ireland
22 seems a little late to me.

23 **A.** I'm probably not explaining myself sufficiently --

24 **LADY HALLETT:** Maybe it's the writer of this letter I should
25 be asking, but you don't seem to have disagreed with the

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1 writer of this letter that it wasn't "necessary to
2 activate the NICCMA arrangements ... unless or until the
3 infection arrived in [Northern Ireland]". Isn't that
4 a bit late?
5 **A.** When you're dealing with a catastrophic event of this
6 nature, again we still have the prepare, respond,
7 recover phases, and you activate NICCMA when you move
8 into the respond, but the respond phase, in our
9 judgement, really couldn't kick in much before the
10 second week in March.

11 Now, it's for the Inquiry to conclude whether we
12 were right in that assessment, but that was our
13 judgement at the time. I have conceded -- excuse me.

14 **LADY HALLETT:** The few days earlier.

15 **A.** I have conceded that we probably should have done it
16 a few days earlier, I think I've conceded elsewhere that
17 in early January/February we weren't as prepared as we
18 ought to have been. I acknowledge that.

19 **LADY HALLETT:** Sorry to interrupt.

20 **MS DOBBIN:** I'm grateful.

21 Sir David, I'm going to come to the point you were
22 just making, because you've noted that in your bundle
23 there was the message that you sent on 5 February.
24 I think you'd been at a meeting in London, and what you
25 recorded at the time was that the UK CMO had said, at
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1 that was based on a presumption or an assumption that
2 the transmission of the virus would lag by maybe,
3 I think, up to two weeks between it coming to
4 Northern Ireland. So that didn't create any
5 complacency, but it did mean that we, I think,
6 recognised that we might have a little bit more time
7 just to do the things that would need to be done.
8 **Q.** I think you've also got in your bundle a message that
9 Dominic Cummings sent as well, I think at around exactly
10 the same time, referring to the fact the Chief Scientist
11 had told him it's probably out of control now and will
12 sweep the world and I think someone else in that
13 message, which you will have seen, said the COBR meeting
14 was I think clear that China is probably losing it.

15 So again just to be clear, I think that you're
16 saying that that was again your understanding at the
17 time that you wrote your message --

18 **A.** Yes.

19 **Q.** -- that that was the direction of travel --

20 **A.** Yes.

21 **Q.** -- and obviously that this was becoming extremely
22 serious?

23 **A.** Yes.

24 **Q.** Just, if we may then -- sorry, forgive me, Sir David.

25 If we could just go then to the meeting that had
123

1 the meeting that you were at, that the Chinese
2 government hadn't got to grips with it, the Covid-19,
3 and that it would almost certainly become a global
4 pandemic.

5 I think we know there are a clutch of messages at
6 around that time that all speak to that, I think, penny
7 having dropped that the situation was quite as serious
8 as it was.

9 Is that right as far as you are concerned, that that
10 was a moment of importance?

11 **A.** Yes. And as we moved through February into March, there
12 was more and more information which was alerting us to
13 the gravity of the situation.

14 But a point I think I need to make here is: we were
15 taking our lead from the UK Government, and I think it
16 was reasonable for us to do that. Northern Ireland is
17 a population of 1.9 million people, we're a small
18 regional administration. I think I -- acknowledged
19 yesterday, a comparison was, you know, we're smaller
20 than Greater Manchester. I think we had every right to
21 put our faith in the UK Government's ability to plan and
22 manage this crisis, given the scientific and other
23 resources they had available to them.

24 So we in a sense were looking what they were doing,
25 and again the Chief Medical Officer was building advice
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1 taken place on 30 January, so it's slightly before that
2 information came to you. This is the meeting that
3 Ms Bernie Rooney had noted. I think we've got that at
4 INQ000232515. Again, Sir David, I think you've seen
5 this.

6 **A.** Yes.

7 **Q.** We see it's addressed to the First Minister and the
8 deputy First Minister. Would that have been -- would
9 you have seen that at the time, if it's addressed to
10 them?

11 **A.** I think I was on the copy list for that.

12 **Q.** All right. As we can see, this relates to the COBR
13 meeting which had taken place on 29 January, and if we
14 could just go over the page, please -- forgive me,
15 that's the wrong one. It's the one that ends 56166.
16 Sorry, forgive me.

17 **(Pause)**

18 Sir David, just quickly, this is linked to what I'm
19 going to ask you about. This CRIP was referred to in
20 Ms Rooney's note, which I will take you to, but can
21 I just check: at the time that you were receiving
22 updates from COBR, were you receiving or were you seeing
23 the documents that sat alongside them, so in other words
24 these information pictures?

25 **A.** I'm not sure that I would have seen every CRIP that was
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1 produced, but I was getting a daily sit rep from the
2 Cabinet Office, the civil contingencies unit in the
3 Cabinet Office. As I say, I got that first thing every
4 morning. I can't remember exactly when it started but
5 it would have been around about this time.

6 **Q.** All right, and I'm going to see if I can bring up the
7 correct document for you. Sorry, I haven't got anyone
8 sitting beside me to check.

9 **LADY HALLETT:** You said it was the one ending 56166?

10 **MS DOBBIN:** Which I think is this, and I think the one
11 that's 2515 has already been brought up.

12 (Pause)

13 My Lady, will you forgive me a second? There's two
14 memos of the same date so I just want to make sure I've
15 got the right one.

16 Could I just check what page 2 of that one is,
17 please?

18 **LADY HALLETT:** It certainly says "provide an update on COBR
19 the day before".

20 **MS DOBBIN:** Can we try page 3 of it? There we go. It was
21 the right one, INQ000232515.

22 So if we just look at this, Sir David, this we can
23 see is the update that Ms Rooney prepared, and you can
24 see from the background that she set out what had --
25 that there had been that meeting on 29 January, and if
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1 your understanding was -- or what you understood by the
2 reasonable worst-case scenario at that stage. In other
3 words, did you fully -- or did you appreciate that that
4 meant an uncontrolled outbreak stretching beyond China
5 and into other countries?

6 **A.** Yes, I think that was something that we were
7 increasingly coming to recognise from that point
8 onwards.

9 **Q.** What part did TEO play, then, in terms of the planning
10 for the reasonable worst-case scenario at this point?

11 **A.** Well, again, given that this was a health pandemic, we
12 would have been relying on the Department of Health as
13 lead government department to prepare the plans to deal
14 with the health impacts of the -- you know, what again
15 was ... I forgot the words you used there, but the
16 reasonable worst-case scenario that was being developed
17 in London.

18 **Q.** So, again, is the answer to that that that would have
19 been seen purely as a health matter at that point in
20 time and not something that required the sort of
21 cross-departmental approach foreseen by --

22 **A.** I wouldn't want me saying that, you know, we would be
23 looking to the Department of Health as lead government
24 department, I wouldn't want that to be seen as us
25 sort of washing our hands of having any responsibility.
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1 we just go to paragraph 4, please, so she set out what
2 the current situation was, having regard to that
3 meeting, and refers to the fact that it was -- and we
4 see that at the first subparagraph -- spreading
5 throughout China and globally. She referred to it being
6 asymptomatic, and the vulnerability in terms of older
7 people and those with an underlying illness.

8 If we just go over the page, please, again, she set
9 out -- and we go to paragraph 7 -- the planning
10 assumptions, and we see there reference to all devolved
11 administrations reviewing their reasonable worst-case
12 scenario pandemic plans for preparedness.

13 If we could just go to the next page as well,
14 please, and I think there should be a page after that as
15 well. And again. And if we see on this page, she's
16 setting out the agreed actions.

17 Again, if we see paragraph 1, it's the next section,
18 please, at the bottom of the page, paragraph 1, so we
19 see there, Sir David:

20 "... increased planning for a reasonable worst case
21 scenario, using the ... pandemic flu assumptions as
22 a starting point, with the ... information that the
23 elderly and those with existing health conditions will
24 be disproportionately affected."

25 Again, can I just ask, then, at that point, whether
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1 What I think I'm saying is that we would have been
2 looking to the Department of Health to provide advice on
3 how they were going to deal with the pandemic and also
4 to, you know, provide advice to us on what other
5 departments would need to do as well.

6 **Q.** Can we go to the next document, please, and this is --
7 **A.** Sorry, and saying that, what other department --
8 you know, the issues that would face other departments,
9 if you like. I'm not trying to suggest that the
10 Department of Health had a particular responsibility
11 that extended beyond their own department. But clearly
12 their knowledge and understanding of the characteristics
13 of the virus were going to be very important to all
14 departments.

15 **Q.** Can we just look, then, please, at another document,
16 this is INQ000309096.

17 We've moved on now to 17 February, and if you see
18 the second paragraph, Sir David, this sets out that:

19 "[The Department of Health] remains in the lead and
20 has staffed up their DOC ... however there is now a need
21 to make preparations for a wider response involving
22 Departments and other key stakeholders."

23 Then as we read on down, there's some reference to
24 some of the figures around planning.

25 If we look at the third paragraph as well, at the
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1 bottom line.

2 So, again, as well, this seems to be a communication
3 at this point in time suggesting that the sort of
4 arrangements foreseen in the protocol needed to start or
5 needed to kick in at this point. Do you agree?

6 **A.** Yes. Although it's interesting that the RWCS at that
7 time still envisaged an absentee rate of 17% to 20%,
8 which would have been consistent with what we would have
9 expected in a pandemic flu. So the point I think is
10 that it was later than this that we -- sorry, at this
11 stage it still wasn't clear just how difficult the Covid
12 virus was going to be to manage.

13 **Q.** I think, though, if we look at a document that bears the
14 same date, and this is INQ000398434, this is a document
15 that you refer to in your witness statement at
16 paragraph 117, so this is a script for the reasonable
17 worst-case scenario, and it sets out -- it's the second
18 substantive paragraph, not in the box -- about the
19 contingency planning being based on the knowledge
20 that ... so we can see there, for example, reference to
21 the doubling rate, that sustained human-to-human
22 transmission couldn't be ruled out, the fact that there
23 was no vaccine.

24 Then if we go down to "The Government" -- and this
25 is in the last paragraph, please -- so we see there
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1 provided to you, that notwithstanding that it's making
2 clear what the potential fatality rate could be, and
3 notwithstanding your own understanding and awareness
4 that the virus had spread beyond China, and there was no
5 question of that, that you didn't foresee or did not
6 think that this was a realistic prospect or that it
7 was --

8 **A.** No, no. No, I'm not saying that at all, and I'm not in
9 a sense -- not in any sense playing down the
10 significance of this. I think all I'm saying is that we
11 would still have been looking, I suppose, at the highest
12 level, to UK Government to see what they would have been
13 doing in terms of planning for this, and then obviously
14 we would have recognised that our own Department of
15 Health was working in conjunction with UK Government or
16 would have been getting an understanding of what might
17 be necessary to actually deal with the -- respond to the
18 pandemic in that regard.

19 We did have, on 3 March, the UK Government's
20 *Coronavirus: action plan*, and it did talk about the
21 sort of contain and delay phases. So at this stage we
22 were still in the contain phase, where the, you know,
23 management of the virus would have been through contact
24 testing and tracing and that sort of thing.

25 I think we didn't have the first case in
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1 a reference to "80% of the population", so that refers,
2 I think, to the figure you've just referred to, the flu
3 plan.

4 But then if we go over the page, and if we go to
5 paragraph 4, we see there reference then, at the end of
6 that paragraph, to the fatality rate being 2% to 3% in
7 terms of cases. Yes?

8 **A.** Yes.

9 **Q.** So as I understand your evidence and your witness
10 statement, that document was provided to you or to the
11 TEO on 17 February?

12 **A.** Yes, yes.

13 **Q.** So again, obviously, the picture that is being presented
14 here is one -- it's making absolutely clear, isn't it,
15 what the case fatality rate --

16 **A.** Well, that is the reasonable worst-case scenario --

17 **Q.** Yes.

18 **A.** -- which of course isn't a forecast.

19 **Q.** No.

20 **A.** It's the worst-case scenario. So we would have been --
21 again, we were aware of that, but we would still have
22 been looking to the Department of Health to, in a sense,
23 advise what the implications of that were for us in
24 Northern Ireland.

25 **Q.** So are you saying, then, at the time this was being
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1 Northern Ireland until 27 February. So we were looking
2 at this in the context of what was actually happening.
3 Knowing what we know now, should we have been doing
4 more? I'm happy to accept that perhaps we should have
5 been doing. But in the context we were in at the time,
6 you know, I wasn't being pressed to do anything more
7 than we were actually doing at that time.

8 **Q.** I think you've gotten straight to the heart of the
9 matter, which is why this doesn't appear, in
10 Northern Ireland, to have prompted any greater sense of
11 urgency or galvanised any more central government
12 planning in response to this.

13 **A.** No, I would probably have to accept that, yes, at that
14 particular time, which -- this was mid-February, yes --

15 **Q.** 17 February.

16 **A.** Yeah. I would accept that that didn't prompt us in the
17 Executive Office to do anything more.

18 Now, having said that, the -- Mr Stewart and the
19 CCPB team were working hard on the sectoral resilience
20 issue, which has been mentioned before, and certainly
21 Mr Stewart has advised me -- and I've no reason to doubt
22 him -- that by early March that sort of 18-month lag
23 that we had in sectoral resilience preparation had been
24 caught up. So it's not as if nothing was being done at
25 this stage.
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1 Q. You have referred to the fact that obviously at this
 2 stage something like test and trace would have been the
 3 most important part of responding. How much insight or
 4 understanding was there, though, at the centre of
 5 government of Northern Ireland about the sort of
 6 capability that there even was at this point in time in
 7 order to be able to do that?

8 A. I'm not sure on 17 February we would have had a clear
 9 understanding of how much test and trace contact tracing
 10 capability we had, nor how much would actually have been
 11 needed at that stage. But I think I would have to defer
 12 to Department of Health colleagues to just confirm what
 13 the position was at that time. Obviously this was a new
 14 virus, and testing capability was, from my perspective,
 15 from my memory, at that stage was uncertain.

16 Q. I think it's right that there's no, certainly no sense,
 17 and we don't see any reference as such in the notes of
 18 the Executive Committee having any sort of role at this
 19 point in time in terms of overseeing what was being
 20 done, for example, in the Department of Health in order
 21 to prepare for this reasonable worst-case scenario
 22 eventuating.

23 A. No, and I think the expectation would be that the
 24 Department of Health was in the best position to manage
 25 this aspect of the emerging pandemic. You know, we in
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1 undertaken at pace.
 2 I will come back and ask you about that, but there
 3 being, as it were, a number of calls for information in
 4 return, yes?

5 A. Yes.

6 Q. Then at 6:
 7 "It is now essential that appropriate preparations
 8 for civil contingency arrangements are formally
 9 established ..."
 10 Correct?

11 A. Yes.

12 Q. So that's by 27 February, but again we still don't see
 13 a response to that, because we know that the emergency
 14 arrangements still aren't set up for another couple
 15 of weeks. So why, with all of this information that was
 16 accumulating at this point in time in February, why is
 17 there still not any response in terms of the central
 18 civil contingencies arrangements being set up?

19 A. I'm perhaps not explaining myself well enough, but our
 20 view at the time was that setting up the hub,
 21 establishing the hub and the Civil Contingencies Group
 22 regular meetings was something that would not need to be
 23 done until we moved further into the response phase. We
 24 were still at the planning phase. We'd only had the
 25 first case in Northern Ireland on 27 February. So, as
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1 the Executive Office wouldn't have been in a position to
 2 sort of second-guess what the department was doing.
 3 I certainly had complete confidence in the Chief Medical
 4 Officer, I knew the permanent secretary and the minister
 5 as well, I thought they were a good team, and again
 6 I thought it was reasonable at the time to place
 7 reliance on their ability to actually deal with the
 8 crisis as we knew it at that time.

9 Q. If we could go, please, I think this is the document at
 10 around the same time, this is dated 27 February, it's
 11 INQ000274690. This is sent to you from the Civil
 12 Contingencies branch. On the first page, the second
 13 paragraph is:
 14 "Note plans for the activation of the NI hub and the
 15 operations room ..."
 16 Then if we go over the page to paragraph 3, we see
 17 reference here to being asked to draw up plans for the
 18 reasonable worst-case scenario, drawing on existing
 19 assumptions and emerging scientific advice in relation
 20 to the virus causing Covid-19.
 21 Then I think we see, over the page, please, at
 22 paragraph 5, and if you just look at that, Sir David,
 23 reference to Covid-19 becoming more widespread, more
 24 impacts beginning to emerge, potential cumulative impact
 25 becoming more complex, preparedness work being
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1 I say, I look to the Inquiry to conclude whether what we
 2 did was sufficient in the circumstances. All I'm doing
 3 is explaining that, as we saw it at that time, there
 4 wasn't a need to put in place the response mechanisms at
 5 that particular time. And again I'm not trying to duck
 6 any responsibility here, but we were not being asked to
 7 do so by the Department of Health for another couple
 8 of weeks.

9 Q. If we could just ask on that, if we could look, please,
 10 at INQ000317435. If we could go to page 2 of that,
 11 please. In fact, we may, just to put it in context,
 12 need to go over the page as well.
 13 So we can see here we've reached 4 March, there had
 14 been a COBR, and we see, the third line down from
 15 Ms Rooney, that Minister Swann and Dr McBride were going
 16 to contact you:
 17 "... to request ramping up the NI Hub to support the
 18 Executive!"
 19 If we go over the page, and if we go to page 2,
 20 please, we can see the message from Mr Stewart back to
 21 her:
 22 "Don't worry ... One can only advise, others must
 23 decide."
 24 If we can go to the first page in that, please.
 25 So this was your response to what was being sought
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1 by the health minister about ramping up the
2 arrangements.
3 "We'll need to be smart about how we respond to
4 this. A flat 'no' ... will get back to [the First
5 Minister] and [deputy First Minister] and be received
6 badly."
7 What was the reluctance on your part at this stage
8 in the face of that request from them off the back of
9 COBR to setting up the arrangements?
10 **A.** I think the message I was getting was that what we were
11 being asked to do was to set up something that would
12 deal with calls that were coming in from businesses,
13 et cetera, for advice. And I think our conclusion, it's
14 somewhere else, is that there are other ways in which we
15 could deal with that, using NI Direct, NI Business Info,
16 et cetera, and that we should look at that.
17 So I didn't read this as the minister of health and
18 the CMO calling for the NICCMA arrangements to be
19 activated in full at that time, and certainly I wasn't
20 contacted in that sense either.
21 **Q.** Well, it does say in terms they're going to contact
22 David Sterling to request ramping up of the NI hub --
23 **A.** Yes.
24 **Q.** -- to support the Executive.
25 **A.** Yeah.

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1 pick up on something that you did mention, which was the
2 UK-wide *Coronavirus: action plan*.
3 You mentioned that just a short time ago.
4 **A.** Yes.
5 **Q.** Can I ask you some questions about that. In
6 paragraph 130 of your witness statement, you suggested
7 that it was around the time -- and I think you confirmed
8 at the very start of your evidence -- that it was now
9 becoming obvious that there would be important
10 differences between preparing for Covid-19 and preparing
11 for a pandemic flu plan.
12 **A.** Yes.
13 **Q.** Is that notwithstanding the information that had been
14 sent to you on 17 February, for example, about the case
15 fatality rate and about the reasonable worst-case
16 scenario? Were you still working at basis at the end of
17 March -- sorry, at the start of March, that in fact it
18 was the flu pandemic plans --
19 **A.** I think by --
20 **Q.** -- that were relevant, and that this would look
21 something like a flu pandemic?
22 **A.** By the beginning of March, I think we had recognised
23 that this was going to be more serious than a flu
24 pandemic, but we hadn't, I think, fully appreciated
25 exactly what would be required in response to that. And

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1 **Q.** And I think, by her exclamation mark, that was regarded
2 as quite a big thing?
3 **LADY HALLETT:** I think the exclamation marks come at
4 virtually every sentence, to be fair.
5 **A.** Yes.
6 **MS DOBBIN:** So, in other words, it is very specific about
7 setting, it's a specific email about setting up the hub,
8 it doesn't seem to be about setting up business lines
9 or -- I mean, obviously the hub plays a very different
10 role.
11 **A.** Yes. Well, look, you know, I ... as I say, I didn't
12 respond to this. I didn't consider that we needed to
13 set up the hub just exactly at that stage, and there
14 wasn't actually a -- like a formal communication from
15 the CMO for another week or so after that in that
16 regard. So perhaps I should have checked with the CMO
17 at this stage exactly what it was that was meant, but
18 I think I -- and again, I would say this was at a period
19 of time where things were moving very quickly, and
20 I can't remember exactly what I did in response to every
21 email, et cetera, that I was getting at that time, but
22 I may well have concluded that, look, the CMO's going to
23 get in touch with me, and he didn't do so.
24 **Q.** All right, and we will come back to some more of the
25 communications at around this time, I just wanted to

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1 again, we would have been looking to UK Government for
2 a steer on what actions were appropriate.
3 You know, if you roll forward a couple of weeks, we
4 went into full lockdown. My view is that
5 Northern Ireland could not have moved into a lockdown
6 before the UK did, for a variety of reasons. So we were
7 always going to take our lead from what was happening in
8 London.
9 **Q.** Just on that, then, can we look at the communications --
10 **A.** Yes.
11 **Q.** -- that you were being sent by Cabinet Office at this
12 time, then.
13 If we go to INQ000309229, and if we could go to
14 page 9, please.
15 I think you're probably familiar with this,
16 Sir David.
17 **A.** Yes.
18 **Q.** This is the email that was sent, and it's the second
19 email in a series that was sent around this time. I'm
20 just going to use it because it's the easiest way in.
21 It was the email that asked all government
22 departments and the devolved administrations to send
23 back a return, and it set out what it wanted each to
24 consider, paragraphs 1, 2 and 3.
25 **A.** Yes.

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1 Q. I won't read out all of it, but obviously it's set out,
2 we can see in the paragraphs below, it wanted
3 information on what the impact of those measures would
4 be, and had asked whether or not there would be regional
5 impacts, and at the very bottom it said:

6 "Are there specific implications for devolved policy
7 areas and the Devolved Administrations?"

8 I think if we then go to page 6, we can see, just at
9 the bottom, we can go on to see the rest of this over
10 the page -- thank you -- we can see the reaction from
11 Mr Stewart, and I think Derek and Tracy is a reference
12 to two permanent secretaries; correct?

13 A. That's correct, yes, education and communities, yeah.

14 Q. He starts:

15 "Brace yourselves."

16 So obviously this wasn't something that he was
17 expecting; correct?

18 A. Well, he was I think recognising this was going to be
19 a challenge for the two departments.

20 Q. And if we can just work our way up this email chain,
21 please, we see that there's a reply from Mr Baker, if we
22 could just go slightly further up, please, so what he
23 says, and we can see he replies at around 6.30 that
24 evening, that it would be impossible for him to answer
25 any of those questions from the perspective of the

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1 probably a few weeks behind.

2 So can I just ask you, please, about this. This
3 obviously indicates that notwithstanding it's
4 a Cabinet Office communication to the TEO seeking
5 a response on the issues that it had set out in terms of
6 potential non-pharmaceutical interventions and asking
7 for information about their possible impact, it's the
8 CMO who intervenes to say that Northern Ireland couldn't
9 respond, and I think in fact it's right that that wasn't
10 responded to for that reason?

11 A. Not immediately, I think we did put a response in, but
12 it was two or three days late.

13 Q. I think eventually you respond on 9 March --

14 A. Yes.

15 Q. -- to this, but just focusing on that, it's the CMO who
16 effectively says "We shouldn't be replying to this";
17 correct?

18 A. That's -- yes.

19 Q. Was it right that there was simply no capability in
20 Northern Ireland to responding to this, or was the fact
21 that you were able to respond within a few days
22 an indication that in fact you could?

23 A. Well, the fact is that we did respond. I'm not sure, in
24 this particular instance, I would have agreed exactly
25 with what the CMO is saying here. It's rare that

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1 Department of Education. In fact he goes on to say that
2 the questions are unanswerable as far as the Department
3 of Education is concerned.

4 If we can just go up a bit more, I think he provides
5 some more information, and if we could just scroll up,
6 and to the next bit of the chain, please, thank you, and
7 just so that we can see the start of that email, please,
8 that starts "It is a matter of fact".

9 So we see then that the CMO replies to this email;
10 correct?

11 A. Yes.

12 Q. And we see that he indicates in the second paragraph
13 that there wasn't the modelling capability to replicate
14 and provide such granularity. We see at the third
15 paragraph he says that the timeframes are unrealistic,
16 that it wasn't possible to provide any meaningful
17 analysis, he didn't know why that was regarded as
18 a "must do", that it was a marathon and not a sprint.

19 At the next paragraph we see that he refers to the
20 fact that this is on the back of what had happened or
21 what was happening in England; correct?

22 Then at the next paragraph, he refers to the fact
23 that there was evidence of deeply troubling and
24 significant community transmission in the
25 Republic of Ireland, but that Northern Ireland was

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1 I would disagree with the CMO, but in a sense
2 I understand where he's coming from, in that this was
3 an impossibly short deadline and we probably didn't have
4 the data analysis capability that ideally we would like
5 to have had. So I understand those points, but clearly
6 we were in a position to provide a response, albeit on
7 the 9th rather than the 7th, I think, was the requested
8 date.

9 Q. I won't take you to it now, but there are a series of
10 messages about this, because I think you were contacted
11 by Mr Stewart to say "We're being pressed for this
12 information" and that it was a choice between annoying
13 the Cabinet Office or annoying the CMO, to which you
14 replied "My advice would be to annoy the Cabinet Office
15 rather than the CMO, and you can hold me to that".

16 That rather suggests that, when it came to the CMO,
17 that the relationship was such that there was -- that
18 not incurring his annoyance was the most important thing
19 at this point --

20 A. Yeah.

21 Q. -- will you help a bit with that?

22 A. I wouldn't want to override the particular point I was
23 making here. Again, when you see something like that in
24 a room like this, you do quite rightly raise eyebrows,
25 but I would say that in the context we were working at

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1 at the time, I actually don't remember writing that now,
2 but I clearly did write it, it was an instantaneous
3 response to something that came across my desk and, as
4 I say, I wouldn't read too much into it. The reality
5 is, even if the CMO hadn't intervened there, I doubt we
6 would have been able to provide a response on the 7th as
7 requested. I think we were only being given one day's
8 notice or something like that. So set aside what I said
9 about not annoying the CMO, and we did get a response
10 in, as I say, albeit a couple of days late.

11 **Q.** There is another chain in this email. I don't know if
12 we have time to go to it before the break?

13 **LADY HALLETT:** Up to you, whatever suits you.

14 **MS DOBBIN:** Let's see if we can get through this before the
15 break.

16 **A.** Sure.

17 **Q.** If we go to INQ000398439, I think so -- what we see is
18 that there is pressure being applied by the
19 Cabinet Office that this response was three hours
20 overdue and they hadn't had it. I mean, that obviously
21 suggests that there was an urgency on the part of the
22 Cabinet Office and that this was regarded as important
23 information.

24 **A.** Yes, and I never like to miss a deadline, but it
25 happens, and, you know, I regret that, but it wouldn't

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1 **Q.** First paragraph.

2 **A.** I had jumped ahead.

3 (Pause)

4 Yes.

5 **Q.** So in other words the advice as at 8 March was
6 Northern Ireland was still in the contain phase;
7 correct?

8 **A.** Yes, and my recollection is UK Government moved from
9 contain to delay on 12 March.

10 **Q.** Then at paragraph 3:

11 "Cabinet Office request for Impacts and Mitigations
12 analysis ... the CMO has advised that there is no
13 particular need for this work to be completed ...
14 impossible to produce ..."

15 And then you point to the fact that there was
16 a "need to mend fences" with the Cabinet Office.

17 Then the fear that that was going to come to the
18 First Minister and the deputy First Minister that that
19 hadn't been replied to.

20 **LADY HALLETT:** I'm sorry, Sir David, I'm not following how
21 yours can be the blue, forgive me. It's an email from
22 you to Mr Stewart?

23 **A.** Yes.

24 **LADY HALLETT:** 8 March, 12.55.

25 **A.** He has replied to me by annotating my email with red

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1 have been the only deadline that we missed, as I say, we
2 were being asked to move at unbelievably rapid pace on
3 a whole range of areas at that time.

4 **Q.** Forgive me, it wasn't that the CMO was saying "Delay,
5 respond -- you know, we need a few days", he was
6 advising at this point in time "We can't respond, we
7 just don't have this data". I mean, what he says in
8 that email is "Well, wait for the next SAGE update", so
9 it's not a question of being a bit late, it's a question
10 of not responding because you've been advised.

11 **A.** Yeah, well, I can't remember exactly what it is we
12 responded with, but we would have responded to the best
13 of our ability with the information we had at that time.

14 **Q.** Could we please just go up in the chain of this email,
15 please, and up again, please, and up again, so that we
16 get to the start of it. So we can see this is an email
17 from you on 8 March, and I think that your responses are
18 set out in red; is that right?

19 **A.** No, mine is the blue, the red responses are Mr Stewart.

20 **Q.** I see. So what we can see from here in terms of what
21 the advice was and the basis upon which you were working
22 at that time, we can see very clearly that as of 8 March
23 his advice was, and we see that at the second line: "we
24 should not move to Delay here immediately". Yes?

25 **A.** Sorry, the second line of the first --

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1 comments.

2 **LADY HALLETT:** Yes, that's what I initially thought you
3 meant -- sorry to interrupt you -- but if you look at
4 the top, the heading is from you. Wouldn't it be from
5 her to you if she had annotated it?

6 **A.** No, sorry, it's from --

7 **LADY HALLETT:** It looks as if you've annotated it, doesn't
8 it?

9 **A.** It's from me to Chris Stewart, who's male, and then --
10 so my -- I'm colour blind, just in case I get this
11 wrong.

12 **LADY HALLETT:** Oh, that's going to help a lot!

13 **MS DOBBIN:** I think if we scroll up as well, I think we can
14 see the point, Sir David --

15 **LADY HALLETT:** Oh, so you're entirely happy --

16 **MS DOBBIN:** Yes --

17 **LADY HALLETT:** Forget what I said, I've obviously entered
18 into dangerous territory, especially colour blindness.

19 **MS DOBBIN:** So just looking at paragraph 4, then,
20 Sir David --

21 **A.** Yes.

22 **Q.** -- I think we're moving on to a slightly different
23 point, there was an issue at this point in time with
24 travel to Italy, I don't know if you recollect that?

25 **A.** Yes.

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1 Q. But there was concern because people were still able to
2 travel back from Italy into Northern Ireland, and
3 I think that it's right that I think certainly the
4 deputy First Minister was concerned about that.

5 A. Yes.

6 Q. And I think in fact Mr Baker of the Department of
7 Education was also concerned about that as well.

8 But we see reference in this part of the reply to
9 the fact that Minister Swann had asked for the hub to be
10 set up for centralised decision-making as well, and that
11 it was still being explained at this point, on 8 March,
12 that stand-up would be premature. Is that right?

13 A. Yes, that's Chris Stewart's comment, yes.

14 Q. But correct that Minister Swann was asking for the hub
15 to be stood up, and it remained Mr Stewart's advice on
16 8 March that there wasn't -- that that would be
17 premature?

18 A. Yes, he -- Chris Stewart is saying that Derek Baker from
19 education approached him indicating he had already ...
20 yeah. Yep. Yeah. Yes, sorry, I don't think I've
21 anything to add to it, yes.

22 Q. The point is it's 8 March, Sir David.

23 A. Yes.

24 Q. Covid-19 was obviously well and truly in
25 Northern Ireland, and yet at this stage there's still

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1 me to conclude if it had been a really big issue for
2 them they would have come to me directly.

3 Q. All right. I don't want to lead you into a mistake.
4 I'm afraid I also have very, very bad eyesight. It may
5 be that that line is slightly ambiguous, that it's
6 either Robin Swann or Mr Baker, the permanent
7 secretary --

8 A. Well, I think it is, and I think it is actually
9 Mr Baker.

10 Q. But is that not even more important, that the permanent
11 secretary to the Department of Education is asking for
12 the central arrangements to be set up?

13 A. Well, again, yes, it's significant, Derek didn't
14 approach me and I can't remember whether we were still
15 having weekly permanent secretary meetings, and had it
16 been a major issue I'm pretty sure Derek, who I had very
17 good relations with, would have been in touch with me.

18 MS DOBBIN: I think that's probably a good moment for
19 a break.

20 LADY HALLETT: Certainly. I shall return at 3.20.

21 (3.05 pm)

(A short break)

23 (3.20 pm)

24 LADY HALLETT: Ms Dobbin.

25 MS DOBBIN: Thank you.

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1 a reluctance to set up one of the most basic components
2 of the civil contingencies arrangements in
3 Northern Ireland and, it would appear, despite the fact
4 that the minister of health himself was asking for them
5 to be set up.

6 A. Yeah. This might sound ... I don't want to be overly
7 defensive of my position here. If the Inquiry concludes
8 that we got this wrong, I will accept that. At the
9 time, my judgement was that we were still very much in
10 preparing for something that was coming. The -- I don't
11 think I'm explaining clearly enough the role that the
12 hub had. You know, the hub is not a planning mechanism,
13 it's a response mechanism, it is there, it works in
14 conjunction with departmental operating centres, so the
15 hub, in a sense, is collecting information about what is
16 happened on the ground. We weren't at the position
17 where that was, in my view, necessary, but, as I say, if
18 the conclusion is that I got that wrong, and I've
19 already conceded we should have done it a few days
20 earlier, I don't recall Minister Swann approaching me
21 directly to say "You should set up the hub", and I would
22 have been seeing him and the permanent secretary and the
23 Chief Medical Officer on a regular basis.

24 So, yes, there's evidence here that they were asking
25 me to do this, but they weren't pushing me, which leads

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1 Sir David, I wonder if I could take you, please, to
2 the next document, which is INQ000086935.

3 You talked earlier about the planning that was going
4 on behind the scenes whilst the civil contingency
5 arrangements hadn't been activated, and I think we
6 certainly see here, this is version 2 of a resilience
7 return, I don't know if it had been prepared or if it
8 was linked to any Cabinet Office communications, but
9 what this appears to be is drawing together the
10 principal concerns and setting out what the potential
11 impacts would be.

12 Is this a document that you recognise?

13 A. I do, yes, and I think it's coincidental to the request
14 from the Cabinet Office for returns.

15 Q. Right.

16 A. This is work that we had commissioned independently
17 ourselves. That's my recollection at the time.

18 Q. So if we look at, for example, just taking the very
19 first entry on that page, we can see that, in terms of
20 economy and business, closure of businesses is the
21 issue, the risk is loss of jobs, loss of labour,
22 impacts, increased unemployment, and no potential
23 mitigations are set out there.

24 I mean, this doesn't look like any kind of developed
25 or considered plan or -- I mean, it looks as though it's

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1 a really basic document. Do you agree?
 2 **A.** Yes, I would agree, and that probably reflects the fact
 3 that, this being completed at the beginning of March,
 4 there wouldn't have been a lot of clarity about exactly
 5 what was going to happen and what mitigations might be
 6 possible to put in place.

7 **Q.** This was 13 March, so it's not the --

8 **A.** Yeah, it's a version 2, so it's probably an amended --
 9 I think I saw an earlier version which was dated earlier
 10 than that. I suppose my point would be here that
 11 I think it was on -- I think it was 18 March that --
 12 maybe the 19th -- no, I can't remember, it might have
 13 been that week the Chancellor announced the financial
 14 support that would be provided to business, and I think
 15 for our own department, the economy, there would have
 16 been very limited actions they could take to support
 17 business in the event of a major closure due to absence
 18 or, as it turned out, to businesses being told "unless
 19 you're absolutely essential you must close".

20 So in one sense I'm not surprised the document is as
 21 it reads there at that time.

22 **Q.** But, I mean, one might have thought that if you didn't
 23 know what central government was going to do, all the
 24 more greater need to have your own potential mitigations
 25 thought through and developed in a properly detailed set

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1 the one made by the UK Government, this is about
 2 planning for what might actually happen, about which you
 3 had had warning over a number of weeks before reaching
 4 this point.

5 **A.** Yes, and, you know, we were relying on individual
 6 departments to make assessments about what might be done
 7 in each of these areas based on the knowledge that they
 8 had at that time. So, you know, I would accept some of
 9 this looks light in terms of departmental or
 10 governmental response, but I think you need to recognise
 11 there was limitations on what departments could actually
 12 do at that particular time.

13 **Q.** Could we look at page 30 of this document, please, it
 14 relates to schools.

15 So, again, this is the first page of the part of the
 16 return that had been provided by the Department of
 17 Information, and we can see that a key area of concern
 18 is school closures. The issue is foreseen as
 19 absenteeism of staff. The risk is regarded as a lack of
 20 staff to teach. Then potential impact: disruption to
 21 curriculum, children losing food, loss of business to
 22 transport companies. And the potential mitigation is:
 23 larger class sizes and a substitute register.

24 So even the planning at this stage, when it talks
 25 about school closures, it's because of a risk that there

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1 of plans?

2 **A.** That -- that's -- I couldn't argue with that, it's
 3 entirely rational, but just at the time the economy
 4 department would have been wrestling with still a fair
 5 amount of uncertainty as to exactly what was going to
 6 happen to individual businesses. You know, I think I've
 7 made clear in my witness statement that I did not see
 8 any realistic prospect that Northern Ireland would move
 9 ahead of UK Government in terms of lockdown or partial
 10 lockdown, and I think there are three factors in that
 11 regard that need to be taken into account. For such
 12 a thing to happen, first of all, the Chief Medical
 13 Officer would have had to have recommended it. The
 14 second option would have been for the political parties
 15 to come together to agree that they would -- they'd
 16 decided to put in place a lockdown. And then the third
 17 factor that would have been needed would have been some
 18 mitigating measures, essentially finance, to compensate
 19 businesses for being forced to close down.

20 None of those three factors, in my view, were likely
 21 at that particular time. So that's why I have said on
 22 a number of occasions that I never saw Northern Ireland
 23 moving ahead of UK Government in terms of its response
 24 to the pandemic as it emerged.

25 **Q.** But this isn't about taking a decision that pre-empts

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1 may not be teachers, as opposed to any risk that
 2 children might not be able to go to school because there
 3 will be a closure of education.

4 **A.** My recollection isn't entirely clear, but my assumption
 5 is that this was prepared on the basis of an expectation
 6 that there would have been absenteeism of around 20% or
 7 more amongst teachers. This wasn't constructed on the
 8 basis that schools would be instructed to close.

9 **Q.** But that's what I'm asking: why isn't that being
 10 addressed in this document that's setting out the
 11 potential mitigations, having regard to the risks that
 12 might arise?

13 **A.** Because at that time, rightly or wrongly, there was no
 14 expectation nor instruction that schools should plan on
 15 the basis that they're going to be closed for
 16 a significant period of time.

17 **Q.** I mean, I think we can see, I won't go back to it, that
 18 the potential for school closures had been raised by
 19 SAGE a considerable period before this. Are you saying
 20 that that message had never filtered through to
 21 Northern Ireland, that that was something that might
 22 have to be done in the eventuality --

23 **A.** Yeah, look, we may well have been aware at the time that
 24 there were suggestions from SAGE that schools might have
 25 to close, but we had no indication from the

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1 UK Government that this was likely to become a policy
2 that would be recommended either in England or in GB or
3 in the UK as a whole. So when the Department of
4 Education was preparing this, you know, again knowing
5 what we know now, it may have been that we should have
6 been saying to them "Please prepare a plan which assumes
7 that you're told to close schools", but that was
8 something we did not foresee at this particular time in
9 early March.

10 **Q.** Was it foreseen before the decision was actually made by
11 the UK Government that schools would close on 18 March?

12 **A.** It was, because, as you will recall, the sequence of
13 events began on 12 March, when the Taoiseach announced
14 that Irish schools were to close for a period of,
15 I think it was, several weeks, and that led to
16 particular difficulties within the Executive because
17 there were differences of view on whether
18 Northern Ireland should follow suit.

19 I'm compressing a very difficult period of several
20 days into a couple of sentences. The issue was only, in
21 a sense, resolved in Northern Ireland on the 18th -- the
22 Taoiseach made his announcement on Thursday 12 March,
23 Gavin Williamson the Secretary of State for Education in
24 England announced that schools would be closed from, as
25 I say, the end of that week, so it was 20 March, and

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1 **Q.** Prior to that there would only have been a couple of
2 days, obviously, before the Republic of Ireland had made
3 its announcement. Had there been any contemplation
4 about the closure of schools or meaningful discussion
5 about the closure of schools --

6 **A.** Not that I recall. I got the call from the secondary
7 general to the Taoiseach around about lunchtime on the
8 Thursday, the Taoiseach had made the announcement in
9 Washington DC, so they were five hours behind us,
10 I think he'd made the announcement at 6 or 7 o'clock in
11 the morning, so I had got around 20 minutes' notice of
12 that announcement. I instantly advised the
13 First Minister, deputy First Minister, we were in
14 Stormont Castle that day, we had a discussion about
15 this, I had got advice, I can't remember whether I got
16 it directly from the Chief Medical Officer or
17 indirectly, but the advice I was getting from the Chief
18 Medical Officer was that they did not believe there were
19 grounds for closing the schools in Northern Ireland.
20 I relayed that information to the First Minister and
21 deputy First Minister --

22 **Q.** Can I pause you there, because let's have a look at the
23 document that records that. This is INQ000232525.
24 I think we see at the first paragraph that you clarify:

25 "... there are no medical/scientific evidence to

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1 given a decision that had been taken at the Executive,
2 albeit on a vote, on the Monday evening of 16 March,
3 Northern Ireland followed suit.

4 So there was only -- the period of time in which it
5 became clear that there was a probability rather than
6 a possibility of school closure emerged, it was a very
7 short period of time, as I say, kicking off on 12 March.

8 **Q.** So just to be clear about that, it was because the
9 Republic of Ireland had done that that it became
10 something that you regarded as realistic for
11 Northern Ireland?

12 **A.** Yes.

13 **Q.** Okay.

14 I am going to ask you about that, and about what
15 happened on 12 March. But just coming back to the point
16 that you made about -- it postdates what happened on
17 12 March but I do just want to pick it up whilst we're
18 at this point. I think it's right that there was the
19 Executive Committee meeting on 16 March?

20 **A.** Yes.

21 **Q.** So it postdated the decision in the Republic of Ireland.
22 And it's right that one of the ministers essentially put
23 to the vote whether Northern Ireland should close its
24 schools on that date. Is that right?

25 **A.** That's correct, it was the finance minister.

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1 support measures announced by the Taoiseach earlier
2 today. Expect COBR will confirm UK measures later
3 today."

4 **A.** Yes, sorry, can I just be clear here, some have
5 construed this as I was giving medical advice, the note
6 of that meeting could have been amplified a little,
7 I was simply passing on the advice I had received from
8 the Department of Health and, as I say, I can't remember
9 whether I got it directly from the Chief Medical Officer
10 or from one of the senior team in the Department of
11 Health.

12 But what I had asked was the -- my recollection is
13 that the permanent secretary, the Minister of Health and
14 the Chief Medical Officer were in the Assembly, and
15 I asked them to leave whatever meeting they were in
16 urgently to come and brief the First Minister and deputy
17 First Minister, which they did. I think they were
18 a little annoyed with me that I had pulled them out of
19 a meeting, but I saw that this was a highly significant
20 issue that was going to prove difficult for the
21 Executive. So they then joined a reconvened meeting and
22 I think the rest of the minute records what was said at
23 that --

24 **Q.** Yes, so if we could perhaps go on to the next page. So
25 I think we can see that, it's the third paragraph down,

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1 so Minister Swann said that containment measures were
2 working in Northern Ireland and that following the
3 Republic of Ireland position would crash the NHS and
4 create unnecessary panic and fear. Is that correct?
5 Does that accord with your recollection?

6 **A.** Yes, broadly, yeah.

7 **Q.** Does that in fact demonstrate what the position was at
8 that time -- I mean, we're at 12 March -- that it was
9 regarded as correct that containment was working in
10 Northern Ireland?

11 **A.** That's what was recorded there, yes.

12 **Q.** I mean, it's also right, I think, that on that day test
13 and trace was stopped in Northern Ireland.

14 **A.** That's correct. That was the same day that UK as
15 a whole moved from contain to delay.

16 **Q.** So how was it reconcilable that containment was working
17 in Northern Ireland, yet there was no need for test and
18 trace to remain on foot?

19 **A.** I -- I would have to defer to Department of Health on
20 that.

21 **Q.** What was your understanding on this day about the
22 reasons why test and trace was stopping in
23 Northern Ireland if in fact containment was working?

24 **A.** Well, it was, I think it was tied into the movement from
25 contain to delay, but I think -- and again I stand to be

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1 we don't have the capacity to test more people than --

2 **A.** Yes, and apologies, it's the passage of time that is
3 leaving me with a certain uncertainty about exactly what
4 the reasons were. I'm pretty sure on the day I would
5 have known more about that.

6 **Q.** I think then in terms of what happened after this, I'm
7 just going to go back to this point about the meeting on
8 16 March, if I may. So that meeting took place amongst
9 the Executive Committee, and obviously it was being
10 pressed by some ministers that there ought to be
11 a decision to close schools in Northern Ireland because
12 that decision had been made in the Republic of Ireland;
13 correct?

14 **A.** Yes, and it's probably worth recognising that it was
15 foreseeable on Monday that this was going to be
16 difficult, because if you roll forward from Tuesday
17 afternoon, there was a press conference on Thursday
18 evening, the evening of Thursday the 12th, where the
19 First Minister and deputy First Minister showed
20 a certain amount of unanimity in the approach which
21 essentially was that schools would be closed whenever it
22 was considered appropriate in Northern Ireland. So it
23 wasn't so much that schools weren't going to be closed,
24 it was a matter about timing, but then there were
25 different -- different messages were being sent out in

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1 corrected on this -- there was limited capacity for
2 extensive testing and tracing, and this was across the
3 UK as a whole. Testing kits were in, I think,
4 reasonably short supply and certainly you may recall
5 this became a big issue at UK level with the Secretary
6 of State for Health being pressed on the need to have --
7 I can't remember what the number was, something like
8 100,000 tests available a day, but they simply were not
9 available at this time.

10 **Q.** I think there are two points that arise from that. The
11 first point is you're saying it was linked to the fact
12 that the UK Government had said that "This was the end
13 of containment, we're moving to delay", why did that
14 need to be followed in Northern Ireland if that wasn't
15 in fact the position in Northern Ireland as was being
16 said on that day?

17 **A.** Well, as I say, I cannot recall exactly why the
18 Department of Health concluded that testing should end
19 that day, you know, I simply don't know whether the
20 rationale was because of the movement from contain to
21 delay or whether there were other factors such as the
22 lack of capacity for extensive testing.

23 **Q.** Given your role, is that not something that would have
24 been of vital importance, I mean in terms of
25 understanding: have we actually reached the point where

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1 the media from Thursday evening and through Friday, so
2 we could see that there was going to be a difficult
3 meeting on Monday.

4 **Q.** We've already discussed one vote, which was whether or
5 not to close schools. The vote that was carried at that
6 meeting was a vote that the closure of schools should be
7 handled in accordance with the CMO's advice. Do you
8 recollect that?

9 **A.** I do, yes.

10 **Q.** So in other words what the ministers were saying was
11 "We're not going to decide whether or not to close
12 schools, we'll essentially -- or the vote will be we
13 will await the advice and we'll act in accordance with
14 it"; correct?

15 **A.** Correct.

16 **Q.** So in other words, it wasn't essentially a decision for
17 them that they would do whatever the CMO said about it;
18 correct?

19 **A.** Yes, that's correct, yes.

20 **Q.** Was there --

21 **A.** The vote wasn't carried unanimously.

22 **Q.** It wasn't carried -- but it was carried?

23 **A.** It was carried.

24 **Q.** And it was that schools would be handled in accordance
25 with the CMO's advice?

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1 A. Yes.

2 Q. It wasn't "We'll await his advice", it would be in
3 accordance with his advice?

4 A. Yes, and that was why on the Wednesday, whenever the
5 Secretary of State for Education in England decided that
6 schools should close from the end of that week, the fact
7 that a decision had been taken to follow CMO's advice,
8 CMO's advice on the Wednesday was "we should follow
9 suit" and therefore there didn't need to be another
10 Executive meeting, the First Minister and deputy
11 First Minister essentially acting on the advice of the
12 Chief Medical Officer agreed that Northern Ireland would
13 follow suit and the announcement was that schools in
14 Northern Ireland would close from the Friday evening.

15 Q. But effectively that precludes them having a role or
16 discussing whether or not that's right for
17 Northern Ireland, it becomes a decision for the CMO, not
18 them?

19 A. Well, yes, but ministers will always take decisions on
20 the basis of the advice they receive. They won't always
21 accept the advice they receive, and that's perfectly
22 right, so long as there is an explanation as to,
23 you know, why they have taken the particular decision.
24 But in this case, my view was that the
25 Secretary of State for Education in England having taken

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1 that I've made at various times, and certainly there
2 were many points of difficulty after that, but by and
3 large we got through them.

4 Q. Well, I'm going to take you to something that I think
5 suggests that maybe it was a bit more fundamental than
6 that, but before I do, I mean, you've obviously foreseen
7 that I'm going to ask you about your comment --

8 A. Yes.

9 Q. -- that that meeting on 16 March was excruciating --

10 A. Yes.

11 Q. -- "no leadership on display", this is at the very
12 earliest staging post, this was the first decision that
13 ministers had been called to make and this was the way
14 that it went.

15 What was excruciating about it?

16 A. Well, it was a protracted discussion, you know, people
17 had got into fixed positions, it had split along
18 Nationalist/Unionist lines.

19 My frustration, as expressed in a message that
20 night, was born of a concern that this might be how
21 things played out from here on. Now, there were
22 difficulties on occasion afterwards, but by and large
23 not of that magnitude, and fortunately on most issues
24 things didn't necessarily break down along
25 Nationalist/Unionist lines.

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1 that decision, got the Executive Office off the hook:
2 they were clearly not in agreement as to how schools
3 should close but essentially the decision how it would
4 be taken that schools essentially across UK and Ireland
5 were going to close made it easier for them to move
6 forward.

7 Sorry, I should say I have been quoted in the media
8 today about, you know, my concerns about ministerial
9 decision-taking, and that was probably the most
10 difficult two or three days that I experienced during
11 the first wave, but what I would like to say is that
12 from there on, in fact from the following Monday
13 onwards, whenever we went into full lockdown, I actually
14 found that ministers were working together on a much
15 more collegiate basis. We had long discussions at times
16 and we had the Chief Scientific Adviser, the Chief
17 Medical Officer probed at length on a range of issues,
18 but by and large decisions were reached albeit after
19 a period of time and I think the Executive did work much
20 more collegiately from that point onwards.

21 So I just think it's important to just correct that
22 sort of line that has been running in the media.

23 Q. I wonder if you're looking at that with slight
24 rose-tinted glasses, because --

25 A. Yes, I know you're going to point to various comments

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1 Q. Can we look at a document that might suggest why that
2 was the case. This is INQ000309200.

3 I think it's the third bullet point. You say this
4 in terms:

5 "Our ministers have not shown strong leadership and
6 have been too quick to retreat into campaigning or
7 community activist-mode -- they've got away with this
8 partly because UKG has thrown so much money at
9 mitigation that they haven't had to take many difficult
10 decisions. Yet when they have (eg school closure and
11 defining 'essential' businesses) they have been found
12 wanting. The irritation of the minor parties is likely
13 to increase."

14 There is a truth in that, isn't there, that
15 effectively any big decisions that the government in
16 Northern Ireland had to make were effectively superseded
17 by the fact that they were taken by the government in
18 Westminster; correct?

19 A. That is true, and again I think it's just recognising
20 our context, you know, where we have five parties in
21 an enforced coalition, very different ideologies, very
22 different aspirations for this place, having to work
23 together. But, you know, what I think is important to
24 recognise is that on all the big issues they eventually
25 did reach decisions, and I think one of the strengths of

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1 our arrangement is that when decisions were reached the
 2 five parties represented just short of 90% of the
 3 electorate. So it was painstaking, it was difficult at
 4 times, but decisions were taken, and I think it's
 5 important to recognise at the high level that, by and
 6 large, we introduced the restrictions in line with
 7 elsewhere in the UK. We developed a process for
 8 agreeing to the easing of those restrictions. The guide
 9 to decision-making which was published on 12 May I think
 10 was a good document, I think it was as clear as the
 11 documents, similar documents that were produced in GB.
 12 And I think that we moved to ease restrictions by and
 13 large in line with GB and with Ireland.

14 So, yes, it was difficult, it was clunky, it was
 15 awkward, time consuming, but we got there, and I think
 16 recognition needs to be given to that.
 17 **Q.** So in terms of the big decisions that you've said that
 18 the Executive Committee made, what big decisions would
 19 you point to as demonstrating their ability to come
 20 together as a cohesive whole, given that they didn't
 21 really make the decisions at the outset of the pandemic,
 22 they were made for them?
 23 **A.** I think there was -- there were lots of different views
 24 about how we should approach the easing and removal of
 25 restrictions. It was quite a tortuous process to agree

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1 by the CMO, and I think in fact the framework for coming
 2 out of restrictions was predicated upon this, was the
 3 fact that a second wave was foreseen and regarded as
 4 highly --

5 **A.** Oh, yes, sorry, when I said I didn't foresee the
 6 difficulties in the autumn, that doesn't mean I didn't
 7 foresee there would be a second wave. I think even at
 8 the time I left there were -- there was a sort of marked
 9 increase in transmission, et cetera, so it was
 10 foreseeable, yeah.

11 **Q.** Two points. I think the first one was it was flagged at
 12 a very early stage that coming out -- that lifting the
 13 restrictions would lead or there was a real risk that
 14 there would be a second wave, and I think, as you
 15 rightly say, by the time you left in August in fact the
 16 rates were already starting to go up by that point.

17 I'm going to go to a very different topic, if I may,
 18 and to ask you about the role of the Department of
 19 Health as the lead department, and I wanted to ask you
 20 about a specific communication, and this is
 21 INQ000287536.

22 I think we might need to go down a little bit,
 23 please. Yes. This is an email from you towards the end
 24 of March, and it's the second paragraph that I'm
 25 interested in on behalf of the Inquiry, Sir David.

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1 the guide to decision-taking which was published on
 2 12 May, but through hard work with the parties we
 3 actually got that document agreed. And again the
 4 handling of individual proposals for reducing
 5 restrictions were worked through; again, it was
 6 painstaking at times but we did get agreement on that.

7 **Q.** So that's agreement about a framework about how you will
 8 make decisions?

9 **A.** Yes, it's agreement about the framework and it's then
 10 the agreements that followed on the individual issues
 11 within that framework.

12 **Q.** So, in other words, you mean the decisions to re-open
 13 different parts of --

14 **A.** Correct.

15 **Q.** -- society? And I think that that process would have
 16 been ongoing in and around the time that you actually
 17 retired in August?

18 **A.** Yes.

19 **Q.** So you weren't in situ and you weren't in place for the
 20 more difficult decisions, effectively, that had to be
 21 made in the autumn of 2020?

22 **A.** No, and I didn't foresee at that time, you know, that
 23 the autumn would be a difficult period.

24 **Q.** I think you'll agree, though, that -- certainly before
 25 you went, and it was being flagged at a very early stage

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1 **A.** Sorry, which one is this?

2 **Q.** It's the --

3 **A.** "dFM want to move to a three ..."

4 **Q.** Yes.

5 **A.** Yeah. That's 26 March. Yes.

6 **Q.** Also the paragraph after that, about ministers being
 7 worried about being held corporately responsible or
 8 liable if things go badly wrong.

9 So can I just ask you some questions about this?

10 **A.** Yeah.

11 **Q.** I mean, first of all, that first paragraph also would
 12 tend to speak to an issue I've asked you questions about
 13 at the very outset, this idea of the First Minister and
 14 the deputy First Minister not having control, as it
 15 were, over the Department of Health or the Department of
 16 Health having its own operational mandate and operating
 17 within it.

18 Can you help, was that the position at the end of
 19 March, as conveyed in that email, that they didn't feel
 20 they had sufficient --

21 **A.** Yeah. No, very much so. I got a very clear sense from
 22 particularly the deputy First Minister that -- and the
 23 First Minister as well, that they wanted to be seen to
 24 have grip over the totality of the issues around the
 25 Covid-19 pandemic, and we -- at this particular time,

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1 following the lockdown -- just before the lockdown ...
 2 sorry, this requires a bit of an explanation, but in the
 3 run-up to the 23rd it was quite clear that we were going
 4 to need to change the daily rhythm, if you like.
 5 And what we did, with the agreement of the First and
 6 deputy First Minister, we moved to an arrangement
 7 whereby the day started with a Civil Contingencies Group
 8 meeting at 8.30, which I chaired, and which all
 9 departments dialled into along with local authorities,
 10 the Northern Ireland Office, the police, the fire and
 11 rescue service, the ambulance service, and
 12 First Minister, deputy First Minister and/or the junior
 13 ministers used to join that. And that gave them
 14 an opportunity to hear at first-hand what was happening
 15 on the ground. And again, issues were raised there. If
 16 they didn't require Executive decision they went on to
 17 an action log which CCG maintained and which we updated
 18 on a daily basis.

19 So we then moved from there to the Executive
 20 meetings, which we re-formed for a period of six days --

21 **Q.** Yes.

22 **A.** -- and we called -- it was Executive Covid crisis
 23 management meetings, and they weren't meetings destined
 24 to take decisions, they were meetings that were designed
 25 to give ministers a greater oversight of what was

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1 three days a week at 10 o'clock; press conference
 2 jointly hosted by the First Minister and the deputy
 3 First Minister and/or the health minister in the
 4 afternoon; and with attendance at the Assembly to give
 5 read-out to the Assembly committees as appropriate.

6 And that rhythm ran for most of April and into May.

7 I think worth noting that the Executive was also
 8 provided when it met with the -- all ministers were
 9 provided with a daily situation report from CCG and also
 10 with an update on the action points which CCG were
 11 dealing with as well.

12 So that was the process that we entered into. And
 13 again the deputy First Minister may wish to correct me
 14 in this, but my impression was that they did have
 15 greater confidence from that point on that the totality
 16 of issues that were being addressed by departments were
 17 being addressed, and certainly she has -- she said to me
 18 at the time that she got value out of attending the CCG
 19 meetings every morning, just to get a sense that things
 20 were being gripped on a cross-departmental basis.

21 **Q.** Because I think we'll see -- we know that there was the
 22 Executive Committee meeting on 18 March, and I think
 23 that's the one where we see evidence or certainly the
 24 notes would tend to reflect that ministers didn't think
 25 that they were in control of what had happened thus far,

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1 happening outside the health domain. So using a piece
 2 of risk analysis that was done by Karen Pearson and her
 3 team, we identified some of the highest risk areas
 4 outside the health sphere, and we asked ministers to
 5 give presentations on how they were going to address
 6 those. And that was across the six -- sorry, across the
 7 seven other departments apart from health.

8 And it was during that, you know, those proved
 9 useful but it was during that period that again I think
 10 the health -- sorry, the deputy First Minister was again
 11 making a case to us that she wanted to be sure that the
 12 Executive was who was managing this. So what we did was
 13 we -- the Health Department had agreed to produce
 14 a strategy, which was the Department of Health's
 15 strategy for dealing with the health aspects of the
 16 pandemic. That was produced around the end of March,
 17 the beginning of April, I can't remember exactly when,
 18 and then that sat alongside the various action plans
 19 which the departments themselves had identified that
 20 they were putting in place to deal with the wider
 21 impacts.

22 So when we went through those six ECCMC meetings, it
 23 was agreed that we would move back to a rhythm of having
 24 three Executive meetings a week, so then the daily
 25 rhythm was: CCG meeting 8.30; Executive meeting

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1 and we see reference to them saying "We're in reactive
 2 mode", and I think it's the meeting where Minister Swann
 3 says "We have been preparing for seven weeks", which one
 4 assumes was a reference to the Department of Health; is
 5 that right?

6 **A.** Yes, I guess so, yeah.

7 **Q.** And again, can I just check that that was your
 8 understanding as well, by the time they got to that
 9 point, ministers felt that they hadn't been sufficiently
 10 in control of what had been going on until that point in
 11 time?

12 **A.** I'm hesitant to express a view on what ministers, all
 13 ministers' view was at the time. There wouldn't have
 14 been a collective view amongst ministers about this, but
 15 I know certainly the deputy First Minister and her team
 16 had concerns that they didn't have sufficient
 17 understanding of all that the Department of Health was
 18 doing. I think it was in response to that that the
 19 minister of health brought forward a strategy that was
 20 to cover a period of, I can't remember, I think it was
 21 two or three months, it was -- you know, that was the
 22 sort of horizon for that strategy, and again I can't
 23 remember exactly when that was, but I think it was early
 24 April. Other ministers would have had concerns as well,
 25 but I wouldn't like to just characterise exactly what

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1 the Executive's concern was as a whole.
 2 **Q.** Right, well, we can ask those ministers.
 3 One of the other things that happened before you
 4 retired which I wanted to touch on before my learned
 5 friends ask you some questions was the Storey funeral
 6 and the attendance of the deputy First Minister at that.
 7 I think it's clear from your witness statement that
 8 that was something that caused difficulties or schisms
 9 within the Executive Committee; is that correct?
 10 **A.** Yes. I'm not going to comment on the issue itself. All
 11 I would observe is that it did cause divisions and the
 12 atmosphere in the Executive was difficult after that,
 13 one of the most immediate practical implications was
 14 that the joint press conferences which took place most
 15 afternoons by First Minister and deputy First Minister,
 16 they stopped, and that was significant because the
 17 feedback we got from the sort of attitude surveys,
 18 et cetera, that we were doing was that the community
 19 found those press conferences very helpful, very
 20 reassuring, and, you know, it was a very visible
 21 manifestation of ministers working together, and the
 22 absence of that I think did reduce public confidence for
 23 a period of time. I think they did resume later, but
 24 there was certainly a period of weeks before that
 25 happened.

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1 **Q.** And in what sense was it not helpful? What did it
 2 mean -- besides the press conference, what impact did it
 3 have on day-to-day work?
 4 **A.** I can't point to any tangible examples of things that
 5 didn't happen because of it.
 6 **(Pause)**
 7 No, I'm -- honestly, I --
 8 **Q.** But generally, then, I think you're saying --
 9 **A.** Generally, it's just -- it's harder to do business
 10 whenever the relationship is not as it should be.
 11 **Q.** And did you try to resolve that, or reconcile the two
 12 offices, so to speak?
 13 **A.** I didn't see myself as a peacemaker in that regard, but
 14 certainly the discussions, the helpful discussions
 15 I would have had would have been with the two lead
 16 special advisers on both sides, and, you know, we would
 17 have met most Friday afternoons, and that would have
 18 been the way I think I would have had most traction.
 19 But this was one of those issues that was only ever
 20 going to work itself out over time.
 21 **Q.** Had it resolved itself by the time of your retirement?
 22 **A.** I can't recall whether the joint press conferences had
 23 resumed by the time I retired, but that did happen
 24 around about that time, I think.
 25 **MS DOBBIN:** All right.

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1 **Q.** Could I just ask you, I mean, you obviously look at this
 2 from the perspective as being an interlocutor in that
 3 relationship as well, between deputy First Minister and
 4 First Minister, did you observe then a fracturing in
 5 their relationship from that point onwards?
 6 **A.** Yes, you could, you could ... people on the outside
 7 perhaps don't fully understand that even parties who
 8 were diametrically opposed on a whole range of issues,
 9 they can actually work together quite well behind the
 10 scenes, but there was a discernible chill after that.
 11 **Q.** And did that affect then how the Executive Office
 12 worked, if there was that division between them?
 13 **A.** Business was still transacted, but I think I made the
 14 point the most practical manifestation of the chill was
 15 the fact that the joint press conferences ended after
 16 that. But business was still -- as I say, issues were
 17 still brought to the Executive, discussions still took
 18 place, decisions were taken. I don't recall that that
 19 became any more difficult than it had been.
 20 **Q.** But it must make a difference, having two people in
 21 those positions who are able to get on with each other
 22 and have a normal working relationship with each other?
 23 I mean, it can't be helpful to government business to
 24 have that relationship --
 25 **A.** It wasn't helpful.

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1 My Lady, I think I need to allow some time for my
 2 learned friends to ask questions.
 3 **LADY HALLETT:** Right, certainly. Is it Ms Campbell or
 4 Mr Wilcock? Mr Wilcock.
 5 **Questions from MR WILCOCK KC**
 6 **MR WILCOCK:** Good afternoon, I represent the
 7 Northern Ireland Covid Bereaved Families for Justice,
 8 and I've got three topics to cover with you.
 9 Before I do so, can I just make sure I understand
 10 three things you've said in your evidence. You've
 11 conceded, haven't you, that in early January/February
 12 Northern Ireland was not as prepared as well as it might
 13 have been?
 14 **A.** Yes.
 15 **Q.** It's right, isn't it, that the NICCMA process wasn't
 16 activated and the hub, which was part of that process,
 17 wasn't set up until mid-March?
 18 **A.** Yes, the hub and the Civil Contingencies Group weren't
 19 set up -- Civil Contingencies Group didn't start to meet
 20 regularly until 18 March.
 21 **Q.** Then finally, your standpoint is that Northern Ireland
 22 had every right -- and this is as good a quote as I can
 23 give you, because I wrote it down as you were saying
 24 it -- to put its faith in the United Kingdom's
 25 Government and ability to plan and manage this crisis

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1 given the scientific and other resources they had
 2 available to them, and that's your perspective?
 3 **A.** That's correct.
 4 **Q.** All right.
 5 So bearing those in mind, can I start with my first
 6 topic and ask you to have a look at INQ000008436,
 7 please, I think it's the second document in the list
 8 I gave you.
 9 Could we have page 2 on screen, please. I think you
 10 will see there that on 6 February you sent a message to
 11 Richard Pengelly stating that:
 12 "... WMC in London yesterday we got an update on
 13 coronavirus."
 14 WMC, did that stand for the "Wednesday meeting
 15 colleagues"?
 16 **A.** It's "Wednesday morning colleagues".
 17 **Q.** Wednesday morning colleagues?
 18 **A.** It's a rather quaint title for a meeting, but yes.
 19 **Q.** That is a meeting of permanent secretaries which is
 20 chaired by the Cabinet Secretary of the UK Government,
 21 and held physically at the Cabinet Office in London,
 22 although you may have attended by Zoom, one imagines,
 23 but that's where the meeting takes place?
 24 **A.** Yes.
 25 **Q.** Just to remind ourselves in the context of your
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1 overread that comment.
 2 **Q.** I understand.
 3 Can I take you back, please, to the message that we
 4 have on screen. You go on in that message to say that
 5 the CMO had said that the Chinese government has not
 6 "got to grips with this and it will almost certainly
 7 become a global pandemic". Do you accept, therefore,
 8 that you were aware in early February that
 9 Northern Ireland would be faced with a global pandemic
 10 of some sort in the very near future that would only
 11 peak in about three to four months and would be with us
 12 for six to seven months? That's what you put in your
 13 message, isn't it?
 14 **A.** Yes.
 15 **Q.** If we go over the page, please, I think we can see that
 16 Mr Pengelly replies, and Mr Pengelly is the permanent
 17 secretary at the Department of Health, isn't he?
 18 **A.** Correct.
 19 **Q.** He replies:
 20 "At one level this was very worrying, although at
 21 peak time here will present 'only' as a bad flu ..."
 22 Leaving aside the fact that sadly you were both
 23 wrong about the imminent pandemic being a flu virus, do
 24 you read the fact that Mr Pengelly put the word "only"
 25 in quotation marks as an indication that he at least
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1 comparison between the dangers of disturbing the
 2 Cabinet Office or the CMO, the Cabinet Office had
 3 a varied role and in terms of contingency planning it
 4 contains a contingency secretariat and it co-ordinates
 5 between the various government departments particularly
 6 in times of crisis?
 7 **A.** The Civil Contingencies Secretariat, yes, and
 8 for example we had worked closely with them during the
 9 Brexit preparations.
 10 **Q.** Just jumping forward a bit, you were asked questions by
 11 my learned friend Ms Dobbin about communications on
 12 7 March where you said "If pressed now, my advice would
 13 be to annoy the Cabinet Office rather than the CMO and
 14 you can hold me to that". I'm just asking: did you
 15 really regard the CMO as more important in terms of
 16 Northern Ireland's coronavirus response than the
 17 Cabinet Office?
 18 **A.** I think, as I was explaining in my responses to
 19 Ms Dobbin, it was a slightly flippant remark, and
 20 I wouldn't want that to be seen as me making a sort of
 21 concluded judgement about the relevant significance of
 22 both organisations --
 23 **Q.** You were asked questions on it, as you said --
 24 **A.** The Cabinet Office and the Chief Medical Officer were
 25 both highly important to me, so I wouldn't want to
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1 accepted the coming pandemic was going to be very
 2 serious?
 3 **A.** Yes, and I think the comment here is just reflecting
 4 what the advice by and large was at that stage --
 5 **Q.** Yes.
 6 **A.** -- which I was passing on, which was pandemic flu plans
 7 will be sufficient to deal with this.
 8 **Q.** Absolutely, absolutely, and is that why, if we go on to
 9 15.37 I think it's the next, you ended your reply to
 10 that message with the words:
 11 "I guess the problem will be if (when) it hits care
 12 homes and hospitals."
 13 Now, your evidence to us today has been at this
 14 stage you are the -- regarding Northern Ireland as being
 15 in the prepare phase of your three-stage process.
 16 **A.** Yes.
 17 **Q.** Reading this message from early February 2020, do you
 18 agree that planning should have been under way at this
 19 stage to ensure measures were in place to protect those
 20 in care homes or hospitals before whatever pandemic hit
 21 this jurisdiction?
 22 **A.** Yes.
 23 **Q.** Was it?
 24 **A.** I don't want to be seen to be sort of passing the buck
 25 on this one, but that would have been a matter the
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1 Department of Health would have been clearly covering.
 2 **Q.** Okay.
 3 Well, that's one of the themes of this period, isn't
 4 it? There's a tension between the Department of Health
 5 as the lead department and the Executive Office as the
 6 sort of co-ordinating department, with cross-cutting?
 7 **A.** No, I wouldn't say there was a tension. There was --
 8 there was a good relationship between the two
 9 departments, like I always enjoyed a good relationship
 10 with the health minister, the Chief Medical Officer, the
 11 permanent secretary. We understood and respected our
 12 different responsibilities and positions, and I think we
 13 worked well together.
 14 **Q.** You know that I wasn't referring to tension in terms of
 15 bad feelings towards each other, I was meaning there was
 16 a difference of emphasis between the departments as to
 17 who was in charge of this show in February, wasn't
 18 there?
 19 **A.** I wouldn't even say a difference of emphasis. We had
 20 different responsibilities, if you like.
 21 **Q.** All right.
 22 In your statement, and we can put it up on screen if
 23 you want, you state that the first occasion on which the
 24 Executive discussed Covid-19, and then you used the
 25 words "in some depth", to be fair to you, was on
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1 discussion about Covid-19 on 2 March 2020 ..."
 2 Then he goes on to say:
 3 "... and during that discussion, the Chief Medical
 4 Officer observed ..."
 5 We can all read what is said about what the Chief
 6 Medical Officer reported about what was coming. Is he
 7 right, or are you wrong?
 8 **A.** Well, he's making a judgement on what the reaction of
 9 other ministers and departments was at that stage. His
 10 judgement is entirely valid, I wouldn't challenge him on
 11 that. I ... like, he may well be right, at that stage
 12 in early February it's probably fair comment that people
 13 had not fully appreciated how serious this was.
 14 **Q.** Well, I want to come on to that section in a minute, but
 15 in terms of the first substantive discussion taking
 16 place on 2 March, do you accept that, bearing in mind
 17 the meeting you were referring to was only a discussion
 18 under "AOB", that he's right in his recollection that
 19 the first substantive discussion took place a month
 20 later than you do?
 21 **A.** Sorry, say that again, the first substantive discussion
 22 was on 2 March?
 23 **Q.** Correct.
 24 **A.** Yeah.
 25 **Q.** You just said your recollection is that the first
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1 3 February 2020.
 2 Do you remember saying that in your statement?
 3 **A.** I do.
 4 **Q.** And do you agree that anything that was said in that
 5 meeting about Covid came not under a specific agenda
 6 item about Covid, but under the catch-all "Any other
 7 business" section of the agenda?
 8 Now, if we could have --
 9 **A.** Sorry, can I take --
 10 **Q.** I'm sorry.
 11 **A.** The fact that it was under "Any other business"
 12 shouldn't be taken to -- people shouldn't conclude that
 13 that meant it was not a significant piece of business.
 14 That simply suggests that there wasn't -- it was brought
 15 to the attention of the Executive, perhaps at shorter
 16 notice.
 17 **Q.** So the fact that it was under "any other business"
 18 doesn't mean there wasn't a substantive discussion?
 19 **A.** Correct.
 20 **Q.** Right.
 21 Could we have INQ000002903, paragraph 65 on screen,
 22 please. This is the statement that Robin Swann, the
 23 Minister of Health, has made for this Inquiry. He says
 24 something different. He says in paragraph 65:
 25 "The Executive Committee held its first substantive
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1 substantive --
 2 **A.** Oh.
 3 **Q.** -- discussion was a month earlier.
 4 **A.** Sorry, I hadn't picked up the significance of that.
 5 I would need to look back over the handwritten notes of
 6 the meeting in early February.
 7 **Q.** Okay.
 8 Then what you were going on to deal with is the fact
 9 that in Robin Swann's statement he says that whilst he
 10 thought there was a high level of urgency and activity
 11 by his department, health, at this stage, "even as the
 12 conditions and outcomes were described by the CMO", that
 13 he outlined in that paragraph, he was not entirely sure
 14 that the overall impact on society was fully understood
 15 by other ministers and departments, as in his opinion
 16 they still perceived this was a health issue that would
 17 only impact hospitals.
 18 Now, we've seen what you were saying in the messages
 19 to Mr Pengelly shortly before about the problem coming
 20 when this hits care homes and hospitals. I want to ask
 21 you: did Mr Swann have a point that other departments
 22 did not fully understand the overall impact of what was
 23 to come?
 24 **A.** I think I've already conceded that --
 25 **Q.** Yes.
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1 A. -- if that was his conclusion at the time, I wouldn't
2 want to challenge it.

3 **MR WILCOCK:** All right.

4 Now, my Lady, the third topic relates to a matter
5 that Ms Dobbin has taken Sir David through, and she
6 knows what I'm going to ask, it's not on our
7 pre-approved, but I think I have permission to go to it.

8 **LADY HALLETT:** Give it a go, Mr Wilcock.

9 **MR WILCOCK:** Thank you very much.

10 Could we please put on INQ ending 7435 again,
11 please.

12 If we go to the bottom of page 2, you will see,
13 Sir David, the passage that Ms Dobbin took you through
14 in the exchange at 18.45, and just to refresh your
15 memory, do you recall being taken through that --

16 A. I do.

17 Q. I want to take you through a reply to that message,
18 which came about 45 minutes later, which at the top of
19 the same page, where Bernie Rooney says in the first
20 substantive paragraph under the list:

21 "A key message that I failed to deliver, would be
22 a proportionate response. The Minister [that must be
23 Mr Swann] did ask where people were as David had said we
24 were set up so I had to show him our CCPB folks on the
25 corridor ..."

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1 papers until the last minute for fear they might leak,
2 and I got the impression when you gave that evidence
3 that the question of leaks, for example, undermined the
4 efficacy of the way the Committee worked, but then you
5 had what Ms Dobbin described as the rose-tinted view.

6 How do those two different aspects of your evidence,
7 how do you reconcile them?

8 A. It's a very good question, and ... I think what I would
9 say is government is difficult. It's particularly
10 difficult at the moment, it was particularly difficult
11 then. It's even more difficult in Northern Ireland,
12 given the nature of our constitutional arrangements.

13 So we, you know, the civil servants who are
14 supporting the Executive, will always expect that things
15 will not run smoothly, and, you know, certainly I showed
16 on many occasions, as the evidence has shown, my
17 frustration with behaviour that fell well below best
18 practice, but in that context what I was saying later
19 was that once we got past 23 March and into April, I did
20 see better collegiate working, and I just thought that
21 needed to be said to just counter the message. And
22 again, I think my witness statement concludes with
23 a recognition that it is difficult working in the
24 Executive and that there nonetheless was some good
25 co-operative working.

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1 Had you told Mr Swann that you were set up on that
2 date?

3 A. I do not recall that at all.

4 Q. As a matter of fact, if you had said that, you couldn't
5 have been referring to anything to do with NICCMA or the
6 hub, could you?

7 A. No, I -- well, we hadn't set up the hub, so I would not
8 have been saying we had. There were -- it would have
9 made no sense for me to have done that, because --

10 Q. Was there anything else you could have been --

11 A. -- when the -- setting up the hub would have required
12 a notification to the Executive that we were doing that,
13 and we hadn't done that at that stage.

14 So I'm not entirely clear what is meant when
15 Ms Rooney says "David had said we were set up", so
16 I just don't know what that actually means.

17 **MR WILCOCK:** I'm afraid I can't enlighten you because
18 I didn't write the message.

19 My Lady, they're all the questions we wish to ask.

20 **LADY HALLETT:** Thank you very much, Mr Wilcock.

21 Questions from THE CHAIR

22 **LADY HALLETT:** Sir David, I've got just one question, and
23 I'm trying to reconcile evidence you gave at the
24 beginning of your evidence about the operation of the
25 Executive Committee and the leaks and the not bringing

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1 So I don't think what I said today is contradictory
2 to what is in my witness statement; it may sound
3 a little odd to people, but working with the Executive
4 can be a little odd at times.

5 **LADY HALLETT:** I think we can follow that, but, I mean, the
6 leaks carried on. Even in the period when you say there
7 was better collegiate working, the leaks carried on, did
8 they?

9 A. The leaks have been endemic --

10 **LADY HALLETT:** So I gather.

11 A. -- in Executives going right back to 2000. Sadly, in
12 this day and age, if people are determined to leak, it's
13 very hard to stop it. You have to go to some quite
14 extraordinary lengths, you know, creating documents with
15 hidden, you know, misspellings or whatever in them so
16 that you can identify, like. But if somebody wants to
17 leak and cover their tracks, it's not too difficult.
18 And I don't want to sound pessimistic in this note, but
19 when you have the five, four or five-party Executive and
20 things get difficult, it may be that leaks are just
21 an occupational hazard. I wish it wasn't so, but
22 I'm afraid that's probably my conclusion.

23 **LADY HALLETT:** Sorry to sound too much like a retired judge
24 and too legalistic, but isn't that a clear breach of the
25 ministerial pledge?

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1 A. Yes.

2 **LADY HALLETT:** But no one seems to bother about that.

3 What's the point of taking the pledge?

4 A. Well, indeed. I suspect part of the problem is that it

5 has been extremely difficult to identify culprits, and

6 in that case perhaps if there are no fears of sanctions

7 then it may well go on.

8 **LADY HALLETT:** One last question: in relation to the Civil

9 Service in England, Wales and I think Scotland, there's

10 the Civil Service Code. I appreciate that you're not

11 part of what people call the Home Civil Service, do you

12 have a similar code for civil servants here?

13 A. We do, and it was revised in January/February 2020 in

14 the light of the *New Decade, New Approach* agreement, it

15 was revised by the Department of Finance at the time.

16 It's a very similar document to the GB code of conduct

17 for civil servants -- sorry, code of conduct -- did you

18 say code of conduct?

19 **LADY HALLETT:** Yes.

20 A. Yes, yes, it's very similar.

21 **LADY HALLETT:** Code. No, I said code.

22 A. Code, yes.

23 **LADY HALLETT:** I think they call it the code, rather than --

24 A. It's code I mean, not the code of conduct, which is

25 a different thing.

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1 **LADY HALLETT:** Yes.

2 Thank you very much indeed, Sir David. I think

3 that's all we need from you, so thank you for your help.

4 **THE WITNESS:** Thank you.

5 **(The witness withdrew)**

6 **LADY HALLETT:** Right, 10 o'clock tomorrow?

7 **MS DOBBIN:** Yes, my Lady.

8 **LADY HALLETT:** 10 o'clock, please.

9 **(4.25 pm)**

10 **(The hearing adjourned until 10 am**

11 **on Thursday, 2 May 2024)**

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