

Witness Name: Neil Surman

Statement No: 01

Exhibits: 24

Dated: 28/09/2023

UK COVID-19 PUBLIC INQUIRY

WITNESS STATEMENT OF NEIL SURMAN

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 31 July 2023 and referenced M2/WG/NS/01

I, Neil Surman, will say as follows: -

Background and qualifications

1. I have worked in the Welsh Government and its predecessor the Welsh Office since 1988. I entered the civil service from university; I possess a BA(Hons) degree in Humanities and a Postgraduate Diploma in Public Administration.
2. My professional background is as a civil servant. Over the course of my career in the civil service I have worked in a wide range of policy and corporate roles covering among other issues local government finance and local government reorganisation, corporate finance, health and social care, services for children and young people / children's safeguards, reform of public services, the third sector and education (including higher education and student finance).
3. Between the 8th October 2018 and 25 February 2020, I was the Deputy Director for Public Health. From the 26th February 2020 to 1st November 2020 I was appointed by the then Permanent Secretary, Dame Shan Morgan to work on the Coronavirus Bill which subsequently became the Coronavirus Act 2020.

4. Upon the Coronavirus Act becoming law, I was the lead policy official responsible for co-ordinating the Welsh Government regulations which put in place relevant restrictions and allowed their gradual easement as the pandemic progressed. From late May 2020, I was also responsible for the introduction of the International Travel Regulations in Wales, in coordination with the other UK governments.
5. From the 1st November 2020, I took up the role as Deputy Director of Social Partnership, a role I continue in today. My role in relation to the Welsh Government regulations ceased when I took up this new role.
6. This statement relates to the period 21st January 2020 and 30th May 2022. In preparing this statement, I have been assisted by **Name Redacted** former member of my team who led work on the International Travel Regulations for Wales.

Early Stages of the Pandemic

7. Through the work of my Division, I believe I became aware of Covid 19 at the end of December 2019 when the World Health Organisation first reported a cluster of pneumonia cases in Wuhan, China.
8. At the start of January 2020, my role in respect of Covid 19 entailed supporting the Chief Medical Officer for Wales (CMO), Sir Frank Atherton who was my then line manager, and working alongside other health professionals including Public Health Wales. I was involved in early discussions about the uncertain but seemingly growing threat of what at that stage became known as Novel Coronavirus, and about the need for the Welsh Government to establish a potential emergency coordination response to Covid 19. I also continued with my other routine duties as Deputy Director for Public Health Division, providing leadership and oversight for the work of my team across a wide range of broader public health matters. With the momentum that was gathering in relation to the pandemic, from February 2020 I was deployed to work on the Coronavirus Bill exclusively to help ensure its passage into law and that so far as possible it met the needs of Wales and the Welsh Ministers.
9. With regard to the state of Wales' preparedness for dealing with a pandemic at the beginning of 2020 I was aware through the work of my Division of earlier preparations made for a UK Pandemic Influenza Bill, a first draft of which had been produced in December 2018.

10. As Deputy Director for Public Health, I also attended meetings of the Health Protection Advisory Group chaired by the Chief Medical Officer for Wales. An example set of minutes is exhibited at **Exhibit NS01/001 INQ000180634**. I was aware from the work of that Group and from discussions with the CMO and other health professional colleagues, including Dr Marion Lyons, of concerns about the preparedness of NHS Wales to respond to high-consequence infectious diseases and of planned actions to address those concerns. Located within Public Health Division at that time was a Health Emergency Planning Unit with responsibility for providing professional advice in all areas of health emergency planning, civil contingency statutory responsibilities, emergency preparedness policy development and integrated emergency management professional practice. The head of that unit, David Goulding, reported to me as Deputy Director on day-to-day matters and informed me that in his professional role he also would report directly to the then Director General Health and Social Services/CEO NHS Wales, Dr Andrew Goodall.
11. Responsibility for the draft Pandemic Influenza Bill at the time rested with the Health Emergency Planning Unit which from my recollection had been understaffed and into which new staff had therefore been appointed. Prior to my appointment in 2018, I believe Mr Goulding had taken partial retirement and was employed on a part-time basis. A new Grade 7 Head of Branch had been appointed but Mr Goulding continued to act as the senior professional adviser on all health emergency planning matters. Like myself, none of those recently appointed to the Unit had any prior experience in public health and the team was still in a somewhat formative stage of development by the end of 2019.
12. By the end of January 2020, it was apparent to me that Covid 19 presented a very serious health threat to the UK and to Wales. This was confirmed when on the 30th January that year the World Health Organisation declared a Global Emergency.
13. In my role as Deputy Director for Public Health Division, I reported to the CMO who in turn reported to the then Director General Health and Social Services/CEO NHS Wales, Dr Andrew Goodall, and to the then Minister for Health and Social Services (MHSS), Vaughan Gething MS.
14. My interaction with the Minister for Health and Social Services, other Ministers and with the First Minister was limited largely to working with health professional colleagues, including Public Health Wales, to provide briefing or situation reports on

matters relating to the developing Covid 19 emergency, use of existing public health legislation to combat the early spread of the virus and from late February onwards on matters relating to the Coronavirus Bill and other public health legislation.

15. I did not attend any decisions making committees, although I attended meetings of the Cabinet Covid Group which received weekly reports from the CMO, the Chief Executive of NHS Wales, the Emergency Coordinating Centre and the Welsh Local Government Association. An example set of actions is exhibited at **Exhibit NS01/002 INQ-000271463**. I also attended a meeting of COBR(Officials) on 19th February 2020 at which the developing plans for the then Coronavirus Bill were discussed, and Cabinet Office announced the establishment of a Coronavirus Bill Programme Board whose role it would be to coordinate cross-government activity on the Bill. The note I sent to Ministers following that meeting and the associated attachments are exhibited at **Exhibit NS01/003 INQ000087067, Exhibit NS01/003a INQ000087068 and Exhibit NS01/003b INQ000087069**. The Coronavirus Bill Board met for the first time on 20th February 2020 and in the absence at that time of an established lead official with responsibility for the Bill, I dialled into the Board meeting to represent the Welsh Government. I also attended a number of daily Welsh Government “bird table” meetings and during the preparation of the Coronavirus Act reported into those meetings on progress and any current issues in relation to the planned legislation. I do not recall having met Ministers directly during the early period of the pandemic. I had no meetings with Welsh local authorities.

Legislation

16. The decision to use public health legislation was for Ministers and not myself. I did not advise on the use of the public health legislation as opposed to other potential legislative vehicles or extant powers. I believe the default position taken during the early period of the pandemic was that the existing public health legislation – the Public Health (Control of Disease) Act 1984, as amended, and accompanying regulations – provided appropriate powers for the Welsh Ministers to respond to the threat of an airborne virus. In respect of the Coronavirus Act, the decision was made to “repurpose” the planned Pandemic Influenza Bill which had been in preparation for some time and was designed specifically to address the spread of a potentially fatal respiratory disease.

17. I do not recall being involved in any specific discussion around potential use of the Civil Contingency Act 2004 to respond to Covid 19. My understanding at the time was that a decision to pursue emergency powers under Part 2 of the Civil Contingency Act would be a matter for the UK Government. Exhibited at **Exhibit NS01/004 INQ000087042 and Exhibit NS01/004a INQ000299004** is MA/L/VG/0809/20 and the associated annex, which provided advice to Ministers on the implications of any decision by the UK Government to fall back on wider civil contingencies powers contained in the 2004 Act.

18. My role in relation to the Coronavirus Act 2020 was initially as the lead policy official interfacing with the other UK administrations on proposals for the legislation. Subsequently, from 26th February 2020 I was asked by the then Permanent Secretary to act as Senior Responsible Officer for the Wales provisions in what was then the Coronavirus Bill. I acted as the main interface between the Welsh Government and other UK administrations on the scope and drafting of the legislation. Within Welsh Government, as the proposed scope of the Bill developed and changed, I liaised with colleagues in relevant policy departments (primarily Health, Social Care and Education) and with Welsh Government Legal Services and drafting lawyers in the office of the Legislative Counsel on provisions needed for Wales and coordinated advice to Ministers and the First Minister. Colleagues in policy departments maintained close communication with their own counterparts in the other UK administrations. I also updated Ministers by email on the progress of discussions about the Coronavirus Bill as it developed, examples of which are exhibited at **Exhibit NS01/005 INQ000271440 and attachment NS01/005a INQ000271441, and NS01/006 INQ000271449**. All of this was done at great speed; hence time to consider the contents, cost and impact of the legislation prior to enactment was limited. In order to inform Parliamentary scrutiny of the legislation, however, the UK Department for Health and Social Care published a Human Rights Memorandum and Impact Assessment which were prepared in consultation with the devolved governments. The impact assessments drawn up by the Department for Health and Social Care were shared with policy teams across the Welsh Government who had contributed to the development of the draft legislation and its provisions as they related to Wales. In the time available, the Welsh Government was not able to prepare its own separate impact assessment.

19. Ministerial Advice submissions (MA) were provided to the FM on the Coronavirus Act 2020 but because of the speed at which the Bill was developing, it was not always

possible for an MA to be sent to the Minister and email confirmation of Ministerial instructions was provided instead. An example of an email seeking Ministerial instructions is exhibited as Exhibit **NS01/007 INQ000271448** and which includes instructions from the First Minister.

20. As the Coronavirus Act included matters within the devolved competence of Welsh Ministers, I and my team also led work on a Legislative Consent Memorandum which was laid before the Senedd on 24th March 2020. The Senedd agreed a Legislative Consent Motion on the same day.
21. After the Coronavirus Act received Royal Assent, I moved to work on relevant Welsh Government regulations. My role was ensure that Ministerial decisions on changes to regulations needed to manage the pandemic were delivered to time, in keeping with the regular 21-day cycle of reviews in place throughout the period. I understand that the 21-day process has already been set out for the inquiry by Andrew Goodall in his statement WG/01. I led a small team drawn together from other parts of the Welsh Government with responsibility for delivering the regulations and core supporting guidance. Subsequently with effect from the middle of June 2020 my team also assumed responsibility for delivery of the International Transport Regulations in Wales.
22. With regard to the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 and subsequent iterations, I was advised or assisted primarily by Thomas Smithson and the Covid 19 Project Team (who coordinated the series of reviews of the Welsh regulations over the course of the pandemic). I worked closely with lawyers including but not limited to Sarah Wakeling then a Deputy Director in Legal Services and members of her team. In addition, I worked closely with colleagues in the Office of the Legislative Counsel including Dylan Hughes (Chief Legislative Counsel) and Terry Kowall (Office of the Legislative Counsel). On the supporting guidance which was published alongside the regulations I worked with James Gerard (Deputy Director) who was placed with me in the Covid 19 Regulations team from May 2020 and whose main focus was coordination of the guidance. In all of this we were advised and assisted by Special Advisers also, notably Jane Runeckles, Claire Jenkins and Madeleine Brindley. The Chief Medical Officer's advice of course was sought throughout the period on all relevant matters and on all advice which went forward to Ministers.

23. The process by which the Coronavirus regulations were prepared required that the outcome of the regular 21-day reviews be translated rapidly into draft regulations. Lawyers and drafting counsel were engaged in the review process in the same way as policy officials because a formal sequential process by which policy instructions would be provided to Legal Services and subsequently legal instructions provided to drafting counsel would not have facilitated the production of draft regulations quickly enough.
24. During the earlier phases of the pandemic, and following the passing of the Coronavirus Act 2020, I was for a short period responsible with others for coordinating advice to Ministers on the review of the Coronavirus Regulations as required by law. A Covid-19 Project Team was established around April 2020 and the coordination of advice on the Regulations and any proposed changes fell to that team going forward. I attach as **Exhibit NS01/008 INQ000097652** an example of an MA where amendments to regulations were sought.
25. Throughout the period of the pandemic, though attendance at relevant meetings such as the Cabinet Covid Group and from regular discussions with colleagues, I was aware that the First Minister, other Ministers and officials had frequent engagement with stakeholders on the progress of the pandemic and on draft laws, regulations and guidance. An especially important forum which brought together partners and stakeholders representing public services, employers, trade unions, the third sector, statutory commissioners in Wales and others was the Shadow Social Partnership Council, details of which are provided at para 29.
26. I was also aware of ongoing contact through the pandemic between Welsh Ministers and the other governments of the UK. My impression was that the need for consistency of approach in respect of regulations and restrictions was one among a number of factors considered in decision making, but so too was the need for regulations and restrictions to be sensitive to the particular context of each of the devolved nations.
27. Draft Coronavirus laws reflected the outcome of the regular 21-day review cycle in which all portfolio departments and Ministers were engaged. Stakeholders, including public services providers, business sector representatives, third sector representatives

and statutory commissioners in Wales, would be consulted about potential changes to regulations arising from each review and informed of the planned date on which any changes would be brought into force. Thereafter, once the policy approach had been agreed by Ministers, draft regulations would be drawn up as described in paragraph 20 above and brought into force on the date agreed. Guidance for the most part was drafted by relevant policy officials in each department of the Welsh Government and agreed by the relevant Minister. Guidance on the core contents of the regulations (for example on Frequently Asked Questions) and on changing restrictions over time was coordinated by my team under the leadership of James Gerard. Regulations and supporting guidance when updated were posted to the Welsh Government website. The First Minister or another Minister would undertake a televised press briefing following each review of the regulations and restrictions to inform the public about the status of the pandemic and any upcoming changes to the law. An example of a press briefing given by the FM is exhibited at **Exhibit NS01/009 INQ000090588**.

28. Consideration of how the Coronavirus laws, regulations or guidance related to the Public Sector Equality Duty was a matter for the 21-day policy review cycle. With regard to the Coronavirus Act, the Welsh Government and other devolved governments contributed to the Impact Assessment published by the UK Department for Health and Social Care published on 19 March 2020: **Exhibit NS01/010 INQ000271869**.

29. My role in respect of Coronavirus legislation concluded in November 2020, when I moved to become Deputy Director for Social Partnership. My role in Social Partnership engaged with the pandemic to the extent that the then Shadow Social Partnership Council, chaired by the First Minister, had been meeting from 14 May 2020 to 14 July 2022. The Partnership Council formed a key mechanism for engagement between Welsh Ministers and a wide range of social partners (employers and trade unions) as well as other stakeholders such as the statutory Commissioners in Wales on management of the pandemic. A summary of the work of the Shadow Social Partnership Council is exhibited at **Exhibit NS01/011 INQ000271870**

UK Coronavirus Action Plan

30. I played no role in developing, implementing or monitoring the Coronavirus Action Plan, save participating in some meetings when the plan may have been discussed by others.

Engagement with UK Government and Counterparts

31. I had significant engagement with the UK Government and other devolved governments in relation to the drafting of the Coronavirus Act between January and end of March 2020. I attended the Coronavirus Bill Programme Board established and chaired initially by the UK Cabinet Office Civil Contingencies Division and latterly by the UK Department of Health and Social Care. The Programme Board brought together all four UK administrations to agree the scope and content of the Bill and then support its passage through Parliament. Collaboration between the four governments was in my experience positive and constructive throughout. Likewise, there was significant engagement with the other UK governments on matters relating to International Travel Regulations and restrictions (I set out further details below).

Travel Regulations

32. I worked primarily on the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, responsibility for which was transferred formally to my team in June 2020 having been dealt with in the earlier part of the year by another senior colleague, Tim Render (Director, Environment and Rural Affairs) and the Covid 19 Project Team. I and a Grade 7 colleague in Public Health Division, provided support to Mr Render and worked closely with other colleagues (notably the Office of Legislative Counsel) during May 2020 to formulate advice to Ministers on initial proposals from the UK government for UK-wide restrictions on international travel into the UK **Exhibit NS01/012 INQ000271537**. A first set of Health Protection Regulations concerning international travel came into force across the UK on 8th June 2020. The first iteration of the Health Protection (Coronavirus, International Travel) (Wales) Regulations were made following advice to Ministers coordinated by the Covid 19 Project Team. A copy of MA-FM-1809-20 is provided as **Exhibit NS01/013 INQ000271545**.
33. Between the 8 June and 9 July 2020, the Regulations required all persons arriving at ports from outside of the common travel area (that is the United Kingdom, the Channel Islands, the Isle of Man, and Ireland), subject to exemptions for certain categories of

person, to provide information about where they would reside when in Wales (“passenger information”) and to isolate for 14 days following arrival. With effect from 10th July 2020 some of these restrictions began to be relaxed. The Regulations were amended to exempt arrivals from certain countries from the need to isolate for 14 days, as well as amending exceptions to the need to isolate and some categories of persons who are exempt from the requirements of the Regulations. Countries were exempted based on a risk categorisation developed by the UK government. The exemption applied to all low-risk countries but applied only to medium-risk countries where those countries had reciprocal arrangements in place for arrivals from the UK.

34. A Grade 7 officer in my team, was transferred temporarily into the role at the end of May 2020 from another department in Welsh Government. Over the next few months he assumed a lead role in terms of liaison with the other UK governments on the International Travel Regulations, including the assessment of the public health risk arising from inward travel to the UK from other countries and establishment of agreed “travel corridors”. Supported by this officer, it was generally my role then to clear any formal advice to the FM and other Ministers, ensuring that advice was supported by the CMO and agreed by Welsh Government lawyers. An example of the advice submitted to Ministers on 21 September 2020 is attached as **Exhibit NS01/014 INQ000271579 and Exhibit NS01/014a INQ000271580**.

35. In respect of the International Travel Regulations, officials relied primarily on advice from the Joint Biosecurity Centre (JBC) which was established to identify outbreaks of COVID-19, and to ensure that decision makers had access to the best possible information in their jurisdictions when responding to outbreaks. Ministers received advice on the establishment of the JBC in MA/FM/2430/20 **Exhibit NS01/015 INQ000176794**. The JBC had three main functions:

- Collection of data.
- Provision and analysis of decision-making advice.
- Establishing a legal basis for setting a single UK-wide Covid-19 Alert Level, including consideration of regional variations in data where appropriate. The alert level was determined by the four Chief Medical Officers, with advice from the JBC.

36. Officials dealing with the International Travel Regulations would also have recourse to the Technical Advisory Cell (TAC), the Chief Scientific Advisor for Health in Wales and the Chief Medical Officer to inform advice to the Minister for Health and Social Care and First Minister.

37. Regular meetings were held at Ministerial level and between officials in the four UK governments about proposed changes to international travel restrictions. Proposals for amending the international travel restrictions by the UK Government often changed very quickly during each review cycle as new epidemiological data and advice became available for each country. My recollection is that relevant JBC data and analysis was often shared with the Welsh Government and others somewhat later than it came into the possession of the UK Government, leaving less time for consideration. **Exhibit NS01/016 INQ000271556** and **Exhibit NS01/017 INQ000271568** and **Exhibit NS01/017a INQ000271569** provide an examples when decisions by the Welsh Ministers on relevant changes that might be made to the Welsh Regulations was dependent upon decisions made by UK Ministers. I understand a full list of coronavirus related legislation, including that relating to travel restrictions have been provided by Helen Lentle as part of her statement for WG/01.

38. Initial restrictions on movement and travel during the pandemic were introduced as part of the suite of health protection measures put in place to try to curb the spread of the virus. Part of my early role as Deputy Director for Public Health was to help advise Ministers on the need for and content of the Regulations, although as I have said my primary focus from 26th February 2020 was delivery of the Coronavirus Act 2020 and subsequent regulations. There was some divergence of approach taken with the other UK governments over time and as the pandemic developed. Any divergence reflected the policy choices made by Ministers on the basis of the scientific and other advice. The First Minister was anxious that the Welsh Government should facilitate a UK-wide system of border health controls by mirroring as far as possible the English Regulations.

Informal Communications

39. I was not a member of any WhatsApp or other messaging groups with Welsh Ministers, senior advisors and senior civil servants.

Lessons learnt

40. My overall reflection having spent the majority of 2020 working on the Welsh Government's response to the Coronavirus would be to echo the view expressed previously by the First Minister – that governance arrangements were sometimes ad-hoc and fragmented with a lack of reliable rhythm. Collaboration between the four UK government on the Coronavirus Act worked reasonably well, however, insofar as appropriate governance structures were put in place early (the Coronavirus Bill Board) to facilitate sharing of information about the scope, purpose and impact of the legislation. Through the operation of that Board, the Welsh Ministers were able to secure appropriate provision for Wales.

Evidence at Senedd Committees

41. With the Minister for Health and Social Services, I attended a meeting of the Senedd Health, Social Services and Sport Committee on 18 March 2020 to provide a briefing on the Coronavirus Bill, the contents and purpose of which had been made public on 17th March by the UK Government. **Exhibit NS01/018 INQ000271871.**

Statement of Truth

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

Signed: _____

Personal Data

Neil Surman

Dated: _____28/09/2023_____