

Wednesday, 15 May 2024

1  
2 (10.00 am)  
3 **MS DOBBIN:** My Lady, may I call the first witness for today,  
4 please, Baroness Arlene Foster.  
5 **LADY HALLETT:** Thank you for coming back to help us,  
6 Lady Foster.  
7 **BARONESS ARLENE FOSTER (sworn)**  
8 **Questions from LEAD COUNSEL TO THE INQUIRY for MODULE 2C**  
9 **LADY HALLETT:** Thank you, Ms Dobbin.  
10 **MS DOBBIN:** Can I ask you to give your full name to  
11 the Inquiry, please.  
12 **A.** Yes, Arlene Isobel Foster.  
13 **Q.** You ought to have a witness statement in front of you,  
14 Baroness Foster, which you signed -- just checking,  
15 forgive me, it's on 28 February 2024; correct?  
16 **A.** That's correct.  
17 **Q.** Is that witness statement true to the best of your  
18 knowledge and belief?  
19 **A.** It is.  
20 **Q.** I want to start, please, by asking you about your  
21 background, if I may. I think it's right that you were  
22 the member for the Legislative Assembly for Fermanagh  
23 and South Tyrone from 2003 until your resignation in  
24 October 2021; is that correct?  
25 **A.** That's correct.

1

1 **Q.** Then between 11 January 2020 and 14 June 2021, you were  
2 once again the First Minister of Northern Ireland; yes?  
3 **A.** That is correct.  
4 **Q.** So you were First Minister for a considerable period of  
5 the time that this Inquiry is interested in; correct?  
6 **A.** Yes, that is correct.  
7 **Q.** And you were also one of the ministers who had the most  
8 substantial experience behind them in terms of  
9 ministerial experience as well; that's also correct,  
10 isn't it?  
11 **A.** Yes.  
12 **Q.** I want to start by asking you the same questions that  
13 were asked of Ms Michelle O'Neill yesterday to see if  
14 you accept a number of the points that she accepted.  
15 First of all, that you and she were the joint heads  
16 of government in Northern Ireland as of January 2020;  
17 correct?  
18 **A.** Yes, it is a joint office, yes.  
19 **Q.** And that you were jointly responsible for leading the  
20 Executive's response to the pandemic?  
21 **A.** Yes, in a mandatory coalition, but yes, absolutely.  
22 **Q.** Do you agree that the Executive Committee exercised  
23 a joint responsibility towards the people of  
24 Northern Ireland for the response to the pandemic?  
25 **A.** Yes, I do.

3

1 **Q.** I think that you were also the leader of the Democratic  
2 Unionist party between 2015 and 2021, is that also  
3 correct?  
4 **A.** That is correct, my Lady.  
5 **Q.** During the course of that time, you held a number of  
6 ministerial positions, so you were the Minister for  
7 Finance and Personnel; is that right?  
8 **A.** That's correct, for a short period of time, yes.  
9 **Q.** Between 2015 and 2016; yes?  
10 **A.** Yes.  
11 **Q.** You were the Minister of Enterprise, Trade and  
12 Investment from 2008 until 2011; is that correct?  
13 **A.** That is correct, yes.  
14 **Q.** Then again from 2011 to 2015; yes?  
15 **A.** Yes.  
16 **Q.** You were also the Minister for the Environment as well  
17 for a period between 2007 and 2008?  
18 **A.** That's correct.  
19 **Q.** You had periods of being the acting First Minister,  
20 I think, between 2010 and 2015, when Mr Robinson had to  
21 stand aside for temporary periods; is that also correct?  
22 **A.** That is correct.  
23 **Q.** You were the First Minister of Northern Ireland between  
24 January 2016 and January 2017; is that also correct?  
25 **A.** That is correct, yes.

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1 **Q.** Do you agree that this went to the single most important  
2 duty that you owed to the people of Northern Ireland: to  
3 protect their lives?  
4 **A.** Yes.  
5 **Q.** I want, again, to ask you precisely the same question  
6 I asked of her: whether you consider that you and your  
7 ministerial colleagues gave the people of  
8 Northern Ireland the leadership that they deserved  
9 during that period?  
10 **A.** Well, I have to say, my Lady, it was probably the most  
11 difficult period of my political career. I think it has  
12 been set out that I've had a quite long political  
13 career, but I can say without any hesitation that  
14 dealing with the Covid pandemic was the most challenging  
15 and the most difficult time, and I've had some difficult  
16 times.  
17 But we certainly tried, as -- all of the Executive,  
18 I think, tried to put their best foot forward and to  
19 deal with the issues that were presented to them. We  
20 had had three years without a government. We had come  
21 back on 11 January. We had a lot of things to do  
22 because there hadn't been a government for three years.  
23 And we were then confronted with this global pandemic  
24 coming towards us. So it was hugely challenging.  
25 And I think all I can say in regards my own

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1 leadership is that I certainly tried to do the best for  
 2 the people of Northern Ireland, recognising that I was  
 3 First Minister at the time.

4 **Q.** The question was a simple one, Baroness Foster, it's  
 5 whether or not you and your colleagues gave the people  
 6 of Northern Ireland the leadership that they deserved  
 7 during the pandemic?

8 **A.** Well, I think that's a subjective question, my Lady.  
 9 Other people will have particular views on whether they  
 10 got the leadership they deserve. I can only answer it  
 11 from my own perspective, and I certainly gave as much as  
 12 I could during the time that I was in that position.

13 **Q.** So, Baroness Foster, is it your position that you did  
 14 give the people of Northern Ireland the leadership they  
 15 deserved?

16 **A.** My position is that people will have particular views on  
 17 whether I gave the leadership that they deserved, and  
 18 I'm sure that those views, my Lady, will be varying  
 19 views. From my perspective I gave the leadership that  
 20 I felt was needed at that time.

21 **Q.** Have you reflected on the leadership that you gave and  
 22 the decisions that you were part of, and have you  
 23 considered whether those were the right decisions for  
 24 Northern Ireland?

25 **A.** Well, of course, with the benefit of hindsight, you do

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1 by a senior official, the Chief Medical Officer, set out  
 2 in black and white in front of you, in relation to one  
 3 of the most critical junctures of the pandemic, does  
 4 that cause you a moment's reflection about the  
 5 leadership that you offered at that time?

6 **A.** Well, of course, my Lady, it does, absolutely, more than  
 7 a moment's reflection, it has to be said. But the Chief  
 8 Medical Officer, like all of us, was exhausted by that  
 9 stage, I think it's fair to say. He worked so  
 10 diligently for the Executive and for the people of  
 11 Northern Ireland right throughout this pandemic. We had  
 12 a very good relationship, and it saddens me greatly to  
 13 see those text messages.

14 And actually it brings me back to what we were going  
 15 through at that particular point in time, and it was  
 16 an incredibly difficult point that we had reached.  
 17 Because the context of those messages is very critically  
 18 important, and I think to get the context we have to go  
 19 back to September/October: people not actually abiding  
 20 by the regulations, people tired, people fatigued by the  
 21 regulations, people looking to the example,  
 22 unfortunately, from some of the Sinn Féin ministers  
 23 breaching the regulations in July; and so we'd reached  
 24 a point where people were not listening as well as they  
 25 had listened back in March/April time to the Executive

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1 think about all of the decisions that we took at that  
 2 time, and no doubt we will go through some of those  
 3 decisions today, but certainly at the time I took those  
 4 decisions with the best of intentions, to protect the  
 5 people of Northern Ireland, that was certainly the  
 6 **modus operandi** that I was operating under at the time,  
 7 that we had to do what was right for the people of  
 8 Northern Ireland.

9 **Q.** I wonder if we could go to, please, to INQ000417025, and  
 10 to page 9.

11 This was the message that the Chief Medical Officer  
 12 sent after the meeting on 10 November 2020, where he  
 13 said:

14 "Hang their heads in shame. Tell that story to the  
 15 wife and two boys of a 49 year old who said goodbye to  
 16 their father on Facebook on Friday. There will as  
 17 a consequence be more."

18 Perhaps if we could go to another message that was  
 19 sent in respect of that meeting.

20 INQ000370538 at page 28, please. It's the message  
 21 at 18.19. Thank you.

22 "A huge thank you. I don't know about you but I'm  
 23 out on my feet for what when all said and done.  
 24 Politics at its worst."

25 Baroness Foster, when you see those sorts of views

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1 ministers, and that's a source of great regret.

2 **Q.** We're going to go through those months, I think, in some  
 3 detail in order to understand the advice that was being  
 4 provided to you at this point in time. A number of  
 5 people have given evidence about the meeting that took  
 6 place over the course of those four days, and I think  
 7 that I can put it generally that many regarded it as  
 8 a nadir in politics in Northern Ireland. Do you accept  
 9 any responsibility for that?

10 **A.** Well, I think we all have a responsibility to where we  
 11 had got to on 9 November, 10, 11 November, because  
 12 relationships were very poor at that time, I think you  
 13 can see that from the minutes of that meeting. The  
 14 deputy First Minister had given an interview on the  
 15 Sunday saying that we can't have continuous lockdown, we  
 16 need to find a way to deal with that. We had discussed  
 17 the issue outwith the Executive around close contact  
 18 workers, hairdressers, beauticians, people who were  
 19 pretty low paid, and at the time she had sympathy for  
 20 trying to do something for those people, because some of  
 21 those people, if they didn't work they didn't get paid.  
 22 And it was that context that we went into the meeting,  
 23 believing that we could give some hope and some relief  
 24 to those people.

25 And then the story changed, once we started the

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1 meeting, and it became clear during the first day,  
 2 I think, towards the end, that Sinn Féin, because the  
 3 deputy First Minister was in the chair -- and I think  
 4 this is an important point, my Lady, to make -- the way  
 5 the Executive was chaired is that we took it in turns to  
 6 chair the Executive, so if I had chaired the last  
 7 meeting for the first five items, Michelle would chair  
 8 the meeting the next time for the first five items, so  
 9 it just so happened on that occasion that she was in the  
 10 chair for the whole length of that very long meeting,  
 11 which meant that she had control in terms of when the  
 12 votes were to be put, or if indeed a vote was to be put,  
 13 because we have a duty, as you know, under the  
 14 Ministerial Code to try to find consensus in  
 15 an Executive and try to bring everybody to the same  
 16 point, and because she was in the chair she had the  
 17 decision to make as to whether to continue to look for  
 18 consensus or whether to put something to a vote.

19 **Q.** Is that a very long, long way of saying that you don't  
 20 bear any responsibility --

21 **A.** Not at all.

22 **Q.** -- for what happened at that meeting?

23 **A.** Not at all, I absolutely accept my position as  
 24 First Minister, I'm just trying to explain what the  
 25 context was, why relationships were so bad at that time,

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1 during the first wave of the pandemic, or do you accept  
 2 responsibility for that?

3 **A.** I don't think it was the Department of Health's fault  
 4 for what happened during the first wave of the pandemic.  
 5 It was the virus that caused the damage to  
 6 Northern Ireland and we were trying to deal with what  
 7 was coming at it. Because nobody had any appreciation  
 8 of the scale of what was coming towards us, and actually  
 9 in mid-March at the meeting we had with the  
 10 Republic of Ireland ministers, in those minutes you can  
 11 see that the Chief Medical Officer, our Chief Medical  
 12 Officer, is saying that he felt that the peak was around  
 13 14 weeks from then.

14 So wrongly, and I say absolutely wrongly, we felt  
 15 that we had time, and we didn't have time, and that's  
 16 a source of great regret.

17 **Q.** Saying that it wasn't the fault of the Department of  
 18 Health is not the same as accepting responsibility for  
 19 what happened in Northern Ireland during the first wave.  
 20 I'm going to ask you that question again, whether you  
 21 accept that you bear any responsibility for the outcomes  
 22 in Northern Ireland during the first wave of the  
 23 pandemic?

24 **A.** Yes, of course I accept responsibility, I was  
 25 First Minister at the time.

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1 and why we got ourselves into the position where the  
 2 cross-community vote was triggered.

3 **Q.** It's a feature of your witness statement, isn't it, that  
 4 you blame a number of people or other departments for  
 5 what happened in Northern Ireland for the pandemic; do  
 6 you agree?

7 **A.** No, I don't agree.

8 **Q.** We'll have a look at your witness statement.

9 **A.** Yes.

10 **Q.** But throughout it you refer to the responsibility borne  
 11 by the Department of Health, don't you, for the initial  
 12 response to the pandemic?

13 **A.** Yes, because -- and I had an opportunity to look at the  
 14 emergency response structure last night again, and it's  
 15 very clear from those documents that Health was the lead  
 16 department, and that's why both Michelle and I looked to  
 17 the Health Department for information in relation to the  
 18 coronavirus.

19 So that's not a passing of the buck, it's just the  
 20 reality that we didn't have the information in relation  
 21 to what was happening.

22 **Q.** Well, I'm going to ask you about why you didn't have the  
 23 information, but are we to take it, per your witness  
 24 statement, that it's the Department of Health which is  
 25 largely to blame for what happened in Northern Ireland

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1 **Q.** And do you, for example, accept that you had joint  
 2 responsibility with other ministers for the oversight,  
 3 the general oversight, in terms of what happened,  
 4 for example, in care homes in Northern Ireland during  
 5 the first wave of the pandemic?

6 **A.** Yes, indeed, my Lady.

7 **Q.** Do you accept the concessions that were made by  
 8 Ms O'Neill in her evidence yesterday that, by and large,  
 9 there was no real oversight on the part of the Executive  
 10 Committee until around mid-March in respect of the  
 11 response to the pandemic?

12 **A.** Yes, I think that's a fair comment.

13 **Q.** Right.

14 I'm going to go back and look at all of those  
 15 things, but just turning then to your statement, so that  
 16 hopefully we can proceed on an agreed basis. First, if  
 17 we could go, please, to page 22.

18 Just picking up paragraph 72 at around the mid-point  
 19 and the line that begins:

20 "However, with hindsight, we probably should have  
 21 locked down earlier. Given that this was a novel threat  
 22 and the information and modelling was developing all the  
 23 time, a more precautionary approach might have avoided  
 24 many deaths. In the event, Northern Ireland had lower  
 25 case numbers than parts of England, and in particular

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1 London, when the national lockdown was announced, which  
2 meant that in comparative terms, Northern Ireland's  
3 lockdown took place when we were at an earlier stage.  
4 This helped to minimise the loss of life in the first  
5 wave, albeit I appreciate this will provide no comfort  
6 to those who did lose loved ones at this time."

7 Correct?

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

9 **Q.** That obviously doesn't address the position in the  
10 second wave, does it? Do you accept, Baroness Foster,  
11 that you had more agency in relation to the second wave  
12 of the pandemic, and that you knew a very good deal more  
13 about Covid-19 during the second wave of the pandemic?

14 **A.** Yes, I think that's right.

15 **Q.** Yet despite all of that, do you accept that more people  
16 died in Northern Ireland during the period for which you  
17 had a greater level of oversight, perhaps, than wave 1?

18 **A.** Yes, I do accept that more people died during that  
19 period.

20 **Q.** Again, do you accept that you, jointly with others, also  
21 bear some responsibility that that was the outcome in  
22 Northern Ireland?

23 **A.** Yes, I do.

24 **Q.** I'm going to go back and deal with what you said, then,  
25 please, at paragraph 36 of your witness statement.

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1 were running in February.

2 **Q.** I'm not sure that's an answer. You said at paragraph 36  
3 that until the end of February pandemic planning was  
4 squarely within the remit of the Department of Health.  
5 Did that mean that until the end of February, planning  
6 for the pandemic was not a matter for the Executive  
7 Committee?

8 **A.** Well, the response was being led by Health as the lead  
9 department. The emergency response was not stood up  
10 until March, as I think it's been given in evidence.

11 The CCG was -- met on 20 February under the leadership  
12 of the head of the Civil Service, David Sterling, and so  
13 in terms of planning and response, the Department of  
14 Health was certainly taking the lead at that time,  
15 albeit that the head of the Civil Service held the CCG  
16 on 20 February.

17 **Q.** Yes, I'm going to come back and deal with what the CCG  
18 actually amounted to during that period. I'm just going  
19 to go back and look again at paragraph 36.

20 If we follow that paragraph down, I won't read all  
21 of it out, but as you can see, Baroness Foster, what you  
22 go on to say, having addressed the position to the end  
23 of February, you say:

24 "This culminated in the Health Minister advising on  
25 16 March ... that [the Department of Health] had been

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1 That's at page 11, please. What you've set out there is  
2 that:

3 "... from the end of January to the end of February,  
4 pandemic planning was squarely within the remit of [the  
5 Department of Health]. We were receiving briefings in  
6 February from [the Department of Health] at Executive  
7 meetings and being advised in a general way of the  
8 various preparations that were being undertaken."

9 Correct?

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

11 **Q.** When you say that pandemic planning was squarely within  
12 the remit of the Department of Health, what that means  
13 is that really it was no part of the work of the  
14 Executive Committee in January or February 2020 to be  
15 part of the pandemic planning in Northern Ireland;  
16 correct?

17 **A.** No, I think in February, at the beginning of February,  
18 we started to receive updates from the Minister of  
19 Health under "Any other business" at the Executive  
20 meetings, and we were focused very much on trying to get  
21 a programme for government in place, along with  
22 a budget, and indeed we had an away day to deal with  
23 those issues on 12 February, and given that the  
24 Department of Health was attending COBR and dealing with  
25 the issues and reporting to us, that was the way things

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1 preparing for the last 7 weeks. As this was a matter  
2 that was largely being dealt with by [the Department of  
3 Health], issues such as the implications of Covid-19 ...  
4 were not raised to the Executive, save for the CMO's  
5 comment on 2 March 2020 that the 'virus [was] not like  
6 flu' ... There was also no consideration at Executive  
7 level of the appropriateness or otherwise of flu  
8 pandemic plans for managing the challenges a coronavirus  
9 might present."

10 So really, is that an acceptance at paragraph 36  
11 that really, until it got to 16 March, the Executive  
12 Committee really didn't have any role in the response to  
13 the pandemic in Northern Ireland?

14 **A.** I don't think it's the case that we had no role in  
15 relation to coronavirus coming to Northern Ireland.  
16 I think that we had started to receive updates from the  
17 Department of Health at the beginning of February. As  
18 I say, the CCG was set up on 20 February, and planning  
19 was taking place, as I indicated in the Department of  
20 Health, but also in other ministries as well. You've  
21 heard evidence from the Minister of Education,  
22 for example, that he was taking planning forward.

23 So I think the setting up of the CCG was  
24 an indicator to the departments that they should be  
25 planning, albeit on pandemic flu readiness, and then we

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1 were told on 2 March that it wasn't like flu, it was  
 2 actually different.  
 3 **Q.** I think you had been told long before then that it  
 4 wasn't like flu, weren't you?  
 5 **A.** Not to my recollection.  
 6 **Q.** Right. We'll have a look at what you were told, and  
 7 I will take you to that. But I wanted to start with the  
 8 NICCMA protocol of 2016 --  
 9 **A.** Yes.  
 10 **Q.** -- because I think that's what you were referring to  
 11 when you were trying to explain why the Department of  
 12 Health was responding to the pandemic.  
 13 If we could go to that, please, at INQ000092739.  
 14 If we could go to paragraph 1, please,  
 15 Baroness Foster, paragraph 1 sets out that:  
 16 "When an emergency ... is anticipated which is  
 17 likely to have a serious impact ... to a part or the  
 18 whole of Northern Ireland, central strategic  
 19 co-ordination arrangements can be activated ..."  
 20 Correct?  
 21 **A.** That's correct, yes.  
 22 **Q.** And that part of the reason that they can be activated  
 23 is to provide strategic co-ordination of the response to  
 24 Northern Ireland departments; correct?  
 25 **A.** Yes.

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1 **Q.** Yes, it would be absurd to suggest, wouldn't it, that  
 2 the heads of government in Northern Ireland didn't have  
 3 the ability to call for the activation of civil  
 4 contingencies arrangements?  
 5 **A.** Yes, it would be, yes.  
 6 **Q.** Much has been made, and in your witness statement, of  
 7 the role of the Department of Health as the lead  
 8 department.  
 9 Can we just go and look at that, please, at  
 10 paragraph 41.  
 11 It sets out there:  
 12 "The Lead Government Department has a key role in  
 13 NICCMA. It has expert knowledge of the cause of the  
 14 emergency which it can apply to inform the response by  
 15 formulating a prognosis, so allowing other emergency  
 16 responders to understand the implications for their  
 17 sectors and areas of responsibility. Under NICCMA it is  
 18 possible that there may be multiple lead departments in  
 19 a multifaceted emergency."  
 20 Correct?  
 21 **A.** That is correct, yes.  
 22 **Q.** Can you help as to what decision you made or were aware  
 23 of that determined that the Department of Health would  
 24 be the lead government department?  
 25 **A.** Well, my Lady, we determined that because the minister

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1 **Q.** If we look at paragraph 3:  
 2 "The First Minister and deputy First Minister or TEO  
 3 may activate NICCMA following a request to do so from  
 4 the Executive ..."  
 5 Correct?  
 6 **A.** Yes.  
 7 **Q.** In the absence of any of the organisations or  
 8 representatives set out there, they can be activated  
 9 whenever TEO judges it appropriate to do so; correct?  
 10 **A.** Yes, that's correct.  
 11 **Q.** So overarching responsibility for the standing up of  
 12 these arrangements ultimately lies with the TEO or with  
 13 you and the deputy First Minister; correct?  
 14 **A.** Yes, that is correct.  
 15 **Q.** There would be absolutely nothing to stop either of you,  
 16 would there, from calling for the activation of civil  
 17 contingency arrangements if you thought that they were  
 18 required?  
 19 **A.** That's correct, although I do note at paragraph 23 it  
 20 says that it will normally be chaired by the head of the  
 21 Civil Service and membership is comprised of senior  
 22 officials, and we had an understanding that officials  
 23 took the lead. Although I absolutely accept that it is  
 24 the responsibility of both the First Minister and deputy  
 25 First Minister in terms of ministerial roles.

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1 had been attending COBR meetings alongside the Minister  
 2 of Health for the Westminster government, the Scottish  
 3 Government, and the Welsh Government. He was reporting  
 4 back to the Executive on those occasions that he  
 5 attended those meetings, and the coronavirus was  
 6 a health emergency, which is why we felt that the  
 7 Department of Health was the lead department.  
 8 **Q.** Did you actually make a decision to that effect?  
 9 **A.** I don't think that it was minuted that we'd taken  
 10 a decision, but that was the way it developed, because  
 11 of the fact that the minister was attending those  
 12 meetings.  
 13 **Q.** And you'll agree, I'm sure, that paragraph 21(sic), and  
 14 this description of a lead government department having  
 15 a "key role", in no way obviates or impacts upon the  
 16 powers that you and the deputy First Minister had in the  
 17 context of a civil contingencies emergency; do you  
 18 agree?  
 19 **A.** Yes, I do agree, yep.  
 20 **Q.** So for all of the reference and all of the reliance  
 21 placed in your witness statement on the fact that the  
 22 Department of Health was the lead government department,  
 23 do you accept that that's no answer at all as regards  
 24 the fact that the ultimate responsibility for the  
 25 response to the pandemic lay with you and the deputy

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1 First Minister as the heads of government?

2 **A.** Well, as you know, my Lady, we have a different form of  
3 government here in Northern Ireland. The First Minister  
4 and deputy First Minister in Northern Ireland do not  
5 have the same powers as our counterparts in Scotland and  
6 Wales, in terms of directing ministers, particularly if  
7 those ministers are from a different party than those  
8 which we were in. Therefore, we have to use our soft  
9 power, as I call it, to try to work with all of the  
10 ministers. We can't direct those ministers, but we have  
11 to try to find common ground where we can all move  
12 forward. And I really believe that I had tried to do  
13 that with the Department of Health, to try to have as  
14 much information as we needed to try to move forward.  
15 Of course, with hindsight, we didn't have as much  
16 information as we should have had at that time, and  
17 I regret that deeply.

18 **Q.** I think we've already established that this protocol  
19 doesn't in any way inhibit you or the deputy First  
20 Minister or the Executive Office from activating civil  
21 contingencies arrangements; correct?

22 **A.** That is correct, but I do think, having re-read the  
23 document again, my Lady, that it's a document that  
24 doesn't reflect the realities of mandatory coalition,  
25 and I think it's something that needs to be revisited to

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1 it, in order to provide you with a full and proper  
2 update as to pandemic planning in Northern Ireland?

3 **A.** I don't have the power to ask other departments to bring  
4 submissions, my Lady. Sometimes ministers will decide  
5 to bring submissions if they feel that they want to get  
6 the backing of members and to say that they've brought  
7 a paper explaining what is happening, what is going on.  
8 But the Department of Health, and I'm not criticising  
9 them for this at all, I'm just saying they came with  
10 a verbal update, it was not a written submission.

11 **LADY HALLETT:** You say you don't have the power to ask. Did  
12 you mean by that you don't have the power to direct?

13 **A.** Direct, yes, sorry. I do have the power to request and  
14 sometimes during the minutes you will see that I did  
15 request some things would happen, but I don't have the  
16 power to demand that something comes forward.

17 **MS DOBBIN:** Baroness Foster, you're surely not trying to  
18 suggest to this Inquiry that in February 2020 you were  
19 so impotent that you didn't have the ability to seek  
20 proper and detailed information as to what the response  
21 to the pandemic in Northern Ireland was?

22 **A.** No, that's not what I'm suggesting at all. What I'm  
23 indicating is that we didn't receive a paper, I did not  
24 have the direction power to ask for a paper, I'm simply  
25 saying we received a verbal update from the Minister of

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1 reflect those realities.

2 **Q.** We've already heard evidence from Mr Swann, and he  
3 confirmed, that in February 2020 he brought the issue of  
4 the response to the pandemic to the Executive Committee  
5 under paragraph 2.4 of the Ministerial Code. Correct?

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

7 **Q.** And it was brought before you, wasn't it, because the  
8 response to the pandemic was, on any view, a significant  
9 matter; yes?

10 **A.** Yes, it was. Under our rules there are elements within  
11 departments that don't need to come to the Executive,  
12 but if something is cross-cutting or significant or  
13 controversial, or indeed involves financial spending,  
14 then it should come to the Executive. But it came to  
15 the Executive under "any other business", it did not  
16 come in the form of a submission to the Executive.

17 **Q.** Did you ever ask for a submission to come to the  
18 Executive from the Department of Health during  
19 February 2020?

20 **A.** No, because there was no decision being asked of us from  
21 the Department of Health, and therefore the update that  
22 was given to us by the Minister of Health was something  
23 that was -- seemed fine to us at the time.

24 **Q.** There was nothing to stop a submission being put  
25 forward, it didn't need to make a recommendation, did

22

1 Health, and that's how we proceeded during February.

2 **Q.** Yes, that's because you didn't ask for anything more,  
3 that that was the way information was provided to you;  
4 that is correct, isn't it?

5 **A.** I could have asked, but he could have decided "I don't  
6 have time and therefore I'm going to continue with my  
7 verbal briefings", because, as I say, he wasn't asking  
8 for any decision at that time. Once he started to ask  
9 for decisions to be made, submissions came to the  
10 Executive.

11 **Q.** You, collectively, were responsible in February 2020,  
12 weren't you, for understanding Northern Ireland's state  
13 of readiness and what was being done in Northern Ireland  
14 to plan for a pandemic; yes?

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

16 **Q.** All that happened is that Mr Swann came to those  
17 meetings and provided you with an update; correct?

18 **A.** That's correct.

19 **Q.** You didn't seek any papers from within the Executive  
20 Office, for example, asking for detailed information  
21 about testing, did you?

22 **A.** Well, testing would have been a Department of Health  
23 issue, but you're right, I didn't ask for any papers  
24 from the Executive Office, because it was Health, as  
25 I think I've indicated, that was leading on our

24

1 interaction with the UK Government, and indeed other  
2 devolved administrations.

3 **Q.** The fact that Health was leading, Baroness Foster,  
4 doesn't in any way remove the responsibility that you  
5 had, overarchingly, with your Executive colleagues for  
6 the response to the pandemic; can we at least agree  
7 that?

8 **A.** That's absolutely the case, and NICCMA was set up on  
9 16 March in terms of a response to the pandemic.

10 NICCMA's not a planning body or structure, the  
11 planning takes place in the different departments, and  
12 I think you've heard evidence from officials to say that  
13 if officials had have been taken out of departments  
14 earlier to stand up NICCMA, then they wouldn't have been  
15 doing the planning work in their departments, and the  
16 response part of our structures was not needed until  
17 March time, I think the first death was on 19 March.

18 **Q.** You're conflating, if I may respectfully suggest,  
19 Baroness Foster, a number of different things in that  
20 answer. I wonder if I can tease them out.

21 First of all, without going back to the 2016  
22 protocol, it clearly sets out in paragraph 1, to which  
23 I took you, that those arrangements can be set up in  
24 anticipation of a national emergency; correct?

25 **A.** It says we are to provide strategic co-ordination of the  
25

1 necessarily stand up the protocol for those purposes,  
2 did you?

3 **A.** No, and I think the fact that CCG met on 20 February was  
4 an indicator to the departments that planning needed to  
5 certainly be taking place.

6 **Q.** Well, we're going to look at what happened at the  
7 meeting on 20 February, and what that amounted to, in  
8 due course. I'm going to go, if I may, a bit earlier in  
9 time, and I was going to look at your witness statement,  
10 please, at paragraph 29 on page 9.

11 Again, just about six lines down, at paragraph 29,  
12 you say:

13 "I cannot recall precisely when I became aware that  
14 the virus was capable of asymptomatic transmission."

15 And you refer to the handwritten notes of around  
16 that time, and I think you're referring to the end of  
17 February 2020; yes?

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

19 **Q.** If we could go, please, to INQ000391226.

20 This is a briefing that was provided to you on  
21 30 January 2020, after a --

22 **A.** No, it's to "PS/First Minister", I didn't see this. It  
23 went to "PS/First Minister", which means the private  
24 secretary.

25 **Q.** So are you suggesting that you were wholly unaware of  
27

1 response and/or recovery.

2 **Q.** The first paragraph sets out that where an emergency is  
3 anticipated, those arrangements can be set up; yes?

4 **A.** Yes, but that's also part of paragraph 1, to provide the  
5 strategic co-ordination of the response and/or recovery.

6 **Q.** You do understand that these sorts of arrangements are  
7 stood up in order to assist in the response to  
8 a national emergency? So in other words, if  
9 an emergency is oncoming, if you know it's going to  
10 happen, these arrangements can be stood up in order to  
11 assist with the work done in order to meet the response?

12 **A.** Yes. And I think, my Lady, if we had numerous civil  
13 servants to go into NICCMA and not cause damage to the  
14 planning that was taking place in departments, then  
15 certainly we could have set up NICCMA earlier.

16 As it was, I felt that we could have set it up  
17 slightly earlier, to be in readiness. That's of course  
18 with the benefit of hindsight. But I think the point  
19 that if you're in a response mode, the planning has to  
20 happen in the departments for, then, the response to  
21 happen in the central piece, which is what NICCMA is.

22 **Q.** Yes, and there was nothing to stop you, for example, and  
23 the deputy First Minister, and indeed your ministerial  
24 colleagues, from ensuring that there was  
25 cross-departmental planning going on; you didn't need to  
26

1 the update that was provided?

2 **A.** No, I didn't have that.

3 **Q.** The deputy First Minister, the then deputy First  
4 Minister, Ms O'Neill, appears to have been aware of it?

5 **A.** Well, I certainly wasn't furnished with that from my  
6 private office.

7 **Q.** Are you quite sure about that?

8 **A.** Well, I've certainly no recollection of it.

9 **Q.** I mean, one of the things that would seem perhaps  
10 extraordinary, Baroness Foster, is if this were not  
11 precisely the kind of document you were asking to see at  
12 around this time.

13 **A.** At the end of January?

14 **Q.** Yes.

15 **A.** No, I've no recollection of this document.

16 **Q.** So Minister Swann was attending COBR; correct?

17 **A.** That is correct, yes.

18 **Q.** And in fact two COBR meetings had taken place by this  
19 time; yes?

20 **A.** Yes.

21 **Q.** One might have thought that this is precisely the  
22 sort of information that would be provided to you, and  
23 that you would want at this time, in order to understand  
24 why COBR was being convened and what information was  
25 being provided.  
28

1 A. Indeed, and as you know, we did get that verbal update,  
2 my Lady, on 2 February from the minister.  
3 Q. Can we just go through this, please, and could we please  
4 go to page 3, paragraph 2. This briefing was setting  
5 out critical information about the risk level having  
6 been raised to moderate; yes?  
7 A. Yes.  
8 Q. It was setting out that the pandemic, or that Covid-19  
9 could become a pandemic; yes?  
10 A. Yes.  
11 Q. If we go to page 3, paragraph 4, please, and look at the  
12 first two bullets, we can see that it was setting out  
13 that the modelling was spreading throughout China and  
14 globally; correct?  
15 A. That's correct.  
16 Q. And that the "clinical effects ... range from [the]  
17 asymptomatic"; yes?  
18 A. Yes.  
19 Q. So information was being provided at this time?  
20 A. To my private secretary, yes.  
21 Q. What would be the point of providing it to your private  
22 secretary, Baroness Foster?  
23 A. Well, I am just simply saying that I have no  
24 recollection of this document coming to my desk. I'm  
25 not going to say it did come to my desk when I have no  
29

1 additional information that the elderly and those with  
2 existing health conditions would be disproportionately  
3 affected?  
4 A. Yes.  
5 Q. Were you aware of that?  
6 A. Yes, I was.  
7 Q. Right. So what information in this briefing was known  
8 to you or, sorry, was not known to you at the end of  
9 January?  
10 A. Well, I think the issue around asymptomatic transmission  
11 probably is the only issue that wasn't brought to the --  
12 well, it may well have been brought, but I have no  
13 recollection of it -- to the Executive.  
14 Q. And again, can you explain why, if a paper was being  
15 prepared at this incredibly important time and sent to  
16 your office, you wouldn't have read it?  
17 A. I wouldn't have read it? Well --  
18 Q. Why would --  
19 A. -- it would have had to come to me for me to read it,  
20 that's the point I'm making.  
21 Q. Sorry?  
22 A. It had to come to me in order for me to read it.  
23 Q. So do you think that perhaps someone in your office just  
24 decided not to provide it to you?  
25 A. It may have been read by the special adviser or the  
31

1 recollection of it.  
2 Q. Are you saying that because the information in it is of  
3 a surprise to you, or is this information that you knew  
4 at the time?  
5 A. No, well, I think it probably forms the basis, my Lady,  
6 of what the Minister of Health brought to the Executive  
7 on 2 February, although I can't confirm whether he  
8 talked about asymptomatic issues or not, because I'm  
9 unclear as to when I learnt about it -- you know, the  
10 range was from asymptomatic to relatively mild through  
11 to pneumonic.  
12 Q. Did you know that the virus was spreading globally by  
13 this stage?  
14 A. Yes, I did.  
15 Q. Did you know that it had been decided that devolved  
16 administrations -- and perhaps we could look at this,  
17 please, it's at page 4, paragraph 7 -- that devolved  
18 administrations were to review their reasonable  
19 worst-case scenario pandemic plans for preparedness?  
20 A. Yes, I do recall the Chief Medical Officer and  
21 Minister Swann talking about reasonable worst-case  
22 scenarios at the time in the Executive.  
23 Q. Right, so you were aware of that; yes?  
24 A. Yes.  
25 Q. When we go, please, to page 7, paragraph 1, the  
30

1 junior minister, but certainly, my Lady, I'm just being  
2 completely truthful, I have no recollection of seeing  
3 this paper.  
4 **LADY HALLETT:** Which junior minister?  
5 A. Oh, the junior minister under -- Junior Minister Lyons  
6 or, indeed, the special adviser, because, as you're  
7 aware, my Lady, my special adviser was a medical doctor,  
8 Philip Weir.  
9 **MS DOBBIN:** So it appears that you probably knew everything  
10 that was in this paper, but with a question mark over  
11 asymptomatic transmission at the end of January;  
12 correct?  
13 A. Correct.  
14 Q. So you must have wanted to know, then, what the  
15 reasonable worst-case scenario was and what that meant  
16 for Northern Ireland; yes?  
17 A. Yes.  
18 Q. That would be an obvious question, wouldn't it?  
19 A. Yes.  
20 Q. So where do we see you asking about that and what the  
21 implications of that are for Northern Ireland? Where do  
22 we --  
23 A. I think we were briefed on the reasonable worst-case  
24 scenario certainly in an Executive meeting by the Chief  
25 Medical Officer, I can't remember the date, it would  
32



1 have been in either mid-February to early March, he  
 2 would have talked about the reasonable worst-case  
 3 scenario, because -- the reason I remember that phrase  
 4 is that, not being from a health or medical background  
 5 myself, there were a lot of different phrases coming  
 6 forward, my Lady, that needed to be understood. In fact  
 7 there was an enormous amount of medical terms coming  
 8 towards us at that time, and we were asking what they  
 9 meant.

10 **Q.** And you must have wanted to know what sort of  
 11 infrastructure there was in Northern Ireland in order to  
 12 be able to respond to a pandemic?

13 **A.** Yes.

14 **Q.** I mean, that would be probably about as basic as it  
 15 gets --

16 **A.** Yes.

17 **Q.** -- for the leader of a country. Where, at the end of  
 18 January 2020, do we see you asking those sorts of  
 19 questions?

20 **A.** Well, it's not in the Executive meetings, but we were  
 21 asking our officials offline what was happening, hence  
 22 the setting up of the CCG on 20 February, because not  
 23 all discussions between ministers take place in the  
 24 Executive Committee.

25 **Q.** I think what you've said in your witness statement is

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1 whatever was coming in terms of the pandemic, and not  
 2 all pandemics, of course, are of the same scale as what  
 3 came towards us, because in the past we'd had swine flu  
 4 and issues like that, and of course they weren't of the  
 5 same scale as to what was coming. So we were taking  
 6 advice as to what needed to be done. And, as I say,  
 7 that's why CCG was stood up on 20 February.

8 **Q.** So is every question that I ask you about planning and  
 9 what you knew about, is it going to come back to the  
 10 setting up of the CCG meeting?

11 **A.** Well, I think those were our emergency response  
 12 structures, yes.

13 **Q.** So, coming back to my question, then, in terms of what  
 14 you were told about the infrastructure that existed in  
 15 Northern Ireland to respond to a pandemic in  
 16 February 2020, what were you told?

17 **A.** Well, we were told about the Department of Health's  
 18 preparation, although that didn't really come to the  
 19 Executive until March when we heard about their surge  
 20 plans and what they were doing in hospitals.

21 Again, in the Department of Justice, they were  
 22 looking at mortuaries and having to deal with those who  
 23 had passed away and how they could deal with that, at  
 24 a site in Belfast. The Department of Education were  
 25 setting about planning, although it was something that

35

1 that certainly in February 2020 it was the Executive  
 2 Committee meetings that were the source of the  
 3 information to you --

4 **A.** From (inaudible).

5 **Q.** -- about updating about the pandemic, so I just want to  
 6 be clear that that's correct and that, when it came to  
 7 information about the pandemic, it was the Executive  
 8 Committee meetings --

9 **A.** So.

10 **Q.** -- that were the source of your information?

11 **A.** So the source of the information meaning the information  
 12 that was brought to us by the Minister of Health to the  
 13 Executive Committee meetings. That doesn't mean that we  
 14 weren't asking questions outside of the Executive  
 15 Committee meetings about what they meant. And because,  
 16 as I say, I had a special adviser who was a medical  
 17 doctor I was able to ask him if there was anything  
 18 I didn't quite understand.

19 **Q.** Right. So when we get to February 2020, what were you  
 20 being told, then, about the plans that existed, the  
 21 infrastructure that existed, to respond to the pandemic  
 22 in Northern Ireland?

23 **A.** Of course there's two elements to that, my Lady, there's  
 24 the health infrastructure that needed to be in place,  
 25 and then there's the infrastructure to deal with

34

1 we didn't want to consider, what would happen to schools  
 2 in those sorts of circumstances.

3 So there were plans being undertaken by the  
 4 different departments.

5 **Q.** I think all of those plans all involved getting to  
 6 a stage, if you're talking about the sensitive plans on  
 7 the part of the Department of Justice, or hospital  
 8 plans, those are all about what you do once the virus is  
 9 in a country and once the worst has happened. What was  
 10 happening, what were the plans in Northern Ireland to  
 11 stop the worst from happening?

12 **A.** Sorry, I don't understand the question.

13 **Q.** Well, the sorts of plans that you're talking about are  
 14 what happens when the virus has reached Northern  
 15 Ireland --

16 **A.** Yes.

17 **Q.** -- and is causing hospitals to be overrun and causing  
 18 schools to shut down; yes?

19 **A.** Yes.

20 **Q.** What were the plans in February to try to stop that from  
 21 happening in the first place?

22 **A.** Well, my Lady, I think it was the policy to delay and  
 23 then contain the virus. I don't think at any stage  
 24 there was any suggestion we were going to be able to  
 25 keep the virus from coming to Northern Ireland. I think

36

1 it was accepted that it would arrive here, and it did in  
 2 late February, as I recall, arrive into  
 3 Northern Ireland.

4 **Q.** I'm going to go to the Executive Committee minutes from  
 5 February 2020 to consider the extent of discussion that  
 6 there was with the Minister of Health.

7 If we could go, please, to INQ000065706.

8 We don't have a minute for 2 February,  
 9 Baroness Foster, this is the first one that we've got,  
 10 and I think that we have to go to page 5 before we get  
 11 to it.

12 There's certainly no detailed information there, is  
 13 there, about testing capacity, tracing capacity,  
 14 hospital capacity?

15 **A.** No.

16 **Q.** There's nothing there about the reasonable worst-case  
 17 scenario and what that might mean in Northern Ireland,  
 18 is there?

19 **A.** No, not in the minutes, no.

20 **Q.** If we scroll down a bit, please.

21 No one asks any questions about that either, do  
 22 they?

23 **A.** No, I think we were definitely, my Lady, in receive mode  
 24 in respect of what Robin was telling us in connection  
 25 with what he had learnt from both COBR and from both his

37

1 **A.** Yes, those had been approved by the First and deputy  
 2 First Minister before they went.

3 **Q.** So the regulations that had been drafted in the  
 4 United Kingdom were amended for the purposes of  
 5 Northern Ireland; correct?

6 **A.** Correct.

7 **Q.** So, to the extent that that amounted to any planning,  
 8 that was just the amendment of regulations that had been  
 9 drafted in another place; correct?

10 **A.** Yes, but it was important, my Lady, that we had the  
 11 appropriate legislative cover for Northern Ireland.  
 12 Because our legislation is slightly different, we're  
 13 still operating under the 1967 Public Health Act, which  
 14 had been amended in England and Wales but hasn't been  
 15 amended in Northern Ireland.

16 **Q.** But that doesn't amount to any sort of substantive  
 17 planning, does it, in terms of infrastructure, testing,  
 18 ensuring that there's hospital capacity? It doesn't  
 19 touch on any of those things --

20 **A.** I do accept that it doesn't touch on those things, but  
 21 I also say that it's important to have the legislative  
 22 cover to act if and when we do need to.

23 **Q.** That might be thought to be the very least of it, don't  
 24 you agree?

25 **A.** Well, I do think having legislation in place is --

39

1 own -- and from his own advisers as well.

2 **Q.** Could we go, please, to the next meeting.  
 3 INQ000065692, and could we go to page 3, please.

4 We can see reference to there being 12 places to  
 5 carry out tests.

6 If we could scroll down, please, there's some  
 7 mention of the legislation. Reference a few lines  
 8 down -- thank you -- to the health service being in  
 9 "containment phase".

10 I think there's some measure of emergency  
 11 legislation. And then items set out below, those are  
 12 all items to do with the emergency legislation; yes?

13 **A.** Yes.

14 **Q.** If we go down, please, thank you.

15 We've seen before, there's a reference to  
 16 "Coronavirus (see above)", but there doesn't appear to  
 17 be any further discussion; yes?

18 **A.** Yes.

19 **Q.** It's cursory, isn't it?

20 **A.** We had, you see reference there to, my Lady, an urgent  
 21 decision that had been taken, that was in relation to  
 22 clauses for the UK Coronavirus Bill for our inclusion in  
 23 that Bill, so that indicates that we were doing things  
 24 outside of the Executive in terms of preparation.

25 **Q.** The Bill?

38

1 I wouldn't describe it as being at the very least of it;  
 2 I think it's important that it was there.

3 **Q.** Can we go to the minutes, please, at INQ000273788.

4 This is 24 February, Baroness Foster.

5 I think if we go, please -- I think we have to  
 6 scroll all the way to page 9.

7 24 February, and there's barely anything in these  
 8 notes about Covid-19; do you agree?

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

10 **Q.** "Still in containment phase."

11 That's pretty much it.

12 Standing back from all of that, do you agree that  
 13 the Executive Committee in Northern Ireland brought  
 14 virtually no scrutiny to the pandemic or the plans for  
 15 the pandemic in February 2020?

16 **A.** My Lady, I wouldn't say that we had no scrutiny, but  
 17 I do -- by way of explanation and certainly not by way  
 18 of an excuse, one has to look at everything else that  
 19 was going on at that particular point in time. We had  
 20 only came back into government, we were trying to set up  
 21 a programme of government to deal with all of the things  
 22 that had been left sitting for three years. And I know  
 23 that the Inquiry has heard evidence in relation to the  
 24 preparedness of the Northern Ireland system, in terms of  
 25 its emergency procedures being 18 months behind, and yet

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1 that wasn't identified to us in our first-day brief or  
 2 indeed brought to our attention.  
 3 So I do accept that there should have been more  
 4 scrutiny at that time. As I say, I tried to explain why  
 5 that didn't happen, but it's certainly not an excuse.  
 6 **Q.** Just coming back to the legislation, if we could go,  
 7 please, to INQ000390947, please.  
 8 So we can see this is a reference back to the urgent  
 9 decision, I think, that you were referring to; yes?  
 10 **A.** Yes.  
 11 **Q.** We can see at paragraph 2 the minister sets out that  
 12 it's a cross-cutting issue, that he was taking the lead;  
 13 yes?  
 14 **A.** Yes.  
 15 **Q.** And I think we can be clear, and he's explained this,  
 16 that despite -- that he was the health minister and that  
 17 this Bill touched upon many aspects of other  
 18 departments, that nonetheless he was the person who was  
 19 sponsoring it or bringing it forward; correct?  
 20 **A.** That's correct, yes.  
 21 **Q.** If we go, please, to page 2, and again we can see set  
 22 out here that he was explaining that:  
 23 "... it was appropriate to ... prepare for  
 24 [a] reasonable worst case scenario ... COVID-19 pandemic  
 25 moderate severity, without a vaccine."

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1 **Q.** Yes, and again I don't think we see any papers or any  
 2 requests from you to officials in your department asking  
 3 for any sort of briefing, submission, detail on what the  
 4 reasonable worst-case scenario -- how that might  
 5 eventuate in Northern Ireland?  
 6 **A.** Yes, as I've indicated, the Chief Medical Officer would  
 7 have briefed us on that issue, although I accept it's  
 8 not in the minutes, as has been shown to me. And as  
 9 I've indicated as well, my special adviser was a medical  
 10 doctor, so I would have asked him what that meant.  
 11 **LADY HALLETT:** Did anybody ever discuss with you that if  
 12 this new virus was asymptomatic, there was asymptomatic  
 13 transmission, that the pandemic flu plans might not be  
 14 appropriate?  
 15 **A.** Certainly not in February.  
 16 **LADY HALLETT:** Can you remember roughly when that was  
 17 first --  
 18 **A.** I have a recollection of an Executive meeting, I think  
 19 it was in March, when we were talking about the  
 20 transmission of the virus and the Chief Medical Officer  
 21 indicating that it could be lifted from surfaces and  
 22 that that was a huge problem and why social isolation  
 23 was something that we had to look at, and making sure  
 24 that everybody -- you know, the basics of washing hands,  
 25 not touching your face after you've touched a surface.

43

1 Yes?  
 2 **A.** Yes, that's correct.  
 3 **Q.** And paragraph 5, please.  
 4 So, again, just setting out some of the fairly stark  
 5 figures by that point; yes?  
 6 **A.** Yes.  
 7 **Q.** If we could go to page 5, please. This sets out,  
 8 doesn't it, Baroness Foster, for example, that previous  
 9 exercises had identified gaps in capabilities -- we see  
 10 that at paragraph 2 -- to overcome a severe pandemic?  
 11 **A.** Yes.  
 12 **Q.** Yes? Thank you.  
 13 And reference there to some of the work programme,  
 14 yes --  
 15 **A.** Yes.  
 16 **Q.** -- related to the Bill.  
 17 So again, just to be clear, that was in the middle  
 18 of February, so again reinforcement, do you agree, that  
 19 what was being prepared for was this reasonable  
 20 worst-case scenario; yes?  
 21 **A.** Yes, and I think it's interesting that in that paragraph  
 22 that describes the reasonable worst-case scenario, again  
 23 it's indicated that we're using our pandemic flu plans  
 24 as the way forward, and that was certainly my  
 25 recollection at the time.

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1 So I do have a recollection of that, and I think it was  
 2 in March time.  
 3 **MS DOBBIN:** You said in your witness statement at  
 4 paragraph 53, I don't think we need to bring it up, that  
 5 you would have been aware of the World Health  
 6 Organisation advice of 24 February.  
 7 **A.** Yes.  
 8 **Q.** So you would have been aware that that advice was to the  
 9 effect that there needed to be the highest level of  
 10 national response; correct?  
 11 **A.** Yes. That's correct, yes.  
 12 **Q.** That there needed to be or there needed to be ensured  
 13 an all-of-government and all-of-society approach; yes?  
 14 **A.** Yes.  
 15 **Q.** With non-pharmaceutical --  
 16 **A.** Interventions.  
 17 **Q.** -- public health measures; yes?  
 18 **A.** Yes.  
 19 **Q.** And that there needed to be active, exhaustive case  
 20 finding and immediate testing, isolation, and  
 21 painstaking contact tracing; yes?  
 22 **A.** Yes.  
 23 **Q.** And rigorous quarantine; yes?  
 24 **A.** Yes.  
 25 **Q.** And again, despite you apparently being aware of that

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1 advice having been given, there's no evidence, is there,  
 2 that you sought any briefings or asked for any detailed  
 3 papers to be provided to you, setting out, for example,  
 4 what that sort of all-society approach might require in  
 5 Northern Ireland; do you agree?  
 6 **A.** I do agree, but I would have thought that the setting up  
 7 of our emergency structures would have been the  
 8 all-society response, and I say response in terms of  
 9 when the virus came to Northern Ireland.  
 10 **Q.** So, again, sorry, just to be -- I want to be clear  
 11 whether or not you're talking about the institution of  
 12 the CCG meeting or are you talking about the response on  
 13 16 March?  
 14 **A.** The CCG meeting was the beginning of our emergency  
 15 procedures being put in place, but the -- as you are  
 16 aware, my Lady, the actual structure wasn't put in place  
 17 until after 16 March. So the head of the Civil Service  
 18 brought officials together on 20 February, and I've  
 19 heard the evidence about the content of that meeting,  
 20 and then the actual structure of NICCMA wasn't set up  
 21 until after that.  
 22 **Q.** Okay, I wonder if I could bring up, please, paragraph 38  
 23 of your witness statement. You said there:  
 24 "In TEO by end of January, NICCMA was being set up  
 25 and I believe officials were looking at those aspects of

45

1 **Q.** -- behind the rest of the United Kingdom.  
 2 **A.** That's correct, I wasn't aware of that paper.  
 3 **Q.** Did you know that within the civil contingencies branch  
 4 in Northern Ireland there was regarded to be a critical  
 5 lack of resources in January 2020?  
 6 **A.** No, I did not, and as I've already indicated, my Lady,  
 7 it was not flagged as an issue of concern in my  
 8 first-day brief.  
 9 **Q.** Were you aware of the PwC report known as the futures  
 10 report, which was written in November 2019 and which  
 11 made 85 separate recommendations about civil  
 12 contingencies in Northern Ireland?  
 13 **A.** No, I was not aware of that.  
 14 **Q.** Were you aware of a paper that was provided to the TEO  
 15 board on 25 February that said that civil contingencies  
 16 arrangements in Northern Ireland hadn't been reviewed  
 17 for the past 20 years and said that a review was needed  
 18 in order to ensure that effective arrangements are in  
 19 place in the Executive to support wider citizens and  
 20 wider society in the event of an unforeseen emergency  
 21 event or situation?  
 22 **A.** No, I wouldn't have been privy to TEO board papers.  
 23 **Q.** Were you aware, I think it's correct at this time,  
 24 I think, that there were only about two staff in the  
 25 Civil Contingencies Policy Branch?

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1 emergency arrangements that fell outwith the health  
 2 portfolio ..."  
 3 Can you just be clear --  
 4 **A.** Yes.  
 5 **Q.** -- as to what you mean by NICCMA being set up by the end  
 6 of January?  
 7 **A.** I think that's not exact -- I can see why you would ask  
 8 that question, because that's not phrased in the  
 9 appropriate way. NICCMA was being set up, I think what  
 10 I mean by that, it was being considered as to when it  
 11 was going to be put in place as opposed to being set up.  
 12 So I do apologise to the Inquiry for that clumsy  
 13 wording.  
 14 **Q.** Yes. Well, it's not clumsy; it's just not right, is it?  
 15 **A.** Yeah. Absolutely. Well, in terms of -- there were  
 16 discussions taking place about NICCMA, but it wasn't  
 17 being set up at that time, that's correct.  
 18 **Q.** In terms of your awareness about the state of civil  
 19 contingencies arrangements in Northern Ireland, you  
 20 I think say in your witness statement at paragraph 21 --  
 21 I don't think I need to take you to it -- that you were  
 22 not aware of the January 2020 paper about sector  
 23 resilience in civil contingencies. That's the paper  
 24 that said that Northern Ireland was 18 months --  
 25 **A.** Oh yes.

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1 **A.** No, I was not aware of that.  
 2 **Q.** And are you or were you not aware of any of those things  
 3 because you hadn't asked any questions about civil  
 4 contingencies capacity in Northern Ireland?  
 5 **A.** As I've indicated, my Lady, it was not flagged as  
 6 a matter of concern in my first-day brief, I was aware  
 7 that the civil contingencies had been put in place for a  
 8 no-deal Brexit, Yellowhammer, I probably therefore  
 9 believed that the civil contingencies branch was in  
 10 a good state, and I regret now not asking that very  
 11 question, and instead assuming, because it had been  
 12 stood up to deal with those no-Brexit issues, that it  
 13 was in a good state.  
 14 **Q.** Why would arrangements that had been designed for  
 15 an EU exit be necessarily suitable or appropriate for  
 16 the kind of response that might be required in the  
 17 context of a pandemic?  
 18 **A.** Because in TEO our function is to co-ordinate the  
 19 response and therefore it would have been about  
 20 co-ordinating the response for the pandemic, just as we  
 21 had got ready, although in the end we didn't need to do  
 22 it, have to co-ordinate the response in respect of  
 23 a no-deal Brexit.  
 24 **LADY HALLETT:** Is that a convenient moment?  
 25 **MS DOBBIN:** It is, thank you.

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1 **LADY HALLETT:** Just from what I've heard about Yellowhammer,  
2 one of the principles was that civil servants were  
3 recruited, so I think the whole point about Yellowhammer  
4 was preparing the numbers of staff, so that should have  
5 been the impact --

6 **THE WITNESS:** Sure.

7 **LADY HALLETT:** By the sounds of it, in Northern Ireland it  
8 wasn't.

9 Very well, 11.30.

10 (11.16 am)

(A short break)

12 (11.30 am)

13 **LADY HALLETT:** Ms Dobbin.

14 **MS DOBBIN:** Thank you.

15 Baroness Foster, before the short adjournment I was  
16 asking you some questions about civil contingencies  
17 arrangements in Northern Ireland, and asking you about  
18 your level of awareness as to how depleted they had  
19 become, and I think that you confirmed that you didn't  
20 know that, and I think the question that I was asking  
21 you was whether or not that was because you hadn't made  
22 any enquiry of your department or asked to see,  
23 for example, what the civil contingency planning looked  
24 like for the response to the pandemic?

25 **A.** Well, my Lady, if the deputy First Minister and I sat  
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1 a need on your part to ascertain what the civil  
2 contingencies arrangements were in Northern Ireland for  
3 responding to this oncoming pandemic.

4 Did you ask that question, or ask to look at those  
5 plans?

6 **A.** My Lady, I don't think it's unreasonable to expect civil  
7 servants to alert if there were matters of concern in  
8 relation to those issues. I think it was reasonable for  
9 me to expect that those plans were in place. We were  
10 aware the CCG had met on 20 February. If there were  
11 particular issues around resourcing, I don't think it's  
12 unreasonable to expect those to have been brought to us,  
13 given what was going on, but they weren't.

14 **Q.** What about the broader plans, Baroness Foster? What  
15 about the plans that were being put in place across  
16 government in Northern Ireland to respond to the  
17 pandemic? Did you ask to see those?

18 **A.** I have no right, my Lady, to demand that those plans are  
19 brought to me, because, I've already indicated, I don't  
20 hold the same position as the Scottish First Minister or  
21 the Welsh First Minister. I'm in a mandatory coalition  
22 where each department has their own remit, and therefore  
23 I would have been satisfied that the CCG had been stood  
24 up and that the departments would be working to their  
25 plans.

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1 down and tried to think about all of the things that we  
2 wanted to ask questions about and didn't know about, we  
3 would have been a long time going through all of that.  
4 So, no, I didn't know about the state of preparedness in  
5 terms of civil contingencies. I should have known, and  
6 it should have been brought to me, and, whilst I accept  
7 you will take a different position, I believe that the  
8 civil servants should have brought it to me.

9 **Q.** Well, throughout the course of February, the picture was  
10 building, wasn't it, as to just how serious the position  
11 was in respect of Covid-19; yes?

12 **A.** Yes, it was.

13 **Q.** And you would have seen, for example -- I'm sure you  
14 didn't need a briefing to tell you about the lockdowns  
15 that had taken place in Italy in February, for example;  
16 yes?

17 **A.** Yes, towards the end of February, that's right.

18 **Q.** I think from about 21 February, I'm sure that someone  
19 will correct me if I'm wrong about that.

20 Obviously COBR had continued to meet, hadn't it?

21 **A.** Yes.

22 **Q.** We've already seen that you were aware of the World  
23 Health Organisation declaration. So one might have  
24 thought that perhaps, coming towards the end of  
25 February, that it might have crystallised that there was

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1 **Q.** You didn't have to demand to see anything, did you? You  
2 could have convened a meeting of your ministerial  
3 colleagues and asked them to bring their plans to the  
4 table, asked them, not demanded it of them, couldn't  
5 you?

6 **A.** That's not the way mandatory coalition works in  
7 Northern Ireland.

8 **Q.** What, that in the face of a global pandemic you can't  
9 say to your colleagues, "Shall we sit down together and  
10 work out what we're all doing to respond"?

11 **A.** I think it's clear from the minutes later on that when  
12 we did try to have a more collegiate central role in  
13 terms of the pandemic that we were pushed back on that,  
14 because people understandably, and I'm not criticising  
15 colleagues for this, believed that they have their own  
16 remit in their own department and that they are the lead  
17 person in respect of that.

18 I respect that, because I've grown up in politics  
19 through the mandatory coalition system. Is it a good  
20 system for governance? Is it an efficient system for  
21 governance? No, it's not, my Lady. That's the point.  
22 But it's the system that we have, that was given us to  
23 by the Belfast Agreement, and it's there for a reason.  
24 And no doubt we will talk about the cross-community vote  
25 system later on in evidence, but that's the system we

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1 have due to the Belfast Agreement.

2 **Q.** Baroness Foster, I don't think you can deflect every  
3 question that's put to you by reference to mandatory  
4 coalition.

5 **A.** I'm not deflecting any questions whatsoever, I'm  
6 answering the questions to the best of my ability.

7 **Q.** Did you ask any of your ministerial colleagues in  
8 February 2020 if you could sit round a table and discuss  
9 planning for the pandemic with them?

10 **A.** No, I did not.

11 **Q.** Could we look, please, at paragraph 68 of your witness  
12 statement.  
13 That's at page 21, so it's INQ000418976.  
14 The first couple of lines of that read:  
15 "As DoH was leading the pandemic response, NICCMA  
16 was to be activated when DoH asked for it to be  
17 activated."  
18 Do you accept that that part of your witness  
19 statement is wrong?

20 **A.** No, I don't think it's wrong, I think it was a statement  
21 of the reality we're working to. If you're suggesting  
22 that I am saying that we couldn't have set it up, that's  
23 not what I'm saying. I'm saying that it was to be  
24 activated when DoH asked for it to be activated. And if  
25 you look at the correspondence between officials at that

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1 Northern Ireland?

2 **A.** I think when we started to implement non-pharmaceutical  
3 interventions.

4 **Q.** So in and or around 16 March, or later than that?

5 **A.** In and around the 16th. I think schools closed, from  
6 memory, on 18 March, and at that time we had been  
7 speaking about vulnerable elderly people and shielding  
8 as well, so it became a non-health issue then, because  
9 it was obviously impacting on society more broadly.

10 **Q.** The part of this paragraph that I actually wanted to go  
11 to was the second line:  
12 "However, TEO had been making preparations prior to  
13 this. As set out in the Submission of 3 March 2020 on  
14 Covid-19 Preparedness and Response, TEO convened  
15 a meeting of the CCG on 20 February ... and had begun  
16 daily engagement with Cabinet Office, Civil  
17 Contingencies Secretariat, and other devolved  
18 administrations."  
19 Yes?

20 **A.** Yes.

21 **Q.** So again, just coming back to that, as I understand your  
22 evidence, Baroness Foster, that is the principal part of  
23 the TEO that was responding to the pandemic; is that  
24 right? Or that that was the structural response in  
25 Northern Ireland in the TEO --

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1 time, they were waiting for the Health Department to ask  
2 for it to be activated.

3 **Q.** Well, I think that the Health Department was providing  
4 advice at that point in time. It doesn't appear that  
5 they were seeking to say that this meant that TEO  
6 couldn't stand up the civil contingencies arrangements.

7 **A.** I think there is, in some of the emails, that it was too  
8 soon to set up the civil contingencies, because it was  
9 going to take people away from planning. So I think  
10 that that is the case, that we were waiting for them to  
11 say when was the optimum moment to set it up.

12 **Q.** So, and again can we just be clear about this, is that  
13 your evidence, then, that whether or not to set up civil  
14 contingencies arrangements was something that you were  
15 waiting to be told by the Department of Health?

16 **A.** Not being told, but they were the lead department. And  
17 I know that that's not something that the Inquiry likes  
18 to hear me say, but that's the reality of the way we  
19 were working at that time: they were the lead department  
20 and therefore we were waiting to hear from them.

21 **Q.** And even though these were the civil contingencies  
22 arrangements for the whole of Northern Ireland, not for  
23 the Department of Health?

24 **A.** But it was -- it was principally a health emergency.

25 **Q.** When did it stop being principally a health emergency in

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1 **A.** Yes.

2 **Q.** -- to the pandemic. So there was a single meeting,  
3 wasn't there, one meeting on 20 February 2020, before  
4 18 March --

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

6 **Q.** -- correct?

7 **A.** That's correct.

8 **Q.** Have you seen, it's been shown to a number of witnesses,  
9 what was discussed at that meeting and what the  
10 priorities were?

11 **A.** Yes, I think I have seen that, yes.

12 **Q.** If you have, because I don't want to be unfair, but if  
13 you've seen it, perhaps we could bring it up.  
14 INQ000023220.  
15 We've seen, Baroness Foster, that these were the  
16 priorities in Northern Ireland at this time.

17 **A.** Yes.

18 **Q.** Do you agree that it's a matter of deep concern that  
19 these were the priorities for planning for a pandemic in  
20 Northern Ireland on 20 February?

21 **A.** I think those were the -- the first three are issues of  
22 concern that have obviously been brought by the  
23 different departments. The last bullet point, in terms  
24 of readiness, my Lady, is to give an indicator to the  
25 different departments that they need to get ready for

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1 the reasonable worst-case scenario.

2 **Q.** I think you're misunderstanding me, and perhaps I didn't  
3 ask the question clearly enough. Do you consider it to  
4 be a matter of deep concern that these are the  
5 priorities in Northern Ireland in February 2020 for  
6 planning for a pandemic?

7 **A.** But the CCG is a co-ordinating role. The different  
8 departments would have been planning in their own  
9 particular way. Those are issues of concern that have  
10 obviously been brought to the centre, that's why they've  
11 been registered in the way that they have, and then the  
12 different departments would work through their issues  
13 with their ministers.

14 **Q.** So you don't think it's a matter of concern, then, that  
15 those were the priorities?

16 **A.** Well, sorry, these are the priorities that have been  
17 brought from the departments as matters of concern at  
18 that point in time.

19 So I don't see why -- it's not a planning exercise,  
20 it's actually people coming from their departments and  
21 saying "Here are our issues of concern at this point in  
22 time".

23 **Q.** So what this seems to suggest is that these are the most  
24 important things that need to be done in  
25 Northern Ireland?

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1 organisation, it's not a policy body, and that's why --  
2 I can see the questions you're asking, but those are  
3 coming up from the different departments.

4 **Q.** So where was the scrutiny, Baroness Foster, of or by  
5 ministers in Northern Ireland as to what was being done  
6 at this level in order to plan for the pandemic in  
7 February 2020?

8 **A.** This isn't a scrutiny body, it's a co-ordination body.

9 **Q.** No, where is the scrutiny of it?

10 **A.** Yes, so I accept that, yes.

11 **Q.** There wasn't any, was there?

12 **A.** There wasn't any scrutiny in relation to the issues that  
13 were brought.

14 **Q.** There wasn't any scrutiny at all, was there, by the  
15 Executive Committee in February 2020 of the response to  
16 the pandemic at all, was there?

17 **A.** In our structure, and this is not a deflection, before  
18 that is raised, the committees are the scrutiny of the  
19 ministers' decisions, it is not really the work of other  
20 ministers to mark the homework of their ministerial  
21 colleagues.

22 **Q.** So it was no part of your role, Baroness Foster, in the  
23 response to the pandemic to, even if exercised as  
24 a collective responsibility, understand what state  
25 Northern Ireland was in and whether it was capable of

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1 **A.** I think they're the most urgent things that needed to be  
2 done at that point in time on 20 February.

3 **Q.** Yes, and even if we take it on that basis, this doesn't  
4 cause you any concern?

5 **A.** I'm not sure what issue you're trying to raise with me.

6 **Q.** Well, if this is the only meeting that takes place in  
7 Northern Ireland of the civil contingencies  
8 organisation, and that these are the things that they  
9 regard as being the priorities, so, for example, storage  
10 of the remains of people, that there mightn't be a power  
11 to close higher education -- in other words, that there  
12 aren't a number of priorities going to the core  
13 functions of every department and what they need to do  
14 in order to respond to a pandemic. Where do we see any  
15 consideration of that?

16 **A.** You have to remember this is 20 February, we haven't any  
17 cases of Covid-19 at this point in time. I accept that  
18 there should have been more identification particularly  
19 in and around elderly people, and how they were going to  
20 be dealt with. So instead of dealing with excess deaths  
21 storage, why were we not hearing about the care home  
22 facilities and how they were going to be dealt with?  
23 But, as I say, these were issues that were raised from  
24 the different departments to the centre. I've already  
25 indicated that, in my view, CCG and NICCMA is a response

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1 responding to a pandemic; is that what you're  
2 suggesting?

3 **A.** No, what I'm suggesting is I think it was reasonable to  
4 expect that the pandemic plans were being developed by  
5 our officials and if there were gaps in the planning, if  
6 there were things that weren't being dealt with, that we  
7 would have been alerted to that.

8 **Q.** So again, it's a question of people drawing things to  
9 your attention rather than you seeking to assure  
10 yourself that Northern Ireland was in a fit state to  
11 respond to the pandemic?

12 **A.** Yes, my Lady, I think there is a duty on civil servants  
13 to inform their ministers in relation to issues of  
14 concern that have come across their desks, and because  
15 we have the policy powers, and I do say that we had been  
16 out of government for three years, and it may be the  
17 case that the civil servants had got used to the fact  
18 that they didn't have to do submissions to their  
19 ministers in relation to issues. That's not criticism  
20 of them, it's just the way they had been working during  
21 those three years. And this was just literally a month  
22 after we had come back into office.

23 **Q.** What was your responsibility at this time,  
24 Baroness Foster?

25 **A.** A wide-ranging responsibility --

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1 Q. No, I mean in respect of the pandemic.  
 2 A. Well, as I've already indicated, we were reliant,  
 3 heavily reliant, probably too heavily reliant, on  
 4 briefings from the Minister of Health in relation to  
 5 what was happening.  
 6 Q. That's not an answer.  
 7 A. Well, it is an answer, and it's the answer I'm giving to  
 8 the Inquiry.  
 9 Q. I'm asking you what your responsibilities were or how  
 10 you discharged your responsibilities to Northern Ireland  
 11 as the leader of its government in respect of the  
 12 pandemic during that time?  
 13 A. I've already answered that question.  
 14 Q. I'm going to move on.  
 15 Could we please go to INQ000065694.  
 16 So these are the minutes of 2 March.  
 17 Perhaps if we may just scroll through these, if we  
 18 could. Thank you. We can just keep scrolling.  
 19 (Pause)  
 20 I think -- thank you -- we see here set out for the  
 21 Executive Committee that the fatality rate could be 2%  
 22 to 3%; yes?  
 23 A. Yes.  
 24 Q. If we could just please scroll down a little more.  
 25 (Pause)

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1 Q. So alarm bells were now ringing with you; is that right?  
 2 A. Very loudly.  
 3 Q. Very loudly.  
 4 Could we go, please, to INQ000418976. Forgive me,  
 5 that was the wrong ... it's INQ000065695, sorry.  
 6 So these are the meeting minutes of 10 March,  
 7 Baroness Foster, and if we could go, please, to page 3,  
 8 and we'll scroll down, Baroness Foster, so that you can  
 9 see it in context.  
 10 Sorry, could we just scroll up to page 2, please.  
 11 (Pause)  
 12 I think we can see reference there, a few lines up,  
 13 to "vulnerable people -- over 70s".  
 14 If we scroll down, please, thank you.  
 15 And then we can see you, at the top:  
 16 "Civil Contingencies.  
 17 "- have we got plans to handle -- advice to  
 18 organisations/companies?"  
 19 If you were alarmed at the meeting on 2 March, it  
 20 doesn't seem to have crystallised or led you to have  
 21 given any thought, does it, to civil contingencies in  
 22 that week? I say that because you seem to be asking  
 23 possibly the most fundamental and basic question that  
 24 could possibly be asked by this stage: have we got plans  
 25 to handle?

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1 If we could just go past this point to ensure that  
 2 that's all of the discussion, please. Yes.  
 3 So, again, we can see that there's maybe a little  
 4 bit more discussion, Baroness Foster, but again, there's  
 5 no detailed, considered discussion about plans, the  
 6 ability of the health service to withstand the pandemic,  
 7 testing capacity, any of that kind of information that  
 8 one might expect by this stage; do you agree?  
 9 A. Well, I think this is the first substantive meeting  
 10 where the CMO came to brief us. And as you will see in  
 11 that briefing, he indicated that it was not like a flu,  
 12 the virus was different, and that was him alerting us to  
 13 that fact, I think probably for the first time, although  
 14 I stand to be corrected.  
 15 And I think, if I may, my Lady, we were all in  
 16 a state of shock at this meeting. It was really a very  
 17 sober assessment of where we were at.  
 18 Q. And it doesn't appear to have prompted any consideration  
 19 for a joint meeting about planning, does it?  
 20 A. Well, I think we were absorbing a lot of information,  
 21 a lot of new information, at that time, and you will see  
 22 we broke off the meeting to go to our first -- well, in  
 23 terms of First and deputy First Minister, our first COBR  
 24 meeting, and that was remotely, obviously, from the  
 25 Department of Health.

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1 A. Well, my Lady, just because it's a basic question  
 2 doesn't mean that it shouldn't be asked. I mean, I've  
 3 been criticised for not asking questions, and now I'm  
 4 asking questions and I'm being criticised for that as  
 5 well, in terms of the terms of the questions.  
 6 So I think I was trying -- we had been in London --  
 7 I had been in London the day before, at the COBR  
 8 meeting, and I had obviously taken into consideration  
 9 what I'd heard there and I was wanting to make sure that  
 10 we had our plans in place. And as you can see, I asked:  
 11 "Who leads on advice."  
 12 And the head of the Civil Service says, below:  
 13 "CMO's advice."  
 14 So it was clear that the CMO was the lead person  
 15 giving advice.  
 16 Q. It wasn't the way the question was asked,  
 17 Baroness Foster, that I was putting to you, it was  
 18 the fact that it's only on 10 March 2020 that you're  
 19 asking the question: have we got plans to handle?  
 20 A. But I wanted to be assured that they were in place at  
 21 that time. Because, as I say, I'd been to COBR the day  
 22 before and the week before, I wanted to make sure our  
 23 plans were in place as well. I think in a previous  
 24 minute you will have seen me asking had we the same  
 25 legislative powers as England, to make sure that that

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1 was in place. I don't think because a question's basic  
2 that it shouldn't be asked.

3 **Q.** What you're asking is: have we got plans?

4 Have we got plans? On 10 March. In respect of  
5 a pandemic --

6 **A.** Yes, and the CCG had been set up on 20 February, so  
7 I was expecting an answer in the affirmative, and I was  
8 expecting to be told what those plans were.

9 **Q.** And I think we see, I won't go -- perhaps if we just go  
10 on to page 3, please.

11 **LADY HALLETT:** That is page 3.

12 **MS DOBBIN:** Sorry. Yes, we can see that there's some  
13 reference there, for example, to risk assessments.

14 I think that we can be clear, then, Baroness Foster,  
15 and perhaps this really lays bare that up until this  
16 point in time you appeared just not to have known  
17 whether there were plans to respond to the pandemic?

18 **A.** That's not the case.

19 **Q.** It's also right that we haven't seen, until this point  
20 in time, so 10 March, we haven't seen any information or  
21 briefing about what the worst reasonable case scenario  
22 might translate into in Northern Ireland either, in  
23 terms of numbers of people, the health system, the  
24 ability of the health system to withstand the sorts of  
25 numbers who might become ill?

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1 Northern Ireland. There doesn't appear to be any  
2 consideration of those kind of practical, vital  
3 questions that might need to be asked.

4 **A.** There was a reference, I think, around -- and I think it  
5 might be on 10 March -- around moving people who were  
6 infected into different wards. But, again, that was  
7 because -- we didn't second-guess that because the scale  
8 was not apparent to us at the time, and as I've already  
9 indicated, my Lady, on 14 March the Chief Medical  
10 Officer was indicating that our peak, based on the  
11 modelling, was 14 weeks away at that stage. As it  
12 turned out, it was only four weeks away.

13 **Q.** When you went to the COBR meeting on 12 March, there was  
14 a presentation, wasn't there, or a graph about the NHS  
15 and whenever it would get past the point of capacity and  
16 what that looked like? Do you recall that?

17 **A.** I'm sure you're right, but I can't just recall it at the  
18 moment.

19 **Q.** Because, again, it doesn't appear to have sparked or  
20 prompted any sort of scrutiny or questioning by  
21 ministers in Northern Ireland about the position in  
22 Northern Ireland and what that might mean for health  
23 services in Northern Ireland.

24 **A.** Yes, well, as I've indicated, I think our feeling was  
25 that we had time to deal with those issues, and as it

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1 **A.** Yes, but those would have been brought to us by the  
2 department in terms of the numbers, and that's why I --  
3 the numbers were brought to us on 2 March, not in terms  
4 of numerical but in terms of percentage --

5 **Q.** Yes.

6 **A.** -- modelling and, as I say, it was certainly a shocking  
7 statistic.

8 **Q.** Well, I think that you're first told of the figures,  
9 I mean, we'll come to it, there's no translation of  
10 the -- and I'm going to be careful what I say, because  
11 I'm not entirely clear or sure of what it is that  
12 Minister Swann's calculation was, but I think 19 March  
13 is the first time we see any specific figures --

14 **A.** Yes.

15 **Q.** -- being put to the Executive Committee; do you agree?

16 **A.** I do, although, as I say, it was indicated that it was  
17 2% back on 2 March, but I think until the numerical  
18 figures were spelt out, the scale was then really  
19 understood. Or the possible scale, I should say.

20 **Q.** Despite the reasonable worst-case scenario having been  
21 raised and in prospect, for a considerable time by  
22 10 March, it doesn't appear that there's any sort of  
23 discussion -- but you will know better than me -- at the  
24 Executive Committee about capacity within hospitals or  
25 what the risk is to hospitals or health services in

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1 turned out, it came a lot quicker, in terms of the peak  
2 of the pandemic.

3 **Q.** If we could go, please, to the -- forgive me. What  
4 happened next in time, that COBR meeting, was that test  
5 and trace was ended, wasn't it --

6 **A.** Yes.

7 **Q.** -- in Northern Ireland? And the United Kingdom moved,  
8 didn't it, from the contain to the delay phase?

9 **A.** Yes.

10 **Q.** What was your understanding at that time or what had you  
11 asked about test and trace in Northern Ireland?

12 **A.** Well, we had an Executive meeting on 12 March, and  
13 amongst other things it became clear that the testing  
14 and tracing had been paused by the Department of Health,  
15 and the answer, when asked -- I think I might have been  
16 in the chair at the time, and when one is in the chair  
17 one tries to allow ministers to ask questions, so you  
18 will notice in the minutes, whoever's in the chair tends  
19 not to ask the questions, but the questions were asked  
20 of Minister Swann and the answer was "I'd rather" -- and  
21 I'm paraphrasing here -- "I'd rather try to deal with  
22 what's coming towards us than count", in terms of the  
23 number of cases he had. So I think it was a capacity  
24 issue at that time.

25 **Q.** I was really asking, Baroness Foster, what questions you

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1 had asked prior to 12 March in order to understand what  
2 testing and tracing capacity there was in  
3 Northern Ireland?

4 **A.** Well, I think I've indicated that it came up as an issue  
5 on March 12, and that's when it was discussed and the  
6 Department of Health told us that they had paused the  
7 test and trace.

8 **Q.** So, again, can we be clear about this: that it was only  
9 when testing and tracing was suspended that you asked  
10 any questions about what Northern Ireland's capability  
11 was to provide testing?

12 **A.** Well, testing was under the remit of the PHA at that  
13 time and was taking place, and I think it's not  
14 unreasonable for us to ask why it was stopped, and  
15 you've seen the answer that was given to us by the  
16 Minister of Health at that time.

17 **Q.** It wasn't a question about when it was stopped,  
18 Baroness Foster; it was a question as to whether you  
19 made any enquiry at all, until testing was paused, as to  
20 what Northern Ireland's testing capability was?

21 **A.** Well, that's the answer I have given in relation to the  
22 testing was under the public health authority which is  
23 under the Department of Health. When it was paused we  
24 asked why it had been paused. I don't think that's  
25 an unreasonable question.

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1 made an announcement that it would move to impose  
2 a number of restrictions, I think on 11 March; correct?

3 **A.** The 11th or 12th, yes.

4 **Q.** Yes, I'm not that the day matters too much. And I think  
5 that also coincided with the World Health Organisation  
6 declaring a pandemic; yes?

7 **A.** Yes.

8 **Q.** And again, neither of those things, and perhaps if  
9 I take something that's not political, perhaps, the  
10 declaration of the pandemic by the World Health  
11 Organisation, again that doesn't seem to have prompted  
12 any consideration on your part as to whether or not now  
13 maybe the time had come to set up civil contingencies  
14 arrangements in Northern Ireland.

15 **A.** Well, my Lady, we were taking advice from SAGE in  
16 London, which was being brought to us by the Chief  
17 Medical Officer, and the advice was that we'd deploy  
18 interventions at "the right time", and we took that at  
19 face value from the Chief Medical Office, and we agreed  
20 that there wouldn't be school closures on that basis,  
21 because it wasn't the right time to close schools and  
22 the medical advice was such that we agreed with it.

23 **Q.** SAGE weren't -- they weren't giving advice about  
24 standing up civil contingencies arrangements --

25 **A.** No.

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1 **Q.** Sorry, is the answer to that straightforward question  
2 no?

3 **A.** I've given my answer.

4 **Q.** Is the answer no?

5 **A.** The answer is that testing was under the public health  
6 authority, which is reporting to the Department of  
7 Health.

8 **LADY HALLETT:** Move on, I think, Ms Dobbin.

9 **MS DOBBIN:** Yes. Thank you, my Lady.

10 So testing and tracing stopped, Northern Ireland  
11 moved from the contain to the delay phase, and I think  
12 it's right, Baroness Foster, that that was effectively  
13 a decision that was taken by government in Westminster  
14 and applied, effectively --

15 **A.** Yes.

16 **Q.** -- in Northern Ireland, and that there was no discussion  
17 by the Executive Committee, for example, about whether  
18 or not in fact test and trace needed to be stopped in  
19 Northern Ireland?

20 **A.** That's correct.

21 **Q.** You were informed by the Department of Health --

22 **A.** Correct.

23 **Q.** -- that it was stopping.

24 We understand and we've heard a good deal of  
25 evidence about the fact that the Republic of Ireland

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1 **Q.** -- were they, because they'd been set up, I mean, from  
2 prior to 24 January --

3 **A.** Yes.

4 **Q.** -- in Westminster?

5 **A.** Yes.

6 **Q.** And it's now 12 March, in Northern Ireland. I mean,  
7 this might be thought to look like sleepwalking into  
8 a pandemic, Baroness Foster.

9 **A.** I totally reject that, my Lady, I absolutely reject  
10 that, and the idea that we would sleepwalk into  
11 a pandemic when we had had such a determination to work  
12 for the people of Northern Ireland, to represent our  
13 constituents in a devolved administration and that we  
14 would expose them to this in a wilful way is just  
15 offensive, frankly.

16 **Q.** Well, it's just really difficult to understand why the  
17 most basic infrastructure for responding to a pandemic  
18 wasn't activated even by the declaration of the pandemic  
19 by the World Health Organisation.

20 **A.** As I said, we were receiving our information from SAGE,  
21 and they had indicated that we should trigger  
22 interventions at "the right time". The CCG had met on  
23 20 February, albeit it hadn't met again, and NICCMA was  
24 stood up on 16 March.

25 **Q.** I wanted to touch then, briefly, if I may, on the

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1 meeting on 16 March 2020.  
 2 That's at INQ000065689.  
 3 This was the meeting that took place after the  
 4 decision by the Republic of Ireland to impose measures  
 5 or restrictions, and I think again we can just scroll  
 6 through it, please, and I think ...

7 (Pause)

8 We see reference, and we've seen it already,  
 9 I think, the deputy First Minister was referring to the  
 10 fact that control had been lost two weeks ago.

11 (Pause)

12 We can see reference there -- we don't need to  
 13 stop -- reference to 80% of the population getting  
 14 Covid.

15 (Pause)

16 If we could maybe just go forward, please, to  
 17 page 17, I think this is the first time,  
 18 Baroness Foster, that there's any sort of reference or  
 19 briefing to the Executive Committee about planning. Do  
 20 you agree?

21 A. Yes, indeed.

22 Q. And it says:

23 "[Departments] can prepare own plans but have to  
 24 join up."

25 Yes?

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1 the Department of Justice believed that they should  
 2 listen to the views of the Chief Medical Officer, and  
 3 indeed of the head of the Civil Service, and therefore,  
 4 along with ourselves, voted to keep schools open.

5 The Minister of Education had indicated to me that  
 6 he needed time to plan the closure of schools in terms  
 7 of vulnerable children, making sure that some schools  
 8 were open for the children of key workers, so therefore  
 9 the decision was taken not to close schools at that  
 10 time.

11 Q. That's one thing, but what you put to a vote was the  
 12 motion that schools should close when the CMO  
 13 advised it.

14 A. Yes.

15 Q. Correct? And why was a decision whether or not to close  
 16 schools, why was that to be delegated to the Chief  
 17 Medical Officer?

18 A. Because he was working with the Public Health Agency,  
 19 had been working very closely with the Department of  
 20 Education behind the scenes as well, and I know that the  
 21 then minister, Peter Weir, was working very hard to make  
 22 sure that he had plans in place to deal -- trying to  
 23 deal with things that would cause problems, so that's  
 24 why.

25 Q. Whether to close schools was -- perhaps might be thought

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1 A. Yes.

2 Q. I think we can perhaps take it from that that this was  
 3 being said because there was, and there had been, no  
 4 joined up planning to date in Northern Ireland?

5 A. There had been planning, my Lady, but not joined up, and  
 6 I think that that's why NICCMA was activated.

7 Q. I'm going to come to those plans in a second.

8 This was the meeting where there was debate and  
 9 discussion about whether to close schools; correct?

10 A. Correct.

11 Q. And there was a vote as to whether schools should close;  
 12 yes?

13 A. Yes.

14 Q. And it was just a -- it was a straightforward majority  
 15 vote, wasn't it?

16 A. That's correct, yes.

17 Q. It wasn't a cross-community one?

18 A. No.

19 Q. And --

20 A. It was achieved through consensus.

21 Q. Well, that vote didn't go through, did it? The vote  
 22 that was put: should we close schools? --

23 A. Yes --

24 Q. -- that was rejected?

25 A. That was rejected because the Department of Health and

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1 to be one of the most significant decisions that the  
 2 Executive Committee could possibly take --

3 A. Yes.

4 Q. -- do you agree?

5 A. I do, yes.

6 Q. And whether to close schools encompassed a whole range  
 7 of considerations that cut across lots of different --

8 A. Yes, that's correct.

9 Q. -- departments; yes? I mean, it raises fundamental  
 10 issues about child protection, doesn't it, about how  
 11 children will be fed, it involves a decision based on  
 12 all of those things, doesn't it?

13 A. It does indeed.

14 Q. It wasn't a matter for the CMO to decide?

15 A. I think it's a misrepresentation to suggest that we  
 16 weren't taking those issues into consideration. I,  
 17 looking at the Republic of Ireland decision, was  
 18 concerned that they had closed schools without any plans  
 19 and the Minister of Education, our Minister of Education  
 20 was putting plans together because whilst we didn't want  
 21 to close schools, because we knew the impact it was  
 22 going to have on our young people, we knew that was the  
 23 direction of travel, therefore we would have to plan for  
 24 it, and the trigger point for that would be when the CMO  
 25 advised that we couldn't keep them open any longer.

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1 **Q.** The argument for closing schools was, I think, based  
 2 partly on the fact that in fact lots of people had  
 3 already decided to stop sending their children to  
 4 school; is that right?

5 **A.** I think unfortunately when the deputy First Minister  
 6 decided to go public with her opinion on the closure of  
 7 schools, that some of the schools in the  
 8 Catholic maintained sector started to close, and  
 9 therefore it was, to use the Minister of Education's  
 10 phrase at the time, fraying around the edges. And  
 11 I think that was regrettable, because it was important  
 12 that we had the plans in place to help those young  
 13 people, who we knew weren't going to be back in school  
 14 for a considerable length of time. That was made clear  
 15 to us, that once you close schools, schools are going to  
 16 be closed for a long time. And we were very conscious  
 17 of the fact that not every child has access to  
 18 technology, not every child has a safe home environment,  
 19 and we were concerned about that at the time.

20 **Q.** I think in terms of people stopping to -- stopping  
 21 sending their children -- from -- going to school, that  
 22 that had already started to happen, and I think was  
 23 discussed at a meeting of 12 March, before the deputy  
 24 First Minister made her public statement.

25 **A.** I think that accelerated then some school closures after

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1 do you think you had sufficient sources of advice?

2 **A.** Well, we were heavily reliant on SAGE advice, as you  
 3 know, and then that was synthesised first by the CMO.  
 4 We didn't see the minutes from SAGE in real time, we had  
 5 the ability to see it later, if you know what I mean.  
 6 And it would have been helpful for us to see the  
 7 information at first hand, not putting any slight on the  
 8 CMO at all in relation to that.

9 But we were in a sort of a situation where  
 10 everything was happening very, very quickly, we were  
 11 listening to the CMO, and his view from SAGE was that it  
 12 wasn't the right time to close schools. And as  
 13 I understand it, that was the advice in the  
 14 Republic of Ireland as well, but the Republic of Ireland  
 15 took a political decision to close schools on 12 March.

16 **LADY HALLETT:** Sorry to pursue this, it's just that in  
 17 Northern Ireland your Chief Medical Officer is --  
 18 basically he's Department of Health.

19 **A.** Correct.

20 **LADY HALLETT:** So you don't have the equivalent of  
 21 Sir Chris Whitty.

22 **A.** No.

23 **LADY HALLETT:** At the time you didn't have the equivalent of  
 24 Sir Patrick Vallance, because you didn't have  
 25 a government chief scientific officer, and I appreciate

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1 her statement. I mean, I think people were by this  
 2 stage -- we all were by this stage becoming very afraid,  
 3 and people, understandably, were keeping their children  
 4 at home because they didn't want to -- they didn't know  
 5 what way the virus worked, who it impacted the most, and  
 6 therefore they were keeping their young people at home.

7 **LADY HALLETT:** Do you think, Lady Foster, that you had  
 8 sufficient information on how the closure of schools  
 9 would impact on the transmission of the virus at that  
 10 stage?

11 **A.** Later on we had more information, there's no doubt about  
 12 that, but at that stage, whilst we had been told that  
 13 older people were more affected by the virus, there  
 14 was -- and you will recall this, no doubt -- this idea  
 15 that young people would infect older people by bringing  
 16 the virus home to them, and so it was almost a societal  
 17 issue about trying to protect our most vulnerable by  
 18 cocooning everybody in a lockdown.

19 **LADY HALLETT:** Because you didn't have, at this stage, the  
 20 epidemiological, kind of, advice that we got later in  
 21 the pandemic --

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

23 **LADY HALLETT:** -- that I heard a lot about elsewhere, and  
 24 I'm just wondering do you, it may be that the advice  
 25 wouldn't have been available anyway at this stage, but

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1 steps being taken to try to remedy the latter, but you  
 2 still don't have a government Chief Medical Officer in  
 3 Northern Ireland or do you?

4 **A.** No, we don't and perhaps that's something that needs to  
 5 be reflected upon in government.

6 And I do recall the conversation, my Lady, around --  
 7 later on in the pandemic, when we were trying to take in  
 8 other considerations and we had that discussion with  
 9 the CMO, and his point of view was "But I'm only looking  
 10 at it from a health perspective and actually from  
 11 a Covid perspective, I'm not looking at it from  
 12 an economy perspective or indeed non-Covid health  
 13 issues". So that was a problem. But then how do you  
 14 ever get a Chief Medical Officer to take into  
 15 consideration economic issues?

16 **LADY HALLETT:** You don't. I heard from Sir Chris Whitty  
 17 saying that you don't.

18 **A.** And therein lies the problem, you know, that was a real  
 19 issue.

20 **LADY HALLETT:** Thank you.

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

22 Baroness Foster, just going back to the meeting on  
 23 16 March, I'm sure you've read those minutes, but people  
 24 appear to have perhaps gone to default settings about  
 25 the position they were taking, whether or not to close

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1 schools, but without very much consideration of what  
2 that would actually mean for children in  
3 Northern Ireland, and I'm referring to the content and  
4 the quality of the debate --

5 **A.** Yes.

6 **Q.** -- at that meeting. Do you accept that?

7 **A.** I do, yes.

8 **Q.** I think if I may, we know that on the evening of  
9 17 March -- perhaps we could bring this up,  
10 INQ000308439, at page 2.

11 This is a reflection on that meeting:

12 "Even in a crisis they seem keener on scoring points  
13 off each other than helping the citizen."

14 Again, Baroness Foster, reflecting on that, do you  
15 accept at this first challenge to ministers in  
16 Northern Ireland, the first decision that they're called  
17 upon to make, that that was true, that it became about  
18 point scoring, not about children in Northern Ireland  
19 actually at all?

20 **A.** It was very disappointing that the decision that we had  
21 agreed on, I think a couple of days before, was then  
22 challenged by Sinn Féin ministers, because I believe,  
23 and I know this has been refuted by the deputy First  
24 Minister, that she wanted to be in the similar position  
25 to the Republic of Ireland, and whilst we were following

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1 decision that ministers couldn't just sit down and have  
2 a mature discussion and ...?

3 **A.** I agree it's a very bad reflection, very bad.

4 **Q.** I'll move on to a different topic.

5 It's just going back to the question of planning,  
6 Baroness Foster, because I think this all coalesces at  
7 around the same time that there was a bit of additional  
8 input into the TEO to help with planning, in the form of  
9 Ms Pearson.

10 **A.** Yes.

11 **Q.** I think when she came, she arrived, there was a plan in  
12 place.

13 And if we could just go to this, please, it's  
14 INQ000086935, and perhaps if we could look at page 30 of  
15 this.

16 I'm just going to schools, Baroness Foster, because  
17 it's an easy one to understand and everyone, I think,  
18 can see what the inadequacies of this plan are, and, if  
19 these were the risks on 13 March, that they just  
20 appeared wholly unrealistic.

21 **A.** But, if I may, my Lady, that's at 13 March and I think  
22 over the next week there was a lot of intensive work  
23 carried out, which goes to the point that it would have  
24 been too soon to close the schools at that point,  
25 because a lot of work was then carried out in terms of

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1 what we were being told at that time, and I think doing  
2 the right thing in terms of preparing for school  
3 closures but not at that particular point, it descended  
4 into "them and us", which is very disappointing.

5 And I think the exchange that we see on the screen  
6 is something, my Lady, that I referenced earlier.  
7 Officials are saying, you know, "We need a different  
8 decision-making structure", "Never underestimate how  
9 difficult it is to get things agreed here". I mean, we  
10 hadn't had a government for three months -- three years.  
11 Three months, if only. Three years. And officials had  
12 got used to making decisions without reference to  
13 ministers, and I think this is just a frustration coming  
14 through from the head of the Civil Service saying "We  
15 have the ministers back here and things are not simple  
16 any more". Because it ...

17 The five parties in the Executive, as you know,  
18 my Lady, are a wide range of views on many, many things,  
19 and therefore it is always difficult to gain consensus  
20 and to seek common ground. But unfortunately that's the  
21 system we have.

22 **Q.** Baroness Foster, that's candid of you, but it's really  
23 sad and tragic, isn't it, that --

24 **A.** It is.

25 **Q.** -- when it came to children and this really important

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1 children of key workers, making sure that children who  
2 got their only hot meal at school were able to --  
3 payment was going to be made so that they could have  
4 a meal at home. So there was a lot of work carried out  
5 between this document and the actual closing of schools.

6 **Q.** This document doesn't really contemplate schools being  
7 closed at all by way of a non-pharmaceutical  
8 intervention. The risk, if we see school closures,  
9 what's being planned for is that staff might be absent.  
10 As we can see, that's the issue, that's the risk.

11 **A.** Yeah, but staff were still working during school  
12 closures, and I think the worry was that if they were  
13 not able to teach remotely, then that would be  
14 a problem.

15 **Q.** Well, I'm not --

16 **A.** And obviously for those schools that were open for  
17 key worker children as well, they needed to be in place  
18 as well.

19 **Q.** Well, I don't think that can be right. This isn't  
20 a plan for closing schools, and in fact we can see that  
21 the potential mitigation is larger school sizes. So  
22 it's not -- the risk isn't: children are going to be off  
23 school, how do we plan for this? This is -- the risk  
24 is: teachers won't be in school, how do we plan for  
25 this?

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1 **A.** Yes, but I do think that the department had plans in  
 2 place, because, as I understood it, there was  
 3 legislation that they were putting in place if school  
 4 closures had to be effected. I don't think anybody  
 5 wanted to close schools, I certainly didn't want to  
 6 close schools, but that's where we ended up.

7 **Q.** Yes. Baroness Foster, it's really just to draw your  
 8 attention to what state of planning appeared to be on  
 9 13 March.

10 **A.** Sure.

11 **Q.** These are the plans that the Inquiry has been provided  
 12 with in order to understand what the contingency  
 13 planning was, and when it comes to schools, this is the  
 14 state of the plans.

15 **A.** Yes. I accept that, but I also think, my Lady, that  
 16 a lot of work was done in that week, which goes to show  
 17 that we were right in not closing the schools at the  
 18 same time as the Republic of Ireland.

19 **Q.** I think if I may I'll move on and just deal then with  
 20 the minutes of the 19 March, please.

21 That's INQ000065737.

22 Again, I think we can see that the deputy First  
 23 Minister appears to be exhorting people to work  
 24 together, and reflecting, I think, on the pressure that  
 25 was on the health minister. If we could, again, just

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1 **Q.** So there were no figures discussed or considered by the  
 2 Executive Committee until the first person had actually  
 3 died in Northern Ireland?

4 **A.** No, we only had percentage figures, I think, in terms of  
 5 modelling, back in February.

6 **Q.** I think we can probably take that down, thank you.

7 Obviously very, very quickly, then, Baroness Foster,  
 8 you were moving and Northern Ireland moved into  
 9 a lockdown; yes?

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

11 **Q.** I think that it's also correct that -- I think it's  
 12 correct for everywhere, I'm not suggesting that it's  
 13 just for Northern Ireland -- that there hadn't been  
 14 any -- well, certainly no advice, I think, from the CMO  
 15 that a lockdown was in prospect or was needed in  
 16 Northern Ireland in the run-up to 23 March; is that  
 17 right?

18 **A.** Yes, my understanding is that SAGE hadn't modelled for  
 19 a lockdown, and therefore we hadn't been advised by our  
 20 CMO about a lockdown, and I think partly that was  
 21 because SAGE had believed that the British people  
 22 wouldn't really accept a lockdown because it was so anti  
 23 what we believed in, in terms of being able to move  
 24 around. So it's absolutely the case that there was no  
 25 planning for a lockdown in Northern Ireland, but in GB

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1 please scroll down, thank you.

2 **(Pause)**

3 Yes, we get to Covid now. And if we could just  
 4 scroll down a little bit, please.

5 **(Pause)**

6 I think if we could just stop, I think this is  
 7 probably where we -- we've obviously seen,  
 8 Baroness Foster, that this was the day on which the  
 9 first person in Northern Ireland died.

10 **A.** Yes.

11 **Q.** I think maybe -- I'm not sure anyone had ever asked the  
 12 question before, that we see at the bottom of page 4,  
 13 which I think must be a reference to PPE.

14 **A.** Yes.

15 **Q.** And again, is that correct, had the Executive Committee  
 16 asked any questions about the availability of PPE before  
 17 this date?

18 **A.** I don't think so, no.

19 **Q.** If we could just scroll down, please.

20 **(Pause)**

21 Thank you, if we just pause there, please. I think  
 22 this is the first time that there's any reference to  
 23 numbers or concrete figures in front of the Executive  
 24 Committee. Do you agree?

25 **A.** Yes.

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1 either.

2 **LADY HALLETT:** There are some who argue you should never  
 3 impose a lockdown, given the dire consequences for all  
 4 of us. Did you and your Executive consider all the  
 5 various consequences of a lockdown?

6 **A.** No, because I think we were so frightened about the  
 7 prospect of so many people losing their lives that we  
 8 didn't give it the due consideration that it probably  
 9 should have been given. I think we probably would have  
 10 ended up in the same place, my Lady, but certainly there  
 11 was no discussion about: let's not have a lockdown. It  
 12 was happening, and that was it.

13 I think later on, and you will have seen this in the  
 14 minutes, there was more discussion about how the virus  
 15 was transmitted and whether a lockdown was correct for  
 16 everybody in society. But certainly not at that time.

17 **MS DOBBIN:** I, on behalf of the Inquiry, asked Ms O'Neill  
 18 whether she accepted that Northern Ireland was woefully  
 19 unprepared for going into a lockdown, and she agreed  
 20 with that, or she accepted that. Do you accept that?

21 **A.** I do, because I don't think we were modelling or  
 22 predicting that a lockdown would come. I think, by that  
 23 stage, we knew that there was going to have to be some  
 24 interventions. We had seen the lockdown in Italy,  
 25 I think on 23 February. We had seen the television,

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1 photographs of people in their own homes and, frankly,  
2 thought it was: oh my goodness, this is terrible, that  
3 people aren't allowed to move around. But then, as time  
4 went on, I think there wasn't anybody saying that we  
5 shouldn't do it when it arrived.

6 I mean, it was really turning the normal run of what  
7 you do -- normally, in law, if you're not allowed to do  
8 something, you're allowed to do everything else, but  
9 this was telling you you're not allowed to do anything  
10 unless it's actually permitted in law.

11 So that shift was an incredible shift at that time  
12 and very difficult to contemplate.

13 **MS DOBBIN:** I was going to move on to a different topic,  
14 my Lady, but I don't know, I can't quite see the clock.

15 **LADY HALLETT:** It's 20 minutes to.

16 **MS DOBBIN:** I'm in your hands, if you would like me to --

17 **LADY HALLETT:** Is it a five-minute or so --

18 **MS DOBBIN:** It's not a five-minute or so topic, no.

19 **LADY HALLETT:** In which case we will break now.

20 How are you doing for timing? Would you rather  
21 I broke until 1.40 or 1.45?

22 **MS DOBBIN:** I think I'm being told that we're fine for time.

23 **LADY HALLETT:** 1.45.

24 **(12.40 pm)**

**(The short adjournment)**

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1 touch upon, with you, the attendance of the deputy First  
2 Minister at the funeral of Mr Storey. I think it's  
3 clear from your witness statement that that was a matter  
4 which caused you personal difficulty and difficulty with  
5 your -- in your relationship with her; is that right?

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

7 **Q.** I think that it's also right that for a period of some  
8 weeks thereafter you didn't feel able to stand on  
9 a platform with her, so to speak, in order to give the  
10 press conferences that you had been giving previously;  
11 yes?

12 **A.** Yes, that is correct, yes.

13 **Q.** All right. I think it's probably clear enough from your  
14 statement, and I hope I'm not mischaracterising it, but  
15 it may be a matter of personal hurt or difficulty to  
16 you?

17 **A.** Yes, I think that's a fair comment. At the beginning of  
18 June, the deputy First Minister and I had actually given  
19 an interview to the Belfast Telegraph about how we were  
20 trying to work together after a sometimes bumpy start in  
21 terms of school closures, criticism of Minister Swann,  
22 and we were trying to work together through those  
23 difficulties.

24 So it was a huge disappointment, and indeed caused  
25 massive damage to the Executive, to the credibility of

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1 **(1.46 pm)**

2 **LADY HALLETT:** Sorry if we're late, both Lady Foster and  
3 I had lift malfunctions of different kinds.

4 Can I just say this, Lady Foster, before Ms Dobbin  
5 goes back to her questioning: you said something earlier  
6 that -- you're not the first person to say it and  
7 I wanted to make -- this is not a point against you,  
8 it's just to make plain for everybody. You said  
9 something like the Inquiry doesn't want me to hear, or  
10 you attributed, basically to me, as the Inquiry,  
11 questions from Ms Dobbin.

12 Can I just reassure you and explain to everybody,  
13 questions asked by Counsel to the Inquiry do not  
14 indicate any conclusion that I've formed, or any views,  
15 they're really designed to test the evidence to enable  
16 me to reach conclusions.

17 **THE WITNESS:** I appreciate that.

18 **LADY HALLETT:** So I just wanted to reassure you that  
19 I haven't reached any conclusions as yet.

20 **THE WITNESS:** Thank you.

21 **MS DOBBIN:** I'm grateful, my Lady.

22 Baroness Foster, before the short adjournment, I was  
23 going to move to a different topic and to a different  
24 phase in the pandemic, and look at what happened from  
25 autumn 2020 onwards. Before I do that, I just wanted to

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1 the Executive, to public messaging, and was very hurtful  
2 to the so many people around Northern Ireland who had  
3 stuck by what were very stringent rules around funerals  
4 and wakes, in particular, because, as I'm sure evidence  
5 has been given, my Lady, around the culture in  
6 Northern Ireland, they have wakes and -- to grieve  
7 together as neighbours, and all of that had been  
8 prohibited, and yet here was one of the people making  
9 the rules actually doing just so.

10 So it was a huge disappointment. Personally I felt  
11 very upset about it all, and I didn't feel there was any  
12 credibility in going back to press conferences at that  
13 time. The press conferences began again in September.  
14 I think at that stage Michelle had acknowledged the hurt  
15 that had been caused, I think was the phrase that was  
16 used at that time, and in particular the damage to  
17 messaging, and given where we were then going, I felt it  
18 was important that we started to give those public  
19 messages again.

20 **Q.** Yes. I think we can see, just picking up the  
21 chronology, that that happened and that you -- when  
22 I say you moved on, that you did resume giving those  
23 press conferences together, and obviously the Executive  
24 Committee, we can see, fell into a rhythm of meeting,  
25 because it had agreed a structure, hadn't it, by which

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1 it would remove restrictions?  
 2 **A.** Yes.  
 3 **Q.** I think that framework, I won't bring it up, was put in  
 4 place I think in May 2020.  
 5 **A.** Yes.  
 6 **Q.** And you, I think the Executive Committee agreed some  
 7 principles by which it would gradually remove  
 8 restrictions; yes?  
 9 **A.** Yes.  
 10 **Q.** And test the removal as well; correct?  
 11 **A.** Yes, I think there was a matrix drawn up where, it might  
 12 have been later actually, the matrix where we would look  
 13 at the risk and benefit from removing regulations and  
 14 the CMO and the Department of Health would have told us  
 15 whether they thought it was a negative or a positive  
 16 place, so we felt that that was a good way to look at  
 17 the regulations.  
 18 **Q.** And I think we can see that on their advice there would  
 19 be -- a restriction might be removed and then a period  
 20 of time allowed to pass, and then a decision taken  
 21 whether or not to remove another restriction; I think  
 22 that was broadly the process?  
 23 **A.** Yes, I think it was, we would act and then we would  
 24 pause and then we would see how that had an impact on  
 25 principally the reproduction number but also other

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1 transmissible in winter rather than in the summer  
 2 months.  
 3 **Q.** Baroness Foster, I'm going to hopefully cover the  
 4 chronology without needing to take you to any document,  
 5 but if at any point you want to see a document, please  
 6 say and I will take you to it.  
 7 **A.** Okay.  
 8 **Q.** I think we can see, if we pick the chronology up on  
 9 19 August 2020, I think Minister Swann met with you and  
 10 the CMO and the CSA, and at that stage the R value was  
 11 higher in Northern Ireland than the rest of the  
 12 United Kingdom or the Republic of Ireland. Do you  
 13 recollect that?  
 14 **A.** I do, yes.  
 15 **Q.** I think at around that time, there were some concerns  
 16 about whether or not to go down the enforcement route,  
 17 that a decision was ultimately taken on 10 September to  
 18 consider localised restrictions in some areas?  
 19 **A.** Yes, I think at that meeting in August the Chief Medical  
 20 Officer had indicated that there were enough regulations  
 21 in place, it's just that they weren't being enforced  
 22 properly and that caused us some concern. Then in  
 23 particular areas, actually some of them quite close to  
 24 the Republic of Ireland border, there then became  
 25 an exponential rise and there was a need to put

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1 issues as well, hospital admissions, capacity and things  
 2 like that.  
 3 **Q.** Yes, and I think we see in that document, I think there  
 4 are a number of principles that were intended to guide  
 5 your decision-making, one of them I think was  
 6 proportionality?  
 7 **A.** Yes.  
 8 **Q.** One of them was keeping R below 1. So you had  
 9 a framework around which to base your decisions; is that  
 10 right?  
 11 **A.** Yes, we had a framework, and also, bearing in mind what  
 12 the regulations themselves said, which was if  
 13 a regulation is no longer required then the Department  
 14 of Health must remove that regulation. So there was  
 15 a necessity issue as well, whether it was necessary to  
 16 keep that regulation in place.  
 17 **Q.** Yes, and I think we've established this with other  
 18 witnesses, Baroness Foster, and I won't take you back to  
 19 the materials, but it would appear that that process had  
 20 worked for a period and that the R number actually went  
 21 down by quite a bit in Northern Ireland in and around  
 22 the summer of --  
 23 **A.** In the summer, yes, but we did understand, and we had  
 24 been advised as well, that there was a seasonal element  
 25 to it as well in terms of the virus became more

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1 restrictions in, and for the first time we did it on  
 2 a localised postcode basis. I think in England they had  
 3 different tiers, whereas we had, for this particular  
 4 point in time, postcodes.  
 5 **Q.** I think in fact in terms of the areas, if we started,  
 6 I think, the first restrictions were introduced in and  
 7 around 10 September 2020, I think in fact Belfast was  
 8 the main area of concern at around that time?  
 9 **A.** Yes, and then moved, I think, to Ballymena, and to Derry  
 10 and Strabane.  
 11 **Q.** Yes. I think, again just moving forward in time,  
 12 I think by a week later the transmission rates were  
 13 still higher than the rest of the UK and the  
 14 Republic of Ireland and that the increases had been seen  
 15 in Antrim and Newtownabbey, they seem to have been  
 16 recorded as the main concerns. Do you recollect that?  
 17 **A.** Yes, so there were changing areas, some weeks different  
 18 district council areas were higher than in other weeks,  
 19 so it was moving about.  
 20 **Q.** Then on 21 September you might recollect that SAGE then  
 21 considered whether or not on a UK-wide basis -- or  
 22 certainly considered the position on a UK-wide basis,  
 23 didn't it?  
 24 **A.** About short circuit-breakers, is this the --  
 25 **Q.** Yes.

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1 A. -- the time that they talked about? Yes.  
 2 Q. So on 21 September SAGE had noted that incidence was  
 3 increasing across the country in all age groups; yes?  
 4 A. Yes.  
 5 Q. And that the effect of opening schools at that time had  
 6 yet to be seen in the transmission rates; correct?  
 7 A. Yes, indeed.  
 8 Q. And it's right, isn't it, that SAGE proposed a menu of  
 9 options that might be --  
 10 A. Yes.  
 11 Q. -- open across the United Kingdom for meeting the  
 12 situation as it then was; correct?  
 13 A. Yes, and I think the first of those was a short  
 14 circuit-breaker, from memory, and then there were others  
 15 of a lesser nature.  
 16 Q. That's right, so advice to work from home, banning all  
 17 contact within members of the household, so those kind  
 18 of --  
 19 A. Yes.  
 20 Q. -- those kind of restrictions.  
 21 That day, on 21 September, the health minister in  
 22 fact he requested an emergency meeting of the Executive  
 23 Committee, didn't he?  
 24 A. He did.  
 25 Q. And the decision -- or what he put to ministers was

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1 scene, if I may, for, I think, the first document that  
 2 it might assist us to look at.  
 3 Which is INQ000065631.  
 4 I think this paper might assist in understanding how  
 5 decision-making had changed in Northern Ireland,  
 6 Baroness Foster. I don't know if you recollect it, but  
 7 this kind of briefing was now coming before the  
 8 Executive Committee in order to help inform their  
 9 decision-making.  
 10 A. Yes, it had changed in terms of what -- I think Robin  
 11 still was recommending what he believed was the right  
 12 way forward, it was later on that he brought a menu of  
 13 options, but I think he's still recommending at this  
 14 point.  
 15 Q. I think if we, first of all, look at paragraph 2, this  
 16 sets out the reason why he was bringing this before the  
 17 committee; yes?  
 18 A. Yes.  
 19 Q. So we can see that case numbers were going up, and we  
 20 can see that in fact cases and hospital bed occupancy  
 21 were increasing at a rate of 50% a week; yes?  
 22 A. Yes.  
 23 Q. And I think, again, what this was reflecting was that  
 24 the effect of two things was awaited, the opening of  
 25 pubs and the return of children to school; yes?

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1 whether or not to extend the local restrictions on  
 2 a Northern Ireland-wide basis; is that right?  
 3 A. That's correct, yes.  
 4 Q. I think insofar as they were restrictions -- they  
 5 weren't a form of lockdown, were they? It was just that  
 6 certain sectors --  
 7 A. Yes.  
 8 Q. -- weren't permitted to open?  
 9 A. Yes, I think that's right, including close contact  
 10 services and hospitality, from memory, as well.  
 11 Q. Well, I don't think that -- I'm not sure that's right,  
 12 because I think that on 23 September --  
 13 A. Right, okay.  
 14 Q. -- pubs that didn't serve food were starting to open in  
 15 Northern Ireland, that previously having been --  
 16 A. Right. Okay. I can't recall --  
 17 Q. No.  
 18 A. -- the precise time, I just knew that we had moved to  
 19 more restrictions on a -- yes, that's correct. So we  
 20 hadn't put in -- we had put in the restrictions at  
 21 a postcode level and then we followed those through  
 22 right across the whole of Northern Ireland, and then  
 23 later in October we had the circuit-breaker for  
 24 four weeks, I think that's correct.  
 25 Q. Yes, that's right, I had really just wanted to set the

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1 A. Yes.  
 2 Q. I think that if we go forward again in time.  
 3 And if we go, please, to INQ000304274, please.  
 4 This recorded a call with the CMO on 30 September  
 5 and this is a call with you and the deputy First  
 6 Minister.  
 7 And I think that if we go, please, to page 2, the  
 8 CMO sets out that the "Rate of risk [was] deeply  
 9 concerning". And you can see that the CSA was setting  
 10 out that:  
 11 "[The] rate [was] above 2 over the weekend."  
 12 Yes?  
 13 Again, I think if we follow this paper down, we can  
 14 see that, first of all, I think the deputy First  
 15 Minister was suggest -- or asking whether or not it was  
 16 being suggested that there should be measures for  
 17 two weeks; yes?  
 18 A. Yes.  
 19 Q. I think if we followed this on down, the Chief Medical  
 20 Officer was saying that the doubling time was nine days  
 21 and that time was not on our side; yes?  
 22 A. Yes.  
 23 Q. So that was the position on 30 September.  
 24 And I think again if we can just pick up the  
 25 chronology, and I think it's correct, Baroness Foster,

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1 just to put this in context, that I think that this is  
 2 a period when the local restrictions are still on foot;  
 3 is that right?  
 4 **A.** Yes.  
 5 **Q.** They hadn't fallen away.  
 6 If we could go, please, to INQ000304331.  
 7 This is now 7 October, and we can see that the Chief  
 8 Scientific Officer was setting out that all of the  
 9 indicators were getting worse:  
 10 "Cases in [Northern Ireland] [were the] highest in  
 11 Europe for 14 day rates."  
 12 He set out the position in respect of hospital  
 13 admissions, and setting out that it was thought that  
 14 wave 1 admissions would be exceeded within a few weeks.  
 15 Correct?  
 16 **A.** That's correct, yes.  
 17 **Q.** And I think he was saying -- it may have come down --  
 18 that medical services were in danger of being  
 19 overwhelmed at that stage; yes?  
 20 **A.** Yes.  
 21 **Q.** Yes. Setting out -- thank you -- that the death rate,  
 22 I think, would go up in two to three weeks' time.  
 23 And I think it's also right, if we just follow this  
 24 through to page 3, he set out where the R rate would be  
 25 if schools were to open.

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1 please.  
 2 It's INQ000276520.  
 3 So I think this will be familiar to you,  
 4 Baroness Foster.  
 5 **A.** Yes.  
 6 **Q.** It's a series of papers that were provided to the  
 7 Executive Committee at around this time. Yes?  
 8 **A.** Yes.  
 9 **Q.** What the CSA, it appears, was doing was again looking at  
 10 the R rate. Again, we can see, at 4, considering the  
 11 position in relation to schools.  
 12 And I think if we just again scroll down, please, to  
 13 paragraph 12, I think he sets out that the doubling time  
 14 was seven to eight days, again that the ceiling I think  
 15 for hospital capacity would be reached within ten to  
 16 14 days; yes?  
 17 **A.** Yes.  
 18 **Q.** And that cases in those over the age of 60 had more than  
 19 doubled; correct?  
 20 **A.** Correct.  
 21 **Q.** I think that if we follow this on down, he sets out the  
 22 position in relation to hospitals.  
 23 **(Pause)**  
 24 So he set out, if we were just to scroll down, he  
 25 effectively set out, didn't he, that there was already

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1 So, yes, we just see it on the fourth paragraph  
 2 down. Yes?  
 3 **A.** Yes.  
 4 **Q.** So he was advising what the position would be if  
 5 hospitality and schools were both open at the same time,  
 6 I think; is that right?  
 7 **A.** Yes, that was his modelling paper. He was always very  
 8 clear that modelling wasn't a prediction, when pushed  
 9 about his modelling, but the modelling had taken in more  
 10 information certainly than we had at the beginning of  
 11 the pandemic, and we had our own Northern Ireland  
 12 modelling, my Lady, which we didn't have at the  
 13 beginning of the pandemic either, and we had a strategic  
 14 information group. So that's what that was all based  
 15 on, yes.  
 16 **Q.** So do you accept, Baroness Foster, that by this stage  
 17 there was a good deal more sophisticated advice  
 18 available to you about the R rate and, for example,  
 19 about how it would impact on hospital admissions?  
 20 **A.** I do accept that that was the case, yes, my Lady,  
 21 although at times when -- and we will see this -- when  
 22 questions were asked about some of the granular details  
 23 we weren't able to get those answers, which I think was  
 24 a frustration, particularly for some of my colleagues.  
 25 **Q.** If we could move to the next document in the piece,

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1 very considerable pressure on the hospital system?  
 2 I think that this is the paper, I think it was said that  
 3 hospital capacity, I think, was almost reaching 100% at  
 4 this stage; is that right?  
 5 **A.** Well, certainly hospital capacity was an issue in the  
 6 first wave of the pandemic, and was still an issue, very  
 7 much so, in the second wave, I think probably more so,  
 8 because we were dealing with the normal winter pressures  
 9 as well. Our hospitals are always under pressure in the  
 10 winter, but they certainly were severely under pressure  
 11 at this time.  
 12 **Q.** Sorry, I think, forgive me, if we could just scroll back  
 13 up again, I think I went past it, if we just ... just  
 14 slightly up again, please. Sorry.  
 15 **(Pause)**  
 16 Yes, I had missed that on the table. So that table  
 17 was the table that was setting out in-patients and  
 18 admissions.  
 19 Sorry, if we go back down again, please.  
 20 **(Pause)**  
 21 He was also setting out the position in relation to  
 22 critical care beds as well.  
 23 So in this paper he was effectively setting out the  
 24 pressures that were already on the system without  
 25 Covid-19 patients, and he also sets out in this paper

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1 why that had ramifications for community care --  
 2 **A.** Yes.  
 3 **Q.** -- as well. Then in relation to critical care beds, he  
 4 also set out and explained the number of staff who it  
 5 required in order to staff those beds, and the extent to  
 6 which it removed staff from other hospital wards as  
 7 well. Yes?  
 8 **A.** Yes, I do recall a challenge, I don't know whether it  
 9 was from me or somebody else, that: why have we not more  
 10 hospital beds ready at this juncture? And the answer  
 11 given was that 15 intensive care beds extra would mean  
 12 100 staff, and there just wasn't the staff to deal with  
 13 that sort of increase in beds. Because it was  
 14 a frustration, I think, given that we knew we always had  
 15 winter pressures, that there wasn't more capacity in the  
 16 system in this particular year.  
 17 **Q.** But, Baroness Foster, I think the point that was being  
 18 made in this paper, and it's set out in the paragraphs  
 19 that follow, I won't go through all of them, but what  
 20 the CSA was setting out in this paper, wasn't he, was  
 21 that interventions were needed --  
 22 **A.** Yes.  
 23 **Q.** -- because if there weren't interventions hospitals  
 24 wouldn't be able to do the work they were doing at that  
 25 time and were at capacity doing; correct?

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1 **A.** I think it was wider than that. I think, my Lady, there  
 2 was a concern that a lot of the transmission was  
 3 happening at house parties, and that instead of looking  
 4 at hospitality venues we should be concentrating on  
 5 enforcement in house parties.  
 6 And I know that there was a reluctance from the  
 7 police to intervene in the private sphere, and  
 8 I understand that, but it was felt that there was a lot  
 9 of drinking going on at home and house parties happening  
 10 and that's -- was part of the problem that was occurring  
 11 in terms of transmission in the community.

12 People had a sense of relief in the summer, and that  
 13 was continuing, in terms of not complying with the newer  
 14 restrictions and regulations. And part of that was  
 15 fatigue, I'm sure. A lot of people didn't feel that  
 16 they were -- my goodness, having to go back into  
 17 lockdown again was not something that they considered.  
 18 So I think there was a variety of reasons why that  
 19 statement was made, not going to the source of the  
 20 problem.

21 **Q.** It is right, though, that this particular minister then  
 22 did make a public statement, didn't he --  
 23 **A.** He did, yes.  
 24 **Q.** -- within a fairly short period of time, saying in terms  
 25 that transmission rates were considerably higher in

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1 **A.** Yes, that is correct.  
 2 **Q.** So there wasn't any spare capacity in the system, and  
 3 therefore if the situation wasn't addressed --  
 4 **A.** Yes.  
 5 **Q.** -- then the impact would be on ordinary hospital beds  
 6 and the care being provided for people who didn't have  
 7 Covid and who had other illnesses?  
 8 **A.** Yes.  
 9 **Q.** I think if we go, please, to the meeting of 8 October,  
 10 at INQ000065756.

(Pause)

12 I think that we can see that it's set out the impact  
 13 that the transmission rates until that date were having  
 14 on hospital beds; do you agree?  
 15 **A.** Yes.  
 16 **Q.** If we please just scroll down, I think we can see -- and  
 17 I won't go to this, but I think that this was the point  
 18 at which the chief scientific officer was accused, as it  
 19 were, by one of the ministers of looking for a damaging  
 20 approach, and it was being said that people weren't  
 21 listening to the committee not going where the problem  
 22 exists and afraid to say what the problem was; correct?  
 23 **A.** Yes, I think that was right, yes.  
 24 **Q.** Was that a sort of veiled reference to the localities in  
 25 which transmission rates were going up?

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1 Nationalist areas as compared to other areas; that's  
 2 correct, isn't it?  
 3 **A.** That is correct, yes.  
 4 **Q.** As his leader, did you in any way seek to sanction him  
 5 or stop him or speak to him about making those kinds of  
 6 statements in public?  
 7 **A.** I think, given what happened later on, you will see that  
 8 Edwin is very much his own person in terms of his  
 9 opinions. However, it's not a view I shared, and he  
 10 knew it was not a view I shared, and indeed it wasn't  
 11 a view shared by the other DUP ministers either.  
 12 **Q.** I'm going to move on, if I may, in this document to  
 13 page 16.  
 14 And I think it's just at the bottom of the page,  
 15 Baroness Foster, we have the Chief Medical Officer  
 16 setting out his advice, and we can see the refrain --  
 17 the constant refrain, I think -- that modelling wasn't  
 18 a prediction.  
 19 **A.** Yes.  
 20 **Q.** He referred, I think, in his advice to direct and  
 21 indirect deaths; yes?  
 22 **A.** Yes.  
 23 **Q.** So he -- I think that must have been a recognition in  
 24 respect of the position in hospitals; yes?  
 25 **A.** Yes.

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1 Q. And that he was never more concerned than he was then;  
2 yes?  
3 A. Yes, I think it was a reflection of Covid deaths and  
4 non-Covid deaths from not being able to access  
5 healthcare.  
6 Q. Yes, but it was also a reflection on the fact that  
7 hospitals were at capacity in Northern Ireland --  
8 A. Yes.  
9 Q. -- anyway, with people who had a range of illnesses  
10 other than Covid; yes?  
11 A. Yes.  
12 Q. I think that after this -- and again if we could pick up  
13 the chronology, please, at INQ000439242 -- he explained  
14 that, in fact, the situation in Northern Ireland was  
15 more serious than it had been in March.  
16 A. Yes.  
17 Q. Did you accept at that time, Baroness Foster, that the  
18 situation had become very grave --  
19 A. I did, yes.  
20 Q. -- in terms of the ability of hospitals in  
21 Northern Ireland to cope?  
22 A. Yes, I did.  
23 Q. And in terms of the transmission rates as well?  
24 A. Yes.  
25 Q. And it seems that the local restrictions that had been

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1 Q. And in fact he was seeking a six-week lockdown, as he  
2 describes it there; yes?  
3 A. Yes, that's what he was seeking, yes.  
4 Q. And I think that if we went, if we scroll down, we can  
5 see that the Chief Medical Officer was saying that  
6 health services were ten days away from being  
7 overwhelmed.  
8 That's the penultimate paragraph on page 3.  
9 Thank you.  
10 There's reference there to the doubling rate.  
11 I think we can see your concern:  
12 "... if we go [into] lockdown Businesses will close.  
13 Suicide and other health concerns will skyrocket."  
14 And then the CMO advising, in respect of that, that  
15 if Northern Ireland was a country it obviously remained  
16 the position "numbers and trajectory are the worst in  
17 Europe", "but implementation by 16 October is required".  
18 Yes?  
19 A. Yes.  
20 Q. Do you agree that his advice couldn't really be clearer  
21 at that point as to what was needed?  
22 A. Yes, he was very clear.  
23 Q. That it was a hard and, I think we've already seen from  
24 the health minister that, a lengthier period of time  
25 than I think had already been suggested, so I think at

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1 tried throughout September and up until 10 October may  
2 have had some impact, but they obviously weren't able to  
3 bring down the R rate in a way that would be required to  
4 meet the situation or meet the risk that then existed?  
5 A. I think that the restrictions that were put in place  
6 were something that would have helped the R number, but  
7 unfortunately people weren't abiding by them in the same  
8 way as they had been in the first wave of the pandemic  
9 and, despite the fact that we were urging people to work  
10 with us and try to get the R number down, I think people  
11 were making their own decisions at this stage and,  
12 unfortunately, we reached the stage where we recognised  
13 that we would have to have a circuit-breaker.  
14 Q. I'm just going to go to, I think, the last document that  
15 illustrates the position at around this time.  
16 If we could go, please, to INQ000286275.  
17 And again, it's a meeting with you and the deputy  
18 First Minister.  
19 If we could scroll down, please, to page 2, and  
20 I think we can see it being said that hospital numbers  
21 and ICU beds were increasing significantly, that the  
22 point had been reached when routine surgeries were being  
23 turned down, and that a very hard intervention was  
24 sought. Yes?  
25 A. Yes.

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1 this point they're advising in and around three to  
2 six weeks; that's correct, isn't it?  
3 A. Yes, the health minister and his team were looking for  
4 a six-week circuit-breaker. I think I and colleagues  
5 felt, given everything else that was going on,  
6 particularly with people's livelihoods and their  
7 wellbeing, both physical and mental, that six weeks was  
8 a very long period of time and the discussion then came  
9 into being around whether we could find a compromise  
10 position, and we were able to find a compromise position  
11 around four weeks.  
12 Q. Just before you get to that point, COBR met on  
13 12 October --  
14 A. Yes.  
15 Q. -- didn't it? And Northern Ireland in fact was  
16 mentioned, because rates were -- the rates were amongst  
17 the highest. I think the only other place was  
18 Liverpool, maybe?  
19 A. Yes, I think Derry and Strabane was the highest anywhere  
20 in the UK at that point.  
21 Q. Yes, and I think that this was also the date when it was  
22 announced that there would be an economic package as  
23 well, so as to fund any restrictions that were going to  
24 be brought about at that time; yes?  
25 A. Yes, that's correct.

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1 Q. Again, I don't think that I need to take you to this,  
2 but a paper was put before the Executive Committee that  
3 set out that the data showed that rates were higher,  
4 significantly higher than in Wales, Scotland and  
5 England, and that the 14-day rate for Northern Ireland  
6 was the highest than any country in Europe, with the  
7 possible exception of the Czech Republic; yes?

8 A. Yes.

9 Q. Again it was advised that there was a need for stronger  
10 intervention in Northern Ireland than in other  
11 countries; correct?

12 A. Yes.

13 Q. And in fact in this paper, the CMO and the CSA  
14 recommended a circuit-breaker to commence as soon as  
15 possible and lasting three to six weeks, so they in fact  
16 gave a window, didn't they?

17 A. Yes.

18 Q. In terms, then, of what the Executive Committee decided  
19 to do, I think it's right that the agreement was to  
20 close schools for a two-week period?

21 A. Yes, I think that's right. SAGE, at a UK level, had  
22 indicated that schools could stay open, and in fact  
23 primary schools in particular had less transmission  
24 rates.

25 I think the Minister of Education, there was  
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1 as well; yes?

2 A. Yes.

3 Q. So although this is being described as  
4 a circuit-breaker, there were in fact aspects of society  
5 that were still open and available to people; yes?

6 A. Yes, but if I recall correctly, my Lady, there was quite  
7 strong messaging about not moving around and making sure  
8 that your travel was essential, even though we didn't  
9 have regulation 5 at that point in place in terms of the  
10 travel exemptions, but I think we were trying to get  
11 people to stay at home as much as possible.

12 Q. So, that's right, there was advice given at this time  
13 that you should work from home unless you're unable to  
14 do so, and that no unnecessary travel should be  
15 undertaken; yes?

16 A. Yes.

17 Q. But that was advice as to opposed to anything --

18 A. Yes.

19 Q. -- capable of enforcement.

20 Again, in terms of what happened in respect of that,  
21 it remained the position, didn't it, that, as the weeks  
22 wore on, those restrictions did have an impact --

23 A. Yes.

24 Q. -- but they still weren't sufficient in order to meet  
25 the risks that still existed to the health service;

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1 a week's holiday, I think, coming up at half term in any  
2 event, and then he lengthened that by another week, so  
3 that was the two weeks that happened.

4 Q. Yes. So really one week's additional school closures?

5 A. Yes.

6 Q. Then in terms of other restrictions, there were some  
7 restrictions around bubbling, so to be limited to  
8 a maximum of ten people.

9 A. Yes.

10 Q. Close contact services I think were to close, apart from  
11 those that were related to essential health?

12 A. Yes.

13 Q. But, for example, gyms were allowed to remain open; yes?

14 A. Yes.

15 Q. This may be -- if it assists, I've checked to make sure  
16 what was --

17 A. Yes, yes.

18 Q. -- brought in in that place, so I'm not trying to test  
19 you --

20 A. No.

21 Q. -- but I have checked. But I think, perhaps most  
22 important of all, schools were to remain open once they  
23 came back from the half term break --

24 A. Yes.

25 Q. -- and in fact the retail sector was also to stay open

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1 correct?

2 A. Yes, that was the advice we were being given, yes,  
3 that's correct.

4 Q. In the paper that came before the Executive Committee on  
5 9 November, in fact that continued to recommend that the  
6 closure of non-essential retail wasn't required; do you  
7 recollect that?

8 A. No, I don't recollect that, but I'm content to take --

9 Q. I'm really happy to go to that --

10 A. Yes.

11 Q. -- and to demonstrate that.

12 It's INQ000065589. I think it's at paragraph 25 on  
13 page 6.

14 A. Yes.

15 Q. So that was not being recommended, for the meeting of  
16 9 November.

17 A. Yes.

18 Q. And nor was it being recommended, for example, that  
19 schools should close either --

20 A. Yes.

21 Q. -- correct?

22 A. That's correct.

23 Q. I think that the headline is that the Executive  
24 Committee was advised that the restrictions should be  
25 extended for a further two weeks; correct?

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1 A. That's correct, yes.

2 Q. If we please just go to the final document in respect --  
3 before 9 November, and this is INQ000276538.

4 So the CSA was asked to model various contingencies  
5 or options open to the Executive Committee. So we can  
6 see the first one relates to services such as  
7 hairdressers, and he was asked to model that in line  
8 with, for example, if pubs and bars stayed open; yes?

9 A. Yes.

10 Q. I think if we follow this on down, he sets out that it's  
11 just not possible to do that sort of modelling; correct?

12 A. Yes.

13 Q. And, I think, the best, I'm paraphrasing, that he could  
14 do was to try and treat that as a package in order to  
15 try to, I think, inform your debate --

16 A. Yes.

17 Q. -- correct?

18 A. That's correct.

19 Q. If we go over the page, please, I think he sets out that  
20 under all of the scenarios that he had been asked to  
21 consider, that further intervention to prevent hospital  
22 capacity from being overwhelmed would be required at  
23 some point between 1 and 15 December.

24 Again, if we just look at the point he makes at  
25 paragraph 9 as well.

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1 Again, the deputy First Minister had indicated on the  
2 politics show on the Sunday that we can't live in  
3 continual cycles of lockdown. She had indicated to me  
4 that she recognised low paid workers in the close  
5 contact sector, like myself probably, had been lobbied  
6 by constituents about the issue, and a lot of young  
7 women in particular were finding it very difficult  
8 because of not having any pay if they didn't work.

9 So she'd indicated to me that she was willing to  
10 look at the close contact sector. That changed during  
11 the course of 9 November, and it became clear that  
12 Sinn Féin were not going to support that, and in fact we  
13 were going to roll on the restrictions for two  
14 more weeks without any recognition of the harms that  
15 were being effected against people in society.

16 So on the -- before we came back on the 10th, we  
17 decided if they were going to push this instead of  
18 looking for consensus, because deputy First Minister was  
19 in the chair, so she had the authority and the agency,  
20 if you want to use that word, to ask for a vote as  
21 opposed to trying to find consensus. I was aware of  
22 that, and I felt it was a key decision and therefore  
23 should be recorded on a cross-community basis.

24 Q. Can I just check that I understand this, could we go,  
25 please, to INQ000356174, and it's page 53.

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1 A. Yes.

2 Q. Hospital capacity is currently near 100% and has been  
3 exceeded on a number of recent days. It would only be  
4 possible to deal with an increased number of Covid  
5 admissions by downturning other services. This might  
6 lead to a greater number of deaths which is difficult to  
7 model with any confidence.

8 Yes?

9 A. Yes.

10 Q. Baroness Foster, that was the position going into the  
11 meeting of 9 November -- correct?

12 A. That's correct.

13 Q. -- for your Executive Committee to consider whether or  
14 not to extend the restrictions by two weeks.

15 When he gave evidence, Mr Poots said, I think, that  
16 it was -- the committee of your group of ministers had  
17 met beforehand and that it was you who gave the lead  
18 that if there was to be a vote on the recommendation --  
19 and I assume he's talking about the two-week  
20 recommendation -- that it was you who was giving the  
21 lead that the veto, as he described it in evidence,  
22 should be used.

23 A. Well, first of all, that meeting that he's referring to  
24 took place before 10 November, not 9 November. The  
25 context of 9 November is important, as with all things.

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1 This is redacted, but I think -- sorry, I think we  
2 need to go slightly further up. Oh, yes, sorry, it's  
3 there.

4 We can see that on 9 November at 6.24 Edwin called  
5 for a cross-community vote if needed.

6 A. Yes.

7 Q. That's you, isn't it?

8 A. It is, yes.

9 Q. So during the course of that meeting you're, it would  
10 appear, getting someone else, Mr Poots, to call for the  
11 cross-community vote for you?

12 A. Yes. It's not the convention for either the  
13 First Minister or deputy First Minister to call for  
14 a cross-community vote, so that's why another minister  
15 would call for it. And that is actually towards the end  
16 of the meeting, because I think, if I'm right, from  
17 memory, Diane had to go to do something in the Chamber,  
18 in the Assembly, so I think that was coming towards the  
19 end of the meeting.

20 Q. Yes. So there's no doubt, then, I think,  
21 Baroness Foster, that you were the instigator or the  
22 leader, as it were, of the use of the cross-community  
23 vote --

24 A. Yes, that's correct.

25 Q. -- at this meeting?

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- 1 A. Yes.
- 2 Q. And in terms of the position that other ministers had  
3 taken, there is no doubt, is there, that the advice  
4 coming from the CMO and the CSA was quite clear, as  
5 we've seen, that health services in Northern Ireland  
6 were already under very considerable pressure?
- 7 A. Yes, but we had also taken the decision that we were  
8 going to balance the other needs and, indeed, we had set  
9 up an enforcement group, which was then called  
10 an adherence group, I think, because we felt there  
11 wasn't enough enforcement of the regulations that were  
12 already in place, and that was backed up by the Chief  
13 Medical Officer as well.
- 14 So we felt there was another way to deal with this  
15 issue rather than put more restrictions, particularly on  
16 low paid workers who were trying to find a way through  
17 what was a very difficult period for them.
- 18 Q. The CMO was quite clear in his advice, wasn't he, that  
19 a two-week circuit-breaker was needed?
- 20 A. He was clear in his advice, yes, but, as I indicated, we  
21 had set up a mechanism whereby we wouldn't just look at  
22 the health advice, we would take into consideration  
23 other issues as well, and that's what we were trying to  
24 do.
- 25 Q. Had the position not become too pressing, given the

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- 1 something that will be looked at in the future in terms  
2 of: do you move to weighted majorities as opposed to  
3 using the cross-community vote?
- 4 But it's been there since the Belfast Agreement. It  
5 has, at times, been used by Sinn Féin, at times used by  
6 ourselves. It is a -- it is the nature of the mandatory  
7 coalition here in Northern Ireland. And I know it's  
8 difficult to look at it in the context of the rest of  
9 the UK, but that's the way it is in terms of the  
10 mandatory coalition to allow those who feel that the  
11 decision is going against them, that they can call for  
12 a vote on a cross-community basis. And I regret that  
13 the vote was put, I think it would have been much better  
14 if we had have worked through it and tried to find  
15 a consensus way forward, which is what we eventually  
16 did, but in order to get to that place we had to use the  
17 cross-community mechanism, which is a blunt tool,  
18 I accept that.
- 19 Q. Do you accept that it sectarianised, effectively, the  
20 most pressing and critical of issues going to the health  
21 and the life of people in Northern Ireland?
- 22 A. I don't accept that it sectarianises it, because it's  
23 a mechanism that's there, since 1998, for key decisions.  
24 I think it was a key decision for a lot of people in  
25 Northern Ireland that we were going to take their

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- 1 level, the capacity or the lack of capacity that had  
2 been left in health services, for that kind of measure  
3 to be tested?
- 4 A. Well, the actual advice we were given in terms of the  
5 close contact services was that it would cause 0.05 to  
6 R, which we considered to be small enough on one side to  
7 allow people to go back to work on the other side, in  
8 other words that the benefit was better for those people  
9 to be able to work during what turned out to be one week  
10 as a compromise in the end of the day.
- 11 Q. And why, given the critical position that had been  
12 reached at this time, why press this matter to  
13 a cross-community vote, thus ensuring that you won the  
14 day?
- 15 A. Because we felt it was an important issue, it was a key  
16 issue, as defined by the Belfast Agreement, and that's  
17 why it went to a cross-community vote.
- 18 Q. Even though it removed Minister Long from the vote and  
19 effectively meant that the true cross-community group of  
20 ministers, if I may describe them as that, because they  
21 represented each of the other parties --
- 22 A. Well, that's the mechanism that we had --
- 23 Q. -- couldn't --
- 24 A. I mean, it's a blunt tool, there's no doubt about the  
25 fact that it is a blunt tool, and my Lady, it's probably

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- 1 livelihoods away again. I think that if we had have  
2 been able to move towards a more consensus position --  
3 I wasn't in the chair, deputy First Minister was in the  
4 chair, it was pushed to a vote, and we ended up in  
5 a position where relationships almost broke down,  
6 frankly, and then we had to take some time out, try to  
7 come back together again, trying to find a way forward.  
8 And it was very difficult to watch from the outside, I'm  
9 sure, it was torturous inside, and I hope that we never  
10 get to a place where we have a four-day meeting of the  
11 Executive again.
- 12 Q. You said that it didn't sectarianise the issues, but by  
13 taking Minister Long out of the equation, it had that  
14 effect, didn't it?
- 15 A. Yes, it did, and I think that's why I've said it is  
16 a blunt tool and therefore maybe weighted majorities is  
17 something that should be looked at, particularly with  
18 the way -- the composition of the Northern Ireland  
19 Assembly now, now I'm not in it any more, but the  
20 composition has changed and therefore perhaps people  
21 would like to look at weighted majorities instead of  
22 cross-community vote mechanism.
- 23 Q. The mechanism was used twice over the course of that  
24 meeting, wasn't it?
- 25 A. That's correct.

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1 Q. And a number of people, and we saw what the CMO said  
 2 about it, said that it didn't just mark a low point in  
 3 the pandemic, but that it marked a low point, I think in  
 4 politics, in Northern Ireland generally. Do you accept  
 5 that?  
 6 A. Well, it was a low point in the pandemic, it was a low  
 7 point -- I mean, the lowest point for me was July, after  
 8 the Bobby Storey funeral; this was another low point in  
 9 terms of relationships. But the mechanism is there, it  
 10 has been used in the past, as I've said, on other issues  
 11 which are not constitutional, for Sinn Féin, such as  
 12 welfare reform, so the mechanism has been used in the  
 13 past, so whilst those who didn't want the mechanism used  
 14 will of course complain about it, it is there to be used  
 15 by a minority in a situation where they feel they're not  
 16 being listened to in order to reach consensus and that's  
 17 what happened.  
 18 Q. At no point did you think "We're in a minority here and  
 19 we respect the views of our brother and sister ministers  
 20 and it's right and proper, given the seriousness of  
 21 these issues, that we give way on this and see where  
 22 we're at in two weeks' time"?  
 23 A. I really regret that we couldn't find consensus and we  
 24 were forced into that position. It certainly wasn't  
 25 a good look for the Executive, and I regret that it had

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1 there was a week whenever non-essential retail and cafés  
 2 were open; do you agree?  
 3 A. Yes, I think that's right.  
 4 Q. We've heard evidence that even that week contributed to  
 5 a 25% increase in cases that was seen shortly  
 6 thereafter.  
 7 A. Well, at the meeting of 19 November, from the minutes,  
 8 the Department of Health had indicated that the death  
 9 rate was lower in Northern Ireland than in other  
 10 nations, and he did of course say that there was very  
 11 little capacity for any surge at all. But at that stage  
 12 we were looking towards a vaccine coming in December,  
 13 and the hope was that R would continue to fall.  
 14 Q. Yes, I think that the point at which the 25% increases  
 15 were seen was on 8 December.  
 16 A. Yes.  
 17 Q. So there was a week whenever some services and  
 18 non-essential retail were open, but in fact  
 19 non-essential retail had always been opened --  
 20 A. Yes.  
 21 Q. -- hadn't it?  
 22 A. Yes.  
 23 Q. Schools had always been open?  
 24 A. Yes.  
 25 Q. And it appears that it was cafés that had been re-opened

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1 to be used.  
 2 Q. Because all that damage, and I should ask you first: do  
 3 you accept that damage was done to public confidence --  
 4 A. Yes, I do.  
 5 Q. -- by the use of the vote? And that damage was done in  
 6 order to achieve, I think, a one-week extension to the  
 7 restrictions; correct?  
 8 A. Correct. Which may not seem like much now, looking  
 9 back, but at the time it was a huge relief for many  
 10 working in those close contact sectors and in the coffee  
 11 shop sector as well.  
 12 Q. But it was pointless, wasn't it, because the advice that  
 13 you had been given was that the two-week extension was  
 14 needed, so that in order to try and avoid a restriction  
 15 before Christmas, that was the advice that you were  
 16 being given?  
 17 A. Well, in relation to close contacts, as I've indicated,  
 18 that was indicated to be 0.05 in terms of R, and so we  
 19 were trying to balance up that as opposed to the harm  
 20 that was happening to people trying to make a living,  
 21 and that's why the decision was taken.  
 22 Q. In terms of what actually happened after that, it  
 23 appears that there was a restriction, I think, for  
 24 a week. The restrictions then lapsed from a period from  
 25 19 -- it would appear, from 19 November onwards so that

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1 in that week --  
 2 A. Yes.  
 3 Q. -- where restrictions lapsed. Then it would appear --  
 4 A. And the reason why that was the case was that we had  
 5 said we were closing for four weeks and a lot of the  
 6 coffee shops had brought in stock to re-open on that  
 7 week, and if we hadn't allowed them to open for that  
 8 week, all of that stock would have been lost, which is  
 9 why we felt it was important that they should be allowed  
 10 to open for that short period of time.  
 11 Q. Then I think that it's right that after that week  
 12 there's then a two-week period of restrictions; correct?  
 13 A. Yes, I think that's right, yes, to 11 December, I think.  
 14 Q. Then -- I confess it's extremely difficult to follow  
 15 this through, but there then came a period after around,  
 16 I think, 13 December where those restrictions fell away  
 17 so that retail was open again?  
 18 A. Yes, I think that's right.  
 19 Q. So do you accept that in this period leading up to  
 20 Christmas, that the position that's taken or the  
 21 decisions reached resulted in a position that was almost  
 22 incoherent in terms of restrictions being in place,  
 23 lapsing, coming back in, lapsing, just before the  
 24 Christmas holiday?  
 25 A. No, I don't accept that they were incoherent, because we

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1 were communicating what was happening at that time, and  
 2 people were waiting to hear, could they open their close  
 3 contact hairdressers for a period of time -- not just  
 4 for the hairdressers, but frankly for a lot of ladies of  
 5 a certain age who were feeling quite mentally unwell  
 6 because they hadn't had their hair cut.

7 And I mean, I know, my Lady, you may find that  
 8 strange, but for those of us who need to get our hair  
 9 cut every couple of weeks, it was becoming a real issue  
 10 and we were being told this very keenly.

11 So hairdressers -- 0.05 in terms of R -- and the  
 12 coffee shops were open for that week, and then they were  
 13 closed again for the two weeks. The next couple  
 14 of weeks was around allowing people to get ready for  
 15 Christmas, to give them some hope, recognising that  
 16 probably there would -- restrictions would come after  
 17 Christmas again.

18 **Q.** And I think the net position reached -- and I think we  
 19 can go to this at INQ000276571, and I think we can pick  
 20 this up from paragraph 3 -- that in fact, in terms of  
 21 the modelling, that what it had estimated might happen  
 22 in Northern Ireland was in fact borne out; yes?

23 **A.** Yes. They're saying that the period before Christmas  
 24 had led to that, yes.

25 **Q.** Yes, and that led to the highest rates of infection,  
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1 making when he came to give evidence was that what  
 2 happened in Northern Ireland, that it had its highest  
 3 death rates and highest infection rates, were as had  
 4 been estimated and bore out what the Executive Committee  
 5 had been advised of in the weeks leading up to  
 6 Christmas.

7 **A.** Yes, but I do make the point that we weren't advised to  
 8 close down before Christmas in those two weeks  
 9 beforehand.

10 **Q.** And I think what we also saw, when we took the  
 11 Secretary of State for Northern Ireland to this, was  
 12 that in fact capacity within the health services were so  
 13 affected by staff absences at this point in  
 14 Northern Ireland that military aid had to be provided --

15 **A.** Yes.

16 **Q.** -- to Northern Ireland in order to compensate for all of  
 17 the healthcare staff who were off work?

18 **A.** Yes.

19 **Q.** Baroness Foster, just one point: I think that it's -- it  
 20 has been accepted by a number of ministers who have  
 21 given evidence in the Inquiry, and I think you  
 22 foreshadow it in your witness statement, that  
 23 insufficient account was taken and insufficient account  
 24 was paid to the most vulnerable people in  
 25 Northern Ireland and what the impact of lockdowns --  
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1 didn't it, in Northern Ireland during waves 1 and 2 of  
 2 the pandemic?

3 **A.** Yes, but I don't recall, and I may be wrong about this,  
 4 but I don't recall the Department of Health asking for  
 5 restrictions during those weeks before Christmas.

6 **Q.** Well, I'm focusing on what the Executive Committee did.  
 7 We saw the advice that had been given --

8 **A.** Yes, but that was --

9 **Q.** -- leading up to --

10 **A.** -- up until the end of November and then there was those  
 11 two weeks that we were advised and we did that, those  
 12 two weeks, to close down, and then we opened up again  
 13 before Christmas. I don't think there was any pressure  
 14 to close before Christmas.

15 There was a discussion around Christmas, around --  
 16 it started out, I think, across the UK, we were going to  
 17 have five days for Christmas and then that was reduced  
 18 to one day at Christmas to allow people to come together  
 19 in a bubble of two households, I think, and that was  
 20 reduced so that we would try and deal with those issues  
 21 and then restrictions came in, as I understand it, on  
 22 Boxing Day --

23 **Q.** That's correct.

24 **A.** -- at 8 pm, from memory.

25 **Q.** I think the point that the Chief Scientific Adviser was  
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1 **A.** Yes.

2 **Q.** -- would be on them. Do you accept that?

3 **A.** Yes, absolutely.

4 **MS DOBBIN:** My Lady, those are my questions. I understand  
 5 my learned friends have some.

6 **LADY HALLETT:** Would you prefer to have a break? We  
 7 wouldn't normally break until 3. You have got about  
 8 20 minutes or so of questions; are you happy to carry  
 9 on?

10 **THE WITNESS:** That's fine, yes.

11 **LADY HALLETT:** Ms Campbell.

#### 12 Questions from MS CAMPBELL KC

13 **MS CAMPBELL:** Thank you, my Lady, and Baroness Foster.

14 Baroness Foster, can I take you back, please, to  
 15 some evidence you gave at the start of your evidence  
 16 this morning, and it's in relation to the Department of  
 17 Health being the lead department --

18 **A.** Yes.

19 **Q.** -- in relation to the pandemic, and you'll recall that  
 20 section of your evidence with Ms Dobbin, the inference  
 21 or perhaps the evidence being that in January or  
 22 February 2020 you, as the First Minister, were not  
 23 directly involved in the pandemic response in this  
 24 jurisdiction.

25 **A.** Not involved directly in the pandemic response, I think  
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1 that's fair, yes.

2 **Q.** Yes. So I assume, and you'll correct me if I'm wrong,  
3 but I assume you have listened to the evidence of  
4 Minister Swann and First Minister Ms O'Neill.

5 **A.** Not all of it, but I've heard most of it, I would like  
6 to think.

7 **Q.** Thank you. Well, it perhaps doesn't matter greater but  
8 they were both asked about their recollection of  
9 Exercise Nimbus, which we know to be the UK Government's  
10 exercise --

11 **A.** Yes.

12 **Q.** -- in pandemic preparedness which took place on  
13 12 February 2020.

14 **A.** Yes.

15 **Q.** I think you may have been asked, at our request, to look  
16 at a few documents in --

17 **A.** Yes.

18 **Q.** -- relation to that overnight.

19 **A.** I have.

20 **Q.** I wonder if we can have a look at the first one, please.  
21 It's INQ000469510. If we can go to the second page,  
22 please, and just zoom in on the second page, thank you.  
23 So we can see here that whoever has forwarded it  
24 from the permanent secretaries' account in the TEO email  
25 account has indicated that this was not sent to the

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1 "2. To identify the likely type and range of  
2 decisions that would need to be [taken] ..."  
3 And:  
4 "3. To rehearse the structure, process and  
5 protocols for supporting critical, strategic decision  
6 making in response to [the approaching pandemic] ..."  
7 Okay?

8 **A.** Mm-hm.

9 **Q.** Now, this was sent, if we can just zoom out, please,  
10 because I think this email is dated, at the top,  
11 6 February, and we know that on 30 January a civil  
12 servant called Bernie Rooney had drafted that 30 January  
13 document that you're not quite sure ever landed on your  
14 desk --

15 **A.** Yes.

16 **Q.** -- but you're familiar, broadly, with the contents of,  
17 and we also know that at the Executive meeting on  
18 3 February Covid was on the agenda?

19 **A.** Yes, under any other business, yes.

20 **Q.** Yes.

21 **A.** Yes.

22 **Q.** Did the terms of this invitation to you and the  
23 Department of Health and the Minister of Health not  
24 trigger your interest in terms of attending?

25 **A.** Well, there was a couple of things. First of all, the

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1 Department of Health minister, it's to take place on  
2 12 February at 4.45 in the evening, and we can see it's  
3 a COBR meeting and it says underneath it:  
4 "This is an invitation for your Secretary of State  
5 and First Ministers to attend a [top table] exercise on  
6 the coronavirus response."  
7 Okay? So the first point is that this wasn't, if  
8 you like, an either/or Department of Health or  
9 First Ministers?

10 **A.** Yes.

11 **Q.** You were, Ms O'Neill was and Mr Swann was --

12 **A.** Yes.

13 **Q.** -- invited, and I daresay the invitation may have been  
14 extended further had there been such a request, but at  
15 the very basic level those were the invitations that  
16 were sent out, and you agree with that?

17 **A.** Yes.

18 **Q.** Now, we can see underneath what the nature of the  
19 exercise is. The aim is:  
20 "To rehearse Ministerial-level decision making for  
21 UK pandemic preparedness and response within this novel  
22 coronavirus outbreak."  
23 The objectives are:  
24 "1. To expose the potential scale and range of  
25 impacts arising [from] the pandemic ..."

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1 other devolved administrations were sending their health  
2 ministers to the event. Robin had led in COBR on these  
3 issues for us. And the third thing, which probably  
4 shouldn't come into the decision-making but I think  
5 probably did come into the decision-making, was that we,  
6 as an Executive, were having an "away day", in inverted  
7 commas, on 12 February to plan our programme of  
8 government and budget. In the minutes of the Executive  
9 meeting before 12 February Robin has said "I have to go  
10 to a COBR meeting in the late afternoon so I might have  
11 to leave the planning meeting early", so he at that  
12 stage was committed to going to this meeting. So I'm  
13 sure that probably played a part in the decision-making  
14 as well, the fact that we had an away day planned for  
15 programme of government and budget preparation. And as  
16 I said, because he was leading on the issues for us with  
17 COBR at that time, I felt he was the most appropriate  
18 minister to go.

19 **Q.** The away day was really to identify the most pressing  
20 issues for governance --

21 **A.** Yes.

22 **Q.** -- with our new Assembly?

23 **A.** It was actually to try to see where we were going with  
24 our programme of government, yeah.

25 **Q.** Yes, and it started at about 9 o'clock in the morning?

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1 A. Yes.

2 Q. And finished, we know, about 3.30?

3 A. Yes.

4 Q. And in fact the Minister of Health dialled into this

5 meeting --

6 A. Yes.

7 Q. -- and you know that because you've seen it.

8 A. Mm.

9 Q. So the away day in and of itself didn't impact your

10 attendance; you could have done both?

11 A. I could have done both but I didn't know that at the

12 time of the invitation coming in.

13 Q. Well, it says 16.45.

14 A. Yes, it says -- for that, but we didn't know how long

15 the other meeting was going to run on for, which is why

16 Minister Swann had said "Look, I might need the other

17 meeting to go to this meeting" --

18 Q. Did he need to leave?

19 A. No, because he had -- because the meeting had finished,

20 no, he didn't need to leave early.

21 Q. Did you ask him at the end of the away day,

22 "I understand you're going to that COBR and it seems to

23 be a significant one, would you please report back to me

24 and tell me -- and to us -- and tell us what happened"?

25 A. Yes, well, he did report back because he did update the

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1 social and primary care services were struggling. They

2 had an eye on oxygen supplies as they [only -- bearing

3 in mind this is 12 February] had 4 days left but the

4 logistical supply chain was a concern as all supplies

5 came through the Republic of Ireland."

6 Did you know that in mid-February, that there were

7 only four days left of oxygen?

8 A. No, but I do recall a meeting of the Executive a short

9 time after that where it became public knowledge, and

10 I think there had been a media report in Altnagelvin

11 hospital. When we asked the minister about it he said

12 no, that they had enough oxygen and they were content

13 they had their supplies but I didn't know about it at

14 that juncture, no.

15 Q. It would have been important, do you agree?

16 A. Yes, it would have been important, yes.

17 Q. We can see, following down the page here, that attending

18 this meeting, from an English perspective at the very

19 least --

20 A. Yes.

21 Q. -- were the minister for Housing, Communities and Local

22 Government, the Treasury, the Department for Work and

23 Pensions, the Department for Transport, the Home Office,

24 and essentially a wide range --

25 A. Yes.

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1 Executive meeting at the next Executive, again under

2 "Any other business", around the COBR meeting and the

3 planning of that time.

4 Q. Well, you also mention that the other devolved

5 administrations were sending their health ministers, the

6 situation for the other devolved administrations is

7 of course different, they don't have the same

8 departmental structure that you have to work with in

9 this jurisdiction --

10 A. Yes, that is correct.

11 Q. -- the Minister of Health having sole responsibility

12 over his department?

13 A. That's correct.

14 Q. You see, if we can look, please, at the outcomes of the

15 minutes of Exercise Nimbus.

16 It's at INQ000195891, and if we can please go to,

17 I think it's paragraph 16, which we have to scroll down,

18 perhaps to the second or third page. Thank you, fourth

19 page.

20 At paragraph 16, if we can zoom in from 16 perhaps

21 to 26 -- or, well, this is fine for now.

22 The contribution, according to the minutes, from

23 a Northern Irish perspective, and we can see it at 16 :

24 "NORTHERN IRELAND EXECUTIVE ... highlighted they had

25 a lag in available staff. As a result, community,

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1 Q. -- of cabinet-level ministers or their representatives.

2 Do you accept, looking at what took place and looking at

3 who attended, that there plainly was a need for

4 cross-government attendance at this meeting on

5 12 February, or at least it would have benefited had

6 there been, from our perspective?

7 A. Yes, I think it's fair to say, my Lady, that, looking at

8 this now, both myself and the deputy First Minister

9 should have been at this meeting along with the

10 Department of Health.

11 Q. You see, we saw from the email that I put on screen, and

12 I won't go back to it, that your, I think, permanent

13 secretary replies that you're keen for the Minister of

14 Health to continue leading on this, or to attend on your

15 behalf, and a short time thereafter there's a reply

16 saying the dFM is in agreement with you. Was there ever

17 any discussion between you and the deputy First Minister

18 about the potential importance of attending this?

19 A. No I don't think there was any discussion around it. As

20 I say, I had thought, wrongly, that this was a Health

21 meeting. What happens ordinarily is that invitations

22 are brought through the special advisers, who would say

23 "This has come in", they would say "I think Health

24 should go to that". And I'm not moving away from any --

25 it was my decision to say that Health could look after

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1 it, but I'm trying to explain why I came to that  
 2 decision, because they were leading on this issue at  
 3 that point in time.  
 4 I fully accept that we should have been at that  
 5 meeting and it would have been actually very helpful for  
 6 us if we had have been at that meeting.  
 7 **Q.** You see, this morning you told us about this period of  
 8 time, that throughout it really you looked to the  
 9 Department of Health for information.  
 10 **A.** Yes.  
 11 **Q.** To use your words, this is not a passing of the buck,  
 12 you just didn't have the information?  
 13 **A.** Yes.  
 14 **Q.** But is there an alternative way of looking at that,  
 15 Baroness Foster, you didn't have the information because  
 16 you did pass the buck to the Department of Health?  
 17 **A.** No, I don't think that's a fair assessment of what was  
 18 going on at that time. As I've said, we had other  
 19 pressures. I fully accept that it turned out that this  
 20 was the most pressing pressure and therefore we should  
 21 have been at this meeting. I fully accept that. But at  
 22 the time we had other issues that were pressing us for  
 23 our attention, and that's what happened I'm afraid,  
 24 my Lady.  
 25 **Q.** I'll move on to a new topic and you touched on it

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1 may have misread.  
 2 **MS CAMPBELL:** Have I?  
 3 **LADY HALLETT:** Are you suggesting that Lady Foster was  
 4 saying she didn't recognise the suggestion that  
 5 a minister had indicated higher transmission rates?  
 6 **MS CAMPBELL:** No, I'm suggesting that she knows as a fact  
 7 that it did happen.  
 8 **LADY HALLETT:** Oh, I see, as opposed to it's been suggested?  
 9 **MS CAMPBELL:** It's been suggested to --  
 10 **LADY HALLETT:** I follow, thank you.  
 11 **MS CAMPBELL:** Yes.  
 12 So you knew as at -- at the time, as a fact, that  
 13 that statement --  
 14 **A.** At the time I certainly had no previous -- I had no  
 15 prior knowledge that --  
 16 **Q.** No, I don't suggest for a moment that you did. But you  
 17 also knew -- well, you've told us today it wasn't a view  
 18 that you shared?  
 19 **A.** No.  
 20 **Q.** Insofar as you knew, it was an entirely baseless view;  
 21 would you agree with that?  
 22 **A.** Yes, I do agree with that.  
 23 **Q.** So we've got: the fact that it happened, the fact that  
 24 you knew it was baseless, and it's also a statement that  
 25 was put out publicly at what was a very difficult time

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1 briefly this afternoon.  
 2 Can we have your statement INQ000418976, at  
 3 paragraph 233, please.  
 4 It's your 28 February statement, Baroness Foster,  
 5 and it's dealing with the statement by your colleague  
 6 Mr Poots in relation to transmission rates across  
 7 different areas.  
 8 We might zoom in, please, on paragraph 233. You  
 9 say:  
 10 "I am also aware that it has been suggested that  
 11 a Minister indicated that rates of transmission were  
 12 higher in nationalist areas as compared to unionist  
 13 areas. While I don't recognise this as being accurate,  
 14 I don't consider that it would have had a huge impact on  
 15 public confidence."  
 16 If we might just break that down, it's not that  
 17 you're aware that it has been suggested; you knew at the  
 18 time, in and around 19 October 2020, that your colleague  
 19 had made a suggestion --  
 20 **A.** Yes.  
 21 **Q.** -- so it's not a suggestion that you have realised after  
 22 the event, you knew about it at the time; isn't that  
 23 right?  
 24 **A.** Well, I didn't --  
 25 **LADY HALLETT:** I think, Ms Campbell, forgive me, I think you

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1 for our communities in the North because we were  
 2 three days into this circuit-breaker. That was  
 3 difficult for everyone across the board, you'll agree  
 4 with that, don't you?  
 5 **A.** I do, yes, absolutely.  
 6 **Q.** Why did you not do anything about it publicly, given the  
 7 importance to you, Baroness Foster, of maintaining  
 8 public confidence?  
 9 **A.** Because I didn't want to give it any more traction than  
 10 it already had, and if I had have entered into the  
 11 sphere to slap Edwin down for what was clearly not  
 12 accurate, it would have become a huge media story,  
 13 intra-DUP story, and frankly I thought it was better to  
 14 let it pass and to -- if I was -- if I had have been  
 15 asked about it, I would have said "Absolutely, I don't  
 16 agree with it", but the reality is he'd made the  
 17 statement and I was trying to minimise any impact that  
 18 it had on public confidence.  
 19 **Q.** Well, one can understand that, as a way of dealing with  
 20 things publicly, is to not give it any further oxygen;  
 21 another way of dealing with it is a public statement by  
 22 you and the deputy First Minister, the then deputy First  
 23 Minister, saying, "United we disapprove, we disavow that  
 24 statement we are all in this together". Was that  
 25 an option?

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- 1 **A.** I spent many hours trying to keep everybody in this  
2 together, including when the deputy First Minister went  
3 off and attacked other ministers, I tried to get  
4 everybody to keep it in the tent and work together. It  
5 was, my Lady, torturous at times to try to keep  
6 everybody on the same page. Because we're all very  
7 strong personalities, I think the Inquiry has seen that  
8 from evidence that has been given, and I thought,  
9 perhaps wrongly, Ms Campbell, that that was the best way  
10 to deal with it, to try to not give it oxygen and to  
11 move on.
- 12 **Q.** Did you consider that approach when dealing with the  
13 aftermath of the Bobby Storey funeral?
- 14 **A.** Well, the aftermath of the Bobby Storey funeral was in  
15 a completely different league in terms of --
- 16 **Q.** I don't suggest they were in the same league, but did  
17 you consider, in the aftermath of the Bobby Storey  
18 funeral, managing things publicly in a way that would  
19 minimise damage that would make sure the Bobby Storey  
20 funeral did not continue a trail or pass a trail over  
21 future decisions that the Executive had to make?
- 22 **A.** Well, actually, Ms Campbell, I could have and some  
23 people were pressing me to use the nuclear button at  
24 that point in terms of the Executive, and I felt that  
25 that was absolutely not the thing to do in the middle of

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- 1 This is a handwritten note of the meeting and it's  
2 at page 95, and just while that's coming up, when we  
3 were dealing with this earlier this morning you made  
4 clear that under the Ministerial Code there was a duty  
5 upon those present to try to reach consensus?
- 6 **A.** On the chair to try to reach consensus.
- 7 **Q.** Well, and all of those present surely had a duty to try  
8 to assist her in that task?
- 9 **A.** Yes, principally the chair needs to try to find ways to  
10 find consensus.
- 11 **Q.** If we can, sorry, just go to the bottom of page 94  
12 because it spans these two pages.
- 13 You can see that there is a note attributed to you,  
14 the First Minister, we can see at the very top of the  
15 page, and you talk about:
- 16 "[Executive] to reach consensus; vote ..."  
17 And then you talk about the Ministerial Code:  
18 "... where have we breached?"  
19 And then down the page:  
20 "Only COVID deaths matter to [the] SDLP. All deaths  
21 matter to me."
- 22 **A.** Yes.
- 23 **Q.** Is that something that you might have said to  
24 Minister Mallon in a meeting where you were trying to  
25 reach consensus?

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- 1 a pandemic and that I had to stay and try to work  
2 through the difficulties that had arisen.
- 3 I know there are some in my community who were  
4 wondering why I hadn't called for the deputy First  
5 Minister to resign, and I didn't, at that time. I asked  
6 her to reflect and apologise, and I'm very glad that she  
7 has used the Inquiry as a place to apologise. I think  
8 that that is the right thing to do, and I'm pleased that  
9 that has happened. But be under no illusion, my Lady,  
10 that that was a moment of maximum risk, and I had to try  
11 to manage internally my own colleagues and externally as  
12 well.
- 13 **MS CAMPBELL:** My Lady, I appreciate I'm pushing time.  
14 I wonder if I can deal with one more topic.
- 15 **LADY HALLETT:** One more topic, then we've got Mr Friedman.
- 16 **MS CAMPBELL:** Thank you, yes.
- 17 **LADY HALLETT:** Because the stenographer's going to walk out.
- 18 **MS CAMPBELL:** Yes, no, and I am grateful to our stenographer  
19 as well.
- 20 I want to, please, in that case Baroness Foster have  
21 a look, please, at some comments that you made in the  
22 middle of the discussions about the cross-community  
23 vote.
- 24 **A.** Sure.
- 25 **Q.** It's at INQ000116294.

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- 1 **A.** Yes, well, I think you have to understand that  
2 Minister Mallon was essentially accusing me of causing  
3 deaths in the community at that point in time by not  
4 having a full lockdown, and I reject that completely,  
5 and I was concerned about all of the deaths that were  
6 occurring in Northern Ireland, particularly those deaths  
7 that were occurring because people weren't able to  
8 access healthcare for physical ailments, or indeed for  
9 mental health ailments, as a result of restrictions that  
10 had been put in place not just in hospitals but also in  
11 general practitioners, and therefore I was making the  
12 point that all deaths that were occurring right across  
13 Northern Ireland were of concern to me.
- 14 **MS CAMPBELL:** My Lady, I'm out of time, unfortunately, but  
15 thank you.
- 16 **LADY HALLETT:** Just a bit over.  
17 Mr Friedman.
- 18 **Questions from MR FRIEDMAN KC**
- 19 **MR FRIEDMAN:** Baroness, good afternoon, I ask questions on  
20 behalf of Disability Action Northern Ireland.
- 21 Ms Dobbin has already asked you about your several  
22 reflections in your statement, that we needn't go to,  
23 that in effect insufficient account was taken and  
24 insufficient account was paid --
- 25 **A.** Yes.

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1 Q. -- to socially vulnerable groups about the impact of the  
 2 non-pharmaceutical interventions. On that, the Inquiry  
 3 has heard similar insight from Karen Pearson,  
 4 Jenny Pyper, Deirdre Hargey, Robin Swann and yesterday  
 5 Michelle O'Neill that there was insufficient engagement  
 6 with disabled groups during the pandemic in that  
 7 respect. Do you agree with them?  
 8 A. Yes, I don't think there was enough engagement, and  
 9 I think that this is very much a learning point for any  
 10 future emergencies, that we do engage immediately with  
 11 those groups representative of vulnerable people,  
 12 whether that's people with special needs, whether it's  
 13 disabled people, those suffering from domestic violence,  
 14 there's a whole list of vulnerable groups that we didn't  
 15 engage with before the lockdown happened, and I regret  
 16 that.  
 17 Q. May I then ask you, as a previous First Minister,  
 18 a person who knows this place, cares about it --  
 19 A. Yes.  
 20 Q. -- the same question that I asked the current  
 21 First Minister: what is your lesson learned about why  
 22 politicians in this jurisdiction who are otherwise  
 23 deeply engaged in their communities have not been as  
 24 equally engaged with disabled ones?  
 25 A. Well, I think we were engaged at a -- because we don't  
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1 the process to deal with those issues, but I think, as  
 2 the deputy First Minister, now First Minister, said  
 3 yesterday, it certainly is something that will be on the  
 4 agenda moving forward.  
 5 Q. So just lastly on that, there's all the opportunity for  
 6 that face-to-face interaction at the grassroots?  
 7 A. Yes.  
 8 Q. But you're accepting it needs to be more strategic --  
 9 A. I do.  
 10 Q. -- and it needs to be more structured engagement with  
 11 organisations like Disability Action --  
 12 A. I do --  
 13 Q. -- is that correct?  
 14 A. I accept that.  
 15 MR FRIEDMAN: Thank you, and thank you, my Lady.  
 16 LADY HALLETT: Thank you very much, Mr Friedman.  
 17 Thank you very much for your help, Lady Foster.  
 18 I do understand the burdens we place, as you've now  
 19 helped the Inquiry twice as, of course, has the current  
 20 First Minister, so I'm very grateful to you for your  
 21 help.  
 22 THE WITNESS: Thank you very much.  
 23 (The witness withdrew)  
 24 LADY HALLETT: I shall return at 3.30.  
 25 (3.15 pm)

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1 live separate from the communities, I'm sure you accept  
 2 we live --  
 3 Q. Yes.  
 4 A. -- in the community --  
 5 Q. Very much so.  
 6 A. -- and therefore those of us who were close to people  
 7 who had particular characteristics knew very well the  
 8 impact that lockdown was having, and you will note that  
 9 quite early on, and I was criticised for this, my Lady,  
 10 I had a number of people coming to me and saying "We  
 11 cannot access the graves of our loved ones, we cannot go  
 12 to those graves because the gates are closed and you  
 13 have banned us from going to graveyards. We can go out  
 14 for a walk but we can't go to our graveyards". And  
 15 I thought that was incredibly cruel, and we did react to  
 16 that, and change that. And some people said "Well, why  
 17 are you changing that?" But I was reflecting on the  
 18 fact that those regulations should only stay in place  
 19 for as long as necessary and if they were proportionate.  
 20 And again, if people brought us particular  
 21 circumstances, and I accept that this is not a strategic  
 22 way to act, I totally accept that, but if people brought  
 23 us particular circumstances that were causing concern  
 24 and harm, we would try to deal with that in the process.  
 25 And I regret that we didn't do enough at the start of  
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1 (A short break)  
 2 (3.30 pm)  
 3 LADY HALLETT: I hope we haven't kept you waiting too long,  
 4 Mr Todd.  
 5 Mr Scott.  
 6 MR SCOTT: My Lady, may we call Alan Todd.  
 7 MR ALAN TODD (affirmed)  
 8 Questions from COUNSEL TO THE INQUIRY  
 9 MR SCOTT: Good afternoon, Mr Todd.  
 10 A. Good afternoon.  
 11 Q. Thank you for your assistance to the Inquiry. You  
 12 provided the Inquiry with a witness statement dated  
 13 31 October 2023, and that's up on screen. At page 22 is  
 14 your signature and the statement of truth. Can you  
 15 confirm that the contents of that statement are true?  
 16 A. That's correct.  
 17 Q. And you're content for that to be relied on for the  
 18 purposes of the Inquiry?  
 19 A. I am.  
 20 Q. If I could just quickly go over your background. So you  
 21 were appointed to the rank of Assistant Chief Constable  
 22 in the Police Service of Northern Ireland in 2016,  
 23 a position that you held until July 2023 when you  
 24 retired?  
 25 A. That's correct.

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1 Q. You've got more than 30 years' experience as a police  
2 officer prior to your retirement and you've been  
3 decorated with the King's Police Medal for distinguished  
4 service?

5 A. That's correct.

6 Q. And in your role as Assistant Chief Constable, you were  
7 responsible for local policing within Northern Ireland  
8 and in particular in relation to the pandemic you were  
9 responsible for all aspects of the police response to  
10 Covid-19?

11 A. That's correct.

12 Q. I just want to briefly outline the Police Service of  
13 Northern Ireland. It's correct that it's a single  
14 police service, it's got responsibility for policing the  
15 whole of Northern Ireland?

16 A. That's correct.

17 Q. And it has about 6,600 police officers and 2,300 police  
18 staff. In terms of staff size and territorial scope,  
19 how does the PSNI compare to other police services  
20 across the UK?

21 A. PSNI is one of the larger services in the United Kingdom  
22 and that reflects the fact that, as a unitary police  
23 service we are standalone and self-sufficient in many  
24 functions that would otherwise be shared in the rest of  
25 the United Kingdom, but there's also a piece of the

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1 A. Yes.

2 Q. The NPCC. So you say in your statement that:  
3 "The role of the NPCC in relation to PSNI during the  
4 Covid-19 pandemic was coordinating and representative,  
5 in that it acted as a conduit for information sharing  
6 between forces and had some engagement with Whitehall on  
7 behalf of policing interests. However, the NPCC played  
8 no role in the enforcement of Covid-19 regulations in  
9 Northern Ireland and it has no operational directive  
10 powers in relation to PSNI or any individual officer."

11 That encapsulates the relationship the PSNI had?

12 A. It does. Having said that, we do regularly rely on NPCC  
13 structures across a whole range of policing disciplines,  
14 public order, public safety policing, firearms policing,  
15 national standard -- anything that involves the national  
16 standard we would strongly rely on the research, the  
17 best practice that arises and is disseminated through  
18 NPCC.

19 Q. There was a national standard in relation to the  
20 response to the pandemic in terms of Operation Talla, is  
21 that right?

22 A. There was indeed, yes.

23 Q. Would you be able to provide -- I know my Lady has heard  
24 this a number of times but would you be able briefly  
25 describe --

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1 strength of the organisation, has its history with the  
2 conflict in Ireland, in Northern Ireland, and the  
3 various requirements that have arisen over time from  
4 that.

5 Of course, the Patten Report would have recommended  
6 a service, in similar circumstances, to be 7,500  
7 officers, it's now substantially less than that, but  
8 that's the background, my Lady.

9 Q. Thank you. There are two broad oversight bodies, so you  
10 had the Department of Justice, which provides for the  
11 governance of the PSNI, is that correct, but it doesn't  
12 have any operational oversight of the PSNI?

13 A. In common with other police services across the UK, it's  
14 generally regarded policing as what's known as  
15 operationally independent --

16 Q. Yes.

17 A. -- and operates within a triple lock, generally the  
18 ministerial level on one side and the oversight body  
19 being the Policing Board on the other.

20 Q. You do have the Policing Board, and that has the  
21 effective oversight of the delivery of the policing  
22 service; is that right?

23 A. That's correct.

24 Q. I just want to touch upon the relationship between PSNI  
25 and the National Police Chiefs' Council?

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1 **LADY HALLETT:** Four Es coming up?

2 A. Indeed, and I know you have been given several versions  
3 of that, my Lady, over time, but it was engage,  
4 encourage, I always forget them myself actually  
5 sometimes. It was to engage with the members of the  
6 public in the first instance, to explain the regulations  
7 to them, to encourage their participation and adherence  
8 to those, and if that was unsuccessful and it was deemed  
9 to be proportionate then to move to the fourth E, which  
10 was enforcement. So you will see in police  
11 documentation, you will see in my piece from time to  
12 time, talking to staff, sometimes we talk about the  
13 three Es and then the fourth E for that very reason.

14 **LADY HALLETT:** Can you speak a little more slowly, Mr Todd.

15 **THE WITNESS:** Certainly.

16 **LADY HALLETT:** We have been pressing the stenographer and  
17 putting pressure on her all day, so ...

18 **THE WITNESS:** I apologise.

19 **MR SCOTT:** In terms of Operation Talla, was that something  
20 that was created specifically for the response to the  
21 pandemic or was it something that was effectively  
22 an operation that was in place already, it just needed  
23 to be tweaked to respond to the --

24 A. Operation Talla was put in place by NPCC in response to  
25 the pandemic, I'm not aware of it being in place before

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1 that, and we adopted the operation name, as the many  
 2 other pieces that we adopted with it, as a response to  
 3 the pandemic as a standalone and it wasn't something  
 4 that pre-existed that time.

5 **Q.** I just want to talk about the structures within PSNI  
 6 that formed in response to the pandemic, so you were the  
 7 gold commander?

8 **A.** That's correct.

9 **Q.** And the gold commander has strategic responsibility for,  
 10 effectively in this case, the response to the pandemic;  
 11 is that right?

12 **A.** That's correct.

13 **Q.** And --

14 **A.** Well, actually, for the running of the organisation and  
 15 I know the Inquiry understandably focuses on policing  
 16 the pandemic, but actually my role as gold commander was  
 17 about navigating the organisation through the pandemic  
 18 and actually when we talk about our specific role in  
 19 relation to the pandemic, which takes you into the world  
 20 of regulations and enforcement, in the early stages that  
 21 was a very minor consideration for policing and for me  
 22 as the gold commander, you know, COBR briefings through  
 23 NPCC would have indicated working assumptions of absence  
 24 in the workplace of between 35% and 40%, so the bigger  
 25 strategic question for me as a gold commander is: how do

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1 policing.

2 **Q.** Thank you. I just want to focus on one aspect, a small  
 3 amount of that --

4 **A.** Sure.

5 **Q.** -- in terms of how the coronavirus regulations  
 6 themselves were enforced and the approach using the  
 7 four Es, so all the stages prior(?) to that, but again,  
 8 I think it's fair to say that that's a part not the  
 9 whole of your role?

10 **A.** Indeed.

11 **Q.** You had a silver commander who --

12 **A.** Yes.

13 **Q.** -- worked to you who was responsible for implementing  
 14 gold, in this case your strategy, and other  
 15 decision-making; is that right?

16 **A.** Yes.

17 **Q.** And silver commander would have had a support team?

18 **A.** Yes.

19 **Q.** So the silver commander, together with the support team,  
 20 were responsible for day-to-day work and operational  
 21 decision-making; is that right?

22 **A.** Correct.

23 **Q.** Obviously the silver commander was able to escalate  
 24 things to you as the gold commander as that was thought  
 25 necessary?

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1 I continue to operate an effective police service to the  
 2 communities across Northern Ireland, with 40% absence,  
 3 with a pandemic with all the -- how do we create safe  
 4 working spaces, how do we create safe -- how do we run  
 5 contact management centres, how do we investigate crime,  
 6 how do we make provision for victims of potentially  
 7 rising domestic abuse, how do we provide those services  
 8 and, if forced to make choices, where are those choices  
 9 about service delivery going to be made.

10 So those are actually -- if you look at my to-do  
 11 lists in the early days and weeks of the pandemic,  
 12 strategically planning the organisation's path through  
 13 that, my Lady, was as big -- actually a far bigger  
 14 concern, because policing doesn't stop just because  
 15 there's a pandemic and how we continue to do that with  
 16 the projected absences and pressures the organisation  
 17 was likely to face, were probably focusing most of my  
 18 time. How we engage --

19 **Q.** Sorry, Mr Todd, is there any chance you can speak a  
 20 little bit slower and keep your volume up a fraction as  
 21 well, please.

22 **A.** So those were the big strategic items for us as a police  
 23 service and we would have reflected that into  
 24 discussions around structures, responsibilities and what  
 25 else we could do to reasonably assist with the pandemic

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1 **A.** That is correct.

2 **Q.** On 23 April 2020 it became part of the role of the  
 3 silver commander to effectively pre-authorise any  
 4 issuing of a fixed penalty notice; is that correct?

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

6 **Q.** I'm going to come back to the reason why that was deemed  
 7 necessary, at the moment I'm just dealing with  
 8 structures but, again, below silver there were a number  
 9 of bronze commanders; is that right?

10 **A.** Yes.

11 **Q.** They fed into the structure, one of the bronze  
 12 commanders was responsible for, I think the words were  
 13 translating the regulations into operational  
 14 instructions and guidance for officers?

15 **A.** That's correct.

16 **Q.** How easy a role was that bronze commander -- did that  
 17 bronze commander find translating those regulations into  
 18 operational instructions and guidance?

19 **A.** It was extremely difficult.

20 **Q.** I'll come to some of the specifics in due course but you  
 21 say that the PSNI held a pandemic planning meeting on 3  
 22 February 2020. What caused the PSNI to hold its first  
 23 meeting on that date?

24 **A.** 3 February 2020 pre-dates my tenure as a gold commander,  
 25 I took over slightly later than that, but it is fair to

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1 say we had been involved in a number of meetings through  
 2 NPCC and others, and we were tracking how this was  
 3 developing, and there were update meetings held at  
 4 various times. I know other witnesses have talked about  
 5 Operation Yellowhammer and the work that was going on  
 6 around Brexit planning, and a lot of that work had sat  
 7 in that space, but we were starting to sort of ask  
 8 ourselves questions about how it might look going  
 9 forward, so the early meetings in early February would  
 10 have reflected that.

11 I don't want to underestimate -- I don't want to  
 12 overstate it or understate it but we certainly had  
 13 a curiosity as to what the future looked like.

14 **Q.** Can I just jump in there. Were these meetings driven by  
 15 the PSNI or were they driven by NPCC engaging with you?

16 **A.** I don't recall the specifics of the 3 February meeting,  
 17 I'm sorry I can't assist you with that.

18 **Q.** But generally in those early stages, even if it's not  
 19 necessarily 3 February --

20 **A.** Sure.

21 **Q.** -- are you able to remember whether this was an internal  
 22 PSNI concern to the situation that was presenting itself  
 23 in Northern Ireland in February 2020 or was this your  
 24 national engagement was making PSNI believe this is  
 25 something we are going to need to deal with?

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1 **Q.** And were you getting any answers from the government?

2 **A.** We were getting -- we were getting updates and the  
 3 briefings that everyone else was getting but there  
 4 wasn't a clarity in that and there was certainly no  
 5 taskings or askings coming to the police service as  
 6 a result.

7 **Q.** Do you think that that impeded the ability of the PSNI  
 8 to respond to the pandemic in the early stages?

9 **A.** It's always better to have more time to plan, but  
 10 I wouldn't be overly critical. I mean, you know,  
 11 looking back, as late as late February, I was chairing  
 12 a gold meeting in relation to the up and coming  
 13 St Patrick's Day celebrations and it really hadn't  
 14 occurred to anybody that it wouldn't be going ahead on  
 15 17 March, and I think that maybe captures the mindset,  
 16 my Lady. You know, it's -- however we ended up there,  
 17 I wouldn't have been holding a gold meeting about  
 18 St Patrick's Day parades and celebrations on  
 19 21/22 February 2020 in anticipation of being locked down  
 20 a short number of weeks later.

21 **Q.** How does that quite square, that you felt it necessary  
 22 in early February to have the initial meetings, you got  
 23 the engagement of the NPCC, and England was ahead of  
 24 Northern Ireland in terms of the development of the  
 25 pandemic, how was it not occurring to people in late

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1 **A.** I think, to be fair, on balance, my Lady, that was  
 2 largely driven by what we were hearing from NPCC and  
 3 national structures and that was the impetus behind  
 4 that.

5 **Q.** Because you say that you appointed a tactical adviser  
 6 who had worked on the PSNI's influenza pandemic  
 7 planning?

8 **A.** That's correct.

9 **Q.** What message, as far as you can remember, was that  
 10 individual getting from those contacts he'd worked with  
 11 as part of his pandemic planning and when I say those  
 12 individuals, those who were within the government of  
 13 Northern Ireland?

14 **A.** I think, I think we had lots -- I don't know that there  
 15 were many clear messages, I think there were lots of  
 16 questions, and I think people were curious about the way  
 17 it was developing, I think there were conversations  
 18 that -- we had had issues around SARS back in 2011,  
 19 2012, there were issues around avian flu, some that had  
 20 a similar run-in but had never really become the big  
 21 issue that they might --

22 **Q.** Were these questions from the PSNI or were they  
 23 questions being posed to the PSNI?

24 **A.** No, these were questions that we were raising in our own  
 25 mind about, you know, frankly where's this going.

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1 February, when you're planning for the St Patrick's Day  
 2 parade, that actually there might be an issue about how  
 3 that was going to be policed and also whether there was  
 4 going to be any issues from the pandemic arising?

5 **A.** I can't account for that. I mean, we were getting  
 6 briefings about how things were developing, what they  
 7 might be, but people were still very much talking about  
 8 containment phases not only in Northern Ireland but  
 9 further afield, and I don't believe at that point people  
 10 thought we would just -- so much would happen so  
 11 quickly.

12 **Q.** You mentioned earlier on about the history of the PSNI.  
 13 In those initial stages, so late March and earlier, were  
 14 there any particular policing sensitivities that are  
 15 unique to Northern Ireland or which are more prevalent  
 16 in Northern Ireland than they might be in the rest of  
 17 the United Kingdom, that had any relevance or impact  
 18 upon how the PSNI planned to respond to the pandemic?

19 **A.** I think there are lots of sensitivities for policing --

20 **LADY HALLETT:** I was going to say: how much time do you  
 21 have?

22 **A.** That's right.

23 **LADY HALLETT:** Listing sensitivities or policing  
 24 sensitivities.

25 **A.** But I would say this, my Lady -- and I know time is

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1 pressing -- I think Martin Hewitt, the chair of the  
2 NPCC, very articulately outlined the sensitivities for  
3 policing a pandemic in the UK, and we share that, and  
4 the NPCC's position on that is our position on it.

5 It will not have been lost on my Lady, and other  
6 people in the room, the sensitivities and the politics  
7 and how quickly issues in Northern Ireland become party  
8 political issues. That means they are in the public  
9 space, it means they're on radio shows and it means that  
10 they are reflected in various members of our Policing  
11 Board, who would have different views on different  
12 subjects, and therefore very quickly that political  
13 interest becomes input for policing in its  
14 considerations.

15 So that sensitivity is as per the rest of the UK,  
16 but I think in a small place like this, and other  
17 witnesses have talked about how close politics are to  
18 communities, and how close policing can be, it's -- it  
19 would be -- I think it would be understood in the room  
20 that there are sensitivities in Northern Ireland that  
21 perhaps are more sharply defined on top of what the rest  
22 of the UK also experienced.

23 **MR SCOTT:** If I can have on the screen, please,  
24 INQ000291261.

25 So this is a note of a meeting -- it's not the  
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1 implications for policing started to crystallise for me  
2 when I saw the Italian police patrolling the streets of  
3 Italian towns, not long before the meeting, it had just  
4 been on -- you know, so that was 9, 10, 11 of April, and  
5 you had Italian police patrolling Italian towns, getting  
6 people to stay in their homes, and it was at that point  
7 I thought, you know --

8 **LADY HALLETT:** April or March?

9 **A.** March, I beg your pardon, in the Italian lockdown. And  
10 I suppose it was at that point that it started to  
11 crystallise in my mind what sort of ask might be coming.  
12 But I also tempered that with the Italian police and the  
13 Italian system's different to ours and that the ask here  
14 might be different, differently done.

15 But still at that point, and I think some of the  
16 frustration that the Chief Constable had, and as  
17 illustrated by the report, was we were starting to have  
18 meetings on a number of fronts with a number of groups  
19 and there was lots of information sharing and there's  
20 lots of discussion but there was no ask of policing or  
21 framework arising as to what the ask might look like.

22 **MR SCOTT:** So was there no planning realistically?

23 **A.** Realistically, not.

24 **Q.** Because you said about 9, 10, 11 March. I mean, you set  
25 the gold objectives on 9 March.

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1 PSNI's note, but it's a note of the meeting of  
2 20 March 2020, so this is prior to lockdown but after  
3 the NICCMA arrangements had been stood up, and this is  
4 a note of the meeting between the First Minister, deputy  
5 First Minister, Chief Constable and the Deputy Chief  
6 Constable.

7 You can see the points that are discussed there  
8 about -- observations about command and control, about  
9 getting good issues, and then, at the bottom, importance  
10 of personal resilience.

11 It doesn't seem from that meeting, again  
12 I appreciate this is Chief Constable to the First  
13 Minister and deputy First Minister, it doesn't seem like  
14 there's great clarity about the precise role that the  
15 PSNI was going to play in the response to the pandemic  
16 as of 20 March. Do you agree with that?

17 **A.** Yes.

18 **Q.** In terms of your understanding of the role that the PSNI  
19 was going to play as of 20 March, do you think that  
20 there was sufficient clarity at that time?

21 **A.** No.

22 **Q.** And why was that?

23 **A.** I think -- I think a range of agencies were playing  
24 a significant amount of catch-up. And I don't pretend  
25 to be any different than anybody else. I think the  
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1 **A.** Yes.

2 **Q.** You had your first gold command meeting on 12 March.

3 **A.** And that was the date on which I was appointed.

4 **Q.** Yes. Is it fair to say that effectively your concerns  
5 around that 9, 10, 11, 12, March led to the initiation  
6 of the gold structure?

7 **A.** Well, the Chief Constable appointed me as the gold  
8 commander. It was a change because we -- hitherto,  
9 my Lady, we had -- I think for good reason, the --  
10 another one of my Assistant Chief Constable colleagues  
11 had been working on the Brexit planning through  
12 Operation Yellowhammer, the structures and relationships  
13 were being developed that way --

14 **Q.** Excuse me, Mr Todd, is there any chance you could slow  
15 down, again, please.

16 **A.** Sorry, I beg your pardon.

17 I think at that point my colleague was seen as a --  
18 the right conduit, with the relationships and the  
19 structures that this would sort of move from one plan  
20 into another. But as we started to see the potential  
21 for the operational ask starting to arise, with the  
22 experience in continental Europe, it was felt that it  
23 would have a much more day-to-day operational focus  
24 required, and to split that away from myself, who was in  
25 charge of local policing, I think the Chief Constable  
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1 took the view that that wasn't a good structure, and  
 2 therefore appointed me as the gold commander.  
 3 **Q.** So as of 23 March, when the country went into lockdown,  
 4 again, do you think that the structures were in place to  
 5 enable a proper and effective response in  
 6 Northern Ireland, from your perspective as a police  
 7 officer?  
 8 **A.** I think from a policing perspective as -- one thing  
 9 policing tends to be very good at, my Lady, is doing  
 10 lots of things quickly and putting their best foot  
 11 forward, but it wasn't an ideal situation.  
 12 **Q.** But in terms of doing things quickly and putting your  
 13 best foot forward, that's exactly what you need at  
 14 a time when you're trying to respond --  
 15 **A.** And that's exactly what we did. And in fairness to the  
 16 men and women under my command, everybody put their best  
 17 effort -- and actually, you know, the amount of distance  
 18 the organisation travelled in a very short time, we  
 19 never missed an emergency call, we never missed a call  
 20 for service, at any point throughout the pandemic, as  
 21 well as all the other stuff we delivered on top, and  
 22 I think that's a credit to the men and women of the  
 23 police service.  
 24 **Q.** Do you think the other limbs of the Northern Ireland  
 25 Government progressed as quickly or were as ready as you

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1 a principled issue, that you can't enforce what you  
 2 don't have?  
 3 **A.** Well, that's correct. So, you know, at the very early  
 4 stages regulations were provided at very short notice.  
 5 They came without guidance, they were secondary  
 6 legislation to primary legislation. They were  
 7 regulations, there were no powers of arrest. There had  
 8 seemed to be little consideration given to giving police  
 9 officers powers to ask members of the public questions  
 10 about why they're out of their home, where they were  
 11 going to work. You can ask, but there's no authority to  
 12 do so if people were difficult or wanted to game the  
 13 system.  
 14 There was no guidance which would have shown due  
 15 regard to European Convention considerations. There was  
 16 no guidance to point the police in terms of section 75  
 17 Northern Ireland Act considerations. That was all --  
 18 that was all sitting -- none of that was available at  
 19 the time that lockdown went live. And that places the  
 20 police in a difficult position, where your natural and  
 21 professional inclination is for the service to do the  
 22 maximum amount it can to assist the health service and  
 23 protect people's lives, understanding that the  
 24 foundations on which you're being asked to do some of  
 25 this work, in our normal understanding of the law, were

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1 were?  
 2 **A.** I think different limbs of government were in different  
 3 places at different times.  
 4 **Q.** So by the time of 23 March, do you, again from your  
 5 perspective, consider that there was sufficient level of  
 6 readiness to respond?  
 7 **A.** No, I don't.  
 8 **Q.** In what way was it deficient?  
 9 **A.** From a policing and operational perspective, as  
 10 an example, the date of lockdown was announced at really  
 11 short notice. And whilst the concept was announced, the  
 12 regulations that would shape it weren't available.  
 13 We've talked about, my Lady, the three Es and the  
 14 four Es, but the simple truth is that for the first  
 15 three weeks of the first lockdown there was no fourth E.  
 16 And this is just a preparedness issue, for no reason  
 17 other than that's the way it was.  
 18 Fixed penalty notices, the only agency in  
 19 Northern Ireland who has a contract to have them printed  
 20 was the police service. The -- they're printed in  
 21 Wales, and the lead time for introduction of -- that was  
 22 three weeks. You couldn't physically get fixed penalty  
 23 notices, which was the principal enforcement limb,  
 24 physically couldn't put them in place for three weeks.  
 25 **Q.** Yes, that's a practical issue, but isn't there also

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1 not in place as they might otherwise have been.  
 2 **Q.** Whose obligation do you consider it was to make sure  
 3 that was in place?  
 4 **A.** It's a collective of government, but at the end of the  
 5 day I take the view -- others may argue, but I took the  
 6 view that a pandemic was a particular set of  
 7 circumstances, not normal policing circumstances. This  
 8 was a health crisis. We were being asked to take steps  
 9 to protect the health service and to protect the  
 10 community's health, and the responsibility for shaping  
 11 what that looked like by way of guidance and/or  
 12 regulations or law was a matter for the directing body,  
 13 which would have been, in my view, the Department of  
 14 Health and/or the Executive, depending on which way  
 15 government decided to split that responsibility.  
 16 **Q.** It might be thought that when regulations are brought  
 17 in, in order to respond to a public health crisis, that  
 18 those initial stages are when it's almost most important  
 19 to have clear and effective understanding about how  
 20 those regulations are going to be applied and  
 21 potentially enforced; would you agree with that?  
 22 **A.** Yes.  
 23 **Q.** In those initial stages, when they were brought in on  
 24 28 March, did the PSNI, putting it simply, understand  
 25 what they were being asked to do by those regulations?

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1 **A.** I think we understood the framework, we understood the  
2 concept of a lockdown, and we understood how policing  
3 could assist in that space.

4 Did we understand the detail? It wasn't provided.  
5 Did we understand the guidance that we should rely upon  
6 in operating it? It wasn't available.

7 And actually there was a reluctance to provide that.  
8 It was not -- it did not come in a short timeframe after  
9 that. We had to push very hard to get that, and you  
10 will see that reflected in correspondence from the Chief  
11 Constable to the health minister.

12 **Q.** Yes, that correspondence was 17 April. Are you  
13 suggesting that, let's put it a different way, even by  
14 17 April you didn't have the tools that you needed to  
15 properly police those regulations?

16 **A.** Well, I drafted -- I drafted some of that correspondence  
17 for the Chief Constable in relation to what I felt,  
18 again it's my professional view, what I felt was a lack  
19 of progress on what I considered to be important issues.

20 **Q.** Can we see that letter. That's INQ000272745.  
21 Thank you.

22 This is a relatively lengthy letter, I think it's  
23 four pages, something along those lines.

24 **A.** Yes.

25 **Q.** What had it taken -- let me ask that a slightly  
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1 point of contact and the lightning rod, for want of  
2 a better phrase, in everything that people wanted to  
3 know or were unhappy about the regulations. The number  
4 of media interviews I was being asked to do to explain  
5 regulations that I didn't write, and outline guidance  
6 which I wasn't given, we felt was becoming an increasing  
7 risk for us as a police service and was symptomatic of  
8 the conversation we had earlier.

9 **Q.** If I can just pause you there, if we can just scroll  
10 down in this letter, please, and we can see that, at 1,  
11 there is a request for a formal commissioning  
12 arrangement. But if we -- apologies, I'm just trying to  
13 find one section there where I believe the Chief  
14 Constable talks about this being a ... there, just above  
15 paragraph 3 there, exchanges with Solace:

16 "... I appreciate that this is being kept under  
17 review, the risk of policing fulfilling responsibilities  
18 outside our 'traditional' role have medium term  
19 consequences for public confidence."

20 When you were saying that you were becoming  
21 a lightning rod, do you think that there were concerns  
22 amongst yourself and/or the Chief Constable about the  
23 general confidence of the population of Northern Ireland  
24 in the PSNI at that time?

25 **A.** I think it's fair to say that we had concerns that if we  
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1 different way.

2 It was a slightly surprising step, would you agree,  
3 for a Chief Constable to need to write to the health  
4 minister to say, effectively: we're not being given what  
5 we need to enforce these regulations.

6 Do you agree with that?

7 **A.** I think it's a significant step. We're a very busy  
8 organisation and, you know, it was after a conversation  
9 between I and the Chief Constable at the time, deciding  
10 the best way to try to approach this.

11 **Q.** Was this the culmination of a number of, let's say,  
12 lower level efforts, maybe engaging with departments,  
13 dealing at a slightly lower level rather than Chief  
14 Constable to minister?

15 **A.** Yes, it was. And I don't attach any personal blame to  
16 any of those parties, my Lady. It was quite clear that  
17 Department of Health lawyers were under-resourced, badly  
18 stretched, and were doing the best that they could.

19 I was acutely aware that what I was asking was a further  
20 imposition upon that, and, you know, in its own way it  
21 was a way of raising it at what we believed to be an  
22 appropriate strategic level.

23 It is also worth saying that it is in response to  
24 a feeling, a concern that I had and the Chief Constable  
25 had, that the police service were becoming the first  
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1 didn't take action that that was a potential consequence  
2 for us.

3 **Q.** Do you think that this letter effectively headed off  
4 those concerns or did it not?

5 **A.** I think it helped progress matters, but -- and this is  
6 why, again, I'm reluctant -- I'm genuinely not, we had  
7 a very healthy working relationship with the Department  
8 of Health staff and, you know, on a personal basis  
9 I felt tremendously supported from the Chief Medical  
10 Officer and I hope he felt likewise in the work that we  
11 were able to do in support of the overall effort. But  
12 the nature of regulations changing so quickly and always  
13 being -- we sort of never really felt that we were  
14 get -- you know, regulations would change very quickly,  
15 sometimes what was trailed wasn't what was published, it  
16 was -- it wasn't just that the regulations came out,  
17 that we had some concerns, that they were addressed and  
18 everything was fine. Because it wasn't. It was more  
19 iterative or cyclical, the problems arose every time we  
20 went round the circle, and that was pressure of time,  
21 pressure of politics, pressure of changing  
22 circumstances.

23 **Q.** Well, let's look at this from a slightly different  
24 perspective, one of the essential elements of the  
25 Inquiry is to make recommendations about how systems can  
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1 manufacture -- or can work better in the future in the  
 2 event of another pandemic.  
 3 Given what you're saying about the circumstances  
 4 that have led you to this point, what recommendations  
 5 would you think that my Lady should consider about how  
 6 the relationship between the police, government  
 7 departments in Northern Ireland, regulations, what  
 8 recommendations would you consider should be thought of?

9 **A.** Erm --

10 **Q.** I don't mean to put you on the spot in that.

11 **A.** And yet ...

12 My Lady, policing likes to operate on the basis of  
 13 no surprises. We like to deal with our community on the  
 14 basis of no surprises, we find that people respond to  
 15 policing best when there's time to explain, understand,  
 16 move forward together. Unfortunately the pandemic was  
 17 full of surprises and that to some degree points to  
 18 a lack of preparedness and lack of planning. Yes, there  
 19 was a flu pandemic plan, but actually when you looked at  
 20 it, it was not -- it wasn't helpful, actually, in terms  
 21 of its applicability to the Covid pandemic.

22 I sat for a number of years as an Assistant  
 23 Chief Constable on various contingency planning  
 24 structures across government, and whilst a pandemic may  
 25 have been the UK's number one critical incident risk,

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1 **A.** Absolutely not.

2 **Q.** So you needed, effectively, the other parts of the  
 3 cross-governmental response to be doing their job to  
 4 enable you to do yours?

5 **A.** But even, and some of your paper reflects, trying to get  
 6 others to play a space in the enforcement space and,  
 7 you know, local councils, Trading Standards, you know,  
 8 people were actively suggesting that health and safety  
 9 workplace arrangements would be inspected by the police  
 10 service, because we -- in the initial regulations, we  
 11 were the only body designated under the regulations and  
 12 from day 1 I was saying: this is on top of police  
 13 service we provide and if you're going to be effective  
 14 at enforcement, and people talk about enforcement --

15 **Q.** Can I just, you're a fraction ahead of me here, Mr Todd.

16 **A.** Sure.

17 **Q.** I am going to come back to the other bodies in  
 18 enforcement.

19 **A.** It illustrates the point, that thinking, it was very  
 20 much set on the police's table and, you know, because  
 21 we're a can-do organisation and these were important  
 22 times where people were dying, we did our best, but  
 23 there were some things that made that harder than it  
 24 should have been.

25 **Q.** Because, again, coming back to the letter that is still

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1 I never heard it mentioned. Certainly the here and now  
 2 of critical incident planning in Northern Ireland tended  
 3 to be around weather emergencies, flooding, heavy  
 4 snowfall, and climate change related -- because that was  
 5 happening regularly and we were being called to action  
 6 on that regularly.

7 So to arrive at a pandemic facing a very short  
 8 number of days, actually, never mind weeks, with no  
 9 framework, of no concept of what a lockdown would look  
 10 like, of who would be responsible for what, of who would  
 11 co-ordinate that, you know, policing were invited under  
 12 some of the civil contingency arrangements to take up  
 13 the chair of the strategic co-ordinating group, because  
 14 it was seen to be related to a pandemic which was seen  
 15 to be related to a mass casualty event, and I said, I'm  
 16 sorry but I don't know what police would be  
 17 co-ordinating here. It's not a multiple accident on  
 18 a motorway with mass casualties, or something of that  
 19 ilk, or an Arena disaster or a terrorist attack, which  
 20 is the tradition fare for contingency planning. We just  
 21 hadn't entered this space and therefore we were in the  
 22 world of surprises and that's difficult for policing in  
 23 communities.

24 **Q.** Because the police -- you can't police your way out of a  
 25 pandemic.

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1 on the screen from the Chief Constable, again this is  
 2 dated 17 February, we can see in the top paragraph that  
 3 this is about an operational commission, against which  
 4 the parameters of policing response can be tested  
 5 provide the necessary legitimacy to what we are being  
 6 asked to achieve. And then, the next paragraph down,  
 7 there's talk about consideration to designating other  
 8 public officials as enforcement bodies. Again, at the  
 9 bottom in terms of paragraph 3 you can see there  
 10 there's, the third line up from the bottom, there's talk  
 11 about risks further confusing public understanding of  
 12 how the regulations are being enforced.

13 Effectively the PSNI were flagging up, even by  
 14 17 April, all the concerns which realistically  
 15 perpetuated throughout the lifetime of the pandemic; is  
 16 that right?

17 **A.** That's correct.

18 **Q.** If we can just look at the response from the Department  
 19 of Health, and this is at INQ000303261, and we can see  
 20 that's dated 21 April 2020, I presume you're very  
 21 familiar with the contents of this letter?

22 **A.** I am.

23 **Q.** Do you consider that this response actually addressed  
 24 the concerns that the PSNI were raising in that previous  
 25 letter?

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1 A. No, I don't.  
 2 Q. Why not?  
 3 A. I think it acknowledges the problems but it doesn't  
 4 provide the solutions which we were trying to outline.  
 5 Q. If we can go over the page to page 2, please, and it's  
 6 the large paragraph in the middle where there is talk  
 7 about:  
 8 "I note your request that a formal commissioning  
 9 arrangement be established."  
 10 What benefit would a commissioning arrangement have  
 11 given the PSNI by the middle of April?  
 12 A. I think there was an emerging narrative. I mean,  
 13 I don't think we should expect significant people,  
 14 a number of people in the population to welcome lockdown  
 15 as a concept or regulations, and it seemed to policing,  
 16 and others across government, that from the first days  
 17 of lockdown and restrictions that people sought to  
 18 game -- my phrase -- to find a way round the  
 19 restrictions and find a way round the regulations. And  
 20 it was a police perspective on that that a lot of the  
 21 queries that arose about what was or wasn't permissible  
 22 was for the police to decide, and I fundamentally -- I'd  
 23 fundamentally disagreed with that. I thought it was for  
 24 Health to decide what they did or didn't want to happen  
 25 across communities to protect their health service and

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1 then saying to the police, here is what we need from you  
 2 and here's the regulations and guidance to support you.  
 3 And I don't think we ever got there.  
 4 Q. Do you think that would also have helped public  
 5 confidence for that to have been in place?  
 6 A. I think it would have made -- I think it would have made  
 7 for a better no surprises approach because it leaves the  
 8 police, in the absence of those things, it leaves the  
 9 police service open to the allegations that we were  
 10 being heavy-handed or acting beyond our remit, in  
 11 a novel and contentious space and none of those things  
 12 are good for public confidence in policing.  
 13 Q. Did you ever get what you considered -- did you ever get  
 14 a commissioning arrangement?  
 15 A. The closest we came to a commissioning arrangement,  
 16 my Lady, were when we considered local restrictions.  
 17 You could see --  
 18 Q. That was in September?  
 19 A. Yeah, you could see some of that thinking in the run-in  
 20 to the second wave and the second batch of restrictions,  
 21 you could see that thinking arising. But no, we never  
 22 got to a formal commissioning arrangement, would be the  
 23 full answer.  
 24 Q. And did that have a negative impact upon the PSNI's  
 25 ability to police the pandemic and/or the public

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1 protect the lives of the people they were treating and  
 2 that we would operationalise that for them, as --  
 3 Q. Can I ask you to slow down again.  
 4 A. I took the view then, as I take the view now, that the  
 5 Executive and/or the Health Department, whoever takes  
 6 the view on that, that they are making a collective  
 7 decision on what they want to happen in terms of  
 8 managing the pandemic, and the tasking to policing is to  
 9 operationalise that, and I think for relationships with  
 10 communities and answering for the outworking of that,  
 11 whilst there's an operational independence, about how we  
 12 do it, the what and the regulations, you know, it  
 13 shouldn't be for the Assistant Chief Constable to be  
 14 writing operational guidance to try and guide people to  
 15 give us back the guidance that we think will work.  
 16 You know, that commissioning for me was, if you look  
 17 at a tasking four-nation structure, who has the  
 18 strategic intent, who has the strategic objectives, and  
 19 who has the data to drive that? The police service  
 20 weren't any of those three people and therefore the  
 21 people in that position, be that the Department of  
 22 Health or the Executive Office or a partnership in  
 23 there, should be collectively taking a view on what they  
 24 want happening on the streets, roads and byways of  
 25 Northern Ireland and the borders, and anywhere else, and

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1 confidence?  
 2 A. I'm reluctant to say it inhibited our ability to  
 3 respond. It made the consequences more difficult to  
 4 deal with. You were doing more explaining than might  
 5 otherwise have to be the case, and, you know, again it  
 6 was largely left in the police's space to explain that,  
 7 and we just -- it would be my view then and my  
 8 colleagues', as it is now, I think that was unfortunate.  
 9 Q. Coming back to other bodies enforcing, if we can have,  
 10 please, INQ000390980, and it will be page 19. This is  
 11 a briefing provided by the health minister to his  
 12 Executive colleagues dated 14 May 2020, and you can see  
 13 the heading is "Under consideration about proposal to  
 14 designate district councils as enforcement bodies", and  
 15 we can see at the top there that even by 14 May it was  
 16 the PSNI and the Harbour Police who were enforcing the  
 17 restrictions. I don't want to be unfair, you probably  
 18 weren't getting a huge amount of support from the  
 19 Harbour Police in enforcing restrictions?  
 20 A. Harbour Police is a small organisation, with a very  
 21 small geographical remit, so in the scheme of Northern  
 22 Ireland, no disrespect to the Harbour Police, no,  
 23 my Lady.  
 24 Q. So in comparison, in England, Scotland and Wales, as  
 25 paragraph 2 says, the local authorities had been

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1 designated for enforcement of certain parts of the  
2 regulations.

3 Were you looking for other bodies -- firstly, you  
4 were looking for other bodies to be able to provide  
5 enforcement; is that right?

6 **A.** I think, trying to take a strategic view on it, my Lady,  
7 looking forward it was clear that, you know, even by  
8 that stage, that restrictions would relax but they would  
9 stay in some shape, size or form. It was also clear  
10 that those restrictions may need to be flexed over time  
11 and some issues would be revisited over time, and it was  
12 not -- whilst this was a starting point I took the  
13 view -- forgive me for a slightly long answer to this.

14 In the early part of lockdown 1 the police were in  
15 a fortunate position, day-to-day demand -- the evening  
16 economy didn't require policing, because there wasn't  
17 one, road traffic almost disappeared, and thankfully,  
18 mercifully, the high 40% working assumption absence  
19 rates in policing weren't realised. So we had  
20 a significant amount of operational capability, which  
21 I was able to deploy in support of the health protection  
22 regulations enforcement.

23 But looking forward, as we knew shops would re-open,  
24 the evening economy would re-open, more people would go  
25 back to work, more of the normal policing demand would  
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1 any enforcement role throughout the pandemic?

2 **A.** I think there was a limited willingness. I think they  
3 saw that was them putting themselves and their staff  
4 into potentially confrontational situations, which they  
5 didn't feel equipped to deal with.

6 And I understand that concern, my Lady, but I was  
7 flagging to government that nevertheless, you know,  
8 the -- we either widened our capability across agencies  
9 or we were going to end up with a gap because policing  
10 couldn't fill it all.

11 And, you know, I think this was true of things like  
12 public transport and all of those things, there were  
13 lots of debates about why public transport could police  
14 tickets but not facemasks. All those sorts of things  
15 were being debated behind the scenes. Policing just  
16 felt that there wasn't a long queue of people queueing  
17 up to help in that wider effort, my Lady.

18 **Q.** Thank you, so were there learnings from wave 1 through  
19 into wave 2 about how you policed the pandemic?

20 **A.** I think -- yes, in terms of preparedness and that no  
21 surprises, but it was -- it was cyclical because when --  
22 when those second batch of restrictions in the second  
23 wave came into effect, the regulations were very  
24 different, there were lots more exemptions. And the  
25 more exemptions you have in those types of restrictions,  
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1 increase. And therefore, over time, the only way of  
2 effectively managing restrictions was to have the widest  
3 possible involvement of partners. And I would have been  
4 working with major retailers about how they would  
5 effectively small p police supermarkets with local  
6 councils, with Trading Standards, with business owners,  
7 because in my view it was foreseeable over time that the  
8 only way of getting that wider effort in support of  
9 those regulations wasn't for police to step back, we  
10 just continued -- there was going to be more demand at  
11 a time when we had less supply, and therefore the bigger  
12 partnership was the more likely successful approach.

13 **Q.** If we could just scroll down to paragraphs 5 and 6,  
14 please, and we can see there paragraph 5, I think that  
15 effectively encapsulates what you were just saying  
16 there, that as things begin to re-open it's going to  
17 become harder to enforce?

18 **A.** Indeed.

19 **Q.** And we can see at paragraph 6 there:

20 "The Health and Safety Executive position is that  
21 there is no need to designate HSENI to enforce the  
22 restriction regulations ..."

23 Did you get a sense from other bodies, in the  
24 broader sense, who have enforcement powers, that there  
25 was any willingness from those bodies to actually play  
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1 the more likely people are to exploit it round the  
2 edges --

3 **Q.** Are they also less likely to be able to understand what  
4 they can and cannot do?

5 **A.** I think it's -- they're less likely to -- yes, I think  
6 there are people who are less likely to understand it  
7 and I think there are people who are more likely to use  
8 that confusion to circumvent the regulations, I think  
9 that's true.

10 **Q.** Was it also the fact that you were moving from  
11 a spring/summer into an autumn/winter setting; did that  
12 change how you were able to police the restrictions that  
13 had been brought in?

14 **A.** I don't think it was -- I think the risks increased  
15 because of people moving from the outdoors to the  
16 indoors. Policing of it, I think the nature of the  
17 regulations changed, therefore the nature of the  
18 policing changed. But the bigger aspect for policing  
19 was as business and economies opened up so did the  
20 demand for policing, to do non-pandemic policing, and we  
21 started to be stretched in some places.

22 **Q.** The Inquiry has seen throughout autumn a number of  
23 documents coming from the CMO, the CSA, people have been  
24 talking about particular areas of concern, whether it be  
25 house parties or amongst different age groups. Were you  
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1 being told by the Department of Health or anybody else  
2 where any particular areas of concern were as the  
3 pandemic progressed? Because would that have helped you  
4 to then target your response?

5 **A.** We had access to the Department of Health dashboards.  
6 I had regular briefings from the Chief Medical Officer  
7 and the Chief Scientific Adviser, and my people did from  
8 public health officials as well. So we had information  
9 about what the issues were, and we knew those issues,  
10 and house parties did feature, and it was a particular  
11 point -- it was a particular point of effort on behalf  
12 of the police service, my Lady.

13 From recollection I briefed -- I mean, you mentioned  
14 the Northern Ireland Policing Board are part of my  
15 accountability -- or were part of my accountability  
16 arrangements, and I briefed the Policing Board as to  
17 achieve action around coronavirus regulations, and  
18 I pointed out -- so the figures even in September of  
19 2020, coming through the summer, we had issued over --  
20 heading towards 500 fines for people in house parties,  
21 we had issued somewhere above 60 prohibition notices on  
22 individual private premises, we had visited more than  
23 a thousand -- done more than a thousand pub inspections  
24 as the licensed trade re-opened, and issued prohibition  
25 notices in relation to over 60 pubs and closing them

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1 you know, police officers attended a house party in  
2 a rural community at around this time, it was a 21st  
3 birthday party, there were 30-plus people, blatant  
4 breach of the regulations, and the householder decided  
5 they were quite happy to pay the £1,000 fine as the  
6 householder, and £60 -- £30 for each of the attendees as  
7 a price for having the party. And I don't -- that, you  
8 know, that ...

9 And that point of issuing those fines, the police  
10 had no further powers in relation to it and no further  
11 deterrent in relation to it. And I don't think that  
12 sort of event, which obviously becomes public knowledge,  
13 helps a police service or a government manage a health  
14 pandemic.

15 **Q.** I just want to deal with two further topics and that's  
16 in relation to policing large-scale events.

17 Now, Mr Todd, it's been -- throughout Module 2C,  
18 it's not been the intention to look at the rights and  
19 wrongs of what happened on the day of Bobby Storey's  
20 funeral, but it is about looking at the impact of that  
21 event. What is your view on the impact upon compliance  
22 with the regulations of the Bobby Storey funeral?

23 **A.** I know you haven't sought to draw me, my Lady, but  
24 I think it's important, if not on a personal basis, but  
25 on behalf of policing and the men and women who police

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1 down whilst they resolved the issues they needed to  
2 resolve, and as well as thousands of visits supporting  
3 the retail sector with their work as well.

4 So, you know, I was regularly reporting the  
5 enforcement efforts of policing through the  
6 accountability body that was the Policing Board, and  
7 indeed other interested parties, and we were aligning  
8 that on a daily basis.

9 You know, it wasn't touched on but part of our  
10 silver structure, my Lady, we had a 24-hour command room  
11 running throughout the pandemic, and day by day by  
12 24-hour period I knew, as the gold commander, where we  
13 had been and how many of each of the four Es we had used  
14 over time. That data has been made available to  
15 the Inquiry. It was substantial. More than  
16 substantial. A huge amount of work put in.

17 And contrary to some evidence, you know, I was  
18 pushing the Executive in debates around this, about the  
19 appropriateness of £60 fines, which were £30 if you paid  
20 them soon, which I pointed out to Executive policymaking  
21 colleagues is less than you would get for dropping  
22 litter in Belfast city centre, and whether that  
23 demonstrated the seriousness with which we took a breach  
24 of the coronavirus regulations.

25 And, you know, anecdotes make wonderful telling but,  
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1 Northern Ireland.

2 What happened on the day of Bobby Storey's funeral  
3 was wrong. I said so at the time, I said so throughout  
4 the various investigations into it, and I said it every  
5 day since. I think the people who were involved in that  
6 have now come to that position --

7 **Q.** Sorry, Mr Todd, again, if you could just slow your pace  
8 down, please.

9 **A.** I think people who had been involved in that have now  
10 come to that position, but that was the police position  
11 before, during and after. I think it was wrong, I don't  
12 think it should've happened, for either the politicians  
13 or the people present. Neither do I believe that there  
14 was a policing solution to that.

15 **Q.** Why was there no policing solution?

16 **A.** I don't believe there was a policing solution and  
17 I don't think any of the reports into it have identified  
18 one.

19 **LADY HALLETT:** I think we may be straying off --

20 **MR SCOTT:** I was about to --

21 **A.** No, well, let me take it --

22 **MR SCOTT:** -- just phrase it slightly differently --

23 **A.** Let me take it in a more thematic space for you, Chair,  
24 if that helps.

25 **LADY HALLETT:** It's just that I can't investigate whether or  
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1 not the police should have done more --

2 **A.** Sure, indeed.

3 **LADY HALLETT:** That is not part of my job. I think -- can  
4 we go back to Mr Scott's question.

5 **MR SCOTT:** Yes.

6 **A.** But I think --

7 **MR SCOTT:** Mr Todd, I may be able to help you, just in terms  
8 of the question I am seeking to ask.

9 Does there become, effectively, a critical mass of  
10 people, when you have a large gathering, beyond which it  
11 effectively becomes almost impossible for you to provide  
12 a policing response -- whatever the setting?

13 **A.** Theoretically. I think the bigger issue in relation to  
14 this, and I'm going back to the previous conversation,  
15 was, when you're relying on secondary legislation,  
16 low-level -- in legal terms, low-level regulations, that  
17 the top of their fining scale is a fixed penalty notice,  
18 where there are no powers of arrest and no powers of  
19 physical restriction, which don't come with guidance  
20 which is based on the European Convention on Human  
21 Rights, and the right to protest and all the rights of  
22 private life, and all those other rights that we  
23 enshrine in our decision-making, when that is absent  
24 from the regulations handed to the police service, the  
25 police service can step in and make decisions but it's

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1 **A.** I think the event undermined confidence in the very  
2 people who were making the regulations and that was  
3 never going to make it easier for the body charged with  
4 enforcing.

5 **MR SCOTT:** If I can just move on finally to the issue of  
6 equalities. To what extent were the PSNI giving  
7 consideration to vulnerable groups about how they were  
8 involved in the coronavirus regulations?

9 **A.** I've already pointed out that I thought that section 75  
10 screening and the outcomes of which, incorporating into  
11 guidance, were attached to the regulations is  
12 an omission. We sought as a service, I sought as a gold  
13 commander, to fill that gap in the operational guidance  
14 I gave to the officers, and specifically the operational  
15 guidance I gave to the 24-hour cell that controlled  
16 policing operations.

17 I think there are a number of documents that you  
18 will see that I have written to officers with letters  
19 that I had received from members of the public, maybe  
20 circumstances we hadn't foreseen, but we used those case  
21 studies and we used those messages to encourage  
22 discretion, to recognise vulnerability, to acknowledge  
23 it, and to act -- and exercise our professional  
24 discretion in relation to it, and I take the view that  
25 as a police service we had that at the forefront of our

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1 not, it's not a good space to be in, and the notion that  
2 you would start to deploy large numbers of police with  
3 the potential for disorder and the requirement to  
4 exercise the use of force just becomes untenable,  
5 untenable generally and particularly untenable when the  
6 human rights considerations of that and the guidance  
7 hasn't been issued as part of the regulations, my Lady.

8 **LADY HALLETT:** I think we are going down whether the  
9 police -- and that's not part of my remit.

10 **MR SCOTT:** Absolutely, my Lady.

11 **LADY HALLETT:** Can we go back to the question that Mr Scott  
12 asked about the Storey funeral, Mr Todd, the impact on  
13 compliance.

14 **A.** The police service took a lot of criticism, it made life  
15 very difficult for my officers. I think -- I didn't  
16 see -- I didn't see any significant shift in the data,  
17 my Lady, it shifted the tone, and I think that emerging  
18 number of people who were seeking a reason not to comply  
19 or adhere to the regulations had their case  
20 strengthened.

21 **LADY HALLETT:** So the criticism was of the police for not  
22 stepping in, and you've just given some of the reasons  
23 why they couldn't, but that criticism led to people  
24 thinking: well, if the police don't even do that,  
25 then ...

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1 minds not only in a policy space but in a practice and  
2 operational space, and I think we were really strong in  
3 delivering against that, and I think it's to the credit  
4 of the system we set up and the daily scrutiny we gave  
5 to the impacts of our enforcement and we -- that  
6 methodology allowed us to make these considerations on  
7 a day-by-day basis across Northern Ireland with a view  
8 to fairness and equality and discretion and to make sure  
9 that what could otherwise be a blunt tool was used as  
10 professionally as possible in the circumstances, and  
11 I think the organisation deserves some credit for that.

12 **MR SCOTT:** My Lady, I've no further questions.

#### 13 **Questions from THE CHAIR**

14 **LADY HALLETT:** Can I go back, Mr Todd, to the regulations  
15 themselves. You may know that in Module 2 I asked  
16 Mr Hewitt about the regulations themselves. Now,  
17 I appreciate the pressure people were under drafting  
18 these regulations in very difficult circumstances, but  
19 I couldn't understand them, and that has -- there's  
20 a number of problems with that.

21 So, basically, there's a principle, as you'll  
22 understand, of the criminal justice system that you  
23 shouldn't have penal consequences unless the person  
24 who's committing the offence understands it, it's  
25 difficult for your officers to enforce, and as you said,

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1 I think the second lot of regulations, you said they had  
 2 masses of exemptions which brings a lot of subjectivity  
 3 into them.  
 4 Were your regulations here in Northern Ireland as  
 5 bad as I think they were in England?  
 6 **A.** I wouldn't argue with either your or Martin Hewitt's  
 7 assessment, my Lady. I think we had the additional  
 8 factor that they were often amended but the amendments  
 9 were rarely consolidated and therefore you were reading  
 10 a new set of regulations, trying to remember what it  
 11 said six regulations ago and two amendments in the  
 12 middle. And you asked me the question earlier about the  
 13 role of my bronze commander, the Chief Inspector, who  
 14 dealt with that, it was a very, very difficult role.  
 15 **LADY HALLETT:** How does the officer on the street deal  
 16 with it?  
 17 **A.** Well, that was the challenge, that that officer on my  
 18 behalf and the team on my behalf, it was one of the big  
 19 parts of our job was taking that and condensing it into  
 20 one or two pages of guidance, the Practical Peelers that  
 21 we used, and condensing that into practical, usable  
 22 advice and guidance and then supervising that through  
 23 the 24-hour command and control system that we had.  
 24 Again, I think that was successful but it was very, very  
 25 difficult work.

1 **LADY HALLETT:** Did you get more notice than Mr Hewitt said  
 2 the National Police Chiefs' Council got?  
 3 **A.** I didn't, I don't recall his part of that evidence.  
 4 **LADY HALLETT:** Basically I think he said sometimes --  
 5 Mr Phillips will confirm -- he said that basically the  
 6 regulations would change at a minute past midnight and  
 7 they'd be told at five to midnight if they were lucky,  
 8 sometimes afterwards. Mr Phillips, I think --  
 9 **A.** That did happen, my Lady, yes.  
 10 **LADY HALLETT:** That did happen?  
 11 **A.** That did happen.  
 12 **LADY HALLETT:** Right, thank you very much for your help,  
 13 Mr Todd, I'm very grateful.  
 14 **(The witness withdrew)**  
 15 **LADY HALLETT:** Right, 10 o'clock tomorrow?  
 16 **MR SCOTT:** Yes, my Lady.  
 17 **LADY HALLETT:** The final witness and then closing  
 18 submissions. Thank you.  
 19 **(4.32 pm)**  
 20 **(The hearing adjourned until 10 am**  
 21 **on Thursday, 16 May 2024)**  
 22  
 23  
 24  
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