

## MODULE 2B – THE WELSH GOVERNMENT’S CLOSING STATEMENT

### Introduction

1. This closing statement sets out the Welsh Government’s position on the principal matters that were canvassed during three weeks of evidence: its actions before lockdown; decision-making during the pandemic; inter-governmental relations and informal communications.

### Part I: January and February 2020

2. The early months of 2020 were dominated by the imminent risks of a no-deal Brexit; by winter pressures in the health service, which are always at their height in early January; by anxieties to pass the budget and very significant flooding that affected thousands of people in South Wales.<sup>1</sup> The Welsh Government’s focus was reasonably on those urgent issues because in late January 2020 there was little or no certainty that the novel coronavirus would spread outside of China.
3. Although in late January 2020, when spread beyond China started to become more likely, the Welsh Government (and the other Devolved Governments) proceeded on the basis that the UK Government would lead the pandemic response and took action to prepare. By way of a non-exhaustive example:
  - (a) On 24 January, the Chief Medical Officer (**CMO(W)**) advised the First Minister there was a significant risk the virus would reach Wales. At the First Minister’s direction, the Minister for Health and Social Services (**MHSS**) attended COBR(M) from 28 January onwards. The CMO(W) advised NHS bodies by a public health link about what to do if a patient had C-19 symptoms.<sup>2</sup>
  - (b) From 28 January, Ministers and officials were updated daily on the threat level, testing data, NHS guidance and other information to inform planning and decision-making.<sup>3</sup>
  - (c) Regular all-Wales meetings attended by local government and other public bodies were held to plan and co-ordinate the response; Public Health Wales (**PHW**) distributed guidance to the NHS; the PHW laboratory was authorised so that samples did not need to be sent to England; PHW developed guidance to supplement that published by the UK Government.

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<sup>1</sup> Drakeford, 13 March 2020 [45/24 - 46/10].

<sup>2</sup> INQ000383578; INQ000383579.

<sup>3</sup> INQ000320708.

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- (d) On 31 January, the four CMOs upgraded the threat to the UK from low to moderate. CMO(W) issued a statement that required the NHS to escalate planning and preparation; that the UK had its first confirmed case of the novel coronavirus and that it was likely that Wales would see cases of novel coronavirus.<sup>4</sup>
4. Before February began, the Welsh Government was alert to developments but at that time there was not a single case in Wales.<sup>5</sup> That said, preparation continued and accelerated in February 2020. In summary:
- (a) On 3 February, CMO(W) took steps to ensure that testing in Wales could be approved<sup>6</sup>.
  - (b) Welsh travel advice was updated and charging regulations were disapplied for those presenting with symptoms and seeking medication.
  - (c) On 4 February, the Civil Contingencies Group (**CCG**) met for the first time, in the context of the pandemic and its meeting reflected the recognition of the possibility for coronavirus to come to the UK and therefore to come to Wales and to identify the substance of the response.<sup>7</sup> The minutes of the meeting evidence an acute awareness of the nature and scale of the threat, and the need to plan on the basis of a worst case scenario while monitoring events in China and whether the virus was likely to be contained.
  - (d) On the same day, the Emergency Coordination Centre Wales (**ECC(W)**) was operational and met daily thereafter.<sup>8</sup>
  - (e) Also on 4 February, CMO(W) wrote to local health boards (**LHBs**) about infection protection and control for healthcare providers; assessment of suspected coronavirus cases and seeking assurance that they held adequate stocks of PPE.<sup>9</sup>
  - (f) On 10 February, CMO(W) wrote to LHBs about their responsibility to assess and test individuals who may have the virus and to require the development of community assessment and testing plans<sup>10</sup>.
  - (g) From 10 February, the Welsh Government’s Resilience Team met the chairs of the four Welsh Local Resilience Fora and PHW weekly to support local preparedness.<sup>11</sup>
  - (h) On 12 February, the Health Countermeasures Group met for the first time to co-ordinate countermeasures including PPE.<sup>12</sup> It brought together Welsh Government and PHW

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<sup>4</sup> INQ000320710.

<sup>5</sup> Drakeford, 13 March 2024 [46/19-24].

<sup>6</sup> INQ000383582; INQ000383583.

<sup>7</sup> Kilpatrick, 6 March 2024 [151/13 – 152/9].

<sup>8</sup> Kilpatrick, 6 March 2024 [154/15 – 19], [154/7-22].

<sup>9</sup> INQ000226920.

<sup>10</sup> INQ000298964.

<sup>11</sup> Kilpatrick, INQ000274156, §31; INQ000321240.

<sup>12</sup> Goulding, INQ000377979, §§32, 38 and 65.

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representatives and the NHS Wales Shared Services Partnership to identify required equipment and any gaps in the stockpile.<sup>13</sup>

- (i) In mid-February, there was “shift in gear” in terms of preparation.<sup>14</sup> That was reflected in work done by officials to ensure a free flow of information and clarity of responsibilities.<sup>15</sup> Mr Drakeford identified the COBR(M) meeting on 18 February as the point when the Welsh Government recognised that the pandemic response became a cross-government preoccupation.<sup>16</sup> The step change saw the setting up of ExCovid on 18 February. It provided regular senior oversight of the pandemic response to ensure that the administration was acting efficiently and effectively.<sup>17</sup> The Welsh Government and PHW provided weekly updates for the health and social care sectors from 19 February.<sup>18</sup>
  - (j) On 20 February, the HSSG Planning and Response Group met for the first time. It included NHS Wales, LHBs, the WLGA, Care Inspectorate Wales and third sector organisations. Its seven sector-specific sub-groups allowed (a) intelligence from those groups to be gathered and disseminated efficiently and effectively,<sup>19</sup> and (b) made sure that policy was informed by the experience/expertise of its members.<sup>20</sup> Although its structure could have been further refined, the sub-groups were “essential” and “focussed on the right areas”.<sup>21</sup> they were effective and they were retained because they worked.<sup>22</sup>
5. Covid-19 was first discussed by Cabinet on 25 February. The fact that there was no previous formal discussion does not mean that there was no discussion by Ministers. Mr Drakeford made it clear that there was significant discussion before 25 February, but the significance of Cabinet on 25 February is acknowledgement of the need for cross-portfolio decision-making to respond to the virus.<sup>23</sup>
  6. On 27 February, the Technical Advisory Cell (**TAC**) was set up to provide Wales-specific scientific advice.<sup>24</sup> The first Welsh case of Covid-19 was confirmed the next day.
  7. Until COBR on 20 March, Ministers assumed that decisions on non-pharmaceutical interventions would be taken by the UK Government, either under the Civil Contingencies Act 2004 (**CCA**) or, when that appeared unlikely, under the Coronavirus Bill. At COBR the

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<sup>13</sup> INQ000298968.

<sup>14</sup> Shan Morgan, 4 March 2024 [186/13-17]; Goodall, 5 March 2024 [51/7-10].

<sup>15</sup> INQ000320719.

<sup>16</sup> Drakeford, 13 March 2024 [49/9-14].

<sup>17</sup> Shan Morgan, 4 March 2024 [166/4-14], [167/13-23], [168/16 – 169/4]; Shan Morgan, INQ000371233, §38.

<sup>18</sup> INQ000309708.

<sup>19</sup> Goodall (HSSG), INQ000319643, §§100-101.

<sup>20</sup> Goodall, 5 March 2024 [27/22 – 28/4].

<sup>21</sup> Goodall, 5 March 2024 [29/12-24], [27/22-23].

<sup>22</sup> Goodall, 5 March 2024 [28/15-17], [29/18-20].

<sup>23</sup> Drakeford, 13 March 2024 [47/13 – 48/13], [48/24 – 49/18].

<sup>24</sup> INQ000320747, INQ000383610.

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Attorney General advised that each nation would need to make regulations under the Public Health (Control of Disease) Act 1984 (**PHA**) to implement the decision to close hospitality. Responsibility then shifted to the Welsh Government to make regulations for Wales, but it would have taken an “imaginative leap” for Wales to have acted unilaterally when the UK Government made the decisions.<sup>25</sup>

8. Mass gatherings: The First Minister argued for a ban on mass gatherings at COBR on 12 March, but the UK Government did not agree. He considered that there was a “cognitive dissonance” between the ‘stay at home’ message and allowing mass gatherings to continue<sup>26</sup> but the Welsh Government could not act unilaterally: it lacked the power to ban them.<sup>27</sup>

9. Schools: Schools were closed on 18 March in response to unfolding events. On 17 and 18 March councils were unilaterally closing schools because parents were not sending their children and because of staff absence.<sup>28</sup> The Welsh Government was required to impose order and, following discussion with the Secretary of State for Education, schools were closed. The Welsh Government’s pragmatic approach, based on advice, enabled provision for key workers’ children, vulnerable children and those with special educational needs.

10. Lockdown: Once the die was cast on 20 March, Ministers asked officials for advice on a Wales-specific lockdown.<sup>29</sup> It was anticipated that there would be a COBR on 22 March, but when that did not happen Ministers were not confident that the UK Government would order a lockdown. The Welsh Cabinet discussed lockdown on the morning of 23 March. Later at COBR the Prime Minister informed the First Ministers that he would announce a lockdown in England and asked them to do the same in their nations. The First Minister gave that commitment knowing that the decision had the support of the Cabinet.<sup>30</sup> Some Welsh Government witnesses have said that the decision to lockdown should have been made a week earlier. However, for the reasons already explained, it would have been necessary for a lockdown decision on 16 March 2020 to have been led by the UK Government as the legislative vehicle for the pandemic response had not yet been identified by the UK Government.

## Part II: The Welsh Government’s response to the pandemic

### A. Decision making structures and processes

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<sup>25</sup> Drakeford, 13 March 2024, pp.38 – 41.

<sup>26</sup> Drakeford, Module 2 statement, INQ000273747, §36; Module 2B statement, INQ000371209, §§91 – 94.

<sup>27</sup> Drakeford, 13 March 2024, pp. 87 – 89.

<sup>28</sup> Drakeford, 13 March 2024, pp. 99 - 101.

<sup>29</sup> Drakeford, 13 March 2024, pp. 101 – 102.

<sup>30</sup> Drakeford, 13 March 2024, p. 104.

11. 21-day reviews: In the immediate aftermath of the decision to lockdown on 23 March, the Welsh Government took steps to ensure that its decision making was considered, rigorous and in line with the legal requirements of the PHA. This process was not in place for the first review of the regulations on 16 April 2020<sup>31</sup> but was already in the process of being developed. Much of the structure was in place for the review of the regulations on 7 May and a comprehensive decision-making structure (including detailed equality impact information) was in place by 27 May. By the 18 June 2020 review, formal impact assessments were being conducted and summary impact assessments began to be published along with the review information.<sup>32</sup> This short delay is unsurprising given that it was only immediately before the lockdown that it became apparent that the PHA would be used to impose measures to tackle the virus (rather than the UK government using the CCA or the Coronavirus Act) and, as Reg Kilpatrick stated in evidence, only on 23 March that it became clear that the regulations would need to be reviewed every 21 days.<sup>33</sup>
12. The 21-day review process was the cornerstone of decision-making. It allowed Ministers to take decisions informed by the scientific, medical, legal and factual background. It “*allowed [the Welsh Government] to ensure that all of the different respective voices were able to be brought around the table*”.<sup>34</sup> The 21-day rhythm was understood by the population; it provided a good structure for internal meetings, information-sharing and broader communication.<sup>35</sup>
13. Engagement with local government: There was regular and substantive engagement with local government throughout the pandemic. In summary:
- (a) Meetings were chaired by Ministers and attended by local authority leaders and chief executives, the WLGA and officials and they were used to consult on NPIs and other aspects of the response. They were held as regularly as need required.<sup>36</sup>
  - (b) Informal meetings between the Director of the Local Government Directorate and local authority chief executives, which took place as frequently as required and at least weekly. They were frank and open discussions about operational matters, including prospective NPIs.<sup>37</sup>
  - (c) Meetings between officials about specific policy areas (e.g. social care and education).<sup>38</sup>

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<sup>31</sup> Miles, 12 March 2024 [159/10-18].

<sup>32</sup> Miles, 12 March 2024 [172/7-9].

<sup>33</sup> Kilpatrick, 6 March 2024 [170/8-15].

<sup>34</sup> Goodall, 5 March 2024 [39/17-20]; see also Eluned Morgan, 12 March 2024 [23/24 - 24/15].

<sup>35</sup> Mason, 7 March 2024 [28/1-12].

<sup>36</sup> Witness statement of Reg Kilpatrick (LGD) §§57-62.

<sup>37</sup> Witness statement of Reg Kilpatrick (LGD) §§63-65.

<sup>38</sup> Witness statement of Reg Kilpatrick (LGD) §63.

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- (d) Meetings of the Covid Core Group attended by the leader of the WLGA and the Director of the Local Government Directorate.<sup>39</sup>
- (e) Meetings of the Partnership Council, which continued as normal throughout the pandemic. These and the meetings of the two additional sub-groups of the Council that were established in response to the pandemic provided another forum in which local authority leaders, the WLGA, and Welsh Ministers were able to communicate.<sup>40</sup>
14. The effectiveness of this engagement is reflected in the WLGA’s evidence which refers to “*an unprecedented level of dialogue and engagement and openness*”.<sup>41</sup> In relation to engagement at official level, the WLGA set out a wide-ranging list of meetings, in addition to those in para. 13 above, that ensured that local authority views informed decision-making on NPIs, emerging regulations and other pandemic-related matters.<sup>42</sup> The WLGA considered that it had an “*advisory and consultative role*” in discussions about NPIs, and its “*local intelligence and views did help inform Welsh Government decision-making around NPIs*”.<sup>43</sup>
15. Engagement at official level was intense. Reg Kilpatrick recalled, in his area of responsibility alone, an extraordinary level of consultation and in excess of 30 meetings each month in February and March between officials and ministers and local government.<sup>44</sup> Although Dr Llewelyn said that local government should be included in the co-production of policy, that is precisely what happened albeit on a fast-moving and relatively informal basis.
16. Dr Llewelyn’s contemporaneous view, as confirmed to Tracey Burke on 26 March, was that “*the engagement between your colleagues, and Steve [Davies] and Reg [Kilpatrick] in particular, has increased significantly over the last week and I am grateful to all of you for responding so positively*”.<sup>45</sup> That is consistent with Reg Kilpatrick’s evidence that the WLGA’s concerns “*were in the run-up to lockdown and the surprise with which that decision took them*”.<sup>46</sup> By autumn 2020, dialogue was said to be “*a model of central-local relations*”.<sup>47</sup> In December 2020, following a meeting with Dr Llewelyn, Shan Morgan recorded that “*The WLGA feel the partnership between national and local government is working very well in Wales*” and that Dr Llewelyn’s English colleagues were “*envious*” of the

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<sup>39</sup> Witness statement of Reg Kilpatrick (LGD) §68.

<sup>40</sup> Witness statement of Reg Kilpatrick (LGD) paras 69, 70-74

<sup>41</sup> Llewelyn, INQ000273741, §36.

<sup>42</sup> Llewelyn, INQ000273741, §76.

<sup>43</sup> Llewelyn, INQ000273741, §§88 – 89.

<sup>44</sup> Kilpatrick, 6 March 2024 [173/16-21].

<sup>45</sup> INQ000089876.

<sup>46</sup> Kilpatrick, 6 March 2024 [175/9-21].

<sup>47</sup> Llewelyn, INQ000273741, §112.

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positive relationship. Relationships with Reg Kilpatrick and Jo-anne Daniels (both Welsh Government officials) were singled out as being particularly noteworthy.<sup>48</sup>

17. Engagement with science: Scientific and clinical advice was fundamental to Welsh Government decision-making throughout the pandemic. Ministers and officials were anxious to ensure that they had the data, the expertise and the knowledge to make well informed decisions and they drew upon the following resources:

- (a) Cabinet was advised by CMO(W), who was in near-daily contact with Ministers. CMO(W) would advise Cabinet before any discussion, to ensure that Cabinet discussions and decisions were informed by the latest advice.
- (b) CMO(W) actively collaborated with PHW throughout the pandemic.<sup>49</sup> He was the conduit by which advice and information from PHW was communicated to Ministers.
- (c) The need for Welsh-specific advice was apparent very early, not least because most of the data and analysis collected by SAGE was UK-centric. The demographic in Wales and the healthcare structures in place are very different. TAG collected scientific and technical experts, from both inside and outside government, to provide Wales-specific advice and guidance. Its analysis was informed by data collected in Wales, including NHS capacity in Wales, infection rates and other data points.<sup>50</sup> Its nine sub-groups provided nine different, but directly relevant, specialties. TAG built upon the SAGE model where it could. For example, economic advice did not play a significant role in SAGE’s advice so TAG’s economic harm subgroup allowed Wales to plug that gap.<sup>51</sup>
- (d) Ministers received weekly advice from SAGE in the early stages of the pandemic. When the 21-day review started in April, Ministers received bespoke advice from TAG on the Wales-specific proposals and their possible effect in Wales. Ministers received a detailed brief which set out the data received by TAG and its subsequent analysis and discussions, as well as a summary of that advice which was suitable for publication.<sup>52</sup> Publication of TAG’s summary advice ensured transparency about the basis of and the reasons for the Welsh Government’s decisions which, in turn, created popular confidence in those decisions.

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<sup>48</sup> INQ000299744.

<sup>49</sup> Atherton, 4 March 2024 [15/10-16/12].

<sup>50</sup> Orford, 4 March 2024 [90/9-91/18].

<sup>51</sup> Orford, 4 March 2024 [91/19-93/18].

<sup>52</sup> Orford, 4 March 2024 [98/16-100/6].

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(e) TAG’s work allowed the Welsh Government to benefit from UK modelling and data, including SPI-MO’s work, but with a particular understanding of, and application to, the demographics and distinctive characteristics of Wales. By working with Swansea University and through the expertise in TAG, the Welsh Government had access to bespoke Welsh modelling which could be commissioned and used to consider the effect of regulations and proposed amendments. The SAIL databank at Swansea University drew together a very broad range of data originating both within the Welsh Government and from external sources, including that relating to social care workers; children’s attendance at schools; emergency department datasets; data from healthcare workers; risk assessments and the ZOE app.<sup>53</sup>

18. Asymptomatic infections and care homes: As CTI noted, consideration of the complex evidence about the clinical/scientific evidence of asymptomatic infection, asymptomatic transmission, testing and discharge advice is a matter for later modules. This module heard high level evidence about the approach to decision-making on these difficult issues which showed that decisions were not taken lightly and were based on the data and analysis as it stood at the time, with the benefit of advice from CMO, CSA(H), PHW and SAGE. To assess the decisions fairly, it is important to be specific on the content of that advice and the state of the science at any given point in time.
19. Asymptomatic infection is not a synonym for asymptomatic transmission. SARS-CoV-1 could not be transmitted by asymptomatic individuals.<sup>54</sup> The advice from Public Health England on 29 January 2020 was that the data available at that time was not adequate to provide evidence for major asymptomatic/subclinical transmission of Covid-19.<sup>55</sup>
20. The experts’ understanding of the possibility of asymptomatic transmission, which informed the advice given to Ministers, grew gradually during the pandemic.<sup>56</sup> Evidence from the *Diamond Princess* in February 2020 indicated 30-50% of cases of asymptomatic infection. CSA(H) was clear that this did not mean that there was asymptomatic transmission in 30-50% of cases. It was not known whether those individuals were infected with no symptoms or pre-symptoms or pauci-symptomatic, in that they had mild symptoms, or whether they were able to transmit.<sup>57</sup> Dr Williams explained that whether asymptomatic infections were detectable by testing and or they were transmissible are separate questions.<sup>58</sup> CSA(H) said that

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<sup>53</sup> Howarth, 4 March 2024 [124/10-124/22].

<sup>54</sup> Orford, 4 March 2024 [106/18-107/6].

<sup>55</sup> INQ000224495

<sup>56</sup> Atherton, 4 March 2024 [32/9/23].

<sup>57</sup> Orford, 4 March 2024 [106/15-107/6].

<sup>58</sup> Williams, 1 March 2024 [43/7-22].



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reports from the *Diamond Princess* did not provide sufficient evidence that asymptomatic people could transmit Covid-19. Sufficient evidence to say that asymptomatic people could transmit came “*a lot later*”.<sup>59</sup> The Inquiry is alert to the fact that it has only heard a snapshot of the complex evidence on this topic thus far.

21. It was asked whether, notwithstanding the limitations in the evidence, a more precautionary approach should have been taken. Mr Drakeford explained that the advice was, until the end of April, that there was no basis to do so.<sup>60</sup> Mr Gething described the difficult task of balancing the possible risks against the known risks.<sup>61</sup> Policy needed to balance the significant risk of hospitals being overwhelmed and the pressing need to release capacity. The balance struck by the policies was substantially informed by the British Geriatrics Society’s guidance about the ability of care homes to manage both symptomatic and asymptomatic case and have in place effective isolation and infection, prevention and control measures. The risk to vulnerable and elderly patients in hospital compared to the risks they faced in a care home setting had to be balanced.<sup>62</sup>
22. Policies concerning testing and discharge were developed with PHW. Dr Williams explained that although his contemporaneous belief that it was important to consider the possible routes of transmission on a precautionary basis, that did not mean it was necessary for the Welsh Government to assume that asymptomatic transmission was taking place.<sup>63</sup> In November 2020, having analysed evidence on care home updates and hospital discharges, PHW concluded that overall, hospital discharges “were not a significant factor in the spread of COVID-19 to residential care in Wales.”<sup>64</sup>
23. Face coverings: Decisions about face coverings illustrates Ministers following the advice of its scientific advisers, even when it departed from the position in England, Scotland and Northern Ireland. CMO(W) thought that there was only “weak evidence of a small benefit” for making face coverings mandatory at the time.<sup>65</sup> He maintained that view when questioned.<sup>66</sup> The evidence further shows that decision-makers and officials interrogated CMO(W)’s advice and TAG provided detailed papers on the evidence and its members were divided about the efficacy of mandatory face masks. There is no evidence whatsoever to support the suggestion that the Welsh Government played politics about face coverings.<sup>67</sup> It

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<sup>59</sup> Orford, 4 March 2024 [106/15-107/6].

<sup>60</sup> Drakeford, 13 March 2024 [64/13-65/2].

<sup>61</sup> Gething, 11 March 2024 [123/8-124/2].

<sup>62</sup> Atherton, 4 March 2024 [70/8-71/13].

<sup>63</sup> Williams, 1 March 2024 [44/22-43/10].

<sup>64</sup> INQ000224074.

<sup>65</sup> Atherton, 4 March 2024 [47/6-7].

<sup>66</sup> See for example: Atherton, 4 March 2024 [65/16-17] and [64/25 - 65/3].

<sup>67</sup> Drakeford, 13 March 2024 [141/10-21].

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would have been politically expedient to align Wales with the rest of the UK, but Mr Drakeford said that it was important to accept CMO(W)’s advice albeit subject to sufficient critical challenge.<sup>68</sup>

24. The position in Wales did change by September 2020 and there are lessons to learn from divergence on mandatory face coverings. CMO(W) accepted that despite the absence of good evidence, mandating the use of face coverings at the same time as England may have been preferable given that divergence caused confusion in Wales.<sup>69</sup>
25. Engagement with the third sector and other groups: Decision-making was informed by the extensive engagement with representatives of affected sectors of society. That was facilitated by pre-existing groups, committees, and forums and which adapted quickly to meet the challenges of the pandemic, as well as the establishment of new groups.
26. Prof. Emmanuel Ogbonna spoke positively about the Black, Asian and Minority Ethnic Covid-19 Advisory Group, and its subgroups, including the report of the socioeconomic subgroup published on 18 June 2020 and the risk assessment tool developed by the risk assessment subgroup.<sup>70</sup> The Welsh Government was receptive and proactive: as Prof. Ogbonna explained, steps were taken to address problems as and when they were identified, rather than waiting for the publication of the report.<sup>71</sup>
27. Prof. Debbie Foster spoke of the Welsh Government’s “progressive” approach in deciding that the Disability Equality Forum, and not Ministers, should appoint the Chair responsible for the production of what became the “Locked Out” report.<sup>72</sup> Prof. Foster spoke of the benefits of co-production: “*everybody in the room was bringing something to the report... we were all going through the pandemic and people were experiencing things there and then in terms of their lived experience*”.<sup>73</sup> The important work to implement the report’s recommendations continues, overseen by the Disability Rights Taskforce. Prof. Foster, who co-chairs the Taskforce, described Welsh Government’s engagement with it as “*excellent*”.<sup>74</sup>
28. The Older People’s Commissioner also spoke positively about the early and increased communications between her office and Ministers and senior officials.<sup>75</sup> The Children’s

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<sup>68</sup> Drakeford, 13 March 2024 [138/8-15].

<sup>69</sup> Atherton, 4 March 2024 [53/11-19].

<sup>70</sup> Ogbonna, 28 February 2024 [48/25 – 49/2].

<sup>71</sup> Ogbonna, 28 February 2024 [50/10-22].

<sup>72</sup> Foster, 28 February 2024 [83/2-7].

<sup>73</sup> Foster, 28 February 2024 [87/4-18].

<sup>74</sup> Foster, 28 February 2024 [104/9-16].

<sup>75</sup> Herklots, 28 February 2024 [118/18 – 119/22].

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Commissioner similarly attested to regular engagement at political and official level.<sup>76</sup> Witnesses confirmed the effectiveness of the Shadow Social Partnership Council which remained an important component of the structures throughout the pandemic in its expanded form,<sup>77</sup> facilitating engagement and information sharing across a broad reach of the community.

### B. Communications response

29. The Welsh Government’s public health communications were governed by clarity, transparency and honesty.<sup>78</sup> Ensuring that the public and vulnerable and minority groups in particular had effective access to communications was a fundamental cornerstone, with specific strategies to address the needs of particular groups, including:

- (a) Establishment of the Accessible Communications Group in early June 2020 which comprised officials and Welsh organisations representing those who faced barriers in accessing communications.<sup>79</sup> Their work produced the Guidance on Communication using Accessible Formats.<sup>80</sup>
- (b) Campaigns for the digitally excluded utilising hard-copy leaflets delivered to households in all-Wales ‘door drops’ and to GP surgeries and community centres.
- (c) Communication activities to reach minority communities.<sup>81</sup> These included provision of communications in up to 35 different languages, engagement with equality and diversity stakeholder groups and community leaders, establishment of multi-cultural / multi-lingual street teams and Q&A sessions involving Ministers and experts.
- (d) Provision of communications in accessible formats, including easy-read and Braille versions of important documents and British Sign Language at press conferences.
- (e) Engagement of children and young people, with the significant support of the Children’s Commissioner for Wales and her communications team (who joined the Welsh Government’s social care communications group on 23 March 2020).

30. Communication of Wales-specific rules to the Welsh public was important. The establishment of a Four Nations Communications Group proved very effective,<sup>82</sup> although its effectiveness is inevitably dependent upon advance sharing of proposed campaigns between nations.<sup>83</sup>

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<sup>76</sup> Holland, 28 February 2024 [162/9 – 164/12], [169/12-17].

<sup>77</sup> Holland, 28 February 2024 [171/5-11]; Taj 6 March 2024 [81/2-19].

<sup>78</sup> Goodall (Welsh Government), INQ000327735, §410; Mason, 7 March 2024 [55/19-56/1].

<sup>79</sup> Burke (CTPD), INQ000273937, §100.

<sup>80</sup> INQ000282164.

<sup>81</sup> INQ000227599.

<sup>82</sup> Mason, 7 March 2024 [68/14 – 69/6].

<sup>83</sup> Mason, 7 March 2024 [70/1 – 71/11].

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31. The UK Government’s routine refusal to specify that announcements applied to England only caused unnecessary confusion. That said, the Welsh Government worked hard to ensure the Welsh public understood the rules applicable to them, by holding daily press conferences, frequent interviews and media appearances by the First Minister and development of the specific ‘Keep Wales Safe’ brand to provide consistency. This was effective, as illustrated by the contemporaneous focus group results<sup>84</sup> and the degree of public awareness.<sup>85</sup>

### C. Financial response

32. From an early stage, the Welsh Government was alert to the financial pressures that Covid-19 would bring. Correspondence was sent to the Chancellor emphasising the Welsh Government’s need to plan and respond to the virus.<sup>86</sup> This was repeated at a Quadrilateral Meeting on 10 March, when it was emphasised that the demographics and economy of Wales meant the response spend was likely to be higher than a population share of spending in England.<sup>87</sup>

33. On 20 March, Ministers were asked to prepare papers setting out proposals to repurpose individual portfolio budgets to assist in the response.<sup>88</sup> On 23 March, the Star Chamber was established as an advisory body to maximise the impact of available resources and provide strategic oversight of all major spending decisions.<sup>89</sup> This represented an entirely new financial management structure for the Welsh Government. On 25 March, the Star Chamber identified £256.5M to be re-purposed and placed into the newly-created Covid-19 Response Reserve, which was a central fund created for the pandemic response from which all significant pandemic-related expenditure was deployed. The Star Chamber’s practices were subject to continuing review to ensure effective and transparent operation.

34. The Welsh Government has consistently recognised the extent of funding provided by the UK Government during the pandemic. The Covid-19 Barnett Guarantee was an example of the system working well once implemented. However, there were limitations in the way that support was provided and there are lessons to be learned that would improve the Welsh Government’s ability to respond effectively to a future pandemic.

35. One area of improvement is the provision of information by the UK Government to enable certainty in planning and managing the financial response. Calls for clarity on the extent of

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<sup>84</sup> See e.g. Findings Note, 13 May 2020, INQ000066103, and Findings Note, 21 May 2020, INQ000282289.

<sup>85</sup> Goodall (Welsh Government), INQ000327735, §463-464.

<sup>86</sup> Letter, 6 March 2020, INQ000321258.

<sup>87</sup> QM Minutes, 10 March 2020, INQ000353437.

<sup>88</sup> E-mail, 20 March 2020, INQ000271458.

<sup>89</sup> Terms of Reference, INQ000066177.

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consequential funding were made at an early stage<sup>90</sup> and the potential consequences of failing to provide this expressly outlined to the Chief Secretary on 13 March.<sup>91</sup> Such clarity did not come until the Autumn Statement 2020,<sup>92</sup> which meant many previous Welsh Government decisions were taken ‘at risk.’<sup>93</sup> Although the Barnett Guarantee greatly assisted, the Welsh Government received no advance notification of uplifts received in October, November and December 2020 which inhibited its ability to plan.<sup>94</sup>

36. The need for timely and effective inter-governmental consideration of funding is essential. This may be assisted by the subsequent formalisation of the Finance Quadrilateral Meetings as a Standing Committee, but such structure will only be as effective as the engagement of those involved; the extent and impact of which remains solely within the remit of HM Treasury.
37. The recoupment by HM Treasury of £155M for the financial year 2020/21 demonstrates the Welsh Government’s reliance on the decision-making of individuals in the UK Government and the significant consequences thereof. Recoupment occurs when the Barnett consequential is negative due to an underspend by the UK Government in a devolved area. This means the Welsh Government has no input or ability to influence this. Were the Barnett Guarantee not in place, a ‘usual’ Barnett-share of the recouped funding would have been in excess of £1B, which would have been “completely unmanageable”<sup>95</sup> and demonstrates the fundamental importance of the Guarantee. Notably, the Barnett Guarantee was only in place after 23 July 2020, and did not exist when the Welsh Government was considering its financial capability to respond to Omicron in late-2021. Implementation of the Barnett Guarantee is fundamental to a future pandemic response and is something that should be implemented forthwith if a pandemic strikes again.<sup>96</sup> There is presently no mechanism to ensure its return. The potential consequences of its absence are stark when considered in the context of the recoupment.
38. As the firebreak in autumn 2020 and the Omicron responses in late 2021 illustrated, the existing funding arrangements were also limited in a pandemic response insofar as those matters reserved to the UK Government. The Welsh Government has repeatedly stated its support and gratitude for the introduction by the UK Government of the Coronavirus Job Retention Scheme, which provided essential financial support to many Welsh businesses and their employees from March 2020 onwards. However, as the pandemic progressed into

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<sup>90</sup> For example, Written Statement, 11 March 2020 (INQ000321259).

<sup>91</sup> Letter, 13 March 2020 (INQ000320760).

<sup>92</sup> Evans, [91/9-19]

<sup>93</sup> Evans, [95/18 – 96/5]

<sup>94</sup> Evans, para.100-101.

<sup>95</sup> Evans, [76/15-21]

<sup>96</sup> See other examples of flexibility that may be required in a future pandemic: INQ000066172.

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Summer 2020 and the differing approaches of the four nations to restrictions emerged, it became clear that issues could arise as to its availability to the Devolved Governments in the event of regional or local lockdowns.

39. Correspondence to the then-Chancellor in summer 2020 sought clarification as to whether the Scheme would be available in such eventuality, but this was never provided.<sup>97</sup> At a COBR meeting on 22 September,<sup>98</sup> the First Minister sought clarification from the Treasury as to the funding arrangements available to support those required to self-isolate in the Devolved Nations. On 24 September, the UK Government announced the creation of a new Job Support Scheme that was to come into force on 1 November 2020<sup>99</sup>.
40. Although the newer scheme provided more assistance, the most material difference was a removal of the existing requirement for employees to have been previously furloughed to qualify under the newer scheme. This was important: the existing scheme had been closed to new entrants since 30 June 2020 leaving any employee who had not been furloughed before or had been employed after June 2020 unable to receive financial support. That particularly affected the hospitality sector where many new employees had been engaged to re-open the industry. This meant a ‘firebreak’ lockdown commencing 23 October 2020 would leave many Welsh businesses and employees unable to qualify for financial assistance under the existing scheme for the period 23 to 31 October. Even where such scheme would apply, businesses would be subject to the unenviable administrative burden of applying for assistance under two separate schemes in a 17-day period.
41. On 16 October, the First Minister set out these (and other) concerns and asked that access to the new Job Support Scheme be brought forward to 23 October for applicants in Wales.<sup>100</sup> The Welsh Government offered to reimburse any additional financial costs incurred by HMRC due to the increased financial recompense available under the new scheme.
42. On 19 October, Rishi Sunak confirmed the First Minister’s request was denied “*due to the limitations in HMRC delivery timelines*”.<sup>101</sup> E-mail advice to the then-Chancellor that day also suggests the existence of a UK Government policy not to provide financial support in situations where “*DAs [are] going further than HMG on NPIs*”<sup>102</sup>, although this was not communicated. A further request from the First Minister on 20 October<sup>103</sup> to waive the

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<sup>97</sup> Letter, 4 June 2020, INQ000220503, and Letter, 3 July 2020, INQ000066172.

<sup>98</sup> Minutes, 22 September 2020, §10, INQ000083849.

<sup>99</sup> Chancellor outlines Winter Economy Plan - GOV.UK (www.gov.uk).

<sup>100</sup> Letter, 16 October 2020, INQ000216554.

<sup>101</sup> Letter, undated, INQ000216555.

<sup>102</sup> INQ000397193.

<sup>103</sup> INQ000216553.

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requirement under the existing Scheme for employees to have been previously furloughed was never answered.<sup>104</sup>

43. Rishi Sunak suggested that the Welsh Government could have used existing available funding to finance the firebreak.<sup>105</sup> That fatally misunderstands the specific nature of the support provided by the relevant ‘furlough’ schemes; employment is a reserved matter, and the Welsh Government were neither responsible for nor in a position to administer a scheme. Indeed, the creation and management of such a scheme would require HMRC to provide information to the Welsh Government that it was not legally permitted to disclose. The irony of suggesting the Welsh Government could set up an entirely new alternative scheme with the Barnett Guarantee funding in the short time available, whilst also asserting that HMRC were unable to bring forward a planned scheme by just one week within that same timescale (having previously run a very similar scheme for more than six months before), is also not lost.
44. The Welsh Government has never alleged insufficient funding was provided by the UK Government during the pandemic. The issue is that the timing and fact of funding decisions were based solely on public health decisions made by the UK Government where the Welsh Government had devolved responsibility for such decisions in Wales which carried inevitable financial impacts, including the imposition of lockdowns and other NPIs.
45. This resulted in a situation where the Welsh Government’s decision-making abilities were directly impacted by financial considerations and limitations in a manner that the UK Government were not. If the UK Government sought to impose a lockdown or other NPIs, such financial support would be provided by HM Treasury. That is what happened when the UK Government extended the Job Support Scheme when it announced its own ‘firebreak’ lockdown on 5 November.<sup>106</sup>
46. This imbalance was even more stark in late 2021 when the Omicron variant threatened. Again, clarification was sought that necessary financial support would be available if decisions were made for more interventionist measures than those by the UK Government.<sup>107</sup> Neither the Barnett Guarantee nor a relevant ‘furlough’ scheme were in place, and reassurance was requested that these would be available. Neither were forthcoming.
47. On 16 December 2021, the Cabinet received advice from TAG that anything below Alert Level 4 measures were not likely to have a significant enough effect to prevent material harm

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<sup>104</sup> As accepted in M2B Statement, Rishi Sunak, §§25-26.

<sup>105</sup> Sunak, 11 December 2023, pp.171-176.

<sup>106</sup> Furlough Scheme Extended and Further Economic Support announced - GOV.UK ([www.gov.uk](http://www.gov.uk)).

<sup>107</sup> For example, Letter, 29 November 2021, INQ000256922, and Letter, 15 December 2021, INQ000321139.

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to care services.<sup>108</sup> On 21 December, it was recognised that the absence of any employment support schemes meant harms from restrictions could not be mitigated in the same way as in previous waves, thereby ruling out the most stringent measures.<sup>109</sup> Thus, the Welsh Government was unable to act upon the scientific advice as a direct result of being unable to require the re-introduction of the ‘furlough’ scheme or such other appropriate alternative.

48. Had the Omicron variant developed in accordance with the reasonable worst-case scenario, there would have been significant repercussions arising from the Welsh Government’s inability to take the decisions it considered necessary. Although the ‘peacetime’ fiscal framework between the UK and Welsh Governments is outside the Inquiry’s remit, there is a clear case for the recommendation of specific fiscal flexibilities and / or mechanisms to be implemented in the case of a future pandemic to permit the Devolved Governments to respond financially and to make core decisions on an equal footing to the UK Government.

### **D. Re-emergence of the virus: local lockdowns and firebreak**

49. Local lockdowns: These were implemented from early September 2020 in a considered and managed attempt to control the spread of the virus proportionately, taking into account: the harms that would be suffered by locking down the whole country; the fact that the virus still remained effectively suppressed in many parts of Wales; and previous success in managing localised outbreaks on a localised basis. The fact that the local lockdowns ultimately failed to contain the virus does not detract from the fact that they were planned and executed thoroughly and efficiently, in collaboration with local government; and that they had a positive impact on incidence rates in the local areas, albeit not sufficient to stop the virus from spreading outside those areas.<sup>110</sup>
50. The management of the local lockdowns also gave rise to the establishment of the Health Protection Advisory Group Outbreaks Subgroup (**HPAG OSG**) on 10 September 2020, two days after the implementation of the first local lockdown in Caerphilly, to meet the need for regular, close monitoring of developments at local level, with a direct line of report to Ministers.<sup>111</sup> HPAG OSG was undoubtedly a key success, continuing to operate throughout the pandemic as a central part of the Welsh Government’s Covid-19 response structures and demonstrating the organisation’s ability to respond flexibly and at speed to the developing situation.

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<sup>108</sup> TAG Advice, 15 December 2021, INQ000057972.

<sup>109</sup> Cabinet Review Paper, 21 December 2021, INQ000057994.

<sup>110</sup> Drakeford, 13 March 2024 [144/20 – 145/6].

<sup>111</sup> Kilpatrick, INQ000274156, §§92 and 142.



51. *Firebreak lockdown*: In September and October 2020 Ministers had to strike the difficult balance between the safe re-opening of society while reducing the growing incidence of the virus. As Prof. Wincott recognised, there was a fundamental difference between the situation that existed in the initial phases of the pandemic, and the situation that existed from summer 2020, when the policy focus had necessarily shifted to continuing a more normal range of NHS services.<sup>112</sup> Comparing the firebreak with the first lockdown was, in Prof. Wincott’s phrase, a “*false equivalence*”. There was also the balance of harms to consider, and the need to ensure public support for, and compliance with, any further restrictions.<sup>113</sup> Considerable “*political headwind*” was also created by the UK Government’s active and vocal opposition to further lockdowns.<sup>114</sup> This should not be underestimated as a factor in decision-making not least because it was echoed by the opposition in the Senedd.
52. Against this, there were the significant economic pressures – which were particularly relevant to the proposed length of the firebreak – as a result of HM Treasury’s intransigence over the available financial support to individuals and businesses, as considered above.
53. That was the context in which the Welsh Government considered the scientific advice from mid-September. As the First Minister stated, October was spent “*trying to grapple*” with those competing factors.<sup>115</sup> Once the decision was made in principle on 15 October 2020, there followed four days of intensive engagement with sector representatives about its impact, before it was formalised on 19 October 2020.<sup>116</sup> This was an entirely rational, sensible approach.

#### **E. Christmas 2020**

54. All four nations sought a consistent approach to Christmas 2020. There were millions of people who had complied with restrictions throughout 2020 and were holding on to the hope of a Christmas with loved ones from whom they had been separated. For many that involved travelling across borders, across the UK to meet with family members and to form a bubble. There was real merit in consistency of approach across the four nations, but with a bespoke application in Wales through the four-tier system.
55. In Cabinet and in Ministerial Calls on 10, 15 and 19 December Ministers monitored the developing situation closely and received scientific advice at every stage. CTI asked whether the Welsh Government had learned lessons from earlier stages of the pandemic and earlier

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<sup>112</sup> Wincott, 29 February 2024 [54/10 – 55/5].

<sup>113</sup> Drakeford 13 March 2024 [147/23 – 148/11], Gething 11 March 2024 [166/15 – 167/19].

<sup>114</sup> Drakeford 13 March 2024 [147/23 – 148/11].

<sup>115</sup> Drakeford, 13 March 2024 [148/24 – 149/3].

<sup>116</sup> Drakeford, 13 March 2024 [165/15 – 167/3].

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waves. Throughout this difficult period the Welsh Government considered and applied the lessons it had learned about both the direct and the indirect Covid harms, including harms caused by locking down as well as those caused by not locking down.

56. Mr Drakeford and Mr Gething were deeply concerned about the effect on children, and vulnerable children in particular, of closing schools having worked so hard to return them to the classroom.<sup>117</sup> Christmas is an important time for the economy and closing it down would have long-term consequences for many businesses.<sup>118</sup>

57. Mr Drakeford described this as the most difficult period of decision-making in the pandemic. Cabinet was divided and the decision was robustly debated. Though Mr Drakeford had entered Cabinet minded to delay the increase in restrictions, he listened to the advice that he received and the views of his Cabinet and ultimately summed up to the contrary.

### F. Inter-governmental relations

58. In May 2020, the UK Government unilaterally decided to reorganise its Cabinet structures with the result that, until October 2020 when COBR was re-engaged, the First Ministers were invited only to Covid-O meetings, chaired by the Chancellor of the Duchy of Lancaster, whereas the strategic decisions were made by the Prime Minister in Covid-S.

59. As several witnesses have explained, it does not matter whether the meetings with the First Ministers were in COBR, Joint Ministerial Committee meetings or otherwise. What mattered was the need for a regime of regular meetings, attended by the Prime Minister and the First Ministers, in which the heads of the four governments were able to raise, discuss and decide matters of mutual interest and concern. That is what the First Minister of Wales regularly called for.<sup>119</sup>

60. The First Minister identified a number of reasons why this lack of engagement adversely affected decision-making.<sup>120</sup> first, it was optically important for the heads of government to be seen to be co-operating during a time of national peril; secondly, even if decisions were not uniform, the process of joint decision-making would have left each government better informed of the reasons for differing decisions, the differing challenges being faced by each government and how they were proposing to deal with it and it would have improved trust amongst the heads of government which was an important commodity in a difficult and fast-paced environment; and, thirdly, although the Chancellor of the Duchy of Lancaster had

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<sup>117</sup> Drakeford, 13 March 2024 [169/21 – 173/9]; Gething, 11 March 2024 [182/8 – 194/10].

<sup>118</sup> Drakeford, 13 March 2024 [170/24 – 171/11].

<sup>119</sup> Drakeford (Module 2, 2<sup>nd</sup> statement), §18.

<sup>120</sup> Drakeford, 13 March 2024, pp. 11 – 12 and 17 – 18.

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influence, it was not determinative and so there was a limit to the extent to which he could lead a four nations response.

61. Boris Johnson wanted to avoid creating the impression that the UK was a federal state,<sup>121</sup> an apprehension shared by the territorial Secretaries of State who described regular meetings between the Prime Minister and the First Ministers as a “potential federalist Trojan horse”.<sup>122</sup> Mr Johnson’s concern with appearances did not recognise, and so did not meet, the scale of the events confronting the four nations.
62. The Welsh Government submitted in opening that once the Devolved Governments started to make public health regulations, the benefits of subsidiarity became clear. The suggestion made by some former ministers of the UK Government that any future response should be centralised does not bear scrutiny. That remains the case. The more cautious relaxation of restrictions and the timing of the firebreak around the different school term-dates in Wales are only two examples where devolved consideration of the needs of population of Wales led to necessarily different decisions.

### G. Informal communications

63. At the start of this module, Counsel to the Inquiry said that it did not appear that Welsh Ministers used WhatsApp or any other form of informal communication as an alternative to formal decision-making processes. Three weeks later, after hearing from 14 witnesses from the Welsh Government, the position remains that there is no evidence that Welsh Ministers used informal communications in order to make decisions.

### Conclusion

64. The ultimate question in this module is whether, taking into account the many relevant (often conflicting) factors, the Welsh Government’s decisions were ‘reasonable’. Self-evidently, different decisions could have been made all of which were nonetheless ‘reasonable’ measures to deal with the unprecedented challenge to civil society presented by Covid-19. For each decision, there was no single, “right” answer: in particular, no decision was free from consequence; and none could have guaranteed that no-one would have lost their life to the virus.
65. All witnesses from the Welsh Government set out how they would have acted differently had they had the benefit of the knowledge which we now have about the virus such as,

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<sup>121</sup> Johnson, §188 [INQ000255836].

<sup>122</sup> [INQ000091348].

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instance, the long-term effects of Covid-19. But the decisions made by the Welsh Government cannot be fairly judged by hindsight, but by what was known at the relevant time about the nature of the virus (which was very little indeed in the early months of 2020) and in circumstances where swift action and hard decisions were necessary to protect the people of Wales.

**Dated 5 April 2024**