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**CLOSING SUBMISSION ON BEHALF OF DISABLED PEOPLE'S ORGANISATIONS:  
DISABILITY WALES (ANABLEDD CYMRU) & DISABILITY RIGHTS UK**

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**INTRODUCTION**

1. AS GOOD AS IT GETS: All the Governments the Inquiry has studied purported to champion categories of 'vulnerable' people and to act on their behalf. The Inquiry will evaluate the success of various endeavours, but for Disabled people there is a real basis to fear that in the Welsh Government response to Covid-19 *this is as good as it gets* and it was *not good enough*.
2. RESILIENCE: The Welsh Government system of civil contingency was not resilient. In spite of its humanist values and collaborative practices, government could not deliver quickly and widely enough to its population. PART [A] below addresses the reasons why that was so. But the DPO also want to ask, because it is a question they believe the Inquiry must ask, what is it that would render emergency systems in Wales and the UK more resilient in the future? PART [B] seeks to answer that question in a fashion that can be further tested by the Inquiry in modules to come.

**PART A: GOVERNMENT**

3. SMALL NATION GOVERNMENT: This Module shows that the small state quality of Welsh Government, presiding over some 3 million people, and with embedded close relations, has both possibilities and challenges. Some of the general features of small nation democracy include clearly distinct social identities, operating through social partnerships, key personnel knowing one another, a tendency to consult as a means of problem solving, and the capacity of decision makers to govern at a level of granularity due to their local knowledge. All of this made a rapid shift to collaborative emergency governance possible, even when in Wales, as in the rest of the UK, there was no adequate pre-existing pandemic planning or response structures.<sup>1</sup> Civil servants in Government also reported a far more open and collaborative atmosphere compared to the workplace in Whitehall.<sup>2</sup>

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<sup>1</sup> Wincott [INQ000411927/10 §§21, 23, /18 §40, /21 §§49-50, /27 §69, /28 §§71-72, /36 §103]

<sup>2</sup> WG 01.10.22 [INQ000182549/10 §§44, 46] Cf. MacNamara [M2/INQ000273841/50 §§99-102, 105]

4. SOCIAL PARTNERSHIP: In Wales the principle of Social Partnership meant different groups came together to assist Government response to the pandemic.<sup>3</sup> This can be seen in the expansion of the Shadow Social Partnership Council beyond its traditional membership of unions and commerce to include various statutory Commissioners, and the Council for Voluntary Action, although not the DPO. The commitment to engagement with relevant stakeholders runs deep in the Welsh culture of governance, and although diminished during the pandemic, engagement still led to change.<sup>4</sup> Helena Herklots, as the Commissioner for Older People, was able to tilt the Minister to introduce more concrete planning for the needs of older people, when the Minister's original inclination was not to do so.<sup>5</sup> The appointment of those like Jon Luxton as special adviser on disability prior to the pandemic meant that diversity and equality advice was directly available to Cabinet, just as the appointment of Professor Foster to co-chair the Disability Rights Taskforce in 2021 with the Minister for Social Justice meant that independent critical thinkers were not to be excluded.<sup>6</sup>
5. DISABLED PEOPLE: Likewise, it was in Wales, and not England or Scotland, that genuinely collaborative meetings took place between DPO and government. Meetings with Deputy Minister Jane Hutt started in early April 2020, whereas the UK Government did not even table a Ministerial discussion on the pandemic's impact on Disabled people until 21 May and did not start limited meetings with DPO until July.<sup>7</sup> The Inquiry has examined the detail of the Locked Out report, produced in collaboration between DPO and Welsh Government.<sup>8</sup> The Report's DPO steering group meant that reporting could evade the potential 'cosiness' that remains a potential impediment of small state social partnership.<sup>9</sup> The issue going forward is how that method of co-production and co-design can be worked into pre-pandemic and other emergency planning in a way that scales across all parts of the UK.
6. COMPARABILITY: In essence, Wales was therefore as good as it gets when it came to engagement with Disabled people and their organisations. It could use its high level of social partnership to react to pandemic challenges and improvise its response. It did this in circumstances in which its population profile was more exposed than most of England, by

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<sup>3</sup> DPO M2B Written Opening 20.02.24 p. 8 §3.8

<sup>4</sup> Drakeford [INQ000371209/5 §18, /7 §§22-23] Hutt [INQ000366148/5 §§14,16, /10 §37] Foster [INQ000274189/28 §92]

<sup>5</sup> Herklots [INQ000276281/47 §§11.36-11.39] [T2/137/22-138/25]

<sup>6</sup> Luxton [INQ000369755/3 §12] Foster [INQ000274189/19 §§54-55, 68] [T2/104/8-18] Drakeford [T11/191/3-25]

<sup>7</sup> R Davies [INQ000410946/6 §19, /8 §§24-26] Cf. Mallick [M2/INQ000280035/8 §§24-25, /13 §§42-50, /26 §§86-89]

<sup>8</sup> DPO M2B Written Opening 20.02.24 p. 11 §3.16

<sup>9</sup> Wincott [INQ000411927/27 §69]

virtue of age, income and other health inequalities.<sup>10</sup> However, Welsh Covid-19 fatality figures for Disabled people were the worst in the UK;<sup>11</sup> and its overall pandemic fatalities were similar to England; with reasonable grounds to believe that the figures have been underreported (see §13 below).<sup>12</sup> As with Scotland, there is also a dissonance between aspiration and delivery.<sup>13</sup> Despite its progressive vision, Professor Wincott suggests that dependency on the financial arrangements of devolution made Wales fiscally conservative and unable to govern in a way that was paradigmatically different to the rest of the UK.<sup>14</sup> That in part explains why Wales has often declared rights-based aspirations in legislation without necessarily creating the legal means to enforce them.<sup>15</sup> It also explains why Welsh Government's nominal differences in pandemic decision making, including the October Firebreak, still operated in the 'shadow' of UK Government.<sup>16</sup> For Professor Foster the Welsh devolved state response to Covid-19 was left "*highly dependent upon third sector organisations and the goodwill of institutions such as universities, to provide free or inexpensive skills and labour*" and ultimately "*too precarious*" to create solid foundations for future pandemic resilience.<sup>17</sup>

7. SUBSIDIARITY: The problem for Wales during the pandemic is that it was too small, both in terms of the power it held and its capacity to do things differently. It was too small not to be taken for granted by Westminster. Wales was informed about decisions rather than being consulted upon them on numerous occasions.<sup>18</sup> It was not invited to SAGE for its first 5 meetings.<sup>19</sup> It learned barely days before enactment that devolved public health law, and not reserved aspects of UK Civil Contingency Law, would govern lockdowns; and only then was legal advice sought for the first time.<sup>20</sup> Wales could have gone for a sooner and longer October Firebreak, but it stumbled in political and economic headwinds, which made it

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<sup>10</sup> Drakeford [INQ000371209/38 §124] WG Science Evidence Advice [INQ000353571/5]

<sup>11</sup> Coronavirus (COVID-19) and the impact on disabled people [INQ000371211/17, 22]

<sup>12</sup> Diamond [INQ000271436/14 §§44-45] and Hale [INQ000257925/30 §56.1]

<sup>13</sup> DPO M2A Closing 23.02.24 p. 2 §3]

<sup>14</sup> Wincott [T3/16/4-17/16]

<sup>15</sup> Wincott [INQ000411927/16 §§37-38] DPO M2B Opening [T1/134/13-135/6] Thomas (2019) *Thinking through Policy before Legislating* available at <https://www.statutelawsociety.co.uk/library>

<sup>16</sup> Wincott [INQ000411927/11 §25]

<sup>17</sup> Foster [INQ000274189/29 §94]

<sup>18</sup> Wincott [T3/26/24-27/1] Drakeford [INQ000273747/54 §191]

<sup>19</sup> Atherton [INQ000391115/12 §46] [T5/13/5-16] Gething [T2/22/12-23/17] Henderson [INQ000269372 §95]

<sup>20</sup> Drakeford [INQ000371209/35 §§108-109, 112] [T11/32/7-42/24] Gething [T9/84/4-85/6] Wincott [INQ000411927/37 §§105-108, /38 §110]: see also Lockdown Options Briefing 20.03.20 [INQ000361424]

cautious about acting as regards its own electorate, and especially so when it felt unsupported by the UK Government.<sup>21</sup>

8. PAROCHIALISM: Wales was also too small to escape being parochial and limited in what it could do locally to really change its outcomes. There was no Welsh version of Professor Mark Woolhouse to email the Chief Medical Officer early and tell him that this was going to be a global pandemic very “*likely*” to affect Wales.<sup>22</sup> The academics of Wales were not represented on SAGE in a way that Scotland’s were.<sup>23</sup> Its epidemiologists and modellers were conscious of the threats from January and February 2020, but were not especially connected into Welsh Government’s core advice before March,<sup>24</sup> and no specific Welsh modelling was carried out in the earlier period.<sup>25</sup> Sir Frank Atherton and Dr Orford (neither epidemiologists) did not make clear the gravity of Covid-19 as early and as rigorously as they should have done; especially so in the period after 24 January 2020, when the First Minister was notified of the significant risk arising, but no specific protections could be identified as put in place before Cabinet discussed the virus for the first time on 25 February.<sup>26</sup> The First Minister thought that Dr Orford (a cancer specialist) was sufficiently connected to the SAGE scientists in the early period,<sup>27</sup> but Orford’s own evidence was that he felt excluded from SAGE and NERVTAG’s early work,<sup>28</sup> and was himself not directly involved in advising cabinet.<sup>29</sup> Atherton agreed that by late January, when Wales started to be notified of the SAGE activity, much of the UK scientific mindset concerning how to manage the risks were already established.<sup>30</sup>
9. FOLLOWING THE SCIENCE: Welsh Government ‘followed the science’ in a way that saddled it with the problems of the UK Government framing decision making in that way.<sup>31</sup> This happened on the initial unevicenced concerns about the public not being willing to comply with a pandemic they could not yet see killing people in Wales,<sup>32</sup> and in thinking too narrowly

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<sup>21</sup> Drakeford [T11/147/23-149/3] [T11/149/15-150/7] [T11/152/6-12] [INQ000273747/40 §136, /71 §232]: see further §18 below

<sup>22</sup> Woolhouse-Calderwood Emails 21.01. 20 to 31.01.20 [M2A/INQ000103352] [M2A/T7/3/6-30/6]

<sup>23</sup> Henderson [INQ000269372/33 §97] Wincott [INQ000411927/41 §119]

<sup>24</sup> C. Williams [T4/6/16-25] [T4/11/7-23] Gravenor [T4/135/20-138/23]

<sup>25</sup> Gravenor [T4/134/13-25] [T4/138/2-13]

<sup>26</sup> Cf. Atherton [T5/24/17-26/5]

<sup>27</sup> Drakeford [T11/25/12-17]

<sup>28</sup> Orford [T5/80/17-83/18] [T5/84/20-85/9]: see also Orford [INQ000356177/4 §§14-16, /6 §24]

<sup>29</sup> Orford [T5/103/15-104/17]

<sup>30</sup> Atherton [T5/20/20-23/15]

<sup>31</sup> Gething [INQ000391237/23 §96, /44 §178] Cf. DPO M2 Closing [INQ000399541/23-25 §§35-37]

<sup>32</sup> CAB Minute 10.03.20 [INQ000129909/2 §2.1] Drakeford [INQ000371209/28 §§88-89] [T11/70/5-22]

Gething [INQ000391237/47 § 189] [T9/88/7-89/2] Hutt [INQ000366148/18 §61] Cf. John [T4/124/22-126/12] [INQ000286066/40 §7.11] Reicher [M2/INQ000273800/21 §§59-61, /53 159] Rubin [M2/T12/57/17-77/10] Halpern [M2/T16/171/15-174/2]

about mass gatherings per se rather than the contagious activity around them and the confusing messages they sent in terms of building public health resilience.<sup>33</sup> Equally, ‘following the science’ did not necessarily make Welsh Government more independent or effective in its own analysis. Mark Drakeford’s presentation of the matter to the Inquiry was particularly entrenched; and especially so given his realisation now that “*there was never a time when there was a settled body of knowledge about Covid-19*”.<sup>34</sup> Aside from wrongly fettering his discretion in his notion that he would never go against his scientific advice,<sup>35</sup> the First Minister seemingly deferred too much to his understaffed CMO<sup>36</sup> who did not query SAGE’s drift into behavioural fatigue,<sup>37</sup> and who increasingly acted as an unnecessary outlier against the “*risky behaviours*” engendered by mandatory face masks, which while no panacea became well justified on a precautionary basis.<sup>38</sup>

10. OTHER LIMITS ON SCIENCE: Welsh Government realised early on that it was limited by lack of parity of access to SAGE as a genuine UK entity and the extent to which SAGE advised through the prism of English based data.<sup>39</sup> Dedicated scientific advice from Wales also faltered in the early stages with its comparatively limited number of data analysts and data infrastructure.<sup>40</sup> Its modelling had to be developed largely from scratch. Without a standing Government modelling service it fell to academics such as Michael Gravenor who did the work for free, and in their free time.<sup>41</sup> The experience of Welsh Government analysts deployed to take up a limited role in the Joint Biodiversity Centre found that its work was highly Anglocentric in its original focus and did not necessarily work in a way that truly captured Welsh data.<sup>42</sup> Even with the benefits of TAG and TAC, those services mirrored the predicament of SAGE and its subgroups in not being diverse in their personnel, in a way that risked proper due regard for the predicaments of Disabled people and other potentially marginalised civil society groups and issues.<sup>43</sup>

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<sup>33</sup> Drakeford [INQ000371209/30 §§91-92] [T11/83/9-85/19] Gething [INQ000391237/52-53 §§211-212] [T9/101/18-102/24] [T9/107/19-109/10] Cf. McNamara [M2/INQ000273841/29 §§52, 61]

<sup>34</sup> Drakeford [INQ000273747/6 §17]

<sup>35</sup> Drakeford [T11/95/1-98/10]

<sup>36</sup> Atherton [INQ00039115/2 §§5, 21-27, 30] [T5/5/10-6/7]

<sup>37</sup> Atherton [INQ00039115/2 §5, /6 §§21-27, /9 §30] [T5/5/10-6/7]; See Fn. 32 above

<sup>38</sup> Atherton [INQ00039115/24 §99] [INQ000048738/3] Cf. Atherton [T5/49/21-50/2] Drakeford [T11/135/22-141/21] Williams [T4/68/20-24]

<sup>39</sup> Drakeford [T11/26/8-29/8] Bennée [INQ000366137/11 §§39-40, /13 §46] Kilpatrick [INQ000274156/64 §209] Wincott [INQ000411927/41 §§121-122]

<sup>40</sup> G Jones [INQ000274147/5 §§19-20] Orford [INQ000356177/22 §77-9, /26 100] Burke [INQ000273937/42 §§151-159]

<sup>41</sup> Gravenor [INQ000347979/11-12, §39, /34 §113] [T4/167/15-168/1] Orford [INQ000356177/9 §35]

<sup>42</sup> Trott [INQ000328682/11 §49] Solomon [INQ000291490/11-13 §§48, 50-54] Atherton [T5/14/19-15/9]

<sup>43</sup> John [T4/117/4-15] [INQ000286066/35 §6.69] Orford [T5/95/7-96/21]

11. FAILURE TO SURGE: While Welsh Government might not be expected to have locked down earlier than England, it erred in that it did not sufficiently mobilise sooner in all other respects, given its elderly population with lower income and higher numbers of Disabled people.<sup>44</sup> The Emergency Coordination Centre (Wales) ('ECCW') did not convene for the first time until 6 March.<sup>45</sup> The Welsh National Resilience Council, a planning forum only, met once during the pandemic, because there was no plan.<sup>46</sup> Having recognised an inevitable risk to social services as early as 7 February, a dedicated Planning and Response group for the sector did not meet until 6 March.<sup>47</sup> The Cabinet Minutes of February and March 2020 remained concerned with Brexit, floods and budgets.<sup>48</sup> COBR was told by the First Minister on 2 March that the Welsh Local Resilience Forums ('LRFs') would cope, because they were used to dealing with flooding and so were "*active and ready for [the] next challenge*".<sup>49</sup> By contrast, only on 4 March did Cabinet register that threat of the virus needed to be aligned with existing Local Authorities plans to become "*fully prepared*", especially for those dealing with flooding issues.<sup>50</sup> Only on 10 March did Ministers determine that they should "*discuss resilience planning matters with their stakeholders, both in the public and private sector, to ensure that they were prepared for their workforce being incapacitated*".<sup>51</sup> PHW thought the LRFs should have been engaged earlier given the role they were expected to play.<sup>52</sup>
12. FAILURE OF SMALL STATE: For all the real value that can be placed on the close relationships that facilitate small government in Wales, they did not always lead to joined up planning. The leadership of PHW describes constant conversations with the CMO in January and February 2020, knowing how much Wales was going to be exposed in terms of its population profile, but these conversations did not translate into consequential advice to the Welsh Government about the level of the threat.<sup>53</sup> None of them were recorded; and there is no record of the gist of the conversations transmitted to Government.<sup>54</sup> The First Minister explained the matter away on the basis that PHW was an arms-length independent agency,

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<sup>44</sup> Drakeford [INQ000371209/38 §124] [T11/47/4-52/15]

<sup>45</sup> WLGA [INQ000115551/2]

<sup>46</sup> Gething [INQ000391237/14-15 §§54-56]

<sup>47</sup> Heaney [INQ000389958/7 §22, /10 §30], Briefing to Minister 09.03.20 [INQ000336266/1-2]

<sup>48</sup> Drakeford [INQ000371209/28 §86] [T11/45/24-46/10]

<sup>49</sup> Gething [INQ000391237/42 §169] WG Summary Note 02.03.20 [INQ000320806/2]

<sup>50</sup> CAB Minute 04.03.20 [INQ000048789/4 §§3.4, 3.8]

<sup>51</sup> CAB Minute 10.03.20 [INQ000129909/1 §§2.1, 2.3]

<sup>52</sup> Cooper [T6/147/6-20]

<sup>53</sup> Cooper [T6/125/10-20] [T6/126/11-13] [T6/127/1-16] [T6/138/22-140/22] PHW 'Major Incident Note'

11.03.20 [INQ000147245] Cf. Drakeford [T11/52/16-54/11]

<sup>54</sup> Atherton [T5/15/10-16/18] Sandifer [T7/6/12-7/14]

although in the later months of the emergency its members did meet with Ministers and division of roles were given far greater clarity.<sup>55</sup> So it was that on 24 January, 3 March and (even, to his astonishment) 11 March, Quentin Sandifer as the strategic lead for PHW emergency planning, preparedness and response failed in his attempt to turn a crisis framed as a health issue into a multi-agency full society program.<sup>56</sup> Similarly, meetings with the WLGA did not take place until the 12 March, when its Chief Executive found that capacity had been presumed, and damage was done in terms of trust and actual integration of local government into an all-government response.<sup>57</sup> The failure of strategic leadership that Dr Sandifer highlights<sup>58</sup> concerns Ministers who were experienced in government, who broadly understood their population, and its health inequalities, and who therefore should have known better than to wait on the UK to act before it started its own whole society planning.<sup>59</sup>

13. DATA: Data collection in Wales was poor to the point where it is hard to trust that its published numbers were not in fact worse. Wales did not routinely collect data on protected characteristics or other types of inequalities and vulnerabilities regarding hospitalisation and ICU treatment.<sup>60</sup> It did not register all covid deaths in care homes from the outset, notification of deaths in care homes throughout the pandemic could not be guaranteed, and figures do not properly reflect protected characteristics.<sup>61</sup> As in the rest of the UK, Wales does not systematically gather health data on individual impairment. It did not gather information reflecting the social model of disability to ascertain what Disabled people might need,<sup>62</sup> even though Wales has recognised the social model's importance for over 20 years.<sup>63</sup> The pandemic clearly showed that there are considerable parts of society that are not properly counted and hence (inadvertently or otherwise) they end up counting for less.<sup>64</sup>

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<sup>55</sup> Drakeford [T11/57/14-25] Cooper [T6/119/3-16]

<sup>56</sup> Sandifer [INQ000267867/14 §56] [INQ000147245] [T7/47/4-14] [T7/49/10-50/10] [INQ000255778] [T7/54/24-55/3] Cooper [T6/147/6-20] Atherton [T5/27/5-24] Cf. Drakeford [T11/54/22-58/17]

<sup>57</sup> Llewelyn [INQ000410950/5 §13, /7 §23, /8 §§28-30] [T7/108/24-109/12] [T7/110/8-12] [T7/117/12-118/15] [T7/127/19-128/16]

<sup>58</sup> Sandifer [INQ000267867/34 §145] [T7/66/13-18]

<sup>59</sup> Drakeford [INQ000273747/2 §§6-10] Gething [INQ000391237/3 §§8-9] [T9/94/1-7] [T9/95/6-25]

<sup>60</sup> Howarth [INQ000399709/6 §10] [T3/115/8-116/3] [T3/118/8-15] [T3/140/6-141/1]

<sup>61</sup> Baranski [INQ000335481/13 §§47, 48.2] Howarth [T3/130/7-131/9] [T3/140/6-141/1] Herklots [T2/126/14-25] See also Bennée [INQ000366137/64 §§216-7]

<sup>62</sup> Howarth [T3/129/19-25]

<sup>63</sup> Hutt 01.12.20 [INQ000350691/2] Foster [T2/90/5-91/4]: see also John [INQ000286066/32 §6.51]

<sup>64</sup> John [T4/129/14-131/5]: see also DPO M2 Closing [INQ000399541/23 §§35-37] DPO M2A Closing 23.02.24 p. 12 §§23-25]

14. CARE SECTOR: Like the rest of the UK, the Welsh Government's lack of situational awareness of its care sector was fatal. Its resident profile and numbers were unknown.<sup>65</sup> Its risks were not modelled.<sup>66</sup> There was a dearth of bespoke data on the movement of people from hospitals and between care settings.<sup>67</sup> Its staffing was characterised by zero-hours and agency contracting, which made staff prone to be vectors of transmission.<sup>68</sup> Wales (like England) never funded the sector to prevent multiple staff movement, or otherwise found a solution to the problem.<sup>69</sup> Although known to be the most significant area of concern in the event of a pandemic, the care sector was largely outside of any civil contingency planning.<sup>70</sup> Its recourse to PPE was given wholly insufficient thought for the coming Covid-19 pandemic before March 2020, and thereafter hospitals were prioritised over residential and domiciliary care services. There was real disconnection between what was being promised at a policy level and delivery on the ground.<sup>71</sup> The 'poor relative' status of social care services compared to health services was a practical and indeed cultural problem across the UK; but Welsh Government should have realised their own national variant of the problem.<sup>72</sup> Instead, Ministers and advisers acted in March as if standard influenza protocols would sufficiently protect care settings.<sup>73</sup>
15. CONSEQUENCES: The exposure of the care sector had terrible consequences for Disabled people, whose capacity for independent living and habilitative and rehabilitative care was, regardless of intention, presented as dispensable compared to 'saving the NHS'.<sup>74</sup> Part of the problem was the insistence upon explaining action taken to ease care services as something that was done in defence of the 'vulnerable'. An early version of this was the 'framework of actions' for local health and care providers announced on 13 March that Vaughan Gething described as designed "*to provide care and support for the most*

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<sup>65</sup> Howarth [T3/131/10-132/19] Cooper [T6/152/10-153/12] Drakeford [T11/210/18-211/16] Baranski [INQ000335481/13 §§46-8, /4 §139]

<sup>66</sup> Solomon [INQ000291490/29 §127] Gravenor [T4/188/6-25]

<sup>67</sup> A Jones [INQ000280064/19 §61] Connor [INQ000346111/55 §§170-72] Wincott [INQ000411927/51 §163, /54 §§173-176, /81 §268]

<sup>68</sup> Gething [INQ000391237/130 §498] Bennée [INQ000366137/53 §§180-181] Heaney [INQ000389958/13 §46] Cf. John [T4/111/18-25] [T4/114/3-8] [T4/123/21-124/12]

<sup>69</sup> Technical Report [M2/INQ000087225/297-298, 305 §3] Hayward [M2/INQ000267868/6 §§3.9-3.10] Whately [M2/INQ000273897/52-53 §§224, 229] DPO M2 Closing [INQ00039954/26 §§41-42]

<sup>70</sup> Goodall [M1/T14/34/9-22]

<sup>71</sup> Heaney [INQ000389958/19 §73, /64 §240] Email DMSS (Chris Jones) 03.04.2020 [INQ000336377/2] Cf. Herklots, *Care Home Voices: Snap-Shot Review* (21 June 2020) [INQ000181725/22]

<sup>72</sup> Daly M. *COVID-19 and care homes in England: What happened and why?* (2020) 54 Soc Policy Adm, 985-998, pp 995-996 §3.2.2: for Wales, Gething [T9/112/4-14] J Morgan [INQ000371581/6 §§22-3] Wincott [INQ000411927/44 §136] Cf. Herklots [INQ000276281 §§10.5.6, 14.2.3-14.2.4]

<sup>73</sup> Atherton [T5/70/18-20] Heaney [INQ000389958//16 §55] [INQ000336324/1] Gething [T9/113/5-10] [INQ000391237/129 §494] Drakeford [T11/91/9-21] C Jones [INQ000336377/2]

<sup>74</sup> Gething [INQ000391237/110 §§411-414]



*vulnerable people in our communities*”, but included expediting hospital discharge of vulnerable people into care, relaxing targets and regulatory requirements in the health and care system, and suspending protocols for people to have choice about their care home settings.<sup>75</sup> In a similar vein, based on a discourse of wanting to protect vulnerable people, Welsh Local Authorities by virtue of Schedule 12 of the Coronavirus Act were granted temporary easements on their statutory duties regarding provision of care and assessments. The Welsh Government officials positively pushed for these provisions from early February, based on the foreseeable risk that the sector would be overwhelmed and advised accordingly on 6 March.<sup>76</sup> But they refrained from more concrete planning on how to mitigate the risk. Jane Hutt ultimately renounced the easements for “[singling] out disabled peoples’ most basic rights as something that can be switched off when expedient to do so.”<sup>77</sup> It remains an extraordinary feature of the pandemic that in three of the four nations of the UK the very first thing that the state did to protect the so-called ‘vulnerable’ was to ease its duties in relation to them.<sup>78</sup>

16. HUMAN RIGHTS: Unlike the rest of the UK, in 2015 Wales incorporated a requirement to have due regard to the United Nations Convention on the Rights of Disabled People<sup>79</sup> into Part 2 of the Code of Conduct under the Social Service and Wellbeing in Wales Act.<sup>80</sup> As of 20 February 2020, Julie Morgan as Deputy Minister for Health and Social Service emphasised that Article 19 was clear on the duty of states to “*ensure...access to a range of home / residential and other community support services, including the personal assistance necessary to support living independently and inclusively within their community*” and emphasised “*the key principle regarding this human right is the ability to choose how you are supported in your everyday personal care*”.<sup>81</sup> However, it is not clear at all how Welsh Government or social services applied that Convention, especially with regard to data collection and emergency planning. Indeed the guidance on Adult Social Care during the pandemic, issued in April 2020 after rapid consultation, stated that the Local Authorities must have due regard to the UNCRDP without saying how, or detailing the rights to have regard to.<sup>82</sup> The Ministerial Advice in August 2021 acknowledged that this was not enough,

<sup>75</sup> Gething [INQ000391237/50 §§202-204]

<sup>76</sup> Heaney [INQ000389958/7 §22] and Ministerial Advice 06.03.20 [INQ000087042/4]

<sup>77</sup> Hutt-Morgan correspondence 11.11.20 [INQ000349992] Luxton [INQ000369755/7 §29] Foster [INQ000274189/8 §§19-21]

<sup>78</sup> R. Davies [INQ000410946/32-36 §§87-94] Luxton [INQ000369755/5-8 §§19-32]: see also DPO M2 Closing [INQ00039954/8 §13] and DPO M6 PH Oral Submission 19.03.24 [M6/T/74/4-75/17]

<sup>79</sup> In all of the Welsh Government documents the Convention is referred to as UNCRDP, not UNCRPD

<sup>80</sup> Part 2 Code of Practice (General Functions) §65 cited

<sup>81</sup> J Morgan 20.02.20 Welsh Independent Living Grant (WILG) [INQ000337603/2]

<sup>82</sup> ASC Guidance for WLA 30.04.20 [INQ000350818/6] Hutt [INQ000366148/27 §84]

actioning the need for training and educational resources as well as training on co-production with Disabled people, and advising that overall guidance was needed in order to enable the UNCRDP to become further embedded into Welsh law.<sup>83</sup> The reported experience of Disabled people in Wales during the pandemic is that access and engagement with Local Government was considerably worse than with Central Government.<sup>84</sup>

17. CAPACITY: As in England and Scotland, Wales had experts that queried universal lockdown. Professor Salmon called for “*targeted protection*” of “*at-risk persons*”, “*at risk locations*” and “*at risk occupations*”.<sup>85</sup> As the Inquiry has discovered in previous modules, none of those risk categories were the subject of adequate planning, infrastructure, or data intelligence at the time. For example, the reality of the delay on testing in relation to the care sector is that Wales did not have the tests, and like elsewhere in the UK made the most difficult of choices of where to test.<sup>86</sup> As in the rest of the UK, targeted protection was beyond the capacity of the Welsh State.
18. OCTOBER 2020: The Firebreak underscored the problems with Welsh subsidiarity to UK Government. In evidence the First Minister ultimately did not blame the UK Treasury for stopping Wales from locking down longer in October 2020, even if he regarded its inflexibility as unfair.<sup>87</sup> He could not do otherwise, when the Cabinet made decisions for a two week (that became a 17 day) firebreak on 12 October and 15 October, before the exchange of correspondence with the UK Treasury between the 16 and 20 October.<sup>88</sup> He further explained that the length of the firebreak and the time it took to implement was influenced by the need to consider trade-offs with other harms and consult with social partners.<sup>89</sup> However, the tensions between Wales and England in mid-October<sup>90</sup> cannot be overlooked. This was when Boris Johnson railed against another lockdown, stating that ‘only’ old people were dying.<sup>91</sup> It was also when Michael Gove identified the “*terrible lost opportunity*” of failing to think ambitiously for disproportionately impacted groups, especially

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<sup>83</sup> Ministerial Advice, Covid-19 Restart - Disabled People 21.08.21 [INQ000136890/4 §17]

<sup>84</sup> Foster [INQ000274189/18 §52] [T2/106/22-108/24]

<sup>85</sup> Salmon Email 27.10.20 [INQ000130870] [T4/84/9-18] [T4/90/23-92/22]

<sup>86</sup> Orford [T5/128/21-129/18]: see also Gething [T9/122/24-127/11] Drakeford [T11/92/3-17] [INQ000371209/41 §132, /58 §189]

<sup>87</sup> Drakeford [T11/152/22-164/12]

<sup>88</sup> Drakeford [INQ000273747/39-40 §§132-136]

<sup>89</sup> Drakeford [T11/164/13-167/3]

<sup>90</sup> Drakeford [INQ000273747/40 §138]

<sup>91</sup> WhatsApp 26.08.20 [M2/INQ000102231/3 8:48am] WhatsApp 15.10.20 [M2/INQ000283369/67-68 18:53pm] Vallance Diaries 10.10.20 [M2/INQ000273901/234] 25.10.20 [INQ000273901/245]

Disabled people, knowing time was running out for the second wave.<sup>92</sup> At a time that it became clear that Covid's impact across population groups was drastically unequal, thereby causing a crisis for all four Governments, Welsh Government was not sufficiently robust or confident to act with radical difference.<sup>93</sup>

19. DEVOLUTION: The issues in Wales raise serious questions for Devolution because regardless of what one calls it, we live in a United Kingdom with a lower case federalist division of powers and responsibilities.<sup>94</sup> This multi-state system of government is complicated to navigate, piecemeal, reactive and ad hoc in normal times, let alone during an emergency.<sup>95</sup> The Westminster propensity to presume its hierarchical supremacy coupled with the lack of meetings and collaboration between the leaders on a structured joint response to the pandemic<sup>96</sup> inevitably led to divergence. Different approaches to different population profiles and risks would not have been wrong in itself. What was damaging was divergence accompanied by lack of coordination, understanding, and trust.<sup>97</sup> For the DPO, it is important to press for the protection of humanity over state, not to take sides in various nationalist and unionist debates, but also recognise that it would neither be possible nor sensible for public health choices to be made by state apparatus unless it is steeped in local knowledge and accountable to, as well as engaged with, the local population.<sup>98</sup> Covid-19 therefore shows the dangers of a devolution system that currently lacks structure, understanding and mutual respect, and even basic comprehension of how each of the four political-administrative sub-systems operate.<sup>99</sup> The foremost relevance of devolution (and its discontents) to this Inquiry is that people on the margins of each part of the system were rendered vulnerable by its flaws during the pandemic. That included Disabled people.<sup>100</sup> Resetting the quality and form of the four government relationships is something that all people have a stake in, because if these governments cannot co-produce and co-design with each other a planned response to mass emergency that respects and manages differences, that bodes badly for how other parts of the system can improve.

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<sup>92</sup> Gove [M2/INQ000083956/8-9]

<sup>93</sup> DPO M2 Closing [INQ000399541/34 §53]

<sup>94</sup> Henderson [INQ000269372/4 §1]

<sup>95</sup> Henderson [INQ000269372/10 §26] Wincott [INQ000411927/80 §§267-269] [T3/6/11-12]

<sup>96</sup> Wincott [INQ000411927/11-12 §25, 26(c), 27] [T3/21/3-7] [T3/21/8-24/6] Henderson [INQ000269372/42 §131, /56 §168, /61 §188] Drakeford [INQ000273747/52-3 §§185-188]

<sup>97</sup> Drakeford [T11/11/9-13/1] Henderson [INQ000269372/53 §161]

<sup>98</sup> Wincott [INQ000411927/11 §23, /80 §263] [T3/27/23-29/8] Drakeford [INQ000371209/92 §§297]

[T11/43/12-44/6]: see also Foster [INQ000274189/15 §41, /29 §§94-5] Locked Out [INQ000142176/39, 54]

<sup>99</sup> Wincott [INQ000411927/18 §39] [T3/31/14-33/4] DPO M2B Opening [T1/143/14-144/10]

<sup>100</sup> DPO M2B Oral Opening [T1/144/11-22]

## **PART B: RESILIENCE**

20. ULTIMATE QUESTION: The DPO therefore ask what would make the system more resilient in a future pandemic, or similar whole society crisis? That is the Inquiry's ultimate question. The DPO use Welsh Government as the case study. They use Disabled people as the litmus test as that is their concern, but also because vulnerability and impairment are part of the universal life cycle, and yet the disproportionate impact of that vulnerability is socially determined. A state that is truly responsive to that reality needs this Inquiry to help it find the coordinates of change.

### **[1]. SYSTEMS ARE VULNERABLE NOT PEOPLE**

21. STARTING POINT: The case of the DPO during these Government modules is that the system was vulnerable, not people. The opposite of vulnerability is resilience. Resilience is not a natural phenomenon. Some organisations, families or individuals might be more robust than others, but resilience is about assets and it is the state that plays a key role in generating, protecting and facilitating those assets.<sup>101</sup> This is truly the starting point. Overlooking this enables individualising the problem, overestimating that something will happen without intervention, or worse, accepting that nothing can be done.<sup>102</sup>

### **[2]. RESILIENCE IS COLLECTIVE**

22. SYSTEM: When witnesses talk of needing a better (whole-society) system of planning and response, that begs the question of what type of system. Systems that rely on individuals are not resilient. Thus, while it is tempting to think that things could be done better if there were only better people in place, and Minister Jane Hutt was valued by DPO in this regard while others have been criticised, a system that overly relies on personality lacks resilience because it is too dependent on singular points of failure, or singular points of success.<sup>103</sup> In a whole system crisis there clearly needs to be a better way than hoping that our leaders make the right judgment calls. There needs to be a more integrated system of collective resilience.

### **[3]. DEDICATED MACHINERY GENERATES RESILIENCE**

23. STRUCTURE: The beginning of that system would involve dedicated machinery with a core aim of generating resilience in UK, devolved and regional governments. That machinery

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<sup>101</sup> DPO M2 Opening 26.09.23 §§1.7-1.10: Fineman M. (2008) *The vulnerable subject: Anchoring equality in the human condition*. Yale Journal of Law & Feminism 20(1): 8–40

<sup>102</sup> Foster [T2/97/16-98/16] Cf. McNamara [M2/INQ000273841/53 §106]

<sup>103</sup> Foster [T2/95/1-23]: see DPO M2B Written Opening 20.02.24 p. 7 §3.7

has to be intergovernmental irrespective of whether UK Government takes a leading or facilitating role; and as such emergency planning must be designed into the constitutional function of intergovernmental relations.<sup>104</sup>

24. INEVITABLE INEQUALITY: The unequal impact of disasters is currently inevitable given how many policies and practices of modern government are embroiled in the problems of inequality. There must therefore be dedicated ministers at each level of government to mitigate the consequences of inequality, with emergency planning and response with regard to socially vulnerable groups a key part of portfolios.<sup>105</sup> Central Government machinery will need to be assisted by executive agencies that operate in partnership with local organisations (see Section [4] below). Government machinery also requires revamped independent Commissions concerned with Equality and Human Rights with more effective powers to act as interlocutors and challengers. Within all that machinery Disabled people must be recruited as leaders and managers, rather than simply being led.<sup>106</sup>

#### **[4]. CENTRE AND LOCALITY MUST BECOME MORE CONNECTED**

25. INTEGRATION: The effectiveness of any resilience system involves lateral and vertical integration between different parts of government. There is especially a need for connection between the centre and the local, including situational awareness working both ways. You cannot have circumstances, as befell the Welsh Local Government Association, where those who will have to deliver emergency services are the last to know about them. Likewise the notion of whether Welsh Local Authorities relied on the easement of care duties under Schedule 12 of the Coronavirus Act remained just that, a notion. No local authority filled out a form to say it was withdrawing services. Yet no audit has been done of the manner in which services and assessments were curtailed. That is the Welsh version of the problem. The gap between central and local power, and the extent to which Disabled people remained more excluded and less protected as consequence, was a UK wide issue.<sup>107</sup>
26. ORGANISATION: Part of the answer lies in creating a new and improved structure of national, regional and local resilience organisations, *not mere meetings*. Robert Jenrick, as Secretary of State for Local Government, knew them to be no more than that.<sup>108</sup> He admitted to COBR

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<sup>104</sup> Henderson [INQ000269372/63 §196 R1-R6]

<sup>105</sup> R Davies [INQ000410946/42 §112] Foster [T2/110/11-111/11]: see also Mallick [M2/T5/67/1-69/19] Tomlinson [M2/T20/167/18-169/3]

<sup>106</sup> Foster [T2/91/22-92/20]

<sup>107</sup> DPO M2 Closing [M2/INQ000399541/3 §7] DPO M2A Closing 23.02.24 p. 9 §16

<sup>108</sup> Jenrick GPSMIG meeting 17.03.20 [M2/INQ000056023/6]: see also Alexander and Mann [M1/INQ000203349/40 §§93-94] Sedwill [M2/INQ000250229/17 §64] Case [M2/INQ000207294/23 §3.23.2] Wormald [M2/INQ000280628/120 §§38-9] Lloyd [M1/INQ000177803/43 §160]

on 2 March that preparedness would be “*varied*”.<sup>109</sup> Matt Hancock added that they were “*a patch work and not all up to speed*”. All of the Devolved Administrations appeared naïve, if not negligent, in recording that they “*were content with their engagement with their Local Resilience Forum equivalents*”.<sup>110</sup> Mark Drakeford expressed that position at a time when readiness had not been assessed.<sup>111</sup> COSLA relied on self-assessment of Scottish Local Authorities, who regarded themselves when asked as ready to respond to the needs of vulnerable groups in the pandemic, including Disabled people, even though DPO had no involvement in any pre-pandemic planning, and there was no objective data to support their confidence.<sup>112</sup> There were in Wales, as in all the other nations, assumptions about the readiness and capacities of local authorities, health boards and care settings, which were essentially intuitive. Government assessment of the issue should have been informed by robust periodic inspection. Overall, Local Resilience Forums must have more specific statutory duties, adequate funding and external auditing. DPO, but also other third sector groups, must be enrolled into these organisations with status and funding. They can no longer be seen as some sort of amorphous voluntary populace whose views might be considered, without any structured core participation.

#### **[5]. TRAINING, LEARNING, PRACTICING**

27. PROVISION: If Governments want state organisations and personnel to deliver on resilience against inequality, they need to provide continuous training, learning and practice on how to do so, with particular focus on disability rights and inclusion.<sup>113</sup> In terms of training design, accreditation and delivery, it is crucial that DPO are properly involved and that content includes the lived expertise of Disabled people, carers, front-line workers and bereaved families.

#### **[6]. CO-PRODUCTION AND CO-DESIGN**

28. NOT JUST AN IDEA: Governments, civil servants, third sector and private sector all need to develop far greater skill in the practice of co-production and co-design. Professor John provides a description in this module of co-design “*which uses creative and participatory methods to engage citizens, stakeholders and officials in a series of steps which are*

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<sup>109</sup> COBR 02.03.20 [INQ000056217/5 §§6-7]

<sup>110</sup> WG Summary Note 02.03.20 [INQ000320806/2]: see also Whately [M2/INQ000273897/11-12 §§44-46] and Hancock [M2/INQ000232194/55 §230]

<sup>111</sup> Fn. 49 above

<sup>112</sup> Dickie [M2A/INQ000273700/8 §3.14]: see also Swinney [M1/T12/84/16-24]

<sup>113</sup> Atherton [INQ000391115/64 §§250(vii) (viii)] Wincott [INQ000411927/83 §274] Locked Out [INQ000142176/7]

*repeated, tweaked and improved with each cycle, to respond to shared problems. We then measure the impact of policies and communications on the basis of barriers and facilitators underpinned by transparency and ethical requirements*".<sup>114</sup> This chimes with Kamran Mallick's evidence in Module 2 describing "*the idea...that you don't bring people in at the end, once you've already designed something, you actually bring people in right at the outset.... And it's about ... ongoing conversations, so these are not consultations or meetings, these are ongoing processes, structured processes, where civil society is funded to engage with government*".<sup>115</sup> This language of "co-production" is not just an idea, it is a central tenet of Welsh Government policy and has been commended by a range of state and non-state actors in other modules.<sup>116</sup> It is a method important to DPO and central to the latest developments in international human rights law, obliging government to "*closely consult and actively involve*",<sup>117</sup> but its relevance is broader than that.

29. UTILITY: In Disaster management the aim of co-production and co-design is not just to be kind, but to be smart.<sup>118</sup> In the provision of scientific advice, it ensures that advice remains grounded in social reality. In response to emergency, as the British Red Cross would put it, it's about making your friends before you need them.<sup>119</sup> It is also not just about talking. As Jane Hutt suggests, it concerns acknowledgement of information shared, consideration of its relevance and feedback on what then happens.<sup>120</sup> It mitigates the lack of diversity and potential bias that occur when politicians and experts hold conversations only amongst themselves. It creates better outcomes if decisions are stress tested by those who will live and potentially die by them.
30. THE LOST PROPOSAL: The Inquiry will recall that the Disability Unit in the UK Cabinet Office wanted to create a National Disabled Peoples' Panel as part of its 'ambitious' planning that was never taken up.<sup>121</sup> There needs to be UK and Devolved Nation convened Task Forces

<sup>114</sup> John [INQ000286066/9 §4.6] Locked Out [INQ000142176/3] Foster [T2/86/24-88/5]

<sup>115</sup> Mallick [M2/T5/64/15-65/15]

<sup>116</sup> Drakeford [INQ000371209/6 §§18(d), 22-23] Welsh Government – A Healthier Wales [INQ000066130/17-18] Goodall [INQ000327735/26 §79] Foster [INQ000274189/24 §§73-77]: see also for UK, Sedwill [M2/INQ000182382/6] [M2/T20/151/16-153/20] Tomlinson [M2/T20/207/5-208/9] Cabinet Office (June 2022) [M2/INQ000180306/29 and 32]; and for Scotland Swinney [M1/INQ000185352/9 §26], COSLA [M2A/INQ000273690/29]; O'Donnell [M2/INQ000189722/20-21] Reicher [M2/INQ000273800/16 §47, /67 §198] Bear et al [M2/INQ000273376] Drury [M2/INQ000056551/10 §7(1-4)] SHRC [M2A/INQ000130421/11 §18] Feeley Review [M2A/INQ000280640/6, 22, 73]

<sup>117</sup> UNCRPD Art. 4(3) and UNCRPD UK Country Report (2017) [M2/INQ000182691/4 §§28-29]

<sup>118</sup> Bambra and Marmot [M1/INQ000195843/83 §199.4] Sendai Framework (March 2015) §19(d)

<sup>119</sup> Adamson [M1/T21/114/2-8] [M1/INQ000182613/17 §63]

<sup>120</sup> Hutt [INQ000366148/12 §42] Cf. R Davies [INQ000410946/8 §26, /28 §78] Foster [INQ000274189/6 §13, /28 §92] Herklots [INQ000276281/56 §14.3.2].

<sup>121</sup> Covid-O DU Submission 12.11.20 [INQ000083918/1 §§3.2 and Annex B pp 6-10] and DPO M2 Closing [INQ000399541/22 §34]

with DPO to co-produce emergency risk assessments and planning for Disabled people. That work then needs to be channelled into general planning at National, Devolved and regional levels of state.<sup>122</sup>

## **[7]. HUMAN RIGHTS ARE TOOLS FOR PROTECTION**

31. INCORPORATION: Human rights protection of Disabled people matters in pandemics because they are the people disproportionately affected. If Governments are committed to those rights then they need to show how they comply with them in this field, admit the gaps, and create legally enforceable means to resolve disputes of contested interpretation. Moreover, the learning of Government and the DPO during the pandemic is that it is clearly not enough to refer to rights without teaching them and detailing how they work. Wales has codified a requirement to consider the UNCRDP. It has created an obligation to have due regard to the UN Convention on the Rights of the Child since 2011. But these rights are not yet embedded in real time decision making, especially as regards emergency planning and data in relation to Disabled people. To secure those rights before they are needed, they need to be incorporated into the law of Wales, but also the law of the whole UK.<sup>123</sup>
32. ASSESSMENTS: If one is serious about human rights, equality and non-discrimination then the form filling and absence of real time scrutiny that has made the method of impact assessments impotent has to end. Across a range of equality and rights based mandatory considerations, impact assessments should involve both thinking and collaboration with the third sector, to make the discipline the centre of gravity of good governance and resilience building.<sup>124</sup>
33. ETHICS: Human rights provide a foundation for an applied system of ethics that produces practical and effective results. Ethical frameworks need to be established now that assist decision makers during the emergencies of the future to make difficult choices, but also recognise positive obligations to socially vulnerable groups. Those groups are entitled to reciprocity for the sacrifices they will need to make during emergencies which are known to be at a greater human cost than others. These frameworks should be informed by human rights principles, including the decision-making tool of proportionality. The frameworks should be co-designed with those to whom the positive obligations will apply, including

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<sup>122</sup> HC WESC, *The National Disability Strategy* First Report of Session 2023–24 08.11.23 §§20-28

<sup>123</sup> DPO M2 Closing [INQ000399541/35 §56] DPO M2A Closing 23.02.24 pp 18-19 §§35-37]: see also Locked Out [INQ000142176/7-8] SHRC [M2A/INQ000130421/11 §§22-23] SRAB [M2A/INQ000182792/42]

<sup>124</sup> Foster [T2/100/18-101/9] Holland [T2/183/10-184/8] [T2/186/2-4]



Disabled people. For them the UNCRDP is the globally endorsed fundamental ethical toolkit.

#### **[8]. DATA IS HUMAN ACCOUNTING AND CRITICAL TO DEMOCRACY**

34. HUMAN RIGHTS: All the Inquiry Modules thus far have shown the profound weaknesses in data systems and analysis.<sup>125</sup> Professor Diamond told the Inquiry that “*Disability... is a major gap of our country*”. According to Diamond the issue is still under “*conversation*”<sup>126</sup> with granularity on individual impairments lacking, and the social and intersectional dimensions of Disabled people’s lives not being registered. Neither local resilience nor effective delivery to the people who need it will properly exist without a more sophisticated system of data collection and its deployment. The ONS did a good job at the top of the structure, but there needs to be a far wider network of data collection, distribution and analysis, with the technology to assist it. We are supposed to be in the midst of an information revolution, but its possibilities have not yet reached the interests of marginalised people. This is an issue of human rights, because the gaps in the system amount to a failure of human accounting; of rendering patterns of inequalities and harm invisible when they should be prominent.
35. CAPACITY: There has to be a means to extract and monitor in a timely and reliable fashion inequality data in order to inform policy.<sup>127</sup> There needs to be a practice of co-production and co-design of services by DPO and other representative groups to enable national data projects to happen in a way that can be trusted not only by government but by those who are governed.<sup>128</sup> It is important for Disabled people to understand that data collection will not double down on the medical model of their conditions.<sup>129</sup> Likewise, there need to be strong links with Third Sector groups, anchored in local communities, who can gather intelligence on who is in need of support beyond more conventional GP lists and other services.<sup>130</sup>
36. TRANSPARENCY: The stance of the Welsh Cabinet of 4 March 2020 when presented with a Realistic Worse Case Scenario of 25,000 fatalities was to refrain from sudden action “to

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<sup>125</sup> DPO M2 Closing [INQ000399541/23-25 §§35-37] DPO M2A Closing 23.02.24 p. 12 §§23-26]

<sup>126</sup> Diamond [T3/95/19-96/3] Bell [M2/INQ000198850 §116] ONS (07.06.22) [INQ000089787/17, 22-23]

<sup>127</sup> Atherton [INQ000391115/63 §250(iii)]

<sup>128</sup> John [INQ000286066/37 §§6.75-6.79] [T4/129/14-132/3] Bennée [INQ000366137/64 §216]: see also Freeguard [INQ000260629/48 §§95, 97, /57 §§113-4]

<sup>129</sup> Locked Out Report [INQ000142176/18-22] Foster [INQ000274189/7 §§15-17]

<sup>130</sup> Watson & Shakespeare [INQ000280067/12 §38] and Scottish Community Alliance, Lessons Learned 30.06.20 [M2/INQ000075375/1-6]: see also see also Cullingworth, J et al “*They have been a saving grace in all this*”: the role of the third sector in disabled people’s experiences of COVID-19 and implications for sector–state relations, (2022) Voluntary Sector Review, 2022: 1–18, pp 1-2, 15

*help prevent panic amongst the general population*".<sup>131</sup> There was similar reticence about sharing these assessments by the UK Government, as if people were somehow too irrational to handle that information and it was up to the Government alone to think matters through.<sup>132</sup> The work on social psychology over the last 50 years has queried that view as unevidenced and counter-productive.<sup>133</sup> Contrary to popular belief, people do not panic or fatigue when they become sufficiently aware of crisis and their mutual inter-dependence.<sup>134</sup> The problem was analysed in depth by the BSE Inquiry in 2002 that found it wrong of Ministers, officials and the scientific advisory committee alike to be "*shaped by a consuming fear of provoking an irrational public scare*".<sup>135</sup> It was the "*firm conclusion*" of Lord Phillips and his panel that "*a policy of openness is the correct approach*". The Inquiry recommended that to establish credibility it is necessary to generate trust; trust can only be generated by openness; openness requires recognition of uncertainty, where it exists; the importance of precautionary measures should not be played down on the grounds that the risk is unproved; the public should be trusted to respond rationally to openness; scientific investigation of risk should be open and transparent; and the advice and the reasoning of advisory committees should be made public.<sup>136</sup>

## **[9]. RESILIENCE IS IN PEOPLE**

37. CONNECTION: The approach of "collective resilience" replaces an emphasis on the deficiencies of individuals, with a focus on social relationships between individuals.<sup>137</sup> However, words like resilience and subsidiarity mean nothing without organised networks of networks to channel communication, advice and action from below and above.<sup>138</sup> Harnessing the positive qualities of people and groups requires proper integration between state and society. This is not merely a communication exercise. It is about structure and planned action. To take future shielding as an example; there need to be structures and prepared pathways that enable government decisions to connect directly with those who are shielded, in terms of contacts, relationships, data sharing and stakeholders.<sup>139</sup> For

<sup>131</sup> CAB Minute 04.03.20 [INQ000048789/3 §§2.6, 2.9]

<sup>132</sup> COBR 29.01.20 [INQ000056226/6 §12] 05.02.20 [INQ000056215 §11] 18.02.20 [INQ000056227/7 §18]

<sup>133</sup> Reicher [M2/INQ000273800/3-5 §§9-13]: see also Drury J. (2018) *The role of social identity processes in mass emergency behaviour: An integrative review* European Review of Social Psychology, 29:1, 38-81 [INQ000273351]

<sup>134</sup> Reicher [M2/INQ000273800/53 §§159-160]: see also Clarke L. (2002), *Panic: Myth or Reality?* Contexts, 1(3), 21-26. [M2/INQ000280394]

<sup>135</sup> The Inquiry into BSE and variant CJD in the UK Vol. 1 Findings and Conclusions, Ch. 14 §1294

<sup>136</sup> Op Cit, Ch. 14 §1301

<sup>137</sup> Reicher [M2/INQ000273800/4 §11]

<sup>138</sup> John [INQ000286066/48 §§9.13-9.15]

<sup>139</sup> Atherton [INQ000391115/66 §255]

Disabled people inclusive communication is vital and has already been the subject of proposals and activity to end digital exclusion, but not by way of a pan-UK program.<sup>140</sup>

38. HUMAN GEOGRAPHY: There needs to be organised, practised, data-informed, inclusive and valued connection between the centres of power and the critical parts of the human geography that whole-society crisis response must be able to reach and collaborate across. That includes independent experts and agencies, those who deliver on the ground, whether it is local government, other Category 1 responders, the Third or the private sector. But also the people, families, streets and communities that make up every day ordinary life, the very essence of what government is there to protect. From the WHO downwards, the public health and group psychology advice is that people are the solution during crisis.<sup>141</sup> Group identity will remain important, and in that respect, the culture and communities that align with the four nations territories and regions within them will remain important in terms of consent and support for measures designed to assist collective and not just individual well-being.<sup>142</sup> However, it is important to understand people beyond single identities. For Disabled people that is particularly important, because the security of their rights relies on “*Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity*” (UNCRDP Art. 3(d)).

**[10]. ECONOMICS CAN BE MORE HUMAN CENTRED**

39. VALUE(S): All of these changes need funding, and that leads to the moral economics of all that underpins this Inquiry’s subject matter. The Inquiry has heard DPO submissions that human rights will not be enough in a pandemic without social and economic rights.<sup>143</sup> The Chair will come to her own view of whether or how much to express that in accordance with the Inquiry’s terms of reference. At the very least it is important through the Inquiry’s reporting to make visible the human price of inequalities and the cost in life and suffering that was paid for failing to build more resilient systems.
40. RIGHTS BASED BUDGETING: In concrete terms the DPO want equality and human rights impact assessments to be applied to budgeting,<sup>144</sup> including the duty to consider socio-economic disadvantage under section 1 of the Equality Act; and they want all governments

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<sup>140</sup> Foster [INQ000274189/17 §49] Locked Out [INQ000142176/ 61-62, 67-68, 70-71]: see also Watson & Shakespeare [M2/INQ000280067/8 §§25-26] [M2/T5/35/16-40/8] Cf. Response to the SRAB Report [M2A/INQ000366047/15,17] DU Submission 12.11.20 [INQ000083918/1 §3.3 and Annex C pp 10-14]

<sup>141</sup> Reicher et al [M2/INQ000273366] [M2/INQ000281416/6] Drakeford [INQ000371209/5 §§18(d)]

<sup>142</sup> Wincott [INQ000411927/15 §35] Reicher [M2A/INQ000370347/5 §§12-13] [M2A/T7/92/25-94/12] [M2A/T7/107/25-110/25]

<sup>143</sup> DPO M2 Closing [INQ000399541/28 §§43-45] DPO M2A Closing 23.02.24 §§28-29, 39

<sup>144</sup> Locked Out [INQ000142176/ 71-72]: see also SHRC [M2A/INQ000130421/9 §11, /43 §6]

to practice co-production and co-design of economics with all its people, and not just more powerful elites. Had that be done before the pandemic, then all governments would have had to acknowledge and risk assess the consequences of cuts to benefits and social services as part and parcel of their emergency planning.<sup>145</sup> More research needs to be done on schemes of payment not to work and universal income in times of crisis that go beyond standard protection of those on salaried contracts, with the care sector being the key area to consider.<sup>146</sup> As to intergovernmental relations, there must be a means to fund emergency preparedness and response outside of the Barnett formula, with better methods to enable financial response to emergency that does not amount to English control of variable needs across the four nations.<sup>147</sup>

## **CONCLUSION**

41. The Inquiry has endeavoured, as the DPO accept it must, to avoid judging party political differences. Yet, as submitted at the close of Module 2, it would be highly political to accept a status quo that made it inevitable that certain sections of society would die and suffer so much more during the pandemic than others.<sup>148</sup> On any view the changes now needed to avoid pandemic inequalities must involve considerable and progressive effort to make democracy more social again, and more socially responsive than it has been for some time. The recommendations advanced by the DPO and other civil society core participants are about putting inter-dependency, interconnectedness, and a shared ethics, into the forefront of how society prepares and responds to similar disaster in the future. Rhodri Morgan, one of the architects of the modern government of Wales, said that Devolution would create a “*living laboratory*” in which different policy ideas could be explored.<sup>149</sup> The Covid pandemic caused some of the great and tragic living experiments of our time. It is this Inquiry in its investigation across the four UK nations that must gather the learning up and make its recommendations.

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**5 APRIL 2024**

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<sup>145</sup> Watson & Shakespeare [INQ000280067/10 §§31-36, /12 §41] [M2/T5/31/6-35/2]

<sup>146</sup> Reicher [M2A/INQ000370347/31 §§67-68, /64 §131] [M2A/T7/124/2-125/23] Smith [M2A/INQ000273978 §622] Vallance [M2/INQ000273901/164] Halpern [M2/INQ000391415/2 §§5-8]

<sup>147</sup> Henderson [INQ000269372/62 §194, /63 §197 R9]

<sup>148</sup> DPO M2 Closing [M2/INQ000399541/36 §§57-60]

<sup>149</sup> Morgan *Clear Red Water*, Swansea 2002 Henderson [INQ000269372/8 §14] Wincott [T3/14/10-21]