

Wednesday, 11 December 2024

(10.30 am)

LADY HALLETT: Good morning. This is the second preliminary hearing for Module 5, procurement, and Mr Richard Wald KC will now explain the issues that I have to consider this morning.

Submissions by LEAD COUNSEL TO THE INQUIRY for MODULE 5

MR WALD: Thank you, my Lady, I am Rich Wald and I am senior counsel responsible for the preparation and delivery for matters falling within the ambit of Module 5, which deals with the procurement and distribution to end users across the four nations of the United Kingdom of key healthcare-related equipment and supplies during the pandemic.

I appear at this preliminary hearing along with my learned friends Mr Sharma, Mr Stoate, Ms Shehadeh and Ms Gardiner who comprise with me the counsel team for Module 5. The first preliminary hearing in Module 5 took place on Tuesday 6 February 2024. This is the second -- and it is anticipated final -- preliminary hearing in this module ahead of the public hearings which will run between 3 and 27 March of next year, 2025.

As well as being provided with regular progress updates, Core Participants have received, ahead of

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apparent in a few moments, that the National Crime Agency, or NCA, and the Crown Prosecution Service, CPS, represented respectively by Fiona Barton of King's Counsel and Jonathan Polnay, also of King's Counsel, are present at today's hearing.

Written submissions for today's hearing have been received jointly from the Covid-19 Bereaved Families for Justice UK and Northern Ireland, who also provided written observations on the M5 draft list of issues. We have also received written submissions from Covid-19 Bereaved Families for Justice Cymru, joint submissions on behalf of Covid-19 Bereaved Families for Justice UK, and Northern Ireland Covid-19 Bereaved Families for Justice, Scottish Covid Bereaved, the Federation of Ethnic Minority Healthcare Organisations, or FEMHO, the Scottish Government and the United Kingdom Anti-Corruption Coalition.

We are very grateful to them for having provided us with their observations and insights which you, my Lady, and your legal team have considered carefully.

I believe you will be hearing oral submissions from five of these Core Participants in due course today.

Moving, then, my Lady, to the topics just indicated and in turn, starting with an update on Rule 9 requests.

As we set out in our CTI note, as I will also

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today's hearing, a CTI note dated 15 November 2024 which addresses in brief the issues for this hearing and provides a public update on the Inquiry's work so far.

In accordance with the agenda for this preliminary hearing, I will address you, my Lady, so far as this Module is concerned, on the following areas: an update on Rule 9 requests, disclosure to Core Participants, the approach to the investigation and hearing, the list of issues for Module 5, the expert witnesses in Module 5, Every Story Matters, the timetable for this module, opening and closing statements; and the public hearing dates.

But before that, a quick word on Core Participants, if I may.

My Lady, I do not propose to reintroduce the Module 5 Core Participants on or their legal representatives, given that all but one of these appeared before you at the first preliminary hearing on 6 February this year. Of the 24 Core Participants who contribute to Module 5, one, however, obtained that status between the last preliminary hearing and this one, and should therefore be introduced. It is the British Medical Association, represented by Brian Stanton of Innovo Law.

I should also add, for reasons which will become

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reiterate briefly now, this module of the Inquiry has now issued a total of 279 formal requests for evidence pursuant to Rule 9 of the Inquiry Rules of 2006. The monthly Module 5 solicitor team update notes provided details to Core Participants of the recipients of the Rule 9 requests, and an overview of the topics raised with them. In very brief summary, Rule 9 requests have been sent to:

The major UK Government and devolved administration departments, and directorates involved in procurement of key healthcare equipment and supplies during the pandemic, including a number of individuals within them;

The NHS and other organisations involved in procurement, including public health bodies and a number of individual NHS Trusts and health boards in England, Scotland, Wales and Northern Ireland;

A range of health unions, including the British Medical Association and Royal College of Nursing, associations including the NHS Confederation;

Research bodies and civil society organisations such as the UK Anti-Corruption Coalition;

A range of care sector bodies, including the National Care Association and Care Provider Alliance, in England Scotland Wales and Northern Ireland;

The regulatory agencies with an important role in

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1 procurement during the pandemic.

2 The major investigatory enforcement and prosecution

3 authorities for the UK and devolved administrations;

4 A number of local authorities;

5 Groups and individuals concerned with equalities in

6 the UK, including the Runnymede Trust and Voluntary

7 Organisations Disability Group;

8 Industry bodies, including the Confederation of

9 British Industry, Federation of Small Businesses and the

10 UK Bioindustry Association;

11 Individual companies, primarily those involved in

12 the Ventilator Challenge;

13 And finally, a range of private sector consultancies

14 which advised the government on procurement,

15 distribution and supply chain resilience during the

16 pandemic.

17 This module is focused on the procurement of key

18 healthcare equipment and supplies, and on the associated

19 structures, processes and core decision-making during

20 the pandemic. It will examine systemic issues in order

21 to learn important lessons for the future. The focus of

22 this module will be on procurement of PPE, ventilators,

23 lateral flow tests and PCR test kits.

24 The Inquiry considers that these four areas of

25 procurement highlight different examples of how the

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1 informed through the monthly Module 5 solicitor team

2 update notes and they will, of course, receive copies of

3 the evidence and disclosure generated by the requests.

4 The Inquiry is grateful to recipients of Rule 9

5 requests for the efforts they have made to comply with

6 these in a timely manner. We acknowledge that the

7 preparation for each hearing is demanding, for both

8 material providers and the Inquiry alike, and that for

9 some material providers and government departments, this

10 has been a very onerous task, particularly for those

11 facing the dual challenge of deadlines in other Inquiry

12 modules and those imposed in this one.

13 We are disappointed that in some instances,

14 significant delays have occurred in the provision of

15 material to the Inquiry. In certain cases, ongoing

16 criminal investigations or civil litigation have

17 required the Inquiry to agree processes with government

18 departments for disclosure of material and where there

19 have been particular sensitivities, to issue section 21

20 notices in order to receive disclosure of material.

21 Where necessary, extensions to proposed deadlines

22 have been agreed to allow government departments,

23 organisations, and individuals to focus on providing

24 responses to requests made in earlier Inquiry modules,

25 or where disclosure requests have been more complex

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1 system operated, which will enable the Inquiry to

2 effectively investigate the issues outlined in the list

3 of issues.

4 These are, firstly, procurement of large volumes of

5 goods, so PPE; procurement of specialist medical

6 equipment, of which the best example is ventilators; and

7 procurement of testing equipment, so PCRs and LFTs.

8 To conduct an effective investigation the Inquiry

9 team does not consider that it is generally necessary to

10 seek evidence from individual companies about specific

11 offers of PPE. Instead, the focus of this area of the

12 investigation is on the actions taken by those in

13 receipt of the offer, and how the system responded in

14 line with the topics outlined in this module's list of

15 issues. It continues to keep this under review, but at

16 this stage, does not anticipate its focus will be on

17 hearing from specific companies or individuals connected

18 to them about particular contracts for PPE.

19 Such evidence is unlikely to assist the Inquiry's

20 understanding of the institutional or systemic response

21 to the challenges of public procurement of key health

22 care equipment and supplies during the pandemic. It

23 remains the Inquiry's approach that Core Participants

24 will not be provided with copies of Rule 9 requests.

25 They will, however, continue to be kept properly

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1 and/or extensive.

2 There is no skirting around the fact that these

3 delays have had an impact on the approach which the

4 module has been able to take to the investigation and

5 this is a matter to which I will return briefly in a few

6 moments.

7 We will, of course, ensure that Core Participants

8 continue to be updated through the monthly Module 5

9 solicitor team update notes but we believe we are close

10 to the end of the process of sending Rule 9 requests to

11 government departments, organisations, and individuals.

12 My Lady, I turn now then to the next topic:

13 disclosure to Core Participants. A large number of

14 documents in this module contain sensitive or

15 confidential information which may fall within

16 a category of material under section 19(5) of the

17 Inquiries Act of 2005, which is to say the disclosure of

18 which might cause harm or damage within the meaning of

19 that Act, such that your Ladyship may decide to restrict

20 that disclosure or publication.

21 As a result, there are number of significant

22 processes and checks through which documents must

23 progress prior to any disclosure to Core Participants.

24 It has taken time for the module team to work with the

25 material providers, interested third parties, and

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1 investigating or prosecuting authorities to establish
2 a robust approach to the review, redaction, and
3 disclosure of relevant material.

4 These are now operating effectively, but the number
5 of checks through which each document must, of
6 necessity, pass, means that it takes significantly
7 longer for a document identified as relevant in this
8 module to be disclosed to Core Participants than would
9 otherwise be the case.

10 The module team continues to work hard to ensure
11 that this process operates as quickly and efficiently as
12 possible.

13 As at the date of this hearing, the Module 5 team
14 has disclosed 5,836 relevant documents. Publicly
15 available material relevant to the scope of this module
16 has already been disclosed.

17 The Inquiry expects to make further significant
18 tranches of disclosure in the coming weeks, including
19 further final signed witness statements and exhibits.

20 Back in January of this year, the Inquiry commenced
21 engagement with the NCA about one particular ongoing
22 criminal investigation which overlaps with Module 5.

23 This relates to the NCA investigation into the
24 contracts awarded to PPE Medpro and individuals
25 associated with those deals.

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1 you, my Lady, and the Inquiry legal team. My Lady, you
2 of course will be anxious to ensure that as much
3 relevant material and as much of this investigation as
4 possible is heard in public. Equally, you will no doubt
5 be mindful of the need carefully to consider the risk of
6 any harm, and/or damage said to be caused by disclosure
7 or publication by the Inquiry of relevant material which
8 touches on ongoing criminal investigations and possible
9 prosecutions and any steps that could be taken to
10 mitigate those risks, if satisfied that the criteria
11 under section 19 of the Act are met.

12 The Inquiry plans to provide more information about
13 this and an opportunity for Core Participants to provide
14 written representations in the next few days.

15 As the Inquiry will not in any event be seeking
16 evidence from the private suppliers of PPE which may be
17 the subject of criminal investigation, undertakings from
18 the Attorney General, as have been suggested by CBFFJ UK
19 and Northern Ireland about the use of such material,
20 will not be necessary.

21 My Lady, turning to our approach to the
22 investigation and hearing. We set out in our CTI note
23 that the Inquiry team intends to adopt a thematic
24 approach to its interrogation of the evidence and the
25 hearing, having previously considered whether case

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1 Although the CPS is not instructed in relation to
2 the investigation, it has been involved in these
3 discussions from an early stage. The Inquiry has sought
4 to understand the NCA's and CPS's respective positions
5 in relation to PPE Medpro and in particular, as to any
6 risks relating to the investigation or potential
7 prosecution that may arise if the Inquiry were to
8 examine, at the public hearings in March of next year,
9 issues relevant to the scope of Module 5 arising from
10 its contracts. These efforts to seek clarification were
11 made at an early stage, given the need to review
12 material, gather evidence, and understand any particular
13 sensitivities in the investigation and how these could
14 be navigated.

15 Suffice it to say that it has not been
16 a straightforward process, but there has been regular
17 dialogue in the intervening months, aimed at clarifying
18 matters.

19 On 9 December, some 11 months after engagement
20 began, the Inquiry received an application from the NCA
21 for a restriction order over material in the Inquiry's
22 possession which relates to its investigation into
23 PPE Medpro. The CPS has provided a note which states
24 that it neither supports nor opposes the application.

25 The application is currently under consideration by
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1 studies, following a number of contracts from offer
2 through to conclusion, would be the appropriate method
3 of examining systemic issues in procurement during the
4 pandemic.

5 From the review of the evidence received to date,
6 the Inquiry team has identified a number of themes by
7 means of which it considers the Module 5 outline of
8 scope and wider Inquiry terms of reference will be met.
9 These are, first, structures, systems and processes;
10 next, data analysis; third, skills, expertise and
11 experience; fourth, emergency trade and industrial
12 strategy; fifth, regulation and inspection; and finally,
13 governance, transparency, and accountability.

14 Further detail about these themes includes likely
15 exploration of the approach in the UK and devolved
16 administrations to pandemic stockpiles including their
17 adequacy, accessibility, and appropriateness for the
18 range of physical characteristics of the health and
19 social care workforce, insofar as this is not addressed
20 in other modules.

21 Next, the key structures, systems and processes for
22 procurement and how they worked in practice. This will
23 include an examination of modelling, gathering and
24 analysing inventory data, due diligence, contract terms,
25 advanced payments and risk, the role of intermediaries

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1 and how value for money was assessed and spending
2 controls applied. In this thematic review, the Inquiry
3 will focus on important aspects of contracts awarded as
4 part of the Chinabuy, Newbuy, and UK Make strategies.

5 Third, the establishment of the VIP or High Priority
6 Lane. The Inquiry will consider issues including its
7 purpose and performance, vulnerability to influence by
8 high profile individuals, the level of pressure exerted
9 by referrers and suppliers on officials and an analysis
10 of the key features of the contracts awarded, including
11 their overall value for money.

12 Next, the effectiveness of the logistics and
13 distribution systems in England Scotland, Wales and
14 Northern Ireland. This will include an examination of
15 the role of the Ministry of Defence and private
16 companies in the distribution of key healthcare related
17 equipment and supplies, including to the care sector.

18 My Lady, next, the skills, expertise and experience
19 in government for the emergency procurement and
20 distribution of key healthcare equipment and supplies.

21 The Inquiry will consider the analysis, advice,
22 leadership and support provided by special appointees
23 and consultants from the private sector during the
24 pandemic.

25 The reliance of the UK and devolved administrations

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1 about contracts during the award process; fourth, the
2 approach to due diligence and risk; and fifth and
3 finally intermediaries between government and
4 manufacturers.

5 In their joint written submissions for this hearing,
6 CBFFJ UK and Northern Ireland raise concerns about the
7 approach to how specific contracts will be examined in
8 the context of our proposed thematic approach. We
9 agree, of course, that it is important to the Inquiry's
10 terms of reference that it considers the operation of
11 emergency procurement processes and procedures in
12 practice, the delays on the part of government
13 departments to which I have already made reference in
14 providing information and material to the Inquiry, and
15 in some cases, the failure on the part of government
16 departments to provide disclosure in line with the
17 deadlines set by the Inquiry have, frankly, been
18 disappointing.

19 As a result of these, it has not been possible for
20 the Inquiry to receive disclosure of every document and
21 accompanying witness evidence for specific contracts in
22 order to use a chronology of the contract as the vehicle
23 by which the Inquiry investigates the issues identified
24 in the scope for Module 5 and the list of issues as well
25 as the Inquiry's wider terms of reference.

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1 on global supply chains and domestic manufacturing to
2 support the procurement of key healthcare equipment and
3 supplies is the next theme or topic. This theme will
4 include consideration of supply chain resilience and
5 risk during the pandemic and the so-called call to arms.

6 One from last of these themes, the institutions and
7 systems for the effective regulation and inspection of
8 key healthcare equipment and supplies procured during
9 the pandemic. The Inquiry will examine their
10 effectiveness and whether they provided a coherent,
11 efficient, and systematic scheme to protect the safety
12 of end users.

13 Finally, the roles of governance, transparency, and
14 accountability in the award and publication of contract
15 information during an acute emergency.

16 As part of the examination of this theme, the
17 Inquiry will consider at a high level the use of
18 criminal investigations and civil enforcement action
19 against individuals and companies.

20 The Inquiry team intends to examine key aspects of
21 a number of contracts as illustrative examples of the
22 above themes and this list of themes is likely to
23 include: first, value for money; second, the effect, if
24 any, of a contract being in the High Priority Lane;
25 third, the impact, if any, of contact from referrers

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1 Following careful consideration of the evidence
2 received to date, we consider that it is nonetheless
3 possible to highlight key themes using particular points
4 identified within the contractual timelines. It is not
5 the approach which the Inquiry would have preferred to
6 take, but it is one which we will still ensure that you,
7 my Lady, Core Participants and the public, will
8 understand the key general principles and issues by
9 reference to real world examples and which will assist
10 you in reaching conclusions and making any relevant
11 recommendations.

12 The Inquiry team has sent out number of Rule 9
13 requests to government departments seeking evidence of
14 the contracts awarded, including in relation to price,
15 volume, risk, conflicts of interest and performance. We
16 have also sought detailed information about particular
17 contracts identified as part of the evidential review
18 process. Where relevant, this material is being
19 disclosed to Core Participants. We are confident,
20 my Lady, that we will be in a position to focus on and
21 examine the most important aspects of the various
22 contracts that we have selected in order to fulfil the
23 module's scope and the Inquiry's terms of reference.

24 Work continues on the review of relevant materials
25 and requests for further evidence relating to these

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1 contracts are likely to be made in the coming weeks.
 2 The Inquiry will liaise closely with the relevant
 3 organisations to provide clear instructions as to its
 4 priorities to ensure that it has all relevant material
 5 to effectively meet the Module 5 outline of scope and
 6 the Inquiry's terms of reference.

7 Turning, my Lady now, to the list of issues for
 8 Module 5.

9 As CPs are aware and as I had now mentioned, in
 10 advance of this hearing a draft list of issues was
 11 provided with our CTI note which was intended as an
 12 indicative guide to the topics proposed for exploration
 13 within the Module 5 investigation. As will be clear
 14 from the update notes provided to CPs, and as will be
 15 apparent in due course as further statements and
 16 material are disclosed, we have undertaken significant
 17 investigatory work across Module 5 scope within each of
 18 the devolved administrations of the UK. I make it clear
 19 that the timetabling of this module will inevitably
 20 reflect the quantity of procurement, of key healthcare
 21 equipment and supplies across the four nations, as well
 22 as the relative volumes of items procured and relative
 23 spend on PPE.

24 Cooperation between the UK and devolved
 25 administrations, including by mutual aid in the

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1 the procurement and distribution of key healthcare
 2 equipment and supplies during the pandemic?

3 And at paragraph 23(b) which refers to "contract
 4 terms, advance payments and risk" should be expanded
 5 specifically to look at the availability of a formal
 6 mechanism for the devolved administrations to request
 7 and access emergency funding from the UK Government to
 8 support procurement.

9 While the focus in Module 5 is not specifically
 10 these broader funding issues, we acknowledge that
 11 funding from UK Central Government is relevant, and it
 12 will be dealt with in evidence in providing the context
 13 of procurement decisions which affected the devolved
 14 nations.

15 Module 5 will examine how the four nations of the
 16 United Kingdom worked together in the procurement of key
 17 healthcare equipment and supplies during the pandemic,
 18 and our view, my Lady, is that the issue raised by the
 19 Scottish Government does fall within structures and
 20 systems we have already outlined.

21 The submissions provided by FEMHO rightly remind the
 22 Inquiry to ensure that inequality remains a guiding
 23 principle in all its investigations with specific
 24 attention to procurement policies and their disparate
 25 impacts. I want to reassure FEMHO, all CPs, and the

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1 purchasing and distribution of PPE, is also being
 2 examined. It is not our intention to solely carry out
 3 a high-level review of procurement at a UK level and
 4 apply that to the devolved nations. There will be
 5 analysis and reference of contracts from across the
 6 devolved administrations, where they highlight
 7 particular points as outlined a few moments ago in
 8 relation to the approach to this module.

9 As for submissions made by CBFFJ Cymru to the effect
 10 that each paragraph of the list of issues should
 11 explicitly refer to the devolved administrations, each
 12 of the issues will be considered from the perspective of
 13 all of the devolved nations, an approach which this
 14 module, like the Inquiry as a whole, has in any event
 15 had firmly in mind throughout the Inquiry process.

16 The submissions of the Scottish Government note that
 17 issues that arose in Scotland due to the urgent need to
 18 procure key healthcare equipment in a situation where,
 19 as they put it, a UK Government was not guaranteeing
 20 consequential funding that might pay for that
 21 procurement. The Scottish Government suggests that
 22 paragraph 5 of the draft list of issues we've circulated
 23 to Core Participants asks: were the institutions,
 24 structures, systems and tools in the UK and devolved
 25 administrations adequate, adaptable and effective for

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1 public, that we will do so. Questions about inequality
 2 have been asked of a wide range of organisational and
 3 individual witnesses, and as further disclosure of
 4 evidence to CPs in this module is made, that will --
 5 this will become clear.

6 Like the Inquiry as a whole, we have striven and
 7 will continue to strive to ensure that inequality
 8 considerations are woven into the recommendations which
 9 arise from this module, and we propose to amend our
 10 draft list of issues to include at its start a note to
 11 make this important point more explicit.

12 I do, however, need to make clear, my Lady, first,
 13 that Module 5 cannot and will not be covering terrain
 14 already covered in, for example, Module 3, which
 15 looked at healthcare systems, but will consider issues
 16 of inequality in the context of structures and systems
 17 for procurement in the pandemic, as well as in decisions
 18 about what to buy.

19 And secondly, as explained earlier, we will be
 20 focusing on the procurement of PPE, ventilators, and
 21 testing equipment as the most significant areas of
 22 healthcare procurement in the pandemic.

23 Turning now briefly to some of the specific issues
 24 raised in the various CP submissions, the joint
 25 submissions of CBFFJ UK and Northern Ireland welcome the

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1 module's focus on the resilience of the stockpile
2 arrangements but raise what they describe as potential
3 for a blind spot in relation to efficacy of the PPE
4 equipment contained within those stockpiles.

5 This is an issue on which evidence has already been
6 heard in the Module 3 public hearings, including, to
7 varying degrees from the Royal College of Nursing,
8 UKHSA, the BMA, and the HSE, and will be considered in
9 Module 5 as the backdrop to what key healthcare
10 equipment and supplies were procured during the
11 pandemic.

12 The module will examine procurement including how
13 issues of quality, fit, testing, and operation were
14 taken into account when decisions were made as to what
15 to procure to the extent that these matters are
16 relevant.

17 CBFFJ UK and Northern Ireland raised the importance
18 of the way in which contracts were awarded by government
19 under emergency procurement processes such as the High
20 Priority or VIP Lane.

21 These are issues which are being and will continue
22 to be investigated within Module 5.

23 CBFFJ UK and Northern Ireland further make the point
24 that their members have relevant evidence to give in
25 relation to the consequences and impact of difficulties

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1 investment into, culturally competent and sensitive
2 healthcare equipment including PPE.

3 Due consideration will be given to this evidence to
4 inform the questioning of those charged with
5 procurement, avoiding duplication, and using the
6 Inquiry's time efficiently.

7 FEMHO repeats its request that Core Participants
8 should provide position statements. While this has been
9 kept under review, my Lady, we remain of the view that
10 this is unnecessary. We consider that the witness
11 statements we have obtained, and which will be disclosed
12 in due course, provide a sufficiently clear picture of
13 state CPs' positions of the areas within Module 5.

14 Finally, we note that last week on 2 December the
15 government announced the appointment of its Covid
16 Corruption Commissioner, Tom Hayhoe. The Inquiry has
17 sought and will consider evidence from the Treasury
18 regarding this appointment which will be disclosed to
19 Core Participants.

20 As for the details of the terms of his appointment
21 currently available, it appears that the commissioner's
22 aims will be different to those of this module with the
23 former focused on looking at individual contracts made
24 during the pandemic, with a view to recouping public
25 money, and the latter being concerned with the operation

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1 in accessing appropriate medical equipment and supplies.

2 The importance of procuring suitable equipment for
3 use by frontline workers is not, of course, lost on this
4 Inquiry. The focus of this module is how the systems
5 operated to ensure that frontline workers had what they
6 required to safely carry out their roles. Although
7 important to bear in mind their experiences in using the
8 equipment, the focus of this module is not on these
9 experiences. It is on the decisions to procure that
10 equipment, including in relation to its specification
11 and suitability for use. We have sought evidence from
12 a number of NHS trusts and unions regarding availability
13 and suitability of kit which was procured and used in
14 order to inform the approach to the analysis of evidence
15 and list of issues.

16 Where appropriate, we have redisclosed evidence from
17 other modules on this issue. A number of issues raised
18 by FEMHO in its submission to Module 5 have been
19 addressed in Module 3. For example, Habib Naqvi, chief
20 executive of the NHS Race and Health Observatory, told
21 the Inquiry that issues such as lack of representation
22 in clinical trials for key healthcare supplies should be
23 viewed in the context of pre-existing inequalities, and
24 Professor Jaswinder Singh Bamrah, on behalf of FEMHO,
25 told the Inquiry there must be a review of and

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1 of the systems and processes for procurement during the
2 pandemic.

3 Turning now, my Lady, to expert witnesses, as Core
4 Participants will be aware, Module 5 has instructed two
5 expert witnesses. First, Albert Sanchez-Graells,
6 Professor of Economic Law and co-director of the Centre
7 for Global Law and Innovation at the University of
8 Bristol Law School, whose report will focus on public
9 procurement. This report was provided to Core
10 Participants in draft on 6 December of this year with
11 any Core Participant comments on it to be received by 20
12 December.

13 The second expert witness is John Manners-Bell, CEO
14 of Transport Intelligence and Honorary Visiting
15 Professor at London Guildhall Faculty of Business and
16 Law at the London Metropolitan University, whose report
17 will focus on supply chains. This report was provided
18 to Core Participants in draft also on 6 December 2024
19 with any Core Participant comments on it to be received
20 by the same date, 20 December 2024.

21 CBFFJ UK and Northern Ireland ask you, my Lady, to
22 revisit your decision not to call expert evidence on the
23 area of standards and regulatory framework for key
24 healthcare equipment and supplies.

25 My Lady, I can assure you and CPs that there will be

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1 substantial evidence about the relevant regulatory
2 frameworks and standards during the course of the
3 evidence we intend to call and we do not consider that
4 further expert evidence on these issues is necessary.

5 The submissions of the Scottish Covid Bereaved make
6 the point that the Inquiry does not appear to have
7 instructed experts with specific expertise in relation
8 to Scotland. We are confident that issues specific to
9 Scotland, Wales and Northern Ireland are being
10 considered in appropriate detail by the experts we have
11 instructed on procurement and supply chains, such that
12 separate expert evidence pertaining to the devolved
13 administrations is not required.

14 Every Story Matters. As has been communicated to
15 Core Participants, it was considered by the Inquiry that
16 a full Every Story Matters report would add limited
17 value to this investigation. The Inquiry will instead
18 be exploring the key themes in the evidential hearings
19 and we are confident that the evidence we have received
20 and continue to receive in Module 5 will allow us to
21 give appropriate time and space to the experiences of
22 frontline workers.

23 Moving now to the timetable. As we have indicated,
24 the Module 5 team will circulate the final list of
25 issues, a provisional list of witnesses, a provisional

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1 from the first of these, the Covid-19 Bereaved Families
2 for Justice UK.

3 **LADY HALLETT:** Thank you very much indeed, Mr Wald.
4 Ms Morris.

5 Submissions on behalf of Covid-19 Bereaved Families for
6 Justice UK by MS MORRIS KC

7 **MS MORRIS:** My Lady, as you know, I make submissions on
8 behalf of the Covid Bereaved Families for Justice UK.
9 I make my submissions this morning alongside
10 Ms McDermott who speaks on behalf of the Northern Irish
11 Covid Bereaved Families for Justice. Both groups, as
12 you know, were established in order to campaign for this
13 Public Inquiry and their goal remains first to establish
14 the truth about what happened to their loved ones,
15 secondly to participate effectively in the pursuit of
16 the truth and in doing so to ensure accountability and
17 prevent future deaths. The following submissions are
18 provided in that spirit of their commitment to making
19 this Inquiry work.

20 My submissions will address three topics in a little
21 detail and then somewhat more briefly on three further
22 topics.

23 Both CBFFJ UK and Northern Irish Covid Bereaved
24 Families for Justice have made a number of submissions
25 in writing on general issues, including disclosure and

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1 timetable, and further details about the Rule 10 process
2 following this second preliminary hearing.

3 Opening and closing statements. Counsel to the
4 Inquiry will make an opening statement at the
5 commencement of the public hearing. It is unlikely that
6 counsel to the Inquiry will deliver a closing statement.
7 Those Core Participants who wish to make opening and
8 closing statements will of course be permitted to do so,
9 however, Counsel to the Inquiry will be inviting you,
10 my Lady, to impose strict time limits. This is likely
11 to be determined in part by the number of participants.
12 Written statements must be submitted to the Inquiry
13 within a timeframe which will be set out in due course.

14 Finally, public hearing dates. The Inquiry does not
15 anticipate holding a further preliminary hearing for
16 Module 5 before the start of the public hearings in
17 March 2025. As the Core Participants were informed in
18 the monthly Module 5 solicitor team update notes and as
19 published on the Inquiry website, the public hearing of
20 Module 5 will take place at Dorland House between 3 and
21 27 March of 2025.

22 My Lady, that concludes all of the matters upon
23 which I wish to address you on behalf of Counsel to the
24 Inquiry. A number of CPs wish to address you during the
25 course of this hearing and so can I invite you to hear

26

1 position statements. We rely on those submissions but
2 we won't repeat them here.

3 The first topic I'd like to touch on, my Lady, is
4 the Inquiry's approach to the investigation of
5 contracts. As Mr Wald recognises, at the heart of
6 Module 5 are serious concerns about the nature of
7 decisions taken by central government during the Covid
8 pandemic in relation to the procurement of medical
9 equipment, supplies and services, such as PPE. This
10 Inquiry has already heard evidence in other modules of
11 the extreme difficulties faced by medical staff in
12 accessing appropriate PPE, including, as has been widely
13 publicised, the use of bin bags where staff were unable
14 to access suitable supplies of protective wear.

15 The lack of access to appropriate PPE is quite
16 clearly contributed to the transmission of Covid, and in
17 turn, to deaths in a range of health and care settings,
18 and this is of course an issue presently under
19 investigation in Module 3 and relevant to the Inquiry's
20 future investigations in Module 6.

21 Against that background, the families that we
22 represent have serious and significant concerns in
23 relation to the way in which contracts were awarded by
24 government under emergency procurement processes such as
25 the High Value or VIP Lane, and information that is

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1 already in the public domain raises suspicion that
2 conflicts of interest, commercial interests and
3 maladministration impacted on the contracts awarded and
4 the quality of what was supplied, and these concerns
5 must be central to the Inquiry's Module 5
6 investigations.

7 Mr Wald, King's Counsel, in a previous preliminary
8 hearing set out that the Inquiry's concerns involve the
9 fact that some contracts may have been fraudulent, that
10 prices were inflated and that PPE was defective and
11 unusable and some of that has been further elaborated on
12 this morning. But in order to address these issues,
13 my Lady, which are clearly of interest both to the
14 bereaved families and to the public more widely, we
15 maintain that the Inquiry must investigate specific
16 procurement decisions taken by the government and the
17 specific contracts awarded, including those under the
18 VIP Lane, as well under other non-competitive
19 procurement processes deployed in Northern Ireland,
20 Scotland and Wales.

21 This is particularly important, we say, where
22 information already available in the public domain
23 suggests that the individual companies did not meet
24 their contractual obligations, conflicts of interest
25 were present, public law principles and regulations were

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1 this approach, and in order to understand best how to
2 support and contribute to this aspect of the Inquiry's
3 investigations, we requested further information in
4 relation to the planned methodology, including how the
5 Inquiry intended to select contracts to be investigated
6 and the evidence it intended to obtain

7 However, it is now clear from what's been said this
8 morning that the Inquiry intends that this approach will
9 no longer be followed. And we understand that this is
10 because there has been the delays on the part of Central
11 Government departments in providing information
12 requested to the Inquiry. Reasons given by those
13 departments have included the way documents are stored
14 and the department staff moving and leaving. And there
15 has been delays in agreeing processes between the
16 Inquiry and the government departments for that
17 disclosure.

18 As a result of these delays, the Inquiry, as we
19 understand it, has not been able to obtain all the
20 relevant information it needs in order to examine the
21 relevant contracts from offer to conclusion as it had
22 intended and committed to do.

23 The families that we represent are incredulous, not
24 only at the lack of cooperation that the government
25 departments have provided, but also that the Inquiry has

31

1 not complied with, maladministration was present and
2 contracts were not awarded openly or fairly, and there
3 are questions of possible fraud or corruption.

4 We have jointly with Northern Ireland Bereaved
5 Families for Justice Made a number of submissions to the
6 Inquiry in which suggestions have been made by us as to
7 specific companies which requests for evidence should be
8 made by the Inquiry under the Rule 9 process, including
9 PPE Medpro, SG Recruitment Limited and Radox
10 Laboratories. We ask now, how can the Inquiry properly
11 investigate the concerns around fraudulent or inflated
12 contracts or the provision of defective PPE without the
13 specific evidence from the companies other than at
14 a surface level?

15 The Inquiry has previously indicated that it was
16 considering whether case studies would have been an
17 appropriate method to which to examine systemic issues
18 in procurement during the pandemic. Initially, as is
19 indicated by Counsel to the Inquiry, this would involve
20 following a number of contracts through.

21 Mr Wald has expanded this morning on why the reasons
22 have changed and the Inquiry's approach is going to be
23 slightly different.

24 Although the detail of that approach was only
25 revealed in the most recent of CTI notes, we endorse

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1 not used the full extent of its statutory powers to
2 request disclosure to maximum effect, to ensure that it
3 can investigate its terms of reference in the way that
4 it decided to do so. We have particular concerns that
5 the Inquiry's investigations have been frustrated and
6 limited by delays on the part of Central Government,
7 particularly by the Department of Health and Social Care
8 and the UKHSA.

9 The Inquiry's terms of reference require it to
10 examine the public health response to Covid across the
11 whole of the UK, including the safeguarding of public
12 funds and management of financial risk and the
13 procurement and distribution of key equipment supplies,
14 including PPE and ventilators.

15 The provisional outline of scope for Module 5
16 confirms that the Inquiry will cover steps taken to
17 eliminate fraud, contractual performance by suppliers
18 and compliance with public law procurement principles
19 and regulations, openness and fairness, including the
20 High Priority Lane, and the existence of any
21 maladministration.

22 In our submission, it is absolutely essential to the
23 Inquiry's investigations and to its terms of reference
24 that it considers the operation of the emergency
25 procurement processes and procedures in practice. In

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1 order to do so, it will need to obtain evidence in
2 relation to those contracts that were awarded,
3 particularly high-value contracts on which the health
4 and social care sector depended for essential medical
5 supplies.

6 The Inquiry now appears to accept that it has been
7 forced off its primary course of investigation into its
8 secondary position of examining key numbers of contracts
9 as illustrative examples of the key themes. The real
10 concern is that there is no -- it's no longer the
11 Inquiry driving forward its lines of investigation, but
12 allowing the investigation to be shaped around what is
13 being disclosed to the Inquiry by Central Government
14 departments. Covid Bereaved Families for Justice and
15 Northern Ireland Covid Bereaved Families for Justice now
16 urge the Inquiry to revert to its original proposal for
17 the investigation of contract case studies and to
18 consult meaningfully with Core Participants in relation
19 to the approach to be taken and the selection of
20 appropriate contracts, including those through the VIP
21 Lane.

22 **LADY HALLETT:** Ms Morris, can I interrupt. I appreciate
23 your submissions are intended constructively, but as you
24 know, I am extremely conscious of my terms of reference.

25 **MS MORRIS:** Yes.

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1 of what was in the Inquiry's mind, in our submission
2 that was a proportionate approach had the disclosure
3 been forthcoming from those from which it was requested.
4 And in our submission, that was a constructive and
5 proportionate way of examining that in a way that both
6 the Inquiry, the Core Participants, and the public could
7 best have understood those processes which are under the
8 examination by the Inquiry.

9 So we're primarily concerned about the failure of
10 the government departments to disclose the relevant
11 material to the Inquiry, and in our submission, that's
12 representative of a continuing lack of transparency in
13 relation to their award and running of procurement
14 contracts, and that is also our key concern, my Lady.

15 I know that UK Anti-Corruption Coalition and their
16 partners will address you further this morning, but on
17 behalf of the Covid Bereaved Families, can I make it
18 clear that we endorse their submissions, and have
19 concerns that transparency is still very much lacking in
20 relation to the procurement processes that were
21 undertaken during the pandemic.

22 Can I move then, please, to by second topic: that is
23 liaison of criminal investigations. Mr Wald has given
24 some helpful details this morning regarding the
25 Inquiry's liaison with the criminal investigations

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1 **LADY HALLETT:** And I also use my statutory powers whenever
2 I consider it necessary and possible, but the other
3 problem is that, as you also know, because you're
4 involved in a number of different modules, there is
5 a very, very full timetable throughout 2025 and if the
6 only way we can obtain the material that there has been
7 a delay in providing in time to put on the module is by
8 delaying Module 5, then in which case some other module
9 has to be delayed, and I'm sure that none of those you
10 represent would wish me to delay, for example, the care
11 module, and I'm sure those who are involved in the
12 children and young people module wouldn't want that
13 delayed. So there are all sorts of problems and it's
14 not for want of trying, I can assure you and those you
15 represent. I appreciate you're putting forward the
16 concerns of those you represent but I want to assure
17 them that I am very conscious of those concerns and I'm
18 going to do my utmost to assure that they are allayed,
19 but I do have a number of difficulties.

20 **MS MORRIS:** My Lady, of course we understand the Inquiry's
21 timetable and the need to be proportionate. The
22 timetable, however, my Lady, I'm sure would never
23 prevent full and proper investigation of the terms of
24 reference, and we understand the need for
25 proportionality, but now having a better understanding

34

1 identified for the first time that there has been an
2 application under Rule 19(5) of the Inquiries Act. It
3 will clearly be of the utmost importance to you,
4 my Lady, when considering that application to take an
5 approach that reflects the highest standards of
6 transparency and openness and includes and considers the
7 views of all Core Participants before you make any
8 decisions.

9 We welcome further information in respect to the
10 nature and basis of that application, and we will
11 certainly engage with that application and ensure that
12 the views of the bereaved families are before you.

13 We do say now, however, given the position in
14 relation to disclosure, and now the application for a
15 restriction order, that this is likely to merit a third
16 preliminary hearing so that these matters can be
17 resolved in open court and not behind closed doors.

18 More generally, our position remains that the terms
19 of section 2 of the Act means that the scope of Module 5
20 should not be curtailed by the existence of parallel
21 criminal investigations. We have set out a number of
22 examples where the two have happened in parallel, and we
23 ask the Inquiry to continue to update us in relation to
24 other issues if and when they arise, and to allow us to
25 continue to engage with the Inquiry, make submissions,

36

1 and for the Inquiry to hear arguments and make any
2 decisions in public.

3 My third topic in detail is the Inquiry's list of
4 issues for investigation. As Mr Wald indicated, we have
5 responded in writing separately in response to the
6 Inquiry's thorough and detailed list of issues for which
7 we are very grateful of receipt. And having considered
8 the written submissions made by the other Core
9 Participants in advance of today, we would like to add
10 just two short but I hope important points.

11 The first has been touched on to some degree in
12 terms of the involvements made in relation to the
13 devolved administrations. Our submission is that there
14 needs to be clarity in relation to what particular
15 arrangements are being examined and some of that clarity
16 has been offered this morning, for which we are
17 grateful.

18 The second observation is in relation to the
19 submissions made by FEMHO about the procurement
20 decision-making and how it perpetuated systemic
21 inequalities, and Mr Wald has spoken to that and offered
22 some further detail on that issue this morning for which
23 we are grateful.

24 We endorse the submissions made by FEMHO that
25 considerations of equality, law and duty should be

37

1 difficulties in accessing appropriate medical equipment
2 and supplies. Many of them had loved ones in healthcare
3 settings and care homes and many of them were themselves
4 healthcare -- health and careworkers who were directly
5 affected or suffered loss because of the inadequacies of
6 the protective equipment that was provided to those
7 settings.

8 And I don't need to remind you, my Lady, of the
9 Inquiry's stated commitment to the bereaved being at the
10 heart of the Inquiry and, as such, we do continue to
11 invite Rule 9 requests from the Inquiry for
12 organisational and individual witness statements from
13 family members, particularly in light of the Inquiry's
14 decision not to provide a full Every Story Matters
15 report in Module 5.

16 Finally, my Lady, my final point. We, as always,
17 ask the Inquiry to engage with Core Participants and
18 update us in terms of dates and timetabling, but just to
19 return to a point I made earlier in relation to the
20 Rule 19 application, we ask you to remain open to the
21 need for a further preliminary hearing to resolve any
22 issues pertaining to that application, to the disclosure
23 of material, experts, and further appropriate witnesses.

24 Thank you, my Lady.

25 **LADY HALLETT:** I apologise again for interrupting you,

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1 factored into the Inquiry's exploration of procurement
2 principles, regulations and standards.

3 Three shorter topics, then, please, my Lady: the
4 first in terms of expert witnesses. We do maintain the
5 importance of the Inquiry's -- we ask that -- we
6 maintain that the Inquiry should revisit the decision
7 not to call independent expert evidence on the matters
8 of regulation and standards. We appreciate that
9 a significant amount of evidence has been requested and
10 will be obtained from the relevant regulators. However,
11 my Lady, that's not independent evidence and there is
12 still a role, in our submission, for independent expert
13 evidence, given the issues that are being examined
14 around decisions about regulation, the public concerns
15 about the effectiveness of that regulation in this
16 particular context of procurement, and so we still
17 invite you to consider the instruction of an appropriate
18 expert to comment on this important area.

19 My fifth topic, my Lady, is in relation to bereaved
20 families as witnesses. Mr Wald has indicated this
21 morning that the focus of Module 5 is going to be on the
22 systems in play for procurement but of course, my Lady,
23 there are a large number of the bereaved families that I
24 represent who do have relevant evidence to give in
25 relation to the consequences and impact of their

38

1 Ms Morris, I just didn't want your lay clients to think
2 I'm not doing everything in my power to get hold of the
3 material that I want and that they would like to see.

4 **MS MORRIS:** Thank you.

5 **LADY HALLETT:** Thank you again.

6 Ms McDermott.

7 Submissions on behalf of the Northern Ireland Covid Bereaved
8 Families for Justice by MS McDERMOTT

9 **MS McDERMOTT:** Good morning, my Lady. I represent, as you
10 know, the Northern Ireland Covid Bereaved Families for
11 Justice headed by Brenda Campbell KC, Peter Wilcock KC
12 and instructed by PA Duffy Solicitors. May I start by
13 thanking you for the opportunity to address you in
14 respect of this module.

15 I'm mindful of the written submissions which have
16 been already filed and helpfully addressed by Mr Wald KC
17 this mornings and I hope in these oral remarks taking on
18 board the comments made by your Ladyship a moment ago
19 that I complement Ms Morris KC and simply augment what
20 has already been provided both orally this morning and
21 in writing with particular emphasis on certain points
22 that are of importance to the Northern Ireland family
23 group.

24 There are four net topics that I would briefly like
25 to touch upon, and the first being the regional voice.

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1 So in Northern Ireland, unquestionably like
2 elsewhere, the procurement of medical supplies became an
3 urgent and high stakes challenge. The procurement
4 systems in place were tested in ways that had never been
5 before. While there are certainly examples of
6 resilience and collaboration, this Inquiry gives rise to
7 critically examine any shortcomings and making findings
8 for lessons learned and how we can prove for future
9 crisis.

10 Procurement of health services is devolved to
11 regional bodies meaning that Northern Ireland had to
12 manage its own systems, and while the Department of
13 Health in Northern Ireland did work in collaboration
14 with the UK Government's centralised procurement
15 efforts, the perceived lack of unified approach this
16 Inquiry may find often resulted in fragmentation,
17 inefficiencies and delays in securing critical supplies.

18 In M3, my Lady, you heard and had a taster of some
19 of that evidence, having been told of different systems
20 across each trust, perhaps even every hospital, or in
21 every ward, not helped by a lack of central oversight
22 within government.

23 There is a concern that the regional health services
24 in Northern Ireland, working under the Department of
25 Health in Northern Ireland, struggled to coordinate

41

1 were not always based for the best interests of the
2 public health.

3 I pause here to note the opening by my learned
4 friend Mr Wald KC this morning, noting that there would
5 be no evidence from the private suppliers.

6 I would further add that the note of failure on the
7 part of the government departments to provide disclosure
8 in line with the deadlines set is more than
9 disappointing. In addition to the foregoing from the
10 group which I represent, there are complaints that the
11 lack of public visibility regarding how procurement
12 decisions were made has an effect, and while it is
13 necessary to act quickly in an emergency, a balance must
14 always be struck between speed, accountability and
15 quality.

16 While speed was of importance, without transparency
17 and accountability, the public could not have the full
18 confidence in the taxpayer money, that it was being
19 spent and spent wisely, and the best suppliers were
20 being chosen.

21 Without quality control of the equipment and PPE,
22 taxpayer money was spent and some of the taxpayer money
23 was not being kept safe, despite that expenditure.

24 This not only erodes public trust but also learning
25 difficulties open the possibility for cronyism,

43

1 domestically and with counterparts in UK Government
2 which had its own procurement mechanisms, and that this
3 fragmentation led to inefficiencies and gaps in the
4 supply chains that could have been avoided if there'd
5 been robust and clear lines of communication and
6 co-ordination.

7 This Inquiry may want to ask whether and to what
8 extent these issues hindered Northern Ireland's ability
9 to respond quickly and effectively to the evolving
10 crisis.

11 The second point I want to come to is transparency.
12 One of the most publicised and controversial issues
13 within the procurement during the pandemic was the lack
14 of transparency surrounding the procurement process.
15 The urgency of securing medical equipment led to
16 a rushed decision-making, and this often meant that
17 contracts were awarded with little oversight or
18 accountability.

19 The awarding of contracts to suppliers with limited
20 track records or insufficient scrutiny of their ability
21 to deliver and delivered on time raises concerns, in
22 particular with widespread criticism about the awarding
23 of contracts to companies with no prior expectation or
24 experience in medical supply provision, some of whom
25 were based in other sectors entirely. These decisions

42

1 unethical practices, and as you heard in M3,
2 exploitation by so-called shysters.

3 My third point is about procurement shortages and
4 delays. Despite the massive efforts to secure supplies,
5 concerns remained that Northern Ireland experienced
6 significant shortages and delays. The procurement of
7 personal protective equipment, PPE, was one of the most
8 notable issues. Healthcare workers on the front line
9 were left without adequate protection for far too long,
10 which created additional stress and anxiety within the
11 healthcare system.

12 Further to citations which we have already provided
13 in the written submissions, it is clear that doctors,
14 nurses, support staff and careworkers in general were
15 left to face the virus with suboptimal equipment,
16 putting their lives and ultimately the lives of their
17 patients at risk.

18 To that end, I bring you to the fourth topic, and
19 that is learning for the future. Ultimately,
20 procurement during Covid-19 highlighted both the
21 strength and the weaknesses of the centralised and
22 devolved systems, both separately and collectively.

23 While there were undoubtedly certain successes in
24 securing certain supplies, there was also significant
25 failings that must be addressed and aside from the

44

1 financial cost, there is the personal cost, that of
2 frontline workers, that of the vulnerable populations
3 and the population at large, all of whom are entitled to
4 answers.

5 To that end I do ask that consideration is given for
6 a third preliminary hearing, due to the significant
7 issues raised in respect of disclosure, and the concern
8 that Every Story Matters will have less application in
9 this module, all strikes to the heart of our group's
10 concern.

11 Notwithstanding these issues that I've raised, we
12 welcome Mr Wald KC's opening analysis that this module
13 will examine not only at a high level, but will include
14 review of contracts and considerations of the impact of
15 funding on the UK Central Government reaching across all
16 of the devolved administrations.

17 My Lady, those are the points I wish to make. If
18 there is anything further.

19 **LADY HALLETT:** Thank you very much, and I apologise to you
20 and to Ms Mitchell, I think I took you out of order. So
21 I took you by surprise and overlooked by Ms Mitchell.
22 How could I do that?

23 **MS McDERMOTT:** I'm grateful.

24 **LADY HALLETT:** Thank you very much, Ms McDermott.
25 Ms Mitchell.

45

1 investigations into Medpro and we are disappointed that
2 it took that length of time for the NCA to take that
3 action.

4 The Scottish Covid Bereaved hope that a robust
5 attitude is taken towards such applications and don't
6 doubt that that will be the case. Lawyers, it is fair
7 to say, have a very cautious approach to risk, secrecy
8 has no place in modern government, certainly not in
9 a public inquiry, and we should strive for transparency
10 to show the workings of government, and if it is
11 suggested that restrictions are appropriate, that those
12 seeking restrictions are made to actually show real and
13 not fanciful risks of harm and damage, and we are
14 confident that the chair will be able to apply that
15 test.

16 The second issue that I wish to raise is discrete
17 Scotland procurement issues. We endorse the approach of
18 the Inquiry that you will analyse the individual
19 situations in relation to the devolved administrations,
20 and we're grateful for that. We had been somewhat
21 concerned with disclosure so far that that would not be
22 the case, and that will certainly assist concerns in
23 that regard.

24 We also note what the Scottish Government has to say
25 about consequential funding, and endorse the view

47

1 Submissions on behalf of the Scottish Covid Bereaved by
2 DR MITCHELL KC

3 **DR MITCHELL:** Good morning, my Lady. I appear, as
4 instructed by Aamer Anwar & Company, on behalf of the
5 Scottish Covid Bereaved. We are grateful to Counsel to
6 the Inquiry for providing the detailed note of
7 15 November and also for the submissions this morning
8 bringing us up to date in relation to preparations.

9 There are three issues left that I would wish to
10 raise with my Lady and perhaps she wouldn't be surprised
11 at the content.

12 Number 1, disclosure. We note what's been said by
13 Counsel to the Inquiry in relation to disclosure and
14 that there is still a significant amount to come. We
15 understand in this module there are the creation of
16 certain particular issues in relation to disclosure, in
17 light of the criminal and civil matters ongoing, and
18 hear what my learned friend Counsel to the Inquiry had
19 to say in this matter. We hear and understand the
20 difficulties and we hope that if and when Scottish Covid
21 Bereaved find themselves straining to match those time
22 limits, that will be borne in mind.

23 We note that it took until 9 December of this year
24 for the NCA to ask for a restriction order over material
25 in the Inquiry's possession in relation to

46

1 expressed in that regard, and we are grateful for the
2 Inquiry to include that in the evidence that we are
3 going to hear because we think that that was an
4 important issue in relation to the procurement process.

5 The third matter which perhaps my Lady will not be
6 surprised to hear is one which she has already heard
7 about from the two previous speakers, is what has been
8 said in relation to how this Inquiry will deal with the
9 issue of the procurement process. We endorse what was
10 said by Ms Morris, and of course those in the Scottish
11 Covid Bereaved want to know were there sufficient
12 procedural safeguards to guard against fraudulent
13 contracts, inflated contracts, or corruption. If so,
14 how did they work or how did they not work?

15 We think it will be a difficult task to examine
16 those procedural safeguards to make recommendations for
17 the future if we don't have a sound understanding of
18 what actually happened, ie, to produce a generality in
19 terms of recommendation from specific examples.

20 Of course we hear what the Chair has had to say this
21 morning in relation to delay and we appreciate that it
22 is not for the want of trying, but the timetable,
23 my Lady, we suggest, cannot be allowed to take
24 precedence over a constructive and sensible approach
25 that was already put in place.

48

1 There's a separate issue about this flagged in part
2 already by Ms Morris KC, which is that the public is
3 already concerned about the procurement process, and
4 they are doubtless interested in this matter.

5 It will be important in the future to have public
6 confidence in our procurement process, to ensure that it
7 is all above reproach. In order to encourage compliance
8 with using PPE, to de-politicise the issues, and to
9 ensure that the procedural safeguards which are put in
10 place mean that what is being obtained is necessary and
11 sufficient.

12 In the next pandemic, as we have indicated before,
13 there will be misinformation and disinformation in
14 relation to these matters. And every way in which this
15 Inquiry can robustly investigate these issues and put in
16 place procedural safeguards are important.

17 My Lady is absolutely correct: the Scottish Covid
18 Bereaved indeed do not want to delay the process
19 including, as my Lady has mentioned, in relation to care
20 homes, but they also, no doubt, want to ensure that each
21 of the modules is dealt with as robustly as possible and
22 that the delay by the UK Government does not frustrate
23 the proper work of this Inquiry.

24 This failure will do little to build trust that the
25 government is both accountable and transparent in its

49

1 or FEMHO, led by Mr Leslie Thomas KC and instructed by
2 the firm Saunders Law.

3 I will start, if I may, my Lady, with a wee bit of
4 musing. What interest does an identity-based consortium
5 of black, Asian and minority ethnic healthcare workers
6 have in issues of procurement during the pandemic? Now,
7 this might have been a fair question before the Inquiry
8 began when the thematic concerns of its modules were
9 still merely notional. However, evidence heard across
10 the three previous modules has underscored the critical
11 role of procurement, procurement decision making, in
12 shaping the pandemic's impact on black, Asian and
13 minority ethnic healthcare workers.

14 Your Ladyship has heard troubling evidence about the
15 general scarcity of PPE, especially respiratory
16 protective equipment, or RPE, instances of healthcare
17 workers having to reuse or source their own makeshift
18 masks, aprons, and other protective wear during -- due
19 to insufficient supply, masks that were out of date,
20 unfit for purpose, or that simply did not fit, and
21 confirmation that some masks were designed with white
22 male facial features as the default, certain equipment
23 such as the pulse oximeter, failing to function
24 optimally on darker skin because they were configured to
25 provide accurate readings primarily on lighter skin

51

1 dealings. In these circumstances, it is submitted that
2 the Inquiry could reconsider even picking number of
3 contracts, even if that is a smaller number than
4 previously anticipated, to carry out this investigation.

5 These are the submissions on behalf of the Scottish
6 Covid Bereaved.

7 **LADY HALLETT:** Thank you very much, Ms Mitchell, and may
8 I assure those whom you represent that I will ensure
9 that by sticking to the timetable does not mean that
10 every module doesn't get a thorough and robust
11 investigation. If I weren't satisfied with that,
12 there'd be no point in my doing the job.

13 **DR MITCHELL:** I'm obliged, my Lady.

14 **LADY HALLETT:** Thank you for your submissions.

15 I think, Mr Dayle, if you will forgive me, we will
16 break now.

17 I shall return in 15 minutes.

18 **(11.39 am)**

(A short break)

20 **(11.55 am)**

21 **LADY HALLETT:** Mr Dayle.

22 Submissions on behalf of Federation of Ethnic Minority
23 Healthcare Organisations by MR DAYLE

24 **MR DAYLE:** Good morning, my Lady. I represent the
25 Federation of Ethnic Minority Healthcare Organisations,

50

1 tones.

2 So FEMHO has made detailed submissions in our
3 written statement on the draft list of issues for this
4 module which we do not seek to repeat today. However,
5 as always, we remain keen to assist the Inquiry team,
6 should they have any queries in relation to these
7 submissions.

8 For the purpose of this presentation, I will focus
9 on our two main points: one, providing contextual
10 background to FEMHO's intervention in this module; and
11 two, making high-level submissions aimed at building
12 a fairer and more equitable procurement system.

13 So, in terms of contextual background, FEMHO's
14 primary contention, my Lady, is that the Inquiry must
15 undertake a deeper examination of procurement
16 decision-making, and I note comments this morning by
17 Mr Wald KC warning against repetition, and the
18 underlying processes that allowed structural
19 inequalities, indeed structural racism, to persist and
20 worsen.

21 This requires a starting point from what we say is
22 first principle, essentially going back to basics. And
23 specifically, this Inquiry must interrogate the
24 standards and metrics that underpinned procurement
25 decisions during the pandemic.

52

1 Which principles guided the conceptualisation and/or
2 enforcement of measurements? What defined optimal size
3 and median range in PPE, for instance? How were faulty
4 assumptions identified and corrected for an increasingly
5 diverse workforce?

6 Evidence heard thus far suggests that procurement
7 decisions often failed to incorporate principles of
8 equality, or recognise the diversity of end users. For
9 example, the appropriateness of PPE was based on
10 assumptions that did not take into account
11 a multi-racial workforce with diverse anthropometric
12 needs.

13 FEMHO submits that the Equality Act 2010 must form
14 the starting point for any reset in procurement
15 processes. Decision makers must represent greater
16 awareness of equality and diversity, not as an
17 aspirational standard but as a legal, practical
18 necessity.

19 FEMHO contends that procurement processes during the
20 pandemic failed to comply with established equality
21 duties and looking forward, equality duty must be
22 treated as a binding requirement in procurement
23 decisions in order to foster what we hope will be
24 a culture of compliance and accountability.

25 So FEMHO's submissions are threefold. The first one
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1 that reflects diversity, ensuring equipment such as PPE
2 and pulse oximeters meet the needs for varied
3 anthropometrics and skin tone.

4 So in concluding, my Lady, FEMHO urges you to keep
5 equality concerns at the forefront of this module and
6 we've had reassurances of that from Mr Wald's very
7 helpful statement, and to maintain this focus as these
8 issues intersect with every facet of procurement
9 decision-making that is to be examined in this Inquiry.

10 We remain committed to assisting the Inquiry by
11 providing a focused and constructive perspective, and we
12 look forward to contributing meaningfully to the
13 investigations for procurement processes in this module.

14 **LADY HALLETT:** Thank you very much for your help, Mr Dayle,
15 I'm very grateful.

16 Mr Hayman? Oh, you're there.

17 Submissions on behalf of UK Anti-Corruption Coalition by
18 MR~GAVIN HAYMAN

19 **MR HAYMAN:** My Lady, thank you very much for inviting me to
20 speak today. I'm Gavin Hayman, the Executive Director
21 of the Open Contracting Partnership, a global non-profit
22 organisation working to open up and transform public
23 procurement in over 30 countries.

24 During the pandemic, we shared best practices and
25 supported emergency procurement in countries across the
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1 has to do with inclusive stockpiling strategies. FEMHO
2 invites you, your Ladyship, to consider a comprehensive
3 review of stockpiling strategies to ensure inclusivity
4 in resource allocation. Robust equality analysis must
5 underpin procurement decisions to eliminate racial and
6 ethnic disparities. Further FEMHO advocates for what we
7 term a centralised intelligence point to oversee
8 equality reviews in procurement, coupled with broader
9 stakeholder engagement to embed fairness and diversity.

10 Secondly, we wish to make a point about technology
11 and automation risks. We emphasise that before
12 procurement processes are further automated, existing
13 inequalities must be addressed. Automating flawed
14 assumptions such as designing pulse oximeters for
15 lighter skin tones would exacerbate disparities. FEMHO
16 calls for stronger engagement with equality frameworks
17 to avoid perpetuating biases through technology and
18 reflecting that technology endpoint Garbage In Garbage
19 Out.

20 Thirdly, leveraging global influence. FEMHO calls on
21 the UK Government to leverage its procurement power to
22 influence global manufacturers towards producing more
23 inclusive equipment, rather than deflecting
24 responsibility with the oft referred to global issue, UK
25 decision-makers must advocate for product development
54

1 world. I want to share some insights from our work and
2 from that experience with you today. I also have the
3 honour of co-chairing the UK Anti-Corruption Coalition,
4 a non-partisan group working to reduce corruption in the
5 UK and abroad. The coalition has 17 partner members
6 from the UK's leaving public integrity organisations and
7 academics.

8 The UK Anti-Corruption Coalition is a Core
9 Participant to this module and we have submitted
10 a 180-page Rule 9 response to the Inquiry. I wanted to
11 highlight from that three key points for the Inquiry to
12 investigate further.

13 Firstly, why was there so much bad buying in the UK
14 and why so little action on failed contracts? Our
15 evidence, in our submissions, shows there were plenty
16 much more effective procurement strategies available to
17 the UK than relying on huge direct awards to untested
18 suppliers. Other countries used these, the UK did not.
19 Why was that?

20 Secondly, full investigation into the so-called High
21 Priority Lane. No other country in the world created
22 a special channel to prioritise political referrals for
23 PPE vendors. There was nothing high priority about the
24 lane other than the referral came from a demanding
25 politician from the ruling party. It was found to be
56

1 a breach of the law; it put conflicts of interest at the
2 heart of the UK's sort of emergency response and it
3 distracted effort for more credible suppliers. Lastly,
4 it had a high failure rate. So how did it come about?

5 Thirdly, transparency provisions themselves should
6 have been a core part of the emergency response, not
7 a trade-off. In emergency, buyers and suppliers
8 urgently need to connect. People need to know who has
9 stocks of PPE and who doesn't, so how come the UK's
10 Covid contracting transparency was so much worse than
11 for all other UK contracts?

12 Let me briefly enlarge on these key points.
13 Firstly, on the bad buying and little action on failed
14 contracts. Yes, it was an emergency; yes, global
15 markets and supply chains were in chaos and that's
16 exactly why the UK should have been smart and let its
17 procurement professionals take the lead. Almost every
18 other country in the world did do that. Instead the UK
19 made poor choices, wasted public money, put the
20 politicians in charge of prioritising contracts, and the
21 Inquiry must really understand how and why this happened
22 to learn lessons.

23 Our analysis of the available data suggests the UK
24 brought more, faster, and relied on direct awards for
25 PPE and other supplies much longer than its peers.

57

1 reveals some fairly shocking details. The UK handed out
2 a staggering 48 billion in Covid-related contracts
3 across 400 public bodies and 5,000 deals. Nearly 10% of
4 those contracts -- about 4.1 billion of taxpayers'
5 money -- went to firms with a link to the then ruling
6 party, and in total, Transparency International
7 identifies 135 contracts worth about £15.3 billion as
8 having three or more red flags for corruption, risks and
9 conflicts of interest. That's almost a third of the
10 total Covid-related contracts.

11 And, as a result of all the above, we've seen very
12 high levels of waste and failure with write-downs and
13 write-offs of almost 10 billion being reported from the
14 Department of Health.

15 So, despite this level of waste, why has the UK only
16 taken one supplier to court? We think it's vital the
17 Inquiry investigates the reasons for the inactions so
18 far, and new powers and authorities are needed to hold
19 suppliers to account.

20 We've had the welcome news now of the appointment of
21 the Covid Counter-Fraud Commissioner although on
22 three days a year for -- three days a week for
23 a one-year appointment it would appear he has about
24 a working day to look at each of Transparency
25 International's high-risk contracts. Let's compare that

59

1 Coupled with little regard for price or supplier track
2 record, and with weak contracts and contracting
3 processes, this left the UK in an extremely vulnerable
4 position to misspending.

5 We also know that due diligence was fragmented and
6 lacking. We show that in our submission.

7 Unlike its peers, what's also striking is the UK
8 didn't pause for review a few months into the emergency,
9 it just kept buying and buying like a runaway machine.
10 Much better processes were used by other countries.

11 We give the example of Canada's transparent needs,
12 specification and qualification process. We give the
13 example of how you could use open frameworks and mini
14 competitions that were used by other OECD members, or
15 you could use Germany's take it or leave it cap price
16 buyers lists. Those were all available under UK law,
17 a point that Professor Sanchez-Graells makes himself in
18 his draft expert report to the module.

19 Why were these options not considered -- or, were
20 these options not considered, and if not, why not? We
21 think that's a really important addition to the module's
22 list of issues.

23 The best dataset we have is now assembled by
24 Transparency International and we've put that at the
25 Inquiry's disposal. Their report behind the mask

58

1 response to the robust mechanisms in the US and
2 elsewhere where specialist prosecution and public
3 accountability taskforces have been brought together
4 like the Pandemic Response Action Committee. They've
5 been assembled to hold companies and individuals
6 accountable for failing the USA in its hour of need.
7 Where's the equivalent response in the UK?

8 Lastly, in issuing the Rule 9 requests, we do think
9 it's important that key providers of PPE and the
10 consultancy firms who were involved in sourcing are also
11 asked to submit evidence so we truly get to the bottom
12 of what went wrong and learn lessons for the future.

13 Secondly, on the High Priority/VIP Lane, we are
14 really glad to see the Inquiry focus on the lane. As
15 the Open Contracting Partnership we work in countries
16 across the world, literally from Albania to Zambia, and
17 we know of no other country that put a formal process in
18 place to prioritise emergency contracts based on
19 political referrals from the ruling party at the time
20 and only from the ruling party.

21 We note Professor Sanchez-Graells, in his draft
22 expert report, also couldn't find a single other example
23 either.

24 Normally, to be frank, the whole purpose of
25 procurement rules is to keep politicians out from making

60

1 procurement choices and, instead, the UK created
2 a process that put conflicts of interest and political
3 preference at the heart of the UK's emergency response.
4 The only prioritisation lane was that the referral
5 came from a connected individual who had robustly chased
6 up on his referral, and we cite a lot of evidence in our
7 submission that this distracted energy and attention
8 from more credible leads elsewhere. And, we also cite
9 evidence that VIP Lane contracts had a higher failure
10 rate than other contracts.

11 We would agree with Professor Sanchez-Graells'
12 expert report there should be a broader recognition of
13 some of the points of principle on the basis of the
14 finding of unlawfulness by the High Court of the VIP
15 Lane. Specifically, there is evidence that
16 opportunities that were treated as high priority even
17 where there was no objectively justifiable grounds for
18 expediting the offer. The High Priority Lane did not
19 act as a quality filter and it treated orders as if they
20 were superior quality just because of the source of the
21 referral; and the criteria used to allocate offers to
22 the High Priority Lane did not treat comparable offers
23 in the same way. The mere fact the offer was sent to
24 the priority email address with senior referral did not
25 justify preferential treatment over a similar offer that

61

1 really matters. It is also clear that unscrupulous
2 businesses and carpetbaggers seize upon those
3 opportunities to profit from a Government's crisis
4 response. There is no point in buying fast if the
5 product is defective, so transparency is a really
6 important counter to that opportunism, many other
7 governments appreciated this but apparently the UK did
8 not. Let's compare situations like Ukraine, like
9 Colombia and Lithuania, we cite all these in our
10 submission, where emergency contacts were readily
11 available in realtime on public data dashboards and they
12 could even be beamed into your phone in under 24 hours.
13 Compare that to the UK where PPE contract awards were
14 still not published after 100 days and in some cases
15 even later.

16 Our own analysis that we did looking at the publicly
17 available information on the UK's Contracts Finder
18 portal and elsewhere shows larger delays in establishing
19 PPE Covid contracts, on average 125 days later, than for
20 all other contracts in the country and that made
21 a chaotic market situation much worse.

22 So when it really mattered to publish contract
23 details to help with sourcing, it appears the UK
24 actually made it harder and did worse. Why was that and
25 was that connected to the awkwardness of all those

63

1 was made through the more normal portal.

2 As the professor says, the fact that such
3 unjustified unequal treatment drove close to 50% of the
4 value of procurement by the PPE buy-sell and
5 significantly increased the likelihood of successive VIP
6 offers seems to me to be downplayed by the Cabinet
7 Office and Department of Health and Social Care.

8 So we think it's vital the Inquiry gets to the
9 bottom of what happened there and how this
10 counter-productive and frankly amateurish process came
11 about.

12 Lastly, my third point, transparency should be
13 a core part of the Covid response and not a trade-off.
14 In a crisis, transparency and public trust are key.
15 Newspaper headlines about nurses having to resort to bin
16 bags alongside stories of UK suppliers nominated by
17 politicians profiteering and supplying the wrong PPE is
18 immense damage to that trust.

19 So we strongly support the inclusion of governance,
20 transparency and accountability as a major component to
21 the module. The word "balance" is frequently used in
22 the list of issues, but the transparency did not have to
23 be traded off against other emergency needs. When the
24 market is disrupted, buyers and suppliers urgently need
25 to connect, transparency and data on who has supplies

62

1 political referrals?

2 We also note that despite assurances that all the
3 deals have now been published, we're still finding new
4 contracts and missing information. Chris Smith, an
5 independent procurement expert who is part of our Core
6 Participant team, personally identified over 500
7 contracts worth about 7.8 billion where the details have
8 not been fully disclosed and published. We detail all
9 this in our submission to your Lady.

10 I'll wrap up with a more bit of positive news. The
11 UK now has a new Procurement Act, our submission
12 contains a series of important recommendations to
13 improve its implementation, we commend to you and the
14 Inquiry's attention.

15 So, in closing, thank you very much for your time
16 and inviting the UK Anti-Corruption Coalition to submit
17 our evidence. We'd like to put on record we cannot
18 forget the work of the frontline responders to the
19 pandemic or the many wonderful UK citizens who lost
20 their lives to Covid. These hearings may now seem
21 distant and removed from the dark pandemic days but poor
22 procurement decisions taken at the highest levels had
23 profound impact on delivery of equipment and the
24 protection of doctors, nurses, patients and care home
25 staff. So we need to examine, learn from and never

64

1 repeat those mistakes. We're at your disposal for any
 2 clarification or additional information you or your team
 3 require and thank you again.

4 **LADY HALLETT:** Thank you very much, Mr Hayman, I welcome
 5 your organisation to the Inquiry and I look forward to
 6 the contribution it can make.

7 Mr Wald, anything you can say to allay some of the
 8 concerns expressed by Ms Morris, Ms McDermott,
 9 Ms Mitchell and others?

10 **MR WALD:** My Lady, yes, I hope so. There will be a CP
 11 update note distributed on January 8, and I suspect that
 12 that note will have that function. It will allay those
 13 concerns, but since we're almost a month away from that,
 14 I say the following: there will be case studies, it's
 15 not that the idea of case studies has been abandoned.
 16 What there won't be is a following of particular
 17 contracts from start to finish in an exhaustive fashion.
 18 I don't think either the timetable would permit that,
 19 nor do we consider it is necessary to engage in that
 20 sort of process. And the reason for that is this: we
 21 have analysed extensive and detailed evidence from
 22 across the UK and devolved administrations. That has
 23 enabled the Module 5 Counsel to the Inquiry team to
 24 identify key or essential themes, and to associate those
 25 themes with particular contracts. And we consider that

INDEX

Submissions by LEAD COUNSEL TO THE INQUIRY .. 1
 for MODULE 5

Submissions on behalf of Covid-19 Bereaved 27
 Families for Justice UK by MS MORRIS KC

Submissions on behalf of the Northern 40
 Ireland Covid Bereaved Families for Justice by
 MS McDERMOTT

Submissions on behalf of the Scottish 46
 Covid Bereaved by DR MITCHELL KC

Submissions on behalf of Federation of 50
 Ethnic Minority Healthcare Organisations by MR
 DAYLE

Submissions on behalf of UK 55
 Anti-Corruption Coalition by MR~GAVIN HAYMAN

1 it will not only be possible, but desirable and
 2 effective, to draw out those themes by reference to
 3 particular contracts.

4 Now, as I say, that exercise ought to be made
 5 clearer come January 8, and clearer still when we get to
 6 March. But I say that now in case there is any
 7 misunderstanding about the approach now being adopted
 8 and the ability of that approach to achieve the
 9 objectives of this module within its scope.

10 **LADY HALLETT:** Thank you very much indeed, Mr Wald.

11 I'm very grateful to everybody, as ever, the
 12 submissions were productive and helpful, and I shall
 13 bear them all very much in mind, including the point
 14 made by Ms Morris and others about whether we will need
 15 another preliminary hearing. I have got to consider the
 16 restriction order. We will see where we go, but I do
 17 take the point that Ms Morris and others made.

18 Thank you all very much, I think the next time I sit
 19 is in January, when we start Module 4.

20 **(12.19 pm)**

(The preliminary hearing concluded).

DR MITCHELL: [2] 46/3 50/13	400 [1] 59/3 48 billion [1] 59/2	11/11 36/2 36/19 43/13 53/13 61/19 64/11	Albania [1] 60/16 Albert [1] 24/5 Albert	53/11 anthropometrics [1] 55/3
LADY HALLETT: [14] 1/3 27/3 33/22 34/1 39/25 40/5 45/19 45/24 50/7 50/14 50/21 55/14 65/4 66/10	5 5,000 [1] 59/3 5,836 [1] 9/14 50 [1] 62/3 500 [1] 64/6	action [5] 14/18 47/3 56/14 57/13 60/4 actions [1] 6/12 actually [3] 47/12 48/18 63/24 acute [1] 14/15 adaptable [1] 18/25 add [4] 2/25 25/16 37/9 43/6 addition [2] 43/9 58/21 additional [2] 44/10 65/2 address [8] 2/5 26/23 26/24 27/20 29/12 35/16 40/13 61/24 addressed [5] 12/19 22/19 40/16 44/25 54/13 addresses [1] 2/2 adequacy [1] 12/17 adequate [2] 18/25 44/9 administration [1] 4/9 administrations [14] 5/3 12/16 13/25 17/18 17/25 18/6 18/11 18/25 19/6 25/13 37/13 45/16 47/19 65/22 adopt [1] 11/23 adopted [1] 66/7 advance [3] 17/10 19/4 37/9 advanced [1] 12/25 advice [1] 13/21 advised [1] 5/14 advocate [1] 54/25 advocates [1] 54/6 affected [2] 19/13 39/5 after [2] 10/19 63/14 again [3] 39/25 40/5 65/3 against [5] 14/19 28/21 48/12 52/17 62/23 agencies [1] 4/25 Agency [1] 3/2 agenda [1] 2/4 ago [2] 18/7 40/18 agree [3] 7/17 15/9 61/11 agreed [1] 7/22 agreeing [1] 31/15 ahead [2] 1/21 1/25 aid [1] 17/25 aimed [2] 10/17 52/11 aims [1] 23/22	Sanchez-Graells [1] 24/5 alike [1] 7/8 all [23] 2/17 17/4 18/13 19/23 19/25 26/22 31/19 34/13 36/7 45/3 45/9 45/15 49/7 57/11 58/16 59/11 63/9 63/20 63/25 64/2 64/8 66/13 66/18 allay [2] 65/7 65/12 allayed [1] 34/18 Alliance [1] 4/23 allocate [1] 61/21 allocation [1] 54/4 allow [3] 7/22 25/20 36/24 allowed [2] 48/23 52/18 allowing [1] 33/12 almost [4] 57/17 59/9 59/13 65/13 along [1] 1/15 alongside [2] 27/9 62/16 already [15] 9/16 15/13 19/20 20/14 21/5 28/10 29/1 29/22 40/16 40/20 44/12 48/6 48/25 49/2 49/3 also [25] 2/25 3/4 3/8 3/10 3/25 16/16 18/1 24/18 31/25 34/1 34/3 35/14 43/24 44/24 46/7 47/24 49/20 56/2 58/5 58/7 60/10 60/22 61/8 63/1 64/2 although [4] 10/1 22/6 30/24 59/21 always [4] 39/16 43/1 43/14 52/5 am [7] 1/2 1/8 1/8 33/24 34/17 50/18 50/20 amateurish [1] 62/10 ambit [1] 1/10 amend [1] 20/9 amount [2] 38/9 46/14 analyse [1] 47/18 analysed [1] 65/21 analysing [1] 12/24 analysis [9] 12/10 13/9 13/21 18/5 22/14 45/12 54/4 57/23 63/16 announced [1] 23/15 another [1] 66/15 answers [1] 45/4 anthropometric [1]	Anti [8] 3/17 4/21 35/15 55/17 56/3 56/8 64/16 67/21 Anti-Corruption [8] 3/17 4/21 35/15 55/17 56/3 56/8 64/16 67/21 anticipate [2] 6/16 26/15 anticipated [2] 1/20 50/4 Anwar [1] 46/4 anxiety [1] 44/10 anxious [1] 11/2 any [21] 8/23 10/5 10/12 11/6 11/9 11/15 14/24 14/25 16/10 18/14 24/11 24/19 32/20 36/7 37/1 39/21 41/7 52/6 53/14 65/1 66/6 anything [2] 45/18 65/7 apologise [2] 39/25 45/19 apparent [2] 3/1 17/15 apparently [1] 63/7 appear [4] 1/15 25/6 46/3 59/23 appeared [1] 2/18 appears [3] 23/21 33/6 63/23 application [11] 10/20 10/24 10/25 36/2 36/4 36/10 36/11 36/14 39/20 39/22 45/8 applications [1] 47/5 applied [1] 13/2 apply [2] 18/4 47/14 appointees [1] 13/22 appointment [5] 23/15 23/18 23/20 59/20 59/23 appreciate [4] 33/22 34/15 38/8 48/21 appreciated [1] 63/7 approach [28] 2/8 6/23 8/3 9/2 11/21 11/24 12/15 15/2 15/7 15/8 16/5 18/8 18/13 22/14 28/4 30/22 30/24 31/1 31/8 33/19 35/2 36/5 41/15 47/7 47/17 48/24 66/7 66/8 appropriate [13] 12/2 22/1 22/16 25/10 25/21 28/12 28/15 30/17 33/20 38/17 39/1 39/23 47/11 appropriateness [2]
1 10 [2] 26/1 59/3 10 billion [1] 59/13 10.30 [1] 1/2 100 [1] 63/14 11 [1] 10/19 11 December 2024 [1] 1/1 11.39 [1] 50/18 11.55 [1] 50/20 12.19 [1] 66/20 125 [1] 63/19 135 [1] 59/7 15 [2] 2/1 50/17 15 November [1] 46/7 15.3 billion [1] 59/7 17 [1] 56/5 19 [12] 3/7 3/10 3/12 3/13 8/16 11/11 27/1 27/5 36/2 39/20 44/20 67/6	A Aamer [1] 46/4 abandoned [1] 65/15 ability [3] 42/8 42/20 66/8 able [3] 8/4 31/19 47/14 about [37] 6/10 6/18 9/21 11/12 11/19 12/14 15/1 15/6 16/16 20/1 20/18 25/1 26/1 27/14 28/6 35/9 37/19 38/14 38/15 42/22 44/3 47/25 48/7 49/1 49/3 51/14 54/10 56/23 57/4 59/4 59/7 59/23 62/11 62/15 64/7 66/7 66/14 above [3] 14/22 49/7 59/11 abroad [1] 56/5 absolutely [2] 32/22 49/17 academics [1] 56/7 accept [1] 33/6 access [3] 19/7 28/14 28/15 accessibility [1] 12/17 accessing [3] 22/1 28/12 39/1 accompanying [1] 15/21 accordance [1] 2/4 account [3] 21/14 53/10 59/19 accountability [9] 12/13 14/14 27/16 42/18 43/14 43/17 53/24 60/3 62/20 accountable [2] 49/25 60/6 accurate [1] 51/25 achieve [1] 66/8 acknowledge [2] 7/6 19/10 across [12] 1/12 17/17 17/21 18/5 32/10 41/20 45/15 51/9 55/25 59/3 60/16 65/22 act [9] 8/17 8/19	1 10 [2] 26/1 59/3 10 billion [1] 59/13 10.30 [1] 1/2 100 [1] 63/14 11 [1] 10/19 11 December 2024 [1] 1/1 11.39 [1] 50/18 11.55 [1] 50/20 12.19 [1] 66/20 125 [1] 63/19 135 [1] 59/7 15 [2] 2/1 50/17 15 November [1] 46/7 15.3 billion [1] 59/7 17 [1] 56/5 19 [12] 3/7 3/10 3/12 3/13 8/16 11/11 27/1 27/5 36/2 39/20 44/20 67/6	1 10 [2] 26/1 59/3 10 billion [1] 59/13 10.30 [1] 1/2 100 [1] 63/14 11 [1] 10/19 11 December 2024 [1] 1/1 11.39 [1] 50/18 11.55 [1] 50/20 12.19 [1] 66/20 125 [1] 63/19 135 [1] 59/7 15 [2] 2/1 50/17 15 November [1] 46/7 15.3 billion [1] 59/7 17 [1] 56/5 19 [12] 3/7 3/10 3/12 3/13 8/16 11/11 27/1 27/5 36/2 39/20 44/20 67/6	
2 20 [2] 24/11 24/20 2005 [1] 8/17 2006 [1] 4/3 2010 [1] 53/13 2024 [5] 1/1 1/19 2/1 24/18 24/20 2025 [4] 1/23 26/17 26/21 34/5 21 [1] 7/19 23 [1] 19/3 24 [1] 2/19 24 hours [1] 63/12 27 [2] 1/22 26/21 279 [1] 4/2	2 20 [2] 24/11 24/20 2005 [1] 8/17 2006 [1] 4/3 2010 [1] 53/13 2024 [5] 1/1 1/19 2/1 24/18 24/20 2025 [4] 1/23 26/17 26/21 34/5 21 [1] 7/19 23 [1] 19/3 24 [1] 2/19 24 hours [1] 63/12 27 [2] 1/22 26/21 279 [1] 4/2	2 20 [2] 24/11 24/20 2005 [1] 8/17 2006 [1] 4/3 2010 [1] 53/13 2024 [5] 1/1 1/19 2/1 24/18 24/20 2025 [4] 1/23 26/17 26/21 34/5 21 [1] 7/19 23 [1] 19/3 24 [1] 2/19 24 hours [1] 63/12 27 [2] 1/22 26/21 279 [1] 4/2	2 20 [2] 24/11 24/20 2005 [1] 8/17 2006 [1] 4/3 2010 [1] 53/13 2024 [5] 1/1 1/19 2/1 24/18 24/20 2025 [4] 1/23 26/17 26/21 34/5 21 [1] 7/19 23 [1] 19/3 24 [1] 2/19 24 hours [1] 63/12 27 [2] 1/22 26/21 279 [1] 4/2	
3 30 [1] 55/23	3 30 [1] 55/23	3 30 [1] 55/23	3 30 [1] 55/23	3 30 [1] 55/23
4 4.1 billion [1] 59/4	4 4.1 billion [1] 59/4	4 4.1 billion [1] 59/4	4 4.1 billion [1] 59/4	4 4.1 billion [1] 59/4

A	53/4 53/10 54/14 assurances [1] 64/2 assure [5] 24/25 34/14 34/16 34/18 50/8 at [38] 1/15 2/18 3/5 6/15 9/13 10/8 10/11 10/17 14/17 18/3 19/3 19/5 20/10 20/15 23/23 24/7 24/15 24/16 26/4 26/20 28/5 30/13 31/24 39/9 44/17 45/3 45/13 46/11 52/11 55/5 57/1 58/24 59/24 60/19 61/3 63/16 64/22 65/1 attention [3] 19/24 61/7 64/14 attitude [1] 47/5 Attorney [1] 11/18 Attorney General [1] 11/18 augment [1] 40/19 authorities [4] 5/3 5/4 9/1 59/18 automated [1] 54/12 Automating [1] 54/13 automation [1] 54/11 availability [2] 19/5 22/12 available [8] 9/15 23/21 29/22 56/16 57/23 58/16 63/11 63/17 average [1] 63/19 avoid [1] 54/17 avoided [1] 42/4 avoiding [1] 23/5 award [3] 14/14 15/1 35/13 awarded [11] 9/24 13/3 13/10 16/14 21/18 28/23 29/3 29/17 30/2 33/2 42/17 awarding [2] 42/19 42/22 awards [3] 56/17 57/24 63/13 aware [2] 17/9 24/4 awareness [1] 53/16 away [1] 65/13 awkwardness [1] 63/25	Barton [1] 3/3 based [5] 42/25 43/1 51/4 53/9 60/18 basics [1] 52/22 basis [2] 36/10 61/13 be [94] beamed [1] 63/12 bear [2] 22/7 66/13 became [1] 41/2 because [6] 31/10 34/3 39/5 48/3 51/24 61/20 become [2] 2/25 20/5 been [53] 3/6 4/8 7/10 7/19 7/22 7/25 8/4 9/16 10/2 10/15 10/16 11/18 15/17 15/19 20/2 21/5 22/18 23/8 25/14 28/12 29/9 29/11 30/6 30/16 31/7 31/10 31/15 31/19 32/5 33/6 34/6 35/3 36/1 37/11 37/16 38/9 40/16 40/20 41/4 41/19 42/4 42/5 46/12 47/20 48/7 51/7 57/6 57/16 60/3 60/5 64/3 64/8 65/15 before [9] 2/13 2/18 26/16 36/7 36/12 41/5 49/12 51/7 54/11 began [2] 10/20 51/8 behalf [18] 3/12 22/24 26/23 27/5 27/8 27/10 35/17 40/7 46/1 46/4 50/5 50/22 55/17 67/6 67/9 67/13 67/16 67/20 behind [2] 36/17 58/25 being [18] 1/24 14/24 16/18 18/1 21/21 23/25 25/9 33/13 37/15 38/13 39/9 40/25 43/18 43/20 43/23 49/10 59/13 66/7 believe [2] 3/21 8/9 Bell [1] 24/13 bereaved [32] 3/7 3/11 3/12 3/13 3/14 25/5 27/1 27/5 27/8 27/11 27/23 29/14 30/4 33/14 33/15 35/17 36/12 38/19 38/23 39/9 40/7 40/10 46/1 46/5 46/21 47/4 48/11 49/18 50/6 67/6 67/10 67/14 best [7] 6/6 31/1 35/7 43/1 43/19 55/24 58/23 better [2] 34/25 58/10	between [7] 1/22 2/21 15/3 17/24 26/20 31/15 43/14 biases [1] 54/17 billion [5] 59/2 59/4 59/7 59/13 64/7 bin [2] 28/13 62/15 binding [1] 53/22 Bioindustry [1] 5/10 bit [2] 51/3 64/10 black [2] 51/5 51/12 blind [1] 21/3 BMA [1] 21/8 board [1] 40/18 boards [1] 4/15 bodies [6] 4/14 4/20 4/22 5/8 41/11 59/3 borne [1] 46/22 both [9] 7/7 27/11 27/23 29/13 35/5 40/20 44/20 44/22 49/25 bottom [2] 60/11 62/9 breach [1] 57/1 break [2] 50/16 50/19 Brenda [1] 40/11 Brian [1] 2/24 Brian Stanton [1] 2/24 brief [2] 2/2 4/7 briefly [6] 4/1 8/5 20/23 27/21 40/24 57/12 bring [1] 44/18 bringing [1] 46/8 Bristol [1] 24/8 British [3] 2/23 4/17 5/9 broader [3] 19/10 54/8 61/12 brought [2] 57/24 60/3 build [1] 49/24 building [1] 52/11 Business [1] 24/15 businesses [2] 5/9 63/2 but [34] 2/13 2/17 6/15 8/9 9/4 10/16 16/6 20/15 21/2 28/1 29/12 31/25 33/11 33/23 34/2 34/16 34/19 34/25 35/16 37/10 38/22 39/18 43/24 45/13 48/22 49/20 53/17 62/22 63/7 64/21 65/13 66/1 66/6 66/16 buy [2] 20/18 62/4 buy-sell [1] 62/4 buyers [3] 57/7 58/16 62/24 buying [5] 56/13	57/13 58/9 58/9 63/4 C Cabinet [1] 62/6 call [4] 14/5 24/22 25/3 38/7 called [3] 14/5 44/2 56/20 calls [2] 54/16 54/20 came [3] 56/24 61/5 62/10 campaign [1] 27/12 Campbell [1] 40/11 can [14] 24/25 26/25 30/10 32/3 33/22 34/6 34/14 35/17 35/22 36/16 41/8 49/15 65/6 65/7 Canada's [1] 58/11 cannot [3] 20/13 48/23 64/17 cap [1] 58/15 care [14] 4/22 4/23 4/23 6/22 12/19 13/17 28/17 32/7 33/4 34/10 39/3 49/19 62/7 64/24 careful [1] 16/1 carefully [2] 3/20 11/5 careworkers [2] 39/4 44/14 carpetbaggers [1] 63/2 carry [3] 18/2 22/6 50/4 case [10] 9/9 11/25 30/16 33/17 34/8 47/6 47/22 65/14 65/15 66/6 cases [3] 7/15 15/15 63/14 category [1] 8/16 cause [1] 8/18 caused [1] 11/6 cautious [1] 47/7 CBFFJ [8] 11/18 15/6 18/9 20/25 21/17 21/23 24/21 27/23 central [8] 19/11 28/7 29/5 31/10 32/6 33/13 41/21 45/15 centralised [3] 41/14 44/21 54/7 Centre [1] 24/6 CEO [1] 24/13 certain [6] 7/15 40/21 44/23 44/24 46/16 51/22 certainly [4] 36/11 41/5 47/8 47/22 chain [2] 5/15 14/4 chains [5] 14/1 24/17 25/11 42/4 57/15 chair [2] 47/14 48/20
----------	--	---	---	---

C				
<p>chairing [1] 56/3 challenge [3] 5/12 7/11 41/3 challenges [1] 6/21 changed [1] 30/22 channel [1] 56/22 chaos [1] 57/15 chaotic [1] 63/21 characteristics [1] 12/18 charge [1] 57/20 charged [1] 23/4 chased [1] 61/5 checks [2] 8/22 9/5 chief [1] 22/19 children [1] 34/12 Chinabuy [1] 13/4 choices [2] 57/19 61/1 chosen [1] 43/20 Chris [1] 64/4 chronology [1] 15/22 circulate [1] 25/24 circulated [1] 18/22 circumstances [1] 50/1 citations [1] 44/12 cite [3] 61/6 61/8 63/9 citizens [1] 64/19 civil [4] 4/20 7/16 14/18 46/17 clarification [2] 10/10 65/2 clarifying [1] 10/17 clarity [2] 37/14 37/15 clear [11] 17/3 17/13 17/18 20/5 20/12 23/12 31/7 35/18 42/5 44/13 63/1 clearer [2] 66/5 66/5 clearly [3] 28/16 29/13 36/3 clients [1] 40/1 clinical [1] 22/22 close [2] 8/9 62/3 closed [1] 36/17 closely [1] 17/2 closing [5] 2/11 26/3 26/6 26/8 64/15 co [3] 24/6 42/6 56/3 co-chairing [1] 56/3 co-director [1] 24/6 co-ordination [1] 42/6 coalition [9] 3/17 4/21 35/15 55/17 56/3 56/5 56/8 64/16 67/21 coherent [1] 14/10 collaboration [2] 41/6 41/13</p>	<p>collectively [1] 44/22 College [2] 4/18 21/7 Colombia [1] 63/9 come [5] 42/11 46/14 57/4 57/9 66/5 coming [2] 9/18 17/1 commenced [1] 9/20 commencement [1] 26/5 commend [1] 64/13 comment [1] 38/18 comments [4] 24/11 24/19 40/18 52/16 commercial [1] 29/2 Commissioner [2] 23/16 59/21 commissioner's [1] 23/21 commitment [2] 27/18 39/9 committed [2] 31/22 55/10 Committee [1] 60/4 communicated [1] 25/14 communication [1] 42/5 companies [10] 5/11 6/10 6/17 13/16 14/19 29/23 30/7 30/13 42/23 60/5 Company [1] 46/4 comparable [1] 61/22 compare [3] 59/25 63/8 63/13 competent [1] 23/1 competitions [1] 58/14 competitive [1] 29/18 complaints [1] 43/10 complement [1] 40/19 complex [1] 7/25 compliance [3] 32/18 49/7 53/24 complied [1] 30/1 comply [2] 7/5 53/20 component [1] 62/20 comprehensive [1] 54/2 comprise [1] 1/17 conceptualisation [1] 53/1 concern [5] 33/10 35/14 41/23 45/7 45/10 concerned [6] 2/6 5/5 23/25 35/9 47/21 49/3 concerns [18] 15/6 28/6 28/22 29/4 29/8 30/11 32/4 34/16 34/17 35/19 38/14</p>	<p>42/21 44/5 47/22 51/8 55/5 65/8 65/13 concluded [1] 66/21 concludes [1] 26/22 concluding [1] 55/4 conclusion [2] 12/2 31/21 conclusions [1] 16/10 conduct [1] 6/8 Confederation [2] 4/19 5/8 confidence [2] 43/18 49/6 confident [4] 16/19 25/8 25/19 47/14 confidential [1] 8/15 configured [1] 51/24 confirmation [1] 51/21 confirms [1] 32/16 conflicts [6] 16/15 29/2 29/24 57/1 59/9 61/2 connect [2] 57/8 62/25 connected [3] 6/17 61/5 63/25 conscious [2] 33/24 34/17 consequences [2] 21/25 38/25 consequential [2] 18/20 47/25 consider [17] 1/5 6/9 11/5 13/6 13/21 14/17 16/2 20/15 23/10 23/17 25/3 34/2 38/17 54/2 65/19 65/25 66/15 consideration [5] 10/25 14/4 16/1 23/3 45/5 considerations [3] 20/8 37/25 45/14 considered [9] 3/20 11/25 18/12 21/8 25/10 25/15 37/7 58/19 58/20 considering [2] 30/16 36/4 considers [5] 5/24 12/7 15/10 32/24 36/6 consortium [1] 51/4 constructive [3] 35/4 48/24 55/11 constructively [1] 33/23 consult [1] 33/18 consultancies [1] 5/13 consultancy [1] 60/10 consultants [1]</p>	<p>13/23 contact [1] 14/25 contacts [1] 63/10 contain [1] 8/14 contained [1] 21/4 contains [1] 64/12 contends [1] 53/19 content [1] 46/11 contention [1] 52/14 context [5] 15/8 19/12 20/16 22/23 38/16 contextual [2] 52/9 52/13 continue [8] 6/25 8/8 20/7 21/21 25/20 36/23 36/25 39/10 continues [3] 6/15 9/10 16/24 continuing [1] 35/12 contract [8] 12/24 14/14 14/24 15/22 19/3 33/17 63/13 63/22 contracting [4] 55/21 57/10 58/2 60/15 contracts [60] 6/18 9/24 10/10 12/1 13/3 13/10 14/21 15/1 15/7 15/21 16/14 16/17 16/22 17/1 18/5 21/18 23/23 28/5 28/23 29/3 29/9 29/17 30/2 30/12 30/20 31/5 31/21 33/2 33/3 33/8 33/20 35/14 42/17 42/19 42/23 45/14 48/13 48/13 50/3 56/14 57/11 57/14 57/20 58/2 59/2 59/4 59/7 59/10 59/25 60/18 61/9 61/10 63/17 63/19 63/20 64/4 64/7 65/17 65/25 66/3 contractual [3] 16/4 29/24 32/17 contribute [2] 2/20 31/2 contributed [1] 28/16 contributing [1] 55/12 contribution [1] 65/6 control [1] 43/21 controls [1] 13/2 controversial [1] 42/12 cooperation [2] 17/24 31/24 coordinate [1] 41/25 copies [2] 6/24 7/2 core [36] 1/25 2/7 2/13 2/16 2/19 3/22 4/5 5/19 6/23 8/7 8/13 8/23 9/8 11/13 16/7</p>	<p>16/19 18/23 23/7 23/19 24/3 24/9 24/11 24/18 24/19 25/15 26/7 26/17 33/18 35/6 36/7 37/8 39/17 56/8 57/6 62/13 64/5 correct [1] 49/17 corrected [1] 53/4 corruption [13] 3/17 4/21 23/16 30/3 35/15 48/13 55/17 56/3 56/4 56/8 59/8 64/16 67/21 cost [2] 45/1 45/1 could [10] 10/13 11/9 35/6 42/4 43/17 45/22 50/2 58/13 58/15 63/12 couldn't [1] 60/22 counsel [16] 1/7 1/9 1/17 3/4 3/4 26/3 26/6 26/9 26/23 29/7 30/19 46/5 46/13 46/18 65/23 67/3 counter [3] 59/21 62/10 63/6 Counter-Fraud [1] 59/21 counter-productive [1] 62/10 counterparts [1] 42/1 countries [5] 55/23 55/25 56/18 58/10 60/15 country [4] 56/21 57/18 60/17 63/20 coupled [2] 54/8 58/1 course [18] 3/22 7/2 8/7 11/2 15/9 17/15 22/3 23/12 25/2 26/8 26/13 26/25 28/18 33/7 34/20 38/22 48/10 48/20 court [3] 36/17 59/16 61/14 cover [1] 32/16 covered [1] 20/14 covering [1] 20/13 Covid [38] 3/7 3/10 3/12 3/13 3/14 23/15 25/5 27/1 27/5 27/8 27/11 27/23 28/7 28/16 32/10 33/14 33/15 35/17 40/7 40/10 44/20 46/1 46/5 46/20 47/4 48/11 49/17 50/6 57/10 59/2 59/10 59/21 62/13 63/19 64/20 67/6 67/10 67/14 Covid-19 [8] 3/7 3/10 3/12 3/13 27/1 27/5 44/20 67/6 Covid-related [2]</p>

C	deal [1] 48/8 dealings [1] 50/1 deals [4] 1/11 9/25 59/3 64/3 dealt [2] 19/12 49/21 deaths [2] 27/17 28/17 December [8] 1/1 10/19 23/14 24/10 24/12 24/18 24/20 46/23 December 2024 [2] 24/18 24/20 decide [1] 8/19 decided [1] 32/4 decision [11] 5/19 24/22 37/20 38/6 39/14 42/16 51/11 52/16 53/15 54/25 55/9 decision-makers [1] 54/25 decision-making [5] 5/19 37/20 42/16 52/16 55/9 decisions [16] 19/13 20/17 21/14 22/9 28/7 29/16 36/8 37/2 38/14 42/25 43/12 52/25 53/7 53/23 54/5 64/22 deeper [1] 52/15 default [1] 51/22 defective [3] 29/10 30/12 63/5 Defence [1] 13/15 defined [1] 53/2 deflecting [1] 54/23 degree [1] 37/11 degrees [1] 21/7 delay [5] 34/7 34/10 48/21 49/18 49/22 delayed [2] 34/9 34/13 delaying [1] 34/8 delays [11] 7/14 8/3 15/12 31/10 31/15 31/18 32/6 41/17 44/4 44/6 63/18 deliver [2] 26/6 42/21 delivered [1] 42/21 delivery [2] 1/9 64/23 demanding [2] 7/7 56/24 department [6] 31/14 32/7 41/12 41/24 59/14 62/7 departments [15] 4/10 7/9 7/18 7/22 8/11 15/13 15/16 16/13 31/11 31/13 31/16 31/25 33/14 35/10 43/7 depended [1] 33/4 deployed [1] 29/19	describe [1] 21/2 designed [1] 51/21 designing [1] 54/14 desirable [1] 66/1 despite [4] 43/23 44/4 59/15 64/2 detail [7] 12/14 25/10 27/21 30/24 37/3 37/22 64/8 detailed [5] 16/16 37/6 46/6 52/2 65/21 details [7] 4/5 23/20 26/1 35/24 59/1 63/23 64/7 determined [1] 26/11 development [1] 54/25 devolved [20] 4/9 5/3 12/15 13/25 17/18 17/24 18/4 18/6 18/11 18/13 18/24 19/6 19/13 25/12 37/13 41/10 44/22 45/16 47/19 65/22 dialogue [1] 10/17 did [16] 29/23 41/13 48/14 48/14 51/20 53/10 56/18 57/4 57/18 61/18 61/22 61/24 62/22 63/7 63/16 63/24 didn't [2] 40/1 58/8 different [5] 5/25 23/22 30/23 34/4 41/19 difficult [1] 48/15 difficulties [6] 21/25 28/11 34/19 39/1 43/25 46/20 diligence [3] 12/24 15/2 58/5 direct [2] 56/17 57/24 directly [1] 39/4 director [2] 24/6 55/20 directorates [1] 4/10 Disability [1] 5/7 disappointed [2] 7/13 47/1 disappointing [2] 15/18 43/9 disclose [1] 35/10 disclosed [9] 9/8 9/14 9/16 16/19 17/16 23/11 23/18 33/13 64/8 disclosure [27] 2/7 7/3 7/18 7/20 7/25 8/13 8/17 8/20 8/23 9/3 9/18 11/6 15/16 15/20 20/3 27/25 31/17 32/2 35/2 36/14 39/22 43/7 45/7 46/12 46/13 46/16 47/21	discrete [1] 47/16 discussions [1] 10/3 disinformation [1] 49/13 disparate [1] 19/24 disparities [2] 54/6 54/15 disposal [2] 58/25 65/1 disrupted [1] 62/24 distant [1] 64/21 distracted [2] 57/3 61/7 distributed [1] 65/11 distribution [8] 1/11 5/15 13/13 13/16 13/20 18/1 19/1 32/13 diverse [2] 53/5 53/11 diversity [4] 53/8 53/16 54/9 55/1 do [24] 2/15 20/1 20/12 25/3 26/8 31/22 32/4 33/1 34/18 34/19 36/13 38/4 38/24 39/10 45/5 45/22 49/18 49/24 52/4 54/1 57/18 60/8 65/19 66/16 doctors [2] 44/13 64/24 document [3] 9/5 9/7 15/20 documents [4] 8/14 8/22 9/14 31/13 does [8] 6/9 6/16 19/19 25/6 26/14 49/22 50/9 51/4 doesn't [2] 50/10 57/9 doing [3] 27/16 40/2 50/12 domain [2] 29/1 29/22 domestic [1] 14/1 domestically [1] 42/1 don't [4] 39/8 47/5 48/17 65/18 doors [1] 36/17 Dorland [1] 26/20 Dorland House [1] 26/20 doubt [3] 11/4 47/6 49/20 doubtless [1] 49/4 downplayed [1] 62/6 downs [1] 59/12 DR [2] 46/2 67/14 DR MITCHELL [1] 46/2 draft [9] 3/9 17/10 18/22 20/10 24/10 24/18 52/3 58/18 60/21	draw [1] 66/2 driving [1] 33/11 drove [1] 62/3 dual [1] 7/11 due [11] 3/22 12/24 15/2 17/15 18/17 23/3 23/12 26/13 45/6 51/18 58/5 Duffy [1] 40/12 duplication [1] 23/5 during [29] 1/13 4/11 5/1 5/15 5/19 6/22 12/3 13/23 14/5 14/8 14/15 15/1 19/2 19/17 21/10 23/24 24/1 25/2 26/24 28/7 30/18 35/21 42/13 44/20 51/6 51/18 52/25 53/19 55/24 duties [1] 53/21 duty [2] 37/25 53/21
D	damage [4] 8/18 11/6 47/13 62/18 dark [1] 64/21 darker [1] 51/24 dashboards [1] 63/11 data [5] 12/10 12/24 57/23 62/25 63/11 dataset [1] 58/23 date [6] 9/13 12/5 16/2 24/20 46/8 51/19 dated [1] 2/1 dates [3] 2/12 26/14 39/18 day [1] 59/24 Dayle [5] 50/15 50/21 50/23 55/14 67/18 days [6] 11/14 59/22 59/22 63/14 63/19 64/21 de [1] 49/8 de-politicise [1] 49/8 deadlines [4] 7/11 7/21 15/17 43/8			E
				each [8] 7/7 9/5 17/17 18/10 18/11 41/20 49/20 59/24 earlier [3] 7/24 20/19 39/19 early [2] 10/3 10/11 Economic [1] 24/6 effect [4] 14/23 18/9 32/2 43/12 effective [5] 6/8 14/7 18/25 56/16 66/2 effectively [5] 6/2 9/4 17/5 27/15 42/9 effectiveness [3] 13/12 14/10 38/15 efficacy [1] 21/3 efficient [1] 14/11 efficiently [2] 9/11 23/6 effort [1] 57/3 efforts [4] 7/5 10/10 41/15 44/4 either [2] 60/23 65/18 elaborated [1] 29/11 eliminate [2] 32/17 54/5 elsewhere [4] 41/2 60/2 61/8 63/18 email [1] 61/24 embed [1] 54/9 emergency [19] 12/11 13/19 14/15 15/11 19/7 21/19 28/24 32/24 43/13 55/25 57/2 57/6 57/7 57/14 58/8 60/18 61/3 62/23 63/10 emphasis [1] 40/21 emphasise [1] 54/11 enable [1] 6/1 enabled [1] 65/23

E	63/15 event [2] 11/15 18/14 ever [1] 66/11 every [12] 2/10 15/20 25/14 25/16 39/14 41/20 41/21 45/8 49/14 50/10 55/8 57/17 everybody [1] 66/11 everything [1] 40/2 evidence [50] 4/2 6/10 6/19 7/3 10/12 11/16 11/24 12/5 15/21 16/1 16/13 16/25 19/12 20/4 21/5 21/24 22/11 22/14 22/16 23/3 23/17 24/22 25/1 25/3 25/4 25/12 25/19 28/10 30/7 30/13 31/6 33/1 38/7 38/9 38/11 38/13 38/24 41/19 43/5 48/2 51/9 51/14 53/6 56/15 60/11 61/6 61/9 61/15 64/17 65/21 evidential [2] 16/17 25/18 evolving [1] 42/9 exacerbate [1] 54/15 exactly [1] 57/16 examination [5] 12/23 13/14 14/16 35/8 52/15 examine [14] 5/20 10/8 14/9 14/20 16/21 19/15 21/12 30/17 31/20 32/10 41/7 45/13 48/15 64/25 examined [5] 15/7 18/2 37/15 38/13 55/9 examining [3] 12/3 33/8 35/5 example [8] 6/6 20/14 22/19 34/10 53/9 58/11 58/13 60/22 examples [7] 5/25 14/21 16/9 33/9 36/22 41/5 48/19 executive [2] 22/20 55/20 exercise [1] 66/4 exerted [1] 13/8 exhaustive [1] 65/17 exhibits [1] 9/19 existence [2] 32/20 36/20 existing [2] 22/23 54/12 expanded [2] 19/4 30/21 expectation [1] 42/23 expects [1] 9/17	expediting [1] 61/18 expenditure [1] 43/23 experience [4] 12/11 13/18 42/24 56/2 experienced [1] 44/5 experiences [3] 22/7 22/9 25/21 expert [15] 2/9 24/3 24/5 24/13 24/22 25/4 25/12 38/4 38/7 38/12 38/18 58/18 60/22 61/12 64/5 expertise [3] 12/10 13/18 25/7 experts [3] 25/7 25/10 39/23 explain [1] 1/5 explained [1] 20/19 explicit [1] 20/11 explicitly [1] 18/11 exploitation [1] 44/2 exploration [3] 12/15 17/12 38/1 exploring [1] 25/18 expressed [2] 48/1 65/8 extensions [1] 7/21 extensive [2] 8/1 65/21 extent [3] 21/15 32/1 42/8 extreme [1] 28/11 extremely [2] 33/24 58/3	31/23 33/14 33/15 35/17 36/12 38/20 38/23 40/8 40/10 67/7 67/10 family [2] 39/13 40/22 fanciful [1] 47/13 far [6] 2/3 2/5 44/9 47/21 53/6 59/18 fashion [1] 65/17 fast [1] 63/4 faster [1] 57/24 faulty [1] 53/3 features [2] 13/10 51/22 February [2] 1/19 2/19 February 2024 [1] 1/19 Federation [5] 3/14 5/9 50/22 50/25 67/16 FEMHO [17] 3/15 19/21 19/25 22/18 22/24 23/7 37/19 37/24 51/1 52/2 53/13 53/19 54/1 54/6 54/15 54/20 55/4 FEMHO's [3] 52/10 52/13 53/25 few [5] 3/1 8/5 11/14 18/7 58/8 fifth [3] 12/12 15/2 38/19 filed [1] 40/16 filter [1] 61/19 final [4] 1/20 9/19 25/24 39/16 finally [7] 5/13 12/12 14/13 15/3 23/14 26/14 39/16 financial [2] 32/12 45/1 find [3] 41/16 46/21 60/22 Finder [1] 63/17 finding [2] 61/14 64/3 findings [1] 41/7 finish [1] 65/17 Fiona [1] 3/3 firm [1] 51/2 firmly [1] 18/15 firms [2] 59/5 60/10 first [15] 1/18 2/18 12/9 14/23 20/12 24/5 27/1 27/13 28/3 36/1 37/11 38/4 40/25 52/22 53/25 firstly [3] 6/4 56/13 57/13 fit [2] 21/13 51/20 five [1] 3/22 flagged [1] 49/1 flags [1] 59/8 flawed [1] 54/13	flow [1] 5/23 focus [16] 5/21 6/11 6/16 7/23 13/3 16/20 19/9 21/1 22/4 22/8 24/8 24/17 38/21 52/8 55/7 60/14 focused [3] 5/17 23/23 55/11 focusing [1] 20/20 followed [1] 31/9 following [8] 2/6 12/1 16/1 26/2 27/17 30/20 65/14 65/16 forced [1] 33/7 forefront [1] 55/5 foregoing [1] 43/9 forget [1] 64/18 forgive [1] 50/15 form [1] 53/13 formal [3] 4/2 19/5 60/17 former [1] 23/23 forthcoming [1] 35/3 forward [5] 33/11 34/15 53/21 55/12 65/5 foster [1] 53/23 found [1] 56/25 four [5] 1/12 5/24 17/21 19/15 40/24 fourth [3] 12/11 15/1 44/18 fragmentation [2] 41/16 42/3 fragmented [1] 58/5 framework [1] 24/23 frameworks [3] 25/2 54/16 58/13 frank [1] 60/24 frankly [2] 15/17 62/10 fraud [3] 30/3 32/17 59/21 fraudulent [3] 29/9 30/11 48/12 frequently [1] 62/21 friend [2] 43/4 46/18 friends [1] 1/16 front [1] 44/8 frontline [5] 22/3 22/5 25/22 45/2 64/18 frustrate [1] 49/22 frustrated [1] 32/5 fulfil [1] 16/22 full [7] 25/16 32/1 34/5 34/23 39/14 43/17 56/20 fully [1] 64/8 function [2] 51/23 65/12 funding [6] 18/20 19/7 19/10 19/11 45/15 47/25 funds [1] 32/12
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F	42/1 43/7 45/15 47/8 47/10 47/24 49/22 49/25 54/21 Government's [2] 41/14 63/3 governments [1] 63/7 Graells [3] 24/5 58/17 60/21 Graells' [1] 61/11 grateful [11] 3/18 7/4 37/7 37/17 37/23 45/23 46/5 47/20 48/1 55/15 66/11 greater [1] 53/15 grounds [1] 61/17 group [4] 5/7 40/23 43/10 56/4 group's [1] 45/9 groups [2] 5/5 27/11 guaranteeing [1] 18/19 guard [1] 48/12 guide [1] 17/12 guided [1] 53/1 guiding [1] 19/22 Guildhall [1] 24/15	34/25 37/7 41/19 51/17 59/8 62/15 Hayhoe [1] 23/16 Hayman [5] 55/16 55/18 55/20 65/4 67/21 he [1] 59/23 headed [1] 40/11 headlines [1] 62/15 health [18] 4/14 4/15 4/17 6/21 12/18 22/20 28/17 32/7 32/10 33/3 39/4 41/10 41/13 41/23 41/25 43/2 59/14 62/7 healthcare [28] 1/13 3/15 4/11 5/18 13/16 13/20 14/2 14/8 17/20 18/18 19/1 19/17 20/15 20/22 21/9 22/22 23/2 24/24 39/2 39/4 44/8 44/11 50/23 50/25 51/5 51/13 51/16 67/17 healthcare-related [1] 1/13 hear [7] 26/25 37/1 46/18 46/19 48/3 48/6 48/20 heard [9] 11/4 21/6 28/10 41/18 44/1 48/6 51/9 51/14 53/6 hearing [33] 1/4 1/15 1/18 1/21 2/1 2/2 2/5 2/8 2/11 2/18 2/21 3/5 3/6 3/21 6/17 7/7 9/13 11/22 11/25 15/5 17/10 26/2 26/5 26/14 26/15 26/19 26/25 29/8 36/16 39/21 45/6 66/15 66/21 hearings [6] 1/21 10/8 21/6 25/18 26/16 64/20 heart [5] 28/5 39/10 45/9 57/2 61/3 help [2] 55/14 63/23 helped [1] 41/21 helpful [3] 35/24 55/7 66/12 helpfully [1] 40/16 here [2] 28/2 43/3 high [22] 13/5 13/8 14/17 14/24 18/3 21/19 28/25 32/20 33/3 41/3 45/13 52/11 56/20 56/23 57/4 59/12 59/25 60/13 61/14 61/16 61/18 61/22 high-level [1] 52/11 high-risk [1] 59/25 high-value [1] 33/3 higher [1] 61/9	highest [2] 36/5 64/22 highlight [4] 5/25 16/3 18/6 56/11 highlighted [1] 44/20 himself [1] 58/17 hindered [1] 42/8 his [4] 23/20 58/18 60/21 61/6 hold [3] 40/2 59/18 60/5 holding [1] 26/15 home [1] 64/24 homes [2] 39/3 49/20 Honorary [1] 24/14 honour [1] 56/3 hope [6] 37/10 40/17 46/20 47/4 53/23 65/10 hospital [1] 41/20 hour [1] 60/6 hours [1] 63/12 House [1] 26/20 how [25] 5/25 6/13 10/13 12/22 13/1 15/7 19/15 21/12 22/4 30/10 31/1 31/4 37/20 41/8 43/11 45/22 48/8 48/14 48/14 53/3 57/4 57/9 57/21 58/13 62/9 however [10] 2/20 6/25 20/12 26/9 31/7 34/22 36/13 38/10 51/9 52/4 HSE [1] 21/8 huge [1] 56/17	I may [2] 2/14 51/3 I move [1] 35/22 I note [1] 52/16 I pause [1] 43/3 I represent [3] 40/9 43/10 50/24 I say [3] 65/14 66/4 66/6 I shall [2] 50/17 66/12 I should [1] 2/25 I sit [1] 66/18 I start [1] 40/12 I suspect [1] 65/11 I think [3] 45/20 50/15 66/18 I took [2] 45/20 45/21 I turn [1] 8/12 I want [3] 19/25 34/16 56/1 I wanted [1] 56/10 I weren't [1] 50/11 I will [5] 2/5 3/25 8/5 51/3 52/8 I wish [2] 26/23 45/17 I would [1] 43/6 I'd [1] 28/3 I'll [1] 64/10 I'm [11] 34/9 34/11 34/17 34/22 40/2 40/15 45/23 50/13 55/15 55/20 66/11 I've [1] 45/11 idea [1] 65/15 identified [8] 9/7 12/6 15/23 16/4 16/17 36/1 53/4 64/6 identifies [1] 59/7 identify [1] 65/24 identity [1] 51/4 identity-based [1] 51/4 ie [1] 48/18 if [20] 2/14 10/7 11/10 14/23 14/25 34/5 36/24 42/4 45/17 46/20 47/10 48/13 48/17 50/3 50/11 50/15 51/3 58/20 61/19 63/4 illustrative [2] 14/21 33/9 immense [1] 62/18 impact [7] 8/3 14/25 21/25 38/25 45/14 51/12 64/23 impacted [1] 29/3 impacts [1] 19/25 implementation [1] 64/13 importance [6] 21/17 22/2 36/3 38/5 40/22 43/16
G	gaps [1] 42/3 Garbage [2] 54/18 54/18 Gardiner [1] 1/17 gather [1] 10/12 gathering [1] 12/23 GAVIN [3] 55/18 55/20 67/21 general [5] 11/18 16/8 27/25 44/14 51/15 generality [1] 48/18 generally [2] 6/9 36/18 generated [1] 7/3 Germany's [1] 58/15 get [4] 40/2 50/10 60/11 66/5 gets [1] 62/8 give [5] 21/24 25/21 38/24 58/11 58/12 given [8] 2/17 10/11 23/3 31/12 35/23 36/13 38/13 45/5 gives [1] 41/6 glad [1] 60/14 global [7] 14/1 24/7 54/20 54/22 54/24 55/21 57/14 go [1] 66/16 goal [1] 27/13 going [5] 30/22 34/18 38/21 48/3 52/22 Good [4] 1/3 40/9 46/3 50/24 goods [1] 6/5 got [1] 66/15 governance [3] 12/13 14/13 62/19 government [39] 3/16 4/9 5/14 7/9 7/17 7/22 8/11 13/19 15/3 15/12 15/15 16/13 18/16 18/19 18/21 19/7 19/11 19/19 21/18 23/15 28/7 28/24 29/16 31/11 31/16 31/24 32/6 33/13 35/10 41/22	H Habib [1] 22/19 had [20] 8/3 17/9 18/15 22/5 31/21 35/2 39/2 41/4 41/11 41/18 42/2 46/18 47/20 48/20 55/6 57/4 59/20 61/5 61/9 64/22 handed [1] 59/1 happened [5] 27/14 36/22 48/18 57/21 62/9 hard [1] 9/10 harder [1] 63/24 harm [3] 8/18 11/6 47/13 has [60] 4/1 7/10 8/4 8/24 9/14 9/16 10/2 10/3 10/15 10/16 10/23 12/6 15/19 16/12 17/4 18/14 21/5 23/8 23/16 24/4 25/14 28/10 28/12 29/11 30/15 30/21 31/10 31/15 31/19 31/25 33/6 34/6 34/9 35/23 36/1 37/11 37/16 37/21 38/9 38/20 40/20 43/12 47/8 47/24 48/6 48/7 48/20 49/19 51/10 51/14 52/2 54/1 56/5 57/8 59/15 59/23 62/25 64/11 65/15 65/22 have [73] having [8] 3/18 11/25	hear [7] 26/25 37/1 46/18 46/19 48/3 48/6 48/20 heard [9] 11/4 21/6 28/10 41/18 44/1 48/6 51/9 51/14 53/6 hearing [33] 1/4 1/15 1/18 1/21 2/1 2/2 2/5 2/8 2/11 2/18 2/21 3/5 3/6 3/21 6/17 7/7 9/13 11/22 11/25 15/5 17/10 26/2 26/5 26/14 26/15 26/19 26/25 29/8 36/16 39/21 45/6 66/15 66/21 hearings [6] 1/21 10/8 21/6 25/18 26/16 64/20 heart [5] 28/5 39/10 45/9 57/2 61/3 help [2] 55/14 63/23 helped [1] 41/21 helpful [3] 35/24 55/7 66/12 helpfully [1] 40/16 here [2] 28/2 43/3 high [22] 13/5 13/8 14/17 14/24 18/3 21/19 28/25 32/20 33/3 41/3 45/13 52/11 56/20 56/23 57/4 59/12 59/25 60/13 61/14 61/16 61/18 61/22 high-level [1] 52/11 high-risk [1] 59/25 high-value [1] 33/3 higher [1] 61/9	I also [2] 34/1 56/2 I am [1] 1/8 I apologise [1] 45/19 I appear [2] 1/15 46/3 I appreciate [2] 33/22 34/15 I assure [1] 50/8 I believe [1] 3/21 I bring [1] 44/18 I can [2] 24/25 34/14 I consider [1] 34/2 I do [5] 2/15 20/12 45/5 45/22 66/16 I don't [1] 39/8 I had [1] 17/9 I have [2] 1/5 15/13 I hope [3] 37/10 40/17 65/10 I interrupt [1] 33/22 I invite [1] 26/25 I just [1] 40/1 I know [1] 35/15 I look [1] 65/5 I made [1] 39/19 I make [3] 17/18 27/7 27/9

I	30/11 48/13 influence [3] 13/7 54/20 54/22 inform [2] 22/14 23/4 information [14] 8/15 11/12 14/15 15/14 16/16 28/25 29/22 31/3 31/11 31/20 36/9 63/17 64/4 65/2 informed [2] 7/1 26/17 Initially [1] 30/18 Innovation [1] 24/7 Innovo [1] 2/24 Inquiries [2] 8/17 36/2 inquiry [113] Inquiry's [30] 2/3 6/19 6/23 10/21 15/9 15/25 16/23 17/6 23/6 28/4 28/19 29/5 29/8 30/22 31/2 32/5 32/9 32/23 34/20 35/1 35/25 37/3 37/6 38/1 38/5 39/9 39/13 46/25 58/25 64/14 insights [2] 3/19 56/1 insofar [1] 12/19 inspection [2] 12/12 14/7 instance [1] 53/3 instances [2] 7/13 51/16 instead [4] 6/11 25/17 57/18 61/1 institutional [1] 6/20 institutions [2] 14/6 18/23 instructed [7] 10/1 24/4 25/7 25/11 40/12 46/4 51/1 instruction [1] 38/17 instructions [1] 17/3 insufficient [2] 42/20 51/19 integrity [1] 56/6 intelligence [2] 24/14 54/7 intend [1] 25/3 intended [5] 17/11 31/5 31/6 31/22 33/23 intends [3] 11/23 14/20 31/8 intention [1] 18/2 interest [8] 16/15 29/2 29/13 29/24 51/4 57/1 59/9 61/2 interested [2] 8/25 49/4 interests [2] 29/2 43/1 intermediaries [2] 12/25 15/3 International [2]	58/24 59/6 International's [1] 59/25 interrogate [1] 52/23 interrogation [1] 11/24 interrupt [1] 33/22 interrupting [1] 39/25 intersect [1] 55/8 intervening [1] 10/17 intervention [1] 52/10 into [12] 9/23 10/22 20/8 21/14 23/1 33/7 38/1 47/1 53/10 56/20 58/8 63/12 introduced [1] 2/22 inventory [1] 12/24 investigate [6] 6/2 29/15 30/11 32/3 49/15 56/12 investigated [2] 21/22 31/5 investigates [2] 15/23 59/17 investigating [1] 9/1 investigation [26] 2/8 6/8 6/12 8/4 9/22 9/23 10/2 10/6 10/13 10/22 11/3 11/17 11/22 17/13 25/17 28/4 28/19 33/7 33/11 33/12 33/17 34/23 37/4 50/4 50/11 56/20 investigations [14] 7/16 11/8 14/18 19/23 28/20 29/6 31/3 32/5 32/23 35/23 35/25 36/21 47/1 55/13 investigatory [2] 5/2 17/17 investment [1] 23/1 invite [3] 26/25 38/17 39/11 invites [1] 54/2 inviting [3] 26/9 55/19 64/16 involve [2] 29/8 30/19 involved [7] 4/10 4/13 5/11 10/2 34/4 34/11 60/10 involvements [1] 37/12 Ireland [25] 3/8 3/13 4/16 4/24 11/19 13/14 15/6 20/25 21/17 21/23 24/21 25/9 29/19 30/4 33/15 40/7 40/10 40/22 41/1 41/11 41/13 41/24 41/25 44/5 67/10 Ireland's [1] 42/8	Irish [2] 27/10 27/23 is [119] issue [11] 7/19 19/18 21/5 22/17 28/18 37/22 47/16 48/4 48/9 49/1 54/24 issued [1] 4/2 issues [55] 1/5 2/2 2/9 3/9 5/20 6/2 6/3 6/15 10/9 12/3 13/6 15/23 15/24 16/8 17/7 17/10 18/10 18/12 18/17 18/22 19/10 20/10 20/15 20/23 21/13 21/21 22/15 22/17 22/21 25/4 25/8 25/25 27/25 29/12 30/17 36/24 37/4 37/6 38/13 39/22 42/8 42/12 44/8 45/7 45/11 46/9 46/16 47/17 49/8 49/15 51/6 52/3 55/8 58/22 62/22 issuing [1] 60/8 it [79] it's [6] 33/10 34/13 59/16 60/9 62/8 65/14 items [1] 17/22 its [30] 6/16 10/10 10/22 11/24 13/6 17/3 19/23 20/10 22/10 22/18 23/7 23/15 32/1 32/3 32/23 33/7 33/7 33/11 33/16 41/12 42/2 49/25 51/8 54/21 57/16 57/25 58/7 60/6 64/13 66/9	Justice UK [4] 3/8 3/12 27/2 27/8 justifiable [1] 61/17 justify [1] 61/25
		J	K	
		January [4] 9/20 65/11 66/5 66/19 January 8 [2] 65/11 66/5 Jaswinder [1] 22/24 job [1] 50/12 John [1] 24/13 joint [3] 3/11 15/5 20/24 jointly [2] 3/7 30/4 Jonathan [1] 3/4 just [6] 3/23 37/10 39/18 40/1 58/9 61/20 Justice [16] 3/8 3/11 3/12 3/14 27/2 27/6 27/8 27/11 27/24 30/5 33/14 33/15 40/8 40/11 67/7 67/10 Justice and [1] 33/14 Justice Cymru [1] 3/11 Justice Made [1] 30/5 Justice now [1] 33/15	KC [13] 1/5 27/6 40/11 40/11 40/16 40/19 43/4 46/2 49/2 51/1 52/17 67/7 67/14 KC's [1] 45/12 keen [1] 52/5 keep [3] 6/15 55/4 60/25 kept [4] 6/25 23/9 43/23 58/9 key [30] 1/12 4/11 5/17 6/21 12/21 13/10 13/16 13/20 14/2 14/8 14/20 16/3 16/8 17/20 18/18 19/1 19/16 21/9 22/22 24/23 25/18 32/13 33/8 33/9 35/14 56/11 57/12 60/9 62/14 65/24 King's [3] 3/3 3/4 29/7 Kingdom [3] 1/12 3/16 19/16 kit [1] 22/13 kits [1] 5/23 know [10] 27/7 27/12 33/24 34/3 35/15 40/10 48/11 57/8 58/5 60/17	
		L		
		Laboratories [1] 30/10 lack [8] 22/21 28/15 31/24 35/12 41/15 41/21 42/13 43/11 lacking [2] 35/19 58/6 Lady [52] 1/8 2/5 2/15 3/19 3/23 8/12 11/1 11/1 11/21 13/18 16/7 16/20 17/7 19/18 20/12 23/9 24/3 24/21 24/25 26/10 26/22 27/7 28/3 29/13 34/20 34/22 35/14 36/4 38/3 38/11 38/19 38/22 39/8 39/16 39/24 40/9 41/18 45/17 46/3 46/10 48/5 48/23 49/17 49/19 50/13 50/24 51/3 52/14 55/4 55/19 64/9 65/10 Ladyship [4] 8/19 40/18 51/14 54/2 lane [16] 13/6 14/24 21/20 28/25 29/18 32/20 33/21 56/21		

L	63/8 64/17 likelihood [1] 62/5 likely [5] 12/14 14/22 17/1 26/10 36/15 limited [4] 25/16 30/9 32/6 42/19 limits [2] 26/10 46/22 line [4] 6/14 15/16 43/8 44/8 lines [2] 33/11 42/5 link [1] 59/5 list [19] 2/8 3/9 6/2 6/14 14/22 15/24 17/7 17/10 18/10 18/22 20/10 22/15 25/24 25/25 37/3 37/6 52/3 58/22 62/22 lists [1] 58/16 literally [1] 60/16 Lithuania [1] 63/9 litigation [1] 7/16 little [6] 27/20 42/17 49/24 56/14 57/13 58/1 lives [3] 44/16 44/16 64/20 local [1] 5/4 logistics [1] 13/12 London [2] 24/15 24/16 long [1] 44/9 longer [4] 9/7 31/9 33/10 57/25 look [4] 19/5 55/12 59/24 65/5 looked [1] 20/15 looked at [1] 20/15 looking [3] 23/23 53/21 63/16 loss [1] 39/5 lost [2] 22/3 64/19 lot [1] 61/6 loved [2] 27/14 39/2	17/18 20/11 20/12 21/23 25/5 26/4 26/7 27/7 27/9 35/17 36/7 36/25 37/1 45/17 48/16 54/10 65/6 makers [2] 53/15 54/25 makes [1] 58/17 makeshift [1] 51/17 making [11] 5/19 16/10 27/18 37/20 41/7 42/16 51/11 52/11 52/16 55/9 60/25 maladministration [3] 29/3 30/1 32/21 male [1] 51/22 manage [1] 41/12 management [1] 32/12 manner [1] 7/6 Manners [1] 24/13 Manners-Bell [1] 24/13 manufacturers [2] 15/4 54/22 manufacturing [1] 14/1 many [4] 39/2 39/3 63/6 64/19 March [5] 1/22 10/8 26/17 26/21 66/6 March 2025 [1] 26/17 market [2] 62/24 63/21 markets [1] 57/15 mask [1] 58/25 masks [3] 51/18 51/19 51/21 massive [1] 44/4 match [1] 46/21 material [23] 7/8 7/9 7/15 7/18 7/20 8/16 8/25 9/3 9/15 10/12 10/21 11/3 11/7 11/19 15/14 16/18 17/4 17/16 34/6 35/11 39/23 40/3 46/24 materials [1] 16/24 matter [4] 8/5 46/19 48/5 49/4 mattered [1] 63/22 matters [14] 1/10 2/10 10/18 21/15 25/14 25/16 26/22 36/16 38/7 39/14 45/8 46/17 49/14 63/1 maximum [1] 32/2 may [12] 2/14 8/15 8/19 10/7 11/16 29/9 40/12 41/16 42/7 50/7 51/3 64/20 McDermott [6] 27/10 40/6 40/8 45/24 65/8	67/11 me [6] 1/17 34/10 50/15 55/19 57/12 62/6 mean [2] 49/10 50/9 meaning [2] 8/18 41/11 meaningfully [2] 33/18 55/12 means [3] 9/6 12/7 36/19 meant [1] 42/16 measurements [1] 53/2 mechanism [1] 19/6 mechanisms [2] 42/2 60/1 median [1] 53/3 medical [11] 2/23 4/18 6/5 22/1 28/8 28/11 33/4 39/1 41/2 42/15 42/24 Medpro [5] 9/24 10/5 10/23 30/9 47/1 meet [3] 17/5 29/23 55/2 members [4] 21/24 39/13 56/5 58/14 mentioned [2] 17/9 49/19 mere [1] 61/23 merely [1] 51/9 merit [1] 36/15 met [2] 11/11 12/8 method [2] 12/2 30/17 methodology [1] 31/4 metrics [1] 52/24 Metropolitan [1] 24/16 might [3] 8/18 18/20 51/7 mind [5] 18/15 22/7 35/1 46/22 66/13 mindful [2] 11/5 40/15 mini [1] 58/13 Ministry [1] 13/15 minority [6] 3/15 50/22 50/25 51/5 51/13 67/17 minutes [1] 50/17 misinformation [1] 49/13 missing [1] 64/4 misspending [1] 58/4 mistakes [1] 65/1 misunderstanding [1] 66/7 Mitchell [7] 45/20 45/21 45/25 46/2 50/7 65/9 67/14	mitigate [1] 11/10 modelling [1] 12/23 modern [1] 47/8 module [87] Module 3 [1] 20/14 Module 4 [1] 66/19 Module 5 [31] 1/18 2/9 2/16 2/20 4/4 7/1 8/8 9/13 9/22 10/9 12/7 15/24 17/5 17/17 19/9 21/9 21/22 22/18 23/13 24/4 25/20 25/24 26/16 26/18 26/20 28/6 29/5 32/15 36/19 38/21 39/15 Module 6 [1] 28/20 module's [4] 6/14 16/23 21/1 58/21 modules [9] 7/12 7/24 12/20 22/17 28/10 34/4 49/21 51/8 51/10 moment [1] 40/18 moments [3] 3/1 8/6 18/7 money [9] 13/1 13/11 14/23 23/25 43/18 43/22 43/22 57/19 59/5 month [1] 65/13 monthly [4] 4/4 7/1 8/8 26/18 months [3] 10/17 10/19 58/8 more [16] 7/25 11/12 20/11 27/21 29/14 36/18 43/8 52/12 54/22 56/16 57/3 57/24 59/8 61/8 62/1 64/10 More generally [1] 36/18 morning [19] 1/3 1/6 27/9 29/12 30/21 31/8 35/16 35/24 37/16 37/22 38/21 40/9 40/20 43/4 46/3 46/7 48/21 50/24 52/16 mornings [1] 40/17 Morris [11] 27/4 27/6 33/22 40/1 40/19 48/10 49/2 65/8 66/14 66/17 67/7 most [5] 16/21 20/21 30/25 42/12 44/7 move [1] 35/22 moving [3] 3/23 25/23 31/14 Mr [28] 1/4 1/16 1/16 27/3 28/5 29/7 30/21 35/23 37/4 37/21 38/20 40/16 43/4 45/12 50/15 50/21 50/23 51/1 52/17 55/6
----------	---	---	---	---

M	38/22 39/8 39/16 39/16 39/24 40/2 40/9 41/18 43/3 44/3 45/17 46/3 46/10 46/18 48/5 48/23 49/17 49/19 50/12 50/13 50/24 51/3 52/14 55/4 55/19 62/12 65/10	33/10 33/10 42/23 43/5 47/8 49/20 50/12 56/21 60/17 61/17 63/4 nominated [1] 62/16 non [3] 29/18 55/21 56/4 non-competitive [1] 29/18 non-profit [1] 55/21 none [1] 34/9 nonetheless [1] 16/2 nor [2] 10/24 65/19 normal [1] 62/1 Normally [1] 60/24 Northern [28] 3/8 3/13 4/16 4/24 11/19 13/14 15/6 20/25 21/17 21/23 24/21 25/9 27/10 27/23 29/19 30/4 33/15 40/7 40/10 40/22 41/1 41/11 41/13 41/24 41/25 42/8 44/5 67/9	62/15 64/24 Nursing [2] 4/18 21/7	61/16 63/3 opportunity [2] 11/13 40/13 opposes [1] 10/24 optimal [1] 53/2 optimally [1] 51/24 options [2] 58/19 58/20 or [45] 2/16 3/2 3/15 6/17 6/20 7/16 7/25 8/1 8/14 8/18 8/20 9/1 10/6 11/6 11/7 13/5 14/3 21/20 28/25 30/2 30/3 30/11 30/12 39/5 41/20 42/17 42/20 42/23 48/13 48/14 51/1 51/16 51/17 51/20 53/1 53/8 58/1 58/14 58/15 58/19 59/8 64/19 65/2 65/2 65/24 oral [2] 3/21 40/17 orally [1] 40/20 order [17] 5/20 7/20 10/21 15/22 16/22 22/14 27/12 29/12 31/1 31/20 33/1 36/15 45/20 46/24 49/7 53/23 66/16 orders [1] 61/19 ordination [1] 42/6 organisation [2] 55/22 65/5 organisational [2] 20/2 39/12 organisations [11] 3/15 4/13 4/20 5/7 7/23 8/11 17/3 50/23 50/25 56/6 67/17 original [1] 33/16 other [27] 4/13 7/11 12/20 22/17 28/10 29/18 30/13 34/2 34/8 36/24 37/8 42/25 51/18 56/18 56/21 56/24 57/11 57/18 57/25 58/10 58/14 60/17 60/22 61/10 62/23 63/6 63/20 others [3] 65/9 66/14 66/17 otherwise [1] 9/9 ought [1] 66/4 our [32] 3/25 11/21 11/22 15/8 17/11 18/2 19/18 20/9 32/22 35/1 35/4 35/11 35/14 36/18 37/13 38/12 45/9 49/6 52/2 52/9 56/1 56/14 56/15 57/23 58/6 61/6 63/9 63/16 64/5 64/9 64/11 64/17 out [15] 3/25 11/22
Mr... [8] 55/14 55/16 55/18 65/4 65/7 66/10 67/17 67/21 Mr Dayle [2] 50/21 55/14 Mr Hayman [2] 55/16 65/4 Mr Leslie [1] 51/1 Mr Richard [1] 1/4 Mr Sharma [1] 1/16 Mr Stoate [1] 1/16 Mr Wald [14] 27/3 28/5 29/7 30/21 35/23 37/4 37/21 38/20 40/16 43/4 45/12 52/17 65/7 66/10 Mr Wald's [1] 55/6 Ms [24] 1/16 1/17 27/4 27/6 27/10 33/22 40/1 40/6 40/8 40/19 45/20 45/21 45/24 45/25 48/10 49/2 50/7 65/8 65/8 65/9 66/14 66/17 67/7 67/11 Ms Gardiner [1] 1/17 Ms McDermott [3] 27/10 40/6 65/8 Ms Mitchell [5] 45/20 45/21 45/25 50/7 65/9 Ms Morris [9] 27/4 33/22 40/1 40/19 48/10 49/2 65/8 66/14 66/17 Ms Shehadeh [1] 1/16 much [20] 11/2 11/3 27/3 35/19 45/19 45/24 50/7 55/14 55/19 56/13 56/16 57/10 57/25 58/10 63/21 64/15 65/4 66/10 66/13 66/18 multi [1] 53/11 musings [1] 51/4 must [17] 8/22 9/5 22/25 26/12 29/5 29/15 43/13 44/25 52/14 52/23 53/13 53/15 53/21 54/4 54/13 54/25 57/21 mutual [1] 17/25 my [66] 1/8 1/15 2/5 2/15 3/19 3/23 8/12 11/1 11/1 11/21 13/18 16/7 16/20 17/7 19/18 20/12 23/9 24/3 24/21 24/25 26/10 26/22 27/7 27/9 27/20 28/3 29/13 33/24 34/1 34/18 34/20 34/22 35/14 36/4 37/3 38/3 38/11 38/19 38/19	my Lady [42] 1/8 2/15 3/19 3/23 8/12 11/1 11/1 11/21 13/18 16/20 19/18 20/12 23/9 24/3 24/21 24/25 26/10 26/22 27/7 28/3 29/13 34/20 34/22 36/4 38/3 38/19 38/22 39/8 39/16 39/24 40/9 41/18 45/17 46/3 48/23 49/19 50/13 51/3 52/14 55/4 55/19 65/10	N Naqvi [1] 22/19 National [2] 3/1 4/23 nations [6] 1/12 17/21 18/4 18/13 19/14 19/15 nature [2] 28/6 36/10 navigated [1] 10/14 NCA [6] 3/2 9/21 9/23 10/20 46/24 47/2 NCA's [1] 10/4 Nearly [1] 59/3 necessary [8] 6/9 7/21 11/20 25/4 34/2 43/13 49/10 65/19 necessity [2] 9/6 53/18 need [15] 10/11 11/5 18/17 20/12 33/1 34/21 34/24 39/8 39/21 57/8 57/8 60/6 62/24 64/25 66/14 needed [1] 59/18 needs [6] 31/20 37/14 53/12 55/2 58/11 62/23 neither [1] 10/24 net [1] 40/24 never [3] 34/22 41/4 64/25 new [3] 59/18 64/3 64/11 Newbuy [1] 13/4 news [2] 59/20 64/10 Newspaper [1] 62/15 next [11] 1/22 8/12 10/8 11/14 12/10 12/21 13/12 13/18 14/3 49/12 66/18 NHS [5] 4/13 4/15 4/19 22/12 22/20 no [14] 8/2 11/4 31/9	not [70] notable [1] 44/8 note [19] 2/1 3/25 10/23 11/22 17/11 18/16 20/10 23/14 43/3 43/6 46/6 46/12 46/23 47/24 52/16 60/21 64/2 65/11 65/12 notes [6] 4/4 7/2 8/9 17/14 26/18 30/25 nothing [1] 56/23 notices [1] 7/20 noting [1] 43/4 notional [1] 51/9 Notwithstanding [1] 45/11 November [2] 2/1 46/7 November 2024 [1] 2/1 now [27] 1/5 4/1 4/2 8/12 9/4 17/7 17/9 20/23 24/3 25/23 30/10 31/7 33/6 33/15 34/25 36/13 36/14 50/16 51/6 58/23 59/20 64/3 64/11 64/20 66/4 66/6 66/7 number [24] 4/12 4/14 5/4 8/13 8/21 9/4 12/1 12/6 14/21 16/12 22/12 22/17 26/11 26/24 27/24 30/5 30/20 34/4 34/19 36/21 38/23 46/12 50/2 50/3 Number 1 [1] 46/12 numbers [1] 33/8 nurses [3] 44/14	Oh [1] 55/16 on [112] one [14] 2/17 2/20 2/22 7/12 9/21 14/6 16/6 42/12 44/7 48/6 52/9 53/25 59/16 59/23 onerous [1] 7/10 ones [2] 27/14 39/2 ongoing [4] 7/15 9/21 11/8 46/17 only [9] 30/24 31/24 34/6 43/24 45/13 59/15 60/20 61/4 66/1 open [7] 36/17 39/20 43/25 55/21 55/22 58/13 60/15 opening [6] 2/11 26/3 26/4 26/7 43/3 45/12 openly [1] 30/2 openness [2] 32/19 36/6 operated [2] 6/1 22/5 operates [1] 9/11 operating [1] 9/4 operation [4] 15/10 21/13 23/25 32/24 opportunism [1] 63/6 opportunities [2]

<p>O</p> <p>out... [13] 16/12 18/2 22/6 26/13 29/8 36/21 45/20 50/4 51/19 54/19 59/1 60/25 66/2</p> <p>outline [3] 12/7 17/5 32/15</p> <p>outlined [4] 6/2 6/14 18/7 19/20</p> <p>over [6] 10/21 46/24 48/24 55/23 61/25 64/6</p> <p>overall [1] 13/11</p> <p>overlaps [1] 9/22</p> <p>overlooked [1] 45/21</p> <p>oversee [1] 54/7</p> <p>oversight [2] 41/21 42/17</p> <p>overview [1] 4/6</p> <p>own [4] 41/12 42/2 51/17 63/16</p> <p>oximeter [1] 51/23</p> <p>oximeters [2] 54/14 55/2</p>	<p>particular [17] 6/18 7/19 9/21 10/5 10/12 16/3 16/16 18/7 32/4 37/14 38/16 40/21 42/22 46/16 65/16 65/25 66/3</p> <p>particularly [5] 7/10 29/21 32/7 33/3 39/13</p> <p>parties [1] 8/25</p> <p>partisan [1] 56/4</p> <p>partner [1] 56/5</p> <p>partners [1] 35/16</p> <p>Partnership [2] 55/21 60/15</p> <p>party [4] 56/25 59/6 60/19 60/20</p> <p>pass [1] 9/6</p> <p>patients [2] 44/17 64/24</p> <p>pause [2] 43/3 58/8</p> <p>pay [1] 18/20</p> <p>payments [2] 12/25 19/4</p> <p>PCR [1] 5/23</p> <p>PCRs [1] 6/7</p> <p>peers [2] 57/25 58/7</p> <p>people [2] 34/12 57/8</p> <p>perceived [1] 41/15</p> <p>performance [3] 13/7 16/15 32/17</p> <p>perhaps [3] 41/20 46/10 48/5</p> <p>permit [1] 65/18</p> <p>permitted [1] 26/8</p> <p>perpetuated [1] 37/20</p> <p>perpetuating [1] 54/17</p> <p>persist [1] 52/19</p> <p>personal [2] 44/7 45/1</p> <p>personally [1] 64/6</p> <p>perspective [2] 18/12 55/11</p> <p>pertaining [2] 25/12 39/22</p> <p>Peter [1] 40/11</p> <p>phone [1] 63/12</p> <p>physical [1] 12/18</p> <p>picking [1] 50/2</p> <p>picture [1] 23/12</p> <p>place [8] 1/19 26/20 41/4 47/8 48/25 49/10 49/16 60/18</p> <p>planned [1] 31/4</p> <p>plans [1] 11/12</p> <p>play [1] 38/22</p> <p>please [2] 35/22 38/3</p> <p>plenty [1] 56/15</p> <p>pm [1] 66/20</p> <p>point [17] 20/11 21/23 25/6 39/16 39/19 42/11 44/3 50/12 52/21 53/14</p>	<p>54/7 54/10 58/17 62/12 63/4 66/13 66/17</p> <p>points [9] 16/3 18/7 37/10 40/21 45/17 52/9 56/11 57/12 61/13</p> <p>policies [1] 19/24</p> <p>political [4] 56/22 60/19 61/2 64/1</p> <p>politician [1] 56/25</p> <p>politicians [3] 57/20 60/25 62/17</p> <p>politicise [1] 49/8</p> <p>Polnay [1] 3/4</p> <p>poor [2] 57/19 64/21</p> <p>population [1] 45/3</p> <p>populations [1] 45/2</p> <p>portal [2] 62/1 63/18</p> <p>position [7] 16/20 23/8 28/1 33/8 36/13 36/18 58/4</p> <p>positions [2] 10/4 23/13</p> <p>positive [1] 64/10</p> <p>possession [2] 10/22 46/25</p> <p>possibility [1] 43/25</p> <p>possible [9] 9/12 11/4 11/8 15/19 16/3 30/3 34/2 49/21 66/1</p> <p>potential [2] 10/6 21/2</p> <p>power [2] 40/2 54/21</p> <p>powers [3] 32/1 34/1 59/18</p> <p>PPE [35] 5/22 6/5 6/11 6/18 9/24 10/5 10/23 11/16 17/23 18/1 20/20 21/3 23/2 28/9 28/12 28/15 29/10 30/9 30/12 32/14 43/21 44/7 49/8 51/15 53/3 53/9 55/1 56/23 57/9 57/25 60/9 62/4 62/17 63/13 63/19</p> <p>PPE Medpro [4] 9/24 10/5 10/23 30/9</p> <p>practical [1] 53/17</p> <p>practice [3] 12/22 15/12 32/25</p> <p>practices [2] 44/1 55/24</p> <p>pre [1] 22/23</p> <p>pre-existing [1] 22/23</p> <p>precedence [1] 48/24</p> <p>preference [1] 61/3</p> <p>preferential [1] 61/25</p> <p>preferred [1] 16/5</p> <p>preliminary [15] 1/3 1/15 1/18 1/20 2/4</p>	<p>2/18 2/21 26/2 26/15 29/7 36/16 39/21 45/6 66/15 66/21</p> <p>preparation [2] 1/9 7/7</p> <p>preparations [1] 46/8</p> <p>present [3] 3/5 29/25 30/1</p> <p>presentation [1] 52/8</p> <p>presently [1] 28/18</p> <p>pressure [1] 13/8</p> <p>prevent [2] 27/17 34/23</p> <p>previous [3] 29/7 48/7 51/10</p> <p>previously [3] 11/25 30/15 50/4</p> <p>price [3] 16/14 58/1 58/15</p> <p>prices [1] 29/10</p> <p>primarily [3] 5/11 35/9 51/25</p> <p>primary [2] 33/7 52/14</p> <p>principle [3] 19/23 52/22 61/13</p> <p>principles [6] 16/8 29/25 32/18 38/2 53/1 53/7</p> <p>prior [2] 8/23 42/23</p> <p>priorities [1] 17/4</p> <p>prioritisation [1] 61/4</p> <p>prioritise [2] 56/22 60/18</p> <p>prioritising [1] 57/20</p> <p>priority [11] 13/5 14/24 21/20 32/20 56/21 56/23 60/13 61/16 61/18 61/22 61/24</p> <p>Priority/VIP [1] 60/13</p> <p>private [5] 5/13 11/16 13/15 13/23 43/5</p> <p>problem [1] 34/3</p> <p>problems [1] 34/13</p> <p>procedural [4] 48/12 48/16 49/9 49/16</p> <p>procedures [2] 15/11 32/25</p> <p>process [19] 8/10 9/11 10/16 15/1 16/18 18/15 26/1 30/8 42/14 48/4 48/9 49/3 49/6 49/18 58/12 60/17 61/2 62/10 65/20</p> <p>processes [21] 5/19 7/17 8/22 12/9 12/21 15/11 21/19 24/1 28/24 29/19 31/15 32/25 35/7 35/20 52/18 53/15 53/19 54/12 55/13 58/3 58/10</p> <p>procure [3] 18/18</p>	<p>21/15 22/9</p> <p>procured [4] 14/8 17/22 21/10 22/13</p> <p>procurement [91]</p> <p>procuring [1] 22/2</p> <p>produce [1] 48/18</p> <p>producing [1] 54/22</p> <p>product [2] 54/25 63/5</p> <p>productive [2] 62/10 66/12</p> <p>professionals [1] 57/17</p> <p>professor [7] 22/24 24/6 24/15 58/17 60/21 61/11 62/2</p> <p>Professor at [1] 24/15</p> <p>Professor Jaswinder [1] 22/24</p> <p>Professor Sanchez-Graells [1] 60/21</p> <p>Professor Sanchez-Graells' [1] 61/11</p> <p>profile [1] 13/8</p> <p>profit [2] 55/21 63/3</p> <p>profiteering [1] 62/17</p> <p>profound [1] 64/23</p> <p>progress [2] 1/24 8/23</p> <p>proper [2] 34/23 49/23</p> <p>properly [2] 6/25 30/10</p> <p>proportionality [1] 34/25</p> <p>proportionate [3] 34/21 35/2 35/5</p> <p>proposal [1] 33/16</p> <p>propose [2] 2/15 20/9</p> <p>proposed [3] 7/21 15/8 17/12</p> <p>prosecuting [1] 9/1</p> <p>prosecution [4] 3/2 5/2 10/7 60/2</p> <p>prosecutions [1] 11/9</p> <p>protect [1] 14/11</p> <p>protection [2] 44/9 64/24</p> <p>protective [5] 28/14 39/6 44/7 51/16 51/18</p> <p>prove [1] 41/8</p> <p>provide [9] 11/12 11/13 15/16 17/3 23/8 23/12 39/14 43/7 51/25</p> <p>provided [18] 1/24 3/8 3/18 4/4 6/24 10/23 13/22 14/10 17/11 17/14 19/21</p>
--	---	--	--	--

<p>P</p> <p>provided... [7] 24/9 24/17 27/18 31/25 39/6 40/20 44/12</p> <p>Provider [1] 4/23</p> <p>providers [4] 7/8 7/9 8/25 60/9</p> <p>provides [1] 2/3</p> <p>providing [8] 7/23 15/14 19/12 31/11 34/7 46/6 52/9 55/11</p> <p>provision [3] 7/14 30/12 42/24</p> <p>provisional [3] 25/25 25/25 32/15</p> <p>provisions [1] 57/5</p> <p>public [41] 1/21 2/3 2/11 4/14 6/21 10/8 11/4 16/7 20/1 21/6 23/24 24/8 26/5 26/14 26/16 26/19 27/13 29/1 29/14 29/22 29/25 32/10 32/11 32/18 35/6 37/2 38/14 43/2 43/11 43/17 43/24 47/9 49/2 49/5 55/22 56/6 57/19 59/3 60/2 62/14 63/11</p> <p>publication [3] 8/20 11/7 14/14</p> <p>publicised [2] 28/13 42/12</p> <p>publicly [2] 9/14 63/16</p> <p>publish [1] 63/22</p> <p>published [4] 26/19 63/14 64/3 64/8</p> <p>pulse [3] 51/23 54/14 55/2</p> <p>purchasing [1] 18/1</p> <p>purpose [4] 13/7 51/20 52/8 60/24</p> <p>pursuant [1] 4/3</p> <p>pursuit [1] 27/15</p> <p>put [11] 18/19 34/7 48/25 49/9 49/15 57/1 57/19 58/24 60/17 61/2 64/17</p> <p>putting [2] 34/15 44/16</p>	<p>quick [1] 2/13</p> <p>quickly [3] 9/11 42/9 43/13</p> <p>quite [1] 28/15</p> <hr/> <p>R</p> <p>Race [1] 22/20</p> <p>racial [2] 53/11 54/5</p> <p>racism [1] 52/19</p> <p>raise [4] 15/6 21/2 46/10 47/16</p> <p>raised [7] 4/6 19/18 20/24 21/17 22/17 45/7 45/11</p> <p>raises [2] 29/1 42/21</p> <p>Randex [1] 30/9</p> <p>range [7] 4/17 4/22 5/13 12/18 20/2 28/17 53/3</p> <p>rate [2] 57/4 61/10</p> <p>rather [1] 54/23</p> <p>reaching [2] 16/10 45/15</p> <p>readily [1] 63/10</p> <p>readings [1] 51/25</p> <p>real [3] 16/9 33/9 47/12</p> <p>really [6] 57/21 58/21 60/14 63/1 63/5 63/22</p> <p>realtime [1] 63/11</p> <p>reason [1] 65/20</p> <p>reasons [4] 2/25 30/21 31/12 59/17</p> <p>reassurances [1] 55/6</p> <p>reassure [1] 19/25</p> <p>receipt [2] 6/13 37/7</p> <p>receive [4] 7/2 7/20 15/20 25/20</p> <p>received [9] 1/25 3/7 3/10 10/20 12/5 16/2 24/11 24/19 25/19</p> <p>recent [1] 30/25</p> <p>recipients [2] 4/5 7/4</p> <p>recognise [1] 53/8</p> <p>recognises [1] 28/5</p> <p>recognition [1] 61/12</p> <p>recommendation [1] 48/19</p> <p>recommendations [4] 16/11 20/8 48/16 64/12</p> <p>reconsider [1] 50/2</p> <p>record [2] 58/2 64/17</p> <p>records [1] 42/20</p> <p>recouping [1] 23/24</p> <p>Recruitment [1] 30/9</p> <p>red [1] 59/8</p> <p>redaction [1] 9/2</p> <p>rediscovered [1] 22/16</p> <p>reduce [1] 56/4</p> <p>refer [1] 18/11</p> <p>reference [14] 12/8</p>	<p>15/10 15/13 15/25 16/9 16/23 17/6 18/5 32/3 32/9 32/23 33/24 34/24 66/2</p> <p>referral [5] 56/24 61/4 61/6 61/21 61/24</p> <p>referrals [3] 56/22 60/19 64/1</p> <p>referred [1] 54/24</p> <p>referrers [2] 13/9 14/25</p> <p>refers [1] 19/3</p> <p>reflect [1] 17/20</p> <p>reflecting [1] 54/18</p> <p>reflects [2] 36/5 55/1</p> <p>regard [3] 47/23 48/1 58/1</p> <p>regarding [4] 22/12 23/18 35/24 43/11</p> <p>regional [3] 40/25 41/11 41/23</p> <p>regular [2] 1/24 10/16</p> <p>regulation [5] 12/12 14/7 38/8 38/14 38/15</p> <p>regulations [3] 29/25 32/19 38/2</p> <p>regulators [1] 38/10</p> <p>regulatory [3] 4/25 24/23 25/1</p> <p>reintroduce [1] 2/15</p> <p>reiterate [1] 4/1</p> <p>related [4] 1/13 13/16 59/2 59/10</p> <p>relates [2] 9/23 10/22</p> <p>relating [2] 10/6 16/25</p> <p>relation [34] 10/1 10/5 16/14 18/8 21/3 21/25 22/10 25/7 28/8 28/23 31/4 33/2 33/18 35/13 35/20 36/14 36/23 37/12 37/14 37/18 38/19 38/25 39/19 46/8 46/13 46/16 46/25 47/19 48/4 48/8 48/21 49/14 49/19 52/6</p> <p>relative [2] 17/22 17/22</p> <p>relevant [22] 9/3 9/7 9/14 9/15 10/9 11/3 11/7 16/10 16/18 16/24 17/2 17/4 19/11 21/16 21/24 25/1 28/19 31/20 31/21 35/10 38/10 38/24</p> <p>reliance [1] 13/25</p> <p>relied [1] 57/24</p> <p>rely [1] 28/1</p> <p>relying [1] 56/17</p> <p>remain [4] 23/9 39/20 52/5 55/10</p> <p>remained [1] 44/5</p>	<p>remains [4] 6/23 19/22 27/13 36/18</p> <p>remarks [1] 40/17</p> <p>remind [2] 19/21 39/8</p> <p>removed [1] 64/21</p> <p>repeat [3] 28/2 52/4 65/1</p> <p>repeats [1] 23/7</p> <p>repetition [1] 52/17</p> <p>report [10] 24/8 24/9 24/16 24/17 25/16 39/15 58/18 58/25 60/22 61/12</p> <p>reported [1] 59/13</p> <p>represent [11] 28/22 31/23 34/10 34/15 34/16 38/24 40/9 43/10 50/8 50/24 53/15</p> <p>representation [1] 22/21</p> <p>representations [1] 11/14</p> <p>representative [1] 35/12</p> <p>representatives [1] 2/17</p> <p>represented [2] 2/23 3/3</p> <p>reproach [1] 49/7</p> <p>request [3] 19/6 23/7 32/2</p> <p>requested [4] 31/3 31/12 35/3 38/9</p> <p>requests [16] 2/7 3/24 4/2 4/6 4/7 6/24 7/3 7/5 7/24 7/25 8/10 16/13 16/25 30/7 39/11 60/8</p> <p>require [2] 32/9 65/3</p> <p>required [3] 7/17 22/6 25/13</p> <p>requirement [1] 53/22</p> <p>requires [1] 52/21</p> <p>Research [1] 4/20</p> <p>reset [1] 53/14</p> <p>resilience [4] 5/15 14/4 21/1 41/6</p> <p>resolve [1] 39/21</p> <p>resolved [1] 36/17</p> <p>resort [1] 62/15</p> <p>resource [1] 54/4</p> <p>respect [3] 36/9 40/14 45/7</p> <p>respective [1] 10/4</p> <p>respectively [1] 3/3</p> <p>respiratory [1] 51/15</p> <p>respond [1] 42/9</p> <p>responded [2] 6/13 37/5</p> <p>responders [1] 64/18</p> <p>response [12] 6/20</p>	<p>32/10 37/5 56/10 57/2 57/6 60/1 60/4 60/7 61/3 62/13 63/4</p> <p>responses [1] 7/24</p> <p>responsibility [1] 54/24</p> <p>responsible [1] 1/9</p> <p>restrict [1] 8/19</p> <p>restriction [4] 10/21 36/15 46/24 66/16</p> <p>restrictions [2] 47/11 47/12</p> <p>result [4] 8/21 15/19 31/18 59/11</p> <p>resulted [1] 41/16</p> <p>return [3] 8/5 39/19 50/17</p> <p>reuse [1] 51/17</p> <p>revealed [1] 30/25</p> <p>reveals [1] 59/1</p> <p>revert [1] 33/16</p> <p>review [13] 6/15 9/2 10/11 12/5 13/2 16/17 16/24 18/3 22/25 23/9 45/14 54/3 58/8</p> <p>reviews [1] 54/8</p> <p>revisit [2] 24/22 38/6</p> <p>Rich [1] 1/8</p> <p>Rich Wald [1] 1/8</p> <p>Richard [1] 1/4</p> <p>rightly [1] 19/21</p> <p>rise [1] 41/6</p> <p>risk [10] 11/5 12/25 14/5 15/2 16/15 19/4 32/12 44/17 47/7 59/25</p> <p>risks [5] 10/6 11/10 47/13 54/11 59/8</p> <p>robust [6] 9/2 42/5 47/4 50/10 54/4 60/1</p> <p>robustly [3] 49/15 49/21 61/5</p> <p>role [5] 4/25 12/25 13/15 38/12 51/11</p> <p>roles [2] 14/13 22/6</p> <p>Royal [2] 4/18 21/7</p> <p>RPE [1] 51/16</p> <p>Rule [16] 2/7 3/24 4/3 4/6 4/7 6/24 7/4 8/10 16/12 26/1 30/8 36/2 39/11 39/20 56/10 60/8</p> <p>Rule 10 [1] 26/1</p> <p>Rule 19 [2] 36/2 39/20</p> <p>Rule 9 [12] 2/7 3/24 4/3 4/6 4/7 6/24 7/4 8/10 16/12 30/8 39/11 56/10</p> <p>rules [2] 4/3 60/25</p> <p>ruling [4] 56/25 59/5 60/19 60/20</p> <p>run [1] 1/22</p> <p>runaway [1] 58/9</p>
--	---	---	--	--

R	secure [1] 44/4 securing [3] 41/17 42/15 44/24 see [3] 40/3 60/14 66/16 seek [3] 6/10 10/10 52/4 seeking [3] 11/15 16/13 47/12 seem [1] 64/20 seems [1] 62/6 seen [1] 59/11 seize [1] 63/2 select [1] 31/5 selected [1] 16/22 selection [1] 33/19 sell [1] 62/4 sending [1] 8/10 senior [2] 1/8 61/24 sensible [1] 48/24 sensitive [2] 8/14 23/1 sensitivities [2] 7/19 10/13 sent [3] 4/8 16/12 61/23 separate [2] 25/12 49/1 separately [2] 37/5 44/22 series [1] 64/12 serious [2] 28/6 28/22 Service [1] 3/2 services [3] 28/9 41/10 41/23 set [7] 3/25 11/22 15/17 26/13 29/8 36/21 43/8 settings [3] 28/17 39/3 39/7 SG [1] 30/9 shall [2] 50/17 66/12 shaped [1] 33/12 shaping [1] 51/12 share [1] 56/1 shared [1] 55/24 Sharma [1] 1/16 she [2] 46/10 48/6 Shehadeh [1] 1/16 shocking [1] 59/1 short [2] 37/10 50/19 shortages [2] 44/3 44/6 shortcomings [1] 41/7 shorter [1] 38/3 should [16] 2/22 2/25 18/10 19/4 22/22 23/8 30/7 36/20 37/25 38/6 47/9 52/6 57/5 57/16 61/12 62/12 show [3] 47/10 47/12 58/6	shows [2] 56/15 63/18 shysters [1] 44/2 signed [1] 9/19 significant [11] 7/14 8/21 9/17 17/16 20/21 28/22 38/9 44/6 44/24 45/6 46/14 significantly [2] 9/6 62/5 similar [1] 61/25 simply [2] 40/19 51/20 since [1] 65/13 Singh [1] 22/24 single [1] 60/22 sit [1] 66/18 situation [2] 18/18 63/21 situations [2] 47/19 63/8 size [1] 53/2 skills [2] 12/10 13/18 skin [4] 51/24 51/25 54/15 55/3 skirting [1] 8/2 slightly [1] 30/23 Small [1] 5/9 smaller [1] 50/3 smart [1] 57/16 Smith [1] 64/4 so [40] 2/3 2/5 6/5 6/7 14/5 20/1 26/8 26/25 27/16 32/4 33/1 34/13 35/9 36/16 38/16 41/1 44/2 45/20 47/21 48/13 52/2 52/13 53/25 55/4 56/13 56/14 56/20 57/4 57/9 57/10 59/15 59/17 60/11 62/8 62/19 63/5 63/22 64/15 64/25 65/10 so-called [3] 14/5 44/2 56/20 social [4] 12/19 32/7 33/4 62/7 society [1] 4/20 solely [1] 18/2 solicitor [4] 4/4 7/1 8/9 26/18 Solicitors [1] 40/12 some [21] 7/9 7/13 10/19 15/15 20/23 29/9 29/11 34/8 35/24 37/11 37/15 37/22 41/18 42/24 43/22 51/21 56/1 59/1 61/13 63/14 65/7 somewhat [2] 27/21 47/20 sort [2] 57/2 65/20 sorts [1] 34/13 sought [4] 10/3 16/16	22/11 23/17 sound [1] 48/17 source [2] 51/17 61/20 sourcing [2] 60/10 63/23 space [1] 25/21 speak [1] 55/20 speakers [1] 48/7 speaks [1] 27/10 special [2] 13/22 56/22 specialist [2] 6/5 60/2 specific [13] 6/10 6/17 15/7 15/21 19/23 20/23 25/7 25/8 29/15 29/17 30/7 30/13 48/19 specifically [4] 19/5 19/9 52/23 61/15 specification [2] 22/10 58/12 speed [2] 43/14 43/16 spend [1] 17/23 spending [1] 13/1 spent [3] 43/19 43/19 43/22 spirit [1] 27/18 spoken [1] 37/21 spot [1] 21/3 staff [5] 28/11 28/13 31/14 44/14 64/25 stage [3] 6/16 10/3 10/11 staggering [1] 59/2 stakeholder [1] 54/9 stakes [1] 41/3 standard [1] 53/17 standards [6] 24/23 25/2 36/5 38/2 38/8 52/24 Stanton [1] 2/24 start [6] 20/10 26/16 40/12 51/3 65/17 66/19 starting [3] 3/24 52/21 53/14 state [1] 23/13 stated [1] 39/9 statement [4] 26/4 26/6 52/3 55/7 statements [10] 2/11 9/19 17/15 23/8 23/11 26/3 26/8 26/12 28/1 39/12 states [1] 10/23 status [1] 2/21 statutory [2] 32/1 34/1 steps [2] 11/9 32/16 sticking [1] 50/9 still [9] 16/6 35/19	38/12 38/16 46/14 51/9 63/14 64/3 66/5 Stoate [1] 1/16 stockpile [1] 21/1 stockpiles [2] 12/16 21/4 stockpiling [2] 54/1 54/3 stocks [1] 57/9 stored [1] 31/13 stories [1] 62/16 Story [5] 2/10 25/14 25/16 39/14 45/8 straightforward [1] 10/16 straining [1] 46/21 strategies [4] 13/4 54/1 54/3 56/16 strategy [1] 12/12 strength [1] 44/21 stress [1] 44/10 strict [1] 26/10 strikes [1] 45/9 striking [1] 58/7 strive [2] 20/7 47/9 striven [1] 20/6 stronger [1] 54/16 strongly [1] 62/19 struck [1] 43/14 structural [2] 52/18 52/19 structures [6] 5/19 12/9 12/21 18/24 19/19 20/16 struggled [1] 41/25 studies [5] 12/1 30/16 33/17 65/14 65/15 subject [1] 11/17 submission [12] 22/18 32/22 35/1 35/4 35/11 37/13 38/12 58/6 61/7 63/10 64/9 64/11 submissions [47] 1/7 3/6 3/10 3/11 3/21 15/5 18/9 18/16 19/21 20/24 20/25 25/5 27/5 27/7 27/9 27/17 27/20 27/24 28/1 30/5 33/23 35/18 36/25 37/8 37/19 37/24 40/7 40/15 44/13 46/1 46/7 50/5 50/14 50/22 52/2 52/7 52/11 53/25 55/17 56/15 66/12 67/3 67/6 67/9 67/13 67/16 67/20 submit [2] 60/11 64/16 submits [1] 53/13 submitted [3] 26/12 50/1 56/9 suboptimal [1] 44/15
----------	--	--	--	--

<p>U</p> <p>UK... [41] 24/21 27/2 27/6 27/8 27/23 32/11 35/15 41/14 42/1 45/15 49/22 54/21 54/24 55/17 56/3 56/5 56/8 56/13 56/17 56/18 57/11 57/16 57/18 57/23 58/3 58/7 58/16 59/1 59/15 60/7 61/1 62/16 63/7 63/13 63/23 64/11 64/16 64/19 65/22 67/7 67/20</p> <p>UK Government [5] 4/9 19/7 42/1 49/22 54/21</p> <p>UK Government's [1] 41/14</p> <p>UK's [5] 56/6 57/2 57/9 61/3 63/17</p> <p>UKHSA [2] 21/8 32/8</p> <p>Ukraine [1] 63/8</p> <p>ultimately [2] 44/16 44/19</p> <p>unable [1] 28/13</p> <p>under [16] 6/15 8/16 10/25 11/11 21/19 23/9 28/18 28/24 29/17 29/18 30/8 35/7 36/2 41/24 58/16 63/12</p> <p>underlying [1] 52/18</p> <p>underpin [1] 54/5</p> <p>underpinned [1] 52/24</p> <p>underscored [1] 51/10</p> <p>understand [11] 10/4 10/12 16/8 31/1 31/9 31/19 34/20 34/24 46/15 46/19 57/21</p> <p>understanding [3] 6/20 34/25 48/17</p> <p>understood [1] 35/7</p> <p>undertake [1] 52/15</p> <p>undertaken [2] 17/16 35/21</p> <p>undertakings [1] 11/17</p> <p>undoubtedly [1] 44/23</p> <p>unequal [1] 62/3</p> <p>unethical [1] 44/1</p> <p>unfit [1] 51/20</p> <p>unified [1] 41/15</p> <p>unions [2] 4/17 22/12</p> <p>United [3] 1/12 3/16 19/16</p> <p>United Kingdom [3] 1/12 3/16 19/16</p> <p>University [2] 24/7 24/16</p>	<p>unjustified [1] 62/3</p> <p>unlawfulness [1] 61/14</p> <p>Unlike [1] 58/7</p> <p>unlikely [2] 6/19 26/5</p> <p>unnecessary [1] 23/10</p> <p>unquestionably [1] 41/1</p> <p>unscrupulous [1] 63/1</p> <p>untested [1] 56/17</p> <p>until [1] 46/23</p> <p>unusable [1] 29/11</p> <p>up [4] 46/8 55/22 61/6 64/10</p> <p>update [11] 2/3 2/6 3/24 4/4 7/2 8/9 17/14 26/18 36/23 39/18 65/11</p> <p>updated [1] 8/8</p> <p>updates [1] 1/25</p> <p>upon [3] 26/22 40/25 63/2</p> <p>urge [1] 33/16</p> <p>urgency [1] 42/15</p> <p>urgent [2] 18/17 41/3</p> <p>urgently [2] 57/8 62/24</p> <p>urges [1] 55/4</p> <p>us [8] 3/18 25/20 30/6 36/23 36/24 39/18 46/8 60/1</p> <p>USA [1] 60/6</p> <p>use [9] 11/19 14/17 15/22 22/3 22/11 28/13 34/1 58/13 58/15</p> <p>used [7] 22/13 32/1 56/18 58/10 58/14 61/21 62/21</p> <p>users [3] 1/11 14/12 53/8</p> <p>using [4] 16/3 22/7 23/5 49/8</p> <p>utmost [2] 34/18 36/3</p> <hr/> <p>V</p> <p>value [7] 13/1 13/11 14/23 25/17 28/25 33/3 62/4</p> <p>varied [1] 55/2</p> <p>various [2] 16/21 20/24</p> <p>varying [1] 21/7</p> <p>vehicle [1] 15/22</p> <p>vendors [1] 56/23</p> <p>Ventilator [1] 5/12</p> <p>ventilators [4] 5/22 6/6 20/20 32/14</p> <p>very [24] 3/18 4/7 7/10 27/3 34/5 34/5 34/17 35/19 37/7</p>	<p>45/19 45/24 47/7 50/7 55/6 55/14 55/15 55/19 59/11 64/15 65/4 66/10 66/11 66/13 66/18</p> <p>view [4] 19/18 23/9 23/24 47/25</p> <p>viewed [1] 22/23</p> <p>views [2] 36/7 36/12</p> <p>VIP [9] 13/5 21/20 28/25 29/18 33/20 60/13 61/9 61/14 62/5</p> <p>virus [1] 44/15</p> <p>visibility [1] 43/11</p> <p>Visiting [1] 24/14</p> <p>vital [2] 59/16 62/8</p> <p>voice [1] 40/25</p> <p>volume [1] 16/15</p> <p>volumes [2] 6/4 17/22</p> <p>Voluntary [1] 5/6</p> <p>vulnerability [1] 13/7</p> <p>vulnerable [2] 45/2 58/3</p> <hr/> <p>W</p> <p>Wald [16] 1/4 1/8 27/3 28/5 29/7 30/21 35/23 37/4 37/21 38/20 40/16 43/4 45/12 52/17 65/7 66/10</p> <p>Wald's [1] 55/6</p> <p>Wales [5] 4/16 4/24 13/13 25/9 29/20</p> <p>want [13] 19/25 34/12 34/14 34/16 40/1 40/3 42/7 42/11 48/11 48/22 49/18 49/20 56/1</p> <p>wanted [1] 56/10</p> <p>ward [1] 41/21</p> <p>warning [1] 52/17</p> <p>was [42] 13/1 17/10 17/11 18/19 22/13 24/9 24/17 25/15 29/4 29/10 30/1 30/15 30/24 35/1 35/2 35/3 35/4 39/6 42/13 43/16 43/18 43/22 43/23 44/7 44/24 48/3 48/9 48/25 53/9 56/13 56/19 56/23 56/25 57/10 57/14 58/5 61/4 61/17 61/23 62/1 63/24 63/25</p> <p>waste [2] 59/12 59/15</p> <p>wasted [1] 57/19</p> <p>way [9] 21/18 28/23 31/13 32/3 34/6 35/5 35/5 49/14 61/23</p> <p>ways [1] 41/4</p> <p>we [142]</p>	<p>We'd [1] 64/17</p> <p>we're [5] 35/9 47/20 64/3 65/1 65/13</p> <p>we've [5] 18/22 55/6 58/24 59/11 59/20</p> <p>weak [1] 58/2</p> <p>weaknesses [1] 44/21</p> <p>wear [2] 28/14 51/18</p> <p>website [1] 26/19</p> <p>Wednesday [1] 1/1</p> <p>wee [1] 51/3</p> <p>week [2] 23/14 59/22</p> <p>weeks [2] 9/18 17/1</p> <p>welcome [5] 20/25 36/9 45/12 59/20 65/4</p> <p>well [5] 1/24 15/24 17/21 20/17 29/18</p> <p>went [2] 59/5 60/12</p> <p>were [47] 10/7 10/10 18/23 21/10 21/13 21/14 21/18 26/17 27/12 28/13 28/23 29/10 29/25 29/25 30/2 33/2 35/20 39/3 39/4 41/4 42/17 42/25 43/1 43/12 43/19 44/9 44/14 44/23 48/11 51/8 51/19 51/21 51/24 53/3 56/15 57/15 58/10 58/14 58/16 58/19 58/19 60/10 61/16 61/20 63/10 63/13 66/12</p> <p>weren't [1] 50/11</p> <p>what [27] 20/18 21/2 21/9 21/14 22/5 27/14 29/4 33/12 35/1 37/14 40/19 42/7 46/18 47/24 48/7 48/9 48/18 48/20 49/10 51/4 52/21 53/2 53/23 54/6 60/12 62/9 65/16</p> <p>what's [3] 31/7 46/12 58/7</p> <p>when [9] 21/14 36/4 36/24 46/20 51/8 62/23 63/22 66/5 66/19</p> <p>whenever [1] 34/1</p> <p>where [16] 7/18 7/21 7/25 16/18 18/6 18/18 22/16 28/13 29/21 36/22 60/2 61/17 63/10 63/13 64/7 66/16</p> <p>Where's [1] 60/7</p> <p>whether [5] 11/25 14/10 30/16 42/7 66/14</p> <p>which [64] 1/10 1/22 2/1 2/25 3/19 5/14 6/1 6/6 8/3 8/5 8/15 8/17 8/18 8/22 9/5 9/22</p>	<p>10/22 10/23 11/7 11/16 12/7 15/13 15/23 16/5 16/6 16/9 17/11 18/13 19/3 19/13 20/8 20/14 21/5 21/18 21/21 22/13 23/11 23/18 26/13 26/23 28/23 29/13 30/6 30/7 30/17 33/3 34/8 35/3 35/7 37/6 37/16 37/22 40/15 42/2 43/10 44/10 44/12 48/5 48/6 49/2 49/9 49/14 52/4 53/1</p> <p>while [7] 19/9 23/8 41/5 41/12 43/12 43/16 44/23</p> <p>white [1] 51/21</p> <p>who [15] 1/17 2/19 3/8 26/7 27/10 34/11 38/24 39/4 57/8 57/9 60/10 61/5 62/25 64/5 64/19</p> <p>whole [4] 18/14 20/6 32/11 60/24</p> <p>whom [3] 42/24 45/3 50/8</p> <p>whose [2] 24/8 24/16</p> <p>why [10] 30/21 56/13 56/14 56/19 57/16 57/21 58/19 58/20 59/15 63/24</p> <p>wide [1] 20/2</p> <p>widely [2] 28/12 29/14</p> <p>wider [2] 12/8 15/25</p> <p>widespread [1] 42/22</p> <p>Wilcock [1] 40/11</p> <p>will [104]</p> <p>wisely [1] 43/19</p> <p>wish [8] 26/7 26/23 26/24 34/10 45/17 46/9 47/16 54/10</p> <p>within [16] 1/10 4/12 8/15 8/18 16/4 17/13 17/17 19/19 21/4 21/22 23/13 26/13 41/22 42/13 44/10 66/9</p> <p>without [4] 30/12 43/16 43/21 44/9</p> <p>witness [5] 9/19 15/21 23/10 24/13 39/12</p> <p>witnesses [8] 2/9 20/3 24/3 24/5 25/25 38/4 38/20 39/23</p> <p>won't [2] 28/2 65/16</p> <p>wonderful [1] 64/19</p> <p>word [2] 2/13 62/21</p> <p>work [13] 2/3 8/24 9/10 16/24 17/17 27/19 41/13 48/14 48/14 49/23 56/1</p>
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<p>W</p> <p>work... [2] 60/15 64/18</p> <p>worked [2] 12/22 19/16</p> <p>workers [8] 22/3 22/5 25/22 44/8 45/2 51/5 51/13 51/17</p> <p>workforce [3] 12/19 53/5 53/11</p> <p>working [4] 41/24 55/22 56/4 59/24</p> <p>workings [1] 47/10</p> <p>world [5] 16/9 56/1 56/21 57/18 60/16</p> <p>worse [3] 57/10 63/21 63/24</p> <p>worsen [1] 52/20</p> <p>worth [2] 59/7 64/7</p> <p>would [19] 9/8 12/2 16/5 25/16 30/16 30/19 34/10 34/22 37/9 40/3 40/24 43/4 43/6 46/9 47/21 54/15 59/23 61/11 65/18</p> <p>wouldn't [2] 34/12 46/10</p> <p>woven [1] 20/8</p> <p>wrap [1] 64/10</p> <p>write [2] 59/12 59/13</p> <p>write-downs [1] 59/12</p> <p>write-offs [1] 59/13</p> <p>writing [3] 27/25 37/5 40/21</p> <p>written [10] 3/6 3/9 3/10 11/14 15/5 26/12 37/8 40/15 44/13 52/3</p> <p>wrong [2] 60/12 62/17</p>	<p>56/2 58/13 58/15 64/13 64/15 65/2 65/3 65/4 65/7 66/10 66/18</p> <p>you're [3] 34/3 34/15 55/16</p> <p>young [1] 34/12</p> <p>your [16] 3/20 8/19 24/22 33/23 40/1 40/18 50/14 51/14 54/2 55/14 63/12 64/9 64/15 65/1 65/2 65/5</p> <p>your Ladyship [1] 40/18</p>			
<p>Y</p> <p>year [8] 1/22 2/19 9/20 10/8 24/10 46/23 59/22 59/23</p> <p>yes [4] 33/25 57/14 57/14 65/10</p> <p>you [67] 1/8 2/5 2/18 3/19 3/21 11/1 11/1 11/4 16/6 16/10 24/21 24/25 26/9 26/23 26/24 26/25 27/3 27/7 27/12 33/23 34/3 34/9 34/14 34/14 34/16 35/16 36/3 36/7 36/12 38/17 39/8 39/20 39/24 39/25 40/4 40/5 40/9 40/13 40/13 41/18 44/1 44/18 45/19 45/19 45/20 45/21 45/24 47/18 50/7 50/8 50/14 50/15 54/2 55/4 55/14 55/19</p>	<p>Z</p> <p>Zambia [1] 60/16</p>			