

1 Friday, 19 January 2024

2 (10.00 am)

3 LADY HALLETT: Mr Dawson.

4 MR DAWSON: Good morning, my Lady. The first witness this

5 morning is Ms Lesley Fraser.

6 MS LESLEY FRASER (affirmed)

7 Questions from LEAD COUNSEL TO THE INQUIRY for MODULE 2A

8 MR DAWSON: Good morning. You are Lesley Fraser?

9 A. I am.

10 Q. You have provided us with a number of statements for

11 the Inquiry so far, thank you very much for having done

12 so. If I could just run through them quickly in

13 order --

14 A. Yes.

15 Q. -- that the references can be put on the transcript for

16 those who are interested to read them.

17 You provided a witness statement dated

18 23 October 2023 which is INQ000320588.

19 You provided a second statement as a corporate

20 statement as Director General of corporate, which has

21 the reference INQ000215474. That's dated 23 June 2023.

22 You then provided an addendum witness statement in

23 that capacity as director on 6 November of this year,

24 INQ000340111.

25 A further statement, again in that capacity, on

1           9 November of this year, INQ000340122.

2           Then finally, again in that capacity, a further  
3           statement on 4 January 2024, INQ000391307.

4           You have signed all of these statements, as  
5           I understand it; is that correct?

6   A.   I have, yes.

7   Q.   You're familiar with their contents?

8   A.   I am.

9   Q.   Do the contents of these statements remain true and  
10       accurate as far as you're concerned?

11   A.   They do.

12   Q.   Thank you.

13       You are the Director General of the Corporate  
14       directorate general within the Scottish Government and  
15       a full-time civil servant; is that correct?

16   A.   I am.

17   Q.   You've held that role since March 2021?

18   A.   Yes.

19   Q.   And you originally joined the Scottish Government as  
20       a civil servant in 2001; is that correct?

21   A.   That's correct, yes.

22   Q.   You explain in some of your statements that the Director  
23       General Corporate is responsible for the corporate  
24       services required by the Scottish Government, which  
25       includes, amongst other things, corporate governance,

1           legal propriety and ethics, and also you're responsible  
2           for the Covid Inquiries Response Directorate. Is all  
3           that correct?

4   A. All of that is correct, yes.

5   Q. Thank you.

6           The Covid Inquiries Response Directorate, as  
7           I understand it, is a directorate within the Scottish  
8           Government which co-ordinates the Scottish Government's  
9           response to this Inquiry and indeed to the  
10          Scottish Inquiry?

11   A. That's correct, yes.

12   Q. I'd like to ask you some questions this morning about  
13          a number of documents and practices relating to document  
14          retention within the Scottish Government.

15   A. Yes.

16   Q. As I understand it, this is a matter which falls within  
17          your ambit as the Director-General Corporate?

18   A. It is, so I am responsible for all aspects of  
19          record-keeping but I'm also the senior information risk  
20          owner for the organisation, which carries its own  
21          responsibilities as well, but all that general area  
22          falls within my ambit.

23   Q. Thank you very much.

24          Could I just have the 9 November statement,  
25          INQ000340122. You say in paragraph 1 of that statement

1           that:

2           "The Scottish Government has established policies  
3           and guidance in place to support effective information  
4           governance and records management. The Scottish  
5           Government is committed to openness and transparency,  
6           and to cooperating fully with both the UK and Scottish  
7           Covid-19 Inquiries."

8           Is that correct?

9    A.   It is correct, yes.

10   Q.   The current First Minister of Scotland, and indeed the  
11       former First Minister of Scotland, Nicola Sturgeon, have  
12       repeatedly committed to these important values as well,  
13       including statements made in Parliament to that effect;  
14       is that correct?

15   A.   That is correct.

16   Q.   These values of accountability and transparency  
17       represent a bond of honesty with the people of Scotland;  
18       is that correct?

19   A.   That is correct, they're absolutely fundamental to good  
20       government, and a key responsibility as a civil servant,  
21       being able to transparently explain what the government  
22       has done and why it has done it and how it has done it,  
23       and demonstrate that through the record, is  
24       fundamentally important to good government.

25   Q.   And as such, I think it's correct to say that these

1 principles of openness and transparency and indeed  
2 accountability are embedded within the National  
3 Performance Framework, about which we heard a little  
4 from Professor Cairney yesterday; is that correct?

5 A. They are in the National Performance Framework, yes, but  
6 they're in other places as well. So you'll see them in,  
7 for example, the Public Records (Scotland) Act 2011,  
8 which we are responsible for complying with, and in  
9 a range of other areas as well. So it -- it's  
10 fundamental to, as I say, how we operate as civil  
11 servants in the Civil Service Code, also referred to in  
12 the Ministerial Code as well. So cuts in all ways, but  
13 everybody is responsible and accountable for that  
14 openness, transparency and accountability.

15 Q. Thank you.

16 I think in fact one sees these principles laid out  
17 in a number of key documents relating to the Covid-19  
18 response. For example, the framework which is called  
19 the four harms framework, from April 2020, and other  
20 such documents.

21 A. Yes, exactly so. So the four harms framework is setting  
22 out how the government would seek to balance what were  
23 recognised to be real harms that were happening across  
24 society through this, you know, tragic and unprecedented  
25 set of circumstances. But to illustrate that to the

1 public and indeed of course to Parliament and to others  
2 who would rightly scrutinise us, so that we could be  
3 held to account for the way in which we were  
4 endeavouring to respond.

5 Q. When government decisions are taken, it's important that  
6 the people are able to understand how, when, why and by  
7 whom those decisions were taken?

8 A. Fundamentally so, and of course we're accountable -- or  
9 rather ministers are directly accountable to the  
10 Scottish Parliament and it was critical throughout the  
11 pandemic that we had a record of, as you say, who, what,  
12 why, when, how. We were regularly sharing that with the  
13 Parliament, and Parliament was therefore able to hold  
14 ministers to account in live time for the way in which  
15 the conduct of the response to the pandemic was being  
16 undertaken.

17 Q. As regards accountability, it's hard perhaps to achieve  
18 accountability if inadequate records of these matters  
19 are retained?

20 A. Precisely so, and that's why it's a legal responsibility  
21 on the government to maintain a proper record and to be  
22 able to account for decisions and how those were  
23 reached, and to be able to demonstrate that through the  
24 public record. And we produce a plan and regularly  
25 review that, at least annually, and that is then

1       overseen by the Keeper of the Records of Scotland, who  
2       has a legal responsibility to ensure that we are  
3       conducting ourselves lawfully in respect of our records  
4       management approach.

5   Q.   Obviously from our perspective we are looking back on  
6       a period of time in the past --

7   A.   Yes.

8   Q.   -- and records such as the ones we're talking about are  
9       relevant to our investigation. But is it not also the  
10      case that these records are important when dealing with  
11      a situation like the pandemic, which is a continuous  
12      one, rather than a single incident, to be able to access  
13      records of the kind we have been discussing in order to  
14      inform continuous decision-making?

15  A.   Absolutely. As I say, it's fundamental to good  
16      government. You need to be able to set out what it is  
17      that, of course, ministers have asked for advice on and  
18      then demonstrate the way in which that advice has been  
19      brought together, and you need to be able to explain and  
20      demonstrate how perhaps challenging and different  
21      perspectives have been reconciled or brought to  
22      ministers' attention, and therefore -- and then you also  
23      need to be able to demonstrate the way in which  
24      ministers have considered that advice and then  
25      ultimately reached a decision, and then of course what

1 the government has done about it, what the impact has  
2 been, and so on. You need to be able to demonstrate  
3 that process.

4 Q. I think it would be fair to say, however, would it not,  
5 Ms Fraser, that it would be overly burdensome on  
6 an organisation like the Scottish Government if one were  
7 to suggest they should retain every piece of paper and  
8 every electronic piece of documentation relating to its  
9 business?

10 A. Absolutely. We could not possibly retain absolutely  
11 everything. For example, I think in relation to the  
12 handling of the Covid pandemic we have well in excess of  
13 a million emails, for example. Now, much of those will  
14 be, you know, inconsequential. The job of records  
15 management is to ensure that the core elements, all of  
16 the relevant information, including when there are  
17 disputes and when things need to be reconciled or you  
18 need to change course, for example, that all of that is  
19 set out and it's clear then to either, for example,  
20 a Parliamentary committee looking in pretty live time at  
21 what's going on, that you can demonstrate what has  
22 happened; or, as now, that some years since, you can  
23 then go back and look at the record and understand how  
24 that journey has been undertaken.

25 Q. In order to achieve a balance between retaining



1 an impossible amount of documentation and documentation  
2 of the type that we have been discussing, would it be  
3 fair to say that the government and those working for it  
4 should be required to consider the kinds of matters  
5 we've discussed, the principal aim being that the  
6 Scottish public is able to access information which tell  
7 them, reasonably, why decisions were taken, by whom  
8 decisions were taken, how decisions were taken, when  
9 decisions were taken?

10 A. Exactly so, and we give guidance through our Records  
11 Management Policy and Plan and through training, which  
12 is mandatory for all civil servants, and regularly  
13 renewed. We also have a direct responsibility on  
14 directors in the Scottish Government to ensure that  
15 their teams are acting in accordance with Records  
16 Management Policy. So that's where the guidance would  
17 be found for civil servants seeking to understand, as  
18 you say, how you assemble correctly the full record  
19 for -- yeah, for inquiries like this, for Parliament,  
20 for all the purposes of government.

21 Q. I understand, we will come to it in a moment, that there  
22 are a number of policies which relate to this subject  
23 which existed and were current around about our two and  
24 a bit year scope. You are generally responsible for  
25 those policies; is that --

1 A. I am indeed, yes.

2 Q. And responsible for ensuring that they are complied  
3 with?

4 A. Yes. I share that responsibility for compliance with my  
5 fellow directors general. As I say, the way that --  
6 because we're an organisation of 10,000 civil servants,  
7 then directors have an accountability for ensuring that  
8 Records Management Policy and other policies are fully  
9 complied with in their area. And directors then account  
10 on an annual basis for compliance through what we call  
11 a certificates of assurance process. So that's one way  
12 in which compliance would be assured.

13 I also oversee an information governance board for  
14 the Scottish Government, and there we look at the ways  
15 in which we are encouraging and improving records  
16 management across the Scottish Government, where we need  
17 to pay particular attention, what needs to be changed in  
18 processes that we might have in place.

19 Obviously it's not an issue that ever stands still,  
20 technology keeps moving on, and there are new questions  
21 and challenges as well that mean that we need to adapt  
22 and change our records management approach, but the  
23 fundamentals still persist.

24 Q. Because as far as compliance is concerned, it wouldn't  
25 really serve a great deal of purpose to have policies if

1        efforts were not make to seek that they were complied  
2        with on behalf of the government, its directors and  
3        other senior officials?

4    A.    Correct, we'd rely on that compliance in order to be  
5        able to create that accurate record, as we are legally  
6        required to do.

7    Q.    We'll come to some of these policies in a moment,  
8        Ms Fraser, but as you are responsible for the  
9        Covid Inquiries Response Directorate, we have received  
10       a number of these policies in what might, I think,  
11       fairly be described as something of a piecemeal fashion.  
12       In particular, we issued an original corporate request  
13       to you for information, including relating to document  
14       use, informal use of documents in the management of the  
15       pandemic, and we received a single policy in response to  
16       that which was dated November 2021. We'll come to that  
17       policy in a moment.

18       We then required to issue a further Rule 9 request  
19       seeking greater information, and this over time resulted  
20       in a number of further policies becoming apparent and,  
21       indeed, we received some policies from you only in the  
22       last couple of days. I think they were directly from  
23       you, actually, as I understand it.

24       Can you please tell us why it is that it has been so  
25       difficult, given your responsibility for the Response

1           Directorate, to get the policies that we asked for some  
2           time ago?

3    A. Well, I'm sorry if it has appeared to the Inquiry and  
4           indeed to others involved in this process that that has  
5           been difficult or complex. That is absolutely not our  
6           intention. We've endeavoured throughout to give the  
7           Inquiry as well and as quickly as we can precisely the  
8           documents that you've been looking for.

9           The fundamental document here is our Records  
10          Management Policy. The November 2021 document that you  
11          refer to is a -- if you like, a supplement to that that  
12          explains in a bit more -- a bit more clearly and  
13          precisely how to treat information, mobile messaging,  
14          and --

15   Q. We'll get on to the detail in a moment, Ms Fraser.

16   A. Okay, very good.

17   Q. Is the reason why these documents were produced in this  
18          piecemeal fashion that those charged with locating them  
19          had difficulty locating them?

20   A. No, I don't think we've had difficulty locating them.  
21          I think our understanding of the focus and requirements  
22          of the Inquiry has very much developed over time as,  
23          I think, the Inquiry has become more and more specific  
24          in your requests of us. The reason why we provided or  
25          I provided documents to the Inquiry earlier this week is

1       because of a different set of searches that we had  
2       undertaken in relation to a Freedom of Information  
3       request which brought up a much longer document which  
4       was produced -- well, not a document actually, a Saltire  
5       article. Saltire is the intranet for Scottish  
6       Government employees. And we produced an article in  
7       April 2020, as our colleagues were moving out of the  
8       office -- I think 97% of people were office-based before  
9       the pandemic, and that switched entirely, obviously,  
10      with lockdown, and this pulled together a whole host of  
11      useful information. You know, how to negotiate with  
12      your broadband, you know, provider, how to get new  
13      technology if you needed it, how to get an adjustable  
14      chair, a whole range of things. But it also said in  
15      terms of staying in touch -- and we were thinking about  
16      people's personal wellbeing, but also the business  
17      contacts that people have -- we were recognising that  
18      applications like Zoom as well as WhatsApp were much  
19      more prevalent and people were adapting and finding ways  
20      to --

21   LADY HALLETT: To go back to the point Mr Dawson was  
22      pursuing, the Inquiry asked you for various policies --

23   A. Yes.

24   LADY HALLETT: -- and you've just said a few minutes ago  
25      said there was one fundamental policy: the Records

1           Management Policy.

2    A.   Yes.

3    LADY HALLETT:  But instead of sending the one fundamental

4           policy, which we'd have thought it was easy to find --

5           someone would just say, "There's our one fundamental

6           policy, off to the Inquiry", you sent the 2021 policy

7           that was about something else.  So why was it a member

8           of your team couldn't find the fundamental policy to

9           send to the Inquiry when first asked?

10   A.  I'm sorry, my Lady, I understood that we had provided

11          the Records Management Policy in good time to

12          the Inquiry.  I've certainly been conscious of referring

13          to that from my statements from certainly last summer,

14          I would have expected that to be on any of my

15          statements.

16   LADY HALLETT:  It may be I've misunderstood, Mr Dawson.

17   MR DAWSON:  No, my understanding, my Lady, was that the

18          policy that was provided originally was the

19          November 2021 policy, and that the policy to which

20          Ms Fraser is making reference was provided at a later

21          date in response to a further request.

22   A.  That is a surprise to me.  I'm --

23   LADY HALLETT:  Well, it would be surprising, wouldn't it?

24   A.  It would be very surprising.  I would understand that

25          that would have been provided with my witness statements

1           last year. But can I check that point, my Lady?

2   LADY HALLETT: And also we'll get the team to check it as

3           well.

4   A. Okay, thank you.

5   MR DAWSON: If it were the case that one had difficulty

6           locating document retention policies, it might tend to

7           suggest that document retention doesn't work very well

8           in the Scottish Government; would that be fair?

9   A. The Records Management Policy is readily available to

10          colleagues, it's on our intranet site, we train people

11          on it on a regular basis, my colleagues and I myself, we

12          must take mandatory annual training. On aspects of data

13          handling, for example, the Records Management Policy is

14          referred to through that, so -- in fact I'm pretty

15          certain it's published on our website as well. So it's

16          a legal requirement that we have a Records Management

17          Policy and a Records Management Plan, and that that is

18          approved by the Keeper of the Records of Scotland. So

19          it's not a new thing, and it's absolutely fundamental to

20          the way that we operate.

21   Q. Okay, thank you.

22                Can we perhaps look at the policy, it is

23                INQ000309551.

24                I understand this is the Scottish Government Records

25                Management Policy. I think this is the one to which you

1           made reference as being the go-to document; is that  
2           right?

3    A.   That is the one, yes.

4    Q.   There is an October 2019 version, which is the one we  
5           see here.

6    A.   Yes.

7    Q.   I understand it may have been updated in September 2020  
8           is that right?

9    A.   We regularly update it, generally on an annual basis,  
10           and it's reviewed at least every five years by the  
11           Keeper of the Records of Scotland, yeah.

12   Q.   But this one would have been the one that would have  
13           been current at the time of the --

14   A.   Yes.

15   Q.   -- period we're interested in, the beginning of 2020?

16   A.   Exactly so.

17   Q.   Could we go to page 3, please.  If we see at the top of  
18           the page there it says:

19               "The Scottish Government handles a very large amount  
20               of information.  This information relates to specific  
21               topics and individuals as well as records of decisions  
22               made by the Government, actions taken and the rationale  
23               behind these decisions.  The Scottish Government  
24               recognises that its records are an important public  
25               asset and are a key resource in the effective operation,



1 policy making and accountability of the Scottish  
2 Government. Like any asset, records require careful  
3 management and this policy sets out the Scottish  
4 Government's responsibilities and activities in respect  
5 of this."

6 Just go back to the original document, jump down  
7 a little bit further. Under "Scope "it says:

8 "All employees of the Scottish Government have a  
9 responsibility to effectively manage records in  
10 accordance with specified legislation and guidelines."

11 In the next section:

12 "This policy applies to all records created,  
13 received or maintained by Scottish Government staff in  
14 the course of carrying out their functions."

15 It also helps us with the definition, which says:

16 "A record is a piece of recorded information or  
17 document, regardless of format, which facilitates the  
18 activities and the business carried out by the  
19 Government and which is thereafter retained for a set  
20 period to provide evidence of a transaction or decision  
21 carried out by or on behalf of the Government. Records  
22 may be created, received or maintained in hard copy or  
23 electronically. Emails, SMS messages, tweets,  
24 documents, sound recordings and videos may all be  
25 records."

1           The policy says that employees of the government  
2           have to retain evidence of transactions or decisions  
3           carried out "by or on behalf of ... Government"?  
4   A.   That's correct.  
5   Q.   Things done on behalf of government may include making  
6           decisions, taking action, and the forming of a rationale  
7           behind those decisions; is that correct?  
8   A.   That's correct.  
9   Q.   Would all of those things be deemed to be part of  
10          transactions or decisions on behalf of the Scottish  
11          Government?  
12   A.   They would all be considered relevant, yes.  
13   Q.   This policy does not mention WhatsApps or specifically  
14          other electronic information, does it?  
15   A.   It talks about emails, SMS messages, tweets, so it's  
16          drawing -- and I guess in October 2019 WhatsApp was  
17          perhaps not as prevalent at that point as it  
18          subsequently became, and I think by the time we get to  
19          September 2020, so a year later, WhatsApp is then  
20          included in this list.  
21   Q.   We'll get to that, Ms Fraser. But the important point  
22          I think is that -- what I think we have tried to do is  
23          cast the net as widely as possible, to cover all forms  
24          of communication which may become prevalent in  
25          the prac --

1 A. Exactly so, yeah.

2 Q. -- of the various ministers and employees; yes?

3 A. Yes.

4 Q. It states that it's important to retain records relating  
5 to the business of government.

6 A. Yes.

7 Q. And the business of government contains and creates  
8 information which it records about the business of  
9 government; is that right?

10 A. Yes.

11 Q. And this information includes records of not only  
12 decisions but, as I think we've covered, actions taken  
13 and the rationale behind those decisions?

14 A. Yes.

15 Q. As well as how those decisions were reached?

16 A. Yes.

17 Q. Thank you.

18 Could we then go to INQ000274180. Now, as  
19 I understand it, this is one of the documents that you  
20 were able to provide to us just in the last couple of  
21 days. Is that right?

22 A. That's correct, that's the document -- well, it's  
23 a snapshot of what was on our intranet site as guidance  
24 for colleagues.

25 Q. Indeed, and I think as you told us earlier, this was

1 text that was published on the Scottish Government  
2 intranet, I think you called it Saltire?

3 A. Saltire we call it, yes.

4 Q. In April 2020, as guidance or a policy to assist with  
5 working from home; is that right?

6 A. Yes, I wouldn't say it was policy. It's much more  
7 up-to-the-minute guidance for people who are moving from  
8 working in the office to moving to working at home. So  
9 it is covering things like how to log on, what to do if  
10 you can't get your password to work, all of the things  
11 that people would have gone to maybe a person in the  
12 office to deal with, and we were now explaining how you  
13 can do that when everybody is working from home.

14 Q. So this was one of the events that I think you  
15 contemplated earlier, where there is still the general  
16 policy that we've discussed, but this was attempting to  
17 try to deal with the particular circumstances that  
18 prevailed at the time?

19 A. This is a lot of questions that are coming in to us,  
20 quite understandably, and we're endeavouring to pull  
21 lots of information together in a single useful place  
22 where people can click on links and get that advice.

23 Q. If we go to page 8, please, it says under the blue  
24 passage:

25 "Keeping in touch with colleagues and having social

1 and business contacts during this time is vitally  
2 important. Apps like Zoom, Slack and WhatsApp can be  
3 downloaded on your SCOTS mobile, but must be used in a  
4 responsible, professional manner. When using them  
5 remember:

6       "- apps are for official info only

7       "- messages are only encrypted when in transit -- as  
8 soon as they arrive on your device it depends on your  
9 security settings

10       "- messages are subject to Freedom of Information  
11 (FOI)

12       "-- messages should be transitory and not used as  
13 the official record

14       "- messages should be deleted as soon as they are no  
15 longer needed."

16       The guidance to Scottish Government officials  
17 encourages the deletion of messages which might relate  
18 to business, doesn't it?

19 A. It tells people, it's -- this is quite shorthand,  
20 I would say, so when it says apps are for official  
21 information only, that is actually referring,  
22 for example, to our security settings. So nothing above  
23 official level, so sensitive information or secret  
24 information, for example, can be used.

25       It's pointing --

1 Q. I was focusing slightly more on the final bullet point,  
2 Ms Fraser.

3 A. Yes, but I think the second to last bullet point is  
4 important as well. So they're -- they're transitory,  
5 and they're not the official record, therefore you need  
6 to write the relevant information into the official  
7 record, which is what the Records Management Policy  
8 requires you to do, and we are rightly pointing out to  
9 colleagues that they are subject to Freedom of  
10 Information as well.

11 Q. Is it clear here that matters require to be written into  
12 the official record, as you said, before they are  
13 deleted?

14 A. That is -- because we're talking about them being  
15 transitory and not the official record, that implies to  
16 me that therefore they must be written into the official  
17 record if they're relevant to government business.

18 Q. Is your position that it is clear?

19 A. I think in the context of this, which is a section about  
20 connecting with colleagues, yes, that is implied and  
21 clear to experienced civil servants.

22 Q. The requirement to write it into the official record  
23 comes from the first document we looked at, isn't that  
24 right?

25 A. It comes from that document, but it comes from the way

1 of working, as a civil servant. Government cannot  
2 operate unless civil servants are writing the relevant  
3 information onto the corporate record, and it's  
4 searchable, we can look at it when we're taking forward  
5 policy, we can respond to queries and requests, scrutiny  
6 in Parliament, Freedom of Information, for example, so  
7 the whole way in which government works depends on civil  
8 servants ensuring that information is on the record at  
9 the earliest opportunity.

10 Q. Would this also apply to ministers, surely, as well?

11 A. Ministers are not subject to our Records Management  
12 Policy, that is a matter for civil servants, so  
13 ministers, for example, don't have access to our  
14 electronic records management system directly, they  
15 could not write information on to the record.

16 Ministers work with their private offices, and when  
17 a minister comes into office, their private office  
18 explains to them how decision-making, the transfer of  
19 their views to other ministers or to stakeholders or to  
20 policy officials will happen. That private office will  
21 explain that if a minister has a meeting without  
22 private office being present, for example, then that  
23 information must be relayed to private office at the  
24 earliest opportunity so that private office can, one,  
25 act on it, and two, also record that for the record.

1       Because, again, what ministers are doing is of  
2       fundamental importance and interest not just to  
3       Government but to Parliament and to others who want to  
4       scrutinise our activities.

5   Q.   But these rules that we are looking at must also apply  
6       to ministers by extension, is that not correct?

7   A.   Ministers are required under the Ministerial Code to  
8       work positively and productively with the civil service,  
9       and they must -- it's clear in the Ministerial Code,  
10      for example, that should they have meetings where civil  
11      servants are not present, they must relay that to their  
12      private office and -- you know, so that the relevant  
13      actions can be taken, including the information recorded  
14      to the record, and --

15  Q.   Simply put, do these rules apply to ministers? The  
16      reason I'm asking is because we have asked the Scottish  
17      Government for its policies relating to the way in which  
18      information requires to be retained --

19  A.   Yes.

20  Q.   -- for these purposes in its key decision-makers,  
21      including ministers and senior advisers.

22  A.   Indeed.

23  Q.   So are there policies we have not seen that relate to  
24      ministers?

25  A.   No, there are not. It's -- what I'm trying to explain



1       is it's the civil servants who have the responsibility  
2       for record-keeping and not ministers directly.  
3       Ministers have a different set of responsibilities about  
4       how they work with their private offices, and their  
5       private offices have that very important responsibility  
6       for ensuring that the actions of their minister and the  
7       communications from their minister are then recorded in  
8       the record. So I'm just trying to draw that distinction  
9       between responsibilities.

10    Q. I understand. So if ministers were to refer to these  
11       policies as their understanding of the rules that  
12       pertained to them, would they be wrong?

13    A. They're not wrong, because they provide good, you know,  
14       guidance and advice, which ministers --

15    Q. But surely, Ms Fraser, not for them, you're telling me?

16    A. Not directly for them in relation to the retention of  
17       records on the corporate records system of the Scottish  
18       Government, but it provides good guidance and advice in  
19       terms of, for example, how you would treat WhatsApp  
20       messages on your private phone if they were relevant to  
21       government business.

22    Q. If I were a minister at the beginning of the pandemic,  
23       keen to know how I would comply with my obligations, if  
24       this policy doesn't apply to me, surely I wouldn't look  
25       at it?

1     A.  You would be made aware of the relevant aspects that --  
2             and as they do apply to ministers by your  
3             private office.  So that's a responsibility of  
4             private office and then a responsibility of ministers to  
5             work well and productively, including the transfer of  
6             information to private office so that it can be retained  
7             on the record.

8     Q.  Where can we see for ministers the obligations defined  
9             in this regard with this degree of specification from  
10            this period?

11    A.  I'm sorry, I didn't quite ...

12    Q.  Where can we see applying to ministers the guidance  
13            pertaining to their obligations about the retention of  
14            records with this degree of specification?

15    A.  So this degree of specification would be well known and  
16            indeed was discussed with ministerial private offices,  
17            and ministerial private offices are then supported to be  
18            able to have the conversations and the discussions with  
19            their ministers about how they will then work.

20            There's of course a degree of personal preference  
21            about how ministers choose to work with the civil  
22            service and choose to work with their private office,  
23            but the fundamental points about ensuring that the  
24            relevant information is then transferred into email,  
25            into the records system, is the critical one, and

1 ministerial private office do that, working with their  
2 ministers.

3 Ministers would have been able to see the mobile  
4 messaging policy, it's not a secret policy. It's  
5 written from the perspective of civil servants because  
6 civil servants are the ones with the responsibility, but  
7 the good practice guidance would equally apply to  
8 ministers.

9 Q. Is the good practice guidance a different document that  
10 we haven't seen?

11 A. No, no, it's contained, not in this document that we  
12 have in front of us here, but in the mobile messaging  
13 policy in 2021.

14 Q. There were a number of press articles in 2023 when  
15 matters pertaining to retention of documents became  
16 a live issue being addressed by the Scottish Government  
17 where former ministers, including former Health Minister  
18 Alex Neil, suggested that when he was in office he  
19 frankly couldn't understand the policies as to document  
20 retention. Is it really surprising that ministers are  
21 in that position, given the fact that what you have told  
22 us is that these policies relate to civil servants and  
23 that there is some more general obligation, poorly  
24 defined it seems, relating to ministers?

25 A. I would say that the obligation on ministers is not

1       poorly defined, I think it is very clearly defined in  
2       the Ministerial Code that they have a responsibility and  
3       accountability to let their private office know at the  
4       earliest opportunity of meetings and discussions that  
5       they have that are relevant to government business, that  
6       where a civil servant is not present -- if a civil  
7       servant is present then it's the responsibility of the  
8       civil servant to take that note.

9           I think Mr Neil left office in 2016, so potentially  
10       arguably before WhatsApp, for example, became prevalent  
11       as a means of informal communication, but Mr Neil would  
12       at the time have had advice before 2016 about how to  
13       work with his private office and ensure that his  
14       meetings, decisions, views were then transferred into  
15       the record and were acted on by the civil service.

16   Q.   You've said on a number of occasions that  
17       private offices would do things with regard to speaking  
18       to ministers about their obligations. Do you know that  
19       that is the case, that that happened?

20   A.   I do know that that is the case, yes.

21   Q.   It's your job, I think, to oversee that to a certain --

22   A.   Ministerial private offices sit within my area of  
23       responsibility. So, for example, I know that as part of  
24       the induction process for new ministers after the  
25       May 2021 election, we specifically spoke to ministers

1       about record -- well, handling data and information well  
2       and looking after data securely, and that was part of  
3       the induction process for ministers.

4           Fundamentally, and I think actually the Deputy First  
5       Minister referred to this in particle, if ministers  
6       don't tell their private office about every aspect of  
7       what they've done, nothing in government will happen.  
8       Ministers may talk to each other or talk to  
9       a stakeholder; if that's not relayed, then no action  
10      will be taken by the civil service.

11   Q.   What you're telling me is during the period with which  
12       we are concerned, ministers were definitely told by  
13       their private offices that they required to comply with  
14       these policies as regards not only general documentation  
15       and information, but the specific types of electronic  
16       communications that we have mentioned here?

17   A.   We would have said -- well, ministers would be aware of  
18       the necessity of talking to their private office, as  
19       I've said. The level of specification about WhatsApp  
20       and the mobile messaging policy was something that was  
21       developed towards the end of November 2021, so at that  
22       point we would have been discussing that across our  
23       organisation, and at that point private offices would be  
24       aware of that and discussing it.

25           I think actually in my evidence pack I did see

1 an exchange between a private office and a minister  
2 where they were discussing precisely this in, at the  
3 beginning of January 2022. So that gives me again just  
4 a second check that indeed this was being discussed.

5 LADY HALLETT: Ms Fraser, I'm afraid I'm not following. I'm  
6 a minister and I'm talking to Mr Dawson, who's another  
7 minister, in a WhatsApp message and no civil servant is  
8 part of the group.

9 A. Yes.

10 LADY HALLETT: What am I or what is Mr Dawson told to do  
11 with our WhatsApp messages? In clear terms, what are we  
12 told? Are we told, in accordance with this policy --  
13 that seems to be delete them when they're not needed, or  
14 are we told to keep them, are we told to tell the civil  
15 servants -- our private office about them?

16 What are we told? In clear terms.

17 A. Assuming that this is about government business?

18 LADY HALLETT: Yes.

19 A. Yes.

20 LADY HALLETT: Well, chances are if I'm a minister and  
21 Mr Dawson is a minister it will be, isn't that right?  
22 Unless we're talking about having a cup of tea,  
23 I suppose, but ...

24 A. You could be having a cup of tea or it could be party  
25 business. But assuming it's government business, then

1       you would agree, right, I'll tell my private office to  
2       do X, Y or Z as a result of the conversation that we've  
3       had, and that is the general way in which information  
4       that is perhaps discussed between ministers would be  
5       relayed to the civil service so that action could be  
6       taken.

7   LADY HALLETT: But that may not record the rationale which  
8       Mr Dawson got you to agree is one of the things that  
9       ought to be recorded, that would just be recording the  
10      actions to be taken as a result of our decision.

11            So in other words, things could get lost if the  
12      ministers delete their WhatsApp messages without telling  
13      private office everything that was discussed or send  
14      it -- forwarding them to private office.

15   A. Mr Dawson was talking to me earlier about the process of  
16      agreeing what's relevant government business here, so  
17      ministers couldn't, for example, meet and -- you know,  
18      without civil servants in the room, and say "We are  
19      determining to set up a new grant scheme here, right,  
20      I'll tell my private office, a new grant scheme will be  
21      set up", impossible to do that, because there's a whole  
22      set of other checks and balances about the expenditure  
23      of public money, about the value for money test, about  
24      accountable officer responsibilities.

25            So a minister would say "I've spoken to my

1       colleague, we'd be interested in advice on setting up  
2       a grant scheme that could do this, will you please get  
3       me the relevant advice", and private office would then  
4       say "Ministers have spoken, they're keen to do this, can  
5       officials please provide the advice".

6               Now all of that then is part of the official systems  
7       of the Scottish Government. That is generally handled  
8       on email, that's where decisions and advice from  
9       ministerial offices comes from, and then the civil  
10      service will provide that advice and that is where the  
11      decision then would be assessed and taken.

12   LADY HALLETT: I'll leave Mr Dawson to pursue that.

13              Can I just pursue one other question that I had in  
14      relation to the passage we had highlighted:

15              "- apps are for official info only"

16              You said you thought it was clear to experienced  
17      civil servants -- of course not all civil servants are  
18      necessarily as experienced as you are -- but I confess  
19      that I don't find these rules or principles clear. If  
20      messages are subject to Freedom of Information requests,  
21      my immediate instinct would be to say, "Well, if it's  
22      going to be subject to an FOI then I've got to keep it",  
23      yet the final passage says "messages should be deleted  
24      as soon as they are no longer needed". That seems to  
25      conflict with the fact that they need to be kept in case



1           somebody, a representative of the media makes, say,  
2           a Freedom of Information request. Is that clear?  
3           I don't think that's clear.

4   A. This is a snapshot of a much longer document which  
5       relates to a whole set of issues for people moving home  
6       and working from home when they have been working  
7       online, and this is a section about connecting with  
8       colleagues, both personal colleagues and business  
9       colleagues. The "apps are for official [information]  
10      only" certainly says to me that's for nothing that is  
11      sensitive, nothing that is secret, because those --  
12      "official" is a recognised security marking within  
13      government.

14           And because messages are transitory and are  
15      therefore not part of the official record, that says to  
16      me: therefore anything that's relevant must be on the  
17      record and then you should be deleting that transitory  
18      information as soon as it's no longer required, which is  
19      also part of good practice.

20   LADY HALLETT: Sorry, I don't think you've addressed my  
21      point, but, Mr Dawson, I'll leave it to you.

22   MR DAWSON: Thank you very much.

23           Ms Fraser, who monitors compliance with these  
24      policies?

25   A. As I've explained, the responsibility sits with

1       directors. We have over 50 directors in the Scottish  
2       Government, and they're responsible for ensuring the  
3       compliance of their teams with these policies along with  
4       a range of other policies. That is then annually  
5       assured through a certificate of assurance process.

6           In addition to that, I chair an information  
7       governance board of the Scottish Government and we look  
8       across the piece at the issues that are emerging, at  
9       where we need to make improvements and so on, and we  
10      target the resources of government and our actions to  
11      ensuring that we are making the necessary improvements.  
12      So that's another form of assurance.

13           We also have the opportunity to bring in our  
14      internal audit colleagues as well. So, for example, in  
15      relation to material that we've provided for this  
16      Inquiry, we've on two occasions asked our internal audit  
17      colleagues to just check that the approach that we've  
18      been taken looks to them to be sensible and in line with  
19      the questions that the Inquiries have been giving to us,  
20      and then we've been -- obviously acted on the  
21      recommendations that have come back.

22   Q. How do these compliance bodies know if ministers and/or  
23      civil servants are corresponding with each other by  
24      WhatsApp, which of course happened during the course of  
25      the pandemic, about government business, whether the

1 policies are being complied with if you know nothing of  
2 the correspondence?

3 A. If the civil service knows nothing of the correspondence  
4 then action will not be able to be taken within  
5 government.

6 Q. Does that not create a very significant risk, Ms Fraser,  
7 given that you've acknowledged that during the course of  
8 the pandemic it was known from April 2020 that people  
9 were going to be using these various new media of  
10 communication, that people could well be corresponding  
11 about the business of government and that not being  
12 retained on the corporate record?

13 A. I think that what I would say here is that the --  
14 you know, three things were happening, I think, here.  
15 One, we were moving from most people face-to-face in the  
16 office to the majority, the vast majority of people  
17 working from home. At the same time we had access to  
18 new technologies, I particular remember Zoom being  
19 fundamental to the way that we were working in  
20 government. And there were quite rightly questions  
21 about how that would work.

22 I think the third thing is that the process of  
23 producing information for this Inquiry, and indeed for  
24 the Scottish Inquiry, has made us reflect on the way in  
25 which these new digital records are being created. So

1 I can see from the evidence that I've been referred to  
2 in preparation for today that there's a great deal that,  
3 you know, is informal, that is preparing for formal  
4 meetings, which then I know will have appeared on the  
5 record, but nonetheless we're creating a digital  
6 footprint, a digital record where previously none,  
7 I think, would have occurred before.

8 For that --

9 Q. Ms Fraser -- sorry.

10 A. For that reason, we are already looking at our Records  
11 Management Policy and the way in which WhatsApp and  
12 other social -- mobile messaging apps are handled within  
13 our records management approach.

14 Q. Does this not mean, Ms Fraser -- it is encouraging to  
15 hear that Scottish Government --

16 A. Yes.

17 Q. -- is taking action as a result of its experience with  
18 this Inquiry. However, is it not the position that the  
19 Scottish Government had no control over the use of these  
20 messaging systems and the retention of any messages that  
21 were sent via them involving ministers or civil servants  
22 during the course of the pandemic?

23 A. I disagree, because it was necessary for government to  
24 be able to function that information was being relayed  
25 to civil servants and was then being handled through the

1 formal systems of the Scottish Government, our email  
2 principally, but records management and so on. No  
3 action, no activity of government could happen without  
4 that.

5 And at the same point we were ensuring that those  
6 records were being added to the record so that we could  
7 understand the steps that we had taken during the  
8 pandemic, we could be held to account in particle in  
9 live time, and we were also then from very early on  
10 aware that there was likely to be public inquiries and  
11 that we should be preparing for those.

12 So that is why we've got very significant amounts of  
13 information that we have been able to provide to  
14 the Inquiry, I think more than 19,000 documents of that  
15 sort, and that is the very fundamentals of government,  
16 those are the decisions and how they were reached, and  
17 you can see all of that set out in those records.

18 What I've seen in the WhatsApps exchanges that I've  
19 been pointed to is colleagues preparing for those  
20 exchanges and then information potentially duplicated on  
21 WhatsApp but then clearly going into formal records and  
22 on to email, for example.

23 So I wasn't at the time conscious that this was  
24 a problem, and believe that we have been able to and we  
25 do have a comprehensive record.

1           However, I think that this has shone a spotlight on  
2           a really important issue to do with, you know, what  
3           these WhatsApp exchanges convey and what that means in  
4           terms of the records that government might look to keep  
5           in the future, and that's the area that we want to look  
6           at now in our review.

7   Q.   Ministers and civil servants were permitted by the  
8           Scottish Government to use these messaging platforms to  
9           speak about government business during the course of the  
10          pandemic; is that not correct?

11  A.   That is correct, up to a certain level of security.,  
12          yes.

13  Q.   They were allowed, for example, to use their own mobile  
14          phones for that purpose?

15  A.   Ministers on some occasions chose to use their own  
16          mobile phones if they were dealing with --

17  Q.   I've asked whether they were permitted to do so.

18  A.   They were permitted to, ministers were permitted to.

19  Q.   Does it not mean, in these circumstances that, as you've  
20          said, none of these issues have arisen during the course  
21          of the pandemic for the various compliance bodies that  
22          you've mentioned, is it not inevitable that that would  
23          be the case when people are using apps, using personal  
24          phones over which the government can have no possible  
25          control?

1     A. For government business which ministers might want to  
2         conduct on a personal phone, the only way that could  
3         happen is by installing a secure app on their phone. At  
4         the time it was a mobile BlackBerry app that they were  
5         using and that enabled them to receive emails to their  
6         secure government account on a personal phone. So that  
7         was available, I think, until March 2023 as one option  
8         for ministers: rather than taking a government phone,  
9         they could install this secure app on their personal  
10        phone and use that mechanism.

11    Q. Would an exchange between a senior minister and  
12        a political adviser in September 2020 relating to the  
13        number of people who should in Scotland be permitted to  
14        attend weddings or funerals fall within the definition  
15        of government business?

16    A. It would.

17    Q. Should that have been retained on the corporate record?

18    A. Not necessarily that artefact, but a decision like that,  
19        that would have been discussed through our formal  
20        processes, so you would see email exchanges on that, you  
21        would see evidence and advice on that.

22           The exchange, I think, between Ms Sturgeon and her  
23        chief of staff would be -- I wasn't part of that  
24        conversation obviously, but it would be for them to  
25        explain. But it would be an adjunct to that formal

1 process.

2 Q. We received in response to a request made of the  
3 Covid Inquiries Response Directorate a very helpful  
4 table, if I may say so, on 13 October 2023, which  
5 I referred to at the third preliminary hearing.

6 The table is to be found at INQ000319509.

7 In that table, your staff, I think, provided us with  
8 summaries of the position of a number of senior  
9 ministers who were involved in key decision-making  
10 during the course of the pandemic, on a number of  
11 issues, including their retention of notebooks and  
12 things like that, but also in relation to the extent to  
13 which they had used or had retained messages relating to  
14 the pandemic and how it had been managed.

15 In the summary table that we see here, we can see  
16 that under the box "Nicola Sturgeon" it says that:

17 "Messages were not retained, they were deleted in  
18 routine tidying up of inboxes or [changes] of phones ...  
19 Unable to retrieve messages."

20 So what that tends to suggest is that at a time  
21 a request was made, Nicola Sturgeon, the former  
22 First Minister of Scotland, had retained no messages  
23 whatsoever in connection with her management of the  
24 pandemic. Is that correct?

25 A. That's what that indicates to me.



1 Q. And when we asked the government whether it had retained  
2 any such messages on its corporate record, you provided  
3 us with none.

4 A. Correct.

5 Q. Does that mean that we have no access to the former  
6 First Minister of Scotland's messages in connection with  
7 her management of the pandemic?

8 A. The way in which, I mean, Ms Sturgeon will be able to  
9 explain this much better than me --

10 Q. I think that's just a matter of logic, Ms Fraser, which  
11 I'm asking you to help us with.

12 A. Yes. Ms Sturgeon would have worked with her  
13 private office in order to ensure that her views and  
14 instructions were clearly understood, and they may well  
15 have been informed by some of the exchanges that she'd  
16 had with her chief of staff or with other ministers, but  
17 she would have relayed that to her private office and  
18 that would be then the instruction that went from  
19 private office and that would be retained --

20 Q. Do you know that to have happened?

21 A. That is how -- as I say, that's how government works.  
22 It's a necessity, for that information to be captured.

23 Q. So is the answer to the question do you know that to  
24 have happened, no?

25 A. It's hard for me to give absolutes in relation to

1 a general question.

2 Q. It's just about your own knowledge, Ms Fraser, do you  
3 know that to have happened or not?

4 A. Well, my experience is that we've been able to find the  
5 relevant information and to demonstrate how those  
6 decisions were made and to evidence that through emails  
7 and other exchanges on our corporate records system.

8 Q. But if you don't have access to Ms Sturgeon's messages,  
9 and she doesn't have access to them any more, how can  
10 you know whether the relevant information has been  
11 transposed on to the corporate record? How can you give  
12 the answer you've just given?

13 A. I can't, no, not having seen all of the information.

14 Q. Could I just refer you very briefly to page 2 in  
15 connection with the former Deputy First Minister. His  
16 position was that:

17 "Messages would have been deleted by auto-delete  
18 functions or by themselves manually deleting them as  
19 they do on a regular basis."

20 So the former Deputy First Minister's position  
21 appears to be that he had messages set up on  
22 an auto-delete function. Was that something that was  
23 permitted?

24 A. The use of WhatsApp was permitted on Scottish  
25 Government --

1 Q. That's not the question.

2 A. -- devices. How ministers and private offices chose to  
3 manage that on a day-to-day basis would be a matter for  
4 them, so it may be that Mr Swinney spoke on a daily  
5 basis and explained what he wanted from his  
6 private office and then ensured that information was  
7 deleted thereafter so that he was able to manage what  
8 would quickly, I suppose, become unmanageable amounts of  
9 information.

10 How ministers work with the private office I think  
11 is the critical area.

12 Q. You mentioned a moment ago, I think on a few occasions,  
13 that it was the responsibility of the directors to  
14 ensure compliance; is that right?

15 A. Yes.

16 Q. And what ultimately that meant was compliance by both  
17 ministers and civil servants, although they worked  
18 directly with the civil servants who were making sure  
19 that the ministers did it; is that correct?

20 A. Yeah, so minist -- yes, directors are responsible for  
21 ensuring that their teams are absolutely maintaining our  
22 corporate policies and approaches, including on records  
23 management. That includes the director for ministerial  
24 private offices, who would have been ensuring that this  
25 was working well through the pandemic.

1 Q. Would it surprise you if it were the case that  
2 a director general had encouraged people in a group  
3 relating to the management of the pandemic to delete  
4 their messages?

5 A. I would be surprised if they encouraged them to delete  
6 without ensuring that relevant information was retained.  
7 I know that some --

8 Q. (inaudible)

9 A. I know that some WhatsApp exchanges tipped into what  
10 I would call banter and, you know, on some instances,  
11 I think, personal support for colleagues as well. Now,  
12 that I would argue is not relevant for the corporate  
13 record of the Scottish Government and, therefore, would  
14 not be something that should be retained, and I would  
15 expect colleagues to remind people of that as well.

16 Q. To follow up on a question that her Ladyship asked  
17 earlier, if that material was deemed discoverable by  
18 a Freedom of Information request, would it automatically  
19 require to be kept on the corporate record?

20 A. The matters for the corporate record are the ones that  
21 are relevant to government business and the who, what,  
22 why, when, how, where. The Freedom of Information  
23 requirements do not include what they call ephemeral  
24 information, so --

25 Q. But on the assumption that it were covered by the FOI

1 requirements, would that mean that it would require to  
2 be transposed onto the corporate record and, therefore,  
3 not deleted?

4 A. We are required to produce anything that we hold, any  
5 information that we hold under the Freedom of  
6 Information response and therefore were, for example,  
7 somebody to ask for all WhatsApps messages pertaining to  
8 a decision on X, then were they held, then those would  
9 be discoverable under Freedom of Information.

10 Now, not all of that information -- if, for example,  
11 it was about the football last night -- would be  
12 relevant and therefore ought to be recorded on the  
13 government records system.

14 Q. Does the Scottish Government place any automatic back-up  
15 on government-issued phones?

16 A. We automatically back up and indeed sync from our  
17 government systems. So we have a set of government  
18 systems called SCOTS, and whether those are on your  
19 mobile or on your laptop, they will automatically be  
20 backed up for a certain amount of time.

21 Q. Was that the case during the course of the pandemic?

22 A. Yes.

23 Q. For people who used their personal phones for  
24 communications relating to government business, is there  
25 any similar system?

1 A. Yes, if, for example, ministers were using the secure  
2 app in order to be able to receive emails, then that  
3 would be covered by the back-up system --

4 Q. Would WhatsApp message on a personal phone be  
5 automatically backed up to the system?

6 A. No, they would not. That would depend on the settings  
7 that the individual put in place.

8 Q. Would anything other than the emails on the secure  
9 system that you've just mentioned be backed up to the  
10 secure system?

11 A. No, we would not back up information on ministers'  
12 private devices other than the information on the secure  
13 app.

14 Q. I understand that between December 2022 and  
15 September 2023 the Scottish Government carried out  
16 an upgrade of its corporate mobile phones; is that  
17 correct?

18 A. It is.

19 Q. And you've helpfully provided us with a statement in  
20 relation to that.

21 A. I have, yes.

22 Q. Is the result of that that the messages contained on the  
23 phones of a number of individuals were wiped,  
24 effectively, from their systems?

25 A. Yes, I understand that three individuals have said that

1           they lost messages as a result of that upgrade.

2   Q.   That's three individuals in a list of people that this

3           Inquiry was interested in contacting for their

4           involvement in decision-making in this pandemic.

5   A.   Yes.

6   Q.   There will have been a lot of other individuals but not

7           people that related to our interest.

8   A.   Yes, the guidance that people had very clearly alerted

9           them to the fact that if they had non-government systems

10          or apps on their phone they would need to back those up

11          separately, that was, I think, number one instruction --

12   Q.   The instructions came from you in that regard, I think,

13          didn't they?

14   A.   The instructions, yes, came from my digital team, so

15          we -- yes, we provided training, we provided, again,

16          Saltire articles and advice, and we sent emails to every

17          single person affected to explain to them the process

18          and what they needed to do, step by step.

19   Q.   Did you ensure that the information that was given was

20          complied with?

21   A.   As far as we were able to do, yes.  Again, working with

22          a large number of officials we rely on directors to

23          ensure that their teams are aware and complying.

24   Q.   Could I just ask you one final question, Ms Fraser: in

25          all the circumstances that we have discussed, would you

1       accept that the Scottish Government's document retention  
2       policies were simply not fit for purpose during the  
3       course of the Covid-19 pandemic?

4    A.   I wouldn't accept that they were not fit for purpose  
5       during the pandemic, and I think that's evidenced by the  
6       sheer number of documents that we've been able to  
7       provide and the end-to-end story that that sets out.

8           I would accept, and I think this is very much  
9       learning and understanding, the hurt and frustration  
10      that there has been, as well, of not being able to  
11      receive all the WhatsApp messages, for example, that we  
12      therefore do need to look again at this new, you know,  
13      digital trail that is being left by informal messaging  
14      and to consider what that means for the good operation  
15      of record management within government, and I'd be very  
16      happy to keep the Inquiry updated on that work, if that  
17      would be helpful.

18   Q.   Thank you very much.

19           In the finest tradition, my Lady, having said that's  
20      the last question, there is one matter I'll return to.  
21      It was on the issue of the records that had been  
22      provided with the first corporate statement. The first  
23      Director General Corporate statement which was provided  
24      by Ms Fraser disclosed one version of the Records  
25      Management Plan, which was undated, the November 2021



1       messaging apps usage policy to which we referred. The  
2       plan was an operational document and did not set out the  
3       policy itself. Further requests were made by a further  
4       Rule 9 request, which again resulted in a further Rule 9  
5       response from Ms Fraser. The October 2019 Scottish  
6       Government Records Management Policy, which is the main  
7       policy that we have been looking at, was only disclosed  
8       to the Inquiry on 11 October 2023.

9           Is that your understanding, Ms Fraser, or are you  
10       prepared to take from me that that's the case?

11   A. I'm sure you've investigated that, thank you. If we've  
12       got any other information on that, we'll of course come  
13       back to you --

14   Q. I think the key point about that, as her Ladyship said  
15       earlier, was that if this was the obvious policy one  
16       could quite obviously have reached for it and provided  
17       it to us, along with the November 2021 policy, with the  
18       first Corporate statement; is that not right?

19   A. Yes, I think I would like to consult my team and just  
20       check on that point, thank you.

21   MR DAWSON: My Lady, I understand that there is one  
22       core participant question.

23   LADY HALLETT: There is.

24   MR DAWSON: Ms Mitchell.

25   LADY HALLETT: Ms Mitchell.

1 Questions from MS MITCHELL KC

2 MS MITCHELL: I'm obliged, my Lady. There is also a Rule 10  
3 application which was made which has been sent to  
4 the Inquiry, so perhaps if I'm asking my first question  
5 they might have a look at that. It was simply arising  
6 from something that was said, my Lady.

7 LADY HALLETT: Okay, if somebody could send that to me,  
8 thank you.

9 MS MITCHELL: I understand from my junior it's been sent  
10 off.

11 LADY HALLETT: I've got shaking heads, but anyway.

12 MS MITCHELL: A little. Well, my Lady ...

13 I'm obliged to my learned friend Counsel to the  
14 Inquiry for asking many of the questions which the  
15 Scottish Covid Bereaved were interested in asking.

16 I want to move to a slightly separate issue just  
17 now, and that is the response in relation to public  
18 messaging.

19 You've given us a full statement in relation to  
20 public messaging, but I only have a very narrow issue to  
21 ask you about, and it's this: the UK Government in  
22 an earlier part of the module, Module 2, it was shown  
23 that there were a number of messages which were wrong  
24 that were given publicly, and by that I mean that either  
25 identified the wrong place to which they applied because

1 ministers referred publicly to "the UK" or "this  
2 country" or "Britain" when they were actually meaning  
3 England, "England as the UK", I believe, was a phrase  
4 which was used.

5 What I would like to know from you, Ms Fraser, was:  
6 was there any need for a correction of the  
7 UK Government's public health messaging that you were  
8 aware of, and was there any discussion within that, and  
9 any action taken?

10 A. I don't have here information about whether there was  
11 a particular instance, but I know that there were  
12 regular weekly meetings between my own communication and  
13 marketing colleagues and their counterparts in the UK,  
14 and a great deal of time and effort was spent on trying  
15 to ensure that there were not contradictory or  
16 misleading messages applied through those -- through  
17 communications and marketing activity.

18 I think, for example, we had in place the FACTS  
19 messaging from -- I think with stakeholders from late  
20 May 2020 and then in use generally in June 2020, and  
21 "Hands, Face, Space" from the UK Government was then  
22 something that they launched later that summer, is my  
23 understanding.

24 Now, clearly we had traction and awareness and  
25 understanding, and employers and other institutions were

1       bought into and using the FACTS messaging, so there we  
2       worked with the UK Government to try to ensure that  
3       there wasn't confusion by overlaying a separate set of  
4       messages to a population who were already, we were  
5       observing, working very hard in order to comply with  
6       these protective behaviours.

7   Q.   So I see you understand that detail, but my specific  
8       question related to the difficulty of the problems that  
9       was being evidenced by the UK Government being unable to  
10      distinguish between these on occasions. Do you  
11      personally have any understanding of whether or not that  
12      was addressed by your team?

13   A.   My team did have regular discussions, for example, about  
14      communities living in the borders, you know, who were,  
15      for example, receiving perhaps, you know, contradictory  
16      information or difficult to understand information  
17      about, for example, train journeys that might cross the  
18      border. So there the teams were working together to try  
19      to ensure that as far as possible we were giving clear,  
20      consistent, actionable advice to people who were keen to  
21      respond properly.

22   Q.   But I might just press you --

23   A.   Yes.

24   Q.   -- focus, in relation to the problem that was identified  
25      of the UK Government getting that message wrong, are you

1           aware specifically of anything of that nature?

2   A.   I would need to check with my teams whether there were  
3       specific examples.  I know that generally the position  
4       improved over the course of the pandemic, so it was more  
5       problematic at the outset.  I think, for example, the  
6       change from "Stay at Home" message was something that we  
7       were unaware was going to change to "Stay Alert", and  
8       that caused a problem at the outset.

9   Q.   Yes, I think the Inquiry is aware of that.

10  A.   Okay.

11  Q.   So I don't need any further information in that regard.

12           My Lady, I don't know whether or not --

13  LADY HALLETT:  I think the question has landed.

14           Mr Dawson, you're going to tell me ...

15  MR DAWSON:  The position is, I think, although we're very  
16       grateful to Ms Mitchell, the subject has been covered in  
17       the questions we've already put to Ms Fraser and her  
18       extensive statements on the matter.

19  LADY HALLETT:  What is the question?

20  MR DAWSON:  The question pertains to the deletion policy and  
21       whether it's -- the question is:

22           "I would like to ask what the rationale was for  
23       deletion given the FOI obligation."

24           Which I think is --

25  LADY HALLETT:  The matter I was pursuing?

1 MR DAWSON: Indeed. Which I think has been covered as far  
2 as I'm concerned.

3 LADY HALLETT: You've got a minute, Ms Mitchell.

4 MS MITCHELL: Okay.

5 The question is this: what's the rationale for the  
6 deletion of records when it would seem eminently  
7 sensible simply to hold on to those records in case  
8 someone FOIs you?

9 A. Indeed. We can't physically retain everything --

10 Q. No, I'm talking about individuals on their WhatsApps or  
11 other text messages.

12 A. Yeah. So we're concerned about security. So different  
13 messaging systems can have different vulnerabilities,  
14 and obviously government ministers or civil servants  
15 need to reduce the vulnerabilities if on phones that are  
16 being used for government business.

17 Q. And --

18 A. We're also concerned that if, for example, there are  
19 long WhatsApp exchanges that might contain personal  
20 information, sensitive information about individuals  
21 that would be covered, for example, by the GDPR data  
22 privacy, that those should not be retained. We  
23 shouldn't -- government shouldn't be holding information  
24 that is not relevant to government business and  
25 therefore that should be reviewed, got on to the record

1           and then deleted at the earliest opportunity.

2   Q.   And we touched briefly on the issue of FOIs.  If, when

3           someone asks you to show them the retained information

4           you have --

5   A.   Yes.

6   Q.   -- it's only relevant at that particular time, so if

7           it's deleted you don't have that obligation, but you do

8           have an obligation to do something, to tell them either

9           when it was deleted or to explain your policy; is that

10          correct?

11  A.   We have a -- yes, we have a general responsibility

12          actually under the Public Records Act to explain what

13          our retention and deletion policies are.

14  Q.   So prior to 2021, before the addendum came up, how were

15          people able to know what that policy was?

16  A.   So under the Records Management Act, it's clear what the

17          document retention policies are that we agree with the

18          Keeper of the Records of Scotland.  In relation to

19          WhatsApp messaging, we would be first of all saying to

20          people "If it's relevant to government business, get it

21          on to the government record", that's the number one

22          thing, because we can't search easily --

23  Q.   I understand the issue, what I'm saying is --

24  A.   "Once it's on the record, then for security, data

25          privacy and a whole set of other reasons, please don't

1 retain information for longer than it's required."

2 Q. But if you have to give an explanation for why such

3 a policy is in place, for deletion or the fact that it's

4 been deleted, we don't actually have one directly in

5 relation to ministers?

6 A. Ministers don't have the responsibility directly to

7 write information onto the corporate record. That is

8 the responsibility of civil servants.

9 MS MITCHELL: I think I've taken enough of my Lady's minute.

10 LADY HALLETT: Thank you, Ms Mitchell. In fact the email

11 was sent to the M2 inbox, not the M2A, that's why it

12 took a while to track it down.

13 MS MITCHELL: I apologise.

14 LADY HALLETT: Not your fault. I mention it so it doesn't

15 happen again.

16 MS MITCHELL: Thank you.

17 LADY HALLETT: 11.30.

18 MR DAWSON: Thank you very much.

19 LADY HALLETT: Thank you very much indeed, Ms Fraser.

20 THE WITNESS: Thank you.

21 (The witness withdrew)

22 (11.16 am)

23 (A short break)

24 (11.30 am)

25 LADY HALLETT: Mr Dawson.



1 MR DAWSON: The next witness, my Lady, is Mr Kenneth Thomson  
2 CB.

3 MR KENNETH THOMSON (affirmed)

4 Questions from LEAD COUNSEL TO THE INQUIRY for MODULE 2A

5 MR DAWSON: You are Kenneth Thomson?

6 A. Correct.

7 Q. Could you please try to speak into the microphone,  
8 Mr Thomson, as best you can.

9 You have provided, I think, a number of witness  
10 statements to the Inquiry, for which we're very  
11 grateful. The position in your regard is slightly  
12 complicated in that I think there were some statements  
13 which you had some responsibility for compiling but were  
14 actually signed off and finalised by others subsequent  
15 to you leaving post; is that correct?

16 A. I saw those -- they were compiled by others on behalf of  
17 the Director General. I saw some of that material  
18 before I left post but, as you I think are saying, some  
19 of it was signed and submitted to the Inquiry by my  
20 successor.

21 Q. Yes, let's try to go through and -- just to be  
22 absolutely clear which ones you're responsible for and  
23 which ones you've had involvement with.

24 There is a witness statement from you dated  
25 9 November 2023 under reference INQ000343888. That's

1           your statement?

2    A.   It is.

3    Q.   You've provided a number of other corporate witness

4           statements, as you were at the time the

5           Director-General for Strategy and External Affairs for

6           our module. One was dated 22 June of this year,

7           INQ000215495, and a further statement dated 23 June,

8           INQ000216655. These are also statements that were

9           compiled and signed by you?

10   A.   Yes, they were.

11   Q.   Do the contents of these statements remain true and

12           accurate as far as you're concerned?

13   A.   They do.

14   Q.   Just to clarify, my Lady, the two corporate statements

15           covered slightly different areas which fell within the

16           area of responsibility of Mr Thomson at the time.

17           A further four witness statements have also been

18           provided by, I think, the Director-General for Strategy

19           and External Affairs. We understand you're familiar

20           with two of these statements as you provided them in

21           draft prior to leaving post; is that correct?

22   A.   I would need to see them to know which ones I saw --

23   Q.   Let's just run through them, I don't want to --

24   A.   Yeah, go on, go through them --

25   Q.   I don't want to be asking questions about ones you're

1 not responsible for, Mr Thomson.

2 The first was a supplemental statement dated

3 26 October 2023. It's INQ000348720. This statement --

4 you may recall this one, I think that you did have

5 an involvement with it -- was a supplemental statement

6 of that date relating to Covid-specific structures of

7 the Scottish Government such as SGoRR, the Covid

8 directors and the four harms group.

9 That was one I think that was compiled by you,

10 possibly, but then signed by your successor, Mr Griffin,

11 is that correct?

12 A. It was seen by me and provided in draft, as paragraph 1

13 confirms.

14 Q. Thank you very much. And the second statement, similar

15 to that, was INQ000339039, a statement dated

16 1 November 2023.

17 A. That's not the statement --

18 Q. No, that' (inaudible) I'm afraid. There was a second

19 statement, we'll come back to that.

20 I understand also that two further statements were

21 provided on behalf of the directorate general with which

22 you were previously associated. These were provided by

23 your successor, the first dated 5 November 2023,

24 INQ000366267.

25 A. I have a different number in front of me. Yes, I now

1           have 267 before me.

2   Q.   Yes.   Have you seen that statement at least?

3   A.   That one I think was prepared without my involvement.

4   Q.   Right.   And a further statement dated INQ000362632.

5           This is one dated 6 December providing a correction to

6           the previous one.   I think, again, that was provided by

7           your successor.   Did you have any involvement in that

8           one?

9   A.   No, that's highly unlikely.

10  Q.   Thank you very much.   We'll just return to the other

11          number in a moment but deal with your personal

12          background.

13                You initially joined the civil service, as

14          I understand it, in October 1988, is that --

15  A.   Correct.

16  Q.   Since late 2011 you held the role as Director-General

17          Constitution and External Affairs, which as I understand

18          it was renamed Strategy and External Affairs in

19          February 2022?

20  A.   That's correct.

21  Q.   I'll refer to the -- could you just tell us, that's

22          a directorate family, is that correct?   It's a term we

23          heard from Professor Cairney yesterday.   Is that

24          a directorate family and could you tell us what that is?

25  A.   It's a family of directorates.   So, as Professor Cairney

1       said, the Scottish Government structure is a number of  
2       directorates supporting portfolios -- mapping isn't  
3       quite one to one -- and directors, leading directorates,  
4       are managed by a director-general, and  
5       a director-general's span of command is informally known  
6       as a family.

7   Q.   Right, so you were in charge of a directorate-general  
8       and under you will be have been, at different times,  
9       a different constellation of directorates?

10  A.   Yes.

11  Q.   Thank you.

12       In your work I understand that you supported the  
13       First Minister, Deputy First Minister and Cabinet  
14       including on cross-governmental work?

15  A.   I had two broad areas of support to ministers. The  
16       first was what you've just summarised, the second was  
17       support to a portfolio Cabinet Secretary in relation to  
18       a number of different matters, which changed over the  
19       period of the Inquiry, but that's probably less  
20       relevant.

21  Q.   Yes, but your responsibility included those matters that  
22       I mentioned?

23  A.   Yes, it did.

24  Q.   You explain helpfully in your statement ending 343888 at  
25       paragraph 6 that this role is analogous to the role of

1 the Cabinet Office within the UK Government; is that a fair  
2 description?

3 A. It's broadly fair, it's the best way I have of  
4 describing what my role is, but it's not exactly the  
5 same. The principal difference is that the  
6 Cabinet Office is co-ordinating actions across separate  
7 government departments, whereas I and my teams were  
8 co-ordinating action within one organisation working  
9 across directors, as you've described earlier.

10 Q. Thank you.

11 You retired from the civil service in November 2023.

12 A. That's correct.

13 Q. And I understand that you were awarded the Companion of  
14 the Order of the Bath in the most recent New Year's  
15 Honours List; is that --

16 A. Also correct.

17 Q. I'd like to ask you some questions about the subject  
18 which we've just been covering with one of your former  
19 colleagues, Ms Fraser, which is to do with document  
20 retention policy. We heard evidence yesterday about  
21 a number of important framework documents which set out  
22 the principles which are designed to guide  
23 decision-making within the Scottish Government,  
24 including the National Performance Framework. These  
25 documents include, amongst other things, a commitment to

1 transparency and accountability; is that not correct?

2 A. It is correct.

3 Q. These are important documents which lay out principles

4 with regard to the way in which Scottish Government

5 aspires to conduct its business, and these principles

6 apply both to ministers and to civil servants, as you

7 used to be.

8 A. Indeed.

9 Q. There are a number of documents, I think, that reiterate

10 the commitment to these principles which emanated by

11 means of guidance to the way in which decision-making

12 would be made in the pandemic, for example the framework

13 relating to the four harms strategy from April 2020?

14 A. That's correct.

15 Q. Indeed, during the course of the pandemic the Scottish

16 Government's public communications strategy was also

17 consistently said to be based on openness, honesty and

18 accountability; is that correct?

19 A. Correct.

20 Q. We've heard evidence from the current

21 Director-General of Corporate, Ms Fraser, about the

22 government's document retention policies and the

23 importance of keeping records. What is your

24 understanding of the Scottish Government's policy on the

25 use and retention of informal messaging such as

1       WhatsApps as at the period with which we're interested,  
2       from 2020 to the end of the pandemic in April 2022?

3    A.   So I think this will be a longer answer than my answers  
4       so far.  So at the period of the pandemic and the  
5       requirement to stay at home, our use of electronic  
6       messaging grew very rapidly, for obvious reasons, and at  
7       the early part of that period we had a number of  
8       corporate tools to make that possible.

9       From memory, the main one was Skype at the time,  
10       later replaced by Teams.  But in order to co-ordinate  
11       the work that we were doing, there was also a need to  
12       contact people rapidly, using, for example, messages  
13       that would show up on their phone if they were away from  
14       their -- where they were working at home and so on.  So  
15       we used a number of different -- people would use  
16       a number of different tools to contact each other.

17       Coming to records management, the key principle  
18       there is to create and maintain the formal record of  
19       government decisions, what decision was taken, by whom,  
20       when and on what evidence.  In my experience, corporate  
21       decisions were taken in the formal Scottish Government  
22       systems, including their IT system, so principally that  
23       would be the SCOTS email system, and my understanding of  
24       the use of -- or my practice in the use of informal  
25       messaging would be, as I describe in my witness



1 statement, to contact or be contacted by others in order  
2 to, you know, share an important piece of information  
3 that had just become known or to say "I've sent you  
4 something by email, you need to look at it right now" or  
5 "The First Minister wants to you at St Andrew's House in  
6 two hours' time" or -- messages of that sort, that  
7 needed to get into my attention rapidly.

8 Q. Okay.

9 A. Where -- so most of these messages didn't contain  
10 material that would be relevant -- you know, a "salient  
11 fact" I think is the way it's captured in the relevant  
12 policies. But where there was a salient fact relating  
13 to government business or pertaining to a decision that  
14 was in contemplation, it would be my practice to  
15 transfer that into the corporate systems usually by  
16 sending an email within the Scottish Government system  
17 saying "The First Minister has asked for additional  
18 advice on subject X" or something of that sort, and then  
19 having done that I would not retain material relating to  
20 government business in non-government systems.

21 Again, as later confirmed in the mobile messaging  
22 policy, you know, the instruction to us was to transfer  
23 salient points and then to delete the messages. So  
24 that's what I did.

25 LADY HALLETT: You're very softly spoken, I don't know if

1           you always were, but if you would speak up a bit more  
2           I'd be very grateful.

3    A.   I'll do my best.

4    LADY HALLETT:   Thank you.

5    MR DAWSON:   Just for the sake of clarity, Mr Thomson,  
6           I think you may be referring to the paragraph in the  
7           November 2021 mobile messaging apps usage policy, about  
8           which we've heard a little, where there is stated an  
9           obligation at least monthly, but preferably at the  
10          earliest opportunity, you must transcribe the salient  
11          points of any business discussions and/or decisions.  
12          Was that your understanding of the position?

13   A.   Yes, as the date shows, that policy post-dates the start  
14          of lockdown and the work I was doing, but that was my  
15          understanding of the application of the Records  
16          Management Policy to informal messaging platforms at the  
17          time. And indeed is -- you know, has been my practice  
18          for many years.

19   Q.   Yes, so that may have used a particular form of wording  
20          but effectively that had been your understanding of the  
21          obligation throughout this period?

22   A.   Yes.

23   Q.   You use the phrase "salient facts", which might be  
24          interpreted slightly differently from that wording, but  
25          that wording is what you always thought the obligation

1           was?

2    A.  Yes, you're always thinking as a civil servant: what are  
3       the decisions under contemplation here?  What is the  
4       evidence that would go into the public record that that  
5       decision was taken by whom?  And so on.

6           So if I use as an example, some of the decisions  
7       taken by governments, plural, in the course of COBR  
8       meetings in March were taken very rapidly, and part of  
9       your mind as a supporting official is thinking:  
10      a decision in that corporate discussion was taken, it  
11      was taken by my First Minister, I need to capture that,  
12      I need to make sure that is part of the formal record.

13           So that's what you're doing.  In ordinary times most  
14      of that is happening routinely -- solely in corporate  
15      systems, you don't need to send anybody informal  
16      messages about it.  But where there are messages which  
17      say, for example -- a realistic example would be the  
18      First Minister saying -- she might message me to say  
19      "We're having a meeting in two hours' time, I need  
20      additional briefing on such and such", and if I couldn't  
21      provide that to her myself directly immediately, then  
22      I would transfer that into the formal system to say,  
23      "The First Minister needs briefing on such and such" --  
24      now that's not actually our -- that's doesn't --  
25      evidence of decision, because there's no decision in

1           that, but that was my practice, it's the -- always  
2           thinking: what do I need to transfer into the formal  
3           system?

4    Q.   I think you talked in your description about the  
5           importance of understanding not just the decision but  
6           "on what evidence" were the words that you used.  I'd  
7           just like to clarify what you mean by that.

8                 Would you agree with me that that would require the  
9           corporate record to contain information relating to the  
10          way in which decisions had been taken, by whom they had  
11          been taken, the advice that had been tendered and  
12          accepted or not accepted, and any discussion which  
13          contained information of that nature?

14   A.   Yes.  The gold standard for this is a decision by  
15          Cabinet, and it will always be clear, and I believe it  
16          is clear from the materials in front of you, that  
17          Cabinet would receive a paper which would set out in  
18          a lot of detail the evidence, the options, the  
19          consideration, the advice, the recommendations, and  
20          then, continuing the chain of evidence, as it were, the  
21          Cabinet conclusions will set out what decision ministers  
22          took and give an account, not a verbatim account but  
23          an account of the discussion which had led to those  
24          decisions.

25                 So when things moved at pace, in such a way that

1 even on the very intense pace that we were working with  
2 Cabinet at that time, a decision was being taken away  
3 from Cabinet more rapidly, you would want to capture  
4 that same set of evidence. So, for example, just after  
5 the May 2021 election, before the -- the First Minister  
6 was still the First Minister, because there is always  
7 a First Minister, but she had not yet been nominated by  
8 the Parliament for reappointment, and at that point we had  
9 an emergency within an emergency because the -- we had  
10 information coming from the scientific advisers about  
11 a new variant, the Delta variant. And I think some of  
12 the messages that you have from me at the time show the  
13 Chief Medical Officer contacting me -- I think not in  
14 the messages but separately he had rung me to tell me  
15 this news and the two of us had gone to brief the then  
16 First Minister, and then there's a rapid exchange of  
17 messages about, first of all, how we brief the First  
18 Minister and then, secondly, what -- does this new  
19 information bring back into play decisions that the  
20 government has already taken and announced about moves  
21 between levels and, if it does, on what basis will those  
22 decisions be taken. And I think somewhere in that  
23 message chain there is me commissioning formal advice  
24 from one of my team to the First Minister about that  
25 decision.

1           From memory, again, that was not a decision taken by  
2           Cabinet because we didn't have a Cabinet. We -- the  
3           Cabinet could have met, that was provided for in the  
4           pre-election guidance, but in the event, because --  
5           including, partly, because she was to be asked an urgent  
6           question in the particle even before having been  
7           nominated, the First Minister would need to be  
8           transparent with Parliament about her thinking, and in  
9           fact what she decided to do was take a decision and tell  
10          Parliament what that decision was. So we recorded that  
11          decision, and of course it's also apparent in the record  
12          of Parliament what that decision was.

13   Q.   Thank you.

14           Ms Fraser told us that it was part of the  
15          responsibilities of directors and directors general to  
16          ensure that there were compliance with these policies  
17          that make sure that all of the matters we've discussed  
18          ultimately ended up on the corporate record. Did you do  
19          that while you were a director general?

20   A.   Yes, I did. In fact I -- that was not an onerous  
21          responsibility in the sense that the -- most of my  
22          dealings were with the First Minister and the  
23          First Minister didn't take decisions in informal  
24          messaging. She -- it would be very rare that she would  
25          message me at all, never mind in order to make

1 a decision. So most of what we were doing was speeding  
2 up the formal decision-making processes that we were  
3 used to using, which would be a written submission,  
4 a reply from the private office or a draft Cabinet  
5 paper, a circulated paper, a discussion and Cabinet  
6 conclusions. So there was little material in my  
7 experience that -- certainly not relating to  
8 decisions -- that needed to be transcribed from my  
9 informal messaging into the corporate record.

10 However, I think I say this in my witness statement,  
11 looking back, the use of these messaging systems was  
12 much greater because we weren't in the same physical  
13 building, and it was possible, and I think the evidence  
14 shows that this happened -- that different people  
15 interpreted the policies in different ways. So although  
16 I had no messages to give you, you found -- recovered  
17 some from others, I see that many of my colleagues were  
18 keeping messages and I wasn't. So that's an example of  
19 the risk that I allude to in my witness statement.

20 Q. Okay.

21 Could I take you to some messages, please, to have  
22 a look at them just to understand your approach in this  
23 regard.

24 INQ000331192, please. It's at page 5.

25 This is an exchange from the very beginning or very

1 near the beginning of the pandemic in the first  
2 lockdown, 25 March 2020. This comes from a WhatsApp  
3 group chat that was provided to us and the WhatsApp  
4 group was called "WhatsApp group OROG"; can you recall  
5 what that was to do with?

6 A. Yes, I can.

7 Q. Could you tell us what it's to do with?

8 A. I'm sorry?

9 Q. Could you tell us, please, what the group was to do  
10 with, what were the business or the --

11 A. The group called OROG was, from memory, a group of  
12 directors and me and some other directors general which  
13 came together shortly after the lockdown decision.  
14 I think OROG stood for operational response oversight  
15 group.

16 It was an informal group, it wasn't a formal part of  
17 the Scottish Government's governance or decision-taking,  
18 and it was really a place in which these directors  
19 could, as you would say, formally maintain situational  
20 awareness so we could understand what was going on and  
21 what needed to be done, so we were keeping an oversight  
22 of all of the different activity that was going on, so  
23 that, for example, within the Health directorates people  
24 were standing up new programmes on shielding, within  
25 other parts of the organisation people were moving



1 resources from one place to another because of the -- of  
2 what we could see we would need to do, and OROG was  
3 a group that kept oversight of that.

4 I think it, it's fed back to directors in written form  
5 within the Scottish Government systems, but it also had  
6 a WhatsApp group in which, out of our group calls, we  
7 were able to share information and I think that's what  
8 this thread will be.

9 Q. So this is a piece of correspondence between you and  
10 someone whose name has been redacted in which you say:

11 "My next strategic prediction: [this particular  
12 individual] is about to remind us to clear this  
13 thread..."

14 Then a person says:

15 "No need ken you have already done it thank you."

16 This seems to be you acknowledging that there will  
17 be clearance of the messages from this group, despite  
18 the fact it involves business discussions relating to  
19 the pandemic; isn't that right?

20 A. No, this is quite an informal group. It is discussions  
21 about the pandemic but it's not a forum in which  
22 decisions, especially not ministerial decisions, were  
23 taken, there are no ministers as part of this group.

24 Q. It involved business discussions?

25 A. Yes, it's about: do we have the right people in place to

1 do that bit of work? Have we got adequate cover?

2 So, for example, one of the topics I remember being  
3 part of this was concern for the welfare of staff in  
4 that we know that in emergencies -- if you're running  
5 an emergency 24/7 you will need five people to cover one  
6 post, allowing for three-shift working and for people to  
7 have some recovery time at weekends and for sickness, and  
8 at this point we thought that many of our staff might be  
9 absent sick.

10 So one of the things we were discussing in this was  
11 what later became called the rule of two, in other words  
12 have we got key roles doubled up so that we've got some  
13 additional resilience.

14 So there's those kinds of discussion going on.

15 Q. These are business discussions, are they not,  
16 Mr Thomson?

17 A. Yes, but they don't lead to -- as I'm describing them  
18 here, they don't lead to decisions by government.

19 Q. As I read out to you a moment ago, the obligation which  
20 you had told me had been the obligation throughout your  
21 period as a civil servant, was that you had to  
22 transcribe the salient points of any business  
23 discussions and/or decisions, so discussions -- salient  
24 points of discussions required to be retained on the  
25 corporate record, did they not?

1     A.   So the test I'm applying when I'm looking at this  
2           material is: does this material need to be part of the  
3           record? And the record is described and defined in our  
4           Records Management Policy in relation to decisions taken  
5           by government.

6           What I'm describing is conversations amongst civil  
7           servants about making sure that we're able to support  
8           the business of government, so it's business in the  
9           sense that it is our work but it doesn't relate to  
10          decisions taken by ministers as part of the government,  
11          that's the distinction I'm making.

12    Q.   That's simply not what the policy says. It's  
13          discussions, business discussions.

14          If someone, for example, wanted to know what were  
15          these directors discussing about this rule of two at the  
16          time, perhaps someone had been dissatisfied with what  
17          you ultimately decided, they would need to know, would  
18          they not, what discussions had taken place in order to  
19          know how the ultimate decision had been reached? What  
20          you're suggesting here is that there is an early almost  
21          pre-discussion clearance of the thread.

22    A.   No, I don't think so. I think these are business  
23          discussions and from them any salient points would need  
24          to be transferred into the corporate record, and the  
25          test that I'm applying is: we've had a discussion about

1           how we're doing our business, is there something here  
2           that affects -- that needs to be part of the record of  
3           the actions of government in responding to the pandemic?  
4           If that's "I'm a bit worried about person X, that  
5           they've got caring responsibilities and their work's  
6           just exploded", that's not -- if I apply the test, does  
7           that need to be part of the formal record of government  
8           decisions? I don't think it meets that test.

9   Q.   The test should of course be defined by the policy and  
10       not subjectively by you?

11  A.   I'm making a judgement about the -- whether this example  
12       of information meets the criteria set out in the policy  
13       to be part of the formal record.

14  Q.   Okay.

15           Can we go to INQ000268017, please, page 10.

16           Again, there is an exchange here, this is dated  
17       a bit later, this is from August of 2020 and there are  
18       a number of people in this chat, the group is called  
19       "Covid outbreak group", do you remember that group?

20  A.   I don't recall it, but it sounds entirely likely that  
21       I was part of it.

22  Q.   Yes, you were part of it because we can see the messages  
23       from you that -- a number of other people we can see,  
24       they include Nicola Steedman, who I think was the Deputy  
25       Chief Medical Officer, if I remember correctly; is that

1 right?

2 A. Yes.

3 Q. And Jason Leitch, who was the National Clinical  
4 Director?

5 A. Yes.

6 Q. And in this there's a discussion which starts with you  
7 saying:

8 "Just to remind you (seriously), this is  
9 discoverable under FOI. Know where the 'clear chat'  
10 button is..."

11 To which Nicola Steedman replies:

12 "Yes -- absolutely..."

13 Jason Leitch then replies:

14 "DG level input there..."

15 Then you say:

16 "Plausible deniability are my middle names. Now  
17 clear it again!"

18 And then Jason Leitch says:

19 "Done."

20 And you say:

21 "Me too."

22 Is this you encouraging people in advance of  
23 messages being exchanged relating in a group called  
24 "Covid outbreak group" to delete messages in order to  
25 defeat FOI requests?

1 A. No.

2 Q. What was your intention when sending this message?

3 A. My -- you've shown me one part of this. I think

4 probably what has just been said is something that it

5 might have been a bit of personal disclosure or it might

6 have been something that seemed to me not to be a useful

7 thing to say in a group like this because it might not

8 relate to the purpose of the group. I don't know,

9 I can't see what it was that prompted me to say it.

10 What I have said is that this channel is discoverable

11 under FOI, which I believe to be correct. That doesn't

12 mean it needs to be kept, it needs to be important --

13 there's a -- the FOI rules operate in that way, but the

14 Records Management Policy relates to information which

15 is kept. So I'm reminding my colleagues that this

16 channel is discoverable under FOI, which I think is

17 correct, and then I'm saying in an informal way that my

18 understanding of our approach to these groups is that

19 messages should not be kept -- other than in relation to

20 salient points, as we've just discussed, these messages

21 should not be kept and should therefore be deleted.

22 Q. You mentioned the possibility that there had previously

23 been some personal discussion. If there were personal

24 discussion, that wouldn't be recoverable by FOI, would

25 it?

1     A.  If it is information held by the government then I would  
2         need to probably take some advice on that, but if I run  
3         through, supposing that there had been a FOI request for  
4         an informal messaging channel, I would first of all make  
5         sure that we had clearly what information we held, and  
6         that would include information in the form of messaging  
7         channels and in people's notebooks and so on.  So the  
8         first step in dealing with an FOI request is to make  
9         sure you know what information you hold.  Then you  
10        decide -- you apply the terms of the request to  
11        discover -- you know, to decide what's in scope,  
12        you know, is this information in scope.  Then you  
13        consider whether there are any relevant exemptions from  
14        the FOI legislation, and those are also set out in  
15        FOISA, Freedom of Information (Scotland) Act, and then  
16        you consider in relation to most of these exemptions  
17        whether the public interest test applies and whether  
18        given that the information should be disclosed even  
19        though there might be a relevant exemption on more than  
20        one.  So that's the process you go through.

21    Q.  You used the phrase:

22                "Plausible deniability are my middle names.  Now  
23        clear it again!"

24                You are suggesting to people in this discussion,  
25        prominent people in the Covid response, that they

1           should, as a matter of instinct, clear their messages to  
2           defeat FOI requests are you not?

3    A.  No, I'm responding to Jason Leitch teasing me by saying  
4           that's a "DG level input there" by bantering back, if  
5           you like, but what I'm saying is: unless material is  
6           salient and relevant to the public record, in which case  
7           it should be transferred -- and then all of the material  
8           should be deleted.  That's what the -- I think later our  
9           corporate policy would say.

10   Q.  Thank you.

11                 INQ000268025, please.

12                 Again, this is a group which is, intriguingly, named  
13                 "Quantum of Omicron".  It says in the group -- starts  
14                 off with you speaking:

15                 "I feel moved at this point to remind you that this  
16                 channel is FOI-recoverable."

17                 To which someone named Penelope responds:

18                 "Clear the chat!"

19                 Someone called Jim McMenamin says:

20                 "Happy to do so -- Lan reduced from 51 to 39 but  
21                 fair comment."

22                 And then Jason Leitch says:

23                 "WhatsApp deletion is a pre-bed ritual."

24                 Again, does this indicate, Mr Thomson, that there is  
25                 a culture amongst people who are prominent advisers or



1 decision-makers in connection with the Covid-19 pandemic  
2 in Scotland to delete their messages in order to delete  
3 the very purposes for which the policies are set up?

4 A. I need to give you a longer answer to this question, but  
5 the short answer is no. The longer answer begins on  
6 a point of fact. In fact this is not the Quantum of  
7 Omicron exchange. It's -- because --

8 Q. You may be right about that, Mr --

9 A. -- this is much earlier than Omicron. I think this is  
10 actually a set of messages about the Delta variant.

11 Q. Yes.

12 A. So -- and this is relevant to -- to the point I want to  
13 make. I think I'd said earlier that we had an emergency  
14 within an emergency when Delta emerged in Glasgow just  
15 after the Scottish elections, and these messages are  
16 from that time, and earlier in this thread, because I do  
17 recall this thread, Jason Leitch has posted into the  
18 thread a message from Twitter, and I have therefore gone  
19 to see what is that message and why has Jason posted it  
20 in, and the context here is that we know that there is  
21 a new variant of the virus, we think it's in community  
22 transmission in Glasgow, we think that it's between --  
23 I may be wrong on the details, but it's 40% to 80% more  
24 transmissible, it's significantly more transmissible,  
25 and it's spreading primarily among members of the Indian

1       and Pakistani community, who are very well represented  
2       in Glasgow, and the same variant also got a hold in  
3       Bolton. And final bit of context, in two days' time  
4       Rangers supporters are planning to march through Glasgow  
5       to celebrate the fact that their team has just won  
6       a trophy. And Jason's tweet is -- well, not his tweet,  
7       the tweet that he posted into this group -- is from  
8       a die-hard Rangers supporter reporting a food safety  
9       expert as saying that there is, therefore, no risk to  
10      Rangers fans if they march through Glasgow on Saturday.  
11      And I know how -- I guess how Jason is going to feel  
12      about that, and he is envisaging what actually happened,  
13      which is that thousands of Rangers fans did march,  
14      against the regulations then in force, against the  
15      advice of the Scottish Government and the police and  
16      Rangers Football Club, in -- very closely packed and --  
17      you know, thousands of people there, many of them will  
18      have had Covid, more of them will have had Covid by the  
19      end of that march, and some of them will have got ill  
20      and some of them may have died. So I'm imagining how  
21      Jason is feeling about that as a clinician and, given  
22      his role in communications, that he's going to have to  
23      be the person who says "Well, I'm a doctor and I say  
24      that you shouldn't march", and they say "Well, there's a  
25      sort of doctor who says you can", and what I'm really

1           doing -- I accept in an oblique way -- with my reference  
2           to the FOI is saying "Take a deep breath before you  
3           comment about the tweet you've just posted, Jason."  
4   Q.   The reference to the phrase by Penelope "Clear the  
5           chat!" is somehow reminiscent, I think, of the phrase  
6           that you used in the previous message: "Now clear it  
7           again!" Was that a phrase that was used to describe  
8           this ritual of clearing the WhatsApp messages?  
9   A.   Well, it is used there. To repeat a point from earlier,  
10          that was in fact the instruction that we were given in  
11          the corporate policy, having transferred any salient  
12          points to the corporate record.  
13   Q.   Again, the discussion that you are talking about  
14          relating to the Delta variant emerging, I think you were  
15          putting it in its context, is a business discussion  
16          between you and other senior advisers advising the  
17          government about their response to Covid, is that not  
18          right?  
19   A.   No, I think if you read the whole of that group what you  
20          see is a group of colleagues co-ordinating rapidly on  
21          logistical matters and -- in fact, yes, it's a business  
22          discussion in the sense that you used the term earlier,  
23          I should say that, but I think elsewhere in that  
24          I say -- I ask my colleagues does this have implications  
25          for the decisions already announced by ministers, and we

1       have a discussion about whether the UK Government is  
2       likely to change its position, and we conclude that it  
3       does have implications, and what I then say, somewhere  
4       in this group, is then we need advice to our ministers,  
5       and I think I commissioned Dominic Munro, who is also  
6       a member of this group, to write that advice and to send  
7       it to the First Minister within the formal systems, and  
8       I think that's what was done, leading to a rapid  
9       decision -- I think I referred to it earlier -- in  
10      relation to both Moray and Glasgow, as local authority  
11      areas. So, yes, it's a business discussion, but there  
12      are -- no decisions about the exercise of government  
13      power are taken here, there is no decision here about  
14      whether Glasgow would remain for longer in level 3,  
15      which is the issue in question.

16             But what we identified was a need for ministers to  
17      have advice -- in fact the First Minister was telling us  
18      in no uncertain terms that she needed advice on this --  
19      and we were making dispositions about who was going to  
20      cover a meeting, a four nations meeting with the  
21      UK Government, who was going to write the advice, who  
22      was going to support the First Minister in her  
23      preparations for answering an urgent parliamentary  
24      question and so on.

25   Q.   Could I ask you, please, Mr Thomson, to try to speak

1           slightly more slowly. If it's of any consolation to  
2           you, I'm being similarly admonished. So I'd be very  
3           grateful, just for the sake of the stenographer --

4   A. We will both do our best in that case.

5   Q. Yes, thank you.

6           Could I just ask you to go over the page, please, to  
7           the second page of this chain, and I think we see there  
8           at 18.19 in the middle -- this is the same chain as we  
9           were looking at before, which you very helpfully  
10          reported out is not Quantum of Omicron, my understanding  
11          is it was subsequently named Quantum of Omicron. It's  
12          a rather odd collection of letters and numbers which is  
13          meaningless.

14   A. I don't think that's correct. There was a group called  
15          Quantum of Omicron. From my memory it was started by  
16          the then Chief Medical Officer in order to share rapidly  
17          emerging information about the Omicron variant, but that  
18          group was not this group.

19   Q. Thank you. I'm looking at the entry there at  
20          14 May 2021 at 18.19, it says:

21               "Ken Thomson: updated the message timer. New  
22               messages will disappear from this chat 7 days after  
23               they're sent, except when kept."

24               Is that you putting an auto-delete function on the  
25          message group such as to delete messages automatically,

1           whether they relate to government business or not?

2    A.   It's me doing what I say in my witness statement was my  
3       practice, that what I would do is transfer salient  
4       points into the corporate systems where that was  
5       necessary, and I would do that weekly. The later policy  
6       said at least monthly. And then having done that  
7       I would delete the messages because salient points had  
8       been transferred and the rest didn't need to be kept.

9           And I say in my witness statement that where there  
10       were -- where the messaging platform provided a way of  
11       automating that process then I would use it.

12          I think by 14 May the decision in relation to  
13       extending Glasgow's period in level 3 had been taken and  
14       announced. I think it was announced earlier that day.  
15       So I was probably anticipating that there would be  
16       little or no additional traffic on this. In fact, from  
17       memory, the next step in decision-making about Glasgow  
18       and level 3 was at the meeting of the Cabinet on 1 June,  
19       which would have been the first meeting after the  
20       election. And the Cabinet had a long submission from --  
21       unusually not a Cabinet paper, but formal written  
22       advice, 30 to 40 pages of it, on the basis of which  
23       ministers took a decision at that point to move Glasgow  
24       into level 2. So I wasn't anticipating any -- that  
25       there would be much more traffic in this group, and

1           therefore I switched on something that would save me the  
2           work of coming back to it in a week's time to check  
3           whether anything had arisen.

4   Q.   Again just above that you see one you have your  
5           colleagues I think using the phrase "Clearing the chat"  
6           that we saw earlier; is that right?

7   A.   So yes, she is confirming that she too is following our  
8           practice and indeed our policy of not retaining messages  
9           that didn't need to be kept.

10  Q.   While we're on this exchange I was just quite interested  
11           in some of the things that aren't being discussed there  
12           more substantively, Mr Thomson.

13           You can see a message from you slightly before that,  
14           at the top, where you say:

15           "It was really useful to have that full Four Nations  
16           Ministerial call led by the PM to share all the  
17           information and responses so that communications could  
18           be aligned, wasn't it?"

19           And then you say:

20           "(Not.)"

21           And then Gregor Smith, who was the Chief Medical  
22           Officer, says:

23           "Cobra anyone?"

24           And then there is a reference to Penelope Cooper  
25           saying:

1           "I feel a cost benefit for FM would not have been  
2           positive."

3           I wonder if you could explain to us what it is that  
4           you're discussing at that time. You've already given us  
5           some helpful context what was going on at that point.  
6           There is reference to a four nations ministerial call.  
7           And it seems on our interpretation that you were,  
8           perhaps slightly sarcastically, saying that the meeting  
9           was not useful although the words suggest that it was?

10    A. Sorry, I will try to speak slowly on this, because I've  
11       got a lot to say.

12           So I was going to say that, yes, looking at that,  
13       I was being a bit sarcastic. I will explain why.

14           So I've already referred to this being an emergency  
15       within an emergency, and the Delta variant, and  
16       I mentioned Bolton. So relevant to -- and I've also  
17       said that the First Minister had already taken and  
18       announced her decision that Glasgow would move to  
19       level 2 shortly after these exchanges, and the question  
20       that we were considering with the First Minister,  
21       including in a discussion that the CMO and I had had  
22       with her, I think on 12 May, was whether the new  
23       information that we had about the Delta variant called  
24       that decision into question. The reason for that would  
25       be that the level and the NPIs associated with that



1 level, in which Glasgow currently was, the decision on  
2 that would have been taken on the basis of the  
3 epidemiological characteristics and situation at the  
4 time the decision was taken. And that would have been  
5 on the knowledge that we had about the infectiousness of  
6 the virus at that point.

7 If the virus -- if there's a new variant of the  
8 virus which is, let's say, 50% more transmissible and  
9 it's in community transmission among communities that  
10 are -- where spread will be -- may be easier because you  
11 have larger households or multigenerational households  
12 and that might involve more risk, you might have more  
13 cases and more risk, and that means, you know, the  
14 decision that you had already reached, there is new  
15 information here that means that you not only could but  
16 you would have to revisit that decision. So that's the  
17 context.

18 And the UK Government faces this challenge in  
19 relation to England as well, and I've mentioned Bolton,  
20 there were other areas too. Very similar  
21 considerations, communities and so on. And in that  
22 circumstance, if I wind back to the period running up to  
23 the original stay-at-home decision and then shortly  
24 after that, there was better, at that time, opportunity  
25 for governments to align their policies including

1 through COBR and in relation to -- you know, outside  
2 COBR, in relation to these matters through more or less  
3 formal calls, sometimes led by Mr Gove.

4 But what we had -- what we were doing, what we had  
5 been doing, I think, just shortly before these  
6 exchanges, was watching live on the television the  
7 Prime Minister making what I think was a delayed  
8 announcement, and I think he did -- he'd said -- he gave  
9 his assessment of the new variant, but he did not in  
10 fact make -- mention any different decisions about  
11 restrictions. The first we knew that that was going to  
12 be what he said was when he said it live on television.

13 Q. So your point, I think, here, to take it succinctly, is  
14 that you -- there was information which you obviously  
15 had to be able to say that, and you're saying that  
16 that's information which it certainly would have been  
17 useful for the reasons you've set out, the similarities  
18 in the communities, et cetera, to have been shared with  
19 you on your four nations ministerial call.

20 Was it a consistent theme of your involvement in  
21 those calls that information which would have been  
22 useful to you was not always clearly shared by the  
23 Prime Minister or representatives of the UK Government?

24 A. Yes. Just to give one bit of context here.

25 Q. Thank you.

1 A. When I say "It was really useful to have that full  
2 Four Nations Ministerial call led by the  
3 [Prime Minister] to share all the information and  
4 responses", what I'm saying is that didn't happen.

5 Q. Yes, I follow.

6 A. There was a four nations call, I think from memory led  
7 by Mr Gove, I wasn't part of it but Penelope Cooper  
8 supported the First Minister in that call. The Delta  
9 variant was mentioned but -- and all the -- so I knew  
10 from Penelope's feedback from that that it was of  
11 concern to all four nations but Mr Gove had not  
12 indicated what the UK Government's decision in relation  
13 to Bolton or anything else to do with Delta would be.

14 So what I'm saying, and I'm trying to be succinct,  
15 but what I'm saying is that I did not feel that there  
16 had been a useful exchange between the governments of  
17 the kind that would have been appropriate in relation to  
18 a rapidly emerging new variant.

19 Q. This is obviously an important moment, isn't it?  
20 There's a significant threat at this stage.

21 A. There is.

22 Q. I asked you whether this was -- this failure to share  
23 information was something that you had experienced  
24 before -- this is significantly into the pandemic -- and  
25 I think you said yes, that you had had previous problems

1 of this nature.

2 What did you in your senior position do to try to  
3 improve these meetings and other relations with the  
4 UK Government in order to try to access the information  
5 which you thought would be important to the Scottish  
6 Government's response?

7 A. So I think it may be helpful if I answer in two parts.

8 And the first is, at a high level and across the period  
9 of the pandemic, to say why I said in passing that  
10 I thought that the intergovernmental relations had  
11 deteriorated somewhat.

12 Q. Yes, please.

13 A. And then the second is to answer your point about what  
14 did I do about that.

15 So, to be as succinct as I can, I would contrast  
16 what I've already said about the position here in  
17 relation to Delta, with the exchanges in late March and  
18 in April and May, first of all in relation to  
19 introducing the stay-at-home requirement and then, and  
20 perhaps more pertinently, in relation to the first  
21 review of those restrictions and how that would be  
22 approached.

23 So I recall a four nations call on 7 May, I think,  
24 in which the First Ministers of Scotland, Wales and  
25 Northern Ireland and the deputy First Minister of

1 Northern Ireland were engaged in a discussion with the  
2 Prime Minister in which --

3 Q. We will return to that particular aspect.

4 A. So I can be more succinct in that case.

5 That was a good exchange. And if you're going to  
6 come back to it I can unpack what I mean by that.

7 If I contrast that with what I've just described,  
8 you will see I think there is a deterioration there. So  
9 what did I --

10 Q. Just to be clear, a deterioration after the May, the  
11 early May exchanges, is that what you're saying?

12 A. So I think I would characterise that by saying that in  
13 the run-up to lockdown there was pretty good -- albeit  
14 that this was all happening extremely fast, but my  
15 First Minister was in COBR. Often in other  
16 circumstances I might have had to argue for her presence  
17 there, which I would do by contacting my counterparts in  
18 the Cabinet Office. And so she was there, so that's  
19 good.

20 I think -- I've described the May exchange to which  
21 we may come back. In that exchange, my First Minister  
22 was arguing for continued close liaison so that -- it  
23 didn't mean that the decisions of the four governments  
24 would be the same but they would have the opportunity to  
25 exchange information and their intentions beforehand

1           rather than discovering what each was doing by reading  
2           the newspapers. But by this point, in May of 2021, that  
3           effectively was where we were.

4   Q. I would like to ask you a few questions now about  
5           a separate subject, thank you very much, which is to do  
6           with the --

7   A. I'm sorry, Mr Dawson --

8   Q. Sorry.

9   A. -- I didn't actually give the second part of my  
10          answer --

11   Q. Oh, I'm sorry. Please.

12   A. So there were, during this period-- it was part of my  
13          job, I should start by saying, I was responsible for the  
14          quality of the relationship between the UK Government  
15          and the Scottish Government. I might put that  
16          differently by saying I was supported by ministers in  
17          that relationship. Now, what the outcome was depended  
18          on what ministers did with it. And in that role I had  
19          close constructive professional working relationships  
20          with a series of opposite numbers and other contacts in  
21          the UK Government, largely in the Cabinet Office  
22          although, during the pandemic, my counterparts there  
23          also moved into Mr Gove's department. And I have  
24          a reasonably good network in Whitehall more generally.

25                So what I was doing, as I felt that there was

1       insufficient bandwidth in the relationship, was using  
2       those contacts, which were both formal and informal, to  
3       put the case for more frequent contact and liaison, both  
4       formally and informally. So to give examples, if  
5       I became aware that, for example, the Prime Minister was  
6       going to visit Scotland, because it would be a courtesy  
7       that the UK Government would tell us that, then I would  
8       contact my opposite numbers and say, "Is there  
9       a possibility that we could arrange a discussion? Would  
10      the Prime Minister be willing to come and see the First  
11      Minister, because if so I'll go and ask the First  
12      Minister if she would agree to that". And that did  
13      actually happen with Mr Gove. I can't recall that it  
14      happened with Mr Johnson.

15           I might also say, "Would it not be useful to have  
16      a four nations call about this?" And that did happen in  
17      fact. So to nuance what I said about a deterioration,  
18      things improved somewhat, from memory, in September of  
19      2020 when -- I cover this in my statement -- there was  
20      better bandwidth, and that led to a meeting which -- out  
21      of which the four governments published a joint  
22      statement about their strategic intent in relation to  
23      coronavirus. And I thought that was a good thing.

24           From memory I wrote the first draft of that  
25      statement and I was pushing my contacts to say "I've





1           Can we just look for context at INQ000233 -- that's  
2           the same reference, sorry. I'll ask you this without  
3           necessarily going to the document.

4           You're referring there to there being, I think the  
5           general characterisation of your position was that there  
6           were early opportunities to be able to use connections  
7           that you had to be able to try to promote  
8           intergovernmental relations. There was a deterioration  
9           in those, in particular I think you pointed things that  
10          happened around May; is that correct?

11   A. I'm listening carefully to your question. You put it to  
12          me that there was a deterioration in my contacts with my  
13          opposite numbers, which I would not say was the case.  
14          There was a deterioration in the opportunities that  
15          ministers had to come together for these discussions.

16   Q. Yes. Can you tell us what the nature and state of the  
17          relationship between Mr Johnson and Ms Sturgeon was  
18          during the course of the pandemic?

19   A. I can tell you what my observation of that was.

20   Q. Yes, please.

21   A. I'm sure you'll take evidence from Ms Sturgeon herself.

22   Q. Yes.

23   A. So I'm going to go back before the pandemic. I was  
24          present supporting Ms Sturgeon at her first meeting with  
25          Mr Johnson after he became Prime Minister, and -- so the

1 context here was, in a conversation after that meeting  
2 she and I were contrasting the style of this  
3 Prime Minister with his predecessor, and my observation  
4 of that description, and the First Minister can confirm  
5 this in the conversation afterwards, was that it had  
6 been a conversation among two senior politicians --  
7 you know, I think the First Minister's phrase to me was,  
8 "You can have a debate with him". She was contrasting  
9 that with her experience of his predecessor. That  
10 doesn't mean that the relationship was warm or that --  
11 they were clearly not politicians of the same view, but  
12 at that point I think, speaking for myself not  
13 Ms Sturgeon, I was more optimistic that it would be  
14 possible for that relationship to become productive.  
15 I think --

16 Q. Did it?

17 A. The short answer to that is no, but I think I want to  
18 give you a more nuanced answer, which is that in the  
19 early stages of the pandemic there was serious  
20 engagement between all ministers in the COBR meetings  
21 and otherwise. I didn't see party politics in those  
22 discussions at all. And that was also present in the  
23 early lockdown period as these discussions began to --  
24 you know, ministers turned their minds to when would the  
25 restrictions be lifted and how. I think in the meeting

1 of 7 May to which, again, we may come in more detail but  
2 I think that was the first point at which I was  
3 concerned that the -- well, I'm going to distinguish the  
4 decisions and the relationship.

5 It was clear to me in that discussion that it was  
6 quite likely that the Prime Minister would decide to  
7 release restrictions in England sooner than my  
8 First Minister at that point thought was right, given  
9 the facts and circumstances before her in Scotland, so  
10 there was going to be difference between the approaches  
11 of the two governments. That is not in itself  
12 a problem, but I thought I could also detect at that  
13 point that the course of this relationship was going to  
14 go in a different -- they were going to diverge in terms  
15 of their ability to do work together, because the  
16 Prime Minister was assuring the First Minister that,  
17 you know, he wasn't going to release anything on the  
18 very day -- and she makes this point in the meeting --  
19 when the newspapers had headlines like "Freedom beckons"  
20 and "Magic Monday", and I thought, you know, there's  
21 not -- something not quite joining up here.

22 And from that point on I think it became harder for  
23 there to be the same kind of four governments coming  
24 together discussing decisions, taking decisions each for  
25 their own jurisdiction, which might or might not be the

1 same but would have been discussed in that way. And in  
2 my statement I use the term "alignment" for this.  
3 Alignment doesn't mean the outcome is identical, but  
4 there was good alignment, and that alignment -- the  
5 opportunities to create it and therefore the alignment  
6 deteriorated over the period of the pandemic. With --  
7 with the exception of the period around September 2020  
8 that I referred to earlier.

9 Q. Thank you.

10 There is some documentation in relation to  
11 opportunities that there were for the governments to  
12 co-ordinate their responses, for example the ministerial  
13 implementation groups which we've heard something about  
14 in Module 2 already, and some of the documentation  
15 suggests that there was a degree of dissatisfaction with  
16 those in the Scottish Government, in particular as  
17 regards -- the observation made in a number of places  
18 that there was no substitute for head of governments  
19 getting together and really being able to try to work  
20 out a consensus approach.

21 Would you agree that that characterisation, both of  
22 the ministerial implementation groups and the fact that  
23 there was no substitute for Ms Sturgeon and Mr Johnson  
24 getting together to make proper decisions together is  
25 an accurate characterisation of the Scottish

1 Government's position?

2 A. Yes. In your earlier question you asked me about the  
3 relationship between the two heads of government.

4 Q. Yes, indeed.

5 A. Yes. So it's useful for me to add, answering this  
6 question, that under that there was a good deal of  
7 intergovernmental discussion, I don't wish my earlier  
8 answer to give the impression that there was no contact,  
9 there was a great deal of contact, including through the  
10 ministerial implementation groups, and actually also in  
11 relation to the JMC, which I know is of interest to the  
12 Inquiry. Although the JMC in plenary did not meet in  
13 this period, the JMC Europe had been very busy on Brexit  
14 business and continued to meet through this period, so  
15 there was a lot of that and the participation in --

16 Q. Just for clarity, that's the Joint Ministerial Committee  
17 on which Scottish Government and the UK Government are  
18 both represented; is that correct?

19 A. That is correct, it's the forum created by the  
20 memorandum of understanding at the time of devolution.

21 Q. Thank you.

22 A. And it meets in different formats, and JMC(E) it's Joint  
23 Ministerial Committee (Europe).

24 Q. You were telling us about the relationships between the  
25 two --

1 A. Yes. So the -- your question was about the quality of  
2 the interaction and the satisfaction with the  
3 interaction in the ministerial implementation groups.

4 Q. Yes.

5 A. That they existed and that Scottish Government ministers  
6 took part in them was, I think, welcome and useful, but  
7 did they achieve the potential for alignment, to use the  
8 language of my statement? I don't think they did.

9 Q. What was your interpretation of the reason for that?

10 A. I think a combination of factors. I think the  
11 UK Government had a significant challenge in reaching  
12 these decisions because it had a broader range of  
13 responsibilities over a larger geographic area, point  
14 one. Point two, a much larger group of ministers in the  
15 Cabinet. Point three, a different institutional  
16 landscape, with separate departments rather than  
17 portfolios and directorates within one organisation.  
18 And point four, part of my role was to kind of look in  
19 on this and discern what I could when I -- in  
20 an informal message I said "strategic prediction".  
21 Quite a lot of what I was doing was trying to work out  
22 what the UK Government's strategy was or would become so  
23 that I could help my ministers to understand that and to  
24 align with it or to seek -- consider whether that was  
25 relevant to the decisions they were taking.

1           So part of my job was to try to work out how the  
2           UK Government was taking its decisions, and that was  
3           quite hard to do and in my experience those decisions  
4           tended to be taken quite late in the sense -- I don't  
5           mean late in epidemiological terms, I mean if there's  
6           a MIG, a ministerial implementation group going to  
7           happen, the UK Government will direct its mind to those  
8           issues only relatively shortly before the meeting.

9           And then, final point, the UK Government finds it  
10          uncomfortable to take its decisions with a Scottish  
11          Government minister or Northern Ireland minister in the  
12          room, so although our ministers were participating in  
13          these meetings, they sometimes had the impression that  
14          ministers had decided -- UK ministers had decided  
15          beforehand what needed to happen and they were kind of  
16          playing that through the discussion once our ministers  
17          were involved in it.

18        Q.   Thank you. I had asked you another element to this,  
19              which was whether these ministerial implementation  
20              groups, with which you've described a certain degree of  
21              dissatisfaction on the part of the Scottish Government,  
22              were an adequate substitute for the two leaders coming  
23              together to try to work profitably together in the  
24              interests of both parts of the United Kingdom, and is  
25              your position that the relationship between those two

1        did not work well, to the detriment of both nations  
2        (inaudible)?

3    A.   So in supporting work between governments -- and this is  
4        also relevant to the relationship Ms Sturgeon had with,  
5        for example, Mr Drakeford and the First and deputy  
6        First Ministers in Northern Ireland -- but in supporting  
7        that a number of things are in play.  There's a --  
8        within government there's a constant pressure for issues  
9        to get escalated and there's a constant need, battle on  
10       the part of those supporting the heads of government to  
11       delegate.  So any -- anyone supporting a head of  
12       government wants to make sure that their energy and time  
13       and attention is only being taken by the things that  
14       absolutely have to come to them, and if I put myself in  
15       the shoes of my counterparts supporting the  
16       Prime Minister, they would be wanting to ensure that his  
17       time and attention were not taken up by things that  
18       are -- the First Minister of Scotland thought were  
19       important but he might not.  So that's a fair point.

20   Q.   When you say they were "making sure" that was the case,  
21        can you just clarify what you mean by that?

22   A.   What I simply mean is that it is part of the role of the  
23        people supporting the head of government to triage the  
24        issues that were clamouring for attention, and it's  
25        entirely proper that those supporting the First Minister



1       would say, "The First Minister of Scotland wants to  
2       speak to you, what priority does that have within other  
3       things that are on your agenda?" However -- and my next  
4       point is that it's therefore necessary for heads of  
5       government to be able to delegate liaison and  
6       decision-making and so on, including in  
7       intergovernmental forums, and that was part of the  
8       purpose of the ministerial implementation groups.

9               So where you do need head of government direct  
10       participation and decision-making, as you did in the  
11       COBR meeting of 23 March, it doesn't mean that you need  
12       it on decisions about travel restrictions to Spain some  
13       time later. That's the point I'm trying to make.

14   Q.   Yes.

15   A.   That's preparatory to the answer to your question. It  
16       is important for there to be a relationship of trust  
17       between heads of government such that if my  
18       First Minister thinks that actually the Prime Minister  
19       does really need to know this, there should be --  
20       you know, she should be able to get through to him, and  
21       vice versa. And in my experience that didn't happen.  
22       You know, it was not ... it was -- the relationship had  
23       not been built up in peacetime, as I use as a metaphor  
24       in my witness statement, in a way that allowed it to be  
25       deployed in the particular circumstances of Covid.

1           And to come to your -- the final part of your  
2           question, yes, I do think that affected how the --  
3           whether the decisions were the best they could have  
4           been. I shouldn't say that without particularising why  
5           I do say that. So if I come back to levels and tiering,  
6           I'm entirely -- I can speak to the reason why the  
7           Scottish Government took the decisions it did, and  
8           indeed so can Ms Sturgeon, but there was an opportunity,  
9           perhaps briefly, for the -- for tiers and levels to be  
10          brought together in a system which could have been  
11          promulgated for the UK, or at least for Great Britain,  
12          with clarity, and that would have been easier for  
13          ministers and communication teams to do than having two  
14          separate systems, and in the event that didn't happen.

15          But -- and just to expand briefly on two further  
16          points, because they do bear on this. It's reported --  
17          I think in the Inquiry's documentation there's  
18          a reference to the First Minister saying that she  
19          proposed to introduce a three-level system. That's not  
20          actually correct. It was reported --

21   Q. It was reported, that's correct.

22   A. What she actually said was "I have been discussing with  
23          the Prime Minister their proposal for a three-tier  
24          system", or something of that sort. And indeed she  
25          had -- or there had been -- we had had information,

1 a bit late in the day perhaps but we knew what the  
2 UK Government was thinking about. In the event, she  
3 concluded that a system of this kind was required in  
4 Scotland, that it needed to have more than three levels  
5 because I think in her view a level 3 would not be  
6 adequate to suppress the virus at all points, you needed  
7 a level above that, and also you needed a level below it  
8 because you might want to make smaller steps out to make  
9 sure that you don't take off restrictions and then have  
10 a second spike.

11 What she did do, though -- or the reason that the  
12 Scottish Government's five-tier system was numbered 0 to  
13 4 -- which later was the WHO's recommendation, but  
14 that's coincidental -- it was numbered in that way so  
15 that levels 1 to 3 would be broadly comparable with  
16 the UK Government's tiers 1 to 3, because in the nature  
17 of the NPIs applied in them they were broadly  
18 comparable.

19 So that was our trying to align, trying to achieve  
20 that degree of alignment but it didn't, in my view  
21 looking back, it didn't succeed in -- between them, the  
22 working between the governments didn't succeed in  
23 realising the full potential for that.

24 Q. Could I just ask you briefly some questions about the  
25 very early period of the pandemic. My understanding is

1           that you were involved -- one of the things you were  
2           involved in was briefing ministers who were attending  
3           COBR; is that correct?

4    A.   It's not quite correct, but let me explain.

5           So as you know from my witness statement, my  
6           involvement in this began over the weekend of the very  
7           end of February, and I won't repeat what I say in the  
8           statement about how that came about, but from -- so  
9           I was not part of meetings that took place over that  
10          weekend, I don't think there were any COBR meetings that  
11          weekend, and I wasn't part of my COBR meetings on Covid  
12          before that, although I have supported ministers in COBR  
13          before.

14          From Monday 1 -- no, 2 March, I was concerned to  
15          support the First Minister in what was clearly a major  
16          emergency and in my then day job, if I can put it that  
17          way, my teams and I would have contributed to  
18          intergovernmental interactions, usually not so much COBR  
19          because the resilience team would lead on that, but  
20          I thought that I could be of support to the  
21          First Minister by, you know, being around her and in  
22          supporting her in COBR. Not -- this is the point  
23          I really want to make: not in relation to  
24          decision-making on COBR, the Chief Medical Officer and  
25          others were there to support her on that, I was

1 supporting her in my IGR role (intergovernmental  
2 relations) by helping her to read what decisions the  
3 UK Government -- you know, how the UK Government was  
4 responding to this emergency, how its decision-making  
5 was shaping up, what the opportunities would be,  
6 you know, would it be necessary or relevant for her to  
7 seek to influence those decisions, if so how could she  
8 best do that. Those would be the big kinds of  
9 conversations I would have had with her, perhaps before  
10 and after COBR meetings in the very early stages.

11 Q. Thank you.

12 I wonder if I might just take you to one document  
13 briefly, please.

14 The document is INQ000346137. I'm looking at  
15 page 14. Thank you.

16 This is a notebook which --

17 A. Could you tell me which of those pages is page 14?

18 Q. Yes, it's the Wednesday the 26th entry that I'm going to  
19 be looking at, which is at the top left.

20 A. Forgive me, Mr Dawson, this is a document you showed me  
21 this morning so --

22 Q. Yes, absolutely, I'm just wanting to ask you about this.

23 This is a contemporaneous notebook --

24 A. If I may?

25 Q. Yes.

1 A. Wednesday the 26th of what?

2 Q. This is 2020.

3 A. Of February?

4 Q. Of February 2020, the period that we were just

5 discussing.

6 LADY HALLETT: Please, I appreciate you didn't have all the

7 documents in good enough time, but please just say and

8 Mr Dawson will make sure that all --

9 Q. Thank you.

10 MR DAWSON: Mr Thomson was kind enough to tell me before we

11 started, my Lady, that he had had the opportunity to

12 look at the extracts we gave him, so --

13 A. And this was one matter that (inaudible) which month is

14 being --

15 Q. Yes, thank you for asking me to clarify.

16 This is a notebook which we received from

17 Derek Grieve, who was the deputy director of health

18 protection division within the Directorate of Population

19 Health; is that correct? Is that your recollection?

20 A. That Derek Grieve had that role, yes.

21 Q. Yes?

22 A. Yes.

23 Q. I'm interested really in just understanding whether your

24 recollection of that period, given the limitation of the

25 role that you've described, is consistent with the way

1           in which Mr Grieve is describing the position of the  
2           Scottish Government at this stage.

3           He says in relation to this that he attended the  
4           COBR (M) meeting with Cabinet Secretary Freeman, that's  
5           Jeane Freeman:

6           "It's clear all [departments] in UK Gvt are fully  
7           engaged and mobilised in a way the SG simply isn't."

8           And I'd like to ask you then just to go to the  
9           Thursday the 27th, it's the next note, where he says:

10          "Despite Shirley trying to encourage them, still no  
11          real engagement. They then spent 20 [minutes] talking  
12          about internal SG comms. Completely amazed!"

13          And the page 18, please.

14          It's the Thursday the 5th entry I'm looking at,  
15          where it says in the first entry -- if we could zoom  
16          into that, please:

17          "I attended Directors meeting ... Laid it out  
18          thickly but few believe this is going to be serious."

19          That's Thursday 5 March 2020 we understand it.

20          These entries might be taken, Mr Thomson, to suggest  
21          that Mr Grieve characterised the general mood within the  
22          Scottish Government as being one which was not  
23          particularly engaged with the emerging threat despite  
24          what appeared to be his concerns about it. Was that  
25          an atmosphere which you recognised in the Scottish

1 Government at that time as regards the emerging threat  
2 of Covid?

3 A. So I will turn to the relevant passage in my witness  
4 statement to answer this.

5 So these straddle the period in which I involved  
6 myself in Covid in the Scottish Government. I was in  
7 London in the week of the first of the entries that you  
8 showed me, so I wasn't part of that COBR meeting, from  
9 recollection --

10 Q. I'm not suggesting you were, Mr Thomson, I'm just  
11 suggesting that you might be someone --

12 A. Sorry.

13 Q. -- given the prominence of your position, to be able to  
14 reflect upon these observations made by Mr Grieve.

15 A. Absolutely. So I'm rehearsing in my mind which of these  
16 discussions might I have been involved in. Possibly  
17 5 March, but not the other ones because I wouldn't have  
18 been in Scotland.

19 So to answer your question, and forgive me for my  
20 drawing myself back into the events of the day, I -- as  
21 I say in my witness statement, I was aware of the  
22 preparations that were being made for Covid, in the  
23 sense that at the meetings of the Scottish Government's  
24 executive team I was hearing from my Health and Social  
25 Care counterparts, colleagues, that they were preparing



1 to ramp up for what Covid would mean for us, and I think  
2 I read in Derek's notes here a frustration that that --  
3 that the ramping up, the mobilisation of the Scottish  
4 Government is not happening as quickly as he would want  
5 to see happen.

6 I agree with that. I don't think that means that  
7 the Scottish Government in the sense that Derek Grieve  
8 and his colleagues -- I think they were very closely  
9 involved in consideration of Covid and the threat that  
10 it posed. As I said in my witness --

11 Q. I think, Mr Thomson, that their consideration doesn't  
12 seem to have led to any sense of urgency about it?

13 A. Well, I think -- I think they were -- I think -- I took  
14 that is -- this is not what you mean, but I think that  
15 they thought this was very urgent, and what they're  
16 trying to do, and Derek is expressing his frustration  
17 about this, is to, if you like, spin the flywheel up.  
18 And I shared that concern.

19 MR DAWSON: If that's a convenient moment, my Lady.

20 LADY HALLETT: It is. I shall return -- I'm sorry we have  
21 to break in the middle of your evidence, I hope you were  
22 warned you may have to, Mr Thomson. I shall return  
23 at 1.45.

24 (12.47 pm)

25 (The short adjournment)

1 (1.45 pm)

2 LADY HALLETT: Mr Dawson.

3 MR DAWSON: Thank you, my Lady.

4 Mr Thomson, if I could just return to the -- you  
5 remember there was one statement we were looking at at  
6 the beginning, one of your statements that we didn't  
7 manage to get up.

8 If we can just go to INQ000339039.

9 This is a statement dated 6 November. This,  
10 I think, falls into the category of one of the ones,  
11 Mr Thomson, that you drafted but was ultimately signed  
12 by your successor; is that correct?

13 A. It was provided in draft by me. It was drafted on my  
14 behalf and I commented on that draft.

15 Q. Understood. Can I just confirm with you that insofar as  
16 the statements were prepared by you, they remain true  
17 and accurate at this moment in time?

18 A. That is correct.

19 Q. Thank you very much.

20 If I could just return to a topic to which we've  
21 alluded a few times, Mr Thomson, but we haven't quite  
22 arrived at yet, which is the time period around May of  
23 2020, you've referred to this a few times in your  
24 evidence already but it's a topic I was particularly  
25 interested in covering with you. This is, I think,

1 a quite important period, and it's -- just to put it in  
2 context, it's the month after the Scottish Government  
3 has launched its four harms framework, and it is the  
4 month in which the Scottish Government route map out of  
5 the restrictions is published; is that correct, to give  
6 context?

7 A. That's correct.

8 Q. I understand that over this period some meetings took  
9 place which led up to the public announcement on behalf  
10 of the UK Government about its messaging changing with  
11 regard to the way in which they wished to try to explain  
12 what people should be doing at that stage. Is that  
13 right?

14 A. That's correct.

15 Q. And the messaging that I'm talking about is the change,  
16 broadly speaking, from a Stay at Home to a Stay Alert  
17 message, which was issued by the UK Government on  
18 10 May 2020?

19 A. That's correct.

20 Q. I understand that there was a meeting which took place  
21 between the First Minister, former First Minister, and  
22 former Prime Minister, on 7 May to discuss the position  
23 with regard to the pandemic. Is that correct?

24 A. My recollection is that it was a four nations meeting,  
25 so it was also attended by Mr Drakeford and by probably

1       the First and deputy First Ministers of  
2       Northern Ireland, so it was a four nations meeting  
3       rather than a bilateral.

4   Q.   Yes, indeed, but it was a meeting at which there was  
5       discussion between the former First Minister and the  
6       former Prime Minister about the approach that would be  
7       taken.

8       You've very helpfully provided us with some of your  
9       notebooks about -- which have your notes of various  
10      important junctures in the pandemic.

11      Could we have a look at, please, INQ000371228.

12   A.   Thank you, Mr Dawson.  Whilst that is coming up, perhaps  
13      I could just say a word about my notebooks?

14      Although I think you're about to show me a fairly  
15      detailed note of this conversation, that wasn't  
16      generally how I used them, and I probably noted this  
17      particular meeting because I didn't have access to  
18      a computer or (inaudible).

19   Q.   It may be that we don't have to look very carefully,  
20      they're really just as an aide memoire for you,  
21      Mr Thomson, because there's a few important points  
22      I would like to take just to clarify exactly what was  
23      going on.

24      I must admit that we struggled slightly with your  
25      handwriting.  I wonder whether you ever considered

1 a career in the medical profession.

2 But it may be that we don't need to try to struggle  
3 with that today if we can deal with this on the basis of  
4 some basic propositions, if I put them to you and you  
5 can tell me -- please disagree if I get it wrong, but  
6 I'm just trying piece together the narrative.

7 The position I think of the First Minister at this  
8 important juncture was broadly that she was concerned  
9 about some media reports which had suggested that  
10 the UK Government was going to drop its Stay at Home  
11 message, and that she was keen -- and your notes back  
12 this up -- to try to impress upon others at the meeting,  
13 in particular the former Prime Minister, that she would  
14 not be prepared to drop that message for Scotland in  
15 light of the Scottish Government's interpretation of the  
16 threat; is that correct?

17 A. That's exactly correct.

18 Q. And she -- in fact, I think, these notes suggest that  
19 you've noted her as saying something along the lines of  
20 "Stay at Home is the foundational message", and in fact  
21 she appears to have said that a change would be  
22 catastrophic?

23 A. Yes, I don't have that page in front of me, but I do  
24 recollect that she did say that and I wrote --

25 Q. Yes, so that was her position. And it seems from the

1 notes that she was attempting to try to convey that  
2 position forcefully to the Prime Minister?

3 A. Exactly.

4 Q. In your notes as well, and we do have other notes of  
5 this particular meeting which I think are consistent  
6 with this position, is that the Prime Minister in  
7 response to this position being advanced by  
8 Nicola Sturgeon was that he indicated that he totally  
9 understood that Stay at Home remained an important part  
10 of the message; was that broadly your understanding of  
11 his position at that meeting?

12 A. Yes, that is what he said. The First Minister was  
13 concerned that there was a gap between what he was  
14 saying there and the -- I referred already to the  
15 headlines, I refreshed my memory on them, so I don't  
16 need to repeat that. I think she also said, and I wrote  
17 down, that "The newspapers didn't get" -- you know,  
18 "didn't make that up by themselves". So she was  
19 pointing to, "You're saying one thing to me but you're  
20 leading the newspapers to expect another thing".

21 Q. Indeed, I think there's a note to that effect that we  
22 managed to make out suggesting that the media wouldn't  
23 make that message up so there must be some element of  
24 truth to it. And they were trying -- she was trying to  
25 ascertain whether that was in fact the UK Government's

1 position or not; is that broadly correct?

2 A. That's the case. And -- and Mr Drakeford said much the  
3 same thing. It might actually have been he who said  
4 that, but she would have agreed with it.

5 Q. So Mr Drakeford was struggling to understand with  
6 precision what the UK Government's position on this  
7 important matter was as well?

8 A. No, I think Mr Drakeford and Ms Sturgeon understood  
9 that -- they had a clear sense that the Prime Minister  
10 wanted to release restrictions. That wasn't quite what  
11 they heard him saying to them. They believed that, you  
12 know, he'd been leading the media to expect that that is  
13 what would happen I think the following Monday. And  
14 they were both clear that, in relation to the conditions  
15 and the epidemiology in Wales and Scotland, that was not  
16 the right thing to do. So they wanted to be, to get  
17 confirmation from the Prime Minister of what he was  
18 going to do and impress on him that I think both of  
19 them, but certainly Ms Sturgeon, did not agree that that  
20 would be the right thing for Scotland at that time and  
21 that that would be a decision that she would make rather  
22 than he.

23 Q. Did you and the First Minister leave that meeting with  
24 the impressions that the Stay at Home message would  
25 remain the position of the UK Government at that time?

1 A. Well, again, there was a gap here. The Prime Minister  
2 explained that his concern was that the UK Government's  
3 message was actually "Stay at Home (unless you need to  
4 go to work)", I paraphrase slightly, and he thought that  
5 too many people were interpreting that as just "stay at  
6 home". So she was concerned that, you know, if he  
7 wanted to soften that message that would have  
8 a deleterious effect on the compliance with NPIs  
9 you know, she would hope that that would be -- would not  
10 feature in Scotland, but she was concerned about that,  
11 and I recall her saying to me, possibly at the end of  
12 that meeting, she turned to me with some exasperation  
13 and said "I can't stand in front of a television camera  
14 and tell people to stay alert to something that they  
15 can't see". She was thinking about how does this work  
16 as a piece of public health communication, and she  
17 was -- she said it would be a mistake to depart from  
18 that foundational message of Stay at Home.

19 Q. So do I take it from what you're saying that her concern  
20 was perhaps two-fold: one was that the Stay Alert  
21 message she didn't particularly understand herself and  
22 therefore couldn't communicate that in a public health  
23 communication; is that right?

24 A. It fits it very well.

25 Q. Also I think that there was a risk that if that were to



1        remain -- were to become, sorry, the message of the  
2        UK Government, that there was a risk that that message  
3        would cause confusion in Scotland in particular because  
4        her epidemiological advice was to the effect that she  
5        should stick with the current regime and the current  
6        messaging?

7    A.   So I would say that there were two points in there.   The  
8        first is that departing from the Stay at Home message as  
9        currently understood and adhered to in Scotland would be  
10       the wrong thing to do in terms of the epidemiology in  
11       Scotland.   And the second was that even if it was the  
12       right thing to do in England, the nature of the  
13       communications from the Prime Minister publicly might  
14       cause confusion because, as she said at the time and as  
15       has come out in other evidence, quite often the  
16       Prime Minister and others would say "I'm telling people  
17       in the country" or "the UK" when actually they meant, in  
18       this case, England.   That was the confusion.

19   Q.   Thank you.

20        I understand that on 8 May, which was the day after  
21        this meeting, the former First Minister was reported as  
22        saying that there was some recognition that each of the  
23        four nations would move at different speeds and that she  
24        would not be pressured into lifting restrictions  
25        prematurely.   Is that correct, there was an announcement

1           to that effect by the former First Minister on that day?

2   A.   I think it might have been a reporting of comments

3           rather than an announcement by her, but --

4   Q.   Yes.

5   A.   -- what you say is exactly what she felt at the time,

6           and (inaudible) --

7   Q.   Were you involved in briefing about that message or

8           advising about that message at that time?

9   A.   Well, I ... so the word "briefing" has a precise meaning

10          within the civil service.   So I didn't brief her on

11          whether it was the right thing or the wrong thing.   She

12          gets that advice from my medical colleagues.   But I was

13          involved in discussions with her about -- part of my

14          role as I explained earlier was to help her understand

15          what was going on in the UK Government, so I was part of

16          those conversations about what is the UK Government

17          going to do, what is the right thing to do in Scotland,

18          what's the interaction between these two things.

19   Q.   Would it be correct to say that at that time there was

20          a significant concern or apprehension that there was

21          about to be a significant change in the approach being

22          taken by the UK Government and the Scottish Government

23          to the management of the pandemic?

24   A.   Yes.

25   Q.   I think that you sent an email to the First Minister,

1       which is INQ000222934. I'd like to look at that with  
2       you, please.

3       In this you say:

4       "First Minister --

5       "Dominic Munro has given you advice ahead of today's  
6       COBR meeting. This note supplements that on one aspect:  
7       the framing of the 'Four Nations' approach.

8       "Following your discussion with the Prime Minister,  
9       Mr Gove and other First Ministers on Thursday and  
10      Friday, as officials we set out to our UKG counterparts  
11      the need for deeper and more consistent engagement on  
12      the aspects of their work which apply across the UK and  
13      affect devolved interests, including (for example)  
14      business guidance and border controls:

15      "We acknowledged that some details have been shared  
16      through the UKG's Ministerial Implementation Groups and  
17      the Four Nations calls, but continued to press for the  
18      full detail of the UKG's proposals, which we have not  
19      yet received (at the time of writing).

20      "Much of the detail of tomorrow's UKG document will  
21      be, in effect, a plan for England (though it will  
22      probably continue to mix England-only and UK-wide  
23      aspects). We know that UKG officials are conscious of  
24      the risk of COBR becoming mired in the detail.

25      "At the level above the detail, the Four Nations are

1 moving in broadly similar ways, though to different  
2 timescales, and remain reasonably closely aligned. As  
3 you emphasised to the Prime Minister, however, each  
4 government is responsible and accountable for guidance  
5 and regulations within its own jurisdiction.

6 "You may wish to assess during and after COBR,  
7 whether there is scope and advantage in consolidating  
8 the Four Nations approach, including the emphasis on the  
9 separate accountabilities of the four governments.

10 "One way to do so would be to draw on the lines set  
11 out below, either by proposing these as a shared basis  
12 for media briefing, or consolidating them in a joint  
13 statement. These lines go no further than restating the  
14 governments' existing positions, and are consistent  
15 with the principles they have published in the past  
16 two months (extracts attached)."

17 Then you set out a proposed form of words which  
18 relates to the four nations approach trying to set out  
19 the characteristics of that as you understand it.

20 What was your thinking in trying to advise the  
21 First Minister at this time in this way and what was  
22 your apprehension about what was perhaps happening or  
23 about to happen?

24 A. So it's useful to be reminded of this.

25 In an earlier answer I -- we covered the events

1       which led to the publication of the joint statement in  
2       September. I think this is probably -- in my mind, as  
3       I wrote this, was: is that the point we could get to?  
4       And you will see that it took us from May to September  
5       to get to that point, which in the world of an epidemic  
6       is a very long time indeed.

7   Q.   Mm.

8   A.   Why was I offering her advice of this kind? I was  
9       concerned, as you put it to me earlier, that the two  
10       governments might be pulling apart. I don't mean in  
11       terms of the decisions because the decisions should be  
12       taken on the facts and circumstances before them, but  
13       pulling apart in terms of their ability to align and  
14       understand and share in advance what those decisions  
15       were going to be.

16       And what you see here is the product of  
17       conversations or exchanges with my counterparts,  
18       including in Wales and Northern Ireland, to say "I'm  
19       concerned about that, it would be good if COBR could  
20       pull us back to where we, the devolveds, think we need  
21       to be", and then I'm saying to the First Minister "You  
22       could draw on these lines". And I emphasised to her,  
23       because she was concerned about this, that I'm not  
24       proposing that she should cede decision-making about  
25       Scotland to the UK Government -- which would not be

1 right (she would think, and I would agree) -- but I am  
2 saying, you know, "There is an opportunity here to join  
3 up and here's how you could propose that we do it", and  
4 I say "This doesn't actually go any further than each of  
5 those administrations has already said, it's just  
6 an opportunity to pull together and say this is what we  
7 are all trying to do, which is protect our  
8 administrations and our people from the impacts of this  
9 terrible disease", which would be what you would want  
10 your senior politicians to do.

11 Q. Did you feel -- it seems from what you're suggesting  
12 here that there was a need, not for any innovation but  
13 for there to be a reiteration of the four nations  
14 approach, as you had understood it before that point?

15 A. That's correct.

16 Q. Was that because you apprehended that there was about to  
17 be a departure from this approach?

18 A. It was in part for that reason but in part also because  
19 I could see that the decision-making for all the  
20 governments was about to -- was going to become over the  
21 summer more complex.

22 You know, it's -- there is a reference elsewhere in  
23 the evidence to the concept of the hammer and the dance.  
24 Now, if lockdown is the hammer, then the decisions about  
25 the fine grain of what restrictions you can release and

1       when, and when it's safe to do so, or how you mitigate  
2       the other harms, that's the dance. So decision-making  
3       for all these governments, and therefore the interaction  
4       between them, was becoming more complex, and just at  
5       that time I was concerned that the bandwidth in the  
6       relationship, certainly at heads of government level,  
7       and below it actually, was inadequate to good alignment  
8       given that challenge.

9   Q.   Would it be fair to say that in advising the Scottish  
10       Government it was important to bear in mind that the  
11       UK Government would always have, because of the  
12       devolution settlement, control over aspects of pandemic  
13       management that would inevitably affect Scotland's  
14       strategy in fighting the virus?

15  A.   So you put that to me as the UK Government would have  
16       control over, and I'll answer that part and another  
17       part.

18       There were certain aspects of pandemic management  
19       that were reserved. Incidentally not border controls in  
20       relation to public health, one might come to that, but  
21       there certainly were some that were reserved and the  
22       UK Government had control of those and that was relevant  
23       to the Scottish Government's decision-making. Furlough  
24       would be an example.

25       But there's also a concern in my mind at this point

1       and in the First Minister's that the decisions that she  
2       is taking within devolved responsibilities are within  
3       the context of GB or the UK where the UK Government, in  
4       its role as, I'm putting this in quotes, the government  
5       of England, in other words in its exercise of  
6       responsibilities which in Scotland are devolved, it's  
7       taking those decisions and because of the -- and when  
8       the Prime Minister says something it gets reported  
9       through the whole of the UK -- that influences the  
10      environment in which she is -- the former First Minister  
11      is managing the pandemic. So there's both control but  
12      also the interaction of messaging.

13    Q. I don't wish to diverge, but you mentioned something  
14      which is of interest to me, which is the question of  
15      border controls, so if I could just deal with that but  
16      come back to this narrative in a moment.

17           The question of border controls is one which we've  
18      found slightly difficult to comprehend. Is your  
19      position from the answer you've given that border  
20      controls were effectively a matter under the control of  
21      the Scottish Government during the pandemic, as regards  
22      Scotland of course?

23    A. Forgive me if I dive into the detail. The detail's  
24      complicated but, to address Professor Cairney's word,  
25      I don't think it's blurry in relation to this matter,



1       because the place where what is reserved is set out is  
2       schedule 5 of the Scotland Act. And I should say that  
3       I was one of the people who contributed to the drafting  
4       of that at the time. And in schedule 5 you will find --  
5       you will not find "borders" as a word appearing. What  
6       you will find reserved is immigration and nationality,  
7       under section 6B of the specific reservations, and  
8       you'll find the regulation of international trade  
9       reserved at paragraph 7 as part of the general  
10      reservation of foreign affairs.

11           What that means is that border controls at the  
12      border in relation to immigration and nationality and  
13      regulation of trade, which is what most border controls  
14      are, those are reserved, and the administrative  
15      apparatus by which the UK Government deals with that is  
16      within its control. But border controls in relation to  
17      public health are not reserved, therefore they are  
18      devolved, which is why the Scottish Parliament was able  
19      to pass an Act, the Public Health etc (Scotland) Act  
20      2008, at which section 94 sets out provisions for  
21      controls, international it's called, but it includes the  
22      ability to make regulations which provide for what  
23      happens when a vehicle arrives at the border, including  
24      the ability to require that persons in that vehicle  
25      should quarantine.

1           Now, those are the powers that were being used in  
2           relation to travel restrictions, and because of the  
3           passage of that Act post devolution the UK law officers  
4           would have had the opportunity to satisfy themselves as  
5           to the -- that Act was within competence. So although  
6           it is complicated --

7   Q. This is why, Mr Thomson, that when one looks at the  
8           restrictions in Scotland at borders, they are exercising  
9           control by the Scottish Government, because it relates  
10          to the control of public health rather than other  
11          matters which might be under the control of the  
12          UK Government, such as immigration and nationality?

13   A. That is exactly right. And to add one further point,  
14          the Scottish Government needed the help and co-operation  
15          of the UK Government to make all this work because  
16          administratively the means by which you do this involves  
17          the input of Border Force and so on.

18   Q. Yes.

19   A. So that support is necessary. But in terms of the vires  
20          for these, that's clear in my mind.

21   Q. Thank you. Well, it will be a matter for her Ladyship  
22          in due course to determine whether the lines are blurry  
23          in that regard, but thank you for the explanation.

24                To return then to our narrative from May, you  
25          mentioned that the email you had written was in

1 connection with a COBR meeting and I think your  
2 aspiration, you said, was that the COBR meeting might be  
3 able to bring things back into alignment, as you say; is  
4 that right?

5 A. Yes, that's fair.

6 Q. And the COBR meeting took place on 10 May; is that  
7 correct?

8 A. I'm relying on you for that, but yes.

9 Q. It was very shortly after that period that we have been  
10 discussing. We have a note of this, it's from  
11 Ms Elizabeth Lloyd, it's quite a useful shorthand and  
12 I'm interested to know whether you agree with me as to  
13 whether this is what happened.

14 We understand that this relates to -- this is at  
15 INQ000346141 at page 114, and we understand that this  
16 relates to the 10 May COBR meeting where she says:

17 "COBR is a shambles.  
18 "PM ignoring comments.  
19 "Welsh plea not to advise people to travel --  
20 completely ignored.  
21 "NI/SG insisting that it be clear PM is referring to  
22 England.  
23 "Repeated calls for assurance ignored by PM."  
24 Now I'm using that as a swift means to try to  
25 characterise what I think happened at that meeting but,

1           Mr Thomson, does that ring true with your understanding  
2           of what occurred at that meeting? Despite your  
3           aspiration, things went very much the other way?

4   A. In short, yes. Just for clarity, as I read this --  
5           Liz Lloyd's writing is much better than mine -- but the  
6           "NI/SG" means Northern Ireland Executive and Scottish  
7           Government --

8   Q. Yes, that was our understanding.

9   A. Yes, well, I see no reason to disagree with that  
10          characterisation of the meeting.

11   Q. One of the tasks I suppose which we've set ourselves is  
12          to try to understand the point at which -- and I know,  
13          I think, from your statement you don't like the word --  
14          Scotland diverged from the UK four nations type approach  
15          or the UK's approach involving the four nations  
16          considerations that you set out in your advice.

17                I'm interested to explore with you, if you can tell  
18          me, whether you think that this is the moment at which  
19          that divergence occurred? I know you don't like the  
20          word "divergence" but please forgive me.

21   A. So to be clear, because I am trying to be helpful,  
22          I only don't like it in the sense that -- I think  
23          Mr Jacobs quoted me in the opening statement -- if it  
24          implies that the approach of the UK Government is the  
25          orthodox one and somehow if you divert from that you're

1       becoming unorthodox.

2               But yes, the approaches did diverge. Was this the  
3       point at which it happened? So this is 10 May. (Pause)  
4       So, if I go back to, let's say, 23 March, and the Stay  
5       at Home decision, there is no divergence in that. And  
6       if I go forward from this point in time to October when  
7       the levels and tiers systems were introduced, there's  
8       definitely divergence by that point. So it happened  
9       somewhere in between those.

10              I think it would be fair to say that in this meeting  
11       you can see the start of that process, because if you  
12       compare my advice that you showed me a moment ago with  
13       Ms Lloyd's description of the meeting you can see that  
14       my aspiration for greater alignment was not being  
15       realised.

16              To finish with one qualification of that, it wasn't  
17       a one-way -- it wasn't a straight line deterioration, if  
18       I can put it that way, the quality of interaction did  
19       ebb and flow a bit, and it ebbed back in a bit in  
20       September, as you've seen, but I've also said that that  
21       took a long time and time was not a thing we had.

22   Q.   Thank you.

23              There is one more matter I'd like to raise with you,  
24       please. There are a number of commentators who have  
25       suggested that in the Scottish Government's management

1 of the pandemic, the pandemic was politicised in order  
2 to try to further the cause of independence. I'd be  
3 interested to hear your perspective on that criticism  
4 which is held certainly by certain sectors of the  
5 Scottish public.

6 A. So I've heard that criticism made in, with two -- in two  
7 forms. The first is that the Scottish Government's  
8 attention or energy was in some way devoted to work on  
9 independence rather than work on Covid. I was also the  
10 Director-General responsible for supporting our  
11 ministers in constitutional change and as you can see,  
12 I hope, from the materials in front of you, during this  
13 period my -- pretty much my entire attention was focused  
14 on Covid and that which was not focused on Covid was  
15 focused on Brexit, which also has constitutional  
16 dimensions. So I don't agree with that.

17 The second way I hear that criticism is that somehow  
18 in her decisions the First Minister was seeking to show  
19 people -- you know, to make -- to be different for the  
20 sake of being different to remind people that Scotland  
21 has the ability to take decisions on its own. And  
22 I also don't agree with that. I said earlier I didn't  
23 see any party politics on the part of any politician in  
24 the COBR meetings.

25 In all the advice that I gave the First Minister and

1 all the exchanges I had with her about that advice,  
2 there was nothing of that sort present. Indeed,  
3 I couldn't give her advice in relation to party politics  
4 without breaching the Civil Service Code, which I did  
5 not do.

6 And if I then turn to the substance of these  
7 decisions -- well, first of all, these were not  
8 differences for the sake of being different, they were  
9 differences of substance in relation to the timing and  
10 the design and the application of NPIs and how you  
11 change that as vaccination comes through. This was  
12 serious decision-making with clinicians and  
13 epidemiologists and scientific advisers and other  
14 advisers in relation to economic policy and social  
15 policy.

16 So there were real differences, and in this Scotland  
17 was not the outlier. Coming back to my dislike of the  
18 word "divergence" it was quite often the case, as in  
19 these exchanges I think, that two or more of the three  
20 devolved administrations were taking one view and it was  
21 the Prime Minister and the UK Government that was taking  
22 the different view.

23 And then finally, I think not just in the decisions  
24 but also in the outcomes there are substantial  
25 differences, and I think the Inquiry has that before it

1 in the expert evidence of Professors Hale and Diamond,  
2 where, if you look at age-standardised mortality rates  
3 over the period, you see substantial differences in the  
4 outcomes of the pandemic in the four nations. And  
5 the -- I think it's important to see these differences  
6 rather than not see them -- and I'm not saying this to  
7 say the Scottish Government did well. None of us --  
8 you know, none of us wanted this to be as it was. But  
9 I am saying there were real differences in the approach  
10 and in the outcomes and we should all learn from all of  
11 that and we can't do so if somehow the narrative of the  
12 pandemic is that we all ended up in the same place or  
13 that the differences were just for the sake of it.  
14 That's -- I think in public policy terms that would be  
15 a mistake.

16 Q. Is it the case that your position is that the Scottish  
17 Government's principal focus remained on managing the  
18 pandemic from January 2020 to April 2022?

19 A. The only other focus -- sorry, give me the dates again?

20 Q. It's just the period of our scope, Mr Thomson,  
21 January 2020 to April 20 --

22 A. So to give you as precise an answer as I can, it was not  
23 the only focus and the two other focal points I would  
24 give you would be, first of all, Brexit, because you'll  
25 remember that during the pandemic period the UK was



1 preparing for the possibility of a no-deal Brexit, which  
2 involved significant work and attention within the  
3 Scottish Government.

4 Then secondly I would say during this period the  
5 focus of the Scottish Government began to move, and  
6 particularly after the May 2021 election, from the  
7 response to the pandemic to the concept and the  
8 operationalisation of this concept of Covid recovery,  
9 and that's reflected in the changes to ministerial  
10 titles and roles after that election.

11 Q. Thank you.

12 Could I ask you to look, please, briefly at  
13 INQ000214408.

14 This is Cabinet minutes, we call -- I think they're  
15 called "conclusions" internally -- from 30 June 2020.

16 Can we have a look at page 56, please.

17 A. Sorry, just before you move off this page, I'm just  
18 looking to see if I was at this meeting. I don't think  
19 I was. But that's fine, I can comment on --

20 Q. Thank you.

21 Paragraph 56, please.

22 At letter (e), it says that Cabinet:

23 "Agreed that consideration should be given to  
24 restarting work on independence and a referendum, with  
25 the arguments reflecting the experience of the

1 coronavirus crisis and developments on EU Exit."

2 Is this conclusion reached by Cabinet indicative of  
3 the fact that the Scottish Cabinet in June 2020 wished  
4 to politicise the coronavirus crisis?

5 A. (Pause) I'm reading the wording carefully.

6 Consideration should be given to restarting work. So we  
7 would then have -- I think there was a set of --

8 Q. It's the second half of the sentence I think I'm  
9 focusing on, Mr Thomson:

10 "... with the arguments reflecting the experience of  
11 the coronavirus crisis ..."

12 A. Yes, it's helpful to be reminded of that, so that runs  
13 slightly contrary to what I said in my previous answer  
14 and I do acknowledge that.

15 My previous answer was in terms of -- I was  
16 thinking, you know, what was my focus on, what was the  
17 Scottish Government's focus on, what were my team's  
18 focus on. The constitutional work at the time, just to  
19 give you a bit of context, had been paused, I think I'm  
20 right in saying.

21 Q. Yes. Mr Russell had done that at the beginning.

22 A. Yes, he had. And the -- as we moved out of the lockdown  
23 restrictions, more of the ordinary business of the  
24 Scottish Government began to resume, including this bit.

25 I think -- I don't think that -- this might account

1       for the differences between this and my earlier  
2       answer -- I don't think I gave significant time to that,  
3       but some of my team who, for example, had been moved  
4       from that independence work into work such as travel  
5       restrictions might then have resumed work on this  
6       because we had been able to adapt our structures and put  
7       more people into a team who would take forward travel  
8       restrictions further on.

9   Q.   One further document, and this I think will be the last,  
10       Mr Thomson.

11       INQ000371228. I'm afraid we're returning to your  
12       notebooks. Page 50, please.

13       The context of this, which I hope you can take from  
14       me, is -- I looked at this earlier -- it's dated, we  
15       think, 25 May 2021, and we think it is recording  
16       a conversation between yourself and the then Deputy  
17       First Minister in which, shortly after the election,  
18       you're discussing, amongst other things, the very  
19       subject that you said was one of the main focuses of the  
20       Scottish Government in that period after the election,  
21       ie Covid recovery. You will recall -- you will know  
22       of course that the Deputy First Minister had been  
23       appointed at around that time as the Minister for Covid  
24       Recovery I think; is that right?

25   A.   Yes, that's right.

1 Q. And in that context there is a phrase at the top where  
2 you've written:  
3 "Indy is back."  
4 Does that tend to suggest that in the course of that  
5 conversation the Deputy First Minister has indicated to  
6 you the policy priority is to now pursue independence  
7 again?  
8 A. So I need to apologise for the fact that my notebooks  
9 were written for me rather than for counsel to read.  
10 This page is not in fact a record of points made in the  
11 discussion with the Deputy First Minister, possibly the  
12 previous page is and I've failed to, you know, put a new  
13 subject heading at the top. This page, which I remember  
14 quite well, is me writing out of my head the reasons  
15 I am concerned about my own personal resilience. And  
16 I'm doing that just after the election. I'm  
17 wondering -- I'm constructing a possibility here which  
18 is that people will fall over, including me. I say that  
19 three-quarters of the way down the page.  
20 LADY HALLETT: Mr Thomson, I'm sorry to interrupt, but the  
21 question really is a simple one. You have written down  
22 what seems to be "Indy is back", which we all assume  
23 means independence is back on the agency. Presumably  
24 you got that impression from a minister? Which is the  
25 point I think Mr Dawson's asking.

1 MR DAWSON: Thank you, my Lady.

2 A. No, I think what I'm listing here is reasons that --

3 risks, rather than --

4 LADY HALLETT: No, but did you get the impression from

5 a minister that independence was back on the agenda?

6 That's the question.

7 A. I can't -- I don't recall that being part of the

8 discussion with the Deputy First Minister.

9 LADY HALLETT: But did you get that impression from any

10 other minister? Otherwise why did you make this note?

11 Because it would only be back on the agenda if

12 a minister had said it's a policy issue again, wouldn't

13 it?

14 A. Well --

15 LADY HALLETT: That's the question. It's a simple question,

16 Mr Thomson.

17 A. Right, I was trying to explain why I had written this

18 note.

19 If the question is, was there a possibility that

20 independence work would resume, yes that's definitely

21 a possibility. But that's not actually why I wrote it

22 here.

23 MR DAWSON: Thank you, my Lady.

24 We've referred to looking at statistical information

25 and making comparisons about the way in which the

1 pandemic ebbed and flowed in the different nations of  
2 the United Kingdom, and we have heard some detailed  
3 evidence about that from the Scottish Government and its  
4 own Chief Statistician.

5 In the period after this point, Scotland was still  
6 to experience its highest rates of infection. It was  
7 still to experience around a third of its deaths. It  
8 was still to experience incredible hardship and  
9 devastation, including hospitals being overwhelmed, the  
10 military needing to be called in. Is it your position,  
11 as you suggested earlier, that the focus of the Scottish  
12 Government over that period remained on the Covid  
13 pandemic and not on independence?

14 A. As I hope I communicated earlier, certainly my work  
15 through that period, as the situation deteriorated,  
16 remained dominated by Covid, and to some extent by  
17 Brexit.

18 MR DAWSON: Thank you very much, Mr Thomson, I've no further  
19 questions.

20 LADY HALLETT: And I don't think there are any Rule 10s.

21 MR DAWSON: Nothing at all, my Lady, thank you.

22 LADY HALLETT: Very well. Thank you very much, Mr Thomson.

23 (The witness withdrew)

24 MR DAWSON: The next two witnesses who will be giving  
25 evidence together are Dr Jim McMenamin and

1           Professor Nick Phin.

2                           DR JIM MCMENAMIN (sworn)

3                           PROFESSOR NICK PHIN (sworn)

4           Questions from LEAD COUNSEL TO THE INQUIRY for MODULE 2A

5   MR DAWSON: Thank you very much.

6                    This is the second occasion on which we have had two

7           people give evidence together. I will, as I endeavoured

8           the first time, attempt to direct my questions as best

9           I can, but the Inquiry would be very interested to hear

10          perspectives from both of you, so if there are

11          observations you wish to make on questions I've

12          addressed to the other, please indicate and I'd be very

13          happy to hear from you on those matters too.

14                    You are Dr Jim McMenamin?

15   DR McMENAMIN: Yes, that's right.

16   MR DAWSON: And you are Professor Nick Phin.

17   DR PHIN: Correct.

18   MR DAWSON: And I understand you both have provided a number

19          of statements to the Inquiry. In particular,

20          Dr McMenamin, you have provided a witness statement

21          under Inquiry number INQ000360968. The statement is

22          dated 29 November 2023. Is that your statement?

23   DR McMENAMIN: Yes.

24   MR DAWSON: Does the statement remain true and accurate as

25          at this date.

1 DR McMENAMIN: Yes, it does.

2 MR DAWSON: Professor Phin, you have also provided

3 a statement to us, very helpfully. It's dated

4 6 November 2023, under INQ000339576. Is that your

5 statement?

6 DR PHIN: That is.

7 MR DAWSON: Do the contents of that statement remain true

8 and accurate?

9 DR PHIN: They do.

10 MR DAWSON: As I understand it, having been briefed by your

11 representatives, you were involved, Professor Phin, in

12 the compilation of some corporate statements which were

13 helpfully given to the Inquiry on behalf of Public

14 Health Scotland. Is that correct?

15 DR PHIN: That's correct.

16 MR DAWSON: And they are INQ000300280, a statement dated

17 2 October 2023, and a supplemental statement dated --

18 INQ000361394, dated 23 October 2023, and a further PHS

19 chronology dated INQ000176685.

20 You contributed to the compilation of these

21 documents, as I understand it, although it was along

22 with others, as I understand it?

23 DR PHIN: That's correct, yes.

24 MR DAWSON: Do these remain true and accurate to the best of

25 your knowledge and belief as at this date?



1 DR PHIN: They do.

2 MR DAWSON: Just to understand your respective roles here,  
3 you've both therefore provided individual witness  
4 statements to the Inquiry, and Dr McMenamin, I intend to  
5 ask you questions predominantly relating to your own  
6 personal experience of the pandemic but, insofar as it's  
7 relevant to discuss PHS's corporate position, I think,  
8 Professor Phin, you're able to answer questions as best  
9 you can; is that roughly correct?

10 DR PHIN: That's -- that'll be -- yes, that's the case.

11 MR DAWSON: And Dr McMenamin, that's correct as far as your  
12 position is concerned? You were not, as I understand  
13 it, involved in the creation of the corporate materials,  
14 but you have very helpfully provided what is in fact  
15 a very lengthy personal statement and you can speak to  
16 that.

17 DR McMENAMIN: Yes, that's right.

18 MR DAWSON: Thank you very much indeed.

19 So to start with you, Dr McMenamin, I understand you  
20 are a consultant epidemiologist; is that correct?

21 DR McMENAMIN: Yes.

22 MR DAWSON: And that you are the head of Health Protection  
23 (Infection Services); is that right?

24 DR McMENAMIN: Yes.

25 MR DAWSON: And that you were the Public Health Scotland

1 Covid-19 strategic incident director; is that correct?

2 DR McMENAMIN: Yes, that's correct.

3 MR DAWSON: And you have been the strategic lead for the

4 respiratory team within PHS or its predecessors for the

5 past 19 years?

6 DR McMENAMIN: Yes, that's right.

7 MR DAWSON: You were, as I understand it, during the course

8 of the pandemic, a chair of a body which we will come on

9 to called the National Incident Management Team.

10 DR McMENAMIN: Yes, that's correct.

11 MR DAWSON: You sat on a number of different bodies which

12 provided advice to government, both UK Government and

13 the Scottish Government, including SAGE.

14 DR McMENAMIN: Yes.

15 MR DAWSON: And NERVTAG.

16 DR McMENAMIN: Yes.

17 MR DAWSON: And the Scottish Government Covid Advisory

18 Group.

19 DR McMENAMIN: Yes, that's correct.

20 MR DAWSON: Amongst others.

21 When the pandemic struck, Dr McMenamin, you acquired

22 the role of public -- I think Health Protection Scotland

23 Covid-19 strategic incident director. What did that

24 particular role entail?

25 DR McMENAMIN: It meant overall co-ordination of, initially,

1           the Health Protection Scotland response and, thereafter,  
2           the response (inaudible) Public Health Scotland.

3   MR DAWSON: Was it correct to say, as I said there, that  
4           that role was under the guise of Health Protection  
5           Scotland rather than Public Health Scotland?

6   DR McMENAMIN: Yes, that's initially --

7   MR DAWSON: Initially, yes, because as I think we've heard  
8           before from other witnesses there was an important  
9           reorganisation at around the time the pandemic struck of  
10          public health services in Scotland. I'll try and  
11          narrate it briefly, but if I get anything wrong, please  
12          correct me.

13           There had been a number of agencies involved in the  
14          delivery of public health in Scotland, including Public  
15          Health Scotland before April 2020; is that right?

16   DR McMENAMIN: Yes, correct.

17   MR DAWSON: And as part of strategic reorganisation of the  
18          way in which public health services were to be  
19          delivered, the Scottish Government decided to create  
20          a new body called Public Health Scotland.

21   DR McMENAMIN: That's correct.

22   MR DAWSON: And that body was incorporated in late 2019 as  
23          I understand it.

24   DR McMENAMIN: Indeed.

25   MR DAWSON: And became operational in early April 2020.

1 DR McMENAMIN: Yes, it did.

2 MR DAWSON: Which was a particularly important time as  
3 regards public health, because it was shortly into the  
4 first lockdown in the pandemic.

5 DR McMENAMIN: Yes, that's correct.

6 MR DAWSON: How did the role that you had of Covid-19  
7 strategic incident director sit alongside other medical  
8 advisers who gave advice or provided assistance to the  
9 Scottish Government's Covid-19 response, including,  
10 for example, the Chief Medical Officer and others?

11 DR McMENAMIN: Thank you.

12 The principal route by which we offer advice  
13 remained exactly the same before and after to some  
14 degree, in that our principal contact through Scottish  
15 Government would be both through the offices of the  
16 Chief Medical Officer but also in reporting through our  
17 policy colleagues in Scottish Government.

18 The only additional reporting requirement that  
19 changed as of 1 April became that the co-sponsorship  
20 arrangement that we had for who we would report to meant  
21 that corporately, in addition to Scottish Government,  
22 there was also the involvement of our local authority  
23 colleagues and the body COSLA and Solace that were then  
24 a part and parcel of that combined reporting that we  
25 often did.

1 MR DAWSON: We'll come on to some more detail relating to  
2 the National Incident Management Team of which you were  
3 chair in a moment, Dr McMenamin, but I'm interested to  
4 know, around that time at the beginning of the pandemic  
5 there must have been a clamour on the part of the  
6 Scottish Government for medical advice as to how they  
7 would handle the crisis. Did you find, from your  
8 perspective, and you've just explained how it fitted in  
9 with others, that the medical advisory systems at that  
10 crucial time provided clarity as to who it was that was  
11 to give the ministers who required it the ultimate  
12 medical advice, or was there a confusion perhaps of  
13 medical voices?

14 DR McMENAMIN: I certainly don't recall there being any  
15 confusion of medical voices, but rather a clear  
16 reporting arrangement where we were able to have an open  
17 door, effectively, to any urgent contact with the Chief  
18 Medical Officer, and that we had the opportunity through  
19 our Scottish Government policy colleagues to maintain  
20 the relationship with Scottish Government. And that was  
21 a very close working relationship that we had really  
22 from the first moments in January, when we identified  
23 there's something not quite right happening in China,  
24 all the way through to the announcements by Scottish  
25 Government of the arrangements that were to be put in

1 place for the emergency powers that Scottish Government  
2 would enact to support the response in Scotland.

3 MR DAWSON: Thank you.

4 Could I just ask you some details about your  
5 background, Professor Phin.

6 I understand that you joined Public Health Scotland  
7 as director of public health service on 6 January 2021;  
8 is that right?

9 DR PHIN: That's correct, yes.

10 MR DAWSON: And in that role you were charged, along with  
11 others, with, as I've said, not only preparing the  
12 corporate response but collating together information to  
13 be able to respond to our questions as directed towards  
14 PHS; is that right?

15 DR PHIN: Yes.

16 MR DAWSON: Presumably that involved consultation with  
17 others because you yourself had arrived at PHS during  
18 the course of the pandemic.

19 DR PHIN: That's correct, yes.

20 MR DAWSON: So, in as far as we are asking you questions, we  
21 have to understand that for the first half, if you like,  
22 of the pandemic, you were not personally part of Public  
23 Health Scotland; is that right?

24 DR PHIN: Yes, and if there are questions I think are --  
25 might be useful, I can involve my colleague.

1 MR DAWSON: I'm very much obliged.

2 Before that I understand it that you were the

3 director of the Centre for Infectious Disease

4 Surveillance and Control at Colindale.

5 DR PHIN: Yes, for three and a half years I was the interim

6 director, I then became deputy director for the National

7 Infection Service within Public Health England and part

8 of that was dealing with emerging infections, et cetera.

9 So my initial involvement, therefore, was I convened the

10 first national -- well, the IMT in London, within,

11 I think, four or five days of us getting news of the

12 developments in China.

13 MR DAWSON: So in the early part of the pandemic, before the

14 role you took up with PHS, you were working within

15 Public Health England?

16 DR PHIN: That's correct.

17 MR DAWSON: As a result, in your witness statement you have

18 been able to provide us with a number of interesting

19 perspectives about the way in which things were

20 approached differently in the two nations.

21 DR PHIN: That's correct, yes.

22 MR DAWSON: Thank you.

23 We've heard some evidence from one of your

24 colleagues in PHS, Mr Heald, already and so we've

25 covered some of the functions, in particular the data

1 side of things, but I wonder if we might just summarise  
2 what the role of PHS is and was.

3 I would attempt to summarise it along these lines:  
4 that during the course of the pandemic PHS received  
5 policy decisions from the Scottish Government and  
6 assisted with the medical side providing advice on the  
7 medical side of those; is that correct?

8 DR PHIN: Yes, I mean, medical but also epidemiological --

9 MR DAWSON: Yes.

10 DR PHIN: -- statistical and other aspects.

11 MR DAWSON: It also had a role in issuing advice in the  
12 other direction, if you like, towards hospitals and the  
13 public and other organisations that might wish to  
14 receive advice about the policy of the government at the  
15 time.

16 DR PHIN: Yes, I think a key role was trying to translate  
17 some of those policy directions and aspirations into  
18 something that could be used, you know, by external  
19 organisations.

20 MR DAWSON: So in effect PHS was providing data and advice  
21 upstream towards the Scottish Government, but also it  
22 was providing it downstream towards institutions,  
23 organisations and the public?

24 DR PHIN: That's correct, yes.

25 MR DAWSON: As we've heard from Mr Heald, an important part



1 of that role was that PHS obtained, analysed and  
2 published data relating to the pandemic which was used  
3 both by the Scottish Government in its assessment of the  
4 threat but also by the public.

5 DR PHIN: That's right.

6 MR DAWSON: And we've heard a good deal about that already  
7 from Mr Halliday and Mr Heald.

8 Did the nature of the role of HPS or PHS in any of  
9 these capacities change during the pandemic, or did it  
10 remain as that?

11 DR PHIN: From my perspective -- bearing in mind, as I say,  
12 I came in 2021 -- I can't comment what it was like  
13 before then, but from 2021 onwards I would say that the  
14 role was pretty much unchanged. We continued to provide  
15 that advice, translate it into operational, if you like,  
16 guidance and provide intelligence and insight where  
17 appropriate.

18 MR DAWSON: Dr McMenamin, you may be able to assist with  
19 this as well.

20 As far as the way that advice was commissioned from  
21 HPS, or subsequently PHS, was concerned, from Scottish  
22 Government, how was that advice commissioned? Was it  
23 advice that was offered or was it specifically  
24 requested? How would that advisory function work?

25 DR McMENAMIN: I think it would be fair to say that there

1       was a mixture of different approaches that allowed  
2       advice and guidance to be offered, either through  
3       recognition, because it was fairly obvious that we would  
4       need to support our NHS board and local authority  
5       colleagues in the investigation and management of cases,  
6       but in particular once we reached the first cases being  
7       reported in Scotland and our Scottish Government  
8       colleagues increasingly moving towards a stepping up of  
9       their response on behalf of government and ultimately  
10      the emergency powers that were then enacted to support  
11      that, more and more of a transition from a health  
12      protection alone response into a societal response that  
13      our government colleagues were then very, very much at  
14      the forefront of, and in particular through the actions  
15      of First Minister, a co-ordination of that communication  
16      of messaging that was co-ordinated by our Scottish  
17      Government colleagues from some point in March onwards.

18   MR DAWSON:   Okay.

19           Obviously, as we discussed with Mr Heald and  
20      Mr Halliday, there would be a situation where data was  
21      available upon which decisions might be made about the  
22      best thing to do to manage the pandemic which would  
23      emanate from PHS, and that that PHS data would form  
24      a subset of the entirety of the information available to  
25      the Scottish Government.

1 DR McMENAMIN: Indeed.

2 MR DAWSON: What I'm interested in exploring is the extent  
3 to which PHS would form its own views based on its data,  
4 one assumes, about what to do, and the Scottish  
5 Government would make its mind up or take advice  
6 separately, or whether that was a collaborative  
7 exercise.

8 DR McMENAMIN: It's sometimes easy to forget that in the  
9 first days of our response, and indeed the first months,  
10 that we had no patients that were potentially presenting  
11 with infection and that our data then was a nil return  
12 thus far, for instance across the months of January and  
13 indeed across the month of February, that we had no  
14 cases, but rather that we were using the experience of  
15 others, whether that was from China or closer to home in  
16 Italy, across the month of February and then using the  
17 initial cases that were described in England. Our first  
18 approach to that was then to use whatever data was  
19 available to us to inform that, backed by this  
20 international data.

21 Professor Phin and I have had a long working  
22 relationship across decades in which making sense of  
23 those first cases using a First Few 100s approach was  
24 actually something which then was important that we were  
25 able to bring to the fore and work collaboratively

1 across the UK to describe that first series of cases.

2 MR DAWSON: I think that's a project, if you like, that

3 the Inquiry's heard some evidence about already in

4 Module 2, so just to understand that, the position is

5 that at the beginning -- as regards access to

6 information in particular -- there was very scant

7 information available and that therefore access to data

8 and information was driven by the need to get one's

9 hands on whatever was available --

10 DR McMENAMIN: Absolutely.

11 MR DAWSON: -- to inform -- best inform the response.

12 As the pandemic went on, one assumes more local data

13 systems and testing and cases started to emerge, one

14 could advise on and inform about a more local response;

15 is that correct?

16 DR McMENAMIN: And that the opportunity was afforded in the

17 short interval to gear things up, to begin to be able to

18 receive and process that information, recognising that

19 this was in the days before declaration of a pandemic,

20 it was very likely we were going to see an increase in

21 cases and we would require to be able to report on all

22 of those cases.

23 MR DAWSON: We've heard some evidence from the previous

24 witness, who was a government civil servant, about

25 difficulties that were experienced at a government level

1           obtaining information from the UK Government.

2           You mentioned the fact that there was a necessity to  
3           try and rely on whatever evidence one could get, as  
4           hopefully reliable as possible, one would assume.

5           From a scientific perspective, was there over this  
6           period -- and indeed any other period during the  
7           pandemic -- any difficulty which was experienced gaining  
8           information on a scientific basis from the UK Government  
9           or from UK agency -- English or UK based agencies?

10   DR McMENAMIN: Not at all from our health protection  
11           colleagues. As you might imagine, in peacetime, outwith  
12           a pandemic setting, there was very good working  
13           relationship with our colleagues at what was Public  
14           Health England and what became the UK Health Security  
15           Agency, and indeed I have been a past chair of  
16           a multicountry group looking to harmonise some of our  
17           surveillance output. So we were using the relationships  
18           that we already had well established to make sure that  
19           we were keeping each other, and indeed the rest of the  
20           four nations -- and indeed a fifth nation, the Irish  
21           Republic -- very well aware of what was developing.

22   MR DAWSON: Sorry, Professor Phin.

23   DR PHIN: I'm just wanting to say, coming from the other  
24           perspective, when I was in Public Health England at that  
25           particular time we made every effort to try and involve

1       the devolved administrations, as we called them, in both  
2       the information sharing and, where time allowed, the  
3       detailed development of policy and guidance.

4           I think it would be fair to say that we didn't start  
5       off with no guidance at the beginning of a pandemic. We  
6       had the 2009 pandemic, and at that point I was leading  
7       the Pandemic Flu Office, and indeed we'd produced  
8       a suite of guidance around how we might manage various  
9       aspects of it.

10       So it was a case of getting that guidance out,  
11       dusting it off, looking at what we now knew about --  
12       what we knew about Covid, and seeing how we could adapt  
13       that existing guidance and use it in a rapid and helpful  
14       way with the response that we would -- that potentially  
15       we could anticipate.

16   MR DAWSON:   Thank you.

17       So her Ladyship will decide upon this in due course,  
18       but whatever the position as regards governmental  
19       information sharing or relations from a scientific  
20       perspective from both ends, your evidence is that that  
21       worked as well as one could expect?

22   DR McMENAMIN:   Yes.

23   MR DAWSON:   I wonder if I could take you, in relation to  
24       this initial period, Dr McMenamin, to paragraph 14.18 of  
25       your witness statement. The statement is INQ000360968.

1       We asked you some questions about this early period,  
2       which you have helpfully responded to in your statement.  
3       You say that:  
4             "Early in the response HPS moved on to an emergency  
5       footing and instituted their Emergency Response Plan.  
6       Sustaining the response over the initial short period of  
7       months significantly taxed the capability of HPS to near  
8       breaking point despite the best efforts of our parent  
9       organisation, National Service Scotland, and the able  
10      assistance provided by our ARHAI colleagues ..."  
11      Could you tell us, first of all, which time period  
12      you're referring to?  
13   DR McMENAMIN:  So as an immediate response across the months  
14      of January, February and March.  
15   MR DAWSON:  And you say there that -- this is obviously the  
16      period before the kind of April, PHS comes into  
17      existence --  
18   DR McMENAMIN:  Yes.  
19   MR DAWSON:  -- we're still talking about HPS, that the  
20      position at that stage had stretched HPS to near  
21      breaking point.  Can you tell us what you meant by that?  
22   DR McMENAMIN:  I am indebted and will be forever indebted to  
23      just exactly how much and how wholeheartedly all of our  
24      staff threw themselves at addressing all of the issues  
25      of the day.  It has become commonplace, I think, we've

1       seen in some of the responses that it became common,  
2       regrettably, that colleagues were working 12 to 14-hour  
3       days for seven days a week and not necessarily having  
4       much in the way of opportunity for any downtime. So  
5       that continued sustained effort over an initial period,  
6       that didn't start with a lockdown but rather started in  
7       January, was a significant effort by all of those staff  
8       that that meant then, for all of my colleagues then,  
9       I can offer nothing but thanks for all of the effort  
10      that they expended.

11   MR DAWSON: Could you just assist us with the acronym ARHAI?

12   DR McMENAMIN: So Antimicrobial Infection and Healthcare  
13      Associated Infection is the acronym. I hope that the  
14      provision of the glossary in my own statement was then  
15      useful for that purpose to help anyone who might be  
16      reading that.

17   MR DAWSON: Yes, thank you.

18   DR McMENAMIN: Those colleagues were part of our parent  
19      Health Protection Scotland organisation, but remained  
20      with our NSS colleagues at the creation of Public Health  
21      Scotland, so, if you like --

22   MR DAWSON: We'll get on to that in a moment, but I was just  
23      keen to try to understand what the role of that  
24      particular body was. In particular, what was it doing  
25      specifically in the pandemic response and the process



1           you've described over those early few months?

2   DR McMENAMIN: Thank you. The principal role throughout  
3           this and the continued role that they had across the  
4           pandemic was in the provision of infection prevention  
5           and control advice for all of the NHS in Scotland.

6   MR DAWSON: Okay.

7           I'd like to ask you a few questions about the  
8           reorganisation. You've both given us in your statements  
9           helpful explanations of that but, broadly speaking, as  
10          I think you've alluded to, there was a reorganisation  
11          which meant a number of the public health functions  
12          which had previously been HPS moved to PHS; but one of  
13          the notable things that did not move was this ARHAI part  
14          of the operation, which stayed within --  
15          administratively within the ambit of National Services  
16          Scotland; is that correct?

17   DR McMENAMIN: Yes.

18   MR DAWSON: Can I ask you whether, given the role that you  
19          have stated was played, an important role, by your ARHAI  
20          colleagues, that administrative separation between the  
21          two wings, if you like, of this public health response,  
22          or two of the wings, whether that caused difficulty when  
23          the separation happened? Because previously you were  
24          administratively together and you move to being  
25          administratively apart.

1 DR McMENAMIN: So this might be considered akin to the most  
2 painless separation or divorce that I've ever  
3 experienced, because our colleagues continued on  
4 a day-to-day basis to work with us, night and day, to be  
5 able to deliver what we needed to do. So in those early  
6 days, certainly, and that first year of April 2020 to  
7 March 2021 was actually something which was barely  
8 visible to any external agency, let alone an internal  
9 one. We continued to rely on each other to assess the  
10 delivery of the things that we did.

11 MR DAWSON: But both parts, if you like, if I can describe  
12 it as that, played an essential role --

13 DR McMENAMIN: Absolutely.

14 MR DAWSON: -- over that period.

15 DR McMENAMIN: Absolutely.

16 MR DAWSON: I think you recognise that in your statement.

17 DR McMENAMIN: Yes.

18 MR DAWSON: Professor Phin, you in your witness statement,  
19 INQ000339576, at paragraph 11.1.2, comment under  
20 subparagraph (i) there that:

21 "In my view the separation of ARHAI from PHS should  
22 not have gone ahead at the start of the pandemic.  
23 Trained and suitably experienced health protection  
24 staff, familiar with working in the national health  
25 protection structure, were in short supply and leaving

1       them in NSS impacted on the ability of PHS to mount  
2       an effective response at a critical time during the  
3       pandemic. It created artificial barriers to effective  
4       working at a time when this was desperately needed.  
5       Staff on both sides became distracted by trying to work  
6       through new arrangements etc. This was avoidable and  
7       unnecessary."

8               In particular --

9   LADY HALLETT: I'm sorry to ask, Mr Dawson. I think the  
10       public gallery look as if they're being frozen. Can we  
11       please -- one lady has already had to leave because she  
12       was so cold, and I've seen others shivering. If we  
13       could sort that out rather than -- we don't want to  
14       freeze our audience.

15               Sorry, Mr Dawson.

16   MR DAWSON: I did warn you about coming to Scotland ...

17   LADY HALLETT: I don't think it's meant to be that cold  
18       indoors, though.

19   MR DAWSON: Thank you, sorry.

20               Professor Phin, we were asking you about this  
21       administrative change, and in particular in light of the  
22       evidence that Dr McMenamin's already given about the  
23       earlier period before April and the extent to which the  
24       pressures had driven the HPS service to near breaking  
25       point.

1           Could you assist us with your apparent view that you  
2           think this separation should not have gone ahead, in  
3           particular as regards the effect that you think this may  
4           have had on the effectiveness of the response?

5   DR PHIN:  Yes, I think people maintained a very professional  
6           approach to this separation, they tried not to let it  
7           get in the way of any sort of barriers to useful  
8           working.  However, what effectively happened was that  
9           Health Protection Scotland lost a third of its workforce  
10          in -- when we became Public Health Scotland, and over  
11          the period of the pandemic we found ourselves going  
12          after the same groups of staff.  So we were advertising  
13          to fill posts, and indeed there was movement from ARHAI,  
14          as we describe, ARHAI, to Public Health Scotland and  
15          from Public Health Scotland to ARHAI, which I don't  
16          think was helpful.

17           I think a decision to defer that would have been  
18          useful at the time, and indeed there is a consultation  
19          ongoing at the moment which Public Health as a corporate  
20          body will be contributing to, and we will await the  
21          outcome.

22           What I'm expressing there, I think, is a personal  
23          view based on my experience of working in health  
24          protection over many years, and that ARHAI equivalent in  
25          Public Health England having -- working extremely well

1           within Public Health England. So again this is  
2           a professional perspective.

3   MR DAWSON: Because one of the things that the Inquiry is,  
4           of course, interested in is the extent to which it might  
5           make recommendations to try and make response in any  
6           future pandemic better, and I'm sure you are both also  
7           engaged in that process regularly. It did occur to us,  
8           on reading these comments and others, that this  
9           administrative separation -- which of course had been  
10          pre-planned many months before, and no one knew there  
11          would be a pandemic -- would be something perhaps that  
12          we might consider as being something that would improve  
13          any future response.

14                Would you agree with that, Professor?

15   DR PHIN: I would. I mean, if you look at health  
16          protection, health protection is an umbrella term  
17          describing all aspects. We cover vaccination, we cover  
18          infection control, antimicrobial resistance, we interact  
19          with animal health, we interact with the food industry,  
20          FSA. So health protection is that umbrella under which  
21          we all operate and we all work. Clearly people develop  
22          special interests, we have off elements where it's  
23          appropriate to develop and garner expertise, but  
24          ultimately working as part of that larger health  
25          protection organisation, we're able to flex people to

1       where they may be needed in the event of, let's say,  
2       a large food-borne outbreak or, as indeed in this  
3       situation, in a pandemic.

4             So being able to have that overarching health  
5       protection structure I would say is a key issue going  
6       forward.

7   MR DAWSON:   Thank you.

8             One of the things I just wanted to follow up on was  
9       that I think, Dr McMenamin, you said earlier that one of  
10      the important functions of ARHAI was development of  
11      guidance for infection prevention and control in  
12      hospital settings. Did that part of the operation also  
13      provide such guidance for social care settings?

14   DR McMENAMIN:   So, yes, they made a significant contribution  
15      potentially to anything that we were offering for  
16      setting specific information, but in the main the  
17      priority, as the name suggests, of -- for their full  
18      name, for their abbreviation, was that their principal  
19      focus was always to be in the healthcare settings.

20             So outside of that, they were able to, where it was  
21      possible, begin to offer advice, but in the main it was  
22      a healthcare offer of that advice.

23   MR DAWSON:   I think at paragraph 11.4.2 of the corporate  
24      statement it suggests that their role covered both  
25      health and social care, but is that to be understood

1           with the limitation that they played some role in that,  
2           as I understand what you're saying, but not their  
3           priority was hospital (inaudible)?

4   DR McMENAMIN:  We're probably the wrong people to ask,  
5           because given that that separation from 1 April 2020 --  
6           but we can perhaps offer our understanding about that,  
7           but it would be good to confirm anything that we're  
8           saying with our ARHAI colleagues.

9   MR DAWSON:  Yes.  The reason obviously I'm interested in  
10          that, to be candid, as you will have worked out,  
11          Dr McMenamin, is over the period that we are interested  
12          in at the very beginning of the pandemic --

13   DR McMENAMIN:  Yes.

14   MR DAWSON:  -- you will be aware that there were many, many  
15          infections and deaths in care homes in Scotland.

16   DR McMENAMIN:  Yes.

17   MR DAWSON:  That's an important part of the module that  
18          we're addressing here, and we'll come on to some  
19          elements of that in due course, but --

20   DR McMENAMIN:  Yes.

21   MR DAWSON:  -- I'm interested in the extent to which the  
22          reorganisation, or indeed inadequacies in the ARHAI role  
23          in providing guidance to, rather than to hospitals, to  
24          care home settings, created a potential problem, given,  
25          as we have heard from witnesses, including

1 Donald Macaskill of Scottish Care yesterday, that there  
2 was a clamour really within the care community for  
3 guidance as to how operate effective infection control  
4 within an environment such as a care home, which --  
5 DR McMENAMIN: Yes.  
6 MR DAWSON: -- as I'm sure you'll be aware, is difficult to  
7 do.  
8 DR McMENAMIN: Yes.  
9 MR DAWSON: So can you help us, either of you, from  
10 a corporate view or from your own personal perspective,  
11 Dr McMenamin, as to whether there was a deficiency in  
12 the service being provided at that time with regard to  
13 guidance, which resulted either from the reorganisation  
14 or from the fact that it wasn't clear that guidance to  
15 be provided to care homes was a priority in this public  
16 health service?  
17 DR McMENAMIN: So I don't recognise that as being any  
18 deficiency. Our colleagues in infection prevention and  
19 control were able to make clear a very articulate  
20 recommendation about what would be advisable in the  
21 setting for health and social care, and they certainly  
22 were very much part of the guidance team and the offer  
23 of advice that covered this important period across  
24 March and April of 2020 onwards.  
25 MR DAWSON: Just to be clear -- sorry, before I come to you,



1       Professor -- there might be a difference in the type of  
2       guidance being provided, because guidance could be  
3       provided to government as to what they should do about  
4       it, but I mean guidance being provided to the sector  
5       itself.

6   DR McMENAMIN:  Yes, and indeed my infection prevention and  
7       control colleagues were making significant contribution  
8       to any of the guidance that was being issued either by  
9       Health Protection Scotland before the end of March 2020  
10      or thereafter from Public Health Scotland.

11  MR DAWSON:  Yes, thank you.

12               And, Professor, you have a view?

13  DR PHIN:  Well, it's just to say that, you know, we didn't  
14       start from scratch when the pandemic started.  
15       Healthcare in social and healthcare settings have for  
16       many, many years been dealing with outbreaks of flu,  
17       norovirus, et cetera, in healthcare and in the  
18       community.  So there are well established processes  
19       around infection control within the social care setting.  
20       In addition to that, we have local health boards which  
21       have got health protection teams, and we made clear in  
22       a number of iterations of the guidance that was  
23       subsequently issued that healthcare -- social care  
24       settings should approach those health protection teams  
25       if there was any concerns or if they needed advice

1           around the implementation or understanding.

2           So, you know, we didn't start from nothing, there  
3           was existing principles, there were existing processes  
4           in place, and it was simply a case of trying to adapt  
5           those to the peculiarities of the themes or the things  
6           that were emerging from this particular pandemic.

7   MR DAWSON:   There's just one other aspect of the  
8           reorganisation which I'd just like to give you the  
9           opportunity to comment on.   I think we may have touched  
10          on this already, but Chris Robertson -- who's the  
11          Chief Statistician, I think, at HPS -- said in his  
12          witness statement to this Inquiry that:

13                "Almost certainly the formation of PHS in April 2020  
14                initially had a major negative impact on the management  
15                of the pandemic in Scotland, as there was a whole new  
16                layer of senior management who the senior consultants  
17                had to report to.   The management structure of PHS was  
18                more complex than HPS, and the whole organisation much  
19                larger.   In addition, many of the senior leaders on the  
20                PHS board did not appear to have extensive experience in  
21                managing a pandemic response and were new and external  
22                appointments."

23           So this is an aspect of the reorganisation which  
24           a witness who was involved is suggesting may have had  
25           an impact on the response, and one might reasonably

1 think that such a reorganisation of senior management  
2 would have an impact on direction, control and the  
3 ability of the organisation to function as fully as one  
4 needed at that time.

5 I'd be very interested to hear your perspective on  
6 that, whether you agree with it or not, from a corporate  
7 or indeed individual perspective.

8 Dr McMenamin?

9 DR McMENAMIN: I recognise everything that you've said that  
10 Professor Chris Robertson has written. In practice,  
11 I can see much of what Chris has written is something  
12 which was either being addressed but was perhaps  
13 interrupted, or at least the speed with which people  
14 could come to common understanding was interrupted  
15 because the pandemic was so demanding of our time. But  
16 nonetheless our chief executive and the interim clinical  
17 director in Public Health were instrumental in trying to  
18 overcome some of the immediate difficulties that we had,  
19 particularly about expanding our workforce. Which is  
20 always going to take time because you -- the specialists  
21 that we needed to grow or acquire from elsewhere were  
22 going to take that time.

23 It's certainly unfortunate about the timing of the  
24 creation of the organisation, but nonetheless important  
25 that we went ahead with that, and that as we pulled

1           together, as the teams across all of those organisations  
2           coming together, we had very, very good buy-in from all  
3           of those team members. So at a practical level we could  
4           see the immediate benefits of having increased access to  
5           the same workforce who had joined us from NSS, who were  
6           part of an original organisation, Information Services  
7           Division, but also some of the expertise that our  
8           colleagues from Health Scotland were bringing to this,  
9           and in particular -- and if opportunity arises in the  
10          discussion to talk about inequalities -- their great  
11          experience was going to be very, very helpful over those  
12          coming months as we began to look at that.

13   MR DAWSON: Thank you.

14           I would like to just say to you, Dr McMenamin, that  
15          my question doesn't seek to imply any criticism in any  
16          way. This was a pre-planned reorganisation which came  
17          at a really extremely unfortunate time. It is part of  
18          our remit, however, to explore as a matter of fact --

19   DR McMENAMIN: Yes.

20   MR DAWSON: -- whether that reorganisation did impact upon  
21          the response which this important organisation could  
22          provide, and support and advice that it was obviously  
23          was called upon to do.

24           Do you think overall that it did as a matter of  
25          fact, without suggesting any culpability or anything of

1           that sort?

2   DR McMENAMIN:  It certainly may have affected some of our  
3           initial work, but work before PHS was formed had already  
4           been enabled by the appointment of a chief executive who  
5           was working in the background to make sure that that  
6           transition could be as smooth as possible.  But  
7           I certainly could not disagree with you that that was  
8           challenging because we had to expend time and energy  
9           that otherwise we wouldn't have had to -- with getting  
10          to know new colleagues who were going to be instrumental  
11          in helping us doing things.

12  MR DAWSON:  Thank you, Dr McMenamin.

13           Professor?

14  DR PHIN:  Yeah, from a corporate perspective, although not  
15          around at the time, I worked extremely closely with  
16          chief exec and my other colleagues from January 2021  
17          onwards.  Looking through and talking to them, it was  
18          very clear that there was a recognition they were new to  
19          this, and therefore they followed almost to the letter  
20          the advice that Jim and his team was giving them about  
21          what was needed, what resources needed to be deployed,  
22          and I saw nothing to suggest that there was any  
23          reticence about moving people into support it.

24          So it's not something I recognise in the sense that  
25          PHS actually provided greater flexibility.  There were

1 more resources to pull on, albeit not trained  
2 specifically in health protection, but everyone made  
3 a contribution and I would say that the establishment of  
4 that team across the wider remit actually helped bolster  
5 the response and, as I say, I saw nothing to indicate  
6 that the advice about how it should be structured, how  
7 it should be resourced was ever rejected, and in fact it  
8 was supported as best was possible at the time.

9 MR DAWSON: Thank you, Professor.

10 With my apologies for overrunning, my Lady, that  
11 would be a moment to break.

12 LADY HALLETT: No, not at all. People probably don't know  
13 as yet, we may have to sit a little later tonight. So  
14 I shall return at -- we'll have a slightly shorter break  
15 in case we need to have another break later, and I shall  
16 return at 3.20. And by the looks of it, we're not  
17 freezing members of the public gallery any more; good.

18 (3.08 pm)

19 (A short break)

20 (3.20 pm)

21 LADY HALLETT: Mr Dawson.

22 MR DAWSON: Thank you, my Lady.

23 Moving into a slightly different area, we are  
24 of course in this module concerned primarily with  
25 looking at political decisions made by primarily the

1 Scottish Government but connected with Scotland, and we  
2 are asking you questions to try and understand your role  
3 in that process.

4 In your report, Professor Phin, you say at  
5 paragraph 1.4.4 of the report, INQ000339576, 1.4.4,  
6 where you say, reading from roughly the middle:

7 "PHS had therefore minimal opportunities to provide  
8 Ministers with a first-hand account of the thoughts of  
9 senior staff in PHS or to make them aware of the  
10 practical implications of policy decisions. The main  
11 mechanism by which PHS was able to provide advice to  
12 Scottish Government was through the NIMT."

13 To which I will return imminently.

14 Do you think that PHS could or should have been able  
15 to provide more direct information and advice to  
16 ministers, given their central role in the public health  
17 response?

18 DR PHIN: Yes, I was contrasting the approach in Scotland  
19 with that experience then for the 12 months in England,  
20 and right from the start PHE -- either myself as one of  
21 the incident directors, one of my medical director or  
22 director of health protection -- would be involved in  
23 face-to-face discussions with the minister, they would  
24 be attending COBR, the COBR meetings, and there would be  
25 in the room present providing direct advice, based on

1       largely our experience of: if you were to introduce this  
2       policy, this is what it could mean on the ground, these  
3       are the issues that we'd have to think through.

4             With the greatest of respect to colleagues in  
5       Scottish Government, they were working at a national  
6       level, they were not working -- well, they, I've(?)  
7       understood I think what the local implications, the  
8       restrictions, the limitations indeed, on what could be  
9       done with the public health workforce. So very much  
10      being able to be in the same room, advise, point out the  
11      implications, I think, was really important.

12   MR DAWSON: Did that create a situation where decisions may  
13       be made about restrictions which might be incapable of  
14       being delivered on the ground?

15   DR PHIN: Yes, I think we've given a couple of examples, one  
16       around borders where there was an expectation that  
17       somehow we would be going out, checking up on people as  
18       to whether they were maintaining quarantine, and I think  
19       there was a reasonably robust exchange between our chief  
20       executive and Scottish Government saying that just  
21       wasn't a feasible option, we didn't have the legal  
22       powers, and in any sense, you know, it wasn't something  
23       that we could do. But nevertheless we were instructed  
24       to try and enquire about people's wellbeing and provide  
25       them with information, but equally if they didn't



1       respond there was an implication that we should somehow  
2       report this to Police Scotland. And again that is  
3       outwith anything that we would normally do, and had we  
4       been available we could have pointed out some of the  
5       limitations of that approach.

6   MR DAWSON: Do you think, other than just the practical  
7       issues and potential problems that that causes, do you  
8       think that that represents perhaps a gap in the  
9       knowledge base available to the Scottish ministers in  
10      making decisions, because it may be if they were aware  
11      of those practical limitations they would have chosen  
12      an alternative way of managing the pandemic, for example  
13      in the borders situation that you're suggesting?

14   DR PHIN: It's possible, and I would be speculating if  
15      I gave an opinion one way or the other. I'm simply  
16      noting that the difference, the contrast between England  
17      and Scotland where, if you like, the public health, the  
18      health protection advice was round the table, providing  
19      it directly. That's not to say it was always listened  
20      to, but at least there was an opportunity to put those  
21      points across, and we were working, if you like, through  
22      a filter, you know, people were interpreting what they  
23      heard and they were then trying to then re-interpret  
24      that in the context of what they were being asked.

25            So being there, being able to clarify things at that

1 point, I think could have been extremely beneficial.

2 MR DAWSON: I think you mentioned there was another example

3 other than borders that you had considered.

4 DR PHIN: Yes, I mean ... yes, there was another, and I'm

5 trying to think what it was. Apologies, I can't

6 remember, but if it comes to me, I'll --

7 MR DAWSON: Thank you, I appreciate that.

8 Just staying in your statement there, Professor,

9 there was another issue I wanted to raise with you at

10 paragraph 1.4.3, the immediately preceding paragraph.

11 You enumerate(?) some of the challenges faced by those

12 responding to the pandemic included the need for

13 definitions used for certain key data items, their

14 significance and the frequency of reporting to change

15 over the course of the pandemic; and I think you

16 highlight there, without going through all of the text,

17 that there was an issue in this regard where PHS had

18 suggested that a definition relating to deaths,

19 mortality figures, would appropriately be changed in

20 order to try to maximise accuracy and that that proposal

21 was refused by the Scottish Government because they had

22 become used to the way in which the definition had

23 operated up to that point.

24 Can you add anything to that?

25 DR PHIN: Well, yes, I mean, that was one example you've

1       given. Another example was in relation to our  
2       definition of a patient in hospital with Covid, which  
3       was -- the definition that had been used was 28 days, so  
4       that was then used to understand occupancy, who was  
5       occupying beds in hospital. The reality was that,  
6       you know, 28 days is a long time, most people would have  
7       been recovered, therefore they weren't occupying a bed  
8       because of Covid, and back in November, I think it was,  
9       2022 we proposed the change to bring that down to  
10      14 days. This was supported by CMO's office but it  
11      wasn't until May 2023 that that change was actually  
12      introduced. So that was nearly six, seven months, and  
13      we reckoned, we estimated that using that original  
14      definition we were overestimating the number of people  
15      in hospital by something like 24%, and if you're trying  
16      to make planning assumptions, that's quite a lot of  
17      people that you may be overestimating --

18   MR DAWSON: I think perhaps we touched on this with your  
19      colleague Mr Heald, it was because the definition of  
20      being in hospital 28 days after the test may include  
21      people who are no longer suffering from Covid --

22   DR PHIN: That's right.

23   MR DAWSON: -- but were in hospital for another reason. But  
24      the point here is that these were matters on which PHS  
25      made representations to the government to try to improve

1           the system, but that these were rejected.

2   DR PHIN:   Yes, they were eventually implemented --

3   MR DAWSON:   Yes.

4   DR PHIN:   -- but it was after some time --

5   MR DAWSON:   In the intervening period, PHS's position would

6           be that the data provided was not as accurate as it

7           might have been?

8   DR PHIN:   Yes.

9   MR DAWSON:   I wonder if I might then move to the NIMT and

10           I think, Dr McMenamin, in relation to this.  You were

11           the chair of this body.  The PHS corporate statement

12           states that:

13               "HPS set up a National Incident Management Team that

14           met for the first time on 13 January 2020.  The

15           composition of the NIMT was dynamic and adapted to the

16           evolving response to the pandemic.  NIMT members include

17           local health board directors of public health, Scottish

18           Government policy and analytical advisers, the CMO and

19           representatives from local government and PHS teams.

20           Attendees changed over time between the initial set-up

21           in January 2020 to the formalisation of the group and

22           the agreement of the terms of reference in

23           September 2020."

24               Was the NIMT a body that was created simply to deal

25           with the Covid crisis, or was it a concept that could be

1 brought together to deal with an emergency of the nature  
2 of the Covid crisis, the idea of which already existed?  
3 DR McMENAMIN: Okay, so in reverse order, I think, to what  
4 you just asked me: the "Managing incidents of public  
5 health concern" which has been in place as a document  
6 that a number of stakeholders assisted us to generate  
7 from the Scottish Health Protection Network was  
8 a long-standing approach for how we dealt with any  
9 incidents, no matter their size, about what should or  
10 could be done and who might be able to assist you in  
11 delivering the response that was required to bring that  
12 issue under control.

13 Our initial incident management team met, as you  
14 said, for the first time in January and I think we've --  
15 we met something like 169 times. I think I might have  
16 been the chair 162 of those 169, and Nick maybe three or  
17 four of those, whenever I got benched to take leave or  
18 something else. So that group was really important in  
19 helping us to deliver everything that we then hoped to  
20 be able to deal with on a national basis, dealing with  
21 whatever the emerging issue was of the time.

22 And certainly from my perspective it was the  
23 privilege of my working lifetime to be able to be the  
24 chair of that group, because I don't think I've ever  
25 come across a group of colleagues who were as dedicated

1           to try and make sure that they managed Covid as best as  
2           was humanly possible to reduce the impact on the  
3           population.

4   MR DAWSON:   Thank you.

5           Just to tie into one of the answers that  
6           Professor Phin gave a moment ago, my understanding is  
7           that the CMO sat on that group; is that correct?

8   DR McMENAMIN:   Yes, that's correct.

9   MR DAWSON:   And you mentioned earlier that one of the  
10          reporting mechanisms of PHS, or HPS as it was at that  
11          time, was through the CMO, and I think the passage we  
12          went to before suggested that because there was not  
13          direct contact with ministers, as there had been in  
14          Professor Phin's experience in England, the NIMT was the  
15          main reporting mechanism.

16          Was it therefore the case that the CMO attended  
17          meetings and that whatever input the group could have  
18          the CMO then took away and fed into the Scottish  
19          Government machine?

20   DR McMENAMIN:   I think it was both directions, it was  
21          imparting any urgent issues for the incident management  
22          team to be able to address, but also hearing first-hand  
23          what the intelligence was that was being offered in each  
24          of the meetings about what were we seeing, what if  
25          anything was working in control of the cases that we

1       were seeing, and instances where that was not the fact,  
2       but either that we were seeing an increasing number of  
3       cases, that's to say that whatever policy issues had  
4       been implemented were not having the effect that they  
5       should or, particularly once we had the availability and  
6       deployment of vaccination, just what were we beginning  
7       to see. That allowed us to have the advice that we were  
8       offering from NIMT to come in through the formal  
9       four harms reporting arrangement, which I'm sure that  
10      we've been through over the previous days.

11   MR DAWSON:   Yes.

12   DR McMENAMIN: And offered that opportunity to also have in  
13      that four harms meeting that direct representative, the  
14      CMO, able to give an update to which I, as the chair, or  
15      whoever was attending on behalf of PHS, able to  
16      supplement that with any additional points that were  
17      felt to be important.

18   MR DAWSON:   When you say that the NIMT was able to report  
19      and feed into the process local experience -- you've  
20      talked about outbreaks, the effect of vaccination -- was  
21      it possible through that mechanism to feed through local  
22      health experience, so in hospitals and the NHS, the  
23      frontline, if we can call it?

24   DR McMENAMIN: Indeed. However, within the four harms  
25      exposure of all of that information, our representative

1 colleagues, as directors of public health, or I think  
2 from one of the colleagues that you had yesterday on  
3 behalf of COSLA, Solace, hear that local representation  
4 about: yes, this is something that we agree with, or  
5 their opportunity to offer any contrary view.

6 MR DAWSON: I'm particularly interested in the extent to  
7 which it was possible to get frontline NHS information  
8 into the machine through that; that was part of it?

9 DR McMENAMIN: Absolutely, yes, that is part of that. My  
10 principal role in garnering all of that advice then was  
11 to make sure that we had representation from all of our  
12 NHS boards and, through COSLA and Solace, opportunity to  
13 hear exactly what the intelligence was from those local  
14 areas about just exactly how bad a problem were they  
15 seeing, what was working, what did not, and that allowed  
16 us to contextualise any of the advice that we were then  
17 offering about the societal measures that were  
18 implemented at the time, or later the impact of  
19 vaccines.

20 MR DAWSON: Okay, thank you.

21 What prompted the NIMT to be set up on  
22 13 January 2020?

23 DR McMENAMIN: As part of our managing incidents of public  
24 health concern, there's a set choreography for what we  
25 would do where: is there a problem? A problem



1           assessment group, and that can be called by any of the  
2           constituent members -- in this instance an internal  
3           issue within Health Protection Scotland -- and  
4           thereafter say: we think that there's something that at  
5           the very least that we need to begin to prepare for,  
6           where we can say there's unusual infection in China  
7           which is unexplained, appears to be causing severe  
8           illness and was a recognised first step then where we  
9           implemented that to try and ensure that we were  
10          beginning to prepare for dealing with any increase in  
11          cases, should we see any.

12   MR DAWSON:   So do I take it, then, that the instigation was  
13                  from within HPS itself?

14   DR McMENAMIN:   Yes.

15   MR DAWSON:   It wasn't the Scottish Government or anything  
16                  telling you to do that; you yourselves put that body  
17                  together?

18   DR McMENAMIN:   That's correct, and indeed that would be the  
19                  normal circumstance for almost every incident management  
20                  team that we've ever created.

21   MR DAWSON:   What advice generally was being given over the  
22                  period between January and February, to the end of  
23                  February let's say, through the NIMT to the government  
24                  about the nature of the threat?

25   DR McMENAMIN:   So in I think almost a daily basis that we

1       have opportunity, through our national incident  
2       co-ordination, to be able to meet with a variety of  
3       stakeholders which included government, not just for the  
4       Chief Medical Officer who you've mentioned already, but  
5       also for a number of liaison colleagues within the  
6       policy side of government to hear exactly what was the  
7       feedback from our NHS board or indeed local authority  
8       colleagues about just what they were seeing.

9               Now, I've already mentioned that early on, that we  
10       necessarily were investigating any returning traveller  
11       who might meet a case definition, but the first  
12       identification of a new case for the first time in  
13       Scotland was not until the report on 1 March of 2020.

14   MR DAWSON:   So there was little local information one could  
15       give, but were you looking at other sources, for example  
16       you mentioned earlier getting information from England  
17       or internationally, you obviously --

18   DR PHIN:    Indeed.

19   MR DAWSON:   -- somehow found out about the virus from China  
20       in the first place. So what was the tenor of the advice  
21       about the threat? I mean, it seems that there is other  
22       evidence which is available to this module from another  
23       epidemiologist who was expressing, he says, considerable  
24       concern about the threat over this period to the Chief  
25       Medical Officer. Was that the tenor of the advice being

1           given by NIMT at that stage? Because obviously there  
2           was little local information.

3   DR McMENAMIN: Indeed. I think across the UK, whether it  
4           was through Professor Woolhouse directly or whether it  
5           was from a variety of colleagues who were reporting to  
6           us, Professor Phin in his prior role, or indeed other  
7           colleagues in England, but also any feedback that we had  
8           from colleagues in the World Health Organisation or  
9           elsewhere, where this distillate of information was  
10          demonstrating a picture of gradually escalating,  
11          a ramping up of concern across the month of January and  
12          February, particularly once we saw that this was not  
13          just an isolated problem confined to the shores of  
14          China, but rather one which was beginning to hit home  
15          closer to home, whether that was Italy or elsewhere.

16   MR DAWSON: So by the end of February, what advice had been  
17          given by NIMT about the threat to Scotland to the CMO or  
18          Scottish Government?

19   DR McMENAMIN: That there was this gradual escalation of  
20          threat that we could see and that the important  
21          grouping -- that we haven't yet moved on to consider --  
22          is the advice that was coming through from SAGE, the  
23          Scientific Advisory Group for Emergencies --

24   MR DAWSON: Yes.

25   DR McMENAMIN: -- along with any advice from the New and

1 Emerging Respiratory Virus Threats Advisory Group  
2 (NERVTAG), both of which bodies I was sitting on.

3 That international experience was feeding in through  
4 both of those groups, and was being fed in in parallel  
5 to anything that we were seeing locally, where that  
6 international concern fuelled by any of the modelling  
7 scenario output by SPI modelling group was certainly  
8 very, very influential in describing what was happening  
9 abroad and what might happen next.

10 MR DAWSON: Given that international perspective on the  
11 threat which you were also part of, as you said, on  
12 those committees, and indeed your knowledge about  
13 epidemiology, what advice was being tendered at a local  
14 level to Scottish Government about the need to consider  
15 precautionary measures that would need to be taken,  
16 for example the ramping up of PPE, the development of  
17 a testing regime during the month of February, let's  
18 say?

19 DR McMENAMIN: Well, I think, looking back on things, we had  
20 not the position that we perhaps enjoyed at the peak of  
21 where we were able to do a million tests a day, but  
22 rather that we had a limited number of tests from about  
23 the middle of February onwards from, you know,  
24 February 10, maybe we had to do -- the capability to  
25 offer something between 350, 375 tests per day from

1 a new testing system that was available to be deployed.  
2 And I think that that was reflecting in what we were  
3 advising, which was: we think that there is  
4 an escalating issue internationally. We at that point  
5 had not seen any human cases being identified in  
6 Scotland, but we had seen some cases identified in  
7 England, and indeed across the month of February we were  
8 aware of the first of the death reports that were  
9 beginning to come through about that. So the advice  
10 that we had then was: we need to be prepared to  
11 escalate. It was over to our government colleagues who,  
12 on a societal perspective, were beginning to put the  
13 machinery in place to begin to generate what you've then  
14 taken us into, which is: and what should we do about PPE  
15 which is already stockpiled, what should we do about any  
16 of the other planning that we need to have in place?

17 MR DAWSON: One thing that you've alluded on as being the  
18 actual course of events is it does take a while to ramp  
19 up testing, it takes a while to acquire PPE, one needs  
20 to work out what the current state of stocks and  
21 capacity is.

22 Given the emerging nature of the threat -- as you  
23 said, the gradual nature, the emergence of cases in  
24 Europe, deaths in Europe -- to what extent do you think  
25 that the message being given to government from any of

1           these bodies on which you were sitting was one of  
2           urgency such that, even although the threat may not  
3           materialise, if it does, one needs to be more ready than  
4           we actually were in Scotland?

5   DR McMENAMIN: I think that the primacy of the offer of  
6           advice here was one where we recognised that that prime  
7           influencer of what should happen next needed to be the  
8           SAGE group. They were informed by NERVTAG, informed by  
9           SPI modelling group, of course informed by any of the  
10          national health protection agencies across the UK, but  
11          the primary recommendations were going to stem from what  
12          our SAGE colleagues were saying.

13   MR DAWSON: Is that because those bodies had access to the  
14          best available information?

15   DR McMENAMIN: It's not just that they, like us, had access  
16          to that information, but rather that they had the brain  
17          power in the room to be able to make that determination  
18          and recommendation or advice that was then going to UK  
19          ministers or being offered to ministers across each of  
20          the devolved administrations.

21   MR DAWSON: Thank you.

22                I think the professor is keen to say something on  
23          this subject.

24   DR PHIN: I just wonder if a little bit of context might be  
25          helpful here.

1           We've got to just reflect back to the 2009 pandemic.  
2           During the 2009 pandemic many people, organisations  
3           globally were heavily criticised for overreacting to  
4           what turned out to be a relatively mild infection.

5           So in the people looking at this, there was the  
6           context: at what point do we say this is mild and it's  
7           going to be a serious condition? So that was going  
8           through people's minds.

9           The second thing is that the information we were  
10          getting out of China suggested that this originated in  
11          a wet market or seafood market -- wet being, you know,  
12          live animals as opposed to wet in the sort of colloquial  
13          sense -- and therefore people were watching and waiting:  
14          is this going to be something where there is evidence of  
15          human-to-human transmission? And once that started to  
16          emerge, that then started to build up a picture that  
17          concern should be taken.

18          The stocks were controlled by UKHSA, and I think it  
19          would be fair to say that in the early weeks UKHSA -- or  
20          PHE, as it was at the time -- would be the organisation  
21          that would take the national, the UK perspective. But  
22          as it gradually started to emerge, the DAs, the devolved  
23          administrations started then to take on responsibility  
24          given that health is a devolved, you know,  
25          responsibility in Scotland.

1           So I think in that context, there was a caution,  
2           there was an uncertainty, the information we were  
3           getting was coming out slowly and, you know, caution was  
4           the day.

5           The last point I wanted to make was about testing,  
6           because I think that was something that came up  
7           yesterday. Until we know the genetic sequence of the  
8           virus, you can't develop a test. That came out in the  
9           middle of January. PHE Colindale worked tirelessly to  
10          develop a test. That then had to be field tested, you  
11          needed a virus to be able to test it against, it needed  
12          to be validated, and it wasn't until 10 February that  
13          Scotland carried out its first test. And that  
14          validation is important, because CDC, you know,  
15          globally -- you know, global body that's held in very  
16          high esteem, developed a test which actually turned out  
17          to be faulty and did not deliver it. So these are high  
18          stakes endeavours.

19          So the first test was in Scotland on 10 February.  
20          350 tests by the end of February, I think it was 1,900  
21          by the end of March -- pardon?

22       DR McMENAMIN: Daily tests.

23       DR PHIN: Sorry, daily tests. These are daily tests, not  
24          weekly tests. Thank you.

25          So wanting to do some of the things that we love to



1 do was constrained simply by the fact that there wasn't  
2 the resource, there wasn't the infrastructure and  
3 indeed, as the pandemic evolved in those early months  
4 into 2020, supply chains were stretched, we ended up not  
5 having enough sample kits because everyone was trying to  
6 get their hands on them.

7 So there were multiple factors here that delayed the  
8 introduction of testing, which I think we all accept now  
9 was an important part of our control response.

10 MR DAWSON: Thank you.

11 You mentioned in your response that the position was  
12 characterised as one of caution, based on the context  
13 that you set out, including 2009. Was it the case and  
14 was it important that advice being given to the Scottish  
15 Government and other governmental bodies didn't only  
16 reflect that caution but reflected an element of  
17 precaution, given the possibility that the reliance on  
18 previous experiences such as 2009 may not turn out to be  
19 how this coronavirus manifested itself?

20 DR PHIN: I wasn't party to those discussions, either in PHE  
21 or in PHS --

22 MR DAWSON: Of course.

23 DR PHIN: -- but I was party to the discussions where we  
24 looked at the evidence, and there was this initial sense  
25 of caution: is this going to be the same as 2009? Have

1       we got evidence that there is person-to-person  
2       transmission, which would be a key feature of  
3       an evolving pandemic? Once we were clear about that,  
4       I can't comment on the mechanisms as to how that was fed  
5       into either Cabinet Office in England or in Scottish  
6       Government. I do know that the CMOs met regularly at  
7       that point to consider it, so I would have expected  
8       there to have been some information being fed in at that  
9       level.

10   MR DAWSON: I was holding off on your response, Professor,  
11       but perhaps more appropriately for Dr McMenamin: was it  
12       your experience, given your involvement in these  
13       advisory structures, that Scottish Government was  
14       getting a message of precaution as well as caution at  
15       this time? Or was, as the professor has suggested, what  
16       characterised the advice being one of caution based on  
17       the previous experiences to which he's alluded?

18   DR McMENAMIN: I think it would be fair to say that both  
19       things were happening, it was caution and precaution.  
20       Indeed, I caught part of the testimony earlier from  
21       Mr Thomson while we were in the waiting area, and  
22       I could see then that that gearing up that was being  
23       discussed was something that, certainly from the health  
24       protection side of public health discussions, was one  
25       that we could see that happening within the discussions

1       we were having then with our health protection and  
2       director of public health colleagues, while at the same  
3       time any discussion that we had with Scottish Government  
4       colleagues, whether it was from the CMO's office or from  
5       policy side, we could see that this was an escalating  
6       concern, and particularly became an escalating concern  
7       once we began to see our first home cases identified  
8       and, in particular, as Professor Phin has just taken us  
9       into, once we had demonstration of community  
10      transmission, onward transmission of this infection to  
11      others in the population, then, yes, that was coming  
12      home to then be truly something which was much more  
13      scary for us.

14   MR DAWSON:   That's a key epidemiological red flag,  
15                I suppose, is it?

16   DR McMENAMIN:   Absolutely.

17   MR DAWSON:   When did that occur in Scotland?

18   DR McMENAMIN:   So I think the demonstration that we had is  
19                from our first case identification that we had on  
20                1 March, the follow-up of those individuals, along with  
21                what our colleagues were doing across the rest of the  
22                UK, we were then able to demonstrate sustained community  
23                transmission by about the middle of the month of march.  
24                That meant then that with -- despite anything that was  
25                being done in the background, meant that we had to have

1           some serious discussion then about what further  
2           escalation needed to be in place and how incrementally  
3           could it be delivered.

4   MR DAWSON:   You've mentioned your involvement in both SAGE  
5           and NERVTAG --

6   DR McMENAMIN:   Yes.

7   MR DAWSON:   -- Dr McMenamin.   The broad question I'm  
8           interested in as regards those bodies is the extent  
9           which you and other representatives from Scotland were  
10          able to voice issues from a particularly Scottish  
11          context in terms of asking questions, seeking  
12          information, feeding information in, or whether you  
13          thought the Scottish participation was suboptimal from  
14          a Scottish public health perspective?

15   DR McMENAMIN:   I certainly don't think it was suboptimal.  
16          Like any new group when it's forming, of course there  
17          are teething difficulties or maybe from time to time,  
18          because of a delivery method for how you communicate,  
19          there can be interruptions in information provision or  
20          you drop off of an invite or something, but all of those  
21          things were really very quickly remedied, in particular  
22          for SAGE.

23          NERVTAG, my status in that group was as a member  
24          because I'm an appointed member to that group,  
25          whereas --

1 MR DAWSON: In private capacity, was it?

2 DR McMENAMIN: That's right.

3 MR DAWSON: Yes.

4 DR McMENAMIN: So that throughout all of that, that group

5 was very, very active in looking at any of the new

6 information. For the SAGE status, I think I'm variably

7 described either as a member or observer, but the key

8 thing was that either of the health protection teams in

9 each of the administrations, along with representatives

10 of the chief medical officers of the UK and the policy

11 side were part of those discussions, and I think that

12 that was a full offer of observer status for those

13 groups, and that I felt at no point any difficulty about

14 being able to contribute, particularly when we had

15 something key to raise, and that in particular when we

16 began to describe the first of the vaccine effectiveness

17 studies, that was very, very welcomed by that SAGE

18 group, as we had something new and important potentially

19 as a path out of the lockdowns that had been in place,

20 and relaxation of societal measures.

21 MR DAWSON: Was that through the EAVE II project?

22 DR McMENAMIN: Yes, that's correct.

23 MR DAWSON: We've heard some evidence about that already.

24 My broad understanding is that that was a project which

25 was able to deliver early, very early, in fact the

1           earliest, I think, information about the effectiveness  
2           of the vaccines in February 2021 --

3   DR McMENAMIN:  Yes, that's right.

4   MR DAWSON:  -- because it was a mechanism that was able to  
5           access information quickly through its previous set-up,  
6           if you like; is that correct?

7   DR McMENAMIN:  Indeed, and that first demonstration of  
8           effectiveness is of somewhere between 84% and 92%  
9           effectiveness for one dose of vaccine on a national  
10          basis was really important.

11           And picking up on something that Nick said  
12          earlier -- I beg your pardon, Professor Phin -- that we  
13          had the forethought to set something up after the 2009  
14          pandemic which was now bearing fruit and was looking at  
15          the whole of the Scottish population to use information  
16          to be able to demonstrate that effect.

17   MR DAWSON:  The EAVE project involved reviving, as I think  
18          you mentioned, a previous project and scaling it up, as  
19          I understand it, to be able to access a huge amount of  
20          information to inform us about --

21   DR McMENAMIN:  Indeed.

22   MR DAWSON:  -- the crisis, and therefore it was in  
23          a position to be able to report quickly on vaccine  
24          effectiveness, as we've discussed.

25           Was it a tool that was used in order to affect the

1       real-time response or did it merely use the same dataset  
2       as was being used in order to inform that response?

3   DR McMENAMIN:   Well, Professor Aziz Sheikh and  
4       Professor Chris Robertson are the key architects of this  
5       from the University of Edinburgh, and through  
6       Professor Robertson who worked with us but is  
7       a University of Strathclyde professor of mathematics.  
8       It was using near real-time data to be able to  
9       demonstrate what our vaccine effect was, but also even  
10      before we had vaccines be able to say something about  
11      who is most at risk of the development of complications  
12      of Covid? The identification of those groups most at  
13      risk led to refinement of the some of the advice that  
14      was then able to be offered on a policy basis. We were  
15      able to use that dataset for validation of risk groups  
16      across the UK and, more than that, it's really important  
17      and I think it's become important for everyone that they  
18      have confidence about: is the vaccine that I'm going to  
19      receive going to make me unwell? And it is important,  
20      then we were able to investigate on a whole population  
21      basis things that might not have been picked up in any  
22      of the initial trials of vaccines but, because you were  
23      using a whole population, and even though you might have  
24      a rare side effect, something is one in a million,  
25      you're able to identify that using that whole population

1           basis.

2   MR DAWSON:   In the period before that, I think you

3           identified that the project was able to achieve research

4           benefit which would assist the general pandemic response

5           by identifying things through the researchers' efforts,

6           such as particularly at-risk groups and that sort of

7           thing, which might not have been something available

8           elsewhere --

9   DR McMENAMIN:   Absolutely.

10   MR DAWSON:   -- of the EAVE II project.

11   DR McMENAMIN:   Absolutely, and that demonstration of this

12           surveillance output and the evaluation of the health

13           policy and health benefit of some of our routine

14           approaches was then immensely useful.   Not just for

15           Scotland, not just for the UK but was internationally

16           greeted with the broad consensus that this was a really

17           dramatic development that globally was then captured in

18           media reporting.

19   MR DAWSON:   We heard from Mr Roger Halliday about the lack

20           of research opportunities and access to data that might

21           have benefitted on a wider scale the pandemic response

22           in Scotland.   Would it be fair to say that EAVE II is

23           the exception to that proposition, very much so?

24   DR McMENAMIN:   In fact that I think went much further than

25           that.   It's integral to what Professor Phin and I, with



1           PHS, are looking at about what should be an important  
2           part of what Public Health Scotland is doing routinely  
3           in the future for the observations about the impacts and  
4           description of risk factors, in particular looking at  
5           the health inequalities issues that our own organisation  
6           is trying to do to not only identify what the  
7           inequalities are, but to assess the interventions that  
8           are there to try and address those inequalities.

9   MR DAWSON:   Thank you very much.

10           I believe, my Lady, we are to have a short break at  
11           this stage for the stenographer.

12   LADY HALLETT:   Because we may be sitting later --

13   MR DAWSON:   Yes.

14   LADY HALLETT:   -- the stenographer literally just needs to  
15           move her fingers --

16   MR DAWSON:   A short break --

17   LADY HALLETT:   -- or she gets very tired.

18   MR DAWSON:   -- would be convenient.

19   LADY HALLETT:   So I'm not going to go very far, I suggest  
20           other people don't go, and I shall return at 4.05.

21   MR DAWSON:   Thank you, my Lady.

22   (4.01 pm)

23   (A short break)

24   (4.05 pm)

25   LADY HALLETT:   Mr Dawson.

1 MR DAWSON: I have some questions for you now, it's about  
2 two things that I think are related, broadly speaking:  
3 care home related guidance, but also something called  
4 the policy alignment check which you cover in your  
5 statements.

6 In relation to the care home guidance, we've heard  
7 some evidence about this already from Donald Macaskill  
8 of Scottish Care, and I think it's fair to say that our  
9 understanding of the responses you have provided in this  
10 area is that, as per your general position,  
11 Professor Phin, you have provided a corporate response  
12 but were not part of PHS at the time of the early  
13 pandemic; and, Dr McMenamin, your position, as  
14 I understand it, is that care home guidance was not  
15 a matter that you had direct involvement in, there were  
16 others who dealt with that, but that very helpfully you  
17 have attempted to answer the question by looking at  
18 contemporaneous materials to assist us as best you can  
19 with the thinking and process behind care home guidance  
20 being issued over that early period.

21 So have I got that correct?

22 DR McMENAMIN: Yes.

23 MR DAWSON: And I think that's an important caveat to your  
24 evidence, that you were not, Dr McMenamin, the person  
25 who was actually dealing directly with this, but that

1           you are assisting us on an informed but slightly  
2           second-hand basis. Is that fair?

3   DR McMENAMIN: Indeed.

4   MR DAWSON: Could I just ask you, first of all, about  
5           aspects of your statement to do with the concept of the  
6           policy alignment check.

7           In particular, Dr McMenamin, you raise in your  
8           statement at paragraph 50.8 some of the challenges that  
9           appear to have been experienced by HPS in the early  
10          stages of the pandemic, trying to reach consensus in  
11          a timely manner. In particular, you refer to some  
12          disagreements with the Scottish Government about what  
13          precise language there should be and indeed who should  
14          take the lead, if you like, in relation to issuing  
15          guidance.

16          I wonder if, perhaps in the specific care context  
17          a bit more generally, you could explain to us the issues  
18          that were experienced, as you understand it, by HPS and  
19          subsequently PHS in that regard.

20   DR McMENAMIN: Guidance spanned the period from March of  
21          2020 onwards. My colleagues within HPS and then PHS  
22          from 1 April were then working collaboratively with  
23          a number of stakeholders to look at whatever guidance  
24          was required in each setting. As you might have already  
25          gathered, that increasing appreciation about what steps

1 would need to be in place, particularly across the month  
2 of March, as we began to appreciate just exactly what we  
3 needed to plan for for Covid, meant that very rapidly we  
4 were trying to come to a conclusion about what initial  
5 guidance might be provided. So, for example, for  
6 care home settings, a provision of an initial response  
7 in which we were in liaison with Scottish Government,  
8 trying to rapidly pull together something for advice.

9 That is something which Professor Phin and all of us  
10 working in health protection are very familiar with,  
11 whenever you have an initial incident response where you  
12 often are giving completely unacceptable timelines to  
13 colleagues to rapidly contribute to information,  
14 recognising that you'll do the best that you can for the  
15 maximum good within the time available to you, knowing  
16 that you may yet have opportunity to come back under  
17 current revisions, over the course of the rest of that  
18 month or later, to try and identify any further wording  
19 change or incorporate any of the new things available.

20 And in particular we've already begun to talk about  
21 what the testing challenge was for us in that the number  
22 of tests that were available per day, talking about the  
23 most good that you could make of those tests was  
24 something which was incredibly clinically challenging.

25 You might imagine if someone is being managed in

1 an intensive care or in a hospital bed and clinically  
2 there are some decisions to be made about what  
3 medicines, et cetera, that they're receiving, that  
4 having priority for testing in that limited testing  
5 environment available to you becomes important, as is  
6 the investigation of incidents and outbreaks.

7 That meant that it's not just our colleagues in  
8 Scottish Care but in fact everyone involved in that  
9 process who is then saying: what can we do to improve  
10 the availability of tests? We might recognise that we  
11 might not have them this very moment to be able to help  
12 with the care home setting, but what can be done to  
13 maximise our availability of those tests, and recognise  
14 that in fact that, as it turned out later, that we began  
15 to incrementally introduce those tests not just to the  
16 individuals receiving the care, but to staff that were  
17 also involved to try and make sure that we, as it became  
18 available to us, could manage that risk.

19 MR DAWSON: You've helpfully told us about the prevailing  
20 circumstances with regard to care home guidance.

21 In trying to combine two topics at once, which was  
22 my fault, I don't think we've heard from you about the  
23 influence, if any, of the policy alignment check,  
24 particularly on the care home guidance in March.

25 Is there, based on your researches, an effect on the

1           quality or timing of that guidance being provided by  
2           HPS?

3   DR McMENAMIN:  Forgive me, but it does sound as though there  
4           might be a misunderstanding about something.

5   MR DAWSON:  Thank you.

6   DR McMENAMIN:  I think within the -- I'm straying into  
7           territory for Professor Phin.  In the corporate response  
8           that we outline, the policy alignment check and the  
9           arrangements for that were really something which  
10          stemmed from the middle of May onwards, rather than in  
11          this initial period that you're speaking to for  
12          care homes, was something which we were looking at from  
13          the middle of March onwards.

14  MR DAWSON:  Right.  So it wasn't an issue, it was simply  
15          because there's a sentence in the corporate statement  
16          that suggests that the PAC process was a direct  
17          consequence of the NHS in Scotland having been placed on  
18          an emergency footing during the period from March 2020  
19          to April 2022, but that may just reflect the entirety of  
20          the pandemic, it may not be that March was when this was  
21          actually an operative issue.

22  DR McMENAMIN:  I think I would understand that the key point  
23          that's been made there is that, rather than Public  
24          Health Scotland -- or their predecessor, HPS -- being  
25          the key body who was responsible for guidance, it

1           changed potentially as of those emergency powers coming  
2           in, because the primacy about who had control about the  
3           final bit of sign-off then becomes the Scottish  
4           ministers, and that that is a key distinction to make  
5           between the period before the institution of the  
6           emergency powers and the period that preceded it.

7   MR DAWSON:   So let me just get this right.   The emergency  
8           powers came in in Scotland on 26 March.

9   DR McMENAMIN:   Yes.

10   MR DAWSON:   Which by your interpretation means that that was  
11           the point at which the Scottish ministers took  
12           responsibility over lockdowns, restrictions and the  
13           like?

14   DR McMENAMIN:   Well, they always did have control about  
15           that.

16   MR DAWSON:   Yes.

17   DR McMENAMIN:   But rather that they, for guidance purposes,  
18           what I'm talking about here, that they had the final say  
19           about --

20   MR DAWSON:   I see.

21   DR McMENAMIN:   -- what should be communicated.

22   MR DAWSON:   Right.

23   DR McMENAMIN:   And communication, then -- as a key part of  
24           what you're trying to do with guidance -- was then their  
25           responsibility.   So that's not to say that of course our

1 government colleagues didn't have a significant input to  
2 anything that we said about guidance as one of our key  
3 partners in that period before --

4 MR DAWSON: Prior to that period, 26 March, HPS would, with  
5 in consultation with others like the government, have  
6 issued guidance of this nature by its own action.

7 DR McMENAMIN: Indeed.

8 MR DAWSON: But then subsequent to that, there was  
9 a requirement, given the slightly changed position of  
10 the Scottish Government in the management of the  
11 pandemic, for there to be greater Scottish Government  
12 involvement in the process and effectively an alignment  
13 check between what you were proposing and what they were  
14 prepared to have put out. Is that broadly the position?

15 DR McMENAMIN: Broadly speaking, without the term "policy  
16 alignment check" having been formally coined, because  
17 that was not coined until some point about the middle of  
18 May.

19 MR DAWSON: So this did not have an effect on guidance being  
20 issued about care homes in March.

21 DR McMENAMIN: Correct.

22 MR DAWSON: The first such guidance having been issued,  
23 I think, on 13 March and that having preceded that  
24 period, that was simply issued by HPS itself; is that  
25 correct?



1 DR McMENAMIN: It was issued by HPS itself following  
2 discussion with a number of our stakeholders.

3 MR DAWSON: Thank you.  
4 Professor?

5 DR PHIN: Yeah, I wasn't there at the time but, like  
6 Dr McMEnamin, I've looked at the notes that were  
7 available, and I think it's important that the guidance  
8 that was issued in March was actually for a care  
9 setting. It wasn't simply care homes. It covered  
10 services delivered in the home, community services  
11 generally. It was a generic document. It wasn't until  
12 later, I think until April, that we actually issued  
13 specific guidance for the care homes, by which time we  
14 were into this situation where sign-off was by Scottish  
15 Government.

16 The policy alignment guidance was absolutely key to  
17 taking forward guidance because, prior to that time, the  
18 challenge that we had was trying to get agreement and  
19 trying to get guidance out in a timely fashion, and --  
20 I think as you will see from some of the evidence we  
21 submitted --there were substantial delays in getting  
22 sign-off, which actually resulted in three or four sets  
23 of guidance actually not being issued but as moving on  
24 to an updated set of guidance. So the whole idea of the  
25 policy alignment is to try and speed up, make the

1 process more efficient, and to address any concerns.

2 I would say that there was an analogy with Public  
3 Health England where we had something called the triple  
4 lock, which was an attempt to try and make sure that the  
5 organisations were all aligned and so that any guidance  
6 that was issued, you know, had the support and clarity  
7 from all organisations.

8 MR DAWSON: Could we look, please, at INQ000101020. This is  
9 the report which her Ladyship has seen before,  
10 "Discharges from NHS Scotland hospitals to care homes  
11 between 1 March and 31 May 2020", published in  
12 October 2020. This is a report that was compiled by  
13 Public Health Scotland in connection with the discharge  
14 from hospitals to care homes over that period; is that  
15 right?

16 DR McMENAMIN: That's right.

17 MR DAWSON: In this report, it is, I think, set out that  
18 guidance was issued by HPS first on 13 March 2020?

19 DR McMENAMIN: Yes.

20 MR DAWSON: And that it suggested a number of things,  
21 including social distancing, essential visits only,  
22 accept admissions to the home if safe, and close the  
23 home if resident tests positive.

24 DR McMENAMIN: Yes.

25 MR DAWSON: That's broadly what the guidance was.

1           Now, you've given an answer to this, I think,  
2           already, but I just want to address it directly.

3           That guidance contains no guidance or suggestion  
4           about the possibility of people being tested, or the  
5           requirement for a test before being moved from  
6           a hospital to a care home; is that right?

7   DR McMENAMIN:  Yes, that's correct.

8   MR DAWSON:  What is the reason why there is no element  
9           related to testing in that advice from HPS, as you  
10          understand it, based on your researches, Dr McMenamin?

11  DR McMENAMIN:  Well, my understanding was about availability  
12          of the tests that would be able to support such  
13          an approach, not just about, as you've just taken us  
14          into, discharge from hospital or admission from home to  
15          a care setting, but also the thinking that was going on  
16          in the background about: what would we need to be able  
17          to test not just those individuals who were in that care  
18          setting but potentially the staff who would be involved  
19          too?

20  MR DAWSON:  So the issue was that, as you said earlier in  
21          your answer, there were no tests and there were  
22          difficulties around prioritising testing at that stage;  
23          is that --

24  DR McMENAMIN:  I think it's the latter, that there was  
25          certainly significant pressure on test availability,

1 dependent upon the setting that we wished to deploy it,  
2 and that there had to be effectively a triage, the  
3 concentration of where did we think the maximal benefit  
4 might derive from that test offer.

5 That's not just from HPS at the time, or ultimately  
6 from PHS, but rather across all of the clinical service,  
7 about what could or should be done there.

8 MR DAWSON: Some might suggest, and indeed have suggested --  
9 and I would like to give you the opportunity, both of  
10 you, to comment on this -- that at that time it was  
11 known that where the greatest need was was care homes,  
12 because the most vulnerable were the elderly and it was  
13 known or ought to have been known that care homes were  
14 generally an environment which had poor infection  
15 control, not at the level of a hospital, such that if  
16 a positive patient were released they would be exposed  
17 to a number of elderly vulnerable patients whom they  
18 would be likely to infect.

19 I simply invite your comment on that, because it's  
20 a matter that's been said to us by several witnesses.

21 DR PHIN: Could I come in on that point? I think -- I don't  
22 know if you're aware of it, but there was a consensus  
23 statement issued on 26 May 2022, and this was  
24 a consensus statement that was commissioned by the  
25 Department of Health and Social Care in England and it

1        was an independent report involving care homes, NHS,  
2        et cetera, and this was looking at the discharge of  
3        patients from hospital with Covid into care homes. It  
4        was a fairly extensive review, it actually used the data  
5        that was provided by Public Health Scotland in coming to  
6        its conclusions, and I think it draws out a couple of  
7        really important issues.

8            I think it recognises that both in care homes and in  
9        hospital we have two things, we've got two high contact  
10       groups, in other words we've got people being provided  
11       by care, very close contact, therefore potential for  
12       transmission is high, and they're both dealing with  
13       vulnerable populations.

14           The conclusion of this report -- and I'm very happy  
15       to forward it to you if you've not already seen it -- is  
16       an acknowledgement that at least some care home  
17       outbreaks were caused, partly caused or intensified by  
18       discharge from hospital to care homes, and I think  
19       that's an important issue.

20           They also identified, as was the case in the Public  
21       Health Scotland finding, that there is an association  
22       between care home size and outbreaks. In other words,  
23       the bigger the care home, the bigger the interactions,  
24       the more potential for outbreaks to occur.

25           And then finally, which I think is a really key

1 issue, is that there was an acknowledgement that  
2 hospital discharges to care homes without testing early  
3 in the pandemic is highly likely to have caused some  
4 outbreaks. However, looking at two outbreaks that  
5 occurred, one in the East of England and one in Norfolk  
6 and Suffolk, the conclusion was that this was not the  
7 dominant driver, and in fact in the East of England  
8 study just under 6% of cases were definitely linked to  
9 hospital, and in fact in the Norfolk and Suffolk  
10 outbreak two out of 89 cases were linked. And again the  
11 conclusion is that hospital discharge was not  
12 a prominent feature of transmission in the healthcare  
13 setting.

14 Instead, and it's in the report so I'm not -- this  
15 is not me saying this -- that care home staff and  
16 visiting professionals were probably the cause of many  
17 of the introductions and the promulgation of infection  
18 within the care homes, and they cite a case in Norfolk  
19 where there were six establishments, genetic sequencing  
20 identified this was not in the hospital, it was not in  
21 the community, it was being transmitted within the  
22 hospital setting.

23 So I'm not sure if you're aware of it, I think it's  
24 useful, because I think it acknowledges that there was  
25 an element but it was not the key, it was not the

1           dominant route of transmission.

2   MR DAWSON: Do we see in either of the boxes on 13 or

3           26 March, which helpfully summarise the guidance, the

4           two pieces of guidance issued by Health Protection

5           Scotland, guidance relating to what should be done to

6           minimise the risk of transmission by care home staff or

7           visiting professionals?

8   DR PHIN: Sorry, I didn't --

9   DR McMENAMIN: For visiting professionals?

10   MR DAWSON: Yes, I'm quoting what I understood

11           Professor Phin to have said was the predominant cause of

12           the trans --

13   DR PHIN: Yes. That was the conclusion from this

14           consensus --

15   MR DAWSON: What I'm asking is whether any guidance was

16           given by this public health body to try to minimise that

17           route of transmission at that time?

18   DR McMENAMIN: If you mean --

19   MR DAWSON: Because I don't see it in the boxes.

20   DR McMENAMIN: Okay. The context here was regarding the

21           care homes, which is what you've put up on the screen.

22           Professor Phin's already taken us into that, there was

23           broader guidance that was available for use across the

24           NHS and other settings, and indeed for the clinical

25           management of individuals in the community. I think

1           that the guidance was perhaps updated five times across  
2           the month of March. I'm not quite sure across the month  
3           of April how many times. But perhaps either  
4           Professor Phin or myself would need to come back to you  
5           about the detail of that specific question that you just  
6           asked.

7   MR DAWSON: It doesn't appear in those boxes.

8   DR McMENAMIN: That's correct, it does not appear.

9   MR DAWSON: Yes.

10           Just to be clear, there was a second guidance,  
11           I think, issued by HPS on 26 March. Did your  
12           researches, Dr McMEnamin, reveal why it was that  
13           a second piece of guidance was necessary at that  
14           particular point? There was a significant change  
15           obviously on 21 April, but why was a second guidance  
16           issued at that time?

17   DR McMENAMIN: I think it would be fair to say that I'd just  
18           covered part of that by saying that each and every  
19           opportunity was made to update any of our guidance, and  
20           that there were five updates to that across the month of  
21           March. Forgive me, but I don't know what the driver was  
22           for --

23   MR DAWSON: Yes. If you don't know because of your limited  
24           involvement, I understand that, Dr McMEnamin.

25           The other major element of these guidances -- other



1       than the fact that they don't require negative tests or,  
2       as was subsequently the case, two negative tests before  
3       a patient or a resident would be allowed to be  
4       transferred from a hospital into a care home -- is that  
5       the infection control measures and social distancing  
6       measures which are recommended here are, according to  
7       those who work within the care profession, completely  
8       unrealistic.

9           For example, "essential visits only" is simply  
10       something that many care home patients, many of whom  
11       suffer from dementia, it's simply not something that is  
12       tolerable. Simply also that the vague suggestion that  
13       there should be social distancing in a care home with  
14       many patients with dementia, for example, is something  
15       at the very least -- if not impossible, is something at  
16       the very least on which further specification would be  
17       required.

18           Have your researches indicated that there was any  
19       consideration in the publication of these guidance or  
20       these very practical limitations on the ability of the  
21       care sector to minimise infection within care homes?

22   DR McMENAMIN: I think, certainly from what I have been able  
23       to see as communications in the background and from my  
24       own recollection of some of the discussions with  
25       colleagues at the time, of course all of those

1       considerations were articulated, not just by  
2       Scottish Care, but were certainly discussed in a number  
3       of meetings across that time, and there were very  
4       passionate presentation of those views by a number of  
5       colleagues, including by Donald Macaskill, in those  
6       sorts of meetings.

7           I think that there was much sympathy for all of  
8       those views, but in practice what we had at the time was  
9       something which was scary because of the large number of  
10      potential deaths that we may yet go on to see at that  
11      time point, and regrettably -- and it is with much  
12      regret that everyone, myself included, in PHS offer our  
13      deep regret about each and every one of those deaths and  
14      that for all of the families of everyone who was  
15      affected by this dreadful infection, and for the care  
16      staff too who managed all of these much loved  
17      individuals in those settings.

18           I think it would be certainly an instinctively human  
19      reaction that of course all of those things were being  
20      considered in each of those settings, but the key driver  
21      was: do the most good that we can. Understandably our  
22      knowledge at the time was as whatever you've seen  
23      documented, and that what we were then offering was the  
24      best advice at the time to try and deal with it, and  
25      that that then dynamically had to change over time as

1 more information became available to us, particularly  
2 once we knew about the offer of tests when that became  
3 available to us.

4 MR DAWSON: Are there any -- given your answer and what  
5 we've looked at, are there any elements of the public  
6 health services and Scotland's role in providing  
7 guidance and support over this period that PHS, as kind  
8 of a legacy body, is able to identify, and are there any  
9 further expressions of regret which the organisation  
10 would like to advance on behalf of PHS to those who lost  
11 loved ones as a result of that mass outbreak of care  
12 home infections?

13 DR PHIN: Yes, I mean, unreservedly. Clearly the pandemic  
14 had an enormous impact and, as you say, a key risk  
15 factor for Covid complications and indeed deaths was  
16 age, older population, those with comorbidities, those  
17 with existing vulnerabilities, and these were the types  
18 of people who actually lived in some of the settings  
19 we're describing at the moment.

20 It's -- I can only offer my sympathy, my  
21 condolences. This was a situation unprecedented. We  
22 were desperately trying to get principles, guidance out  
23 to care homes that they could use and adapt, and I have  
24 to stress that we recognised at the outset we cannot  
25 provide a set of guidance that answers every question,

1       because as you have said there were people with  
2       dementia, there were people with other conditions for  
3       whom different types of care were necessary.

4               So what we tried to produce were some principles,  
5       some key pieces of guidance, and advice, that could be  
6       adapted and used in the healthcare setting -- sorry, in  
7       the social care setting, where the people looking after  
8       those people had the better -- had a greater insight  
9       into what they needed and how to adapt those principles  
10      in a practical and sensitive way.

11             So, yes, we -- you know, my condolences on behalf of  
12      the organisation to all those families and individuals  
13      who suffered.

14   DR McMENAMIN: One further thing perhaps to add is: you may  
15      recognise from the evidence that we've submitted, Public  
16      Health Scotland's role here is in provision of guidance,  
17      it's our local authority and NHS board colleagues who  
18      had the relationship with the care homes and, as  
19      Professor Phin has just taken us into, that opportunity  
20      for those offering care in the community was to make  
21      a dialogue with their local health protection teams and  
22      their public health departments to go through any issue  
23      that they had. That was certainly a really important  
24      thing for those departments to be able to collect any of  
25      the valuable intelligence there and share that, and

1       indeed the very welcome component of Cabinet Secretary  
2       announcement also was the role to try and co-ordinate  
3       activity by the department -- by the department of  
4       public health directors locally to try and address such  
5       circumstance.

6   MR DAWSON:   Those provisions, I think you're referring to  
7       the 21 April announcement?

8   DR McMENAMIN:   Yes.

9   MR DAWSON:   Which is reflected again here.   Is there any  
10       reason for you to think that those provisions could not  
11       have been introduced much earlier, based on your  
12       knowledge of the way that public health and these  
13       organisations and agencies work?

14   DR McMENAMIN:   Yeah, I think from the review of the  
15       information that I see, an earlier step in retrospect,  
16       something which could potentially have been done was  
17       that earlier appeal for better co-ordination.   That's  
18       not to say that any of our colleagues were not doing  
19       their best, but rather it was unclear about who had  
20       overall primacy in being able to make sure that things  
21       were as best co-ordinated as they possibly could be.  
22       I've already said that HPS and PHS didn't have -- we  
23       certainly don't have any legislative power to be able to  
24       do anything for those settings.

25   MR DAWSON:   Yes.

1 DR McMENAMIN: Another body that is there is able to say  
2 something about the care homes, which is the  
3 Care Inspectorate. So for them, working in conjunction  
4 with those agencies who are responsible for the care of  
5 the population, it's the NHS boards and the local  
6 authorities.

7 MR DAWSON: Thank you for that perspective.

8 I'd like to ask you about one other area. I might  
9 be able to cover this without going to the detailed  
10 report.

11 You've helpfully given us some very detailed  
12 information about a particular aspect of the Covid-19  
13 pandemic in Scotland, namely the significance of the  
14 Nike conference which took place in late February 2020  
15 as regards the transmission of the virus.

16 As I think is reflected in reports which emanate  
17 from PHS and you, this is an event which has largely  
18 been portrayed as a superspreader event, but as  
19 I understand it the -- HPS undertook an investigation  
20 into the extent, retrospectively, as to whether that had  
21 in fact been the case or not.

22 My understanding is that the broad conclusions were  
23 that that proposition was in fact not correct, and that  
24 the strain of the virus which had been introduced via  
25 that event could be shown to have died out and not

1       caused a mass outbreak of infection as had been  
2       speculated.

3               Is that the broad conclusion of the report?

4   DR McMENAMIN:   Indeed, the Nike conference wasn't a ground  
5       zero, it was one of at least 200 plus introductions of  
6       slightly different variants of the Covid-19 virus into  
7       the population.   There was some remarkable detective  
8       work enabled by whole genomic sequencing, looking at the  
9       genetic fingerprints of the different variants at the  
10      time which allowed us to demonstrate that the public  
11      health actions that were taken limited the effect of the  
12      spread.

13              The spread within the Scottish and indeed the UK  
14      population was something that appeared to be limited to  
15      those individuals who attended or, for instance, to  
16      households of those individuals, and that that certainly  
17      meant that we instituted a number of local actions to  
18      deal with that.

19              It's certainly fair to say that that was certainly  
20      assisted later by what we then have all come to see,  
21      which is either for Scotland, the rest of the UK or  
22      internationally, across the month of March into April,  
23      all of the societal measures that then kicked in to try  
24      and limit the spread of infection, but we've certainly  
25      not seen recurrence of any of that infection --

1 MR DAWSON: It was that aspect that, not so much relating to  
2 the particular conference strain but the wider  
3 investigation that I was interested in, because I think  
4 what the report shows is that in Scotland on at least  
5 283 occasions during March and February, Covid,  
6 SARS-CoV-2 was introduced into Scotland.

7 DR McMENAMIN: Yes.

8 MR DAWSON: And there is in fact a separate estimate from  
9 another group of 307 over that period.

10 DR McMENAMIN: Yes.

11 MR DAWSON: And that the lineages which were introduced over  
12 that period could be traced to mainland Europe,  
13 particularly Spain; is that right?

14 DR McMENAMIN: I think particularly Italy, Spain and other  
15 European countries, yes.

16 MR DAWSON: Yes, thank you. Spain is just mentioned, but  
17 that -- it is effectively from continental Europe where  
18 Covid came into Scotland over that period --

19 DR McMENAMIN: Yes.

20 MR DAWSON: -- is that what we think?

21 And the study also helpfully indicated that there  
22 was community transmission which was likely to have  
23 occurred in Scotland undetected up to one to two weeks  
24 earlier than the first detected case which was on  
25 1 March; is that right?



1 DR McMENAMIN: Yes.

2 MR DAWSON: And also it suggests that, considering the 14 to  
3 28-day incubation period before seroconversion, the  
4 report concludes that it was likely that the virus began  
5 circulating in Scotland in late February 2020?

6 DR McMENAMIN: Yes, on that basis.

7 MR DAWSON: Yes. So it's a helpful indicator as to what was  
8 actually going on at that time, although of course  
9 unknown.

10 DR McMENAMIN: Indeed.

11 MR DAWSON: Could I ask you about one further aspect of  
12 that, Dr McMenamin? You have in your report some  
13 observations. Another aspect of the Nike conference  
14 which has caused some degree of public consternation is  
15 the fact that information relating to it which was  
16 available to HPS in its investigations but Scottish  
17 Government and other agencies, other public agencies,  
18 was not publicised at that time, which I think created  
19 or contributed to the creation of an apprehension that  
20 something was being hidden from the public and that it  
21 was significant in connection with the way in which  
22 Covid spread in Scotland.

23 You suggest in your report I think that there are  
24 some positive public health reasons for not publicising  
25 the name. I think they include at least the -- your

1       experience that if one does release details of things  
2       like that, that that might reduce the willingness of the  
3       agency involved or the company involved to participate  
4       in initial investigations, which you have said are  
5       important; is that broadly correct?

6   DR McMENAMIN:   That's correct.

7   MR DAWSON:   Would it not have been possible, however, to try  
8       to find a middle ground?   Because the public health  
9       communications policy of the Scottish Government  
10      subsequent to this was based very much on the idea --  
11      the idea -- that the Scottish Government was being  
12      honest with the people of Scotland, and the Nike  
13      conference experience in many eyes soured that  
14      relationship and meant that people did not trust the  
15      Scottish Government.

16            Would it not have been possible to deal with those  
17      public health concerns that you've pointed out by  
18      anonymising but still releasing information so that  
19      people were aware that there was a potential threat, and  
20      perhaps even to reassure them about the fact that HPS  
21      and your colleagues were doing everything they could to  
22      try and keep it under control?

23   DR McMENAMIN:   So in retrospect, yes, that's one certain  
24      area that it could have been done, but with the  
25      agreement of the Chief Medical Officer of the time they



1 LADY HALLETT: Ask your question, Ms Mitchell.

2 MS MITCHELL: I'm obliged. I'll be very, very quick.

3 Questions from MS MITCHELL KC

4 MS MITCHELL: The report you referred to, just so we can be

5 clear I'm talking about the right document, is the

6 consensus statement on the association between the

7 discharge of patients from hospitals and Covid in

8 care homes published 26 May 2022; is that correct?

9 DR PHIN: That's correct, yes.

10 MS MITCHELL: You clearly have a detailed knowledge of that

11 report. The report indicates that in relation to the

12 data from which -- the information you gave about

13 discharge into care homes, that has some important

14 limitations; is that correct?

15 DR PHIN: Yeah.

16 MS MITCHELL: Can you identify what those limitations are?

17 Would it be easier for me to point them out to you, at

18 this time of day, perhaps?

19 DR PHIN: Well, I would be happy to take it and give

20 a fuller response.

21 MS MITCHELL: Perhaps I can just put it this way: the

22 limitations are, I think, broadly speaking, two-fold in

23 relation to the data.

24 The first of these two, what are described as

25 important features of limitations of the data, is that

1       there was lone variable levels of testing in care homes'  
2       populations in wave 1, with variations between areas  
3       depending on testing capacity. Typically, symptomatic  
4       residents admitted to hospital were tested but  
5       asymptomatic residents who were admitted for other  
6       reasons were not routinely tested. So there was  
7       a testing problem: if you couldn't test, you didn't know  
8       where Covid might have come from. Is that correct?

9   DR PHIN: Well, yes, generally, but the two instances are  
10       cited where a study was carried out in the East of  
11       England where they were able to demonstrate that 6% of  
12       cases were linked, and that is where whole genome  
13       sequencing would have been an important component.

14       The other one was an investigation of six  
15       establishments that were linked in Norfolk and Suffolk,  
16       where again two out of 89 were linked through this  
17       genetic fingerprinting --

18   MS MITCHELL: Indeed.

19   DR PHIN: -- able to say these were exactly the same strain  
20       and there was nothing in the community that we were  
21       aware of and there was nothing in the hospital.

22       I think what these are is a consensus statement,  
23       these are a group of people both NHS, social care,  
24       scientists, and this is their conclusion, looking at  
25       a number of different studies, and ... yeah.

1 MS MITCHELL: And indeed their conclusion, that the first  
2 part was that all analysis of the impact of hospital  
3 discharges are limited by two important features of the  
4 available data, the first which was identified, the  
5 second which is no UK country can easily and completely  
6 identify who is resident in care homes or who was  
7 discharged from hospital to care homes because sometimes  
8 the addresses weren't changed. So that is another  
9 limiting factor of the data.

10 And in fact the report ends by saying none of these  
11 problems are fixable retrospectively, meaning that all  
12 of the analysis done are based in data that are less  
13 than ideal. Is that correct?

14 DR PHIN: That is the conclusion of that group. I would add  
15 though that they additionally looked at international  
16 studies, which actually supported the findings of their  
17 conclusion. So I keep going -- I go back to it's  
18 a consensus group.

19 I'm simply reporting and I'm -- I think it would be  
20 obviously relevant to this Inquiry that they had a copy  
21 of that report, given it does highlight some of the  
22 issues that I think have been raised elsewhere.

23 MS MITCHELL: I'm obliged.

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

25 Thank you, Mr Dawson.

1           Thank you both very much. Thank you or a second  
2           time, Dr McMenamin. I'll try not to call you in every  
3           module, but thank you for your help. Thank you,  
4           Professor, for your help too.

5                           (The witnesses withdrew)

6   LADY HALLETT: And I hope that everyone gets as restful  
7           a weekend as possible, and I will see everyone at  
8           10 o'clock on Monday. Thank you.

9   (4.48 pm)

10                           (The hearing adjourned until 10 am  
11                           on Monday, 22 January 2024)

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1	INDEX	
2		PAGE
3	MS LESLEY FRASER (affirmed) .....	1
4		
5	Questions from LEAD COUNSEL TO THE INQUIRY .....	1
6	for MODULE 2A	
7		
8	Questions from MS MITCHELL KC .....	50
9		
10	MR KENNETH THOMSON (affirmed) .....	57
11		
12	Questions from LEAD COUNSEL TO THE INQUIRY .....	57
13	for MODULE 2A	
14		
15	DR JIM MCMENAMIN (sworn) .....	143
16		
17	PROFESSOR NICK PHIN (sworn) .....	143
18		
19	Questions from LEAD COUNSEL TO THE INQUIRY .....	143
20	for MODULE 2A	
21		
22	Questions from MS MITCHELL KC .....	228
23		
24		
25		