

Module 2a – Summary of Evidence – Week Three

Michael Gove (Former Chancellor of the Duchy of Lancaster and current Secretary of State for Levelling Up, Housing and Communities)

I was a conduit between the UK Govt and Devolved Governments

Health is devolved but there is a distinction when you are dealing with a pandemic which is raging across one island, Great Britain. Then I do think that there is a case for saying that there can and should be certain UK wide powers exercised at the centre. I don't think it's a legal principle, I think it is a practical operational question and it relates to how we protect the health of everyone.

My understanding was that if Scotland had wanted to take action like a lockdown that the UK didn't, the UK would have to grant them powers.

I don't think the evidence would justify a view that the UK took decisions and just informed the Devolved Governments of them. There were times the Devolved governments took a different path. A universal approach was desirable but there were occasions when the Scottish Government chose a different comms strategy, different ratios for meeting outside etc.

There were other areas, though, where it was undoubtedly the case that it was the strength of the UK Government that was able to help everyone within the UK to respond better. We would not have been able to secure the effective vaccine roll-out that we did without the UK Government playing the role that it did in setting up the Vaccine Taskforce and so on. I think it is important that recognise that there were critical elements of the pandemic response where we benefitted from having the broad shoulders of the UK Treasury and indeed the international negotiating and purchasing power of the UK Government.

The political aim of the SNP is to destroy the United Kingdom, and from time to time they will make political points to that end. The First Minister and those working for her were thinking Politically at times. The UK did not do the same thing to keep the UK together because we felt was that it was important to ensure that lives were saved across the United Kingdom. I don't agree with Deputy First Minister Mr Swinney that relationships were pretty poor. They were not as strong as they might be because of the divergent views on Brexit but day to day working was effective.

Dominic Cummings didn't want the Devolved Governments in the meetings – he was concerned about leaks. The more people there are in a meeting, the greater the risk of a leak.

12 March there was COBR meeting. The Scottish Government was minded to advise against gatherings of more than 500 people. Their rationale for this to allow healthcare workers to prioritise treatment for Covid-19. Our position was that there was a not a science case for cancelling such events so it was agreed that the CMOs of the 4 nations would prepare and advice and COBR would keep it under review. That afternoon Nicola Sturgeon announced that she was banning gatherings of 500.

The minutes record that we agreed that we would defer any announcement until further consideration, and it certainly wasn't the case that the First Minister had indicated that immediately after that meeting that she would announce such a policy. People were unhappy about the jumping of the gun. There was

an expectation that the discussions were confidential. I do think it was an error on her part but that should not prejudice good working going forwards. The PM was irritated but he doesn't bear grudges

In the period late February, early March it is a fair charge that across the UK we did not act as quickly as we might have done to deal with the virus.

Jeane Freeman (Former Cabinet Secretary for Health and Sport)

Access to testing was significant from the outset, not least because we did not have sufficient testing capacity. My initial concern was not who is going to be able to be tested, but initially how can we increase our testing capacity. We started out with a per day testing capacity of around 350 tests. By 18 March we had 780 per day, we increased that by the end of April to 4,350.

The first COBR meeting which was chaired by Mr Hancock, I and the Scottish Chief Medical Officer attended. My feeling was that there wasn't sufficient urgency from the UK Government. In that meeting I queried their intention to focus on flights into the UK from Wuhan, and I suggested that international travellers often travelled via hub centres like Schiphol or Dubai, and that we should be looking at flights from there too if we wanted to know whether the virus was coming in via any of those routes. That was not being considered the right thing to do. I believed that was wrong, and said so. But that was not within my purview as a Scottish Health Secretary. There were times when Scottish Government officials were frustrated by slow information or the absence of information

Guidance had been issued to care homes on 13 March advising social distancing and visiting restrictions. I had written on 13 March that patients should be screened clinically to ensure that they weren't being transferred inappropriately to care homes. The concern about care homes and those in care start within the Scottish Government started in February. The Chief Nursing Officer was the lead official in this, given her responsibility for infection prevention and control.

I was personally very concerned about both our residential care sector and the care at home sector for adults, not all of whom were elderly. I regret very much and will do for the rest of my life any deaths that occurred there because of action that the Scottish Government didn't take or did take but could have done better.

50% of the deaths in Scotland in the first wave of the pandemic occurred in care homes.

There was two-fold concern. One was that patients who were ready to be discharged from hospital because they no longer required hospital based clinical treatment should not stay in hospital any longer. This was a pre-Covid concern. A longer stay in hospital diminished their muscle capabilities, could produce confusion in those who had not previously experienced that, and so on. In terms of Covid, the concern was that it made them more vulnerable to acquiring the infection in hospital. Against that was the risk of transferring people to care homes who had not been teste. What we attempted to do was put in place additional mitigation measures on infection prevention which all care homes were required to follow. Those additional mitigation measures are set out in the 13 March guidance but then increased significantly over a relatively short timescale. That guidance did not require testing for transfers from hospital into the care and that partly goes back to the availability of testing capacity.

In none of this was there a risk-free choice. I understood very well the difficulty and the distress that might be caused to residents, and certainly the distress to their families by asking for physical distancing, the ending of communal dining, the ending of communal association, the ending of some of the external visits that residents do get a great deal from. I also believed that to allow that to continue was to increase the risk of transmission of the virus into the care home and transmission of the virus within the care home.

There were 1,084 care homes. 843 of them had discharges from hospital. 348 of those had outbreaks. 321 had deaths. What that tells us is that some care homes that received discharges from hospital during this time did not have outbreaks. The issue is a complex one, not complex in terms of the professionalism, the commitment or the care of care home staff, but complex in terms of size of care home as well as the availability of PPE and so on. I am not saying that the discharge from hospital without a test into care homes had no impact. What I am saying is that it was one of the factors,

The prioritisation for tests was based on a clinical decision. In the early days the prioritisation was to assist with diagnosing. The decision was made on the basis of clinical advice from the CMO.

The Scottish Government's response to the care home crisis was not as adequate as I would have wished it to be. I believe it was all that could be done with the resources available to us at that point, and that improved as time passed.

Kate Forbes (Former Cabinet Secretary for Finance and Economy – Scottish Minister)

Treasury is a reserved matter so I had to access funding from the UK Government which I then handed out to the various directorates.

It surprises me that neither the SGoRR or the Gold Group meetings were minuted. I had no knowledge until now. I think they should be minuted. My expectation was that they would be. Summary emails were sent out afterwards of the main issues that were discussed. They were very important to see how a decision was made. Corporate memory is very important because people come and go.

The impression that the Scottish Government had that if it were to impose another lockdown, circuit-breaker, firebreak lockdown or whatever, there would be an impediment to that course of action because furlough funding would not necessarily be available from the UK Government. Funding was central in the decision making about whether to have a lockdown.

The Scottish Government has very limited power to borrow money or to raise money through taxes.

My Welsh and Northern Irish counterparts and I all agreed that it the Barnett formula couldn't bear the weight of an emergency, and we suggested a number of flexibilities so that Barnett remained the basis on which funding was provided but there were flexibilities around it. It remains an element of disappointment that only the guarantee was implemented of those various flexibilities that we had suggested.

We had sought to persuade the UK Government probably over the entirety of the pandemic that funding should be aligned with when it was needed in Scotland rather than when it was needed in England.

We intensely lobbied the chief secretary to the Treasury to ask that furlough be extended, and if it couldn't be extended for the whole of the UK, it would be extended for those devolved governments that needed it. Our concern was that it severely constrained the period within which we might be able to introduce some form of lockdown. The difficulty for all of us is that none of us could control the administration of furlough, because it was HMRC, and that was reserved. There was no inch given that I can recall, there was no hint that it would be extended. We had suggested alternatives, for example, doing a top-up ourselves but needing help with the administration but even that was not supported. Furlough was only extended on the eve of an announcement of lockdown in England.

EOTHO

We recognised the significant economic opportunity of the scheme but reservations were expressed about how it might encourage the spread of Covid-19. It was introduced on a UK-wide basis without any decision-making for the Scottish Government. I had no knowledge about it before it was introduced

John Swinney (Former Deputy First Minister for Scotland)

Involved in the development and implementation the four harms framework

Text messages with Nicola Sturgeon have been deleted. They were deleted manually. I was advised by my Private Office that I should not hold material relevant to the Official Record on ungoverned sources. Throughout my ministerial career, I have deleted material once I have made sure that any relevant information was placed on the official record of the government. The messages I had with Hamza Yousef have been obtained from his handset. They were not available from mine. I would conduct periodic deletion on an ongoing basis once it was on the official record. I was not a member of any group chats with ministers, civil servants and officials that considered ongoing issues in relation to the pandemic.

Relations with UK were poor in the aftermath of Brexit because the majority of Scotland was against that. Things were pretty strained after the no deal Brexit experience

Cabinet never held a vote on any issue related to Covid or any other matter. That was because the views were aired and the First Minister would get to a summary position, informed by the evidence and expressed at Cabinet. We did not do business by vote, we tried to come to an agreement. A decision would be made and then collective responsibility kicks in. If you really can't live with it, you have to resign, and no member chose to do that. The Scottish Cabinet began regularly to delegate decision-making to me and/or the First Minister on marginal questions and finalising the detail of changes to be made

We knew that the first lockdown had a negative impact on children's learning and development but I didn't feel we had an alternative for the second lockdown. I could not ignore the epidemiological advice that was being put in front of me, I think that would have been frankly reckless.

I experienced no tangible presence of Alister Jack, Secretary of State for Scotland, in any aspect of the work of handling the pandemic in Scotland. There was no real value in it in going to him, because if the Scottish Government had a problem with the UK Government, the best way to solve it was to go directly to the person in the UK Government. In my experience the Secretary of State for Scotland would have contributed nothing of any useful value in assisting us in that process. The current Secretary of State for

Scotland is not a help to get things resolved. His predecessor was. I did not try to engage with him because of my experience with him before the pandemic.

Nicola Sturgeon – Former First Minister of Scotland

First Minister of Scotland between 20 November 2014 and 28 March 2023

Informal communications were not used by me for anything other than routine exchanges, logistics, passing on information. I did not do government business through informal messaging. I would check whether there was anything that required to be recorded on the Scottish Government system, and I am firmly of the view that there is nothing.

I do agree that in order to scrutinise decisions and learn lessons, a public inquiry would need to see not just the decisions themselves but the discussions that led to the decisions being made or not made, including discussion of information and advice. Any informal communications I had were limited both in terms of the number of people and the extent of the communication, there would be nothing in those communications that was not available to either the Inquiry or the public through the record of the Scottish Government or indeed in the very detailed public statements.

Q It was suggested by a number of witnesses in Module 2 that the then Prime Minister, Mr Johnson, was the wrong Prime Minister for this crisis. Did you share that view?

A. Yes ... I don't think I'm betraying any secrets here when I thought Boris Johnson was the wrong person to be Prime Minister, full stop.

I've made the political comment about my views of Boris Johnson generally. In those early days of the pandemic, my view was, and my experience was, that we were all trying our best in almost impossible circumstances. I did not see a political opportunity. I didn't see an opportunity of any description in Covid. I saw a threat, a risk. At times I felt overwhelmed by the scale of what we were dealing with and perhaps more than anything I felt an overwhelming responsibility to do the best I could. So the idea that in those horrendous days, weeks, I was thinking of a political opportunity it just wasn't true.

There was sense of fear and responsibility. Seeing the reasonable worst-case scenario was terrifying in terms of what could have happened. I don't think I had any sense that because swine flu had turned out to be, to use a loose term, a false alarm, the same was likely to happen with Covid. In fact, I think that because that was in my mind, I think I was guarding against that in those early days.

There are things in those early days that if I had my time again I would do differently. I think there were assumptions made, for example, around the public's willingness to comply with restrictions and how long that would last that, that turned out to be wrong, I think, that perhaps influenced some of those early decisions more than a memory of swine flu did.

I think governments now must reflect on with foresight, is the level of testing and contact tracing infrastructure that is kept in place outside pandemic periods. It is very costly to do that, but we certainly suffered from not having a greater baseline capacity at the start of 2020 than we had.

Testing had limitations, it is absolutely the case that I think it would have been desirable to have been able to do more testing at an earlier stage, but particularly in people without symptoms there was not a degree of confidence then, I'm not sure what the degree of confidence is now, that the tests would pick up the virus in everybody.

The Scottish Government Covid-19 Advisory Group was set up by Dr Calderwood at my request for specific reasons. Although there were frustrations with the SAGE process that led me to ask Dr Calderwood to establish the advisory group, I had great confidence in the scientific advice coming through SAGE. So we, at no point did I feel that I was not getting good advice.

Dr Calderwood was the main conduit of clinical advice to me, but that advice was coming from different sources, and she was part of the collective Scottish Government team that was responsible for both devising and implementing the plan to respond to the pandemic. I don't think it would be accurate to say that was her sole responsibility.

Resignation of Dr Calderwood

I immediately understood that there would be significant public anger about this, and that that would have to be addressed, and that Dr Calderwood would have to very clearly apologise and be very clear that she had made a mistake and that the rules applied to her as they did to anybody else.

I was mindful of how disruptive it would be to suddenly lose a Chief Medical Officer. Initially I wanted to try to achieve two things, address the public anger and make sure there was no doubt at all that she had made a very serious error but retain what I thought was very valuable expertise and advice in government.

As the Sunday progressed, I began to realise I couldn't achieve both of those things and that if I continued to try to achieve the latter of those I would seriously compromise trust in the government's message. I had to prioritise the confidence in public messaging.

Dr Calderwood had already reached the decision and was very clear to me that public confidence in messaging had to take priority

12 March – COBR meeting with Mr Johnson and Mr Gove

I was at that meeting and was in no doubt that the Scottish Government was going to confirm a decision that it was going to advise the cancellation of mass gatherings of over 500 people. I have heard it referred to in evidence that I jumped the gun on mass gatherings. I would counter it. I think by this point none of us were jumping the gun, we were arguably all going more slowly than we should have been. I think the public was ahead of governments at this point in the action they thought was appropriate. My view on mass gatherings, which I set out to COBR, was that for three reasons I thought it important to take this action at this time.

There was no doubt in that meeting what I was going to do. It even states in there "the PM respects the Scottish Governments decision." I tried to persuade the other Govts to follow suit. I think they did follow suit within 2 or 3 days. if I have a regret about that decision, it's not that I took it that day, it's that I didn't take it days earlier. My responsibility was to the Scottish people, not to Boris Johnson.

These were not decisions that were meant to be kept secret. It wasn't just important they were communicated, it was important that they were communicated quickly. So I would put it that it wasn't that I communicated these things too quickly, perhaps the UK Government were communicating them too slowly, and perhaps not doing so with the urgency that at that point was required.

I was not breaching confidentiality, and I would go further than that and suggest that given the situation we were dealing with, the whole notion of confidentiality is a bit absurd. This was a virus that was spreading rapidly at this point. We were taking decisions that were about trying to stem the spread of that virus, and the only way those decisions could have the desired effect was if the public knew about them, and if the public knew about them quickly. Therefore, in my view, the responsibility on all of us, was to get out there and tell the people of Scotland, tell people across the UK what we were asking them to do and not to do. If we'd operated on the basis of these decisions being confidential, then I think self-evidently that would have been very, very mistaken.

In order for me to not irritate Boris Johnson, I think I would just have had to adopt a position of doing whatever Boris Johnson wanted me to do. Where I thought the UK Government was taking a decision that was not the right one, I would have been negligent in my responsibilities just to go along with that in order to avoid, bizarrely, irritating people.

It's often described as if the UK Government's position on these things was the orthodox one and any of the devolved administrations that diverged were stepping out of that orthodox position. That wasn't the right way of looking at it. Often where the Scottish Government was diverging from their four nations preferred road, we were joined in that by Wales and Northern Ireland. So, often Wales, Scotland and Northern Ireland were in exactly the same position but the UK Government, had decided to take a different position. In effect they often became the outlier in four nations decision-making, not Scotland.

The Scottish Government was not pushing for lockdown earlier. That only crystallised on 23 March but we were pushing for other restrictions earlier. I don't know that anybody can say with certainty what difference it would have made in the overall trajectory of the pandemic and the outcomes of the pandemic, but of the many regrets I have, probably chief of those is that we didn't lock down a week, two weeks earlier than we did.

The issue of care home visiting was one of the most difficult because I was aware of the increasing distress and trauma both to care home residents and to their loved ones of restrictions on visiting, and that was an issue on which we were always trying to strike a balance between opening up and allowing much more flexibility in terms of visiting but trying to guard against infection being in homes. I don't think we got that right, possibly at all, but it was not because we did not care. I have had in the past, I have at the moment relatives in care homes myself, I understand or I think I can understand how awful that would have been for any family with a loved one in a care home at that time.

Alister Jack (Secretary of State for Scotland)

Act as Scotland's voice in Whitehall and represent the interests of Scotland at Cabinet. Is Scotland's main representative in the United Kingdom Government. Championed the UK Government in Scotland, and advocate for the UK Government's policies in Scotland. My job is always to press the case to get the best deal for Scotland but also when we're making legislation across the UK, to make sure we don't cut across the devolution settlement.

We would meet with the Scottish Government and tell them what our plans were. I felt that they absorbed the information and then worked out how they could do it just slightly differently. I felt very strongly felt that was a political manoeuvre on their behalf. We always knew it would be something similar but just slightly different, and that's why I said "for the sake of it".

After what had happened on March 12 after the COBR meeting, where the First Minister had gone out and announced quite a lot of things in her 3 o'clock statement, we felt that broke the memorandum of understanding, we have a sort of duty of confidentiality. From that meeting then going forwards we were cautious because we didn't want announcements to be released early or to jump the gun before everything had been agreed across Whitehall.

My job is to go out and strengthen the United Kingdom and sustain the United Kingdom, the First Minister she saw her job, as leader of a nationalist government to break up the United Kingdom, that's what the Scottish National Party exists to do. So it was inevitable that there would be tensions, and there always are in government. Devolution works very well when governments want to work together but not when one government wants to destroy the United Kingdom and destroy devolution. Those tensions existed before the pandemic and they exist now today

The fact that the original strain of Covid was eradicated in Scotland is irrelevant because it was mutating. Smallpox was mutating when it was eradicated. Covid was mutating and was not eradicated. It didn't make any difference to the statistics in terms of how Scotland was performing against the rest of the United Kingdom. There was a misleading assertion from the then First Minister that the prevalence in Scotland was five times lower than the rest of the UK, but the statistics authority said that was completely untrue. This mistaken information was guiling the public into believing that the elimination strategy was working, it wasn't working at all, and the details show that.

It was not within the competence of the Scottish Government effectively to close the border and tell people not to cross the border from Scotland to England. UK borders and Border Force are reserved. We have a common travel area which is very clear in the Scotland Act and we are one United Kingdom and I said before the virus doesn't respect borders. Our feeling at the time was that the border had to remain open. I thought the whole border thing was, played very much to the trying to appear like Scotland was a separate country, a land apart.

Closing Submissions by Clare Mitchell KC obo SCB

The actions of Nicola Sturgeon, Liz Lloyd, Jason Leitch, John Swinney and others have robbed the bereaved of those contemporaneous messages, and with them answers to questions.

The Scottish Covid Bereaved say that when Nicola Sturgeon told the Scottish public that she was prepared to give an assurance she would disclose messages that she knew she had deleted, this was not just to be

failing to be clear in her answer. It ought to have been made clear that she and other Scottish ministers routinely deleted important information relating to the pandemic and that it was beyond the reach of freedom of information legislation and public inquiries.

These past three weeks have revealed, however. The Scottish Government may seek to differentiate itself from the UK Government, that many of the same mistakes were made in Edinburgh as were made in London.

Despite these credible and dire warnings from Prof Woolhouse there was a lack of urgency on the part of the Scottish Government. So frustrated was Professor Woolhouse that he had to email Dame Sally Davies, the UK Government's former CMO, and ask her to get Dr Calderwood in effect to listen to him. We can only wonder how many lives could have been saved if Professor Woolhouse's warnings were taken seriously at the time.

The evidence led before the Inquiry has left the Scottish with a great many questions about the part played by Dr Calderwood as information provided as the main conduit of information on medical matters to the then First Minister. This module is not whole without her evidence and the SCB look forward to hearing her evidence in due course.

Closing Submission by Danny Friedman KC obo Inclusion Scotland and Disability Rights UK

Where were the disabled people of Scotland in the pandemic disaster management system? Whatever their recognition as citizens, their protection was not solid enough. The notion that no one should be left behind was effectively thwarted before the crisis started.

Despite disabled people already being in a dire state of crisis pre-pandemic and Scottish Government being aware of that, the impact of the NPIs on disabled people was not sufficiently mitigated. There was no plan to cater for the foreseeable collapse in care or to deal with food and other resource scarcity for those who fell those beyond and off the highest risk list

The statement that equality is the duty of everyone in Scottish Government is all well and good, but especially in an emergency how does co-ordinated action for marginalised groups get done without being the function of a particular minister and lead group of civil servants?

There are serious shortcomings of data collection and deployment on behalf of disabled people in Scotland. It is a defining feature of residential and domiciliary care of how little is known, how much people are not counted and consequently whatever our aspirations the uncounted, count for less.

Human rights mean nothing without social and economic rights. Recognition of disabled people as equal citizens will never be enough without redistribution.

Closing by Mr Phillips obo National Police Chiefs' Council

Normal policing activity had to carry on, so far as possible, despite the difficult conditions. Policing by consent: The aim of the guidance was compliance and not enforcement, which was and remained the last resort. The police's figures suggest that 88% of such encounters were resolved short of enforcement, and you heard the current First Minister say that the figure might be as high as 94%.

Closing Submission by Mr Mitchell KC obo Scottish Govt

The Scottish Government acknowledges that it did not get everything right. Where there were missteps, it deeply regrets them. Decisions were taken in good faith, some, and acknowledging the limitations of a hindsight judgement, would be taken differently today.

There was no single simple and certain way to respond. The very fact that so many different views have been expressed on the steps and measures taken, so many different opinions on what should or should not have been done by the Scottish Government and the other governments of the four nations surely demonstrates this very point.

Knowing what is known now, Scottish ministers would have wished to move faster in March 2020 in issuing a stay-at-home instruction. Scotland instituting its own lockdown would still have been subject to financial support so practical financial considerations would have remained. Scientific advice did not recommend lockdown until very shortly before that decision was made

Studies such as the PHS report on discharges to care homes referred to by Professor Phin showed that discharge from hospitals was not the driving factor in care home outbreaks in Scotland. Care home size was much more strongly associated with an outbreak than all other care home characteristics including hospital discharge