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## **All-Party Group on Coronavirus – Oral Evidence**

Transcript by Communique Communications Ltd

15 June 2021

### **Layla Moran MP**

OK well good morning everyone to the All-Party Group on Coronavirus's oral evidence session for today where we are going to be looking at a public inquiry. Interestingly when we constituted back last summer this was very much on the list of things we need to look at because we were calling as far back as then for the Government to start such an inquiry and then share transparently its findings in order to avoid a further wave. Well unfortunately that didn't happen and that wave happened and as we speak it does look like we are at the beginnings of yet another one of those waves. However, the important work of an inquiry has been conceded by the Government, they are saying that it will happen later rather than sooner which is not what we'd hoped for, but it does allow us time to examine how it might be done, what it would be looking at and all things inquiry which as always with such things is potentially a bit more detailed than people might have imagined.

So I will welcome our illustrious panel and hopefully by the end of this session we'll have a better clue about how this is going to work. So in no particular order I'll just introduce them all, so first of all Lord Kerslake thank you so much for joining us. Lord Kerslake is the former Head of the Civil Service and former Permanent Secretary at the Department for Communities and Local Government. He has previously worked as the Chief Executive of two Local Authorities at Sheffield and Hounslow, so carries with him a huge amount of experience of how this stuff will be permeated through Whitehall, so thank you very much for joining us.

Then we have Tim Gardner who is a Senior Policy Fellow at the Health Foundation; prior to joining the Health Foundation Tim spent ten years in the Department for Health working on policy and legislation. Most recently Tim was a Senior Policy Advisor in the NHS Strategy and Delivery Unit where he advised on a range of projects including the Dalton Review, the Better Care Fund and the Government response to the Francis Inquiry, so thank you very much for being with us too.

We then have Jodie Blackstock, Barrister and Legal Director for Justice, she is responsible for Justice's legal and policy output aiming to strengthen the justice system across the criminal, civil and administrative jurisdictions. In 2019 she was on the Working Party at Justice that looked at, among other things, how inquiries can lead to fairer outcomes, so thank you very much Jodie for being with us.

We also have Richard Murray, CEO of the King's Fund. Richard was appointed CEO in January 2019 after five years as a Director of Policy. He is the co-author of the King's Fund's publication 'assessing England's response to Covid-19' so has already done a lot of thinking of this, thank you Richard for being with us.

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And last but certainly not least, Marcus Shephard, Senior Researcher at the Institute for Government and co-author of the publication ‘the Coronavirus inquiry – the case for an investigation of Government actions during the Covid pandemic’.

Well thank you all for being with us and Marcus very ably chaired a similar session on this last week on which I sat, so we’re role reversing today. But it is wonderful to have such expertise in the Zoom room and hopefully will help us shed some light on what needs to happen next. So my first question, I’ll ask it to all of you in the order I introduced you and I’ll ask you to be relatively brief if I may, is the very, very basic question why are we doing this? What is the value of a public inquiry into Government handling of the pandemic and what should the inquiry’s objectives be? Lord Kerslake.

### **Lord Kerslake**

Well thank you, it’s important to say there’s been a lot of good work done to look at the response to the pandemic and learn lessons, but I think a public inquiry is distinctively different and very important here because it is in public, it can compel witnesses to attend and it can release documentation. I think the purposes of such an inquiry ought to be first of all to find the facts, secondly to identify who was responsible for what basically, why did things happen in the way they did and crucially the point you made Layla, learn lessons for the future. I strongly believe we need that inquiry to be under way sooner rather than later, it is in my view urgent and there are a number of people including of course the King’s Fund and others who are saying the same thing. So it’s very different, and I think even if you thought that none of those arguments were, there are 150,000 estimated deaths, the bereaved families deserve to have a proper inquiry into these issues. So the case in my view is compelling.

### **Layla Moran MP**

I’m on mute! A quick supplementary, there seems to be sort of two strands of thought and one is more about sort of lessons learned for the future, but then there is a very strong group of people, many of whom are the bereaved families and wider who want accountability, you know who want people to be held directly accountable for the decisions and mistakes that they may have made. So are you saying that the balance there should be more around learning for the future, or is there a role in this inquiry to find out you know if wrongdoing happened, who did it and they should get their comeuppance for it.

### **Lord Kerslake**

I think it has to be both I have to say and you should also look by the way for the things that went well and there were some things that went well, some I’m involved in myself around ‘Everyone In’ campaign for rough sleeping for example, but I do think it’s right and proper to learn the lessons, it’s not there to hang people out to dry but we do have to get to the facts of how decisions were made and why they were made, as well as learning the lessons. And I think the two are kind of intimately linked, I don’t think you can learn the lessons without really understanding how the decisions were made inside Government. So I think they’ve both got to be central to it.

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I should just say that some people say were too busy, well I have to say there's never a good time to do an inquiry but I think as we move into this period we hope at the end of this pandemic if you like, this is the time to get the ball rolling really and get the preparation moving.

**Layla Moran MP**

Thank you very much. Tim.

**Tim Gardner**

I would agree with that, I think the key objective is for the inquiry to learn lessons, to ensure the UK is better prepared to handle the next pandemic. This country was ostensibly very well prepared for a pandemic, we had done lots of planning, testing of those plans, we were very highly rated in the International Health Securities Index, nevertheless the UK has been one of the hardest hit countries in Europe during the pandemic, both through the direct impact of coronavirus itself but also the much wider consequences for our health and for our economy and we know that future pandemics are an inevitability, there will be more pandemics, there will be other major health emergencies. We urgently need to understand how our response to those can be better.

**Layla Moran MP**

Thank you very, very much. Do you feel that also, and we'll talk about scope and terms of reference in a moment, but Dominic Cummings in his now famous, latest intervention, spoke about the whole of Whitehall's response to this as well? Do you think it should be sort of narrowly looking at just this pandemic or should it also be looking at the whole workings of Whitehall and what happened there?

**Tim Gardner**

I think there is, so experience from past inquiries, the excellent work that the Institute for Government have done, also personal experience suggests that speed is important and speed tends to need to be balanced off between the scope of an inquiry. If the longer an inquiry takes I think the bigger the risk that the window of opportunity for bringing about meaningful change will be gone. Key people will move on, organisations will change, we're already starting to see some of that. The Government has already started on an overhaul of the public health system. By the time this inquiry starts Public Health England which has played such a major role in the response to the pandemic, may no longer exist and there is always the danger that as individuals and organisations change we assume the problem is fixed, it gives us false reassurance even if it's not. So I think I would be very strongly in favour of at least initially a very focused inquiry that really aims to get to the facts and identifies the learning that we need to take forward quite quickly, which is as was pointed out something that wasn't really done after the first wave.

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**Layla Moran MP**

Thank you so much. And Jodie, what's your opinion?

**Jodie Blackstock**

Thank you, I would very much agree with what's been said, a public inquiry is an opportunity for bereaved people and survivors, as well as the wider public, to understand what went wrong and to ultimately achieve some sense of justice as to the tragic events that have occurred. It therefore requires both of those questions that you asked about should it establish responsibility and should it learn lessons to be satisfied by the process. A public inquiry does not apportion liability but it shouldn't be afraid of inquiring into places which would perhaps identify where that liability might lie for subsequent proceedings and it may be that civil and criminal proceedings would follow on from such an inquiry if the inquiry comes first which it looks as if would be the case for this scenario.

**Layla Moran MP**

So just, can I ... so just to pick up on that specific point because obviously people are already talking about you know bringing suits for corporate manslaughter and others, and just to be very clear, this inquiry would have to finish its work in your opinion before other proceedings could begin, is that something that has to happen or is that something that ideally should happen because that all links back into the timeline of events.

**Jodie Blackstock**

It's not something that has to happen and it will happen in different ways. Ideally criminal liability would be identified ahead of a public inquiry and indeed an inquest processes that sort of morph into a much larger inquiry, but that's not always possible and the problems of that, you see from the Hillsborough situation that's gone on all of this length of time and findings were made by the Jury in the inquest which then have not transferred into criminal liability for reasons that are very hard for the public to understand but come down to the assessment of evidence to the criminal standard. So, it's complex because there are different questions being asked in these different venues. If proceedings to establish liability in civil or criminal jurisdictions are commenced it will make it very difficult for the inquiry to progress whilst that's happening, so it adds another layer of complexity. But the crucial thing through this process is to ensure that all those who are asked to provide evidence to the inquiry do so in as open and transparent a way as they can, it's called the Duty of Candour, and this is a really problematic area for ensuring, you know that all of the lessons can be learned when information is withheld because of the concern about liability.

**Layla Moran MP**

Thank you, we'll probably return to that theme at some stage later with other questions. And Richard, what's your opinion, why are we doing this?

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### **Richard Murray**

So, as you know the King's Fund has already come out calling for a public inquiry and surely the greatest event in the health and wellbeing in this country certainly since the Second World War, there must be lessons to be learnt here. But I would emphasise there's some positive lessons as well that we don't want to lose. Some things clearly didn't work but there were some things that did and when we're thinking about how we confront the next pandemic, for I fear there's bound to be one, we don't want to lose those, those bits that should form the basis of the response in the future. And I do think I agree with Tim on the need for pace, but I do think this will throw up some questions about Whitehall capability, that may not be the subject of the inquiry itself, and I'll give you an example, the level of understanding about social care in Whitehall as decisions were being made, and indeed possibly amongst the science community as well about how incredibly vulnerable social care was and indeed its clientele group were particularly vulnerable to Covid.

Just one thing on timing, I really do think we need to begin sooner rather than later and that's partly there is an enormous amount of material already in the public domain that needs, someone's going to have to go through the comments from SAGE, the work, it's going to be a massive tome in itself, so if you wait to start doing that until you've kicked the whole thing off I think that's going to put us back a very long time. And that means well both as Tim says we begin to forget the things that we knew and you'll never find the people that you need to bring forward for the evidence, so I think there is a need for pace. That doesn't mean to say you need to appoint the Head, there is a lot of background work here that needs to be gone through.

### **Layla Moran MP**

Thank you so much. And Marcus.

### **Marcus Shephard**

Thank you, I don't have much to add to what's been said. I agree with all the points made. I have two small points. I think one is that we need a public inquiry because there are certain things that only a public inquiry can do. In his statement to the House about a week or so before announcing the inquiry the Prime Minister recognised the work done by things like Parliamentary Select Committees and the NAO and I would add to that also work done by people like the Coroner's system and the Ombudsman as well. And these are very effective institutions but they are limited by institutional remit, by powers, statutory powers and largely also by resources. I think the value of a public inquiry is that as Lord Kerslake noted it can take evidence under oath, it can have this unique remit to look at things in a way that other people can't. And it can also look in a bigger way than say a Parliamentary Select Committee can, so I think that is why we need an inquiry, we need this thing that can cover the breadth of this issue.

But I would say also to that I think those bodies I mentioned, I think we need to keep them in view at all times because I think there will be some of the questions that come up, you know not wanting to get ahead of ourselves but hypothetically if you were looking at say the value of money for

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procurement contracts, that's a question that the NAO is very well set up to answer and actually may be better placed to answer than an inquiry and I think there will be a bit of like parsing to sort of say actually what can be pushed out of the scope onto these other things, but fundamentally we need an inquiry at the heart of this to really look at the sort of particularly how decisions were made in Whitehall.

And I think the other point on the learning lessons and responsibility, I think the learning lessons has to be paramount, I think as Richard and Lord Kerslake both noted there are both positive and negative lessons to be learned here and that fits one of our key messages, was how inquiries have to avoid being about blame, like if they are seen to be about being blame and retribution that will harm public trust, it will make it harder for them to work with the people they need to hear from. And so I think finding ways for the inquiry to be both, you know empathetic to the huge tragedy that's happened which it needs to do, but also be very agnostic to the questions is key. And so I think that will enable it to learn lessons well. The establishing responsibility part I think flows from that, but I don't think it's something that the inquiry has to explicitly do necessarily, it doesn't have to sort of write in its conclusions Minister X was responsible for this and therefore they were good or bad or something like that, I think that will be parsed from the evidence it lays out through the media, through Parliament, through others and those are better organs to actually make those determinations. The inquiry has to be this sort of neutral arbiter of the truth at the heart of all these questions.

#### **Layla Moran MP**

Thank you. Before I pass to Lord Strasburger to ask you Marcus, which department is it that's going to set this up, which Minister is it who is going to be responsible for this?

#### **Marcus Shephard**

So that's a really good question, I think there are conflicts of interest everywhere, I think this has to be set up by the Prime Minister, he has to own this, it goes so centrally to the heart of Government decision making that you know it can't sit anywhere else, it has to be his responsibility. And I think that means the sponsoring department has to be the Cabinet Office, although I would note that you know when we think about departmental sponsorship of inquiries this has to be very hands off, it's as Una O'Brien the former Permanent Secretary of the Department of Health has put it, it needs to be a bread and rations, pay and ... you like the sponsoring department gives them the resources they need and nothing more, the Cabinet Office should not be exerting direction on the inquiry, it should not be seeking to influence appointments, stuff like that, it should solely be a source of essentially financial resources to ensure the inquiry can do its work.

#### **Layla Moran MP**

Thank you. Paul Strasburger.

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### **Lord Strasburger**

Good morning to all our panellists. Public trust in the process of the inquiry and also in its findings is fundamentally important, how should we be building trust in the inquiry and its findings? Lord Kerslake would you like to go first?

### **Lord Kerslake**

Yes certainly, I absolutely share your view Lord Strasburger about the importance of trust and it's not going to be one actually it's going to be a series of them, the point that Marcus made about pretty arm's length support arrangements, we need a Chair who is beyond question independent and not party **pre** to any of the actions that were taken. We need consultation on the terms of reference and indeed the scope here so it's not simply determined inside Government. One of the kind of good things in a sense is that you have the Inquiries Act 2005 but perhaps one of the less good things about that is that a lot of the decisions lie with Government on that and it's how they exercise their power that's going to determine whether people trust this process. So, a very open way of establishing who is the Chair, how do you identify the terms of reference and consulting on those terms of reference and crucially in my view right at the start of any inquiry you need to allow those directly caught up in events, frontline staff, care staff and others, to have their say. In the way that's happened at Grenfell and other inquiries, that's part and parcel of building the trust.

So it's the whole series of actions like that that I think will go to whether people really believe this is an independent inquiry.

### **Lord Strasburger**

Thank you. Jodie would you like to go next?

### **Jodie Blackstock**

Thank you, yes this is an issue which the Justice Working Party chaired by Sir Robert Owen spent quite a lot of time considering because public trust is fundamental to any process which is learning lessons and trying to identify why things have gone wrong. I would absolutely agree that there must be wide consultation to enable that public trust and buy-in to the process. The Inquiries Act makes the set up of the public inquiry very much a political decision, the terms of reference, the appointment of the chair and even the start date and time and budget are matters for the Minister and their department. That is obviously something which does not in itself instil public trust in the process and so it is essential that those powers are used very much in the sort of most hands off way possible, so that we have extremely wide public consultation over this and obviously everybody has been affected in the country by this pandemic and that therefore needs a very wide public consultation to enable it to progress.

We in our Working Party recommended the establishment of a central inquiries unit to ensure that there is a standardised process for the set up of public inquiries. It's very much an ad-hoc tap on the

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shoulder system at the moment that there's very little knowledge bank about how it should be done and what are the best methods for running inquiries and that's something that a year ago when we reported we had very much hoped would be the case and it's not clear now whether that's going to happen, but it seems it is essential for the set up of this inquiry to make sure lessons are learned from all of those that have gone before and we take on board the concerns raised by the core participants in those inquiries and the wider public that they didn't feel set up was a transparent process.

### **Lord Strasburger**

Thank you. Would any of our other panellists like to contribute on this?

### **Richard Murray**

Just very quickly, I think one of the things standard criticism of public inquiries is that by the time that they'd reported everyone's lost interest and so I think there's something really here about pace, so again it goes back about starting soon because I completely agree on a broader consultation on the terms of reference but that is going to eat up quite a lot of time if you do it properly, and so I think there is something here again about being ready to make some of those judgement calls about the speed with which it can move and get going to produce something for the public domain. As it goes forward then alongside that, I mean tempers are frayed so much during Covid for very good reasons, it's going to need a proper comms plan, it's going to need to think about how it engages not only in the point of consultation but right throughout the process so that people continue to be interested and continue to pay attention to what it's doing to get the, to keep on top of the public mind.

### **Lord Strasburger**

Thank you. Marcus.

### **Marcus Shephard**

Richard kind of pre-empted my point here, my point was going to be that I think trust, we have to view trust as a process not an event, it's not enough to just sort of appoint a worthy person as chair and we need a very worthy person, I think trust has to be this thing that you work at continuously and that is going to involve an on-going process of public engagement, so if we look at some current inquiries like Grenfell has quite a large communications team within its secretariat, the independent inquiry into child sexual abuse has a very large communications team, they have this thing called the Truth Project which is designed to bring in victims of child sexual abuse to tell their stories, and I think this inquiry will absolutely need to make a very serious resource investment in staff to do communications, to do public engagement and public outreach, both to sort of find accounts from people and hear their stories but also just to remind people that the inquiry is still there and it is still on-going and it is actually doing good work. It isn't just like a submarine that sort of vanishes for two years and then pops up with a 1,000 page report. I think keeping people abreast of what's going on.

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The one other thing actually that I don't have much to say about because we don't know much about is the Prime Minister did announce this Covid Commemoration Commission, I think, and I think that nominally this sounds like a good idea, I think commemoration and remembrance has been an increasingly key part of inquiries, Grenfell had commemoration hearings, the infected blood had a commemoration day at the start, Manchester Arena inquiry similarly. The scale of the loss means that commemorating this within the inquiry itself would be challenging for the number of people, but I think again how that institution operates and I think that would be something that would be good for Parliament to probe a little bit harder, will also sort of reflect and sort of support the success or otherwise of the inquiry and I think that's something that will go to the question of public trust.

### **Lord Strasburger**

And Tim, I think you wanted to say something.

### **Tim Gardner**

Yes thank you, so I would agree with earlier comments about the importance of selecting an impartial chair who commands support from across the political spectrum. I would also echo what Marcus was saying about making sure that that chair was backed by all of the resources they needed, Marcus talked a lot about the importance of engaging with the public and making sure the work of the inquiry remained visible. I think there is a broader question about resources for the inquiry, that will partly dictate how quickly the inquiry can get established and moving, making sure that there are enough very good people to do a good job without undue delay. And that will also feed into how the inquiry is able to support and engage with those who've been most affected by the pandemic and allow them to be heard. The Health Foundations work on looking back at inquiries and investigations within health has highlighted that a common objective of inquiries is to try and provide an element of reconciliation and catharsis, but that's a difficult job to do well and that means you need people, and you need the right expertise.

I think the other thing, the last point I would make about public trust is demonstrable cooperation from the individuals and the organisations involved, this inquiry is going to face a huge task, just getting on top of the timeline of what's happened, all of the documentation, generating a list of who to call to give evidence is going to be a massive endeavour and that's going to be much, much harder if organisations involved in the inquiry are dragging their heels on cooperating with it.

### **Lord Strasburger**

Thank you, and as to the terms of reference, how do you think those should be established and agreed and how should stakeholders be consulted on them? Could I go to Lord Kerslake again please?

### **Lord Kerslake**

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Yes certainly. I think clearly the chair needs to be established and I do think the previous practice of inquiries is that the chair takes the lead on consulting on terms of reference. I think maybe Government will come up with an initial version but I do think there has to be consultation led by the chair and the panel established to make sure that they capture all of the relevant issues. I would just say that one of the things I think is crucial and I should have made the point earlier, is to learn from international experience. I felt for a while we have a sort of British exceptionalism here that is resistant to learning from others and I think had we not had that we might have learned an awful lot about the response particularly in the Far East that would have helped us in our response to the pandemic. So international learning is important but I personally think you might have an outline terms of reference, then the chair and the panel need to engage in a consultation process on those terms of reference.

### **Lord Strasburger**

Marcus?

### **Marcus Shephard**

I would agree with that. I think doing like ... I think some people have proposed things like having a citizen's assembly or something like that. My view is that I think that would while nominally nice it would drag things out and you know take too much time. I think there needs to be some sort of engagement with stakeholders and this sort of gets to another question which is about representation, sort of who speaks for the victims and stuff like that. I think there's no way to consult necessarily effectively with all, you know, basically the whole population of the UK on what these should be and I think there will have to be some pick and choosing of who you speak to, like do you speak to say the BMA or the TUC or like the bereaved families groups that are starting to come together and trust that they are representative of the people who you know have concerns and one of those issues is reflected in the terms of reference.

So I think that needs to be done but I agree with Lord Kerlake, this really needs to be under the chair and I think in some cases terms of reference are laid before Parliament sort of as a bit of a fait accompli, you know sort of the day after the event, here are the terms of reference, go off and do it. I think any chair who accepted the terms of reference as presented by the Government wouldn't be fit for the job, the terms of reference need to be shaped and owned by the chair. I think there is also a question given the scale of this inquiry and the need for a panel, whether it might actually be that you would want the chair and the panel to take a view on the terms of reference and how particularly if the terms of reference are going to specify a highly modularised inquiry where you have multiple workstreams looking at different issues as a way to sort of get to the answers quicker.

One other thought I have on the terms of reference and this is something we flagged up in our paper is, I think terms of reference, how should I put this ... a lot of inquiries in the past tend to be a bit of a closed loop, they sort of the judges who chair them, they sort of answer their questions, they hand over their report and the inquiry ends. Actually Tim might have some thoughts on this having worked on Mid Staffs. Mid Staffs was different, Mid Staffs had sort of a life after the inquiry because the first recommendation that Robert Francis made was that the Health Select Committee should pick up the recommendations and take them forward and then sort of oversee their implementation within

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Government. And I think the terms of reference here need to explicitly state some sort of accountability mechanism for implementing the lessons learned. I don't think it's enough for the terms of reference simply to say go off and find out what happened here. I think they need to say go off and find out what happened here and once that is done, this person then needs to sort of pick up, or you know the inquiry needs to identify a suitable body to take ownership of the recommendations going forward to ensure that they are implemented and that change happens.

**Lord Strasburger**

Thank you, that's very interesting. Jodie, would you like to go next?

**Jodie Blackstock**

Yes, I completely agree with everything Marcus has said there except I think I would probably err more on the side of wider public consultation, I certainly agree there is a balance to be struck in not creating unnecessary delay and unnecessary conflict between where the terms of reference should go, but I do think because this is a tragedy that has affected the entire country that we have to find a way to consult as widely as possible. And it may be that the best mechanism to achieve that is through Parliament and that Parliamentarians would take them to their constituency base so that it is a terms of reference document that is signed off by Parliament.

Aside from that I think you know it's critical that bereaved people and survivors do feel that they are involved in this process. The establishment of who chairs and what the panel looks like, and it does seem that this is going to be the kind of inquiry that it is essential to have a panel for, those people have to also be consulted on to a certain degree in terms of their reflection of the matters to be determined. It's not just a question of impartiality, that's what the legislation requires, but considering public appointments across the sphere of public life, the requirements for that are much broader than simply impartiality and I think for this process we really need to be ensuring that the panel is diverse and reflects all areas of public life and all of the areas where the virus has affected public life. That's going to be critical.

So, the terms of reference I think will need that group to also consider them fully before undertaking its work and I agree with Marcus, part of that process is going to be determining how that work is done, is it a linear piece of work or is it concurrent activities.

**Lord Strasburger**

I think we have a question on that coming up actually.

**Layla Moran MP**

Indeed, if I could just interrupt to say we've got little time particularly with Lord Kerslake and also Richard Murray who have to head off, so specifically perhaps Richard do you have something

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specifically on this and then Tim we'll move on but if you want to weave in thoughts you've had into further answers, I'd really appreciate that.

**Richard Murray**

Sorry, quickly then because I agree with what's been said. I think we just need to be careful not to give the chair and the panel an impossible task, if we think about some of the other public inquiries, Mid Staffs, the number of people that have been affected by Covid is the population of the United Kingdom, you're not going to get a sense of healing or resolution to everybody, you know we're measuring the dead in six figures. So I think there's something here about consulting but trying to make this a manageable process and if that means we need something alongside it that really picks up some wider engagement then so be it. And it's not only the people that were affected by the losses from Covid, people with mental health have had their services interrupted, older people who've been shut indoors for over a year, there's a lot of people that have been hurt by Covid and the response to it, so I think we just need to make sure we give the chair of the panel a manageable task in doing this. That's the only thing I was going to add.

**Lord Strasburger**

Tim, a quick thought?

**Tim Gardner**

I would just echo that and I think it's really important to have a public consultation on the terms of reference, however I do think that should try to bring out exactly that balance between scope and speed that Richard has just articulated very clearly, so that would be my only thought to add.

**Lord Strasburger**

Thank you very much, back to you Chair.

**Layla Moran MP**

Thank you very much. Unfortunately I've got to pass over the Chair to Philippa Whitford because I have to go and ask a question in the Chamber and I'd just like to say a massive thank you to the panellists from me before I head off, so thank you ever so much. So I'll pass over to Philippa but I know our next question is coming from Caroline and I think we should probably just crack on, so Caroline.

**Caroline Lucas MP**

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Thanks Layla. Yes, I had some questions about the scope of the inquiry and how we determine that and if I could just give you in advance the kind of sub-questions I had underneath that and then you can choose which bits you answer. So, I really appreciate what you've all said about the trade-off between scope and speed, but in particular could you let me know what your thoughts are about whether the inquiry should look at the UK's preparedness ahead of the pandemic, so should we be getting into the questions about Exercise Cygnus for example, the Guardian recently reported that there were another ten unpublished exercises that were done in the five years before Covid which was news to me, but if you had any reflections on any of those.

Secondly, should it look as the King's Fund suggests into the health and wealth inequalities that were present at the time the pandemic hit, in other words you know just how resilient was our country before the pandemic hit. And finally should it look into the health and economic outcomes of the decisions made and there's a parallel APPG that I'm very involved in that's looking at all of the issues around the support that was given or not given to the self-employed and so on and so forth. So those are my three sub-questions under the main one and I will go to Lord Kerslake first because I know he's only got another five minutes.

#### **Lord Kerslake**

Thank you very much Caroline. I think inevitably it is Government that will ultimately decide the scope, but they need to set it out and consult as we talked about earlier. I would go for a pretty wide scope but I do think you have to break it down into stages and have reports on components as you move along, maybe even run some of them in parallel in order not to take too long over it. I think it's also possible that the inquiry will look to others to prepare some of the evidence. On your specific questions, definitely preparedness, I think it was Richard who said you know we thought we were well prepared and actually I'm not sure we were. I completely agree with the King's Fund, we have to look at the issue of the resilience of the country if you like to the pandemic and the inequalities there were in health and indeed in the investment in public health which I think is a very critical issue that we look at. Covid was an accelerator but it certainly wasn't a leveller and we need to absolutely understand those issues.

So, I completely agree that needs to form part of the scope. I think the core of it should be health outcomes, but it can't not look at if you like, put it the other way around, at the economic context in which those decisions were made. So it isn't an economic inquiry but it will have to look at how the economy and the wider concerns about the economy influenced ... and again you can't entirely disentangle them, one of the reasons some people didn't isolate in the way they should was because the support for them in isolation financially wasn't enough. I know many people who literally carried on working when they shouldn't have done and the lower your income was and the more vulnerable your job the more likely you were to do that. So you can't disentangle the economics but I think the core of it should be the health issues. I hope Caroline that covers your questions, thank you.

#### **Caroline Lucas MP**

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It does. You don't know anything do you about these other ten pandemic exercises that apparently happened, I mean we've heard about Project Cygnus but I hadn't heard about Project Alice for example that was looking at MERS and about seven or eight other ones.

**Lord Kerslake**

Not personally, I don't know that, what I do know I think is I personally feel we've got to ramp up to a different gear on our civil contingencies planning actually, it is one of the reforms of Whitehall that I think this has taught us. We put effort into it but we don't put enough effort into it, bluntly.

**Caroline Lucas MP**

Thank you. I'll come to Tim next if I could.

**Tim Gardner**

Thank you. So I think the inquiry really needs to be focused on the quality of the decisions that happened at the very heart of the State and of Government. A panel put together by the World Health Organisation which was looking at the international response to Covid found that the countries that were hardest hit by the pandemic generally ignored or denied the threat, devalued the scientific advice they were given, delayed crucial decisions and either failed to act or focused on a very narrow set of measures as part of their response. I think that decision making process is really central to this. We know what a lot of those decision points were, so you know when to activate COBRA to coordinate the response, the initial strategy, when to lockdown and so on. But we actually know I think far less, at least not definitively, about the sequence of events that led up to those decisions. Where those decisions were made, what shaped the choices that were made, the quality of the expert advice and analysis that was available to decision makers and how it was communicated to them. And then how the resulting actions were coordinated across Government.

For me I think a key test of what should be in or out of scope is where do we urgently need a better understanding to improve our response in the future, but secondly what is most amenable to the methods of a public inquiry. Public inquiries I think tend to be good at some things, you know trawling through the paper trail, putting witnesses under oath, understanding how decisions were made or not made, how information was shared or not shared within large organisations. It tends to be what they're very good at. That's not to say there are some very important contextual factors that would have weighed on those decisions but I'm not sure that they're directly matters for the inquiry. We know for instance that the NHS has very little spare capacity, we know that even before the pandemic it was running with over 100,000 vacancies, the inquiry doesn't need to relitigate this, what it should do however is look at how did that constrain or affect decision making. We know an awful lot, we now know a lot more from the last 12-18 months about the pernicious impact of health inequalities, what I think we don't know very much about is how, what awareness of there was there within Government and how was that factoring into decisions, if at all.

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I think the one exception to that sort of dividing line would be preparedness, because you know there is an awful lot that we know and understand very well already, I think the one clear glaring exception that is preparedness and planning because a lot of this happened almost by necessity behind closed doors and is very rarely seen by the public, it's not something we get regular data or other information on, I think it is, and I think it's a really crucial question.

#### **Caroline Lucas MP**

Thank you, Tim, I'm going to come to Richard next because I know you need to leave quite soon, and I wonder if particular whether there's anything that Tim said there about health inequalities and so forth that you would disagree with because I know the King's Fund has made pronouncements on this.

#### **Richard Murray**

Yes, so I think a couple of things, and I think I'm sure no real difference between us and Tim on this. You do have to touch on some of the preparedness, clearly East Asia was and Western Europe or large parts of it weren't, there has to be a question then about why was that the case, but at least for the Government at the time we clearly weren't prepared and didn't have either a background in scientific knowledge, we didn't have a clear view about critical supply lines for products, people will remember PPE, so Governments effectively I think, obviously for the inquiry to find out, slightly making it up as they went along. And you have to think about the state of the country as Covid came, particularly if you're going to look at international comparisons, because some of those international comparisons will critically relate to underlying features of this country. So obviously New Zealand and the United Kingdom, there are real differences between us about the exposure to international travel that are not true if you are thinking about United Kingdom and France. But depending on which way you take those international comparisons I think you have to have a view about how exposed were we to Covid as it first came. And then go on from that into decision making.

I don't think that will take very long, I don't think that's a massive exercise, I think that actually the data and the understanding is actually there already and as we think about what happened as Covid went on, I think if we don't tackle some of the ways Covid works against ethnic minority communities then that will just leave a great big hole both of our understanding, of Government's understanding and of their response about how they then try to become more culturally competent in communicating with people from ethnic minorities, which we're still seeing in the vaccine programme now, so some real successes in beginning to pick up uptake, but it's still there. So I think if you left that out you've got a great big hole, particularly for the people that were most affected by Covid.

#### **Caroline Lucas MP**

Thank you, I'll come to Jodie next and if I could just ask you in particular just to press you a little bit on the last of the three points that I raised which was about whether it should look into the health and economic outcomes of the decisions made, so in other words should it get into the fact that there were lots of delays now in terms of cancer care let's say, or lots of self-employed businesses went out

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of business because they didn't get the support they needed. Or should everything be focused on the Covid specificity of the main focus?

**Jodie Blackstock**

I don't think that's a question I can answer unfortunately, it's outside of my expertise, but the only thing I would add to the questions that you're raising here as you think about this is yes, health and wealth inequalities is a good way of describing it but I would also ensure that you're talking about public sector equality duties and how these were given effect to during decisions being made. We've got obvious groups of those with disability, racial disparity and age, in particular the protected characteristics which have come into play in stark focus during this process and there will of course be others, so I'd just make sure that's in the mix.

**Caroline Lucas MP**

OK and finally Marcus.

**Marcus Shephard**

I would echo all the points laid out, I agree with my co-panellists. I think the only point I would add on the health and economic outcomes I think the inquiry will need to look at these because they will be the lens through which it judges the effectiveness of those things, so if you were trying to identify lessons you need to understand how well or not something works, so you need a metric and then the outcomes are probably our best metric. So we will need to look at that at some point, but I think there is a balance of the scope whereby trying to understand why certain outcomes happened a long time down the road, further down the road, may go beyond the sort of value of the inquiry. I think I would most strongly like to concord with Tim on the idea that our view is that this inquiry really needs to focus on decisions and how decisions were made, partly because I think that is crucial to understanding the story of the inquiry but I think also that is the unique competence of the inquiry. Like nothing else, no other institution can summon the Prime Minister and say what was on your desk on the 14<sup>th</sup> of March 2020? No one else can do that and that is why that needs to be its first and foremost objective because that's the value it adds.

I think the simplest way to put what the inquiry should be doing is it should be establishing the state of knowledge when these decisions were made. This goes back to my point earlier about it being sort of agnostic and independent, separating out hindsight is going to be a real challenge, again to your question about the outcomes, the outcomes give us a way of understanding what happens down the line but I think to understand how decisions were made at the time we have to strip that out and we have to say well actually, you know when the decision was made to, you know launch 'eat out to help out' or to put in the first lockdown or to delay the second lockdown, this is what the Prime Minister and his advisors understood to be true and I think also not just what they understood to be true but also looking at the options considered and discarded, the effect of lobbying and sort of how different arguments were weighing on the people making the decisions, particularly the Prime Minister but also his advisors, his other Ministers, senior officials.

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And I think also to the point that Lord Kerslake and Richard both made about sort of international comparisons, the sense to which there were cultural biases or tendencies within both the Government and the organisation of Government that perhaps led people to believe in some sort of British exceptionalism here or to sort of devalue or ... essentially not necessarily in a negative sense but basically how they weighted the experience of others in their own decision making, it's a very nuanced question but again I think these are the sort of things that only an inquiry can understand and this is where, this should be the starting point for the terms of reference and the scope of the inquiry, it should be those decisions and then at some point someone will have to draw a bright line around that and say OK we can't look into operational decisions in a specific hospital or care home because while these are obviously important they just, it's too much, and I think keeping it at the heart of Government is where we will get the most value, the answers that will satisfy the public concern the best and will hopefully give us the best lessons for the future.

**Caroline Lucas MP**

Thank you. Sorry Richard, I saw you had your hand up.

**Richard Murray**

Yes sorry, I should have said on the health and economic outcomes the decisions that were made, I think you have to think about them, I don't think you can understand as Lord Kerslake said, people struggled with isolating, if you understand that they were in the gig economy, on minimum wage, you wouldn't get paid. If you don't think about that critically the decisions are important but I think there is a question here for the understanding of Government about how well it thought its measures would work, both on paper where people obey them and then the real world given the challenges that they faced. And I think that could very briefly touch on the kind of second round effects on people with cancer, heart disease and others who've had their care interrupted. Now that primarily caused by the failure to stop widespread community transmission of Covid, that's what caused it is the NHS was pushed into delays and cancellations. I think there's a question then about how well they handled that, but that was the primary cause. But I think for the people that are suffering those consequences at the moment it adds the importance I think to some of those decisions and that understanding earlier on in the disease.

And just to say because it's probably my last point before I head off, that point Marcus said about kind of an ex-ante and an ex-post understanding of the decisions that were made, what information and understanding were available to decision makers at the time and then of course did it turn out to be correct. The only thing I think I might add into that is that does take you into the quality of the advice, where was it coming from, how broad based it was, Governments aren't completely the victim of their own scientific advisors, to some extent they create those circumstances as well, and as I've said already you know, given the information that was in front of Ministers perhaps some of the decisions on social care don't look strange, but you could question well why did nobody seem to know anything about social care when those decisions were made. Now that's a slightly longer term conversation. Thank you, I probably just need to head off now.

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**Caroline Lucas MP**

Thank you so much. Over to you Chair.

**Philippa Whitford MP**

I was hoping that you would stay for the start of mine Richard.

**Richard Murray**

I'll try, I can hang on for another five minutes Philippa.

**Philippa Whitford**

Yeah that would be fine. Are you finished Caroline or are you ... yeah, OK thanks very much. I'm going to do the same as Caroline which is put all my supplementaries in one bucket so that we can get an answer. Lord Kerlake referred to the idea of you know you might even be splitting the inquiry into sub-groups because of there's just so many different sectors and different questions, so do you think you would structure it in that way, so as to get more work done in a shorter time and the other issue is regarding the three devolved nations, many of their responses were secondary to what the UK Government did, so they didn't have necessarily choice or control over that, but equally in other things they diverged. So should each of the four nations have a completely separate inquiry, should there be both or should the devolved nations work simply be included with a UK-wide inquiry. So if I could come to you Richard with your last four minutes.

**Richard Murray**

On the sub-structure I think yes and that also reflects the fact that the kind of expertise that you would need is very different in some of the different areas that are going to be under investigation. I think just doing it as one group, it either makes that group very big or it's going to leave a lot of people puzzling why they're there. That will need a really strong central team to tie those pieces together because you know what we did on public health then did matter for what happened in the NHS and in social care and the degree to which that was successful or not in stopping widespread transfer. But I do think that splitting it up into separate sections, and we can go back to something I think that Marcus may have said, people like the NAO know an awful lot about procurement, you could even then task other organisations to lead on specific things or draw on those elements within the wider work programme.

And on the devolved administrations, I think Philippa to be slightly cheeky I think I'd probably ask them what do they, how do they want to handle this. There are some decisions that were taken together, but there were clearly some decisions that weren't. How do we mesh that into a coherent set? I think to some extent England probably could do it on its own, but critically I think that would be very odd to ignore the learning and the experience that we saw in the other three countries because we can

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still see that in the vaccine roll out, from what I understand Wales seems to have done very well and trying to puzzle through what those different mechanisms were and how the decision making was different I think could throw an interesting light on what was done in Whitehall but also what was done in Edinburgh and Cardiff and Belfast.

### **Philippa Whitford MP**

Yeah, similarly with our approach to care home staff was different and we got over 99% getting vaccinated. I'm sure each of the nations could all learn things from each other. OK thank you very much Richard for joining us and thank you for hanging on for that. If I could come to Marcus next on that same, so dividing it by topic but also where the three devolved nations fit in.

### **Marcus Shephard**

So, thank you Chair. So in terms of a single inquiry I think our view is that you want, you don't want to split this up into multiple inquiries, they would tread on each other's toes, it would be an absolute nightmare and it would just be very inefficient, it would be very hard to form a consensus, stuff like that. You need a single inquiry at the heart of this that drives things forward. There is, and I might defer to Jodie a little bit on this, I'm not a lawyer so I don't quite understand the full parameters of the Act but my understanding of the Act is that basically a UK-wide inquiry couldn't look into decisions made by say the Scottish Executive, likewise the Scottish Executive one couldn't so, there are sort of boundaries there. I think what we would want to see is essentially the establishment of a UK-wide inquiry that looks at decisions made for the whole of the UK and then all decisions made by the Westminster Government for England or England and Wales in terms of the NHS and then allow space, or basically establish a model of investigation that hopefully the Scottish, Welsh and Northern Ireland Executives would set up their own inquiries in the mould of, and I believe most of those Executives have said that they intend to do something like that.

For the UK-wide inquiry itself it is so big and as we've just talked about with the scope, it's a big challenge and I think expecting one chair to sort of sit triumphantly over this and have a view on all of it is challenging and could draw things out. I think one of the things we had an event on this and Sir Lawrence Friedman had some good thoughts on this and his view was that what you needed was kind of like a supercharged panel, not just like where you have a chair with a bunch of advisors, but where the panellists actually take ownership for sort of streams of work within the inquiry, so you might have a stream which is sort of you know the effectiveness of institutions in Government, like the Civil Contingency Secretariat, you might have another stream which looks at you know how the operation of Public Health England, you might have another one which looks at say decision making in the Department of Health relating to schools, but at the same time this would all be coordinated within a single body, so the way you might constitute it, and this is a bit novel, you would have essentially like a Working Group chaired by the chair but then sort of the subgroups of that would look at different things and individual panellists would chair those. Now there are questions around you would have to obviously, the panellists would obviously have to have the same power as the chair to take evidence under oath and stuff like that which I don't think would be too hard to arrange.

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But that seems to us to be a more efficient way forward than just having ... because if the chair has to oversee every hearing it just means that they become the bottleneck on that and I think structuring it in this modular way where you can look at things in parallel will get us to the answers quicker. The reason you can't pull things completely apart is because as I sort of reflected in my last answer, if you're thinking about decisions, if you're thinking about the decision to lockdown, this is obviously a lockdown is a huge public health intervention but it's not made in a vacuum, like you can't make the decision to lockdown without thinking about what happens to the schools, you can't think about the schools without thinking about what happens to working parents, you can't think about what happens to working parents without thinking about ... you know the businesses that employ them, so there are all these overlaps that will need to be teased out. But I think centrally you can split this into sort of thematic areas that could be owned by ... and actually this might also help because then you could bring in panellists with more domain expertise, like you could bring in a former Cabinet Secretary to look at sort of you know the sort of, the operation of the Cabinet Office or you could bring in, you know a doctor, you know to look at sort of the delivery of healthcare and that would help bring it in.

And so I think that is how I would structure it and hopefully also by having that it would take some of the weight off the inquiries in the devolved administrations because it would make it much clearer for them what bits of their competencies they need to look at specifically and what bits they don't need to worry about.

#### **Philippa Whitford MP**

Thanks very much, so basically from the point of view of topic and expert panel individually chairing these kinds of threads and then either the devolved nations would have separate, that feed in or actually as subgroup parts to that.

#### **Marcus Shephard**

I think they would be separate and distinct. It would be nice to think that you could coordinate this all but I suspect that would be hard. I think what we would hope in the way sort of you know normative behaviours is that if there were four inquiries running the chairs would all be in contact with others and we would find ways to facilitate dialogue between them and so because I mean I guess the worst scenario would be where you get say a Scottish inquiry that says oh X, Y and Z that Westminster did was terrible and made everything worse for us and Westminster says well A, B, C the devolved administrations did was hopeless but they're all so inept. And that is just unproductive for everyone, so I think you would want some sort of dialogue mechanism but I think, I don't think you would want any formal connection, I think they all need to have their own chairs, their own secretariats and be left to work in their own ways, just for the speed of moving forward and it's a bit softer but require on some of those more informal respects between experts to sort of resolve sort of some of the discrepancies and sort of come to a consensus on the truth.

#### **Philippa Whitford MP**

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I mean we've seen that with the Chief Medical Officers etc all working together. If I could come to you Jodie, obviously Marcus raised some issues about what can and can't happen if you're going for that approach.

### **Jodie Blackstock**

Yes, the easiest thing is any reserved matters are obviously going to be those kept within the core UK inquiry, when it comes to devolved matters as we've seen they have been dealt with separately. The Inquiries Act does enable it all to fall within the one inquiry where the Minister has sought permission or effectively has consulted, it doesn't use the word permission it uses consulted, but you probably ought to take that as permission because it would be quite odd for them to consult and then disregard the answer, with the devolved administration and permission is then given to the chair of the inquiry to consider those matters which are wholly or partly Scottish, Welsh or Northern Irish in that way. But as we've said, the sensible way of doing this really would be to have concurrent separate inquiries where there would be a panel of expertise relevant to that jurisdiction of the UK looking at those matters. But it does seem that the overarching terms of reference could control that work, so it wouldn't become unwieldy by the looks of the framework that we have for it.

I mean in terms of how we should do it, it's a sort of ... it really depends on where the terms of reference settle and perhaps that's a bit of a circular issue, but absolutely what we'd be aiming for as we keep saying is something that is not unwieldy, the problem with public inquiries is that they can go on forever, cost a huge amount of money and the you know primary aim which is to provide answers for the people who have suffered just sort of dissipates over time. We absolutely don't want that to happen in this circumstance, so it does seem if there's a way of ensuring concurrent work can take place that should be explored.

Within the confines of the Inquiries Act there is provision for a single chair and for a panel or panellists or members to sit alongside that chair, so what we'd need to explore is is it possible to have sub-chairs within that construct and hopefully the answer to that would be yes, that would be sensible. But the Act is silent on that at present, I think because we've just never had anything of this scale before.

### **Philippa Whitford MP**

OK, thanks very much. Obviously the contaminated blood inquiry at the moment is looking at all four nations although they did hearings in the different countries but you know as has been highlighted there is just nothing on the scale of this. If I can come to yourself Tim before I would go back to Marcus who wants to come back.

### **Tim Gardner**

Thank you. So I would ... I think I would agree with Marcus about actually a sort of UK Government/England single inquiry and taking that first, I think the main question that comes up is do you try to run it in series, so you've got options, you know you could have a single inquiry that runs in phases with the more urgent aspects of learning lessons coming first and then subsequent aspects

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being put into later phases of the same inquiry or you could have multiple inquiries running in parallel. I think I agree with Marcus, I think the idea of having multiple no doubt highly interdependent inquiries running in parallel and trying to coordinate the work that they do, there is potential for absolute chaos. So I think I would quite strongly favour one large inquiry but as Marcus was saying there are lots of different options for how you split some of those into modules and allow work to proceed in parallel within that single inquiry.

One thing I was reading quite recently was a history of the 9/11 Commission in the USA and actually the way that inquiry was set up was to effectively create separate investigative teams so there was one team that focused on what did the CIA know and what did they do, another that looked at the FBI, what did they know and what did they do. Another that looked at the history of Al-Qaeda and so on and so forth. And actually one of the other benefits of that model and why it might be applicable to an inquiry of this size is that those investigative teams were then able to publish what were called Staff Reports which were highly factual, evidence-based summaries of what those investigative teams had found out that were put into the public domain prior to the relevant witnesses being called to give evidence and I think that's, whilst I'm not suggesting that that is a flawless model I think it's one that merits looking at in this context given that it's such a big inquiry. But that reiterates the need for a very large, well-resourced central team.

I think the other thing that an inquiry can do to help get through a lot relatively quickly is to make maximum use of the other mechanisms and organisations that already exist in the relevant space. So, I think Marcus mentioned the valuable work of the NAO, there is an awful lot of valuable work, there is an awful lot of knowledge and understanding about the broader context, about NHS capacity, about the state of adult social care, about health and inequalities that has been done so one option that might allow the inquiry to get through quite a lot of this context reasonably speedily is to make a lot of use of panel members, but also calling on expert witnesses right at the start of hearings to help frame the context for the inquiry and help the inquiry team to develop some of its key lines of inquiry.

On the point about whether there should be separate inquiries in each devolved administration, the three devolved Governments have their own power to hold their own inquiries and I think they should do so. I think the Welsh, Scottish and Northern Irish Governments all made, played a very important role during this pandemic, each forged their own distinctive direction and made their own decisions, so I think it's important to look at that. If we tried to fold that into a single inquiry on the basis that there would be economies of scale, I think having tried to look at health related work within the UK before at country level, actually it's four times the work rather than anything else. But it's probably quite important to try and start from a shared basis of what are those inquiries going to try to look at and try to develop some frameworks in common for how those issues are going to be examined. That's obviously extra work but then that reiterates the importance of starting this process going ASAP.

**Philippa Whitford MP**

Thanks Tim.

**Baroness Masham**

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Phillipa?

**Philippa Whitford MP**

Yes Baroness?

**Baroness Masham**

Could I come next because I have to go to the Chamber for a question.

**Philippa Whitford MP**

OK, if we can just finish off mine and then I'll come to you before Barbara if that's already.

**Baroness Masham**

Very good.

**Philippa Whitford MP**

OK, thank you. Obviously the issue will be some of the interfaces like the lockdown or non-lockdown decision in September with furlough winding up and I think that's where the friction that Marcus talks about will come in. The other thing that I remember from the Penrose Inquiry into contaminated blood is the devolved nation public inquiries cannot force a UK Minister or release of documents from a UK department and that is where we might have the weakness. Back to you Marcus, but very briefly because time is marching on, we've a lot still to get through.

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**Marcus Shephard**

That's good, I only wanted to make two very, well sort of one small point which was I think something that should be in the scope that actually all inquiries will need to look at is the sort of success or otherwise and breakdown of the joint working arrangements, so back in March there was good coordination between the devolved administrations and Westminster through COBRA, but then by September we have Nichola Sturgeon I think it was saying 'oh I can't remember the last time I spoke to Boris Johnson'. I think that is something that all the inquiries should take a view on because it's a key area for us to learn lessons.

**Philippa Whitford MP**

Yeah, that seemed to fall apart last May. OK if I could come to Baroness Masham and then Barbara Keeley next.

**Baroness Masham**

My question is do you think there should be the inquiry led by a Judge. I think that whoever it is it should be independent and trusted by everybody. I have to go to the Chamber, but I'll just hear the answers quickly.

**Philippa Whitford MP**

Maybe if we start with you Jodie and others can just add if they've something specific because not everyone needs to answer every question.

**Jodie Blackstock**

It doesn't have to be a Judge, it's not necessarily that Judges are the best, it just happens to be in this sort of ad-hoc process that we have, it tends to be High Court Judges that are approached. I think this would be part of the areas and arenas to consult on as to who the best person would be in light of the problems, it might be sensible for someone from the health sector to chair given so much of this is about the health sector, but of course it depends on the panel. If there's a panel with a Judge that may well assuage any concerns about diversity of experience. Absolutely they have to be impartial in all matters and that's usually why Judges are appointed, but yes, a Judge with a panel I think we've agreed is probably, the panel is essential in any event even if it's not an actual Judge.

**Philippa Whitford MP**

Tim or Marcus, any comment you want to add to that?

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**Marcus Shephard**

I'll just say quickly it doesn't have to be a Judge, but a Judge would be a very good choice. They have the independence, the public trust and their ability to sort of forensically unpick past events from very complex patterns of evidence is really unparalleled. There are no downsides to a Judge.

**Tim Gardner**

Yeah, I would echo that.

**Philippa Whitford MP**

OK that's great, thank you very much.

**Baroness Masham**

Thank you very much.

**Philippa Whitford MP**

OK, thanks Susan. If we can now come to Barbara Keeley with her question.

**Barbara Keeley MP**

Thanks, it's a question that we've touched on already I think in a few of the responses but it's about how decisions made during the pandemic should be evaluated and I was thinking you know there are broad areas we've already touched on like the decisions around social care being seeded into care homes, obviously you know one can look at the context of that but I think as was mentioned earlier, certainly the Whitehall capacity and quality of the advice or the lack of understanding and expertise has to come into that too, and maybe also another example is the decision on closing borders to limit the Delta variant, we're into a lot of what was known about the variant and the decisions you know, why those borders were not closed earlier, so it's difficult to judge that isn't it with the context of what was known at the time. Can I come to you first Tim? How are decisions to be evaluated?

**Tim Gardner**

Sure, I think the key thing is to avoid hindsight bias, the pandemic was clearly a major test of governments around the world and some have clearly fared reasonably well, others have done well in places, others have done badly in places and others have done absolutely awfully throughout. I think we need to evaluate decisions based on what was known at the time rather than what we know now. I think we also need to think about what could reasonably have been guessed, because this is

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an area where governments are managing with an incredibly high degree of uncertainty and there are no complete ... there will very rarely be any complete answers coming from the scientists, only some things that are known and large areas of uncertainty. But by asking the question what could have been reasonably inferred even if it wasn't definitively known, or at least suspected, so one question would be the question of asymptomatic transmission of the virus, this was something that came up at the Select Committee hearing with the Secretary of State for Health last week where I think it was mentioned that the WHO's advice had been that asymptomatic transmission was not proven until relatively late on, however, there was the case of the individual who came from China back to Brighton via a skiing holiday in France who created a single-handed super spreading event unbeknownst to him, which at least raised the question of actually this is something that seems to be possible and so perhaps based on the precautionary principle we might want to assume that it is until proved that it's not. So I think that's something, that I think is a key dynamic.

I think there's also a question of what shaped the choices that were made, you know what were the ... what can we see from how decisions were made that explicit and implicit priorities that were influencing decision makers and what quality of advice was given to them. I think it was Richard who pointed out earlier that governments are not passive prisoners of the advice given to them by experts, they play quite a big role in shaping the nature of that advice and the quality of that advice and so that's something that would need to be evaluated as well.

#### **Barbara Keeley MP**

Fine, thanks. Marcus, anything to add to that?

#### **Marcus Shephard**

No, I broadly agree with everything Tim has said, as ever. I think the main thing I would add to that in terms of evaluating decisions is absolutely it's about you know looking at what was known at the time but I think there is a very key question about sort of the institutional capacity for learning during the crisis. One of the key themes of this crisis and I think one of the, you know, drivers of the need for this inquiry is the fact that it seems very clear that the same mistakes were made time and again. It's understandable that you know, maybe there were reasons why the first lockdown was a very hard decision to make and it wasn't made as quickly as it should have been, but by the time we're getting to sort of the second or the third lockdown, or the second or the third decision to close borders and stuff like that, you know why was the learning from before not being embedded, why were lessons not being learned on the go. So I think there's that and also to Tim's point and the point about what's been made about, you know there was a lot of uncertainty, there were also visible models, like you know there was that period in sort of February/March/April where sort of as goes Italy so goes the UK two weeks later, like you know again was there sort of a cultural unwillingness, were there sort of institutional reluctance to sort of actually look at the wider context of what's going on elsewhere and use that to understand what might go on here.

But otherwise, yes, I agree entirely with what Tim said, it's about looking at sort of how evidence was used, sort of how uncertainty was managed and how that worked within the sort of yeah, the organisation of Government.

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**Barbara Keeley MP**

And should that question that Richard raised earlier about Whitehall capacity be rolled in or looked at separately do you think, because clearly I think it's starting to emerge that that has been a big factor in the social care issues, I think the Secretary of State admitted last week that he didn't even have a list of care providers, their knowledge of them was do dire and they certainly didn't seem to understand how agency staff operate between homes and just the operation of that wasn't there, but of course given scientific expertise was coming from groups like SAGE, they didn't have social care represented either, so it does seem that there's a vacuum there of nobody making input who actually understood how the thing worked and you know with a Department of Health and Social Care that's a big gap isn't it.

**Marcus Shephard**

Yes I agree, and I think one of the things that the Government talks a lot about, I mean we're seeing I think the Civil Service reform plan is due out, one of the big emphasis is just in general working within Government is about having sort of more multi-disciplinary teams, I guess there is a good question about was there sort of a default mode of thinking. I think it will be interesting, sorry I'm jumping a little bit, in terms of the Civil Contingency Secretariat which I think is very well set up to deal with things like a terror attack, or a plane crash or you know a building fire or something like that, but is not well set up to deal, in terms of its capacity and capabilities, with something like a pandemic disease. But then I think equally yeah you're right, the scientific advisory mechanisms, did they have the right sort of knowledge, was just putting a bunch of sort of like you know mathematical modellers and I'll say in a past life I was an epidemiologist so I have a slight bias there, but did that skew the advice that was given and I think that is a key question. Yeah, were groups like SAGE constituted correctly, is the sort of question that an inquiry is well placed to answer and should look into.

**Philippa Whitford MP**

OK if we could come to Lord Russell now with his question.

**Lord Russell**

Yes, very quickly, let's get the difficult bit out the way which is we've got an inquiry and it's come out with some clear recommendation, what happens then? Marcus you earlier touched on that and I think you specifically mentioned the Mid Staffordshire inquiry as being a model of there actually being sort of clear responsibility for overseeing follow up. Could you expand on that thinking about all of the recommendations that might come out. What could you envisage might be an effective follow up mechanism?

**Marcus Shephard**

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Tim can probably speak to Mid Staff better than I can, I think one thing we recommended before is that the Liaison Committee should adopt an 11<sup>th</sup> core task for Parliamentary Select Committees and that core task should be that following any public inquiry the relevant Select Committee should pick up the recommendations and hold hearings at regular intervals, three or six months, with you know the Permanent Secretary or whoever is leading the implementation to see that they're done.

I think in this context we would like to see the same, it may not be one Select Committee, it may have to be several, I mean because you're thinking you know there will be recommendations for ... it wouldn't be appropriate for the Education Select Committee to be scrutinising you know health questions or vice versa or stuff like that. I think what we need is yes a clear steer from the start, ideally in the terms of reference that Parliament will step in and pick up some of these lines of investigation, sort of take the recommendations as they come out, hopefully it won't be just one grand report, what we would like to see if interim reports that sort of deliver recommendations, so as I think Tim pointed out earlier, we get to the more urgent questions first.

So maybe there's sort of urgent questions about Public Health England that come out after 18 months and they could be picked up by the Health and Social Care Committee who would then sort of ensure that whoever is responsible for implementing those is held accountable for that, that's what we would like to see. I think the only other thing I'd say is we've talked a little bit about the use of people like the NAO, the Ombudsman and other institutions, I think there are also places for them, not necessarily to hold accountability but to sort of just provide on-going scrutiny and oversight of the Government's performance at implementing change and that's what we would really like to see.

#### **Lord Russell**

OK thanks, and if I can put the same question quickly to Tim and then to Jodie and if you could be fairly succinct please.

#### **Tim Gardner**

Thank you, I'll try and be as succinct as I can. So I think it starts before you have a set of recommendations, so any ... one of the things that the Mid Staffordshire inquiry did was it dropped nearly 300 recommendations on Government with less than 48 hours' notice and even just getting ahead, speaking as someone who was involved in that, just getting your head around what those recommendations are let alone whether they're a good idea, whether we think they're feasible and so on is incredibly difficult. One of the things that that inquiry did do before it reported was to hold a series of seminars with experts, involving a range of other people to try and develop what it thought those recommendations should be and I think that's very much a process that I think I would personally commend to this inquiry, is to try and start thinking about that to make its recommendations as implementable as possible before it even actually formally makes them.

Beyond that, as soon as something is reported I think a formal follow up is incredibly useful, on Mid Staffordshire I think there were two possibly three subsequent Government reports highlighting progress and either describing where how recommendations were being implemented or where they were being, you know they were being honoured in the spirit, or if they had been declined and it's

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always open to Government to decide that a recommendation isn't right for whatever reason, why that was. But actually that transparency and that follow up I think is arguably more critical than simply a sort of blanket acceptance of all recommendations.

**Lord Russell**

OK thanks very much, Jodie anything to add?

**Jodie Blackstock**

Just to say this is an area of real importance to the Justice Working Party and we definitely commended the approach of Mid Staff on holding those seminars because the recommendations need to be practical and they need to be workable. So starting from a point of achievable recommendations is what we should be aiming for.

We recommended that interim recommendations were a very good way forward because it meant during the life of the inquiry the chair can then track the progress of those recommendations and whether they're being implemented and that's something that the inquiry into child sex abuse is doing and doing well. So that would be something to include in the set up.

We also recommended the establishment of an independent body to monitor take up of the recommendations, obviously we won't be able to do that in the light of this inquiry but in the alternative or in addition to that we certainly agreed with the Institute for Government's recommendation about the Parliamentary Liaison Committee and taking much more scrutiny in Parliament of these measures. We also had a final recommendation that where Ministers agreed to implement recommendations they should be required to report back to Parliament with an implementation plan, so that there is then something to track by different Parliamentary Committees and that could be incorporated into the set up as well.

**Lord Russell**

Thank you, Philippa back to you, one minute to go.

**Philippa Whitford MP**

OK, thanks very much, we're right at the end. Many of our other questions have been answered as we go. Several of you have mentioned the role of Parliamentary Select Committees to take it forward but do you think if there is any other specific role for Parliament, for Parliamentarians. Starting with you Jodie.

**Jodie Blackstock**

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I think I probably covered that in what I just said, but I think right at the outset when we were talking about the terms of reference I do think it would be worth Parliament having oversight and approval of those because it means you'll then be able to ensure that the ... you know this question about how should the evidence be evaluated, that's very much beholden to the terms of reference and making sure that they include you know quality of decision making, what was known at the time, what information was available. These things are really important to be set out in the terms of reference because everything flows from them. So I would absolutely commend having a role from that point onwards and then ensuring that the structure allows Parliamentary scrutiny throughout the process.

**Philippa Whitford MP**

OK, thanks very much. Marcus, yourself, anything to add?

**Marcus Shephard**

I would agree with that, I think yeah the main thing would be having somebody probably PACAK [ph 1:37:40.2] to scrutiny on the terms of reference. I don't think you necessarily want it to be voted, but I think it would be appropriate to have a debate on this in the House before they are formally agreed.

**Philippa Whitford MP**

OK, and Tim, anything to add to that?

**Tim Gardner**

I would agree, I think inquiries can be quite effective in creating an impetus for change, but in terms of actually sustaining that impetus and ensuring that it leads to real change and improvement is fundamentally a job for Parliament.

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**Philippa Whitford MP**

So, at the beginning setting terms of reference and then at the end in pushing implementation. OK we're one minute late but if I could thank all of my colleagues on the panel for taking part, but particularly the three witnesses who have stayed with us to the bitter end, thank you for your evidence. Thank you very much, this meeting is now closed.