## OPUS<sub>2</sub>

Scottish Covid-19 Inquiry

Day 1PH1

August 28, 2023

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1	Monday, 28 August 2023	1	provide you with an update on the work undertaken by the
2	(10.00 am)	2	Inquiry to date and to set out our plans for hearings
3	(Proceedings delayed)	3	this autumn and the relevant processes and protocols.
4	(10.05 am)	4	What we will discuss today relates only to our health
5	Health and Social Care Preliminary Hearing	5	and social care hearings. Further information about our
6	THE CHAIR: Good morning. I am Lord Brailsford, Chair to	6	approach to future sets of hearings will be set out at
7	the Inquiry, and I'd like to thank you all for attending	7	a later date.
8	our first public hearing. I am honoured to have been	8	This preliminary hearing and the Inquiry itself is
9	entrusted with such an important undertaking on behalf	9	not a court. We are not here to determine criminal or
10	of the people of Scotland.	10	civil responsibility; we are here to examine what
11	Let's adjust this mike a little bit.	11	happened in Scotland in a non—adversarial manner,
12	Today I'm here to share with you the approach	12	working with core participants and gathering and
13	I intend to take to the task I've been set, which is to	13	analysing the experiences of people across the country.
14	establish the facts of and to learn lessons from the	14	While you do not need to be a core participant to engage
15	strategic response to the COVID—19 pandemic in Scotland	15	with the Inquiry, these organisations have some
16	between 1 January 2020 and 31 December 2022, the period	16	additional rights. We have 37 core participants to this
17	covered by this Inquiry.	17	Inquiry, many of whom are with us in the room today.
18	Before we begin, however, I would like to address	18	They play a central role, working with the Inquiry to
19	bereaved families, care home relatives and all of those	19	fulfil its terms of reference and ensure our terms are
20	of you here today and watching online who were impacted	20	met.
21	by the pandemic and who are looking to this Inquiry for	21	When I was appointed Chair of this Inquiry by the
22	answers. We all hold at the forefront of our minds the	22	then Deputy First Minister in October 2022, I was under
23	very difficult and distressing experiences so many have	23	no illusion as to the importance and magnitude of the
24	had. In particular we remember those who have lost	24	Inquiry's work. The COVID—19 pandemic presented the
25	their lives and those who were separated from their	25	most severe health crisis in living memory. It affected
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1 2	families , key workers who did all they could to	1 2	everyone. More than 17,700 people have died in Scotland
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decisions at pace that impacted upon the entire

population. They shouldered this responsibility for

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Inquiry.

The purpose of this preliminary hearing today is to

1 him. None of us associated with this Inquiry is under many months. 2 I will conduct a robust investigation without fear 2 any misapprehension as to the scale of the task before 3 or favour that will arrive at the facts, identify any 3 us. It is immense and to a certain extent it is 4 lessons that need be learned and make recommendations to 4 daunting. Speaking personally and on behalf of the 5 Scottish ministers so we are better prepared in the 5 whole counsel team, we are all honoured by the fact that event of any future pandemic. I will not take sides and Lord Brailsford has placed his trust in our abilities to 6 6 7 I will act with fairness towards all parties involved in 7 perform the roles of Counsel to the Inquiry. Our role in the Inquiry is to be independent and to perform our 8 the Inquiry process. 8 9 I'd now like to invite Mr Stuart Gale KC to make 9 duties to the best of our professional abilities , and we 10 10 some opening remarks. do that, as Lord Brailsford has said in the general 11 MR GALE: Thank you, my Lord. 11 context of the Inquiry, without fear or favour. All of 12 12 Good morning, everybody. Can I also thank everyone us intend to carry out our duties in that way. 13 present here in Murrayfield and also watching us online 13 Both Lord Brailsford and I have had the honour of 14 for joining us today in what is the first preliminary 14 meeting members of both the Scottish Covid Bereaved and 15 hearing of this Inquiry and indeed a very important 15 Care Home Relatives Scotland. In those meetings we 16 16 milestone in the Inquiry. As some of you may know, I am heard distressing accounts of the loss of loved ones, 17 17 Stuart Gale King's Counsel and, together with my the circumstances experienced both before and after that 18 colleague, Laura-Anne van der Westhuizen King's Counsel, 18 loss and the impact of being separated from loved ones, 19 19 we are the co-lead counsel to this Inquiry. particularly in circumstances where that loved one had 2.0 2.0 a compromised understanding of the reasons for that Our responsibilities, so far as the investigative 21 work of the Inquiry and indeed the presentation of the 21 separation or isolation. To all those relatives and 22 22 evidence, are divided between us and our respective indeed to those individuals, whether in care homes or in 2.3 23 teams. You will be aware perhaps from the Inquiry's other settings, the counsel team through me conveys 2.4 2.4 website that we have structured our investigative work their deepest condolences and sympathies. 25 into four portfolios. My team and I are responsible for 2.5 Most of us have experienced personal loss, whether 5 1 Portfolio 1, which is the public sector response, and 1 it be of a loved one, a family member, a dear friend. 2 Portfolio 3, which is of specific significance today. 2 The circumstances attending such loss are inevitably 3 That is the provision of health and social care 3 difficult to deal with. To try to have to cope with the services. Ms van der Westhuizen and her team are 4 circumstances of loss in the overall context of the 5 responsible for Portfolio 2, which is the financial and 5 restrictions imposed by outside authorities, all in the welfare support to businesses and individuals, and 6 context of a pandemic, are completely unparalleled. 6 7 7 Portfolio 4, which is education, certification and In addition to those who tragically died during the 8 impact on children and young people. 8 pandemic and those who had to deal with the impact of 9 9 My counsel team comprises advocates Alan Caskie, who the pandemic and its restrictions in visiting loved ones 10 is here with us today, and Faryma Bahrami. 10 in care homes and other settings, we, as a counsel team, 11 Ms van der Westhuizen's team comprises advocates 11 are mindful also of the impact that the pandemic had on 12 David Turner and Mary Ellen Stewart. In addition our 12 workers in the healthcare sector in particular and those 13 13 counsel teams have further counsel input from advocates impacts are relevant to our investigations. Indeed, if 14 Chris Stephens, Dennis Edwards, Graham Dunlop and 14 I may be permitted to make a personal observation,

from a nurse in that film, and she said this:

"Feeling we were failing everyone bore down hard on us as nurses. Our best was rarely good enough."

having watched now for I think the third or fourth time

the film that we've just seen, there was a quotation

That was then followed by a photograph of a trainee advanced critical care practitioner in full PPE with bloodshot eyes. That was a particularly moving reminder of the impact that caring for people during the pandemic had on those in the caring professions.

Lord Brailsford has said that the role of this

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Sarah Trainer. Each counsel team works with a dedicated

team of solicitors and paralegals and support staff.

counsel and solicitors ' teams.

Various specific investigative streams have been and

will continue to be allocated to various members of the

In these introductory remarks from me I would like

to reflect, if I may, on some of the matters touched on

by Lord Brailsford in his opening remarks. At the very

outset Lord Brailsford mentioned the honour that his

nature and extent of the undertaking which lies before

appointment represents and the appreciation of the

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Inquiry is to establish the facts of and learn lessons from the strategic decisions taken in response to COVID—19. Establishing the facts and the critical examination of those facts will lead to recommendations, the intention of which will be to provide an informed basis for an approach to dealing with another pandemic, should one occur.

As a counsel team, we are committed to the establishment of those facts and to a critical examination so that lessons can be learned. We will not hold back in examining and stating anything we consider to have been mistakes in the strategic decision—making process. Some chairs of previous inquiries have been sceptical of the success that inquiries have achieved in providing the basis for different approaches to similar circumstances. If I can give one example, Dame Janet Smith, who chaired the Shipman Inquiry, said

"If the success of public inquiries is judged in terms of changes in regulations and legislation, then we cannot often claim to have achieved that."

Now, we are aware of that critical approach and we are determined that this Inquiry will be a success in providing recommendations to decision—makers so that they are better prepared in the event of a future

pandemic.

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In saying all this, we are mindful as an inquiry that COVID—19 remains in Scotland as well as in the UK more widely an issue. The National Records of Scotland for the week to 13 August of this year disclose that 17 deaths were recorded during that time in which COVID—19 was mentioned and that there have been also recent media reports of new variants emerging and new mutations. More recently Professor Jason Leitch, the National Clinical Director, stated in an interview last week that 200 people were admitted to hospital with the virus in the previous week. Also, over the weekend, we have been aware of further press reports regarding the closure of certain hospital wards due to the presence of COVID and again also of further mutations.

It seems reasonable to assume that COVID-19 is not behind us and we therefore take extremely seriously our obligation to identify the lessons to be learned from the pandemic that we have just been through.

Can I now pass back to Lord Brailsford to provide an update on the progress of the Inquiry so far?

THE CHAIR: Thank you very much indeed, Mr Gale.

Now, in this section we will provide updates in a number of areas, including staffing and premises, planning and structure of the Inquiry, the approach the

Inquiry will take in terms of human rights, being person—centred and trauma—informed, connections with the UK Inquiry and with the Crown Office and Procurator Fiscal Service and gathering evidence. I should say that between myself and Mr Gale we will share the informing you about these various heads, under these various heads.

So I will start with staffing . Over the last few months the Inquiry has undertaken a number of recruitment exercises to further expand the team to conduct the investigation. That process is advanced, with new team members now in post or joining soon. In July I welcomed Mr Ian Duddy to the Inquiry as Chief Executive and you heard very briefly from Mr Duddy earlier this morning. As chief executive, Mr Duddy is the Inquiry's most senior official and will be responsible and accountable for the administration and management of the Inquiry. He brings to the Inquiry more than 20 years' experience in leadership, advocacy and human rights, having served as a senior diplomat, a UK ambassador and former Chair of the Scottish Human Rights Commission. I am confident that Mr Duddy's extensive leadership experience will ensure the Inquiry continues to proceed apace. He will also be instrumental in assisting me in upholding my commitment

to conducting a robust, independent investigation and adopting a human—rights—based approach in arriving at its findings and recommendations.

As some of those present today will be aware, the secondment of Ms Joanna Bain, the Inquiry's interim solicitor, will end on Thursday, 31 August, three days' time. I would like to thank Ms Bain for her significant contribution to the Inquiry to date and wish her well with all her future endeavours.

I am happy to announce her successor as interim solicitor is Mr Gordon McNicoll, who is sitting on my left, although he's probably quite hidden from you, I fear. Mr McNicoll is an experienced solicitor who brings with him experience of working on other independent public inquiries. Mr McNicoll has already taken up post and is with us here today, as I've already said. Recruitment for the permanent appointment to this post is ongoing. I will ensure core participants are informed once this recruitment exercise has concluded.

If I now turn to premises. We have been working in our offices at Waverley Gate at the end of Princes Street for most of this year. The space the Inquiry team is using currently will become our hearing suite and we will move to another office space within the same building. The refurbishment works to make the

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hearing space suitable and accessible will be completed in summer 2024. We are therefore planning to use other buildings for our hearings scheduled before then. We will use the Land Court space at George House in central Edinburgh for our first impact hearings in October and Mr Gale will say more about this shortly.

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We recognise that those giving evidence may wish to have family members or friends close by and that we may not be able to accommodate everyone in the hearing room at George House. We are putting the needs of families and the bereaved very much at the forefront of our consideration of suitable spaces to hold hearings. Therefore we are hiring additional space close to George House where the proceedings will be live—streamed and families and friends can watch and have access to refreshments. We will have a hearings and witness support team in place for those hearings and will ensure that appropriate emotional support is available to those who need it, both in the hearing space and in the additional room where the live—stream will be shown.

A named support officer will be available for those giving evidence prior to their attendance on the day. The support officer will ensure those giving evidence know what to expect when they attend, have the opportunity to visit the hearing space beforehand and

receive support on the day. The support officer can also provide signposting to organisations that may be able to help to provide bespoke or ongoing support if that is required. This forms part of our person—centred and trauma—informed approach, and I will say a little more about that later today.

I would now like to pass back to Mr Gale to tell you something about the planning and designing of the structure of the Inquiry.

MR GALE: Thank you again, my Lord.

I would like now to share with you information about the structure and approach that we propose to take with our investigations and hearings. Again this is in the context of the health and social care hearings that are upcoming. The Inquiry is adopting a thematic approach. The themes are health and social care; education and young people; and finance, business and welfare. For each of these themes the Inquiry will look at the impact of the pandemic first, then the implementation of measures and, finally, key decision—making.

Our approach seeks to bring the experiences of people in Scotland to the forefront of the Inquiry's investigations and the presentation of evidence, ensuring that the human impact of the pandemic is captured first. This is a deliberate choice on our part

and I consider it right at this stage that I should explain a little more detail about the reasoning behind that choice.

Last year the counsel team gave advice to his Lordship as to how we saw the order of consideration in this Inquiry. In giving that advice, our view was that impacts were likely to have been contingent upon the decisions that were implemented. In essence, decisions have consequences. The fact and existence of decisions and their implementation gave rise to the impacts. It was our view that it would not be possible to consider decision—making without first considering the impacts. As further consideration was given to that approach, we became more satisfied that consideration of impacts should precede consideration of implementation and decision-making. In simple terms, we considered that, in order to properly consider the quality and nature of the decisions made and the way in which they were implemented, the Inquiry first needs to consider the impact of those decisions in the real world.

The counsel team made this recommendation to Lord Brailsford and, after discussion with him, he accepted the recommendation. Thereafter the approach was further refined. In particular, it was decided that the examination of impacts should begin with the impacts

in the health and social care setting and that we should conduct detailed examination of those impacts. I should emphasise that the counsel team was not persuaded by the suggestion that impacts did not require detailed consideration on the basis that those impacts were

I can perhaps give an example of the subtlety of certain impacts that would not, in my view, be regarded as obvious. Recently I have seen one witness statement where the individual who gave it had certain vulnerabilities and they indicated that some of the advice created in their mind a level of fear which had an adverse impact on their confidence and affected their coping mechanisms that they had come to rely on in dealing with their vulnerabilities.

There were a number of reasons we made a positive decision to commence our impact hearings with those in the health and social care setting. As Lord Brailsford will explain, the Inquiry has adopted a trauma—informed and human—rights—based approach to our investigations and our hearings. With that in mind, we considered it appropriate that in our evidential public hearings we begin without delay consideration of those people who wish to engage with the Inquiry and who have suffered loss and/or trauma of separation from loved ones. We

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are also minded that much of the evidence from such witnesses will depend on personal recollections without the aid of extensive contemporaneous written records and, with that in mind, we feel that we should bring this evidence to the fore.

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A further consideration that we have in mind is that, while our principal role is information—gathering, we appreciate that for many involved in public inquiries, providing a public statement, whether that is simply the statement or one which is then expanded upon at an oral hearing, is a cathartic experience and we are anxious to provide that opportunity.

It is right now that I give an indication of our programme of impact hearings in the health and social care setting.

The Chair has to strike a balance between the need to report as quickly as practicable so that lessons can be learned and ensuring that the Inquiry conducts a robust, open and independent investigation which gets to the truth and makes recommendations grounded in evidence and informed by the experiences of the people of Scotland. In addition he has a statutory duty to act fairly and with regard to the need to avoid unnecessary

By necessity this means the Inquiry will not be able

to hear from everybody who wishes to give a formal witness statement or provide formal oral evidence at a hearing. To do so would lead to unacceptable delay in terms of reporting on findings and making recommendations. However, we will invite a number of organisations and individuals to appear as witnesses at our impact hearings. Those organisations and individuals will also provide signed witness statements which will be published on the Inquiry website and will form the basis for counsels' questioning of witnesses.

The impact hearings will begin on Tuesday, 24 October of this year. Weekly sitings will be from Tuesday to Friday of each week. The hearing will start at 10.00 am, continue through to about 11.30 for a mid—morning break and resume thereafter until 1 o'clock. We will then resume after lunch at 2 o'clock and continue until 4 o'clock or thereby, with a short mid—afternoon break. There will be flexibility in these timings and particularly about the finishing time if it is necessary to complete the evidence of a witness.

It is my intention that we begin with what we are terming "representative" statements on impacts. These will be from representatives of organisations speaking to the sorts of impacts that people associated with their organisations experienced. The organisations will

include those which were established during or just after the pandemic as well as from organisations which were established before the pandemic and continued to operate during it. In this regard the Inquiry has been in contact with a number of charitable organisations as well as other organisations established to assist with those having particular needs. The decision to take such evidence was instigated after certain members of the counsel team, including myself, held meetings with a number of organisations and they provided anecdotal information in respect of groups that they had supported during the pandemic. We anticipate that those representative hearings will probably take two weeks.

From the third week of hearings I expect to commence hearing from members of Care Home Relatives Scotland and Scottish Covid Bereaved and we are grateful as a counsel team and as an inquiry generally to Mr McGuire, Mr Anwar and their teams for facilitating engagement with members of the client groups that they represent. Further, we are grateful to members of those groups who have already provided witness statements and to those who are making time to engage with the Inquiry team to allow further statements to be taken.

As has been made clear, not all members of those groups will be called to give oral evidence and the

decision as to who gives oral evidence will be one for me and my team, but I can assure you that we will try to ensure that a broad range of impacts arising from this tragic situation are presented in oral evidence and I would wish to emphasise that all statements given by members of those groups — and this applies to all groups and all others who provide statements — will be considered and account will be taken of them.

It had originally been my intention in these initial hearings to only take evidence from those who suffered bereavement in the care home setting. On further reflection it seemed to me that to do so would be an unnecessary division and, mindful of the distress giving evidence of bereavement will inevitably cause, I have concluded that witnesses from these groups will give evidence of deaths of loved ones experienced in all settings.

I do not intend to place a limit on the length of time that witnesses from either group or indeed any other witnesses will take and, as with the scheduling of all witnesses to the Inquiry, there is no case of preference or prioritisation being given. The Inquiry intends to complete this first tranche of impact hearings at the conclusion of the week ending Friday, 8 December. We want to finish before the festive period

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as we appreciate that, for many people who have been impacted by the pandemic, this will have been and will continue to be a very difficult period.

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Therefore we will continue our engagement with the Care Home Relatives Scotland and the Scottish Covid Bereaved and their legal representatives, beginning as it has already and will continue, with a view to completing the witness—statement—taking process, and I should say that last week we were very grateful to have been provided by Mr Anwar and his team a total of 66 statements from members of the Scottish Covid Bereaved group and we are in the process of examining those statements, reviewing them, analysing them and, if necessary, seeking further clarification in certain

For those individuals who are asked to provide oral evidence at the impact hearing, the Inquiry team will explore their availability in order to inform scheduling of the witness timetable. This is all with the ambition of having called all relevant witnesses in this area by 8 December, subject obviously to availability.

The Inquiry obviously has an idea of the number of witnesses who are likely to give evidence —— we have a very clear idea of that —— in these groups and also in the representative organisations that I've referred to.

It seems to us that, given the anticipated numbers of witnesses, it is quite possible that the witnesses from these groups will occupy the entire period to 8 December. Thereafter we will continue with our investigations, and I should say that our investigations do not stop during the presentation of evidence. Our investigations are ongoing, as they have been now for many, many months. We will continue with our investigations but we will not hold further public hearings until February 2024 so that we do not overlap with the UK Inquiry's Module 2A hearings, which are on Scottish matters and which will be held in Scotland.

From February we expect to run until Easter, continuing with public hearings on health and social care impacts. The reason we are not being specific at this stage about the exact number of weeks or the witnesses at this point is that we are mindful that many of the witnesses we call will have suffered bereavement or loss and we wish again to make a trauma—informed approach to all these hearings, not rushing witnesses to get through to a fixed timetable.

Our intention for the remainder of 2024 is to hold hearings on the impacts on education and young people and, after that, on the impacts, both human and economic, on finance, business and welfare. These

obviously, as I've said earlier, fall within the portfolios that are headed by my colleague,
Laura—Anne van der Westhuizen. We will then return to health and social care and hold hearings on implementation, hearing from those who took decisions to put into practice the legislation and guidance in the health and social care sector over the period that we are investigating.

Can I ask Lord Brailsford now to expand on the approach of trauma—informed and human rights?

THE CHAIR: Thank you again, Mr Gale.

Now, the trauma—informed approach we are taking with respect to health and social care impact hearings will be embedded in all the Inquiry's work. While our purpose and terms of reference are set by Scottish ministers, it is for me, as Chair of the Inquiry, to set out how we will engage with others, how we will organise ourselves and how we will deliver these outcomes. I want to ensure that every person and organisation engaging with the Inquiry feels they have been treated fairly and feels that they have been heard. I know that many of the people the Inquiry will be engaging with have suffered loss of different kinds. Everyone working in the Inquiry has had training in trauma awareness. Those colleagues working in direct

contact with individuals who have been bereaved or suffered other losses have had specific, more in—depth training so they are equipped with the skills they need to conduct their tasks. While it is not the role of a public inquiry to provide counselling, we will provide emotional support at hearings through our own team and, where appropriate, through partner agencies.

When reporting at the end of the Inquiry, I am required "to demonstrate how a human rights—based approach by the Inquiry has contributed to the Inquiry's findings in facts and recommendations". This means taking a human—rights—based approach from the beginning. I want to set out here how I intend to do that.

A human—rights—based approach goes beyond a series of specific actions. I view it as the philosophy of the Inquiry and embedded in our approach to how we conduct our work in accordance with the terms of reference. We will apply this philosophy when scrutinising the extent to which decision—makers and those implementing measures set out in legislation and guidance had regard to human rights considerations. When investigating the 12 areas in our terms of reference, we will consider ways in which the strategic handling of the pandemic may have had an adverse effect on the exercise of human rights. As measures varied over time, we will consider

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developments of legislation, guidance and policies individually and cumulatively and the extent to which regard was given to human rights and equalities duties.

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It is important to remember that my role is not to determine if rights have been breached in individual cases or circumstances. However, when the Inquiry makes findings about lessons learned, where I determine it is relevant, I will consider and comment on any adverse effects on the exercise of human rights or equality issues

On the issue of equalities and any disparities or unequal impacts, I am bound in the terms of reference to consider these as I deem appropriate and necessary. A statement of how we will embed a human-rights-based approach in our work will be published on our website in advance of our October hearings.

I would like now to turn to our relationship with the UK Inquiry. I recognise that people living in Scotland may be affected by and indeed interested in the investigations of both the Scottish COVID-19 Inquiry and the UK Covid-19 Inquiry. The response to the COVID-19pandemic involved both Scottish and UK authorities. This Inquiry will only investigate areas within the devolved competence of the Scottish Parliament. However, as Chair, I recognise the importance of it

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being clear to people which Inquiry is responsible for looking at particular issues and both inquiries have an obligation in our terms of reference to take steps to minimise any duplication of evidence gathering, investigation and reporting.

I have had several discussions with Baroness Heather Hallett, Chair of the UK Covid-19 Inquiry, about how our two inquiries might work together to share information and maximise value for money to the public purse. In February of this year, we signed a memorandum of understanding which formalises our agreement. This commits us to providing clear information to the public about how each inquiry will conduct its investigation in Scotland to enhance public understanding of its work, including both public engagement exercises. Let's Be Heard and Every Story Matters.

Officials and solicitors meet regularly and share information and planning where possible on areas which are within both our terms of reference. While we do not share evidence directly with each other, we endeavour to minimise the burden on material providers by sharing our requests for information so that, where such requests meet each other's needs, these are identical and require one search rather than two. Earlier in the summer we held a meeting for organisations which are core

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participants in both inquiries. This was found useful by all parties and is something we would be pleased to arrange again at suitable points in time.

Where possible we will organise our timetabling of hearings to ensure we do not hold public hearings at the same time as each other. However, we are mindful of our own responsibilities in conducting our separate independent inquiries. I need to consider the interests of those who are not part of the UK Inquiry and who deserve to see this Inquiry's progress in a reasonable timescale. It will not be possible or desirable therefore to avoid having public hearings which overlap

After the festive period, when the UK is holding its Module 2A hearing, which is specifically about Scottish matters, we will pause our own hearings. However, neither inquiry can guarantee there will not be overlapping hearing schedules at other times, when the focus of the UK Inquiry hearings is not Scotland-specific. Our particular meetings with our UK Inquiry counterparts will assist us in planning this and both inquiries will be flexible in responding to situations where the same witness or witnesses may be scheduled for a particular set of hearings.

I now ask Mr Gale to again represent to you in

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relation to the relationship with the Crown Office. MR GALE: Thank you, my Lord.

In the same way in which we and the UK Inquiry respect each other's independence, we and the Crown Office and Procurator Fiscal Service respect the distinct and independent roles each has. The Inquiry is aware of the investigations being carried out by Crown Office into deaths which occurred in care and nursing homes and other settings during the pandemic and the importance of avoiding, wherever we can, the possibility that work carried out by the Inquiry prejudices those investigations or any subsequent proceedings. The Inquiry and the Crown Office have already established an ongoing dialogue relating to these matters and will continue a channel of communication concerning their respective work and the Inquiry will discuss with all legal representatives of core participants and others in the event that we consider that it may be appropriate or necessary to defer participation in the Inquiry to a later date.

THE CHAIR: Thank you again. Mr Gale.

Now, an update on evidence gathering. Using my powers under the Inquiries Act 2005, I have required public bodies, including the Scottish Government, to produce documents relevant to the Inquiry's

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documents, with the aim of producing a factual record of the key strategic elements of the handling of the pandemic.

Rule 8 and Section 21 notices are the two avenues at the Inquiry's disposal to pursue to recover documents and evidence from individuals and organisations.

A Section 21 notice gives the Chair of the Inquiry the

investigations. We estimate that during the course of

this Inquiry we will review and analyse millions of such

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and evidence from individuals and organisations. A Section 21 notice gives the Chair of the Inquiry the power to compel an individual or organisation to hand over documents and evidence to the Inquiry. In contrast, a Rule 8 request is for the voluntary provision of records and evidence. The Inquiry has published a full list of the recipients of Rule 8 and Section 21 recipients on our website.

When embarking on its evidence—gathering process, the Inquiry was mindful that information relevant to its investigations may include communications shared via WhatsApp and other private messaging applications. To ensure that such material is not lost or destroyed, in August 2022 the Inquiry issued "Do not destroy" letters to organisations and individuals which may hold information relevant to the Inquiry's investigations. Those letters, which made specific reference to WhatsApp and text messages, emails and other communications,

require such information to be preserved and retained so it is available to the Inquiry as and when required.

The Inquiry is examining all the material that has been provided to it by Scottish Government and other parties. As this process continues, I will decide whether any further calls for evidence are required. Where documents and requests for information are required by these hearings, we will endeavour to engage as early as possible with document—holders to understand demands on organisations and co—ordinate requests for evidence where practicable.

While I do not have power to make any findings of criminal or civil liability , I will continue to use my powers as Chair to the Inquiry to obtain evidence and to compel the production of documents and the appearance of witnesses. I will not tolerate any attempt to obstruct or hinder the work of this Inquiry.

Can I now ask Mr Gale to tell you something about Let's Be Heard?

MR GALE: Thank you again.

Earlier it was mentioned today that you do not have to be a core participant to engage with the Inquiry. For most people in Scotland, the principal channel for sharing your experiences with us is through our listening project, Let's Be Heard. It aims to give

a voice to as many people in Scotland as possible.

Let's Be Heard allows people to tell us about their experiences in the pandemic, how these affected them and any lessons that they believe should be learned or could be learned from those experiences. We are gathering and analysing the thousands of experiences the people of Scotland have kindly shared with us through Let's Be Heard.

Provision of information to Let's Be Heard is a formal submission to the Inquiry, therefore project staff are working closely with the Inquiry's legal teams in engaging with both organisations and individuals. In addition to facilitating the identification of potential witnesses, the experiences gathered through Let's Be Heard will help guide the Inquiry's investigations and inform its reports and recommendations.

I can perhaps just reiterate that the quotations that you saw on the film that was played this morning were, in the main, obtained from representations and communications received by Let's Be Heard.

The process that we are undertaking will include identifying any disproportionate or unequal impacts on particular groups or communities. The legal team review the evidence received by Let's Be Heard and may follow

up with individuals to ask if they would provide a further statement to the Inquiry.

In addition to our online platform and paper forms, Let's Be Heard has created a bespoke Engagement Guide to encourage organisations to engage with their members in a way that best suits them. Let's Be Heard asks to attend events where invited and offers financial support to help meet accessibility needs. Let's Be Heard is also designed with accessibility in mind, but we understand that some may face further barriers in participation. We encourage people to contact Let's Be Heard if they have any queries or require any additional materials, any translations, languages or formats, so that they can find a way for people to engage with Let's Be Heard.

A dedicated team of researchers and analysts has been recruited to the Inquiry to analyse these responses and Let's Be Heard will publish a series of reports based on key findings of the experiences shared by the public in Scotland. The reports will provide insights into the issues, impacts and recurring or emerging themes.

So far Let's Be Heard has received 2,800 responses from individuals and groups and will continue its national engagement approach until the end of this year.

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I'm grateful to the team for providing detailed information with regards to the geographic spread of the responses into Let's Be Heard. It is pleasing that Let's Be Heard has received individual responses from people in every local authority area in Scotland. Based on a preliminary analysis of submissions, it is perhaps, however, unsurprising that almost a quarter of all responses have come from the City of Glasgow and the City of Edinburgh areas. Certain areas that we have heard less from include, for example, West Lothian, North Lanarkshire and Fife, and I would welcome as many people as possible from those areas and indeed across Scotland broadly to engage with Let's Be Heard. Frankly, we all have an experience that can be conveyed to us.

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Both Let's Be Heard and the counsel team are eager to ensure that we hear from ethnic minority groups in Scotland and I would use this platform to ask that members of such groups engage with the Inquiry, either directly or through Let's Be Heard, in order that we are informed of the impact of the pandemic on members of such groups and their suggestions of any lessons to be learned so that they can be incorporated into our investigations and final recommendations.

Let's Be Heard will undertake a more targeted

approach this winter and beyond, which will include more specific engagement and research, such as focus groups and workshops, as requested by the Inquiry's investigative teams, in order that we can fulfil any information gaps and provide a more detailed information

Aligned to this, I wonder if I could refer briefly to academic research that the Inquiry has instructed and undertaken. So we have been able to call on independent academic research of the highest quality.

When the Inquiry was established in December 2021, it commissioned introductory scoping research from academics considered to be leading authorities in their respective fields to provide context for the Inquiry's investigative portfolios. This research has been crucial in helping direct our investigations and covers many, but not all, of the areas within the Inquiry's terms of reference and from a multitude of perspectives.

In keeping with the transparent way in which we are working, these scoping research reports were published on our website in June 2022 and included research from academic institutions including the Universities of Dundee, Edinburgh, Edinburgh Napier, Glasgow, Highlands and Islands and Birmingham.

These reports covered the period up to April 2022. 34

We issued a second call for academic research in January of this year to extend the scope of research to cover the entire period of the Inquiry, that is up until 31 December 2022. As well as additional areas identified as important, we are preparing to publish these additional reports on our website in the coming weeks and months.

I have found the high—quality research which has been produced to date to be extremely instructive as we conduct our investigations and prepare for our public hearings and I'm very grateful to all the academics involved for their continued invaluable input into our

This research is one of many sources of evidence of the Inquiry which we will consider before we report, and it follows, therefore, that the content of the research we have received and will receive in future should not in any way be seen to pre—empt the eventual conclusions and recommendations that we will make.

Could I also say some words about the science and epidemiology? As COVID—19 spread across the world, we all found ourselves in unchartered territory. Decisions regarding Scotland's response to the emerging pandemic were taken against the backdrop of evolving science regarding the nature and transmission of COVID—19 and

the race to develop and then roll out effective vaccines.

In July of this year Dr Ashley Croft provided a report and a presentation on the epidemiology of COVID—19. We will be hearing from other epidemiologists and public health experts as we continue our investigations . In addition, we will be analysing academic research and materials published by a wide range of sources, including those commissioned by the UK Inquiry, where relevant to our terms of reference.

None of the findings of these expert reports and academic research papers is binding on the Inquiry, which will reach its own conclusions on all matters within the terms of reference. We will also be examining the science which informed the alternative strategic approaches taken by countries around the world to managing the pandemic. We will explore what factors influenced the contrasting approaches taken by countries such as New Zealand and Sweden and how these compare to the decisions taken in Scotland.

Now back to Lord Brailsford on the matter of reporting  $\!.\!$ 

THE CHAIR: Although I think we will have a pause. Thankyou very much, Mr Gale.

That has been a relatively large amount of

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information and I appreciate you've all been very patient over the course of almost an hour and a half and I also don't forget, of course, that much of this for many of you has been quite emotional. So we'll have a break now of about 15 minutes or thereby, which should have us back -- my computer has conveniently switched itself off, as these things do at the moment, so I'm not sure of the exact time. I think it's about 11.20 -- so around about 25 to or 20 to 12. Thank you very much. We'll pause for a moment. (11.21 am) (A short break)

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13 (11.48 am)

THE CHAIR: Welcome back. 14

> Now, I think I said just before the break that I would turn now to reporting. It's not possible for me to say at this stage how long the Inquiry will take to reach its final conclusions, but we will, of course, report as quickly as we can whilst ensuring we conduct a robust, thorough, independent investigation which establishes the facts and identifies any lessons that need to be learned so that Scotland is better prepared for the future.

As the work of the Inquiry progresses, it is my intention to publish interim reports as and when

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I consider it to be appropriate to make sure interested parties are kept informed. Again, I can't say how many we will have. It will very much depend on when it seems appropriate to do that.

I turn now to specific protocols which are probably of primary interest to those that will be -- solicitors who will be responsible for looking after the affairs of their clients in a practical sense. So I'm going to deal with protocols and orders, firstly restriction

A number of questions have been put to the Inquiry in advance of today's proceedings relative to anonymity, disclosure and use of identifying information. As Chair, I have been clear that I consider it important that this Inquiry carries out its work in as open and transparent a manner as is possible and that its proceedings are conducted in public. However, I appreciate that there will be circumstances where it would not be appropriate to do so and that it will be necessary and in the public interest to keep some of the evidence provided to the Inquiry private.

One of the powers available to me as Chair is the power to make an order known as a "restriction order", which restricts the disclosure or publication of specific information. These orders remain in force

unless and until I decide they should be changed or cancelled and usually remain in force at least until the Inquiry has ended but often beyond that.

I made one of these restriction orders on 5 May this vear, known as "Restriction Order 1 -- Health and Social Care". The effect of that order is to impose restrictions on the publication or disclosure of evidence or documents produced by or provided to the Inquiry pertaining to health and social care in the Inquiry's investigation of matters covered by Terms of Reference (g), (h) and (i) and, where appropriate, Terms of Reference (c), (d), (e) and (f). It is important to note that this order applies equally to the Inquiry itself as it does to core participants

The Inquiry is very grateful to individuals who are coming forward to provide witness evidence and is acutely conscious of the need to ensure sensitive information is given appropriate protection. In terms of how Restriction Order 1 works in practice, it first creates a category of protected persons who will benefit from the protections set out in the order. Those are: persons who apply to give evidence to the Inquiry in respect of the Inquiry's impact hearings on health and social care; that person's family members; persons and/or their family members who were in receipt of care

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in a residential care setting or hospital or in receipt of health and social care in the community alongside the witness; the name of the residential care setting, hospital or other care setting; the name of individual carers, whether paid or unpaid, and healthcare providers; a person who was a key worker, although this is subject to certain exceptions.

Restriction Order 1 prohibits the disclosure or publication of information that can enable a protected person to be identified unless I give my express written permission to the contrary. What this means in practice is that careful consideration will be given before documentation is disclosed by the Inquiry in unredacted form to ensure that the information falling within the terms of the restriction order is kept private.

There are exceptions to the restriction order; for example, where we receive evidence which includes allegations of criminality, the Inquiry may disclose the identities of a protected person to Police Scotland. Therefore, I would encourage all core participants to ensure their legal representatives have reviewed Restriction Order 1. It can be found on the Inquiry's

I also want to remind core participants of the terms of section 36 of the Inquiries Act 2005. This provides

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that where a person fails to comply with or breaches a restriction order made by the Inquiry, I may refer the matter to the Court of Session. Any breach of the restriction order will not be treated lightly and I request in the strongest terms that all legal representatives and core participants ensure they are familiar with its terms.

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I would like to say something now about anonymity. I am aware that there may be circumstances where individuals may wish to provide evidence to the Inquiry but may be concerned about any personal or professional implications of them doing so. Therefore I wanted to address today the matter of whether an individual can provide a statement to the Inquiry anonymously.

I consider that anonymity for those providing evidence to the Inquiry will only be granted if the reasons why it is required have been properly justified. This would be done on a case—by—case basis and would involve the individual or their legal representative setting out in writing why it is needed and who should be covered by it, and that will enable me to make a decision on that matter.

Criticism. Some core participants have raised questions with me about whether they will have the opportunity to respond to any criticisms made about them

by witnesses to the Inquiry. I would like to highlight section 10, subsections (a), (b) and (c) of Restriction Order 1, which enables the Inquiry to disclose the identity of protected persons to individual carers or healthcare providers or residential care settings or hospitals or other care settings and their representatives in the interests of fairness. In practice, what this means is that, where significant or explicit criticism of individuals or organisations is made, the Inquiry can disclose this to them in the interests of fairness.

As with our approach to granting requests for anonymity, the Inquiry will take decisions about whether to disclose such information on a case—by—case basis. In the event that an unexpected criticism is made during the course of a hearing, the live—stream will be on a delay, which will give the Inquiry time to prevent that information from being released into the public domain. The terms of the restriction order will apply to all those in attendance at the hearing. While organisations are entitled to respond to criticisms made of them, the Inquiry cannot guarantee the opportunity to respond before a witness gives evidence nor will the Inquiry give a right of reply.

Organisations will have opportunity during the

course of the implementation hearings to provide statements in which they can comment on the evidence presented to date. The Inquiry is an inquisitorial process, not an adversarial one, therefore, depending on the severity of the criticism and the implications this might have for an organisation, I may decide that details of the criticism will not be disclosed to the wider core participant group.

I have also been asked to clarify whether the Inquiry will investigate and rule on every criticism and complaint. It is not the role of the Inquiry and therefore we will not do so.

Now, leave to appear. Whilst this does not apply to preliminary hearings such as the one we are having today, there will be a general rule at all substantive hearings that any core participant who wishes to appear at this Inquiry's hearings will be required to be granted leave to appear. I think I may have said "leave to appeal" by mistake at the outset of this. I apologise for that. It's leave to appear.

Those granted leave to appear at any hearing in the Inquiry will be given copies of documents to be referred to at the hearing prior to those being made available to the public in advance of the hearing taking place, be able to request Counsel to the Inquiry to ask certain

questions of witnesses, be able to ask questions of witnesses direct with the permission of the Chair and be able to make opening submissions at the hearing where the Chair directs that such submissions are required.

Making a closing statement at any hearing where the Chair directs the making of such statements is not contingent on the core participant or its or their recognised legal representative having had leave to attend the hearing to which the closing statement relates. Those granted leave to appear will be notified of the number of representatives they can have present in the hearing room during the hearing in question.

I would remind core participants that the requirement to obtain leave to appear applies separately to each substantive hearing date held by the Inquiry, so leave to appear at one hearing does not confer leave to appear for any subsequent hearing. I encourage core participants and their legal representatives to familiarise themselves with the terms of the Inquiry's leave to appear protocol, which can be found on our website.

Opening statements. In relation to the October 2023 impact hearing, I can confirm that opening statements will be sought from core participants who have been granted leave to appear. I will issue a direction on

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opening statements in due course which will set out my position on this matter.

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Expenses. I recognise that the question of the payment of expenses has been raised in advance of this hearing. As Chair, I have a legal duty to minimise expense to the public purse. The Inquiry's current policy of not paying travel expenses to people voluntarily attending a hearing in person is consistent with those of other public inquiries. The Inquiry does, however, pay legal expenses for core participants and others, where eligible, to ensure they have appropriate legal representation throughout the course of the Inquiry's work. We will shortly publish our policy with regards to the payment of expenses for witnesses who will be asked to attend future hearings.

People who are unable to attend the Inquiry's preliminary hearing and future hearings are invited to watch them via dedicated live—streams on the Inquiry's YouTube channel, which will also be recorded and available to watch any time on demand.

The questioning of witnesses. In advance of our first substantive hearings, I wanted to take some time to set out this Inquiry's position regarding the questioning of witnesses. Rule 9 of the Inquiries (Scotland) Rules 2007 enables core participants to apply

to examine a witness. Witnesses may be asked to give evidence in the form of a written or oral statement and may also be asked to appear at an inquiry. I will issue a procedural direction in the coming weeks which will set out further details on the process for core participants making an application to pose questions. My intention is for Inquiry counsel to ask any questions that have been posed by core participants, subject to them being granted permission by Inquiry counsel, rather than have witnesses examined by the representatives of core participants. I would expect that application process to be preceded by an informal approach to Counsel to the Inquiry to explore whether they are prepared to put a question or line during examination.

Confidentiality undertakings. I wish to highlight that confidentiality undertakings were sent to core participants on 24 August 2023. I remind all core participants and their representatives that documentation will only be disclosed to individuals who have signed such an undertaking.

Evidence and witnesses. For our October hearings, core participants who have status in respect of sections (g), (h) and (i) of the Inquiry's terms of reference and leave to appear will receive bundles containing witness statements and documentary productions in respect of

this tranche of hearings prior to these being available to the public and in advance of the commencement of the October 2023 impact hearing. The Inquiry team is working towards an initial tranche of disclosure in respect of bundles at the end of September 2023. Documents will be shared with core participants using our document management system, Relativity.

The Inquiry is in the course of gathering evidence from a variety of sources in preparation for the first set of hearings. As I highlighted earlier in the session, in the context of the impact hearing specifically, written statements are being sought from members of core participant groups and relevant external organisations, in addition to which we are conducting detailed analysis of the submissions made to Let's Be Heard.

Core participants will not be entitled to comment on draft witness statements of others. The only circumstances where someone may comment on a draft witness statement is the witness to whom the draft pertains. Inquiry counsel will then take a view on who ought to be called to appear in person to give oral testimony. As a general statement, witnesses who are called to give oral evidence will, at the start of their evidence, be invited by Counsel to the Inquiry to

confirm that they will adopt the written statement as their evidence.

The Inquiry team will identify and call witnesses to give evidence. We will, of course, communicate to core participants when their own members are expected to be called but it is not our intention to publish a witness list for impact hearings. However, we will provide on a weekly basis a list of those with leave to appear in that period. Because of the nature of impact hearings, there may require to be changes to the intended witness schedule. Witnesses may be asked to give evidence in the form of a written or oral statement and may also be asked to appear at an Inquiry hearing. Counsel to the Inquiry will identify and call witnesses to give evidence.

Witnesses who speak to key and distinct impacts will be invited to give oral evidence. Evidence will be led by a cross—section of witnesses who are able to speak to key and divergent impacts experienced by individuals.

Can I turn to access to medical records? Specific questions have been asked in advance of this hearing about whether the Inquiry plans to routinely consider the medical records of individuals who have been asked to give evidence. Given the Inquiry's remit, it is not our function to ascertain causation of anyone being in

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hospital, therefore it is unlikely. They will only be requested as and when required. Where the Inquiry does require access to a patient's medical records, it will issue a notice under Section 21 of the Inquiries Act 2005 requiring their production. The Inquiry may involve medically qualified persons in considering patient records if it considers it necessary.

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I will make decisions on what records may be relevant and I will consider this on a case—by—case basis, bearing in mind what is necessary, proportionate, reasonable and relevant to fulfil the Inquiry's terms of reference. Not everything that is collected will be disclosed to core participants or placed into the public domain. This will also be considered on a case—by—case basis

As you know, core participants were asked to pre—submit questions in advance of this preliminary hearing so I'd like to take some time to speak to the points raised. I believe most of these questions will have been covered in the course of today's proceedings already. However, there were a number of specific questions raised that I will now address.

Evidence. I have received a number of questions regarding what types of evidence the Inquiry will consider during the course of our health and social care

hearings. We will not publish evidence proposals for the impact hearings. I may consider doing so for the implementation hearings and decision—making hearings. Proceedings for these hearings will be shared nearer the time

One question specifically mentioned evidence relating to population triage and DNACPR (do not attempt cardio—pulmonary resuscitation decisions), decision—making in hospital and social care settings. This is an area where we have already collected evidence and will consider further during the course of our investigations.

Front—line workers. I have been asked to confirm if workers and workplaces will be considered in the impact hearings. The Inquiry will of course hear evidence from front—line workers. This will likely take place in the next tranche of hearings early next year. Staff will be approached directly rather than through their employers. The Inquiry is in its evidence—gathering stage and is focusing on the impacts felt in relation to health and social care. The terms of reference in focus at present are: (g), in care and nursing homes, the transfer of residents to or from homes, treatment and care of residents, restrictions on visiting, infection prevention and control, and inspections; (h), the

provision of healthcare services and social care support, including the management and support of staff and the recognition, involvement and support of unpaid carers; (i), the delivery of end—of—life care and the use of DNACPR, again do not attempt cardio—pulmonary resuscitation decisions.

There will of course be staff who do not fall naturally within the themes. We are actively considering this and do not wish for anyone to fall between the cracks. We will provide further information in the course of our investigations.

Long COVID. I've been asked how the Inquiry will address the issue of long COVID. As many of you will be aware, following a legal opinion from the advocate and junior counsel to this Inquiry, Mr David Turner, I determined that certain matters relating to long COVID fall within the Inquiry's remit. This was because the existence and effects of long COVID are relevant to the handling of the pandemic in Scotland and those affected by long COVID will be relevant to the scope of the Inquiry. Mr Turner's full opinion can be found on the Inquiry's website for those with an interest.

The Inquiry is in its evidence—gathering stage and is focusing on the impacts felt in relation to health and social care. The terms of reference in focus are --

I have already stated these, so I won't repeat them again. They are (g), (h) and (i), which I read out just a moment or two ago.

Evidence will be sought in respect of long COVID, particularly in respect of ToR (h).

One question specifically mentioned evidence relating to population triage, and again I think I've covered this, so I don't need to repeat that this is an area which we've collected evidence in and will consider further during the course of investigation.

Some core participants have also asked for opportunities for their members to provide evidence to me as Chair which would not be made public. I would invite all these core participants with an interest to make a formal request to Counsel to the Inquiry and, if a request is approved, this will be arranged by the Inquiry policy and external relations team.

Disproportionate impacts. One question asked what the Scottish COVID—19 Inquiry is going to do to specifically address the issue of race in the first hearings. On the issue of equalities and any disparities or unequal impacts, I am bound in the terms of reference to consider these as I deem appropriate and necessary. In preparing for the hearings, we have been gathering evidence from organisations representing those

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with protected characteristics and other disadvantaged groups where it is relevant to each of the 12 areas included in the terms of reference, including consideration of any disproportionate and intersectional impact.

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Dr Croft's report. I have received a number of questions concerning the status of the report and evidence provided by Dr Ashley Croft to the Inquiry regarding the epidemiology of COVID—19. To set the report in context, prior to commencing hearings we considered it appropriate to explore the scientific position at the relevant time. We instructed Dr Croft to provide an account of this.

Dr Croft is a public health physician and epidemiologist who has undertaken and published research on a wide range of public health issues, including issues relating to COVID—19. Dr Croft's report was commissioned to form the basis for future discussion in the Inquiry and to provide some scientific context for the work that will follow. His report will sit alongside other existing academic research the Inquiry has received and will receive in future, covering specific areas in more detail.

The contents of Dr Croft's report, as with any expert commissioned by the Inquiry, should not be seen

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to pre—empt the eventual conclusions and recommendations I will eventually make. The views expressed in Dr Croft's report are his own professionally informed opinions and were provided by the Inquiry to inform core participants, interested parties and members of the public and to form the basis for future discussion in the Inquiry.

As is the case with all commissioned advice and research, I will consider all relevant material. I will assess it and give it the weight I consider to be appropriate, taking into account all the relevant circumstances.

I have also been asked to provide further details on the timeframe for core participants to have the opportunity to respond to Dr Croft's report and his presentation in Dundee last month.

Core participants will of course have an opportunity to apply to the Inquiry for questions they may wish to be put to Dr Croft with regard to his presentation. This will necessarily take place at a date later in the lifetime of the Inquiry to enable core participants to consider the conclusions presented in Dr Croft's report in the context of the additional evidence presented in the course of the Inquiry's work. Careful consideration is being given to scheduling and core participants will

be given appropriate notice ahead of any session to enable them to prepare questions which will be submitted to Inquiry counsel for consideration.

I also think it is important to address some of the questions asked regarding why this Inquiry has taken a different approach to the UK Inquiry with regards to the use of an expert presentation. As with all statutory inquiries, it is for the Chair to determine the structure of investigation and hearings. In line with our memorandum of understanding, we have opted not to duplicate costs in commissioning a very similar exercise to that undertaken by the UK Inquiry.

Where the UK Inquiry has commissioned expert reports, such as that produced by Professor Heymann, these are available to us. As is the case with all commissioned advice and research both by the UK Inquiry and this Inquiry, I will consider all the relevant material and give it the weight I deem appropriate, considering all the circumstances.

Evidence from expert witnesses. Questions have also been raised about whether I plan to instruct any additional expert witnesses during the course of proceedings. As I have previously discussed, the Inquiry is an inquisitorial process and, in the course of progressing work to fulfil its terms of reference,

I will decide whether and which experts I wish to instruct. Where an expert is brought to a hearing, I wish to reassure core participants that they will have an opportunity to apply to ask questions to the expert. Any documentary evidence relied upon at the hearing will also be disclosed to core participants with leave to appear prior to the hearing.

The Inquiry has already conducted some round—table meetings with experts and key organisations to help gather the evidence we hope to capture. The Portfolio 4 team, led by Ms Van der Westhuizen KC, commenced round—tables with Colleges Scotland on 24 August and will continue through the week of 28 August. Similar round—tables have been set up with Universities Scotland. Where the Inquiry considers round—tables to be most effective, it will consider using them.

I understand some core participants have also asked whether the Inquiry may be willing to fund the instruction of experts by core participants to assist with their preparation for hearings. There will be no blanket permission or denial of such a request at this stage. If a core participant strongly felt that it would not be possible for them to prepare fully without the input, in an advisory rather than investigatory capacity, to help them understand technical evidence

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advanced, the Inquiry will consider that request with regard to its overarching duties and, in particular, with regard to proportionality and fairness. Any request for funding for such expert input will need to be considered in context.

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In principle, if a strong case were to be made and I consider it appropriate to do so, the Inquiry could grant such a request. It may be, for example, that multiple core participants are asked to jointly instruct an expert to ensure proportionality or some other limitation or expectation may be placed on parties seeking to secure such funding. This, however, I stress, will need to be considered in context and on

While we would not envisage that such expert input would be required, for example in the context of the impact hearings, it may be that this is a justifiable request with regard to particular aspects of the Inquiry's work in due course, and I will turn my mind to such requests as and when they are made.

Funding -- bear with me. I think I said already this computer closes down from time to time so I need to refresh it.

Funding. In terms of what legal fees can be claimed for preparatory work for public hearings, the initial

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interim award and accompanying documents set out a range of activities for which funding can be made available and we are currently working to confirm the final scheme for the award of legal expenses. We hope to have that ready and published to all legal representatives by early October. Until the work to put in place structures for the final award has been concluded, fees submitted will be assessed with reference to the interim award scheme.

In terms of whether work charged to the UK Inquiry for work done with regard to their terms of reference, we cannot provide assurances that that work will necessarily be funded with regard to this Inquiry. Specifically, we cannot take the view it would necessarily be fair to double-fund for work already done. Any claim for legal expenses will need to be tied to the ongoing work of the Scottish Inquiry at a given time and will be considered on its merits by the Inquiry. We will, however, consider how best to reflect these issues in the ongoing work on what will be the final funding award.

Operation of the hearings. A number of the questions we have received related to the practical operation of our hearings in relation to the publication of transcripts and the option for remote participation.

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The proceedings will be live -streamed and, as such, can be viewed by as many people as want to access them. In terms of individual requests for participation in hearings without attending in person, we are considering the needs of individuals on a case-by-case basis, with a view to facilitating remote access where appropriate to do so. We are presently considering requests from people who wish to participate in hearings but cannot do so by attending in person. The Inquiry will produce a transcript of each hearing which will be made available on the website as soon as practicable.

Now, that concludes, rather more expeditiously than we had necessarily thought, the introductory remarks and the answers to some of the questions which have been posed by myself and by Mr Gale. We're slightly ahead of schedule. I'm told that lunch isn't available for another seven minutes —— I checked —— and I apologise for such expedition.

I think, however, the sensible thing to do is, bearing in mind that luncheon is not available until 12.30, we'll give you an hour from 12.30 and, instead of starting again with any questions that may remain at 2 o'clock, we'll start at 1.30. There's always the prospect we might finish earlier than the anticipated time, which I'm sure no one would object to. So thank

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you very much for listening this morning. I appreciate it's been a lengthy session.

I'm sorry, I apologise. I've been reminded I should have told you that anyone who wishes to ask a question at the afternoon session, could they please do so at the reception -- is that correct? -- at the reception, please. Thank you very much indeed.

8 (12.25 pm) 9

(The short adjournment)

10 (1.39 pm)

> THE CHAIR: Good afternoon, ladies and gentlemen. Over the luncheon adjournment I have been provided with information that two persons have additional questions. What I'm going to do is ask them in turn to come up and give me their question from the lectern here so they can address you.

17 So the questions and the persons that want to ask 18 questions are Mr Aamer Anwar, who is the solicitor for 19 Scottish Covid Bereaved, and Ms Amber Galbraith, who is 2.0 the lead counsel. I assume, for Care Home Relatives 21 Scotland. So Mr Anwar first, if you would, please,

2.2 MR ANWAR: I'm obliged, your Lordship. If this fails, it's 23 because the wifi connection is awful and for the next 2.4 set of hearings it will be checked out before we go into

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As your Lordship said, I am the lead solicitor for the Scottish Covid Bereaved and I have a handful of questions for your Lordship and your senior counsel. The public quite rightly are looking for answers and no more so than the loved ones of the nearly 16,450 people in Scotland who died from the pandemic.

The Inquiry has claimed repeatedly and has so again

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The Inquiry has claimed repeatedly and has so again today that it is human-rights based, so the question, having spoken to my clients earlier on and prior to this, is -- the question that the Scottish Covid Bereaved and many others — core participants I've spoken to are asking is: why can they not be given precise dates of hearings? It starts on Tuesday, 24 October, which happens to be the same date that the preliminary hearing into Module 2A is taking place in London for the UK Inquiry, and that impacts on Scotland. and when after that will this hearing actually sit? We have been provided by the UK Inquiry dates of hearings of up to six months in advance into 2024, yet the Scottish Inquiry is still unable to provide precise details of when from 24 October onwards the Inquiry will actually sit.

We understand that you have a memorandum of understanding with the UK Inquiry and the Scottish Covid Bereaved welcome that. We know that

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Module 2 impacts on Scotland and we have dates of 30 October to 1 November, 1 November to 9 November, 20 November to 30 November and 1 December to 7 December when Module 2 is sitting in London. So one wonders how exactly is it not clashing. I appreciate and we have said to our clients that there will be an overlap in dates in hearings, but clarity and preciseness is important, not just to the bereaved, but also to their representatives, who have to organise their diaries and be able to make sure that counsel, solicitors, are available to fully represent and adequately represent their clients.

Both our clients and their representatives have the right to know in advance. The bereaved have said it is deeply traumatising for them to even be here today. They have this hanging over them, and to not even know when they have family commitments, when they have work commitments — many of the families we represent are suffering from financial crisis but also from the crisis that they lost their loved ones, and the idea that they should drop everything a few days in advance or a week in advance or two weeks in advance is simply unacceptable and, I repeat, it traumatises those who want to speak and who want a right — that have a right to clarity and they want to be front and centre.

There are also 37 core participants and so far we have heard very little about the other core myself and somebody else asking questions today, but we have only so far heard about the care homes and the Scottish Covid Bereaved. I know that many of my clients also happen to be front-line workers, they happen to be members of trade unions, they are people involved in the care homes, and many of the core participants want to know when will they be involved, when will they be spoken to. All of those issues interact with each other, and that is essential that this Inquiry, that is human-rights based -- and these families and the bereaved and front-line workers and trade unions and the refugees and the minorities, the minority ethnic communities, are front and centre of this Inquiry, then that should most definitely be addressed and not left up in the air because again that retraumatises. Again. there is a concern.

There is a concern from what has been said today that it would appear that no politicians, no ministers and no senior civil servants will give evidence until 2025. We have already heard from a former Prime Minister, we've heard from the former Chancellor of the Exchequer, we have heard from the former First

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Minister in the London Inquiry and we know whether individuals are being called back for October, November and December.

Another matter that arises, as I understand, is that no core participants out of the 37 core participants have received any disclosure of worth for evidence. For comparison, we received disclosure from the UK Inquiry almost six months in advance of the hearing so we could be ready. We were disclosed a total of 35,370 documents, totalling around 385,436 pages. However, when it comes to the Scottish Inquiry, we have to date received only one report, of which the main part of the report is 127 pages, from an expert that our clients do not accept as an expert.

We understand that you and senior counsel will decide who gives evidence. Where is the clarity on the participation of core participants in that process? How is that human—rights based? Will we have any involvement or is it simply the case that it will be your Lordship and senior counsel that will decide who gives evidence in the impact hearing?

I am one of those who, I remember at the start of the UK Inquiry, explained to our clients and accepted the fact that it would be impossible for all bereaved to come to an inquiry to give evidence, but what happened

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in the UK Inquiry was that the statements were taken, they were provided to the Inquiry and out of that it was selected core individuals who would come forward and give evidence. I am concerned when it is said there is no time limit on giving evidence that we have -- I don't like to call it "tradition", but in this country where inquiries trundle on for years.

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Your interim solicitor of course was involved in the Trams Inquiry, which is still yet to report and has spent £13 million. This Inquiry, we sought an FOI in terms of clarification of the costs. £8 million have been spent on this Inquiry. We have not received any answers of breakdown in costs, but there is a real concern that this will break the record of the Iraq Chilcot Inquiry, which the Trams Inquiry had in terms of that

The families do not want haste at the expense of it being robust and independent and transparent but they do have a right to know exactly what is happening with regard to cost, expenditure, even in terms of the general day-to-day of an inquiry hearing, how people are treated, whether it is trauma-based, whether counsellors are available, et cetera.

The final question, my Lord, is: why is there such secrecy around experts? How can we prepare if we do not

know in advance? Dr Croft, as far as we're concerned -and that's the only so-called expert we can go by -- but as far as the Scottish Covid Bereaved were concerned, his evidence was disastrous and we do not want to repeat

However, we are entitled, if it's a human-rights-based Inquiry and it is operating -- it has a gold-plated standard which to look at, to know who the experts are in advance in order that we may instruct and seek permission and seek leave to instruct our own experts to advise on that, not to be told four weeks in advance. This is far too important and we need to have that clarified .

I'm obliged.

THE CHAIR: Thank you. I'll just wait until you're back in your seat.

Well, as you fairly said at the beginning, there are a number of questions embedded in that speech and I think in fairness quite a lot of the points that you have raised have been covered in what I've already said today. However, I will highlight certain matters. I'm also going to call on Mr Gale to address certain of those issues because he's the person that is directly concerned

The first one concerned timings, and you indicated 66

that you had, I think you said, notice of specific dates of hearings from the UK Inquiry six months in advance, but unless my arithmetic is very wrong, Mr Gale gave you this morning a clear indication of what his intention was in relation to adducing evidence in a period which is I think a little in excess of six months.

It is in what Mr Gale said earlier this morning, but I think in fairness and to be absolutely clear, I'm going to ask Mr Gale again to explain his plan for the hearings between now and Easter, which I think is at the beginning of April next year.

Mr Gale.

MR GALE: Thank you, my Lord.

Yes, as I said earlier, the plan is to commence impact hearings on 24 October and I indicated that they would be each day, a four-day week and run through to 8 December. Initially we are going to hear from representative witnesses -- and a quite deliberate decision has been taken on that -- and thereafter we will hear from Care Home Relatives and the Covid Bereaved group, and the intention is that there will be witnesses through that period up until 8 December.

If there are more witnesses than we can accommodate in that period, we will have further hearings in relation to those witnesses. We are not prescriptive in

67

cutting off witnesses as at 8 December, and I hope I made that clear.

Thereafter, into the new year, we have a period when we will not be sitting due to the presence here of the UK Inquiry and thereafter we will resume our hearings in February and run through to Easter. During that time we will hear from other impacted witnesses and groups, and that will include -- as I think was made clear at an earlier hearing and also at an earlier meeting that I had with some of the parties -- that will include, for example, those who were employed within the care and health sectors. We will also hear from witnesses and their impacts who were in the refugee community. We will also hear from witnesses who were in prison. We have dedicated teams looking at each of these areas, and they are just some. We will also be looking specifically at hospitals and we will be looking at care in the community. So we have the intention of obtaining as much information on impacts in as many settings as we can conceivably accommodate. So that is our plan.

As I say, we have a number of dedicated teams. When I say "dedicated teams", I use that word in two senses. They are very dedicated to what they're doing and they are specific in relation to what they are doing. They are looking -- for example, there is a dedicated team

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looking to those who were impacted by the use of "do not resuscitate" notices. We already have a number of witnesses who are within that category, we have statements from them, we have material from them, we have liaised with hospice groups, we have liaised with groups providing palliative and end—of—life care. So I would like to reassure Mr Anwar that all of these matters are in hand, are well in hand and prepared. We are utilising the statement that his firm gave us last week in relation to the witnesses within his client group and we will be in touch with him and, through him, his clients to advise as to when his clients will be giving evidence.

THE CHAIR: Thank you, Mr Gale.

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Now, there's a number of other points ancillary to that that arose in the questions from Mr Anwar. The first one is in relation to hearings on the same dates as the UK Inquiry has intimated it is having hearings. As I said earlier this morning, there is a memorandum of understanding between the two inquiries and that memorandum of understanding encompasses trying, where possible, to avoid having hearings on the same dates or certainly hearings concerning the same subjects on the same dates.

In relation to that, it is not an absolute

undertaking not to have hearings on the same dates although we will use our best endeavours to avoid having hearings on the same dates. My understanding is that the hearings of the UK Inquiry in the months of October, November and December do not directly relate to Scottish matters, and that was a factor we took into account.

Now, I immediately acknowledge that there may be dates when representatives who are participants in both inquiries might feel a need to be at the UK Inquiry even if it's not dealing specifically with Scottish matters. If there are such dates, then we would be willing, on representations being made to us by the participant involved, to consider whether we can do anything about that. But as a matter of generality, my understanding is the UK Inquiry is not dealing with Scottish matters. Obviously, we are accommodating the UK Inquiry by not sitting when it is dealing with Scottish matters in January of next year. That's the first point.

The second point is in relation to the question or the issue of why our focus in this case. One of the reasons we're having hearings when we're having hearings in October is because we are taking a people—centred approach. We are putting individuals, people, in all their capacities, workers, bereaved and so forth and so on, at the heart of our Inquiry. As Mr Gale said when

he was addressing you this morning, there were good, cogent reasons for trying to prioritise this evidence. Memories get stale is the obvious one. We were anxious to hear individuals at the first opportunity. That is why we put impact hearings first. If we delayed impact hearings, these people, these individuals, would not be heard until well into next year. We took, and I may say still take, the view that that is undesirable if we want to be person—focused and adopt a human rights approach. So that is another reason why we are proceeding in October.

You make the point absolutely correctly that politicians and others have already given evidence in the UK Inquiry. Again this comes back to the priorities and the focus that we have chosen to adopt in this Inquiry. We will hear from politicians during the implementation and decision—making hearings, when these come later, but we thought that frankly it was more important to hear from the individuals as soon as possible rather than hearing from persons who were taking decisions, important though that obviously is.

Let me see, what else did you raise? Disclosure, yes. I again acknowledge that there are times when disclosure should be made well in advance of any hearings. You have been provided, you told me, with

many thousands — I can't remember the exact figure. Forgive me — but many thousands of documents, at considerable periods of time, months in advance of hearings of the UK Inquiry. Well, I've already said that the UK Inquiry has been run in a different way from us and was hearing evidence of those involved in decision—making and implementation at an earlier stage, at the beginning of their Inquiry, and since those persons are those that would require documents or would be involved in relation to documents that were produced, I can well see the need for you having lots of notice of that. When we come to implementation hearings, I can assure you that we will give adequate time and you will get, I've no doubt, fairly voluminous volumes of production of documents well in advance.

The hearings that we're going to have between now and Easter of next year are of a different category. They are, obviously, primarily of individuals as witnesses and therefore the documents which we will disclose to you will be in the majority witness statements from those persons. It's Mr Gale's ambition, which again he's stated this morning and which I can assure you is being adhered to, that he will try and give you a month's notice of those things and, in the exercise of our professional judgment, for documents of

1 the sort that we're going to use in the implementation 2 hearings, that is sufficient. You will get a greater 3 degree of notice when we come to implementation at 4 a later stage. 5 I think -- is there anything I've forgotten? No. 6 I think that is my answer to your questions. If there 7 is anything that I've missed, please feel free to 8 communicate this and we will supplement anything I've 9 10 ATTENDANT AT HEARING: (inaudible). 11 THE CHAIR: Yes. Can I just —— I didn't quite hear you. 12 There was some coughing at the side. Clarification of 13 ATTENDANT AT HEARING: (inaudible). 14 15 THE CHAIR: Well, I think that's actually again relatively straightforward. We have to set up a public inquiry. 16 17 A public inquiry is of necessity an expensive process. 18 We had to engage staff. I may say the staff continued 19 to grow and to some extent continues to grow and we have to pay for staff. We had to acquire premises, which 2.0 21 I may say was a very time-consuming and difficult job 22 and has not been without its difficulties . We had to 2.3 engage academics to perform research who require to be 2.4 paid. We had to set up Let's Be Heard, which is a very 25 wide-ranging process which continues to operate. It's

72

been operating since the —— well, it's been set up since the inception of the Inquiry and is operating and will continue to operate for many months yet. All those things cost a great deal of money and that is why we have expended to date something in the region of £8 million.

I do not, I may say, consider the £8 million to be at all excessive, having regard to the scale of the organisation and operation that we've set up.

Yes. Thank you, Mr Anwar.

11 Ms Galbraith

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MS GALBRAITH: Chair, thank you for the opportunity to ask questions on behalf of Care Home Relatives Scotland and PAMIS. There are five key questions I would like to ask which each relate to different issues. The Chair may prefer if I pause after each question to allow for an answer on each specific point.

The first question relates to the practical operation of restriction orders and anonymity. It's considered this remains a little unclear and in that respect the Inquiry is asked whether consideration could be given to providing a protocol or written policy regarding the practicalities .

Four particular issues arise that I would like to highlight in that regard. The first is where a person

2 of a restriction order. Will this prevent information 3 that could lead to their identification being passed to 4 other core participants as opposed to being disseminated 5 to the wider public or would there have to be an application for anonymity? The second point is: when 6 7 can an individual apply for anonymity? Thirdly, if anonymity is refused, can an individual withdraw their 8 9 evidence? And lastly, if the Inquiry consider 10 a statement contains criticism, will the identity of the 11 critic be given to the organisation or individual being 12 criticised and will the critic be told about that and 13 given the opportunity to withdraw that criticism? 14 THE CHAIR: Right. I think probably the answer is that we 15 can provide you with some written protocol in relation 16 to that. So far as the four specific sub-heads are 17 concerned. I don't think I would be confident in 18 answering the first question off the top of my head and 19 I think I'd prefer to have that answered in writing. 2.0 I think I may apply that to the other three heads as 21 well, although I'm prepared to answer those. When can 22 an application apply for anonymity? I think "any time" 23 is the answer to that, but we'll confirm that in 2.4 writing. Can it be withdrawn? "Yes", I think is the 25 answer to that. And will -- if there is a complaint,

falls within the definition of those protected in terms

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will the identity of the complainer be revealed?

I think the answer to that is probably "No". But could

you please treat these as provisional answers and we

will respond in writing?

5 MS GALBRAITH: Thank you, Chair.

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The second question is in relation to the timeline. The indication is that in October there will firstly be evidence from representatives of organisations. Can it be clarified whether this is only for a care home or social care organisations or is the term being used in a wider context, such that it might cover those I represent?

THE CHAIR: Right. I think I'll ask Mr Gale to answer that. MR GALE: Yes. The position in relation to representative organisations, as I said, will be wider than simply Care Home and I think I indicated there would be various charitable organisations that we are approaching. So I won't give a particular example but we have been in touch with numerous charitable organisations who advised groups with specific needs in the care sector and the health sector to give an indication of the sorts of impacts that they were experiencing or their members were experiencing, so it will be wider than care homes.

were experiencing, so it willMS GALBRAITH: Thank you.

The third question is: what opportunities will there

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1 be to use creative or multi-media means to hear evidence 2 of those with profound and multiple learning disability? 3 THE CHAIR: Again, I think I can be quite straightforward. 4 We will cater to the best of our abilities to enable 5 persons in the categories you indicate to give their 6 evidence -- we've given quite a lot of thought to that 7 and I'm confident that we'll be able to satisfy the 8 demand. 9 Could I ask you and to any other core participants 10 to whom this affects to give us as much notice in 11 advance of witnesses in those categories so that we can 12 make sure that we take the appropriate and adequate 13 means to facilitate the giving of their evidence. MS GALBRAITH: The fourth question relates to what was said 14 15 earlier about the use of medical records. Can it be 16 clarified what approach will be taken to records from 17 care homes or perhaps social work records if the same 18 would apply? 19 THE CHAIR: Yes, I don't think we anticipate requiring to 20 recover medical records in relation to persons in care 2.1 homes, but again I'll ask Mr Gale to say a bit more 22 about that. So far as social work records are 2.3 concerned, again, I'm not sure if the requirement is 2.4 going to arise on many occasions, but let's see what 25 Mr Gale thinks.

77

MR GALE: Where circumstances disclosed in a witness

statement require us in our view to obtain some more

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3 clarification about circumstances of a particular witness or about whom a witness is speaking, then we may 5 wish to obtain more specific records. An obvious 6 situation that we may be faced with is a date on which a particular resident contracted COVID and we may need 8 to obtain records relating to that so that we can set in context what restrictions were being placed on the 10 visiting of that relative, and so those are 11 circumstances where we would consider doing it. 12 I must emphasise, however, that we are not and will 13 not be in the business of obtaining widespread records 14 in relation to individual care home residents. Those 15 are beyond -- what is strictly necessary would be all 16 that we would be requiring and we would not be wanting, 17 for example, to know why somebody was put into a care 18 home three years ago. We would only want to know 19 whether there was information relating to the care of 2.0 that resident and the interaction of the resident's 21 relatives with the care home at the material time of the 2.2 pandemic. 23 THE CHAIR: I think I'd simply add to that, Ms Galbraith, 2.4 that Mr Gale made clear, when speaking earlier this

morning, that we are not concerned, obviously, within

78

the terms of the remit of causation, of any person being in a care home or hospital and therefore our approach in the event that we require to recover records will be the most restrictive possible.

MS GALBRAITH: Thank you. The last point is: can

a reassurance be given that the first tranche of
evidence will not only consider the issue of deaths due
to COVID in health and care settings but will deal with
wider issues of the impact of restrictions on
individuals and their families, even where there was no
death, and will also consider the impact on care home
residents of all ages, not simply the elderly?

13 THE CHAIR: Yes, I think we're both absolutely clear the 14 answer to that is in the affirmative.

15 MS GALBRAITH: Thank you.

16 THE CHAIR: Thank you.

Very good. Well, I think that answers the supplementary questions that have been proposed, so that formally brings an end to the day's hearing. I would like to say, however, again — repeat my thanks to all of those that have attended today. We appreciate particularly to the relatives of victims of this that this has been a trying and stressful day and we're all the more appreciative for your appearance today. Thank you, and thank everyone else for their participation and

79

help and we look forward to their support going forward.Thank you all very much.

(2.11 pm)

(The preliminary hearing concluded)

aamer (1) 60:18 abilities (3) 7:6,9 77:4 able (11) 4:3 13:9 14:3 17:25 34:9 43:25 44:1,3 48:18 62:10 77:7 absolute (1) 69:25 absolutely (3) 67:8 71:12 79:13 academic (7) 34:8,10,22 35:1 36:8,12 53:21 academics (3) 34:13 35:11 73:23 accept (1) 64:14 accepted (2) 15:23 64:23 access (5) 13:15 48:20 49:3 59:2.6 accessibility (2) 32:8,9 accessible (1) 13:1 accommodate (3) 13:9 67:23 68:20 accommodating (1) 70:16 accompanying (1) 58:1 accordance (1) 24:17 account (4) 20:8 53:13 54:11 70:6 accountable (1) 11:17 accounts (1) 7:16 achieved (2) 9:14,21 acknowledge (2) 70:7 71:23 acquire (1) 73:20 across (3) 3:13 33:12 35:21 actions (1) 24:15 actively (1) 51:8 activities (1) 58:2 actually (3) 61:17,22 73:15 acutely (1) 39:17 add (1) 78:23 addition (7) 6:12 8:7 17:22 31:13 32:3 36:7 47:14 additional (9) 3:16 13:13.20 32:13 35:4.6 54:23 55:22 60:13 address (8) 1:18 41:13 49:22 51:13 52:20 55:4 60:16 66:22 addressed (1) 63:17 addressing (1) 71:1 adducing (1) 67:5 adequate (2) 72:13 77:12 adequately (1) 62:11 adhered (1) 72:23 adjournment (2) 60:9,12 adjust (1) 1:11 administration (1) 11:17 admitted (1) 10:11 adopt (3) 48:1 71:9,15 adopted (1) 16:19 adopting (2) 12:2 14:15 advance (22) 25:16 38:12 43:24 45:4,21 47:2 48:21 49:17 61:19 62:14.21.22.22 64:8 66:1.9.12 67:2 71:24 72:3.15 77:11 advanced (3) 8:21 11:11 57:1 adversarial (1) 43:4 adverse (3) 16:13 24:24 25:8 advice (5) 15:4,6 16:12 54:8 55:16 advise (2) 66:11 69:12 advised (1) 76:19 advisory (1) 56:24 advocacy (1) 11:19 advocate (1) 51:14 advocates (3) 6:9,11,13 affairs (1) 38:7 affected (6) 2:3 3:25 16:13 25-19 31-3 51-19 affects (1) 77:10 affirmative (1) 79:14 after (10) 7:17 15:22 18:16 19:2.8 22:24 27:14 38:7 61:17 74:16

afternoon (2) 60:5,11 again (26) 10:15 14:10,13 22:19 23:11 27:3.25 28:21 30:20 38:2 51:5 52:2.7 59:22 61:7 63:18.18 67:9 71:14,23 72:22 73:15 77:3,21,23 79:20 against (1) 35:24 agencies (1) 24:7 ages (1) 79:12 ago (2) 52:3 78:18 agreement (1) 26:11 ahead (2) 55:1 59:15 aid (1) 17:3 aim (1) 29:3 aims (1) 30:25 air (1) 63:18 alan (1) 6:9 aligned (1) 34:7 allegations (1) 40:18 alleviate (1) 2:2 allocated (1) 6:18 allow (2) 19:22 74:16 allows (1) 31:2 almost (3) 33:7 37:2 64:8 along (1) 4:17 alongside (2) 40:2 53:21 already (16) 12:15,16 19:20 21:7 28:14 49:21 50:10 52:1 56:8 57:21 58:15 63:23 66:20 69:2 71:13 72:4 also (37) 5:12,13 8:11 10:7,12,15 11:24 14:2 17:1 18:8 21:24 32:9 35:20 36:14 37:3 40:24 43:9 45:19 46:3 48:12 49:14 52:11 54:13 55:4,20 56:6.17 62:8.19 63:1.7 66:22 68:9,12,14,16 79:11 alternative (1) 36:15 although (5) 12:12 36:23 40:6 70:2 75:21 always (1) 59:23 ambassador (1) 11:21 amber (1) 60:19 ambition (2) 21:19 72:21 amount (1) 36:25 analyse (2) 29:2 32:17 analysing (4) 3:13 21:13 31:6 36:7 analysis (2) 33:6 47:15 analysts (1) 32:16 ancillary (1) 69:15 andor (2) 16:25 39:25 anecdotal (1) 19:10 announce (1) 12:10 anonymity (9) 38:12 41:8,15 42:13 74:19 75:6,7,8,22 anonymously (1) 41:14 another (5) 9:6 12:24 59:17 64:4 71:10 answer (9) 73:6 74:17 75:14,21,23,25 76:2,13 answered (1) 75:19 answering (1) 75:18 answers (6) 1:22 59:14 61:4 65:13 76:3 79:17 anticipate (2) 19:12 77:19 anticipated (2) 22:1 59:24 anwar (8) 19:17 21:10 60:18,21,22 69:7,16 74:10 anxious (2) 17:12 71:3 anyone (5) 2:13,17 48:25 51:9 60:4 anything (5) 9:11 70:13 73:5.7.8 apace (1) 11:24 apologise (3) 43:20 59:17

63-21 appearance (2) 30:15 79:24 application (4) 46:6,11 75:6.22 applications (1) 29:19 applies (3) 20:6 39:13 44:14 apply (11) 24:18 39:22 42:19 43:13 45:25 54:18 56:4 75:7,20,22 77:18 ppointed (1) 3:21 appointment (2) 6:24 12:17 appreciate (7) 17:8 21:1 37:1 38:18 60:1 62:5 79:21 appreciation (1) 6:24 appreciative (1) 79:24 approach (30) 1:12 3:6 9:6,22 10:25 12:2 14:5.12.15.21 15:13.23 16:20 22:20 23:10 12 24:10.12.14.16.25:15 32:25 34:1 42:12 46:12 55:6 70:23 71:9 77:16 79:2 approached (1) 50:18 approaches (3) 9:15 36:16,18 approaching (1) 76:17 appropriate (19) 13:18 16:22 24.7 25.13 28.19 38.1 4 19 39:11,18 45:11 52:23 53:11 54:11 55:1,18 57:7 59:6 77:12 approved (1) 52:16 april (2) 34:25 67:11 area (4) 21:20 33:5 50:10 52-9 areas (13) 10:24 21:15 24:21 25:23 26:18 33:9,9,12 34:17 35:4 53:2,23 68:15 arise (2) 74:24 77:24 arises (1) 64:4 arising (1) 20:3 arithmetic (1) 67:3 arose (1) 69:16 around (4) 36:16 37:9 64:10 65:25 arrange (1) 27:3 arranged (1) 52:16 arrive (1) 5:3 arriving (1) 12:2 ascertain (1) 48:25 ashley (2) 36:3 53:8 ask (18) 23:9 27:25 30:18 32:1 33:18 43:25 44:1 46:7 56:4 60:4,14,17 67:9 74:12,14 76:13 77:9,21 asked (19) 21:16 43:9 45:15 46:1,3 48:11,13,21,23 49:16 50:13 51:12 52:11,18 54:13 55:5 56:17 57:9 74:21 asking (2) 61:12 63:4 asks (1) 32:6 aspects (1) 57:18 assess (1) 54:10 essed (1) 58:8 assist (3) 19:6 27:21 56:19 assisting (1) 11:25 associated (2) 7:1 18:24 assume (2) 10:16 60:20 assurances (1) 58:12 assure (3) 20:2 72:13,23 attempt (3) 30:16 50:7 51:5 attend (5) 13:24 32:7 44:9 45:15.16 attendance (2) 13:22 42:20 attendant (2) 73:10,14 attended (1) 79:21 attending (5) 1:7 8:2 45:8 59:4.9 august (7) 1:1 10:5 12:6 29:21 46:17 56:12,13 authorities (3) 8:5 25:22

available (14) 13:18,21 30:2 38-22 43-23 45-20 47-1 55:15 58:2 59:11.16.20 62:11 65:23 avenues (1) 29:6 avoid (4) 17:23 27:12 69:22 70:2 avoiding (1) 28:10 award (5) 58:1,4,7,9,21 aware (7) 5:23 9:22 10:13 12:4 28:7 41:9 51:14 awareness (1) 23:25 awful (1) 60:23

**b (1)** 42:2 back (10) 2:20 9:11 10:20 14:7 36:21 37:6.14 64:2 66:15 71:14 backdrop (1) 35:24 bahrami (1) 6:10 bain (2) 12:5,7 balance (1) 17:16 baroness (1) 26:6 barriers (1) 32:10 base (1) 34:6 based (5) 32:19 33:5 61:8 63:13 64:18 basis (13) 9:6.15 16:5 18:10 41:18 42:14 48:8 49:10,15 53:18 54:6 57:14 59:5 bear (1) 57:21 bearing (2) 49:10 59:20 became (1) 15:14 become (1) 12:23 before (12) 1:18 6:25 7:2,17 13:3 19:3 20:25 35:15 37:15 40:12 42:23 60:24 beforehand (1) 13:25 begin (5) 1:18 15:25 16:23 18:11.21 beginning (5) 21:6 24:12 66:17 67:11 72:8 behalf (3) 1:9 7:4 74:13 behind (2) 10:17 15:2 being (24) 4:3 7:18 11:1 20:22 22:15 26:1 28:7 42:18 43:23 46:9 47:1,12 48:25 54:25 64:2 65:18 70:12 72:23 75:3.4.11 76:10 78:9 79:1 believe (2) 31:4 49:19 benefit (1) 39:20 bereaved (19) 1:19 7:14 13:11 19:16 21:6.12 24:1 60:19 61:2.11.25 62:8.14 63:6,14 64:24 66:3 67:21 70:24 bereavement (3) 20:11.14 22:18 bespoke (2) 14:3 32:4 best (6) 7:9 8:19 32:6 58:19 70.2 77.4 better (3) 5:5 9:25 37:22 between (8) 1:16 5:22 11:5 17:16 51:10 67:10 69:20 72:16 beyond (4) 24:14 34:1 39:3 78:15 binding (1) 36:12 birmingham (1) 34:24 bit (2) 1:11 77:21 blanket (1) 56:21 bloodshot (1) 8:22 boards (1) 4:20 bodies (1) 28:24 bore (1) 8:18 both (18) 7:13,14,17 13:19 22:24 25:20,22 26:2,15,19 27:1.22 31:12 33:16 55:16

62:13 70:8 79:13

bound (2) 25:12 52:22

16:18 23:9 36:21

breach (1) 41:3

brailsford (12) 1:6 6:22,23

7:6,10,13 8:25 10:20 15:22

breached (1) 25:5 breaches (1) 41:1 break (6) 18:15,18 37:5,12,15 65:14 breakdown (1) 65:13 briefly (2) 11:14 34:7 bring (2) 14:21 17:4 brings (3) 11:18 12:14 79:19 broad (1) 20:3 broadly (1) 33:13 brought (2) 2:20 56:2 building (1) 12:25 buildings (1) 13:3 bundles (2) 46:24 47:5 burden (1) 26:21 business (3) 14:17 22:25 78:13 businesses (2) 4:13 6:6 c (2) 39:12 42:2 call (7) 22:18 34:9 35:1 48:3,14 65:6 66:22 called (6) 19:25 21:20 47:22.24 48:6 64:2 calls (1) 30:6 cancelled (1) 39:2

cannot (5) 9:21 42:22

58:12.14 59:8

cant (2) 38:2 72:1

capacities (1) 70:24

capacity (1) 56:25

capture (1) 56:10

captured (1) 14:25

51:5

81:4

cardiopulmonary (2) 50:8

care (64) 1:5,19 3:5 4:7,15

14:14,16 16:1,18 17:15

19:15 20:11 21:5 22:15

39:6.9.24.25 40:1.2.3.4

51:1,4,25 60:20 63:5,9

42:5.6 49:25 50:9.21.22.23

67:20 68:11,17 69:6 74:13

76:9,10,16,20,23 77:17,20

78:14.17.19.21 79:2.8.11

careful (2) 40:12 54:24

caring (2) 8:23,24

carried (2) 28:7.11

carries (1) 38:15

49-9 14 59-5

casetocase (1) 57:14

categories (2) 77:5,11

category (3) 39:20 69:3

causation (2) 48:25 79:1

carry (1) 7:12

cases (1) 25:6

caskie (1) 6:9

cater (1) 77:4

cause (1) 20:14

caused (1) 2:10

causes (1) 4:2

central (2) 3:18 13:4

centre (2) 62:25 63:16

certain (12) 7:3 10:14

certificate (1) 4:3

cetera (1) 65:23

certification (1) 6:7

16:8,10 19:8 21:14 33:9

chair (38) 1:6,6 3:21 10:22

11:21 17:16 23:11,16

25:25 26:7 28:21 29:9

38-14-22-44-2-4-6-45-5

52:13 55:8 60:11 66:15

69:14 73:11,15 74:12,15

75:14 76:5,13 77:3,19

78:23 79:13.16

chaired (1) 9:17

completely (1) 8:6

completing (1) 21:8

comply (1) 41:1

30:14 36:23 37:14

40:7 43:25 51:16 66:21.22

cathartic (1) 17:11

72:17

carers (3) 40:5 42:5 51:4

casebycase (5) 41:18 42:14

6:3 7:15,22 8:10,21

23:4.7.13 28:8

characteristics (1) 53:1 charged (1) 58:10 charitable (3) 19:5 76:17,19 checked (2) 59:17 60:24 chief (2) 11:14,15 chilcot (1) 65:15 children (1) 6:8 choice (2) 14:25 15:3 chosen (1) 71:15 chris (1) 6:14 circumstances (14) 7:17,19 8:2.4 9:16 25:6 38:18 41:9 47-19 54-12 55-19 78:1.3.11 city (2) 33:8,9 civil (3) 3:10 30:13 63:22 claimed (2) 57:24 61:7 clarification (4) 21:14 65:11 73:12 78:3 clarified (3) 66:13 76:9 77:16 clarify (1) 43:9 clarity (3) 62:7,25 64:16 clashing (1) 62:5 clear (11) 19:24 21:24 26:1,12 38:14 67:4,8 68:2.8 78:24 79:13 client (2) 19:19 69:10 clients (10) 38:8 61:9 62:6.12.13 63:6 64:13.23 69:12.12 clinical (1) 10:10 close (2) 13:8,13 closely (1) 31:11 closes (1) 57:22 closing (2) 44:5,9 closure (1) 10:14 cogent (1) 71:2 colead (1) 5:19 colleague (2) 5:18 23:2 colleagues (1) 23:25 collected (3) 49:12 50:10 colleges (1) 56:12 come (8) 16:14 33:8 60:14 64:25 65:3 71:18 72:12 73:3 comes (2) 64:11 71:14 coming (3) 35:6 39:16 46:4 commence (3) 16:17 19:14 67:14 commenced (1) 56:11 commencement (1) 47:2 commencing (1) 53:10 comment (4) 25:8 43:2 47:17.19 commission (1) 11:22 commissioned (7) 34:12 36:9 53:18,25 54:8 55:13,16 commissioning (1) 55:11 commitment (1) 11:25 commitments (2) 62:17,18 commits (1) 26:12 committed (1) 9:8 communicate (2) 48:4 73:8 communication (1) 28:16 communications (3) 29:18.25 31:21 communities (2) 31:24 63:16 community (3) 40:2 68:13,18 compare (1) 36:19 comparison (1) 64:7 compel (2) 29:10 30:15 competence (1) 25:24 complainer (1) 76:1 complaint (2) 43:11 75:25 complete (2) 18:20 20:23 completed (1) 13:1

chairs (1) 9:13

chancellor (1) 63:24

changes (2) 9:20 48:10

channel (3) 28:15 30:23

changed (1) 39:1

45:19

78:25 69:23 58:7 80:4 37:18 54:1,22 47:14 77.7 58:3 75:23 74:21 32:11 76:11 78:9 74:3 73:18 73:19.25

comprises (2) 6:9,11 compromised (1) 7:20 computer (2) 37:6 57:22 conceivably (1) 68:20 concern (3) 63:19,20 65:14 concerned (9) 41:11 65:4 66:1,3,24,25 75:17 77:23 concerning (3) 28:16 53:7 concluded (4) 12:19 20:15 concludes (1) 59:12 conclusion (1) 20:24 conclusions (5) 35:18 36:13 conditions (1) 4:9 condolences (2) 2:4 7:24 conduct (8) 5:2 11:11 16:2 24:4.16 26:13 35:10 37:19 conducted (2) 38:17 56:8 conducting (3) 12:1 27:7 conducts (1) 17:18 confer (1) 44:16 confidence (1) 16:13 confident (3) 11:22 75:17 confidentiality (2) 46:15,16 confirm (5) 44:23 48:1 50:13 connection (1) 60:23 connections (1) 11:2 conscious (2) 39:17 63:3 consequences (2) 4:5 15:9 consider (36) 9:11 15:1,11,17,19 24:22,25 25:8,13 27:8 28:19 35:15 38:1.14 41:15 48:22 49:9,25 50:2,11 52:9,23 54:9,10,22 55:17 56:16 57:1,7 58:19 70:13 74:7 75:9 78:11 79:7.11 considerable (1) 72:3 consideration (13) 13:12 15:5,13,14,15 16:5,23 17:6 40:12 53:4 54:24 55:3 considerations (1) 24:21 considered (11) 15:16 16:21 20:8 34:13 49:14 50:14 53:11 57:5.13 58:18 74:20 considering (6) 15:12 49:6 51:9 55:19 59:4,7 considers (2) 49:7 56:15 consistent (1) 45:8 contact (4) 4:9 19:5 24:1 containing (1) 46:24 contains (1) 75:10 contemporaneous (1) 17:3 content (1) 35:16 contents (1) 53:24 context (14) 7:11 8:4,6 14:14 34:14 47:11 53:10.19 54:23 57:5.13.16 contingent (2) 15:7 44:7 continue (14) 6:18 18:14.17 21:3.4.7 22:4.8 28:15 30:13 32:24 36:6 56:13 continued (3) 19:3 35:12 continues (4) 11:24 30:5 continuing (1) 22:14 contracted (1) 78:7 contrary (1) 40:11 contrast (1) 29:12 contrasting (1) 36:18 contributed (1) 24:10 contribution (1) 12:8 control (1) 50:25

appeal (1) 43:19

appear (20) 2:17 18:6

43:13.16.18.20.21

44:10.14.16.17.20.25

46:3,24 47:22 48:8,13 56:7

34-13

authority (1) 33:5

availability (2) 21:18,21

autumn (1) 3:3

conveniently (1) 37:6

conveyed (1) 33:14

conveys (1) 7:23 coordinate (1) 30:10 cope (1) 8:3 copies (1) 43:22 coping (1) 16:14 core (55) 3:12,14,16 12:18 26:25 28:18 30:22 39:14 40:20,24 41:6,23 43:8,16 44:7,13,17,24 45:10,25 46:5.8.11.16.17.22 47:6 13 17 48:4 49:13 16 52:11.14 54:4.14.17.21.25 56:3.6.17.19.22 57:9 61:11 63:1,2,9 64:5,5,17 65:3 75:4 77:9 correct (1) 60:6 correctly (1) 71:12 cost (3) 17:24 65:20 74:4 costs (4) 55:11 65:11,13 73:13 coughing (1) 73:12 counsel (34) 5:17,18,19 6:9,13,13,15,19 7:5,7,23 8:10 9:8 15:4,21 16:3 19:9,16 33:16 43:25 46:7,9,13 47:21,25 48:13 51:15 52:15 55:3 60:20 61-3 62-10 64-15 20 counselling (1) 24:5 counsellors (1) 65:22 counsels (1) 18:10 counterparts (1) 27:21 countries (2) 36:16,18 country (2) 3:13 65:6 course (24) 4:19 29:1 37:2.3.18 42:16 43:1 45:1,12 47:8 48:4 49:20,25 50:11,15 51:7,11 52:10 54:17.24 55:22.24 57:19 cover (2) 35:2 76:11 covered (7) 1:17 34:25 39:10 41:21 49:20 52:8 66:20 covering (1) 53:22 covers (1) 34:16 covid (21) 4:6 7:14 10:15 19:16 21:5,11 51:12,13,16,18,20 52:4 60:19 61:2,10,25 63:6 66:3 67:20 78:7 79:8 covid19 (20) 1:15 2:3.6.11 3:24 4:2 9:3 10:3.7.16 25:20.21.21 26:7 35:21.25 36:5 52:19 53:9,17 cracks (1) 51:10 created (2) 16:12 32:4 creates (1) 39:20 creative (1) 77:1 criminal (2) 3:9 30:13 criminality (1) 40:18 crisis (3) 3:25 62:19.19 critic (2) 75:11.12 critical (4) 8:21 9:3,9,22 critically (1) 4:16 criticised (1) 75:12 criticism (8) 41:23 42:9,15 43:5,7,10 75:10,13 criticisms (2) 41:25 42:21 croft (6) 36:3 53:8.12.14 54:19 66:1 crofts (6) 53:6,17,24 54:3,15,22 crosssection (1) 48:18 crown (5) 11:3 28:1.5.8.13 crucial (1) 34:16 cumulatively (1) 25:2 current (1) 45:6 currently (2) 12:23 58:3 cutting (1) 68:1

d (1) 39:12 dame (1) 9:17 date (12) 3:2,7 12:8 28:20 35:9 43:3 44:15 54:20 61:14 64:11 74:5 78:6

depend (2) 17:2 38:3 depending (1) 43:4 deputy (1) 3:22 der (5) 5:18 6:4,11 23:3 56:11 deserve (1) 27:10 designed (1) 32:9 designing (1) 14:8 desirable (1) 27:11 destroy (1) 29:21 destroyed (1) 29:20 detail (2) 15:2 53:23 detailed (5) 16:2,4 33:1 34:5 47:15 details (4) 43:7 46:5 54:13 61:21 determine (4) 3:9 25:5.7 55:8 determined (2) 9:23 51:16 develop (1) 36:1 developments (1) 25:1 devolved (1) 25:24 dialogue (1) 28:14 diaries (1) 62:9 didnt (1) 73:11 died (3) 4:1 8:7 61:6 different (6) 9:15 23:23 55:6 72:5,17 74:15 difficult (4) 1:23 8:3 21:3 73.21 difficulties (1) 73:22 diplomat (1) 11:20 direct (3) 23:25 34:16 44:2

dates (12) 61:13.18 62:1.7

67:1 69:17.22.24

david (2) 6:12 51:15

daytoday (1) 65:21

dealing (5) 9:6 16:15

death (2) 4:2 79:11

deaths (4) 10:6 20:16 28:8

december (13) 1:16 20:25

21-21 22-4 34-11 35-4

decide (6) 30:5 39:1 43:6

decision (5) 16:17 19:7 20:1

making (8) 9:12

decisionmakers (2) 9:24

14:20 15:12,16 50:3,9

decisions (15) 4:24 9:2

dedicated (8) 6:15 32:16

45:18 68:15.21.22.23.25

deem (3) 25:13 52:23 55:18

15:8,8,9,18,20 23:5 35:22

36:20 42:13 49:8 50:8 51:6

56:1 64:16,20

decided (1) 15:24

41:22 67:19

71:17 72:7

24.19

71:21

deepest (1) 7:24

deeply (1) 62:15

definitely (1) 63:17

definition (1) 75:1

delayed (2) 1:3 71:5

delay (3) 16:23 18:3 42:17

deliberate (2) 14:25 67:18

mand (2) 45:20 77:8

degree (1) 73:3

deliver (1) 23:18

delivery (1) 51:4

denial (1) 56:21

dennis (1) 6:14

demands (1) 30:10

demonstrate (1) 24:9

defer (1) 28:20

62:3 3 64:3 67:17 22 68:1

70:10.15.17

dear (1) 8:1

79:7

70:5

day (4) 13:22 14:1 67:16

days (3) 12:6 62:21 79:19

deal (5) 8:3,8 38:9 74:4 79:8

70:1.3.8.11

daunting (1) 7:4

79:23

direction (2) 44:25 46:4 directly (5) 26:20 33:20 50:18 66:23 70:5 director (1) 10:10 directs (2) 44:4.6 disability (1) 77:2 disadvantaged (1) 53:1 disastrous (1) 66:4 disclose (6) 10:5 40:18 42:4.10.14 72:20 disclosed (7) 40:13 43:7 46:19 49:13 56:6 64:9 78:1 disclosure (9) 38:13.24 39:7 40:8 47:4 64:6,7 71:22,24 discuss (2) 3:4 28:17 discussed (1) 55:23 discussion (3) 15:22 53:18 54:6 discussions (1) 26:6 disparities (2) 25:11 52:22 disposal (1) 29:7 disproportionate (3) 31:23 52:18 53:4 disrupted (1) 4:12 disseminated (1) 75:4 distinct (2) 28:6 48:16 distress (1) 20:13 distressing (3) 1:23 2:12 7:16 divergent (1) 48:19 divided (1) 5:22 division (1) 20:13 dnacpr (2) 50:7 51:5 document (1) 47:7 documentary (2) 46:25 56:5 documentation (2) 40:13 46:19 documentholders (1) 30:9 documents (17) 28:25 29:3,7,11 30:7,15 39:8 43:22 47:6 58:1 64:10 72:2,9,10,15,19,25 does (5) 39:14 43:13 44:16 45:9 49:2 doesnt (1) 2:17 doing (5) 41:12 50:2 68:23,24 78:11 domain (2) 42:19 49:14 done (3) 41:18 58:11,16 dont (5) 37:3 52:8 65:5 75:17 77:19 doublefund (1) 58:15 doubt (1) 72:14 down (2) 8:18 57:22 dr (12) 36:3 53:6,8,12,14,17,24 54:3,15,19,22 66:1 draft (3) 47:18,19,20 drop (1) 62:21 duddy (3) 11:13,14,15 duddys (1) 11:22 due (5) 10:14 45:1 57:19 68:4 79:7 dundee (2) 34:23 54:16 dunlop (1) 6:14 duplicate (1) 55:11 duplication (1) 26:4

e (1) 39:12 eager (1) 33:16 earlier (15) 11:15 23:1 26:24 30:21 47:10 59:24 61:9 67:7.14 68:9.9 69:19 72:7 77:15 78:24 early (3) 30:9 50:17 58:6 easter (4) 22:13 67:10 68:6 72:17

economic (1) 22:25

event (5) 5:6 9:25 28:18

eventual (2) 35:18 54:1

eventually (1) 54:2

42:15 79:3

events (1) 32:7

during (19) 8:7,23 10:6

19:1.4.12 22:6 28:9 29:1

49:25 50:11 52:10 55:22

42:15,25 44:12 46:14

duties (4) 7:9,12 25:3 57:2

duty (3) 4:19 17:22 45:5

68:6 71:16

edinburgh (4) 13:5 33:9 34:23.23 education (4) 4:12 6:7 14:16 22:23 educational (1) 4:12 edwards (1) 6:14 effect (2) 24:24 39:6 effective (2) 36:1 56:16 effects (2) 25:9 51:18 either (2) 20:19 33:19 elderly (1) 79:12 elements (1) 29:4 eligible (1) 45:11 ellen (1) 6:12 else (3) 63:4 71:22 79:25 emails (1) 29:25 embarking (1) 29:16 embed (1) 25:14 embedded (3) 23:14 24:16 66:18 emergency (1) 4:18 emerging (3) 10:8 32:21 35:23 emotional (3) 13:18 24:6 37:4 emphasise (3) 16:3 20:5 78-12 employed (1) 68:11 employers (1) 50:18 enable (5) 40:9 41:21 54:21 55:2 77:4 enables (2) 42:3 45:25 encompasses (1) 69:21 encourage (4) 32:5,11 40:20 44.17 end (6) 12:6.21 24:8 32:25 47:5 79:19 endeavour (2) 26:20 30:8 endeavours (2) 12:9 70:2 ended (1) 39:3 ending (1) 20:24 endoflife (2) 51:4 69:6 engage (12) 3:14 16:24 19:22 23:17 30:8.22 32:5.15 33:13.19 73:18.23 engagement (6) 19:18 21:4 26:15 32:4,25 34:2 engaging (3) 23:20,23 31:12 enhance (1) 26:14 enough (1) 8:19 ensure (16) 3:19 11:23 12:18 13:17.23 20:3 23:19 27:5 29:20 33:17 39:17 40:14,21 41:6 45:11 57:10 ensuring (3) 14:24 17:18 37:19 entire (3) 4:24 22:3 35:3 entitled (3) 42:21 47:17 66:6 entrusted (1) 1:9 envisage (1) 57:15 epidemiologist (1) 53:15 epidemiologists (1) 36:5 epidemiology (3) 35:21 36:4 equalities (3) 25:3,11 52:21 equality (1) 25:9 equally (1) 39:13 equipped (1) 24:3 essence (1) 15:8 essential (1) 63:12 establish (2) 1:14 9:1 established (5) 19:1,3,6 28:14 34:11 establishes (1) 37:21 establishing (1) 9:3 establishment (1) 9:9 estimate (1) 29:1 et (1) 65:23 ethnic (2) 33:17 63:15 even (5) 62:15,16 65:20 70:9

every (4) 23:19 26:16 33:5 43:10 everybody (2) 5:12 18:1 everyone (6) 4:1 5:12 8:18 13:9 23:24 79:25 everything (2) 49:12 62:21 evidence (89) 5:22 11:4 13:7,22,23 14:23 17:1,5,21 18:2,20 19:8,25 20:1.4.10.14.16 21:17.23 22-6 26-4 20 28-22 29:8.11.13 30:6.11.14 31:25 35:14 38:21 39:8,16,22 40:17 41:10,16 42:23 43:2 46:2,21 47:8,24,25 48:2,4,11,15,17,17,24 49:23.24 50:1.6.10.15 52-4 6 9 12 25 53-8 54-23 55:20 56:5.10.25 63:22 64:6,16,21,25 65:4,5 66:4 67:5 69:13 71:2,13 72:6 75:9 76:8 77:1.6.13 79:7 evidencegathering (3) 29:16 50:19 51:23 evidential (1) 16:22 evolving (1) 35:24 exact (3) 22:16 37:8 72:1 exactly (2) 62:5 65:19 examination (5) 9:4,10 15:25 16:2 46:14 examine (2) 3:10 46:1 examined (1) 46:10 examining (4) 9:11 21:12 30:3 36:15 example (10) 9:16 16:7 33:10 40:17 57:8,16 68:11,25 76:18 78:17 exceptions (2) 40:7,16 excess (1) 67:6 excessive (1) 74:8 exchequer (1) 63:25 executive (2) 11:14,15 exercise (5) 12:19 24:24 25:9 55:12 72:25 exercises (2) 11:10 26:15 existence (2) 15:9 51:18 existing (1) 53:21 expand (2) 11:10 23:9 expanded (1) 17:10 expect (4) 13:24 19:14 22:13 46:11 expectation (1) 57:11 expected (1) 48:5 expedition (1) 59:18 expeditiously (1) 59:12 expended (1) 74:5 expenditure (1) 65:20 expense (2) 45:6 65:17 expenses (7) 45:3,4,7,10,14 58:4.16 expensive (1) 73:17 experience (5) 11:19,23 12:14 17:11 33:14 experienced (6) 7:17,25 12:13 18:25 20:16 48:19 experiences (10) 1:23 3:13 14:21 17:21 30:24 31:3.5.6.14 32:19 experiencing (2) 76:22.23 expert (14) 36:11 53:25 55:7,13,20,22 56:2,4 57:4.10.15 64:13.14 66:2 experts (7) 36:6 56:1,9,19 65:25 66:9.11 explain (3) 15:2 16:19 67:9 explained (1) 64:23 explicit (1) 42:9 explore (4) 21:18 36:17 46:13 53:11 express (2) 2:4 40:10 expressed (1) 54:2 extend (1) 35:2 extensive (2) 11:23 17:3

external (2) 47:13 52:17 extremely (2) 10:17 35:9 eyes (1) 8:22

f (1) 39:12 face (1) 32:10 faced (3) 4:13,15 78:6 facilitate (1) 77:13 facilitating (3) 19:18 31:13 59:6 factor (1) 70:6 factors (1) 36:17 factual (1) 29:3 failed (1) 4:14 failing (1) 8:18 fails (2) 41:1 60:22 fair (1) 58:15 fairly (4) 17:23 23:21 66:17 72:14 fairness (6) 5:7 42:7,11 57:3 66:19 67:8 fall (4) 23:1 51:7,9,17 falling (1) 40:14 falls (1) 75:1 familiar (1) 41:7 familiarise (1) 44:19 families (9) 1:19 2:1 4:10 13:10.15 62:18 63:13 65:17 79:10 family (5) 8:1 13:8 39:24,25 62:17 far (10) 5:20 10:21 32:23 63:1.5 66:1.3.12 75:16 77:22 faryma (1) 6:10 favour (2) 5:3 7:11 fear (4) 5:2 7:11 12:13 16:12 february (4) 22:10,13 26:10 68-6 feel (3) 17:4 70:9 73:7 feeling (1) 8:18 feels (2) 23:20.21 fees (2) 57:24 58:7 felt (3) 50:20 51:24 56:22 festive (2) 20:25 27:14 few (3) 2:13 11:8 62:21 fields (1) 34:14 fife (1) 33:11 figure (1) 72:1 film (9) 2:7.9.12.15.18.20 8:16.17 31:19 final (6) 33:24 37:18 58:3,7,21 65:24 finally (1) 14:20 finance (2) 14:17 22:25 financial (4) 4:13 6:5 32:7 62:19 find (2) 2:11 32:14 findings (7) 12:3 18:4 24:11 25:7 30:12 32:19 36:11 finish (2) 20:25 59:24 finishing (1) 18:19 firm (1) 69:9 first (24) 1:8 3:22 5:14 13:5 14:19.25 15:12.19 20:23 39:19 45:22 47:9 52:20 60:21 63:25 66:25 69:17 70:18 71:4,5 74:18,25 75:18 79:6 firstly (2) 38:9 76:7 fiscal (2) 11:4 28:5 five (1) 74:14 fixed (1) 22:21

flexibility (1) 18:18

focus (6) 27:19 34:2 50:21

51:25 70:20 71:15

follow (2) 31:25 53:20

followed (1) 8:20

follows (1) 35:16

fore (1) 17:5

extent (5) 6:25 7:3 24:18

25:2 73:19

following (1) 51:14

force (2) 38:25 39:2

focusing (2) 50:20 51:24

flexible (1) 27:22

foi (1) 65:10

14:22 forget (1) 37:3 forgive (1) 72:2 forgotten (1) 73:5 form (6) 18:10 40:14 46:2 48:12 53:18 54:6 formal (5) 2:9 18:1,2 31:10 52:15 formalises (1) 26:11 formally (1) 79:19 formats (1) 32:14 former (4) 11:21 63:23.24.25 forms (2) 14:4 32:3 forth (1) 70:24 forward (4) 39:16 65:3 80:1,1 found (7) 4:21 27:1 35:8,22 40:22 44:20 51:21 four (4) 5:25 66:11 74:24 75:16 fourday (1) 67:16 fourth (2) 8:15 77:14 frankly (2) 33:14 71:18 free (1) 73:7 friday (2) 18:13 20:24 friends (4) 2:6 4:10 13:8,15 front (2) 62:25 63:16 frontline (4) 50:13.16 63:7,14 fulfil (4) 3:19 34:4 49:11 55:25 full (3) 8:21 29:14 51:21 fully (2) 56:23 62:11 function (1) 48:25 fund (1) 56:18 funded (1) 58:13 funding (6) 57:4,12,21,24 58:2,21

forefront (3) 1:22 13:11

67:24 future (11) 3:6 5:6 9:25 12:9 35:17 37:23 45:15,17

53:18,22 54:6

further (22) 3:5 6:13

10:13,15 11:10 15:13,24

22:9 30:6 32:2,10 46:5

50:11 51:10 52:10 54:13

17:6 19:19,22 20:11 21:14

g (4) 39:11 46:23 50:22 52:2 galbraith (9) 60:19 74:11.12 76:5.24 77:14 78:23 79:5,15 gale (30) 5:9,11,17 10:22 11:5 13:6 14:7.10 23:11 27:25 28:2.21 30:18.20 36:24 59:15 66:22 67:3.7.9.12.13 69:14 70:25 76:13.14 77:21.25 78:1.24 gales (1) 72:21 gaps (1) 34:5 gate (1) 12:21 gather (1) 56:10 gathered (1) 31:14 gathering (7) 3:12 11:4 26:4 28:22 31:5 47:8 52:25 gave (5) 15:4,10 16:10 67:3

69:9 general (4) 7:10 43:15 47:23 65:21 generality (1) 70:14

generally (1) 19:17 gentlemen (1) 60:11 geographic (1) 33:2 george (3) 13:4,10,13 get (4) 22:21 71:3 72:14 73:2

gets (1) 17:19 give (33) 9:16 16:7 17:13 18:1 19:25 20:15 21:23 30-25 39-22 40-10 42:17.24 46:1 47:22.24 48:4,11,14,17,24 54:10 55:18 59:21 60:15 63:22 64:25 65:4 72:13.24

Opus 2 Official Court Reporters 76:18.21 77:5.10

given (19) 15:13 20:5,22 22:1 25:3 39:18 40:12 43:22 48:24 54:25 55:1 58:17 61:12 71:13 74:22 75:11.13 77:6 79:6 gives (5) 20:1 29:9 42:23 64:16.21 giving (8) 13:7,22,23 15:6 20:13 65:5 69:13 77:13 glasgow (2) 33:8 34:23 goes (1) 24:14 going (10) 38:8 52:19 60:14 66:22 67:9.17 72:16 73:1 77:24 80:1 goldplated (1) 66:8 good (6) 1:6 5:12 8:19 60:11 71:1 79:17 goodbye (1) 4:3 gordon (1) 12:11 government (3) 4:20 28:24 30:4 graham (1) 6:14 grant (1) 57:8 granted (6) 41:16 43:18,21 44:10,25 46:9 granting (1) 42:12 grateful (6) 19:16,20 21:9 33-1 35-11 30-15 great (1) 74:4 greater (1) 73:2 grounded (1) 17:20 group (5) 20:19 21:12 43:8 67:21 69:11 groups (21) 19:11,19,20,25 20:6 7 15 21:24 22:3 31:24 32:24 33:17.19.22 34:2 47:13 53:2 68:7 69:5,6 76:20 grow (2) 73:19,19 guarantee (2) 27:17 42:22 guidance (3) 23:6 24:20 25:1 guide (2) 31:15 32:4

h (5) 39:11 46:23 50:25 52:2,5 half (1) 37:2 hallett (1) 26:7 hand (3) 29:10 69:8.8 handful (1) 61:2 handling (3) 24:23 29:4 hanging (1) 62:16 happen (2) 63:7,7 happened (2) 3:11 64:25 happening (1) 65:19 happens (1) 61:14 happy (1) 12:10 hard (1) 8:18 hardship (1) 4:14 haste (1) 65:17 having (15) 8:15 11:20 19:7 21:20 27:12 43:14 44:8 61:9 69:18.22 70:2.21.21 72:11 74:8 head (1) 75:18 headed (1) 23:2 heads (3) 11:6,7 75:20 health (30) 1:5 3:4,25 4:6,8,15 6:3 14:14,16 16:1.18 17:14 22:14 23:4.7.13 36:6 39:5.9.23 40:2 49:25 50:20 51:24 53:14,16 68:12 76:21 79:8 81:4 healthcare (4) 8:12 40:5 42:5 51:1 hear (13) 18:1 33:17 50:15 67:17,20 68:7,12,14 71:4 16 19 73:11 77:1

47:16 63:2.5.23.24.25 71:7 73:24 hearing (59) 1:5,8 2:14,25 3:8 5:15 12:23 13:1,9,19,25 17:11 18:3,13 19:15 21:17 23:5 27:15,18 36:5 42:16.20 43:21.23.24 44:3,5,9,12,12,15,16,17,23 45:5,8,17 47:3,11 48:13,21 49:18 56:2.5.7 59:10 60:25 61:15.17 64:8.21 65:21 68:9 71:20 72:6 73:10.14 79:19 80:4 hearing1 (1) 81:4 hearings (94) 3:2,5,6 13:3,5,12,16,17 14:13,14 16:17,21,22 17:14 18:7,11 19:13.14 20:10.24 22:10.11.14.20.23 23:4.13 24:6 25:16 27:5,5,12,16,19,24 30:8 35:11 39:23 43:1,14,16,17 45:15.17.22 46:21 47:1.10 48:7,9 50:1,2,3,3,4,15,17 52:21,24 53:10 55:9 56:20 57:17,25 58:22,24 59:4,8 60-24 61-13 18 62-7 67:2 10 15 24 68:5 69:17,18,22,23 70:1,3,4,21,21 71:5,6,17,25 72:4,12,16 73:2 heart (1) 70:25 heather (1) 26:7 held (4) 19:9 22:12 26:25 44:15 help (6) 14:3 31:15 32:8 56:9,25 80:1 helping (1) 34:16 here (11) 1:12,20 3:9,10 5:13 6:10 12:16 24:13 60:15 62:15 68:4 hes (3) 12:12 66:23 72:22 heymann (1) 55:14 hidden (1) 12:12 highest (1) 34:10 highlands (1) 34:23 highlight (4) 42:1 46:15 66:21 74:25 highlighted (1) 47:10 highquality (1) 35:8 hinder (1) 30:17 hiring (1) 13:13 hold (8) 1:22 9:11 13:12 22:9,22 23:4 27:5 29:22 holding (1) 27:14 home (16) 1:19 4:7 7:15 19:15 20:11 21:5 60:20 67:20 74:13 76:9.16 78:14.18.21 79:2.11 homes (10) 7:22 8:10 28:9 50:22.23 63:5.9 76:23 77:17,21 honour (2) 6:23 7:13 honoured (2) 1:8 7:5 hope (3) 56:10 58:4 68:1 hospice (1) 69:5 hospital (7) 10:11,14 40:1,4 49:1 50:9 79:2 hospitals (2) 42:6 68:17 hour (2) 37:2 59:21 house (3) 13:4,10,14 however (19) 1:18 18:5 25:6.25 27:6.16 33:7 38:17 45:10 48:7 49:21 57:12 58:19 59:19 64:10 66:6.21 78:12 79:20 huge (1) 4:15

ian (1) 11:13 id (5) 1:7 5:9 49:18 75:19 78:23 idea (3) 21:22,24 62:20 identical (1) 26:23 identification (2) 31:13 75:3 identified (2) 35:5 40:10 identifies (1) 37:21 identify (4) 5:3 10:18 48:3.14 identifying (2) 31:23 38:13 identities (1) 40:19 identity (3) 42:4 75:10 76:1 ill (4) 4:16 66:15 76:13 77:21 illusion (1) 3:23 im (17) 1:12 2:20 33:1 35:11 37:7 38:8 59:16,25 60:3,14,22 66:14,21 67:8 75:21 77:7.23 images (1) 2:11 immediately (1) 70:7 immense (1) 7:3 impact (35) 2:8 6:8 7:18 8:8.11.23 13:5 14:18.24 15:20 16:13,17 17:14 18:7,11 20:23 21:17 23:13 33:21 39:23 44:23 47:3.11 48:7,9 50:2,14 53:5 57:17 64:21 67:15 71:5.5 79:9.11 impacted (5) 1:20 4:24 21:2 68:7 69:1 impacts (31) 8:13 15:7.10.12.14.25.25 16:2,4,5,8 18:22,24 20:3 22:15,23,24 25:12 31:23 32:21 48:16,19 50:20 51:24 52:18,22 61:16 62:1 68:13,19 76:22 implementation (11) 14:19 15:10.15 23:5 43:1 50:3 71:17 72:7.12 73:1.3 implemented (2) 15:8,19 implementing (1) 24:19 implications (2) 41:12 43:5 importance (3) 3:23 25:25 28:10 important (11) 1:9 5:15 25:4 35:5 38:14 39:12 55:4 62:8 66:12 71:19.21 impose (1) 39:6 imposed (1) 8:5 impossible (1) 64:24 inaudible (2) 73:10,14 inception (1) 74:2 include (7) 19:1 29:18 31:22 33:10 34:1 68:8.10 included (2) 34:21 53:3 includes (1) 40:17 including (10) 4:5 10:24 19:9 26:15 28:24 34:22 36:9 51-2 53-3 16 incorporated (1) 33:23 independence (1) 28:4 independent (9) 7:8 12:1,15 17:19 27:8 28:6 34:9 37:20 65:18 indepth (1) 24:2 index (1) 81:1 indicate (1) 77:5 indicated (4) 16:11 66:25 67:15 76:16 indication (4) 17:13 67:4 76:7,21 individual (13) 16:10 25:5 29:10 33:4 40:4 41:13,19 42:4 59:3 75:7,8,11 78:14 individually (1) 25:2 individuals (26) 6:6 7:22 18:6 8 21:16 24:1 29:8 22 31:12 32:1.24 39:15 41:10 42:9 46:19 48:19,23 59:5 64:2 65:3 70:23 71:4,6,19

infection (1) 50:24 influenced (1) 36:18 inform (3) 21:18 31:16 54:4 informal (1) 46:12 information (28) 3:5 14:11 19:11 26:9,12,18,22 29:17.23 30:1.7 31:9 33:2 34:5,5 37:1 38:13,25 39:18 40:9,14 42:14,18 51:10 60:13 68:19 75:2 78:19 informationgathering (1)17:7 informed (7) 9:5 12:19 17:21 33:21 36:15 38:2 54:3 informing (1) 11:6 initial (3) 20:9 47:4 57:25 initially (1) 67:17 input (5) 6:13 35:12 56:24 57:4.15 inquiries (19) 9:13.14.19 12:15 17:9 26:2,8 27:1,8,22 28:23 40:25 45:9.24 49:4 55:8 65:7 69:20 70:9 inquiry (219) 1:7,17,21 2:5,24 3:2,8,15,17,18,21 5:8 15 16 19 21 7:1 7 8 11 9-1 17 23 10-2 21 25 11:1,3,9,13,18,18,23 12:8,23 14:9,15,18 15:6,19 16:19.24 17:18.25 18:9 19:4.17.22 20:21.22 21:17,22 23:17,20,22,24 24:5,8,10,16 25:6 18 20 21 23 26:1 7 13 27:9.17.19.21 28:3,6,11,13,17,20 29:2,9,11,13,17,21 30:2.3.14.17.22 31:10 32:2,17 33:19 34:8,11 35:3,15 36:10,12 37:17,24 38:11,15,21 39:3,9,13,15,22 40:13,18 41:2.10.14.16 42:1.3.10.13.17.22.24 43:3,10,11,22,25 44:15 45:9 46:3,7,9,13 47:3,8,21,25 48:3,13,14,22 49:2,5,24 50:15,19 51:12,15,21,23 52:15,17,19 53:8,19,21,25 54:4.7.18.21 55:3.5.6.12.13.16.17.24 56:8,15,18 57:1,7 58:10,13,17,19 59:9 61:7,16,18,20,21,24 63:12,16 64:1,7,11,23,25 65:1,2,9,10,12,15,15,21 66:7 67:2 68:5 69:18 70:4.9.15.16.25 71:14.16 72:4.5.8 73:16.17 74:2.21 75:9 inquirys (34) 3:24 5:23 11:16 12:5 14:22 22:11 23:14 24:10 27:10 28:25 29:7.23 31-11 15 34-3 14 17 39:10,23 40:22 43:17 44:19 45:6,13,16,18,23 46:23 48:24 49:11 51:17,22 54:24 57:19 inquisitorial (2) 43:3 55:24 insights (1) 32:20 inspections (1) 50:25 instead (1) 59:21 instigated (1) 19:8 institutions (1) 34:22 instruct (5) 55:21 56:2 57:9 66:9.10 instructed (2) 34:8 53:12 instruction (1) 56:19 instructive (1) 35:9 instrumental (1) 11:25 intend (4) 1:13 7:12 20:18 24:13 intended (2) 2:9 48:10

intention (10) 9:5 18:21 20:9 22:22 37:25 46:7 48:6 67:4.21 68:18 interact (1) 63:11 interaction (1) 78:20 interest (4) 38:6,20 51:22 interested (3) 25:19 38:1 interests (3) 27:8 42:7,11 interim (6) 12:5,11 37:25 58:1.8 65:8 intersectional (1) 53:4 interview (1) 10:10 intimated (1) 69:18 into (17) 5:25 23:6 28:8 32:21 33:3,23 35:12 42:18 49-13 54-11 60-24 61:15 19 68:3 70:6 71:7 78:17 introductory (3) 6:20 34:12 59:13 invaluable (1) 35:12 investigate (2) 25:23 43:10 investigating (2) 23:8 24:21 investigation (10) 5:2 11:11 12:1 17:19 26:5 13 37:20 39-10 52-10 55-9 investigations (21) 8:13 14:13,23 16:20 22:5,5,7,9 25:20 28:7,12 29:1,18,23 31:16 33:24 34:16 35:10 36:7 50:12 51:11 investigative (5) 5:20,24 6-17 34-4 15 investigatory (1) 56:24 invite (4) 2:7 5:9 18:5 52:14 invited (4) 32:7 45:17 47:25 involve (2) 41:19 49:6 involved (10) 5:7 17:8 25:22 35:12 63:8,10 65:8 70:13 72:6,10 involvement (2) 51:3 64:19 iraq (1) 65:14 islands (1) 34:24 isnt (1) 59:16 isolation (1) 7:21 issued (2) 29:21 35:1 issues (11) 25:10 26:2 32:21 53:16.17 58:20 63:11 66:23 74:15.24 79:9 its (33) 3:19 8:9 12:3 26:13,14 27:14 29:16,17 31:16 32:24 36:13 37:8,16,18 38:15,16 41:7 43:20 44:7 50:19 51:23 55:25 57:2 58:18 60:2.22 66:6 70:10 72:21 73:22,25 74:1.19 itself (3) 3:8 37:7 39:14 ive (14) 1:13 12:16 21:25 23:1 51:12 52:7 60:3 61:11 66:20 72:4,14 73:5,7,8 ianet (1) 9:17 ianuary (3) 1:16 35:1 70:18 jason (1) 10:9 joanna (1) 12:5 job (1) 73:21 jobs (1) 4:14 joining (2) 5:14 11:12

jointly (1) 57:9 iudged (1) 9:19 judgment (1) 72:25 july (2) 11:13 36:3 june (1) 34:21 junior (1) 51:15 justifiable (1) 57:17 justified (1) 41:17

kc (2) 5:9 56:11 keep (2) 4:17 38:20

intends (1) 20:23

keeping (1) 34:19 kept (2) 38:2 40:15 key (10) 2:1 4:19 14:20 29:4 32:19 40:6 48:16.19 56:9 74:14 kindly (1) 31:7 kinds (1) 23:23 kings (2) 5:17,18 know (15) 5:16 13:24 23:22 49:16 61:25 62:14.16 78:17.18 known (2) 38:23 39:5

livestream (3) 2:14 13:20

livestreamed (2) 13:14 59:1

london (3) 61:16 62:4 64:1

51:12,13,16,18,20 52:4

61:4 68:15.16.17.25 69:1

livestreams (1) 45:18

local (2) 4:20 33:5

long (9) 4:5,9 37:17

61:1,3 64:20

62:20

62:20

44:5.6 46:6

4:3,7 5:1 17:8 21:1

22:8.8.17 23:22 31:1 33:11

34:17 35:14 37:4 38:2

51:13 59:2 61:11 62:18

63:6,9 68:19 72:1,2 74:3

51:2

77:24

16:25 22:19 23:23

8:1,9 16:25 20:16 61:5

living (3) 3:25 4:5 25:18

42:16

look (3) 14:18 66:8 80:1 63:6,10 64:1 65:19 66:1,8 looking (9) 1:21 26:2 38:7 lordship (5) 15:5 60:22 loss (8) 7:16,18,25 8:2,4 ladies (1) 60:11 losses (1) 24:2 lanarkshire (1) 33:11 lost (5) 1:24 2:5 4:14 29:20 land (1) 13:4 languages (1) 32:13 lot (2) 66:19 77:6 large (1) 36:25 last (7) 10:10 11:8 15:4 21:9 lothian (1) 33:10 lots (1) 72:11 54:16 69:9 79:5 loved (10) 4:4 7:16,18,19 lasting (1) 2:10 lastly (1) 75:9 lasts (1) 2:16 lunch (2) 18:16 59:16 later (6) 3:7 14:6 28:20 luncheon (2) 59:20 60:12 54:20 71:18 73:4 lauraanne (2) 5:18 23:3 lead (5) 9:4 18:3 60:20 61:1 magnitude (1) 3:23 75:3 main (2) 31:20 64:12 leaders (1) 4:20 leadership (2) 11:19,23 majority (1) 72:20 leading (1) 34:13 makes (2) 17:20 25:6 learn (2) 1:14 9:1 making (5) 18:4 19:21 learned (9) 5:4 9:10 10:18 17:18 25:7 31:4,5 33:23 management (3) 11:18 47:7 37:22 learning (1) 77:2 managing (1) 36:17 least (1) 39:2 manner (2) 3:11 38:16 leave (18) 2:14,18 many (30) 1:23 2:2,20 3:17 43:13.18.18.20.21 44:8.10.14.16.16.20.25 46:24 48:8 56:6 66:10 lectern (1) 60:15 led (2) 48:17 56:11 left (2) 12:12 63:17 legal (17) 21:6 28:17 31:11,24 40:21 41:5,19

44:8.18 45:5.10.12 51:14

lessons (10) 1:14 5:4 9:1,10

lets (26) 1:11 26:15 30:19,25

33:3,4,13,16,20,25 47:16

31:2,8,9,15,21,25

32:4.6.8.12.15.18.23

10:18 17:17 25:7 31:4

57:24 58:4.5.16

24:20 25:1

leitch (1) 10:9

length (1) 20:18

lengthy (1) 60:2

33:22 37:21

73:24 77:24

level (1) 16:12

liability (1) 30:13

liaised (2) 69:5,5

lightly (1) 41:4

lifetime (2) 2:23 54:21

like (17) 1:7,18 2:7 5:9 6:20

12:7 14:7.11 25:17 41:8

42:1 49:18 65:6 69:7

likely (3) 15:7 21:23 50:16

74:14,24 79:20

limit (2) 20:18 65:5

limitation (1) 57:11

line (2) 46:14 55:9

list (3) 29:14 48:7.8

63:2 67:6 74:20

listed (1) 4:2

lies (1) 6:25

letters (2) 29:22.24

let (1) 71:22

less (1) 33:10

legislation (4) 9:20 23:6

mary (1) 6:12 material (7) 26:21 29:20 30:3 54:9 55:18 69:4 78:21 materials (2) 32:13 36:8 matter (7) 36:21 41:3.13.22 45:2 64:4 70:14 matters (14) 6:21 22:12 26:16 27:16 28:15 36:13 39:10 51:16 66:21 69:8 70:6.10.15.17 maximise (1) 26:9 mcguire (1) 19:17 mcnicoll (3) 12:11.13.15 means (6) 17:25 24:11 40:11 42:8 77:1,13

measures (3) 14:20 24:19,25 mechanisms (1) 16:14 media (1) 10:8 medical (6) 4:11 48:20,23 49:3 77:15.20 medically (1) 49:6

meet (3) 26:17,23 32:8 meeting (3) 7:14 26:25 68:9 meetings (4) 7:15 19:9 27:20 56:9

member (1) 8:1

members (22) 6:18 7:14 11:12 13:8 19:8,15,18,20,24 20:6 21:11 32:5 33:19,21 39:24.25 47:13 48:5 52:12 54:5 63:8 76:22 memorandum (5) 26:10 55:10 61:23 69:19.21

memories (2) 2:21 71:3 memory (1) 3:25 mental (1) 4:6 mentioned (5) 6:23 10:7 30:21 50:6 52:6

listening (2) 30:25 60:1 little (7) 1:11 2:16 14:5 15:2 lives (3) 1:25 4:16,19 merits (1) 58:18

Official Court Reporters

heard (34) 7:16 11:14 23:21

26:16 30:19,25

31:2,8,9,15,21,25

32:4.6.8.12.15.18.23

33:3.4.10.13.16.20.25

human (12) 11:1,20,21

14:24 22:24 23:10

64-18

24:9,20,24 25:3,9 71:9

humanrights (3) 61:8 63:13

humanrightsbased (6) 12:2

16:20 24:12.14 25:14 66:7

72:18 79:10

inevitably (2) 8:2 20:14

messages (1) 29:25 messaging (1) 29:19 met (1) 3:20 midafternoon (1) 18:18 midmorning (1) 18:15 might (5) 26:8 43:6 59:24 70:9 76:11 mike (1) 1:11 milestone (1) 5:16 million (4) 65:10,11 74:6,7 millions (1) 29:2 mind (8) 16:12,21 17:4,6 32:9 49:10 57:19 59:20 minded (1) 17:1 mindful (6) 8:11 10:2 20:13 22:17 27:6 29:17 minds (1) 1:22 minimise (3) 26:4,21 45:5 minister (3) 3:22 63:24 64:1 ministers (3) 5:5 23:16 63:21 minorities (1) 63:15 minority (2) 33:17 63:15 minutes (3) 2:16 37:5 59:17 misapprehension (1) 7:2 missed (2) 4:13 73:7 mistake (1) 43:19 mistakes (1) 9:12 module (5) 22:11 27:15 61:15 62:1,4 moment (4) 2:17 37:7,10 52:3 moments (1) 2:13 monday (1) 1:1 money (2) 26:9 74:4 month (1) 54:16 months (12) 5:1 11:9 22:8 35:7 61:19 64:8 67:2,6 70:4 72:3,24 74:3 more (21) 4:1 10:4,9 11:19 13:6 14:6 15:2,14 24:2 33:25 34:1,5 53:23 59:12 61:5 67:23 71:18 77:21 78:2.5 79:24 morning (11) 1:6 5:12 11:15 31:19 60:1 67:4.7 69:19 71:1 72:22 78:25 most (9) 3:25 7:25 11:16 12:22 30:23 49:19 56:16 63:17 79:4 move (1) 12:24 moving (1) 8:22 ms (14) 6:4.11 12:5.7 56:11 60:19 74:11.12 76:5.24 77:14 78:23 79:5,15 much (12) 10:22 13:11 17:1 36:24 37:3,9 38:3 60:1,7 68:19 77:10 80:2 multimedia (1) 77:1 multiple (2) 57:9 77:2 multitude (1) 34:18 murravfield (1) 5:13 must (1) 78:12 mutating (1) 4:23 mutations (2) 10:9,15 myself (4) 11:5 19:9 59:15 63:4

name (2) 40:3,4 named (1) 13:21 napier (1) 34:23 national (3) 10:4,10 32:25 naturally (1) 51:8 nature (4) 6:25 15:17 35:25 48:9 nearer (1) 50:4 nearly (1) 61:5 necessarily (4) 54:20 58:13,15 59:13 necessary (9) 18:20 21:14 25:13 28:19 38:20 49:7.10 52:24 78:15 necessity (2) 17:25 73:17 need (18) 3:14 5:4 13:19 17:16.23 24:3 27:8 37:22 39:17 52:8 57:4.13.22

58:16 66:12 70:9 72:11 78:7 needed (1) 41:20 needs (7) 13:10 15:19 19:7 26:23 32:8 59:5 76:20 neither (1) 27:17 next (7) 50:17,17 60:23 67:11 70:18 71:7 72:17 nhs (1) 4:20 nonadversarial (1) 3:11 none (2) 7:1 36:11 nor (1) 42:23 north (1) 33:11 note (1) 39:13 notice (8) 29:9 49:4 55:1 67:1 72:11,24 73:3 77:10 notices (2) 29:6 69:2 notified (1) 44:10 november (7) 62:2,2,2,3,3 64:2 70:5 number (18) 10:24 11:9 16:16 18:5 19:5,10 21:22 22:16 38:11 44:11 49:21,23 53:6 58:22 66:18 68:21 69:2,15 numbers (1) 22:1 numerous (1) 76:19 nurse (1) 8:17 nurses (1) 8:19 nursing (2) 28:9 50:22

0

obligation (2) 10:18 26:3

obliged (2) 60:22 66:14

observation (1) 8:14

obstruct (1) 30:16

object (1) 59:25

obtain (5) 30:14 44:14 78:2,5,8 obtained (1) 31:20 obtaining (2) 68:18 78:13 obvious (4) 16:6.9 71:3 78:5 obviously (7) 21:21,22 23:1 70:16 71:21 72:18 78:25 occasions (1) 77:24 occupy (1) 22:3 occur (1) 9:7 occurred (1) 28:8 oclock (4) 18:16.16.17.59:23 october (17) 3:22 13:5 18:12 25:16 44:22 46:21 47:3 58:6 61:14,21 62:2 64:2 67:15 70:4,22 71:11 76:7 offers (1) 32:7 office (6) 11:3 12:24 28:1,5,8,13 officer (3) 13:21,23 14:1 officers (1) 4:18 offices (1) 12:21 official (1) 11:16 officials (1) 26:17 often (2) 9:21 39:3 once (1) 12:19 ones (8) 4:4 7:16,18 8:9 16:25 20:16 61:5 62:20 ongoing (6) 12:18 14:3 22:7 28:14 58:17,20 online (5) 1:20 2:15,22 5:13 32:3 onwards (1) 61:21 open (2) 17:19 38:15 opening (6) 5:10 6:22 44:3.22.23 45:1 operate (3) 19:4 73:25 74:3 operating (3) 66:7 74:1,2 operation (4) 58:22,24 74:9,19 opinion (2) 51:14,21 opinions (1) 54:4 opportunities (3) 4:13 52:12

opted (1) 55:10 option (1) 58:25 oral (11) 17:11 18:2 19:25 20:1,4 21:16 46:2 47:22,24 48:12.17 order (22) 15:5,17 21:18 33:20 34:4 38:23,23 39:5,6,13,19,21 40:8,15,16,22 41:2,4 42:3.19 66:9 75:2 orders (5) 38:9,10,25 39:4 74:19 organisation (5) 23:20 29:10 43:6 74:9 75:11 organisations (29) 3:15 14:2 18:6,7,23,25,25 19:2,5,6,10 21:25 26:25 29:8.22 30:10 31:12 32:5 42:9 21 25 47:14 52:25 56:9 76:8.10.15.17.19 organise (3) 23:18 27:4 62:9 originally (1) 20:9 others (11) 4:6,21 20:7 23:17 26:23 28:4,18 45:11 47:18 61:11 71:13 ought (1) 47:22 ourselves (2) 23:18 35:22 outcomes (1) 23:19 outset (2) 6:23 43:19 outside (1) 8:5 over (9) 2:16 10:12 11:8 23:7 24:25 29:11 37:2 60:11 62:16 overall (1) 8:4 overarching (1) 57:2 overlap (3) 22:10 27:12 62:6 overlapping (1) 27:18 own (7) 24:6 27:7,16 36:13 48:5 54:3 66:10

pace (1) 4:24 pages (2) 64:10.13 paid (2) 40:5 73:24 palliative (1) 69:6 pamis (1) 74:14 pandemic (33) 1:15,21 2:3,8,11 3:24 4:7 5:6 8:6.8.9.11.23 9:6 10:1.19 14:19.24 19:2.3.12 21:2 24:23 25:22 28:9 29:5 31:3 33:21 35:23 36:17 51:19 61:6 78:22 paper (1) 32:3 papers (1) 36:12 paralegals (1) 6:16 parliament (1) 25:24 part (4) 14:4,25 27:9 64:12 participant (8) 3:14 30:22 43:8,16 44:7 47:13 56:22 70:12 participants (48) 3:12,16 12:18 27:1 28:18 39:14 40:20.24 41:6.23 44:13.18.24 45:10.25 46:6.8.11.17.18.22 47:6.17 48:5 49:13.16 52:11.14 54:5,14,17,21,25 56:3,6,17,19 57:9 61:11 63:1,3,9 64:5,5,17 70:8 75:4 77:9 participate (1) 59:8 participation (6) 28:20 32:11 58:25 59:3 64:17 79:25 particular (14) 1:24 8:12 15:24 19:7 26:2 27:20,24 31:24 57:2.18 74:24 76:18 particularly (5) 7:19 8:22 18:19 52:5 79:22 parties (7) 5:7 27:2 30:5 38:2 54:5 57:11 68:10 partner (1) 24:7 pass (2) 10:20 14:7 passed (1) 75:3

patient (2) 37:2 49:7

patients (2) 4:16 49:3 pause (6) 2:13,16 27:16 36:23 37:10 74:16 pay (2) 45:10 73:20 paying (1) 45:7 payment (2) 45:4,14 people (37) 1:10 2:2,9 3:13 4:1,4,10 6:8 8:23 10:11 14:17,22 16:23 17:21 18:24 21:1 22:23 23:22 25:18 26:1 30:23 31:1.2.6 32:11.14 33:5.12 45:7.16 59:2.8 61:5 63:8 65:21 70:23 71:6 peoplecentred (1) 70:22 peoples (1) 4:12 perform (3) 7:7,8 73:23 perhaps (5) 5:23 16:7 31:18 33.6 77.17 period (13) 1:16 20:25 21:3 22:3 23:7 27:14 34:25 35:3 48:9 67:5,22,24 68:3 periods (2) 4:9 72:3 permanent (1) 12:17 permission (5) 40:11 44:2 46:9 56:21 66:10 permitted (1) 8:14 person (12) 23:19 40:6.10.19 41:1 45:8 47:22 59:4,9 66:23 74:25 79:1 personal (4) 7:25 8:14 17:2 41:11 personally (1) 7:4 personcentred (2) 11:2 14:4 personfocused (1) 71:9 persons (13) 39:20,22.24.24 42:4 49:6 60:13,17 71:20 72:9,21 77:5,20 perspectives (1) 34:18 persuaded (1) 16:3 pertaining (1) 39:9 pertains (1) 47:21 philosophy (2) 24:15,18 photograph (1) 8:20 physician (1) 53:14 place (7) 13:17 20:18 43:24 50:16 54:20 58:6 61:15 placed (4) 7:6 49:13 57:11 78:9 plan (4) 55:21 67:9,14 68:20 planning (5) 10:25 13:2 14:8 26:18 27:21 plans (2) 3:2 48:22 platform (2) 32:3 33:18 play (1) 3:18 played (2) 2:19 31:19 please (6) 2:18 60:5,7,21 73:7 76:3 pleased (1) 27:2 pleasing (1) 33:3 pm (3) 60:8.10 80:3 points (4) 27:3 49:19 66:19 69:15 police (2) 4:17 40:19 policies (1) 25:1 policy (4) 45:7,13 52:17 74:22 politicians (4) 4:20 63:21 71:13.16 population (3) 4:25 50:7 52:7 portfolio (5) 6:1,2,5,7 56:10 portfolios (3) 5:25 23:2 34-15 pose (1) 46:6 posed (2) 46:8 59:15 position (4) 45:2,23 53:12 76:14

positive (1) 16:16

possibility (1) 28:11

possible (14) 15:11 22:2

69:22 71:20 79:4

potential (1) 31:14

nost (3) 11:12 12:16.18

26:18 27:4,11 30:9 31:1

33:12 37:16 38:16 56:23

productions (1) 46:25

professionally (1) 54:3

professions (1) 8:24

72:25

professional (3) 7:9 41:11

power (3) 29:10 30:12 38:23 powers (3) 28:23 30:14 38:22 ppe (1) 8:21 practicable (3) 17:17 30:11 59:11 practical (3) 38:8 58:23 74:18 practicalities (1) 74:23 practice (4) 23:6 39:19 40:11 42:8 practitioner (1) 8:21 precede (1) 15:15 preceded (1) 46:12 precise (2) 61:13,20 preciseness (1) 62:7 preempt (2) 35:18 54:1 prefer (3) 2:12 74:16 75:19 preference (1) 20:22 prejudices (1) 28:12 preliminary (11) 1:5 2:25 3:8 5:14 33:6 43:14 45:17 49:17 61:15 80:4 81:4 premises (3) 10:24 12:20 73:20 preparation (2) 47:9 56:20 preparatory (1) 57:25 prepare (4) 35:10 55:2 56:23 65.25 prepared (6) 5:5 9:25 37:22 46:14 69:8 75:21 preparing (2) 35:5 52:24 prescriptive (1) 67:25 presence (2) 10:14 68:4 present (4) 5:13 12:4 44:11 50.21 presentation (7) 5:21 14:23 22:6 36:4 54:16,19 55:7 presented (5) 3:24 20:4 43:3 54:22.23 presently (1) 59:7 preserved (1) 30:1 press (1) 10:13 pressures (1) 4:15 presubmit (1) 49:17 prevent (2) 42:17 75:2 prevention (1) 50:25 previous (2) 9:13 10:12 previously (1) 55:23 primarily (1) 72:18 primary (1) 38:6 prime (1) 63:24 princes (1) 12:22 principal (2) 17:7 30:23 principle (1) 57:6 prior (6) 13:22 43:23 47:1 53:10 56:7 61:9 priorities (1) 71:14 prioritisation (1) 20:22 prioritise (1) 71:2 prison (1) 68:14 private (3) 29:19 38:21 40:15 probably (5) 12:12 19:13 38:5 75:14 76:2 procedural (1) 46:4 proceed (1) 11:24 proceeding (1) 71:10 proceedings (9) 1:3 13:14 28:13 38:12,17 49:20 50:4 55:23 59:1 process (16) 5:8 9:13 11:11 21:8,12 29:16 30:5 31:22 43:4 46:5,12 55:24 60:25 64:17 73:17.25 processes (1) 3:3 procurator (2) 11:3 28:5 produce (2) 28:25 59:9 produced (4) 35:9 39:8 55:14 72:10 producing (1) 29:3 production (3) 30:15 49:5

professor (2) 10:9 55:14 profound (1) 77:2 programme (1) 17:14 progress (2) 10:21 27:10 progresses (1) 37:24 progressing (1) 55:25 prohibits (1) 40:8 project (2) 30:25 31:10 properly (2) 15:17 41:17 proportionality (2) 57:3,10 proportionate (1) 49:10 proposals (1) 50:1 propose (1) 14:12 proposed (1) 79:18 prospect (1) 59:24 protected (6) 39:20 40:9,19 42:4 53:1 75:1 protection (1) 39:18 protections (1) 39:21 protocol (3) 44:20 74:22 75:15 protocols (3) 3:3 38:5,9 provide (30) 3:1 9:5 10:20,23 14:2,3 17:12 18:2,8 20:7 21:16 24:5,5 32:1,20 34:5,14 39:16 41:10 14 43:1 48:7 51:10 52:12 53:13 19 54:13 58:12 61:20 75:15 provided (13) 19:10,21 21:10 30:4 36:3 38:21 39:8 53:8 54:4 60:12 61:18 65:2 71:25 providers (3) 26:21 40:6 42:5 provides (1) 40:25 providing (8) 9:15,24 17:9 26:12 33:1 41:15 69:6 74:22 provision (4) 6:3 29:13 31:9 provisional (1) 76:3 public (37) 1:8 6:1 9:19 12:15 16:22 17:8,9 22:9,14 24:5 26:9.12.14.15 27:5.12 28:24 32:20 35:10 36:6 38:17,20 42:18 43:24 45:6,9 47:2 49:13 52:13 53:14,16 54:6 57:25 61:4 73:16,17 75:5 publication (4) 38:24 39:7 40:9 58:24 publish (6) 32:18 35:5 37:25 45:13 48:6 50:1 published (8) 2:22 18:9 25:15 29:14 34:20 36:8 53:15 58:5 purpose (2) 2:25 23:15 purse (2) 26:10 45:6 pursue (1) 29:7 putting (2) 13:10 70:23 qualified (1) 49:6 quality (2) 15:17 34:10 quarter (1) 33:7 queries (1) 32:12 question (18) 44:12 45:3 46:14 50:6 52:6,18 60:4,15 61:8,10 65:24 70:19

74:16,18 75:18 76:6,25

questions (31) 38:11 41:24

49:17,19,22,23 53:7 54:18

59:14,22 60:13,17,18 61:3

44:1,1 46:6,7 48:21

55:2.5.20 56:4 58:23

63:4 66:18 69:16 73:6

quickly (2) 17:17 37:19

quite (9) 12:12 22:2 37:4

61:4 66:19 67:18 73:11

74:13.14 79:18

quotation (1) 8:16

quotations (1) 31:18

77:3,6

questioning (3) 18:10

77:14

45.21.24

race (2) 36:1 52:20 raise (1) 71:22 raised (6) 41:23 45:4 49:19,22 55:21 66:20 range (4) 20:3 36:9 53:16 58-1 rapidly (1) 4:23 rarely (1) 8:19 rather (6) 26:24 46:9 50:18 56:24 59:12 71:20 reach (2) 36:13 37:18 read (1) 52:2 ready (2) 58:5 64:9 real (2) 15:20 65:13 reason (2) 22:15 71:10 reasonable (3) 10:16 27:10 49:11 reasoning (1) 15:2 reasons (5) 7:20 16:16 41:17 70:21 71:2 reassurance (1) 79:6 reassure (2) 56:3 69:7 receipt (2) 39:25 40:1 receive (6) 4:11 14:1 35:17 recent (1) 10:8 45:3 recognised (1) 44:8 15:21.23 54:1 48:20.23 49:3.7.8 78:5.8.13 79:3 recruited (1) 32:17 12:17.19 recurring (1) 32:21 refer (2) 34:7 41:2 55-25 58-8 11 refined (1) 15:24 reflection (1) 20:12 refresh (1) 57:23 refugee (1) 68:13 refugees (1) 63:15 refused (1) 75:8

40:17 46:24 53:22 received (13) 31:21,25 32:23 33:4 35:17 49:23 53:6.22 58:23 64:6,7,12 65:12 recently (2) 10:9 16:9 reception (2) 60:6,6 recipients (2) 29:14.15 recognise (4) 13:7 25:18,25 recognition (2) 2:10 51:3 recollections (1) 17:2 recommendation (2) recommendations (11) 5:4 9:4.24 12:3 17:20 18:5 24:11 31:17 33:24 35:19 record (2) 29:3 65:14 recorded (2) 10:6 45:19 records (17) 10:4 17:3 29:13 77:15.16.17.20.22 recover (3) 29:7 77:20 79:3 recruitment (3) 11:10 reference (22) 3:19 23:15 24:17.22 25:12 26:3.19 29:24 34:18 36:10,14 39:11,12 46:23 49:12 50:21 51:25 52:23 53:3 referred (2) 21:25 43:22 reflect (3) 2:8 6:21 58:19 refreshments (1) 13:16 refurbishment (1) 12:25 regard (13) 17:23 19:4 24:20 25:3 54:19 57:2,3,18 58:11,13 65:20 74:8,25 regarded (1) 16:8 regarding (8) 10:13 35:23,25 45:23 49:24 53:9 55:5 74:23 regards (3) 33:2 45:14 55:6 region (1) 74:5 regularly (1) 26:17 regulations (1) 9:20 reiterate (1) 31:18 relate (2) 70:5 74:15

76:25

opportunity (11) 13:25 17:12

41:25 42:22,25 54:15,17

56:4 71:4 74:12 75:13

opposed (1) 75:4

37-22 40-19 45-25 51-19

56:12.15 60:21 61:6.16

scotlandspecific (1) 27:20

scottish (28) 5:5 7:14 11:21

19:16 21:5,11 22:12 23:16

25:20,22,24 27:15 28:24

30:4 52:19 58:17 60:19

66:3 70:5.10.15.17

scrutinising (1) 24:18

secondment (1) 12:5

section (7) 10:23 29:6,9,15

secrecy (1) 65:25

40:25 42:2 49:4

sector (5) 6:1 8:12 23:7

see (4) 27:10 71:22 72:11

seeking (2) 21:14 57:12

seems (3) 10:16 22:1 38:3

seen (4) 8:16 16:9 35:18

senior (6) 11:16.20 61:3

sections (1) 46:22

76:20,21

77-24

53:25

sectors (1) 68:12

secure (1) 57:12

seek (2) 66:10:10

seeks (1) 14:21

seemed (1) 20:12

selected (1) 65:3

63:22 64:15,20

sense (1) 38:8

senses (1) 68:22

sensible (1) 59:19

sensitive (1) 39:17

sent (1) 46:16

separate (1) 27:7

separated (2) 1:25 7:18

separation (2) 7:21 16:25

separately (1) 44:14

september (1) 47:5

seriously (1) 10:17

servants (1) 63:22

service (2) 11:4 28:5

services (2) 6:4 51:1

session (5) 41:3 47:11 55:1

set (22) 1:13 3:2,6 23:15,17

24:13,20 27:24 39:21

served (1) 11:20

60:2,5

series (2) 24:14 32:18

search (1) 26:24

seat (1) 66:16 second (4) 35:1 70:19 75:6

61:2.10.20.25 63:6 64:11

62:1 74:13

scotlands (1) 35:23

related (1) 58:23 relates (4) 3:4 44:10 74:18 77:14 relating (7) 28:14 50:7 51:16 52:7 53:17 78:8.19 relation (18) 28:1 44:22 50:20 51:24 58:24 67:5,25 68:24 69:10,17,25 70:19 72:10 75:15 76:6,14 77:20 78:14 relations (1) 52:17 relationship (2) 25:17 28:1 relative (2) 38:12 78:10 relatively (2) 36:25 73:15 relatives (11) 1:19 2:5 7:15,21 19:15 21:5 60:20 67:20 74:13 78:21 79:22 relativity (1) 47:7 released (1) 42:18 relevant (18) 3:3 8:13 21:20 25:8 28:25 29:17,23 36:10 47:13 49:9,11 51:18,20 53:2.12 54:9.11 55:17 relied (1) 56:5 rely (1) 16:14 remain (3) 38:25 39:2 59:22 remainder (1) 22:22 remains (2) 10:3 74:20 remarks (4) 5:10 6:20,22 59:13 ber (4) 1:24 25:4 64:22 72:1 remind (3) 40:24 44:13 46:17 reminded (1) 60:3 reminder (1) 8:22 remit (3) 48:24 51:17 79:1 remote (2) 58:25 59:6 repeat (5) 52:1,8 62:23 66:4 repeatedly (1) 61:7 reply (1) 42:24 report (16) 17:17 35:15 36:4 37:19 53:6.7.10.17.20.24 54:3.15.22 64:12.13 65:9 reporting (5) 18:4 24:8 26:5 36:22 37:16 reports (11) 10:8,13 31:16 32:18,20 34:20,25 35:6 36:11 37:25 55:14 represent (6) 19:19 27:25 62:11.11.18 76:12 representation (1) 45:12 representations (2) 31:20 70:12 representative (7) 18:22 19:13 21:25 41:19 44:8 67:18 76:14 representatives (15) 18:23 21:6 28:17 40:21 41:6 42:7 44:11.18 46:10.18 58:5 62:9.13 70:8 76:8 representing (1) 52:25 represents (1) 6:24 request (10) 29:12 41:5 43:25 52:15,16 56:21 57-1 4 8 18 requested (2) 34:3 49:2 requests (8) 26:22,22 30:7.10 42:12 57:20 59:3.7 require (10) 16:4 26:23 30:1 32:12 48:10 49:3 72:9 73:23 78:2 79:3 required (14) 4:8,11,22 14:4 24:9 28:23 30:2.6.8 41:17 43:17 44:4 49:2 57:16 requirement (2) 44:14 77:23 requiring (3) 49:5 77:19 78:16 research (19) 34:2,8,10,12,15,20,21 35:1,2,8,14,16 36:8,12 53:15.21 54:9 55:16 73:23 researchers (1) 32:16 resident (2) 78:7.20 residential (3) 40:1.3 42:5

78-14 20 79-12 respect (11) 19:11 23:13 28:4,5 39:23 46:22,25 47:5 52:4.5 74:21 respective (3) 5:22 28:16 34:14 respond (6) 4:22 41:25 42:21,23 54:15 76:4 responding (1) 27:22 response (5) 1:15 6:1 9:2 25:21 35:23 responses (5) 32:17,23 33:3.4.8 responsibilities (2) 5:20 27:7 responsibility (2) 3:10 4:25 responsible (5) 5:25 6:5 11:17 26:1 38:7 restriction (15) 38:9,23 39:4 5 19 40:8 15 16 22 41:2.4 42:3.19 74:19 75:2 restrictions (6) 8:5,9 39:7 50:24 78:9 79:9 restrictive (1) 79:4 restricts (1) 38:24 resume (3) 18:15,16 68:5 resuscitate (1) 69:2 resuscitation (2) 50:8 51:6 retained (1) 30:1 retraumatises (1) 63:18 return (1) 23:3 revealed (1) 76:1 review (2) 29:2 31:24 reviewed (1) 40:21 reviewing (1) 21:13 rightly (1) 61:4 rights (11) 3:16 11:1,20,22 23:10 24:21,24 25:3,5,9 71:9 rightsbased (1) 24:9 rise (1) 15:10 risked (1) 4:19 robust (5) 5:2 12:1 17:19 37:20 65:18 role (7) 3:18 7:7 8:25 17:7 24:4 25:4 43:11 roles (2) 7:7 28:6 roll (1) 36:1 room (6) 2:14,21 3:17 13:9,20 44:12 roundtable (1) 56:8 roundtables (3) 56:12,14,15 routinely (1) 48:22 rules (1) 45:25 run (4) 22:13 67:16 68:6 72:5 rushing (1) 22:20

45:1,23 46:5 47:10 53:9 56:14 58:1 60:24 73:16,24 74:1.9 78:8 safe (1) 4:17 same (12) 12:25 27:6,23 sets (1) 3:6 setting (8) 16:1.18 17:15 28:3 61:14 69:17,22,23,24 20:11 40:1,3,4 41:20 70:1.3 77:17 settings (9) 7:23 8:10 20:17 sarah (1) 6:15 28:9 42:6,6 50:9 68:19 satisfied (1) 15:14 79.8 satisfy (1) 77:7 seven (1) 59:17 save (1) 4:16 several (1) 26:6 saw (2) 15:5 31:19 severe (1) 3:25 saying (1) 10:2 severity (1) 43:5 scale (2) 7:2 74:8 share (6) 1:12 11:5 14:11 sceptical (1) 9:14 26:8,17,20 schedule (2) 48:11 59:16 shared (5) 29:18 31:7 32:19 scheduled (2) 13:3 27:24 47:6 50:4 schedules (1) 27:18 sharing (2) 26:21 30:24 scheduling (3) 20:20 21:18 shield (1) 4:8 54:25 shipman (1) 9:17 scheme (2) 58:3,9 short (4) 2:7 18:17 37:12 science (3) 35:20,24 36:15 60:9 scientific (2) 53:11,19 scope (2) 35:2 51:20 shortly (2) 13:6 45:13 should (21) 2:15 9:7 11:4 scoping (2) 34:12,20 15:1,15,25 16:1.2 17:4 scotland (34) 1:10.15 2:9 21:9 22:5 31:4 35:17 37:5 3:11 4:1 7:15 10:3,4 14:22 39:1 41:20 53:25 60:3 17:22 19:15 21:5 22:12 62:21 63:17 71:24 25:19 26:14 30:23 31:1,7 shouldered (1) 4:25 32:20 33:5.13.18 36:20

shown (1) 13:20 side (1) 73:12 sides (1) 5:6 signed (3) 18:8 26:10 46:20 significance (1) 6:2 significant (2) 12:7 42:8 signposting (1) 14:2 similar (3) 9:15 55:11 56:13 simple (1) 15:16 since (3) 72:8 74:1,1 sincere (1) 2:4 sit (3) 53:20 61:17.22 sitings (1) 18:12 sitting (4) 12:11 62:4 68:4 70:17 situation (3) 4:21 20:4 78:6 situations (1) 27:23 six (4) 61:19 64:8 67:2,6 skills (1) 24:3 slightly (1) 59:15 smith (1) 9:17 socalled (1) 66:2 social (26) 1:5 3:5 4:15 6:3 14:14,16 16:1,18 17:14 22:14 23:4,7,13 39:5,9,24 40:2 49:25 50:9,21 51:1,25 76:10 77:17 22 81:4 solicitor (6) 12:6.11.13 60:18 61:1 65:8 solicitors (5) 6:16,19 26:17 38:6 62:10 somebody (2) 63:4 78:17 someone (1) 47:19 something (5) 14:8 27:2 30-18 41-8 74-5 soon (3) 11:12 59:11 71:19 sort (1) 73:1 sorts (2) 18:24 76:21 sought (5) 4:16 44:24 47:12 52:4 65:10 sources (3) 35:14 36:9 47:9 space (7) 12:22,24 13:1,4,13,19,25 spaces (1) 13:12 speak (4) 48:16.18 49:18 62:24 speaking (4) 7:4 18:23 78:4,24 specific (18) 6:2,17 22:15 24:2,15 29:24 34:2 38:5,25 48:20 49:21 53:23 67:1 68:24 74:17 75:16 76:20 78:5 specifically (8) 27:15 47:12 50:6 52:6,20 58:14 68:17 70:10 speech (1) 66:18 spent (2) 65:10,12 spoken (3) 61:9,12 63:11 spread (2) 33:2 35:21 spreading (1) 4:23 staff (8) 6:16 31:11 50:17 51:2,7 73:18,18,20 staffing (2) 10:24 11:8 stage (8) 15:1 22:16 37:17 50:19 51:23 56:22 72:7 73:4 stale (1) 71:3 standard (1) 66:8 start (6) 2:18 11:8 18:13 47:24 59:23 64:22 starting (1) 59:22 starts (1) 61:13

stated (3) 10:10 52:1 72:22

statement (17) 16:9 17:9,10

18:2 25:14 32:2 41:14

44:5.9 46:2 47:20.23

statements (19) 18:8,22

stating (1) 9:11

stephens (1) 6:14

status (2) 46:22 53:7

statutory (2) 17:22 55:8

48:1.12 69:9 75:10 78:2

19:21,23 20:5,7 21:11,13

47:12,18 65:1 69:4 72:21

43:2 44:6,22,23 45:1 46:25

steps (1) 26:3 stewart (1) 6:12 still (5) 2:2 4:4 61:20 65:9 71:8 stop (1) 22:6 story (1) 26:16 straightforward (2) 73:16 77:3 strategic (6) 1:15 9:2,12 24:23 29:4 36:16 streams (1) 6:17 street (1) 12:22 stress (1) 57:13 stressful (1) 79:23 strictly (1) 78:15 strike (1) 17:16 strong (1) 57:6 strongest (1) 41:5 strongly (1) 56:22 structure (4) 10:25 14:9,12 55:9 structured (1) 5:24 structures (1) 58:7 stuart (2) 5:9,17 subheads (1) 75:16 subject (3) 21:21 40:7 46:8 subjects (1) 69:23 submitted (2) 55:2 58:8 subsections (1) 42:2 subsequent (2) 28:12 44:17 substantive (3) 43:15 44:15 45:22 subtlety (1) 16:7 success (3) 9:14,19,23 successor (1) 12:10 suffered (6) 4:6 16:24 20:10 22:18 23:23 24:2 suffering (3) 2:2,10 62:19 sufficient (1) 73:2 suggestion (1) 16:4 suggestions (1) 33:22 suitable (3) 13:1,12 27:3 suite (1) 12:24 suits (1) 32:6 summer (2) 13:2 26:24 supplement (1) 73:8 supplementary (1) 79:18 support (15) 6:6,16 13:17,18,21,23 14:1,1,3 24:6 32:7 51:2,2,3 80:1 supported (1) 19:11 sure (7) 2:20 37:8 38:1 59:25 62:10 77:12.23 suspend (1) 2:14 sweden (1) 36:19 switched (1) 37:6 sympathies (1) 7:24 system (1) 47:7 taken (12) 9:2 12:16 19:23

3:4.17 5:14 6:2.10 12:4.16 14:6 30:21 41:13 43:15 20:8 35:24 36:16,18,20 61:8 62:15 63:4,20 66:21 55:5 65:1 67:19 77:16 taking (7) 23:12 24:12 43:24 79:21,24 todays (2) 38:12 49:20 54:11 61:15 70:22 71:21 together (2) 5:17 26:8 targeted (1) 33:25 told (5) 59:16 60:4 66:11 task (2) 1:13 7:2 71:25 75:12 tasks (1) 24:4 tolerate (1) 30:16 teachers (1) 4:17 too (1) 66:12 team (34) 2:5 5:25 took (3) 23:5 70:6 71:7 6:4,9,11,15,16 7:5,23 8:10 tor (1) 52:5 9:8 11:10.12 12:23 13:17 total (2) 21:10 64:9 15:4.21 16:3 19:9.17.22 totalling (1) 64:10 20:2 21:10.17 24:6 31:24 touch (2) 69:11 76:19 32:16 33:1,16 47:3 48:3 52:17 56:11 68:25 touched (1) 6:21 towards (2) 5:7 47:4 teams (9) 5:23 6:13,19 19:18 trade (2) 63:8.14 31:11 34:4 68:15,21,22 tradition (1) 65:6 technical (1) 56:25 tragic (1) 20:4 term (1) 76:10 tragically (1) 8:7 terming (1) 18:22 trainee (1) 8:20 terms (40) 3:19.19 9:20 11:1 trainer (1) 6:15 15:16 18:4 23:15 24:17,22 training (2) 23:24 24:3 25:12 26:3,19 34:18 trams (2) 65:9.15 36:10,14 39:10,11,18 tranche (5) 20:23 47:1,4 40:15.24 41:5.7 42:19

50-17 79-6 transcript (1) 59:10 transcripts (1) 58:25 transfer (1) 50:22 translations (1) 32:13 transmission (1) 35:25 transparent (3) 34:19 38:16 65:18 trauma (2) 16:25 23:25 traumabased (1) 65:22 traumainformed (6) 11:2 14:5 16:19 22:19 23:10.12 traumatises (1) 62:23 traumatising (1) 62:15 travel (1) 45:7 treat (1) 76:3 treated (3) 23:21 41:4 65:22 treatment (2) 4:11 50:23 triage (2) 50:7 52:7 trundle (1) 65:7 trust (1) 7:6 truth (1) 17:20 try (3) 8:3 20:2 72:23 trying (3) 69:21 71:2 79:23 tuesday (3) 18:11,13 61:13 turn (7) 12:20 25:17 37:16 38-5 48-20 57-19 60-14 turner (2) 6:12 51:15 turners (1) 51:21 types (1) 49:24

44-19 46-23 49-11 50-21

51-25 52-22 53-3 55-25

57:24 58:10.11 59:3

65:11.15.20 75:1 79:1

thank (27) 1:7 5:11,12 10:22

12:7 14:10 23:11 28:2,21

30:20 36:23 37:9 59:25

60:7 66:15 67:13 69:14

79:5.15.16.24.25.80:2

thats (3) 66:2 70:18 73:15

themes (4) 14:16,18 32:22

themselves (2) 4:21 44:19

thereafter (6) 15:23 18:15

therefore (14) 10:17 13:2,13

21:4 27:12 31:10 35:16

40:20 41:12 43:4,12 49:1

22:4 67:19 68:3,5

72:19 79:2

thevre (1) 68:23

thing (1) 59:19

thinks (1) 77:25

thirdly (1) 75:7

thorough (1) 37:20

though (1) 71:21

72:1,2

thereby (2) 18:17 37:5

theres (2) 59:23 69:15

third (3) 8:15 19:14 76:25

thought (3) 59:13 71:18 77:6

thousands (5) 4:4,18 31:6

three (3) 12:6 75:20 78:18

18:14 22:21 24:6,7 30:24

31:7,14 33:20 50:18 56:13

through (16) 7:23 10:19

67:16,22 68:6 69:11

thursday (1) 12:6

tied (1) 58:16

throughout (2) 2:23 45:12

time (26) 8:15 10:6 12:7

18:19 19:22 20:19 24:25

27:3,6 37:8 42:17 45:20,22

49:18 50:5 53:12 57:22,22

58:18 59:25 65:5 68:6

72:3.13 75:22 78:21

timeconsuming (1) 73:21

times (3) 27:13,18 71:23

timetable (2) 21:19 22:21

timeframe (1) 54:14

timeline (1) 76:6

timescale (1) 27:11

timetabling (1) 27:4

timings (2) 18:19 66:25

today (21) 1:12,20 2:25

74:10.12 76:5.24

thanks (1) 79:20

thematic (1) 14:15

51:8

territory (1) 35:22

testimony (1) 47:23

text (1) 29:25

uk (35) 10:3 11:3,21 22:11 25:18.21.22 26:7 27:9.14.19.21 28:3 36:10 55:6,12,13,16 58:10 61:16,18,24 64:7,23 65:1 67:2 68:5 69:18 70:4,9,15,16 71:14 72:4,5 unable (3) 4:10 45:16 61:20 unacceptable (2) 18:3 62:23 unchartered (1) 35:22 unclear (1) 74:20 underlying (1) 4:8 understand (7) 30:9 32:10 56:17,25 61:23 64:4,15 understanding (9) 7:20 26:11,14 55:10 61:24 69:20.21 70:3.14 undertake (1) 33:25 undertaken (5) 3:1 11:9 34:9 53:15 55:12 undertaking (5) 1:9 6:25 31:22 46:20 70:1 undertakings (2) 46:15,16 undesirable (1) 71:8 unequal (3) 25:12 31:23 52:22 unexpected (1) 42:15 unions (2) 63:8,14 universities (2) 34:22 56:14 unless (3) 39:1 40:10 67:3 unlikely (1) 49:1 unnecessary (2) 17:23 20:13 unpaid (2) 40:5 51:3 unparalleled (1) 8:6 unprecedented (1) 4:21 unredacted (1) 40:13 unsurprising (1) 33:7 until (14) 18:15,17 22:10,13 32:25 35:3 39:1,2 58:6 59:20 63:22 66:15 67:22 71:7 upcoming (1) 14:15 update (3) 3:1 10:21 28:22 updates (1) 10:23 upholding (1) 11:25 upon (4) 4:24 15:7 17:10 56:5

residents (6) 4:7 50:23,24

urgently (1) 4:11

used (1) 76:10

useful (1) 27:1

usually (1) 39:2

utilising (1) 69:9

56:16

using (4) 12:23 28:22 47:6

vaccines (1) 36:2 value (1) 26:9 van (5) 5:18 6:4,11 23:3 56:11 variants (1) 10:8 varied (1) 24:25 variety (1) 47:9 various (5) 6:17,18 11:6,7 76:16 via (2) 29:18 45:18 victims (1) 79:22 video (1) 2:19 viewed (2) 2:23 59:2 views (1) 54:2 virus (2) 4:22 10:12 visit (1) 13:25 visiting (3) 8:9 50:24 78:10 voice (1) 31:1 volumes (1) 72:14 voluminous (1) 72:14 voluntarily (1) 45:8 voluntary (1) 29:12 vulnerabilities (2) 16:11,15

wait (1) 66:15 wanting (1) 78:16 wants (1) 2:17 wards (1) 10:14 watch (5) 2:7,13 13:15 45:18,20 watched (1) 8:15 watching (4) 1:20 2:15,21 5:13 waverley (1) 12:21 way (8) 7:12 15:18 28:3 32:6,14 34:19 35:18 72:5 ways (1) 24:22 website (11) 2:23 5:24 18:9 25:15 29:15 34:21 35:6 40:23 44:21 51:22 59:11 week (11) 10:5,11,12 18:13 19:14 20:24 21:9 56:13 62:21 67:16 69:10 weekend (1) 10:12 weekly (2) 18:12 48:8 weeks (6) 19:13 22:16 35:7 46:4 62:22 66:11 weight (2) 54:10 55:18 welcome (3) 33:11 37:14 61:25

welcomed (1) 11:13

west (1) 33:10 westhuizen (4) 5:18 6:4 23:3

56:11 westhuizens (1) 6:11

welfare (3) 6:6 14:17 22:25

weve (5) 8:16 52:9 63:24 74:9 77:6 whatsapp (2) 29:19,24

wherever (1) 28:10 1 (11) 1:16 6:1 18:16 39:5,19 whilst (2) 37:19 43:13 whole (1) 7:5 10 (1) 42:2 whom (4) 3:17 47:20 77:10 1000 (2) 1:2 18:14 78:4 1005 (1) 1:4 whose (1) 4:6 11 (1) 2:16 wide (2) 36:8 53:16 1120 (1) 37:8 widely (1) 10:4 **1121 (1)** 37:11 wider (6) 43:8 75:5 **1130 (1)** 18:14 76:11,15,23 79:9 1148 (1) 37:13 wideranging (1) 73:25 12 (3) 24:21 37:9 53:2 widespread (1) 78:13 1225 (1) 60:8 wifi (1) 60:23 1230 (2) 59:21,21 willing (2) 56:18 70:11 127 (1) 64:13 winter (1) 34:1 **13 (2)** 10:5 65:10 wish (14) 2:4 12:8 13:7 **130 (1)** 59:23 16:24 20:5 22:19 41:10 139 (1) 60:10 46:15 51:9 54:18 56:1,3 **15 (1)** 37:5 59:8 78:5 16450 (1) 61:5 wishes (3) 18:1 43:16 60:4 17 (1) 10:6

27:23 39:16 40:3 42:23 46:1.24 47:18.20.20 48:6,10 72:20 78:1,4,4 witnesses (46) 17:2 18:6,10 20:15.19.20.21 21:20.23 22:2,2,17,18,20 27:23 30:16 31:14 42:1 44:1,2 45:14,21,24 46:1,10,21 47:23 48:3,11,14,16,18 55:20,22 67:18,22,23,25 68:1,7,12,14 69:3,10 72:19 77:11 witnessstatementtaking (1)

21:8 wonder (1) 34:7 wonders (1) 62:4 wont (2) 52:1 76:18 work (31) 3:1,24 5:21,24 23:14 24:17 25:15 26:8.14 28:11.16 30:17 35:13

37:24 38:15 45:13 53:20 54:24 55:25 57:19,25 58:6,10,11,12,15,17,20 62:17 77:17,22 worker (1) 40:6 workers (10) 2:1 4:15,19 8:12 50:13,14,16 63:7,14

70.24 working (10) 3:12,18 12:14,20 23:24,25 31:11 34:20 47:4 58:3

workplaces (1) 50:14 works (3) 6:15 12:25 39:19 workshops (1) 34:3 world (3) 15:20 35:21 36:16 worth (1) 64:6 writing (4) 41:20 75:19,24 76:4

written (8) 17:3 40:10 46:2 47:12 48:1,12 74:22 75:15 wrong (1) 67:3

year (15) 10:5 12:22 15:4 18:12 26:10 32:25 35:2 36:3 39:5 50:17 67:11 68:3 70:18 71:7 72:17 years (3) 11:19 65:7 78:18 yet (3) 61:19 65:9 74:3 young (4) 4:12 6:8 14:17 22:23

youre (1) 66:15 youtube (1) 45:19 youve (1) 37:1

zealand (1) 36:19

40:8,22 42:3 62:2,2,3

2 (5) 6:5 18:16 59:23 62:1,4 20 (3) 11:19 37:9 62:3 200 (1) 10:11 2005 (3) 28:23 40:25 49:5 2007 (1) 45:25 2020 (1) 1:16 2021 (1) 34:11 2022 (6) 1:16 3:22 29:21 34:21,25 35:4 **2023 (5)** 1:1 44:22 46:17 47:3.5 2024 (4) 13:2 22:10,22 61:19 2025 (1) 63:23 21 (4) 29:6,9,15 49:4 **211 (1)** 80:3 **24 (6)** 18:12 46:17 56:12 61:14,21 67:15 **25 (1)** 37:9 **28 (2)** 1:1 56:13 2800 (1) 32:23 2a (3) 22:11 27:15 61:15

30 (2) 62:2,3 31 (3) 1:16 12:6 35:4 35370 (1) 64:9 **36 (1)** 40:25 **37 (3)** 3:16 63:1 64:5 **385436 (1)** 64:10

**4 (3)** 6:7 18:17 56:10 5 (1) 39:4

**66 (1)** 21:11

8 (12) 20:25 21:21 22:4 29:6.12.14 65:11 67:17.22 68:1 74:6.7

9 (2) 45:24 62:2

withdraw (2) 75:8,13 17700 (1) 4:1 withdrawn (1) 75:24 witness (22) 13:16 16:9 18:2,8,20 19:21 21:19

3 (1) 6:2 7 (1) 62:3