

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

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**BETWEEN:**

**THE QUEEN (on the application of MOOSA QURESHI)**

**Claimant**

**-and-**

**THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE**

**Defendant**

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**WITNESS STATEMENT OF MOOSA QURESHI**

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I, MOOSA QURESHI of [REDACTED] WILL SAY AS FOLLOWS:

1. I am the Claimant in these proceedings and I make this statement in support of my application for permission to proceed with this judicial review. The judicial review seeks to challenge the decision of the Secretary of State for Health and Social Care ("**Secretary of State**") to refuse to disclose a copy of report/s produced following a simulation exercise/reports submitted as part of the multi-agency exercise conducted in 2016 ("**Exercise Cygnus**"). That exercise was undertaken to test how prepared the UK was to deal with a viral pandemic. I refer to the report/s as the "*Cygnus Report*".
2. Except where I indicate to the contrary, I make this witness statement on the basis of facts and matters within my knowledge. Where these facts and matters are within my own knowledge, they are true. Where the facts and matters in this witness statement are not within my knowledge, they are true to the best of my information and belief. I understand that

proceedings for contempt of court may be brought against me if I have made a false statement in this witness statement without an honest belief in its truth.

3. I refer to a number of articles and other sources in this statement. Where possible, I have provided hyperlinks to those sources. The key documents which I refer to can be found in the Claimants' Permission Bundle. I have provided cross references in the form **(CB/tab/page)**.
4. I have prepared this statement in liaison with my solicitors Tessa Gregory and Carolin Ott who asked me to address certain questions via telephone and email. We were not able to meet in person due to the Covid-19 public health emergency.
5. The purpose of my statement is to:
  - (1) summarise my own background and the way in which the Covid-19 pandemic has affected my personal and professional life (§§6-17 below);
  - (2) set out the background to Exercise Cygnus and the calls that have been made for its disclosure (§§18-34 below);
  - (3) outline the reasons why disclosure of the information requested is in the public interest and is needed urgently (§§35-60 below); and
  - (4) provide the court with an overview of the background to my application for judicial review (§§61-70 below);

### **Personal Background**

6. I was born on 9 June 1972 in Walthamstow, London. My father and mother worked as a barrister and teacher respectively in Pakistan. They emigrated to the United Kingdom in the 1960s, but due to the social environment it was impossible for them to continue their professional careers and they subsequently worked in the Post Office and as factory workers.

7. I decided to become a medical doctor after I became seriously unwell in 1992 and 1993, requiring prolonged hospital admissions. At the time I was studying European Law and Languages. I loved both public law and mootings, but my exposure to medicine as a seriously sick patient led me to believe that I could be of more benefit to people if I cured them than if I argued for their constitutional rights. I completed my degree in law, and then worked in the IT industry to finance my way through medical school. I studied at the University of the West of England (LLB Hons European Law & Languages, 1996), Microsoft (Microsoft Certified Systems Engineer, 2000), St George's Hospital Medical School (MBBS Medicine, 2005), and more recently I have undertaken PhD research at the University of Cambridge.
8. My current role is as the senior haematology registrar at the Royal Free Hospital in London. I have held this role since 7 August 2019. I previously worked as a haematology registrar at the North Middlesex Hospital in London. My work requires me to provide care for hospital in-patients with a range of blood disorders including leukaemia and haemophilia, review patients who are referred for specialist haematology advice, sit in haematology outpatient clinics, make microscopic diagnosis of blood disorders, and conduct bone marrow biopsy lists. My PhD research involved using a virus to introduce a gene mutation into cells, and then employing cutting-edge technology to study the transcriptional signature of leukaemia at the level of the single cell. I therefore have significant experience of both clinical medicine and laboratory science.
9. My wife, Sara Khalil Ebrahim Ali, is also a medical doctor and is pursuing a PhD in London, but due to the pandemic lockdown she volunteered to return to clinical work in Royal London Hospital.
10. I remain passionate about the rule of law and as a doctor I campaign, primarily through social media, to promote fairer outcomes when the State comes into conflict with healthcare professionals. I first did this by forming the Junior Doctors' Alliance ("JDA") during the junior doctors' strike. JDA crowdfunded to engage the services of a professional PR team, securing high-profile media interviews to put forward the position of junior doctors during industrial action which we felt was not being put forward with sufficient effectiveness by the

British Medical Association (“**BMA**”). I have also campaigned with [www.54000doctors.org](http://www.54000doctors.org) to restore the whistleblowing rights of Dr Chris Day and vicariously of 54,000 British doctors against the Government, which had misrepresented the legal relationship of junior doctors with Health Education England before an employment judge.

11. In addition, I co-organised through [www.54000doctors.org](http://www.54000doctors.org) the crowdfunding campaign for Dr Hadiza Bawa Garba’s successful appeal against the General Medical Council’s decision to permanently erase her from the medical register, which led directly to the Health Secretary ordering a review into gross negligence manslaughter legislation.<sup>1</sup> Both Dr Day and Dr Bawa Garba were strongly supported by grassroots lobbying organisations such as the Doctors Association UK and EveryDoctor. I belong to the membership of both groups, although I act independently of their executive committees.

### **The impact of Covid-19 on our lives and the lives of healthcare professionals**

12. The Covid-19 pandemic has had significant effects on the work of all NHS hospital doctors on the front line, including for me and my wife. In my workplace, more than half of our haematology team were re-assigned to Covid-19 teams, leaving a skeleton team of doctors including myself to staff the haematology department.
13. In my capacity as a haematology registrar, I have provided care for haematology in-patients with Covid-19, reviewed patients with Covid-19 who have been referred for specialist haematology advice, and I have had to engage in higher risk procedures such as a bone marrow biopsy in an aerosolised environment. A bone marrow biopsy which normally takes me 45 minutes, has taken me 2.5 hours to perform with full Personal Protective Equipment (“**PPE**”) following an aerosol-generating procedure.
14. Sara (my wife) was assigned to work in one of the Covid-19 medical teams in the Royal London Hospital, providing care in Covid-19 wards where patients are treated with Continuous Positive Airway Pressure, causing a higher risk of aerosolisation and transmission

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<sup>1</sup> Nick Bostock, “Legal fund for Dr Hadiza Bawa-Garba raises more than £300,000” *GP Online* (5 February 2018) <https://www.gponline.com/legal-fund-dr-hadiza-bawa-garba-raises-300000/article/1456246>

of viral infection to staff members. It has been a real worry to me that my wife is working in a particularly high risk environment. On 15 May 2020 after feeling unusually tired and spiking fevers, Sara tested positive for Covid-19. Although her symptoms have improved, she tested positive again when tested on 22 May 2020. This may be due to her high level of exposure to the virus. As a result, Sara has not been able to return to work and we have both had to self-isolate. I will be returning to work on 1 June and Sara is awaiting the result of her repeat test on 29 May to find out whether she is safe to go back to work. .

15. We are both psychologically robust and have been confronted with risks and distressing situations with our patients before this pandemic, but inevitably we have significant concerns around the Covid-19 pandemic. Our entire professional frame of reference as medical doctors has changed, and pandemic conditions have required doctors to withhold treatments which would ordinarily be provided. It has also been emotionally challenging to act as a bridge between in-patients and family members who are unable to visit.
16. In addition to the fact that Covid-19 has affected us directly with Sara recently falling ill, we have also seen Covid-19 affect our colleagues and friends from work. The father of my wife's friend was reported as one of the first medical doctors to die of suspected Covid-19 in the pandemic. One of my closest friends works in a higher risk area in A&E and has had work colleagues from the same environment fall seriously unwell with Covid-19. I have friends and work colleagues who have fallen sick with Covid-19 or whose elderly parents have become unwell.
17. There is certainly a feeling in the healthcare community that we are making significant sacrifices which go above and beyond the terms and conditions of our employment. I feel incredibly proud of my colleagues across the healthcare professions, especially those who have died in service during the Covid-19 crisis, but I also feel angry that some of their deaths and some of the many deaths in NHS hospitals and in care homes could have been avoided if we had been better prepared for this pandemic.

## Exercise Cygnus

18. “Exercise Cygnus” was a 3-day simulation exercise led in 2016 by the Department of Health<sup>2</sup> to evaluate “*the preparedness*”<sup>3</sup> of the UK health system to deal with a viral pandemic. By this time, it was known that pandemic influenza constituted the highest risk threat on the UK’s list of civil emergencies.<sup>4</sup>
19. Documents in the public domain suggest that Exercise Cygnus was planned as a training and educational process, which would inform the Government, public health experts, NHS procurement, medical practitioners, health and social care providers on how it was best to prepare for an influenza pandemic.<sup>5</sup> An NHS England Board Paper in March 2017 states that Exercise Cygnus examined “*the impact of a pandemic influenza outbreak, and the significant impacts on health delivery a widespread pandemic in the UK would trigger..*”<sup>6</sup> challenging “*the NHS to review its response to an overwhelmed service with reduced staff availability.*”<sup>7</sup> The Board Paper entitled

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<sup>2</sup> NHS England, “Pandemic Influenza – Guidance to the NHS on current and future preparedness for an influenza pandemic” (PGR 02616: April 2016) <https://www.mansfieldanddashfieldccg.nhs.uk/media/2198/pandemic-iinfluenza-brief-april-2016.pdf> (CB/C151-C160]

<sup>3</sup> Powys Teaching Health Board (Wales), “Board Paper: Agenda Item 2.6: Powys Pandemic Influence Planning Update 2016” (25 January 2017) <http://www.powysthb.wales.nhs.uk/sitesplus/documents/1145/Board%5FItem%5F2.6%5F%20Pandemic%20flu%20Annual%20Report.pdf> (CB/C161-C166]

See also NHS England, “Board Paper — NHS England” (No. PB.30.03.2017/10) p. 1.

<https://www.england.nhs.uk/wp-content/uploads/2017/03/board-paper-300317-item-10.pdf> (CB/C167-C172]

Chris Smyth, “NHS fails to cope with bodies in flu pandemic test” *The Times* (27 December 2016)

<https://www.thetimes.co.uk/article/nhs-fails-to-cope-with-bodies-in-flu-pandemic-test-8pnmdpdfx> (noting that Exercise Cygnus involved testing co-ordination between hospitals, Whitehall and disease-tracking experts in a scenario where tens of thousands of individuals were infected by a virulent new strain of influenza) (CB/C464-C465]

<sup>4</sup>Cabinet Office, “National Risk Register for Civil Emergencies – 2015 edition” (24 March 2015)

<https://www.gov.uk/government/publications/national-risk-register-for-civil-emergencies-2015-edition> (CB/C100-C150]

<sup>5</sup> Lincolnshire’s Resilience Forum, “Exercise Cygnus – Preparing for Emergencies – What you need to Know” (14 May 2014) <https://lincolnshire.moderngov.co.uk/documents/s5937/Appendix%20A.pdf> (CB/C1-C11]

<sup>6</sup> NHS England, “Board Paper — NHS England” (No. PB.30.03.2017/10) p. 1 <https://www.england.nhs.uk/wp-content/uploads/2017/03/board-paper-300317-item-10.pdf> (CB/C167-C172]

<sup>7</sup> NHS England, “Board Paper — NHS England” (No. PB.30.03.2017/10) (8). <https://www.england.nhs.uk/wp-content/uploads/2017/03/board-paper-300317-item-10.pdf> (CB/C167-C172]

“Emergency Preparedness, Resilience and Response (EPRR)” further notes: “EPRR is a core function of the NHS and is a statutory requirement of the Civil Contingencies Act (CCA) 2004. Responding to emergencies is also a key function within the NHS Act (2006) as amended by the Health and Social Care Act (2012). The role of NHS England is to ensure that NHS England and the NHS in England is properly prepared to deal with potential disruptive threats to its operation and to take command of the NHS, as required, during emergency situations. The CCA (2004) requires NHS organisations, and providers of NHS-funded care, to demonstrate their ability to deliver safe patient care during emergency situations, whilst maintaining essential services. Therefore, the NHS needs to plan for, respond to and recover from a wide range of incidents and emergencies. These are wide ranging and could be anything from extreme weather conditions to outbreak of an infectious disease, a major transport accident or a terrorist incident.”<sup>8</sup> Exercise Cygnus was carried out to inform such emergency response efforts. The meeting of the NHS England Board at which the paper was considered was videoed and the video of the meeting is publicly available.<sup>9</sup> The NHS England Board considered the paper and accepted the assurance that NHS England were prepared to respond to an emergency.

20. Minutes from the New and Emerging Respiratory Virus Threats Advisory Group (“**NERVTAG**”) which advises the Government on pandemics similarly state that the aim of Cygnus “was to assess the response to a pandemic of influenza”.<sup>10</sup> On 29 April 2020, Minister for the Cabinet Office, Michael Gove MP confirmed that Exercise Cygnus was “designed to anticipate what would happen in a flu pandemic”.<sup>11</sup> The scenario in Exercise Cygnus described an H1N1 influenza rather than a novel Coronavirus, but the Exercise and its outcomes were directly

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<sup>8</sup> NHS England, “Board Paper — NHS England” (No. PB.30.03.2017/10) [8]. <https://www.england.nhs.uk/wp-content/uploads/2017/03/board-paper-300317-item-10.pdf> (CB/C167-C172)

<sup>9</sup> The video is available to view at Paul Nuki and Bill Gardner, “Exercise Cygnus uncovered: the pandemic warnings buried by the Government” *The Telegraph* (28 March 2020) <https://www.telegraph.co.uk/news/2020/03/28/exercise-cygnus-uncovered-pandemic-warnings-buried-government/> (CB/C474-C482)

<sup>10</sup> NERVTAG, “Minutes of the fifth meeting of NERVTAG” (14 June 2017) p. 5 <https://app.box.com/s/3lkcboxepqixkg4mv640dpvvg978ixjtf/file/239555624001> (stating that “[t]he aim of the [Cygnus] exercise was to assess the response to a pandemic of influenza.”) (CB/C258)

<sup>11</sup> Adrian Zorzut, “Michael Gove admits UK was not prepared for the coronavirus” *The New European* (29 April 2020) <https://www.theneweuropean.co.uk/top-stories/michael-gove-admits-uk-was-not-prepared-for-the-coronavirus-1-6630032>

applicable to the current pandemic crisis and could be generalised to any respiratory viral pandemic. Both influenza viruses and coronaviruses are structurally very similar (single-stranded RNA), “*both infect the respiratory tract through direct contact and airway droplets and cause similar clinical symptoms like fever, cough, and sore throat.*”<sup>12</sup> Both can cause viral pneumonia and superimposed bacterial infections, both can have similar immune-mediated effects,<sup>13</sup> and severe cases in both conditions require ventilation in an intensive care unit and may cause death.<sup>14</sup>

21. It is true that Covid-19 has a higher reproductive number and higher mortality than the common influenza, but it is important to understand that Exercise Cygnus was not a preparatory exercise for the common flu. Exercise Cygnus was designed to prepare for highly virulent influenza pandemics, and the PHE Pandemic Influenza Response Plan 2014 expressly mentions the possibility of “*a 1918-type pandemic*” (the Spanish Flu was an H1N1 pandemic).
22. There are sufficient shared characteristics (i.e. both are transmissible, both are respiratory, and both carry significant mortality) for the findings of Exercise Cygnus to be directly relevant to the Covid-19 outbreak. This is evident inter alia from the fact that: planning for PPE has been partially based on influenza data<sup>15</sup>, the treatment options for coronavirus were extrapolated

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<sup>12</sup> Chao Jiang et al. “Comparative review of respiratory diseases caused by coronaviruses and influenza A viruses during epidemic season” *Microbes and Infection* (13 May 2020)  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7217786/>

<sup>13</sup> Jian Zheng and Stanley Perlman, “Immune responses in influenza - A virus and human coronavirus infections: an ongoing battle between the virus and host” *Current Opinion in Virology* (February 2018)  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5835172/>

<sup>14</sup> Chao Jiang et al. “Comparative review of respiratory diseases caused by coronaviruses and influenza A viruses during epidemic season” *Microbes and Infection* (13 May 2020)  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7217786/>

<sup>15</sup> See, e.g., NERVTAG ‘Minutes of Nervtag Wuhan Novel Coronavirus Fifth Meeting’ *Public Health England* (3 February 2020) <https://app.box.com/s/3lkcbxepqixkg4mv640dpvvg978ixjtf/file/239555624001> paras 3.3 and 3.6 (CB/C276-C277);

NERVTAG, ‘Minutes of Nervtag Wuhan Novel Coronavirus Third Meeting’ *Public Health England* (28 January 2020) <https://app.box.com/s/3lkcbxepqixkg4mv640dpvvg978ixjtf/file/239555624001> para 4.4: (stating that: “NERVTAG concluded that the current PPE recommendations for pandemic flu are acceptable for use should there be evidence of sustained community transmission of WNV-Cov.” (CB/C270)

from treatment of influenza, and pandemic flu data is also being used to plan hospital capacity.<sup>16</sup>

23. Pandemic flu data is not only relevant due to the similarities set out above but also because it is the only viral pandemic data available. It is because we do not know enough about Covid-19 that scientific experts are having to rely on influenza data (as shown from the NERVTAG meetings)<sup>17</sup>. Therefore ventilator capacity, preparedness stockpiling including PPE, surge and capacity management, health and social care infrastructure, contact tracing, social isolation and economic/workplace consequences of a pandemic are all themes that should properly have been examined in Exercise Cygnus and which are directly applicable to any respiratory viral pandemic including the current Covid-19 pandemic.
24. The UK Government has expressly stated that lessons learned from Exercise Cygnus have informed the Government's policy on being prepared for a pandemic. In March 2017 NHS England stated that its plans were being revised "*to incorporate the learning from this exercise and ensure our continued preparedness for future pandemic influenza outbreaks.*"<sup>18</sup> The June 2017 minutes of NERVTAG set out a number of key lessons identified from Exercise Cygnus: the need "*to improve co-ordination between the complex network of partners involved in a pandemic influenza response, to better align individual organisations response plans, and to provide an overview of the entire response*"; "*[a]dvance planning for legislative easements which would come into effect during a pandemic*", in order to "*provide greater flexibility during a pandemic*"; and "*[t]he need to strengthen the surge capability and capacity*

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<sup>16</sup> See, e.g., NERVTAG 'Minutes of NERVTAG Wuhan Novel Coronavirus Seventh Meeting' *Public Health England* (21 February 2020) <https://app.box.com/s/3lkcbxepqixkg4mv640dpvvg978ixjtf/file/239555624001> para 3.6 (CB/C293)

<sup>17</sup> See, e.g., NERVTAG 'Minutes of Nervtag Wuhan Novel Coronavirus Fifth Meeting' *Public Health England* (3 February 2020) <https://app.box.com/s/3lkcbxepqixkg4mv640dpvvg978ixjtf/file/239555624001> paras 3.3 and 3.6 (CB/C276-C277); NERVTAG, 'Minutes of Nervtag Wuhan Novel Coronavirus Third Meeting' *Public Health England* (28 January 2020) <https://app.box.com/s/3lkcbxepqixkg4mv640dpvvg978ixjtf/file/239555624001> para 4.4: (stating that: "NERVTAG concluded that the current PPE recommendations for pandemic flu are acceptable for use should there be evidence of sustained community transmission of WNV-Cov." (CB/C270)

<sup>18</sup> NHS England, "Board Paper — NHS England" (No. PB.30.03.2017/10) [8]. <https://www.england.nhs.uk/wp-content/uploads/2017/03/board-paper-300317-item-10.pdf> (CB/C167-C172)

*in operational resources in certain areas...*<sup>19</sup> NERVTAG has confirmed that these findings are contained in full within the Cygnus Report.<sup>20</sup>

25. NHS England's own official literature states an intention to publish the findings of Exercise Cygnus and learn from them: *"Following the exercise a report will be published establishing the elements of the response that worked well and areas for improvement"*.<sup>21</sup> Paul Cosford, Director for Health Protection and Medical Director of Public Health England, said in April 2017 that a report *"setting out the learning and recommendations"* from Exercise Cygnus *"was in the process of being finalised"*.<sup>22</sup>
26. In May 2020 in response to a written question, Jo Churchill MP (Parliamentary Under-Secretary for Health and Social Care) stated that *"lessons identified"* from Exercise Cygnus *"have been considered across Government and shared with participants and local pandemic preparedness planners."*<sup>23</sup>
27. However, the findings of Exercise Cygnus were never published. According to senior sources that is because they were *"too terrifying"* to be revealed.<sup>24</sup> It is clear from subsequent public statements and media reports that the UK failed this test of viral pandemic responsiveness. The media has reported that Exercise Cygnus revealed 22 key lessons for the Government,

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<sup>19</sup> NERVTAG, "Minutes of the fifth meeting of NERVTAG" (14 June 2017) p. 5-6.  
<https://app.box.com/s/3lkcxbepqixkg4mv640dpvvg978ixjtf/file/239555624001> (CB/C258-C259)

<sup>20</sup> NERVTAG, "Minutes of the fifth meeting of NERVTAG" (14 June 2017) p.5.  
<https://app.box.com/s/3lkcxbepqixkg4mv640dpvvg978ixjtf/file/239555624001> (noting that *"Members received copies of an extract of the full report that focused on the lessons learned during the exercise"*) (CB/C258)

<sup>21</sup>NHS England, "Pandemic Influenza – Guidance to the NHS on current and future preparedness for an influenza pandemic" (PGR 02616: April 2016) <https://www.mansfieldanddashfieldccg.nhs.uk/media/2198/pandemic-iinfluenza-brief-april-2016.pdf> . (CB/C151-C160)

<sup>22</sup> Paul Nuki and Bill Gardner, "Exercise Cygnus uncovered: the pandemic warnings buried by the Government" *The Telegraph* (28 March 2020) <https://www.telegraph.co.uk/news/2020/03/28/exercise-cygnus-uncovered-pandemic-warnings-buried-government/> (CB/C474-C482)

<sup>23</sup> Catherine West MP (Hornsey and Wood Green) (Lab) *Hansard Debate* Written Question (41129) (28 April 2020) "Exercise Cygnus" <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-04-28/41129/> (CB/C218)

<sup>24</sup> Paul Nuki and Bill Gardner, "Exercise Cygnus uncovered: the pandemic warnings buried by the Government" *The Telegraph* (28 March 2020) <https://www.telegraph.co.uk/news/2020/03/28/exercise-cygnus-uncovered-pandemic-warnings-buried-government/> (CB/C474-C482)

including that “the UK’s capability to respond to a worst case pandemic influenza should be critically reviewed.”<sup>25</sup> Professor Dame Sally Davies is reported to have stated in her capacity as Chief Medical Officer that “a lot of things need improving... We’ve just had in the UK a three-day exercise on flu on a pandemic that killed a lot of people. It became clear that we could not cope with the excess bodies, for instance”.<sup>26</sup> Phillip Lee, who was a Conservative Minister at the time of Exercise Cygnus has stated that “we knew we were not prepared for a pandemic from the Cygnus report... “It was a mistake not to publish it at the time. If we were not going to act on the lessons, then what was the point of the exercise?”<sup>27</sup>

28. An article in *The Telegraph* reported that “Reasons for the report not being published are likely to go beyond Whitehall’s paternal view and a desire not to frighten the public. The Telegraph has talked to multiple sources with first hand knowledge of Cygnus and all say the exercise revealed significant gaps in the NHS’s “surge capacity”... Whatever the reasons, the final report on Exercise Cygnus was buried and its prophetic findings hidden from public view”<sup>28</sup>.
29. In summary, Exercise Cygnus was a process designed to provide information to prepare health and social care services, and other key stakeholders for a viral pandemic, the UK’s highest risk

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<sup>25</sup> Stephen Moyes and Nick McDermott, “The Pandemic Files: Bombshell secret report warned Britain was “critically” underprepared for a deadly pandemic like coronavirus” *The Sun* (27 April 2020) <https://www.thesun.co.uk/news/11494106/bombshell-secret-report-warned-britain-was-critically-underprepared-for-any-deadly-pandemic-like-coronavirus/> (CB/C539-C542);

See also Chris Smyth, “NHS fails to cope with bodies in flu pandemic test” *The Times* (27 December 2016) <https://www.thetimes.co.uk/article/nhs-fails-to-cope-with-bodies-in-flu-pandemic-test-8pnmdpdfx> (CB/C464-C465);

Paul Nuki and Bill Gardner, “Exercise Cygnus uncovered: the pandemic warnings buried by the Government” *The Telegraph* (28 March 2020) <https://www.telegraph.co.uk/news/2020/03/28/exercise-cygnus-uncovered-pandemic-warnings-buried-government/> (CB/C474-C482);

Bill Gardner and Paul Nuki. “Covid-19 strategies: Britain planned for herd immunity while Asia intended to contain virus” *The Telegraph* (18 April 2020) <https://www.telegraph.co.uk/news/2020/04/18/Covid-19-strategies-britain-planned-herd-immunity-asia-intended/> (CB/C499-C502)

<sup>26</sup> Chris Smyth, “NHS fails to cope with bodies in flu pandemic test” *The Times* (27 December 2016) <https://www.thetimes.co.uk/article/nhs-fails-to-cope-with-bodies-in-flu-pandemic-test-8pnmdpdfx> (CB/C464-C465);

<sup>27</sup> Jamie Doward, “Government under fire for failing to act on pandemic recommendations” *The Guardian* (19 April 2020) <https://www.theguardian.com/world/2020/apr/19/government-under-fire-failing-pandemic-recommendations> (CB/C503-C504)

<sup>28</sup> Paul Nuki and Bill Gardner, ‘Exercise Cygnus uncovered: the pandemic warnings buried by the Government’ *The Telegraph* (28 March 2020) <https://www.telegraph.co.uk/news/2020/03/28/exercise-cygnus-uncovered-pandemic-warnings-buried-government/> (CB/C474-C482)

civil emergency, but that information has subsequently been withheld from both healthcare providers and the public. Issues surrounding non-disclosure of the report have come to the fore again in light of the outbreak of the Covid-19 pandemic. Details regarding more recent calls for disclosure of the findings of the Exercise in light of the Covid-19 pandemic reaching the UK have been set out in further detail below.

## **Covid-19**

30. The first two cases of a novel coronavirus in the UK were announced on 29 January 2020 by the UK's Chief Medical Officer.<sup>29</sup> On 23 March 2020, the Prime Minister, describing Covid-19 as “*the biggest threat this country has faced for decades*”, announced that the country was to be placed in an unprecedented “lockdown” with everybody confined in the most part to their homes and all non-essential shops closed.<sup>30</sup> The Office for Budget Responsibility has suggested that a three-month lockdown, followed by three more months of partial lockdown measures, could shrink GDP by 35% and put unemployment up by more than 2 million.<sup>31</sup>
31. The daily death toll continues to rise. As of 27 May 2020, 37,837 deaths were reported in hospitals alone.<sup>32</sup> This comes at a time when researchers at the University of Oxford reported that the UK has the third-highest daily death rate internationally at 4.49 deaths per million

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<sup>29</sup> “Coronavirus: Two cases confirmed in UK” *BBC News* (31 January 2020) <https://www.bbc.co.uk/news/health-51325192> (CB/C466-C469)

<sup>30</sup> Prime Minister's Office, 10 Downing Street and Rt Hon Boris Johnson MP, “Speech: PM address to the nation on coronavirus: 23 March 2020” <https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020> (CB/C470-C473)

<sup>31</sup> See, e.g., Andrew Sparrow and others, “UK coronavirus: Sunak warns of “unprecedented challenge” as questions persist over economy and care homes — as it happened” *The Guardian* (14 April 2020) <https://www.theguardian.com/uk-news/live/2020/apr/14/coronavirus-uk-live-news-lockdown-extended-peak-dominic-raab-boris-johnson-latest-updates>

<sup>32</sup> See e.g. Jon Sharman, ‘UK coronavirus death toll rises by 377 to 37,837’ *The Independent* (27 May 2020) <https://www.independent.co.uk/news/uk/home-news/uk-coronavirus-death-toll-today-latest-update-covid-19-a9537531.html>

people per day.<sup>33</sup> It is against this background that there have been widespread calls for the full public disclosure of the findings of Exercise Cygnus.

### **Calls for disclosure since the pandemic outbreak**

32. A number of calls for disclosure of the findings in relation to Exercise Cygnus have been made by a range of bodies and individuals since the outbreak of Covid-19. For example, Shadow Secretary of State for Health Jon Ashworth MP has stated that there are serious questions about the Government Response “*which can only be answered by publishing its conclusions and the actions taken as a result.*”<sup>34</sup> Adam Price MP (leader of Plaid Cymru) has stated that the public need to know what actions “*the Welsh Government took to better plan and prepare our NHS for an inevitable pandemic*” after Exercise Cygnus, and “*the public deserve and need to know what happened in this test so that we can learn lessons to help us now*”.<sup>35</sup> On 6 May 2020 during a House of Commons debate Valerie Vaz MP (Shadow Leader of the House of Commons) stated that “[i]t is important for us to know for the next step whether there is capacity so that the NHS can withstand any changes. If the Government had released the 2016 pandemic Exercise Cygnus report - or at least its conclusions - it might have helped with that next stage”<sup>36</sup>.
33. Relevant government ministers have also been publicly challenged on the failure to learn from Exercise Cygnus on popular mainstream media including by Nick Ferrari on LBC radio (1.3

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<sup>33</sup> Ben Quinn, “Excess UK deaths in Covid-19 outbreak approach 60,000” *The Guardian* (26 May 2020) <https://www.theguardian.com/world/2020/may/26/uk-coronavirus-deaths-weekly-Covid-19>

<sup>34</sup> Dan Sabbagh, “Labour urges UK government to publish findings of 2016 pandemic drill” *The Guardian* (2 April 2020) <https://www.theguardian.com/world/2020/apr/02/labour-urges-government-publish-findings-2016-pandemic-drill> (CB/C495-C496)

<sup>35</sup> ‘Coronavirus: Pandemic exercise findings ‘must be published’ *BBC* (2 May 2020) <https://www.bbc.co.uk/news/uk-wales-politics-52509854> (CB/C522-C523)

<sup>36</sup> Valerie Vaz MP (Walsall South) (Lab) Hansard Debate (6 May 2020) vol 675, col 576 (Excerpts) (CB/C243-C247)

million daily listeners)<sup>37</sup> and Piers Morgan on Good Morning Britain (currently 906,000 viewers during the pandemic).<sup>38</sup>

34. The Government has continued to ignore, delay responses to, or refused repeated requests for disclosure from various sources<sup>39</sup>, including in response to a number of parliamentary questions seeking publication. By way of example:

- (1) The Deputy Prime Minister, Dominic Raab MP was asked at a Daily Briefing on 22 April 2020 whether he would commit to making the Cygnus Report publicly available. He responded that he would “*look very carefully at the rule*” and that he was “*happy to take that away and have a look at it*”.<sup>40</sup> However, there has been no further public announcement.
- (2) On 27 April, in the formal meeting (oral evidence session) of the Committee on the Future Relationship with the EU, Rupa Huq MP asked Minister for the Cabinet Office, Michael Gove MP, about the exercise: “*when are we going to see the lessons learned from Operation Cygnus? That was specifically about pandemics and we know it said that there was not*

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<sup>37</sup>“Nick Ferrari’s extraordinary exchange with Care Minister over pandemic text exercise” *Leading Britain’s Conversation DAB Digital Radio* (30 March 2020) <https://www.lbc.co.uk/radio/presenters/nick-ferrari/extraordinary-exchange-care-minister-coronavirus/>

<sup>38</sup> Cydney Yeates, “Piers Morgan hits back at MP over bullying accusations after explosive Victoria Atkins interview” *Metro* (28 April 2020) <https://metro.co.uk/2020/04/28/piers-morgan-hits-back-mp-bullying-accusations-12620018/>

<sup>39</sup> In a 14th April letter from Greg Clark MP to Professor Stephen Powis, National Medical Director for NHS England, copied to the Secretary of State for Health and Social Care, Mr Clark asks Professor Powis asks about “when the results of the 2016 ‘Exercise Cygnus’ work will be published” (<https://committees.parliament.uk/download/file/?url=%2Fpublications%2F696%2Fdocuments%2F3428&slug=06-200414-chair-to-stephen-powispdf>). The Chair of the Science and Technology Select Committee, has since written to Prime Minister directly raising concerns over “over the transparency of the scientific advice given and its relationship to government decisions” and included recommendations “to increase transparency” , (<https://publications.parliament.uk/pa/cm5801/cmselect/cmsctech/correspondence/200518-Chair-to-Prime-Minister-re-COVID-19-pandemic-some-lessons-learned-so-far.pdf>). No response to this correspondence was received to date.

<sup>40</sup> “Coronavirus: Dominic Raab gives daily briefing on outbreak in UK — watch live” *YouTube (Guardian News)* (22 April 2020) [https://youtu.be/tnSdp\\_4RZMQ?t=3038](https://youtu.be/tnSdp_4RZMQ?t=3038) (from 50:39)

enough PPE... Are we going to see the results of that ever?”<sup>41</sup> Michael Gove MP did not respond to this question.

- (3) On 5 May Sir Christopher Chope, a Conservative MP, noted that the Secretary of State had earlier on in the House of Commons debate stated that “*transparency is the lodestar of Government policy.*” and asked “*If that is correct, will he now release the findings of Exercise Cygnus and prove that that was not just a gesture, but is actually the real policy of the Government?*”<sup>42</sup> The Secretary of State responded “*Exercise Cygnus was undertaken under my predecessor, and there are specific rules in Government around decisions over papers that were produced before one’s time. I will take away that point.*”<sup>43</sup> It is important to note in this regard that his predecessor Jeremy Hunt MP, has confirmed that he has no problem with the report being published.<sup>44</sup> No updates have been provided since.
- (4) On 12 May in response to a further query from Sir Chistopher Chope and others about whether the Secretary of State will make it his policy to publish all recommendations resulting from Exercise Cygnus, the Under-Secretary for Health and Social Care responded that “*The Department does not routinely publish reports on exercises. This is to allow Ministers, officials and emergency planners to develop policies and plans while ensuring that the full, candid and proper deliberation of lessons identified is not influenced or impacted by the possibility of public exposure.*”<sup>45</sup>

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<sup>41</sup> Rupa Huq MP (Ealing Central and Acton) (Lab), Future Relationship with the EU Committee (6 May 2020) <https://twitter.com/RupaHuq/status/1257981198401486849>

<sup>42</sup> Sir Christopher Chope MP (Christchurch) (Con) Hansard Debate (5 May 2020) vol. 675, col. 503 “Covid-19 Update” <https://hansard.parliament.uk/Commons/2020-05-05/debates/FEDF1F15-7728-4E4D-A66E-01F7CE658C46/Covid-19Update> (CB/C219-C239)

<sup>43</sup> The Secretary of State for Health and Social Care (Matt Hancock), Hansard Debate (5 May 2020) vol. 675, col. 503 “Covid-19 Update” (<https://hansard.parliament.uk/Commons/2020-05-05/debates/FEDF1F15-7728-4E4D-A66E-01F7CE658C46/Covid-19Update>) (CB/C219-C239)

<sup>44</sup> Christopher Hope, ‘Jeremy Hunt says he has no problem with Government's 2016 pandemic report being published’ *The Telegraph* (24 April 2020) <https://www.telegraph.co.uk/politics/2020/04/24/jeremy-hunt-says-has-no-problem-governments-2016-pandemic-report/> (CB/C516-C518)

<sup>45</sup> Clive Efford MP (Eltham) (Lab) Hansard Debate Written Question (38414) (21 April 2020) “Exercise Cygnus”

- (5) Sir Christopher Chope MP has raised a number of further written questions in relation to Exercise Cygnus. On 13 May he asked which reports on pandemic flu exercises had been published by the Department for Health and Social Care and what criteria were applied in each such case to justify publication.<sup>46</sup> In her response on 20 May, the Under-Secretary for Health and Social Care stated: “*The Department does not routinely publish reports on exercises*”.<sup>47</sup>
- (6) In a written question on 15 May 2020 Sir Christopher Chope MP asked: “*with reference to the principle of transparency set out on page 18 of the Government document entitled “Our Plan to Rebuild: The UK Government’s Covid-19 recovery strategy, CP239”, for what reason he has not published the scientific and technical advice arising from Exercise Cygnus; and if he will make a statement.*”<sup>48</sup> In response, he was informed that “*Reports on exercises are not routinely published by the Department to allow full, candid and proper deliberation of the lessons learnt. The scientific and technical advice from Exercise Cygnus was based on a hypothetical scenario for a fictional influenza pandemic and is therefore not suitable for publication. Lessons from Exercise Cygnus, in conjunction*

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<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-04-21/38414/>

Justin Madders MP (Ellesmere Port and Neston) (Lab) Hansard Debate Written Question (38614) (21 April 2020) “Exercise Cygnus”

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-04-21/38614/> ;

Sir Christopher Chope MP (Christchurch) (Con) Hansard Debate Written Question (37420) (20 April 2020) “Exercise Cygnus”

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-04-20/37420/> (CB/C248-C250)

<sup>46</sup> Sir Christopher Chope MP (Christchurch) (Con) Hansard Debate Written Question (46525) (13 May 2020) “Emergencies: Disclosure of Information” <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-05-13/46525/> (CB/C251)

<sup>47</sup> Sir Christopher Chope MP (Christchurch) (Con) Hansard Debate Written Question (46525) (13 May 2020) “Emergencies: Disclosure of Information” <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-05-13/46525/> (CB/C251)

<sup>48</sup> Sir Christopher Chope MP (Christchurch) (Con) Hansard Debate Written Question (47173) (15 May 2020) “Exercise Cygnus: Disclosure of Information” <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-05-15/47173/> (CB/C253)

*with expert advice, continue to be used in planning for a future influenza pandemic and inform policy development.”<sup>49</sup>*

- (7) It is also worth noting that further oral questions on Exercise Cygnus have been scheduled.<sup>50</sup>

### **Public interest in publication of the findings of Exercise Cygnus**

35. The public interest in the publication of the findings of Exercise Cygnus is overwhelming. Like the many politicians, members of the press and healthcare professionals who have (as set out above) called for the disclosure of the findings of Exercise Cygnus, I consider that publication is essential to address the ongoing public health emergency, and to protect the general public’s health against a second wave of this pandemic and future viral pandemics. That is particularly the case now that lockdown restrictions are being lifted which is leading to an increased risk that infection rates will rise<sup>51</sup> and has formed the basis for statements from scientists advising delays in lifting lockdown restrictions/expressing concerns about increases in infection rates.<sup>52</sup>

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<sup>49</sup> Jo Churchill MP (Bury St Edmunds) (Con) Hansard Debate Written Question (47173) (29 May 2020) “Exercise Cygnus: Disclosure of Information” <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-05-15/47173/> (CB/C253)

<sup>50</sup> Lord Hunt of Kings Heath (Lab), Hansard Debate Written Question (HL4634) (18 May 2020) <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2020-05-18/HL4634/>

<sup>51</sup> See, e.g., James Gallagher, ‘Coronavirus infection ‘R’ rate in UK creeps up’ *BBC* (15 May 2020) <https://www.bbc.co.uk/news/health-52677194>; Gerrard Kaonga, ‘Coronavirus risks surge in UK again as critical ‘R’ rate now back in dangerous territory’ *The Express* (15 May 2020) <https://www.express.co.uk/news/uk/1282785/UK-coronavirus-r-rate-infection-risk-dangerous-lockdown-matt-hancock>; David Shukman, ‘Coronavirus: Can we stay safe as lockdown eases?’ *BBC* (26 May 2020) <https://www.bbc.co.uk/news/science-environment-52804795>

<sup>52</sup> See, e.g., Rowena Mason and Hannah Devlin, ‘England’s Covid-19 infection rate too high for further easing, experts say’ *the Guardian* (14 May 2020) <https://www.theguardian.com/politics/2020/may/14/englands-covid-19-infection-rate-too-high-for-further-easing-experts-say>; Hannah Devlin, ‘UK’s reproduction rate still close to 1, bringing lockdown-easing steps into question’ *The Guardian* (15 May 2020) <https://www.theguardian.com/world/live/2020/may/15/uk-coronavirus-live-union-leaders-to-meet-government-about-reopening-english-schools?page=with:block-5ebeba0d8f0849a584fe14c8#block-5ebeba0d8f0849a584fe14c8>; ‘Could easing lockdown put people with long-term conditions at risk?’ *British Heart Foundation* (15 May 2020) <https://www.bhf.org.uk/information-support/heart-matters-magazine/news/behind-the-headlines/coronavirus/easing-coronavirus-lockdown>;

### The purpose of Exercise Cygnus

36. Exercise Cygnus was carried out for the express purpose of informing Government, public health experts, medical practitioners, NHS procurement, health, social care and education providers, on how best to prepare for an influenza pandemic. It was undertaken at tax-payers' expense in order to protect their health against a high-risk civil emergency. The executive summary of Public Health England's Pandemic Influenza Response Plan 2014 expressly recognised this fact when preparing for Exercise Cygnus: "*PHE's first function is to fulfil the Secretary of State's duty to protect the public's health from infectious diseases and other public health hazards. The threat from pandemic influenza remains the top national risk and PHE has a core and critical role working with its local and national partners, in preparing for and responding to influenza pandemic.*"<sup>53</sup>
37. From the perspective of a healthcare professional, it is difficult to understand why a complex national exercise should have been carried out at great expense to the tax-payer for the express purpose of learning lessons for the future, and that the learning points from that exercise should then be covered up, without any reason or explanation provided, particularly with regard to a pandemic which can cause and has caused widespread mortality and is highly likely to result in a second pandemic wave for which preparation is necessary.

### The Government's continued reliance on the content of the Cygnus Report

38. The Government has repeatedly referred to Exercise Cygnus, and expressly recognised that the Cygnus Report is relevant to the laws, regulations, systems and procedures that have been developed, and are currently being developed, in response to the Covid-19 pandemic.

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Caitlin Doherty and Ryan Merrifield, 'Lifting UK Coronavirus lockdown too early 'may cause up to 73,000 extra deaths'' *The Mirror* (13 May 2020) <https://www.mirror.co.uk/news/uk-news/lifting-uk-coronavirus-lockdown-early-22017827>

<sup>53</sup> Public Health England, "Pandemic Influenza Response Plan 2014" (August 2014: PHE PGN 2014256) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/344695/PI\\_Response\\_Plan\\_13\\_Aug.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/344695/PI_Response_Plan_13_Aug.pdf) (CB/C12-C99)

39. The Government has publicly stated that the outcome of the exercise informed its approach to the first pandemic wave, so the value of the data in relation to the current pandemic is not in question. By way of example:
- (1) During a debate about the passing of the Coronavirus Act 2020 Steve Brine MP stated that Exercise Cygnus highlighted the need *“of the draft pandemic influenza Bill, which forms the basis of the legislation today.”*<sup>54</sup>
  - (2) The Department of Health and Social Care published a very detailed response to an article by the Sunday Times Insight team that was critical of the Government’s handling of the pandemic. That response stated that *“lessons learnt around pandemic preparedness, including from Exercise Cygnus”*, included (i) *“being ready with legislative proposals that could rapidly be tailored to what became the Coronavirus Act”*, (ii) *“plans to strengthen excess death planning”*, (iii) *“planning for recruitment and deployment of retired staff and volunteers”* and (iv) *“guidance for stakeholders and sectors across government.”*<sup>55</sup>
  - (3) In response to a question regarding lessons learned from Exercise Cygnus, the former Health Secretary, Jeremy Hunt MP has stated that the UK Government *“did a massive amount of work to prepare the NHS for this type of situation”*.<sup>56</sup>

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<sup>54</sup> Steve Brine (Winchester) (Con), Hansard Debate (23 March 2020) (6.37pm), “Coronavirus Bill — Second Reading” (Volume 674) <https://hansard.parliament.uk/Commons/2020-03-23/debates/F4D06B4F-56CD-4B60-8306-BAB6D78AC7CF/CoronavirusBill>

<sup>55</sup> Department of Health and Social Care Media Centre, “Response to Sunday Times Insight article” (19 April 2020) [https://healthmedia.blog.gov.uk/2020/04/19/response-to-sunday-times-insight-article/?fbclid=IwAR14qhzPc\\_Af\\_ePeTB4rExs1OeKxhyKr6k0c64CHHinUL0MOMQ-7k50c3nc](https://healthmedia.blog.gov.uk/2020/04/19/response-to-sunday-times-insight-article/?fbclid=IwAR14qhzPc_Af_ePeTB4rExs1OeKxhyKr6k0c64CHHinUL0MOMQ-7k50c3nc) (CB/C505-C508)

<sup>56</sup> “Caller tackles Jeremy Hunt over why UK didn’t prepare for coronavirus” *YouTube* (5 April 2020) <https://www.youtube.com/watch?v=-oOmOsROX08>.

- (4) On 2 April 2020, a spokesperson for the Department of Health and Social Care stated that the pandemic plans were regularly tested which had “*helped [the Government] to rapidly respond to Covid-19*”.<sup>57</sup>
- (5) On 21 April 2020 a former Health Minister, Baroness Nicola Blackwood stated that several lessons were learned and implemented following Exercise Cygnus, including (i) scaling-up the availability of PPE, and (ii) having contracts in place to acquire PPE.<sup>58</sup> She also identified the number of ventilators in place as a challenge.<sup>59</sup>
- (6) On 29 April 2020 in respect of Exercise *Cygnus* Nigel Adams MP stated on behalf of the Government: “*Of course, the lessons learned from Cygnus continue to be considered by Government when we are reviewing our responses.*”<sup>60</sup>
- (7) On 4 May 2020, Jo Churchill MP (Parliamentary Under-Secretary for Health and Social Care) stated that the “*lessons identified*” from *Cygnus* “*continue to inform the development of pandemic preparedness plans*”<sup>61</sup>.

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<sup>57</sup> Dan Sabbagh, “Labour urges UK government to publish findings of 2016 pandemic drill” *The Guardian* (2 April 2020) <https://www.theguardian.com/world/2020/apr/02/labour-urges-government-publish-findings-2016-pandemic-drill> (CB/C495-C496)

<sup>58</sup> “Nick Ferrari’s fiery interview with Tory peer over government’s pandemic preparedness” *Leading Britain’s Conversation* (21 April 2020) <https://www.lbc.co.uk/radio/presenters/nick-ferrari/tory-peer-public-health-england-coronavirus/> (CB/C514-C515)

<sup>59</sup> “Nick Ferrari’s fiery interview with Tory peer over government’s pandemic preparedness” *Leading Britain’s Conversation* (21 April 2020) <https://www.lbc.co.uk/radio/presenters/nick-ferrari/tory-peer-public-health-england-coronavirus/> (CB/C514-C515); Nick Ferrari asked: “*Why didn’t we get more ventilators as a result of Cygnus?*” Baroness Blackwood replied: “*I think the ventilators were a challenge, and there is a right challenge I think to the number of ventilators which were in place, but... we were not the only country in the world which did not have enough ventilators in place.*”

<sup>60</sup> Nigel Adams MP (Minister for Asia) Hansard Debate (29 April 2020) vol.675 col.334 “Covid-19: Repatriation of UK Nationals” <https://hansard.parliament.uk/Commons/2020-04-29/debates/DE2C990B-FB35-4882-BB67-4D296FD905F5/Covid-19RepatriationOfUKNationals?highlight=cygnus#contribution-C0149B0C-EAED-47F8-8B6F-2D2A3B8A1BBD> (CB/C216-C217)

<sup>61</sup> Catherine West MP (Hornsey and Wood Green) (Lab) Hansard Debate Written Question (41129) (28 April 2020) “Exercise Cygnus” <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-04-28/41129/>

- (8) On 5 May 2020, in response to a question regarding Operation Cygnus raised by Dr Philippa Whitford MP regarding the lessons from the Exercise on the lack of “*both ventilators and personal protective equipment for staff*”, Edward Argar MP confirmed that “*The Government did act in looking at all previous modelling and all previous exercises.*”<sup>62</sup>
- (9) On 13 May 2020, in response to a written question from Baroness Ritchie about what steps the Government took in response to the Cygnus Report recommendations, Lord Bethell stated on behalf of the Government that “*[the] lessons identified from Exercise Cygnus continue to be considered by the Government and a range of stakeholders, including expert advisory groups and local emergency planners...the lessons from Exercise Cygnus have informed our preparedness, including strengthening health sector plans to surge and flex systems and resources beyond normal operations, and stockpiling personal protective equipment specifically for a pandemic influenza*”.<sup>63</sup>
- (10) On 18 May 2020 in response to a written question from Baroness Thornton querying what assessment HM Government have made of the plans developed by NHS England to improve pandemic response planning as a result of Exercise Cygnus, Lord Bethell wrote: “*The lessons from Exercise Cygnus, along with expert scientific, clinical and operational advice, have informed the UK’s preparedness to ensure that the country remains well prepared for infectious disease outbreaks. This includes work such as development of draft legislation support to the health system response to a future influenza pandemic and strengthening plans to surge and flex beyond normal operations, as demonstrated by the considerable increase in critical care capacity as part of the response to the Covid-19 pandemic.*”<sup>64</sup>

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<sup>62</sup> Dr Philippa Whitford MP (Central Ayrshire) (SNP) Hansard Debate (5 May 2020) vol.675, “Covid-19: EU Procurement Schemes” <https://hansard.parliament.uk/Commons/2020-05-05/debates/33E3D264-4A1D-4B0E-8375-D14394DFBB82/Covid-19EUProcurementSchemes?highlight=cygnus#contribution-996B977B-80FE-4C8D-A60A-D658137B634D> (CB/C240-C241)

<sup>63</sup> Baroness Ritchie of Downpatrick, Hansard Debate Written Question (HL3149) (13 May 2020) “Exercise Cygnus: NHS” <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2020-04-21/HL3149/> (CB/C252)

<sup>64</sup> Baroness Thornton (Lab) Hansard Debate Written Question (HL3956) (5 May 2020) “Disease Control” <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2020-05-05/HL3956/> (CB/C242)

40. The fact that Exercise Cygnus has and continues to inform Government decision-making is also supported by further statements included in the statement of my co-claimant Thomas Greene at **(CB/B35-B44)**.
41. The need to urgently disclose a report that the Government has repeatedly stated it is relying on in addressing the first pandemic wave is undeniable in the context of both the likelihood of further pandemic waves which I discuss further below, and the ongoing public health emergency which will ensue from secondary effects of the primary wave.
42. The significance of the findings of Exercise Cygnus in being able to evaluate and critique the Government's ongoing response to the pandemic and inform future policy has been confirmed by a number of individuals and scientific experts, such as Sir David King, the Government's former Chief Scientific Adviser,<sup>65</sup> Sir Paul Nurse, Nobel Prize in Physiology or Medicine winner,<sup>66</sup> Phillip Lee, a former Conservative MP who was a Conservative Minister at the time of Exercise Cygnus and now states that it was "*a mistake not to publish at the time*"<sup>67</sup>, Jeremy Hunt (the Secretary of State for Health at the time of the exercise) who stated "*The Government should publish the findings of a pandemic drill which forecast how the UK would be quickly overwhelmed by a major outbreak*" and noted "*The reality is that we did learn lessons. But there were clearly*

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<sup>65</sup> Krishnan Guru-Murthy, "Government not being honest enough, says former Chief Scientific Adviser" *Channel 4 News* (19 April 2020) <https://www.channel4.com/news/government-not-being-honest-enough-says-former-chief-scientific-adviser> **(CB/C509)**;

"UK government accused of "sleepwalking into disaster" over coronavirus outbreak" *YouTube (Channel 4)* (19 April 2020) [https://www.youtube.com/watch?time\\_continue=511&v=fPrETIGYMuE&feature=emb\\_logo](https://www.youtube.com/watch?time_continue=511&v=fPrETIGYMuE&feature=emb_logo) (specific mention to Exercise Cygnus at 9:22).

<sup>66</sup> Adrian Zorzut, "UK's top bioscientist slams government for "failing" to prepare NHS for coronavirus" *The New European* (1 May 2020) <https://www.theneweuropean.co.uk/top-stories/sir-paul-nurse-on-boris-johnson-government-failings-over-nhs-and-coronavirus-1-6632991> **(CB/C519-C521)**

<sup>67</sup> Jamie Doward, "Government under fire for failing to act on pandemic recommendations" *The Guardian* (19 April 2020) <https://www.theguardian.com/world/2020/apr/19/government-under-fire-failing-pandemic-recommendations> **(CB/C503-C504)**

*things that we needed to learn.*”<sup>68</sup> and other senior academics involved at the time<sup>69</sup> as well as numerous media articles.<sup>70</sup>

43. There is significant concern both at the highest scientific level and in national public discourse around the continued failure to learn from Exercise Cygnus. For instance, Sir Paul Nurse is a Nobel Prize Winner, former President of the Royal Society, current CEO of the Francis Crick Institute, and the UK’s most eminent bio-scientist has publicly said on BBC Question Time: “*We were totally unprepared for it, and we should have been prepared for it. I mean, the fact is there was a review of the functioning of the NHS, how it would work in a pandemic... it was never published... and we didn’t do well, in fact we failed. Now was there any action there? I didn’t see any action. It wasn’t even published.*”<sup>71</sup> Sir Paul’s statement on 30 April 2020 makes the argument that pandemic preparation was not undertaken at least in part due to the failure of disclosure and we need to ensure that these mistakes are not repeated when preparing for further pandemic waves.
44. At present, members of the public, including healthcare professionals, have no way to test the UK Government’s assertions in relation to its reliance on Exercise Cygnus, given the ongoing refusal to disclose this material. The ability to do so becomes even more important when it is noted that public debate regarding the Government’s response to the first pandemic wave will likely inform its future response.

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<sup>68</sup> Christopher Hope, ‘Jeremy Hunt says he has no problem with Government’s 2016 pandemic report being published’ *The Telegraph* (24 April 2020) <https://www.telegraph.co.uk/politics/2020/04/24/jeremy-hunt-says-has-no-problem-governments-2016-pandemic-report/> (CB/C516-C518)

<sup>69</sup> Bill Gardner and Paul Nuki, “Exercise Cygnus warned the NHS could not cope with pandemic three years ago but “terrifying” results were kept secret” *The Telegraph* (28 March 2020) <https://www.telegraph.co.uk/news/2020/03/28/exclusive-ministers-warned-nhs-could-not-cope-pandemic-three/> (CB/C483-C490)

<sup>70</sup> Paul Nuki and Bill Gardner, “Exercise Cygnus uncovered: the pandemic warnings buried by the Government” *The Telegraph* (28 March 2020) <https://www.telegraph.co.uk/news/2020/03/28/exercise-cygnus-uncovered-pandemic-warnings-buried-government/> (CB/C474-C482)

<sup>71</sup> Adrian Zorzut, “UK’s top bioscientist slams government for “failing” to prepare NHS for coronavirus” *The New European* (1 May 2020) <https://www.theneweuropean.co.uk/top-stories/sir-paul-nurse-on-boris-johnson-government-failings-over-nhs-and-coronavirus-1-6632991> (CB/C519-C521)

45. The localised information and data that must be available from Exercise Cygnus is really important to have especially in a context where the Government are taking about localised lockdowns as we come out of the first wave and also, of course, potentially go into a second wave. It seems Local Resilience Forums and individual NHS Trusts were sent a report on their performance which they are presumably still relying on in their response to coronavirus (See Statement of Tessa Gregory (**CB/C67-C69**). Did they identify local areas which coped worst under Exercise Cygnus and does that correspond with what has happened during this pandemic? It seems to be accepted that different areas need different approaches but how can anyone assess or critique those decisions without the full findings of Exercise Cygnus being publicly disclosed.
46. One key concern which the findings of Exercise Cygnus are likely to address is the availability of PPE which has been and continues to be a huge issue during this pandemic. There is evidence from the minutes of a NERVTAG meeting dated 14 June 2017 that Exercise Cygnus uncovered a shortage of specific items of PPE and suggesting that shortage was ignored.<sup>72</sup> Subsequently, during the Covid-19 pandemic, the Government's policy on PPE has contradicted the advice of the UK Resuscitation Council,<sup>73</sup> and contradicted the advice of the World Health Organization<sup>74</sup>. Many healthcare professionals have lost confidence in the Government's pandemic policy in these circumstances, and our own personal health and safety at work is directly impacted. We are bound by a code of conduct which obliges us to put the patient first<sup>75</sup> and inevitably this results in our own exposure to a level of risk which is higher than for most people. This is not only a problem which affects healthcare workers

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<sup>72</sup>NERVTAG, "Minutes of the fifth meeting of NERVTAG" (14 June 2017) Action 5.7. <https://app.box.com/s/3lkcxbepqixkg4mv640dpvvg978ixjtf/file/239555624001> (noting that "*Members received copies of an extract of the full report that focused on the lessons learned during the exercise*"). (**CB/C259**)

<sup>73</sup>Shaun Lintern, "NHS staff "at risk" from Public Health England's advice that they don't need masks to resuscitate Covid-19 patients" *Independent* (20 April 2020) <https://www.independent.co.uk/news/health/coronavirus-mask-nhs-cpr-resuscitation-resus-public-health-england-a9474621.html>

<sup>74</sup> Abi Rimmer, "Covid-19: Experts question guidance to reuse PPE" *The BMJ* (20 April 2020) <https://www.bmj.com/content/369/bmj.m1577>

<sup>75</sup> General Medical Council, "The duties of a doctor registered with the General Medical Council" (2020) <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/good-medical-practice/duties-of-a-doctor>

during the current pandemic. It also affects the general public because the lack of PPE encourages transmission of Covid-19 by healthcare workers to patients, to the community and to their own families.<sup>76</sup> Understanding what information and considerations led to the decisions on PPE to date, including whether findings from Exercise Cygnus informed those decisions, will allow the wider public and healthcare professionals to assess Government decision-making in relation to provision of PPE within the first pandemic wave and thereby general public debate to inform an approach to any future pandemic waves.

### The risk of a second wave

47. The risk of a second wave of the Covid-19 pandemic is very real and heightens the urgent need for full disclosure of the findings of Exercise Cygnus. The Scientific Pandemic Influenza Group on Modelling (SPI-M) provides independent expert advice to the Department of Health and Social Care, and reported in November 2018 that there were three significant pandemics in the 20<sup>th</sup> century in the UK: the 1918-19 pandemic or “Spanish Flu” (three waves), the 1957-58 pandemic (one wave, but lasting 6 months), and the 1968-69 pandemic (two waves). The 1918-19 and 1968-69 pandemics had large second peaks.<sup>77</sup> The international scientific community has also warned about the likelihood of a second wave of Covid-19.<sup>78</sup>
48. In addition, it is of significant concern that the WHO has advised, “*There is currently no evidence that people who have recovered from Covid-19 and have antibodies are protected from a second infection.*”<sup>79</sup> This suggests that herd immunity may not develop, and we will have to wait many months for a vaccine to acquire immunity to Covid-19. In the meantime, the UK population will be highly

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<sup>76</sup> “Public health professor says NHS testing system “emaciated” by Tory cuts” *ITV* (1 May 2020) (1.30am) <https://www.itv.com/news/2020-05-01/public-health-professor-says-nhs-testing-system-emaciated-by-tory-cuts/>

<sup>77</sup> “SPI-M Modelling Summary” *Scientific Pandemic Influenza Group on Modelling* (November 2018) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/756738/SPI-M\\_modelling\\_summary\\_final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756738/SPI-M_modelling_summary_final.pdf) (CB/C173-C215)

<sup>78</sup> Shunqing Xu, Yuanyuan Li, “Beware of the second wave COVID-19” (8 April 2020) [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30845-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30845-X/fulltext) (CB/C497-C498)

<sup>79</sup> “Immunity passports in the context of Covid-19 – Scientific Brief” *World Health Organisation* (24 April 2020) <https://www.who.int/news-room/commentaries/detail/immunity-passports-in-the-context-of-Covid-19>

vulnerable to further cycles of the pandemic. The scientific literature also suggests that even where immunity develops from exposure to a virus, secondary waves can cause significant mortality by affecting those who were not exposed to the primary wave.<sup>80</sup> It is important to emphasise that scientific data suggests that second waves have increased severity as compared to primary waves of a viral pandemic.<sup>81</sup>

49. The director of the United States Centres for Disease Control and Prevention (“**CDC**”) has warned that a second wave of coronavirus is likely to be even more devastating because it is likely to coincide with flu season.<sup>82</sup> However, there is no consensus on the timing of a likely secondary wave, and it may be much sooner than the flu season. As above, the risk of infection rates (and by extension hospitalisations) rising as lockdown restrictions are lifted is widely accepted. Professor Shattock, a leading UK expert who is working on a vaccine at Imperial College, issued a similar warning to that from the CDC director, but also said, “*We don’t know that there’s any seasonality about this virus, but you can imagine that when we start to get back to normal life, possibly over the summer, that cases will ramp up again.*”<sup>83</sup>
50. The academic literature points out that regardless of whether there is another “cycle” of Covid-19, there will be a secondary wave in terms of by-products of the primary wave: (i) rebound in medical needs, as patients with ignored medical needs during the pandemic present to the NHS with decompensated severe disease resulting from untreated medical conditions,

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<sup>80</sup> Svenn-Erik Marrieland, “1918 pandemic morbidity: The first wave hits the poor, the second wave hits the rich” *US National Library of Medicine National Institutes of Health Influenza and other Respiratory Viruses* (May 2018) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5907814/>

<sup>81</sup> See L Simonsen et al, “A review of the 1918 herald pandemic wave: importance for contemporary pandemic response strategies” *US National Library of Medicine National Institutes of Health* (May 2018) <https://www.ncbi.nlm.nih.gov/pubmed/29530388>: “Taken together, historic experience with the 1918 and subsequent pandemics shows that increased severity in second and later pandemic waves may be the rule rather than the exception.”

<sup>82</sup> Lena H. Sun, “CDC director warns second wave of coronavirus is likely to be even more devastating” *The Washington Post* (21 April 2020) <https://www.washingtonpost.com/health/2020/04/21/coronavirus-secondwave-cdcdirector/>

<sup>83</sup> Rhys Blakely, “Be ready for second wave of coronavirus to strike UK, scientist tells country” *The Times* (20 April 2020) <https://www.thetimes.co.uk/article/britain-must-be-ready-for-second-wave-of-coronavirus-leading-scientist-warns-jsvrlmchq> (CB/C510-C513)

(ii) intermediate and long-term sequelae to Covid-19 infection such as long term respiratory and cardiac failure, and (iii) healthcare worker burnout.<sup>84</sup>

51. Finally, it is important to bear in mind that Covid-19 represents a progression in a series of viral pandemics during the last seventeen years, including SARS, MERS, H1N1 and Ebola, and there remains the possibility of future pandemics with novel viruses, which can draw on evidence from Exercise Cygnus to inform any response.
52. Whilst some learning may now be drawn from the experience of managing and responding to the first wave of the pandemic, the fast-moving nature of the pandemic has led to a lag in collecting and collating information (one of many examples of this is the difficulty in obtaining clarity regarding mortality figures). A second wave will therefore at least in part have to draw on lessons from the Cygnus simulation exercise, the findings of which have already been collated and, as set out above, relied on in the first pandemic wave. It is important to emphasise that, as above, the Department for Health and Social Care has recently confirmed to my co-claimant in these proceedings, Thomas Greene in his capacity as a freelance journalist, that the Department is continuing to draw on the findings of Exercise Cygnus to inform its policy decisions going forward.<sup>85</sup>

#### The need for transparency in the particular context of a pandemic

53. Government ministers have repeatedly cited “*the scientists*” when responding to difficult questions on Covid-19 policy. However, non-disclosure of the findings of Exercise Cygnus contradicts the most basic scientific values. There is a general scientific and healthcare consensus that best outcomes are achieved by transparency, peer review, collaboration and engagement with the public. It is now normal practice for scientists to present not only their scientific results for peer review by the scientific community, but also their raw data so that those results can be tested and validated independently. Transparency is required for the scientific community to have confidence in any scientific proposition,<sup>86</sup> and similarly

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<sup>84</sup> Edgar Argulian, “Anticipating the “Second Wave” of Health Care Strain in COVID19 Pandemic” *JACC Case Reports* (1 April 2020) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7158795/pdf/main.pdf> (CB/C491-C494)

<sup>85</sup> See First Witness Statement of Thomas Greene (CB/B36-B45)

transparency is required for healthcare workers to have confidence in Government policy and to execute that policy effectively. In addition, the Chief Scientific Adviser recently explained that transparency can often encourage novel insights into scientific problems: “*I believe it is... right that the evidence base should become open for others to see too, so they can provide challenge and form new and important observations*”.<sup>87</sup>

54. Healthcare professionals have a direct participatory role in implementing Government policy on the Covid-19 pandemic. We have to represent the Government’s position by explaining clinical decisions during the pandemic to patients and their families. I therefore believe that the Government is interfering with the right of healthcare professionals to have information which we require to understand policy, implement that policy, and discharge competently the role which the Government has itself assigned to us. It is very difficult to both follow and represent Government decisions and guidance without any understanding of the basis for those decisions, particularly when those decisions and advice contradict scientific best practice and put lives at risk.<sup>88</sup>
55. Publication of the Cygnus Report now is essential because the Government’s lack of transparency has damaged the confidence of the scientific and healthcare communities in current pandemic policy and their faith in its ability to respond to future waves and developments. The former Chief Scientific Adviser Sir David King went so far as to set up a shadow SAGE committee, saying “*because there is no transparency, the government can say they are*

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<sup>86</sup> “Towards transparency in reporting science” *Nature Energy* (6 March 2018)  
<https://www.nature.com/articles/s41560-018-0123-2>

<sup>87</sup> Patrick Vallance, ‘We will have learned a lot, including how to do it better next time – this is science’ *The Telegraph* (30 May 2020) <https://www.telegraph.co.uk/news/2020/05/30/will-have-learned-lot-including-do-better-next-time-science/> (CB/C535-C538)

<sup>88</sup> See, e.g., Dr Oliver Lewis, “The UK Government’s guidance on combating coronavirus in care homes is inconsistent with WHO standards” *Doughty Street Insights* (21 April 2020)  
<https://insights.doughtystreet.co.uk/post/102g58h/the-uk-governments-guidance-on-combating-coronavirus-in-care-homes-is-inconsiste> ;  
Stephen Cragg, Emily-Jade Defriend, “Has the government broken the law by putting NHS staff in harm’s way?” *The Guardian*, (25 April 2020)  
<https://www.theguardian.com/commentisfree/2020/apr/25/nhs-staff-government-ppe-coronavirus> ;  
Ed Browne, “Incendiary call for Matt Hancock to resign over coronavirus PPE failings” *Daily Express* (19 April 2020)  
<https://www.express.co.uk/news/uk/1270877/coronavirus-uk-matt-hancock-guidance-government-PPE-NHS-resign-Covid-19>

*following scientific advice but we don't know that they are.”*<sup>89</sup> Sir King has subsequently highlighted the ongoing issues with transparency from the SAGE committee, stating: *“there is no transparency in the way scientific advice is going into the Government... the Government is running a top-down process... the science advisory group really has to follow what situation they are set by [Number 10]...”*<sup>90</sup> and calls for further disclosure from SAGE have continued.<sup>91</sup>

### The Government's stated commitment to transparency

56. The Government has responded to calls for increased transparency in respect of the Covid-19 pandemic generally, and accepted its importance. For example, the Prime Minister himself on 27 April 2020 when discussing the “*difficult judgments*” that the UK Government will need to make in responding to the pandemic “*serve[d] notice ... that these decisions will be taken with the maximum possible transparency*”.<sup>92</sup> In the Government's written plan for a Covid-19 recovery strategy it has also stated that transparency will be a “*guiding principle*” and that it “*will continue to be open with the public and parliamentarians, including by making available the relevant scientific and technical advice. The Government will be honest about where it is uncertain and acting at risk, and it will be transparent about the judgments it is making and the basis for them*”.<sup>93</sup>

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<sup>89</sup> Jon Stone, “Top scientist set up “shadow” SAGE committee to advise government amid concerns over political interference” *Independent* (3 May 2020) <https://www.independent.co.uk/news/uk/politics/coronavirus-sage-dominic-cummings-david-king-a9496546.html>

<sup>90</sup> Fiona Jones, “James O'Brien's eye-opening interview with former Chief Scientific Advisor” *Leading Britain's Conversation* (20 May 2020) <https://www.lbc.co.uk/radio/presenters/james-obrien/james-obriens-eye-opening-interview/>

<sup>91</sup> Ian Sample “Case for transparency over SAGE has never been clearer” *The Guardian* (24 April 2020) <https://www.theguardian.com/society/2020/apr/24/case-for-transparency-over-sage-has-never-been-clearer> ; Thomas Moore, “Coronavirus: Top scientist calls for greater transparency over SAGE meetings” *Sky News* (27 April 2020) <https://news.sky.com/story/coronavirus-top-scientist-11979656> ; Antony Costello, “The SAGE advice must be published now to find where Britain got coronavirus wrong” *The Guardian* (18 May 2020) <https://www.theguardian.com/commentisfree/2020/may/18/sage-advice-britain-coronavirus-science-government-policy>

<sup>92</sup> Prime Minister's Office, 10 Downing Street, and the Rt Hon Boris Johnson MP, “Speech: PM statement in Downing Street: 27 April 2020” <https://www.gov.uk/government/speeches/pm-statement-in-downing-street-27-april-2020>

<sup>93</sup> HM Government, ‘Our Plan to Rebuild: The UK Government's COVID-19 recovery strategy’, May 2020, CP 239, pp.17-18

57. On the basis of its commitment to transparent decision-making on Covid-19, the Government has recently revised its approach to making public details of the meetings and work carried out by the Scientific Advisory Group for Emergencies (SAGE).<sup>94</sup> In a statement updated on 5 May 2020, the Government stated:

*“During a response to a virus of this nature, it is imperative that the public is confident the government has based its decisions on a representative range of the most up-to-date science advice. In the case of Covid-19, the Scientific Advisory Group for Emergencies (SAGE) has been providing ministers and officials with free and frank advice throughout, based on external scientific evidence and a wide source of essential information. In fast moving situations, transparency should be at the heart of what the government does. We have therefore published the statements and the accompanying evidence to demonstrate how our understanding of Covid-19 has continued to evolve as new data emerges, and how SAGE’s advice has quickly adapted to new findings that reflect a changing situation.”<sup>95</sup>*

58. In line with commitments to increase transparency, further minutes<sup>96</sup> from meetings of the SAGE committee were published on 29 May 2020.<sup>97</sup> The Government’s own announcement in relation to the release noted *“Given the exceptional nature of the Covid-19 pandemic, the government, SAGE and its participants want to ensure there is as much available evidence and material as possible to the*

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/884760/Our\\_plan\\_to\\_rebuild\\_The\\_UK\\_Government\\_s\\_COVID-19\\_recovery\\_strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/884760/Our_plan_to_rebuild_The_UK_Government_s_COVID-19_recovery_strategy.pdf) p.18 (CB/C458-C463)

<sup>94</sup> Government Office for Science, “Coronavirus (COVID-19): scientific evidence supporting the UK government response” *Gov.uk* (Updated 5 May 2020) <https://www.gov.uk/government/news/coronavirus-Covid-19-scientific-evidence-supporting-the-uk-government-response> . 28 of 120 documents have been reported to have been released. See also: “Scientific Advisory Group for Emergencies (SAGE): Coronavirus (COVID-19) response” *Gov.uk* <https://www.gov.uk/government/groups/scientific-advisory-group-for-emergencies-sage-coronavirus-Covid-19-response>

<sup>95</sup> Government Office for Science, “Coronavirus (COVID-19): scientific evidence supporting the UK government response” *Gov.uk* (Updated 5 May 2020) <https://www.gov.uk/government/news/coronavirus-Covid-19-scientific-evidence-supporting-the-uk-government-response>

<sup>96</sup> According to the Government’s press release, the minutes published on 29 May 2020 *“cover those from its first meeting to the meetings that took place at the beginning of May”* Government published SAGE minutes’ *Gov.uk* (29 May 2020) <https://www.gov.uk/government/news/government-publishes-sage-minutes> (CB/C527-C529)

<sup>97</sup> Government published SAGE minutes’ *Gov.uk* (29 May 2020) <https://www.gov.uk/government/news/government-publishes-sage-minutes> (CB/C525-C526)

*general public so there is full transparency on how science advice is being formulated*' (emphasis added).<sup>98</sup>

The publication of the minutes has been widely welcomed by the scientific community and wider public, including for their ability to allow the public to understand how decision-making during the pandemic has developed.<sup>99</sup>

59. I firmly believe that the same considerations regarding transparency and public confidence apply to the publication of the Cygnus Report. In circumstances where Exercise Cygnus was designed to inform the Government's response to a pandemic; the findings in Exercise Cygnus *have* informed that response and are continuing to inform Government decision-making going forward; and the Government has repeatedly relied on the findings in Exercise Cygnus to justify the approach that it is taking, it is unsurprising that, as set out in detail above, there have been widespread calls from scientists, civil society, the media and parliamentarians to publish the report.<sup>100</sup>

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<sup>98</sup> 'Government published SAGE minutes' *Gov.uk* (29 May 2020) <https://www.gov.uk/government/news/government-publishes-sage-minutes>. (CB/C525-C526)

<sup>99</sup> See e.g. 'Sage minutes reveal how UK advisers reacted to coronavirus crisis' *The Guardian* (29 May 2020) <https://www.theguardian.com/world/2020/may/29/sage-minutes-reveal-how-uk-advisers-reacted-to-coronavirus-crisis> (CB/C530-C534);

'Expert reaction to publication of SAGE minutes' *Science Media Centre* (29 May 2020) <https://www.sciencemediacentre.org/expert-reaction-to-publication-of-sage-minutes/>

<sup>100</sup> See, e.g., Dan Sabbagh, "Labour urges UK government to publish findings of 2016 pandemic drill" *The Guardian* (2 April 2020) <https://www.theguardian.com/world/2020/apr/02/labour-urges-government-publish-findings-2016-pandemic-drill> (CB/C495-C496);

Martin Hannan, "Exercise Cygnus and how failing NHS foreshadowed Covid-19 reaction" *The National* (31 March 2020) <https://www.thenational.scot/news/18346034.exercise-cygnus-tories-failing-nhs-foreshadowed-Covid-19-reaction/>;

Adrian Sherling, "Former Chief Scientific Adviser: Austerity and delay has led to more people dying" *Leading Britain's Conversation DAB Digital Radio* (15 April 2020) <https://www.lbc.co.uk/radio/presenters/nick-ferrari/ex-chief-scientific-advisor-austerity-coronavirus/>

Jane Merrick, "Coronavirus epidemic in care homes 'will not go away in the short term'" *Independent* (7 May 2020) <https://inews.co.uk/news/coronavirus-epidemic-care-homes-latest-not-go-away-warning-2846813> (Liz Kendall, the shadow social care minister, said: "Ministers must be clear about why they failed to act on the report's recommendations and what they will now do to fully protect and resource these vital services in future").

Michael Day, "Covid-19: Concern about social care's ability to cope with pandemics was raised two years ago" *British Medical Journal* (11 May 2020) <https://www.bmj.com/content/bmj/369/bmj.m1879.full.pdf> (Professor Martin Green, CEO of Care England, has said: "It would be really helpful if this document was put into the public domain as many of the key messages may still be helpful in today's pandemic") (CB/C524)

Jane Merrick, "Coronavirus epidemic in care homes 'will not go away in the short term'" *Independent* (7 May 2020) <https://inews.co.uk/news/coronavirus-epidemic-care-homes-latest-not-go-away-warning-2846813> (Liz Kendall, the shadow social care minister, said: "Ministers must be clear about why they failed to act on the report's recommendations and what they will now do to fully protect and resource these vital services in future").

Information regarding the report is already available

60. Remarkably, the Government has continued to refuse to publish the report notwithstanding the fact that *The Sun* and *The Guardian*<sup>101</sup> have published some of the findings in apparent leaks. The fact that at least parts of the findings surrounding Exercise Cygnus may well already be out in the open and information about the contents of the report has already been made public only strengthens the case for its disclosure now. Speculation and concerns about the contents of the report can and should be addressed and public debate about appropriate future action can be based on the actual contents of the report rather than excerpts from or speculation in relation to its contents. From looking at information on Exercise Cygnus in the public domain<sup>102</sup>, I strongly believe that the Guardian's leaked report contains findings from Exercise Cygnus on strategic decision-making and coordination of messaging, but excludes important information in other Cygnus Reports relating to a viral pandemic's impact on health and social care providers, and the maintenance of critical functions.

Crowdfunding campaign

61. Finally, I also consider that it is important to mention within the context of the public interest of disclosing the findings of Exercise Cygnus that as part of preparing for bringing the challenge, I launched a crowdfunding campaign via the CrowdJustice website on 25 April 2020. This campaign has been supported by ordinary members of the public and has received no financial support from the corporate sector. In addition to the financial support received via over 1700 pledges on the website, I have also received an outpouring of support for my

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<sup>101</sup> David Pegg and others, 'Revealed: the secret report that gave ministers warning of care home coronavirus crisis' *The Guardian* (7 May 2020) <https://www.theguardian.com/world/2020/may/07/revealed-the-secret-report-that-gave-ministers-warning-of-care-home-coronavirus-crisis> (CB/C543-C545)

<sup>102</sup> See e.g. Lincolnshire's Resilience Forum, "Exercise Cygnus – Preparing for Emergencies – What you need to Know" (14 May 2014) <https://lincolnshire.moderngov.co.uk/documents/s5937/Appendix%20A.pdf> (CB/C1-C11); NHS England, 'Board Paper — NHS England' (No. PB.30.03.2017/10) p. 1 <https://www.england.nhs.uk/wp-content/uploads/2017/03/board-paper-300317-item-10.pdf> (CB/C167-C172); Powys Teaching Health Board (Wales), 'Board Paper: Agenda Item 2.6: Powys Pandemic Influence Planning Update 2016' Powys Teaching Health Board (25 January 2017) [http://www.powysthb.wales.nhs.uk/sitesplus/documents/1145/Board\\_Item\\_2.6\\_%20Pandemic%20flu%20Annual%20Report.pdf](http://www.powysthb.wales.nhs.uk/sitesplus/documents/1145/Board_Item_2.6_%20Pandemic%20flu%20Annual%20Report.pdf) (CB/C161-C166);

case in seeking publication of the Cygnus Report from members of the public and other NHS staff both via the crowdfunding page and other sources, including social media, online fora and in person.

### **The judicial review claim**

62. I first contacted Leigh Day on 14 April 2020. At this point the effects of the Covid-19 pandemic were being felt significantly in my work as an NHS doctor and I was extremely disillusioned. I could not understand the basis for the decisions that were being made by Government and the lack of transparency surrounding them. I wanted to explore ways of seeking accountability for unnecessary deaths and get an understanding of what recommendations had been made following Exercise Cygnus. I was concerned that the medical community had no sense of how past exercises designed to prepare for a viral pandemic were informing the response to the Covid-19 pandemic.
63. On 20 April I submitted an information request under the Freedom of Information Act (“FOIA”) 2000 requesting disclosure of the findings in relation to Exercise Cygnus **(CB/E45-E46)**. I was aware at the time that similar requests had been refused so did not consider that I would receive the information in that way, but I thought it was important to try every possible avenue.
64. Leigh Day sent a pre-action letter on my behalf on 23 April 2020 **(CB/E1-E9)**. The Secretary of State provided a response on 1 May 2020 **(CB/E16-E20)**. Before that response was received there were further pre-action exchanges, including in relation to information on findings of Exercise Cygnus that emerged in *The Sun* after an apparent leak on 27 April 2020 **(CB/C539-C542)(CB/E12)**. In response to enquiries regarding that information, the Secretary of State responded in his 30 April 2020 letter that he would not comment on leaked materials or leak investigations **(CB/E14)**.
65. Further information in relation to Exercise Cygnus emerged in a publication by *The Guardian* on 7 May 2020. *The Guardian* published a 57-page report entitled “*Exercise Cygnus Report Tier One Command Post Exercise Pandemic Influenza 18 to 20 October 2016*” **(CB/C546-C602)** again

apparently following a leak. Neither the authenticity nor the completeness of the report published were clear.

66. The leak to the Guardian was published very dramatically. It was entitled: “*Revealed: the secret report that gave ministers warning of care home coronavirus crisis*”.<sup>103</sup> However, on reading the report, I was struck by how little it told me about the health and social care challenges of a major viral pandemic. In particular, as set out in further detail below, Exercise Cygnus was a national multi-agency exercise involving Public Health England, NHS England, the military, and multiple Local Resilience Forums and yet the report published by the Guardian does not contain any findings in relation to the preparedness of any of those bodies, which are obviously key in any pandemic response. That formed the basis for my later, refined request for information which is seeking findings specifically in relation to the preparedness of those bodies **(CB/ E50-E52)**.
67. As set out in the statement of my solicitor, Tessa Gregory, **(CB/B67-B69)** my legal team has since been informed that the report published in the Guardian was only one of a number of reports summarising the findings of Exercise Cygnus. That information confirmed what was suggested by the report published by the Guardian and information regarding the objectives of Exercise Cygnus available in the public domain,<sup>104</sup> namely that further unpublished reports

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<sup>103</sup> David Pegg and others, ‘Revealed: the secret report that gave ministers warning of care home coronavirus crisis’ *The Guardian* (7 May 2020) <https://www.theguardian.com/world/2020/may/07/revealed-the-secret-report-that-gave-ministers-warning-of-care-home-coronavirus-crisis> **(CB/C543-C545)**

<sup>104</sup> See, e.g. Lincolnshire Resilience Forum ‘Exercise Cygnus’ *Lincolnshire’s Resilience Forum – Appendix A*’ <https://lincolnshire.moderngov.co.uk/documents/s5794/Appendix%20A.pdf> **(CB/C1-C11)**

This presentation refers to both “National Objectives” (see p.3) and “Local Strategic Objectives” (p.10). The matters described as “National Objectives” seem to track what is in the ‘leaked’ report (for example, national level organisation and coordination). That suggests to me that “Local Strategic Objectives”, described as including things such as responder’s capacity to respond to a pandemic and the resilience of health and social care providers, are dealt with in separate reports perhaps prepared by the local responders/participants.

See also: NHS England, ‘Board Paper — NHS England’ (No. PB.30.03.2017/10) p. 1 (30 March 2017) <https://www.england.nhs.uk/wp-content/uploads/2017/03/board-paper-300317-item-10.pdf> para 8 **(CB/C167-C172)**;

Paul Nuki and Bill Gardner, ‘Exercise Cygnus uncovered: the pandemic warnings buried by the Government’ *The Telegraph* (28 March 2020) <https://www.telegraph.co.uk/news/2020/03/28/exercise-cygnus-uncovered-pandemic-warnings-buried-government/> **(CB/C474-C482)**;

Powys Teaching Health Board (Wales), ‘Board Paper: Agenda Item 2.6: Powys Pandemic Influence Planning Update 2016’ Powys Teaching Health Board (25 January 2017) [http://www.powysthb.wales.nhs.uk/sitesplus/documents/1145/Board\\_Item\\_2.6\\_%20Pandemic%20flu%20Annual%20Report.pdf](http://www.powysthb.wales.nhs.uk/sitesplus/documents/1145/Board_Item_2.6_%20Pandemic%20flu%20Annual%20Report.pdf) **(CB/C161-C166)**;

